

International Taxation

CA. Hinesh Doshi, CA. Pramita Rathi

M/s. Myntra Designs Pvt. Ltd. vs. Deputy Commissioner of Income Tax, (International Taxation)
Circle-1(2) Bangalore [TS-833-ITAT-2021(Bang)] dated 03rd September, 2021

Facts:

- The assessee company made certain overseas payments towards advertising charges to a company in Ireland.
- During the course of assessment proceedings, AO observed that the assessee did not deduct tax at source u/s 195 of the Income Tax Act, 1961 as the above said payments were taxable in India primarily as 'royalty' and alternatively as FTSq/FIS.
- Accordingly, AO initiated proceedings u/s 201(1) of the Act treating the assessee as an 'assessee in default'.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the assessee was liable to withhold tax on the overseas payment made?

Held:

- Relying on the case of M/s Urban Ladder (supra), ITAT held that the payments made by the assessee to the non-resident company in Ireland could not be considered as "royalty".
- ITAT held that beneficial DTAA provisions were to be considered for determining taxability of income and mere usage of facility does not render the payments as "royalty" as copyright attached to the facility is not parted with.
- ITAT held that there was no requirement to deduct tax at source from those payments u/s 195 of the Act.
- ITAT observed that the assessee could not be considered as an assessee in default u/s 201(1) of the Act.
- Accordingly, ITAT ruled in favour of the assessee.

M/s. Crescent Payments Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Circle-6(1)(1)

Mumbai [TS-834-ITAT-2021(Mum)] dated 30th August, 2021

Facts:

- The assessee company was engaged in the business of Information Technology Enabled Services (ITES).
- During the course of assessment proceedings, AO observed that the monies received as remittance from holding company of the assessee in Canada, which was treated as gift.
- AO opined that such receipt was to be treated as income of the assessee in terms of section 28(iv) r.w.s. 2(24)(ix) of the Income Tax Act, 1961.

- The assessee company stated that Canadian company remitted amount towards issue of shares in its favour but the Indian promoters missed the deadline of compliance under Foreign Exchange Management Act (FEMA) and as advised by the assessee's consultant, such amount was then treated as gift.
- AO was not satisfied with the contention of the assessee and treated such receipt as taxable in India.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the receipt treated as gift by the assessee would be considered as taxable income in India?

Held:

- ITAT observed that the assessee company failed to comply with the FEMA regulations and pursuant to this failure, as advised by the FEMA consultant, the assessee had two choices – (i) to refund the monies back to Canadian Company or (ii) to treat the receipt as gift provided Canadian Company agrees to the same.
- ITAT noted that at the time of receipt of monies, Canadian company was not the holding company of the assessee company and that there was no malafide intention.
- ITAT stated that the lower authorities had taken advantage of the fact that the assessee had admitted to violating FEMA regulations and thereby the receipt of monies constituted income of the assessee.
- ITAT held that merely because there was violation of FEMA regulations it would not automatically become the income of the assessee company.
- Relying on the case of Nerka Chemicals (P) Ltd vs Union of India, ITAT held that the receipt of monies would not be taxed as income in the hands of the assessee company.
- Accordingly, ITAT ruled in favour of the assessee.

M/s Infosys BPM Limited Electronic City. vs. Deputy Commissioner of Income Tax, Circle –3 (1) (1) Bangalore [TS-788-ITAT-2021(Bang)] dated 23rd August, 2021

Facts:

- The assessee was engaged in providing business process outsourcing services.
- AO observed that the assessee had claimed Foreign Tax Credit (FTC) by placing reliance on the HC ruling in the case of Wipro Ltd wherein the provision of section 10A of the Income Tax Act, 1961 was considered to be in the nature of exemption.
- However, AO was not satisfied by the reliance placed by the assessee and considered the ruling of HC in the case of Yokogawa India wherein the provision of section 10A was considered to be a deduction provision.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the assessee would be allowed to take reliance of HC ruling in case of Wipro Ltd and claim exemption u/s 10A?

Held:

- ITAT noted HC ruling in the case of Wipro Ltd wherein HC allowed foreign tax credit on a portion of income claimed exempt u/s 10A, clarifying that “section 10A exemption only has the effect of suspending collection of income tax for a period of 10 years and it does not make the said income not leviable to income tax”.
- ITAT stated that it was to be considered whether income chargeable u/s 10AA was chargeable to tax u/s 4 and includible in total income.
- ITAT held that the fact that the assessee was not paying tax due to exemption or deduction granted under the Act was not relevant.
- ITAT allowed assessee’s reliance on the case of Wipro Ltd and directed AO to determine the Foreign Tax Credit by considering the above case.
- Accordingly, ITAT ruled in the favour of assessee.

