NEWSLETTER

Tax & Regulatory

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What's Inside?


Direct Tax
01

PEs are taxable subject to independent evaluation, global income or profit being irrelevant.

Hyatt International Southwest Asia Ltd. vs Additional Director of Income Tax

ITA 216/2020 and other connected matters

Issue(s) – Whether profit earned by the Indian PE when entity incur losses at the global level will be taxable in India.

Outcome – In Favour of Revenue

Background

In a recent verdict, the Hon'ble Delhi High Court ('Hon'ble HC') had examined the taxability of profits of Permanent Establishment ('PE') in cases when the entity makes loss at the global level and concluded that Article 7 of the India-UAE Double Taxation Avoidance Agreement ('the DTAA') cannot possibly be viewed as restricting the right of the source state to allocate or attribute income to the PE based on the global income or loss that may have been earned or incurred by a cross border entity.

Brief Facts and Contentions

- Hyatt International Southwest Asia Ltd. ('the Assessee') is a foreign company resident of United Arab Emirates ('UAE') and had entered into Strategic Oversight Service Agreement ('SOSA agreement') with the Indian Hotels to provide strategic planning services and know how.

- The Assessing officer (‘Ld. AO’) had passed the assessment order contending that the Assessee had constituted a PE in India in term of Article 5(2) of the DTAA and further contended that the receipts from the hotel owner under the SOSA agreement to be taxed as royalty income under the DTAA which had been upheld by the Hon’ble ITAT on an appeal filed by the Assessee.
- Aggrieved Assessee filed an appeal before the Hon’ble HC and argued that the receipts from the hotel owners under the SOSA agreement cannot be construed as royalty under the DTAA, rather it is business profit which cannot be taxed since the Assessee does not have PE in India.
- Further, Assessee contended that even if it was assumed that the Assessee had PE in India, no profit or income could be attributed to the PE as the entity on the global level had incurred loss and there was no taxable attributable profit relying on the decision of Hon’ble Delhi HC in case of Nokia Solutions and Network OY **[ITA 503 of 2022].**
- The learned counsel of the revenue argued that the convention clearly contemplates an exercise of attribution being undertaken under Article 7 in light of the PE being treated as a separate and distinct enterprise in itself and contended that the taxability of the profit of the PE would have no connection with either the profit or the loss which the Assessee earned at the global level.
- Hon’ble HC (special bench) in its order dated 22nd December, 2023 held that the Assessee had PE in term of Article 5 of India-UAE DTAA underlining that the hotel premise was at the disposal of the Assessee since it had exercised control in respect of framing and implementing the policies and it had the discretion to send the employees at its will. Further, Hon’ble HC doubted the correctness of the judgment rendered in the case of Nokia Solutions and Network OY (supra) and referred the matter to the full bench of Hon’ble HC in this regard.

Hon’ble HC Judgement

- Hon’ble HC (full bench) observed that Article 7 of the DTAA clearly requires that if an enterprise was carrying on the business through a PE in the other contracting state, its profit to the extent attributable to that PE would become taxable in the other state and ruled that it would be wholly incorrect to tax on the basis of overall activities or profitability of an enterprise basis the decision of Hon’ble Apex Court in case of Morgan Stanley & Co. Inc **[(2007) 292 ITR 416 (SC)]** and commentaries of OECD and UN on Article 7 of DTAA.
- Hon’ble HC (full bench) further held that PE for the purpose of taxation is viewed as a separate and distinct enterprise. Accordingly, its profit is determined as if it is an independent enterprise by relying on the judgement rendered in case of International Management Group (UK) Limited vs Commissioner of Income Tax **[ITA 218 of 2017]** wherein it was held that conventions do accord an independent identity upon a PE and it need not be a juridical entity as is recognized in law.
- Moreover, Hon’ble HC (full bench) had overturned the decision laid down in case of Nokia Solutions and Network OY (supra) thereby acknowledging the doubt expressed by the Hon’ble HC (Special Bench).

Nangia Andersen’s Take

This case is significant as it sets a precedent for how PEs are taxed under Indian tax law, ensuring that multinational corporations are taxed fairly based on their operations within India. The decision aligns with international tax standards, particularly those outlined by the OECD, and aims to prevent tax avoidance strategies that could arise from taxing PEs based on the global income or profit earned at enterprise level.

Managerial and operational structure in Singapore is sufficient proof of residence to claim DTAA benefits

Tyco Electronics Singapore Vs DCIT

ITA No 1760/Del/2022

Issue(s) – Whether DTAA benefits can be availed by only furnishing TRC

Outcome – In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal ('Hon'ble ITAT'), examined the validity of Tax Residency Certificate ('TRC') as an evidence to avail the benefits of India - Singapore Double Tax Avoidance Agreement ('DTAA'), held that TRC though not a conclusive evidence is a statutory evidence and the Revenue shall allow DTAA benefits unless it establishes that granting of such benefits would be in contravention of the object and purpose of the treaty.

