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Estd. 1982

DTPA
Direct Taxes Professionals' Association

e-Journal

A Publication of The Professionals, for The Professionals, by The Professionals

Nov. - Dec., 2021

Dear Members

Hope you all had a good festive season and delightful Deepawali with sound health.

In November, we have witnessed the 2nd highest GST collection showing better economic growth but the fear of Omicron is on the doorstep. We all professionals are now busy with our professional commitments and working is in full swing. Hopefully some relief may come with the extension of due date for filing within 31st December 2021.

We, the DTPA e-Journal team, have come forward with a new theme from this Issue onward to answer the queries raised by Members. This initiative will be beneficial to all the DTPA Members with the reply to their queries from a penal of expert.

I would sincerely request all the Members to contribute useful articles and compilations which I assure, will find place in the next published Journal, if found worthy of publication.

My best wishes to the Members and a very Happy New Year in advance.

With regards

CA MAHENDRA K AGARWAL
Chairman - DTPA Journal Committee
28th December, 2021

EDITORIAL BOARD MEMBERS

Headlines

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Dear DTPA Family,

I commence my journey to communicate with you all as President with this maiden Message. I first offer my salutations at the holy feet of Baba Bholenath for bestowing on me the choicest of blessing and making me worthy to be chosen as President of the august professional body DTPA. I would like to take this opportunity to thank all my seniors at DTPA for honing my skills and making me worthy of leading one of the oldest Association of Direct Taxes which is in its 40th year.

DTPA has evolved over the years as an Association committed to its motto "GYAANAM EKYAM CHA NAYAYRATHAM" meaning "Knowledge and togetherness for justice " Every President tries his/her best to achieve the motto of the Association and they are successful in doing so. I may consider this role of President as a success. I am conscious of the fact that success should feed one's sense of responsibility. I am sure that I pledge my full sincerity and dedication and will leave no effort untried in maintaining the standards, for which this Association is known for.

I want to thank the immediate past President CA Narendra Kumar Goyal for the untiring hard work he has done for last two years during the pandemic period as President. His perfection in organizing the activities has taken the Association to great heights.

Predecessors give lessons to incoming President by their activities and untiring efforts as to how the Association will reach and touch new heights.

I would also like to take this opportunity to congratulate other officebearers and Committee Members for their hard working and co-operative attitude. I am sure that I will get such co-operation from my Executive Committee Members and Sub-committee Members to achieve the goal of success.

Membership Strength:

Our DTPA family consists of 1750 members at present and our target is 1850 members strength by inducting new members. We also want to increase the number of female members in our Association.

In the modern world, women are progressing. The social and economic status of the women have soared high and they are no longer confined within the boundaries of the four walls. They are playing the roles of a working woman, an efficient homemaker, and a proud mother and daughter.

Earlier women were only associated with taking care of the household and babies. But nowadays, they are engaging in work fields to explore their inner talents and also to

become independent and earn for themselves. They are one of the main reason behind the progress of the nation who makes our daily lives easy and the country proud.

Today's youth is the leader of tomorrow. They are energetic and have new ideas. However, the implementation of their ideas is a problem for them at all times. All the Committee Members and I will try our best to help them boost their ideas to improve the profession.

Information technology has always played a dominant role in our lives and its penetration is getting deeper and deeper. Members will appreciate that DTPA has been incorporating IT in its functioning and are planning to work more on this front. We launched our mobile app, updated our website and organising our virtual seminars with the use of information technology in our profession.

We firmly believe that we need to send representations to the Government on issues of profession and national interest along with suggestions which helps in sending professional as well as industry's sentiment to the Government.

We also try to organise interaction between the Industry Associations and Chambers, Government authorities, other professional Associations and regulatory bodies to strengthen the existing bond. We plan to organise joint events with such institutes and associations and ensure positive exchange of ideas and sharing knowledge.

Our Association has been publishing Journals regularly. We shall continue publishing such journals with content of professional interest from eminent writers.

Thank You once again for the faith you have placed in me and this privilege to serve as your President. I assure all the Members and pledge that I alongwith officebearers and Committee Members will put our best efforts for the Members of our profession at large for the legacy we have inherited and forever of our esteemed and beloved DTPA.

I am always open to suggestions and grievances. Please feel free, don't hesitate to share them with me from time to time.

Best wishes for the festive season ahead.

With warm regards

Adv Kamal Kumar Jain
President - DTPA
28th December, 2021

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USEFUL POINTS IF A STATEMENT MADE DURING SEARCH IS TO BE RETRACTED

Narayan Jain, LL.M., Advocate

A confessional statement admitting extra income during search, may be retracted. However, one should be cautious on following points to make the retraction successful.

1. **The Retraction must be made without delay**: Kantilal C. Shah v. ACIT [2011] 133 ITD 57 (Ahd) held that **retraction of statement made u/s 132(4) will not be permissible if it has been made after a lapse of considerable time and not done immediately.** In this case, after a lapse of around 9 months through an Affidavit,and the said retraction was submitted before the AO with a covering letter after 50 days of its retraction. According to department's pleadings the said delay thus demonstrated that the assessee was not confident about filing of the retraction. **There must be some convincing and effective evidence in the hands of the assessee through which he could demonstrate that the said statement was factually incorrect.** Further there should also be some strong evidence to demonstrate that the earlier statement recorded was under coercion. **In the present case, it was held that the retraction is general in nature and lacking any supportive evidence, rather assessee took several months to retract the initial statement, which by itself created a serious doubt.**
2. **A belated retraction would fall in the category of afterthought**: In Council of Institute of Chartered Accountants of India v Mukesh R. Shah [2004] 134 Taxman 265 (Guj) the Court held that **it goes without saying that a retraction made after a considerable length of time, would not have the same efficacy in law as a retraction made at the earliest point of time from the day of admission. A belated retraction would fall in the category of afterthought instead of being retraction.**
3. **Evidences to corroborate reasons for retraction:**
   a) Sudharshan P. Amin v. Asst. CIT [2013] 35 taxmann.com 370 (Gujarat): **In search, assessee had disclosed a sum as undeclared income. However, during assessment proceedings, assessee retracted from his statement. Assessee's CA who was present at time of confessional statements did not suggest any undue pressure or allurement by department. It was held that retraction made by assessee could not be accepted and addition should be made to his income as undeclared investment.** When retracting a statement made on oath under section 132(4), it should always be supported by effective evidence which shows that the statement which was earlier recorded was incorrect on facts or was

taken under inter alia coercion and intimidation. **Merely mentioning that the statement was recorded using undue influence, threat or coercion, or that there was a mistake of facts or law, may not be enough. What has to be seen is how clearly the same is spelt out and what evidence, has been furnished to demonstrate the same.**

b) In Asstt. CIT v. Rameshchandra R. Patel [2004] 89 ITD 203 (Ahd.) (TM) it was held that the **assessee had a right to retract but that has to be based on evidence brought on record to the contrary and there must be justifiable reason and material for accepting retraction** i.e., cogent and sufficient material have to be placed on record for acceptance of retraction. All that has to be done by the assessee if he is to retract the statement which was recorded in the presence of witnesses unless there is evidence of pressure or coercion. **Further corroboration of retracted statement is necessary** where the assessee established **at the earliest possible opportunity by leading reliable evidence and proving thereby the erroneous or incorrect nature of the facts admitted or confessed** and also where evidence available on record is inconsistent with the confessional statement.

4. **Intimation of retraction to higher authorities:** In Principal CIT v. Roshan Lai Sancheti [2019] 306 CTR (Raj) 140, the Court held that "Statement recorded under sec. 132(4) and later confirmed in statement recorded under sec. 131, cannot be discarded simply by observing that the assessee has retracted the same because **such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence.** Duration of time when such retraction is made assumes significance and in the present case **retraction has been made by the assessee after** 237 days.

5. **Statements made involuntarily i.e. obtained under coercion, threat, duress, undue influence etc.:** In Deepchand & Co v. ACIT [1995] 51 TTJ (Bom.) 421, the ITAT, Mumbai held that there is no supporting evidence to confirm the additions except the statements of two partners recorded at the time of search. It would not be out of context to mention that **the statements recorded by the search party for 2 days cannot be considered to be free, fearless and voluntary.** There is a considerable substance in the assessee's contention that the **statements were recorded under pressure and force.** The Tribunal had held that retraction should be allowed if it is based on proper principles and evidence. In the ordinary course, no assessee would say that he had much concealed unaccounted money as mentioned in the statements herein. Putting in the mouth of the assessee that so much amount was unaccounted and concealed would itself indicate that the admission was forcible and not voluntary.

6. **Retraction after obtaining copy of Statement on ground of mistaken belief either of fact or law:**
   a) In Jyotichand Bhaichand Saraf & Sons (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 11(1) (ITAT Pune) [2012] 139 ITD 10 (Pune), during search action, statement of the Director of

assessee was recorded on 6th November 2001. **The assessee was given copies of the statement recorded under section 132(4)on 20th May 2002.** On receipt of copy of the statement, assessee realized that there was a mistake in the declaration of income. The assessee submitted a letter clarifying the mistake on 21st June 2002 to the Assessing Officer and retracted the statement made under mistake of fact. The assessment was accordingly made but was set aside by the CIT under sec. 263 stating that the same was prejudicial to the interest of the revenue and was made by A.O. without application of mind. On appeal, ITAT held that the department has not brought on record any **corroborative evidence** so as to establish undisclosed income having been invested in agricultural land. **Statement of the assessee cannot be sole basis without any cogent and corroborative evidence**. The mistake in the statement is immediately clarified on the receipt of the statement by the appellant. Moreover, no material/evidence was found during the course of search action indicating on-money payment or any undisclosed investment in land. **The statement was given under mistaken belief of law** that **the suppressed sale is unaccounted/undisclosed income** instead of correct legal position that the gross profit arising from unaccounted sale is the undisclosed income. Statement of Director indicate that **he was not mentally composed at relevant point of time.**

b) Amritsar ITAT Bench in Asstt. CIT v Janak Raj Chauhan[2006] 102 TTJ 316 (Asr.), observed that admission made at the time of search is an important piece of evidence, but the same is not conclusive. It is open to the assessee to show that it is incorrect and same was made under mistaken belief of law and fact.

c) Hotel Kiran v. Asstt. CIT [2002] 82 ITD 453 (Pune) – Admission by a person is a good piece of evidence though not conclusive. The Legislature in its wisdom has provided that such a **statement under sec. 132(4) may be used** as evidence in any proceedings under the Act. However, **there are exceptions to such admission where the assessee can retract from such statement/admission. The first exception exists where such statement is made involuntarily, i.e., obtained under coercion, threat, duress, undue influence, etc.** But the burden lies on the person making such allegation to prove that the statement was obtained by the aforesaid means. **The second exception** is where **statement** has been given under **some mistaken belief either of fact or of law.** If he can show that the **statement** has been made on mistaken belief of facts, and the facts on the basis of which **admission** was made were incorrect.

7. **Principles of Natural Justice to be applied:** ITAT, Jodhpur Bench in

Maheshwari Industries v. Asstt. CIT [2005] 148 Taxman 74 (Jodh) (Mag.) held that additions should be considered on merits rather than merely on the basis of the fact that the amount was surrendered. It is settled legal position that unless the provision of statute warrant **or there is a necessary implication on reading of section that the principles of natural justice are excluded, the provision of section should be construed in manner incorporating principles of natural justice and quasi-judicial bodies should generally read in the provision relevant section a requirement of giving a reasonable opportunity of being heard before an order is made which will have adverse civil consequences for parties effected.**

8. **Mode and Manner of Retraction:** Retraction of a statement later on, which was made during the search operation is not an easy way to escape the tax implications and **requires corroborative evidence and documents to support the retraction and show the circumstances as to why the person is retracting his statement made earlier.** The person has to go through minute scrutiny by the tax authorities and the Courts later on, if the need be. The following aspects should be kept in mind:

a) **Affidavit** – A retraction should be made on an affidavit along with supporting evidences, if any;

b) **Affidavit of witnesses** – Additional affidavit of the witnesses present during search may also be filed. Such statement holds good value and may aid the assessee in getting relief.

c) **Elaborate** – It must clearly lay down the facts of the case and detail the evidences showing inter alia use of force, coercion, intimidation or any mistake of fact/law, whatever may be the case.

d) **Highlight Error** – In case of a mistake of fact or law, it must clearly lay down as to what mistake took place in making the statement, the reason for the same and the actual correct position. Evidences in support of the correct facts must also be attached.

e) **Inform Senior Officers** – In addition to the A.O., Authorised Officer (who conducted the Search), a retraction which is made on affidavit or otherwise should also be communicated to higher authorities.

f) **Earlier the better** – Any retraction should be done at the earliest without any delay. A retraction made immediately may strengthen the case of the assessee whereas a belated retraction will in most cases would be seen as an afterthought.

9. Some decisions where Retraction of Statement was held VALID:

a) Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 (SC) : Their Lordships while observing that **admission is an extremely important piece of evidence, held that, it cannot be said to be conclusive and the maker can show that it was incorrect.** [Also refer S. Arjun Singh v. CWT [1989] 175 ITR 91/[1988] 41 Taxman 272 (Delhi)].

b) Avadh Kishore Das v. Ram Gopal AIR 1979 SC 861: The Supreme Court held that **evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them.** The Supreme

Court further held that **unless shown or explained to be wrong, they are an efficacious proof of the facts admitted.**

c) In CIT Central-III v. Lavanya Land Pvt. Ltd. and Others [2017] 397 ITR 246 (Bom.), the Hon'ble Bombay High Court dismissed an appeal filed by the revenue against the order of the ITAT, Mumbai had set aside the additions made by the revenue based on the statement made by person during search which was later retracted by him. In this case, a search was conducted at the premises of one of handlers of the assessee company and his statement was recorded which showed an admission that a large sum of money was received by him to purchase lands in the name of the assessee company. The statement was retracted by him after a period of two and a half months. On appeal, the ITAT Mumbai set aside the addition made. **Adverting to the fact that the concerned person has retracted his statement, the Tribunal arrived at the conclusion that merely on the strength of the alleged admission in the statement, the additions could not be made as the essential ingredients of Section 69C of the IT Act enabling the additions were not satisfied**. This was not a case of 'no explanation'. Rather, the Tribunal concluded that **the allegations made by the authorities are not supported by actual cash passing hands.** Bombay High Court, held while dismissing the appeal of the revenue: "It is not possible for us to reappraise and re-appreciate the factual findings. The finding that Section 153C was not attracted and its invocation was bad in law is not based just on an interpretation of Section 153C but after holding that the ingredients of the same were not satisfied in the present case. That is an exercise carried out by the Tribunal as a last factfinding authority. Therefore, the finding is a mixed one. There is no substantial question of law arising from such an order and which alternatively considers the merits of the case as well."

d) **Retraction of statements recorded at odd hours:** The admissibility of retraction of statements which were given in an exhausted state and at odd hours was allowed by Gujarat High Court in Kailashben Manharlcil Choksi v. CIT [2010] 320 ITR 411 (Guj,). It was held that a statement which has been recorded u/s 132(4) at odd hours is not a voluntary statement if it is subsequently retracted. The Court observed that the main grievance of the A.O. was that **the statement was not retracted immediately and it was done after two months. It was an afterthought and made under legal advise.** High Court held :**Merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. The Court also held that the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission.**

e) **Principal CIT, Central III v. Krutika Land (P.) Ltd. [2019] 103 taxmann.com 9 (SC): During search certain incriminating documents were found in possession of one DD, handling land acquisition on behalf of assessee-company and his statement was recorded. He stated that there were amounts disbursed for purchase of lands and a certain amount of cash had also been received by him to purchase**

lands. However, later he had retracted his statement. A.O. issued notice under section 153C and initiated proceedings against assessee and made additions under section 69C. High Court held that since seized documents did not belong to assessee but were seized from residential premises of one Mr. DD who had later retracted his statement, no action under section 153C could be undertaken in case of assessee. It further held that since entire decision was based on seized documents and there was no material to conclusively show that huge amounts revealed from seized documents were actually transferred from one side to another, additions under section 69C were not sustainable. SLP of Revenue was dismissed.

f) Satinder Kumar (HUF) v. CIT [1977] 106 ITR 64 (HP): It was held that it is true that an admission made by an assessee constitutes a relevant piece of evidence but **if the assessee contends that in making the admission he had proceeded on a mistaken understanding or on misconception of facts or on untrue facts** such an admission cannot be relied upon **without first considering the aforesaid contention.**

g) Asstt. CIT v. Jorawar Singh M. Rathod [2005] 148 Taxman 35 (Ahd. – Trib.) (Mag.): Assessee stated in retraction that **during recording of statement he was under constant threat of penalty and prosecution and was confused about various questions asked by the search party about documents, papers, etc., of other persons found from his premises. He declared the sum under pressure which was evident from the fact that no such corroborative evidence, asset or valuables were found in form of immovable or movable properties from his residence** in support of the amount of disclosure which was later on retracted but not accepted by the department. The Tribunal **observed**: "…It is true that simple denial cannot be considered as a denial in the eyes of law but at the same time it is also to be seen (that) the material and valuables and other assets are found at the time of search. **The evidence ought to have been collected by the revenue during the search in support of the disclosure statement." The retraction was held valid.**

h) S.R. Koshti v. CIT [2005] 193 CTR (Guj.) 518: **If assessee under a mistake, misconception or on not being properly instructed, is over assessed, the authorities are required to assist him and ensure that only legitimate taxes due are collected. The decision in CIT v. Durga Prasad More [1973] CTR (SC) 500, was followed i.e., test of human probabilities. The High Court said "We do not find any material on record on which basis it can be said that the disclosure of the assessee of Rs. 16 lakhs is in accordance with law** or in spirit of section 132(4)…".

i) CIT (LTU) v. Reliance Industries Ltd. [2019] 102 taxmann.com 372 (Bombay)/[2020] 421 ITR 686 (Bombay) [SLP granted in [2020] 114 taxmann.com 320 (SC)], the **Appellate Authorities allowed payments made to 'S', a consultant holding that there was sufficient evidence justifying the payments made and A.O. other than relying upon statement of 'S' recorded in search had no independent material to make disallowance.** The CIT (Appeal) and Tribunal concurrently held that 'S' retracted his statement within a short time

by filing an affidavit. Subsequently his further statement was recorded in which he also reiterated the stand taken in affidavit. **The High Court slammed AO for making disallowance of payment merely relying on statement of payer recorded during search, which said that 'S' had not rendered any service to assessee so as to receive such payments. The allowance of payments made to 'S',** a consultant, was allowed as business expenditure. The assessee had set up a captive power generating unit and provided electricity to its another unit. It claimed deduction u/s 80-IA in respect of the profits arising out of such activity. It contended before the A.O. that the valuation of electricity provided toanother unit should be at the rate at which the electricity distribution companies were allowed to supply electricity to consumers. The issue had been examined by the Bombay High Court on earlier occasion in Income Tax Appeal No. 2180 of 2011 and the view taken by the Tribunal in similar circumstances was upheld. Similar view was taken in CIT v. Godawari Power & Ispat Ltd. [2014] 42 taxmann.com 551/223 Taxman 234 (Chhattisgarh); and Pr.CIT v. Gujarat Alkalies & Chemicals Ltd. [2017] 395 ITR 247/88 taxmann.com 722 (Gujarat) and allowed the expenditure.

j) **Other cases in which Retraction was accepted:** These are CIT v. Uttamchand Jain [2009] 182 Taxman 343 (Bom) / [2010] 320 ITR 554 (Bombay); CIT v. Rakesh Ramani [2018] 94 taxmann.com 461 (Bom.)/ [2018] 256 Taxman 299 (Bom.) / 168 DTR 356 (Bom.)(HC); Surinder Pal Verma v. Asstt. CIT [2004] 89 ITD 129 (Chd.) (TM)**;** Asstt. CIT v. Anoop Kumar [2005] 147 Taxman 26 (Asr.) (Mag.); Gyan Chand Jain v. ITO [2001] 73 TTJ (Jodh.) 859- Part Relief allowed.

Narayan Jain is a Master of Law, former National Vice President of AIFTP, guest faculty at IIMC, NUJS and many Institutions. He is author of the book "How to handle Income Tax Problems" with CA Dilip Loyalka.

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ANALYSIS OF EXPENSES ALLOWABLE UNDER SECTION 37 OF I.T. ACT, 1961

PARAS KOCHAR, ADVOCATE

Business expenses mean any expenses which are spent wholly and exclusively for the purpose of business. Such expenses should have commercial expediency. Business expenses which are revenue in nature, are allowable as deduction u/s 37of Income Tax Act, 1961. Business expenses which are capital in nature are not claimed as deduction against income of current year of the assessee. The expression "for the purpose of the business" is essentially wider than the expression "for the purpose of earning profits". It covers not only the running of the business or its administration but also measures for the Preservation of the business and protection of its assets and property.

Personal expenses are out of the purview of business expenses. However, business expenses incurred for any unlawful full business is not allowed to be claimed as deduction against business income.

Section 37 of the Income Tax Act, 1961is a residuary section for allowability of business expenditure and the same is given below:

*"**37.** (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

Explanation 1—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party"

As per above section, following conditions are required to be fulfilled for Allowability of business expenses -

- Such expenditure should not be covered under the specific section i.e., sections 30 to 36of Income Tax Act, 1961.
- Expenditure should not be of capital nature

- The expenditure should be incurred during the previous year.
- The expenditure should not be of personal nature.
- The expenditure should have been incurred wholly or exclusively for the purpose of the business or profession.
- The business should be started
- The expenditure should not be any illegal purpose or violative of any law of the land.

There are plethora of judgements where it has been held that expenses incurred wholly and exclusively for the purpose of business or profession is a principal requirement for acid test. Some of the important judgements are given as under: -

the Hon'ble Apex Court approving the observation of ***ATHERTON's case - 1926 AC 205*** in the matter of ***EASTERN INVESTMENT LIMITED vs COMMISSIONER OF INCOME TAX reported in (1951) 20 ITR 1***, held:

"a sum of money expended, none of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade", can be adopted as the best interpretation of the crucial words of Section 10(2)(xv). The imprudence of the expenditure and its depressing effect on the taxable profits would not deflect the applicability of the section. ***The acid test, "did the expenditure fall on the assessee in this character as trader and was it for the purpose of the business****".*

The Hon'ble Apex Court in another case of ***Travancore Titanium Products Ltd vs Commissioner Of Income-Tax 1966 AIR 1250*** has held as under: -

"The nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading principles. ***The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the taxpayer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business****"*

The Hon'ble Rajasthan High Court in the case of ***Commissioner of Income Tax vs Rajasthan Spg. And Wvg. Mills Ltd. (2005) 198 CTR Raj 96***has held as under:

"Expression 'wholly and exclusively' does not denote 'necessarily'. The word 'wholly' refers to quantum of expenditure. The word 'exclusively' refers to motive, objective or purpose with which the particular expense has been incurred. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of its or his business. Such expenses can be incurred voluntarily and without necessity. If it is incurred for promoting the business and to earn the profits, the assessee can claim the deduction"

In general parlance, it is said that since the expenses have been made through banking mode, the party is identifiable the expenses should be allowed U/s 37(1)of Income Tax Act, 1961 against business income. But apart from this, the assessee may also be asked by the assessing officer to prove the rendering of services. How the AO may come to conclusion that services have been rendered or not is explained in the following illustration: -

Suppose, A claims in the return that he has paid RS

100000/ as brokerage on sale of Textile goods. During course of scrutiny assessment proceedings, the AO asks for furnishing of evidences in support of the said claim of brokerage as expenses in return of income. The assessee furnishes brokerage bill,confirmation, Agreement, Bank statement, PAN of broker and other evidences. The learned AO apart from these documents further asks for furnishing of details of parties whom goods was sold through the broker and nature of services rendered by the broker. On receipt of such information, the AO proceeds further by issuing notices u/s133(6)of Income Tax Act, 1961 to the buyer if the assessee for identity of the broker and also for confirming services being rendered by the broker related to sale of goods made to him. Sometimes the party refuses that he has not bought any goods from buyer. If AO is not satisfied by the replies furnished, he may also issue notice u/s 131of Income Tax Act, 1961 on the broker for recording of his statement. During course of recording of statement If the broker fails to explain nature of services rendered by him or also fails to explain certain information related to party to whom he sold the goods for earning brokerage (Name, phone number, Complete address of the party, Representatives of the assessee or his buyer whom he met during the deal, rate of brokerage, terms of transaction etc, and various such other queries. If the AO is not satisfied with the replies of the broker made during recording of statement, he may make disallowance of the brokerage paid by the assessee as the AO is able to prove that no services were rendered by the broker. Therefore, simply production of preliminary evidences and mode of payment through banking channel to the broker, holding PAN etc. may not be sufficient for allowing business expenses against business income of the relevant year of the assessee.

Double impact of additions made by invoking Section 115BBE of I.T.Act, 1961

The Taxation Laws (Second Amendment) Act, 2016 (No. 48 of 2016) was passed by the Hon'ble Lok Sabha of India on 29.11.2016. The Second Amendment Act, 2016 received the assent of the President on the 15th December, 2016 and is published for general information. The section 115BBE of the Income tax was substituted by a new section 115BBE w.e.f. 1st April, 2017.

The amended provisions of Section 115BBE of I.T.Act, 1961 are stated as under:

"115BBE. (1) Where the total income of an assessee, —

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1)."

The government made two changes in the amended section: -

1. **Reflected in the return of income furnished under section 139 of Income Tax Act, 1961**
2. **Taxation at flat rate of sixty per cent.**

As per the old provisions, if any assessing officer finds or assesses any income by invoking the provisions of section 68, section 69, section 69A, section 69B, section 69C or section 69Dof Income Tax Act, 1961, such income was required to be taxed @ 30%. However, as per amended provisions, the rate of tax at which such income required to be taxed has been changed to 60%. Further, the amendment provision also covers the transactions declared by the assessee in its return of income u/s 139of Income Tax Act, 1961, which are later found to be unexplained.

The impact of such disallowance, as stated in the illustration mentioned earlier, may be doubled if provisions of section 115 BBEof Income Tax Act, 1961 are invoked by the Assessing Officer i.e. If the expenses claimed by the assessee are found to be bogus and it is established that expenses were in the nature of accommodation entry, then not only such expense will be disallowed u/s 69Cof Income Tax Act, 1961 but it shall attract theprovisions of section 115 BBEof Income Tax Act, 1961 and a tax rate of 60%. Further, the assessment of the broker can also be reopened u/s 148of Income Tax Act, 1961and income shown by him as brokerage may be treated as income from other sources and by applying section 115 BBEof Income Tax Act, 1961, the 60% rate of tax can be charged in the case of broker also asbecause once it is established that the assessee has taken accommodation entries in the guise of brokerage, the brokerage received by payee also becomes bogus credit entries and attracts the provisions of Section 68 of Income Tax Act, 1961. Hence, such disallowance of expenses may lead to double additions.

Imposition of penalty u/s 271AAD of I.T.Act, 1961.

The Finance Act,2020, has introduced a new section 271AAD in Chapter XXI – Penalties Imposable to discourage taxpayers to manipulate his books of accounts by recording false entries including fake invoices to claim wrong input credit in GST/VAT. The said section has been inserted following the investigation of Maharashtra Sales Tax Department, who had unearthed a scam of fictitious invoices in excess of Rs.10,000/- Crores claiming input credit of VAT under the Sales Tax Act. Even under the GST regime, the GST department unearthed few big scams of bogus invoices amounting to more than Rs.1,000/- crores, involving availing of GST Input Credit. The new section which was made effective from 1st April 2020 reads as under –

"271AAD. *(1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—*

(i) a false entry; or

(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty

a sum equal to the aggregate amount of such false or omitted entry.

