N. D. KAPUR & CO.
CHARTERED ACCOUNTANTS

Monthly Updates

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(I) CORPORATE LAW

LIMITED LIABILITY PARTNERSHIP (AMENDMENT) RULES, 2024

The Limited Liability Partnership (Amendment) Rules, 2024, notified on August 5, 2024, by the Central Government of India, introduces key amendments to the Limited Liability Partnership Rules, 2009, particularly in the context of the Centre for Processing Accelerated Corporate Exit (C-PACE). Key Points of the Amendment are as follows:

1. **Establishment of C-PACE:** C-PACE was established through an MCA Notification dated March 17, 2023. It is located at the Indian Institute of Corporate Affairs and is intended to expedite the closure processes for defunct companies and Limited Liability Partnerships ("LLPs").

2. **Amendments to the LLP Rules, 2009:** The amendments specifically impact clause (b) and the first proviso of rule 37, along with sub-rule (1), sub-rule (3), and sub-rule (4). These amendments empower C-PACE to undertake the necessary actions to strike off the name of defunct LLPs from the register, thus facilitating a faster and more streamlined exit process for defunct LLPs.

COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2024

The Ministry of Corporate Affairs on August 5, 2024 has notified the Companies (Adjudication of Penalties) Amendment Rules, 2024, which amend the Companies (Adjudication of Penalties) Rules, 2014. These amendments are set to take effect from September 16, 2024.

Previously, adjudication proceedings under the Adjudication Rules involved physical hearings and the submission of documents. Although some steps like filing replies and paying penalties could be done electronically via the MCA portal, a fully integrated electronic system for all aspects of the adjudication process was not available. The Amendment addresses this by centralizing and digitizing the entire process, thereby enhancing efficiency and reducing the reliance on physical documentation and hearings. The key highlights of the Amendment are as follows:

1. Introduction of e-Adjudication Platform: The Amendment introduces a centralized and advanced e-adjudication platform, developed by the Central Government, for the electronic adjudication of penalties. This platform will streamline the adjudication process, ensuring that all proceedings are conducted digitally.

2. **Electronic Proceedings:** All processes related to adjudication, including issuing notices, filing responses and documentation, conducting hearings, recording witness attendance, passing orders, and paying penalties, will now be handled electronically via the e-adjudication platform.

3. **Handling of Notices/Summons:** If the person to whom a notice or summons is to be issued does not have an available e-mail address, the adjudicating officer will send a physical notice to the last known

postal address. A copy of the notice will also be preserved electronically on the e-adjudication platform. If there is no known address, the notice will be published on the e-adjudication platform.

4. **Revised Form ADJ:** The Annexure to the Adjudication Rules has been amended to include a revised Form No. ADJ for filing appeals against adjudication orders. This form will now be available for filing in electronic mode, further digitizing the appeals process.

COMPANIES (REGISTRATION OF FOREIGN COMPANIES) AMENDMENT RULES, 2024

The Government of India, through the Ministry of Corporate Affairs vide its notification dated August 12, 2024, has issued the Companies (Registration of Foreign Companies) Amendment Rules, 2024, which will come into force on 9th September 2024. Key amendments are as under:

1. **Amendment to Rule 3, Sub-rule (3):** Previously, a foreign company was required to file Form FC-1 with the registrar within 30 days of establishing its place of business in India, along with the necessary fees and documents as per the Companies (Registration Offices and Fees) Rules, 2014. The application was to be supported by an attested copy of approval from the RBI under the FEMA or Regulations and from other regulators if required, or a declaration stating that no such approval was needed. Now, in terms of the said amendment, the term "registrar" has been replaced with "Registrar, Central Registration Centre," indicating that Form FC-1 must now be filed with the Central Registration Centre (CRC) instead of the general registrar.

2. **Insertion of New Proviso in Rule 8, Sub-rule (1):** A proviso has been added stating that the documents for registration by a foreign company, as referred to in Sub-rule (3) of Rule 3, shall now be delivered in Form FC-1 to the Registrar, Central Registration Centre (CRC).

