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Contents

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

S.O. 1879(E).—In exercise of the powers conferred by clause (v) of the Explanation to section 48 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O. 1790(E), dated the 5th June, 2017, namely:—

In the said notification, in the Table, after serial number 19, the following serial number and entries relating thereto, shall be inserted, namely:—

Sr. No.	Financial Year	Cost Inflation Index
(1)	(2)	(3)
"20	2020-21	301".

This notification shall come into force with effect from 1st day of April, 2021 and shall accordingly apply to the assessment year 2021-22 and subsequent years.

Note:- The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1790(E), dated the 5th June, 2017 and last amended by the notification number S.O.3266 (E), dated the 12th September,2019.

(Notification No. 32/2020/F.No. 370142/17/2020-TPL, dated 12th June, 2020)

G.S.R. 415(E).—In exercise of the powers conferred by sub-section (2) of section 115BAC read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:–

1. Short title and commencement: -

(1) These rules may be called the Income-tax (13th Amendment) Rules, 2020.

(2) They shall come into force from the 1st day of April, 2021 and shall accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.

2. In the Income-tax Rules, 1962,-

(a) in rule 2BB, after sub-rule (2), the following sub-rule shall be inserted, namely:—

> "(3) Notwithstanding anything contained in sub-rule (1) and (2), an employee, being an assessee, who has exercised option under sub-section (5) of section 115BAC shall be entitled to exemption only in respect of the allowances mentioned in sub-clauses (a) to (c) of sub-rule (1) and at serial no.11 of the Table below sub-rule (2) to the extent and subject to the conditions, if any, specified therein.";

(b) in rule 3, in sub-rule (7), in clause (iii), after the proviso, the following proviso shall be inserted, namely:—

> "Provided further that the exemption provided in the first proviso in respect of free food and nonalcoholic beverage provided by such employer through paid voucher shall not apply to an employee, being an assessee, who has exercised option under sub-section (5) of section 115BAC.".

Note: The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) vide number S.O. 969 (E), dated the 26th March, 1962 and last amended by the Income-tax (12th Amendment) Rules, 2020, vide notification number G.S.R. 338 (E) dated 29.5.2020 Uploaded

(Notification No. 38/2020/F. No.370142/15/2020-TPL, dated 26th June 2020)

G.S.R. 423(E).— In exercise of the powers conferred by section 50CA read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:**—**

1. Short title and commencement.–
(1) These rules may be called the Income-tax (15th Amendment) Rules, 2020.
(2) They shall come into force from the 1st day of April, 2020 and shall be applicable for assessment year 2020-21and subsequent assessment years.

2. In the Income-tax Rules, 1962, after the rule 11UAC, the following rule shall be inserted, namely:—

Prescribed class of persons for the purpose of section 50CA.

11UAD. The provisions of section 50CA of the Act shall not apply to transfer of any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary by an assessee, where,—

(i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and

(ii) share of such company and its subsidiary and the subsidiary of such subsidiary has been transferred pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Explanation.-For the purposes of this sub-rule,-

(a) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company
(b) "Tribunal" shall have the same meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013.

(Notification No.42 /2020/F. No.370149/143/2019-TPL, dated 30th June, 2020)

Case laws

Housing and Urban Development Corporation Ltd. vs. Additional CIT [2020] 421 ITR 599 (Del. [2020] 115 taxmann.com 166 (Del.) Date of order: 6th February, 2020 A.Y.: 2007-08

Facts:

- The assessee was a public sector undertaking. For the A.Y. 2007-08, it claimed deduction of Rs. 1.60 crores on account of the provision for revision of pay in its books of accounts. The deduction was made in the light of the Pay Revision Committee appointed by the Government of India. The A.O. disallowed the claim, holding that the expenditure was purely a provision against an unascertained liability and could not be claimed as expenditure for the A.Y. 2007-08. The disallowance was upheld by the Tribunal.
- The assessee was following the accrual or mercantile system of accounting and was accounting the 'fees' as its revenue from the date of signing of the loan agreement. The amount was finally realised from the loan amount, when it was actually disbursed to the borrower. There were instances when the loan agreement was signed and the borrower would not take the disbursement and, accordingly, fees would not be realised. The Comptroller and Auditor-General (CAG) objected to this on the ground that the accounting treatment was not in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India which provide guidance for determination of income on accrual basis. The assessee assured the CAG that the accounting policy was reviewed for the F.Y. 2006-07 and, accordingly, the Board had approved the change in accounting policy in its meeting held on 27th September, 2007. The revised accounting policy recognised the fees as on the date of their realisation, instead of the date of signing of the loan agreement. For the A.Y. 2007-08, the A.O. made an addition of Rs. 1.28 crores on the ground that the change had resulted in understatement of profits and also because the change was introduced after the closing of the financial year. The addition was upheld by the Tribunal.

