NEWSLETTER

Tax & Regulatory

May, 2024

Nangia Andersen LLP

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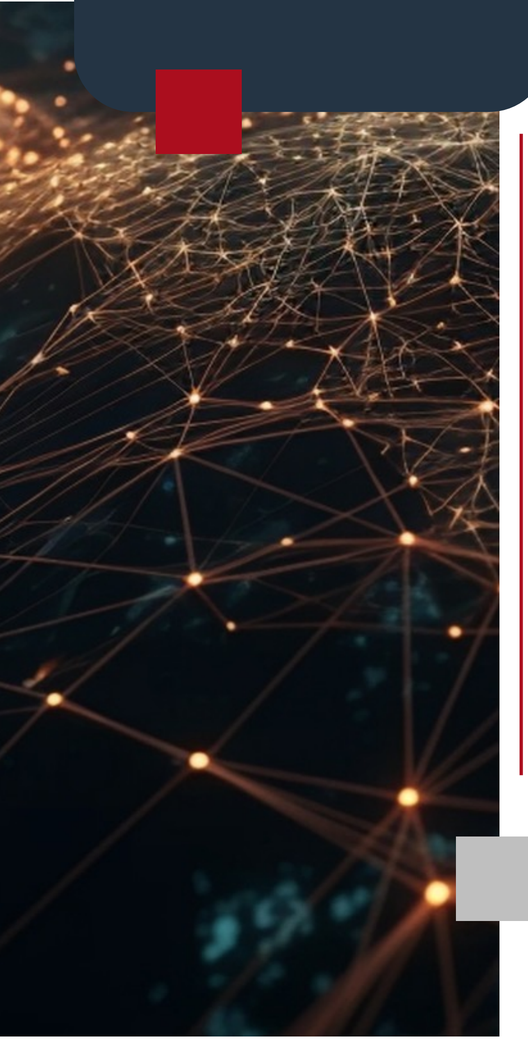

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01

Direct Tax

Once profit attribution rate has been accepted by Revenue, the same shall be considered while issuing lower withholding certificate to the Assessee

GE Energy Parts Inc. Vs Income Tax Officer

Writ Petition no. 9593/2022, 10055/2022, 13633/2023 & 15097/2023

Issue(s) – Can lower withholding certificate rate exceed the profit attribution rate

Outcome - In Favour of Assessee

Background

In a recent verdict, Hon'ble High Court, Delhi ['Hon'ble HC'] held that Assessing officer ['AO'] cannot issue lower withholding certificates at rate exceeding the profit attribution rate determined by ITAT for prior years as Revenue had not disputed such attribution rate.

Brief Facts and Contentions

- GE Energy Parts Inc. ("Assessee") is a US based company which entered into contracts for supply of spare parts from outside India;
- For AYs 2001-02 to 2008-09, AO held that Assessee had established a permanent establishment ['PE'] in India. Further profitability of 10% was determined by applying provisions of sections 44BB and 44BBB of the Income Tax Act, 1961 [the 'Act']. Further, 35% of such profit was attributed to the PE;

- The contention of the AO with respect to establishing a PE in India was upheld by the Hon'ble Income Tax Appellate Tribunal ['ITAT'] but the attribution rate was reduced to 26%;
- For FYs 2010-11 up to 2020-2021, Assessee was granted lower withholding certificates for at the rate of 1.5% of the gross receipts. However, for FY 2021-22, AO issued lower withholding certificates at a significantly higher rate of 4% of the gross receipts;
- Assessee filed a writ petition before Hon'ble HC for FY 2021-22 challenging the rate of 4% on the ground that for AYs 2001-02 to 2008-09, Hon'ble ITAT had attributed profit at the rate of 26% and accordingly, effective rate of withholding ought to be 1.04%;
- Assessee did not press such writ as the relevant FY 2021-22 was coming to an end, but requested AO to consider the contentions of that writ petition while issuing lower withholding certificate for the next FY. Accordingly Hon'ble HC disposed the petition while directing the AO that when application for next FY is submitted, it must be dealt as per the law and after granting personal hearing to the Assessee.
- Assessee applied for lower withholding certificate for FY 2022-23 and AO issued lower withholding certificate at the rate of 4% for that FY as well. Aggrieved, Assessee filed a writ petition challenging the rate, and submitted that for AYs 2001-02 to 2008-09, Hon'ble ITAT had attributed rate of 26%. Further this rate was also accepted by the Dispute Resolution Panel ['DRP'] through directions issued on 05.05.2022.
- Revenue submitted that DRP had missed crucial facts regarding the case, and accordingly rectification application had been filed to DRP for its impugned directions issued on 05.05.2022.

Hon’ble HC’s Judgement

- Hon’ble HC passed an interim order while waiting for the decision of DRP regarding the rectification application. In the interim order, it has held that Assessee shall receive consideration after withholding the tax at the rate of 1.5%, but if the writ petition was dismissed, then balance of 2.5% shall be deposited post-haste by the Assessee.
- By the time the writ petition were taken up for hearing, it was evident that it had become infructuous due to FY coming to an end. However, assessee drew the attention of Hon’ble HC to its interim order, wherein it was held that in case the writ petition was dismissed, Assessee would be liable to deposit the remaining 2.5% to the Revenue.
- Hon’ble HC, while issuing final order observed that Revenue had accepted the profit attribution rate of 26% and the same had not been disputed. Accordingly it held that withholding could not exceed the effective rate of 1.04%.
- Further Hon’ble HC held that the above judgement would only apply to FYs 2022-23 and 2023-24 in respect of which the petition was filed and should not be treated as precedent for the subsequent years.

