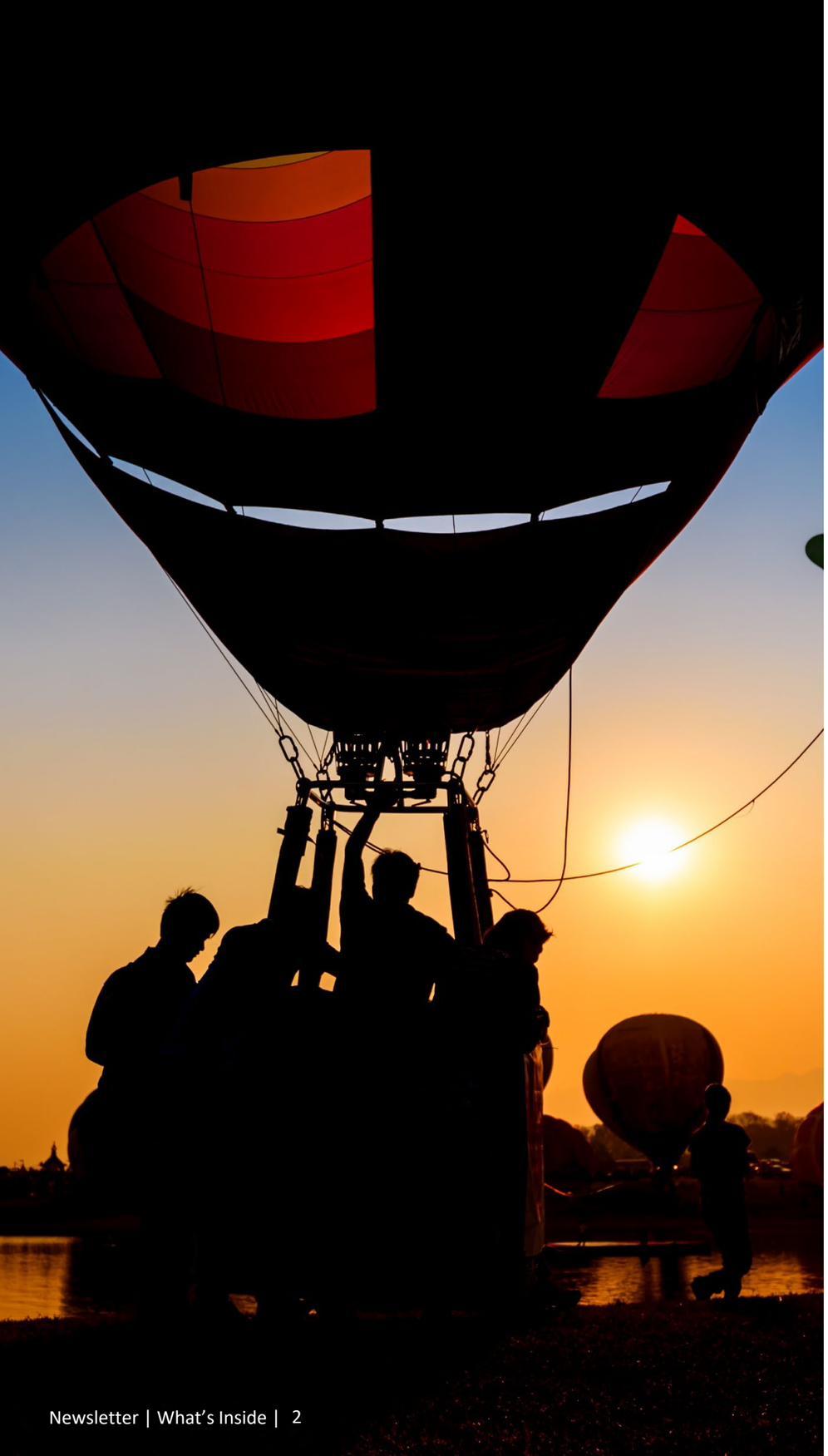
Nangia Andersen LLP

Tax & Regulatory Newsletter

May 2023



What's

Inside?

01
Direct Tax

Profit attribution is an obvious question of facts

Director of Income Tax vs Travelport Inc. & others
Civil appeal Nos. 6511-6518/2010

Issues	Outcome
Proportion of profits to be attributed in India is a question of facts and does not call for interference with the concurrent findings of HC and ITAT	In Favour of Assessee

Background

In a recent verdict, Supreme Court ('Hon'ble SC'), dismissed the Revenue's batch of appeal, holding "the question as to what proportion of profits arose or accrued in India is essentially one of facts. Therefore, we do not think that the concurrent orders of the Tribunal and the High Court call for any interference". Consequently, since HC's view on profit attribution is upheld, SC declines to address the question whether the computers placed in the premises of the travel agents and the nodes/leased lines form a fixed place PE of the Assessees in India.

Brief Facts and Contentions

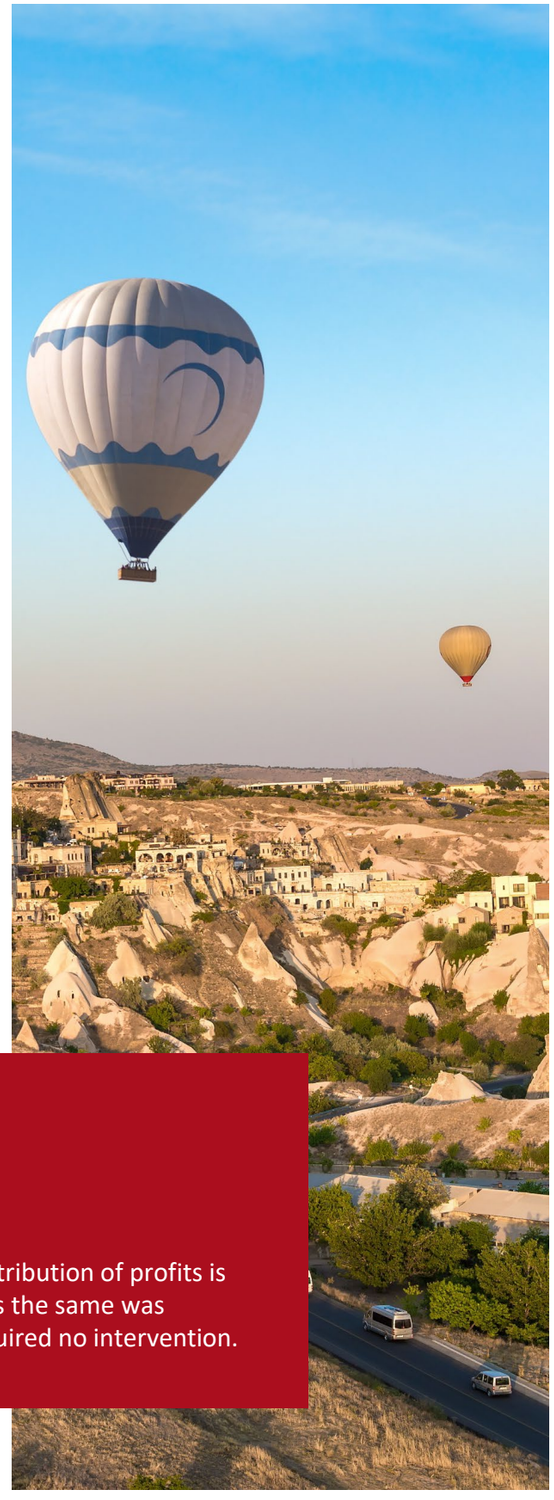
- The Assessees in these appeals are in the business of providing electronic global distribution services to Airlines through "Computerized Reservation System" ('CRS').
- In order to market and distribute the CRS services to travel agents in India, the respondents have appointed Indian entities and have entered into distribution agreements with them and the amount paid by the Assessees to their Indian entities ranged from 33.33% to about 60% of their total earnings.
- The respective Assessing Officers in the original proceedings held that the entire income earned through India by the Assessees is taxable. This was on the basis that the income was earned through the hardware installed by the Assessees in the premises of the travel agents and that therefore the total income of USD/EURO 3 is taxable.
- The orders of assessment so passed, were upheld by the respective Commissioners of Income Tax (Appeals) by independent orders. The Appeals were filed by the Assessees before the Hon'ble ITAT ('Tribunal') and the Revenue also filed cross objections on a different aspect.
- Consequently, the Tribunal held that the Assessees herein constituted Permanent Establishment ('PE') in two forms, namely, fixed place PE and dependent agent PE ('DAPE').
- As regards to attribution of profits to the PE constituted in India, the Tribunal assessed it at 15% of the revenue and held, on the basis of the functions performed, assets used and risks undertaken (FAR) that this 15% of the total revenue was the income accruing or arising in India. This 15% worked out to 0.45 cents. But the payment made to the distribution agents was USD 1/EURO 1 in many cases and much more in some cases. Therefore, the Tribunal held that no further income was taxable in India.

