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kcm Insight

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Dear Reader,

We are happy to present ***kcm*Insight**, comprising of important updates in the M&A space, legislative changes in direct and indirect tax law, corporate & other regulatory laws, as well as recent important decisions on direct and indirect taxes.

We hope that we are able to provide you an insight on various updates and that you will find the same informative and useful.

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Ship Leasing Entities Framework in IFSC

Background

Towards the end of February this year, RSCPL (IFSC) Pvt Ltd, a ship leasing company was set up in the IFSC[1] jurisdiction. RSCPL (IFSC) is a wholly owned subsidiary of Singapore-based RBB Ship Chartering Pte Ltd and is the *first entity of its kind* to secure a license to operate from the IFSC. But what exactly is the framework under which a ship leasing entity can set up its operations in the IFSC and why was there a need to have such a framework in the first place?

Maritime transport is the lifeline of international trade as well as the global economy. Today, there are global shipping hubs across the world which specialize in various activities. Such shipping hubs are created as a result of factors like concentration of capital, liberal taxation and liberal regulations. In view of such benefits, global as well as the Indian ship lessors preferred such foreign shipping hubs to set up the base of their operations. Consequently, India-based ship lessors faced multiple inconveniences, one such inconvenience from an income-tax perspective was the concept of place of effective management (POEM). This hindered the growth of Indian shipping entities in the global market.

Recognizing this, the IFSC Authorities issued a circular[2] laying down the *Framework for Ship Leasing* in the IFSC jurisdiction and made suitable amendments to the IFSC regulatory framework in order to permit ship leasing entities to operate from the IFSC.

Salient Features of the Ship Leasing Framework

In order to set up a ship leasing entity in the IFSC jurisdiction, the entity shall be required to obtain registration with the IFSCA. Such entity can be in the form of a company, LLP, trust or even a branch of a company or its wholly owned subsidiary within/outside the IFSC jurisdiction.

There are two basic conditions for an entity to become eligible for setting up ship leasing operations in the IFSC –

- First, in case it is incorporated in the form of a company/LLP/Trust, then its promoters/partners/trustees, as the case maybe, should be located in a FATF compliant jurisdiction.
- Second, all such entities shall comply with all laws and regulations imposed by the applicable statute including the Merchant Shipping Act, 1958 (including the circulars or notifications from the Ministry of Shipping or Director General of Shipping)

Permissible Activities under the Framework

The IFSCA has broadly classified ship leasing activities into three parts – Finance lease, Operating lease and Hybrid lease.

It is interesting to note that under this framework, a transaction shall be classified as a lease if it is so classified under the Indian Accounting Standard 116 (Ind AS 116), i.e., which provides for accounting of Leases.

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[1] *International Financial Services Centre*

[2] *Circular no. F. No. 496/IFSCA/FC/SLF/2022-23/001 dated 16.08.2022.*

Ship Leasing Entities Framework in IFSC

A lessor in the IFSC can only undertake certain permissible activities –

- Operating Lease, Finance Lease or a Hybrid of finance and operating lease
- Asset Management Support Services for assets owned or leased out by
  - the entity or
  - its WOS or
  - a branch of its WOS set up in the IFSC
- Sale and lease back, purchase, novation, transfer, assignment, and such other similar transactions in relation to ship lease.
- Any other related activity with the prior approval of the IFSCA

Minimum Capital Requirement and Currency of Business

In keeping with the intention of the IFSCA to attract the bigger players of the ship leasing industry, the framework prescribes a minimum owned fund requirement to be maintained at all times by a registered entity –

- For lessors engaged in operating lease, there is a requirement to have minimum owned fund[3] of USD 2,00,000 (or its equivalent) in freely convertible foreign currency which must be maintained by such lessor at all times.
- In case of lessors engaged in finance lease or hybrid lease, the said minimum owned fund requirement is increased to USD 30,00,000 (or its equivalent) in freely convertible foreign currency which must be maintained by such lessor at all times.

The lessor must undertake all its transactions only in freely convertible foreign currency. However, administrative expenses may be paid in INR by maintaining a separate INR account.

<u>Some Basic Questions</u>

➢ ***Can only ship owners set up operations in the IFSC under this framework?***

No. This framework permits to set up an entity in the IFSC which operates under the 'lease-in, lease-out' model (or sub-leasing). Hence, there is no requirement of owning a ship in order to qualify as a ship leasing entity under this framework.

➢ ***Does this framework cover solely lease of the typical large ocean vessels since it is a 'ship' leasing framework?***

Under this framework ships and ocean vessels both can be leased. The terms ship and ocean vessels have been defined broadly to cover virtually every kind of watercraft including boats, submarines, mobile offshore drilling units, inland water vessels, coasting vessels and so on.

➢ ***Are shipping operations like voyage charter also covered under this framework?***

[3] *Owned fund = paid-up-capital (+) free reserves (+) balance in share premium account (-) asset revaluation reserves (-) accumulated loss balance (-) book value of intangible assets (-) deferred revenue expenditure*

Ship Leasing Entities Framework in IFSC

No. As the framework stands today, voyage charters are not covered under this framework. The IFSC ship leasing framework permits only bareboat charters.

- ***What are the benefits of setting up a ship leasing entity in the IFSC?***

  To begin with there is an exclusive lifetime income tax exemption to non-residents receiving royalty/interest from a ship leasing entity in the IFSC set up on or before 31st March 2024. The IFSC ship leasing entity itself has a 10-year tax holiday under section 80LA. Since IFSC jurisdiction is also considered as an SEZ under the law, the services of ship leasing entity is also exempt from GST.

- Further, the IFSC ship leasing entity shall be considered as a resident outside India for FEMA purposes. Accordingly, any transaction undertaken by such an entity with a person in any foreign jurisdiction shall not result in any FEMA compliance requirements.

Conclusion

RBB Chartering's decision to set up operations in the IFSC jurisdiction marks the beginning of the Indian Maritime sector's growth story. With a coastline of over 7,500 kms, 12 major and 205 minor ports, India is strategically located on the world's shipping routes. With a view to truly achieve the potential of India's maritime sector and make this nation a global shipping hub, the government has indeed made brilliant advances in this direction by the introduction of ship leasing framework in the IFSC jurisdiction.

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For detailed understanding or more information, send your queries to ***kcminsight@kcmehta.com***

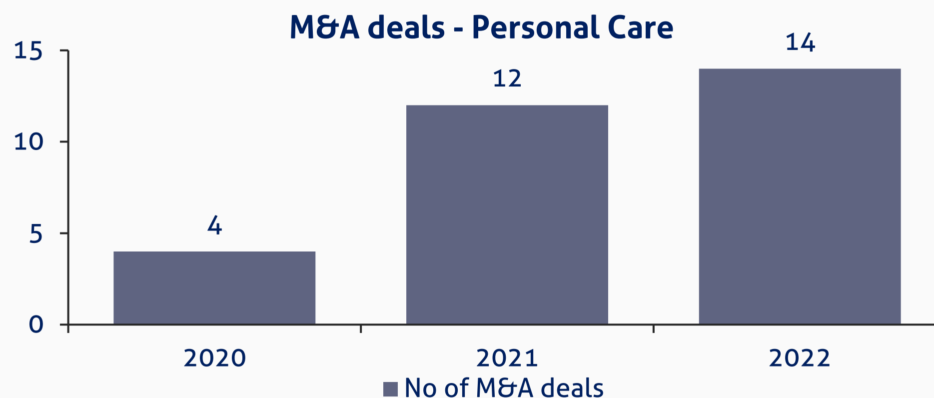
M&A in Personal Care Sector

Buzzing M&A activity in Personal Care Sector

Background

Indian personal care market is ranked fourth in the world in terms of sale of beauty and personal care business trailing only to United States, China and Japan. Beauty and personal care (BPC) products are more than just an aisle in the supermarket. Demand for premium products is growing in India as Indian consumers are moving from functional products to more advanced and specialized cosmetic products. Indian BPC sector attained a value of USD 21.65 Bn in 2022. The market is further expected to grow at a CAGR of over 10% in the forecast period of 2023-2028. While the cosmetic market is dominated by few multinationals such as Unilever, Procter & Gamble and L'Oréal, of late local companies such as Mama Earth, Khadi Essentials, Plum and Soul Tree have made significant inroads and contributed to the growth of BPC market in India.