Brief Facts and Contentions

- Assessee is a non-resident corporate entity resident of Singapore and is engaged in the business of trading of electromechanical relays, wire and wireless equipment, high performance polymeric products, highly specialized energy-related products and other electronic components.
- During the Assessment Year ('AY'), Assessee had sold 10,37,030 shares of TE Connectivity Global Shared Services India Private Limited resulting in long term capital gains and claimed that such gains were exempt from taxation in India via Article 13(4) DTAA.

- The Ld. Assessing officer ('Ld. AO') selected the return for scrutiny and denied the eligibility of Assessee to claim the benefit of Article 13(4) of the DTAA. Assessee furnished TRC and other documents to support its eligibility for the DTAA benefits, but AO disregarded the same and made an addition of ₹ 2,11,62,53,235.
- Assessee filed objections before Dispute Resolution Panel ('DRP') on the following grounds:
  - OTRC and other documents submitted before the AO had been completely disregarded,
  - Assessee had been given the benefits of the DTAA on yearly basis in past years as well.
- DRP observed that the Assessee had not furnished the documents requested by the AO to ascertain its eligibility for DTAA benefits. Further, DRP stated that DTAA does not provide any blanket relief to taxpayers from providing justification for claiming benefits. Further, it was emphasized that the onus of proving the eligibility to claim DTAA benefits rests on Assessee.
- Further with regard to the principle of consistency, DRP while following the judgement of Hon'ble High Court in case of **Krishak Bharati Cooperative Ltd.** (23 taxmann.com 265) held that there is no such thing as res judicata in income tax matters.

Hon'ble ITAT Judgement

- Hon'ble ITAT following the judgement Hon'ble Delhi High Court in case of **Tiger Global Eight Holdings** stated that TRC though not a conclusive evidence of tax residency, is a statutory evidence. Upon furnishing of TRC, the onus shifts on the Revenue to establish by evidence that the entity is created and run for tax shopping.
- Further, it was stated that there must exist a reason for drifting away from the principle of consistency.

- Further, it was held that the submissions of the Assessee had been completely left out of consideration and those submissions sufficiently established that the Assessee had sufficient managerial and operational structure in Singapore and the transaction under consideration was a long-term investment decision and thereby Assessee was eligible to claim the benefits of DTAA.

Nangia Andersen's Take

The landmark ruling of Hon'ble Delhi High Court in case of Tiger Global Eight Holdings has strengthen the validity of TRC and provided that the entities should not be subject to additional standards of legitimacy owing to the fact that they have been incorporated in tax friendly jurisdictions. Such additional standards undermine the validity of the Tax treaties.

The above judgement is in line with these principles and held that once Assessee furnishes a valid TRC, it shall be considered as sufficient evidence unless Revenue has evidence that the transaction under consideration undermines the object and purpose of the treaty. The onus of finding such evidence lies with the Revenue.

Tax Implications of LLC and eligibility for Indo-U.S. Treaty Benefits.

General Motors Company USA Vs The Assistant Commissioner of Income Tax

ITA No. 2359/Del/2022

Issue(s)-Whether LLC a taxable entity under US tax laws and eligible for Indo-US treaty benefits

Outcome-- In Favour of Assessee

Background

In a recent verdict, Hon'ble Delhi ITAT ('Hon'ble ITAT') allowed the appeal filed by General Motors Company ('Assessee'), considering that the Assessee, a Limited Liability Company ('LLC') is tax resident of US under Article 4 of Indo-US Double Taxation Avoidance Agreements ('DTAA') and its recognition as a separate existence from its members qualifies as a 'person', and thus makes it eligible to treaty benefits under the DTAA.

Brief Facts and Contentions

- The Assessee incorporated in USA, claimed to be a resident of USA and filed its return of income for the Assessment year(s) ('AY') 2014-15 and 2015-16 offering income by way of receipts on account of fees at the rate of 15% under Article 12 of India-USA DTAA.
- During the assessment proceedings, the Learned Assessing Officer ('Ld.AO') contended that the total income of the Assessee for the relevant AY to be taxed at 25% under section 115A of the Income Tax Act ('the Act') as against the treaty rate at 15% as per Article 12 of the India-USA DTAA since the Assessee is an LLC which is a fiscal transparent entity, alleged to be not a person liable to tax in the US, hence it is not eligible to the benefits of DTAA.

