TAX NEWS

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HEMANT ARORA & CO.
Chartered Accountants

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Inside………..

Direct Tax

International tax and Transfer Pricing

- DTAA does Not Protect Tax Evaders. SIT Formed To Probe Black Money.
- Jurisdictional CIT should not be part of DRP to avoid likelihood of bias.
- If assessee does not ask for u.s. 147 reasons and object to reopening, ITAT cannot remand the matter to AO and give assessee another opportunity.
- Software embedded in off-shore supply may be taxable even if supply not taxable.
- Sale of shares by Mauritius Company can be treated as sale by 100% USA parent. Sale of shares of foreign company taxable if object is to acquire the Indian assets.
- AO to decide "preliminary issue" whether sale of shares of Foreign Company by Non-Resident to Non-Resident attracts Indian tax.
- For "Equipment Royalty" u.s 9(1)(vi), control of equipment by payer essential.
- The consideration for supply of vessels on time share basis for extraction or production of oil and gas is taxable u.s. 44BB and not as fee for technical services.
- Transfer Pricing: Disallowance of costs on ground that AE also benefited not permissible
- Transfer Pricing: CBDT's view that +/-5% variation amendment applies to pending proceedings incorrect.
- Transfer Pricing: Loss/High-Profit Company's need not per se be excluded.
- Transfer Pricing: principles on use of multi-year data, turnover filter, risk adjustment & +/- 5% adjustment.

Domestic tax

- Instruction -CBDT's Tax Arrear Recovery Strategy for F.Y 2011-12.
- Strengthening laws to curb generation of black money in India.
- Notification - Firm or individual/HUF covered under section 44AB are mandatorily required to file ITR-5 or ITR-4 electronically using digital signature.
- Notification - Creation of a new Directorate of Income-tax for Criminal Investigation.
- Notification - S.10(15)(i) of the Act- Exemptions – Income by way of Interest etc., on bonds, securities- Specification of bonds, securities, etc., issued by central government.
- Notification - S.10 (23AAA) of the Act - Exemptions – Income received by any person on behalf of fund established for welfare of employees or their dependents – Notified purposes/ conditions for establishment of fund.
- Where assessee, engaged in business of production of film and TV serials, could not commercially exploit a TV serial for period of six years and later wrote off of cost of production of such serial after six years, such loss could not be disallowed.
- Where money received by assessee-company from its sister concern in which it held more than 10 per cent shares, was not as loan or advance but as sale consideration for shares of wholly owned subsidiary company of assessee, s. 2(22)(e) would not apply.
- Merely because assessee has not claimed refund in return form itself, it cannot be said that assessee is not entitled to refund.
- Profit on sale of assets credited to profit & loss account cannot be excluded in computing book profit u.s 115JB even though capital gain arising from sale of that asset is not taxable under normal provisions of Act by virtue of provisions of s. 54EC.
- Legal ownership over land has never been any relevant criteria for allowing or not allowing deduction u.s 80-IB(10); what is necessary is that assessee should have complete control, dominance and right to carry on project as sanctioned by local authority.
- No tax is deductible under section 195 on commission payable to non-resident agents for services rendered outside India.
- Cutting and polishing of rough diamond into 'cut and polished' diamond amounts to manufacturing entitled to deduction u.s 80-IA.
- If AO does not assess escaped income as per recorded reasons u.s 147, he cannot assess other income u.s 147.
- To decide whether u.s 148 notice is "issued" in time, date of handing over by AO to post office to be seen.
- Order u.s 263 becomes "infructuous" if effect order not passed in "reasonable time".

- Despite "Wrong Claim", u.s. 147 reopening is invalid if failure to disclose not alleged.
- Tribunal entitled to do "own research" and rely on non-cited cases.

Service Tax

- Notification - Exemption to Preschool Coaching and Training.
- Notification - Exemption to Clinical Establishment or by a doctor.
- Circular - Regarding Assistance provided for processing VISA application.
- Circular - Service provided by Sub contractor / consultants.
- Circular - Education Cess is levied and collected as percentage of Service Tax.
- Service Tax applicability for Professionals like CA, CS, CWA in Limbo.
- Food served in room not liable to Service Tax.

Snippets

Statutory compliance calendar

International Tax & Transfer Pricing.

DTAA does not protect tax evaders. SIT formed to probe black money.

Ram Jethmalani Vs. UOI (Supreme Court)

Pursuant to a Writ Petition alleging inaction by the Government on the unearthing of unaccounted money, the Supreme Court set up a High Level Committee to act as a Special Investigation Team to supervise the investigation by the Government into black money. In the course of the ruling, the Court considered the impact of the Double taxation Avoidance Agreements, the Vienna Convention and the judgment in UOI Vs. Azadi Bachao Andolan 263 ITR 706 (SC). The Court strongly disapproved of the stand taken by the Government that the names of the tax evaders was a "secret" and could not be revealed under the India-Germany DTAA. In its decision the Apex Court has held as under.

"*We have perused the said agreement with Germany. We are convinced that the said agreement, by itself, does not prescribe the disclosure of the relevant documents and details of the same, including the names of various bank account holders in Liechtenstein. In the first instance, we note that the names of the individuals are with respect to bank accounts in the Liechtenstein, which though populated by largely German speaking people, is an independent and sovereign nation state. The agreement between Germany and India is with regard to various issues that crop up with respect to German and Indian citizens' liability to pay taxes to Germany and/or India. It does* *not even remotely touch upon information regarding Indian citizens' bank accounts in Liechtenstein that Germany secures and shares that have no bearing upon the matters that are covered by the double taxation agreement between the two countries. In fact, the "information" that is referred to in Article 26 is that which is "necessary for carrying out the purposes of this agreement", i.e. the Indo-German DTAA. Therefore, the information sought does not fall within the ambit of this provision. It is disingenuous for the Union of India, under these circumstances, to repeatedly claim that it is unable to reveal the documents and names as sought by the Petitioners on the ground that the same is proscribed by the said agreement. It does not matter that Germany itself may have asked India to treat the information shared as being subject to the confidentiality and secrecy clause of the double taxation agreement. It is for the Union of India, and the courts, in appropriate proceedings, to determine whether such information concerns matters that are covered by the double taxation agreement or not."*

To avoid likelihood of bias, CBDT issued directions to ensure that the jurisdictional CIT should not be part of DRP.

Hyundai Heavy Industries Co. Ltd. Vs. UOI (High Court-Uttrakhand)

While deciding a writ filed by the assessee on the issue of conflict of interest in cases where the jurisdictional Commissioner also acts as a member of the Dispute Resolution Panel the Uttarakhand High Court has held that as the DIT-II was exercising supervisory functions over the AO, the real likelihood of "official bias" cannot be ruled out. Even if the officer is impartial and there is no personal bias or malice, nonetheless, a right minded person would think that in the circumstances, there could be a likelihood of bias on his part. In that event, the officer should not sit and adjudicate upon the matter. He should recuse himself. The Court held that this follows from the principle that justice must not only be done but seen to be done. In order to ensure that no person should think that there is a real likelihood of bias on the part of the officer concerned, the Court directed the CBDT to ensure that a jurisdictional Commissioner is not nominated as a member of the DRP under Rule 3 (2) of the DRP Rules.

