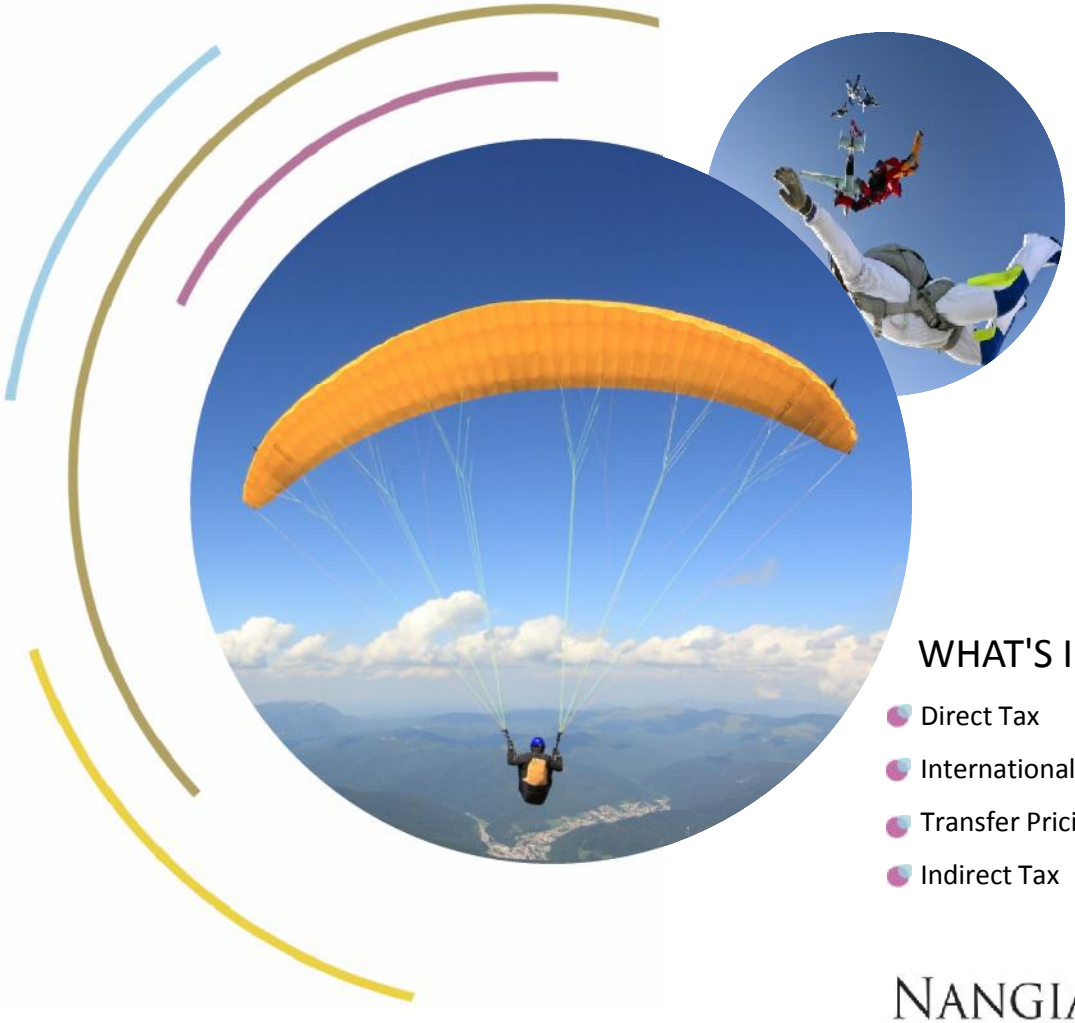
NEWS CRUNCH

May 01- May 15



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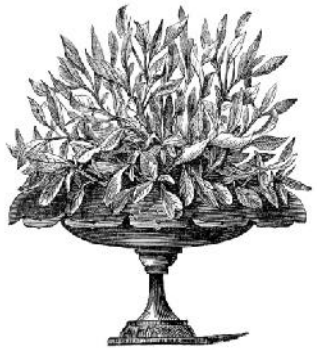
NANGIA & CO LLP
CHARTERED ACCOUNTANTS

What's inside . . .

