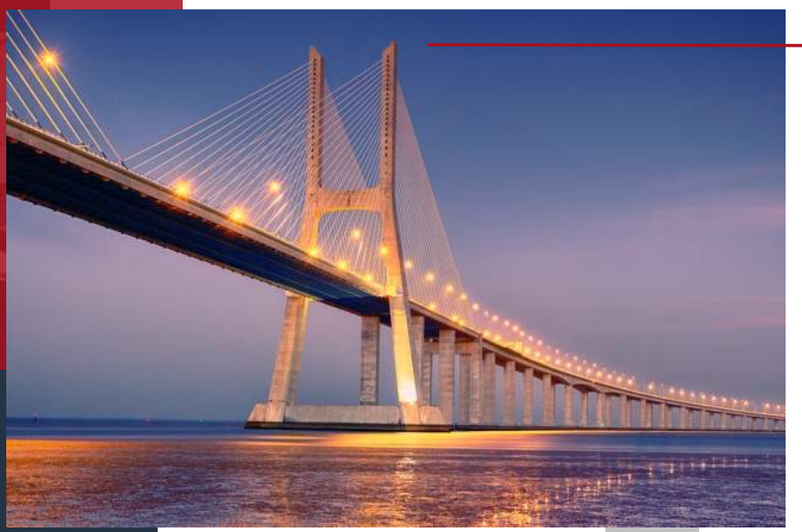
NEWSLETTER

Tax & Regulatory

Dec, 2023



Nangia Andersen LLP

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What's *Inside ?*

01

Direct Tax

Drawing and designs, being inextricably linked to the offshore supplies, will not be taxable as Fee for technical services

DSD Noell GMBH vs Dy./Asst. CIT

ITA No. 3186/Del/2016 & Others

Issue(s) - Whether receipts from offshore supplies and drawing & design inextricably linked to offshore supply will be taxable in India

Outcome - In Favour of Assessee

Background

In a recent verdict, Delhi ITAT ('Hon'ble ITAT') held that the offshore supplies were not taxable as the equipment were designed & manufactured outside India and title was duly passed on to the customer outside India on FOB basis for which consideration was also received outside India. Further, ITAT observed that the dominant object of the contract entered with customer was to supply a plant manufactured according to the designs developed and held the character of the offshore services to be that of the supply of the equipment, thereby, excluding the same from Fee for Technical services ('FTS').

Brief Facts and Contentions

- The Assessee, incorporated in Germany, is engaged in the business of engineering, designing, manufacturing & installing plants for the hydro-electric power projects and entered into agreement with Hindustan Construction Company Ltd ('HCC' or 'customer').

- For AY 2011-12, 2012-13 and AY 2014-15 to AY 2018-19, Assessee received consideration from HCC towards offshore supply of plant & equipment as well as for offshore services (involving supply of related drawings design). Such receipts were claimed as non-taxable in India under the provisions of the Act as well as under the relevant Articles of the Double Taxation Avoidance Agreement (DTAA).
- During the Assessment proceedings, Assessee submitted that the offshore supply of plant & equipment were tailor-made to suit the specifications and requirements of the customer. Further, Assessee contended that it was necessary to first prepare the drawing, design of the plant and equipment to be manufactured/fabricated and get the same approved by the customer.
- Assessee submitted that offshore services are integral part of the offshore supply of plant and equipment and therefore the consideration received for offshore services should be given the same treatment of offshore supplies as both were carried out outside India and consideration received in foreign currency outside India and accordingly, no part of it would become taxable u/s 9 of the Act.
- However, the Ld. AO did not accepted the contentions of the Assessee and held these receipts to be taxable in India. Aggrieved of the Final Assessment order, the Assessee filed an appeal before the Commissioner of Income Tax (Appeal) ['Ld. CIT(A)'] which correspondingly affirmed the findings of Ld. AO.
- Aggrieved by the order of Ld. CIT(A), the Assessee filed an appeal before the Hon'ble ITAT.

ITAT's Judgement

- Hon'ble ITAT observed that the plant and equipment supplied to customer were designed and manufactured outside India, title was duly passed on to the customer outside India on FOB basis, consideration for such offshore supplies was also received outside India in foreign currency and all activities such as manufacturing, fabrication, designing etc. of plant & equipment was undertaken outside India.

