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DIRECT TAX REVIEW
MARCH 2020

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SUPREME COURT RULINGS

Conversion of Firm into a company does not have any impact on its claim of deduction u/s 80-IA subject to satisfaction of conditions

Facts

The assessee, a firm, entered into an agreement with the Government of Rajasthan for construction of road and collection of road/toll tax. The construction of the road was completed and later on the firm was converted into a private limited company. For the relevant AY, the assessee Company claimed deduction u/s 80-IA of the Income Tax Act, 1961. The AO declined that claim of the assessee company stating that the agreement having been entered into by the erstwhile firm, the now existing assessee company had not entered into any agreement with the government; the decision was reversed by the CIT(A), Udaipur, further upheld by the ITAT. The High Court while upholding the view taken by CIT(A) and the ITAT, dismissed the appeal.

Ruling

The Hon'ble Supreme Court upheld the order granting sec 80-IA deduction to the assessee company for AY 2002-03 holding that assessee company succeeding erstwhile partnership firm satisfies the condition u/s 80IA(4)(i)(b), hence deduction could not be denied. The assessee company had undertaken maintaining & operating activities of the infrastructure facility after being developed, thus satisfying the condition under the said section, as also holds that the original agreement entered into with the firm automatically stood converted in favour of the assessee company. The SC affirmed the view taken by the CIT(A) and allowed the deduction u/s 80-IA.

Source:

SC, in M/s Chetak Enterprises Pvt. Ltd. vs. CIT

Civil Appeal No. 1764, dated March 06, 2020

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Where AO of searched person and person covered u/s 153C is the same, recording in Satisfaction note of documents seized having belonged to the other person is sufficient compliance for initiation of proceedings u/s 153C

Facts

Post search operation u/s 132(1), notice was issued to the assessee u/s 153C. The ITAT allowed the appeal preferred by the assessee and held that the satisfaction note recorded under Section 153C, i.e., a third party, was invalid. The HC set aside the order passed by the learned ITAT.

Ruling

The Hon'ble Supreme Court distinguishing the facts of the present case observed that where where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the

requirement of Section 153C of the Act is fulfilled. On examination of the satisfaction note recorded by the Assessing Officer on merits, the Court was in agreement with the High Court that requirements of Section 153C were duly fulfilled by the AO before initiation of proceedings. Matter was rightly referred back the case to Ld. ITAT by the HC to decide and dispose of the appeals afresh on merits.

Source:

SC in M/s Super Mall Pvt. Ltd. vs.PCIT

Civil Appeal No. 8449-50/2017, dated March 06, 2020

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Excess depreciation claimed inadvertently will not be considered as 'tax evasion' attracting additional tax under erstwhile sec 143(1)(a)

Facts

The assessee filed return on 30-12-1991 for the AY 1991-92 showing a loss amounting to INR 427 crores. Due to a bonafide mistake, the assessee claimed 100% depreciation on WDV of the assets instead of 75%. Under the un-amended section 32(2) of the Income Tax Act, 1961 the assessee was entitled to claim 100% depreciation. However, after the amendment the depreciation could only be 75%. An intimation under Section 143(1)(a) of the Income Tax Act, 1961 was issued by the AO disallowing 25% of the depreciation, restricting the depreciation to 75% and additional tax amounting to INR 8 crore was demanded. The assessee filed an application for rectification u/s 154 and a petition u/s 264 against the demand of additional tax stating that even after allowing only 75% of depreciation the income of the assessee remained to be in loss to INR 343 crores. Revision petition was dismissed by the CIT and further HC also rejected the assessee's special appeal upholding the demand.

Ruling

The Hon'ble Supreme Court allowed assessee's appeal, reversing Rajasthan HC Ruling, setting aside additional tax demand u/s 143(1)(a) on grounds that the said section could not be applied 'mechanically' without establishing that the assessee had willfully filed an incorrect return to evade tax. The object of the said section was prevention of tax evasion and to persuade the assessee to file returns carefully, to avoid mistakes, states that burden of proof is on Revenue to establish that the assessee has, in fact, attempted to evade tax. Further, SC stated that in claiming of 100% depreciation, there was no intention to evade tax and the said claim was only a bonafide mistake.

