MPC & CO LLP
CHARTERED ACCOUNTANTS

Corporate Update

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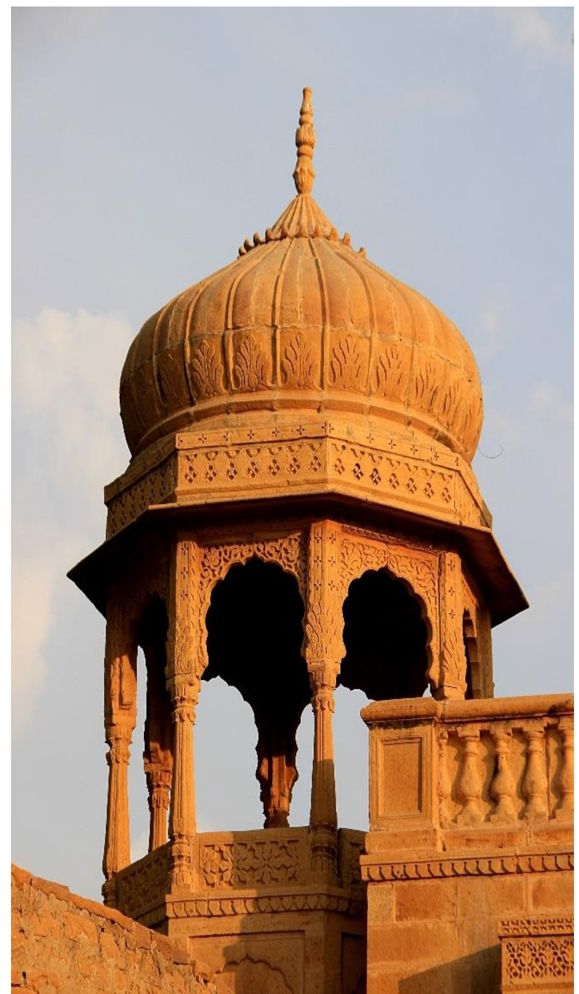

FOREWORD

Dear Reader,

The COVID 19 crisis has severely disrupted the growth of the Indian economy, with India's growth rate plummeting to its lowest in the last three decades. Apart from significant unemployment and drop in household incomes, there has been a considerable impact on small and medium scale businesses.

Keeping in mind that the small-scale sector is the backbone of the Indian economy, the Central Government has announced a series of economic packages to provide the much needed stimulus to the Indian economy.

Notably, the Government has announced various sops to the Micro Small and Medium Enterprises ('MSME'), such as the broadening of the definition of MSMEs, provision of collateral free emergency credit, subordinate debt etc.

On the direct tax front, deadlines for filing tax returns, completion of assessment proceedings, tax audit report and the Vivad se Vishwas Scheme have been extended. Furthermore, the Government has temporarily reduced the rate of withholding tax in case of certain payments with an objective of boosting the working capital of taxpayers.

It has also been provided that certain COVID-19 related debt would be excluded from the definition of default under the Insolvency and Bankruptcy Code for the purpose of triggering insolvency proceedings. Furthermore, prescribed minor technical and procedural defaults under Company law shall be decriminalized under the provisions of the Company Act.

C.S. Mathur
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International Tax

Protocol amending India-Austria DTAA notified

Notification No.22/F.No. 505/01/1982-FTD-I (Pt.) dated April 24, 2020

The protocol amending India-Austria Double Taxation Avoidance Agreement (DTAA), which was signed on February 06, 2017 has been notified by the Government of India and the date of entry into force of the said Protocol is May 01, 2020. The protocol shall enter into effect from April 01, 2021.

The protocol replaces Article 26 "Exchange of Information" (EOI) in line with the OECD model. The amended Article 26, inter-alia, provides that the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of the DTAA or to the administration or enforcement of the domestic laws concerning taxes. If information is requested by a Contracting State in accordance with Article 26, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes.

The original protocol to the DTAA has been amended to provide that the applicant State shall demonstrate the foreseeable relevance of the information requested under the DTAA and shall provide certain set of information to the requested State for this purpose. It is also provided that for the interpretation of Article 26 the principles established in the OECD Commentaries shall be considered, subject to the reservations or observations or positions of India or Austria.