- Further, Hon'ble ITAT observed that retention of consideration was a normal clause which is incorporated in any contract especially the nature of contract undertaken in the instant case. In addition, Hon'ble ITAT stated that Defects Liability Clause would be incorporated in every contract to take care of a contingent event which was not relevant to passing of title to the equipment.
- As a result, the Hon'ble ITAT, placing reliance on the judgement of Apex court in case of **Ishikawaiima-Harima Heavy Industries vs. DIT [288 ITR 408(SC)]** and jurisdictional HC in case of **National Petroleum Construction vs. DIT [66 taxmann.com 16 (Del)],** held that no part of consideration received outside India for offshore supplies could be deemed to accrue or arise in India as per section 9 of the Act and therefore, not taxable in India.
- Hon'ble ITAT observed that plant & equipment as supplied by the Assessee from outside India are tailor-made to suit the specifications and requirements of the customer. Further, Hon'ble ITAT also observed that it was necessary for the Assessee to first prepare the drawing, design of the plant and equipment to be manufactured/fabricated and get the same approved by the customer.
- Thus, basis the above observations and ruling by jurisdictional HC in case of **Linde AG, Linde Engineering Division vs DIT reported in 365 ITR 1 (Del)**, Hon'ble ITAT held that the supply of drawings and design is inextricably linked with the offshore supply of plant & equipment and the same cannot be characterized as FTS and therefore, not chargeable to tax in India.

Nangia Andersen LLP's take

In this judgement, Hon'ble ITAT has specifically delved into the taxability of drawing and designs, forming integral part of offshore supplies and held that the same shall not be treated as FTS; also held that the dominant purpose of the contract was supply of equipment only. It was further noted that drawing & designs could not be utilized on a standalone basis, being specific to the requirements of the plant & equipment and vice-versa.

Expression “used for the purpose of business or profession” under section 32 has to be construed to include assets which are passively used in the business

PR. Commissioner of Income Tax vs Indus Towers Ltd.

ITA 89/2020

Issue(s) - Whether depreciation can be claimed on assets which are passively used.

Outcome - In Favour of Assessee

Background

In a recent verdict, Delhi High Court (‘Hon’ble HC’) examined the depreciation claim on assets which were passively used in business. Held that the same can be claimed, as the expression “used for the purposes of business or profession” in the provision under Section 32 has to be construed widely by including those cases where there is, what may be described as a passive use in the business because of various reasons.

Brief Facts and Contentions

- Indus Towers Ltd. (‘Assessee’) is a public limited company incorporated as a joint venture between Bharti Infratel Limited, Vodafone Essar Limited and Aditya Birla Telecom Limited with its main object being to share the telecom infrastructure.
- Assessee had 79,239 telecom sites under indefeasible rights to use and 14,484 telecom sites were built and personalized during the year.

- During the assessment proceedings, the Assessing officer ('Ld. AO') made additions on the ground that interest bearing borrowings were utilized for construction of telecom sites and the same should be capitalized and cannot not be claimed as revenue expenditure under section 36 of the Act.
- Further, the Ld. AO disallowed 50% of depreciation on the ground that not all towers erected might have been put to use and tower wise details were also not submitted.
- Further, the Ld. AO disallowed the entire loan processing fees claimed as revenue expenditure on the ground that only 1/5th expense of the fees was debited to P&L account by the Assessee but for the deduction under the Act, the entire amount was claimed as deduction. Therefore, the Ld. AO allowed only 1/5th of the loan processing fees with liberty to claim deduction in subsequent years based on accounting treatment.
- Aggrieved by the additions made, Assessee filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT - (A)'], which after admitting tower wise details issued by independent third party engineer as well as service tax returns allowed the claim by Assessee with regard to interest on loan and depreciation. However, the CIT - (A) held that the entire loan processing fee should be capitalized.
- Both Assessee and Ld. AO filed an appeal before Income Tax Appellate Tribunal ('Hon'ble ITAT') which upheld the appeal of the Assessee. As a result, an appeal was filed by the Revenue before the Hon'ble HC.

Hon’ble HC’s Judgement

- Hon’ble HC observed that Construction of towers began in April, 2008 whereas the Indefeasible Right to Use (IRU) Agreement was executed on 01.01.2009, therefore, the Assessing Officer was factually incorrect in observing that the respondent/Assessee commenced business through lease of towers under IRU Agreement. The respondent/Assessee had filed relevant evidence before the revenue authorities with regard to the expenses related to loan and there is no adverse finding to the effect that the said expenses were not utilized for business, therefore, the respondent/Assessee rightly claimed the same as revenue expenses.
- Further, Hon’ble HC considered the expression “used for the purposes of business or profession” in the provision under Section 32 of the Act and held that the same has to be construed liberally so as to include even passive usage of the subject machinery i.e. towers.
- Further the loan processing charges though paid upfront but amortized over a period of five years, solely to be in consonance with the mercantile system of accounting, deduction of the entire charges in lump sum in the year in which the same were paid could not be denied to the Assessee.

Nangia Andersen LLP’s take

In this judgment, Hon’ble HC has given a extensive interpretation to term “used for the purposes of business or profession” and held that depreciation should also be allowed on those assets which are not used actively in business. Further a deduction cannot be denied to an Assessee on the ground that the expenditure has been amortized in the books as per the applicable Accounting Standard.

