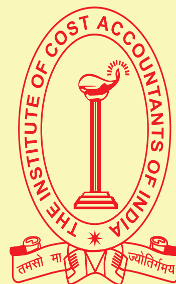
DECEMBER, 2018

TAX Bulletin

VOLUME - 29



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

VISION STATEMENT

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

Objectives of Taxation Committee:

1. Preparation of Guidance Note and Analysis of various Tax matters for best Management Accounting Practices for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit suggestions to the Ministry from time to time for the betterment of Economic growth of the Country.
4. Evaluating opportunities for CMAs to make effective value addition to the tax-economy.
5. Designing of Certificate Course on Direct and Indirect Tax for members and stake holders.

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FROM THE DESK OF THE CHAIRMAN

I would like to appreciate and encourage The Institute of Cost Accountants of India, Tax Research Department and the Bhubaneswar chapter for jointly organizing a three-day **National Seminar on Taxation.** The Theme for the said seminar would be "**Reformed Taxation System – Catalyst to sustained Economic Growth**". The resource persons of national repute i.e from industry, government and practice will deliberate on the topics.

I invite all to participate wholeheartedly in the Seminar.

Apart from the above the TRD has achieved a few milestones as enumerated below:

1. 3rd Batch Certificate Course on GST has kicked off at a few locations PAN India

2. 2nd Batch Certificate Course on GST – on line examination held on 18th November 2018 with an overall pass percentage of 80.13%. The Closing Ceremony of "Certificate Course on GST" has also been organized.

3. 2 Webinars have been conducted on the topics:
   - GST audit analysis assessment and export license and
   - Accounts & Records under GST and Role of GST Auditor

4. 2 Seminars have been conducted at:
   - Indore on 1st December 2018 themed GST regime – Road map for Make in India
   - Raipur on 17th Nov, 2018 themed Techniques of GST Audit

It would be important here to acknowledge and appreciate the valuable contributions of the Resource persons and Team TRD. Such passion is solicited in their deliverables in future also.

CMA Niranjan Mishra
Chairman - Taxation Committee
4th December, 2018

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.
Please send the articles to

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IMPACT OF ADVANCE RULING ON EXPORT OF SERVICES

CMA Nilesh Khandelwal
General Manager Finance, HCL Technologies Ltd.

Recently Maharashtra Authority for Advance Ruling holds that back office support services is in nature of intermediary services. Rejects applicant's contention that such services qualify as export under GST laws

Background

Versvglobal Private Limited (The Company) is enganged in providing back office support services to its overseas client. Activates includes the followings

- Coordination with client suppliers and customers
- Liaising with supplier on behalf of client
- Processing of payments
- Arranging the documentation for suppliers and customers
- Maintain client employees related records

The company posed a question before the Maharashtra Authority for Advance Ruling whether service provided would qualified as Zero rated supply in accordance with the GST Law?

The company also contended that it is fulfilling all the conditions required for the services to be qualify as export of services such as

- The supplier of services is located outside India
- The recipient of services is located outside India
- The place of supply of services is outside India
- The payment for such service has been received by the supplier of service in convertible foreign exchange and
- The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with the Explanation 1 of Sector 8

The company also stated that it is providing services to client on a principal to principal basis, and therefore, excluded from the definition of intermediary

Ruling of AAR

AAR observed that all the activities performed by applicant for its client indicate that the applicant is engaged in arranging/facilitating supply of goods and services between client and its customers and therefore, qualifying as an intermediary.

As per this AAR ruling, services provided by intermediaries should not be treated as 'zero rated supplies.' would lead to litigation as the authorities would use it to slap taxes on many companies exporting services. the ruling may go against the GST law.

Impact on IT Industries

Indian IT industry outsourcing market is around $ 50 billion and Indian IT industries operates thru their overseas subsidiaries where overseas subsidiaries get the order from the customer and outsource it to their Indian counterpart to provide various services such as

- Accounting services
- Payroll processing services
- Business support Services
- IT enable services including remote infrastructure management services

Indian entities make the necessary arrangement to provide the services thru creating the delivery centers in various SEZ units to enjoy the benefit of direct & indirect tax, employee requisite manpower, deploy necessary hardware and software's and bill to their overseas entities in foreign currency based on fixed price basis or time and material basis as per the agreement. Their overseas entity in turn bill to the end customer based on the final agreement with customers.

Indian entities also ensure the FEMA compliance with respect to filling of necessary Softex to respective SEZ authorities and arranging the bank realization certificate from Authorized Dealer in support of their export claim.

Historically these IT companies are enjoying the benefit of refund of unclaimed service input against the export of these services and also getting the tax exemption under section 10 aa of the Income Tax Act, 1961
As per the advance ruling all these transactions between Indian entities and their overseas entities are subject to GST and Indian entity need to charge the GST on their invoices to overseas entity.

The amount of GST charge would become the expense for the overseas entity and they are not eligible to claim the input in their respective countries against these taxes.

In such a scenario either the Indian entity need to take the hit of GST or their overseas counterpart need to take the hit of GST. In any case it will impact the overall profitability of the company.

INTEREST EXPENSES – DEDUCTION & ITS ASSESSMENT UNDER I.T. ACT

Prabhakar K S
Proprietor – Shree Tax Chambers

Introduction

1. The Income-tax Act, 1961 (hereinafter "the Act") provides detailed provisions to claim a deduction of expenses incurred for earning business income. Sections 30 to 36 of the Act deal with deductions for computing profits and gains of business or profession and also prescribes certain conditions to avail of such deductions. The amount of interest paid with respect to capital borrowed for the purposes of business or profession is one among them. Deduction of Interest Expenses, no doubt, also opens contentious issues while completing Assessment proceedings. Clause (*iii*) of sub-section (1) of Section 36 makes an allowance in respect of interest paid on capital borrowed for the purpose of the business or profession, however, the transaction if found "sham", the assessee cannot avail of the deduction. Following paragraphs throw some light on such areas.

Ingredients of the Provision

2. The Section, *in a summarized form*, reads as follows:

Other Deductions

2.1 36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28 –

(*i*) & (*ii*)** ** **

(iii) the amount of the interest paid in respect of capital borrowed for the purpose of the business or profession:-
Provided *that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.*

Clause (*iii*) of the said Section contains three ingredients, namely, Interest, Borrowed and Purpose of Business. Let us understand them in general parlance as well as in the light of Hon'ble Supreme Court's verdict in *Madhav Prasad Jatia* v. *CIT* [1979] 118 ITR 200/1 Taxman 477 (SC).

