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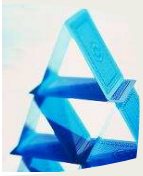

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SNK Newsletter

DIRECT TAXES

Judicial pronouncements

Mondial Orient Ltd. v. ACIT (Int'l Taxation) (2010) 37DTR (Bang)(Trib) 267

Income deemed to accrue or arise in India - Business connection - Support services rendered by Indian branch for purchases made by foreign company

Activities of identification of suppliers, quality control, pre-production meeting, online inspection, post-manufacturing inspection, handling of logistic and co-ordination of shipment carried out by the Indian branch office of the foreign company (assessee) under an agreement with another foreign company for providing assistance to its customers in connection with purchase of goods from India fall within the scope of Expln. 1(b) to s. 9.(1)(i), and therefore, no part of assessee's income from such services is taxable in India.

Cherukuriramesh v. ACIT (2010) 36 DTR (Visakha)(Trib) 269

Business income - Vis-a-vis capital gains on Sale of plots

Assessee, his wife and son jointly purchased land on 2nd March, 1997, and soon thereafter applied for converting the same into housing plots though sanction was given by the concerned development authority in 2001. They sold all the eight plots during the financial year 2004-05. Co-owners of the assessee have no record of carrying on of agricultural operations. Two of the three co-owners are engaged in the business of automobile spare parts. Even though the conversion of land materialized in the year 2001 only, in the absence of any evidence to show that the land was used for some other purpose prior to seeking approval of the layout plan, the intention of purchase of land cannot be automatically inferred as an investment. Thus, the attendant circumstances of the case lead to the conclusion that the land was purchased with the intention to sell the same at a profit.

Therefore, though an isolated transaction, it was an adventure in the nature of trade and the income therefrom has to be treated as business income.

ACIT v. Elecon Engineering Co. Ltd. (Civil Appeal Nos. 2057 to 2065 of 2010)

Roll over charges paid on foreign exchange forward contracts required to be adjusted in the carrying amount of fixed asset

It cannot be said that roll over premium charges paid in respect of foreign exchange have nothing to do with fluctuation in rate of exchange under section 43A as roll over charge stood paid to avoid increase or reduction in liability as a consequence of the change in the rate of exchange.

Vijaya Bank v. CIT (Civil Appeal Nos. 3286-3287 of 2010) (SC)[2010] 3 taxmann.com 90 (SC)

It is not imperative for assessee-bank to close individual account of each of it's debtors in it's books for claiming deduction under section 36(1)(vii)

Where the assessee-bank has instituted recovery suits in Courts against it's debtors, if individual accounts are to be

closed, then the Debtor/Defendant in each of those suits would rely upon the Bank statement and contend that no amount is due and payable in which event the suit would be dismissed

As regards Department's contention that it is necessary to square off each individual account failing which there is likelihood of escapement of income from assessment, section 41(4), inter alia, lays down that, where a deduction has been allowed in respect of a bad debt or a part thereof under Section 36(1)(vii), then, if the amount subsequently recovered on any such debt is greater than the difference between the debt and the amount so allowed, the excess shall be deemed to be profits and gains of business and, accordingly, chargeable to income tax as the income of the previous year in which it is recovered; in the circumstances, the Assessing Officer is sufficiently empowered to tax such subsequent repayments under Section 41(4) and, consequently, there is no merit in the contention that, if the assessee succeeds, then it would result in escapement of income from assessment.

CIT v. Mool Chand Sharbati Devi Hospital Trust (ITR No. 15 of 1992) (Allahabad HC)

Expenditure for construction of hospital building for general public is expenditure incurred for charitable purposes

Advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose.

Triumph Securities Ltd. v. DCIT [IT (SS) A No. 444/Mum/2004] [2010] 3 taxmann.com 87 (MUM. - ITAT)(SB)

Regular books of account which record the relevant facts in documentary form have to be treated as evidence in terms of section 158BB

Mere recording of transaction in the regular books of account is of no consequence unless the true income has been disclosed. If the material has been found during the course of search from which, it can be concluded that the transactions recorded in the books of account do not disclose the assessee's true income then such transactions are to be considered in the block assessment. Post search enquiries and investigations in regard to recorded transactions such as tax audit and enquiries from the Stock Exchange could be resorted to for determining the undisclosed income. Merely by furnishing 98% confirmations, it cannot be held that the assessee had fully discharged its burden that the transactions did not belong to him. Once it is established that there is concealed undisclosed income in the entries recorded in the books of account, to that extent the provisions of section 68 would be applicable and merely because the entire transactions have been recorded in the books of account, the applicability of section 69 cannot be ruled out.

Smt. Susila Ramasamy v. ACIT (Chennai ITAT)(Dtd. 02-04-2009)

Sec. 69 - once money brought into India through banking channel – assessee has discharged his onus to explain source of funds

If a (non-resident) person, having money in a foreign country, brings that money to India, through a banking channel, he cannot be called upon to pay income-tax on that money in India. The remittance of money into India through banking channel will make, the onus on the assessee under s. 69, discharged.

CIT v. Lokmat Newspapers Pvt. Ltd. (ITA (L) No. 3005 of 2009)

Speculation gain can be set off against carried forward speculation loss

The expression “any speculation business” in Explanation to section 73 means a speculation business of assessee in respect of which profits & gains for assessment year in question have arisen and there is no justification to restrict content of that speculation business where profits have arisen by excluding a business involving actual delivery of shares.

CIT vs. Shah Originals (Bombay High Court)(ITA No.431 of 2008)

EEFC A/c foreign exchange fluctuation and interest not eligible u/s 80HHC

The assessee, an exporter, claimed deduction u/s 80HHC on account of foreign exchange fluctuation and interest in the EEFC account on the ground that it was part of business income and arose from exports. The AO & CIT (A) rejected the claim though the Tribunal allowed it. On appeal by the Revenue, HELD reversing the Tribunal:

(i) S. 80HHC allows a deduction in respect of the profits “derived” from exports. The term ‘derived’ is of a narrower connotation than the term ‘attributable to’ and postulates the existence of a direct and proximate

nexus with the export activity. Pandian Chemicals 262 ITR 278 (SC) and Ravindranathan Nair 295 ITR 228 (SC) followed;

(ii) An exporter is not obliged to maintain the export proceeds in the EEFC Account but, this is a facility made available by the RBI. The transaction of export is complete in all respects upon repatriation of the proceeds. It lies within the discretion of the exporter as to whether the export proceeds should be received in a rupee equivalent in the entirety or whether a portion should be maintained in convertible foreign exchange in the EEFC Account. The exchange fluctuation arises after the export transaction is complete and payment has been received by the exporter. It does not bear a proximate and direct nexus with the export transaction so as to be "derived" from exports for s. 80HHC. Interest on EEFC deposits is not "business income" but is "income from other sources" and not eligible for deduction u/s 80HHC.

