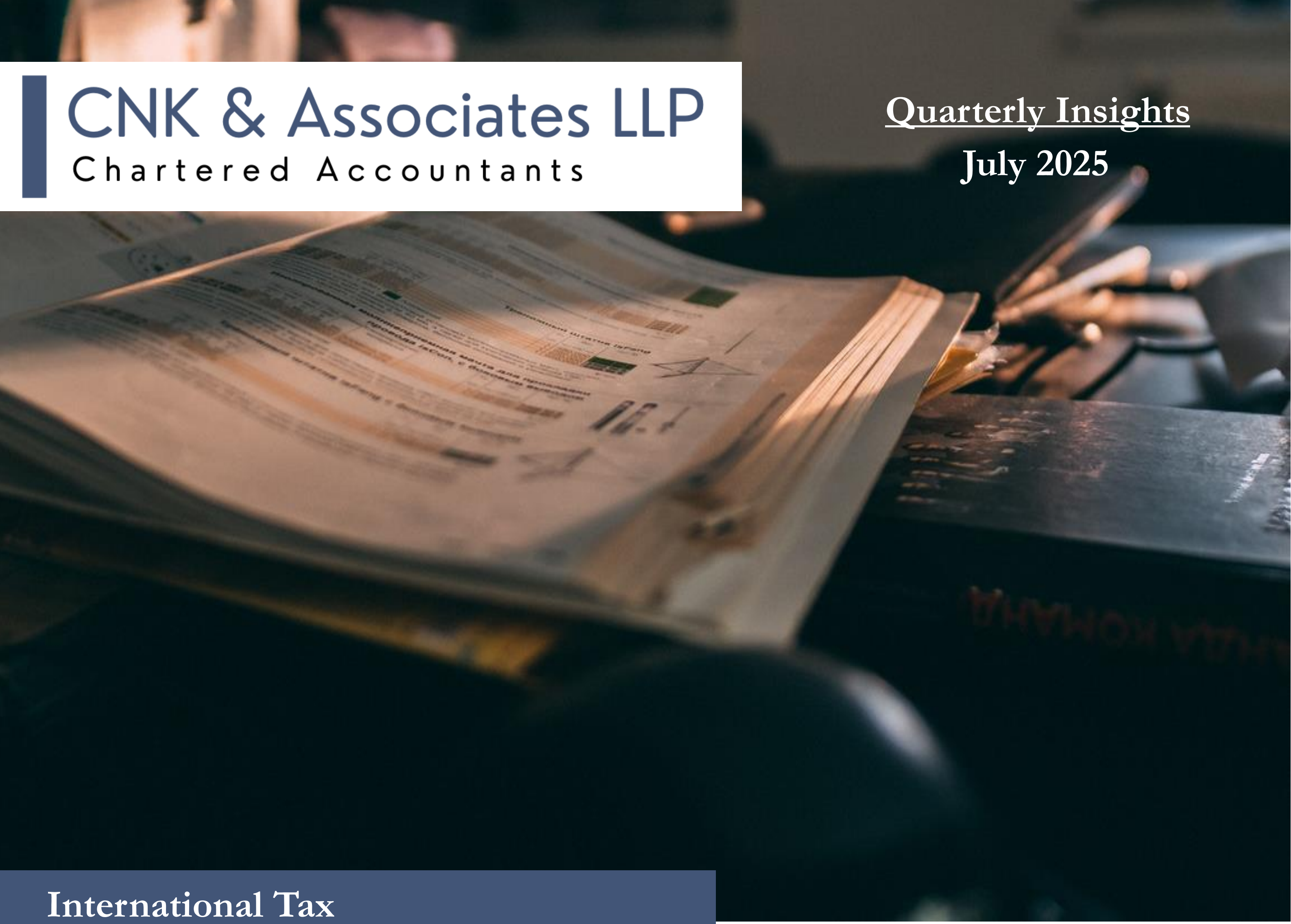

CNK & Associates LLP

Chartered Accountants

Quarterly Insights

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International Tax

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Capital gains earned by a Mauritius entity on sale of shares acquired before 1st April 2017 is exempt from income tax as per India Mauritius Tax Treaty. Capital loss on shares acquired after 1st April 2017 can be independently carried forward without set off against gain earned on shares sold acquired before 1st April 2017

Bay Capital India Fund Ltd. vs. ADIT [(2025) 173 taxmann.com 352] (Mumbai)
In favour of Assessee

Brief facts

The assessee was a company incorporated in Mauritius. It earned long-term capital gains **(LTCG)** of Rs. 38.49 crores on sale of listed equity shares acquired before 1st April 2017. It had also incurred short-term capital loss **(STCL)** and long-term capital loss **(LTCL)** on shares sold which were acquired after 1st April 2017 of Rs.3.60 crores. The assessee filed its return of income claiming that LTCG of sale of listed equity shares acquired before 1st April 2017 as exempt as per Article 13(4) of the India-Mauritius Tax Treaty (Tax Treaty) being grandfathered gain. The STCL and LTCL of Rs.3.60 crores were carried forward to subsequent years.

