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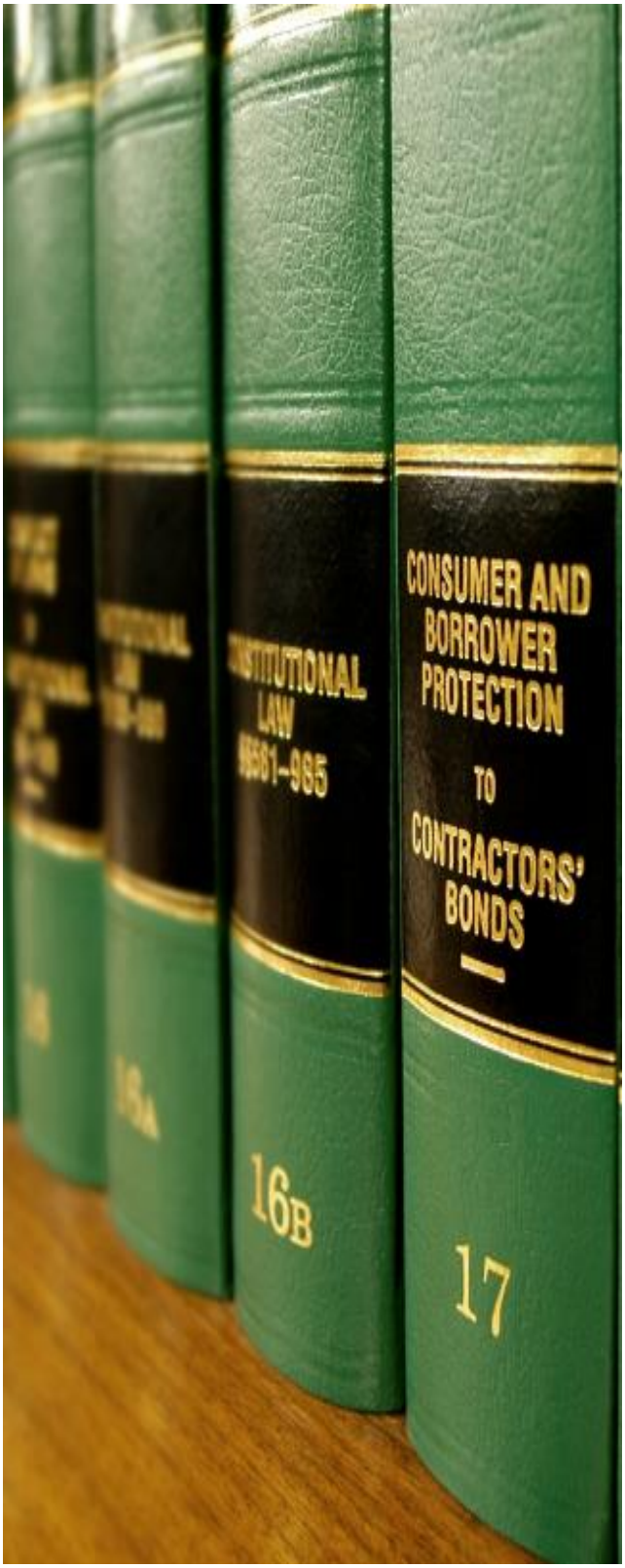

Case Law 1

Where a foreign employer has directly credited salary, for services rendered outside India, into NRE bank account of non-resident seafarer in India, same could not be brought to tax in terms of Section 5 of The Income Tax Act, 1961

Facts

- Assessee, a Marine Engineer is a Non Resident Individual (NRI) as per tax laws of India and was engaged with M/s. Wallem Ship Management Ltd, Hong Kong (Employer) in the capacity as a Master. He was receiving salary income in foreign currency from the employer that was later on remitted to the Savings Bank NRE Account held with an Indian Bank. He claimed that income to be exempt as per The Income Tax Act (Act).

- The case was taken for scrutiny in which the Assessing Officer(AO) accepted the residential status of the taxpayer as NRI, However, he issued a show cause notice to explain as to why the remuneration transferred in India should not be brought to tax in terms of section 5(2)(a) of the Act.

- The taxpayer contended that since the remuneration was earned and received outside India in foreign currency and on his request, it was remitted to the NRE Account, it would not be taxable in India.

- The AO held that section 5(2)(a) includes all income received or is deemed to be received in India and it does not differentiate between Indian currency or foreign currency. Hence remuneration shall be taxable in India.

- Aggrieved by the order of the AO, taxpayer filed an appeal with CIT(A) which upheld the order of the AO.

ITAT's Decision

- A NR is taxed on the following income:

  - ❑ Income received or deemed to be received in India
  - ❑ Income accrued or deemed to be accrued in India

- Salary for services rendered on board a ship outside the territorial waters of any country would be sufficient to give the country where it is received the right to tax the said income on

receipt basis as per section 5(2)(a) of the Act.

