Direct Tax

amicus

May 2025 / Issue –128

Lakshmikumaran Sridharan attorneys
SINCE 1985
exceeding expectations

An e-newsletter from
Lakshmikumaran & Sridharan, India

Table of Contents

Article

To report or not to report, that is the Branch Office question

By **Tanmay Bhatnagar**

Applicability of Transfer Pricing provisions are generally not envisaged where an Indian company is operating its branch office outside India. However, the taxpayers may have to re-examine this position in the light of the recent judgment of the Gujarat High Court in the case of *Axis Bank Limited*. Elaborately discussing the said decision, its ramifications, and a detailed analysis, the author points out that it is debatable if the Legislature ever intended to bring the transactions between Indian companies and their overseas branch offices into the ambit of the TP provisions. Further, while observing that the taxpayers may have to re-evaluate their reporting obligations in the light of the decision, the author highlights that the taxpayers should also be cognizant of the fact that the Department may seek to deny credit for the taxes paid in the jurisdiction in which the branch office is situated, basis a re-computation of the business profits attributable to such office.

To report or not to report, that is the Branch Office question

By Tanmay Bhatnagar

When one thinks of the applicability of the Transfer Pricing ('**TP**') provisions of the Income-tax Act, 1961 ('**Act**'), the first thing that comes to mind is a situation where an Indian company has transactions with its group entities outside India or *vice versa*.

A situation where the applicability of TP provisions is generally not envisaged is where an Indian company is operating its branch office ('**BO**') outside India. On first glance, the said assumption seems reasonable since: (a) a BO is nothing but an extension of the Indian entity outside India and is not a separate legal entity in itself; and (b) the global income of the Indian entity is taxable in India, which would mean that the entire income of the branch office is included in the said global income by default.

However, the taxpayers may have to re-examine this position in light of the recent judgment of the Hon'ble Gujarat High Court ('**Gujarat HC**') in the case of *Axis Bank Limited*[1] ('**Axis**').

Decision in the case of Axis

In the said case, Axis, an Indian banking company engaged in the financial services sector, had a BOs in Sri Lanka, Singapore and Dubai. During the year under consideration, Axis' case was referred by the Assessing Officer ('**AO**') to the Transfer Pricing Officer ('**TPO**') with respect to the transactions between the head office ('**HO**') and the BOs.

Aggrieved by it, Axis challenged the said reference *inter-alia* on the grounds that its BO could not be considered to be its associated enterprise ('**AE**') in terms of Section 92B of the IT Act as there was no income element involved in the transactions between the HO and BO. Axis reasoned that this was the case as the HO and the BO were the same entity and also because it was an Indian resident whose global income (which would include the BO's income) was chargeable to tax in India. In order to support its position, Axis placed reliance on the decisions of the ITAT in *Elder Exim (P.) Ltd.*[2] and *Aithent Technologies (P.) Ltd.*[3].

[1] *Axis Bank Limited* v. *ACIT*, Judgment dated 18 March 2025 in Special Civil Application No. 1717 of 2021, Gujarat HC.

[2] *Elder Exim (P.) Ltd.* v. *DCIT*, [2017] 167 ITD 208 (Mumbai).

[3] *Aithent Technologies (P.) Ltd.* v. *DCIT*, [2015] 154 ITD 285 (Delhi - Trib.).

While rendering its judgment, the Gujarat HC rejected Axis' arguments and noted that the said contentions had been dealt with by the TPO in Axis' case for another assessment year whose facts were identical to the year under consideration. Considering the TPO's said order, the HC held that it was apparent that Axis had failed to report the international transactions between its HO and BO and the determination of ALP for such transactions would have an impact on its income. Accordingly, the HC concluded that the AO was correct in making the reference to the TPO.

