NANUBHAI DESAI & CO.

September 2019

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Contents

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/Press Release

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 Official Gazette, vide number S.O. 2413(E), dated the 13th June, 2018, namely:

In the said notification, in the Table, after serial number 18 and the entries relating thereto, the following serial number and entries, shall be inserted, namely:

Sr. No.	Financial Year	Cost Inflation Index
"19	2019-20	289"

This notification shall come into force with effect from the 1st day of April, 2020 and shall accordingly apply to the Assessment Year 2020-2021 and subsequent years.

(Notification No. 63/2019/F. No. 370142/11/2019-TPL dated 12th September, 2019)

In exercise of the powers conferred by the third proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 1961)(hereinafter referred to as the 'said Act'), read with proviso to sub-rule (7) of rule 10CA of the Income-tax Rules, 1962, the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent. of the latter in respect of wholesale trading and three per cent. of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2019-2020.

Explanation.- *For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-*

i. purchase cost of finished goods is eighty per cent. or more of the total cost pertaining to such trading activities; and

ii. average monthly closing inventory of such goods is ten per cent. or less of sales pertaining to such trading activities.

(Notification No. 64/2019/F. No. 500/1/2014-APA-II dated 13th September, 2019)

In exercise of the powers conferred by section 32 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, hereby, makes the following rules to further amend the Income-tax Rules, 1962.

- These rules may be called the Income-tax (9th Amendment) Rules, 2019. They shall be deemed to have come into force with effect from the 23rd day of August, 2019.
- In the Income-tax Rules, 1962, in the NEW APPENDIX I, in the Table, in PART A relating to TANGIBLE ASSETS, in item III relating to MACHINERY AND PLANT,-
  a) for sub-item (2) and entries relating thereto, the following shall be substituted, namely:-

Block of Assets	Depreciation allowed as per percentage of written down value
1	2
"(2)(i) Motor cars, other than those used in a business of running them on hire, acquired or put to use on or after the 1st day of April, 1990 except those covered under entry (ii); (ii) Motor cars, other than those used in a business of running them on hire, acquired on or after the 23rd day of August, 2019 but before the 1st day of April, 2020 and is put to use before the 1st day of April, 2020.	15 30"

  b) in sub-item (3), for paragraph (ii) and entries relating thereto, the following shall be substituted, namely:-

Block of Assets	Depreciation allowed as per percentage of written down value
1	2
"(ii) (a) Motor buses, motor lorries and motor taxis used in a business of running them on hire	30

Block of Assets	Depreciation allowed as per percentage of written down value
1	2
other than those covered under entry (b). (b)Motor buses, motor lorries and motor taxis used in a business of running them on hire, acquired on or after the 23rd day of August, 2019 but before the 1st day of April, 2020 and is put to use before the 1st day of April, 2020.	45”

(Notification No. 69 /2019/ F.No. 370142/17/2019-TPL dated 20th September, 2019)

Case laws

Deputy Commissioner of Income-tax, Circle Shimla vs. Keshav Dutt Shreedhar

Facts:

- The assessee was an Advocate. During year, the assessee had sold a residential house property for a consideration of certain amount and the same amount was invested for purchasing a new house property. Accordingly, the assessee claimed deduction under section 54. Same was granted.
- After four years, a reopening notice was issued against the assessee on grounds that the assessee was not liable for exemption under section 54 for reason that sale proceeds were deposited in 'C' bank account which was probably a joint account of the assessee with his wife and were further converted in Fixed Deposits and the investment was instead made from ICICI account which was the assessee's account where professional receipts were deposited. Thus, the assessee had not utilised sale consideration from sale of property to purchase new property. Consequently, the assessee was not entitled to claim deduction under section 54.
- On appeal, the Commissioner (Appeals) also upheld the findings of the Assessing Officer.

Issue:

Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence (Investment of sale consideration for purchase of new house) - Assessment year 2008-09 - During year, assessee sold a residential house property and invested sale consideration for purchasing another house property - Accordingly, assessee claimed exemption under section 54 - Assessing Officer allowed same - Subsequently, Assessing Officer issued reopening notice against assessee on ground that sale proceeds were deposited in a joint account of assessee with his wife and were further converted in fixed deposits and investment was made from another bank account which was assessee's account where professional receipts were deposited, thus, assessee had not utilised sale consideration from sale of old property to purchase new property - Consequently, assessee was not entitled to claim exemption under section 54.