- The issue has been duly addressed by the CBDT Circular No. 13/2017 dated 11.4.2017 wherein it has been stated that any remuneration received by a NR outside India shall not be included in total income merely because the salary was later on transferred to his NRE account in India.

- However, the circular does not clarify whether exemption is either for remuneration directly credited to NRE account by the employer or for remuneration that was received in bank outside India and later on, transfer to NRE account as this remittance is not salary income but a mere transfer of assessee's fund.

Circular does not clarify whether the expression "merely because" used refers to which of the two remittances. Hence, a benefit of doubt was given to the assessee by holding that the circular covers both the situations and therefore the said remittance was held as exempt income in the hands of taxpayer.

Case Law 2

Assistant Commissioner of Income –tax-2(1), Raipur v. Bagadiya Brothers (P.) Ltd.

Berry ratio is applicable in circumstances where no value added services were rendered by pure distributors

Facts

- BBPL, the assessee was an exporter mainly exporting Iron Ore Fines from Indian ports to various Chinese ports.

- BBPL established a subsidiary company in Singapore, BBSPL which provided vessels to assessee as well as third parties.

- AO observed that BBSPL was a front company created to divert profits and it was not discharging any significant functions. Hence, it was created for non-business consideration

- AO applied berry ratio based on Gross Profit/Operating Expenses and rejected assessee's application of Transactional Net Margin Method (TNMM) as Most Appropriate Method (MAM) and BBSPL as tested party.

- Accordingly, an addition was made to the income of the assessee on account of downward adjustment as per order under section 92CA (3)

- AO applied berry ratio based on Gross Profit/Operating Expenses and rejected assessee's application of Transactional Net Margin Method (TNMM) as Most Appropriate Method (MAM) and BBSPL as tested party.

- Accordingly, an addition was made to the income of the assessee on account of downward adjustment as per order under section 92CA (3).

- The Commissioner had upheld that TP adjustment to the extent of approx. 7 crores being third party transactions, had been wrongly considered by the TPO as related party transactions liable for ALP determination.

- Aggrieved by the order of AO, assessee filed an appeal with CIT (A) and then further to ITAT.

Decision

- Assesee's total export of iron ore had a significant increase in profits therefore, there is no force in the propositions of TPO/Assessing Officer to allege that the AE(Associated Enterprise) is a front company, created for non-business consideration.

- There is no merit in the TPO's allegation that BBPL was a merchant exporter and not engaged in the shipping business in India.

- The Commissioner after admitting additional evidence noticed that AE had its own sufficient funds even prior to entering into business transaction with the assessee and that the assessee had not supported financially the AE. The assessee started doing business with AE from the month of October 2007. The AE earned income of approx. 1 million USD from chartering business with third parties, other than the assessee prior to October 2007.

- The payment of hire charges, bunker charges, port charges had been made by the AE from its own funds evidenced by cash flow statement could not be controverted by revenue the AE had performed proper business functions, assumed business risks by employing its own funds independently without help of assessee AE cannot be considered as pure distributor.

- Berry ratio is not applicable in this case and therefore, appropriate profit indicator was operating profit / total cost.

- As per TNMM study filed by the assessee, the margin on total cost earned by AE was 4.52% which was less when compared with 5.18% in case of other eleven comparable companies. This is within arm's length. Therefore, otherwise also no transfer pricing adjustment is called for by the safe harbour clause.

Case Law 3

Assistant Commissioner of Income-tax, Mumbai *v.* Valentine Maritime LLC.

Actual period of two projects unrelated are undertaken by a foreign company could not be combined to determine its PE in India.

Facts

- The assessee was a foreign company incorporated in Abu Dhabi, UAE, to cater to oil and gas construction industry.

- It entered into a contract with a company (LCI) in India to provide services of personnel, provision of survey services and provision of a barge.

- The AO observed that the assessee was doing small contracts in order to avoid a Permanent Establishment and to claim exemption under the DTAA.

- Since it had contracts throughout the year, it was held that the assessee had a PE in India for all the projects and its income were held to be taxable in India.

- The case was appealed further to CIT(A) wherein it was held that that assessee could not be said to be having a PE in India because it was evident from the period of projects that the assessee had not spent 9 months in India for any project or during the period of any 12 months since assessment year 2008-2009.

ITAT's Decision:

- The services rendered by the assessee were provided for a duration of less than nine months. The Commissioner had given a clear finding and the tribunal agreed with the same.

- The AO did not base his order on any logical reasoning and he had presumed that assessee's representative might have come earlier before the actual arrival of the barge in the Indian waters this kind of hypothesis cannot be sustained.

- The AO's view that the period of the two works should be combined cannot be sustained because the two projects cannot be combined as they were unconnected works.