Nangia Andersen LLP’s Take

Hon’ble High Court's ruling has emphasized that when the Revenue has acknowledged a profit attribution rate without contesting it further, the acknowledged rate shall form the basis for issuing lower withholding certificates.

Receipts from licensing of non-exclusive, non-sub-licensable, non-transferable object code version of proprietary software cannot be taxed as royalty

Saxo Bank A/S vs Assistant Commissioner of Income Tax ('ACIT') ITA No. 2010/Del/2023

Issue(s) - Whether receipts from licensing object code version of proprietary software is taxable as royalty or not.

Outcome - In Favour of Assessee

Background

In a recent verdict, Hon'ble Delhi ITAT ('Hon'ble ITAT') has examined and held that the consideration for licensing of a software cannot be considered as royalty where the core of a transaction is to authorise the end-user to only have access to and make use of licenced software over which the licensee has no exclusive right and no copyright is parted with end user.

Brief Facts and Contentions

- Saxo Bank A/S ('Assessee'), tax resident of Denmark, is a Fin-tech company which offers platform, tools and knowledge to make an impact through investment strategies to its partners and clients. It facilitates multi-asset trading, providing capital market access and services to traders, investors, and wholesale clients;
- Assessee had entered into an agreement with Microsoft for procuring various shrink wrapped software user licence centrally for its group entities. These software are hosted through enterprise application and enterprise server, providing the group to collaborate with one another;

- Assessee recovered the cost of software license from its group entities on the usage basis. During the relevant assessment year, Saxo Group India Private Limited ('SGIPL') has made payment against the licence and withheld tax under section 195 of the Income Tax Act ('the Act') on the same. Further, Assessee had filed return of income declaring NIL income;
- During the assessment proceedings, Assessing Officer ('AO') contended that the Assessee had maintained an IT infrastructure and it had received the charges against providing access to the IT infrastructure which is taxable as equipment royalty;
- Assessee had submitted the relevant documents and contended that it does not maintain any IT infrastructure. Further, Assessee contended that the case of M/s Engineering Analysis Centre of Excellence Private Limited vs CIT [Civil Appeal Nos. 8733-8734 of 2018] squarely applies to the facts of the Assessee, accordingly receipts are not chargeable to tax;
- Hon'ble Dispute Resolution Panel ('DRP') noted that AO had not actually recorded his observation regarding the examination of the relevant facts and documents for arriving at the conclusion that the Assessee has maintained IT infrastructure or a server. The Ld. DRP directed the AO to consider and factually verify the Assessee's submission.

Hon’ble ITAT’s Judgement

- Hon’ble ITAT held that the above receipts are not taxable as royalty as the software used by SGIPL does not pertain to any use or right to use of any copyright as neither the Assessee nor SGIPL can sub-license, transfer, modify or reproduce the user license as Assessee was granted the Microsoft Software under an object code only;
- Further, relying on the judgment of Hon’ble Delhi High court in the case of EY Global Services Ltd. vs ACIT [W.P. (C) Nos. 11975 & 12003 of 2016] noted that a licence conferring no proprietary interest on the licensee, does not entail parting with the copyright, therefore the receipts cannot be taxed as “royalty”;
- Further, Hon’ble ITAT held that mere fact that the tax has been deducted doesn’t automatically make the receipt taxable as royalty thus no liability arises on the Assessee.

Nangia Andersen LLP’s Take

ITAT has further strengthened the view taken by various courts that licensing of computer software cannot be construed as royalty as copyright is intangible and quite independent of any material substance. As the software provided was an object code version, mere use of the copyrighted article without transfer of any copyright in it cannot be taxed as royalty.

Reimbursement of Routine Business Expenditure to Non-Resident Associated Enterprise(s) do not Constitute Fee for Technical Services

CIT Vs M/s Jas Forwarding Pvt. ltd ITA No. 9/2020 & 24/2020

Issue(s) - Whether cost-to-cost reimbursement of expenditure would be considered as fee for technical services

Outcome - In Favour of Assessee

Background

In a recent verdict, Delhi High Court examined the taxability of payment(s) made to non-resident associate enterprises towards reimbursement of expenses in the nature of server maintenance cost, netting charges, management expenses, travelling cost, insurance expense etc. and held that the services would not qualify as ‘fee for technical services’ in terms of section 9(1)(vii) of the Income-tax Act, 1961 [‘the Act’].