Editor's note:

In the present dispensation, the two of the three members of the Dispute Resolution Panels are Director of Income Tax, International Taxation and Directors of Income Tax, Transfer Pricing. By virtue of the aforesaid decision if any of the members on the Panel is a jurisdictional Commissioner in assessee's case, he cannot continue as a member on the Panel adjudicating objections filed by the assessee.

Jeetan Nagpal, Partner, HEMANT ARORA & CO. was part of the litigation team in the above matter.

If assessee does not ask for u.s. 147 reasons and object to reopening, ITAT cannot remand the matter to AO and give assessee another opportunity.

CIT Vs. Safetag International India Pvt. Ltd (High Court-Delhi).

The assessee's assessment was reopened u.s 147. The assessee did not ask for the recorded reasons. Even before the CIT(A), though the assessee had challenged the reopening as being without jurisdiction, it did not ask for the reasons. Before the Tribunal, the assessee claimed that it was not aware that it could demand the reasons and object thereto. Pursuant thereto the Tribunal remitted the case to the AO with direction that the reasons & opportunity to object be provided and denovo assessment be framed if objections were rejected. On appeal by the department, the High Court held that while the AO is required to record reasons, law does not mandate the AO to suo moto supply the reasons to the assessee. It is for the assessee to demand the reasons and raise objections to the reopening which the AO is required to dispose of by passing a speaking order. As the assessee did not ask for the reasons and instead participated in the reassessment proceedings, the Tribunal could not have restored the matter back to the file of the AO and give another opportunity to the assessee to raise objections to the "reasons to believe" recorded by the AO. It was the assessee own creation that it did not ask for the reasons or raise objection thereto. Merely because the assessee was oblivious of such a right would not mean that the Tribunal should have granted this right to the assessee, that too, at the stage when the matter was before the Tribunal and travelled much beyond the AO's jurisdiction. It is trite that what cannot be done directly, it is not allowed indirectly as well. This novel and ingenuousness method adopted by the Tribunal in setting aside the reassessment orders on merits cannot be accepted. However, also held that as the assessee had challenged the validity of reassessment before the CIT(A), it ought to have been provided with the reasons and so the matter was remitted for supply of reasons.

Software embedded in off-shore supply is taxable even if supply *per se* is not taxable.

Raytheon Company Vs. DDIT (ITAT-Delhi)

The assessee, a USA company, entered into two separate contracts with AAI, one for supply of equipment and the other for rendering installation and training services. The AO & CIT(A) held (i) that the two contracts were an "indivisible works contract", (ii) that as the supply involved embedded software, the income had to be bifurcated between "supply of equipment" and "royalty" in the ratio of 30:70, (iii) that the equipment-supply profits had accrued on completion of contract and not at the time of transfer of title, (iv) that 50% of the equipment-supply profits was attributable to the assessee's PE in India and this was taxable at the global profit rate of 13.4%. On appeal to the Tribunal, HELD:

i. The two contracts constitute one agreement because (a) the essential purpose of both contracts was to set up the ATS, (b) the contract for supply of equipment and software would have been of no consequence without installation and performance services, (c) the dates of payment for the supply contract were connected with the service contract and (d) it was difficult to segregate the contract from installation/service contract (Ishikawajima-Harima 288 ITR 408 (SC) referred);
ii. The PE came into existence on clearance of the goods in India because after transfer of title outside India, the possession was handed over to the assessee for safe custody, installation etc. This required storage space and

supervision which cannot be said to be preliminary or auxiliary activities in nature as the equipments were required to be installed;

iii. The bifurcation of revenue into supply of equipment and software in the ratio of 30:70 had to be upheld because (a) though the software was embedded in the equipment and supplied as one package for one price, it was permissible to segregate the composite consideration into different components and (b) the assessee had not shown the segregation done by the customs authorities for imposing duty on the equipment and software (Rotem Company 279 ITR 165 (AAR) & Motorola 95 ITD 269 (SB) referred);

iv. In a turnkey contract, in which the assessee is under obligation to supply the equipment and the software and also install them, the profit is taxable on completion of each milestone and not at the time of handing over the functioning system to the contracting party. The department's argument that in a works contract, mere supply of equipment and software is of no consequence till installation and so profits should be taxed at that stage is not correct because even if "turnkey", the taxable events in the execution of a contract may arise in several stages in several years if the obligations under the contract are distinct ones. The supply profits are consequently not taxable as it accrued on supply outside India;

v. On facts, as the supply of equipment and software constituted a milestone in the contract, the income therefrom arose in the year of shipment which was in an earlier year. It did not accrue or arise in the present year. As the PE came into existence when the equipment was handed over to it by the AAI, the profits from installation contract and services was taxable.

Sale of shares by Mauritius Co can be treated as sale by 100% USA parent. Sale of shares of foreign company taxable if object is to acquire the Indian assets.

Aditiya Birla Nuvo Limited Vs. DDIT (Bombay-High Court)

In the instant case, the Hon'ble Court had to consider the validity of three proceedings initiated by the AO.

a. Order u/s 163 treating Aditya Birla Nuvo [ABN] as agent of NCWS, USA on the ground that though the transferor was AT&T Mauritius, the gains from sale of the Idea Cellular shares was taxable in the hands of NCWS USA,

b. Order u/s 163 treating Tata Industries as agent of NCWS, USA on the ground that though the shares of AT&T Mauritius were purchased, effectively the underlying shares of Idea Cellular were purchased; and

c. Notice u/s 148 asking NCWS to file a return in respect of the gains arising from (indirect) transfer of the Idea Cellular shares.

Deciding in favour of the department, the Court held;

i. Since AT&T Mauritius was merely the "permitted transferee" and acted "for and on behalf" of NCWS, USA, ABN's argument that the shares of Idea Cellular were beneficially owned by AT&T Mauritius and that the gains would not be taxable in India under the India-Mauritius DTAA is not

ii. acceptable. It was NCWS, USA which was the "beneficial owner" of the shares of idea Cellular and not AT&T Mauritius. Accordingly, Azadi Bachao Andolan 263 ITR 706 (SC) had no application to the facts of the case;

iii. That s. 163 applies not only with respect to income "deemed to accrue or arise" in India u.s 9 but also to income "accruing or arising" in India. Following the decision of the Apex Court in the case of Eli Lily [312 ITR 225], the Court held that income NCWS, USA on transfer of a capital asset situated in India, (shares of Idea Cellular) is deemed to accrue or arise in India to NCWS and can be assessed either in the hands of NCWS or in the hands of the payer as agent of the non-resident u/s 163;

iv. Where 195(2) order was obtained by suppressing the material facts, such an order was invalid in law. Accordingly, the assessee's contention that the AO having issued a NOC u/s 195(2) permitting ABN to remit the sale proceeds without TDS could not recover tax by treating the payer as agent of AT&T Mauritius, could not be accepted.

v. While ordinarily, the AO must not proceed against the representative assessee once proceedings are initiated against the non-resident, there is nothing in the Act to suggest that the option to assess either in the hands of the representative assessee or in the hands of the non-resident must be exercised at the threshold itself and not at the end of the assessment proceedings. Thus, in exceptional cases where complex issues are involved and the AO is unable to make up his mind on account of suppression of material facts, it is open to the AO to continue with the assessment proceedings against the representative assessee and the non-resident simultaneously till he decides to assess either of them;

vi. The notice issued u/s 148 of the Act, is absolutely valid in law as the prima facie belief of the AO that the transaction was in fact a transaction for transfer of a capital asset situate in India (shares of Idea Cellular) was with substance.;

vii. The argument that no gains are taxable in India as the subject matter of sale were shares of AT&T Mauritius and not the shares of Idea Cellular is not acceptable because prima facie it appears that the transaction for sale of shares of AT&T Mauritius was a "colourable transaction" and was in fact for sale of the shares of Idea Cellular.