Explanation. — For the purposes of this section, "false entry" includes use or intention to use —

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.]"

The above section penalises all the false entries found in the books of accounts of an assessee and the amount of such penalty shall be less than equal to the total value of the entries which are found to be false/bogus. Hence, it is stated in context to the aforesaid illustration, that not only the provisions of section 115 BBE will be attracted, the AO may also invoke section 271AADof Income Tax Act, 1961and impose 100% penalty on the total amount of brokerage expense claimed by the assessee and total amount of income from brokerage claimed by the broker as because the entries in their respective books were in the nature of accommodation and a false one.

Further, Penalty u/s 270A of Income Tax Act, 1961 may also be imposed on both assessee and the broker for misreporting of income.

Conclusion

In the faceless era of assessment, we shall witness such additions more frequently as time passes by. Transient of information from one officer to another officer or assessment unit is now more likely than earlier. In time to come, it will be more difficult for the tax practitioners to handle faceless assessment where such additions and disallowances will be common. Apart from section 37(1), there are other sections in Income Tax Act which prohibits an expenditure for deduction against income either fully, partly or not during the relevant financial year in which such expenses were incurred. To name a few, section 43B, Section 40(2)A, Section 40(a)(ia)of Income Tax Act, 1961. However, section 37(1)of Income Tax Act, 1961 is basic test for allowability of business expenditure against business income of the assessee.

LATEST INCOME TAX JUDGEMENTS

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SECTION 12A OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST

Thanthi Trust v. Director of Income Tax (Exemptions) - [2020] 121 taxmann.com 119 (Madras)

Where assessee-trust was engaged in business of publishing newspaper, though assessee did not run any school or college, surplus of income from business was utilized for donation to a particular assessee-trust which was running educational institution and in earlier years, it was confirmed that amounts which were earned by assessee-trust was spent for a charitable purpose, registration granted to assessee-trust could not be cancelled.

Commissioner of Income-tax, (Exemptions), Chandigarh v. Shree Durga Mata Mandir - [2020] 121 taxmann.com 31 (Punjab & Haryana)

Huge corpus : Commissioner (Exemption) was not justified in declining registration to assessee-society when there was nothing on record to show that assessee was not working for achieving its aims and objects or that accumulated funds were used for purposes other than aims and objects of assessee .

DEPUTY COMMISSIONER OF INCOME TAX VS J.K. TRUST BOMBAY : (2020) 60 CCH 0216 MumTrib

Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business.

SECTION 14A OF THE INCOME-TAX ACT, 1961 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

Kundan Rice Mills Ltd. v. Assistant Commissioner of Income Tax, Panipal - [2020] 120 taxmann.com 422 (Delhi - Trib.)

Quantum of disallowance : Disallowance under section 14A cannot be more than exempt income .

IBM India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-4(1)(2), Bangalore - [2020] 120 taxmann.com 424 (Bangalore - Trib.)

General :Where there was no exempt income earned by assessee during year, no disallowance was to be made under section 14A .

SECTION 28(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS LOSS/DEDUCTION

Kundan Rice Mills Ltd. v. Assistant Commissioner of Income Tax, Panipal - [2020] 120 taxmann.com 422 (Delhi - Trib.)

Loss in trading from stock option : Where there were no material available with authorities below so as to conclude that assessee had entered into any dubious or other transactions deliberately to show business loss, disallowance of loss in trading from stock option could not have been disallowed by Assessing Officer solely

on basis of interim order of SEBI alleging that certain entities were deliberately making repeated losses through their trading in stock option .

SECTION 32 OF THE INCOME-TAX ACT, 1961 - DEPRECIATION

IBM India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-4(1)(2), Bangalore - [2020] 120 taxmann.com 424 (Bangalore - Trib.)

Leased assets :Assessee-company was eligible for depreciation on leased assets .

IBM India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-4(1)(2), Bangalore - [2020] 120 taxmann.com 424 (Bangalore - Trib.)

Computer software :Assessee-company was to be allowed depreciation at rate of 60 per cent on computer software that were capitalized .

SECTION 37(1) OF THE INCOME-TAX ACT, 1961 - BUSINESS EXPENDITURE

IBM India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-4(1)(2), Bangalore - [2020] 120 taxmann.com 424 (Bangalore - Trib.)

Suomotu disallowance under section 40(a)(ia) : Where assessee-company debited certain amount on account of various expenditures like rent, professional charges, sub-contract charges, interest, royalty, etc. in its P&L account that attracted provisions of TDS and made suomotu disallowance of said amount under section 40(a)(ia), since these expenses were related to day-to-day running of business of assessee, same could not be disallowed under section 37(1) merely because assessee had made suomotu disallowance of same under section 40(a)(ia) .

Principal Commissioner of Income-tax, Coimbatore v. Vijayeshwari Textiles Ltd. - [2020] 121 taxmann.com 29 (Madras)

Product development expenses : Product development expenses are deductible even though said expenditure was to be amortized over a period of 3 years as per accounting practice adopted by assessee .

SECTION 234B OF THE INCOME-TAX ACT, 1961 - INTEREST, CHARGEABLE AS

IBM India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-4(1)(2), Bangalore - [2020] 120 taxmann.com 424 (Bangalore - Trib.)

Assessee-company was eligible to pay interest under section 234B on incremental income arisen to it due to Advanced Pricing Agreement (APA) entered by it with CBDT .

Commissioner of Income Tax, Bangalore v. JSW Steel Ltd. - [2020] 121

Deferred tax liability : Interest under section 234-B was chargeable where assessee failed to pay advance tax in respect of deferred tax liabilityin view of insertion of clause (h) to second proviso to section 115JB (1) .

SECTION 2(35) OF THE INCOME-TAX ACT, 1961 - PRINCIPAL OFFICER

Suvendra Kumar Panda v. Income Tax Officer, Corporate Ward 6(2), Chennai - [2020] 121 taxmann.com 27 (Madras)

Reassessment notice : Where petitioner had acted as a director of company for a short period and disclosed details of acting directors, acting directors of company being available, department could have proceeded against any one of such acting directors for reassessment proceedings and could have treated any one of them as Principal Officer, and, thus, impugned order treating petitioner as Principal Officer was set aside.

SECTION 4 OF THE INCOME-TAX ACT, 1961 - INCOME - CHARGEABLE AS

Principal Commissioner of Income-tax v. Shiv Salai& Sons (I) Ltd. - [2020] 121 taxmann.com 28 (Madras)

Suppression of sale : Where Assessing Officer holding that cash sales of bullions were effected by assessee by quoting low rates as against sales effected against jewellery made addition for suppression of sales, however, Tribunal after taking note of number of instances where assessee had charged lesser on its jewellery customers than for cash sales and also finding that there was no additions for supression of sales for other assessment years deleted said addition, impugned order of Tribunal was justified.

SECTION 5 OF THE INCOME-TAX ACT, 1961 - INCOME - ACCRUAL OF

Principal Commissioner of Income-tax v. Shiv Salai& Sons (I) Ltd. - [2020] 121 taxmann.com 28 (Madras)

Time of accrual - Business receipts : Where Assessing Officer made additions on account of credit/debt notes for receivables issued by a company in favour of assessee, since there was an arbitration proceedings pending between assessee and said company regarding such receivables, Tribunal rightly held that addition on account of such credit notes/debt could be made only in assessment year in which arbitration proceedings would reach finality and liability of assessee would be crystalised .

SECTION 36(1)(iii) OF THE INCOME-TAX ACT, 1961 - INTEREST ON BORROWED CAPITAL

Principal Commissioner of Income-tax v. Shiv Salai& Sons (I) Ltd. - [2020] 121 taxmann.com 28 (Madras)

Interest free advances/loans : Where assessee had substantial capital built over various years and was also having substantial interest free advances and there was nothing on record to show that any interest bearing funds were diverted by assessee for giving any interest free loans or for making any investments, impugned disallowance of interest claim of assessee was unjustified .

SECTION 43(5) OF THE INCOME-TAX ACT, 1961 - SPECULATIVE TRANSACTIONS

Principal Commissioner of Income Tax, Coimbatore v. Precot Meridian Ltd. - [2020] 120 taxmann.com 429 (Madras)

Foreign exchange derivative loss : Loss incurred on foreign exchange derivative cannot be disallowed holding it to be a speculative loss .

SECTION 68 OF THE INCOME-TAX ACT, 1961 - CASH CREDIT

Principal Commissioner of Income-tax v. Shiv Salai& Sons (I) Ltd. - [2020] 121 taxmann.com 28 (Madras)

Loans : Where Tribunal clearly noted fact that amount received by assessee company from an individual was towards repayment of earlier advances given by assessee when it business was runing as a proprietorship concern and transactions in respect of same were also reflected in accounts of proprietorship concern, no additions could be made on account of such repayment of loan amount received by assessee after converting into a company as unexplained cash credit .

SECTION 69 OF THE INCOME-TAX ACT, 1961 - UNEXPLAINED INVESTMENTS

Associated Capsules Pvt. Ltd. v. Assistant Commissioner of Income Tax, Circle-42, Mumbai - [2020] 121 taxmann.com 103 (Mumbai - Trib.)

Paintings : Where during search operation at premises of assessee, 288 paintings were found but Assessing Officer noted that description of paintings mentioned on vouchers given by assessee did not match and were

not verifiable, since paintings were acquired by assessee in years much prior to date of search, addition in respect of said paintings could not be made in search proceedings, and, thus, it would be appropriate to restore this issue to file of Assessing Officer .

Commissioner of Income Tax, Chennai v. Vijay Kumar Koganti - [2020] 120 taxmann.com 430 (Madras)

Share application money : Where Assessing Officer examined issue regarding substantial increase in capital investment reflected by assessee in balance sheet in scrutiny assessment and passed assessment order, in absence of any finding by Pr. Commissioner as to how assessment order was erroneous, Tribunal rightly set aside revisional order passed by Pr. Commissioner on said issue .

SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

Associated Capsules Pvt. Ltd. v. Assistant Commissioner of Income Tax, Circle-42, Mumbai - [2020] 121 taxmann.com 103 (Mumbai - Trib.)

Adjustment - Guarantee commission : Guarantee commission is to be charged to extent of actual exposure of facility availed instead of gross amount of facility.

INCOME

S. H. MOHAMED NOWFEL VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0222 ChenTrib

Merely for the reason that assessee was into real estate business and involved in buying and selling of lands for profits, profit derived from sale of agricultural land cannot be brought to tax under the head 'income from business or profession'.

BMR PLYMERS (P) LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0223 DelTrib

Section 68 is applicable in the case where the assessee offers no explanation about the nature and source therewith or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory in respect of the sum so credited which may be charged to income tax

COMMISSIONER OF INCOME TAX VS SOCIEDADE DE FOMENTO INDUSTRIAL PVT. LTD. : (2020) 109 CCH 0055 MumHC

Onus is on Revenue to establish that there is a proximate relationship between expenditure and exempt income.

BMR PLYMERS (P) LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0223 DelTrib

Section 68 is applicable in the case where the assessee offers no explanation about the nature and source therewith or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory in respect of the sum so credited which may be charged to income tax.

REVISION

GIGABY TECHNOLOGY (INDIA) PRIVATE LTD. VS COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0029 MumHC

Where a final assessment order is made by the AO without compliance with the mandate of section 144C, the same is not merely an erroneous order but such an order is without jurisdiction.

GUNJAN GARG & ANR. VS PRINCIPAL COMMISSIONER OF INCOME TAX & ANR. : (2020) 60 CCH 0227 DelTrib

When a settlement commission is given a special power to grant immunity from prosecution and penalty Under the income tax act itself, it cannot be said that assumption of jurisdiction by the settlement

commission in accordance with the law wherein there are chances for waiver of penalty as well as immunity from prosecution is an order which will constitute prejudicial to the interest of the revenue.

REASSESSMENT

SUDHAKAR CHAKKILAM VS INCOME TAX OFFICER : (2020) 60 CCH 0158 HydTrib

Reopening of assessment is bad in law where notice U/s143(2) was issued beyond the time limit prescribed under the Income Tax Act, 1961.

DIVYA S RAO VS INCOME TAX OFFICER : (2020) 60 CCH 0226 BangTrib

Re-assessment order passed is without offering proper opportunity of being heard to assessee, which is not in accordance with law.

AKIK MARKETING INDIA PVT. LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0214 DelTrib

Reasons recorded by the Assessing Officer cannot be supplemented by assessment order, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of assessment order.

SHANKER TRADER PVT. LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0237 DelTrib

In reopening made prior to 1 June 2015 sanction should be taken by the assessing officer for reopening of the assessment u/s 147 from the rank of the joint Commissioner of income tax according to Section 151 (2).

PENALTY

INCOME TAX OFFICER VS LOTUS DYES AND CHEMICALS : (2020) 60 CCH 0172 MumTrib

Merely on basis of unproved claim of purchases no penalty under Sec. 271(1)(c) can been validly imposed on assessee.

SYMBYOSYS INTEGRATED SOLUTIONS PVT. LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0150 MumTrib

It is obligatory on the part of the A.O to have clearly put the assessee to notice as regards the default for which it was called upon to explain as to why penalty under Sec. 271(1)(c) may not be imposed.

ADVENT COMPUTER SERVICES LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0230 ChenTrib

Liability cannot be fastened u/s. 271(1)(c) where there is no deliberate attempt on the part of the assessee to conceal particulars of income or evade payment of taxes.

SECTION 43A OF THE INCOME-TAX ACT, 1961 - FOREIGN CURRENCY, RATE OF EXCHANGE, CHANGE IN

Commissioner of Income Tax, Bangalore v. JSW Steel Ltd. - [2020] 121 taxmann.com 39 (Karnataka)

Loss on account of settlement of forward contracts for purchase of plant and machinery was allowable even in a case where payment was not actually made by assessee .

SECTION 45 OF THE INCOME TAX ACT, 1961 - CAPITAL GAINS - CAPITAL ASSET

Income Tax Officer, Ward-4(5), Hyderabad v. Shrilekha Business Consultancy (P.) Ltd. - [2020] 121 taxmann.com 150 (Hyderabad - Trib.)

Where consideration for capital contribution made by a partner in a firm is share in profits of firm during firm's subsistence and share in assets after firm's dissolution, consideration was 'indeterminate' and as such computation provisions of section 48 would fail

and hence, no capital gain would arise thereon; further, when consideration is indeterminate, computation provisions of section 56(2)(viia) to determine inadequacy or otherwise of 'such consideration' also fail and provisions of section 56(2)(viia) could not be made applicable to capital contribution of a partner made in firm .

UDDHAV KRISHNA BANKAR VS INCOME TAX OFFICER : (2020) 60 CCH 0224 PuneTrib

The requirement of depositing before the date of furnishing of return of Income under Section 139 of the Act has not to be restricted only to the date specified in Section 139(1) of the Act but would include all sub section of Section 139 including sub section (4) of the Act.

SECTION 132 OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE

Best Oasis Ltd. v. Deputy Director of Income-tax ADIT (Investigation) - [2020] 121 taxmann.com 32 (Gujarat)

Attachment v/s 132(9B) : Where revenue had provisionally attached fixed deposit receipts of two bank accounts of assessee, assessee's prayer to operate said bank accounts was to be allowed .

SECTION 249 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER (APPEALS) - FORM OF APPEAL AND LIMITATION

Reena Agarwal v. Union of India - [2020] 121 taxmann.com 26 (Gauhati)

Condonation of delay : Where Commissioner (Appeals)'s order did not record materials on basis of which satisfaction was arrived at that grounds urged by assessee in support of its prayer for condonation of delay were not sufficient grounds to condone delay, matter was remanded back to Commissioner (Appeals) to decide afresh issue of condonation of delay .

SECTION 9 OF THE INCOME TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

Bengal Tiger Line (P.) Ltd. v. Deputy Commissioner of Income Tax (International Taxation) 1(1), Chennai - [2020] 121 taxmann.com 165 (Chennai - Trib.)

In terms of Article 8 of India Singapore DTAA, global income of a tax resident of Singapore from shipping operations, even though which is earned outside Singapore is taxable only in Singapore on accrual basis and consequently article 24 of India Singapore DTAA cannot be invoked to deny benefit of exemption merely for simple reason that said income was not taxed in Singapore by virtue of separate exemptions provided under Singapore Income-tax Act.

Intel Technology India (P.) Ltd. v. Commissioner of Income Tax, International Taxation, Bangalore - [2020] 121 taxmann.com 130 (SC)

Royalties/Fees For technical services - General : Where High Court had not answered question of payment of royalty on merits, matter should be restored to High Court

Symantec Asia Pacific Pte. Ltd. v. Deputy Commissioner of Income Tax (international Taxation), Circle 3(1)(2), New Delhi - [2020] 121 taxmann.com 102 (Delhi - Trib.)

Royalties/fees for technical services - Computer software : Amended definition of 'Royalty' under domestic law even if amended with retrospective effect cannot be extended to definition of 'Royalty' under DTAA since said term has not been amended in DTAA .

HariharanSubramaniam v. Assistant Commissioner of Income Tax, Circle 6(1), New Delhi - [2020] 121 taxmann.com 189 (Delhi - Trib.)

Independent personal services - Legal services : Where assessee, a legal practitioner in field of intellectual property rights, availed services of foreign legal

practitioners (individual lawyers and law firms) for filing patent applications in foreign countries on behalf of his clients in India, services by foreign attorney would be classified as 'independent Personal services' .

SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS

Principal Commissioner of Income Tax, Central-1, Kolkata v. Sona Vets P. Ltd.

Manufacture : Production of poultry feeds by assessee by way of receiving raw materials and other inputs and processing them by grinding, mixing, roasting and blending to produce large quantity of poultry feeds would amount to 'manufacture' and assessee would be entitled to claim deduction under section 80-IB .

Commissioner of Income-tax, Mangalure v. Mandavi Builders, Mangalore - [2020] 121 taxmann.com 36 (Karnataka)

Housing project : Amendment brought on 1-4-2010 vide clauses (e) and (f) to section 80-IB(10) is prospective in nature .

Commissioner of Income-tax, Mangalure v. Mandavi Builders, Mangalore - [2020] 121 taxmann.com 36 (Karnataka)

Housing project : Where unaccounted money found during search proceedings at premises of assessee-company, engaged in business of building and developing housing project, was treated as business income of assessee by Assessing Officer, assessee could not be denied deduction under section 80-IB(10) in respect of such amount .

SECTION 241A OF THE INCOME-TAX ACT, 1961 - REFUND - POWER TO WITHHOLD, IN CERTAIN CASES

Vodafone Idea Ltd. v. Assistant Commissioner of Income-tax, Circle 26(2) - [2020] 121 taxmann.com 101 (SC)

Scope of : Review petition dismissed against finding that section 241A requires a separate recording of satisfaction on part of Assessing Officer that having regard to fact that a notice has been issued under section 143(2), grant of refund is likely to adversely affect revenue whereafter, with previous approval of Principal Commissioner or Commissioner and for reasons to be recorded in writing, refund can be withheld .

SECTION 145A OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING IN CERTAIN CASES

Commissioner of Income Tax-III, Bangalore v. SPR Group Holdings (P.) Ltd. - [2020] 120 taxmann.com 432 (Karnataka)

Excise duty : In respect of excisable goods manufactured and lying in stock, excise duty element is not to be included in valuation of closing stock .

SECTION 240 OF THE INCOME-TAX ACT, 1961 - REFUNDS - REFUND ON APPEAL, ETC.

VisalakshiAnandkumar v. Assistant Commissioner of Income Tax, Circle-III, Trichy - [2020] 121 taxmann.com 97 (Madras)

Where income of petitioner was chargeable to tax and assessee paid self assessment tax which was admittedly payable, merely because income was not assessed in relevant year and was admitted by assessee on a later date, claim for refund of tax paid on admitted income is not sustainable.

DEDUCTIONS

ASCENT MEDITECH VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0215 SuratTrib

With respect to the sum received by the assessee from

any of his employees to which provisions of sub-clause (x) of clause (24) of section (2) applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(1)(va).

SECTION 2(15) OF THE INCOME-TAX ACT, 1951 - CHARITABLE PURPOSES

Karnataka Industrial Area Development Board v. Additional Director of Income Tax (Exemptions), Bengaluru - [2020] 121 taxmann.com 88 (Karnataka)

Objects of general public utility : Where assessee was a statutory body under provision of Karnataka Urban Development Authority Act, 1987 formed with, an object to promote and assist in rapid and orderly establishment, growth and development of industries in suitable areas in State, activities of assessee would be considered as charitable.

SECTION 256 OF THE INCOME-TAX ACT , 1961 - HIGH COURT - REFERENCE TO

Commissioner of Income Tax v. MD Waddar& Co. - [2020] 121 taxmann.com 164 (Bombay)

Mere presence of an inter-State Tribunal cannot be determinative of High Court's jurisdiction for an aggrieved party to challenge that Tribunal's order .

SECTION 276C OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - WILFULATTEMPT TO EVADE TAX, ETC.

SrinidhiKarti Chidambaram v. Deputy Director of Income-Tax, (Investigation) Unit 3(2) Chennai - [2020] 121 taxmann.com 91 (Madras)

Where complaints under section 276C/277 were filed against assessees on basis of seized material from purchaser of assessee's land and seized material's indicated that assessees received some part of sale consideration in cash but did not disclose same in return, trials of said complaints could not be quashed .

SECTION 280A OF THE INCOME-TAX ACT, 1961 - OFFENCES AND PROSECUTION

Srinidhi Karti Chidambaram v. Deputy Director of Income-Tax, (Investigation) Unit 3(2) Chennai - [2020] 121 taxmann.com 91 (Madras)

Transfer of cases from magistrate court to special court : No prejudice will be caused to assessees in transfer of their case from Additional Chief Metropolitan Magistrate Court to Special Court even when right of revision under section 397 of Cr.P.C. in taken away by such transfer .

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 1st November, 2021

(INCOME-TAX)

S.O. 4584(E).—In exercise of the powers conferred by sub-section (11) and (12) of section 245D of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:—

1. Short title and commencement.—(1) This Scheme may be called the e-Settlement Scheme, 2021.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions.— (1) In this Scheme, unless the context otherwise requires,—

(a) "Act" means the Income-tax Act, 1961 (43 of 1961);

(b) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(c) "applicant" means the assessee who had filed an application under section 245C of the Act and such application is a pending application;

(d) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Act;

(e) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to eliminate discretion and optimise the use of resources;

(f) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(g) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(h) "designated portal" means the web portal designated as such by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be;

(i) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(j) "electronic mode" means any communication by way of an e-mail, video-telephony or video conferencing or any other electronic media;

(k) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(l) "email" or "electronic mail" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(m) "e-Settlement" means the settlement where proceedings are conducted electronically;

(n) "Interim Board" means the Interim Board for Settlement constituted by the Central Government under section 245AA of the Act;

(o) "pending application" shall have the meaning as assigned to it in clause (eb) of section 245A of the Act;

(p) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including-

(i) the email address available in the electronic filing account of the addressee registered in the designated portal; or

(ii) the e-mail address available in the last income-tax return furnished by the addressee; or

(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

(vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;

(q) "settlement" means the settlement under Chapter XIX-A of the Act;

(r) "Rules" means the Income-tax Rules,1962;

(s) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

(2) Words and expressions used herein and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Scope of the Scheme.—This Scheme shall be applicable to pending applications in respect of which the applicant has not exercised the option under sub-section (1) of section 245M of the Act and which has been allotted or transferred by Central Board of Direct Taxes to an Interim Board.

4. Interim Board.–(1) The Interim Board shall conduct e-settlement of pending applications allocated or transferred to it under paragraph 3, in accordance with the provisions of this Scheme.

(2) The Interim Board shall have such income-tax authority, ministerial staff, executive or consultant to assist the members of the Interim Board, as considered necessary by Central Board of Direct Taxes.

5. Allocation of pending applications.-The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems), as the case may be, shall, with the approval of Central Board of Direct Taxes, devise a process to randomly allocate or transfer the pending applications, referred to in paragraph 3, to the Interim Boards.

6. Procedure for settlement.—The procedure for settlement of pending applications allotted or transferred to an Interim Board shall be as per the following, namely:-

(i) the Interim Board shall intimate the applicant about the allocation or transfer, as the case may be, of his case to it;

(ii) the Interim Board may call for the records from the Principal Commissioner or the Commissioner and may forward the necessary information, document, evidence, report and additional facts referred to in paragraph 7 to the Principal Commissioner or the Commissioner and direct it to make or cause to be made further enquiry or investigation and furnish a report in accordance with and within the time allowed under sub-section (3) of section 245D of the Act;

(iii) where the Principal Commissioner or the Commissioner fails to furnish the report as referred to in clause (ii), within the time, the Interim Board may proceed to pass the order under sub-section (4) of section 245D of the Act, without waiting for that report;

(iv) where the report as referred to in clause (ii) has been furnished by the Principal Commissioner or the Commissioner, the Interim Board shall forward such report to the applicant and request the applicant to submit written response to such report within the date and time specified or such extended date and time as may be allowed on the basis of an application made in this behalf;

(v) where the applicant fails to furnish the response as referred to in clause (iv) within the specified time, or within the extended time, the Interim Board may proceed to pass the order under sub-section (4) of section 245D of the Act, without waiting for that response;

(vi) the opportunity referred to in sub-section (4) of section 245D of the Act shall be provided by the Interim Board through video conferencing or video telephony;

(vii) the Interim Board shall before providing opportunity referred to in clause (vi), forward the response referred to in clause (iv), if received from the applicant, to the Principal Commissioner or the Commissioner;

(viii) an authorised representative appearing for the applicant at the time of hearing of an application shall file before the commencement of the hearing a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is employed at that point in time;

(ix) the Interim Board may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the application or any matter arising therefrom;

(x) after hearing the applicant and the Principal Commissioner or the Commissioner, through video conferencing or video telephony, and after examination of all the information, document, record, report and evidence with it, the Interim Board shall pass order under sub-section (4) of section 245D of the Act;

(xi) the order passed under clause (x) shall be delivered to the applicant vide the registered e-mail address along with a copy to the Principal Commissioner or the Commissioner;

(xii) the order passed under clause (x) may be rectified by the Interim Board under sub-section (6B) of section 245D of the Act either *suo motu* or on an application made by the applicant or the Principal Commissioner or the Commissioner;

(xiii) the provisions of Chapter XIX-A of the Act shall *mutatis mutandis* apply to pending applications allotted or transferred, to the Interim Boards.

7. Verification of additional facts.— Where in the course of any proceedings before the Interim Board any facts not contained in the settlement application (including the annexure and the statements and other documents accompanying such annexure) are sought to be relied upon, they shall be submitted to the Interim Board in writing and shall be verified in the same manner as provided for in the settlement application.

8. Proceedings not open to the public.— The proceedings before the Interim Board shall not be open to the public and no person (other than the applicant, his employee, the concerned officers of the Interim Board or the Income-tax authority or the authorised representatives) shall, without the permission of the Interim Board, remain present during such proceedings, even on video conferencing or video telephony.

9. Communication on behalf of the Interim Board.— (1) The opportunity for hearing through video conferencing or video telephony shall be facilitated by any Income-tax Authority as authorised by the Interim Board, who will provide the link and password to the applicant and concerned parties in advance.

