NEWSLETTER

Tax & Regulatory

Feb, 2024

Nangia Andersen LLP

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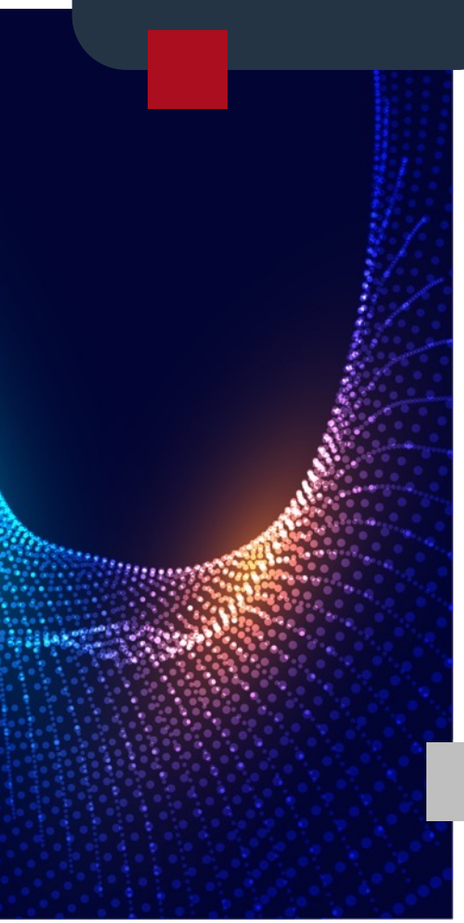
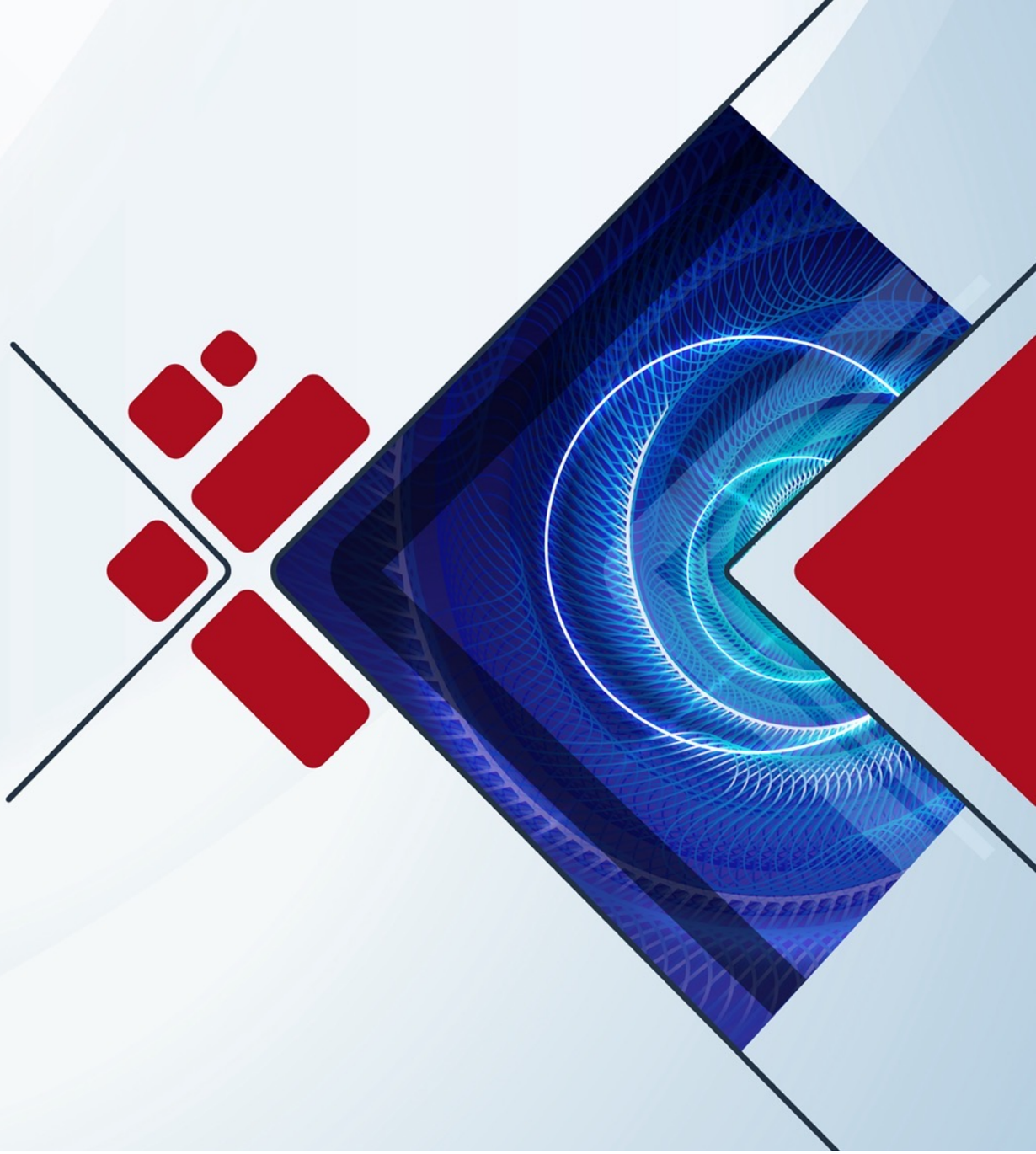
What's *Inside ?*



