May, 2023

TAX Bulletin

Volume - 135
02.05.2023

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

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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."

MISSION STATEMENT

"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."

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and 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 representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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MESSAGE

The Tax Research Department had always striven to live up to the expectations of the Students, members, and learners. Keeping the same pace the department is running 7 courses, in direct tax and indirect tax courses namely –

- CCGST: Certificate Course in GST
- ACCGST: Advance Certificate course in GST
- ACGAAP: Advanced Course in GST Audit & Assessment Procedure
- CCTDS: Certificate Course in TDS
- CCFOF: Certificate Course in Filing of Returns
- ACIAA: Advanced Course in Income Tax Appeals & Assessment
- CCIT: Certificate Course in International Trade

Under all these courses the most recent topics are being discussed so as to keep the participants updated. The reason for the courses being liked by the professions and students is that the classes of the courses are all interactive wherein all the participants can clear their doubts. Moreover, the recordings of the classes are also provided for recalling the sessions.

Apart from this GST Course for College and University students and Crash Course on Income Tax Overview are undertaken for budding professionals which are conducted on both online and offline mode. Such courses are conducted for colleges and universities all across India. In the month of May, the Examination of Certificate course on GST for College and University was held on May 08, 2023, for Sandip University, Nashik. Certificate distribution held for Certificate Course on GST for Colleges of Srinagar on 10 May 2023, Certificate distribution held for Crash Course in Income Tax Overview, S A College of Arts and Science, Chennai on 08 May 2023. Certificate distribution was also held for Certificate Course on GST for College and University, ST Ann's College of Women, Hyderabad on 06 May 2023.

The department is also working on developing technical concept papers for students and other professionals on different topics of both Direct and Indirect Tax which are expected to be released during the month of July and August.

Tax Research Department

02.05.2023

CONTENTS

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

trd@icmai.in /trd.ad1@icmai.in

Taxation on E-commerce

(PART- I : Direct Tax Approach)

Team Tax Research Department

E-commerce, also known as electronic commerce or internet commerce, refers to the buying and selling goods or services over an electronic network, primarily the internet, as well as the transfer of money and data to complete these transactions. E-commerce is frequently used to refer to the online sale of physical products, but it can also refer to any type of commercial transaction that is facilitated by the internet. Whereas e-commerce covers all aspects of running an online business, e-commerce is solely concerned with the exchange of goods and services. Well-known Indian e-commerce examples include Amazon, Flipkart, Myntra, Paytm, Zomato, Swiggy, and others.

These business transactions occur mainly as business-to-business (B2B), business-to-consumer (B2C), consumer-to-consumer or consumer-to-business.

commerce has come a long way since the CompuServe launch in 1969. By May of 2020, e-commerce transactions reached $82.5 billion — a 77% increase from 2019. E-commerce has allowed firms to establish a market presence, or to enhance an existing market position, by providing a cheaper and more efficient distribution chain for their products or services.

The working of e-commerce is similar to that of any offline or retail business. The main three functions in e-commerce are receiving orders, processing order information, and shipping. Let us look at the detailed understanding of the virtual process that takes place from computer surfing to dispatch. These steps are:

- A customer visits an online shop using a computer or mobile to search for products. The customer's web browser communicates simultaneously with a web server that handles the e-commerce website.
- The e-Commerce website connects to its database and requests this data to dynamically render any requested web pages.
- The customer browses the products and adds the product on their cart.
- An order manager or order management software confirms the product is in stock.
- If the product is available and the customer is ready to check out, she enters her payment card details and shipping information on your payment form or page.
- The bank computer confirms sufficient funds in the customer's account in the bank or enough credit on her card to complete the transaction..
- Once the order is complete, and the payment has gone through, the website typically provides an estimated shipping time, a unique transaction number, postal tracking number, etc.
- The order management system requests the warehouse system to initiate the dispatch of goods to the customers.
- The warehouse computer system emails the customer about en-route delivery upon the dispatch of goods.
- The goods are finally delivered to the customer's address.

The E-commerce business models have introduced new tax issues. The typical direct tax issues relating to e-commerce are

1. difficulties of characterizing the nature of payment
2. establishing a nexus or link between a taxable transaction, activity and a taxing jurisdiction,
3. difficulty of locating the transaction, activity
4. identifying the taxpayer for income tax purposes.

Some terms related to taxation :

Person - Under Section 2(31), A 'Person' is An Association Of Persons (AOP) or a Body Of Individuals (BOI) or a Local Authority or an Artificial Juridical Person, whether or not, such Person or Body or Authority or Juridical Person, was formed or established or incorporated with the object of deriving income, profits or gains.

In other words, A Person includes...

(i) An Individual

(ii) A Hindu Undivided Family (HUF)

(iii) A Company

(iv) A Firm

(v) An Association Of Person (AOP) or a Body Of Individual (BOI), whether incorporated or not.

(vi) A Local Authority

(vii) Every Artificial Judicial Person not falling within any of the preceding sub-clauses.

A Hindu Undivided Family (HUF) :

has not been defined under the tax laws. However, as per the Hindu law, it means a family which consists of all persons lineally descended from a common ancestor including their wives and daughters.

Resident and Non-Resident :

The taxability of an individual in India depends upon his residential status in India for any particular financial year.

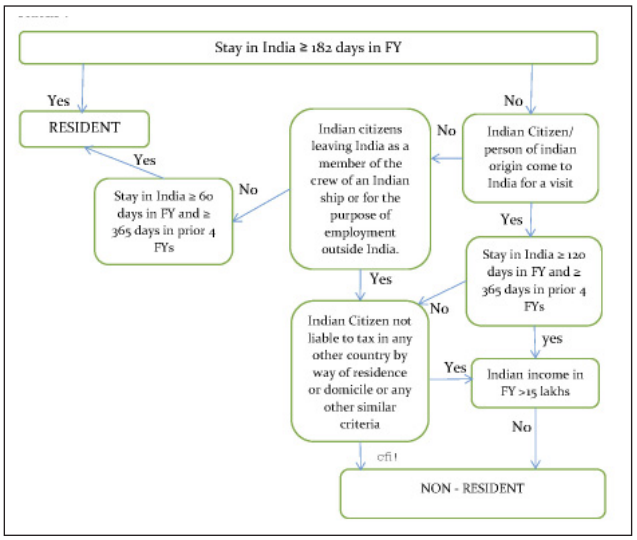
An individual is said to be a resident in the financial year if he/she is:

- physically present in India for a period of 182 days or more in the financial year, or
- physically present in India for a period of 60 days or more during the relevant financial year and 365 days or more in aggregate in four preceding financial years.

The Finance Act, 2020, w.e.f., Assessment Year 2021-22 has amended the above exception to provide that the period of 60 days as mentioned in point 2 above shall be substituted with 120 days, if an Indian citizen or a person of Indian origin whose total income, other than income from foreign sources, exceeds INR 15 Lakhs during the previous year. Income from foreign sources means income that accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

If none of the above two conditions are met, the individual is said to be an Non Resident in that financial year.

Period of stay and other conditions in current Financial Year and residential status :



Considering the growing numbers of e-commerce transactions and entities, Government of India has recently brought in certain provisions in the Income Tax Act, 1961 to tax such E-commerce transactions. We will discuss such provisions which were introduced through Finance Act, 2016 and Finance Act, 2020 as explained in brief herein below:

Provisions introduced by Finance Act 2016

Section 165- Equalization Levy

This is a tax leviable on consideration received or receivable by a non-resident for any **specified service** such as online advertising, any provision for digital advertising space or any other facility or service for online advertising @6% from :

1. A resident person carrying on business/profession in India or

2. A Non-Resident having a permanent establishment in India

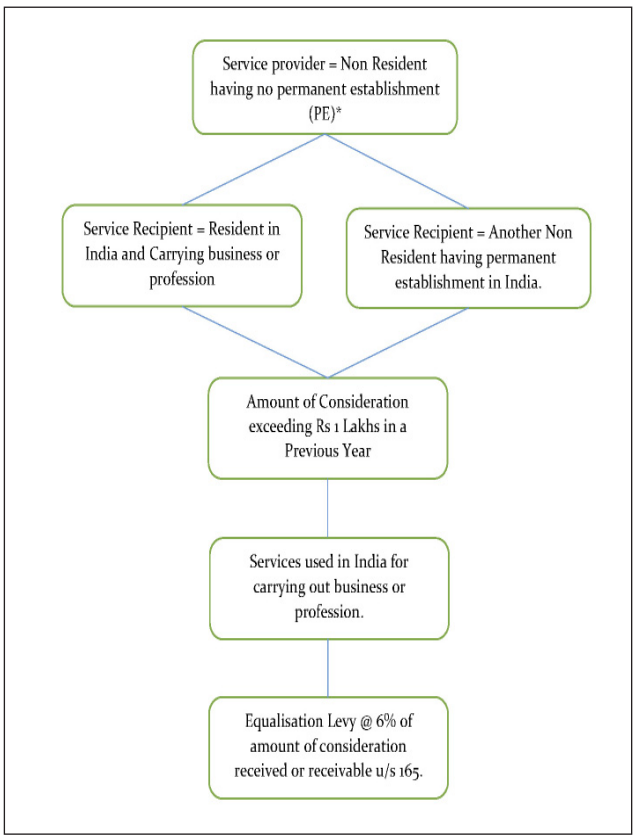
Specified services include the following:

1. Online advertisement

2. Any provision for digital advertising space or any other facility or service for the purpose of online advertisement.

3. Any other service as notified by the Central Government for this purpose.

The government identified that Indian people majorly availed services relating to advertising over the internet from non-resident service providers and hence decided to levy a fixed percentage as tax on the consideration amount which has to be deducted by the Indian resident before making payment to the Non-resident service provider



* PE includes a fixed place of business through which the business of the enterprise is wholly or partly carried on. A PE will generally not be deemed to exist where the activity performed is preparatory or auxiliary in nature.

As the income earned by Non- residents having PE in India are already deemed to accrue or arise in India under section 9 of the Income Tax Act and are taxable in India, Non-residents having NO PE in India are only included as service providers for this purpose.

