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Exemption to interest income on specified off-shore Rupee Denominated Bonds.

Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India before the 1st of July, 2020 is liable for concessional rate of tax of five percent. Consequently, section 194LC of the Income-tax Act, 1961 (the Act) provides for the deduction of tax at a lower rate of five percent on the said interest payment.

Consequent to review of the state of economy on 14th September, 2018 by the Prime Minister, the Finance Minister has announced a multi-pronged strategy to contain the Current Account Deficit (CAD) and augment the foreign exchange inflow. In this background, low cost foreign borrowings through off-shore rupee denominated bond have been further incentivised to increase the foreign exchange inflow.

Accordingly, it has been decided that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17th September, 2018 to 31st March, 2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC of the Act.

Legislative amendments in this regard shall be proposed in due course.

(Press Release dated 17th September, 2018)

Filing of Income Tax Returns registers an upsurge of 71% upto 31st August, 2018

There has been a marked improvement in the number of Income Tax Returns(ITRs) filed during FY 2018 (upto 31/08/2018, the extended due date of filing) compared to the corresponding period in the preceding year. The total number of ITRs e-filed upto 31/08/2018 was 5.42 crore as against 3.17 crore upto 31/08/2017, marking an increase of 70.86%. Almost 34.95 lakh returns were uploaded on 31/08/2018 itself, being the last date of the extended due date of filing of ITRs.

A remarkable increase is seen in the number of ITRs in 2 categories ie ITRs filed by salaried Individuals (ITR-1& 2) as also those availing the benefit of the Presumptive Taxation Scheme(ITR-4).

The total number of e-returns of salaried Individual taxpayers filed till 31/08/2018 increased to 3.37 crore from 2.19 crore returns filed during the corresponding period of 2017, registering an increase of 1.18 crore returns translating into a growth of almost 54%.

A stupendous growth has been witnessed in the number of returns e-filed by persons availing the benefit of Presumptive Tax, with 1.17 crore returns having been filed upto 31st August, 2018 compared to 14.93 lakh returns upto 31st August, 2017 registering a massive increase of 681.69%.

The increase in the number of returns reveals a marked improvement in the level of voluntary compliance of taxpayers which can be attributed to several factors, including the impact of demonetisation, enhanced persuasion & education of taxpayers as also the impending provision of late fee which would be effective on late filing of returns. This is indicative of an India moving steadily towards a more tax compliant society & reflects the impact of continuous leveraging of technology to improve taxpayer service delivery.

(Press Release dated 1st September, 2018)

Case laws

Commissioner of Income-tax, Jaipur vs. Daulat Enterprises

Facts:

- The assessee firm had undertaken the contract of handling and transporting gypsum from the mines to the factory of various companies like Benani Cement, ACC Cement, Mangalam Cement, etc. For rendering these services, the assessee firm had raised its invoices which would include the payment made to truck owners for using their trucks for transportation. On payment being made to the truck owners, the assessee firm had deducted tax at source and paid the same to the State Exchequer. In the case of M/s. Mangalam Cement, the freight to the truck owners was directly paid by M/s. Mangalam Cement and therefore, from the invoice of the assessee firm the said payment for transportation to truck owners was deducted by M/s. Mangalam Cement and the balance amount for handling the goods was paid to the assessee firm.
- As the assessee firm had passed the entries and transferred the transportation cost paid to the truck owners by M/s. Mangalam Cement from its invoice value to the account of M/s. Mangalam Cement, who had thereafter paid transportation charges to the truck owners directly. This amount was disallowed by the AO invoking section 40(a)(ia) on the ground that the assessee firm had failed to deduct tax at source on the payment made for transportation of goods to M/s. Mangalam Cement. The case of the assessee firm was that the freight was directly paid by M/s. Mangalam Cement and the payment of the invoice of the assessee was made after deduction of freight paid by M/s. Mangalam Cement and hence the balance amount was received by the assessee firm as handling charges. The assessee had only made book entries with regard to the freight paid by M/s. Mangalam Cement directly to the truck owners in the account of M/s. Mangalam Cement in respect of the bills raised by the assessee firm. Thus the assessee firm had not paid freight and therefore, section 194C had no application.

