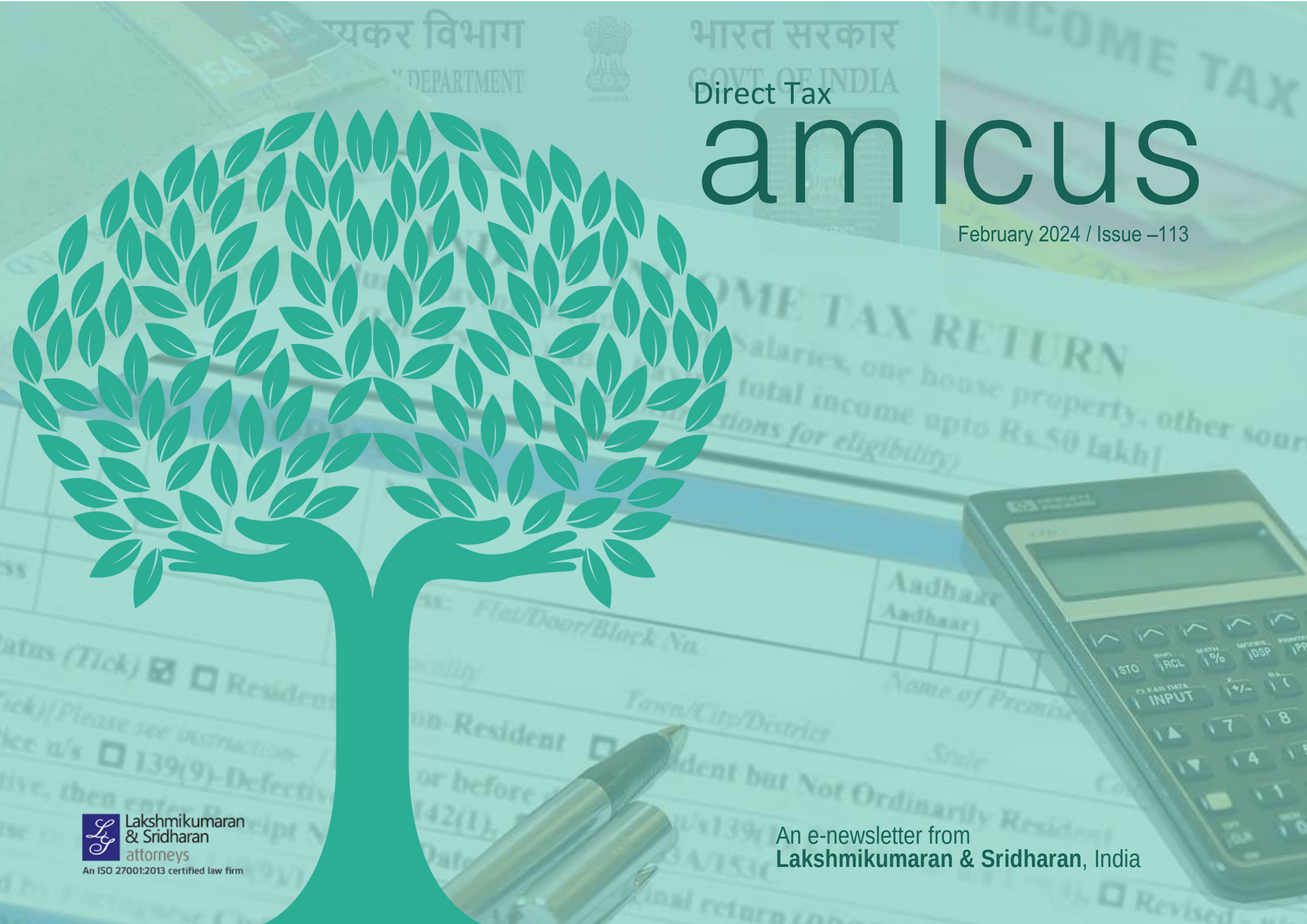

Direct Tax amicus

February 2024 / Issue –113

Lakshmikumaran & Sridharan attorneys

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An e-newsletter from
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Article

Will the recent ruling on Benami law dig up old deals?