- Assessee had submitted that under the US income tax law, an LLC is given an option to either be taxed as a corporation or to be taxed as a disregarded entity or partnership wherein the income of the LLC is clubbed in the hands of its owner who merely discharges the tax that is assessable in the case of LLC. Further it is also stated that a person is considered to be liable to comprehensive taxation even if a country does not in fact impose tax.
- Additionally, attention is also drawn to the phrase 'liable to tax' which states that a person does not have to be actually paying tax to be liable to tax, otherwise a person who had deductible losses or allowances, which reduced his tax bill to zero, would find himself unable to enjoy benefits of the convention.
- However, the Ld. AO contended that LLC do not fall under the special clause of partnerships and trusts laid down in paragraph 1(b) of Article 4 of the DTAA considering that only person or entities that are liable to tax in their country under the laws of their country are considered resident for the purpose of DTAA. Accordingly, the Ld. AO passed the assessment order and held that in case of LLC, even if the shareholders are residents of USA, the treaty benefits are not available to the corporation and taxed the receipts at the rate of 25% under the Act.
- Aggrieved by the order of the Ld. AO, Assessee filed an objection before the Learned Dispute Resolution Panel which had examined the facts on record and uphold the action of the Ld. AO and dismissed the objections filed by the Assessee.
- Further, Assessee referring to the judgement delivered by the Hon'ble Mumbai ITAT in **Linklaters LLP vs ITO 20101 40 SOT 51 (Mum)** where it is determined that paragraph 1(b) of Article 4 of the DTAA recognizes partnership as a resident of the US for the purpose Indo-US Treaty to the extent that the income derived by such partnership is subject to tax in the US as the income either in the hands of the partnership or in the hands of its partners or beneficiaries.

Hon’ble ITAT Judgement

- Hon’ble ITAT is of the view that tax residency certificate (‘TRC’) and Form 10F as received from US tax authorities showcases that Assessee is a resident under Article 4 of the India-US DTAA by virtue of incorporation and recognizes it as a separate existence from its members qualifying it as a ‘person’.
- Furthermore, Hon’ble ITAT imposes a limitation on eligibility of a partnership to avail the benefits of India-US tax treaty as prescribed, i.e., it seeks to exclude from the eligibility of provisions of India-US tax treaty such income of the partnership which is not 'subject to tax' in the US by placing its reliance on the judgement rendered by Authority for Advance Ruling (‘AAR’) in case of **General Electric Pension Trust vs DIT [A.A.R. NO. 659 OF 2005]** where it can be concluded that an exclusion provision can only exclude something if it was included at the outset.
- In conclusion, the Hon’ble ITAT allowed the appeal filed by the Assessee as it satisfies all the conditions for the eligibility at benefits of the India-US tax treaty and that the Assessee, therefore is eligible to claim a beneficial rate of 15% instead of the rate provided under the Act.

Nangia Andersen’s Take

The Hon’ble ITAT's conclusion would serve as a comprehensive guide for the Assessee, detailing the findings, legal reasoning, and implications for their tax situation. This decision would not only influence the current case but also shape the Assessee's approach to international taxation and compliance moving forward. The tribunal's clarity on these points is crucial for ensuring the LLC can navigate the complexities of cross-border taxation effectively.

Self-generated trademark transfer would constitute as capital gain; Registration cost treated as revenue expenses

M/s. Mawana Sugar Ltd Vs Deputy Commissioner of Income Tax

ITA No. 4519/Del/2009 and 3498/Del/2013

Issue(s) – Whether the transfer of Trademark (intangible assets) would constitute as Capital Gain under Income Act 1961

Outcome – In favor of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal, Delhi ('Hon'ble ITAT') deliberated on the taxability of transfer of self-generated intangible assets. Hon'ble ITAT examined whether the registration cost related to the assets were treated as revenue expenses, held that the trademark will constitute as capital asset and therefore the transfer was subject to capital gain tax.

Brief Facts and Contentions

- Assessee, a company engaged in the manufacturing and sale of Vanaspati, received ₹11 crores as a non-compete fee from ITC Agro Tech Ltd by virtue of a contractual agreement that prohibited the Assessee from directly or indirectly competing with ITC in the hydro-generated vegetable oil market for five years. The agreement also restricted the Assessee from using the brand name "Rath."
- Assessee recorded ₹11 crores as "exceptional income" in its profit and loss account but claimed it as a non-taxable capital receipt under the Income-tax Act, 1961 ('the Act') for which reliance was placed on the Supreme Court ruling in **CIT v. B.C. Srinivasa Setty** (**128 ITR 294) (SC)**, which established that similar capital receipts are not taxable.

- During the assessment proceedings, the Ld. Assessing Officer ('Ld. AO') scrutinized the nature of the payment and noted that Assessee continued to engage in the Vanaspati business by outsourcing production even after ceasing its own manufacturing in 1996. It further concluded that since the business was still operational, ₹11 crores received was a revenue receipt, thus taxable.
- The Ld. AO argued that the decline in sales after transfer of the trademark was not adequate to classify the payment as a capital receipt. He emphasized that the trademark was a depreciable asset under Section 32 of the Act, which subjected any proceeds from its transfer to capital gains tax under Section 50 of the Act. Additionally, he dismissed the assertion that no capital gain was applicable due to nil cost of acquisition.
- Further, Ld. AO disallowed Rs. 9.16 lakhs related to the provisions for employee leave encashment, which rose from Rs. 49.25 lakhs to Rs. 58.41 lakhs, arguing that this amount was not added back in the income computation. Furthermore, he denied the Assessee's claim of a capital loss of Rs. 116.17 crores resulting from the surrender of land to the DDA ('Delhi Development Authority').
- The Commissioner of Income Tax (Appeals) ('CIT (A)'), upheld the Ld. AO's findings, agreeing that the Assessee's business operations were ongoing and that the amount received should be treated as taxable income.
- Further, CIT(A) upheld the disallowance of Rs. 9.16 lakhs for the provision made for leave encashment and disallowed the capital loss of Rs. 116.17 crores incurred on the surrender of land to DDA in the relevant assessment year.
- Aggrieved by the same, Assessee filed an appeal before the Hon'ble ITAT challenging the order passed by CIT(A).

