INTERNATIONAL BUSINESS ADVISORS

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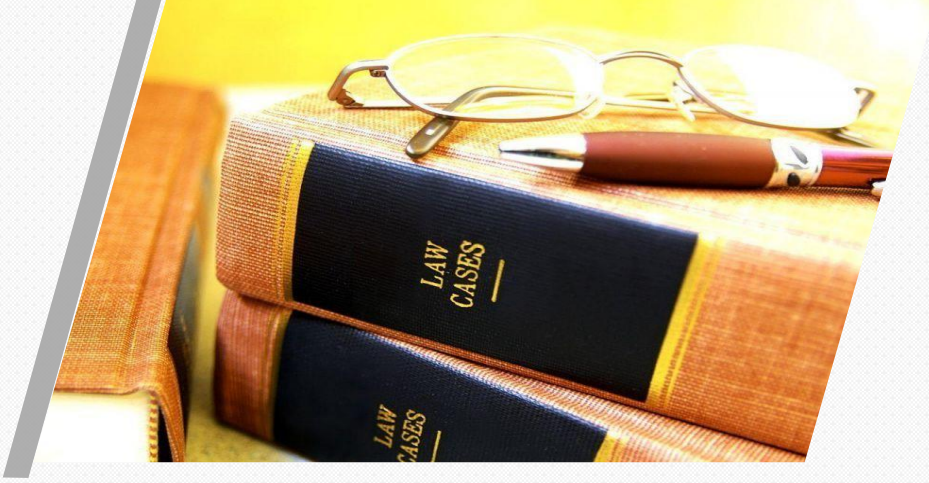
March- 2020

Content

Direct Tax Case Laws



Case Law 1:

Where in case of assessee, a contractor, Assessing Officer made addition in respect of two bills which were raised by assessee but not accounted for in its return even though it was following mercantile system of accounting, in view of fact that one of said bill was raised after termination of contract whereas nothing was received in respect of second bill because payer was in severe financial crisis, impugned addition was to be deleted

The assessee-company was engaged in construction work. It was awarded a construction contract by Dabhol Power Company (DPC). For relevant assessment year, the assessee filed a return of income. While carrying out the scrutiny assessment of the said return, the Assessing Officer questioned the assessee about the non-inclusion of two amounts of Rs.26.47 crores and Rs.59.51 Crores, for which assessee had raised the bills, but not accounted for in its income. The Assessing Officer rejected the assessee's explanation that the amounts had not accrued to the assessee and therefore, even on the basis of mercantile system of accounting, the same could not be offered to tax.

The Assessing Officer was of the opinion that since the assessee had raised the bills, whether payments were made or not, would not be relevant in view of the fact that the assessee followed mercantile system of accounting. He thus added amounts in question to assessee's taxable income. The Commissioner (Appeals) opined that amount of Rs. 59.51 crores could not have been brought to tax since the bill was raised after termination of contract. However, with respect to the sum of Rs.26.47 crores, the Commissioner (Appeals) did not grant relief primarily on the ground that the bill raised by the assessee pertained to construction work already carried out before the termination of the contract.

The Tribunal confirmed the view of the Commissioner (Appeals) with respect to the sum of Rs.59.51 crores on the ground that the bill was raised after the termination of the contract and the bill was not even accepted by the DPC. The income had therefore never accrued to the assessee. With respect to the sum of Rs.26.47 crores, the Tribunal noted that the parent company of DPC was in severe financial crisis; the assessee could not receive any payment for a long time; eventually after delay of nearly four years, the assessee could recover only 8.58% of the total claim. On such factors, the Tribunal applied the theory of real income and deleted the addition. High Court held that the view of the Tribunal was correct. With respect to the larger amount of Rs.59.51 crores, the claim was for damages for premature termination of the contract. The bills were raised after the termination of the contract and the contracted party did not even accept the bills. With respect to the remaining amount of Rs.26.47 crores, the Tribunal has applied relevant facts and held that in view of the real income theory,

no tax can be levied on the assessee at the relevant time. High Court also held that any further examination of the issue would be of no relevance in nature since in any case, the assessee could have claimed the said amount by way of bad debts.