Interest – *Meaning of*

3. The first ingredient of the section is "Interest". It is a consideration paid either for use of money or for forbearance in demanding it after it has fallen due. The word 'Interest' is an inclusive definition and includes interest on unpaid purchase price, payable in any manner which would include interest payable by means of an irrecoverable letter of credit. *CIT* v. *Vijay Ship Breaking Corpn.* v. *CIT* [2003] 129 Taxman 120/261 ITR 113 (Guj.) and *Vijay Ship Breaking Corpn.* (*supra*)

The word "Interest" in a given context –

Summarized provisions of Section 2(28A) and Section 36(1)(*iii*) of the Act as follows,

Section 2(28A)	*Interest payable in any manner in respect of any sums of money borrowed or debt incurred…….*
Section 36(1)(*iii*)	*The amount of the interest paid in respect of capital borrowed for the purpose of the business or profession…….*

Section 2(28A) defines Interest in a wider sense whereas Section 36(1)(*iii*) in a restrictive manner and extends only to "Money Borrowed" and not "on debt incurred."

Borrowed - *Concept of*

4. The second ingredient of the section is "Borrowed." Provisions of Section 36(1)(*iii*) concern with capital borrowed but no other liabilities. A borrowed capital is undoubtedly a debt but all debts have not involved a loan or borrowal.

In one of the oldest precedents, the Hon'ble Supreme Court held that the term borrowed money must be construed in its natural and ordinary meaning and implies a real borrowing and a real lending. *Lakshmanier & Sons* v. *Income Tax and Express Profits Tax Commissioner (AIR 1953 SC 145)*

Hon'ble Supreme Court's observation in *Bombay Steam Navigation Co. Private Ltd.* v. *CIT [1965] 56 ITR 52*, held that the Legislatures intention is just to permit interest paid on borrowed capital "exclusively' for the purpose of the business and in that context, borrowed capital means money and not any other asset purchased on credit.

The Hon'ble Gujarat High Court in *Arun Family Trust* v. *CIT 298 ITR 437* clearly states that the existence of a loan transaction or a loan agreement between parties with an established role of creditor and debtor is a pre-condition under Section 36(1) (*iii*).

Purpose of Business - *Meaning of*

5. The third but most important ingredient of the Section is "Purpose of Business."

Again, in one of the oldest precedent, the Hon'ble High Court of Calcutta *Standard Vacuum Oil Co.* v. *CIT* AIR 1967 Cal 68, 73 held that the expenditure incurred shall be for carrying on the business and the assessee shall incur the expenditure in his capacity as a person carrying on the business.

Whether similar expression found in clause (*iii*) of Section 57 has same intention of Legislatures?

The Section, *in a summarized form*, reads as follows:

> ***57. Deductions***
>
> (*i*) & (*ii*)** ** **
>
> (*iii*) Any other expenditure (not being the capital expenditure) expended wholly or exclusively for purpose of earning such income.

No., The Hon'ble Supreme Court *in Madhav Prasad Jatia* (*Supra*) case held that the expression under Section 36(1)(*iii*) has a wider scope than the expression found in Section 57(iii). Hence, probabilities of allowing a deduction under former Section is much wider than the later one.

Since one of the most important ingredients to determine whether a particular expenditure is allowable or not, the Hon'ble Supreme Court in *S A Builders Ltd.* v. *CIT* [2007] 288 ITR 1/158 Taxman 74 (SC), *very first time* coined a word "Commercial expediency". New definition says that "an expression of wide import and includes such expenditure as prudent businessman incurs for the purpose of business. Also opined that expenditure may not be incurred under any legal obligation, yet it is allowable as business expenditure.

Interestingly, after the Hon'ble Supreme Court's elaborative definition, the Hon'ble Delhi High Court in *Punjab Stainless Steel Industries* v. *CIT* [2010] 324 ITR 396/[2011] 196 Taxman 404 widens the said definition further. In a summarized words, *"The commercial expediency would include such purpose as is expected by the assessee to advance its business interest and may include measures to taken for preservation of its business interests, however, same has to be distinguished from the personal interest of its directors or partners."*

To avail of deductions, the said three ingredients or conditions are must and same has been summarized as follows:

1. *The capital must have been borrowed*
2. *Interest must have been paid*
3. *Must have been borrowed for the purpose of business*.

Key Amendments – *In Brief*

6. To disallow interest paid on money borrowed for acquiring a capital asset, the Central Government, *vide* Finance Act, 2003 w.e.f. 1-4-2004 inserted a suitable proviso to the said Section.

> "Any amount of the interest paid in respect of capital borrowed for acquisition of an asset whether capitalized or not for any period beginning from the date on which the capital was borrowed for acquisition of the assets till the date on which such asset was put to use shall not be allowed as deduction."

Prior Position

6.1 Prior to the amendment, interest paid on capital borrowed for expenditure for expanding a business was allowable deduction, although the assets brought were not put under actual use in the relevant accounting year.

Whether newly inserted "Proviso" operates retrospectively or prospectively?

6.1.1 As Hon'ble Supreme Court held that "the newly inserted proviso will operate prospectively." *Dy. CIT* v. *Core Health Care Ltd.* [2008] 298 ITR 194/167 Taxman 206.

Further, the Central Government *vide* Finance Act, 2015, amended the said provision by omitting the words "*for extension of existing business or profession*"' w.e.f. 1-4-2017 or Assessment year 2016-17 and subsequent assessment years.

Impact –Interest paid on capital borrowed for acquisition of an asset for any period beginning from the date on which the capital was borrowed for acquisition of the asset till date on which such an asset was put to use shall not be allowed as deduction.

7. Issues Involved in Assessment

7.1 Whether Burden of proof lies on the assessee or the Revenue?

There is no doubt that the burden of proof lies on the assessee. The assessee is under an obligation to prove beyond reasonable doubt that the sums of money borrowed have all the ingredients of the given provisions and were not used for non-business purposes.

Whether Assessing Officer can question the rate of interest?

7.2 As affirmed in last issue and assessee proved its genuineness, the answer is No. Assessing Officer does not have any power to question the rate of interest or to disallow the deduction by stating grounds like a rate of interest is unreasonable or is charged less rate of interest on monies which he lent.

Whether interest- free loans to sister-concern allowable as a deduction?

7.3 Allowable, but same rests on whether the interest - free loan was given by assessee as a measure of "Commercial Expediency". In other words, the assessee diverted the borrowed money to his sister concern. The Hon'ble Supreme Court in *S A Builders* (*supra*) held that the Revenue cannot decide how much is reasonable expenditure having regard to the circumstances of the case.

