

DECEMBER, 2020

TAX Bulletin

★ ★ VOLUME - 77 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

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.”

VISION STATEMENT

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

Objectives of Taxation 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.

DECEMBER, 2020

TAX Bulletin

★ ★ VOLUME - 77 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100



CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department.

Crash Course on GST has been successfully completed for the students of, Sapient College of Mysore and Exam had also been conducted.

The Classes for the Taxation courses like Certificate Course on GST, Advanced Certificate Course on GST, Certificate Course on Filing of Returns and Certificate Course on TDS are being conducted seamlessly.

Admissions for the courses are open for all the Taxation Courses like

- (i) Certificate Course on GST
- (ii) Advanced Certificate Course on GST
- (iii) Certificate Course on Filing of Returns
- (iv) Certificate Course on TDS

including the following two new courses

- (v) Advanced Course on GST Audit and Assessment Procedure and
- (vi) Advanced Course on Income Tax Assessment and Appeals

The Taxation portal is also being updated on a regular basis.

We are thankful to our Resource Persons and knowledge contributors for their incessant support. We solicit feedback from our readers for any improvisations that may be made in the Bulletin.

Wish you all to take care of yourselves and your family members in this pandemic scenario.

Jai Hind.

Warm Regards

(Rakesh Bhalla)

CMA Rakesh Bhalla
2nd December 2020

CMA Chittaranjan Chattopadhyay
2nd December 2020

TAXATION COMMITTEES 2020 - 2021

Indirect Taxation Committee

Permanent Invitees

CMA Biswarup Basu - President
CMA P. Raju Iyer - Vice-President

Chairman

1. CMA Chittaranjan Chattopadhyay

Members

2. CMA Balwinder Singh
3. CMA Ashwinkumar G. Dalwadi
4. CMA Debasish Mitra
5. CMA H. Padmanabhan
6. CMA (Dr.) V. Murali
7. CMA (Dr.) K Ch A V S N Murthy
8. CMA Vijender Sharma
9. CMA Rakesh Bhalla
10. CMA V.S. Datey (Co-opted)
11. CMA Ashok B. Nawal (Co-opted)
12. CMA Debasis Ghosh (Co-opted)

Secretary

CMA Rajat Kumar Basu, Addl. Director

Direct Taxation Committee

Permanent Invitees

CMA Biswarup Basu - President
CMA P. Raju Iyer - Vice-President

Chairman

1. CMA Rakesh Bhalla

Members

2. CMA Balwinder Singh
3. CMA Neeraj D. Joshi
4. CMA (Dr.) Ashish P. Thatte
5. CMA H. Padmanabhan
6. CMA Papa Rao Sunkara
7. CMA Chittaranjan Chattopadhyay
8. CMA Harijiban Banerjee (Co-opted)
9. CMA Rakesh Sinha (Co-opted)

Secretary

CMA Rajat Kumar Basu, Addl. Director

ACKNOWLEDGEMENTS

CMA Mrityunjay Acharjee	CMA Anil Sharma
CMA Amit Sarker	CMA Arindam Goswami
CMA Vishwanath Bhat	CMA Manmohan Daga
CMA Bhogavalli Mallikarjuna Gupta	CMA R. K. Khurana
CMA T K Jagannathan	
CMA Shiba Prasad Padhi	
CMA Niranjan Swain	
CMA Navneet Kumar Jain	

TEAM - TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu - Additional Director - Tax Research
CMA Tinku Ghosh Das - Deputy Director - Tax Research
CMA Priyanka Roy - Assistant Director - Tax Research
Ms. Mukulika Poddar - Officer - Tax Research
CMA Debasmita Jana - Associate - Tax Research
CMA Amitesh Kumar Shaw - Research Associate
CMA Priyadarsan Sahu - Research Associate

SPECIAL ACKNOWLEDGEMENT

Mr. Dipayan Roy Chaudhuri - Graphics & Web Designer

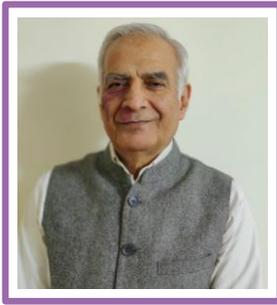
CONTENTS

ARTICLES		
INDIRECT TAX		
01	ADJUDICATION: DEMAND AND RECOVERY OF TAX UNDER GST LAWS	
	CMA R. K. Khurana	Page - 1
DIRECT TAX		
02	TAX TREATMENT OF GIFT RECEIVED BY AN INDIVIDUAL OR HINDU UNDIVIDED FAMILY (HUF)	
	CMA Niranjan Swain	Page - 6
RECENT UPDATES IN DIRECT AND INDIRECT TAX		
	Team TRD	Page - 15
TAX UPDATES, NOTIFICATIONS AND CIRCULARS		
	Indirect Tax	Page - 16
PRESS RELEASE		
	Direct Tax	Page - 22
JUDGEMENTS		
	Indirect Tax	Page - 24
	Direct Tax	Page - 27
TAX COMPLIANCE CALENDAR AT A GLANCE		
	Indirect Tax	Page - 30
	Direct Tax	Page - 31
	Courses - Tax Research Department	Page - 32
	E-Publications of Tax Research Department	Page - 33

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



ADJUDICATION: DEMAND AND RECOVERY OF TAX UNDER GST LAWS

CMA R. K. Khurana
Advocate

Introduction

The term adjudication is the act of making a judicial ruling such as a judgment or decree. It is the giving or pronouncing a judgment in a civil or a criminal action. It is a legal ruling or judgment of a competent authority having power to decide a particular issue brought before it. Adjudication can also be referred to as the process of settling a legal case or claim through the court or justice system. It usually refers to the final judgment or pronouncement in a case brought before it. Most of the executive functions such as registration of tax payers, scrutiny of returns, inspection, search, seizure, detentions and confiscation of goods recovery of tax etc under the GST laws are done by the proper officer.

Adjudication under the CGST, Act, 2017

The Central Goods and Service Tax Act, 2017 does not define the term 'Adjudication', but defines two important terms i.e. the Proper Officer and the Adjudicating Authority. Section 2 (91) defines, "Proper Officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board". This implies that the functions assigned to the Commissioner can be assigned to officers of the central tax, who are assigned these functions by the Commissioner or the Central Board of Indirect Taxes and Customs (CBIC). In most of the sections wherever functions are to be performed under this Act, these functions are performed by the Proper Officer i.e. by the commissioners or the officer of the GST Department, who are assigned these functions by the Commissioner.

Section 2(4) of the Act, defines Adjudicating authority to mean any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171(i.e. Anti-Profiteering Authority). Any order/decision passed under the Act is called an act of Adjudication. Some of the important issues which require judicial application of mind and application of mind are as under:

1. Tax not paid (Secs. 73 & Sec.74)
2. Tax Short paid (Secs. 73 & 74)
3. Tax erroneously refunded (Sec. 73 & 74)
4. ITC wrongly availed (Sec. 73 & 74)
5. ITC wrongly utilized (Secs. 73 & 74)
6. Tax Collected but not paid (Sec. 76)
7. Tax Collected under wrong head (Sec.77)

For the purpose of this article, the points mentioned at serial number 1 to 5 above shall, in short, be referred to as tax short/non paid etc. The points mentioned at serial number 6 and 7 shall be described separately.

The Proper officer has also to determine whether the actions of the registered tax payers involving non-payment or short payment of tax, or excess claim of input tax credit is for reason of (or not involving) fraud, wilful misstatement, or suppression of facts on the part of the tax payers. In case the non-payment or short payment etc of tax is **for reasons other than** fraud, wilful misstatement or

suppression of fact, the necessary adjudication involves application of Section 73 of the CGST, Act, 2017. However if the non/short-payment of tax, excess claim of input tax credit etc is by way of fraud, misstatement suppression of facts etc. necessary adjudication and other follow is provided under Section 74 of the CGST Act, 2017.

Officers authorised to issue show cause notice and pass adjudication orders: The adjudication involves activities such as the scrutiny of returns, collection of information to find out taxable persons who might have not may payment short payment, excess availed input tax credit, or sought refund, giving show cause notice (SCN) seeking replies to from the tax payers, giving opportunity of being heard before passing of final orders.