Bechtel International Inc v CIT

Case Law 2:

Where assessee claimed exemption under section 54F by making investment of long-term capital gain in two bungalows located adjacent to each other and used as one residential unit, assessee could not have been denied exemption on reasoning that there were two different registries of buildings/properties as both properties purchased by assessee were a single property located in same geographical area

The assessee in the year under consideration has declared income under the head capital gain after claiming the exemption under section 54F. The assessee in support of the exemption claimed under section 54F of the Act contended that he has made investment in 2 bungalows which are adjacent to each other. However, the AO was of the view that the assessee can claim the exemption under section 54F of the Act with respect to the investment in one bungalow only. CIT (A) observed that there is an amendment under the provisions of section 54F of the Act where the expression previously used "a residential house" has been substituted with one residential house. Such amendment is effective with effect from assessment year 2015-16 i.e. the year under consideration. Accordingly, the learned CIT (A) rejected the contention of the assessee and confirmed the order of the AO.

Being aggrieved by the order of the learned CIT (A) the assessee appealed before Tribunal. Admittedly, there are 2 units bearing separate numbers which were purchased by the assessee out of the long-term capital gain income. Both the units are adjacent to each other and the same are used single residential unit. Both the units have separate two registries. Tribunal held that Under the provisions of the Act i.e. 54F of the Act, there is no definition/clarification provided about the area of the residential property. It means, one assessee can buy huge bungalow/property say thousand square meters and can claim the deduction subject to the conditions. Similarly, the other assessee on the other hand acquired two different residential properties adjacent to each other but both the properties put together has only two hundred square meters but he will be extended the benefit of the exemption with respect to one unit only because of the reason that there are two different properties based on registry documents.

Thus in Tribunal's considered view, the assessee cannot be deprived of the benefit conferred under the statute merely on the reasoning that there were two different registries of the buildings/properties

Mohammadanif Sultanali Pradhan v DCIT

Case Law 3:

Where total stay in India of applicant for preceding four years is for a period amounting to more than 365 days and for year under consideration is for a period amounting in all to 119 days which is more than 60 days, requirements of sub-section

(c) of section 6(1) is met by applicant to become a resident in India. Whether consequently, amount of proceeds received in India on conversion of ESOPs and RSUs awarded to her by her employer in China will be taxable in India.

The assessee Mrs. Smita Anand is an Indian citizen and a person of Indian origin. She was working with Hewitt Associates (India) Private Limited from April 2002 till September 2007. On September 22, 2007, the assessee left India for the purpose of employment with Hewitt Consulting (Shanghai) Company Limited, which is a company incorporated in China. The assessee's employment with Hewitt (Shanghai) commenced on October 1, 2007. During her employment in China, she visited India and her stay in India in a particular year never exceeded 182 days. She returned to India on February 12, 2011 after resigning from her employment in China with effect from January 31, 2011. During the financial year 2010-11 which is the relevant year in this assessee, her total stay in India was 119 days. As per the assessee, she is a non-Resident in FY 2010-11 and therefore, as per the domestic tax laws, no tax would be applicable for that year.

During the financial year 2010-11 relevant for assessment year 2011-12, the applicant realized proceeds from exercise of ESOPs and RSUs which were awarded to her by her employer in China, vested and exercised by her during the tenure of her employment with Hewitt China. The entire grant, vesting the exercise of the ESOPs and RSUs happened during the course of employment with Hewitt China.

She approached AAR to determine whether applicant is taxable in India in respect of amount of proceeds received in US and subsequently remitted into her Indian savings bank account in the financial year 2010-11, upon exercise of ESOP's & RSU's which were granted to the applicant by her employer in China and which were vested as well as exercised by her during the tenure of her employment.

In the decision of the ITAT Bangalore Bench in the case of Manoj Kumar Reddy (supra) it was held that the assessee has come to India after leaving his employment outside India, the Explanation (a) to section 6(1)(c) will not be applicable. That being so the total stay in India of the applicant for the preceding four years is for a period amounting to more than 365 days and total stay in India for the FY 2010-11 is for a period amounting in all to 119 days which is more than 60 days, requirements of sub-section (c) of section 6(1), (182 days will not be substituted by 60 days and the status will be determined as per 60 days only) is met by the applicant to become a resident in India.

To conclude, we hold that the applicant's case does not fall under Explanation (a) or (b) to section 6(1)(c) of the Act and having fulfilled the requirements of section 6(1)(c) of the Act her status will be resident in India. Consequently, the amount of proceeds received in India on conversion of ESOPs and RSUs awarded to her by her employer in China will be taxable in India.

