MPC & CO LLP
CHARTERED ACCOUNTANTS

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CONTENTS

FOREWORD 2

DIRECT TAXES

INTERNATIONAL TAXATION

- No tax withholding on payments made by Deloitte India to Deloitte Holdings, UK for shared services of brand, communication and technology 3
- CBDT extends time-limit for furnishing Form 67 for claiming Foreign Tax Credit 4
- CBDT notifies Form 29D for claiming tax refund under Sec.239A 5
- Provisions of TCS under sections 206C(1G) on overseas remittance and for sale of overseas tour package not applicable to non-residents not having a permanent establishment in India 5

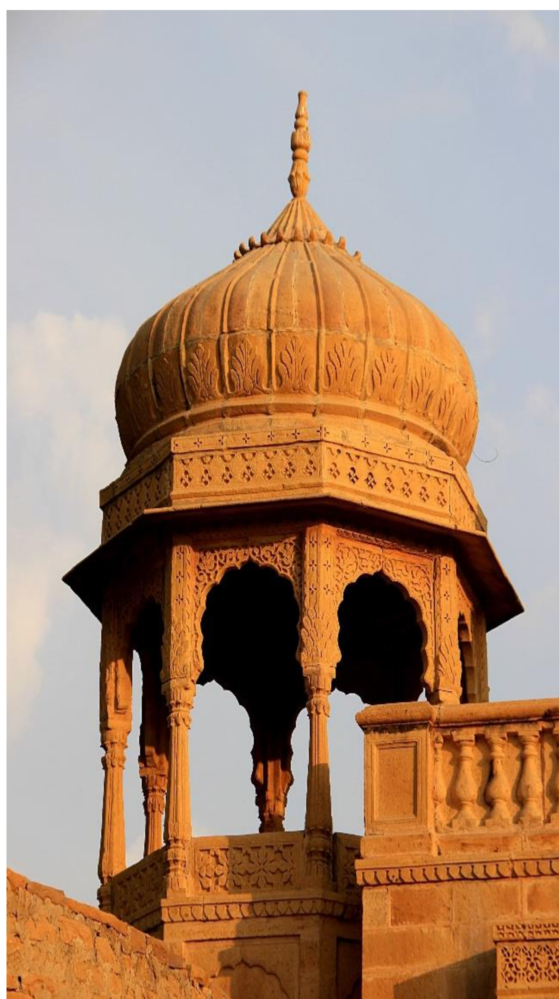
DOMESTIC TAXATION

- Deduction of bad debts disallowed in absence of compliance with prescribed conditions 6
- Admissibility of Employees' Contribution to PF - Amendment is prospective in nature 7
- Exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement 9

REGULATORY

- Salient Features of the New Overseas Direct Investment Policy under FEMA 11

IMPORTANT DATES TO REMEMBER 14



FOREWORD

Dear Reader,

India is celebrating its 75th year of independence this year. Several articles have appeared on India's achievements on economic, social and in various other areas.

Indian economy recently became the fifth largest in the world by overtaking the British economy. In terms of purchasing power parity, India's GDP now makes it the world's third largest economy behind US and China.

India is expected to grow to $5 trillion economy from present level of nearly $3 trillion, in the next 3 years.

In the current year, the Indian GDP is now expected to grow by around 7.5% in spite of challenges faced due to various developments in the world.

The Government of India has recently notified revised guidelines in connection with the overseas investment regime with a view to simplify the existing framework for overseas investment by persons resident in India. A detailed note on the same forms part of this Update besides notes on important tax cases, notifications issued under tax regulations.

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DIRECT TAXES

INTERNATIONAL TAXATION

No tax withholding on payments made by Deloitte India to Deloitte Holdings, UK for shared services of brand, communication and technology

Deloitte Haskins & Sells LLP vs. DCIT [TS-616-ITAT-2022(Mum)] dated July 27, 2022

Recently, the Tax Tribunal, Mumbai Bench, held that no tax was required to be withheld by Indian member firms of Deloitte group to its UK group company on payments towards shared services relating to global brand, global communications and global knowledge.

