KNAV
PARTNERS BEYOND BOUNDARIES

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In this edition of our thought leadership publication, we have tracked the progress of some significant cases decided by the appellate forums across the country an important circular and press release issued by the Central Board of Direct Taxes.

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Transfer Pricing

Case Law 1: M/s. Hospira Healthcare India Private Limited Vs. DCIT (ITA No. 821/MDS/2016)

When the sales between two entities exceeds 20% of total sales of the selling entity, it would be considered as 'dominant influence' of one entity over the other entity. And thus, the two entities would be considered as Associated Enterprises ('AEs') u/s 92a(2)(i) of the Income tax Act,1961 ('the Act').

Facts:

The assessee, Hospira Healthcare India Private Limited, is engaged in manufacturing and selling of generic injectable drugs to its group entities and certain other concerns called as distribution partners. It is a subsidiary of Hospira Pte. Ltd, Singapore.

On December 15, 2009, the assessee had acquired the generic injectable pharmaceutical business of Orchid Chemicals & Pharmaceuticals Ltd ('*Orchid India*') on slump sale basis. By virtue of this acquisition, various agreements entered into between Orchid India and distribution partners were inherited by the assessee.

During the relevant AY, the assessee had affected sales to 3 of its AEs. It had similar transactions with two other entities namely Apotex Corp. and Apotex Inc. Signet.

Prior to its acquisition, Orchid India had worked on a profit sharing basis model with its trading partners, which included the AEs of the assessee. Post acquisition, the assessee continued with the same model. Under this model, profits were worked out by deducting from the sales affected by the entities abroad, the cost of products sold and marketing cost. The AEs abroad, who were selling the assessee's products, were also entitled to marketing cost of 7.5% on the total sale price. The resulting profit was shared in the ratio of 50% each.

During the scrutiny assessment proceedings, the Transfer Pricing Officer (*'TPO'*) relied on an earlier order of the Income Tax Settlement Commission in case of Orchid India for AYs 2006-07 to 2010-2011 to conclude that the two entities Apotex Corp and Apotex Inc Signet were AEs of the assessee as well. TPO further contended that the profit split ratio between the assessee and AEs should have been 60:40 instead of 50:50.

The TPO had also applied section 92A(2)(i) of the Act, to determine the associate relation. As per section 92A(2)(i) of the Act, two enterprises shall be deemed to be associated enterprises for the purposes of 92A (1) of the Act if, at any time during the previous year, the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise.

Accordingly, an upward adjustment was made by the Assessing Officer ('*AO*'), following the instructions of the TPO.

On appeal before the Hon'ble Commissioner of Income tax (Appeals) ('*CIT(A)*'), the decision was rendered in favour of the revenue. Aggrieved, the assessee preferred appeal before the Hon'ble Tribunal.

Arguments by the assessee and the revenue before the Hon'ble Tribunal:

Before the Hon'ble Tribunal, the assessee contended that the authorities had erred in considering the two entities as AEs and has further erred by applying the ratio of 60:40 for splitting the profits between assessee and its AEs.

The assessee contended that direct/indirect participation in the management/control/capital of one enterprise in the other, at enterprise level, was required for establishing a relationship of association. It was further contended by the assessee that there was no common controlling interest of shareholders or directors and that unless conditions set out in section 92A(1) of the Act are satisfied, section 92A(2) of the Act could not be brought into play.

Relying on the case of Orchid Pharma (ITA No. 771/MDS/2016), assessee submitted that the type of influence mentioned in section 92A(2)(i) of the Act was a dominant influence and not a passive one, submitting that passive influence happens in course of ordinary business. Otherwise even a solitary transaction could be treated as one which gives rise to a relationship of AE. Also, in the ruling of Page Industries Ltd (159 ITD 680), the Hon'ble Bangalore Tribunal had held that, for becoming an AE, parameters in both sub section (1) and (2) of section 92A of the Act had to be satisfied. The assessee submitted that, as it did not have either *defacto* or *dejure* control over Apotex Corp and Apotex Inc Signet, the two enterprises should be treated as non-associated and consequently the pricing of the products and sharing of profit with them would be at arm's length.