- Further, Appeals were filed both by the Revenue and Assessees against the orders of the Tribunal before the Delhi High Court ('Hon'ble HC'). The Hon'ble HC dismissed the appeals filed by the Revenue on the ground that no question of law arose in these matters and as far as attribution is concerned, the Tribunal had adopted a reasonable approach.

The Revenue aggrieved by the order of Hon'ble HC appealed before the Hon'ble SC.

Supreme Court's Judgement

- Hon'ble SC stated that the question as to what proportion of profits arose or accrued in India is essentially one of facts. SC quoted *"therefore, we do not think that the concurrent orders of the Tribunal and the High Court call for any interference."*
- Further, Hon'ble SC held that under Section 9 of the Act, what is reasonably attributable to the operations carried out in India alone can be taken to be the income of the business deemed to arise or accrue in India. What portion of the income can be reasonably attributed to the operations carried out in India is obviously a question of fact. On this question of fact, the Tribunal has taken into account relevant factors.



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Nangia's Take

Supreme Court has precisely stated that attribution of profits is a question of facts, not deliberating on it as the same was extensively dealt with by ITAT/ HC and required no intervention.

Loss on account of confiscation of smuggled good not allowable as a business loss

The Commissioner of Income Tax v. Prakash Chand Lunia (D) Thr.Lrs. & Anr.
CIVIL APPEAL NOS.7689-90 OF 2022

Issues	Outcome
Whether confiscation of smuggled goods be allowed as business loss	In Favour of Revenue

Background

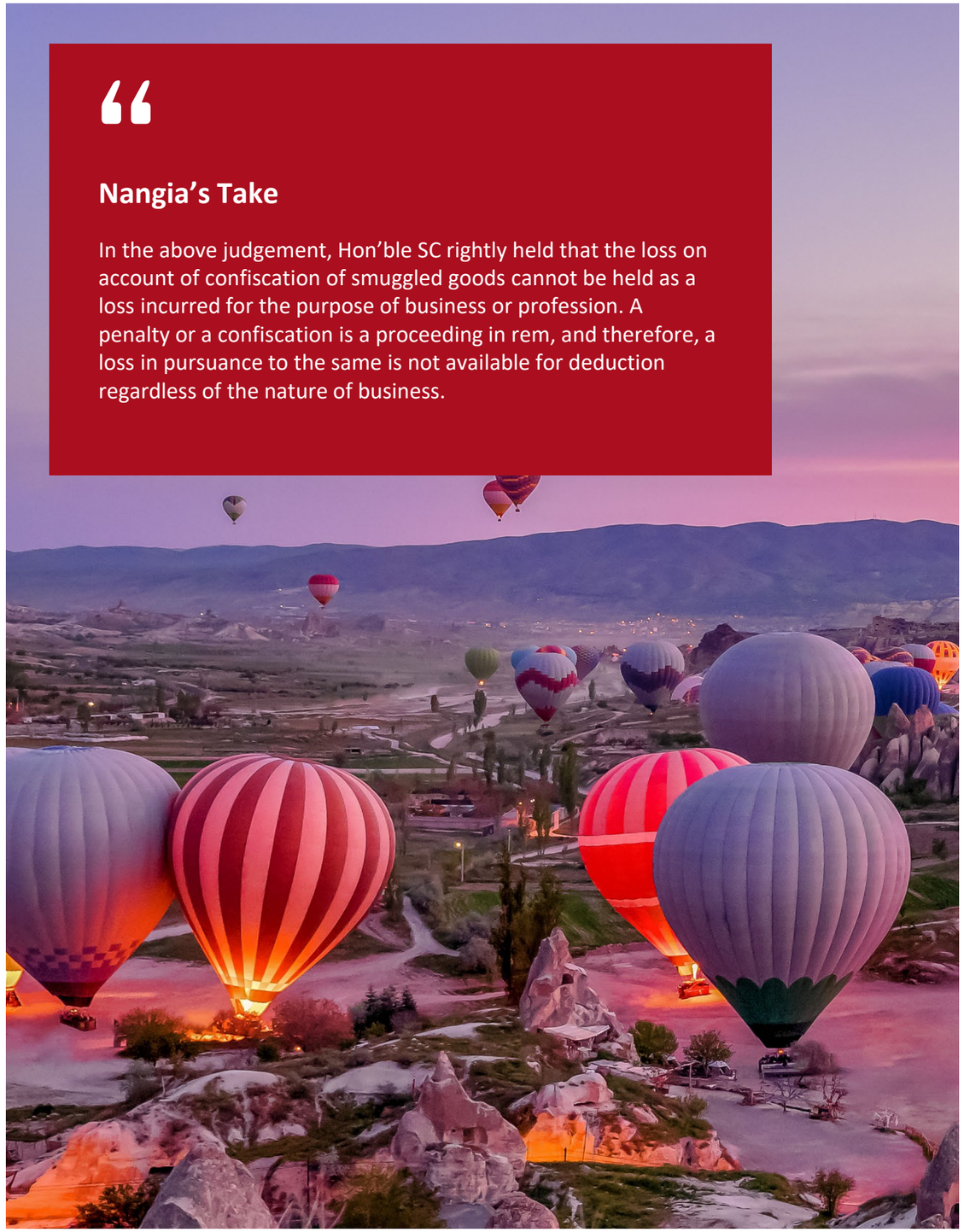
In a recent verdict, Supreme Court ('Hon'ble SC') has held that confiscation of smuggled goods, as held by the Customs Collector, viz. silver bars, shall not be allowed as business loss under the provisions of Income Tax Act,1961 ('the Act').

Brief Facts and Contentions

- Prakash Chand Lunia ('Assessee') is a bullion trader. Pursuant to search conducted by Directorate of Revenue Intelligence, bars of silver worth ₹3 crores were discovered from his place.
- Custom Collector held that the silver bars found are of smuggled nature and confiscated them. Further, Assessee was not able to explain the nature and source of acquisition of the bars, thereby attracting section 69A of the Act.
- Assesse appealed that the loss on account of confiscation of bars should be allowed as business loss.
- Assessing officer, Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal dismissed Assessee's appeal but High Court upheld Assessee's contention relying on the judgement of Hon'ble SC in Piara Singh vs CIT.

SC Judgement

- Hon'ble SC quashed the High court's judgement and held that ruling in Piara Singh shall not be applicable as the Assessee in question in the judgement was engaged in illegal business, and accordingly the loss was held to be arising from the business.
- Further explanation 1 to section 37 was introduced post he above-mentioned judgement which clearly states that any expenditure incurred for a purpose which is an offence or is prohibited by law shall not be allowed as a deduction.
- Though the explanation addresses expenditure while not making specific reference to loss one must also consider the accepted commercial practices and trading principles. Thus all losses would become expenditure.
- Further the SC ruling in Haji Aziz has also made the position clear that a penalty can never be understood as a commercial expenditure for the purpose of law.



Nangia's Take

In the above judgement, Hon'ble SC rightly held that the loss on account of confiscation of smuggled goods cannot be held as a loss incurred for the purpose of business or profession. A penalty or a confiscation is a proceeding in rem, and therefore, a loss in pursuance to the same is not available for deduction regardless of the nature of business.

Incriminating material is a prerequisite for invoking the provisions of section 153A/153C in case of unabated assessments.

Principal Commissioner of Income Tax, Central-3 vs Abhisar Buildwell P. Ltd.
CIVIL APPEAL NO. 6580 OF 2021

Issues	Outcome
In case of completed assessments, whether to consider all the material that is available on record, including that found during the search and make an assessment under section 153A	In Favour of Assessee

Background

In a recent verdict, Supreme Court (SC) examined the scope of assessment under section 153A of the Income Tax Act, 1961 (the 'Act') where the assessment under section 153A was initiated in respect of completed/unabated assessments in absence of incriminating material found during the course of search under section 132 of the Act. The core issue involved in the present batch of appeals is that in case of unabated assessments, whether to consider all the material that is available on record, including that found during the search and make an assessment under section 153A.

SC categorically holds that the object of Section 153A is to bring undisclosed income to tax which is found during the course of search. Therefore, holds that an incriminating material is a prerequisite for the Revenue to assume jurisdiction to assess or reassess the total income in case of unabated assessment.

