NANUBHAI DESAI & CO.

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Contents

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Indian Advance Pricing Agreement regime moves forward with signing of more UAPAs and BAPAs by CBDT

The Central Board of Direct Taxes (CBDT) has entered into 5 more Unilateral Advance Pricing Agreements (UAPAs) and 1 Bilateral APA during the month of October, 2018. Further, the CBDT had also entered into 3 UAPAs and 3 BAPAs in the months of August and September, 2018. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 244, which includes 220 UAPAs and 24 BAPAs. It is noteworthy that one of the UAPAs signed in October is a renewal application and the same has been concluded in a time span of only 7 months.

The BAPAs entered into during the last three months were with the following treaty partners:-

- Australia – 2
- Switzerland – 2

The BAPAs and UAPAs entered into during the last three months pertain to various sectors and sub-sectors of the economy like publishing, production of electronic goods, automobile ancillary manufacturing, banking, IT/ITeS, textiles, telecommunications, food & beverages, etc.

The international transactions covered in all these agreements, inter alia, include the following, -

- provision of software development services
- provision of back office (ITeS) support services
- export/import of raw materials, journals, etc
- payment of royalty
- advertising, marketing and sales promotion (AMP) expenses incurred
- provision of marketing support services
- distribution of finished goods
- corporate management and business support services
- payment of guarantee fee

The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner.

(Press release dated 2nd November, 2018)

Task Force for drafting a New Direct Tax Legislation

In order to review the Income-tax Act, 1961 and to draft a new direct tax law in consonance with the economic needs of the country, a Task Force was constituted by the Government of India in November, 2017.

In partial modification of the earlier order, the Government has appointed Shri. Akhilesh Ranjan, Member (Legislation), CBDT as Convenor of the Task Force. Other members of the Task Force remain unchanged.

The Task Force shall submit its report to the Government by February 28, 2019.

(Press release dated 26th November, 2018)

Case laws

Mumtaz Haji Mohmad Memon vs. ITO [2018] 408 ITR 268 (Guj.)

Facts:

- The assessee before the Hon'ble Gujarat High Court was an individual. During the year 2009, the assessee, along with two other co-owners, sold an immovable property for a declared sale consideration of Rs. 50 lakh. In the return filed for the relevant assessment year 2010-11, the assessee disclosed the sale and after adjusting the cost of improvement and indexed cost of acquisition, offered a sum of Rs. 2,45,900/- by way of capital gains.
- The return filed by the assessee was not taken for scrutiny assessment. The AO issued notice under section 148 of the Act on the ground that the assessee has not filed return of income for the year under consideration i.e., 2010-11 and had not offered the capital gains that arose out of sale consideration to tax.
- The assessee filed his objections wherein he has brought factual matrix of his case that he has filed return of income for the year under consideration and also declared the capital gains on such sale consideration. The AO rejected the objections raised by the assessee. In such order, he recorded that the co-owner had declared the total sale consideration of the property at Rs. 1,18,95,000/-. Further, the report received from the Sub-Registrar, Surat, would show that the market value of the said property was determined at Rs. 1,18,95,000. He was therefore of the opinion that the assessee should have shown his share of the sale consideration at Rs. 39,65,000/-, in spite of which, he declared the sum at Rs. 16,66,667 Primarily on these grounds, the objections were rejected.
- Notably, the Assessing Officer did not make any comment on the assessee's Contention that return of income was filed. Being aggrieved by the order passed by the AO rejecting the objections the assessee filed a writ petition before Hon'ble Gujarat High Court. Hon'ble High Court observed that the reasons proceeded on two fundamental grounds. One, that the. property in question was sold for a sum of Rs.1,18,95,000/- ; and two, that the assessee had not filed the return and that therefore his 1/3rd share out of the sale proceeds was not offered to tax.