The protocol also inserts a new article, Article 26A "Assistance in the Collection of Taxes", which provides that the Contracting States shall lend assistance to each other in the collection of the tax to the extent needed to ensure that any exemption or reduced rate of tax granted under the DTAA shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article. The requesting State shall be required to produce a certified copy of a document specifying that the sums referred to for the collection are due and enforceable.

Supreme Court holds that Indian Liaison Office is not a Permanent Establishment

UOI v. U.A.E. Exchange Center [2020] 116 taxmann.com 379 (SC)

Recently, the Hon'ble Supreme Court of India held that Liaison Office (LO) of foreign entity in India did not constitute Permanent Establishment (PE) as the activities carried out by it were of preparatory or auxiliary character.

On facts, the assessee, U.A.E. Exchange Center, is a UAE based company engaged in offering, among others, remittance services for transferring amounts from UAE to various places in India. It had set-up various LOs in India with the approval of the Reserve Bank of India (RBI) for supporting its remittance activities. The contract was entered into by the assessee with Non-resident Indians ('NRI') in UAE and commission/ fee was also received by the assessee in UAE.

While in some cases the assessee made remittance to beneficiaries in India by telegraphic transfer through bank channels, in other cases the assessee sent instruments/cheques through its LOs to the beneficiaries in India. The instant dispute arose in respect of the latter case wherein, the LOs were involved in the activity of downloading the particulars of remittances through electronic media and printing cheques/drafts drawn on the banks in India, which, in turn, were couriered or dispatched to the beneficiaries in India, in accordance with the instructions of the NRI remitter.

The assessee sought a ruling from the

Authority for Advance Rulings (AAR) as to whether any income accrued/ was deemed to be accrued in India from the activities carried out by the LOs in India.

The AAR stated that downloading data, preparing cheques for remitting the amount, dispatching the same through courier by the LOs was an important part of the main work itself because without remitting the amount to the beneficiaries as desired by the NRIs, performance of the contract would not be complete.

On this premise, the AAR ruled that the activities carried on by the LOs were not of preparatory or auxiliary character and hence, constituted a business connection under the Income-tax Act as well as a PE of the assessee in India. Thus, the profits of the assessee were liable to tax in India to the extent attributable to the activities of LOs in India. The assessee challenged the order of the Advance Ruling before the jurisdictional High Court, which decided the matter in favour of the assessee. Aggrieved, the Revenue filed an appeal before the Hon'ble Supreme Court.

The Supreme Court noted that the LOs were permitted to carry on only limited activities in India such as responding to banks' queries, bank reconciliation, printing Indian Rupee drafts with facsimile signature from the Head Office and counter signature by the authorised signatory of the LO, etc. and that the permission did not allow the LOs to enter into any contract in India or to undertake any other activity of trading, commercial or industrial nature. It observed that the LO was only dispensing with the remittances by downloading information from the main server of respondent in UAE and printing cheques/drafts drawn on the banks in India as per the instructions given by the NRI remitters in UAE. Moreover, the LOs could not charge commission or fee for activities undertaken in India.

The Supreme Court opined that the functional test regarding the activity in question was essential to determine whether the same was of preparatory or auxiliary nature. The Hon'ble Court observed that the expressions "preparatory" or "auxiliary", which are not defined in the Act or the tax treaty, ought to be understood in common parlance and in this regard, reference was made to the Black's Law Dictionary and the Oxford English Dictionary. The Supreme Court also relied on its earlier decisions in the case of *ADIT v E-Funds IT Solution Inc. [2018] 13 SCC 294* and DIT v. *Morgan Stanley & Co. Inc. [2007] 7 SCC 1* wherein support activities were held to be of preparatory or auxiliary character.

The Supreme Court concurred with the opinion of the High Court that the activities in question of the LOs were within the scope of the permission given by the RBI and were in the nature of preparatory or auxiliary character. Accordingly, the Supreme Court held that the LOs did not constitute PE of the assessee in India in terms of Article 5 of the India-UAE tax treaty.

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Domestic Taxation

Supreme Court upholds sanctity of Clause (f) of Section 43B

UOI v. Exide Industries Ltd (2020) 116 taxmann.com 378 (SC)

In a recent decision, Hon'ble Supreme Court has upheld the constitutional validity of Clause (f) of Section 43B of the Income tax Act by recognizing that such clause had been introduced to remedy specific mischief caused and address the concerns of public at large.

