Tax INFORM

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DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

Shri Amit Murlidhar Kamthe (ITA No.699/PUN/2016) / [TS-395-ITAT-2021(PUN)]

No capital gains could be charged on development agreements (DAs) where title of land was itself in dispute and possession of such land was not transferred to the Developer.

Facts: The assessee had executed two DAs for certain land for a stated consideration and had received part consideration under these DAs. However, no capital gains were offered to tax by the assessee on such transfer.

While entering into the agreement with the Developer, the title of the land was under dispute with the State Government under The Urban Land (Ceiling and Regulation) Act, 1976 ('ULC Act') as the assessee and co-owner of the land was declared as holder of excess land and an appeal against the same was pending adjudication. ULC Act was repealed in the year 2010 and the name of Maharashtra Government (Govt.) was thereafter removed from the 7/12 extract. Subsequently, a certain portion of the land was sold by the assessee by way of a registered sale deed. Thereafter, the initial agreements with the Developer were cancelled and the assessee sold the remaining property to some other party.

Revenue's contentions: As per the Assessing Officer (AO), since the DAs were duly registered with the Registrar and part consideration was received by the assessee, it had transferred the land rights to the Developer and accordingly u/s 53A of Transfer of Property Act (TPA Act) r.w. sec 2(47)(v) of the Income-tax Act, 1961 (Act), there was a 'transfer'.

However, on submission of a copy of cancellation agreements before the CIT(A), it deleted the additions and held the issue in the assessee's favour.

Issue before the Tribunal: The issue before the Tribunal was whether the DAs vis-à-vis the disputed land constituted a 'transfer' under the Act.

Tribunal's Ruling: The Tribunal held as follows:

- The land was under litigation while entering into the agreement with the Developer and the

excess land was recorded in the name of the Govt. Hence it could not have been validly transferred to the Developer.

- The DAs entered were subsequently cancelled.
- The Developer was allowed to enter the property only as a Licensee. Further, when the title to a part of such property was itself in dispute at the time of the DAs, the question of allowing the Developer possession of the property as its owner did not arise.
- The transaction fell through when the lands were eventually sold.
- As there was no transfer of possession, invoking of section 53A r.w. sec. 2(47) of the Act, automatically fails.
- Reliance was placed on the Hon'ble Apex Court's judgement in the case of Balbir Singh Maini [(2017) 398 ITR 531 (SC)], where, there was a JDA, it was held that the owner continued to be the owner throughout the JDA and had, at no stage, purported to transfer ownership rights to the developer; hence no profit or gains arose from transfer of the capital asset.

Held that there was no transfer of capital asset (i.e. land) in the earlier year and no capital gains were chargeable to tax. Further, capital gains would be chargeable to tax only in the later years when the title of undisputed land was transferred to the respective buyers.

Aditya Balkrishna Shroff (ITA No. 4472/Mum/2019) / [TS-363-ITAT-2021(Mum)]

Foreign exchange fluctuation gains arising on a personal interest free loan extended to a close relative as a non-taxable capital receipt.

Facts: The assessee, an individual, had extended a personal interest-free loan of USD 2 Lacs (approx. INR 90 Lacs) to his cousin in Singapore under the Liberalised Remittance Scheme (LRS) of the Reserve Bank of India (RBI). As repayment, the assessee received an amount of INR 1.12 crores (approx.) including foreign exchange fluctuation gain of INR 22 lacs. The assessee contended that the loan was personal in nature (i.e. not a business transaction) and there was no motive to earn economic gains in this transaction. Further, the loan transaction was in terms of the LRS scheme of the RBI and was a permitted capital account transaction. As such, the transaction was in the capital field and hence, the gain was a capital receipt, not offered to tax.

Department's contentions: The AO contended that the gain on the realisation of loan would partake the character of "income" under the head "income from other sources". Further, the CIT(A) held that the accretion of money, in rupee terms, was to be considered as interest and

should be taxed as such.

Issue before the Tribunal: The question before the Tribunal was whether an accretion in value of an asset held on a capital account (i.e. foreign exchange denominated loan) can be subjected to tax in the hands of the assessee.

Tribunal's Ruling: The Tribunal observed that when a receipt is in the capital field, even if it is a gain, it is in the nature of a capital gain and u/s 2(24)(vi) of the Act only such capital gains can be brought to tax as are permissible to be taxed under section 45.

Further, the Tribunal noted that it is not in dispute that the receipt in the instant case is in the capital field and placed reliance on Supreme Court's judgement in the case of D P Sandu & Bros Chembur Pvt Ltd [(2005) 273 ITR 1 (SC)] wherein it was held that "it would be illogical and against the language of section 56 to hold that everything that is exempted from capital gains by statute could be taxed as a casual or non-recurring receipt under section 10(3) read with section 56".