The revenue submitted that 'influence' and not 'dominant influence' is mentioned in section 92A(2)(i) of the Act. Revenue also submitted that no material for justifying profit split of 50:50 was brought on record and the risks were all borne by assessee and not by the trading partners. As a consequence, the settlement commission had recommended profit splitting in the ratio of 60:40.

Decision of the Hon'ble Tribunal

The Hon'ble Tribunal noted that in the Orchid India ruling, assessee had a similar profit sharing arrangement with Northstar, which was considered as an AE by TPO. Further, the same contention was deliberated upon in the Page Industries Ruling. The Hon'ble Tribunal noted a few observations as were laid down by the co-ordinate bench in these rulings:

- that the term 'influence' appearing in section 92A(2)(i) of the Act is a type of dominant influence which leads to a *defacto* control over the other enterprise;
- that in order to constitute relationship of an AE, the parameters laid down in both sub-sections (1) and (2) should be fulfilled;
- that if were to be held that there is a relationship of AE, only once the requirements of sub-section (2) are fulfilled, then the provisions of sub-section (1) would render otiose or superfluous;
- that it is well settled canon interpretation of statutes that while interpreting the taxing statute, construction shall not be adopted which renders a particular provision otiose; &
- that when interpreting a provision in a taxing statute, a construction, which would preserve the purpose of the provision, must be adopted.

In the Orchid India ruling, the co-ordinate Bench had held that Northstar was not in a position to exercise any such dominant influence as assessee's (Orchid India) dealings with the company constituted less than 5% of its entire exports and less than 6% of its entire sales.

Distinguishing the same from the instant case, the Hon'ble Tribunal observed that more than 20% of assessee's sales were to Apotex Corp and Apotex Inc and the profit share earned from them aggregated to INR 30.07 crores out of total profits of INR 125.25 crores. The Hon'ble Tribunal opined that a person who purchased more than 1/5th of the total sales of assessee would have a distinctly dominant influence on the pricing and can exercise a *defacto* control.

Thus, the Hon'ble Tribunal held that the authorities were justified in treating M/s. Apotex Corp and Apotex Inc as AEs of the assessee.

Pertaining to the issue of application of the profit split method, the Hon'ble Tribunal opined that the lower authorities had not considered essential elements that are required to be verified for applying the said method while considering the profit split ratio at 60:40.

The Hon'ble Tribunal thus set aside the orders of the lower authorities and remitted the issue back to the file of the AO.

International Tax

Case Law 1: Director of Income Tax Vs. A.P. Moller Maersk A S (SLP (C) NO. 5980 OF 2017)

If payments, in the nature of reimbursements, are made for utilization of common facility/services, required for the purpose of operating certain aspects of the business, then such payments cannot be considered as 'Fees for Technical Service'.

Facts:

The assessee was a foreign company incorporated in Denmark, engaged in the shipping business. The assessee had agents working for him in India who acted as clearing agents. The assessee set up a global telecommunication facility for the agents and received income from them on pro-rata basis for the usage of such facility, and this payment made by the agents was in the nature of reimbursement of expenses. The facility had been set up for ease of business and communication across the globe.

However, the AO did not accept this contention and held that the payments made by the agents amounted to 'fees for technical service' and thus, taxed the payments in India at the rate of 20%.

The assessee preferred an appeal before the Hon'ble CIT(A). However, the Hon'ble CIT(A) confirmed the view taken by AO.

Aggrieved by the order of the Hon'ble CIT(A), the assessee preferred appeal before the Hon'ble Bombay Tribunal.