- The AO invoked article 5(2) (h) of the DTAA between India and UAE and has based his decision on the analysis thereof. Further it was found out that the assessee cannot be held to be liable for tax as the period of the stay was less than 9 months required to form a permanent establishment so as to come under the ambit of taxation under this article.

- Accordingly, in the background of aforesaid discussions there is no merit in AO's observations.

Indirect Tax
CASE LAWS

Case Law 1

Interest on delayed refund to be computed from date of CESTAT's favorable order and not Supreme court's order

Sony Pictures Networks India Pvt. Ltd. vs. Union of India [TS-146-HC-2017(KER)-EXC-Sony_Pictures]

Assessee imported satellite receivers and classified the same under the heading 8525.20 of the Customs Tariff Act, for which it was allowed clearance at the concessional rate of Duty. Subsequently, a notice was issued by Revenue directing assessee to pay differential duty for the sum of Rs.5 crores as per the classification under CTH 85.28. Assessee paid the duty liability of Rs.3 crores and 1.15 crores during the pendency of the appeal. CESTAT allowed the appeal in favor of the assessee and the appeal filed by the Revenue against this order was dismissed by the SC directing that the excess duty paid by the assessee be refunded to it. Revenue granted refund of pre-deposit along with the interest calculated @ 6% from expiry of 3 months from the date of receipt of SC's order. However, assesse contested that interest to be calculated @ 12% on expiry of three months from the date of the order by the CESTAT. To this revenue responded that assessee did not submit a letter for refund and was unable to produce certain documents necessary to verify refund bills. HC, placing reliance on the case Commissioner of Central Excise vs. ITC limited [2005 (179) E.L.T 15 (SC)], held that pre-deposit shall be refunded with interest calculated @ 12% from expiry of 3 months from the date of order passed by CESTAT.

Case Law 2

Credit note pursuant to assessment finalization does not absolve unjust enrichment test for refund

Commissioner of Central Excise, Chennai vs. National Plywood Industries Limited TS-158-HC-2017(MAD)-EXC-National_Plywood_Industries

Assessee was in the business of manufacturing paper based decorative laminated boards. It cleared goods from depots located in Bangalore, Chennai and Delhi at varied prices on account that it opted for provisional assessment for the years 2000-01 to 2002-03. Post final assessment assessee determined the exact selling price of its goods. Concerned Authority held that assessee was entitled to claim a refund of INR 1.71 lakhs and furthermore,

liable to pay INR 2.22 lakhs because of differential duty. Pursuant to said order being passed, a show cause notice was served on assessee calling upon it to justify as to why refund erroneously sanctioned to it ought not to be recovered along with interest. To this assessee contested that the refund claim made by it was admissible as the burden of duty has not been passed on to its customers because he has issued credit notes after the incidence of duty has been passed. HC noted that assessee was not maintaining stock wise and item wise accounts in the Depots for goods received from the factory and their onward dispatch to the customers. In other words, no correlation could be made between the credit notes issued and the goods dispatched to the customers. Held that assessee was not eligible for refund and was liable to pay differential tax amount along with interest.

Case law 3

Receipt of INR routed through foreign bank deemed to be 'Convertible Foreign Exchange' for export of services

M/s. Support. com India Pvt. Ltd. Versus Commissioner of Service Tax [2017 (6) TMI 1109 - CESTAT Bangalore]

Assessee was engaged in the business of exporting IT services and was registered as a 100% Export Oriented Unit (EOU). During January 2013 to March 2013, it exported services and filed the refund claim for unutilised CENVAT credit paid on inputs services utilised for providing the output services. Payment for such export of services was received in India rupee and subsequently revenue rejected the refund claim stating that the consideration was not received in convertible foreign exchange which is in violation of the conditions laid under Rule 3(2)(b) of Export of Service Rules, 2005. Assessee contested that to protect the exchange rate fluctuations, they instructed their bankers to covert foreign exchange realization into INR and credit to their account, whereas the actual realization was made in foreign exchange. Tribunal held that though the payment is received in INR as per the FIRC's issued by India bank but the same was routed through foreign bank which shall qualify the condition of 'Convertible Foreign Exchange' and hence the rejection of refund on this ground is not sustainable.