DIRECT TAX

1. India gives its nod for signing Multilateral Instrument to implement OECD lead BEPS



Background

Moving forward swiftly with its resolve to deal with the impact of base erosion arising as a result of profit shifting and treaty abuse practice, India's Cabinet has given its nod for signing Multilateral Instrument ('MLI') to implement OECD lead BEPS. MLI shall be signed on June 7 in Paris, which shall trigger the first step towards implementation of BEPS package which has been the focal point of attention of the tax world since past few years.

This shall change the face of the 3000+ tax treaties as they exist today and shall impact the way income is currently being taxed. India has to decide the list of treaty countries that shall stand covered by this MLI, its position on reservations that it has on the minimum standards on its implementation and also that options that India offers as an alternative. While India will make its own list of the Tax Treaties to which it intends the MLI to apply, the MLI will be effective for such individual tax treaty only if the partner treaty country also includes India in its list.

Further, India has addressed its tax treaties with Cyprus, Mauritius and Singapore, favorable treaties such as The Netherlands and France were increasingly being used by taxpayers seeking to reduce their tax liabilities. India had commenced the renegotiation of its treaty with Netherlands but the proceedings had been stalled.

The sense was that the renegotiation will be achieved through the MLC instead of adopting a bilateral approach. It will be interesting to note whether using the MLC allows for an (effective) amendment of The Netherlands treaty beyond the minimum standards. Since India already has in place, a GAAR under the domestic law, it already has a mechanism in place whereby it can unilaterally prevent treaty abuse in respect of all its treaty partners. On the other hand, the MLC also addresses prevention of treaty abuse but it comes as a minimum standard and provides for denial of treaty benefits within the treaty framework. Nevertheless, one would assume that GAAR still remains the nuclear option for India.

2. Payment for collaborative maintenance/ training services is taxable as "fees for technical services" as against "non-taxable" or "without prejudice taxable u/s 44BB" claim of Assessee

Background

The University of Calgary ("**Assessee**") is a public research university located in Calgary, Alberta and is a tax resident of Canada. ONGC entered into an agreement with Assessee for collaborative research, participating, training, maintenance and service of certain equipment jointly by ONGC and Assessee's personnel. As per scope of work reproduced in Tribunal's decision, it was primarily for maintenance of certain equipment jointly by Assessee's & ONGC's personnel

M/s ONGC Ltd. in its capacity as Representative Assessee, filed return of income showing NIL income. Subsequently, case was selected for scrutiny assessment and Assessing Officer ("**AO**") treated payment received by Assessee as "fees for technical services" and taxed the same on gross basis applying section 115A of the Act, which was subsequently confirmed by Commissioner of Income Tax (Appeals) ["CIT(A)"]

Proceedings before the Tribunal

- The Assessee contended that such receipts were not taxable in India as per the India-Canada Double Taxation Avoidance agreement ("**DTAA**"), as services **do not** "make available" any technical knowledge, experience, skill, knowhow or processes or **do not** consist of development & transfer of a technical plan or technical design
- Without prejudice main contention, Assessee further contended, even if the receipts are considered taxable, the same should be taxable u/s 44BB and not as fees for technical services, since services are rendered in "connection with extraction & production of mineral oil". For this purpose, Assessee also relied on Supreme Court decision in case of **ONGC Ltd. vs. CIT (2015) (59 Taxmann.com 1)(SC)**
- The Assessing Officer held that the know-how possessed by the assessee has been shared and made available to the ONGC personnel.
- The services were in the nature of "fee for technical services" as taxable u/s 115A and the assessee was not involved in extraction of oil, minerals. Thus, section 44BB does not apply.