Issue:

- Reassessment – Section 147 of Income-tax Act, 1961 – Reopening on the ground that the assessee had not filed Return of Income whereas the same was

filed –Possibility of application of section 50C mentioned in the affidavit – in reply but not in reasons recorded – Though the AO may be correct about applicability of section 50C notice issued under section 148 is bad in law [A.Y. 2010-11]

Held:

- The High Court held that both these factual grounds are totally incorrect as it was admitted by the Revenue. It was undisputed that the assessee had actually filed the return of income for the said assessment year and also offered his share of income of the declared sale consideration to tax as capital gains.
- The High Court observed that the Assessing Officer may have dispute with respect to computation of such capital gains, he cannot simply dispute the fact that the assessee did file the return. Importantly, even the second factual assertion of the Assessing Officer in the reasons recorded was totally incorrect, as he referred to said sum of Rs. 1,18,95,000/- as a sale price of the property.
- The High Court held that the Assessing Officer may be correct in pointing out that when the sale consideration as per the sale deed is Rs. 50 lakh but the registering authority has valued the property on the date of sale at Rs. 1,18,95,000/- for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein.
- However, this was not the cited reason for reopening the assessment. The reasons cited are that the assessee filed no return and that 1/3rd share of the assessee from the actual sale consideration of Rs.1,18,95,000 therefore, was not brought to tax.
- These reasons were interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually incorrect, the Revenue simply could not have hoped to salvage the impugned notice.
- The court further held that through the affidavit-in-reply a faint attempt has been made to entirely shift the centre of the reasons to a completely new theory, viz., the possible applicability of section 50C of the Act.
- However, the reasons recorded nowhere mentioned this possibility. Reasons recorded, ignored the fact that the sale consideration as per the sale deed was Rs.50 lakh and that the assessee had by filing the return offered his share of such proceeds by way of capital gains. The court thus quashed notice issued u/s. 148.

PCIT vs. Sun Pharmaceutical Industries Ltd. [2018] 408 ITR 517 (Guj.)

Facts:

- The assessee before the Hon'ble Gujarat High Court was a company engaged in various businesses including manufacturing pharmaceuticals. For relevant assessment years, the assessee had filed the return of income computing income in terms of section 115JB.
- The AO issued notice under section 148 for the both the assessment years and finalised the assessment making various additions and disallowances. On appeal, CIT(A) allowed the appeals of the assessee by accepting the assessee's grounds against the additions made by the AO.
- However, on the question of validity of reopening of the assessments, the learned CIT(A) held against the assessee.
- The department being aggrieved preferred to appeal before the Tribunal. Since the assessee was not aggrieved by the order passed by the learned CIT(A), it had not preferred any appeal.
- It did not even file a cross-objection against the departmental appeal. Later on, relying on Rule 27 of the Income-tax Appellate Tribunal's Rules (Rules), the assessee challenged the validity of the re-assessments before the Tribunal.

Issue:

- Appeal to Appellate Tribunal – section 253 of the Income-tax Act, 1961 – Scope of Rule 27 of Income tax (Appellate Tribunal) Rules – Assessee entitled to defend order of the Commissioner of Income Tax (Appeals) on all grounds including on grounds held against it without filing a cross-objection. [A.Y. 2001-02, 2002-03]

Held:

- Despite objections from the revenue, the Tribunal permitted the assessee to raise such contentions and ultimately held that the notices for reopening of assessments in both the years were bad in law and declared them as invalid. The department challenged the tribunal order before the Hon'ble Gujarat High Court under section 260A of the Act. Hon'ble High Court observed that rule 27 of the rules makes it clear that the respondent in appeal before the Tribunal even without filing an appeal can support the order appealed against on any of the grounds decided against him.

- It can be easily appreciated that all prayers in the appeal may be allowed by the commissioner (Appeals), however, some of the contentions of the appellant may not have appealed to the Commissioner.
- When such an order of the Commissioner is at large before the Tribunal, the respondent before the Tribunal would be entitled to defend the order of the Commissioner on all grounds including on grounds held against him by the Commissioner without filing an independent appeal or cross-objection.
- The High Court observed that Rule 27 of the Rules is akin to rule 22, Order XLI of the Civil Procedure Code. Sub-rule (1) provides that any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been decided in his favour.
- The High Court decided the question against the Revenue and in favour of the Assessee.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Protocol amending India-China DTAA

The Government of the Republic of India and the Government of the People's Republic of China have amended the Double Taxation Avoidance Agreement (DTAA) for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income, by signing a Protocol on 26/11/2018.

