



Western India Chartered Accountants Newsletter



Dear Members,

'Challenges are what makes life interesting and overcoming them is what makes life meaningful'. – Joshua J. Marine

Currently, individuals, organisations and economies across the world has been exposed to unprecedented challenges due to Covid

19. The pandemic is continuously posing great threat to survival of businesses. During these difficult times it is particularly important for us to continuously update and adapt ourselves to overcome this challenge.

Representation by Covid 19 Economic Response Group

Members may recall that in order to identify, study and suggest solutions for economic issues due to Covid-19, WIRC has formed "Covid 19 Economic Response Group". I am happy to share that the Study Group has received responses from various sectors of the industry which were compiled by the team of group members.

The study group has prepared a summary of responses received with regards to issues, proposed resolutions, action expected from etc., and submitted a representation on "*Ease of doing business and avoiding hardship to business fraternity during and after the lockdown*" to ICAI for onwards representation to government authorities.

Importance of technology in response to Covid 19

The lockdown imposed due to Covid 19, has once again highlighted the importance of technology. Organizations are rapidly moving from traditional operational work flow models to working from home using the digital medium. Going forward, reliance on technology will increase substantially and as professionals, we should adapt to this in our day to day operations.

A recent study which saw participation by over 1,100 accounting professionals and tax professionals, from 18 different countries on "*The*

Message from Chairman's Desk

Impact Of Covid-19 On Accountants By Usage And Implementation Of Technology" found that:

- Firms using cloud-based technologies, such as document management over cloud, online client portals, felt that they are successfully responding to Covid 19, as compared to firms using traditional models.
- Further, firms using traditional models are now increasingly putting more efforts towards incorporating technology to enable remote work and communication with team members and clients.
- Firms that already had at least one cloud system in place prior to COVID-19 fared far better than firms that did not have any cloud systems in place.

INITIATIVES FOR MEMBERS

Database of Members in Industry, Business & Public Services

Members in Industry, business and public services play a key role in overall development of economic activities. I am pleased to announce that WIRC has taken an initiative of industry connect, where we will be connecting with our CA fraternity who are a part of industry, business and public service.

Further, WIRC is compiling a database of Members in Industry, Business & Public Services. Members can fill the details at following link- <https://forms.gle/ZTk9yPmBda31h2rG7>

Knowledge update with technology

It is a proud moment for me to announce that WIRC has seamlessly moved towards technology as a platform for bestowing and updating knowledge. During May 2020, WIRC organized several webinars, which were very well attended and appreciated by the whole WIRC fraternity. Topics ranged from artificial intelligence to accounting in times of Covid -19 and other topics of professional interest.

The quality of subjects and the high-quality speakers addressing these webinars have raised the bar for all our future educational programs. I take this opportunity to thank the speakers for their invaluable time and for enabling us to continue with our education programs for the members at large.



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WIRC Study Group

With a view to promote systematic research, develop expertise and skill sets among members, WIRC has created the following 7 study groups for 2020-21

1. AAS, Ind AS and Financial Reporting Study Group
2. BFSICM Study Group
3. Co-Operatives Study Group
4. Indirect Tax Study Group
5. Insolvency & Bankruptcy Code Study Group
6. ISA & FAFP Study Group
7. RERA Study Group

The study group will hold meetings once in a month and will discuss the provisions and try to ensure that through rigorous deliberations all members in the group are subject experts.

It is suggested that the members shall register themselves and take active participation in activities of the study group.

E-Publications

Apart from the webinars, we have also stepped up the publication of our e-publications on topical subjects relevant to current times. Our e-publication on '*Guide to Working From Home For Every Professional*' and '*Disclosures relating to COVID-19: Compilation from results of listed Companies*' saw immediate downloads in large numbers, attesting to the excellent timing and content of these publications.

Refresher courses for members

In order to update our members with recent changes in requirements of laws and to reduce the challenges that

could be faced by members while discharging their duties, we have planned refresher course on "*Practical issues in Standards of Auditing under Covid 19*" and "*Direct Tax Refresher Course*". Members are requested to register and take benefit of the same.

Representation on Income Tax

With a view to reduce the hardship being faced by taxpayers and members in complying with certain provisions of Income Tax Act, WIRC has made representation to Direct Tax Committee of ICAI for allowing relaxation in provisions and extension of due dates for certain compliances.

Annual Report and Audited Financial Statements

I wish to inform members that WIRC has submitted its audited financial statements for 2019-20 to ICAI. We had a productive year and look forward to keeping our positive track record in the years to come.

Looking ahead, I am thankful that our profession is one of the essential services and as such we have the luxury to continue to work, use our talent and intellect to create a better world for all stakeholders.

Covid cases are rising across the Region. I entreat all members and students to continue to do your stellar work from home. Stay home, stay safe.

Yours sincerely



Lalit Bajaj
Chairman

CA Foundation Day Celebrations ★



Various activities for Members and Students through online portal from

Colours of Life 27th June 2020 to 1st July, 2020

Beginning of 2020 is a Year to forget
End of June will be a Week to Remember!!

