TAX NEWS

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- Merely for reason that credits are provided by company through journal entries, it cannot be said that same are not deemed dividend.
- Merely because an assessee purchased raw material from market or got it manufactured by outsiders, it cannot be said that assessee is not engaged in manufacturing for purpose of deduction u.s 80-IB of the Act.
- As per S.54EC of the Act investment within 6 months is investment for that particular financial year in which transfer has taken place and said period of six months would not include some part of subsequent financial year.
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International Tax & Transfer Pricing

Advisory group, for international taxation and transfer pricing issues, in the Department of Revenue, Ministry of Finance.

Office Memorandum, dated 22/3/12

In order to reduce tax litigation and bring certainty in the area of international taxation and transfer pricing, a twelve member, ***'Advisory Group for International Taxation and Transfer Pricing'*** has been set up.

The advisory group can have consultation on emerging issues of taxation in the area of international taxation and transfer pricing to understand each other's view points and also with a purpose to reduce litigation and bring in more tax certainty. The group can also advice the government about legislative amendments & administrative measures which can help reduce litigation and bring in more tax certainty.

Agreement with State of Tanzania for avoidance of double taxation and prevention of fiscal evasion

Notification No. 8/2012 dated 16/02/12.

The Government of the Republic of India and the Government of Tanzania on the 27th day of May, 2011 has entered into an agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. Now in exercise of the powers conferred by S. 90 of the Act, the Central Government has directed that all the provisions of the said Agreement, shall be given effect to in the Union of India with effect from 1st day of April, 2012.

Furnishing of Annual Statement by a non-resident having LO in India.

Notification No 5/2012 dated 06/02/12.

Rule 114DA has been inserted after Rule 114D, which states that the annual statement as provided under S.285 for every financial year, shall be furnished in Form 49C which shall be verified by the Chartered Accountant or the person authorised in this behalf by the non-resident person, who shall be known as the Authorised Signatory.

The Annual statement shall be furnished in electronic form alongwith digital signature. The Director General of Income-tax (Systems) shall specify the procedure for filing of annual statement referred to in sub-rule (l)and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to statements so furnished.

Selective buy-back of shares in lieu of dividend is a “colourable transaction”

A Mauritius (AAR, New Delhi)

The Applicant’s shares were held 48.87 % by a US company & 25.06% by a Mauritius company. The rest was held by a

Singapore company and the public. The Mauritius company was ultimately held by another US company. Since 1.4.2003, when s. 115-O was introduced, the Applicant did not (to avoid DDT) distribute dividend. Instead, it let its reserves grow and offered a buy-back in the year 2008. The buy-back was accepted only by the Mauritius Company, in whose hands the capital gains u/s 46A, were not assessable under the India-Mauritius DTAA. The other shareholders did not accept the offer. A second offer was proposed which also was accepted only by the Mauritius company and not by the other shareholders. The Applicant sought a ruling on whether the gains as a result of the buy-back would be capital gains u/s 46A in the hands of the Mauritius company and exempt under Article 13 of the India-Mauritius DTAA. HELD by the AAR;

Though the Applicant was making regular profits, it did not declare any dividends after the introduction of s. 115-O and allowed its reserves to grow. This was only to avoid paying DDT. The buy-back was a "colourable device" devised to avoid tax on distributed profits u/s 115-O because while it would result in repatriation of funds to the Mauritius company, that would constitute "capital gains" in the hands of the recipient, and not be assessable to tax in India under Article 13 of the India-Mauritius DTAA. The fact that the other major shareholders did not accept the buy-back was significant. A buy-back results in a release of accumulated profits which is assessable as "dividend". The exemption to treat the buy-back proceeds as capital gains is only in respect of a genuine buy-back of shares. As the transaction is colourable, it is not a transaction in the eye of law and has to be ignored and the arrangement has to be treated as a distribution of profits by a company to its shareholders which is assessable as dividend in the hands of the recipient.

A Consortium is an AOP where members come together to bid for a work and their bid for such work is awarded to the consortium and not to the members individually.

Linde AG (AAR, New Delhi)

ONGC Petro Additions Ltd. (OPAL) floated a Tender Notice inviting tender inquiries for executing an EPC contract, on lump sum turnkey basis, for the Dual Feed Cracker and Associated Units of Dahej Petrochemical Complex. For this purpose, Linde AG 'applicant' and Samsung Engineering Company Ltd. decided to come up together and take up the work as a consortium. The tender submitted by the consortium was accepted. According to the applicant the contract was to be split into separate parts and the part dealing with the obligations of the applicant was to be considered independent of the obligations of Samsung, the other Consortium member. Accordingly, the applicant relying on the SC judgment in the case of Hyundai Heavy Industries Ltd [291 ITR 482 (SC)], contended that its income from off-shore activities was not taxable in India.

The Authority ruled,

The contract was awarded to the Consortium and not to the two members individually. It was for the whole work and a composite contract. No two contracts were entered into with the Consortium members. Payment was to be made to the Consortium for the work. Having tendered for the entire work

of the project and accepted the tender, OPAL itself could not have under normal circumstances, split up the contract. The internal division of responsibility by the Consortium members and the recognition thereof by OPAL or the making of separate payments by OPAL to the two members, cannot dislodge the legal position of formation of an AOP by the applicant and Samsung. The authority therefore opined that in the instant case an AOP had come into existence; the contract was an indivisible one and accordingly, the claim of the applicant that the amount payable in respect of design and engineering could not be taxed in India, was not tenable in law.

On a question raised whether the amount receivable by the applicant for supply of equipment, material and spares, outside India are liable to tax in India, under the provisions of the Income-tax Act, 1961 or under the DTAA read with Protocol. **The authority held that the contract is indivisible and the consortium is to be taxed as an AOP and so the amount for offshore supplies shall also be liable to tax in India.**

Liaison Office of Korean company would be treated as PE of Korean company as defined under article 5 of India-Korea Tax Treaty.

Jebon Corporation India Vs. CIT (Intl. Taxn.)(High Court – New Delhi)

The assessee, a South Korean enterprise, engaged in the business of trading in semi-conductor components manufactured by various companies across the world, set up a LO at Bangalore in 1998 after obtaining the required approval from the RBI. The assessee contended that, the LO was solely engaged in the liaisoning activities as permitted by the RBI, and did not carry out any business activities.

The AO observed that the LO had all characteristics of a PE as defined under article 5 of the DTAA and passed an assessment order directing the assessee to pay tax on the income earned by it in India.

On appeal, the appellate authority, on re-appreciation of the entire evidence on record, came to the conclusion that the LO had only a limited flexibility in fixing its own margin subject to the condition within the minimum and maximum margin was fixed by the head office, which in turn was dependent on the models, their unit price and set up charges. Therefore, the appellate authority was of the view that the income could not be deemed to accrue or arise in India through or from any business connection in India *since it did not constitute a business activity carried out by the LO on behalf of the head office by habitually exercising an authority to conclude contracts on behalf of the non-resident within the meaning of clause (a) of Expl. 2 to S. 9(1)(i).*

The Tribunal reversed the order of the CIT(A) holding that there was a business connection in respect of source of income in India of the NRC and, therefore, the income from such activity was deemed to accrue/arise in India and would, therefore, be taxable in India. The Tribunal held that the LO was engaged in promotion of import in India by procuring purchase orders after negotiating the deal and, therefore, the AO was justified in holding that the LO was a permanent establishment.