01 Direct Tax



Management fees paid on External Commercial Borrowings partakes the character of Interest

AKA AUSFUHRRKREDITGESELLSCHAFT MBH v. Asst. Commissioner of Income Tax

ITA No.783/DEL/2023 (Delhi Tribunal)

Issue(s) – Taxability of management fees paid on external commercial borrowings ('ECB')

Outcome - In Favour of Assessee

Background

In a recent verdict, Delhi Tribunal examined the taxability of management fees paid on external commercial borrowings, wherein AKA Ausfuhrrkreditgesellschaft MBH ('Assessee'), a Germany based bank extended ECB to various Indian entities and charged interest along with management fees on the ECB. The tribunal held that management fees is in nature of interest and not fees for technical services.

Brief Facts and Contentions

- The Assessee is a non-resident banking company incorporated in Federal Republic of Germany and tax resident of Germany. The Assessee had received interest along with connected fees, such as management/processing fee, documentation fee and commitment fee.
- The Assessee claimed management fees to be in nature of interest as the fee was directly linked to the loan granted. Interest charged by the Assessee is not liable to tax as per the exclusion provided in Article 11(3)(b) of India-Germany DTAA ('DTAA') and accordingly, fees were also exempted from tax.

- However, the Revenue held the management fees to be in nature of fees for technical services and taxable under section 9(1)(vii) of the Act as well as Article 12 of DTAA. The Dispute Resolution Panel upheld the same.
- Aggrieved by the above, the Assessee approached the Tribunal.

ITAT's Judgement

- Tribunal, on basis of the definition of interest as per Section 2(28A) of the Act and DTAA, concluded that interest includes any service fee or other charge in respect of borrowed money; debt incurred, or credit facility. Further, Tribunal observed that the management fee is similar in nature to commitment and documentation fees, both of which have been accepted to be in the nature of interest by the Revenue.
- Accordingly, management fees held to be exempted as per Article 11 of the DTAA. The judgement of the Tribunal is in conformity with the decision of Kolkata Tribunal in case of DCIT vs Sisecam Flat Glass India Ltd. (ITA No.2475/Kol/2019)

Nangia Andersen LLP's take

Tribunal has held that management fees shall partake the character of interest if it is explicitly linked to the borrowed funds. This decision holds substantial importance for the taxpayers who have obtained ECBs, as it fortifies that any payment/ associated costs with respect to ECB, irrespective of the nomenclature, shall be considered as interest only.

Remittance for acquisition of rights for broadcasting live sport events is not copyright; not chargeable to tax as royalty

Lex Sportel Vision Pvt. Ltd. Vs Income Tax Officer

ITA No. 2397/Del/2023

Issue(s) – Whether TDS is deductible on remittance made to Non-resident entity for obtaining Live Broadcasting rights.

Outcome – In Favour of Assessee.

Background

In a recent verdict, Hon'ble Delhi ITAT ('Hon'ble ITAT') examined if right to broadcast live sport events would fall under the scope of royalty under section 9 of the Income Tax Act, 1961 ('the Act'). ITAT concluded that broadcasting live sport events is not work in which copyright subsists and there is no use of any "process" as defined under section 9(1)(vi) of the Act.

Brief Facts and Contentions

- The Assessee is tax resident of India engaged in the business of broadcasting or sub-licensing right to broadcast sport events on Live and Non-Live basis. Assessee has filed its income tax return for the Assessment Year ('AY') 2018-19 declaring total Nil Income.
- During the Financial Year ('FY') 2017-18, Assessee has entered into agreements with various non-resident for acquisition of rights to broadcast live sport events ('Live Rights') and right to use audio-visual recording of the sport events ('Non-Live Rights').
- The agreements and invoices in relation to acquisition of both the rights bifurcate the total consideration for Live Rights and Non-Live Rights.

- Assessee has deducted tax at source ('TDS') under section 195 of the Act for foreign remittance in respect of acquisition of Non-Live Rights but has not deducted any tax at source for foreign remittance in respect of Live Rights.
- The Ld. CIT(A) passed the order under section 201 of the Act construing the foreign remittance in respect of Live Rights as royalty under section 9 of the Act and thus TDS was required to be deducted.
- Further, Ld. CIT(A) relying on the judgement of the Apex court in the case of Transmission Corporation of AP vs Commissioner of Income Tax [(1999) 239 ITR 587 SC] contended that if the whole or part of the payment bears the income character and the payer has not made any application under section 195(2) of the Act neither payee has made any application under section 195(3) of the Act, then the payer will have to deduct tax on the entire payment.
- Aggrieved by the order of the Ld. CIT(A), the appellant filed an appeal before the Hon'ble ITAT.