Editor's note: The decision of the Bombay High Court goes against the decision of the Apex Court in Azadi Bachao Andolan which dealt with the Indo-Mauritian Treaty. The instant decision in ABN's case only reiterates 'relinquishment of bundle of rights' proposition as held in the now famous Vodafone's case which is presently pending before the Supreme Court.

AO to decide "preliminary issue" whether sale of shares of Foreign Co. by Non-Resident to Non-Resident attracts Indian tax.

Richter Holding Ltd. vs. ADIT (IT) (High Court-Karnataka)

The assessee, a company based in Cyprus, bought shares (100% together with another company) of a UK company called Finsider International, from another UK company. Finsider, UK, held 51% shares of Sesa Goa Ltd, India. The AO took the view that the 51% shares in Sesa Goa held by Finsider, UK, constituted a capital asset u/s 2(14) and that the transfer of the shares of Finsider amounted to a transfer of the said 51% shares of Sesa Goa and that the assessee was liable to deduct tax at source u/s 195 when it bought the shares of Finsider, UK. He accordingly issued a show-cause notice u/s 201 seeking to treat the assessee as a defaulter.

The assessee filed a Writ Petition to challenge the notice on the ground that as one non-resident had sold shares of a foreign company to another non-resident, there was no liability under Indian law. The petition was dismissed by the Single Judge holding "What is under challenge is only the show-cause notice issued u/s 195 … it may be necessary for the fact finding authority to lift the corporate veil to look into the real nature of transaction to ascertain virtual facts. It is also to be ascertained whether the assessee, as a majority shareholder, enjoys the power by way of interest and capital gains in the assets of Sesa Goa and whether transfer of shares in the case on hand includes indirect transfer of assets and interest in Sesa Goa".The assessee filed an appeal against the said judgment. Declining to interfere with the judgment, it was held;

In view of the judgment of the Supreme Court in Vodafone International vs. UOI [221 CTR 617], the interest of the assessee is safeguarded by directing that the AO shall record a finding on the preliminary issue relating to jurisdictional fact (as to whether the overseas transaction attracts Indian tax at all). Accordingly, the order passed by the Single Judge is justified and the show-cause notice does not call for interference. However, if the assessee is aggrieved by the finding so recorded, it is entitled to challenge the same by way of a Writ Petition.

For "Equipment Royalty" u/s 9(1)(vi), control of equipment by payer essential.

Yahoo. India Pvt. Ltd. Vs. DCIT (ITAT-Mumbai)

The assessee, an Indian company, remitted Rs. 34 lakhs to Yahoo Holdings (Hong Kong) Ltd, a Hong Kong company, for placing banner advertisements on the web portal of Yahoo Hong Kong. The AO & CIT (A) took the view that the payment was "for the use or right to use any industrial, commercial or scientific equipment" (i.e. the server) and had the character of "royalty" under clause (iva) of Expl 2 to s. 9(1)(vi). On appeal by the assessee, HELD allowing the appeal:

The word "use" in relation to equipment occurring in clause (iva) of Expl to s. 9(1)(vi) is not to be understood in the broad sense of availing of the benefit of an equipment. The context and collocation of the two expressions "use" and "right to use" followed by the word "equipment" indicate that there must be some positive act of utilization, application or employment of equipment for the desired purpose. If an advantage was taken from sophisticated equipment installed and provided by another, it could not be said that the recipient/customer "used" the equipment as such. The customer merely made use of the facility, though he did not himself use the equipment. What is contemplated by the word "use" in clause (iva) of Expl 2 to s. 9(1)(vi) is the customer came face to face with the equipment, operated it or controlled its functions in some manner. But if it did nothing to or with the equipment and did not exercise any possessory rights in relation thereto, it only made use of the facility created by the service provider who was the owner of the entire network and related equipment and there was no scope to invoke clause (iva) in such a case because the element of service predominated (Reliance placed on ISRO Satellite 307 ITR 59 (AAR), Dell International 305 ITR 37 (AAR) & Asia Satellite 332 ITR 340 (Del) followed)

The consideration received under charter party agreements for supply of vessels on time share basis for extraction or production of oil and gas is taxable u.s. 44BB and not as fee for technical services.

Bourbon Offshore Asia Pte. Ltd. (AAR)

The following twin questions before the AAR in the above matter have been so decided:

Whether receipts on account of provision of supply of vessels on hire basis for prospecting/extracting/ production of oil and gas falls within the ambit of s.44BB and it cannot have character of fees for technical services – Held, Yes.

Whether rate at which tax is to be deducted on such payments towards time charter of service vessels would be 4.22 percent. Held, Yes.

Transfer Pricing: Disallowance of costs on ground that AE also benefited not permissible.

Patni Computers System Ltd. Vs. DCIT (ITAT-Pune)

In the instant case the two issues to be considered by Tribunal were:

a. whether notional interest relatable to the extended credit period allowed to the Associated Enterprises (AEs) to pay the dues can be assessed; and
b. whether, in the absence of any agreement between the assessee and the AEs to share costs, the consultancy expenses paid to McKinsey & Co can be disallowed on the ground that it benefited the AEs as well.

It was held that:

i. Following the judgment delivered by the Mumbai Bench of ITAT in the case of Nimbus Communications, the ITAT observed that, a continuing debit balance *per se*, in the account of the associated enterprises, does not amount to an international transaction u/s 92B in respect of which ALP adjustments can be made. It is a result of international transaction. The factum of payment has to be considered vis-à-vis terms of payment set out in the transaction arrangement, and not in isolation with the commercial terms on which transaction in respect of which payment is delayed.;
ii. Section 92B(1), permits apportionment of cost only under a “mutual agreement or arrangement” between two or more Associated Enterprises. In the absence of such an agreement, the costs cannot be apportioned. The bare allegation that the AE’s had received “specific and identifiable benefits” is not sufficient to justify apportionment.
iii. Further, even assuming that the AEs were liable to compensate the assessee, the TPO ought to have determined the ALP of such “international transaction” after taking into consideration all the rights obtained and obligations incurred by the two entities, including the advantages obtained by the AEs.

Transfer Pricing: CBDT's view that +/-5% variation amendment applies to pending proceedings incorrect.

Policy Network Pvt. Ltd Vs.(ITAT-Delhi).

The assessee, in respect of AY 2006-07 entered into an international transaction with its associate enterprises. The TPO applying TNMM determined the ALP and made an adjustment of Rs. 75 lakhs. The assessee claimed that as the said adjustment was within +/-5% of the ALP, no adjustment could be made under the proviso to s. 92C(2) as it stood pre-amendment by the F (No. 2) Act, 2009. The Department relied on Circular No.F.142/13/2010-SO (TPL) dated 30.9.2010 (Corrigendum) where the view was expressed that as the amendment came into effect from 1.10.2009, it would apply in relation to all cases in which proceedings are pending before the Transfer Pricing Officer on or after such date.

