SNR & COMPANY
CHARTERED ACCOUNTANTS

KRESTON SNR

# INCOME TAX BULLETIN


## JANUARY 2024

Delhi, Pune, Bangalore

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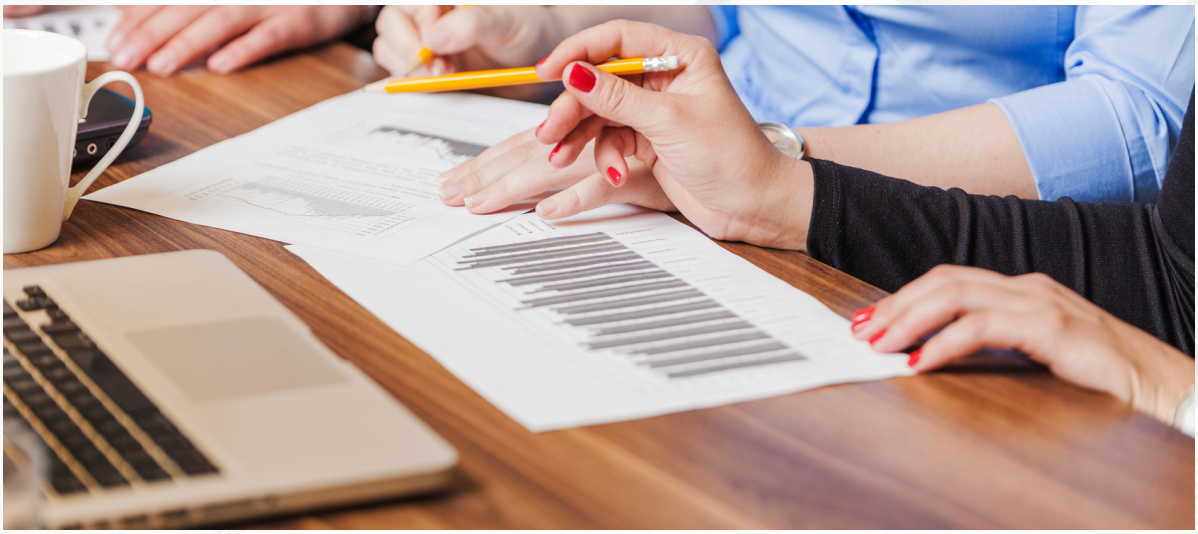
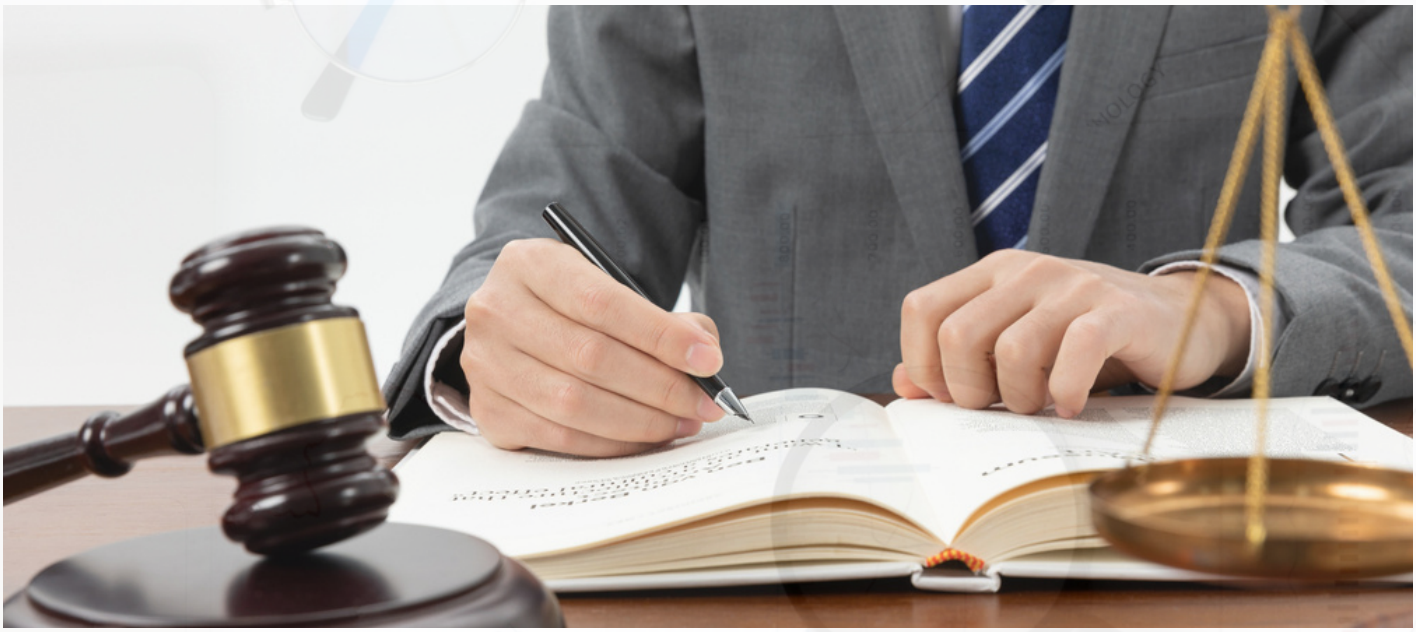
# Judicial Updates

