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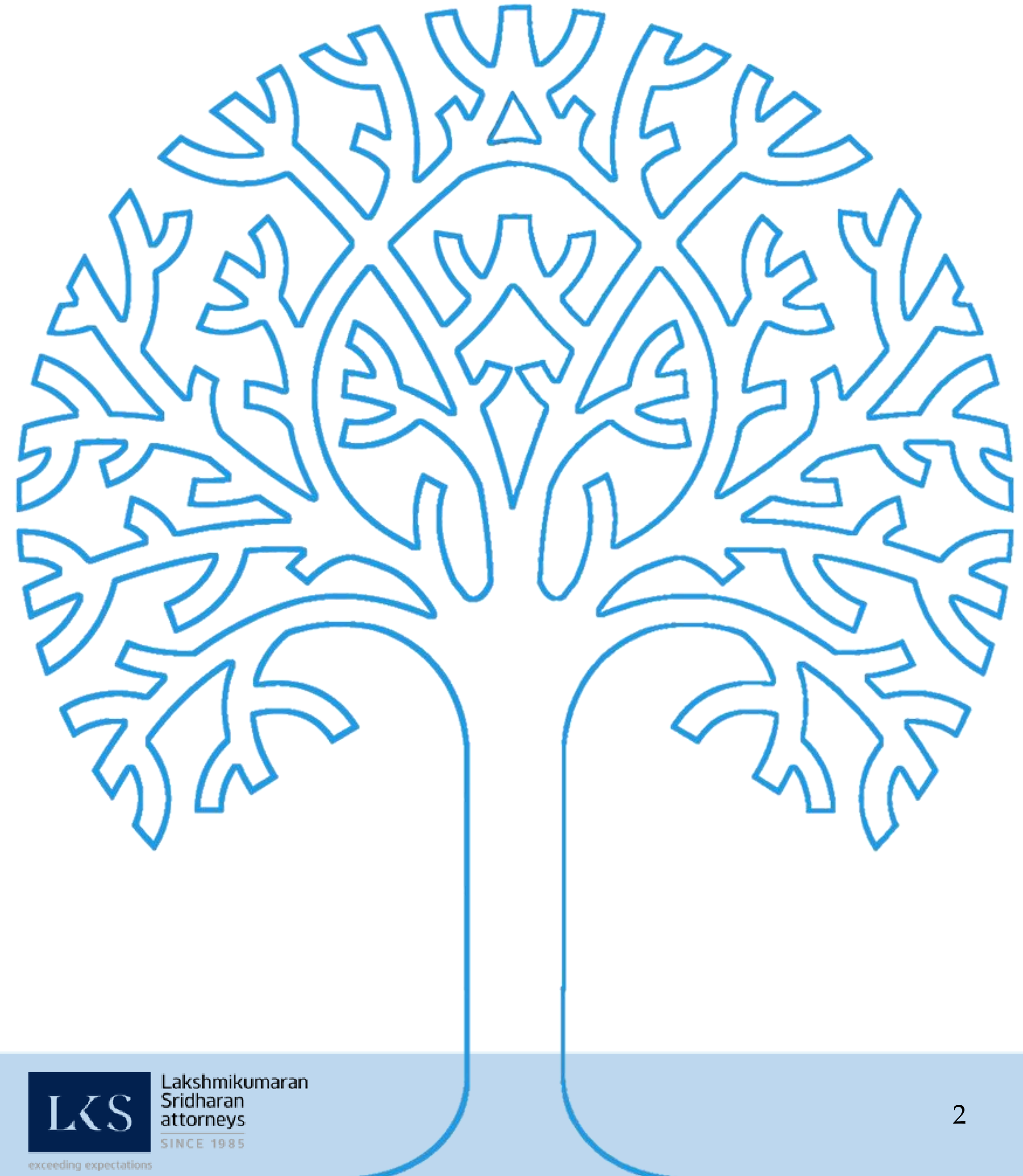

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Article

Garnishee of a garnishee: The Income Tax perspective

By **Ravi Sawana and Apurva Chaudhary**

'Garnishee of Garnishee' is triggered when the garnishee fails to make the payment to the creditor of its debtor and pursuant to which, the creditor seeks to recover money from the debtors of the garnishee. The article in this issue of Direct Tax Amicus discusses in detail the question as to whether the tax department has power to go after the debtors of the garnishee i.e., whether it would lead to issuance of notice under Section 226(3) to garnishee of garnishee. Citing various case law and interpretating the provisions, the authors are of the view that the Income Tax Act does not allow layered garnishment, i.e. recovery of dues from the debtor of the garnishee. According to them, jurisdiction of the tax department is thus restricted to the debtors of the assessee and cannot be construed to be extended to the debtors of the garnishee.

