MPC & CO LLP
CHARTERED ACCOUNTANTS

Corporate Update

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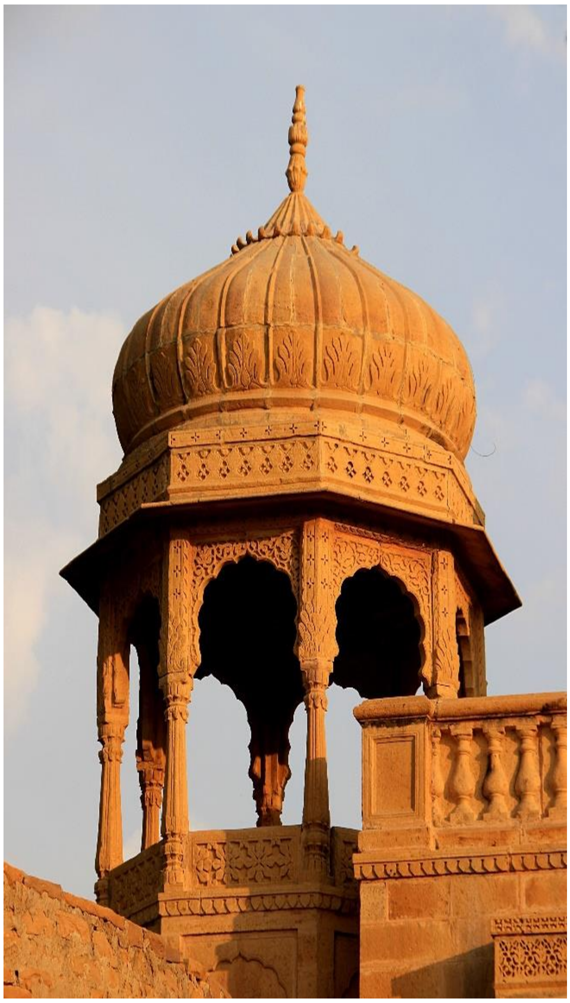

FOREWORD

Dear Reader,

The Indian Economy continues to do well. During the current financial year, it is expected to grow at around 6.7%. The tax collections are also showing an upward trend.

In this update, we report on important judgments on international taxation and certain changes in the GST Regulations.

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DIRECT TAXES

INTERNATIONAL TAXATION

Mere grant of access to SAP system is not Royalty under Section 9(1)(vi) of Income-tax Act, 1961

CIT (IT)-2 v. Colgate Palmolive Marketing SDN BHD [(2023)152 taxmann.com 124(Bom HC)]

Recently, the Bombay High Court has held that mere grant of access to SAP systems is not 'Royalty' under Section 9(1)(vi) of the Income-tax Act, 1961.

Briefly, as per provisions of Section 9(1)(vi), any income of the nature of 'Royalty', *inter-alia*, payable by Resident or Non-Resident shall be deemed to accrue or arise in India and accordingly, shall be taxable in India subject to certain conditions. The term 'Royalty' has been defined in Explanation 2 to Section 9(1)(vi) whereas, various other Explanations to Section 9(1)(vi) highlight the manner in which provisions of Section 9(1)(vi) shall be operative.

On facts of the case, the assessee (i.e., Colgate Palmolive Marketing SDN BHD), an entity incorporated in Malaysia is engaged in the business of marketing, distribution and sale of household products, fabrics, and personal care. The assessee entered into an agreement dated May 14, 1998, with its group entity namely, Colgate Palmolive (India) Limited (CPI) for use of its SAP system. Towards such usage, CPI was required to make payments to the assessee along with other service-related payments. The assessee had treated the aforesaid receipts as non-taxable in the tax return filed for Assessment Year (AY) 1999-2000.

The case of the assessee for AY 1999-2000 was selected for scrutiny proceedings. During such proceedings, the Income-tax Officer held that payments for use of SAP system should be characterized as 'Royalty' under Section 9(1)(vi) of Income-tax Act, 1961 and taxed accordingly. On further appeal, the Commissioner (Appeals) sustained the order of the Income-tax Officer. However, the Tax Tribunal, Mumbai Bench reversed the findings of the Income-tax Officer and held that the payment received for use of SAP system is outside the purview of 'Royalty.'