## 1. Consequential assessment orders shall be quashed in case of DIN-less DRP directions:

**Case of :** Keller Asia Pacific Limited Vs ACIT
**Decision by :** ITAT, Delhi
**In favour of :** Assessee
**Date of Judgement :** 22-11-2023



- Assessee was subjected to assessment wherein the draft order passed was objected before the DRP and directions were issued under Section 144C(5) without containing DIN leading to a consequential assessment order under Section 143(3) read with Section 144C(13).
- Before ITAT, Assessee relied on jurisdictional HC ruling in Brandix Mauritius and contended that DRP directions in absence of DIN is bad in law. The assessee also relied on coordinate bench ruling in *Abhimanyu Chaturvedi Vs DCIT (ITA 2486/Del/2022) wherein the assessment order in absence of DIN was considered non est.*
- While Revenue contended that an intimation letter was generated containing system generated DIN for the manual order.
- ITAT observed that perusal of DRP order clearly evidences that directions under Section 144C(5) were passed without mentioning the DIN and the DIN was generated subsequent to passing of the orders/directions by DRP.
- The Tribunal relied on coordinate bench ruling in *Sharda Devi Bajaj Vs DCIT (ITA 3006/Del/2022)* wherein assessment order under Section 153C was set aside while observing that in the absence of exceptional circumstances mentioned in Para 3 of the said Circular any subsequent intimation containing DIN will not valid the assessment order and the said order will be deemed to have never been issued.
- Accordingly, following jurisdictional HC ruling as well as coordinate bench ruling, ITAT held that DRP directions as bad in law and held the assessment order passed pursuant to DRP directions liable to be quashed.



**Full Judgement: Keller Asia Pacific Limited**

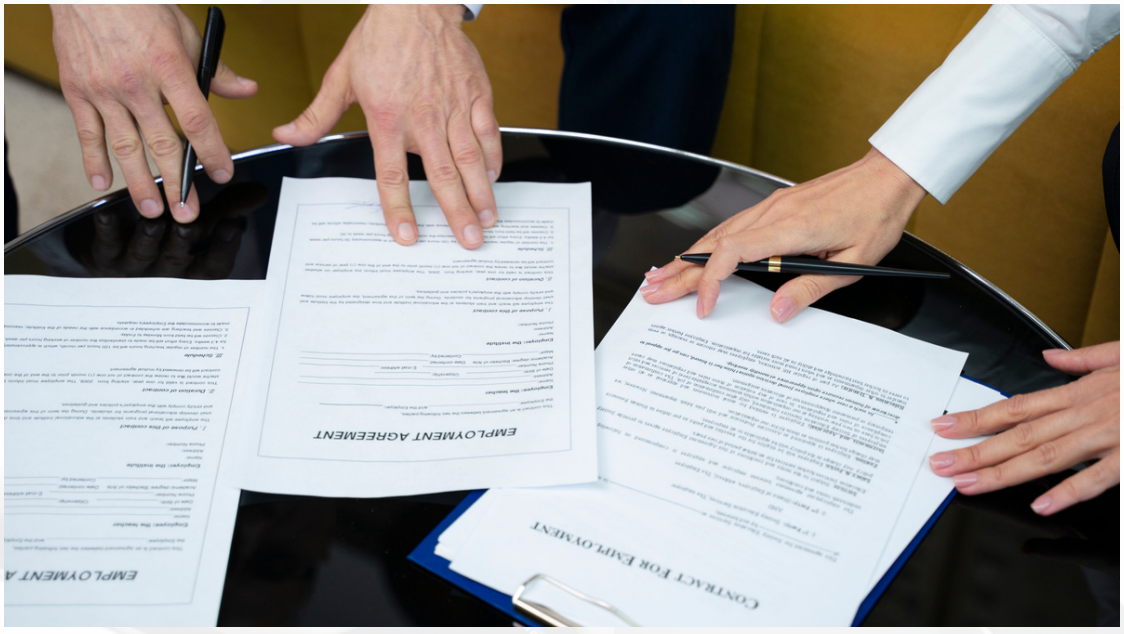
## *SNR's Take*

*The tribunal has reiterated the stand taken by the Jurisdictional High Court in the case of The Commissioner of Income Tax (International Taxation) Vs Brandix Mauritius Holdings Ltd [ITA 163/2023 (Delhi HC)] wherein it was held that orders/communications issued without quoting of DIN on the body is invalid in view of CBDT Circular No. 19 of 2019 dt. Aug 14, 2019*