From the perusal of the judgment, it appears that Gujarat HC has affirmed the following findings made by the TPO:

- The term 'enterprise' as defined in Section 92F of the IT Act includes within its ambit the permanent establishment ('**PE**') of an assessee. Thus, an assessee's BO would be considered to be its AE for the purposes of TP regulations and consequently, any transaction between the HO and BO would be an 'international transaction'.
- Even though the profits of the PE would be taken into account while computing the global income of the resident company, the credit for taxes paid in the other country would be provided in India. Consequently, transfer of higher profits to PE would result in a loss of taxes to India on account of the inflated tax credit claim by the assessee.
- In the case of banking companies, Double Taxation Avoidance Agreements ('**DTAAs**') provide that interest expenses paid to HO would be allowed while computing the income of the BO/PE. Hence, such transactions between HO and BO must be benchmarked.
- The reliance place by Axis on the decisions in *Aithent Technologies (P.) Ltd. (supra)* and *Elder Exim (P.) Ltd. (supra)* was incorrect as those cases were factually different.

Upon perusing the observations made by the TPO, the Gujarat HC held that the Assessee had failed to disclose international transaction with its overseas branches and that the TPO can exercise jurisdiction to determine ALP of the said transactions.

However, considering that the Assessee was not provided an adequate opportunity before making such reference, the Court quashed the reference made by AO and remitted the proceedings to AO for passing fresh order after hearing the Assessee.

Ramifications of the Gujarat HC decision

Even though the Court ultimately remanded the matter back to the file of Assessing Officer, the Court did validate TPO's jurisdiction to examine the pricing of transaction between the India HO and its foreign branches. It follows from the said finding that if Indian company has its BO outside India, the latter would be considered to be its AE and consequently, any transactions between them would be considered to be 'international transactions' as per Section 92B of the IT Act that would have to be reported in Form 3CEB. In case the same is not done, it would *inter-alia* result in a penalty of 2% of the value of such 'international transactions' under Section 271AA of the IT Act. Further, it also seems that the ALP determined by the TPO could be considered for validating the tax credit claimed by the taxpayer.

Analysis of the Gujarat HC decision

Considering the implications of the position laid down by the Gujarat HC with respect to overseas BOs under the TP provisions, it is important to analyse the reasoning given to arrive at the aforesaid conclusions.

While reference has been made to the definition of the term 'enterprise' in Section 92F of the IT Act to state that a BO or PE of an Indian company would fall within its ambit, the meaning given to the terms 'associated enterprise' and 'international transaction' in Sections 92A and 92B of the IT Act respectively seems to have been overlooked.

It is a settled position of law that for two 'enterprises' to be classified as AEs under Section 92A, it is necessary that the conditions laid down sub-sections (1) and (2) thereof must be satisfied concurrently. In this regard, it should be noted that an overseas BO is merely an extension of an Indian company and not a separate legal entity having its own existence. Therefore, most of the scenarios laid down in Section 92A of the IT Act may not be satisfied in the case of an overseas BO of an Indian company. Thus, it can be argued that while an overseas BO may satisfy the definition of 'enterprise' under Section 92F, it would still not qualify as an AE under Section 92A, which is a *sine qua non* for a transaction between two 'enterprises' to be an 'international transaction'.

Furthermore, even if it were to be argued that an overseas BO would qualify as an AE under Section 92A, a transaction between the Indian company and such BO would still have to cross the threshold of being an 'international transaction' under

Section 92B of the IT Act. Section 92B clearly provides that for a transaction between AEs to qualify as an 'international transaction', the overseas BO has to be a non-resident. The term 'non-resident' has been defined in Section 2(30) of the IT Act in a negative manner to mean a person who is not a 'resident' as per section 6 of the IT Act. Averting to Section 6 of the IT Act, it becomes apparent that the test of residency can only be applicable in case of a 'person', whose definition in Section 2(31) only includes a 'company' and not a BO. Since a BO is a not a separate legal entity and rather an extension of the Indian company, there is no question of it separately being treated as a 'non-resident' under the IT Act. Thus, any transaction between an Indian company and its BO cannot be considered to be an 'international transaction'.

