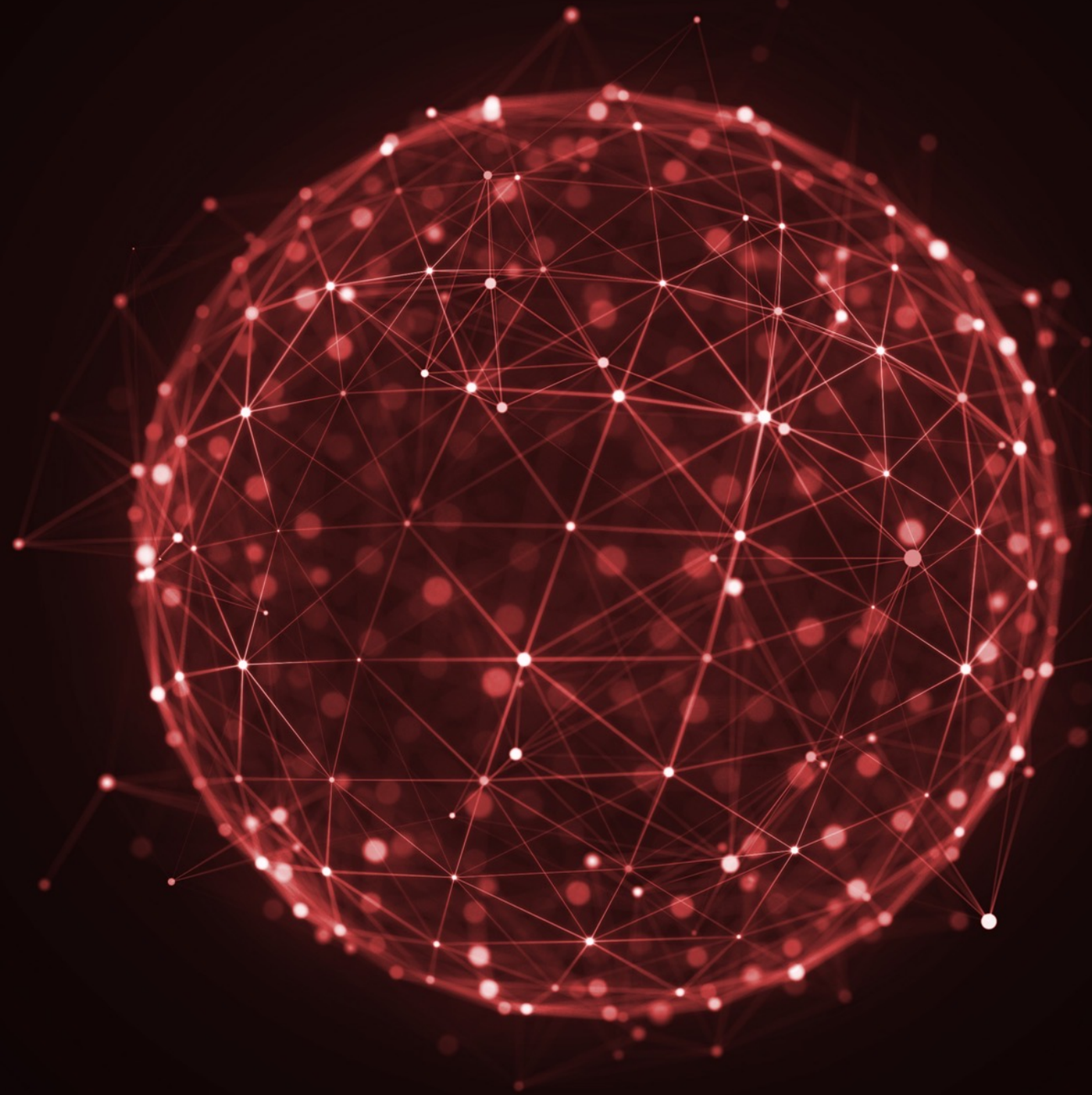
NEWSLETTER

Tax & Regulatory

March, 2024



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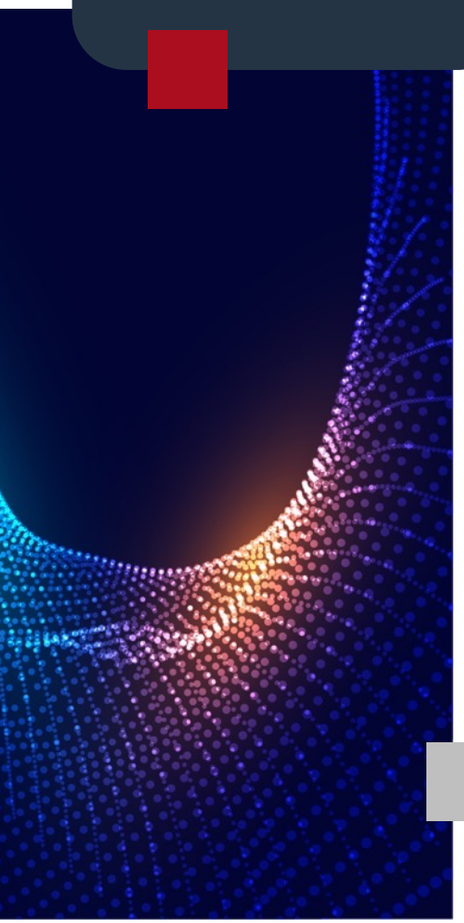
What's *Inside ?*