Brief Facts and Contentions

- Present bunch of appeals have been preferred by the revenue challenging the order passed by the respective High Courts.
- Revenue submitted that it is the total income and not the undisclosed income that is required to be assessed and even where no incriminating material is found during the search in case of an unabated assessment, the AO can assess or reassess the total income taking into consideration the other material.
- Assessee contended that, as per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate.
- Assessee further claimed that search will become a tool to enlarge limitation period for making regular assessment under section 143(3), which is not permissible.

Supreme Court Judgement

- SC expounds, "The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e.,

the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search."

- SC interprets the second proviso to Section 153A and holds that it abates only pending assessments, thus, Revenue can exercise jurisdiction only with respect to pending assessments. However, holds that the Revenue cannot be left without a remedy in such cases, therefore, the Revenue can initiate the reassessment proceedings under Sections 147/48 subject to fulfilment of the conditions.
- SC further holds that, in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns.

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Nangia's Take

In the above judgement, SC has rightly held that incriminating material showing undisclosed income is the foundation for initiating assessment under section 153A/153C of the act. Further, SC has left another door open for Revenue, as a remedy, to initiate the reassessment proceedings under Sections 147/48 subject to fulfilment of the conditions.

Dividend Distribution Tax is a levy on companies and not shareholders

Total Oil India Pvt. Ltd. & Others
ITA NO.6997/MUM/2019 (A.Y.2016-17)

Issues	Outcome
Whether DDT is a tax in hands of the Company with respect to distributable profits or in hands of the shareholders with respect to dividend income	In Favour of Revenue

Background

In a recent verdict, a special bench of Income Tax Appellate Tribunal, Mumbai ('Hon'ble ITAT') examined the nature of Dividend Distribution Tax (DDT) on account of dividend paid to non-resident shareholder, in order to determine the applicable rate at which DDT shall be deposited by the company i.e. rate as per Section 115-O of the Income Tax Act, 1961 (the Act) or rate at which such dividend income is taxable in the hands of shareholder as per applicable Double Tax Avoidance Agreement (DTAA). Hon'ble ITAT concluded that the provisions of DTAA will not be applicable on DDT as the same is in nature of tax in hands of company with respect to distributable profits and the liability to deposit the same lies with the company.

Brief Facts and Contentions

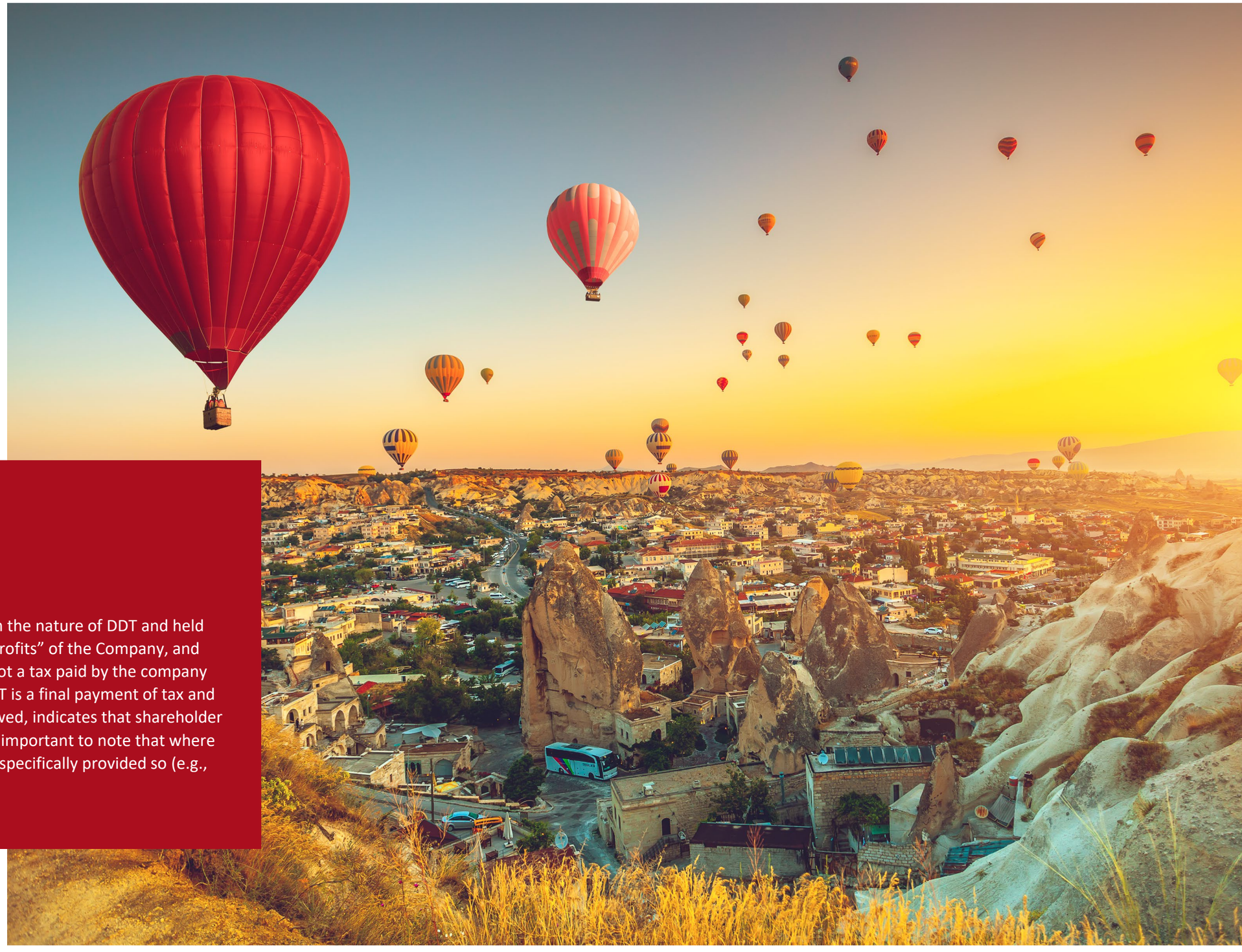
- Total Oil India Pvt. Ltd. ('the Assessee') is a domestic company, which declared/paid dividend during FY 2015-16 to its shareholders including non-resident shareholder. As per section 115-O of the Act, domestic company is required to pay additional income tax on any amount declared, distributed or paid by way of dividend and also prescribes the rate at which tax has to be paid on distributed profit.
- The Assessee raised a plea that the rate at which DDT has to be paid under section 115-O of the Act cannot be more than the rate at which such dividend income is taxable in hands of the shareholder in India i.e. the rate has to be as per the applicable DTAA, which is generally less than the rate prescribed under section 115O of the Act.
- The Assessee further submitted that section 115-O was introduced in order to escape the cumbersome procedure of collecting tax and accordingly, the intent of the legislature was not to shift the incidence of tax on the company instead of the shareholders.
- However, revenue contented that rate as per section 115O is independent of provisions of DTAA and such tax is applicable to the company on account of its distributable profits and not to the shareholders on account of its dividend income. Further, it was stated that DDT is not in nature of TDS/TCS where the shareholder can claim credit of such taxes and is a flat rate applicable to the companies on the amount distributed as dividend.

ITAT's Judgement

- Hon'ble ITAT observed that section 115-O starts with non-obstante clause and accordingly overrides the other provisions of the Act, including Sec.4. Section 115-O fixes