To give a brief background, Clause (f) of Section 43B of the Act had been introduced vide Finance Act, 2001 with effect from April 1, 2002 to provide for deduction of leave encashment in the year of actual payment of leave encashment by an employer to an employee. Thus, the eligibility of deduction of leave encashment arose only in the year of actual payment and not in the year in which provision for such payment is made in the books of accounts (unless paid before due date for filing tax return), irrespective of the method of accounting followed by an assessee.

The issue which arose was the aggrievement of the taxpayers with the inclusion of Clause (f) in Section 43B of the Act as they felt that the clause took away the right granted under Section 145 of the Act to follow their choice in method of accounting. Further, the taxpayers also felt that the objects and reasons behind introduction of main Section 43B was completely different from the nature of liability of leave encashment (i.e. trading liability) as Section 43B had been specifically carved out to cover statutory liabilities like tax, duty, cess etc. and other liabilities created for the welfare of the employees and thus, could not bring a trading liability such as leave encashment within its ambit.

The constitutional validity of Clause (f) first came up before division bench of Hon'ble Calcutta High Court which termed Clause (f) as unconstitutional on three counts –

(i) Non-Disclosure of objects and reasons behind introduction of Clause (f);

(ii) Inconsistency of Clause (f) with intention behind introduction of main Section 43B and its other clauses to plug evasion of statutory liabilities; and

(iii) Introduction of Clause (f) to nullify the Hon'ble Supreme Court decision in case of Bharat Earth Movers v. CIT [2000] 6 SCC 645.

On appeal to the Hon'ble Supreme Court, the Court held on basis of settled constitutional principles that in order to examine constitutional validity of any provision, it is imperative that two essential elements are present: (i) Existence of legislative competence to enact law; and (ii) Violation of constitutional right.

The Supreme Court held that there is no uniformity in the nature of deductions included in Section 43B which have been included to cater to different fiscal scenarios and does not entail within its ambit only deductions concerning statutory liabilities. Clause (f) had been introduced to address mischief which would have been caused on account of double benefit to an employer – firstly, when an employer would have availed deduction of leave encashment without actual payment to an employee and secondly, refusal by an employer to pay leave encashment to an employee on his retirement.

Hon'ble Supreme Court while analyzing the impugned decision of Hon'ble Calcutta High Court, gave a ground wise conclusion in favour of upholding the constitutional sanctity of Clause (f):

(i) **Non-Disclosure of objects and reasons behind introduction of Clause (f)** - Objects and reasons feature in the list of external aids to interpretation and can be looked into for the limited purpose of interpreting an ambiguous provision which is subject to multiple meanings. The presence of objects and reasons has no impact upon the constitutional validity of a provision as long as the literal interpretation of the provision enables the Court to comprehend its true meaning with sufficient clarity.

(ii) **Inconsistency of Clause (f) main Section 43B and its other clauses –** Court held that legislature has the power to include any type of deductions in the ambit of Section 43B and never intended to restrict Section 43B to a particular category of deduction. Further, it was observed that broad objective of enacting

Section 43B was to protect larger public interest including welfare of the employees and Clause (f) shares sufficient nexus with the aforesaid broad objective.

(iii) **Defeats the decision of Bharat Earth Movers (supra) –** The Court held that where an enactment is corrected by the wisdom of legislature, a judgment which is delivered by the Court on the basis of an earlier enactment stands altered and in such a scenario, the legislature does not declare the opinion of the Court to be invalid. Placing reliance on a plethora of its own decisions, the Court held that the insertion of clause (f) has not extinguished the autonomy of the assessee to follow the mercantile system and has merely deferred the benefit of deduction to be availed by the assessee.

In view of the above, the Supreme Court upheld the constitutional validity of Clause (f) of Section 43B of the Act.

Central Board of Direct Taxes Clarification in respect of Residency Provisions

Circular 11 of 2020 dated May 8, 2020

Provisions regarding determination of residency of a person are contained in Section 6 of the Income-tax Act which are relevant in determining the residential status of a person particularly 'an individual'. The residential status of an individual is dependent, *inter-alia*, on the period of stay of that individual in India during previous year (i.e. 1st April – 31st March) ('tax year').

On account of outbreak of the Covid-19 pandemic and consequent suspension of international travel worldwide, individuals who had come to India on a visit during tax year 2019-20 had to extend their stay in India. The extended period of stay of stranded individuals meant that such individuals were prone to higher risk of being regarded as 'resident' in India and subsequent taxation of their global income in India.