Case Law 4

No separate tax rate applicable on 'Mobile Charger' if it is sold as a composite part of 'mobile'

M/s. Nokia India Sales Pvt. v/s Excise and Taxation Comissioner, Himachal Pradesh and others [TS-156-Tribunal-2017-VAT]

Assessee is engaged in trading of cell phones. It sells cell phones along with chargers in pre-packed retail packages and discharges their liability under Himachal Pradesh VAT (HPVAT) at 5% rate. Revenue contended that although cell phones are chargeable to tax @ 5% but their chargers even when sold in a pre-packed retail package should be levied tax @ 13.75%. To this assessee responded that the battery charger is part and parcel of the mobile phone unit and cannot be assessed separately as a single MRP is charged for the entire product. It also submitted that it is a well settled law that when goods are sold in a set, the classification of the said goods for the purposes of tax, will be determined with reference to the material product which accords them their essential character. Tribunal noted that the character test squarely applies in determining the classification of retail packs consisting of both cell phones and chargers. Further, it observed that revenue had solely relied on SC judgment in ***Nokia India Pvt. Ltd*** but referring to decision in **Micromax Informatics Ltd. v/s State of Himachal Pradesh and others** wherein SC held that assessee can bring to notice of the State VAT authorities that decision in Nokia India is distinguishable. Tribunal noted that the entry in HPVAT Act specifies 'mobile handsets and parts thereof', even if a charger is not treated as being a product qualifying to be termed as "part thereof", it would still qualify as a composite product under the rules of interpretation of the Customs Tariff Act, 1975. Held decision in favour of assessee that no separate tax rate is applicable on mobile charger if it is sold as a composite part of mobile.

Notifications

Credit Transfer Document

Vide **Notification No. 21/ 2017 - CE (NT)**, the Government has introduced a document by the name of Credit Transfer Document ('CTD').

Intent behind issuance of CTD - In a supply chain consisting of multiple dealers (or 'distributors'), the Excise Duty (charged by manufacturer) is required to be borne as a cost by the distributors. Such cost is passed on to the customers in the form of higher prices. By introduction of CTD, distributors can avail credit of such Excise Duty on stock lying on 1 July 2017, thus, reducing their costs. In this manner, final cost to consumer
shall also reduce.

Key features of the said document are explained hereunder:

- CTD shall be issued by a manufacturer registered under Excise to a dealer who was unregistered under the old Law but is required to get registered under GST;
- CTD can be issued only in lieu of goods cleared under an invoice before 1 July 2017. CTD shall be issued within 45 days from 1 July 2017;
- Copy of invoice issued by manufacturer needs to be annexed to CTD. In case the supply chain consists of multiple distributors, invoices raised by all such distributors are also required to be attached along with CTD and
- It shall be maintained by the final distributor;
- The value of such goods should be more than INR 25,000. The goods should be branded and separately identifiable;
- The goods should not have gone through any processing while going through multiple legs of distributors;
- In case of single leg of distributor, if excisable invoice was issued by the manufacturer, CTD shall not be issued;
- All distributors receiving CTDs from manufacturers shall not be eligible to obtain 'deemed credit' of 40%/ 60% as prescribed under Rule 117 of CGST Rules, 2017;
- Manufacturer and dealer issuing (and receiving) the CTD shall be required to fill FORM TRANS 3 within 60 days from 1 July 2017. In addition to this, Forms TRANS 3A and 3B also need to be maintained by the manufacturer and dealer respectively.

Taxability of procurements from unregistered dealer

Government vide **Notification No.8/2017-Central Tax (Rate)** has notified that all Intra-State supplies of goods or services or both received by a registered person from any unregistered supplier shall be exempt from taxability under reverse charge basis provided that aggregate value of such supplies received by a registered person from **all unregistered suppliers in a day** do not exceeds INR 5,000.

Legal & Regulatory

NOTIFICATION

MINISTRY OF CORPORATE AFFAIRS

Clarification regarding transmission of Securities by Operation of Law

(MCA General Circular no. 07/2017 dated June 05, 2017)

The Ministry of Corporate Affairs vide its general circular provides clarification under the provisions under Rule 6(3) (d) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. It has been stated that since transfer of shares to IEPF under Section 124(6) of the Companies Act, 2013, takes place on account of operation of law hence the procedure followed during transmission may be followed and duplicate share need not to be issued.

http://www.mca.gov.in/Ministry/pdf/IEPFGcircular07_05062017.pdf

Exemptions to Government Companies under section 462 of Companies Act, 2013

(MCA Notification No. G.S.R. 582(E) dated June 13, 2017)

The Ministry of Corporate Affairs has issued notification, wherein it has modified the previously issued notification dated June 05, 2015 number G.S.R. 463(E) with respect to exemptions/ relaxations/ modifications for Government Companies.

Key highlights of the notification are as follows:

- It has been clarified that Annual General Meeting of Company shall be held at registered office of the Company or such other place within the city, town or village in which the registered office of the Company is situate or such other place as the Central Government may approve in this behalf.

- Provisions relating to retirement of director by rotation shall not apply to following government Companies:
  - ❑ a Government Company, which is not a listed Company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
  - ❑ a subsidiary of a Government Company, referred to in (a) above.