Time of levy - The equalisation levy should be deducted at the time of payment (or) at the time of credit to the account of the payee whichever is earlier.

Due date of payment - Within 7th of the month immediately following the calendar month when the equalization levy collected under section 165.

Furnishing the statement :

1. The statement under section 165 should be submitted by the person receiving the specified services from the Non-resident.

2. The assessee shall furnish the statement in Form No.1 on or before 30th June immediately following the Financial Year of deduction.

3. Penalty @ Rs. 100/day will be charged till the default continues.

4. Revised statement shall be filed by an assessee before the expiry of 2 years from the end of the financial year in which the service was provided in the following cases:

   a. If the assessee fails to furnish the equalization levy statement within the prescribed time or

   b. If he notices any omission or wrong particulars in the statement filed.

Non payment within due date :

1. Interest: at the rate of 1% per month or part of the month after due date till the date of payment

2. Penalty: (over and above the above of equalisation levy)

   For Non-deduction: Penalty equal to amount of equalisation levy

   For Non-payment: Penalty equal to Rs. 1000/day (maximum upto equalisation levy not paid

Under the following conditions the Equalization Levy @6% is not charged

1. The non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;

2. The aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident From a person resident in India and carrying on business or profession, or From a non-resident having a permanent establishment in India, **does not exceed one lakh rupees**; or

3. Where the payment for the specified service by the person resident in India, or the permanent establishment in India is **not for the purposes of carrying out business or profession.**

Co-relation with other sections of Income Tax Act, 1961 :

Section 40(a)(ib)

If the equalisation levy under section 165

1. Is deductible but not deducted during PY (or)

2. Deducted but not paid to government upto the due date of filing return of Income

100% of the expenditure on which equalisation levy should have been deducted will be disallowed while computing taxable income of the person liable to deduct equalisation levy.

Section 10(50)

Under section 10(50) of the Income Tax Act, income arising to a non-resident from supplying specified services on which equalisation levy under section 165 is levied shall be exempt for the purpose of calculating taxable income for the purpose of paying income tax.

Example :

Y Ltd., an Indian company makes a payment of Dollar 3200 to ABC Inc., a company based in Panama for online advertisement of its products. ABC Inc. does not have a permanent establishment in India. Should Y Ltd deduct equalization levy in respect of the above transaction?

In the above case, equalization levy shall be applicable as ABC Inc is a non-resident company having NO PE in India and the payment is made in respect for availing online advertisement services.

Y Ltd shall deduct Rs. 15,850 [6% of (3200 x 82.55)] as equalization levy and remit the balance amount to ABC Inc.

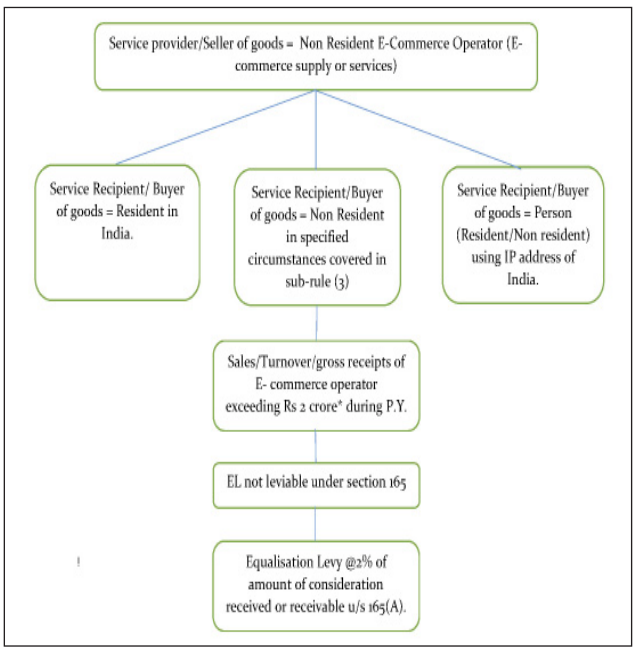
Provisions introduced by Finance Act 2020

Section 165A - Equalisation Levy

As per Section 165 of the Finance Act, 2016 ("FA, 2016" for short), Equalisation Levy was chargeable only on the consideration received or receivable by a non-resident from providing online advertisement services or related services to the Indian resident or person having PE in India.

Now, Chapter VIII of Finance Act, 2016 is amended by Finance Act 2020 and provisions regarding Equalisation Levy are inserted (Section 165A and some more sections). The same is now extended to consideration received or receivable by an e-commerce operator for e-commerce supply or services w.e.f. 01.04.2020 and is levied @2% on such consideration and made or provided or facilitated by it—

1. To a person resident in India; or
2. To a non-resident in the specified circumstances as referred to in sub-section (3); or
3. To a person who buys such goods or services or both using internet protocol address located in India.



*As per Section 165A(2)(iii) r.w. sub-section (1) of Section 165A for computing the threshold limit of Rs. 2 crore only the supplies or services made to the Specified Persons will be considered and not the global turnover or global receipts of the e-commerce operator.

For instance, ABC Inc. is providing e-commerce services all over the world in respect of which it has generated gross receipts of Rs. 20 Crore during the P.Y. 2020-21. Out of the said gross receipts, Rs. 1 crore has been received from customers resident in India. In the said case, New Equalisation Levy will not be attracted as the turnover from the customers resident in India does not exceed Rs. 2 crore.

The equalisation levy is a direct tax on the e-commerce operator and to be paid by the e-commerce operator. Equalisation levy under section 165 is similar to the TDS mechanism where the service receiver is required to deduct the equalisation levy before making payment to the non-resident service provider, however, section 165A requires the service provider to directly pay the equalisation levy to the government. Now the e-commerce operator can decide to charge the consideration including the levy.

Example - An e-commerce operator receives a consideration of Rs. 6 crores for the e-commerce services provided to Indian Residents and accordingly, it is required to deposit an equalisation levy @2% of the consideration received from such services which comes out to Rs. 12 Lacs. Now, if the e-commerce operator decides to charge this equalisation levy of Rs. 12 Lacs from its customers and increases the consideration to Rs. 6.12 Crores.

But then it will be liable to pay Equalisation levy on this revised consideration.

As per amended provisions of Section 163 in relation with 165A of FA, 2016, New Equalisation Levy applies to consideration received or receivable by an e-commerce operator for e commerce supply or services made/ provided/facilitated by it on or after 01.04.2020.

Therefore, it can be said that the Equalisation Levy will be applicable when both the following conditions are satisfied

(i) consideration is received/ receivable on or after 01.04.2020; and

(ii) the said consideration is received/receivable for e-commerce supply or services made/provided/ facilitated on or after 01.04.2020.

Therefore, if

i. Supply of goods is made on 30.03.2020 and the consideration is received on 12.04.2020 - the equalisation levy will not be attracted as both the aforesaid conditions are satisfied.

ii. Supply of goods is made on 05.04.2020 and the consideration is received on 20.04.2020 but the Order was placed on 22.03.2020 - the equalisation levy will be attracted both the aforesaid conditions are satisfied.

iii. Supply of goods is made on 10.04.2020 but the consideration was received in advance on 20.03.2020 - equalisation levy will not be attracted as the consideration was received before 01.04.2020.

Some Concepts :

Specified Circumstances-

i. Sale of Advertisement, which targets a customer who is Indian resident or a customer who accesses the advertisement through IP Address* located in India; and

Example - XYZ, a US based cosmetics company approaches MNP which is a UK based company targeting Indian customers at large, for placing advertisement of its cosmetics products on digital platform of MNP. In this case, MNP will be liable to pay Equalisation levy @ 2% of the consideration received by it from XYZ.

ii. Sale of data, collected from an Indian resident or from a person who uses IP Address located in India

* IP address: a unique string of characters that identifies each computer using the Internet Protocol to communicate over a network

For instance, ABC Inc. a US based Company, an e-commerce operator, collects data from an Indian resident person and further sells such data collected to a UK based company. In this case, US based company selling the data collected from an Indian resident will be liable to pay Equalisation

levy @2% on the amount of consideration received by it from the UK based company.

Non resident e-commerce operator -

The expression "e-commerce operator" has been defined by way of inserting a new clause (ca) in Section 164 of the FA, 2016. As per the said definition, "e-commerce operator" means

i. a non-resident who owns, operates or manages a digital/electronic facility/platform for online sale of goods or online provision of services or both.

ii. A person who owns, operates or manages a digital/electronic facility/platform for facilitating transactions between the buyer and seller will also be included under the scope of an e-commerce operator. (i.e. an intermediary e-commerce operator will also be covered)

#If any non-resident uses a third party's facility or platform to supply its goods which is also operated and managed by the said third party, such non-resident will not be covered within the ambit of an e-commerce operator and accordingly will not be chargeable to New Equalisation Levy.

E-commerce supply or services -

The expression "e-commerce supply or services" is defined in clause (cb) of Section 164 of the FA, 2016 as under:

i. online sale of goods owned by the e-commerce operator; or

ii. online provision of services provided by the e-commerce operator; or

iii. Online facilitation of transactions between a buyer and a seller where consideration is collected by the e-commerce operator. ; or

iv. Any combination of activities listed in clause (i), (ii) or clause (iii).

"Online sale of goods" and "online provision of services" shall include one or more of the following activities :

i. Acceptance of offer for sale: or

ii. Placing of purchase order: or

iii. Acceptance of the purchase order: or

iv. Supply of products or making provisions of services.

v. The aforesaid definition can be explained as below :

ABC Inc. a non-resident is operating an electronic or digital platform, whereby services of enabling online meeting for various participants is being provided. The platform of ABC Inc. is being used for online webinars/meetings, etc. by Indian customers who are availing such services by paying annual/ monthly charges. In the said example, ABC Inc. is an e-commerce operator and online provision of services of enabling webinars/meetings by the said company will fall within the meaning of "e-commerce supply or services".

Under the following conditions the Equalization Levy @2% is not charged

i. The e-commerce operator having permanent business establishment in India and their e-commerce supply of services has been extensively connected with such PE. or

ii. Where the equalization levy is levied under section 165. or

iii. Sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated as referred to in sub-section (1) is less than 2 crore rupees during the previous year.

