Tax & Corporate law Bulletin

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From the Editor's Desk...

Dear Reader,

Greetings for the season.

With the wishes of Peace and Joy we are glad to put this edition for our reader on the significant updates as … Vodafone Case Dispute, OECD – head of BEPS project discusses goals and issues, External Commercial Borrowings (ECB), IRDA to launch mandatory pilot on insurance repository system, and read many more…

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & associates

Chartered accountants

For further details, Please contact....

CA. Swatantra Singh

Singh.swatantra@carajput.com

CA. Sushil Singh

Sks_978@carajput.com

CA. Navneet Gupta

info@carajput.com

CA. Manoj Kumar Singh

support@carajput.com

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GLOSSARY

"Adapting swiftly to the global business environment"

DIRECT TAX

- **Vodafone Case Dispute**

A former Additional Solicitor General today approached the Supreme Court seeking its direction to the Centre to recover around Rs 20,000 crore tax dues from UK telecom major Vodafone and to restrain the government from going ahead with arbitration on the issue.

Bishwajit Bhattacharyya, who deals with tax matters and was a law officer during the UPA regime, mentioned his petition before a vacation bench headed by Justice Vikramajit Sen which posted the case for hearing on July one.

Bhattacharyya submitted that the Centre is not implementing the rule which was amended in 2012 to claim taxes and pleaded to the apex court to intervene in the matter by directing the Centre to administer the Income Tax Act impartially, even handedly and without fear or favour.

"It amounts to arbitrariness of state action not to enforce law (Section 9 of IT Act) for 27 months after its enactment. This violates Article 14 of the Constitution," the petition said, adding, "Allowing arbitration proceedings under India-Netherland BIPA (Bilateral Investment Protection Agreement) would flagrantly violate rule of law."

He submitted that the IT Act does not recognise conciliation as a dispute settlement mechanism and the tax dispute does not come within the ambit of BIPA.

Recently, the government had appointed former Chief Justice of India R C Lahoti as arbitrator in the tax dispute case. The government's decision was in response to an arbitration notice served by Vodafone International Holdings BV in April under BIPA for resolving the dispute.

Following the international arbitration notice by Vodafone, the Union Cabinet during the United Progressive Alliance rule had on May 15 approved the withdrawal of a conciliation offer.

The Cabinet had approved the conciliation with Vodafone in June last year in a bid to resolve the capital gains tax dispute related to its 2007 acquisition of Hutchison Whampoa's stake in Hutchison Essar.

While the basic tax demand was Rs 7,990 crore, the total outstanding, including interest and penalty, is estimated to have risen to Rs 20,000 crore.

The Supreme Court had ruled in Vodafone's favour in 2012, saying the company was not liable to pay any tax over the acquisition of assets in India from Hong Kong-based Hutchison.

The government, however, had amended the tax laws with retrospective effect to undo the Supreme Court judgment and claim taxes.

- **Section 119, read with section 195 of the Income-tax Act, 1961 – Income tax authorities –Instructions to subordinate authorities – Clarifications as to whether tax is to be deducted under section 195(1) on whole sum being remitted to a non-resident or only portion representing sum chargeable to tax, particularly if no application has been made under section 195(2) to determine sum**

Instruction No. 2/2014 [F.No. 500/33/2013-FTD-I]

Section 195 of the Income-tax Act (hereafter referred to as 'the Act') provides that any person, responsible for paying to a non-resident not being a company or to a foreign company, any sum chargeable under the provisions of this Act, shall at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rates in force.

Section 201 of the Act inter alia provides that any person, who is required to deduct tax in accordance with the provisions of the Act, does not do so, shall be deemed to be an assessee in default and shall also be liable to pay simple interest at the specified rate. References were received from field officers on the issue of deduction of tax at source under section 195 in the light of the decisions of the Supreme Court of

India in the case of GE India Technology (P.) Ltd. vs. CIT [2010] 193 Taxmann 234/327 ITR 156 (SC) and Transmission Corporation of AP Ltd. and Another vs. CIT [1999] 105 Taxmann 742/239 ITR 587 (SC) and the decision of the Madras High Court in CIT vs. Chennai Metropolitan Water Tax Cases Appeals Nos. 500-501 of 2005, [2011] 202 Taxmann 454/ [2012] 348 ITR 530 (Mad.) with a request for clarification as to whether the tax is to be deducted under sub-section (1) of section 195 on the whole sum being remitted to a non-resident or only the portion representing the sum chargeable to tax, particularly if no application has been made under sub-section (2) of section 195 of the Act to determine the sum.

The matter has been examined in the Board and accordingly, in exercise of powers vested under section 119 of the Act, the Board hereby directs that in a case where the assessee fails to deduct tax under section 195 of the Act, the Assessing Officer shall determine the appropriate proportion of the sum chargeable to tax as mentioned in sub-section (1) of section 195 to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under section 201 of the Act, and the appropriate proportion of the sum will depend on the facts and circumstances of each case taking into account nature of remittances, income component therein or any other fact relevant to determine such appropriate proportion.

GLOBAL TAX DISPUTE

With tax audit and dispute activity rising in almost every country, keeping up with trends and developments is more important than ever. In this edition, you'll find briefings on key news, events and thought leadership submitted by Global Tax Dispute Resolution & Controversy professionals in KPMG member firms worldwide. Staying informed can be a crucial first line of defense as you manage your disputes around the globe.

- **Tax Dispute and Controversy Update – Alternative Dispute Resolution**

As the revenue authorities around the world refocus their efforts on adjustments and enforcement, they are similarly focused on gaining efficiency in the face of reduced budgets and increasing responsibility.

One approach to achieving this efficiency in the tax disputes resolution process is the use of alternative dispute resolution (ADR) methods, to avoid costly, time-consuming and resource-depleting litigation. ADR provides an approach to resolution in which the taxpayer and the revenue authority come together to actively seek resolution. While different jurisdictions have different offerings and approaches, the concept is gaining global appeal.

On a recent webcast, KPMG dispute resolution professionals from Australia, the UK, the US and Germany shared their experiences with ADR and discussed the various options available in their country.

