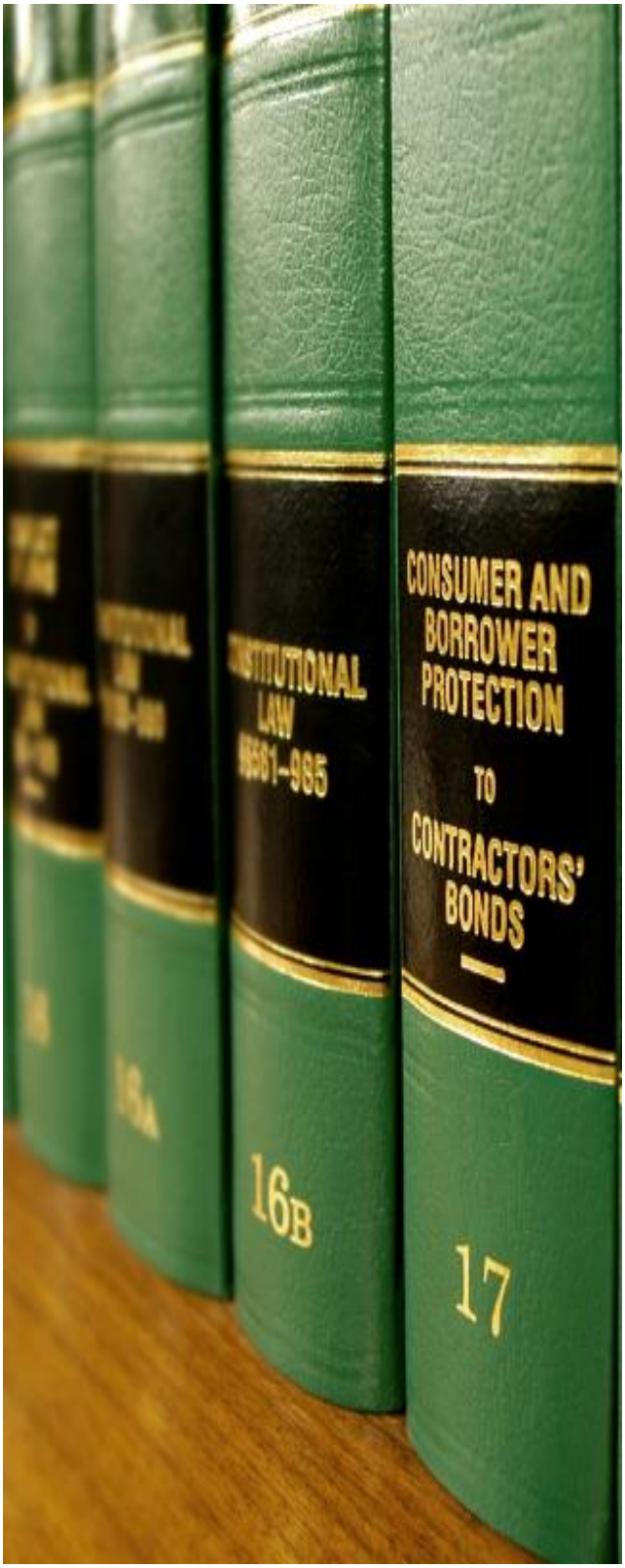
CONNEKT

April 2017

Contents

News & Views from IBA

Direct Tax
CASE LAWS



Case Law 1

Shah Rukh Khan v/s ACIT, Mumbai

Issue 1: Where assesse had an arrangement whereby loss suffered by Star India was sought to be recouped with earnings from sponsorship of assesse's Cricket Team Kolkata Knight Riders and assesse incurred expenses on this behalf, since there is a nexus between the said expenditure and purpose of business, same was to be allowed.

Facts

- The assesse was an individual and a film actor by profession. He was liable to act as anchor and host of the programme for 104 episodes to be produced by Star India Ltd, the consideration of which was to be received in advance. The same was offered for tax in an earlier year on receipt basis.

- However, the programme was discontinued midway by Star India Private Ltd. for commercial reasons. The assesse explained that as the balance of 54 episodes were not delivered, Star India Private Ltd wanted to recover the value of the unutilized amount from the assesse. The assesse agreed to compensate by getting a key sponsorship association with Kolkata Knight Riders team AND certain appearances and promotions by the assesse in press conferences in London and Dubai.

- It was explained that for procuring the sponsorship rights of Knight Rider Sports Private Ltd. assesse had incurred an expenditure on behalf of Star India Private Ltd. which was claimed as a professional expenditure. The Assessing Officer (AO) opined that during the year no income of any nature had been received by the assesse for which the assesse should be allowed deduction of expenditure.

- The Assessing Officer was of the view that the assesse was under no obligation to refund any amount to Star India Private Ltd.