Brief Facts and Contentions

- Jas Forwarding Pvt. Ltd. [‘Assessee’], entered into an agreement with its non-resident Associated Enterprise(s), pursuance to which it reimbursed expenses of ₹ 21.58 Lac;
- The Assessing Officer (‘AO’) contended that the reimbursement of expenses fell within the purview of Section 9(1)(vii) of the Act and thus qualifies as "Fee for Technical Services [‘FTS’]," necessitating tax deduction under Section 195 of the Act. Failure to comply with the TDS provision invokes Section 40(a)(i), leading to disallowance of the expenditure deduction and addition back to the Assessee's total income. Consequently, the argument that these payments are mere reimbursements of expenses exempt from taxation was rejected;

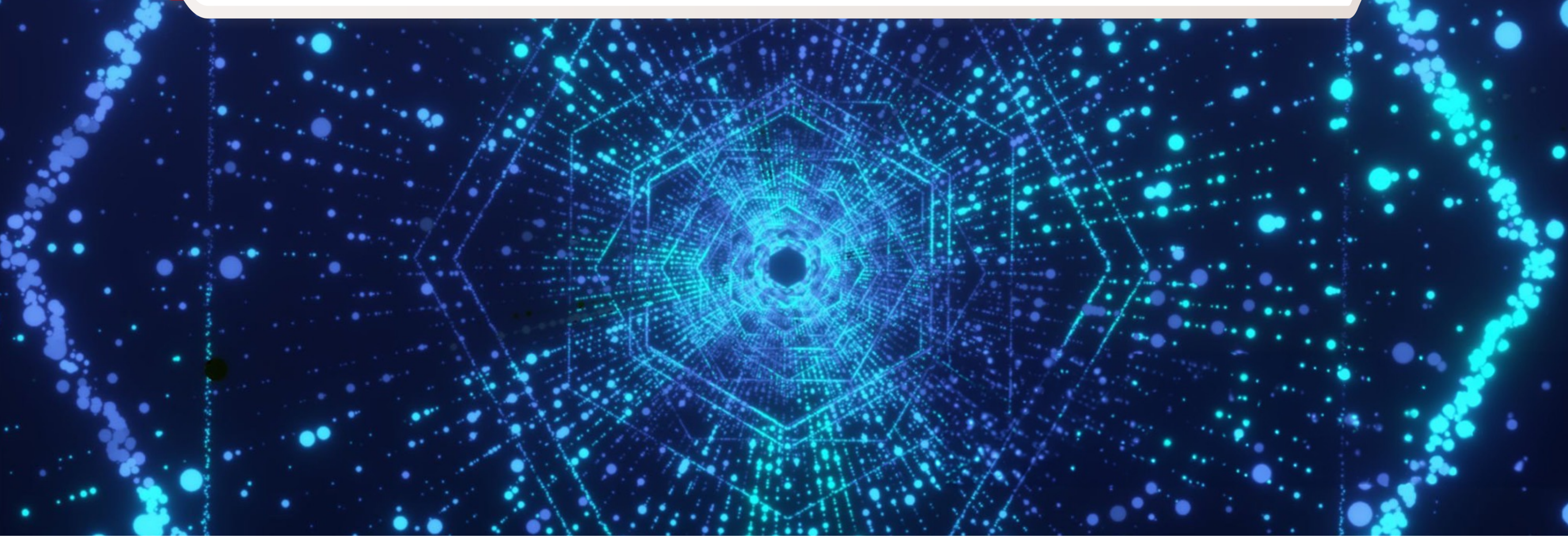
- CIT(A) disagreed with the view expressed by the AO and deleted the disallowance on the ground that the said payments do not fall under FTS as the Revenue had not given any finding "as to what was the nature of service-managerial, technical or consultancy, rendered by the non-resident associate enterprises to the Assessee";
- After considering the copy of invoices, ledger accounts etc. filed before it, ITAT noted the nature of reimbursement is of such expenses which are purely in the nature of day-to-day expenses of the business activities of the Assessee and therefore will not be covered under section 9(1)(vii);
- Nature of expenses included server maintenance cost, netting charges, management expenses, travelling cost, insurance expenses etc., which are integral of running of a business and for undertaking day to day activities stood accepted. ITAT upheld the deletion of disallowance applying the commercial expediency test. Thus the appeal filed by assesse has succeeded;
- Dissatisfied with the decision of the Income Tax Appellate Tribunal (ITAT), the revenue filed an appeal in the Delhi High Court.

Delhi High Court Judgement

Revenue was required to demonstrate that the fees or amounts remitted fell within the scope of any technical, managerial or consulting services rendered. After perusing the relevant clauses of the agreement, the court found the argument of revenue unsustainable. Therefore, no substantial question of law arose. As a result, the appeals are unsuccessful and accordingly dismissed.

Nangia Andersen LLP's Take

Taxability of reimbursement has been a matter of considerable debate in India from the perspectives of Direct Tax. Where these are intra-group reimbursements, it is generally the intention of the taxpayers to achieve a tax-neutral position on these transactions, especially in the absence of a profit element. On the other hand, the tax authorities generally contend that such payments are taxable for a variety of reasons, relying on India's strong source rule of taxation, however, the revenue ought to establish that the services actually qualify under the definition of FTS.



02
Indirect Tax

Hon’ble CESTAT held that royalty paid on final products manufactured by importer cannot be added to the transaction value to determine custom duty on import of raw material.

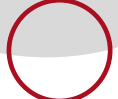
Brief Facts

M/s. Page Industries (‘Appellant’) is the sole distributer of the brand owned by M/s Jockey International USA and Speedo International, U.K. The Appellant entered into a Trade Mark License Agreement with both companies for products distributed and manufactured in India. The Custom Authorities alleged that royalty and advertisement cost should be added to the transaction value of the imported goods.

The Adjudicating authority vide impugned order confirmed the demand along with interest, redemption fine and penalty. Aggrieved by the order, appellant filed the appeal.