Garnishee of a garnishee: The Income Tax perspective

By Ravi Sawana and Apurva Chaudhary.

What is 'Garnishment' and 'Garnishee'?

'Garnishment' is the legal process under which a creditor recovers monies from third parties who owe money to its debtor. Garnishment has the effect of settlement of dues of mutual amount between three parties, where one person (judgement creditor) is owed certain dues by another (judgement debtor) and a third party (garnishee) is indebted to such debtor. It is a '*judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party*'[1]. Therefore, the essentials of garnishment are (i) a debt should be owed by a person ('Mr. X') to another ('Mr. Y'); (ii) third party ('Garnishee') owes money to the said debtor ('Mr. X'); and (iii) the garnishee transfers this money to Creditor (Mr. 'Y') of said Debtor.

What is 'Layered Garnishment' / 'Garnishee of Garnishee'?

'Garnishee of Garnishee' is triggered when the garnishee fails to make the payment to the creditor of its debtor. Pursuant to which, the creditor seeks to recover money from the debtors of garnishee.

Garnishment under Income-tax Act, 1961

The modes for recovery of taxes are prescribed in Section 222 of the Income-tax Act, 1961 ('**Act**'). In addition, Section 226 of the Act provides for 'Other modes of recovery' of taxes i.e., 'garnishee' proceedings. Sub-section (3) of Section 226 of the Act provides that the tax department is empowered to issue a notice to a person (i) who owes money to an assessee or (ii) who holds money for or on account of the assessee, either in present or in future. The effect thereof would be that such a person (garnishee) shall pay the amount (money sufficient to pay the amount due from the assessee or the whole of the money due from him to the assessee, whichever is less) to the tax department. On receipt of such a notice, the garnishee becomes

[1] 'garnishment', Black's Law Dictionary, 9th Edition, 2009, P. 750.

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personally liable to the tax department. In such a case, the garnishee may file a statement on oath to the tax department that the sum demanded is not due to the assessee or that he holds no money for or on account of the assessee, in which case the garnishee shall not be required to pay any sum or part thereof u/s. 226(3).

Consequences of non-payment by garnishee

If the garnishee fails to make the payment to the tax department as demanded in a notice issued under Section 226(3), then he shall be deemed to be an 'assessee in default' in respect of the amount mentioned in the notice. In that event, the tax department may recover the monies from garnishee, by attaching and selling his movable / immovable property and may lead to arrest of such person.

Once the garnishee is deemed as assessee in default, a question arises as to whether the tax department has power to go after the debtors of the garnishee i.e., whether it would lead to issuance of notice u/s. 226(3) to garnishee of garnishee?

One view is that No, monies due from garnishee cannot be recovered from garnishee of garnishee. Section 226(3)(x) of the Act under which the garnishee is treated as an assessee in default, only provides for recovery of money from garnishee in the manner prescribed in Section 222 to 225 i.e., *inter-alia* by selling his movable / immovable properties. The power to recover tax in terms of Section 226 is an additional mode of recovery and does not find mention in Section 226(3)(x).

Similar question had come up for consideration before the High Court of Bombay in the case of *McDermott International Inc.* v. *Union of India*[2]. In the given case, ONGC owed a certain sum of money to Company H (contractor), which in-turn owed money to the assessee (the sub-contractor). The Court, while determining the validity of the recovery of dues of the assessee from ONGC has clearly held that Section 226(3) of the Act was not applicable on sums due from ONGC to Company H, in respect of the sums due to the assessee. It was held that the action under Section 226(3) of the Act, in respect of the dues of the assessee could only be taken against Company H, that owed money to the assessee and not against ONGC, that did not owe any money to the assessee but owed money to Company H, the debtor of the assessee.