Due date of depositing Equalisation Levy under section 166A

According to section 166A Equalisation Levy is required to be deposited by the e-commerce operator on quarterly basis as follows:

Quarter ending	Due date of payment of Equalisation levy
30th June	7th July
30th September	7th October
31st December	7th January
31st March	31st March

Consequences of non-payment

Interest: at the rate of 1% per month or part of the month after due date till the date of payment by every e-commerce operator who fails to deposit whole or any part of the equalisation levy by the due date

Penalty: (over and above the above of equalization levy)

For Non-deduction: Penalty equal to amount of equalization levy

For Non-payment: Penalty equal to Rs 1000/day (maximum upto equalization levy not paid)

Statement of equalization levy

i. Every e-commerce operator liable to pay equalisation levy shall furnish an annual statement containing all particulars, as prescribed in Form No. 1 on or before 30th June of the relevant assessment year.

ii. The Form should be signed and verified electronically under digital signature or electronic verification code.

In case of failure to furnish within the time allowed :

i. It would be required to furnish the annual statement in Form No. 1 or revised statement at anytime before the expiry of 2 years from the end of the financial year in which the e-commerce supply or services was made or provided or facilitated.

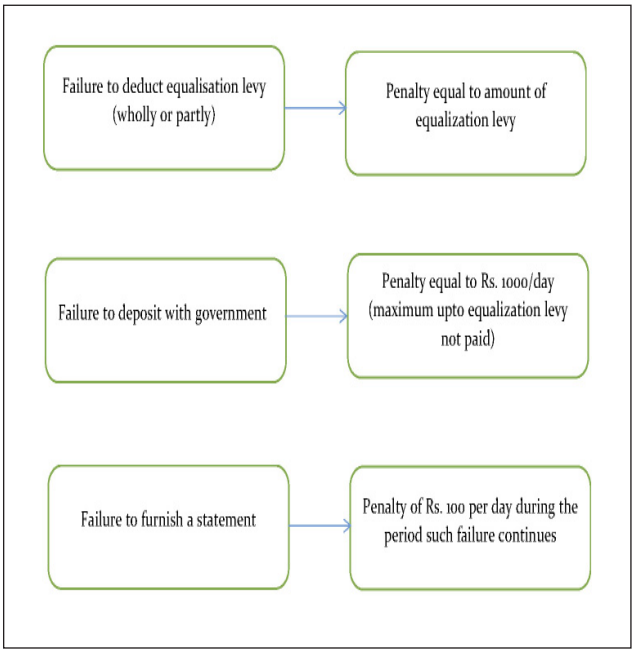
ii. If the e-commerce operator fails to furnish annual statement, the A.O. may serve a notice upon the e-commerce operator requiring him to submit the statement, within 30 days from the date of service of the notice.

Penalty and Prosecution

i. Penalty of Rs. 100 per day during the period such failure continues. However, no penalties shall be imposed unless the e-commerce operator is given an opportunity of being heard.

ii. Prosecution: If a person files false statement, he shall be punishable with imprisonment for a term which may extend to 3 years and with fine.

Penalties under section 165A



Exemption under Income Tax

Vide the Finance Act, 2020, a consequential amendment has been brought in Section 10(50) of the IT Act to provide that income arising from e commerce supply or services made/provided/facilitated by the e-commerce operator shall not be chargeable to income-tax on which New Equalisation Levy is chargeable u/s 165A.

Main ingredients of Section 165 & 165A

	Section 165	Section 165A
Amount of consideration	In Excess of INR 1 lakh	In excess of INR 2 Crore
Services/ Goods received or receivable	"Specified service" means □ online advertisement; or □ any provision for digital advertising space or any other facility or service for online advertisement; or □ any other service as may be notified by the central government on this behalf.	e-commerce supply or services made or provided or facilitated by it

	Section 165	Section 165A
Amount of consider-ation	In Excess of INR 1 lakh	In excess of INR 2 Crore
Service receipt, Who is	Resident in India and carrying business in India; or Non-Resident having permanent establishment in India.	Resident in India ● Non Resident in specified circumstances; or ● Buy such goods or services or both using internet protocol address located in India.
Services Provider	Non-Resident	E-commerce operators
Rate of Equalisation Levy	6%	2%

E-commerce taxation under Section 194O of the Income Tax Act

Section 194O has been introduced in the Union Budget 2020. According to Section 194O, an e-Commerce operator is required to deduct TDS @1% on the gross amount of sales or services provided or facilitated by them through their digital or electronic facility or platform. The TDS is to be deducted at the time of crediting —for example, an amount to the supplier's account or at the time of payment thereof in cash, by the issue of a cheque or draft, or by any other mode, whichever is earlier.

For example, a proprietary company XY (an e-commerce participant) sells its products on Flipkart (an e-commerce operator). On November 1, 2021, Mr A purchases this product online from MN for INR 60,000.

Flipkart credits XY's account on November 1, 2021, but the customer pays XY directly on November 15, 2021. Flipkart is required to deduct TDS at 1% on INR 60,000 when crediting the party or making payment, whichever comes first. TDS should be deducted in this case on November 1, 2021.

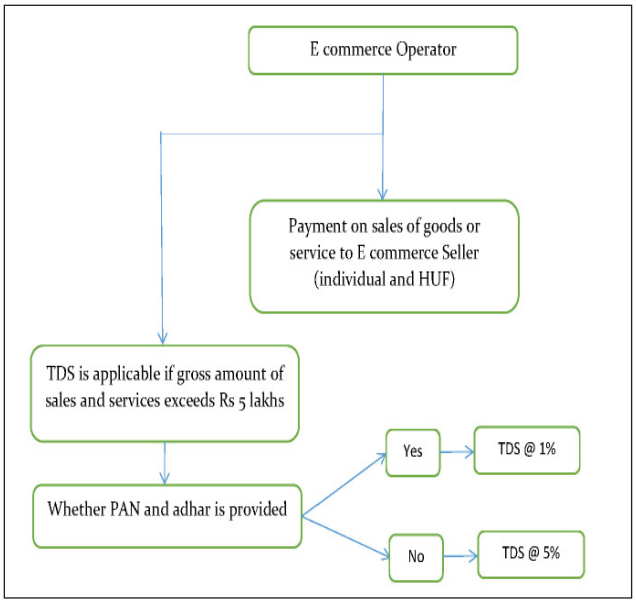
TDS on e-commerce operators under section 194-O is applicable from 1 October 2020.

Before including this section, payments paid to participants in e-Commerce were not tax deductible. They had to submit their income tax return on their own. Many small-scale participants in e-Commerce as a result avoided filing their income tax returns and paying taxes.

No TDS is required to be deducted if the amount paid/ credited to E-Commerce Participant being an individual/ HUF whose gross amount of such sales or services does not exceed Rs 5 lacs. The limit of Rs 5 lacs shall not be available when the services provided are in relation to hosting of advertisements.

But the word "gross amount of sales" has not been defined in this case.

Example - Suppose there is sales of Rs 50 lacs and returns of Rs 10 lacs, TDS should be deducted @ 1% on Rs 50 lacs and not on Rs 40 lacs.



Definitions :

i. "Electronic Commerce" means the supply of goods or services or both, including digital products over digital or electronic network.

ii. "E-commerce operator" means a person who owns,

operates or manages digital or electronic facility or platform for electronic commerce. An E-Commerce Operator can be a resident or a non-resident in India.

iii. "E-commerce participant" means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce. Hence, if the E-Commerce participant is a non-resident, no TDS provisions would be applicable.

Some important points to keep in mind are:

- As per the Explanation to Section 194O, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of TDS.

- These provisions are applicable even if the purchaser of goods/ recipient of services is a non -resident but does not apply if the E-commerce participant conducts business through its own website.

- Any payment made directly to an e-commerce participant by a purchaser of goods or a recipient of services for the sale of products or the supply of services, or both, enabled by the e-commerce operator is presumed to be paid by the e-commerce operator, and TDS is needed to be deducted.

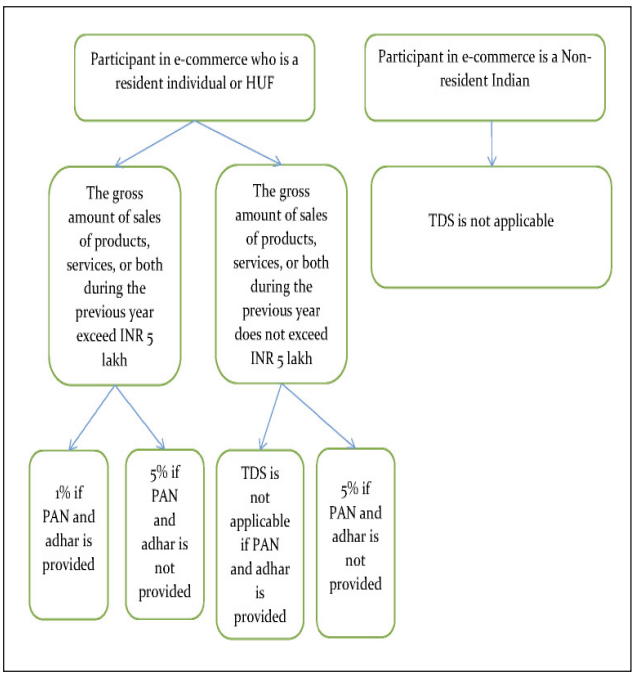
- Section 194-O applies only to e-commerce operators who are resident in India, and whose annual sales or turnover exceeds Rs. 10 crore.

- The TDS under Section 194-O is deducted on the gross amount paid or credited to the e-commerce participant, which includes the sale value, commission, delivery charges, and any other charges.

- No TDS is required to be deducted by an e-commerce operator if the gross amount paid or credited to the e-commerce participant does not exceed Rs. 5 lakhs in a financial year.

- The e-commerce participant must have a valid PAN to receive payment from the e-commerce operator.