Issue:

Section 194C read with section 204(iii) will come into operation only on payment made by the Contractor

Held:

- The Tribunal allowed the appeal of the assessee firm and held that when payment of freight was made by M/s. Mangalam Cement directly to the truck owners, it was not possible for the assessee to make deduction and payment of taxes thereupon. The assessee had only received handling charges and all acts and obligations were carried out by M/s. Mangalam Cement. As such neither there was any obligation on the part of the assessee nor was it possible for the assessee to make deduction of taxes thereupon. The Tribunal, therefore, did not find justification in the observation of the CIT(A) that M/s. Mangalam Cement was making payment to truck owners only on behalf of the assessee and the assessee was a contractor and truck owners were sub-contractors. The appeal of the Revenue was dismissed by the Rajasthan High Court wherein their Lordships held that as rightly contended by the counsel for Respondent, section 194C r.w.s. 204(iii) come into operation only on payment made by the assessee and as rightly discussed, since payment was not made by the assessee there was no default on the part of the assessee. Accordingly, the appeal was dismissed.
- The SLP filed by the Department was dismissed as their Lordships did not find any ground to interfere with the judgment of the High Court.

Commissioner of Income-tax vs. Suyog Shivalaya, July 20, 2018

Facts:

- Dismissing the SLP the Supreme Court has approved the decision of the Bombay High Court in the case of CIT vs. Makwana Brothers & Co. (HWP) (86 taxmann.com 278). The Bombay High Court followed its own decision in the case of CIT vs. Brahma Associates (333 ITR 289) wherein the Division Bench held that expression 'Housing Project' is not defined under the Act. However, section80-IB(10) refers to Housing Projects which are approved by local authorities. Therefore, for the purpose of section 80-IB(10), which project should be treated as 'Housing Project' is left to the local authorities.
- Development of every region is regulated by the concerned local authorities in accordance with the Development Control Rules/Regulations framed by the local authorities which is dependent upon the needs of that region. Therefore, which project would qualify to be called a 'Housing Project' has to be gathered

from the Rules/Regulations framed by the local authority. The Court, therefore, held that whether the Housing Project is of only and purely residential units and not commercial units or no commercial user, is contemplated by it, was an issue or question not open for the Income-tax Authorities to decide particularly when the projects have been approved as Housing Projects by the Planning Authority/ local authority. In this respect, the Court referred to and relied upon the insertion in section 80- IB(10) with effect from 1st April, 2005. The Division Bench held that the Development Control Regulations which prevail for cities and planning authorities in each case would have to be understood for interpretation of the expression 'Housing Project' as also the nature of the users envisaged and permitted therein in a Housing Project.

Issue:

SLP of the Revenue is dismissed in respect of deduction u/s. 80-IB(10) on the issue that local authorities can approve a project as 'Housing Project' along with commercial user to the extent permitted under the DC Rules/ Regulations framed by respective local authorities

Held:

- Thus the Division Bench of the Bombay High Court had followed its earlier decision of the Division Bench in CIT vs. Vandana Properties (353 ITR 36).

PCIT vs. New World Synthetics Ltd. [2018]

Facts:

- The assessee company had an outstanding liability of Rs 2,61,72,160/- due and payable to M/s. P.T. Polysindo, Jakarta, Indonesia since 31-3-2003. This liability was shown and acknowledged in the balance sheet and the accounts prepared by the assessee for year ending 31-3-2006.
- These were filed with Registrar of Companies and Income tax department. While the liability to pay was not disputed the Assessing officer insisted and claimed that there was cessation of liability as the amount had remained outstanding and unpaid since 31-3-2003 till 31-3-2006 and the debt due to P.T. Polysindo had become barred by limitation.