Further, the High Court of Calcutta in the case of *Shaw Wallace and Co. Ltd. and Anr.* v. *Union of India and others*[3], relied on the decision of the High Court of Gujarat in the case of *Smt.*

[2] [1988] 39 Taxman 58 (Bombay)

[3] (2004) 267 ITR 248

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Tejal R. Amin v. *ACIT*[4] to hold that the provisions of the sub-section (3) of Section 226 do not apply to the debtors of the garnishee and that on failure of the garnishee to pay the dues under the sub-section (3), the recovery can be made from the garnishee under Sections 222 – 225, deeming him to be an assessee in default. The Court noted that had the legislature intended to empower the AO / TRO to proceed against the debtors of the garnishee, it would not have added the phrase '*in the manner provided under sections 222 to 225*' in the clause (x) of Section 226(3) of the Act.

Another view is that monies due from garnishee can be recovered from garnishee of garnishee. This is for the reason that upon drawing up a certificate under Section 222 of the Act on the garnishee, the tax department can invoke Section 226(1A) of the Act and recover tax in the manner provided under Section 226, as discussed above. Section 226(1A) of the Act provides that '*Where a certificate has been drawn up under section 222, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.*' Drawing-up of a certificate under Section 222 against the garnishee is an entry point for the tax department under Section 226 and invokes the recovery mechanism provided therein.

It is relevant to note that the other view mentioned in the preceding paragraph was neither argued nor considered in the above referred judgements. Therefore, position can be litigative.

Conclusion

Considering the legal provisions and the judicial precedents discussed above, the authors are of the view that the Act does not allow layered garnishment, i.e. recovery of dues from the debtor of the garnishee (garnishee of garnishee). Hence, for the purpose of a garnishee order, the jurisdiction of the tax department is restricted to the debtors of the assessee and cannot be construed to be extended to the debtors of the garnishee.

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[4] (1994) 208 ITR 103

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Notifications & Circulars

- Higher rate of TDS/ TCS as per Section 206AA/ 206CC made non-applicable in case of death of deductee / collectee before linkage of PAN and Aadhaar
- Key amendments made by the Finance (No.2) Act, 2024

Higher rate of TDS/ TCS as per Section 206AA/ 206CC made non-applicable in case of death of deductee / collectee before linkage of PAN and Aadhaar

The provisions of Section 139AA of the Act require every person holding an Aadhar Card, to link the same to the Permanent Account Number (PAN) of such person, failing which the PAN of the person shall be considered as inoperative. Section 206AA of the Income Tax Act, 1961 requires tax to be deducted at a higher rate in the event that the PAN is invalid, i.e., not linked to the Aadhar Card of the person. Similarly, Section 206CC requires tax to be collected at a higher rate in case the PAN of the person is not linked to Aadhar Card.

The last date for linking the Aadhar Card with the PAN of the assessee, was extended by the CBDT by an earlier Circular No. 6 of 2024, till 31 May 2024, in respect of transactions till 31 March 2024.

Many assessees, however, cited genuine grievance that huge tax demands stood against various assessees who passed away before exercising the option for linkage of the Aadhar Card with the PAN Card.

The Central Board of Direct Taxes (CBDT) has, hence, with a view to redress these queries, issued Circular No. 8 of 2024 relaxing the provisions of higher deduction/collection of tax under Section 206AA/ 206CC of the Act respectively in case of demise of the deductee/ collectee on or before 31st May 2024.

Consequently, there is no obligation to deduct or collect tax at a higher rate on the deductor/collector in event of demise of the deductee/ collectee on or before 31 May 2024.

Key amendments made by the Finance (No.2) Act, 2024

I. *Rates of Taxes*

- Tax rates for individuals and HUFs opting for the new regime under Section 115BAC of the Act have been amended, and the revised rates of taxes under the new regime are as follows:

Income	Tax Rates
Upto Rs.3,00,000	Nil
3,00,001 - 7,00,000	5%
7,00,001 - 10,00,000	10%

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Income	Tax Rates
10,00,001 - 12,00,000	15%
12,00,001 - 15,00,000	20%
Above 15,00,000	30%

- Further, the rate of tax for foreign companies has been reduced from 40% to 35%.