It's going to be an evening filled with
Activities, Excitement & Fun-tainment

Come and Celebrate!!
As We Refresh, Renew & Rejuvenate

This CA Day we bring to you A spectrum of Celebrations
Paint your canvas with new **Colours of Life & Vibrations**

More Details on
WIRC Website

Chief Co-ordinators :

CA. Priti Savla - 9321426883
CA. Hitesh Pomal - 9824049402
CA. Balkishan Agarwal - 9377110634
CA. Jayesh Kala - 9820010113

Co-ordinators :

CA Gunjan Somani - 9920113148 | CA Pooja Maloo - 7878977777 | CA Parul Saraf - 9821162477
CA Pritam Sahu - 9057264371 | CA Neha Khandelwal - 9510065540 | CA. Khushbu Jain 98604 04945
CA. Seema Bagla - 9819258331 | CA. Krutika Trivedi 8976422616 | CA. Anand Chandak 9890636700

Forthcoming Events Webinar for Members

| Date & Day | Time & Fees | Topic(s) | Speaker(s) | Regional Council Members (Chief Co-ordinators) |
|---|--|---|---|---|
| 04/06/2020 Thursday 03 CPE Hrs | 2.00 p.m. to 05.00 p.m. ₹ 236/- (Incl. GST) | Virtual CPE Meeting on GST Key note address Issues in real estate sector | CA. Niranjan Hiranandani Co-Founder & MD, Hiranandani Group CA. Naresh Sheth | CA. Arun Anandagiri 8796005669 CA. Umesh Sharma 9822079900 CA. Manish Gadia 9820537986 |
| 07/06/2020 14/06/2020 21/06/2020 28/06/2020 Sundays 12 CPE Hrs | 10.00 a.m. to 01.00 p.m. ₹ 1,000/- (Incl. GST) | Refresher Course on Practical issues on Standards on Auditing under COVID-19 07/06/2020 Sunday Key Note Address- Risk assessment & Audit Evidence "SA 320 Materiality in Planning and Performing an Audit SA 500 Audit Evidence SA 530 Audit Sampling" "SA 505 External Confirmations SA 560 Subsequent Events SA 570 Going Concern" 14/06/2020 Auditor's Responsibilities "SA 210 Agreeing the Terms of Audit Engagements SA 230 Audit Documentation SA 540 Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures" "SA 260 Communication with Those Charged with Governance SA 580 Written Representations SA 610 Using the Work of Internal Auditors" 21/06/2020 Audit Conclusions and Reporting "SA 700 Forming an Opinion and Reporting on Financial Statements SA 705 Modifications to the Opinion in the Independent Auditor's Report SA 706 Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report" "SA 701 Communicating Key Audit Matters in the Independent Auditor's Report SA 720 The Auditor's Responsibilities Relating to Other Information SA 600 Using the Work of Another Auditor" 28/06/2020 SAs and industry specific considerations Manufacturing & retail Infrastructure & services | CA. Mukund Chitale Past President, ICAI CA Hemlata Jhawar CA Chirag Doshi CA Padmashree Crasto CA Paresh Clerk CA N. Jayendran CA Pritesh Amin CA Sandeep Shah CA Kaushik C. Patel | CA. Vishal P. Doshi 9824059901 CA. Sushrut Chitale 9821112904 CA. Chintan Patel 9099921163 CA. Abhijit Kelkar 9422126890 |

| Date & Day | Time & Fees | Topic(s) | Speaker(s) | Regional Council Members (Chief Co-ordinators) |
|---|---|---|---|---|
| 05/06/2020 Friday 03 CPE Hrs | 2.00 p.m. to 05.00 p.m. ₹ 236/- (Incl. GST) | Virtual CPE Meeting on MSME & Govt Incentives under Various Schemes Regn under MSME & it's benefits, Recent stimulus package for MSMEs, Package Scheme of Incentives (PSI)-2019 of Maharashtra & filing of claim under PSI-2019 Credit linked Capital Subsidy Scheme (CLCSS), Food & Agro Processing Policy of Govt of India. | CA. Julfesh Shah CA. Anuj Chandak | CA. Anand Jakhotiya 9325444644 CA. Yashwant Kasar 9822488777 CA. Balkishan Agarwal 9377110634 |
| 06/06/2020 Saturday 03 CPE Hrs | 2.00 p.m. to 5.00 p.m. ₹ 236/- (Incl. GST) | Virtual CPE Meeting on Income Tax Practical guide to handling Income Tax assessments including E-assessments Settlement commission law and procedure | CA. Chetan Karia Shri H. C. Jain | CA. Drushti Desai 9820335923 CA. Murtuza Kachwala 9833015334 CA. Jayesh Kala 9820010113 |
| 09/06/2020 Tuesday 03 CPE Hrs | 2.00 p.m. to 05.00 p.m. ₹ 236/- (Incl. GST) | Virtual CPE meeting on Stressed Assets Resolution Finance Minister announces 1 year suspension of insolvency proceedings, opens new avenues such as: 1) Restructuring of debt under RBI guidelines 2) Stress Resolution through Change of Ownership 3) One time settlement (OTS) IBC Journey so far in light of important decisions of judiciary:- Way forward on ongoing insolvencies: Question & Answer Session | CA. Mahendra Khandelwal CA. Vandana Garg | CA. Priti Savla 9321426883 CA. Vimal Agrawal 9320617447 CA. Shilpa Shinagare 9820053395 |
| 13/06/2020 Saturday 03 CPE Hrs | 2.00 p.m. to 05.00 p.m. ₹ 236/- (Incl. GST) | Virtual CPE Meeting on Representaion and drafting for appellate processes under Income Tax Act Law and process of appeals: Drafting of appeals - practical guide Practical guide to appearance before appellate authorities | CA. Yogesh Thar CA. Kinjal Bhuta CA. Chetan Karia | CA. Jayesh Kala 9820010113 CA. Rakesh Alshi 9819427242 CA. Umesh Sharma 9822079900 |
| 17/06/2020 Wednesday 03 CPE Hrs | 2.00 p.m. to 05.00 p.m. ₹ 236/- (Incl. GST) | Virtual CPE Meeting on Startup The Indian startup Story: Past, Present and Future Tax and Regulatory Considerations specific to Startups Startup Roundtable | Dr. Apoorv Ranjan Sharma CA. Eshank M. Shah Moderated by CA. Anuj Golecha | CA. Kamlesh Saboo 9819195333 CA. Arpit Kabra 9819007027 CA. Vikash Jain 9327715892 |
| 20/06/2020 27/6/2020 04/7/2020 11/7/2020 & 18/7/2020 Saturdays 15 CPE Hrs | 2.00 p.m. to 05.00 p.m. ₹ 1,000/- (Incl. GST) | Direct Tax Refresher Course 20/6/2020 New Scheme of Corporate Taxation including manufacturing companie, start ups, others and MAT Relaxatiions under Income Tax Law in view of COVID 19 27/6/2020 Reading Tax Treaties in the Era of MLI Issues relating to taxation of dividends 4/7/2020 Equalisation Levy and E-commerce Taxation of Real Estate Transaction 11/7/2020 International Tax Planning in view of GAAR M&A in view of COVID Taxation of Ex-pats in India (both income in and outside India 18/7/2020 Amendments to provisions relating to Charitable Entities Recent Important Judicial decisions | CA. Gautam Doshi Past Chairman, WIRC Eminent Speaker CA. T.P. Ostwal CA. Anish Thacker CA. Yogesh Thar CA. Jagdish Punjabi Eminent Speaker CA. Ketan Dalal CA. Milin Mehta CA Shariq Contractor Adv. Chythanya K. K. | CA. Jayesh Kala 9820010113 CA. Rakesh Alshi 9819427242 CA. Drushti Desai 9820335923 CA. Arpit Kabra 9819007027 |

