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NEWS YOU CAN USE

TAX EVASION

Rent from children not a tax evasion tool, rules ITAT

Receiving rent from your children will not be treated as tool for tax evasion, provided it is for genuine tax-saving arrangement, Income Tax Appellate Tribunal (ITAT) has ruled. Nobody would, in the view of the AO, charge rent (for residence) from his own son and daughter, given that both are unmarried and living together with the family in their own property. The arrangement was therefore regarded merely as a tax-reducing device adopted by the assessee and liable to be ignored. Treating the house as a self-occupied property, the AO restricted the claim of interest to Rs. 1.50 lakh, which was confirmed later by the appellate officer.

'Unusual arrangement'

After hearing both sides, though the Bench admitted that it is an unusual arrangement, "That, however, to our mind, may not be conclusive of the matter." The Bench was also conscious of the fact that assessee's major son and daughter are financially independent, with independent incomes, sharing the interest burden of their common residence with their father. And, as such, instead of transfer of funds to him per se, have regarded, by mutual agreements, the same as rent, as that would, apart from meeting the interest burden to that extent, also allow tax saving to the assessee-father. Further, it said that a genuine arrangement cannot be disregarded as the same results or operates to minimise the assessee's tax liability. "We are, accordingly, in principle, in agreement with the assessee's claim inasmuch as, as aforenoted, there is nothing on record to further the (Department of) Revenue's case of the arrangement being not a genuine arrangement, that is, apart from being unusual," it said.

▸ www.thehindubusinessline.com dt. 12-03-2020

PAN

Don't miss the March 31 deadline; I-T Dept on PAN-Aadhaar linking

The Income Tax Department on Monday issued a public message saying it was "mandatory" to link PAN with Aadhaar and advised people not to "miss" the stipulated deadline of March 31. The department had last month said Permanent Account Number (PAN) will become "inoperative" if it is not linked with Aadhaar by this date. The CBDT had also issued a notification amending I-T rules and inserted Rule 114AAA that stipulates the "manner of making permanent account number inoperative" for those who do not link the two by March 31. The notification said persons whose PANs become inoperative shall be liable for all the consequences under the I-T Act for not furnishing, intimating or quoting PAN. For those linking PAN with Aadhaar after March 31, 2020, the I-T department had said it shall "become operative from the date of intimation of Aadhaar number".

▸ www.business-standard.com dt. 16-03-2020

STATUTES

(2020) 172 TR (A) ..... (St.)

THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020

[Gazetted on 17-3-2020]

ACT

No. 3 of 2020, dt. 17-3-2020

The Direct Tax Vivad Se Vishwas Act, 2020

A

BILL

An Act to provide for resolution of disputed tax and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:

1. Short title

This Act may be called the Direct Tax Vivad se Vishwas Act, 2020.

2. Definitions

(1) In this Act, unless the context otherwise requires,-

'(a) "appellant" means-

(i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date;

(ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date;

(iii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 (43 of 1961) and the Dispute Resolution Panel has not issued any direction on or before the specified date;

(iv) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;

(v) a person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date;";

(b) "appellate forum" means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);

(c) "declarant" means a person who files declaration under section 4;

(d) "declaration" means the declaration filed under section 4;

(e) "designated authority" means an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of this Act;

(f) "disputed fee" means the fee determined under the provisions of the Income-tax Act, 1961 (43 of 1961) in respect of which appeal has been filed by the appellant;

(g) "disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

(h) "disputed interest" means the interest determined in any case under the provisions of the Income-tax Act, 1961 (43 of 1961), where-

(i) such interest is not charged or chargeable on disputed tax;

(ii) an appeal has been filed by the appellant in respect of such interest;

(i) "disputed penalty" means the penalty determined in any case under the provisions of the Income-tax Act, 1961 (43 of 1961), where-

(i) such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;

(ii) an appeal has been filed by the appellant in respect of such penalty;

(j) "disputed tax", in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961 (43 of 1961), as computed hereunder:-

(A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;

(B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;

(C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;

(D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;

(E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;

(F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

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

(l) "last date" means such date as may be notified by the Central Government in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "specified date" means the 31st day of January, 2020;

(o) "tax arrear" means,-

(i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or

(ii) disputed interest; or

(iii) disputed penalty; or

(iv) disputed fee,

as determined under the provisions of the Income-tax Act;

(2) The words and expressions used herein and not defined but defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

3. Amount payable by declarant

Subject to the provisions of this Act, where a declarant files under the provisions of this Act on or before the last date, a declaration to the designated authority in accordance with the provisions of section 4 in respect of tax arrear, then, notwithstanding anything contained in the Income-tax Act or any other law for the time being in force, the amount payable by the declarant under this Act shall be as under, namely:-

Sl. No.	*Nature of tax arrear.*	*Amount payable under this Act on or before the 31st day of March, 2020.*	*Amount payable under this Act on or after the 1st day of April, 2020 but on or before the last date.*
(a)	where the tax arrear is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax.	amount of the disputed tax.	the aggregate of the amount of disputed tax and ten per cent of disputed tax: Provided that where the ten per cent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.
(b)	where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act.	The aggregate of the amount of disputed tax and twenty-five per cent of the disputed tax: Provided that where the twenty-five per cent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.	The aggregate of the amount of disputed tax and thirty-five per cent of disputed tax: Provided that where the thirty-five per cent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.

Sl. No.	*Nature of tax arrear.*	*Amount payable under this Act on or before the 31st day of March, 2020.*	*Amount payable under this Act on or after the 1st day of April, 2020 but on or before the last date.*
(c)	where the tax arrear relates to disputed interest or disputed penalty or disputed fee.	twenty-five per cent of disputed interest or disputed penalty or disputed fee.	thirty per cent of disputed interest or disputed penalty or disputed fee :

Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:

Provided also that in a case where an appeal is filed by the appellant on any issue before the Income Tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed.

4. Filing of declaration and particulars to be furnished

(1) The declaration referred to in section 3 shall be filed by the declarant before the designated authority in such form and verified in such manner as may be prescribed.

(2) Upon the filing the declaration, any appeal pending before the Income Tax Appellate Tribunal or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under sub-section (1) of section 5 is issued by the designated authority.

(3) Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of tax arrear, he shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.

(4) Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim, if any, in such proceedings or notice after issuance of certificate under sub-section (1) of section 5 and furnish proof of such withdrawal alongwith the intimation of payment to the designated authority under sub-section (2) of section 5.

(5) Without prejudice to the provisions of sub-sections (2), (3) and (4), the declarant shall furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.

(6) The declaration under sub-section (1) shall be presumed never to have been made if,-

(a) any material particular furnished in the declaration is found to be false at any stage;

(b) the declarant violates any of the conditions referred to in this Act;

(c) the declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),

and in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

(7) No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrear mentioned in the declaration in respect of which an order has been made under sub-section (1) of section 5 by the designated authority or the payment of sum determined under that section.

5. Time and manner of payment

(1) The designated authority shall, within a period of fifteen days from the date of receipt of the declaration, by order, determine the amount payable by the declarant in accordance with the provisions of this Act and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.

(2) The declarant shall pay the amount determined under sub-section (1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.

(3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

Explanation.—For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

6. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases

Subject to the provisions of section 5, the designated authority shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrear.

7. No refund of amount paid

Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances.

Explanation.—For the removal of doubts, it is hereby clarified that where the declarant had, before filing the declaration under sub-section (1) of section 4, paid any amount under 30 the Income-tax Act in respect of his tax arrear which exceeds the amount payable under section 3, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount under section 244A of the Income-tax Act.

8. No benefit, concession or immunity to declarant.

Save as otherwise expressly provided in sub-section (3) of section 5 or section 6, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

9. Act not to apply in certain cases

The provisions of this Act shall not apply-

(a) in respect of tax arrear,-

(i) relating to an assessment year in respect of which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds five crore rupees;

(ii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;

(iii) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;

(iv) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) on or before the filing of declaration:

Provided that-

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) to any person in respect of whom prosecution for any offence punishable. under the provisions of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Prevention of Corruption Act, 1988 (49 of 1988), the Prevention of Money Laundering Act, 2002 (15 of 2003), the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts;

(d) to any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence punishable under the provisions of the Indian Penal Code (45 of 1860) or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an Income-tax authority;

(e) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992) on or before the filing of declaration.

10. Power of Board to issue directions, etc.

(1) The Central Board of Direct Taxes may, from time to time, issue such directions or orders to the income-tax authorities, as it may deem fit:

Provided that no direction or order shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the said Board may, if it considers necessary or expedient so to do, for the purpose of this Act, including collection of revenue, issue from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in any work relating to this Act, including collection of revenue and issue such order, if the Board is of the opinion that it is necessary in the public interest so to do.

11. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act come into force.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

12. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form in which a declaration may be made, and the manner of its verification under section 4;

(b) the form and manner in which declarant shall furnish undertaking under sub-section (5) of section 4;

(c) the form in which certificate shall be granted under sub-section (1) of section 5;

(d) the form in which payment shall be intimated under sub-section (2) of section 5;

(e) determination of disputed tax including the manner of set-off in respect of brought forward to carry forward of tax credit under section 115JAA or section 115JD of the Income-tax Act or set-off in respect of brought forward or carry forward of loss or allowance of depreciation under the provisions of the Income-tax Act;

(f) the manner of calculating the amount payable under this Act;

(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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NOTIFICATION

F.No. Pr. CCIT/Lko/Judl./VSV/ Vol.2I/2019-20, dtd. 18-3-2020

Notification of 'designated authority' under 'the Direct Tax Vivad Se Vishwas Act, 2020

In exercise of the powers under sub-section (1) and (2) of section 120 of the Income Tax Act, 1961 conferred upon me by the Government of India, Central Board of Direct Taxes, New Delhi vide notification no. 51/2014 in F.No. 187/35/2014-ITA-l dated 22nd October, 2014 published in the Gazette of India, Extraordinary in Part-II Section-3, sub-section (ii) No. S.O. 2753(E), I, the Principal Chief Commissioner of Income Tax, (UP), East, Lucknow hereby notify that the following jurisdictional Principal Commissioner of Income Tax/ Commissioner of Income Tax as specified in column (2), having their headquarters at the place specified in the corresponding entries in column (4) shall be the 'designated authorities' under the Direct Tax Vivad Se Vishwas Act, 2020 (3 of 2020) (the Act) as defined in clause (e) of section 2 of the said Act, which provides to the 'declarant' a mechanism to resolve disputes under the Income Tax Act, 1961 in respect of the 'declarant' over whom their jurisdiction is exercised.

SCHEDULE

S.No.	*Designation of Income Tax Authority*	*CCIT Charge*	*Headquarters*
(1)	*(2)*	*(3)*	*(4)*
1	Pr. Commissioner of Income Tax -1, Lucknow	Lucknow	Lucknow
2	Pr. Commissioner of Income Tax,-2, Lucknow	Lucknow	Lucknow
3	Pr. Commissioner of Income Tax -Faizabad	Lucknow	Faizabad
4	Pr. Commissioner of Income Tax -Allahabad	Allahabad	Allahabad
5	Pr. Commissioner of Income Tax -Varanasi	Allahabad	Varanasi
6	Pr. Commissioner of Income Tax -Gorakhpur	Allahabad	Gorakhpur
7	Pr. Commissioner of Income Tax -Bareilly	Bareilly	Bareilly
8	Pr, Commissioner of Income Tax -Moradabad	Bareilly	Moradabad
9	Pr. Commissioner of Income Tax (Central), Lucknow	DGIT(Inv.), Lucknow	Lucknow
10	Commissioner of Income Tax -TDS, Lucknow	Lucknow	Lucknow

2. This order comes into force with effect from 18-03-2020.

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F.No. Pr.CCIT/(Hqrs.)(Coord.)/Delhi/ VSV/Designated Authority/2019-20/8641, dtd. 18-3-2020

Notification of 'designated authority' under the Direct Tax Vivad Se Vishwas Act, 2020

In exercise of the powers under sub-section (1) and (2) of section 120 of the Income-tax Act, 1961 conferred upon me by the Government of India, Central Board of Direct Taxes, New Delhi vide notification no. 51/2014 in F.No. 187/35/2014-lTA-ld dated 22nd October, 2014, published in the Gazette of India, Extraordinary in Part-ll Section 3, sub-section (ii) No S.0.2753 (E), I the Principal Chief Commissioner of Income-tax Delhi, hereby notify that the following jurisdictional Principal Commissioners of Income-tax/Commissioners of Income -tax as specified in column (2), having their headquarters at the place specified in the corresponding entries in column (4) shall be the 'designated authorities' under the Direct Tax Vivad Se Vishwas Act, 2020{3 of 2020)(the Act) as defined in clause (e) of section 2 of the said Act, which provides to the 'declarant' a mechanism to resolve disputes under the Income -tax Act 1961 in respect of the 'declarant' over whom their jurisdiction is exercised.

SCHEDULE

S. No.	*Designation of Income Tax Authority*	*CCIT Charge*	*Headquarters*
1	Pr. Commissioner of tnccme Tax - 1, Delhi	CCIT-1, Delhi	Delhi
2	Pr. Commissioner of Income Tax - 2, Delhi	CCIT-2, Delhi	Delhi
3	Pr. Commissioner of Income Tax - 3, Delhi	CCIT-3, Delhi	Delhi
4	Pr. Commissioner of Income Tax - 4, Delhi	CCIT-4, Delhi	Delhi
5	Pr. Commissioner of Income Tax - 5, Delhi	COT - 5, Delhi	Delhi
6	Pr. Commissioner of Income Tax - 6, Delhi	CCIT-6, Delhi	Delhi
7	Pr, Commissioner of Income Tax - 7, Delhi	CCIT-7, Delhi	Delhi
8	Pr. Commissioner of Income Tax - 8, Delhi	CCIT-8, Delhi	Delhi
9	Pr. Commissioner of Income Tax - 9, Delhi	CCIT-8, Delhi	Delhi
10	Pr. Commissioner of Income Tax -10, Delhi	CCIT-1, Delhi	Delhi
11	Pr. Commissioner of Income Tax - 12, Delhi •	CCIT-2, Delhi	Delhi
12	Pr. Commissioner of Income Tax - 15, Delhi	CCIT-3, Delhi	Delhi
13	Pr. Commissioner of Income Tax -16, Delhi	CCIT - 4, Delhi	Delhi
IA	Pr. Commissioner of Income Tax - 17, Delhi	CCIT-5, Delhi	Delhi
15	Pr. Commissioner of Income Tax -18, Delhi	CCIT-5, Delhi	Delhi
16	Pr. Commissioner of Income Tax - 20, Delhi	CCIT-6, Delhi	Delhi
17	Pr. Commissioner of Income Tax - 21, Delhi	CCIT-7, Delhi	Delhi
18	Pr. Commissioner of Income Tax - 23, Delhi	CCIT-8, Delhi	Delhi
19	Pr. Commissioner of Income Tax - 24, Delhi	CCIT-7, Delhi	Delhi
20	Commissioner of Income Tax - LTU, Delhi	CCIT-4, Delhi	Delhi
21	Commissioner of Income Tax(TDS) -1, Delhi	CCIT(TDS), Delhi	Delhi
22	Commissioner of Income Tax(TDS) - 2, Delhi	CCIT(TDS), Delhi	Delhi
23	Pr. Commissioner of Income Tax(Central) -1, Delhi	CCIT (CENTRAL) Delhi	Delhi
24	Pr. Commissioner of Income Tax(Central) - 2, Delhi	CCIT (CENTRAL) Delhi	*Delhi
25	Pr. Commissioner of Income Tax(Central) - 3, Delhi	CCIT (CENTRAL) Delhi	Delhi

2. This order comes into force with effect from 18-03-2020.

DIRECT TAX VIVAD SE VISHWAS RULES, 2020

RULE

Notification No. 18/2020, dtd. 18-3-2020
[F. No. IT(A)/1/2020-TPL]

The Direct Tax Vivad Se Vishwas Rules, 2020

S.O. 1129(E).—In exercise of the powers conferred by sub-section (2) of section 12 read with sub-sections (1) and (5) of section 4 and sub-sections (1) and (2) of section 5 of the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020), the Central Government hereby makes the following rules, namely:–

1. Short title and commencement

(1) These rules may be called the Direct Tax Vivad se Vishwas Rules, 2020.

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

2. Definitions

In these rules, unless the context otherwise requires, -

(a) "Act" means the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020);

(b) "dispute" means appeal, writ or special leave petition filed or appeal or special leave petition to be filed by the declarant or the income-tax authority before the Appellate Forum, or arbitration, conciliation or mediation initiated or given notice thereof, or objections filed or to be filed before the Dispute Resolution Panel under section 144C of the Income-tax Act, or application filed under section 264 of the Income-tax Act;

(c) "eligible search cases" means cases in which an assessment has been made under sub-section (3) of section 143 or section 144 or section 153A or section 153C of the Income-tax Act on the basis of search initiated under section 132 or section 132A of the Income-tax Act and the amount of disputed tax does not exceeds five crore rupees;

(d) "Form" means the Forms appended to these rules;

(e) "issues covered in favour of the declarant" means issues in respect of which -

(i) an appeal or writ or special leave petition is filed or appeal or special leave petition is to be filed by the income-tax authority before the appellate forum or

(ii) an appeal is filed or to be filed before the Commissioner (Appeals) or objections is filed or to be filed before the Dispute Resolution Panel by the declarant, on which he has already got a decision in his favour from Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), or

(iii) an appeal is filed or to be filed by the declarant before Income Tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court);

(f) "section" means section of the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020);

(g) the words and expressions used in these rules and not defined but defined in the Act or Income-tax Act, 1961 shall have the same meanings respectively as assigned to them in those Acts.

3. Form of declaration and undertaking

(1) The declaration under sub-section (1) of section 4 shall be made in Form-1 to the designated authority.

(2) The undertaking referred to in sub-section (5) of section 4 shall be furnished in Form-2 along with the declaration.

(3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.

(4) The designated authority on receipt of declaration shall issue a receipt electronically in acknowledgement thereof.

4. Form of certificate by designated authority

The designated authority shall grant a certificate electronically referred to in sub-section (1) of section 5 in Form-3.

5. Intimation of payment

The detail of payments made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, appli-

cation, writ petition, special leave petition, arbitration, conciliation, mediation or claim filed by the declarant to the designated authority in Form-4.

6. Manner of furnishing

The Form-1 and Form-2 referred to in rule 3 and Form-4 referred to in rule 5 shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature or, in other cases through electronic verification code.

Explanation.—For the purpose of this rule, "electronic verification code" shall have the same meaning as referred to in rule 12 of the Income-tax Rules, 1962.

7. Order by designated authority

The order by the designated authority under sub-section (2) of section 5, in respect of payment of amount payable by the declarant as per certificate granted under sub-section (1) of section 5, shall be in Form-5.

8. Laying down of procedure, formats and standards

The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for furnishing and verifying the declaration in Form-1 under sub-rule (1) of rule 3, furnishing and verifying the undertaking in Form-2 under sub-rule (2) of rule 3, granting of certificate in Form-3 under rule 4, intimation of payment and proof of withdrawal in Form-4 under rule 5 and issuance of order in Form-5under rule 7 and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the said declaration, undertaking, certificate, intimation and order.

9. Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced

(1) Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, the declarant shall have an option to –

(i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or

(ii) carry forward the reduced amount of loss or unabsorbed depreciation.

(2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years:

Provided that the written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation:

Provided further that in cases other than the eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant:

Provided also that in case of eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction and where the one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced exceeds the amount of loss to be carried forward before it's reduction, such excess shall be ignored:

Provided also that in case of eligible search cases in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which loss or unabsorbed depreciation is re-

duced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

10. Manner of computing disputed tax in cases where Minimum Alternate Tax (MAT) credit is reduced

(1) Where the dispute in relation to an assessment year relates to reduction in Minimum Alternate Tax (MAT) credit to be carried forward, the declarant shall have an option to

(i) include the amount by which MAT credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction, or

(ii) carry forward the reduced MAT credit.

(2) Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward reduced MAT credit in subsequent years:

Provided that in cases other than the eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant:

Provided further that in case of eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which MAT credit is reduced shall be considered for reduction and where the one and one-fourth times the amount by which MAT credit is reduced exceeds the amount of MAT credit to be carried forward before it's reduction, such excess shall be ignored:

Provided also that in case of eligible search cases in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

Explanation.—For the purpose of this rule MAT credit means tax credit as per the provisions of section 115JAA or 115JD of the Income-tax Act.

11. Manner of computing disputed tax in certain cases

(1) Where the dispute includes issues covered in favour of declarant, the disputed tax in respect of such issues shall be the amount, which bears to tax, including surcharge and cess, payable on all the issues in dispute, the same proportion as the disputed income in relation to issues covered in favour of declarant bear to the disputed income in relation to all the issues in dispute.

FORM-1

(See Rule 3)

Form for filing declaration

PART A – GENERAL INFORMATION

PAN/Aadhaar No.	Name of appellant	TAN	Mobile No.
Email Address			

INFORMATION RELATING TO ELIGIBILITY

		Yes	No
	Whether the applicant is appellant in terms of section 2 of the Direct Tax Vivad se Vishwas Act, 2020 (DTVSV) and is not ineligible to apply in terms of section 9 of DTVSV?		
Option exercised by Appellant			
Whether opting to pay tax on reduction of losses or depreciation or MAT credit			
If Yes go to relevant schedule under A; If No fill up schedule D			

PART B – INFORMATION RELATING TO DISPUTE

Nature of tax arrear	*Disputed tax/ Disputed Interest/ Disputed Penalty/ Disputed Fee*	*Details of pending* appeal / writ / SLP / DRP Objections / Revision application/Arbitration/ Conciliation/Mediation–*	*(Drop down to be provided in e-filing utility)*
		(1) Whether Appeal /objection/revision/Writ / LP/Arbitration/Conciliation/Mediation? (2) Appellate Forum – CIT(A) / DRP/CIT/PCIT/ITAT / HC / SC (3) Whether already filed? – Yes/No (4) If No, date on which time-limit for filing expires in case of assessee (5) If yes, filed by – (Tick the relevant option) – Assessee / Department / Both (6) Date on filing (7) Reference number (8) Whether DRP case? (9) If yes, whether directions passed by DRPon or before 31.1.2020? (10) If yes, whether order passed by AO? (If yes, not eligible) (11) Whether revision application case? (12) If yes, date of filing *Pending also include to be filed	Based on the combination of nature of disputed tax, appellate forum and appellant relevant schedule will be filled by the declarant
Details of order by which tax arrear determined (1) Assessment Year / Financial Year (2) Section under which order passed (there could be multiple sections for same assessment year) (3) Income-tax authority / Appellate Forum who passed the order (there could be multiple orders for same assessment year) (4) Date on which order passed (there could be multiple dates for same assessment year)	(Drop down to be provided in the e-utility)	If declaration is with respect to appeal, writ, SLP, arbitration, conciliation or mediation for disputed tax including disputed TDS/TCS appeal, is there pending appeal, writ or SLP for interest or penalty imposed in relation to such disputed tax - YES/ NO	If yes, give details of such appeal, writ or SLP.(details to be captured in e-filing utility)

(5) Whether search case with disputed tax less than Rs. 5 crores in the assessment year? (information flag relevant for rate at which amount payable is to be computed)			

PART C – INFORMATION RELATED TO TAX ARREARS

(i)	Tax arrears (as per schedule)	

PART D – INFORMATION RELATED TO AMOUNT PAYABLE

(ii)	Total amount payable under DTVSV if paid on or before 31-3-2020	Pick up from X from relevant schedule (in case of both assessee and deptt appeal, add them up)
(iii)	Total amount payable under DTVSV if paid after 31-03-2020	Pick up from Y from relevant schedule (in case of both assessee and deptt appeal, add them up)

PART E – INFORMATION RELATED TO PAYMENTS AGAINST TAX ARREAR

(i)	Whether the declarant has made any payment against tax arrears before filing of declaration?			Yes	No
(ii)	If yes, please fill following details				
S.No.	Date of payment	Amount	BSR Code		
1.					
(iii)	Total payments against tax arrears				
Part F	Net amount payable/refundable by the appellant: Part D (i) or D (ii), as the case may be, less Part E (iii)				

VERIFICATION

I.....(name in block letters) son/daughter of Shri..... solemnly declare that to the best of my knowledge and belief the information given in this declaration is correct and complete and is in accordance with the provisions of the Direct Tax Vivad se Vishwas Act, 2020.