The said view is further buttressed by the fact that the global income of an Indian company, which would include the income earned by all of its overseas BOs, is chargeable to tax in India. The said view has been discussed in detail by the ITAT in the cases of *Aithent Technologies (P.) Ltd. (supra)* and *Elder Exim (P.) Ltd. (supra)*. However, this aspect has not been properly dealt with in the case of *Axis Bank Limited (supra)*.

Moreover, while reference has been made to the provisions of DTAAs in *Axis Bank Limited (supra)*, the TPO's order fails to address the fact that by way of the constitution of a PE, it is not the BO of the Indian company which would be taxed in the other jurisdiction but the Indian company itself. Moreover, it is only for the purposes of computing the extent of an Indian company's taxable income in the other jurisdiction that profits have to be attributed to the PE/BO and thus, a notional exercise of benchmarking the 'transactions' between them needs to be carried.

The rationale of TPO' order (which has ultimately been accepted by the Gujarat HC) rests on examination of quantum of foreign tax credit claimed by the taxpayer as the premise to justify the TPO reference of transaction between Indian HO and foreign branch. It is without a doubt that the tax officer has the power to examine the quantum of foreign tax credit claimed by the taxpayer. This is because as per Rule 128 of the Income-tax Rules, 1962 ('**IT Rules**') foreign tax paid in excess of the tax payable as per the DTAA is to be ignored for the purpose of granting tax credit. However, the problem with this approach is that Rule 128 of the IT Rules does not authorize a reference to the TPO for determining foreign tax credit.

The established principle for permanent establishments is that the source state determines income under the Business Profits Article of the relevant treaty. Adherence by the source state to these principles obligates the resident state to grant treaty-based credits without re-computing branch income. Adopting the TPO's interpretation would require the resident state (India, in Axis' case) to re-determine branch income for credit purposes. Given the subjective nature of arm's length profit determination and potential divergence between states, this interpretation would create a chaotic system, forcing taxpayers to justify branch profits in both jurisdictions and risk losing credits. Consistent application would necessitate frequent Mutual Agreement Procedure recourse to ensure credit availability.

Conclusion

As is apparent from the scheme of provisions of the IT Act, it is debatable if the Legislature ever intended to bring the transactions between Indian companies and their overseas BOs into the ambit of the TP provisions. However, till the time the decision of Gujarat HC in *Axis* remains the only HC decision on the issue, the Department is unlikely to accept any position to the contrary taken by taxpayers. Non-reporting of the transaction can result in a potential penalty of 2% of the value of the transaction. Therefore, considering the financial impact that non-reporting such transactions can have under the IT Act, the taxpayers may have to re-evaluate their reporting obligations in the light of the decision of Gujarat HC.

Furthermore, considering the comments of the TPO in *Axis's* case, taxpayers should also be cognizant of the fact that the Department may seek to deny credit for the taxes paid in the jurisdiction in which the BO is situated basis a re-computation of the business profits attributable to such BO.

[The author is Principal Associate in Direct Tax practice at Lakshmikumaran & Sridharan Attorneys, New Delhi]

Notifications & Circulars

- Collection of tax at source under Section 206C(1F) – Additional goods notified
- Form ITR-B to be filed for the block period with respect to search and seizure proceedings
- Expenditure incurred for settlement of proceedings under certain legislations to be denied deduction
- Reporting Long-Term Capital Gains under ITR-1 and ITR-4
- New ITR Forms notified for AY 2025-26
- Direct Tax Vivad se Vishwas Scheme, 2024 – Last date for filing declaration extended

Collection of tax at source under Section 206C(1F) – Additional goods notified

The CBDT has, *vide* Notification No. 35/2025 and Notification No. 36/2025 dated 22 April 2025, notified the following goods for collection of tax at source u/s 206C(1F)(ii) of the Income Tax Act at the rate of 1% of the sale consideration, if the value of the goods exceeds INR 10 lakhs:

- Any wristwatch.
- Any art piece such as antiques, painting, sculpture.
- Any collectibles such as coin, stamp.
- Any yacht, rowing boat, canoe, helicopter.
- Any pair of sunglasses.
- Any bag such as handbag, purse.
- Any pair of shoes.
- Any sportswear and equipment such as golf kit, ski-wear.
- Any home theatre system.
- Any horse for horse racing in race clubs and horse for polo.