(II) INDIRECT TAXATION

CESTAT: INCORRECT ADDRESS ON INVOICES NOT A VALID GROUND TO DENY CENVAT CREDIT

In the matter of M/s. National Engineering Industries Limited Versus Commissioner of CGST & Central Excise, Jaipur (Excise Appeal No. 55041 of 2023 [SM]) the Delhi Bench of the Customs, Excise, and Service Tax Appellate Tribunal ("CESTAT") has ruled that an incorrect address on invoices is not a valid reason to deny CENVAT credit. It noted that the invoices issued by the input service providers, despite having incorrect addresses, contained all the necessary details as required under the proviso to Rule 9(2) of Cenvat Credit Rules, 2004. Therefore, CENVAT credit cannot be denied to the appellant. Rule 9(2) does not mandate the inclusion of the service recipient's address. The proviso to Rule 9(2) is applicable only when the conditions under Rule 4A of the Service Tax Rules, 1944, read with Rule 9 of the Credit Rules, are not fully met.

As per the facts of the case, the Appellant, engaged in manufacturing bearings, bearing components, and machines, and registered for service tax for providing business auxiliary services and consulting engineering services, was found to have incorrectly availed CENVAT credit based on invoices that did not comply with Rules 4(7) and 9 of the CENVAT Credit Rules, 2004, during an audit.

alleged that the discrepancies were discovered during the audit and accused the appellant of suppressing facts to evade central excise duty. Consequently, the department proposed to recover the wrongly availed CENVAT credit of Rs. 12,62,017 along with interest and penalties, which was confirmed, and the appeal against this order was dismissed.

The Appellant argued that the invoices contained all the details required under Rule 9(1)(f) of the Credit Rules, read with Rule 4A(1) of the Service Tax Rules, except for the correct address.

The Tribunal, in allowing the appeal, held that without evidence from the Department proving that the units mentioned in the invoices were the service recipients, the incorrect address was merely a procedural lapse and could not justify denying substantial benefits.

CESTAT: PREFERENTIAL LOCATION CHARGES LEVIED BY BUILDERS ARE PART OF TAXABLE VALUE FOR SERVICE TAX

In the matter of M/s DBF Infrastructure Pvt. Ltd. Versus Commissioner of CGST, Meerut (Service Tax Appeal No.70722 of 2019), the Hon'ble Allahabad Bench of the Customs, Excise, and Service Tax Appellate Tribunal ("CESTAT" / "Tribunal") has ruled that preferential location charges ("PLC") levied by builders are includible in the taxable value for service tax purposes. It observed that the service provided is related to the location and does not constitute a tax on land as per Entry 49 of List II. Instead, it remains a tax on the service rendered by the builder to the buyer, with no ambiguity.

As per the fact of the case, the Appellant, engaged in constructing residential complexes and registered with the service tax authorities, was found during an audit (April 2013 to June 2016) to have not paid service tax on PLC services, amounting to Rs. 3,25,123.

A Show Cause Notice was issued, demanding the unpaid service tax on PLC recovered from customers. The department confirmed the demand and ordered recovery for the period from April 2014 to June 2016 under Section 73(1) of the Finance Act, 1994.

The Appellant argued that PLC was a premium added to the base price of flats based on their location and not a service. However, the Tribunal dismissed the appeal, stating that service tax liability arises only when a separate charge is levied for a specific service, such as a preferred location or development. If no separate charge is levied, no service tax is applicable.

MADRAS HIGH COURT: NO IGST IS DUE ON OCEAN FREIGHT UNDER REVERSE CHARGE MECHANISM

In the matter of Viterra India Pvt Ltd. Versus The Union of India (W.P(MD)No.19314 of 2024 and W.M.P(MD)Nos.16380 and 16382 of 2024), the Madras High Court has ordered the Department to refund the GST paid by the assessee on ocean freight under the reverse charge mechanism.

The Hon'ble Court relied on the Hon'ble Supreme Court's decision in the case of Mohit Minerals Private Limited, which held that no IGST is payable on ocean freight under the reverse charge mechanism for CIF imports.

As per the facts of the case, the Petitioner had challenged the order dated December 3, 2021, and the rectification order rejecting their refund claim. Thereafter, they sought directions for the Respondents to grant the refund with interest for July 2019.

The Petitioner argued that the issue was covered by the Hon'ble Supreme Court's judgment, which confirmed the Gujarat High Court's ruling that GST on ocean freight services via notifications 8/2017-IT(Rate) and 10/2017-IT(Rate) was invalid.

Before GST, ocean freight was exempted by Notification 25/2012 but later made taxable by Notification 12/2017. GST Notification 8/2017 levied a 5% integrated tax on specified services, including ocean freight, and Notification 10/2017 categorized the recipient of such services as an importer.