By **Janane G**

The article in this issue of Direct Tax Amicus discusses a recent ruling of the Delhi Appellate Tribunal in the case of Prism Scan Express Private Limited. According to the author, this decision would be a wakeup call to all those who were under the belief that their old trades would not come under the glare of the Benami Law, taking shelter of the decision of the Supreme Court in *Ganpati Dealcom Pvt. Ltd.* v. *UoI* which had held that the Benami Transactions Prohibition (Amendment) Act, 2016 shall not apply retrospectively. The Tribunal interpreted the word 'held' as appearing in the definition of the term 'benami transaction' to hold that even if the property was transferred to a benamidar before 2016, the same can still be regarded as a 'benami transaction' if such property is continued to be held by the benamidar post 2016. The author notes that the Supreme Court had not discussed the implication of the word 'held', and believes that the latest ruling has opened a pandora's box and may lead to fresh wave of proceedings involving attachments/ confiscations and criminal prosecution in respect of alleged benami properties.

Will the recent ruling on Benami law dig up old deals?

By Janane G

A significant ruling of the Delhi Appellate Tribunal in the case of *Prism Scan Express Pvt. Limited* could be a wakeup call to all those who were under the belief that their old trades would not come under the glare of Benami Law, taking shelter of the decision of the Apex Court in the case of *Ganpati Dealcom Pvt Ltd* v. *UoI*[1] which held that the Benami Transactions (Prohibition) Amendment Act , 2016 shall not apply retrospectively.

The intent behind formulating the Benami Transactions Prohibition Act was to prohibit such transactions where a person used to purchase properties in the name of another person for various reasons such as tax avoidance, hiding of accumulated personal wealth, parking of unaccounted money etc. Since these transactions became largely prevalent, the Government introduced the Benami Transactions Prohibition Act, 1988 ('**Old Act**') to prohibit Benami Transactions and also to acquire properties acquired through such properties. However, since no clear-cut rules or regulations regarding powers of an authority to prosecute or confiscate were ever brought out, the Act became ineffective.

Hence, amendments were needed to effectuate the Act and the Government thus introduced the Benami Transactions Prohibition (Amendment) Act, 2016, ('**Amendment Act 2016**') which came into force from 1 November 2016 with certain amendments to prosecution and confiscation procedures under the Benami law. These amendments became a subject matter of litigation on the question of its retrospective application as authorities under the Amendment Act 2016, upon its introduction, invoked the provisions extensively to prosecute and confiscate benamidars and their properties for transaction that took place during periods prior to coming into effect of the said Act. This issue was finally settled by the Apex Court in the *Ganpati Dealcom* (*supra*) to hold that the amendments cannot be applied retrospectively as they are punitive in nature and thus, directed all the concerned authorities to quash proceedings initiated for transactions that occurred prior to 2016.

[1] 2020 SCC Online SC 1064

Subsequent to the decision of the Apex Court, a position emerged that transactions undertaken prior to 2016 would not attract the rigors of the amended Benami Law. However, the recent ruling of the Appellate Tribunal in the case of *Prism Scan Express Pvt Limited* v. *DCIT*[2] has rekindled this debate.

Brief background of the case

Appeals were filed under Section 46 of the Benami Prohibition Act challenging the provisional attachment Order of the Appellant's demat and bank accounts. It was the case of the authorities that based on a survey conducted under Section 133A of the Income Tax Act, 1961 in the premises of one M/s Bhageria Industries Limited ('BIL') in the year 2018, it was found out that there had been purchase of shares of BIL by benamidars, M/s Prism Scan Express Pvt Ltd and Futurage Corporate Care Pvt. Ltd. ('**Appellants**') in the year 2013. Therefore, a show cause notice under Section 24(1) of the Act was issued. The Authorities further attached the DEMAT accounts of the Appellants by invoking powers under Section 24(3). This attachment Order was subject to challenge before the Tribunal.

It was argued by the Appellant that since the alleged purchase of shares took place in the year 2013 itself, invoking provisions of the Benami law as amended in 2016 for confiscation or initiating criminal action is not valid as the said law is to be applied only prospectively as laid down in *Ganpati Dealcom* case. The Appellants hence prayed for a direction to quash the proceedings initiated.

Tribunal findings

The Tribunal analysed the definition of the term 'Benami Transaction' as provided under Section 2(9)(A) of the Amended Act 2016 which is reproduced hereunder.