M&A deals in BPC space in India



Source: VCCEdge

Beauty and personal care market is thriving and one of the fastest growing consumer markets. In recent years, significant M&A activity has taken place in the industry. Number of M&A deals increased from 4 in the year 2020 to 12 in 2021 and 14 in 2022. Key reason for increase in M&A deals was the challenging environment posed by Covid forcing companies to pivot from physical to digital retail by taking strategic M&A route in order to sustain themselves in the market.

However, the digital/online retail push has continued to prevail even post Covid as BPC market accelerated the shift to online buying, especially in Tier 2 and beyond cities. Ecommerce penetration, improved logistics and proliferation of social media have enabled D2C BPC brands to grow in a fraction of time and cost than was previously possible.

Key M&A deals

MyGlamm acquired The Moms Co.

Sanghvi Beauty and Technologies Pvt Ltd (MyGlamm) acquired Amishi Consumer Technologies Pvt Ltd (The Moms Co.), a D2C brand in Oct-21 to grow in South Asian market with a deal value of USD 67 Mn acquiring 100% stake with a shared vision of leveraging Content-to-Commerce as a growth engine with digital audience of over 100 million users across POPxo and BabyChakra, over 220,000 Plixxo influencers and BabyChakra's 10,000 doctors' network. The Moms Co. will also have access to data-driven insights from the MyGlamm Group's content platform.

Purplle acquired Faces Canada's India business

M&A in Personal Care Sector

Manash Lifestyle Pvt Ltd (Purplle.com), an e-commerce company acquired Faces Cosmetics India Pvt Ltd (Faces Canada's Indian business) in Dec-21 at a deal value of USD 40 Mn for 100% stake to strengthen its makeup footprint to make the most comfortable international quality cosmetics available to Indian consumers and provide an enhanced customised beauty experience. With this acquisition, Purplle expanded its consumer offerings with a superior international makeup portfolio.

Nykaa acquired Dot & Key

FSN E-Commerce Ventures Ltd (Nykaa) acquired home grown D2C brand Dot & Key in Sep-21 with 100% stake to extend the brand's reach to a larger landscape of consumers and enter the nutraceutical space. Dot & Key is a consumer centric brand with a growing base of consumers and a range of skincare solutions. Dot & Key has expanded into nutraceuticals under the brand IKWI, whose products are dermatologically tested and cruelty free.

Lotus Herbals acquired Vedicare Ayurveda

Lotus Herbals Pvt Ltd, India's premier natural beauty care firm acquired Vedicare Ayurveda Pvt Ltd, owning the brands SoulTree and Vedicare in Aug-20. Lotus Herbals entered the luxury ayurvedic wellness and beauty space with the acquisition of SoulTree.

Mankind Pharma acquired Upakarma Ayurveda

Mankind Pharma acquired majority ownership in Upakarma Ayurveda, a D2C brand for ayurvedic and herbal products in Nov-22. Mankind Pharma's decision to invest in Upakarma Ayurveda will power a wider range of products and offerings and penetrate the market leveraging the strong distribution network of Mankind Pharma while also catering to emerging needs of its consumers.

Way Forward

Changing consumer demographics and lifestyles provide innumerable opportunities for entrepreneurs to devise new and innovative business models around consumer needs. Emerging segments within the consumer services industry like e-commerce services have proven to be investor-friendly with lower risk levels and lesser legal compliance. However, entrepreneurs need to develop innovative strategies to scale up their businesses. The key reason for this strong growth in BPC space is the generational shift with young consumers entering the market. At the same time, this change is reinforced by social media and e-commerce, which have a lasting effect on buying behavior when it comes to beauty products.

Beauty and personal care industry is expected to continue to grow and evolve in coming times due to greater emphasis on personal care after Covid, larger number of D2C brands providing vast range of options at one place, customization and personalization amid growing demands of natural and organic beauty products.

Sources: VCCEdge, Financial Express, Invest India, Livemint, Yourstory, Moneycontrol

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Important Rulings

Reassessment for AY 2013-14 and 2014-15 is time barred by limitation since first proviso to section 149 is unaffected by changes made by TOLA

Keenara Industries Pvt Ltd, SCA No. 17321 of 2022, High Court of Gujarat

The FA 2021 has made structural amendments to the scheme of reassessment. The amendment was effective from April 1, 2021. The amendment incidentally came into force during the time of pandemic when the provisions of TOLA ["Taxation and Other Laws (Relaxation and Amendment to certain Provision) Act, 2022] were also in operation. The SC had an occasion to decide the fate of the notices issued by the tax departments u/s 148 of the ITA under the old regime. The SC in the case of Ashish Agrawal (CA 3005 to 3017 and 3019-3020 of 2022) has held that notice originally issued u/s 148 of ITA is to be treated as notice issued u/s 148A(b) of the new scheme.

In pursuance to the above, the Taxpayer was accordingly served with the fresh notice u/s 148A of the ITA for the AY 2013-14 and AY 2014-15. As per the mandate of section 148A, the AO has provided the "information" about the escapement of income in the form of loans taken from Kolkata based companies which was found to be bogus.

The Taxpayer had challenged the validity of the notice and action of the AO primarily on two grounds. Firstly, the Taxpayer has contended that as per the amended provision of section 148, the assessment proceeding beyond 3 years cannot be reopened unless the income is represented in the form an "asset" and since the alleged loan is not an "asset" reopening is not valid. Secondly, as per the provision of section 149 as amended by the Finance Act, 2021, proceeding for the AY 2013-14 and AY 2014-15 are barred by limitation.

The AO rejected the contentions of the Taxpayer and passed an order u/s 148A(d) by solely relying upon the decision of the SC in the case of Ashish Agrawal (supra). The AO has also stated that definition of "asset" u/s 148 has wider connotation and therefore the bogus loans are liable to be assessed u/s 148. As per the first proviso to new amended provision of section 149, no notice u/s.148 of the ITA under the new provision can be issued if such notice could not have been issued at that time on account of being time barred under the old regime of section 149. The AO also held that the extension of time limit made by CBDT vide various circulars read with TOLA regarding issuance of notice up to June 30, 2021 shall also be applicable to such proviso to section 148 as amended with effect from April 1, 2021.

The Taxpayer has challenged the validity of the order passed u/s 148A before the Gujarat HC. The HC after considering the above pleas held that TOLA read with applicable CBDT circulars, which provided for extension of various time limits, would not extend the time limit for re-opening of case under old regime as provided in first proviso to section 149 of the ITA. The HC categorically mentioned that the CBDT Circular No 1 of 2022 dated 11.05.2022, extending its applicability to first proviso to section 149 as amended by the Finance Act, 2021 does not lay down the correct law.

The proviso to section 149 categorically prohibits issuance of notice if time limit for issuing such notice under provisions existing on 31.03.2021 has expired. The intention behind the said proviso is to avoid undue advantage of extended time-period of ten years to the

Important Rulings

assessment years where six years has already lapsed on the date of commencement of the new provisions of the reassessment proceedings. Thus, the HC held that since the time limit for issuing notice for AY 2013-14 and 2014-15 already lapsed by on 31.03.2020 and 31.03.2021 respectively i.e. before enactment of new provisions, the notices issued u/s 148 for the AY 2013-14 and AY 2014-15 are therefore time barred under the new provisions as well.

The Hon'ble Allahabad HC in case of Rajeev Bansal (Writ Tax No. 1086 of 2022) has similarly held that TOLA would not extend the time limit of the proceedings which got time barred as per the old provisions of the ITA as provided in first proviso to section 149.

Credit of TDS allowable u/s 143(1) even though not deposited with the Government

Mukesh Padamchand Sogani v. ACIT, ITA no. 29 of 2022, Pune ITAT

The Taxpayer was working as Chief Operating Officer of a public company. He had claimed credit of tax deducted at source on salary in the return of income. However, on processing of return u/s 143(1), TDS credit was not allowed since the same was not deposited by the employer and not reflected in Form 26AS.

CIT(A) passed order against the Taxpayer and so he preferred appeal before ITAT.