The Gujarat High Court struck down these notifications, and the Hon'ble Supreme Court upheld this decision, declaring the levy of GST on ocean freight services ultra vires.

The Petitioner filed a rectification application under Section 161 of Central Goods and Services Tax Act, 2017, but the Department rejected it, stating the Petitioner should seek remedy before the Goods and Service Tax Appellate Tribunal, which was not yet constituted.

The Court, in disposing of the appeal, held that the issue was settled by the Hon'nle Supreme Court, and the Department must refund the GST collected on ocean freight services.

CESTAT: SEZ UNITS IN INDIA DEEMED OUTSIDE INDIAN TERRITORY, EXEMPT FROM EXCISE DUTY ON MANUFACTURED GOODS

In the matter of Commissioner Appeals - CGST & Central Excise Rajkot Versus M/S. Reliance Industries Ltd, Unit Of RSEZ Jamnagar (Excise Appeal No. 10070 of 2024 - DB) the Ahmedabad Bench of the Customs, Excise, and Service Tax Appellate Tribunal ("CESTAT" / "Tribunal") has ruled that the Special Economic Zone Act exempts all duties on goods manufactured in Special Economic Zones ("SEZ/s").

The Hon'ble Court observed that since SEZ units are excluded from the levy of excise duty, this exclusion also applies to the Special Additional Excise Duty ("SAED") and Additional Duty of Excise ("AED"). The SEZ unit is not specifically mentioned in Sections 147 and 112 of the Finance Act, 2002 and 2018, respectively, which further supports this exclusion.

The Respondent, an SEZ unit in Reliance Jamnagar SEZ, manufactures Motor Spirit ("MS"), High Speed Diesel ("HSD"), and Aviation Turbine Fuel ("ATF"). These products fall under specific sub-headings of the Fourth Schedule to the Central Excise Act 1944. The Respondent argued that since goods manufactured in SEZs are excluded from basic excise duty, they should also be exempt from the surcharge SAED and cess AED, which are additional duties of excise.

The Department, however, contended that the MS, HSD, and ATF manufactured by the SEZ unit and exported were liable for SAED and AED during a specific period in 2022. The Tribunal held that the levies of SAED and AED are incomplete and lack certainty regarding the taxable event, the person liable, and the measure. Sections 147 and 112 of the Finance Acts of 2002 and 2018 require the application of the Central Excise Act and its rules, which exclude SEZ units from these duties. Therefore, the SEZ unit is not liable for SAED and AED, and any duties paid are refundable with interest.

APPOINTMENT OF EFFECTIVE DATE FOR THE APPLICABILITY OF THE AMENDMENTS MADE VIDE THE FINANCE ACT, 2024

Notification No. 16/2024-CT dated 06.08.2024 has been issued to appoint the effective date for the said amendments as under:

1. **Substitution of Section 2(61) - Definition of input service distributor:**

Section 2(61) which defines input service distributor had been substituted vide the Finance Act, 2024 to include reverse charge invoices in the scope of credit distribution by an input service distributor.

As per the substituted definition, an input service distributor means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3)or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20.

The substituted definition will become effective from 1st April, 2025.

2. Substitution of Section 20 - Manner of distribution of credit by an Input Service Distributor:

Section 20 which prescribes the manner of distribution of credit by an input service distributor had been substituted vide the Finance Act, 2024 to make the input service distributor mechanism as provided thereunder mandatory. The amendment was made pursuant to the recommendations made in the 50 the GST Council meeting held on 11.07.2023.

The substituted section 20 provides as under:

i. Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.
ii. The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.
iii. The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.
The substituted section 20 will become effective from 1st April, 2025.

3. Insertion of new section 122A - Penalty for failure to register certain machines used in manufacture of goods as per special procedure:

New section 122A had been inserted vide the Finance Act, 2024 to levy penalty on failure to register certain machines used in manufacture of goods (tobacco, pan-masala and similar items) as per special procedure notified u/s 148 of CGST Act.

The new section 122A provides as under:

(1) Notwithstanding anything contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure, he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees for every machine not so registered.

(2) In addition to the penalty under sub-section (1), every machine not so registered shall be liable for seizure and confiscation:

Provided that such machine shall not be confiscated where

(a) the penalty so imposed is paid; and

(b) the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty.

The new section 122A will become effective from 1st October.