On appeal to the High Court, HELD;

The activities of procuring purchase orders, identifying the buyers, negotiating with the buyers, determining final price, seeking purchase orders, forwarding the same to head office, follow up with the customers regarding payments and offering after sale support, carried out by the LO were commercial in nature and render the LO as PE, of the Korean entity, in India. Merely because the purchase orders were placed by the customers directly with the Korean Head Office, materials were dispatched directly from Korea and the payments were made by customers directly to Korean HO would not mean that the LO did not perform any business activities in India.

Thus, once the material on record clearly establishes that the LO is undertaking an activity of trading and, therefore, entering into business contracts, fixing price for sale of goods and merely because, the officials of the LO are not signing any written contract would not absolve them from liability. Further, merely because no action is initiated by RBI would not render the findings recorded by the authorities under the Income-tax Act as erroneous or illegal.

Offshore supplies not taxable, unless established that part of business relating to offshore supplies, was carried out in India.

CTCI Overseas Corporation Ltd., In re. (AAR, New Delhi)

Applicant, a Hong Kong company engaged in the business of undertaking EPC contracts for petroleum, petro-chemical and power plants, with a view to execute a project awarded by Petronet, formed a consortium with CINDA, an Indian company, to develop a terminal for the receipt and storage of liquefied natural gas at Kochi. Under the contract, the consortium members were to undertake the designing, engineering, procurement of equipment, material supplies to erect, construct, test and commission and turnover the facilities for the storage and degasification of liquefied natural gas to Petronet.

As per the terms of the contract, the applicant was responsible for offshore supplies, offshore services and mandatory spares for offshore supplies and CINDA was responsible for onshore supplies, onshore services, construction and erection and machinery spares for onshore supplies. On these facts, the applicant sought an advance ruling on the issue of taxability of the income received/receivable by it for offshore supplies from Petronet in India. HELD;

In view of S. 2(31) and the fiction created by the Expl. thereto, the consortium of CINDA and CTCI forms an Association of Persons (AOP) to carry out the project awarded by Petronet. Thus, the applicant can be said to have a business connection in India for the purpose of application of S. 9(1).

As the applicant is excluded from the relief u.s. 90(2), the fiscal jurisdiction to tax the offshore supplies would be governed under the Act. Though the applicant has a business connection in India, it has not carried out any part of the business relating to offshore supplies in India. Under the deeming provision of S. 9(1) read with Expl. 1(a), any business income accruing or arising to the applicant can be taxed in India only in respect of such operations carried out in India. All that is income in the transaction for supplies has not arisen in India as the right, title, payments, etc., in the supplies have passed on to Petronet, which is importing these

supplies, outside India. The applicant is not the owner of the supplies in India. The ownership vests with Petronet who imported these Supplies. Therefore, the amount received/receivable by applicant from Petronet for offshore supplies in terms of the contract is not liable to tax in India.

Act cannot seek to tax items specifically excluded under the DTAA, and vice versa.

DIT (International Taxation) Vs. Venkatesh Karrier Ltd. (High Court - Gujarat)

The assessee, an agent of the ship registered in UAE, furnished its RoI under S. 172(3) claiming zero tax liability on the premise that final freight beneficiary was the shipping Company, a resident of UAE, not liable to tax in India under Article 8 of DTAA. The AO summarily dismissed the assessee's contention without citing any reasons therefor and levied tax at the normal rate. On a appeal preferred before the CIT(A), the demand raised by the AO was deleted, relying upon the provisions contained in Article 8 of Indo –UAE DTAA. The CIT(A) held that the AO did not have any authority to tax the owner of the ship in India.On Revenues appeal before ITAT the order passed by the CIT(A) was affirmed. On further appeal, the High Court relying on the ***CBDT Circular No. 333 dated February 2, 1982*** and ***circular No. 732 dated December 20, 1995***, held;

The provisions of the DTAA would prevail over the general provisions of the Act. Further, where the ships are owned by an enterprise belonging to a country, with which India has entered into a DTAA, and the agreement provides for taxation of shipping profits only in the country of which the enterprises is a resident, no tax is payable by such ships at the Indian ports.

No S. 195 TDS Liability on Payer if Payee not assessed

Crompton Creaves Ltd Vs. DCIT (ITAT- Mumbai)

The assessee made a public issue of GDR for which it engaged international lead managers like Jardine Fleming, Merrill Lynch etc and paid management and underwriting commission of Rs. 7.68 crores without deducting TDS. The AO & CIT (A) held that the said commission constituted "FTS" and that the assessee ought to have deducted TDS u/s 195. The assessee was held to be in default u/s 201. Before the Tribunal, the assessee argued that as no action has been taken by the department against the payees and the time for taking such action had expired, no order u.s 195 & 201 could be passed. Following the judgment delivered by the Special Bench of Mumbai, ITAT in the case of Mahindra & Mahindra (313 ITR 263), the Tribunal held:

No order u.s 201(l) or (1A) holding the payer to be in default can be passed where the Revenue has not taken any action against the payee and the time limit for taking action against the payee u.s 147 has expired. As the time limit for taking action against the payee u.s 147 is not available, and there is no course left to the Revenue for making the assessment of the non-resident, exconsequenti, no lawful order can be passed against the assessee either u.s 201(1) or (1A).

Secondment Agreement – existence of service PE; payment under secondment agreement (though in the nature of reimbursement) constitute income, liable to TDS under S. 195

Centrica India Offshore (P.) Ltd., In re (AAR, New Delhi)

The applicant (CIO), was a company incorporated in India and a wholly owned subsidiary of Centrica Plc., a UK based company. Centrica Plc. alongwith its other overseas AE's, was engaged in the business of supplying Gas and Electricity to various consumers across U.K and outsourced their back office support functions to CIO, India. A secondment agreement was entered into between the applicant is its overseas AE's on the premise that, the AE's shall provide staff to CIO, who had adequate knowledge of various processes and practices employed by the AE's.

The terms of the secondment agreement in brief were as follows:

The overseas AE's were to provide staff, fully equipped with the knowledge and experience in managing and supplying the processes employed by the AE's. The seconded employees were to continue on the payroll of the respective AE's and were to retain their entitlement to participate in the social security plans abroad. However, the monthly cost of the secondees, initially paid by the AE's, was to be ultimately borne by the applicant, CIO. The monthly charges were to include all direct costs, i.e. basic salary, other compensation, cost of participation in social security plans of the overseas entities, etc.