> Section 2. Definitions. — In this Act, unless the context otherwise requires, *(9) 'benami transaction' means,—*
>
> *(A) a transaction or an arrangement— (a) where a property is transferred to, **or is held** by, a person, and the consideration for such property has been provided, or paid by, another person; and*
>
> *(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—*

[2] [2023] 157 taxmann.com 623

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;…

The Tribunal noted that the definition to the term 'benami transaction', post amendment in 2016, not only refers to a case where property is transferred to a person, but also includes a case where the property is 'held' by a person, consideration in respect of which was paid by another person. The Court interpreted the word 'held' to hold that, even if the property was transferred to a benamidar before 2016, the same can still be regarded as a 'benami transaction' if such property is continued to be held by the benamidar post 2016.

The Tribunal while referring to the ratio laid down by the Supreme Court judgement *in Ganpati Dealcom*, however noted that the word 'held' as provided in the definition of benami transaction is also of great significance and should, therefore, be accorded its proper interpretation. In the present facts, the transaction of purchase of shares of BIL by the Appellants took place as early as 2013 and the same were 'held' by the Appellants at the time of survey conducted by the Authorities in the year 2018.

Conclusion

This case is the first of its kind where the term 'held' as appearing in the definition of the term 'benami transaction' is being interpreted by a Court. It is also pertinent to note that the *Ganapti Dealcom* decision did not discuss the implication of usage of the term 'held'. The latest Tribunal ruling has opened a pandora's box and may lead to fresh wave of proceedings involving attachments/ confiscations and criminal prosecution in respect of alleged benami properties, which are continued to be held post 2016, even if the underlying transfer took place prior to the amendment in 2016.

[The author is a Principal Associate in Direct Tax Team at Lakshmikumaran & Sridharan Attorneys, Chennai]

Notifications & Circulars

- Income-tax Return Form-6 for the AY 2024-25 amended
- Individuals and HUFs liable to file their ROI under Section 44AB, enabled to verify their return using DSC or under EVC

Income-tax Return Form-6 for the AY 2024-25 amended

The CBDT *vide* Notification No.16 dated 24 January 2024, has introduced certain amendments to the Income tax return form ('ITR') - 6 for AY 2024-25 pertaining to FY 2023-24. The updated ITR-6 will be applicable from 1 April 2024. The form has been updated to include the following additional information:

- A drop-down to choose the due date of filing of ROI as 31 October or 30 November;
- Mandate to provide Legal Entity Identifier number (20 digits alpha numeric code) if the eligible refund amount is INR 50 crore or more;
- Mandate to furnish information regarding recognition status under MSME and the registration number allotted under the MSMED Act, 2006.
- Reason for requirement for audit under Section 44AB.
- Requirement to provide Acknowledgement number of the Tax Audit Report and UDIN.
- Requirement to disclose the sum payable to MSME entities beyond the specified time limit as per the MSME Act, 2006 to incorporate the amendments in Section 43B(h).
- Additional disclosure requirements relating to capital gains being, date of deposit, account number and IFSC code where any the sum deposited under Capital Gains Accounts Scheme.
- Separate disclosure to furnish information with respect to the income by way of winnings from online games chargeable to tax u/s 115BBJ and Dividend income received from a unit located in IFSC taxable u/s 115A.
- Requirement to provide specific information with respect to contribution made to political parties under Section 80GGC.
- Separate disclosure for startups for deduction under Section 80-IAC has been inserted seeking additional information such as date of incorporation, nature of business, certificate obtained from Inter-Ministerial Board of Certification and the first AY in which the deduction was claimed.
- A new Schedule 80LA has been inserted to provide additional information with respect to the deductions claimed in respect of offshore banking unit or IFSC.

A new Schedule 115TD has been inserted in the ITR form for the reporting of tax payable on accreted income. This schedule requires various details such as the computation of accreted income, tax payable on accreted income and details of challans for deposit of tax on accreted income.

Individuals and HUFs liable to file their ROI under Section 44AB, enabled to verify their return using DSC or under EVC

The CBDT *vide* Notification No.19 dated 31 January 2024, has enabled the Individuals and HUFs who are liable to file their ROI under Section 44AB of the Act, to verify their return by using DSC or under Electronic Verification Code (EVC).