- Further there was no likelihood of making payment as assessee had incurred huge losses and stopped business operations during the period relevant to AY 2000-01

Issue:

Section 41(1) - Remission or cessation of trading liability - Section 41(1) of the Income-tax Act, 1961 – due to continuous losses, payments and debts due including those due to financial institutions are not paid – Since likelihood of payment was remote as business has stopped AO made addition u/s. 41. Held that circumstances would not by itself denote and mean cessation or remission of liability – addition deleted. [A.Y. 2005-06]

Held:

- The High Court observed that the word "cessation" in common parlance and in context in which it is used in section 41(1) connotes that debt has become extinct, has come to an end or it has been forfeited. "Remission" implies cancellation or extinguishment of all or part of financial obligation on part of the creditor.
- While the explanation also states to include remission and cessation by unilateral act, the Court observed that in the present case there was no unilateral act by the assessee as it had not written off the outstanding amount payable to P.T. Polysindo.
- The Court held that delay or non-payment, even when the AO is of the opinion that likelihood of payment was remote as business has stopped, would by itself not denote and mean cessation or remission of liability. In the winding up or bankruptcy proceedings, payments are made, mostly partly on sale of assets.
- Further debt or liability may subsist notwithstanding its recovery was barred by limitation for the law of limitation merely bars the creditor from invoking legal remedy.
- Expiry of period of limitation as prescribed in limitation act does not extinguish the debt but only prevents the creditor from enforcing the debt.
- The Court held that there was patent flaw when the department ignored and overlooked admission of liability to pay as the assessee had acknowledged the debt payable.

- Debt acknowledged and admitted in the balance sheet and accounts filed with the Registrar of Companies is an acknowledgement within the meaning of Section 18 of Limitation Act.
- Hon'ble High Court thus dismissed the appeal of the department holding that there was no remission or cessation of liability.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Liberalisation Of External Commercial Borrowings (Ecb) Policy

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to paragraphs 2.4.1 and 3.3.3 of Master Direction No.5 dated January 1, 2016 on "External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers", as amended from time to time.

It has been decided, in consultation with the Government of India, to liberalise some aspects of the ECB policy including policy on Rupee denominated bonds as indicated below:

- ECBs by companies in manufacturing sector: As per the extant norms, ECB up to USD 50 million or its equivalent can be raised by eligible borrowers with minimum average maturity period of 3 years. It has been decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year.
- Underwriting and market making by Indian banks for Rupee denominated bonds (RDB) issued overseas: Presently, Indian banks, subject to applicable prudential norms, can act as arranger and underwriter for RDBs issued overseas and in case of underwriting an issue, their holding cannot be more than 5 per cent of the issue size after 6 months of issue. It has now been decided to permit Indian banks to participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable prudential norms.

All other provisions of the ECB policy shall remain unchanged. AD Category - I banks should bring the contents of this circular to the notice of their constituents and customers.

The directions contained in this circular have been issued under section 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

(Circular No.9, Dated 19-9-2018 A.P. (Dir Series 2018-19)

Case laws

TVS Motor Company Ltd. vs. ITO – [T.C. (Appeal). Nos.1509 to 1513 of 2007

Facts:

- The assessee had entered into an agreement with the University of Warwick for provision of technical services and according to the terms of the agreement, the tax was to be borne by the assessee.
- The AO was of the view that tax had to be deducted even on the tax payment to be made by the assessee and the principle of grossing up would be applicable. The AO by applying provisions of section 195A of the Act, grossed up the income by the tax component of the remittance and held the assessee to be an 'assessee-in-default' u/s. 201(1)/ 201(1A) of the Act for short deduction of tax at source u/s.195 of the Income-tax Act,1961, as the assessee had not deducted tax on the amount of 'grossing up'..
- The CIT (A) upheld the AO order and rejected the assessee's contention that the application of the 'grossing up provisions' is against the beneficial provisions of DTAA between India and UK opted for by the assessee, since the percentage of tax rate by grossing up would go beyond 15% of the gross receipts (being the rate stipulated in Article 13 of the said DTAA). The Tribunal affirmed the CIT .(A)'s order.