I further declare that I am making this declaration in my capacity as (drop down to be provided).....and that I am competent to make this declaration and verify it. I am holding permanent account number/Aadhaar No. .....(if allotted)

Place.....

Date..... Name and Signature of the declarant

A Schedules applicable where declaration relates to disputed tax (Applicable in case of PAN)

Combination: Disputed tax + CIT(A) + Assessee

Schedule I. To be filled in case appeal of assesseeis pending before CIT(A) as on 31-01-2020 or the time for filing appeal by the assessee before CIT(A) has not expired as on 31-01-2020

A	Total income as per order against which appeal filed OR to be filed	A	
B	Disputed income out of A		
	(i) relating to issues, which have been decided in favour of assessee in his case for any assessment year by ITAT (and such order has not been subsequently reversed by the High Court) or High Court (and such order has not been subsequently reversed by the Supreme Court)	B(i)	
	(ii) relating to issues other than B(i)	B(ii)	
C	Disputed tax in relation to disputed income at B(i)	C	
D	Disputed tax in relation to disputed income at B(ii)	D	

E	Tax effect of enhancement, if any, by CIT(A)	E	
F	Total disputed tax (C+D+E)	F	
G	Interest charged on disputed tax	G	
H	Penalty leviedon disputed tax	H	
I	Tax arrears (F+G+H)	I	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*C + D + E If search case 0.625*C +1.25*D + 1.25*E	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*C + 1.1*D + 1.1*E If search case 0.675*C +1.35*D + 1.35*E	Y	

Combination: Disputed tax + DRP draft order + Assessee

Schedule II. To be filled in case assessee has filed objections with DRP against draft assessment order and DRP has not issued any directions as on 31-01-2020 or the time-limit to file objections against draft order passed by AO has not expired as on 31-01-2020

A	Total income as per draft order against which objections filed OR to be filed	A	
B	Disputed income out of A -		
	(i) relating to issues, which have been decided in favour of assessee in his case for any assessment year by ITAT (and such order has not been subsequently reversed by the High Court) or High Court (and such order has not been subsequently reversed by the Supreme Court)	B(i)	
	(ii) relating to issues other than B(i)	B(ii)	
C	Disputed tax in relation to disputed income at B(i)	C	
D	Disputed tax in relation to disputed income at B(ii)	D	
E	Total disputed tax (C+D)	E	
F	Interest charged on disputed tax	F	
G	Penalty levied on disputed tax	G	
H	Tax arrears (E+F+G)	H	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*C + D If search case 0.625*C +1.25*D	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*C + 1.1*D If search case 0.675*C +1.35*D	Y	

Combination: Disputed tax + DRP direction + Assessee

Schedule III. To be filled in case DRP has issued directions u/s 144C of the Act in response to objections filed by the assessee and Assessing Officer has not passed the order as per such directions issued by DRP as on 31.01.2020

A	Total income as per directions of DRP	A	
B	Disputed income out of A		
	(i) relating to issues, which have been decided in favour of assessee in his case for any assessment year by ITAT (and such order has not been subsequently reversed by the High Court) or High Court (and such order has not been subsequently reversed by the Supreme Court)	B(i)	
	(ii) relating to issues other than B(i)	B(ii)	
C	Disputed tax in relation to disputed income at B(i)	C	
D	Disputed tax in relation to disputed income at B(ii)	D	
E	Total disputed tax (C+D)	E	
F	Interest charged on disputed tax	F	

G	Penalty levied on disputed tax	G	
H	Tax arrears (E+F+G)	H	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*C + D If search case 0.625*C +1.25*D	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*C + 1.1*D If search case 0.675*C +1.35*D	Y	

Combination: Disputed tax + ITAT + Assessee

Schedule IV. To be filled in case appeal of assessee is pending before ITAT as on 31-01-2020 or the time for filing appeal by the assessee before ITAT has not expired as on 31-01-2020

A	Total income as per order against which appeal filed OR to be filed	A	
B	Disputed income out of A		
	(i) relating to issues, which have been decided in favour of assessee in his case for any assessment year by High Court (and such order has not been subsequently reversed by the Supreme Court)	B(i)	
	(ii) relating to issues other than B(i)	B(ii)	
C	Disputed tax in relation to disputed income at B(i)	C	
D	Disputed tax in relation to disputed income at B(ii)	D	
E	Total disputed tax (C+D)	E	
F	Interest charged on disputed tax	F	
G	Penalty leviedon disputed tax	G	
H	Tax arrears (E+F+G)	H	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*C + D If search case 0.625*C +1.25*D	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*C + 1.1*D If search case 0.675*C +1.35*D	Y	

Combination: Disputed tax + ITAT + Department

Schedule V. To be filled in case appeal of Department is pending before ITAT as on 31-01-2020 or the time to file appeal by the department in ITAT has not expired on 31-01-2020.

A	Total income as per order against which appeal filed OR to be filed	A	
B	Disputed income out of A	B	
C	Disputed tax in relation to disputed income at B	C	
D	Interest charged on disputed tax	D	
E	Penalty levied on disputed tax	E	
F	Tax arrears (C+D+E)	F	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*C If search case 0.625*C	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*C If search case 0.675*C	Y	

Combination: Disputed tax + HC + Assessee

Schedule VI. To be filled in case appeal or writ of assessee is pending before High Court as on 31-01-2020 or the time for filing appeal by the assessee before High Court has not expired as on 31-01-2020

A	Total income as per order against which appeal / writ filed OR appeal to be filed	A	
B	Disputed income out of A	B	

C	Disputed tax in relation to disputed income at B	C	
D	Interest charged on disputed tax	D	
E	Penalty levied on disputed tax	E	
F	Tax arrears (C+D+E)	F	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case C If search case 1.25*C	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*C If search case 1.35*C	Y	

Combination: Disputed tax + HC + Department

Schedule VII. To be filled in case appeal or writ of Department is pending before High Court as on 31-01-2020 or the time to file appeal by the department in HC has not expired on 31-01-2020.

A	Total income as per order against which appeal/ writ filed OR appeal to be filed	A	
B	Disputed income out of A	B	
C	Disputed tax in relation to disputed income at B	C	
D	Interest charged on disputed tax	D	
E	Penalty levied on disputed tax	E	
F	Tax arrears (C+D+E)	F	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*C If search case 0.625*C	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*C If search case 0.675*C	Y	

Combination: Disputed tax + SC + Assessee

Schedule VIII. To be filled in case appeal or writ or SLP of assessee is pending before Supreme Court as on 31-01-2020 or the time for filing appeal or SLP by the assessee before Supreme Court has not expired as on 31-01-2020

A	Total income as per order against which appeal / writ / SLP filed OR appeal / SLP to be filed	A	
B	Disputed income out of A	B	
C	Disputed tax in relation to disputed income at B	C	
D	Interest charged on disputed tax	D	
E	Penalty levied on disputed tax	E	
F	Tax arrears (C+D+E)	F	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case C If search case 1.25*C	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*C If search case 1.35*C	Y	

Combination: Disputed tax + SC + Department

Schedule IX. To be filled in case appeal or writ or SLP of Department is pending before Supreme Court as on 31-01-2020 or the time to file appeal or SLP by the department in SC has not expired on 31-01-2020.

A	Total income as per order against which appeal / writ / SLP filed OR appeal /SLP to be filed	A	
B	Disputed income out of A	B	
C	Disputed tax in relation to disputed income at B	C	
D	Interest charged on disputed tax	D	
E	Penalty levied on disputed tax	E	

F	Tax arrears (C+D+E)	F	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*C If search case 0.625*C	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*C If search case 0.675*C	Y	

Combination : Disputed tax + 264 + Assessee

Schedule X. To be filled in caserevision application of assessee u/s 264 is pending before PCIT/CIT as on 31.01.2020

A	Total income as per order against which revision application filed	A	
B	Disputed income out of A	B	
C	Disputed tax in relation to disputed income at B	C	
D	Interest charged on disputed tax	D	
E	Penalty levied on disputed tax	E	
F	Tax arrears (C+D+E)	F	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case C If search case 1.25*C	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*C If search case 1.35*C	Y	

Combination: Disputed tax + Arbitration/Conciliation/Mediation + Assessee

Schedule XI. To be filled in case arbitration or conciliation or mediation of assessee is pending as on 31-01-2020

A	Total income as per order against which arbitration / conciliation / mediation has been filed	A	
B	Disputed income out of A	B	
C	Disputed tax in relation to disputed income at B	C	
D	Interest charged on disputed tax	D	
E	Penalty levied on disputed tax	E	
F	Tax arrears (C+D+E)	F	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case C If search case 1.25*C	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*C If search case 1.35*C	Y	

B. Schedules applicable where declaration relates to disputed TDS/TCS (Applicable for TAN):

Combination: Disputed TDS / TCS + CIT(A) + Deductor/Collector

Schedule I. To be filled in case appeal of assessee is pending before CIT(A) as on 31-01-2020 or the time for filing appeal by the assessee before CIT(A) has not expired as on 31-01-2020

	Appeal reference number		
A	Amount of TDS / TCS disputed in appeal OR in appeal to be filed	A	A(i)+A(ii)
	(i) relating to issues, which have been decided in favour of assessee in his case for any financial year by ITAT (and such order has not been subsequently reversed by the High Court) or High Court (and such order has not been subsequently reversed by the Supreme Court)	A(i)	
	(ii) relating to issues other than A(i)	A(ii)	
B	Tax effect of enhancement, if any, by CIT(A)	B	
C	Interest charged on disputed TDS / TCS	C	

D	Penalty levied on disputed TDS / TCS	D	
E	TDS /TCS arrears (A+B+C+D)	E	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*A(i) + A(ii) + B If search case 0.625*A(i) +1.25*A(ii) + 1.25*B	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*A(i) + 1.1*A(ii) + 1.1*B If search case 0.675*A(i) +1.35*A(ii) + 1.35*B	Y	

Combination : Disputed TDS/TCS + ITAT + Deductor/Collector

Schedule II. To be filled in case appeal of assessee is pending before ITAT as on 31.01.2020 or the time for filing appeal by the assessee before ITAT has not expired as on 31-01-2020

A	Amount of TDS / TCS disputed in appeal OR in appeal to be filed	A	A(i)+A(ii)
	(i) relating to issues, which have been decided in favour of assessee in his case for any assessment financial year by High Court (and such order has not been subsequently reversed by the Supreme Court)	A(i)	1
	(ii) relating to issues other than A(i)	A(ii)	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*A(i) + A(ii) If search case 0.625*A(i) +1.25*A(ii)	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*A(i) + 1.1*A(ii) If search case 0.675*A(i) +1.35*A(ii)	Y	

Combination : Disputed TDS/TCS + ITAT + Department

Schedule III. To be filled in case appeal of Department is pending before ITAT as on 31-01-2020 or the time to file appeal by the department in ITAT has not expired on 31-01-2020.

	Amount of TDS / TCS disputed in appeal OR in appeal to be filed		
A	TDS/TCS default for which appeal is filed OR to be filed	A	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*A If search case 0.625*A	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*A If search case 0.675*A	Y	

Combination : Disputed TDS/TCS + HC + Deductor/Collector

Schedule IV. To be filled in case appeal or writ of assessee is pending before High Courtas on 31-01-2020 or the time for filing a by the assessee before High Court has not expired as on 31-01-2020

	Amount of TDS / TCS disputed in appeal OR in appeal to be filed		
A	TDS/TCS default for which writ or appeal is filed OR appeal to be filed	A	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case A If search case 1.25*A	X	

Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*A f search case 1.35*A	Y	

Combination : Disputed TDS/TCS + HC + Department

Schedule V. To be filled in case appeal or writ of Department is pending before High Court as on 31-01-2020 or the time to file appeal by the department in HC has not expired on 31-01-2020.

Amount of TDS / TCS disputed in appeal OR in appeal to be filed			
A	TDS/TCS default for which writ or appeal is filed OR appeal to be filed	A	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*A If search case 0.625*A	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*A If search case 0.675*A	Y	

Combination : Disputed TDS/TCS + SC + Deductor/Collector

Schedule VI. To be filled in case appeal or writ or SLP of assessee is pending before Supreme Court as on 31-01-2020 or the time for filing appeal or SLP by the assessee before Supreme Court has not expired as on 31-01-2020

Amount of TDS / TCS disputed in appeal OR in appeal to be filed			
A	TDS/TCS default for which writ or appeal or SLP is filed OR appeal / SLP to be filed	A	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case A If search case 1.25*A	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*A If search case 1.35*A	Y	

Combination : Disputed TDS/TCS + SC + Department

Schedule VII. To be filled in case appeal or writ or SLP of Department is pending before Supreme Court as on 31-01-2020 or the time to file appeal or SLP by the department in SC has not expired on 31-01-2020.

Amount of TDS / TCS disputed in appeal or in appeal to be filed			
A	TDS/TCS default for which writ or appeal or SLP is filed or appeal / SLP to be filed	A	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case 0.5*A If search case 0.625*A	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 0.55*A If search case 0.675*A	Y	

Combination: Disputed TDS/TCS + 264 + Deductor/Collector

Schedule VIII. To be filled in case revision application of assessee u/s 264 is pending before PCIT/CIT as on 31-01-2020

Amount of TDS / TCS disputed in appeal OR in appeal to be filed			
A	TDS/TCS default for which revision application filed	A	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case A If search case 1.25*A	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*A If search case 1.35*A	Y	

Combination: Disputed TDS/TCS + Arbitration/Conciliation/Mediation + Assessee

Schedule IX.To be filled in case arbitration or conciliation or mediation of assessee is pending as on 31-01-2020

Amount of TDS / TCS disputed in appeal OR in appeal to be filed			
A	TDS/TCS default for which arbitration or conciliation or mediation has been filed	A	
B	Interest charged on disputed TDS / TCS	B	
C	Penalty levied on disputed TDS / TCS	C	
D	TDS / TCS arrears (A+B+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case A If search case 1.25*A	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*A If search case 1.35*A	Y	

C. Schedule applicable where declaration relates to disputed penalty, interest or fee only (Applicable for PAN & TAN)

Combination: Disputed penalty/interest/fee + CIT(A) + Assessee

Schedule I. To be filled in case appeal of assessee is pending before CIT(A) as on 31-01-2020 or the time for filing appeal before CIT(A) has not expired as on 31-01-2020

A	Total amount of penalty / interest / fees per order against which appeal filed OR to be filed	A	
B	Disputed amount of penalty / interest / fee out of A	B	B(i)+B (ii)
	(i) relating to issues, which have been decided in favour of assessee in his case for any assessment year by ITAT (and such order has not been subsequently reversed by the High Court) or High Court (and such order has not been subsequently reversed by the Supreme Court)	B(i)	
	(ii) relating to issues other than B(i)	B(ii)	
C	Penalty or interest or fee proposed to be enhanced by CIT(A)	C	
D	Tax arrears (B(i)+B(ii)+C)	D	
X	Amount payable under DTVSV on or before 31.03.2020 = 0.125*B(i) + 0.25B(ii) + 0.25*C	X	
Y	Amount payable under DTVSV after 31.03.2020 = 0.15*B(i) + 0.3*B(ii) + 0.3*C	Y	

Combination: Disputed penalty/interest/fee + ITAT + Assessee

Schedule II. To be filled in case appeal of assessee is pending before ITAT as on 31-01-2020 or the time for filing appeal by the assessee before ITAT has not expired as on 31-01-2020

A	Total amount of penalty / interest / fee as per order against which appeal has been filed OR to be filed	A	
B	Disputed penalty / interest / fee due to appeal by assessee -	B	B(i)+B(ii)
	(i) relating to issues, which have been decided in favour of assessee in his case for any assessment year by High Court (and such order has not been subsequently reversed by the Supreme Court)	B(i)	
	(ii) relating to issues other than B(i)	B(ii)	
C	Tax arrears (B(i) + B(ii))	C	
X	Amount payable under DTVSV on or before 31.03.2020 = 0.125*B(i) + 0.25*B(ii)	X	
Y	Amount payable under DTVSV after 31.03.2020 = 0.15*B(i) + 0.3*B(ii)	Y	

Combination: Disputed penalty/interest/fee + ITAT + Department

Schedule III. To be filled in case appeal of Department is pending before ITAT as on 31-01-2020 or the time for filing appeal by the department before ITAT has not expired as on 31-01-2020

A	Total amount of penalty/interest/fee as per order against which appeal filed OR to be filed	A	
B	Disputed penalty / interest / fee relating to issues on which appeal has been filed or to be filed	B	
C	Tax arrears (B)	C	
X	Amount payable under DTVSV on or before 31.03.2020 = 0.125*B	X	
Y	Amount payable under DTVSV after 31.03.2020 = 0.15*B	Y	

Combination: Disputed penalty/interest/fee + HC + Assessee

Schedule IV. To be filled in case appeal or writ of assessee is pending before High Court as on 31-01-2020 or time for filing appeal by the assessee before High Court has not expired as on 31-01-2020

A	Total amount of penalty / interest / fee as per order against which appeal or writ has been filed OR appeal to be filed	A	
B	Disputed penalty / interest / fee due to appeal by assessee	B	
C	Tax arrears (B)	C	
X	Amount payable under DTVSV on or before 31.03.2020 = 0.25*B	X	
Y	Amount payable under DTVSV after 31.03.2020 = 0.3*B	Y	

Combination: Disputed penalty/interest/fee + HC + Department

Schedule V. To be filled in case appeal or writ of Department is pending before High Court as on 31-01-2020 or the time for filing appeal by the department before High Court has not expired as on 31-01-2020

A	Total amount of penalty / interest / fee as per order against which appeal or writ has been filed or appeal to be filed	A	
B	Disputed penalty / interest / fee on issues raised in appeal	B	
C	Tax arrears (B)	C	
X	Amount payable under DTVSV on or before 31.03.2020 = 0.125*B	X	
Y	Amount payable under DTVSV after 31.03.2020 = 0.15*B	Y	

Combination: Disputed penalty/interest/fee + SC + Assessee

Schedule VI. To be filled in case appeal or writ or SLP of assessee is pending before Supreme Court as on 31-01-2020 or the time for filing appeal or SLP by the assessee before Supreme Court has not expired as on 31-01-2020

A	Total amount of penalty / interest / fee as per order against which appeal or writ or SLP has been filed OR appeal / SLP to be filed	A	
B	Disputed penalty / interest / fee due to appeal by assessee	B	
C	Tax arrears (B)	C	
X	Amount payable under DTVSV on or before 31.03.2020 = 0.25*B	X	
Y	Amount payable under DTVSV after 31.03.2020 = 0.3*B	Y	

Combination: Disputed penalty/interest/fee + SC + Department

Schedule VII. To be filled in case appeal or writ or SLP of Department is pending before Supreme Court as on 31-01-2020 or time for filing appeal or SLP by the department before Supreme Court has not expired as on 31-01-2020

A	Total amount of penalty / interest / fee as per order against which appeal or writ or SLP has been filed OR appeal / SLP to be filed	A	
B	Disputed penalty / interest / fee on issues raised in appeal	B	
C	Tax arrears (B)	C	
X	Amount payable under DTVSV on or before 31.03.2020 = 0.125*B	X	
Y	Amount payable under DTVSV after 31.03.2020 = 0.15*B	Y	

Combination: Disputed penalty/interest/fee + 264 + Assessee

Schedule VIII. To be filled in case revision application of assessee u/s 264 is pending before PCIT/CIT as on 31-01-2020

Amount of TDS / TCS disputed in appeal or in appeal to be filed			
A	Total amount of penalty / interest / fee as per order against which revision application filed	A	
B	Disputed penalty / interest / fee on issues raised in revision application	B	
D	Tax arrears (B)	D	
X	Amount payable under DTVSV on or before 31.03.2020 (0.25*B)	X	
Y	Amount payable under DTVSV after 31.03.2020 (0.3*B)	Y	

Combination: Disputed penalty/interest/fee+ Arbitration/Conciliation/Mediation + Assessee

Schedule IX.To be filled in case arbitration or conciliation or mediation of assessee is pending as on 31-01-2020

Amount of TDS / TCS disputed in appeal or in appeal to be filed			
A	Total amount of penalty / interest / fee as per order against which arbitration or conciliation or mediation has been filed	A	
B	Disputed penalty / interest / fee on issues raised in arbitration (B)	B	
X	Amount payable under DTVSV on or before 31.03.2020 If non-search case A If search case 1.25*A	X	
Y	Amount payable under DTVSV after 31.03.2020 If non-search case 1.1*A If search case 1.35*A	Y	

Schedule D : In case the appellant opts not to pay tax on additions having effect of reducing loss/depreciation or MAT credit carried forward then the relevant column of the following schedule is to be filled up.

Unabsorbed loss/depreciation/MAT credit	Unabsorbed loss	Unabsorbed depreciation	MAT Credit
Brought forward as claimed by assessee (A)			
Carried forward as claimed by assessee (B)			

Disputed income* (C)			
Brought forward as per order of income-tax authorities (D)			
Carried forward as per order of income-tax authorities (E)			

*see instructions

Form-2

[See rule 3(2)]

UNDERTAKING UNDER SUB-SECTION (5) OF SECTION 4 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

To,
The Designated Authority
Sir/Madam,
.....
.....

*I,.....(name in block letters) son/daughter of Shri ....having PAN/Aadhaar number/TAN.....having decided to avail the benefit of the Direct Tax Vivad se Vishwas Act, 2020 do hereby voluntarily waive all my rights, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to me under any law for the time being in force, in equity, by statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise.

*I, ...(name in block letters) son/daughter of Shri..... .....designation.....on behalf of ..... (name of declarant) having PAN/Aadhaar number/TAN .....being duly authorised and competent in this regard, the..... (name of declarant) having decided to avail the benefit of the Direct Tax Vivad se Vishwas Act, 2020 do hereby voluntarily waive all its rights, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to me under any law for the time being in force, in equity, by statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise.

The above undertaking is irrevocable.

I also confirm that I am aware of all the consequences of this undertaking.

Place: ....
Date: ..... Signature/Verification

Note:
*Strike off whichever is not applicable.

The undertaking is to be furnished in respect of tax arrear along with the declaration in Form-1

Form-3

[See rule 4]

FORM FOR CERTIFICATE UNDER SUB-SECTION (1) OF SECTION 5 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

Whereas Mr./Mrs./M/s.....(hereinafter referred to as the declarant) having PAN/Aadhaar number/TAN.....has filed a declaration under section 4 of the Act;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 5 of the Act and after consideration of relevant material, the following amounts are hereby determined to be payable by the declarant towards full and final settlement of the tax arrear covered by the said declaration under the Act:

Sl. No.	*Assessment year/Financial year*	*Details of dispute settled*	*Nature of tax arrear (disputed tax/ disputed penalty/ disputed interest/ disputed fee)*	*Tax arrear (Rs.)*	*Amount payable under section 3 (Rs.)*	*Amount already paid against tax arrear*	*Balance amount payable/ refundable after adjusting amount already paid*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8) = (6) – (7)*

The declarant is hereby directed to make the payment of sum payable, if any, as per column (7) above within thirty days from the date of receipt of this certificate.

In case of non-payment of amount payable within the said period, the declaration under Form-1 shall be treated as void and shall be deemed never to have been made.

Certificate No. .....

Place..... .....

Date..... (Designated Authority)

Form-4

[See rule 5]

INTIMATION OF PAYMENT UNDER SUB-SECTION (2) OF SECTION 5 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

To,

The Designated Authority

.....

.....