Ruling of the Tribunal

- On appeal filed by Assessee, Tribunal ruled that the **know-how possessed by the assessee has been shared and "made available" to the ONGC personnel** as is evident from the words "training and collaborative research", and thus taxable under "**Article 12(4) of India-Canada DTAA**"
- Tribunal also rejected "without prejudice" contention of Assessee and held that Section 44BB of the Act applies in a case where consideration is for services relating to exploration activity which are not in the nature of technical services. If, the consideration is in nature of fee for technical services, the provisions of either section 44DA or section 115A will be applicable
- Tribunal also distinguished Supreme court judgment in case of ONGC Ltd. (supra) and held that the same was applicable in case of an assessee engaged in drilling operations.

- Tribunal held that in present case, the agreement shows that neither the personnel of the non-resident are engaged in extraction or production of mineral oils and nor is it receiving any consideration for mining, assembly or other like projects undertaken by it. Thus, the appellant falls within the purview of Section 9(1)(vii) of the Act and the receipts are to be taxed u/s 115A and not u/s 44BB.

- **Accordingly, Tribunal agreed with the views of AO and CIT(A) and dismissed the appeals of the assessee.**

NANGIA'S TAKE :

- ***The Tribunal does not seem to have fully appreciated the ratio of the ruling of the Supreme Court in the case of ONGC Ltd. While the Supreme Court ruling has discussed various aspects of the oil & gas operations inasmuch it dwelled upon the proximity of the services to the mining operations, no such effort seems to have been made by Tribunal in this case. The factual analysis of Tribunal also appears incorrect since the thrust of the ruling is on "training" allegedly provided by the appellant while the actual scope of work appears to be a maintenance activity.***

- ***The ruling makes it imperative for the taxpayers claiming applicability of section 44BB to adequately demonstrate as to how their services are directly associated and inextricably connected with the prospecting, extraction or production of mineral oils.***

3. Payment made under membership agreement by the member entity not taxable on the principle of mutuality, thus no obligation to withhold tax

Background

KPMG ('Assessee') was an Indian firm engaged in the business of providing services such as auditing, accounting, taxation and management services. The assessee was Indian member firm of M/s KPMG International ('KPMGI') which is mutual association/organization registered in Switzerland and having its head office in Netherlands.

The assessee made certain payment to KPMGI to enable them in discharging its function within the terms of membership agreement signed between assessee and KPMGI. The assessee had not deducted tax at source u/s 195 of the Act on such payments and the Assessing Officer issued a show-cause notice for proceeding u/s 201(1)/201(1A) of the Act.
The assessee, in response contended that the principle of mutuality applied in the present case and the amount remitted outside India was in the nature of reimbursement of cost to KPMGI. Therefore, the assessee was not liable to deduct tax at source because reimbursement of expense at cost cannot be treated as income chargeable to tax.

After hearing, the AO concluded that the expenses incurred on account of alleged reimbursement of cost in is in the nature of 'royalty' as covered u/s 9(1)(vi) of the Act.

Therefore, the assessee was liable to deduct tax at source in respect of such expenses by applying the rate of royalty provided under article 12(2) of India-Switzerland DTAA. Aggrieved revenue filed an appeal before the ITAT.

Proceedings before the ITAT

- The Revenue argued that the basic motive of the assessee was to avail the goodwill associated with name of 'KPMG' and other consequential benefit, additional and incidental incentive. The payment made to KPMGI was for the use of brand name and therefore, covered by the definition of 'Royalty'.

- The KPMGI charged the interest and guarantee on finance support required by any member. Further, the feature like inspection of books, levy of penalty, imposing restrictions on professional & financial decision of members treated as watch over the activities of members. These all are against the principle of mutuality.

- The main object of KPMGI are tainted with commerciality i.e. to create an international chain of professional by using its name and marks, in terms of making payments of percentage from the respective turnover. All these issues made the principle of mutuality inapplicable.

- KPMGI was a mutual association/organization and the assessee was a member of the organization. KPMGI does not work with any profit motive while carrying business or profession.

- In order to co-ordinate the activities of the members, double up abilities and raise professional standards certain cost was incurred by KPMGI. As per arrangement between KPMGI and the members, the cost of KPMGI was decided to be pooled by its member's firms without any markup on the basis of respective turnover of the member firm, to enable the members to have access all the benefit arises from such membership.