Observations

- Hon’ble CESTAT observed that royalty is being paid on the final products which are manufactured and cleared by the Appellant under the brand name of jockey. And what is imported by the Appellant is raw materials that are used in the manufacture of these final products so the royalty has nothing to do with the products being imported and hence the claim of the Appellant that royalty cannot be added to the products imported by them is justified.
- Hon’ble CESTAT further observed that the advertisement expenses incurred by the Appellant cannot be added to the transaction value of imported goods because such expenses incurred by the Appellant is a post import activity incurred on its own account and not for discharge of any obligation of the seller under the term of sale.



Decision

- The Impugned Order passed by the adjudicating authority is set aside and consequential relief to be allowed in accordance with law.

[Page Industries Vs. Commissioner of Customs [(2024) 17 Centax 299 (Tri.-Bang) dated 13 March 2024]

Bombay High Court allows petition of assessee assailing SCN to levy GST on ocean freight of coal imported on FOB basis.

Brief Facts

- The petitioner challenged a Show Cause Notice ('SCN') issued by the Assistant Commissioner of Sales Tax, "C" Division Mumbai, directing the petitioner to levy GST on Ocean freight as they were engaged in importing coal on FOB basis;
- The notice was primarily challenged on the grounds of lack of jurisdiction, citing the striking down of the relevant notification by the Gujarat High Court in the case of Mohit Minerals Pvt. Ltd. v. Union of India.

Observations

- Hon'ble High Court observed that the case of Mohit Minerals Pvt. Ltd. involved both categories of contract namely CIF and FOB, which was noted in the judgment of the High Court of Gujarat. The Court on such facts, declared the revenue's decision ultra vires of the IGST Act. Supreme Court subsequently upheld the decision;

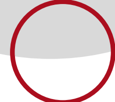
- Hon’ble High Court further observed that once the notification itself has been declared as ultra vires and the same has been upheld by the Supreme Court, the notification in no manner was available to the State Authorities to be applied as it would amount to applying an illegal notification.

Decision

- The petition was allowed, setting aside the show cause notice;
- The petitioner, having made payment of tax under protest, would be entitled to seek a refund with the interest @7% per annum.

[Agarwal Coal Corporation (P.) Ltd. vs. Assistant Commissioner of State Tax - (2024) 17 Centax 343 (Bom.)]

GST Clarifications and Updates



GST Advisory on Self – Enablement for e-Invoicing dated 3 April 2024.

- GSTIN has issued an advisory for self-enablement for e-Invoicing for the registered persons whose turnover exceeds 5 crores in the financial year 2023- 2024.
- Accordingly, the registered persons exceeding the threshold limit of 5 crores will be required to generate e-Invoice from the next financial year, i.e., from 1st April 2024 onwards.
- For the registered taxable persons who meets the threshold criteria but have not yet been enabled on the portal. Now, they can self – enable for e-Invoicing by visiting https://einvoice.gst.gov.in and start reporting e-Invoice on Invoice Registration Portals.
- It may also be noted that the same is applicable on the registered taxable persons whose turnover exceed the prescribe threshold limit in any of the preceding Financial Years.

GST Advisory on Auto-Population of HSN Summary from e-Invoices into Table-12 of GSTR-1 dated 09 April 2024

- GSTIN has issued an advisory regarding introduction of a new feature that auto-populates the HSN Summary from e-invoices into Table-12 of GSTR-1.
- Accordingly, auto-drafting of HSN data can be made directly into Table-12 based on e-Invoice Data.

- It is advised to reconcile the data with the available records before final submission. Any discrepancies or errors should be manually corrected in Table-12 of GSTR-1.

Notification No. 09/2024- Central Tax dated 12th April 2024.

- The Commissioner, on the recommendation of the GST Council, has extended the time limit for furnishing the details of Outward Supplies in FORM GSTR-1 for the tax period March-2024 vide notification no. 09/2024.
- Accordingly, the registered persons can furnish their outward supplies in FORM GSTR-1 till 12th April 2024 for the tax period March 2024.

03
Transfer Pricing

ITAT: Examines ALP of royalty payment, considers consistency in conduct while interpreting agreements.

Outcome: In favour of the Taxpayer.

Category: Determination of Arm's Length Price ("ALP") for Royalty payment.

Facts of the Case

- CRM Services India Private Limited (CRM India) is a wholly owned subsidiary of Teleperformance USA (TP USA), a company incorporated in the United States of America. CRM India is engaged in the business of providing voice-based call centre services, rendering tele-services to customers of TP USA located in different parts of the world. TP USA is a leading global provider of outsourced customer experience management services.
- During the year under consideration, CRM India entered into two international transactions with its AEs i.e., Provision of call centre services to TP USA by virtue of Foreign Collaboration Agreement and Payment of Royalty to TP USA by virtue of Intangible and Proprietary Licence Agreement ("Licensing Agreement"). For the purpose of benchmarking the international transactions, the taxpayer applied Transactional Net margin Method (TNMM) and considered itself as the tested party and OP/OC as the PLI.
- The Transfer Pricing Officer (TPO), during the 1st round of proceedings accepted the transaction of provision of call centre services at ALP, however TPO applied the Comparable Uncontrolled Price (CUP) method to benchmark the royalty payment transaction. In this regard, TPO concluded that no recognizable benefit was received by CRM India from royalty payment and thus, the arm's length price of the royalty payment should be considered as NIL. Accordingly, TPO disallowed the entire royalty payment of Rs. 1,28,68,402 made by CRM India to TP USA.