Sir/Madam,

1. Pursuant to the certificate received from designated authority in Form-3vide certificate No. ..... dated ..... in respect of ....(Name of the declarant)..... PAN/Aadhaar number/TAN ..... for A.Y./ F.Y....., the detail of payments made is as under:

Sl.	*BSR Code of Bank*	*Date of Deposit (DD/MM/YYYY)*	*Serial Number of Challan*	*Amount (Rs)*
(1)	*(2)*	*(3)*	*(4)*	*(5)*

2. The appeal, objections, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim has been withdrawn (please upload proof of withdrawal with number and forum thereof).

Place.....

Date.....

Form-5

[See rule 7]

ORDER FOR FULL AND FINAL SETTLEMENT OF TAX ARREAR UNDER SECTION 5 (2) READ WITH SECTION 6OF THE DIRECT TAXVIVAD SE VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

Whereas.....(Name and PAN/Aadhaar number/TAN of the declarant)(hereinafter referred to as declarant) had made a declaration under section 4 of the Act;

And whereas the designated authority by Certificate No. .....dated ..... determined the amount of ..... rupees payable by / refundable to the declarant in accordance with the provisions of the Act and granted a certificate setting forth therein the particulars of the tax arrear and the amount payable / refundable after such determination towards full and final settlement of tax arrear;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 5 read with section 6 of the Act, it is hereby certified that-

(a) a sum of Rs. ..... has been paid by the declarant towards full and final settlement of tax arrear determined in the order No. .....dated; and

(b) the immunity is granted subject to the provisions contained in the Act, from instituting any proceeding for prosecution for any offence under the Income-tax Act or from the imposition of penalty under the said enactment[as per section 6 of the Act], in respect of the tax arrear as detailed in the table below:

Assessment year / Financial year	Details of dispute settle	Nature of tax arrear (disputed tax / disputed penalty / disputed interest / disputed fee)	Amount of tax arrear

It is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

Place..... .....

Date..... (Designated Authority)

To

(1) The declarant

(2) Assessing Officer

(3) Concerned Principal Commissioner of Income-tax

(4) Concerned Appellate Forum

Note : Strike-off whatever is not applicable.

INCOME TAX

NOTIFICATION

Notification No. 17/2020, dtd. 13-3-2020
F. No. 173/10/2014-ITA-I]

Section 115AD—Foreign Institutional Investor—Notified

S.O. 1057(E).—In exercise of the powers conferred by clause (a) of the Explanation to section 115 AD of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies that a non-resident being an Eligible Foreign Investor which operates in accordance with the Securities and Exchange Board of India, circular IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017, shall be deemed as Foreign Institutional Investor (FII) for the purposes of transactions in securities made on a recognised stock exchange located in any International Financial Services Centre (IFSC), where the consideration for such transaction is paid or payable in foreign currency.

Explanation. - for the purpose of this notification, -

(a) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(b) "recognised stock exchange" shall have the same meaning as assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43 of the Income-tax Act, 1961;

(c) the expression "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

SUBSCRIBERS' QUERY

INCOME TAX

Tax Audit Under Section 44AB—*Presumptive Taxation under section 44AD*—*Applicability of provisions***

Query

I have a query regarding tax audit. In one of my prospective client's case, she is engaged in the business of petroleum station and another into selling and repairing of machine parts both. Both businesses are under separate name and style. The books of account of both the businesses are written separately. Both businesses are under the same PAN and GSTIN. The turnover of petroleum pump is around Rs. 30 Crores, at the same time turnover of machining parts and repairing business is around Rs. 40 Lacs.

Now, my question is whether it is valid that person gets his accounts audited in case of petrol pump and, in case of machine repairing business opts under section 44AD and shows minimum 8% profit without getting her books of account audited. I understand that tax audit is PAN based audit and requires books of account to get audited if turnovers from all the businesses exceeds Rs. 2 Crores.

Also, please let me know, if she is having multiple businesses and maintains separate accounts for all such businesses and turnover does not exceed in aggregate Rs. 2 crores, whether she can opt for audit under section 44AB for one of businesses and section 44AD for another one.

Reply

Section 44AB provides that every person, —

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year; or

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year, or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE, or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or,

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or,

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnished by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

So, under the law audit is to be got done of the person carrying on business. So, if under one PAN two businesses are being carried on, then the assessee can either go for deemed income scheme under section 44AD or can go for regular declaration of income, subject to audit of both the businesses provided turnover of both businesses exceed the limit specified above.

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Capital gains—*Long-term capital gains*—*Tax rate applicable*

Query

NRI sells its house property but he does not have Aadhar, nor PAN and now bank is demanding Form 15CA/CB. So, what is procedure to pay tax and what rate is applicable in case of long-term capital gain?

Reply

In terms of section 195(1) any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of the Act (not being income chargeable under the head "Salaries") shall deduct tax at source. Since the capital gain is arising from transfer of a capital asset situated in India, hence, it will be deemed to accrue or arise in India by virtue of section 9(1)(i) and will be taxed in the hands of non-resident. As a consequence liability for tax deduction will arise. Tax will have to be deducted at 20 per cent plus surcharge (If applicable) and health and education cess. As the entire sale consideration is not taxable and it is only the capital gain that is taxable, therefore, you are advised to file an application under section 195(2) before the assessing officer to determine the appropriate proportion of the sum chargeable to tax in India, and upon such determination, tax shall be deducted 195(1) only on that proportion of the sum which is so chargeable. If you do not invoke section 195(2), then tax will be deductible on the entire sale consideration.

NRI has to obtain PAN and tax deductor has to make necessary compliances.

Computation of accumulation under section 11(1)(a) of Income Tax Act 1961 in case of Grant-in-aid to schools and colleges

Query

Section 11(1)(a) of the Income Tax Act 1961 allows the trust registered under section 12A, to accumulate 15% of Income from property held under trust without any condition. Thus, 15% of income of trust is wholly exempt under section 11(1)(a) of the Act.

Now in case of a trust running grant-in-aid schools and colleges, the said schools and colleges get government grants for payment of salaries. The said salaries are directly credited by government in the bank account of respective employees. However, as per generally accepted accounting principles the said grant is recorded as income of the trust and salary is recorded as expense of the trust.

Now, while calculating 15% of income of the trust for the purpose of section 11(1)(a) whether income shall be considered inclusive of the salary grant income (credited in P&L account) or income shall be considered exclusive of salary grants?

Example: College is having total income of Rs. 10 Lakhs (inclusive of Salary grant of Rs. 5 Lakhs). Now, for calculation of accumulation under section 11(1)(a), 15% shall be considered of Rs. 10 lakhs (i.e., 1,50,000) or 15% shall be considered of Rs. 5 lakhs (i.e., 75,000)?

Reply

If salary grant is credited to Profit and Loss account, the same will be considered for calculating accumulation of 15 per cent under section 11(1)(a), irrespective of the fact that salaries are directly credited by the Government in employee's bank account, because while computing income of a charitable trust or institution one is concerned with accounting income and not taxable income.

In *Eighth ITO v. Trustees of Marathi Mission (1982) 1 ITD 539 (Bom-Trib),* the question was whether the sum received by the assessee-trust by way of grant-in-aid from the government and local authorities, could be treated as income of the trust. It was held that the grant-in-aid was to be treated as income in the hands of the assessee, because firstly, the provisions of section 12 read with section 2(24)(iia) create a fiction for a limited purpose of treating all voluntary contributions other than those received for specific purposes towards the corpus of the trust as income. Thus, the

Legislature not only provided for treating such contribution as income by fiction of law but also placed such contribution under the expression "income" as set out in section 2(24)(iia). Thus, such voluntary contributions for limited purpose of section 11 assume the character or attribute as income. The second reason is that the income for the purpose of section 11 has to be determined in accordance with the general commercial principles. On parity of reasoning, therefore, the receipts which form part of surplus available for application must also enter the computation on the credit side in order to determine the applicability of income for the purpose of section 11(2). It is difficult to divorce grant-in-aid from income particularly when the grant-in-aid is granted with a view to meeting the expenditure incurred by the institution.

It is, however, to be taken note of the fact that if educational institution is fulfilling conditions contained in section 10(23C)(iiiad), then exemption will be available of whole amount without necessity of application of income. As per section 10(23C)(iiiad) where the educational institution is existing solely for educational purposes and not for purposes of profit and is not financed by the Government, then exemption will be available if the aggregate annual receipts of such university or educational institution do not exceed ₹ one crore. The institutions covered by section 10(23C)(iiiad) are also not required to make investment as prescribed under section 11(5).

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ARTICLES

(2020) 172 TR(A)..... (Art.)

FINANCE BILL, 2020—DIVIDEND TAXATION

Dividend Taxation Post Amendments by the Finance Bill, 2020

— CA. Manoj Gupta —

Currently, in case of dividends from domestic company the incidence of tax is on the payer company and not on the recipient, except in certain case referred to in section 115BBDA. The present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed. The present system of taxation of dividend in the hands of company was re-introduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself. Returning back to classical system of taxation the Finance Bill, 2020 has proposed to tax dividend in the hands of recipients. In this what one can call a comprehensive analysis of taxation of dividends from domestic company in view of amendments proposed by the Finance Bill, 2020 the learned author explains the proposed amendments in all aspects.

1. Current legal position

(a) Dividend is chargeable to tax as income from other sources in view of its specific mention under section 56(2)(i). Section 56(2)(i) provides that dividends shall always be chargeable to tax as income from other sources. The section 56(2)(i) do not specify any particular type of dividend, i.e., whether dividend from Indian Company or foreign company or dividends from co-operative society or dividend from mutual funds or deemed dividends. Therefore, all types of dividends are chargeable to tax as income from other sources, if they are liable to be taxed as per the scheme of the Act.

However, dividend income from domestic company is not taxable from the assessment year 2004-05 in the hands of shareholders except in certain cases where it exceeds certain threshold and assessee is one specified under section 115BBDA.

(b) Currently dividends referred to in section 115-O is out of tax net provided the amount of dividend does not exceed ₹ 10 lakhs in case of specified resident assessees. Therefore, dividend in aggregate exceeding ₹ 10,00,000 received by any resident in India except the following is not exempt under section 10(34).

(i) domestic company;

(ii) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/(v)/(vi)/(via);

(iii) a trust or institution registered under section 12A or section 12AA.

Tax is levied under section 115BBDA if the income in aggregate exceeds ten lakh rupees, by way of dividends declared, distributed or paid by a domestic company or companies.

In case of all assessees specified above being domestic company ,etc, being resident, entire dividend from domestic company is exempt in their hands.

(c) Dividend referred to in section 115-O includes dividends referred to in section 2(22). Therefore, all dividends referred to in section 2(22) is exempt in hands of recipient however, dividend referred to in section 2(22)(a) to 2(22)(d) is taxed at a flat rate of 15 per cent subject to surcharge (12%) and cess (4%) in hands of company as dividend distribution tax. After grossing up effect this rate goes upto 20.55872% on the amount of dividend distributed. All other dividends from domestic company are similarly subjected to DDT at 20.55872% on the amount of dividend distributed.

However, dividend referred to in section 2(22)(e) is subject to DDT (without grossing up) in hands of domestic company at a higher rate of 30 per cent plus surcharge and cess. Effective rate comes to 34.944%. This dividend is exempt in hands of all assessees irrespective of the sum involved.

2. Change in tax policy

Currently, the incidence of tax is on the payer company and not on the recipient, except in certain case referred to in section 115BBDA where it should normally be. The dividend is income in the hands of the shareholders and not in the hands of the company. The incidence of the tax should therefore, be on the recipient. Moreover, the present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed. The provisions are hence, considered, iniquitous and regressive. The present system of taxation of dividend in the hands of company/ mutual

funds was re-introduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself.

In view of above, it is proposed by the Finance Bill, 2020 to carry out amendments so that dividend are taxable in the hands of shareholders at the applicable rate and the domestic company are not required to pay any DDT. The deduction for expense under section 57 of the Act shall be maximum 20 per cent of the dividend or income from units. Therefore, the Finance Bill, 2020 proposes to–

(i) amend section 115-O to provide that dividend declared, distributed or paid after 1st April, 2003, but on or before 31st March, 2020 shall be covered under the provision of this section.

(ii) amend clause (34) of section 10 to provide that the provision of this clause shall not apply to any income, by way of dividend, received on or after 1st April, 2020.

(ii) amend clause (23FC) of section 10 so that all dividends received or receivable by business trust from a special purpose vehicle is exempt income under this clause.

(iii) amend clause (23FD) of section 10 to exclude dividend income received by a unit holder from business trust from the exemption so that the dividend income is taxable in the hand of unit holder of the business trust.

(iv) amend sub-section (3) of section 115UA to delete reference to sub-clause (a) so that distributed income of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 shall be deemed to be income of the unit holder and shall be charged to tax as income of the previous year. Thus dividend income distributed by a special purpose vehicle to business trust would be taxed in the hands of unit holder.

(v) remove reference of section 115-O dividend income in various sections like section 57, section 115A, section 115AC, section 115ACA, section 115AD and section 115C.

(vi) insert new section 80M as it existed before its removal by the Finance Act, 2003 to remove the cascading affect, with a change that set off will be allowed only for dividend distributed by the company one month prior to the due date of filing of return, in place of due date of filing return earlier.

(vii) amend section 115BBDA which taxes dividend income in excess of ten lakh rupee in the hands of shareholder at ten per cent to only dividend declared, distributed or paid by a domestic company on or before the 31st day of March, 2020.

(viii) amend section 57 to provide that no deduction shall be allowed from dividend income, company, other than deduction on account of

interest expense and in any previous year such deduction shall not exceed twenty per cent. of the dividend income or income from units included in the total income for that year without deduction under section 57.

(ix) amend section 194 to include dividend for tax deduction. At the same time the rates of ten per cent. is proposed to be prescribed and threshold is proposed to be increased from ₹ 2,500 to ₹ 5,000 for dividend paid other than cash. Further, at present the mode of payment is given as "an account payee cheque or warrant". It is proposed to change this to any mode.

(x) amend section 194LBA to provide for tax deduction by business trust on dividend income paid to unit holder, at the rate of ten per cent. for resident. For non-resident, it would be 5 per cent for interest and ten per cent. for dividend.

(xi) amend section 195 to delete exemption provided to dividend referred to in section 115-O.

(xii) amend section 196A to revive its applicability on TDS on income in respect of units of a Mutual Fund. It is also proposed to substitute "of the Unit Trust of India" with "from the specified company defined in Explanation to clause (35) of section 10"and "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

(xiii) amend section 196C to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

(xiv) amend section 196D to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

Amendments at clause (i) to (viii) above will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. Amendments at clause (ix) to (xiv) will take effect from 1st April, 2020.

3. The proposal

The Finance Bill, 2020 proposes that from the assessment year 2021-22:

(i) No dividend distribution tax under section 115-O shall be levied if any amount of dividend is declared, distributed or paid by any domestic company on or after 1-4-2020.

(ii) Any amount of dividend referred to in section 2(22) and any other dividend from a domestic company shall be taxed in hands of recipient. No exemption under section 10(34) shall be allowed in respect of such dividend. Further, any such dividend shall not be taxed at concessional rate of 10 per cent, plus surcharge and cess where the

amount of dividend exceeds ₹ 10,00,000 and dividend is paid to a resident assesses being other than

(a) domestic company;

(b) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/(v)/(vi)/(via);

(c) a trust or institution registered under section 12A or section 12AA.

(iii) Any dividend referred to in section 2(22)(e) will again be taxed in hands of shareholder and will no longer be liable to dividend distribution tax at rate of 30 per cent plus surcharge and cess in hands of distributing company.

4. Position as to taxability of dividends summarised

Particulars	*Taxability*		*Position of expenses*	
	Upto 31-3-2020	*From 1-4-2020*	*Upto 31-3-2020*	*From 1-4-2020*
1. Dividends from domestic company other than dividend referred to in section 2(22)(e) in an amount not exceeding ₹ 10,00,000 in aggregate received by all resident assessees other than : (a) domestic company; (b) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/ (v)/(vi)/(via); (c) a trust or institution registered under section 12A or section 12AA.	Exempt in hands of recipient. However, the company will be liable to pay dividend distribution tax at 20.55872% of amount distributed	Taxable at rate of tax applicable to assessee. In case of inter-corporate dividends deduction under section 80M allowable to domestic company.	No expenses allowable in case of dividends referred to in section 115-O [Being dividend referred to in section 2(22)]. In other cases reasonable expenses towards collection charges allowable.	Only interest expenses allowable that too not exceeding 20% dividend income.
2. Dividends from domestic company being dividend referred to in section 2(22)(e) in an amount whether exceeding or not exceeding ₹ 10,00,000 in aggregate received by all assessees including non-residents.	Exempt in hands of recipient. However, the company is liable to pay dividend distribution tax at 34.944% of amount distributed. [without grossing up]	– do –	-do-	-do-

Particulars	*Taxability*		*Position of expenses*	
	Upto 31-3-2020	*From 1-4-2020*	*Upto 31-3-2020*	*From 1-4-2020*
3. Dividends from domestic company other than dividend referred to in section 2(22)(e) exceeding ₹ 10,00,000 in aggregate received by all resident assessees other than : (a) domestic company; (b) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/ (v)/(vi)/(via); (c) a trust or institution registered under section 12A or section 12AA.	Amount upto ₹ 10,00,000 : Exempt under section 10(34). Amount in excess of ₹ 10,00,000 taxable at 10% plus surcharge cess (as applicable) and cess (at 4%)	– do –	– do –	– do –
4. Dividends including one referred to section 2(22)(e) from domestic company whether or not exceeding Rs. 10 lakhs in aggregate received by: (a) domestic company; (b) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/ (v)/(vi)/(via); (c) a trust or institution registered under section 12A or section 12AA.	Exempt in hands of recipient. However, the company will be liable to pay dividend distribution tax at 20.55872% of amount distributed and in case of dividends referred to in section 2(22)(e) at 34.944% of amount distributed.	Taxable at rate of tax applicable to assessee. In case of inter-corporate dividends deduction under section 80M allowable to domestic company.	No expenses allowable in case of dividends referred to in section 115-O [Being dividend referred to in section 2(22)]. In other cases reasonable expenses towards collection charges allowable.	Only interest expenses allowable that too not exceeding 20% dividend income.

5. Expenses against dividend income

Currently, reasonable charges for realisation of dividend [other than exempt dividends, i.e., dividends referred to in section 115-O being dividend referred to in section 2(22)] or interest to a banker or any other person is allowable. Any such sum can be paid by way of commission or remuneration to a banker or any other person for realising the dividend on behalf of the assessee is allowable.

However, in respect of dividend received on or after 1-4-2003 from domestic companies which are exempt under section 10(34) there is not allowed any deduction towards collection charges.

Section 57(i) specifically excludes dividend referred to in section 115-O while providing for allowability as expenditure of any sum paid by way of commission or remuneration to a banker or any other persons for the purposes of realising dividend on behalf of the assessee. Therefore, if one incurs any expenditure by way of commission or remuneration to a banker or any other persons for the purposes of realising dividend referred to in section 115-O then the same would not be allowable under section 57(i).

Further, section 10(34) provides for exemption in respect of dividend referred to in section 115-O. Any dividend referred to in section 115-O is not taxable in the hands of recipients. Section 14A provides for non-allowability of any expenses against an income which is exempt from tax. Since dividend referred to in section 115-O is fully exempt in the hands of recipient shareholder, therefore, any expenses including the one referred to in section 57(i) would not be allowable against it. It means that section 57(i) would apply only to those cases where dividend is not covered by section 115-O.

However, dividend referred to in section 115BBDA is not exempt in hands of shareholders, therefore expenses referred to in section 57(i) may be allowed therefrom.

The Finance Bill, 2020 proposes to insert a proviso to section 57(i) from the assessment year 2021-22 so as to provide that no deduction shall be allowed from the dividend income, other than deduction on account of interest expense, and in any previous year such deduction shall not exceed twenty per cent of the dividend income, or income in respect of such units, included in the total income for that year, without deduction under this section.

Accordingly, no expenses other than interest expenses shall be allowed against dividend income. The deduction shall be restricted to 20 per cent of dividend income included in total income of the previous year, without deduction under section 57(i).

Nature of income	*Amount of expenses allowable*
Dividend income which include dividend income referred to in section 2(22)	Actual amount of interest expenses subject to maximum of 20 per cent of dividend income included in total income of the relevant previous year

It may be noted that this is very harsh provision so far as dividend income is concerned. There may be investment company which makes investment in various companies and earn dividend income then such company will only get deduction for interest expenses and no deduction for other expenses like salary income or administration expenses will be allowed.

Position of expenses	
Upto 31-3-2020	*From 1-4-2020*
No expenses allowable in case of dividends referred to in section 115-O [Being dividend referred to in section 2(22)]	Only interest expenses allowable that too not exceeding 20% of dividend income.

6. Case of domestic company receiving dividends

A new section 80M is proposed to be inserted from the assessment year 2021-22 so as to provide that

(a) Where the gross total income of a domestic company in any previous year includes any income by way of dividends from any other domestic company

(b) then there shall be allowed in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company as does not exceed the amount of dividend distributed by the first mentioned domestic company on or before the due date.

"due date" means the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139.

(c) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

	A Ltd.	*A Ltd.*
Dividend received	₹ 10,00,000	₹ 10,00,000
Dividend distributed	₹ 9,00,000	₹ 11,00,000
Amount qualifying for deduction under section 80M	₹ 9,00,000	₹ 10,00,000
(If such dividend distributed by due date)		
A Ltd. distributed dividend by due date	₹ 9,00,000	₹ 5,00,000
Amount deductible under section 80M	₹ 9,00,000	₹ 5,00,000
Tax payable by A Ltd. on (at applicable rate)	₹ 1,00,000	₹ 5,00,000

7. Current versus proposed tax incidence

Recipient	*Current tax incidence (Upto Assessment Year 2020-21)*	*New tax incidence(From Assessment Year 2021-22)*
1. An individual in receipt of dividends of ₹ 5,00,000 having total income other than dividends at ₹ 15,00,000	Exempt. Company liable to pay tax at 20.55872% of sum distributed Total tax incidence 20.55872%	To be taxed at 30% plus cess at 4%. Total tax incidence goes upto 31.2%.
2. An individual in receipt of dividends of ₹ 15,00,000 having total income other than	Amount upto ₹ 10,00,000 : Exempt Amount in excess of ₹ 10,00,000 i.e., ₹ 5,00,000 will be taxed under section 115BBDA in hands of individual at	To be taxed at 30% plus cess at 4%. Total tax incidence goes upto 31.2%.

Recipient	*Current tax incidence (Upto Assessment Year 2020-21)*	*New tax incidence(From Assessment Year 2021-22)*
dividends at Rs. 15,00,000	10.4% (including cess) and company will pay dividend distribution tax at 20.55872% of amount of distributed. Total tax incidence at 30.95872% of amount distributed.	
3. An individual receives dividends referred to in section 2(22)(e) in an amount being ₹ 15,00,000, where the individual is having total income of ₹ 20,00,000	Company will pay dividend distribution tax at 34.944% of the ₹ 15,00,000. No tax under section 115BBDA will be levied on the recipient so entire amount will be exempt. Total tax incidence 34.944%	To be taxed at 30% plus cess at 4%. Total tax incidence goes upto 31.2%.
4. An individual receives dividend of ₹ 7 crore, and having total income of ₹ 10 crore.	Company will pay dividend distribution at 20.55872% of sum distributed. Recipient will pay tax under section 115BBDA at 10% plus surcharge at (37% of tax) plus cess (4%) of the amount in excess of ₹ 10,00,000. Total tax incidence : 20.55872% company Recipient : 14.248% Total : 34.80672%	To be taxed at 30% plus surcharge (37%) plus cess at 4%. Total tax incidence 42.744%
5. A Ltd. a domestic company, having total income of ₹ 15 crore receives dividend of ₹ 20,00,000 from another domestic company. (a) A Ltd. opts for section 115BA (b) A Ltd. is having turnover of not exceeding ₹ 400 crore during 2017-18/ 2018-19 (c) A Ltd. is having turnover exceeding ₹ 400 crore during 2017-18 to 2018-19	Company distributing dividend will pay tax at 20.55872% of sum distributed. No tax to be paid by A Ltd. under section 115BBDA . Total tax incidence 20.55872%	A Ltd. Will pay tax at rate of tax applicable to A Ltd. (a) At 25% plus surcharge at 12% plus cess at 4% (b) At 25% plus surcharge at 12% plus cess at 4% (c) At 30% plus surcharge @12% and cess @ 4% However, in all above cases A Ltd. may claim deduction under section 80M and then will pay tax on residual income.