Register for the DTRC & Get a physical copy of the WIRC Reference Manual 2020-21 Free

DIRECT TAX – LAW UPDATE
CA. Haresh P. Kenia, CA. Deepak Lala



CBDT REVISING RETURN FORMS TO ENABLE TAXPAYERS AVAIL BENEFITS OF TIMELINE EXTENSION DUE TO COVID-19

PRESS RELEASE, DATED 19-4-2020

CBDT said that due to outbreak of Covid-19, the Government has extended various timelines under the Income-tax Act, 1961 vide Taxation and Other Laws (Relaxation of certain provisions) Ordinance, 2020. Accordingly, the time for making investment/ payments for claiming deduction under Chapter-VIA of IT Act which includes Section 80C (LIC, PPF, NSC etc.), 80D (Medi claim), 80G (Donations), etc. for FY 2019-20 has also been extended to 30th June 2020. Also, the dates for making investment/construction/ purchase for claiming roll over benefit in respect of capital gains under sections 54 to section 54GB has also been extended to 30th June 2020. Therefore return forms are being revised to facilitate reporting of the transactions of the relief period. Once the revised forms are notified, it will further necessitate the consequential changes in the software and return filing utility. Hence, the return filing utility after incorporating necessary changes shall be made available by 31st May, 2020 to avail benefits for FY 2019-20.

SECTION 119, READ WITH SECTION 44AB OF THE INCOME-TAX ACT, 1961 – CBDT - INSTRUCTION TO SUBORDINATE AUTHORITIES - DEFERMENT OF REPORTING REQUIREMENT UNDER CLAUSE 30C AND CLAUSE 44 OF TAX AUDIT REPORT IN FORM NO. 3CD IN VIEW OF GLOBAL PANDEMIC DUE TO COVID-19

CIRCULAR NO. 10/2020 [F. NO. 370142/9/2018-TPL], DATED 24-4-2020

in view of the Global Pandemic due to COVID-19 virus, the requirement to report the details of GST and General Anti-Avoidance Rules (GAAR) under clause 30C and clause 44 in the Tax Audit Report shall be kept in abeyance till 31st March 2021.

NEW PROCEDURE FOR REGISTRATION, APPROVAL, ETC. OF CERTAIN ENTITIES DEFERRED TO 1-10-2020

PRESS RELEASE, DATED 9-5-2020

In view of the unprecedented humanitarian and economic crisis, due to the outbreak of novel corona virus (COVID-19) and consequent lockdown, the CBDT has decided that the implementation of new procedure for approval/ registration/notification of certain entities shall be deferred to 1st October, 2020. Accordingly, the entities approved/ registered/ notified under section 10(23C), 12AA, 35 and 80G of the Income-tax Act, 1961 (the Act) would be required to file intimation within three months from 1st October, 2020, i.e., by 31st December, 2020. Further, the amended procedure for approval/ registration/ notification of new entities shall also apply from 1st October, 2020.

SECTION 6 OF THE INCOME-TAX ACT, 1961 - RESIDENTIAL STATUS - CLARIFICATION OF RESIDENCY UNDER SAID SECTION

CIRCULAR NO. 11 OF 2020 [F.NO.370142/18/2020-TPL], DATED 8-5-2020

Due to declaration of the lockdown and suspension of international flights owing to outbreak of Novel Corona Virus (COVID-19), the CBDT has decided that for the purposes of determining the residential status under section 6 of the Act during the previous year 2019-20 in respect of an individual who has come to India on a visit before 22nd March, 2020 and:

- (a) has been unable to leave India on or before 31st March 2020, his period of stay in India from 22nd March, 2020 to 31st March, 2020 shall not be taken into account; or
- (b) has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after 1st March, 2020 and has departed on an evacuation flight on or before 31st March, 2020 or has been unable to leave India on or before 31st March, 2020, his period of stay from the beginning of his quarantine to his date of departure or 31st March, 2020, as the case may be, shall not be taken into account; or
- (c) has departed on an evacuation flight on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to his date of departure shall not be taken into account.

Further as the lockdown continues during the Financial Year 2020-21 and it is not yet clear as to when international flight operations would resume, a circular excluding the period of stay of these individuals up to the date of normalisation of international flight operations, for determination of the residential status for the previous year 2020-21 shall be issued after the said normalisation.