- In the provision of the below mentioned section the word "Central Government "has been substituted in place of Tribunal:

  - ❑ 230. Power to compromise or make arrangements with creditors and members
  - ❑ 231. Power of Tribunal to enforce compromise or arrangement
  - ❑ 232. Merger and amalgamation of Companies

It is pertinent to note that the above exceptions, modification, and adoption shall be only allowed if the Company has not committed default in filing financial statement or annual report with the Registrar.

http://www.mca.gov.in/Ministry/pdf/ExemptionGovernmentCompanies_14062017.pdf

Legal & Regulatory
NOTIFICATION

Exemption to Private Companies under section 462 of Companies Act, 2013

(MCA Notification No. G.S.R. 583(E) dated June 13, 2017)

The Ministry of Corporate Affairs has issued a notification, wherein it has modified the previously issued notification dated June 05, 2015 number G.S.R. 464(E) with respect to with respect to exemptions/ relaxations/ modifications for Private Companies.

Key highlights of the notification are as follows:

- Private Companies which are start-up are not required to prepare cash flow statement as a part of financial statement.
- The Compliances under clause (a) to (e) of Section 73 (2) relating to acceptance of deposit under section 73 shall not be applicable for following Private Companies:
  - ❑ which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or
  - ❑ which is a start-up, for 5 years from the date of its incorporation; or
  - ❑ which fulfils all of the following conditions, namely:
    - ✓ The requirement for which is not an associate or a subsidiary Company of any other Company;
    - ✓ if the borrowings of such a Company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
    - ✓ such a Company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

  The requirement of filing the details for acceptance of deposit with ROC would be there.
- The Private Companies which are Small Companies are not required to file the amount of remuneration drawn by only Director and not Key Managerial Personnel in Form MGT-7.
- The auditor shall not be required to state about the adequacy of Internal Financial Control and operating effectiveness of such controls for the Private Companies falling under any of the criteria:
  - ❑ Which is one person Company or a Small Company; or
  - ❑ Which has turnover less than Rs. 50 Crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less then Rs. 25 Crore
- The Private Companies which are start-up have been allowed to convene only one meeting of the Board of Directors in each half of a calendar ensuring the gap between the two meetings is not less than ninety days.

- Interested director(s) of a Private Company may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

It is pertinent to note that the above exceptions, modification, and adoption shall be only allowed if the Company has not committed default in filing financial statement (Form AOC-4) or annual report (Form MGT-7) with the Registrar.

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

Exemption to Section 8 Companies under section 462 of Companies Act, 2013

(MCA Notification No. G.S.R. 584(E) dated June 13, 2017)

The Ministry of Corporate has issued notification, wherein it has modified the previously issued notification dated June 05, 2015 number G.S.R. 466(E) with respect to exemption/relaxation for Section 8 Companies.

Key highlights of the notification are as follows:

- A Section 8 Company has been permitted to have more than 15 directors.

- The restriction for giving loan under section 186 at a rate of interest lower than the prevailing yield of one year, three years, five years or ten years Government Security closest to the tenor of the loan shall not be applicable for a Government Company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such Company for funding Industrial Research and Development projects in furtherance of its objects as stated in its memorandum of association.

It is pertinent to note that the above exceptions, modification, and adoption shall be only allowed if the Company has not committed default in filing financial statement (Form AOC-4) or annual report (Form MGT-7) with the Registrar.

http://www.mca.gov.in/Ministry/pdf/ExemptionSection8Companies_14062017.pdf

The Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017

(MCA Notification dated June 29, 2017)

The Ministry of Corporate Affairs(MCA) has notified the Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017 which have come into force on the date of their publication in the Official Gazette and also notified an order clarifying the need and reason for the amendments in the said rules.

Key highlights of the changes are as follows:

- Where a Company is undergoing Voluntary Winding up and the notice of resolution for Voluntary Winding up is sent for advertisement under section 485 (1) of Companies Act, 1956 but the Company has not been dissolved before the 1st day of April, 2017 then winding up shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and rules thereunder.

The above amendment has been made to align the notification issued by the MCA and the Insolvency and Bankruptcy Code, 2016 .

Legal & Regulatory

NOTIFICATION

- In cases of winding up of the Companies pending before the High Court on the ground of inability to pay its debt and where petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959, the MCA has revised the timelines within which the petitioner would be required to furnish all the requisite information as per the provision under Insolvency and Bankruptcy Code, 2016, has been revised to July 15, 2017 failing which the petition shall stand abated.

  Also, if there is already a petition pending before High Court and there is another petition regarding the inability to pay debt by the Company as on 15th December, 2016, then such petition shall also be dealt by High Court.