Hon’ble ITAT Judgement

- Hon’ble ITAT, relying on the judgement of Hon’ble Delhi High Court in the case of CIT vs Delhi Race Club [IT APPEAL NOS. 6 & 241 of 2014] and various other judgement held that broadcasting Live events does not amount to a work in which copyright subsists meaning thereby right to broadcast live events i.e . “Live Rights” is not “copyright” and therefore any payment made thereto can’t be said to be chargeable to tax as royalty under section 9(1)(vi).
- Further, ITAT concluded that the payment in dispute are made to the right holder and not for the use of any process therefore remittance for broadcasting live sport events cannot be charged to tax as royalty under section 9(1)(vi) of the Act.
- Hon’ble ITAT further held that revenue cannot deem the payment made for Live Rights to have been made for a bouquet of rights as the agreement between the Assessee and Non-resident right holder evidently bifurcates the consideration paid towards Live Rights and Non-live rights.

Nangia Andersen LLP’s take

ITAT has further strengthened the view taken by various courts in respect of the broadcasting rights for ‘live events’ by referring to the meaning of “copyright” and “work in which copyright subsists”. The Judgement also draws a line of demarcation between live and non-live events.

Loss on account of capital reduction in investee company must be construed as capital loss

M/s. Tata Sons Limited Vs CIT

ITA No. 3468/Mum/2016

Issue(s) – whether loss due to cancellation of shares of investee company can be claimed as a capital loss

Outcome - In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Mumbai ('Hon'ble ITAT') examined whether loss due to cancellation of shares be claimed as capital loss and concluded that extinguishment of shares is to be treated as a transfer and result of the transfer has to be computed as per section 48 of the Income Tax Act,1961 (the "Act")

Brief Facts and Contentions

- Tata Sons Limited filed its income tax return for AY 2009-10 and reported capital loss of ₹2,047 crores due to cancellation shares in Tata Tele-Services Company Ltd. ("TTSL").
- The return was selected for assessment under section 143(3) of the Act and the assessing officer ("AO") raised queries regarding allowance of the capital loss. Appellant submitted that extinguishment of shares amounts to transfer under section 2(47) of the Act and computation provisions provided u/s 48 can be applied unless it is not possible to conceive any element of cost. The assessment proceedings were concluded in favour of the Assessee.

- Principal Commissioner of Income tax ("CIT") initiated revisionary proceedings under section 263 of the Act and contended that the assessment order was prejudicial to the interests of the revenue. CIT claimed that extinguishment of shares are transfer u/s 2(47) of the Act, but to attract the capital gains, consideration must be received or accrued to the appellant as a result of transfer. In absence of consideration, section 48 would not be applicable and it would not be possible to compute gains or loss arising from the transfer.
- CIT passed order u/s 263 disallowing the loss, arguing that the loss is notional in nature and cannot be subjected to the provisions of the Act.