01 Direct Tax

Chargeability to tax in India is a pre-requisite to tax withholding under Section 195; Non-discrimination clause applies to section 40(a)(i)

Commissioner of Income Tax v. Mitsubishi Corporation India P. Ltd

ITA 180/2014 (Delhi High Court)

Issue(s) – Whether expense has to be disallowed under section 40(a) of the Income Tax Act, 1961 owing to non-deduction of tax

Outcome - In Favour of Assessee

Background

In a recent verdict, Delhi High Court ('HC') examined the allowability of expenses on account of purchases, wherein Mitsubishi Corporation India Pvt. Ltd. ('Assessee) made payments for the purchases to its group entities outside India without withholding of any taxes under section 195 of the Act. Hon'ble HC held that since the amount received by the group entities is not taxable in India, tax need not be withheld under section 195 of the Act and accordingly, no disallowance under section 40(a)(i) of the Act is attracted in case of the Assessee.

Brief Facts and Contentions

- The Assessee is a company incorporated in India and made payments amounting to ₹97.89 Cr. in Assessment Year (AY) 2006-07 without withholding tax under section 195 of the Act to seven group entities, out of which five are resident of USA and Japan and remaining two are resident of Singapore and Thailand.
- The Ld. Assessing Officer held that the said expenditure shall not be allowed as deduction as per section 40(a) of the Act, which states that the payment made to non-resident shall be disallowed in the hands of the Assessee if tax has not been withheld on such payment.

- Assessee argued that the said payment is not be liable to tax in India in hands of the payee entities as the entities do not have Permanent Establishment (PE) in India and section 195 of the Act states that tax shall be withheld only on the amounts which are taxable in India. The Assessee relied on landmark judgement of Supreme Court in Union of India v. Azadi Bachao Andolan & Anr., 263 ITR 706 (SC).
- The fact that payee entities do not have PE in India was confirmed at the Tribunal level.
- Further, the Assessee argued that section 40(ia) of the Act, applicable on residents, covers specific payments which shall be disallowed if tax has not been withheld in case of residents and purchases were not included in its purview. Accordingly, Assessee relied on non-discrimination clause in the India-USA Treaty and India-Japan Treaty, which stated that there shall no discrimination to the non-residents as compared to residents.

HC's Judgement

- The payment made for purchases to group entities resident in Singapore and Thailand shall not be liable to withholding of tax under section 195 of the Act, as the sum paid is not chargeable to tax in India in the hands of the payee in absence of PE. Accordingly, the payments are not subject to disallowance under section 40(a) of the Act.
- Further, payment made to entities resident in USA and Japan shall not be liable to withholding tax under section 195 of the Act on the basis of non-discrimination clause in the respective treaties. HC held that more beneficial provision of the Act or of the Treaty shall apply and accordingly, the payee is entitled to take benefit of the non-discrimination clause.

Nangia Andersen LLP's take

As has been held in plethora of judgements, this ruling reasserts the principle that taxes shall be withheld only on income which is chargeable to tax in India. Further, the judgement discusses and extends the benefit of non-discrimination clause as provided in the treaty in context of tax withholding on foreign payments.

Section 2(22)(e) applicable on beneficial owner with control & influence on lender and borrower

Apeejay Surrendra Management Services Pvt. Ltd Vs DCIT

ITA No. 987 & 988/Kol/2023

Issue(s) – Whether deemed dividend is the income of borrowing entity or beneficial owner under section 2(22)(e)

Outcome - In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Kolkata ('Hon'ble ITAT') examined the provisions of deemed dividend and held that as per section 2(22)(e) of the Income Tax Act, 1961, the dividend accrues in the hands of the beneficial owner.

Brief Facts and Contentions

- Apeejay Surrendra Management Services Pvt Ltd. ('Assessee") is engaged in the business of Brand Owning and consultancy, it filed return of income on 30.09.2023 and reported loss of ₹ 2.16 crores.
- During the year, Assessee received a loan of ₹ 5.50 crores from another group company called Apeejay Private Ltd. ("APL"). Assessee is not a shareholder of APL, however there is a common shareholder namely, Kathua Steel Works Pvt. Ltd ("KSWPL") who holds substantial interest in both Assessee and APL.
- Accumulated profits available for distribution in the books of APL, was ₹ 36.91 crores. The Assessing officer ("AO") treated the loan as deemed dividend in the hands of Assessee under second limb of section 2(22)(e) of the Act on the ground that KSWPL has substantial interest in both Assessee and APL.