(2) All communication of the Interim Board inward and outward shall be carried out by any Income-tax Authority as authorised by the Interim Board.

10. Communication exclusively by electronic mode.—(1) For the purposes of this Scheme,-

(a) all communications between the Interim Board and the applicant, or his authorised representative, shall be exchanged by electronic mode;

(b) all communications between the Interim Board and the Principal Commissioner or the Commissioner shall be exchanged by electronic mode:

Provided that any application received in a mode other than electronic mode by the Interim Board may be forwarded to the Principal Commissioner or the Commissioner electronically, to the extent technologically feasible.

(c) every notice or order or any other electronic communication under this Scheme from the Interim Board shall be delivered to the addressee, being the applicant by sending an e-mail to the registered email address of the applicant or his authorised representative;

(d) the applicant or the authorised representative shall file his response to any notice or order or any other electronic communication, under this Scheme, to the Interim Board through his registered e-mail address; and

(e) the Principal Commissioner or the Commissioner shall file his response to any notice or order or any other electronic communication, under this Scheme, to the Interim Board through official electronic mail facility.

11. Authentication of electronic record.—For the purposes of this Scheme, an electronic record shall be authenticated by the—

(i) the Interim Board, the Principal Commissioner or the Commissioner, by affixing its digital signature;

(ii) the applicant or his authorised representative, by affixing his digital signature if he is required under the Rules to furnish his return of income under digital signature, and in any other case, by communicating through his registered e-mail address.

12. No personal appearance before the Interim Board.—(1) The applicant shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the Interim Board or before any Income-tax Authority or ministerial staff posted with the Interim Board.

(2) Central Board of Direct Taxes shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony at such locations as may be necessary, so as to ensure that the applicant, or his authorised representative, is not denied the benefit of this Scheme merely on the ground that such applicant or his authorised representative, or any other person does not have access to video conferencing at his end.

13. Language of the Interim Board.— (1) All pleadings before the Interim Board may, at the option of the applicant, be in Hindi or in English.

(2) All orders and other proceedings of the Interim Board may, at the option of the Interim Board, be in Hindi or in English

14. Publication of orders of the Interim Board.—The Interim Board, at its discretion, direct the publication of orders or portions containing the rulings of the Interim Board with such modifications as to names and other particulars therein, as it may deem fit.

[Notification No. 129/2021/ F.No. 370142/52/2021-TPL (Part IV)]

SHEFALI SINGH, Under Secy., Tax Policy and Legislation Division

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 2nd November, 2021

(INCOME-TAX)

S.O. 4592(E).—In exercise of powers conferred by sub-clause (iv) of clause (c) of the *Explanation* 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the "Act"), the Central Government hereby specifies the pension fund, namely, the School Employees Retirement System of Ohio, (hereinafter referred to as "the assessee") as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as "said investments") subject to the fulfillment of the following conditions, namely:-

(i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

(ii) the assessee shall furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10 of the Act, during the financial year, from an accountant as defined in the *Explanation* below sub-section (2) of section 288 of the Act, as per the provisions of clause (vi) of rule 2DB of the Income –tax Rules, 1962;

(iii) the assessee shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB, as per the provisions of clause (v) of rule 2DB of the Income-tax Rules, 1962;

(iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;

(v) the assessee shall continue to be regulated under the law of the State of Ohio, United States of America;

(vi) the assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;

(vii) not more than ten per cent. of the total value of the assets administered or invested by the assesse are allowed for the purpose other than the purpose listed at clause (vi) provided such assets are wholly owned directly or indirectly by the State of Ohio, United States of America and such assets vest in the State of Ohio, United States of America upon dissolution;

(viii) the earnings and assets of the assessee should be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (vi) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person; barring any payment made to creditors or depositors for loan or borrowing [as defined in sub-clause (b) of clause (ii) of *Explanation* 2 to clause (23FE) of section 10 of the Act] taken for the purposes other than for making investment in India;

(ix) the earning from assets referred to in clause (vii) may be used for purpose other than the purpose listed as in clause (viii) provided that the said earnings are credited either to the account of Government of State of Ohio, United States of America or any other account designated by such Government so that no portion of the earnings inures any benefit to any private person;

(x) the assessee shall not have any loans or borrowings [as defined in sub-clause (b) of clause (ii) of *Explanation* 2 to clause (23FE) of section 10 of the Act], directly or indirectly, for the purposes of making investment in India;

(xi) the assessee shall not participate in the day to day operations of investee [as defined in clause (i) of *Explanation* 2 to clause (23FE) of section 10 of the Act] but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee.

2. Violation of any of the conditions as stipulated in the said clause (23FE) of section 10 of the Act and this notification shall render the assessee ineligible for the tax exemption.

3. This notification shall come into force from the date of its publication in the Official Gazette.

[Notification No. 130 /2021/ F. No. 370142/50/2021-TPL]

NEHA SAHAY, Under Secy. (Tax Policy and Legislation Division)

Circular No. 20 of 2021

F. No.370142/56/2021-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
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Dated 25th November, 2021

Subject: Guidelines under sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-I) of section 206C of the Income-tax Act, 1961 – reg.

Finance Act, 2020 inserted a new section 194-O in the Income-tax Act 1961 (hereinafter referred to as "the Act") which mandates that with effect from 1st day of October, 2020, an e-commerce operator shall deduct income-tax at the rate of one per cent of the gross amount of sale of goods or provision of services or both, facilitated through its digital or electronic facility or platform. However, exemption from the said deduction has been provided in case of certain individuals or Hindu undivided family subject to fulfilment of specified conditions. This deduction is required to be made at the time of credit of the amount of such sale or service or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier.

2. Finance Act, 2020 also inserted sub-section (1H) in section 206C of the Act which mandates that with effect from 1st day of October, 2020 a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year shall collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax. The collection is required to be made at the time of receipt of amount of sale consideration. Seller is defined as the person whose total sales or gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of good is carried out. Central Government has been authorised to specify by notification in the Official Gazette, the person who would not be considered as seller for the purposes of this section, subject to the fulfillment of certain conditions as specified therein.

3. Finance Act, 2021 inserted a new section 194Q to the Act which took effect from 1st day of July, 2021. It applies to any buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of value exceeding fifty lakh rupees in any previous year. The buyer, at the time of credit of such sum to the account of the seller or at the time of payment, whichever is earlier, is required to deduct an amount equal to 0.1% of such sum exceeding fifty lakh rupees as income tax. Buyer is defined to be person whose total sales or gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Central Government has been authorised to specify by notification in the Official Gazette, person who would not be considered as buyer for the purposes of this section, subject to fulfillment of specified conditions.

4. Sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-I) of section 206C of the Act empowers the Board (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties.

4.1 In this regard, vide circular no. 17 of 2020 dated 29.09.2020, guidelines were issued by the Board (with the approval of the Central Government) in relation to the provisions of section 194-O and section 206C(1H) of the Act in certain cases to remove difficulties and provide clarity for certain transactions.

4.2 Further, vide circular no. 13 of 2021 dated 30.06.2021, guidelines were issued by the Board in relation to the provisions of section 194Q of the Act through which the difficulties arising from the applicability of the provisions of section 194Q in certain cases were removed. Furthermore, guidelines with respect to the cross application of the provisions of sections 194-O, 194Q and 206C (1H) of the Act were also issued through the said circular.

4.3 In continuation of the above, to further remove the difficulties, the Board, with the approval of the Central Government, hereby issues the following guidelines under sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-I) of section 206C of the Act.

5. Guidelines

5.1 E-auction services carried out through electronic portal:

5.1.1 Representations have been received from various stakeholders involved in the business of carrying out e-auction services through electronic portal owned, operated or maintained by them (hereinafter referred as 'e-auctioneer'). It has been stated that in an e-auction, the e-auctioneer involved in conducting the e-auction through its portal is responsible only for the price discovery for the sale/purchase of goods or services and the result of the auction report is submitted to the client. The client could be the buyer or the seller. Participants in the auctions are sellers (if client is buyer) or buyers (if client is seller). The transaction of sale/purchase is being carried out directly between the buyer and the seller which are not done through the electronic portal of the e-auctioneer. Further, the price so discovered can be further negotiated between the parties without the knowledge of the e-auctioneer. In such a scenario, it has been represented that provisions of section 194-O of the Act does not apply as the transaction of sale/purchase itself is not taking place through the electronic portal.

5.1.2 From the representations made, the following facts have been noticed:

(a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery **only** which is reported to the client.

(b) The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.

(c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale.

(d) The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery.

(e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty.

(f) For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O of the Act.

5.1.3 In order to remove difficulty, it is clarified that the provisions of section 194-O of the Act shall not apply in relation to e-auction activities carried out by e-auctioneers if **all the facts** listed at (a) to (f) of para 5.1.2 are satisfied. This clarification shall not apply if any of these facts are not satisfied. Further, it is clarified that the buyer and seller would still be liable to deduct/ collect tax as per the provisions of section 194Q and 206C (1H) of the Act, as the case may be.

5.2 Adjustment of various state levies and taxes other than GST

5.2.1 In Para 4.3.2 of circular no. 13 of 2021 dated 30.06.2021, it has been provided that in case the GST component has been indicated separately in the invoice and tax is deducted at the time of credit of the amount in the account of the seller, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such GST. It has been further provided that in case the tax is deducted on payment basis as the payment is earlier than the credit, the tax is to be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future. Further, adjustment of tax deducted in case of purchase return has also been provided.

5.2.2 It has been represented that in case of goods which are not within the purview of GST, such as petroleum products, various levies like VAT, Excise duty, sales tax etc. are charged. While the treatment of GST component has been clarified in the circular no. 13 of 2021, the same is silent on other non-GST levies which have otherwise been subsumed and replaced by GST.

5.2.3 In this regard, it is hereby clarified that in case of purchase of goods which are not covered within the purview of GST, when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of VAT/Sales tax/Excise duty/CST, as the case may be, has been indicated separately in the invoice, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such VAT/Excise duty/Sales tax/CST, as the case may be. However, if the tax is deducted on payment basis, if it is earlier than the credit, the tax is to be deducted on the whole amount as it will not be possible to identify the payment with VAT/Excise duty/Sales tax/CST component to be invoiced in the future. Furthermore, in case of purchase returns, the clarification as provided in Para 4.3.3 of circular no. 13 of 2021 shall also apply to purchase return relating to non GST products liable to VAT/excise duty/sales tax/ CST etc.

5.3 Applicability of section 194Q of the Act in cases where exemption has been provided under section 206C (1A) of the Act

5.3.1 Sub-section (1A) of section 206C of the Act provides that notwithstanding anything contained in sub-section (1) of the said section, no tax is to be collected in case of a buyer, who is a resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration to the effect that the goods (as referred to in sub-section (1)) are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

5.3.2 As per the provisions of sub-section (1H) of section 206C of the Act, tax is to be collected in respect of sale of goods other than the goods which have not been covered under sub-section (1) or sub-section (1F) or sub-section (1G). It has been represented that in case of goods which are covered under the provisions of sub-section (1) of the said section but exempted under sub-section (1A), tax will not be collectible under either sub-section (1) or sub-section (1H) of section 206C as the provisions of sub-section (1H) categorically exclude the goods which are covered under sub-section (1) of section 206C. It has been requested to clarify if the provisions of section 194Q of the Act will be applicable in such cases.

5.3.3 The issue has been examined. It is seen that the provisions of section 194Q of the Act does not apply in respect to those transactions where tax is collectible under section 206C [except sub-section (1H) thereof] of the Act. Since by virtue of sub-section (1A) of section 206C of the Act, the tax is not required to be collected for goods covered under sub-section (1) of the said section, it is hereby clarified that in such cases, the provisions of section 194Q of the Act will apply and the buyer shall be liable to deduct tax under the said section if the conditions specified therein are fulfilled.

5.4 Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation

5.4.1 There have been representations from department of the Government (both Central Government and State Government), to enquire if such department is required to deduct tax under the provisions of section 194Q of the Act.

5.4.2 As per the provisions of section 194Q, tax is to be deducted by a person, being a buyer, whose total sales, gross receipts or turnover from **business** carried on by that person exceed ten crore rupees during the financial year immediately preceding the financial year in which the goods are purchased by such person. Thus, for a person to be considered as a buyer for the purposes of section 194Q of the Act, following conditions are required to be fulfilled:

(a) Such person shall be carrying out a business/ commercial activity;
(b) The total sales, gross receipts or turnover from such business/ commercial activity shall be more than Rs. 10 crore during the financial year immediately preceding the financial year in which goods are being purchased by such person.

In case of any Department of the Government which is not carrying out any business or commercial activity, the primary requirement for being considered as a 'buyer' will not be fulfilled. Accordingly, such an organization will not be considered as 'buyer' for the purposes of section 194Q of the Act and will not be liable to deduct tax on the goods so purchased by them. However, if the said department is carrying on a business/commercial activity, the provision of section 194Q of the Act shall apply subject to the fulfillment of other conditions.

5.4.3 Issue has been raised in case where any department of the Government will be considered as a 'seller' for the purposes of deduction of tax under section 194Q of the Act. In this regard, it is hereby clarified that for the purposes of section 194Q, Central Government or State Government shall not be considered as 'seller' and no tax is to be deducted by the buyer, in cases where any Department of Central or State Government are seller of goods.

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 10th December, 2021

INCOME-TAX

G.S.R. 851(E).—In exercise of the powers conferred by clause (4E) of section 10 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:—

1. Short title and commencement.—(1) These rules may be called the Income-tax (33rd Amendment) Rules, 2021.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, after rule 21AJ, the following rule shall be inserted, namely:—

"21AK. Conditions for the purpose of clause (4E) of section 10.- (1) The income accrued or arisen to, or received by, a non-resident as a result of transfer of non-deliverable forward contracts under clause (4E) of section 10 of the Act, shall be exempted subject to fulfillment of the following conditions, namely:—

(i) the non-deliverable forward contract is entered into by the non-resident with an offshore banking unit of an International Financial Services Centre which holds a valid certificate of registration granted under International Financial Services Centres Authority (Banking) Regulations, 2020 by the International Financial Services Centres Authority; and

(ii) such contract is not entered into by the non-resident through or on behalf of its permanent establishment in India .

(2) The offshore banking unit shall ensure that the condition provided in clause (ii) of sub-rule (1) is complied with.

Explanation.- For the purpose of this rule, the expression,-

(i) "permanent establishment" shall have the meaning assigned to it in clause (iiia) of section 92F;

(ii) "a non-deliverable forward contract" shall mean a contract for the difference between an exchange rate agreed before and the actual spot rate at maturity, with the spot rate being taken as the domestic rate or a market determined rate and such contract being settled with a single payment in a foreign currency; and

(iii) "offshore banking unit" means a banking branch Unit located in an International Financial Services Centre, as referred to in sub-section (1A) of section 80LA of the Act.".

[Notification No. 136/2021/F. No. 370142/53/2021-TPL (Part-II)]

UMME FARDINA ADIL, Under Secy.

Note : The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), *vide* notification number S.O. 969 (E) dated the 26th March, 1962 and were last amended *vide* notification number G.S.R. 831(E) dated 23rd November, 2021.

Circular No. 21 /2021

F. No. 225/140/2021/ITA-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
*****

New Delhi, dated 28th December,2021

Subject: One-time relaxation for verification of all income tax-returns e-filed for the Assessment Year 2020-21 which are pending for verification and processing of such returns - reg.

1. In respect of an Income-tax Return (ITR) which is filed electronically without a digital signature, the taxpayer is required to verify it using any one of the following modes within the time limit of 120 days from date of uploading the ITR: -

i. Through Aadhaar OTP
ii. By logging into e-filing account through net banking
iii. EVC through Bank Account Number
iv. EVC through Demat Account Number
v. EVC through Bank ATM
vi. By sending a duly signed physical copy of ITR-V through post to the CPC, Bengaluru

2. In this regard, it has been brought to the notice of Central Board of Direct Taxes ('Board') that large number of electronically filed ITRs for the Assessment Year 2020-21 still remain pending with the Income-tax Department for want of receipt of a valid ITR-V Form at CPC, Bengaluru or pending e-Verification from the taxpayers concerned. In law, consequences of failure to verify the ITR within the time allowed is significant as such an ITR is/can be declared *non-est*. Thereafter, the consequences for non-filing an ITR, as specified in the Income-tax Act,1961 ('the Act') follow.

3. In this context, it has been decided by the Board to provide one-time relaxation for submission of ITR-V/e-Verification for resolving the grievances of the taxpayers associated with non-verification of ITRs for the Assessment Year 2020-21 and to regularize such ITRs which have either become *non-est* or have remained pending with Income-tax Department for want of receipt of respective ITR-V Form or pending e-Verification. Therefore, **in respect of all ITRs for Assessment Year 2020-21 which were uploaded electronically by the taxpayers within the time allowed under section 139 of the Act and which have remained incomplete due to non-submission of ITR-V Form/ pending e-Verification**, the Board, in exercise of its powers under section 119(2)(a) of the Act, hereby permits verification of such returns either **by sending a duly signed physical copy of ITR-V to CPC, Bengaluru through speed post or through EVC/OTP modes as listed in para 1 above. Such verification process must be completed by 28.02.2022.**

4. This relaxation shall not apply in those cases, where during the intervening period, Income-tax Department has already taken recourse to any other measure as specified in the Act for ensuring filing of tax return by the taxpayer concerned after declaring the return as *non-est*.

5. Further, Board also relaxes the time-frame for issuing the intimation as provided in second proviso to sub-section (1) of Section 143 of the Act and directs that such returns shall be processed by **30.06.2022** and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provision of section 244A (2) of the Act would apply. It is clarified that this relaxation would be applicable to all such returns which are verified during the extended period.

6. In case the taxpayer concerned does not get her/his return regularized by furnishing a valid verification (either ITR-V or EVC/OTP) by 28.02.2022, necessary consequences as provided in law for non-filing the return may follow.

sd/-
(Ravinder Maini)
Director (ITA.II), CBDT

Copy to: -

i. PS to FM/OSD to FM/PS to MoS(F)/OSD to MoS(F)
ii. PS to Secretary (Revenue)
iii. Chairman, CBDT & All Members, CBDT
iv. All Pr. CCsIT/ Pr. DGsIT
v. DGIT(systems) with a request to undertake a campaign to ensure that maximum number of returns are verified during the extended period
vi. All Joint Secretaries/CsIT, CBDT
vii. CIT (M&TP), Official Spokesperson of CBDT for giving wide publicity
viii. Web Manager for uploading on official income-tax website
ix. JCIT (Database Cell) for uploading on the irsofficersonline website

28/12/2021
(Ravinder Maini)
Director (ITA.II), CBDT

ज्ञानं एकं च न्यायार्थम
Estd. 1982
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15 FAQs on Rule 86B – Mandatory 1% cash payment on output GST

CA Subham Khaitan

Rule 86B has undergone severe criticism from various stakeholders ever since the same has been notified by the Government. It puts a restriction on the amount which can be used from the electronic credit ledger while making the payment of output taxes. Through this article, the author purports to analyze the provisions and its practical implications by answering the most commonly asked questions relating to this rule.

Q1. What does the rule 86B require of the taxpayers?

Ans. It mandates cash payment of 1% of the output tax liability on a monthly basis for the registered persons who are covered by this rule. This payment of liability in cash would be required irrespective of the fact that there is an existing balance in the electronic credit ledger.

Q2. Will this limit of 1% cash payment be calculated by including the reverse charge payments also?

Ans. The limit of 1% is on the output tax liability only. Reverse charge payments cannot be considered as payment of output taxes. Thereby, the limit of 1% will exclude the portion of taxes which has been paid under reverse charge.

Q3. Which persons are required to comply with this rule?

Ans. Only registered persons who have taxable supplies of more than Rs. 50 lakhs in a particular month (subject to certain exceptions) must comply with this provision.

Q4. If a registered person has a turnover of more than Rs. 50 lakhs in a particular month but less than Rs. 6 crores in a financial year, will he also be required to comply with the said rule?

Ans. One does not need to cumulatively calculate the taxable supplies by merging values of the earlier month. One needs to only find the taxable supplies of the current month to determine if it exceeds Rs. 50 lakhs. If yes, one needs to comply with this provision.

Thereby if in any month, the limit of Rs. 50 lakhs is not crossed but the turnover is more than Rs. 6 crores in a financial year, Rule 86B does not need to be complied with. On the other hand, if the turnover is less than Rs. 6 crores in a financial year but the taxable supplies for any month exceeds Rs. 50 lakhs, then Rule 86B stands attracted.

Q5. If a registered person has multiple kinds of supplies i.e. taxable, exempt, non-taxable and exports, whether the limit of Rs. 50 lakhs should be calculated cumulatively?

Ans. The value of all zero-rated supplies including exports and supplies to SEZ will be excluded for calculating the limit of Rs. 50 lakhs. Further, the exempted supplies (which also includes non-taxable supplies) will also not be counted towards this Rs. 50 lakhs. Therefore, the limit of Rs. 50 lakhs will only be calculated by considering the taxable supplies.

For example, if in any month, taxable supplies are of Rs. 40 lakhs, exports of Rs. 20 lakhs and exempt supplies of Rs. 10 lakhs, Rule 86B will not be attracted in that month.

Q6. If a registered person has both taxable (say Rs. 60 lakhs in a month) and zero rated supplies (Rs. 30 lakhs in a month), will the requirement of 1% payment in cash be applicable on both kinds of supplies?

Ans. For calculation of the threshold limit, the value of taxable supplies excluding the zero-rated supplies needs to be considered. However, for the purpose of payment of tax liability, 1% of the total output tax needs to be disbursed in cash. Therefore, where zero rated supplies are with payment of tax, 1% cash payment will still be required on output tax including that on zero rated supplies.

For example, if in any month, taxable supplies are of Rs. 60 lakhs and zero rated supplies with payment of tax is Rs. 40 lakhs, assuming the rate of GST of 18%, mandatory amount of 1%*100 lakhs*18% = Rs. 18000 must be paid in cash.

Q7. Are there any exceptions to the list of registered persons who are required to comply with this rule?

Ans. The following persons are not required to comply with the restrictions:

a) The registered person or the Proprietor or the Karta or the Managing Director or any of its two partners, whole-time directors or members of Managing Committee of Association or Board of Trustees should have paid more than Rs. One lakh as income tax. This amount should have been paid in each of the two preceding financial yearsfor which the time limit to file return of income under subsection section 139(1) of the said Act has expired.

b) the registered person has received a refund of more than Rs. One lakh in the preceding financial year under zero rated supplies (i.e. exports and supplies to SEZ)

c) The registered person has received a refund of more than Rs. One lakh in the preceding financial year under inverted duty structure

d) The registered person has discharged his liability towards output tax through electronic cash ledger in excess of 1% of total output tax liability applied cumulatively upto the said month in the current financial year

e) The registered person is –

i) Government Department or

ii) Public Sector Undertaking or

iii) Local authority or

iv) Statutory body

Q8. Which financial years should be considered for calculating the limit of Rs. One lakh income tax when filing the return for the month of January 2021?

Ans. The due date of filing Income Tax return for the Assessment year 2020-21 has been extended for persons liable for tax audit / companies' audit / partners of firms liable for audit etc. to 15th February 2021. Most of the taxpayers falling under Rule 86B would be having tax audit applicable to them. Thereby for compliance for the month of January 2021, the two preceding financial years for calculating the limit of Rs. One lakh would be the Assessment year 2019-20 and 2018-19.

Q9. When meaning to state that refund in the preceding financial year should be more than one lakh, would the limit be calculated for all refunds taken together?

Ans. The limit of Rs. One lakh will be calculated for inverted duty structure and zero rated supplies separately. Thereby, the limit for the exports and supplies to SEZ developer or unit will be clubbed to determine Rs. One lakh but that of the inverted duty structure would be separate.

For example, if refund received for inverted duty structure is Rs. 60,000 and for exports is Rs. 50,000 in a year, the exceptions provided above will not be attracted. However, if the refund for supplies to SEZ had been Rs. 60,000 and for exports Rs. 50,000, the limit would be breached and Rule 86B would not be required to be complied with.

Q10. Under the exception, whether the limit is refund received during the year or refund belonging to the year?

Ans. It has been clearly provided the limit is for refund received during the preceding financial year irrespective of the period for which the refund had been claimed.

For example, in the return for the month of January 2021, one needs to calculate the refund received during the year 2019-20. Assuming the refund received during 2019-20 was Rs. 1,20,000 wherein Rs. 70,000 belonged to 2018-19 and Rs. 50,000 to the year 2017-

18, the exception would be said to be attracted and Rule 86B need not be complied with.

Q11. How should the limit of 1% be applied cumulatively in the current financial year to check applicability of Rule 86B? Please explain with an example.

Ans. Let us assume the following example in order to determine the applicability of Rule 86B for month of January 2021:

Payment in cash cumulatively from April 2020 to December is 10/1050 = 0.95%. Thereby, the limit of 1% does not stand breached. Thereby, the exception to Rule 86B is not attracted.

Month	Total GST payment (in lakhs)	Payment through	
		Cash (in lakhs)	Credit (in lakhs)
Apr-20	50	0	50
May-20	80	2	78
Jun-20	90	0.5	89.5
Jul-20	100	0	100
Aug-20	120	2	118
Sep-20	130	1.5	128.5
Oct-20	150	1	149
Nov-20	160	0	160
Dec-20	170	3	167
Total	**1050**	**10**	**1040**

Q12. What is the intent of the Government behind notifying the said rule?

Ans. There are numerous entities all over India which engage in fake invoicing i.e. issue of invoices without actual supply of goods and / or services. These entities have a tendency only to receive credit and pass on credit to other entities without making any payment of taxes in cash. This rule has been notified in order to discourage these entities from issuing these kinds of fake invoices which results in evasion of tax revenue and looting of the government treasury. Thereby, this would help to control fraudsters who issue fake invoices, show high turnovers but have no financial credibility and flee after misusing ITC without payment of taxes in cash.

Q13. Which kind of genuine taxpayers may also get covered within the ambit of this rule?

Ans. Small taxpayers having less than Rs. 50 lakhs worth of taxable supplies would not get covered. Also, through the exceptions discussed above, most of the genuine taxpayers are eliminated from the ambit of this rule. As per the twitter handle while clarifying the misconceptions on this rule, the CBIC has clarified not more than 0.5% taxpayers would be covered by this rule out of 1.2 crore taxpayers.

Though this rule has been notified with the right intention in mind, the government cannot help but cover a select group of genuine taxpayers as well within its ambit. An illustrative list of such taxpayers has been provided below:

a) An entity with heavy capital investment

b) Persistent loss making entities

c) Lower rate of input and output with a higher rate of tax on input services (e.g. a fabric trader having substantial overhead expenditure)

d) A new entity which has high initial expenditure and having low sales

e) An entity with high imports wherein the value of imported goods is inflated by Custom Laws

Q.14 Is there any legal way out for a genuine taxpayer to be excused from the mandatory 1% cash payment?

Ans: The Commissioner or any officer authorized by him have been given the power to remove the restrictions after such verification and safeguards as he may deem fit. This means that the genuine taxpayers who are unintentionally facing the brunt of this rule have an option of making an application before the Department. After observing the safeguards, it can exempt the relevant taxpayers from following this provision. Hence it is suggested that genuine taxpayers who are troubled by this new rule should carefully

draft their representation to the Department in order to circumvent the restriction of making 1% tax payment through cash.