As per CBIC circular No. 31/05/2018 – GST (F. No. 349/75/2017-GST) dated 09 February 2018, the work relating to the issuance of SCNs and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax have been prescribed. In pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board has assigned the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

Table

Sr No	Officers of Central Tax	Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Sl. No. Officer of Central Tax central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act	Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act	Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to integrated tax vide section 20 of the IGST Act
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding Rupees 20 lakhs	Not exceeding Rupees 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakhs and not exceeding Rupees 1 crore	Above Rupees 20 lakhs and not exceeding Rupees 2 crore	Above Rupees 20 lakhs and not exceeding Rupees 2 crore
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crore without any limit	Above Rupees 2 crore without any limit

SCNs issued by the Officers of Audit Commissionerates and Director General GST Intelligence:

As per this circular, the central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence ("DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them is to be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice is adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

SCNs in which the Principal Places of business of the notices fall in multiple Commissionerates:

A SCN issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerates and where the central tax and/or integrated tax (including cess) involved is more than Rs. 5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

SCNs issued on similar issues to a noticee(s) made and made answerable to different levels of Adjudicating Authorities:

In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

SCN and adjudication of demand under Section 73 of the CGST Act, 2017: The steps for demand under Section 73 of the CGST Act, 2017 are summarised as under:

1. Determination whether, in the opinion of the Proper Officer, the tax not/short paid etc. is for reason other than on account of fraud, wilful misstatement, suppression of fact.
2. If answer to question number 1 is affirmative, the Proper Officer shall proceed under Section 73 of the CGST Act, 2017, else under Sec 74 of this Act.
3. Pre-SCN intimation to the defaulting taxable person. The Proper Officer to Compute the details of tax, interest and penalty payable, as ascertained by him and communicate the same to the defaulting tax payer, in Part A of Form GST DRC-01A.
4. A taxpayer, on receipt of intimation in Form DRC-01A, may use the second part of the said form i.e. Part B, to communicate to the officer, if he (taxable person) has made whole or part-payment of the ascertained liability, or if the liability is not acceptable by him.
5. In case the taxable person pays the full amount mentioned at serial number 3 above and informs the Proper Officer, the proceedings under Section 73(1) shall stand concluded and there would be no need for issue of SCN.
6. When the amount paid as per the ascertainment of the assessee falls short, the proper officer shall issue a notice for the amount of shortfall.
7. Where the tax payer makes the payment of tax along with interest within 30 days of issuance of Notice and intimates the proper officer of such payment in FORM GST DRC-03, the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice and subsequently no penalty shall be payable.
8. Where the person files a reply or representation, the proper officer after considering the representation, shall issue an order in FORM GST DRC-06, consisting of the amount of tax, interest and penalty (i.e. tax + interest + penalty).
9. The amount of penalty shall be higher of 10% of tax or Rs.10,000.
10. A summary of such order shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. Such summary of order in Form GST DRC-07 shall be treated as a notice for recovery.

11. Time limit for issue of the determination order: As per Section 73(10), the Proper Officer is required to pass the order within three years from:
 - a. the due date of filing of Annual Return under Section 44 for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates or
 - b. date of erroneous refund.
12. Time limit for issue of SCN: The Proper Officer is required to issue notice at least three months prior to the time limit specified under Section 73(10) for issuance of an order.
13. Notwithstanding anything contained in Section 73(6) and Section 73(8) i.e. bullets 5 and 7 above, penalty under Section 75(9) shall be payable where any amount of:
 - a. Any amount of Self-assessed tax or
 - b. Any amount collected Tax collected as tax

has not been paid within a period of thirty days from the due date of payment of such tax.

SCN and adjudication of demand under Section 74 of the CGST Act, 2017: The steps for determination of tax under Section 74 are similar to the steps required under Section 73 above, with the following differences:

1. Determination under this Section is applicable, if in the opinion of the Proper Officer, the tax not/short paid etc. is for reason of fraud, wilful misstatement, suppression of fact.
2. Pre-SCN intimation to the defaulting taxable person. In case the taxable person pays the full amount with interest prescribed under Section 50 and a penalty equal to 15 percent of tax, and informs the Proper Officer, the proceedings under Section 74(1) shall stand concluded and there would be no need for issue of SCN.
3. Where the tax payer makes the payment of tax along with interest and penalty equal to 25% of the tax within 30 days of issuance of Notice and intimates the proper officer of such payment, the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings.
4. Where the taxable person makes payment of tax, interest as prescribed under Section 50 and penalty at the rate of 50 per cent of the tax payable within 30 days of the receipt of the order, the proceedings initiated under Section 74(1) shall stand concluded.
5. If the payment is not made within 30 days of the receipt of the order, the amount of penalty will be equal to the amount of tax ordered to be paid as per the provision of Section 74(1).
6. A summary of such order shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. Such summary of order in Form GST DRC-07 shall be treated as a notice for recovery.
7. Time limit for issue of the determination order: As per Section 73(10), the Proper Officer is required to pass the order within five years from:
 - a. the due date of filing of Annual Return under Section 44 for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates or
 - b. date of erroneous refund.
8. Time limit for issue of SCN: The Proper Officer is required to issue notice at least six months prior to the time limit specified under Section 73(10) for issuance of an order.

Comparative summary of the penalty payable under Section 73 and Section 74:

The amount of penalty payable under the two sections is summarised as under:

Sr. No	Stage of payment	Section 73	Section 74
1.	Tax and interest paid before issue of SCN	No Penalty	15% of the tax amount
2	Tax and interest paid within 30 days after issue of SCN	No Penalty	25% of the tax amount
3.	Tax and interest paid within 30	10% of the tax or Rs.10,000,	50% of tax amount

	days of communication of adjudication order	whichever is higher	
4.	Maximum penalty: In any other case	10% of the tax or Rs.10,000, whichever is higher	100% of the tax amount.

General provisions relating to determination of tax (Section 75):

The general provisions relating to determination of demand under Section 73 and Section 74 are summarised as under:

1. Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of notice and of passing of order.
2. Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.
3. Where notice issued under *Section 74 (1)* is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established, the Proper Officer shall determine the tax payable by such person, deeming as if the notice were issued *Section 73 (1)*.
4. An opportunity of hearing shall be granted, where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
5. The PO shall, if sufficient cause is shown by the taxable person, grant time to the said person and adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted for more than three times to a person during the proceedings.
6. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
7. The amount of tax, interest and penalty demanded in the order not to be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
8. Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the Proper Officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.
9. The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.
10. Any person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.
11. The proper officer shall issue an order within one year from the date of issue of the notice.
12. Where a taxable person wrongly pays CGST/SGST or CGST/UTGST on the transaction treating it as intra-State supply, but which is subsequently held to be inter-State supply, upon payment of IGST on such transaction, the CGST/SGST or CGST/UTGST will to be refunded.
13. The refund of such CGST/SGST or CGST/UTGST would be granted subject to such conditions as may be prescribed in this regard. However, interest is not required to be paid on the IGST payable in terms of Section 19 (2) of the IGST Act.

-
1. *The views expressed in this articles are personal views of the author, and do not necessarily represent the views of The Institute of Cost Accountants of India.*
 2. *The present article has been written with the object of sharing and disseminating knowledge on the subject. It is not a legal opinion. The Publisher or the Author do not take responsibility for any loss that may be caused to any person due to use of the information contained in this article.*



TAX TREATMENT OF GIFT RECEIVED BY AN INDIVIDUAL OR HINDU UNDIVIDED FAMILY (HUF)

CMA Niranjana Swain
Advocate & Tax Consultant

1. Back Ground: A very common and frequent question running in the mind of taxpayers is the taxability of gifts. In this chapter an attempt has been made to discuss about various provisions relating to taxability of gift received by an individual or a Hindu Undivided Family (HUF) i.e. sum of money or property received by an individual or a HUF without consideration or a case in which the property is acquired for inadequate consideration.

1.1. From the taxation point of view, gift can be classified as follows:

- i.** Any sum of money received without consideration; it can be termed as '**monetary gift**'.
- ii.** Specified movable properties received without consideration, it can be termed as '**gift of movable property**'.
- iii.** **Specified movable properties** received at a reduced price (i.e. for inadequate consideration), it can be termed as 'movable property received for less than its fair market value'.
- iv.** Immovable properties received without consideration; it can be termed as '**gift of immovable property**'.
- v.** Immovable properties acquired at a reduced price (i.e. for inadequate consideration), it can be termed as '**immovable property received for less than its stamp duty value**'.

2. Tax treatment of monetary gifts received by an individual or Hindu Undivided Family (HUF)

2.1. If the following conditions are satisfied then any sum of money received without consideration (i.e., monetary gift may be received in cash, cheque, draft, etc.) by an individual/ HUF will be charged to tax:

- Sum of money received without consideration.
- The aggregate value of such sum of money received during the year exceeds Rs. 50,000.

2.2. Though the provisions relating to gift applies in case of every person, but it has been reported that gifts by a resident person to a non-resident are claimed to be non-taxable in India as the income does not accrue or arise in India up to 4th July 2019. **To ensure that such gifts made by residents to a non-resident person are subjected to tax in India, the Finance (No. 2) Act, 2019 has inserted a new clause (viii) under Section 9 of the Income-tax Act to provide that any income arising outside India, being money paid without consideration on or after 05-07-2019, by a person resident in India to a non-resident or a foreign company shall be deemed to accrue or arise in India.**

2.3. Cases in which sum of money received without consideration, i.e., monetary gift received by an individual or HUF is not charged to tax

In following cases, monetary gift received by an individual or HUF will not be charged to tax:-

- a) Money received from relatives.

Note: Relative for this purpose means:

In case of an Individual - a. Spouse of the individual; b. Brother or sister of the individual; c. Brother or sister of the spouse of the individual; d. Brother or sister of either of the parents of the individual; e. Any lineal ascendant or descendent of the individual; f. Any lineal ascendant or descendent of the spouse of the individual; spouse of the persons referred to in (b) to (f).

In case of HUF - any member thereof.

- b) Money received on the occasion of the marriage of the individual.
- c) Money received under will/ by way of inheritance.
- d) Money received in contemplation of death of the payer or donor.
- e) Money received from a local authority [as defined in *Explanation* to section 10(20) of the Income-tax Act].
- f) Money received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C).
- g) Money received from a trust or institution registered under section 12AA.
- h) Share received as a consequences of demerger or amalgamation of a company under clause (vid) or clause (vii) of section 47, respectively.
- i) Share received as a consequences of business reorganization of a co-operative bank under section 47(vicb).