Decision of the court

- The bench at the ITAT opined that there existed a business relationship between assesse and Star India Private Ltd as the assesse has earned substantial professional receipts from Start India Private Ltd. not only in this year but also in the past years. It must be observed that the assesse had received consideration that constituted almost 40% of the total receipts.

- In such situation where non-shooting took place for the remaining episodes on account of a decision of Star India Private Ltd., whereas the consideration for the entire episodes was paid to the assesse in advance, intention of Star India Private Ltd to recover the value of the unutilized amount from assesse for non-shooting of the balance episodes is plausible. The allowability of the impugned expenditure had to be examined in the context of its commercial expediency. From the point of view of commercial expediency, it is abundantly clearly that assesse had a long-standing professional relationship with Star India Private Ltd. and there is a nexus between the impugned expenditure and the purpose of business. In the present case, the expenditure was incurred wholly and exclusively for the purposes of business within the meaning of section 37(1) of the Act. The expenditure was thus allowed to be claimed by the Bench.

Issue 2: Where the brand equity of Knight Riders Sports and Star India was enhanced because of appearances by assesse, and in subsequent year, assesse had purchased shares of Knight Riders Sports, there is a certain amount of income within meaning of section 2(24)(iv) attributable to assesses appearance, in view of fact that no such appearances and promotions had indeed been carried out and Assessing Officer had not been able to establish benefit obtained by assesse, no addition could be made.

Facts

- The assesse had agreed to attend one press conference each at London and Dubai on mutually suitable dates for promotion of M/s. Star India Private Ltd. as sponsor of Kolkata Knight Riders Cricket team. The Assessing Officer further noticed that the activity of appearing in a press conference was also in the realm of assesses professional activity. According to the Assessing Officer, the benefits of the enormous brand equity had benefitted the assesse and an estimated value of such arrangement was bought to tax as part of Professional Receipts.

Decision of the Court

- With regard to the addition made with respect to professional receipts, it was observed that the press conferences at London and Dubai never took place as they were not demanded by Star India and hence there was no justification for the AO to assume that assesse had earned any income and hence the contention of the AO was set aside.

Issue 3: Income from Dubai Villa was liable to be taxed in India in as much as same was includible in return of income and whatever taxes that might have been levied in other contracting State, credit thereof was required to be allowed.

Facts

- The assesse was gifted a villa in Dubai where the AO show caused the assesse to explain as to why the deemed annual letting value within the meaning of section 23(1)(a) of the Act should not be adopted in respect to the said property.

- The assesse contended that in view of the provisions of Para -1 of Article -6 of the Double Taxation Avoidance Agreement (DTAA) between India and UAE, no income in respect of the said property was required to be assessed. However, AO did not accept the plea of the assesse and estimated the annual letting thereafter, allowing the deduction under section 24(a).

Decision of the Court

- With respect to deeming rental income under section 23(1)(a), the Bench was of the opinion that as per the notification issued on 28th August 2008, where the DTAA provided "may be taxed" in the other country, such income shall be included in his total income chargeable to tax in India. However, credit of any tax paid in another country shall be allowed as per law. Hence, the case was set aside partially in favour of the AO.

Case Law 2

Nagarjuna Fertilizers and Chemicals Ltd. v/s ACIT, Circle-15(1), Hyderabad

Issue 1: Where tax rate under Double Tax Avoidance Agreement (DTAA) was lower than 20% as prescribed under section 206AA, TDS would be deducted at such lower rate even if non-resident deductee fails to furnish his PAN.

Facts

- The assesse-company made certain payments in the nature of fees for technical services to non-residents. It deducted TDS at lower rate as per DTAA even in case of payees, who did not furnish valid Permanent Account Numbers.

- The assesse was held to be liable to deduct tax at source at higher rate of 20 per cent for want of Permanent Account Numbers of the concerned non-resident payees as per the provisions of section 206AA.

- Accordingly, the assesse was treated as an assesse in default for short-deduction of tax.

- The Commissioner (Appeals) also held that section 206AA starting with non obstante clause would override all other sections including section 90(2).

Decision

- The AO opined that it was evident that section 206AA contained a *non-obstante* clause and relying on the same, the stand taken by the authorities was that the provisions of section 206AA had an overriding effect. On the other hand, one of the contentions raised on behalf of the assesse in this regard was that the non-residents at the relevant time was not even required to obtain Permanent Account Numbers (PAN) as per the provisions of section 139A(8) read with rule 114C and since they were not obliged to even obtain the PAN, they were not required to furnish the same as envisaged in section 206AA and the said provisions, therefore, could not be applied in the case of non-residents even by the overriding effect given to the said provisions.

- As explained by CBDT while inserting the provision of section 206AA vide Circular No. 5 of 2010, the intention of the said provision was mainly to strengthen PAN mechanism and keeping in view this limited function and purpose, non obstante clause contained in the machinery provision of section 206AA was required to be assigned a restrictive meaning and the same could not be read so as to override even the relevant beneficial provisions of the Treaties, which override even the charging provisions of the Income-tax Act by virtue of section 90(2). It, therefore, cannot be said that the provisions of section 206AA, despite the non obstante clause contained therein, would not override the provisions of DTAA to the extent they were more beneficial to the assesse and it was the beneficial provision of treaty that would override the machinery provisions of section 206AA.