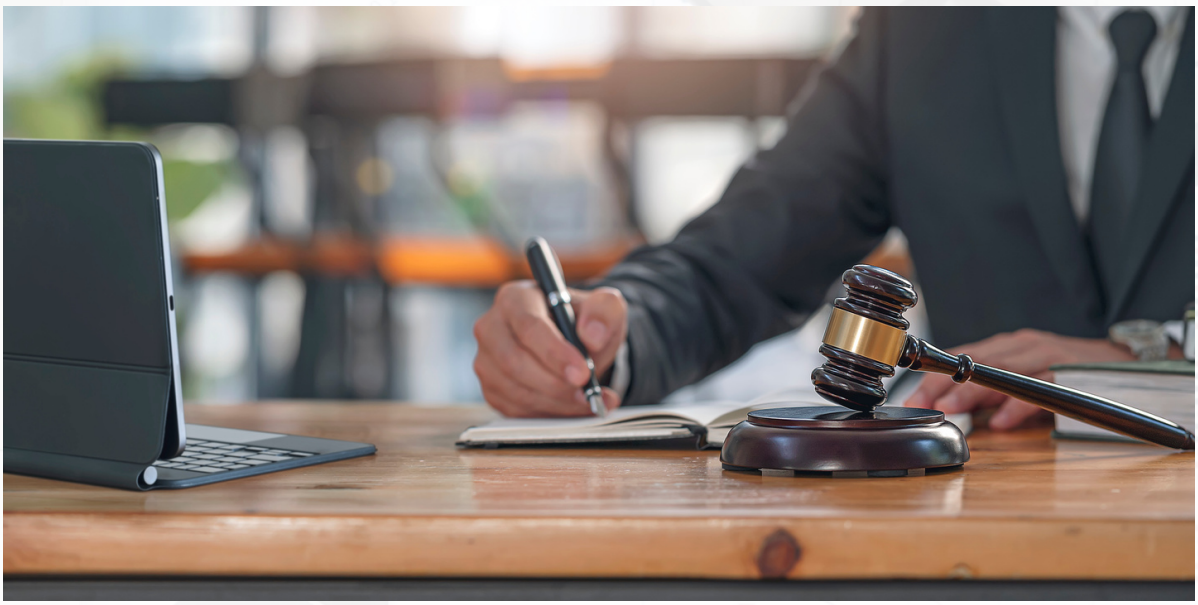
## 2. Taxability of FTS on intra-group management support services not sustainable in case 'make available' condition not satisfied:

**Case of :** Global Schools Holdings Pte. Ltd Vs ACIT
**Decision by :** ITAT, Delhi
**In favour of :** Assessee
**Date of Judgement :** 21-11-2023

- Assessee, a Singapore-based LLC, entered into separate Licensing Intellectual Property (IP) agreements with its Indian AEs, which comprises of licensing of GIIS brand name, proprietary IT system etc. and received license fee of Rs. 5.38 Cr. from both the Indian AEs, which was offered to tax in India, as royalty income.
- Assessee also entered into an additional agreement with one of its AE, Global India School Education Services Ltd (GISES) for provision of management support services including intra group services, such as, legal, finance, accounting etc. to streamline business processes, ensure compliance and promote cost-efficiencies etc.
- Assessee received Rs. 6.43 Cr, from GISES for provision of management support services, which was not offered to tax on the premise that it is in the nature of business income and in absence of PE, it is not taxable in India.
- Revenue held that the intra group services are in the nature of managerial, technical, and consultancy services and are also ancillary and subsidiary to the royalty income. Thus, held the receipts for provision of intra group services to be taxable in India as FTS, both under Section 9(1)(vii) and under Article 12(4)(a) of India–Singapore DTAA and made addition of Rs. 6.43 Cr as FTS, which was confirmed by the DRP.
- Aggrieved, Assessee preferred the appeal before the Tribunal. ITAT analysed the licensing agreement entered into between the Assessee and its Indian AEs and observed that the Assessee provided licences for use of the brand name/Trade-mark and has also sub-licensed a software, named "My GIIS School Enterprise Resource Planning Software", so as to enable the Indian AE to use the specialized software. Also analysed the Service agreement entered between the Assessee and its Indian AE, GISES, and observed that the administrative functions under the service agreement included providing Assistance to management of trusts/schools towards getting affiliations from various boards, admissions, counselling, scholarship programs, etc.



- Further observed that the other services included assistance in overall operations and improvements of schools, providing guidance on teaching methodologies, etc and pointed out that the intra group management support services provided by the Assessee as per service agreement are routine services and finds no connection between the licence agreement and service agreement.
- The tribunal further, observed that even though some of the marketing activities under the service agreement may result in sustaining the trade-mark/brand name, however, that by itself is not enough to conclude that the service rendered under the service agreement are ancillary and subsidiary to the royalty income as per sub-licensing agreement.
- Thus, the tribunal opined that the receipts from provision of intra-group services under the service agreement cannot come within the ambit of Article 12(4)(a) of India–Singapore DTAA.
- Hence, tribunal dismissed Revenue's argument that the Indian AE is providing similar services to various other schools managed by it and Remarks that, Revenue, instead of making general statements that the Assessee has made available technology, know-how, skill etc., must bring cogent material on record to establish such fact, which the Revenue has failed to do.
- Thus, allowed Assessee's appeal holding that the said receipts for do not fall within Article 12(4)(b) of India-Singapore DTAA.