Pursuant to the secondment agreement with the AE's the applicant also entered into individual secondment agreement with each of the seconded employees. The secondees were to work under the control and supervision of CIO. The AE's were not responsible for the actions of the secondees. However, the right to terminate the secondees, at all times rested with the AE's. In the event of CIO not being satisfied with the performance of the secondees, the said secondees were to be deputed back to the AE's and the individual secondment agreement between the secondee and the applicant got terminated.

In this background the applicant sought advance ruling on the question as to whether it was liable to deduct taxes u/s 195 of the Act, from the payments made to overseas entities under the secondment agreements, being opurely in the nature of reimbursement of salary cost.

The AAR ruled:

(i) That in case of secondment arrangements, the enterprise to which the employee is sent does not qualify as an employer merely because the employee performs services for it, or because the enterprise gives the employee instructions regarding his work. The situation is different if the employee works exclusively for the enterprise in the State of employment and was released for the period in question by the enterprise in his State of residence. However, there may certainly be two work relationships simultaneously as well.

(ii) Determining the employer, in such cases, only depends on whether (atleast) one of them is responsible for the remuneration in the State of employment.

(iii) In the facts of the instant case, since, the obligation to pay salary is that of the original employer and the right of the employees to claim that salary is against the original employer, the one responsible for the remuneration, the overseas AE's, necessarily have to be held as the employer of seconded employees.

(iv) As against the contention of the Revenue to treat the payments made by the applicant as FTS in the hands of the AE's, the secondees are all rendering managerial services and the same shall not fall within the ambit of Article 13.4 of the Indo-UK DTAA. Hence, the consideration paid by the applicant to the overseas entities for getting the services of these employees could not be treated as FTS.

(v) As regards the next contention raised by the Revenue, that the presence of the seconded employees of the overseas entities would result in a 'service PE' under Article 2(k) of the Indo-UK DTAA and accordingly the portion of the income earned by them would be taxable in India, the authority held,

a. that in view if the fact that the employees continue to be the employees of the overseas entities; employer continues to be the overseas entity concerned; the employees are rendering services for their employer in India by working for a specified period for a subsidiary or associate enterprise of their employer; the service PE of the overseas entities in India would get triggered within the meaning of Art. 5 (k) of the India-UK Treaty.

b. Thus, the payment by the applicant under the agreement was held to be income accruing to overseas entities in view of the existence of a service PE in India and accordingly the applicant was liable to deduct tax at source u.s 195 of the Act.

Salary payments, on which tax has already been deducted by the foreign entity, no liability to deduct taxes, on reimbursement thereof arises in the hands of the Indian Company.

ACIT Vs. CMS (India) Operations & Maintenance Co. (P.) Ltd. (ITAT- Chennai.)

The assessee, a company engaged in operation and maintenance of power plant, made remittance abroad under the head *'Reimbursement of manpower cost'* to a USA based company 'CMS RDC'. The contention of the assessee was, that since the payments were in the nature of reimbursement of salaries, the same did not fall within the term 'FTS' as defined to Expl. 2 to S. 9(1)(vii) and such reimbursement was not a sum chargeable to tax as stipulated under S. 195.

The AO, alleged that payments made by the assessee to CMS RDC and payments by CMS RDC to deputed persons were two separate and distinct set of transactions. The assessee was involved only in the first transaction and it was a business expenditure for the assessee. Such payments were not salaries. The persons, who were deputed, were on the payroll of CMS RDC and working on deputation with the assessee. CMS RDC was engaged in the business of providing

consultation, operation and maintenance services to electrical utilities outside USA and the deputation of employees by CMS RDC to the assessee's power plant for operation and maintenance work was nothing but part and parcel of the business activity of CMS RDC in India, which resulted in a direct business connection for the CMS RDC in India. Thus, payments given by the assessee to CMS RDC formed part of income which had accrued or arisen to CMS RDC in India under S. 9(1). Further, as per AO, the payment also fell within the ambit of Expl. 2 to S. 9(1)(vii) being FTS.

Therefore, the AO disallowed the entire expenditure under S. 40(a)(i), holding that the assessee failed to deduct tax at source as stipulated under S. 195.

On appeal, the CIT(A) deleted the additions made by the AO.

On Revenues appeal before Tribunal, it was held:

To fall under S. 195, the payment should be a sum chargeable under the provisions of the Act. No doubt if it was FTS, it would definitely fall under S. 9(1)(vii) and irrespective of the place of business or business connection of the non-resident entity in India such income has to be deemed as accruing or arising to the non-resident entity in India. Even if the payments were to be considered as FTS under the Act, the assessee could still fall back on S. 90(2), and say that the Indo-USA DTAA be applied. The Indo-US DTAA and the MoU dated 15-5-1989, defining the terminology used in the DTAA, at para-4 provide for the make available clause. Thus, in view of the clear finding by the CIT(A), that salaries were paid to the deputed employees by CMS RDC, taxes were duly deducted and such tax deducted were reflected in the income tax return filed by the said employees; the agreements between assessee and CMS RDC clearly show that no technical know-how was made available to the assessee; no part of the payment made by the assessee had any element of income.

Thus, where the circumstances were such, that the assessee could be justified in reaching a bona fide impression that payments effected by it, was not sums on which tax was chargeable in India, the assessee was not at default of Chapter XVII-B and, therefore, consequences of the nature specified in S. 40(a)(i) did not attracted.

While interest paid by PE of foreign bank to H.O. is deductible in hands of PE, same interest is not taxable in hands of H.O.

Sumitomo Mitsui Banking Corporation Vs. DDIT (ITAT Special Bench) (5 Member)

The assessee, a Japanese bank, carrying on business through a PE in India, paid interest of Rs. 5 crores to its H.O. & other branches. The assessee, in computing the profits assessable to tax in India, claimed that while the interest received by the H.O. & other branches from the PE was not chargeable to tax in India on the principle that the PE & H.O. were one & the same entity, the PE was entitled to claim a deduction under Article 7 of the DTAA. The AO held that the PE & the H.O. were deemed to be separate entities and that while the interest received by the H.O. from the PE was taxable under Article 11, deduction for that interest could not be allowed to the PE u/s 40(a)(i) as it had failed to deduct TDS. The CIT (A) followed the verdict of the Special Bench in ABN Amro Bank 98 TTJ 295 (Kol) and held that the interest was neither

chargeable to tax nor allowable as a deduction. On appeal to the Tribunal, the matter was referred to a 5 Member Special Bench. HELD by the Special Bench:

(i) On the question whether the interest paid by the PE to the H.O. is deductible, while such interest is not deductible under the Act because the payer & payee are the same person, Article 7(2) and 7(3) of the DTAA & its Protocol makes it clear that for the purpose of computing the profits attributable to the PE in India, the PE is to be treated as a distinct and separate entity which is dealing wholly independently with the general enterprise of which it is a part and deduction has to be allowed for, inter alia, interest on moneys lent by the PE of a bank to its H.O.