Service Tax unpaid upto the date of filing ITR to be disallowed under section 43B of the Act, even though not routed through the Profit and Loss Account

Mr. Ashraf Nafisa Althaf vs ITO Ward-1 & TPS Udupi

ITA No. 614/Bang/2023

Issue(s) – Whether Service Tax collected and not deposited with the Government within due date of filing income tax return under section 139 of the Income Tax Act, 1961 ('the Act') is disallowed under section 43B of the Act even if not charged to P&L Account.

Outcome – In Favour of Revenue

Background

In a recent verdict, Bangalore Tribunal ('Hon'ble ITAT') examined the allowability of service tax under section 43B of the Act which is not paid to the government upto the due date of return filing. The Hon'ble ITAT examined the question whether such collected is an income of the assessee, being a trading receipt. It was also held that the present provisions of section 145A of the Act could not be applied in view of the non-obstante clause in section 43B of the Act.

Brief Facts and Contentions

- Mr. Ashraf Nafisa Althaf ('Assessee') is an individual tax resident of India. The Assessee had collected service tax from its customers but did not deposit the same with the government upto the due date of return filing under section 139(1) of the Act.
- The Assessee had neither claimed any deduction nor debited the service tax amount in the P&L A/c. The Assessee had shown INR 33.47 lakhs towards service tax payable as "Current liabilities and provisions" in the Balance Sheet.

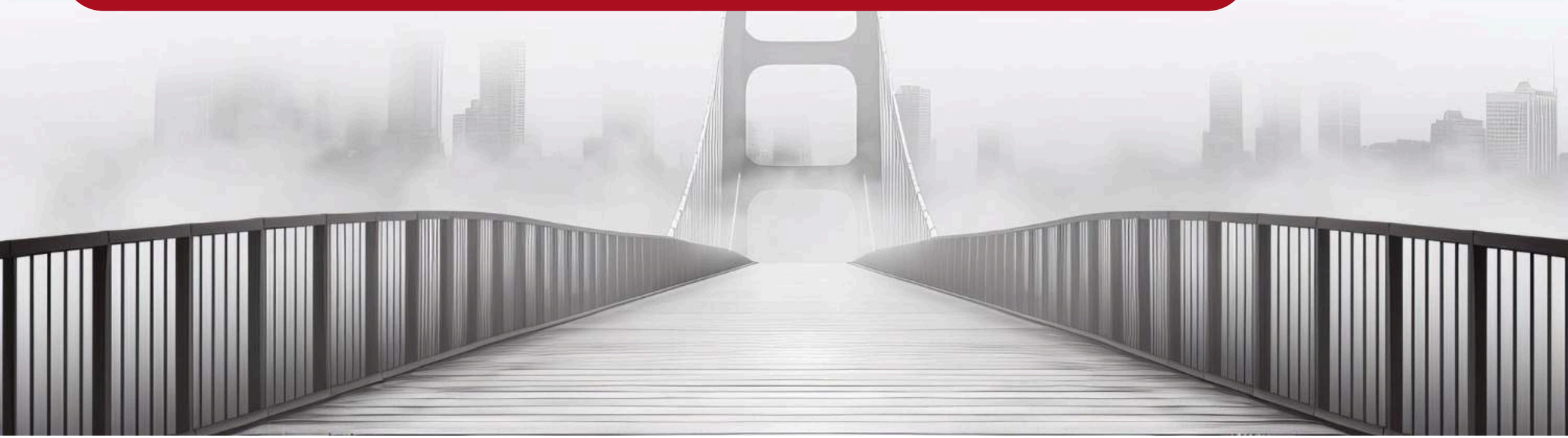
- The Assessing officer (‘Ld. AO’) disallowed the amount of service tax not paid to the government under section 43B of the Act.
- As a result, the Assessee filed an appeal before the Commissioner of Income Tax (Appeal) (‘Ld. CIT(A)’). The Ld. CIT(A) relying on the judgment of Hon’ble Supreme Court in the case of Chowringhee Sales Bureau (P) Ltd. [87 ITR 542] (SC) upheld the addition made by the Ld. AO.
- Aggrieved by the order of the Ld. CIT(A), the Assessee filed an appeal before the Hon’ble ITAT.
- The Assessee contented that since the amount had not been claimed as deduction in the P&L A/c, it shall not be added to the total income of the Assessee and placed reliance on the judgment of Hon’ble Delhi High Court (‘Hon’ble HC’) in the case of CIT vs Noble Hewitt Pvt. Ltd. (305 ITR 324) which stated that since the amount of service tax was not debited to P&L account as expenditure nor the assessee had claimed any deduction in respect of the same the question of disallowance under section 43B of the Act did not arise.