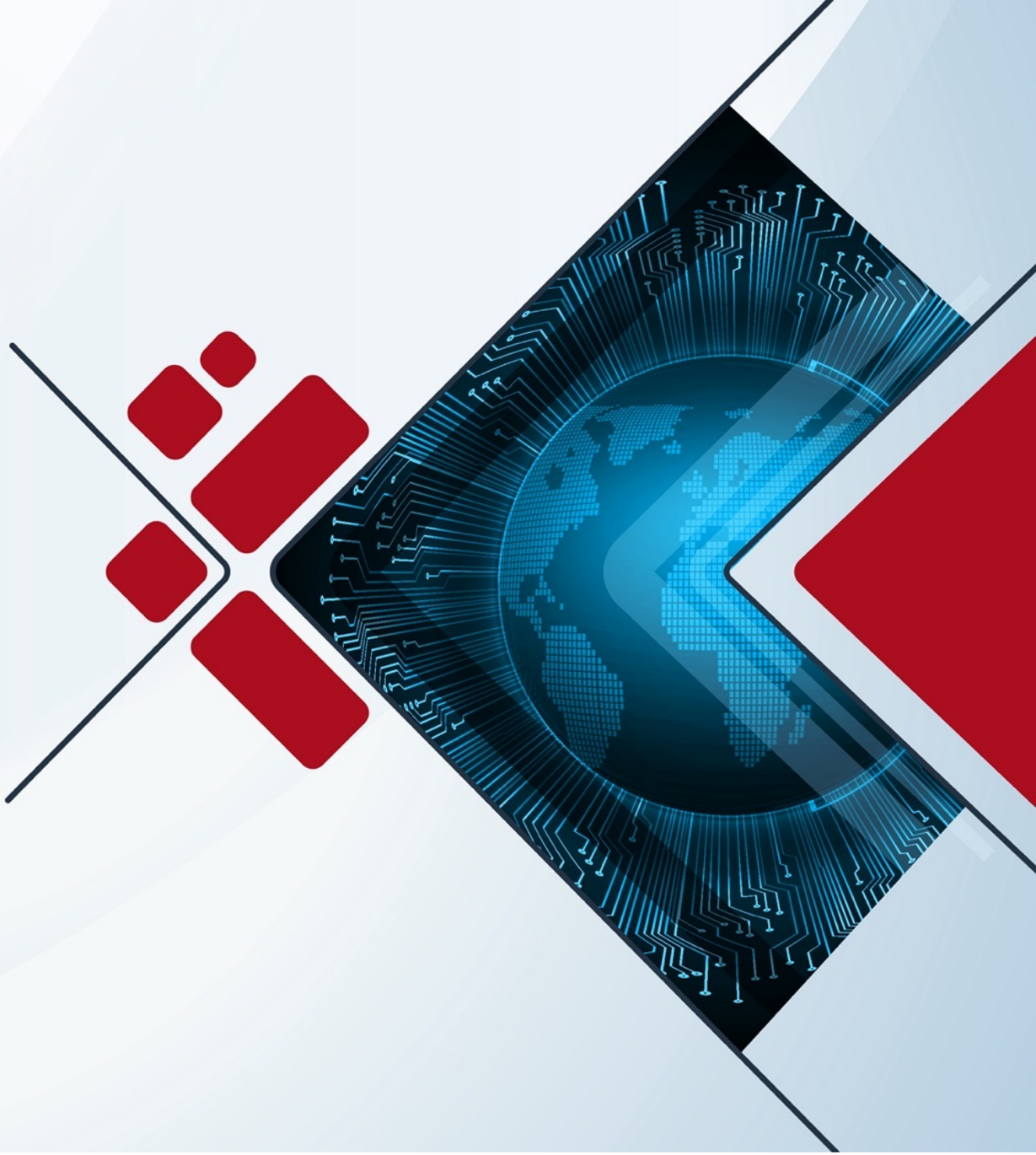
Hon'ble ITAT's Judgement

- Hon'ble ITAT placed reliance on Hon'ble Supreme Court's Judgement in the case of kartikeya Sarabhai [228 ITR 163 (SC)] and stated that extinguishment of share capital would amount to transfer under section 2(47) of the Act.
- Further reliance was placed on Hon'ble Gujarat High Court case of CIT vs Jaykrishna Harivallabhdas (231 ITR 108) wherein it was held that in case of non-receipt of consideration, the entire extinguishment of rights has to be written off as a loss resulting from computation of capital gain. Thus, it was held that even though appellant has not received any consideration, its investment results into capital loss.

Nangia Andersen LLP's take

An important proposition has been referred to in the judgement, that a line of distinction needs to be drawn between cases in which the cost of acquisition or any other component of section 48 of the Act is incapable of ascertainment and cases in which it is ascertained as zero.

02 Indirect Tax



Advance Rulings & Judgements

Hon'ble High Court of Madras held that the date of credit of GST in Electronic Cash Ledger is the date of payment of tax to the Government, no interest would be applicable if GSTR 3B is filed post prescribed due date.

Brief Facts

- In the given case, the petitioner is a public limited company and a renowned manufacturer of mid-sized motorcycles led by the iconic brand 'Royal Enfield'.
- Owing to want of system readiness and technical glitches in GST common portal, the CBIC kept on extending the time limit for filing of FORM GST TRAN – 1 for transferring the transitional credit and hence the petitioner filed its FORM GST TRAN – 1 at a later date. Accordingly, such transitional Credit amounting to Rs. 33.87 crores was not reflected in the Electronic Credit Ledger of the petitioner, so the petitioner could not file its GSTR 3B for the month of July 2017 within the prescribed due date. Such non – filing of GSTR 3B of July 2017 had a domino effect and the petitioner could not file GSTR 3B of subsequent periods from August 2017 to December 2017.
- Though the petitioner was disabled from filing the returns, the petitioner had ensured that the tax dues are fully paid within the due dates without any delay and accordingly, the petitioner had discharged GST liability for the period from July, 2017 to December, 2017 by depositing the tax amounts in the Electronic Cash Ledger under the appropriate heads as CGST, SGST, IGST into the Government account within the due date for each month. Of late, the petitioner filed its GSTR 3B for the period July 2017 to December 2017.
- After 6 years, payment of interest was demanded for alleged belated payment of GST on ground that deposit of tax in Electronic Cash Ledger would not amount to payment of tax and would tantamount to failure to remit GST in time, for which interest liability would be attracted.

Observations

- Whether the petitioner is liable to pay interest under Section 50 of Central Goods and Service Tax Act, 2017 ('CGST Act') for late filing of the GSTR-3B return, even though they deposited the GST amount on time in the Electronic Cash Ledger?

Decision

- The High Court of Madras ruled that the petitioner is not liable to pay interest on delayed filing of GSTR 3B as the amount deposited in Electronic Cash Ledger equals to credit to the exchequer.
- That once the amount is paid by generating PMT – 06, the said amount will be initially credited to Government account immediately upon deposit, at which point, the tax liability will be discharged to the extent of deposit made to the Government.
- That, no interest will be payable if the amount is credited to Electronic Cash Ledger within the prescribed time limit even if there is delay in filing of GSTR 3B by the taxpayer.

[M/s Eicher Motors Limited vs The Superintendent of GST and Central Excise (WP No. 16866 & 22013 of 2023 and WMP No. 32200 of 2023 – Madra HC dated 23 January 2024]

Hon'ble High Court of Madras held that if the petitioner is unable to participate in proceedings before Adjudicating Authority due to unawareness of show cause notice, impugned order was to be set aside and Adjudicating Authority was directed to grant petitioner sufficient opportunity of personal hearing in accordance with law.

