NEWSLETTER

Tax & Regulatory

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Nangia Andersen LLP

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What's Inside?

01

Direct Tax

Gain from transfer of Capital Assets outside India not taxable in terms of section 9 of the Act

Nikhil Arora vs Deputy Commissioner of Income Tax

ITA No. 1008/Del/2022

Issue(s) – Whether capital gain from the transfer of the rights or interest arising out of the agreement entered outside India can be taxed in India or not.

Outcome – In Favour of Assessee.

Background

In a recent verdict, Hon'ble Delhi ITAT ('Hon'ble ITAT') examined the nature of the Capital Asset in case of rights/interest in respect of shares which were acquired and transferred wherein it was held that such transfer of rights/interest does not fall under the exception of the section 2(42A) of the Income Tax Act 1961 ('the Act'). Hon'ble ITAT further examined whether capital gain from transfer of rights or interest created in favour of Assessee from the agreement executed outside India can be taxed in India and concluded that since the situs of capital asset is not located in India, it cannot be taxable in terms of section 9(1)(i) of the Act.

Brief Facts and Contentions

- The Assessee is a Non-resident Indian (NRI) Individual and a resident of United States of America (USA). During AY 2015-16 (FY 2014-15), Assessee had entered into employment agreement with Soft Bank Corporation which was subsequently amended on 17th December 2014 by virtue of which the Assessee had been granted the rights in the Compulsorily Convertible Preference Shares (CCPS) of the Two Indian Companies namely Jasper Infotech Pvt. Ltd. ('Snapdeal') and ANI Technologies Pvt. Ltd. ('Ola').

- Further, Assessee had entered into Third amended and restated executive agreement dated 20th May 2015 modifying certain terms of employment with the terms of allotment of shares being unchanged. On 1st February 2017, the employment agreement came to an end, Assessee's interest in the direct investment equity award had been fully and completely extinguished in exchange for cash payment from the Soft Bank group.
- During AY 2017-18 Assessee had filed return of income offering income arising from transfer of rights/interest in such CCPS as Long term Capital Gain ('LTCG') to be taxed in India.
- The case of the Assessee had been selected for the scrutiny assessment. The Ld. AO had observed that the Assessee had treated the gains as LTCG considering the period of holding exceeding 24 months from 17/12/2014 to 01/02/2017.
- The Ld. AO had passed Draft Assessment Order contending that the employment agreement dated 17th December 2014 is merely a draft employment agreement and the final employment agreement was being executed on 20th May 2015. The Ld. AO submitted that the Assessee had not furnished any share transfer agreement which can demonstrate his declaration about period of holding.
- Further, the Ld. AO highlighted that the Assessee's name was not registered in the shareholder list furnished by the two Indian Company in response to the notice issued to them u/s 133(6) of the Act. Consequently, the Ld. AO had viewed the above capital gain as Short Term Capital Gain ('STCG') considering the third agreement dated 20th May 2015 as the date on which shares has been transferred to the Assessee.
- Moreover, the Ld. AO had also disallowed the cost of acquisition in pursuance to the section 49(2AA) r.w.s 17(2)(vi) of the Act stating that the salary compensation was offered to tax in US and no tax has been offered to tax in India and thus contended that there is no tax base in India for claiming for cost of acquisition.
- Assessee had filed an objection before the Dispute Resolution Paned ('Ld. DRP') which had confirmed the Draft Assessment order passed by the Ld. AO and accordingly the Final Assessment Order was passed.

- Aggrieved, Assessee filed appeal before ITAT wherein the Learned Counsel ('Ld. Counsel') of the Assessee had submitted that the Employment agreement merely records the terms of employment and does not record acquisition of any asset. It is the assignment deed dated 29th December 2014 which creates certain rights in favour of the Assessee and the same has been mentioned in the termination agreement also.
- Further, Ld. Counsel relying on the judgment of Hon'ble Bombay High Court in case of CWT vs C. Rai **([1979] 119 ITR 553)** submitted that the expression 'held' in the section 2(42A) of the Act cannot be equated with ownership. Although the shares were held by the employer in their names, the same could not be alienated to others. Therefore, Assessee being beneficial owner of shares, should be construed to have held the capital Asset.
- Additionally, the Ld. Counsel submitted that the agreement clearly mentions the extinguishment of interest and not sale or transfer of shares. Ld. Counsel placing its reliance on the case of Vodafone International Holding BV vs Union of India **(Civil Appeal No. 733 of 2012)** and other judgments submitted that employment agreements were entered outside India and were subject to US jurisdiction, situs of Assessee's interest or rights to acquire shares was outside India and thus capital gain was not taxable in India.
- Learned Departmental Representative ('Ld. DR') submitted that claim of the Assessee that it has acquired the shares was totally misconceived as the Assessee never had any legal ownership right or title over the shares, he had never been registered as a shareholder. Ld. DR further contended that the Assessee had acquired a right in shares which is a capital asset but cannot be equated to shares/securities. Therefore, it had to be treated as STCG as the period of holding is less than 36 months.
- Ld. DR highlighted that since the underlying asset are shares of Indian company, the capital gain is taxable in India referring to the explanation 2 to section 2(47) of the Act.