ITAT’s Judgement

- The Hon’ble ITAT distinguishing judicial precedents relied by the assessee held that the respective Hon’ble High Courts in the case of Noble Hewitt Pvt. Ltd. and India Carbon Ltd. did not consider the issue whether the service tax has been collected by the Assessee and remained unpaid upto the due date of furnishing the returns actually forms part of the total income for the concerned assessment year.
- Further, the Hon’ble ITAT held that the service tax collected by the Assessee and not paid upto the due date of return filing shall be disallowed under section 43B of the Act, even if the same has not been claimed as deduction in the P&L A/c and tat provisions of section 43B of the Act cannot be applied in view of the non-absentee clause I section 43B of the Act.

Nangia Andersen LLP's take

Section 43B of the Act disallows certain expenses if not paid upto the due date of return filing and covers any amount of tax, duty, cess or fees, which covers indirect taxes as well. The principles laid down in this judgement shall attract disallowance under section 43B of the Act purely on payment basis and irrespective of the fact whether the same has been routed through the Profit & Loss Account. It is also important to analyse that the service tax collected and not deposited to the ex-chequer forms part of the income of the Assessee for the concerned year.



02

Indirect Tax

Advance Rulings & Judgements

Hon'ble High Court of Allahabad held that maximum penalty amounting to Rs. 10000/- can be levied on the taxpayer where the taxpayer has already discharged the GST liability in full but after considerable delay due to COVID – 19 situations.

Brief Facts

- In the given case, the petitioner is a private limited company and is engaged in the business of providing manpower supply services.
- A Show cause Notice (SCN) was issued by the Proper Officer alleging that petitioner had collected GST but not deposited the same within the prescribed time limit. However, the petitioner could not respond to SCN on account of COVID – 19 situation and the Proper Officer passed the order on ex-parte basis demanding penalty equivalent to GST due i.e., Rs. 56,00,953/- along with GST tax liability.
- The Petitioner aggrieved by the Order passed by the Proper Officer, filed an appeal for availing the relief against the payment of penalty. However, the Appellate Authority upheld the imposition on penalty and dismissed the appeal by placing reliance on the mandate of Section 122(1)(iii) of Central Goods and Service Tax Act, 2017 (CGST Act).

Observations

- Whether the Proper Officer can demand the penalty equivalent to the tax due merely on the grounds that the tax amount was deposited by Taxpayer to the Revenue Account with delay due to prevailing COVID – 19 situation?

Decision

- The High Court of Allahabad held that there is no material evidence or even an allegation against the petitioner that the amount was collected but not paid or evaded, but the only allegation is that the amount was not paid within the prescribed time limit and was paid after a delay.
- The High Court of Allahabad opined that even if the said allegation could be treated as correct then the only penalty imposable against the petitioner would be Rs. 10,000/- as no tax amount has admittedly been evaded by the Petitioner.
- The High Court of Allahabad further concluded that the Appellate Authority and the Proper Officer had failed in following the general discipline relating to penalty as prescribed in Section 126(2) of CGST Act.

[Clear Secured Services vs Commissioner, State Tax (Writ Tax No. 1 & 5 of 2023 – Allahabad HC) dated 23 November 2023]

Hon'ble High Court of Allahabad held that the demand issued on the grounds of non-payment of tax by the Supplier cannot sustain since the recipient's taxpayer type was a Composition dealer.

Brief Facts

- The Petitioner had opted for a composition scheme for the period 01.10.2017 to 21.03.2019.
- The GST Department issued a notice to the Petitioner alleging that one of its supplier was found non existent at the time of survey and demanded the tax along with interest and penalty.

Observations

- Where at time of supply, seller existed but subsequently it was found non-existent, since Authorities could have very well verified as to whether after filing of GSTR-1 and GSTR-3B how much tax had been deposited by selling dealer, but authorities had failed to do so.

Decision

- The High Court of Allahabad noted that the disputed purchases pertained to period May 2018 and June 2018, which fell under the period of composition and question of taking credit would not arise. Moreover, the petitioner adduced evidence such as tax invoice, e-way bill, G.R., payment receipts etc. to show that purchases were made from registered dealer whose registration was cancelled in October 2019.
- The High Court of Allahabad held that at time of transaction in question, seller was a registered firm under GST Act and at subsequent time, the seller was found non-existence. Thus, the Court held that the impugned order raising demand for entire amount of tax could not be sustained in eyes of law and matter was remanded back.

[Rama Brick Field vs Additional Commissioner Grade – 2 (Writ Tax No. 909 of 2022) dated 6 November 2023]

Hon’ble High Court of Delhi sets aside Order cancelling GST Registration with unspecified reasons.