Held:

- A perusal of the record shows that in the facts of the present case on account of sale of a specific property, capital gains of certain amount arose to the assessee. The relevant facts relatable to the factum of sale and accrual of amount of capital gains are not being referred to in greater details as there is no dispute amongst the parties on the said issue. The fact that the assessee before the filing of the return i.e. before 30-9-2008 invested an amount of Rs. 49.88 lakhs vide cheque drawn for acquiring a residential flat is an admitted fact. The specific cheque was cleared by the bank is also not in dispute. The fact that said evidence was available to the Assessing Officer as questionnaires were issued by the Assessing Officer during the original scrutiny proceedings to justify the claim of deduction under section 54 and the reply of the assessee are also facts on record. The fact that sale proceeds were deposited in 'C' bank account which was probably a joint account of the assessee with his wife and were further converted in Fixed Deposits and the investment was not made from the bank where sale proceeds were deposited and were instead made from ICICI account which was the assessee's account where professional receipts were deposited, are also the facts on record. The revenue attempts to draw strength for re-opening and sustaining addition on merits solely on the ground that there was no live link with sale proceeds and the amount invested. The said legal position as understood by the revenue is not in accordance with the letter and the spirit of law and is a subject matter of many decisions. Some of these have been cited by the assessee. No contrary decision or rebuttal/distinguishing fact is offered by the revenue. In these facts, since the lack of discussion in the original scrutiny assessment order, where the only new fact which could thus be said to come to light in the re-assessment proceedings is that on the sale of the specific property, the assessee deposited the sale receipts of Rs. 55 lakhs with 'C' bank, wherein the saving bank account was jointly maintained with his wife and the sale proceeds were converted into FDR. The investment in the specific property accordingly, was made from the assessee's professional income.
- In these circumstances, the case of the revenue, as noted, presumably is build on the fact that it is not the very same colour of the specific notes received from the sale of property which is deposited in the acquisition of the new asset. There are plethora of decisions on the issue which hold that the law nowhere requires that there should be a live link between the amount of capital gain and

in the purchase of the new asset where the asset is purchased within the stipulated time of filing of return. The law does not require the assessee to hold on to the very same money and demonstrate that the very same money is utilized in the acquisition of the asset. Requirement of the law is that the money so available to the assessee to that extent on which exemption under section 54 is sought to be claimed ought to be invested in the acquisition of the specific as set within the stipulated time.

- By way of investing more than Rs. 49.88 lakhs, the amount for which exemption is sought (Rs. 38.61 lakhs) which was paid the assessee had done all it could have the position of law. Where the assessee having invested substantial amount in the purchase of a new asset within the specified period, the assessee could be said to have acquired substantial domain over the property entitling him for claim of exemption. The Board's Circular clarifying the position for DDA allotments as referred to in Circular No. 471 [1986] 162 ITR (SC) 41, dated 15-10-1986 may also be referred to. Accordingly, notwithstanding the fact that no specific information was noticed by the revenue on the basis of which re-opening has been made, the fact remains that there is nothing placed on record by the Assessing Officer or tax authorities to justify the claim that the re-opening was warranted beyond the period of four years. In the facts of the present case, the case of the assessee deserves to be allowed. The addition made by way of a disallowance on the claim of exemption cannot be upheld for the detailed reasons addressed hereinabove which are in line with the position of law as argued before the Commissioner (Appeals). Even otherwise in the facts of the present case, nothing has been brought on record by the revenue to demonstrate that the action was warranted beyond a period of four years in the facts as they stand. Accepting the explanation offered and on consideration of facts, circumstances and position of law as discussed hereinabove, the appeal of the assessee is allowed.

Principal Commissioner of Income Tax vs. Aadil Ashfaque & Co. (P.) Ltd.

Facts:

- The petitioner filed e-return on 29-10-2007. Due to inadvertence and by mistake committed by the employee of the petitioner company, both the gross total income and total income were shown as Rs. 2.74 crore, instead of total income Rs. 56.91 lakh. Therefore, the petitioner filed its revised return on 26-7-2010 altering only the figures in gross total income and total income without

making any changes with respect to the other columns and with income computation. While so, after five years of filing the revised return, the petitioner company received a communication dated 7-8-2015 stating that there is outstanding of tax demand for the assessment year 2007-08 to Rs. 87.26 lakh. The petitioner was not aware of the intimation issued under section 143(1) till it was received by them on 23-9-2015.

- The petitioner approached the first respondent and filed an application under section 264 on 6-10-2015. The same was rejected by the impugned order for the reason that it was filed beyond the period of limitation.

Issue:

Section 264 of the Income-tax Act, 1961 - Revision - Of other orders (Belated application for condonation of delay) - Assessment year 2007-08 - Assessee submitted that total income shown in original e-return filed in 2007 was mistakenly shown at higher figure which was rectified by filing revised return in 2010 - In mean time, revenue had already raised tax demand on higher amount - Assessee claimed that it became aware of intimation only in 2015 - Assessee's application was set aside by Commissioner on ground that, though application for revision was belated, application for condonation of delay was filed belatedly

Held:

- The petitioner claims that gross total income shown in the original return filed on 29-10-2007 as Rs. 2.74 crore is a factual mistake and on the other hand, it is only a sum of Rs. 56.91 lakh as the sum to be reflected as gross total income in all the places. In order to rectify such mistake, it is seen that the petitioner has filed a revised return on 26-7-2010. By that time, it seems that the intimation under section 143(1) raising the demand was issued on 20-10-2008 itself. According to the petitioner, they are not aware of such intimation. On the other hand, it is contended by the revenue that such intimation was readily available in the e-filing portal of the petitioner. No doubt, the petitioner has approached the first respondent and filed application under section 264 to set right the dispute. However, the fact remains that such application was filed on 6-10-2015 with delay. The first respondent has specifically pointed out that the petitioner has not filed any application to condone the delay specifically indicating the reasons for such delay. It is also seen that the first respondent has chosen to reject the application only on the ground that it was filed

belatedly. Therefore, the ends of justice would be met if the matter is remitted back to the first respondent Commissioner for reconsidering the matter afresh if the petitioner is in a position to satisfy the first respondent that the delay in filing such application under section 264 was neither wilful or intentional.