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

http://www.mca.gov.in/Ministry/pdf/CompaniesRemovalofDifficultiesOrder_30062017.pdf

The Companies (Audit and Auditors) Second Amendment Rules, 2017

(MCA Notification dated June 22, 2017)

The Ministry of Corporate Affairs(MCA) has notified the Companies (Audit and Auditors) Second Amendment Rules, 2017 which have come into force on the date of their publication in the Official Gazette, wherein the threshold limit of paid up capital for the purpose of rotation of statutory auditors has been increased from Rupees 20 Crores to Rupees 50 Crores or more for Private Companies.

http://www.mca.gov.in/Ministry/pdf/CompaniesAuditandAuditorsSecondAmendmentRules2017.pdf

The Insolvency and Bankruptcy Board of India notifies the regulatory framework for Inspection and Investigation of service providers

(IBBI Notification dated June 12, 2017)

IBBI has notified the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 vide notification dated June 12, 2017 which shall come into force on the date of their publication in the Official Gazette. These regulations shall apply to inspection and investigation of service providers.

The Board shall conduct inspection and investigation of such number of service providers, as may be decided by the Board from time to time under section 218. If the Board, is of the prima facie opinion that sufficient cause exists to take actions under section 220 or sub-section (2) of section 236, it shall issue a show cause notice in accordance with regulation 12 to the service provider or an associated person and in any other case, close the inspection or investigation, as the case may be. The Board shall refer the show-cause notice to the Disciplinary Committee along with all the relevant records including the written submissions, if any, made by the notice in the matter.

http://ibbi.gov.in/The_Insolvency_and_Bankruptcy_Board_of_India_Inspection_and_Investigation_Regulations_2017.pdf

Legal & Regulatory

NOTIFICATION

The Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2017

(IBBI Notification dated June 14, 2017)

Insolvency and Bankruptcy Board of India has notified the Fast Track Insolvency Resolution Process for Corporate Persons Regulations. The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 has come into force on June 14, 2017.

These regulations provide the process from initiation of insolvency resolution of eligible corporate debtors till its conclusion with approval of the resolution plan by the Adjudicating Authority. The process in these cases shall be completed within a period of 90 days, as against 180 days in other cases. However, the Adjudicating Authority may, if satisfied, extend the period of 90 days by a further period up to 45 days for completion of the process. The Ministry of Corporate Affairs has notified the relevant sections 55 to 58 of the Insolvency and Bankruptcy code, 2016 pertaining to the Fast Track Process and also notified that fast track process shall apply to the following categories of corporate debtors, a small company, a Startup or an unlisted company with total assets, not exceeding Rs.1 crore.

http://ibbi.gov.in/Insolvency_and_Bankruptcy_Board_of_India_Fast_TrackInsolvency_Resolution_Process_for_Corporate_Persons_Regulations_2017.pdf

The Insolvency and Bankruptcy Board of India notifies that no person to function as an Insolvency Professional without Certificate of Registration

(IBBI Press Release dated June 15, 2017)

IBBI, has issued a Public Notice to clarify the position under the Code as to who can render services as IP's Accordingly, no person to function as an Insolvency Professional without obtaining Certificate of Registration from IBBI.

Section 206 prohibits a person from rendering services as IP under the Code unless he is enrolled as a member of an IPA, and is also registered with the IBBI. Section 207 requires a person first to obtain membership of an IPA and then register himself with the IBBI. It empowers the IBBI to specify the categories of professionals or persons possessing such qualifications to be eligible for registration as IPs. No person other than persons registered as IPs with the IBBI can act as IP. Further, Insolvency Professional Entities are neither enrolled as member of an IPA nor registered as IP with the IBBI and cannot act as IPs under the Code.

http://ibbi.gov.in/webadmin/pdf/press/2017/Jun/IBBI.pdf

Thought LEADERSHIP

"For a guy who failed his sixth standard, I don't think I have done badly by selling batter."

-P.C. Mustafa

While growing up in an illiterate farmer's family in a remote part of Wayanad, Kerala, P.C. Mustafa did not have a lot of expectations. "I grew up in a remote village. There was lack of basic facilities. I was poor in studies and failed in Class VI." This was just the shock he needed. As the reality of having to work on a farm if he did not study struck him, he decided to take another shot at educating himself. This time, he succeeded, and a few years later managed to join an engineering course at National Institute of Technology, Calicut. His first job was with Motorola in Bangalore. After some time, the company deputed him to the UK on a long-term project. "Maybe it's my background, or whatever, I couldn't live on a diet of potatoes there," he says.

Homesick, he decided to look for a way out. "I decided to go to the hometown of all Malayalis, the Gulf," he says. He joined Citibank's technology department where he worked for seven years in several cities in the region, including Riyadh and Dubai. Still, his heart was fixated on India, as he wanted to spend time with his parents. Another ambition was pursuing higher studies.

After returning to India, Mustafa pursued the executive MBA programme at Indian Institute of Management, Bangalore.