2.4. Marriage of the individual is the only occasion when monetary gift received by him will not be charged to tax

Gift received on the occasion of marriage of the individual is not charged to tax. Apart from marriage there is no other occasion when monetary gift received by an individual is not charged to tax. Hence, monetary gift received on occasions like birthday, anniversary, etc. will be charged to tax.

2.5. Taxability of monetary gifts received from friends

2.6. Gifts received from relatives are not charged to tax (Meaning of 'relative' has been discussed earlier). Friend is not a 'relative' as defined in the above list and hence, gift received from friends will be charged to tax (if other criteria of taxing gift are satisfied).

2.7. Monetary gifts received from abroad

If the aggregate value of monetary gift received during the year by an individual or HUF exceeds Rs. 50,000 and the gifts are not covered under the exceptions discussed in earlier part, then gifts whether received from India or abroad will be charged to tax.

2.8. Once the aggregate value of gifts received during the year exceeds Rs. 50,000 then all gifts are charged to tax

Sum of money received without consideration by an individual or HUF is chargeable to tax if the aggregate value of such sum received during the year exceeds Rs. 50,000.

The important point to be noted in this regard is the "aggregate value of such sum received during the year". The taxability of the gift is determined on the basis of the aggregate value of gift received during the year and not on the basis of individual gift. Hence, if the aggregate value of gifts received during the year exceeds Rs. 50,000, then total value of all such gifts received during the year will be charged to tax (i.e. the total amount of gift and not the amount in excess of Rs. 50,000).

2.9. Illustration -1

Mr. Kumar received following gifts during the financial year 2019-20:

- Rs. 1,84,000 from his friend residing in Canada.
- Rs. 25,200 from his elder brother residing in Delhi.
- Rs. 84,000 from his friend residing in Delhi (received on the occasion of birthday of Mr. Kumar).

What will be the tax treatment of above items in the hands of Mr. Kumar?

Tax Treatment: Sum of money received without consideration (i.e. gift) by an Individual or a HUF from any person other than relative (meaning of relative is already discussed earlier) and otherwise

than on prescribed occasions (as discussed earlier) is charged to tax, if the aggregate amount of such gift received during the year exceeds Rs. 50,000. Considering these provisions, the tax treatment of gifts in the hands of Mr. Kumar will be as follows:

- Rs. 1,84,000 received from his friend will be fully taxed because friend is not covered in the definition of 'relative'.
- Rs. 25,200 received from elder brother will not be charged to tax because elder brother is covered in the definition of 'relative'.
- Birthday is not covered in the list of prescribed occasion on which gift is not charged to tax, hence Rs. 84,000 received on the occasion of birthday will be fully taxed.

Illustration -2

During the financial year 2020-21, Mr. Raja received following gifts from his friends:

- Rs. 25,000 on 1-5-2020
- Rs. 18,000 on 20-12-2020

What will be the tax treatment of above gifts?

Tax Treatment: Sum of money received without consideration (i.e. gift) by an Individual or a HUF from any person other than relative (meaning of relative has been discussed earlier) and otherwise than on prescribed occasions (as discussed earlier) is charged to tax, if the aggregate amount of such gift received during the year exceeds Rs. 50,000.

Friends are not covered in the definition of relative. Further, birthday is not covered in the list of prescribed occasion on which gift is not charged to tax and hence, gift received from friends will be charged to tax. However, nothing will be charged to tax, if the aggregate amount of gift received during the year does not exceed Rs. 50,000.

The aggregate amount of gift received by Mr. Raja during the year amounts to Rs. 43,000 (Rs. 25,000 + Rs. 18,000) which is below Rs. 50,000, hence, nothing will be charged to tax in the hands of Mr. Raja. Suppose, if in the given case, the amount of second gift is Rs. 28,000 instead of Rs. 18,000, then the aggregate amount of gift will come to Rs. 53,000 (Rs. 25,000 + Rs. 28,000). In this case, entire amount of Rs. 53,000 will be charged to tax in the hands of Mr. Raja.

3. Tax treatment of immovable property received as gift by an individual or HUF

If the following conditions are satisfied than immovable property received without consideration by an individual or HUF will be charged to tax:

- i. Immovable property, being land or building or both, is received by an individual/HUF.
- ii. The immovable property is a capital asset with in the meaning of section 2(14) for such an individual or HUF.
- iii. The stamp duty value of such immovable property received without consideration exceeds Rs. 50,000.

3.1. When immovable property received by an individual or HUF without consideration (i.e. by way of gift) is not charged to tax

In following cases, gift of immovable property will not be charged to tax.

- 1) Property received from relatives. Relative for this purpose means:
 - i. In case of an Individual
 - a. Spouse of the individual;
 - b. Brother or sister of the individual;

- c. Brother or sister of the spouse of the individual;
 - d. Brother or sister of either of the parents of the individual;
 - e. Any lineal ascendant or descendent of the individual;
 - f. Any lineal ascendant or descendent of the spouse of the individual;
 - g. Spouse of the persons referred to in (b) to (f).
- ii. In case of HUF, any member thereof. .
- 2) Property received on the occasion of the marriage of the individual.
 - 3) Property received under will/ by way of inheritance.
 - 4) Property received in contemplation of death of the donor.
 - 5) Property received from a local authority [as defined in *Explanation* to section 10(20) of the Income-tax Act].
 - 6) Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C).
 - 7) Property received from a trust or institution registered under section 12AA.

3.1.1. Marriage of individual is the only occasion when gift received by him will not be charged to tax

Gift (i.e. immovable property received without consideration) received only on the occasion of marriage of the individual is not charged to tax. Apart from marriage there is no other occasion when gift received by an individual is not chargeable to tax. Hence, immovable property received on occasions like birthday, anniversary, etc., without any consideration will be charged to tax.

3.2. Taxability of immovable property received without consideration i.e., gift from friends

Gifts (i.e. immovable property received without consideration) received from relatives are not charged to tax (meaning of relative has been discussed earlier). Friend is not a relative as defined in the above list and hence, gift received from friends will be charged to tax (if other criteria of taxing gift are satisfied).

3.3. Tax treatment of gift of immovable property located abroad

If the conditions discussed in earlier part (regarding the taxability of gift of immovable property) are satisfied, then gift of immovable property will be charged to tax whether the property is located in India or abroad.

Illustration -3

An Individual received a gift of flat from his friend. The stamp duty value of the flat is Rs. 84,000. In this case whether the total value of gifted property will be charged to tax or only the value in excess of Rs. 50,000 will be charged to tax?

Tax Treatment: If the conditions discussed in earlier part (regarding the taxability of gift of immovable property) are satisfied, then the entire stamp duty value of immovable property received without consideration, i.e., received as gift will be charged to tax. Once the taxability is attracted, i.e., stamp duty value of property received as gift exceeds Rs. 50,000, then the entire stamp duty value of the property is chargeable to tax. Hence, in this case entire stamp duty value of property, i.e., Rs. 84,000 will be charged to tax.

Illustration-4

On 1-5-2020, Mr. Kumar gifted his house to his friend Mr. Raja. The market value of the building was Rs. 8,40,000 and the value of the building adopted by the Stamp Valuation Authority for charging stamp duty was Rs. 9,00,000. Advise Mr. Raja regarding the tax treatment in this case.

Tax Treatment: If the following conditions are satisfied then immovable property received by an individual or HUF will be charged to tax:

- i. Immovable property, being land or building or both, is received by an individual/HUF.
- ii. The immovable property is a 'capital asset' within the meaning of section 2(14) for such an individual or HUF.
- iii. The stamp duty value of such immovable property received without consideration exceeds Rs. 50,000.

The above provisions are not applicable in case of immovable property received from relatives and immovable property received on certain specified occasions.

In the given case, the property is a capital asset for Mr. Raja, the property is received from his friend (friend is not covered in the definition of relative), property is not received on any specified occasions and the stamp duty value of the property exceeds Rs. 50,000. In other words, all the conditions required to tax the gift are satisfied and hence the stamp duty value of the property i.e. Rs. 9,00,000 will be charged to tax in the hands of Mr. Raja. It will be charged to tax under the head "Income from other sources".

3.4. Taxability in a case where an immovable property is received for less than its stamp duty value

Apart from taxing immovable property received without consideration, i.e., received as gift, the Income-tax Act has also designed provisions for taxing immovable property received for less than its stamp duty value. If following conditions are satisfied, then immovable property received by an individual or HUF for less than its stamp duty value will be charged to tax:

- i. Any immovable property is acquired by an individual or a HUF.
- ii. The immovable property is a 'capital asset' within the meaning of section 2(14) of the Act for such individual or HUF.
- iii. Such property is acquired for a consideration but the consideration is less than the stamp duty value and the difference exceed higher of Rs. 50,000 and 10% of the consideration.

Note: The Finance Act, 2020 has increase the safe harbor limit of 5% to 10% w.e.f. Assessment Year 2021-22

In above case the excess of stamp duty value over the purchase price of the property will be treated as income of the purchaser. When immovable property received by an individual or HUF for less than its stamp duty value is not charged to tax. In following cases, nothing will be charged to tax in respect of immovable property received for less than its stamp duty value

Property received from relatives.