The Notification provides for the substitution of ITR forms - 2, 3 and 5 for AY 2024-25 pertaining to FY 2023-24. The updated ITRs will be applicable from 1 April 2024. The substitution is to seek for additional information to enhance transparency and to incorporate the amendments made by Finance Act, 2023. The changes incorporated in the ITR as follows:

- ITR -5 requires a manufacturing co-operative society to confirm whether they are opting for concessional tax rate under Section 115BAE and requires to furnish details of Form-10 - IFA if applicable.
- A drop-down option has been provided to choose the due date of filing of ROI as 31 July or 31 October or 30 November;
- Mandatory requirement to provide Legal Entity Identifier number (20 digits alpha numeric code) if the eligible refund amount is INR 50 crore or more;
- A new line has been inserted in 'Schedule BP' to disclose the turnover or gross receipts received in cash during the Previous Year.
- Mandate to furnish information regarding its recognition status under MSME and the registration number allotted under the MSMED Act, 2006.
- In schedule 'OI – Other Information' separate line is added to disclose the sum payable to Micro or Small enterprises beyond the specified time limit as per the MSME Act, 2006 to incorporate the amendments in Section 43B(h).
- In Schedule 'CG – Capital Gains' additional disclosure requirements such as date of deposit, account number and IFSC code has to be furnished in addition to the sum deposited under Capital Gains Accounts Scheme.
- In schedule 'OS – Income from other Sources', to be in line with the amendments made by Finance Act, 2023

separate lines are inserted to furnish information with respect to the income earned by way of winnings from online games chargeable to tax u/s 115BBJ, dividend received from unit located in IFSC, bonus received under life insurance policies.

- A new schedule 80GGC has been inserted to provide information with respect to the contribution made to political parties.
- A new 'Schedule – Tax Deferred on ESOP' has been inserted to seek additional details such as the PAN of the employer (an eligible startup) and its DPIIT Registration number.
- Under Schedule – VI A, a new line item has been inserted to include the deductions claimed under Section 80CCH. (Agnipath and Agni Veer Corpus fund contributions).
- A new Schedule 80DD has been inserted into ITR 2 and 3 to provide additional information with respect to the deductions claimed.
- A new Schedule 80U has been introduced in ITR -3 to include the details of the deduction claimed.
- Mandatory reporting of all bank accounts held at any time except dormant accounts.
- A separate line has been inserted in Schedule DPM – Depreciation on Plant and Machinery to provide adjustment with respect to the amount of unabsorbed depreciation not allowed to be adjusted on account of opting for Section 115BAC. WDV of the block as on 01-4-2023 shall be increased by the amount of unabsorbed depreciation (pertaining to additional depreciation).
- A new Schedule 80IAC has been inserted in ITR-5 seeking additional information such as date of incorporation, nature of business, certificate obtained from Inter-Ministerial Board of Certification and the first AY in which the deduction was claimed with respect to the amount of deductions claimed under this section.
- A new Schedule 80LA has been inserted in ITR-5 to provide additional information with respect to the deductions claimed in respect of offshore banking unit or IFSC.
- A new Schedule 115TD has been inserted in the ITR-5 for the reporting of tax payable on accreted income. This schedule requires various details such as the computation of accreted income, tax payable on accreted income and details of challans for deposit of tax on accreted income.

Ratio Decidendi

- Trust – Section 11 exemption available to a trust even if audit report in Form 10B is filed after RoI, but before assessment proceedings – Gujarat High Court
- Management/processing fee in respect of loan, is in the nature of 'interest' under Section 2(28A) and is thus exempt under Article 11 of India-Germany DTAA – ITAT New Delhi
- 'Live Transmission fee' is not taxable under the head 'Royalty' – Delhi High Court
- Charitable purpose – Conferences conducted by Chamber of Commerce for a fee are covered under Section 2(15) – ITAT Kolkata
- Compensation received on termination of agency, distribution & manufacturing rights is 'business income' – ITAT Mumbai

Trust – Section 11 exemption available to a trust even if audit report in Form 10B is filed after RoI, but before assessment proceedings

Gujarat Energy Development Agency ('**Assessee**'), a registered charitable trust u/s 12AA of the Income Tax Act, 1961 ('**IT Act**') filed Return of Income ('**RoI**') for AY 2018-19 declaring business income. *Vide* the said RoI, the Assessee had also shown voluntary contributions and for the said contributions, claimed exemption under Section 11 of the IT Act. After processing the RoI under Section 143(1) of the IT Act, an intimation was issued by the Centralized Processing Centre ('**CPC**'). *Vide* the said intimation, the Assessee's claim for exemption was disallowed for the reason that the Assessee did not file the audit report along with the RoI.