Whether any presumption can be drawn between "own funds" and "borrowed funds" while providing an interest-free loan to sisterconcern?

7.3.1 The Hon'ble Bombay High Court in *CIT* v. *Reliance Utilities & Power Ltd.*[2009] 313 ITR 340/178 Taxman 135 (Bom.) held that a presumption can be made that the advances for non-business purposes have been made out of the own funds and that the borrowed funds have not been used for business purpose.

Whether interest on borrowings to purchase of a revenue asset allowable?

7.4 The said provision does not make any distinction between revenue asset or capital asset. All that is required is to confirm the said three ingredients of the Section. However, subsequent *"Section 37 – General"* of the Act expressly excludes an expense of a capital nature.

Is there any restrictions to put to use an asset brought on borrowings in the same financial year?

7.5 Interest paid in respect of borrowings on capital assets not put to use in the concerned financial year is an allowable deduction as it stood till 31-3-2004.

Whether interest on borrowings used for earning exempt income is allowable?

7.6 The answer is in the Negative. The basic condition of the section is that the interest is paid on capital borrowed for the purpose of business or profession. Interestingly, the Central Government amended the Act suitably by inserting Section 14A by the Finance Act, 2011 with retrospective effect from 1-4-1962 to safeguard the interest of the Revenue. Hence, expenditure should not be considered in the computation of total income, else same will result in double advantage to the assessee.

How to treat Interest on borrowed capital in the case of Firms?

7.7 Yes, Can claim allowance but with a rider..!!

To have a clear picture, Section 36(1) (*iii*), read with Section 40(*b*)(*iv*). Even if the assessee is entitled to a deduction under Section 36(1)(*iii*), the firm will not be allowed or entitled to claim a deduction for interest payment exceeding 12 Per cent. *Munjal Sales Corp.* v. *CIT* [2008] 298 ITR 298/168 Taxman 43.

Whether deduction allowed under Section 36(1)(*iii*) or section 37(1)?

7.8 Section 36(1) (*iii*) limits allowance only on capital borrowed whereas the other Section allows any debt incurred. The assessee can utilize the borrowed amount to procure a capital asset for the purpose of business, whereas the other section won't allow utilizing the same amount to procure a capital asset.

For instance, interest paid on the purchase of debentures will be allowed under Section 37(1) and not under Section 36(1)(*iii*). *Eastern Investments Ltd.* v. *CIT* [1951] 20 ITR 1 (SC)

However, there will be no double deduction for one and the same amount.

7.9 What may be the position in following cases?

- **Pre-commencement of business**
  The Calcutta High Court *in Ritz Continental Hotels Ltd.* v. *CIT* [1978] 114 ITR 554 held that no deduction under said provisions can be claimed.

- **Cessation of business**
  The Hon'ble Guwahati High Court in *Assam Biscuit Mfg. Co Ltd.* v. *CIT* [1990] 185 ITR 535 held that no deduction can be claimed in respect of interest on borrowings.

- **Sham transactions**
  If the object of the borrowing is just sham and proved itself, the provisions have no application. As held in *Govan Bros.* v. *CIT* [1963] 48 ITR 930 (All.)

Whether any inferences can be drawn from Companies Act, 2013 provisions?

7.10 The Companies Act, 2013 has made it very difficult to borrow or lend money to its group or sister concerns. Sections 185 - 186 of the said Act and Companies (Meetings of the Board and its Powers) Rules, 2014, extensively dealt with all the relevant issues under Company Laws. The Department can utilize those provisions and make good assessments in the interest of the revenue.

8. Leading Pronouncements – *In Brief*

8.1 In favour of assesses -

8.1.1 *Hero Cycles Private Ltd.* v. *CIT*

The Hon'ble Supreme Court in *Hero Cycles Private Ltd.* v. *CIT* [2010] 323 ITR 518/189 Taxman 50 (Punj.&Har.) *by applying its own principles laid down in S. A. Builders Ltd.* (*supra*), *held that interest - free loans advanced to a subsidiary company, satisfies the test of "commercial expediency" and entitled the assessee to deduct interest expenses.*

Taparia Tools Ltd.* v. *JCIT

8.1.2 The Hon'ble Supreme Court in *Taparia Tools Ltd.* v. *Jt. CIT* [2015] 372 ITR 605/231 Taxman 5/55 taxmann.com 361 (SC) held that when interest was actually incurred by the assessee, who followed mercantile system, on application of the said provision, the assessee would be entitled to deduct full amount of interest expenses in assessment year in which it was paid.

8.2 In favour of Revenue

Bombay Steam Navigation Company Pvt. Ltd.* v. *CIT

8.2.1 The Hon'ble Supreme Court in *Bombay Steam Navigation Co. Pvt. Ltd.* (*supra*) ruled in favour of revenue by stating that payment of interest by the assessee on an unpaid price of the assets taken over is not an affordable expense.

Lachhiram Puranmal* v. *CIT

8.2.2 The Hon'ble Madhya Pradesh High Court in *Lachhiram Puranmal* v. *CIT* [2001] 119 Taxman 1 held that interest paid on borrowed capital was held not deductible since the borrowed sums of money were spent on agricultural land which was not a business investment.

East India Pharmaceuticals Works Ltd.* v. *CIT

8.2.3 The Hon'ble Supreme Court in *East India Pharmaceuticals Works Ltd.* v. *CIT* [1997] 224 ITR 627/91 Taxman 185 rightly disallowed the interest expenses. *The interest paid on borrowed sums of money to discharge income-tax liability is not deductible.*

Similarly, the Hon'ble Supreme Court in *Bharat Commerce and Industries Ltd.* v. *CIT* [1998] 230 ITR 733/98 Taxman 151 did not allow to deduct interest while discharging Voluntary Disclosure of Income Scheme (VDIS) liability with interest as business expenditure.

Indian Express Newspaper (Madurai) (P.) Ltd.* v. *CIT

8.2.4 Brief Facts – The assessee transferred the borrowed sums of money to an investment company floated by the assessee itself. Thereafter the said investment company transferred to an associate company which was originally engaged in construction business. Since the borrowed money was not spent for the assessee's business, the Hon'ble Madras High Court did not allow deducting the expenses.

Citation: *CIT* v. *Indian Express News Papers (Madurai) (P.) Ltd.* [1999] 238 ITR 70/104 Taxman 578.