Besides other changes, the Protocol updates the existing provisions for exchange of information to the latest international standards. Further, the Protocol incorporates changes required to implement treaty related minimum standards under the Action reports of Base Erosion & Profit shifting (BEPS) Project, in which India had participated on an equal footing. Besides minimum standards, the Protocol brings in changes as per BEPS Action reports as agreed upon by the two sides.

(Press release dated 26th November, 2018)

Case Laws

Pr. CIT vs. Organizing Committee Hero Honda FIH World Cup – [TS-660-SC-2018] - Special Leave Petition(Civil) Diary No. 37870/2018

Facts

- The assessee organisation entered into a contractual relationship with the Federation of International Hockey (FIH) for organising / sponsoring the Men's Hockey World Cup in the financial year 2009-10.
- Under the arrangements the FIH was to act as the facilitator, receiving the amounts and arranging for provisional services connected with the event (services primarily concerned with the travel, hospitality and provision of food etc.) and claimed reimbursements of payouts from the assessee, being the event organiser / sponsor.
- The AO was of the opinion that the payment made to FIH by the assessee of the aforesaid reimbursements was liable for deduction of tax under section 195 of the Act, opining that the payouts also included commission which was per se taxable.
- The assessee claimed that the payments were only reimbursement of the expenses, which were duly supported by documentary evidence.
- The CIT(A) accepted the assessee's explanation noting that the reimbursements
- Were such that the assessee could not hold an independent inquiry into each transaction and the assessee had no privity of contract with the service providers. The Tribunal affirmed the CIT(A)'s order.
- The Delhi High Court held that the findings of fact were conclusive since the lower appellate authorities, after considering the submissions and record, had held that the assessee had no privity of contract with the service provider and thus there was no substantial question of law arising in this regard.

Issue:

- Revenue's SLP dismissed against High Court order holding that TDS was not deductible u/s. 195 on payment towards reimbursement of expenses as the assessee had no privity of contract with the service provider.

Held

- The Court dismissed the SLP filed by the Revenue holding that there was no reason to interfere in the matter.

DIT(IT) vs. Board of Control for Cricket in Sri Lanka - [2018] 97 taxmann.com 600 (Calcutta) – ITA Nos. 242 & 279 of 2008

Facts:

- A joint management committee of India, Pakistan and Sri Lanka, [PAK-INDO-LANKA joint management committee (PILCOM)] was formed to co-host/ conduct the world cup 1996 tournament. Bank accounts were opened by PILCOM in London to be operated jointly by India and Pakistan cricket boards. In this account, moneys from sponsorships, TV rights etc., were deposited.
- PILCOM paid certain amounts to eleven non-resident cricket associations for allowing to host the tournament which included certain amount paid as guarantee money. ITO(TDS) made an order under section 201(1)/194E against PILCOM demanding certain amount as tax which ought to have been deducted by it.
- The Tribunal held that only that proportion of the total fund received by the cricket association of any country from PILCOM which was equal to the ratio of the number of matches played by such country in India to the total number of matches played by that country in the tournament should be considered to be income arising or accruing to the cricket association of that particular country. Tax should be deducted at source in respect of this portion of the payment made by it to a particular association.
- On appeal against the above order of the Tribunal, the High Court dismissed the appeal vide its decision in PILCOM vs. CIT [2011] 335 ITR 147 (Cal.), with the observation that the order of the Tribunal did not call for any inference.
- The non-resident cricket associations filed return showing their income as Nil. Notice under section 148 was issued and order was passed under section 147 for all the cricket boards. The AO made an assessment of income of each assessee through PILCOM (i.e. representative assessee).
- On further appeals, the Tribunal held that a representative assessee / agent is liable to tax in India on behalf of the non-resident assessee only with respect to

its income which is 'deemed to have accrued in India' under section 9, whereas in the present case, as decided in its earlier order (discussed above) the income had accrued in India and not 'deemed to have accrued in India'. Therefore, it held that PILCOM could not be liable as agent under section 163.

- Aggrieved, the Revenue filed an appeal to the High Court against the order of the Tribunal.