Thereafter, the matter was carried in appeal to the Bombay High Court which held as under:

- **'Equipment Royalty' under Clause (iva) of Explanation 2 to Section 9(1)(vi)** – The Court held that the definition of 'Royalty' given in Explanation 2 did not include 'Equipment Royalty' for AY 1999-2000 as it was introduced by Finance Act, 2001 (w.e.f., April 01, 2002). Conversely, 'Equipment Royalty' pre-existed in the definition of 'Royalty' under India – Malaysia Double Taxation Avoidance Agreement (DTAA). As the assessee was entitled to use the beneficial provisions of Income-tax Act, 1961 vis-à-vis the DTAA, payment for SAP usage was held to be non-taxable as 'Equipment Royalty'.

- **'Process Royalty' under Clauses (i), (ii) and (iii) of Explanation 2 and Explanation 6** – The Court held that in the instant case, there is no transfer of any right, imparting of any information or use of any process which may fall under the definition of 'Process Royalty' under Explanation 2. The assessee was merely accessing the SAP system which did not qualify as 'Process Royalty.' Further, it was also held that Explanation 6, which provides a wider definition of term 'process', relates to live transmission of programs such as channel feed and not grant of access to SAP system.

- **Consideration for transfer of all or any rights for Copyright under Clause (v) of Explanation 2 and Explanation 4** – Placing reliance on decision of Apex Court in the case of **Engineering Analysis Centre of Excellence Private Limited v. CIT [(2021) 432 ITR 471 (SC)]**, it was held that clause (v) of Explanation 2 would apply only when there is transfer of a right in respect of a copyright mentioned in Section 14(b) read with Section 14(a) of Copyright Act, 1957. In the instant case, the assessee had only given access to the SAP system to CPI and had not transferred any right in respect of any copyright to CPI. Further, it was held that as there is no transfer of right to use computer software, Explanation 4 does not apply in the instant case.

In view of the aforesaid, the Court held that payment made for use of SAP system was not 'Royalty' under Section 9(1)(vi) of Income-tax Act, 1961 but rather should be characterized as 'Business Profits' under Article 7 of DTAA. In the absence of any Permanent Establishment in India as defined under Article 5 of the DTAA, payment received by the assessee from CPI, which would be business profit, was held to be not taxable in India.

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Commission for sale and marketing support services is not fees for technical services

Recently, the High Court of Delhi in the case of **Springer Nature Customer Services Centre GMBH** [TS-380-HC-2023(DEL)] has held that commission for rendering sale and marketing support services for sale and promotion of books under a commissionaire agreement is not Fees for Technical Services.

On facts, the assessee, a German company, is part of Springer Group which is engaged in the business of publishing books and academic journals in the field of natural sciences, technology and medicine. The taxpayer functions as a non-exclusive sales representative globally of the Springer Group's affiliated publisher entities.

A commissionaire agreement was executed between the assessee and Springer India Private Limited (SIPL) as per which it promoted, sold and distributed, print and electronic books and journals published by SIPL. The services provided by the taxpayer under the agreement included global sales and marketing services, customer services, order handling, address maintenance, stock keeping, inventory management, invoicing, delivery (physical as well as online), debtor management services, subscription management and processing of return copies for which it received a commission at the rate of 9.9% of net revenue of SIPL. The taxpayer received a commission of INR 2.3 million from SIPL during AY 2013-14. The taxpayer was also in receipt of subscription fees against e-journals from two Indian entities amounting to INR 166.8 million during the year.

The assessee had disclosed nil income in its return of income for the year. In the tax assessment, the Assessing Officer made additions to the income holding the commission and subscription fees received as 'royalty' income in its hands under section 9(1)(vi) of the Act read with Article 12(3) of the tax treaty.