II. *Heads of Income*

Salaries

- The Standard Deduction for employee under Section 16 has been increased from INR 50,000/- to INR 75,000/-.

Profits and gains of business or profession

- An explanation has been inserted below Section 28 to clarify that income from letting out of a residential house or a part of the house by the owner shall not be chargeable under the head 'Profits and gains of business or profession' and shall be chargeable under the head 'Income from house property'.
- Further, a new Presumptive taxation scheme has been introduced for non-residents engaged in the business of operation of cruise ships. New Section 44BBC has been introduced for the purpose. Consequently, Section 44B of the IT Act provides for presumptive taxation scheme for non-residents engaged in the business of shipping has been amended to exclude non-residents engaged in the business of cruise shipping.

Capital Gains

- Presently, transfer by way of gift, will or irrevocable trust would not constitute transfer u/s 47(iii). The Finance Act has now amended the said provision to the effect that the benefit of this provision shall now be restricted only to Individuals and HUFs, and would therefore not be extended to companies, partnerships or other persons.
- The definition of short-term capital asset u/s 2(42A) of the Act has been amended. Post the amendment, there now exist only two periods of holding, *viz.* 12 months for a listed security and 24 months for all other assets.
- The tax rate on Long Term Capital Gain on sale of listed equity shares and equity-oriented funds u/s 112A of the Act has been increased from 10% to 12.5%. The exemption limit to bring such gains to tax has been increased to Rs.1,25,000/-

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- The tax rate on Short Term Capital Gain (STCG) on sale of listed equity shares and equity-oriented funds u/s 111A of the Act is increased from 15% to 20%. All other STCG shall continue to be taxed at the rate applicable to the assessee.
- The benefit of indexation and the provisions related to indexation are removed with effect from 23 July 2024. Hence, long term capital assets, which were previously taxable at option of assessee at either 10% without indexation or 20% with indexation, would now be chargeable only @ 12.5% without benefit of indexation. In respect of immoveable properties acquired before 23 July 2024, the benefit of indexation has not been withdrawn and the tax payable under the provisions as they stood immediately before the amendment would be the final tax liability.

Income from Other Sources

- The provisions of angel tax u/s 56(2)(viib) of the Act have been abolished.
- Presently, tax on buyback of shares was levied u/s 115QA on companies buying back the shares and the consideration received was exempt in the hands of the shareholders u/s 10(34A) of the Act. The buyback tax in the company's hands has now been abolished and buyback of shares would now be considered as dividend income by way of introduction of section 2(22)(f) in the Act. Further, for the purposes of gains, full value of consideration for transfer of the said shares shall be considered as 'Nil'.

Deduction u/c VI-A

- Section 80CCD(2) and Section 36(1)(iva) of the Act have been amended to allow an increased deduction of 14% of the employee's salary as employer's contribution to pension scheme for non-government employers.
- The said benefit is only for employees opting for a new regime u/s 115BAC of the Act.

III. *Tax Deduction and Collection at Source*

- Section 194T has been introduced to create a withholding liability on partnership firms, which shall be required to withhold tax @ 10% on salary, remuneration, commission, bonus or interest paid or payable to partners. It is applicable to payments exceeding INR 20,000/-. The same is to take effect from 1 April 2025.

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- Section 194C provides for TDS on work and Section 194J provides for TDS on professional and technical services. There are cases which qualify as 'work' and 'professional services' both, such as advertisement by professionals, leading to ambiguity on the correct section to withhold taxes under. To eliminate the ambiguity, the definition of 'work' under Section 194C amended to exclude sums covered by Section 194J (such as fee for professional services, fee for technical services), Consequently, in case of services specified in 194J which also qualify as 'work', TDS needs to be deducted under 194J.
- Scope of TCS u/s 206C(1F) of the Act has been increased to provide for TCS on such luxury goods as Government may notify. The provision is to take effect from 1st January 2025.