Delhi ITAT Judgement

- The Hon’ble ITAT noted that Rs. 11 crores were received for transfer of the "Rath" brand, emphasizing that this trademark was a self-generated intangible asset. It pointed out that while the trademark was indeed an asset of the company, the costs related to its registration had been claimed as revenue expenditure in the past. Therefore, the trademark was treated as a capital asset.
- It held that since the trademark's registration costs were previously deducted as expenses, the transaction should be considered a short-term capital gain rather than a business receipt.
- It further emphasized that while the non-compete clause is a common aspect of such agreements, the essential nature of the transaction is transfer of intellectual property, which is taxable under capital gains.
- Further, it ruled in favor of Assessee by allowing a deduction of ₹9.16 lakhs for provisions related to employee leave encashment, citing the Supreme Court's ruling in **Bharat Earthmovers** (**Civil Appeal No. 9271 of 1995**), which permits deductions for liabilities that have definitely arisen in the accounting year, even if quantified later.
- Regarding a capital loss of ₹116.17 crores from surrendering land to DDA, the ITAT noted that Assessee had previously claimed this loss in AY 2004-05, which was dismissed. However, since the loss was incurred, it directed the Revenue to allow the claim in the relevant assessment year.

Nangia Andersen’s Take

Taxability of self- generated intangible assets has been a matter of considerable debate in India from the perspective of Direct Tax. This judgment reiterates the taxability of self-generated intangible assets that are not capitalized in the balance sheet. The Hon’ble ITAT expressed the view that the costs associated with registering the asset, claimed as a revenue expense rather than being capitalized, should be treated as a capital asset.

Indirect Tax

02

Advance Rulings & Judgements

Hon'ble High Court of Himachal Pradesh held that CGST authorities cannot initiate proceedings when same subject matter is already under investigation by SGST authorities.

Brief Facts

- In the given case, the petitioner is a manufacturer and distributor of iron and steel in the State of Himachal Pradesh. The petitioner had purchased raw material from different sellers and the same had been done after satisfying itself about the genuineness of the suppliers in terms of the conditions as laid down in Section 16 of the Act.
- A Summon was issued by the State Tax Officer asking the petitioner to supply various documents to show the genuineness of the transactions with the suppliers. The Petitioner complied with summons and submitted documents regarding purchases from five suppliers.
- Later, Director General of Goods and Service Tax Intelligence initiated parallel proceedings by issuing summons and blocking the petitioner's ITC, attributing fraud to the suppliers.
- The Petitioner contended that Section 6(2)(b) of the Central Goods and Service Tax Act, 2017 ('CGST Act') prohibits the initiation of parallel proceedings by State and Central authorities on the same subject matter.

Observations

- Whether parallel proceedings can be initiated on the same subject matter by Central and State GST Authorities?

Decision

- The High Court of Himachal Pradesh referred to Section 6 of the CGST Act, which empowers officers of both Central and State tax authorities to initiate proceedings but prohibits parallel investigations on the same subject matter. Once proceedings have been initiated by one authority (State or Central), the other cannot initiate separate proceedings on the same matter.
- The High Court of Himachal Pradesh emphasized that since State authorities had already initiated proceedings against the petitioner and the suppliers, Central authorities could not initiate parallel proceedings on the same subject matter.
- The High Court of Himachal Pradesh allowed the petition by quashing the blocking of ITC ledger and the summons issued by Central Authorities as the same were in contrary to the provisions of Section 6(2)(b) of the CGST Act.

[Kundlas Loh Udyog vs State of Himachal Pradesh (CMPMO No. 273 of 2024 – Himachal Pradesh HC) dated 17 September 2024]

Gauhati High Court held that Notification extending time limits for issue of orders under section 73 of the CGST Act ultra vires.

Brief Facts

- The Petitioner challenged the order passed under section 73(9) of the CGST Act and the Assam Goods and Services Tax Act, 2017, stating that the notification extending the period for passing of the order under section 73(10) of the CGST Act in exercise of the powers under section 168A of the CGST Act was ultra vires.