The CIT(A) upheld both the additions. However, the CIT(A) held the nature of commission as 'Fees for Technical services' by invoking section 9(1)(vii) of the Act read with Article 12(4) of the tax treaty.

The ITAT deleted the additions holding that commission is not 'Fees for technical services'. Further, subscription fees cannot be treated as royalty in view of the Supreme Court judgement in the case of Engineering Analysis Center of Excellence (P.) Ltd. v CIT [2021] 432 ITR 471 (SC).

Revenue went before the High Court of Delhi on the ground that promotion and sale related activities, order handling, inventory management, debtor and subscription management, marketing and sale activities involves human intervention and fall under the ambit of technical service, consultancy or managerial services. Also, revenue flipped on its stance before the High Court to contend that subscription fee for e-journals is received on account of performance of a similar scope of services as mentioned in the commissionaire agreement and should be treated as Fees for Technical services (instead of Royalty as it had contented before the Tribunal).

The High Court of Delhi deleted both the additions on the reasoning that the promotion, sale, or distribution of SIPL's publications, or rendering support services as referred to above, although involve human intervention, do not fall in the category of technical and/or consultancy services. The High Court observed that there were no special skills or knowledge that the taxpayer's personnel were required to possess to render the services that were contemplated under the Commissionaire Agreement. The assessee also did not render any professional advice, or service concerning a specialized field.

The High Court held that (i) technical services are generally connected with applied and industrial sciences or craftsmanship, involving special skills or knowledge, excluding fields such as art, or human sciences; and (ii) consultancy services involve rendering professional advice or service in a specialized field.

Regarding subscription fee, the High Court rejected the stance of the revenue that subscription fee should be treated as Fees for Technical services, as this was not the position taken by the Revenue before the ITAT. Accordingly, the High Court dismissed the appeal of the revenue and upheld the order of the ITAT.

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PE commences with the performance of business activities at building site/ assembly project; preparatory work for tendering purposes cannot be considered to determine PE threshold period

CIT, International Taxation vs. Bellsea Ltd. [2023] 147 taxmann.com 488 (Delhi)

The Delhi Court, while dealing with installation permanent establishment (PE) issue under Article 5(2)(g) of the Indo-Cyprus tax treaty, held that preparatory work like travelling for obtaining tender/contract cannot be considered while calculating the threshold period of 12 months.

Article 5(2)(g) of the Indo-Cyprus treaty provides that a building site, construction, assembly or installation project or supervisory activities in connection therewith would constitute PE where such site, project or activities continue for a period of more than twelve months.

Revenue had filed appeal before the High Court on the ground that the order of the Tax Tribunal was perverse in the findings of facts. The Tax Tribunal had noted that one of the employees of the assessee visited India for the purpose of collecting data and information necessary to bid for the contract and held that such preparatory work like pre-survey engineering, investigation of site, etc., for tendering purposes before entering into the contract could not be considered as activity qua the installation project. The Tribunal further held that Article 5(2)(g) ostensibly refers to activity-based PE and the duration of 12 months per se is activity specific qua the site.

In this regard, the High Court relied on its earlier decision in the case of National Petroleum Construction Co. v. DIT (International Taxation) [2016] 66 taxmann.com 16 which was rendered in context of a similar clause, Article 5(2)(h) of the Indo-UAE tax treaty. In the said decision, the High Court had held that a PE constituted by a building site or construction/ assembly project would begin upon commencement of activities relating to the site or project. The High Court had further held that the said clause is to be read harmoniously with Article 5(1) which requires carrying on of the business from the fixed place of business. The High Court had thus concluded that an activity which may be related or incidental to the project but which is not carried out at the site in the source country would not be construed as a PE as it would not comply with the essential condition as stated in Article 5(1) of the Indo-UAE tax treaty. The High Court had also stated that preparatory work at site such as construction of a site office, a planning office or preparing the site itself would be counted towards the minimum duration of a PE under Article 5(2) (h) of DTAA.