Authority for Advance Rulings v Mrs. Smita Anand

Direct Tax Notifications

Amendment in Income Tax Rules

1. In exercise of the powers conferred by section 115BAA and section 115BAB read with section 295 the Income-tax Act, 1961, the Central Board of Direct Taxes makes the rules further to amend the Income-tax Rules, 1962.

https://www.incometaxindia.gov.in/communications/notification/notification_10_2020.pdf

2. In exercise of the powers conferred by proviso to sub-section (2) of section 139AA read with section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes makes the rules further to amend Income-tax Rules, 1962

https://www.incometaxindia.gov.in/communications/notification/notification_11_2020_new.pdf

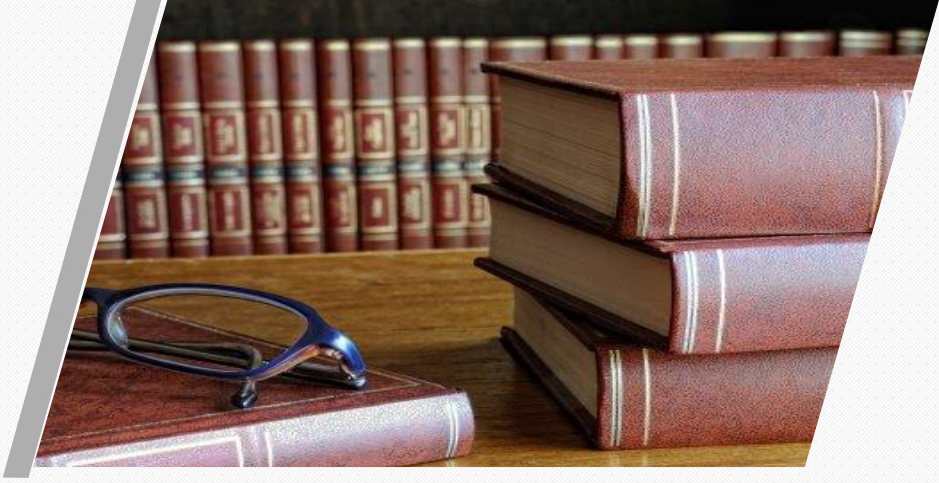
3. In exercise of the powers conferred by clause (XI) of the proviso to clause (x) of sub-section (2) of section 56 read with section 295 of the Income-tax Act, 1961, the Central Government, makes the rules further to amend the Income-tax Rules,1962.

https://www.incometaxindia.gov.in/communications/notification/notification_12_2020.pdf

4. In exercise of the powers conferred by clause (xii) of sub-section (5) of section 11 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes makes the rules further to amend the Income-tax Rules, 1962.

https://www.incometaxindia.gov.in/communications/notification/notification15_2020.pdf

Indirect Tax : Case Laws



Case Law 1:

Classification and Applicable Rate of GST on Rubber Pad if supplied in semi-finished condition to person other than Railways

The applicant is engaged in the manufacture of "Rubber Pad" and supplying the same to the Railways at GST Rate of 5%. The applicant had sought an advance ruling on what is classification and applicable rate of GST on rubber pad if supplied in semi-finished condition to any other person other than railways. In this context it was found that a clarification regarding applicable GST rates on various supplies made to the Indian Railways has been issued by the Government of India vide Circular No. 30/4/2018-GST dated 25.01.2018 such that only the goods classified under Chapter 86, supplied to the railways attract 5% GST rate with no refund of unutilised input tax credit and other goods [falling in any other chapter] would attract the general applicable GST Rates to such goods, even if supplied to the railways. On perusal of the said circular, we observe that the Government has already clarified that only goods of chapter 86 of GST Tariff Act, 2017 will attract GST at the rate of 5% if supplied to the Railways and goods falling in any other chapter of GST Tariff Act, 2017 will attract GST rate applicable to the such goods whether the same supplied to railways or otherwise. In view of the above it was held that "Rubber Pad" falls under Chapter 4016 of the GST Tariff Act and GST at the rate of 18% is applicable on "Rubber Pad"

AUTHORITY FOR ADVANCE RULINGS-UTTARAKHAND IN M/s V.K. Enterprises (Advance Ruling No. 06/2019-20-Dated 11TH December 2019)

Case Law 2:

Activity of Printing and supply of 'Access Card' is an activity of supply of goods or supply of services?

