NEWSLETTER

Tax & Regulatory

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Nangia Andersen LLP

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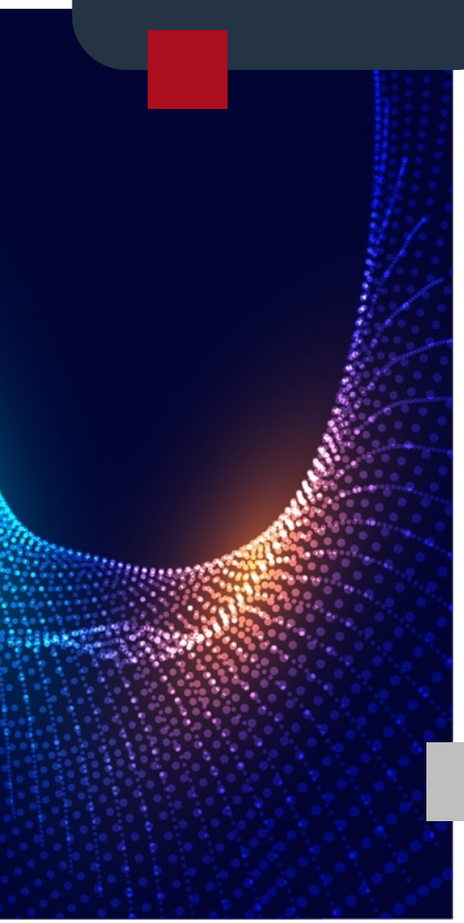
What's *Inside ?*



01

Direct Tax

No service PE in India absent physical rendition of services as per Article 5(6)(a) of India-Singapore DTAA, virtual PE aspect rejected owing to India's stance on BEPS report

Clifford Chance PTE Ltd. Vs ACIT

ITA Nos. 2681 & 3377/Del/2023

Issue(s) - Whether creation of service Permanent Establishment ("PE") can be alleged in India without physical presence of employees or other personnel of the Assessee.

Outcome - In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Delhi ('Hon'ble ITAT') examined Article 5(6) of India-Singapore DTAA and held that for the purpose of establishing Service PE in India, the employees or other personnel of the Entity should be present in India and provide services for a period exceeding the threshold of 90 days.

Brief Facts and Contentions

- Clifford Chance PTE Ltd. ("Assessee") is engaged in providing legal advisory services and is a tax resident of Singapore. For AY 2020-21 and 2021-22, Assessee filed its return of income declaring NIL income.
- During AY 2020-21, employees of Assessee travelled to India to provide a part of advisory services. The aggregate stay of employees in India was 120 days, but services were provided only for 44 days and rest were vacation and business development days. During AY 2021-22, the services were rendered remotely from outside India and no employees visited India.

- The Assessee's cases were selected for scrutiny and assessing officer (the "AO") contended that Assessee constituted a service PE as well as virtual service PE in India on the ground that in terms of para 6 of Article 5 of the India-Singapore DTAA, what is relevant is the aggregate duration of provision of services by the non-resident and physical presence of the employees in India is not material. Accordingly the entire gross receipts of Assessee received in AY 2020-21 and 2021-22, amounting to ₹ 15.5 crores and ₹ 7.7 crores were held taxable.
- Aggrieved Assessee filed objections before the Ld. Dispute Resolution Panel ("DRP") which directed AO to reconsider the facts/information.
- Pursuant to the DRP's directions, the AO passed final assessment order u/s 143(3) r.w section 144C of the Income Tax Act, 1961 (the "Act") where he held that Assessee constituted service PE and the entire gross receipts are taxable.
- Aggrieved, Assessee approached Hon'ble ITAT and placed reliance on the judgement of the Hon'ble Supreme Court in case of **E-funds IT Solutions Inc** (Civil Appeal No. 6082 of 2015) and submitted that in order to constitute a service PE, services are to be rendered physically by the employees or other personnel of the Assessee in India. Further reliance was placed on the judgement of the Hon'ble Mumbai ITAT in case of **Linklaters LLP (ITA no. 3250/Mum/2006)** wherein it was held that period of vacation has to be excluded while computing the threshold limit for constitution of the service PE.
- Revenue placed reliance on the judgement of Hon'ble Bangalore ITAT in the case of ABB FZ LLC [IT(TP) Appeal nos. 1103 of 2013 and 304 of 2015] and on the concept of virtual service PE mentioned in OECD Interim Report 2018 under the OECD/ G20 BEPS project titled "Tax Challenging arising from Digitalisation".