Issue:

- Representative assessee of foreign resident is liable for not only an income which is deemed to have accrued in India, through a business connection, but also that which has directly arisen or accrued in India

Held:

- The Court held that section 5 divides the income in two categories viz., one which is received in India and one which arises or accrues or deemed to arise or accrue in India but may be received in India or elsewhere and section 9 merely tries to classify the income which is deemed to accrue or arise in India by saying that it should inter alia arise from business connection of the non-resident in India.
- The Court held that only because of use of the short title to section 9, i.e. Income deemed to accrue or arise in India, does not absolve the representative assessee of the duty to account for any income which has directly arisen to the non-resident in India.
- Thus, it held that the Tribunal misunderstood the law in holding that since the income earned by the non-resident cricket boards were held to have directly arisen in India, this income could not be deemed to have arisen or accrued to the non-resident in India and the responsibility of the representative assessee was confined to only accounting for income which was deemed to have arisen in India.
- The Court held that section 160 makes it abundantly plain that a representative assessee would represent a non-resident assessee in respect of his income specified in section 9 and thus the representative assessee not only represents an income which has directly arisen or accrued in India but also that which has indirectly arisen or accrued in this country, through a business connection.

- Accordingly, the Court affirmed the orders of the AO and the CIT(A) and set aside the Tribunal's order, stating that points left open by the Tribunal may be decided by it in accordance with law

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

External Commercial Borrowings (ECB) Policy – Review of Minimum Average Maturity and Hedging Provisions

a) Amendments vide A.P. Dir. Series Circular No. 11 dated 6th November, 2018

In terms of paragraphs 2.4.1, 2.4.2 and 2.5 of Master Direction No. 5 on "External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers", dated January 1, 2016 as amended from time to time, certain eligible borrowers raising foreign currency denominated ECBs under Track I, having a minimum average maturity requirement of 5 years, are mandatorily required to hedge their ECB exposure fully.

Extant Guidelines provided under Para 2.4.2 and 2.5 of Master Direction No.5 on "ECB, Trade Credit, Borrowing and Lending in Foreign Currency by AD and Persons other than AD", are amended as under :-

- Minimum Average Maturity:
  Present minimum average maturity requirement for ECBs in the infrastructure space by eligible borrowers is 5 years.
  RBI has now reduced the same to 3 years.

- Hedging Requirements:
  RBI has reduced the average maturity requirement from extant 10 years to 5 years for exemption from mandatory hedging provision applicable to ECBs raised by above referred eligible borrowers. Accordingly, *the ECBs with minimum average maturity period of 3 to 5 years in the infrastructure space will have to meet 100% mandatory hedging requirement.*

Further, it is also clarified that ECBs falling under the aforesaid revised provision but raised prior to the date of this circular will not be required to mandatorily roll-over their existing hedges.

b) Amendments vide A.P. Dir. Series Circular No. 15 dated 26th November, 2018.

On a further review of the extant provisions, RBI has reduced the mandatory hedge coverage from 100 per cent to 70 per cent for ECBs raised under Track I of the ECB framework by eligible borrowers given at paragraph 2.4.2(vi) of the aforesaid Master Direction for a maturity period between 3 and 5 years.

RBI further clarified that ECBs falling within the aforesaid scope but raised prior to the date of this circular will be required to mandatorily rollover their existing hedge(s) only to the extent of 70 per cent of outstanding ECB exposure.

COMPANY LAW

Amendment to the Companies (Registered Valuers and Valuation) Rules, 2017

It is clarified that these Rules would apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act. These rules shall not apply to valuation conducted under any other law. Further, amendments have been made as regard to the eligibility, qualifications and experience requirements for registration as a valuer.

National Financial Reporting Authority Rules, 2018 notified

The Ministry of Corporate Affairs has notified the NFRA Rules on 13th November 2018. The Rules covers the following key aspects:

- Classes of companies and bodies corporate governed by the Authority.
- Functions and duties of the Authority.
- Annual return to be filed by the auditor with the Authority.
- Recommending accounting standards and auditing standards.
- Monitoring and enforcing compliance with accounting standards.
- Monitoring and enforcing compliance with auditing standards.
- Overseeing the quality of service and suggesting measures for improvement.
- Power of the authority to investigate.
- Disciplinary proceedings.
- Manner of enforcement of orders passed in disciplinary proceedings.
- Punishment in case of non-compliance.