To address the aforesaid concerns of individuals, the Central Board of Direct Taxes has recently issued a clarification for determining residential status of such stranded individuals for tax year 2019-20. As per the said clarification, an individual who has come on a visit to India prior to March 22, 2020 shall for the purpose of determining his/ her residential status in India exclude time period as under:

S. No.	Scenarios	Time Period
1.	Unable to leave India on/ before March 31, 2020 due to Covid-19	March 22, 2020 – March 31, 2020
2.	Quarantined in India due to Covid-19 on/ after March 1, 2020 and departed on evacuation flight on/before March 31, 2020 or after March 31, 2020	Beginning of Quarantine Period – Date of Departure/ March 31, 2020 (where date of departure is after March 31, 2020)
3.	Departed on evacuation flight on/ before March 31, 2020	March 22, 2020 – Date of Departure

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Notice issued after 4 years to tax income escaping assessment, without invoking second proviso to section 147 regarding undisclosed foreign asset/ income, is untenable

New Delhi Television Ltd. v. DCIT [2020] [2020] 116 taxmann.com 151 (SC)

The Supreme Court has quashed a notice issued under section 148 beyond the period of 4 years from the end of the relevant assessment year, observing that there was no failure on the part of the assessee to disclose primary facts. Further, it was also held that the notice issued to the assessee and the supporting reasons did not invoke provisions of the second proviso of Section 147 of the Income-tax Act (alleging escapement of income on account of undisclosed foreign asset) and therefore the revenue cannot be permitted to take benefit of the extended time limit of 16 years under second proviso at a later stage of the proceedings.

In the instant case, the assessee, New Delhi Television Limited ('NDTV'), is an Indian company engaged in running television channels of various kinds. It has various foreign subsidiaries including subsidiary based in the United Kingdom (UK) named NDTV Network Plc., U.K. ('NNPLC'). NDTV filed its return of income for financial year 2007-08 i.e AY 2008-09 on 29.09.2008 declaring a loss.

During the assessment proceedings, the tax officer observed that NNLPC had issued step-up coupon bonds amounting to US$100 million in July 2007 for a period of 5 years redeemable at a premium of 7.5% after the expiry of the period of 5 years. These bonds were redeemed in advance at a discounted price of US $74.2 million in November, 2009. NDTV had agreed to furnish corporate guarantee for the said transaction. The tax officer held that NNPLC had virtually no financial worth, no business and therefore it could not have issued convertible bonds of US$ 100 million, unless the repayment along with interest was secured by the assessee agreeing to furnish guarantee in this regard. Though the assessee had never actually issued such guarantee, the tax officer held that it should be treated like a guarantee issued by any corporate guarantor in favour of some other corporate entity, based on arm's length principle. Therefore, the tax officer imposed guarantee fee @ rate of 4.68% by treating it as a business transaction and added Rs. 18.72 crores to the income of the assessee, without doubting the validity of the transaction.

Subsequently, the case of the assessee was reopened under section 148 to tax income escaping assessment, based on the order of the DRP for subsequent assessment year 2009-10, wherein the DRP concluded that the transactions with the subsidiary companies in Netherlands were sham and bogus transactions aimed to get the undisclosed income back to India by circuitous round tripping. Further, the tax officer also relied on complaints received from minority shareholders in which it was alleged that the money introduced in NNPLC was shifted to another subsidiary of the assessee in Mauritius from where it was taken to a subsidiary of the assessee in Mumbai and finally to the assessee. Therefore, the tax officer was of the opinion that there were reasons to believe that the funds of Rs.405.09 crores introduced into the books of NNPLC were a sham transaction and pertains to the assessee itself.

The assessee filed its objections to the notice and reasons given, claiming that there had been no failure on the part of the assessee to disclose truly and fully all material facts necessary to make an assessment and it was a mere change of opinion and no reasons to believe and the transaction of step-up bonds was a legal and valid transaction. The assessee stated that in the original assessment proceedings, the tax officer has considered the transaction to be genuine by levying guarantee fees and adding it back to the income of the assessee.

The tax officer disposed the objections of the assessee by holding that there was non-disclosure of material facts by the assessee and the notice would be within limitation since NNPLC was a foreign entity and admittedly a subsidiary of the assessee and the income was being derived through this foreign entity. Hence, the case of the assessee would fall within the second proviso of section 147 of the Income-tax Act and the extended period of 16 years would be applicable.