The applicant is a partnership firm registered under the Goods and Services Act, 2017 engaged in business as manufacturers of cartons, corrugated boxes, paper folders, sleeves, other packaging containers, labels, tags, pamphlets, booklets, brochures, leaflets and similar printed matter falling under HSN Code 48 and 49. The applicant had sought an advance ruling on whether 'Access Card' printed and supplied by him is rightly classifiable under HSN Code 4901 10 20 under the description brochures, leaflets and similar printed matter whether or not in a single sheet and attracts GST rate of 5% in case of IGST and 2.5% CGST and 2.5% SGST in case of Intra state supplies. In view of the same it was held that Printing is ancillary to the main activity of making 'Access cards'. In other words, the principal supply in the case of Appellant is not the printing service but a supply of Access cards which is a product emerging out of the printing activity. Therefore, the provisions of Para 5 of the

CBIC Circular No 11/11/2017-GST dated 20.10.2017, will apply in this case and the printing and supply of Access cards by the appellant based on the contents provided by their customers is a supply of goods and is rightly classifiable under HSN Code 4901 10 20 under the description brochures, leaflets and similar printed matter whether or not in single sheet and attracts GST rate of 5% in case of Inter-state supplies and 2.5% CGST and 2.5% SGST in case of Intra state supplies.

APPELLATE AUTHORITY FOR ADVANCE RULINGS- KARNATAKA IN M/s PATTABI ENTERPRISES (Order No.- KAR/AAAR/11/2019-20-Dated 31ST January 2020)

Case Law 3:

Restaurant located in same premises as hotel with room tariff more than 7,500, taxable @ 18%

The applicant operates a restaurant by the name "The Cheaters'", situated in a retail arcade which is owned and operated by M/s Chalet Hotel Limited which also owns and operates a hotel under the brand name "JW Marriot" on the same plot. An advance ruling was sought on what would be the applicable GST rate on such restaurant services. The applicant submitted that there is inter connectivity to the arcade from the hotel and vice versa via a private passageway. However, the applicant contented that there were no facilities for residence or lodging in the arcade and although the hotel offers rooms with a declared tariff of more than INR 7,500 per day but since the arcade is a separate premise from the hotel, thus the provision of GST rate of 18% as per Notification No. 11/2017-CT(R) [dated 28th June 2017 and as amended from time to time] does not apply and it can disburse its GST liability @ 5%. The jurisdictional officer opined that the restaurant is a part and parcel of the JW Marriot Hotel premises and cannot be treated as independent territory, thus the rate of 18% shall apply. The ruling authority observed that the restaurant was operating primarily for the clientele of the hotel JW Marriot and as per the submissions made by the applicant, there is inter-connectivity between the two premises bearing as common entry gate, thus, the arcade cannot be considered as a separate premise from the Hotel area. Henceforth, it was ruled that the applicant is located in the same premises as of JW Marriot having rooms with a declared tariff of more than INR 7,500 and should discharge it's GST liability @ 18% in pursuance of the Notification No. 11/2017-CT(R) dated 28th June 2017 (as amended from time to time).

AUTHORITY FOR ADVANCE RULINGS – MAHARASHTRA IN M/s KUTTING FUSION HOSPITALITY LLP (Advance Ruling No. GST-ARA-22/2019-20/B-03 Dated 15TH January 2020)

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. AMENDMENT IN NIDHI RULES, 2014

I. (MCA notification dated February 03, 2020)

The Ministry of Corporate Affairs (MCA) vide its notification dated February 03, 2020 has amended the Nidhi Rules, 2014 through Nidhi (Amendment) Rules, 2020 wherein new forms NDH-1, NDH-2 and NDH-3 have been introduced. The said amendment has come into effect from February 11, 2020.

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/Rules2_04022020.pdf

II. (MCA notification dated February 14, 2020)

The Ministry of Corporate Affairs (MCA) vide its notification dated February 14, 2020 has amended the Nidhi Rules, 2014 through Nidhi (Second Amendment) Rules, 2020. The said amendment shall come into effect on the date of its publication on Official Gazette.

As per the said amendment, certain Companies having objects similar to Nidhi Companies or Mutual Benefit Societies and who have either not applied or applied for registration as a Nidhi company and the Nidhi Companies, incorporated under the Companies Act, 2013 before the commencement of Nidhi (Amendment) Rules, 2019, shall file a declaration as Nidhi Company or for updating the status as Nidhi, within one year from the date of its incorporation or within a period of nine months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later.

