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Withholding tax as per treaty shall prevail over IT Act, 1961 even in the absence of PAN

Facts:

In the matter of Serum Institute of India Limited (hereinafter referred "Taxpayer), Taxpayer made payment to non-resident on account of royalty and fees for technical services. The Taxpayer withheld taxes on such payments by applying lower rate as provided in relevant Tax Treaty. The Revenue authorities found that some of the non-residents did not have PAN and therefore alleged that the Taxpayer did not appropriately deduct tax. The Revenue authorities made a tax demand on the Taxpayer for the difference between actual tax withheld and 20% as per Section 206AA of the IT Act.

Provision:

According to section 206AA of the Indian Income Tax (IT) Act, 1961 any person, entitled to receive any amount or income, which is liable for withholding, is required to furnish Indian tax permanent identification number ('PAN') to the person making payment. In case of failure to do so, withholding is to be applied at the higher of

1. rate specified in relevant provision of IT Act or
2. rates in force or
3. 20%

Conclusion:

In a ruling on this matter, the Hon'ble Pune Bench of Income tax Appellate Tribunal ('ITAT') has held that where taxes have been withheld as per beneficial provisions of Tax Treaty, the provisions of Section 206AA of the IT Act cannot be invoked by the Revenue authorities to insist tax deduction at the rate of 20%.

Therefore in case of non-residents, tax liability in India is to be determined in accordance with provisions of the IT Act or Tax Treaty with relevant country, whichever is more beneficial to the Taxpayer.

Further Section 206AA of IT Act is not a charging section, but a part of procedural provisions dealing with deduction of tax at source. Even provisions of Section 195 of the IT Act which cast duty on the Taxpayer to withhold taxes from payments to non-residents cannot be looked upon as a charging provision. In fact, in context of Section 195 of the IT Act withholding provisions apply only to sums which are chargeable to tax under the Act.

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New Indian Foreign Trade Policy 2015-20

The Government of India has announced the long awaited Foreign Trade Policy 2015-20 dated on April 01, 2015. The key takeaways of new policy are as under:

1. Merchandise Exports from India Scheme (MEIS): Before this policy, there were 5 different scheme i.e., Focus Product Scheme, Focus Market scheme etc, which now have been merged into new single scheme, namely Merchandise Exports from India Scheme (MEIS). Rewards for export of notified goods to notified markets under MEIS shall be payable as percentage of realized FOB value (in free foreign exchange). The debits towards basic customs duty in the transferable reward duty credit scrip's would also be allowed adjustment as duty drawback.
2. Service Exports from India Scheme (SEIS): Served from India Scheme (SFIS) has been replaced with Service Exports from India Scheme (SEIS). SEIS shall apply to 'Service Providers located in India' instead of 'Indian Service providers. The rate of reward under SEIS would be based on net foreign exchange earned.
3. Incentives (MEIS & SEIS) shall also be available for SEZs
4. Duty credit scrip's to be freely transferable and usable for payment of custom duty, excise duty and service tax.
5. Enhance Make in India policy by reducing Export obligation for domestic procurement under EPCG scheme. Higher level of rewards under MEIS for export items with high domestic content and value addition
6. New Initiatives for EOUs, EHTPS and STPs: To share infrastructure facility among themselves, so that it will avoid duplication of work and reduce cost for creating infrastructure. Inter unit transfer of goods have been allowed among themselves, this will reduce cost of transportation, other logistic cost and maintaining effective supply chain. EOUs have been allowed facility to set up warehouse near the port of export, this will help in reducing lead time for delivery of goods.
7. Facilitating and encouraging export of Defense Export: Normal export obligation period under advance authorization is 18 month, but export obligation in case of export item falling in the category of defense, shall be 24 month.

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MCA clarification regarding applicability of Companies (acceptance of deposits) rules, 2014

The Ministry of Corporate Affairs (MCA) has issued clarification through General Circular no. 05/2015 dated March 30, 2015 that the amount received by Private Company prior to April 1, 2014 shall not be treated as "deposits" under the Companies Act, 2013.

MCA has issued clarification in respect of query raised by stakeholders, who have

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sought clarifications as to whether amounts received by private companies from their members, directors or their relatives prior to 1st April, 2014 shall be considered as deposits under the Companies Act, 2013 as such amounts were not treated as 'deposits' under section 58A of the Companies Act, 1956 and rules made there under.

Further MCA has inserted the proviso through notification dated March 31, 2015 in Explanation (a) of clause (vii) in sub rule (1) of rule 2 Companies (Acceptance of Deposits) Rules, 2014 in which it states that unless otherwise required in the Companies Act, 1956 or Securities and Exchange Board of India A ct, 1992, if a company either Private or Public Company receives any amount by way of subscriptions to any shares, stock, bonds or debentures before the April 1, 2014 and disclosed in the balance sheet for the financial year ending on or before the March 31, 2014 against which the allotment is pending on the March 31, 2015, the company shall either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules from June 01, 2015.

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