As such, in the instant case, the High Court held that duration of a PE would commence with the performance of business activities in connection with the building site or assembly project. The Court concluded that the preparatory work like travelling for obtaining tender/contract could not be deemed to be the starting point of the PE. Consequently, the Court dismissed the Revenue's appeal as there was no perversity in the findings of facts by the Tribunal.

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No profits from offshore supplies could be attributed to PE in India where the foreign company incurred loss at the operational level

Hitachi Ltd [TS-398-ITAT-2023(DEL)]

Recently, the Tax Tribunal, Delhi Bench held that no profit from offshore supply of equipment could be attributed to Indian Permanent Establishment (PE) where the assessee incurred loss at the operational level.

On facts, the assessee, Hitachi Ltd. is a Japanese multinational engineering and electronics conglomerate company. The assessee had entered into contracts for execution of projects with various Indian customers in power and Railways sector.

During the year under consideration, the income of the assessee consisted of income from royalty, fees for technical services (FTS) as well as business income of various project / branch offices from onshore activities.

The assessee was awarded two new contracts, as a part of consortium, by Dedicated Freight Corridor Corporation of India Ltd. (DFCCIL), Ministry of Railways. The scope of work *inter-alia*, included offshore design, construction and supply of equipment from Japan, onshore supplies and onshore services of commissioning and testing within India. The price in respect of offshore portion was separately identified and payable directly to Hitachi Ltd in Japan. While the assessee had offered to tax in India the entire amount receivable under onshore portion of the contracts on net basis, the receipts from offshore supplies were considered non-taxable in India as the equipment was manufactured in Japan and no part of the activity of such offshore supplies could be attributed to the PEs in India.

In the assessment proceedings, the Assessing Officer computed profit from offshore supplies by applying global profit rate of 6.87% and attributed 35% of the profits so computed to the PE in India. This was also affirmed by the Dispute Resolution Panel (DRP).

Before the Tax Tribunal, the assessee submitted that as per the contract terms, the assessee delivered the equipment on ex-works Japan basis to the transporter, Mitsui & Co. Ltd. which shipped the equipment and delivered the same at site in India. Mitsui & Co. Ltd. was directly paid by the customer, DFCCIL for its shipping and transportation activities. Although custom clearance of offshore equipment was the responsibility of assessee's Indian project offices, all activities in relation to the same were actually undertaken by Mitsui & Co. Ltd. The goods were only passed through the project offices for the purpose of customs duty compliance in India including payment of customs duty and IGST, which in turn was charged back to the assessee by the project offices. Accordingly, it was the contention of the assessee that no activity in respect of offshore portion of the contract was attributable to its PEs in India.

The assessee also contended that it had a loss at the operational level with regard to the offshore supply portion of the contract. The assessee stated that this loss was on account of change in product specification by the customer, substantial increase in labour/ manufacturing costs in Japan, increase in fixed costs due to delay in project execution on account of Covid. In support of its contention, the assessee relied upon relevant workings which substantiated such loss.

In this regard, the assessee placed reliance on the decision of the Hon'ble Delhi High Court rendered in the case of CIT v Nokia Solutions and Networks OY [2023] 147 taxmann.com 165 (Delhi)], wherein, it was held that global net profit margin is to be applied for determining the income attributable to PE and where a assessee has net loss at global level, no profit could be attributed to the PE in India. As such, the assessee contended that no addition could have been made as offshore portion of the contract resulted in a loss.

The Tribunal noted that the goods were manufactured in Japan, transported by Mitsui & Co. Ltd. and were delivered to the customer. The Tribunal stated that the Revenue had not specified the role of the project office and the basis for attributing the profit from offshore supplies at 35% to the PE. Moreover, the Revenue had not adverted anything on the aspects that the goods were passed through the project offices purely for the purpose of customs duty compliances and that the assessee had loss in offshore portion of the contract at the operational level.

The Tax Tribunal, while relying on the jurisdictional High Court decision in the case of Nokia Solutions (supra) held that the Revenue was not justified in attributing the profit to assessee's PE in India when there was loss. Accordingly, the Tribunal decided the matter in favour of the assessee and held that the revenue from offshore supplies is not liable to tax in India.