Income Tax Officer (Exemption), Kochi vs. Sree Narayana Dharma Paripalana Yuvajana Samithy

Facts:

- The assessee was a charitable trust registered under section 12A and the predominant object of trust was relief to the poor and for meeting the requirement of trust, the trust was authorized to collect donations from the public, small savings schemes and to do kuri business and this kuri business was held under trust as per section 11(4).
- The Assessing Officer found that the income generated from kuri business had been utilized for charitable purpose and assessments were completed allowing the application of income under section 11 observing that the foreman's commission from Kuri business was less than Rs. 25 lakhs and, therefore, 1st proviso to section 2(15) did not attract in the case of the assessee.
- The Commissioner (Exemptions) found that predominant objectives was relief of the poor and thus, running a Kuri business was in no way incidental to the objects of the trust.
- The Commissioner (Exemptions) found that on verification of the accounts receipts out of Kuri business exceeded Rs. 25 lakhs and observed that the Assessing Officer had only considered foreman's commission out of Kuries. According to the Commissioner (Exemptions), as per proviso to section 2(15) receipts out of the business is to be taken for consideration and total receipts out of Kuri business according to the profit and loss account was approx 40 lakhs. Therefore, the Commissioner (Exemptions) held that the assessment order was erroneous and prejudicial to the interest of revenue and invoked the provisions of section 263.

Issue:

Section 2(15), read with sections 263 and 11, of the Income-tax Act, 1961 - Charitable purpose (Objects of general public utility) - Assessment years 2014-15 to 2015-16 - Assessee-trust was engaged in providing relief to poor and for

meeting requirement of trust, it was authorized to do kuri business as per section 11(4) - Assessing Officer found that income generated from kuri business had been utilized for charitable purpose and assessment was completed allowing application of income under section 11 - Commissioner (Exemptions) observed that running of a Kuri business was in no way incidental to objects of trust and he held that assessment order was erroneous and prejudicial to interest of revenue and invoked provisions of section 263.
Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (General) - Assessment years 2014-15 to 2015-16

Held:

- Section 263 seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It empowers the Commissioner to initiate suo motu proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matter, where such inquiry was prima facie warranted. The Commissioner is well within his powers to treat an order as erroneous on the ground that the Assessing Officer should have made further inquiries before accepting the wrong claims made by the assessee. The Assessing Officer cannot remain passive in the face of a claim, which calls for further enquiry to know the genuineness of it. In other words, he must carry out investigation where the facts of the case so require and also decide the matter judiciously on the basis of materials collected by him as also those produced by the assessee before him. The Assessing Officer was statutorily required to make the assessment under section 143(3) after scrutiny and not in a summary manner as contemplated by sub-section (1) of section 143. The Assessing Officer is, therefore, required to act fairly while accepting or rejecting the claim of the assessee in cases of scrutiny assessments. The Assessing Officer should protect the interests of the revenue and to see that no one dodged the revenue and escaped without paying the legitimate tax. The Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return. The order passed by the Assessing Officer becomes erroneous when an enquiry has not been made before accepting the genuineness of the claim which resulted in loss of revenue.

- In the instant case, the main object of the assessee-trust was to offer relief to the poor but it was running kuri business and, thus, it was a profit making activity and not incidental to the attainment of the objects of the Trust; by applying income from kuri business for charitable purposes, the assessee cannot say that its prime object is to give relief to the poor. In such cirucumstances, the Commissioner (Exemptions) was justified in setting aside the assessment order as erroneous and prejudicial to the interests of the revenue with a direction to the Assessing Officer to redo the same after giving sufficient opportunity of being heard to the assessee.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Notification of Tolerance Range for Wholesale Traders

The Ministry of Finance issued a notification pertaining to AY 2019 20, in relation to tolerance range for wholesale trading. As per Income Tax Act, 1961 if the variation between the arrived arm's length price and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed three per cent of the actual price, then price at which the transaction has actually been undertaken is deemed to be the arm's length price. However, as per the said notification, in case of a wholesale trading, the tolerance range is restricted to one percent. A person is said to be a 'wholesale trader' if the purchase of finished goods is 80% or more of total cost of trading activities and average monthly inventory of such goods is 10% or less of trading sales. Further, the notification being retrospective by nature clarifies that it will not adversely affect any taxpayer.

