

# DIRECT TAX

## Judicial Rulings

**The rate at which the Power Distribution Companies (PDC) supplied powers to consumers should be adopted instead of the rate at which the power generating companies (PGC) supplied power to PDC to calculate the Arm's length Price ('ALP') for transfer of power qua 80IA eligible unit**

- The appellant is engaged in the business of manufacture of Papers, Power, Energy and cement
  - The assessee have two captive power generation units which were eligible for deduction u/s. 80IA of the Act.
  - The assessee has claimed deduction u/s. 80IA of the Act for captive power consumption from its eligible units @ INR 6.35 per unit.
  - The assessee had supplied excess power generated to PDC i.e. TANGEDCO @ INR 5.11 per unit. The assessee had also supplied minor quantity of power to M/s. R S Yarana Power Pvt. Ltd @ Rs. 9.10 per unit.
  - In the course of transfer pricing proceedings, TPO observed that the assessee shown to have purchased power @ Rs. 6.35 per unit which was the rate charged by PDC. However, the captive power generation units did not do any distribution activities and thus, rate adopted by the assessee on the basis of power purchased from TANGEDCO @ Rs. 6.35 per unit is incorrect.
  - Therefore, TPO adopted internal comparable, which is the rate at which surplus power supplied by the assessee company to TANGEDCO @ 5.11 per unit.
- The Delhi ITAT allows deduction u/s 80IA , relies on coordinate bench's ruling in India Cements Ltd wherein it was held that for the purpose of computing deduction towards power generated from captive power generation units and consumed by other units, the rate at which the PDC supplied powers to consumers should be adopted instead of the rate at which the power generating companies supplied power to PDC.
  - Accordingly, deletes adjustment in respect of deduction claimed u/s. 80IA for eligible unit.

*Tamil Nadu Newsprint and Papers Ltd  
[TS-672-ITAT-2023(CHNY)-TP]*

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### Revenue failed to establish Mauritian Co. as 'conduit', TRC sufficient for capital gains exemption

- Assessee had acquired the shares of an Indian company before April 1, 2017.
- As per Article 13(4) of India- Mauritius DTAA ("the DTAA"), capital gain on sale of shares on Indian company acquired before April 1, 2017 are exempt from taxation in India. Therefore, Assessee claimed that they were entitled from taxation of capital gain in India.
- Further, Assessee had also presented the valid Tax Residency Certificate ("TRC") for the relevant AY issued by the competent authority of Mauritius.
- However, Revenue disputed the claim of the assessee and contended that Assessee is a conduit company stating
  - ✓ Lack of Economic Substance as no business activities during the relevant AY
  - ✓ Lack of commercial Ownership
  - ✓ No commercial rationale for establishing entity in Mauritius

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## Judicial Rulings

- ✓ No control and management present in Mauritius
- The Delhi ITAT rejects the revenue argument of assessee being a conduit company stating
  - ✓ Assessee holds a valid TRC which carries considerable weight in tax matters
  - ✓ Assessee would be entitled to DTAA benefits by relying on Hon'ble Supreme Court ruling in Azadi Bachao Andolan and Hon'ble Jurisdictional High Court ruling in case of Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd.

*Veg 'N' Table*  
[TS-657-ITAT-2023(DEL)]

### **Addition based on the projected revenue (submitted for lower TDS certificate) instead of actual revenue in financial results is untenable**

- The Assessee company, a Singapore entity, entered into a fixed-price subcontract with Siemens Ltd for undertaking telecommunication work for Chennai Metro Rail Project for the period of FY 2012-13 to FY 2017-18.
- During the assessment proceedings, tax department observed the following for FY 2017-18
  - Assessee debited contract losses for INR 4.95 Cr
  - a large difference between projected contract revenue submitted for a lower TDS certificate and actual revenues.

- In view of the same, tax department increased the revenue of assessee company by the difference shown in projected revenue and actual revenue for FY 2017-18.
- The Delhi ITAT rejects the revenue/tax department approach stating
  - In 197 application, the assessee has merely projected the contract revenue and these estimations could not be taken to be the turnover of the assessee disregarding the actual revenue of the assessee.
  - The assessee recognized losses according to para 25 of AS-7 due to expected excess costs over revenue
  - There was no deviation from accounting standards, and the extension of the project explained the variance in estimation and actual revenue.
  - Revenue projections in tax proceedings were based on estimated work, while financial statements were based on certified actual work
  - Aggregate contract revenue has been offered to tax over the life of the contract period starting from financial years 2012-13 to 2022-23 (as contract extended) which is evidenced by the details of invoices as placed on record.
  - there is no leakage of contract revenue and taxing more amounts in this year would result into bringing to tax contract revenues much more than the fixed price contract value to be received by the assessee over the life of contract.

*ST Engineering Electronics Ltd*  
[TS-675-ITAT-2023(CHNY)]

# INDIRECT TAX

## Notification

### Extension of time limit to file appeal

Time limit to file appeal u/s 107(1) in FORM APL-01 extend till 31-01-2024 for the following:-

- Appeal was not filed against demand order passed by proper office under section 73 and 74 on or before 31-01-2023
- Appeal was earlier rejected on ground that appeal was not filed within specified time period

The extension is subject to making a pre-deposit of 12.5% (as against 10%) of the tax under dispute and at least 25% to be discharged from the electronic cash ledger.

*Notification no. 53/2023-CT, 02-11-2023*

## Circular

### Taxability and Valuation of personal guarantee and corporate guarantee

#### Personal Guarantee

- personal guarantee provided by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service under clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act
- In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply.

- The open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company

#### Corporate Guarantee

- corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company or holding company to subsidiary company, where both the companies are related, the activity is to be treated as a **supply of service** between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration
- As per Rule 28 (2), the taxable value for the supply of a corporate guarantee service will be higher of 1% of the guarantee offered or the actual consideration, irrespective of whether full ITC is available to the recipient of services or not
- Further, Rule 28(2) shall not be applicable on personal guarantee

*Circular No. 204/16/2023-GST, 27-10-2023*

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