Hon'ble ITAT Judgement

- Hon'ble ITAT after analyzing the employment agreements stated that whether agreement dated 17th December 2014 was draft or final, it had not created rights/interest in favour of the Assessee and held that whatever rights and interest in respect of CCPS accrued to the Assessee was by virtue of the assignment deed dated 27th December 2014 which would be considered as the date on which right or interest was created in favour of the Assessee.
- Hon'ble ITAT further concluded that the shares had never been transferred to the name of the Assessee. The employment agreement only created a right/interest in favour of the Assessee which cannot fall under the exceptions of section 2(42A) of the Act.
- Additionally, Hon'ble ITAT highlighted that the situs of capital asset in the nature of rights and interests acquired by the Assessee which were subsequently transferred and subjected to capital gain, was in USA and not located in India and relying on the case A & F Harvey Ltd. Vs. Commissioner of Wealth-tax **[1977] 107 ITR 326 (Madras)** held that the income derived from transfer of such capital asset is not taxable in India in terms of section 9(1)(i) of the Act.
- Moreover, Hon'ble ITAT further held that the Assessee plea of non-taxability above gain in India in terms of provisions of section 9(1)(i) of the Act would only act as a defence to support the claims made by the Assessee in the return of income and not for claiming any extra benefit beyond the return of income.

Nangia Andersen LLP's take

The income from transferring a capital asset was not taxable under Section 9(1)(i)(a) of the Act because the asset was situated in the USA, not India. The Assessee did not physically acquire the shares but only held rights and interests, which were not legally transferred and were extinguished by the termination agreement. Additionally, the asset's situs and any related legal proceedings were based in the USA. Therefore, it is crucial to correctly determine the situs of the asset based on its nature to establish the appropriate tax position.

Services provided by a global online learning platform by providing access to online courses and degrees from leading universities and companies does not qualify as FIS

Coursera Inc. Vs ACIT

ITA Nos 2416 & 3646/Del/2023

Issue(s) – Whether receipts from providing access to online courses and degrees from leading universities and companies can tantamount to FIS

Outcome – In Favour of Assessee

Background

In a recent verdict, Income Tax Appellate Tribunal ('Hon'ble ITAT'), examined whether the services provided by Global online learning platform in the form of providing access to various courses and degrees of leading universities can be claimed as technical services and taxed as Fees for Included Services ('FIS'), held that such services do not qualify as FIS under Article 12(4) of India-US DTAA.

Brief Facts and Contentions

- Assessee is a non-resident corporate entity incorporated in USA and a tax resident of USA. It operates a global online learning platform which offers online education/courses in various disciplines. For this purpose the Assessee had entered into agreements with Indian customers including universities from outside India to provide access to its platform in India. For providing such services, Assessee earned fees of ₹ 75,66,52,591.

- Assessee offered ₹ 17,98,07,270 in its income tax return and claimed that ₹ 75,66,52,591 is neither in the nature of royalty nor FIS and accordingly not taxable in India.
- Assessing officer ('AO') selected the return for scrutiny and examined the agreement of Assessee with one of the Indian customers. AO contended that Assessee provides two services i.e. content services and User Services. Under content services access was provided to courses and specialization certificate services, including access to course assessments and grades through online open content offerings. Under User services, Assessee provides customized landing page featuring the organization logo, user engagement reports, payment solutions, enterprise level-user support. Further the completion certificate bears the logo of the educational institution as well as the Assessee.
- AO contented that though the course content was prepared by other educational institutions and not by the Assessee, however the fact that content services and user services are being provided to Indian customers by the Assessee and the completion certificate bears the logo of the educational institution as well as the Assessee, signified that training services are being provided by the Assessee itself. Thus, it was held that these services are technical in nature.
- Further, AO held that while providing such services, the Assessee makes available specialization, technical skill and know-how to its customers, thereby satisfying the make available test in Article 12(4) of India- USA DTAA. Accordingly it was held that the receipts were in the nature of FIS in the draft assessment order.
- Assessee filed objections before Dispute Resolution Panel ('DRP'), which observed that AO had not properly examined the agreement nor had factually examined Assessee's contentions. Accordingly, AO was directed to verify the contentions of the Assessee in light of the agreement. However, without implementing such directions properly, AO held that the agreement had already been discussed in the draft assessment order and accordingly passed final assessment order holding that the receipts were in the nature of FTS.
- Aggrieved, Assessee filed an appeal before Hon'ble ITAT.