The Hon'ble Tribunal relied on the decision rendered by Skycell Communications Ltd. & Anr. Vs. DCIT & Ors. ([2001] 251 ITR 53), and the Delhi High Court in CIT Vs. Bharti Cellular Ltd. ([2009] 319 ITR 139) and further, considered the nature of the costs incurred by the assessee. The Hon'ble Tribunal observed that the three agents were booking cargo and acting as clearing agents for the assessee. The Hon'ble Tribunal held that the agents were entitled to utilization of the global communication facility, which consisted of a communication system connecting the mainframe and other computers in each of the countries of operation. The Hon'ble Tribunal distinguished the decision of the Hon'ble CIT(A) and allowed the appeal of the assessee.

Aggrieved by the order of the Hon'ble Tribunal, the revenue preferred appeal before the Hon'ble Mumbai High Court. The Hon'ble Mumbai High Court dismissed the appeal of the revenue holding that it was merely a cost sharing arrangement between the assessee and the agents. The Hon'ble High Court further relied on the principles discussed in the case of the Director of Income Tax (International Taxation) Vs. M/s. Safmarine Container Lines NV ([2014] 367 ITR 209) wherein the agents used the common service and the assessee entailed certain cost reimbursements.

Aggrieved by the order, the revenue challenged the decision of the Hon'ble High Court before the Hon'ble Supreme Court.

Decision of the Hon'ble Supreme Court:

The Hon'ble Supreme Court held that the expenditure incurred for running this system was shared by all the agents on pro-rata basis and no technical services are provided by the assessee to the agents. The Hon'ble Supreme Court affirmed the decision of the Hon'ble High Court and held that the payments were in the nature of reimbursement of costs.

It also relied on the fact that the TPO had accepted these payments to be in the nature of reimbursements. It thus held that once the nature of payment is determined as reimbursement, it cannot be brought to tax.

It further relied on the decision rendered by the Hon'ble Supreme Court in the case of CIT Vs. Kotak Securities Limited ([2016] 383 ITR 1 (SC)) wherein it had been laid down:

- that use of facility does not amount to technical services, as technical services denote services catering to the special needs of the person using them and not a facility provided to all;
- that 'technical services' like 'managerial and consultancy service' would denote seeking of services to cater to the special needs of the consumer/user as may be felt necessary and the making of the same available by the service provider. It is the above feature that would distinguish/identify a service provided from a facility offered. While the former is special and exclusive to the seeker of the service, the latter, even if termed as a service, is available to all and would, therefore, stand out in distinction to the former; &
- that the services provided were common services, utilization of which was necessarily required to carry out the business in question.

Thus, relying on the above, the Hon'ble Supreme Court held that such payments could not be considered as fees for technical services and therefore, could not be brought to tax in India.

Case Law 2: DDIT, International Taxation Vs. Nipro Asia Pte Ltd (ITA No. 4078/DEL/2013)

Rule 10 of the Income tax Rules, 1961 ('the Rules') can be invoked if the AO is of the opinion that amount of income accruing to non-resident companies on account of business connection in India is not ascertainable.

Summary of the case:

The assessee is a company engaged in trading of medical equipment in India and a tax resident of Singapore. It is operating in India through a branch office which performs activities like marketing, sales, warehousing, after-sales services and technical services to the customers on behalf of the Singapore Head Office *('HO')*. The HO is also directly undertaking sales activity in India. However, the branch in India did not account for sales made in India directly by the HO or through distributors in India. It was undisputed that the branch in India was undertaking all the activities like marketing, selling, and after sales services, <u>even of the products directly sold by the HO</u>.

As the Indian branch was not receiving any income in lieu of services rendered in relation to sale of the products directly by the HO, the AO held that the branch was constituting a permanent establishment ('*PE*') in India under Article 5 of the India-Singapore Double Tax Avoidance Agreement ('*DTAA*'), as well as a business connection in India in terms of section 9(1) of the Act. Therefore, the AO computed the profits attributable to the PE/business connection.

Further, the AO disregarded the transfer pricing study report since there was divulgence in the international transactions between the HO and the branch and held that there was no justification of the 'Cost Plus Method' applied by the assessee for arriving at an arm's length price. Also, the AO found this case to be unique without any exact comparables and therefore invoked the provisions of Rule 10 of the Rules for determining the income of the assessee. The AO attributed 40% of the computed profit margin of 28.60% of the ultimate parent company in Japan, to the sales activities in India through the branch/PE. However, the profit margin was computed ignoring the selling and general expenses.