Scope of Section 194O on E-commerce taxation



Section 194O is not applicable if the following requirements are met:

- The E-Commerce participant is a person or a HUF;

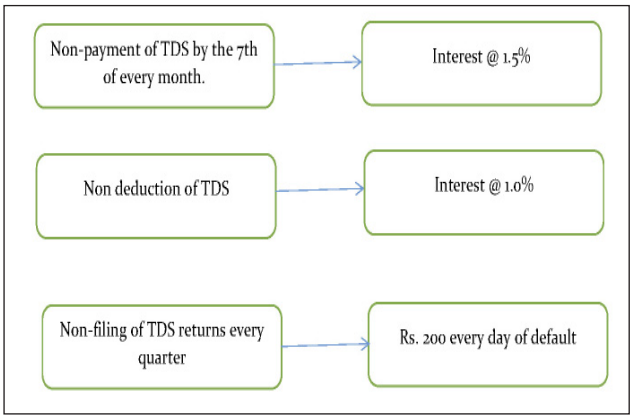
- The gross value of sale of products or supply of services or both during the year does not exceed Rs.5 lakhs; and

- Further, the E-Commerce participant has provided his PAN or Aadhar number to the e-commerce operator.

Moreover, if TDS has been deducted in respect of a transaction under Section 194-O of the Act, TDS must not be deducted on such transaction under any Section of Chapter XVII-B of the Act. TDS requirements, on the other hand, will continue to apply to amounts received by an E-Commerce operator for hosting ads or providing any other services not covered by this Section.

Penalties under Section 194O

The e-commerce operator will be subject to the penalties that are detailed here, if they fail to report and submit the TDS as required:



TDS Certificate

The e-commerce operator is required to issue Form 16A to the e-commerce seller. This form can be used by the seller to claim credit of the tax deducted while filing the Income Tax Return.

TDS Return

After depositing TDS with the income tax department, the deductor should file Form 26Q on TRACES (TDS Reconciliation Analysis and Correction Enabling System).

Example of TDS deduction for an E-commerce Business

Let's say A is a registered e-commerce seller on Nykaa (e-commerce operator). Here are the details of her sales.

Gross sales = Rs. 6,20,000

GST @ 18% included in the above sales = Rs. 1,11,600

Nykaa's commission @ 2% = Rs. 12,400

TDS Calculation according to Section 194O

E-Commerce Operator – Nykaa

E-Commerce Seller – A

TDS = 1% of6,20,000 = Rs. 6,200

Nykaa is required to,

- deduct TDS of Rs. 6,200 at the time of credit fulfillment or making payment, whichever is earlier.
- file TDS return via Form 26Q & issue form 16A to A.
- If A fails to furnish the PAN or Aadhar, then TDS should be deducted @ 5% irrespective of gross sales amount.

Part II will continue in next Edition

Press Releases

Indirect Tax

GST revenue collection for April 2023 highest ever at ₹ 1.87 lakh crore

Gross GST collection in April 2023 is all time high, Rs 19,495 crore more than the next highest collection of ₹1,67,540 crore, in April 2022

GST revenues for April 2023 are 12% higher than the GST revenues Y-o-Y

Highest tax collected on a single day ever at ₹68,228 crore through 9. 8 lakh transactions on 20th April 2023

1st May, 2023

The gross GST revenue collected in the month of April, 2023 is ₹1,87,035 crore of which CGST is ₹38,440 crore, SGST is ₹47,412 crore, IGST is ₹89,158 crore (including ₹34,972 crore collected on import of goods) and cess is ₹12,025 crore (including ₹901 crore collected on import of goods).

The government has settled ₹45,864 crore to CGST and ₹37,959 crore to SGST from IGST. The total revenue of Centre and the States in the month of April 2023 after regular settlement is ₹84,304 crore for CGST and ₹85,371 crore for the SGST.

The revenues for the month of April 2023 are 12% higher than the GST revenues in the same month last year. During the month, the revenues from domestic transactions (including import of services) are 16% higher than the revenues from these sources during the same month last year.

For the first time gross GST collection has crossed ₹1.75 lakh crore mark. Total number of e-way bills generated in the month of March 2023 was 9.0 crore, which is 11% higher than 8.1 crore e-way bills generated in the month of February 2023.

Month of April 2023 saw the highest ever tax collection on a single day on 20th April 2023. On 20th April 2023, ₹68,228 crore was paid through 9. 8 lakh transactions. The highest single day payment last year (on the same date) was ₹57,846 crore through 9.6 lakh transactions.

For details visit:
https://pib.gov.in/PressReleasePage.aspx?PRID=1921186

Government launches Vivad se Vishwas scheme for relief to MSMEs for COVID-19 period, as announced in the Union Budget 2023-24

Last date for submitting claims under the scheme is 30.06.2023

2nd May, 2023

The Department of Expenditure, Ministry of Finance, has launched the scheme, "Vivad se Vishwas I – Relief to MSMEs" for providing relief to Micro, Small and Medium Enterprises (MSMEs) for COVID-19 period. The scheme was announced in the Union Budget 2023-24 by Union Finance Minister Smt. Nirmala Sitharaman. In Para 66 of the Union Budget speech, Smt. Sitharaman had announced:-

"In cases of failure by MSMEs to execute contracts during the COVID period, 95 per cent of the forfeited amount relating to bid or performance security will be returned to them by Government and Government undertakings. This will provide relief to MSMEs".

The Department of Expenditure, Ministry of Finance, had issued an order on 06.02.2023 indicating the broad structure of the scheme. Final instruction in this regard, extending the relief to cover more cases and relaxing the

limits of refunds was issued on 11.04.2023. The scheme was commenced from 17.04.2023 and the last date for submission of claims is 30.06.2023.

COVID-19 pandemic, one of the biggest crises in the human history, had a devastating impact on economy, especially MSMEs. The relief provided under this scheme is in continuation to the efforts of the government in promoting and sustaining the MSME sector.

Under the scheme, Ministries have been asked to refund performance security, bid security and liquidated damages forfeited/ deducted during the COVID-19 pandemic. Certain relief has also been provided to MSMEs debarred for default in execution of contracts during the COVID-19 period.

The Ministry of Finance, through this scheme, decided to give following additional benefits to eligible MSMEs, affected during the COVID-19 period:

i. 95% of the performance security forfeited shall be refunded.

ii. 95% of the Bid security shall be refunded.

iii. 95% of the Liquidated Damages (LD) deducted shall be refunded.

iv. 95% of the Risk Purchase amount realized shall be refunded.

v. In case any firm has been debarred only due to default in execution of such contracts, such debarment shall also be revoked, by issuing an appropriate order by the procuring entity.

However, in case a firm has been ignored for placement of any contract due to debarment in the interim period (i.e. date of debarment and the date of revocation under this order), no claim shall be entertained.

vi. No interest shall be paid on such refunded amount.

As per the Office Memorandum issued by the Department of Expenditure to Secretaries of all the Ministries/ Departments of Government of India and Chief Secretaries/ Administrators of Union Territories, relief will be provided in all contracts for procurement of Goods and Services, entered into by any Ministry/ Department/ attached or subordinate office/ autonomous body/ Central Public Sector Enterprise (CPSE)/ Central Public Sector Banks/ Financial Institution etc. with MSMEs, which meet the following criteria:

i. Registered as a Medium, Small or Micro Enterprise as per relevant scheme of Ministry of MSME on the date of claim by supplier/ contractor. MSME could be registered for any category of Goods and Services.

ii. The original delivery period/completion period stipulated in contract was between 19.02.2020 and 31.03.2022 (both dates are inclusive).

Government e-Marketplace (GeM) has developed a dedicated web-page for implementation of this scheme. Eligible claims shall be processed only through GeM.

TB

NOTIFICATIONS & CIRCULARS

Indirect Tax

Notifications

Customs

Notification No. 19/2023- Customs

Dated 20th April 2023

The Central Government Seeks to further amend notification No. 55/2022- Customs, dated 31.10.2022, in order to notify Nepalgunj road as an additional LCS against condition number 1

G.S.R. .....(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 55/2022-Customs, dated the 31st October 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 796(E), dated the 31st October 2022, namely: -

In the said notification, in the Annexure, against Condition number 1, in the Condition(s), for the word "Sonauli", the words "Sonauli or Nepalgunj Road" shall be substituted.

2.This notification shall come into force on the 21st day of April, 2023

For more information, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009714/ENG/Notifications

Notifications

Customs

Notification No. 5/2023- Customs (ADD)

Dated 19th April 2023

The Central Government Seeks to levy ADD on imports of "Vinyl Tiles other than in roll or sheet form" originating in or exported from China PR, Taiwan and Vietnam.

G.S.R. ...(E).-Whereas, in the matter of "Vinyl Tiles, other than in roll or sheet form" (hereinafter referred to as the subject goods), falling under heading 3918 of the First Schedule of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR, Taiwan and Vietnam and imported into India, the designated authority in its final findings, vide notification F. No. 06/17/2021-DGTR, dated the 23rdJanuary, 2023, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 23rd January, 2023, has come to the conclusion, inter alia that-

(i) the product under consideration has been exported to India at a price below normal value, thus resulting in dumping;

(ii) the dumping of the subject goods has materially retarded the establishment of domestic industry in India;

the volume of the subject imports has increased even after commencement of the commercial production in India, and has recommended imposition of anti-dumping duty on imports of the subject goods, originating in, or exported from the China PR and Taiwan and imported into India, in order to remove injury to the domestic industry

For more details, please follow,
https://taxinformation.cbic.gov.in/view-pdf/1009713/ENG/Notifications

Notifications

Central Excise

Notification No. 18/2023- Central Excise

Dated 18th April 2023

The Central Government Seeks to amend No.

18/2022-Central Excise, dated the 19th July, 2022 to increase the Special Additional Excise Duty on production of Petroleum Crude.

G.S.R.....(E).–In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584 (E), dated the 19th July, 2022, namely:

In the said notification, in the Table, -

against S. No. 1, for the entry in column (4), the entry "Rs. 6400 per tonne" shall be substituted;

2. This notification shall come into force on the 19th day of April 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009711/ENG/Notifications.

Notifications

Central Excise

Notification No. 19/2023- Central Excise

Dated 18th April 2023

The Central Government Seeks to further amend No. 04/2022-Central Excise, dated the 30th June, 2022, to reduce the Special Additional Excise Duty on Diesel.