Hon’ble ITAT’s Judgement

- Hon’ble ITAT, following the judgment of Supreme Court in case of **E-funds IT Solutions Inc.** held that only the physical presence of the employees or other personnel shall be taken in account for computing threshold limit for creating of a service PE. Also observes that no provisions of virtual service PE are yet present in the India-Singapore DTAA and hence the present service PE provision under the India-Singapore DTAA which requires physical rendition of service in India should only be applied.
- Further by placing reliance on the judgement of Linklaters LLP, it was held in AY 2020-21 that out of 120 days, the vacation days shall be excluded. Further business development days and common days were to be excluded as well. Effectively, services were provided for only 44 days, thereby not qualifying the limit of 90 days. Accordingly it was held that Assessee had not constituted PE in any of the subject AY’s.

Nangia Andersen LLP’s take

It is judicious to note that the concept of virtual PE discussed above is proposed to tackle the growing concern that the multinationals could artificially avoid PE status by rendering cross border supplies of goods and services through electronic means. However, Hon’ble ITAT has clarified that for any law to be applicable, it needs to be codified by lawmakers/ brought into respective tax treaties and cannot be simply read into law based on certain global developments.

Receipts of Google Ireland from Google India for 'AdWords rights' does not constitute royalty

Google Ireland Ltd ('GIL') vs Deputy Commissioner of Income Tax ('DCIT')

IT (IT) A Nos. 191 to 194/Bang/2024

Issue(s) - Whether receipts from sale of online advertisement space through Google Adwords program which is licensed to Google India are taxable as royalty or not

Outcome - Partly allowed in Favour of Assessee

Background

In a recent verdict, Hon'ble Bangalore ITAT ('Hon'ble ITAT') examined whether use of the computer software amounts to copyright and held that licensing of a computer program without transfer of copyright in it does not qualify as royalty. Hon'ble ITAT further concluded that use of trademark ancillary to the main service of marketing and distribution cannot be construed as royalty.

Brief Facts and Contentions

- Google Ireland Ltd, Ireland is engaged in the business of sale of online advertisement space to Google India Pvt Ltd ('GIPL') and other advertisers directly. During the year under consideration, Assessee has given marketing & distribution rights of Adwords program to GIPL.
- GIPL acts as a non-exclusive distributor of Google AdWords for Advertisers under distribution agreement, earning specified margin over cost from Assessee. GIPL was required to make payment to the Assessee if the revenue recorded from the sale of online advertisement space by GIPL is more than cost plus the specified margin of GIPL.

- Assessee did not file income tax returns for the assessment years 2013-14 to 2016-17 considering that revenue from online advertisement sales was not taxable in India.
- The Assessing Officer ('AO') contended that the abovementioned service were taxable as royalty under the Income Tax Act ('the Act') and India-Ireland Double Taxation Avoidance Agreement ('DTAA') and thus initiated income escaping assessment and issued a notice under section 148 of the Act.
- Further, AO contended that GIPL uses Assessee's trademark, brand features, and processes for AdWords program distribution, asserting sums received are taxable as royalty under DTAA.
- Assessee submitted that Hon'ble ITAT has decided that the above service is not liable to be taxed in India both under the Act or DTAA in the case of GIPL [IT(TP)A nos. 1513 to 1516/Bang/2013].

Hon'ble ITAT's Judgement

- Hon'ble ITAT, following the order of its coordinate bench in Assessee's own case for AY 2007-08 [IT(IT)A No. 2845/Bang/2017] held that payment made by GIPL to Assessee cannot be construed as royalty and hence not be taxable in the hands of the Assessee under the Act or DTAA.
- Hon'ble ITAT referring to the judgment of the Apex court in the case of Engineering Analysis Centre of Excellence Private Limited [Civil Appeal Nos. 8733-8734 of 2018 & others.] contended that mere use or licensing of a computer program without transferring of copyright in it as per sections 14(a)/(b) or section 30 of the Copyright Act, 1957, does not qualify as royalty under the Act or DTAA.
- Further, Hon'ble ITAT, relying on the decision of Hon'ble Delhi High Court in the case of Sheraton International Inc **[(2009) 313 ITR 267]** held that since the trademark and other brand features are not used independently but are incidental or ancillary to the marketing and distribution of Adwords program the same cannot be construed as royalty.

Nangia Andersen's Take

This ruling reaffirms the principle that copyright itself and the copyrighted article are distinct, emphasizing that mere utilization of the copyrighted material without the transfer of any copyright ownership cannot be classified as royalty. Further, the incidental use of trademark for main services viz. marketing and distribution is kept out of the purview of royalty.

ITAT grants treaty benefit to UK resident on the basis of TRC; Dependent agent PE cannot be established without authority to conclude contract on behalf of principal

UK Grid Solutions Limited Vs DCIT

ITA No. 2239,884, 885 &2240/Del/2023

Issue(s) - Whether alleged fiscally transparent entity can avail DTAA benefits and whether dependent agent PE can be established without authority to conclude contracts on behalf of principal

Outcome - In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Delhi ('Hon'ble ITAT') examined the taxability of offshore supplies and establishment of Dependent Agency PE and held that offshore supplies are not taxable in India and for the purpose of establishing Dependent Agency PE, the agent must have the authority to conclude the contract on behalf of the Principal.