HELD disagreeing with the Department's contention:

While the Finance (No.2) Act, 2009 provides that the substituted Proviso shall come into effect on 1.10.2009 and applies in respect of AY 2009-10 & subsequent years, the Explanatory Notes to the Finance (No.2) Act, 2009 issued vide Circular No.5/2010 dated 3.6.2010 incorrectly states that the amendment comes into effect on 1.4.2009. In the Corrigendum, it is stated that the amendment shall apply to proceedings pending before the TPO on or after 1.10.2009. It is difficult to accept the argument of the Department that retrospective or prospective applicability of a provision should be decided in the manner explained by the CBDT. A procedural provision resulting in creating a new disability or which imposes a new duty in respect of transactions already completed cannot be applied retrospectively. As the amended Proviso brings about a substantial change in the relief available to an assessee, it cannot be treated as being retrospective in nature.

The ITAT relied on judgments delivered in the case of Kuber Tobacco Products 117 ITD 273 (Del) (SB) & Ekta Promoters 113 ITD 719 (Del) (SB).

Transfer Pricing: Loss/High-Profit companies need not *per se* be excluded.

Exxon Mobil Company India Pvt. Ltd. Vs DCIT (ITAT-Mumbai)

In the said case, on the given facts that ITAT has held that:

i. The assessee rendered three services to its AE and while it received a mark-up for "application of technical development services" and "promoting the licensing of technology", it did not receive any mark-up for "application research". The argument that the three activities should be aggregated to determine the ALP is not acceptable because the entire benefit of the "application research" was retained by the AE and not shared with the assessee and so there was no justification for not compensating the assessee;

ii. Under Rule-10B(4), only the data relating to the financial year can be taken and as an exception, the data of two years prior to the financial year may be taken but only if such data reveals facts which could have influenced the determination of transfer pricing. If the assessee wants to consider previous year's data, the burden is on it to demonstrate that the previous year's data contained certain facts which would influence the determination of transfer pricing. In the absence of that, there is no scope for considering data other than that of the current year;

iii. In principle, neither loss making units nor high profit making units can be eliminated from the comparables unless, there are specific reasons for eliminating the same which is other than the general reason that a comparable has incurred loss or has made abnormal profits.

Transfer Pricing principles on use of multi-year data, turnover filter, risk adjustment & +/- 5% adjustment.

Symantec Software Solution Pvt. Ltd vs. ACIT (ITAT-Mumbai)

The assessee's appeal raised the issues whether

a. the TPO could consider financial information of comparables not available at the time of TP study,
b. multi-year data of comparables could be considered,
c. a turnover filter had to be applied for identification of comparable companies,
d. an adjustment for difference in functional and risk profile of comparable companies vis-à-vis of the assessee had to be made, and;
e. the amendment of +/-5% variation law was retrospective

The burden of proving that the transactions with the AE are at arms' length is on the assessee. If TNMM is adopted, the comparison has to be made between the net margin realized from the operation of the uncontrolled parties' transaction and net margin derived by the assessee on similar international transactions. The comparison should be between the net margins on transaction basis and not at enterprise level;

i. Section 92CA(3), entitles the TPO to consider material in public domain which, though not available to the assessee at the time of the TP study, is relevant for the financial year;
ii. Ordinarily only the data pertaining to the financial year of the transaction can be considered. The proviso to Rule 10B (4) which permits the use of data relating to other financial years; being not more than two years prior to relevant financial year does not mean that one can insist on the use of multi-year data but it has a limited role only when the data of earlier years reveal facts which could have influenced on determination of the TP in relation to the transaction being compared.
iii. While in principle, comparables having an abnormal difference of turnover and distorted operating profits have to be excluded for determining the ALP, the claim that as the assessee revenue is about Rs. 20 crores, comparables having more than 50 crores and less than 5 crores of turnover should be excluded is not acceptable because no specific fact has been brought on record to show that due to the difference in turnover the comparables become non-comparables.;
iv. Since the assessee has not brought on record how such functional difference and risk has influenced the result of the comparables with quantified data, no adjustment could be made for difference in function and risk level. Further, the +/-5% adjustment as the 2nd Proviso to s. 92C is intended to adjust for such differences;
v. The department's argument that the amendment by FA 2009 w.e.f. 1.10.2009 to the 2nd Proviso to s. 92C with regard to the +/-5% variation from the arithmetic mean of the ALP is clarificatory and procedural and so retrospective is not correct.

Domestic tax

CBDT's Tax Arrear Recovery Strategy for F.Y 2011-12.

The Central Board of Direct Taxes has issued instructions for expediting recovery of tax demand as part of it's collection strategy for financial year 2011-12. The crux of the said instructions is:

- In respect of the tax demands stayed by the courts/ITAT - Department's Counsels/Representatives shall endeavor to get the stay vacated or ensure early hearings by relying on the Supreme Court's direction to Vodafone to pay 25% of the disputed taxes and provide bank guarantee for the remaining.
- In respect of tax demands stayed by tax authorities - Stays to be reviewed and in future stays to be granted for a period of 3-4 months only.
- Demands pending on account of TDS mismatch and rectifications – to be cleaned up immediately.
- In respect of taxpayers with an outstanding demand of Rs. 10 crore and above and classified as not traceable or with no/inadequate assets - Efforts shall be made to track the tax payers and their assets by using the information provided by DG(Admn.) and also the clues emerging from the information.

Strengthening laws to curb generation of black money in India.

Under enormous pressure from the Supreme Court on the issue of black money stashed abroad, The CBDT has constituted a nine member committee under the Chairmanship of Chairman, CBDT to examine ways to suggest strengthening of laws to curb the generation of black-money in India, its illegal transfer abroad and modes of its recovery. The mandate of the Committee shall be to examine the existing legal and administrative framework to deal with the menace of generation of black money through illegal means including, *inter alia*, (a) Declaring wealth generated illegally as national asset; (b) Enacting/ amending laws to confiscate and recover such assets; (c) Providing for exemplary punishment against its perpetrators; The Committee is to submit its report within a period of six months, after consulting all the stakeholders.

However the Supreme Court was not satisfied with the measures taken by the Government and Court has set up a High Level Committee to act as a Special Investigation Team to supervise the investigation by the Government into black money. On it's part the Government has termed the Supreme Court order as another instance of judicial overreach and filed a review petition.

The issue is more elaborately discussed in the International Tax section and also the Snippets section of this newsletter.

Firm or individual/HUF covered under section 44AB are mandatorily required to file ITR-5 or ITR-4 electronically using digital signature.

Notification No. 37/2011 Dated 1-7-2011.

Partnership firms, individuals and Hindu Undivided Family (HUFs) subjected to mandatory tax audits will now be required to file their income-tax (IT) returns only electronically and that too under digital signature. This regime would be applicable for assessment years 2011-12 (financial year 2010-11) and subsequent years, the Central Board of Direct Taxes (CBDT) has said vide its Notification No. 37/2011 [F. No. 149/68/2011 will be applicable from 1st July 2011.

Creation of a new Directorate of Income-tax for Criminal Investigation.

Notification No. 29/2011 Dated 30-5-2011.

The President of India has, vide this Notification, approved the creation of the Directorate of Income Tax (Criminal Investigation), CBDT, Department of Revenue, Ministry of Finance. The DCI will perform functions in respect of criminal matters having any financial implication punishable as an offence under any direct tax law including, inter alia, Chapter XXII of the Income Tax Act, 1961 and Chapter VIII of the Wealth-tax Act, 1957. The Directorate will be headed by a Director General of Income-tax (Criminal Investigation), who will be an officer of the rank of CCIT and will located in New Delhi. The Directorate will function under the administrative control of the Member (Investigation) in the CBDT and will be a subordinate office of CBDT.