SECOND SPECIAL ALL-INDIA DRIVE AGAINST FAKE REGISTRATIONS

Instruction No. 02/2024-GST dated 12.08.2024 provides:

In view of the effectiveness of first Special All-India drive conducted during the period 16th May, 2023 to 14th August, 2023 for weeding out fake registrations, the National Coordination Committee has decided to take a concerted action against the fake registrations and fake/bogus invoices on the same pattern as was done during the said drive.

The second such drive will be conducted from 16th August, 2024 to 15th October, 2024.

In light of the above, in partial modification of the Instruction No. 01/2023-GST dated 04.05.2023, the following guidelines have been issued for Special All-India drive to be conducted during this year:

(a) Identification of fraudulent GSTINs

GSTN, in coordination with Directorate General of Analytics and Risk Management (DGARM), CBIC, will identify suspicious/ high-risk GSTINs, based on detailed data analytics and risk parameters, for the purpose of verification by the State and Central Tax authorities during the said drive and share the details of such suspicious GSTINs, jurisdiction wise, with the concerned tax administration. Besides, the State

and Central Tax Authorities, may, at their own option, supplement this list by data analysis/ intelligence gathering at their end, using various available analytical tools like BIFA/ GAIN, ADVAIT, NIC Prime, E-Way Bill Analytics etc., as well as through human intelligence, modus operandi alerts, experience gained through the past detections, as well as the first special All-India drive.

(b) Action to be taken by field formations

- A time bound exercise of verification of the suspicious GSTINs shall be undertaken. If, after detailed verification, it is found that the taxpayer is non-existent and fictitious, then the tax officer may immediately initiate action for suspension and cancellation of the registration of the said taxpayer.
- Matter may also be examined for blocking of input tax credit in Electronic Credit Ledger without any delay. Additionally, the details of the recipients to whom the input tax credit has been passed by such non-existent taxpayer may be identified through the details furnished in FORM GSTR-1 by the said taxpayer.
- Where the recipient GSTIN pertains to the jurisdiction of the said tax authority itself, suitable action may be initiated for demand and recovery of the input tax credit wrongly availed by such recipient on the basis of invoice issued by the said non existent supplier.
- Where the recipient GSTIN pertains to a different tax jurisdiction, the details along with the relevant documents/ evidence may be sent to the concerned tax authority, as early as possible, in the format given in Annexure-B.
- A nodal officer shall be appointed immediately by each of the Zonal CGST Zone and State for the purpose of communicating this information to the recipient tax jurisdiction.
- Action may also be taken to identify the masterminds/ beneficiaries behind such fake GSTIN for further action, wherever required, and also for recovery of Government dues and/ or provisional attachment of property/ bank accounts, etc.
- Further, during the investigation/ verification, if any linked suspicious GSTIN is detected, similar action may be taken/ initiated in respect of the same.

(c) Feedback and Reporting Mechanism

- An action-taken report in the specified format shall be uploaded by each of the State as well as CGST Zones, through the nodal officer on the portal provided for the same, on a weekly basis on the first working day after completion of the week, for enabling the GST Council Secretariat to monitor the same.

- If any novel modus operandi is detected during the verification/ investigation, the same may also be indicated in the said action taken report. On conclusion of the drive, GSTIN-wise feedback on the result of verification of the suspicious GSTINs shared by GSTN, will be provided by the field formations through the nodal officer to GSTN, as per the specified format.

(d) The Principal Chief Commissioner/ Chief Commissioner of the Central GST Zones and the Chief Commissioner/ Commissioner of the States/ UTs may monitor the progress of action taken in respect of list of suspicious GSTINs received from GSTN and chosen locally. The action taken in respect of the GSTINs received from other tax administrations through the 'Initiate Enquiry' module may also be monitored.

(e) GST Council Secretariat will compile the reports received from various formations and make it available to the National Coordination Committee immediately. The unique modus operandi found during this special drive will be compiled by GST Council Secretariat and presented before National Coordination Committee, which will be subsequently shared with Central and State Tax administrations across the country.

(III) DIRECT TAXATION

CBDT ISSUES CLARIFICATION ON INCOME-TAX CLEARANCE CERTIFICATE (ITCC)

The Central Board of Direct Taxes (CBDT) has issued a clarification regarding the requirement for obtaining an Income-Tax Clearance Certificate (ITCC). This clarification addresses misconceptions arising from recent amendments to Section 230(1A) of the Income-tax Act, 1961, introduced by the Finance (No. 2) Act, 2024.