Brief Facts

- The Petitioner is engaged in the business of manufacturing and supplying bags. A GST consultant was engaged by the petitioner for GST compliances.
- The GST Department issued a notice in FORM ASMT – 10/FORM DRC 01 to the Petitioner for discrepancies between returns in FORM GSTR 1 and GSTR 3B. However, the petitioner relied on the GST consultant and did not file a response to such notices.
- The Adjudicating Authority hence passed the order imposing tax liability along with interest and penalty on the petitioner on ex-parte basis.

Observations

- Whether the Adjudicating Authority can pass the order without giving proper opportunity of being heard to petitioner, since he was unaware of the fact that show cause notice has been issued and no suitable response has been submitted by the GST consultant hired by him?

Decision

- The High Court of Madras held that the explanations given by the petitioner are not fully convincing, but it also considered the fact that a registered person carrying on a small business did not have opportunity to respond to claim made by tax department with regard to discrepancy between returns in Form GSTR 1 and Form GSTR 3B.
- That the impugned order passed by the Adjudicating Authority to be set aside and the matter is to be remanded for re-consideration of such case.
- It is made clear that the petitioner will not have an opportunity to respond to the show cause notice and the opportunity would be limited to participation in the proceedings before the assessing officer and making any submissions in relation thereto. Any such submission shall be made by the petitioner within a maximum period of two weeks from the date of receipt of a copy of this order. The assessing officer is directed to complete the re-assessment within a maximum period of two months from the date of receipt of a copy of this order by issuing a reasoned decision.

[Basheer Bags vs Deputy State Tax Officer – 2 (WP No. 1227 of 2024 and WMP No. 1269 of 2024) dated 22 January 2024]

GST Update

CBIC has further extended the due date for filing of GSTR 3B for the month of November 2023 in certain districts of Tamil Nadu.

- CBIC has further extended the due date for furnishing the return in Form GSTR-3B for the month of November-2023 till 10 January 2024 for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu and are required to furnish return under sub section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules').
- Earlier, the due date for filing GSTR-3B for the month of November 2023 was extended till 27 December 2023.

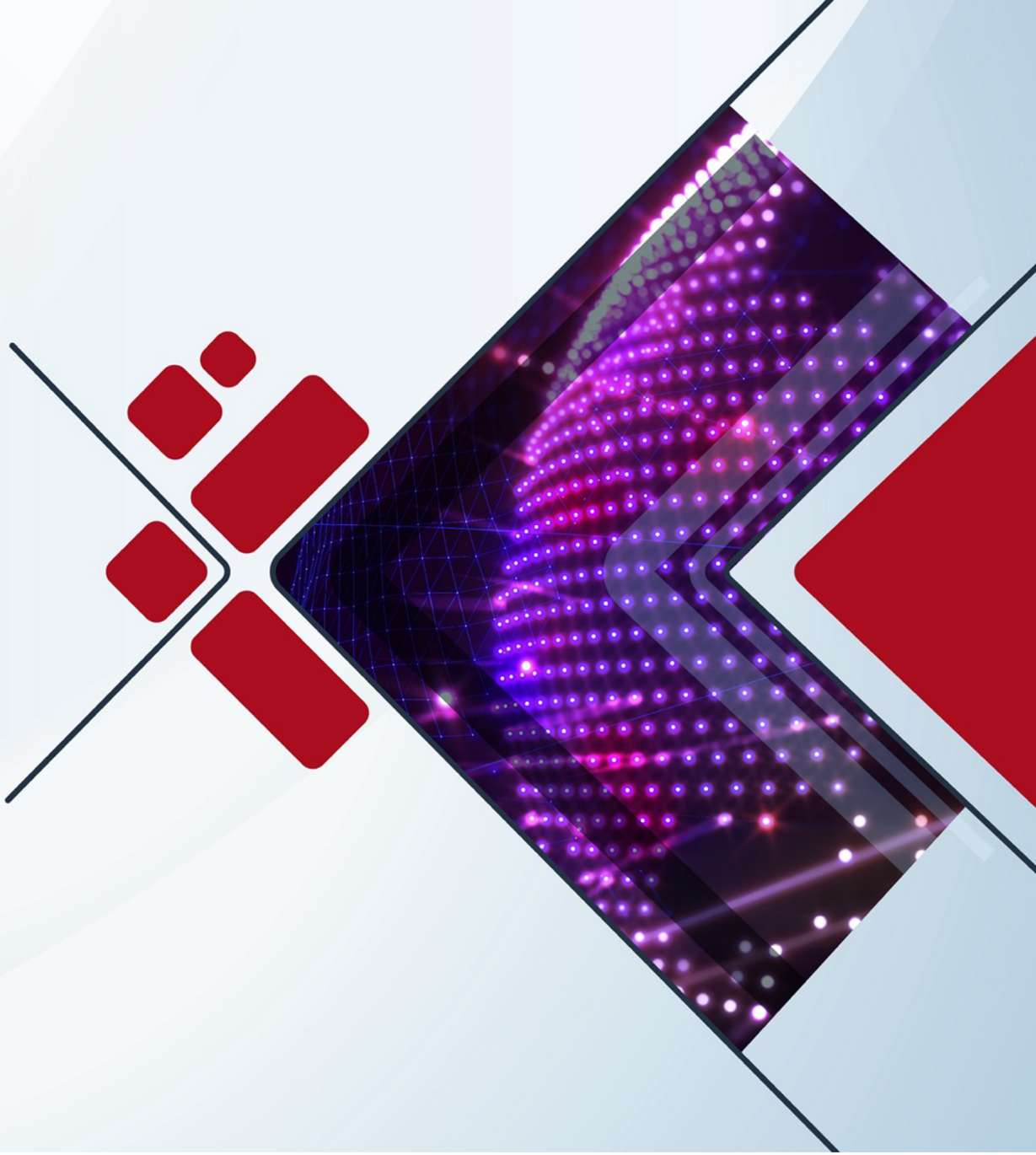
[Notification No. 01/2024 - Central Tax dated 5 January 2024]