Relative for this purpose means:

In case of an Individual Spouse of the individual; Brother or sister of the individual; Brother or sister of the spouse of the individual; Brother or sister of either of the parents of the individual; Any lineal ascendant or descendent of the individual; Any lineal ascendant or descendent of the spouse of the individual; Spouse of the persons referred to in (b) to (f).

In case of HUF, any member thereof: Property received on the occasion of the marriage of the individual. Property received under will/ by way of inheritance. Property received in contemplation of death of the donor. Property received from a local authority [as defined \in Explanation to section 10(20) of the Income-tax Act]. Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C). Property received from a trust or institution registered under section 12AA.

Illustration -5

Question: On 1-4-2020, Mr. Raja (a salaried employee) purchased a building from Mr. Kumar for Rs. 25,20,000. The value of the building adopted by the Stamp Valuation Authority for charging stamp duty was Rs. 28,00,000. Advice Mr. Raja regarding the tax treatment in this case.

Tax Treatment: If an individual purchases a capital asset, being an immovable property, and the stamp duty value of such property exceeds actual consideration by higher of Rs. 50,000 and 10% of the actual consideration, then the excess of stamp duty value over the purchase price will be charged to tax in the hands of the purchaser.

In the instant case, building is a capital asset for Mr. Kumar. The stamp duty value of the building exceeds the actual consideration by Rs. 2,80,000 which is higher than Rs. 50,000 and 10% of the actual consideration of Rs. 25,20,000, i.e., Rs. 2,52,000. Hence, the above discussed provision shall apply and the differential amount of Rs. 2,80,000 (Rs. 28,00,000 less Rs. 25,20,000) will be treated as income of Mr. Kumar.

Illustration -6

On 1-4-2020, Mr. Kumar (a salaried employee) purchased a building from Mr. Vipul for Rs. 25,40,000. The value of the building adopted by the Stamp Valuation Authority for charging stamp duty was Rs. 25,50,000. Advice Mr. Kumar regarding the tax treatment in this case.

Tax Treatment: If an individual purchases a capital asset, being an immovable property, and the stamp duty value of such property exceeds actual consideration by higher of Rs. 50,000 and 10% of the actual consideration, then the excess of stamp duty value over the purchase price will be charged to tax in the hands of the purchaser.

In the instant case, building is a capital asset for Mr. Kumar. Though the stamp duty value of the building exceeds the actual consideration by Rs. 10,000 but it does not exceed Rs. 50,000 and 10% of the actual consideration of Rs. 25,40,000, i.e., Rs. 2,54,000. Hence, the above discussed provision shall not apply and the differential amount of Rs. 10,000 (Rs. 25,50,000 less Rs. 25,40,000) will not be treated as income of Mr. Kumar.

4. Tax treatment of movable property received as gift by an individual or HUF

4.1. If the following conditions are satisfied then value of prescribed movable property (meaning discussed in later part) received by an individual or HUF will be charged to tax:

- i Prescribed movable property is received without consideration (i.e., received as gift).
- ii The aggregate fair market value of such property received by the taxpayer during the year exceeds Rs. 50,000.

In above case, the fair market value of the prescribed movable property will be treated as income of the receiver.

Prescribed movable property means shares/securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art and bullion, being capital asset of the taxpayer.

Considering the above definition, nothing will be charged to tax in respect of gift of any item being a movable property other than covered in the above definition, e.g., Nothing will be charged to tax in respect of a television set received as gift, because a television set is not covered in the definition of prescribed movable property.

4.2. When prescribed movable property received without consideration, i.e., received as gift by an individual or HUF is not charged to tax

In following cases, nothing will be charged to tax in respect of prescribed movable property received without consideration:

Movable Property received from relatives.

Relative for this purpose means:

In case of an Individual Spouse of the individual; Brother or sister of the individual; Brother or sister of the spouse of the individual; Brother or sister of either of the parents of the individual; Any lineal ascendant or descendent of the individual; Any lineal ascendant or descendent of the spouse of the individual; Spouse of the persons referred to in (b) to (f).

In case of HUF, any member thereof: Property received on the occasion of the marriage of the individual. Property received under will/ by way of inheritance. Property received in contemplation of death of the donor. Property received from a local authority [as defined \in Explanation to section 10(20) of the Income-tax Act]. Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C). Property received from a trust or institution registered under section 12AA.

Illustration -7

During the financial year 2020-21, Mr. Raja received following gifts from his friends/relatives:

- Shares received from his father, the fair market value(i.e. value as per stock exchange) of the shares on the date of gift was Rs. 2,84,000.
- Jewellery received from his friend, the fair market value of the jewellery is Rs. 84,000.
- Jewellery received from his friends and relatives on the occasion of his marriage, the fair market value of jewellery is Rs. 2,52,000.
- Advice Mr. Raja regarding the tax treatment of above gifts.

Tax Treatment: If the following conditions are satisfied then value of prescribed movable property (meaning has been discussed earlier) received by an individual or HUF will be charged to tax:

- Prescribed movable property is received without consideration (i.e., received as gift).
- The aggregate fair market value of such property received by the taxpayer during the year exceeds Rs. 50,000.

In above case, the fair market value of the prescribed movable property will be treated as income of the receiver. The discussed provisions are not applicable in case of prescribed movable property received from relatives and received on certain specified occasions.

Considering above provisions, the tax treatment of various items received by Mr. Raja will be as follows:

- a) Nothing will be charged to tax in respect of shares received from his father, since father comes under the definition of the term 'relative'.
- b) Friend is not covered in the definition of relative and hence, in respect of jewellery received from his friend, the fair market value, i.e., Rs. 84,000 will be charged to tax in the hands of Mr. Raja.
- c) Marriage is covered in the list of specified occasions, and hence, nothing will be charged to tax in respect of jewellery received from his friends and relatives on the occasion of his marriage.

Illustration -8

An individual received gift of jewellery from his friends. The total value of jewellery received during the

year as gift from all the friends amounted to Rs. 84,000. What will be the tax treatment of gift in this case?

Tax Treatment: If the aggregate fair market value of prescribed movable property received by an individual or HUF without consideration during the year exceeds Rs. 50,000, then the total value of such properties received during the year without consideration will be charged to tax. In this case the total value of jewellery received during the year exceeds Rs. 50,000 and hence, Rs. 84,000 will be charged to tax.

4.3. Taxability when prescribed movable property is received by an individual or HUF for less than its fair market value

If the following conditions are satisfied then prescribed movable property (meaning has been discussed earlier) received by an individual or HUF will be charged to tax:

- i. Prescribed movable property is acquired by an individual or HUF.
- ii. The aggregate fair market value of such properties acquired by the taxpayer during the year exceeds the consideration paid for these properties by Rs. 50,000. In other words, the aggregate fair market value of all such properties is higher than the consideration paid and the difference is more than Rs. 50,000.

Considering the definition of prescribed movable property (as discussed earlier), nothing will be charged to tax in respect of gift of any item, being a movable property other than covered in the above definition. e.g., Nothing will be charged to tax in respect of a television set received as gift because a television set is not covered in the definition of prescribed movable property.

4.4. When prescribed movable property received for less than its fair market value by an individual or HUF is not charged to tax

In following cases, nothing will be charged to tax in respect of prescribed movable property received for less than its fair market value:

Movable Property received from relatives.

Relative for this purpose means:

In case of an Individual Spouse of the individual; Brother or sister of the individual; Brother or sister of the spouse of the individual; Brother or sister of either of the parents of the individual; Any lineal ascendant or descendent of the individual; Any lineal ascendant or descendent of the spouse of the individual; Spouse of the persons referred to in (b) to (f).

In case of HUF, any member thereof: Property received on the occasion of the marriage of the individual. Property received under will/ by way of inheritance. Property received in contemplation of death of the donor. Property received from a local authority [as defined in Explanation to section 10(20) of the Income-tax Act]. Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C). Property received from a trust or institution registered under section 12AA.

Illustration -9

During the financial year 2020-21, Mr. Raja purchased the following capital assets:

- Gold jewellery purchased for Rs. 1,84,000, the fair market value of gold jewellery is Rs. 2,84,000.
- Bullion purchased for Rs. 5,50,000, the fair market value of the bullion is Rs. 6,00,000.
- Motor car purchased for Rs. 1,52,000, the fair market value of car is Rs. 2,52,000. Advice him regarding the tax treatment of above items acquired by him.

Tax Treatment: Any prescribed movable property (meaning has been discussed earlier) acquired for less than its fair market value by an individual/HUF is charged to tax if the following conditions are satisfied:

- a) Prescribed movable property is acquired by an individual or HUF.
- b) The aggregate fair market value of such properties acquired by the taxpayer during the year exceeds the consideration paid for these properties by Rs. 50,000. In other words, the aggregate fair market value of all such properties is higher than the consideration paid and the difference is more than Rs. 50,000.

The above discussed provisions are not applicable in case of prescribed movable property received from relatives and received on certain specified occasions.

Considering above provisions, the tax treatment of various items acquired by Mr. Raja will be as follows:

- Gold jewellery and bullion are covered in the definition of specified movable property. The fair market value of gold jewellery is Rs. 2,84,000 and of bullion is Rs.6,00,000. The purchase price of gold jewellery is Rs.1,84,000 and that of bullion is Rs. 5,50,000. It can be observed that both the properties are acquired for less than its fair market value.