Source:

SC in Rajasthan State Electricity Board Jaipur vs.Union of India

Civil Appeal No. 8590 of 2010, dated March 20, 2020

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HIGH COURT RULINGS

Withholding of refund to assessee on unjustifiable reasons calls for imposition of costs on the department for period of delay

Facts

The petitioner is engaged in the business of manufacturing and trading of telecom network equipment. After various notices, reply and direction, the refund as per the communication under Section 143(1) for the AY 2017-18 was 51 cr. and for the AY 2018-19 was 275 cr. There was an amount outstanding of approximately INR 5 cr. against the petitioner and for the said reason, the refund was withheld. AO was of the view that, before completion of scrutiny assessment, grant of refund would likely to adversely affect the collection of revenue as

huge demand is likely to be raised in scrutiny assessments and in accordance with the powers conferred under the provisions of section 241A, withheld the refund due for the A.Y. 2017-18 and 2018-19 till the finalization of scrutiny assessment.

Ruling

HC quashed the order under section 241A and issues a show cause notice on the concerned AO/PCIT for imposing costs for withhold the refund finding the reason unjustifiable. Further, directing issuance of INR 300 cr. refund for AY 2017-18 and 2018-19 along with statutory interest within 4 weeks to the assessee. HC observed that there is no reason recorded for coming to the conclusion that grant refund is likely to adversely affect the revenue; as such the order is unsustainable. Mere pendency of proceedings under section 143(2) in itself is not enough to withhold the refund. Hence appeal is decided in the favour of the asessee.

Source:

Punjab & Haryana HC in Huawei Telecom (India) Company Pvt. Ltd. vs. Union of India

App No. 2698 of 2020, dated March 6, 2020

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Charitable institution organizing 'Garba' events eligible for Section 11 exemption.

Facts

The assessee (a Charitable Institution) filed its ROI declaring total income as Nil after claiming an exemption under Section 11 of the Act. The assessee had received total income of INR 5.48 cr. out of which INR. 4.37 cr. is from organizing garba events. As per the AO, almost 79.85 percent of its income from garba events during Navratri festivals constituted business income and as per the amended provision of Section 2(15) of the Act, the activities of the assessee could not be said to be advancement of any other object of general public utility and, therefore, the assessee was not liable to claim the benefit under Sections 11 and 12 respectively of the Act, more particularly, in view of Section 13(8) of the Act and made addition of INR 58 lacs on account of the interest on FSF fund and INR 1.67 cr. on account of anonymous donation. Revenue being dissatisfied with the relief granted by the CIT(A), preferred an appeal before the Appellate Tribunal, which was dismissed.

Ruling

HC observed that both CIT(A) and ITAT had taken the view that profit making is not the driving force or objective of the assessee, which is also evidenced by the fact that any income generated by the assessee from events like Garba is utilized fully for the purpose of the objects of the assessee. It thus held that activities like organizing the event of Garba including the sale of tickets and issue of passes etc. could not be termed as business, granting relief and exemption to the assessee.

Source:

High Court, Gujarat in CIT-Exemptions vs. United Way of Baroda

App No. 95 of 2020 , dated March 10, 2020

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Deduction under section 10B is to be allowed before set-off of unabsorbed depreciation.

Facts

The assessee was a company (100% EOU) registered under the Companies Act, 1956 is engaged in the manufacturing of Starter Motors and Alternator and development of computer software.

- For the AY 2004-05, the assessee filed a return, declaring the taxable income as Nil after claiming deduction of INR. 29 cr under section 10B of the Act. Profit of INR 1.55 cr. was set off against the brought forward unabsorbed depreciation loss of AY 2001-02. The return was selected for scrutiny and the AO had adjusted the brought forward unabsorbed depreciation loss relating to the AY 2001-02 to the extent of INR 22 cr. and to the AY 2002-03, amounting to INR 8.76 cr. against the business profits before allowing the deduction claimed by the assessee under Section 10B of the Act.
- Second issue taken up was that the deduction under section 10B was to be granted prior to the set off of the brought forward unabsorbed depreciation loss of the earlier years. The AO computed the assessee's total income by first setting off the brought forward and unabsorbed depreciation loss of the earlier years thereby leaving assessee in a position where it could not claim any deduction under section 10B as there was no income after the set off.