Registration by certain companies on Trade Receivables Discounting Platform

Instructions are issued by the Central Government that all companies registered with the Companies Act, 2013 with a turnover of more than Rs. 500 crore and all Central Public Sector Enterprises shall be required to get themselves on boarded on the Trade Receivables Discounting System platform, set up as per the notification of the Reserve Bank of India.

Issuance of Companies (Amendment) Ordinance, 2018

Application for alteration in the Financial Year [Section 2(41)]- The application for adopting a different year as "financial year" shall now be made to "Central

Government" Earlier, the applications were filed with National Company Law Tribunal ('Tribunal'). Existing applications pending before the Tribunal before 2nd November, 2018 shall be disposed of by the Tribunal as per the erstwhile provisions.

Re-introduction of declaration of Commencement of Business [Section 10A]: As per the newly inserted section 10A, a company having share capital incorporated after the commencement of the Ordinance, has to ensure the following before commencing its business or exercising borrowing powers-

- a declaration in prescribed form is filed by a director of the company within a 180 days of the date of incorporation of the with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration.
- the company has verified its registered office in e-Form INC-22

Failure to file the declaration shall give reasonable cause to the ROC to remove the name of the company from the register of companies.

Physical verification of the registered office [Section 12(9)]: The Registrar of Companies may carry out physical verification of the registered office of the Company on reasonable cause to believe that no business or operations are being carried out by the company. In case any default is found, the ROC may remove the name of the company from the register of companies.

Alteration of Articles for conversion of Public Company into Private [Section 14]: Authority to approve application for conversion of a public company to private has been shifted from NCLT to Central Government. Applications pending with NCLT shall be disposed of by in accordance with erstwhile provisions.

Reduction in time-limit for filing application for condonation of delay for registration of charge Section 77]: As per the erstwhile provisions, if a company could not register a charge within 30 days, the ROC had the power to condone the delay and allow registration of charges within 300 days of such creation on payment of additional fees. However, after commencement of the Ordinance, the ROC shall condone the delay only up to 60 days from the date of creation of such charge. In case the charge is not registered within this time, then ROC may on application, allow the registration of the charge within a period of further 60 days on payment of ad valorem fees.

Punishment of contravention of any provision under Chapter VI relating to Registration of Charges [Section 86]: A new provision has been inserted under Section 86 which states that any person who willfully furnishes false or incorrect information or knowingly suppresses any material information pertaining to registration of charges shall be liable to fraud and attract action under Section 447.

Order of NCLT in respect of Significant Beneficial Ownership [Section 90]: Once a company or any person obtains restrictions under section 90(7) relating to significant beneficial ownership, in respect of shares whose ownership remains undetermined, such shares shall be transferred to the Investor Education and Protection Fund if rightful owner does not claim ownership within 1 year of such restrictions. Further, persons failing to make declaration under Section 90, shall be punishable with fine or imprisonment or both.

Disqualification of Director [Section 164]: In Section 164(1) which lays down the grounds for disqualification of a Director, a new sub-clause (i) has been inserted which states that if a director does not comply with provisions of Section 165 relating to maximum number of directorships a person may hold (i.e. maximum ten public companies and maximum twenty in other companies), he/she shall be disqualified under section 164 of the Act.

Power of the Registrar to remove the name of the company [Section 248]: The erstwhile provisions of the Act provided the following situations in which the Registrar can remove the name of the Company from the register of companies:

a) It has failed to commence its business within one year of incorporation.

b) Is not carrying out any business or operations for a period of two years

c) Is a dormant company under section 455

However, the Ordinance has introduced two new clauses for removal of name of the Company namely-

- if the subscribers of MOA of the Company have not paid the subscription amount and have not furnished a declaration in this regard within 180 days
- if the Company is revealed to not having any registered office after physical verification of registered office.

Compounding of offences [Section 441]: Scope of compounding order which can be passed by Regional Director increased from the existing thresh hold limits [maximum amount of fine] of Rs. 5 lakh to Rs. 25 lakhs.