Q15. What can be the legal consequences upon non-compliance with these rules?

Ans. There are multi fold implications of non-compliance with Rule 86B of the CGST Rules 2017:

a) **Non submission of GSTR-1:**Rule 59 of the CGST Rules 2017 prescribes the provisions for furnishing details of outward supplies in GSTR-1. As per this rule, if a taxpayer who is required to pay tax at the rate of 1% of the output tax liability in cash and fails to furnish his GSTR-3B in any particular month, he will not be allowed to upload his GSTR-1 of the subsequent tax period.

For example, if a registered person does not file his GSTR-3B of January 2021 and he was liable to pay tax at the rate of 1% of output tax in cash, he will not be allowed to furnish GSTR-1 of February 2021.

b) **Cancellation of Registration:**Rule 21 of the CGST Rules 2017 which provides for cancellation of registration has been modified to include the reference to violation of Rule 86B of the CGST Rules 2017. This means that the registration of a person can be cancelled if fails to comply with the mandatory deposit of 1% of the output tax liability in cash wherever applicable.

c) **Scrutiny of returns:** Scrutiny of returns can be carried out by the proper officer to verify the correctness of the return as per Section 61 of the CGST Act 2017. Thereafter, the discrepancies are communicated to the taxpayer for seeking explanation. Non-payment of mandatory 1% cash element can attract the Department's attention through this section. After this process, if the Department does not find the explanation of the registered person to be satisfactory, they may proceed for Department Audit under Section 65 or Special Audit under Section 66 or the operations of inspection, search and seizure under Section 67. They may also issue showcause notice for determination of tax dues under Section 73 or 74 which has discussed in detail below.

d) **Demand proceedings u/s 73 or 74:** Non-compliance with the mandatory requirement of payment of 1% tax liability in cash for the applicable cases amounts to incorrect utilization of input tax credit. As per Section 73 or 74, where there is wrong utilization of input tax credit, the Department can proceed to determine such amount and require its payment along with interest and penalty. Ofcourse purpose of Section 73 and 74 are different with the intention of taxpayer (fraud, wilful misstatement or suppression of facts) separating the two.

Having said this, it may be argued in such a situation, there was no avoidance of any tax liability. Hence, there is no amount payable to the government. Thereby, there cannot be any question of any tax liability or interest or penalty payable on the contravention of this provision. At most, the Department can levy penalty under Section 125 which is the residuary provision for contravention of any of the provisions of the Act or rules. In this section, the maximum penalty prescribed is Rs. 25,000 under the CGST Act 2017.

Conclusion

Though it may seem like Rule 86B is to severely dampen the ease of doing business, the intent behind the notification of the said provision should not be obscured. It is to catch hold of persons issuing fake invoices and are 'fly by night' operators. Most of the unscrupulous taxpayers and a handful of genuine taxpayers would be covered within the ambit of this rule. Any genuine taxpayer getting covered by this provision and facing a cash crunch while making payment of GST in cash should make an application to the jurisdictional Commissioner for removal of the restriction of Rule 86B on him.

GST ANNUAL RETURNS (GSTR-9 & 9C) for 2020-21

Compilation by : CA Aanchal Kapoor

In section 35 of the Central Goods and Services Tax Act, sub-section (5) shall be omitted.

Substitution of new section for section 44.

5 Annual return

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.".

Analysis

✓ Annual Return + Self Certified Reconciliation Statement

- Section 35 and 44 has been amended to **remove the Mandatory requirement of GST audit by professionals**.
- The requirement for audited reconciliation has been **replaced by a self certified reconciliation statement** reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically.
- Thus, every person required to file annual return would be required to file a self certified reconciliation of his as well. **Shift of responsibility from auditor to taxpayer**.
- This proposition although is a loss of opportunity for the professionals, but on the other side of the coin, it is **lesser responsibility on the part of professional** and more on the part of taxpayers. This may further **lead to loss of revenue to the government** and **more tax burden at the time of assessment to the taxpayers**. Need to **compare tax cost vs. compliance cost.**
- This amendment is **not applicable till F.Y. 2019-20 but henceforth from F.Y 2020-21.**

Notification 29/2021-CT dt. 30th July

Applicability of section 110 and 111

Sec	Description
110	Section 110 omits section 35(5) of CGST Act means GST Audit (GSTR-9C) by CA/CMA is no longer required
111	substitutes section 44 (Annual return) of CGST Act, 2017.

the Central Government appoints the 1st day of August, 2021, as the date on which the provisions of sections 110 and 111 of the said Act shall come into force.

Notification 31/2021-CT dt 30th July

1st day of August, 2021

The Commissioner, on the recommendations of the Council, hereby exempts the registered person whose aggregate turnover in the financial year 2020-21 is upto two crore rupees, from filing annual return for the said financial year.

Every registered person

Not required to file annual return

Aggregate turnover in the financial year 2020-21 is upto two crore rupees

Notification 30/2021 dt 30th July

Rule 80 substituted

"80. Annual return.-

(1) Every registered person, **other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person**, shall furnish an annual return for every financial year as specified under section 44 electronically in FORM GSTR-9 on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided **that a person paying tax under section 10 shall furnish the annual return in FORM GSTR-9A.**

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in FORM GSTR - 9B.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

Notification 30/2021 & 31/2021

Turnover of F.Y. 2020-21	GSTR-9	GSTR-9C
Upto 2 Crore	Exempted	Not Applicable
Above Rs. 2Cr but up to Rs. 5Crore	Mandatory	Not Applicable
Above Rs. 5Crore	Mandatory	Mandatory

Changes in GSTR 9 of F.Y. 2019-20 vide Not. 79/2020-CT Applicable for F.Y 2020-21 also

In Serial No. 6B, 6C, 6C, 6D, 6E

1. "For FY 2019-20, the registered person shall report the **breakup of input tax credit as capital goods** and have an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.";

2. In Table 8A, if 2A auto populated credit does not match as per GSTR-2A, then option for attaching PDF file is not given in F.Y. 2019-20.

Headings changed

3. "Particulars of the transactions for the financial year declared in returns of the **next financial year till the specified period**.";

Gstr-9

Notification 30/2021

Sl. No.	Particulars	Amendment	Remarks
4. Details of advances, inward and outward supplies on which tax is payable as declared in returns filed during the financial year			
4I	Credit Notes issued in respect of transactions specified in (B) to (E) above	Optional	Registered persons can fill net of Outward supplies for which tax is payable after deducting Credit notes in Sl. No. 4B to 4E.
4J	Debit Notes issued in respect of transactions specified in (B) to (E) above	Optional	Registered Persons can fill net of Outward supplies for which tax is payable after adding Debit notes in Sl. No. 4B to 4E.
4K & 4L	Supplies / tax declared through Amendments & Supplies / tax reduced through Amendments	Optional	Registered Persons can fill the details of Outward supplies for which tax is payable after adjusting the amendments made in GSTR 1 during the Financial Year.
5. Details of Outward supplies on which tax is not payable as declared in returns filed during the financial year			
5D, 5E & 5F	Exempted, Nil Rated & Non-GST supply	Optional	Registered Persons can fill the accumulated figure of these three fields in "Exempt" field only. Bifurcation of Exempted, Nil Rated & Non-GST supply can be avoided.
5H	Credit Notes issued in respect of transactions specified in A to F above	Optional	Registered persons can fill net of Outward supplies for which tax is not payable after deducting Credit notes in Sl. No. 5A to 5F.
5I	Debit Notes issued in respect of transactions specified in A to F above	Optional	Registered Persons can fill net of Outward supplies for which tax is not payable after adding Debit notes in Sl. No. 5A to 5F.
5J & 5K	Supplies declared through Amendments & Supplies reduced through Amendments	Optional	Registered Persons can fill the details of Outward supplies for which tax is not payable after adjusting the amendments made in GSTR 1 during the Financial Year.

Gstr-9

Sl. No.	Particulars	Amendment	Remarks
6. Details of ITC availed as declared in returns filed during the financial year			
6B	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Partly optional	Registered persons can avoid bifurcation of inputs and Input Services and can fill the accumulated figure in Inputs field, but ITC on capital Goods field is mandatory. So A registered person can first fill up ITC on Capital Goods then the remaining balance can be filled in Inputs Field only.
6C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Optional	Registered Persons can avoid bifurcation of ITC on RCM from Registered (Sl. No. 6C) and unregistered persons (Sl. No. 6D), they can write the accumulated figure in Sl. No. 6D only. They can also avoid bifurcation of Inputs and Input Services. Inputs on capital Goods field can be filled first and then the remaining balance can be filled on Inputs Field only.
6D	Inward supplies received from registered persons liable to reverse charge (other than B above) on which tax is paid and ITC availed	Partly Optional.	Registered persons can avoid bifurcation of Inputs and Input Services and can fill the accumulated figure in Inputs field, but ITC on capital Goods field is mandatory. So A registered person can first fill up ITC on Capital Goods then the remaining balance can be filled in Inputs Field only.
7. Details of ITC Reversed and Ineligible ITC as declared in returns filed during the financial year			
7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H	As per Rule 37, As per Rule 39, As per Rule 42, As per Rule 43, As per section 17(5), Reversal of TRAN-I credit, Reversal of TRAN-II credit, Other reversals	Partly Optional	Registered Persons can fill up the accumulated figure from Sl. No. 7A to 7E in Sl. No. 7H i.e. in Other Reversal Field, but Reversal of Transitional credit fields are mandatory.
Pt. V	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to date of filing of annual return of previous FY whichever is earlier	Change in period	Transactions pertaining to Financial Year, 2020-21 but tax paid/Reduced/ ITC availed or reversed in GSTR 3B for the period Between April, 2021 to September, 2021 is to be filled in this point which consists of Serial no. 10 to 13 in this Form.

Gstr-9

Sl. No.	Particulars	Amendment	Remarks
10 & 11	Supplies / tax declared through Amendments, Supplies / tax reduced through Amendments	Change in Period	Amendment of invoices pertaining to Financial Year 2020-21 made in GSTR 1 for the period between April, 2021 to September, 2021 is to be filled here.
12	Reversal of ITC availed during previous financial year	Change in Period & Optional	ITC for the year 2020-21 reversed through GSTR 3B for the period between April, 2021 to September, 2021 is to be filled here. This Serial is also made optional.
13	ITC availed for the previous financial year	Change in Period & Optional	ITC for the year 2020-21 availed in GSTR 3B for the period between April, 2021 to September, 2021 is to be filled here. ITC reversed in 2020-21 as per provisions of Section 16(2) but reclaimed in GSTR 3B for the period between April, 2021 to September, 2021 will not come in this field. The same will be furnished in annual return for 2021-22. This Serial is also made optional for financial Year 2020-21.
15. Particulars of Demands and Refunds			
15A, 15B, 15C & 15D	Total Refund claimed, Total Refund sanctioned, Total Refund Rejected, Total Refund Pending	Optional	Refunds claimed, sanction, rejected and pending in the financial year 2020-21 is to be filled in these fields. Furnishing of these fields can be avoided for the FY 2020-21
15E, 15F, 15G	Total demand of taxes, Total taxes paid in respect of E above & Total demands pending out of E above	Optional	Registered Persons can avoid furnishing details of demand raised during the Financial year.
16. Information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on approval basis			
16A, 16B & 16C	Supplies received from Composition taxpayers, Deemed supply under Section 143, Goods sent on approval basis but not returned.	Optional	Registered Persons can avoid furnishing details of the services received made or goods sent for the mentioned purposes.
17 & 18	HSN Wise Summary of outward supplies & HSN Wise Summary of inward supplies	Optional	Furnishing of HSN wise details of Inward and outward supplies be avoided.

Gstr-9C

Sl. No.	Particulars	Amendment	Remarks
5	Reconciliation of Gross Turnover	Partly Optional	Any adjustment in Turnover which is to be furnished in Serial No. 5B to 5N other than Serial No. 5G can be written cumulatively in Serial No. 5O i.e. "Adjustments in turnover due to reasons not listed above"
9, 11 and	Reconciliation of rate wise liability and amount payable thereon, Additional amount payable but not paid		A new rate field "others" is inserted. That means when the rate is none of 28%, 18%, 12%, 5%, 3%, 0.25% or 0.1% then the data can be filled in "others" field. The term
Pt. V	Auditor's recommendation on additional Liability due to non-reconciliation	New Field inserted, partly substituted.	A new rate field "others" is inserted. **"Auditor's recommendation on additional Liability due to non-reconciliation"** is substituted by **"Additional Liability due to non-reconciliation".** Verification part is substituted as : *Verification of registered person:* *I hereby solemnly affirm and declare that the information given herein above is true and correct and nothing has been concealed there from. I am uploading this self-certified reconciliation statement in FORM GSTR-9C. I am also uploading other statements as applicable, including financial statement, profit and loss account and balance sheet etc."*
12. Reconciliation of Net Input Tax Credit (ITC)			
12B & 12C	ITC booked in earlier Financial Years claimed in current Financial Year and ITC booked in current Financial Year to be claimed in subsequent Financial Years.	Optional	Amount of ITC which has been booked in Audited Financial Statement in earlier years but claimed in GSTR 3B for the period 2020-21 or the amount of ITC booked audited financial statement of 2020-21 but which is claimed or to be claimed in subsequent financial years can be avoid from furnishing.
14	Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account	Optional	Furnishing of expense wise details of ITC as per books and its reconciliation with ITC availed in GSTR 9 can be avoided.
Part B	Certification	Omitted	As the Form has become self- certified, so there is no need for Auditor's certification.

Annual return is mandatory to be filed if aggregate turnover is above **Rs. 2 crores.**
Annual Return can be filed online directly or through offline utility.

All GSTR 1 and GSTR 3B for F.Y. 2020-21 must be filed before filing this return.

Even if the GST number is surrendered during the year, GSTR-9 is required to be filed, if the limit is exceeded.

Major data is auto populated in Annual return. However is available in editable form. The fields, where the system computed values would be modified by more/less than 20%, shall be highlighted in 'Red' for reference & attention.

Once GSTR 9 filed, it **cannot be revised**. GSTR 9C can be uploaded only after GSTR 9 is filed.

GSTR 9 is to be filed for every GSTIN i.e. for every branch separate GSTR-9 is to be filed, if the aggregate turnover is exceeded, irrespective of turnover of individual branch.

In GSTR 9/9C additional liability can be created payable through DRC-03(Selecting Annual Return with 73(5), only thru cash) but additional credit cannot be taken. (Payment thru Cash only is a litigative issue.)

Vide N.N. 47/2019-CT as amended by 77/2020 it is provided that the annual return **shall be deemed to be furnished** on **the due date** if it has not been furnished before the due date for the financial year 2017-18 and 2018-19, in respect of registered persons below Rs. 2 crores. If errors in GSTR-3B, then GSTR-9 is advised to be filed. Cir. 124- Portal shall not permit furnishing after said date, if any short payment or ineligible ITC ,pay thru DRC-03.

Prerequisite for GSTR-9

- Copy of Audited financial statements along with notes, schedules, groupings, segment reports etc. of overall entity.
- Bifurcated Branch wise financial statements.
- Income tax returns with copy of 26AS.
- Books of accounts.
- Cost records & Corporate records, if any.
- User ID & Password of GST portal.
- FY 2018-19 Annual returns.
- GSTR 3B (Annual Summary) & GSTR 1
- Electronic Credit Ledger & Electronic Cash Ledger

Quick 20 summarised Points to be taken care while Conducting Audit

- Reconciliation of Income & Receipts as per P & L account and as per GST Returns.
- Expenses liable to RCM including the foreign payments.
- Bifurcation of expenses on which ITC is claimed subject to the condition of sec. 16 of CGST Act, 2017.
- ITC claimed should not be in the negative list as per sec. 17(5).
- Criteria of 180 days to be considered for creditors.
- Checking of calculation of refund claimed during the year based upon the provisions of sec. 54 read with relevant rules.
- Rate of outward supply to be checked based on HSN/SAC.
- Reconciling the balance of advances pertaining to services as standing in balance sheet with unadjusted advances.
- Reconciliation of GST balance as per portal and closing balance as per balance sheet.
- The outward supplies claimed as exports to be checked on the basis of provisions of sec. 2(5) & 2(6) of IGST Act, 2017.
- Addition of all expenses recovered by the supplier incurred on behalf of recipient say transit insurance, freight etc. and discounts given subject to the provision of sec. 15 of CGST Act,2017
- Tax invoices/ debit or credit notes/ self invoices/ payment voucher/ refund voucher issued as per the relevant provisions of the Act.
- Schedule 1 supplies is to be accounted for. E.g Branch Transfers etc.
- GSTR 2A reconciliation
- Sale of Fixed asset is to be considered.
- Interest liability discharged wherever required.
- If the GSTIN is cancelled during the year, check whether Final return i.e GSTR 10 is filed.
- Cross Charge between Branches.
- Applicability of provisions of Rule 42/43 involving Exempt or Schedule III supplies
- Whether Stock Records maintained or not.

GSTR 9 Sec 44 & Rule 80

Sec 44(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

Sec 44(1) & Rule 80(1) GSTR 9 N.A.

- Input Service Distributor
- Person paying tax u/s 51 or 52 (E-Com u/s 9(5) is required to file GSTR-9)
- CTP
- Non Resident Taxable Person
- OIDAR, Foreign Airlines (Not. 30/2019)
- Sec. 35(5) i.e audit N.A. to CG, SG, Local Authority whose BOA are subject to audit by CAG

Rule 80(1) Proviso Composition Sec 10 ---------- Annual Return in GSTR-9A

Rule 80(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in FORM GSTR -9B.

Section 47(2) Levy of late fee

47(2) Any **registered person**

- who **fails to furnish the return required under section 44** by the due date shall be
- **liable to pay** a **late fee** of
- **one hundred rupees for every day during which such failure continues** subject to a **maximum of an amount calculated at a quarter per cent of his turnover** in the State or Union territory.

Sec. 2(112)

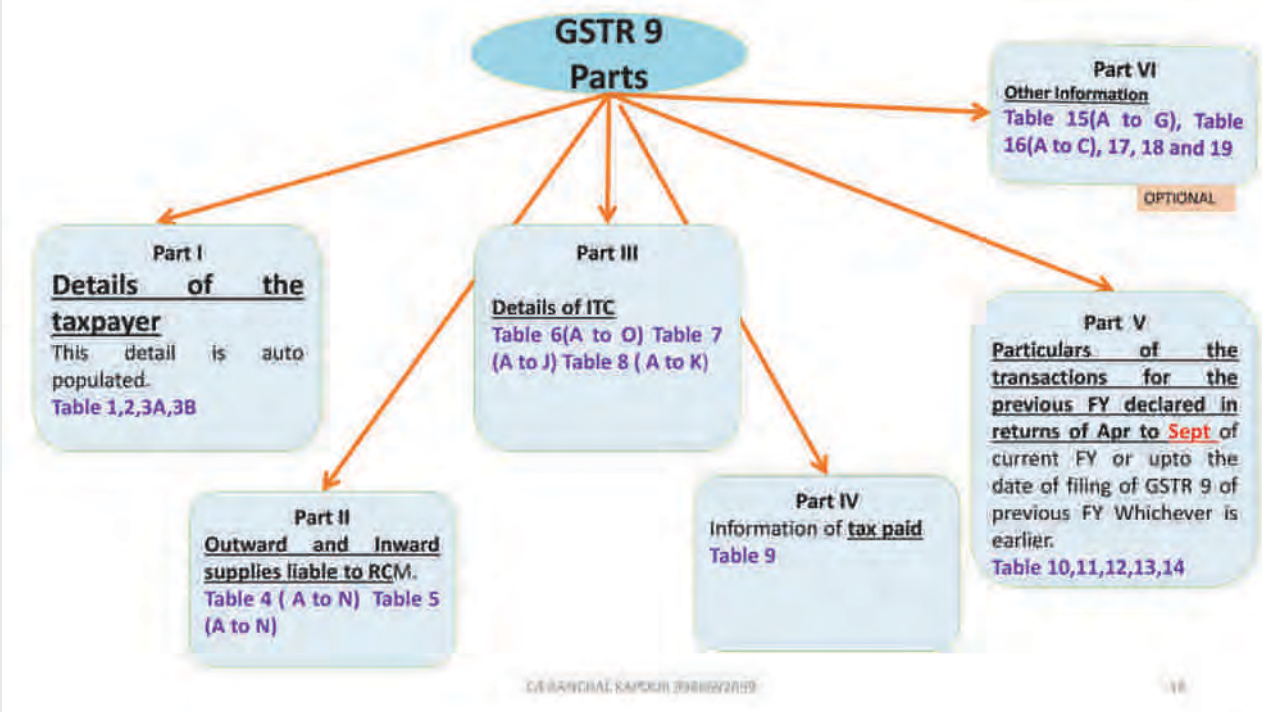
Late Fee= Rs. 100 for every day during which failure continues.(100*2)
Maximum Late Fee= 0.25% of turnover in the state or Union territory. (0.25% *2= 0.50%)

Meaning of Aggregate Turnover Sec. 2(6)

Computed on All India Basis

Particulars	Amt
All Taxable Supplies 2(108)	XXX
Exempt Supply 2(47) Means • Nil Rated • Wholly Exempt • Non Taxable Supply 2(78)	 XXX XXX XXX
Exports of Goods or Services or both	XXX
Inter State Supplies made to persons with same PAN having different GSTN numbers e.g Branch Transfer	XXX
Supply made on behalf of principal(Exp i to sec. 22)	XXX
Exclude:-	
CGST, SGST, UTGST, IGST and Cess	XXX
Inward Supply on which tax is payable by a person under RCM	XXX
Supply of Goods after completion of job work by a registered job worker treated as supply of goods by principal and not to be included in turnover of job worker(Expl ii to sec. 22)	XXX
Net Total(Aggregate Turnover)	XXX

NOTE: While considering the aggregate turnover, the supplies as per GST are to be considered i.e.
- Schedule 1 supplies to be added
- Sale of capital goods.
- In case of persons covered under Rule 32 of valuation Rule eg. Forex Dealer, Air travel etc.



Format of GSTR 9 PART I

FORM GSTR-9[1]		
(See rule 80)		
Annual Return		
Pt. I	Basic Details	
1	Financial Year	2020-21
2	GSTIN	
3A	Legal Name	PAN Card Name(Eg. ABC)
3B	Trade Name (if any)	ABC & Associates

Auto Populated

[1]Substituted by the Central Goods and Services Tax (Fourteenth Amendment) Rules, 2018, w.e.f. 31-12-2018. Earlier, Form GSTR-9 was inserted by the Central Goods and Services Tax (Eighth Amendment) Rules, 2018, w.e.f. 4-9-2018

Rectifications done after March,2021 returns will form part of Part -V

Format of GSTR 9 Part II

Data as per GSTR 3B till March, 20201 returns pertaining to 20-21 (Tax Paid)
+
Additional as per Books for 20-21 not shown in 3B of any period.(Tax Payable)

Pt. II	Details of Outward and inward supplies made during [illegible] year (Amount in Rs. in all tables)					
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
4	Details of advances, inward and outward supplies made during the financial year on which tax is payable					
A	Supplies made to un-registered persons (B2C) (Net of Cr./Dr. Note & amendments upto March,19)(B2CI + B2Cs)					
B	Supplies made to registered persons (B2B) (Gross)	(including Supplies made through ECOM who are required to collect TCS.)				
C	Zero rated supply (Export) on payment of tax (except supplies to SEZs)					
D	Supply to SEZs on payment of tax	NN 48/2017 only goods not services				
E	Deemed Exports					
F	Advances on which tax has been paid but invoice has not been issued (not covered under (A) to (E) above)	Only Unadjusted for Services(For invoices issued forms part of Part 4A Above)				
G	Inward supplies on which tax is to be paid on reverse charge basis					

Editable

Note: (Option to fill Table 4B to 4E, net of credit/debit notes and amendments upto March returns in case of any difficulty in reporting separately)

Format of GSTR 9
Part II

H	Sub-total (A to G above)					
I	Credit Notes issued in respect of transactions specified in (B) to (E) above (-)	OPTIONAL				
J	Debit Notes issued in respect of transactions specified in (B) to (E) above (+)	OPTIONAL				
K	Supplies / tax declared through Amendments (+)	OPTIONAL				
L	Supplies / tax reduced through Amendments (-)	OPTIONAL				
M	Sub-total (I to L above)					
N	Supplies and advances on which tax is to be paid (H + M) above					

Amendments made upto 31.03.2020 returns covered here

Format of GSTR 9
Part II

5	**Details of Outward supplies made during the financial year on which tax is not payable**					
A	Zero rated supply (Export) without payment of tax					
B	Supply to SEZs without payment of tax					
C	Supplies on which tax is to be paid by the recipient on reverse charge basis					
D	Exempted					
E	Nil Rated					
F	Non-GST supply (includes 'no supply')					
G	Sub-total (A to F above)					
H	Credit Notes issued in respect of transactions specified in A to F above (-)	OPTIONAL				
I	Debit Notes issued in respect of transactions specified in A to F above (+)	OPTIONAL				
J	Supplies declared through Amendments (+)	OPTIONAL				
K	Supplies reduced through Amendments (-)	OPTIONAL				
L	Sub-Total (H to K above)					
M	Turnover on which tax is not to be paid (G + L above)					
N	Total Turnover (including advances) (4N + 5M - 4G above)					

Petrol, Alcohol, Liquor(Non Taxable)

Option of either separately report supplies as exempted, nil rated and non GST supply or report consolidated information for all these three heads in the exempted row only

Schedule III,

Note: **(Option to fill Table 5A to 5F, net of credit/debit notes and amendments upto March returns in case of any difficulty in reporting separately)**

Amendments made in GSTR 3B after March 2021 will not form part of Table 6 & 7 will reflect in Part V

Format of GSTR 9
Part III

Pt. III	Details of ITC for the financial year					
	Description	Type	Central Tax	State / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
6	Details of ITC availed during the financial year					
A	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)		<Auto>	<Auto>	<Auto>	<Auto>
B	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Inputs Capital Goods Input Services				
C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Inputs Capital Goods Input Services				
D	Inward supplies received from registered persons liable to reverse charge (other than B above) on which tax is paid and ITC availed	Inputs Capital Goods Input Services				
E	Import of goods (including supplies from SEZs) (All credit of IGST paid at time of imports between April 2020 to Sept 2021 may be declared here)(Press release 31 July 2019)	Inputs				

April, 2020 to Mar, 2021 data

(It will include figures pertaining to FY 2019-20 adjusted in 2020-21)

Registered persons can avoid bifurcation of Inputs and Input Services and can fill the accumulated figure in Inputs field, **but ITC on capital Goods field is mandatory.** So A registered person can first fill up ITC on Capital Goods then the remaining balance can be filled in Inputs Field only.

Registered Persons can avoid bifurcation of ITC on RCM from Registered (Sl. No. 6C) and unregistered persons (Sl. No. 6D), they can write the accumulated figure in Sl. No. 6D only. They can also avoid bifurcation of Inputs and Input Services. Inputs on capital Goods field can be filled first and then the remaining balance can be filled on Inputs Field only.

Registered persons can avoid bifurcation of Inputs and Input Services and can fill the accumulated figure in Inputs field, but ITC on capital Goods field is mandatory. So A registered person can first fill up ITC on Capital Goods then the remaining balance can be filled in Inputs Field only.