Brief Facts and Contentions

- UK Grid Solutions Ltd ("Assessee") is a foreign company incorporated in UK and holds a Tax residency Certificate of UK. Assessee was awarded contract by Power Grid Corporation of India ("PGCIL"). The single composite contract with PGCIL was divided into three contracts:
    - **First contract** for supply of plant and equipment including spares outside India, Type test and Training to be conducted outside India.
    - **Second contract** for supply of plant and equipment including spares and testing within India and this also included design, engineering, testing, etc.

- **Third contract** to perform all services and civil work, testing and commissioning including training of personnel in India.

The Second and Third contracts were assigned to an associated enterprise namely General Electric T&D India Ltd (GETDIL).

- For AY's 2015-16, 2016-17, 2017-18 and 2020-21, Assessee had received receipts for offshore supply from PGCIL and global operation fees from its group company for managerial services. It filed return of income declaring total income of ₹ 13.49 crores. Assessing officer ("AO") selected the return for scrutiny and contended that Assessee had been awarded a single composite contract in respect of a turnkey power project by PGCIL. The AO alleged that the contracts were artificially segregated into separate contracts for offshore and onshore to avoid establishing PE in India.
- AO further alleged that Assessee was an undisclosed agent of GE Energy UK Ltd., terms of which provided that GE Energy UK Ltd. received all income and paid all expenditure of Assessee. AO hence held that Assessee was not a beneficial owner of any income earned by it, and was a fiscally transparent identity and could not be treated as a tax resident of UK. Subsequently Assessee was not entitled to any tax treaty benefits under India-UK DTAA. Accordingly, its taxability was to be determined on the basis of the Income-tax Act, 1961 (the "Act") only.
- AO further contended that the GETDIL was actively involved in soliciting business for Assessee, while also taking on the Indian leg of the composite contracts. Thus, establishing a Dependent Agent Permanent Establishment (PE) in India.
- AO passed Draft assessment order u/s 144C and held that the receipts from offshore supply under PGCIL Contract amounting to Rs. 599.49 Cr are taxable u/s 44BBB(1) of the Act. Further, the income received by Assessee from its group company amounting to Rs 20.84 Cr, were held to be in the nature of Fees for technical services ("FTS") under Section 9(1)(vii) of the Act.
- Aggrieved Assessee filed objections before Dispute Resolution Panel ("DRP") which upheld the draft assessment order. Revenue passed the final assessment order under Section 143(3) r.w.s 144C (13) of the Act.

- Aggrieved, Assessee approached Hon'ble ITAT and by placing reliance on the judgment of the Hon'ble Supreme Court in case of **Ishikawajma-Harima Heavy Industries Ltd vs DIT** [Appeal No. (Civil) 9 of 2007]**,** submitted that where the property of the goods and payment are carried outside India, the transaction cannot be taxed in India.
- Further by placing reliance on the judgment of Hon'ble High Court in case of **Linde Engineering Division Vs. DDIT** [W.P (C) No. 3914 of 2012] , Assessee submitted that when a project is executed under consortium arrangement and if each member is independently responsible for executing its part of work, then each member shall be liable for tax independently. Further AO has erred on establishing Dependent Agent PE and has not disclosed any evidence for such conclusion.
- Assessee further challenged Revenue's reliance on BEPS Action plan 7 which was not applicable for the impugned year.

Hon'ble ITAT's Judgement

- Hon'ble ITAT observed that the Assessee was a tax resident of UK and is entitled to treaty benefits relying on below
  - Certificates were issued by HM Revenue and Customs, UK certifying that Assessee was a tax resident in UK in accordance with Article 4 of the treaty between India-UK DTAA
  - Further, ITAT, in rebuttal of AO's argument that Assessee is a fiscally transparent entity and not liable to be taxed independently, discussed the definition of company in context of Article 3(g) read with Article 4 and held that the expression "liable to tax" as mentioned in Article 4 is to be understood in the manner that whether a particular person is obligated to pay tax in that respective country or not; if obligated, the recovery would happen.
  - That financial statements were prepared in accordance with UK laws and tax returns were also filed by the Assessee in UK.
- Further it was observed that GETDIL did not have any authority to conclude the contract on behalf of the Assessee, and that the contract was awarded based on global bids. The Indian company is independently acting on its own, having its own work force, having independent receipts and had suffered taxes in India. Accordingly it was held GETDIL cannot construe a Dependent Agency PE of the Assessee.