Hiranandani Akruti JV v. DCIT [ITA No. 5416/ Mum/09] [2010] 3 taxmann.com 96 (MUM. - ITAT)

Slum rehabilitation scheme has to be treated as housing project under provisions of section 80-IA(10)

If a slum rehabilitation is carried out in accordance with a scheme framed by Central or State Government and is further notified by the Board then the condition regarding approval by the local authority as a housing project before a particular time and the area of land being above 1 acre need not be complied with to get deduction u/s 80-IB(10).

G. V. Corporation v. ITO (ITA No. 4512/Mum/2007)

Housing Projects: Provisions of sub-section (10) not governed by provisions of sub-section (2) of section 80-IB

The conditions prescribed in sub-section (2) are relevant only in the case of an industrial undertaking and wherever such conditions are required to be fulfilled by other types of businesses, such as a hotel or a multiplex theater or a convention centre the legislature has expressly said so and sub-section (10) not having specifically provided for such conditions in case of an undertaking engaged in the development of housing projects, it is not possible to telescope the conditions mentioned in subsection (2) into the provisions of sub-section (10); sub-section (10) has to be interpreted on its own terms.

CIT vs. Anuj A. Sheth HUF (Bombay High Court)(ITA No.2285 of 2009)

Benefit of lower tax rate under Proviso to s. 112 available to bonus shares despite no indexation

The proviso to s. 112(1) provides that "where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being listed securities … exceeds ten per cent of the amount of capital gains before giving effect to the provisions of the second proviso to section 48 (i.e. indexation), then, such excess shall be ignored for the purpose of computing the tax payable by the assessee". The assessee sold bonus shares of Infosys for Rs. 6.13 crores. As there was no cost of acquisition of bonus shares and no indexation, the long-term capital gains were computed at Rs. 6.13 crores. The assessee sold other shares and computed a long-term capital loss of Rs. 2.68 crores after indexation, which was claimed as a set off against the LTCG of Rs. 6.13 crores. On the balance of Rs. 3.45 crores (comprising of gains on the bonus shares), the assessee paid tax at 10% as per the Proviso to s. 112. The AO took the view that as the assessee was not eligible to claim indexation benefits in respect of the bonus shares, it was not entitled to the option given by the Proviso to s. 112 and tax was payable on the entire gains at the rate of 20%. The AO's stand was upheld by the CIT (A) though reversed by the Tribunal. On appeal by the revenue, HELD dismissing the appeal:

(i) U/s 45 (1), the capital gains on the transfer of each capital asset have to be computed separately. Under the second proviso to s. 48, the gains have to be computed by deducting the "indexed cost of acquisition" from the consideration. U/s 70, the assessee is entitled to set off the loss sustained on the sale of shares from the capital gains realized from the sale of the bonus shares of Infosys resulting in the net capital gain of Rs.3.45 crores. U/s 112, the said long term capital gains are chargeable to tax at the rate of 20% subject to the Proviso;

(ii) In the case of bonus shares, the question of indexation does not arise because the cost of acquisition is taken to be nil. What the proviso to s. 112 essentially requires is that where the tax payable in respect of a listed security (being LTCG) exceeds 10% of the capital gains before indexation, such excess beyond 10% is liable to be ignored. The proviso to s. 112 requires a comparison to be made

between the tax payable at 20% after indexation with the tax payable at 10%

before indexation. If the shares were acquired at a cost, it becomes necessary for purposes of the proviso to s. 112(1) to compute capital gains before giving effect to indexation. However, that does not arise in respect of bonus shares. There is nothing in the s. 112 to suggest that the assessee would be entitled to a set off of the loss u/s 70 but without the benefit of indexation;

(iii) Circular Nos. 721 and 779 dated 13.9.1995 and 14.9.1999 respectively are significant because they reflect the Revenue's understanding that (i) the benefit of a set off would be available while computing the income arising from the transfer of a long term capital asset, which is part of the total income of an assessee and (ii) The benefit of the cost inflation index or indexation would continue to be available subject to the condition that where the tax on long term capital gains without adjustment for indexation exceeds 10%, such excess shall be ignored.

DCIT v. Bombay Diamonds Co. Ltd. (ITA no. 7488/Mum/07)

AO can make adjustments to the book profits for computation of MAT, if book of Accounts are not as per schedule VI of the companies Act

It was held that if the books of accounts of the taxpayer which are not prepared in accordance with part II and part III of schedule VI to the Companies Act, 1956, the Assessing Officer (AO) can make adjustment in the book profits under section 11 5JB of the Income-tax Act, 1961 (the Act) even if the books of accounts are audited or certified by the auditors and accepted by the shareholders.

Further, the Tribunal also held that the decision of the Supreme Court in the case of Apollo Tyres Ltd. v. CIT [2002] 255 ITR 273 (SC) were not applicable to the facts of the present case since in that case the books of accounts were prepared in accordance with the requirements of part II and part III of schedule VI to the Companies Act.

Lodhi Property Company Ltd. v. Under Secretary (ITA-II) [WP(C) 437/2010] [2010] 3 taxmann.com 97 (DELHI)

CBDT has power under section 119 (2) to condone delay in case of a return which is filed late and where a claim for carry forward of losses is made

Circular No. 8/2001 dated 16-5-2001, which laid down the procedure for condonation of delay in the case of belated claims of refund, further clarified that the delay in making a refund claim as well as a claim of carry forward of losses, both could be condoned in cases where the returned income is a loss provided the other conditions are satisfied.

Porrits & Spencer (Asia) vs. CIT (P&H High Court) ITA No. 10 of 2004 (O&M)

Tax planning is valid. As McDowell (5 judges) has been explained in Azadi Bachao (2 judges), the latter is binding

The assessee purchased US-64 Units of the UTI in May 1990 for Rs. 3.75 crs, received dividend thereon of Rs. 45 lakhs and sold the units in July 1990 for Rs. 3.25 crs. The assessee claimed that deduction u/s 80M was available on the dividend and that a short-term capital loss of Rs. 51.61 lakhs on purchase and sale of units was allowable. The AO, CIT (A) and Tribunal took the view that the loss was not allowable by relying on McDowell vs. CTO 154 ITR 148 (SC) on the ground that though the transactions were genuine, they were not bana fide as there was motive of tax planning. On appeal by the assessee, HELD allowing the appeal:

(i) In Azadi Bachao Andolan 263 ITR 706 (SC) it was held that once the transaction is genuine merely because it has been entered into with a motive to avoid tax, it would not become a colourable devise and earn any disqualification. It was held that an act, which is otherwise valid in law, cannot be treated as non est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest as per the perception of the revenue. The aforesaid view looks to be the correct view. Applying the principles of Azadi Bachao Andolan, as the transaction of purchase of units has been held to be genuine by the Tribunal and the basic object of purchasing the units was to earn dividends, which are tax free u/s 80-M and to sell the units by suffering losses, it cannot be concluded by any stretch of imagination that the assessee used any colourable devise, particularly when Parliament has incorporated s. 94 (7) w.e.f. 1.4.2002 to recognize and regulate the purchase and sale of units and the dividends/income received from such units. (Wallfort Share & Stock Brokers 310 ITR 421 (Bom) followed);