- The Bench opined that whenever there is a conflict between the provisions of the Treaty and the provisions of the Domestic Law, the provisions of Treaty would override. There was no merit in the contention raised by the department that as per section 90(2) treaty does not override the Act but gets overridden and rejected by the same being completely contrary to the proposition propounded by the Apex Court.

- Since section 206AA falls in Chapter XVII-B dealing with tax deduction at source, it follows that the treaty provisions which override even the charging provisions of the Domestic Law by virtue of section 90(2) would also override the machinery provisions of section 206AA irrespective of non obstante clause contained therein.

- The Bench at the ITAT level dismissed the AO's contention and held that the provisions of section 206AA of the Act did not have an overriding effect for all other provisions of the Act and the provisions of the Treaty to the extent they were beneficial to the assesse. Hence, the assesse therefore could not be held liable to deduct tax at higher of the rates prescribed in section 206AA in case of payments made to non-resident persons having taxable income in India in spite of their failure to furnish the Permanent Account Numbers.

Case Law 3

Widex India (P.) Ltd. *v.* Assistant Commissioner of Income-tax, Circle 2(1) (ITAT -Chandigarh)

No TP adjustment for AMP exp. just because incidental benefit accrued to foreign AE.

Facts

- The assessee, Widex India (P.) Ltd. was engaged in selling digital hearing aids largely to the end users through a network of dealers in India.

- During the Transfer pricing proceedings, following facts were noted by the Transfer Pricing Officer

  - The assessee entered into an agreement with Widex - Denmark for distribution of digital hearing aids manufactured by it.

  - The assessee had incurred huge Advertisement, Marketing and Promotional (AMP) expenses which were disproportionate to that spent by the comparable companies.

  - With above observations, the TPO concluded that excess AMP spend benefited the AE, for which the assessee should be adequately compensated the AE.

- TPO, thereafter applied Bright Line Test for determining over and above routine spends on AMP by the assessee and treated the transaction as International Transaction with the AE.

- Subsequently, in order to determined ALP of the transaction, the TPO relied upon Cost Plus Method (CPM) and took SBI PLR as markup to be applied on cost incurred by the assessee.

- Accordingly, addition was made to the assessee's ALP. Afterwards, DRP confirmed the additions of TPO.

Decision by Tribunal

It was held by the ITAT that the payment made by the assessee under the head AMP to the domestic parties cannot be termed as international transaction and therefore TPO wrongly invoked the provisions of Transfer Pricing.

Further the ITAT directed to remove the addition made by the lower authority and quashed the other arguments of the assessee.

The Tribunal, placed reliance on ***Bausch & Lomb Eyecare (India) (P.) Ltd. v. Addl. CIT,*** wherein Delhi High Court stated below points –

- The applicability of TP provisions begin with the existence of an International Transaction at a certain disclosed price which is substituted with the ALP by way of adjustment under TP provisions.

- The definition of international transaction presupposes the existence of an arrangement or agreement or understanding between the two AEs whereby one is obliged to spend excessively on AMP to promote the brand of the other.

- Merely because an expense results in service or benefit to the other party, the transaction cannot be constituted as international transaction.

- International Transaction cannot be presumed by assigning some price to the transaction and then deciding that it is not at ALP and henceforth, adjusting the same.

- There exist no machinery provision to determine fair compensation if an international transaction of brand promotion is found to exist.

Basis the above judgement and facts of the case, the Tribunal made below observations –

- There were no clause in the agreement entered into between the two parties requiring the assessee to undertake brand promotion expenses (AMP) on behalf of the AE.

- The existence of some sort of arrangement between the assessee and the AE obliging the assessee to undertake AMP expenditure on behalf of the AE, has not been demonstrated.

- The TPO has not proved that the AMP expenses incurred was not for the benefit of the assessee.

NOTIFICATION

Amendment to India-Singapore DTAA – With effect from 27th February 2017

- The Third Protocol amending India-Singapore Double Taxation Avoidance Agreement (DTAA) which was signed on 30th December, 2016, has come into force on 27th February 2017.

- The India-Singapore DTAA at present provides for **residence based taxation** of Capital Gains of shares in a company.

- The Third Protocol has amended the DTAA with effect from 01st April, 2017 to provide for source based taxation of capital gains arising on sale of shares in a company whereby, income or profits which result due to cross-border investments will be taxed where the income is earned (the source country), or where the person who receives it is normally based (the country of residence). This will curb revenue loss, prevent double non-taxation and streamline the flow of investments.

- In order to provide certainty to investors, investments in shares made before 01st April, 2017 have been grandfathered subject to fulfillment of conditions in Limitation of Benefits clause as per 2005 Protocol.