- Aggrieved by the assessment order, assessee before Ld. CIT(A), which confirmed the additions made by AO.
- Aggrieved assessee approached Hon'ble ITAT and supported its arguments by placing reliance on Judgement of Mumbai ITAT in the case of **ACIT Vs. Bhaumik Colour Pvt ltd** [ITA no. 5030 (Mum) of2004], wherein it was held that deemed dividend can be assessed only in the hands of a person who is a shareholder of the lender company. Further reliance was placed on the Hon'ble Delhi High Court case of **CIT Vs. Ankitech Pvt. Ltd** [ITA No. 462 of 2009] wherein it was held that assessee who is not a shareholder of the company from which he received a loan or advance cannot be treated as being covered by the definition of the word dividend under section 2(22)(e) of the Act.
- Revenue placed reliance on The Hon'ble Supreme Court Case of **National Travel Services** [Civil Appeal No. 2068-2071 of 2012] and submitted that it is not necessary to be a registered shareholder to attract section 2(22)(e) of the Act.

Hon'ble ITAT's Judgement

- Hon'ble ITAT following the judgment of Supreme Court in case of **National Travel Services** held that the second limb of section 2(22)(e) of the Act provides that the deemed income shall accrue to the shareholder who is the beneficial owner but not necessarily a member of the company on its register.
- Further in the present scenario, substantial interest is held by KSWPL, qualifying it to control and influence the decision making process of both Assessee and APL. Accordingly, dividend income accrues in the hands of KSWPL

Nangia Andersen LLP's take

The intention behind enacting the provision of section 2(22)(e) is to prevent closely held companies from distributing profits in-lieu of dividend to its members in the form of loans or advances. Further, deemed dividend accrues in the hands of the beneficial shareholder. The judgement of Supreme Court in case of National Travel Services plays a pivotal role in this regard.

Provision for warranty can only be claimed as business expenditure if based on reliable estimate; utilization pattern also holds importance

The Principal Commissioner of Income Tax ('PCIT') vs M/s Apple India Pvt. Ltd.

Special Leave Petition (Civil) Diary No(s). 5808/2024

Issue(s) – Whether provision for warranty can be claimed as business expenditure

Outcome – In Favour of Assessee

Background

In a recent verdict, Hon'ble Supreme Court (SC) dismissed the special leave petition filed by Revenue thereby upholding the judgment of Karnataka High Court which stated that provision for warranty can be claimed as business expenditure on the basis of past experience and concluded that utilization of 95.5% of the provision(s) created in the past is a reliable and robust estimate.

Brief Facts and Contentions

- The Assessee is an Indian company engaged in the business of trading Apple products in India. It also provides post sale support services, marketing and related support services for Apple products. Assessee filed its return of income for the Assessment Year ('AY') 2013-14 and AY 2014-15 claiming provision for warranty as business expenditure.
- The Assessing officer ('AO') passed the order disallowing the claim of provision for warranty contending that Assessee had not followed the guidelines laid by the Hon'ble SC in the case of Rotork Controls India (P.) Ltd vs Commissioner of Income Tax [ITA Nos. 294, 827 & 829 of 2018] viz. a provision is a liability which can be measured by using a substantial degree of estimation and recognized when
    - an enterprise has a present obligation as a result of past event;

- it is probable that outflow of resource will be required to settle the obligation; and
- a reliable estimate can be made of the amount of obligation.

- Further, AO placed its reliance on the direction of Dispute Resolution Panel (DRP) in the Assessee own case for preceding year i.e. AY 2011-12.
- The Assessee furnished statement showing that the warranty claim is warried between 2.16% to 9.89% and argued that the provision made based on its past experience in Indian international market is reliable and robust as the Assessee has effectively utilised 95.5% of the provision made for AY 2007-08 to AY 2016-17 during the AY 2008-09 to AY 2017-18. Further, Assessee contended that the foundation of assessment order is unsustainable as it is based on the DRP's directions for the AY 2011-12 which was set aside by the tribunal.