Furthermore, consequential amendments have been made to Form 27EQ i.e., the quarterly statement of collection of tax at source under Section 206C.

Form ITR-B to be filed for the block period with respect to search and seizure proceedings

Rule 12AE of the Income-tax Rules, 1962 (‘**Rules**’) has been inserted *vide* CBDT Notification No. 30/2025 dated 7 April 2025, to notify form ITR-B for filing of return under Section 158BC(1)(a) of the Income-tax Act, 1961 (‘**Act**’) with respect to any search initiated under Section 132 or requisition made under Section 132A on or after 1 September 2024. Form ITR-B has been inserted in Appendix-II of the Rules.

The aforesaid rule further subjects allowability of a claim of credit of the tax payments made against undisclosed income of the block period, other than by way of self-assessment tax for the block period, to the verification by and satisfaction of the Assessing Officer.

Expenditure incurred for settlement of proceedings under certain legislations to be denied deduction

Exercising the powers granted to it under Section 37 of the Income Tax Act, 1961 the CBDT has, *vide* Notification No. 38/2025 dated 23 April 2025, notified that any expenditure incurred to settle proceedings initiated in relation to contravention or defaults under certain specified laws shall not be deemed to have been incurred for the purpose of business or profession. Consequently, no deduction or allowance under Section 37 shall be made in respect of such expenditure under the following Acts:

- The Securities and Exchange Board of India Act, 1992.
- The Securities Contracts (Regulation) Act, 1956.
- The Depositories Act, 1996.
- The Competition Act, 2002.

Reporting Long-Term Capital Gains under ITR-1 and ITR-4

With effect from 1 April 2025, the CBDT has amended Rule 12 of the Income Tax Rules in the following manner, *vide* Notification No. 40/2025 dated 22 April 2025:

- Resident individuals with only long-term capital gains (not exceeding INR 1,25,000/-) under Section 112A of the Income Tax Act and having no brought forward or carry forward losses under such head shall be required to file Form SAHAJ (ITR-1).
- Resident individuals, Hindu Undivided Families, or firms (other than Limited Liability Partnerships) deriving income under the head 'Profits or gains of business or profession' and computing such income in accordance with Sections 44AD, 44ADA and 44AE of the Act, and having only long-term capital gains, not exceeding INR 1,25,000/-, under Section 112A of the Act shall be required to file Form Sugam (ITR-4).

Additionally, Forms ITR-1 and ITR-4 have been substituted for AY 2025-26 with effect from 1 April 2025.

New ITR Forms notified for AY 2025-26

The CBDT has substituted the following ITR Forms for AY 2025-26 with effect from 1 April 2025:

- ITR-1 and ITR-4 *[CBDT Notification No. 40/2025 dated 22 April 2025]*
- ITR-2 *[CBDT Notification No. 43/2025 dated 3 May 2025]*
- ITR-3 *[CBDT Notification No. 41/2025 dated 30 April 2025]*
- ITR-5 *[CBDT Notification No. 42/2025 dated 1 May 2025]*
- ITR-6 *[CBDT Notification No. 44/2025 dated 6 May 2025]*
- ITR-V and ITR-Ack *[CBDT Notification No. 45/2025 dated 7 May 2025]*

Direct Tax *Vivad se Vishwas* Scheme, 2024 – Last date for filing declaration extended

The CBDT has, *vide* Notification No. 32/2025 dated 8 April 2025, notified 30 April 2025 as the 'last date' on or before which a declaration in respect of tax arrears is required to be filed by a declarant to the designated authority under Section 90 of the Direct Tax Vivad se Vishwas Scheme, 2024.