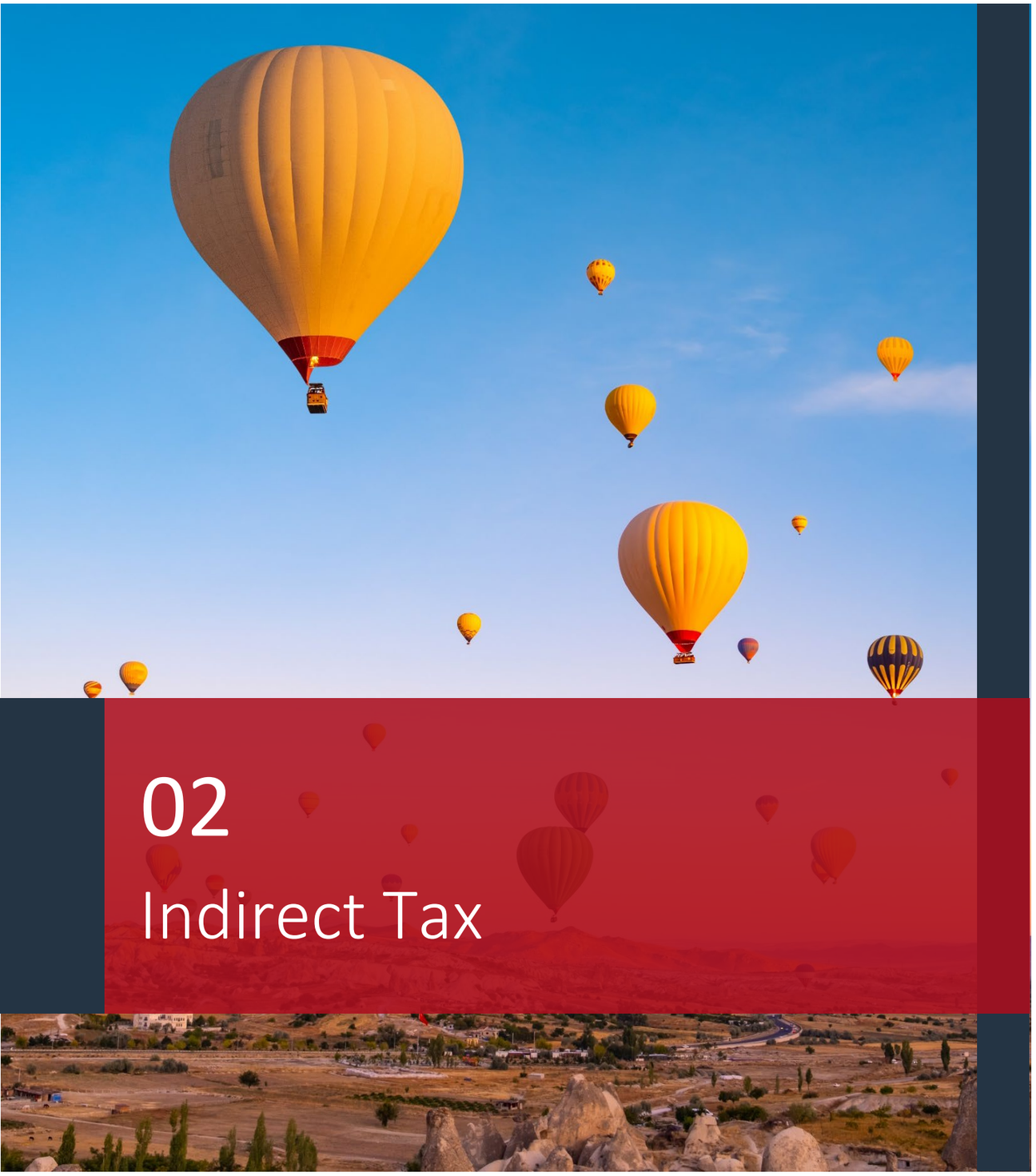
responsibility for compliance on the domestic company and its Principal Officer and is a tax in hands of the company on account of its distributable profits.

- Further, it was stated that nothing prevents the Act to impose immediate and apparent incidence of tax on a person other than person whose income is to be assessed, i.e., the legislature has power to enact provisions imposing tax liability on domestic company on income of shareholder.
- Lastly, it was held that the purpose of DTAA is to avoid double taxation/allocation of taxing rights between two Sovereign nations. DDT is a tax not on the shareholder but on the amount declared/ distributed/ paid by way of dividend by the company implying that there is no double taxation of the same income.



Nangia's Take

Mumbai ITAT has extensively deliberated on the nature of DDT and held that Section 115-O is a tax on "distributed profits" of the Company, and not a tax on "dividend distribution" and is not a tax paid by the company on behalf of shareholders. The fact that DDT is a final payment of tax and no credit to company or shareholder is allowed, indicates that shareholder does not enter the domain of DDT. It is also important to note that where DTAA sought to restrict the DDT rate, it has specifically provided so (e.g., India Hungary DTAA @ 10%.)



02
Indirect Tax

Tamil Nadu Authority for Advance Ruling ('AAR') held that services, including services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability.

Brief Facts

- M/s. Profisolutions Private Limited ('Applicant') is registered in the state of Karnataka and having its branch office registered in the State of Tamil Nadu (Chennai);
- Branch office provides certain support services such as engineering, design and accounting services etc. to the head office in Karnataka through the common employees of the company;
- Applicant contended that employees are appointed and working for the company as a whole and not employed for head office or the branch specifically. Further that the salary and benefits to employees are covered under the employee employer relationship as per para 1 of schedule 3 of CGST Act, 2017;
- In this case, no invoice was being issued and no GST was being paid for provision of said support services.

Issue involved

- Whether providing service by Branch office in one state to head office in another State through the common employees of the Company constitutes 'supply' in terms of the GST Legislation.

Decision

- AAR held that the services, including services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability, as the employees are treated as 'related person' in terms of explanation to Section 15 of the CGST Act, 2017 and treated as supply by virtue of Entry 2 of Schedule I of the CGST Act, 2017.

[Tamil Nadu Advance Ruling No. 07/ARA/2023, dated 31 March 2023]

Delhi CESTAT provided a major relief to the service exporters involved in data processing and collection activities

Recently, the Principal Bench of Hon'ble Delhi Customs Excise & Service Tax Appellate Tribunal ('CESTAT') held that –

- Services of data collection and processing doesn't get qualified under OIDAR services, accordingly, place of provision of service shall be governed by general rule (i.e. location of recipient), hence, benefit of export of service cannot be denied;
- Difference between Service Tax Return and Books of Account cannot be a reason to disallow CENVAT credit, till the time all the conditions for availment of credit are satisfied. Merely not booking of invoices in the books of accounts cannot be a ground for denial of credit;
- Extended period of limitation not invokable if the issue is wholly interpretational in nature and there is no element of fraud;
- This ruling will prove to be a huge sigh of relief for the service exporters involved in data processing and collection activities. Further, it will also benefit the taxpayers (even under the GST laws) where the department has raised tax demands merely on account of mismatch between returns and books of account.

[Delhi CESTAT Final Order No. 50578/2023 dated 17 April 2023]

03
Transfer Pricing

SC: ALP determination, judicious selection of filters are 'substantial questions of law'; Quashes Softbrands

Outcome: In favour of revenue
Category: Determination of ALP constitutes a substantial questions of law

Facts of the case

- Revenue and few of the assessee arises civil appeals out of judgement and orders passed by the various High Courts (“HC”), more particularly the HC of Karnataka, dismissing the appeals challenging the findings of the Income Tax Appellate Tribunal (“Tribunal”) on Transfer Pricing issues on the ground that the issues decided by the ITAT are questions of fact and as perversity is neither pleaded nor argued nor demonstrated by placing material to that effect, no substantial question of law arises for consideration under Section 260A of the Income Tax Act, 1961 (“IT Act”).
- Learned Additional Solicitor General (“ASG”) of India, appearing on behalf of the Revenue has vehemently submitted that the Karnataka HC in the case of ***Softbrands India (P) Ltd.*** has erroneously held that the ITAT is the final fact-finding authority on determining the arm’s length price and therefore the same cannot be subject to judicial scrutiny/ scrutiny in an appeal under section 260A of the IT Act.
- Learned ASG also submitted that arm’s length is to be determined under chapter X of the IT Act, more particularly Sections 92, 92A to 92CA, 92D, 92E and 92F and Rule 10A to 10E of the Income Tax Rules, 1962 (“IT Rules”). Therefore, it is always open for the HC to consider and/or examine, whether the guidelines stipulated under the IT Act and the IT Rules, while determining the arm’s length price have been followed by the ITAT or not. In view of the above, learned ASG submitted that the view taken by the HC of Karnataka in the case of Softbrands India (P) Ltd. is required to be corrected.

- Further, learned Senior Advocates and other learned counsel appearing on behalf of the respective assessees submitted that in all the appeals filed by the Revenue before the HC, the primary issues raised pertained to inclusion and exclusion of a few comparables and selection of filters, which are essentially questions of fact and there is a consensus ad idem to this extent between the parties. Therefore, the HC after noting the questions raised, findings rendered by the ITAT and noting that perversity is neither pleaded/argued nor demonstrated by placing any material, dismissed the appeals, by relying on principles laid down in Softbrands India (P) Ltd.

- Learned Senior Advocated and other learned counsel also submitted that the appeals preferred by the Revenue that in all the cases, the HC has found that there is no perversity by the ITAT in determining the arm's length price and therefore no substantial question of law arises as no perversity is pleaded and demonstrated. Therefore, the impugned judgements and orders passed by the HC dismissing the appeals preferred by the Revenue are not required to be interfered with by this court.