Hon'ble ITAT Judgement

- Hon'ble ITAT observed that in the final assessment order, pursuant to the directions of DRP, AO stated that the agreements had already been discussed and proceeded to pass the order. Hon'ble ITAT stated that this was highly objectionable and against the provisions of section 144C (13) of the Income Tax Act, 1961.
- Further, Hon'ble ITAT stated that AO had not brought on record any material to establish that the Assessee had provided technical services through its online platform. Further merely providing customized landing page does not qualify as technical services. Further even if such services were held to be of technical nature, still the make available condition had to be satisfied as provided in Article 12(4) of India-USA DTAA.
- Further, reliance was placed on the judgement of Mumbai ITAT in **Elsevier Information Systems GmbH** and coordinate bench ruling in **Relx Inc**, wherein Hon'ble ITAT held that these decisions squarely apply to the Assessee and accordingly, it was held that the receipts do not qualify as FIS.

Nangia Andersen LLP's take

YIt is a settled principle that for providing technical services human intervention is a sin qua non. In the above judgement, AO has over stretched nature of services and without any basis held that these services were in nature of technical services to bring Assessee within the ambit of tax. Further, AO is bound to follow the directions issued by DRP and actions taken by AO in violation to the DRP's directions are grossly incorrect.

Professional fees paid by KPMG to non-resident independent agency would neither be considered as FTS nor business income in the absence of PE in India.

The Deputy Commissioner of Income Tax Vs M/s KPMG Assurance and Consulting Services LLP

ITA No. 2273/MUM/2023 and others

Issue(s) - Whether professional fees paid by KPMG to independent consultant can be taxed as FTS or business income

Outcome-- In Favour of Assessee

Background

In a recent verdict, Hon'ble Mumbai ITAT ('Hon'ble ITAT') examined whether professional fees paid by KPMG Assurance ('Assessee') to non-resident independent agency constitutes Fees for Technical Services ('FTS') of the respective Double Taxation Avoidance Agreements ('DTAA') or a business income in light of Article 5, 7, 12 ,13 ,14 ,15 and 22 and whether such payments were liable to withholding tax u/s 195 of the Income Tax Act ('the Act').

Brief Facts and Contentions

- The Assessee is an Indian company engaged in providing business advisory, taxation and audit related services. Assessee filed its return of income for the Assessment Year(s) ('AY') 2012-2013 to 2017-2018. Assessee had claimed deduction for professional fee expenses debited to the Profit & Loss Account without deduction of tax on such payments.