G.S.R.....(E).-In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.04/2022 – Central Excise, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, Section3, Sub-section(i), vide number G.S.R.492 (E), dated the 30th June, 2022, namely

In the said notification, in the Table, -

against S. No. 2, for the entry in column (4), the entry "Rs. NIL per litre" shall be substituted;

2. This notification shall come into force on the 19th day of April 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009712/ENG/Notifications

Notifications

Customs

Notification No. 29/2023-CUSTOMS (N.T)

Dated 20th April 2023

The Central Government Fixes Exchange rate Notification No. 29/2023-Cus (NT) dated 20.04.2023-reg

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 26/2023-Customs(N.T.), dated 6th April, 2023 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 21st April, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods

Schedule I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	56.45	54.05
2.	Bahraini Dinar	225.10	211.70
3.	Canadian Dollar	62.10	60.10

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
4.	Chinese Yuan	12.10	11.75
5.	Danish Kroner	12.30	11.10
6.	EURO	91.80	88.55
7.	Hong Kong Dollar	10.65	10.30
8.	Kuwaiti Dinar	276.85	260.25
9.	New Zealand Dollar	52.05	49.70
10.	Norwegian Kroner	07.90	07.65
11.	Pound Sterling	104.00	100.60
12.	Qatari Riyal	23.30	21.85
13.	Saudi Arabian Riyal	22.65	21.30
14.	Singapore Dollar	62.70	60.65
15.	South African Rand	04.65	04.40
16.	Swedish Kroner	08.05	07.80
17.	Swiss Franc	93.50	90.00
18.	Turkish Lira	04.35	04.10
19.	UAE Dirham	23.10	21.75
20.	US Dollar	83.15	81.40

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	62.10	60.10
2.	Korean Won	06.40	06.00

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009715/ENG/Notifications.

Notifications

Customs

Notification No. 32/2023-CUSTOMS

Dated 26th April 2023

The Central Government makes amendment to Customs Notifications to implement the "Amnesty Scheme for one-time settlement of default in export obligation by Advance and EPCG authorization holders" notified by DGFT.

G.S.R. No. (E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India, Ministry of Finance (Department of Revenue) specified below, which shall be further amended in the manner as specified by the government. The details of the notifications are as follows.

a. 44/2002-Customs, dated the 19th April, 2002 [Vide number G.S.R. 293(E), dated the 19th April, 2002

b. 55/2003-Customs, dated the 1stApril, 2003 [Vide number G.S.R. 279 (E), dated the 1stApril, 2003

c. 97/2004-Customs, dated the17th September, 2004 [Vide number G.S.R. 620 (E), dated the 17thSeptember, 2004]

d. 64/2008-Customs, dated the 9th May, 2008 [Vide number G.S.R. 349(E), dated the 9th May, 2008]

e. 136/2008-Customs, dated the 24th December, 2008 [Vide number G.S.R. 878(E), dated the 24th December, 2008.]

f. 100/2009-Customs, dated the11th September, 2009 [Vide number G.S.R. 666(E), dated the 11th September, 2009.]

g. 101/2009-Customs, dated the 11th September, 2009 [Vide number G.S.R. 667(E), dated the 11th

September, 2009]

h. 102/2009-Customs, dated the 11th September, 2009[Vide number G.S.R. 668(E), dated the 11th September, 2009]

i. 103/2009-Customs, dated the 11th September, 2009[Vide number G.S.R. 669(E), dated the 11th September, 2009]

j. 22/2013-Customs, dated the 18th April, 2013[Vide number G.S.R. 248(E), dated the 18th April, 2013.]

k. 96/2009-Customs, dated the 11th September, 2009[Vide number G.S.R. 662(E), dated the 11th September, 2009]

l. 99/2009-Customs, dated the 11th September, 2009[Vide number G.S.R. 665(E), dated the 11th September, 2009]

m. 112/2009-Customs, dated the 29th September, 2009[Vide number G.S.R. 710(E), dated the 29thSeptember, 2009].

For more details, please visit,
https://taxinformation.cbic.gov.in/view-pdf/1009716/ENG/Notifications

Notifications

Customs

Notification No. 31/2023-CUSTOMS (N.T)

Dated 26th April 2023

The Central Government makes amendment of Notification No.18/2023 Customs (NT) dated 30.03.2023

S.O (E). -In exercise of the powers conferred by sub-section (4) of section 51A of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes, on being satisfied that it is necessary and expedient to do so, hereby makes the following amendment to the notification No. 18/2023 (N.T) dated the 30th March 2023 published in the Gazette of India, Extraordinary part II, Section 3, Sub-section (ii) vide S.O. 1528 €, dated the 30th March 2023, namely

In the said notification, in para 2, for the word, 30th April 2023, the word 30th June 2023, shall be substituted.

For more details, please follow,
https://taxinformation.cbic.gov.in/view-pdf/1009718/ENG/Notifications

Notifications

Customs

Notification No. 30/2023-CUSTOMS (N.T)

Dated 26th April 2023

The Central Government makes amendment of Notification No.19/2022 Customs (NT) dated 30.03.2022

S.O (E). -In exercise of the powers conferred by sub-section (4) of section 51A of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes, on being satisfied that it is necessary and expedient to do so, hereby makes the following amendment to the notification No. 19/2023 (N.T) dated the 30th March 2023 published in the Gazette of India, Extraordinary part II, Section 3, Sub-section (ii) vide S.O. 1528 (E), dated the 30th March 2022, namely

In the said notification, in para 2, for the word, 1st May 2023, the word 1st July 2023, shall be substituted.

For more details, please follow,
https://taxinformation.cbic.gov.in/view-pdf/1009717/ENG/Notifications

Notifications

Customs

Notification No. 32/2023-CUSTOMS (N.T)

Dated 28th April, 2023.

The Central Government fixes Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg.

S.O. ... (E).– In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE - I

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1001
2	1511 90 10	RBD Palm Oil	1022
3	1511 90 90	Others – Palm Oil	1012
4	1511 10 00	Crude Palmolein	1041
5	1511 90 20	RBD Palmolein	1044
6	1511 90 90	Others – Palmolein	1043
7	1507 10 00	Crude Soya bean Oil	1024
8	7404 00 22	Brass Scrap (all grades)	5154

2. This notification shall come into force with effect from the 29th April 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009721/ENG/Notifications.

Notifications

Customs

Notification No. 33/2023-CUSTOMS

Dated 27th April 2023

The Central Government makes amendment Seeks to amend notification Nos. 11/2022-Customs and 12/2022-Customs dated 01.02.2022 with respect to PMP of wearable and hearable devices.

G.S.R. .....(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes amendments in the following notifications of the Ministry of Finance (Department of Revenue), specified in Column (2) of the Table below to the extent specified in the corresponding entry in column (3) of the said Table, namely:

a. Notification No. 11/2022-Customs, dated the 1st February, 2022, vide number G.S.R. 85(E), dated the 1st February, 2022

b. Notification No. 12/2022-Customs, dated the 1st February, 2022, vide number G.S.R. 86(E), dated the 1st February, 2022

For more details, please visit,
https://taxinformation.cbic.gov.in/view-pdf/1009719/ENG/Notifications

Notifications

Central Excise

Notification No. 21/2023- Central Excise

Dated 01st May 2023

The Central Government Seeks to further amend notification No. 18/2022 - Central Excise in order to revise the SAED rate on petroleum crude.

G.S.R.....(E).–In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584 (E), dated the 19th July, 2022, namely:

In the said notification, in the Table, -

against S. No. 1, for the entry in column (4), the entry "Rs. 4100 per tonne" shall be substituted;

2. This notification shall come into force on the 02nd day of May 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009725/ENG/Notifications

JUDGEMENT INDIRECT TAX

High Court directs authority to restore registration of assessee who didn't file returns due to ill health

Facts of the case - TS Events and Management v. Commissioner of CGST Delhi - [2023] (Delhi)

The department issued a Show Cause Notice (SCN) calling upon the petitioner to show cause as to why its GST registration not be cancelled on account of failure to file returns for a continuous period of six months. The petitioner didn't file reply due to ill health and the department cancelled the registration since the petitioner neither responded to SCN nor appeared for a personal hearing.

It filed appeal against the cancellation order but the same was rejected as the Appellate Authority found that the petitioner had not shown sufficient cause for allowing revocation of cancellation of his registration. Therefore, it filed writ petition before the High Court.

Decision of the case :

- The Honorable High Court noted that the impugned order was passed dismissing appeal on ground of not showing sufficient cause for revoking cancellation of registration. The Court also noted that the petitioner was sole proprietor and he was suffering from ill-health during period of pandemic. Due to this reason, he was unable to respond to SCN or to appear personally before concerned officer.

- Moreover, he had fully discharged its tax liability and no amount was outstanding which was evident from the cancellation order. Therefore, the Court held that the petition was allowed considering mitigating circumstances and the impugned order was to be set aside. The Court also directed to restore registration and allowed petitioner to seek waiver of penalty for late filing of returns which was partly occasioned on account of cancellation.

HC set aside order rejecting application of cancellation of registration being passed without application of mind

Facts of the case - Parshant Timber v. Commissioner of Delhi Goods and Services Tax - [2023] (Delhi)

The petitioner had made an application praying that his registration to be cancelled and the reason for seeking cancellation of the registration was disclosed as "Discontinuance of business/Closure of business". The department issued notice which stated that "Please reply ASMT 10 and pay due tax with interest and penalty".

The petitioner didn't respond to the notice and the application was rejected by the department without providing any reasons. It filed writ petition before the High Court to challenge the rejection of cancellation application and contended that he has a right to seek cancellation of the registration on ground of closure of business.

Decision of the case :

- The Honorable High Court noted that the business was closed and cancellation of GST registration was sought and therefore, returns were not filed for subsequent period. However, the impugned order stating reply as considered had been passed without application of mind as no reply was filed by the petitioner.

- Moreover, the impugned order was unsustainable as it did not disclose any reason. The Court also noted that the show cause notice was cryptic and did not mention particular reason for rejecting application of petitioner. Therefore, the Court held that the petition was allowed and Authority was directed to cancel registration from date requested.