Issue:

Even if the assessee opts to be governed by the provisions of the India-UK DTAA, in absence of tax computation mechanism in the said DTAA, income is to be computed as per the provisions of the Act considering the grossing up provision of section 195A and then the rate of tax as per the Act or the DTAA, whichever is more beneficial, would be applicable

Held

- The Court rejected the argument of the assessee that since no grossing up is provided for under Article 13 of the India UK DTAA, it was liable to pay tax at the rate of 15% on the amounts specified in the agreement.

- The Court agreed with the reliance placed by the Revenue on the decision in the case of Tata Ceramic Ltd. [(2011) 15 taxmann. com 49 (Ker)] wherein it was held that only if the tax does not form part of income [say, on account of exemption u/s 10(6A)], there would be no grossing up of such tax for the purpose of TDS.
- The Court accepted the stand of the Revenue that since the term "gross amount" is not defined under the provisions of the DTAA, the definition of income as defined under section 2(24) of the Act had to be referred which includes payments net of taxes. It held that since the tax computation mechanism was not provided for in the treaty, the income had to be computed under the Act and on that income computed, the rate of tax as per the provisions of the Act or the DTAA whichever was more beneficial would be applicable. Thus, it held that the provisions of Section 195A of the Act were applicable to the assessee's case.
- Therefore, it held that since the assessee had undertaken to discharge the tax liability of University of Warwick as per the terms of the agreement, the same had to be added to the latter's income and the principle of grossing up was applicable.

McKinsey Knowledge Centre India Pvt. Ltd vs. Pr.CIT [ITA 461 of 2017 (Bom)]

Facts

- The assessee-company, a wholly owned Indian subsidiary of McKinsey Holding Inc., USA, was engaged in business operations broadly divided into 2 segments viz. Research and Information (R&I) Services and IT Support Services.
- The R&I Services Division could be further divided into through 3 sub-groups- (a) Knowledge On Call Group – providing journalistic research information support. The services offered include financial analysis. (b) Practice Research Group - focusing on domain specific research support. The services provided included sector data and analysis, capital market insights, perspectives and industry trends and (c) Analytics Group - focusing primarily on time intensive analysis requiring expertise and analytical tools and techniques. The services provided included data analysis, model/tool development, proprietary database management, practice specialized analytics.

- Based on the examination of the master service agreement between the assessee and McKinsey USA, the Tribunal held the nature of services provided by the assessee under the R&I segment were in nature of knowledge process outsourcing ["KPO"] since the assessee was offering knowledge-based services.
- In the view of the assessee, it functioned like a business process outsourcing ["BPO"]. The assessee contended that the R&I division carried out research from the internet database and compiled the data which was further customized in accordance with the requestor party before transmission to the overseas group company so that McKinsey group entities could consider them before providing consultancy services
- Aggrieved, the assessee filed an appeal to the High Court against the order of the Tribunal.

Issue:

Distinction between BPO and KPO service providers upheld but Provision of Knowledge Management Services, KPO and not BPO activity.

Held

- The Court examined the master services agreement entered into between the assessee and McKinsey USA for providing both the R&I and also the IT support services. The Court observed that on perusal of the agreement it was evident that the assessee's function were inclusive of "knowledge management systems and infrastructure issues which would encompass infrastructure support, application support, application operations group and survey development centre". It thus held that the Tribunal's finding that since the assessee provided high end services in terms of R&I segment, it was offering knowledge based service, was in alignment with the agreement.
- So far as the distinction between BPO and KPO was concerned, the Court relied on the ruling in case of Rampgreen Solutions Pvt Ltd [(2015) 60 taxmann.com 255 (Del)] where BPO and KPO have been plainly understood in the sense that whereas, BPO does not necessarily involve advanced skills and knowledge; KPO on the other hand would involve employment of advanced skills and knowledge for providing services. Thus, in that case, it was held that the expression "KPO" in common parlance was used to indicate an ITes

provider providing a completely different nature of service than any other BPO service provider.