IV. *Disputes and Dispute Resolution*

Assessment and Reassessment provisions

- The provisions of Sections 148 and 148A are once again substituted. Section 148A now provides time limits for Show Cause Notice being up to 3 Years in all cases, and beyond 3 years but not exceeding 5 years, if income chargeable to tax which has escaped assessment exceeds INR 50 lakh.
- Section 148 is also now substituted, providing the time limit for issuing Notice u/s 148 of the Act, within 3 years and 3 months in all cases, and exceeding 3 years 3 months, but not exceeding 5 years 3 months, where income escaping assessment exceeds INR 50 lakh.
- Section 151 is also amended to provide that the specified authority for sanction for the purpose of Sections 148 and 148A shall be Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be.
- All these amendments with respect to assessment and reassessment proceedings are to take effect from 1 September 2024.

Search Cases – Block assessment introduced

- The provisions related to assessment for search and seizure have been revamped. Till now, the reassessment of search cases also used to take place in accordance with the provisions of section 148 of the Act. The Finance Act has introduced block assessment for search cases, Hence, in respect of search conducted after conducted on or after 1 September 2024, block assessment is to be conducted for six years preceding the year of search.

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- A consolidated assessment at 60% of total income as increased by surcharge as the Central Government may notify shall be conducted.

Vivad se Vishwas Scheme 2024 (VSV 2024)

- A scheme similar to Vivad se Vishwas Scheme, 2020 (VSV 2020) implemented earlier, is brought again. The scheme would bring into eligibility all matters pending on 22 July 2024.
- Following persons would not be eligible for VSV 2024:
  - Where assessment or reassessment is carried out based on search. Unlike VSV 2020 which allowed applying for the scheme in search cases where disputed tax was upto INR 5 crore, such search cases are completely made ineligible from opting this scheme.
  - Relating to assessment year where prosecution is initiated
  - Relating to undisclosed income or undisclosed asset outside India
  - Relating to assessment or reassessment based on information received from foreign country
  - Person in respect of whom order of detention passed or prosecution instituted under certain Acts such as Narcotics Act, PMLA etc.
- The amounts payable by appellants opting for the said scheme is as under:

Type of Dispute	**Date of filing of appeal**	**Amount payable - Application filed before 31 December 2024**	**Amount payable - Application filed on or after 1 January 2025**
Tax Disputes	After 31 January 2020	Entire amount of disputed tax	10% additional amount payable
	Before 31 January 2020	110% of amount of disputed tax	10% additional amount payable

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Type of Dispute	Date of filing of appeal	Amount payable - Application filed before 31 December 2024	Amount payable - Application filed on or after 1 January 2025
Interest or Penalty Disputes	After 31 January 2020	25% of disputed interest / penalty	5% additional amount payable
	Before 31 January 2020	30% of disputed interest / penalty	5% additional amount payable

- Key differences between VSV 2020 and VSV 2024 are as follows:
  - VSV 2024 cannot be opted for in search cases at all, unlike VSV 2020 which allowed search cases to opt for it when disputed tax did not exceed Rs.5 crores.
  - VSV 2020 could be availed where though appeal not pending but period for filing appeal has not lapsed. Such is not the case with VSV 2024

V. *Others*

Charitable Institutions

- The present exemption regime u/s 10(23C) of the Act shall now be discontinued and only one exemption regime u/s 11 of the Act shall continue.
- Presently, an exit tax is levied in case of a merger of trust into another, unless such merger is into a trust having similar objects and such trust were registered or approved under these regimes. The amendment is proposed to include that this benefit shall be available to a merger which fulfills such conditions as may be prescribed.
- CBDT shall also exercise powers u/s 119 of the Act to empower authorities to entertain condonation applications for delay in filing for registration.
- Timelines for disposing applications for registration u/s 12AB and 80G are amended and relaxed.

Equalisation Levy on e-commerce abolished

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- An Equalisation Levy at 2% was introduced by Finance Act, 2020 on consideration received by a non-resident e-commerce operator from e-commerce supply or services. The said levy is withdrawn with effect from 1 August 2024.
- A corresponding exemption was provided under Section 10(50) the IT Act for income arising from e-commerce supply or services which were liable to Equalisation Levy. This exemption has also been withdrawn w.e.f. 1 August 2024.