Aggrieved, the assessee filed a writ petition in the High Court which was dismissed. Against this the assessee filed the present writ before the Supreme Court.

Before the Supreme Court, three questions of law were formed involving the issues whether valid reason to believe that any income escaped assessment exists; whether material facts were fully and truly disclosed; whether reliance on second proviso to section 147 is valid without invoking the same in the notice issued under section 148.

1) Existence of valid reason to believe?

The assessee urged that once the transaction of step-up coupon bonds has been accepted to be correct, then the revenue cannot re-open the same and doubt the genuineness of the transaction. According to the assessee, the transactions relating to the Netherlands subsidiary (dealt with by the DRP in AY 2009-10) have been deliberately mixed up by the revenue with the U.K. subsidiary. As such, there is no fresh material with the tax officer to hold that any income has escaped assessment. On the other hand, revenue submitted that at the stage of issue of show cause notice the revenue only has to establish a tentative and prima facie view.

The SC held that merely the fact that the original assessment is a detailed one, cannot take away the powers of the tax officer to issue notice under section 147 of the Act. The SC referring to its earlier decisions in *Phool Chand Bajrang Lal and Another v ITO (1993) 4 SCC 77*, *Ess Kay Engineering Co.(P) Ltd. vs. CIT (2001) 10 SCC 189* and *Claggett Brachi Co. Ltd v CIT (1989) Supp(2) SCC 182* held that the information which comes to the notice of the tax officer during proceedings for subsequent assessment years can definitely form tangible material to invoke powers vested with the tax officer under section 147 of the Act. At the stage of issuance of notice, the tax officer is to only form a *prima facie* view and the material disclosed in assessment proceedings for subsequent years was sufficient to form such a view.

2) True and full disclosure of all material facts during the course of original assessment?

The revenue had placed reliance on certain complaints made by the minority shareholders and alleged that those complaints reveal that the assessee was indulged in round tripping of its funds. However, SC refused to go into this aspect as these complaints were unsubstantiated and the assessee has not been confronted with such material.

Further, it was contested by the revenue that the assessee did not disclose the amount subscribed and the management structure of the companies. The fact that step-up coupon bonds for US$ 100 million were issued by NNPLC was disclosed; who were the entities which subscribed to the bonds was disclosed; and the fact that the bonds were discounted at a lower rate was also disclosed before the assessment was finalised. Thus, it cannot be said that the assessee had withheld any material information from the revenue. It thus held that the assessee had disclosed all the facts it was bound to disclose. Regarding the argument of the revenue that all those companies were bogus, the SC held that at this stage this is not to be considered. If the revenue wanted to investigate the matter further at that stage it could have easily directed the assessee to furnish more facts.

Also, for the revenue's plea that certain documents were not supplied, the SC held that the assessee had disclosed all primary facts before the tax officer and what the

revenue urges is that the assessee did not make a full and true disclosure of certain 'other facts', to which the SC held that the assessee was not required to give.

Even purely on a legal ground, the SC held that the revenue cannot now turn around and urge that the assessee is guilty of non-disclosure of facts, when it was not the case of the revenue before the High Court.

3) Whether extended period of 16 years available if the notice did not invoke the provisions of the second proviso to section 147?

In this regard, it was noticed by the SC that there is no case set up in relation to the second proviso either in the notice or even in the reasons supplied on August 4, 2015 with regard to the notice. It is only while rejecting the objections of the assessee that reference has been made to the second proviso in the order of disposal of objections dated November 23, 2015. The SC held that this is not a fair or proper procedure. If not in the first notice, at least at the time of furnishing the reasons the assessee should have been informed that the revenue relied upon the second proviso. The assessee must be put to notice of all the provisions on which the revenue relies upon. The notice and reasons given thereafter do not conform to the principles of natural justice and the assessee did not get a proper and adequate opportunity to reply to the allegations which was being relied upon by the revenue.

Accordingly, SC held that the notice issued to the assessee and the supporting reasons did not invoke provisions of the second proviso of section 147 of the Act and therefore at this stage the revenue cannot be permitted to take benefit of the second proviso.

However, the Supreme Court did observe that the revenue may issue fresh notice taking benefit of the second proviso if otherwise permissible under law.