Supreme Court ("SC") Ruling:

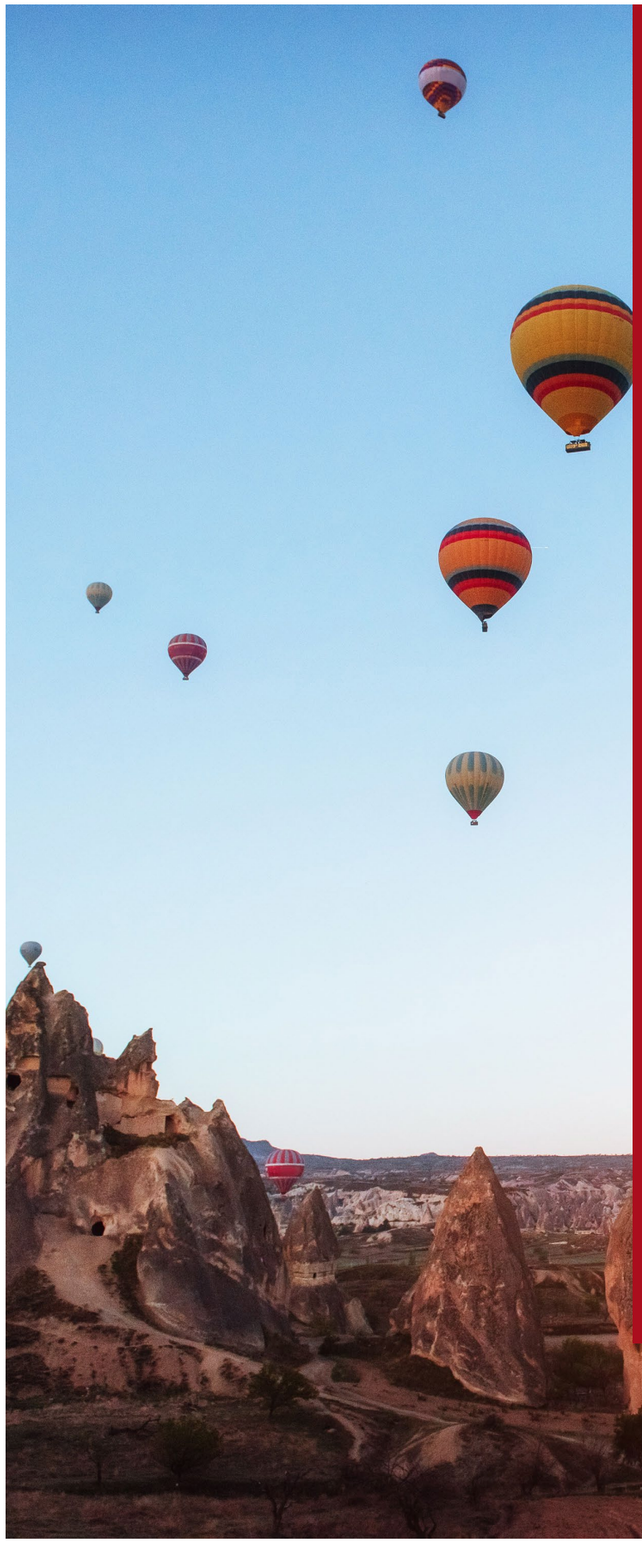
ISC made the following observations:

- SC held that any determination of the arm's length price under Chapter X de hors the relevant provisions of the guidelines (*namely, Sections 92, 92A to 92CA, 92D, 92E and 92F of the IT Act and Rules 10A to 10E of the IT Rules*), **can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law.**

- Further, **SC held that there cannot be any absolute proposition of law that in all cases where the ITAT has determined the arm's length price the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under Section 260A of the IT Act.**

- SC also held that the **HC can examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent non-comparable transactions are considered as comparable transactions or not.** Therefore, the view taken by the Karnataka HC with regard to scope of Section 260A vis-à-vis transfer pricing cases cannot be accepted.

- In conclusion, SC remits the cases back to the concerned HCs to decide and dispose of the respective appeals afresh in light of the observations made and to examine in each and every case whether the ITAT has followed the guidelines laid down under the Act and the Rules while determining the ALP. Further, SC directed respective HCs to determine in each case, within a period of 9 months, whether scheme of the Act read with the rules for ALP determination has been followed or not.



Nangia's Take

In the instant ruling, the Supreme Court of India (SC) has overturned High Court (HC) decisions to held that, there cannot be an absolute proposition of law that in all cases where ITAT has determined the arm's length price the same is final and cannot be the subject matter of scrutiny by the HC in an appeal under Section 260A of the IT Act. SC while laying the broad principle, held that in an appeal involving TP issues it is always open for HC to examine in each case whether the provisions dealing with TP have been followed or not and whether there is any perversity in the findings recorded by the ITAT while determining the ALP.

While the said ruling brings clarity on the aspect that comparability issues in TP can give rise to a 'substantial question of law', providing High Courts with the power to scrutinise appeals involving TP matters, it is also likely to increase time in reaching finality on issues relating to TP under the Indian tax appellate process which is one of the key TP challenges faced by taxpayers in India given the number of levels of appellate authorities and the inventory of cases at each level. In view of this, taxpayers would now need to consider their defence strategies for TP controversy management in India, including use of alternative channels such as Advanced Pricing Agreements (APAs).

04
Regulatory

Updates under companies act, 2013 (“ACT”)

Companies (Removal of Names of Companies from the Register of companies Amendment) Rules, 2023

The Ministry of Corporate Affairs (‘MCA’) on 17th April, 2023 amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 which shall come into force on 01st May, 2023.

Changes made in the rule are as follows:

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016	Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023
An application for removal of name of the company under subsection (2) of section 248 shall be made in Form STK-2 along with the fee of five thousand rupees.	An application for removal of name of a company under subsection (2) of Section 248 shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form No STK-2 along with the fee of ten thousand rupees.
A copy of the special resolution duly certified by each of the directors of the company or consent of seventy-five per cent of the members of the company in terms of paid-up share capital as on the date of application, is to be filed with an application form in STK-2.	The same has been omitted under the revised rules. Now, companies applying for the removal of name is not required to attach the same in application form.
No such provision	New Sub rule added: (3A) The Registrar, Centre for Processing Accelerated Corporate Exit established under sub-section (1) of Section 396, shall be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No STK-2, and all matters related thereto under section 248 having territorial jurisdiction all over India.

Further, the format for Form No. STK-2, Form No. STK-6 and Form No. STK-7 were amended, and revised formats were appended to the notification.

Updates under foreign contribution (regulation) act, 2010 ("FCRA")

Violation of FCRA provisions

On 19th April, 2023, the Central Bureau of Investigation ('CBI') registered a case against Oxfam India, a non-governmental organization ('NGO') for violating the provisions of Foreign Contribution (Regulation) Act, 2010 ('FCRA'). The case has been registered based on a complaint from the Ministry of Home Affairs ('MHA'). The NGO's registration under FCRA, which is necessarily required to receive foreign contribution funds, was not renewed by the MHA in December 2021. The Oxfam group subsequently filed a plea in the Delhi High Court against non-renewal of its FCRA registration.

The complaint filed by MHA, which is now part of the FIR filed by CBI, alleged that though Oxfam India's FCRA registration ceased, it planned to circumvent the law by taking other routes to channelize funds. The surveys by the Income Tax department showed that Oxfam India had paid Rs. 12.71 lakh to the Centre for Policy Research ('CPR') in FY 2019-20 in the form of commissions through its employees/ associates, which is in violation of its FCRA licence granted to do social activities, since as per the FCRA Act 2010 (amended in Sep 2020), an FCRA registered entity is prohibited transfer foreign contribution to any other person.

Updates under reserve bank of India (RBI)

RBI introduces framework for green deposits

The term "Green deposit" means an interest-bearing deposit, received by the RE for a fixed period and the proceeds of which are earmarked for being allocated towards green finance;

The Reserve Bank of India (RBI) has announced a framework for accepting 'green deposits' by banks and deposit-taking non-banking finance companies (NBFCs).

These guidelines are put in place to encourage regulated entities (REs) to offer green deposits to customers, protect interest of the depositors, aid customers to achieve their sustainability agenda, address greenwashing concerns and help augment the flow of credit to green activities/projects.

- The framework shall come into effect from June 1, 2023
- The Green Deposit Guidelines shall become applicable to all Regulated entities (REs) which includes:
    - Scheduled Commercial Banks including Small Finance Banks (excluding Regional Rural Banks, Local Area Banks and Payments Banks) and
    - All Deposit taking Non-Banking Financial Companies (NBFCs) including Housing Finance Companies (HFCs).
- Brief highlights of the Green Deposit Framework is as follows:
    - **Financing framework**

      REs shall put in place a Board-approved Financing Framework (FF) for effective allocation of green deposits covering the eligible green activities/projects that could be financed out of proceeds raised through the green, the process for project evaluation and selection by the RE, the allocation of proceeds of green deposits and its reporting, third-party verification/assurance of the allocation of proceeds and other allied factors.