INCOME TAX RELIEF MEASURES ANNOUNCED BY FINANCE MINISTER ON 13TH MAY 2020

Due to ongoing Covid 19 lockdown, Hon Finance Minister has announced following income tax reliefs:-

1. All the pending income tax refunds to charitable trusts, non-corporate businesses and professions including proprietorship, partnership and LLPs and co-operatives shall be issued immediately.
2. The Tax Deducted at Sources (TDS) rates to all non-salaried specified payments made to residents and Tax Collection at Source (TCS) rates for the specified receipts will be reduced by 25% of the specified rates for the remaining period of financial year 2020-21 i.e. from 14th May 2020 to 31st March 2021.
3. The due date of all income tax returns for the Assessment Year 2020-21 will be extended to 30th November, 2020. Similarly tax audit due date will be extended to 31st October, 2020.
4. Date of assessments getting barred on 30th September 2020 extended to 31st December 2020 and those getting barred on 31st March 2021 will be extended to 30th September, 2021.
5. Period of Vivad se Vishwas Scheme for making payment without additional amount will be extended to 31st December, 2020.

DIRECT TAX – RECENT JUDGMENT

CA. Paras K. Savla, CA. Hemant R. Shah

**Stay of Demand**

While grant stay Hon. ITAT has issued instructions for utilisation of sums. It order that any amount available to the assessee, as a result of this stay order and as a result of garnishee proceedings being lifted, will be first used for making payments of overdue and current wages payable to the labourer working with the assessee, and for making payment of overdue and current salaries to its employees. The amount available, after this exercise, will be used for the purpose of carrying out construction activity as necessary for providing quarantine facilities, as directed by the Collector. Any surplus amount thereafter will be used for construction activities of the business. The assessee will give an undertaking to this effect in writing. Hearing of stay of demand was held through video conference. *Pandhes Infracon (P.) Ltd. V. ACIT* [2020] 116 taxmann.com 376 (Mumbai - Trib.)

S.14A No disallowance if no exempt income earned

No disallowance under section 14A could have been made when assessee has no earned any exempt income. *DCIT v JSW Ltd.* [2020] 116 taxmann.com 565 (Mumbai - Trib.)

S.28 Provision for diminution in closing stock

The provision for diminution in value of stock-in-trade has been made out of the trading account or within the trading account. If such a provision is made outside the trading account (only while computation of income) then same may not be allowable. *ACIT v. PNB Gilts Ltd.* [2020] 116 taxmann.com 418 (Delhi - Trib.)

S. 32 Depreciation on cost of developing Golf Course

Depreciation on cost of developing golf course on land was allowed, considering it as plant and machinery *Landbase India Ltd.v. ACIT* [2020] 116 taxmann.com 574 (Delhi - Trib.)

S. 43B Deduction of Leave Salary on payment basis constitutional valid

To wit, the liability in lieu of tax, duty, cess, bonus, commission etc. also arise in the present as per the mercantile system, but assessee used to defer payment thereof despite claiming deductions there against under the guise of mercantile system of accounting. Resultantly, irrespective of the category of liability, such deductions were regulated by law under the aegis of Section 43B, keeping in mind the peculiar exigencies of fiscal affairs and underlying concerns of public revenue. A priori, merely because a certain liability has been declared to be a present liability by the Court as per the prevailing enactment, it does not follow that legislature is denuded of its power to correct the mischief with prospective effect, including to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to new regulatory measures. Strictly speaking, the Court cannot venture into hypothetical spheres while adjudging constitutionality of a duly enacted provision and unfounded limitations cannot be read into the process of judicial review. A priori, the plea that clause (f) has been

enacted with the sole purpose to defeat the judgment of this Court is misconceived - *UOI v. Exide Industries Ltd.* [2020] 116 taxmann.com 378 (SC)

S. 68 Cash Credit

At the time of assessment, the assessee had failed to produce any explanation or evidence in support of the entries regarding purchases made from unregistered dealers. In the penalty proceedings, however, the assessee produced affidavits of 13 unregistered dealers out of whom 12 were examined by the Officer. The Officer recorded their statements and did not find any infirmity therein including about their credentials. The dealers stood by the assertion made by the assessee about the purchases on credit from them; and which explanation has been accepted by the appellate authority. Appellate Authority also recorded a clear finding of fact that there was no concealment of income or furnishing of any inaccurate particulars of income by the assessee. Accordingly the addition made by the Officer under Section 68 of the 1961 Act, towards cash credit amount shown against the names of concerned unregistered dealers was set aside. *Basir Ahmed Sisodia V. ITO* [2020] 116 taxmann.com 375 (SC)

Principles of Interpretation

Indubitably, when the Court examines the validity of a provision, its primary concern is the literal text of the provision. It is so because the legislature speaks through the text and as long as it is not speaking in an equivocal manner, there is limited space for the Court to venture beyond the text. This constitutes the first test of interpretation, often termed as the literal interpretation. If the text of the provision is unambiguous, the legislative intent gets coalesced and is epitomised therefrom.

When the textual element of the provision reeks of ambiguity and is susceptible to multiple meanings, the Court enters into a proactive examination to find out the real meaning of the provision. This proactive examination by the Court offers multiple avenues and methods to achieve the ultimate purpose of interpretation. Adverting to the express objects and reasons may be useful for limited purpose to understand the surrounding circumstances at the time of enactment. The Court is not bound by such external elements. Therefore, the presence or absence of objects and reasons has no impact upon the constitutional validity of a provision as long as the literal features of the provision enable the Court to comprehend its true meaning with sufficient clarity. *UOI v. Exide Industries Ltd.* [2020] 116 taxmann.com 378 (SC)

INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Ronak Soni

**Shri Paul Xavier Antony samy vs. The ITO, International Taxation 2(1) [TS-138-ITAT-2020(CHNY)] dated 28th February, 2020****Facts:**

- The individual assessee stayed in India for 151 days before leaving for employment in Australia, which qualified him to acquire the status of "Non-resident".