Conclusion

9. Section 36 of the Act is also one of the most debated as well as contentious one like Section 68 or 69. Deducting expenses incurred for earning business income is no doubt an essential element, however, same shall be within the premise of the Tax Laws. Since the law is well-settled, the Revenue is expected to make good assessments.

UNUSED TAX CREDITS & UNUSED TAX LOSSES

[IFRIC 23 — Uncertainty over Income Tax Treatments]

TEAM TRD

A deferred tax asset (DTA) shall be recognised for the carry forward of unused tax losses and unused tax credits to the extent that it is probable that future taxable profit will be available against which the unused tax losses and unused tax credits can be utilised.

There is no difference in criteria for recognising DTA under both the circumstances, DTA from deductible taxable difference & Unused tax losses or credits. However, the existence of unused tax losses is strong evidence that future taxable profit may not be available. Hence, it should recognise DTA on these items, only when there is convincing other evidence that sufficient taxable profit will be available against which the unused tax losses or unused tax credits can be utilised by the entity. In such circumstances, the amount of the deferred tax asset and the nature of the evidence supporting its recognition should be disclosed.

An entity considers the following criteria in assessing the probability that taxable profit will be available against which the unused tax losses or unused tax credits can be utilised:

(a) whether the entity has sufficient taxable temporary differences relating to the same taxation authority and the same taxable entity, which will result in taxable amounts against which the unused tax losses or unused tax credits can be utilised before they expire;

Illustration 1:

Particulars	Year - 1	Year - 2	Year - 3
Taxable Difference	5000	4000	3000
Deductable Difference	4000	1000	Nil

Ans: DTA = (4000 + 1000) 30% = Rs. 1500/-

Illustration 2:

Particulars	Year - 1	Year - 2	Year - 3
Taxable Difference	5000	4000	3000
Deductable Difference	4000	6000	8000

Ans: DTA = (4000 + 4000 + 3000) 30% = Rs. 3300/-

(b) whether it is probable that the entity will have taxable profits before the unused tax losses or unused tax credits expire;

(c) whether the unused tax losses result from identifiable causes which are unlikely to recur; and

(d) whether tax planning opportunities are available to the entity that will create taxable profit in the period in which the unused tax losses or unused tax credits can be utilised

Illustration 3:

Deductible Difference – Rs. 60,000

Tax Planning Cost – Rs. 12,000

Profit 50,000/-

Tax Rate: 30%

Ans:

If there is no Taxable Difference but there is a chance of Tax Planning, then

DTA = (Deductible Difference – Tax Planning Cost) * Tax rate

DTA = (60000 – 12000) * 30% = Rs. 14,400

To the extent that it is not probable that taxable profit will be available against which the unused tax losses or unused tax credits can be utilised, the deferred tax asset is not recognised.

Illustration 4:

RX Ltd (listed in Stock Exchange), was incurring heavy losses since the last few years and the industry in which it was functioning was not expected to perform better in the next few years. While finalizing the accounts for the year ended 31st March. 2018, the CFO of the co., decided to create a Deferred Tax Asset for the tax benefits that would arise in future years from the earlier years losses that had remained unabsorbed in Income tax.

Lets evaluate the view of CFO.

Discussion:
As per Ind AS 12, DTA should be recognised for all timing differences subject to consideration of prudence. Recognition of DTA with respect to unabsorbed depreciation and carry forward losses requires convincing evidence that sufficient future taxable income will be available against which such DTA can be realised.

In the given case, the industry in which RX Ltd. is functioning is not expected to perform better in the next few years. Thus, the required convincing evidence is missing. As per the Ind AS 12, DTA cannot be recognised in this case.

Conclusion:

In view of the above, we will suggest that DTA should not be created by the company as there is no convincing evidence for getting the said benefit in income tax.

Illustration 5:

BX Ltd. sold a long term machine and made a capital loss as per the Income tax Act, 1961. As per the provisions of the Act, the capital loss can be carried forwarded and offset in the future years, only against the income under the head 'Capital gains'.

Lets evaluate can the company recognise deferred tax asset for the capital losses.

Discussion:

As per Ind AS 12, DTA should be Recognised and carried forwarded subject to consideration of prudence and in case of DTA with respect to loss can be recognised only when there is a convincing evidence, that sufficient future taxable income will be available under the head 'capital gains' so that the loss can be set off.

Conclusion:

In the given case, the company can recognised DTA only when there is convincing evidence that they are going to sell some capital asset which given capital gain and can get the benefit of set off. If the entity sold any capital asset after the balance sheet date and before the approval of financial statements (events occurring after the balance sheet date) and got a capital gain which will be sufficient to set off the capital losses, the entity can create DTA to that extent. If the entity is not able to provide evidence before approval of financial statements by its board of directors, it cannot recognise DTA in the current year. The entity should disclose the nature of the supporting evidence in the notes on accounts.

The IFRIC Interpretation, IFRIC 23 Uncertainty over Income Tax Treatments, is issued by the International Accounting Standards Board (the Board). It was developed by the IFRS Interpretations Committee (the Committee). This Interpretation clarifies how to apply the recognition and measurement requirements in Ind As-12 (IAS 12) when there is uncertainty over income tax treatments. In such a circumstance, an entity shall recognise and measure its current or deferred tax asset or liability applying the requirements in Ind As-12 (IAS 12) based on taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates determined applying this Interpretation.

Issues:

Whether an entity considers uncertain tax treatments separately

Consensus:

An entity shall determine whether to consider each uncertain tax treatment separately or together with one or more other uncertain tax treatments based on which approach better predicts the resolution of the uncertainty. In determining the approach that better predicts the resolution of the uncertainty, an entity might consider, for example,

a) how it prepares its income tax filings and supports tax treatments; or
b) how the entity expects the taxation authority to make its examination and resolve issues that might arise from that examination.

If, applying above, an entity considers more than one uncertain tax treatment together, the entity shall read references to an 'uncertain tax treatment' in this Interpretation as referring to the group of uncertain tax treatments considered together.

Issues:

Examination by taxation authorities (The assumptions an entity makes about the examination of tax treatments by taxation authorities)

Consensus:

In assessing whether and how an uncertain tax treatment affects the determination of taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates, an entity shall assume that a taxation authority will examine amounts it has a right to examine and have full knowledge of all related information when making those examinations.

Issues:

Determination of taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates (How an entity determines taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates)

Consensus:

An entity shall consider whether it is probable that a taxation authority will accept an uncertain tax treatment.

If an entity concludes it is probable that the taxation authority will accept an uncertain tax treatment, the entity shall determine the taxable profit (tax loss), tax bases, unused tax losses, unused tax credits or tax rates consistently with the tax treatment used or planned to be used in its income tax filings.