Issue:

Business expenditure – Section 37 of ITA, 1961 – General principles – Difference between ascertained and contingent liability – Public sector undertaking – Provision for revision of pay by government committee – Liability not contingent – Provision deductible u/s 37

Income – Accrual of income – Principle of real income – Public sector undertaking – Amounts due as fees – Amounts included in accounts in accordance with directions of Comptroller and Auditor-General – Amounts had not accrued – Not assessable; A.Y.: 2007-08

Held:

Decision by the High Court:

- The position was that the liability to pay revised wages had already arisen with certainty. The committee was constituted for the purpose of wage revision. That the wages would be revised was a foregone conclusion. Merely because the making of the report and implementation thereof took time, it could not be said that there was no basis for making the provision. The expenditure of Rs. 1.60 crores on account of anticipated pay revision in the A.Y. 2007-08 was deductible.
- No income accrued at the point of execution of agreement. The change in the accounting policy was a result of the audit objection raised by the CAG. The assessee had claimed deduction in profits in the computation of the total income and added it as income in the subsequent assessment year, which had been accepted by the A.O. The change was, thus, revenue-neutral. The addition of Rs. 1,28,00,000 was not justified.

[2019] 116 taxmann.com 385 (Mum.) Anik Industries Ltd. vs. DCIT ITA No. 7189/Mum/2014 A.Y.: 2010-11 Date of order: 19th March, 2020

Facts:

- The assessee was a partner in a partnership firm, namely M/s Mahakosh Property Developers (the 'firm'). The assessee was entitled to a 30% share in the profits of the firm. During the year, the assessee received a sum of Rs. 400 lakhs on account of surrender of 5% share of profit (from 30% to 25%.) This sum was not included in the computation of total income on the ground that the firm was reconstituted and a right was created in favour of the existing partners. The existing partners, whose share was increased, paid compensation of Rs. 400 lakhs to the assessee.
- The assessee relied upon the decision of the Hon'ble Madras High Court in A.K. Sharfuddin vs. CIT (1960 39 ITR 333) for the proposition that compensation received by a partner from another partner for relinquishing rights in the partnership firm would be capital receipt and there would be no

transfer of asset within the meaning of section 45(4) of the Act. Reliance was placed on other decisions also to submit that the provisions of sections 28(iv) and 41(2) shall have no application to such receipts.

- The A.O. held that the said payment was nothing but consideration for intangible asset, i.e., the loss of share of partner in the goodwill of the firm. Therefore, this amount was to be charged as capital gains in terms of the decision of the Ahmedabad Tribunal in Samir Suryakant Sheth vs. ACIT (ITA No. 2919 & 3092/Ahd/2002) and the decision of the Mumbai Tribunal in Shri Sudhakar Shetty (2011 130 ITD 197). Finally, the said amount was brought to tax as capital gains u/s 45(1).
- Aggrieved, the assessee preferred an appeal to the CIT(A) who confirmed the order of the A.O.
- Aggrieved, the assessee preferred an appeal to the Tribunal,

Issue:

Section 45 – Amount received by assessee in its capacity as a partner of a firm from the other partners on account of reduction in profit-sharing ratio of the assessee, is a capital receipt not chargeable to tax

Held:

Held by the Tribunal:

- The Tribunal observed that the only issue that fell for its consideration was whether or not the compensation received by an existing partner from other partners for reduction in profit-sharing ratio would be chargeable to tax as capital gains u/s 45(1).
- As per the provisions of section 45(1), any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to capital gains tax. The Tribunal noted that the answer to the aforesaid question lies in the decision of the Hon'ble Karnataka High Court in CIT vs. P.N. Panjawani (356 ITR 676) wherein this question was elaborately examined in the light of various judicial precedents.
- The Tribunal noted that the decision of the Karnataka High Court in P.N. Panjawani (Supra) also takes note of the fact that the firm is not recognised as a legal entity but the Income-tax Act recognises the firm as a distinct legally assessable entity apart from its partners. A clear distinction has been made between the income of the firm and the income of the partner. It is further noted that there is no provision for levying capital gains on consideration received by the partner for reduction in the share in the partnership firm. Upon

perusal of paragraph 22 of the decision, it is quite discernible that the factual matrix is identical in the present case. The aforesaid decision has been rendered after considering the various case laws on the subject as rendered by the Hon'ble Apex Court. The Tribunal found the decision to be applicable to the given factual matrix.