(Notification No. 64/2019/F. No. 500/1/2014 APA II)

Amendment to Rule 10CB of The Rules

The Central Board of Direct Taxes (CBDT) issued a notification to introduce amendments to Rule 10CB of the Rules. Amends to the Rule 10CB have been summarized as below:

- The CBDT has substituted the words "excess money" with the words "excess money or part thereof" which reflects the intention of these provisions, as the imputed interest is to be computed and offered to tax only to the extent of amount recoverable (and not the total amount) on account of primary adjustment beyond ninety days.
- Substitutions have been made in the existing Rule providing clarifications regarding the computation of time limit for repatriation of excess money or part thereof in case of an Advance Pricing Agreement and Mutual Agreement Procedure under a Double Taxation Avoidance Agreement.
- New sub rule to deal with the period from when interest is to be charged where excess money or part thereof has not been repatriated within the prescribed time limit.
- An explanation to determine the exchange rate to be adopted to compute value of the international transaction has also been added.

(Notification No.76 /2019/ F.No.370142/12/2017-TPL)

Case laws

Van Oord Dredging and Marine Contractors BV vs. Deputy Commissioner of Income-tax (International taxation)-4(3)(1), Mumbai

Facts:

- The assessee-company, incorporated in Netherlands, was engaged in dredging activities. It provided business support services to 'VOIPL', its subsidiary in India, under a management support agreement. Pursuant to the said agreement, on going assistance and support was provided to 'VOIPL' by the assessee in the field of information technology, operation, quality, health and safety, marketing, administration personnel etc.
- The Assessing Officer was of the view that the payments received by the assessee-company were nothing but royalty as per Article 12 of the Treaty. He, thus, treated the services rendered by assessee in the nature of royalty and taxed same at the rate of 10 per cent.

Issue:

Section 9 of the Income-tax Act, 1961, read with Article 12 of the DTAA between India and Netherlands (Royalties/Fees for technical services - Reimbursement of expenses) - Assessment year 2010-11 - Assessee was engaged in dredging activities - It provided business support services to its subsidiary in India under a management support agreement - Pursuant to said agreement, assessee provided ongoing assistance and support to its subsidiary in field of information technology, quality, health and safety, operation etc. - Assessing Officer treated payments received by assessee on account of rendering various services as royalty - It was noted that in preceding and subsequent assessment years, payment received on account of same services was held to be on account of reimbursement of cost and that it did not fall under definition of royalty

Held

- It is to be noted that on almost similar set of facts and on the basis of the same service agreement between the assessee and VOIPL, the Assessing Officer for the assessment year 2009-10 treated the amount received on account of various

services rendered by the assessee as royalty. However, on appeal before the Tribunal, the same was held as reimbursement of cost.

- The decision of the Co-ordinate Bench for the assessment year 2009-10 was followed in the assessment years 2013-14 and 2014-15, wherein the similar payments received pursuant to the same agreement was treated to be on account of reimbursement and did not fall under the definition of 'Royalty' as defined in Article 12(4) of the India-Netherlands Tax Treaty. Further, by following the decision for the assessment years 2009-10, 2013-14 and 2014-15, similar payment was treated as Management Service Fees in appeal for the assessment years 2005-06 and 2007-08.

LG Electronics Inc. Korea vs. Deputy Commissioner of Income-tax (International Taxation), Circle-2(2)1, Noida

Facts

- The assessee - company was engaged in business of manufacture and sale of refrigerators, washing machines, air conditioners and other household appliances. It had a wholly-owned subsidiary (Indian AE) in India, (LG India) which had entered into several transactions relating to sale of raw materials and finished goods. No tax was deducted by LG India, the payer on off shore supplies since no portion of income arising from such supplies arose in India. The assessee did not file any return.
- Survey was conducted at premises of the LG India under section 133A during which a statement of expat employees of LG India was recorded by department.
- On the basis of statements of key officials recorded and materials impounded during the course of survey and fact that LG India, the Indian subsidiary, was legally and economically dependent on the assessee and that the assessee exercised total control over the Indian subsidiary, the Assessing Officer observed that the assessee had a 'permanent establishment' in India in terms of article 5(1) of the India-Korea DTAA and that the assessee also had a 'business connection' in terms of section 9(1). On the basis of these findings, it was alleged that profit arising in the transactions of sale of raw material, capital goods, finished goods etc. undertaken between the assessee and LG India was attributable to the alleged PE of the assessee and, hence, chargeable to tax in India.

- On profit attribution, before DRP, assessee submitted letter that the taxable income of the assessee in India was to be determined at 10 per cent profit margin of 50 per cent of salary cost of expatriates in India during the relevant year. The DRP therefore without considering the profit attribution by the Assessing Officer directed him to take the profit attribution at 20 per cent of profit margin of 50 per cent of salary cost of expatriates in India. The assessee had challenged the order of the Assessing Officer on existence of PE as well as the profit attribution also.