Reliance was also placed on the judgement of Hon'ble Calcutta High Court in the case of Shaw Wallace & Co Ltd [(2001) 71 TTJ 478 (Cal)] wherein it was held that "a capital receipt, in principle, is outside the scope of 'income' chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within the ambit of 'income' by way of specific provisions of the Income-tax Act".

Also, the Tribunal noted that where the loan is advanced in foreign currency and the amount of repayment is exactly the same, there is no question of interest component at all.

The Tribunal has held that the benefit or gain to the assessee was not on account of interest but was on account of a foreign exchange fluctuation and since it was in respect of a transaction in the capital field, the foreign exchange fluctuation itself becomes a capital receipt. In the absence of any specific chargeability, such gain cannot be charged to tax.

Batliboi Limited (ITA No.6228/Mum/2017) / [TS-410-ITAT-2021(Mum)]

Sale of additional FSI is a capital receipt and hence non exigible to tax under normal provisions as well as book profits under section 115JB of the Act.

Facts: The assessee, a company manufacturing machine tools, etc. owned a constructed building on a plot of land in Coimbatore. Due to a change in Development Control Regulations Rules ('DCR Rules'), the assessee had obtained a benefit by way of an additional Floor Space Index ('FSI'). The assessee sold the land along with the building and additional FSI for a total consideration of INR 11.14 crores of which INR 4.76 crores was for the additional FSI. At the time of filing return of income, the assessee treated the amount received for additional FSI as

capital receipt and excluded the same while computing taxable income under normal provisions. However, the same was included while computing book profits under section 115JB of the Act.

Before the Tribunal, the assessee raised an additional ground with respect to non-inclusion of the amount of Rs 4.76 crores even while computing book profits under section 115JB of the Act.

Revenue's contentions: The Revenue contended that the FSI attached to the land is inseparable from the land and it could not be treated independently and an increase in the FSI was merely a value addition to the land. Any buyer, while purchasing the land, will also take over FSI and the purchase price would be determined by the benefits attached to the land. Further, the land, superstructure situated in the said land and the FSI has been sold lock, stock and barrel to only one purchaser. Accordingly, the Revenue taxed the 'transfer of FSI' as long-term capital gains.

Issue before the Tribunal: The issue before the Tribunal was whether the sale of additional FSI could be considered as taxable income under normal provisions as well as under section 115JB (i.e. MAT provisions) of the Act.

Tribunal's Ruling: At the outset, the Tribunal observed that the bifurcation of sales consideration into land, building and additional FSI is not in dispute. Further, it observed that no cost was incurred by the assessee for obtaining any additional benefit for the additional FSI, that was granted due to a change in the DCR Rules in Coimbatore. Accordingly, the assessee could not have pre-empted any change in the DCR Rules at the time of purchase or before the sale of such land. As such, the Tribunal concluded that the additional benefit was only a "windfall gain" by operation of law.

The Tribunal placed reliance on the ruling of Hon'ble Bombay High Court in the case of *Kailash Jyoti No.2 CHS Ltd and others* [Income Tax Appeal No.1607 of 2013] and Hon'ble Apex Court in the case of *Cadell Weaving Mill Co. Pvt. Ltd.* [273 ITR 1 (SC)] wherein it was observed that 'only an asset which is capable of acquisition at a cost would be included under the head "Capital gains" as opposed to asset for which there is no cost at all'. Accordingly, it was held that since there was no cost of acquisition in the case of FSI/ TDR, the same would not be chargeable to tax under the head capital gains.

Based on the above, the Tribunal held that the sum received on sale of additional FSI was not exigible to tax as long-term capital gains under the Act. As regards the additional ground raised by the assessee for non-inclusion such amount while computing book profits under section 115JB of the Act, the Tribunal, relying on assessee's own case for an earlier year, held that the sum being a capital receipt from its inception, has to be excluded while computing such book profits.

Ryder Trans International Pvt. Ltd (ITA No. 720/Ind/2019) / [TS-387-ITAT-2021(Ind)]

Loans received by a company having common substantial shareholder with lender companies is taxable as deemed dividend under section 2(22)(e).

Facts: The assessee is a private limited company engaged in the manufacturing of conveyor belts and rubber products. The case of the assessee was reopened under section 147 of the Act for escapement of deemed dividend under section 2(22)(e) of the Act. During the proceedings, it was observed that the assessee has received loans from below mentioned companies, having one common shareholder. The common shareholder held 25.35% in the assessee company.