ITAT perused the payslips issued by the employer and noted that the tax was duly deducted at source by the employer in every month. ITAT further noted that as per section 143(1)(c), sum payable or amount refundable to assessee is to be determined after adjustment of tax payable by any tax deducted at source, tax collected at source, any advance tax paid, any relief allowable u/s 89/90/90A/91, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee.

ITAT noted that the important thing to be considered is that though the word 'paid' has been used after the words 'advance tax', but it is absent in the context of 'tax deducted at source'. The effect of this is that unlike advance tax, the credit for tax deducted at source is to be allowed only when it is deducted and there is no further requirement of the same having been paid as well. Once there is deduction of TDS, the benefit of such tax deduction has to be allowed in the hands of deductee u/s 143(1) of the Act irrespective of its subsequent deposit or non-deposit by the deductor.

ITAT supported the decision by provisions of section 234B read with section 209, as per which, advance tax payable is to be determined by reducing tax deducted at source/tax collected at source from tax payable on total income of the assessee. This language also suggests that the requirement for computing advance tax is 'tax deducted at source' and not 'tax deducted at source and deposited' with the Government.

In view of the above, ITAT allowed the appeal of the Taxpayer.

It is interesting to note that as per section 199 of the ITA read with Rule 37BA, credit of TDS is allowable in respect of tax deducted as well as paid to the Central Government. However as per section 205 of the Act, once tax has been deducted at source on income, an assessee being receiver of such income shall not be called upon to pay such tax himself. Gauhati High Court in the case of Om Prakash Gattani 242 ITR 638, after discussing provision of

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section 199, held that in view of specific provision contained in section 205 of the Act, an assessee cannot be called upon to pay such tax liability. Such decision has been further upheld by Gujarat High Court in the case of Kartik Vijaysinh Sonavane v. DCIT 132 taxmann.com 293.

Penalty u/s 270A cannot be imposed on additions made on basis of estimation

Jaibalaji Business Corporation (P.) Ltd. v. ACIT, IT no. 840 of 2022, Pune ITAT

The Taxpayer was engaged in the business of solar power generation. During the year, Taxpayer sold certain land and filed the return of income at Rs. Nil. In the assessment proceedings u/s 143(3), an addition of Rs.2,80,07,310/- was made u/s 43CA for difference between stamp duty value and sale value of land. On request from Taxpayer, matter was referred to District Valuation Officer (DVO) and addition was reduced to Rs. 7,05,000 under order passed u/s 154 of the ITA.

The AO imposed penalty u/s 270A of the Act for under-reporting of income, which was also affirmed by CIT(A). The Taxpayer preferred appeal before the ITAT.

ITAT noted that basis for imposition of penalty is addition made u/s 43CA based on the report of DVO. On perusal of the said report, ITAT observed that the value determined by the officer was just an estimate as per valuation report since he had considered certain other properties at different rates and then computed its average to determine the value at which the property ought to have realized on transfer.

ITAT noted that as per section 270A(6)(b), under-reported income shall not include income determined on the basis of an estimate, if accounts are correct and complete to satisfaction of the AO. Since in facts of the case, addition was made u/s 43CA on basis of estimation made by DVO, penalty cannot be imposed on the same.

In view of the above, ITAT allowed the appeal of the Taxpayer.

The aforesaid decision would be useful in cases where additions/disallowances are made by AO based on estimation.

TDS assessment after seven years on payment made to NR is time barred

Subex Technologies Limited v. ACIT, Writ Petition no. 17005 of 2016, Karnataka HC

In the facts of the case, an order was passed u/s 201(1) of the ITA in case of the Taxpayer in respect of payment to non-resident. The order pertained to AY 2008-09 and was passed on February 15, 2016.

As per section 201(3), order u/s 201(1) deeming a person to be a Taxpayer in default for failure to deduct tax from a person resident in India cannot be passed, at any time after the expiry of 7 years from the end of the FY in which payment is made or credit is given. This limitation is only in case of payment made to resident and not for non-resident.

The Taxpayer filed writ petition before HC for the question that where no limitation is prescribed, statutory authorities must initiate action within a reasonable period of four years.

The Taxpayer relied on decision in case of The Director of Income-Tax, International Taxation and Another Vs. The Executive Engineer, BWSSB

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reported in 2020-TIOL-1448-HC-KAR-IT, which was rendered prior to the amendment in section 201(3). In the said case, it was held that when no limitation is mentioned, the reasonable period of limitation for orders u/s 201 would be four years.

It was argued by the Taxpayer that even though currently limitation is prescribed for residents in law, in case of non-residents, period of four years should apply as per said decision.

Revenue argued that even though there have been couple of amendments in section 201 in recent years, the limitation period in respect of payment to non-resident is intentionally excluded in law. With this intention of Parliament being clear and categorical, rule of reasonable period for initiation should not be invoked in case of non-residents. Further, in the decision relied by Taxpayer, assessment year and order were prior to amendment in 201(3) for providing period of limitation whereas in the instant case, order is passed post the amendment.

HC noted that in present case, assessment year concerned is AY 2008-09, which is prior to amendment in section 201(3) vide Finance Act 2009 and secondly, the payment is made to non-resident. In view of the same, HC ruled in favour of the Taxpayer.

It is pertinent to note that HC, though ruled in favour of the Taxpayer, remarked that, the question whether the Legislature with amendment in section 201(3), has deliberately excluded timeline in case of payments to non-resident and therefore rule of limitation should not apply in such case, must be considered in an appropriate case.

LLP, as partner in firm, is eligible for Sec.10(2A) exemption

Mulberry Textiles LLP v. ITO, ITA no. 757/Bang/2022, Bangalore ITAT

The Taxpayer, during the year under consideration, earned share of profit from partnership firm, which was claimed as exempt u/s 10(2A) of the ITA in the return of income. However, such exemption was denied in intimation passed u/s 143(1) of the ITA.

CIT(A) relied on the decision of Hon'ble SC in the case of Dulichand Laxminarayan Vs. CIT AIR 1956 SC 354, wherein it was held that partnership firm is merely an association of individuals and does not have separate legal existence, therefore, partnership firm cannot claim exemption u/s 10(2A) of the ITA. Before the ITAT, the Taxpayer relied on decision of Kerala HC in case of Jayamma Xavier v. Registrar of Firms W.P. No.25741 of 2020, wherein, aforesaid decision of SC was distinguished and it was held that LLP is separate legal entity and therefore, like private company, LLP is entitled to enter into partnership agreement. ITAT distinguished the decision of SC in case of Dulichand Laxminarayan (supra) mentioning that said decision was rendered in context of Rule 2 of Indian Income Tax Rules, 1922, which required that all partners of firm must sign application for registration and partner of a firm, signing on behalf of firm, would not fulfil such requirement laid down by Rule 2.

ITAT relied upon the judgement passed by Guwahati HC in case of Radha Krishna Jalan v CIT 165 Taxman 538, wherein, it was held that legislative intent cannot be discouraged by adopting principle of literal interpretation. Therefore, an income already taxed in hands of partnership firm is not taxable in hands of

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partner so as to avoid double taxation. HC in said decision discussed principles laid down by various SC decisions, in respect of diversion of share of partner by overriding title to a sub-partnership, which is partnership within a main partnership. Sub-partnerships were recognized in India and registration was accorded under India Income Tax Act, 1922.

Following the said judgement, ITAT ruled in favor of Taxpayer. It is important to note that aforesaid decision by ITAT relied on legislative intent of section 10(2A) to exempt the profits in hands of LLP, which was partner in a firm since said profits were already taxed in main partnership firm. However, ITAT did not comment on whether LLP is separate legal entity and can be admissible to partnership, which was main reason for non-grant of exemption to the Taxpayer. It is however to be noted that as per Section 3 of LLP Act, it shall be regarded as legal entity separate from its partners.

Development of Software does not fall within the ambit of 'Manufacturing' activity

Infosys Limited v. JCIT ITA Nos.125 & 126/Bang/2019, Bangalore ITAT

The Taxpayer is engaged in the business of development and export of computer software. During the year under consideration, Taxpayer had claimed deduction u/s 32AC on account of investment in new plant and machinery. The AO disallowed the said claim since software development falls within purview of service sector whereas section 32AC was inserted to give impetus to manufacturing sector. CIT(A) upheld the decision of the AO.