Ruling

Relying on the ruling of the Hon'ble Apex Court in CIT vs. Yokogawa India Ltd., wherein it has been made clear that the decision made in the said judgment pertains to Section 10A would be equally applicable to cases governed by the provision of Section 10B also, the HC observed that the Apex Court had specifically held that, at the stage of the aggregate of the incomes under other heads, the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be a premature for application. The deduction under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the Assessee from the gross total income. Ultimately, the first issue was settled in favor of the assessee.

For second issue, HC held that the deduction under section Section 10A is to be allowed before set off of brought forward losses and unabsorbed depreciation. The Appeal was therefore allowed and the Substantial Question of Law raised in the appeal is answered in favour of the assessee with no costs.

Source:

Madras HC in Ms Comstar Automative Technologies Pvt. Ltd. vs. DCIT App No. 228 of 2011 , dated March 18, 2020

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Discrepancies observed in cash book to be taken note of during assessment, not reason to initiate criminal prosecution u/s 276D

Facts

Assessee Company's return was selected for scrutiny and notice under section 143(2) of the Act was issued on 09-11-2016 asking the petitioner to produce the cash book. The Accountant produced the same on 27-12-2016 and took back the cash book. Further, summons was issued to the MD to produce the cash book on 28-12-2016. The books were again produced on 21-02-2017. A show cause notice for prosecution under section 276D of the Act was issued on 23-02-2017 for non-production of the cash book. AO was of the view that the cash book was produced and accountant inadvertently took it back without any authority or consent of the officials/officers of the respondent. The AO contended that there was not only non-compliance of Section 142(1) of the Act, but there were huge contradictions in the stands taken by the petitioners at different

level. Further argued that the recast and reprinted cash book given under Section 133(6) of the Act on 21-02-2017 was not in compliance with the provisions of Section 142(1) of the Act.

Ruling

HC held that the case in hand did does not fall within the ambit of Section 272A(1)(d) of the Act as there is no willful non production of cash books as the same had already been produced twice on 27-12-2016 and 21-02-2017. Thus, even before the said show cause notice, the cash book had been produced. HC stated whether the cash book produced subsequently was worth reliance or not is to be seen in the assessment proceedings, but the same cannot be made basis for initiating criminal prosecution. Relying on decision of the Hon'ble Supreme Court in Pepsi Foods Ltd.'s case, the impugned complaint and the summoning order were quashed in the favour of the assessee.

Source:

Punjab & Haryana HC in M/s Anubhuti Cold Chains Pvt. Ltd. vs. ACIT
App No. 18597 of 2017, Date of pronouncement: February 28, 2020

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ITAT RULINGS

Transfer of property through GPA by assessee in child's favour will not be considered as 'transfer' and hence no capital gains will attract.

Facts

The assessees are husband and wife and had purchased a land through agreement of sale cum General Power of Attorney (GPA) wherein sale consideration of INR. 40 Lacs was mentioned and was subsequently registered in the name of assessee's children who were all students without any source of income of their own. The AO observed that the value adopted by the SRO is more than the sale consideration declared by the assessee's. Hence, the AO held that provisions of Section 50C of Act are applicable and accordingly issued SCN to both the assessees.

Ruling

ITAT held that by virtue of the said agreement of sale cum GPA, the assessee's have acquired a right in the said property but have not become absolute owners of the property and by virtue of the Sale Deed dt.21-07-2008, the original owners through the GPA holders had sold the property to the children of the assessee's before us. Thus, it is seen that there is actually no sale of property by the assessee's and the Sale Deed has been executed by the original owners through GPA holders to the children of assessee's. Therefore, there is no transfer of property by the assessee's; in fact it is acquisition of property by the assessee's in the names of their children and it is not the case of transfer or gain on sale of property. In view of the same, the grounds of appeal raised by the assessee's are accordingly allowed.