The key points of the Clarification are as follows:

1. Scope of ITCC Requirement: The ITCC is not required for all Indian citizens before leaving the country. Only specific individuals, under certain circumstances, need to obtain this certificate.
2. Circumstances Requiring ITCC:
   - An ITCC is necessary for individuals involved in serious financial irregularities where their presence is crucial for investigations under the Income-tax Act or the Wealth-tax Act.
   - It is also required for individuals with direct tax arrears exceeding Rs. 10 lakh, which have not been stayed by any authority.
3. Amendment Details: The recent amendment to Section 230(1A) includes references to liabilities under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. This ensures that liabilities under the Black Money Act are treated similarly to those under the Income-tax Act and other direct tax laws.
4. Clarification on Misinterpretation: The CBDT has clarified that the requirement for an ITCC has not changed with the recent amendments. The provision has been in place since 2003 and remains applicable only in specific cases.
5. Procedure for Obtaining ITCC: A person can be asked to obtain an ITCC only after recording the reasons for the same and obtaining approval from the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax1.

This Clarification aims to dispel any misinformation and ensure that taxpayers are aware of the specific conditions under which an ITCC is required.

INCOME TAX RELIEF TO COOPERATIVE SOCIETIES

The Ministry of Cooperation has announced significant income tax relief measures for cooperative societies to support their financial health and promote rural development.

The key highlights of the Relief Measures are as follows:

1. Reduction in Surcharge: The surcharge on cooperative societies has been reduced from 12% to 7% for incomes exceeding Rs. 1 crore and up to Rs. 10 crore. This reduction aims to increase the disposable income of cooperative societies, benefiting their members, particularly those from rural and farming communities.
2. Alternate Minimum Tax (AMT): The Alternate Minimum Tax rate for cooperative societies has been lowered from 18.5% to 15%, aligning it with the rate applicable to companies. This change provides a level playing field between cooperative societies and corporate entities.
3. Clarification on Section 269ST: Section 269ST of the Income-tax Act restricts cash receipts exceeding ?2 lakh from a single person in a day, from a single transaction, or from multiple transactions related to a single event or occasion. The clarification ensures that milk cooperative societies, which often receive cash payments from distributors over multiple days, are not penalized under this section.
4. Increased Threshold for Cash Transactions: The threshold for cash withdrawals without TDS (Tax Deducted at Source) has been increased from Rs. 1 crore to ?\Rs. 3 crore. This change is intended to ease cash flow management for cooperative societies.
5. Tax Rate for New Manufacturing Cooperatives: New manufacturing cooperatives that commence operations by March 31, 2024, will benefit from a reduced tax rate of 15%. This incentive aims to encourage the establishment of new manufacturing units within the cooperative sector.
6. Relief for Primary Agricultural Credit Societies (PACS): The limit for cash loans and transactions by PACS has been increased to Rs. 2 lakh. This measure provides greater flexibility for PACS in managing their financial transactions.

DELHI HIGH COURT: THE AO MUST GRANT TDS CREDIT IN ACCORDANCE WITH THE DIRECTIONS OF ITAT

In the matter of ESS Singapore Branch Versus DCIT (W.P.(C) 6589/2024), the Hon'ble Delhi High Court has ruled that the Assessing Officer ("AO") must grant TDS credit in accordance with the directions of the Income Tax Appellate Tribunal ("ITAT" / "Tribunal").

It noted that the Tribunal had clearly directed the AO to verify and address the issue of short credit of TDS, as reflected in Form 26AS, amounting to Rs. 2,03,36,66,125.

As per the facts of the case, the Petitioner had filed a return of income, claiming a refund of Rs. 3,65,970. The return was scrutinized to determine if the revenue earned, including from live feed, constituted royalty and was taxable.

A draft assessment order was issued, stating that the consideration for live feed was taxable as royalty. The Petitioner objected to this before the Dispute Resolution Panel, which upheld the draft order on September 5, 2018. A final assessment order was issued on October 8, 2018.

The Petitioner challenged the DRP's view before the Tribunal, arguing that the consideration for live feed should not be taxed as royalty. The Department had not granted the full TDS credit as shown in Form 26AS.

The Tribunal ruled in favor of the petitioner and directed the AO to verify and grant the TDS credit as claimed.

The Department argued that since the Petitioner did not claim the amount in the income tax return, TDS credit should be denied. They stated that TDS credit can only be granted based on the return of income submitted, and for refunds, the petitioner must follow the procedure in Section 239 of the Income Tax Act.