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/rule_14022020.pdf

2. THE COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2020.

(MCA notification dated February 03, 2020)

The Ministry of Corporate Affairs (MCA) has notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020 through Official Gazette dated February 03, 2020. The provisions of said Rules shall be effective from February 03, 2020.

The key highlights of the said Amendment Rules are as follows:

1. The rules shall be applicable only on unlisted Companies.

2. There is insertion of a new sub rule (5) in rule 3 which states, "A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of sub-section (11) of section 230, when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

3. The application filed in above mentioned point shall be accompanied with the following documents:

a) Valuation report by a registered valuer

b) Details of the separate bank account

4. For giving a takeover offer as per point (1), an applicant shall deposit at least 50% of the amount of consideration for takeover in a separate bank account.

5. Any person aggrieved by the said takeover may apply to the National Company Law Tribunal (NCLT) in Form NCLT-1 accompanied with the prescribed documents and shall be filed along with a fee of Rs. 5,000.

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/Rules1_04022020.pdf

3. AMENDMENT IN THE COMPANIES (ISSUE OF GLOBAL DEPOSITORY RECEIPTS) RULES, 2014

(MCA notification dated February 13, 2020)

The Ministry of Corporate Affairs (MCA) vide its notification dated February 13, 2020 has amended the Companies (Issue of Global Depository Receipts) Rules, 2014 through the Companies (Issue of Global Depository Receipts) Amendment Rules, 2020. The said amendment shall come into effect on the date of its publication on Official Gazette.

Following are the key amendments:

Investment by Foreign Portfolio Investors (FPIs) in debt

i. The scheme now refers to Depository Receipts Scheme, 2014. Previously, it was known as "Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

ii. "Overseas depository" or "overseas depository bank" has been defined now as 'foreign depository' as defined in the Scheme.

iii. The depository receipts can be issued through a public offer or private placement or in any other manner prevalent in the concerned jurisdiction and the same may be listed or traded on the listing or trading platform in the said jurisdiction.

iv. The proceeds of depository receipts can also be remitted through an International Financial Services Centre Banking Unit (IBU) and the same shall be utilised in accordance with the instructions of the Reserve Bank of India from time to time

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/notices_13022020.pdf

4. REQUIREMENT OF FILING OF FORMS INSOLVENCY PROFESSIONAL (IP), INTERIM RESOLUTION PROFESSIONAL (IRP) OR RESOLUTION PROFESSIONAL (RP) OR LIQUIDATOR AS APPOINTED UNDER INSOLVENCY BANKRUPTCY CODE, 2016

(MCA Circular dated February 17, 2020)

The Ministry of Corporate Affairs (MCA) has issued circular dated February 17, 2020. The provisions of the said Rules shall be effective from February 03, 2020.

The key highlights of the said circular are as follows:

i. The IRP/RP/Liquidator would have to first file the NCLT order approving him as the IRP/RP/Liquidator in form INC-28.

ii. Post approval of form INC-28, the name of Insolvency Professional will be reflected as 'Chief Executive Officer (CEO)' under the authorized signatory details of the Company.

iii. IRP shall be allowed to file iXBRL and e-forms SH-8 and SH-9 in his role as CEO instead of the form being signed by two Directors. In respect of e-form MGT-7 the IP shall sign the form instead of a

Director and thereafter the form would have to be certified by a Company Secretary in practice.

iv. On completion of the insolvency process or after getting stay order, the Insolvency Professional is required to file e-form INC-28 once again, to change the status of the Company on the MCA portal.

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/Circular_17022020.pdf

5. INTRODUCTION OF FORM SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) FOR NAME RESERVATION AND INCORPORATION

(MCA notification dated February 18, 2020)

The Ministry of Corporate Affairs (MCA) vide its notification dated February 18, 2020 has substituted the Rule 9 of Companies (Incorporation) Rules, 2014 and amended the various other provisions of other specified rules through Companies (Incorporation) Amendment Rules, 2020.

They said amendment has come into effect from February 23, 2020.