Ratio Decidendi

- Provisions of Indian Evidence Act / Bharatiya Sakshya Adhiniyam are not applicable in assessment proceedings under Income Tax Act – *Madras High Court*
- Compensation in lieu of surrender of 'right to sue' is a capital receipt not chargeable to tax as capital gains – *ITAT Mumbai*
- An appeal is not invalid merely due to amalgamation during appellate proceedings – *ITAT New Delhi*
- Exemption under Section 54 is available even if new residential property is purchased in one's spouse's name – Provisions of Section 54F are pari materia with provisions of Section 54 – *ITAT New Delhi*
- TDS not applicable on independent professional services by non-residents under India-Sri Lanka and India-Kenya DTAAs – *ITAT New Delhi*
- Interest available for delayed refund under Direct Tax Vivad se Vishwas Act, 2020 – *Kerala High Court*

Provisions of Indian Evidence Act / Bharatiya Sakshya Adhiniyam are not applicable in assessment proceedings under Income Tax Act

In this case, a search was conducted at the premises of the assessee during which certain electronic records were seized as evidence. Following the search, proceedings under Section 153A of the Income Tax Act, 1961 ('**IT Act**') were initiated for multiple assessment years and consequently assessment orders were passed. The assessment orders were challenged before the Single Judge Bench of the Madras High Court, *inter alia*, on the grounds of violation of the statutory mandate under Section 65B of the Indian Evidence Act, 1872 ('**IEA**')/Section 63 of Bharatiya Sakshya Adhiniyam, 2023 ('**BSA**'), which specifies that electronic evidence cannot be relied upon without proper certification.

The Single Judge of the High Court set aside the assessment orders, holding that there was a breach of natural justice as there was non-compliance with the statutory mandate under the IEA. However, the Division Bench overturned the Single Judge's order, holding as follows:

- Section 1 of the IEA and Section 1 of the BSA make it clear that the said legislations are applicable to judicial proceedings. However, nowhere do they mention that they would be applicable to quasi-judicial proceedings.
- The Supreme Court has on numerous occasions held that the rules of evidence will not strictly apply to assessment proceedings which are quasi-judicial in nature.
- The adverse material had been seized from the electronic systems of the assessee, and it would be highly improbable to expect the assessee to issue certificates in favour of the Income Tax Department, which would use the material against them in assessment proceedings.
- The Central Board of Direct Taxes' Digital Investigation Manual, which states that the procedure of Section 65B of the IEA must be followed while handling digital evidence, does not have any statutory value and is not binding.

[*ACIT* v. *Vetrivel Minerals* – Judgment dated 30 April 2025 in WA (MD) Nos. 119 to 123 of 2022, Madras High Court]

Compensation in lieu of surrender of 'right to sue' is a capital receipt not chargeable to tax as capital gains

The assessee had entered into an MOU with a developer to book a commercial space and paid an advance of INR 25 lakhs in lieu of the same. However, the said project was aborted and accordingly, the builder cancelled the assessee's allotment returned the advance *vide* a cheque which was not deposited in the bank by the assessee as the assessee had filed a suit for damages before the High Court. Subsequently, on account of a consent decree passed by the High Court, the developer agreed to pay damages amounting to around INR 7.65 crores to the assessee in lieu of the Plaintiff's right to sue.