Writ petition filed against show cause notice without filing reply was pre-mature and not maintainable: HC

Facts of the case - Coimbatore Compressor Engineering Company (P.) Ltd. v. Assistant/Deputy

Commissioner of GST and Central Excise - [2023] (Madras)

The petitioner was supplying materials to railways. It received show cause notice from the department and it was alleged that goods were not correctly classified. The petitioner filed writ petition to challenge the notice by contending that the impugned goods could not be used for any other purpose as same was exclusively designed for use by railways.

According to the petitioner, arbitrarily and by total non-application of mind and without any data to that effect, the petitioner had been called upon to explain under the impugned show cause notice as to why the classification in respect of the petitioner's goods will not fall under Chapters 84 and 85 of the Customs Tariff Act 1975

However, the department contended that after making minor alterations, the impugned goods sold could be used for other purposes also.

Decision of the case :

The Honorable High Court noted that the impugned show cause notice had given reasons as to why goods would be classifiable under Chapters 84 and 85 of Customs Tariff Act and not under Chapter 86. The petitioner had to respond to SCN stating his objections but without responding to impugned SCN the petitioner had approached Court prematurely. Therefore, the Court dismissed the petition and petitioner was directed to submit reply to impugned SCN.

HC denied to issue direction for release of seized goods as assessee didn't comply with requirements

Facts of the case - Adarsh Tobacco Co. v. State of U.P. - [2023] (Allahabad)

The petitioner was a registered dealer under the GST and a survey was conducted by the department. During the survey, certain goods were found in the premises beyond the goods which were already disclosed by the petitioner and therefore, seized by the department.

The petitioner filed writ petition before the High Court for release of goods and contended that the request for release of goods was not considered by the department. The department submitted that the deposit made by the petitioner was not sufficient for the release of seized goods as the commodity which had been seized by the department was a perishable good.

Decision of the case :

- The Honorable High Court noted that the goods seized by the department are included within the definition of tobacco and, therefore, the seized goods would fall within the definition of perishable goods. However, the petitioner had not complied with requirement of release of seized goods i.e. perishable goods but instead follow wrong procedure of release of non-perishable goods.

- The Court also noted that goods which are treated to be perishable would not be converted into non-perishable goods only because authorities have not acted in terms of rule 141(2) of CGST Rules by disposing off such goods. Therefore, the Court held that the petitioner having not complied with the requirement of release of seized goods i.e. perishable goods, would not be entitled to any direction for release of such seized goods.

Bombay High Court upheld the constitutional validity of Section 13(8)(b) and Section 8(2) of IGST, 2017

Facts of the case - Dharmendra M. Jani v. Union of India - [2023] (Bombay)

The petitioner was engaged in providing marketing and promotion services to customers located outside India. It was providing services only to the principal located outside India and in lieu thereof receiving consideration in convertible foreign currency from the principal located outside India. The petitioner contended that the transaction entered into by it with the foreign customers would be one of export of service from India earning valuable convertible foreign exchange for the country by an intermediary. However due to deeming fiction by Section 13(8)(b) of IGST Act, the place of supply shall be the location of the supplier of services which is in India and levy of CGST and SGST would arise. It filed writ petition assailing the constitutional validity of section 13(8)(b) of the IGST Act.

The coram of Division Bench Bombay High Court was of two judges. One Judge of Division Bench Bombay High Court observed that Section 13(8)(b) of IGST Act not only falls foul of overall scheme of CGST Act and IGST Act but also offends Articles 245, 246A, 269A and 286(1)(b) of

Constitution. Thus, as per one opinion, the provision is unconstitutional, other has expressed his disagreement and has rendered his separate opinion. Therefore, in view of such difference in opinion, the matter was placed before the Hon'ble Chief Justice.

The Honorable Bombay High Court observed that the fiction which is created by Section 13(8)(b) would be required to be confined only to the provisions of IGST and ruled that Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid, and constitutional. However, the court has also held that these provisions can only be applied to the IGST Act and can't be used to levy tax on intermediary services under the CGST and SGST Acts.

Ex-parte order passed without affording sufficient opportunity of hearing is not sustainable: HC

Facts of the case - Himanshu Traders v. Union of India - [2023] (Patna)

The input tax credit claimed by the petitioner in GSTR-3B return was rejected in ex-parte assessment order passed by the Adjudicating Authority. The tax and penalty was also imposed against the petitioner. It filed appeal against the order and contended that sufficient time was not afforded to the petitioner to represent his case but the same was rejected. Therefore, it field writ petition before the High Court.

Decision of the case :

- The Honorable High Court noted that the order passed was ex parte in nature which didn't assign any sufficient reasons as to how the officer could determine the amount due and payable by the petitioner. Also, there was violation of principles of natural justice as sufficient time was not afforded to the petitioner to represent his case.

- Moreover, all issues of fact and law ought to have been dealt with, even if the proceedings were ex parte in nature but the authorities failed to adjudicate the matter on the attending facts and circumstances. Therefore, it was held that the impugned order was to be set aside and Adjudicating Authority was directed to decide case on merits after following principles of natural justice.

Rejection of refund without providing hearing opportunity is in violation of principles of natural justice: HC

Facts of the case - DL Support Services India (P.) Ltd. v. Additional Commissioner CGST Appeals II - [2023] (Delhi)

The petitioner was involved in export of services and sought a refund of tax paid on export of services. The application was accepted but later on Adjudicating Authority denied refund on ground that petitioner-assessee and service recipient(s) were not distinct persons.

It filed appeal against the rejection of refund and Appellate Authority proceeded to deny refund on an absolutely new ground that petitioner was an intermediary under section 2(13) of Integrated Goods and Services Tax Act, 2017. It filed writ petition and contended that refund was rejected without any notice or opportunity of hearing and it was not open for the Appellate Authority to suo moto set up a new case.

Decision of the case :

The Honorable High Court noted that the petitioner was not given an opportunity to meet case when it was held that it was not entitled to refund being an intermediary. Therefore, the impugned order was passed in violation of principles of natural justice. The Court also held that the matter to be remanded to Appellate Authority to decide petitioner's appeal afresh, including question as to whether Appellate Authority has jurisdiction to set up a new case against petitioner, which was not a subject matter of either show cause notice or enquiry before Adjudicating Authority.

Appellate order disapproving amount & method adopted in adjudication order without providing reasons to be set aside: HC

Facts of the case - Diamond Steel v. State of UP - [2023] (Allahabad)

The petitioner was a partnership concern and search and seizure were carried out by officers of GST special investigation branch (SIB). Thereafter, the department issued notice and passed adjudication order demanding interest and penalty by adopting guidelines issued by Income-tax authorities. The petitioner filed appeal and challenged that the order was passed on basis of findings and report of SIB which was never supplied and method of

calculation of demand was incorrect.

The Appellate Authority partly allowed the appeal and held that the manner of assessment done by the adjudicating authority on the basis of the provisions of the Income Tax Act can't be justified. However, it raised demand of huge amount without disclosing any basis of quantification. The petitioner filed writ petition against both the impugned orders.

Decision of the case :

- The Honorable High Court noted that the Appellate Authority had rejected assessment made based on guidelines issued by Income-tax authorities but quantified tax and penalty without disclosing reasons. Moreover, the contention of department that SIB report was supplied to petitioner during assessment proceedings and petitioner had also submitted reply against said report was not acceptable as impugned orders did not state such report was supplied and reply to same was made.

- The Court further noted that the department could issue SCN under section 74 when return furnished contained discrepancies and assessee had failed to take measures to correct such discrepancies. However, the adjudication order quantifying demand amount on basis of guidelines issued by Income-tax authorities and appellate order quantifying demand amount without providing reasons though disapproving quantification method adopted by Adjudicating Authority were not in accordance with section 74. Therefore, the Court held that the impugned orders were liable to be set aside.

HC set aside order which resulted into denial of reasonable opportunity to assessee to defend in proceedings

Facts of the case - Ashok Singh v. State of Gujarat - [2023] (Gujarat)

A notice under Section 130 of CGST Act, 2017 was issued to petitioner calling upon him to remain present before authority on 15-10-2019. The petitioner appeared and submitted about pendency of petition under section 130. However, the authority passed order under Section 130 on 15-10-2019, i.e. on same date, confirming all proposals in GST MOV 10 regarding levy of tax and fine. It filed writ petition to challenge the order on the ground that order was passed without opportunity of hearing.

Decision of the case :

- The Honorable High Court noted that the petitioner was called to remain present on 15-10-2019 and he submitted before the authority that a petition was filed before the Court. However, the order under section 130 was passed on same date which resulted into denial of reasonable opportunity to petitioner to defend in proceedings.

- Since, the impugned order was passed in violation of principles of natural justice, the Court held that the impugned order was liable to be set aside. The Court also remanded the proceedings to Competent Authority to decide matter afresh after giving opportunity to petitioner.

Tax paid under protest during investigation being collected without authority of law is liable to be refunded: HC

Facts of the case - Diwakar Enterprises (P.) Ltd. v. Commissioner of CGST - [2023] (Punjab & Haryana)

The petitioner was engaged in manufacturing of lead and lead related products. The department conducted search in the premises of petitioner and its director was questioned throughout the search and thereafter, he was forcibly taken to their office where he was kept detained for two days. He was pressurised to deposit the amount and he deposited Rs. 1,99,90,000/-. The petitioner lodged protest regarding the said deposit and filed the writ petition seeking refund of whole amount along with interest which was recovered forcibly from the petitioner.

Decision of the case :

The Honorable High Court observed that if tax is collected without any authority of law, the same would amount to depriving a person of his property without any authority of law and would infringe his right under Article 300 A of the Constitution of India as well. In the instant case, as per the department, the petitioner has deposited the impugned amount voluntarily but no receipt was given by the Proper Officer after accepting the impugned amount. Therefore, it was held that the amount deposited by the petitioner under protest was liable to be refunded along with 6 % interest.

JUDGEMENT
DIRECT TAX

Reimbursement made to parent Co. for salary paid to expatriate employee assigned to assessee not taxable as FTS: ITAT

Facts of the case - Yamazen Machinery and Tools India (P.) Ltd. v. ACIT - [2023] (Delhi - Trib.)