**Full Judgement: Global School holdings pte ltd.**

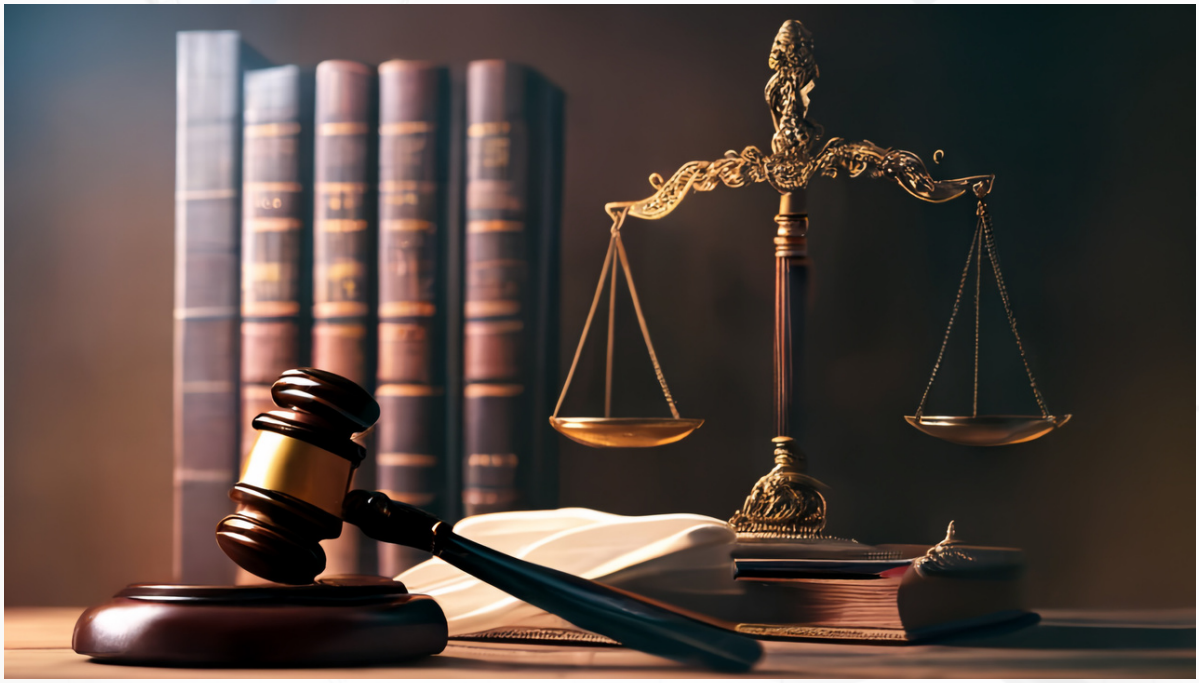
### *SNR's Take*

*In cases involving the issue of Fees for Technical Services, time and again tribunals have held that for any income to be taxed as FTS, the revenue has to bring in material to satisfy the make available condition. In the absence of which, the arguments of revenue won't sustain.*

## 3. Trust eligible for Section 11 exemption, if it files Form 10B after Income Tax Return (ITR) but before assessment:

**Case of :** Sri Vetri Vinayagar Educational Trust Vs ITO
**Decision by :** ITAT, Chennai
**In favour of :** Assessee
**Date of Judgement :** 13-12-2023

- Assessee (Trust), filed its return of income for AY 2016-17, which was processed under Section 143(1), denying exemption claimed by the Assessee under Section 11, on the ground that the Audit Report in Form No.10B was not filed by the Assessee along with return of income. As a result the gross receipts were treated as taxable income.
- Against this, Assessee filed rectification application under Section 154 and Revenue passed the rectification order upholding the disallowance which was confirmed by the CIT(A). Aggrieved, Assessee preferred the appeal before the tribunal.
- ITAT observed that the Revenue did not take into consideration the fact that the audit report into account while processing the return under Section 143(1) as well as while dealing with the rectification application filed by the Assessee.
- Tribunal further Pointed out that the CIT(A) merely accepted the rectification intimation on the ground the rectification application would not fall within the ambit of Section154 overlooking the fact that the Assessee's grievance was not even considered by the CPC while disposing of rectification.
- Thus, following the above-mentioned judicial precedents opined that filing Form 10B after the return of income but before completion of Assessee does not disentitle the Assessee for claim of exemption under Section 11. Tribunal directed the Revenue to verify Form 10B and to allow exemption.