S.10(15)(i) of the Act- Exemptions – Income by way of Interest etc., on bonds, securities- Specification of bonds, securities, etc., issued by central government- Amendment in notification no. G.S.R. 607 (E) dated 09-06-1989.

Notification No. 32/2011, Dated 3- 6- 2011.

In exercise of powers given in s. 10(15) (i) the CBDT has, through, this notification amended the notification No. GSR 607(E) dated June 9, 1989 which specified the maximum limit up to which the income by the way interest, premium on redemption or payment of such securities, bonds, etc. issued by the Central Government shall be exempt from tax for any assessment year.

As per the amendment by this notification, the interest on Post office savings bank account which was so far fully exempt would henceforth be exempt only to the extent of:

a) Rs.3500/- in case of an individual account.
b) Rs.7000/- in case of a joint account.

S.10(23AAA) of the Act - Income received by any person on behalf of fund established for welfare of employees or their dependents – Notified purposes/ conditions for establishment of fund.

Notification No.33/2011, Dated 3-6-2011.

S. 10(23AAA) provides that any income received by any person on behalf of the fund established for notified purpose for the welfare of employees of their dependents would be exempt subject to fulfillment of certain conditions. The CBDT has through this notification amended the notification no. S.O.672 (E) dated July 25, 1995 which specified the purposes for establishment of the fund.

As per the amendment by this notification the cash benefits to a member of the fund to meet the cost of annual medical tests or medical checkups of a member, his spouse and dependent children have been included as one of the purposes of the fund.

Where assessee, engaged in business of production of film and TV serials, could not commercially exploit a TV serial for period of six years and later wrote off of cost of production of such serial after six years, such loss could not be disallowed.

ITO Vs. Nitin P. Mavani (ITAT – Mumbai)

The assessee, a proprietor of 'D' firm which was engaged in production of films and TV serial. While filing a return it showed loss on account of the write off of the cost of production in respect of a TV serial. In order to substantiate the write off, the assessee explained that production of the TV serial was started in the year 1995 and expenses were incurred in respect of the same in the year 1995 and subsequent years, that after the production was completed the assessee approached several TV Channels including Doordarshan for telecasting but did not meet with positive response and that when Doordarshan rejected the offer in year 2005 and there were no prospects of other TV channel accepting the same for telecasting, it was proper to write off the aggregate cost of production as a loss. But the AO did not accept the contentions of the assessee and rejected its claim holding that rule 9 was applicable in the case but since the assessee had capitalized the cost of production in the year 1995-96, the same could not be converted as loss for the year under appeal. On appeal, the CIT (A) accepted the assessee's contention and directed the AO to allow the loss as a deduction. Further at Tribunal's instance, the assessee had filed its profit and loss account and balance sheet for several years starting from the year ended 31-3-1995, from which it was found that in the year ended 31-3-2005 the assessee had produced and sold a TV serial. Those details were called to ascertain whether the assessee had totally abandoned his film production business or he was still continuing the same. The accounts for the year ended 31-3-2005 showed that the assessee did disclose business receipts in respect of a TV serial. For the same year he had also disclosed distributorship receipts in respect of a film.

Therefore, it was held, that the claim of loss on account of write off of the cost of production of the TV serial in question could not be defeated even on the ground that the assessee had stopped carrying on the business of production/distribution of films and the appeal was decided in the favour of assessee.

Where money received by assessee-company from its sister concern in which it held more than 10 per cent shares, was not as loan or advance but as sale consideration for shares of wholly owned subsidiary company of assessee, s. 2(22)(e) would not apply.

DCIT Vs. Regent Automobiles (P.) Ltd.(ITAT – Delhi)

The assessee-company was engaged in the business of trading and service station of the cars. On scrutiny of its accounts, the AO found that the assessee had transactions with its sister concern, i.e., ECPL and both the companies were holding more than 10 per cent shares of each other and it was further found that the assessee had received a sum of Rs. 1.37 crore as advance from ECPL. The AO held that s. 2(22)(e) was applicable on that transaction. Accordingly, he worked out deemed dividend and made addition to the assessee's income. On appeal, the assessee contended that it had handed over all the papers to its CA who failed to handle the proceedings appropriately, rather he did not appear on the relevant date and the AO had drawn adverse inference. The assessee filed an application under rule 46A for leading additional evidence and contended that the amount of Rs. 1.37 crore alleged to have been received from the sister concern was not received by it as loan and advances, but was received as an amount towards sales consideration against shares of AKPL which was a 100 per cent subsidiary of the assessee-company. The CIT(A) called for a remand report from the AO and he did not make elaborate comments on the material supplied by the assessee during the appellate proceedings,

Further it was held by the CIT (A) and Tribunal after considering the facts that there would be no dispute that the assessee and its sister concern fell within the ambit of s. 2(22)(e) if the money was received for the ordinary course of business. The only issue which was adjudicated was that the alleged advance received by the assessee was an advance for sale of shares and the case was decided in the favour of assessee.

Merely because assessee has not claimed refund in return form itself, it cannot be said that assessee is not entitled to refund.

Indglonal Investment & Finance Ltd. Vs. ITO (High Court – Delhi).

The assessee-company had filed its return of income for relevant year declaring loss. In that no claim for refund was made. However, in statement of assessable income and audit report assessee had mentioned regarding receiving dividend from a company on which TDS was deducted and such TDS amount was refundable. Later the assessee wrote a letter to DCIT seeking refund of TDS amount. The revenue, however, rejected the claim on ground that the assessee had not claimed same in the original return and that the assessee should have filed revised return to claim the refund. The contention of the revenue was that only the return form and the not the annexures attached were relevant to decide whether the assessee was entitled to refund or not. Thus, if the assessee had not claimed refund in the return form itself, then the assessee was not entitled to refund.

Further it was held by the Hon'ble High court that the assessee-company was required and mandated by s. 139(9) to file specified annexures and documents with the return of income. Unless the specified documents were furnished, the return of income was regarded as defective. The explanation clause (b) of s. 139(9) specifically stipulated that the return must be accompanied by a computation of tax payable on the basis of return. Clause (c) further stipulated that the return must be accompanied by proof of TDS, advanced tax and self assessment tax. A return of income could be treated as defective unless these documents were enclosed and the AO was required to intimate the defect and give an opportunity to the assessee to rectify the same. After considering the facts it was held, that the contention of the revenue could not be accepted that the annexures did not form a part and parcel of the return. The documents were a part of the return. As a matter of abundant caution, it is clarified that the statutory provision with regard to return have undergone a change as now in some cases documents along with return are not required to be filed and once the documents attached to the return was examined and considered, it was apparent that the assessee had made a claim for refund. Accordingly, it was directed to process the claim for refund to the assessee along with the interest.

Profit on sale of assets credited to profit & loss account cannot be excluded in computing book profit u.s 115JB even though capital gain arising from sale of that asset is not taxable under normal provisions of Act by virtue of provisions of s. 54EC.

Technicarts (P.) Ltd. Vs.ITO (ITAT- Mumbai)

The assessee-company was engaged in the business of manufacturing pressure cookers for other brand owners. During the previous year ended on 31-3-2005, it did not carry on its manufacturing activity. The assessee claimed that for the purpose of calculating book profit u.s 115JB, capital gain arising from sale of factory land and building credited to profit & loss account required to be deducted as it represented receipt in nature of income not taxable u.s 54EC. The claim was rejected by the AO on ground that s. 115JB did not mention that capital gain not chargeable to tax by virtue of s. 54EC would be reduced from the net profit in order to arrive at book profit under section 115JB.