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Wholly owned subsidiary cannot be construed as fixed place PE of the foreign company in India and hence, offshore supplies held to be non-taxable

M/s. Bombardier Transportation GmbH v/s DCIT [TS-390-ITAT-2023(DEL)]

In the above decision Hon'ble ITAT Delhi held that offshore supply made by the assessee is not taxable in India as the transfer of title over the goods took place outside India.

On the issue of treating wholly owned subsidiary of assessee as fixed place PE, the Hon'ble ITAT held that the onus is on the revenue to satisfy disposal test for use of the premises of BTIL and in the absence of such evidence attribution of profit from offshore supply to fixed place PE is not sustainable.

On the facts of the case, the assessee is a non-resident entity incorporated in Germany and is engaged in the business of integration and manufacturing of complete rolling stock and railway applications. The assessee formed a consortium with its wholly owned Indian subsidiary Bombardier Transportation India Ltd. (BTIL) and entered into contract with Delhi Metro Rail Corporation (DMRC) for design, manufacture, supply, testing, commissioning, training, and transfer of technology of 340 Electrical Multiple Units known as RS2 Contract. As per the terms of the contract, the consortium was to supply 58 train sets. As per the Memorandum of Understanding (MoU) entered between the assessee and BTIL, the scope of work of each consortium partner was specifically defined, the assessee was responsible for offshore portion of contract and BTIL was responsible for the onshore portion of contract. The assessee had also established Project Office in India.

The 58 train sets were supplied onshore by the assessee, which were manufactured by BTIL in India. These were purchased by assessee from BTIL and transferred to DMRC on cost-to-cost basis. Incomes from such onshore supplies were offered to tax in India by BTIL. The assessee did not offer income from such supply to tax in India. In addition, the assessee has made offshore supply of 8 more train sets, income from which was claimed not taxable in India as the transfer of title over goods took place outside India and the Project office had no role to play in such offshore supply.

The AO, however, attributed profit from offshore and onshore supplies to the PE of the assessee in India based on the following observations- a) contract between DMRC, assessee and BTIL is a composite contract, b) Project office of the assessee had an active involvement in both offshore and onshore supplies, c) Expatriate employees of the assessee stayed in India for 364 man-days.The assessee raised objections before DRP against the draft assessment order passed by the AO.

The DRP allowed relief in relation to attribution of profit of onshore Portion of the contract and also held that that project office should not be held as PE of the assessee. However, DRP held that the assessee has a fixed place PE in the form of BTIL and attributed 35% profits from offshore supplies to be taxable in India.

Before the ITAT, the assessee contended that the contract between the assessee and BTIL was a divisible contract wherein the scope and price of each party was separately provided. Further, with respect to fixed place PE, the assessee contended that the essential condition for determination of fixed place PE is that business of the non-resident is carried out through the said PE and the Revenue authorities had failed to demonstrate this essential condition of disposal. As regards the visits of the expatriates to India, assessee submitted that the employees visited India only for supervisory work to ensure timely delivery of train sets to DMRC.

The Revenue contended that responsibility of the assessee in relation to the contract starts from bidding till the commissioning of the train sets. Also, the contract is not complete till the train sets are handed over to DMRC and test run/commissioning is complete.

The Hon'ble ITAT noted that in terms of the contract, scope of BTIL and the assessee has been separately defined and, on the facts, BTIL has received separate payments for its scope, which has been duly offered to tax in India. Also, the transaction between the assessee and BTIL have been subjected to transfer pricing assessment. Accordingly, the ITAT held that though DMRC executed a single contract with Consortium Partners, the scope of each partner is well defined and demarcated and it was a divisible contract. Therefore, receipt from offshore supply is not taxable in India as the transfer of title of goods has taken place outside India.

Further, with respect to holding that BTIL constituted fixed place PE of assessee, the ITAT observed that the department has not been able to demonstrate that the premises of BTIL was used to carry out the functions and was at disposal of the assessee The Hon'ble ITAT held that since none of the conditions of fixed place PE as given under Article 5(1) of the DTAA are satisfied, BTIL cannot be construed as a PE of the assessee in India. Therefore, appeal was allowed in favour of the assessee.