Before ITAT, the Taxpayer submitted that its business activity involves various activities like developing software from scratch, modification of existing software or software testing. Further, the creation of computer programs to assist the various business functions is a complex process, wherein, the software to be ultimately created is broken into different drivers or modules. These different modules or even sub-segments thereof are normally developed by different persons because the expertise and ability to develop the software may not be available with a single person.

Examining the background for introduction of section 32AC, ITAT observed that service industries are foot loose industries and employment growth is inadequate. Therefore, there was necessity to increase manufacturing base among policy makers of India. Under this context, section 32AC was introduced.

ITAT noted that reading of annual report of Taxpayer shows that it is into service sector and deduction u/s 32AC is allowed to an assessee which is into 'business of manufacture or production of any article or thing'. The word 'manufacture' is defined in section 2(29BA) of the ITA which means change in non-living physical object or article or thing. ITAT noted that software is intangible and not physical object or article or thing. Further, it cannot be said that creating or maintenance of software programs results in transformation of object/article/thing into new and distinct object/article/thing having a different name, character and use.

ITAT relied on SC ruling in N.C. Budharaja & Co 70 Taxman 312 wherein it was observed that the terms 'manufacture' and 'produce' are normally associated with movable articles and goods, whereas in the instant case the activity is software development, which is intangible. ITAT also noted that Calcutta HC in its ruling in

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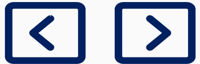

Madgul Udyog 208 ITR 541 held that intellectual property could not be an 'article'.

In view of the above, ITAT held that software development is not manufacturing activity, hence benefit of deduction u/s 32AC is not available to the said activity.

AS-7 and ICDS-III are not applicable in the case of builder and developer

M/s Corporate Leisure & Property Development Private Limited v. DCIT, ITA No.1006/Bang/2022, Bangalore ITAT

The Taxpayer is engaged in business of real estate development and construction of residential apartments. It followed the project completion method for revenue recognition as per AS 9 and 'Guidance Note on Accounting for Real Estate Transactions' issued by the ICAI, consistently from its inception. However, the AO adopted the percentage of completion method, while passing the assessment order.

Before the ITAT, the Taxpayer submitted the reconciliation statement to demonstrate that assessee has already offered to tax, revenue from sale of flats in subsequent assessment years, for which addition is made by the learned AO. Therefore, addition made by AO in the impugned year leads to double taxation of same income. The Taxpayer further contended that project completion method as per AS 9 is correct method for determining its income as it is builder and developer and not percentage completion method as per AS 7, which is applicable to construction contractor. In any case, the effect of following either project completion method or percentage completion method is revenue neutral.

ITAT noted that the Taxpayer has been subjected to assessments u/s 143(3) for the preceding as well as subsequent assessment years, but the Revenue has not disputed on the method of project completion method adopted by the Taxpayer in either of those years.

ITAT relied on the decision of coordinate Bench of Bangalore ITAT in case of Trishul Buildtech & Infrastructure Pvt Ltd ITA no. 107 to 109/Bang/2022 and Karnataka HC in case of CIT v Banjara Developers & Constructions P Ltd 425 ITR 673, wherein it has been held that where assessee engaged in construction of flats consistently follow completed contract method of accounting and said method has been accepted by revenue authorities in past, AO cannot change the same and determine income of assessee on estimate basis in any particular year.

Further, ITAT held that Taxpayer, is a builder and developer and not construction contractor, therefore, AS 7 titled 'Construction Contracts' is not applicable to Taxpayer. This view is also supported by opinion of expert advisory committee of ICAI. Further, ICDS III applicable as per section 145(2) of the ITA, dealing with construction contracts, is also not applicable to Taxpayer and there is no separate standard for development project.

Thus, ITAT accepted all contentions of the Taxpayer and deleted the addition made by AO.

The aforesaid decision could be useful in situations where percentage completion method is applied by the Revenue in case of real estate developers. However, it is to be noted that the Guidance note issued by ICAI on 'Guidance Note on Accounting for Real Estate Transactions' requires to follow percentage of completion method if certain conditions are satisfied.

Important Updates

CBDT notifies new forms for audit reports of Charitable Trusts

Notification 7 of 2023 dated February 21, 2023

Currently, report of audit of accounts of charitable trusts/institutions registered u/s 10(23C) and u/s 12A is to be made in Form 10BB and Form 10B respectively.

Rule 16CC and Rule 17B of the IT Rules now amended both Form 10B as well as Form 10BB. This would be a common form and applicable to entity either claiming exemption u/s.12A or u/s.10(23C).It has been provided that in case of trusts/institutions, whether u/s 10(23C) or u/s 12A , audit report shall be in Form 10B, in case of following situations:

- Total income exceeds 5 crores during the previous year; or
- Trust has received foreign contribution during the year; or
- Trust has applied any part of income outside India during the year

In other cases, report of audit report shall be in Form 10BB.

It is to be noted that Form No.10B is running into 18 pages wherein considering the various amendments made by the Finance Act 2021 & Finance Act, 2022, more detailed information about the donation including foreign donation, its utilization and accumulation including details about loan and borrowing has been called for. Form No.10BB is running into six pages.

CBDT notifies Income Tax Return Forms for AY 2023-24

Notifications No. 4 & 5 of 2023, dated 10-2-2023 and 14-2-2023

CBDT has notified Income-tax Return Forms (ITR Forms) ITR-1 Sahaj, ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-V and Indian Income Tax Return Acknowledgement for the Assessment Year 2023-24.

CBDT makes Centralized Processing of Equalization Levy Statement Scheme, 2023

Notification 3 of 2023 dated February 07, 2023

CBDT has provided scheme of processing the Equalization Levy Statement, furnished under section 167 of the Finance Act, 2016. CBDT has clarified that these statements will be processed electronically by the Centre and all intimations, notices or any other communications are proposed to be served through electronic modes.

Also, it is notified that the Taxpayer is required to reply to the same in the format specified by the Centre in this respect through various electronic modes. Only when the Centre is unable to process the statement due to any reasons, the same will be transmitted to the AO having jurisdiction.

CBDT releases FAQs on e-Verification Scheme, 2021

Press Release dated February 01, 2023

CBDT has recently released FAQs on e-Verification Scheme, 2021 issued vide Notification no. 137/2021 dated December 13, 2021, to provide general guidance in understanding the procedures and processes.

Such FAQ now explains the process of seeking confirmation from the Taxpayer/reporting entity about the various financial transactions reported in AIS, etc.

Important Notifications

E-verification scheme, 2021 in these FAQs, is briefly explained, as below:

- When a financial transaction reported by a Source/Reporting Entity is not considered/included by Taxpayer in Return of Income, a computerized process of identification of such mismatch is undertaken.
- A communication is sent to the Source/Reporting Entity seeking confirmation of the transaction/data reported by it. The Source/Reporting Entity can either confirm the information provided by it or can state that it has wrongly reported and can change the information by revising its statements filed earlier.
- If the Source/Reporting Entity confirms the information, proceedings under the e-Verification Scheme will be initiated for the Taxpayer, in appropriate cases. A notice u/s 133(6) will be issued to the Taxpayer, electronically through the Compliance Portal.
- The explanation/evidence/compliance to the notice u/s 133(6) of the IT Act, 1961 is to be done by the Taxpayer through electronic means, using the Compliance Portal
- Based on the explanation/evidence provided, a view will be formed by the Prescribed Authority conducting the e-Verification about the transaction having been / not having been suitably reflected in the return of income.
- After this process, a communication will be sent to the Taxpayer informing:
  - No further clarification on the issue under verification proceedings is presently required from Taxpayer, or
  - The explanation is not found sufficient to explain the mismatch in the specific information and the Taxpayer may consider updating the return of income u/s 139(8A) of the Act, if eligible.

It has been clarified that these FAQs are informative and advisory in nature and should not be used as a basis for any legal interpretation of the e-Verification Scheme, 2021 or the Income Tax Act, 1961.

