1. **Jaipur Tribunal in the case of Prakash Chandra Mishra[1] - No Equalization levy is deductible when the person running the advertisement (ad), the target audience and the person displaying the ad are all located outside India:**

The Jaipur Tribunal has held that the assessee is not liable to deduct equalization levy ('EL') on the advertisement charges paid to a non-resident on behalf of his clients who are non-residents having no Permanent Establishment, where the target audience are also located outside India. In this regard, considerations have been given to the provisions of section 165A of Finance Act, 2016 and section 9 of the ITA[2] where the intent of the statute has been clearly depicted that only those transactions that are having a territorial nexus with India can be covered under the purview of EL.

Mere recording of the entire gross receipts as income in his books of accounts by the assessee does not conceal the fact that assessee is acting merely as a conduit for channelizing the funds between the person wanting to advertise (non-resident clients) and the platform on which such advertisement is to be done i.e., Google Pacific Pte. Ltd, Singapore ('Google Singapore'). Even though the contract between the Google Singapore and the assessee clearly indicates that the assessee is only its customer and cannot be an agent, it cannot change the fact that the digital advertising service has been ultimately consumed by non-resident having no territorial nexus with India.

The Jaipur Tribunal has relied on SC judgment in the case of Ishikawajma-Harima Heavy Industries Limited[3] where it has been observed that the territorial doctrine plays an important role in assessment of tax. It was observed that only such part of income as is attributable to the operations carried out in India can be taxed in India. Hence the aforesaid transaction lacks the two prominent pre-requisites for imposition of any tax in India that were understood from the intent of the statute viz. **(i) services to be rendered in India** or **(ii) utilized in India**. Since the two conditions are not satisfied in the current case, the said amounts that are paid to Google Singapore by the assessee does not come under the purview of EL and hence non-deduction of the EL does not invoke the provisions of section 40(a)(i) of the ITA. Therefore, it was held that the disallowance of the said expense in the books of the assessee is not acceptable in the eyes of the law.

Our Comments:

The Jaipur Tribunal has provided a clarification on applicability of EL when the ultimate advertiser and targeted customer are located outside India. While coming to such conclusion, Tribunal has verified substance of the transaction and found that the assessee is just a conduit between the Google Singapore and ultimate advertiser. Further, Tribunal has relied on section 165A of the Finance Act, 2016 to interpret the intention of the legislature to insert provisions of EL.

[1] 143 taxmann.com 121 (Jaipur - Trib.)
[2] Income Tax Act,1961
[3] [2007] 3SCC 481 (SC)

2. Mumbai Tribunal in the case of Michael Page International Recruitment Pvt. Ltd [4] - DRP[5] can pass rectified orders under Rule 13 within 6 months from the end of the month in which the order was passed:

In this case, the DRP has issued directions based on which AO has passed the assessment order. However, the directions so contained in the DRP's order incorporated directions relating to another group concern with a somewhat similar name that of the assessee. Upon realization of mistake, DRP has rectified the mistake and passed rectified order. In this regard, the assessee has filed an appeal before the Tribunal and contended that the assessment order is vitiated in law as AO has not applied the mind while passing the assessment order as the order is passed based on directions relating to another assessee. Further, as rectified order is issued after the expiry of time limit for issuing the directions, such directions and consequent assessment order is bad in law.

The tribunal stated that, where the time limit is not set out in the statute, it is indeed open to the court or Tribunal to consider as to what will constitute a reasonable time limit for passing such an order. The Tribunal had referred to a similar precedent[6] where it was held that one must examine the scheme of the act to determine the time limit for a particular action when the same was not provided in the statute itself. By taking stand to that, that Tribunal in Mahindra & Mahindra (Supra) has prescribed the time limit to pass order under section 201(1) or 201(1A) which thereafter has brought into effect by the government itself by amending the section 201, by Finance (No. 2) Act, 2009.

Also by referring to the provisions of section 254(2) of the Act, where it provides that a period of six months shall be provided to Appellate Tribunal to rectify any mistake apparent from any order passed by it, Tribunal has concluded that when a higher forum like Appellate Tribunal can be permitted to rectify its mistakes in six months, it would not be appropriate to leave the DRP with no time to rectify any mistakes in the orders passed by it.

Hence, Tribunal held that six months' time limit can be considered as reasonable time to DRP to pass orders under Rule 13 and since the DRP, in the present case, had passed rectified orders within one month which is within the reasonable time, the Assessing Officer (AO) has to give effect to such orders accordingly. Given that, since the AO has not given effect to the rectified order passed by DRP, the matter is remitted to AO for carrying out necessary rectifications of the impugned order as specified by DRP.

Our Comments:
Unlike normal assessments, Transfer Pricing has a special consideration when it comes to assessment and appeal procedures. However, some of the aspects have not been specially covered for these assessments. Through the Finance Act, 2022, provisions of Section 263 have been amended to provide the income tax authorities to revise the transfer pricing orders. Similar amendments to section 154 may also to be provided to rectify the orders of the DRP within a specified time.

[4] [TS-808-ITAT-2022(Mum)]
[5] Dispute Resolution Panel
[6] Mahindra & Mahindra Ltd [(2009) 122 TTJ SB 577 (Mum)]

3. Supreme Court in the case of Checkmate Services P. Ltd [7] - Disallowance of employees' contribution of ESI & PF in case of delay in depositing such contributions before the due date specified under respective acts:

Disallowance of employee's contributions to welfare scheme was a like a never-ending story as different High Courts have interpreted section 36(1)(va) differently. In order to provide clarification to disallowance, section 36(1)(va) has been amended through the Finance Act, 2022. Even after such amendment, judicial fora have held that such clarification is not applicable retrospectively. Recently, Supreme court has provided much clarification with regard to the disallowance of employees' contribution to welfare fund. The Supreme Court ('SC') had interpreted the non-obstante clause of section 43B and held that the non-obstante clause would not in any manner absolve the employer's obligation to deposit the amounts deducted by it from the employee's income, unless the same is deposited on or before the due date as per the respective acts as given in section 36(1)(va).