(ii) The argument of the revenue based on McDowell & Co cannot be accepted because the judgment rendered therein by Justice Chinnappa Reddy has been explained in detail by the later judgment in Azadi Bachao Andolan. It is well settled that if a smaller Bench of the Supreme Court has later on explained its earlier larger Bench then the later judgment is binding on the High Court. (Precedents referred to). Accordingly, the view expressed in Azadi Bachao Andolan has to be accepted as binding and it cannot be said that the principle of law laid down by the House of Lords in Duke of Westminster as applied in Azadi Bachao Andolan is no longer applicable. Moreover, no such principles having been laid down in the majority judgment in McDowell & Co.

Shreeji Education v. ACIT [IT(SS)A No. 218/Ahd/2004]

Unless an evidence is found during course of search which indicates that assessee has undisclosed income or income which has not been declared by him in return of income or in books of account it cannot be brought to tax in block assessment

Merely because search is carried out at the premises of an assessee and certain irrelevant material or declared material or material containing transaction recorded in the books of accounts are seized, it does not give jurisdiction to AO to frame block assessment and thereafter make addition on the basis of post search enquiry.

CIT v. Jas Jack Elegance Exports [ITA No. 681/2010] [2010] 5 taxmann.com 11 (DELHI)

There is no provision either in the Act or in the rules requiring an assessee carrying business of manufacturing readymade garments, to maintain a Stock Register, as a part of its accounts

Where the assessee has given an explanation regarding non-production of stock-register, which has been accepted not only by the CIT (Appeals) but also by the Tribunal and both of them have given a concurrent finding of fact that maintaining Stock Register was not feasible considering the nature of the business being run by the assessee, which was engaged in the business of manufacturing readymade garments by purchasing fabric which was then subjected to embroidery, dyeing and finishing and then converted into readymade garments by stitching, this Court cannot disturb finding of fact unless some perversity is pointed out in the finding of the Tribunal which is otherwise the final authority on facts

R.R. Caryying Corpn. v. ACIT [2009] 126 TTJ 240 (Cuttack)

In case of difference between the sales as per books of accounts and the amount shown in TDS certificate only the profit element is taxable and not the entire amount

It was held that only the embedded portion of the profits is to be considered as taxable and not the entire amount in the case of discrepancies between the sales or receipt amount as per books of accounts and the amount shown in TDS certificate, for taxability purpose. Accordingly, the Tribunal directed the Assessing Officer (AO) to adopt the gross profit rate declared by the taxpayer for the assessment year under consideration and compute addition accordingly.

This is a welcome decision by the Cuttack Tribunal which resolves a practical difficulty faced by the taxpayers. It is pertinent to note that even in the case of Eagle Seeds & Biotech Ltd. v. ACIT [2006] 100 ITD 301 (Indore) the Indore Tribunal held that undisclosed income on unaccounted purchases could be computed by applying the net profit rate and not the gross profit rate on such purchases.

CIT vs. Glenmark Pharmaceuticals (Bombay High Court)(ITA No.2256 of 2009)

Tests laid down to determine when contract manufacturing will amount to a contract of sale for S. 194C TDS

The assessee entered into an agreement with a third party for the manufacture of certain pharmaceutical products under which it provided the formulations and specifications and the manufacturer affixed the trademark of the assessee on the articles produced. The raw materials were purchased by the manufacturer and property in the goods passed to the assessee only on delivery. The agreement was on a principal to principal basis. The AO took the view that the contract was a contract of 'work' and tax was deductible at source u/s 194C though the Tribunal upheld the contention of the assessee that the contract involved a sale and did not represent a 'contract for work' u/s 194C. On appeal by the Revenue, HELD dismissing the appeal:

(i) A contract for sale has to be distinguished from a contract of work. If a contract involves the sale of movable property as movable property, it would constitute a contract for sale. On the other hand, if the contract primarily involves carrying on of work involving labour and service and the use of materials is incidental to the execution of the work, the contract would constitute a contract of work and labour;

(ii) The argument of the Revenue that the restrictions imposed on the manufacturer to (a) utilise the formula provided by the assessee, (b) affix the trade-mark of the assessee, (c) manufacture as per specifications provided by the assessee and (iii) deal exclusively with the assessee show that the contract is not one of sale is not acceptable because this has not been the understanding of the law at any point of time even by the CBDT and judicial precedents;

(iii) Though a product is manufactured to the specifications of a customer, the agreement would constitute a contract for sale, if (i) the property in the article passes to the customer upon delivery and (ii) the material that was required was not sourced from the customer / purchaser, but was independently obtained by the manufacturer from a third party;

(iv) This position is now statutorily recognized in Expl. (e) to s. 194C inserted by the FA 2009 to provide that the expression 'work' shall not include manufacture or supply of a product according to the requirement or specification of a customer by using material which is purchased from a person other than such customer;

(v) On facts, as (i) the agreement was on a principal to principal basis, (ii) the manufacturer had his own establishment where the product was manufactured, (iii) the materials required in the manufacture of the article or thing was obtained by the manufacturer from a person other than the assessee and (iv) the property in the articles passes only upon the delivery of the product manufactured, the contract was one of "sale" and there was no obligation to deduct tax u/s 194C. The fact that the assessee imposed restrictions on the manufacturer as to quality of the goods, user of trade marks etc are merely matters of business expediency.

EMC v. ITO (ITA NO. 2269 TO 2272/M/2007)(Mumbai ITAT)

Section 194C(1) is applicable to job work assigned by an event manager to others

The job awarded by the assessee to other parties in performance of duty as event manager has to be treated as a contractor and not a sub-contractor for purpose of section 194C(1).