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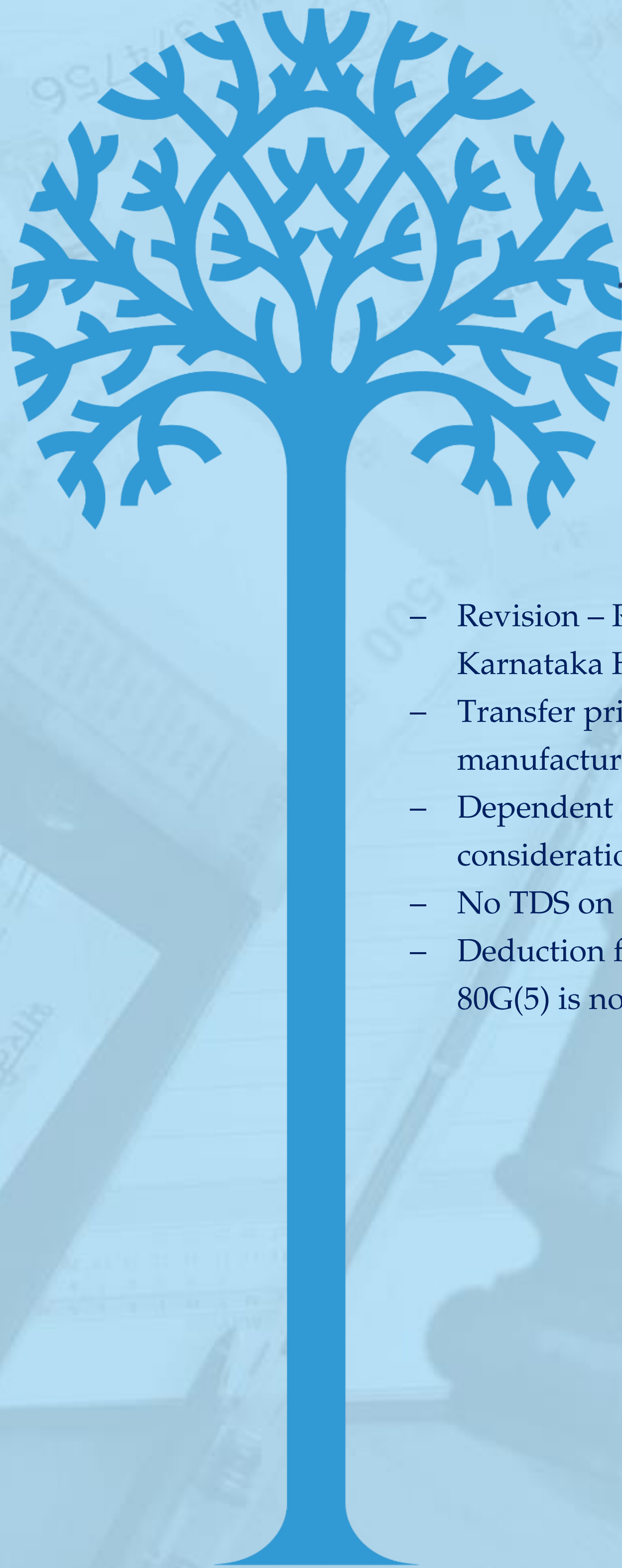

Ratio Decidendi

- Revision – Relaxation of limitation under Section 263(3) is not available where remand not made to PCIT – Karnataka High Court
- Transfer pricing – ALP of royalty payment cannot be considered as Nil, treating assessee as contract manufacturer, when assessee a licensed manufacturer – Delhi High Court
- Dependent Agent PE – Assessee not having transaction with a foreign company for the year under consideration cannot constitute DAPE for such foreign company – ITAT Bengaluru
- No TDS on payments becoming taxable later due to retrospective amendment – Bombay High Court
- Deduction for contribution to relief funds and charitable institutions – Application for final approval u/s. 80G(5) is not time barred even if activities commenced prior to provisional approval – ITAT Kolkata

Revision – Relaxation of limitation under Section 263(3) is not available where remand not made to PCIT

The present case deals with a notice issued by the Principal Commissioner of Income Tax (PCIT), deeming an order passed by the Transfer Pricing Officer (TPO) pursuant to certain directions of the Income Tax Appellate Tribunal (ITAT), as prejudicial to the interests of the Revenue. The said notice was issued beyond the time limit prescribed under Section 263(2) of the Income Tax Act.