- The Tribunal held that the compensation received by the assessee from the existing partners for reduction in the profit-sharing ratio would not tantamount to capital gains chargeable to tax u/s 45(1). It deleted the addition made and allowed the appeal filed by the assessee.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

S.O. 2148(E).—In exercise of the powers conferred by the proviso to sub-section (3) of section 9A of the Income-tax Act, 1961(43 of 1961), the Central Government hereby notifies that the conditions specified in clauses (e), (f) and (g) of the said sub-section shall not apply in case of an investment fund set up by a Category-I foreign portfolio investor registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).

This notification shall be deemed to have come into force from the 23rd day of September, 2019.

Explanatory Memorandum: It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification.

(Notification No. 41/2020/F. No. 142/15/2015-TPL- Part (1), dated)

Case Laws

[2020] 116 taxmann.com 250 (Bang.)(Trib.) Vidal Health Insurance TPA (P) Ltd. vs. JCIT ITA Nos. 736 & 1213 to 1215 (Bang.) of 2018 A.Ys.: 2011-12 to 2014-15 Date of order: 26th February, 2020

Facts

- The assessee was licensed by IRDA for providing TPA services to insurance companies. It engaged telecom operators ('telcos') for allotting toll-free numbers and providing toll-free telephone services to policy-holders of insurance companies such that the charges for calls made by policy-holders to the toll-free number were borne by the assessee and not the policy-holders. The assessee did not deduct tax from the payments made to the telcos.
- According to the A.O., the payments were in the nature of royalty u/s 9(1)(vi) of the Act, read with Explanation 6 thereto. Accordingly, he disallowed the payments u/s 40(a)(ia) of the Act.
- The CIT(A) held that since the payments were made by the assessee for voice / data services, they were in the nature of royalty.
- Being aggrieved, the assessee appealed before the Tribunal. The assessee's principal argument was that section 194J deals with deduction of tax from payment of 'royalty'. As per Explanation (ba) in section 194J, the meaning of 'royalty' should be construed as per Explanation 2 to section 9(1)(vi) of the Act. Explanation 6 to section 9(1)(vi) of the Act defines 'process'. Since section 194J has nowhere referred to Explanation 6 to section 9(1)(vi) of the Act, it could not be considered.

Issue:

Section 9(1)(vi) and section 194J of the Act – Payments made to telecom operators for providing toll-free number service were in nature of 'royalty' u/s 9(1)(vi) and, consequently, tax was required to be withheld

Held

Royalty characterization

- A toll-free number involves providing dedicated private circuit lines to the assessee.
- The consideration paid by the assessee was towards provision of bandwidth / telecommunication services and further, for 'the use of' or 'right to use equipment'. The assessee was provided assured bandwidth through which it

was guaranteed transmission of data and voice. Such transmission involved 'process', thus satisfying the definition of 'royalty' in Explanation 2 to section 9(1)(vi) of the Act.

Royalty definition u/s 194J

- Explanation 6 to section 9(1)(vi) defines the expression 'process', which is included in the definition of 'royalty' in Explanation 2.
- Since Explanation 2 does not define 'process', the definition of 'process' in Explanation 6 must be read into Explanation 2 to analyse whether a particular service comprised 'process' and consequently consideration paid for the same was 'royalty'.

TS-141-TAT-2020 (Ind) D&H Secheron Electrodes Pvt. Ltd. vs. ITO ITA No. 104/Ind/2018 A.Y.: 2016-17 Date of order: 6th March, 2020

Facts:

- The assessee was engaged in the business of manufacture of welding electrodes and was looking for engineers for development of certain products. Hence, it entered into an agreement with a Korean company ('Kor Co') for providing a list of engineers matching the job description provided by it. On the basis of the list provided, the assessee interviewed the candidates and recruited them if found suitable. For its service, the assessee made payments to Kor Co without withholding tax.
- According to the A.O., since the said services were technical in nature, the assessee was liable to withhold tax. Therefore, the A.O. treated the assessee as 'assessee in default' and initiated proceedings u/s 201 and u/s 201(1A) of the Act. The CIT(A) upheld the view of the A.O.
- Being aggrieved, the assessee filed an appeal before the Tribunal.