Larsen & Toubro Ltd vs. ACIT (Bombay High Court)(Writ Petition (L) No.694 of 2010)

S. 197 TDS: High Court censures Dept for cavalier approach

The assessee, a consortium, was awarded a contract by MMRDA for the monorail project. The assessee filed an application u/s 197 for a certificate that MMRDA be directed to deduct tax at 0.11% on the ground that the percentage of total tax liability to revenue was estimated to be 0.11%. The AO rejected the application on the ground that Rule 28AA required figures for three previous years which were unavailable and no eTDS returns were filed by the assessee. A revision application filed u/s 264 was rejected by the CIT on the ground that (i) an order rejecting a s. 197 application is not an "order" for purposes of s. 264 and (ii) by not giving the benefit of a lower rate for withholding u/s 197, no hardship or prejudice is caused to the assessee as the assessee would get a refund of the excess tax paid, if any, with interest. On a Writ Petition filed by the assessee, HELD, censuring the department:

(i) It is far fetched to accept the view that the rejection of a s. 197 application lies in the absolute discretion of the AO or that the AO is not bound to indicate reasons for the rejection of the application. The AO cannot be heard to urge that though an assessee fulfills all the requirements which are stipulated in Rule 28AA/29B, he possesses an unguided discretion to reject the application. In rejecting an application, he is bound to furnish reasons which demonstrate application of mind to the germane. Hence, It is impossible to accept the view that the rejection of an application u/s 197 does not result in an order. The expression "order" for purposes of s. 264 has a wide connotation and includes a determination by the AO on an application u/s 197;

(ii) The manner in which the application has been dealt with by the AO and the CIT leaves much to be desired. The approach of the CIT that no prejudice is caused to the assessee as the excess TDS

would be refunded is specious because if the conditions for grant of a certificate u/s 197 are fulfilled, it was impermissible for the AO to reject the application merely on a whim and on caprice and for the CIT to hold that no prejudice is caused to the assessee since the TDS would be refunded later with interest. "We are constrained to observe that the application filed by the assessee has been rejected in a rather cavalier manner and without application of mind to circumstances which are germane to the statute".

Shri Jethmal Faujimal Soni vs. ITAT (Bombay High Court)(Writ Petition No.1744 of 2010)

ITAT should dispose off stay granted appeals within s. 254(2A) period

S. 254 (2A) empowers the Tribunal to grant stay of recovery of demand for a period not exceeding 365 days. The 3rd Proviso to s. 254(2A) inserted by the Finance Act 2008 provides that if there is a delay in disposing of the appeal within the said period, the order of stay shall stand vacated even if the delay in disposing of the appeal is not attributable to the assessee. The assessee's appeal was adjourned by the Tribunal from time to time for no fault of the assessee and in view of the fact that an identical issue was pending before a Special Bench of the Tribunal. The Tribunal initially granted stay but on the expiry of 365 days dismissed the stay application on the ground that it had no power to extend stay in view of the said 3rd Proviso to s. 254 (2A). The assessee filed a Writ Petition to challenge the constitutional validity of the said 3rd proviso to s. 254(2A). HELD:

(i) The 3rd Proviso to s. 254 (2A) is a stringent provision as a result of which even if the delay in disposing of the appeal is not attributable to the assessee, the stay has to stand vacated in any event upon the lapse of a period of 365 days. Having regard to the nature of the provision which has been enacted by Parliament, the Tribunal is under a bounden duty and obligation to ensure that the appeal is disposed off, so as to not result in prejudice to the assessee, particularly in a situation where no fault can be found with the conduct of the assessee. The fact that an issue was pending before the Special Bench was not a reason for the Tribunal not to dispose of the appeal, particularly since the consequence of the inability of the Tribunal to do so would result in the vacating of the order of stay. It is unfortunate that the Tribunal simply adjourned the appeal merely on the ground of the pendency of an identical issue before the Special Bench. The state of affairs which has come to pass could well have been avoided by the appeal being taken up for final disposal.

(ii) The Tribunal was directed to dispose of the pending appeal within four months. The department's statement that no coercive steps for enforcing the demand would be taken was recorded. The question of constitutional validity of the 3rd proviso to s. 254(2A) was left open.

Cairn Energy India West BV v. ADIT (ITA Nos. 86,457 & 459/Ahd./2010)

Mere fact that assessee has not stated date in appeal(s) memo and appeals were filed by scanned–signature, appeals can only said to be irregularity/defective and same is curable one

Once the assessee has filed fresh appeal(s) memo which borne the signature in ink, date and place, etc., the CIT (Appeals) ought to have treated that defects removed.

Ashoka Buildcon vs. ACIT (Bombay High Court)(Writ Petition No.10160 of 2009)

Assessment order is not effaced in respect of items that are not subject of reassessment. Time limit for s. 263 begins from date of original order for such items

An assessment order u/s 143(3) was passed on 27.12.2006. A reassessment order u/s 147 was passed on 27.12.2007. A show-cause notice u/s 263 was issued by the CIT on 30.4.2009 in respect of issues that were not the subject matter of the reassessment order. The s. 263 notice was time-barred if reckoned from the date of the assessment order but was within time if reckoned from the reassessment order. The revenue urged that the time limit should be reckoned from the date of the reassessment order on the basis of ITO vs. K.L. Srihari (HUF) 250 ITR 193 (SC) where it was held that the reassessment order "made a fresh assessment of the entire income of the assessee" and "the original order stood effaced by the reassessment order".

HELD rejecting the plea of the department:

(i) In CIT vs. Alagendran Finance 293 ITR. 1 (SC) it was held that the doctrine of merger does not apply where the subject matter of reassessment and original assessment is not one and the same. Where the assessment is reopened on a specific ground and the reassessment is confined to that ground, the original assessment continues to hold the field except for those grounds on which a reassessment has been made. Consequently, an appeal on the grounds on which the original assessment was passed and which does not form the subject of reassessment continues to subsist and does not abate. The order of assessment is not subsumed in the order of reassessment in respect of those items which do not form part of the order of reassessment;

(ii) Consequently, the time limit for exercise of power u/s s. 263 with reference to issues which do not form the subject of the reassessment order commences from the date of the original order and not the reassessment order;

(iii) The principle laid down in K. L. Srihari applies to a case where the subject matter of the original assessment as well as of the reassessment was the same and not to a case like Alagendran Finance where the subject matter of the original assessment and the reassessment were not the same;

(iv)The fact that under Explanation 3 to s. 147 inserted by the Finance (No.2) Act 2009 with retrospective effect from 1.4.1989 the AO can reassess even in respect of items that are not the subject-matter of the recorded reasons makes no difference to this principle of law.

ITO v. Oasis Securities Ltd. (ITA No. 846/M/2008)(Mumbai ITAT)

Assessing Officer cannot impose penalty u/s. 271(1)(c) on the basis of routine and general presumptions

Whether it be a case of only concealment or of only inaccuracy of particulars or both, the particulars of income so vitiated would be specific and definite and be known in the assessment proceedings by the ITO, who on being satisfied about each concealment or inaccuracy of particulars of income would be in a position to initiate the penalty proceedings on one or both of the grounds of default as may have been specifically and directly detected.

Royal Metal Printers Pvt. Ltd. v. ACIT (ITA No. 6840/Mum/2008)

Penalty can not be imposed u/s. 272A(2)(c) for delay in filing of quarterly returns of TDS

The delay in filing the returns, even if they are characterized as negligence on the part of the assessee, can only be considered as a technical or venial breach of law for which penalty should not be levied automatically.