The excess of fair market value over the purchase price will amount to Rs. 1,50,000 (Rs. 1,00,000 for gold jewellery and Rs. 50,000 for bullion) which is more than Rs. 50,000. Hence, the entire excess of fair market value over purchase price i.e. Rs. 1,50,000 will be charged to tax in the hands of Mr. Raja. It will be charged to tax under the head "Income from other sources".

- Motor car does not come under the definition of prescribed movable property; hence, nothing will be taxed in respect of purchase of motor car.

Illustration -10

On 1-4-2020, Mr. Kumar purchased shares from Mr. Raja for Rs. 84,000. The fair market value of the shares i.e. value as per price quoted in stock exchange is Rs. 1,00,000. Further, on 1-7-2020, he acquired gold jewellery from Mr. Rajkumar for Rs. 25,200. The fair market value of jewellery is Rs. 50,400. Mr. Kumar is confused regarding the tax consequences arising in respect of above items purchased by him. Advise him in this regard.

Tax Treatment: Any prescribed movable property (meaning has been discussed earlier) acquired for less than its fair market value by an individual/a HUF is charged to tax if the following conditions are satisfied:

- a) Prescribed movable property is acquired by an individual or HUF.
- b) The aggregate fair market value of such properties acquired by the taxpayer during the year exceeds the consideration paid for these properties by Rs. 50,000. In other words, the aggregate fair market value of all such properties is higher than the consideration paid and the difference is more than Rs. 50,000.

The above provisions are not applicable in case of prescribed movable property received from relatives and received on certain specified occasions.

Considering the above discussed provisions, the tax treatment of various items acquired by Mr. Kumar will be as follows:

- The fair market value of the share is Rs. 1,00,000 and shares are acquired for Rs. 84,000, thus, the excess of fair market value over purchase price will come to Rs.16,000.
- The fair market value of jewellery is Rs. 50,400 and it is acquired for Rs. 25,200, thus, the excess of fair market value over purchase price will come to Rs. 25,200.

The total of the excess of fair market value over purchase price amounts to Rs. 41,200 (Rs. 16,000 for shares + Rs. 25,200 for jewellery) which is below Rs. 50,000 and hence, nothing will be charged to tax in the hands of Mr. Kumar.

Suppose, if in the given case, the fair market value of shares is Rs. 1,84,000 instead of Rs. 1,00,000, then the aggregate of excess of fair market value of shares and gold jewellery will amount to Rs. 1,25,200, (Rs. 1,00,000 excess fair market value of shares + Rs. 25,200 excess fair market value of gold jewellery). The excess of fair market value over purchase price exceeds Rs. 50,000 and hence, entire excess of Rs.1,25,200 will be charged to tax as income from other sources.

RECENT UPDATES IN DIRECT AND INDIRECT TAX

Team TRD

Direct Tax

CBDT has released instruction sheets for filling of ITR-2,3,5,6 & 7 revised for better clarity

For more details, please follow-

<https://www.incometaxindiaefiling.gov.in/downloads/incomeTaxReturnUtilities>

Indirect Tax

CBIC has updated on auto-population of e-invoice details into GSTR-1

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/421>

CBIC has facilitated online filing of application (Form GST EWB 05) by the taxpayer for un-blocking of E-Way Bill (EWB) generation facility

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/420>

Salient features of Quarterly Return filing & Monthly Payment of Taxes (QRMP) Scheme released by CBIC

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/417>

CBIC has From 1-1-2021, Government has mandated e-invoicing for the taxpayers with aggregate turnover exceeding Rs. 100 Cr. (in any preceding financial year from 2017-18 onwards).

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/416>

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GST NOTIFICATIONS & CIRCULARS

Central Tax

Notification No. 89/2020 – Central Tax
Dated – 29th November, 2020

Seeks to waive penalty payable for noncompliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020

On the recommendations of the Council, Government has waived the amount of penalty payable by any registered person under section 125 of the said Act for noncompliance of the provisions of notification No.14/2020 – Central Tax which was issued on 21st March, 2020, between the period from the 1st December, 2020 to the 31st March, 2021, subject to the condition that the said person complies with the provisions of the said notification from the 01st April, 2021.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-89-central-tax-english-2020.pdf>

CUSTOMS NOTIFICATIONS & CIRCULARS

Tariff Notification

Notification No. 43/2020 - Customs
Dated – 26th November, 2020

Seeks to further amend notification No. 50/2017-Customs dated 30th June, 2017 so as to prescribe BCD rate of 27.5% on Crude Palm Oil

Central Government has made the further amendment in the notification No. 50/2017- Customs which was issued on 30th June, 2017. In this notification, in the Table, against S. No. 57, for the entry in column (4), the entry “27.5%” shall be substituted. This notification has been effective from the 27th November, 2020.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs43-2020.pdf>

Non-Tariff Notification

Notification No. 108/2020-Customs (NT)
Dated – 19th November, 2020

Exchange rate Notification

CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa which is specified in Schedule I and Schedule II and has effected from 20th November, 2020.

SCHEDULE-I

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Australian Dollar	55.40	53.10
Bahraini Dinar	203.55	191.10
Canadian Dollar	57.80	55.80
Chinese Yuan	11.50	11.15
EURO	89.65	86.45
US Dollar	75.20	73.50

SCHEDULE-II

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Japanese Yen	73.00	70.35
Korean Won	6.90	6.45

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt108-2020.pdf>

Notification No. 109/2020-Customs (NT)**Dated – 27th November, 2020****Exchange rate Notification****Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver**

CBIC has made the following amendments in the notification No. 36/2001-Customs (N.T.) which was issued on 3rd August, 2001. In this notification the following shall be substituted in TABLE-1, TABLE-2, and TABLE-3 :

TABLE - 1

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	904
2	1511 90 10	RBD Palm Oil	925
3	1511 90 90	Others – Palm Oil	915
4	1511 10 00	Crude Palmolein	931
5	1511 90 20	RBD Palmolein	934
6	1511 90 90	Others – Palmolein	933
7	1507 10 00	Crude Soya bean Oil	1067
8	7404 00 22	Brass Scrap (all grades)	4123
9	1207 91 00	Poppy seeds	3623

TABLE - 2

Sl No.	Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	582 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification	753 per kilogram

		No. 50	
3	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	753 per kilogram
4	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	582 per 10 grams

TABLE - 3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	3709

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt109-2020.pdf>

ANTI-DUMPING DUTY

Notification No. 38/2020- Custom (ADD)

Dated - 19th November, 2020

Seeks to further amend notification No. 56/2015-Customs (ADD) dated 4thDec, 2015 to extend the levy of Anti-Dumping duty on Phthalic Anhydride originating in or exported from Japan and Russia, up to and inclusive of 31stJan, 2021

Central Government has made the amendment in the notification No. 56/2015-Customs (ADD) which was issued on 4th December, 2015. In this notification, after paragraph 2 and before the Explanation, the following paragraph shall be inserted:

“3. Notwithstanding anything contained in paragraph 2, the anti-dumping duty imposed under this notification shall remain in force up to and inclusive of the 31stJanuary, 2021, unless revoked, superseded or amended earlier.”

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd38-2020.pdf>

Notification No. 39/2020- Custom (ADD)

Dated – 26th November, 2020

Seeks to amend notification No. 51/2015-Customs (ADD), dated 21st October, 2015 to extend the levy of ADD on imports of "Fully Drawn or Fully Oriented Yarn/Spin Drawn Yarn/Flat Yarn of Polyester " originating in or exported from China PR & Thailand, for a further period upto and inclusive of 31st December, 2020

Government of India has amended notification No. 51/2015-Customs (ADD), dated 21st October, 2015

Amendment

In the notification for the figures and words "30th day of November, 2020", the figures and words "31st day of December, 2020" shall be substituted.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd39-2020.pdf>

Notification No. 40/2020- Custom (ADD)

Dated – 27th November, 2020

Seeks to impose Anti-Dumping duty on Fluoroelastomers (FKM) originating in or exported from China PR for a period of 5 years, in pursuance of sunset review final findings issued by DGTR

Central Government, after considering the final findings of the designated authority, imposed on the Fluoroelastomers (FKM), exported from China PR as specified by the exporters and imported into India, an anti-dumping duty at the rate equal to the amount per unit of measurement,

The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be paid in Indian currency.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd40-2020.pdf>

Notification No. 41/2020- Custom (ADD)

Dated – 27th November, 2020

Seeks to further amend notification No. 49/2015-Customs (ADD), dated 21st October, 2015 to extend the levy of ADD on imports of "Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles" originating in or exported from China PR, for a period upto and inclusive of the January 31, 2021

Government of India has amended notification No. 49/2015-Customs (ADD), dated 21st October, 2015

Amendment

In the notification for the figures and words "30thday of November, 2020", the figures and words "31st January, 2021" shall be substituted

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd41-2020.pdf>

Notification No. 42/2020- Custom (ADD)

Dated – 1st December, 2020

Seeks to amend notification No. 21/2016-Customs (ADD) dated 31st May, 2016 to extend the levy of Anti-Dumping duty on Methylene chloride originating in or exported from China PR, up to and inclusive of 31st Jan, 2021

Central Government has made the following amendments in the notification No. 21/2016-Customs (ADD) which was on 31st May, 2016. In this notification in the Table, against serial number 9, for the entry in column (4), the entry “Any country other than those attracting anti-dumping duty” shall be substituted after paragraph 2 and before the Explanation, the following paragraph shall be inserted

“3. Notwithstanding anything contained in paragraph 2, the anti-dumping duty imposed on the subject goods specified against serial numbers 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Table above shall remain in force up to and inclusive of the 31st January, 2021, unless revoked, superseded or amended earlier.”

