1. **SC in Pioneer Overseas Corporation[1] - Merely raising a dispute before any authority cannot be a ground not to levy interest or waive interest under Section 220(2A) of ITA:**

   A SLP was filed by the assessee with respect to waiver of interest under Section 220(2A) of ITA. The petitioner contended that appropriate authority has rejected the application for waiver of interest, which was later confirmed by High Court. The petitioner stated that as the dispute was pending for Mutual Agreement Procedure (MAP) resolution which was culminated in the year 2012 and the liability to pay tax arose then and therefore, they are entitled for waiver of interest.

   The Supreme Court stated that merely raising the dispute before any authority cannot be a ground not to levy interest or provide waiver under Section 220(2A). The Court stated that if that would be a reason, then every assessee would dispute pretending to be a bonafide litigant and seek waiver of interest and accordingly the petition requires to be set aside. The Court upheld the judgment of High Court and stated that interest under Section 220(2) is mandatory.

2. **Chennai Tribunal in Super Sales India Limited[2] - Depreciation on Forex Loss arising from Foreign Currency Term Loan for purchase of assets indigenously acquired is allowed for the reason that majority of the depreciation is already claimed:**

   The assessee has availed a foreign currency loan for purchase of windmill in India. The assessee has incurred forex loss because of forex fluctuation arising from foreign currency loan and such loss was added to the cost of asset and 80% of depreciation was claimed over certain years.

   The AO has tried to disturb the assessment by stating that since the provisions of Section 43A does not apply to the assets which are purchased in India, the forex loss cannot be added to the cost of asset and proposed to add back the depreciation claimed.

   The assessee contended that, though the provisions of Section 43A do not apply, they have added the loss to cost of asset and claimed depreciation over certain years and hence the same should not be disturbed. The assessee in alternative claimed that since the provisions of Section 43A are not applicable, the forex loss should have actually claimed as revenue expenditure and as against which they have added it to asset and depreciated over period of years.

   The Tribunal held that though the provisions of Section 43A do not apply to the facts, since assessee claimed majority of the loss as depreciation by adding to the asset cost and assessment becoming final, the same should not be disturbed.

   Our Comments:

[1] 2022 (12) TMI 118 – SC Order
[2] 2022 (12) TMI 103 – ITAT Chennai

Though the Tribunal stated that the assessment need not be disturbed, it would be good, if it had dealt with the alternative claim of the assessee, that is, claim of forex loss arising on the foreign currency loan as revenue expenditure. The issue is not clear from doubt and the current position is also not clear, as to, what should be done, with such loss arising from capital items. We have made a detailed study on the said issue and is available here[3].

3. **Rajkot Tribunal in Maersk Tankers Singapore Pte Limited[4] - Article 24 of India – Singapore DTAA does not apply to Income dealt under Article 8 – The Shipping Income earned by Singapore Resident Entity is taxable only in Singapore on Accrual Basis and hence cannot be tried to be taxed by virtue of Article 24 (Limitation of Benefit):**

The core issue that arose before the Tribunal is, whether the income arising under Article 8 of India-Singapore DTAA is taxable in India by virtue of Article 24 of the said DTAA. The Revenue's contention was that since the income earned by shipping company from voyages in India are not taxable under the Section 13F of Singapore Income Tax Act, by virtue of exemption and the said income is also not taxable in India under Article 8 of India-Singapore DTAA (Article 8 gives the resident country the taxing rights for such income), the income is non-taxed in both the contracting states and by invoking provisions of Article 24, the shipping company has to pay tax in India. The Revenue further contended that the income is not 'subject to tax' in Singapore and since there is a difference between 'liable to tax' and 'subject to tax' and current provisions deals with 'subject to tax', the income should be taxable in India.

The assessee contended that the provisions of Article 24 deals with only income which is taxable in the resident country on receipt basis and since in the instant case the shipping company income is taxable on the accrual basis and not on receipt basis, the provisions of Article 24 does not trigger. The assessee contended that the letter from Singapore Tax Authority, wherein it was stated that the income of shipping company is taxable on accrual basis and there is no relevance of flow of funds to Singapore, make it clear that such income is not taxable on receipt basis. The assessee relied on the Honorable Gujarat High Court in the case of MT Maersk Mikage[5], wherein it was held that Article 24 does not apply when the income is taxable on accrual basis in resident country. The assessee contended that though there is no tax payable by them in Singapore by virtue of exemption provided vide Section 13F of Singapore Income Tax Act, that should not disturb the position in India. The said exemption is provided for certain period subject to certain conditions and equivalent to exemptions provided in India like Section 10A and others. The assessee relied on the judgment of Supreme Court in Azadi Bachao Andolan[6] to drive the point that 'liable to tax' cannot be disturbed because there was an exemption.

The Tribunal after considering the submissions held that the Gujarat High Court in MT Maersk Mikage (supra) has dealt with the said issue and also relied on M/s Bengal Tiger Line Pte Limited, Alabra

[3] Treatment of Gain/Loss on Foreign Exchange Fluctuations | SBS (sbsandco.com)
[4] [2022] 145 taxmann.com 260 (Rajkot- Trib)
[5] [2016] 72 taxmann.com 359 (Gujarat)
[6] 132 Taxmann 37

Shipping Pte Limited[7] and various other judgments and held that the income cannot be taxable under Article 24, since the income is taxable on accrual basis in resident country and not on receipt basis, which is sine qua non for taxing under Article 24.