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Mutual agreement for letting out property to independent children is a genuine arrangement

Md. Hussain Habib Pathan. v ACIT [2020] 115 taxmann.com 179 (Mumbai – Trib .)

The Tribunal, Mumbai Bench has held that an arrangement between father and children for payment of house rent by the latter is a genuine arrangement. Therefore, the loss on house property computed by treating the same as let out was allowable.

The assessee owned a property and received rental income from his unmarried children, who were residing at the said property with their father and other family members. During the year, the assessee claimed a deduction on account of interest on loan borrowed for property. Such interest is limited to a statutory threshold amount of INR 1,50,000/- (as applicable during the year under consideration) in case of self-occupied property. However, in this case, the assessee claimed the property as let-out to his children and claimed full deduction on account of interest expense (which was otherwise, for the relevant year, restricted to INR 1,50,000/- in case of self-occupied property). The tax officer treated such arrangement as a device to reduce tax and restricted the deduction to the statutory threshold amount of INR 1,50,000/-. The Commissioner (Appeals) concurred with the view of Assessing officer. During the second stage appellate

proceedings, the Tax tribunal observed that the case of Revenue is based on doubts over genuineness of arrangement which is inconclusive. Referring the landmark decisions of Apex court, the Tribunal held that a genuine arrangement cannot be disregarded if same results or operates to minimize the tax liability of assessee. The Tax tribunal opined that, in the instant case as well, such mutual agreement could be seen as an arrangement for sharing the interest burden of the residence with father by way of rent, while simultaneously allowing the tax savings to the father. However, as the property is both self-occupied and a let-out property, only proportionate interest shall be allowed to the assessee towards the let-out portion of the house.

Based on such observations the Tax Tribunal held that there is nothing on record to support the Revenue's case of the arrangement not being a genuine one. As such, the property is both a self-occupied as well as partly let out to the children and therefore, the proportionate interest corresponding to the let-out portion of the property ought to be fully allowed instead of restricting the same to a statutory threshold limit.

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Transfer Pricing

Upheld adjustment of Custom duty to the profit margin of tested party

Swatch Group [India] Pvt Ltd. [TS-86-ITAT-2020(Del)-TP]

In a recent judgement, the Hon'ble Tribunal, Delhi Bench, upheld the order of CIT(A) allowing custom duty adjustment to the profit margin of the tested party, i.e. the Assessee.

On the facts of the case, the Assessee is a wholly owned subsidiary of Swatch Group Limited, Switzerland. It is a distributor of watches manufactured by Swatch Group, in India and also provides after sale services to customers. The Assessee, amongst other transactions, entered into international transaction of import of watches/ spares for resale in India and receipt of pricing support/ subsidy to support sales. The transaction of support / subsidy received was considered as a subsidy on import of watches/ spares and hence was treated as being intricately linked to the trading business. Both the transactions were aggregated and benchmarked by applying Resale Price Method ('RPM') as the most appropriate method ('MAM').

The Transfer Pricing Officer ('TPO') treated the transaction of receipt of subsidy as a separate transaction and accepted it to be at arm's length. In respect of transaction of import of watches /spares, though RPM was accepted as the MAM, the comparables taken by the Assessee were rejected. The TPO conducted fresh search and selected Italian companies as comparable, making adjustment to the transfer price of the transaction of import of watches /spares.

The Assessee filed an appeal before CIT(A), wherein it contended that the TPO has taken foreign companies as comparable while the tested party is an Indian taxpayer, which is not in accordance with the provisions of transfer pricing regulations. Further, it contended that Italian companies selected by TPO operates in well-developed market whereas the Assessee operates in a significantly underdeveloped market where there is high custom duty on import of luxury watches, warranting adjustment on account of custom duty.

The CIT(A) agreed that it is essential to undertake reasonable adjustments to establish comparability between the foreign comparables and the Assessee. It further

observed that high custom duty rates in India are bound to have significant bearing on the profit margins of the Assessee vis-a-vis Italian comparables. Accordingly, in view of the transfer pricing provisions, the CIT(A) allowed adjustment of custom duty for comparability analysis, thereby deleting the transfer pricing adjustment made by TPO.

The Revenue filed an appeal against the order of CIT(A) before the Tax Tribunal. It contended that adjustment on account of custom duty can only be made to the margin of comparables and not the Assessee.