On facts, Deloitte Haskins & Sells LLP ("Deloitte India") is limited liability partnership firm rendering professional services and is part of Deloitte network worldwide. Deloitte Global Holding Services Ltd. ("Deloitte Holdings"), an English company, performs various activities to promote international alignment and professional standards amongst member firms. It is not permitted to perform any services for third party clients. It incurs expenses for the benefit of all members, which are recovered from members without any mark-up. For this purpose, it entered into "Shared Services Agreement" with member firms. Deloitte India made payment to Deloitte Holdings without deduction of tax at source. Though many services were enumerated in the said "Shared Services Agreement", the dispute was with regard to the payments made under the head "global brand", "global communication" and "global technology/knowledge management". The issue involved was whether these payments constitute "Royalty" under Article 13(3) of the India-UK DTAA.

Activities under "Global Brand" included

- designing and implementation of global brand strategy for use by the Deloitte Network;
- providing Member Firms with common tools, training, and policies related to the Deloitte brand;
- collaborating on brand promotion and eminence building, etc.

The Tribunal held that providing common policies or guidance relating to the brand and collaborating with member firms can neither be considered as use of or right to use any copyright of literary, artistic or scientific work nor information concerning industrial, scientific or commercial experience. Further, there was no transfer of intellectual property by Deloitte Holdings to the member firms and it was also not the case of giving industrial, commercial or scientific equipment. The payment is also not for any use of trademark/patent provided by Deloitte Holdings. As such, payments made for global brand could not be treated as Royalty under Article 13(3) of India-UK DTAA.

Activities under "Global Communications" involved

- developing and distributing internal and external communications, publications and reports,
- managing global public relations and marketing activities;
- providing strategic guidance, content, editorial services and best practices for globally managed websites and related online vehicles;
- providing communications support to member firms, etc.

The Tribunal concluded that these activities were not for use of or right to use of any copyright of literary, artistic or scientific work or for any other terms given in Article 13(3). Further, it could not be held to be information concerning industrial or scientific experience and/or for commercial experience because it was purely for internal use of member firms and not for any third party or any client. These activities could not be considered as providing industrial, commercial or scientific equipment. As such, these activities were outside the nature and scope of royalty.

Activities under "Global Technology/ Knowledge Management" included:

- acquiring, developing and distributing information technology products and services;

- developing and maintaining certain worldwide databases, networks and systems, and internal and external websites, that service the Deloitte Network;

- provide certain technology related security advice and services to the Deloitte Network;

- promoting common technology standards and platforms across the Deloitte Network and administering and monitoring the same, etc.

The Tribunal observed that these services were purely for internal purpose and not for any commercial exploitation, nor any scientific equipment was given to the member firms by Deloitte Holdings. Certain licenced products as acquired from vendors were provided to the member firms. The member firms were allowed to use the software only for its own business purpose and were not permitted to transfer copy of the software and as such there was no transfer of any right in respect of copyright by the vendors and it was a case of mere transfer of copyrighted article. As such, the payments made for "Global Technology/Knowledge Management" did not constitute Royalty.

The Tribunal referred to the judgment of Hon'ble Delhi High Court in the case of EY Global Services Ltd. v. ACIT, 441 ITR 54 (Del.) wherein the High Court, following the ratio of the principles laid down in the judgment of Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P) Ltd. (432 ITR 471) held that for the receipt to be taxed as "royalty", it is essential to show a transfer of copyright in the software.

With regard to the plea relating to principle of mutuality, the Tribunal declined to decide this aspect for the reason that the principle of mutuality could not be examined in proceedings under section 195 and also that the same had to be seen in the hands of the entity which is receiving the payment and not in the hands of the payer.

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CBDT extends time-limit for furnishing Form 67 for claiming Foreign Tax Credit

Notification No. 100/2022 dated August 18, 2022

Rule 128 of the Income-tax Rules, 1962 contains provisions relating to foreign tax credit. As per the said rule, the taxpayer is required to furnish a statement in Form 67 of income offered to tax for the financial year and foreign tax which has been deducted or

paid on such income. Form 67 shall be furnished electronically on or before the due date for furnishing the return of income under section 139(1) [return filed within the due date].

The CBDT has amended Rule 128 to provide that Form 67 can be furnished on or before the end of assessment year where return of income for such assessment year has been furnished within the time specified under Section 139(1) or Section 139(4) [belated tax return].

