Tax News

PKF SRIDHAR & SANTHANAM
Chartered Accountants

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INCOME TAX

Reminder For December '10

Action Due	Due Date
Action Due	**Due Date**
TDS/TCS for the month of Nov.2010	07-12-10
PF for the month of Nov.2010	15-12-10
ESI for the month of Nov.2010	21-12-10
Advance Income Tax	15-12-10

SERVICE TAX

Action Due	Due Date
Service Tax for the month of Nov.2010 in case of company	05-12-2010
Service Tax for the month of Nov.2010 in case of a company for which e-payment is mandatory.	06-12-2010

INCOME TAX

Vital Notifications / Changes

No circular to be reported in this edition.

SUPREME COURT / HIGH COURT DECISIONS

- **Expenditure incurred for acquisition of technical knowhow for product improvement – whether revenue or capital expenditure**

  The assessee was engaged in manufacture and sale of auto electrical products such as Starters, Alternators, Wiper Motors, CDI, Magnetos etc., for four wheelers and two wheelers. It was promoted primarily by two Japanese Companies - M/s Denso Corporation, Japan and M/s Sumitomo Corporation, Japan, which together had an overall share holding of 58.20%, sufficient to exercise overall management control over the assessee company.

  The assessee had paid Rs. 371 lacs as technical know-how fees. Of this, payment of Rs. 308 lacs made to M/s Denso Corp, Japan, in acquisition of know-how was treated as capital expenditure and depreciation u/s 32 was claimed.
  The dispute was related to the payment of Rs. 63 lacs which was paid to M/s Denso Corp, Japan, for supply of technology and improvement of the existing products. The assessee claimed that this expense was revenue in nature and was allowable as business expenditure in its entirety during the assessment year in question. The Assessing Officer, however, treated this expenditure as capital in nature.

  The Commissioner of Income Tax (CIT(A)) observed that drawing and designing of technology was part of intangible assets, that was obtained to improve the quality of manufactured products. Therefore, the said expenditure was to be treated as capital expenditure eligible for depreciation u/s 32.

  The Tribunal (ITAT) observed that the design acquired by the assessee was not in relation to setting-up of the plant or machinery, but related to the improvement of process of manufacturing and as such, the assessee did not obtain any asset of enduring nature. It therefore held that the aforesaid amount of Rs. 63 lacs was to be allowed as revenue expenditure.

  The High Court held that, Clause (ii) of sec. 32 of Income tax Act, uses significant expressions, namely, “acquired” and “owned”. Thus, know-how, patents, etc which are intangible assets should be acquired by the assessee on or after 01.4.1998 and owned, wholly or partly by the assessee in order to become capital asset.

- In the present case, findings show that no such asset was acquired or owned by the assessee. It was only modification of the asset already acquired for which the technical fee was paid which is described as “fee for the application works” under the agreement. So the payment should be treated as revenue expenditure. *2010-TIOL-759-HC-DEL-IT*.

TRIBUNAL JUDGMENTS

- **Taxability of pledge of shares of Group Co received by Mukesh Ambani as security for interest-free loan to own company**

  Assessee, an individual, is the CMD of Reliance Industries who was also appointed as MD of Reliance Communication and Infrastructure Ltd (RCIL). In March 2004, RCIL borrowed Rs 50 crore from the assessee, as an interest free loan for a temporary period. Against this loan, RCIL pledged with the assessee, as security for the loan, 50 crore shares of Rs. 1 face value that RCIL owned of another group company, Reliance Infocom (RIC). Immediately after the loan was disbursed, RCIL dematerialised its RIC shares, held by it in physical form through a depository participant, and credited the demat account of the assessee with Rs 50 crore shares.

  On March 31, 2004, as per section 187C of the Companies Act, the assessee and RCIL made a declaration informing RIC about the transaction. In May 2004, RCIL proposed to repay the loan. So, as per assessee's directions, Rs 50 crore equity shares of RIC were re-transferred to the account of RCIL, and the loan was discharged by RCIL. The Assessing Officer did not accept the assessee's contention that the transaction was a pledge of shares by RCIL to the assessee as security for a loan given to RCIL. Instead the AO claimed that it was a transaction for sale of shares, and any benefit derived by the assessee from it, needs to be taxed.