- The principle of mutuality applies to the case of assessee and the amount paid by assessee was reimbursement of expenses at cost, and there was no element of income chargeable to tax therein. Hence, the assessee was not liable to deduct tax at source under section 195 of the Act

Ruling of the Tribunal

- As per section 28(iii) of the Act, income derived by a trade, professional or similar association from specific services performed for its members is chargeable to income tax under the head 'Profit and gains of business or profession'. The provision was introduced to stop the exemption to the taxpayer who derives income for making profits as a result of rendering its specific services for its members in a commercial manner.

- The Hon'ble Apex Court and various High Courts has laid down the following principles on 'Principle of Mutuality':

  - There are three principle conditions for application of the principle of mutuality;

    i. **Identity:** There must be complete identity between the contributors and the participants. This means identity of the persons who are contributing are identical with the persons entitled to participate.

    ii. **Excess Funds**: The actions of the participants and the contributors must be in furtherance of the mandate of the association.

    iii. **Absence of profiteering**: The basic principle is that 'no one can make profit out of himself.

There must be no scope of profiteering by the contributors from the fund made by them, which could only be expended for mutual benefit or returned to themselves.

- Simply because some incidental activity of the taxpayer (the member) is revenue generating that does not give any justification to hold that it is tainted with commerciality and reaches the point where a relationship of mutuality ends and that of trading begins.

- The case of the assessee falls within the four corner of the ambit of the 'Principle of Mutuality'. Therefore, the income would not be taxable in the hands and KPMGI, accordingly, the assessee was not required to withhold taxes on such payments.

NANGIA'S TAKE

This ruling has laid emphasis on an important condition for withholding tax on reimbursement of costs - if the arrangement is such that it satisfies the conditions of the 'Principle of Mutuality', the reimbursement of cost is not taxable and there will be no obligation to withhold taxes on such payments.

4. The Apex Court of India upholds disallowance of expenditure on default in withholding tax, irrespective of whether it is paid or payable

Background

Recently Supreme Court in the case of Palam Gas Service[1] ('the Assessee'), dealt with the issue whether disallowance of expenses for failure to withhold taxes under the Income-tax Act, 1961 ('the Act') is applicable only in respect of expenses which remain "payable" or if it also covers expenses actually "paid" during the year without withholding of taxes.

The Act provides for various consequences for failure to withhold taxes, which include disallowance of expenses "payable", on which tax is deductible at source but such tax has not been deducted or, after deduction, has not been paid on or before the due date of filing return of income (disallowance provision).

Use of the expression "payable" in the disallowance provision gave rise to an issue of whether the disallowance applies only in respect of expenses remaining "payable" as on the last day of the tax year or whether it is also applicable in respect of expenses "paid" during the tax year without withholding tax. The High Courts were divided on this issue, but majority of the High Courts held that disallowance is triggered even if expenses are "paid" during the tax year without withholding tax.

[1] [TS-170-SC-2017]

Apex Court's ruling

The Apex Court concurred with the majority view of the High Courts on the basis of the following reasoning:

Applicability of the disallowance provision where expense is already "paid" and no amount remains "payable"

- The Act contemplate tax withholding not only on the occasion when the payment is actually made, but also at the time when the amount is credited to the account of the payee, if such credit is earlier than the payment.

- A holistic reading makes it clear that the expression "payable" used in the disallowance provision covers not only cases where the payment is yet to be made, but also cases where payment has actually been made.

- Though the expressions "payable" and "paid" denote different meanings grammatically, such distinction is irrelevant for interpretation of the disallowance provision since withholding tax is triggered in both cases.

- Legislature included the entire accrued liability

    - in the context of taxpayers following the mercantile system of accounting, will cover the amount credited to the account of the payee and,

    - for taxpayers following the cash system of accounting, will cover the actual payment of liability.

Allahabad HC decision in the case of Vector Shipping Services overruled

The Allahabad HC did not consider the amplitude of the WHT provisions while concluding that the disallowance provision would apply only when the amount is "payable". Hence, the said judgement was held incorrect and overruled. Though the Special Leave Petition (SLP) of the Tax Authority against the Allahabad HC's ruling was rejected by the SC earlier, but it is well settled that a mere rejection of an SLP does not amount to an HC ruling being confirmed by the Apex Court[2].