On challenge before the Commissioner of Income Tax (Appeals) ('**CIT (A)**'), the CIT(A) observed that the audit report was e-filed before the Assessing Officer ('**AO**') on 6 December 2018 in the course of the regular Assessment Proceedings and was made available to the AO before passing the Assessment Order under Section 143(3) of IT Act on 6 April 2021. Thus, claim of exemption made by the Assessee must be granted.

On being aggrieved by the same, the Commissioner of Income Tax (Exemptions) filed an appeal before the ITAT, Gujarat. The ITAT relied on the decision of the Hon'ble Gujarat High Court in *Social Security Scheme of GICEA* v. *CIT*[3], *Sarvodaya Charitable Trust* v. *Income Tax Officer*[4] and held that the claim for exemption by the Assessee cannot be disallowed. In the said case, the Assessee had produced the audit report after furnishing the RoI. It was therein held by the Hon'ble Gujarat High Court that furnishing audit report along with RoI is a procedural requirement. It was held that even though the Respondent might be justified in denying the exemption u/s 11, the fact remains that the Assessee was a public charitable trust and had satisfied all conditions to avail exemption. For the mere reason that there is a delay in furnishing audit report, the whole exemption cannot be disallowed.

On being aggrieved by the same, the present appeal was filed before the Hon'ble Gujarat High Court. The Appellant placed reliance on *PCIT* v. *Wipro Limited*[5] wherein it was held that requirement of Section 10B(8) which provides for furnishing declaration for claiming exemption under Section 10B including the time limit, is mandatory. The Hon'ble Gujarat High Court

[3] Civil Application No. 17612 of 2022
[4] Special Civil Application No. 6097 of 2020
[5] Civil Appeal No. 1449 of 2022

distinguished the facts of *Wipro* from the present appeal and held that in the present appeal, Assessee claimed exemption under Section 11 read with Section 12A, where the decision rendered in *Wipro* was in the context of Section 10B of the IT Act and considered the wordings of Section 10B. It was hence held that in the facts of the present appeal, the Hon'ble ITAT rightly followed the decisions of this High Court and that the approach of Courts in such cases must be equitable, balancing and judicious. The High Court noted that in the present case, the Assessee had already uploaded the audit report in Form 10B before the AO prior to the passing of the Assessment Order under Section 143(3), and thus held that the claim of exemption must be granted to the Assessee. [*Commissioner* v. *Gujarat Energy Development Agency* – TS 47 HC 2024 (GUJ)]

Management/processing fee in respect of loan, is in the nature of 'interest' under Section 2(28A) and is thus exempt under Article 11 of India-Germany DTAA

Assessee, a non-resident banking company incorporated in Germany, advanced External Commercial Borrowing Loan to an Indian entity M/s Filatex India Ltd. As against the loan advanced, the Assessee had received interest alongwith connected fees, such as management / processing fee, documentation fee, etc. The Assessee did not file any RoI in India. However, based on the information uploaded in Form 15CA by the Indian entity, it was found that foreign remittance was made towards management / processing fee and no tax was deducted on the same. For the said reason, the AO initiated assessment proceedings on the Assessee under Section 147 of the IT Act. In response to notice under Section 148 of the IT Act, the Assessee submitted a reply stating that the interest alongwith various fees received is exempt Article 11(3)(b) of the India-Germany DTAA.

The AO assented to the claim of the Assessee with respect to interest on loan and certain other fees and denied the claim with respect to management / processing fee. Thus, the AO (vide a Draft Assessment Order) held that the management / processing fee received from the Indian entity is not covered under the definition of interest under Article 11 of the India-Germany DTAA and is in fact in the nature of fee for technical services ('**FTS**'). The Dispute Resolution Panel directed the AO to consider Assessee's claim and pass a speaking order. Accordingly, the AO passed the final Assessment Order upholding the decision as in the Draft Assessment Order.