Aggrieved by the additions made by the AO, the assessee moved to the first appellant authority. The Hon'ble CIT(A) did not agree with the view taken by AO while computing the profit margin at 40% ignoring selling and general expenses. Further, the Hon'ble CIT(A) contented that the transfer pricing report of one of the later years in which the assessee had used that 'Cost Plus 15%' as a mark-up on the cost incurred by the branch office in India was reasonable. On this basis, the Hon'ble CIT(A) held that since the business model of the assessee had remained the same in all the years, the mark-up of 15% was reasonable and is required to be applied in the current case.

Aggrieved by the reduction in addition by the Hon'ble CIT(A), the revenue preferred appeal to the Hon'ble Delhi Tribunal.

Decision of the Hon'ble Delhi Tribunal

- The Hon'ble Tribunal held that calculation done by AO was incorrect since it failed to consider selling and general expenses which accounted for more than 20% of sales;
- However, it held that the AO was right in considering the branch to be a PE of the HO, and further invoking the provisions of Rule 10;
- Further, it did not uphold the view taken by Hon'ble CIT(A) since the Hon'ble CIT(A) relied on the transfer pricing report of a later year and the method adopted was Transactional Net Margin Method as against Cost Plus Method which was subject to changes on a year on year basis;

- The Hon'ble Tribunal relied on the decisions rendered by the Hon'ble Delhi Tribunal in the case of Rolls Royce PLC Vs. DDIT (2007-TII-32-ITAT-DEL-INTL) affirmed in the Delhi High Court and in the case of G.E. Energy Parts Inc. Vs. ADIT (ITA No.671/Del/2011) wherein it was held that the profits attributable to marketing activities in India are 10% of the profits earned. Also, it had drawn an analogy from the provisions of sections 44BB and 44BBB of the Act which provide profit rate of 10%;
- The Hon'ble Tribunal held that attribution of income has to be in line with the extent of activities of PE in India; &
- In view of the above, the Hon'ble Tribunal attributed 3% *(i.e. 30% of 10%)* on the amount of sales made by the assessee in India as the amount of profit attributable to PE in India.

Therefore, the appeal was partly allowed in favour of the assessee.

Domestic Tax

Case Law 1: ITO (TDS) Vs. Kuwait Airways Corporation [2017] 78 taxmann.com 187 (TMUM)

Amount paid to ex-employees under settlement, for the purpose of avoiding litigation, cannot be regarded as 'profit in lieu of salary' under section 17(3)(i) of the Act.

Facts:

- The assessee is an international airline engaged in the business of passenger and cargo transportation. The assessee had retrenched 69 employees in the FY 2001-02 which had led to litigation between both the parties i.e. employer and the employees. Pursuant to this, five ex-employees, who were nearing their superannuation age, entered into an agreement with the regional office of the assessee, stating that they agree to pay taxes if they are paid their dues. The head office of the assessee did not approve of the agreement. The ex-employees filed an application before the Regional Labour Commissioner ('*RLC*') and the matter travelled up to Hon'ble High Court. In pursuance of the judgment of the Hon'ble High Court, RLC ordered recovery of dues. The Collector attached the bank account of the assessee and forcefully recovered the amount;
- A survey operation u/s 133A of the Act was carried out at the business premises of the assessee for the FY 2008-09. During the survey proceedings, the AO noticed that the assessee had paid certain amount, without deducting any tax, to five of its ex-employees during the year under consideration;
- The AO took a view that said payment was to be treated as profit in lieu of salary under section 17(3)(iii) of the Act and, thus, the assessee was required to deduct tax at source u/s 192 of the Act. The assessee contended that it did not get a chance to deduct tax as the amount was forcefully retrieved from it and also, it was under the bona fide belief that payment made to ex-employees was in the nature of capital compensation. Further, assessment in all the five cases for the FY 2008-09 had been completed and the compensation received by the concerned individuals had been brought to tax. However, the AO proceeded to treat the assessee to be assessee-in-default u/s 201(1) and section 201(1A) of the Act;
- On appeal by the assessee, the Hon'ble CIT(A) opined that payment was made to ex-employees by way of settlement in order to bring litigation to an end and same was in the nature of capital compensation. The Hon'ble CIT(A) further held that since said payment was not taxable in the hands of recipients, provisions of sections 201(1) and 201(1A) of the Act were not applicable to assessee's case; &
- Aggrieved, the department preferred appeal before the Hon'ble Tribunal.