Where an updated return has been furnished by the taxpayer under Section 139(8A), Form 67 (relating to income included in updated return) shall be furnished on or before the date of filing of such updated return.

The amendment is effective from April 01, 2022 and thus applies to foreign tax credit claims furnished during the financial year 2022-2023.

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CBDT notifies Form 29D for claiming tax refund under Sec.239A

Notification No. 98/2022 dated August 17, 2022

Section 239A to the Income Tax Act, 1961, as inserted by the Finance Act, 2022, deals with refund of TDS in cases where tax is borne by deductor (net of tax arrangement). It provides for refund of tax borne and deposited by the deductor under Section 195 on payment to non-residents (other than on interest) where it is claimed that no tax was required to be deducted on such payment. The deductor can file an application in the prescribed form before the Assessing Officer for refund of such tax, within a period of 30 days from the date of payment of such tax.

The Central Board of Direct Taxes (CBDT) has inserted a new Rule 40G in the Income-tax Rules, 1962 prescribing the manner to obtain the refund of tax in accordance with section 239A. The application shall be made in Form No. 29D and needs to be accompanied by a copy of an agreement or other arrangement referred to in Section 239A.

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Provisions of TCS under sections 206C(1G) on overseas remittance and for sale of overseas tour package not applicable to non-residents not having a permanent establishment in India

Section 206C(1G) provides for the collection of tax at source ("TCS") from remittance under Liberalized Remittance Scheme ("LRS") and the sale of an overseas tour package. As per this provision, tax is required to be collected at the rate of 5% by an authorised dealer who receives an amount for remittance out of India under the LRS of the Reserve Bank of India; and

Seller of an overseas tour program package, who receives any amount from a person who purchases such package.

The section empowers the Central Government to notify a person wherein tax

collection shall not be made under this provision.

In exercise of such power, the CBDT has notified, vide Notification No. 99/2022 dated August 17, 2022, that provisions of section 206C(1G) shall not apply to a non-resident buyer who does not have a Permanent Establishment ("PE") in India and no TCS is to be collected from it. Earlier this exemption was restricted to an individual who was not a resident in India and was on visit to India, which has now been expanded to all non-resident entities not having PE in India.

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DOMESTIC TAXATION

Deduction of bad debts disallowed in absence of compliance with prescribed conditions

PCIT v. Khyati Realtors Pvt. Ltd. [TS-671-SC-2022 (SC)]

Recently, the Supreme Court has held that no deduction of bad debts is allowable under Section 36(1)(vii) read with Section 36(2) of the Income-tax Act, 1961 (Act) in absence of compliance with prescribed conditions specified in said provisions.

As per provisions of Section 36(1)(vii) of the Act, deduction of bad debts is allowed to a taxpayer where such debts are written off as irrecoverable in the books of accounts of a taxpayer. Further, as per provisions of Section 36(2) of the Act, deduction of bad debts shall be allowed if certain prescribed conditions are fulfilled which *inter-alia* include: (a) bad debt being written off should be included as income of the taxpayer of a previous year or earlier previous year(s); or (b) bad debt represents money lent in the ordinary course of business of money lending carried on by the taxpayer.

Brief facts of the case are that the Respondent carries on the business of real estate development, trading in transferable development rights and finance where, receiving or lending money is one of its objects of business. In 2007, the Respondent had deposited an amount of INR 100 million with M/s C. Bhansali Developers Pvt. Ltd. (Builder) towards acquisition of commercial premises. Since the commercial project did not seem to make any progress, the Respondent sought return of its money from the Builder, who did not return the same. Consequently, the Respondent decided to write of the amount of INR 100 million in 2009.

During tax scrutiny proceedings, the Respondent filed a letter before Assessing Officer seeking allowability of deduction for aforesaid write off under Section 36(2) read with Section 36(1)(vii) of the Act. The Respondent felt that as financing was one of its objects of business, monies advanced in ordinary course of business fell into the ambit of Section 36(2) and ought to be allowed as deduction under Section 36(1)(vii) even where such debt had not been considered while computing total income. The Assessing Officer disallowed claim of bad debt of INR 100 million, which was confirmed by Commissioner (Appeals) subsequently. On appeal before Tax Tribunal, the Tribunal allowed the appeal of the Respondent, and the Bombay High Court dismissed the appeal filed by Revenue on the ground that no question of law arose.