- So far as ground raised by Assessee challenging the action of Revenue in placing reliance on the Base Erosion and Profit Shifting (BEPS) Action Plan 7 read with Article 13 of Multilateral Instrument, ITAT held that application of BEPS Action Plan 7 read with Article 13 Multilateral Instrument was an issue which was still in the air and was in nascent stage as the OECD members had not come into consensus for the same. Accordingly, the same cannot be applied for the impugned AY.
- Further reliance was placed on Assessee's own case for AY 2018-19, and it was held that the contract was not artificially split into three contracts to avoid tax in India. It was also held revenue derived by Assessee was from offshore supplies and not out of any construction, erection, testing or commissioning activities of a turnkey power project in India and consequently, Section 44BBB is not applicable.
- Further with regard to global operation fees it was held that the nature of services were managerial in nature and cannot be taxed as FTS as it does not satisfy the 'make available' clause contained in Article 13(4)(c) of the India-UK DTAA.

Nangia Andersen LLP's take

Hon'ble ITAT has rejected revenue' reliance on BEPS action plan 7 which is inapplicable for the impugned years. Furthermore, the ITAT extensively deliberated on the residential status and treaty eligibility of the purported transparent entity, ultimately refuting it by considering specific details viz. financial statements, tax returns, and a Tax Residency Certificate (TRC) of the Assessee in the UK. Further, the Indian entity functioned autonomously and independently, devoid of any control from the Assessee, failing to construe a PE in India.

02

Indirect Tax

Advance Rulings & Judgements

Hon'ble High Court of Delhi quashes cryptic demand Order due to non-consideration of reply filed by the taxpayer against the impugned SCN and held that matter required to be remitted back to Adjudicating Authority for fresh adjudication.

Brief Facts

- In the given case, the petitioner submitted a comprehensive reply to the Show Cause Notice (SCN), addressing each of the allegations raised by the Department. However, the impugned order merely stated that the reply was devoid of merits without providing any reasoned analysis. The court observed that this indicated a lack of application of mind by the Proper Officer.
- The petitioner challenged the order dated 24.12.2023, alleging that the Proper Officer failed to consider their detailed reply to the Show Cause Notice, resulting in an erroneous demand raised against them.

Observations

- Whether impugned order passed after mere recording narration that reply against the SCN uploaded by the petitioner was not satisfactory sustainable?

Decision

- The High Court of Delhi noted that the Proper Officer did not seek further clarification or documents from the petitioner if deemed necessary. This failure to afford the petitioner an opportunity to clarify or supplement their reply was deemed unfair.

- The High Court of Delhi emphasized that the Proper Officer's duty is to consider the merits of the reply submitted by the taxpayer before reaching a conclusion. Since this was not done in the present case, the court held that the impugned order could not be sustained.
- The High Court of Delhi set aside the impugned order and remitted the matter to the Proper Officer for re-adjudication. The Proper Officer was directed to intimate the petitioner about any additional details or documents required, allowing them an opportunity to respond before passing a fresh order.

[Max Healthcare Institute Ltd vs Union of India (W.P. (C) No. 3355 of 2024 & CM Appls 13818-20 of 2024 – Delhi HC) dated 05 March 2024]

Calcutta High Court held that impugned order to be set aside which was passed holding reason that more than 6 adjournments had been granted and where the Adjudicating Authority did not afford the taxpayer an opportunity of being heard or to respond to SCN by extending further time.

Brief Facts

- The Petitioner claims to be a Cooperative Society registered under the West Bengal Cooperative Societies Act, 1973, and claims to be carrying out cooperative business for under privileged people and is engaged in the business of rendering service of collecting parking fees.
- The Petitioner was issued a Show Cause Notice (SCN) by the Proper Officer under the reason that the response submitted by the petitioner was not satisfactory.

Observations

- The Petitioner filed an adjournment for filing a response to SCN. However, such request for adjournment was not considered by the Proper Officer and without affording an opportunity of being heard, passed an order in Form DRC 07 determining liability under Section 73 of Central Goods and Service Tax Act ('CGST Act').

Decision

- The High Court of Calcutta held that the Adjournment granted in respect of proceedings under Section 61 of CGST Act cannot be clubbed together for the purpose of holding that the Petitioner was afforded with ample opportunity to respond to SCN.

- The High Court of Calcutta further held that since the Order stood vitiated on grounds of violation of principle of natural justice, alternative remedy in the form of an appeal is no bar for exercise of extraordinary writ jurisdiction and quashed the Order accordingly.
- The High Court of Calcutta also directed the petitioner to file its response to SCN & the proper officer to communicate the date of personal hearing. It was made clear to the petitioner that no more adjournments shall be granted in the instant matter.