SC also held that the leeway granted to assesses to allow deductions on deposits made beyond the due date, but before the date of filing the return, cannot be applicable in the case of amounts held in trust, as of the employees in the given case. They are deemed to be held as income of the employers only with the object of ensuring the timely deposit of the same as per the respective laws. Hence, if the employer fails to deposit the monies collected towards ESI and PF from its employees within the said time limits of respective acts, the eligibility to claim such sums as deduction is lost forever.

Our Comments:

Interpretation provided by the Hon'ble SC is big relief to the revenue. This is because, even though section 36(1)(va) contains an explanation from the begging regard the due date for depositing the employees' contribution to welfare funds, some High Courts have provided relief to the assessee by taking recourse to section 43B (though this section does not provide such relief). If the above judgment has been received much before the, there would not been amendment by the Finance Act, 2022.

4. Supreme Court in the case of Ahmedabad Urban Development Authority[8] - Much clarity is provided on the definition of 'charitable activities' under section 2(15) of the ITA with regard to advancement of any other object of general public utility:

SC has held that Parliament intended, through the amendments was to proscribe, involvement or engagement of advancement of any other object of general public utility, from any form of activities that were trade, business or commerce, or engage or involve in providing services in relation to trade, business or commerce- for a fee, cess or other consideration. The inclusion of the term 'in the nature of' in section 2(15) was by design, to clarify beyond doubt, that not only business, trade or commerce, but all activities in the nature of, or resembling them, were proscribed. Likewise, service in relation to such activities, i.e., services relating, or pertaining to, such proscribed activities, too were forbidden.

SC has provided detailed explanations to each type of charitable trusts/bodies viz. Authorities/Corporations established by the Statute, Statutory regulatory bodies/authorities, Trade Promotion bodies/councils/ associations/organisations, non-statutory bodies, Sports associations, and private trusts. SC has held that the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be

[7] [TS-791-SC-2022]

[8] [2022] 143 taxmann.com 278 (SC)

considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

Our Comments:

For comments on this judgment, please see the 'Our comments' section under the below judgment.

5. **Supreme Court in the case of New Noble Educational Society[9] - A much clarity is provided on exemption to Charitable Institutions engaged 'solely' in providing education services:**

It was held that where the language in the law is unambiguous and capable of one meaning, then the interpretation need not be expansive, rather can be understood by its plain terms. Hence held that the requirement of charitable institution to engage 'solely' for educational purposes and 'not for the purpose of profit' means the institution must engage 'exclusively/only' for educational purposes. Merely applying the 'predominant test' in defining the meaning of the word 'solely' does not hold justifiable and SC has overruled the judgements[10] that are passed basing on the predominant test.

There is no bar on generation of any profits in the course of providing education or educational activities. The only bar is on the objective with which the activities are being carried out. If the objective appears to be profit-oriented, then the exemption under section 10(23)C would not be eligible to such institutions. The profits referred to in section 11A also mean only those profits that may be incidentally generated by imparting education or its related activities.

It was also held that registration of trust or charities under its respective state acts would enable the concerned authority to ascertain the genuineness of the trust, charities etc., and held the same obligatory. Further, the court has set aside the arguments contending that the examination of books of accounts would only be at the stage of assessment and held that commissioner is free to call for any books or such documents to satisfy himself with regarding to the genuineness in achieving the objects of the trust, charities etc.

Our Comments:

The back-to-back judgments by the SC with regard to charitable activities creates a big news to trusts/societies. In the former judgment, SC has interpreted the term advancement of any other object of general public utility with regard to trade, commerce or business while in the later judgment, SC has provided strict rule of interpretation to the term 'solely' and held that the curve out provided by way of incidental business shall be interested in the context of providing educational services. The above judgements need to be analyzed carefully by trusts which are claiming exemption under section

[9] [2022] 143 taxmann.com 276 (SC)

[10] American Hotel and Lodging Association, (2008) 10 SCC 509 and Queen's Education Society (2015) 8 SCC 47.

11 and every educational society while conducting any other activities which may affect claiming of exemption under section 10(23C).

6. Mumbai Tribunal in the case of Wockhardt Limited[11] - Between the conflicting decisions of non-jurisdictional HCs, Tribunal must apply the non-jurisdictional HC decision of larger Bench

When there are conflicting decisions of non-jurisdictional High Courts on an issue, but no decision of a jurisdictional High Court, the decision of the court having a larger bench shall be given priority over the decision of the court with a smaller bench without giving effect to the rule that the decision favorable to the assessee shall be considered.

It was construed that when the legal contentions are passed by several judges, the decision that is rendered, even if not unanimous, has the advantage of input from a larger number of legally trained minds. Hence, the decisions of the benches with a larger number of Judges will be placed on a higher pedestal than the decisions of the benches with a lesser number of Judges.

Our Comments:

Mumbai Tribunal has taken different and interesting interpretation when applying the non-jurisdictional High Court Judgments. Though the judgment given by the Mumbai Tribunal looks different, it has arrived at a logical conclusion by holding that larger bench decision shall prevail over single bench decision when it comes to applying the non-jurisdictional High Court Judgement.

[11] ITA No.2633/Mum/2015 (Mum ITAT)