(ii) On the question of taxability of the interest received by the H.O. from the PE, such interest is not taxable under the Act as both are, under the Act, the same person and not separate entities & one cannot make profit out of himself. The fiction created in Article 7(2) of the DTAA treating the PE as separate and independent entity does not extend to Article 11. Also, the interest paid by the PE is not interest paid in respect of debt claims forming part of the assets of the PE so as to attract Article 11(6). The DTAA, even assuming that it does create a liability, cannot be applied u.s 90(2), as it is contrary to the Act and less favourable to the assessee.

Transfer Pricing: TPO can rely on "contemporaneous" data even if not available at specified date

Kodiak Networks (India) Pvt. Ltd Vs. ACIT (ITAT-Bangalore)

In the aforementioned transfer pricing appeal, the Tribunal had to consider two issues:
(a) what is the data to be considered by the TPO at the time of determining ALP? &
(b) whether the assessee should be given an opportunity to refute the material sought to be utilized by the TPO?
HELD by the Tribunal:

(i) Under Rule 10D (4) the information and documents should as far as possible be contemporaneous and should exists latest by the 'specified date' specified in s. 92F (4) i.e. the due date for filing the ROI. There is no cut-off date upto which only the information available in public domain can be taken into consideration by the TPO while making the transfer pricing adjustments and arriving at the ALP. The assessee's argument that s.92D and Rule 10D is defeated if the TPO takes the data which is available in the public domain after the specified date is not acceptable.

(ii) While the TPO is empowered by s. 131(1) & 133(6) to call for information without informing the assessee about the process, he cannot use such information against the assessee without giving the assessee a reasonable opportunity of hearing. If the assessee seeks an opportunity to cross-examine third parties, it has to be given the opportunity.

Transfer Pricing: Profit Level Indicators (PLIs) are ratios that measure relationship between profits and costs or resources

Johnson Matthey India (P.) Ltd. Vs. DCIT (A) (ITAT-Delhi.)

In the instant case, the Tribunal while dealing with the question as to what would constitute a suitable profit level indicator held;

- PLI represents a logical financial relationship between two components/variables
- Use of a particular PLI depends on a number of factors including, nature of activities of tested party, reliability of available data with respect to uncontrolled comparables and extent of which PLI is likely to produce available measure of income
- PLI must be selected with its appropriateness for transaction under view

Transfer Pricing: Upward adjustment made by TPO while determining ALP was to be deleted where whole exercise of selecting comparables by TPO was done in a haphazard manner by only excluding loss making companies and not high profit making companies

ACIT Vs. Frost & Sullivan (I) (P) Ltd. (ITAT- Mumbai)

The assessee, a company engaged in the business of market research and consultancy services, received an amount of market research analysis services. The assessee operated through two divisions i.e. (a) Consulting Division (CD) providing consulting services and; (b) Global Innovation Centre (GIC), providing low and back office support services to AE's. For the low and back office support services, the assessee charged on cost plus 10 per cent mark up. It was submitted that for the services of GIC division, the parent company at USA reimburses the assessee all the operating cost of the GIC division and also paid a profit margin of 10 per cent on such cost.

The TPO required the assessee to show cause as to why ALP of the services to the parent company be not computed at a mark up of 30 per cent (prevalent in the industry, according to TPO). The TPO gave a list of 149 companies and computed an average GP/TC at 28.23 per cent. After excluding 47 loss making companies, the TPO determined the OP/TC at 20.42 per cent.

On appeal, the assessee contended the order of the TPO was in blatant violation of principle of natural justice and deserved to be treated as void- ab - initio.

The CIT (A) held that while the TPO had rightly excluded high loss making companies but he failed to exclude companies earning abnormally high profits. Further, absence of any turnover filter/criteria in selecting comparables was also a sore point in the TPO's order. Turnover is material in a screening process and there exists no justification for taking companies which were 100 times bigger than the assessee in terms of turnover. Thus, the CIT(A) concluded that the TPO's orders suffers from serious violation of the principle of

natural justice and in view of the inconsistencies in standards adopted by the TPO while carrying out the determination of the ALP the upward adjustment made by the AO deserved to be deleted.

On revenue's appeal, the Tribunal upheld the above decision of the CIT (A).

Denial of benefit of S. 115E on basis of wrong description of status in return unjustified

CIT(A) Vs. N. Sundarraman (High Court - Madras)

The assessee, employed with UNICEF, had been residing outside India since 14-2-1977. He returned to India on 6-2-1992. Thereafter, again he had gone out of India on 5-4-1992 and permanently returned to India on 7-5-1992. For the assessment years 1994-95 to 1996-97, the assessee filed the returns of income claiming tax benefit under S. 115E, read with S. 115H on the interest income earned on the various deposits in the bank. However, in the original returns of income, the assessee declared his status as 'Resident'. The AO processed under S. 143(1) the returns of income filed by the assessee and issued the intimation. Later, the AO reopened the assessments of the assessee for the aforesaid assessment years on the ground that there was escapement of income. The AO, under the resassessment proceedings, held that since the assessee at the time of filing of return failed to make a declaration regarding his non-resident status, he was not entitled to the benefit of tax exemption under S. 115E.

On appeal, the CIT(A) upheld the order of the AO.

On second appeal, the Tribunal held, that the AO was not justified in reopening the assessments of the assessee. It further considered the appeal on merits and held that the assessee was entitled to the tax benefit under S. 115E.

On Revenue's appeal, the High Court, in view of the judgment of the SC in the case of ***Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. (2007) 291 ITR 500*** held,

(i) Reopening of assessment was justified.

(ii) Filing of declaration is not a condition, precedent for getting the benefit u/s 115E. The S. requires the assessee to be a non-resident Indian as defined under S. 115C(e). In view of the finding recorded by the Tribunal that the assessee satisfies all the conditions to be termed a non-resident Indian, the assessee had no obligation to file any declaration under S. 115H. Factually, the Tribunal found that the assessee, at the time of filing the returns, was a 'non-resident Indian and, hence, he would be entitled to file returns under S. 115E.

(iii) Merely because there is a wrong description in the returns that he is a resident, it would not alter the real status of the assessee.

Domestic tax

Exemption to specified persons from requirement of furnishing a return of income u.s 139(1) of the Act for AY 2012-13.

Notification No. 9/2012 dated 17-2-2012

The requirement of furnishing ROI under S. 139(1), by an individual, whose total income for the relevant assessment year does not exceed five lakh rupees and consists of only income chargeable to income-tax under the following heads, but subject to certain conditions:

(A) "Salaries";

(B) "Income from other sources", by way of interest from a saving account in a bank, not exceeding ten thousand rupees;

has been done away with, vide the captioned notification, from AY 2012-13 onwards.

The said exemption shall not be available, where a notice under S. 142(1) / 148 / 153A / 153C of the Act has been issued.

Mandatory Electronically filing of Income Tax Return for Previous year 2011-12 and subsequent previous years.

Notification No.14/2012 dated 28-3-2012

Electronic filing of ROI for F.Y. 2011-12, relevant to A.Y. 2012-13, has been made mandatory in case of a resident individual or a resident HUF, whose total income exceeds Rs. 10 Lakhs and/or he/she/it has :

a. Assets (including financial interest in any entity) located outside India; or

b. Signing authority in any account located outside India.