CBIC further extended due date for filing of GSTR 9 & 9C for FY 2022-23 in certain districts of Tamil Nadu.

- CBIC vide notification 02/2024 - Central Tax has extended the due date for furnishing the return in Form GSTR 9 & GSTR 9C for FY 2022-23 till 10 January, 2024 for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu.

[Notification No. 02/2024 - Central Tax dated 5 January 2024]

03 Transfer Pricing



ITAT states that assessing interest-free loans is incomplete without considering the benefits derived by the taxpayer.

Outcome: In favour of the taxpayer

Category: Transfer pricing adjustments related to interest-free loans; commercial expediency

Facts of the Case

- Rubamim Limited ("the taxpayer") is engaged in the business of manufacturing of wide range of Cobalt, Nickel, and Copper. The taxpayer acquires raw material of Cobalt from Democratic Republic of Congo (DRC). For the purpose of seamless supply of raw material, it has set up wholly owned subsidiary in UAE Sharjah namely Rubamin FZE ("RFZE"/ "AE")
- During the year under consideration, the taxpayer had provided interest free loans & Advances to its AE/RFZE. During the course of proceedings, Transfer Pricing Officer ("TPO") treated the same as international transaction in original assessment proceedings and made upward adjustment on account of interest on aforementioned intercompany loan. The issue reached to Tribunal and the Hon'ble bench vide order dated 17th February 2017 set aside the issue to file of the AO/TPO for de-novo adjudication.
- Further, the taxpayer had contended that:
  - the interest-free loan is in the nature of commercial expediency i.e. to help the operation of subsidiary so that the subsidiary would be able to make proper and assured supply of raw materials at lower prices, ultimately benefiting the company more than charging interest and the same was authorized by RBI.

- the taxpayer had undertaken various international transaction which are import of raw material, supply of consumables and capital goods, recovery of expenditure etc. As such the cost of loan transaction and the interest cost in such transaction/ purchases has already been inbuilt. Accordingly, the interest cost cannot be benchmarked independently rather it should be aggregated with the purchases and other transactions carried out with the AE as all the transactions are inter-linked.

- However, the TPO rejected the claims of the taxpayer and made the **upward TP adjustment on the account of arm's length interest**. Aggrieved by the same, the taxpayer appealed before Commissioner of Income Tax (Appeals) ["CIT(A)"]. During the proceedings before CIT(A), the reliance had been made on decision of ***Delhi ITAT in case of Perot Systems TSI (India) Ltd***., and upheld the decision made by TPO and directed assessing officer ("AO") to adopt **LIBOR + 0.75%** rate for making adjustment on account of interest.
- Aggrieved by the CIT(A) decision, the taxpayer had appealed before Income Tax Appellate Tribunal ("ITAT").

ITAT Ruling

Following observation were drawn by the Hon'ble ITAT:

- ITAT made reliance on ***para 3.9 of OECD TP Guidelines*** which reiterates there are often situations where separate transactions are so closely linked or continuous that they cannot be evaluated adequately on a separate basis. Further, ITAT placed reliance on ***para 3.13 of*** OECD Commentary which deals with the topic of Intentional set offs wwhich provides that the **Intentional set-offs** generally occur between AEs in respect of controlled transactions wherein when one enterprise provides benefit to another enterprise within the group that is balanced to some degree by different benefits received from that enterprise in return.

- Further, ITAT made reliance on the judgement of **Hon'ble High Court of Delhi** in the case of ***Sony Ericsson Mobile Communications India (P.) Ltd. vs. CIT,*** wherein it was held that clubbing of closely linked transactions, which would include continuous transactions, would be permissible and not required to be excluded.
- Further, ITAT observed that the taxpayer had huge business from its associated enterprises, which would not have been possible until the assessee had not incorporated a company in UAE and DRC. Accordingly, the transaction for advancing the interest-free loans to the AE had to be seen in the context of the benefit received by it from such AE.
- In view of the above, **ITAT held that no TP adjustment would be required in accordance with Indian TP regulations with respect to the interest free loans and advances by the assessee to its AE.**

Nangia's Take

ITAT in the instant ruling evaluated the economic substance of transaction by emphasizing intrinsic link between transaction pertaining to the interest-free loans by the taxpayer to its wholly owned subsidiary and the overall benefit derived by the taxpayer by entering into other international transactions with its AEs.