If an entity concludes it is not probable that the taxation authority will accept an uncertain tax treatment, the entity shall reflect the effect of uncertainty in determining the related taxable profit (tax loss), tax bases, unused tax losses, unused tax credits or tax rates. An entity shall reflect the effect of uncertainty for each uncertain tax treatment by using either of the following methods, depending on which method the entity expects to better predict the resolution
of the uncertainty:

a) the most likely amount—the single most likely amount in a range of possible outcomes. The most likely amount may better predict the resolution of the uncertainty if the possible outcomes are binary or are concentrated on one value.

b) the expected value—the sum of the probability-weighted amounts in a range of possible outcomes. The expected value may better predict the resolution of the uncertainty if there is a range of possible outcomes that are neither binary nor concentrated on one value.

If an uncertain tax treatment affects current tax and deferred tax (for example, if it affects both taxable profit used to determine current tax and tax bases used to determine deferred tax), an entity shall make consistent judgements and estimates for both current tax and deferred tax.

Issues:

Changes in facts and circumstances (how an entity considers changes in facts and circumstances)

Consensus:

An entity shall reassess a judgement or estimate required by this Interpretation if the facts and circumstances on which the judgement or estimate was based change or as a result of new information that affects the judgement or estimate.

For example, a change in facts and circumstances might change an entity's conclusions about the acceptability of a tax treatment or the entity's estimate of the effect of uncertainty, or both.

An entity shall reflect the effect of a change in facts and circumstances or of new information as a change in accounting estimate applying Ind AS 8 (IAS 8) Accounting Policies, Changes in Accounting Estimates and Errors. An entity shall apply Ind AS 10 (IAS 10) Events after the Reporting Period to determine whether a change that occurs after the reporting period is an adjusting or non-adjusting event.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GST NOTIFICATION

CENTRAL TAX

Notification No. – 62/2018
Date -29th November,2018

Seeks to extend the last date for filing of FORM GSTR-3B for taxpayers in Srikakulam district of Andhra Pradesh and 11 districts of Tamil Nadu.

The registered persons whose principal place of business is in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu has to file FORM GSTR-3B for the month of October, 2018 on or before the 20th December, 2018.

Notification No. – 63/2018
Date -29th November, 2018

Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crores for taxpayers in Srikakulam district in Andhra Pradesh and 11 districts of Tamil Nadu.

Registered persons whose principal place of business is in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu has to file the details of outward supply of goods or services or both in FORM GSTR-1 for the month of October on or before the 20th December, 2018.

Notification No. – 66/2018
Date -29th November , 2018

Seeks to extend the due date for filing of FORM GSTR – 7 for the months of October, 2018 to December, 2018

CBIC extends the time limit for furnishing the return by a registered person required to deduct tax at source in FORM GSTR-7 for the months of October, 2018 to December, 2018 till the 31 st day of January, 2019.

CUSTOMS

TARIFF

Notification No. 78/2018
Date - 29th November 2018

Amendment to notification no. 57/2000-Customs dated 08.05.2000

The Central Government makes amendments in the Notification No. 57/2000-Customs dated the 8th May, 2000

In the said notification, after the second proviso, the following proviso shall be inserted, namely:-

“Provided further that no replenishment of the gold or silver shall be available to the exporter where the exporter avails, in respect of exported product –

i. Cenvat credit on inputs under the Central Excise Act,1944; or
ii. input tax credit on inputs or services or both under Chapter V of the Central Goods and Services Tax Act, 2017; or
iii. refund of input tax credit or refund of integrated tax under section 54 of the Central Goods and Services Tax Act, 2017.”

NON TARIFF

Notification No. 94/2018
Date - 30th November 2018

The Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, makes following amendments-

Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $Per Metric Tonne)
1511 10 00	Crude Palm Oil	463
1511 90 10	RBD Palm Oil	514
1511 90 90	Others – Palm Oil	489
1511 10 00	Crude Palmolein	536
1511 90 20	RBD Palmolein	539
1511 90 90	Others – Palmolein	538
7404 00 22	Brass Scrap (all grades)	3690
1207 91 00	Poppy seeds	2121

For more details- http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt94-2018.pdf;jsessionid=7EF554939A7E21362F342A713542CF70

CIRCULARS

Circular No. – 46/2018
Date -27th November 2018

Advisory on Electronic Nicotine Delivery Systems (ENDS) including e-Cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah, and the like products – reg.

The Ministry of Health & Family Welfare has issued aforesaid advisory to ensure that any ENDS including E – Cigarettes, Heat –Non-Burn devices, Vape, E-Sheesha, E-Nicotine flavored hookah and the like devices that enable nicotine delivery are not sold, manufactured, distributed, traded, imported and advertised except for the purpose and in manner and to the extent as may be approved under the Drugs and Cosmetics Act, 1940 and rules made there under because there is adverse health impact of ENDS/E – Cigarettes . So the Ministry of Health & Family Welfare has issued this advisory to prevent the initiation of nicotine through ENDS by non-smokers and youth, with special attention to vulnerable groups.

In this regards, all the officers under their jurisdiction have been requested for implementation of the aforesaid advisory by refereeing import consignments of ENDS to the Assistant/Deputy/ Drugs Controller in their Jurisdiction. Then the Assistant/Deputy/ Drugs Controller will check the compliance of such goods in terms of the Drugs and Cosmetics Act, 1940. Based on the reports of Assistant/Deputy/ Drugs Controller, non-compliant consignments should not be allowed clearance and appropriate action should be initiated for violation of provisions of the Allied Act.

DIRECT TAX

Notification No. 82/2018
Date – 19th November 2018

The Central Board of Direct Taxes makes the following amend the Income-tax Rules, 1962, namely:—

1. Short, title and commencement.

    1. These rules may be called the Income–tax (Twelfth Amendment) Rules, 2018.
    2. They shall come into force from the 5thday of December, 2018.

2. In the Income-tax Rules, 1962, Rule No. 114 [**Application for allotment of a Permanent Account Number]**

In sub-rule (3), after clause (iv), the following clauses shall be inserted, namely:

v. In the case of a person, being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year and which has not been allotted any permanent account number, on or before the 31st day of may immediately following such financial year;

vi. In the case of a person, who is the
    a. managing director,
    b. director,
    c. partner,
    d. trustee,
    e. author,
    f. founder,
    g. karta,
    h. chief executive officer,
    i. principal officer or
    j. office bearer

of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v) and who has not been allotted any permanent account number, on or before the 31st day of may immediately following the financial year in which the person referred to in clause (v) enters into financial transaction specified therein.";

Amended sub-rule (6)-

The Principal Director General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the formats and standards alongwith procedure, for the verification of documents filed with the application under sub-rule (4) or intimation of Aadhaar number in sub-rule (5), for ensuring secure capture and transmission of data in such format and standards and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing of the application forms for allotment of permanent account number and intimation of Aadhaar number.