- The matter was selected for assessment proceedings wherein the Assessing Officer ('Ld.AO') contended to disallow the expenses on account of non-deduction of tax on payments made for (a) professional fee paid to various non-residents , (b) advertisement and promotion expenses, and (c) remittance made to the KPMG International co-operative, Switzerland considering that such payments was liable to tax in India in the hands of such non-residents under the provisions of the Act read with the applicable articles of the DTAA between India and the country of tax resident of the search non-resident(s) as FTS or Other Income (in absence of Article on FTS).
- Assessee had submitted that professional fee paid to the non-residents was in the nature of Business Profits or Independent Personal Services (IPS) and in the absence of a Permanent Establishment ('PE') or fixed base in India, respectively, the same would not be liable to tax in India.
- However, the Ld. AO had observed that the Assessee had failed to deduct tax for payments made towards the professional fees paid to non-resident and for the remittance made to the KPMG International co-operative, Switzerland. Subsequently the Ld. AO disallowed the deduction for the same by invoking provisions contained in Section 40(a)(i) of the Act.
- Additionally, the Ld. AO had disallowed the 25% of advertisement and promotion expenses on ad-hoc basis on the ground that such expenses incurred by the Assessee promoted the brand held by the parent entity which benefitted the parent entity (and not the Assessee).
- Aggrieved by the order of the Ld. AO, Assessee filed appeal before the Learned Commissioner of Income Tax ('Ld. CIT(A)'). The Ld. CIT(A) granted relief to the Assessee by deleting the disallowance made by the Ld. AO towards advertisement and promotion expenses and remittance made to the KPMG International co-operative, Switzerland. Further, the Ld. CIT(A) granted partial relief in respect of professional fee holding that the professional fee paid to most of the non-residents was not liable to tax in India as FTS or Other Income. Aggrieved by the same, appeal was filed before the Delhi ITAT.
- Revenue contended professional services provided by the non-residents are in the nature of FTS liable to tax in India and fall under the purview of Make Available Clause and therefore, the same is liable to be taxed in India. Further, the provisions of Article 14/15 (Independent Personal Services) of the DTAA is applicable on Individuals only. Without prejudice to the above, such payments fall within the ambit of residuary article 22 (Other Income).

- Assessee contended that services provided by the non-residents did not make available any skill, knowledge, information etc. to the Assessee. Also the services provided by non-residents were not liable to tax in India in terms of Article 14/15 of the applicable DTAA in absence of a fixed base and/or physical presence of such non-resident in India. Thus the payment of professional fee by the Assessee to non-residents could not be taxed.

Hon'ble ITAT Judgement

- Hon'ble ITAT upheld the order passed by the Hon'ble CIT(A) and relying on the judgment in case of **Chennai vs. Ford India Private Ltd. (ITA No. 673 & 840 /CHNY/2015, and 748 & 749/CHNY/2015)** and rejected the revenue contention that in absence of FTS clause, the income of non-residents would fall within the ambit of Article 22 (Other Income).
- Further, Hon'ble ITAT while examining the provisions contained in India-UK DTAA placed its reliance on the case of **Linklaters LLP Vs Income-Tax Officer ([2010] 40 SOT 51 MUM)** held that Article 15 (IPS) would be applicable in case when professional service are provided by an Individual whereas Article 5 r.w. Article 7 will be attracted in case the professional service is provided by an enterprise.
- Hon'ble ITAT observes that the revenue failed to establish that the non-resident payee had a PE in India, thus, the payments whether covered by Article 7 dealing with Business Profits and/or 14/15 dealing with IPS of the applicable DTAA, would not be liable to tax in India.
- Furthermore, Hon'ble ITAT highlighting the judgement rendered by Hon'ble Delhi High Court in **Seagram Manufacturing Private Limited (IT Appeal Nos. 885 of 2016)** wherein ad-hoc disallowance of 10% on brand enhancement expenditure made by the Revenue were deleted holding that the disallowance made on an entirely artificial and notional basis from the expenditure otherwise deductible was not justified, upheld the deletion of ad-hoc disallowance of 25% of the advertisement expenditure

Nangia Andersen LLP's take

The fees paid to a non-resident independent agency do not constitute "Fees for Technical Services" (FTS) under Article 14 (Independent Professional Services) of the DTAA, nor do they qualify as business income, sans fixed base or PE in India. Additionally, Articles 14 and 15 apply to both individuals and entities, and Article 22 (Other Income) is not applicable where specific provisions with respect to nature of income exists in the relevant DTAA and such specific provisions take precedence over general ones.

02 Indirect Tax

Judgements & Updates

Gujarat High Court ruled that date of filing of first refund application to be taken into consideration for the purpose of limitation period of 2 years

Brief Facts

- Darshan Processors ('Petitioner') is a partnership firm engaged in textile dyeing and printing. Petitioner filed refund application in Form RFD-01A online and thereafter manually before State GST Authorities (due to refund module being unavailable online) on account of refund of unutilized Input Tax Credit due to inverted duty structure. After a while, Petitioner came to know that refund application was required to filed before Central GST Authorities and accordingly, petitioner requested State GST Authorities to transfer the files and subsequently said files were transferred to Central GST Authorities;
- Central GST Authorities issued a deficiency memo to Petitioner for furnishing relevant information/ documents. Petitioner provided all the information as required. Subsequently, Central GST Authorities issued a Show Cause Notice ('SCN') to the petitioner stating that the time limit for filing refund application is two years from due date of filing return under section 39 of the CGST Act and accordingly refund application filed is time-barred. Petitioner responded that delay was due to some ambiguity in ascertaining the relevant jurisdiction, and original refund application was timely filed. However, Central GST Authorities rejected the refund claim;
- Aggrieved by the order, Petitioner preferred the present petition before Hon'ble Gujarat High Court.