- The Petitioner argued that there was no force majeure event, such as war, natural calamity, or pandemic. Hence, the condition precedent for issuance of the notification in exercise of powers under section 168A of the CGST Act were unfulfilled.
- The Petitioner further argued that one of the pre-requisites to issue a notification under section 168A of the CGST Act is existence of a recommendation by the GST Council, which was absent. There cannot be a subsequent ratification by the GST Council. The Central Government had resorted to falsehood by mentioning in the notification that it was issued on recommendation of the GST Council.

Observations

- Whether CBIC can issue notification without recommendation of GST Council which is not in consonance with provisions of Section 168A of CGST Act?

Decision

- The High Court of Gauhati addressed the validity of Notification No. 56/2023-CT dated 28 December 2023 (notification) issued under section 168A of the CGST Act.
- The High Court of Gauhati held that the notification extending the time limits prescribed under section 73(10) of the CGST Act for passing orders under section 73(9) of the CGST Act was ultra vires in the absence of a force majeure, which was a pre-requisite under section 168A of the Act and also in the absence of recommendation by the GST Council.

[Jawahar Singh vs Union of India (Writ Petition No. 4681 of 2024) dated 13 September 2024]

GST Updates

Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

- The circular further clarifies that data hosting services do not relate to goods "made available" by the cloud computing service providers, nor do they directly relate to immovable property. Therefore, sections 13(3)(a) and 13(4) of the IGST Act, which apply to services related to goods made available and immovable property, respectively, do not apply to data hosting services. Instead, the place of supply should be determined by the default provision in Section 13(2) of the IGST Act, which states that the place of supply is the location of the recipient.
- As a result, when data hosting services are provided to recipients located outside India, the place of supply is considered outside India, making these services eligible for export benefits under the IGST Act, provided other conditions are met.

[Circular No. 232/26/2024 – GST dated 10 September 2024]

Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess

- The circular clarifies that the exporters who initially imported inputs without paying IGST and compensation cess under Notifications No. 78/2017 - Customs and 79/2017 - Customs can regularize their IGST refunds. This is applicable if the exporters subsequently paid the IGST and compensation cess, along with interest, on the imported inputs or are willing to do so.
- The explanation inserted into sub-rule (10) of Rule 96 by Notification No. 16/2020-CT, effective retrospectively from October 23, 2017, states that the benefits of the relevant exemption notifications are not considered availed if IGST and compensation cess have been paid on inputs, even if only the Basic Customs Duty (BCD) exemption was used.
- Applying this explanation, the circular clarifies that if the inputs were initially imported without IGST and compensation cess, but the taxes were paid later with interest, the refund of IGST on exports would not be in violation of Rule 96(10). The exporters need to have their Bill of Entry reassessed by the jurisdictional Customs authorities to reflect this payment.

[Circular No. 233/27/2024 – GST dated 10 September 2024]

Transfer Pricing

03

HC held that final assessment order passed without passing draft assessment under Sec. 144C is untenable

Outcome: In favour of the assessee

Category: Validity of final assessment order without passing Draft Assessment Order

Facts of the case

- A series of writ petitions had been filed before Delhi HC, impugning the action of Assessing Officer ("AO") for passing the final assessment order without issuing the draft assessment order as required by Section 144C of The Income Tax Act, 1961 ("The Act").
- One of the prominent issue emerged in the petition was that of *Microsoft India (R&D) Pvt Ltd*, wherein the AO had directly issued a final assessment order in pursuant of the remand directions set forth by the ITAT.
- Another issue that emerged in the case of *Telstra India Private Ltd.* was whether the Assessing Officer (AO) was justified in issuing directly the final assessment order without the draft order following directions from the Transfer Pricing Officer (TPO).
- In response to the aforesaid, the Respondents contended that the expression "**in the first instance**" referred to in Section 144C of The Act was **suggestive** of the requirement of framing a draft assessment order being obviated in a situation where the assessment proceedings are to be renewed consequent to a remit by the tribunal.
- Additionally, the Respondents relied on the decision in *Sarabjit Singh v. CIT*, where the Assessing Officer (AO) failed to forward the draft order and objections to the Deputy Commissioner as required by Section 144B(4). This provision grants the Deputy Commissioner the authority to issue directions to guide the AO in completing the assessment.

- In the above case, it was noted that a failure to refer the matter to the Deputy Commissioner would be a **mere procedural irregularity** and would not taint the order of assessment with an invalidity which would be beyond repair.
- Respondents claimed that since the provision of Section 144B is pari materia to Section 144C therefore the principles enunciated in *Sarbljit Singh* should guide the interpretation of Section of 144C.