Source:

ITAT Hyderabad in Smt. R. Mangala Devi & Sh. Ramesh K. Jain vs. ITO
App No. 772 & 773 of 2018 , dated March 05, 2020

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Issue of redeemable debentures to sister concern, not considered as 'loan' for purpose of deemed dividend under section 2(22)(e)

Facts

The assessee is engaged in the business of manufacturing of engineering goods and is a shareholder in number of companies and has beneficial share holding in two companies namely M/s Jasubhai Business Services Pvt Ltd (23.75%) and M/s. ABM Steels Pvt. Ltd. (26.76%). The AO observed that assessee has taken loan of INR. 26.23

lacs from M/s ABM Steels and as per the Balance Sheet, M/s. ABM Steels Pvt. Ltd. have an accumulated reserve of INR. 13.76 cr. as on 01-04-2012 and INR. 15.88 cr. as on 31-03-2013. Considering the above facts, AO observed that M/s. ABM Steels Pvt. Ltd. is not a company in which public is substantially interested and assessee is holding beneficial interest and voting right. M/s ABM Steels Pvt. Ltd. is having accumulated reserves, therefore he invoked the provision of section 2(22)(e) of the Act by relying on various case law. He further observed that assessee in his reply submitted that inter corporate loan of INR. 9 lacs was repaid during the year and with regard to other portion of amount, it is for the purchase of machinery, therefore the addition will not fall under section 2(22)(e) of the Act. However, AO rejected the contention of the assessee and proceeded to make addition u/s 2(22)(e) of the Act.

Ruling

Mumbai ITAT holds that issue of redeemable debentures by assessee company to its related entity which was subsequently redeemed by it will not be deemed as dividend under section 2(22)(e). Further, explicates that the transaction even though is a private placement but it cannot be considered as a loan transaction. The securities were separate scripts and having standalone capital liability, which could not be equated with loan, which is a current liability. ITAT further explained that the provisions of section 2(22)(e) of the act will be attracted only when loans and advances take place in direct issue of dividends. In transaction involving payment by assessee's related concern on behalf of the assessee for purchase of machinery, ITAT took note of assessee's submission that the sister concern had purchased the similar machinery from the assessee in the subsequent AY and it is a back to back purchase of machinery, thus holding that it was a business transaction, which could not be termed as a loan and advance so as to attract section 2(22)(e) provisions.

Source:

ITAT Mumbai in ACIT vs. M/s Jasubhai Engineering Pvt. Ltd.

App No. 7519 of 2016, dated March 06, 2020

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CIRCULARS & NOTIFICATIONS

Modification in the method of tax collection under section 192- Corrigendum to Circular No. 4/2020 dated January 16, 2020

Master Circular on withholding taxes on Salaries has been modified to include, *"No tax, however, will be required to be deducted at source in a case unless the estimated salary income including the value of perquisites is taxable after giving effect to the exemptions, deductions and relief as applicable".* This comes in replacement of the earlier text, which read as *'No tax however, will be required to be deducted at source in a case unless the estimated salary income including the value of perquisites for the Financial Year exceeds INR. 2.50 lacs or INR. 3 lacs or INR. 5 lacs, as the case may be, depending upon the age of the employee'.*

Source: Circular No.275/192/2019, dated March 5, 2020

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Circular w.r.t. revision of interest rates for small saving schemes

In exercise of powers conferred by Rule 9(1) of the Government Saving Promotion General Rules, 2018, the rates of interest on various small savings schemes for the first quarter of financial year 2020-21 starting

from April 1, 2020 and ending June 30, 2020 have been revised vide Office Memorandum which are as under:

Instruments	Rate of Interest		Compounding frequency
	Jan 1 to Mar 31	Apr 1 to Jun 30	
Savings Deposit	4	4	Annually
1 year TD	6.9	5.5	Quarterly
2 year TD	6.9	5.5	Quarterly
3 year TD	6.9	5.5	Quarterly
5 year TD	7.7	6.7	Quarterly
5 year TD	7.2	5.8	Quarterly
Senior Citizen Savings Scheme	8.6	7.4	Quarterly and paid
Monthly Income Account	7.6	6.6	Quarterly and paid
National Saving Schemes	7.9	6.8	Annually
PPF Scheme	7.9	7.1	Annually
KVP	7.6 (will mature in 113 months)	6.9 (will mature in 124 months)	Annually
Sukanya Samriddhi Account Scheme	8.4	7.6	Annually