Observations

- Hon'ble Gujarat High Court observed that, it is apparent that the petitioner has filed refund application within the period of two years and subsequently, fresh refund application was filed after receipt of deficiency memo;
- High Court further relied on the decision of same Court in case of M/s LA-Gajjar Machineries Private Limited and held that original refund application filed by the Petitioner would be considered as a proper refund application within the period of limitation and fresh refund application filed pursuant to the deficiency memo, would be considered as in continuation of first refund application.

Decision

- Petition allowed and accordingly, Impugned Order rejecting the application for refund filed by the Petitioner on the ground of limitation was quashed and set aside;
- Proper Officer to pass fresh order on merits in accordance with law within 12 weeks of receipt of present order.

[Darshan Processors vs. Union of India (2024) 21 Centax 342 (Guj.)-GST, dated 26 July 2024]

Maharashtra Appellate Authority for Advance Ruling ruled that application for rectification of mistake apparent from record does not envisage rectification of an error of judgment or a different interpretation

Brief Facts

- M/s Puranik Builders Private Limited ('Appellant') is engaged in the construction and sale of residential apartments, filed an application before the Advance Ruling Authority (AAR) seeking clarification on whether "other charges" namely 'club house maintenance', 'Infrastructure charges' etc. collected from flat buyers would be considered as part of construction services. The AAR ruled that "other charges" would not be classified under construction services and would attract 18% GST;
- Aggrieved by the order of AAR, Appellant appealed to the Appellate Authority for Advance Ruling (AAAR), which partially modified the AAR's ruling and held that "other charges" that are inextricably linked to supply of construction services forming part of bundled services related to construction would attract 12% GST (namely water connection charges, electric meter installation charges, development charges, legal fees etc.) but charges that do not meet the criteria for bundled services (such as club house maintenance, advance maintenance etc.) would be treated as independent supplies and taxed according to their respective classification. Further, the appellant was also directed by AAAR to refund any excess GST collected from customers, emphasizing equity and justice. Aggrieved by the order of AAAR, Appellant filed the application for rectification of the AAAR's order, contending errors in judgment.

Observations

- AAAR relied on various cases and observed that 'mistake to be rectified' must be one that is 'apparent' from record and not a debatable point of law or disputed fact. And 'apparent' is that it must be something which appears to be so ex-facie that there cannot be any argument or debate in that regard and accordingly rectification of mistake does not envisage rectification of an alleged error of judgment or a different interpretation;

- AAAR further noted that GST Legislation does not restrict authority in any manner from giving their rulings on any facts presented before them - Since, it is not in dispute that appellant have collected excess tax from their customers, therefore, Appellate Authority deemed it completely proper and legal by ruling that said excess GST amount should be refunded back to customers from whom such excess amount have been collected by appellant.

Decision

- The application for rectification rejected and ruling by the AAAR upheld as proper and legal.

[M/s Puranik Builders Limited (2024) 21 Centax 225 (App. A.A.R. - GST - Mah.) dated 22 July 2024]

03 Transfer Pricing

HC dismisses Revenue's appeal against allowing custom duty adjustment w.r.t. import of watches

Outcome: In favour of the assessee

Category: Adjustment related to custom duty

Facts of the case:

- Swatch Group [India] Pvt. Ltd. ("the Taxpayer") is distributor of luxury watches manufactured by Swatch Group brands, in India. The company also provides customer services in the nature of after sales services to customers.
- During the year under consideration, the Taxpayer imported luxury watches from its AE and sold them to its non- AE entities in India. The aforesaid transaction is benchmarked using Resale Price Method ("RPM") as MAM.
- The Transfer Pricing Officer (TPO) accepted RPM but deemed the initial comparables inappropriate due to the product's unique nature. Subsequently, the TPO conducted a revised search, selecting predominantly Italian comparables and taxpayer as the tested party.
- However, the taxpayer contended before ld. CIT that the selection of foreign comparables being the Indian Company as tested party is bad in law.
- Further, the taxpayer also highlighted, before the Ld. CIT, the need to advocate reasonable adjustments owing to significant differences in terms of taxes, duties etc to establish comparability with the comparables

- The ld. CIT upheld TPO selection of foreign comparables considering the lack of information available on the comparables present in India. However, ld. CIT allowed adjustments to account for differences in custom duty rate prevalent in India vis a vis Italy to enhance comparability.
- Aggrieved by the same, the revenue filed an appeal before the Tribunal.
- The ITAT supported the ld. CIT reasoning for allowing custom duty adjustment to account for differences due to different geographical location and accordingly, dismissed revenue's appeal.