Judicial Pronouncements - International Taxation

Maruti Udyog Ltd. v. ADIT (Int'l Taxation) (2010) 37DTR (Del)(Trib) 85

Agreement between India and France - Fees for technical services - Protocol is an indispensable part of the treaty with the same binding force as the main clauses therein, as protocol is an integral part of the treaty and its binding force is equal to that of the principal treaty

Activity of conducting impact tests by UTAC, a French company, on the cars manufactured by the assessee company in the presence of assessee's representative and submission of test reports which were utilised for product development in India was in the nature of technical services and, therefore, payment made to UTAC for such tests was fees for technical services within the meaning of art. 13(4) of Indo-Franch DTAA as well as s. 9(1)(vii) and these payments were chargeable to tax in India and consequently, assessee is liable to deduct tax at source under s. 195.

DDT v. Tekmark Global Solutions LLC (ITA No. 671 /Mum/2007)

Deputation of personnel by the US Company to the Indian Company, without providing any further service cannot create a Permanent Establishment in India

held that since the taxpayer company was not providing any other service and has deputed its personnel on the payroll of the Indian company who were carrying out the work on behalf of the Indian company under the direct supervision and control of the Indian company, it did not create Permanent Establishment (PE) in India under article 5 of the India-USA tax treaty (the tax treaty).

ADIT vs. Valentine Maritime (Mauritius) (ITAT Mumbai)(ITA No. 1532/Mum/05)

To compute the PE 'duration test' under Art. 5 (2) of the DTAA, different project sites can be aggregated only if the test of interconnection and interrelationship is satisfied

Article 5(2)(i) of the India-Mauritius DTAA defines "permanent establishment" to include "a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than nine months". The assessee, a Mauritius company, executed three contracts in India. While the period of each contract was less than 183 days, cumulatively they exceeded that period. The question arose whether in determining whether the assessee had a PE in India, the period of all contracts could be aggregated. HELD:

(i) Though there is a PE under Article 5(1) ("fixed place of business"), a 'construction, installation or project site' cannot fall under this if the period specified in Article 5(2)(i) is not satisfied. Article 5(2)(i) is a test of 'permanence' for purposes of Article 5(1) and both are required to be read together;

(ii) For computing the threshold time limit under Article 5(2)(i), the activities of a foreign enterprise on a particular site or a particular project etc have to be seen and not on all the activities in a tax jurisdiction as whole. Each building site, construction project, assembly project or supervisory activities in connection therewith has to be viewed on a standalone basis. This is on the assumption that the different business activities are not so inextricably interconnected that they are required to be viewed as a coherent whole;

(iii) In certain DTAAs (e.g. India-Australia), the relevant PE clauses specifically require application of the aggregation principle on all sites, projects or activities for computation of threshold duration test. However, even such aggregation requires exclusion of double counting of days when more than one site or project exists on a day, or when work is carried out at two or more different places on a day. However, when aggregation is not specifically provided for in the relevant PE definition clause, it is not open to infer the application of the aggregation principle;

(iv) The principle that the duration test applies to each individual site or project is subject to two exceptions. The first is where the assessee has artificially split the contract so as to avoid the duration test. However, the onus to show that the contracts have been split to avoid the duration test is on the revenue and has to be supported with reasons and not by vague and generalized allegations. The second is when the activities are so inextricably interconnected or interdependent that these are required to be viewed as a coherent whole. In applying this test, it is not relevant whether the activities are carried out for the same principal or different principals. What is relevant is the nature of activities, their interconnection and interrelationship and whether these activities are required to be essentially regarded as a coherent whole in conjunction with each other;

(v) On facts, as there was no finding that the three contracts were inextricably interconnected, interdependent or could only be seen only as a coherent whole in conjunction with each other, the duration of the projects could not be aggregated for the purposes of ascertaining whether or not there was a PE.

ITO vs. M/s Prasad Production (ITAT Chennai Special Bench)(ITA No. 663/Mds/2003)

S. 195 (1) TDS obligation does not arise if the payment is not chargeable to tax. Samsung Electronics not followed

The assessee made a remittance to IMAX Canada towards technology transfer fee without deduction of tax at source. The AO took the view that the consideration was "fees for technical services" u/s 9 (1)(vii) and that tax ought to have been deducted at source as per Transmission Corporation 239 ITR 587 (SC). He accordingly held the assessee to be an "assessee-in-default" u/s 201 though the CIT(A) reversed the same. On appeal by the revenue, the question as to whether a person responsible for making payment to a non-resident was liable to deduct tax at source u/s 195 (1) if he did not apply to the AO u/s 195 (2) for permission to remit without deduction at source was referred to the Special Bench. HELD by the Special Bench:

(i) The effect of the judgments of the Supreme Court in Transmission Corporation and Eli Lilly 312 ITR 225 is that s. 195 (1) applies only if the payment made to the non-resident is chargeable to tax. If the payer has a bona fide belief that no part of the payment has income character, s. 195 (1) will not apply and it is not necessary to

apply to the AO u/s 195 (2). This interpretation is supported by the Circulars of the CBDT setting out the alternative procedure for TDS;

(ii) As regards Samsung Electronics 320 ITR 209 (Kar) (which held that s. 195 / 201 liability cannot be avoided on ground of non-taxability of recipient), a judgement of a non-jurisdictional High Court need not be followed where there are conflicting High Court judgements or where the judgement is rendered per incuriam (Kanel Oil 121 ITD 596 (Ahd)) or where the correct legal position was not brought to the notice of the High Court (Lalsons Enterprises 89 ITD 25 (Del) (SB). Apart from the judicial conflict, the alternative TDS procedure as per the CBDT Circulars was not brought to the attention of the High Court. Consequently, the judgement of the Special Bench in Mahindra & Mahindra 313 ITR 263 (AT)(Mum) (which held that s. 195 (1) did not apply if the payment was not chargeable to tax) has to be followed in preference to that of Samsung Electronics;

(iii) As regards the merits, though the question framed is general and there is no specific direction in the order of reference, the Special Bench, the entire appeal is open before the Special Bench and it is not confined to the question framed (NTPC 24 ITD 1 (SB) followed);

(iv) On merits, as the services rendered by the payee were auxiliary to the sale of equipment, the consideration was not chargeable to tax in India.