- **Focus on top audit issues – selected countries**

Levels of tax audits and disputes continue to rise in countries worldwide. In some cases, taxpayers face similar audit issues, such as those arising for global companies as the international movement to address base erosion and profit shifting (BEPS) continues to gather steam. In other cases, domestic issues and priorities are creating audit issues that are unique to the jurisdiction.

A recent article from KPMG's Global Tax Disputes and Controversy practice presents a high level round-up of some of the top audit issues being experienced by clients of KPMG International member firms in Canada, China, India, the US and the UK. (Part 2 of this article – coming soon – will profile the top audit issues in the emerging MINT countries – Mexico, Indonesia, Nigeria and Turkey.).

- **OECD – head of BEPS project discusses goals and issues**

In a recent interview, Raffaele Russo, head of the BEPS (Base Erosion and Profit Shifting) project of the Organization for Economic Co-operation and Development (OECD) discusses the OECD's goals and the difficulties with implementation.

According to Russo, the BEPS project is not just about harmful tax avoidance. The project originated in part out of a concern that efforts to relieve double taxation would not survive for long with so many opportunities for double non-taxation. To tackle double taxation, the OECD and G-20 also had to work on a set of rules to attack systemic double non-taxation. Addressing double non-taxation has received widespread support from governments and outside interest groups.

Russo's biggest concerns with BEPS are the compressed time frame and keeping the business community's attention. The challenge is to coordinate all the different items, many of which are being worked on simultaneously.

Implementation will be the biggest challenge.

Writing rules and recommendations is the easier part of the project. It is daunting to marshal a set of guidelines and rules into a functioning multilateral system when that implementation requires numerous governments to make changes to domestic laws and adopt policies that may not be in their own country's best interests. However, some recent changes in the tax and banking worlds give reason to be optimistic.

- **Australia – ATO focuses on non-resident transactions**

Non-resident taxpayers need to consider the tax implications of proposed transactions with an Australian connection and how to manage the interaction with the Australian Taxation Office (ATO). The Foreign Investment Review Board and the ATO are reportedly sharing information, resulting in the ATO seeking active engagement with taxpayers during the course of a transaction.

It is important for taxpayers to determine the optimal way to manage this interaction to help ensure the smooth conduct of their transaction and avoid the potential for the ATO to use its formal powers to protect the revenue.

- **Canada – appeal court narrows scope of foreign affiliate anti-avoidance rule**

Canada's Federal Court of Appeal (FCA) unanimously upheld the Tax Court of Canada's (TCC) decision in the taxpayer's favor in The Queen v. Lehigh Cement Limited (2014 FCA 103). The FCA agreed that the foreign affiliate (FA) anti-avoidance rule should not deny a deduction for exempt surplus dividends that a Canadian corporation received from its U.S. affiliate through a tax-efficient financing structure.

However, the FCA significantly narrowed the scope of the FA anti-avoidance rule from the TCC's determination, concluding that the rule is targeted at taxpayers whose principal purpose of acquiring or disposing of the shares of a non-resident corporation is to manipulate its FA, controlled FA or related corporation status.

- **India – signs its first set of advance pricing agreements**

India's advance pricing agreements (APA) program, introduced as a method of proactive dispute resolution, became operational on 1st July 2012. Although the program was seen as a positive step toward curbing the unprecedented litigation that was affecting investor sentiment, taxpayers were apprehensive of the practical challenges associated with APA negotiations.

Amid the prevailing uncertainty, Indian taxpayers filed over 140 APA applications in 2013, with KPMG in India handling over 40 of them. India has now signed its first batch of APAs with five multinational corporations, fixing their tax liability in cross-border transactions over the APA term.

The APA program is important for providing certainty to taxpayers. Generally, an APA is valid for up to 5 years and can be renewed, revised or cancelled in some circumstances. During the 5-year period, the taxpayer is required to file an annual report to confirm compliance with the terms of the APA. The tax authorities shall conduct a limited audit of the taxpayer to ensure compliance with the APA's terms.

INDIRECT TAX

SERVICE TAX

- **Clarification on levy of service tax on services provided by a RWA to own members**

Service provided by a RWA (Resident Welfare Association) to its own members by way of reimbursement of charges or share of contribution up to Rs. 5,000 per month per member for sourcing of goods or services from a third person for the common use of its members is exempt under the Notification No. 25/2012-ST. CBEC has now clarified on the scope of the exemption which are as follows:-

- The exemption is provided upto an amount of Rs.5,000/- per month per member. If the per month per member contribution of any or some members of a RWA exceeds Rs. 5,000, the entire contribution of such members whose per month contribution exceeds Rs. 5,000 would be liable to service tax.
- The threshold exemption of Rs. 10 lakh available under Notification No. 33/2012-ST to Small Service Providers is applicable to a RWA, subject to conditions prescribed therein. The value of services which are exempt from service tax would not be included for the computation of aggregate value.

Under the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service. It is clarified that where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, then RWA would be a pure agent and accordingly such payment would be excluded from the value of taxable service. However, if the electricity bills are issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., there is no agent involved in these transactions and accordingly the exclusion from the value of taxable service would not be available and the transaction would be liable to service tax.

CENTRAL EXCISE

- **Excise Duty Cut for Auto, Capital Goods, and Consumer Durable extended till December 31st, 2014**

Notification No. 06/2014-CE dated June 25th, 2014

In the Interim Union Budget 2014 on 17th February, 2014, the Government had reduced the Excise duty on:-

- Small cars, motorcycles, scooters, three wheelers and commercial vehicles from 12% to 8%;
- Mid-segment cars from 24% to 20%;
- Large cars from 27% to 24%; and
- SUVs from 30% to 24%

Further, to stimulate growth in the Capital goods and Consumer durable sectors, Excise duty was reduced from 12% to 10% on all goods falling within the Chapters 84 & 85 of the Central Excise Tariff Act, 1985.

Now, the Government has extended by six months the validity of concessional Excise duty regime provided for the Capital goods, Automobiles and Consumer durables sectors in interim budget in February 2014.

Refer the Notification No. 12/2012-CE dated March 17, 2012, duly amended by Notification No. 4/2014-CE dated February 17th, 2014 and now by Notification No. 06/2014-CE dated June 25th, 2014).