Please follow the link for getting the amendment in Format of Form 49A - https://www.incometaxindia.gov.in/communications/notification/notification82_2018.pd

Notification No. - F. No. 225/402/2018/ITA.II
Date -28th of November, 2018

Scope of enquiry in Limited Scrutiny cases selected under CASS cycles 2017 and 2018 in the context of information provided by any law-enforcement/ intelligence/regulatory authority or agency – regd.-

Under CASS cycles 2017 and 2018, some of the cases were selected for scrutiny as a 'Limited Scrutiny' case.

In 'Limited Scrutiny' cases, Assessing Officer cannot travel beyond the issue(s) for which the case was selected. The idea behind such a stipulation is to enforce checks and balances upon powers of an Assessing Officer to do fishing and roving enquiries in cases under 'Limited Scrutiny'.

In this regard, several representations have been received in the Board from the field authorities that in several cases under 'Limited Scrutiny', information pointing out specific tax-evasion for the relevant year, given by any law-enforcement/intelligence/regulatory authority or agency is available with the concerned Assessing Officer, however, in view of the restrictive nature of enquiry/investigation which can be made in 'Limited Scrutiny' cases, the same presently cannot be acted upon.

The matter has been considered by the Board. In order to enable proper enquiry/ investigation in pending 'Limited Scrutiny' cases which were selected through CASS cycles of 2017 and 2018, where credible material or information has been/is provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, it has been decided by the Board that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.

It is pertinent to mention that unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to the conversion of case to **'Complete Scrutiny'** as laid down in **Instruction No. 5/2016 dated 14.07.16,** the pending 'Limited Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Complete Scrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above.

The following procedure shall be adopted while examining the additional issue:

- The Assessing Officer shall duly record the reasons for expanding the scope of 'Limited Scrutiny' to the extent mentioned in para 2 and 3, above.
- The same shall be placed before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding.
- The Assessing Officer shall issue an intimation to the assessee concerned that additional issue would also be considered during the course of pending assessment proceeding.
- To ensure proper monitoring in these cases, provisions of section 144A of the Income-tax Act, 1961 may be invoked in suitable cases. Further, to prevent fishing and roving enquiries in these cases, it is desirable that these cases are invariably picked up for Review/Inspection by the administrative authorities.
- The above directive shall be applicable from the date of its issue and shall apply to the pending 'Limited Scrutiny' cases which were selected under the CASS 2017 and 2018 cycles. It is reiterated that the grounds mentioned in para 3 above are the only grounds on which a 'Limited Scrutiny' case of CASS 2017 and 2018 cycles can be expanded in its scope and that too only to the extent of the issues referred to by the law-enforcement/intelligence/regulatory authority or agency .

PRESS RELEASE

INDIRECT TAX

Extension of due dates for filing GST returns

Date – 28th November 2018

In view of the disturbances caused to daily life by Cyclone Titli in the district of Srikakulam, Andhra Pradesh, and by Cyclone Gaza in eleven districts of Tamil Nadu viz., Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram, the competent authority has decided to extend the due dates for filing various GST returns as detailed below:

Return/Form	**Extended due date**	**Taxpayers eligible for extension**
FORM GSTR-3B for the month of October, 2018	20th December, 2018	Taxpayers whose principal place of business is in the 11 specified districts of Tamil Nadu
FORM GSTR-1 for the month of October, 2018	20th December, 2018	Taxpayers having aggregate turnover of more than 1.5 crore rupees and whose principal place of business is in the eleven specified districts of Tamil Nadu
FORM GSTR-7 for the months October to December, 2018	31st January, 2019	All taxpayers

DIRECT TAX

Task Force for drafting a New Direct Tax Legislation

Date – 26th November 2018

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

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

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

Protocol amending India-China DTAA

Date – 26th November 2018

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

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

JUDGEMENTS

INDIRECT TAX

Consultancy Services' for Preparation of Transport Studies such as Comprehensive Mobility Plan, etc. Exempt from GST- AAR Andhra Pradesh

M/s. Amaravathi Metro Rail Corporation Ltd. vs. AAR Andhra Pradesh

Case No. – AAR/12(GST)/2018

Date – 25th June 2018

Fact of the Case

1. M/s. Amaravathi Metro Rail Corporation Ltd. (AMRCL) is the assessee here.
2. The issue before the Authority was whether the applicant is a government authority according to Notification No. 12/ 2017 dated June 28th, 2017.
3. The second issue was whether the consultancy services for preparation of transport studies such as comprehensive mobility plan, transit oriented development plan, NMT plan and consultancy services of transaction advisors comes within the purview of the functions of 'Municipality' under Article 243W .
4. According to meaning of "Government Authority" is that government has at least 90% or more equity participation or control to carry out any function of the organization.
5. To answer the second issue with respect to examination of whether 'consultancy services' for preparation of transport studies come within the purview of functions of 'Municipality' enlisted under Article 243W.

Decision of the Case

The bench answering the second issue held AMRCL to be a 'Municipality' under Article 243W of the Constitution and is hence exempt from GST.

GST can't be Deducted from Salary of Employees sponsored by UPNL: Uttarakhand HC

Kundan Singh vs. State & Others
Writ Petition No. – 116 of 2018

Date -12.11.2018

Fact of the Case

1. In the instant case Savinda Karamchari Sangh is the applicant. It has filed writ petition before High Court highlighting the exploration of the workman by the state govt. as well as local bodies.
2. The petitioners contended that employees are being honorarium of Rs. 8400 p.m by the UPNL & GST @18% and Service Tax @2.5% has been deducted from their salary.
3. It is also highlighted that the administrative, disciplinary and financial control on each and every employee is of the establishment, in which, they are working.
4. It was also submitted before the honorable High Court that the State Govt. issued letter dt. 9/6/2016 that UPNL will sponsor Ex-Service man only. Thereafter vide letter dt. 5/7/16UPNL has been allowed to sponsor dependent of Ex-Serviceman also.
5. It was noted that the main object of the company is also to provide financial assistance to the ex-servicemen, their dependents, family members of ex-servicemen including imparting them necessary training.