Hon'ble HC Judgement

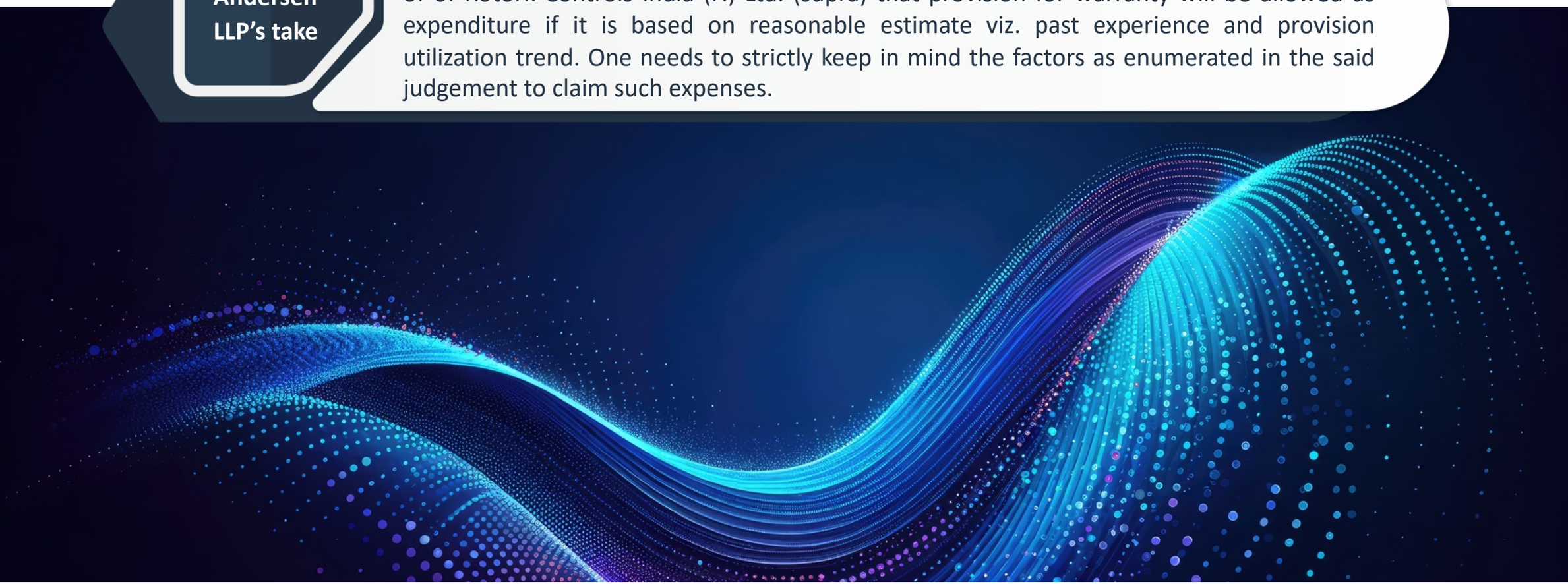
- Hon'ble HC asserted that the Assessee has utilized 95.5% of the provisions made in the past years and concluded that the estimates made by the Assessee is reliable and robust as held in the Rotork Controls India (P.) Ltd.'s case (supra).
- Further, Hon'ble HC held that the Assessee's contention is right that the very foundation of the assessment order is unsustainable as it is based on the DRP's directions for AY 2011-12 which is already been set aside by the tribunal.

Hon’ble SC Judgement

- Hon’ble SC dismissed the SLP filed by Revenue and contended not to interfere with the judgment and order passed by the Hon’ble HC.

Nangia Andersen LLP’s take

The SLP was dismissed by the Hon’ble SC, re-affirming the SCs landmark judgement in case of of Rotork Controls India (P.) Ltd. (supra) that provision for warranty will be allowed as expenditure if it is based on reasonable estimate viz. past experience and provision utilization trend. One needs to strictly keep in mind the factors as enumerated in the said judgement to claim such expenses.



02 | Indirect Tax

Advance Rulings & Judgements

Madras High Court held that Input tax credit ('ITC') cannot be denied solely on the basis that concerned supplier's registration cancelled with retrospective effect.

Brief Facts

- M/s. Engineering Tools Corporation ('Petitioner') purchased goods from M/s Shikhar Technologies in Financial Year 2017-18 and availed ITC on the same. Respondent directed the petitioner to reverse the ITC on such purchases on the ground that the registration of the Petitioner's supplier was cancelled with retrospective effect and alleged availment of ITC basis the fake invoices in Impugned Order;
- Aggrieved by the Impugned Order, Petitioner filed the present writ petition before the Madras High Court.

Observations

- Hon'ble High court observed that contentions of the Petitioner were rejected entirely on the ground that petitioner should have proved the existence of its supplier. Petitioner, at the highest, may be called upon to produce evidence of existence of supplier at relevant point of time i.e. when goods were purchased;
- Further, High Court noted that Petitioner submitted the relevant documents to prove that transaction was genuine (tax invoices, e-way bills, and proof of payments) but these documents were disregarded while passing the Impugned Order.

Decision

- The Impugned Order passed by the adjudicating authority is quashed and matter remanded for reconsideration.

[Engineering Tools Corporation [(2024) 15 Centax 388 (Mad.) Dated 15 February 2024]

Madras High Court held that receipt of payment by an intermediary for and on behalf of its client to qualifies as payment received by the client for the purpose of Export of services.