Fema

CA. Manoj Shah, CA. Atal Bhanja

Summary Information on few Compounding Orders issued after 1st March 2020

Sr. No.	Party Name	Nature of Contravention	Date of Order	Compounding Fees (Rs.)
1.	Worldtron Logistics International Private Limited	Contravention under Regulation 3.1(I)(A)(3) of FEMA 395 for non issue of equity instruments within 60 days from date of receipt of consideration.	10-08-2021	51,567
2.	MCML Systems Pvt. Ltd.	Contravention under Regulation 15(iii) for non filing of Annual Performance Report within prescribed time and Regulation 16(1)(iv) for disinvestment without considering the fact that Indian Party had outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from JV/WOS abroad.	17-08-2021	1,78,767

1. RBI Notification No. RBI/DOR/2021-22/81 DOR.MRG.42/21.04.141/2021-22 Dated August 25, 2021

Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021

RBI has issued detailed guidelines on Classification, Valuation and Operation of Investment Portfolio of Commercial Banks. The same can be accessed at link:

“ <https://www.rbi.org.in/scriptS/NotificationUser.aspx?Id=12153&Mode=0> “

2. RBI Notification No. RBI/2021-22/91 DOR.FIN.REC.No.41/03.10.136/2021-22 Dated August 25, 2021

Notification as 'Financial Institution' under Section 2(1)(m)(iv) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Government of India (GoI) has, vide its Gazette Notification No. S.O. 2405(E) dated June 17, 2021 notified the HFCs registered under Section 29A(5) of National Housing Bank Act, 1987 and having assets worth ₹ 100 crore & above, as 'Financial Institution' under Section 2(1)(m)(iv) of SARFAESI Act, 2002. In view of revision of the criteria for notification as 'Financial Institution' as per the abovementioned Gazette notification of GoI, the criteria prescribed under Para 105 of the aforesaid Master Direction are withdrawn with immediate effect.

3. RBI Notification No. RBI/2021-22/94 CO.DPSS.RPPD.No.S475/04.09.003/2021-22 Dated August 27, 2021

Enhancements to Indo-Nepal Remittance Facility Scheme

The Indo-Nepal Remittance Facility Scheme (Scheme) was launched by the Reserve Bank of India in May 2008 as an option for cross-border remittances from India to Nepal, with special focus on requirements of migrant workers of Nepali origin working in India. The Scheme leverages the National Electronic Funds Transfer (NEFT) ecosystem available in the country for origination of such remittances and entails a ceiling of ₹ 50,000 per remittance with a maximum of 12 remittances in a year. The beneficiary receives funds in Nepalese Rupees through credit to her / his bank account maintained with the subsidiary of State Bank of India (SBI) in Nepal, i.e., Nepal SBI Bank Limited (NSBL) or through an agency arrangement.

2. A review of the Scheme has since been made and to boost trade payments between the two countries, as also to facilitate person-to-person remittances electronically to Nepal, the following enhancements are announced –

- i. Increase in the ceiling per transaction from ₹ 50,000 to ₹ 2 lakh.
- ii. Removal of the cap of 12 remittances in a year per remitter.
- iii. As hitherto, banks shall accept remittances by way of cash from walk-in customers or non-customers. The ceiling of ₹ 50,000 per remittance with a maximum of 12 remittances in a year shall, however, continue to apply for such remittances.
- iv. The charges for transactions up to ₹ 50,000 shall continue as provided in circular DPSS (CO) No.1381/04.09.003/2008-09 dated February 09, 2009. For transactions beyond ₹ 50,000, the charges prescribed by SBI shall apply.
- v. The banks shall put in place suitable velocity checks and other risk mitigation procedures.

3. The enhancements are also expected to facilitate payments relating to retirement, pension, etc., to our ex-servicemen who have settled / relocated in Nepal.

4. These directions are issued under Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007) and shall come into effect from October 01, 2021.