Hence, the concessional Excise duty cut for above mentioned goods was set to expire on June 30, 2014, will now be available till December 31st, 2014.

While addressing the media persons, the Finance Minister said that the duty benefits are being extended for six months up to December, 2014 and the Government expects the industry to show positive results in the coming months. He said that the Government also expects that the benefit of these duty concessions will be passed on to the consumers at large.

GLOBAL ECONOMIC ASPECTS

Developing countries are headed for a year of disappointing growth, as first quarter weakness in 2014 has delayed an expected pick-up in economic activity, according to the World Bank's Global Economic Prospects (GEP) report, released today.

Developing countries are headed for a third consecutive year of disappointing growth below 5 percent, as first quarter weakness in 2014 has delayed an expected pick-up in economic activity, says the World Bank's latest Global Economic Prospects report, issued on June 10, 2014.

In contrast, recovery in high-income countries is gaining momentum, despite first quarter weakness in the United States. These economies are expected to grow by 1.9 percent in 2014, accelerating to 2.4 percent in 2015 and 2.5 percent in 2016. The Euro Area is on target to grow by 1.1 percent this year, while the United States economy, which contracted in the first quarter due to severe weather, is expected to grow by 2.1 percent this year (down from the previous forecast of 2.8 percent).

The global economy is expected to pick up speed as the year progresses and is projected to expand by 2.8 percent this year, strengthening to 3.4 and 3.5 percent in 2015 and 2016, respectively. High-income economies will contribute about half of global growth in 2015 and 2016, compared with less than 40 percent in 2013.

The financial health of economies has improved. With the exception of China and Russia, stock markets have done well in emerging economies, notably, India and Indonesia. But we are not totally out of the woods yet. A gradual tightening of fiscal policy and structural reforms are desirable to restore fiscal space depleted by the 2008 financial crisis. "In brief, now is the time to prepare for the next crisis" Says Kaushik Basu (Senior Vice President and Chief Economist at the World Bank)

FEMA

- **Reporting mechanism for transfer of Equity shares/fully and mandatorily convertible**

preference shares/fully and mandatorily convertible debentures

A.P. (DIR Series) Circular No.127 dated May 2nd, 2014 In order to rationalise the existing procedure, RBI has decided that where a Non Resident [including a Non-Resident Indian (NRI)], who has acquired and continues to hold control in an Indian company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, acquires shares of that company on a stock exchange in India through a registered broker, the investee company would have to file form FC-TRS with the

AD Category-I bank within 60 days from the date of receipt of the amount of consideration. Further, in order to facilitate operational convenience, RBI has decided that the AD Category-I bank may approach the Regional Office concerned of RBI, Foreign Exchange Department to regularise the delay in submission if any, of form FC-TRS, beyond the prescribed period of 60 days which earlier required approval from RBI, Central Office and in all other cases, Form FC-TRS shall continue to be scrutinised at AD bank level as per the extant practice.

- **External Commercial Borrowings (ECB)**

ECB Policy – Re-schedulement of ECB – Simplification of Procedure A.P. (DIR Series) Circular No. 128 dated May 9th, 2014 Currently, AD-Category banks are permitted to approve changes/ modifications in the drawdown/repayment schedule of ECBs already availed. However, any elongation/rollover in the repayment on expiry of the original maturity of the ECB requires prior approval of the RBI. The same has been simplified and powers have been delegated to the designated AD Category–I bank by RBI to allow re-schedulement of ECB due to changes in drawdown schedule and/or repayment schedule subject to following conditions:-

- Changes if any, in all-in-cost (AIC) is only on account of average maturity period (AMP) due to re-schedulement of ECB. Post re-schedulement, AIC and AMP are in line with applicable guidelines. There should not be any increase in rate of interest and no additional cost should be involved.
- The re-schedulement is allowed only once, before the maturity of the ECB.
- If the lender is an overseas branch of domestic bank, prudential norms applicable must be complied with.
- Changes should be reported to DSIM through revised Form 83.
- ECB should be in compliance with all applicable guidelines related to eligible borrower, recognised lender, AIC, AMP, end use etc.
- The borrower should not be in default/caution list of RBI and also not under investigation of Directorate of Enforcement.

The facility will be available for ECBs raised through both routes viz. automatic and approval. These provisions shall not apply to FCCBs. The modification to the ECB policy shall come into force with immediate effect and all other aspects of the ECB policy shall remain unchanged.

- **Refinance / Repayment of Rupee Loans raised from domestic banking system A.P. (DIR Series) Circular No. 129 dated May 9th, 2014**

As per the extant regulations, eligible Indian companies are permitted to refinance / repay the Rupee loans, raised from domestic banking system by raising ECB from recognised lenders but subject to conditions. However Circular DBOD.No. BP. BC. 107/21.04.048/2013-14 dated April 22nd, 2014 issued by Department of Banking Operations and Development (DBOD) of RBI restricted the repayment of Rupee loans availed from domestic banking system through ECBs extended by overseas branches/ subsidiaries of Indian Banks. In view of the above circular, RBI has restricted raising of ECBs by eligible Indian companies from overseas branch/subsidiaries of Indian banks for refinance/repayment of Rupee Loans raised from domestic banking system for the following purposes:-

- Scheme of take out finance.
- Repayment of existing rupee loans for companies in infrastructure sector.
- Spectrum allocation.
- Repayment of Rupee loans.

The above changes shall come into force with immediate effect.

➢ **ECB form Foreign Equity Holders – Simplification of Procedure A.P. (DIR Series) Circular No.130 dated May 16th, 2014**

As per the extant ECB policy, ECBs from direct Foreign Equity Holders (FEH) are considered both under automatic and approval routes as the case may be. ECBs from indirect equity holders and group companies and FEHs for general corporate purpose are considered under approval route. As a measure to simplify the procedure, RBI has decided to delegate powers to AD banks to approve proposals for raising ECBs under approval route by the following companies:-

- Companies belonging to manufacturing, infrastructure, hotels, hospitals and software sectors from indirect equity holders and group companies.
- Companies in miscellaneous services from direct/indirect equity holders and group companies. (Miscellaneous services means companies engaged in training activities, research and development activities and supporting infrastructure sector. Companies doing trading business, providing logistics services, financial and consultancy services not covered under this facility).
- Companies belonging to manufacturing, infrastructure, hotels, and software sectors for general corporate purpose. ECB for general corporate purpose (including working capital finance) is permitted only from direct equity holders.
- Proposals involving change in lender when ECB is from FEH – direct / indirect equity holders and Group Company. Other aspects of ECB policy like eligible borrower, recognised lender, permitted end use; all-in-cost, average maturity period, pre payment, reporting arrangements etc. shall remain unchanged.