HC Ruling

Following observation were drawn by the Hon'ble HC:

- Delhi HC upheld **ITAT observation that the taxpayer sufficiently and reasonably** justified the benchmarking of the transaction by restricting custom duty to 5% while computing gross operating mark-up of the taxpayer basis nil or negligible custom duty applies in comparables.
- Delhi HC opined that the comparability in any international transaction should be judged considering the significant factors including FAR analysis and conditions prevailing in the market *(customs duty in the instant case)* as envisaged in the Rule 10B(2) of the Indian Transfer Pricing Regulation.
- Accordingly, in light of the above, Delhi HC upheld ITAT's decision of dismissing revenue's appeal that adjustments should be confined to comparables and supported ITAT's reliance on Rule 10B(1) which do not restrict adjustment in the profit margin of the tested party.

Nangia's Take-

- The instant ruling brings forth and accentuates a very significant issue on comparability adjustment during benchmarking of an international transaction. From the instant case, it can be indisputably inferred that the differences arising in the profitability of comparables on account of varying geographical locations and other external factors should not be ignored.
- Moreover, the judgment distinctly articulates that the scope of permissible adjustments extends beyond mere comparables. It authorizes the application of necessary and appropriate adjustments to the margins of the tested party, with the aim of further refining and enhancing the comparability of the analysis.

Sources:

Swatch Group India Pvt Limited [TS-341-HC-2024(DEL)-TP]
Swatch Group India Pvt Limited [TS-86-ITAT-2020(DEL)-TP]

04 Regulatory

Updates Under Companies Act, 2013 ("ACT")

Delegation of Power to Register Foreign Companies to Central Registration Center ('CRC')

The Ministry of Corporate Affairs ('MCA') vide notification dated 12 August, 2024 introduced 'Companies (Registration of Foreign Companies) Amendment Rules, 2024' pursuant to which foreign companies are required to file Form FC-1 for the registration of their Project office/Branch office/ Liaison Office, as the case may be with Registrar, CRC i.e., a dedicated department of Registrar of Companies ('ROC') for incorporations only w.e.f., 9 September, 2024.

Prior to this amendment, the applications for setting up of the PO/LO/BO in India were submitted with Registrar of Companies, Delhi ('ROC, Delhi').

Facilitation of Limited Liability Partnership's ('LLPs') Exit via Centre for Processing Accelerated Corporate Exit (C-PACE)

The MCA vide notification dated 5 August, 2024 introduced 'Limited Liability Partnership (Amendment) Rules, 2024' which came into effect from 27 August, 2024. The said amendment adds references to the C-PACE to the process of striking off defunct LLPs. Accordingly, the LLPs which have not been carrying on any business or operation for a period of one year or more, are now required to submit their strike-off applications to C-PACE. This process is intended to streamline the exit process for defunct LLPs and reduce the time taken thereby enabling a faster strike-off process.

Notification of Companies (Adjudication of Penalties) Amendment Rules, 2024

The MCA vide its notification dated 5 August 2024, has released rules may be called the Companies (Adjudication of Penalties) Amendment Rules, 2024. The same shall come in force by 16 September 2024.

On the commencement of the said Rules, all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer (AO) and Regional Director (RD) under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose.

Further, in case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the AO shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform. In case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform.

Updates Under Reserve Bank Of India (RBI)

Frequency of reporting of credit information by Credit Institutions ('CI') to Credit Information Companies ('CIC')

The RBI vide notification dated 8 August, 2024 (effective from January 1, 2025) revised timelines for submission data to CICs in the following manner:

- CICs and CIs update information on a fortnightly basis (i.e., as on 15th and last day of the respective month). The fortnightly submission of credit information by CIs to CICs shall be ensured within seven (7) calendar days of the relevant reporting fortnight.
- Further, CICs are required to ingest credit information data received from the Cis within five (5) calendar days of its receipt from the CIs.