[Pioneer Co-operative Car Parking Servicing and Constructions Society Limited vs Senior Joint Commissioner (WPA No. 3092 of 2024 and IA CAN 1 & 2 of 2024) dated 01 March 2024]

Customs updates

Notifications, Circulars and Instructions

Tariff:

1. **Notification issued to reduce BCD on import of meat and edible oils**

   The Central Government has amended Notification 50/2017-Customs dated 30th June 2017 by introducing Entry No. 3AB to lower the Basic Customs Duty ('BCD') to 5% on imports of frozen duck meat and edible offal of ducks, frozen on fulfillment of specified conditions. The amendment will be effective from 7th March 2024.

   [Notification No. 13/2024-Customs dated 6 March 2024]

2. **Notification issued to amend specific tariff items in Chapter 90 of the 1st Schedule to Customs Tariff Act, 1975**

   The Central Government has amended the rate of tariff item 9022 3000 and 9022 9090 in Chapter 90 of the 1st Schedule to Customs Tariff Act, 1975 from 10% to 15% with effect from 1st April 2024.

   [Notification No. 15/2024 – Customs dated 12 March 2024]

3. **Amendment in Notification No.50/2017- to change the applicable BCD rate on specified parts of medical X-ray machines**

   The Central Government has modified Notification No. 50/2017 Customs dated 30th June 2017 to introduce Entry No. 563B, 563C, and 563D, relating to specific components of medical X-ray machines namely High Frequency X-Ray Generator, Vertical Bucky, Ray Tube Suspension, X-Ray Grid and Multi Leaf Collimator/ Iris for use in manufacture of X-ray machines for medical, surgical, dental or veterinary use. The Notification will be effective from 1st April 2024.

   [Notification No. 16/2024- Customs, dated 12 March 2024]

4. **Amendment in Notification No. 57/2017-Customs to modify BCD rates certain smart wearable devices**

The Central Government has amended Notification No. 57/2017 Customs dated 30th June 2017 to exclude smart wearable devices including smart rings, shoulder bands, neck bands or ankle bands from the concessional rate band.

[Notification No. 17/2024- Customs, dated 14 March 2024]

5. **Amendment in BCD rates for specified goods imported from Republic of Mauritius**

Notification No. 25/2021-Customs dated 31st March 2021, amended by prescribing the effective rate of BCD on specified goods imported from Republic of Mauritius subject to fulfilment of conditions. The Notification is effective from 1st April 2024.

[Notification No. 18/2024-Customs dated 14 March 2024]

6. **Amendment in Notification No. 50/2017-Customs to give concession to Electric Vehicles imported under of the Ministry of Heavy Industries Scheme to promote manufacturing of electric passenger cars in India**

Pursuant to introduction of "Scheme to promote manufacturing of electric passenger cars in India" by the Ministry of Heavy Industries, the Central Government has amended Notification No. 50/2017 Customs dated 30th June 2017 to provide concession on BCD and IGST in relation to Electronically Operated Vehicles falling under Chapter 8703 subject to conditions. Also, Social Welfare Surcharge exempted for certain EV's.

[Notification No. 19 and 20/2024 – Customs dated 15 March 2024]

7. **Amendment in BCD rates for specified goods imported from UAE**

The Central Government *vide* this notification has prescribed revised rates specified for goods falling under Table No. 1 of Notification No. 22/2022- Customs dated 30th April 2022 in respect to third tranche of India-UAE CEPA. The Notification is effective from 1st April 2024.

[Notification No. 21/2024- Customs, dated 15 March 2024]

03

Transfer Pricing

ITAT Confirms CIT(A)'s deletion of TP-adjustment w.r.t. import of goods from AE.

Outcome: In favour of Taxpayer.

Category: Determination of Most Appropriate Method ("MAM").

Facts of the Case

- Best Seller Fashion India Pvt Ltd ("the Taxpayer") is engaged in the business of wholesale trading of garments and fashion accessories, under the Bestseller trademarks Vero Moda, ONLY and Jack & Jones. The taxpayer is a wholly owned subsidiary of 'BEST Seller united NL BV, Netherland'. During the year under consideration, the Taxpayer had entered into international transaction pertaining to **import of goods and reimbursement of expenditure** with its Associated Enterprises ("AEs").
- For the purpose of benchmarking the transaction pertaining to import of goods from AE, the Taxpayer had applied Resale Price Method ("RPM") as the most appropriate method ("MAM") and considered the gross profit as ratio of cost of goods sold as Profit Level Indicator ("PLI") for determination of arm's length price.
- However, during the course of proceedings, Transfer Pricing Officer ("TPO") rejected the RPM method on the ground that taxpayer performing the marketing and distribution functions with great intensity, whereas the comparable selected by the taxpayer are not performing the same functions with the same intensity. Further, the TPO adopted the Transactional Net Margin Method ("TNMM") as MAM and considered Operating Profit/Operating Revenue ("OP/OR") as PLI for benchmarking the transaction.
- Further, for the purpose of determination of ALP under TNMM, TPO analysed the 5 comparables as selected by the taxpayer (while using RPM method) and rejected 3 comparables on the ground that AMP to Sales ratio to such comparables is less than 3%. In view of the same, the TPO retained only two comparables and computed mean of such comparables as ALP. Based thereon, TPO proposed an adjustment of INR 7.16 crores in the income of the taxpayer.