**Full Judgement: Vetri Vinayagar Educational Trust**

## *SNR's Take*

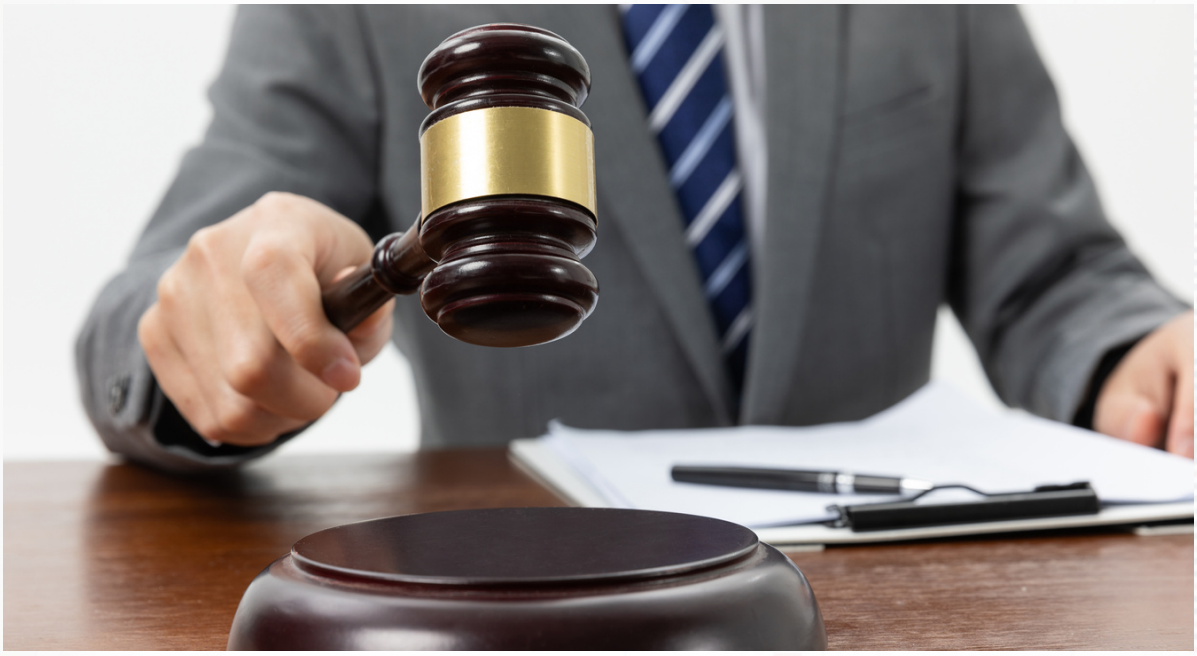
*This decision is a welcome relief for trusts that may have inadvertently missed filing Form 10B along with their ITR. It provides a window of opportunity to rectify the error and still claim exemption. CBDT Circular 10/2019 had already condoned the delay in filing Form 10B for AYs 2016-17 and 2017-18. This case further reinforces the applicability of such leniency.*

## 4. Trust that recycles post-consumer plastic waste contributes to preserving environment. Thus, eligible for Sec 80G registration:

**Case of :** Huhtamaki Foundation Vs CIT (Exemption)
**Decision by :** ITAT, Mumbai
**In favour of :** Assessee
**Date of Judgement :** 29-11-2023

- Assessee-Trust, registered under the Bombay Public Trusts Act, 1950, filed an application in Form 10AB seeking approval under section 80G and CPC issued Form 10AC granting provisional approval under section 80G.
- Subsequently, CIT(E) rejected Assessee's application for grant of approval under section 80G on the ground that the Assessee is established for spending Corporate Social Responsibility funds of Huhtamaki India Ltd.
- CIT(E) further held that the material produced by the Assessee is again sold in the market which is a commercial activity and thus it doesn't come under the purview of charitable activities. Aggrieved, assessee preferred the appeal before the tribunal.
- ITAT rejected Revenue's argument that the Assessee is undertaking commercial activity as it provides integrated recycling and waste management services, by noting that Assessee's financial statement discloses that it has earned income only from donations, sale of scraps, and sale of finished goods and no such service was rendered to any entity.
- The Tribunal held that merely because the Assessee has earned revenue from this entire activity cannot lead to the conclusion that recycling of plastic waste does not fall within the purview of preservation of environment and thus, is not a charitable activity. Further, held that in any case, there is no dispute that the revenue earned by the Assessee is further used for the only activity conducted by it, i.e. plastic waste management.
- The ITAT further noted that the Assessee was settled as an irrevocable trust vide trust deed with the main object to work in the area of preservation of environment thus dismissed CIT(E)'s observation that the Assessee is established for spending CSR funds of Huhtamaki India, by relying on Gujarat HC ruling in Naroda Enviro Projects, wherein it was held that just because the members of the taxpayer are being benefited and their statutory liability is being discharged by the assessee, by itself, would not be sufficient to hold that the assessee could not be said to have been set up for charitable purpose.

- The Tribunal further held that Assessee's submission that that it recycled multi-layer plastic (MLP) which included ink, fibre, and foil, and the output in the form of granules derived from recycling of MLP waste is of low quality and does not have much market value and does not sale the same to Huhtamaki India, as they require different quality of plastic raw material.
- The Tribunal further considered the list of parties to whom granules produced after recycling MLP waste were sold during the financial years 2021-22 and 2022-23 and concurred with Assessee's submission that Huhtamaki India does not purchase any product manufactured by the Assessee nor use it as raw material; Thus, assessee's appeal was allowed.