Recipient	*Current tax incidence (Upto Assessment Year 2020-21)*	*New tax incidence(From Assessment Year 2021-22)*
6. A Ltd., a manufacturing company opting for section 115BAB, receives dividend of ₹ 20,00,000 from another company	– do –	A Ltd. will pay tax at 22% plus surcharge @10% of tax payable plus cess (4%). Total tax incidence 25.168%. A Ltd. can claim deduction under section 80M of the sum distributed by it and will pay tax at above rates only on residual dividend income.
7. A Ltd. opting for section 115BAA receives dividend of ₹ 20,00,000 from another company	– do –	– do –

8. TDS on dividends

Currently section 194 provides for tax deduction for dividends except the dividend referred to in section 115-O. Accordingly, any dividend referred to in section 115-O is not liable to TDS.

The first proviso to section 194 clearly states that no deduction is required to be made at source from dividend payable to an individual if :

(a) the dividend by such company is paid through an account payee cheque; and

(b) the amount of dividend or aggregate of such amount of dividend distributed or paid or likely to be distributed or paid during the financial year by such company to share holder does not exceed ₹ 2,500.

(c) the shareholder is an individual.

In view of the fact that dividends are now proposed to be taxed in hands of recipient hence section 194 is proposed to be amended from 1-4-2020 so as to provide for TDS on dividends.

(i) Liability to deduct tax on dividends

Section 194 of the Income Tax Act, requires deduction of tax from any dividend or before making any distribution or payment to a resident shareholder of any dividend within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2 of the Income Tax Act.

(ii) What is dividend

Dividend have will take meaning from section 2(22). Accordingly, dividend will include dividend referred to in section 2(22) and on such dividend tax will be deducted under section 194.

(iii) Person responsible for deduction of tax at source

The principal officer of an Indian company or a company which has made the prescribed arrangements for declaration and payment of dividends (including dividend on preference shares) within India is a person responsible for deduction of tax at source from payment of dividend.

'Principal officer' has been defined under section 2(35) as : "Principal officer" used with reference to a local authority or a company or any other public body or association of persons of any body of individuals means :

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company association or body upon whom the assessing officer has served a notice of his intention of treating him as the principal officer thereof."

Thus, any person holding the post of secretary, treasurer, manager or agent of the authority, company, association or body is automatically the "principal officer" under section 2(35)(a) and the law does not call for any other requirement to be fulfilled. Further, a person can be treated as principal officer when he satisfies both the conditions of section 2(35)(b) even if he is not covered under section 2(35)(a).

(iv) Prescribed arrangements for declaration and payment of dividends within India

Rule 27 specifies the prescribed arrangements for declaration and payment of dividends within India. Accordingly, the arrangements referred to in sections 194 and 236 to be made by a company for the declaration and payment of dividends (including dividends on preference shares) within India shall be as follows :

(1) The share-register of the company for all shareholders shall be regularly maintained at its principal place of business within India, in respect of any assessment year from a date not later than the 1st day of April of such year.

(2) The general meeting for passing the accounts of the previous year relevant to the assessment year and for declaring any dividends in respect thereof shall be held only at a place within India.

(3) The dividends declared, if any, shall be payable only within India to all shareholders.

(v) When tax is to be deducted

The principal officer of an Indian company or a company which has made prescribed arrangement for declaration and payment of dividends within India has to deduct tax at the earliest point of time from the following stages :

(i) Before payment of dividend by any mode; or

(ii) Before distribution or payment to shareholder, who is resident in India

(vi) Rate at which tax be deducted

Tax is to be deducted at 10%. No surcharge and cess will be recovered by way of TDS because TDS under section 194 is to be made on payments to residents.

In case of non-residents tax will be deducted under section 195 at 30 per cent plus surcharge and cess in case of non-resident non-corporate assessees. In case of foreign companies tax will be deducted under section 195 at 40 per cent plus surcharge and cess in case of non-resident non-corporate assessees.

(vii) No deduction under certain circumstances- Where quantum of dividend payment does not exceed ₹ 5,000 [First proviso to section 194]

The first proviso to section 194 clearly states that no deduction is required to be made at source from dividend payable to an individual if :

(a) the dividend by such company is paid through any mode other than cash; and

(b) the amount of dividend or aggregate of such amount of dividend distributed or paid or likely to be distributed or paid during the financial year by such company to share holder does not exceed ₹ 5,000.

(c) the shareholder is an individual.

(viii) Tax deduction at lower rate or no tax deduction

Section 197(1) provides that where, in the case of any income of any person, or sum payable to any person income-tax is required to be deducted at the time of credit or at the time of payment at the rates in force under the provisions discussed below and the assessing officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, than the assessing officer shall, on an application made by the recipient in this behalf, give to him such certificate as may be appropriate.

Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the assessing officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.

This grant of certificate is subject to rules made under section 197(2A).

Rules 28(1), 28AA, 28AB and 29 are relevant in this regard.

Tax to be deducted under section 194 at lower rate or no tax to be deducted where the recipient furnishes a certificate (in Form No. 13) from the assessing officer in this regard.

(ix) No tax deduction where recipient furnishes Form No. 15G/15H

Section 197A enables persons with nil tax liability on estimated total income to receive income of the nature referred to in sections 192A, 193, 194, 194A, 194D, 194DA,194EE, 194-I and 194K without deduction of tax at source. Section 197A provides that recipient of such income may receive the same without tax deduction on his furnishing a declaration in writing (in duplicate) in the prescribed form [15G/15H] and verified in the prescribed manner to the person responsible for making the payment.

(x) Payment to LIC, GIC or other insurers [Second proviso to section 194]

No deduction of tax at source shall be made under section 194 in respect of any dividend payable to the Life Insurance Corporation of India or the General Insurance Corporation of India or to any of the four companies formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 or any other insurer in respect of any shares owned by them or in which they have full beneficial interest.

(xi) Blanket exemption to certain payees [Section 196]

Tax will not be required to be deducted at source in the case of dividends in respect of shares beneficially owned by the following :

(a) the Government,

(b) the Reserve Bank of India,

(c) a corporation established by or under a Central Act which is under any law, for the time being in force, exempt from tax on its income,

(d) a Mutual Fund specified under section 10(23D).

where such sum is payable to it by way of dividend in respect of any securities or shares owned by such persons or in which full beneficial interest is held by it.

FINANCE BILL, 2020—BUSINESS INCOME

Business Income Vis-a-vis Finance Bill, 2020

— CA. Nisha Bhandari —

The present write up highlights the amendments proposed by the Finance Bill, 2020 in relation to provisions dealing with computation of income from business or profession.

1. Eligibility for deduction under section 35 in respect of scientific research expenditure

(i) Deduction under clause (iia) of section 35(1) not to be denied on subsequent withdrawal of approval granted to company

Section 35 provides deduction in respect of expenditure on scientific research.

Sub-section (1) of section 35 provides that the expenditures on scientific research in respect of which, the deductions shall be allowed. Clause (ii) of said sub-section provides that the deduction for any sum paid to a research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research, clause (iia) of said sub-section provides that any sum paid to a company to be used by it for scientific research, and clause (iii) of said sub-section provides that any sum paid to a research association which has as its object the undertaking of research in social science or statistical research or to a university, college or other institution to be used for research in social science or statistical research. Explanation of said clause provides that assessee shall not be denied the deduction in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn.

The Finance Bill, 2020 has proposed to amend the said Explanation so as to provide that the assessee shall not be denied the deduction in respect of any sum paid to a company referred to in clause (ii) which it is entitled to, merely on the ground that, subsequent to the payment of such sum, the approval granted to the company has been withdrawn.

(ii) Revalidation of approval and its validity period

The Finance Bill, 2020 has also proposed to insert a new fifth proviso in sub-section (1) so as to provide that every notification under clause (ii) or clause (iii) in respect of the research association, university, college or other institution or under clause (iia) in respect of the company issued on or before the date on which this proviso comes into effect, shall be deemed to have been withdrawn unless such research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) makes an intimation in such form and manner to the prescribed authority within three months from the date on which this proviso has come into effect, and subject to such intimation the notification shall be valid for a period of five consecutive assessment years beginning with the assessment year commencing on or after the 1-4-2021.

It is also proposed to insert a new sixth proviso to said sub-section (1) so as to provide that any notification issued, by the Central Government under clause (ii), clause (iia) or clause (iii), after the date on which the Finance Bill, 2020 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding five assessment years as may be specified in the notification.

(iii) Requirement as to submitting statement and issuance of certificate in respect of donation

The Finance Bill, 2020 has proposed to insert a new sub-section (1A) in section 35 after sub-section (1) thereof so as to provide that notwithstanding anything contained in sub-section (1), the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) shall not be entitled to deduction under respective clause of said sub-section, unless such research association, university, college or other institution or company,–

(a) prepares such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed, and it may also file a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be provided by rules; and

(b) furnishes to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of sum, as may be prescribed.

2. Deduction under section 35AD made optional

Section 35AD, is relating to deduction in respect of expenditure on specified business, provides for 100 per cent deduction on capital expenditure (other than expenditure on land, goodwill and financial assets) incurred by the assessee on certain specified businesses. Under sub-section (1) of section 35AD, the said deduction of 100 per cent of the capital expenditure is allowable during the previous year in which such expenditure has been incurred. Further, sub-section (4) provides that no deduction is allowable under any other section in respect to the expenditure referred to in sub-section (1). At present, an assessee does not have any option of not availing the incentive under said section.

Due to this, a legal interpretation can be made that a domestic company opting for concessional tax rate under section 115BAA or section 115BAB, which does not claim deduction under section 35AD, would also be denied normal depreciation under section 32 due to operation of sub-section (4) of section 35AD. This has not been the intention of the statute.

Therefore, it is proposed to amend sub-section (1) of section 35AD to make the deduction thereunder optional. It is further proposed to amend sub-section (4) of section 35AD to provide that no deduction will be allowed in respect of expenditure incurred under sub-section (1) in any other section in any previous year or under this section in any other previous year, if the deduction has been claimed by the assessee and allowed to him under this section.

This amendment will take effect from the assessment year 2020-21.

3. Safe harbour limit of 5 per cent increased to 10 per cent under section 43CA

Section 43CA provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e., "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

The Finance Bill, 2020 has therefore, proposed to increase this limit to 10 per cent.

4. Due date for furnishing audit report made one month prior to due date for furnishing return of income

In order to enable pre-filling of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assessees at least one month prior to the due date of filing of return of income. This requires amendments in all the sections of the Act which mandates filing of audit report along with the return of income or by the due date of filing of return of income. Thus, provisions of section 10, section 10A, section 12A, section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44AB, section 44DA, section 50B, section 80-IA, section 80-IB, section 80JJAA, section 92F, section 115JB, section 115JC and section 115VW of the Act are proposed to be amended accordingly.

Further, the due date for filing return of income under sub-section (1) of section 139 is proposed to be amended by providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 to section 139(1).

Thus tax audit report shall be required to be furnished on or before 30th September of the assessment year.

It is however to be noted that sections 10A and 32AB are not currently operative, hence not required to be amended as such.

5. Recognised association in section 43(5) replaced by 'recognised stock exchange' as defined in SCRA instead by FCRA

Section 43(5) provides that trading in commodity derivatives shall not be treated as speculative transaction if the transaction is carried through a recognized association.

Trading in derivatives including commodity derivatives is regulated by the Securities Contract (Regulation) Act, 1956 (SCRA). Prior to 2015, derivative trading in commodities was regulated by the Forward Markets Commission (FMC) under the Forward Contracts (Regulation) Act, 1952 (FCRA). In 2015, the FCRA was repealed and the FMC was merged with the SEBI. As a result, the recognised associations defined in the FCRA were replaced by the recognised stock exchange defined in the SCRA.

Thus the Finance Bill, 2020 has proposed to amend section 43(5) so as to replace the words "recognised association" with recognised stock exchange.

INCOME TAX—CORPORATE TAXATION

Decoding of Section 115BAB

— Mukesh Kabra —

The Taxation Laws (Amendment) Act, 2019 has inserted a new section 115BAB in the Act from the assessment year 2021-22 to provide lower tax rates for new manufacturing companies. One of the conditions for this lower tax rate is that the company must be engaged in manufacture or production of an article or thing. What will constitute manufacture for purposes of section 115BAB. The learned author analyses certain situations in this regard.

1. Introduction

It is said that a person feels joyous and happy when something unexpected positively happened in one's life but on other hand unexpected kindness showered on them by Almighty God also frightened one's inner soul simultaneously from an unexpected fear as to what will

happen if this happiness is taken away back. The same situation is happening with Indian tax payer corporates or would be corporate assesse. May be first time in the history of India, the Government had given tax bonanza without any demand from the taxpayers in the form of lower tax rate for *new manufacturing companies*. May be Indian tax rate for corporates are best comparable with rate of another country in this universe. May be such rates were mainly designed to attract global investors but Indian investors can also reap benefit out of it. Now, tax payers are joyous on tax rate cut that their tax outgo will reduce substantially but also a fear is creeping in their mind whether they will fulfil all the conditions to get it qualify. What would be incidence if they cannot qualify in tax assessment.

Such a low tax rate coupled with huge gap with normal tax rate are tempting businessmen to arrange their affairs in such a way that it will be very difficult task for taxman to disqualify them for reap benefit of new tax rate in future. Though setting up of a new business with large capex and complex structure is not everybody's cup of tea but there is various busineses, whereas present structure is very simple and creation of a new undertaking have low cost compared to estimated tax benefit.

Main thrust of section 115BAB is on Manufacturing or Production. Here, the moot question is: what is the meaning of manufacturing? Whether tax benefit is available only for self-manufacturing or merchant manufacturer is also eligible to claim benefit? Whether units which are only assembling various parts will also get eligible? These types of question may arise not only to businessman but to professional also.

For ease of understanding of the dilemma, now take a hypothetical situation wherein a person is running a private limited company. It purchases raw fabrics from the market and get it processed from outside manufacturing units on *JOB WORK BASIS*. Sometimes various value addition work like Embroidery, fixing of lace, Stones, etc., is also done on JOB WORK BASIS from outside manufacturing works. It has stitching machines, cutting machines, rolling machines and other small machineries in its premises which is rented. Finished fabrics is converted into small pieces of various length and size in a shape like Shirts, Lehngaetic but unstitched and sold to buyers as such. Sometime stitching machines is also used wherein pieces are stitched which is generally known as Lehnga, T-shirts, Shirts, etc. and sold to buyers. Now, management wants to form a new company and to fulfil all the condition narrated in section 115BAB, they are planning to purchases all new machineries which are presently used by them like stitching machines, Cutting, rolling machines, etc., because they considered themselves as manufacturer, albeit most of work is done through job work.

Apart from textile, such type of job work is also undertaken in other various types of industries like Steel, Rolling, Food based Industries, FMCG products, Tobacco products, etc.

2. Eligibility Conditions and connected matters for low tax rate

Now, let us take a look of conditions narrated in section 115BAB and look upon whether all these conditions are fulfilled or not to take benefit of section 115BAB in above example. These conditions are as under:

1. The assessee should be a domestic company. This section is not applicable to other person like Individual, firm, LLP, etc. and Foreign Companies.

2. The company has commenced the manufacture or production of an article or thing on or before 31st March, 2023.

3. The business of such company is not formed by splitting up or re-construction of a business already in existence.

4. Such company is incorporated on or after 1st October, 2019.

5. Such company does not use second-hand machinery (except imported second-hand machinery) whose value is more than 20% of the value of the total Plant and Machinery used by the company. It is also worthwhile to mention here that second hand plant & machinery shall be eligible only when such plant & machinery is never used in India and no depreciation has been used by any person in India on such plant and machineries. Looking to the language, it is advisable that purchaser shall purchase machineries directly from manufacturer and a certificate be obtained from seller that plant and machineries are new one and never used in India.

6. The company does not use any building previously used as a Hotel or Convention Centre and for which a deduction under section 80-ID has been allowed.

7. The company is not engaged in any other business other than:

- Manufacture of an article or thing.
- Research in relation to such manufacture or production
- Distribution of such article or thing manufactured or produced by it.

8. The company is not engaged in the following businesses: –

- Software Development
- Mining
- Conversion of marble blocks or similar materials into slabs
- Bottling of gas into cylinders
- Printing of books
- Production of cinematograph films
- Any other notified business

9. The company does not claim any of the deductions/ exemptions/benefits mentioned below in computing the total income for the purpose of income-tax viz: –

- Tax Holiday for Units in Special Economic Zones (Section 10AA)

- Additional Depreciation under section 32((iia)
- Investment Linked deduction under section 32AD
- Benefits under section 33AB or 33ABA
- Accelerated R&D allowance (clause (ii), (iia), (iii) of sub-section (1), sub-section (2AA) or sub-section (2AB) of section 35)
- Allowances under section 35AD, 35CCC or 35CCD
- Deductions under Chapter-VIA under the heading C: Deductions in respect of certain expenses, excluding deduction for additional employment under section 80JJAA

10. The company informs the Income Tax Department of exercising such option to claim lower tax rate in the prescribe form on or before the due date of filing income tax return for the company for the first assessment year. Option once exercised cannot be withdrawn.

Recently, the CBDT has prescribed Form No 10ID for this purpose. If any company wants to pay tax under this section than it has to file electronically under DSC Form No 10ID on or before due date of filing of return of Income.

11. Deductions under Chapter-VIA under the heading C: Deductions in respect of certain expenses, excluding deduction for additional employment under section 80JJAA or 80M [from A.Y. 2021-22] is not claimed.

12. No benefit of set-off of loss or unabsorbed depreciation shall be available to the assesse company. *Looking to the language of section normal loss and depreciation can be set-off but only loss or depreciation generated through section enumerated in point No 7 are not available. It means unabsorbed depreciation allowance due to claim of additional depreciation shall not be set off but available under normal depreciation shall be available for set-off.*

13. Profit should not be unreasonable if there are close relation between the transacting parties otherwise reasonable profit shall be determined by AO which seems to be reasonable, looking to the facts of the case.

If we compare all these conditions and connected matters with our hypothetical example, then one can find that company can fulfil all the conditions without much difficulty EXCEPT A FEW CONDITION specially to *prove the fact it is manufacturing company producing or manufacturing any article or thing.*

3. Meaning of manufacture or production

In all these conditions, the most important word is *manufacture or production of an article or thing.* Earlier, there was lot of chaos on the meaning of manufacturer but definition of the word manufacture was inserted into the Income Tax Act vide Finance Act, 2009. Section *2(29BA) of the Income Tax Act* defines the word "Manufacture", which is as under:

"Manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,–

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;

Interestingly, though the word manufacture has been defined in the Act but the word 'production' is nowhere defined in the Income Tax Act yet but the Apex court of the land in a series of judgments has held that the word *'production' has a wider connotation in comparison to 'manufacture' and held that any activity which brings a commercially new product into existence constitute production.*

Reliance can be placed on *CIT v. HPCL (Civil Appeal No 9295 of 2017)* and *Arihant Tiles and Marbles P Ltd (2010) 320 ITR 79(SC)* delivered by Supreme Court of India on this point.

From the above, one can say that any product which is commercially new product and marketable as such is production though it might not qualify for manufacture. For example, mixing of pan masala with tobacco is not qualified as manufacture but certainly it is commercially new product, hence, can be classified as production.

4. Self-manufacturing or job work

Now the next question arises is: whether manufacture or production should be on account of self or it can be outsourced, i.e., job work.

Answer of this question is very difficult and whole of the issue revolved around this question only. No clear wording is given in the Act which is diffusing doubts among the stakeholders. But, if we analyse the language of the section, it is almost on the same line as given in earlier section like 80-IA, 80-IB, 10AA, etc., hence we can resort the help from judicial pronouncements of various courts made in the past on the same question.

5. Judicial pronouncements for manufacture or production

The Allahabad High Court in the case of *Talwar Khuller (P.) Ltd. (1999) 235 ITR 70 (All)* has held that the assessee company was manufacturing various articles of brassware from artisans under its supervision and control. It was also noted that the assessee gave the pattern and design of the articles to be manufactured by the artisans and advanced money to them for purchasing the raw material. It was also noted that the artisans made articles in different models. It further noted that the articles in raw form were examined by the assessee and then directions were given to the artisans to modify and polish the same. Under these facts, it was held

by Allahabad High Court that the assessee company was a new company manufacturing company engaged in manufacturing and processing of article.

Likewise, the Bombay High Court in the case of *Penwalt India Ltd. 196 CTR (Bom) 813* has held that the assessee is getting machinery manufactured by somebody else under its direct supervision and control and all other activities are undertaken by the assessee, the assessee is said to be engaged in manufacture of sugar and tea machinery and therefore, entitled to special deduction under section 80-I of the Act.

In *CIT, Bombay City-II v Neo Pharma Private Limited (1982) 137 ITR 879 (Bom)*, the assessee company, which was incorporated mainly with the object of engaging itself in the business of manufacturing and processing pharmaceuticals, entered into an agreement with another company, "Pharmed", to make available to the assessee their premises, plant, machinery and the services of the staff such as chemists and labourers to carry on the manufacturing activities for and on behalf of the assessee. Exercising the powers under section 263 of the Act, the Commissioner held that an assessee could be said to be the manufacturer of goods or engaged in the manufacture or processing of goods only when it carried out all the operations involved in converting the raw-material into finished goods with the aid of machinery owned by itself and with labour in its direct supervision; and that since the machinery and services rendered for the conversion of raw-materials into finished goods in that case were provided by Pharmed, the assessee could not be said to be a manufacturer. The assessee's appeal was allowed by the Tribunal. *The High Court affirmed the decision of the Tribunal, holding, inter alia, that although the plant and machinery employed for the purpose of manufacture belonged to Pharmed and the services of certain employees of Pharmed was also utilized in that process, the manufacturing activity was really that of the assessee and that therefore, it could not be said that it was not the assessee but Pharmed which manufactured the drugs and pharmaceuticals.*

In *CIT v. Acrow India Ltd. (1991) 188 ITR 485(Bom)*, it was held that where the assessee had engaged the services of V. Company for fabrication of goods and things mentioned in the Agreement under its supervision and control with the help of technical know-how supplied by it and the assessee had also supplied all the raw-materials to V.Company, which acted only as labour contractors with the assessee, the assessee was engaged in the business of manufacturing and processing of goods.

In the case of Bidi Manufacturing Industry, the Gujarat High Court in the case of *CIT v. Prabhudas Kishordas Tobacco Products P. Ltd. (2006) 282 ITR 568 (Guj)*, has held that the tendu leaves and tobacco, which are used as inputs, do not retain their independent identity after the bidis are rolled after undergoing several process. Commercially, the final product is known in the trade as a distinct commodity and has a separate market.

Furthermore, merely because an assessee gets the work done through contract workers, in other words, enters into a contract with the workers and pays them per piece the relief could not be denied. *The test is whether the outside agency works directly under the supervision and control of the assessee, it being immaterial whether the processing is done by the workers employed by the assessee at a place outside the premises of the assessee.* The Tribunal was justified in treating the activities carried on by the assessee as amounting to manufacturer of bidies, entitling the assessee to relief under sections 80HH and 80-I.