Brief Facts

- M/s. Afortune Trading Research Lab LLP ('Petitioner') is engaged in the business of providing online services through its website. Services are provided in the form of information and knowledge on various investment options. Predominantly all the clients/customers of the Petitioner are from the U.S and the neighboring countries;
- Users visiting its website subscribe to plans as given and make payments. Payments are routed through the Paypal, an intermediary, appointed by the petitioner. Subscribers make the payment for availing the Petitioner's service through Paypal platform. Paypal collects the payment in foreign exchange (US Dollars in the instant case). In doing so, Paypal acts as an intermediary/agent of the Petitioner;
- Petitioner treated the services supplied through its website to users located outside India as Export of services and had filed refund claims, partly seeking refund of ITC availed on service used in provision of services;
- Refund claims of the Petitioner were rejected by the adjudicating authority on the ground that Petitioner failed to establish that the amount received in Indian Rupees was through freely convertible Vostro account as stated in the RBI directions. Appellate Authority also confirmed the order passed by Adjudicating Authority;

- Aggrieved by the order of the Appellate Authority and given that there is no Appellate Tribunal to file appeal against the Impugned Order, Petitioner filed the present writ petition before the Madras High Court.

Observations

- Hon'ble High court observed that the routing of the payment by the intermediary viz., Paypal from its account in CITI Bank to the petitioner's own account with HDFC Bank in Indian Rupees is in accordance with the provisions of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016;
- Hon'ble High Court further observed that merely because the receipts are rooted through the intermediary and received in Indian currency *ipso facto* would not mean that the Petitioner has not exported services within the meaning of Section 2(6) of the IGST Act, 2017. Receipt of payment by an intermediary for and on behalf of its client like the Petitioner will qualify as payment received by the client.

Decision

- The petitioner is entitled to claim refund of the unutilized ITC used in export of service. Impugned Order is unsustainable and thus set aside.

[Afortune Trading Research Lab LLP [(2024) 15 Centax 520 (Mad.)] Dated 16 February 2024]

GST Clarifications and Updates

GST Advisory on delay in GST Registration dated 28 February 2024

- GSTIN has issued an advisory regarding on instances of delay in registration reported by some taxpayers despite successful Aadhar authentication in accordance with Rules 8 and 9 of the Central Goods and Service Tax Rules, 2017.
- Accordingly, where a person has undergone Aadhaar authentication as per sub-rule (4A) of Rule 8 but has been identified in terms of Rule 9(aa) by the common portal for detailed verification based on risk profile, the application for registration would be processed within thirty days of application submission.
- It is also clarified that necessary changes would also be made to reflect the same in the online tracking module vis a vis the processing of registration applications.

03 Transfer Pricing

ITAT applies corporate guarantee fee @ 0.5% and accepts taxpayer's weighted average rate w.r.t loan-interest for determination of ALP.

Outcome: In favour of both i.e., Taxpayer and Revenue.

Category: Determination of Arm's Length Price ("ALP"); Corporate guarantee; Interest on Loan

Facts of the Case

- The Tata Power Co Ltd ("the Taxpayer") is engaged in the business of generation, transmission and distribution of electricity. During the year under consideration, the Taxpayer had entered into international transaction pertaining to **provision of loan and corporate guarantee** with its Associated Enterprises ("AEs").
- During the year, the Taxpayer had applied Comparable Uncontrolled Price ("CUP") as the most appropriate method ("MAM") for the purpose of benchmarking the transaction pertaining to corporate guarantee given to the AE. Whilst the application of CUP, the Taxpayer had charged corporate guarantee fees of 0.041% from arm's length perspective, by applying the guarantee fees rate obtained from SBI.
- However, during the course of proceedings, Transfer Pricing Officer ("TPO") rejected methodology preferred by the taxpayer for determination of guarantee commission rate and applied average rate of 2.075% per annum and added a mark-up of 0.925% on account of exchange risk, country risk and AE risks to arrive at a rate of 3% as the ALP. Accordingly, the TPO proposed an adjustment on the guarantee fees charged by the Taxpayer to be at ALP.

- Further, in pertinence to the transaction in the nature of loan, the TPO had noticed that Taxpayer granted the loan to its AE by using proceeds from foreign currency convertible bonds (“FCCB”) and out of available balance, to some extent. In this regard, the taxpayer claimed that the effective interest charged from AEs towards the loan was 4.11%, i.e. higher than the interest paid on FCCB at 3.88% per annum, accordingly, the taxpayer treated the transaction of lending of loan to its AE to be at arm’s length.
- Furthermore, TPO opined that the taxpayer had given a moratorium period of 2 years to AE and not received any interest from the AE towards the loan and therefore for the purpose of ALP the TPO considered the interest receivable for the year under consideration as Nil. The TPO did not accept the submissions of the taxpayer that weighted average rate i.e. effective rate of interest should be considered for the purpose of benchmarking.
- Further, TPO added a mark-up of 3% to the rate at which, the FCCB is borrowed i.e. 3.88% and considered the interest rate of 6.88% to arrive at the TP adjustment. Also, for the loan granted out of available funds TPO added a mark-up of 3% on the said average cost of borrowing of 7.55% to cover the risk factor and accordingly applied rate of 10.55% to compute the TP adjustment.
- Aggrieved by the same, the Taxpayer had filed objections before the Dispute Resolution Panel (“DRP”). The DRP deleted the risk mark-up added to the average rate applied by the TPO, hence, held that the rate of 2.075% as arm’s length corporate guarantee fees. For the transaction pertaining to Interest on loan, DRP upheld the TP adjustment by stating that TPO is correct in adding 3% towards risk and that even in case of loan out of own funds interest rate should be imputed for the purpose of ALP.
- Aggrieved by the direction of DRP, the taxpayer preferred an appeal before the Hon’ble Income Tax Appellant Tribunal (“ITAT”).