Following are the key amendments:

i. The reservation of fresh name and incorporation of a Company shall now be made through a web service platform on mca.gov.in by way of form Spice+ and the name reservation for an already existing company shall be made by the RUN (Reserve Unique Name) application along with the respective fee.

ii. The application for incorporation provides with the GST, EPFO, ESIC and Profession Tax registration; allotment of PAN and TAN; and opening of Bank Account.

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/rule_22022020.pdf

6. COMPANIES (AUDITOR'S REPORT) ORDER, 2020

(MCA order dated February 25, 2020)

The Ministry of Corporate Affairs (MCA) has revised Companies (Auditor's Report) Order, 2020. The said order has come into force on the date of its publication in the Official Gazette i.e. February 25, 2020.

The said order is applicable to every company including a foreign company except, a banking company, an insurance company, a Section 8 Company, a One Person Company, a small company, a private limited company, not being a subsidiary or the holding company of a public company-

i. having a paid-up capital and reserves and surplus, not more than one crore rupees as on the date of balance sheet

ii. does not have total borrowings exceeding one crore rupees from any bank or financial institution

at any point of time during the financial year and which does not have a total revenue exceeding ten crore rupees.

Further, The Companies (Auditor's Report) Order, 2020 requires mandatory disclosure on Corporate Social Responsibility with respect to transfer of the unspent amount to a Fund specified in Schedule VII and the amount remaining unspent to the special account within a specified period.

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/Orders_25022020.pdf

7. AMENDMENT IN THE COMPANIES (APPOINTMENT AND QUALIFICATION) RULES, 2014

(MCA notification dated February 28, 2020)

The Ministry of Corporate Affairs (MCA) vide its notification dated February 28, 2020 has amended the Companies (Appointment and Qualification) Rules, 2014 through the Companies (Appointment and Qualification) Amendment Rules, 2020.

The said amendment will be applicable from the date of its publication in the Official Gazette.

Legal & Regulatory

Following are the key amendments:

1. Every person appointed as an independent director, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 is required to apply online to 'Indian Institute of Corporate Affairs at Manesar' for inclusion of his name till his tenure of independent director in any company. Previously the time limit was of three months.

2. Now, an individual is not required to pass the online proficiency self-assessment test, when he has served as director or key managerial personnel for at least ten years, as on the date of inclusion of his name in the databank, in one or more of the followings: -

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of Rs. Ten Crore or more; or

(c) body corporate listed on a recognized stock exchange

The calculation of the period of ten years referred above, any period during which an individual was acting as a director or as a Key Managerial Personnel in two or more companies or bodies corporate at the same time shall be counted only once. Previously body corporate was not mentioned.

The link of the amendment is as follows:

http://www.mca.gov.in/Ministry/pdf/rule_28022020.pdf

Column

Accounting For Guarantee Fee Paid To A Party Other Than A Lender

By –Sudhanshu Jain

IBA

Introduction

Ind AS 109, Financial Instruments requires financial instruments to be initially recognised at their fair value (i.e. generally the transaction price) plus or minus directly attributable transaction costs. Ind AS 109 also introduces the concept of Effective Interest Rate (EIR) for financial instruments measured at amortised cost and defines it as 'the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial asset or financial liability to the gross carrying amount of a financial asset or to the amortised cost of a financial liability'. The EIR thus computes the effective interest earned on loans granted/effective cost incurred on loans received.

In addition, financial assets (excluding equity instruments) that are classified into the Fair Value through Other Comprehensive Income (FVOCI) category also require the application of the EIR method for recognition of interest income.

The EIR is calculated on initial recognition of a financial instrument and considers all contractual terms of the instrument and other fees and transaction costs that are an integral part of the EIR of a financial instrument.

In this article we aim to discuss the accounting for guarantee fee paid subsequent to initial payment to a party other than the lender while computing EIR.

Background

The Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (ICAI) has considered an issue on accounting treatment of guarantee fee paid to the Government of India (GOI) in relation to the loan taken by an entity from a foreign lender. On the basis of this issue, it issued an opinion on 'Computation of Effective Interest Rate on Borrowings '.

In the given case, a power sector entity entered into a loan agreement for Euro 500 million with a foreign lender for financing its projects. The loan agreement with the lenders sets out the rate of interest and fees payable by the company to the lenders. This loan is guaranteed by GOI for due and punctual payment of the principal, interest and other charges through separate guarantee agreement. The company is required to pay an initial guarantee fee to the GOI on the sanctioned amount and thereafter, subsequent guarantee fee is payable on first April of every year on the amount outstanding at the beginning of the year as per the office memorandum of Ministry of Finance, GOI.