- In the return filed, the assessee had taken the benefit of Article 15 of India-Australia DTAA and claimed the salary income received for services rendered in Australia as non-taxable in India.
- However, the salary income was credited in the bank account in India and therefore ITO opined that the same will be liable to be taxed in India in terms of sec 5(2)(a) of the IT Act.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether salary received by assessee in Indian bank account from abroad would be subject to tax in India?

Held:

- ITAT stated that there was no dispute that the assessee was a resident of Australia and non-resident in India during the year under consideration and hence was entitled to the benefit of exemption under Article 15(1) of India-Australia DTAA.
- Further, ITAT also noted that as per provisions of section 9(1)(ii), "salary income would be deemed to accrue or arise in India, only if it is earned in India in respect of services rendered in India".
- Relying on the ruling in Prahlad Vijendra Rao, Avtar Singh Wadhwan and Sumanabandyopadhyay and Anr, ITAT observed that the salary income earned from services rendered in Australia was liable to be taxed only in Australia and not in India.
- Accordingly, ITAT ruled in favour of the assessee.

Sreenivasa Reddy Cheemalamarri vs. Income-tax Officer, International Taxation -1 [TS-158-ITAT-2020(HYD)] dated 05th March, 2020**Facts:**

- The assessee, a non-resident individual, employed in Austria, received his salary net of TDS from the employer.
- While filing his return, the assessee claimed double taxation relief u/s 90 of the IT Act and declared Nil income and further claimed refund of TDS.
- However, AO brought to tax the salary income and foreign allowance received by the assessee on the grounds that the same was received in India and therefore was liable to be taxed in India.
- AO also stated that as the assessee was unable to produce Tax Residency Certificate of Austria, details of bank account outside India and other supporting evidences required by the Act, he was not eligible to claim exemption under India-Australia DTAA.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the assessee was eligible to claim the benefit of India-Australia DTAA in absence of Tax Residency certificate in respect of salary and foreign allowances received in India?

Held:

- ITAT observed that the assessee was unable to procure the requisite certificate from Austria for understandable reasons and therefore treated the same as "impossibility of performance".
- ITAT stated that the taxpayer cannot be obligated to do impossible task and be penalized for the same.
- Further, ITAT observed that if the assessee provided sufficient circumstantial evidence in such cases, the requirement of section 90(4) ought to be relaxed.
- ITAT also noted that in the previous year relevant to AY 2014-15, the assessee qualified as non-resident in India and tax resident in Austria.
- Moreover, ITAT also noted that by virtue of DTAA and the IT Act, there is no bar in law for receiving the money in India.
- Relying on the ruling of Sunil Chitranjan Muncif and Prahlad Vijendra Rao, ITAT directed AO to delete the tax on salary income and foreign allowances earned by the assessee outside India.
- Accordingly, ITAT ruled in favour of the assessee.

Union of India & Anr. Vs. U.A.E. Exchange Centre [TS-215-SC-2020] dated 24th April, 2020**Facts:**

- The assessee, being a limited company incorporated in UAE, is engaged in offering remittance services for transferring amounts from UAE to various places in India.
- The assessee operates through a Liaison office (LO) in India and performed activities like
 - downloading particulars of remittances through electronic media,
 - printing cheques/drafts drawn on banks in India.
- The entire expenses of LO were met exclusively out of funds received from UAE through normal banking channels and no commission or fees were charged by LO for its activities.
- HC quashed the AAR ruling which held that income accrued in India from the activities conducted by LO.
- Aggrieved, the Revenue filed an appeal with the Supreme Court.

Issue:

- Whether the activities conducted by LO are 'preparatory' or 'auxiliary' in character?
- Whether PE will be attributed under India-UAE DTAA?

Held:

- SC held that activity carried on by the LO in India did not contribute to earning of profits, directly or indirectly, by the assessee in UAE.
- The entire transaction was concluded in UAE and the activities performed by LO in India was only supportive

Law Updates

of the transaction carried on in UAE.

- SC held that the activities conducted by LO were merely 'preparatory' or 'auxiliary' in character in terms of Article 5(3)(e) of DTAA.
- SC thus held that the fixed place of business of the non-resident assessee in the form of LO would not qualify within the definition of PE in terms of Articles 5(1) and 5(2) of the DTAA.
- Replying on the SC ruling in Morgan Stanley and Co. Inc and E-funds IT Solution, SC held that the non-resident assessee does not constitute PE under India – UAE DTAA.
- Accordingly, SC rules in favour of the assessee.

FEMA

CA. Manoj Shah, CA. Sudha G. Bhushan, CA. Mitesh Majithia



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

1. 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.
2. 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>

CORPORATE LAWS

CA. Premal Gandhi, CA. Rahul Joglekar



FAQs on Companies Fresh Start Scheme (CFSS), 2020 And LLP Modified Settlement Scheme, 2020. Press Release, Dated 21-5-2020

Relaxation in Timelines for Compliance with Regulatory Requirements Vide Circular No: SEBI/HO/MIRSD/DOP/CIR/P/2020/82 Dated 15-5-2020.