For more details, please follow: cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd42-2020.pdf

CIRCULARS - CUSTOMS

Circular No. 51/2020-Customs

Dated – 20th November, 2020

Clarifications regarding availment of exemption on temporary import of durable Containers

A representation has been received in Board regarding the eligibility of the exemption available under No.104/94-Cus. dated 16.03.1994, for durable containers which do not conform to the standard marine container dimensions, but which are intended for temporary import and eventual re-export. There is also a perceived ambiguity regarding procedural and system readiness regarding the import and re-export of such durable containers, which are not explicitly covered by the guidelines as provided under Circular No.31/2005-Cus., dated 25.07.2005 and issue has been examined regarding the eligibility of the duty exemption, reference is invited to Board Circulars No.69/2002-Customs, dated 25.10.2002 and No.73/2002-Customs, dated 07.11.2002. These said circulars clarify that **“As per the meanings assigned to the words `durable` and `container` in various Dictionaries, it would appear that any goods (containers) used for packaging or transporting other goods, and capable of being used several times, would fall in the category of `containers of durable nature`”. Further, `durable containers` covers within its ambit “any type of reusable packaging containers such as cases, boxes, cartons, trays, etc., made up of metals or plastics”**. Thus, it has reiterated that containers that satisfy following conditions are eligible for the said duty exemption:

- a) that are durable,
- b) capable of being re-used multiple times,
- c) capable of being identified at the time of re-export viz. a viz. the imported containers, and
- d) satisfy all the other stipulated conditions in the notification.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-51-2020-updated.pdf>

Circular No. 52/2020-Customs

Dated – 27th November, 2020

Exports of Gems and Jewellery through Courier mode

Representations have been received from the Gems and Jewellery to Export Promotion Council seeking clarification on whether gems and jewellery is allowed to be exported through courier under the Courier Imports and Exports and issue has been examined. It appears that the doubt has arisen as Regulation 2(2)(a)(iv) of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 places a restriction on imports of precious and semi-precious stones, gold or silver in any form, through courier. The Regulation 2(2) (a) (iv) reads as **“These regulations shall not apply to the following imported goods requiring testing of samples thereof or reference to the relevant statutory authorities or to experts before their clearance, namely precious and semi-precious stones, gold or silver in any form”**. Thus, the restriction imposed by Regulation 2(2)(a)(iv) on gems and jewellery is applicable only on their imports. Similarly, the Courier Imports and Exports (Clearance) Regulations, 1998 place a restriction on imports of precious and semi-precious stones, gold or silver in any form and not on their exports.

In view of the above, it is clarified that the extant Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 and the Courier Imports and Exports (Clearance) Regulations, 1998, do not restrict exports of gems and jewellery through the courier mode and the above clarification has to be read along with the other provisions applicable for exports through courier.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-52-2020-updated.pdf>

PRESS RELEASE

DIRECT TAX

20th November, 2020

Income Tax Department conducts searches at various locations in Uttar Pradesh

The Income Tax Department started a search and survey action on 18/11/2020 in the case of a leading cattle feed producer in Northern India. The search and survey actions are being carried out at 16 locations in Kanpur, Gorakhpur, Noida, Delhi and Ludhiana.

The main allegations against the group are that it has taken accommodation entries of more than Rs. 100 crore in the form of non-genuine unsecured loans from certain Delhi-based shell companies; unusually high sundry creditors; suppression of net profit; and also that a related group chit fund company had received unsecured loans of several crore from unknown sources.

During the course of search action, it has been established that the shell companies from which loans had been taken exist only on paper and have no real business and creditworthiness. Directors of these shell companies are dummy, non-filers and individuals of no means. One of the Directors of these companies has been found to be a taxi driver, having 11 bank accounts, showing huge routing of funds. Therefore, it has been established that the accommodation entries of more than Rs. 121 crore in the form of unsecured loans from these shell companies are bogus and actually represent the unaccounted income of the group.

It has been further gathered during the search that one of these shell companies is a chit subscriber in the group's chit fund concern, which is a violation of the provisions of the Chit Funds Act, 1982.

Search has revealed huge unaccounted investment in the construction of the residences of the main persons of the group. The same is under verification and will be referred for valuation.

Till now gold and diamond jewellery to the tune of Rs. 52 lakh has been seized. The sources of acquisition of the remaining jewellery are being verified. The source of total cash found amounting to Rs. 1.30 crore is being further verified. A total of 7 lockers have been found, which are yet to be operated.

Further investigations are going on.

26th November, 2020

CBDT to validate Unique Document Identification Number (UDIN) generated from ICAI portal at the time of upload of Tax Audit Reports

The Institute of Chartered Accountants of India, in its gazette notification dated 2nd August, 2019, had made generation of UDIN from ICAI website www.icai.org mandatory for every kind of certificate/tax audit report and other attests made by their members as required by various regulators. This was introduced to curb fake certifications by non-CAs misrepresenting themselves as Chartered Accountants.

In line with the ongoing initiatives of the Income Tax Department for integrating with other Government agencies and bodies, Income-tax e-filing portal has completed its integration with the Institute of Chartered Accountants of India (ICAI) portal for validation of Unique Document Identification Number (UDIN) generated from ICAI portal by the Chartered Accountants for documents certified/attested by them.

It may be noted that, in consonance with the above requirement, Income Tax e-filing portal had already factored mandatory quoting of UDIN with effect from 27th April, 2020 for documents certified/attested in compliance with the Income Tax Act, 1961 by a Chartered Accountant. With this system level integration, UDIN provided for the audit reports/certificates submitted by the Chartered Accountants in the e-filing portal shall be validated online with the ICAI. This will help in weeding out fake or incorrect Tax Audit Reports not duly authenticated with the ICAI.

If for any reason, a Chartered Accountant was not able to generate UDIN before submission of audit report/certificate, the Income Tax e-filing portal permits such submission, subject to the Chartered Accountant updating the UDIN generated for the form within 15 calendar days from the date of form submission in the Income Tax e-filing portal. If the UDIN for the audit report/certificate is not updated within the 15 days provided for the same, such audit report/certificate uploaded shall be treated as invalid submission.

JUDGEMENTS

INDIRECT TAX

NAA finds Logix Infrastructure guilty of not passing ITC benefit to Flat Buyers

Appeal Number: Case No. 72/2020
Date of Judgement/Order: 13/11/2020
Sh. RajenderMeena Vs Logix Infrastructure Pvt. Ltd (National Anti-Profitteering Authority)

Fact of the Case

- The Applicant, had filed application alleged that the Respondent, M/s Logix Infrastructure had not passed on the benefit of the input tax credit by way of commensurate reduction in price to the Applicant in respect of the purchase of flat in the Respondent project “Logix Blossom County” at Noida Expressway, Uttar Pradesh.
- The DGAP in his report has stated that a notice under Rule 129 of the CGST Rules, 2017 was issued calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicants by way of commensurate reduction in prices and indicate the same in his reply to the notice along with all supporting documents.
- The NAA noted that Respondent has accepted his liability of passing on the benefit of additional ITC as per the report of the DGAP and has also submitted that he had passed on the benefit of Rs. 13,32,278 to his customers/flat buyers by way of credit notes.

Decision of the Case

- The Authority found that the profited amount as per the provisions of Section 171 (1) read with Rule 133 (1) of the above Rules which includes GST at the rate of 12% on the base profited amount.
- The Authority observed that the Respondent that he has not passed on interest at the rate of 18% to his recipients/flat buyers on the profited amount, which shall be paid by the Respondent to his recipients/flat buyers from the date of receipt of the additional

price till the amount is paid to each buyer, as he has used this amount in his business, as per the provisions of Section 171 (1) of the CGST Act, 2017 read with Rule 133 (3) (b) of the CGST Rules, 2017.

- The NAA directed the DGAP to ensure that the interest is paid to the eligible home buyers and submit a report confirming payment of the interest. In case the interest is not paid the same shall be recovered by the concerned CGST/SGST Commissioner and paid to the eligible buyers.

The National Anti-Profitteering Authority (NAA) found M/s Logix Infrastructure guilty of not passing the benefit of Input Tax Credit (ITC) to flat buyers.

Procedure for E-Commerce Exports through Post doesn't determine eligibility for Refund of ITC on Exports, not applicable retrospectively: Delhi HC

Appeal Number: W .P. (C) 3917/2020
Date of Judgement/Order: 10/11/2020
Medical Bureau Vs Commissioner of Central Goods and Services Tax Delhi North &Ors. (Delhi High Court)

Fact of the Case

- The petitioner, Medical Bureau challenged the order passed by the Appellate Authority whereby the respondent authorities have denied refund.
- The petitioner had made exports of goods outside India and such exports are regarded as zero rated supplies under Section 16 of the Integrated Goods and Services Tax Act, 2017 on which the petitioner was entitled to refund of input tax credit under Section 54(3) of the Central Goods and Services Tax Act, 2017.
- The petitioner stated that the refund has been denied to the petitioner on the sole ground that petitioner had exported goods through Foreign Post Offices in August and September 2017, while Notification dated 04th June, 2018 read with Circular No.14/2018-Customs dated 04th June, 2018 has notified exports by post

Regulations, 2018 w.e.f. 21st June, 2018 which provides for an entry to be presented to the proper officer at the Foreign Post Office of clearance.