**Full Judgement: Huhtamaki Foundation**

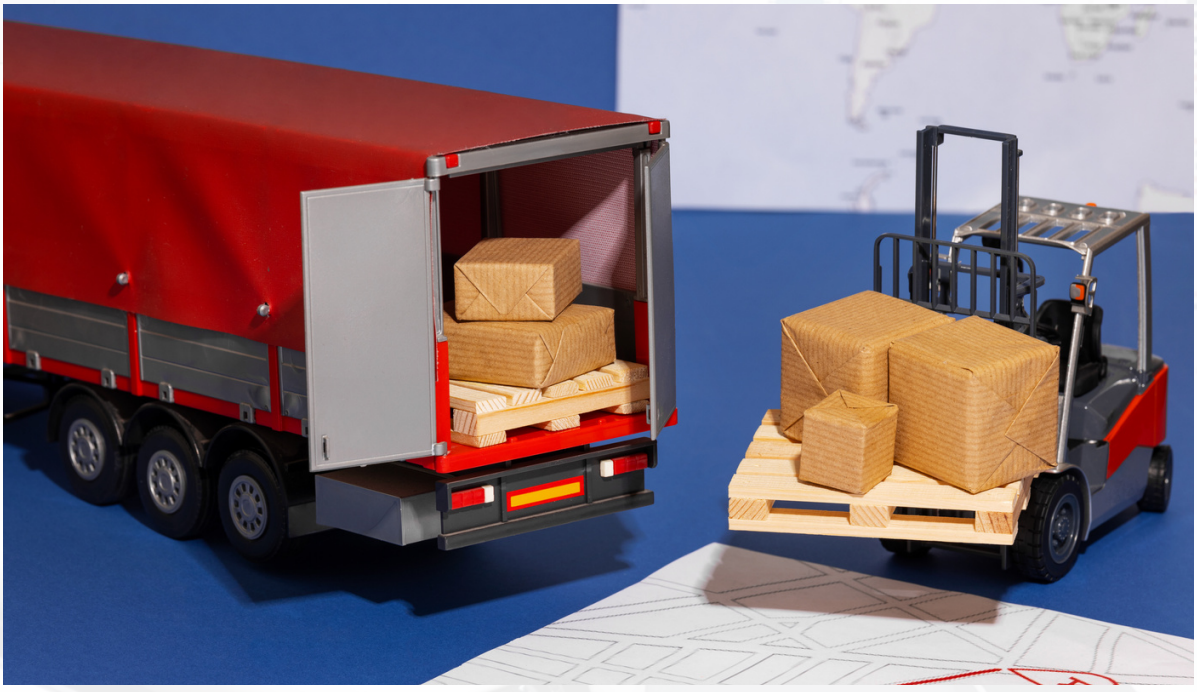
## *SNR's Take*

*The ITAT acknowledged that such activities contribute to environmental preservation, qualifying them as charitable under Section 80G. Additionally, the judgment dismissed the notion that fulfilling corporate social responsibility obligations undermines charitable purpose. Overall, the judgment provides a positive outlook on environmental initiatives and offers insights for organizations seeking Section 80G registration for their charitable work.*

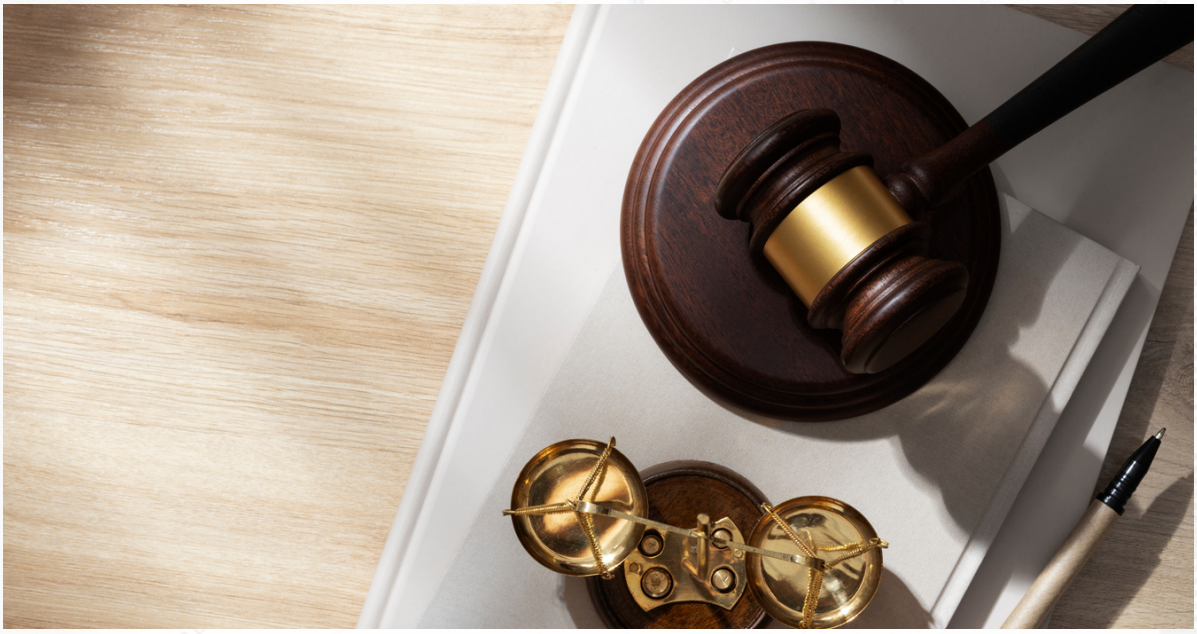
## 5. Damages received is not an income for a non-resident shipping Company. Thus, no TDS liability shall be there upon the payer:

**Case of :** D.C.I.T. (Intl. Taxn.)-1 Vs Nirma Limited
**Decision by :** ITAT, Ahmedabad
**In favour of :** Assessee
**Date of Judgement :** 28-11-2023