➢ **Overseas Direct Investment (ODI) – Limited Liability Partnership (LLP) As Indian Party RBI/2013-14/595, A.P. (DIR Series) Circular No.131 dated May 19th, 2014**

RBI has decided to notify a Limited Liability Partnership (LLP), registered under Limited Liability Partnership Act, 2008 as an "Indian Party" under clause (k) of Regulation 2 of Notification No. FEMA.120/RB- 2004 dated July 7th, 2004. Accordingly, an LLP, may henceforth undertake financial commitment to / or behalf of JV / WPS abroad in terms of FEMA provisions under Regulation 6 (and regulation 7, if applicable) of the notification ibid.

Necessary amendment to the Notification ibid is issued vide Notification No. FEMA. 299/2014-RB dated March 24th, 2014, which is effective from the date of publication in the Gazette i.e. May 7th, 2014. Export of Goods – Long-Term Export Advances A.P. (DIR Series) Circular No. 132 dated May 21, 2014 Notification No. FEMA.23/RB-2000 dated May 3, 2000 requires prior approval of RBI by an exporter for receipt of advance where export agreement provides shipment of goods beyond a period of 1 year from the date of receipt of advance.

Further, AD Category–I banks are currently allowed to permit exporters to receive payment for export of goods which would take more than 1 year to manufacture and ship where export agreement

provides the same. In view of requests received from exporters, RBI has decided to permit AD Category–I banks to allow exporters having a minimum of 3 years satisfactory track record to receive long-term export advance up to a maximum tenor of 10 years to be utilised for execution of long-term supply contracts for export of goods subject to certain conditions as specified. For details of conditions and instructions issued by RBI please refer circular at Import of Gold by Nominated Banks/ Agencies / Entities A.P. (DIR Series) Circular No. 133 dated May 21st, 2014 Taking into account the representations received from jewelers, bullion dealers, AD banks, trade bodies etc. and in consultation with the Government of India (GOI), RBI has decided to rationalise / modify guidelines for import of gold by nominated banks/agencies/entities. Star Trading Houses/Premier Trading Houses (STH/PTH) which are registered as nominated agencies by Director General of Foreign Trade (DGFT) may now imp:-

- The STH/PTH should have imported gold prior to introduction of 20:80 the scheme. They should get verification of gold consignment by Department of Customs at any port where they have imported gold consignment in past.

- The first lot of gold under this scheme would be b monthly import during any of the last 24 months prior to RBI's notification dated August 14th, 2013, subject to maximum of 2,000 kg.

- As in case of other nominated agencies, eligible quantities may be imported by STH/PTH from any port, subject to their eligibility limit / maximum quantity allowed.

- For compliance, before importing they must submit import plan, port wise and quantity wise to the customs office, where verification of figures of past performance was done. The overall discipline of exporting 20% of each imported consignment before the next consignment is imported is equally applicable to such STH/PTH.

Further, nominated banks are permitted to give Gold Metal Loans (GML) to jewellery manufacturers out of eligible domestic import quota of 80% to the extent of GML outstanding in their books as on March 31st, 2013. These guidelines shall come into force with immediate effect. For working example of the operation of 20:80 scheme in terms of the revised guidelines

INTERNATIONAL TAXATION

- **Pan-Asia iGATE Solutions, Mauritius (TS-296-AAR-2014) dated May 9th, 2014.**

Facts of the case

The applicant, Pan-Asia iGATE Solutions, incorporated in Mauritius, is a non-resident company under the provisions of the Income-tax Act, 1961 (the Act). Applicant proposed to purchase 1,82,55,396 equity shares of Patni Computer Systems Ltd. (a listed Indian company) from iSolutions, Inc., a US based company. Issues Applicant filed an application before AAR u/s 245Q(1) seeking ruling on whether it was required to withhold tax u/s 195 @ 10% on amount of long term capital gains ('LTCG') arising to iSolutions under proviso to Sec. 112(1).

Held

AAR took note of its previous ruling in Cairn UK Holdings Ltd. [TS-419- AAR-2011], which was quashed by Delhi HC by its order dated October 7th, 2013 [TS-510-HC-2013(DEL)]. Delhi HC ('HC') had therein observed that non-resident seller was eligible for lower rate of 10% on capital gains, on sale of listed shares, as per proviso to Sec. 112(1) and quashed AAR ruling which denied relief by applying 20% capital gains tax. HC rejected Revenue's contention that proviso to Sec. 112(1) was available only if second proviso to Sec. 48 applied (which neutralises the effect of inflation) and held, "legislative intention was to tax long term capital gain on listed shares, bonds and units @ 10%,

without benefit of indexation under second proviso to Section 48 of the Act."

Thus, ruling in favour of assessee, HC had quashed AAR's diametrically reversed order. Relying on above Delhi HC ratio, AAR in applicant's case, answered the question in affirmative. AAR, thus, held that applicant shall withhold TDS at a lower rate of 10.56 %(including surcharge and education cess) as per proviso to Sec. 112(1), on LTCG arising to non-resident seller.

- **The Director of Income Tax (International Taxation) II vs. Bechtel International Inc USA (TS-261-HC-2014(BOM)**

Facts of the case

The assessee, Bechtel International Inc, USA, came to India in connection with 2 projects, namely, Dabhol Power Company for setting up a power plant in Maharashtra and Haldia Petrochemical Ltd for setting up a petrochemical plant in West Bengal. The assessee claimed a deduction in relation to expenses of Dabhol Power Project of ` 1.52 crores which was disallowed by AO and CIT (A). However, Tribunal ruled in favour of the assessee. Aggrieved by Tribunal's order, Revenue preferred an appeal before Bombay HC.