In case on an individual/HUF assessee satisfying, any of the conditions i.e. (a) or (b), above, ITR Form SAHAJ – ITR -1 shall not be used.

Also in case of individual/HUF(s) deriving business income, to be computed in accordance with special provisions referred to in S. 44AD and S. 44AE, the prescribed Form SUGAM - ITR 4S, shall not be used if any of the conditions i.e. (a) or (b), above, are satisfied by such assessee.

Issuance of TDS Certificates in Form No. 16A downloadable from TIN website

Circular No. 01/2012 Dated 9-4-2012

The CBDT, vide the captioned circular, has provided that in respect of all sums deducted on or after 01-04-2012:

1) All deductors shall issue TDS certificate in Form No. 16A generated through TIN central system, only, which is downloadable from the TIN website with a unique TDS certificate number; and
2) Such TDS certificates shall be authenticated by the deductors, either using digital signature or manually.

Rectification of wrongly claimed depreciation through filing of a letter to AO, is allowed when no fresh claim is made.

ITO Vs. *Sri Balaji Sago and Starch Products (ITAT - Chennai)*

The assessee claimed the depreciation on a newly installed windmill on the basis of WDV method at the rate of 15%. Subsequently, when assessee realized the mistake that correct rate of depreciation would be 80%, it filed a letter before AO to rectify the claim and to provide deprecation at the rate of 80%. The AO rejected the claim considering the principle laid down by the ***Supreme Court in Goetze (India) Ltd. Vs. CIT [2006]*** that a fresh claim cannot be made by the assessee other than by way of filing a revised return.

The CIT(A) upheld the order of the AO.

On second appeal before Tribunal, it was held that the assessee was not making a fresh claim before the AO. Infact, the assessee had made a claim for depreciation but the rate chosen was not a correct one. Thus, the judgment of the Supreme Court in the Goetze (India) Ltd. (Supra) would not apply to the present case. Further, as per Explanation 5 to S. 32(1), the depreciation would be allowed whether or not the assessee has claimed the depreciation in computing the total income. Therefore, the AO was duty bound to allow the depreciation computed at the correct rate provided under the Act.

In order to compute eligible profits within meaning of S. 80-IA(8) of the Act, price of product sold by assessee-undertaking has to be determined on basis of market forces.

Sri Velayudhaswamy Spinning Mills (P.) Ltd Vs. DCIT (ITAT – Chennai)

The assessee, a manufacturing company, had an independent windmill undertaking division eligible for deduction u.s. 80-IA of the Act. The electricity generated by the windmill was collected by the State electricity board. It collected electricity from the generation point of the assessee and released it to the assessee-company whenever required. When State Electricity Board took over the electricity generated by the assessee unit, it paid for the power at the rate of Rs. 2.70 per unit. The State Electricity Board charged a rate of Rs. 3.50 per unit when power was supplied to industrial units. The assessee had consumed power more than its contribution, therefore, in all such excess consumptions; assessee had paid Rs. 3.50 per unit to the board. The assessee claimed deduction u.s 80-IA of the Act by adopting the market price of the power generated by it at Rs. 3.50 per unit. The AO rejected the claim of assessee and held that the assessee was delivering the power to the Board at the rate of Rs. 2.70 per unit and, therefore, the same should be taken as the market price of power generated by the assessee. The AO, thus, reduced the sale price of the power by 80 paise per unit. To that extent the quantum of the eligible profit of the assessee had come down. On appeal, the CIT (A) upheld the order of the AO.

On appeal before the Tribunal, it was held;

The AO had adopted the price of power at Rs. 2.70 per unit in the light of the provisions of law stated in s. 80-IA(8) of the Act. The said sub- section provides that where any goods are transferred to any other business carried on by the assessee or where any goods are transferred to the eligible business and in either case, the consideration for the transfer recorded in the books of account if does not correspond to the market value of such goods, the AO shall compute the eligible profit on the basis of the market value of such goods. It means that sub-section (8) of S. 80-IA of the Act does not allow an assessee to inflate the profit of its eligible unit by over-invoicing the goods transferred or under-invoicing of goods bought in. As far as the captive consumption of power is concerned, the assessee is neither selling nor buying electricity. The State Electricity Board is the supplier and the assessee is the consumer and there is no question of commodity banking or barter exchange. Therefore, it is obvious that the market price of the power generated by the assessee is Rs. 3.50 per unit. The expression used in s. 80-IA(8) of the Act is market value. Therefore, the contention of the assessee is accepted and the order of the lower authorities is set aside on this issue.

Merely for reason that credits are provided by company through journal entries, it cannot be said that same are not deemed dividend.

ACIT Vs. Gurbinder Singh (ITAT Chennai)

The accounts of the three assessee-directors were credited with various amounts on different dates. The AO treated all these credits as deemed dividends in the hands of the assessees, invoking s. 2(22)(e) of the Act. When the matters were taken in first appeal, the CIT (A) held that the amounts transferred by passing journal entries cannot be held to be in the nature of deemed dividends, as provided in s. 2(22)(e) of the Act. He, therefore, held that the amounts credited in the accounts of the assessees by passing journal entries for the assessment years 2005-06, 2006-07 and 2007-08 could not be held to be deemed dividends in the hands of the assessees. As far as the assessment year 2008-09 was concerned, the CIT (A) held that moneys were paid to the assessees for purchasing land for the company and, therefore, the payments were made in the course of carrying on of the business and, therefore, the same could not be held to be deemed dividends in the hands of the assessees. Consequently, reliefs had been granted by the CIT (A).

On an appeal by the Revenue, the ITAT, laid down the following principles for determining whether a credit would fall within the ambit of S. 2(22)(e) of the Act or not:

(i) Every journal entry conferring credit to the assessees should be examined to verify whether any fund/benefit had been transferred by the company to the assessees directly or indirectly.

(ii) the purpose for which the journal entries were passed should also be examined.

(iii) It should be further examined whether the assessees have drawn funds from their accounts and from the company in the backdrop of the earlier credits

transferred to their personal accounts by means of journal entries.

The Tribunal, restoring the matter to the file of the AO, held that without making any such enquiry, it is not possible for the AO/CIT(A) to come to a lawful conclusion that the credit entries passed in favour of the assessees could be in the nature of deemed dividends u.s 2(22)(e) of the Act.

Merely because an assessee purchased raw material from market or got it manufactured by outsiders, it cannot be said that assessee is not engaged in manufacturing for purpose of deduction u.s 80-IB of the Act.

P.L. Patel Vs .Income-tax Officer (ITAT – Mumbai)

The assessee was engaged in the manufacture and sale of industrial and commercial water systems and drinking water purification systems. The manufacturing process involved making of structure and control panels for which raw material like stainless steel, tube, etc., along with motor pump, certain chemicals, control panels and other items were duly assembled to achieve the desired quality and quantity of the water. The raw material requirements for manufacturing of various parts and components used to be sent to outside party who used to prepare the parts and components as per instructions given by the assessee and the labourers were paid for the work done. The assembling and testing of the finished product were carried out in house and for that purpose, the assessee was employing around 22 workers in his factory. The assessee claimed deduction u.s 80-IB of the Act.