- The petitioner contended that the new procedure for filing postal bill of exports doesn't take away the substantive right to claim refund of input tax credit in respect of zero rated supplies under the Statute.

Decision of the Case

- The division bench of Justice clarified that the Circular No.14/2018-Customs dated 04th June, 2018 is neither clarificatory nor it determines the eligibility of allowing refund of Input Tax Credit on exports. In any event, the new procedure cannot be made applicable from a retrospective date.
- Therefore, the court while setting aside the impugned orders passed by respondent authority, remanded the matter back to the Original **Adjudicating Authority i.e. Assistant Commissioner**, who in turn is directed to decide the same in accordance with law within 4 weeks.

The Delhi High Court while directing the matter back to the adjudicating authority held that the procedure for e-commerce exports through Post does not determine eligibility for refund of Input Tax Credit (ITC) on exports and the procedure can not apply retrospectively.

[NAA finds P&G and Gillette India guilty for not passing GST Reduction to Customers to tune of Rs. 243 cr](#)

**Appeal Number: 76/2020
Date of Judgement/Order: 23/11/2020
Director General of Anti-Profiteering Vs
Procter & Gamble Home Products (PGHP)
Private Limited (NAA)**

Fact of the Case

- The Applicant alleged that the Respondents, M/s Procter & Gamble (P&G), and Gillette India had not passed on the benefit of reduction in the rate of GST from 28% to 18% w.e.f. 15.11.2017 to the recipients by way of commensurate reduction in the prices of the products being sold by them in terms of Section 171 of the CGST Act, 2017.

- The DGAP had also stated that the base prices of 1383 goods had been increased by the Respondents after the rate of tax was reduced on P&G and Gillette India them and hence,
- The DGAP had further reported that the Respondents had profiteered an amount of Rs. 2,43,93,90,580 by denying the benefit of tax reduction to their customers.

Decision of the Case

- The NAA stated that the confirmed amount of tax benefit that the companies P&G Home Products, P&G Hygiene and Health Care, and Gillette India not passed on to consumers was Rs.181.51 crore, Rs.2 crore and Rs.57.99 crore, respectively.
- The NAA ordered the companies to reduce the price of the products and deposit half of the profiteered amount to the central consumer welfare fund and rest to the state, along with an interest. The profiteered amount has to be deposited **within three months** from the date of passing of the order.

The National Anti-profiteering Authority (NAA) has found that M/s Procter & Gamble (P&G) and Gillette India allegedly profiteered over Rs. 243 crores by not passing the GST reduction benefits to customers.

[Appellate Authority required to grant Sun Pharma opportunity to explain its stand on GSTR-1 and GSTR-3B, says Sikkim High Court](#)

**Appeal Number: WP(C) No. 09/2020
Date of Judgement/Order: 19/11/2020
Sun Pharma Laboratories Limited Vs Union
of India (Sikkim High Court)**

Fact of the Case

- The petitioner, Sun Pharma is a Private Limited Company engaged in the supply of patented and proprietary medicines falling under Chapter 29 and 30 of the Customs Tariff Act, 1975, made applicable to the supplies made under the Central Goods and Services Act, 2017.
- During the month of August, 2017 two consignments of pine bark extract and Crospovidone NF were transferred by the petitioner from Unit-II to Unit-I.

- As the transfer did not qualify as supply in terms of Section 7 of the CGST Act, such transfer ought to have been effected under the cover of a delivery challan but inadvertently two invoices came to be issued. Having realized the mistake, the transfers were not declared as “outward supply” in the Form GSTR-01 for the month of August, 2017.

However, at the time of filing of the GSTR-3B return for the month in question, the petitioner inadvertently took these two invoices into consideration and discharged GST amounting to Rs.15,82,938.72 and Rs. 1,659.42, respectively, totalling Rs. 15,84,598/-. Subsequently, the petitioner filed an online application in Form GST RFD-01A under Section 54 of the CGST Act seeking a refund of such amount.

The petitioner contended that the petitioner had not adjusted the excess tax amount paid and this Court may pass appropriate orders directing the respondents to refund the tax along with interest as envisaged under Section 56 of the CGST Act.

Decision of the Case

- The division judge bench said that the Appellate Authority, in the instance case, was required to grant the petitioner an opportunity to explain its stand on GSTR-1 and GSTR-3B as also the Circulars.
- The Court said that it is appropriate to embark upon an inquiry to examine the claim of the petitioner that excess payment of tax has not been carried forward or that the same has not been adjusted. These are matters to be reconsidered by the Appellate Authority.
- Therefore, the court permitted the petitioner to file a representation dealing with the aspects and such representation would be filed ***within a period of 8 weeks from today before the Appellate Authority.***

The Sikkim High Court held that the Appellate Authority was required to grant Sun Pharma the opportunity to explain its stand on GSTR-1 and GSTR-3B.

.....

Madras High Court directs Department to grant retrospective registration for petitioner’s Registration Certificate

**Appeal Number: W.P.(MD)No.15796 of 2020 and W.M.P.(MD)No.13241 of 2020
Date of Judgement/Order: 10/11/2020
Tvl. Lourdes Matha Cashew Industries Vs Union of India (Madras High Court)**

Fact of the Case

- The petitioner, Tvl.LourdesMatha Cashew Industries was issued a provisional Registration Certificate under the Goods and Service Act by the respondent authority. According to him, he had taken steps for migration from the Tamil Nadu Value Added Tax regime to the Tamil Nadu Goods and Service Tax regime.
- However, he was unable to upload the details as required for migration and the process of migration was not finalized. He found out that it was partly on account of inadvertent omission/mistake of his Accounts Department in Tamil Nadu and partly due to the technical glitches caused in the computer system.
- He submitted a letter to the respondent authority pointing out the difficulties faced by him with regard to the migration from Tamil Nadu Value Added Tax regime to the Tamil Nadu Goods and Service Tax regime.
- However, according to him, there was no positive response from the Department. It is his case that he was compelled to apply for a fresh application for registration, as the provisional Registration Certificate issued to him earlier, got lapsed. His fresh application was processed and valid Registration Certificate was issued by the respondent authority under the Tamil Nadu Goods and Service Tax Act.
- The Special Government Pleader representing respondent authority submitted that the petitioner only obtained new registration and old registration was not in force when the petitioner submitted his returns. The retrospective effect cannot be given to the Registration certificate.

Decision of the Case

- The Single Judge Bench of Justice observed that the petitioner is entitled to a relief sought for in his representation is concerned, it is for the respondent

authority to consider the same on merits and in accordance with the law.

- Therefore the court directed the respondent authority to consider the petitioner's representation seeking for validation of his registration from July 1, 2017, itself and pass final orders on merits and in accordance with the law and in the light of the decisions referred to by the petitioner in his representation after giving sufficient opportunity to the petitioner, **within a period of 8 weeks.**

The Madras High Court directed the Joint Commissioner & Assistant Commissioner to grant retrospective registration for the petitioner's Registration Certificate.

.....

DIRECT TAX

Explanation to Indirect Share Transfer provisions inserted by Finance Act, 2015 applicable retrospectively

Fact of the Case

- The appellant, Augustus Capital PTE Ltd. sold its entire shareholding in Accelyst to an Indian company, namely, Jasper Infotech Private Limited
- The sale consideration was Rs.41,24,35,969. The buyer, Jasper Infotech Private Limited, withheld taxes at source amounting to Rs. 17,84,19,800/.
- The assessee was of the firm belief that the transaction involving sale of shares of foreign company, which held investment in India, was not taxable as per amended provision of section 9(1)(i) of the Act.
- The Assessing Officer asked the assessee to explain as to why capital gains arising from the sale of shares from Accelyst to Jasper Infotech Private Limited should not be brought to tax in India under section 9(1)(i) of the Act
- The assessee contended that Explanation 7 to Section 9(1)(i) of the Act states that the impugned transaction is not taxable
- The Assessing Officer disregarded the submissions of the assessee as the Assessing Officer was of the firm belief that operation of Explanation 7 to section 9(1)(i) of the Act is prospective, since it has been inserted by the Finance Act, 2015 and made effective from April 1, 2016 and,

therefore, not applicable in the year under consideration.

Decision of the Case

- The quorum consisting of Amit Shukla and N.K. Billaiya clarified that section 9(1)(i) of the Act was amended and Explanation 5 was inserted by the Finance Act, 2012 giving retrospective effect from April 1, 1962, because of apprehensions and ambiguities in the said Explanation Shome Committee was constituted and on the recommendations of Shome Committee, Explanations 6 and 7 were inserted by the Finance Act, 2015.
 - The ITAT directed the Assessing Officer to read Explanation 7 as applicable for the year under consideration and delete the impugned addition.
-

Sale made out of Opening Stock can't be treated as Unexplained Income to be taxed as Income from Other Source

Fact of the Case

- In the present case Akshit Kumar is the Responded-Assessee who filed his ITR declaring his income.
- The declared sources of income of the Respondent-Assessee were salary, income from business and profession and other sources. The declared income included an amount of Rs. 3,19,580 under the head income from business and trading of textiles. The case was selected for scrutiny and notices under Sections 143(2) and 142(1) were issued by the Assessing Officer from time to time
- The AO held The assessee had neither shown any building in its fixed asset schedule nor any rent expense in his P/L Account. The assessee had shown a huge opening stock of 19,85,109.530 kg valued at over Rs.30 crores which would require considerable storage space. It is pertinent to answer if the assessee was indeed selling goods from the opening stock available with it, then where was this stock stored.