NANGIA'S TAKE

After taking note of the conflicting rulings of the High Courts on the issue, the Apex Court put to rest the controversy arising on this issue by upholding that the majority view that disallowance is triggered regardless of whether the amounts are "payable" or are actually paid during the tax year.

[2]V.M. Salgaocar & Bros. (P) Ltd. v. Commissioner of Income Tax [(2000) 243 ITR 383] and Employees Welfare Association v. Union of India [(1989) 4 SCC 187]

5. Australian Budget 2017 – Highlights

Australian Treasurer Scott Morrison has unveiled a new budget which includes a surprise rise in taxation for the country's five biggest banks from July. It has also announced education savings which will see students pay a greater share of the cost of degrees. Infrastructure projects, health and housing affordability were also high on the government's agenda. The Australian government has revealed that it will align the GST treatment of digital currency, including Bitcoin, with regular money as of July 1, 2017 -- which it said will promote the growth of the fintech industry.

Source - http://www.bbc.com/news/world-australia-39853185 & http://www.zdnet.com/article/budget-2017-government-to-remove-bitcoin-double-tax-next-month/

6. Sweden's tax plan is the opposite of Donald Trump's - and it is proving hugely successful

In a world still flinching from the financial crisis that hit a decade ago and the populist wave that followed, Sweden's economic stewardship holds lessons that challenge the conventional wisdom in the US on how taxes work, according to the Harvard-educated minister. The country also takes a pragmatic view of capitalism, which includes allowing businesses to fail if they can't compete. Part of this includes providing a safety net and training for workers, features that Andersson says are crucial to keeping a dangerous anti-globalisation sentiment at bay.

Source - http://www.independent.co.uk/news/world/europe/donald-trump-tax-jobs-us-economy-sweden-plan-scandinavian-income-a7723846.html

7. OECD: Launches facility to disclose CRS avoidance schemes with 1800 bilateral exchange relationships

As part of its ongoing efforts to maintain the integrity of the OECD Common Reporting Standard (CRS), the OECD is today launching a disclosure facility on the Automatic Exchange Portal which allows interested parties to report potential schemes to circumvent the CRS. Also today, a further important step to implement the CRS was taken, with an additional 500 bilateral automatic exchange relationships being established between over 60 jurisdictions committed to exchanging information automatically pursuant to the CRS, starting in 2017.

This facility is part of a wider three step process the OECD has put in place to deal with schemes that purport to avoid reporting under the CRS. As part of this process all actual or perceived loopholes that are identified are systematically analysed in order to decide on appropriate courses of action. This will further strengthen the effectiveness of the CRS which by design already limits opportunities for taxpayers to circumvent reporting to the greatest possible extent. There are now over 1800 bilateral relationships in place across the globe, most of them based on the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information ("the CRS MCAA").

Source - http://www.oecd.org/tax/crs-avoidance-schemes-disclosure-facility-over-1800-exchange-relationships

TRANSFER PRICING

8. Brand value accretion through incurrence of AMP expenditure of the taxpayer renders an incidental benefit to its brand owning associated enterprise which does not fall under the definition of 'International Transaction' and thus, not to be benchmarked

Background

Hyundai Motor India Ltd. ["the taxpayer''] is a fully owned subsidiary of Hyundai Motor Company ["HMC"] and engaged in the business of manufacturing cars in India. During the course of assessment proceedings, the Transfer Pricing Officer ["TPO"] observed that the taxpayer is manufacturing cars under the brand name 'Hyundai'- which is legally owned by the HMC Korea. The taxpayer, under the agreement with HMC Korea, was under the obligation to use the logo with trademark Hyundai in every vehicle manufactured by it. Thus, the TPO was of the view that the taxpayer had significantly contributed to the development of Hyundai brand in Indian market and thereby should be compensated by HMC Korea in arm's length manner.