- Aggrieved by the same, the Taxpayer filed objections before the Hon'ble Dispute Resolution Panel ("DRP"). The DRP, in its directions dated 29.11.2013, made the following observations:
  - DRP clarified that CRM India had benefitted from the payment of royalty to TP USA. Further, DRP interpreted certain clauses of the Licensing Agreement and analysed the definitions of "Accumulated Gross Revenue" & "Affiliate" from the Licensing Agreement.
  - Based thereon, DRP held that the royalty was payable by CRM India only on the gross receipts from sales to third parties (unrelated entities) and **not on the revenues generated indirectly from TP USA for services provided to TP USA's clients/customers.**
  - Accordingly, DRP directed the TPO to recompute the allowable royalty expense by disallowing the portion of royalty paid by CRM India on the revenues received indirectly from TP USA. In compliance with the DRP's directions, the TPO restricted the disallowance to Rs. 64,75,322, being the royalty paid by CRM India on the revenue generated indirectly through TP USA (i.e., for services provided to TP USA's clients).

Aggrieved by the directions of DRP, taxpayer filed an appeal to Income Tax Appellant Tribunal ("ITAT") for AY 2009-10 & 2010- 11. Further, the taxpayer filed additional evidence pertaining to post facto addendum to the Licensing agreement with TP USA, which was effective retrospectively, from the original date of Licensing Agreement. Based on such agreement, ITAT referred back case to TPO for deciding the issue of royalty afresh after duly considering the addendum to agreement and after giving due opportunity to the taxpayer to present its case.

However, TPO in second round of proceedings rejected the addendum to agreement and sustained the adjustment with respect to the transaction of payment of royalty in the manner consistent with the direction of the DRP as passed in 1st round of proceedings and disallowed the royalty in proportion to the revenue that has been generated indirectly through TP USA. The Ld. DRP vide directions dated 14.03.2022 sustained the adjustment made by Ld. TPO.

Aggrieved by the directions of DRP, taxpayer filed an appeal before the ITAT.

ITAT Ruling

Following observation were drawn by the Hon’ble ITAT:

- The ITAT clarified that TPO and DRP erred in rejecting the addendum as evidence of the parties' consistent conduct & intentions and erroneously interpreted the clauses of the Licensing agreements. Further, the ITAT also opined that inter-company agreements need not be registered or notarized under the law, only the mutual conduct of parties over the time is often determinative of actual intentions.
- Further, the ITAT analysed specific clauses in the agreements that indicated that CRM was obligated to furnish services to TP USA, and that royalty was to be paid with respect to the entire sales revenue of the taxpayer in regard to overseas clients of TP USA, including sales to third-party customers for TP USA for which revenue was received from TP USA. Hence, the TPO/DRP's conclusion that no royalty was payable on sales to TP USA was incorrect.
- The ITAT also elucidated that the parties always intended for royalty to be paid on CRM India's entire sales revenue, including revenue received from TP USA for services to TP USA's clients. The addendum merely clarified this understanding.
- Further, the ITAT emphasized the importance of the "rule of consistency" in this case. It noted that CRM India had consistently paid royalties to TP USA on its entire sales revenue since 2002-03, and this transaction was accepted as arm's length by the TPO until AY 2007-08. Further, the is underlying agreements and business model remained the same over the years.

In view of the above, the ITAT concluded that the TPO and DRP erred in making transfer pricing adjustments to the royalty payment made by CRM India to TP USA for AY 2009-10 and 2010-11. Accordingly, ITAT allowed CRM India's appeals, holding that the entire royalty payment made by CRM India to TP USA was at arm's length.

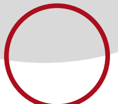
Nangia's Take-

- Indian tax authorities have consistently scrutinized royalty payments made by Indian entities to their associated enterprises, closely examining the benefits derived and benchmarking such payments against arm's length standards. The issue of arm's length pricing of royalty payments has been a contentious one, with tax authorities often disallowing such payments on the grounds of lack of commensurate benefits or insufficient justification.
- The ruling emphasizes that inter-company agreements serve as the influential document for Indian Tax Authorities to assess the remuneration mechanism of the involved parties for determining arm's length pricing of international transactions. In light of instant ruling, taxpayers are advised to ensure that their agreements with related parties should be thorough, transparent, and accurately depict the transaction structure and remuneration terms. This proactive approach shall help in preventing disputes and ensuring compliance with tax regulations, thereby minimizing the likelihood of tax-related conflicts.

[Source: CRM Services India Pvt Ltd [TS-137-ITAT-2024(DEL)-TP]]

04

Regulatory



Updates Under Reserve Bank of India ("RBI")

Digital Lending – Transparency In Aggregation Of Loan Products From Multiple Lenders

The RBI, *vide* its press release dated 26th April, 2024 issued a draft circular on the proposed regulatory framework for aggregation of loan products by lending service providers.

The same is pursuant to the recommendations of the working group on Digital Lending[1] formed by the RBI, which among many others, sought to regulate the digital lending space including Web Aggregators for Loan Product (WALP).

The proposed framework aims to curb 'push selling' in the market, enhance transparency, customer centricity and enable borrowers to make informed decision.