Issue:

Section 9, read with section 195, of the Income-tax Act, 1961 and article 5 of DTAA between India and Korea - Income - Deemed to accrue or arise in India (Permanent Establishment - Fixed PE, place of business) - Assessment years 2004-05 to 2010-11, 2013-14 and 2014-15 - Assessee-company was engaged in business of manufacture and sale of refrigerators, washing machines, air conditioners and other household appliances - It had a wholly-owned subsidiary in India (LG India) which had entered into several transactions relating to sale of raw materials and finished goods but no tax was deducted by LG India, on off shore supplies on ground that no portion of income from such supplies arose in India – Assessing Officer held that assessee had a fixed place PE in India in terms of article 5(1) and 5(2) as LG India was legally and economically dependent on assessee and that assessee exercised total control over Indian subsidiary - Assessing Officer attributed an income in addition to returned income as income allocable to assessee's PE in India - DRP without considering profit attribution by Assessing Officer directed him to take profit attribution at 20 per cent of profit margin of 50 per cent of salary cost of expatriates in India - It was found that there was no clear-cut admission of assessee of existence of PE before DRP, and DRP had not at all given any finding on existence of permanent establishment of assessee in India.

Held

- The Dispute Resolution Panel (DRP) has gone under the presumption that assessee had conceded the aspect of the existence of the permanent establishment in India of the assessee but the assessee now denies the above fact and said that it had never considered the issue of the existence of the permanent establishment. On careful analysis of the letter dated 5-12-2016 submitted by the assessee before the Dispute Resolution Panel, it states that assessee submits that without prejudice to the assessee's view towards the non-

existence of permanent establishment in India, from the limited perspective of the attribution of income to the alleged PE, it is being acceptable to the assessee that the taxable income of the assessee in India is directed to be determined at 10 per cent (profit margin) of 50 per cent of salary cost of expatriates in India during the relevant year. It further says that where the salary cost of expatriates in India during the relevant year is rupees hundred, the assessed income of the assessee will be computed at INR 5. It further says that the aforesaid is without prejudice to the assessee's right to challenge existence of permanent establishment in India for the relevant year or any other years and other grounds raised by the assessee or its associated enterprise in India viz., LG India in various other proceedings in India. Thus, this letter has been accepted by the Dispute Resolution Panel and straight away went on to attribute the profit to the permanent establishment.

- Further for assessment year 2008-09, the assessee before the Dispute Resolution Panel on 2-8-2017 has stated that the assessee has not appealed before the Tribunal against the quantum of attribution arrived at by the Assessing Officer, however assessee has filed appeal for assessment year 2007-08 in IT Appeal No. 1946 (Delhi) of 2017 on 31-3-2017 before the Tribunal. Therefore, there is a sharp contradicition in the submission of the assessee before the Dispute Resolution Panel and for the reason that the assessee is contesting the existence of permanent establishment as well as the profit attribution for assessment year 2007-08 and all other years except few but before the Dispute Resolution Panel it has made a statement of fact on 2-8-2017 that assessee has not filed any appeal for assessment year 2007-08 which was in fact filed on 31-3-2017.
- In view of the above facts it is apparent that as per the letters of the assessee in the direction of the Dispute Resolution Panel, the assessee had reserved its right to challenge the existence of the PE at various forums. Therefore, there was no clear-cut admission of the assessee of the existence of the PE before the Dispute Resolution Panel and, apparently, in all these years, the Dispute Resolution Panel had not at all given any finding of the existence of the permanent establishment of the assessee in India. In almost all the cases the DRP has referred the above two letters submitted by the assessee and based on that has upheld the action of the Assessing Officer except to the small extent of adjustment of the profit attribution for assessment year 2007-08 from the suggested lines by the assessee.

- In view of the submission of the assessee before the Dispute Resolution Panel and consequent understanding of the Dispute Resolution Panel that the assessee has conceded the existence of the permanent establishment, no finding can be given findings on the existence of the permanent establishment as it will prejudice the interest of the assessee to the extent that it will not be able to avail the benefit of the direction of the Dispute Resolution Panel on the existence of the permanent establishment. In normal circumstances, as necessary facts are laid down, the issue would have been decided but the specific letters before the DRP, where DRP in its own understanding, rightly or wrongly, considered the concession by the assessee on this issue and had not directed the Assessing Officer on its merit about the existence of PE. The object of the incorporation of the provision of Dispute Resolution Panel is to 'resolve a dispute' by directing the Assessing Officer on a specific issue. If that right of the assessee is not allowed to be exercised, then it may cause irreparable damage to the assessee.
- In view of above facts, all the appeals of the assessee are set aside back to the file of the Dispute Resolution Panel with a direction to first ascertain the fact about the admission of the assessee with respect to acceptance of the assessee of the existence of the permanent establishment. If it is found that there is an admission on part of the assessee about the existence of the permanent establishment, then, the Dispute Resolution Panel will decide the issue in accordance with the law considering the above admission. However, if it is found that there is no admission on this aspect, then to decide the issue of existence of the permanent establishment and consequent profit attribution thereto with respect to each of the assessment years.