- Aggrieved by the same, the Taxpayer had filed objections before the Learned Commissioner of Income Tax, Appeals ("Ld. CIT(A)"). Before the Ld. CIT(A). the Taxpayer had submitted an appeal before the Ld. CIT(A) to adopt RPM as the MAM as compared to TNMM and added 4 additional comparables on the basis of updated data at the appellate stage.
- The Ld. CIT(A) opined that the taxpayer is merely purchasing and selling the products without adding any value to the core product, the taxpayer is a pure routine distributor and therefore, RPM is the MAM for the said transaction. Ld. CIT(A) also relied upon the decision of ***Hon'ble Bombay High Court in case of Loreal India (P) Ltd.*** Further**,** the Ld. CIT(A) also noted that the taxpayer considered the nine comparables and observed that the margin of the taxpayer is more than the operating margin of the comparable companies. Based thereon, CIT(A) deleted the adjustment made by the TPO.
- Aggrieved by the direction of Ld. CIT(A), the Learned Assessing Officer ("Ld. AO") preferred an appeal before the Hon'ble Income Tax Appellant Tribunal ("ITAT").

ITAT Ruling

Following observation were drawn by the Hon'ble ITAT:

- The Hon'ble ITAT opined that as the Ld. CIT(A) held RPM as MAM, but since the taxpayer itself has adopted the TNMM in subsequent years and same has been accepted by TPO. Hence, ITAT contented that the computation of ALP for the said international transaction can be benchmarked by adopting the TNMM also.
- Further, the Ld. AO raised objection that the comparables introduced by the taxpayer before the Ld. CIT(A) has very low margin and such low margin entities could not have been selected. The Hon'ble ITAT noticed that the Ld. AO could not show that those entities are functionally not comparable with the taxpayer and held that "**May be in the comparability analysis some of the companies may have a lower margin but those have to be included in the comparability analysis if they are functionally comparable with the functions of the taxpayer from the perspective of Indian TP Regulations".**
- In view of the above, ITAT found no infirmity in CIT(A)'s deletion of TP-adjustment and confirmed CIT(A)'s deletion of TP adjustment w.r.t import of goods from AE by taxpayer.

Nangia's Take-

The instant ruling contributes to the extensive body of cases concerning the Selection and application of the Most Appropriate Method ("MAM") for transactions related to import of products for further distribution in India.

In this specific instant, the Ld. TPO rejected the Resale Price Method ("RPM") for benchmarking such transaction on the ground that the said method requires high functional comparability's between the comparable companies and the taxpayer whereas in the instant case there is difference in the marketing and distribution function of taxpayer vis-à-vis comparable companies. Further, the Ld. TPO considered TNMM as MAM in the instant case.

Considering the fact that the taxpayer was at ALP even considering TNMM as MAM, ITAT did not decide what should be the MAM in instant case, however, ITAT clearly elucidated that the comparability analysis should be based on functional analysis of taxpayer vis-à-vis comparable companies irrespective of the fact that comparable companies yield low margins.

In view of the above judicial precedent, the taxpayers are recommended to conduct a thorough functional and comparable analysis of the taxpayer and comparable companies involved in the transaction as the same is the foundation of transfer pricing analysis and comparability analysis for the purpose of benchmarking the inter-company transactions undertaken by the taxpayers.

[Source: Best Seller Fashion India Pvt Ltd [TS-87-ITAT-2024(Mum)-TP]

04
Regulatory

MCA Updates

Report of the Committee on Digital Competition Law

Following the recommendation of the Parliamentary Standing Committee on "Anti-Competitive Practices by Big Tech Companies," the Ministry of Corporate Affairs (MCA) established the Committee on Digital Competition Laws (CDCL). The CDCL was tasked with evaluating the potential introduction of a proactive competition framework for digital markets in India. Recently, the CDCL published its report on Digital Competition Law and presented the draft Digital Competition Bill, 2024, inviting public feedback.

The Digital Competition Law seeks to modernize competition regulations to suit the dynamics of the digital era, promoting fair competition and safeguarding consumer interests in a dynamic economic environment.

SEBI Updates

Introduction of Beta version of T+0 rolling settlement cycle

The SEBI is continuously endeavouring to smoothly and gradually transition to shorter timelines for settlement from time to time. Now, an attempt is being made to transition from T+1 settlement cycle to T+ 0 settlement cycle on a pilot basis.