6. Importance of intention of the law for interpretation of status

It is a settled law that in case of vague and misleading language of Law, Statue should be interpreted with the intention of the legislature while inserting the particular amendment in the statue. The Taxation Law (Amendment) Bill, 2019 was introduced all of a sudden vide Press Release on 20-09-2019. Relevant portion of said Press Release with respect to section 115BAB was as under:

> *"In order to attract fresh investment in manufacturing and thereby provide boost to 'Make-in-India' initiative of the Government, another new provision has been inserted in the Income-tax Act with effect from financial year 2019-20 which allows any new domestic company incorporated on or after 1st October, 2019 making fresh investment in manufacturing, an option to pay income-tax at the rate of 15%. This benefit is available to companies which do not avail any exemption/incentive and commences their production on or before 31st March, 2023. The effective tax rate for these companies shall be 17.01% inclusive of surcharge and cess. Also, such companies shall not be required to pay Minimum Alternate Tax".*

7. Conclusion

From the above discussion, we can say that new company which has been registered after 01-10-2019 can claim benefit of low tax rate if it is engaged in either *manufacturing or production* of an article or thing. As we discussed in earlier para, production is having wider meaning than manufacturing. Mainly this manufacturing or production activity should be carried out in its own manufacturing unit which has been set up with new plant and machinery. But, in a situation where a part of process is outsourced, then also it is fair to claim the benefit of this section. If an assessee company outsourced whole process of manufacturing then in that situation manufacturing unit which is doing job work should be in direct control and supervision of the assessee company but this manufacturing unit should have new plant and machinery because intention of the government was to promote manufacturing and investment to boost, make in India movement but certainly assembling unit having least capex should avail the benefit of this section.

In our hypothetical example cited above, it will be very tough task to claim benefit of section 115BAB though the company is said to be engaged in production of article of fabrics having distinct commercial market but absence of manufacturing unit of main ingredient work, i.e., processing of fabrics will make it little bit difficult. If in the said example, weaving had been undertaken by the assessee company on its manufacturing unit and part of process have been outsourced then the answer would have been different.

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CASE LAW DIGESTS

(2020) 172 TR(A) .... (Digests)

INCOME TAX ACT, 1961

S. 2(1A)

Agricultural income—***Assessee failed to prove agriculture activity***—*Adangal extract not filed before the AO to establish the cultivation—Addition on this ground*

Where adangal village account with respect to cultivation extract as received from Revenue authorities by AO disclosed no such cultivation of banana as claimed by assessee and moreover, assessee himself had also admitted before AO that Rs. 10 lakhs was not part of agricultural income, therefore, addition was rightly made by AO. ■

Assessee claimed agricultural income to the extent of Rs. 27,74,849. Even though assessee has produced the details of agricultural lands owned by him, according to Department, adangal extract was not filed before AO to establish the cultivation. According to department, assessee claimed before AO that banana was cultivated in 6.31 acres of land. AO called for the adangal extract from the State Revenue authorities which discloses that banana was not cultivated in the land. Moreover, in respect of the land wherein the assessee claimed to have cultivated crops, many pieces of the lands were not cultivated by assessee. AO found that entire income of Rs. 27,74,849 could not have been earned from cultivation and also found that assessee himself admitted that Rs. 10 lakhs was not part of agricultural income. Accordingly, a sum of Rs. 10 lakhs out of Rs. 27,74,849 was not from agriculture and added the same to taxable income. ***Held:*** Assessee could not file any material to substantiate the claim of cultivation of banana and crops as claimed before the AO. State Revenue authorities were maintaining the cultivation account. In fact, Village Administrative Officer was keeping the adangal, which is otherwise known as Village Account with respect to cultivation. The adangal extract as received from the Revenue authorities by AO disclosed no such cultivation of banana as claimed by assessee. Inspite of these materials, AO was fair enough to disallow only Rs. 10 lakhs. Moreover, assessee himself had also admitted before AO that Rs. 10 lakhs was not part of agricultural income. Therefore, addition made by AO was confirmed.

Dt.Ord.: *5 July, 2019* ✓ **Against the assessee**

➲ **Subramanian Sivaraj v. ITO** *(2020) 172 TR (A) 404 (Chn-Trib) : 2019 TaxPub(DT) 6217 (Chenn-Trib)*

S. 2(24)(ix), Expln. A.Y. 2000-01

Income—***Lottery***—*Receipt of first prize under coupon received for purchase from cloth merchant—No intention to participate in a 'lot' proved by AO*

It was customary in Kerala to buy new clothes during onam festival and intention of assessee was to purchase new clothes for himself and his family. The assessee approached cloth merchant with this predominant intention. The particular scheme of distributing free coupons at time of festival seasons like Onam was offered by almost all the merchants in town, be it Textiles, Footwear, Grocery, Jewellry, etc. In case of assessee, choice of a particular cloth merchant was availability of desired dress material at his affordable price and not

the offer of a free coupon. Hence, it could not, by any stretch of imagination, be presumed that assessee visited a particular merchant and purchased dress material from him with intention to participate in lot. Hence, there was 'no intention to participate'. Thus, essential ingredients of 'lottery' as it stood prior to insertion of Explanation to section 2(24)(ix) were absent in the facts and circumstances of case and, AO was not justified in taxing the gift value. ■

Assessee had made purchases of cloth from a shop at Kanhangad. As purchases were above specified monetary limit, hence, he was given certain number of price coupons under a scheme of the Kasargod Vyapari Vyasaya Ekopana Trust (KVVES Trust). The assessee won first price on lot being one kg. of gold. On production of coupon, assessee was issued 600 gms. of gold coins and balance was deducted being 40% of the price money by KVVES Trust u/s 194B of the IT Act. The one kg. of gold coins was valued at Rs. 4 lakhs and total tax deducted at source including surcharge was Rs. 1.88 lakhs. Assessee filed return of income declaring total income at Rs. 'NIL', claiming refund of Rs. 1.88 lakhs being tax deducted by KVVES Trust from the gift value of Rs. 42 lakhs given to assessee. AO held that assessee's first price of one kg. gold was nothing but winning from lottery and was thus chargeable to tax as per rates provided in s. 115BB and tax had been rightly deducted by KVVES Trust authorities. ***Held:*** It was customary in Kerala to buy new clothes during onam festival and intention of assessee was to purchase new clothes for himself and his family. The assessee approached cloth merchant with this predominant intention. The particular scheme of distributing free coupons at time of festival seasons like Onam was offered by almost all the merchants in town, be it Textiles, Footwear, Grocery, Jewellery, etc. In case of assessee, choice of a particular cloth merchant was availability of the desired dress material at his affordable price and not the offer of a free coupon. Hence, it could not, by any stretch of imagination, be presumed that assessee visited a particular merchant and purchased dress material from him with intention to participate in lot. Hence there was 'no intention to participate'. Thus, essential ingredients of 'lottery' as it stood prior to insertion of Explanation to section 2(24)(ix) were absent in the facts and circumstances of case and, AO was not justified in taxing the gift value.

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Dt.Ord.: *7 August, 2019* ✓ **In assessee's favour**

➲ **Rajmohan V.V., Kumbalappalli v. ITO** *(2020) 172 TR (A) 404 (Coch-Trib) : 2019 TaxPub(DT) 7291 (Coch-Trib) : (2019) 179 ITD 288 (Coch-Trib)*

S. 2(47) A.Y. 2009-10

Capital gains—***Transfer under section 2(47)***—*Assessee, a General Power of Attorney holder and not the owner of property transferred*

When in the registered power of attorney no consideration had passed on from assessee to the original owner of the property, there was no question of any transfer of property in favour of the assessee. Moreover, when assessee being GPA holder of the owner of property executed sale deed in favour of her husband wherein it was specifically mentioned that sale consideration was earlier paid by assessee's husband to the owner, that would clearly show that at the time of execution of the registered sale deed, no consideration was passed on from assessee's husband to the assessee. Thus, there was no question of any transfer of property from the side of assessee, so as to attract

provisions of capital gains. ■

AO made additions on account of long-term capital gain on sale of land and short-term capital gain on sale of factory building constructed on said land. Assessee contended that as she was acted as General Power of Attorney holder on behalf of original owner of the property, no transfer was made by her and, as such, no long term capital gain or short term capital gain would arose. However, Revenue contended that assessee had shown the amount of sales consideration received through registered sale deed in her capital amount. Therefore, that clearly showed that the impugned property belonged to assessee. ***Held:*** The assessee filed copy of the 'Ikrar Nama' which was executed by the owner of the property in favour of assessee's husband and it was signed by both the parties as well as witnesses. The owner of the property had also executed affidavit in favour of assessee's husband and Registered General Power of Attorney (GPA) in favour of the assessee. But, said GPA was without any consideration. Thereafter, assessee being GPA holder of the owner of property executed sale deed in favour of her husband wherein it was specifically mentioned that sale consideration was earlier paid by assessee's husband to the owner. And, that would clearly show that at the time of execution of the registered sale deed no consideration was passed on from assessee's husband to the assessee. Thus, there was no question of any transfer of property from the side of assessee, so as to attract provisions of capital gains.

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Dt.Ord.: *14 October, 2019* ✓ **In assessee's favour**

Followed: CIT v. C. Sugumaran 2015 TaxPub(DT) 0226 (Mad-HC) and Gyan Chand Agarwal v. Addl. CIT [ITA No. 266/JP/2017] : 2017 TaxPub(DT) 3859 (Jp-Trib).

➲ **Upma Shukla Proprietor Troubleshooters v. ITO** *(2020) 172 TR (A) 405 (Del-Trib) : 2019 TaxPub(DT) 7047 (Del-Trib)*

S. 2(47)

Capital gains—***Transfer under section 2(47)***—*Joint development agreement—Agreement not registered*

Where no possession had been given by the transferor to the transferee of the entire land in part performance of JDA so as to fall within the domain of section 53A and in absence of registration of JDA, although executed afterwards, the agreement did not fall under section 53A and consequently section 2(47)(v) did not apply and no further amount had been received and no action thereon had been taken, therefore, appeal of Revenue was dismissed. ■

Issue arose under consideration as to whether Tribunal was justified in holding that no possession had been given by the transferor to transferee of the entire land in part performance of joint development agreement so as to fall within the scope of sec. 53A of the Transfer of Property Act, 1882, that in absence of registration of joint development agreement having been executed, agreement did not fall u/s 53A of the Transfor of Property Act for sec. 2(47)(v) to apply, that the society has transferred the land through JDA on a pro-rata basis and that only money received against which sale deeds had also been executed could be taxed and money to be received later could not be presently taxed. ***Held:*** No possession had been given by the transferor to the transferee of the entire land in part performance of JDA so as to fall within the domain of sec. 53A. Further, sec. 53A, by incorporation, stood embodied in sec. 2(47)(v) and all essential ingredients of section 53A were required to be fulfilled. In absence of

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registration of JDA,although executed afterwards, the agreement did not fall u/s 53A and consequently sec. 2(47)(v) did not apply. It was submitted by assessee that whatever amount was received from the developer, capital gains tax had already been paid on that and sale deeds had also been executed. No further amount had been received and no action thereon had been taken. Therefore, appeal of Revenue was dismissed.

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Dt.Ord.: *17 February, 2017* ✓ **In assessee's favour**

➲ **Pr. CIT v. Chuni Lal Bhagat** *(2020) 172 TR (A) 406 (P&H-HC) : 2019 TaxPub(DT) 2922 (P&H-HC)*

S. 4

A.Y. 2009-10 to 2012-13

Income—***Revenue recognition***—*Sale of underconstruction flats—Exemption of registered documents or registration of agreement or date of delivery of possession, relevant to recognition of income as per AS-7 and AS-9*

It was the date of execution of registered document, not the date of delivery of possession or the date of registration of document which was relevant and once the executed documents were registered, the transfer will take place on the date of execution of documents and not on the date of registration of documents. AO was thus, directed to tax the revenue, in view of percentage completion method, out of remaining executed agreements, if any during the impugned assessment year, as per AS-9 ■

Assessee-company was in the business of development of real estate. It follows the mercantile system of accounting. AO observed that assessee had commenced a project of development and construction of building 'Sterling Tower' at Mazgaon, Mumbai and it had received an advance of Rs. 24,92,42,860 from the prospective buyers of the flat. However, the assessee had offered the income only in respect of the flat owners with whom agreement had been entered into. The AO observed from the details that in many cases, the assessee had received almost 90% of the agreement, still it had not offered the income for taxation on the pretext that no agreement had been made with the prospective buyer. Before the AO, the assessee submitted that the remaining income was not offered for tax on the reason that no agreement was executed in writing with the person from whom the payment was received and the revenue in respect of the balance advance could not be recognized. AO came to a finding that all the conditions specified in the accounting standard (AS-9) were fulfilled. Further referring to Explanation 2 to section 2(47) introduced with retrospective effect from 1-4-1962, the AO stated that the scope and definition of transfer had been drastically enhanced. CIT(A) agreed with the reasons given by the AO and dismissed the appeal. ***Held:*** In the instant case, as recorded by the AO, when a prospective buyer approaches the assessee for booking the flat, allotment letter was issued to the buyer on receipt of the advance money. According to written submission of assessee before the AO stating that the degree of work completed and certified by architect till 31-3-2009 was 73% and the assessee-company had recognized the revenue by applying 73% to the value of agreements executed till 31-3-2009. It was further stated before the AO that the revenue in respect of balance advances could not be recognized as passing of risks and rewards by virtue of ownership is an essential condition for revenue recognition as per AS-9, which had not been fulfilled

in the instant case. As per the ingredients of AS-7 and AS-9, 'revenue' be recognized even though legal title of the property is not transferred and possession is not given. Once seller transfers significant risks and rewards of ownership to buyer, seller thereafter acts like a contractor. Accordingly revenue recognition will have to be as in 'Percentage Completion Method' (AS-7). Having considered the application of principles of AS-9 in respect of sale of goods to a real estate project. The Tribunal therefore, set aside the order of the CIT(A) and restored the matter to the file of the AO to make an addition, bringing to tax by percentage completion method, the revenue out of the remaining executed agreements, if any, during the impugned assessment year.

Dt.Ord.: *28 August, 2019* ✓ **In assessee's favour (partly)**

Relied: Alapati Venkataramiah v. CIT (1965) 57 ITR 185 (SC) : 1965 TaxPub(DT) 294 (SC).

➲ **Shankala Realtors (P) Ltd. v. ITO** *(2020) 172 TR (A) 407 (Mum-Trib) : 2019 TaxPub(DT) 7147 (Mum-Trib) : (2019) 179 ITD 835 (Mum-Trib)*

S. 10(23C)(vi)

Exemption under section 10(23C)(vi)—***Educational institution***—*Rejection of approval on the allegation of institution existing not solely for the purpose of education but for the purpose of profit*

The surplus generated by educational institution was ploughed back for educational purpose, it had to be held that the institution existed solely for educational purpose and not for the purpose of profit. ■

Assessee claimed itself to be an institution existing solely for educational purpose and accordingly sought approval under section 10(23C)(vi). CIT(E) rejected assessee's application on the ground that looking financials of the assessee and the surplus generated, it did not satisfy the condition of not existing for the purpose of earning profit and further training was not a major activity of assessee but the Institution was often asked to conduct training in areas where it had specialized focus and certification possibility, therefore, assessee could not be said to be engaged in educational activity. ***Held:*** RBI as well as NABARD had advised the banks to take assistance of assessee for training employees and agents for certain core activities of banks. Also, it was not forthcoming from the order of CIT(E) as to whether assessee was given sufficient opportunity to furnish all documentary evidences and material to demonstrate that it had imparted training/education in respect of the courses offered. Therefore, without conducting in-depth enquiry/verification and examining the relevant materials, it could not be concluded that assessee was not a educational institution existing solely for the purpose of education and after meeting expenditure if any surplus resulted incidentally from activity lawfully carried out by the educational institution, it would not cease to be one solely for educational purpose and if the surplus generated by educational institution was ploughed back for educational purpose, it had to be held that the institution existed solely for educational purpose and not for the purpose of profit. On overall consideration of the facts and material on record, entire issue relating to assessee's application seeking approval under section 10(23C)(vi) was restored back to for *de novo* adjudication after providing reasonable opportunity of being heard to assessee.

IMPORTANT

Dt.Ord.: *2 August, 2019* ✓ **Matter remanded**

➲ **Indian Institute of Banking & Finance v. CIT** *(2020) 172 TR (A) 408 (Mum-Trib) : 2019 TaxPub(DT) 5393 (Mum-Trib) : (2019) 178 ITD 833 (Mum-Trib) : (2020) 203 TTJ (Mum-Trib) 820*

S. 10(37)

Exemption under section 10(37)—*Compensation received on acquisition of land*—*Whether interest received by assessee in view of section 28 of Land Acquisition Act is part of compensation*

Interest received by the assessee in view of section 28 of Land Acquisition Act, 1894 is part of the compensation and therefore, was not taxable. ■

Assessee's land was acquired against which he received compensation i.e. enhanced compensation under section 28 of the Land Acquisition Act. Revenue taxed said compensation as interest in the hands of the assessee. However, assessee contended that such enhanced compensation was part of the compensation and was not taxable in his hands. ***Held:*** Interest received by the assessee in view of section 28 of Land Acquisition Act 1894 is part of the compensation and therefore was not taxable. Thus, the amount received by assessee under section 28 of the Land Acquisition Act was part of the compensation and therefore, exempt.

Dt.Ord.: *18 October, 2019* ✓ **In assessee's favour**

Relied: Amar Chand Gupta v. ACIT [ITA No. 5367/DEL/2018, 1424/DEL/2018, 1425/DEL/2018, 214/DEL/2018, 2414/DEL/2018, 2415/DEL/2018, 2888/DEL/2018,3564/ DEL/2018, 1707/DEL/2018, 5423/DEL/2017, 5368/DEL/2018, 212/DEL/2018, dt. 14-8-2019], CIT v. Ghanshyam (HUF) 2009 (8) SCC 412 : 2009 TaxPub(DT) 1897 (SC).

➲ **Naresh Gupta v. ITO** *(2020) 172 TR (A) 409 (Del-Trib) : 2019 TaxPub(DT) 7146 (Del-Trib)*

S. 10A

A.Y. 2009-10 to 2011-12

Deduction under section 10A—*Undertaking in a free trade zone*—*No arrangement existed between the assessee and its AE to prove that more than ordinary profits was earned*

Where department failed to prove that there existed an arrangement between the assessee and its AE to earn more than ordinary profits, no merit was found in the curtailment of deduction claimed by assessee under section 10A. ■

AO noticed that assessee was registered with Software Technology Park of India (STPI) and had claimed tax holiday benefit under section 10A in respect of revenue earned from provision of engineering services and customer support services. Further, he noticed that assessee had made net profit after tax of more than 50% of the sales turnover and that according to him, was extraordinarily high. Further, he had also pointed out to the assessee that an entity operating in similar type of business had shown operating profits of 16.95% only. Thus, he had applied the profit margins as declared by similar entity and worked out the excess profit alleged to have been earned by assessee and disallowed its claim of deduction under section 10A to that extent. ***Held:*** In view of the decision of the Tribunal in assessee's own case for an earlier assessment year, where the department failed to prove that there existed an arrangement between the assessee and its AE to earn more than ordinary profits, no merit was found in the curtailment of deduction claimed by assessee under section 10A. Thus, AO was not justified in disallowing assessee's claim of deduction under section 10A.

Dt.Ord.: *2 January, 2020* ✓ **In assessee's favour**

Followed: Eaton Industries Pvt. Ltd. v. Asstt. CIT [ITA No.2544/PUN/2012, dt. 30-10-2017]

➲ **Dy. CIT v. Eaton Industries (P) Ltd.** *(2020) 172 TR (A) 409 (Pun-Trib) : 2020 TaxPub(DT) 72 (Pune-Trib)*

S. 11

Charitable trust—***Application of income***—*Expenses for investment in acquisition of fixed assets*

As the assessee society was already held to be eligible for exemption under sections 11 and 12 in the appeal proceedings; AO was not justified in denying assessee's claim of deduction in respect of expenses for investment in acquisition of fixed assets as application of income. ■

Assessee claimed expenses for investment in acquisition of fixed assets, which was disallowed by the AO on the ground that assessee's claim of exemption under section 11 was rejected. However, CIT(A) allowed assessee's claim of exemption under section 11/12 and directed the AO to compute the income as per provisions of sections 11 and 12. ***Held:*** Since the assessee society was already held to be eligible for exemption under section 11 and 12 in the appeal proceedings; the ground of appeal pertaining to denial of assessee's claim of application of income by way of capital expenditure towards acquisition of fixed assets became academic and hence, dismissed.

IMPORTANT

Dt.Ord.: *16 October, 2019* ✓ **In assessee's favour**

➲ **Dy. CIT (E) v. Lotus Education Society** *(2020) 172 TR (A) 410 (Jai-Trib) : 2019 TaxPub(DT) 7550 (Jp-Trib)*

S. 11

Charitable trust—***Exemption under section 11***—*Disallowance of claim of exemption under section 11 in respect of consultancy fee received*

Where contention of assessee that it was engaged in activity of providing education, the proviso to section 2(15) was not applicable and the said aspect was not examined or dealt with by Tribunal because no pleading to that effect was taken by the assessee, therefore, matter was remanded back to AO for re-examination and directed him to adjudicate the issue keeping in view the evidences filed by assessee. ■

Assessee was basically undertaking research in the field of chemical engineering and providing training and claimed exemption under section 11. AO noticed that during the year, assessee received consultancy fee. Assessee submitted that certain projects were undertaken with a view to carry out research and help the students/fellows of Institution to gain actual working experience in live projects in subject during the course of their studies. It was submitted, out of the total fee received from such projects, only 1/3rd is taken by assessee and balance amount was paid to faculty who undertakes the research project. AO, however, concluded that revenue earned on such consultancy activity could not be regarded as charitable in view of provisions of section 2(15) read with sections 11 and 12 and disallowed assessee's claim of exemption only with regard to its share in consultancy fee received, though, he allowed assessee's claim of exemption under section 11. ***Held:*** The proviso to section 2(15) applies only to activity of 'advancement of any other object of general public utility' as per definition of charitable purpose under section 2(15). It was the contention of assessee that since it was engaged in the activity of providing education, the proviso to section 2(15) was not applicable. The

aforesaid aspect was not examined or dealt with by Tribunal because no pleading to that effect was taken by assessee. Since claim of assessee had not at all been examined by Departmental Authorities, therefore, matter was remanded back to AO for re-examination and directed him to adjudicate the issue keeping in view the evidences filed by assessee.

Dt.Ord.: *15 January, 2020* ✓ **In assessee's favour by way of remanded**

➲ **Institute of Chemical Technology v. ITO** *(2020) 172 TR (A) 410 (Mum-Trib) : 2020 TaxPub(DT) 367 (Mum-Trib) : (2020) 203 TTJ (Mum-Trib) 590*

S. 11

Charitable trust—***Exemption under sections 11 and 12***—*AO found discrepancy in the loan and treated the same as unexplained*

Treating the loan as unexplained had no link with the denial of the exemption under section 11/12. Further, as the assessee had not defaulted in any of the limbs of section 13, the exemption under section 11 could not be denied. Moreover, as the discrepancy referred to by the AO in the loan was only an accounting error duly explained by the assessee, the denial of the exemption under section 11/12 by AO was not justified. ■

Assessee-trust was registered under section 12AA. It had shown unsecured loans. AO treated the discrepancies found in the amount of loan as unexplained and denied the exemption under sections 11 and 12. Assessee contended that as the discrepancy mentioned by the AO did not fall in any of the limbs of section 13, denial of exemption under section 11 was not justified. Assessee further contended that said discrepancy in the loan was only an accounting error. ***Held:*** Registration granted to the assessee under section 12AA had not been cancelled or withdrawn by the CIT. Further, treating the loan as unexplained had no link with the denial of the exemption under section 11/12. And, as the assessee had not defaulted in any of the limb of section 13, the exemption under section 11 could not be denied. Moreover, as the discrepancy referred to by the AO in the loan was only an accounting error duly explained by the assessee, the denial of the exemption by AO was not justified. Hence, the AO was directed to compute the income after allowing exemption under section 11/12.