Thereafter, a notice under Section 148A was issued to the assessee and an order under Section 148A(d) was passed determining that the assessee's case is not fit for reassessment. However, the PCIT in his revisionary jurisdiction issued notice under Section 263 regarding the issue of taxability of receipt of compensation and subsequently, treated the amount as a capital gain in the light of the Bombay High Court judgement in the case of *CIT* v. *Vijay Flexible Containers* [186 ITR 692], as the assessee had forfeited his right to sue in lieu of the compensation. The assessee challenged the said order before the ITAT. Setting aside the order of the PCIT, the ITAT held that:

- The judgement relied upon by the PCIT for making the addition was regarding forfeiture of right of specific performance for receiving damages, however, specific performance in the assessee's case is not possible as the project itself was aborted. Thus, the PCIT had placed incorrect reliance on the decision of *Vijay Flexible Containers* (*supra*).
- The right that a person acquires on the establishment of the breach of contract is a mere right to sue. Such a right to sue for damages is not an actionable claim and it cannot be assigned. Furthermore, Section 6 of the Transfer of Property Act, 1882 categorically provides that a mere right to sue cannot be transferred. Accordingly, the said right cannot be considered to be a capital asset in terms of Section 2(14) of the Income Tax Act, 1961 and the compensation received by the assessee in lieu thereof was a capital receipt not chargeable to tax as capital gains.

[*DCIT* v. *Ramesh Ravji Chheda* – Order dated 23 April 2025 in ITA No. 968/Mum/2025, ITAT Mumbai]

An appeal is not invalid merely due to amalgamation during appellate proceedings

An appeal had been filed before the Commissioner of Income Tax (Appeals) by a company by the name of IDP Education Exam Services Pvt. Ltd. ('**Original Assessee**'). However, during pendency of the appeal, the Original Assessee amalgamated into IDP Education India Pvt. Ltd. ('**Appellant**'). Thereafter, in response to a notice for hearing issued by the CIT(A), the Appellant filed a revised Form 35 and the fact of amalgamation was also brought to the notice of CIT(A). However, the CIT(A) dismissed the appeal in limine on the grounds that an order cannot be passed in the name of a non-existent entity.

Aggrieved by the CIT(A)'s order, the Appellant preferred an appeal before the ITAT. In the second appellate proceedings, the ITAT noted that it was an indisputable fact that the appeal before the CIT(A) had been filed by the Original Assessee, against whom the assessment order had been passed as well and that the amalgamation had taken place after such appeal had been filed.

Rejecting the CIT(A)'s reasoning, the ITAT held that if during pendency of appellate proceedings, the fact of amalgamation is brought on record, then, merely amendment of the title in Form 35 would be sufficient. The ITAT also observed that the CIT(A) should have taken into cognizance the fact that the Appellant was prevented from revising the original Form 35 on the income-tax portal. Accordingly, the ITAT held that the CIT(A) should have considered the manually filed revised appeal in Form 35 in the name of the Appellant (i.e., the amalgamated company) and consequently, remanded the matter back to the CIT(A).

[*IDP Education India Pvt. Ltd. v. DCIT* – Order dated 30 April 2025 in ITA No. 2582/Del/2024, ITAT Delhi]

Exemption under Section 54 is available even if new residential property is purchased in one's spouse's name – Provisions of Section 54F are *pari materia* with provisions of Section 54

The assessee sold his residential property for INR 43.5 lakh. He subsequently purchased another residential property for INR. 18.72 lakh in his wife's name. The assessee claimed exemption under Section 54 of the Income Tax Act, 1961 for the entire long-term capital gain, stating that the balance amount was utilized for renovating and repairing the newly purchased residential property. However, during the assessment, the assessee was unable to provide any documentary evidence to substantiate the said claim. Consequently, the AO restricted the claim of exemption under Section 54 with respect to the purchase price of the new residential property.

In the first appellate proceedings, the CIT(A) not only upheld this restriction but also denied the assessee's entire claim of exemption on the grounds that the new residential property was purchased in the name of the assessee's spouse.