Name of the Company	Loan Received (INR)	Accumulated Profits (INR)	Percentage of holding by common shareholder
Vimal Sneh Private Limited	1,00,00,000	93,55,409	26.32%
Jain Transmission (I) Pvt. Ltd.	33,92,842	39,24,025	39.87%
Rajkamal Builders	86,95,000	60,69,1862	36.90%

The assessee contended that since it was not the shareholder of the lender companies, no addition could be made in its hands for deemed dividend under section 2(22)(e) of the Act.

Revenue's contentions: The AO invoked the provisions of section 2(22)(e) of the Act and made additions for deemed dividend in the hands of the assessee. However, the CIT(A) allowed the appeal in favour of the assessee by observing that the assessee is neither a registered nor a beneficial owner of shares of the lender companies.

Before the Tribunal, the Departmental Representative (DR) contended that the issue is squarely covered in favour of the Revenue, by the judgement of Hon'ble Supreme Court in the case of National Travel Services [(2018) 89 taxaman.com 332(SC)].

Issue before the Tribunal: The issue before the Tribunal was whether the addition for deemed dividend under section 2(22)(e) of the Act could be made in the hands of the assessee, who is not a shareholder of the lender companies.

Tribunal's Ruling: At the outset, the Tribunal observed that the case of the assessee does not fall in any of the exclusions as provided in section 2(22)(e) of the Act.

Thereafter, the Tribunal relied on the judgement of National Travel Service (Supra) and observed

that the common shareholder was a substantial shareholder in all the four companies and u/s 2(22)(e) of the Act, inter alia, deemed dividend includes any payment made by a company, not being a company in which public are substantially interested, by way of advance or loan to any company in which such common shareholder is a member and has a substantial interest (i.e. . holding not less than 10 per cent of the voting power in the company).

Based on the above, the Tribunal ruled in favour of the Revenue and held that the conditions of section 2(22)(e) were duly satisfied and accordingly, the amount of loan should be treated as deemed dividend in the hands of the assessee to the extent of the accumulated profits of the lender companies.

II. International Tax Rulings

Morgan Stanley Mauritius Co Ltd (ITA No.: 7388/Mum/19) / [TS-400-ITAT-2021(Mum)]

Income from Indian depository receipts taxable under the Act, however, exempt under Article 22 of Indian-Mauritius DTAA prior to 1 April 2017.

Facts of the case: Assessee was a company incorporated in and a tax resident of Mauritius and held a valid Tax Residency Certificate (TRC) issued by Mauritius Revenue Authorities. Further, it had invested in Indian Depository Receipts (IDRs), listed in India, issued by Standard Chartered Bank-India branch (SCB India), with underlying assets being shares of Standard Chartered Bank Plc (SCB UK), listed in London Stock Exchange, in turn, held by the depository custodian - Bank of New York Mellon, USA (BNY US). During the relevant year, the assessee had received dividend income from SCB India, w.r.t dividend from underlying shares of SCB UK.

The assessee contended that the dividend income from IDRs was not taxable in India since the dividends were received outside India by BNY US w.r.t shares of a foreign company (i.e. SCB UK) and the same neither accrued nor arose nor were received or deemed to be received in India. Further, subsequent remittance of the dividends to the IDR holders in their Indian bank account would not trigger receipt-based taxation.

Without prejudice to the above contentions, it was also contended that the said payments do not meet the requirement of the definition of dividends under Article 10 of the India-Mauritius Double Taxation Avoidance Agreement (DTAA) and hence it can be subjected to Article 22 (i.e. Other Income) of the DTAA, as per which the domain of exclusive taxation is with the residence jurisdiction (i.e. Mauritius).

Revenue's contentions: The AO rejected the contentions of the assessee and concluded that the first point of receipt of dividend is when it is deposited in the Indian bank account of the IDR holders. It was also contended that the conditions of section 9(1)(i) (i.e. Business Connection) of the Act are duly satisfied and the provisions of section 9(1)(iv) cannot restrict its scope as it does not start with a *non-obstante* clause. Dispute Resolution Panel (DRP) confirmed the AO's action and declined to grant the treaty benefit to the assessee on the ground that the company making the distribution of dividend is a resident of India and thereby held that the same is also taxable under the treaty.

Issue before the Tribunal: The issue before the Tribunal was whether the dividend income received by a Mauritian Company with respect to IDRs held in India would be exigible to tax in India as per the provisions of the Act read with India-Mauritius DTAA.

Tribunal's Ruling: The Tribunal observed and held as under:

IDR holders are not shareholders of the foreign company and accordingly, they do not receive dividends in their right as a shareholder, as such. However, IDR holders are entitled to the benefits of the shareholding related to the IDR.