On appeal before Supreme Court, the

following principles arose:

- If the taxpayer carries on a business and writes off a debt relating to the business as irrecoverable, it would be entitled to a deduction under Section 36(1)(vii) only upon fulfilment of the conditions outlined in Section 36(2) of the Act.

- Placing reliance on other decisions of Supreme Court, it was held that for claiming deduction under Section 36(1)(vii) following must be complied with:

  (i) Bad debt has to be written off as irrecoverable in books of accounts of taxpayer for the previous year;

  (ii) Bad debts written off as irrecoverable cannot include any provision for bad and doubtful debts;

  (iii) No deduction of write off will be allowed unless it is taken into account for computing income or represents business of money-lending carried on in ordinary course of business; and

  (iv) Taxpayer is obligated to prove that its case satisfies ingredients of Section 36(1)(vii) and 36(2).

- The Supreme Court noted that the Respondent was not able to substantiate that the deposit given was a loan by evidencing receipt of interest income, duration of loan, terms and conditions of loan etc. Further, the Court noted that there was no evidence to suggest that conditions inherent in Section 36(2) and Section 36(1)(vii) had been satisfied to warrant deduction of Section 36(1)(vii).

Thus, the Court disallowed the Respondents claim of deduction of INR 100 million under Section 36(1)(vii) of the Act.

Another issue which was bought up before the Supreme Court was on claim of INR 100 million as a deduction under Section 37 of the Act since it has been spent or laid out exclusively for business purposes. In adjudicating on this issue, the Court relied on decision of **Southern Technologies Ltd. v. JCIT [(2010) 2 SCR 380]** wherein, it was held that if an item falls in Section 30 to Section 36 and is excluded by provision of any of sections therein, Section 37 cannot be applied.

Similarly, the Supreme Court held that as the Respondent could not claim deduction under Section 36(1)(vii) (i.e., provisions of Section 36) due to non-fulfillment of conditions prescribed therein, it could not claim a deduction under Section 37 of the Act.

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Admissibility of Employees' Contribution to PF - Amendment is prospective in nature

PCIT v. TV Today Network Ltd. [TS-627-HC-2022 (Del)]

The Delhi High Court has held that amendment to Section 36(1)(va) of the Income-tax Act, 1961 has prospective effect and shall be applicable Assessment Year (AY) 2021-22 onwards. Based on this view, the Court deleted the disallowance of late deposit of employees contribution to provident fund (PF) under Section 36(1)(va) of the Act.

As per provisions of Section 36(1)(va) of the Act, deduction of employees contribution to specified funds shall be allowed, if such contribution is deposited in the relevant fund before the due date. An amendment was bought into said provision by Finance Act, 2021 w.e.f. April 01, 2021 (i.e., AY 2021-22 onwards) which clarified that the term 'due date' shall mean the date specified in the act, rule, order or notification etc. issued in context of such fund. Additionally, another explanation was also inserted by Finance Act, 2021 w.e.f. April 01, 2021, which mentioned that for 'removal of doubts', the term 'due date' specified under Section 43B shall never be construed so as to extend to due date under Section 36(1)(va).

Brief facts of the case are that the Respondent was incorporated on December 28, 1999 and was engaged in the business of broadcasting, telecasting, relaying, transmitting or distributing audio, video or other programmes etc. The subject appeal relates to AY 2012-13 and the Respondent made a late deposit of employees' contribution to PF of INR 4.3 million for March 2012 on April 25, 2012. The due date for deposit of employees' contribution to PF for March 2012 was April 20, 2012 as per relevant labour law.

The case of the Respondent was picked up for scrutiny by the Assessing Officer who made an addition of INR 4.3 million, *inter-alia*, amongst other additions. Thereafter, the Commissioner (Appeals) and Tax Tribunal upheld the stand of the Respondent and deleted the disallowance of above sum made by Assessing Officer.

On appeal before Delhi High Court, the Court placing reliance on its division bench decision in case of **CIT Vs. AIMIL Ltd. (2010) 321 ITR 508 (Delhi)** as well as other decisions held that if the deposit of delayed employees contribution to relevant fund is before the due date for filing tax return under Section 139(1) but after the due date specified in related labour law, no disallowance can be made under Section 36(1)(va) of the Act.