Format of GSTR 9
Part III

G	Input Tax credit received from ISD					
H	Amount of ITC reclaimed (other than B above) under the provisions of the Act					
I	Sub-total (B to H above)					
J	Difference (I – A above)		Ideally should be ZERO as B to H is as per 3B			
K	Transition Credit through TRAN-I (including revisions if any)					
L	Transition Credit through TRAN-II					
M	Any other ITC availed but not specified above			ITC 01, ITC 02,		
N	Sub-total (K to M above)					
O	Total ITC availed (I + N above)					

Figures from GSTR 3B

Format of GSTR 9 Part III

Mere ineligible credits shown in Table 4D of GSTR 3B will be shown. Because no effect in 3B/ Credit ledger

7	Details of ITC Reversed and Ineligible ITC for the financial year		
A	As per Rule 37 (16(2)- 180 days)		Option to either fill information on reversals separately in table 7A to 7E or report the entire amount of reversal under table 7H only. However reversal on account of Trans-1 Credit(Table 7F) and Trans- 2(Table 7G) are to be mandatorily reported)
B	As per Rule 39 (ISD- Negative apportionment)		
C	As per Rule 42 (Prop. Reversal of credit- input)		
D	As per Rule 43 (Prop. Reversal of credit- Capital Goods		
E	As per section 17(5) (Blocked Credit)		
F	Reversal of TRAN-I credit		
G	Reversal of TRAN-II credit		
H	Other reversals (pl. specify) Rule 38(Banking),Rule 44 (Special circumstances),ITC03		
I	Total ITC Reversed (Sum of A to H above)		
J	Net ITC Available for Utilization (6O – 7I)		

Normal Purchase

Format of GSTR 9 Part III

ITC reclaimed

8	Other ITC related information				
A	ITC as per GSTR-2A (Table 3 & 5 thereof)	GSTR 2A shall be auto populated in this table.			
B	ITC as per sum total of 6(B) and 6(H) above				
C	ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the FY but availed in Next FY upto Specified Period				
D	Diff-rence (A-(B+C))				
E	ITC available but not availed				
F	ITC available but ineligible	Eg. Car, insurance			
G	IGST paid on import of goods (including supplies from SEZ) (Becoz not part of GSTR 2A)				
H	IGST credit availed on import of goods (as per 6(E) above) (No adjustments of effects pertaining to FY 2020-21 made after March 2021 given)(press release dated 03.07.2019)	<Auto>			
I	Difference (G-H)				
J	ITC available but not availed on import of goods (Equal to I)				
K	Total ITC to be lapsed in current financial year (E + F + J)	<Auto>	<Auto>	<Auto>	<Auto>

[2] Substituted by the Central Goods and Services Tax (Twelfth Amendment)Rules, 2020, w.e.f. **15-10-2020**. Earlier, the entry in column 2, was amended by the Central Goods and Services Tax (Seventh Amendment) Rules, 2019, w.e.f. 14-11-2019 and Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019.

Format of GSTR 9
Part IV

Pt. IV	Details of tax paid as declared in returns filed during the financial year						
9	Description	Tax Payable	Paid through cash	Paid through ITC			
				Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6	7
	Integrated Tax	Matches with Table 4 (Actual liability for 2020-21) (Editable)	AS PER 3B's upto March, 2021 (Non-Editable) (It will include figures pertaining to FY 2019-20 paid in 2020-21)				
	Central Tax						
	State/UT Tax						
	Cess						
	Interest						
	Late fee						
	Penalty						
	Other						

Format of GSTR 9
Part V

Invoices, Debit or Credit Notes

	Pt. V		March 2021 [3] Particulars of the transactions for the FY declared in returns of the next F.Y. till the specified period]					
			Description	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
			1	2	3	4	5	6
Liability +	10		Supplies / tax declared through Amendments (+) (net of debit notes)					
Liability -	11		Supplies / tax reduced through Amendments (-) (net of credit notes)					
ITC -	12		Reversal of ITC availed during previous financial year	In Online window this point is added between Pt. No. 13 & 14 (total Turnover(SN +10-11)	Registered person has the option not to fill this table			
ITC +	13		ITC availed for the previous financial year					
	14		on account of declaration in 10 & 11 above					

Description	Payable	Paid
1	2	3
Integrated Tax	As per above Table 10 & 11	
Central Tax		
State/UT Tax		
Cess		
Interest		

Note: Tax Payable will be calculated based on Table 9 and Table 14

[3] Substituted by the Central Goods and Services Tax (Twelfth Amendment) Rules, 2020, w.e.f. **15-10-2020**. Earlier, heading, was amended by the Central Goods and Services Tax (Seventh Amendment) Rules, 2019, w.e.f. 14-11-2019 and Central Goods and Services Tax (Fourth Amendment) Rules, 2019, w.e.f. 28-6-2019

Format of GSTR 9
Part VI

Pt. VI	Other Information							
15	Particulars of Demands and Refunds							
	Details	Central Tax	State Tax / UT Tax	Integrate d Tax	Cess	Interest	Penalty	Late Fee /Others
	1	2	3	4	5			
A	Total Refund claimed							
B	Total Refund sanctioned							
C	Total Refund Rejected							
D	Total Refund Pending							
E	Total demand of taxes							
F	Total taxes paid in respect of E above							
G	Total demands pending out of E above							

Optional

Format of GSTR 9
Part VI

Inward

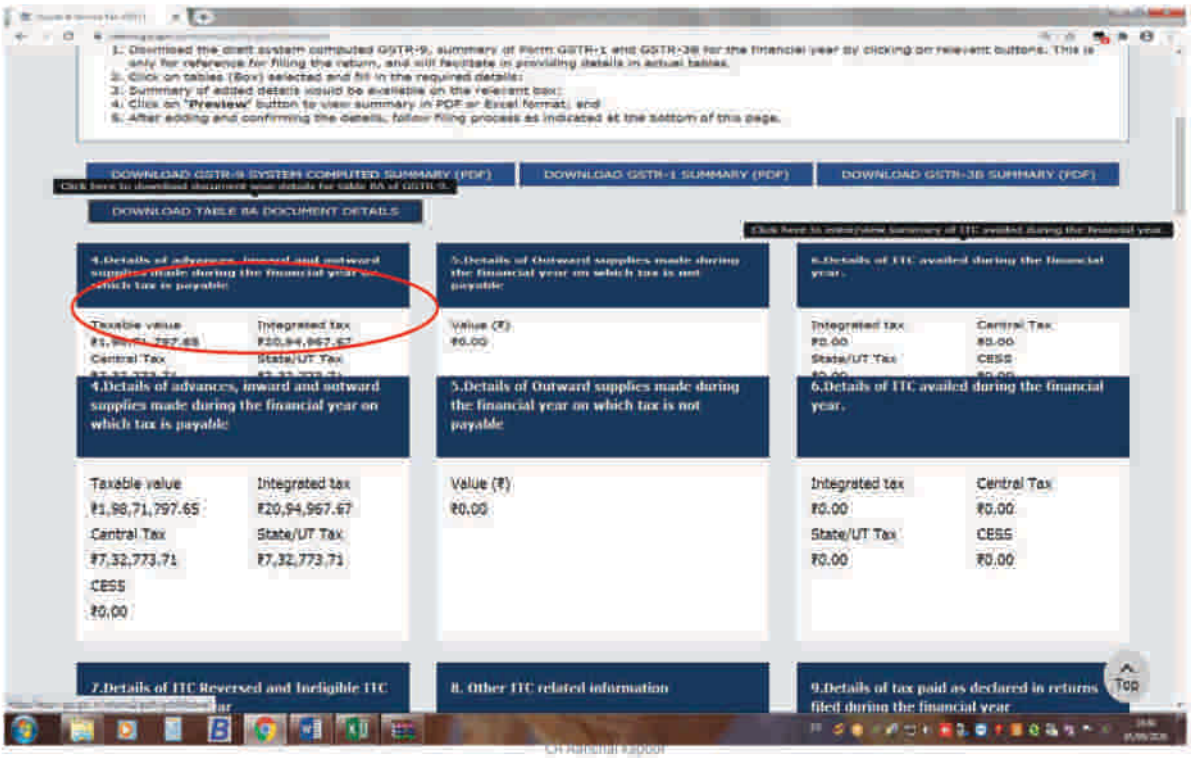
All Optional

16	Information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on approval basis					
	Details	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
A	Supplies received from Composition taxpayers		Non editable as comp. taxpayer does not charge tax			
B	Deemed supply under Section 143(Job Work 1 year/3 year)					
C	Goods sent on approval basis but not returned (180 days time Period)					

17	HSN Wise Summary of outward supplies (Turnover Criteria applicable)							
HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9

18	HSN Wise Summary of inward supplies (Turnover Criteria applicable)							
HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9

19	Late fee payable and paid (Pertaining GSTR-9)		
	Description	Payable	Paid
	1	2	3
A	Central Tax		
B	State Tax		



CASE STUDIES of Outward supplies(Table 4, 9, 10, 11)

Document Type	Document Date	Reported In GSTR-1	Reported/ Adjusted in Form 3B	Amendment In GSTR-1	
Invoice	07/07/2020	Aug 2020 (Reported 3B & Gstr-1)	Amended in May 2021	May 2021	Invoice - Part II – T No 4 Amendment to Invoice - Part V – T No 10
Credit Note	30/06/2020	June 2020	June 2021	No Amendment	Part V – T No 11
Invoice	05/09/2020	September 2020	September 2020	October 2020	Part II – Sl No 4
Invoice	05/09/2020	-	-	-	Part II – Sl No 4 (DRC-03)

CASE STUDIES of Outward supplies(Table 4, 9, 10, 11

Document Type	Document Date	Reported In GSTR-1	Reported/ Adjusted in Form 3B	Amendment In GSTR-1
Invoice	06/09/2020	September 2020	September 2020	May 2021
Invoice	06/09/2020	September 2020	September 2020	January 2021

3B prevails over GSTR-1

Part II – Sl No 4

Part II – Sl No 4

CASE STUDIES of Outward supplies(Table 4, 9, 10, 11)

S.N	FY 2020-21			FY 2021-22	
	Books	3B	GSTR-1	3B	GSTR-1
1	15000	15000	15000	NIL	NIL
2	15000	10000	10000	5000	5000
3	15000	10000	10000	NIL	NIL

ALL IN TABLE 4

TABLE 4 - 10000
TABLE 10- 5000

TABLE 4- 15000
SHORTFALL DRC-03

CASE STUDIES of Outward supplies(Table 4, 9, 10, 11)

3B prevails over GSTR-1

S.N	FY 2020-21			FY 2021-22	
	Books of accounts	3B	GSTR-1	3B	GSTR-1
4	15000	10000	10000	2500	2500
5	15000	15000	10000	0	5000
6	15000	10000	15000	5000	0

TABLE 4 12500
DRC-03 for tax on 2500
TABLE 10 Rs. 2500

RS. 15000 TABLE 4 (Value flowing from 3B)

TABLE 4 10000
TABLE 10 5000
(Value flowing from 3B)

CASE STUDIES of Inward supplies(Table 6,8, 12, 13)

S.N	FY 2020-21				
	BOA	3B	2A	Table 6 &12/13	Table 8
1	100000	100000	105000	100000 (6A & 6B)	105000(8A) 100000(8B) 5000(Lapse)
2	105000	100000(Mar) 5000(May 2020)	105000	100000 (6A & 6B) 5000 (13)	105000(8A) 100000(8B) 5000(8C) 0 (8D)
3	105000	108000(Mar) -3000(May 2020)	105000	108000(6A) 108000(6B) 3000(12)	105000(8A) 108000(8B) -3000(8C) 0 (8D)

SPILL OVER EFFECTS

(2019-20 adjustments done in 2020-21)

OUTPUT Impact
Table 4,9,10,11, 14

Table 4

*Actual figure of FY 2020-21 = GSTR 3B 2020-21
Tax paid as per 3B + payable not subsequently adjusted
− Table 10(2019-20)
+ Table 11(2019-20)
+ 20-21 Fig. Not adjusted till date

Table 9 (Payable)

Table 9= Payable= Table 4

Table 9 (Paid)

Table 9= Paid = As per GSTR 3B (including 19-20 effects)

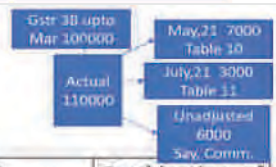
CHECKSUM Formula (Diff b/w Payable or Paid) =

GSTR 3B 2020-21 − Table 10 of 2019-20 + Table 11 of 2019-20 + Table 10 of 2020-21 − Table 11 of 2020-21

NOTE: As per above formula, Difference Payable after above formula shall be paid by DRC-03.
If Excess then one can apply Refund subject to condition of 2 years and Sec. 54 provisions.

Example

Freezed figures :-
- GSTR 3B = 103000
- 2019-20 Table 10 = 5000
- 2019-20 Table 11= 2000



Particulars	2020-21 Correctly shown	2020-21 Short shown in 3B corrected next year (Table 10)	2020-21 short shown in 3B not corrected	2020-21 Excess shown in 3B corrected (Table 11)	2020-21 excess shown not corrected	Combination of All
Actual output liability of 2020-21(BOA)	100000	108000	108000	92000	92000	110000
Table 4	100000	100000 (103000-5000+2000)	108000	100000	92000	106000 (103000-5000+2000-8000)
Table 9 Payable	100000	100000	108000	100000	92000	106000
Table 9 paid	103000	103000	103000	103000	103000	103000
Table 10 (20-21)	0	8000	0	0	0	7000
Table 11 (20-21)	0	0	0	8000	0	3000
Table 14 (20-21)	0	8000	0	0	0	4000
DRC - 03	0	0	8000	0	0	6000
RECO Table 9 payable = paid	103000-5000 +2000=100000	(103000-5000+2000)+8000 = 108000	(103000-5000+2000)+0-0= 100000 ≠ 108000 8000 (pay by DRC-03)	(103000-5000+2000)+0-8000= 92000 ≠ 92000	(103000-5000+2000)+0+0= 100000 ≠ 92000 So 8000 Refund can be claimed thru Table 9	103000-5000+2000+7000-3000=104000 ≠ 110000 Diff Rs. 6000 to be paid by DRC-03

Freezed figures :-
- GSTR 3B = 102000
- 2019-20 Table 12 = 4000
- 2019-20 Table 13= 6000

INPUT Impact Table 6,8,12,13

Example

OPTION 1 As per Press Release/Not.

Actual 110000 = 100000 As per 3B + Table 12(-) 3000 + Table 13 (+) 7000 + Not claimed 6000

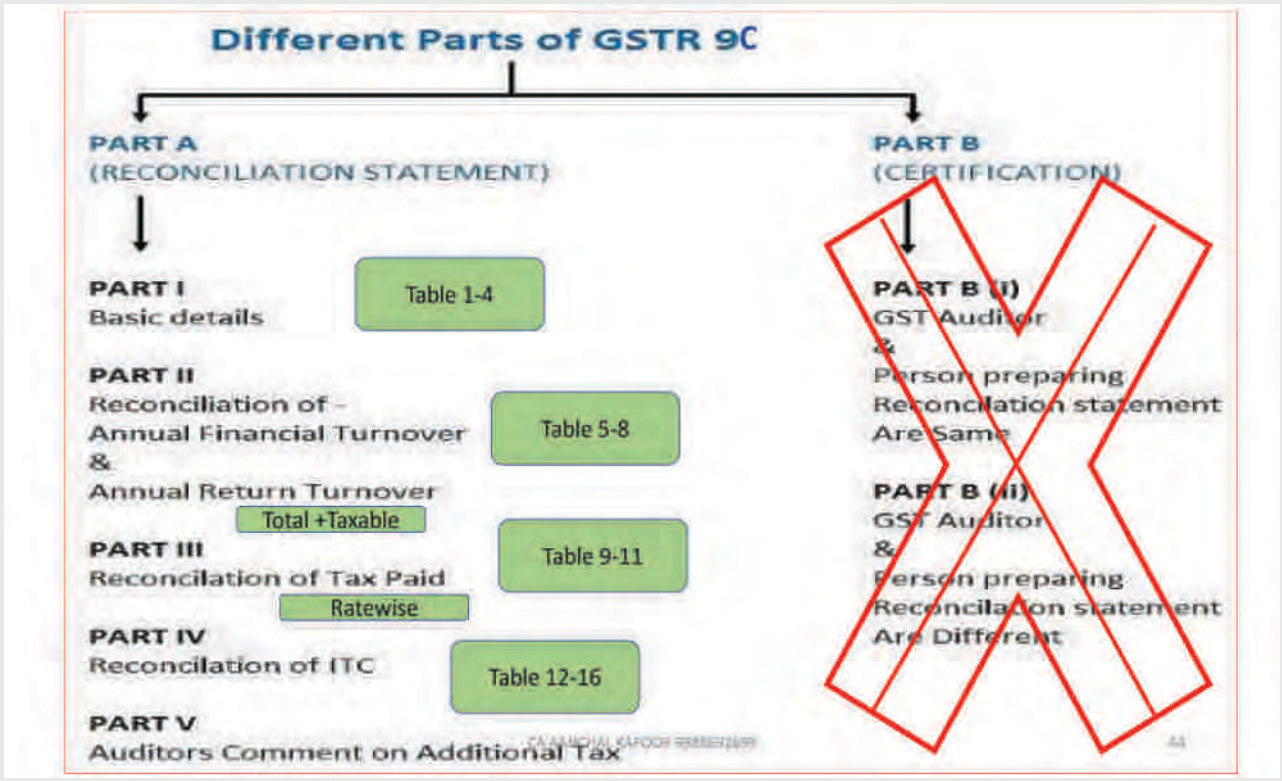
Particulars	2020-21 Actual	2020-21 Short & Adjusted (Table 13)	2020-21 Short & No Adjusted	2020-21 Excess & Adjusted (Table 12)	2020-21 Excess & Not Adjusted	Combination
Actual ITC of 2020-21 (BOA)	100000	108000	108000	92000	92000	110000
Table 6A	102000	102000	102000	102000	102000	102000
Table 6B	100000	100000	100000	100000	100000	100000
Table 6J	2000 (Diff Last year)	2000 (Diff Last year)	2000 (Diff Last year)	2000 (Diff Last year)	2000 (Diff Last year)	2000 (Diff Last year)
Table 6O	100000	100000	100000	100000	100000	100000
Table 8A(GSTR2A)	100000	108000	108000	92000	92000	110000
Table 8B =6B	100000	100000	100000	100000	100000	100000
Table 8C	0	8000	0	-8000	0	4000 (7000-3000)
Table 8D 8A-(8B+8C)	0	0	8000	0	8000	6000
Table 12	0	0	0	8000	0	3000
Table 13	0	8000	0	0	0	7000
Comments	NIL	NIL	8000 will lapse	NIL	ORC-03 8000 payable	8000 will lapse

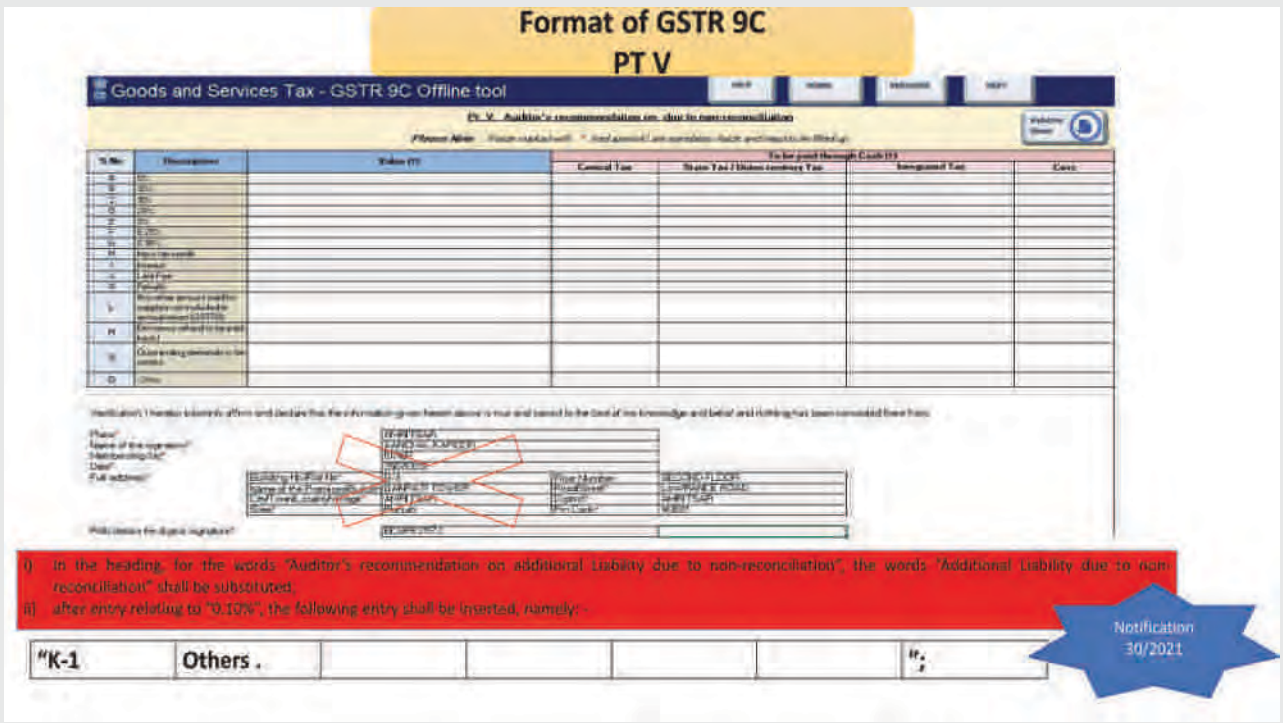
GSTR 9C Impact

OPTION 1 As per Press Release /Not

Table 12	Particulars	Amount	Comments
A	ITC availed as per audited annual financial statements	110000	
B	ITC booked in earlier financial year claimed in current year	2000	ITC of PY 2019-20 availed in 2020-21
C	ITC booked in current financial year to be claimed in subsequent financial year	4000	ITC of current FY availed in subsequent FY
D	ITC availed as per audited financial statements or BOA (A+B-C)	108000	
E	ITC claimed in annual return(GSTR-9-COL 7J)	100000	
F	Un-Reconciled ITC	8000	ITC lapsed as being unclaimed till Sept. 2021+2000 last year

Table 14	Particulars	Amount	Comments
R	Total amount of eligible ITC claimed	110000	
S	ITC availed in annual return(GSTR 9-COL 7J)	100000	
T	Un reconciled ITC	10000	(6000 C/Y + 4000C/Y POST)


Different Parts of GSTR 9C
PART A
(RECONCILIATION STATEMENT)
PART I
Basic details
Table 1-4
PART II
Reconciliation of -
Annual Financial Turnover
&
Annual Return Turnover
Total +Taxable
Table 5-8
PART III
Reconciliation of Tax Paid
Ratewise
Table 9-11
PART IV
Reconciliation of ITC
Table 12-16
PART V
Auditors Comment on Additional Tax
PART B
(CERTIFICATION)
PART B (i)
GST Auditor
&
Person preparing
Reconciliation statement
Are Same
PART B (ii)
GST Auditor
&
Person preparing
Reconciliation statement
Are Different


Format of GSTR 9C
PT V
Goods and Services Tax - GSTR 9C Offline tool
i) In the heading, for the words "Auditor's recommendation on additional liability due to non-reconciliation", the words "Additional liability due to non-reconciliation" shall be substituted;
ii) after entry relating to "0.10%", the following entry shall be inserted, namely:-
"K-1
Others .
";
Notification 30/2021

When you click on following button –

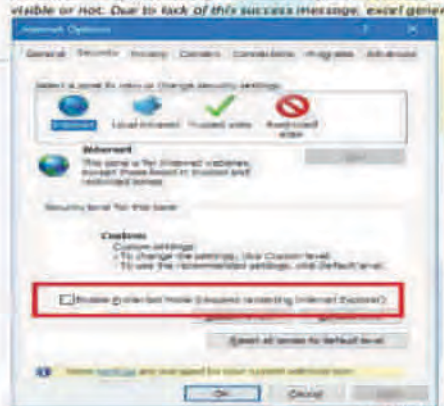
SETTINGS

Do you face this error?

Solution –

a. Please make sure that file "wsweb.html" is saved in the same folder where your 9C offline utility file is saved. This file you will find in ***GSTR_9C_Offline*** Utility zip file you download from GSTN portal.

b. Make sure following security setting is disabled in "Internet Options" settings *(If security settings remain enabled, Internet Explorer does not pass on success message to Excel. If "**wsweb.html**" is visible or not. Due to lack of this success message, excel generate error)*



SOLUTION

1) Copy the Folder of GSTR-9C in fake path in C-Drive, then try to attach the Sign.

2) Verify all the files downloaded alongwith GSTR-9C offline utility is in same folder in which the Excel of GSTR-9C is saved.

THANK YOU

Disclaimer The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.

BY:
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For GST updates please WHATS APP YOURNAME_CITY on 9988692699

CASE LAWS

CA Ankit Kanodia & CA Nishi Jain

1. BASIC INFORMATION:

IN THE MATTER OF	SRC Chemicals Private Limited & Anr.
NAME OF Authority	BOMBAY HIGH COURT
Petition/Appeal No	CIVIL WRIT PETITION NO.5160 OF 2021
Date of Order	12-10-2021
Relevant Section/Rule	Refund on Exports cannot be denied for non transmission of data from GSTN to ICEGATE

FACTS IN BRIEF:

The petitioner had exported certain goods from Jawaharlal Nehru Port, Nhava Sheva on 28/06/2017 i.e. just before 3 days of the introduction of the GST regime in India. However due to the change in the systems at Port to accommodate changes for the GST regime, the shipping bill which should have got printed on 28/6/2017 got printed on 1/7/2017. Since GST was applicable with effect from 1/7/2017 and leviable on the export of goods, the shipping bill got printed on 1/7/2017 with petitioner No.1's GST Identification Number and levy of IGST albeit with the date of 29/6/2017. The Petitioner chose to pay the amount of Rs.22,92,587/- being the IGST and claimed refund. The payment is reflected in the IGST returns of petitioner No.1. Shipping bill since had all details including IGST, invoice details was to be deemed to be an application for refund itself. As petitioner did not receive the refund of IGST of Rs.22,92,587/- on or about 16/9/2018 petitioner approached the customs office to check the status of its refund. However it was not processed and also the manual refund application came to be rejected by Commr (appeals), Pune also. The Petitioner kept sending reminders. Notwithstanding all these efforts put by petitioner and notwithstanding the fact that there was no denial of petitioner entitlement to get the refund of Rs.22,92,587/-, the respondents chose to keep quiet. Thus the present writ petition.

JUDGEMENT/ORDER OF THE AUTHORITY:

The HC observed that : -The communication dated 10/2/2020 between the internal department teams (respondents herein) indicates that petitioner is entitled to refund but the petitioner is made to run from pillar to post only because data of IGST refund is not transmitted from GSTN to ICEGATE. - That cannot be petitioner's problem and it was the responsibility of respondents and in particular respondent no.6 to ensure that petitioner got its refund. Unfortunately, it is more than 4½ years since the amount has not been refunded. - Respondent shall, within 4 weeks ensure that the refund of Rs.22,92,587/- is paid to petitioner together with interest thereon @ 9% p.a. from the filing date of the petition i.e., 28/4/2021 together with costs in the sum of Rs.25,000/-.