Dt.Ord.: *16 October, 2019* ✓ **In assessee's favour**

➲ **Dy. CIT (E) v. Lotus Education Society** *(2020) 172 TR (A) 411 (Jai-Trib) : 2019 TaxPub(DT) 7550 (Jp-Trib)*

S. 11(1)(a)

Charitable trust—***Accumulation of income***—*Blanket exemption*

The assessee being eligible for exemption under sections 11 and 12 is eligible for accumulation of its receipts within the prescribed threshold as provided in the Act. But, where the assessee society had reported excess of expenditure over receipts and had shown unsecured loans then *prima facie* the excess of expenditure has been treated to be met out of unsecured loans. Therefore, to examine in detail the extent to which unsecured loans and fee receipts and other income have been utilised for meeting the expenditure and then determine the amount of accumulation out of total fee and other income receipts, the matter was set aside to the AO. ■

AO did not allow the accumulation or set apart to the extent of 15% of total receipts to the assessee as the assessee's claim of exemption under section 11 was rejected. However, CIT (A) directed the AO to compute the

income as per provisions of section 11. Assessee submitted that from the computation of total income, it could also be noted that assessee had not claimed any accumulation or set apart of total receipts. ***Held:*** The assessee being eligible for exemption under sections 11 and 12 is eligible for accumulation of its receipts within the prescribed threshold as provided in the Act. In this regard, it was found that the assessee society had reported excess of expenditure over receipts by Rs. 41,53,672. And, besides the fees receipts and other income, the assessee had shown unsecured loans of Rs. 8,85,32,180, *prima facie* the excess of expenditure has been met out of unsecured loans and not out of total fee and other income receipts during the year. Therefore, it needs to be examined in detail to what extent the unsecured loans and fee receipts and other income have been utilised for meeting the expenditure and then determine the amount of accumulation out of total fee and other income receipts accordingly. Thus, the matter was set aside to the AO for the limited purpose of determination of accumulation of receipts and take action as per law.

Dt.Ord.: *16 October, 2019* ✓ **In assessee's favour (by way of remand)**

➲ **Dy. CIT (E) v. Lotus Education Society** *(2020) 172 TR (A) 411 (Jai-TRIB) : 2019 TaxPub(DT) 7550 (Jp-Trib)*

S. 12A

A.Y. 2013-14

Charitable trust—***Deemed registration under section 12A***—*Non-consideration of application submitted by assessee under section 12A within time fixed under section 12AA(2)*

Non-consideration of application for registration under section 12A within the time fixed under section 12AA(2) would be a deemed grant of registration. ■

Assessee was a trust applied for registration under section 12A on 6-8-1990. The case of assessee was that his application for grant of registration under section 12A was pending with the authorities, however, every year exemption under section 11 was granted to the assessee under section 143(3). The department was allowing the assessee's income as exempt under section 11 by considering that the assessee was already having a registration under section 12A. For the assessment year under consideration, the assessee had filed a return of income, whereas the CPC, Bangalore processed the return under section 143(1) and considered the entire gross receipts as income liable for tax on the ground that registration number of the Trust was not mentioned in the return form. ***Held:*** Once assessee was enjoying benefit of section 11 by the Department, the subsequent years without scrutiny, it cannot simply reject on the ground that registration number of the Trust was not mentioned. The CPC, Bangalore ought to have referred the matter to the AO for examination of the entire issue. Since the adjustment made by the CPC (AO) was debatable, which requires verification from the assessment records and there was no evidence to show that the registration applied for was rejected or cancelled, the intimation under section 143(1) was beyond the scope of section 143(1) and the order passed by the CPC (AO) under section 143(1) was set aside and the addition made by the AO was deleted. Non-consideration of the application for registration under section 12A within the time fixed under section 12AA(2) would be a deemed grant of registration. There was no merit in the grounds raised by the revenue. Thus, the appeal filed by the revenue was dismissed.

Dt.Ord.: *4 October, 2019* ✓ **In assessee's favour**

Followed: CIT & Ors. v. Society for the Promotion of Education (2016) 382 ITR 06 (SC) : 2016 TaxPub(DT) 1237 (SC), Society for the Promotion of Education Adventure Sport & Conservation of Environment v. CIT & Ors. (2015) 372 ITR 222 (All) : 2008 TaxPub(DT) 1867 (All-HC) and Andhra School of Preaching v. CIT(Appeals) [ITA No. 36/VIZ/2017, dated 9-8-2017] : 2017 TaxPub(DT) 2141 (Visakhapatnam-Trib).

➲ **ITO v. Rural India Self Development Trust** *(2020) 172 TR (A) 412 (Vizag-Trib) : 2019 TaxPub(DT) 6829 (Visakha Trib)*

S. 14 A.Y. 2011-12

Head of income—***Income from house property or Income from other sources***—*Sum received from display of advertisement on assessee's undergoing real estate project*

Rental income received for display of commercial advertisement on assessee's undergoing real estate building project was taxable as income from house property because assessee was owner of concerned property. ■

IMPORTANT

Assessee challenged order of CIT(A) upholding rental income received for display of commercial advertisement on assessee's undergoing real estate building project to be in the nature of income from other sources, instead of income from house property, as declared by assessee. ***Held:*** A perusal of conveyance agreement filed by assessee clearly indicated that assessee was 'owner' of concerned property. The aforesaid documents were also filed before AO. Assessee had obtained development rights of the re-development project and therefore, was owner of re-development rights of the said society. Therefore, income was to be assessed as income from house property and deduction u/s 24 was to be allowed to assessee.

Dt.Ord.: *9 April, 2019* ✓ **In assessee's favour**

➲ **Chaitanya Developers v. Addl. CIT** *(2020) 172 TR (A) 413 (Mum-Trib) : 2019 TaxPub(DT) 3584 (Mum 'C'-Trib)*

S. 14A A.Y. 2012-13

Disallowance under section 14A—***Assessee having sufficient own funds to cover cost of investments***—*Expenditure against exempted income*

Where assessee-company had sufficient owned fund at its disposal to cover the cost of investments yielding exempt income, disallowance under section 14A of proportionate interest expenditure was unjustified because revenue was unable to prove that the assessee had made the investments by utilizing borrowed funds. ■

IMPORTANT

Assessee-company had earned dividend income, which was exempt under section 10(34). It offered disallowance under section 14A of expenditure incurred in relation to earning such dividend income. AO did not accept the disallowance offered by assessee and enhanced the same by making addition of proportionate interest expenditure invoking Rule 8D(2)(ii). Assessee contended that it did not utilize borrowed fund to make the investments, therefore addition of interest expenditure to the disallowance u/s 14A was unjustified. ***Held:*** Apparently the amount of owned funds was much higher than the amount of the investments. It implied that the assessee had at its disposals sufficient funds to make the investment, which yielded exempt income. Since AO could not bring anything on record, which proved that the investments were made out of the borrowed funds, therefore disallowance under section 14A was not justified.

Dt.Ord.: *28 August, 2019* ✓ **In assessee's favour**

➲ **Motilal Chunilal & Muktalal Shaw (HUF) & Ors. v. Asstt. CIT** *(2020) 172 TR (A) 413 (Kol-Trib) : 2019 TaxPub(DT) 6990 (Kol-Trib)*

S. 14A

Disallowance under section 14A—*Expenditure against exempt income*— *Applicability of rule 8D—Non-satisfaction not recorded by AO*

Though AO worked out disallowance under section 14A by invoking rule 8D, but the AO did not record his non-satisfaction to reject disallowance under section 14A made by assessee, therefore, Tribunal rightly held that there would be no occasion to invoke rule 8D to work out the disallowance under section 14A. ■

Assessee disallowed a sum under section 14A as expenditure attributable to earning of exempt income, but AO did not accept the claim of the assessee. The AO worked out disallowance under section 14A by invoking rule 8D, which was confirmed by CIT(A). Tribunal held that the AO did not record his non-satisfaction to reject disallowance under section 14A claimed by the assessee. Therefore, there would be no occasion to invoke rule 8D to work out the disallowance. ***Held:*** Non-satisfaction with the disallowance offered by the assessee had to be arrived at on the basis of the accounts submitted by the assessee. The AO had not carried out any exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with rule 8D. The application of rule 8D would only arise once the AO was not satisfied on an objective criteria in the context of its accounts, that *suo motu* disallowance claimed by the assessee was not proper. Thus, Tribunal rightly held that there would be no occasion to invoke rule 8D to work out the disallowance under section 14A.

Dt.Ord.: *15 October, 2019* ✓ **In assessee's favour**

➲ **Pr. CIT v. Bombay Stock Exchange Ltd.** *(2020) 172 TR (A) 414 (Bom-HC) : 2019 TaxPub(DT) 7364 (Bom-HC)*

S. 14A

A.Y. 2009-10

Disallowance under section 14A—*Expenditure against exempt income*— *Assessee made suo motu disallowance—AO made disallowance over and above suo moto disallowance made by assessee*

Where AO did not point out in clear terms as to why the *suo moto* disallowance made by assessee under section 14A was not correct with reference to its books of account, the AO was not justified in making disallowance of expenditure determined in accordance with rule 8D(2) over and above the *suo moto* disallowance made by the assessee. ■

Assessee-company made *suo moto* disallowance under section 14A. However, AO made disallowance of expenditure determined in accordance with rule 8D(2) over and above the *suo moto* disallowance made by the assessee. Assessee contended that as AO did not point out in clear terms as to why the *suo moto* disallowance made by it was not correct, therefore, the disallowance made by the AO over and above the *suo moto* disallowance would not be sustainable. ***Held:*** AO did not point out in clear terms as to why the *suo moto* disallowance made by assessee was not correct with reference to its books of account. He all along stated in the assessment order that only partial application of rule 8D was made by the assessee and did not point out the incorrectness of the *suo moto* disallowance made by the assessee or as to why the same was not adequate disallowance under section 14A to meet the expenses

attributable for earning dividend income. Hence, the AO was directed to restrict the disallowance under section 14A only to the *suo moto* disallowance already made by the assessee and delete the balance disallowance.

Dt.Ord.: *10 January, 2020* ✓ **In assessee's favour**

➲ **Cyrus Investment (P) Ltd. v. Asstt. CIT** *(2020) 172 TR (A) 414 (Mum-TRIB) : 2020 TaxPub(DT) 357 (Mum-Trib)*

S. 23

Income from house property—***Annual value***—*Determination*

Where assessee did not give any supporting evidence that premises was vacated by the tenant and it was the submission of assessee that given an opportunity, assessee was in a position to substantiate the claim by producing necessary evidence, therefore, matter was remanded back to AO with a direction to grant an opportunity to the assessee to substantiate that the tenant had in fact vacated the premises. ■

AO noted that assessee had declared income from house property after deducting house tax and standard deduction u/s 24(a). However, from the perusal of rent agreement, AO noted that initially assessee had rented the premises to M/s. S on a monthly rent of Rs. 1,40,000 w.e.f. March 2009 which was valid till 9-3-2011. However, assessee contended that the premises was vacated during the year and was again rented to M/s. R on a monthly rent of Rs. 90,000 w.e.f. 1-10-2010. Since assessee did not submit any documentary evidence in support of his claim that premises was vacated by M/s. S, AO accordingly made addition to the income of the assessee under the head "Income from house property". ***Held:*** Even before CIT(A) also assessee did not give any supporting evidence that premises was vacated by the said tenant for which he upheld the action of AO. It was submission of assessee that given an opportunity, assessee was in a position to substantiate the claim by producing necessary evidence. In the interest of justice, matter was remanded back to AO with a direction to grant an opportunity to assessee to substantiate with evidence to his satisfaction that tenant had in fact vacated the premises.

Dt.Ord.: *13 December, 2019* ✓ **In assessee's favour (by way of remand)**

➲ **Aman Tandon v. ACIT** *(2020) 172 TR (A) 415 (Del-Trib) : 2019 TaxPub(DT) 8071 (Del-Trib)*

S. 32(1)

Depreciation—***Allowability***—*Block of assets—Some assets not used during the year under consideration*

Business use of each item of a block of assets is not necessary for allowing depreciation thereon, therefore, depreciation was allowable on concerned block of assets in full and same could not be reduced in the manner done as by AO. ■

Assessee claimed depreciation on WDV of certain block of asset. AO restricted of claim on the ground that same assets of the concerned block were not used during the relevant year. ***Held:*** Business use of each item of a block of assets is not necessary for allowing depreciation on block, therefore, depreciation was allowable on concerned block of assets in full and same could not be reduced in the manner done as by AO.

IMPORTANT

Dt.Ord.: *15 February, 2019* ✓ **In assessee's favour**

Followed: Swati Synthetics Ltd. v. ITO (2010) 38 SOT 0208 (Mumbai-Trib.) : 2010 TaxPub(DT) 1192 (Mum-Trib)

➲ **Bharat Mines and Mineral v. ACIT** *(2020) 172 TR (A) 415 (Bang-Trib) : 2019 TaxPub(DT) 2111 (Bang-Trib) : (2019) 70 ITR (Trib) 684 (Bang-Trib)*

S. 32(1)(iia)

Depreciation—***Additional depreciation***—*Allowability—Installation of windmill*

In view of the decision rendered in *CST v. Madhya Pradesh Electricity Board AIR 1970 SC 732*, whereby the Apex Court held that electricity is goods within the meaning of the Sales Tax Act and the Excise Act, the first contention of assessee with regard to additional depreciation under section 32(1)(iia) on installation of windmill was not examined by the Court. ■

Assessee claimed additional depreciation under section 32(1)(iia) on installation of windmill contending that it being engaged in manufacture of articles and things, such additional depreciation would be admissible, whether the installation of plant and machinery was in connection with such business or not. ***Held:*** In view of the decision rendered in *CST v. Madhya Pradesh Electricity Board AIR 1970 SC 732*, whereby the Apex Court held that electricity is goods within the meaning of the Sales Tax Act and the Excise Act, the first contention of assessee with regard to additional depreciation under section 32(1)(iia) on installation of windmill was not examined by the Court.

Dt.Ord.: *9 April, 2019* ✓ **In assessee's favour**

Followed: CST v. Madhya Pradesh Electricity Board AIR 1970 SC 732

➲ **ACIT v. Dhariwal Industries Ltd.** *(2020) 172 TR (A) 416 (Bom-HC) : 2019 TaxPub(DT) 3564 (Bom-HC)*

S. 32(2)

Depreciation—***Unabsorbed depreciation***—*Allowability of set-off—Assessee having discontinued business in earlier years*

'Set-off' of 'unabsorbed depreciation' cannot be bridled with a condition that the business should be continued by assessee in the concerned year, therefore, claim of 'set off" of brought forward 'unabsorbed depreciation' by assessee against its 'Income from house property' and 'Income from other sources' for the concerned year was in conformity with mandate of law. ■

Assessee had 'set off' its entire 'Income from house property' and 'Income from other sources' against brought forward 'unabsorbed depreciation' of the earlier years. AO held that as assessee had admittedly discontinued its business activities in assessment year 2010-11, therefore, it was not entitled to claim 'set off' of losses of earlier years against its income for the relevant year. ***Held:*** 'Set off' of 'unabsorbed depreciation' cannot be bridled with a condition that business should be continued by assessee in the concerned year, therefore, claim of 'set off'' of brought forward 'unabsorbed depreciation' by assessee against its 'Income from house property' and 'Income from other sources' for the concerned year was in conformity with mandate of law.

Dt.Ord.: *7 August, 2019* ✓ **In assessee's favour**

Relied: CIT v. Virmani Industries Pvt. Ltd., (1995) 216 ITR 607 (SC) : 1995 TaxPub(DT) 1370 (SC).

➲ **Dy. CIT v. Regency Property Investments (P.) Ltd.** *(2020) 172 TR (A) 416 (Mum-Trib) : 2019 TaxPub(DT) 6628 (Mum-Trib) : (2019) 179 ITD 584 (Mum-Trib)*

S. 37(1) A.Y. 2012-13

Business expenditure—***Allowability***—*Foreign exchange fluctuation loss arising out of re-statement of External Commercial Borrowings*

When External Commercial Borrowings (ECB) was utilized for purchase of capital assets in India by assessee, then, any change in the ECB value due to exchange fluctuation would not alter cost of fixed assets, therefore, the assessee deserved to be granted deduction towards foreign exchange fluctuation loss. ■

Assessee claimed foreign exchange fluctuation loss arising out of re-statement of External Commercial Borrowings (ECB) at the year end rates in accordance with Accounting Standardâ€"11(AS-11) prescribed by Institute of Chartered Accountants of India (ICAI). AO made disallowance of foreign exchange loss by holding that it was capital expenditure and could not be allowed as deduction under section 37(1), which was confirmed by CIT(A). ***Held:*** The ECB had been utilized for purchase of capital assets in India by the assessee. Thereafter, any change in the ECB value due to exchange fluctuation would not alter the cost of fixed assets. It could be safely concluded that exchange loss had got absolutely no bearing/link with the cost of fixed asset. In that scenario, the only alternative was to treat the loss as loss incurred on the revenue field and the same was to be allowed as revenue expenditure. Therefore, the assessee deserved to be granted deduction towards foreign exchange fluctuation loss and the same was allowed.

Dt.Ord.: *7 August, 2019* ✓ **In assessee's favour**

➲ **Pharmabase India (P) Ltd. v. Dy. CIT** *(2020) 172 TR (A) 417 (Mum-Trib) : 2019 TaxPub(DT) 6625 (Mum-Trib)*

S. 37(1)

Business expenditure—***Allowability***—*Salary and commission expenditure*

Merely because assessee deducted TDS would not be justified that expenses have been incurred wholly and exclusively for the purpose of business. ■

Assessee challenged disallowance of commission and salary. During appellate proceedings, it had been argued that these expenses were business expenses allowable under section 37. ***Held:*** Since assessee failed to produce relevant evidences and also failed to produce such persons for examination before AO, therefore, onus cast upon assessee to prove that genuine commission was payable had not been discharged by assessee. Merely because assessee deducted TDS would not be justified that expenses have been incurred wholly and exclusively for the purpose of business. Assessee in respect of salary paid had failed to provide complete details before AO as well as failed to produce attendance register and the receipts given by the employees against payment of salary. Thus, commission payable and salary expenses were rightly disallowed by revenue authorities below.

Dt.Ord.: *2 September, 2019* ✓ **Against the assessee**

➲ **Ritu Taneja v. ITO** *(2020) 172 TR (A) 417 (Del-Trib) : 2019 TaxPub(DT) 7004 (Del-Trib)*

S. 37(1)

Business expenditure—***Income from partnership firm***—*Disallowance of expenses against remuneration earned by assessee from a firm*

Where Supreme Court in case of *Ramlik Kothari (1969) 74 ITR 57 (SC) : 1969 TaxPub(DT) 0354 (SC)* had held that expenditure incurred by partner for earning income from partnership firm was an allowable expenditure and since in the preceding and subsequent years such salary paid to employees were allowed as business expenditure from the salary income received from the firm, therefore, CIT(A) was not justified in upholding the disallowance made by AO. ■

Assessee had claimed business expense against remuneration received from the firm M/s. W. AO asked assessee to justify the allowability of such expenses against remuneration. Assessee submitted that remuneration from a firm was considered as business income as per section 28(v). He had employed two persons to look after the interest of Firm's business, therefore, these expenses are fully allowable from the business income of the assessee. AO was not satisfied with the explanation given by assessee and disallowed the same. CIT(A) upheld the order of AO. ***Held:*** Supreme Court in the case of *Ramlik Kothari (1969) 74 ITR 57 (SC) : 1969 TaxPub(DT) 0354 (SC)* had held that expenditure incurred by partner for earning income from partnership firm was an allowable expenditure. Further, the rule of consistency also was in favour of assessee, since in preceding and subsequent years such salary paid to employees were allowed as business expenditure from the salary income received from the firm. Therefore, CIT(A) was not justified in upholding the disallowance made by AO.

Dt.Ord.: *13 December, 2019* ✓ **In assessee's favour**

Followed: CIT v. Excel Industries Ltd. (2013) 358 ITR 395 (SC) : 2013 TaxPub(DT) 2414 (SC), Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC) : 1992 TaxPub(DT) 0858 (SC), CIT v. Ramniklal Kothari (1969) 74 ITR 57 (SC) : 1969 TaxPub(DT) 0354 (SC)

➲ **Aman Tandon v. Asstt CIT** *(2020) 172 TR (A) 418 (Del-Trib) : 2019 TaxPub(DT) 8071 (Del-Trib)*

S. 40(a)(ia)

Business disallowance under section 40(a)(ia)—***Non-deduction of tax at source on interest***

As the assessee society was already held to be eligible for exemption under sections 11 and 12 in the appeal proceedings, AO was not justified in making disallowance under section 40(a)(ia) on account of non deduction of TDS. ■

AO made disallowance under section 40(a)(ia) on account of non-deduction of TDS on interest because assessee's claim of exemption under section 11 was rejected by him. However, CIT(A) deleted the disallowance made by the AO. Assessee contended that section 40(a)(ia) are not applicable to trust, hence, disallowance made by the AO was not tenable. ***Held:*** Since the assessee society was already held to be eligible for exemption under sections 11 and 12 in the appeal proceedings, the ground of appeal pertaining to disallowance made by AO under section 40(a)(ia) for non deduction of TDS became academic and hence, dismissed.

Dt.Ord.: *16 October, 2019* ✓ **In assessee's favour**

➲ **Dy. CIT (E) v. Lotus Education Society** *(2020) 172 TR (A) 418 (JAI-Trib) : 2019 TaxPub(DT) 7550 (Jp-Trib)*

S. 40A(3)

Business disallowance under section 40A(3)—***Cash payments exceeding monetary limit***—*Law applicable*

Where payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft against expenditure incurred by assessee exceeded the specified limit of Rs. 20,000, CIT (A) was justified in sustaining disallowance as made by AO under section 40A(3) to the extent of such payment/payments. ■

Assessee contended that CIT (A) erred in disallowing payments made in excess of Rs. 20,000 to a single person in a day in cash without considering the bill amount. It further, contended that the amount of each bill or the instance of expenditure incurred by assessee was to be taken into consideration and if such amount did not exceed the limit specified, disallowance under section 40A(3) would not be attracted even if the payment made in cash against such expenditure or aggregate of payments made to a person in a day exceeded the specified limit. ***Held:*** As per section 40A(3), what is relevant for the purpose of applicability of section 40A(3) is a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft against any expenditure incurred by assessee exceeding the specified limit of Rs. 20,000. Thus, there was no merit in the contention of the assessee. In instant case, such payment/payments in cash made by assessee exceeded the specified limit of Rs. 20,000, therefore, CIT (A) was justified in sustaining disallowance as made by AO under section 40A(3) to the extent of such payment/payments.

Dt.Ord.: *25 October, 2019* ✓ **Against the assessee**

➲ **Speed & Movers India (P) Ltd. v. ITO** *(2020) 172 TR (A) 418 (Kol-Trib) : 2019 TaxPub(DT) 8168 (Kol-Trib)*

S. 40A(3)

Business disallowance under section 40A(3)—***Cash payments exceeding monetary limit***—*Payment on account of electricity, power and fuel expenses—Applicability of proviso to section 40A(3)*

The proviso to section 40A(3) was applicable only in case of payment made for plying, hiring or leasing goods carriages and the benefit of the same could not be extended to cover the expenditure incurred on power and fuel irrespective of the nature of such expenditure or the nature of assessee's business. Therefore, the disallowance made under section 40A(3) on account of electricity, power and fuel expenses, would be sustainable. ■

Assessee-company made payment on account of electricity, power and fuel expenses. Since the said payment was made in cash in violation of provisions of section 40A(3), AO disallowed the said expenditure. Assessee submitted that keeping in view the nature of its business of transportation of goods, the said expenditure would be treated as freight charges and the disallowance made under section 40A(3) to the extent it involved the payments in cash not exceeding Rs. 35,000, would be deleted as per the proviso to section 40A(3). ***Held:*** The relevant proviso to section 40A(3) was applicable only in case of payment made for plying, hiring or leasing goods carriages and the benefit of the same could not be extended to cover the expenditure incurred on power and fuel irrespective of the

nature of such expenditure or the nature of assessee's business. Therefore, the disallowance made under section 40A(3) on account of electricity, power and fuel expenses, would be sustainable.