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Same sub-contractor and common personnel in two projects of a customer do not conclude that both projects are one and single project to determine PE constitution under India-Singapore DTAA

Planetcast International Pte Ltd v ACIT [TS 389-ITAT-2023(DEL)]

In a recent judgment, the Delhi Tax Tribunal held that merely because installation and commissioning services were provided by the same sub-contractor or common personnel engaged in both the projects, it could not be concluded that both the projects were one and single project. As such, the incidence of PE is required to be examined for each project separately.

On the facts of the case, Planetcast International Pte Ltd., a Singapore based company received two purchase orders for supply of equipment from Accenture Solutions Pvt. Ltd. ('customer') for its projects in Bengaluru and Gurugram in India which were further sub-contracted to original equipment manufacturer ('OEM'). The Singapore Company claimed receipts from supply of equipment as non-taxable on the basis that manufacture and sale of the equipment took place outside India, title over the goods was passed outside India and payments were also received outside India. It was also claimed that since the duration of each project was less than 183 days, there was no PE in India and therefore, receipts from installation and commissioning services were not liable to be taxed in India.

The tax officer held that all project sites are required to be treated as one project for determination of PE. While holding so, the tax officer referred to the provisions of the DTAAs entered into by India with Italy, Australia and USA, wherein, it has explicitly been provided that for determining existence of PE, all projects in one contracting State have to be construed as single project. The tax officer observed that installation activities at Bengaluru and Gurugram, cumulatively, worked out to 233 days and therefore, concluded that the Singapore Company had a PE in India in terms of provisions of Article 5(3) and 5(4) of tax treaty. Accordingly, the tax officer attributed business profits to the PE in India applying the global net profit ratio. The DRP sustained the order of tax officer.

Being aggrieved, the Singapore Company preferred an appeal before the Tax Tribunal. During the course of arguments, it was contended that despite commonality in customer and sub-contractor, the nature of the two projects, the respective purchase order as well as equipment supplied were completely different from each other. Accordingly, the threshold period of 183 days for determination of PE ought to be computed separately for each project and not cumulatively.

The Tax Tribunal, while deciding the appeal in favour of the Singapore Company held as under:

- The material on record indicated that the two projects were independent of each other and had no connection. Merely because the installation and commissioning services were provided by the same sub-contractor or because of common personnel engaged in both the projects, it could not be concluded that both the projects constituted one and single project.

- The language employed in Article 5(3) and 5(4) of the tax treaty refers to 'a' building site or construction, installation or assembly project continuing for a period of more than 183 days. The term 'a' denotes singular form. Moreover, the language of the aforesaid provisions cannot be read at par with similar provisions in India-Australia, India-Italy or India-USA treaties. Thus, in absence of any such express provision in India-Singapore treaty, words used in other treaties cannot be imported. As such, based on the language used in above articles of the tax treaty, each project site has to be construed as a separate project for constituting an installation or supervisory PE.

- The Singapore Company had furnished material evidence to demonstrate that the duration of the Bangaluru project was 46 days, while that of the Gurugram project was 87 days. Thus, in both the instances, the threshold period of 183 days as provided in Article 5(3) and 5(4) of the tax treaty was not breached in each project.

- Further, the lower authorities had reckoned the period of 183 days from the date of raising of the first invoice for supply of equipment till the date of last invoice raised by Singapore company both for Bangaluru project as well as Gurugram Project. The Tax Tribunal noted that the Singapore Company was a mere supplier of the equipment manufactured by OEM. Furthermore, the installation/commissioning services could not have commenced until the equipment was manufactured and delivered. Moreover, the work of installation and commissioning services was also sub-contracted to the OEM and for this purpose, employees of OEM visited the respective project sites to undertake such activities. In view of the above, the first date of raising of invoice for supply of equipment could not be taken as the date of commencement of installation and commissioning services at the project site.