Umicore Finance Luxembourg, In Re (AAR No. 797 of 2009)

Capital gains—Transaction not regarded as transfer under s. 47(xiii)—Applicability of s. 47A(3) vis-a-vis conversion of partnership firm into company under Part IX of Companies Act, 1956

A firm was converted into a private limited company AZ Ltd. under Part IX of the Companies Act on 13th Sept., 2005, and the partners of the erstwhile firm became shareholders of the said company having shareholding identical to the profit-sharing ratio at the time of registration. Applicant acquired its 99.96% shares and later it purchased the entire shareholdings in AZ Ltd. and the transfer of shares was completed by 12th Aug., 2008. Shares allotted to the partners of the erstwhile firm consequential to the registration of the firm as a company did not give rise to any profit or gain. By receiving such shares the value of which is nothing more than the value of the sum total of the partners' interest in the firm or the worth of their shareholdings in the firm, no gain is made. Rise in the share value in course of time does not have a bearing on the intrinsic worth of shares at the point of time when conversion/ succession took place. In a transaction involving conversion of firm into company under Part IX of Companies Act, it can hardly be said that the partners have made any gain or received any profit. Thus, the fact that the requirement in the second part of cl. (d) of the proviso to s. 47(xiii) i.e., shareholding of fifty per cent or more should continue to be as such for a period of 5 years from the date of succession, has not been fulfilled by reason of the transfer of shares of AZ Ltd. to the applicant before the expiry of 5 years would not attract the consequences of s. 47A(3). Sub-s. (3) of s. 47A presupposes that there was a transfer of capital asset and that certain profit or gain resulted therefrom which was not charged to tax earlier. Since no profits or gains arose earlier when the conversion of the firm into the company took place, the deeming provision under s. 47A(3) cannot be invoked. Sec. 47(xiii) r/w s. 47A(3) cannot be construed to introduce a fiction to the effect that the income which is not liable to be taxed under other provisions relating to capital gains can be deemed to be capital gains if the violation of conditions takes place. Therefore, notwithstanding the non-compliance with cl. (d) of proviso to s. 47(xiii) by reason of premature transfer of shares, AZ Ltd. is not liable to pay tax on capital gains.

VVF Limited v. Deputy Commissioner of Income tax [2010-TIOL- 55-ITAT- MUM]

Internal CUP Method Applies for Interest-Free Loans Made by Indian Company to Foreign Subsidiaries

VVF Limited was a company incorporated in India and owned equally by Mr. Rustom Joshi, Mr Faraz Joshi and M/s Interred Products Limited, Bahamas. The Company had two wholly owned subsidiaries (associated enterprises or AEs) namely, VVF Inc, Canada and VVF FZE, Dubai. The taxpayer advanced certain interest free loans to its AEs and determined the arm's length price (ALP) of the interest free funds at Nil.

During the course of assessment proceedings for assessment year (AY) 2002-03, the Transfer Pricing Officer (TPO) held that the international transaction undertaken by the taxpayer, in relation to the interest free loan, was not at arm's length and made upward adjustment by adopting 14 percent per annum as arm's length interest. The Commissioner of Income-tax (Appeals) [CIT (A)] upheld the order passed by the TPO. It was held that -

- The purpose of making arm's length adjustments, in prices at which transactions have been entered into with AEs, is to nullify the impact of interrelationship between the AEs. Accordingly, the taxpayer should have charged interest on the loans advanced to the subsidiaries.
- In determining the ALP using the CUP method, it is irrelevant whether the funds are advanced out of interest bearing funds or out of funds on which 14 percent interest is being paid.
- The transaction in the present case is of lending money, in foreign currencies, to its foreign subsidiaries. The comparable transaction therefore is of foreign currency lending by unrelated parties and hence the transaction should be benchmarked on this basis.
- ICICI Bank had advanced a foreign currency loan to the taxpayer at LIBOR plus 3 percent. This constitutes an internal CUP and can be adopted as the ALP of the loans advanced by the taxpayer to its subsidiaries. The Tribunal in applying the internal CUP also observed that the financial position and credit rating of the subsidiaries will be broadly the same as the holding company i.e. the taxpayer.
- The external CUP, provided by the taxpayer by way of letter from Bank of India, was relatively vague as it did not mention the exact rate at which the loan is granted by Bank of India to its customers and hence internal CUP is more reliable than the external CUP in the present case.

Accordingly, the Tribunal disallowed the claim of the taxpayer in providing interest free loans to its overseas subsidiary and directed the AO to recompute the ALP using internal CUP.

Shri Anurag Chaudhary, In re (AAR No. 839 of 2009)

Employee left India for the purpose of employment outside India – non resident if present for less than 182 days in India

The Authority of Advance Ruling (AAR) has held in the case of that an employee who has left India for the purpose of employment outside India would qualify as a non resident, if he was present in India for less than 182 days during a financial year (From 1st April to 31St March). Further, it was held that the salary earned on account of employment outside India would not be taxable in India.

In the instant case, the relevant facts in respect of an individual's stay in the earlier financial years have not been placed on records and examined.

Therefore, facts of each case in respect of secondment agreements need to be examined in view of the general understanding and above ruling to determine the taxability of assignees.

Director of Income-tax v. Sahara India Financial Corpn. Ltd. (ITA No. 1064/2007)(Delhi HC)

Reference in Article 13(3)(c) of Indo-Canada DTAA is to "any copyright" and it is not a reference to "any right" for purpose of terming a payment as `royalty'

Before any payment could be termed as a `royalty' under Article 13(3)(c), it would have to be either as consideration for the copyright or for the right to use a copyright in any of the four categories of works mentioned therein.

DDIT (IT) v. Preroy A. G. (ITA Nos. 4252, 4256, 5820, 5821 & 6575/ Mum/2004)

Indo-Swiss Tax Treaty – Consideration for information concerning industrial, commercial and scientific experience is to be regarded as royalty, only if it is received from imparting know-how

Providing strategic consulting services, which may entail the use of technical skills and commercial experience by a strategic consultant, does not amount to know-how being imparted to the buyer of the strategic consulting services

Circulars / Notifications

Notification No. 25/2010 [F.NO. 500/124/97-FTD-II], dated 20-4-2010

Section 90 of the Income-tax Act, 1961 – Double taxation agreement – Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries or Specified Territories – Notified 'specified territory'

In exercise of the powers conferred by Explanation 2 to section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Hong Kong Special Administrative Region of the People's Republic of China" as 'specified territory' for the purposes of the said section.

Notification No 23/2010 [F.No.142/21/2009-SO (TPL)] dated 8th April, 2010

The CBDT has notified new valuation rules to determine FMV of a property other than immovable property for the purpose of section 56 of the Act. The notification deals with the determination of FMV of -

- Shares and Securities
- Jewellery
- Archeological collection, Drawings, Paintings, Sculptures or any work of art

The new valuation rules come into effect from 1 October 2009.

To get the entire notification please Click here

Notification No.29 / 2010 / F.No.142/28/2009 –TPL

New Saral-II Form is notified instead of ITR-1 for filing return of income by Individuals deriving Income from Salary / Pension / Income from One House Property (excluding loss brought forward from previous years) / Income from Other Sources (Excluding Winning from Lottery and Income from Race Horses).

To get the entire notification please click here.