- Further, a two year transition period from 1st April, 2017 to 31st March, 2019 has been provided during which capital gains on shares will be taxed in source country at half of normal tax rate, subject to fulfillment of conditions in Limitation of Benefits clause.

Indirect Tax

CASE LAWS

Case Law 1

Financial hardship not a reason for non-payment of statutory liability and penalty

Assessee was engaged in providing taxable service under the category of consulting engineers. They were registered with the Department and were discharging service tax liability. However, during the period 2006 to 2008, the assesse did not discharge service tax liability on the taxable considerations received by them. Revenue issued show cause notice and initiated proceedings against the assesse for confirmation of service tax liability and for imposing penalties. Upon follow up enquiry by the officers of the Department, it was found that assesse had later paid the service tax liability with interest but failed to pay penalty of 25% within 30 days of service of order which is also required to be paid within one month of the order to avail such reduction in penalty. Therefore, Revenue demanded 100% penalty of service tax liability under Section 78 of the Finance Act, 1994. Assessee contended that that the delay in payment of service tax is due to acute financial problem. There is no intention to evade the service tax, the amount of service tax payable has been reflected in their annual balance sheet under the head "statutory liabilities" and full amount with interest for delayed payment has been paid before the issue of show cause notice. Assessee contended that if the service tax is evaded with any mala fide intention then section 78 is applicable, hence they should not be subjected to penalty under Section 78. Tribunal held that when the tax was recovered and not paid to the Department, it is clearly a case of evasion of tax with intention. Tribunal also holds that financial hardship cannot be pleaded against penal action when the tax collected is not remitted to the Government hence rejected the assesse appeal and upheld the penalty.

M/s Meinhardt Singapore Private Ltd. Versus CST, Delhi [Service Tax Appeal No. 390 of 2011 Final Order No. 50680/2017 Dated: 08.02.2017] [2011-TIOL-1574-CESTAT-DEL]

Case Law 2

Multiple CENVAT Credit issues and penalty under rule 15 of CCR, 2004 were settled.

In the case of M/s Deewan Reclaim Rubber Versus Commissioner of Central Excise, CENVAT credit was denied on certain grounds as follows :

- Whether the appellant is entitled to avail cenvat credit on receipt of inputs in the factory, wherein on the invoices address of Head Office is mentioned. CESTAT holds that credit should be allowed since the appellants have produced the evidences, which shows that the goods were received in the factory as is evident from the goods received note, and the weighment slips at factory.

- In respect of cenvat credit being 50% of the eligible credit, which was required to be taken in the subsequent year, but was taken in the 1st year itself by the appellant, revenue demanded to reverse the credit with interest and imposed the penalty equivalent to the amount of duty aggrieved by that appellant reversed the such amount of credit and paid the amount of interest but did not agree to pay penalty. The appellant stated that the reason for taking of credit before it was due, was due to over sight and no mala fide intention on the part of the appellant. The credit was anyway available after few months in the next financial year. CESTAT holds that considering the facts and circumstances and the credit being so available after few months, holds that the interest is held payable and the same is confirmed. Further, the amount of penalty imposed equivalent to amount of duty is reduced to Rs.10,000/ as specified under rule 15 of cenvat Credit Rules, 2004.

M/s Deewan Reclaim Rubber Versus Commissioner of Central Excise, 2017 (3) [TMI 1080 CESTAT ALLAHABAD]

Case Law 3

Refund cannot be rejected because invoices are not raised from the unit from where services is exported in case of centralized registration.

The assesse is a wholly owned subsidiary of Vanu International USA and is engaged in the business of exporting the service classifiable under Information Technology Software Service (ITSS) and Business Auxiliary Service (BAS) to its parent company. The asessee has two locations i.e. at Bangalore and Gurgaon and has obtained centralized registration under the service tax laws only at Bangalore unit and raising export invoices only from Bangalore unit. In the SOFTEX return of the assesse, only export of software services is disclosed and BAS provided from Gurgaon unit is not disclosed, as the Bangalore unit is registered as a software technology park of India. The assesse have filed various refund claims.

The revenue rejected the claims on the ground that no export has taken place from Gurgaon unit and the nexus between the input services received and output services exported could not be established by the assesse. Revenue also denied the refund in respect of certain input services (i.e. parking and cafeteria rent; building maintenance and housekeeping; etc.) because the same does not fall in the definition of input service. CESTAT holds that raising the export invoices only at Bangalore unit is permissible under Service Tax Rules. CESTAT also holds that non-disclosure of BAS in the monthly SOFTEX return filed with the STPI, is not sustainable in law. Further, only on this ground the refund is wrongly rejected. As far as lack of nexus about the input service (i.e. parking and cafeteria rent; building maintenance and housekeeping; etc.) all these services are necessary for running the business and fall within in the definition of input service and the assesse is entitled to refund of the same. Accordingly, appeal allowed by way of remand.