Relaxations relating to Procedural Matters - Takeovers And Buy-Back Circular No. SEBI/CIR/CFD/DCR1/CIR/P/2020/83, Dated 14-5-2020

Relaxation From Applicability of SEBI Circular Dated October 10, 2017 On Non-Compliance With Minimum

Public Shareholding (Mps) Requirements Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/81, Dated 14-5-2020

Additional Relaxation, in View of Covid-19 Pandemic, In Relation To Compliance With Certain Provisions Of Sebi (Listing Obligations And Disclosure Requirements) Regulations 2015 Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/79 Dated 12-5-2020

Relaxations Relating To Procedural Matters - Issues And Listing Vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78, Dated 6-5-2020

GOODS AND SERVICES TAX

CA. Rajiv Luthia



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 file 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

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CBIC vide notification 42/2020-CT dated 5th May, 2020 has extended the due-date for filing GSTR 3B for registered person whose principal place of business is in following union territory as mention in corresponding column

| Sr. No. | U n i o n Territory | Month | Due-date |
|---------|---------------------|----------------------------------|------------------|
| 1. | Jammu & Kashmir | November, 2019 to February, 2020 | 24th March, 2020 |
| 2. | Ladakh | November, 2019 to December, 2019 | 24th March, 2020 |
| 3. | Ladakh | January, 2020 to March, 2020 | 20th May, 2020 |

CBIC vide notification 43/2020-CT dated 16th May, 2020 appoints 18th May, 2020 as date on which provision of section 128 of Finance Act, 2020 shall come into force.

Through said notification, amendment proposed in of section 140 of CGST Act, 2017 shall come into effect retrospectively from 1st July, 2017.

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

TRANSFER PRICING

CA. Bhavesh Dedhia, CA. Bhavya Goyal,
CA. Shazia Khatri



Case Law Update

(a) TP adjustment on account of AMP expenses cannot be made if the revenue fails in showing that there existed any international transaction in respect of such transaction; and (b) Resale Price Method ('RPM') most appropriate in case of distributor companies not performing any value added functions – Acer India Private Limited vs. DCIT [2020-TII-135-ITAT-BANG-TP]

The Assessee is engaged in the business of distribution of laptop, monitors, projector, etc. imported from Associated Enterprise ('AE'). The Assessee had incurred Advertisement Marketing and Promotion ('AMP') expenses and part of the same was reimbursed by its AE. The Transfer Pricing Officer ('TPO'), however, took the view that the Assessee's AMP expenses is more than the average amount spent by other comparable companies and accordingly made adjustment in respect of the said transaction. Further, the Assessee had benchmarked its trading activity by adopting

RPM as the most appropriate method. The TPO, however, took the view that the Assessee is not a mere distributor, but is doing value added services in the form of protecting trademark of AE in India by incurring AMP expenses. The TPO accordingly rejected RPM and adopted Transaction Net Margin Method ('TNMM') and proposed an upward adjustment. Dispute Resolution Panel ('DRP') affirmed the view of the TPO.

On appeal, the Hon'ble Tribunal observed as under:

- Adjustment in respect of AMP expenses:
 - The revenue needs to establish on the basis of tangible material the existence of international transaction before undertaking benchmarking of AMP expenses.
 - Bright Line Test has no mandate under the Act and accordingly, the same cannot be resorted to for the purpose of ascertaining if there exists an international transaction of brand promotion services between the Assessee and the AE.
 - In the instance case, since no material has been brought on record to show the existence of International transaction, TP adjustment on account of AMP expenses is unjustified.
- Most Appropriate Method for trading activity
 - Major portion of AMP expenses consists of trade discounts, sales commission and scheme discounts. The actual sales promotion and advertisement expenses constitute only 1.38% of the total sales.
 - Accordingly, the contention of the TPO that the Assessee is doing value added services in the form of protecting trademark of AE in India by incurring AMP expenses is not correct.
 - When there is no value addition and the imported products are sold as is, then RPM is the most appropriate Method.

An arm's length price needs to be determined based on 'Most appropriate Method' considering facts of the case and factors under Rule 10C(2) of the Rules. There cannot be a hierarchy of methods or preference of direct methods over indirect methods – Gulbrandsen Chemicals Private Limited vs DCIT (ITA.No.1215 and 1216/Ahd/2017)

The Assessee is engaged in the business of manufacturing of chemicals. The Assessee sold finished goods to AE as well as non-AE. In the Transfer Pricing study, the Assessee adopted internal TNMM as the most appropriate method. The TPO rejected internal TNMM and instead applied CUP method to benchmark the transaction. The TPO compared the average FOB price per unit charged to AE vis-à-vis those charged to non-AE and proposed an upward TP adjustment. CIT(A) largely upheld the approach of the TPO.

On appeal, Hon'ble Tribunal deleted the TP adjustment following coordinate Bench ruling in Assessee's own case in preceding year wherein CUP method was rejected and Internal TNMM was accepted. In doing so, Hon'ble Tribunal upheld the following principles:

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- When comparing the prices of products sold to AE vis-à-vis independent parties, it is not sufficient to compare the prices de hors the economic circumstances in which the respective AE and non AE transactions take place.
- Factors specified under Rule 10C(2) should be considered when determining suitability of a method of determination of ALP in a particular fact situation.
- In the instance case, there were crucial variation between AE and non-AE transaction in the payment term, volume sold, impact of other related party transactions, etc. and accordingly, comparability under CUP ceases to be relevant. Further, no reliable and accurate adjustment can be made in respect of these variations.

Profit Split Method cannot be considered as most appropriate method for benchmarking Royalty payment when the Assessee only leverages on the use of technology from the AE and does not contribute any unique intangibles to the transaction. - Toyota Kirloskar Auto Parts Pvt. Ltd., vs. DCIT [IT(TP)A No.1915/Bang/2017 & IT(TP)A No. 3377/Bang/2018]

The Assessee is engaged in the business of manufacture of automotive front axle, rear axle and propeller shaft. The AE provided the Assessee technical know-how, which includes process know-how, designs & drawings to manufacture transmission units and axles & propellers, shafts and engine assembly. The Assessee paid Royalty (5% on sales) to the AE for using the said technology / technical know-how. The Assessee claimed this transaction was closely linked to the manufacturing operation and accordingly TNMM was applied as most appropriate method, aggregated with other transaction.