It was during this course that he decided to take a plunge into entrepreneurship. Mustafa's cousins ran a kirana shop in Thipassandra, a Bangalore suburb. "I would sit in the shop on weekends and holidays. After IIM, I could have got a job anywhere, but I decided to be on my own," says Mustafa. Sitting in the shop Mustafa would notice women buying batter for idlis and dosas. In spite of the poor quality of the batter and irregular supply, it used to fly off the shelves. This gave him the idea to enter the packaged food business for which he dipped into his Rs. 14 lakh savings.

The cousins, aware of their humble background, started small. They brought 5,000 kg rice and made 15,000 kg batter, which they distributed as samples. "This is where feedback from our kirana customers was crucial. By the end of the experiment, we knew how to make ideal batter."

In 2008, the cousins rented a 50-square-feet kitchen and a grinder. The batter was delivered on a scooter. Nazer did the grinding while Sanshudeen took care of delivery. And yes, the Malayali kirana network did help, at least in the beginning. Mustafa says initially the idea was he would remain just an investor. "I had to take a call. If we wanted to scale up, we had to put organisational structures in place and run operations professionally. That is when I decided to enter the business full time and the company started operating formally," he says.

What set them apart, he says, was quality. They did not add preservatives or additives to the batter and used low-sodium salt and water purified by the reverse osmosis method. "Our product is 100 per cent natural. We do not use chemicals or preservatives. It is just like the home-made product." While the company was informally known as Best Foods Pvt Ltd, copyright issues forced a change to ID Special Foods Pvt Ltd.

By 2010, the brothers were selling 2,000 kg batter a day. The annual revenue had touched Rs 4 crore. The company employed 40 people, though distribution was limited to Bangalore. At this stage, attempts to expand to Chennai failed. Here, the company did not stick to its core strength - making products with a short shelf life.

Here, the company did not stick to its core strength - making products with a short shelf life. Other challenges also kept cropping up. One was wastage. As it is a daily distribution business, inventory means losses. In the early days, wastage was as high as 25 per cent. "We had to get the ideal mean between ensuring availability and minimising unsold inventory." Mustafa says that is where his IT experience helped.

They developed an application to capture data on a real-time basis, cutting wastage to 1.6 per cent. Also, the plan to sell Malabar parotas, which have a shelf life of three days, took off. Today, apart from 50,000 kg batter, the company sells 40,000 chapatis, two lakh parotas and 2,000 packets (200 gm each) of tomato and coriander chutney in a day. Parotas accounted for 40 per cent of ID's Rs 62-crore revenue in 2014/15.

ID today sells in eight cities - Bangalore, Mysore, Mangalore, Chennai, Mumbai, Hyderabad, Pune and Sharjah. A total of 200 Tata Ace delivery vehicles go around the seven cities in India. ID now employs 650 people, touching more than 10,000 stores a day. Mustafa says the company has been profitable from day one and the amount of batter it sells in one day can make a million idlis.

Most of the expansion has been done by ploughing back profits. They could have borrowed to grow faster, but Mustafa says religious principles forbid them from taking loans. Six months ago, ID raised Rs 35 crore from Helion Ventures, a venture capital (VC) fund, to modernise its factories, expand its fleet, and for marketing and R&D.

In the pipeline are fresh sambhar, coconut chutney and dhokla for the Ahmedabad market. ID plans to be present in 30 cities in the next six years, though Mustafa says it will not get into ready-mix spices or categories where there are large players unless they can ensure differentiation.

Column

Indian Transfer Pricing - Range Concept

by

Sarthak Juneja

Background

Determination of an Arm's Length Price (ALP) under an International Transaction i.e. a price not influenced by an existing relation between the parties entering into a transaction has always been surrounded by controversies and mix-ups. Solving a major problem, the Finance Act 2014 brought about a change solving the problem lying around calculating ALP of a transaction.

The rationale behind the amendment was that most countries of the advanced nations were employing "range" concept for determining the ALP. In India, before the amendment, the Transfer Pricing (TP) regime provided a method of taking the arithmetical mean as the most appropriate method to arrive at an ALP in case of more than one price. Since the process wasn't streamlined, many TP Adjustments were done on account of comparability analysis between various comparable. This led to various controversies and prolonged TP legislations between the taxpayers and tax department.

To overcome the above issues and make the TP provisions in line with the OECD's Guidelines and global practices, the Finance Minister, in his 2014 budget introduced range concept for determination of ALP in the Indian TP regime where there are adequate number of comparable for determination of ALP.

Empowered by section 92A, new rule, Rule 10CA was introduced in the Income Tax Rules, 1962 wherein provisions relating to applicability of Range Concept were defined.

Through this article, we have explained the provisions of Rule 10CA discussing its concept, application, and calculation.

Concept

The fundamental problem in calculating the arithmetical mean is that it treats all the individual observations equally. Secondly, mean is very sensitive to extreme values. For instance, mean of 4, 6, 8,100 will be 59 which doesn't indicate anything useful about the level of the individual numbers.