M/s. Vanu India Private Limited Versus Commissioner of Service Tax [2017 (3) TMI 69 CESTAT Bangalore]

Case Law 4

Disallows post-sale discount deduction given by way of credit note and such amount includible in 'turnover' for tax payment.

Assessee is engaged in the trading of cement and purchases cement from manufacturer's local depot and sells to retailers within state. According to the petitioner, subsequent to raising the tax invoice, the seller allowed a discount by the way of a credit note and doing so was a common practice in the industry. Moreover, as per the Kerala Value Added Tax (or 'KVAT'), turnover discount, target discount, additional discount, etc. are allowable deduction from the sale price or purchase price for the computation of taxable turnover. Under the present scenario, the petitioner made a sale at a price lower than the purchase price of the goods and computed the tax liability on the sale price adjusting it against the higher Input tax credit available from the purchases made, to which the Revenue appealed that the tax should be applicable as per the explanation VII to section 2(iii) of the KVAT Act, 2003 which states that "*Where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods*".

Indirect Tax

CASE LAWS

HC holds that issue in this appeal is already covered by the judgement in State of Kerala v. Syed Muhammed [(2016 (4) KLT 462)] wherein it was held that goods were sold at price lower than purchase price attracting Explanation VII to Section 2(lii) hence disallowed the deduction of discount received from supplier.

M/s Vettathil Agencies v. Department of Commercial Taxes[TS-40-HC-2017(KER)-VAT]

Notifications

The **C**entral Government has exempted all items of machinery, including instruments, apparatus, and appliances, transmission equipment and auxiliary equipment required for setting up of power generating fuel cell and balance of systems operating on bio gas from customs duty when imported to India provided that the importer furnishes a certificate containing quantity, description and specification of items imported and an undertaking stating that the said items will be used for the specified purpose only and in case of any noncompliance he shall be liable to pay the duty as leviable on such items.

Notification No. 5/2017 – Customs [F. No. 334/07/2017TRU] dated: 02-02-2017

Legal & Regulatory

NOTIFICATION

MINISTRY OF CORPORATE AFFAIRS

Designation of Special Court for the state of Telangana and Andhra Pradesh

(MCA Circular dated March 23, 2017)

The Ministry of Corporate Affairs with the concurrence of Chief Justice of High Court at Hyderabad and Andhra Pradesh, vide its notification dated March 23, 2017 has designated the below mentioned courts as Special Courts in order to provide speedy of trail of offences punishable with imprisonment of two years or more:

- Special Court for trial of Economic Offences-cum-VIII Additional Metropolitan Sessions Judge Court-cum-XXII Additional Chief Judge, City Civil Court, Hyderabad – **State of Telangana**

- Court of IV Additional District Judge cum-II Additional Metropolitan Sessions Judge, Visakhapatnam - **State of Andhra Pradesh**

http://www.mca.gov.in/Ministry/pdf/Specialcourt_25032017.pdf

Amendment in Schedule III (Financial Statement) of the Companies Act, 2013, relating to disclosure of specified bank notes

(MCA Circular dated March 30, 2017)

The Ministry of Corporate Affairs vide its notification dated March 30, 2017 made the amendment in Schedule III (Financial Statement) of the Companies Act, 2013, wherein every Company would be required to disclose the details of Specified Bank Notes (SBN) held and transacted during the period from November 8, 2016 to December 30, 2016 in the format prescribed in this regard.

http://www.mca.gov.in/Ministry/pdf/AmendmentinScheduleIII_Notification31032017.pdf

Amendment in the Companies (Audit and Auditors) Rules, 2014, requiring Statutory Auditors to comment on the disclosures relating to specified bank notes in financial statements

(MCA Circular dated March 30, 2017)

The Ministry of Corporate Affairs vide its notification dated March 30, 2017 has made amendment in Companies (Audit and Auditors) Rules, 2014, which has come into force from March 30, 2017, wherein the Statutory Auditors are required to comment on whether the Company had made requisite disclosures in its Financial Statements relating to dealings in Specified Bank Notes during the period from November 8, 2016 to December 30, 2016.

Further, the Statutory Auditors are required to comment upon whether the disclosures are in accordance with the books of accounts maintained by the company, if made

http://www.mca.gov.in/Ministry/pdf/ScannedCompaniesAuditandAuditorsRules_31032017.pdf

Legal & Regulatory

NOTIFICATION

Revision in the limits for related party transactions requiring members approval

(MCA Circular dated March 30, 2017)

The Ministry of Corporate Affairs vide its notification dated March 30, 2017 has made amendment in the Companies (Meetings of Board and its Powers) Rules, 2014, which has come into force from March 30, 2017, wherein the limits specified under rule 15(3) requiring members approval for entering into related party arrangements under section 188 of the Companies Act, 2013, have been streamlined.