The AO, however, denied the claim on ground that the basic conditions of s. 80-IB(2) of the Act were not fulfilled. As per the AO, the assessee had only the office equipment and there was no other machinery employed and without machinery there could not be an industrial undertaking; that the assessee had not employed the requisite number of workers, and had not been deducting any PF or ESI contributions from the wages paid to the employees, and, therefore, no relationship of employer and employee was established. The AO, also noted that assessee was not paying the excise duty which meant that the activity of the assessee was not manufacturing but it was only an assembly.

The CIT (A) confirmed order of the AO.

On appeal before ITAT, it was held, that,

It is an undisputed fact that the major components required for assembly or production of the system or equipment are either purchased from the market or the production of same is outsourced. Nowhere, it is the case of the AO that readymade units are bought by the assessee and are sold.

Merely because some raw material is readily purchased from the market and some raw material is got manufactured by outsourcing, it cannot be said that the assessee is not engaged in the manufacturing business, especially so, when the final product is made by the assessee himself. Admittedly, the new product is made by the assessee.

So far as the issue of payment of the excise is concerned, the Circular No. 659/50/2002-CX, dated 6-9-2002 is giving

exemption from customs and excise duty to the water treatment plants.

So far as the non-deduction of the PF and ESI, etc., is concerned, merely because there is a violation of labour law, it would not take away the assessee's right to claim benefit under the Income Tax Act.
Moreover, the assessee has been granted the deduction in the preceding years. Hence, on the rule of consistency, there is no question of disputing the eligibility of the assessee to claim the deduction.

As per S. 54EC investment within 6 months is investment for that particular financial year in which transfer has taken place and said period of six months would not include some part of subsequent financial year.

ACIT Vs. Sh. Raj Kumar Jain & Sons (HUF) (ITAT – Jaipur)

The assessee-HUF sold a property for Rs. 2.47 crores on 13-12-2007 and disclosed capital gain of Rs. 1,14 crores. The assessee claimed deduction u.s. 54EC of the Act in respect of long-term capital gain amounting to Rs. 1 crore i.e., invested in specified capital gain bond (Rs. 50 lakhs on 31-3-2008 + Rs. 50 lakhs was made on 10-6-2008). The only dispute was with regard to the next investment of Rs. 50 lakhs made on 10-6-2008, which was not considered by the AO by relying upon the proviso u.s. 54EC of the Act which provided that investment in any financial year cannot exceed Rs. 50 lakhs. Hence, the AO was of the view that the assessee having made a claim of Rs. 1 crore, exceeded the investment limit prescribed in the proviso and therefore, restricted the deduction up to Rs. 50 lakhs accordingly.

The CIT (A) observed that investment of Rs. 50 Lakhs each had been made during two financial years i.e., financial years 2007-08 & 2008-09. In either of the two cases, investment was made within the time-limit of six months from the date of transfer. Accordingly, he allowed deduction of Rs. 1 Crore u.s 54EC of the Act. On filing an appeal by revenue before ITAT it was held that the proviso to s. 54EC provides that an investment made on or after 1-4-2007 in the long-term specified asset by an assessee during any financial year does not exceed Rs. 50 lakhs. Hence, the investment should not exceed Rs. 50 lakhs. The department during the course of proceedings has fairly contended that the interpretation which the assessee wants to place on the proviso to s. 54EC will enable the assessee to claim exemption of around Rs. 1 crore. In case, the transfer of assets has taken place from 1st October to 31st March because the assessee will be able to invest Rs. 50 lakhs in a financial year in which the transfer has taken place and Rs. 50 lakhs in subsequent financial year. However, the assessees who have earned the capital gain on transfer of assets from 1st April to 30th Sept. will be able to have deduction only of Rs. 50 lakhs. Therefore, assessee in the instant case is entitled to exemption of Rs. 50 lakhs u.s 54EC and it is not the case where two interpretations of s. 54EC are possible. The earlier notification of the Government clearly suggested that the assessee's are entitled to the extent of Rs. 50 lakhs u.s 54EC of the Act. Investment within 6 months is the investment for that financial year in which transfer has taken place. Hence, subsequent investment is to be considered as part of the investment of financial year in

which transfer has taken place. It is therefore held that the CIT (A) was not justified in allowing deduction to the assessee to the extent of Rs.1 crore u.s 54EC of the Act. Therefore, order of the CIT(A) was upheld.

Order passed by Assistant Commissioner rejecting stay application filed by assessee against rectified demand notice without considering circulars and judgments cited by assessee was to be quashed and matter be remanded to him for consideration afresh

Urban Improvement Trust Vs. ACIT (High Court - Rajasthan)

The assessee, an Urban Improvement Trust, preferred an application as per S. 154 of the Act, before ACIT for seeking stay of demand. The ACIT issued a rectified demand notice for a sum of Rs. 10,402,140. The subject assessment year's appeal against assessment order was pending before CIT (A).The ACIT passed an order on the application which says that *"It is pertinent to mention here that merely filing an appeal against the assessment order before the appellate authority is not sufficient reason to stay the recovery of demand. Moreover, the Ld. CIT (A) has already adjudicated the issues in favour of the department. The UIT has sufficient funds for payment of demand as is apparent from the news published. As per the news appearing in the said paper, the UIT has further earned Rs. 4.50 Crore on account of auction of plot in Motel Town. Thus there are sufficient funds with UIT for payment of outstanding demand. In view of these facts, you are requested to make 50% payment of outstanding demand positively and balance demand may be considered to be paid installment. It may also be mentioned that if 50% demand is not paid coercive action for recovery of demand will be taken against you"*

Being aggrieved by this order the assessee preferred to file writ petition against impugned assessment order on ground that ACIT while passing said order has not taken into consideration Instruction No. 96 (F. No 1/6/69 – ITCC}, dated 21.08.1969, according to which where income determined on assessment was substantially higher than the returned income, twice latter amount or more, collection of tax in dispute should be held in abeyance till decision of appeals. The assessee also contended that ACIT has not taken into consideration judgments of Rajasthan High Court in His Late Highness Maharaja Sri Bhagwat Singh Ji of Mewar Vs. ITAT (1997) 223 ITR 192 and also judgment of Delhi High Court in Soul Vs. DCIT (2010) 323 ITR 305/(2008) having considered all the facts of the case. The Hon'ble High Court deem it appropriate to quash the order issued by ACIT on stay application and further remanding the matter to the ACIT to consider the stay application submitted by the assessee afresh by providing an opportunity of hearing to the assessee and also by taking into consideration judgments and circulars cited by the assessee. The petition for writ is disposed of accordingly in the favour of the assessee.