INDIRECT TAXES

Judicial Pronouncements

Sun Pharmaceutical Industries Ltd. vs. CCE (2009 TIOL 1613)

No obligation on the DTA unit to reverse the accumulated balance of Cenvat credit at the time of its conversion into EOU

Appellant is engaged in the manufacture of pharmaceutical products and bulk drugs falling under Chapter 29 of Central Excise Tariff Act. It avails credit on inputs, packing materials, etc. The unit was converted into 100% EOU and its entire stock of inputs was transferred to EOU without reversing the credit availed thereon. A show cause notice was issued demanding the reversal of the credit availed on inputs which were transferred to EOU on conversion of DTA unit. On adjudication, the demand was confirmed along with the applicable interest and penalty. Commissioner (Appeals) also upheld the adjudication order. Appellant therefore challenged the appellate order before the Tribunal.

The Tribunal held that inputs on which credit availed was availed by the DTA unit were never removed from the premises of the DTA unit at the time of its conversion into an EOU. Thus, there was no contravention of any of the provisions of Cenvat Credit Rules, 2004. Further, no provision contained in the Cenvat Credit Rules, 2004 contemplates reversal of credit availed on inputs by a DTA unit at the time of its conversion into EOU.

Bajaj Auto Ltd. v. CCE (2009 TIOL 1735)

Reversal of Cenvat Credit in the event of reduction of price after the supply of goods

Appellant is engaged in the manufacture of motorcycle, auto rickshaw, etc. and are availing Cenvat credit on the inputs received in its factory. The inputs are supplied by various independent suppliers under contracts backed by the purchase orders for agreed prices. Appellant availed credit on these inputs based on proper duty paying documents. However, subsequent to the supplies, there was a retrospective reduction in the prices of such inputs. Revenue therefore sought to deny the credit proportionate to the subsequent extinction in prices of inputs. On adjudication, the adjudicating authority confirmed the aforesaid denial of credit along with applicable interest and penalty. Aggrieved with the said order, appellant filed an appeal before the Tribunal.

The Tribunal held that a manufacturer is eligible for credit of the 'duty paid' on inputs and not "duty payable'. The Tribunal further held that there is no provision in excise laws for the re-assessment of the duty paid on inputs at the recipient's end. It is obligatory on the revenue to re-assess the duty at supplier's end in order to recover differential duty therefrom rather than denying credit to the input recipient. Therefore it was held that the credit has been correctly availed and the appellant is not required to reverse any part thereof (proportionate to the extinction in price).

CCE v. Nicholas Piramal (India) Ltd. 2009 (244) ELT 321 (Bom HC)

Cenvat credit on common inputs eligible only in terms of rule 6 when excisable & exempted products are manufactured

The respondents are engaged in the manufacture of Vitamin A falling under Chapter Heading 29.36 and animal food supplement falling under Chapter Heading 23.02 of the Schedule to the Central Excise Tariff Act, 1985. Vitamin A is liable to Central Excise Duty. Animal food supplement is not liable for payment of Central Excise Duty since Heading 23.02 attracts nil rate of duty. The Cenvat credit on common inputs utilized in manufacture of aforesaid final products was availed by the respondent during the period of dispute. At the time of clearance of exempted finished goods (i.e. Animal food supplement), the proportionate credit relating to inputs utilized in manufacture of the said exempted final products was reversed

However, Revenue issued a show cause notice demanding 8% of the value of the exempted final products in terms of Rule 57CC(1) of the Central Excise Rules, 1944/Rule 6(3)(b) of the Cenvat Credit Rules, 2004. The said notice was adjudicated and the same was confirmed by the Commissioner. In an appeal before the Tribunal, the matter was allowed on majority by the larger bench. Revenue is in appeal before the Hon'ble High Court against this order of the Tribunal.

The Bombay High Court agreed with the position adopted by the revenue and held that in absence of any provision allowing proportionate reversal of credit availed in respect of common inputs in Rule 57CC of the Central Excise Rules, 1944 or Rule 6 of Cenvat Credit Rules 2004, It would be imperative on the respondent to pay an amount equal to 8% of the value of exempted final products in terms of Rule 57CC(1) of the Central Excise Rules, 1944/Rule 6(3)(b) of Cenvat Credit Rules, 2004, in the event the respondent did not opt to maintain separate accounts in respect of inputs utilized in manufacture of exempted final products. The Bombay High Court strictly interpreted Rule 57CC of the Central Excise Rules, 1944/Rule 6 of Cenvat Credit Rules, 2004 to hold that a mere reversal of proportionate credit would not comply with the requirements of aforesaid Rule.

OTHER LAWS

RBI

RBI Circular - DPSS.CO.CHD.No. 1832/01.07.05/2009-10 dated 22nd February 2010

Prohibiting alterations / corrections on cheques

No changes / corrections should be carried out on the cheques (other than for date validation purposes, if required). For any change in the payee's name, courtesy amount (amount in figures) or legal amount (amount in words), etc., fresh cheque forms should be used by customers. This would help banks to identify and control fraudulent alterations.

In view of the above guidelines, with effect from July 01, 2010 no alterations in cheque will be allowed (even if signature is made at the place of alteration on cheque). These kinds of altered cheques will not be honored by Bank.

A.P. (DIR Series) Circular No. 39, dated 2-3-2010

External Commercial Borrowings (ECB) Policy

Issued by Foreign Exchange Department, RBI

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to the A.P. (DIR Series) Circular No. 5 dated August 1, 2005, A.P. (DIR Series) Circular No. 46 dated January 2, 2009, A.P. (DIR Series) Circular No. 71 dated June 30, 2009 and para 2 (iv) of A.P. (DIR Series) Circular No. 19 dated December 9, 2009 relating to the External Commercial Borrowings (ECB).

2. As per the extant ECB policy, Non-Banking Finance Companies (NBFCs), which are exclusively engaged in financing of infrastructure sector, are permitted to avail of ECB from the recognized lender category including international banks, under the approval route, for on- lending to the infrastructure sector, as defined in the extant ECB policy.

3. In view of the thrust given to the development of the infrastructure sector, a separate category of NBFCs viz. Infrastructure Finance Companies (IFCs) has been introduced in terms of the guidelines contained in circular DNBS.PD.CC No. 168/03.02.089/2009-10 dated February 12, 2010. In view of the new category of NBFCs being in place, the dispensation provided in para 2 above is not considered necessary. Accordingly, proposals for ECBs by the IFCs, which have been classified as such by the Reserve Bank, for on-lending to the infrastructure sector, as defined in the extant ECB policy may be considered under the approval route, subject to their complying with the following conditions:

i) compliance with the norms prescribed in the aforesaid DNBS Circular dated February 12, 2010;

ii) hedging of the currency risk in full; and

iii) the total outstanding ECBs including the proposed ECB not exceeding 50 per cent of the Owned Funds.

The AD Category-I bank should certify the compliance with the above conditions by the IFCs.