REGULATIONS GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT

Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019 – Acceptance of Deposits by issue of Commercial Papers

RBI vide circular dated 16th August 2019 has introduced Foreign Exchange Management (Deposit) (Amendment) Regulations 2019 to amend the Foreign Exchange Management (Deposit) Regulations, 2016 Regulation 6 (3) of the above regulation states that an Indian company may accept deposits by However, basis consultations with the stakeholders, SEBI has issued a circular on 9th August 2019 to harmonize the permissible investments by AIFs incorporated in IFSC with the domestic AIFs as per SEBI (Alternative Investment Funds) Regulations, 2012

As a result, in addition to the existing list of permissible investments, an AIF in IFSC can also invest in the following:

- Limited Liability Partnership
- Real Estate Investment Trusts
- Infrastructure Investment Trust
- Derivatives
- Complex or Structured Projects
- Goods received in delivery against physical settlement of commodity derivatives
- Special Purpose Vehicles

Circular dated 19th August 2019: Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations")

For non-compliance with certain provisions of ICDR Regulations, stock exchanges shall impose fines on the listed entities as under:

- A fine of □ 20,000 per day of non-compliance till the date of compliance would be imposed if there is delay in completion of a bonus issue within the prescribed time as follows
    - Within 15 days from the date of approval of the issue by its board of directors in cases where shareholders' approval for capitalization of profits or reserves for making the bonus issue is not required.

- Within 2 months from the date of the meeting of its board of directors wherein the decision to announce bonus issue was taken subject to shareholders' approval in cases where issuer is required to seek shareholders' approval for capitalization of profits or reserves for making the bonus issue.

- Further, The approvals for the listing and trading of promoters' bonus shares may be granted by the Stock Exchange, only after payment of the requisite fine by the listed entity However, the approvals for the listing and trading of bonus shares allotted to persons other than the promoter(s) may be granted in the interest of the investors, subject to compliance with other requirements. A fine of 20,000 per day of non-compliance till the date of compliance would be imposed if:
  - Listed entities do not complete the conversion of convertible securities and allotting the shares, within 18 months from the date of allotment of convertible securities.
  - The issuer makes an application for listing, from the date of allotment within such period as may be specified by SEBI to one or more recognized stock exchange.
  - Listed entities do not make an application for trading approval to the stock exchange within seven working days from the date of grant of listing approval by the stock exchange.
- The amount of fine realized as per the above structure shall continue to be credited to the "Investor Protection Fund" of the concerned stock exchange.
- The recognized stock exchange shall disseminate on their website the names of non-compliant listed entities that are liable to pay fine for non-compliance, the amount of fine imposed, details of fines received, etc.
- The recognized stock exchange shall issue notices to the noncompliant listed entities to ensure compliance and collect fine as per this circular within 15 days from the date of such notice.
- If any non-compliant listed entity fails to pay the fine, the recognized stock exchange may initiate appropriate enforcement action.

GOODS AND SERVICE TAX

Biggest Ever Pan-India Joint Operation By Directorate General Of GST Intelligence And Directorate General Of Revenue Intelligence Against Fraudulently Claiming Refund Of IGST By Exporters

In the biggest ever joint operation by Directorate General of GST Intelligence (DGGI) and Directorate General of Revenue Intelligence (DRI) against exporters who were claiming refund of IGST fraudulently, pan-India searches were carried out at 336 different locations across the country yesterday. The operation covered entities in the states of Delhi, Haryana, Uttar Pradesh, Gujarat, Maharashtra, Tamil Nadu, West Bengal, Karnataka, Madhya Pradesh, Telangana, Punjab, Rajasthan, Himachal Pradesh, Uttarakhand and Chhattisgarh. The joint operation of the two premier intelligence agencies of Central Board of Indirect Taxes and Customs (CBIC), was a first of its kind in the history of CBIC which involved about 1200 officers from both the agencies.

On the basis of data analytics, an intelligence developed in close coordination by both the agencies revealed that some exporters are exporting goods out of India on payment of tax (IGST), being done almost entirely out of the Input Tax Credit (ITC) availed on the basis of ineligible/fake supplies. Further, such IGST payment was claimed as refund on export. Based on the data provided by the Directorate General of Analytics and Risk Management (DGARM), analysis was conducted wherein certain 'red flag' indicator filters were applied to Customs' export data in conjunction with the corresponding GST data of the exporters. It was also noticed that there was no or negligible payment of tax through cash by the exporters as well as their suppliers. In few cases, even the tax paid through ITC was more than the ITC availed by these firms. On the basis of this intelligence, massive searches were conducted on the premises of exporters and their suppliers.

The day long operation revealed that many of the entities spread across the length and breadth of the country were either non-existent or had given fictitious addresses. The preliminary examination of the records/documents resumed during the course of the joint operation along with the statements recorded of various persons indicated that an Input Tax Credit of more than Rs. 470 Crore (Invoice value of approx. Rs 3500 Crores) is bogus/fake which has been further utilized by the exporters for effecting exports on payment of IGST through ITC and claiming consequential cash refund of the same. Besides, an IGST refund amount of around Rs 450 crore is under examination. Further, some live export consignments of these exporters have been intercepted at Vadodara Rail Container Terminal, Mundra port and Nhava Sheva port for examination in order to ascertain mis-declaration.