Service tax

Increase in Rate of Tax w.e.f 01.04.2012

Notification no. 2/2012 dated 17/03/12

- The rate of service tax will be increased to 12.36% from 10.30% on all taxable services with effect from 01.04.2012.
- Changes have also been made in respect of rates of tax in Service Tax Rules 1994 and Works Contract (Composition Scheme of Payment of Service Tax) Rules 2007

Taxable Service	Special Rate of Tax w.e.f 01.04.2012
Services in Execution of Works Contract	4.8%
Money Changer Services(Falling under Rule 6(7B) of Service Tax Rules,, 1994)	
(i) Up to Rs. 1,00,000	0.12% of the gross amount of currency exchanged, subject to minimum amount of Rs.30
(ii) An amount exceeding Rs.1,00,000 and upto Rs.10,00,000.	120 (calculated at 0.12% on first Rs.1,00,000 plus 0.06%(on the remaining balance) of the gross amount of currency exchanged.
(iii) An amount exceeding Rs.10,00,000	Rs.660(calculated on first Rs.10,00,000 as per above second slab) plus 0.012%(on the remaining balance) of the gross amount of currency exchanged, subject to maximum amount of Rs.6,000
Distributor or Selling Agent of Lotteries (Falling under Rule 6(7C) of Service Tax Rules,1994)	
(i) If the lottery or lottery scheme is one where guaranteed prize payout is more than 80%	Rs.7,000 on every Rs.10 lakh (or part of Rs.10 lakh) of aggregate face value of lottery tickets printed by the organizing state for a draw.
(ii) If the lottery or lottery scheme is one where guaranteed prize payout is less than 80%	Rs.11,000 on every 10 lakh (or part of Rs. 10 lakh) of aggregate face value of lottery tickets printed by the organising state for a draw.

- The special rate of tax payable in respect of life insurance business services (falling under Rule 6(7A) of Service tax Rules,1994) has also been increased from 1.5% to 3% in respect of first year premium charged from policy holders. However, in all subsequent years, the rate of service tax has been retained at 1.5% of the amount of premium.

Exemption of 60% to Transport of Passengers by Air Services w.e.f 01.04.2012.

Notification no. 6/2012 dated 17/03/12

Through the above notification an exemption of 60% has been provided in respect to services provided by an aircraft in relation to scheduled or non- scheduled air transport w.e.f 01.04.2012.

No service tax on toll fee paid by users.

Circular no. 152/3/2012-ST dated 22/02/12

- The above mentioned circular has been issued to clarify that service tax is not leviable on toll paid by the users of roads, including those roads constructed by a Special Purpose Vehicle (SPV) created under an agreement between National Highway Authority of India (NHAI) or a state authority and the concessionaire (Public Private Partnership Model, Build-Own/Operate-Transfer arrangement). Tolls Collected under the PPP model by the SPV is collection on own account and not own account and not on behalf of the person who has made the land available for construction of the road.

- However, if the SPV engages an independent entity to collect toll from users on its behalf and a part of toll collection is retained by that independent entity as commission or is compensated in any other manner, service tax liability arises on such commission or charges, under the Business Auxiliary Service.

Gross Amount does not include value of free-of-cost supplies of goods and services in or in relation to the execution of Works Contract if execution of works contract has commenced or any payment has been on or before the 7th day of July, 2009

Circular no. 150/1/2012-ST dated 8 February, 2012

CBEC issued the above circular to clarify that in cases where execution of works contract has commenced or where any payment, except payment through credit or debit to any account, has been made towards a works contract, prior to 07-07-2009, meaning of the expression ‘gross amount’ appearing in explanation to rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 shall not be applicable.

Extension of time limit for issuance of invoice (RULE 4A).

In terms of Rule 4A of Service Tax Rules (STR), 1944 prevailing upto 31/03/2012 a service provider is required to

issue an invoice either within 14 days from the date of completion of service or receipt of any payment received against such taxable service, whichever is earlier. However, with effect from 01/04/2012 the above mentioned time limit of 14 days stands revised:

A service provider providing any service other than banking & other financial services	30 days from the date of completion of relevant taxable service
A service provider engaged in providing banking & other financial services	45 days from the date of completion of these taxable services

Payment of service tax (Rule 6)

Two new will be inserted to Rule 6(1) of Service Tax Rules 1994 with effect from 01.04.2012.

1. According to the newly inserted third proviso taxable services, covered under Rule 3(1) of Service Tax Rules, shall not apply if the payment in received within the period specified by the R.B.I including such extended period as may be allowed from time to time.
2. With effect from 01.04.2012 all service providers, individuals and partnership firms, have been given the benefit of depositing tax on receipt basis if their aggregate value of taxable service does not exceed Rs. 50 lakh in the preceeding financial year. According to the newly inserted fourth proviso service provider shall have to pay service tax on service provided or to be provided by the dates specified with respect to the month or quarter, in which payment is received.

RULE7- Regarding specified services and persons amended.

A new Rule 7 has been substituted in place of the old Rule 7. As per the current Rule, notwithstanding anything contained in the POT Rules, 2011, ***the point of taxation in respect of following services is the date on which payment is received or made:***

(a) The services covered by sub-rule (1) of Rule 3 of Export of Services Rules, 2005;

(b) The persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section 2 of S. 68 of the Finance Act, 1944;

(c) Individuals or proprietary firms or partnership firms providing following taxable services

1. Consulting Engineer's Service [65(105)(g)]
2. Architect's Services [65(105)(p)]
3. Interior Decorator's Service [65(105)(q)]
4. Chartered Accountant Service [65(105)(s)]
5. Cost Accountant Service [65(105)(t)]
6. Company Secretary Service [65(105)(u)]
7. Scientific and Technical consultancy [65(105)(za)]
8. Legal Service [65(105)(zzzzm)]

However, as per the substituted Rule 7 with effect from 01.04.2012, point of taxation in respect of the persons required to pay tax as recipient of service shall be the date on

which such payment is made provided payment should be made within six months of the date of invoice. Further, as substituted second proviso to rule 7 in the case of associated enterprises, where the person is located outside India, the point of taxation shall be the date of debit in the books of the accounts of the person receiving the service or the date of making the payment whichever is earlier.

On the other hand, in case of export of services and above mentioned 8 services, the point of taxation is the date of payment. The special dispensation has been shifted from the POT Rules to the Service Tax Rules with the view to provide certainty in the application of rate of tax.

Snippets

Budget 2012

The budget 2012, was presented in the Parliament, by the Finance Minister on 16.03.2012. A detailed insight of the amendments proposed in the budget has been provided in a separate document titled ***"INDIA BUDGET STATEMENT 2012 – The Direct Tax proposals."***

The same may be viewed or downloaded from our website www.hemantarora.in

Tax collections for fiscal year 2011-12

The tax collections, both direct and indirect, for financial year 2011-12 amounted to Rs. Rs 6.97 lakh crore as against the budget estimate of Rs. 8.98.lakh crore. While about Rs 3.69 lakh crore was collected in direct taxes (budget estimate 5 lakh crore), over Rs 3.28 lakh crore was mopped up through indirect taxes (budget estimate 3.98 lakh crore).