On appeal, the ITAT reiterated the facts and held that the management fee was also in the similar nature of commitment

fee and documentation fee as it was closely linked to the loan granted. It was thus held that the management fee partakes the nature of interest under Section 2(28A) of the IT Act and Article 11(4) of the India-Germany DTAA. The same would therefore be exempt from taxation in terms of Article 11(3)(b) of the DTAA. [*Aka Ausfuhrrkreditgesellschaft Mbh* v. *Assistant Commissioner* – TS 43 ITAT 2024 (DEL)]

'Live Transmission fee' is not taxable under the head 'Royalty'

For AY 2015-16, Fox Network Group Singapore Pte Ltd ('**Respondent**') filed RoI and offered INR 65 crore as royalty income (earned from sub-licensing of broadcasting 'non live' content as per Master Services Agreement to Star India Private Limited ('**SIPL**')), subject to tax in terms of Section 9(1)(vi) of the IT Act. The AO asked the Respondent to furnish details with respect to why out of the entire licence fee earned, only part of it has been offered to tax as royalty. The Respondent submitted that out of the entire licence fee, INR 65 crore pertained to fee earned from sub-licensing of sports broadcasting rights to SIPL from 'non live' feed and the rest of the consideration pertained to 'live feed' which does not fall within the ambit of 'royalty'. However, the AO held that the entire licence fee is taxable as 'royalty'. The said view was further upheld by the DRP.

Aggrieved by the same, the Respondent filed an appeal before the ITAT. The Hon'ble ITAT considered the submissions of both the parties and observed that-

(i) It was explicitly provided in the Agreement that 95% of the value of licence fee was attributable to live feed and 5% to non-live. So, it was erroneous on part of the AO and DRP to hold that there were same kind of bundle of rights and there cannot be any bifurcation between live feed and non-live feed.

(ii) As per Explanation (2) to Section 9(1)(vi) of the IT Act, royalty means consideration for the transfer of all or any rights in respect of any copyright, literary, artistic or scientific work. Since the said terms are not defined in the IT Act, reference must be placed on the Copyright Act, 1957. Section 13 of the said Act provides that copyright shall subsist in work. Section 14 provides that copyright is the exclusive right of doing any acts in respect of work.

(iii) In the present case, right was granted by Respondent to SIPL which is merely a transfer of live feed through satellite. The entire transmission is done by SIPL. There is neither a recording by way of cinematography or sound recording involved in live telecast because the right

granted by the Respondent was merely to broadcast the event.

(iv) Reference was placed on the decision of the Delhi High Court in *CIT* v. *Delhi Race Club Ltd*[6] wherein it was held that payment for 'live' telecast of horse races was not 'royalty' as per Explanation 2 to Section 9(1)(vi) of the IT Act. It was further held that there is a distinction between copyright and broadcasting right. Broadcasting of live coverage is merely a broadcasting right and the said right does not subsist within 'work' in which copyright subsists.

The Delhi High Court upheld the views of the ITAT. In addition, the Hon'ble High Court delved into the question of whether the amendment made to Explanation 6 to Section 9(1)(vi) on understanding of the term 'process' can be read into the India-Singapore DTAA as well. Reliance was placed on the decision of the Delhi High Court in *Director of Income Tax* v. *New Skies Satellite BV*[7] wherein it was held that no amendment made in the domestic law can be extended to the DTAAs without subsequent amendments in the said DTAAs therein.

Thus, the said consideration with respect to fee earned from sub-licensing of sports broadcasting rights from live feed was held as not taxable as royalty under Section 9(1)(vi) of the IT Act. [*Commissioner* v. *Fox Network Group Singapore Pte. Ltd.* – TS-28-HC-2024(DEL)]

Charitable purpose – Conferences conducted by Chamber of Commerce for a fee are covered under Section 2(15)