The Tax Tribunal held that the Indian transfer pricing regulations do not restrict that adjustments cannot be made on the results of the tested party and agreed with the adjustment of custom duty as granted by CIT(A). Accordingly, appeal of the revenue was dismissed.

Transaction held to be at arm's length in hands of one AE will be treated as at arm's length in other AEs hand

AT & S Austria Technologie & Systemtechnik Aktiongesellschaft [TS-117-ITAT-2020(Kol)-TP]

The Tax Tribunal, Kolkata Bench, while deciding various issues, held that the same international transaction cannot be treated in two different ways in the hands of two associated enterprises ('AE') i.e. once a transaction is held to be at arm's length in the hands of one of the AE, TPO cannot hold such transaction to be not at arm's length in the hands of other AE.

On the facts of the case, the Assessee is a tax resident of Austria. The Assessee has entered into transactions of interest received on loan and advance, reimbursement of IT support service cost and corporate guarantee fee from its wholly owned subsidiary in India, viz. AT & S India Private Limited.

The TPO vide its order made adjustment in respect of all the aforesaid international transactions undertaken by the Assessee.

The Assessee filed its objections before Dispute Resolution Panel ('DRP'), which reduced the amount of adjustment in respect of interest on loan and advance and corporate guarantee fee and sustained the adjustment in respect of IT support service cost. The Assessing Officer passed final assessment order.

The Assessee filed an appeal before the Tax Tribunal against the assessment order. Before the Tax Tribunal, the Assessee submitted that the TPO has accepted the transaction of payment of interest on loan and advance to be at arm's length under Comparable Uncontrolled Price ('CUP') method in the case of the AE, i.e. AT & S India. As such, it contended that since no adjustment was recommended in the case of AE, the same should be treated to be at arm's length in the hand of Assessee as well. The Assessee also contended that LIBOR should be used as an appropriate benchmark interest rate that conforms to arm's length standard under CUP method.

The revenue on the other hand relied on the Special Bench decision of Tax Tribunal, Kolkata in the matter of *Instrumentarium Corporation ltd. Finland v ADIT [ITA No. 1548 and 1549/ Kol/ 2009]*, wherein it was held that transfer pricing provision did not contemplate taking a holistic view i.e. considering lowering of the overall profit or increasing overall loss for the group companies taken together and transfer provision would be applied to the non-resident assessee independent of the taxability of its Indian associated enterprise. The revenue contended that in light of said decision of Special Bench the adjustment is necessary in the hands of the Assessee irrespective of the fact that the payment was accepted to be arm's length in the hands of the AE.

The Tax Tribunal deciding in favour of the Assessee held that the same international transaction cannot be treated in two different ways in the hands of two AE. As such, once it

was admitted by the TPO that the payments of interest on loan and advance were at arm's length in the hands of AT&S India, it was unsustainable for the TPO to hold that the same international transaction resulted in shifting of profit out of Indian tax jurisdiction in the hands of the assessee for the same assessment year. It further relied on judgement of Hon'ble High Court in the matter of *CIT v. Cotton Naturals (I) (P) Ltd [(2015) 231 Taxman 401]* and various other rulings and held that LIBOR is the appropriate benchmark interest rate for intra-group loans denominated in foreign currency.

With respect to reimbursement of IT support service cost, Tribunal observed that the issue under consideration has already been decided in favour of Assessee by the coordinate bench, wherein such cost were held to be in the nature of reimbursement not chargeable to tax in India.

With respect to Corporate Guarantee Fee, the Tax Tribunal relied on the ruling of coordinate bench, in the case of *Emami Limited [ITA No. 1958/Kol/2017]* wherein it was held that provision of corporate guarantee is not an international transaction. Accordingly, all the transfer pricing adjustments made were deleted by the Tax Tribunal.

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Goods and Services Tax

General Updates

CBIC, ***vide Circular No 136/06/2020-GST, dated April 3, 2020***, has already clarified doubts regarding COVID-19 relief measures provided by the Government for addressing the issues faced by taxpayers with respect to various compliances under the provisions of the CGST Act, 2017. However, CBIC has ***vide Circular No 137/07/2020-GST dated April 13, 2020 and Circular No 138/08/2020-GST dated May 6, 2020***, further clarified issues faced by the taxpayers and the same are provided under **Appendix A**.