- Accordingly, following the ratio laid down in aforesaid decision of Delhi High Court, the Court held that since the services rendered by the assessee were specialized and required specific skill based analysis and research that was beyond the rudimentary nature of services rendered by a BPO, the services provided by the assessee were more akin to KPO.

REGULATIONS GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT

Amendment vide AP. Dir. Series Circular No. 9 dated 19th September, 2018.

Current Guidelines provided under Para 2.4.1 and 3.3.3 of Master Direction No.5 on "ECB, Trade Credit, Borrowing and Lending in Foreign Currency by AD and Persons other than AD", are amended as under :-

- ECBs by company in Manufacturing Sector: Presently, ECB up to USD 50 million or its equivalent can be raised by eligible borrowers with minimum average maturity period of 3 years.
- Underwriting and market making by Indian banks for Rupee denominated bonds (RDB) issued overseas: Presently, Indian banks, subject to applicable prudential norms, can act as arranger and underwriter for RDBs issued overseas and in case of underwriting an issue, their holding cannot be more than 5 per cent of the issue size after 6 months of issue.

Amendments vide AP Dir. Series Circular No. 10 dated 03th October, 2018.

Current Guidelines provided under Para 2.4.5, 2.4.6 and 2.5 of Master Direction No.5 on "ECB, Trade Credit, Borrowing and Lending in Foreign Currency by AD and Persons other than AD", has been amended as under :-

- Presently, ECB can be raised under tracks I and III for working capital purposes if such ECB is raised from direct and indirect equity holders or from a group company, provided the loan is for a minimum average maturity of 5 years. RBI, in a measure of liberalisation permitted Public sector Oil Marketing Companies (OMCs) to raise ECB for working capital purposes with minimum average maturity period of 3/5 years from all recognized lenders under the automatic route.
- Further, the individual limit of USD 750 million or equivalent and mandatory hedging requirements as per the ECB framework have also been waived for borrowings under this dispensation. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECBs.

GOODS AND SERVICE TAX

Clarification regarding the scope of Principal – Agent relationship in the context of Schedule I of the CGST Act. (Circular No. 57/2018 CGST dt. 4-9- 2018):

It is clarified that the Principal-Agent agent relationship shall be covered under the scope of Schedule I only when:

i. the supply or receipt of goods is undertaken by the agent on behalf of the principal; and
ii. invoice for the supply of goods on behalf of the principal is being issued by the agent in his name or invoice for procurement of goods on behalf of the principal is received in the name of the agent.

Thus, if the agent has the authority to pass or receive the title of the goods on behalf of the principal then it gets covered under Schedule I. Also, supply or receipt of services between agent and principal is outside the ambit of the entry.

Clarification on refund related issues (Circular No. 59/2018 – GST dt. 4-9-2018)

Clarification is issued with regards to following issues relating to refunds:

i. The statement in Form GSTR-2A is to be given and hard copy of invoices to be submitted only for the entries which are not available in GSTR-2A.
ii. Statement of invoices in Annexure A to be submitted for determining the eligibility of ITC claimed.
iii. Total eligible refund is to be apportioned in the following order:
    a) IGST to the extent of balance available in Credit ledger;
    b) CGST and SGST / UTGST equally to the extent of balance available in credit ledgers and shortfall, if any, the differential amount is to be debited from other credit ledger (for e.g., For shortfall in CGST credit ledger, differential amount to be debited from SGST / UTGST ledger and vice versa)
iv. In case of rejection of claim of refund of unutilised input tax credit on account of ineligibility of credit under sub-sections (1), (2) or (5) of section 17, the proper officer shall re-credit the rejected amount to the electronic credit ledger of the claimant using FORM GST RFD-01B and simultaneously issue demand

notice as the case may be. On confirmation of demand, the amount to be added to liability ledger through FORM GST DRC- 07. Alternatively, the claimant can pay this amount voluntarily along with interest and penalty before service of this demand notice.