Issues

Whether if business deduction of project's expenses is allowed after temporary termination of the said business if there is absence of total business discontinuance?

Held

HC observed that Tribunal noted the factual position and found that though the Dabhol Power Company contract was temporarily terminated w.e.f. June 17th, 2001 for default in payment, yet, the assessee's presence in India continued for pursuing its claim against the company. Further, the project office was not the only reason by which the assessee claimed the deduction but urged it was following up the matter and seeking the extension from the Reserve Bank of India (RBI).

It was also noted that extension was granted by RBI from time to time till September 30, 2006. In the meantime, it was observed that assessee entered into an agreement with Bharat Heavy Electrical Limited on March 27th, 2006 for providing through the very office, services in relation to Dabhol Power Company. HC noted that in these peculiar circumstances that the Tribunal held that the assessee could not be said to be not carrying on any business in India during the relevant period. HC thus concluded that the disallowance by the Assessing Officer and sustained by the Commissioner of Income Tax (Appeals), cannot be upheld. Noting that there was no total or complete discontinuance of the business activity. HC also rejected Revenue's objection that there was no business activity and, therefore, the income could not be said to be generated or earned from the business. Ruling in favour of assessee, HC upheld Tribunal's order and dismissed Revenue's appeal.

- **Sumit Aggarwal vs. DCIT Circle VI I Ludhiana (TS-300-ITAT- 2014(CHANDI) dated May 20th, 2014**

Facts of the case

The assessee, a resident of India, filed his return of income for AY 2008- 09 declaring an income of ` 2.42 crores after computing loss from house property. The loss from house property was computed because of the payment of interest to ANZ Bank; Australia amounting to 10.43 lakhs in respect of property purchased and let out on rent in Australia.

The AO observed that since the assessee had not deducted tax, possible income from property should have been assessed to tax after ignoring the claim of interest which is not allowed if payable outside India without tax deduction under section 25 of the Income-tax Act. CIT (A) held that AO was not justified in disallowing interest and Revenue also did not oppose this finding. However, in appellate proceedings, CIT(A) referred to the decision of CIT

vs. PVAL Kulandagan Chettiar (267 ITR 645) stating that as far as rent income from Australia was concerned, the assessee was required to file the return in Australia and such income could not be included in Indian income. Therefore, negative income could not be assessed in India. Aggrieved, assessee filed an appeal before Chandigarh ITAT.

Issues

Whether income accruing and arising outside India should be taxed under the DTAA or Income-tax Act in case of a resident? Whether loss from house property from Australia can be allowed to be set off against Indian income in that case?

Held

ITAT observed that as per Sec. 5, in case of a resident, income accruing or arising outside India has to be assessed in India and that Sec. 90(2) states that wherever DTAA is applicable in case of an assessee then the assessee has an option to apply either Indian Tax Laws or provisions of DTAA if the same are more beneficial to the assessee. In the present case,

ITAT noted that the assessee had exercised the option of filing his return of income under Indian law and held that the same could not be refused simply because DTAA was applicable as an option to the assessee. Ruling in favour of the assessee, ITAT concluded that the assessee had right to file the return of global income in India and the Revenue is bound to give effect to such return. Therefore the learned CIT (A) is not correct in holding that income from house property from Australian property was not assessable in India. Accordingly, ITAT directed AO to assess the loss from house property in the hands of the assessee.

- **Pirelli Cavi E Sistemi Telecom S.P.A. vs. ACIT Circle 3(2) Hyderabad. (TS-317-ITAT-2014(HYD)) dated May 28th, 2014**

Facts of the case

The assessee, an Italian Company, had entered into three different contracts with an Indian Company relating to offshore supply of equipments, onshore supply of equipments and onshore services contract respectively. The assessee had Permanent Establishment (PE- Project Office) in India which was established after the signing of contracts. For AY 2000-01, assessee offered income arising out of on-shore supply and on-shore services contracts. It submitted that income arising from off-shore supply contract was not taxable in India.

However, AO observed that all the three contracts were to be treated as a single/composite contract and held that the profit from the offshore contract was also taxable in India estimating the income from offshore contract at 5% of the gross contract value. On appeal to CIT (A), it noted that some installation activities and training imparted to personnel should be considered to be carried out by assessee in India through its Project Office. Hence, it confirmed AO's order that income from offshore contract was also to be taxed in India but reduced the percentage of income taxable to 1%.

Assessee, aggrieved by confirmation of income on offshore contract as well as rejection of books of accounts preferred an appeal before Hyderabad ITAT. On the other hand, Revenue, aggrieved by reduction of estimation on the offshore contracts and adoption of domestic tax rate as against higher rate adopted by AO filed a cross-appeal.

Issues

Whether Income of non-resident assessee from offshore contract with India taxable in India in case of PE being present in India? Whether it is taxable if PE is not present in the above case? Whether tax rate higher than tax rate as applicable to domestic companies.

Held

ITAT noted that offshore contract was entered into in February, 1998 whereas assessee's PE in India–Project Office was established in June, 1998. Thus, it held that there was no correlation between signing up the contract in India and assessee's PE, also stating that CIT (A) had erred in doing so. It also observed

that 'installation' in the present case, did not pertain to installation service but involved fixation of cable lines required for installation activity outside India.

Further, with reference to training imparted to personnel in India, ITAT observed that training was incidental to supply of offshore material and even if it was considered as part of PE operations, assessee did not earn any income on personnel training in India. Thus, ITAT held "no profit was earned on the said activity in India, no income can be deemed to accrue or arise in India". It also noted that the principle that income from offshore contract is taxable only to the extent of profits attributable to the operations in India (by assessee's PE), ITAT held that this principle was applicable even if all the three contracts signed in the present case were treated to be single or composite contract.

On Revenue's appeal, rejected Revenue's contention that higher tax rate as held by AO was applicable in the present case. Thus, ITAT confirmed CIT (A)'s order on applicability of lower tax rate as applicable to domestic companies as it was in line with non-discrimination clause in the DTAA. Thus, Revenue's cross-appeals were dismissed.