The TPO referred to the decision of the special bench of Tribunal, in the case of ***LG Electronics Pvt Ltd vs. ACIT [(2013) 22 ITR (Trib) 1 (Del)]*** and treated the use of 'Hyundai' logo by the taxpayer as brand building of the trademark (owned by the AE) in local market as an international transaction. In light of the same, the TPO also made an upwards adjustment of INR 1.98bn in respect of compensation that the taxpayer should have received, from HMC Korea, for brand development. Aggrieved by the same, the taxpayer carried the matter to the Dispute Resolution Panel ["DRP"]. The DRP confirmed the TPO's stand. The aggrieved taxpayer filed an appeal before the Income Tax Appellate Tribunal ["the Tribunal" / "the ITAT"].

The Tribunal's Ruling

- The ITAT placed reliance on the High Court ruling in case of ***Sony Ericson Mobile Communications India Pvt Ltd [(2015) 374 ITR 118 (Del)],*** which clarifies that Special Bench's decision in case of ***LG Electronics (supra)*** was not good in law and rejected the Bright Line Test as a tool to benchmark the taxpayer's Advertisement Marketing and Promotion ["AMP"] expenditure ;

- The AMP expenditure is a conscious effort for achieving goal of brand promotion whereas the alleged brand building exercise in the taxpayer's case by increased market in India is an imperceptible exercise and a by-product of the economic activity of sales;

- The Tribunal mentioned that if the cars, so manufactured by the Appellant, is marketed without any established brand then the acceptability of the car by Indian consumers will be significantly

less vis-à-vis the situation if the car is marketed with a brand. Accordingly, the use of brand/ logo (owned by the AE) yields a direct benefit to the taxpayer.

- The ITAT closely analyzed whether the alleged arrangement of the taxpayer falls within any of possible limbs of the transactions provided in the definition of international transaction. The Tribunal observed that –

  - The alleged brand promotion cannot be considered as **apportionment**, **contribution** or **cost of any expense**. Further, the same is neither in the nature of **lending and borrowing of money** nor any other form of **capital financing** transaction;

  - As regard to the intangibles, the alleged accretion in the value of AE's brand cannot be viewed as **purchase, sale or lease of intangibles;**

  - The accretion in brand value on account of using logo/ brand of the AE cannot be regarded as **provision of services** as the logo used by the taxpayer is a privilege and a marketing compulsion to the Appellant which substantially benefit the taxpayer; and

  - The alleged accretion in the value of AE's brand does not result in any **impact on the income, expenditure, losses or assets** of the taxpayer.

Based on above, the Tribunal held that accretion of brand value, as a result of use of brand name of AE under the technology use agreement, which has been accepted to be an arrangement at ALP, does not result in a separate international transaction to be benchmarked and deleted the adjustment made by the TPO.

NANGIA'S TAKE

The issue of incurrence of excessive AMP expenditure by taxpayer and thereby benefitting its overseas group entity in promoting its brand/ trademark is one concerning the fundamentals of economics and TP. This issue has refused to die its natural death as the Revenue has already knocked the doors of Supreme Court of India in many cases. This final verdict is very important since it is going to be the trendsetter for future decisions in succeeding cases.

Source: Hyundai Motor India Private Limited [TS-322-ITAT-2017(CHNY)-TP]

9. Distinguishing the High Court's findings in landmark case of Vodafone India, the Tribunal confirmed the levy of penalty for non-filing of Form 3CEB in relation to the taxpayer's share investment transaction

Background

During course of assessment proceedings of BNT Global Private Limited ["the taxpayer"], the Assessing Officer ["AO"] noticed that the taxpayer has entered into an international transaction pertaining to receipt of foreign remittance from its director and beneficial shareholder [viz. a non resident Indian] on account of share capital and share premium. In this connection, the AO was of the view that the aforesaid transaction, being covered within the definition of international transactions as outlined under provisions of Section 92B of Income-tax Act, 1961 ["the Act"], were required to be reported in Form 3CEB.