Brief Facts

- The petitioner received a Show Cause Notice (SCN) dated May 19, 2022, for cancellation of the GST Registration, with effect from March 03, 2018, for the reason that the Petitioner obtained registration by fraud, wilful misstatement, or suppression of facts.
- GST Registration of the Petitioner was suspended with effect from the date of issuance of the SCN. Thereafter, the Revenue Department without waiting for a reply against the SCN from the Petitioner, issued the Order dated May 23, 2022 (Impugned Order).

Observations

- Delhi High Court observed that the Impugned Order neither refers to any fraud that was found to have been committed by the petitioner nor mentions any misstatement allegedly made by the Petitioner.

Decision

- Delhi High Court opined that there is no explanation as to why the buyers and suppliers have been found to be suspicious. Merely because the Petitioner’s shop was found closed, absent anything more, is not a ground for cancellation of Petitioner’s GST registration.
- Delhi High Court disposed the petition with the direction to the proper officer to restore the GST Registration.

[VAB Apparel LLP Vs Commissioner of Delhi GST [W.P.(C) No. 13462 of 2023 – Delhi HC, dated 10 November 2023]

Supplementary invoice or debit note to be issued within 30 days by taxpayers in case of receipt of differential consideration on upward revision of rate for works executed prior to enforcement of GST Acts.

Brief Facts

- M/s. Jaiprakash Associates Limited (Applicant) is a works contractor executing works for the State Government.
- The Applicant submitted that it was awarded a work for executing Investigation, design and execution of 2 Tunnels of Reservoir Project. The work for one of tunnels commenced from June 2008 and from June 2011 for another tunnel. However, the Ministry of Environment and Forests had restricted the entry into the forest of the Applicant for survey and investigation work.
- The Applicant further submitted that during the execution of project, the properties of strata encountered were varying than those available for planning during bidding. This had resulted in lower work progress, heavy consumption of spares, consumables, power etc. Such matter was represented to the Government requesting to revise the rates for underground excavation and lining concrete. The Government considered the matter and agreed for Rate revision for the changed site conditions beyond agreement period as per the observed data and approved the revised rate for the work done during the extended period (beyond agreed contract period) i.e., September 2010 to June 2017.

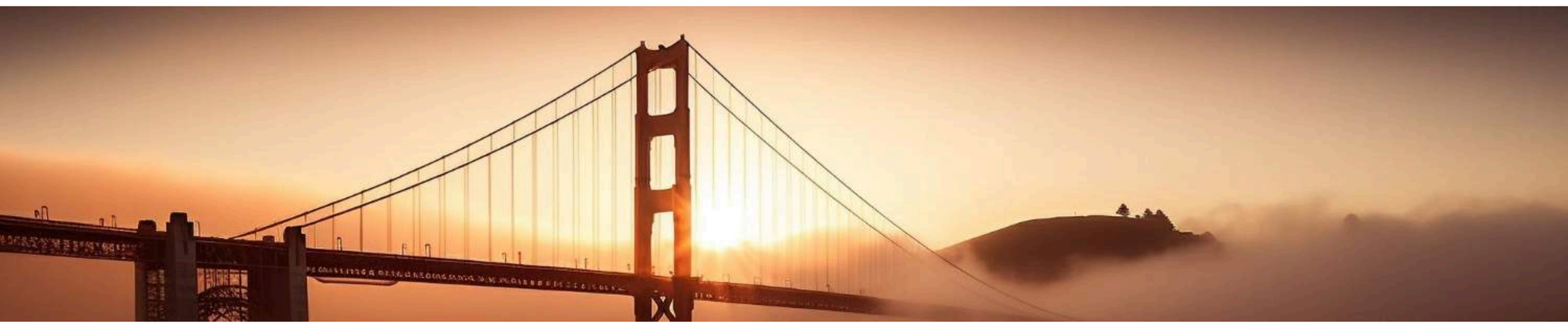
Issue Involved

- What is the time of supply of the work executed from September 2010 to June 2017?
- How to issue tax invoice in this scenario?

Decision

- AAR held that The Applicant has received consideration for the works executed by him prior to the appointed day i.e., 01.07.2017 due to upward revision.
- AAR referred to the provisions of Section 142(2)(a) of the Central Goods and Service Tax Act, 2017 (CGST Act) and concluded that the time of supply is the date on which such consideration is received as enumerated under section 13(*c*)(*a*) of the CGST Act.
- The applicant shall receive a supplementary invoice or payment debit note, within thirty days of such price revision and such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under CGST Acts.

[Telangana Advance Ruling No. 19/TSAAR/2023 in A.R.Com/14 of 2023, dated 30 September 2023]



GST Update

CBIC introduced an amnesty scheme for filing of appeal and offering relief to eligible taxpayers who missed the appeal filing deadline.