v. In case of rejection of claim of refund of unutilised input tax credit on account of any other reason other than eligibility of credit, the rejected amount shall be re-credited to the electronic credit ledger of the claimant only after receipt of an undertaking from the claimant that he shall not file an appeal against the said rejection or in case he files appeal, the same is finally decided against the claimant.

vi. Pursuant to retrospective amendment u/r. 96(10) of CGST Rules it is clarified that only those purchasers/importers, who are directly purchasing/importing supplies on which the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of IGST paid on export of goods or services.

vii. It is clarified that the counterpart tax authority shall not withhold any refund amount after sanctioned by proper officer under any grounds except u/s. 54(11).

viii. It is clarified that once deficiency memo is issued, SCN is not required to be issued. A refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application and order in FORM GST RFD-04/06 cannot be issued in respect of an application against which deficiency memo is issued.

ix. No refund under section 54(5) or (6) shall be paid to the applicant if the amount of refund is less than Rs. 1,000/-. Further, it is clarified that the limit of Rs. 1,000/- shall be applied for each tax head separately and not cumulatively.

Clarification regarding the processing of refund claims by UIN entities [Circular No. 63/2018 dt. 14-9-2018]

In order to expedite the processing of refund applications filed by the UIN entities, the following formats/ documents are specified:

i. Refund checklist which includes covering letter for each quarterly refund, FORM GSTR RFD-10, and FORM GSTR-11, a copy of the letter issued by Protocol Division of the Ministry of External Affairs based on the principle of reciprocity and a cancelled cheque.

ii. Certificate and undertaking in respect of the use of goods and services in accordance with Notification No. 13/2017 IGST (Rate), 16/2017 CGST (Rate) and 16/2017 CGST (Rate) dt. 28-6- 2017.

iii. Statement of invoices along with copies of only those invoices wherein UIN is not mentioned on the invoice by the supplier. Required formats are given in the annexures to the Order.

COMPANY LAW

Mandatory dematerialization of shares of unlisted public company

The amended rules inserted new Rule 9A to the Companies (Prospectus and Allotment of Securities) Rules, 2014. The amendments to the Rules are effective from 2nd October 2018.

As per the new rule, every unlisted public company should:

- Issue securities only in dematerialised form and
- Facilitate dematerialisation of all its existing securities in accordance with the provisions of Depositories Act, 1996 and regulations made thereunder.

Additionally, every holder of securities of an unlisted public company:

- Who intends to transfer such securities on or after 2 October 2018, should get such securities dematerialised before the transfer.
- Who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2 October 2018, should ensure that all his/her existing securities are held in dematerialised form before such subscription.

Amendment to Companies (Registered Valuers and Valuation) Rules, 2017

- Any person who may be rendering valuation services under the Companies Act 2013, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 31st January, 2019 [earlier date was 30th September 2018]
- Time limit extended from 1 year to 2 year [from the date of commencement of these Rules] for converting the following valuation organization under Section 8 company
    a) Society under the Societies Registration Act, 1860
    b) Trust governed by the Indian Trust Act, 1882

Amendments to Schedule V of the Companies Act, 2013

Three new Acts as given below have been added in the list of the Acts, contravention of which would make a person ineligible for his/ her appointment as a managing director or whole-time director or a manager. The said new Acts added are as under:

i. The Insolvency and Bankruptcy Code, 2016,
ii. The Goods and Services Tax Act, 2017 and
iii. The Fugitive Economic Offenders Act, 2018

ACCOUNTS & AUDIT

Amendments to Indian Accounting Standards

Ind AS 20, 'Accounting for Government Grants and Disclosure of Government Assistance' has been amended to allow the option of recording of non-monetary government grants at nominal value. Further, government grants related to assets can be presented by deducting the same from the carrying amount of the asset. Corresponding changes have been made in the following Ind AS:

a. Ind AS 12: Income Taxes
b. Ind AS 16: Property, Plant and Equipment &
c. Ind AS 38: Intangible Assets

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