The Special Bench in the similar case of Rain Commodities Ltd. Vs. DCIT [2010] also held that as long as profit on sale of assets is credited to the profit & loss account, the same should be taken into account for computing book profit u.s 115JB. Merely because the capital gains arising from the transfer of those assets is not taxable under the normal provisions of the Act, it cannot be excluded from the book profits u.s 115JB. The computation of book profit u.s 115JB is a separate code by itself. Sub-section (5) of s.115JB providing that other provisions of the Act shall apply will not mean that the provisions of normal computation of income can be imported into s.115JB. Sub-section (5) starts with 'save as otherwise provided in this section which clearly means that the other provisions of the Act cannot alter or amend the computation of book profit as provided under s. 115JB.

In view of aforesaid, the profit on sale of assets credited to the profit & loss account could not be excluded while computing the book profit under section 115JB even though the capital gains arising from the sale of that asset was not subject to tax under the normal provisions of Act by the virtue of provisions of s. 54EC and the assessee’s appeal was dismissed.

Legal ownership over land has never been any relevant criteria for allowing or not allowing deduction u.s 80-IB(10); what is necessary is that assessee should have complete control, dominance and right to carry on project as sanctioned by local authority.

Nikhil Associates Vs. ITO (ITAT – Mumbai)

The assessee company was engaged in the business of construction and development of housing project. It claimed the deduction u.s 80-IB(10). During the course of assessment proceedings, the AO found that a housing society (NCHCL) had purchased the land and gave it to the assessee for development of a housing project. On disposal of houses assessee showed it as a project receipt. The deduction u.s 80-IB (10) was claimed on the ground that assessee was a developer and it had developed housing project of the specific area fulfilling the conditions laid down under that section. The AO however was of the view that assessee was not entitled to such deduction as for claiming deduction u.s 80-IB(10), the assessee should be the owner of the land whereas in instant case the assessee had carried out the project as a contractor or as an agent of the land owner which in instant case was NCHCL.

However, the Tribunal considered that only five conditions are necessary for claiming deductions u.s 80-IB(10). Apart from these five one more condition has been laid down in this section. If all these conditions are fulfilled the assessee is entitled for the deduction. In the instant case, it was undisputed fact that money for purchase of land was given by the assessee to the society and thereafter, land was handed over to the assessee for development of the project. Thus, assessee was a de facto owner of the land and even as per provisions of s. 53A of the Transfer of Property Act, the assessee would be owner of the land as firstly it had paid the consideration and secondly it had the possession of the land. In any case, legal ownership over the land had never been any relevant criteria for allowing or not allowing deduction u.s 80-IB(10). What is necessary is that assessee should have complete control, dominance and right to carry on the project as sanctioned by the local authority. Therefore, the argument of the revenue that assessee was not entitled to deduction u.s 80-IB(10) merely because assessee was not the legal owner of the land was rejected and it was held that assessee was entitled to deduction u.s 80-IB(10) as a developer.

No tax is deductible u.s 195 on commission payable to non-resident agents for services rendered outside India.

DCIT Vs. Divi's Laboratories Ltd. (ITAT – Hyd)

The assessee company had paid commission to the foreign agents for the services rendered outside India. The AO disallowed the said expenditure u.s 40(a)(ia) on the ground that the assessee had not deducted the tax at source on the payment made to the foreign agent. The assessee company contended that payment was made to foreign agents for service rendered outside India and payments were remitted through the proper banking channel as per the requirement of the RBI Regulations and there was no obligation to deduct tax at source. Then the assessee filed an appeal against the order and CIT (A) deleted the disallowances after placing the reliance on the CBDT recent Circular No. 7 dated 22-10-2009 which had withdrawn its earlier Circular Nos. 23 dated 23-7-2009, 163 dated 29-5-1975 and 786 dated 7-2-2000. Under certain circumstances, withdrawal of earlier circulars issued by the CBDT had no assistance to the department, in any way in disallowing such expenditure. It appeared that an overseas agent of Indian exporter operated in his own country and no part of his income arises in India and his commission is usually remitted directly to him by way of TT or posting of cheques/demand drafts in India and, therefore, the same is not received by him or on his behalf in India and such an overseas agent is not liable to income-tax in India on those commission payments.

In view of the above, it was held that no tax is deductible u.s195 on commission payments and consequently the expenditure on export commission payable to non-resident for services rendered outside India becomes allowable expenditure and the same is outside rigors of s. 40(a)(ia) of the Act.

Cutting and polishing of rough diamond into 'cut and polished' diamond amounts to manufacturing entitled to deduction u.s 80-IA of the Act.

Sheetal Diamonds Ltd. Vs.ITO (ITAT – Mumbai)

A survey was conducted at the premises of the company engaged in business of cutting and polishing of diamonds. The AO rejected its claim for deduction u.s 80-IA on one of the grounds that cutting and polishing of diamond could not be said to be manufacturing activity. On filling an appeal, CIT (A) also confirmed disallowance. During the assessment proceedings the assessee proved that cutting and polishing of diamonds would constitute manufacturing.He had produced rough diamonds which are just like ordinary stones or more precisely coloured glass type with uneven surface and were of uneven shape. All the samples were of dark brownish/greenish/bluish colour measuring about 1 c.m. to 2 ½ c.m. The assessee also produced cut and polished diamonds in the size of 10 cents to 1 carat, which were looking sparkling white. It was explained with reference to the procedure for cutting and polishing or processing of the diamonds as listed out in the book titled as 'Diamonds from Mines To Markets'. In this book it is stated that diamond cutting is a labour incentive industry and India is one of the main centers for the cutting.

A plain look at rough diamond and finished diamond would show that they are totally different products. Further, only cut and polished diamonds are studded into various jewellery items. The above makes it clear that definitely a process is involved which converts the rough diamond into a cut and polished diamond. Thus, it is clear that if some process is operated on a material and a new product emerges, then such process has to be called as 'manufacturing. However, no definition of the word 'manufacture' is available in s. 80-IA or otherwise in the Act. Though clause (29BA) has been inserted in s. 2 by the Finance (No. 2) Act, 2009 with retrospective effect from 1-4-2009 wherein the word 'manufacture' has been defined, but that cannot be taken as an aid for interpretation because the clause is clearly stated to be applicable after 1-4-2009. The definition given in Explanation 4 to s.10A has been further held to be of retrospective operation being clarificatory in nature. In view of above, it was held by the Tribunal that the assessee was engaged in the business of manufacture of rough diamonds and eligible for deduction u.s 80-IA of the Act.

If AO does not assess escaped income as per recorded reasons u.s 147, he cannot assess other income u.s 147.

Ranbaxy Laboratories Ltd. vs. CIT (High Court-Delhi)

The AO issued a notice u.s 148 for the reason that club fees, gifts and presents and provision for leave encashment had escaped assessment. Pursuant to the assessee’s explanation, the AO accepted that these items had not escaped assessment. However, he passed an order u.s 147 on the ground that deduction u.s 80HH and 80-I had been wrongly claimed on export incentives like duty drawback, profit on sale of REP licenses and cash assistance, etc even though these issues did not figure in the recorded reasons. This was upheld by the CIT(A) and the Tribunal.