As per the loan agreement, guarantee provided by the GOI in this case is a precondition for obtaining and continuing with the loan facility. As per the terms of the agreement, in case the loan continues, guarantee will also continue and therefore, during the term of loan, the guarantee is not cancellable.

Accounting issue

The company initially recognised the foreign loan at fair value minus transaction costs and subsequently measured at amortised cost using the EIR method as per Ind AS 109. However, while calculating the EIR on above mentioned borrowing, the company only considered the cash flows arising under the loan agreement towards interest and fees payable to the lenders. The guarantee fee is not payable to the lenders, but it is payable to the GOI. An issue arose whether the guarantee fee should be considered for the purpose of computing the EIR.

As per Appendix A to Ind AS 109, when calculating the EIR, an entity shall estimate the expected cash flows by considering all the contractual terms of the financial instrument (for example, prepayment, extension, call and similar options) but shall not consider the expected credit losses. The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest, transaction costs, and all other premiums or discounts.

Analysis

Ind AS 109 provides that in applying the EIR method, an entity identifies transaction costs and fees that are an integral part of the EIR of a financial instrument. Fees that are an integral part of the EIR of a financial instrument are treated as an adjustment to the EIR, unless the financial instrument is measured at fair value, with the change in fair value being recognised in profit or loss.

In addition, Ind AS 109 provides examples of fees that are an integral part of the EIR of a financial instrument. Origination fees paid on issuing financial liabilities measured at amortised cost is an example of fees that is an integral part of EIR method. While transaction costs include fees and commission paid to agents (including employees acting as selling agents), advisers, brokers and dealers, levies by regulatory agencies and security exchanges, and transfer taxes and duties, transaction costs do not include debt premiums or discounts, financing costs or internal administrative or holding costs.

Additionally, transaction costs are incremental costs that are directly attributable to the

acquisition or issue of a financial liability. Ind AS 109 further clarifies that an incremental cost is one that would not have been incurred if the entity had not acquired or issued the financial instrument.

In the context of given case, EAC concluded on the basis of the guidance in Ind AS 109, the guarantee fee paid to GOI (initially as well as subsequently) is an incremental cost which is directly attributable to the acquisition of the loan facility as this cost would not have been incurred if the company had not incurred the loan liability. Additionally, the terms of loan agreement specify that the guarantee provided by the GOI in this case is a precondition for obtaining and continuing with the loan facility. Therefore, the financial guarantee fee paid (initially as well as subsequently) by the company should be considered for computation of EIR while measuring the loan liability at amortised cost to comply with Ind AS 109.

Conclusion

The companies should evaluate the costs incurred in relation to borrowings for determining whether the costs incurred are incremental costs and are directly attributable to the acquisition or issue of a financial liability. Consider all the relevant facts and circumstances and available guidance while arriving at an appropriate conclusion.

IBA NEWS

Training on Overview of Valuations & Budget Opinions

Neha Srivastava delivered a very useful and effective session on overview of valuations. Abhishek, Tanvi, Anuranjan & Akanksha shared their views on Budget 2020

Here are IBA's SHEROES

Feminism isn't about making women stronger. Women are already strong. It's about changing the way the world perceives that strength. A special gratitude to all the lovely ladies on International Women's Day.

Splashed Colours @ IBA

We had a wonderful holi celebration with pot luck lunch and gujiyas. It ended with a splash of colours and a lot of enjoyment.

Upcoming Compliances

Date	Compliance
March 13, 2020	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of February 2020
March 15, 2020	Fourth instalment of advance tax for the assessment year 2020-21
	Due date for payment of whole amount of advance tax in respect of assessment year 2020-21 for assessee covered under presumptive scheme of Section 44AD/ 44ADA
March 20, 2020	Due date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover of more than 5 Crore the month of February 2020.
March 22, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore and principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.
March 24, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore and principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.
March 31, 2020	Due date for furnishing of GST Annual return and GST Audit Report for the Financial Year 2018-19
	Due date for linking of Aadhaar number with PAN

Upcoming Compliances

Date	Compliance
March 31, 2020	Country-By-Country Report in Form No. 3CEAD for the previous year 2018-19 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group

Editorial Team




About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity 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.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. 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 optimize client service.