The new framework provides for mandatory provision of information such as name of the Bank/ NBFC extending the loan, amount, tenor of loan, annual percentage interest rate and other key terms and conditions to help borrower make better and informed decision . These guidelines will help provide detailed information of all loan offers available to the borrower from all the available lenders.

Key Facts Statement (KFS) For Loans & Advances

In a bid to streamline the regulatory frameworks for various regulated entities, the RBI has *vide* notification dated 15th April, 2024 provided for instructions for key fact statements issued by different regulated entities. The provisions of the same shall apply to all retail and MSME term loan products extended by all regulated entities.

[1] https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54187

The key fact statement provides a bird eye overview of the key terms of the loan offered, which are important for the consumers to make the financial decision. The key fact statement also forms a part of the loan agreement.

One of the key aspects of the key fact statement is the calculation of Annual Percentage Rate (APR) – which includes interest and all charges to be charged to a customer. Notably, any charge not factored in the APR cannot be subsequently charged from the customer unless explicit consent is taken.

All in all, a standardised key fact statement promotes transparency and visibility in the financial sector.

Regulation Of Payment Aggregators (PAS) – Draft Directions

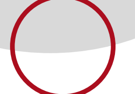
The RBI *vide* press release dated 16th April, 2024 proposed the following draft directions on regulation of Payment Aggregators:

- New draft directions on regulation of Payment Aggregators – Physical Point of Sale;
- Amendments to the existing directions on Payment Aggregators

Primarily, the aforesaid amendments seek to bring in offline payment aggregators within the regulatory purview of the RBI.

The drafts are open for comments till 31st May, 2024.

Fair Practices Code For Lenders – Charging Of Interest



The RBI *vide* notification dated 29th April, 2024 highlighted certain unfair practices adopted by REs while charging interest rates on loans disbursed.

The practices involve charging interest more than what is due from the customer – these include charging of interest from a date prior to disbursal i.e. date of execution of loan contract, charging interests from a date prior etc.

Accordingly, the RBI has instructed the REs to review their practices, in order to ensure that fair practices are carried out.

Updates Under Securities And Exchange Board Of India ('SEBI')

ISO Settlement Scheme 2024

The SEBI *vide* a public notice has issued third settlement scheme in the matter of trading activities of certain entities in the illiquid stock options segment of Bombay Stock Exchange and inter-alia it provides the following:

- It provides a settlement opportunity to all the entities that have executed reversal trades in the stock options in the period between 1st April, 2014 and 30th September, 2015, against whom proceedings have been initiated and are pending before any authority or forum;
- The Scheme shall commence on 11th March, 2024 and end on 10th May, 2024 (both days inclusive);
- The above settlement option is available subject to an appeal been filed and pending before the Hon'ble SAT/Court.

Framework For Category I And II Alternative Investment Funds To Create Encumbrance On Their Holding Of Equity Of Investee Companies

SEBI vide its circular dated 26th April 2024 has issued a framework for AIFs to create encumbrance on their holding of equity in the investee companies. It inter-alia provides for the following:

- The encumbrance can be created by the AIFs on equity of investee company that are in the business of development, operation or management of projects in any of the infrastructure sub- sectors;
- Existing schemes of Category I or II AIFs that have not on-boarded any investors prior to 25th April, 2024 may create such encumbrances, subject to disclosure in their Private Placement Memorandums (PPMs);
- The borrowings by the investee company against the encumbered equity can only be used for the development, operation or management of the investee company, and not for investing in another company;
- The duration of the encumbrance shall not exceed the residual tenure of the AIF scheme.

SEBI Consultation Paper On IC

SEBI has issued a consultation paper seeking public feedback on various aspects of the proposed framework for price discovery of shares of Listed ICs and IHCs.

- Currently, some listed ICs and IHCs have their shares trading at a price significantly lower than their book value, even though the underlying investments may have high market value. This is seen as adversely affecting liquidity and fair price discovery;

- Further, SEBI is proposing a special call-auction mechanism without price bands for ICs and IHCs in order to meet optimal price, that meet certain criteria, such as:
  - The scrip should have been listed for and available for trading for at least 1 year.
  - At least 50% of total assets invested in shares of other listed companies
  - 6-month volume weighted average price (VWAP) less than 50% of book value
  - The call-auction would be held once a year with detailed disclosures by the stock exchanges.
- The public comments can be provided by latest by May 10, 2024 through the link.

Updates Under Food Safety And Standards Of India (FSSAI)

Advisory Issued In Relation To Filing Of Annual Return By FBO

In accordance with provisions of Clause 2.1.13 of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 (the 'Regulations') and advisory issued by FSSAI dated 16th April, 2024, every manufacturer (including re-packer and re-labeller), importer and manufacturer-exporter is mandatorily required to electronically submit an annual return via FoSCoS portal by 31st May of every year for the food business activities conducted during the previous financial year. Any delay in filing return beyond 31st May of each year shall attract a penalty of Rs 100 per day of delay, extending upto 5 times the Annual License Fee, with no waiver available.

A separate return is required to be filed for every license issued under the said Regulations, irrespective of whether the same Food Business Operator ('FBO') holds more than one license. The FBOs also have the option to seek help of Food Safety Mitra, in case required for assistance in filing Annual Return on payment of fixed charge of Rs 500.