- **The Tribunal held that:**

  To create a valid pledge it was necessary that the security should be delivered either physically or constructively. Once, shares were dematerialized they were no longer in physical form. In such an event, the Depositories Participants Act suggested constructive delivery where the participant acknowledged in its register of beneficial owners the fact that the shares were held as security for due repayment of debt by the beneficial owner. The assessee had claimed to have taken physical possession of the shares by having his name registered as the beneficial owner but in law he held the shares only as pawnee and RCIL was the beneficial owner of the security. Although these circumstances threw doubts on the claims made by the assessee, it was not enough to conclude that the assessee held shares as beneficial owner and not as a pawnee.

  Regarding the pledge being taken after disbursement and the market value of shares being disproportionate to the amount of loan, these were matters lying within the realm of consent of the parties to an Agreement and could not be the basis to conclude that there was in fact a sale of shares by RCIL to the assessee. It also could not be ignored that RCIL was again recognized as beneficial owner of the shares after due repayment of the loan.

  Regarding the AO reference that the assessee needed to buy shares to have control over RIC and the transaction was in fact a sale and not a pledge, these were vague allegations and

could not form the basis for conclusion. Under Section 195 of the Companies Act, 1956, minutes of a meeting of the Board of Directors was presumed to be true until the contrary was proved and it would be presumed that the meeting had been duly called and held and all proceedings authorising the borrowing of monies by RCIL from the assessee had duly taken place.

The transfer of 50 crore shares of RIC, by RCIL to the demat account of the assessee was not a transaction of sale. The transfer was only by way of delivery of possession of shares as security for repayment of a loan availed by RCIL from the assessee

As a pawnee/ pledgee, the assessee did not have absolute rights over the shares. He could sell the security in a manner contemplated by law. But in case the proceeds were greater than the amount due to him, he had to pay the surplus to the pawnor.
Consequently, the assessee would have derived no benefit or perquisite, the value of which could be brought to tax. *2010-TIOL-705-ITAT-MUM in Income Tax.*

- **Remuneration to Partners:**

  It was held by the tribunal that it is necessary that remuneration of partners should not only be authorized by partnership deed but should also be as per clauses of the deed, and limit prescribed by I-T Act. *2010-TIOL-687-ITAT-DEL in Income Tax.*

  Payment through credit card: It was held that the necessity of the supporting vouchers/ bills cannot be dispensed with to prove the genuineness and purpose of the expenses even if the payment was made through the credit card. The assessing officer should not disallow the purchases done by the assessee as not genuine when the assessee has produced the evidence of payment of these purchase through cheques. *2010-TIOL-684-ITAT-MUM in Income Tax.*

- **Valuation of HRA:**

  Assessees were employees of BPCL Corporation (Employer). Under a self-leasing scheme they rented their house property to the employer and earned lease rent and also received the maintenance charges incurred from the employer as reimbursement of expenses. All the assessees did not show the lease rent as their income and filed ITR. AO was of the view that the assessees have concealed their lease income.

  ITAT held that:

  The leasing of flat by the employees to the corporation is a separate transaction. The lease rent received by the employee is taxed separately. The employees do not lose the benefit of the HRA merely because they have leased their premises to the corporation. Since the Corporation permitted the employees to occupy their own premises it had taken on lease, the HRA of the employees was withheld in lieu of the lease rent payable to the employees for the accommodation provided by the corporation.

  In computing the value of perquisite for accommodation provided by the corporation, the HRA withheld should be treated as amount recovered by the

employer for providing accommodation and the perquisite value be calculated on the value over and above the HRA recovered. In these circumstances, the AO is directed to reduce HRA from the value of perquisite and rework the assessment in accordance with law and issue the refund if due accordingly. *2010-TIOL-653-ITAT-MUM in Income Tax.*

Taxability of commission paid to MD:

The assessee paid commission at 1% of the profit to its Managing Director who was also the shareholder of the company. It was approved by shareholders as well as by the Company Law Board. The AO applied the provision of section 36(i)(ii) and disallowed this commission.

The ITAT held that :

there is no dispute on the fact that the payment of commission was authorized in terms of the resolution at the AGM. It is also noted that the said resolution has been approved by the Department of the company affairs.