The CPC Bangalore passed intimation under section 143(1), whereby it set off the LTCL and STCL of Rs. 3.60 crores against the LTCG of Rs. 38.49 crores and accordingly, the net LTCG of Rs.34.89 crores were taxed.

Held

LTCG which is exempt as per the Tax Treaty, would not enter the computation of total income. Consequently, the provisions of the Act dealing with loss adjustment would not apply to such an exempt income. STCL and LTCL were allowed to be carried forward to subsequent years without adjustment with such exempt LTCG as per the Tax Treaty.

Article 24 dealing with limitation of benefits of the India Singapore Tax Treaty would not be applicable while determining taxability of capital gain as per Article 13(4)

Prashant Kothari vs. ITO [(174 taxmann.com 1244) (Mumbai)
In favour of Assessee

Brief facts

The assessee, a tax resident of Singapore had earned LTCG of Rs. 5.64 crores on listed shares acquired before 1st April 2017. He claimed exemption of the said LTCG as per Article 13(4) of the India–Singapore Tax Treaty.

The CPC Bangalore denied the benefit of Article 13(4) of the Tax Treaty holding that Article 24(1) was attracted. As per the AO, as the assessee had failed to establish taxability or remittance of such gains in Singapore, he would not be entitled to capital gain tax exemption as per Article 13(4). Article 24 requires a tax resident of Singapore selling shares of an Indian company, to remit the capital gain to Singapore as well as pay tax on such capital gain in Singapore.

Held

Article 24 of the Tax Treaty has twin conditions that need to be cumulatively fulfilled before Article 24(1) can be invoked. First condition requires that the Tax Treaty should provide that income shall be fully exempt from tax or taxed at a reduced rate, in India. Second condition requires Singapore to tax such income not on the basis of accrual, but on the basis of remittance or amount received in Singapore and the benefit under the Tax Treaty shall be restricted to the amount remitted to or received in Singapore. Second condition doesn't provide that in every case of non-remittance of income to Singapore, the benefit as per the Tax Treaty shall be restricted or shall not be allowed irrespective of tax treatment thereof under the laws of Singapore.

Article 13(4) does not provide that capital gains derived by a resident of Singapore is exempt from tax or taxed at a reduced rate in India. Rather, it clearly provides that capital gains derived by a resident of Singapore shall be taxable only in Singapore. Article 13(4) is clearly a taxing provision, and the right of taxation has been given to the state of residence instead of state of source of such income.

Since the first condition itself had not been satisfied, the second condition was not examined, and it was held that Article 24(1) cannot be invoked to disallow capital tax exemption to the assessee.

Set off of business loss against interest income as per the domestic tax laws permissible. Taxation of interest income on gross basis at concessional rate of tax as Article 11(2) of the India UAE Tax Treaty would not override such set off

Abu Dhabi Commercial Bank PJSC vs. DCIT [175 taxmann.com 420) (Mumbai)

In favour of Assessee

Brief facts

The assessee, a non-resident banking company was a tax resident of UAE. The assessee had branches in India carrying on banking business. The assessee had advanced External Commercial Borrowing **(ECB)** loans to Indian customers/clients directly through head office **(HO)** without the involvement of Indian branches. The assessee had earned interest income from Indian customers on the ECB loans.

The assessee's branches in India, had suffered losses. In the Indian tax return filed, the assessee claimed set off of the business losses of the Indian branches against the interest income and the balance interest income was offered to income tax at 5% as per the India UAE Tax Treaty.

Held

Firstly, computation of total income and its taxability has to be determined as per the domestic law, i.e., the Act. Total income of the assessee was computed as per the provisions of the Act which allows set off of business loss for the current year against income from other sources.

The action of AO in denying the benefit of set off on the ground that Article 11(2)(a) provides for 'gross' interest was not correct. The term 'gross' means interest without claiming deduction towards any expenditure. The assessee's claim of set off of loss of Indian branches against the interest income is allowable as per the Act itself. Such set off of losses cannot be said to be claiming deduction of expenditure.

Accordingly, the assessee had rightly claimed set off of loss of Indian branches against interest income on ECB and only balance interest, after setting off would be subject to tax at 5%.

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