4. All other aspects of ECB policy such as USD 500 million limit per company per financial year under the automatic route, eligible borrower, recognised lender, end-use, average maturity period, prepayment, refinancing of existing ECB, reporting arrangements and terms and conditions stipulated in the A.P. (DIR Series) Circulars shall remain unchanged.

RBI/2009-10/445 - A. P. (DIR Series) Circular No.49 dated May 04, 2010

FDI in India - Revised Pricing Guidelines for Transfer of Shares by way of Sale (Revised)

To get the entire circular please click here.

Circulars / Notification

DIPP

Circular No. 1 of 2010 dated 31-03-2010

Consolidated FDI Policy

On 31 March 2010, the Government of India - Ministry of Commerce and Industry released its Circular No. 1 of 2010 announcing the Consolidated Foreign Direct Investment ('FDI') Policy Framework to be effective from 01-04-2010. This Circular consolidates all existing regulations, press notes, press releases and clarifications on the FDI in force as on 31-03-2010. A new such Circular is now envisaged every six months as an investor friendly measure.

To get the entire circular please click here.

OTHERS

Notification F. No. S-38025/04/2010 - SS-I

Ministry of Labour and Emplyment has increased the scope of Employee state insurance act , 1948 vide notification dated 20.04.2010.Now employee taking salary up to Rs 15000/- (increased from 10000)are covered under ESI ACT ,1948. This Notification is applicable from 01.05.2010.

India and Russia signed pacts in defence and strategic spheres

- India and Russia sealed agreements in the defence and strategic spheres, besides taking steps to extend their partnership in new areas such as energy and fertilizers.
- In all, the two sides signed five agreements — two each in the nuclear sphere and fertilizers and one in the civilian space segment.
- Russia has announced it will build 16 nuclear reactors in India as part of defence and energy deals. The agreement sees construction of up to 16 nuclear reactors in three locations.
- Russia is competing with French and US firms for contracts to build nuclear power plants in Asia's third-largest economy which is looking to increase its energy supply to sustain rapid economic growth.
- Commercial level agreements were signed between Gazprom and ONGC; NPCIL and Atomostroy export (for the next two units at Kudankulam in Tamil Nadu); and Alrosa and Diamonds India Limited, besides two between companies also engaged in the diamond sector.
- Several other pacts were signed on the sidelines, including supplementary agreements on the aircraft carrier Admiral Gorshkov to finalise cost and technical issues, and a deal in the military aviation sphere that includes the purchase of more naval version MiG-29 fighters.
- Discussions on regional and global issues and agreed to intensify consultations on Afghanistan and the challenges posed by terrorism and extremism in the region.

Totalisation agreements with US

- India asking the US to start negotiations on a totalisation agreement,
- A totalisation agreement would allow Indian professionals working for a limited period in the foreign country not face social security taxation.
- According to estimates, India could save up to $1 billion that professionals on shortterm contracts contribute to social security annually in the US.
- India has signed social security agreements with Belgium, France, Germany, Switzerland, Luxembourg and the Netherlands in the recent past. Similar agreements with other countries like Canada, South Korea, Czech Republic and USA are being pursued.

India, U.S. finalise reprocessing agreement

- India and the United States have agreed to the arrangement and procedures under which the reprocessing of spent nuclear fuel will take place at two stand-alone safeguarded sites. New Delhi also retains the right to make additions and modifications.
- This will allow India to retrieve recyclable material found in spent fuel from U.S.-origin nuclear plants for further generating electricity.
- The reprocessing plants would operate under International Atomic Energy Agency (IAEA) procedures.
- This is only the third pact signed by the U.S., the earlier ones being with Japan and Euratom, a European consortium.
- Until the final round of talks earlier this month, the principal sticking points revolved around the number of facilities that the agreement would cover, and the conditions under which the U.S. could suspend the operation of arrangements and procedures, thereby bring a halt to the reprocessing of U.S.-origin spent fuel in India.
- The U.S. wanted the agreement to cover only one reprocessing facility, while India felt the 123 agreement envisaged multiple facilities. In the end, the final text says the pact will apply to two facilities, with India allowed to make additions and modifications.
- As for suspension, Indian officials say the final agreement now allows Washington to suspend the arrangements and procedures only if there is a threat to physical security

or to U.S. national security. Earlier, the U.S. wanted this kept very open-ended, while India was for restricting it to "exceptional circumstances."

- The U.S. State Department said the completion of these arrangements would "facilitate participation by U.S. firms in India's rapidly expanding civil nuclear energy sector."
- With the reprocessing pact out of the way, the U.S. will be "following the progress of [the liability] legislation very closely," U.S. Assistant Secretary of State Robert Blake said.
- While India has been assured of upfront reprocessing rights by Russia and France, Section 201 of the Hyde Act — an American law prescribing the envelope for Indo-U.S. civil nuclear cooperation — asks the U.S. President to ensure that countries offering similar rights do so under comparable terms.
- It also states that the pact will be void if the U.S. Congress disapproves of it, despite the U.S. President reporting in "detail" the reasons, description and text of the reprocessing arrangement.
- India claims that the Hyde Act is U.S.'s domestic law and its sole reference point is the bilateral 123 civil nuclear agreement.
- These arrangements will help open the door for U.S. firms in India's rapidly expanding energy sector, creating thousands of jobs for the citizens of both our countries," U.S. Ambassador to India Timothy Roemer said.

Japan credit for six infrastructure projects

- Japan agreed to give financial assistance worth over Rs.10,500 crore to fund six infrastructure projects in India, which includes various phases of Metro rail projects in Delhi, Chennai and Kolkata. With this, the official development assistance (ODA) from Japan will cross Rs.1.55-lakh crore, making India the highest recipient of ODA from Japan.
- Japan has agreed to give Rs.1,648 crore to construct 121-km. of new rail lines in the National Capital Region under the second phase of the Delhi Metro rail project. Similarly, Japan will give over Rs.2,932 for Chennai Metro project with the objective to cope with the increase of traffic demand in Chennai metropolitan area by extending the mass rapid transportation system. Another Rs.1,146 crore will go towards Calcutta East-West Metro project phase II.
- Japan will also give Rs.4,422 crore for the first phase of a dedicated freight corridor project of Indian Railways and over Rs 150 crore for Rengali irrigation project in Orissa.
- It will give Rs. 263 crore for Sikkim Biodiversity Conservation and Forest Management Project that will strengthen biodiversity conservation activities, besides improving livelihood for the local people who are dependent on forests.

Due Dates of key compliances pertaining to the month of May 2010:

5th May	***Payment of Service Tax & Excise duty for April***
6th May	***Payment of Excise duty paid electronically through internet banking***
7th May	***TDS/TCS Payment for April***
10th May	***Excise Return ER1 / ER2 /ER6***
15th May	***PF Contribution for April***
21st May	***ESIC Payment for April***
31st May	***TDS/TCS Payment for amount credited on 31st March***

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