Vide ***Notification No. 38/2020-Central Tax dated May 5, 2020***, electronic verification code (EVC) and SMS-based authentication for filing GSTR-3B has been introduced, wherein a Company can furnish GSTR-3B during the period April 21, 2020 to June 30, 2020 by authenticating it using an EVC.

Further, businesses intending to file a Nil return (i.e. a return having nil or no entry in all the tables) in Form GSTR-3B can utilize SMS facility and can verify the said return by a registered mobile number based One Time Password (OTP) facility. (The said facility would come into effect from a date to be notified later.)

Vide ***Notification No. 39/2020-Central Tax dated May 5, 2020***, changes has been made in Insolvency and Bankruptcy Code (IBC), clarifying that the resolution professional shall be liable to take a new registration in each of the States/Union territories where the corporate debtor was registered earlier, within 30 days of his appointment or by June 30, 2020, whichever is later.

Further, due to the extension of lockdown till May 17, 2020, ***vide Notification No. 40/2020-Central Tax dated May 5, 2020,*** extension has been provided till May 31, 2020, for all the e-way bills generated on or before March 24, 2020, where the period of validity expires between March 20, 2020 and April 15, 2020.

Vide ***Notification No. 41/2020-Central Tax dated May 5, 2020***, due date for furnishing Annual Return in Form GSTR-9 and the reconciliation statement in Form GSTR-9C for

FY 2018-19 has been extended to September 30, 2020.

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Regulatory

RBI Related Clarifications

As per the 'Master Direction on Import of Goods and Services' issued earlier, remittances against normal imports (i.e. excluding import of gold/diamonds and precious stones/ jewellery) should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance etc.

In view of the disruptions due to outbreak of COVID- 19 pandemic, it has been decided to extend the time period for completion of remittances against such normal imports (except in cases where amounts are withheld towards guarantee of performance etc.) from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020.

Important dates to remember

Particulars	Date
Deposit of TDS for the month of May, 2020	07.06.2020
Filing of TDS Return for 4th quarter ending March 31, 2020	30.06.2020
Issuance of Form 16/ Form 16A for 4th quarter ending March 31, 2020	30.06.2020
Filing of GSTR I for the month of May, 2020	30.06.2020
Filing of GSTR 3B for the month of May, 2020	27.06.2020

APPENDIX A

Clarification	Particulars
Clarification in case advance is received by a supplier for a service contract, for which invoice/receipt voucher has been issued and subsequently such contract got cancelled.	The taxpayer shall issue a "credit note" or "refund voucher" and the tax liability shall be adjusted in subsequent GST return. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note/refund voucher can be adjusted, the taxpayer may file a refund claim under "Excess payment of tax, if any" through FORM GST RFD-01.
Clarification regarding furnishing of Letter of Undertaking (LUT) for the year 2020-21	Vide ***Notification No. 35/2020-Central Tax dated April 3, 2020***, the time limit for filing such LUT shall stand extended to June 30, 2020, and the taxpayer can continue to make the supply without payment of tax under LUT provided that FORM GST RFD-11 for 2020-21 is furnished on or before June 30, 2020. Further, Taxpayers shall quote the reference number of the LUT filed for the year 2019-20 in relevant documents.
Clarification regarding the deposit of TDS under GST	Where the due date for furnishing of return in FORM GSTR-7 along with the deposit of tax deducted falls between March 20, 2020 to June 29, 2020, the same has been extended till June 30, 2020. No interest u/s 50 of CGST Act, 2017 shall be leviable if tax deducted is deposited by June 30, 2020.
Clarification in case the date for filling an application for refund expires on March 31, 2020.	Vide ***Notification No. 35/2020-Central Tax dated April 3, 2020***, where the due date for filing refund application as per Section 54(1) of the CGST Act, 2017 falls during the period between March 20, 2020 to June 29, 2020, the same has been extended till June 30, 2020.
Clarification regarding exports by Merchant exporter.	Vide **Notification No. 35/2020-Central Tax dated 3rd April, 2020,** it has been clarified that the requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020 provided the completion of such 90 days period falls within 20th March, 2020 to 29th June, 2020.
Clarification regarding furnishing of FORM GST ITC-04 for the quarter ending March, 2020.	The due date of furnishing of FORM GST ITC-04 for the quarter ending March, 2020 stands extended up to June 30, 2020.