Decision of the case

- The court observed that the consistent view has been taken by various judicial authorities wherein it was held that failure to frame an assessment order in draft would clearly be volatile of the mandatory prescription of Section 144C and the final order of assessment framed in violation thereof liable to be viewed as **a nullity**.
- Delhi High court upheld the decision rendered by the Madras, Gujrat and Bombay High court wherein it was stated that **issuance of draft assessment order was necessary even if the proceeding were to be started afresh on remand.**
- The court observed that power envisaged to Deputy Commissioner in Section 144B was essentially contemplated to review, supervise and aid the process of assessment whereas the powers of the DRP under Section 144C are not only corrective but extend to the power to enhance or reduce the proposed variation. Therefore, **rejected the respondent's contention of Section 144B being pari materia to Section 144C**.
- It further stated that a failure to frame a draft order of assessment not only curtails the right of the assesse to adopt corrective measure, it also deprives of a salutary right to challenge the draft in terms of the statutory mechanism laid in place.

Nangia Andersen's Take

- The instant ruling brings forth and accentuates the significance of issuing the draft assessment order by the AO even after the remand instructions outlined by the higher authorities, the failure to which would entail the entire order null and void.
- Building upon the principles established in the preceding ruling, it can be clearly stated that breach of Section 144C(1) i.e issuance of draft assessment order is a legal imperative and not merely a procedural irregularity.

Sources:

Sumitomo Corporation India P. Ltd [TS-378-HC-2024(DEL)-TP]


04
Regulatory

Ministry Of Corporate Affairs (MCA)

Notification of Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 (CAA Amendment Notification)

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 were amended vide the CAA Amendment Notification w.e.f. 17th September 2024.

Pursuant to the amended rules, a transferor foreign holding company incorporated outside India and the transferee being wholly owned subsidiary Indian company, merge or amalgamate under the fast-track route, as provided under section 233 of the Companies Act, 2013.

For obtaining such approval, the transferee as well as the transferor company are required to obtain prior approval of the Reserve Bank of India (RBI). The transferor as well as the transferee are required to satisfy conditions as specified under Rule 25A(5).

The CAA Amendment Notification aims to streamline the 'reverse flipping' norms in India, thereby easing the procedure for foreign companies and start-ups to house their operations in India.

Clarification on holding of Annual General Meeting (AGM) and Extra ordinary General Meeting (EGM) through Video Conferencing (VC) or Other Audio Visual Means (OAVM)

The MCA vide circular dated 19th September 2024 permitted companies whose AGM is due in 2024 or 2025, to conduct their AGM by VC or OVAM on or before 30th September 2025 as per general circular no. 20/2020 dated 5th May, 2020.

The companies are also permitted to conduct their EGM by VC or OAVM up to 30th September 2025. It is noteworthy that the circular merely permits conducting of AGM and EGM by way of VC/OAVM for the extended timeline and is not an extension of the statutory timelines for conducting the AGM.

Reserve Bank of India (RBI)

Irregular practices observed in grant of loans against pledge of gold ornaments and jewellery

The RBI vide circular dated 30th September 2024 ('Gold Loan Circular') highlighted irregular practices followed by supervised entities. To curb the same, the RBI directed these entities to comprehensively review their policies and practices with regard to gold loans and report the progress on action taken to Senior Supervisory Manager of Reserve Bank within three months of the date of the Gold Loan Circular.

Irregular practices as highlighted in the circular include practices along the gold loan lifecycle. These include:

- **Deficiencies in appraisal, valuation practices** of the gold collateral, improper storage of gold.

- **Deficient practices regarding disbursal of loans** - such as cash disbursals in excess of the statutory limit under the Income Tax Act and unusually high number of gold loans being granted to the same individual with the same PAN during a financial year. In certain cases, end uses of the non-agricultural loans were also not determined or proper documentation w.r.t. agricultural gold loans were not obtained.
- **Deficiencies in ongoing monitoring practices and governance** – such as non-categorisation of gold loans as NPA, inadequate or absence of controls over third-party entities, improper application of risk weights and lack of periodical monitoring of the LTV and not actively persuading the system generated alerts.
- **Deficient practices at time of renewal/ top up of loans –** No fresh appraisals at the time of top up and lack of specific identifier for top up loans, rolling over loans at the end of tenor, with only part payment.
- Irregular realisation of gold loan collateral.
- Certain transactions having no economic rationale were also highlighted.

Securities And Exchange Board Of India ('SEBI')

The SEBI, on its Board Meeting held on 30th September 2024 affirmed the following:

- **Review of regulatory framework for Investment Advisers (IAs) and Research Analysts (RAs) to facilitate ease of doing business**
    - **Relaxation in eligibility criteria for IAs and RAs** – The entry criteria has been relaxed in terms of qualification and experience. Further, the minimum net-worth requirement is to be replaced with a reduced requirement of deposits.

- **Ease in compliance requirements of IAs and RAs -** Applicants shall be allowed to seek registration as both IA and RA. Further, applicants (individual/partnership firm) engaged in other business activities and employment shall be allowed to seek registration as Part-time IA/ Part-time RA.