Issue:

Article 12 of India-Korea DTAA, section 9(1)(vii) of the Act – Fees paid to foreign company for providing shortlist of candidates as per job description, were not in the nature of FTS u/s 9(1)(vii) of the Act

Held:

- In the contract between the assessee and Kor Co, the assessee had not sought any technical expertise from the latter.
- The process involved in the services provided by Kor Co was as follows:
    - Assessee provided detailed job description to Kor Co;

  - After matching the job description with the profile of candidates available in its database, Kor Co shortlisted candidates for the assessee and had merely provided the list of such candidates to the assessee;
  - Kor Co had guaranteed that if the appointed candidate were to voluntarily leave the job within the first 90 days of employment, Kor Co would provide suitable replacement at no cost to the assessee.
- The assessee had evaluated the shortlisted candidates on its own by interviewing them and taking tests. The decision whether the relevant candidates were suitable as per its requirements was solely that of the assessee and Kor Co had not provided any inputs for the same.
- Having regard to the nature of the services provided by Kor Co, the payments made by the assessee to Kor Co were not in the nature of 'fees for technical services' as defined in Explanation 2 to section 9(1)(vii). Accordingly, the assessee was not required to withhold tax from such payments.

Note: Apparently, though the assessee had also referred to Article 12 of the India-Korea DTAA, the Tribunal concluded only in the context of section 9(1)(vii) of the Act.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Amendments to Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules)

Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020 issued vide Notification No. S.O. 1374(E) dated April 27, 2020 issued by the Ministry of Finance, Government of India

- It has been now provided that a person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights subject to compliance of pricing guidelines specified under NDI Rules as amended.
- The Government of India had amended the Consolidated Foreign Direct Investment Policy of 2017 vide Press Note No. 1 (2020 Series) to increase the limit in FDI in insurance intermediaries from 49% to 100% and align the same with the Indian Insurance Companies (Foreign Investment) Rules 2015. Consequently, NDI Rules have now been amended to give effect of the said amendment to bring it in line with amended FDI Policy.

For detailed amendments, please refer aforesaid notification amending NDI Rules as available at http://egazette.nic.in/WriteReadData/2020/219200.pdf

COMPANY LAW

Companies (Share Capital and Debentures) Amendment Rules, 2020.

- MCA has done away with the requirement for DRF creation for privately placed debentures issued by listed companies.
- MCA referred to the amended meaning of Startups as defined under notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.
- MCA has allowed the Startups to issue sweat equity shares not exceeding 50 % of its paid up capital upto 10 years from the date of its incorporation or registration.

(Notification No. F. No. 01/04/2013-CL-V- Part-IV, dated 05th June,2020)

Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020

- A new Form STK -3A has been introduced for Govt. Companies and its subsidiaries to furnish Indemnity Bond with application for removal of name from register of companies.
- The Govt. Company or its subsidiary shall be wholly owned by CG/SG/Partly CG or SG

(Notification No. F. No. 1/28/2013-CL-V- Part, dated 29th June,2020)

Further amendments in Schedule VII to the Companies Act, 2013

- Inclusion of words “Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows” in Para vi of the Schedule.

(Notification No. F. No. 13/18/2019-CSR, dated 29th June,2020)

ACCOUNTS & AUDIT

SEBI issues further relaxations for listed companies amid COVID-19

Extension of timeline for filing financial results

The Securities and Exchange Board of India (SEBI) through a circular dated 24 June 2020 has further extended the timeline for filing financial results for the quarter/half-year/ financial year ended 31 March 2020 up to 31 July 2020 (earlier up to 30 June 2020). This extension is available to companies with listed equity and debt securities in terms of Regulation 33 and 52 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (Listing Regulations).

Additionally, SEBI has extended the timeline for filing of Annual Secretarial Compliance (ASC) report for the year 2019-2020 up to 31 July 2020 (earlier up to 30 June 2020).