On an appeal by the assessee, the High Court following the decision of Bombay High Court in the case of Jet Airways [331 ITR 236] held that though Explanation 3 to s. 147 inserted by the Finance Act 2009 w.e.f 1.4.1989 permits the AO to assess or reassess income which has escaped assessment even if the recorded reasons have not been recorded with regard to such items, it is essential that the items in respect of which the reasons had been recorded are assessed. If the AO accepts that the items for which reasons are recorded have not escaped assessment, it means he had no "*reasons to believe that income has escaped assessment*" and the issue of the notice becomes invalid. If so, he has no jurisdiction to assess any other income.

To decide whether u.s 148 notice is "issued" in time, date of handing over by AO to post office to be seen.

Kanubhai M. Patel HUF Vs. Hiren Bhath (High Court-Gujarat)

In the instant case, the AO in respect of AY 2003-04 issued a notice u.s 148 dated 31.3.2010. However, the notice was given by the AO to the post office for dispatch to the assessee on 7.4.2010 and it was delivered to the assessee on 8.4.2010. The assessee challenged the issue of notice by way of a Writ Petition contending that though the notice was dated 31.3.2010, it was not "issued" till it was delivered to the post office on 7.4.2010 by which time the limitation period of 6 years from the end of the assessment year prescribed in s. 149 had expired. The Hon'ble High Court upholding the assessee's plea held that for purposes of s. 149, the expression "*notice shall be issued"* means that the notice should go out of the hands of the AO. On facts, though the notice was signed on 31.3.2010, it was sent to the speed post center for booking only on 7.4.2010. Considering the definition of the word "*issue*", merely signing the notices on 31.3.2010 cannot be equated with "*issuance of notice*" as contemplated u.s 149. The date of issue would be the date on which the same was handed over for service to the proper officer, which in the present case would be the date on which the notices was actually handed over to the post office for the purpose of booking for the purpose of effecting service on the assessee. While deciding the writ in assessee's favour the Court held that till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete.

Order u.s 263 becomes "infructuous" if effect order not passed in "reasonable time"

CIT Vs. Goyal M.G. Pvt Ltd. (High Court-Delhi)

In the instant case, the CIT passed a revision order u.s 263 directing the AO to assess the interest income on mercantile basis within a period of three months. In the appeal filed by the assessee against the s. 263 order, the Tribunal held that as the AO had not yet passed the consequential order though 4 years had passed, the s. 263 order could not be given effect to and was therefore "infructuous". The Tribunal's order was upheld by the High Court on the ground that apart from the fact that the CIT had jurisdiction to specify the 3 month period, even if no period of limitation was prescribed, a reasonable period of limitation had to be adopted and the non-specification of a period of limitation did not mean that the AO could wait for an infinite period before passing the consequential order. Further after passing of the Tribunal's order but before passing of the High Court's order, the AO passed the consequential order. The CIT (A) and Tribunal held that the AO had no jurisdiction to pass the consequential order in view of the fact that the order u.s. 263 had been held to be infructuous. On appeal by the department to the High Court, it was held that even if there is no period of limitation prescribed u.s153 (3)(ii) to give effect to u.s. 263 orders, the AO is required to pass the order within a "reasonable period". Non-specification of period of limitation does not mean that the AO can wait for indefinite period before passing the consequential order.

Despite "Wrong Claim", u.s. 147 reopening is invalid if failure to disclose not alleged.

Titanor Components Limited Vs. ACIT (High Court-Bombay at Goa)

In this case, the AO reopened the assessment after the expiry of four years from the end of concerned assessment year on the ground that the assessee had "wrongly claimed deduction u.s 80IA" and that "long term capital gains had been wrongly set-off". There was no allegation in the recorded reasons that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. On a Writ Petition filed by the assessee, challenging the reopening, the Hon'ble High Court following the decision of Bombay High Court in the case of Hindustan Lever [268 ITR 332], quashed the notice issued u.s 148 and held that there is a well known difference between a wrong claim made by an assessee after disclosing all the true and material facts and a wrong claim made by the assessee by withholding the material facts. It is only in the latter case that the AO is entitled to proceed u.s 147. The power conferred by s. 147 does not provide a fresh opportunity to the AO to correct an incorrect assessment made earlier unless the mistake in the assessment so made is the result of a failure of the assessee to fully and truly disclose all material facts necessary for assessment. Further, it is necessary for the AO to first state that there is a failure to disclose fully and truly all material facts. If he does not record such a failure he would not be entitled to proceed u.s 147.

Tribunal entitled to do "own research" and rely on non-cited cases.

Geofin Investment (P) Ltd Vs. CIT (High Court-Delhi).

The assessee's appeal on disallowance made on account of short term capital loss and long term capital loss was decided by the Tribunal by relying on a decision of the Mumbai Bench in Macintosh Finance Estates Ltd Vs. ACIT which had not been cited by either party to the appeal. The assessee filed a Miscellaneous Application u.s 254(2) claiming that reliance on a non-cited judgment was an apparent mistake. The MA was dismissed by the Tribunal. On a Writ Petition filed by the assessee, the High Court while dismissing the writ has held:

Reliance and reference to reasons stated in another decision cannot be regarded as a mistake apparent from the record. It is not unusual or abnormal for Judges or adjudicators to refer and rely upon judgments/decisions after making their own research.

Service tax

Exemption to Preschool Coaching and Training.

Notification no 33/2011 ST dated 25.04.2011.

With effect from 01.05.2011 the following services provided by any commercial coaching or training centre would be exempted from service tax.

1. any preschool coaching and training, or
2. any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognized by any law for time being in force.

Exemption to Clinical Establishment or by a doctor.

Notification no 30/2011 St dated 25.04.2011.

With effect from 01.05.2011, if any of the taxable services such as diagnosis treatment or care for illness, disease, injury deformity, abnormality or pregnancy in any system of medicines are provided by a clinical establishment or by a doctor not being an employee of a clinical establishment would be exempted from the service tax.

Regarding Assistance provided for processing VISA application.

Circular no 137/6/2011 ST dated 20.04.2011

It has been clarified that services provided by a visa facilitator in a form of assistance to individuals to obtain visa does not fall under taxable service specified u.s 65(105) of the Finance Act 1994. However service tax would be leviable on any service provided other than direct assistance to Individuals for obtaining Visa.

Service provided by Sub contractor/ consultants.

Circular no 138/07/2011 ST dated 06.05.2011

It has been clarified from the board that the service provided by the subcontractor consultants and other service provider would be classifiable as per s. 65A of the Finance Act 1994 under respective sub clause (105) of the s. 65 of the finance Act 1994 and chargeable to service tax accordingly. The board has also clarified that if the services are rendered by the work contractor on account of works contract service (WCS), they would be distinctly classifiable under the respective sub clause of s. 65(105) of the finance act by their description.

Education Cess is levied and collected as percentage of Service Tax.

Circular No 134 ST dated 08.04.2011

It has been clarified that the Education Cess is levied and collected on percentage of service tax. However when and wherever service tax is nil by virtue of exemption the education cess would also be Nil. However the clarification has been issued by the Tribunal in its order of M/s Balasore Alloys Ltd Vs CCE Customs and service tax, which is inconsistent with the intension of government to exempt education cess in addition to service tax where whole of service tax stands exempted.

Service Tax applicability for Professionals like CA, CS, CWA in limbo.