The provisions of Section 263(2) provide that no order under Section 263(1) shall be passed after two years from end of the financial year in which the order sought to be revised is passed. Based on the said understanding, Karnataka High Court allowed a Writ Petition filed by the respondent assessee, on the said contention of it being barred by limitation.

The PCIT thereafter filed a review petition before the Court, contending that the order of the TPO was passed in pursuance of remand by the ITAT, and hence the case fell in Section 263(3) of the Act, which provides that time limit under subsection (2) shall not apply in case of orders passed in consequence of, or giving effect to, order of ITAT or High Court or Supreme Court.

The High Court, however, observed that the provisions of Section 263(3) apply only when there is remand or direction by the ITAT or the Courts to the revisional authority. In the present case, the matter was remanded to TPO and not to the PCIT, and hence the provisions of Section 263(3) do not apply. Therefore, the limitation period would be calculated in accordance with Section 263(2), and thus, the review petition was dismissed.

[*PCIT v. Quest Global Engineering Services Pvt Ltd.* – TS 286 HC 2024(KAR)]

Transfer pricing – ALP of royalty payment cannot be considered as Nil, treating assessee as contract manufacturer, when assessee a licensed manufacturer

In the present case, the assessee was a wholly owned subsidiary of a Korean Company and was engaged in manufacture and sale of mobile phones in India. The assessee was in receipt of design, know-how, and other components from its Korean parent for which it paid technical assistance fee and also royalty of INR1.99 crore. During assessment proceedings, the TPO determined the

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Arm's Length Price (ALP) of the royalty as 'Nil', on the basis that the assessee was merely a contract manufacturer, and consequently, a final assessment order came to be passed. Upon appeal, the Tribunal followed its own decision rendered in the case of the assessee for the previous year and allowed the appeal, against which the Revenue filed an appeal in the High Court.

The Revenue contended that the assessee was a contract manufacturer for its Korean parent and hence, payment of royalty would effectively mean payment to its own self. It was further contended that the gross profit on sales to AEs was at 19.18% as against 23.24% to independent third parties.

The Court, referring to factual backdrop of the assessee's case in AY 2007-08, observed that royalty payments were indelibly connected to receipt of technical know-how from Korean parent. It further observed that though the Korean parent had close overview of quality of raw materials and production process, it did not control or determine quantity of production. The mere fact that the assessee was a wholly owned subsidiary would not necessarily mean that it was engaged as a contract manufacturer. The High Court also rejected the argument that the entire transaction was intended as a profit-shifting mechanism.

Observing that since the technical know-how was owned by the Korean parent and it would be eligible for royalty as it owned the brand name under which the assessee manufactured and sold phones, the Court held that the right of the Korean parent to receive such royalty cannot be negatived. Revenue's appeal was thus dismissed.

[*Principal Commissioner of Income-tax* v. *Samsung India Electronics (P.) Ltd.* – [2024] 164 taxmann.com 706 (Delhi)]

Dependent Agent PE – Assessee not having transaction with a foreign company for the year under consideration cannot constitute DAPE for such foreign company

The assessee, in the present case, was a developer and provider of data storage devices and solutions under the brand name 'WD'. During FY 2016-17, the assessee acquired SanDisk Corporation, USA ('**SanDisk USA**'), and through it, its subsidiary, SanDisk India Device Design Centre Pvt. Ltd. ('**SanDisk India**'). The issues under consideration arose for AY 2016-17, when the assessee had not acquired SanDisk USA and effectively, SanDisk India.

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During the course of a survey on SanDisk India in January 2019, it was found that SanDisk India had reimbursed salaries of expats sent by SanDisk USA for Marketing Support Services (MSS). The AO alleged that the marketing team of SanDisk India would constitute agency PE of the assessee during the said year and that the salaries reimbursed by SanDisk India to SanDisk USA would be Fees for Technical Services in hands of assessee, thereby attributing 30% of revenue from operations in India as business income of the PE in India. The DRP confirmed the order of the AO.