CORPORATE LAWS

- **MCA General Circular No. 10/ 2014 dated May 7th, 2014 – Certification of E-forms/non e-forms under the Companies Act, 2013 by the Practicing Professionals**

Under the Companies Act, 2013, professionals i.e. members of ICAI, ICSI and ICOAI have been allowed to authenticate various e-forms required to be filed with ROC. MCA has clarified in this circular the manner in which instances of filing of documents, applications containing false or misleading information or omission of material fact etc. shall be handled.

- **MCA General Circular No. 11/ 2014 dated May 12th, 2014 and 13/2014 dated 23rd May, 2014 – One time opportunity for extension of period of Reservation of Name**

MCA has clarified that where reserved names for the purpose of Company incorporation with 60 days prescribed validity expiring during the period when services for incorporation of companies were not available on the MCA21 portal to stakeholders from 1st April, 2014 to 28th April, 2014 because of the deployment requirement for new E-forms, the validity of the reserved names was extended till 31st May, 2014 and further extended till 7th June, 2014.

- **MCA General Circular No. 12/ 2014 dated May 22nd 2014, Applicability of PAN requirement for Foreign Nationals**

MCA has clarified that the PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income-tax Act, 1961 on the date of application for incorporation Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, along with undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned. Format of the undertaking is given in the circular.

- **SEBI notification No. – LAD-NRO/GN/2014-15/01 dated May 6th, 2014 – Issue of SEBI (Mutual Funds) (Amendment) Regulations, 2014.**

SEBI has made certain changes to the SEBI (Mutual Funds) Regulations 1996 vide the aforesaid notification. The amendments mainly deal with investment by the sponsor or asset management company of not less than 1% of the amount raised in the new fund offer or fifty lakh rupees, whichever is less, in the growth option of the scheme and such investment shall not be redeemed unless the scheme is wound up.

- **SEBI Circular No. – CIR/IMD/DF/10/2014 dated May 22nd, 2014 – Circular on Mutual Funds**

SEBI has released a circular covering certain aspects of mutual fund operations. The limit of cash

transactions in mutual funds has been increased from the existing limit of 20,000/- per investor, per mutual fund, per financial year to 50,000/- per investor, per mutual fund, per financial year subject to certain safeguards. In addition, certain relaxations have been given to investment / trading in Securities by Employees of Asset Management Companies and Trustees of Mutual Funds in respect of liquid schemes. For complete text of the circular please refer to the link:

- **SEBI Circular No. – CIR/MRD/DP/15/2014 dated May 15, 2014 – Risk management framework for Foreign Portfolio Investors (FPI) under the SEBI (Foreign Portfolio Investors) Regulations, 2014**

The SEBI regulations on Foreign Portfolio Investors were notified on January 7, 2014 and shall commence with effect from 1st June, 2014. SEBI has given directive measures regarding trading and risk management of FPI trades to effect smooth transition to the FPI regime to stock exchanges and clearing corporations. The complete directive measures can be referred on the SEBI website

POLICY WATCH

- **Centre to leverage Cloud for Mission Mode projects**

The Indian government is looking to leverage cloud computing in a big way, beginning with its multi-billion dollar mission-mode projects, six of which will start within a month's time. The Department of Electronics and Information Technology has identified six existing Mission Mode Projects (MMP), based on the need for technology upgradation, scope of process simplification with emerging technologies and the possibility of leveraging newer technology platforms. The government's MMPs focus on one aspect of e-governance such as pensions, banking, insurance and judiciary.

- **Delhi government to deploy GPS for food transportation movement**

The Delhi government's Department of Food, Supplies and Consumer Affairs is setting up a comprehensive web based, real time tracking system for effective implementation of the Public Distribution System. The objective is to continuously track the movement of vehicles to ensure that commodities are properly and timely delivered to the Fair Price Shops (FPS) and are not diverted to the open market. It will be implemented by the Delhi State Civil Supplies Corporation Limited which is responsible for supplying food grains from the six Food Corporation of India go down in Delhi to about 2,500 FPS across the city.

- **Investors sign MoUs to invest USD 10.11 billion in Uttar Pradesh**

Uttar Pradesh government has received initial investment commitments of USD 10.11 billion from companies, including Reliance Jio, Fortis and ITC, in areas ranging from agriculture to telecommunications. Essel Group signed a Memorandum of Understanding (MoU) to invest USD 3.37 billion in areas like urban development and power distribution. Reliance Jio pledged USD 0.84 billion outlay for implementation of 4G network. FMCG company ITC plans to invest USD 0.21 billion in various sectors; Fortis Healthcare promised USD 0.13 billion outlay for setting up three 250-bed hospitals each at Kanpur, Lucknow and Greater Noida. Investment of USD 0.37 billion was committed by JVL Agro Industries in agro and food processing sectors. River Engineering plans to set up an air taxi base for USD 0.06 billion. Sonalika plans USD 0.03 billion investment for setting up a farm equipment and tractor manufacturing base.

- **IRDA to launch mandatory pilot on insurance repository system**

The Insurance Regulatory and Development Authority (IRDA) is to launch a pilot on life Insurance Repository (IR) system. This is meant for keeping/storing a policy in digitized/de- materialized form to be able access as and when required. The two-month pilot would be started with effect from

July 1, 2014 and it shall be mandatory of all life-insurers and existing five insurance repositories (IR) to participate in the programme. During the pilot launch, each life insurer shall convert a minimum of 1,000 or 5% of the existing individual policies (issued in hard form and currently in force) whichever is less for each of the IRs into electronic form.

- **RBI mandates maintenance of liquidity ratios for banks**

The Reserve Bank of India (RBI) has mandated lenders to maintain 60% Liquidity Coverage Ratio (LCR) from January 1, 2015. Also, the central bank suggested a phased manner in which the ratio will have to increase to 100% by January 1st, 2019. Equal quantum of increase has been suggested for every year, till 2019.The LCR promotes short-term resilience of banks to potential liquidity disruptions by ensuring that they have sufficient high-quality liquid assets to survive an acute stress scenario lasting for 30 days.LCR is defined as the proportion of high-quality liquid assets to the total net cash outflows in the next 30 calendar days.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

- **Exports posted double-digit growth in May, the highest in six months**

  As shipments of key commodities, such as engineering goods, petroleum products, readymade garments and pharmaceuticals registered strong increases the exports raises to highest level. Imports continued to fall during the month, mostly due to declining gold imports, which narrowed the trade deficit sharply compared to the previous year. Recording a growth for two consecutive months of the new fiscal year, exports increased 12.4% in May to USD 28 billion over the same month a year ago.