The TPO, however rejected TNMM and adopted Profit Split Method ('PSM') as most appropriate method to benchmark payment of Royalty. In doing so that TPO alleged that the useful economic life of bundle of technologies transferred for start-up and operationalizing the whole business has lapsed. The Royalty now is being paid for technical upgrades. As per the TPO, the ALP of such technology cannot be assessed on net margin level analysis. Further, CUP cannot be used due to lack of relevant information. The TPO proceeded to apply PSM as under and made a TP adjustment:

| | |
|---|-----------------|
| Net Profit Margin of the Assessee (A) | 7.87% |
| Net Profit Margin of Comparable Companies (B) | 5.89% |
| Excessive Profits (C= A-B) | 1.98% of sales |
| Royalty Payable considering 50:50 split between Assessee and AE | 0.991% of sales |

The DRP upheld the approach of the TPO. Aggrieved, the Assessee filed an appeal before Hon'ble Tribunal.

Hon'ble Tribunal noted that in earlier years the co-ordinate bench preferred TNMM over CUP (upheld by HC), however in AY 2013-14 for the first time Revenue sought to apply PSM on the ground that economic life of the technology has

expired. Hon'ble Tribunal observed that there was no basis for the TPO / DRP's conclusion that the useful economic life of the technology would be only 5 years. Further, passage of time cannot be the basis to discard TNMM. Rejecting PSM, Hon'ble Tribunal observed "In the present case the Assessee leverages on the use of technology from the AE and does not contribute any unique intangibles to the transaction."

Other Updates:

The Central Board of Direct Taxes of India vide Notification No. 23/2020/F.No. 370142/31/2019-TPL dated 6 May 2020 has notified amended Rule 44G of the Rules dealing with application and procedure for giving effect to Mutual Agreement Procedure ('MAP'). Rule 44H of the Rules has been omitted pursuant to such amendments.

The amended Rules inter-alia specifies the Competent Authority of India shall call for relevant records and additional details or hold discussions with such authorities or Assessee or representative, to understand the actions taken by the income-tax authorities; the resolution arrived at shall be communicated to the Assessee in writing and the Assessee acceptance or non-acceptance of the resolution in writing to the Competent Authority in India within thirty days of receipt of the communication. The amended Rule also specifies that the Competent Authority shall endeavor to arrive at a mutually agreeable resolution within an average time period of 24 months. CBDT has also revised Form 34F for making application to Competent Authority for invoking MAP.

GST-ADVANCE RULINGS

CA. C. B. Thakar, CA. Jinal Maru



Case: M/s MEGHA AGROTECH PVT LTD [2020-4-TMI-691] (KARNATAKA AAR)

The applicant is in the business of manufacturing and supplying of LLDPE pipes and micro irrigation system and its accessories. They received subsidy amount from the Horticulture / Agriculture / Sericulture Department of Government of Karnataka under PMKSY scheme on behalf of the farmers, for supplying of micro irrigation system to farmers. They intend to know whether subsidy received shall be excluded from the value of their supply to the farmers.

The AAR held that the receipt of any amount received by the farmer from the Government Department has no bearing on the price or value of the supply of goods and/or services by the applicant. The Government Department makes payment to the applicant only on behalf of the farmer. The price is independent of the assistance amount and hence would not be covered under clause (e) of sub-section (2) of section 15 of the CGST Act.

Case: SRI TAGHAR VASUDEVA AMBRISH [2020-TIOL-84] (KARNATAKA AAR)

Applicant along with 4 others collectively have let out a residential complex to M/s D Twelve Spaces Pvt. Ltd. which is engaged in the business of providing affordable residential accommodation to students on a long term basis (from 3 to 11 months). M/s D Twelve Spaces P Ltd. is engaged in providing

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a host of other services such as maintenance, food, WiFi etc. generally called as a Paying Guest accommodation. It is the contention of the applicant that 'services by way of renting of residential dwelling for use as residence' are exempt from GST.

The AAR held that each of the lessor owns a part of the property and they have pooled up their properties and then leased it to the company contract of the applicant group with the company indicates that what is given is an immovable property consisting of only rooms with attached toilets as per the layout of the leased premises annexed to the lease agreement and does not fit into the meaning of a dwelling which means a house. They are like hotel rooms and the entire leased premises of 42 rooms, which can by no imagination be termed as residential dwelling. Therefore, exemption prescribed under Entry no. 13 of 9/2017-ITR cannot be extended and the lessors (as an entity) have to charge GST while issuing the invoice for the lease services to M/s D Twelve Spaces P Ltd

Case: GURUKRUPA HOSPITALITY SERVICES [2020- 4-TMI- 595] (GUJARAT AAR)

The applicant have entered into an agreement with one of their client for running of canteen and its total affairs including supply of snacks, tea, lunch and dinner to its employee and workers. The applicant seeks to know the rate of tax for his transaction.

The AAR held the taxability till and post 25th July,2018 considering the amendments in notification 11/2017-CTR under entry 7. It is held that till 25th July,2018, the nature of service provided by the applicant is that of "outdoor catering service" as the applicant was engaged for running of the canteen where the rates of food and menu was pre decided by the client/ recipient. Thus, taxable under entry 7(v) of said notification attracting GST@ 18%.