Dt.Ord.: *25 October, 2019* ✓ **Against the assessee**

➲ **Speed & Movers India (P) Ltd. v. ITO** *(2020) 172 TR (A) 419 (Kol-Trib) : 2019 TaxPub(DT) 8168 (Kol-Trib)*

S. 40A(3)

Business disallowance under section 40A(3)—***Cash payments exceeding monetary limit***—*Payment on account of car hire charges—Applicability of proviso to section 40A(3)*

Where payment for car hire charges was covered by the proviso to section 40A(3) being payment made for plying, hiring or leasing goods carriages and where the payment of such expenditure was made in cash not exceeding a sum of Rs. 35,000, the disallowance made under section 40A(3) in respect of the said expenditure, would not be sustainable. ■

Assessee-company made payment on account of car hire charges. Since the said payment was made in cash in violation of provisions of section 40A(3) and there were no exceptional circumstances explained by the assessee for making such payment in cash as specified in rule 6DD, AO disallowed the said expenditure. ***Held:*** Since payment for car hire charges was covered by the proviso to section 40A(3) being payment made for plying, hiring or leasing goods carriages and since the payment of such expenditure was made in cash not exceeding a sum of Rs. 35,000, the disallowance made under section 40A(3) in respect of the said expenditure, would not be sustainable.

Dt.Ord.: *25 October, 2019* ✓ **In assessee's favour**

➲ **Speed & Movers India (P) Ltd. v. ITO** *(2020) 172 TR (A) 420 (Kol-Trib) : 2019 TaxPub(DT) 8168 (Kol-Trib)*

S. 41(1)

Business income—***Profits chargeable to tax under section 41(1)***—*Waiver of term loan*

Since loan was taken from acquisition of capital assets and assessee had made submissions that for chargeability under section 41(1), there should have been actual allowance made in the assessment of assessee in the earlier year, therefore, waiver of loan being waived off could not be termed as a revenue receipt and appeal of revenue was dismissed. ■

Issue arose for consideration as to whether Tribunal was justified in dismissing the appeal of the revenue on the issue of deletion of addition being disallowance of principal amount of loan waived off by lender on account of one time settlement of loan holding that the loan was acquired for acquisition/investment of capital assets as such its waiver cannot be termed as revenue receipt. ***Held:*** Loan was taken from acquisition of capital assets. Thus, waiver of loan being waived off could not be termed as a revenue receipt. Assessee had made submissions that for chargeability under section 41(1), there should have been actual allowance made in the assessment of assessee in the earlier year. CIT(A) and Tribunal followed the decisions of this Court in the case of *Mahindra and Mahindra Ltd. v. CIT ((2003) 261 ITR 501(Bom) : 2003 TaxPub(DT) 0995 (Bom-HC))* and held that

on such waiver of loan taken on capital account, neither section 41(1) nor section 28(iv) are applicable. Thus, the question was no longer *res-integra*.

Dt.Ord.: *25 September, 2019* ✓ **In assessee's favour**

➲ **Pr. CIT v. Colour Roof (India) Ltd.** *(2020) 172 TR (A) 420 (Bom-HC) : 2019 TaxPub(DT) 6712 (Bom-HC)*

S. 45

A.Y. 2015-16

Capital gains—***Chargeability***—*Bank sold the property of group concern as it failed to repay—Whether assessee liable to pay capital gains tax*

As assessee availed of loan from the Bank under the banner of group concerns by mortgaging its own property and thereafter, as the group concerns failed to repay the loan, the bank sold the property and recovered entire consideration. Thus, it could not be held that the assessee had not received any consideration directly or indirectly, which were liable to tax. ■

IMPORTANT

Assessee-firm had given guarantee/security for the borrowings made by other entities being its group concern. Thereafter, as the group concerns failed to repay the loan, the bank sold the property and recovered entire consideration. Thus, revenue held that assessee was liable to pay capital gains tax. However, assessee contended that as it did not receive any benefit or accrue any benefits from the transfer, the levy of Capital Gains Tax was not correct. ***Held:*** In the instant case, the assessee availed loan from the Bank under the banner of group concerns by mortgaging its own property and thereafter, as the group concerns failed to repay the loan, the bank sold the property and recovered entire consideration. Thus, it could not be held that the assessee had not received any consideration directly or indirectly, which were liable to tax. Moreover, availing of loan itself was a consideration and as in the instant case, constructive benefit was very well accrued to the assessee when the loan was availed of by its group concerns, which was owned partly by the assessee. Thus, the levy of capital gains tax was correct.

Dt.Ord.: *6 September, 2019* ✓ **Against the assessee**

➲ **T.S. Hajee Moosa & Co. v. ACIT** *(2020) 172 TR (A) 421 (Chen-Trib) : 2019 TaxPub(DT) 7160 (Chenn-Trib)*

S. 48

A.Y. 2014-15

Capital gains—***Cost of acquisition***—*Interest expense on capital borrowed for acquisition of the asset—AO holding that interest expenditure should be claimed under section 24*

Deduction under section 24(b) and computation of capital gains under section 48 are altogether covered by different heads of income and, therefore, AO was not justified in holding that since assessee had leased out concerned house property for rent, therefore, interest expenses had to be claimed as deduction from income from house property and same could not be allowed as cost of acquisition. Assessee was certainly entitled to include interest amount at the time of computing capital gains under section 48. ■

IMPORTANT

Assessee sold certain flat which had been leased out before sale. He declared capital gain net of interest expense on capital borrowed for acquisition of the asset. AO held that since assessee had leased out the said house property for rent, therefore, interest expense had to be claimed as deduction from income from house property and same could not be allowed as cost of acquisition. ***Held:*** Deduction u/s 24(b) and computation of capital gains u/s 48 are altogether covered by

different heads of income i.e., Income from 'house property' and 'Capital gains'. Further, a perusal of both the provisions makes it unambiguous that none of them excludes operative of the other. In other words, deduction under section 24(b) is claimed when concerned assessee declares income from 'house property', whereas, cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. There could not be even a slightest doubt that interest in question was indeed an expenditure towards acquiring the asset. Since both provisions are altogether different, assessee in the instant case was certainly entitled to include interest amount at the time of computing capital gains under section 48.

IMPORTANT

Dt.Ord.: *30 October, 2019* ✓ **In assessee's favour**

Applied: Praveen Gupta v. Asstt. CIT 2011 TaxPub(DT) 399 (Del-Trib) and Asstt. CIT v. C. Ramabrahmam 2013 TaxPub(DT) 1535 (Chen-Trib).

➲ **Ashok Kumar Shahi v. Asstt. CIT** *(2020) 172 TR (A) 421 (Del-Trib) : 2019 TaxPub(DT) 7320 (Del-Trib)*

S. 54

A.Y. 2012-13

Capital gains—***Deduction under section 54***—*Right acquired by way of provisional booking of property, whether to be considered as purchase acquisition of new capital asset*

Surrendering of allotment of flat has to be considered as a right in property, which is a capital asset and any capital gain arising from that capital asset, if assessee purchases new flat, then he is eligible for exemption under section 54. ■

Assessee had obtained allotment letter for certain flats in a residency project. After three years, it was surrendered and assessee earned a differential surplus after indexation of capital gains. After surrendering first property, assessee purchased another property on which, he claimed exemption u/s 54. AO denied the exemption alleging that in absence of an agreement to sell, rights acquired by provisional booking of property was not acquisition of new capital asset. ***Held:*** *CBDT Circular No. 471, dt. 15-10-1986* mandates that property acquired by allotment letter was considered as capital asset for the purpose of exemption from capital gains. In view of CBDT circular and also in view of case in *CIT v. Ram Gopal (2015) 55 taxmann.com 536 (Del),* it was held that surrendering of allotment of flat has to be considered as a right in property which is a capital asset and any capital gain arising from that capital asset, if assessee purchases new flat, then he is eligible for exemption u/s 54.

IMPORTANT

Dt.Ord.: *21 May, 2019* ✓ **In assessee's favour**

➲ **Asstt. CIT v. Ashwin. S. Bhalekar** *(2020) 172 TR (A) 422 (Mum-Trib) : 2019 TaxPub(DT) 4124 (Mum 'A'-Trib) : (2019) 74 ITR (Trib) 5 (Mum 'A'-Trib)*

S. 54

Capital gains—***Exemption under section 54***—*Construction of new house property not completed timely on account of delay caused by builder for minor repairs*

Where assessee had purchased land by investing the capital gains and constructed residential house and also produced completion certificate from the municipal authority, exemption under section 54F could not be denied on the ground that the construction was not completed

within the specified period. ■

Assessee was denied exemption under section 54 on account of delay in construction of new residential property. ***Held:*** There was a delay on the part of the builder in non-completing the construction on account of minor repairs and obtained completion certificate subsequently, cannot be a ground to deny the claim of exemption under section 54. Assessee had purchased land by investing the capital gains and constructed residential house and also produced completion certificate from the municipal authority, exemption under section 54F could not be denied on the ground that the construction was not completed within the specified period.

IMPORTANT

Dt.Ord.: *2 August, 2019* ✓ **In assessee's favour**

➲ **Manthravadi Vidyavathi v. Dy. CIT** *(2020) 172 TR (A) 422 (Vizag-Trib) : 2019 TaxPub(DT) 5706 (Visakha Trib)*

S. 54B

A.Y. 2014-15

Capital asset—***Deduction under section 54B***—*Allowability as regards cost step up under section 56(2)(viib)*

Section 49(4) clearly provides that benefit of inflated cost of acquisition in view of deeming provisions under section 56(2)(vii)(b)(ii) would be available at the time of sale of asset and capital gains would be accordingly reduced to the extent of such increase in deemed consideration. Accordingly, cost step up would be available only for the purpose of calculating capital gain when property is transferred at a later date as capital asset. Therefore, cost step-up would not be allowed which computing deduction under section 54B, in the year, in which land was acquired. ■

Assessee has purchased certain land parcels below stamp duty valuation rate. AO accordingly replaced stamp duty valuation rate for the purposes of determination of purchase consideration by applying section 5(vii)(b). Assessee contended that addition under section 56(2)(vii) would have direct linkage with cost of asset and, therefore, exemption claim u/s 54B against land sold would be increased to that extent as per section 49(4) read with section 54B as section 49(4) does not require transfer of the same property for claim of deduction under section 54B. ***Held:*** Section 49(4) clearly provides that benefit of inflated cost of acquisition in view of deeming provisions under section 56(2)(vii)(b)(ii) would be available at the time of sale of asset and capital gains would be accordingly reduced to the extent of such increase in deemed consideration. Accordingly, cost step up would be available only for the purpose of calculating capital gain when property is transferred at a later date as capital asset. In view of this deduction on enhanced value could not be made available for the deduction under section 54B during the year under consideration.

IMPORTANT

Dt.Ord.: *11 September, 2019* ✓ **Against the assessee**

➲ **Vishnubhai Mafatbhai Desai v. ITO** *(2020) 172 TR (A) 423 (Ahd-Trib) : 2019 TaxPub(DT) 6235 (Ahd-Tribl)*

S. 54F

Capital gains—***Deduction under section 54F***—*No evidences Produced for purchase of new house*

Where assessee did not furnish any evidence of payment towards deposit made with the builder with whom she had entered into an

agreement for purchase of new flat, her claim of deduction under section 54F could not be entertained without furnishing payment details. Thus, she was directed to furnish complete evidence towards payment before AO for verification. ■

After sale of property, in order to purchase a new flat, assessee claimed that she had made three payments towards 'negotiation deposit' with the builder within the time limit permitted under section 54 and thus, claimed deduction under section 54F. Assessee filed copy of the apartment buyer's agreement. Revenue alleged that assessee did not produce any agreement entered into with the builder for the purchase of flat before the authorities below with regard to the claim of three payments made for the purchase. Revenue alleged that mere agreement without payment evidence, the claim of deduction could not be allowed. ***Held:*** The payment through three cheques for a total amount before due date of filing of return of income under section 139 was not in dispute. When there was no clarity on the purpose for which assessee made payment with the builder, under section 133, AO could have called for details/explanation from the builder, which was not done by AO. Since there was long delay in construction of property, assessee made a request for withdrawal of the amount paid and the entire amounrt was refunded to assessee. However, assessee did not furnish any evidence of payment towards deposit made with the builder with whom the assessee has entered into an agreement for purchase of new flat. Without furnishing payment details, assessee's claim could not be entertained. Assessee was directed to furnish complete evidence towards payment of the amount before AO for verification. If the details were found to be correct, the claimed deduction under section 54F was allowable and otherwise not.

IMPORTANT

Dt.Ord.: *7 June, 2019* ✓ **In assessee's favour by way of remand**

➲ **Archana Kanwar v. ITO** *(2020) 172 TR (A) 423 (Chen-Trib) : 2019 TaxPub(DT) 4593 (Chenn-Trib)*

S. 54F

A.Y. 2012-13

Capital gains—***Deduction under section 54F***—*Quantum of deduction—Payment towards purchase of residential house up to the due date of filing of return prescribed under section 139(4)*

The payment made by assessee towards purchase of residential house up to the due date of filing of the return of income prescribed under section 139(4) would be allowable for considering deduction under section 54F. ■

Assessee invested a portion of sale consideration on sale of land for purchase of a residential house. Accordingly, he claimed deduction under section 54F. AO was of the view that payment made for purchase of residential flat before due date of filing of return of income as per section 139(1) would be allowable for considering deduction under section 54F. Assessee contended that the due date of filing of return of income should be reckoned as under section 139(4). ***Held:*** In view of various decisions of High Court and Tribunal, the payment made by assessee towards purchase of residential house up to the due date of filing of the return of income prescribed u/s 139(4) would be allowable for considering deduction under section 54F. Accordingly, the AO was directed to consider amount utilized by the assessee for purchase of house till due date of filing of return of income prescribed under section 139(4) for deduction under section 54F.

Dt.Ord.: *6 August, 2019* ✓ **In assessee's favour**

Relied: Principal CIT v. Shankar Lal Saini ITA No. 153 of 2017: 2018 TaxPub (DT) 0314 (Raj-HC), CIT v. K. Ramachandra Rao [ITA Nos. 494 & 495 of 2013 & 46 & 47 of 2014, 14-7-2014]: 2015 TaxPub (DT) 1933 (Karn-HC) and Kishore H. Galaiya, v. ITO ITA No. 7326/Mum/2010: 2012 TaxPub (DT) 2549 (Mum-Trib)

➲ **Vatsala Asthana v. ITO** *(2020) 172 TR (A) 424 (Del-Trib) : 2019 TaxPub(DT) 7168 (Del-Trib) : (2019) 179 ITD 297 (Del-Trib)*

S. 54G

Capital gains—***Exemption under section 54G***—*Capital gain earned by assessee on sale of its godown situated in an urban area and which was relocated in a non-urban area*

Where capital gain arising from transfer of capital asset, being machinery or plant or land or building used for the purposes of business of an industrial undertaking situated in an urban area effected in the course of or in consequence of the shifting of such industrial undertaking to any area other than an urban area, assessee was entitled to the benefit of deduction under section 54G. ■

Assessee sold an explosive godown/property and invested in a property located in a non-urban area, i.e., in the outskirts and claimed deduction under section 54G. However, AO disallowed the exemption claimed by assessee. Tribunal allowed the claim holding that assessee shifted its godown storing hazardous products to a non-urban area and that the activity carried on in the godown being storage and repacking, which was severable from the other activities of the industrial establishment and hence assessee was entitled to claim exemption of capital gains as per the provisions of section 54G. ***Held:*** In terms of rule 71 of the Explosives Rules, 2008, a person holding licence for possession of explosives granted under these Rules should store the explosives only in the premises specified in the licence. One factor, which AO lost sight of, was manner, in which, the first limb of section 54G(1) is worded wherein the transfer of a capital asset includes machinery or plant or building or land or any rights in the building or land used for the purpose of business of an industrial undertaking situated in an urban area. However, where capital gains arising from transfer of capital asset, being machinery or plant or land or building used for the purposes of business of an industrial undertaking situated in an urban area effected in the course of or in consequence of the shifting of such industrial undertaking to any area other than an urban area, assessee was entitled to the benefit of deduction under section 54G.

Dt.Ord.: *9 July, 2019* ✓ **In assessee's favour**

➲ **Pr. CIT v. Standard Fireworks (P) Ltd.** *(2020) 172 TR (A) 425 (Mad-HC) : 2019 TaxPub(DT) 5373 (Mad-HC)*

S. 68

A.Y. 2014-15

Income from disclosed sources—***Addition under section 68***—*Sale proceeds of shares—Assessee having proved identity, creditworthiness and genuineness*

Assessee having furnished transactional documents, i.e., copies of purchase bills, copy of bank statements showing payments made for purchase of shares, demat account statement, transaction statement from BSE, copies of contract notes in respect of sale of shares, copy of bank statements showing receipts against sale of shares, etc., had substantiated genuineness of transactions involving purchase and sale

of shares and assessee was not involved in alleged racket of penny stock transactions and, therefore, AO was not justified in making addition under section 68. ■

AO based on information from investigation wing treated long-term capital gain on sale of shares claimed by the assessee as exempt under section 10(38) as bogus and accordingly subjected sales proceeds of shares to addition under section 68. ***Held:*** Assessee having furnished transactional documents, i.e., copies of purchase bills, copy of bank statements showing payments made for purchase of shares, demat account statement, transaction statement from BSE, copies of contract notes in respect of sale of shares, copy of bank statements showing receipts against sale of shares, etc., had substantiated genuineness of transactions involving purchase and sale of shares and assessee was not involved in alleged racket of penny stock transactions and, therefore, AO was not justified in making addition under section 68.

Dt.Ord.: *23 August, 2019* ✓ **In assessee's favour**

➲ **Bhagwati Devi Patwari v. Dy. CIT** *(2020) 172 TR (A) 425 (Kol-Trib) : 2019 TaxPub(DT) 5508 (Kol-Trib)*

S. 68 | A.Y. 2010-11

Income from undisclosed sources—***Addition under section 68***—*Cash deposit in bank account—No evidence to substantiate genuineness*

Since assessee failed to substantiate the claim that deposits made in bank account were out of sale proceeds, therefore, AO was justified in making addition under section 68. ■

AO noticed cash deposits of Rs. 8 crores in assessee's bank account. Assessee submitted that cash deposits in different bank accounts were out of sale proceeds of goods to different parties. AO being not satisfied with assessee's explanation, made addition under section 68. ***Held:*** Assessee claimed to have achieved turnover of more than Rs. 13 crores during the year under consideration. It was pertinent to note that assessee had commenced these business activities during the year itself and closed the same during the year itself. During this short period, assessee had achieved turnover of more than Rs. 13 crores that too the entire of sale claimed in cash without having any details or particulars of persons to whom the sales were made. This magnitude of turnover was not possible while doing retail sale to individuals and therefore, if the sale was made in wholesale, then particulars of purchaser should have been produced. Since assessee failed to substantiate the claim that deposits made in bank account were out of sale proceeds and accordingly AO was justified in making addition under section 68.

Dt.Ord.: *7 August, 2019* ✓ **Against the assessee**

➲ **Manish Kumar Mukim v. ITO** *(2020) 172 TR (A) 426 (Jp-Trib) : 2019 TaxPub(DT) 6629 (Jp-Trib)*

S. 68 | A.Y. 2014-15 & 2015-16

Income from undisclosed sources—***Addition under section 68***—*Long-term capital gain on sale of shares—AO merely relying on investigation wing report without disputing vortex of evidences furnished by assessee*

Assessee had furnished details including bank statement, share brokers note, ledger account copies, share certificates, in support of purchase and sale of shares and mode of payment and receipts of

proceeds. Neither AO conducted any enquiry nor brought any clinching evidences to disporve evidences produced by assessee. The report of investigation wing was much later than the dates of purchase/sale of shares and nowhere SEBI had declared the transaction at earlier dates as void, accordingly, statements recorded by investigation wing could not be the sole basis of addition without conducting proper enquiry and examination. ■

AO based on information emanated from investigation wing treated long-term capital gain declared by assessee as exempt under section 10(38) on sale of shares as bogus and made addition under section 68. ***Held:*** Assessee had, furnished details including bank statement, share brokers note, ledger account copies, share certificates, in support of purchase and sale of shares and mode of payment and receipts of proceeds. Neither AO conducted any enquiry nor brought any clinching evidences to disprove evidences produced by assessee. The report of investigation wing was much later than the dates of purchase/sale of shares and nowhere SEBI had declared the transaction at earlier dates as void, accordingly, statements recorded by investigation wing could not be the sole basis of addition without conducting proper enquiry and examination.

Dt.Ord.: *6 August, 2019* ✓ **In assessee's favour**

Supported: Fair Invest Ltd. (2013) 357 ITR 146 (Del) : 2013 TaxPub(DT) 912 (Del-HC).

➲ **Karuna Garg v. ITO** *(2020) 172 TR (A) 426 (Del-Trib) : 2019 TaxPub(DT) 5700 (Del-Trib) : (2019) 178 ITD 823 (Del-Trib)*

S. 68 A.Y. 2015-16

Income from undisclosed sources—***Addition under section 68***—*Sale proceeds of shares of KAFL—Assessee submitted contract notes, bills, bank statements, etc.*

Since transactions of purchase and sale of shares were accepted by AO in earlier years, the same could not be treated as bogus simply on the basis of some orders of SEBI and/or the statements of third parties especially when SEBI in its final order did not give adverse comment, accordingly, addition was deleted. ■

Assessee claimed exemption under section 68 in respect of long-term capital gain (LTCG) arisen on sale of shares of KAFL. AO taking note of interim order of SEBI, treated sale proceeds of shares as accommodation entries liable for addition under section 68. ***Held:*** Since transactions of purchase and sale of shares were accepted by AO in earlier years, the same could not be treated as bogus simply on the basis of some orders of SEBI and/or the statements of third parties especially when SEBI in its final order did not give adverse comment, accordingly, addition was deleted.

Dt.Ord.: *2 August, 2019* ✓ **In assessee's favour**

➲ **Shankar Lal Daruka v. ITO** *(2020) 172 TR (A) 427 (Kol-Trib) : 2019 TaxPub(DT) 6880 (Kol-Trib)*

S. 68

Income from undisclosed sources—***Addition under section 68***—*Unexplained cash credit*

Where the loan taken by assessee was fully explained by it, no addition could be made under section 68 by treating said loan as unexplained cash credit. ■

AO observed that assessee had shown loan of Rs. 15,00,000 from 'A', whereas in response to information called under section 133(6), 'A' had informed that he gave loan of Rs. 10 lacs and also furnished his bank statement. Accordingly, the AO treated difference in unsecured loan as anonymous receipt and unexplained cash credit and made addition under section 68. Assessee contended that it had received loan of Rs. 10 lacs from 'A' and Rs. 5 lacs from his sister concern. However, by mistake the entire loan has been accounted for in the books in the name of 'A'. In support of the same, copy of bank account of assessee and confirmation from sister concern of 'A' and its bank account was filed. ***Held:*** Since the loan taken by assessee was fully explained by it, therefore no addition could be made under section 68 by treating difference in unsecured loan as anonymous receipt and unexplained cash credit.