Decision of the Case

1. The honorable justice of the bench noted that the employees have a legitimate, statutory and fundament rights to be regularized.
2. Every workman is entitled to the living and fair wage to make both ends meet. The UPNL has not obtained the license as Contractor nor has registered under the Act.
1. A division bench of the Uttarakhand High Court has directed the State Government to not to deduct GST or Service Tax from the salary of the employees sponsored by the Uttarakhand Purv Sainik Kalyan Nigam Ltd (UPNL).

Supply of Food to Other Offices in SEZ is not Zero Rated Supply: AAAR

Merit Hospitality Services Pvt. Ltd. vs. MAHARAHTRA AAAR

Case No. – MAH/aar/ss-rj/12/2018-19

DATE – 1.11.2018

Fact of the Case

1. In the present situation Merit Hospitality Services Pvt. Ltd. is the assessee which is engaged in supplying food to employees in other offices located in SEZ.
2. The assessee supplies food/drinks/other articles for human consumption to the employees of the company located in the SEZ.

3. The Appellant submitted that supply made to SEZ unit or a developer of SEZ are treated as ZERO rated supplies under section 16(3) of GST Act.

Decision of the Case

1. The Appellate Authority of Advance Ruling pointed out that the appellant is registered as "Outdoor Caterers" and is engaged in providing the corporate catering services to their offices/units as per terms & condition of the contract entered with them.
2. The appellant is also engaged in preparing food in their own kitchen and distributing the same to various companies.
3. In the opinion of the Appellate Authority such type of services of supplying food is not a "Zero Rated Supply" and the services of the appellant is not also Restaurant Services as claimed by the appellant.
4. The Maharashtra Appellate Authority of Advance Ruling has passed the order not to allow the assessee for enjoying the facility of Zero Rated Supply.

Contract of Job Work Activity of Custom Milling of Paddy, Transportation of Rice and Usage Charges of Gunny Bags Taxable at 5% as 'Composite Supply': AAR

M/S Taranjeet Singh Tuteja & Brothers vs. Chattisgarh AAR

CASE NO. – STC/AAR/05/2018

DATE - 10.10.2018

Fact of the Case

1. In the instant case M/S Taranjeet Singh Tuteja & Brothers is the assessee who is engaged in custom milling involves transportation of paddy.
2. The assessee has executed an agreement for customs milling of paddy with the Chattisgarh State Marketing Co-Operative Federation Ltd., Raipur for production of rice on Job Work.
3. The assessee has to collect paddy from primary co-operative socities and transport it's 67% to applicant's milling site and from such site to the various delivery centers of Food Corporation of India .The transport will be borne by Marketing Co-Operative Federation Ltd.
4. Applicant receiving milling charges and incentives as decided by the State Govt. of Chattisgarh.
5. The applicant contends that Transport of Paddy & Rice is exempted under notification no. 12/2017. Further that the incentive given by the Marketing Co-Operative Federation Ltd. should be considered as Subsidy and not be included in taxable value under section 2(31) of CGST Act, 2017.

Decision of the Case

1. The learned members of the Honorable Bench explained that the meaning of "Subsidy" is the state welfare of the public. It ruled that the present service is not a 'subsidy' but 'incentive'.
2. Since the service regarding transportation of paddy & rice and the cost of such service is paid as incentive but not as subsidy. So it attracts @ 5% GST by virtue of being composite supply.

Delhi HC stays NAA's order, questions methodology used to calculate 'anti-profiteering' quantum

Pyramid Infrastructure vs. Delhi High Court

Fact of the Case

1. A builder while holding that benefit of ITC was not passed on to applicant in respect of flats constructed under 'Affordable Housing Scheme';
2. Petitioner challenged the constitutional validity of provision of Section 171 r/w Rule 126 of CGST Rules, showing the reason that leaving the mechanism and procedure for determining whether increased benefit of ITC has been passed on and whether same is commensurate to reduction of prices, to the executive without framing any guidelines is violative of Articles 14 and 19 of Constitution of India;
3. Petitioner further argued that NAA and Directorate General of Anti-Profiteering (DGAP) have failed to appreciate a proper definition of 'profiteering' as well as proper methodology for its computation and have given an erroneous interpretation to Section 171 of CGST Act by not factoring in increase in cost of raw materials;

Decision of the Case

HC has questioned methodology to calculate quantum of anti-profiteering and directed Petitioner to pay amount that was accepted in earlier round of litigation before NAA; Matter is now posted for February 19, 2019: Delhi HC.

DIRECT TAX

Running Hospital and Nursing School is Inseparable Activity, Eligible for Tax Exemption: ITAT

M/S MAJ Hospital vs. DY. Commissioner of Income Tax

Case No. – 499/COCH/2017

Date – 12.11.2018

Fact of the Case

1. The assessee, a charitable trust registered u/s 12A of the Income Tax Act claimed exemption under section 11 in respect of the income received from the hospital and nursing school.
2. The Assessing Officer treated the income received from running a hospital and nursing school as business activity and denied the claim.
3. After analyzing the objectives of the Trust, the Tribunal came to the final conclusion that it is a part of the objects of the assessee trust. Both medical relief and education are charitable objects entitled for exemption u/s 11(1) of Income Tax Act.

Decision of the Case

1. It was further held by the Apex Court that there is a very clear distinction between the object of a trust to carry on a business activity and the carrying on an activity of profit for achieving its objects.
2. The assessee's activities of running the hospital and the nursing school are intricately connected and dependent on each other and it is one inseparable activity and both are entitled to exemption u/s 11(1) of the I.T Act.
3. So in the opinion of the Tribunal, the income of the school of nursing is not to be assessed as business income but as arising out of charitable activities of the trust eligible for assessment u/s 11(1) of the I.T. Act.

Intention of Assessee at the time of Purchase of Shares relevant to determine Tax Liability: ITAT

ACIT VS. SHRI FINANCE

Case no. – 6064DEL/2014

DATE -23.10.2018

Fact of the Case

1. In the instant case, the assessee is a partnership firm derives his income from investment activities.
2. The AO proceeded to assess the gains derived from share transactions as business income instead of assessee's claim as capital gain.
3. Aggrieved assessee approached the CIT (A) challenging the treatment of capital gain as business income.
4. The Revenue contested that the assessee wants to avoid paying tax by calculating the amount of tax at lower rate.
5. The revenue also added that the partnership firm comprising six partners comes together to put their investment in a collective manner for better utilization and the activity purely meant for business, not of investment.
6. The counsel for assessee stated that as per CBDT Circular No. – 6, the listed shares & securities held more than 12 months and income arising from transfer thereof as capital gain.