Further, CICs are required to provide a list of CIs which are not adhering to the fortnightly data submission timelines to Department of Supervision, Reserve Bank of India, Central Office at half yearly intervals (as on March 31 and September 30 each year) for information and monitoring purposes.

Review of Master Direction - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017 (Master Directions)

The RBI vide notification dated 16 August 2024 amended the existing Master Directions. The amendments were aimed at plugging loopholes in the Master Directions.

- **Credit Guarantee Provisions -** Further restricting credit risk transfer from lenders to platform. Also restricted cross selling of insurance products which is in the nature of credit enhancement or credit guarantee.
- **Streamlined Funds Transfer –** The funds transfer mechanism have been clearly specified. Now, funds from the lenders' bank accounts shall only be transferred to the Lenders' Escrow Account and shall only be disbursed to the specific borrower's bank account after ensuring compliance to the paragraph 8(3) of the Master Directions. The borrower shall transfer the amount towards repayment of loan from his bank account to the Borrowers' Escrow Account, from where the funds shall only be transferred to the respective lender's bank account. Further, funds from 'Lenders' Escrow Account' shall not be used for repayment of loans and funds from 'Borrowers' Escrow Account' shall not be used for disbursement of loans.

  All in all, funds transferred into the Lenders' Escrow Account and Borrowers' Escrow Account shall not remain in these Escrow Accounts for a period exceeding 'T+1' day.

- Provisions for Collecting Personal Data with Consent.
- Enhanced disclosure norms for NBFC-P2P.
- Funds not to be utilised for any purposes other than mentioned.
- Other provisions with respect to enhancing transparency, clear pricing guidelines and appropriate disclosures w.r.t. name of NBFC.

Updates Under Competition Commission Of India ('CCI')

CCI approves acquisition of shareholding in Shriram Housing Finance Limited by Mango Crest Investment Ltd.

The CCI has approved the acquisition of shareholding in Shriram Housing Finance Limited by Mango Crest Investment Ltd. Mango Crest Investment Ltd. is a company incorporated in the Republic of Mauritius. The principal business activity of the Acquirer is undertaking investment holding activities. Shriram Housing Finance Limited is a housing finance company registered with the National Housing Bank.

CCI approves combination involving acquisition by Advent (through Rasmeli) in Apollo Healthco, acquisition by Apollo Healthco in Keimed and merger of Keimed into Apollo Healthco

Entities involved:

- **Rasmeli Limited (Rasmeli)** - is an entity incorporated in Cyprus with the principal activity of holding investments and has no activities or presence in India. Rasmeli is indirectly held by certain entities which in turn will be held by certain funds/ limited partnerships, which are ultimately managed by Advent International, L.P. (Advent). Advent focuses on investments in certain sectors, including business and financial services, healthcare, industrial, retail, consumer and leisure and technology.
- **Apollo Hospitals Enterprise Limited (AHEL)** is inter alia engaged in the business of providing the following services in India: (i) Tertiary and secondary healthcare services including operating & managing hospitals; (ii) Providing hospital project consultancy services, branding & operations management support services for healthcare providers; and (iii) Providing retail healthcare services which includes operating primary healthcare clinics, birthing centres, short stay surgery centres, sugar management centres, dental & dialysis centres and diagnostic services.

- **Apollo Healthco Limited (AHL/ Apollo Healthco)** operates the "Apollo 24|7" platform which helps users/customers to inter alia book doctor appointments and diagnostic tests. AHL also operates in the pharmacy distribution segment.
- **Keimed Private Limited (Keimed)** is inter alia involved in the business of: (i) wholesale distribution of pharmaceutical products, OTC products, medical equipment, surgical products, scientific apparatus and equipment for hospitals and FMCG; and (ii) marketing and sale of pharmaceutical products.

Manner of Execution

- **Rasmeli Investment**: Rasmeli proposes to make a minority investment in AHL over two tranches along with certain rights in AHL.
- **AHL's investment in Keimed**: AHL proposes to acquire certain shares in Keimed through primary and secondary transactions in a phased manner;
- **Keimed's merger with AHL**: Within a specified period from the Rasmeli Investment, Keimed and AHL would take necessary steps towards the merger of Keimed into AHL;
- **AHEL additional investment in AHL**: Prior to the Rasmeli Investment, AHEL proposes to subscribe to certain equity shares of AHL pursuant to a preferential allotment and a bonus issuance of fresh equity shares by AHL.