ITAT Ruling

Following observation were drawn by the Hon'ble ITAT:

- During the proceedings before ITAT, the Taxpayer had submitted to adopt the weighted average guarantee rate of 0.46% based on unilateral APA of the assessee with CBDT. Further, the Taxpayer made alternate prayer to adopt corporate guarantee rate of 0.5% as approved in the case of ***CIT vs. Everest Kento Cylinders Ltd***.
- The Hon'ble ITAT opined that the CUP method requires a high degree of comparability of products and functions; the rate obtained from SBI does not consider the specific aspects such as risk etc. thus, cannot be applied carte blanche**.** Hence, ITAT contented that the basis on which the assessee has benchmarked the transaction is not acceptable.
- Further, ITAT opined that TPO had also used general rates obtained from two banks viz., Allahabad bank and SBI and there is no proper reasoning provided by the TPO as to how the same is applied for benchmarking subject transaction. Therefore, the TP adjustment computed by the TPO based on the general rate of guarantee fees charged by banks is not tenable.

In view of the above, the Tribunal made reliance on the case of ***Strides Shasun Limited vs ACIT in ITA No.124/Mum/2013*** *wherein the coordinate bench followed the decision of* jurisdictional High Court in the case of ***Everest Kento Cylinder Ltd*** and held that guarantee commission should be charged @ 0.5% p.a. for providing corporate guarantee for the purpose of compliance with ALP from Indian TP Regulations.

- In relation to the transaction in nature of interest of loan, ITAT made reliance on ***Goodyear South Asia Tyres Pvt. Ltd. vs. ACIT (supra)*** and accepted the concept of effective rate of interest where there is a moratorium period in the initial years.
- In the instant case, there was moratorium period of first two years, wherein nil interest was charged by the taxpayer, for the next one year charged 2.5% interest and for the remaining 11 years had charged 5% interest p.a. Hence, weighted average rate of interest charged by the assessee over the period of 14 years including moratorium period is 4.11% p.a. Accordingly, Tribunal accepted the weighted average rate applied by the taxpayer.

- Further, the ITAT made reliance on the judgement of ***Hon'ble Rajasthan High Court in the case of Vaibhav Gems Ltd. (supra)*** and contented to apply LIBOR in respect of loan advanced from India to the AE. Since, it is a settled legal position that for the purpose of determination of ALP, the rate of interest should be charged in the currency in which loan is borrowed.

Nangia's Take

The instant ruling is an addition to the extensive collection of cases revolving on financial transactions pertaining to corporate guarantees and intra-group loans. In the instant case, ITAT elucidated that weighted average rate of interest paid by the taxpayer should be benchmarked using the reference rates of the respective currency in which the loan has been granted, for the purpose of determination of ALP. Also, for the international transaction pertaining to corporate guarantee, ITAT relied on jurisdictional HC ruling and upheld rate of 0.5% as ALP.

In view of the above judicial precedent, the taxpayers are recommended to follow a holistic approach while undertaking the benchmarking of financial transactions and recommended to maintain the robust back-up documents for navigating the complexities from arm's length perspective as embodied in Indian Transfer Pricing Regulations.

[Source: The Tata Power Co Ltd [TS-29-ITAT-2024(Mum)-TP]

04 | Regulatory

Updates under Ministry of Corporate Affairs (MCA)

Extension granted by MCA for filing e-form LLP ben-2 and LLP form 4D

The MCA vide notification dated 7th February, 2024, extended the due date for filling the following e-forms:

- LLP Ben-2 for intimating the significant beneficial owners and
- LLP form 4D for declaring the beneficial interest with the registrar of companies

The said forms will be available on V3 portal for filing purpose from 15th April, 2024 and can be filed by 15th May, 2024.

MCA operationalise central processing centre (CPC) for central processing of corporate filings

The MCA on 14th February, 2024 amended the Companies (Registration Offices and Fees) Rules, 2014 w.e.f 16th February, 2024 to insert rule 10A vide the Companies (Registration Offices and Fees) Amendment Rules, 2024 ('Amendment Rules').

While the CPC was put in place by the MCA vide notification dated 2nd February, 2024 (w.e.f. 6th February, 2024), the role of the CPC was specified vide the aforesaid Amendment Rules, pursuant to which the Registrar of the CPC is required to examine 12 specified e-forms for approval/ decision within 30 days from the date of filing.

Deployment and usage of change request form (CRF) on MCA-21

The MCA on 19th February, 2024 introduced form CRF for exceptional intimations to the ROC, for purposes which are not currently catered through any existing form or services available with front office and back office level.