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated 24 June 2020 and SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/109 dated 25 June 2020)

Maximum time gap between two board/audit committee meetings

The board of directors and audit committee of listed companies have been exempted from observing the maximum stipulated time gap between two meetings (i.e. 120 days) for the meetings held or proposed to be held between the period 1 December 2019 and 31 July 2020 (earlier up to 30 June 2020). However, the board of directors/audit committee should ensure that they meet at least four times a year as stipulated under Regulation 17(2) and Regulation 18(2) of the Listing Regulations.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/110 dated 26 June 2020)

Fast-track FPO

SEBI through a circular dated 9 June 2020 has granted temporary relaxations to listed companies from the eligibility conditions related to fast-track Further Public Offer (FPO) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations). The key relaxations are as follows:

Market capitalisation: The eligibility requirement of average market capitalisation of public shareholding has been reduced from INR1,000 crore to INR500 crore.

Impact of audit qualifications: The impact of audit qualifications, if any and where quantifiable, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed, need to be appropriately disclosed and accounts accordingly restated, in the offer documents. For the qualifications wherein impact on

the financials cannot be ascertained the same should be disclosed appropriately in the offer documents.

Violation of securities law: It should be ensured that the issuer/promoter/promoter group/director of the issuer has fulfilled the settlement terms or adhered to directions of the settlement order(s) in cases where it has settled any alleged violation of securities laws through the consent or settlement mechanism with SEBI.

These relaxations are applicable to FPOs (other than issuance of warrants) that open on or before 31 March 2021. The provisions of the circular are effective from 9 June 2020.

(Source: SEBI circular no. SEBI/HO/CFD/CIR/CFD/DIL/85/2020 dated 9 June 2020)

Revised criteria for classification of MSME

The Ministry of Micro, Small and Medium Enterprises through a notification dated 1 June 2020 has notified the following revised criteria for classification of Micro, Small and Medium Enterprises (MSME):

Micro enterprise: The investment in plant and machinery or equipment does not exceed INR1 crore and turnover does not exceed INR5 crore

Small enterprise: The investment in plant and machinery or equipment does not exceed INR10 crore and turnover does not exceed INR50 crore

Medium enterprise: The investment in plant and machinery or equipment does not exceed INR50 crore and turnover does not exceed INR250 crore.

This notification will come into effect from 1 July 2020.

(Source: Ministry of MSME notification no. S.O. 1702(E) dated 01st June 2020)

GOODS AND SERVICE TAX

CBIC vide notification 37/2020-CT dated 28th April, 2020 read with Notification 31/2019-CT dated 28th June, 2019 has notified FORM GST PMT 09 wherein the registered person can transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for Integrated Tax, Central Tax, State Tax or Union Territory Tax or Cess.

Thus, through above amendment, if Tax/Interest/fees/ penalty is wrongly deposited in any Electronic Cash ledger than same can be adjusted/rectified in appropriate head by filing FORM GST PMT 09 instead of filing refund claim. The said notification shall come into force from 21st April, 2020

CBIC vide notification 38/2020-CT dated 5th May, 2020 have made following amendment to CGST Rule, 2017

Rule 26 (Method of Authentication) – Form GSTR 3B filed between period 21st April, 2020 to 30th June, 2020 can be verified through Electronic verification code (EVC) for companies also. Before the amendment, the companies registered under companies Act, 2013 were required to filed Form GSTR 3B through Digital signature (DSC) only.
Rule 67A (Furnishing return through SMS) – In Case of NIL return, a facility has been provided to registered person to file GSTR 3B using SMS facility through registered mobile number.

CBIC vide notification 39/2020-CT dated 5th May, 2020 has relaxed the registration requirement of Interim resolution professional (IPR) in case of corporate restructuring. Before the amendment, the IPR were required to registered within 15 days from the date of appointment of such IPR. Now the said registration requirement is relaxed to provide that registration shall be obtain within 15 days from appointment or 30th June, 2020 whichever is later

CBIC vide notification 40/2020-CT dated 5th May, 2020 provide that where E-way bill has been generated & its period of validity expires during period 20th March, 2020 to 15th April, 2020, the validity of such E-way bill shall be deemed to have been extended till 31st May, 2020.

CBIC vide notification 41/2020-CT dated 5th May, 2020 has extended the time limit for furnishing annual return for financial year 2018-19 till 30th September, 2020

CBIC Vide circular no. 138/08/2020-GST dated 6th May, 2020 has clarified following

Requirement of exporting goods by merchant exporter within 90 days from date of issue of Tax invoice by registered supplier as required in notification 40/2017- CT (R)

gets extended to 30th June, 2020 provided completion of 90 days falls within 20th March, 2020 to 29th June, 2020

Due-date of Furnishing FORM GST IC 04 (Details of goods dispatch or received from a job worker) for quarter ending March, 2020 stands extended upto 30th June, 2020

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