It is also noticed that the same method of computing the remuneration which is inclusive of the commission has been the regular method right from 1993 and it has been followed by the assessee. Once the commission is authorized by the AGM to be a part of the remuneration and the same has also been approved by the Department of company affairs to be part of the remuneration it does not fall within the term 'Commission' as provided in section 36(1)(ii) of the Act. *2010-TIOL-632-ITAT-DEL in Income Tax.*

Taxability of difference between market value of shares and value at which they are allotted to employees as ESOP:

In the present case ITAT held that:

the decision of Delhi Bench of ITAT in the case of Ranbaxy Laboratories Ltd. is applicable. In that case, shares were allotted by the assessee company to its employees under ESOP at price less than the market price and the resultant difference was claimed as expenditure relying, inter alia, on SEBI guidelines. The Tribunal, however, confirmed the disallowance made by the tax authorities on account of the said expenditure.

the Counsel for the assessee had made an attempt to point out that certain aspects had not been considered by the Tribunal while rendering its decision in the case of Ranbaxy Laboratories Ltd. on the similar issue. The said aspects pointed out by the Counsel for the assessee, however, are not material enough to have any direct bearing on the well considered and well reasoned decision rendered by the Tribunal. As held by the Tribunal, any short receipt of share premium would only be a notional loss to the assessee and not an actual loss;

As further held by the Tribunal, any benefit or income foregone by the assessee cannot be considered as an expenditure and since the assessee had not incurred any expenditure but had merely received lesser amount of premium, the same could not amount to expenditure within the meaning of section 37. *2010-TIOL-654-ITAT-MUM.*

TDS on transport of employees of company:

Issue before the Tribunal was, whether the contract entered into by the assessee with the transport service provider for transportation of its employees should be covered by the provision of section 194-C or 194-I of the Act.

ITAT held that

The provisions of section 194-C shall apply to all types of contracts for carrying out any work including transport contract, service contract etc. Under para 8(ii) of circular, it was further clarified that the transport contract would, in addition to contract for transportation of goods, also cover contracts for plying buses, along with the staff (eg. driver, conductors, cleaner etc)

The Board had also considered this issue in circular no. 558, dated 28.03.1990 wherein the Board had been advised that although the contract may appear to be a simple hire contract, it is actually a service contract (for carrying out any work) entered into between the State Road Transport Corporation and the owner of the bus for plying certain buses on certain routes and subject to certain conditions. In such cases, the provisions of section 194C are applicable and tax will have to be deducted at source from the payment made to the private bus owner.

The explanation to section 194-I refers to only the plant and machinery used by the assessee in its business by hiring them, but not the hiring of transport service. It is clear that once the revenue has collected the tax on the payment, then no demand can be raised u/s 201(1) otherwise it will amount to double taxation. *2010-TIOL-618-ITAT-MUM in Income Tax.*

SERVICE TAX

- **Important circular/ notification**

➢ **Exemption of marketing of lottery tickets:** The Central Government, exempted persons marketing the lottery tickets, other than the distributors or selling agents appointed or authorised by the lottery organising State, from the whole of service tax leviable thereon under section 66 of the Finance Act on the taxable service of marketing of lottery referred to in sec 65(105)(zzzzn) of the Finance Act, if the optional composition scheme under sub-rule (7C) of rule 6 of Service Tax (2nd Amendment) Rules, 2010 dated 8th October 2010 is availed of by such distributor or selling agent, in respect of such lottery during the financial year:

Provided that if such person also markets lottery tickets for distributors or selling agents who have not so opted, then nothing contained in this notification shall apply to the value of service provided to the distributors or selling agents who have not so opted. *Notification no 50/2010 dated 8th Oct. 2010.*

- **SC/HC Judgments**

➢ **Renting of Immovable Property:** The assessee, a public limited company and owner of commercial immoveable property, had leased out the said property to business entities. The transaction of lease was subject to levy of stamp duty under the Indian Stamp Act, 1899 and was governed by Transfer of Property Act, 1882. It was contended that renting of property was different from sale of goods or transfer of property or conveyance. Such transaction was not covered by tax on sale of goods but was in the nature of providing of service with respect to property, and so, covered by service tax. The High Court observed that Service Tax is destination based consumption tax, being not a charge on

business, but on consumer, and is leviable on service provided. It is, thus, value added tax. The services may be property based or performance based. *2010-TIOL-765-HC-P&H-ST in Service Tax.*

Charge of service tax on services received from outside:

The assessee had received technical know-how and technical assistance from five collaborators. It was held that Sec. 68 is applicable to the service provider. Second proviso to rule 6(1) provides that if the service provider authorizes the service receiver, then service receiver can pay tax on behalf of the service provider. As this Act is not applicable to non residents, there is no liability on their part to pay service tax, therefore said proviso was not attracted. *Bharat Electronics Ltd. V. Comm. Of service tax (2010)28 STT 456 (Kar).*

- **CESTAT Judgments**

Cenvat Credit The issue was whether Cenvat credit can be denied on grounds that it is a perquisite given to employees as fringe benefit?