COMMENTS:

The advent of GST was to simplify the tax structure as it was during the earlier regime. For any lapse on the part of the departmental authorities, the registered person cannot be penalised. The Petitioner in the given case had no control over transmission of invoice from the GST Portal to the ICEGATE. However, refund of tax paid on the export invoice was denied to him for this very reason. The Hon'ble High Court, in the given case has bashed the lower authorities on the ground that the lower authorities have made the petitioner run from pillar to post only because data is not transmitted. Further, the respondents have not complied with the directions of the Hon'ble High Court. The Hon'ble High Court has correctly ordered the Respondent to refund the amount of IGST along with interest within a stipulated time without further ado. The judgment would in our view help assessee to get refund in time bound manner in cases where the department is at fault for its technical issues.

2. BASIC INFORMATION:

IN THE MATTER OF	**CHF Industries India (P) Ltd**
NAME OF Authority	**CESTAT ALLAHABAD**
Petition/Appeal No	**Service Tax Appeal No. 70457 of 2020**
Date of Order	**7th October, 2021**
Relevant Section/Rule	**Tax deposited 'under mistake' on service export to Parent Company to be refunded**
Citation	**TS-483-CESTAT-2021-ST**

FACTS IN BRIEF:

The Assessee is a wholly owned subsidiary of M/s CHF International Limited, Hong Kong. During the period October, 2015 to March, 2016 and April, 2016 to September, 2016, the Assessee provided services in the nature of "assistance in procurement of goods" by the parent company in Hong Kong, directly from third parties in India. For the services provided, the Assessee raised an invoice for reimbursement of expenses. On the basis of some wrong legal advice that the services provided by the Assessee to its parent company in Hong Kong are taxable services of "Management or Business Consultancy Services", the Assessee erroneously paid service tax of Rs. 12,84,404/- for the period October, 2015 to March, 2016 and Rs. 9,82,965/- for the period April, 2016 to September, 2016. Subsequently on realizing the mistake, the Assessee filed revised returns for both the periods and the entire amount received in convertible foreign exchange was claimed exempt, against "export of services". Assessee filed separate refund claims for both the periods, whereupon two SCNs came to be issued to show cause as to why not the refund claims be rejected, as the Assessee had provided services of "intermediary or agent" to its foreign client, which are covered under Rule 9 of "Place of Provision of Services Rules, 2012" vand hence the services provided by the Assessee were not export of services. The same was rejected and thus the present appeals.

JUDGEMENT/ORDER OF THE AUTHORITY:

The Hon'ble CESTAT held as:

-CESTAT observed that in the present case, the Assessee as well as its parent company in Hong Kong are separate legal entities and therefore they could not be treated as 'same person'.

-· CESTAT determined that merely because the parent company in Hong Kong is a holding company of the Assessee, the same does not mean that the Assessee and its parent company are the same"person"

- CESTAT also emphasized on Gujarat HC's decision in Linde Engineering India Pvt. Ltd. v. Union of India where the Court considered the explanation 3(b) and held that services provided by a company in India to its 100% holding company abroad, cannot be considered as establishments of a distinct person and therefore such services would be export ofservices

-CESTAT on considering that the services by the Assessee were export of services on which no service tax was payable, held that the amounts of Rs. 12,84,404 & Rs. 9,82,965 paid as service tax, **were paid under mistake of law and therefore the Assessee was entitled to refund of the same and the tax had been paid under mistake, is in the nature of Revenue deposit and no limitation is attracted for refund on such deposit.**

COMMENTS:

The above position of a service being classified as an export of service was also recently clarified by CBIC underGST regime and the concept of establishment of distinct person as envisaged in the definition of export of service was clarified in the same lines as in the above judgment of the service tax regime. Hence to qualify as export of service, holding and subsidiary relations is not relevant subject to fulfillment of other conditions. However if the service is between branch and HO of the same entity then the same will not qualify as export of services. Hence in the given case, the CESTAT allowed the refund by treating the same as export of service. Further it was also held that the refund cannot be time barred under the law as the same was paid under mistake and hence the limitation period prescribed under section 11B of the Central Excise Act, 1944 cannot be made applicable.

3. **BASIC INFORMATION:**

IN THE MATTER OF	**GNC Infra LLP**
NAME OF Authority	**IN THE HIGH COURT AT MADRAS**
Petition/Appeal No	**W.P.No.18165 & 18168 of 2021**
Date of Order	**28-09-2021**
Relevant Section/Rule	**Section 54 of CGST Act,2017- Applicability of CBIC Circular dated 20/07/2021 for extension inlimitation period of filing refund.**
Citation	**TS-662-HC(MAD)-2021-GST**

FACTS IN BRIEF:

The petitioner in this petition is aggrieved by the refund rejection order on the ground that reasons for rejection of refund have not been recorded in writing in accordance with Rule 92 of the CGST Rules, 2017. It is also the grievance that in light of suomotu orders of the SC wherein all limitations periods across the Board were extended, the benefit of the Cordermadeowing to COVID-19situationisapplicabletothecaseonhandrelatingtorefund timelines. Hence the present petition.

JUDGEMENT/ORDER OF THE AUTHORITY:

The High Court while disposing off the petition held that :-

-The refund applications made on April 19, 2021 need to be entertained and the order of Hon'ble Supreme Court clearly enures to the benefit of the writ petitioner in the case on hand. Therefore, the impugned orders arewrong

-The impugned orders are set aside solely on the ground that reasons for rejection of refund have not been recorded in writing in accordance with Rule92.

-Takes into consideration the CBIC Circular No. 157/13/2021- GST dated July 20, 2021 to conclude that refund applications made on April 19, 2021 beyond two years period need to beentertained.

-Thus, HC proposed to send the matter back to the Revenue for considering the refund applications de novo and make an order inter aliain accordance with Rule 92 of the CGST Rules, 2017 read with Section 54(8) of the CGST Act, 2017.

Comments:

The above judgment is a very welcome judgment as recently many adverse orders have been passed by the refundsanctioning authorities on ground that the extension of time limits as per Sup moto cognizance of the Hon'ble Apex Court in wake up of Covid which had extended all due dates falling between 16/03/2020 to 02/10/2021 stands extended to 90 days from 03/10/2021 is not applicable in case of refunds and the same is only applicable for appeal proceedings in view of the CBIC Circular 157/13/2021- GST dated July 20, 2021. The above HC judgment after taking into consideration the said Circular has held that the Supreme Court extension orders would apply for refund proceedings also and hence it was directed that the application be considered afresh on merits. Similar matters are pending before the Hon'ble Calcutta HC (WPO/1152/2021)and Hon'ble Allahabad HC(WRIT TAX No. - 964 of 2021) also.

NOTIFICATIONS

Notification No.32/2021-Central Tax dated 29th August,2021

In the Central Goods and Services Tax Rules, 2017, —

1. In the fourth Proviso of sub-rule (1) of rule 26, which states **"Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of August 2020, also be allowed to furnish the return under section 39 in FORM GSTR 3B and details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC)."**

- the figures, letters and words "31st day of October, 2021" shall be substituted for the figures, letters and words "31st day of August, 2021".
- All the Proviso shall be omitted with effect from 1st November, 2021

2. In rule 138 E, the following proviso is to be inserted after the fourth proviso from 1st May, 2021 –

"Provided also that the said restriction shall not apply during the period from the 1 st day of May, 2021 till the 18th day of August, 2021, in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period March, 2021 to May, 2021."

3. In FORM GST ASMT-14, -

- the words, "vide Order Reference No. -------, dated ------" shall be inserted after the words, "with effect from----"
- the words "for conducting business without registration despite being liable for registration" shall be omitted;
- the word "Address" shall be inserted after "Designation" at the end.

Notification No.33/2021-Central Tax dated 29th August,2021

CBIC vide this notification seeks to make amendment in Notification No. 76/2018– Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1253(E), dated the 31st December, 2018.

In accordance with the amendment:

The registered persons who failed to furnish the return in **FORM GSTR-3B** for the months /quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the **30th Day of November, 2021,** the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of five hundred rupees".

And also where the total amount of central tax payable in the said return is nil, the total amount of late fee under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees for the registered persons who failed to furnish the return in **FORM GSTR-3B** for the months

/ quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the **30th Day of November, 2021**".

Comments:-

GST Council's extension of Amnesty Scheme to provide relief to taxpayers for filing pending returns and also by way of reduction in late fees is a great move to reduce compliance burden.

Notification No.34/2021-Central Tax dated 29th August,2021

Vide this notification, CBIC seeks to extend the time limit for making application of revocation of cancellation of registration under sub-section (1) of section 30 of CGST Act, 2017.

Government, on the recommendations of the Council, notifies that the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 shall be extended up to the 30th day of September, 2021 if the same falls during the period from the 1st day of March, 2020 to 31st day of August, 2021. This notification considers application of revocation only on ground mentioned in clause (b) and (c) of section 29 of the said Act (failure to file returns for consecutive 6 months for regular composition and 3 consecutive tax period for composition taxpayer).

Comments:-

Due to the extenuating circumstances surrounding the COVID-19 national emergency, this notification tries to lower the burden of registered taxpayers from compliances which might go unnoticed by providing them an advantage in times of severe economic downturns and recessions

Notification No.05/2021-Central Tax(Rate) dated 14th June,2021

Vide this Notification, CBIC exempts the Goods mentioned in Table below which shall remain in force till the 30th day of September, 2021:

SL NO.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	Rate
1	2804	Medical Grade Oxygen	2.5%
2	30	Tocilizumab	NIL
3	30	Amphotericin B	NIL
4	30	Remdesvir	2.5%
5	30	Heparin (anti-coagulant)	2.5%
6	3002 or 3822	Covid-19 testing kits	2.5%
7	3002 or 3822	Inflammatory Diagnostic (marker) kits, namely- IL6, DDimer, CRP (C-Reactive Protein), LDH (Lactate DeHydrogenase), Ferritin, Pro Calcitonin (PCT) and blood gas reagents.	2.5%

8	3804 94	Hand Sanitizer	2.5%
9	6506 99 00	Helmets for use with non-invasive ventilation	2.5%
10	8417 or 8514	Gas/Electric/other furnaces for crematorium	2.5%
11	9018 19 or 9804	Pulse Oximeter	2.5%
12	9018	High flow nasal canula device	2.5%
13	9019 20 or 9804	Oxygen Concentrator/ generator	2.5%
14	9018 or 9019	Ventilators	2.5%
15	9019	BiPAP Machine	2.5%
16	9019	(i) Non-invasive ventilation nasal or oronasal masks for ICU ventilators (ii) Canula for use with ventilators	2.5%
17	9025	Temperature check equipment	2.5%
18	8702 or 8703	Ambulance	6%

Comments:-

CBIC vide this notification tries to decrease the financial burden on the families of patients and this move of GST Council would make it more affordable for citizens to provide necessities required considering the rate of infection, the positivity rate, as well as the rate of hospitalisation for those requiring critical treatment that have increased exponentially.

NOTIFICATIONS

Notification No. 35/2021 – Central Tax dated 24th Sept,2021

Rule	Old Rule	New Rule	Remarks
10A	As per rule 10A, the newly registered taxpayer is required to furnish **"details of bank account"** after receiving the certificate of registration in Form GST REG-06 and after receiving the GSTIN, i.e., Goods and Service Tax Identification Number.	The newly registered taxpayer is now required to furnish details of bank account **which is in name of the registered person and is should be linked with Permanent Account Number of the registered person**. The following proviso shall also be inserted which provides that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall be linked with the Aadhaar number of the proprietor.	This amendment is bought to stop the registration which is obtained by means of fraudulent or unfair means.
10B	Not applicable	Aadhaar authentication for registered person- Registered person who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number. If Aadhaar authentication is not done then the registered person will not be able to do the following:-	The main purpose behind the Aadhaar authentication is to create an online platform wherein the identity of Aadhaar holders can be validated anytime anywhere which will keep a check on the malpractices happening under GST law.

Sl No.	Purpose
1	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
2	For filing of refund application in FORM RFD-01 under rule 89
3	For refund under rule 96 of the integrated tax paid on goods exported out of India

23	A registered person, whose registration is cancelled by the proper officer on his own motion, may apply for revocation of cancellation of registration, in FORM GST REG 21	For filing application of revocation of cancellation of registration, the registered person has to authenticate Aadhaar number as per Rule 10B.	Government is making Aadhaar authentication mandatory wherever applicable so as to to prevent revenue leakage.
45(3)	**Conditions and Restrictions in respect of Inputs and Capital Goods sent to the Job Worker (Chapter-V: Input Tax Credit)-** The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another ***during a quarter*** shall be included in FORM GST ITC 04 furnished for that	**Amendment to be effective from the 1st day of October 2021 –** The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another ***during a specified period*** shall be included in FORM GST ITC 04 furnished for that period on or before the twenty-fifth day of the month succeeding ***the said period*** or within such further period as may be extended by the Commissioner by a notification in this behalf. "Explanation. - For the purposes of this sub-rule, the expression "**specified period**" shall mean. - (a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees: and (b) a financial year in any other case."	In the recently held GST Council relaxation was given in filling ITC 04 to reduce compliance burden of the taxpayers :- Frequency of filling for taxpayers whose- 1)Turnover >500 cr-Half yearly 2)Turnover<500 cr-Yearly
	period on or before the twenty-fifth day of the month *succeeding* ***the said quarter*** or within such further period as may be extended by the Commissioner by a notification in this behalf.		
59(6)	**Form and Manner of Furnishing Details of Outward Supplies (Chapter-VIII: Returns) – As per Clause 59(a) -** a	The amendment to be effective from the 1st day of January,2022, - New Rule 59(6) provides that a registered person	This amendment has been brought with the motive to ensure that businesses stay GST Compliant i.e. returns are filed on timely

	registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR 1 if he has not furnished the return in FORM GSTR 3B ***for preceding two months***	shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR 1 if he has not furnished the return in FORM GSTR 3B ***for the preceeding month.***	basis and appropriate amount of tax is deposited to Government.
89	**Application for Refund of Tax, Interest, Penalty, Fees, or any Other Amount (Chapter-X: Refund) –** **As per sub rule 1 -** Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may filean application electronically in FORM GST RFD 01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner. **- Sub Rule 1(A) – Not applicable**	In the said rules, - For claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file**subject to provisions of Rule 10B i.e after Aadhar authentication** an application electronically in FORM GST RFD 01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner. **Sub Rule 1(A) -Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:** **Provided** that the said	This amendment will bring relief to the taxpayers whose refund application becomes time barred.

		application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."	
96(1)	**CGST Rule 96: Refund of Integrated Tax paid on Goods or Services Exported out of India .**	**Rule 96(1)© -The applicant has to undergo Aadhaar authentication in the manner provided in rule 10B for refund of Integrated tax on Goods/Services exported out of India.**	Aadhaar Authentication is mandatory for security reasons and to prevent any fraud.
96C	**Not Applicable**	After rule 96B of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely: - **"96C. Bank Account for credit of refund.** – It states that the "bank account" for claiming refund shall be the bank account which is in the name of the applicant and obtained on his Permanent Account Number. In case of a proprietorship concern, the Permanent Account Number of the proprietor shall be linked with the Aadhaar number of the proprietor.	Bank account has to mandatorily linked with Aadhaar so that there is no unnecessary loss to the taxpayer and refund directly goes in the account of person who is authorised.

Notification No. 36/2021–Central Tax | Dated: 24th September 2021.

CBIC vide this Notification provides that provisions of Sub Section 6(A) of Section 25 of CGST Act,2017 will not apply to a person who is:-

a) Not a citizen of India

b) A Department or establishment of the Central Government or State Government

c) A local authority

d) A Statutory body

e) A Public Sector Undertaking

f) A person applying for registration under the Provisions of sub section (9) of Section 25 of CGST Act.

Section 25(6A) of CGST Act –

Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council.

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration,

The principal Notification 03/2021 dated 23rd February,2021 was brought to include that the provisions of subsection 6(B),6© of Section 25 of CGST Act,2017 would not apply to all the above mentioned persons and this has been amended vide this Notification by including sub section 6(A) of Section 25 of CGST Act,2017.

CIRCULARS

Circular No:- 158/14/2021-GST dated 6th September ,2021.

Topic: -Extension of time limit to apply for revocation of cancellation of registration w.r.t. Notification No. 34/2021-Central Tax dated 29th August, 2021

Background:-Clarification regarding extension of time limit to apply for revocation of cancellation of registration –

Vide this Circular issued by Government clarification has been made that in which circumstances benefit of Notification No. 34/2021 dated 29Th August-21 would be available.

Notification No. 34/2021-CT dated 29.08.2021 was issued to extend the timelines falling between the period (1st day of March,2020 to 31st day of August,2021) for filing of application for revocation of cancellation of registration upto 30.09.2021.

Section 30 of CGST Act,2017:-

The time limit to file application for revocation of cancellation of registration of 30 days from the date of service of the cancellation order may be extended on sufficient cause being shown and for reasons to be recorded in writing

(a) by the Additional Commissioner (AC) or the Joint Commissioner (JC), for a period not exceeding 30 days

(b) by the Commissioner, for a further period not exceeding 30 days, beyond the period specified in clause (a)

Clarification has been brought for the following circumstances:-

1. Where registration is cancelled before 01.01.2021

Where the original time limit of 30 days falls between 01.03.2020 to 31st December 2020 then pursuant to the said notification, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September, 2021 only and no further extension of 60 days will be available as is provided in proviso to Section 30(1) of CGST Act, 2017 because this proviso came into effect from 01.01.2021.

2. Where registration is cancelled on or after 01.01.2021

a) **Where the time period of 90 days (original 30 days and extension of 30 + 30 days) from date of service of the cancellation order has expired as on 31.08.2021** then the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021 only without any further extension of time by JC/AC/ Commissioner under proviso to Section 30(1) of CGST Act, 2017

b) ***Where the time period of 60 days [original 30 days and period of 30 days extended by AC or JC under clause (a) of proviso to Section 30(1)] from the date of service of the cancellation order has expired as on 31.08.2021***then the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021. Also the timeline to file application for revocation of

cancellation of registration can be further extended by another 30 days beyond 30.09.2021 by the Commissioner as per clause (b) of proviso to Section 30(1) of CGST Act, 2017 on being satisfied that there was sufficient cause for not filing the application within the extended period i.e. upto 30.09.2021.

c) ***Where the original time period of 30 days from the date of service of cancellation order has expired as on 31.08.2021 then the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021.*** Also the said time limit will be extended by another 30 days beyond 30.09.2021 by the JC/AC i.e. upto 30.10.2021 on being satisfied that there was sufficient cause for not filing the application within the extended period i.e. upto 30.09.2021 as per clause(a) of proviso to Section 30(1) of CGST Act, 2017. It will be further extended by another 30 days by Commissioner i.e. upto 29.11.2021 on being satisfied that there was sufficient cause for not filing application within the extended period i.e. upto 30.10.2021 as per clause (b) of proviso to Section 30(1) of CGST Act, 2017.

The benefit of Notification No.34/2021 is applicable to all cases like:-

1) application for revocation of cancellation of registration has not been filed by the taxpayer
2) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer
3) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection
4) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority
5) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer

Comments:-The relaxation of time limits is a boon for the taxpayers and that too in the COVID-19 national emergency where entire economy is in a very disruptive state . The main objective behind this extension is to lower the burden of taxpayers of revocation of registration but Government also should take care of accepting the revocation timely if the taxpayers's plea has a valid point so that no business of the taxpayer is effected by this.

Circular No. 159/15/2021-GST dated 20th September,2021

Topic: - Clarification on doubts related to scope of "Intermediary"

Background :- Ambiguity in interpretation of the scope of Intermediary services in GST Law

CLARIFICATION: The pre - requisites of Intermediary are :

1. Min 3 parties
2. Two Distinct supplies
3. Intermediary service provider to have the character of an agent, broker or any other similar person

Important exclusion from intermediary services is Outsourcing and Subcontracting.

The government has clarified that services outsourced to India or carried out in the country for foreign entities will not be treated as intermediary services, and hence not face 18% goods and services tax.

Comments:-

The Clarification issued has proved to be a major relief for India's BPO sector resulting in grant of Refund of accumulated ITC. Services outsourced to India will not be treated as Intermediary services and hence will not attract 18% GST. They will no longer be denied export status by the enforcement authorities . This circular is a part of Government's action to resolve litigations and reduce disputes regarding intermediary services and aid Export service sector.

Circular No. 160/16/2021-GST dated 20th September,2021

Topic: - Clarification in respect of certain GST related issues - reg

Background :- Interpretation of certain issues

SUMMARY OF CLARIFICATIONS:

- In case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.
- There is no need to carry physical invoices where invoices have been generated according to Rule 48(4).
- Those goods which are subjected to Export duty i.e where rates specified in 2nd Schedule to Customs Tariff Act 1975 or fully exempted from Export Duty are excluded from Sec 54(3)

Issue: Delinking the date of issuance of Debit Notes

Issuance of Debit Notes(Before1/1/21)

The date of issuance of original Invoice w.r.t the Debit Note to be considered for the purpose of Determination of relevant F.Y

Issuance of Debit Notes(After 1/1/21)

The date of issuance of original Invoice w.r.t the Debit Note to be considered for the purpose of Determination of relevant F.Y

Comments:-

This circular was issued in order to clarify the relevant financial year to be considered w.r.t the Debit Notes(issued after 1/1/21). It has cleared perplexity from the minds of taxpayers regarding the F.Y to be considered (in case of Debit Notes).

Issue:-NO NEED TO A CARRY PHYSICAL INVOICES

Rule 138A(1):

Person in charge of conveyance has to carry a

1) Invoice or Bill of Supply or Delivery Challan

2) Copy of E Way-Bill

Physically mapped to a Radio Frequency Identification Device

Rule 138A(2):

If Invoices are issued under Rule 48(4)

May be produced electronically for verification in lieu of physical copy.

Comments:-

Joint reading of Rule 138A(1) and Rule 138A(2) simply clarifies that soft copy can be carried for those invoices where IRN has been generated . It was pointless to bring out a separate Circular by the GST Dept. Needless to say ,there are various other issues which needs clarification and should be given due priority.

Issues: Clarification on the term 'subjected to export duty

Section 54(3) clarifies that Refund cannot be claimed on those goods subjected to export Duty.

Hence it is clarified that Refund will be allowed(in case of Exports):

1. Goods in respect of which NIL Rate is specified in 2nd Schedule to Customs Tariff Act.

Comments:-

Export Duty is levied on those products where there is loss of country's valuable minerals. Government and GST Council does not want to encourage export of those goods, which are subjected to export duty and hence no Refund can be claimed on latter.

Following specifies a list of Goods on which Export Duty is Levied:

- ✓ **Iron ore and concentrates (Non -Agglomerated)**
- ✓ **Iron ore and concentrates, (Agglomerated) other 20% than iron ore pellets**
- ✓ **Iron ore pellets**
- ✓ **Bauxite (natural), not calcined**
- ✓ **Bauxite (natural), calcined**
- ✓ **Ilmenite, unprocessed**
- ✓ **Ilmenite, upgraded (beneficiated ilmenite 2.5% including ilmenite ground)**
- ✓ **E.I. tanned leather**
- ✓ **Snake skin**
- ✓ **Luggage leather- case hide or side/suit 25% case/ hand bag luggage/ cash bag leather**
- ✓ **Industrial leathers, namely:- (i) Cycle saddle leathers (ii) Hydraulic/ packing/ belting/ washer leathers (iii) Industrial harness leather**
- ✓ **Picking band leathers**
- ✓ **Strap/ combing leathers**
- ✓ **Raw fur lamb skins**
- ✓ **Ferrous waste and scrap, remelting scrap ingots of iron or steel**
- ✓ **Transistor case/ camera case leathers**

Circular No. 161/17/2021-GST dated 20th September,2021

Topic: - Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017–reg.

Background :-Issue:-interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services.

CLARIFICATION:

- A co. incorporated in India and a foreign co incorporated outside India are separate legal entities and hence not considered as mere establishment of distinct persons. Hence any supply between the latter falls under export of service.
- However supply between two establishments or branches or representational office of a foreign co not incorporated in India and foreign co outside India shall not be considered as Export of Services in accordance to Sec 2(6) of IGST Act.

Comments:-

- We welcome the decision of the GST council to clearly specify that subsidiaries or group companies (companies entities incorporate in India) will be treated as separate entities and be eligible for export status for exports to their foreign parent companies/ group companies.

Ambiguity in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services.

Circular No:-162/18/2021-GST dated 25th Sept,2021

Topic: -Section 77(1) of the CGST Act and Section 19(1) of the IGST Act

Background :-: Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

Section 77 of CGST Act, 2017 provides for tax wrongfully collected and paid to Central Government or State Government. —

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is *subsequently held* to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is *subsequently held* to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."

Section 19 of the IGST Act, 2017 provides for tax wrongfully collected and paid to Central Government or State Government------

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is *subsequently held* to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is *subsequently held* to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."