The Assessee, the Indian Chamber of Commerce is a charitable association registered under Section 12A of the IT Act, set up with the purpose of promoting and protecting Indian business and industry. The Assessee filed its return of income for AY 2013-14 claiming exemption u/s. 11 of the IT Act. The case of the Assessee was subject to scrutiny and assessment proceedings were initiated. The AO contended that the activities of the Assessee, which include organising meetings, conferences and seminars, constituted business activity and therefore hit by proviso to Section 2(15) of the IT Act. According to proviso to Section 2(15) of the IT Act, the advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business and if the receipts from those activities exceed INR 25 lakh. The AO treated the receipts from organising meetings, conferences and seminars as business receipts and

[6] (2015) 228 taxman.com 185

[7] 2016 SCC Online Del 796

denied exemption u/s. 11 of the IT Act on the ground that the receipts arose from business activities and that they also exceeded the monetory limit prescribed in the proviso to Section 2(15) of the IT Act i.e., INR 25 lakh. Further the AO allowed the exemption under Section 11 on the rest of the income of the Assessee, as they arose only from charitable activities of the Assessee. An Assessment Order came to be passed u/s. 143(3) of the IT Act. Aggrieved, the Assessee preferred an appeal before the CIT(A). The CIT(A) denied exemption on the whole income of the Assessee on the ground that the entire activity of the Assessee has to be considered as business activity and that the bifurcation of business receipts and charitable receipts as done by AO is erroneous. Aggrieved, the Assessee preferred an appeal before the ITAT.

Before the ITAT, it was the contention of the Assessee that the activities of the Assessee does not involve any services in the nature of business, rather they are incidental to the attaining of its principal object i.e. to promote and protect the trade, commerce and industry. Reliance was placed on the Apex Court decision of *ACIT (Exemption)* v. *Ahmedabad Urban Development Authority*,[8] wherein, the activities shall be treated as service in relation to trade, commerce or business in the following cases:

i) If the service is individualized, i.e., if the service is provided at personal level.

ii) If the trust is conducting paid workshops, training courses, skill development courses certified by it and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective businesses.

Secondly, the Assessee contended that, in Assessee's own case for AY 2008-09 to 2009-10, the same activities of the Assessee were held to be non-business in nature and that they were only incidental to the main object of the Assessee.

Regarding the first contention, the ITAT accepted the Assessee's reliance on *Ahmedabad Urban Development Authority* (*supra*) and observed that the receipts received from activities such as organising meetings, conferences and seminars barely cover the expenses for such activities. Further, the ITAT held that the consideration charged by the Assessee is on cost basis only and nominally above cost and therefore, the same cannot be held to be in the nature of business. The Hon'ble ITAT held that the AO erroneously read the decision of *Ahmedabad Urban Development Authority* (*supra*) and treated the income from the above activities

[8] [2022] 144 taxmann.com 78 (SC)

of the Assessee as business income. The ITAT relied on *Ahmedabad Urban Development Authority* (*supra*) and held that income from the mentioned activities will not constitute business income since:

i) the Assessee is not carrying on any activity of holding meetings, seminars and conferences for business purpose but only in support of its main object,

ii) the activities were not organised in an individualised manner but were conducted with the intention to spread knowledge and experience of experts regarding trade and commerce with members and non-members. Additionally, the fee charged was also on cost basis.

Regarding the second contention the Hon'ble ITAT held that the case of the Assessee was squarely covered by the decision of the Apex Court in the case of *CIT* v. *Radhasoami Satsang*,[9] wherein it was held that if there is no change in facts or law then the Department cannot take a different stand on the same set of facts. The ITAT observed that in Assessee's own case for AY 2008-09 to 2009-10 the issue regarding exemption u/s. 11 of the IT Act was decided in favour of the Assessee. Therefore, the ITAT held that following the rule of consistency, the Assessee was eligible to exemption u/s. 11 of the IT Act on the entire receipts for AY 2013-14. [*Indian Chamber of Commerce* v. *DCIT* – TS-793-ITAT-2023(Kol)]

Compensation received on termination of agency, distribution & manufacturing rights is 'business income'

The Assessee filed its return of income for the AY 2005-06. The Assessee is in the business of manufacturing and sale of pharmaceutical products which entered into an agreement with the BM Group company in the year 1997. Subsequently, this company was acquired by another German company due to which certain obligations entered with the Appellant were terminated. That being the case, during the AY 2005-06, the Assessee received a sum from RDG, German company under a settlement agreement towards termination of agency, distribution and manufacturing rights granted to it by RDG *vide* agreement dated 30 June 1997. The Assessee offered this sum received under the settlement agreement to tax under the head 'capital gains'. The Assessee treated the sum received as payment toward extinguishment of capital asset being business. The Assessee's case was subject to scrutiny. The AO added the sum as business income under Section 28(ii)(c) read with Section

