

## TRANSFER PRICING

CA. Bhavesh Dedhia, CA. Bhavya Bansal Goyal

### REDINGTON (INDIA) LIMITED (MADRAS HIGH COURT)- Decision dated 10 December 2020

#### Summary Decision

In a recent ruling, the Madras High Court held that transfer of shares by the assessee to its step-down subsidiary in Cayman Islands in FY 2008-09 is not a 'gift' in terms of Sec. 47(iii) of the Income Tax Act. It further upheld the Transfer Pricing Officer's (TPOs) finding that the transfer is an international transaction and Arm's Length Price ("ALP") should be determined under The Comparable Uncontrolled Price ("CUP") method. The High Court reversed the ITAT's ruling on a few important points which leads to a tax demand for Rs 142 Crores (excluding interest).

#### Brief Facts

The Assessee Redington India, transferred its entire shareholding in its subsidiary in Dubai to a newly incorporated step-down subsidiary in Cayman Islands. High Court examined the transfer in terms of Sec. 122 of the Transfer of Property Act defining the term

'gift' and held that while the impugned transfer which was approved by the Board Resolution clearly stated, that the transfer of shares is 'with or without consideration', it was infact without 'voluntary consent' and was not a gratuitous transfer. It was noted that Redington Cayman was incorporated to accommodate an investment by a third party in Redington Dubai and that the transfer was immediately followed by a stake buyout in Redington Cayman by the third party. It was concluded that "The sole intention of the assessee was for corporate re-structuring....Therefore, the voluntariness in the transfer of shares stands excluded", thereby disqualifying it to be a valid gift u/s. 122 of the Transfer of Property Act.

The High Court considered the fact that the step down subsidiary companies were incorporated just before the share-transfer and concluded that it is a colourable device and "undoubtedly a means to avoid taxation in India and the said two companies have been used as conduits to avoid income tax"; Thereafter, HC upholds TPO's application of CUP method to determine the ALP of the shares transferred by considering the price at which the stake of 27% in Redington Cayman (holding the shares of Redington Dubai) was purchased by a third party investor, immediately after the share transfer by the assessee. HC also rejected the 10% risk allowance granted by the Dispute resolution Panel ("DRP") on the premise that the third party was making a risk-free investment as it had a buy-back option noting that DRP did not set aside the factual findings by the TPO.

Additionally, the HC reversed the ITAT's deletion of TP-adjustments on corporate and bank guarantees. It held that the amendment to Sec. 92B inserting the explanation, covering the guarantee transactions, is retrospective in nature. Considers that the explanation commences with "For the removal of doubts, it is hereby clarified that -" and observes that "An Amendment made with the object of removal of doubts and to clarify, undoubtedly has to be read to be retrospective and Courts are bound to give effect to such retrospective legislation".