Pursuant to the same, the SEBI *vide* circular dated 21st March, 2024 has issued a framework to introduce the Beta version of T+0 settlement cycle on optional basis in addition to the existing T+1 settlement cycle in equity cash market, for a limited set of 25 scrips and with a limited number of brokers.

All investors who meet the timelines, process and risk requirements as prescribed by the Market Infrastructure Institutions are eligible to participate in the segment for T+0 settlement cycle.

The transitions are a result of advancement of technology, enhanced digital infrastructure of market participants and an instantly available database of holding of individual investors which facilitate same day settlement of trade transactions.

RBI Updates

Investments in Alternative Investment Funds (AIFs)

The RBI, with an intent to curb evergreening through indirect exposure of Regulated Entities (RE) on debtor companies, restricted investments of RE in AIFs which have downstream investments in a debtor company of the RE *vide* notification dated 19th December 2023.

However, post various concerns raised by the stakeholders, the RBI has clarified the following in this regard *vide* notification dated 27th March, 2024:

- Pursuant to the 19th December circular, REs were not permitted to make investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE. The RBI now, *vide* the 27th March circular clarified that for the purposes of ascertaining "downstream investments", investments other than an AIF's investments in equity shares of the debtor company of the RE (including hybrid instruments) shall be included.
- Pursuant to the 19th December circular, in case the REs were having any investment in an AIF which has a downstream investment in a debtor company of the RE and such RE was not able to liquidate its holding in the AIF within a time-period of 30 days, the RE was required to make a 100% provision on such investments in the AIF. Now, vide the 27th March

circular, the RBI has clarified that the 100% provision shall be required only to the extent of investment by the RE in the AIF scheme which is further invested by the AIF in the debtor company, and not on the entire investment of the RE in the AIF scheme.

- Pursuant to the 19th December circular, investment by REs in the subordinated units of any AIF scheme with a 'priority distribution model' were subject to full deduction from RE's capital funds. It is now clarified that the requirement of deduction shall only be applicable in cases where the AIF does not have any downstream investment in a debtor company of the REs. In case the AIF has such downstream investment – the RE should not make such investments in AIF / liquidate its investment in case investment already made/ make 100% provision on such investment in accordance with Para 2 of the 19th December circular.
- The restrictions as aforesaid does not apply to investments by REs in AIFs through intermediaries such as fund of funds or mutual funds.

CCI Updates

Introduction of Competition Commission of India (Commitment) Regulations, 2024 and the Competition Commission of India (Settlement) Regulations, 2024

The Competition Act of 2002 underwent an amendment on 11th April, 2023, through the Competition (Amendment) Act, 2023. One significant addition made by the Amendment Act was the introduction of Sections 48B and 48C of the Act. These sections aimed to establish a commitment mechanism within the Act.

Section 48B allows an enterprise, which is under investigation pursuant to Section 26(1) of the Act for a suspected violation of Section 3(4) or Section 4, to propose commitments to the Competition Commission of India (CCI).

On the other hand, Section 48C outlines the procedures for revoking commitment orders issued by the Commission and the ensuing consequences of such revocation. Accordingly, the Competition Commission of India (CCI) has notified the following Regulations on 6th March 2024 after consultation with stakeholders:

- **The CCI (Commitment) Regulations, 2024 ("Commitment Regulations")**
- **The CCI (Settlement) Regulations, 2024 ("Settlement Regulations")**

The regulations aim to expedite market corrections and outline specific procedures for delinquent parties to resolve cases with the CCI swiftly, thereby mitigating substantial penalties and litigation expenses.

ROC Orders

Penalty for violation of Section 94 of Companies Act, 2013

The Registrar of Companies, Tamil Nadu, Andaman Nicobar & Chennai, has passed an order dated 20th March 2024 for the violation of Section 94 of Companies Act, 2013 (the 'Act').

Section 94 of the Act mandates the maintenance of registers and returns u/s 88 and 92 of the Act respectively at the registered office of the Company. Additionally, in case of refusal of inspection or making any extract or copy required under the said section, a penalty could be imposed of Rs. 1000 per day, up to a maximum of Rs. 1 Lakh, for each instance of refusal or default.

In the instant case, an Inquiry was conducted u /s 206 (4) of Act of M/s. Winstar Enterprises Marketting Private Limited and it was observed that the company has vacated its existing registered office 2 years back and all the letters being sent to the Company got returned/undelivered with the postal remarks "Left". The Regional Director (SR), MCA, Chennai also directed ROC to initiate necessary action against the defaulters and subsequently, a show cause notice was issued to the Company by ROC. No reply was received from the company or its directors for the notice and neither the authorized representative of the company nor the Directors attended the hearing fixed in this regard. Hence as per Rule 3(8) of Companies Adjudication of Penalties) Rules 2014, the matter was proceeded with in the absence of such persons (ex-parte).