- **To facilitate speedier disposal of matters related to certain types of violations, amendments to the SEBI (Intermediaries) Regulations, 2008 have been approved for incorporating provisions pertaining to summary proceeding.**

  Summary proceedings shall be used in the following cases:

  - Expulsion as a member by stock exchange(s) or clearing corporation(s);
  - Termination of depository participant agreements by depository (ies);
  - Claim(s) of return or performance which are not permitted by the SEBI;
  - Non-payment of specified fees to the SEBI or to such body as may be specified;
  - Non traceability of a person at its physical address and email address available in the records of the SEBI;
  - Failure to submit periodic reports for three or such consecutive periods as may be specified by the SEBI;
  - Admission of violation of any of the provisions of the securities laws or directions, instructions or circulars issued by the SEBI, by a person.

- **Faster Rights Issue with flexibility of allotment to specific investors under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018**

  - Now, rights issue are proposed to be completed in 23 working days from the date of Issuer's Board Meeting approving Rights Issue, as against present average timelines of 317 days.

- Discontinuation of the current requirement of filing Draft Letter of Offer with SEBI for issuance of its observation, instead it will be filed with Stock Exchanges for its in-principle approval. In turn, stock exchanges are to confirm that the issuer is in compliance with LODR disclosure requirements.
- Rationalization of content of Letter of Offer to contain only the relevant incremental information.
- The stock exchanges and depositories are to develop a system for automated validation of the applications in a period of six months.
- Now, appointment of monitoring agency will be mandatory for all rights issue irrespective of the issue size, to monitor the use of proceeds of the issue.
- Rights issues of issue size less than 50 crore rupees, have been brought under the purview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

- **Facilitating ease of doing business under SEBI (LODR) Regulations 2015 and SEBI (ICDR) Regulations, 2018**

  For ease of doing business – under SEBI (LODR) Regulations 2015

  - Introduction of single filing system for listed entities on one exchange which will be automatically disseminated at the other exchange(s).
  - Integration of periodic filings into two broad categories viz., Integrated Filing (Governance) and Integrated Filing (Financial), to minimize the number of filings done on a periodic basis.
  - System driven disclosure of shareholding pattern and revision in credit ratings by Stock Exchanges.
  - Detailed advertisement of financial results in newspapers would be optional for listed entities.
  - Providing additional time of 3 months to fill up vacancies in Board Committees at listed entities and to fill up vacancies in Board, Committees and Key Managerial positions at listed entities coming out of the CIRP under Insolvency and Bankruptcy Code, 2016.

- Revised disclosure requirements as follows:
  - Additional time (3 hours instead of 30 minutes) for disclosure of outcome of the meeting of the board of directors that concludes after trading hours.
  - Additional time (72 hours instead of 24 hours) for disclosure of litigations or disputes involving claims against the listed entity subject to maintaining such information in structured digital database as specified.
  - Disclosure of tax litigations and tax disputes on the basis of materiality.
  - Disclosure of fines / penalties imposed on the basis of new materiality threshold (Rs. 1 lakh for sector regulators / enforcement agencies and Rs. 10 lakhs for other authorities) as against the present requirement to disclose all fines / penalties, within 24 hours.

  For ease of doing business – SEBI (ICDR) Regulations, 2018

  - Harmonization of the provisions of ICDR and LODR Regulations with respect to thresholds for identification of material subsidiary, disclosures related to material litigation, material agreements, qualifications of compliance officer etc.
  - Easing up disclosure requirements.

- **Facilitating ease of doing business under SEBI (Merchant Bankers) Regulations 1992, SEBI (Bankers to an Issue) Regulations 1994 and SEBI (Buy-Back of Securities) Regulations 2018**
  - Notably, bankers to an Issue would now also be permitted to carry out activities as required under applicable regulations such as open offers, buy-backs and such other activities as may be specified by SEBI in addition to issue related activities.

- **Introduction of regulatory framework for a new investment product/asset class under the existing Mutual Fund framework - amendments to SEBI (Mutual Funds) Regulations, 1996**
    - Offerings under the new product will be referred to as 'Investment Strategies'. The minimum investment limit for the new product will be INR 10 lakh per investor across all investment strategies of the new product in a particular AMC.
- **Introduction of liberalised Mutual Funds Lite (MF Lite) framework for passively managed schemes of Mutual Funds**
    - The light touch regulations include relaxed requirements relating to eligibility criteria for sponsors: including net worth, track record and profitability, responsibility of trustees, approval process and disclosures. The framework intends to promote ease of entry, encourage new players, reduce compliance requirements, increase penetration, enhance market liquidity, facilitate investment diversification and foster innovation.
- **Pro-rata and pari-passu rights of investors of Alternative Investment Funds**
    - Relevant amendments in the Regulations to clarify the intent of the AIF Regulations i.e. the rights of the investors in investments of and distributions of the returns from a scheme of an AIF shall be **pro-rata** to their commitment in the scheme and that in all other respects (subject to specified exemptions), the rights of the investors of a scheme of an AIF shall be **pari-passu**.
    - Permitting specified entities to subscribe to junior classes of units of AIFs with less than their pro-rata rights in the investments of the scheme.
    - An exemption has also been provided to Large Value Funds from ensuring pari-passu rights among its investors, subject to a waiver provided by each investor to this effect.
- **Offshore Derivative Instruments (ODIs, or erstwhile P-Notes) and segregated portfolios of FPIs to be subject to disclosure requirements at par with FPIs**

- The additional disclosure framework specified vide SEBI circular dated August 24, 2023 shall now be applicable to ODI subscribers, sub-fund structures, separate classes of shares, and other equivalent structures of FPIs with such segregated portfolios, to ensure that their disclosure requirements are on par with FPIs.