CCI approves acquisition of shareholding in each of Invesco Asset Management (India) Private Limited and Invesco Trustee Private Limited by IndusInd International Holdings Limited

The combination pertains to the acquisition of 60% shareholding in each of Invesco Asset Management (India) Private Limited (Invesco AMC) and Invesco Trustee Private Limited (Invesco Trustee) by IndusInd International Holdings Limited (IIHL).

IIHL will be holding the investment through its wholly owned and controlled subsidiary, IIHL AMC Holdings Limited (IIHL AMC), which has been incorporated specifically for the purposes of Proposed Combination.

Orders/Judgements

Competition Commission of India

Order in the Case of Section 26(2) of the Competition Act, 2002

Background of the Case:

The case, filed by Mr. Vijay Halder under Section 19(1)(a) of the Competition Act, 2002, involved allegations against five individuals and the Deputy Medical Commissioner of ESIC, claiming cartelization in the procurement of medicines by ESIC. The Informant alleged that this cartel arrangement has led to inflated prices for medicines and healthcare products, resulting in significant financial losses for the public exchequer and increased healthcare costs for citizens. The ESIC is responsible for procuring medicines for its extensive network of hospitals and clinics across India through an e-tendering process.

Allegations by the Informant:

The Informant alleged that there existed a cartel among the five named individuals, officials of ESIC, and 29 pharmaceutical companies. This cartel arrangement inflated prices of medicines by approximately 40%, leading to an annual loss of around ₹400 crores for the government. Further, the guidelines and pricing structures for tenders are manipulated to favor these companies, resulting in overpricing.

In view of the above, the Informant requested an investigation into these practices, cancellation of existing tenders, and the establishment of a fair bidding process.

CCI's Findings:

The CCI found that the Informant did not provide sufficient evidence to support the allegations. Despite being given multiple opportunities to submit detailed information regarding the alleged anti-competitive conduct, the Informant failed to do so. The CCI noted that the Informant's claims were primarily based on vague allegations and a single price comparison that did not substantiate a prima facie case of contravention of Section 3(3) of the Act. Consequently, the CCI decided to close the case, stating that no grounds for relief were established.

05

Compliance Calendar

Direct Tax

Due dates	Particulars
7th September 2024	Due date for deposit of Tax deducted/collected for the month of August, 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 August 2024.
14th September 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of July, 2024.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of July, 2024
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of July, 2024
	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of July, 2024 (in case of specified person)

Direct Tax

15th September 2024	Due date of second instalment of advance tax for the assessment year 2024-25.
30th September 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of August, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of August, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of August, 2024
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S for the month of August, 2024 (in case of specified person)
	Due date for filing of audit report under section 44AB for the assessment year 2024-25 in the case of a corporate-assessee or non-corporate assesse (who is required to submit his/its return of income on October 31, 2024)

Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in September 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 turn-over 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 August 2024- 11 September 2024
2	Monthly Return Form GSTR-3B	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turn-over up to INR 5 crores who have not opted for QRMP Scheme	Monthly	20th day of succeeding month	For Tax Period August 2024- 20 September 2024
3	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13th of the succeeding month	For Tax Period August 2024- 13 September 2024

Indirect Tax

4	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GS	Monthly	10th of the succeeding month	For Tax Period August 2024- 10th September 2024
5	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 August 2024- 10 September 2024
6	QRMP Scheme Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme	Monthly	13th day of the Subsequent month following the end of quarter	For Tax Period August 2024- 13 September 2024

Indirect Tax

7	QRMP Scheme Form GSTR-3B (Monthly return)	• Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1[i] states and union territories • Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2[ii] states and union territories	Quarterly	22nd day of the subsequent month following the end of quarter 24th day of the subsequent month following the end of quarter	For Quarter ending September 2024- 22 October 2024 For Quarter ending September 2024- 24 October 2024
8	Form ITC - 04	Furnishing declaration for goods dispatched to a job worker or received from a job worker	Quarterly	25th of the month succeeding the quarter	For Tax Period August 2024- 25 September 2024

[i]**Group 1 states -** Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh or the Union Territories of Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep

[ii]**Group 2 states** - Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha or the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh, Delhi

Regulatory

Segment	Particulars	Due Dates
ECB Borrowers	ECB Return (ECB-2)	7th September, 2024
Annual General Meeting	Every company has to conduct its AGM	On or before 30th September, 2024
KYC of directors	DIR-3 KYC	30th September, 2024

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