Assessee, a wholly owned subsidiary of the Japanese company, had debited certain amount being reimbursement of expenses to its parent company. Assessing officer (AO) found that one part of said payment was classified as salary for providing services in India through certain employees of parent company for rendering managerial services.

AO concluded that the parent company had seconded its employees for rendering managerial services to the assessee. Therefore, the fee paid to them was in nature of FTS, requiring the withholding of the tax under section 195. Since the assessee had not deducted tax at source on such payment, AO made disallowance under section 40(a)(i).

On appeal, the CIT(A) upheld the disallowance. Aggrieved-assessee filed the instant appeal before the Tribunal.

Decision of the case :

- The Delhi Tribunal held that terms of assignment agreement make it clear that assigned employees, in respect of whom, the assessee has made disputed payments, were under complete control and supervision of the assessee during tenure of the assignment agreement. In other words, there was an employer-employee relationship between assessee and assigned employees.

- Payments made to assigned employees, either directly or through parent company, have been treated as salary and tax at appropriate rate had been duly deducted under section 192 by the assessee, which was evident from TDS certificates issued in Form No. 16. Even assigned employees have filed their Income-tax Returns in India offering salary received from the assessee.

- Thus, facts and materials placed on record, including terms of the assignment agreement clearly establish that for all practical purposes, concerned persons assigned by parent company to assessee were working as employees of assessee and receiving salary income.

- Since reimbursement of expenses made by the assessee was in nature of salary cost and was subjected to TDS under section 192, such reimbursement could not be treated as FTS under section 9(1)(vii) and article 12 of India Japan DTAA.

ALP determined by ITAT can be subject to scrutiny; no absolute proposition of law that its decision is final: SC

Facts of the case - Sap Labs India Private Limited Vs. ITO - [2023] (SC)

The issue before the Supreme Court was:

"Whether the High Court was correct in holding that the determination of arm's length price by the Tribunal shall be final against which the High Court cannot entertain an appeal?"

The Supreme Court held that the Tribunal must follow the guidelines stipulated under Chapter X of the Income-tax Act, namely, Sections 92, 92A to 92CA, 92D, 92E and 92F and Rules 10A to 10E while determining the arm's length price (ALP). Any determination of ALP under Chapter X dehors the relevant provisions of the Income-tax Act is considered perverse and may be considered a substantial question of law as perversity itself can be said to be a substantial question of law.

There cannot be any absolute proposition of law that in all cases where the Tribunal determined ALP, the same is final and cannot be scrutinised by the High Court in an appeal under Section 260A of the Income-tax Act.

When the determination of ALP is challenged before the High Court, it is always open for the High Court to consider

and examine whether the ALP was determined considering the relevant guidelines under the Act and the Rules.

Even the High Court can also examine the comparability of two companies or selection of filters and whether the same is done judiciously and based on the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly, i.e., to the extent non-comparable transactions are considered comparable transactions or not.

Therefore, the view that in the matter of transfer pricing, the determination of ALP by the Tribunal shall be final and cannot be subject matter of scrutiny isn't acceptable. The High Court is not precluded from examining the correctness of the determination of ALP.

Consequently, the matter was remitted back to the respective High Court for fresh consideration after examining the arm's length price in accordance with the relevant provisions.

DDT rate mentioned u/s 115-O applies to NR shareholders also unless DTAA specifically protects them: ITAT

Facts of the case - DCIT v. Total Oil India (P.) Ltd. - [2023] (Mumbai - Trib.) (SB)

The question for consideration before the Special Bench of the Mumbai Tribunal was:

"If a domestic company pays dividends to non-resident shareholders, whether the dividend distribution tax (DDT) shall be payable at the rate mentioned in Section 115-O or the tax rate applicable to non-resident shareholder(s) with reference to such dividend income?"

The Mumbai Tribunal held that the first aspect that needs to be decided is whether DDT is a tax on the company or the shareholder. Can one say it is a tax payable by the shareholder, whose liability is discharged by the domestic company in the form of payment of DDT?

The Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. [2010] 194 Taxman 203 (Bombay) held that legal characteristics of DDT are a tax on a company paying the dividend and "is chargeable to tax on its profits as a distinct taxable entity. The domestic company paying DDT does not do so on behalf of the shareholder, and the company does not act as an agent of the shareholder in paying the tax under Section 115-O.

Although the Hon'ble Supreme Court reversed the Bombay High Court ruling, the observations of the Bombay High Court regarding the legal characteristics of DDT that it is a tax on a company paying the dividend cannot be said to have been diluted or overruled.

Thus, it can be concluded that the charge under section 115-O is on the company's profits and not income in the hands of the shareholder.

Regarding the applicability of DTAA, the bench held that the domestic company resident in India pays DDT. It is a tax on its income and not tax paid on behalf of the shareholder. In such circumstances, the domestic company under section 115-O does not enter the domain of DTAA at all. If the domestic company has to enter the domain of DTAA, the partner countries should have agreed specifically in the DTAA to that effect.

For instance, in the Treaty between India and Hungary, the Contracting States extended the Treaty protection to the DDT. It has been specifically provided in the protocol to the Indo-Hungarian Tax Treaty that when the company paying the dividends is a resident of India, the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders, and it shall not exceed 10 per cent of the gross amount of dividend.

Therefore, the DTAA is not triggered when a domestic company pays DDT under section 115-O.

Accordingly, the bench held that where the dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), DDT shall be payable by the domestic company at the rate mentioned in Section 115-O.

However, the domestic company can claim the benefit of DTAA if the Contracting States extend the treaty protection to the domestic company paying dividend distribution tax.

Purchasing share from off-market at a price higher than market price is clear case of investing in bogus scrip: ITAT

Facts of the case - Atmiben Alipitkumar Doshi v. ITO

- [2023] (Ahmedabad - ITAT)

Assessee purchased shares of a company in cash in 2012 at Rs. 20 per share. During the year, the assessee sold said shares and gained Rs. 675 per share as long-term capital gains and claimed the same as exempt under section 10(38).

The Assessing Officer (AO) noted that there was an enquiry related to penny stock companies, and this scrip was under investigation. Therefore, AO made additions on account of such capital gains as unexplained income under section 68, thereby denying the claim of exemption on the same.

On appeal, the CIT(A) confirmed the addition made by the AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

Decision of the case :

- The Tribunal held that the assessee purchased the shares in the scrip from Kappac Pharma Limited at Rs. 20/- per share in cash. Later the shares were sold on the Bombay Stock Exchange on different dates and gained Rs. 675 per share within 24 months. Further, the assessee bought shares at Rs. 20; however, the market price was Rs. 17.45.

- The purchase of Kappac Pharma Limited shares appears bogus as the scrip when having a share price of Rs. 17.45 was purchased by the assessee at Rs. 20 outside the regular stock exchange. Merely because the assessee submitted his demat statement and transaction statement along with debit note and share certificate does not shun away the aspect that the assessee was very well aware of brokers in respect of penny stock.

- Therefore, the AO and the CIT(A) rightly denied LTCG exemption under section 10(38), and additions made under section 68 were to be upheld.

No denial of trust registration if Church is doing charity without prejudice to any caste and creed: ITAT

Facts of the case - Amritsar Diocese of Believers Eastern Church v. Commissioner of Income-tax (Exemptions) - [2023] (Amritsar - Trib.)

The assessee was a charitable and religious trust created for the welfare of the general public regardless of caste, creed and religious status. It filed an application for registration under section 12A.

The Commissioner (Exemptions) denied registration to the assessee on the ground that it had violated the provisions of section 13(1)(b) as it operated only for the Christian community. Aggrieved-assessee filed the instant appeal before the Tribunal.

Decision of the case :

- The Tribunal held that the object clause of the assessee specifically mentioned that trust was charitable in nature and charity would be done without prejudice to any cast and creed. Primarily the object is never barred by section 13(1)(b). During registration of the trust the revenue authorities will verify the main object of the trust and the activities in relation to the main object of trust. Further, revenue had not made any adverse comment on the activity of the assessee-trust.

- Further, it was specifically mentioned in the object of trust that there was there was no violation of section 13(1)(b). The department could not show any evidence against the assessee's submission during the hearing. Accordingly, the order of the Commissioner (Exemption) was set aside, and the revenue is directed to issue the registration to the assessee-trust as the earliest.

Loss due to confiscation of smuggled stock-in-trade not allowable u/s 37: Apex Court

Facts of the case - CIT v. Prakash Chand Lunia (D) Thr. Lrs. - [2023] (SC)

Assessee was in the business of making jewellery. A search was conducted by the Directorate of Revenue Intelligence (DRI) officers at the premises taken on rent by the assessee and recovered slabs of silver.

Since the assessee failed to explain the source of the acquisition of silver, additions were made under section 69A and an assessment order was passed. Later, the assessee claimed loss of confiscation by the DRI official of the Customs Department was a business loss.

The matter reached the High Court, wherein loss was duly allowed relying upon the Supreme Court Ruling in the case

of Piara Singh [1980] 3 Taxman 67 (SC). The revenue filed the instant appeal before the Supreme Court.

Decision of the case :

- The Supreme Court held that the judgement in the case of Piara Singh wrongly relied upon as the same pertained to an assessee who was engaged in the business of smuggling currency notes and for whom confiscation of the currency notes was a loss occasioned in pursuing his business.

- In the instant case, the main business of the assessee was dealing in silver, and his business cannot be said to be the smuggling of silver bars, as was the case in the case of Piara Singh (supra).

- In the assessee's case, he was carrying on an otherwise legitimate silver business. To make larger profits, he indulged in the smuggling of silver, which was an infraction of the law.

- The word 'any expenditure' mentioned in Section 37 takes in its sweep loss occasioned in the course of business, being incidental to it. As a consequence, any loss incurred by way of expenditure by an assessee for any purpose which is an offence or which is prohibited by law is not deductible in terms of Explanation 1 to Section 37.

- Such an expenditure/loss incurred for any purpose which is an offence shall not be deemed to have been incurred for the purpose of business or profession or incidental to it, and hence, no deduction can be made.

- A penalty or a confiscation is a proceeding in rem. Therefore, a loss in pursuance to the same is not available for deduction regardless of the nature of the business, as a penalty or confiscation cannot be said to be incidental to any business. Therefore, an appeal of revenue was allowed, and an order passed by the High Court stand set aside.