Decision of the Hon'ble Tribunal

The Hon'ble Tribunal brought to notice the following aspects:

1. The assessee had not made any payment to its ex-employees:
   The Hon'ble Tribunal opined that section 17(3)(iii) of the Act presupposes the existence of an employment i.e. a relationship of employee and employer, between the assessee and the person who makes the payment of 'any amount' in terms of section 17(3)(iii) of the Act. Thus, the Hon'ble Tribunal stated that the words in section 17(3)(iii) of the Act cannot be read disjunctively to overlook the essential facet of the provision which is the existence of employment. In the instant case the essential fact is missing. The Hon'ble Tribunal concluded that there was no employer-employee relationship between the assessee and the ex-employees.
2. The ex-employees had paid the due taxes on the disputed amount. Further, the assessee had claimed that it was under the bona fide belief that the amount received by the ex-employees was a capital receipt.
3. Under section 17(3)(i) of the Act, in order to characterize a particular payment received from the employer, on termination of the employment, as 'profits in lieu of salary', it has necessarily to be shown that this amount is due or received as 'compensation'. The word 'compensation' is not defined under the Act. Therefore, the Hon'ble Tribunal opined that one has to take into consideration the ordinary connotation of this expression in common parlance. It has to be in the nature of something awarded to compensate for loss, suffering or injury. When translated in the context of employment, it would imply a monetary and non-monetary amount to be given to the employee in return for some services rendered by him. Inherent in this would be the obligation of the employer to pay some amount to the employee to 'compensate' him. It would also mean that the employee gets a vested right to get such an amount. Thus, the Hon'ble Tribunal concluded that in the case under consideration the ex-employee did not get vested right to receive the amounts in

question. It further stated that a settlement was arrived at to avoid litigation and there was no obligation on part of the employer to pay some amount to the employees to compensate them.

Thus, considering the peculiar facts and circumstances of the case, the Hon'ble Tribunal dismissed the revenue's appeal.

Case Law 2: M/s Asara Sales and Investments Private Limited Vs. The Income Tax Officer (ITA No.1345/PUN/2014)

It is a well settled principle that the benefit of set off of loss under an activity or source will not be available under the Act, where the income from such activity or source is exempt from taxation as per the provisions of the Act.

Further, it is the substance and of the transactions and not the form which would be relevant to decide the nature of particular transaction.

Facts:

The assessee, an Indian company, was engaged in the business of investing in shares and derived income from capital gains, dividend and nominal interest. For the year under consideration, the AO observed that the assessee had, in its return of income, shown long-term capital gain of INR 4.53 crores on sale of shares of unlisted group companies and long-term capital loss of INR 8.39 crores on sale of shares of a listed group company namely G G Dandekar Machine Works Ltd. ('*GGDL*'). The assessee, by setting off this long-term capital gain on sale of shares of the unlisted companies against the long-term capital loss on the sale of shares of the listed company, disclosed a net long-term capital loss of INR 3.85 crores in its return of income. The said loss was carried forward to the succeeding years.

The AO observed that since GGDL was listed on the stock exchange, the purchase and sale of its shares was liable to Security Transaction Tax ('*STT*'). Since the transactions of the said shares were liable to STT, long term capital gains, if any, on the sale of such shares would have been exempt u/s 10(38) of the Act and therefore in the event of long-term capital loss on sale of such shares, such loss shall not be allowed to be set off neither carried forward.