In view of above, the instant ruling sets a precedent for considering the wholistic aspect of business / commercial expediency while evaluating / benchmarking interest-free loans from transfer pricing perspective. Further the ruling also emphasizes the significance of thoroughly documenting the commercial rationale behind such transactions and accordingly shall support the taxpayers facing similar disputes during assessment proceedings.

[Source: Rubamim Limited [TS-732-ITAT-2023(Ahd)-TP]

04 Regulatory

Updates under Ministry of Corporate Affairs (MCA)

Introduction of Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024

The Ministry of Corporate Affairs *vide* notification dated 24th January 2024 notified the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 ('Listing Rules'). The Listing Rules lay down the basic regulatory framework for listing of equity shares in permissible jurisdictions by companies classified as unlisted public companies and listed public companies, not meeting the limitation criteria specified under Rule 5 of the Listing Rules and not having partly paid-up shares. The limitation criteria is as follows:

- Section 8 Companies or Nidhi Companies;
- Company limited by guarantee and also have share capital;
- Companies having outstanding deposits from the public;
- Companies with negative net worth;
- Defaulting Companies in regard to the payment of dues to any bank, public financial institutions, non-convertible debenture, or other secured creditors;
  (exception being- if the default has been set right and 2 years has elapsed from making the default good)
- Companies who had applied for Winding up under this Act or for resolution or winding up under Insolvency and Bankruptcy Code, 2016
- Companies who has defaulted in filing of an annual return or financial statements under Section 92 or Section 137, respectively

Updates under Reserve Bank of India (RBI)

Uniformity on Credit/Investment Concentration Norms

In order to ensure uniformity and consistency in computation of concentration norms among different categories of NBFCs, a review of the extant concentration norms was carried out by the RBI and instructions on calculation of such concentration norms were set out by the RBI vide notification dated 15th January 2024.

While the credit concentration norms were earlier applicable to NBFC-ML onwards only, the notification has brought about similar restrictions on NBFC-BL as well.

RBI releases draft circular on 'Review of regulatory framework for Housing Finance Companies (HFCs) and harmonisation of regulations applicable to HFCs and Non-Banking Finance Companies (NBFCs)

In furtherance to harmonisation between regulations of HFCs and NBFCs in a phased manner, the RBI has vide press release dated 15th January 2024 released the draft circular on the aforementioned subject. Comments on the draft circular are invited from NBFCs (including HFCs) and other stakeholders by 29th February, 2024.

Updates under Securities and Exchange Board of India ('SEBI')

Extension of Timeline for Implementation of Provisions Pertaining to Verification of Market Rumours

The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") inter-alia requires top 100 listed entities by market capitalization and thereafter the top 250 listed entities by market capitalization to mandatorily verify and confirm, deny or clarify market rumours from the date as may be specified by SEBI.

SEBI vide its Circular dated 25th January, 2024 has decided to extend the timeline for effective date of implementation of the proviso to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to **1st June, 2024** and for top 250 listed entities by market capitalization, to **1st December, 2024**.

Notification of SEBI (Alternative Investment Funds) (Amendment) Regulations, 2024

The SEBI vide notification dated 5th January 2024 notified the SEBI (Alternative Investment Funds) (Amendment) Regulations, 2024 ('Amendment Regulations'). The following amendments have been brought about through the Amendment Regulations:

- While the SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations') list out the general investment conditions to be satisfied by AIFs prior to making any investment, the SEBI vide the Amendment Regulations have additionally mandated all the AIFs to hold their investments in dematerialized form;

- Prior to the Amendment Regulations, every sponsor or manager of Category I and II AIF having a corpus worth more than INR 500 Crore, and all Category III AIFs were required to appoint a custodian for safekeeping of the securities of the AIF. Now, such requirement has been extended to all the AIFs irrespective of the corpus size, subject to conditions as may be prescribed by SEBI.

Updates under Food Safety and Standards of India (FSSAI)

Introduction of Provision In the Online Food Safety Compliance System Portal ('Foscos') To File Updated/ Revised Annual Return

The FSSAI vide order dated 8th January, 2024 (w.e.f. 6th January 2024 for F.Y. 2022-2023) introduced a provision allowing Manufacturers and Importers to update/revise their already filed annual returns in FoSCoS after the specified due date i.e., 31st May of following year (subject to extensions, if any). Prior to this amendment, the opportunity to make revision/ updates in already filed Annual Return was limited only until the aforementioned deadline. This amendment is aimed to enable the manufacturers and importers to rectify any inadvertent mistakes made during submitting the return.

However, the aforesaid revision/ updation is subject to certain conditions and fee:

- In case initial return is filed within the specified due date i.e., by 31 May of following year, revision/ updation shall be allowed maximum of two times and last submitted return shall be considered as final. There is an additional fee for revision/ updation.

- In case initial return is filed beyond 31 May but till 31 March of following year, only one time revision/ updation shall be allowed till 31 March of following year, with revised filing fee equal to two year license fee + GST.
- In case initial return is filed beyond 31 March of following year, no revision/ updation is allowed.