- Assessee, an Indian Company, filed an application under Section 195(2) for determination of TDS liability on the remittance of USD 4.5 Lac paid to Titan Shipping Limited, Marshall Islands ('owner of vessel') towards physical damages sustained by vessels and the losses caused due to such damage.
- Revenue held that the damages to the vessels happened in India during the business carried out by the ship in India after perusing: (i) the copy of contract, (ii) copy of order delivery of product in Indian Port, (iii) documents of delivery of goods at Porbandar port, (iv) documents supporting liability on buyer for any damage to vessels and (v) documents supporting the damage happened to the vessels at Porbandar port.
- Thus, Revenue held that remittance of USD 4.5 Lac paid by the Assessee does not fall within the income/receipt as stipulated under Section 172 and shall be income in the hands of the remitter (Assessee) under Section 5(2).
- Revenue, observing that in the absence of DTAA between India and Marshal Islands and no TRC being furnished by the remitter, directed the Assessee to deduct tax at source at 20% under Section 195. CIT(A) allowed Assessee's appeal.
- Before ITAT, Assessee relied on CBDT Circular No. 73 dt. Sep 19, 1995 and contended that it merely acts as agent on behalf of non-resident owner of vessel, and thus, steps into the shoes of the principal and accordingly provision of Section 172 only will be applicable and not the provision of Section 194C or 195. Argued that remittance as damage charges is not chargeable to tax in India, however, without prejudice under Section 172 the rate of deduction of tax at source is restricted to 7.5%.



- ITAT found from the settlement deed that the payments were reimbursements in nature and other damages raised were capital in nature.
- The Tribunal observed that CIT(A) rightly declined to consider the remittance on account of damages as income of the ship owner within the purview and scope of Section 5(2) and held that Revenue's order directing Assessee to deduct tax at source at 20% is wrong. Accordingly, dismissed Revenue's appeal.



**Full Judgement: Nirma Limited**

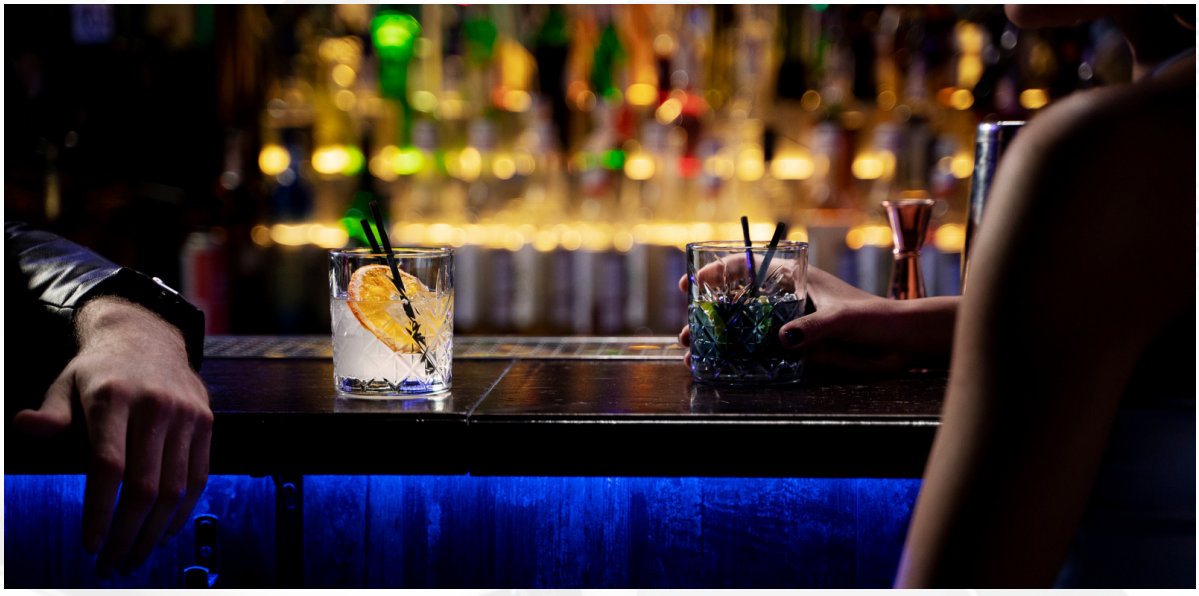
## *SNR's Take*

*This judgment provides clarity and relief for Indian companies engaging with foreign shipping companies, as it clarifies that damages paid for physical harm to vessels are not considered income for non-resident shipping companies under Section 5(2) of the Income Tax Act. The CBDT Circular No. 73 of 1995 regarding agency relationships supported the assessee's argument of acting as an agent for the non-resident owner.*

## 6. No TCS on bar-license fee as empty liquor bottle collection not 'scrap sale':

**Case of :** Tamil Nadu State Marketing Corporation Ltd vs DCIT
**Decision by :** High Court, Madras
**In favour of :** Assessee
**Date of Judgement :** 22-12-2023