- According to the notification, following class of taxpayers are eligible for filing appeal under amnesty scheme:
  - Taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March 2023 under section 73 or 74 of the said Act within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the Central Goods and Service Tax Act, 2017 (CGST Act) i.e., 3 months from date of Order in Form DRC 07, and
  - Taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107 of CGST Act.

- Following conditions must be fulfilled for filing of appeal under amnesty scheme:
  - The amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by the appellant, is paid by the appellant in full.
  - A sum amounting to 12.5% of the remaining amount of tax in dispute arising from the said order, subject to a maximum of Rs. 25 crores, in relation to which the appeal has been filed, out of which at least 20% should have been paid by debiting from the Electronic Cash Ledger.

- Following orders are not eligible for filing of appeal under amnesty scheme:
  - Order passed on or after 01.04.2023.
  - No tax demand Orders
  - Only Penalty Orders
  - Only Interest Orders
  - Orders rejecting Refund Application
  - Orders reducing the Input Tax Credit only, no tax demand.
  - Orders rejecting Application for GST Registration Number.
- Further, no refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified above before the issuance of this notification, for filing an appeal under subsection (1) of Section 107 of the CGST Act.
- The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

[Notification No. 53/2023 - Central Tax dated 02 November 2023]

03
Transfer Pricing

ITAT deletes transfer pricing adjustment and held that no profit is attributable on offshore supplies to Indian customer in case of absent involvement of subsidiary

Outcome: In favour of the taxpayer

Category: Profit attribution to Permanent establishment

Facts of the Case

- Mosdorfer GMBH ("the taxpayer") is engaged in the business of the development and the industrial production of overhead accessories and damping systems from steel and metal as well as other steel and metal goods, which can be manufactured by pressing, forging, bending, welding and shaping by metal cutting as well as the industrial operation of a galvanizing plant.
- During the year under consideration, the taxpayer has received payment against the reimbursement for the expenses incurred on behalf of its subsidiary company in India i.e. Mosdorfer India Private Limited ("MIPL"). Further, the taxpayer also received payment against sale of exported goods and other tangible assets in India. Upon issue of Show cause Notice ("SCN") the assessee submitted the following:
  - The expenses incurred on behalf of MIPL are back-to-back reimbursement cross-charged to Indian entity without any mark-up. Therefore, the same should not be considered as taxable income in India;
  - Further, In respect of export of goods and other tangible assets, the supplies were made to various customers in India on principal-to-principal ("P2P") basis. Moreover, as per CBDT circular the non-resident selling goods or tangible assets from abroad to Indian Importer on a P2P basis will not be considered as income us 9 of the IT Act. Additionally, the assessee neither has any fixed place of business in India nor any employee working in India.

- However the AO rejected the taxpayer's submission and proposed an upward adjustment after making the following observations:-
  - The taxpayer has provided consultancy and professional services and supervision and repair services to MIPL. Therefore, the reimbursement income pertains to technical services and accordingly the nature of receipts comes under the ambit of FTS under the provisions of the act;
  - Further, the taxpayer has not submitted any documentary evidences to establish that goods were exported in India to entities other than its subsidiary;
- Therefore, it was concluded that to provide the abovementioned services, the assessee has deputed its expatriate personnel to supervise it. Accordingly, it was held that the assessee has a fixed place of business in India in the form of MIPL. Hence, the AO, invoking the provision of Rule 10 of the Act considered 10% profit on presumptive basis and attributed 35% of such profit to tax in India as business income.
- Aggrieved, the taxpayer preferred an appeal before the ld. Dispute Resolution Panel ("DRP"). However, the Ld. DRP upheld the action of the AO. Aggrieved by the directions of DRP, the assessee filed an appeal before the Hon'ble Income Tax Appellant Tribunal ("ITAT"/ "the Tribunal").

ITAT Ruling

Following observation were drawn by the Hon'ble ITAT:

- The taxpayer had not added any value to the laboratory report and had not played any role except for being a medium to procure the test reports given by another entity. Therefore, the Tax authorities have failed to consider the evidence which were sufficient to establish that expense was merely by way of reimbursement of the lab test report expenses;
- Further, in respect of profit attributed to Indian subsidiary of the taxpayer, the bill of lading and invoices submitted by assessee as additional evidence established that all orders were received outside India, the supplies were out of India and payment were also received outside India. Accordingly, it was held that there was no business connection to bring section 9 of the Act in operation;
- Therefore, the tax authorities erred in assuming that offshore sales made to Indian buyers were made with the indulgence of Indian subsidiary without substantiating as to how MIPL was party to the purchases made by other entities;

  Therefore, the Hon'ble Tribunal deleted the addition made on account of offshore supplies profit attributed to Indian subsidiary observing that the subsidiary was not taxpayer's PE in India and held that the offshore supplies were directly made to Indian customer without any involvement of Indian subsidiary.