4. **SC in S.M. Overseas Private limited[8] - Reassessment proceedings initiated during pendency of rectification proceedings are unsustainable despite the fact that the rectification proceedings were time barred.**

Rectification proceedings were initiated on assessee one year after the expiry of four years limit as prescribed under section 154(7) of the Act. Further, reassessment proceedings were also initiated for the same assessment year before conclusion of the said rectification proceedings. High court had held that the rectification proceedings were barred by time and thus the reassessment proceedings would be maintainable quashing the tribunal's order. An appeal is filed by the assessee against the said order.

The Supreme Court has held that the subject matter before the court was to decide whether the reassessment proceedings are maintainable during the pendency of rectification proceedings but not the validity of the rectification proceedings. Unless there is any specific order of withdrawal of the proceedings under section 154 of the Act, the proceedings initiated under section 154 of the Act can be said to have been pending. Till the rectification proceedings are concluded, there cannot be any question of any income escaping the assessment.

Our Comments:

Hon'ble Supreme Court is of the opinion that the High Court has committed serious error in observing and holding that the notice under Section 154 was invalid as the same was beyond the period of limitation as provided under Section 154(7) of the Act. It is required to be noted that the proceedings under Section 154 of the Act were not the subject-matter before the High Court. Nothing was on record that, in fact, the notice under Section 154 of the Act was withdrawn on the ground that the same was beyond the period of limitation prescribed under Section 154(7) of the Act.

5. **Bombay HC in Trigent Software Limited[9] - Expenditure incurred on development of a software, previously affected to Capital WIP in books, which subsequently abandoned can now be treated as revenue expenditure.**

The assessee is engaged in the business of software development solution and management. It incurred expense towards development of a software which was recognized in books as capital work-in-progress during the assessment years of development of such software. However, the development of such software was abandoned, and the assessee then claimed the whole capital work-in-progress as revenue expenditure. The AO made an addition to the extent of such expense.

[7] [2015] 62 taxmann.com 185
[8] [2022] TS-942-SC-2022
[9] [2022] TS-941-HC-2022(BOM)

The Bombay High Court, by relying on the judgements of various courts, had held that if the expenditure incurred was in respect of a different line of business, then the expenditure would be of capital nature irrespective of the fact that the project has really materialized or not. Whereas, if the new project is in line with the same business, then comes the question whether a new business/asset came into existence or not. If a new asset is created which was of an enduring benefit, then such expense would be of a capital nature and if no such new asset is created, then it would be of revenue nature.

Since in the present case, the endeavour to develop a new software by the assessee was an endeavour in its existing line of business and the no new asset has come into existence due to abandonment of the project, the said expense is held to be revenue in nature.

Our Comments:

The said issue was subject matter before various courts and tribunals. The important element that has been held in this case is that the expenditure incurred of a new project need to be related to same line of business and such expense should not be in capital field in order to claim it as revenue expenditure. Even if expense is for expansion of the same business, then it can be claimed as revenue expenditure.

6. **Delhi Tribunal in Tupelo Builders Private limited[10] - A benami transaction is one where property vests in the name of one person who is not a real owner and the consideration for such property is provided by some other person for whose benefit such property is acquired by that purported owner.**

The assessee company along with 'S' had jointly purchased a property for Rs. 217 crores with a 95:5 ratio ownership respectively. The purchase was partly financed by a bank loan where the assessee was the co-applicant along with 'S' and partly financed by obtaining a loan from its holding company whose 99.99% shares are held by 'S'. Further, the property was let out to 'S' on leave and license agreement for an amount of Rs. 90 lakhs per month. The AO contended that the assessee was just a benamidar and 'S' is the beneficial owner and the leave and license agreement is a colorable device to hide the real ownership of the property. Having said that, The AO claims that rental income received by the assessee from 'S' cannot be treated as business income but should be treated as other income and the interest charges incurred on loan cannot be allowed to assessee since the loan from the bank is granted to 'S' and assessee has just lent its name for the loan to claim it as business expense.

The Tribunal had explained that benami transaction is one where the property vests in the name of one person and the consideration would be paid by another person. But the aforesaid purchase cannot be termed as benami since the property vests jointly with both the parties, so it doesn't matter if the funds are received directly from 'S' or indirectly from a company on which 'S' has control on it. Also, mere entering into a leave and license agreement does not make the entire transaction into a sham because of the fact that the property is given on rent to 'S' for a fair market value and is backed by duly enforceable agreements. Moreover, the income from the property is ultimately enjoyed by the assessee company to the extent of its share in it and the ownership continues to vest with it. Accordingly, the Tribunal held that the said transaction cannot be treated as benami.

While coming to the question of whether accounting the rental income as business income is appropriate or not, the Tribunal by relying on the decision of Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd.[11] concluded that since the objects clause of the MOA of the assessee contains letting on hire as one of its main objects, the said income can be assessable as business income.

Our Comments:

The Tribunal had rightly inferred that in order to treat a transaction as benami, one must observe who had paid the consideration for a property and who is ultimately enjoying the benefits of that property. If both the payer and the beneficial owner are the same, then one cannot call it as benami by merely looking at the way the money is financed and the manner the asset is put into business. Entering into such purchase transaction jointly or individually and later letting it to the other joint owner is solely a commercial decision of the company, the expediency of which rests solely with the assessee company.

[10] [2022] 145 taxmann.com 270
[11] [2015] 56 taxmann.com 456 (SC)