4. RBI Notification No. RBI/DPSS/2021-22/82 CO.DPSS.POLC.No.S-479/02.14.006/2021-22
Dated August 27, 2021

Master Directions on Prepaid Payment Instruments (PPIs)

RBI has issued detailed Master Directions afresh to revise the " Master Direction dated October 11, 2017 on Issuance and Operation of Prepaid Payment Instruments (PPI-MD) and subsequent amendments made thereto" .

Details can be accessed at the link:

" <https://www.rbi.org.in/scriptS/NotificationUser.aspx?Id=12156&Mode=0>"

5. RBI Notification No. RBI/DOR/2021-22/83 DOR.ACC.REC.No.45/21.04.018/2021-22 Dated
August 30, 2021

Master Direction on Financial Statements - Presentation and Disclosures

A Master Direction incorporating, updating and where required, harmonizing across the banking sector the extant guidelines/instructions/directives on the subject has been prepared to enable banks to have all current instructions on presentation and disclosure in financial statements at one place for reference. However, it may be noted that in addition to these disclosures, Commercial Banks shall comply with the disclosures specified under the applicable regulatory capital framework.

Details can be accessed at the link:

" <https://www.rbi.org.in/scriptS/NotificationUser.aspx?Id=12158&Mode=0> "

6. RBI Notification No. RBI/2021-22/97 DOR.CRE.REC.47/21.01.003/2021-22 Dated September
09, 2021

Large Exposures Framework – Credit Risk Mitigation (CRM) for offsetting – non-centrally cleared derivative transactions of foreign bank branches in India with their Head Office

Please refer to circular No.DBR.No.BP.BC.43/21.01.003/2018-19 dated June 03, 2019 on Large Exposures Framework (LEF).

2. It is advised that the Indian branches of foreign banks shall be permitted to reckon cash/unencumbered approved securities, the source of which is interest-free funds from Head Office or remittable surplus retained in Indian books (reserves), held with RBI under 11(2)(b)(i) of the Banking Regulation Act,1949 ('BR Act') as CRM, for offsetting the gross exposure of the foreign bank branches in India to the Head Office (including overseas branches) for the calculation of LEF limit, subject to the following conditions:

i. The amount so held shall be over and above the other regulatory and statutory requirements and shall be certified by the statutory auditors.

ii. The amount so held shall not be included in regulatory capital. (i.e., no double counting of the fund placed under Section 11(2) as both capital and CRM). Accordingly, while assessing the capital adequacy of a bank, the amount will form part of regulatory adjustments made to Common Equity Tier 1 Capital.

iii. The bank shall furnish an undertaking as on March 31 every year to the Department of Supervision (DoS), RBI that the balance reckoned as CRM for the purpose will be maintained on a continuous basis.

iv. The CRM shall be compliant with the principles/conditions prescribed in paragraph 7 in the Master Circular – Basel III Capital Regulations dated July 1, 2015 as amended from time to time.

3. The amount held under section 11(2)(b)(i) of the BR Act and earmarked as CRM shall be disclosed by way of a note in Schedule 1: Capital to the Balance Sheet as given below:

“An amount of ₹ ... (previous year: ₹) out of the amount held as deposit under Section 11(2) of the Banking Regulation Act, 1949 has been designated as credit risk mitigation (CRM) for offsetting of non-centrally cleared derivative exposures to Head Office (including overseas branches), and is not reckoned for regulatory capital and any other statutory requirements.”

4. Excess amount over and above the CRM requirements shall be permitted to be withdrawn subject to certification by the Statutory Auditor and approval of the DoS, RBI. It may be noted that the onus of compliance with the LEF limit at all times shall be on the bank.

5. It has been decided to permit foreign banks to exclude derivative contracts executed prior to April 1, 2019 while computing the derivative exposures on their Head Office (including overseas branches).

7. RBI Notification No. RBI/2021-22/84 FMRD.FMD.07/02.03.247/2021-22 Dated September 16, 2021

Master Direction – Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2021

The draft Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2020 were released for public comments on December 04, 2020. Based on the feedback received from the market participants, the draft Directions were reviewed and have since been finalised. The Master Direction – Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2021 is available at the link:

<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12163&Mode=0>

8. RBI Notification No. RBI/2021-22/100 DOR.MRG.REC.50/21.04.141/2021-22 Dated September 20, 2021

Master Circular on Investments by Primary (Urban) Co-operative Banks

This Master Circular issued has consolidated and updates of all the instructions/guidelines on the subject issued as on date. It can be accessed at link:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MCUCBC3EE65A980634686A9E648466BCC7271.PDF>