In further appeal, the ITAT held that the assessee was entitled to claim exemption under Section 54 even though the new property was purchased in the name of his spouse by observing as follows:

Lakshmikumaran Sridharan attorneys SINCE 1985

- The provisions of Section 54F and Section 54 of the Act are *pari materia*. Thus, the jurisprudence regarding Section 54F, whereby exemption has been granted even in cases where a new residential property had been purchased in the name of the spouse, would also apply equally to claims under Section 54 of the Act.
- Section 54 is a beneficial provision which should be interpreted liberally in favour of the assessee, once the basic conditions laid down therein are satisfied. Accordingly, the ITAT noted that even though the assessee could not provide documentary evidence for the entire amount claimed as renovation expenses, a reasonable estimate of INR 8 lakhs towards such expenses could be allowed under Section 54 of the Act.

[*Dharam Veer Singh* v. *CIT* – Order dated 4 April 2025 in ITA No. 2778/DEL/2024, ITAT Delhi]

TDS not applicable on independent professional services by non-residents under India-Sri Lanka and India-Kenya DTAAs

During the year under consideration, the assessee made payments to a Sri Lankan resident for rendering certain spa management and consultancy services in India and to a Kenyan resident for conducting market surveys in Kenya for promotion of business. The assessee did not deduct tax at source on the payments made to such non-residents on the grounds that neither of them had any fixed base or permanent establishment in India and thus, their income was not chargeable to tax under the Act due to the operation of the articles dealing with the taxation of business income and independent personal services (‘**IPS**’) under the applicable Double Taxation Avoidance Agreements (‘**DTAAs**’).

However, the AO did not agree with the said contention of the assessee and treated the said payments as fees for technical services (‘**FTS**’) under Section 9(1)(vii) of the Income Tax Act, 1961. Accordingly, the AO held that since no tax was deducted at source, the corresponding expenditure is to be disallowed under Section 40(a)(i). In appeal, the CIT(A) upheld the said disallowance made by the AO by rejecting the assessee’s aforesaid contentions regarding the non-taxability of the payments under the respective DTAAs.

In further appeal, the ITAT found that the services rendered by both the non-residents were not managerial, technical, or consultancy in nature as defined in Explanation 2 to Section 9(1)(vii) of the Act, and thus, did not qualify as FTS. Instead, the

Lakshmikumaran Sridharan attorneys SINCE 1985 exceeding expectations

ITAT held that the professions mentioned in the articles dealing with IPS under the respective DTAAs, as the professions set out therein, are only illustrative and not exhaustive, and were wide enough to cover the services rendered by the two non-residents.

It was further held that the said services were out of special field of knowledge and learning that a person develops expertise in and to which they add their exclusivity, thus, falling under the criterion of being IPS. Moreover, since the non-residents did not have a fixed base in India and did not exceed the threshold period of stay, the income was not taxable in India. Accordingly, it was held that the assessee was not required to deduct TDS on these payments

[*Sujan Luxury Hospitality Pvt. Ltd.* v. *ACIT* – Order dated 25 April 2025 in ITA No. 2844/Del/2019, ITAT Delhi]

Interest available for delayed refund under Direct Tax *Vivad se Vishwas* Act, 2020

The assessee filed a declaration for settlement of dispute under Section 4(5) of the Direct Tax *Vivad se Vishwas* Act, 2020 ('**VSV Act**') pursuant to which a certificate was drawn by the ACIT showing that the assessee was entitled to a refund. Immediately thereafter, Form 5 was issued by the PCIT under Section 5(2) of the VSV Act. However, an order giving effect to the refund was passed after a period of two years without providing any interest to the assessee. Consequently, the assessee filed a writ petition before a Single Judge Bench of the High Court.

The single judge rejected the Department's contention that no interest was payable to the assessee because of a specific exclusion in Section 7 of the VSV Act regarding interest payable under Section 244A of the Income Tax Act, 1961. Rather, the Single Judge held that the requirement of imposing interest on delayed refunds is a matter of accountability of the Department to compensate the person who was deprived of the money.

Subsequently, the Department preferred an appeal before the Division Bench ('**DB**') of the High Court. Therein, the DB held that in the absence of absolute prohibition disentitling the assessee from claiming interest, the Department's contention, that once a declaration under Section 4 of the VSV is accepted and a refund is found to be due, the assessee cannot claim interest, was far-fetched.