The Hon'ble Court held that the AO must comply with the Tribunal's direction and that it was illegal and inequitable for the department to give short credit for the tax deducted and deposited based on the return of income.

MADRAS HIGH COURT: ESOP COMPENSATION WITHOUT CONTRACTUAL OBLIGATION IS A 'PERQUISITE', TAXABLE AS SALARY UNDER SECTION 17(2)

In the matter of Nishithkumar Mukeshkumar Mehta vs. Deputy Commissioner of Income Tax (W.P.No.26506 of 2023 & WMP Nos.25911 & 25912 of 2023), the Hon'ble Madras High Court ruled that the payment by Flipkart Private Limited Singapore ("FPS") was not made towards the Employee Stock Option Purchase (ESOP/s"), as the Assessee continues to hold the ESOPs even after receiving the compensation. The Hon'ble Court held that the receipt qualifies as a perquisite and is taxable under the head 'Salaries'. Consequently, the Hon'ble Court denied the 'Nil' certificate of tax deduction under Section 192 for such compensation, treating it as a perquisite in lieu of 'salary'.

Section 192 of the Income Tax Act states that tax must be deducted at source at the time of actual salary payment, including advance and arrears. Section 17(2) provides for the valuation of perquisites for tax purposes, equal to the cost incurred by the employer. An ESOP is an employee benefit plan that enables employees to own part or all of the company they work for, often used for succession planning.

The Hon'ble Court observed that if payments had been made by the Petitioner in relation to the ESOPs, it would have been necessary to deduct the value thereof to arrive at the value of the perquisite. Since the Petitioner did not make any payment towards the ESOPs and continues to retain all the ESOPs even after receiving compensation, the entire receipt qualifies as a perquisite and becomes liable to be taxed under the head 'salaries'.

As per the facts of the case, the Assessee, an employee of Flipkart Internet Private Limited ("FIPL"), received compensation for ESOPs due to the divestment of the PhonePe business. FPS implemented the Flipkart Stock Option Scheme, 2012 ("FSOP, 2012"), granting stock options to employees. Despite no legal or contractual right under FSOP, 2012, FPS announced compensation per ESOP. The Assessee was vested with 2137 ESOPs that were not exercised and 3787 that were not vested, resulting in compensation of Rs 2.09 Crores for 5924 ESOPs, after deducting TDS under Section 192 and treating the same as 'Salary'. The Assessee's application for a 'Nil' tax certificate under Section 197 was rejected, leading to the High Court case.

The Hon'ble Court noted that FSOP, 2012 granted stock options to employees, conferring the right to exercise the option upon vesting and receive shares of the issuing company, FPS, at a pre-determined value. ESOPs are not revenue-generating until shares are allotted. The compensation was not paid under any legal or contractual obligation but due to the loss in ESOP value triggered by the divestment of

PhonePe business. ESOPs do not fall under "property of any kind held by an assessee" under Section 2(14) and cannot be termed as capital receipts. The entire receipt qualifies as a perquisite and is taxable under 'salaries'.
As a consequence, the Hon'ble High Court dismissed the Assessee's petitions.

ITAT: REMITTANCES TO FOREIGN SUBSIDIARY COMPANIES NOT TAXABLE IN INDIA

In the matter of ITO Versus HCL Technologies Ltd (ITA Nos. 1372 to 1377/Del/2024), the Delhi Bench of the Income Tax Appellate Tribunal ("ITAT" / "Tribunal") has ruled that remittances made by the assessee to foreign subsidiary companies are not taxable in India in the hands of the recipient company. Consequently, the assessee company is not obligated to deduct tax at source under Section 195 of the Income Tax Act.
The Hon'ble Court observed that the obligation to deduct tax at source under Section 195 arises only when the remittance is a sum chargeable to tax under Sections 4, 5, and 9 of the Income Tax Act.

As per the facts of the case, the Appellant, a public limited company providing IT/ITES services, was scrutinized for various remittances made to subsidiary companies in different countries without tax deduction at source under Section 195 of the Income Tax Act. The Assessing Officer ("AO") initially treated the assessee as "in default" under Sections 201(1) and 201(1A) for not deducting tax at source, asserting that the remittances were taxable in India as income deemed to accrue or arise in India under Section 9 of the Income Tax Act.

However, the Tribunal allowed the appeal, holding that the remittances received by the foreign subsidiaries from HCL Technologies Ltd (the assessee) are not taxable in India under the Income Tax Act or the Double Taxation Avoidance Agreement.

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