The Department of Revenue, Ministry of Finance vide notification no. 25/2006 dated 13 July 2006 had exempted the professionals, viz., CS, CWA & CA from the taxable services provided by them in their professional capacity to a client relating to representation before any statutory authority in the course of proceedings initiated under any law for the time being in force. Accordingly, CS were also exempted from not charging service tax on representation services before ROC, RD, CLB, MCA, etc.. However vide notification no. 32/2001 dated 25 April 2011 effective from 01.05.11, has rescinded the earlier notification dated 13.6.06.

A Writ Petition was filed against (i) The Union of India (ii) The Central Board of Excise and Customs and (iii) The Chief Commissioner, Service Tax in the Hon'ble Delhi High Court challenging the validity of above Notification No. 32/2011 dated 25th April 2011.

The Writ Petition came up for hearing on 2nd June, 2011 before the Hon'ble Delhi High Court The Hon'ble Delhi High Court heard the learned Counsels and directed that the effect to the Notification No. 32/2011 dated 25th April 2011 would not be taken till the next date of hearing and it had been adjourned to 6th September, 2011.

Food served in room not liable to Service Tax.

Food served in hotel rooms from their air conditioned restaurants with liquor licences will not attract service tax. When the food is served in the room, service tax cannot be charged under the restaurant service as the service is not provided in the premises of the air-conditioned restaurant with a licence to serve liquor. While clarifying the provisions of service tax, it is to be levied on services provided by air conditioned restaurants with licence to serve liquor, the CBEC said that the Value Added Tax (VAT) would be excluded from the taxable value. Similarly, luxury tax would be excluded in case of short term accommodation service.

Snippets

Exemption from filing returns.

The Central Board of Direct Taxes (CBDT) has issued Press Release No. 402/92/2006-MC (14 of 2011) on June 23, 2011 whereby individuals with total income up to Rs 5,00,000 for the financial year 2010-11, after allowable deductions, consisting of salary from a single employer and interest income from deposits in a savings bank account up to Rs 10,000 are not required to file their income-tax return. It appears that the criteria have to be read separately and not together — it is not mandatory to have income from deposits in a savings bank account to avail of the benefit. However, if one earns income from such deposits, it cannot exceed Rs 10,000 per annum. Exempt individuals must report their Permanent Account Number (PAN) and the entire income from bank interest to their employer, pay the entire tax by way of deduction of tax at source, and obtain a certificate of tax deduction in Form No.16. The Press Release states that persons receiving salary from more than one employer, having income from sources other than salary and interest income from a savings bank account (in excess of Rs 10,000, though this has not been specifically mentioned) or having refund claims shall not be covered under the scheme. In case the tax department has issued notices under Sections 142(1), 148, 153A or 153C, filing of tax returns has been mandated.

TDS likely to be extended to service tax.

The Finance Ministry is toying with the idea of extending the concept of Tax Deducted at Source (TDS) to service tax. The Central Board of Excise and Customs (CBEC) has formed an expert group to look into the feasibility of the proposal, which will entail the user of a service to deduct service tax before making payments to the service provider.

Exempt techies from social security taxes, India tells US.

India has once again urged the US to exempt information technology professionals, who go on short-term work visits, from paying social security taxes in US. Cumulatively, Indian IT professionals on H-1B or L1 visas (staying there for up to six years) pay over $1 billion annually to the US Government in the form of social security taxes, with no benefit or prospect of refund as the social security safety net does not kick-in for ten years.

Supreme Court appoints SIT to pursue black money investigation; Government terms it as judicial overreach.

SOFTER a State, greater would be the unholy nexus between the law makers, the law keepers, and the law breakers - observed the Supreme Court (SC) in a strongly worded order laced with anxiety. Passing an interim order appointing a Special Investigation Team (SIT) to pursue investigation into the issue of black money, the court expressed concern, not only on the quantum of monies stashed away in offshore banks, but also on the audacious manner in which such monies have been off-shored. Further, the SC ordered that all organs of the nation, at central and state level, should extend cooperation necessary for the functioning of SIT and that the government cannot seek protection under the tax treaty secrecy clause in situations of tax evasion. The apex court directed the government to issue notification forthwith regarding the appointment of SIT. The bench also directed the government to disclose the names of all the persons who have been issued show cause notices by the authorities in connection with the probe into the black money issue.

Governments' response - Terming it as judicial over-reach into Executive functions and economic policy, the government today filed an application to recall the order passed by the Supreme Court forming a Special Investigation Team to investigate black money believed to be stashed abroad.

Making HNIs tax-compliant.

The Government is under intense pressure on the issue of unaccounted money allegedly stashed away by some Indians in overseas tax heavens. In order to tackle these issues, the Government has constituted a high-level committee headed by the Central Board of Direct Taxes (CBDT) Chairman to examine ways of strengthening laws to curb generation of illegal wealth, prevent transfer of such funds abroad and draft a framework for recovery of unaccounted and undisclosed assets. According to recent media reports, the CBDT has proposed an intense year-round scrutiny of high net worth individuals A panel constituted by the CBDT has recommended setting up a dedicated cell to monitor those earning over Rs 1 crore/annum or spending more than Rs 10 crore a year, or having assets in excess of Rs 100 crore. Also, the panel has suggested that the Income-Tax Department should share information on these individuals with its overseas units to keep a close tab on their spending abroad. The panel believes that creation of such dedicated cells to monitor HNIs would help the Department trace any unaccounted money. The panel has also recommended robust wealth disclosure norms for HNIs including disclosure of productive as well as non-productive assets in India or abroad in the wealth tax returns. Further, the panel has suggested that the income-tax returns of HNIs should be scrutinized every year to ensure that there is no suppression of income or wealth.

DTAA-TIEA with Singapore – CBDT Press Release, dated 24-06-2011.

The Government of India signed a Protocol, amending Double Taxation Avoidance Agreement (DTAA) with Government of Singapore for effective exchange of information in the tax matters on 24th June, 2011.

Income tax net being widened in Sikkim as assessment begins for 1975 settlers.

Income Tax Department is gearing to extend its net in Sikkim. The department has been working towards this goal in the State where “subjects” of erstwhile kingdom are exempt from the provisions of the Income Tax Act. The tax department has been trying to sensitise the employers, particularly, in the private sector, towards introduction of income tax deduction at source. Under the I-T dispensation, Sikkim residents who hold “subject certificates” and their descendants will continue to enjoy income tax exemption.

Statutory Compliance calendar

- Deposit TDS from Salaries paid for July, 2011- ***August 07, 2011***
- Deposit TDS from Contractor's Bill, Payment of Commission or Brokerage, Rent, Professional/ Technical Services bills/ Royalty made in July, 2011 - ***August 07, 2011***
- Pay Service Tax in Form TR-6, collected during July 2011 by persons other than individuals, proprietors and partnership firms **- *August 5, 2011***
- Pay Central Excise duty on the goods removed from the factory or the warehouse during July, 2011 – ***August 5, 2011***
- Payment of Monthly Employees' Provident Fund (EPF) dues **-*Within 15 days from close of every month***
- Payment of Monthly Employees' State Insurance (ESI) dues **-*Within 21 days from close of every month***
- Monthly return of Provident Fund for the previous month (other than international workers) **- *Within 15 days from close of every month***
- Monthly return of Provident Fund for the previous month w.r.t. international workers **- *Within 15 days from close of every month***

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