The words 'exceeding ten percent' in the rule 15(3) have been substituted with 'amounting to ten percent or more' and the updated limits of the related party transactions requiring member's approval are as follows:

S. No.	Limits for member's approval
1	Sale, purchase or supply of any goods or materials directly or through appointment of agents amounting to 10% or more of the turnover, or 100 crore, whichever is lower
2	Selling or otherwise disposing of, or buying property of any kind directly or through appointment of agents amounting to 10% or more of the net worth, or 100 crore, whichever is lower
3	Leasing of property of any kind amounting to 10% or more of turnover or 100 crore, whichever is lower
4	Availing or rendering of any services directly or through appointment of agents amounting to 10% or more of turnover or 50 crores, whichever is lower

http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingsofBoard_31032017.pdf

Insolvency and Bankruptcy Board of India notifies Corporate Voluntary Liquidation Process Regulations

(IBBI Notification dated March 31, 2017)

The Insolvency and Bankruptcy Board of India (IBBI) has notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 on March 31, 2017. The regulations provide the process from initiation of voluntary liquidation of a corporate person - companies, limited liability partnerships and any other persons incorporated with limited liability - till its dissolution.

http://www.ibbi.gov.in/IBBI%20(Voluntary%20Liquidation).pdf

Securing e-wallets - draft rules for digital transactions made through prepaid instruments

In a 1.25-billion-strong population, India has made a brave move towards a cashless economy following the invalidation of the high-value currency notes on 8 November.

To ensure the survival of a cashless society, existence of a massive network of cashless payment modes like prepaid wallets, online transaction platforms and POS terminals is essential. Little does one realize vulnerability of the security breach and privacy breach attached to the environment of the e-payment system.

Legal & Regulatory

NOTIFICATION

With a view to address the much needed subject of cyber security, the Govt. on 8th March has issued draft rules for digital transactions made through prepaid payment instruments in a bid to make them more safe and secure.

As per the draft rules, issuers of prepaid payment instruments (PPIs) such as mobile wallets like Freecharge, Paytm and Mobikwik. will now have to disclose a privacy policy on their website, which shall include the details of use and sharing of information collected from customers, the duration for storage of customer information, and also the security practices and procedures followed by the issuers. The e-PPI issuer shall also appoint and disclose the name and contact details of grievance redressal officer along with mechanism for grievance redressal.

Every e-PPI issuer must carry out risk assessment every year to identify and assess the risks associated with the security of the payment systems infrastructure operated by it. The draft rules seek to implement an internal system for risk assessment and risk control in every e-PPI issuer in order to mitigate the identified risks.

The draft rules also say that the personal information of customers such as addresses, telephone numbers and financial details will not be disclosed anymore without their prior consent.

The rules require issuers to ensure end-to-end encryption of data exchanged and emphasize electronic transactions conducted by customers should be traceable by issuers. They also mandate every e-PPI issuer should set up a mechanism to monitor, handle and follow-up cybersecurity incidents and breaches. Also, the issuers will have to report cybersecurity breaches to CERT-IN, the nodal agency dealing with cyber threats.

While many e-PPI issuers already follow some of the rules prescribed, the draft rules aim at standardizing these processes for the entire industry.

Even though the move is a big stride towards cyber security in the country, there is something amiss. Firstly, there may arise a situation where e-PPIs face difficulties in deciding the governing regulator as now both RBI and the Ministry of Electronics and Information Technology (MeitY) have a role to play in their governance. Secondly, the issuers are required to review their security policy every year. Looking at the pace of advancements in technology, the timeline for review of the policy every year may fail to address the continuous influx of threats. Lastly, the draft rules are open ended and vague on the subject of standards of security, which is very essential to ensure security in the cyber space.

The government has sought comments from the public which were to be earlier submitted by the 20 March, however, the date has been extended to 5th April, 2017.

The link for the relevant notification is:

http://meity.gov.in/sites/upload_files/dit/files/draft-rules-security%20of%20PPI-for%20public%20comments.pdf

Thought LEADERSHIP

"Today our goal is to create one of the largest internet companies in the world from India impacting every possible transaction in the advertising world when it comes to mobile."

Naveen Tewari

Founder and CEO of mobile ad network giant, InMobi, Naveen Tewari, has come a long way. Naveen is an engineer by training, studied at Harvard Business School, and worked at consulting firm McKinsey. In between all that, Naveen also had some experience working in startups while he was in Silicon Valley.

Entrepreneurs being entrepreneurs, Naveen was very fascinated with the rapidly changing mobile internet. He wanted to build something which he could call his own. Naveen and his team started to dabble and among their first few projects was a VOIP application and also a chat application. But it was too early for the market back then. So the team started to question, "What are the things that could work? Maybe there's a play for us if we were to build a fundamental service?"