Source: Circular No.1/4/2019, dated March 31, 2020

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Order under section 119 of the Act on issue of certificates for lower rate/nil deduction/collection of TDS or TCS under section 195, 197 and 206C(9)

Due to outbreak of the pandemic Covid-19 virus, there is a severe disruption in the normal working of almost all sectors, including functioning of the Income Tax Department. In such a scenario, the applications filed by the payees under sections 195 and 197 of the Act for lower or nil rate of deduction of TDS and applications by buyers/ licensees/ lesses under section 206C(9) of the Act for lower or nil rate of collection of TCS for FY 2020-21, have not been attended in a timely manner by the TDS/TCS-Assessing Officers, causing hardship to tax payers. Considering the constraints of the Field Officers in disposing of the applications for lower or nil rates of TDS/TCS and to mitigate hardships of payees and buyers/licensees/lessees, the CBDT has issued the following directions/clarifications by exercise of its powers u/s 119 of the Act:

(a) All the assessees **who have filed application** for lower or nil deduction of TDS/TCS on the Traces Portal for F.Y.2020-21 and whose applications are pending for disposal as on date and they have been issued such certificates for FY 2019-20, then such certificates would be applicable till 30-06-2020 of F.Y. 2020-21 or disposal of their applications by the Assessing Officers, whichever is earlier, in respect of the transaction and the deductor or collector if any, for whom the certificate was issued for F.Y. 2019-20.

(b) In cases where the assessee's **could not apply** for issue of lower or nil deduction of TDS/TCS on the Traces Portal for the FY 2020-21, but were having the certificates for F.Y. 2019-20, such certificate will be applicable till 30-06-2020 of F.Y. 2020-21. However, they need to apply at the earliest giving details of the transactions and the Deductor/Collector to the TDS/TCS Assessing Officer as per procedure laid down in sub para (c) below, as soon as normalcy is restored or 30-06-2020 whichever is earlier.

(c) In cases where the assessee **has not applied for issue** of lower or nil deduction of TDS/TCS at the Traces Portal, and he is also not having any such certificate for FY.2019-20, a modified procedure

for application and consequent handling by the TDS/TCS Assessing Officer is laid down which is enclosed as Annexure.

(d) On payments to Non-residents (including foreign companies) having Permanent Establishment in India and not covered by (a) and (b) above, tax on payments made will be deducted at the rate of 10% including surcharge and cess, on such payments till 30-06-2020 of F.Y. 2020-21, or disposal of their applications, whichever is earlier.

Source: Order No.275/25/2020, dated March 31, 2020

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Several relief measures relating to Statutory and Regulatory compliance matters across Sectors in view of COVID-19 outbreak

The FM, Smt. Niramla Sitharaman, announced much-needed relief measures in areas of Income Tax which are as under:

- Extend last date for Income tax returns for (FY 18-19) from March 31, 2020 to June 30, 2020.
- Aadhaar-PAN linking date to be extended from March 31, 2020 to June 30, 2020.
- Vivad se Vishwas scheme: No additional 10% amount, if payment made by June 30, 2020.
- Due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents and time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between March 20, 2020 to June 29, 2020 shall be extended to June 30, 2020.
- For delayed payments of advanced tax, self-assessment tax, regular tax, TDS, TCS, equalization levy, STT, CTT made between March 20, 2020 and June 30, 2020, reduced interest rate at 9% instead of 12 %/18 % p.a. be charged for this period. No late fee/penalty shall be charged for delay relating to this period.
- Necessary legal circulars and legislative amendments for giving effect to the aforesaid relief shall be issued in due course.