    - **Use of Proceeds**

      REs shall be required to allocate the proceeds raised through green deposits towards the prescribed list of green activities/projects.

    - **Third-Party Verification/Assurance and Impact Assessment**

      The allocation of funds raised through green deposits by REs during a financial year shall be subject to an annual, independent Third-Party Verification/Assurance.

    - **Reporting and disclosures**

      A review report shall be placed by the RE before its Board of Directors within three months of the end of the financial year which include the details as prescribed by RBI under its framework from time to time.

Master direction on outsourcing of information technology services

The RBI, vide notification dated April 10, 2023 introduced the Master Direction on Outsourcing of Information Technology Services ('IT Outsourcing Master Directions'). The IT Outsourcing Master Directions were introduced as the REs outsource substantial portion of their IT activities to third parties, which expose them to various risks.

The brief highlights of IT Outsourcing Master Directions are as follows:

- Applicable to all Banking Companies, Corresponding New Banks and State Bank of India , Primary Co-operative Banks, Non-Banking Financial Companies - 'Top Layer', 'Upper Layer' and 'Middle Layer', Credit Information Companies and EXIM Bank, NABARD;
- Applicable to all material IT outsourcing arrangements entered into by the RE. The scope of material arrangements and IT activities has been specified in the IT Outsourcing Master Directions.
- The RE shall put in place an IT outsourcing policy in accordance with Chapter III of the IT Outsourcing Master Directions, which shall govern the outsourcing arrangements.
- The board of directors, senior management and the IT function shall play an important role in reviewing and monitoring of the outsourcing arrangements, as per the responsibilities outlined under Chapter III of the IT Outsourcing Master Directions.
- The REs shall carry out a due diligence of the service provider prior to awarding of the contracts, and thereafter on a regular basis on the parameters prescribed under Chapter IV of the IT Outsourcing Master Directions.
- Furthermore, the REs are required to adopt suitable risk management practices enabling them to mitigate risks arising out of outsourcing of IT functions.

Fair lending practice - penal charges in loan accounts

The RBI, *vide* notification dated April 12, 2023 released the draft circular for comments on the aforesaid subject. Supervisory inspections by the RBI indicate that the regulated entities charge excessive penalty on defaulting loans, and use it as a tool of earning revenue, rather than a tool to instil credit discipline in the borrowers. In view of the same, the proposal has been notified to curb entities from charging excessive penalty on defaulting loans.

In this regard, the following are proposed:

- The penalty shall be in form of "penal charges" and not "penal interest" that is added to the overall interest charged on the loan amount;
- The charges shall not be capitalised i.e. for calculating the penalty, penalty amount previously imposed on the borrower shall not be factored in. However, the compounding on normal interest charges is not affected by the proposed notification;

- The RE may alter the interest rates on the loan, in case of alteration of credit risk profile of the borrower;
- The RBI proposes introduction of materiality thresholds for imposing penal charges. The thresholds are to be determined by the concerned RE in a fair manner.
- Penal charges for loans to individual borrowers and purpose other than business shall not be more than that of non- individual borrowers.
- Penal charges and conditions thereto should be disclosed to the borrowers in:
    - Loan agreement;
    - Most important terms & conditions / Key Fact Statement;
    - REs website under Interest rates and Service Charges;
    - While sending reminders for payment of instalments to borrowers.
- The REs shall lay down a board approved policy on penal charges or similar charges on loans.

RBI simplifies the application process for registration of core investment companies

The Reserve Bank has simplified the registration process for companies as Core Investment Companies (CICs) to make it smoother and hassle free. Accordingly, the application form has been revamped to make it structured and aligned with the extant CIC regulations. Also, the number of documents to be furnished along with the application form has been reduced to 18 from the existing set of 52 documents to make the registration process user friendly.

Updates under competition commission of India ('CCI')

CCI approves demerger of Fast-Moving Consumer Goods (FMCG) business of Haldiram Snacks and Haldiram Foods into Haldiram Snacks Food and acquisition of 56% and 44% shareholding in Haldiram Snacks Food by existing shareholders of Haldiram Snacks and Haldiram Foods

The Competition Commission of India (CCI) has given approval for a proposed combination involving the demerger of the Fast-Moving Consumer Goods (FMCG) businesses of Haldiram Snacks Private Limited (HSPL) and Haldiram Foods International Private Limited (HFIPL) into a newly incorporated entity called Haldiram Snacks Food Private Limited (HSFPL), which would undertake the FMCG business currently undertaken by HSPL and HFIPL.

The proposed combination also includes the acquisition of 56% and 44% shareholding in HSFPL by the existing shareholders of HSPL and HFIPL, respectively.

The FMCG business includes packaged food products such as snacks, namkeen, sweets, ready-to-eat/pre-mix food, frozen food, biscuits, non-carbonated ready-to-drink beverages, pasta, etc., which are currently manufactured and distributed by HSPL and HFIPL and their respective subsidiaries/affiliates.

The proposed combination would be carried out through a NCLT-approved Scheme of Arrangement.

CCI approves acquisition of stake in Mukand Sumi Special Steel Limited by Jamnalal Sons Private Limited from Mukand Limited

The Competition Commission of India (CCI) has given approval for the acquisition of 5.51% of the equity share capital of Mukand Sumi Special Steel Limited (MSSSL) by Jamnalal Sons Private Limited (JSPL) from Mukand Limited, both of which are said to be part of the same group.

JSPL is an unregistered core investment company that holds shares in various Bajaj Group Companies and is primarily an investment and lending company. MSSSL, on the other hand, is engaged in the business of manufacturing, marketing, selling, and distributing special and alloy steel hot rolled bars and hot rolled wire rods.

The proposed combination would involve the acquisition of a minority stake in MSSSL by JSPL, which would be acquired from Mukand Limited. The CCI has given its approval for the proposed combination.

CCI approves acquisition of up to 76.10% of voting share capital of Suven Pharmaceuticals Limited by Berhyanda Limited

The Competition Commission of India (CCI) has approved the proposed acquisition of up to 76.10% of the voting share capital of Suven Pharmaceuticals Limited (Target) by Berhyanda Limited (Acquirer). The acquisition would be made through a share purchase agreement dated 26 December 2022 and pursuant to the mandatory open offer in compliance with the Securities and Exchange Board of India (SEBI) (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Berhyanda Limited is a wholly owned subsidiary of Berhyanda Midco Limited, which in turn is a wholly owned subsidiary of Jusmiral Midco Limited. These companies are collectively controlled by the Advent International GPE IX Funds and the Advent International GPE X Funds, which are ultimately managed by Advent International Corporation.

Suven Pharmaceuticals Limited is a bio-pharmaceutical company that was incorporated on 6 November 2018. The company is an integrated contract development and manufacturing organization that offers services to global pharmaceutical and agrochemical majors in their innovation endeavors. The company also exports its manufactured APIs and advanced drug intermediates to markets outside of India. The CCI has approved the proposed acquisition.

Updates under production linked incentive scheme ('PLI')

Electronics sector

Ministry of Electronics and Information Technology (MeitY) constitutes task force aimed at making India product 'manufacturing nation'

MeitY in India has formed a nine-member task force with the goal of making India a "product developer and manufacturing nation". The task force will be headed by MeitY additional secretary Bhuvnesh Kumar, with Joint secretary (electronics) Amitesh Kumar Sinha serving as its member convenor. Other members of the task force include veterans from the Indian electronic industry, such as Ajay Chowdhary, Sunil Vachani, Hari Om Rai, and Aman Gupta.

The aim is to boost local electronics manufacturing and deepen the value addition in this sector. The task force has been given two months to submit its recommendations and will look beyond the production-linked incentive (PLI) scheme. This initiative comes at a time when India is being seen as an alternative to the production hubs of China and Vietnam.

Updates under food safety and standards of India (FSSAI)

Setting up of advertisement monitoring committee ('AMC') by the FSSAI

The Food Safety and Standards Authority of India ('FSSAI') has set up a dedicated Advertisement Monitoring Committee to periodically scrutinize the advertisements and

claims being made by the Food Business Operators ('FBOs') on various channels including social media and e-commerce platforms. The said committee regularly monitors the advertisements/claims made on different food products in Indian Market and in case of any default noticed prima facie actions including issuance of Improvement Notices under Section-32 of FSS Act, 2006 are initiated against the FBO.