These fundamental services range from mobile e-payments to advertising platforms. Therefore, with more interest in the advertising side of the business, mKhoj was founded in 2007. The name was later rebranded to InMobi to suit the international audience better. Naveen told me:

Over the period of years, we started to see success. We decided to go broader and into different markets and not just stick only to Asia. That's how we expanded.

InMobi has had many turning points. Naveen pointed out three. The first was when the team decided to pivot when their chat application wasn't gaining traction. "Pivoting really lead to the next level of growth for us," he added.

The second one was when InMobi received funding from Kleiner Perkins Caufield and Byers (KPCB), a renowned global venture capital firm. The investment, said Naveen, gave InMobi a lot of confidence to grow and compete globally. The vote of confidence from KPCB also helped InMobi attract more talent to join the team. The third turning point was when InMobi received $200 million in funding from Softbank which really helped the company scale quickly in various markets.

We have doubled or tripled down on technology. We have built multiple platforms to go after the entire value chain of the ad business. We made acquisitions too to fill that up. We have also deepened our strengths in local markets – in the UK, Europe and launching ourselves in Korea, China, and Japan.

InMobi has offices in Beijing and Shanghai with more than 50 people running its China operations. When looking for talent, Naveen says that hunger and passion are the key things he is looking for.

Growing from a startup to a multi-national corporation, InMobi faces challenges like any fast growing young company would too. Naveen told me that as a young organization with little processes it was tough running a global operation with 25 offices while keeping one culture, one system, and communicating clearly with everyone.

Despite the problems, InMobi has had a great reception around the world. Today, the company is close to reaching 700 million smartphone users across the world. InMobi was also recently crowned by MIT Technology Review as one of the 50 most disruptive companies in the world.

Column

COMPREHENDING RESIDENTIAL STATUS

By
Sakshi Jain

Introduction

Under the Income Tax Act, 1961, the taxability of an assesse is reliant on the residential status of the assesse. Section 6, which governs the determination of an assesses residential status for the relevant assessment year has categorised an assesse into below mentioned four specific sub categories:

- Individual or Hindi Undivided Family (HUF)
- Company
- Firm, Association of Persons (AOP) or any other person

Residential Status of an Individual and HUF

To determine the residential status of an individual or the karta of an HUF (referred to as "individual"), the first and the foremost requirement is to determine whether the individual falls under the category of resident or non-resident. To determine this, either of the following condition needs to be fulfilled:

1. The individual should reside in India for a period of not less than 182 days in the previous year of the relevant assessment year, **or**,
2. The individual should have stayed in India for a period of not less than 365 days in four preceding previous years and his period of stay in India should not have been less than 60 days in the previous year of the relevant assessment year.

When either of the above-mentioned conditions are fulfilled, the individual is said to be a resident of India for that relevant assessment year.

However, the significance of the second condition gets nullified where the individual in question is a citizen of India and has been residing outside India, **or** has left India for employment purposes (includes any kind of self-employment) **or** has left India to be a part of the crew of an Indian ship, **but** comes to India only for visiting purposes. That is to say, while determining the taxability of such individuals, only the 1st condition needs to fulfilled for him to be determined as a residence of India for that relevant assessment year.

Further, it is important to note that an Individual is determined as a citizen of India only if he, or his parents or grand-parents were born in Undivided India.

As we know that the Insolvency and Bankruptcy Code (herein after referred to as the Code) has been notified last year and the present insolvency framework is in the process of transition. The Code is being rolled out in tranches on a very fast track.

Concept of ROR and RNOR

After an individual, has been classified as a Resident, the next crucial step is to check whether the said person is an Ordinarily Resident **or** a Not Ordinarily Resident. To conclude this, following mentioned checks need to applied:

- The individual should have been classified as a Resident for at least 2 years out of the preceding 10 previous years.
- The individual's stay in India has not been less than an aggregate of 730 days in 7 preceding previous years.

The resident individual is said to be an ordinarily resident (ROR) **only** when both the above-mentioned conditions are fulfilled. In other probable situations, the resident individual will be categorised as a Resident but not ordinarily resident (RNOR).

Residential Status of a Company

A company is determined to be a Resident of India in the relevant previous year when **either** of the below-mentioned conditions are satisfied:

- It is an Indian Company **or**,
- The company's place of effective management is situated in India for that relevant previous year.

It is significant to note that the second condition originally checked the place of control and management of the company's affairs. However, an amendment in the Finance Act 2016, applicable from Assessment Year 2017-18, had this replaced with place of effective management (PoEM) which has been defined as a place where key management and commercial decisions that are necessary for effective conduct of business are taken. In some cases, a situation may arise where the resultant resident company is a resident of the country of its incorporation. Such a situation gives rise to the concept of **Dual Residency**. To resolve such a situation, tie- breaking provisions are applied where the Double Taxation Avoidance Agreement (DTAA) entered between the foreign country and India is checked. Most of the DTAA's also recognise the concept of PoEM for determination of residence of a company incorporated in a foreign jurisdiction as a tie-breaker rule for avoidance of double taxation. To extrapolate the concept of PoEM, no specific guiding principles have been issued. However, the below-mentioned set of guidelines have been proposed.