However, the taxpayer did not file any Form 3CEB for the year under review. Accordingly, owing to this reason, the AO levied penalty of INR 1 lakh u/s 271BA of the Act. The aggrieved taxpayer appealed before the Commissioner of Income Tax (Appeals) ["CIT(A)"] who upheld the actions of the AO. Thereafter, the taxpayer challenged the actions of CIT(A) before the Income Tax Appellate Tribunal ["the ITAT"/ "the Tribunal"].

Proceedings before the Tribunal

Taxpayer's contentions: As the transaction pertaining to allotment of shares is not covered within the definition of international transaction and the taxpayer had not carried out any other international transaction, the reporting and filing of Accountant's report in Form 3CEB u/s 92E of the Act is not applicable to the taxpayer. For this purpose, the taxpayer relied on findings of the High Court ["HC"] in case of *Vodafone India Services Private Limited [TS-308-HC-2014(BOM)-TP]*.

The Tribunal's Verdict: At the outset, the ITAT distinguished the findings of HC ***Vodafone India (supra)*** with that of the taxpayer and held that HC decision revolves around the arm's length price ["ALP"] adjustment made by the Transfer Pricing ["TP"] Officer on issuance of equity shares, on the ground that capital receipts cannot be considered as income and accordingly, would not attract provisions of Chapter X of the Act. On the contrary, the instant case was factually different and is concerned with the imposition of penalty u/s 271BA of the Act for non-filing of Form 3CEB, which was not the issue in the case of ***Vodafone India (supra)***.

The ITAT, referring to provisions of section 92B of the Act, held that it is mandatory for a taxpayer entering into international transaction(s) to furnish an accountant's report setting forth the particulars of such international transaction(s). Further, holding that the transaction of investment in shares falls well within the scope of section 92B of the Act, the ITAT stated that filing of aforesaid report by the taxpayer before the specified date and in prescribed format (duly signed and verified) is mandatorily warranted u/s 92E of the Act. Thus, any contravention of the aforementioned section would attract levy of penalty u/s 271BA of the Act. In support of the above, the Tribunal relied on similar ruling in case of ***IL&FS Maritime Infrastructure Company Limited [TS-204-ITAT-2013(MUM)-TP]***, wherein it was held that failure to disclose the share investment transaction falling under the purview of Section 92E of the Act in the Form 3CEB, would attract penalty.

In light of the above, the ITAT concluded that failure to furnish the audit report is totally attributable to the gross negligence of the taxpayer and no reasonable cause can be produced by the taxpayer in this regard. Accordingly, considering the factual and legal matrix of the case, the taxpayer has violated the vision of section 92E of the Act and penalty under section 271BA of the Act is clearly attracted.

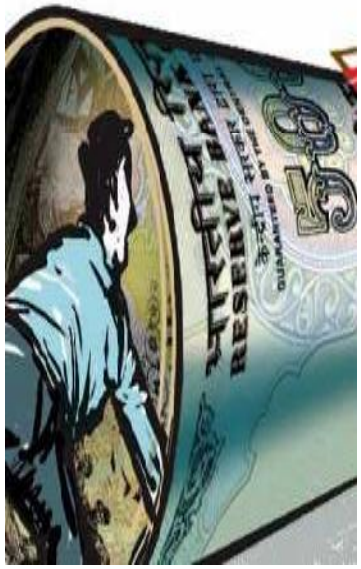
NANGIA'S TAKE

The instant ruling perspicuously clarified that as the transaction of investment in shares falls within definition of international transaction, it mandatory for the taxpayer to furnish the Form 3CEB to report the same. The ALP determination of such transaction is a subsequent step which has nothing to do with levy of penalty by tax authority u/s 271BA of the Act for non filing of Form 3CEB in case when taxpayers undertake such transactions.

Source: BNT Global Private Limited [TS-319-ITAT-2017(Mum)-TP]

10. The primary onus of establishing the fact that its international transactions have a close nexus each other and thus, have been bundled for benchmarking purpose, rest with the taxpayer

Background



Kaypee Electronics & Associates Pvt. Ltd. ["the taxpayer"] is engaged in manufacturing of magnetic based electronic coils, transformers and inductors. The taxpayer entered into technology collaboration agreement with its associated enterprise ["AE"], i.e. Falco Limited Hong Kong, for manufacturing electronic components using technology and knowhow of Falco for marketing and selling components under the brand name of Falco. As consideration, the taxpayer agreed to pay royalty at the rate of 8% on the sales. For benchmarking its international transactions, including the payment of royalty, the taxpayer plied the entity-wide approach using Transactional Net Margin Method ["TNMM"].