As per press note dated 22nd April, 2023 released by FFSAI, during the last six months the said Committee has scrutinized advertisements and claims on various food products, out of which 138 cases including that of many prominent brands have been reported as non-compliant and misleading for the consumers vis-à-vis Regulatory provisions and the provisions of FSS Act, 2006. Further, the said non-compliant claims have been referred to the concerned Licensing Authorities for further enforcement actions such as issuance of notices to all such FBOs for withdrawing of misleading claims or scientifically substantiate the same.

Other regulatory updates

Ministry of electronics and information technology (MEITY)

MeiTY's New Online Gaming Rules

The Ministry of Electronics and Information Technology (MeitY) on 06th April 2023 notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, which are an amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

The Amendment Rules defines an online game as *"a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary."*

Further, the Amendment rules define an online gaming intermediary to mean any intermediary that *"enables the users of its computer resource to access one or more online games".*

The Amendment Rules further provide for the regulatory framework for online gaming and misinformation.

The Amendment Rules ensure that no wagering — or betting on the outcome of any online game — is allowed, and prohibit online gaming intermediaries from hosting, or allowing users to use their resource to host — (i) an online game that is not verified as a permissible online game, (ii) advertisement or surrogate advertisement or promotion of non-permissible online game or any intermediary offering such an online game.

Rule 4A outlines the process for verification of online real-money games. For this purpose, MeitY will designate self-regulatory bodies to verify these games as permissible under the new rules. According to the new rules, bodies that are registered under the Companies Act, have members representing the gaming industry and have a board of directors with individuals of repute and no conflict of interest can apply to be designated as self-regulatory bodies.

Orders/Judgements

Registrar of companies (roc)

Order for Penalty for Violation Of Section 10(A) Of Companies Act, 2013

ROC, NCT of Delhi & Haryana has passed an order dated 17th April, 2023 for violation of Section 10A of the Act in the matter of **M/s Devyansh Hotels & Resorts Private Limited.**

As per Section 10A, a company incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless a declaration is filed by a director within 180 days of the date of incorporation of the company in Form INC-20A with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration.

Further Section 10A(2) states that if any default is made in complying with the requirements of this section, the company shall be liable to a penalty of INR 50,000 and every officer who is in default shall be liable to a penalty of INR 1,000 for each day during which such default continues but not exceeding an amount of INR 1,00,000.

Also Section 10A(3) states that where no declaration has been filed within 180 days from the date of incorporation with the Registrar in Form INC-20A and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies u/s 248 of the Act.

- Company was incorporated on 13.08.2020 and had failed to file e-form INC-20A within 180 days i.e. on or before 09.02.2021.
- Therefore, in terms of provision of Section 10A r/w Section 248, the name of the company was struck off vide notice STK-7 dated 13.12.2022.
- Writ petition was filed before the High Court at Delhi challenging the striking off order of ROC and order was passed on 29.03.2023 by High Court.
- In terms of the High Court Order, company submitted a letter on 03.04.2023 along with copy of challan of Rs. 1,00,000 (SRN X39508536) requesting to unfreeze the bank account of the company.
- The Adjudicating Officer after considering the facts and circumstances of the case imposed the penalty on the company and its directors for violation of Section 10A (1).
- Penalty imposed for the period 09.02.2021 to 13.12.2022 i.e. **672 days:**
  - Company: 50,000/-
  - Directors: 1,000*672 = 6,72,000 (subject to maximum of 1,00,000) = 1,00,000/-on each director.

Order for Penalty for Violation of Section 203 of the Companies Act, 2013

ROC, Tamil Nadu – Coimbatore has passed an order dated 24th April, 2023 under Section 454 of the Companies Act, 2013 (Act) read with Companies (Adjudication of Penalties) Amendment Rules, 2019 for violation of Section 203 of the Act read with 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 in the matter of **M/s Suvarnabhoomi Enterprises Private Limited**.

Section 203(1) of the Act provides that every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel-

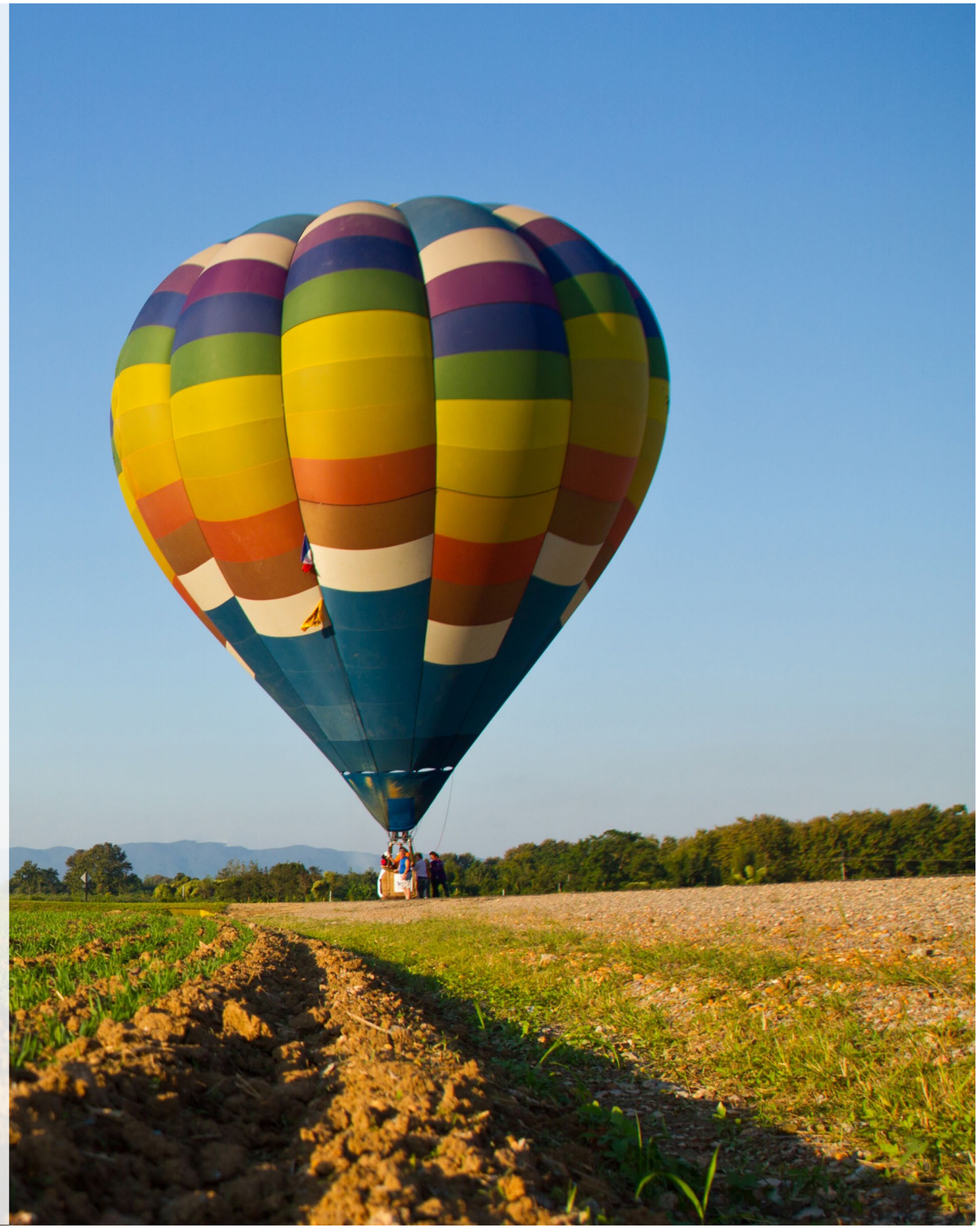
- Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director.
- Company Secretary; and
- Chief Financial Officer.

