NEWSLETTER

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INCOME TAX

JCIT v. Rolta India Limited - Supreme Court Ruling on MAT

Fact of the case:

- The Company filed it Income Tax Return showing "Nil" income and paid tax on "Book Profits" under Minimum Alternative Tax (MAT).
- The assessment was completed under section 143(3) with "Nil" income after set off of brought forward losses and unabsorbed depreciation. The Assessing Officer levied tax on book profit as calculated under section 115JA of The Income Tax Act.
- Since no advance tax was paid, interest under section 234B was also charged.
- The Company claiming that interest under section 234B cannot be charged on tax on book profit filed an appeal before the CIT (Appeal).
- The CIT (Appeal) rejected the claim of the Company. Even Tribunal upheld the order of the Assessing Officer.
- On further appeal, the High Court following a Karnataka High Court decision in the case of Kwality Biscuits Ltd., took the view that the interest cannot be charged on tax on book profit under MAT.
- Aggrieved by the order, the Tax Department filed an appeal before the Supreme Court.

Issue before the Court:

- Whether advance tax was payable on tax calculated under section 115J of The Income Tax and consequently whether interest under section 234B can be levied for non/short payment of advance tax?

Observations and Ruling of the Supreme Court:

- The Court observed that the object of introducing section 115J was to tax "Zero-tax" Companies.
- The calculation of Book Profit and determination of tax on such book profit has to be in accordance with the provisions of section 115J/JA.
- Specific provision has been made in Section 115JA (4) and Section 115JB(5) which states that *"Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a Company, mentioned in this section."*
- Interest under section 234B is levied on assessed tax. Assessed tax has been defined to mean tax on regular assessment which further means tax on application of section 115J/JA on regular assessment. There is no exclusion of applicability of Section 234B if the tax is assessed based on income derived under section 115J/JA.
- Hence interest under section 234B is payable on failure to pay advance tax with regards to tax payable under section 115J/JA.

Conclusion:

- Thus it can be concluded that even for the Companies paying tax under MAT are required to pay advance tax. On failure or short payment of such advance tax, interest under section 234B and 234C is leviable.

Compiled by: Malay Damania

INTERNATIONAL TAX

Logix Micro Systems Ltd v. ACIT (Banglore Tribunal) on Transfer Pricing

Fact of the case:

- The Assessee Company had transactions with its Associate Enterprise in USA (”AE”), which was accepted by the TPO as “Arms Length” transaction.
- Out of the total amount due from the AE, Rs. 5.52 crores were outstanding for more than 6 months.
- The TPO held that the Assessee ought to have earned interest on such overdue amount and charged notional interest of Rs. 56.60 Lakhs on the overdue amount by applying the PLR rate of 10.25%.
- On appeal, The CIT(A)confirmed the addition made by the TPO although he held that the rate of interest charged should not be taken as PLR rate but the rate that AE would have paid in USA had they borrowed funds there.
- He also held that a reasonable time should be given for collection of receivable and the interest can be charged only for the period elapsing the “reasonable period”.

Issues before the Tribunal:

- Was the TPO entitle to go into the issues of notional interest from the AE or his right was restricted to approving the ”Arms’ Length Price”?
- Can the notional interest be included in the income of the Assessee Company?

The Banglore Tribunal held that:

- When a reference is made by the AO to TPO to examine the ALP, it is open for the TPO to examine every issue that is associated with the international transaction. Since the receivables were the result of an international financial transaction with AE, such transactions cannot be treated as a separate transaction for transfer pricing purpose.
- The assessee’s explanation for not recovering the debt for more than 6 months was not convincing. The facts reveal that the assessee was financing the business of the AE.
- If the assessee had brought in funds within a reasonable period, it would have earned interest on the same. The potential loss for not recovering the debt within the reasonable period has to be taken into consideration while examining the ALP. At the same time, reasonable period has to be allowed as interest-free period.
- The Tribunal confirmed the order of the TPO as regards the charging of the notional interest beyond the reasonable period.
- The interest should not be the LIBOR rate but the loss of interest to the Indian Company for not bringing the funds within the reasonable period. The rate available on short-term deposits ie. 5% should be taken and not the PLR rate of 10.25%.