Manufacturers and importers can update their returns after 31st May, subject to following conditions and fees:

- If the initial return is filed by 31st August, up to two revisions are allowed, with the last submission considered final, and the fee is one year's license fee plus GST.
- If the revision is made between 1st September and 31st March of the following year, the fee is two years' license fee plus GST.
- If the initial return is filed between 1st June and 31st March of the following year, only one revision is allowed, with the fee being two years' license fee plus GST.
- No revisions are allowed if the initial return is filed after 31st March of the following year.

Other Regulatory Updates

Updates Under FEMA, 1999

Notification Of Foreign Exchange Management (Foreign Currency Accounts By A Person Resident In India) (Amendment) Regulations, 2024

The RBI on 23rd April 2024 notified Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2024 (‘Amendment Regulations’).

The Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 (‘Principal Regulations’) provide for cases wherein residents in India may open and maintain a foreign currency account.

In this regard, sub-regulation (F)(1) of regulation 5 has been amended to permit parking of funds raised by direct listing of equity shares of companies incorporated in India on International Exchanges, in foreign currency accounts with banks outside India wherein the funds so raised are pending their utilisation or repatriation to India.

Notification Of Foreign Exchange Management (Mode Of Payment And Reporting Of Non-debt Instruments) (Amendment) Regulations, 2024

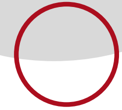
The RBI on 19th April 2024 notified Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024.

The Amendment Regulations cover the following aspects pertaining to international listing:

- Mode of payment of consideration for purchase / subscription of equity shares of an Indian company listed on an International Exchange – may be by way of banking channels to a foreign currency account or an inward remittance from abroad through banking channels.
- Reporting of such purchase/ subscription – The reporting shall be made in Form LEC (FII).

Both the Amendments as aforesaid are in line with other amendments made by government pertaining to permission for direct listing of securities by Indian Companies on international exchange of GIFT IFSC to boost foreign investment.

Orders/Judgements



Registrar Of Companies (ROC)

Order For Penalty Under Section 42 Of The Companies Act, 2013 In The Matter Of Adjudication Of Planify Capital Limited

The Registrar of Companies (ROC) discovered that Planify Capital Limited (the "Company") had been functioning as a fundraising platform for startups, facilitating the sale of shares of unlisted companies to its investors. During the investigation, it was found that the Company issued 454,530 shares to Planify Enterprises Private Limited (a related company) for subsequent transfer to 76 investors, mainly individuals. Additionally, the Company promoted this share issuance through a YouTube video on its channel and through advertorials on news portals. Notably, the Company misrepresented the valuation report by using Planify Enterprises Private Limited's report instead of its own.

These actions were found to be in breach of Section 42 of the Companies Act 2013, which governs private placements of securities. This section stipulates that private placements can only be made to a select group of individuals identified by the board during the fiscal year. Moreover, it prohibits companies from publicly advertising or using media to inform the public about such placements. Following the allotment of securities, companies are required to file Form PAS 3 (return of allotment) with the ROC within 15 days.

In this case, it was evident that the Company violated Section 42(7) by advertising the share issuance openly, with penalties outlined in Section 42(10). However, since this section does not specify fixed penalties for violations, the penalties provided under Rule 3(12) of the Companies (Adjudication of Penalties) Rules, 2014, were applied.

Penalty

ROC OF Delhi & Haryana imposed the following penalty

Violation	Penalty imposed on company/director(s)/promoter(s)	Total penalty imposed u/s 42 of the Companies Act, 2013 in INR
A	B	C
SECTION 42 (7)	Planify Capital Limited	2,00,00,000
	Sh. Rajesh Kumar Singla	2,00,00,000
	Ms. Urmila Rani Singla	1,00,00,000
	Sh. Davinder Kumar Singla	1,00,00,000
	Sh. Uttam Prakash Agarwal	1,00,00,000

Order For Penalty Under Section 137 Of The Companies Act, 2013 In The Matter Of Adjudication Of Dalit Industries Association Of Bihar

Dalit Industries Association of Bihar, a private limited company located in Patna, Bihar, was incorporated on March 13, 2020, with an initial paid-up share capital of Rs. 3,00,000/-. However, the company neglected to submit its financial statements to the Registrar of Companies (ROC) for the fiscal years spanning from 2020-2021 to 2022-2023, despite receiving notices of default from the ROC. Although the company qualified as a 'Small Company' with a paid-up share capital below Rs. 4 crores, its failure to file financial statements led to the forfeiture of benefits under Section 446B of the Companies Act.

Section 137(1) of the Companies Act, 2013 mandates that every company specified under this section must file its financial statements, including consolidated financial statements if applicable, within 30 days of the Annual General Meeting (AGM) with the ROC.

Additionally, Section 446B of the Companies Act, 2013 outlines provisions for reduced penalties in the cases of One Person Company (OPC), Small Company, Start-up Company, and Producer Company. The penalty imposed shall not exceed one-half of the penalty specified in the relevant provision, with a maximum penalty of two lakh rupees for a company and one lakh rupees for the officer in default.