The Tribunal held that there exists a business connection between dividend income and India as per the provisions of section 9(1)(i) of the Act by observing the following:

- SCB India is an Indian depository of the underlying shares of the foreign company;
- IDRs in respect of which monies are received are issued in India by SCB India;
- IDRs are listed in Indian stock exchange;
- Entire management and operations of the depository is in India; and
- The ownership of the shares belongs to SCB India and it was held by BNY US only as a custodian.

It was further observed that the source of income is equity shares of a foreign company and such shares are held by SCB India and constitute its property, although through the custodian abroad. Therefore, it is not a dividend *simplicitor* from a foreign company.

Also, the Tribunal accepted the Department's contention that the provisions of section 9(1)(iv) cannot restrict the scope of section 9(1)(i) and hence dividends from SCB UK is an income deemed to be accruing or arising in India.

It was also observed that what is rightfully due to the assessee in income character is the net amount received from the Indian depository and not the dividend simplicitor, as declared by the foreign company i.e. SCB UK. Therefore, the point of time when income accrues to the IDR holder is when the Indian depository declares the outgo and is received when the Indian depository pays the same and thus the amount in question is received in India, in reality as well in law. Although the physical flow of funds is via the foreign custodian, the constructive flow of dividends is from SCB UK to SCB India.

It was therefore held that the dividend income is received in India and is deemed to accrue or arise in India and accordingly dividend paid by SCB UK, as attributable to IDRs held by the assessee, was taxable in India as per the provisions of the Act.

With respect to treaty protection under India-Mauritius DTAA, the Tribunal observed that the person making the payment i.e. SCB UK or SCB India is not a tax resident of India and therefore dividend income cannot be brought to tax in India under Article 10 of the DTAA. Further, in absence of any other specific article for taxing such income, the same needs to be examined under the residuary Article 22 i.e. Other Income.

On perusal of the same, it was observed that, for the period prior to 1 April 2017, the residuary income could only be taxed in the jurisdiction of residence (i.e. Mauritius) and accordingly assessee's plea in this respect was upheld.



Lubrizol Advanced Materials Inc. (ITA No. 2455/AHD/2018) / [TS-433-ITAT-2021(Ahd)]

Foreign nationals working exclusively for an Indian AE under its supervision and control does not constitute supervisory or agency PE in India.

Facts: The assessee was a foreign company in the USA having an Associated Enterprise ('Indian AE') namely, LAZM India, in India. The Indian AE was setting up a new manufacturing plant in India and entered into an inter-company service agreement with the assessee, at a cost-plus markup of 10%, for providing technical, design and project supervisory services. The assessee sent its personnel to India for supervisory of the project and treated the said arrangement as a "supervisory PE" in India while filing its return of income.

Further, the assessee also deputed two personnel in India to work exclusively for and under the supervision and control of the Indian AE, in the capacity of Managing Directors.

Separately, the assessee also sold certain goods to its Indian AE. Since such a sale was executed and completed outside India, the risk and title to the goods were transferred outside India and payment was also made outside India; no income from this transaction was offered to tax in India by the assessee.

Revenue's Contentions: The AO, ongoing through the website of the assessee, noted that one of the personnel was referred as to the assessee's managing director of South Asia. Further, both the personnel were highly skilled professionals working on different projects across the globe as employees of the assessee. Accordingly, the AO considered these two personnels as employees of the assessee and brought to tax their salary as income from supervisory PE.

The AO further contended that those two employees were working on behalf of the assessee in India and accordingly there existed a dependent agency PE of the assessee in India. Thus, AO proceeded to tax the profit attributable with respect to the sale of goods by the assessee to its Indian AE.

Issue before the Tribunal: The first issue which arose before the Tribunal was whether the two personnel could be considered as employees of the assessee and accordingly the salary paid to them could be attributed to the Supervisory PE of the assessee in India.

The second issue was whether these personnels could be construed as dependent agents of the assessee in India and accordingly profits from the sale of goods by the assessee could be attributed to agency PE in India.

Tribunal's Ruling: The Tribunal observed and held as under:

The salary of the two personnel was paid by the Indian AE, on which eligible taxes were duly deducted at source and the personnel also filed their respective return of income in India.

Further, on perusal of agreement between the assessee and the Indian AE, it was observed that the personnel were employees of the Indian AE and were working under its supervision and guidance. Indian AE was to pay the salary of the personnel and also bearing the cost of all benefits. It was also agreed that part of their salary was to be paid in foreign currency only for convenience purposes; however, the quantum of salary would be decided by Indian AE as per rules and regulations in India. Also, Indian AE has entered into a separate employment agreement with these two employees, which revealed that employees were working exclusively for the Indian AE.