Decision of the Case

Finally, the bench keeping on mind the CBDT circular directed the Assessing Officers to treat capital gains on listed shares and securities held for a period of more than 12 months as income from capital gains if the assessee so desires.

Provisions of S. 269SS not applicable to Loan Transaction between Husband and Wife: ITAT

NABIL JAVED VS. ITO DELHI

CASE NO. – 3797 & 3798 /DEL / 2018

DATE – 27.11.2018

Fact of the Case

1. In the instant case Assessee is a person who has shown a loan of Rs. 88,00,000/- from his wife out of which Rs. 22,00,000/- received by the assessee as advance against sale of his property.
2. The A.O imposed penalty under section 271D of the Act on the amount of advance taken by the assessee from his wife during assessment.
3. On the 2nd Appeal, the Tribunal observed that the assessee received advance Rs. 22 lakhs from four parties, but the deal was not materialized. The purchaser agreed to take

another property which is in the name of his wife for the advance payment of Rs. 22 Lakhs.

Decision of the Case

1. The Tribunal noted that the A.O did not consider the provisions of section 269SS of the Act which is not applicable to the loan transaction between Husband & Wife.
2. The Tribunal deleted the penalty levied by A.O under section 271D of the Act.
3. The Tribunal also allowed the appeal of the assessee.

Premium earned on Allotment of Preference Shares by a Loss-Making entity can't be Taxed: ITAT

PARIMAL REALTY PVT. LTD. VS. DY. COMMISSIONER OF INCOME TAX

Case No. – 2317/MUM/2017

DATE – 16.11.2018

Fact of the Case

1. In the instant case Piramal Realty Pvt. Ltd is the assessee company who has engaged in the business of real estate and real estate development and incidental services.
2. During the course of assessment proceeding the A.O noticed from Balance Sheet that the assessee company has earned huge amount of Share Premium from issuing the cumulative compulsory convertible preference shares.
3. The A.O required the assessee to justify such huge premium. But the assessee is unable to prove the nature & sources of credit as per in the books of accounts in terms of section 68 of the I.T Act.
4. The A.O treated the unexpected amount of huge share premium as unexplained under section 68 of the I.T Act.

Decision of the Case

1. In the opinion of the Tribunal Bench that the valuation is not relevant for determining genuineness of the transaction under section 68 of I.T Act.
2. Valuation of preference share is a completely different exercise as compared to valuation of equity shares.
3. The A.O makes the mention of Reserves & Loss while challenging the charge of share premium on share premium on preference shares. Reserves could be relevant for valuation of equity share only but never relevant for valuation of preference shares.
4. The preference shareholders get priority over the equity shareholders in terms of payment of dividend and during winding up the redemption amount depends upon terms of issue. The conversion of Preference Share also depends upon terms of issue.
5. Under Section 56(2) and rule 11UA of the I.T Act of 1962 requires valuation of preference shares by the Merchant Bankers.
6. In the present case the valuation of Preference Share has been done by the A.O based entirely on conjectures and surmises.
7. Finally the Mumbai Bench of ITAT has ruled that the premium earned von the allotment of preference shares by loss making entity cannot be taxed.

Reassessment - Notice under section 148--Note sheet recording reasons not signed

Sri Pinnamaraju Venkatapathi Raju Visakhapatnam Vs JCIT (ITAT Visakhapatnam)

Fact of the Case

1. After completion of Assessment under section 143(1), the A.O issued notice under section 148 for reopening the case
2. Being aggrieved the assessee agitated before CIT(A) with regards to issue of non-supply of reasons for reopening the already assessed case & the validity of notice under section 148.

Decision of the Case

1. On verification of the assessment record, it was noticed that the AO typed the reasons but not signed the order sheet, thus, there were no reasons recorded for reopening of assessment as required under section 148.
2. AO neither complied with the statutory requirement of recording the reasons for issue of notice nor complied with the law laid down by the Supreme Court.
3. Therefore, the notice issued under section 148 was bad in law accordingly same was quashed and the consequent assessment order made under section 147.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
10th December 2018	**Form GSTR-1-** Taxpayer whose turnover is more than 1.5 Crore
10th December 2018	**Form GSTR 7 -** Return for authorities deducting tax at source. Return for the Month of November 2018
10th December 2018	**Form GSTR 8 -** Details of supplies effected through e-commerce operator and the amount of tax collected for the month of November 2018
13th December 2018	**Form GSTR 6 -** Return for Input Service Distributor for the month of November 2018
20th December 2018	**Form GSTR-3B for October 2018**-Taxpayers whose principal place of business is in 11 districts of Tamil Nadu*****
20th December 2018	**Form GSTR-1 for October 2018**-Taxpayers having aggregate turnover more than Rs. 1.5 crore and whose principal place of business is in the 11 districts of Tamil Nadu*****
20th December 2018	**Form GSTR-3B -** for November 2018
31st December 2018	**Form GSTR 1-** In case of taxpayers with turnover up to Rs. 1.5 Crore in previous F.Y or Current F.Y Newly migrated taxpayers : for quarters from July 2017 to November 2018
31st December 2018	**Form GSTR 1-** In case of taxpayers with turnover above Rs. 1.5 Crore in previous F.Y or Current F.Y Newly migrated taxpayers : for months from July 2017 to November 2018
31st December 2018	Form GSTR-3B - **for newly migrated taxpayers** for months July 2017 to Nov 2018
31st December 2018	**GSTR 9-** Annual Return

***11 Districts of Tamil Nadu -** Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram.

DIRECT TAX CALENDAR - DECEMBER, 2018

07.12.2018

- Due date for deposit of Tax deducted/collected for the month of November, 2018. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

15.12.2018

- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of November, 2018 has been paid without the production of a challan.

- Third installment of advance tax for the assessment year 2019-20.

- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IBin the month of October, 2018.

30.12.2018

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of November, 2018.

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Publication and Circulation of E-bulletin for the awareness of stakeholders, members, traders, Chambers of Commerce, Universities.
2. Publication of Handbooks on Taxation related topics for knowledge updation of stakeholders.
3. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
4. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
5. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
6. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
7. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country
8. Extending 3rd Batch of Certificate Course on GST after successfully carrying the 2 Batches of Certificate Course on GST.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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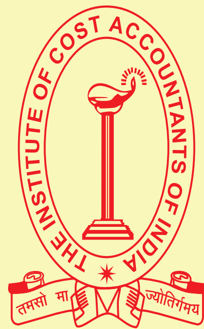

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