Through this Circular interpretation of the word" subsequently held" used in the aforesaid Sections has been clarified as many doubts had been raised that whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively,either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

Thus, it is clarified that the term "subsequently held" in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

Clarification related to relevant date for claiming for refund under Section 77 of CGST Act and Section 19 of IGST Act is also provided based on new Notification issued 35/2021 dated 24-09-2021 .Now the refund can be claimed within 2 years from date of payment of tax in correct head. If this application for claim is made before this new Notification then 2 years will be calculated from date of notification. And if this claim made after this notification date then 2 years will counted from date of payment of tax in correct head Also note that refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

Sl. No	*Date of issue of invoice charging tax under wrong head*	*Different Scenarios*	*Date of payment of tax under the correct head*	*Last date of filing the refund*
1	March 10, 2018	Taxpayer himself found that tax is paid under wrong head	May 10, 2021 *(i.e. before issuance of notification)*	September 23, 2023 *(two years from date of notification)*
2	March 10, 2018	Taxpayer himself found that tax is paid under wrong head	November 10, 2021 *(i.e. after issuance of notification)*	November 9, 2023 *(two years from the date of payment of tax under the correct head)*

Understanding the various refund scenarios :-

Sl. No.	*Date of issue of invoice charging tax under wrong head*	*Different Scenarios*	*Date of payment of tax under the correct head*	*Last date of filing the refund*
3	March 10, 2018	Proper officer or adjudication authority or appellate authority subsequently held that tax is paid under wrong head	May 10, 2019 *(i.e. before issuance of notification)*	September 23, 2023 *(two years from date of notification)*
4	March 10, 2018	Proper officer or adjudication authority or appellate authority subsequently held that tax is paid under wrong head	November 10, 2021 *(i.e. after issuance of notification)*	November 9, 2023 *(two years from the date of payment of tax under the correct head)*

CIRCULARS

Circular No:-163/19/2021-GST Dated 06th October,2021

Topic: -Clarification regarding GST rates

Background :-Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting

HSN	Description	
0801 & 0802 – FRESH VS DRIED	**FRESH FRUITS AND NUTS** ▪ Covers those fruits and nuts which are meant to be supplied as when extracted (includes chilled as well) ▪ It excludes those fruits and nuts which are made frozen or dried in any way	**EXEMPTED**
HSN 0801 & 0802 – FRESH VS DRIED	▪ Covers those which are made frozen, either cooked or not or made dried or dehydrated. Fruits or nuts even if partially re-hydrated for preservation by any treatments qualify as dried only	**TAXABLE @ 5% OR 12% (AS SPECIFIED)**
HSN 1207 & 1209 – PURPOSE SOWING VS OTHER THAN SOWING	**SEEDS OF KIND USED FOR SOWING** ▪ Covers beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches or of lupines ▪ Classified under Heading 1209	**EXEMPTED**
HSN 1207 & 1209 – PURPOSE SOWING VS OTHER THAN SOWING	**SEEDS OF KIND FOR OTHER THAN SOWING** ▪ Covers all those seeds meant for any use other than Sowing under Heading 1209 ▪ Heading 1209 includes Tamarind Seeds as well	**TAXABLE @ 5%**
HSN 1203 & 0801 – COCONUT VS COPRA	**COCONUT** ▪ Covers Coconut whether fresh or dried, shelled or peeled ▪ Excludes Copra	**EXEMPTED**
HSN 1203 & 0801 – COCONUT VS COPRA	**COPRA** ▪ Dried flesh of Coconut used for Coconut Oil extraction ▪ Can be supplied either whole or broken	**TAXABLE @ 5%**
HSN 1404 & 3305 – HENNA POWDER AND LEAVES AND MEHNDI PASTE	**HENNA POWDER AND LEAVES** ▪ Pure Henna Powder and leaves having no additives	**TAXABLE @ 5%**

HSN 1404 & 3305 – HENNA POWDER AND LEAVES AND MEHNDI PASTE	MEHNDI PASTE ▪ Covers Mehndi Paste in cones under HSN 3305 and 1404	TAXABLE @ 5%
HSN 2106 & 0908 - SCENTED SWEET SUPARI & FLAVORED AND COATED ILLAICHI	SCENTED SWEET SUPARI ▪ Classified as "Supari" under tariff 21069030 as "Betel nut product"	TAXABLE @ 18%
HSN 2106 & 0908 - SCENTED SWEET SUPARI & FLAVORED AND COATED ILLAICHI	FLAVORED AND COATED ILLAICHI ▪ Consists Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial sweeteners. ▪ Distinct from illaichi under heading 0908 ▪ Flavoured & Coated illaichi under heading 2106	TAXABLE @ 18%
HSN 2303 – BSG, BDGS AND OTHER RESIDUES	Residues of starch manufacture, beet pulp, bagasse, waste product of sugar manufacture, etc. It includes all those products whether it is dry or wet	TAXABLE @ 5%
HSN 3822 – LABORATORY REAGENTS	Covers Diagnostic or Laboratory Reagents, Certified Reference Materials, etc. under heading 3822	TAXABLE @ 12%
HSN 3006 – PHARMACEUTICAL GOODS	▪ Sterile Surgical Materials ▪ Sterile Laminaria and Sterile Laminaria tents ▪ Sterile absorbable surgical or dental haemostatics ▪ X-Ray Examinations and Diagnostic Reagents ▪ Gel preparations to be used in human or veterinary medicine as lubricant for surgical operations ▪ Blood-grouping reagents ▪ Dental cements and other dental fillings ▪ First-aid boxes and kits ▪ Chemical Contraceptive preparations ▪ Waste pharmaceutical products ▪ Appliances for Ostomy use	TAXABLE @ 12%

❑ REQUIREMENT OF IMPORT ESSENTILIATY CERTIFICATE ISSUED BY DGH

When goods are imported by the company at concessional rate and there is inter state movement of the same within the same company (that is inter stock transfer between distinct persons), GST Council made a decision that Original Import Essentiality Certificate issued by DGH is sufficient and there is no need of taking certificate every time on such inter state movement.

❑ EXTERNAL BATTERIES SOLD ALONG WITH UPS SYSTEMS OR INVERTERS

If both UPS systems and external batteries are sold under one invoice, there price being separately known and both being separately identified, it is supply of two different items on one invoice.

Thus, UPS Systems would attract GST @ 18% under Heading 8504 and External Battery (except lithium-ion Battery) would qualify GST @ 28% under Heading 8507.

❑ SOLAR PV POWER PROJECTS

GST on specified Renewable Energy Projects can be paid on 70:30 ratio for goods and services respectively as specified by GST Council. Council also clarifies that no refund would be granted even if the amount paid exceeds the amount determined as per Central Tax Rate Notification No. 11/2017 dated 28th June,2017.

❑ FIBRE DRUMS, WHETHER CORRUGATED OR NON-CORRUGATED

GST Council through this circular clarifies that the GST rate of all corrugated boxes and cartons and even fibre drums whether partially corrugated shall be uniform @ 18%.

Council further clarifies that no action of recovery would be taken against those taxpayers who paid tax @ 12% and neither refund would be permitted to those who previously paid tax @ 18% while some taxpayers were paying same @ 12%.

Circular No:-164/20/2021-GST Dated 06th October,2021

Topic: -Clarification regarding GST rates

Background :-Clarification regarding GST rates & exemptions on certain services

Representations have been received for clarification in respect of certain activities which have been clarified through this Circular.

1. Issue:-Whether cloud kitchen fall under the definition of Restaurant Service?

Clarification:-"Restaurant Service" has been defined in Notification No. 11/2017 which provides that

"*Restaurant service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.*"

Cloud kitchen is a commercial kitchen space that provides food businesses the facilities and services needed to prepare menu items for delivery and takeout.

The explanatory notes to the classification of service states that restaurant service includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of

food are also considered as restaurant service.

Conclusion:-Thus this covers an entity which exclusively provides services by way of takeaway or door delivery which is a cloud kitchen, hence GST rate 5%(without ITC) would be applicable as defined in Notification No.11/2017-Central Tax(rate)

2. Issue:-Whether ice cream parlour that sells already manufactured ice creams stand on the same footing as Restaurant Service?

Clarification:-There are many advance rulings which have concluded that the ice cream sold in ice cream parlour would be covered under restaurant services but restaurant services include cooking/ preparing items for consumption whereas ice cream parlours do not have the character of a Restaurant Service as they are selling already manufactured ice- cream which does not involve any form of cooking at any stage.

Conclusion:-It is clarified that ice cream sold by a parlour or any similar outlet would attract GST at the rate of 18%and not 5%

3. Issue:-Whether GST would be applicable on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

Clarification:- The ambit of Entry No. 72 of Notification No.12/2017(Rate) dated 28-06-2017 is very wide which exempts services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration and this also covers the coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities".

Conclusion:-The coaching services provided by coaching institutions where entire expenditure is borne by the Central Government, State Government, Union territory administration will be exempt.

4. Issue:-Whether satellite launch services provided by NSIL(M/s New Space India Limited) qualify as "Export of Services" under Section 2(6) of IGST Act,2017?

Clarification:-A Circular No. 2/1/2017 –IGST dated 27-09-2017 was brought which clarified that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and is considered to be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

Conclusion:-Hence the services supplied by NSIL is in line with the services provided by ANTRIX Corporation Ltd

and thus qualifies as "Export of services" and the above Circular sqauarely applies to NSIL.

5. Issue:-Whether GST is applicable on overloading charges at toll plaza?

Clarification:-Service by way of access to a road or a bridge on payment of toll charges is exempted under Entry 23 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017. A notification was issued dated 25th Sept,2018 by Ministry of Road Transport And Highways that overloaded vehicles would be allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll.

Thus, overloading charges are nothing but higher toll charges

Conclusion:- Overloading charges at toll plazas would get the same treatment as given to toll charges and thus would be exempt.

6. Issue:-Whether renting of vehicles to State Transport Undertakings and Local Authorities fall under exemption Notification entry No. 22 ?

Clarification: Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Sl. No. 22 exempts *"services by way of* ***giving on hire*** *(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers"*. This issue has been raised due to an adverse ruling given by AAR that the above entry mentioned exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them.

Conclusion:- It is clarified that the expression *"giving on hire"* in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption.

7. Issue:-Rate of tax applicable for the period 01-7-17 to 31-12-18 for services by way of grant of mineral exploration and mining rights?

Clarification:-For the disputed period [1.7.2017 to 31.12.2018], divergent rulings have been issued by Authorities for Advance Ruling (AAR) and Appellate Authorities for Advance Ruling (AAAR) of various States on the GST rate applicable on the same. Some said 5% , some 18% du to this divergent views the matter was taken up in the GST council and it noted that service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. "*licensing services for the right to use minerals including its exploration and evaluation*". **T**he GST Council in its 14th meeting held on 18th & 19th May, 2019, specifically recommended that all the residuary services would attract GST at the rate of 18%.

Conclusion:-The licensing services for the right to use minerals including its exploration and evaluation" falling under service code 997337 were taxable @ 18% during July 01, 2017 to December 31, 2018. Post, January 01, 2019 no dispute remains open.

8. Issue:-Rate of GST applicable on services provided by Indoor Amusement Parks/Family Entertainment Centers.

Clarification:-It is clarified that 28% rate [entry 34 (iiia)] of Notification No.11/2017 applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, Entry 34 (iii),of the same Notification having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry- go rounds, go-carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club.

9. Issue:-Job work services provided by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption attract 5% or 18%

Clarification:-Sl. No. 26 [Item 1(i)f] of notification No. 11/2017-Central Tax (R) dated 28-6-2017 prescribes GST rate of 5% on services by way of job work in relation to ***food and food products*** falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975. It is clarified that the expression "food and food products" in the said entry excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food.

Conclusion:-Services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% and hence will be taxable at 18%.

COMPANY LAW UPDATES

CA Mayur Agrawal

Reference	Date	Topic	Description
General Circular No.20/2021-	08/12/2021	Clarification on passing of Ordinary and Special resolutions by the companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19-Extention of timeline-reg.	To allow companies to conduct their EGMs through Video Conference (VC) or Other Audio Visual Means (OAVM) or transact items through postal ballot in accordance with framework provided in the aforesaid Circulars up to 30th June, 2022. https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDExNDA=&docCategory=Circulars&type=open
General Circular No.19/2021-	08/12/2021	Clarification of holding of Annual General Meeting (AGM) through Video Conference (VC) or Other Audio Visual Means (OAVM)-reg.	To allow the companies whose AGMs are due in the Year 2021, to conduct their AGMs on or before 30th June, 2022 in accordance with the requirements laid down in Para 3 and Para 4 of the General Circular No. 20/2020 dated 05.05.2020 https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDExNDI=&docCategory=Circulars&type=open

The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021- Notification dated 09/11/2021

In exercise of the powers conferred under sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125 and sub-section (6) of section 124 read with section 469 of the Companies Act, 2013 (18 of 2013).

The Form No. IEPF-5 has been substituted and related changes incorporated in the Rules.

https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDA5OTA=&docCategory=Notifications&type=open

SEBI Updates

Disclosure obligations of listed entities in relation to Related Party Transactions, Dated 22.11.2021

Format for disclosure of related party transactions every six months has been prescribed.

https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html

ज्ञानं एकं च न्यायार्थम
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CORPORATE SOCIAL RESPONSIBILITY : A REVIEW IN LIGHT OF RECENT AMENDMENTS

A. K. LABH & Co.
Company Secretaries

The Concept of Corporate Social Responsibility (CSR) was introduced vide Section 135 of the Companies Act, 2013 ("the Act") and it became effective from 01.04.2014. India was the first Country in the world to introduce this concept and being a new concept, it went through lot of changes and clarifications.

Every Company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more in its immediate preceding financial year is required to spend at least two per cent of the average net profit of its last three preceding financial years towards CSR. A Company not completed three years of its incorporation and falling under CSR criteria, will also be required to contribute two per cent of the average net profit of its preceding financial years since its inception. Further, to a Company if CSR becomes applicable once, the Company will have to continue with it for next three financial years. However, the Company will no longer be required to comply with the provisions, if the stipulated criterias are not attracted for next three financial years. Furthermore, it is applicable to all Companies, including Foreign Companies having offices in India and registered with Ministry of Corporate Affairs (MCA) and fulfilling the desired criteria.

Amount spent by the Company towards any of the activities as illustrated in Schedule VII to the Act will be treated as CSR activities. However, following activities will not be covered under CSR :

a. Contribution to political parties;
b. CSR only for employees of the Company;
c. Activities supported by the Companies on sponsorship basis for deriving marketing benefits for its products or services;
d. Activities undertaken in normal course of business;
e. Activities carried to fulfil any other statutory liability;
f. Activities undertaken outside India except for training of Indian sports personnel representing State or UT at National or International level.

CSR activities may be carried out by the Company : (a) directly by itself or through any registered Public Trust / Society / Section 8 Company (duly registered under Section 12A & 80G of the Income Tax Act, 1961) either promoted by the Company or any independent entity having track record of three years; or (b) through any registered Trust / Society / Section 8 Company established by the Central Government or State Government; or (c) any entity established under an act of Parliament or a State legislature. However, on or after 01.04.2021 new CSR activities eligible under Section 135 of the Act read with rules related thereto can be carried out by these entities only if they are registered with MCA and is having a Unique CSR Registration Number. Further, a Company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

Recently, in the year 2021, CSR provisions have gone through various dynamic changes. There were certain amendments in Section 135 of the Act pertaining to CSR vide the Companies (Amendment) Act, 2019 and the same have been notified w.e.f. **22.01.2021.** Further, another set of amendments as proposed vide Companies (Amendment) Act, 2020 and The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 have also been notified by MCA on **22.01.2021** itself. Certain salient features of all these amendments, taken together and as became effective from a single date, i.e., **22.01.2021** only are as follows :

Srl. No.	Particulars	Amendment & its impact
1	Administrative Overhead	➢ Administrative Overhead towards CSR process should not exceed 5% of total CSR expenditure of the Company for the financial year. ➢ "Administrative Overhead" has been defined now and it means the expenses incurred by the Company for 'general management and administration' of CSR functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme.
2	Entity Registration	➢ Now, the CSR activities can be carried out by the Company directly or through any other eligible entity, *only if*, such entity is also registered with Central Government for such purpose. ➢ For this, every entity need to file on-line form CSR-1 with MCA w.e.f. 01.04.2021. ➢ Applicant entity will be provided a unique CSR Registration Number for carrying out such activities. ➢ On or after 01.04.2021 new CSR activities eligible u/s 135 of the Act read with rules related thereto can be carried out by such registered entities only. ➢ However, eligible CSR projects or programmes approved prior to 01.04.2021 will continue to fall under the ambit of eligible CS expenses.

3	Eligibility	➢ Now, the Companies not completed three years of its incorporation will also be required to contribute two percent of its average net profit of preceding financial years since its inception towards CSR, if the Company fulfill any of the criteria mentioned in Section 135(1) of the Act.
4	Treatment of	➢ Any surplus arising out of the CSR activities shall not form part of the business profit of a Company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account. ➢ The amount need to be spent in pursuance of CSR policy and annual action plan of the Company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.
5	Treatment of excess CSR spending	➢ Where a Company spends an amount in excess of requirement provided under Section 135(5), such excess amount may be set off against the requirement to spend under Sub-Section (5) of Section 135 up to immediate succeeding three financial years subject to the conditions that – (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule. (ii) the Board of the Company shall pass a resolution to that effect.
6	Treatment of Unspent Amount	➢ Now, the Rule has also defined "Ongoing Project" as a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.

		➢ In case of remaining unspent CSR amount pursuant to any ongoing project undertaken by a company in pursuance of its CSR Policy, the same shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent CSR Account. ➢ Such amount shall be spent by the company in pursuance of its obligation towards the CSR Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year. ➢ Now, every Company having average CSR obligation of Ten Crore Rupees or more in pursuance of Sub-Section (5) of Section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of One Crore Rupees or more, and which have been completed not less than one year before undertaking the impact study.
7	Impact Assessment	➢ However, the cost of impact assessment may be booked as expenditure within the stipulated limit of Administrative Overhead. The impact assessment report need to be placed before the Board and shall also be annexed with the Annual Report on CSR.
8	CSR Committee	➢ No requirement for constitution of CSR Committee, if the CSR required amount does not exceed Rs. 50Lakh & ➢ CSR Committee's function to be discharged by the BOD of the Company in all such cases. ➢ Now, CSR Committee will also formulate and recommend to the Board, an annual action plan in pursuance of its CSR Policy.

9	Miscellaneous	➢ Contribution of any amount directly or indirectly to any political party under Section 182 of the Act will not be eligible for CSR. ➢ Activities supported by the Companies on sponsorship basis for deriving marketing benefits for its products or services will not be eligible for CSR. ➢ Now, a Company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.
10	Reporting	➢ The Board of the Company shall satisfy itself that the funds so disbursed have been utilised for the purposes and un the manner as approved by it and the CFO or the person responsible for financial management shall certify to the effect. ➢ A new Format for the Annual Report on CSR Activities has been prescribed and the same need to be included in the Board's Report from the financial year commencing on or after 01.04.2021
11	Penalty	➢ For contravention of the provisions of Sections 135(5) and 135(6) related to spending of CSR amount including unspent amount, if any : (a) Company : Twice of unspent amount OR Rs. 1 Crore (whichever is less) & (b) Officers-in-default : 1/10th of unspent amount OR Rs. 2 Lakh (whichever is less)

Disclaimer : The above note/analysis has been prepared by our research team for guidance purpose only. For authentication of data/information provided, please refer the respective acts, rules and laws. For any further query in the matter, you may contact us at aklabhcs@gmail.com or aklabh@aklabh.com Please visit at www.aklabh.com to know more about us and our services.

FATE OF CONTRACTUAL AGREEMENT UNDER IBC : SUPREME COURT

CA Binay Kumar Singhania
Insolvency Professional

Tata Consultancy Services Pvt Limited (Appellant) entered into aagreement with SK Wheels Pvt Ltd (CD)on 1st December, 2016 whereby CD had to provide premises with certain specifications and facilities to the appellant for conducting examinations for educational institutions. Agreement contained a clause of termination with immediate effect in case material deficiencies are not rectified within 30 days.

Appellant wrote mails to CD for deficiency in services on several occasions before start of insolvency. Insolvency was admitted on 29th March, 2019. Thereafter again appellant wrote mails for deficiency and on 10 june, 2019 terminated the agreement. Resolution Professional (RP) approached NCLT vide misc application u/s 60(5) citing moratorium and also mentioned that 30 days notice period was also not given to CD.

NCLT heard the matter and opined that termination of agreement will have effect on insolvency process and moratorium is applicable after admission to insolvency. It further noted that 30 days notice was also not given and stayed the termination on 18/12/2019. Appellant approached appellate tribunal (NCLAT) whereby NCLAT also upheld the order of NCLT on 24/06/2020 and termination of agreement continued to be stayed.

Appellant thereafter approached Hon'ble Supreme Court and placed the fact that termination was not made pursuance to start of insolvency and proper mails from time to time were given to CD. The deficiency were notified even prior to start of insolvency. It was also mentioned that moratorium is applicable on provision of goods and supplied to CD. Whereas in the instant case the provision of goods and services are used by appellant and not CD. Appellant also stated that third party has a legal right of termination even after start of insolvency.

Hon'ble Supreme Court heard the matter and concluded that third party right can not be done away with. The notice period of 30 days is not required as regular notices for deficiencies in services were given to CD even prior to insolvency. The termination of agreement will not bring corporate death of CD as this agreement was not the sole source of revenue for CD. Apex court pronounced the order on 23rd November, 2021 in favour of Appellant and cautioned NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the Corporate insolvency resolution process. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the CD.

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COMPLIANCE MISHAPS IN INDIAN STARTUP ECOSYSTEM

CA Ritwik Khator

On 3rd June the headlines read, "Government recognises 50,000 startups across India" and we all clapped our hands. In a short span of 5+ years, the Startup India initiative, executed by the Department for Promotion of Industry and Internal Trade (DPIIT), has largely been successful in creating a vibrant ecosystem of new age businesses by recognising startups, creating engagement, easing compliances, introducing benefits and iterating. It's no surprise that in the same timeframe India's ranking in World Bank's ease of doing business index improved from 130 to 63 out of 190 nations and its unofficial startup capital, Bengaluru got the tag of 'the World's fastest growing tech-hub' from a UK based research firm. But among all this glitter also lurks the rising asymmetry between the headline policies and their practical application at ground level. Let's take a walk:

1. Tax Holiday for Startups: Too good to be true:

a. What is it?: Under section 80-IAC of the Income Tax Act, startups that have received a tax exemption certificate from the Inter-Ministerial Board (IMB) enjoy tax exemption on profits for 3 consecutive years out of the 1st 10 years of its operations. Amazing!

b. The catch:

i. If your turnover exceeds INR 100 Crore, you cannot claim exemption.

ii. Obtaining the certification is a long drawn process.

iii. Out of the 50,000 Startups recognised by DPIIT, only 399 startups have received the tax exemption certificate from the IMB till date. That's less than 1% of the entire lot!

iv. This tells us that only the most innovative and the most scalable startups will get IMB certification. Ironically, these are the very startups that hit the turnover threshold of INR 100 Crore the fastest.

2. Capital Gains exemption for Entrepreneurs: No practical application:

a. Did you know?: If a person sells her/his residential property to start a Tech Startup, her/his Capital Gains arising out of sale of such property can be exempted under section 54GB of the Income tax Act.

b. Did you also know?: The exemption comes with a long list of conditions that you can read HERE.

c. The catch: The exemption is only available for IMB certified startups. Which means that entrepreneurs of only 399 Companies in this country can claim benefits under section 54GB as of today.

3. ESOP tax deferment scheme: Well thought of but you can't take benefit:

a. What is it? ESOPs are a great way to

reduce cash flows in early stage Startups and also for retaining the top quality employees. They're offered to the employees at a discount to the fair value of the shares.

b. The problem: When employees purchase these shares, they're supposed to pay tax on the differential amount between fair value and the discounted price they actually pay. Which means they're dishing out cash to buy shares and then also paying tax on it. Their fleeting moment only comes when they finally get to sell these shares which often takes 1-3 years at the least.

c. The solution : In 2020, the GoI finally took cognizance of this problem and decided that employees of Eligible Startups can defer the payment of tax on ESOPs until they sell their shares or on expiry of 5 years or when they leave the startup, whichever is the earliest. Wow!, right?

d. The catch : Employees of Startups having turnover exceeding INR 25 Crore cannot avail this benefit. That's a tiny threshold!

e. The bigger catch : Eligible Startups refer to IMB certified startups only. Which is a coveted group of only 399 Startups as of today.

4. Carve out for carry forward of losses: But you again can't take benefit:

a. You should know: If there is a significant change in ownership of a company (more than 49% shareholding change) then the losses cannot be carried forward.

Here's a fact: Most startups incur losses to blitz-scale and most startups issue shares and sell stakes to raise funds. Without the brought forward losses, these startups will have to pay taxes as soon as they make profit.

b. The solution: The GoI introduced a carve out in Section 79 of the Income tax Act for Eligible Startups, allowing them to carry forward losses as long as all the shareholders continue to hold at least 1 share in the startup.

c. The catch: By now you know too well. Eligible Startups refer to IMB certified startups only. Which means that most of the startups continue to surrender their losses every time there is a major stake sale. Sigh!

5. Angel Tax exemption: Only good for early stages:

a. You should know: If a company issues shares at a price more than its fair value, it attracts taxes under section 56(2)(viib) of the Income tax Act, which is dubbed as 'Angel tax'.

b. What's fair value?: For Income tax purposes, fair value is determined from a Merchant Banker report which conducts a Discounted Cash Flow (DCF) valuation of the company. This valuation drill comes at a considerable price which is the problem for early stage Startups who have little cash to spare.

c. The solution: DPIIT recognised startups can fill up a simple declaration form at the Startup India portal to exempt themselves from Angel tax. This basically means that these Startups can raise funds by issuing shares in excess of their fair value or basically without bothering a merchant banker for a report.

d. The catch: While this scheme has clear cash flow benefits for early stage startups, those that are raising funds in excess of INR 25 Crore (i.e. appx. $3.5Mil) cannot take advantage of this.

So now you'll agree: While the GoI has done commendable work in identifying areas where it could extend monetary benefits to startups, most of these benefits still remain parked in theory books without having any meaningful impact on the startup ecosystem.

Q. & A

Q1. If an Assessee is doing business without trade liscence, whether whole expenses incurred u/s37(1) of income tax act, 1961 may be disallowed by the assessing officer as he is doing business against the provisions of law ?

Ans :-

Expenses incurred wholly and exclusively for business and profession are allowed against income. But such expenses should incur legally or for doing law ful business.

As per Explanation -1 of section 37(1) of income tax act, any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Recently, Karnataka High court has disallowed expenses of iron ore business as it was carried on without obtaining necessary permits/licenses as required under law. It was observed by the Hon'ble HIGH Court that since object of Explanation 1 to section 37(1) is to discourage businesses and professions that are tainted with illegality, no deduction or allowance would be admissible in respect of expenditure incurred for purchasing iron ore under section 37(1) [2021] 133 taxmann.com 72 (Karnataka)

Trade Liscence is compulsory in law. Doing trade/business or profession without trade license is an offence in India.

As the Hon'ble Karnatak High court cited above clarifies that doing business activities without obtaining liscence for particular business is not legal and accordingly, the TRADE LISCENCE is a permission without which business is prohibited. The businessman need to pay penalties for not obtaining trade liscence.

Therefore, if the assessees are doing business without trade liscence , it is likely that the expenses incurred in said business can be fully disallowed.

Q2. Section 12A(b) of Income tax Act says that Audit of Trust is required if its total income exceeds the maximum amount not chargeable to tax. But the Act nowhere prescribes the Maximum amount not chargeable to tax (i.e., basic exemption) in case of trust. Basic exemption of Rs 2.5 Lakh is provided only for individuals, HUF, AGP, BOI but not for Trust. Does it mean that Audit as per Sec 12A(b) is applicable to all Trusts in the absence of Basic Exemption?

Ans :-

Yes, it is absolutely correct that as per provisions of Section 12A(b)of the I.T. Act, 1961, if the

total income of any charitable or religious trust exceeds the maximum amount not chargeable to tax, then the books of accounts of such trust shall require an audit by a chartered accountant and audit report (Form 10B) is required to be filed before the due date specified for filing of such audit report. Provisions of Section 12A(b) of the I.T. Act, 1961 are stated as under: -

"(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 48 [before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date] the report of such audit in the prescribed form49 duly signed and verified by such accountant and setting forth such particulars as may be prescribed;"

The above citedsub-section state the conditions for audit applicability on a charitable or religious trusts.

However, as far as basic exemption of Rs. 2,50,000/- is concerned, the same shall also be available for the charitable or religious trust as Section 164(2)of the I.T. Act, 1961 clearly states that the income of a charitable or religious trust, which is not exempt under section 11 or section 12, shall be taxed as if the such non exempt income is an income of an association of persons. Provisions of Section 164(2)of the I.T. Act, 1961is stated under : -

"(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub-section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons"

Further, as per The First Schedule – Part 1 – Paragraph A, the Rate of Income Tax for Association of Person is given as under: -

(1)	***where the total income does not exceed Rs. 2,50,000***	***Nil;***
(2)	*where the total income exceeds Rs.2,50,000 but does not exceed Rs. 5,00,000*	*5 per cent. of the amount by which the total income exceeds Rs. 2,50,000;*
(3)	*where the total income exceeds Rs.5,00,000 but does not exceed Rs. 10,00,000*	*Rs.12,500 plus 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000;*
(4)	*where the total income exceeds Rs. 10,00,000*	*Rs. 1,12,500 plus 30 per cent. of the amount by which the total income exceeds Rs.10,00,000.*

From the above chart it is clearly seen that the basis exemption of Rs 2,50,000/- is available to an association of persons also and since Section 164(2) of the I.T. Act, 1961 gives the similar status to acharitable or religious trust. Therefore, the basic exemption of Rs 2,50,000/- shall also be available to charitable or religious trust for the purpose of applicability of audit required as per provisions of Section 12A(b) of the I.T. Act, 1961.