It was observed that the mobile phones were given to the employees as perquisite and treated as a fringe benefit just like a staff car or a laptop or a housing facility. Therefore, these facilities could be used either for official or for personal purpose and there was no direction in terms of the desired usage, and as such, input service credit was deniable.

With effect from 10-9-2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in, or in relation to, manufacture of finished goods.

The Assessee contended that

the service is required at each stage of business activity right from the stage of procurement of inputs till receipt of the payment for sale of final product.

The adjudicating authority had accepted their contention that they were entitled to avail input service credit on these mobile phones but denied the same on the ground that mobile phones were not registered at the factory premises.

On appeal, the Commissioner (appeals) denied the inputs service credit on some other premise.

That the charge in the show-cause notice was that these mobile phones were not used in or in relation to the manufacture of the final product and the same had not been dealt with by the Commissioner(Appeals), as it has already been dealt with by the adjudicating authority in their favour.

The Revenue representative submitted that since the appellant had not shown any connection between the use of the mobile phones and manufacturing of the final products, the lower authorities had rightly denied the input service credit.

The CESTAT held that –

In the order, the input service credit is denied because the mobile phones had been given to the employees as perquisite or a fringe benefit, and therefore could not be treated as an input service. These facilities could be used either for official or for personal purpose and there was no direction in terms of the desired usage, and so input credit service was denied. The adjudicating authority had denied the inputs service credit on the premise that the mobile phones were not registered at the factory premises. Although the adjudicating authority has dealt with the show-cause notice and decided in favour of the appellant but denied input service credit on some other premises and the lower appellate authority has gone beyond the scope of the show-cause notice. Hence, the impugned order is not sustainable. So in this case, the appellants are entitled for input service credit on mobile phones. *2010-TIOL-1514-CESTAT-MUM in Service Tax.*

Credit of Service Tax paid under supplementary invoices:

The Assessee received manpower services from M/s Dube & Company and M/s Durga Construction. Both the suppliers of these services, at the time of receiving the services by the appellant, were unregistered firms. Later on, the department pointed out to these firms that they were required to pay Service Tax on the services rendered to their client. Accordingly, they paid the service tax and recovered the same from the appellant by way of issuance of supplementary invoices. The assessee took the credit of the service tax paid to

these service providers. This credit was denied by the Department on the grounds that appellant was not entitled to avail input service credit on supplementary invoices issued subsequently.

CESTAT held that:

the appellant had to make a pre-deposit of the Cenvat Credit along with interest within six weeks, pursuant to which, the Commissioner (A) would hear the matter on merits.

The appellant seemed to have missed the CESTAT decision in the case of JSW Steel Ltd vs. CCE, Salem 2008-TIOL-2351-CESTAT-Mad**,** where the Bench had while allowing the Cenvat credit of Service Tax paid on supplementary invoices, observed that:

The invoices issued to the appellants by the input service provider did not attract clause (b) of sub-rule (1) of Rule 9. This clause, in fact, did not apply to service tax at all. The Explanation to this clause was also therefore not applicable to the above invoices issued by the input service provider.

Documents for availment of credit of service tax paid on input services were those referred to under clauses (e), (f) and (g) of sub-rule (1) of Rule 9. The Explanation, mentioned above, was not applicable to any of these provisions. Therefore, the view taken by the Commissioner is incorrect.

In the JSW case, what was availed by the appellant was credit of service tax paid by itself on "banking and financial services" received from M/s. ICICI Bank Ltd. By virtue of the relevant legal provisions, the appellant was liable to pay such tax, and so it was entitled to avail credit of such tax and utilize the same for payment of duty on it final products. *2010-TIOL-1480-CESTAT-MUM*.

INTERNATIONAL TAX

India –UK DTAA – In case of Airlines Rotables Ltd, the issue decided was 'Whether Location of consignment stock, not used for business, is a Permanent Establishment or not'.

The assessee was a company incorporated under the laws of UK. Its main business was to provide spares and components support for aircraft to the aircraft operators. Assessee entered into an agreement with 'J' Airways Ltd., an Indian company engaged in the business of air transportation, for providing certain support services in respect of aircraft. The arrangement was that when the airline discovered that an aircraft component became operationally unserviceable, i.e when the component was not in a condition to be used, or was not airworthy, the same was to be repaired or overhauled by the assessee. The assessee not only did the repairs and overhauling, but also provided replacement for components which were under repair or overhauling by the assessee. In order to ensure that the replacement components were readily available and flight operations were not interrupted due to repairs and servicing of the components, the assessee provided stock of such components as agreed with the airlines, at the operating base of the airlines. In addition to this, the assessee company also maintained a stock of components at its main depot in the UK from which the assessee company provided replacement components within time limit specified in the agreement, and which varied upon the urgency of requirements. Stock kept in UK was under the direct control of the assessee and stock in India was in the possession of the airlines itself as a bailee because assessee did not have any storage and support facility in India.