- Assessee-Company owned by the Tamil Nadu Govt. has the exclusive monopoly for retail and wholesale of Indian Made Foreign Spirits (IMFS) in the entire state of Tamil Nadu.
- Assessee floated tenders to select third-party bar contractors (licensees) to sell eatables and collect empty bottles left by the consumers at the bars situated adjacent to/within the Assessee's retail shop of liquor. Assessee acting as an agent merely collected the tender/licence amount from the successful tenderer and remitted 99% of the same to the Government retaining 1% commission.
- Revenue treated the Assessee as assessee-in-default for failure to collect tax at source under Section 206C(1) on the amount tendered by the successful bar licensee from sale of empty bottles by treating the sale of bottles as scrap.
- Assessee argued that empty bottles left over by the consumers in the bar do not qualify as scrap under Explanation to Section 206C as the Assessee is not engaged in manufacture or generation of waste from mechanical working of materials from which scrap has arisen, it is merely selling liquor in its retail shops.
- The empty liquor bottles left by the consumers are in the bar and not the property of the Assessee and in any event not sold by it. Also submitted that the bar contractors collected and sold empty bottles in their own right and not on behalf of the Assessee and the consideration is also retained by the contractors.
- HC noted that licensees who run a bar adjacent to the retail outlets/shops of the Assessee offer bids to sell eatables and collect the leftover bottles by the consumer. Considered that Revenue construed such left over bottles as scrap under Section 206C(1)(vi). Observed that the definition of 'scrap' as "waste and scrap from the "manufacture" or "mechanical working of materials" which is definitely not usable as such because of breakage, cutting up, wear and other reasons".



- Court observed that an activity may resemble a manufacturing yet may not amount to "manufacture" and only those activities can came within the purview of the expression of "mechanical working of material". Remarked that only such "scrap" generated from either "manufacturing activity" or from "mechanical working of material" can be construed to be in contemplation of Section 206C.
- Court further Observed that bottles are neither "scrap" nor a property of either the Assessee or Bar Licensee. Court Opined that although, an activity may not amount to "manufacture" yet waste and scrap can be generated from "mechanical working of material".
- Court Noted that 'mechanical working of material' is not defined under the Act and hence refers to the Oxford's dictionary meaning of word 'mechanical' and rule of interpretation of doctrine of noscitur a sociis from Maxwell on the Interpretation of Statutes and SC judgements to opine that "mechanical working of materials" in Section 206C can be inferred by applying the doctrine of noscitur a sociis from the meaning of the expression "manufacture" in Section 2(29BA) which is similar to the definition of "manufacture" in Section 2(f) of the Central Excise Act, 1944.
- Court Opined that neither empty bottles are generated in manufacturing or mechanical working of material, thus Section 206C cannot be invoked.
- Consequentially, Court observed that simple interest under Section 206C(7) ought to not be levied. Concluded that since Section 206C is not applicable, the question of imposing liability on the Assessee to furnish PAN of the Bar owners under Section 206CC is irrelevant. Hence, held that Section 206CCA is also out of scope. Allowed the writ petition.

**Full Judgement: Tamil Nadu State Marketing Corporation**

### *SNR's Take*

*Empty bottles are not scrap, they are not waste materials resulting from manufacturing or mechanical working, as defined in Section 206C. The Court's interpretation provides a clearer understanding of what constitutes "scrap" under Section 206C, preventing ambiguities and potential misuse by the Revenue.It is important to note that the judgment applies to the specific facts of this case and may not be directly applicable to all situations involving scrap materials.*

# Circulars/ Notifications:

## 1. CBDT issues TDS Guidelines for e-commerce operators; Clarifies 5 major issues:

CBDT, vide Circular No. 20/2023 dt. Dec 28, 2023, issues TDS Guidelines under Section 194-O applicable to e-commerce operators; The Circular addresses issues such as: (i) TDS liability in case of multiple e-commerce operators in a transaction, (ii) scope of gross amount w.r.t. convenience fees or commission or logistics & delivery fees, (iii) GST and other state levies vis-a-vis gross amount for TDS, (iv) adjustment of purchase returns, (v) treatment of discounts.

**Read Circular:** 20/2023

## 2. CBDT extended time for processing 'non-scrutiny ITRs' for AYs 2018-19 to 2020-21 to 31st Jan'24

CBDT relaxed the time-frame prescribed under Section 143(1) for AYs 2018-19, 2019-20 and 2020-21, providing that intimation of processing ITRs can be sent to the assessee by Jan 31, 2024. The CBDT further directed that all ITRs validly filed electronically with refund claims for AYs 2018-19, 2019-20 and 2020-21 for which date of sending Section 143(1) intimation has lapsed can be processed now with prior administrative approval of Pr.CCIT/CCIT.

**Read Circular:** Order 119 dated 01-1212023

## 3. CBDT notifies ITR-1 & ITR-4 for AY 2024-25 :-

CBDT, vide Notification No. 105/2023 dt. Dec. 22, 2023, notifies 'ITR-1 Sahaj' and 'ITR-4 Sugam' for AY 2024-25.

**Read Circular:** 105/2023

# Compliance Calendar:

| Date | Particulars |
|---|---|
| **07-01-2024** | Due date for deposit of Tax deducted/collected for the month of August 2023. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan |
| **14-01-2024** | Due date for issue of TDS Certificate for tax deducted under section 194-IA,194-IB,194M and 194S in the month of July 2023 |
| **31-01-2024** | Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, section 194-IB, section 194M and section 194-S in the month of August 2023.<br><br>***Note:*** *Applicable in case of a specified person as mentioned under section 194S* |

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CHARTERED ACCOUNTANTS

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