[9] [1993] 201 ITR 493 (SC)

28(va)(a) of the IT Act. Aggrieved, the Assessee preferred an appeal before the CIT(A). The CIT(A) upheld the additions made by the AO. Aggrieved, the Assessee preferred an appeal before the ITAT. It was the contention of the Assessee before the ITAT that,

1. Section 28(ii)(c) of the IT Act deals with amount received as a result of surrendering agency rights. However, the Assessee contended that it has rather surrendered its business as a whole and therefore suffered right to earn all prospective future profits from conducting the business of RDG's products on its behalf. Business in this case includes agency, distribution and manufacturing rights.
2. *Vide* settlement agreement, the Assessee has lost the right to carry on the business of distributing RDG's products. Since business is a capital asset, the extinguishment of the same should therefore be assessed under the head 'capital gain'.

The ITAT noted that, even after surrendering the rights, the business of the Assessee continued, and the capital structure of the Assessee's business was unaffected. In this regard, the ITAT placed reliance on the Supreme court decision of *CIT* v. *Chari and Chari Ltd.*,[10] wherein it was held that when the termination of an agency did not impair the profit-making structure of the Assessee, but was within the framework of the business, the receipt for termination of agency would be a revenue receipt. Further, the ITAT held that the compensation received will be business income as per Section 28(ii)(c) read with Section 28(va)(a) of the IT Act, since, as per the original agreement it was the intention of the parties that Assessee was to function as an agent of RDG, Germany. Therefore, the ITAT rejected the Assessee's contention that compensation received *vide* settlement agreement was towards surrendering more than just agency rights and hence Section 28(ii)(c) read with Section 28(va)(a) of the IT Act will not be attracted.

In another issue for the same AY, the Assessee had collected sales tax from certain parties on behalf of the government and the same was not deposited with the government as per the scheme formulated by the Madhya Pradesh Government. The amount not deposited was treated as 'Sales tax deferred loan' to the Assessee. Subsequently, the loan was partly waived on prepayment by the Assessee. The amount of sales tax waived off was treated as gain and the Assessee offered the same to tax under the head 'capital gain'. The Ld. AO treated the gain as a

[10] 57 ITR 400 (SC)

revenue receipt taxable under Section 41(1) of the IT Act. The Ld. CIT(A) upheld the action of the Ld. AO. Aggrieved, the Assessee contended before the Hon'ble ITAT that the waived off amount is a capital receipt. In this regard the Assessee placed reliance on Hon'ble Jurisdictional High Court case of *CIT* v. *Suzler India Ltd*.[11] wherein the issue was whether waive off of deferred tax liability will be a benefit accruing from cessation of trading liability under Section 41(1). The High Court had held that in cases where deferred tax has been waived off on account of prepayment and the waived off amount is credited to capital reserve, the said credited amount will be a capital receipt. The ITAT accepted the reliance placed by the Assessee and directed the AO to treat the same as capital receipt. [*Piramal Enterprises Ltd.* v. *Deputy Commissioner – TS-33-ITAT-2024(Mum)*]

[11] (2014) 369 ITR 717

NEW DELHI 5 Link Road, Jangpura Extension, Opp. Jangpura Metro Station, New Delhi 110014 Phone : +91-11-4129 9811 --- B-6/10, Safdarjung Enclave New Delhi -110 029 Phone : +91-11-4129 9900 E-mail : lsdel@lakshmisri.com	**MUMBAI** 2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg, (Near Century Bazar)Prabhadevi, Mumbai - 400025 Phone : +91-22-24392500 E-mail : lsbom@lakshmisri.com
CHENNAI 2, Wallace Garden, 2nd Street, Chennai - 600 006 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** 2nd Floor, Kanak Building 41, Chowringhee Road, Kolkatta-700071 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	**GURGAON** OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A, Gurgaon-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

Lakshmikumaran & Sridharan attorneys
An ISO 27001:2013 certified law firm