- **India's apparel exports set to cross USD 17 billion mark in 2015**

The domestic organized apparel sector, which had witnessed a slowdown in sales, is expected to bounce back with 15% growth. With the relief in excise there had been a surge in demand which tapered off due to uncertain economic conditions. After the removal of 10% excise duty on branded apparel, the category has witnessed 10-12% growth in 2013.The domestic apparel industry is estimated at USD 33.71 billion of which unstitched garments such as sarees and dhotis comprise USD 8.43 billion.

- **Passenger car sales up 3.1%; bikes sales grow 11.7% in May**

Domestic vehicle sales registered a growth of 13.22% to 16, 98,138 units in May this year against 14, 99,893 units in the same month a year ago. While domestic passenger car sales grew 3.08% to 1, 48,577 units last month compared with 1, 44,132 units in May 2013, motorcycle sales grew 11.71% to 9, 84,469 units in May against 8, 81,288 units in the year-ago period. Total two- wheeler sales during the month grew 16.3% to 14, 02,830 units from 12, 06,173 units in the same period previous year. Total sales of commercial vehicles were down 15.28%to 46,986 units (55,458 units).

- **Railways earnings go up by over 8%**

Railways have earned USD 4.09 billion during April and May this year as against USD 3.78 billion during the same period last year, registering an increase of 8.14%. The total earnings from goods during April-May 2014 were USD 2.79 billion compared to USD 2.64 billion during the corresponding period, registering an increase of 5.76%. The earnings from

passengers during April-May period this year were USD 1.13 billion compared to USD 0.98 billion during the same period last year, registering an increase of 15.34%. The earnings from other categories amounted to USD 113.84 million during April-May 2014 compared to USD 110.77 million during the same period last year, registering an increase of 2.76%.

- **SME funding to get USD 0.84 billion boost**

Government is to set up a first of its kind co-investment fund to Small and Medium Enterprises (SMEs). The fund will have an initial corpus of USD 0.84 billion and will be operated by two state-owned financial institutions, viz. Life Insurance Corporation (LIC) and Small Industries Development Bank of India (SIDBI). The fund will be modeled around similar investment vehicles set up in developed nations like Germany and Austria, to address financing challenges to start-ups, especially in the high growth sectors like technology. The proposal to set up a SME co-investment fund follows recent measures such as separate SME exchanges and the institutional trading platform, jointly taken by the finance ministry and SEBI.

- **Brookfield to buy Unitech subsidiary for USD 0.24 billion**

Canadian firm Brookfield Property has entered into an agreement to acquire Candor Investments, a subsidiary of Unitech Corporate Park (UCP), for about USD 0.24 billion. UCP has entered into an agreement with an affiliate of Brookfield Property Partners for the sale and purchase of the entire issued share capital of Candor, subject to conditions, for a cash consideration of about USD 0.24 billion. Through its subsidiaries, Candor Investments holds 60% stake in six properties two in Gurgaon, three in Noida and one in Kolkata. Unitech group owns the rest of the equity.

- **JSW Steel to buy Welspun Maxsteel for about USD 0.19 billion**

JSW Steel will acquire Welspun Maxsteel for about USD 0.19 billion. This is aimed at sourcing cheaper raw material, cutting production cost and strengthening its presence in the northern and western markets. At present, Welspun buys raw material from the global market, forcing it to sell sponge iron at the cost price in the market. The steel maker will acquire the sponge iron plant, jetty and roughly 1,000 acres of land, besides absorbing the USD 0.17 billion debt of Welspun Maxsteel.

- **Japan's Meiji Holdings acquires Medreich for USD 0.29 billion**

Japanese pharmaceutical major Meiji Holdings has bought out Temasek-backed Medreich for USD 290 million, marking the first inbound investment in the Indian pharmaceutical sector by a Japanese company after Daiichi Sankyo's acquisition of Ranbaxy in 2008. Temasek, the private equity arm of the Singapore government, had invested USD 18.38 million in 2005 for a 25% stake in Medreich which manufactures therapeutic generic and branded drugs. Meiji, through its operating subsidiaries, Meiji Seika Pharma, has bought out 100% stake in Medreich.

- **Suzuki to invest USD 3.12 billion for setting up unit in Gujarat**

Suzuki Motor Corporation (SMC) of Japan, parent company of Maruti Suzuki, will spend USD 3.12 billion in setting up a new factory in Gujarat. It would set up a 100% subsidiary, Suzuki Motor Gujarat, to make cars on a strictly no-loss, no-profit basis for Maruti Suzuki (MSIL). SMC intends to fund this expansion with own equity and accumulated depreciation.

- **ZTE to set up network operating centre in India**

Chinese telecom equipment maker ZTE Corporation plans to set up a Global Network Operating Centre (GNOC) in India. The centre will manage the networks of multiple telecom carriers across Asia and Africa. Similar centres have been set up in India by

rival firms, including Nokia Solutions and Networks and Ericsson. ZTE's centre would be one of its major GNOCs in the world that will take care of managed service requirement of operators across the regions.

➢ Centre to leverage Cloud for Mission Mode projects

The Indian government is looking to leverage cloud computing in a big way, beginning with its multi-billion dollar mission-mode projects, six of which will start within a month's time. The Department of Electronics and Information Technology has identified six existing Mission Mode Projects (MMP), based on the need for technology up gradation, scope of process simplification with emerging technologies and the possibility of leveraging newer technology platforms. The government's MMPs focus on one aspect of e-governance such as pensions, banking, insurance and judiciary.