Considering the above, the Tribunal ruled in favour of the assessee and held that no adverse inference can be drawn merely on the information displayed on the website and it cannot precede the documents available on record and accordingly these two personnels would be considered as employees of Indian AE and thus salary of these two employees cannot be attributed to supervisory PE of the assessee in India.

With respect to treatment those two employees as an agent of the assessee as per Article 5 of India-USA DTAA and treating the offshore sale as taxable in India, the Tribunal noted that since those two employees are the employees of Indian AE and they signed the purchase agreement on behalf of the Indian AE, it was held that there is no connection between these two employees and the assessee which can establish agency PE of the assessee in India. Accordingly, the issue was held in favour of the assessee.

M/s. PQR Gmbh (A.A.R. No. 1195 of 2011) / [TS-861-AAR-2019]

Buy back of shares by wholly-owned subsidiary taxable under section 46A and no exemption available under section 47(iv) of the Act.

Facts: The Applicant was a company incorporated in and having registered office in Germany. PQR India Private Limited (PQR India), a private limited company, is a wholly-owned subsidiary of the Applicant. PQR India had proposed to buy back its shares from the Applicant in accordance with the provisions of section 77A of the Companies Act, 1956. The same would result in a transfer of shares of PQR India from the Applicant to its wholly-owned subsidiary i.e. PQR India.

The Applicant contended that the proposed transfer of shares, through buyback, should be exempt from income tax as per the provisions of section 47(iv) of the Act. It was submitted that provisions of section 47(iv) are beneficial provisions enacted to specifically provide tax concessions in case of intercompany transactions like group structuring and accordingly should

be interpreted liberally. Further, with respect to the non-applicability of MAT provisions, it was contended that the provisions of section 115JB of the Act should not be applicable to a foreign company.

Revenue's Contentions: The Revenue argued that the provisions of section 46A, being a charging section, explicitly includes the purchase of its own shares by the company from its shareholders. Hence, section 47 has to be treated as a general clause whereas section 46A is an exclusive clause. Hence, the transfer of shares by the Applicant during buyback would be chargeable to tax in India under section 45, read with section 46A of the Act and the provisions of section 47 would have no relevance in this respect. Further, the provisions of MAT should also be applicable to foreign companies as they are not specifically excluded from the provisions of section 115JB.

Issue before the Authority of Advance Ruling (AAR): The issue which arose before the AAR was whether the transfer of shares by the Applicant to its wholly-owned subsidiary during buy back of shares would be exempt from tax as per the provisions of section 47(iv) of the Act. Another question was whether MAT provisions under section 115JB would be applicable to the capital gains arising in the hands of the Applicant.

AAR's Ruling: The AAR noted that, at the time of introduction of section 46A under the statute, an amendment was brought in section 2(22) of the Act, wherein buyback of shares was specifically excluded from the definition of dividend and the same was specifically taxable under section 46A. It observed therefore that the legislature intended to tax share buy-back transactions as capital gains in the hands of the shareholders and not as deemed dividends under section 2(22). With this objective, a specific provision i.e. section 46A was enacted. If the intention of the legislature was to subject the provisions of section 46A to section 45 and section 47, the same would have been provided in the section itself.

The AAR also referred to three specific provisions under the Act (a) section 47A, which deals with the withdrawal of exemption under section 47(iv), (b) section 49(1)(e), which deals with the cost of acquisition of asset acquired under section 47(iv) and (c) section 155(7B), which deals with the increase in the period for recomputing the taxable income in cases where income is deemed to chargeable to tax under section 47A. The AAR stated that the capital asset in the form of shares cease to exist after buy-back as the companies are required to extinguish and physically destroy the securities within 7 days of buy-back and thus no capital asset remains with the transferee company and therefore no further capital gains tax can be imposed, thus making section 47A, section 49 and section 155(7B) redundant. The intention of the legislature can never be to render any provision of the Act *otiose*. It was also held that the special provision of section 46A would prevail over the general provision of section 45 read with section 47(iv) of the Act.

Considering the above, the AAR held that the share buy-back transaction is chargeable to tax under section 46A of the Act and exemption under section 47(iv) is not available.

With respect to the applicability of MAT provisions, the AAR observed that Finance Act 2016 w.r.e.f 1 April 2016 has inserted explanation 4 to section 115JB clarifying that MAT provisions shall not be applicable to foreign companies that do not have a permanent establishment in India. However, for the year under consideration, the Applicant had a supervisory PE in India and accordingly it was held that MAT liability should be restricted to the profit attributable to the supervisory PE.

Lastly, it was held that since buy back of shares is chargeable to tax under section 46A of the Act, PQR India would be liable to withhold tax at source under section 195 of the Act.