Q. A - Tenant
(proprietorship Co., simple tenancy for last 40years)
B - Landlord (individual- property is 70 years old)
C - New Lessee (Corporate entity)

1. A is under B, a simple tenancy / occupant under WB Tenancy act.
2. A receives from C, aconsideration amount to give up on tenancy rights.
3. C wants from B, a LessorLessee agreement for 99 years by paying "X"amount plus monthly licence fees of 15000.

Query :

a. On amount received from C (see point 2) :
is GST applicable.
If yes, is it under RCM.
Is ITC available to C.

b. on "X" Amount paid by C to B (see point 3)
is GST applicable.
If yes, is it under RCM.
Is ITC available to C.

Ans

a- Receipt of consideration for surrender of tenancy rights by A cannot be subjected to reverse charge GST in hands of C and hence if at all the liability arises it has to be billed By A to C as A becomes the recipient of service if the same is treated as toleration of an act and applying provisions of Sch II to CGST Act, 2017 read with Sec 7 of the CGST Act, the same becomes a supply. As regard ITC, assuming A charges GST and it is a commercial project ITC will be available to C. For residential project, No ITC to be available to C.

b- On X amount paid by C to B plus monthly licence fee, GST will be applicable @ 18% except under the following conditions:

41	Heading 9972	[Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having [20][51] per cent. Or more ownership of Central Government, State Government, Union territory to the industrial unit sort he developers in any industrial or financial business area.][52] [*Explanation.* - For the purpose of this exemption, the Central Government, State Government or Union territory shall have [20][53] percent. Or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.][54]	Nil	{Provided that the leased plots Shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area: Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard: Provided also that incase of any violation or subsequent change of land use, due to any reason whatsoever, the original less or, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained here in, along with the applicable interest and penalty: Provided also that the lease agreement entered into by the original less or with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall Incorporate in the terms and

[51] Substituted vide notification No. 28/2019 – Central Tax (Rate) dt 31.12.2019 to be effective from 01.01.2020.Priorto substitution it read"50".

[52] Substituted vide notification No. 32/2017 – Central Tax (Rate) dt 13.10.2017. Prior to substitution it read "Onetimeupfrontamount(calledaspremium,salami,cost,price,developmentchargesorbyanyothername)leviablein respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided bytheStateGovernmentIndustrialDevelopmentCorporationsorUndertakingsto industrial units."

[53] Substituted vide notification No. 28/2019 – Central Tax (Rate) dt 31.12.2019 to be effective from 01.01.2020.Priorto substitution it read"50".

[54]InsertedvidenotificationNo. 23/2018 –Central Tax (Rate) dt20.09.2018.

				conditions, the fact that the central tax was exempted on the long term lease of the plots by the original less or to the original lessee subject to above condition and that the parties to the said agreements under take to comply with the same.}[55]
[41B	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in aproject, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, which ever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount(called as premium, salami, cost, price, development charges or by any other name) payable for longtermleaseoflandforconstructionoftheproject]**x**(carpetareaoftheresidential	Nil	Provided that the promoter shallbeliabletopaytaxattheapplicablerate,onreversechargebasis,onsuchproportionofupfrontamount(calledaspremium,salami,cost,price,developmentcharges or by any other name)paid for long term lease of land, asis attributable to the residentical apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner - [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] **x** (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first Occupation ÷ Total carpet

[56]InsertedvidenotificationNo. 4/2019–Central Tax(Rate)dt29.03.2019.

		apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).		area of the residential apartments in the project); Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 percent. Of the value in case of affordable residential apartments and 2.5 per cent. Of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central taxonthesaidproportionofupfron tamount(calledaspremium,sala mi,cost,price,development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case maybe.][57]

DIRECT TAXES PROFESSIONALS' ASSOCIATION

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URGENT

Ref. No. DTPA/Rep/21-22/13th December 2021

Smt. Nirmala Sitharaman
Hon'ble Minister of Finance and Corporate Affairs
Government of India
Department of Revenue
North Block
New Delhi - 110001
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Respected Madam,

At the outset we convey our good wishes for NEW YEAR in advance. We would like to make the following suggestions as our Pre Budget Memorandum for 2022-23 :

1. **Personal Income tax** :

   a) We appreciate the alternate tax regime offered for personal taxation under section 115BAC. However please allow benefit of section 80D for medical insurance premium to help taxpayers to keep their medical policies alive in view of exorbitant expenses for hospitalisation & treatment even in case of taxpayers opting for sec. 115BAC. Benefit of tax rebate u/s 87A should be allowed in case of taxpayers opting for sec. 115BAC. The TDS from Salary u/s 192 may be deducted based on tax liability in case of taxpayers opting for sec. 115BAC.

   b) Personal Income tax Exemption Limit and Slab Rates needs to be reviewed. It will be appropriated if exemption limit is across the board fixed at Rs. 4 Lakhs and Tax Rate for the Slab Rs. 5 Lakhs to 10 Lakhs is considered and fixed at 10 per cent; next slab may be Rs. 10 Lakhs to 20 Lakhs with tax rate of 15 per cent and on income in excess of Rs.20 Lakhs tax may be charged at 25 per cent. Such a tax regime will help in developing tax culture and true disclosure of income by all.

2. **Section 10 (10) – Regarding exemption in respect of Gratuity**:

   As per present section gratuity is exempt in respect of Central Government employees as is received by them under the rules or gratuity received under the Payment of Gratuity Act or gratuity received by employees of other organizations as is calculated as per the prescribed method subject to limit as may be

prescribed by the Central Government by notification in the official gazette, having regard to the limit applicable to Central Government employees.

In view of aforesaid language used in respect of employees other than the employees of the Government department and employees covered under the Payment of Gratuity Act, notification is required to be issued from time to time by the Central Government.

Recommendation : It is suggested that the requirement of separate notification by the Central Government in respect of employees other than the employees of the Central Government can be done away by straightaway providing the limit as is applicable to Central Government employees or as is provided in Payment of Gratuity Act.

[It may be stated that presently the notification increasing the exemption limit to **Rs.20 lacs** has not been issued for the purpose of clause (iii) of section 10(10) of Income-tax Act whereas the limit for the Central Government employees as well as under Gratuity Act has been raised quite some time ago and employees as well as employers are in difficulty in the absence of the notification increasing the exemption limit. Such problems can be avoided, if necessary, amendment, as suggested above, is made in the section.]

3. **Section 10(10B) – Exemption in respect of compensation received on retrenchment**:

The section provides that compensation received on retrenchment by a worker under the Industrial Dispute Act or under any other Act or Contract of Service, etc. subject to the limit of the amount as calculated as per section 25F of Industrial Dispute Act or amount as may be notified which at present is Rs.5 lacs. The term 'worker' has been defined to mean the worker under the Industrial Dispute Act, 1947.

In case the exemption is available only to a worker covered under the Industrial Dispute Act, then compensation has obviously to be paid to such workmen u/s 25F of Industrial Dispute Act and, accordingly, there is no need of any other limit prescribed under this section. Further, reference to any other Act, Contract, Award, etc. is redundant.

Recommendation: It is suggested that the scope of section 10(10B) should be extended to all the employees whether under the Industrial Dispute Act or not and a limit for the purpose of exemption should be prescribed, may be the limit on the basis of retrenchment compensation for which a workman is entitled u/s 25F of Industrial Dispute Act or any other limit as may be considered appropriate.

4. **Restructuring of provisions regarding charitable institutions:**

Presently there are different provisions applicable to charitable institutions u/s 10(23C) and section 11 to 13 of the Act. Definition of term 'charitable purpose' has been given in section 2(15) of the Act. There is lot of litigation presently as regards the definition of charitable purpose as well as of application of income etc. As per the existing provisions a charitable institution is permitted to accumulate its income for a period of five years and income applied for capital expenses is also allowable as deduction. In view of the fact that capital expenditure is allowed as application towards charitable purpose, it has become a general phenomenon that educational institutions, hospitals, etc. in some cases, are being run as industry and are charging high fees for the services provided by them and amount is accumulated and is spent for setting up another school, college or hospital.

Accordingly, the whole purpose of the institution, being charitable, has been defeated in many cases and practically they are being run as commercial institution. Inspite of amendment in the definition of the term 'charitable purpose' in section 2(15) of Income-tax Act, the purpose has not been served.

Recommendation: In order to avoid the litigation and also to create a situation that institution really works as a charitable institution it is suggested that:-

(i) The objects and purpose of an institution be examined in detail while granting registration to a charitable institution by the Commissioner of Income-tax. For this purpose, detailed guidelines as regards the charitable purpose should be there by way of notification in the rules. The Commissioner once examine and grant registration, the institution will continue to be recognised as charitable. May be for this purpose an independent authority known as a 'Charity Commissioner' be appointed by the Government, as it exists in certain states. The system of fresh registration and renewal introduced by the Finance Act, 2020 seems unnecessary and needs review.

(ii) As at present 15% of income should be permitted to be accumulated without any condition.

(iii) The restriction, as at present, that no charitable institution can carry on the business unless specific conditions provided under section 11(4A) are complied with, should be done away with. Income of a business, applied for a charitable purpose, should be considered as receipt of charitable institution. In respect of the business separate books of account may continue to be maintained. WE suggest that the income arising from such business should be considered as receipt / income and such income may be allowed to be utilised for the purpose of charitable activities being run by the institution.

5. **Weighted deduction on scientific research expenditure section 35**

a) It is well recognised that scientific research is the lifeline of business in all countries of the world. Indian residents are paying huge sums by way of technical services, fees to foreign technicians to upgrade their products and give the customers what latest technology gives globally. If in-house research is continuously encouraged, outgo on account of fees for technical services will reduce and this will help indigenous businesses to grow. Like made in India, ease of doing business and encouragement to start up initiatives of the government, innovation and scientific research initiative should be given equal weightage.

b) Withdrawal of weighted deduction in respect of scientific research expenditure will put a dent to the **'Make in India'** initiative of the Government.

c) **Recommendation:** It is recommended that weighted deductions allowed under the Income Tax Act, 1961 to various modes of scientific research expenditure should be continued. **The Government can also consider introducing benefits in the form of Research Tax Credits which can be used to offset future tax liability (like those given in developed economies).**

6. **Allow deduction for corporate social responsibility expenditure Sec. 37**

a) At present the Income Tax Act provides that the expenses incurred by the taxpayer on the activities relating to CSR referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be incurred for the purpose of business and hence, shall not be allowed as a deduction for computation of income. **The**

corporate sector spending on CSR is for laudable purposes andeffectively assisting the Government in undertaking social projects for the country. Therefore, the deduction must be allowed for expenses on CSR for the purpose of Income tax**.**

b) **Recommendation: It is recommended that a deduction of CSR expenses incurred by the taxpayers pursuant to the policy of the Central Government and provisions of the Companies Act should be allowed in computing business income.**

7. **Monetary Limit for Tax Audit of Accounts:**

a) Considering the inflation, the Monetary Limit for Tax Audit of Accounts under section 44AB should be reviewed and increased to Rs. 2 Crore in place of present Rs. 1 Crore.

b) In this context we would like to bring to your kind notice that eligible business for the purpose of section 44AD is considered if total turnover or gross receipt in the previous year does not exceed Rs. 2 Crore. That means that if they opt for presumptive Income scheme, the tax audit is not required even if the gross turnover is up to Rs. 2 Crore. On similar lines the monetary limit for tax audit should be enhanced to Rs.2 Crores.

8. **Presumptive Income is case of professionals:**

a) The Presumptive Income is case of professionals is considered under section 44ADA at the rate of 50 per cent of gross receipts which is quite excessive even while we compare with the presumptive income of 8 per cent or 6 per cent, as the case may be, for computing profit and gains of business, as prescribed under section 44AD. The presumptive income in case of professionals should be at the rate of 30 per cent of gross receipt. It may be noted that RV Easwar Committee had suggested the rate of one third of gross receipt of professional receipts. The realistic presumptive rate will encourage more and more professional to opt for the scheme under section 44ADA.

9. **Deduction under Sec. 54EC:**

We suggest that the monetary limit of investment in specified bonds should be increased from present Rs. 50 Lakhs to at least Rs. 1 Crore on sale of each long-termasset. Secondly the time limit for making investment in such Bonds should be allowed upto the due date of filing the Income Tax Return by the assessee instead of present time period of only 6 months from the date of sale of original asset. This will be in line with the time limits provided for the purpose of sec. 54 and 54F.

Moreover the benefit of section 54 EC should also be extended to capital gains on all assets. It should not be restricted to only in case of capital gain arising from land or building or both.

10. **Capital Gain Exemption Sec. 54F:**

The existing section 54 F provides for deduction of Long-Term Capital Gain if the sale consideration is utilised in purchasing of or construction of a residential house within specified period. We suggest that the deduction should be allowed on purchase of any immovable property whether residential or business or office premises. Such an amendment will also help the housing sector and will make the deduction more useful. It may be mentioned that for the purpose of this deduction the sale consideration of original asset has to be invested instead of only capital

gain as is the case for deduction under sec. 54.

11. Reference to Valuation Officer under sec. 55A:

The tolerance limit of 20 per cent variance in value of immovable asset should be incorporated for the purpose of reference to Valuation Officer.

12. Amendment of section 56:

The receipts excluded from the purview of section 56 (2) should also include the amount received by a member of Hindu Undivided Family (HUF) from the HUF. There are considerable litigations on the point. These are unnecessary and may be stopped by inserting above amendment.

13. Increase threshold limit under Section 80C of the Act:

Over the years, investments made in various avenues available under Section 80C of the Income tax Act have has been helping the Government to raise funds as well as the individuals to save tax. The Government may look at increasing the overall deduction limit to at least Rs 250,000 to boost further investment and increase tax savings for the individual and HUFs.

Further the amount to be deposited in PPF account may be increased to Rs. 2,50,000 in place of present Rs.1,50,000. The contribution by HUF should also be allowed.

14. Tax under sec. 115BBE:

Earlier the assessee was not concerned whether the department is treating it as deemed income or business income **as the income was taxable maximum at the rate of thirty percent. But after amendment in section 115BBE from assessment year 2017-18 this matter has become very important and if the department treats surrendered income as deemed income it will be subject to tax at the rate of 60 per cent plus 25 per cent surcharge and education cess. The effective aggregate rate u/s 115BBE now 78 per cent. If the A.O. makes addition penalty under section 271AAC may also be levied @ 10 per cent of tax, which will make the overall burden @84 per cent on assessee. It is prohibitive and needs urgent review. It is desirable that tax under sec. 115BBE should be at best 30 per cent or the maximum marginal rate. The rate was basically increased drastically due to demonetisation. It should be brought back to pre asst. year 2017-18 level.**

It may kindly be appreciated that additions under sec. 68. 69, 69A, 69B and 69C of the Income Tax Act, 1961 are deemed additions and not necessarily the actual or real income.

15. Minimum Alternate Tax – Section 115JB:

a) Recommendation:

We suggest an alternate to MAT.

It may be provided that the aggregate exemptions and deductions allowable to any taxpayer will be pegged to 80 per cent of gross total income. Meaning thereby that all taxpayers contribute some tax to the Government. For making the new system workable exemptions and deductions may be placed under Chapter VIA of the Income Tax Act. Adoption of this approach will help in reducing litigation and help in better tax collection. Even the Charitable Societies, Hospitals etc. making profit will also pay tax in this process.

b) Without prejudice to the above suggestion, we feel that with phasing out of exemptions and incentives under the Act, the current rate of MAT of 15%

w.e.f. asst. year 2020-21 is quite high and has impacted significantly cash flow of companies who otherwise have low taxable income or have incurred tax losses. With the phasing out of exemptions and deductions available under the Act, the burden of MAT should also be reduced to 12 per cent(in place of current level) so that it may commensurate with the phasing out of tax exemptions and incentives.

c) Presently, the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account is allowed as a deduction while computing book profit for the purpose of MAT please refer Expl 1 part 2 item (iii) to 115JB. The said provision adversely affects companies which have huge book losses and lesser unabsorbed depreciation as they will have to pay MAT despite having ample amount of book losses thereby affecting their cash flows. It is suggested to review the provision to make it liberal. Both depreciation and brought forward losses should be fully allowed even for the purpose of MAT. The methodology for computing loss brought forward and unabsorbed depreciation as per books of account may be specifically provided in section 115JB of the Act.

15A. Disclosure during Income Tax Search/ Survey : The CBDT had issued following Instruction dated March 23, 2003:

In the light of the statements recorded followed by retractions on the ground of coercion and threat in the course of search and survey operations, the Board issued the Instructions F.No. 286/2/2003 – IT (Inv.) dated March 23, 2003 stating as follows:

"Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess undisclosed income during the course of the search and seizure and survey operation. Such confession, if not based on credible evidence, are retracted by the concerned assessees while filing return of income. In these circumstances, confession during the search and seizure and survey operation do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax department. Similarly, while recording statement during the course of search and seizure operation, no attempt should be made to obtain confession as to the undisclosed income."

In practice the above Instruction is generally ignored by the officials of department going for Search or Survey. In fact it is not practicable for the taxpayer to ascertain during search itself that how much income he should declare in absence of necessary details and due to the necessity to consult his business associates, family members and staff. With a view to streamline the process of search and survey and with a view to do justice we make the following suggestions :

a) The copy of statement recorded during Search should be given to taxpayer with copy of Panchnama itself. In case of survey also the copy of statement recorded should be instantly provided during Survey.

b) A copy of search warrant should be given to party on the day of search.

c) The copy of seized documents and books should be provided to the taxpayer within 15 working days of completion of search or from the date receipt of application from the taxpayer.

d) The taxpayer should be permitted to make disclosure of income within 15 working days after providing him the copy of seized documents/ books. The benefit of tax rate / exemption from penalty, available in case of disclosure should be made available in case of disclosure within 15 working days as aforesaid.

e) The above changes will be helpful in avoiding the present trend of retractions.

17. **Avoidance of repetitive appeals on the same issue: Section 158A/ 158AA**

In regard to repetitive appeals though there are presently provisions of sections 158A and 158AA of the Income-tax Act, but these provisions are not effective and same are not being used at all. These should be followed.

Recommendation: It is suggested that the law should clearly provide that in case an issue has been decided either in favour or against the assessee in an earlier year, there will be no need to file appeal either by the assessee or the department in a subsequent year in case the issue is identical. Provisions of section 154 of the Act should be applicable in such cases to rectify all subsequent assessments in the light of decision in respect of appeal in earlier year by ITAT, High Court or the Supreme Court. In other words, in case an issue has been decided by CIT(A) in favour of the assessee, in subsequent years it should not be necessary for the assessee to file the appeal before CIT(A) and the order for a subsequent year should be rectifiable in the light of decision of higher authorities. **The Assessing Officer in the assessment may make an addition in respect of particular issue but will not raise the demand in case the issue is already in favour of the assessee. Similarly, if the issue is against the assessee and he is agitating in further appeals, the order of higher authorities will be applicable to subsequent years also.**

17. **Initiation of proceedings against directors u/s 179 of the Income-tax Act:**

In many cases provisions of section 179 are being resorted by the Assessing Officer even prior to decision in appeal by CIT (A) or ITAT and also without firstly exhausting its remedy for recovery of tax demand against the company. Provisions of section 179 are to be resorted to only if the demand has been finally settled and the Assessing Officer is not able to recover the same from the company. Proceedings are not to be used for harassment of the directors, or threatening them by attaching their personal bank accounts. Necessary provision needs to be made in the section to exclude action at least in case of Independent Directors.

18. Scope of Section 207(2) may be extended to HUFs

Section 207 (2) of the Income tax Act provides that: The provisions of sub-section (1) [relating to payment of advance tax] shall not apply to an Individual residents in India, who –

a) Does not have any income chargeable under the head "Profits and gains of business or profession"; and

b) Is of age of 60 years or more at any time during the previous year.

Recommendation: For many provisions including section 80C the HUFs are treated at par with Individual tax payers.

We recommend that sub-section(3) may be inserted to section 207 to provide that the provisions of sub-section (1) of section 207 shall not apply to Hindu Undivided Family if it does not have any income chargeable under the head "Profits and gains of business or profession" and the Karta of the HUF is of age of 60 years or more. Such provision will immensely help the HUFs being looked after by senior citizen as its Karta.

19. **Taxability of income on notional basis:**

The concept of taxability of income on notional basis either under the head 'income from house property' or under other provisions of Income-tax Act should be done away. Only the actual income received by an assessee should be chargeable to tax.

Similarly, no disallowance of any expenditure actually incurred by an assessee as per the method of accounting employed by it should be made and for this purpose provisions like section 43B etc. should be deleted.

20. **Time limit for carrying out appeal effectby the Assessing Officer orpassing Order by Appellate Authority:**

Presently, the Act provides for time limit for completing assessment by the Assessing Officer. There is no doubt as regards the legal position that in case the assessment order is not framed within the specific time limit, the Assessing Officer cannot make the assessment order thereafter. Similar should be the position in regard to **appeal effect**. In case the Assessing Officer does not take the necessary action within the stipulated time limit, the action will be deemed to have resulted in favour of the assessee and no adverse order can be passed. Otherwise, placing time limits for appeal effect, etc. have not brought any effective result and still the matters continue to be pending with the Assessing Officer for quite long time.

Recommendation: In case the appeal is not decided by CIT(A) within the time limit u/s 250(6A) of the Act, the appeal should be deemed to be allowed.

Making the aforesaid provisions in the Act will not in any way bring any adverse result for the obvious reason that when there is compulsion under law the Assessing Officer or the CIT(A) will definitely take the necessary action within the stipulated time limit. It will bring a discipline in the performance of the officers.

21. **Exercising of powers u/s 263 of the Act:**

It is being practically seen that powers u/s 263 are exercised in a routine manner and in spite of detailed submissions or legal requirements, no care is taken by the concerned officers. It is necessary that the provisions should be more specific, duly supported by the necessary guidelines for exercising the powers under these sections. For this purpose, there should also be proper training and also check within the department so that actions taken are upheld in appeals. It is well known that because of casual approach of the officers actions taken under above sections in most of the cases fail in appeals. We welcome the amended provisions of sec. 147, 148 and new section 148A inserted in Finance Act, 2020.

22. **Provisions regarding levy of penalty for under-reporting or mis-reporting of income: Sec. 270A**

As is well known there had been substantial litigation in respect of provisions of section 271(1)(c) of the Act. Provisions of section 270A have been inserted w.e.f. A.Y. 2017-18. The terms 'under-reporting' or 'mis-reporting' are likely to be subject matter of litigation. Further, it is also not clear that at what stage the Assessing Officer will levy the penalty and will determine whether it is a case of under-reporting or mis-reporting.

Accordingly, provisions need to be simplified so as to avoid litigation in this regard.

Recommendation: It is suggested that:-

(i) As a general principal penalty will be leviable only after the decision in appeal by ITAT, which is against the assessee and the issue has not been admitted by the High Court as substantial question of law. In case the issue has been admitted by the High Court as substantial question of law, as a matter of principle, it cannot be said that penalty is leviable in respect of the same. Further, in case the tribunal has allowed the deduction for an expenditure, penalty will not be leviable even if the department is contesting in the High Court.

(ii) In case the addition has been upheld by ITAT, as a simplification of the penalty provisions it should be provided that penalty will be leviable equivalent to, say, 30% of the tax amount payable on such addition. The law straightaway should provide that assessee has to pay 30% of tax as additional amount in the nature of penalty. In case addition made by the Assessing Officer has been deleted in appeals, the assessee should equally be entitled to compensation for the harassment and cost of litigation and for this purpose a straightaway tax rebate of, say, 20% of the amount of tax leviable on such addition should be allowed to the assessee.

23. **Initiation of prosecution: Sec. 276C**

23.1 We welcome the **CBDT Circular 24/2019 dated 09.09.2019**, which considered the issue of premature initiation of prosecution i.e., before the issue is tested in appellate proceedings and CBDT has provided specifically that the prosecution complaint should not be launched unless penalty is confirmed by the Income tax Appellate Tribunal. **The Spirit of the said Circular should be inserted in section 276C itself to provide that prosecution under sec. 276 C should be initiated if tax sought to be evaded is more than Rs.25 Lakhs and Prosecution should be launched only after the penalty is confirmed by the ITAT.**

The said Circular dated 9.9.2019 broadly states that prosecution can be launched only in following cases:

1. **If tax sought to be evaded is more than Rs.25 Lakhs and**
2. **Prosecution should be launched only after the penalty is confirmed by the ITAT**

3. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the **offence has to be proved beyond reasonable doubt.** To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes also instructed that prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3 of the Circular.

The said Circular is available on the Government website at the link:https://www.incometaxindia.gov.in/communications/circular/circular-24-2019-11-09-2019.pdf

This Circular is curative, clarificatory and remedial in nature and it ought to be given retrospective effect and apply to all pending cases where the complaint is filed and should not be restricted only to those pending cases where complaint is yet to be filed. It is a settled law that a curative, clarificatory and remedial amendment must be given retrospective effect. For this proposition

reliance is placed on following judicial pronouncements:

i) When a provision is inserted/deleted to remedy unintended consequences it should be given a retrospective effect - **CIT vs. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC)**.

ii) When a provision is inserted/deleted so as to mitigate hardship caused to the assessee, it should be given retrospective effect - **CIT vs. Calcutta Export Company [2018] 404 ITR 654 (SC).**

Accordingly, we request that CBDT should issue a clarification that the said circular will apply to all matters which are pending in Courts and the complaints already filed may be withdrawn based on any undertaking or conditions, as may appear just and equitable to Your Honours.

23.2 The limit prescribed under the said Circular **"the tax sought to be evadedis more than Rs.25 Lakhs" is on the lower side considering the diminishing value of money.** Therefore, **our humble suggestion is that the Monetary limit should be revised to at least Rs.1 Crore of tax for initiating any prosecution.**

23.3 Your honour has taken commendable steps by removing prosecution provisions under the Companies Act, 2013. On the same line, it is appropriate time that prosecution provisions under the Income tax Act also should be omitted. There are enough provisions for levy of penalty in appropriate cases.

24. **Specific provisions in the Act for payment or refund of interest to and from department:**

As per the existing legal position any interest paid by the assessee to the department is not allowable whereas any interest received from the department is chargeable to tax. Difficulty, however, arises in the case where the department has allowed the interest to an assessee on the amounts of refund but subsequently as a result of appeal order, such interest has to be paid back to the department.

Recommendation:

a) There should be specific provisions in the Act that any repayment of interest earlier allowed by the department and included in the taxable income is allowable as deduction in the year such interest is re-paid to the department.

b) Further, it should be specifically provided in the Act that amount of interest allowed by the department will be chargeable only in the year in which amount is actually received by the assessee by way of cheque or credit in the bank account or on intimation or information is received for adjustment of refund against any demand. Similarly, deduction is to be allowed in the year the assessee has actually repaid the interest to the department.

c) As a matter of clarification it may also be specifically provided under law that any interest paid by the assessee to the department will not be allowable as deduction and any refund out of the same received in subsequent year will not be included in the taxable income.

Kindly consider the above suggestions. We assure your honour of our full co-operation in encouraging taxpayers to make proper tax compliance.

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