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Important Rulings

Indian Rulings

Benefit of India Singapore DTAA is available on furnishing of TRC, GAAR not applicable on grandfathered investment

Reverse Age Health Services Pte Ltd [ITA No. 1867/Del/2022 – order dated 17 February 2023]

Taxpayer was a company incorporated in Singapore and was a tax resident of Singapore. During AY 2018-19, Taxpayer sold shares of an Indian Company, which was acquired in year 2016. Taxpayer had earned short term capital gains from sale of said shares. While filing the return of income, Taxpayer took a stand that the said capital gains is not chargeable to tax in India as per beneficial provisions of Article 13(4A) of India Singapore DTAA and claimed the entire amount of tax withheld as refund.

Revenue authorities have disregarded the TRC produced by Taxpayer and held that Taxpayer is merely a shell or conduit company and therefore, denied benefit of India Singapore DTAA by invoking provisions of Article 24A of DTAA. The core issue for a consideration before ITAT was that whether revenue authorities are empowered to go beyond a TRC furnished by Taxpayer for granting benefits of DTAA.

Tribunal placed strong reliance on the recent decision of Delhi High Court in case of Blackstone Capital Partners, Singapore in W.P (C) 2562/2022 wherein Delhi High Court had discussed the issue of granting treaty benefits to non-resident at length, supported by placing reliance on various judicial precedents, Circulars and Press release issued by Government of India from time to time to hold that TRC produced by non-resident would be sufficient evidence to grant the benefit of DTAA. Tribunal also took into consideration that even shareholders of the Taxpayer were tax residents of Singapore, supported by TRC issued by tax authorities and acknowledged the assessment order passed by Singapore tax authorities, wherein the expenditure incurred by Taxpayer in Singapore was accepted.

Tribunal had also rejected the invocation of GAAR by revenue authorities on two grounds. First, tax benefit from the arrangement under consideration was less than a prescribed threshold (INR 3 crores) and second, grandfathering provided to shares / investment acquired before 01 April 2017 as per the provisions of the ITA.

In view of valid TRC, audited financial statements and assessment order passed by Singapore tax authorities furnished by Taxpayer and binding decision of Delhi High Court, ITAT directed Ld. AO to provide the benefit of India Singapore DTAA and delete the addition of short-term capital gains earned by Taxpayer.

Lately, various favourable decisions have been rendered by the Court and Tribunals (especially in the context of India Mauritius DTAA and India Singapore DTAA) wherein benefit of DTAA was granted to the respective Taxpayer upon furnishing of TRC and attempt was made continuing to protect the assurance provided by Government of India to foreign investors on their eligibility of availing DTAA benefits.

Supreme Court concludes hearing on MFN controversy, judgement reserved

M/S. Nestle SA [Special Leave Appeal 5360/2022]

Hon'ble Supreme Court concluded the hearing of MFN clause controversy and reserves the

Important Rulings

judgement. During the Court room discussion, detailed arguments were made by ASG as well as Counsel appearing on behalf of Taxpayer. The said discussions were ranging from automatic application of protocol, Diplomatic Powers of Government of India, International Law Customary Practice, placing reliance on various foreign judicial precedents on how to interpret the treaty and what not. Hon'ble Supreme Court had directed ASG as well as Counsel appeared on behalf of Taxpayer to submit the written submissions within two weeks.

Considering the high stakes involved and direct bearing of this decision on cross border arrangements, Industry and MNEs have kept high expectations from Supreme Court for rendering the decision in the favour of Taxpayer. It would be interesting to see that how Supreme Court delivers this judgement in the coming days.

Automatic application of protocol without issuing any separate notification

Netafim Limited [ITA No. 1427/Del/2015 – order dated 20 February 2023]

The Taxpayer was a non-resident corporate entity incorporated in Israel and was a tax resident of Israel. For the AY 2010-11 & 2011-12, the Assessee had entered into several international transactions with its Indian subsidiary. One of the said transactions was providing of IT and SAP services to Indian subsidiary. Taxpayer procured SAP license from third party for providing services to all group entities and allocated the cost among the entire group entities on a cost-to-cost basis. Taxpayer had adopted a stand that the said transaction in not chargeable to tax in India in absence of PE in India while Revenue challenged the same and considered the same as FTS and held that it is liable to be taxed in India. In addition, Revenue also challenged the applicability of MFN clause give under protocol to India-Israel DTAA in absence of any separate notification issued in this regard. Revenue authorities have also held that even if MFN clause is applicable, services rendered by Taxpayer satisfy the make available condition and therefore chargeable to tax as FTS.

Taxpayer contented that as per protocol to India-Israel DTAA, if India enters into a Treaty with any other Country after the date of signing of India-Israel DTAA and the said DTAA contains more restricted scope of FTS, then the said restricted scope of FTS will apply to India-Israel DTAA. In addition to the same, the Assessee also argued that there is no pre-requisite condition for issuance of a specific notification by the Country regarding the applicability of MFN clause. Strong reliance was placed on the decision of Steria (India) Ltd [2016] 72 taxmann.com 1 (Del.), wherein it was held that once the DTAA itself has been notified, there is no need for the Protocol to be separately notified by the Nation. Hence, ITAT had also rejected the plea of the Revenue for wanting separate notification to give the effect of protocol forming part of DTAA.

With respect to satisfaction of make available clause, ITAT found that Taxpayer had not transferred any technical knowledge, know-how, experience, skill etc. to Indian Subsidiary while rendering services under consideration. It was also found that Indian subsidiary could not perform said services on its own and it will have to approach Taxpayer for seeking IT and SAP support. Hence, in absence of any transfer of

Important Rulings

knowledge, make available condition is not satisfied and ITAT had relied upon plethora of judicial precedents in this regard.

This is welcome ruling wherein ITAT had confirmed the settled position of law that in order to give the effect of protocol forming part of DTAA, no separate action is required, unless otherwise stated. Also, in absence of fulfilment of make available condition, service fee cannot be chargeable to tax as FTS under respective DTAA.

Reimbursement of salary of seconded employee is not FTS and not chargeable to tax in India

Google LLC [2023] 147 taxmann.com 428 (Bangalore ITAT)

Taxpayer was a foreign company incorporated in USA. During relevant years, Taxpayer received certain payments from its Indian group company towards secondment of its employees in India. Revenue authorities have treated the amounts received by Taxpayer as income chargeable to tax in India as FTS / FIS under the ITA as well as DTAA by observing that Indian group company has availed technical services from the Taxpayer, which were to be provided through certain employees of the Taxpayer, who were technical/managerial experts in their respective domains at a sufficiently higher level. Further, these services were technical and managerial in nature as they provide and impart a skill set to the concerned manpower of Indian group company for execution of technical and managerial jobs and hence falling under the definition of FIS under India USA DTAA.

Hon'ble ITAT allowed the appeal preferred by the Assessee and held that amounts paid by Indian group company to the Taxpayer with reference to seconded employees did not come within the meaning of 'FTS' or 'FIS' under the ITA or under DTAA, by relying upon the ration laid down by decision of Hon'ble Karnataka High Court in case of Flipkart Internet (P.) Ltd [2022] 139 taxmann.com 595 (Karnataka), which was also followed by Hon'ble ITAT, in the case Biesse Manufacturing Company (P.) Ltd. [2023] 146 taxmann.com 242 (Bang. Trib.). Applying the ratio laid down by these rulings, ITAT found that in the present case, seconded employees were working for an Indian Company and under the direct control, supervision, and direction of an Indian company. ITAT also noted that merely for the administrative convenience, salaries were paid by Taxpayer and get it reimbursed from Indian Company on a cost-to-cost basis and reimbursement without profit element is not an income chargeable to tax in India. ITAT also observed that seconded employees have entered into India on an employment visa and such seconded employees did not have any guarantee to join back the original employment with Taxpayer on completion of secondment period.

After considering facts of the case and material on record, ITAT held that reimbursement of salary cost in relation to seconded employee could not be considered as FTS. The ruling comes as a relief to the taxpayer as the Hon'ble ITAT, Bangalore has delved on finer aspects of the secondment arrangement placed before it. The clarity in arrangement between the parties supported by robust documentation does help to mitigate unintended tax consequences.