Penalty

Accordingly, ROC Bihar Imposed the following penalty;-

Nature of default	Company/Officers to whom penalty imposed	Total Penalty
SECTION 137	M/s Dalit Industries Association of Bihar	Rs.1,34,500/-
	Shri Jitendar Paswan	Rs.1,20,900/-
	Shri Rajnish Kumar	Rs.1,20,900/-
	Smt. Sushila Hembron	Rs.1,20,900/-

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Compliance Calendar

Due dates	Particulars
7th May 2024	Due date for deposit of Tax deducted/collected for the month of 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 April 2024.
15th May 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of March, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of March, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of March, 2024.

Date	Compliance
	Due date for issue of TDS Certificate for tax deducted under section 194S (by specified person) in the month of March, 2024.
	Quarterly statement of TCS deposited for the quarter ending March 31, 2024.
30th May 2024	Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2023-24.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of April, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of April, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of April, 2024.

Date	Compliance
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S (by specified person) in the month of April, 2024.
	Issue of TCS certificates for the 4th Quarter of the Financial Year 2023-24.
31th May 2024	Quarterly statement of TDS deposited for the quarter ending March 31, 2024.
	Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA for financial year 2023-24

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in May 2024
1	Monthly Return Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment (‘QRMP’) Scheme	Monthly	11th day of succeeding month	For Tax Period April 2024- 11th May 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 April 2024- 20th May 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 April 2024 - 1st to 13th May 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 April 2024 – 25th May 2024
5	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13thof the succeeding month	For Tax Period April 2024- 13th May 2024
6	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GST.	Monthly	10thof the succeeding month	For Tax Period April 2024- 10th May 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	10thof the succeeding month	For Tax Period April 2024- 10th May 2024

Segment	Particulars	Due Dates
ECB Borrowers	ECB Return (ECB-2)	7th May, 2024
Annual Returns of an LLP	LLP-11	30th May, 2024
Annual Return of a Foreign Company	Form FC-4	30th May, 2024
Regulation 32 (1) of SEBI(LODR) Regulations	Statement of deviation(s) or variation	30th May, 2024
Regulation 33 (3) (a) of SEBI (LODR) Regulations	Financial Results along with Limited review report/Auditor’s repor	30th May, 2024
Regulation 24A of SEBI (LODR) Regulations	Secretarial Compliance Report	30th May, 2024
Regulation 23 (9) of SEBI (LODR) Regulations	Disclosures of related party transactions	On the date of publication of standalone and consolidated financial results

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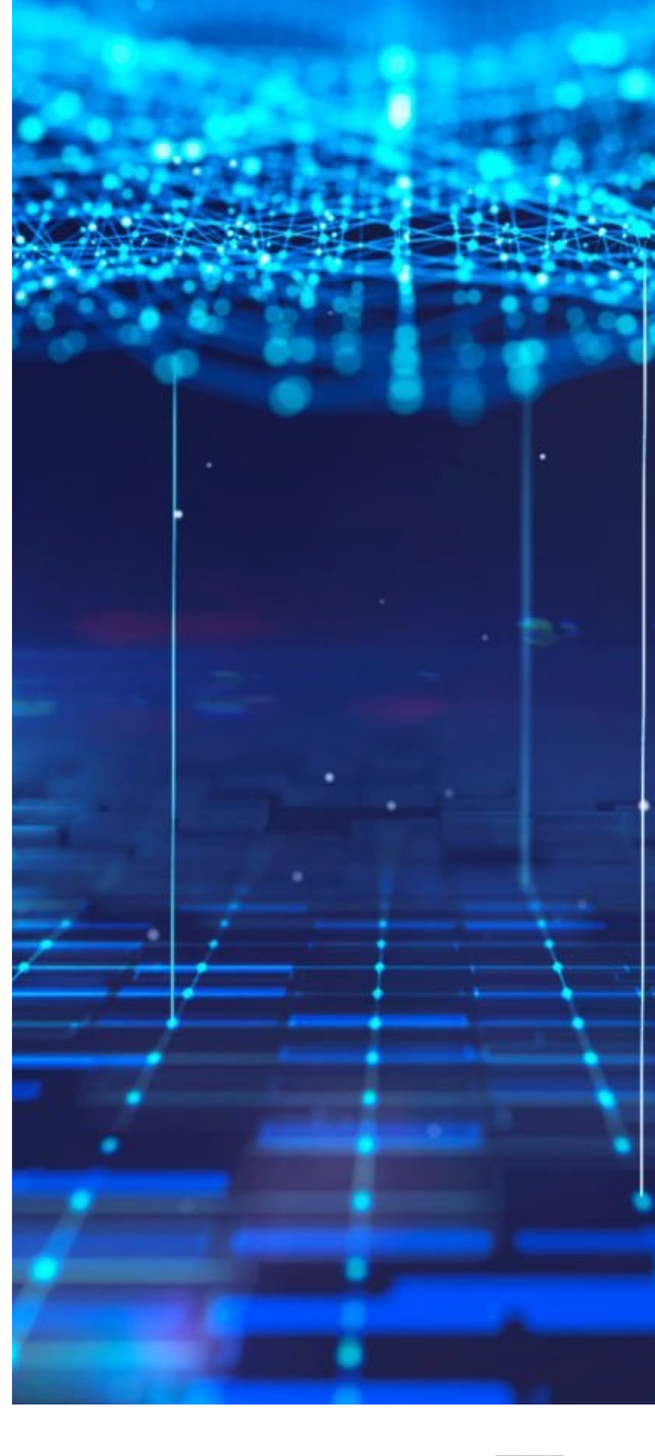

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