In view of the aforesaid, the Tax Tribunal concluded that the profits from of sale of equipment as well as installation and commissioning services were not liable to tax in India.

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Merely withholding of Tax by the employer on Foreign Assignment Allowance, does not render such allowance taxable in India

Tadimarri Prasanth Reddy [TS-364-ITAT-2023(HYD)]

Hyderabad ITAT has held that Foreign Assignment Allowance that was topped up to the Travel Cost Card (TCC) of the Employees, from the bank account in India to nostro accounts, is not taxable in the hands of the Employees in India.

On the facts of the case, the Assessee along with others are the employees of the IBM India Private Limited ('IBM India'). IBM India sent its employees on the long-term assignment to various countries.

During the year, the Assessee received salary which included element of compensation for the foreign assignment. The employee transferred the foreign assignment allowance from the bank accounts held in India to the nostro accounts to top up TCC, which the Assessee can use only abroad, but not in India and it is a foreign currency denominated account.

While filing the tax return in India, the Assessee offered such portion of the salary which was received by him in India, but claimed the foreign assignment allowance as "exempt Income".

While processing the tax return, the Assessing officer took the view, though the Assessee qualifies to be 'Non-Resident' as working outside India, he was only loaned to other organisations to work in their countries, but continued to be on payroll and under the control of IBM India. The Assessing officer also stated that IBM India deducted TDS on the entire amount which tantamounts that the foreign assignment allowances so paid was an Indian sourced Income earned by the Assessee in India, hence liable to be taxed in India.

Assessee filed an appeal before the CIT(A) who rejected the claim and held that TDS made by the employer is the primary evidence to show that the situs of the employment is in India and entire amount of salary including such allowances accrued to the Assessee in India and hence was taxable in India. CIT (A) further held that the Assessee did not pay any tax in UAE and therefore, if the foreign assignment allowance was to be treated as non-taxable in India, it amounts to double non-taxation, which is impermissible under law.

On further appeal, ITAT by placing reliance on the binding precedents on the identical issues held that the foreign assignment allowance that was topped up to TCC of the Assessee, though it was transferred from the bank account in India to the nostro accounts, is not taxable in the hands of the Assessee in India. The ITAT noted that non-taxation in host country is immaterial to decide the question of taxability of foreign assignment allowance in India.

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INDIRECT TAXES

GOODS AND SERVICES TAX

1. **Circular, Notification & other changes**

Government has come out with some important clarifications on issues related to **Input Service Distribution (ISD) and Cross Charge under GST law**, as briefly mentioned below:

Input Service Distributor (ISD) Mechanism for distribution of Common ITC on procurement of services from Third Party: [Circular No.199/11/2023-GST dated July 17, 2023]

Head Office (**HO**) procure common services from third party service providers which are attributable to HO as well as Branch offices located in other states. Such common third-party services would generally include IT services, accounting services, professional services, advertisement and marketing services etc.

It has been clarified that the said common ITC pertaining to third party services can be distributed by HO amongst its Branch offices either through the mechanism of ISD or by issuing output tax invoice upon such Branch offices.

Under ISD mechanism, Taxpayer is required to take ISD registration at its HO and must request all its third-party service providers to raise their respective service invoices on such ISD number. Subsequently, the ISD credit can be distributed through ISD invoice to the relevant Branch offices based on their respective State turnover.

It has now been clarified that the HO instead of following ISD mechanism, may at its option issue output tax invoice on its Branch offices for the purpose of distribution of such common third-party service ITC.

Cross-Charge (Internally generated services)

Cross Charge mechanism pertains to internal functions performed by HO which are used by Branch offices as well, such as managerial functions undertaken by higher management located/seated at HO, internal IT team or HR team etc. These services are referred to as internally generated services rendered by HO on their own to Branch offices.

- *Cases where full ITC is available to Taxpayer:* In respect of internally generated services rendered by HO to Branch offices, the value declared on the invoice shall be deemed as open market value for levy of GST, if the recipient Branch office is eligible for ITC. In other words, HO is not required to include the salary cost of employees engaged in provision of such internally generated services.