Source: Press Release, dated March 24, 2020

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No Extension of the Financial Year

There is a fake new circulating in some section of media that the Financial Year has been extended. A notification issued by the Government of India on March 30, 2020 with respect to some other amendments done in the Indian Stamp Act is being misquoted. There is no extension of the Financial Year.

The Finance ministry said that a notification has been issued by the Department of Revenue, Ministry of Finance on March 30, 2020 which relates to certain amendments to the Indian Stamp Act. It pertains to putting in place an efficient mechanism for collection of Stamp Duty on Security Market Instruments transactions through Stock Exchanges or Clearing Corporation authorized by Stock Exchanges Depositories. This change was earlier notified to be implemented from April 1, 2020.

However, due to the prevailing situation, it has been decided that the date of implementation will now be postponed to July 1, 2020.

Source: Press Release, dated March 30, 2020

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Transactions of certain notified securities not regarded as transfer

In exercise of the powers conferred by the sub-clause (d) of the clause (viiab) of section 47 of the Income tax Act, 1961. The CG hereby notifies the following securities for purpose of the said sub-clause, namely:

- Foreign currency denominated bonds
- Unit of a Mutual Fund
- Unit of a business trust
- Foreign currency denominated equity share of a company
- Unit of Alternative Investment Fund

which are listed on a recognized stock exchange located in any International Financial Services Centre in accordance with the regulations made by SEBI under the Securities and Exchange Board of India, 1992 or the IFSC Authority under the International Financial Services Centers Authority Act, 2019, as the case may be.

Source: CBDT Notification No. 16/2020, dated March 5, 2020

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Vivad Se Vishwas Scheme

VSV scheme was announced during the Union Budget, to provide for dispute resolution in respect of pending Income tax litigations. Pursuant to the budget announcement, the Direct tax Vivad se Vishwaas Bill, 2020 was introduced on February 5, 2020 in the Lok Sabha. The objective of VSV is to inter alia reduce pending Income tax litigation, generate timely revenue for the government and benefit taxpayers for providing them peace of mind, certainty and savings on account of time and resource that would otherwise be spent on the long drawn and vexatious litigation process.

After introduction of VSV, addressing the queries raised by the stakeholders seeking clarification, CBDT issued various notifications and press release which are as under:

- **FAQ's** which contain clarifications on scope/eligibility, calculation of disputed tax, procedure related to payment of disputed tax and consequential benefits to the declarant have been issued vide Circular No 7/2020 dated March 4, 2020.
- CBDT also prescribes **designated authorities** which will provide mechanism to resolve dispute under the Income tax Act, 1961 to the declarant vide notification no. 2019-20/4707 dated March 18, 2020.
- Further, **procedure for making declaration** in Form 1 under sub-rule (2) of Rule 3 and **furnishing undertaking** in Form 2 under sub-rule (2) of Rule 3 under the Direct Tax Vivad se Vishwaas Rules, 2020 have been issued vide notification no. 12/2020 dated March 19, 2020.

Link to the FAQ's, Designated Authorities and Procedure for your reference and detailed information.

Source: CBDT Notification No. 2019-20/4707, dated March 18, 2020 and CBDT Notification No. 12/2020, dated March 19, 2020

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HIGH COURT RULINGS

Supply of software and ancillary services when Royalty under Section 9, to be taxed under Section 44DA, else under 44BB if covered under exception to mining and like activities

Facts

Petitioner-assessee is a company incorporated under the laws of Australia and is a tax-resident of that country. It is engaged in the business of developing and providing customized software enabled solutions and annual maintenance services and opted to be taxed on presumptive basis under section 44BB(1) of the Act. The AO held that in accordance with terms of the contract, the nature of services provided by the Petitioner fell within the purview of Royalty/ Fees for Technical Services (hereinafter, referred to as 'FTS') and is liable to be taxed under section 44DA instead of section 44BB.

Ruling

Allowing the petition and upholding the view of the CIT(A), the HC held that where income from services provided by the Assessee including the supply of software as well as ancillary services such as maintenance and installation would be covered under the definition of Royalty under the Explanation 2 to section 9(vi) of the Income Tax Act, the income would be taxable under section 44DA. On the contrary, the income of the assessee would not be taxable under section 44DA but section 44BB since it is excluded from the definition of Fees for Technical Services under the Explanation 2 to section 9(vii) of the Act, being covered under the exception relating to mining and like activities provided in the definition of FTS. The petitioner was granted liberty to claim benefit of DTAA before the CIT(A), DTAA provisions were not examined by the Court.