Further, the counsel for the Appellant stated that the aforesaid amendment to Section 36(1)(va) bought in by Finance Act, 2021 had clarified that the due date specified in said provision would be taken as 'date specified in relevant labour law' and not the 'due date for filing of tax return under Section 139(1) of the Act'.

The Court observed that as per Memorandum explaining Finance Bill, 2021, the aforesaid amendment in Section 36(1)(va) of the Act, will take effect from April 01, 2021 and shall be applicable AY 2021-22 onwards. Therefore, it was held that such amendment could not be held applicable to AY 2012-13, which is the year in contention for subject appeal.

Further, the Court placing reliance on Supreme Court decisions in case of **Sedco Forex International Drill Inc. v. CIT [12 SCC 717 (2005) (SC)]** and **M.M. Aqua Technologies Ltd. v. CIT [SCC Online SC 575]** held that a provision in tax which is for "removal of doubts" cannot have retrospective effect, if it alters or changes the law as it stood earlier. Thus, this meant that the above amendment in Section 36(1)(va) will not be applicable to AY 2012-13 i.e., Respondent's year in question.

Accordingly, the Delhi High Court dismissed the appeal of the Revenue and allowed Respondent's claim of deduction of delayed employee's contribution to PF amounting to INR 4.3 million under Section 36(1)(va) of the Act.

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Exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement

In a recent decision in case of **Principal Commissioner of Income Tax vs. M/s Wipro Limited [TS-544-SC-2022],** the Supreme Court ("SC") held that for claiming the benefit under section 10B(8), the twin conditions of furnishing a declaration before the AO and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with.

In the instant case, the assessee, a 100% Export Oriented Unit, is engaged in the business of running a call centre and IT Enabled and Remote Processing Services. The assessee filed its return of income for AY 2001-02 declaring loss of Rs. 15.47 Crore (154.7 millions) and claimed exemption under section 10B of the Income-tax Act, 1961 ("the Act"). A note was also annexed to the computation stating that since assessee is a 100% Export Oriented Unit, entitled to claim exemption under Section 10B, no loss was therefore being carried forward. Subsequently, the assessee filed a declaration under section 10B(8) on October 24, 2002 with the Assessing Officer ("AO") withdrawing the exemption under section 10B, and furnished a revised return on December 23, 2002 without claiming the exemption under section 10B, but claiming the carry forward of losses.

Section 10B(8) enables an assessee to exclude the applicability of the deduction under Section 10B by filing a declaration to that effect before the last date in which the return of income is required to be filed.

Revenue rejected the assessee's contention stating that the assessee did not furnish the declaration under section 10B(8) before the due date of filing return of income, i.e., October 31, 2001, and thus denied the claim of carrying forward of losses under section 72 of the Act.

Aggrieved, the assessee filed an appeal before Commissioner of Income Tax (Appeals) (CIT(A)). The CIT(A) upheld the order passed by the Assessing Officer (AO).

On an appeal before the Income Tax Appellate Tribunal (ITAT), the ITAT decided the issue in favour of the assessee stating that the assessee filed the declaration under section 10B (8) of the IT Act before the due date of filing of return of income as per section 139(1) of the Act and allowed the assessee's claim for carrying forward of losses under section 72 of the Act.

The Appeal of the tax department before the High Court against the ITAT order was dismissed by the High Court without any relief.

Hence, the Revenue filed the instant appeal before the SC.

Grounds raised by the Revenue

- The Revenue submitted that the claim for carry forward could not have been made first time while submitting the revised

return of income. That the revised return of income can be filed under section 139(5) only to remove the omission and mistake and/or correct the arithmetical error, and not for a new claim.

- Further, the High Court has erred in observing that the requirement under section 10B(8) of the Act is a procedural requirement and the time limit within which the declaration is to be filed is directory in nature.

- Section 10B is an exemption provision and the condition for seeking an exemption is required to be complied with strictly with the provision.