B. Notifications/Circulars/Press Releases

Circular No 10/2021 dated 25th May 2021:

Clarification regarding the time limit for filing of appeals before the Commissioner of Income-tax (Appeals) [CIT(A)] under the Act.

The CBDT vide Circular no. 8/2021 dated 30 April 2021 had extended the time limit for filing the appeals before CIT(A) to 31 May 2021.

CBDT noted that the Hon'ble Supreme Court, vide order dated 27 April 2021, in a *suo-moto* writ petition has extended the periods of limitation for all judicial/quasi-judicial proceedings until further orders.

Accordingly, CBDT, vide the above-mentioned circular, clarified that where different relaxations are available for a particular compliance, the taxpayer is entitled to the relaxation which is more beneficial to him. Thus, the time limit for filing of appeal before CIT(A) shall stand extended till further orders.

Circular No 11/2021 dated 21st June 2021:

Guidance on use of Functionality under section 206AB and section 206CCA of the Act

Finance Act, 2021 has inserted section 206AB and section 206CCA under the Act which mandate tax deduction/collection at a higher rate in case of certain specified persons who have not filed their return of income for two years immediately preceding the year in which tax is required to be deducted/collected and aggregate of tax deducted/collected was INR 50,000 or more in each of these two years.

In order to ease the compliance burden, CBDT had issued a new functionality ***"Compliance Check for Section 206AB & 206CCA"***.

The CBDT, vide the above-mentioned circular, has provided guidance regarding the use of such functionality by the taxpayers.

Notification No. 71/2021 dated 8th June 2021:

CBDT amends Rule 31A under Income Tax Rules, 1962 (Rules) for furnishing particulars of amount on which tax is not deducted under section 194A, 194, 196D and 194Q

CBDT has amended the existing Rule 31A of the Rules and has provided for furnishing the particulars of amount paid or credited on which tax was not deducted under Sections 194A, 194, 194D and 196Q. New annexure under Form 26Q (i.e. non salary TDS return) have also been prescribed.

Notification No. 73/2021 dated 15th June 2021:

CBDT has notified the Cost Inflation Index as 317 for the financial year 2021-22, applicable from assessment year 2022-23 onwards.

Press Release dated 14th June 2021:

CBDT provides relaxation in electronic filing of Form 15CA/ 15CB

Presently, the taxpayers are required to furnish Form 15CA/ Form 15CB electronically before submitting the copy to the authorized dealer for any foreign remittance.

Recently, the Income-tax Department revamped its website due to which taxpayers were facing difficulties in e-filing of Form 15CA / 15CB. Accordingly, it has been provided that taxpayers can submit Form 15CA / 15CB in manual form to the authorized dealers till 30th June 2021.

INDIRECT TAX

A. Recent Case Laws:

Super India Paper Products & Ors. vs UOI & Ors. [TS-236-HC(DEL)-2021-GST]

GST Portal to enable Trans 1 filings.

The Hon'ble High Court of Delhi addressed a batch of writ petitions on the issue of transition of CENVAT credit from the erstwhile indirect tax regime to the present GST regime and held that non-filing of TRAN-1 Form on account of technical error should not result in the Petitioners' losing out on their accumulated credit allowed/protected under Article 300A of the Constitution of India. Accordingly, the Hon'ble Court directed to re-open the GST online portal enabling the filing of TRAN-1 Form electronically or manually on or before June 30, 2021. Thus, allowing the transition of CENVAT credit.

Marg Human Resources Pvt. Ltd. vs The Pr. Additional Director General & Ors. [TS-

Bank-attachment order vacated; Madras High Court denied recovery against future receivables.

The Hon'ble Madras High Court confirmed that attachment proceedings cannot violate Article 19(1)(g) of the Constitution of India, i.e., right to practise any profession or carry on any occupation, trade, or business; Accordingly, the Court vacated an attachment ordered against an assessee accused of availing fraudulent Input Tax Credit on fictitious invoices. The Court acknowledged the powers of inspection, search & seizure vested with the GST Officers under Section 67 of the Central Goods and Services Tax Act, 2017. However, it prohibited an Officer from exercising it against "future receivables".

Abdul Mannan Khan vs The Goods & Services Tax Council & Ors. [TS-252-HC(CAL)-2021-GST]

Calcutta High Court rejects to condone GSTR-1 rectification; holds no jurisdiction.

The Hon'ble High Court of Calcutta dismissed a writ petition filed by an assessee seeking

rectification of the GSTR-1 Form where the assessee inadvertently declared a sale as an unregistered sale although it was a sale to a GST registered company. The Court confirmed that Section 37 of the CGST Act, 2017, calling for the assessee to declare the details of outward supplies, does not provide a provision for appeal, and neither a provision for condoning a delay in rectifying an error or omission in respect of the particulars furnished under the said section.