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We have our offices in Gurgaon, Mumbai and Bangaluru and associate arrangements in Chennai, Hyderabad, Ahmedabad and Kolkata

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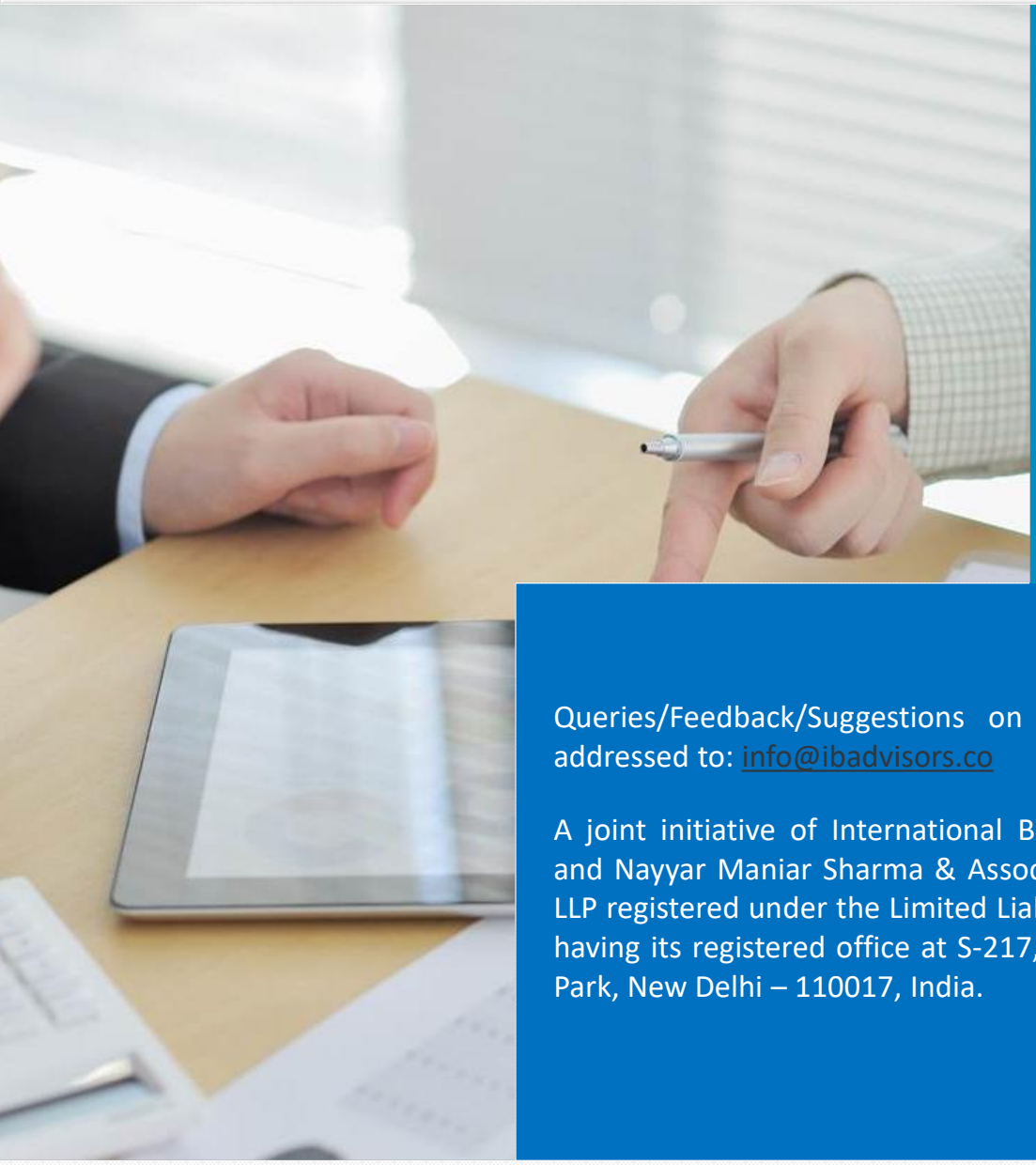

Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

A joint initiative of International Business Advisors LLP (IBA) and Nayyar Maniar Sharma & Associates LLP (NMSA). IBA is a LLP registered under the Limited Liability Partnership Act, 2008 having its registered office at S-217, Ground Floor, Panchsheel Park, New Delhi – 110017, India.

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