Grounds raised by the assesse

- The assessee contended that the High Court relying upon the decision of ***Commissioner of Income Tax, Delhi-III, New Delhi v. Moser Baer India Limited, in ITA No. 950/2007,*** has rightly observed and held that the requirement of filing a declaration is mandatory in nature, while the time limit in filing the declaration is directory in nature.

- Further, section 80 of the Act only requires that an assessee claiming carry forward of loss should file a return showing the loss before the due date of submitting the return. In the instant case, the assessee filed the original return in time declaring the loss and thereby complied with section 80 of the Act.

- Though it was not necessary for the exercise of option under section 10B (8) of the Act, the assessee filed a revised return only to bring to the notice of the AO the factum of exercise of option under section 10B. Thus, the validity of revised return is wholly immaterial and irrelevant.

- Relying on decision of Hon'ble SC in case of ***CIT, Maharashtra v. G.M. Knitting Industries Pvt. Ltd. (2016) 12 SCC 272,*** the assessee contended that the instant case was squarely covered by the favourable ruling. In the case of G.M. Knitting (supra), the assessee did not file Form 3-AA for claiming additional depreciation along with the return of income, but chose to file the Form much later, but before the passing of the assessment order, which may be passed as long as 26 months after the return was filed as provided under Section 153(1). Though Revenue rejected the form on the ground that it had not been filed along with the return of income and declined to grant additional depreciation as claimed by the assessee, the SC held that requirement of submitting the form along with return of income was directory in nature, and thus held assessee eligible for additional depreciation.

Similarly, reliance was placed on the decision of Bombay High Court in the case of ***Commissioner of Income Tax v. Shivanand Electronics ((1994) 209 ITR 63),*** wherein it was held that the requirement that the audit report under section 80HHC should be submitted before the due date of return is only directory.

Decision

The Hon'ble SC in the instant case held that for claiming the benefit under Section 10B (8), the twin conditions of furnishing the declaration to the assessing officer in writing and that the same must be furnished before the due date of filing the return of income under section 139(1) of the Act are mandatory. It cannot be said that one of the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the

assessing officer and to be furnished before the due date of filing the original return of income under section 139(1) are same/similar.

The SC held that the revised return filed by the assessee under section 139(5) can only substitute its original return under section 139(1) and cannot transform it into a return under section 139(3), in order to avail the benefit of carrying forward or set-off of any loss under section 80 of the Act. A revised return of income under Section 139(5) cannot be filed to withdraw the claim and subsequently claiming the carried forward or set-off of any loss. Filing a revised return under Section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. Therefore, claiming benefit/ furnishing declaration under section 10B(8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act.

The apex court rejected the submission of the assessee that the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings.

So far as the reliance placed upon by the assessee on the decision of ***G.M. Knitting Industries Pvt. Ltd. (supra),*** the SC observed that section 10B(8) is an exemption provision which cannot be compared with claiming an additional depreciation under section 32(1)(ii-a) of the Act. The exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.

Further, the SC held that against the decision of the Delhi High Court in the case of ***Moser Baer (supra)***, a special leave petition has been dismissed as withdrawn because of low tax effect and the question of law has specifically been kept open. Therefore, withdrawal of the special leave petition against the decision of the Delhi High Court in the case of ***Moser Baer (supra)*** cannot be held against the revenue.

The SC thus held that for claiming the benefit under section 10B(8) of the Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with.

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REGULATORY

Salient Features of the New Overseas Direct Investment Policy under FEMA

In keeping with the spirit of liberalisation and in order to enhance the ease of doing business, the Government of India, in consultation with RBI has issued revised guidelines in connection with the overseas investment regime. The new regime aims to simplify the existing framework for overseas investment by persons resident in India to

cover wider economic activity and significantly reduce the need for seeking specific approvals thereby reducing the compliance burden and associated compliance costs.

Accordingly, the Government of India through the Ministry of Finance and in consultation with the Reserve Bank of India **('RBI')** has notified the Foreign Exchange Management (Overseas Investment) Rules, 2022 **('OI Rules')**, Foreign Exchange Management (Overseas Investment) Regulations, 2022 **('OI Regulations')** and the Foreign Exchange Management (Overseas Investment) Directions, 2022 **('OI Directions')** (collectively, **'New OI Regime'**).