Dubai Chamber of Commerce and Industry [TS-227-AAR(MAH)-2021-GST]

Liaison Office of an international industrial chamber an 'intermediary' liable to GST.

The Maharashtra Authority for Advance Ruling clarified that a Liaison Office of an International Chamber of Commerce in India is not a non-profit organization, and on effecting the supply of services for a consideration, it has to obtain registration under the Goods and Services Tax Law (GST) and pay applicable GST as the services supplied by it are that of an 'Intermediary' as defined u/s 2(13) of Integrated Goods and Services Tax Act, 2017.

Synthetic Moulders Ltd. [TS-241-AAR(WB)-2021-GST]

Classification of Aerobic microorganism/protein classifiable under HSN 3824 with 18% GST.

The West Bengal Authority on Advance Ruling on applying the principle of nature, characteristics and uses of the product clarified that aerobic microorganism/protein used as a biological agent in concrete payments are classifiable under HSN 3824 of the First Schedule to the Customs Tariff Act, 1975 taxable @18% and not under sub-heading 3101.00 of the heading 3101 as Bio-fertilizers or organic manure.

Ashiana Housing Limited [TS-264-AAR(TN)-2021-GST]

Construction of 'other than affordable residential apartments' taxable @ 7.5%

In a case before the Authority, a real-estate developer had launched a senior-living gated community project by acquiring development rights from Landowner. The Applicant and the Landowner entered into 'Agreement for sale', an 'Indenture of Understanding' and a 'Construction Agreement' with buyers envisaging that construction of unit undertaken by it is

not intended for sale. The Tamil Nadu Advance Ruling Authority observed that the Applicant was undertaking Residential Real Estate Project (RREP) construction for which it entered into a Construction Agreement for the unit with prospective buyer along with 'Agreement for sale. Therefore, the Authority held that the construction of a unit being 'other than affordable residential apartments' based on 'Construction Agreement' entered into by Applicant is a 'Supply of Construction Service' classifiable under SAC 9954 as 'Construction Service' taxable @7.5% as per Entry No. 3(ia) of Notification No. 11/2017-CT dated June 28, 2017.

Daebu Automative Seat India Pvt. Ltd. [TS-279-AAR(TN)-2021-GST]

Assembly provisioning car-seat movement, classified as a motor-vehicle accessory taxable @28%.

In the question before the Authority, the Applicant supplied 'Track Assembly' consisting of Rail Assembly and Cushion panel assembly, with 'Track assembly' fitted to the floor of a motor vehicle and complete seat fitted on Cushion Panel assembly and the Applicant, envisaged to classify the said under HSN 9401 99 00 as part of the motor vehicle seat, attracting 18% GST.

Observing the definition of 'parts' and 'accessories' from 'Oxford English Lexicon', the Authority noted that a 'part' is an integral component without which a product cannot function. Whereas 'accessories' are not an essential component, it is a component that improves the utility, efficiency, or appearance of the whole thing; both are two individual, independent products, manufactured separately and fixed together to make the seat movable for a comfortable position of the driver. Hence the Tamil Nadu Authority for Advance Ruling clarified that 'Track Assembly' fitted to the floor of the car enabling forward and backward movement of the seat, is an accessory classifiable under CTH 8708 and attracts GST @ 28%.



B. Notification/ Circulars

Notification No. 16/2021 – Central Tax dated June 01, 2021:

The Finance Act, 2021, had introduced a proviso to Section 50 of the CGST Act, 2017, prescribing calculation of interest liability on the 'net' tax liability instead of 'gross' liability after adjusting the Input Tax credit. The said proviso has been given effect to vide this notification.

Notification No. 17/2021 – Central Tax dated June 01, 2021:

The Central Government has extended the due date for furnishing GSTR-1 for the tax period May 2021 to the 26th day of the month succeeding the said tax period (i.e., June 26, 2021).

Notification No. 18/2021 – Central Tax dated June 01, 2021:

The Government has provided relief by way of a reduced interest rate for taxpayers as follows:

Aggregate Turnover	Tax Period	Interest rate relaxation from the due date		
		15 days	More than 15 days	After that
More than INR 5 Crores in the preceding financial year	March 2021, April 2021 & May 2021	9%	18%	18%
Up to INR 5 Crores in the preceding financial year	March 2021	Nil	9% [For 45 days]	18%
	April 2021	Nil	9% [For 30 days]	18%
	May 2021	Nil	9% [For 15 days]	18%

Up to INR 5 Crores in the preceding financial year (For Quarterly Filers)	March 2021	Nil	9% [For 45 days]	18%
	April 2021	Nil	9% [For 30 days	18%
	May 2021	Nil	9% [For 15 days]	18%
Return under Composition Scheme	Quarter ending March 2021	Nil	9% [For 45 days]	18%