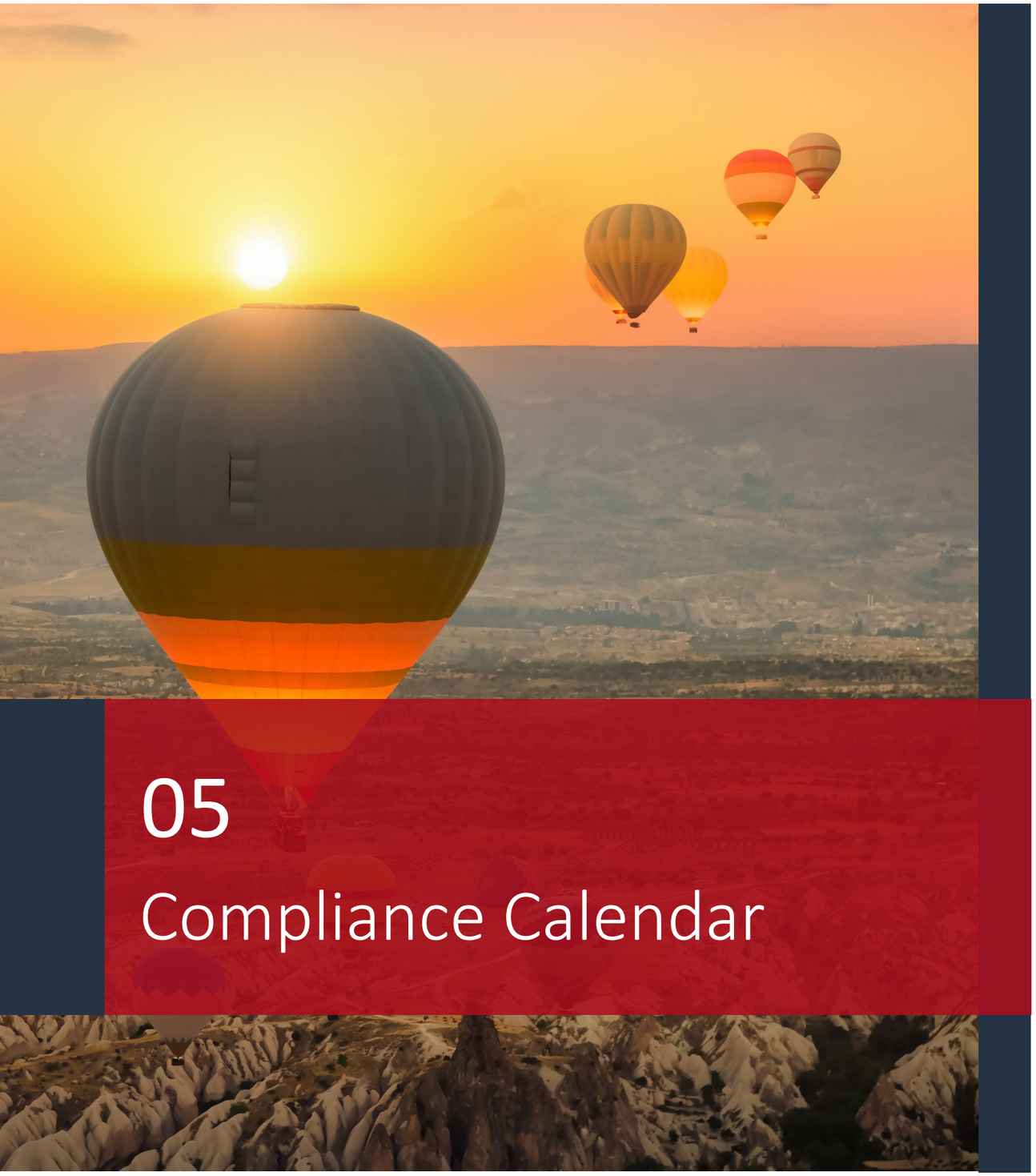
Further, Rule 8 (Appointment of key managerial personnel) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 states that every listed company and every other public company having a paid-up share capital of 10 crore or more shall have whole time key managerial personnel.

Also, Rule 8A (Appointment and remuneration of managerial personnel) Amendment rules 2020, provides that every private company which has a paid up share capital of 10 crore or more **shall have a whole time company secretary.**

Further, Section 203(5) of the Act provides that if any company makes any default in complying with the provisions of section 203, such company shall be liable to a penalty of INR 5,00,000 and every director and key managerial personnel of the company who is in default shall be liable to a penalty of INR 50,000 and where the default is a continuing one, with a further penalty of INR 1,000 for each day after the first during which such default continues but not exceeding INR 5,00,000.

- Company has increased its Paid-up share capital from 10 to 17 crores during the FY 2015-16. However, the company has not appointed Company Secretary for the period from 01.10.2015 to 01.11.2018.
- The company filed the compounding application and the offence was compounded u/s 441 for the said period.
- The company appointed whole-time Company Secretary from 02.11.2020. Therefore, for the period 02.11.2018 to 01.11.2020, the company continued to function without a Company Secretary and thus violated the provisions of section 203.
- Company filed a suo-moto application for adjudication u/s 454 for the above violation.
- The Adjudicating Officer after considering the facts and circumstances of the case imposed the penalty on the company and its directors for violation of Section 203 read with Rule 8A.
- Penalty imposed for the period 02.11.2018 to 01.11.2020 i.e. **731 days:**
  - Company: 5,00,000/-
  - Directors: 1,000*731 = 7,31,000 (subject to maximum of 5,00,000) = 5,00,000/-on each director.





05
Compliance Calendar

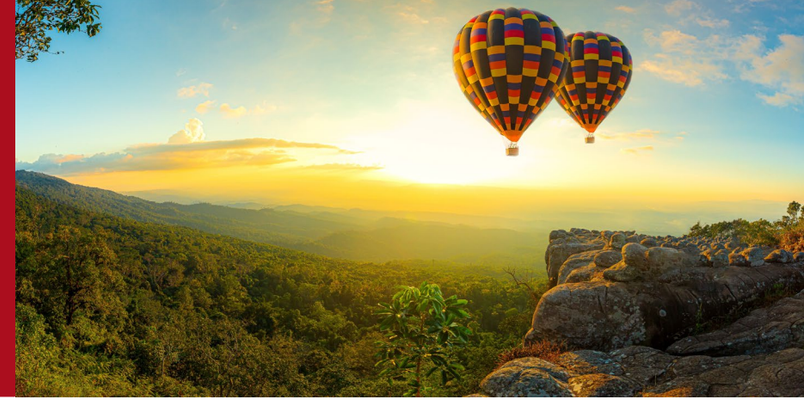
Direct Tax	
Due dates	**Particulars**
7th May 2023	Due date for payment of Equalisation Levy on online advertisement and other specified services, referred to in Section 165 of Finance Act, 2016 for the month of April 2023.
	Due date for deposit of Tax deducted/collected for the month of April 2023
15th May 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of March, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of March, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of March, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of March, 2023 (in case of specified person)
	Quarterly statement of TCS deposited for the quarter ending March 31, 2023
30th May 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of April 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of April 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of April 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the month of April, 2023 (in case of specified person)
	Issue of TCS certificates for the Quarter ending March 31, 2023
31st May 2023	Quarterly statement of TDS deposited for the quarter ending March 31, 2023
	Furnishing of Statement of Financial Transactions in Form 61A as required to be furnished under sub-section (1) of section 285BA for FY 2022-23

Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in March 2023
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11th day of succeeding month	For Tax Period April 2023- 11th May 2023
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20th day of succeeding month	For Tax Period April 2023- 20th May 2023
3	QRMP Scheme Invoice furnishing facility ('IFF')	• Optional facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1st day to 13th day of succeeding month	• For Tax Period April 2023 - 1 to 13 May 2023
	Form GST PMT-06 (Monthly payment of tax)	• Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25th of the succeeding month	• For Tax Period April 2023 - 25 May 2023
	Form GSTR-1 (Details of outward supplies)	• Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme	Quarterly	13th day of the subsequent month following the end of quarter	• For the quarter April 2023 to June 2023 - 13th July 2023
	Form GSTR-3B	• Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1[i] states and union territories	Quarterly	22nd day of the subsequent month following the end of quarter	• For the quarter April 2023 to June 2023-22nd July 2023
	Form GSTR-3B	• Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2[ii] states and union territories	Quarterly	24th day of the subsequent month following the end of quarter	• For the quarter April 2023 to June 2023- 24th July 2023
4	Form GSTR-6 (Return for Input Service distributor)	• Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period April 2023- 13th May 2023
5	Form GSTR-7 (Return for Tax Deducted at Source)	• Return filed by individuals who deduct tax at source.	Monthly	10th of the succeeding month	For Tax Period April 2023- 10th May 2023
6	Form GSTR-8 (Statement of Tax collection at source)	• Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10th of the succeeding month	For Tax Period April 2023- 10th May 2023

Regulatory		
Segment	**Particulars**	**Due dates**
ECB Borrowers	ECB Return (ECB-2)	7th May, 2023
Annual Returns of an LLP	LLP-11	30th May, 2023
Annual Return of a Foreign Company	Form FC-4	30th May, 2023
Regulation 32 (1) of SEBI(LODR) Regulations	Statement of deviation(s) or variation	30th May, 2023
Regulation 33 (3) (a) of SEBI (LODR) Regulations	Financial Results along with Limited review report/Auditor's report	30th May, 2023
Regulation 24A of SEBI (LODR) Regulations	Secretarial Compliance Report	30th May, 2023
Regulation 23 (9) of SEBI (LODR) Regulations	Disclosures of related party transactions	On the date of publication of standalone and consolidated financial results

Our Locations



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