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Statuary compliance calendar for the month of June 2014

Due date	Statuary compliance under Act	Particulars	Governing Authority
WHEN		Rules & Regulations	
06/06/2014	Service Tax	Payment of monthly service tax for the month of May by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of May on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/06/2014	Income Tax	Deposit of Income Tax TCS and TDS deducted in May	Central Board of Direct Tax.
	NBFC-D	Monthly return of exposure to capital markets in form NBS-6 by NBFC having total assets of 100 crore and above	Reserve Bank of India.
	NBFC-ND-SI	Monthly return of source and application of funds, profit and loss account, asset classification	Reserve Bank of India.
10/06/2014	Central Excise	Monthly central excise return in form ER-1/ER-2 by other that SSI	Central Board of Excise and Custom
	Central Excise	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6	Central Board of Excise and Custom
	NBFC-ND-SI	Monthly statement of short term dynamic liquidity in form NBS-ALM1	Reserve Bank of India.
15/06/2014	Income Tax	Advance income tax under section 211 of Income Tax Act by corporate (first installment)	Central Board of Direct Tax.
	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of May (b) Monthly return in form 5 for employees joining Provident Fund during May along with declaration in form 2 furnished by the employees (c) Monthly return of Provident Fund in form 10 of employees leaving the service during May	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
21/06/2014	ESIC	Payment of ESIC contribution for the month of May	The employees' state insurance Act-1948. Ministry of labour and employment.
25/06/2014	Provident Fund	Monthly contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution.	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952

Glossary

Abbreviation	Meaning
AAR	Authority of Advance Rulings
ADR	American Depository Receipt
ALP	Arm's Length Price
AO	Assessing Officer
AP	Association of Persons
APA	Advance Pricing Agreement
ATM	Automated Teller Machine
AY	Assessment Year
BCD	Basic Customs Duty
BI	Body of Individuals
BP	Balance of Payments
CA	Chartered accountant
CAD	Current Account Deficit
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise & Customs
CENVAT	Central Value Added Tax
Customs Act	Customs Act, 1962
CIT	Commissioner of Income Tax
CPI	Consumer Price Index
CSR	Corporate Social Responsibility
CD	Countervailing Duty
DDT	Dividend Distribution Tax
DTA	Domestic Tariff Area
ECB	External Commercial Borrowings
ESI	Employee's state insurance
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FERA	Foreign Exchange Regulation Act
FII	Foreign Institutional Investors
FIPB	Foreign Investment Promotion Board
FPI	Foreign Portfolio Investment
FTS	Fees for Technical Services
FY	Financial Year
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GI	Government of India
GST	Goods and Services Tax
HUF	Hindu Undivided Family
ICAI	Institute of chartered accountant
IFRS	International Financial Reporting Standard
IDR	Indian Depository Receipt
IIP	Index of Industrial Production
IRDA	Insurance Regulatory Development Authority
ITR	Income tax return
LCD	Liquid-crystal Display
MP	Madhya Pradesh
MP	Market price
MF	Mutual fund
MSME	Micro Small and Medium Enterprises
NBFC	Non Banking Finance Company
NHAI	National Highway Authority of India
NPS	National Pension Scheme
NRI	Nonresident in India
NABARD	National Bank for Agriculture and Rural Development
OEM	Original Equipment Manufacturer
OET Act	Odessa Entry Tax Act, 1999
PSU	Public Service Undertakings
P&L	Profit & loss
PF	Provident fund
POTR	Point of Taxation Rules
QE	Quantitative Easing
QFI	Qualified Foreign Investor
RBI	Reserve Bank of India
REF	Renewable Energy Fund
REIT	Real Estate Investment Trust
Rules	Income-tax Rules, 1962
SA	Standard on Auditing
SAD	Special Additional Duty
SC	Scheduled Caste
SC	Supreme Court
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
ST	Scheduled Tribes
ST	Service Tax
STP	Software Technology Park
STR	Service Tax Rules
STCG	Short Term Capital Gain
TIN	Transaction identification number
TNNM	Transactional Net Margin Method
Tribunal	Income tax Appellate Tribunal
TDS	Tax Deducted at Source
TPO	Transfer Pricing Officer
TED	Terminal Excise Duty
VAT	Value Added Tax
VCC	Venture Capital Companies
VCF	Venture Capital Fund
WPI	Wholesale Price Index
WT	Wealth tax
WB	World bank

BUSINESS ADVISORY

- Growth Planning
- Succession Planning.
- Strategic Decision Appraisal
- Risk, Uncertainty and Change Management Services
- Strategic Decision Implementation – National and Global Platform
- Wealth Management Services.

TAXATION SERVICES

- Direct Taxation Advisory
- Service Tax, Excise duty, VAT Registration Services
- Tax Planning Strategy– Optimum use of Corporate Tax Incentives.
- Implementing and Operating in the tax consolidation regime
- Preparation of return of Income Tax, Service Tax, Excise Duty and VAT.

AUDIT & ASSURANCE

- Statutory Audit including Tax Audit &VAT Audit
- Internal Audit and Concurrent Audit
- Management Audit and Operational Audit
- Cost Audit/Reviews
- System and process control reviews.
- Secretarial Audit.

OUTSOURCING ACCOUNTANTS

- Annual financial report preparation
- Preparation of general and special purpose statutory accounts
- Processing Payroll
- Cash management reporting
- Accounting system reviews
- Financial analysis
- General Accounting Support, as required by client.

RBI, FEMA, SEBI Services

- Setting up Liaison Office, Branch Office and Project Office.
- RBI Consulting
- Private Equity Finding Advisory.
- Project Financing.
- Credit Rating.
- Business Asset Valuation.
- Due Diligence.

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BRANCHES / AFFILIATES:-

The head quarter of Rajput Jain & associates, Chartered Accountant is located in Delhi, India. Beside this Rajput Jain & associates has presence all over India, with Nepal, and United States of America, Australia, through its associates / affiliates.

CORPORATE OFFICE

P-6/90, Connaught Place, Connaught Circus, New Delhi-110001, India.

Phone No: -011-23343333.

DELHI BRANCH

204, Prakash Chamber, 6 Netaji Subhash Marg, Main Road Daryaganj, New Delhi-110002, India.

Phone No: - +91-9871857333; 011-43520194.

UTTAR PRADESH BRANCH

B-2, Shanchar Vihar, ITI Mankapur, District Ghonda, Uttar Pradesh, 271308241, India.

Phone No: - +91-9811322785.

NEPAL BRANCH

Building No:-65, Ward No: - 10, Lakhe Chaur Marg, Kathmandu Metropolitan Kathmandu, Nepal.

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