However, w.e.f. 26th July,2018 explanation 1 was inserted in Sr.7(i) & the entry relating to composite supply of food and drinks in restaurant, mess, canteen eating joints and such supplies to institutions (Educational, office, factory, hospital) on contractual basis is rationalize at GST rate of 5% and made it clear that the scope of outdoor catering under 7(v) is restricted to supplies in case of outdoor/indoor functions that are event based and occasional in nature. Therefore, the applicant services shall fall under entry 7(i) and attract GST @ 5%.

CO-OPERATIVE HOUSING SOCIETIES

CA. Ramesh Prabhu, CA. Mukul Varma



Cooperative Commissioner vide circular dated 24th April, 2020, has allowed the Cooperative Societies to conduct the monthly meetings of the managing Committee digitally

Cooperative Commissioner vide circular dated 13th May, 2020, has allowed the societies to undergo the training u/s 24A of the MCS Act, 1960 digitally.

The cooperative Commissioner had issued a circular 4th May, 2020 regarding the appointment of auditors, completing

the audit, complying with the O form and scrutiny of audit report etc and advised to comply with the same.

Circular dt. 24.04.2020 issued by Commissioner of Co-operative Societies, Maharashtra State – Pune.

MAHARERA
CA. Ashwin Shah



EXTENSION OF TIMELINE OF COMPLETION OF PROJECT :-

Hon'ble Finance Minister during the Press Conference dt 13th May 2020 have suggested certain relief measures for Real Estate Sector :-

Ministry of Housing and Urban Affairs will make recommendation to State Government and UTs to further instruct various Real Estate Regulatory Authority to announce relief measures.

The outbreak of COVID 19 shall be treated as Force Majeure for the purpose of extension of timeline of the completion of the project.

Regulatory Authorities may on Suo Moto basis without inviting any application , automatically revise the timeline of completion of the project by six month

However, benefit of automatic extension of timeline of completion of the project will be available to those project whose project completion date expires on or after 25th March , 2020.

Revised Certificate of Project Registration shall be generated and uploaded by Regulatory Authorities mentioning revised date of project completion by adding six month period therein.

Regulatory Authorities may further grant extension of three month as per merit of the case on application therefor.

It is also recommended to extend the timeline of various statutory compliances by Promoter on con current basis.

Maharashtra , Rajasthan and Gujarat Regulatory Authorities have already adhered to the instruction of State Government and issued necessary orders in this regard for extension project completion timeline by six month. However, MahaRera has further granted relief of force majeure period for interest and compensation payable u/s 12,14,18, and 19 of the Act. Further, order dated 18th May 2020 of MahaRera does not specify that automatic extension of timeline for completion of project by six month shall only be available to those project whose timeline were expiring on or after 25th March , 2020.

Representations are made by the group of Developers before Central Government to keep on hold all proceedings of dispute mechanism for certain period and the same is not yet disposed of by the Central Government.

The relief measures suggested by Central Government for extension of timeline of project completion by six month may not be sufficient as Developer community perceives

that impact of halt of economic activities due to lockdown and reduction in purchasing power of the people will impact cash flow of the Real Estate Sector for longer period.

It is further represented by the Developers Association that all the section namely Section 12,14,18,19, which entitles allottees to claim either refund of monies with interest and compensation or interest for delayed period of possession, shall be removed from Real Estate (Regulation & Development) Act, 2016 looking at the cash crunch and other impacts originating from COVID 19.

However, allottees who have availed Housing loans are though allowed certain moratorium period for deferring EMI but no relief has been granted for waiver of interest component for the period which are covered by COVID 19.

The litigation on this front is likely to increase as the allottees would be aggrieved for the reason of non waiver of interest on Housing loan and grant of relief to developer for extension of timeline for the purpose of interest and compensation payable u/s 12,14,18, and 19 of the Act.

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Viral Doshi



The change in the definition of MSMEs

This correctly is an important amendment/announcement from the IBC standpoint. (broaden the precise scope of MSME)

The low threshold in the stringent definition of MSME has inevitably aroused a terrible fear among the MSMEs for securing any available benefits to MSMEs

In direct order to adequately provide the major relief to the MSME sector in such a pandemic situation, the government has carefully revised the operational definition of MSMEs

Existing and revised definition of MSMEs

| Existing MSME Classifications | | | |
|--|---|---|--|
| Criteria: Investment in Plant & Machinery or equipment | | | |
| Classification | Micro | Small | Medium |
| Mfg. Enterprises | Investment < INR 25 Lac | Investment < INR 5 cr. | Investment < INR 10 cr. |
| Services Enterprise | Investment < INR 10 Lac | Investment < INR 2 cr. | Investment < INR 5 cr. |
| Revised MSME Classification | | | |
| Composite Criteria: Investment and Annual Turnover | | | |
| Classification | Micro | Small | Medium |
| Manufacturing and services | Investment < INR 1 cr. And Turnover < INR 5 cr. | Investment < INR 10 cr. And Turnover < INR 50 cr. | Investment < INR 20 cr. And Turnover < INR 100 cr. |

In the specific case of MSME, the provisions enumerated under section 29A - Persons not eligible to be resolution applicants (clause c and h) would be inapplicable

It is pertinent to note that Section 240A of IB Code had already introduced by the government earlier before the changed in the operational definition of MSME

In other specific words, in case, the CD is an MSME, which typically relates to such promoters who have become NPA can also bid for their bankrupt companies and resolution applicants for MSME including the promoter of such MSME can now also bid even though they have provided the personal guarantees to creditors that have been invoked by the lenders.

However, the government of India is likely to suspend the operational section of IB Code i.e. section 7,9 and 10 (Initiation of corporate insolvency resolution process by financial creditor, operation creditors and corporate debtor respectively) for a specific period of one year but yet to typically receive a copy of the ordinance to this profound effect.

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