Some of the significant changes under the New OI Regime are as follows:

1. **'Overseas Direct Investment' (ODI)** and '**Overseas Portfolio Investment' (OPI)**: the New OI Regime provides a distinction between the nature of overseas investments which constitute ODI and OPI. Under the New OI Regime, ODI means: (a) acquisition of any unlisted equity capital or subscription as a part of the memorandum of association of a foreign entity, or (b) investment in 10% or more of the paid-up equity capital of a listed foreign entity, or (c) investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity. OPI means any overseas investment which is not ODI, other than investment in any unlisted debt instruments or any security issued by a person resident in India who is not in an International Financial Services Centre **('IFSC')**.

2. **Foreign entity:** The concepts of 'Joint Venture' ("JV") and a 'Wholly Owned Subsidiary' ("WOS") have been replaced with the concept of a 'foreign entity', which is defined to mean *"an entity formed or registered or incorporated outside India, including in IFSC in India, that has limited liability. Provided that the restriction of limited liability shall not apply to an entity with core activity in a strategic sector."*

   The term *"**strategic sector**"* has been defined to include *"energy and natural resources sectors like oil, gas, coal, mineral ores, submarine cable systems, and startups, and any additional sector notified by the Central Government.*"

3. **'Control'**: In terms of the OI Rules, "Subsidiary" or "step down subsidiary" of a foreign entity means an entity in which the foreign entity has control. The term "control" is defined to mean "*the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent or more of voting rights or in any other manner in the entity."*

4. **Requirement of No Objection Certificate ('NOC'):** Any person resident in India whose account is classified as non-performing assets, or as a willful defaulter by any bank, or is under investigation by a financial service regulator or investigative agency, will have to obtain a NOC from the lender bank or regulatory body or investigative agency, before making any such financial commitment or undertaking disinvestment.

5. **Round tripping**: In terms of the New OI Regime, no person resident in India shall make financial commitment in a foreign entity that has invested or invests into

India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries.

6. **Financial commitment by Indian entity by way of debt:** In terms of the New OI Regime, remittances towards loan to the foreign entity is permitted only after ensuring that the Indian entity has made ODI and has control in the foreign entity. Additionally, such loans are required to be duly backed by a loan agreement where the rate of interest should be charged at arm's length basis.

7. **Acquisition by way of gift:** (a) A resident individual has been granted general permission to gift foreign securities to his relative resident in India (b) A resident individual is permitted to receive foreign securities by way of gift from a person resident outside India, subject to compliance with the provisions of Foreign Contribution (Regulation) Act, 2010.

8. **Overseas investments in IFSC:** The New OI Regime has introduced an entirely new mechanism for overseas investments by persons resident in India in IFSC subject to specified terms and conditions.

9. **Operational Changes**

   a. Form FC has now replaced Form ODI and a separate form, Form OPI has been introduced for a person resident in India other than a resident individual, making OPI

   b. Delay in reporting overseas investment related compliances including Annual Performance Report shall now attract Late Submission Fees **('LSF')** and unless it is not regularized, a person resident in India shall not make any further financial commitment towards such foreign entity or transfer such investment. The facility of LSF can be availed within a maximum period of three years from the due date of filing.

The above is a summary of the most significant changes introduced vide the New OI Regime. For further details, the source Notification, Rules and Master Directions given hereunder may be referred to.

(Source: Notification No. G.S.R. 646(E) dated August 22, 2022 issued by Department of Economic Affairs, Ministry of Finance, Government of India; Notification No. FEMA 400/2022-RB dated August 22, 2022 issued by the Reserve Bank of India, A.P. (DIR Series) Circular No. 12 dated August 22, 2022 issued by the Reserve Bank of India and Master Direction – Reporting under Foreign Exchange Management Act, 1999, last updated as on August 22, 2022)

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Important dates to remember

Particulars	Date
Direct Taxes	
Payment of monthly TDS and TCS for the month of September 2022	07.10.2022
Payment of Second Instalment of Advance tax	15.09.2022
Due date for filing Tax Audit Report in Form 3CA/3CB for AY 2022-23 in case of taxpayers, to whom Transfer Pricing provisions are not applicable	30.09.2022
Due date for filing TCS return for Quarter Ended September 2022	15.10.2022

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