Further, the MCA has committed a timeline of 3 days for processing such forms post which shall be forwarded to Joint Director (e-governance cell) who shall process and give its decision within 7 days.

Updates under Reserve Bank of India (RBI)

Amendement to master direction on prepaid payment instruments

The RBI vide notification dated 23rd February 2024, amended Para 10.2 of the Master direction on Prepaid Payment Instruments.

In order to enhance the ease, speed, cost-effectiveness, and safety of digital payment methods for transit services, it has been determined that authorized PPI issuers, including both banks and non-bank entities, will be allowed to issue PPIs for facilitating payments within diverse public transport systems.

Notification of master direction – Reserve Bank of India (filing of supervisory returns) directions – 2024

In order to consolidate and harmonise the instructions for submission of applicable Supervisory Returns, provide greater clarity and reduce the compliance burden, the RBI notified the Master Direction – Reserve Bank of India (Filing Of Supervisory Returns) Directions – 2024, which serves as a single point of reference for all Supervisory Entities.

The major changes include revised timelines for quarterly/monthly regular filings for NBFCs i.e. now, a uniform timeline of 21 days/ 15 days respectively has been specified (from the earlier 15 days/ 10 days). The revised uniform timelines for all supervised entities have been specified in Para 4.4. of the Master Directions. Also, the return requirements have been slightly made stricter for base layer NBFCs, by making their periodicity at par with NBFCs other than base layer i.e. on a quarterly basis.

Now, the regulator has also focussed on aspects other than mere returns filings - such as risk mitigation and development of IT infrastructure for appropriately filing applicable returns. The onus has been majorly placed on Board of Directors/ Senior Management of the supervised entity.

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

SEBI issues 'guidelines for returning of draft offer document and its resubmission'.

The SEBI vide notification dated 6th February, 2024 notified the Guidelines for returning of draft offer document and its resubmission ('Guidelines').

The Guidelines were issued It was observed by the SEBI that at times, draft offer documents / draft letter of offer filed with the Board for public issue / rights issue of securities (hereinafter "draft offer document") were lacking in compliance with respect to instructions provided under Schedule VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Now, a list of grounds on which re-submission may be raised have been specified. The major grounds include non-disclosure/ improper disclosure.

In case of such re-submission, a public announcement is required to be made within two days of re-submission of draft offer document with the SEBI. Further, the issuer is required to make written intimation to its sectoral regulator, if any, informing about the return and resubmission of the draft offer document.

Updates under Food Safety and Standards of India (FSSAI)

FSSAI order pertaining to time-bound processing of applications for license marked for inspections

The Food Safety and Standards Authority of India ('FSSAI') vide order dated 2 May, 2022 mandated pre-license inspections for certain categories of manufacturers/ processors such as milk & milk products, fish & fish products, fortified rice kernels, etc.

However, it was observed that license applications pertaining to aforesaid categories were being marked by the Designated Officers ('DO') in non-mandatory cases, causing delay in and subsequent granting of license. Additionally, in non-mandatory inspection cases where subsequent inspection was marked by the DO, it was not initiated in due timeline i.e., 15 days. In view of same, FSSAI vide order dated 21 Feb, 2024 has issued the following directives for all the DOs:

- No mandatory pre-license inspections to be conducted other than in categories directed by FSSAI vide order dated 2nd May, 2022.
- In case the DO believes it to be necessary to conduct pre-inspection, the reasons with clear justification for same are required to be recoded in writing and the same should be initiated within 15 days. Failure to do so shall require the DO to recall the application back to Document Scrutiny Stage in FoSCos and grant the license.
- In case, the DO still believes that inspection is still required to be conducted, he/she can reassign the inspection to another FSO or to himself/herself for immediately conducting the inspection without any further delay.

Other Updates

MHI convenes pre-bid meeting for global tender to select bidders for setting up advanced chemistry cell manufacturing facilities under PLI scheme

The MHI successfully convened a pre-bid meeting at IFCI Limited in New Delhi, laying the foundation for the second round under the PLI scheme for Advanced Chemistry Cells (ACC) for cumulative 10 GWh PLI ACC capacity.

The tender documents were available from 24th January, 2024 and the bid due date is 22nd April, 2024. The bid assessment shall commence from 23rd April, 2024. The bidding process will follow online transparent two-stage mechanism under the Quality and Cost Based Selection (QCBS) framework through the CPP Portal in order to ensure fairness, transparency, and efficiency in the selection of bidders.

Orders/Judgements - Registrar of Companies (ROC)

Order of penalty for the violation of section 161 of the companies act, 2013

ROC, West Bengal has passed an order for the violation of Section 161 of the Companies Act, 2013 in the matter of M/s Mayflower Infra Realty Private Limited ('the Company').

Section 161 states that the articles of the company may confer on its board the power to appoint a person as an additional director at any time whose tenure will be till the next annual general meeting or the date till which the annual general meeting should have been conducted.

Further section 172 specifies the penal provisions for the company as well as its officers in default in case of non-compliance with Chapter XI.