Before the ITAT, the assessee contended that it was not even an AE of SanDisk India for AY 2016-17, nor did have any transactions with SanDisk India in AY 2016-17. Hence, the question of treating reimbursements by SanDisk India to SanDisk USA as FTS in assessee's hands does not arise. The ITAT observed that for AY 2016-17, the AO had not brought any document on record to aver that the assessee provided any MSS or sales services to SanDisk India. On the contrary, the ITAT observed that financial statements along with the TP study reports were contrary to the findings of the AO in his remand report. The ITAT further held that the addition of FTS in assessee's hands for reimbursement of expats' salary by SanDisk India to SanDisk USA, is a sheer non-application of mind.

Further, since there is no transaction between the assessee and SanDisk India, the question of SanDisk India constituting agency PE of assessee in India cannot arise at all. There is clearly no interrelation between the assessee and SanDisk India for AY 2016-17. Hence, it cannot be construed as a dependent agent PE of assessee in India.

[*Western Digital Technologies Inc.* v. *DCIT (International Tax)-2(1), Bangalore* – TS-555-ITAT-2024(Bang)]

No TDS on payments becoming taxable later due to retrospective amendment

The Goa Bench of Bombay High Court has upheld the Income Tax Appellate Tribunals order deleting an addition under Section 40(a)(ia) of the Income Tax Act for non-deduction of tax at source on payments made to non-resident entities under Section 195. The payments were for services related to the sampling and analysis of cargo at the destination port. The Revenue argued that the income became taxable due to a retrospective amendment to the Explanation to Section 9, introduced by the Finance Act 2010, which removed the

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requirement for actual rendition of services in India as a prerequisite for taxation.

The High Court concurred with ITAT's view that the assessee could not be expected to deduct tax at source on payments that became taxable solely due to a retrospective amendment. The Court applied the principle of '*impotentia excusat legem*' (disability excuses compliance with the law) and '*lex non cogit ad impossibilla*' (the law does not compel the impossible), holding that compliance with the retrospective amendment was impossible.

The Court relied on a co-ordinate bench judgment[5], reinforcing that an assessee could not be expected to deduct tax at source for payments that became taxable due to a retrospective amendment. The High Court further relied on the decision of the Supreme Court[6], which emphasized that compliance with retrospective amendments is not obligatory if it is impossible. The HC's decision reaffirms the principle that retrospective amendments cannot impose an obligation on taxpayers to perform acts that were impossible at the time of the original transaction.

[*ACIT* v. *Sociedade De Fomento Industrial Pvt. Ltd.* – TS-483-HC-2024(BOM)]

Deduction for contribution to relief funds and charitable institutions – Application for final approval u/s. 80G(5) is not time barred even if activities commenced prior to provisional approval

Pursuant to receipt of provisional approval u/s 80G(5)(iv) of the Act, the assessee in the present case applied for final approval u/s 80G(5)(iii) of the Act. However, the CIT(E) rejected the application on the ground that the time limit for making such an application was six months prior to the expiry of the provisional approval or within six months of the commencement of activities, whichever was earlier. Since the trust had commenced activities in 2002, it had missed the stipulated deadline for final approval.

[5] *PCIT* v. *Ajit Phatarpekar*, (2020) 429 ITR 319 (Bombay HC)

[6] *Engineering Analysis Centre of Excellence (P.) Ltd.* v. *CIT*, (2021) 125 taxmann.com 42 (SC)

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The Tribunal found that the CIT(E) had misconstrued the provisions of Section 80G(5). The finding that the application for final approval was time-barred because the assessee had commenced its activities prior to provisional approval was incorrect. The Tribunal noted that the provision does not preclude institutions that commenced activities before provisional approval from applying for final approval, and that the correct interpretation would be that after obtaining provisional approval, an institution can apply for final approval regardless of when it started its activities. The Tribunal noted that CBDT Circular No. 6 of 2023 extended the deadline for filing applications for final approval to 30 September 2023. It was held that the assessee's application was within this extended deadline, making it valid.

[*North Eastern Social Research Centre* v. *Commissioner of Income-tax (Exemption)* – [2024] 165 taxmann.com 12 (Kolkata - Trib.)]

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