In the present case, the AO observed that the said shares were subsequently sold off market, i.e. not through the Stock Exchange, to a 100% subsidiary, without paying any STT and also noted that it was not the case that the shares could not have been sold through a recognized Stock Exchange.

The AO was of the view that since the shares were otherwise eligible for exemption under section 10(38) of the Act, then the mere fact that the said shares were subsequently sold off market, that too to a 100% subsidiary, without paying any STT, would not change the nature of shares, because the shares were listed on the Stock Exchange and were otherwise eligible for levy of STT. The AO was of the view that the transaction was only a colorable device to enable the assessee to claim the set off of loss on sale of listed shares against profits on sale of unlisted shares.

Therefore, the AO disregarded the stand of the assessee that the provisions of section 10(38) of the Act do not apply to transactions of sale of shares in the present case.

The Hon'ble CIT(A) also rejected the contention of the assessee and upheld the AO's order. The plea of the assessee that similar transactions were carried out off market in the earlier years, was also not accepted by the Hon'ble CIT(A).

Aggrieved, the assessee filed an appeal before the Hon'ble Tribunal.

Decision of the Hon'ble Tribunal:

The assessee stated that the shares of GGDL were purchased through the Stock Exchange and STT was paid on the purchase. With regard to the sale transaction, the assessee took a decision not to trade it through Stock Exchange, in order to prevent any stranger from acquiring equity of the group company. The decision was taken in order to safeguard the acquisition of said shares by any stranger to the group concern.

Also, the said entity to whom the shares were sold was not 100% subsidiary of the assessee company, but the assessee had holding to the extent of 24% shares in the entity. Further, the assessee had raised a loan from the said entity and owing to the hiatus in the business activities, the assessee stated that there was difficulty in servicing interest on the loan, and therefore it was decided that the loan be settled through sale of shares to prevent any further loss or eroding of worth. The assessee claimed that it had sold the shares of GGDL to the said entity purely on business needs and without any ulterior motive.

Referring to the provisions of section 10(38) of the Act, the assessee contended that section 10(38) of the Act is applicable when STT is chargeable, which in turn, is chargeable when the transaction is carried out through a recognised stock exchange. The assessee contended that while interpreting the section, a pick and choose policy cannot be adopted and rule of strict interpretation is to be applied, where intention has to be garnered from the words used in the statute.

As against this, the revenue, by placing reliance on the order of CIT(A) contended that since GGDL was a listed company, the sale of said shares was liable to STT and hence, the transaction is governed by section 10(38) of the Act.

After hearing the rival contentions and perusing the records, the Hon'ble Tribunal was of the view that once no STT is charged, the provisions of section 10(38) of the Act would not be attracted. In case the transaction is routed through a recognised stock exchange, then undoubtedly, the assessee would be liable to pay STT; but in the facts of the present case, the assessee has not sold listed shares through stock exchange and had not paid any STT and consequently, the provisions of section 10(38) of the Act are not applicable.

The Hon'ble Tribunal acknowledged that the decision of sale of shares was undertaken in order to safeguard the acquisition of said shares by any stranger to the group concern. Such business decision taken by the assessee cannot be doubted and called as colorable device to set off profits arising on sale of unquoted shares. Once the transaction has been undertaken by the assessee as a business decision, then simply because the said transaction could be routed through the Stock Exchange does not justify the stand of authorities below in not allowing the set off of loss arising from off market transaction on which no STT was paid against the gain arising on sale of shares of unlisted group companies, on which also no STT is to be paid.

Therefore, going by the principle of substance over form, the Hon'ble Tribunal ruled in favour of the assessee.

Case Law 3: Commissioner of Income Tax Vs. Shri Gumanmal Jain (ITA No.414/MDS/2016)

Prior to the amendment brought about by Finance Act 2014, 'a residential house' u/s 54F of the Act need not be construed as 'one residential house' and exemption could be claimed even on purchase/construction of more than one residential house.