The Transfer Pricing Officer ["TPO"], during the course of assessment proceedings, alleged that the royalty, so paid the taxpayer to its AE, shouldn't have been computed at the gross sales value as it tantamount to paying the royalty on the purchases made by AE also. Accordingly, the TPO recomputed the amount of royalty by deducting the material cost from the value of sales made by the taxpayer and made an upward adjustment INR 27.52mn. As the Dispute Resolution Panel upheld the actions of TPO, the aggrieved taxpayer filed an appeal before Income Tax Appellate Tribunal ["ITAT"/ "the Tribunal"].

Proceedings before the ITAT

Taxpayer's Contentions: No separate benchmarking is required in respect of royalty payments, since TNMM is applied using entity-wide approach.

The Tribunal's Ruling: The Tribunal ruled out the following:

- The international transactions can be clubbed with other international transactions only when such international transactions have a close nexus. Further, the onus is on the taxpayer to establish such justification. As the taxpayer failed to establish this fact both during the course of assessment proceedings and before the ITAT, accordingly, the taxpayer's submission that *"when the entity wide TNMM is applied to benchmark all the transactions, then there exists no necessity for benchmarking royalty transaction on standalone basis",* was factually incorrect and was nothing but an attempt to mislead the court; and
- As regard to the re-computation of amount of royalty, the ITAT observed that the taxpayer failed to point out any fallacies in TPO's reasoning or in the working of ALP adjustment.

Basis the above, the Tribunal held that the taxpayer had also failed to discharge its onus of establishing that how the transaction of royalty payment was closely linked with the other transactions. Hence, the order of TPO was confirmed by the Tribunal.

NANGIA'S TAKE

It is a set principle in the Indian TP legislation that at the first instance, it is onus of the taxpayer not only to provide all information with regard to the stands/ positions taken while benchmarking its international transactions but also required to establish the facts associated with the same in the light of necessary evidences and supporting documents.

Source: Kaypee Electronics & Associates Pvt Ltd [TS-310-ITAT-2017(bang)-TP]

INDIRECT TAX

11. State GST act passed by 12 assemblies

- Twelve state assemblies have passed the State Goods & Service Tax Act (SGST) Acts as the Centre gears up to the roll out the new indirect tax regime nationwide from 1st July, 2017. The other states are also in the process of calling sessions of respective legislative assemblies for passage of law.

Highlights:

- Haryana, Madhya Pradesh, Assam, Uttarakhand, Telangana, Bihar, Rajasthan, Jharkhand, Chhattisgarh, Bhopal, Arunachal Pradesh & Goa have already passed SGST Act.

- Revenue Secretary Dr. Hasmukh Adhia holds detailed review of IT-P reparedness for the roll-out of Goods and Services Tax (GST) from July 01, 2017. [Press Note dated 11th May 2017 (Release ID 161706) by Ministry of Finance]

- GSTN is conducting a pilot on GST System Software from ay 2nd to 16th May, 2017, where 3200 taxpayers drawn from each State/UT and Centre will be participating.

- The pilot covers all the three modules and is being run to give the taxpayers first hand opportunity to work on the live system as the creation of return has become an interactive process.

- 60.5 lakh taxpayers out of 84 lakh have enrolled themselves with the GSTN system. Registration to be reopened for 15 days from 1st June, 2017.

- Finance Minister to chair next GST Council meeting on 18-19 May in Srinagar for fitment of various goods or services into rate baskets.

NANGIA'S TAKE:

Our Hon'ble Finance Minister Arun Jaitely said GST is on schedule for implementation from 1st July, 2017. GST which is a simpler, more efficient taxation system would ease the process of doing business. We express our serious concern on preparedness of industry for implementation of GST from 1st July, 2017.