(Press Release, Dated 12th September, 2019)

Section 69 Of The Central Goods And Services Tax Act, 2017 - Power To Arrest - DBBI-MZU Makes An Arrest For Passing On Fictitious Input Tax Credit

The Mumbai Zonal Unit of the Directorate General of GST Intelligence (DGGI-MZU) on Tuesday (17th September) made an arrest for one Shri Sandeep alias Karan Arora, Managing Director of M/s High Ground Enterprises Ltd.; on charges of having availed & utilized, as well as having passed on fictitious lnput Tax Credit (ITC) by way of issuance of invoices without actual receipt or supply of goods or services.

The press note issued by Joint Director, DGGI-MZU, Smt Ujjwala Bhagwat in this regard states that - it is apparent, from the investigation conducted till date, that M/s High Ground Enterprises Ltd. has availed fake ITC to the tune of approximately Rs 77 Crores, on the basis of invoices having value of approximately Rs. 420 crores. During the course of the investigation, it was ascertained that several of the entities from whom M/s High Ground Enterprises Ltd. has availed invoices are actually shell companies having no capacity to conduct any business operations. Some of the entities from whom M/s High Ground Enterprises Ltd. has availed fake ITU were in existence, but it was ascertained that these entities have merely supplied invoices & other documents without actual supply of goods or services.

The investigation spanned multiple locations in various parts of the country including New Delhi, Kolkata, Hyderabad, Bangalore, Pune, etc. Based on the extensive documentary evidence available, and the statements recorded of several individuals, it was ascertained that Shri. Sandeep alias Karan Arora, Managing Director of the M/s High Ground Enterprises Ltd. is the key mastermind behind this entire operation. Accordingly, Shri Sandeep alias Karan Arora was arrested and presented before the Hon'ble Addl. Chief Metropolitan Magistrate, who ordered a judicial remand.

It is noteworthy to mention that Shri. Sandeep alias Karan Arora is also wanted by the U.K. Govt. for allegedly committing VAT fraud amounting to GBP 4.5 million. In an appeal put out by the Joint Fraud Taskforce consisting of the City of London Police, Metropolitan Police Service & the British National Crime Agency, it has been stated that Shri. Sandeep alias Karan Arora is guilty of wrongly claiming VAT & Film Tax refunds on the basis of films that either did not exists, or which he had no involvement. During the course of the investigation, it has also emerged that Shri. Sandeep alias Karan is under the scanner of other investigative agencies such as the Enforcement Directorate & Income Tax Department.

(Press Release, Dated 19th September, 2019)

Thirty Seventh Meeting Of GST Council - Recommended GST Rates On Services

GST Council in the 37th meeting held on 20th September, 2019 at Goa took following decisions relating to changes in GST rates, ITC eligibility criteria, exemptions and clarifications on connected issues.

EXEMPTIONS/CHANGES IN GST RATES/ITC ELIGIBILITY CRITERIA

Rate reduction sector wise:

i. Hospitality and tourism

- *To reduce the rate of GST on hotel accommodation service as below: -*

Transaction Value per Unit (Rs) per day	*GST*
Rs 1000 and less	*Nil*
Rs 1001 to Rs 7500	*12%*
Rs 7501 and more	*18%*

- *To reduce rate of GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7501 from present 18% with ITC to 5% without ITC. The rate shall be mandatory for all kinds of catering. Catering in premises with daily tariff of unit of accommodation is Rs 7501 and above shall remain at 18% with ITC.*

ii. Job work service

- *To reduce rate of GST from 5% to 1.5% on supply of job work services in relation to diamonds.*
- *To reduce rate of GST from 18% to 12% on supply of machine job work such as in engineering industry, except supply of job work in relation to bus body building which would remain at 18%.*

iii. Warehousing

- *To exempt prospectively services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea.*

iv. Transportation

- *To increase the validity of conditional exemption of GST on export freight by air or sea by another year, i.e. till 30.09.2020.*

v. Insurance

- *To exempt "BANGLA SHASYA BIMA" (BSB) crop insurance scheme of West Bengal Government.*
- *To exempt services of life insurance business provided or agreed to be provided by the Central Armed Paramilitary Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the respective Group Insurance Schemes of these Central Armed Paramilitary forces.*

vi. Export promotion

- *To exempt services provided by an intermediary to a supplier of goods or recipient of goods when both the supplier and recipient are located outside the taxable territory.*
- *To issue a notification under Section 13(13) of IGST Act notifying the place of supply of specified R&D services (such as Integrated discovery and development, Evaluation of the efficacy of new chemical/ biological entities in animal models of disease, Evaluation of biological activity of novel chemical/ biological entities in invitro assays, Drug metabolism and pharmacokinetics of new chemical entities, Safety Assessment/ Toxicology, Stability Studies, Bio Equivalence and Bio Availability Studies, Clinical trials, Bio analytical studies) provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient.*
- *To clarify that the place of supply of chip design software R&D services provided by Indian companies to foreign clients by using sample test kits in India is the location of the service recipient and section 13(3)(a) of IGST Act, 2017 is not applicable for determining the place of supply in such cases.*

vii. Miscellaneous

- *To allow the registered authors an option to pay GST on royalty charged from publishers under forward charge and observe regular GST compliance.*
- *To notify grant of liquor licence by State Governments against payment of license fee as a "no supply" to remove implementational ambiguity on the subject.*
- *To exempt services related to FIFA Under-17 Women's World Cup 2020 similar to existing exemption given to FIFA U17 World Cup 2017.*