Other Updates

Introduction of New Rules: Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2024

The Ministry of Finance vide notification dated 24th January 2024, introduced Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024 amending the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ('NDI Rules'). The recent amendment introduces crucial changes aimed at enhancing regulatory mechanisms.

The inclusion of terms such as "International Exchange," updated definitions, and the allowance for the direct listing of equity shares on International Exchanges create new opportunities for Indian companies. The focus on adherence to regulations, eligibility criteria, and pricing standards establishes a sturdy framework to facilitate international investments while protecting regulatory interests.

Orders/judgements

Registrar of Companies (ROC)

Order of penalty for the violation of Section 197 of the Companies Act, 2013

ROC, Bihar has passed an order for the violation of Section 197 of Companies Act, 2013 in the matter of M/s Seva Parmodharmah Samajik Nidhi Limited (having registered office Bihar) (hereinafter referred as 'the Company').

Section 197(1) states that the total managerial remuneration payable by a public company, to its Directors (including managing director and whole-time director and its manager) in respect of any FY shall not exceed 11% of the net profits of the company for that FY.

Provided that the company in general meeting may, authorize the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to Schedule V.

Section 197(9) states that if any of the directors draws or receives, directly or indirectly, by way of remuneration any amount which exceeds the prescribed limit provided in this section or without the required approval, he shall refund such sums to the company within 2 years or any such lesser period as may be allowed.

Further it also states that until the director refunds such sum, he should hold the funds in the trust for the company.

Section 197(15) states that if any person makes any default in compliance of this Section, he shall be liable to the penalty of 1 lakh rupees and where the defaulter is a company, then it will be liable to a penalty of 5 lakh.

In the given case, an inquiry was caused the Company, where it was found that the Company has paid to its director Rs. 13 Lakhs and Rs. 6.6 lakhs, respectively as director's remuneration, remuneration, which exceed 11% of the net profits of the Company for FY (2018-19 and 2019-20), however the Company has not filed MGT-14, indicating that the Company has not passed any special resolution in this regard.

Accordingly, a show cause notice was issued, wherein the Company accepted the default.

Accordingly, ROC, Bihar imposed the below mentioned penalty for non-compliance of Section 197 of Companies Act, 2013 on the Company and its officer in default:

S. No.	Defaulters on which the penalty is imposed	Penalty for default (In Rs.)	Penalty imposed (In Rs.)
2018-19	On the Company	5 lakh	5 lakh
	Director	1 lakh	1 lakh
	Director	1 lakh	1 lakh
2019-20	On the Company	5 lakh	5 lakh
	Director	1 lakh	1 lakh
	Director	1 lakh	1 lakh

Order of penalty for the violation of Section 88 of the Companies Act, 2013

ROC, Maharashtra has passed an order for the violation of Section 88 of Companies Act, 2013 in the matter of M/s Ahmed Nagar Club Limited (having registered office at Maharashtra) (herein after referred as 'the Company').

Pursuant to the aforesaid section, every company shall keep and maintain Register of members indicating separately each class of equity and preference shares held by the members residing in or outside of India, amongst other registers.

If the company fails to maintain the register of members or debenture-holders or other security holders or fail to maintain in a manner as prescribed under the section, then such company shall be liable to the penalty of Rs. 3,00,000/- and its officer in default shall be liable to the penalty of Rs. 50,000/-

In the given case, an inspection was caused against the Company, wherein it was found that the register of members of the Company were incomplete, thus violated Section 88 of Companies Act, 2013.

The Company submitted its reply stating that it was formed in 1947 and had several members who were admitted 20 to 30 years ago. Earlier the register of member was maintained in physical format however due to digitization the records were transferred to the computer system.

The Company further clarified that it did not had the complete details of few members and several reminders were sent to them however very poor response was received from the members for exercise of update in records.

ROC, Maharashtra found this reply unsatisfactory and imposed a penalty of Rs. 3,00,000 and a penalty of Rs. 50,000 each on the officers in default.

05 Compliance Calendar

Due dates	Particulars
7th February 2024	Due date for deposit of Tax deducted/collected for the month of January, 2024.
	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 January, 2024.
14th February 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of December, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of December, 2023
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of December, 2023

	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of December, 2023 (in case of specified person)
15th February 2024	Quarterly TDS certificate in respect of tax deducted for payments other than salary for the quarter ending December 31, 2023.

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in January 2024
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 January 2024- 11 February 2024
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 January 2024- 20 February 2024
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 January 2024 – 1 to 13 February 2024

	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 succeeding month	For Tax Period January 2024 – 25 February 2024
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of succeeding month	For Tax Period January 2024- 13 February 2024
5	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source	Monthly	10thof the succeeding month	For Tax Period January 2024- 10 February 2024
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	10thof the succeeding month	For Tax Period January 2024- 10 February 2024

Segment	Particulars	Due Dates
FEMA Compliances	ECB – 2	7th February, 2024
SEBI Compliances	Statement of deviation(s) or variation(s)	14th February, 2024
SEBI Compliances	Financial Results along with Limited review report/Auditor's report	14th February, 2024

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