1. **Madras High Court in BNY Mellon Technology Private Limited[1] - The time limit prescribed for TPO to complete assessment before 60 days prior to the last date to complete assessment under section 153 is mandatory in nature and the word 'prior to' should be interpreted differently from the word 'to':**

   The facts in the case were that the last date for completion of assessment in the said case is 31.12.19 after extending the time limit by 12 months on account of referring the case to TPO. Accordingly, as per section 92CA(3A), the TPO had to pass the order before 60 days prior to the last date on which the time limit for assessment expires. TPO actually passed the order in 01.11.19. To determine the validity of the TPO's order, the question has arisen whether the last date on which the time limit for assessment expires is 31.12.19 or 01.01.20 thereby deciding whether last date for passing order by TPO is 01.11.19 or 31.10.19.

   The revenue has drawn attention to the General Clauses Act, 1897 and contended that where the word 'to' is used in an act for determining the time limit, it shall be interpreted as 'up to that date' and such date shall be included. Therefore 'the date before 60 days prior to the last date of assessment 'would mean 60 days calculated by including 31.12.19 also and hence the last date for TPO's order would be 01.11.19 by leaving the AO a period of 60 days to complete his assessment.

   The court has held that the last date for completion of assessment expires on 23:59:59 hours of 31.12.19 but not on 01.01.20 and the words used in the act are 'prior to the last date' but not 'to the last date'. So, 60 days' time limit shall be determined by excluding 31.12.19. Accordingly, the last date for passing TPO's order would be 31.10.19 leaving a period of 60 days to AO for completion of assessment.

   The court has also held that the time limit prescribed under section 92CA(3A) is mandatory in nature but not directory. It is because though the word 'may' suggest that the provision is directory in nature, the court had held that while interpreting a provision or rule, the purpose and object behind the use of the words shall be understood rather than considering the literal meaning of the word.

   Our Comments:
   The Hon'ble Madras High court had explained that the Act needs to be understood in its entirety to interpret a provision or rule. When the law itself is clear, then the need to interpret the same from the context of General Clauses Act is not much required. However, the purpose and object of the legislature has to be interpreted and the consequential effects of the interpretation shall be considered so as to match the interpretation with the intention of such enactment.

2. **Delhi ITAT in Sameer Malhotra[2] - Tie Breaker questionnaire is important but not exclusive. The permanence of home is to be determined on qualitative and quantitative basis:**

   The facts of the case are that the assessee had worked in India for 8 months during the assessment year and served his employment for the remaining 4 months in a new company in Singapore. Accordingly, the assessee had become resident for both the countries and hence the tie breaker test is made to determine the residency of the assessee under Article 4(2) of India-Singapore DTAA. The

[1] [2022] TS-876-HC-2022 (MAD) - TP
[2] TS-1010-ITAT-2022 (DEL)

AO determined that since the assessee had a let-out property in India along with savings accounts, investments, his centre of vital interests is with India and is resident of India as per Article 4(2).

Tribunal had inferred that permanent home means a place arranged by the assessee to stay continuously but not occasionally. Being primarily resided in Singapore along with his family and being attained the Tax Residency Certificate from Singapore authorities, the assessee can be said to have his centre of vital interests with Singapore than India. Also, the habitual mode would mean the place where the assessee resides which is also Singapore in the assessee' s case. Hence, he is considered as resident of Singapore. Also, Article 15 of the treaty says that any remuneration earned in a country on exercise of employment in that country would be taxable in that country itself and hence the said income would be taxable in Singapore itself.

3. **Bangalore Tribunal in Dans Energy Private Limited[3] - Internal comparables for a loan shall be preferred when the denomination of the loan from associated entity and from comparable third parties is the same irrespective of the geographical location of the loan:**

The assessee had taken a loan from its associated enterprise and calculated its arm length price (ALP) using an internal comparable i.e., another loan taken by the assessee from an uncontrolled third party. TPO contended that for computing ALP, preference shall be given to external comparable rather than internal since the internal comparable transaction would not reflect the true independent nature which is required for comparison purpose. TPO also contended that, moreover, both the loans are taken from a different geographical location which rules out the comparable nature for the transaction.

The Tribunal had explained that clause (ii) of rule 10B(3) of Income Tax rules, 1962 refers to two things. Firstly, the comparison can be done with the ' *same enterprise having a comparable uncontrolled transaction*' and secondly, it can be done with '*an uncontrolled enterprise having a comparable uncontrolled transaction*'. Thus, it is evident that rule 10B(3) permits consideration of both internal comparables and external comparables for computing ALP.

Accordingly, the Tribunal has held that when the internal comparables are available with the same denomination as of the international transaction, then preference shall be given to the same over external comparables. The fact that the geographical location of both the transactions is different could not simply rule out the internal comparable. Even if the denomination of loan is different, necessary adjustments need to be done to bring it to ALP. If it is determined to consider external comparables, then such uncontrolled enterprise should be having of same credit rating, loan should be of same nature, terms etc., which makes it suggestible to consider internal comparables to avoid such deviations.

4. **Karnataka High Court in Subex Ltd[4] - NO TDS liability on year end provisions, reversed in next year as payee is not identified:**

The assessee challenged the addition made by assessing officer by disallowing the year-end provisions made towards legal charges, by contending that the payee is not identified in order to deduct the tax and the said provisions are reversed in the next year and tax is deducted on the actual incurrence of the expense and paid to the government within due time.

[3] TS-906-ITAT-2022(Bang)-TP
[4] TS-1014-HC-2022(KAR)

Karnataka High Court by relying on the ruling given in Volvo India Pvt. Ltd.[5] has held that the focus is to be made on the fact that whether the income is accrued to the payee to deduct the tax at source. Also, mere existence or absence of the entries in the books cannot be decisive or conclusive factor in deciding the right of assessee in claiming the deduction. The Court held that what is to be seen is whether the payee to whom the income is taxable is identified at the time of making such provision or not. If there is no such identification, then the assessee has no liability to deduct the tax while making the provision. Moreover, the assessee had offered to tax such provision in the next year by reversing it and deducted the tax when the expense had occurred. Hence, the assessee is held to be not liable to deduct tax when the payee for any expense is not identified.

5. <u>Orissa High Court in Mr Mahimananda Mishra[6] – The tax on deemed dividend should be paid by the shareholder and this is clear from provisions of Section 2(22)(e):</u>

The assessee is a partner in a partnership firm holding 20% of the share. The assessee also holds 36.95% of share capital in the M/s Orissa Stevedores Limited (OSL). OSL has given loan to the partnership firm to the tune of Rs 3,75,78,685/- during AY 2011-12. The AO has held that such an amount is to be treated as deemed dividend in terms of Section 2(22)(e) of IT Act.

The Assessee took the matter to CIT (A) who has confirmed the demand and ordered the beneficial shareholder to pay tax on the deemed dividend. However, ITAT has remanded the matter to CIT(A) as to determine as to who as to pay tax, the firm or the individual shareholder?

When the matter reached High Court, the High Court stated that it is clear from the provisions of Section 2(22)(e), that the shareholder is obliged to pay the tax on deemed dividend and not the entity which holds the share in OSL, that is firm and held that ITAT needlessly remanded the matter.

[5] ITA No. 369/2018 (KAR)
[6] 2023 (1) TMI 780 – Orissa High Court