(Press Release, Dated 20th September, 2019)

COMPANY LAW

Companies (Registration Offices and Fees) Fifth Amendment Rules, 2019 and Companies (Appointment and Qualification of Directors), Fourth Amendment Rules 2019

MCA vide its circular dated 30th September 2019 has introduced Companies (Registration Offices and Fees) Fifth Amendment Rules, 2019 and Companies (Appointment and Qualification of Directors) Fourth Amendment, 2019 to amend the Companies (Registration Offices and Fees) Rules, 2014 and Companies (Appointment and Qualification of Directors) Rules, 2014 respectively.

MCA has clarified in the amendment that for financial year ended 31st March 2019, no fee shall be payable in respect of e form DIR 3 KYC or DIR 3 KYC WEB through web service till 14th October 2019.

National Financial Reporting Authority ('NFRA') Amendment Rules 2019

MCA vide its circular dated 5th September 2019 has introduced NFRA (Amendment) Rules 2019 to amend the NFRA Rules, 2018 as follows:

The class of companies and body corporates governed by the authority in addition to the banking company would cover the corresponding new banks and subsidiary banks as well.

The date of filing annual return with the authority has been extended from 30th April to 30th November of the respective year in the prescribed form (introduced in the circular as NFRA 2 Annual Return to be filed by Auditor with NFRA).

Based on the reference received from the Central Government or findings of its monitoring or enforcement or oversight activities, or on the basis of material otherwise available on record, if the Authority believes that sufficient cause exists to take permissible actions, it shall refer the matter to the concerned division, which shall cause a show cause notice to be issued to the auditor and where such disposal of the show cause notice does not take place within the prescribed period, the reason for such non disposal shall be recorded and the chairperson may extend the prescribed period for not more than ninety days.

The above mentioned extension may be granted by the chairperson more than once.

ACCOUNTS & AUDIT

Amendments to Indian Accounting Standards

New Standard Ind AS 116: Leases-

Ind AS 116 shall be applied for accounting of leases by lessee and lessor in their respective books. Compared to previous Standard (Ind AS 17) on leases which shall be omitted w.e.f. April 1, 2019, principles of Ind AS 116 for lessor are substantially same. However, there is significant change in the way a lessee shall account for leases in its books.

It provides that an entity, being a lessee, shall treat almost all leases, except leases for short-term and leases of low value assets, as finance leases. The entity shall recognise a right-of-use asset and a lease liability whenever it takes any asset on lease. The right-of-use asset shall be measured at cost that comprises of initial value of lease liability, lease payments made on or before the commencement of lease, initial direct costs incurred by the entity and an initial estimated cost of dismantling & removing the leased asset and restoring the site on which the asset is located. The lease liability shall be measured at the present value of the lease payments due. The interest rate implicit in the lease or lessee's incremental borrowing may be used to arrive at the present value. Subsequently, at each balance sheet date, the right-of-use asset shall be depreciated and lease liability shall be increased by interest amount & decreased by amount paid. The right-of-use asset may also be measured at revalued amount under revaluation model.

Amendments to Ind AS 109, Financial Instruments:

The amendments notified to Ind AS 109 pertain to classification of a financial instruments with prepayment feature with negative compensation. Negative compensation arises where the terms of the contract of the financial instrument permit the holder to make repayment or permit the lender or issuer to put the instrument to the borrower for repayment before the maturity at an amount less than the unpaid amounts of principal and interest. Earlier, there was no guidance on classification of such instruments.

According to the amendments, these types of instruments can be classified as measured at amortised cost, or measured at fair value through profit or loss, or measured at fair value through other comprehensive income by the lender or issuer if the respective conditions specified under Ind AS 109 are satisfied.

Amendment to Ind AS 19, Employee Benefits:

The amendments to Ind AS 19, Employee Benefits relate to effects of plan amendment, curtailment and settlement. When an entity determines the past service cost at the time of plan amendment or curtailment, it shall remeasure the amount of net defined benefit liability/asset using the current value of plan assets and current actuarial assumptions which should reflect the benefits offered under the plan and plan assets before and after the plan amendment, curtailment and settlement.

Amendments to Ind AS 28, Investments in Associates and Joint Ventures:

Ind AS 109 excludes interest in associates and joint ventures that are accounted for in accordance with Ind AS 28, Investments in Associates and Joint Ventures from its scope. According to the amendments, Ind AS 109 should be applied to the financial instruments, including long-term interests in associates and joint venture, that, in substance, form part of an entity's net investment in associate or joint venture, to which the equity method is not applied.

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