Important Rulings

Foreign Ruling

Treaty with country of beneficial owner to be applied when immediate payee is not a beneficial owner

Supreme Administrative Court of France - Planet SARL [TS-1038-FC-2022(FRN)]

Taxpayer, a French company made royalty payments to a company incorporated in New Zealand for license to distribute sports programmes to fitness clubs. Tax was withheld on the same at the rate of 10% under DTAA between France and New Zealand.

Subsequently, post 2011, two parallel entities incorporated in Belgium and Malta, respectively were interposed between the Taxpayer and New Zealand Licensor. Royalty payments were made to Belgian entity without tax withholding as per the provisions of France – Belgium DTAA, whereas payments were made to Malta Entity after withholding tax at 10%. Considering that the rate of tax under treaties with New Zealand and Malta were same, payments to Malta Entity were not questioned. However, with respect to payments made to Belgian Entity, French Tax Authorities considered the New Zealand Entity as the Beneficial Owner and levied tax at the rate of 10% applying the DTAA between France and New Zealand and denied benefits of Belgian DTAA considering that the Belgian Entity was not the beneficial owner of the license fees.

The Supreme Administrative Court of France upheld denial of benefits of France Belgian DTAA and held that the DTAA between Source State and Beneficial Owner's State should apply when the immediate recipient is not the beneficial owner of the income.

Relying on the Commentary to OECD's Model Tax Convention, while the benefits of Belgian DTAA was denied, the Court held that held that 'paid to a resident' in Article 12(1) of the DTAA does not seem to prevent the tax treaty's applicability qua the beneficial owner's State and that Article 12(2) of the DTAA refers to the 'recipient which is the beneficial owner' of the income and accordingly benefits of DTAA Beneficial Owner's with State should be granted. The matter was referred back to lower court for factual examination as to which entity was the beneficial owner of the royalty income. Lately, various international Courts have held in the favour of taxpayer wherein the benefit of DTAA has been granted by even if immediate recipient of income is not a beneficial owner. We have already covered few of the international rulings in our previous month's KCM Insight.

Important Updates

Foreign Updates

Extension of certain due dates by Government of Turkey

The Ministry in the Gurin district of Sivas province of Turkey has declared a state of force majeure due to the recent earthquake disaster in Kahramanmaraş on 06 February 2023.

The state of force majeure has been declared in the provinces of Adana, Adıyaman, Diyarbakır, Gaziantep,Hatay, Kahramanmaraş, Kilis, Malatya, Osmaniye and Şanlıurfa, which were affected by the earthquake.

In view of above, Government has extended various due dates in relation to filing of return of income, payment of taxes, penalties, motor vehicle tax, etc. Further, Taxpayers situated in the impacted provinces may settle their tax debts in instalments, without incurring interest, for a maximum of 24 months, as long as they meet certain criteria and submit an application by 02 October 2023.

Turkey strikes off withholding tax on buy back of shares

Turkey's Revenue Administration released Presidential Decision No. 6791 on 14 February 2023, which includes a provision for a lowered withholding tax rate on share buybacks. Pursuant to Article 94 of the Income Tax Law, if a Turkish company that is fully liable and subject to taxation purchases its own shares, the profit or income received by shareholders is classified as a deemed dividend and subject to a 15% withholding tax.

However, with the implementation of Presidential Decision No. 6791, the withholding tax rate has now been reduced to 0%.

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Important Updates

Key Updates on 49th GST council meeting was conveyed on 18th February 2023 at Delhi

GST Appellate Tribunal

The Council adopted the report of Group of Ministers with certain modifications. The final draft amendments to the GST laws shall be circulated to Members for their comments. The Chairperson has been authorized to finalize the same. This should pave way for setting up of GST Tribunal.

Recommendation to increase the time limit for revocation of cancellation of registration.

Amendment is proposed in section 30 of CGST Act, 2017 and rule 23 of CGST Rules, 2017 to provide that –

The time limit for making revocation of application has been increased from 30 days to 90 days, with further option to extend by commissioner or an officer authorized by him for up to 180 days.

Recommendation for extension of time for best judgment assessment order

Amendment in the section 62 of CGST Act, 2017 is proposed to increase the time for filing return for enabling deemed withdrawal of such best judgment assessment order, from 30 days to 60 days, with an option to further extend up to 60 days, subject to certain conditions.

Rationalization of provision of Place of Supply of services transportation of goods

The Council recommended to rationalize the provision of place of supply for services of transportation of goods by deletion of section 13(9) of IGST Act, 2017 to provide that the place of supply of services of transportation of goods, in cases where location of supplier of services or location of recipient of services is outside India, shall be the location of the recipient of services.

Due to deletion of the provision sec 13 (9) and the provision omitted sec 12 (8), for the place of supply of services of transportation of goods, in case where the location of supplier of services or location of recipient is outside India, shall be the place of destination of goods and therefore Reverse Charge Mechanism shall be applicable for goods exported on CIF basis. Requisite clarification for this would be expected.

Change in Late Fee

The council has recommended to rationalise late fee for delayed filing of Annual Return in Form GSTR9 for FY 2022-23 onwards as below:

If turnover up to Rs 5 Crore – Rs. 50 per day (Rs 25 CGST + Rs 25 SGST) or Maximum of 0.04% of Turnover in State or UT (0.02% CGST + 0.02% SGST)

If turnover more than Rs. 5 Crore to Rs. 20 Crore - Rs. 100 per day (Rs 50 CGST + Rs 50 SGST) or Maximum of 0.04% of Turnover in State or UT (0.02% CGST + 0.02% SGST)

No change in late fee for more than Rs. 20 Crore

Current late fee: Rs. 50 per day (Rs 25 CGST + Rs 25 SGST) or Maximum of 0.04% of Turnover in State or UT (0.02% CGST + 0.02% SGST)

Important Rulings

Supply of 'Vouchers' not goods or services, but 'instrument' like 'money'

Premier Sales Promotion Pvt Ltd vs UOI & Ors, High Courts of Karnataka

Writ petition no. 5569 of 2022

The company is engaged in business of procuring Prepaid Payment Instruments (PPI) like Gift Vouchers, Cash back vouchers and E-vouchers from the issuers and supplying them to its clients for specified face value. The company had filed an application before AAR and AAAR where it was ruled that Supply of vouchers is taxable as goods and the Time of supply of the transactions will be governed under section 12(5) of CGST Act and the rate of GST to be charged as per Entry no. 453 of Schedule 3 of Notification No. 1/2017 -Central Tax (Rate)

The Hon'ble High Court held that the definition of voucher as defined under the CGST Act, makes it clear that vouchers are mere instruments accepted as consideration for supply of goods or services. They have no inherent value of their own. Since, they are considered as instrument it will fall under the definition of 'Money' under CGST Act. The CGST Act, excludes 'money' from the definition of goods and service. The order passed by AAAR was quashed holding that the vouchers do not fall under the category of goods and services, and they are exempted from levy of tax.

Intermediary' services explained; refund allowed on 'Business Support' to overseas company

Idex India Pvt Ltd vs Commissioner of CGST (CESTAT Mumbai)

Service tax appeal no. 86812 of 2019

The company is into business of providing taxable services in the category of Business Support Service, Internet & Telecommunication Services, Information Technology Software & Legal consultation services. They provide Business Support Services to its overseas holding company, M/s. Idex Corporation, USA and its subsidiaries such as Idex, Japan etc. During the period April 2015 to June 2016, the company filed refund claims under Notification no. 27/2012-CE(NT) read with Rule 5 ibid for unutilized Cenvat Credit.

The adjudicating authority rejected all refund applications filed on the ground that the services provided by the company to its clients cannot be treated as export of service as provided under Rule 6A of the Service Tax Rules and therefore they are not eligible for refund for the Cenvat Credit.

The CESTAT Mumbai held that supply made by the company does not fall within the ambit of 'intermediary'. If the Revenue department is not in agreement with the claims of the company and if the services do not fall under the ambit of 'export of service' then Revenue should have initiated the proceedings for demanding the service tax for the same. As no such proceedings were initiated and therefore the Revenue itself has allowed this taxable service provided by the company as 'export of service'. Therefore, Revenue department cannot deny refund by treating the service provided not to be export of service.