In the given case, a show cause notice was issued against the Company, where it was observed that the Company appointed Kali Lohia as the additional director on 16th June, 2014 and should have held office till next AGM (30th September, 2015). However the cessation from the office of additional director was shown on 31st December, 2015, thus violating Section 161 of Companies Act, 2013.

Therefore, ROC, West Bengal imposed the below mentioned penalty for violating Section 161 of Companies Act, 2013:

S. No	Name of the Defaulters	Days of default	Amount of default	Total Penalty levied
1	On the Company	30th September, 2015 to 31st December, 2015	Rs. 50000	Rs. 50000
2	Kalandan Mohammed Haris, Director		Rs. 50000	Rs. 50000

Order of penalty for the violation of section 138 of the companies act, 2013

ROC, Maharashtra has passed an order for the violation of Section 138 of Companies Act, 2013 in the matter of M/s Kudos Finance and Investments Private Limited ('the Company').

Section 138 along with Rule 13 of Companies (Accounts) Rules, 2014 states that the below mentioned companies are required to appoint internal auditor:

- **Listed entity;**
- **Every unlisted public company with:**
  - Paid up share capital of 50 crore or more;
  - Turnover of 200 crore or more;
  - Outstanding loans or borrowings 100 crore or more;
  - Outstanding deposits of 25 crore or more;
- **Every private company with:**
  - Turnover of 200 or more;
  - Outstanding loan or borrowing 100 crore or more;

Section 450 provides for penalty in case of non-compliance with the provisions on company as well as its officers in default.

In the given case, during an inquiry of accounts of the Company, it was found that the turnover of the Company exceeded Rs. 1000 crore, hence it was required to appoint internal auditor and conduct audit. However, the Company neither appointed internal auditor nor it conducted the audit.

Accordingly, a show cause notice was issued on the Company. However the reply submitted being unsatisfactory, ROC, Maharashtra imposed a total penalty of Rs. 2,00,000 on the Company and Rs. 50,000 each on its officer in default.

05 Compliance Calendar

Due dates	Particulars
1st March 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of January, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of January, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of January, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the month of January, 2024 (in case of specified person)
7th March 2024	Due date for deposit of Tax deducted/collected for the month of February, 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 February 2024.

15th March 2024	Due date of fourth instalment of advance tax for the assessment year 2024-25
	Due date for payment of whole amount of advance tax in respect of assessment year 2024-25 for assessee covered under presumptive scheme of section 44AD / 44ADA
16th March 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of January, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of January, 2024
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of January, 2024
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of January, 2024 (in case of specified person)

30th March 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of February, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of February, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of February, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S for the month of February, 2024 (in case of specified person)
31st March 2024	Due date of furnishing a statement in Form 67, of foreign income offered to tax and tax deducted or paid on such income in previous year 2022-23, to claim foreign tax credit if return of income has been furnished within the stipulated time.
	Due date furnishing of an updated return of income for the Assessment Year 2021-22
	Due date for payment of Equalisation Levy on e-commerce supply of services, referred to in Section 165A of Finance Act, 2016 for the quarter ending March 31st, 2024.

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in March 2024
1	Monthly Return Form GSTR-1 (Details of out-ward 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 February 2024- 11th March 2024
2	Monthly Return Form GSTR-3B	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 QRMP Scheme	Monthly	20th day of succeeding month	For Tax Period February 2024- 20th March 2024
3	Invoice Furnishing Facility ('IFF') (QRMP Scheme)	Optional Facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1st day to 13th day of succeeding month	For Tax Period February 2024 - 1st to 13th March 2024

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

Segment	Particulars	Due Dates
FEMA Compliances	ECB – 2	7th March, 2024

NOIDA
(Delhi NCR - Corporate Office) A-109, Sector - 136, Noida - 201304, India
T: +91 120 2598000

GURUGRAM
001-005, Emaar Digital Greens Tower-A 10th Floor, Golf Course Extension Road, Sector 61, Gurgaon-122102
T: +91 0124 430 1551

CHENNAI
Prestige Palladium Bayan,
Level 5, 129-140, Greams Road, Thousand Lights, Chennai - 600006 T: +91 44 46549201

PUNE
3rd Floor, Park Plaza, CTS 1085,
Ganeshkhind Road, Next to Pune Central Mall, Shivajinagar, Pune - 411005, India

DELHI
(Registered Office) B-27, Soami Nagar, New Delhi - 110017, India T: +91 120 2598000

MUMBAI
4th Floor, Iconic Tower, URMI Estate, Ganpat Rao Kadam Marg, Lower Parel, Mumbai - 400013, India
T : +91 22 4474 3400

BENGALURU
Prestige Obelisk, Level 4, No 3 Kasturba Road, Bengaluru - 560 001, Karnataka, India
T: +91 80 2248 4555

DEHRADUN
1st Floor, "IDA" 46 E.C. Road, Dehradun - 248001, Uttarakhand, India T: +91 135 271 6300

www.nangia-andersen.com | query@nangia-andersen.com

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