The DB held that even though the assessee may not have been entitled to claim interest on refund under Section 244A of the Act due to the exclusion provided under Section 7 of the VSV Act,

LKS Lakshmikumaran Sridharan attorneys SINCE 1985 exceeding expectations

Courts have the power to grant interest under the provisions of Section 3 of the Interest Act, 1978. Thus, since the assessee was bound to make payment of any amount due to the Department within 15 days as per Section 5 of the VSV Act, the same also implies that the Department was equally bound under law to refund any excess amount to the assessee within a reasonable time. Accordingly, the DB upheld the Single Judge Bench's order

[*ACIT* v. *Satwashil Vasant Mane* – Judgment dated 3 March 2025 in WA No. 369 of 2025, Kerala High Court]

NEW DELHI 7th Floor, Tower E, World Trade Centre, Nauroji Nagar, Delhi – 110029 Phone : +91-11-41299800, +91-11-46063300 E-mail : Lsdel@lakshmisri.com , lprdel@lakshmisri.com	**MUMBAI** 2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg, (Near Century Bazar)Prabhadevi, Mumbai - 400025 Phone : +91-22-30567800/30567801 E-mail : lsbom@lakshmisri.com
CHENNAI Door No.27, Tank Bund Road, Nungambakkam, Chennai 600 034. Phone : +91-44-2833 4700 E-mail : lsmds@lakshmisri.com	**BENGALURU** 4th floor, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajkumar Road, Malleswaram West, Bangalore-560 055. Phone : +91-80-49331800 Fax:+91-80-49331899 E-mail : lsblr@lakshmisri.com
HYDERABAD 'Hastigiri', 5-9-163, Chapel Road, Opp. Methodist Church, Nampally, Hyderabad - 500 001 Phone : +91-40-2323 4924 E-mail :lshyd@lakshmisri.com	**AHMEDABAD** B-334, SAKAR-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad - 380 009 Phone : +91-79-4001 4500 E-mail : lsahd@lakshmisri.com
PUNE 607-609, Nucleus, 1 Church Road, Camp, Pune-411 001. Phone : +91-20-6680 1900 E-mail : lspune@lakshmisri.com	**KOLKATA** 6A, Middleton Street, Chhabildas Towers, 7th Floor, Kolkata – 700 071 Phone : +91 (33) 4005 5570 E-mail : lskolkata@lakshmisri.com
CHANDIGARH 1st Floor, SCO No. 59, Sector 26, Chandigarh -160026 Phone : +91-172-4921700 E-mail :lschd@lakshmisri.com	**GURUGRAM** OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A, Gurugram-122001 phone: +91-0124 - 477 1300 Email: lsgurgaon@lakshmisri.com
PRAYAGRAJ (ALLAHABAD) 3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg), Allahabad -211001 (U.P.) Phone : +91-532-2421037, 2420359 E-mail : lsallahabad@lakshmisri.com	**KOCHI** First floor, PDR Bhavan, Palliyil Lane, Foreshore Road, Ernakulam Kochi-682016 Phone : +91-484 4869018; 4867852 E-mail : lskochi@laskhmisri.com
JAIPUR 2nd Floor (Front side), Unique Destination, Tonk Road, Near Laxmi Mandir Cinema Crossing, Jaipur - 302 015 Phone : +91-141-456 1200 E-mail : lsjaipur@lakshmisri.com	**NAGPUR** First Floor, HRM Design Space, 90-A, Next to Ram Mandir, Ramnagar, Nagpur - 440033 Phone: +91-712-2959038/2959048 E-mail : lsnagpur@lakshmisri.com

www.lakshmisri.com **www.gst.lakshmisri.com** **www.addb.lakshmisri.com**

LKS Lakshmikumaran Sridharan attorneys
SINCE 1985
exceeding expectations