Credit of unadjusted VAT TDS amount can be transitioned to GST regime

Subhash Singh Choudhary vs State of Jharkhand

W.P.(T) No. 2404 of 2020

Important Rulings

The taxpayer was engaged in business of supplying machinery and providing engineering, commissioning, and operational support services. Excess ITC was claimed after filing return for the quarter June 2017, which comprised of the excess ITC and unadjusted TDS under Section 44 of the JVAT Act. A summary of SCN was issued by the Revenue department alleging that taxpayer is not entitled for migration of the amount of credit of VAT. Subsequently a summary of order in Form GST DRC-07 was also issued where the entire amount migrated by the taxpayer was disallowed and interest and penalty were also imposed.

Consequently, a rectification order was passed by the Revenue department where the denial of migration of entire TDS was reduced to the amount of excess TDS reflected in the quarterly return. Thereafter, when the second appeal was filed by the taxpayers which was rejected merely on alleged technicalities. The taxpayer argued for the right to carry forward the VAT Credit reflected in their return prior to GST regime under Section 140 (1) of the CGST Act.

The Hon'ble High court of Jharkhand held that the Section 140(1)(i) of the CGST Act only restricts migration of such credit if there is prohibition of such transaction of claiming ITC under Section 17(5) of CGST Act. If the taxpayer is not allowed to migrate unadjusted TDS amount under the GST Regime, they would have become entitled for refund of the same from 1st July 2017. Therefore, the taxpayer is entitled for migration of TDS amount in terms of Section 140 (1) of CGST Act.

Recent functionalities introduced in GSTN

Geocoding for address of Principal Place of Business: Presently, taxpayers who have registrations in Delhi and Haryana can submit the principal place of business under geocoding, it has been proposed to gradually be opened for taxpayers from other States and UTs

New E-Invoice Portal: GSTN has added four more IRPs (Invoice Reporting Portals) for the reporting of e-invoices, where taxpayers can access information on e-invoice compliance in a user-friendly style.

Option to GTA to shift from RCM to FCM: GSTIN has provided an option to all taxpayers who provide Goods Transport Agency (GTA) services, to pay their taxes via the forward charge mechanism for FY 2023–2024 and to opt the option GTA will require to furnished Annexure V on GSTN portal.

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MCA Notifications

Coverage

Extension of time for filing 45 company e-Forms and Form PAS-3 and SPICe+ Part A

General Circular No. 04/2023 dated February 21, 2023

Due to the shifting of certain e-Forms from MCA (Ministry of Corporate Affairs) Version 2 to MCA Version 3 Portal, many technical glitches have crept in and it becomes difficult for stakeholders to complete the filings within time limit not only due to these technical bugs and but also on account of change in system of filings of forms. In view of the same, MCA decided to extend the time of filing of 46 company e-forms including Form PAS 03 and SPICe+ PART A till March 31, 2023, without levying any additional fees. The condition is that the due dates of these forms should have been between January 20, 2023 and February 28, 2023.

Filing of certain e-Forms forms in physical mode

General Circular No. 05/2023 dated February 22, 2023

Ministry of Corporate Affairs (MCA) allowed filing of certain e-Forms via physical mode with the concerned Registrar between February 22, 2023, to March 31, 2023 without payment of fees for the convenience of stakeholders.

The process to file the form in physical mode is that the stakeholder needs to obtain acknowledgement of the physical filing from the Registrar as per the specified format and a copy of the Form should be sent to the Registrar via e-mail as well. Such filing should be accompanied by an undertaking that the Company shall also file the relevant Form in electronic form on MCA-21 Portal along with fee payable as per Companies (Registration Offices and Fees) Rules, 2014.

List of e-Forms which are allowed to be filed through physical mode:

- GNL-2 (Filing of prospectus related documents and private placement);
- MGT-14 (Filing of Resolutions relating to prospectus related documents and private placement);
- PAS-3 (Allotment of Shares);
- SH-8 (Letter of offer for buyback of own shares or other securities);
- SH-9 (Declaration of Solvency);
- SH-11 (Return in respect of buy-back of securities).

RBI Notifications

Issuance of PPIs to Foreign Nationals / Non-Resident Indians (NRIs) visiting India

Extending UPI for Inbound Travelers to India

Notification No. RBI / 2022-23 / 176 CO.DPSS.POLC.No.S – 1907 / 02.14.006 / 2022-23 dated 10 February 2023 and Press Release: 2022-2023/1765 dated 21 February 2023

To ensure greater convenience to Foreign Nationals and Non-Resident Indians (NRIs) travelling to India, Reserve Bank of India ("RBI") has opened access to Unified Payment Interface (UPI) for making local payments. The travelers will be issued Pre-Paid Instruments ("PPI" or "Facility") for merchant payments ("P2M") during their visit in India.

The salient features of the facility are:

- The PPI / Facility will initially be available to travelers from the G-20 nations.
- Travelers would include delegates from G-20 nations who can specifically take advantage of this benefit at the various Meeting venues which they attend.
- This facility will be initially made available at the international airports of Mumbai, New Delhi and Bengaluru.
- ICICI Bank and IDFC First Bank are the two Banks who shall be eligible to issue PPIs. In addition, Pine Labs Private Limited and Transcorp International Limited are the two Non-bank PPI issuers who have been selected to provide this facility.
- PPIs shall be issued after physical verification of passport and visa of the Eligible Travelers at the point of issuance
- Loading / Reloading of such PPIs shall be against receipt of foreign exchange by cash or through any payment instrument
- The amount outstanding at any point of time in such PPIs shall not exceed the limit applicable on full-KYC PPIs
- The unutilized balances in such PPIs can be encashed in foreign currency or transferred 'back to source' (payment source from where the PPI was loaded), in compliance with foreign exchange regulations.

Introduction of Foreign Contribution (Regulation) Act (FCRA) related transaction code in NEFT and RTGS Systems

Notification No. RBI / 2022-23 / 178 CO. DPSS. RPPD. No. S1931 / 04-03-001 / 2022-23 dated 16 February 2023

With effect from 15 March 2023, SBI is required to daily report to Ministry of Home Affairs (MHA) the donor details such as name, address, country of origin, amount, currency and purpose of remittance, with respect to foreign contributions received under FCRA 2010, from foreign banks through SWIFT and from Indian intermediary banks through NEFT and RTGS systems. The requisite transaction codes for NEFT and RTGS Systems respectively, have been introduced in the core banking/ middleware solutions.

Changes in Framework to enable verification of upfront collection of Margins from clients in Cash and Derivatives segments

SEBI/HO/MRD/MRD-PoD-2/P/CIR/2023/016 dated February 01, 2023

SEBI has been continually incorporating suggestions from various stakeholders for the purpose of smooth and transparent operations in the Derivative segments (including commodities) as well as to curb excessive volatility.

SEBI has clarified that the End of Day (EOD) collection requirement from clients shall be worked out on the basis of fixed BOD margin parameters. The change has been introduced primarily for the purpose of verification of upfront collection of margins from clients.

Applicability: Within 3 months from date of issuance of this Circular.

Manner of achieving Minimum Public Shareholding (MPS)

SEBI/HO/CFD/PoD2/P/CIR/2023/18 dated February 3, 2023

Listed entities have been permitted to achieve Minimum Public Shareholding (MPS) under Rule 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 ("SCRR") read with regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") through various methods including:

- Issuance of shares to Public through prospectus
- Offer for sale ("OFS") of shares held by promoter/promoter group through prospectus or through Stock Exchange mechanism
- Rights Issue
- Bonus Issue
- Issue of shares under Qualified Institutional Placement ("QIP")
- Sale of shares held by promoter(s) / promoter group in the open market (up to a maximum of 5% of the paid up capital during a FY)

In addition to existing methods for achieving the MPS, the following additional methods have been prescribed to achieve MPS requirements:

Sr. No.	Method	Specific condition if any
1	Allotment of shares under Employee Stock Option (ESOP) scheme, subject to maximum 2% of paid-up equity share capital	No allotment of shares to promoter / promoter group.
2	Transfer of shares held by promoter / promoter group to Exchange Traded Fund (ETF), subject to maximum 5% of paid-up equity share capital	Persons belonging to promoter(s)/promoter group to give undertaking that they shall not subscribe to the units of such ETF.