Conclusion:

- The Companies must ensure to bring in funds from their AE within the normal credit period. The recent trend shows that if such funds are not brought in within the reasonable credit period, the companies will have to pay tax on the notional interest beyond such reasonable period.

DCIT v. BASF India Limited (Mumbai Tribunal) on Transfer Pricing

Fact of the case:

- The Assessee Company made certain purchases from its AE.
- The difference between the purchase price and the Arms' Length Price as determined by the AO was only 4%.
- The assessee argued that in view of Section 92C(2), since such difference is less than 5% of the transaction value, no addition was warranted.

Tribunal held that:

- The Tribunal agreed with the contention of the assessee and held that the second proviso to Section 92C(2) clearly states that if the difference is less than 5% then the actual price should be taken as Arms' Length Price.
- Since the difference between the transaction price and the ALP is only 4%, the transaction price should be taken as the ALP and accordingly deleted the addition made on that.

Compiled by: Mr. Malay Damania

INTERNATIONAL FINANCIAL REPORTING STANDARDS

GAAP DIFFERENCES - GROUP ACCOUNTS - IFRS Vs Indian Accounting Standard

S.No	Particulars	IAS 27/28/31	AS 21/23/27
1.	Principal Financial Statement	Consolidated Financial statements (CFS).	Separate Financial Statements (SFS). CFS only required for listed entities.
2.	Consolidation-Interest in JV/ Associates	Mandatory even if the entity is having no subsidiary.	Mandatory only if the entity is having subsidiary.
3.	Subsidiary company definition	Unincorporated entities covered such as partnership firm, prop. Concern and Special purpose entities (SPE) such as Employee trust/ AOP.	Governed by Companies Act definition but yet not specifically defined.
4.	Definition of Control	Power to govern financial and operating policy of the company. Currently exercisable Potential voting power and rights need to be considered.	Control through holdings/ composition of BOD. Effect of Potential voting rights and powers is not to be considered.
5.	Significant Influence	Power to Participate in the Financial and operating policy of the entity.	Power to participate in the financial and/or operating policy of the company.
6.	Reporting Gap	Reporting date gap of 3 months permitted.	Reporting date gap of 6 months permitted for subsidiary and JCE but no time limit prescribed for associates.
7.	Uniform accounting policies	For like and similar transactions, same accounting policy should be followed otherwise effect to be given in financial statements at the time of consolidation.	For like and similar transactions, same accounting policy should be followed but have exception to this requirement on ground of "impracticality".
8.	Cross Holding	Reciprocal interest to be determined at fair value and deducted from Equity.	No Guidance
9.	Subsidiary-Parent Relationship	One Subsidiary- One Parent.	One entity- More than one parent
10.	Minority Interest/ Non controlling interest	Disclosed in equity but as separate component and not part of parent equity. Share of profit and loss to be allocated to Non controlling interest even if the same have negative balance.	Disclosed as separate line item after equity and reserves Share of loss recognized to the extent of balance in minority interest only and excess would be adjusted against majority interest except if minorities are having binding obligation.

GAAP DIFFERENCES - GROUP ACCOUNTS - IFRS Vs Indian Accounting Standard *(cont)*

S.No	Particulars	As per IFRSs	As per Indian GAAP
11.	Disclosure of Interest in Subsidiaries / Associates / JV	As non- current assets	As long term investment
12.	Exemption from consolidation of interest in Associates / JV	Specific exemption to venture capital, Unit trust and similar entities for their holdings in any entity.	No such exemption
13.	Methods of determining interest in Jointly Controlled Entities in CFS	Proportionate consolidation or Equity Method	Proportionate consolidation method

Compiled by Bharat Jain