In case of a distribution having asymmetrical probability, range concept is more robust and sensible to apply as it is not influenced by the extreme values.

A range is determined based on the prices of the comparables and in case the actual transaction undertaken is within the values falling under the range determined, it is considered to be at Arm's Length.

Data of the present year, if available plus immediately preceding 2 years can be considered provided that similar transactions were undertaken by the comparable entities. However present year data has to be used if the same became available at the time of assessment proceedings.

Column

Applicability

Conditions as stated below have been laid out under the prescribed rule on applicability of this concept. Wherein these conditions are satisfied, it becomes mandatory to compute ALP using range concept.

- Method used for determination of ALP shall be either of Transactional Net Margin Method ('TNMM'), Resale Price Method ('RPM') or Cost Plus Method ('CPM')

- On the basis of FAR (Functions, Assets, Risks) analysis, a minimum of 6 or more entities should be identified as comparable and included in the dataset.

Where the dataset consist of less than six comparable, or the most appropriate method is profit split method or the 'other method', the ALP will be determined based on the arithmetical mean of all the prices/data. Flexibility of +/- 3% band around the Transfer Price will continue to be allowed as before.

Computation

As laid down under the rules, following steps will be carried out to apply range concept –

- The multiple prices determined will be arranged in an ascending order forming a dataset

- An ALP range is determined beginning from thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset.

  - ❑ The thirty-fifth percentile of the dataset will be 'Total Entries in the Dataset' multiplied by 35% i.e. **Total Entries in the Dataset X 35/100**

  - ❑ The sixty-fifth percentile of the dataset will be 'Total Entries in the Dataset' multiplied by 65% i.e. Total Entries in the Dataset X 65/100

- If the price at which international transaction has actually been undertaken is within the range as determined above, then the price at which such international transaction has actually been taken shall be deemed to be at Arm's Length.

- If the price at which the international transaction has actually been undertaken is outside the ALP Range, the ALP shall be taken to the median (Total Entries in the Dataset multiplied by 50%) of the dataset i.e.

- Total Entries in the Dataset X 50/100

- If the number above is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the respective percentile.

- If the number is a whole number, then the average of the value in dataset at this number and value in dataset at next higher number shall be the respective percentile.

Conclusion

Range Concept, as a statistical tool is expected to improve the analysis undertaken to compute ALP. Application of Range will provide the taxpayers greater flexibility in terms of determining ALP. In case of Arithmetic Mean, a flexibility of only (+/-) 3% around the mean was available.

Column

Application of Range Concept and use of Multiple Year data will be expected to improve the situation. One can expect substantial reduction in matters pending for litigation around these areas. Applications under APAs and MAPs can now be quickly disposed.

Though the concept was introduced to align the Indian TP regime with the international practices and OECD Guidelines, the Indian revenue department has introduced this concept with a few carve ins and outs. For instance, Indian ALP range (between 35th and 65th percentiles) is narrower than the United States interquartile range and as specified under OECD Guidelines i.e. between 25th and 75th percentiles.

Nonetheless, introduction of range concept is considered to be a step towards reducing litigations arising out of determination of ALP and other related matters.

THOUGHTS WHICH INSPIRE US

"You are not born a winner. You are not born a loser. You are born a chooser."

"Teach your tongue to say I DO NOT KNOW and you will progress ."

"If you have a dream to fulfill, don't waste your energies explaining why."

"I attribute my success to this: I never gave or took any excuse."

JOKES

- Most Insulting Lines Said To Google: "Dear Google, Can You Just Allow Me To Write My Sentence Before You Start Guessing"
- Banta: Name the 3 fastest means of communication.
  Santa: Telephone, Television, Tell-a-woman.
- When A Women Says What? Its Not Because She Didn't Hear You. She's Given You A Chance To Change What You Said.
- Pappu, while filling up a form: Dad, what should I write against mother tongue.?
  Santa: Very long!

INTERESTING FACTS

- Chewing gum while peeling onions will keep you from crying!
- Wearing headphones for just an hour will increase the bacteria in your ear by 700 times.
- Every year about 98% of atoms in your body are replaced.
- The female lion does ninety percent of the hunting.

Birthdays of the Month

Anand Kumar 7-July

Sheetal Bhatia 9-July

Lakhan Nagpal 14-July

Ayush Bhatia 19-July

Saman Khan 24-July

Shivam Khandelwal 31-July

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

July 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5 Excise Duty/Service Tax	6 Online Excise Duty/Service Tax	7 Deposition of TDS/TCS for June, 2017	8
9	10 Excise Return (except SSIs)	11	12	13	14	15 Annual Return on Foreign Assets & Liabilities & Quarterly statement of TCS deposited
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30 Revised Returns	31 Filing of I.Tax return & Quarterly statement of TDS deposited					

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