Nangia's Take

- In the instant case, the Hon'ble ITAT analyzed various aspects relating to attribution of profit to permanent establishment and has affirmed its non-application in case where there is no involvement of subsidiary company in India on offshore supplies to Indian customers.
- The above ruling reiterates an important judicial precedent that mere existence of subsidiary cannot result in PE.
- The ratio laid down in the present decision may assist taxpayers with similar facts. For this purpose, it is important for taxpayer to maintain robust back up documents (in the form of BOL, invoices, payment details etc.) to substantiate that the subsidiary is not taxpayer's PE in India.

[Source: Mosdorfer GMBH [TS-695-ITAT-2023(DEL)]

04
Regulatory

Applicability of significant beneficial owners ('SBO') provision to LLPs

The Ministry of Corporate Affairs *vide* notification 9 November 2023 notified the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 ('SBI Rules'). Pursuant to the said SBO Rules, LLPs are covered under the SBO framework and compliances with respect to declaration of the same by individuals identified as SBO for LLPs are made applicable to them. The prescriptions have been put in place to align the framework for identification of SBOs of LLPs with that of Companies.

The SBO Rules shall come into effective from 10 November 2023. These SBO Rules will be applicable to all LLPs except those specifically exempted by the Ministry of Corporate Affairs.

The threshold for determination of an SBO has been fixed at 10% of the contribution/ voting rights/ total distributable profits, as the case may be.

Now, individuals who are an SBO w.r.t contributions in an LLP have to make declarations to the LLP. The LLPs, in turn, are required to make declarations with respect to SBO to the Registrar of Companies. Further, a register of SBO is to be maintained by the LLP.

Updates under Reserve Bank of India (RBI)

Regulatory measures towards consumer credit and bank credit to NBFCs

The RBI *vide* notification dated 16 November 2023 introduced certain regulatory measures towards consumer credit and bank credit to NBFCs. The same was made pursuant to the high growth seen in consumer credit and increasing dependency of NBFCs on bank borrowings in the recent years.

The risk weights for consumer credit, excluding specific loans, has been increased by 25 percentage points to 125% for both commercial Banks and NBFC's. The RBI has also adjusted risk weights for credit card receivables and increased weights for exposures of Scheduled Commercial Banks to NBFCs in certain cases. To enhance credit standards, the RBI mandates Regulated Entities (REs) to review and establish Board-approved limits for various subsegments of consumer credit. Additionally, a crucial provision treats top-up loans against depreciating assets as unsecured, strengthening overall risk management in handling consumer credit.

These measures collectively aim to fortify the resilience of financial institutions against consumer credit risks.

Updates under Food Safety and Standards Authority of India ('FSSAI')

Revising the option for selecting the validity period during application for FSSAI license/registration

The FSSAI *vide* order dated 11 January 2023 had introduced new provisions for instant renewal of FSSAI license/ registration under FSS (Licensing and Registration of Food Business) Regulations, 2011. The said order allowed license and registration renewals for 1 – 5 years, depending on the selection and payment made by Food Business Operators ('FBO') in their respective application.

FSSAI has *vide* order dated 8 November 2023 partially modified the aforesaid order, by revising the option for selecting the validity period during application for FSSAI License/ registration. Accordingly, FBO applying for new license/ registration or seeking renewal can now select the validity period of 1 to 5 years in their applications with effect from the date of order, with fee as applicable for the selected period as per Schedule 3 of FSS (Licensing and Registration of Food Businesses) Regulations, 2011.

Updates under Competition Commission of India ('CCI')

CCI approves acquisition of additional shareholding in CaratLane by Titan

The CCI on 21 November 2023 has approved acquisition of additional shareholding in CaratLane Trading Private Limited which is a private limited company engaged in the business of manufacture and sale of gems and jewellery in India by Titan Company Limited, which is a public listed company engaged in several business through lifestyle brands including, jewellery, eyecare, fragrances, fashion accessories, and Indian dress wear. The proposed combination relates to the acquisition by Titan of 27.18% share capital of CaratLane (a subsidiary of Titan), on a fully diluted basis, from Mr. Mithun Padam Sacheti, Mr. Siddhartha Padam Sacheti, and Mr. Padamchand Sacheti.

Updates under Production Linked Incentive scheme ('PLI')

Centre extends date for inviting fresh applications under PLI scheme for textiles

The Ministry of Textiles has decided to extend the deadline for making applications under the PLI Scheme for Textiles for Man Made Fibre Apparel, Fabrics and products of Technical Textiles ('PLI Scheme') from 31 August 2023 to 31 December 2023.

Applicants manufacturing the stated products in India can avail incentives under the PLI Scheme by submitting applications based on which beneficiaries shall be selected by the Ministry of Textiles based on a variety of technical and commercial factors.