AO can interfere with completed assessments u/s 153A only if incriminating material found during search: SC

Facts of the case - PCIT v. Abhisar Buildwell (P.) Ltd. - [2023] (SC.)

The issue before the Supreme Court was

"Whether in respect of completed assessments/unabated assessments, the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not?"

The revenue contended that AO has the jurisdiction to assess the 'total income' considering other material, though no incriminating material was found during the search, even in respect of completed/unabated assessments.

The matter was reached to different High Courts, and courts held that no addition could be made to completed/unabated assessments without incriminating material. The lead judgment is by the Delhi High Court in the case of Kabul Chawla v. CIT [2015] 61 taxmann.com 412 (Delhi), which has been subsequently followed and approved by the other High Courts. The Delhi High Court held that in the absence of any incriminating material, the AO could make no addition, and the AO has no jurisdiction to re-open the completed assessment.

Decision of the case :

- The Supreme Court held that section 153A was added to the statute to eliminate the practice of conducting two separate assessments and taxing "undisclosed" income at a regular tax rate instead of a special rate. As a result of this amendment, in the event of a search, a block assessment for six years will be conducted. To initiate a search assessment or block assessment under Section 153A, a valid search must be conducted under Section 132.

- The very purpose of the search, which is a prerequisite/trigger for invoking the provisions of section 153A is detecting undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in the ordinary course of regular assessment.

- Thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of the search. Accordingly, the Supreme Court upheld the view taken by the Delhi High Court in the case of Kabul Chawla.

Therefore, if incriminating material is discovered during a search conducted under Section 132 or requisition under Section 132A, the AO would have the authority to assess or reassess the "total income," considering the collected material, even if the assessment has been completed.

If no incriminating material is found during a search and the assessment is already completed or unabated, the revenue's only option would be to initiate reassessment proceedings under sections 147/48 of the Act, provided the conditions mentioned in sections 147/148 are fulfilled.

Provisions of Sec. 112(1)(c)(iii) applicable to NR supersede general provisions of computing capital gains: ITAT

Facts of the case : Legatum Ventures Ltd. v. ACIT - [2023] (Mumbai - Trib.)

Assessee-company was incorporated in United Arab Emirates (UAE) and was mainly involved in investment activities. During the scrutiny, Assessing Officer (AO) observed that the assessee sold shares of an Indian Private Limited and declared a long-term capital loss of around Rs. 3 Crores after applying 1st proviso to section 48 (i.e., reconversion of the Indian rupee into the same foreign currency).

The Assessing Officer (AO) held that the provision of section 112(1)(c)(iii) applies exclusively to the non-residents, and thus, he computed the capital gains by applying section 112(1)(c)(iii). It resulted in long-term capital gains of more than Rs. 17 crores.

Aggrieved-assessee filed objections before the Dispute Resolution Panel (DRP). DRP confirmed the additions made by AO. Aggrieved by the order, the assessee filed an instant appeal to the Mumbai Tribunal.

Decision of the case :

- The Tribunal held that section 112(1)(c)(iii) deals with tax on long-term capital gains. In the case of a non-resident, the income tax on long-term capital gains arising from the transfer of unlisted shares of a company not being a company in which the public are substantially interested shall be calculated at the rate of 10% on the capital gains. The section also provides that capital gains shall be computed without giving effect to the 1st and 2nd proviso to section 48.
- Assessee contended that section 112 only provides the rate of tax, which is a step subsequent to the determination of total income and for the computation of income chargeable under the head "capital gains". Since assessee was non-resident and earned capital gains from transfer of unlisted shares, therefore the benefit of 1st proviso to section 48 is available as said section provides the mode of computation of capital gains.
- Tribunal held that section 112(1)(c)(iii) is a special provision for computation of capital gains, in case of a non-resident, arising from the transfer of unlisted shares and securities. While on the other hand, section 48 is a general provision which deals with the mode of computation of capital gains in all the cases of transfer of capital assets.
- Since section 112(1)(c)(iii) is the specific provision, therefore, if ingredients of the said section are fulfilled, capital gains are required to be computed as per the manner provided under the said section.
- It is a well-settled rule of interpretation that if a special provision is made respecting a certain matter, that matter is excluded from the general provision under the rule which is expressed by the maxim "Generallia specialibus non derogant". Further, it is also a well-settled rule of construction that when, in an enactment, two provisions exist, which cannot be reconciled with each other, they should be so interpreted that, if possible, the effect should be given to both.
- Therefore, if the submission of the assessee that the income chargeable under the head "capital gains" is to be computed only as per section 48 is accepted, then the same would render the computation mechanism provided in section 112(1)(c)(iii) completely otiose and redundant.
- Thus, there was no infirmity in the orders passed by the lower authorities taxing the long-term capital gains as per section 112(1)(c)(iii).

Question of what proportion of profits arose or accrued in India is a question of fact: Apex Court

Facts of the case - Director of Income-tax v.

Travelport Inc. - [2023] (SC)

Assessee was in the business of providing electronic global distribution services to Airlines through what is known as a "Computerized Reservation System" (CRS). For this purpose, it maintains and operates a Master Computer System, which consists of several mainframe computers and servers in other countries, including the USA. This Master Computer System is connected to airline servers, to and from which data is continuously sent and obtained regarding flight schedules, seat availability, etc.

To market and distribute the CRS services to travel agents in India, the respondents have appointed Indian entities and have entered into distribution agreements with them. Assessee earns an amount of USD 3/EURO 3 per booking made in India. Out of said earnings, it pays various amounts to the Indian entities, which range from USD/EURO 1 to USD/EURO 1.8.

The Assessing Officer (AO) held that the entire income earned out of India is taxable because income was earned through the hardware installed by the assessee in the premises of the travel agents. The CIT(A) also upheld the order of AO.

On further appeal, based on the functions performed, assets used, and risks undertaken (FAR), the Tribunal held that 15% of the total revenue was the income accruing or arising in India. The High Court dismissed the appeal filed by AO. Aggrieved-AO filed the instant appeal before the Supreme Court.

Decision of the case :

- The Supreme Court held that it is seen from the orders of the Tribunal that the Tribunal arrived at the quantum of revenue accruing to assessee in respect of bookings in India which can be attributed to activities carried out in India, based on FAR analysis (Functions performed, assets used and risks undertaken).

- The Commission paid to the distribution agents by the respondents was more than twice the amount of attribution, which has already been taxed. Therefore, the Tribunal rightly concluded that the same extinguished the assessment. The question of what proportion of profits arose or accrued in India is essentially one of the facts.

- Under Explanation 1(a) to section 9(1)(i), what is reasonably attributable to the operations carried out in India alone can be taken to be the income of the business deemed to arise or accrue in India.

- What portion of the income can be reasonably attributed to the operations carried out in India is obviously a question of fact. On this question of fact, the Tribunal has considered relevant factors.

Benefit of Sec. 11 exemption can't be extended to 'deemed income' referred to in Sec. 11(3) : ITAT

Facts of the case - Prabhas Patan Jain v. Income tax Officer - [2023] (Rajkot - Trib.)

Assessee was a public charitable trust and filed its original return of income declaring "Nil" taxable income. During the assessment, the Assessing Officer (AO) contended that the assessee already claimed deduction of the deemed income in the assessment year in which such amount was computed under section 11(2). The amount accumulated had to be spent within a period prescribed the Act. Therefore, bringing the deemed income under the fold of income eligible for deduction under section 11(1)(a) of the Act would be tantamount to double deduction.

On appeal, the CIT(A) upheld the additions made by AO. Aggrieved-assessee preferred an appeal to the Rajkot Tribunal.

The Tribunal relied upon Circular No. 29, dated 23-8-1969. It was held that the intention of the Income-tax Act is quite clear that when the unapplied amount is deemed to be the income of the assessee under section 11(3), then the benefit of section 11(1)(a) would be lost.

Further, the purpose of the introduction of the same was that the assessee should not be eligible to claim double deduction in respect of the same income, i.e. recycle the same income, which remained unapplied.

Therefore, if exemption under section 11(1)(a) is allowable in respect of the deemed income under section 11(3), then exemption under section 11(2) is also allowable in respect of such deemed income as sub-section (2) of section 11 refers to the income referred to in section 11(1)(a). If exemptions under section 11(1)(a) and 11(2) are allowed in respect of the deemed income under section 11(3), then it

will result in unintended benefits to the assessee.

Further, exemption under section 11 is available only on income and not on deemed income; therefore, an assessee cannot claim benefit or accumulation concerning deemed income. This view is also supported by Form No. 3A. Clause No. 10 of Part I of Form No. 3A prescribes the deemed income under section 11(3) to be added to the income arrived at after claiming exemption under section 11(1)(a) and 11(2). The form does not allow the assessee to claim an exemption under sections 11(1)(a) and 11(2) in respect of deemed income under section 11(3).

Therefore, it was held that the assessee-trust is not eligible to claim an exemption under section 11(1)(a) and section 11(2) in respect of deemed income under section 11(3).

Tax calendar Indirect

Due Dates	Returns
May 10th, 2023	GSTR-8 (Apr, 2023)
May 10th, 2023	GSTR-7 (Apr, 2023)
May 11th, 2023	GSTR-1 (Apr, 2023)
May 13th, 2023	IFF (Optional) (Apr,2023)
May 13th, 2023	GSTR-5 (Apr, 2023)
May 13th, 2023	GSTR-6 (Apr, 2023)

Tax calendar Direct

Due Dates	Returns
7 May 2023	Due date for deposit of Tax deducted by an office of the government for the month of March, 2023. However, all sum deducted 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 May 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of March, 2023
15 May 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of March, 2023
15 May 2023	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of March, 2023
15 May 2023	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of March, 2023 Note: Applicable in case of specified person as mentioned under section 194S
15 May 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2023 has been paid without the production of a challan
15 May 2023	Quarterly statement of TCS deposited for the quarter ending March 31, 2023
15 May 2023	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes have been modified after registering in the system for the month of April, 2023

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal - https://icmai.in/TaxationPortal/

Notes

Notes

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. 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.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
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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