Source: Delhi HC in Paradigm Geophysical Pvt. Ltd. vs. CIT (Intt. Tax) WPNo. 1370/2019, dated March 13, 2020

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NR Consultancy payments for proposed foreign business acquisition, FTS under the Act

Facts

The petitioner was engaged in the service of a law firm in Indonesia for acquiring an insurance business in Indonesia. Assessee has made an application under section 195 for TDS exemption on payments to NR for services rendered in Indonesia which was rejected by AO and further a revision petition under section 264 was made which was also rejected. Assessee was of the view that since the payment was made for the legal services procured for a future business to be carried on in Indonesia it constituted payment 'for the purpose of making earning any income from any source outside India' as envisaged in the exception carved out in section 9(1)(vii)(b). The same has no nexus with the generation of income abroad, since it does not have any business activities/source existing in Indonesia.

Ruling

The Court ruled in favour of the Revenue, holding that services rendered by an Indonesian Law Firm (Non Resident) in respect of

proposed acquisition of an Indonesian Insurance Company by assessee constitute 'consultancy services' and hence taxable as FTS under section 9(1)(vii)(b) of the Act. HC left open the question on entitlement of treaty benefit, as assessee did not produce the copy of DTAA as notified which was in force for the period in dispute, requires assessee to produce the same before AO within 30 days. Holding that amended DTAA was not relevant and writ petition was dismissed with no costs.

Source:

High Court, Madras in M/s Shriram Capital Limited vs. DIT

App No. 4695 of 2011 , dated March 13, 2020

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ITAT RULINGS

Weighted average price acceptable in large quantity import values; no need for publicly available information for use of CUP

Facts

The assessee imported certain parts and components from its AEs for purpose of manufacturing of Personal Computers. The transaction of import of parts and components was an international transaction and therefore income from such international transaction has to be determined have regard to ALP as laid down in Section 92. The Assessee also imported parts and components from third parties and chose Comparable Uncontrolled Price (CUP) as the Most Appropriate Method for determining ALP. The AO however, applied TNMM as the MAM based on his contentions that reliable data for comparing controlled transactions was not available, weighted average price was used for application of CUP and that there was no publicly available information on prices charged in independent transactions of similar or identical nature, and therefore CUP could not be applied.

Ruling

The Tribunal heard the assessee's contentions supporting application of CUP that components were identified with UIN, details duly captured in the TP Analysis. Since components/parts were imported throughout the year and were large in number, weighted average price was used. Further, when internal CUP is used there is no need to look at publicly available information and doing so will be against the basic feature of CUP method of determination of ALP. The Tribunal also observed that the department had litigated the DRPs directions and Tribunal rulings in previous preceding years wherein CUP had been upheld as the MAM. Observing no changes from the past years, the Tribunal held that decisions rendered in the past would apply to the present year and granted due relief to the assessee.

Source:

ITAT Bangalore in Lenovo India Pvt. ltd vs. ITO

ITA No. 244/Bang/2019, dated March 6, 2020

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Failure on part of TPO to determine ALP not to be fastened with assessee; penalty u/s 271G deleted

Facts

The assessee, a resident company, is engaged in the business of importing rough diamond, getting them cut & polished and thereafter exporting to various parties outside the Country including the AEs of the assessee situated abroad. In the transfer pricing study

report, the assessee benchmarked the international transaction with the AEs relating to sale of polished diamond adopting TNMM as the most appropriate method with operating profit / sales as the PLI. The TPO observed that the entity level margin of the assessee included its combined profit on the transactions with both the AE and the non-AE and the assessee was unable to furnish the separate segmental result in respect of transactions with the AE and non-AE along with segmental profitability, when called for by the TPO. The TPO ultimately he accepted benchmarking done by assessee by holding that transactions with the AE are at arm's length, however, alleging non-maintenance of specified documents, he initiated proceedings u/s 271G.