Do's and don'ts relating to green debt securities to avoid occurrences of greenwashing

SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 dated February 03, 2023

SEBI Notifications

Action by many listed entities who jumped the bandwagon of raising funds under the garb of green debt securities but are not spending on green technologies as stated at the time of fund raising is coined as "greenwashing". "**Greenwashing**" implies making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of product, service, or business operation.

SEBI has defined "Green Debt Security" under SEBI (Issue and Listing of Non-Convertible Securities) Regulations 2021 (NCS Regulations).

To ensure transparency to market participants so as to avoid / prevent greenwashing, SEBI has released a list of guidelines for the issuer of green debt securities:

Do's	Don'ts
– Continuous monitoring to ensure that greener pathway undertaken.	– No utilization of funds for purposes other than those covered under definition of green debt security.
– Disclosure to investors and provision for early redemption, in case funds utilized for any other purpose.	– No utilization of misleading labels, hiding trade-offs etc. to highlight green practices.
– Adhering to highest standards associated with issue of green debt security.	– No untrue claims giving false impression of certification by a third-party entity.
– Quantification of negative externalities associated with utilization of funds raised.	

Applicability: With immediate effect

Review of regulatory framework for Green Debt Securities

SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/023 dated February 06, 2023

SEBI in order to prevent the occurrence of "*greenwashing*" and to align the framework for issuance of green debt securities with global standards, has replaced chapter IX of Non-Convertible Securities ("NCS") Operational Circular with the following:

- **Initial Disclosures:** Initial disclosures at the time of issue and listing will include:
  - statement of environmental sustainability objectives
  - brief details of decision-making process for determining the eligibility of project(s) and/or asset(s)
  - details of system/procedures for tracking deployment of proceeds
  - details of project(s)/asset(s), details of estimate of distribution of proceeds, etc.
- **Continuous Disclosures:** Additional disclosures in annual report and financial results shall be with regard to:
  - utilization of proceeds duly verified by an external auditor

SEBI Notifications

- details of unutilized proceeds including temporary placement
- list of project(s)/asset(s) & Qualitative performance indicators
- methods and underlying assumptions used in preparation of performance indicators and metrics

➢ **Impact Reporting:**

- Reporting of information on project by project basis about environmental impact of the projects financed by the green debt securities
- Appointment of third-party reviewer/certifier for:
  - post-issue management of use of proceeds
  - verification of internal tracking and impact reporting.

➢ **Responsibilities of issuer of green debt securities:**

- maintaining a decision-making process
- Ensuring that all the project(s)/asset(s) meet the proposed objectives of green debt securities
- utilization of proceeds for the stated purpose

Applicability: All issues (*of green debt securities*) launched on or after April 1, 2023.

Introduction of Issue Summary Document (ISD) and dissemination of issue advertisements

SEBI/HO/CFD/PoD-1/P/CIR/2023/29 dated February 15, 2023

Giving consideration to the need of relevant information regarding issues of various securities and to facilitate consumption of data by stakeholders, it has been decided to introduce Issue Summary Document (ISD), in XBRL (Extensible Business Reporting Language) format at the Stock Exchanges and Depositories. The ISD shall be filed in two stages, namely pre issue and post issue by the Submitting Entity, namely the Lead Manager / Issuer of securities.

The prescribed timelines for implementation of the ISD are based on the nature of events:

Sr. No.	Nature of event	Implementation of ISD
1	Public issues of specified securities (IPOs/FPOs)	Offer document filed on or after March 01, 2023
2	Further issues [preferential issue, qualified institutional placement (QIP), rights issue, issue of ADRs/GDRs/FCCBs.	April 03, 2023
3	Buy-back of equity shares	May 02, 2023
4	Open offer under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	
5	Voluntary delisting of equity shares	
6	Dissemination of all advertisements regarding public issue by Lead Managers	March 01, 2023

SEBI Notifications

Coverage

Maintenance of a website by stock brokers and depository participants

SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/30 dated February 15, 2023

To ensure transparency and keep the investors informed about various activities, SEBI has mandated Stock brokers (SBs) and depository participants (DPs) to maintain websites for dissemination of information.

In addition to such published information SB and DP have now been mandated to maintain "designated website" to display the following information as well:

- Basic details viz registration number such as registered address of head office and branches if any
- names and contact details of Key Managerial Personnel (KMP) and compliance officer
- procedure for opening an account, filing of complaint and tracking status of complaint
- details of authorized person.

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For detailed understanding or more information, send your queries to ***kcminsight@kcmehta.com***

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Abbreviations

Abbreviation	Meaning
AAR	Authority of Advance Ruling
AAAR	Appellate Authority of Advance Ruling
AAC	Annual Activity Certificate
AD Bank	Authorized Dealer Bank
AE	Associated Enterprise
AGM	Annual General Meeting
AIR	Annual Information Return
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Arrangements
AS	Accounting Standards
ASBA	Applications Supported by Blocked Amount
AY	Assessment Year
BOI	Body of Individuals
BRC/FIRC	Bank Realisation Certificate / Foreign Inward Remittance Certificate
CBDT	Central Board of Direct Tax
CBIC	Central Board of Indirect Taxes and Customs
CCA	Cost Contribution Arrangements
CCR	Cenvat Credit Rules, 2004

Abbreviation	Meaning
CESTAT	Central Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Service tax Act, 2017
CIT(A)	Commissioner of Income Tax (Appeal)
COO	Certificate of Origin
Companies Act	The Companies Act, 2013
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
Customs Act	The Customs Act, 1962
DFIA	Duty Free Import Authorization
DFTP	Duty Free Tariff Preference
DGFT	Directorate General of Foreign Trade
DPIIT	Department of Promotion of Investment and Internal Trade
DRI	Directorate of Revenue Intelligence
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
ECL	Electronic Credit Ledger
EGM	Extra-ordinary General Meeting

Abbreviation	Meaning
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIFP	Foreign Investment Facilitation Portal
FIRMS	Foreign Investment Reporting and Management System
FLAIR	Foreign Liabilities and Assets Information Reporting
FPI	Foreign Portfolio Investor
FOCC	Foreign Owned and Controlled Company
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy 2015-20
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GOI	Government of India
GST	Goods and Service Tax
GSTN	Goods and Services Tax Network
GVAT Act	Gujarat VAT Act, 2006
HC	High Court
HSN	Harmonized System of Nomenclature
IBC	Insolvency and Bankruptcy Code, 2016

Abbreviations

Abbreviation	Meaning
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
IEC	Import Export Code
IGST	Integrated Goods and Services Tax
IRDA	Insurance Regulatory and Development Authority
ISD	Input Service Distributor
ITA	Income Tax Act, 1961
ITC	Input Tax Credit
ITR	Income Tax Return
IT Rules	Income Tax Rules, 1962
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Return
ITSC	Income Tax Settlement Commission
JV	Joint Venture
LEO	Let Export Order
LIBOR	London Inter Bank Offered Rate
LLP	Limited Liability Partnership
LO	Liaison Office
LODR	Listing Obligations and Disclosure Requirements
LTA	Leave Travel Allowance
LTC	Lower TDS Certificate

Abbreviation	Meaning
LTCG	Long term capital gain
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NCB	No claim Bonus
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
RMS	Risk Management System
ROR	Resident Ordinary Resident
ROSCTL	Rebate of State & Central Taxes and Levies
RoDTEP	Remission of Duties and Taxes on Exported Products

Abbreviation	Meaning
RPM	Resale Price Method
SC	Supreme Court of India
SCN	Show Cause Notice
SDS	Step Down Subsidiary
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SST	Security Transaction Tax
ST	Securitization Trust
STCG	Short term capital gain
SVLDRS	Sabka Vishwas (Legacy Dispute Resolution Scheme) 2019
TCS	Tax collected at source
TDS	Tax Deducted at Source
TNMM	Transaction Net Margin Method
TP	Transfer pricing
TPO	Transfer Pricing Officer
TPR	Transfer Pricing Report
TRO	Tax Recovery Officer
WHT	Withholding Tax
WOS	Wholly Owned Subsidiary