Adjudication of penalties [Section 454]: The Adjudicating officer can now-

- Impose penalty on company, officer in default, or any other person. The insertion of the words 'any other person' shall widen the power of the adjudicating officer.
- Can provide any direction to the company or officer in default or any other person to rectify the default wherever considers fit.
- Penalty is prescribed for repeated default

ACCOUNTS & AUDIT

Expert Advisory Opinion
Provision for un-encashable portion of Half Pay Leave (HPL) as per AS 15 / Ind AS 19

A. Facts of the case
A company has the policy towards provision for encashment of Privilege Leaves (PL) and Half Pay Leaves (HPL) as per Accounting Standard (AS) 15 'Employee Benefits' /Indian Accounting Standard (Ind AS) 19, 'Employee Benefits'.

As per the rules of the corporation, an employee is eligible for 30 days privilege leaves (PL) in a year and 20 days half pay leaves (HPL) in a year.

Half pay leaves (HPL) are un-encashable during the service period. However, the HPL are encashable on superannuation only to the extent of the privilege leaves to the credit of executive employees falling short of maximum limit of 300 days. The benefit of HPL encashment on superannuation has not been extended to the non-executives employees.

B. Query
In view of the above, the querist has sought the opinion of the Expert Advisory Committee as to whether the provision for the un-encashable half pay leaves (whether executives or nonexecutives employees) should be created similar to the encashable portion as part of cost of services rendered during the period in which the service was rendered which resulted the entitlement.

C. Point considered by Committee
The Committee took reference of para's 8,11,13,16 of Accounting Standard (AS) 15 on 'Employee Benefits' and Para 9,11,13,15,18 Indian Accounting Standard (Ind AS) 19, 'Employee Benefits', to state that obligation exists in respect of short term accumulated compensated absences, irrespective of whether these are vesting or non-vesting and is required to be recognized. Similarly, paragraph 127 of AS 15 and paragraph 153 of Ind AS 19 require to provide for a liability in respect of other long-term compensated absences.

The committee has not examined any other issue, that may arise from the facts of the Case, such as, accounting treatment for privilege leave benefits, classification of half pay leaves as 'short-term' or 'other long-term' employee benefits and their measurement etc. Further, the Committee presumes from the Facts of the Case that the

half pay leaves in the extant case can be carried forward and availed up to the retirement/superannuation of the employees (both executives and non-executives employees).

D. Opinion

On the basis of the above, the Committee is of the opinion that irrespective of whether un-encashable accumulating half-pay leaves in the extant case can be classified as 'short-term employee benefits' or as 'other long-term employee benefits', a liability on account of these should be provided as per the requirements of AS 15/ Ind AS 19, which should be reviewed at each reporting date to recognize the effects of changes in estimates in this regard.

Implementation Guide on Auditor's Resignation

The Institute of Chartered Accountants of India had issued implementation guide on resignation/ withdrawal from an engagement to perform audit of financial statements which includes applicability, documentation, professional obligations, auditor's responsibilities and circumstances leading to withdrawal/resignation. Detailed note as regards the same is attached as an annexure to the newsletter.

GOODS AND SERVICE TAX

Amendment to section 17(3)

Section 17(2) requires that where the inward supplies are used partly for effecting taxable supplies (including zero-rated supplies) and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies (including zerorated supplies). The ITC pertaining to value of exempt supplies is therefore not eligible. Section 17(3) provides that in such cases value of exempt supplies shall also include sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. (i.e. Sr. No. 5 of Schedule III of the CGST Act).

An explanation has been inserted in section 17(3) to clarify that the expression ‘‘value of exempt supply’’ shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule. It appears that the said amendment does not lay down any new law, but merely clarifies the position.

Besides, following additional activities and transactions are added in Schedule III by the Amendment Act, 2018

- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
- Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.
- Supply of warehoused goods to any person before clearance for home consumption [By Explanation 2, it is clarified that the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962].

It would therefore mean that in all the aforesaid cases, there will be no reversal of ITC u/s. 17(2) of the CGST Act. Whether the said amendments in Schedule III would take effect from 1st July 2017 or it would be prospective in nature, would be clear once the said provision is notified by the Government.

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