Decision of the Case

- The two-member bench of High Court observed that the stock was available with

the assessee in his books of account and trading in such stock including purchase, sale, opening and closing stock (quantity wise and value wise) has been accepted by the department year after year and in some years under scrutiny proceedings, therefore, non-existence of stock or business cannot be upheld.

- Secondly, the sale of stock in the earlier years and the sale of balance left out stock in subsequent years has been accepted or has not been disturbed, then to hold that no stock was sold in this year and remained with the assessee will be a difficult proposition
- Thirdly, inquiry and inspection by the AO done much after the closure of business may not be persuasive for the past events.
- Lastly, once neither any item in the trading account, nor gross profit has been rejected, then one part of the credit side of the trading account, that is, sales cannot be discarded completely so as to hold that it is unexplained money.
- The two-member bench of Justice Sanjeev Narula and Justice Manmohan opinion the sale made by the assessee out of his opening stock cannot be treated as unexplained income to be taxed as income from other sources.

.....
No Tax applicable on Securities Premium even if used to set off losses: ITAT deletes addition against Hindustan Coca Cola

Fact of the Case

- The assessee, Hindustan Coca Cola Beverages Pvt. Ltd. is a private limited company engaged in the business of manufacture and sale of aerated soft drinks under the brand name Coca Cola, Fanta, Limca, and manufacture and sale of packaged drinking water under the brand name Kinley.
- It filed its return of income for the relevant assessment year declaring loss of Rs.282,90,29,838 while its liability as determined in Form No.29B for the purpose of levy of MAT was nil.
- During the course of assessment proceedings, the AO noted that the assessee has claimed amortization of a non-compete fee of Rs.48.34 crores. Following his order for Assessment Year 2002-03 wherein such payment of non-

compete fee was held to be capital expenditure, the AO disallowed the claim of Rs.48,34,13,706 as non-compete fee which was claimed by the assessee as revenue expenditure. The alternate claim of the assessee that depreciation should be allowed was also rejected by the AO.

Decision of the Case

- The quorum consists of R.K. Panda and Kuldip Singh while deleting the addition has held that security premium account, being part of the capital of the company is not in the nature of an entry bearing the character of income and since it has not been credited by debiting the Profit and Loss Account of the company, its reversal in any subsequent year is not required to be reflected in the profit and loss account.
- The ITAT held that clause (c) of said Explanation has no applicability since securities premium account is not in the nature of provision; In any case, no addition can be made to the book profits since the securities premium account was never debited to the profit & loss account.

.....
Payment for Acquisition of Leasehold Rights over an Immovable Property is not Rental Income, No TDS applicable: Madras High Court

Fact of the Case

- M/s Nagarjuna oil corporation Ltd. is the assessee in the present situation
- The issue involved before the Tribunal was whether a one-time lump sum paid by the Assessee for getting 99 years lease of land from the Government Undertaking in relation of SIPCOT was a payment in the nature of rental and therefore, the Assessee was required to deduct tax at sources under Section 194 I of the Act and having failed to do so, the said payment was liable to be added back to the declared income of the Assessee
- The council for the Assessee pointed out the decision of a Division Bench of this Court has held that time non-refundable upfront charges paid by the assessee for the acquisition of leasehold rights over an immovable property for 99 years could not be taken to constitute rental income in the

hands of the lessor, obliging the lessee to deduct tax at source under section 194-I of the Act and that in such a situation the lease assumes the character of 'deemed sale'.

Decision of the Case

- The Division Bench of Justice Vineet Kothari and Justice M.S. Ramesh while following its earlier decision allowed the appeal of the assessee and held that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Act.

.....

CIT(A) rightly treated the fixed deposit interest income under the "Income from Business & Profession" instead of "Income from Other Sources": ITAT

Fact of the Case

- The assessee, M/s. National Film Development Corporation Ltd. is engaged in the business of distribution of films, film production, film finance, media campaign, exports of films, service projects including subtitling, hiring of equipment, video studio, etc.
- The assessee filed its return of income declaring total income at Nil
- The case was selected for scrutiny and accordingly notice under section 143(2) was served upon the assessee. The Assessing Officer completed the assessment under section 143(3) determining total income at Rs.61.28 lakhs.

Decision of the Case

- The quorum headed by the Vice President Mahaveer Singh and M. Balaganesh opined that the assessee's business-production of films for Ministries of Government of India and various government departments and the durations for which the amounts were kept with banks the income earned by it has to be held as business income.
- The Tribunal observed that the interest earned by the assessee was obviously

attributable and incidental to the business carried on by it

- It is well-settled that interest can be assessed under the head Income from other sources, only if it cannot be brought within one or the other of the specific heads of charge, ITAT added.
- The ITAT said that the interest income is clearly and justifiably assessed as business income. In short, the case under consideration is not a case of depositing unutilized and surplus money by the assessee to earn interest, and, therefore, the interest earned by the assessee cannot be assessed as income from other sources.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Due Date for GSTR-3B			
State	Turnover in Preceding F.Y.	Month	Due Date
For All State	Turnover is more than Rs. 5 Crore	November, 2020	20th Dec, 2020
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, TamilNadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep	Turnover is upto Rs. 5 Crore	November, 2020	22 nd Dec, 2020
Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi	Turnover is upto Rs. 5 Crore	November, 2020	24 th Dec, 2020

Due Date for		
Form	For the month of	Date
GSTR-1	Monthly (November)	11 th December, 2020
	Quarterly (Oct to Dec)	13 th January, 2021

Composition Scheme Due Dates		
From	Description	Date
CMP - 08	Return for Composite Supplier for Oct to Dec, 2020	18 th January, 2021

Others Returns		
From	Description	Due date for the month of August, 2020
GSRT - 5 & 5A	Filed by Non-resident taxable person and OIDAR respectively (For October, 2020)	20 th December, 2020
GSTR - 6	For input Services Distributor who are required to furnish details of invoice on which credit has been received (For October, 2020)	13 th December, 2020
GSTR - 7	Filed by person required to deduct TDS under GST (For October, 2020)	10 th December, 2020
GSTR - 8	E-commerce operator who are required to deduct TDS (For October, 2020)	10 th December, 2020

Annual Return				
From	Description	Original Due Date for F.Y. 2018-19	Extended Due Date Extended Due Date for F.Y. 2018-19	Late Fee
GSRT - 9/9A	Annual Return	31 st December, 2019	31 st December, 2020	Liability is Rs. 200 per day of default (CGST+SGST). This is subject to a maximum of 0.25% of the taxpayer's turnover in the relevant state or union territory
GSTR - 9C	Reconciliation Statement & Certificate	31 st December, 2019	31 st December, 2020	

DIRECT TAX CALENDAR – DECEMBER, 2020

07.12.2020

- Due date for deposit of Tax deducted/collected for the month of November, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14.12.2020

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2020 has been paid without the production of a Challan

15.12.2020

- Third instalment of advance tax for the assessment year 2021-22
- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of October, 2020
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of November, 2020

30.12.2020

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB, 194M in the month of November, 2020
- Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2019 to December 31, 2019) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of November, 2020

31.12.2020

- Return of income for the assessment year 2020-21 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E.

Note: The due date for filing of return has been extended to December 31, 2020 vide Press Release, dated 24-10-2020.

- Due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21*.

Note: The due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction has been extended to December 31, 2020 vide Press Release, dated 24-10-2020.

COURSES OFFERED BY TAX RESEARCH DEPARTMENT

Eligibility criterion for admission in TRD Courses

- The members of the Institute of Cost Accountants of India
- Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students who are either CMA qualified or CMA pursuing

EXISTING COURSES

CERTIFICATE COURSE ON TDS

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration - 30 Hours

Mode of Class - Online

CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration - 30 Hours

Mode of Class - Online

CERTIFICATE COURSE ON GST

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration - 72 Hours

Mode of Class - Online

** Special Discount for Corporate*

ADVANCED CERTIFICATE COURSE ON GST

Course Fee - Rs. 14,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration - 40 Hours

Mode of Class - Online

CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

Batch Size - 50 (Minimum)

Eligibility criterion - B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

Course Fee - Rs. 1,000 + 18% GST

Exam Fees - Rs. 200 + 18% GST

Course Duration - 32 Hours

NEW COURSES

ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

Course Fee - Rs. 12,000 + 18% GST [Including Exam Fee]

Duration - 30 Hours

Mode of Class - Online

ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEAL

Course Fee - Rs. 12,000 + 18% GST [Including Exam Fee]

Duration - 30 Hours

Mode of Class - Online

For enquiry about courses, mail at – trd@icmai.in

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/>

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
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.

Disclaimer:

The Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, users should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in these documents does not cover every situation and is not intended to replace the law or change its meaning.

The opinion expressed in Article is fully based on the views of the experts. This information is provided for public services only and is neither an advertisement nor to be considered as legal and professional advice and in no way constitutes an attorney-client relationship between the Institute and the User. Institute is not responsible or liable in any way for the consequences of using the information given.

Contact Details:

Tax Research Department
12, Sudder Street, Kolkata - 700016

Phone: +91 33 40364747/ +91 33 40364798/ +91 33 40364711

E-mail: trd@icmai.in



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100