The Adjudicating Officer after duly considering the facts and circumstances imposed a penalty of Rs 1 Lakh on the Company and Rs. 1 Lakh each on every officer in default. Further, the Company was directed to rectify the default made by maintaining the registers and returns as required u/s 94 of the Act and submit proofs of maintenance of same including photos/ rental agreement and other necessary documents to the office of adjudicating officer within 15 days of passing of the order.

Penalty for Violation of Section 165 of Companies Act, 2013

The Registrar of Companies ('ROC'), Tamil Nadu, Andaman Nicobar & Chennai, has passed an order dated 20th March 2024 for the violation of Section 165 of the Act.

Section 165 of the Act restricts the limit of holding an office of director by an individual, including alternate directorships, to 20 companies at a single point of time. Further, the maximum number of public companies in which the individual can be appointed as a director is limited to 10. Failing to comply with the said provisions attracts a penalty of Rs 2,000 for each day after the first day during which the violation continues, subject to maximum of Rs. 2 Lakhs.

In the instant case, it was noticed that Mr. B. Kannan was holding directorship in 29 companies at the same time. ROC issued a show cause notice to him in this regard and subsequently filed a complaint before the Court of Additional Chief Metropolitan Magistrate Economic Offences, Egmore, Chennai. However, Mr. Kannan filed a petition before the Hon'ble High Court of Madras to quash the complaint as filed by ROC. The Hon'ble High Court of Madras transferred the matter to adjudicating authority appointed under the Act and fixed a hearing to take up the same wherein Mr. Kannan accepted the non-compliance.

The Adjudicating Officer after duly considering the facts and circumstances instructed Mr Kannan to immediately choose 20 companies out of 29 in which he wished to continue to hold the office as director, and resign from remaining 9 companies as well as intimate such choice made by him to each of the companies concerned and ROC. Further, a penalty of Rs 2Lakhs was also imposed on Mr. Kannan for the non-compliance under the Act.

04

Compliance Calendar

Due dates	Particulars
7th April 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 March 2024.
14th April 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of February 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of February 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of February 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of February 2024 (in case of specified person).

30th April 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of March 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of March 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of March 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S for the month of March 2024 (in case of specified person).
	Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March 2024.
	Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2023 to March 31, 2024.
	Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2024.

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in April 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 March 2024- 11 April 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 March 2024- 20 April 2024
3	**QRMP Scheme** Form GSTR- 1 (Quarterly Return)	• Details of outward supplies filed by registered person under QRMP Scheme	Quarterly	13th of the succeeding quarter	• For Tax Period January - March 2024 – 13 April 2024

	Form GSTR- 3B (Quarterly Return)	• Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 14 States/ UT*	Quarterly	22nd of the succeeding quarter	• For Tax Period January - March 2024 – 22 April 2024
	Form GSTR- 3B (Quarterly Return	• Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 22 States/ UT**	Quarterly	24th of the succeeding quarter	• For Tax Period January - March 2024 – 24 April 2024
4	Form GSTR-6 (Return for Input Service distributor)	• Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period March 2024- 13 April 2024
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 March 2024- 10 April 2024

*14 specified states/ UT: Chhattisgarh, Madhya Pradesh, Gujarat, Dadra and Nagar Haveli and Daman and Diu, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh

**22 specified states/ UT: Jammu and Kashmir, Ladakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha

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 March 2024- 10 April 2024

Segment	Particulars	Due Dates
The Companies Act 2013	Annual declaration from the existing directors in Form DIR-8 and Form MBP-1	To be taken note of in 1st BM of Company in each Financial Year
Micro, Small And Medium Enterprises Development Act, 2006	MSME Return - Reporting of dues payable to MSME vendors which are outstanding for more than 45 days	30th April, 2024
Foreign Exchange Management Act, 1999	ECB 2 - Filing of ECB Return by companies which have borrowed funds from overseas	7th April, 2024
SEBI (Listing Obligations and Disclosure Requirement) Regulations	Statement of Grievance Redressal Mechanism	21st April, 2024

SEBI (Listing Obligations and Disclosure Requirement) Regulations	Corporate Governance Report	21st April, 2024
SEBI (Listing Obligations and Disclosure Requirement) Regulations	Shareholding Pattern	21st April, 2024
SEBI (Listing Obligations and Disclosure Requirement) Regulations	Compliance certificate by Share Transfer Agent	30th April, 2024
SEBI (Listing Obligations and Disclosure Requirement) Regulations	Certificate on compliance with provisions for transfer or transmission or transposition of securities	30th April, 2024
SEBI (Listing Obligations and Disclosure Requirement) Regulations	Initial Disclosure requirements for large entities	30th April, 2024

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