The Assessing Officer was of the view that the assessee had a PE in India under Article 5 of India–UK tax treaty and accordingly receipts would be taxable in India as business receipts.

However the Tribunal held that:

physical location, b. subjective criteria which is right to use that place and c. functionality criteria which is carrying out of business through that place. It is important that business must be carried on at a physical location in the other country. Consignment stock of the assessee was stored at a specific physical location in India but this storage was under the control of the airlines and the assessee did not have any place at its disposal to carry out its

business from this place. It is also important that consideration received by the assessee was for repairing and overhauling of rotables, and for use or right to use of the replacement equipment.

Repairs and overhauling work was done outside India so it would not be taxable in India.

As it was not established that 'J' Airways ltd. was a dependent agent of the assessee company, therefore 'J' Airways could not be treated as a PE of the assessee. It was held that delivery of the components was for standby use of equipment and not for its sale, and therefore revenue authority was not able to establish that the assessee had a PE in India.

The consideration for use of replacement components was distinct from the overall receipts. Non taxability under article 7 would still mean that application of article 13 was to be considered and adjudicated upon and for purpose of quantification of taxable income, the matter was remitted back.

India- US DTAA – In case of Wockhardt Ltd. vs ACIT, the Tribunal held that sharing of management experiences and business strategies cannot be regarded as technical or consultancy service .

The assessee was an Indian pharmaceutical company. At the assessee's request, the CKP Inc. of USA sent one of its professionals to India for two days to address the conference on future strategy held for the benefit of the assessee's employees. The assessee paid US $ 80000 for the said services rendered by CKP Inc. of USA and no tax was deducted under sec. 195 from the said payment because the amount so paid was not taxable in India. It was contended by the assessee that said company was a tax resident of USA and did not have any PE in India during the year under consideration as contemplated in article 5 of the DTAA between India and USA. It was also submitted that the said company did not make available any technical knowledge to the assessee company and therefore the payment made to the said company was not taxable in India.

The Assessing Officer treated the assessee as 'assessee in default' under sec 201 for non deduction of tax.

However, the Tribunal held that:

As per the provisions of sec. 90, an assessee is eligible to adopt provisions of the treaty if same are beneficial to the assessee. As per article 12 of India–US tax treaty the definition of fees for included services is restricted to technical or consultancy services and since the managerial services are not covered under the said definition, the same can not be taxed in India.

Perusal of presentation made by the professional showed that services rendered by CKP Inc. were essentially in the nature of sharing management experiences and business strategies, and the same had nothing to do with pharma and therefore could not be termed as technical services.

In view of the above it was held that the payment made was in the nature of business profits in the hands of CKP Inc as covered under article 7 of the Treaty, and since CKP Inc did not have any PE in India, the same was not chargeable to tax in India.

Indo – Ireland DTAA – No Tax to be deducted at source on charges for activating enhanced features inbuilt in hardware.

The assessee, an Indian company - Avaya Global Connect Ltd, was engaged in the business of selling 'converged communication solution (CCS)' to its customers. It had entered into an Agreement with AISL Ireland to purchase the CCS from AISL Ireland, and sold the same to various customers in territory of India. The CCS comprised hardware and standard software loaded on the hardware. The software consisted of various features, all of which were not activated

at the time of supply of hardware, but the customers had the option to activate remaining features as per their specific requirement, and enhance the functionality of the hardware. The software could not be de-linked from the hardware. The question was whether the activation charges remitted by the assessee to AISL qualified to be categorized as 'fees for technical services' and so whether the assessee was liable to deduct tax under section 195 while making this remittance.

The Tribunal held that:

Activation charges paid to AISL were part and parcel of original equipment supplied by them to the assessee and hence there was no basis at all to distinguish subsequent transaction from original sale transaction and to hold 'activation charges' as fees for technical services. Hence, correct nature of transaction was sale of product and not fees for technical services.