- **Introduction of investor-Friendly and Uniform Norms for Nomination Facilities in the Indian Securities Market**
- **Amendments to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) to rationalize the scope of expressions 'connected person' and 'immediate relative'**
- **Facilitating fund raising by corporates by expanding the scope of Sustainable Finance Framework in the Indian Securities Market by amendments to SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021**
  - The SEBI approved the proposal to specify the frameworks for issuance of social bonds, sustainability bonds and sustainability-linked bonds, which together with green debt securities, are to be termed Environment, Social and Governance (ESG) Debt Securities.
- **Ease of Doing Business measures by streamlining compliance for listed non-convertible securities with that of equity listed companies and easing disclosures regarding appointment of debenture trustee in the offer document.**
- **Facilitating Ease of Doing Business, amendments to certain SEBI Regulations to substitute the requirement of attestation of certain documents by a Notary Public or Gazetted Officer with self-attestation of such documents**
- **Facilitate wider access to Informal Guidance from SEBI, review of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 and replacing with SEBI (Informal Guidance) Scheme, 2024.**
  - Regulated entities to be made eligible to seek informal guidance.
  - Streamlining the application procedure by creation of nodal cell.
  - Revision in fees for the application.

Competition Commission Of India ('CCI')

Notification of Competition (Criteria of Combination) Rules, 2024

The Competition Act provides for a notice of combination to the CCI. Upon such notice, the CCI peruses the proposed combination to ensure if it has any appreciable effect and accords approval to the combination after such examination.

A carve out from such approval process has been accorded to combinations fulfilling the prescribed criteria i.e. such combinations are auto- approved once the CCI acknowledges the notice of such combination. The (Criteria of Combination) Rules, 2024 have provided for such criteria(s) for group companies/ affiliate companies intending to form a combination.

Group companies intending to form a combination under such fast-track route should not be engaged in a similar business or be a part of the same supply chain/ in complementary roles.

Compliance Calendar

05

Due dates	Particulars
7th October 2024	Due date for deposit of Tax deducted/collected for the month of September, 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 October 2024.
	Due date for deposit of TDS for the period July 2024 to September 2024 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H.
15th October 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of August, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of August, 2024
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of August, 2024.

	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of August, 2024 (in case of specified person).
	Quarterly statement of TCS deposited for the quarter ending September 30, 2024.
30th October 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of September, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of September, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of September, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S for the month of September, 2024 (in case of specified person).
	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2024.

31st October 2024	Quarterly statement of TDS deposited for the quarter ending September, 2024.
	Due date for filing of return of income for the assessment year 2023-24 for the following Assesses:- • Corporate Assessee, or • Non-Corporate Assessee (whose books of account are required to be audited), or • Partner of a firm (whose accounts are required to be audited)
	Audit report under section 44AB for the assessment year 2024-25 in the case of an Assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E.
	Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction.

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in October 2024
1	Form GSTR-1 (Details of outward sup-plies)	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 September 2024- 11 October 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 September 2024- 20 October 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 July - September 2024 - 13 October 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 July - September 2024 - 22 October 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 July - September 2024 - 24 October 2024
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period September 2024- 13 October 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 September 2024- 10 October 2024
6	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10th of the succeeding month	For Tax Period September 2024- 10 October 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

Segment	Particulars	Due Dates
ECB-2	ECB Return	7th October, 2024
AOC-4	Furnishing Financial statement of the Company with Registrar of Companies	Within 30 days from AGM
MSME-1	Companies who has obtained goods from the entities registered under MSME and payment to MSME is out-standing for more than 45 days	31st October, 2024
ADT-1	Intimation of Auditor appointed in Annual General Meeting	Within 15 days from AGM
Statement of Grievance Redressal Mechanism	Disclosure as per Regulation 13 (3) of SEBI LODR Regulations	21st October, 2024

Corporate Governance Report	Disclosure as per Regulation 27(2)(a) of SEBI LODR Regulations	21st October, 2024
Shareholding Pattern	Disclosure as per Regulation 31 (1) (b) of SEBI LODR Regulations	21st October, 2024
Reconciliation of share capital audit report		30th October, 2024
Disclosures of related party transactions	Disclosure under Regulation 23 (9) of SEBI LODR Regulations	On the date of publication of standalone and consolidated financial results

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