It has also been clarified that in cases, where the HO has not raised any invoice on Branch offices, it would be deemed that invoice with NIL value has been raised and it would be deemed that provisions of Cross charge has been duly complied with.

- *Cases where full ITC is not available to Taxpayer:* As a welcome step, Government has clarified that the cost of salary of employees of HO, involved in providing such internally generated services are not mandatorily required to be included while computing the taxable value of such services. This would ease the burden on all Taxpayers who are engaged in supply of both taxable as well as exempt goods/services.

Please note that while Government has clarified what would ***not be included for the purpose of valuation but has still not clarified that what should be included for the purpose of computing the value of cross charge services as these services are not available in open market (being internally generated services). Hence, the matter is still far from being settled at least where full ITC is not available to the taxpayer.***

2. Key Highlights of 50th GST Council meeting

A. Ease of Compliance:

- **Goods Transport Agencies (GTAs)** will not be required to file declaration every year for opting to pay GST under Forward charge. Once opted, it shall be deemed to have been exercised for future financial years as well, unless revoked, with effect from July 27, 2023 **(Notified vide N.N 06/2023 dated July 26, 2023).**

- **GSTR-9 for FY 2022-23:** Filing of Annual Return in FORM GSTR-9 for FY 2022-23 shall be exempt for taxpayers having aggregate annual turnover up-to INR 2 Crore. **(Notified vide N.N 32/2023 dated July 31, 2023)**

B. Other Important Recommendations

- **GST Appellate Tribunal:** Provisions pertaining to setting up of GST Appellate Tribunal to be notified with effect from August 01, 2023 so that the same can be brought into operation at the earliest, with effect from August 01, 2023 **(Notified vide N.N 28/2023 dated July 31, 2023).**

- **Amnesty Scheme for non-filers till 31.08.2023:** It is recommended to extend the amnesty scheme for non-filers of GSTR-4, GSTR-9 and GSTR-10 returns and revocation of cancellation of registration till August 31, 2023 from June 30, 2023 **(Notified vide N.N 25/2023 dated July 17, 2023).**

3. Recent Advance Rulings

- **GST at 18% is applicable on supply of services of Charging Batteries for Electric Vehicles (AAR Karnataka, dated July 13, 2023)**

The Authority of Advance Rulings, Karnataka has held that the process of charging batteries for electric vehicles is a supply of service & GST at the rate of 18% is applicable.

The applicant is engaged in sale of energy and transmission and distribution of electricity. The Applicant stated that they are going to set up various public charging stations (PCS) on its own, for charging electric vehicles (EVs), both two-wheelers and four-wheelers. The charging of a battery in EVs requires electricity. The applicant will provide electric energy to these public charging stations. All electric vehicle users can access these public charging station for battery charging the applicant would like to issue tax invoice and collects 'Electric Vehicle Charging fees.

"AAR observed that, the applicant is putting to use electrical energy at the PCS for its conversion into chemical energy. The applicant also measures the energy charges in the number of units of energy consumed for undertaking the said activity of charging of battery and not the amount of electricity transmitted to the consumer for this further application or usage. Thus, the activity of charging of electric vehicle does not amount to supply of electricity or supply of any moveable property, but it is supply of services"

- **Hostel rent, PG accommodation to attract 12% GST (AAR Karnataka, dated July 13, 2023)**

The applicant is engaged in the business of managing paying Guest Accommodation, in addition to the other business, to suit all type of customers by whatever name called. They are specifically focused on provision of boarding and lodging facilities for inhabitants.

The Bengaluru bench of Authority of Advance ruling (AAR) held that hostels PG/Hostel Rent paid by inhabitants are not akin to residential dwelling units for use as residence and hence are not exempt from GST.

AAR Ruled that, PG/Hostel Rent paid by inhabitants do not qualify for GST exemption under ***S1 No. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017*** *as the service provided by applicant are not akin to renting of residential dwelling for use as residence* and accordingly, is liable to GST at 12%.

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