Registrar of companies (ROC)

Order of penalty for the violation of Section 134 of the Companies Act, 2013

The ROC, Chennai has passed an order for the violation of Section 134 of Companies Act, 2013 in the matter of M/s SACS Infotech Private Limited.

Section 134 states that the report by Board of Directors to be attached to the statements laid before the company in general meeting, which shall include information about the conservation of energy, technological absorption, foreign exchange earnings and outgo, in such manner as prescribed.

Further Rule 8(3) (b) (i) to (ii) of Companies (Accounts) Rules, 2014 clarifies the manner in which the disclosure with regard to the technological absorption is to be made in the Board Report. It states that the following information is required to be made:

- The efforts made towards technology absorption.
- The benefits derived like product improvement, cost reduction, product development or import substitution.

Moreover, Section 134 (8) prescribes the penalty for non-compliance of Section 134. It states that if the company makes any default in complying with the provisions of this Section, the company shall be liable to the penalty of Rs. 300000/- and every officer in default shall be liable to the penalty of Rs. 50000/-.

In the given situation, M/s SACS Infotech Private Limited ('the Company') (having registered office in Chennai), an inquiry was taken up where it was discovered that details regarding to the technological absorption was not furnished as prescribed in Rule 8(3) (b) (i) to (ii) of the Companies (Accounts) Rules, 2014.

Consequently, hearing was fixed, wherein the Company requested for the postponement of the hearing, which was rescheduled to 7th September, 2023. On the date of hearing, the authorised representative of the Company accepted the default.

Therefore, ROC Chennai imposed the below mentioned penalty:

S. No.	Name of the Defaulters	Defaulted years	Penalty imposed
1.	M/s SACS Infotech Private limited	2013-14 & 2014-15	3,00,000 (for each year)
2.	Shri Subramanian Alias Narayanan	2013-14 & 2014-15	50,000 (for each year)
3.	Shri Suganthi Pari Alias Subramanian	2013-14 & 2014-15	50,000 (for each year)

Order of penalty for the violation of Section 158 of the Companies Act, 2013

ROC, Chennai has passed an order for the violation of Section 158 of Companies Act, 2013 in the matter of M/s Shri Narayani (Kumbakonam) Nidhi Limited.

Section 158 states that that every person or company while furnishing any return, information etc. required under Companies Act, 2013 ('Act') shall mention the Director Identification Number in such return, information etc. which pertains to any reference of any director.

Further Section 172 states that Where no specific penalty is given and company or officer in default contravenes any provisions of this chapter, shall be liable to the penalty of Rs. 50000/- and in case the default continues, shall be liable to the penalty of Rs. 500/- for each day till such default continues, maximum cap being Rs. 300000/- for the company and Rs.100000/- in case of officer in default.

In the given situation, a due diligence of records of M/s Shri Narayani (Kumbakonam) Nidhi Limited ('the Company') (having registered office in Chennai) was conducted, where it was observed that the Company failed to mention DIN of Directors who have signed the financial statements for FY 2017-18 & 2018-19, thereafter a hearing date was fixed where the Company accepted the default. Since there was a clear and admitted default on the part of the Company and its officer in default (Shri Subramaniyan) ROC, Chennai levied the below mentioned penalty:

S. No.	Name of the Defaulters	Defaulted years	Penalty imposed
1.	M/s Shri Narayani (Kumbakonam) Nidhi Limited	2017-18 & 2018-19	50,000 (for each year)
2.	Shri Subramaniyan Kartikeyan	2017-18 & 2018-19	50,000 (for each year)

05
Compliance Calendar

Due dates	Particulars
7th December 2023	Due date for deposit of Tax deducted/collected for the month of November, 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 November, 2023.
15th December 2023	Due date for Third Instalment of Advance Tax for the Assessment Year 2024-25.
	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of October, 2023.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of October, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of October, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of October, 2023 (in case of specified person)

30th December 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of November, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of November, 2023
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of November,
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S for the month of November, 2023 (in case of specified person)
31st December 2023	Due date for filing of Belated/Revised Return of Income for the assessment year 2023-24 for all the assessee, provided that assessment has not been completed before December 31st, 2023.

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in December 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 November 2023- 11 December 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 November 2023- 20 December 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 November 2023 – 1 to 13 December 2023

	Form GST PMT-06 (Monthly payment of tax)(QRMP Scheme)	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 November 2023 – 25 December 2023
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period November 2023- 13 December 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 November 2023- 10 December 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 November 2023- 10 December 2023

Particulars	Applicant	Form no.	Due dates
ECB Return	ECB Borrower	ECB-2	December 7
Report for Overseas Investment	Indian Entity	Annual Performance Report	31st December, 2023

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