Update on Vodafone UK Case Vodafone, UK, had acquired shares of a Cayman Island-based Hutchison Group (of Hongkong) entity, which held a majority stake in Hutchison Essar Ltd (HEL), a telecom giant in India. This acquisition resulted in transfer of controlling stake in HEL from the Hutchison Group entity to Vodafone. Vodafone's contention was that since the shares acquired were that of a non-Indian company, and also the acquisition had taken place outside India, and both buyer and seller were non-Indian companies, so the transaction did not fall within the ambit of Indian tax jurisdiction, and so no withholding tax was payable on this transaction.

On the other hand, Indian tax authorities contended that though the shares transferred belonged to a non-resident entity and the share transfer had taken place outside India (from one non-resident to another), what effectively exchanged hands pursuant to the transaction was the "controlling interest" in HEL, India, and so withholding tax was payable on the capital gains arising out of the transaction.

The Bombay High Court held that from the perspective of income tax law, what is relevant is the place from which, or the source from which, the profits or gains have accrued or arisen to the seller. In this case, the income accrued and arose as a result of divestment of Hutchison Group's Cayman Island based entity's interest in India. If there was no divestment of such interest in India, there was no reason for the income to arise.

In view of the above, the Bombay High Court upheld a Rs 11,000-crore capital-gains tax demand imposed on the company by the income-tax authorities. Subsequently on Nov 15, 2010, by passing an interim order, the Supreme Court asked Vodafone International Holdings BV to deposit Rs 2,500 crore within three weeks and furnish a bank guarantee of Rs 8,500 crore within two months, in its ongoing tax appeal. The interim order will be followed by a full hearing on February 5.

The company, while agreeing to pay, might also be exploring an out-of-court settlement in the tax dispute.

Software licensing payments are royalty and taxable: - Recently in a landmark judgment Tribunal gave its ruling that end user payments for licensing of software are to be treated as royalty. With this decision software companies will be badly affected.
Microsoft Corporation, a US company, till January 1, 1999, had direct arrangements with various Indian distributors for sale of Microsoft software (off- the-shelf/shrink-wrapped), on a principal-to-principal basis.

ITAT had held that payments received by Microsoft Corporation from end users (in India) through distributors for sale of Microsoft software, were taxable as royalty. This was applicable for all the payments made before January 1, 1999. From January 1, 1999, the business model was changed and Microsoft granted exclusive licence to Gracemac Corporation of US to

manufacture the Microsoft software and distribute it in terms of the licence agreement. Even under the changed business model, the ITAT has now held that payments for software licensing should be treated as royalty for tax purposes.

Microsoft has been contending that payments made towards licensing of computer software cannot be treated as royalty, but should be considered as business profits. If considered as business profits, the software major would have had no tax liability in India as it does not have a permanent establishment here.

Under Microsoft's changed business model from January 1, 1999, Gracemac had entered into a licence agreement with Microsoft Operations Pte Ltd, a Singapore-based wholly-owned subsidiary of Microsoft Corporation, for non-exclusive licence to reproduce Microsoft software in Singapore. Microsoft Operations sold all its Microsoft software copies to Microsoft Regional Sales Corp (MRSC) branch in Singapore. MRSC had delivered Microsoft software copies to Indian distributors, ex-warehouse in Singapore, who in turn sold them to retailers/end users in India.

Microsoft Operations paid royalty to Gracemac. The royalty was based on a percentage of net selling price received by MRSC from distributors in various countries, including India. ITAT held that payments made in respect of copyright in Microsoft software, are taxable as royalty in hands of Gracemac Corporation .

ITAT further held that MRSC cannot be taxed again on the same income, by way of royalty, for exploitation of same rights which had been taxed in the hands of Gracemac Corporation because that will amount to double taxation.

Our Offices:

Head Office

" KRD Gee Gee Crystal"
7th floor
91 - 92 Dr. Radhakrishnan Salai
Mylapore
Chennai 600 004

Phone # + 91 44 28112985/86/87/88
Fax # + 91 44 2811 2989

Branches:

Bangalore

Unit G1, 'Ebony'
No.7, Hosur Road
Langford Town
Bangalore – 560 025
Phone : +91-80-22110512

Mumbai

No.406, Madhava Building
4th floor, Bandra Kurla complex
Bandra (E), Mumbai – 400 051
Phone : +91-22-26591730/
26590040

Delhi

No.35, Hauz Khaz Apartments
Hauz Khaz
New Delhi
Phone : +91-11-65814982

Hyderabad

6-3-609/140/A
No.402, Annapurna Enclave
Ananda Nagar Colony
Khairatabad
Hyderabad – 500 004
+Mobile:+91-9490189743