Facts:

The assessee, an individual, along with two of his sons owned certain contiguous parcels of land. They aggregated their land and entered into a Joint Development Agreement with a builder and the agreed ratio between the assessee and his sons on one hand and the builder on the other was 70:30. The land was developed and the assessee and his sons got their due share as per the agreed ratio. The assessee opted for exemption u/s 54F of the Act in relation to the long-term capital gains arising on the sale of land. The said section states that capital gains on sale of long-term capital asset other than a residential house shall be exempt when the entire net sales consideration from the sale is invested by the assessee in purchase/construction of 'a residential house' in India within the prescribed time limits. In the present case, the assessee received several flats in exchange of the land as per the joint development agreement and thereby claimed the exemption u/s 54F of the Act. Accordingly, the assessee did not disclose any long-term capital gains in his return of income.

The AO was of the view that the assessee has received more than one residential house in exchange of the land, whereas the provisions of the Act require the investment to be made only in 'a residential house'. Therefore, as per the AO, the assessee's case does not qualify for exemption u/s 54F of the Act and the said long-term capital gains on the sale of land shall be liable to tax under the Act.

Aggrieved, the assessee preferred and appeal before the Hon'ble CIT(A). The Hon'ble CIT(A), by relying on a Division Bench Judgement of the Hon'ble Madras High Court in V.R. Karpagam's case ([2015] 373 ITR 127) which had interpreted the phrase 'a residential house' occurring in section 54F of the Act, ruled in favour of the assessee.

Aggrieved, the revenue preferred an appeal before the Hon'ble Tribunal. The Hon'ble Tribunal, confirming the order of the Hon'ble CIT(A), ruled in favour of the assessee.

Aggrieved, the revenue preferred an appeal before the Hon'ble High Court.

Decision of the Hon'ble High Court:

The revenue contended that the flats received by the assessee in exchange of the land shall not qualify as 'a residential house' occurring in section 54F of the Act, as according to them, the flats are in different blocks and not in the same block.

Placing reliance on the decision taken by Hon'ble Karnataka High Court in case of K.G. Rukminiamma (331 ITR 211), the Hon'ble High Court was of the view that the context in which the expression 'a residential house' is used in section 54 makes it clear that, it was not the intention of the legislation to convey the meaning that it refers to a single residential house. If that was the intention, they would have used the word 'one'. Therefore, the letter 'a' in the context it is used, should not be construed as meaning 'singular'.

Further, in the instant case the assessee having received several flats along with his two sons will not deprive him from getting the benefit u/s 54F of the Act only on the ground that all the flats are not in the same block, particularly in the light of the admitted factual position that all the flats are located at the same address.

Therefore, the Hon'ble High Court upheld the order of the Hon'ble Tribunal and stated that the assessee is entitled to getting the benefit of section 54F of the Act even if the assessee had received more than one residential flat in exchange of the land and even though such flats are located in different blocks.

KNAV comments:

The case under consideration pertains to AY 2012-13. The Finance Bill 2014 amended section 54F of the Act w.e.f April 1, 2015 by substituting the words 'a residential house' with 'one residential house' so as to ensure that the benefit under the said section was available for investment in only one residential house within India.

Recent important circulars and press release issued by the central board of direct taxes (‘*CBDT*’)

1. Circular No. 08/2017 dated February 23, 2017 – Clarification for determination of Place of effective management of a company other than an Indian company.

The CBDT has clarified herewith by way of circular that the guidelines of place of effective management shall not apply to a company having turnover or gross receipts of 50 crores or less in a financial year.

A link for the same is provided herewith:

http://www.incometaxindia.gov.in/communications/circular/circular-8-2017-clarification-on-place-of-effective-management.pdf

2. Press release dated March 9, 2017 – Amendments in the India-Belgium Double Taxation Avoidance Agreement.

The CBDT has clarified herewith by way of press release that India and Belgium have signed a protocol amending the existing DTAA which will widen the scope of DTAA.

A link for the same is provided herewith:

http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/600/India-Belgium-sign-Protocol-amending-India-Belgium-DTAA-Protocol-9-3-2017.pdf

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