A company is said to be engaged in "active business outside India" when:

1. Its passive income (defined below) is not more than 50% of its total income **and**
2. The assets, situated in India are less than 50% of its total assets **and**
3. Less than 50% of the employees of the company are a resident of India and are working in India **and**
4. The payroll expenses on such employees is less than 50% of the total payroll expenditure.
5. Head Office can be defined as a place where the company's senior management and their ancillary staff is predominantly located.

Where,
Passive Income can be defined as:
- Income generated from trading of goods with its associated enterprises.
- Income generated from royalty, dividend, capital gains, interest or rental income.

Senior Management can be defined as:
- Managing Director or Chief Executive Officer
- Financial Director or Chief Financial Officer
- Chief Operating Officer
- Head of Departments/ Divisions

Column

Residential Status of a Firm, AOP, Any other person

The assesses stated above are said to be a Resident in all the previous years. The exception exists only when the control and management of its affairs are situated **wholly** outside India.

Inference

Determination of Residential status is a crucial element as the taxability and the rates, thereby applicable, on the earned income also varies. The implication of taxes on the assesse has been explained below:

1. **ROR**: Any income accrued or received from anywhere in the world, is taxable in India.
2. **RNOR:** Any income deemed to accrue or receive in India or any income accrued or received outside India but from a business controlled in India is taxable in India.
3. **Non- Resident:** Any income deemed to accrue or arise in India, except for income accrued or received outside India from a business controlled in India, is taxable in India.

Further, it is important to note that if a person is deemed to be a resident in India for any source of income, he shall be liable to taxes under the Income Tax Act for all other sources of Income too.

THOUGHTS WHICH INSPIRE US

" A river cuts through rock, not because of its power, but because of its persistence. "

" Strength and growth come only through continuous effort and struggle."

" The pessimist sees difficulty in every opportunity. The optimist sees the opportunity in every difficult."

" Out of all the senses, smell is most closely linked to memory."

JOKES

- Even people who are good for nothing have the capacity to bring a smile to your face, for instance when you push them down the stairs.
- Man 1: Why is prime minister not seen in morning.
  Man 2: Because he is pm not am.
- Mother: How was the paper?
  Son: It was easy but Question 5 confused me.
  Mother: What was the question?
  Son: Question 5 wanted the past tense of 'Think". I thought & thought & thought and end up with writing "Thinked"
- I asked my mom if by any chance I was adopted.
  She replied: Hilarious. Why would we choose you?

INTERESTING FACTS

- If left in the dark, Goldfish will eventually turn white.
- Pineapples are not a single fruit, but a group of berries that have fused together.
- It is physically impossible for pigs to look up into the sky.
- Wearing headphones for just an hour will increase the bacteria in your ear by 700 times.

Birthdays of the Month

Puneet Sharma 1-April

Shankey Jain 1-April

Bhawna Kukreti 4-April

Bipin Kumar 7-April

Nidhi Singh 13-April

Shivam Budhiraja 16-April

Money Gupta 17-April

Sonit Mohan 24- April

Neeti Gambhir 25-April

Shweta Garg 28-April

IBA wishes You a Happy Birthday and a great year ahead!!

March 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7 TDS/TCS for the month of March, 2017	8
9	10 Excise Return [Er-1, ER-2, ER-3]	11	12	13	14	15 Excise Return by First Stage and Second Stage Dealer
16	17	18	19	20	21	22
23	24	25 ST Return by corporates & non-corporates	26	27	28	29
30 Revised Returns						

About Us

IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity so as to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Ten years into conception, IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimise client service.
Our service lines are headed by experts from the varied fields of Financial Outsourcing, Assurance, Risk, Taxation, Regulatory, Mergers and Acquisition who ensure timely delivery of value added services to our clients.

Stay Connected

- New Delhi
  S-217,Panchsheel Park
  New Delhi 110017

- Mumbai
  Suite 1108, Level 11 - 1102 Peninsula
  Business Park Tower B, S B Road
  Lower Parel
  Mumbai 400013

- Bangalore
  Golden Square Serviced Office
  #No 1101, 24th Main, JP Nagar
  1st Phase (above ICICI Bank)
  Bangalore-560078

Editorial Team

Somya Sharma

Sudhakar Jha

Sarthak Juneja

Sonal Sapra

Queries/Feedback/Suggestions on this newsletter may be addressed to:

A joint initiative of International Business Advisors Private Limited (IBA) and Nayyar Maniar & Associates LLP (NMA LLP). IBA is a Company registered under the Companies Act, 1956 having its registered office at S-217, Ground Floor, Panchsheel Park, New Delhi – 110017, India. NMA LLP is a registered partnership firm.

For more information and past issues of ConneKt, kindly visit our website www.ibadvisors.co