Tax of Rs. 181 Cr. realized in HSBC Bank, Geneva cases

The Income Tax department has realised taxes of about Rs 181 crore with respect to the cash deposits of Indians who had unreported accounts in HSBC bank Geneva.

Government may net Rs. 40,000 crore on retro changes in I.T. Act.

The Government may gain Rs 35,000- 40,000 crore from the proposed retrospective amendments to the Income Tax Act. The amendments were introduced in the Finance Bill 2012 to draw Vodafone-type deals into the tax net. The Finance Bill 2012 has proposed about 24 retrospective amendments on the direct tax front. The proposed retrospective amendments have upset industry and intense pressure has been brought upon the Government to rethink on the same.

Budget 2012 proposes law that could overturn SC ruling in Vodafone case.

The budget has proposed legislation to overturn the landmark SC ruling in favour of UK-based Vodafone Plc, a move that could bring in more than $2 billion (Rs 10,000 crore) of revenues, but shock foreign investors who have been vociferously complaining about lack of certainty in the way rules are applied. The legislative changes, essentially tweaks in language asserting the state's right to retroactively (from April 1, 1962) tax cross-borders share sales in which the underlying asset is located in India, could impact companies such as AT&T and GE that have carried out transactions in which a significant part of the assets is in India.

Vodafone tax demand may exceed Rs. 20,000 crore.

After the enactment of retrospective amendments to the Act, the government may ask Vodafone to pay in excess of Rs.20,000 crore — more than two and half times the tax amount the telecom major was “advised to withhold” on its $11-billion deal with Hutchison in 2007. The retrospective amendments and a validation clause, legalising the tax demand despite the SC having quashed it, may empower the tax department to restore the earlier demand.

Vodafone may cite breach of treaty.

Britains Vodafone Group could invoke a little-known investment pact between India and the Netherlands that will allow it to claim back taxes it may be forced to pay, once Parliament clears a new legislation to tax past transactions. The company has said the proposed changes in the law contradict the SC and raise important constitutional questions for India as well as widespread and profound concerns in the minds of international investors.

Vodafone takes on I.T. Department over transfer pricing.

Encouraged by the recent SC order in its favour, Vodafone Plc is taking on the income tax department, yet again. The British telecom major has moved the dispute resolution panel, seeking relief from an order sent by the I-T department in December 2011. The draft transfer pricing order asked Vodafone to add an additional income of around Rs. 8,500 crore to its income from Indian operations. The recent Vodafone-Hutchison SC judgment contains several

observations which relate to the transfer pricing matter and appear to clearly support Vodafones position.

GAAR Scare : PE funds choose Singapore as Mauritius loses charm.

The new anti-avoidance rules will supersede the tax treaty with Mauritius and determine the commercial substance of a transaction as perceived by the tax department. Private equity funds are choosing Singapores concrete jungle over the palmfringed shores of Mauritius in reaction to proposed rules which will make the tiny African nation unattractive as a tax haven. Among the early movers are 3i,Europe's biggest listed private equity firm, CX Partners and Edelweiss Capital, with industry analysts saying more are expected to follow their example in the coming months.

Singapore, apart from being a sophisticated financial hub, is seen to offer additional benefits. Foreign investors need not pay capital gains tax if a fund has been operational in the country for two years or incurs expenditure of about 200,000 Singapore dollars every year in the country. This has led to investors believing that the India-Singapore double taxation avoidance treaty which offers certain provisions which the India-Mauritius DTAA does not allow, can satisfy the anti-avoidance stipulations.

Introduce Anti-avoidance rules only after direct taxes code: ASSOCHAM.

The Finance Bill 2012 proposes to introduce General Anti-Avoidance Rules (GAAR) provisions, which were originally slated to be part of the DTC. In this respect, the Industry chamber Assocham has urged the Government to defer the introduction of the proposed anti-avoidance rules, popularly known as GAAR, till the implementation of the new Direct Taxes Code (DTC).

Government may cut Capital Gains on PE Investments.

To attract more foreign capital, the Finance Ministry may cut long-term capital gain tax from 20 per cent to 10 per cent on investments made by private equity funds into shares of unlisted companies. Several PE investors have appealed to the Ministry to bring them at par with foreign institutional investors (FIIs) as far as tax treatment is concerned.

Kingfisher asked to discharge service tax liability to the extent of Rs. 10 Cr.

Cash-strapped Kingfisher Airlines, which owes Rs.76 crore in service tax arrears, already collected from passengers, agreed to pay only up to Rs.10 crore during financial year 2011-12.

Launch special tax drive: PAR Panel.

A Parliamentary panel has asked the government to launch a special drive to identify tax evaders and tap new areas to increase indirect tax collections. In its report, the standing committee on finance said, “The percentage growth of overall indirect tax collections during 2011-12 over the last year is only 14.62 per cent, while it was 40.66 per cent in 2010-11.

OECD to simplify transfer pricing rules.

In a meeting, attended by tax officials from 90 countries, at OECD's first Global Forum on Transfer Pricing, the need to simplify transfer pricing rules, strengthen the guidelines on intangible issues and improve the efficiency of dispute resolution, was discussed and agreed upon. This is particularly critical in the area of intangible assets, whose location may have a strong impact on tax revenues.

Statutory Compliance calendar

- Deposit TDS from Salaries paid for March, 2012- ***April 07, 2012***
- Deposit TDS from Contractor's Bill, Payment of Commission or Brokerage, Rent, Professional/ Technical Services bills/ Royalty made in March, 2012 ***- April 07, 2012***
- Pay Service Tax in Form TR-6, collected during March 2012 by individuals, proprietors and partnership firms - ***March 31, 2012***
- Pay Service Tax in Form TR-6, collected during March 2012 by persons other than individuals, proprietors and partnership firms - ***March 31, 2012***
- Pay Service Tax in Form TR-6, collected on 31st March 2012 by individuals, proprietors and partnership firms - ***April 07, 2012***
- Pay Service Tax in Form TR-6, collected on 31st March 2012 by persons other than individuals, proprietors and partnership firms - ***April 07, 2012***

- 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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Editor - *Jeetan Nagpal, FCA*

Coordinator - *Nidhi Manocha, ACA*

With inputs from - *Sanjay Arora, FCA*
- *Kamal Nagpal, ACA*
- *Nidhi Manocha, ACA*
- *Devina Gupta, ACA*
- *Priyanka Dhyani, ACA*

Our offices:

NEW DELHI (NCR)

1118-1119 DLF Galleria Towers, 11th Floor
DLF Phase IV, Gurgaon 122002 India
T + 91 124 257 0888
F + 91 124 257 8088

DEHRADUN

1, Tyagi Road, Dehradun 248001 India
T + 91 135 262 7795
F + 91 135 262 6795

ROORKEE

354B, 30 Civil Lines, Roorkee 247667 India
T + 91 1332 27 3343
F + 91 1332 27 7272

For further details, please contact:

Hemant K Arora

hemant.arora@hemantarora.in

Jeetan Nagpal

jeetan.nagpal@hemantarora.in

Sanjay Arora

sanjay.arora@hemantarora.in

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