Ruling

The Tribunal upheld the decision of the Ld. CIT(A) who observed that it is extremely difficult for a diamond trander/manufacturer to identify each cut and polished diamond vis-à-vis original rough diamond and produce a segment-wise report for exports and the diamonds. Further, the TPO could have could have worked out the gross profit and net profit by averaging the purchase price and the expenditure in proportion of export sales of each one of the segments which he did not do. The failure on the part of the TPP to determine ALP could not be attributed to the assessee. Penalty levied u/s 271G was accordingly deleted and due relief granted to the assessee.

Source:

ITAT Bombay in DCIT vs. Decent Dia Jewels Pvt. Ltd

ITA No. 2608/Mum/2017, dated March 13, 2020

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ITAT affirms Intangible Business Connection for appearance/ participation abroad

Facts

The assessee, an Indian company had made a payment of USD 4,40,000, in respect of a celebrity appearance in Dubai without deduction of withhold any tax from the said remittance. The AO (TDS) probed the matter and found that an entity by the name of Audi India, a division of Volkswagen Group Sales India Ltd, and the assessee jointly planned an event in Dubai for launch of Audit A8L facelift model (Dubai Audi A8L launch event). The purpose of this event was launch of a new model of Audi Car, i.e. Audi A-8L, for the Indian market, but the launch event took place in Dubai.

Ruling

The ITAT held that the income embedded in payment to an international celebrity for appearance/ participation in a product launch event in Dubai, was taxable in India. Even in Dubai was India Centric, the event was for the purpose of promoting business in India, luring customers who would purchase cars in India. When these audio-visual clips were for exclusive use of the assessee and the Audi India, and both of these entities have operations only in India, the use of this event, as a tool of marketing, was only in India. Therefore, the said business connection in India, on facts of the present case, was intangible. The assessee co. was held in default under section 201 for not deducting TDS under section 195 of the Act. ITAT rejects assessee's treaty protection claim under Article 23(1) of India-US DTAA.

Source:

ITAT, Mumbai I Bench in Volkswagen Finance Pvt. Ltd. vs. ITO

App No. 2195 of 2017, dated March 19, 2020

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Agreement between India and Brunei for exchange of Information has been notified

The agreement between Government of Republic of India and the Government of Brunei Darussalam for exchange of information and assistance in collection with respect of taxes was signed in New Delhi, India on February 28, 2019. The agreement has been notified in the Gazette of India on March 9, 2020.

The agreement enables exchange of information, including banking and ownership information, between the two countries for tax purposes. It is based on international standards of tax transparency and exchange of information and enables sharing of information on request as well as automatic exchange of information. The agreement also provides for representatives of one country to undertake tax examinations in the other country. Moreover, it provides for assistance in collection of tax claims.

The agreement will enhance mutual co-operation between India and Brunei Darussalam by providing an effective framework for exchange of information in tax matters which will help curb tax evasion and tax avoidance.

Source: Press Release, dated March 17, 2020

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Income of Foreign Institutional Investors from Securities and Capital Gains arising from transfer of such securities

In exercise of the powers conferred by the sub-clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961, CG hereby specifies that a non-resident being an eligible Foreign Investor which operates in accordance with the SEBI, circular dated January 4, 2017, shall be deemed as Foreign Institutional Investor for the purposes of transactions in securities made on a recognized stock exchange located in any IFSC, where the consideration for such transaction is paid or payable in foreign currency.

Explanation for the purpose of this notification:

(a) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

(b) "Recognized stock exchange" shall have the same meaning as assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43 of the Income-tax Act, 1961;

(c) the expression "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

Source: CBDT Notification No. 17/2020, dated March 13, 2020

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VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office
75/7 Rajpur Road, Dehradun
T +91.135.2743283, 2747084, 2742026
F +91.135.2740186
E info@vkalra.com
W www.vkalra.com

Branch Office
80/28 Malviya Nagar, New Delhi
E info@vkalra.com
W www.vkalra.com

For any further assistance contact our team at
kmt@vkalra.com