Notification No. 19/2021 – Central Tax dated June 01, 2021:

Waiver of late fees and reduction in fees is granted towards the filing of GSTR-3B for the period March 2021 to June 2021 as follows:

Aggregate Turnover	Tax Period	No. of Days Waived
More than INR 5 Crores in the preceding financial year	March 2021, April 2021 & May 2021	15 Days
Up to INR 5 Crores in the preceding financial year	March 2021	60 Days
	April 2021	45 Days
	May 2021	30 Days
Up to INR 5 Crores in the preceding financial year (For Quarterly Filers)	January to March 2021	60 Days

Reduction in late fee payable for the delay in filing Form GSTR3B for June 2021, including quarter ending June 2021 is granted as follows:

Aggregate Turnover	Maximum Late fees per return (i.e., CGST + SGST) (in INR)
Nil GST Liability	500
Annual Aggregate Turnover below INR 1.5 crore	2000
Annual Aggregate between INR 1.5 crore to INR 5 crore	5000

Waiver from late fee for Non-filers of Form GSTR3B for the period July 2017 to April 2021

Category of Taxpayers	Reduced Late Fee
With No Tax Liability	INR 500 per return
With Tax Liability	INR 1000 per return
Note: The benefit described above applies to cases where a Form GSTR-3B is furnished between June 01, 2021, to August 31, 2021	

Notification No. 20/2021 – Central Tax dated June 01, 2021:

Waiver of late fees is granted towards the filing of GSTR-1 for the period June 2021 onwards as follows:

Aggregate Turnover	Maximum Late fees per return (i.e., CGST + SGST) (in INR)
Nil GST Liability	500
Annual Aggregate Turnover below 1.5 crore	2000
Annual Aggregate between 1.5 crores to 5 crores	5000

Notification No. 21 & 25/2021 – Central Tax dated June 01, 2021:

Waiver of late fees is granted towards the delay in filing of GSTR-4 (Composition Taxpayers) for FY 2021-22 as follows:

Aggregate Turnover	Maximum Late fees per return (i.e., CGST + SGST) (in INR)
Nil GST Liability	500
Other than above	2000
Annual Aggregate between 1.5 crores to 5 crores	5000

Additionally, regarding Composite taxpayers, the due date of filing Form GSTR-4 for the FY 2020-21, has been extended to July 31, 2021, vide Notification No. 25/2021- Central Tax dated June 01, 2021.

Notification No. 22/2021 – Central Tax dated June 01, 2021:

Waiver of late fees is granted towards delay in filing of return pertinent to Tax deducted at source, i.e., Form GSTR-7. Accordingly, for June 2021, the said late fees are capped to INR 50 per day to a maximum of INR 2,000.

Notification No. 23/2021 – Central Tax dated June 01, 2021:

The Central Government directed registered persons whose aggregate turnover in a financial year exceeds INR 50 crore to comply with generating E-invoice. In this regard, Government departments and local authorities stand exempted.

Notification No. 24/2021 – Central Tax dated June 01, 2021:

The Central Government extends the time limit of meeting compliance. Accordingly,

- wherever the time limit for any completion or compliance of any action by any authority or any person falls between April 15, 2021, to June 29, 2021, the time limit is extended to June 30, 2021,

- wherever the time limit under Rule 9 of the CGST Rules, 2017 (i.e., verification for grant of registration) by any authority falls between May 01, 2021, to June 30, 2021, it is extended to July 15, 2021,

- wherever the time limit for issuance of an order in refund matters by any authority falls between April 15, 2021, to June 29, 2021, the date is extended to June 30, 2021.

Notification No. 26/2021 – Central Tax dated June 01, 2021:

The Central Government extends the time limit for furnishing the declaration in FORM GST ITC-04, which calls for details of inputs sent for job work. As per the extension for the period from January 2021 to March 2021, the due date of filing is extended from May 31, 2021, to June 30, 2021.

Notification No. 26/2021 – Central Tax dated June 01, 2021:

The Central Government has made the following amendments to the Central Goods and Services Tax Rules, 2017:

- filing of returns by companies using Electronic Verification Code (EVC) mode facility has been extended till August 31, 2021,
- the condition of availing a maximum of 5% credit of matched invoices under Rule 36(4) shall apply cumulatively for April 2021, May 2021 and June 2021 in FORM GSTR-3B of June 2021,
- a person who opted for quarterly returns may furnish the details of invoices through Invoice Furnishing Facility ('IFF') for the month of May 2021 using IFF from June 01, 2021 till June 28, 2021.

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