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Dt.Ord.: *16 October, 2019* ✓ **In assessee's favour**

➲ **Dy. CIT (E) v. Lotus Education Society** *(2020) 172 TR (A) 427 (Jai-Trib) : 2019 TaxPub(DT) 7550 (Jp-Trib)*

S. 69

Income from undisclosed sources—***Addition under section 69***—*Cash found during the course of search in bank locker*

Since burden of proof was more on asssessee when cash was found in the locker of a bank and not found deposited in the bank account and considering the status of assessee's family, her life style and standard of living, vis-a-vis returned income, lower authorities have already given substantial relief in respect of cash found from the locker, therefore, addition made by AO was sustained. ■

A search operation under section 132 was conducted at the residence of assessee and during the course of search operation, certain cash was found. Assessee was asked to explain the source of cash in the locker. Assessee explained that the cash so found in the locker was received as gifts on the occasion of marriage and subsequent ceremonies of her younger daughter. After considering the contents of cash book, AO was not satisfied with the source of opening cash balance. AO refused to entertain the claim of gifts on ceremonial functions and made addition as unexplained cash. ***Held:*** It was true that the findings of CIT(A) were not only illogical but also did not find any place in the law. It was equally true that onus was upon assessee to explain the possession of cash found at time of search. The burden of proof was more when cash was found in the locker of a bank and not found deposited in the bank account. Considering the status of assessee's family, her life style and standard of living, vis-a-vis returned income, lower authorities have already given substantial relief in respect of cash found from the locker. Therefore, addition made by AO was sustained.

Dt.Ord.: *7 November, 2019* ✓ **Against the assessee**

➲ **Bhawna Babbar v. ACIT** *(2020) 172 TR (A) 428 (Del-Trib) : 2019 TaxPub(DT) 7474 (Del-Trib)*

S. 69C

A.Y. 2009-10 & 2010-11

Income from undisclosed sources—***Addition under section 69C***—*Bogus purchases—No dispute as regards corresponding sales*

As there was no discrepancy between purchases shown by the assessee and the sales declared entire purchases could not be rejected without

disturbing corresponding sales and therefore, addition was restricted to 12.5% of alleged purchases, i.e., profit element embedded therein. ■

AO noticed that some of the ingredients for testing genuineness of purchases claimed by the assessee were missing accordingly, AO held entire purchases as bogus and made addition under section 69C, however, disputing corresponding sales. ***Held:*** As apparent, books of account were regularly maintained by assessee and the same including quantitative details had not been rejected by AO under section 145 except alleged purchases. No other major discrepancy had been noticed in the books and same were duly audited. Sales made by the assessee were not in dispute and there was no drastic change in gross profit and net profit rate. As there was no discrepancy between purchases shown by the assessee and the sales declared entire purchases could not be rejected without disturbing corresponding sales and therefore, addition was restricted to 12.5% of alleged purchases, i.e., profit element embedded therein.

IMPORTANT

Dt.Ord.: *16 July, 2019* ✓ **Partly in assessee favour**

Followed: Pr. CIT v. Mohommad Haji Adam & Co. [ITA No. 1004 of 2016 dated 11-2-2019] and V.R. Enterprises v. ITO [ITA No. 4650/Mum/2018 Order dated 16-5-2019].

➲ **Asstt. CIT v. Pankaj Sancheti** *(2020) 172 TR (A) 428 (Ind-Trib) : 2019 TaxPub(DT) 5038 (Ind-Trib)*

S. 69C

Income from undisclosed sources—***Addition under section 69C***—*Assessee received accommodation entries from various concerns—Treatment as bogus purchases*

In instant case, addition made by AO on account of bogus purchases was restricted to the extent of 2% keeping in view the decision of Tribunal in assessee's own case for earlier assessment year on similar facts and circumstances and also keeping in view the fact that assessee maintained quantitative details of goods purchased and sold and also furnished quantitative reconciliation of goods so purchased and sold. ■

During course of search proceedings, AO found that assessee had taken accommodation entries from various concerns. Thus, the purchases made from the said concerns were added by AO considering them as bogus on the ground that the assessee failed to substantiate his claim and prove the genuineness of the said purchases. ***Held:*** It was found that in assessee's own case for earlier assessment year on similar facts and circumstances, the addition made on account of bogus purchases was upheld by Tribunal to the extent of 2%. Thus, keeping in view the said decision of Tribunal also keeping in view the fact that assessee maintained quantitative details of goods purchased and sold and also furnished quantitative reconciliation of goods so purchased and sold, the correctness of which was not doubted by Revenue, the AO was directed to restrict the impugned addition to the extent of 2% of bogus purchases.

Dt.Ord.: *11 September, 2019* ✓ **Partly in favour of assessee**

➲ **Prateek Gupta v. Dy. CIT** *(2020) 172 TR (A) 429 (Mum-Trib) : 2019 TaxPub(DT) 6634 (Mum-Trib)*

S. 80P(2)(a)(i) A.Y. 2014-15

Deduction under section 80P(2)(a)(i)—***Credit co-operative society accepted deposits from members***—*Applicability of section 80P(4)*

The fact that assessee accepted deposits from and provided credit

facilities to its members only, had not been disputed by AO. Under these circumstances, assessee could not be held to be engaged in business of banking, especially on account of assessee having no licence from RBI, therefore, claim of assessee was not hit by section 80P(4) and denial of deduction under section 80P(2)(a)(i) was not justified. ■

Assessee, co-operative credit society engaged in providing credit facilities to its members claimed deduction under section 80P(2)(a)(i). AO held the assessee to be a co-operative bank and denied deduction in view of section 80P(4) on the ground that assessee had also received deposits and paid interest thereon. ***Held:*** The fact that assessee accepted deposits from and provided credit facilities to its members only, had not been disputed by AO. Under these circumstances, assessee could not be held to be engaged in business of banking especially on account of assessee having no licence from RBI, therefore, claim of assessee was not hit by section 80P(4) and denial of deduction was not justified.

Dt.Ord.: *1 July, 2019* ✓ **In assessee's favour**

Followed: Quepem Urban Co-operative Credit Society Limited v. Asstt. CIT 2015 TaxPub(DT) 2592 (Bom-HC).

➲ **Jt. CIT v. Kanchangauri Mahila Sahakari Patpedhi Maryadit, Dombivli** *(2020) 172 TR (A) 429 (Mum-Trib) : 2019 TaxPub(DT) 5059 (Mum-Trib)*

S. 80P(2)(d) A.Y. 2011-12 & 2012-13

Deduction under section 80P(2)(d)—*Allowability*—*Interest on FDR placed by assessee, a co-operative society with a co-operative bank***

Though co-operative bank pursuant to insertion of sub-section (4) of section 80P would no more be entitled for claim of deduction under section 80P, however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being enforced in any state for registration of co-operative societies, therefore, interest income derived by assessee, co-operative society from its investments held with a co-operative bank, was entitled for claim of deduction under section 80P(2)(d). ■

Assessee-society claimed deduction under section 80P(2)(d) in respect of interest on FDRs placed by assessee with co-operative bank. AO denied deduction by virtue of section 8P(4) on the ground that for claim of deduction under section 80P(2)(d) interest income should have been derived from investments made by assessee co-operative society with any other co-operative society. ***Held:*** Though co-operative bank pursuant to insertion of sub-section (4) of section 80P would no more be entitled for claim of deduction under section 80P, however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for registration of co-operative societies, therefore, interest income derived by a cooperative society from its investments held with a co-operative bank, was entitled for claim of deduction under section 80P(2)(d).

Dt.Ord.: *2 September, 2019* ✓ **In assessee's favour**

Relied: Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. v. ITO 2018 TaxPub(DT) 3128 (Mum-Trib).

➲ **Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. v. Dy. CIT** *(2020) 172 TR (A) 430 (JP-Trib) : 2019 TaxPub(DT) 6977 (Jp-Trib)*

S. 143(2)

Assessment—***Notice under section 143(2)***—*Limitation—Notice not issued on new address*

In absence of any specific intimation to AO with respect to change in address of assessee, the AO was justified in sending notice under section 143(2) at the available address mentioned in PAN database of the assessee, more particularly when the return was filed under E-Module scheme. Hence, the CIT (A), Tribunal and High Court were not justified in holding that the assessment order passed subsequent to such notice was bad in law. ■

AO issued notice u/s 143(2) to assessee-company at the address as mentioned in PAN database and the same was within the time limit prescribed in proviso to s. 143(2). However, assessee contended that the said notice was not served upon it as it changed its address and shifted to new address prior thereto and by the time when subsequently the notices u/s 143(2) were served upon it, the same became barred by the period prescribed in proviso to s. 143(2). Accordingly, it contended that the assessment order was bad in law. Further, CIT (A) allowed the appeal of assessee and held that assessment order was bad in law. Tribunal and High Court also confirmed the said action of CIT (A). ***Held:*** In absence of any specific intimation to AO with respect to change in address of assessee, the AO was justified in sending the notice at the available address mentioned in PAN database of the assessee, more particularly when the return was filed under E-Module scheme. Further, notices u/s 143(2) are issued on selection of case generated under automated system of Department, which picks up the address of the assessee from the database of PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which the assessee failed to do in the instant case. Accordingly, the impugned order passed by High Court holding the assessment order passed subsequent to such notice as bad in law could not be sustained.

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Dt.Ord.: *18 October, 2019* ✓ **Against the assessee**

➲ **Principal CIT v. I-Ven Interactive Ltd.** *(2020) 172 TR (A) 431 (SC) : 2019 TaxPub(DT) 7063 (SC) : (2019) 418 ITR 662 (SC) : (2019) 267 Taxman 471 (SC) : (2019) 311 CTR (SC) 165*

S. 143(3)

Assessment—***Addition on account of difference in stocks and sundry debtors balances declared to bank and accounted in books of account***—*No evidence to prove—Unaccounted stock or suppression of trade debtors*

Though declaring excess stock to bank was unethical, however, the same could not be the sole evidence or sole reason for making addition to returned income when all evidences were available with AO and AO did not make out a case of unaccounted stock or suppression of trade debtors. ■

AO made addition on account of difference in stocks and the sundry debtors balances declared to the bank and accounted in books of account. ***Held:*** Though declaring excess stock to bank was unethical, however, could not be the sole evidence or sole reason for making the addition to returned income when all the evidences were available with AO. In the instant case, there was no dispute to the fact that value of stock declared in the books of account was as per the purchase bills and correctly reported. There was no difference in physical stocks declared to the bank and accounted in books of account. The value of closing stock declared in books of accounts was duly supported by purchase bills. Also, sundry debtors were correctly reported and grouped in the books of account and no other evidence was brought on record by AO to controvert the said findings. AO did not make out a case of unaccounted stock or suppression of trade debtors, accordingly, addition made by AO could not be sustained.

Dt.Ord.: *25 September, 2019* ✓ **In assessee's favour**

Followed: Asstt. CIT v. Thatavarthi Ramesh Babu Kanuru [ITA No.28/Viz/2015, dt. 8-12-2017] : 2018 TaxPub(DT) 0643 (Visakhapatnam-Trib).

➲ **Balaji Steel Traders v. ITO** *(2020) 172 TR (A) 431 (Visakhapatnam-Trib) : 2019 TaxPub(DT) 6650 (Visakha Trib)*

S. 143(3)

Assessment—***Scope of assessment in remand proceedings***—*AO travelled beyond the scope of remand order of Tribunal and reopened uncontested issues*

Since, under the guise of passing fresh order in pursuant to order of remand, the AO had in effect reopened the uncontested issues and passed fresh order on those issues as well, which was not the intent of Tribunal, while remitting the matter back to AO, the matter was remitted back to AO to redo assessment only in respect of issue relegated by Tribunal while remitting the matter. ■

Tribunal restored addition of Rs. 25 lakhs made by AO representing short-term capital gains in respect of the share transactions on which client code modifications had been done, finding that the said issue had not been properly assimilated nor the facts relevant for deciding the said issue were produced by assessee. However, AO had gone into the issue with regard to short-term capital gains u/s 111A to the tune of Rs. 59 lakhs as well and also recorded a finding that assessee had included profit/loss earned from trading in both equity and derivatives segment under the head short-term capital gains. Likewise, in respect of set-off of capital losses. AO found that the Act did not allow loss under the head capital gains to be set-off against any income from other heads and this could be only set off within Capital gains head. Assessee challenged this on the ground that AO exceeded his jurisdiction over the issues which were not remitted to him, by reconsidering the same. ***Held:*** Clearly, AO travelled beyond the scope of remand order of Tribunal and reconsidered the issues with regard to income from short-term capital gains u/s 111A and Brought/forward losses of previous assessment years and thus, exceeded his jurisdiction over and above the issue which was remanded. Under the guise of passing fresh order in pursuant to order of remand, the AO had in effect reopened the uncontested issues and passed fresh order on those issues as well, which was not the intent of Tribunal, while remitting the matter back to AO. Certainly, this Act of AO was impermissible under law and consequently could not be sustained.

IMPORTANT

Accordingly, the matter was remitted back to AO to redo assessment only in respect of issue relegated by Tribunal while remitting he matter, viz., income from short-term capital gains other than u/s 111A and consequential addition of Rs. 25 lakhs, after giving opportunity of hearing to assessee. IMPORTANT

Dt.Ord.: *18 October, 2019* ✓ **In assessee's favour**

➲ **Neetaa Suneel Shah v. ITO** *(2020) 172 TR (A) 432 (Mad-HC) : 2019 TaxPub(DT) 7133 (Mad-HC) : (2020) 268 Taxman 213 (Mad)*

S. 143(3)

A.Y. 2009-10

Assessment—***Validity***—*AO adjudicated on non-CASS issues without prior written approval from Administrative CIT*

CBDT Circular, dt. 8-9-2010 and *Board Instruction No. 7/2014, dated 26-9-2014* did not permit AO from converting limited scrutiny case to unlimited one without approval of Administrative CIT, therefore, in the absence of such prior written approval from Administrative CIT assessment order passed by AO was *null and void*. ■

AO made addition outside the said limited scrutiny under 'CASS' without obtaining written approval of Administrative CIT. ***Held:*** *CBDT Circular, dt. 8-9-2010* and *Board Instruction No. 7/2014, dated 26-9-2014* did not permit AO from converting limited scrutiny case to unlimited one without approval of Administrative CIT, therefore, in the absence of such prior written approval from Administrative CIT assessment order passed by AO was *null and void.*

Dt.Ord.: *28 June, 2019* ✓ **In assessee's favour**

➲ **Nilesh Vasant Shende MZSK and Associates Chartered Accountants v. Asstt. CIT** *(2020) 172 TR (A) 433 (Pun-Trib) : 2019 TaxPub(DT) 5033 (Pune-Trib)*

S. 143(3)

Assessment—***Validity***—*AO passed draft assessment order under section 143(3) in name of predecessor of amalgamated company*

AO was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, jurisdictional notice was issued only in its name. Since, the basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that amalgamating entity ceases to exist upon the approved scheme of amalgamation, therefore, appeal of Revenue was dismissed. ■

Revenue had preferred the present appeal to assail order passed by Tribunal in *ITA No. 199/Del/2015* for the assessment year 2010-11. Order passed by AO in the name of the predecessor of assessee, despite having notice of the amalgamation was incompetent. It was the admitted position that AO had notice of the said amalgamation vide a Notice, issued to AO. Despite that AO passed a draft order under section 143 (3) read with section 144 C in the name of the predecessor of the amalgamated company. ***Held:*** Supreme Court in a recent decision in *PCIT v. Maruti Suzuki India Ltd. 2019 TaxPub(DT) 4931 (SC)* despite the fact that AO was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation.

Participation in the proceedings by assessee in the circumstances cannot operate as an estoppel against law.

Dt.Ord.: *17 September, 2019* ✓ **In assessee's favour**

➲ **Pr. CIT v. Genpact India** *(2020) 172 TR (A) 433 (Del-HC) : 2019 TaxPub(DT) 6720 (Del-HC)*

S. 147 A.Y. 2011-12

Reassessment—***Reason to believe***—*AO possessing requisite material to form reasonable belief—Reopening on information has investigation wing*

Where after receiving information from investigation report AO applied his mind and also duly enquired about the issue and formed reason to believe that assessee's income had escaped assessment, hence, reasons recorded by AO for reopening of assessment were justified. ■

As per information received from the DDIT (Inv.), it was revealed that the assessee had taken unsecured loan during the year under consideration from five shell companies situated in Kolkata. During the investigation, it was also found that all the companies had no credentials to carry out transaction of huge amounts as per their income profile. These Kolkata based companies were indulged in providing accommodation entries in the form of unsecured loans. In view of the above facts, AO held that there was reason to believe that income chargeable to tax had escaped assessment for assessment year 2011-12 by reason of failure on part of the assessee. After issuing notice under section 148, AO reopened assessment completed under section 143(3). ***Held:*** Having regard to the materials on record it cannot be said that there was a total non-application of mind on the part of the AO while recording the reasons for reopening of the assessment. It also cannot be said that his conclusion was merely based on the observations and information received from the investigation wing. There was no merit in the vociferous submission of the writ applicant that the contents of the reasons recorded by the AO for the reopening of the assessment was merely an introduction about the investigations conducted by the investigation wing, the *modus operandi* of the entry provided, the summing up of inquiry of the investigation wing, the information received from the investigation wing, etc. Court had examined the belief of the AO to a limited extent to look into whether there was sufficient material available on record for the AO to form a reasonable belief and whether there was a live-link existing of the material and the income chargeable to tax had escaped assessment. The present case was not one where it could be argued that the AO, on absolutely vague or unspecific information, initiated the proceedings of reassessment without taking the pains to form his own belief in respect of such materials.

Dt.Judg.: *20 August, 2019* ✓ **Against the assessee/Writ applicant**

Relied: Calcutta Discount Company Limited v. ITO, Companies District, I & Ors., (1961) 41 ITR 191 (SC) : 1961 TaxPub(DT) 130 (SC), Phool Chand Bajrang Lal & Ors. v. ITO & Ors., (1993) 203 ITR 456 (SC) : 1993 TaxPub(DT) 1453 (SC), Yogendrakumar Gupta v. ITO 2014 366 ITR 186 (Guj) : 2014 TaxPub(DT) 3042 (Guj-HC), Gujarat Power Corporation Ltd. v. Asstt. CIT 350 ITR 266 (Guj) : 2013 TaxPub(DT) 409 (Guj-HC), Calcutta Discount Co. Ltd. v. ITO, Companies District I, Calcutta, AIR 1961 SC 372 : (1961) 41 ITR 191 (SC) : 1961 TaxPub(DT) 130 (SC), Narayanappa v. CIT (1967) 63 ITR 219 (SC) : AIR 1967 SC 523 : 1967 TaxPub(DT) 198 (SC), Asstt. CIT v. Rajesh Jhaveri Stock Brokers Private Ltd. (2008) 14 SCC 208 : (2007) 291 ITR 500 : 2007 TaxPub(DT) 1257 (SC), Ess Kay Engineering Co. P. Ltd. v. CIT (2001) 247 ITR 818 SC : 2001 TaxPub(DT) 0052 (SC), Ganga Saran and sons (Pvt.) Ltd. v. ITO (1981) 3 SCC 143 : 1981 TaxPub(DT) 952 (SC), ITO v. Biju Patnaik, 1991 Supp (1) SCC 161 : 1991 TaxPub(DT) 880 (SC), Niranjan & Co. Pvt. Ltd. v. CIT 1986 Supp SCC 272 : 1986 TaxPub(DT) 1426 (SC), Dishman Pharmaceuticals & Chemicals Limited v. Dy. CIT [OSD] (2012) 346 ITR 228 (Guj) : 2012

TaxPub(DT) 2518 (Guj-HC), Jayant Security & Finance Ltd. v. Asstt. CIT (2018) 254 Taxman 81 (Guj) : 2018 TaxPub(DT) 979 (Guj-HC), Ankit Agrochem (P.) Ltd. v. JCIT (2018) 253 Taxman 141 (Raj) : 2018 TaxPub(DT) 186 (Raj-HC), Pr. CIT v. Paramount Communication P. Ltd. (2017) 392 ITR 444 (Del)(HC) : 2017 TaxPub(DT) 0794 (Del-HC), Aravali Infrapower Ltd. v. Dy. CIT (2017) 390 ITR 456 (Del)(HC) : 2016 TaxPub(DT) 5135 (Del-HC), Pr. CIT v. Gokul Ceramics (2016) 241 Taxman 341 (Guj) : 2016 TaxPub(DT) 3157 (Guj-HC), Central Provinces Manganese Ore Co. Ltd. v. ITO 1992 AIR 567 : 1991 SCR (3) 627 : 1991 TaxPub(DT) 1550 (SC), ITO v. Purushottam Das Bangur (1997) 224 ITR 362 (SC) : 1997 TaxPub(DT) 1026 (SC), ITO v. Selected Dalurband Coal Co. Pvt. Ltd., (1978) 113 ITR 489 (Cal) : 1978 TaxPub(DT) 462 (Cal-HC), AGR Investment Ltd. v. Addl. CIT & Anr. (2011) 333 ITR 146 (Del) : 2011 TaxPub(DT) 812 (Del-HC) and Yogendrakumar Gupta v. ITO (2004) 366 ITR 186 (Guj.) : 2014 TaxPub(DT) 3042 (Guj-HC).

➲ **Hemjay Construction Co. (P) Ltd. v. ITO** *(2020) 172 TR (A) 434 (Guj-HC) : 2019 TaxPub(DT) 5898 (Guj-HC) : (2019) 419 ITR 39 (Guj) : (2019) 311 CTR (Guj) 413*

S. 147

A.Y. 2013-14 to 2015-16

Reassessment—***Reason to believe***—*Statement recorded under section 133A—No other tangible evidence*

The word "may" used in section 133A(3)(iii), viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act, makes it clear that materials collected and statement recorded during survey under section 133A are not conclusive piece of evidence by itself and since there was not a shread of material apart from statement recorded u/s 133A forming the basis of proceedings for reassessment, notice under section 148 was set aside as reason recorded for reopening of assessment had no legs to stand. ■

Question arose for consideration was whether notice under section 148 could be issued wholly on the basis of sworn statement recorded during course of survey in the absence of any other tangible evidence available with AO. ***Held:*** The word "may" used in section 133A(3)(iii), viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act, makes it clear that materials collected and statement recorded during survey under section 133A are not conclusive piece of evidence by itself and since there was not a shread of material apart from statement recorded under section 133A forming the basis of proceedings for reassessment, notice under section 148 was set aside as reason recorded for reopening of assessment had no legs to stand.

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Dt.Ord.: *25 February, 2019* ✓ **In assessee's favour**

Relied on CIT, Salem v. M/s. S.Khader Khan Son (2012) 254 CTR (SC) 228 : (2013) 352 ITR 480 (SC) : (2012) 210 Taxman 248 (SC) : 2012 TaxPub(DT) 3088 (SC)

➲ **A. Thangavel Nadar Stores v. ITO** *(2020) 172 TR (A) 435 (Mad-HC) : 2019 TaxPub(DT) 1968 (Mad-HC) : (2019) 417 ITR 50 (Mad)*

S. 147

Reassessment—***Validity***—*No failure on the part of the assessee to make a true disclosure*

Since there was no allegation against the assessee that there was failure on the part of the assessee to make a true disclosure, nor AO had relied on any tangible material, therefore, reopening by AO was a clear case of change of opinion and consequently bad in law. ■

Issue arose under consideration as to whether Tribunal was justified in holding the re-assessment proceedings as invalid, without appreciating the fact that the issue was not a subject-matter of verification in the

original assessment proceedings, hence re-assessment was not based on change of opinion. ***Held:*** Tribunal gave a finding that there was no failure on the part of assessee to disclose fully and truly all material facts and that nothing contrary was demonstrated as to why this finding was incorrect, therefore, questions of law proposed did not give rise to any substantial question of law.

Dt.Ord.: *6 January, 2020* ✓ **In assessee's favour**

➲ **Pr. CIT v. J.M. Financial Institutional Securities Ltd.** *(2020) 172 TR (A) 435 (Del-HC) : 2020 TaxPub(DT) 368 (Del-HC)*

S. 148

Reassessment—***Validity***—*AO rejecting objections against reopening without passing speaking orders*

Where AO while rejecting the objections raised by assessee, had not passed a speaking order and on the other hand, rejected the same with a single line observation, therefore, matter was remanded back to AO for passing a speaking order on the objections filed by assessee against the reasons for reopening. ■

Assessee-company was issued reassessment notice, which was assailed by it contending that reasons for reopening the assessment were not furnished by AO whereas it was the duty of the AO to furnish the same along with notice under section 148. However, AO rejected the objections filed by assessee against the reasons for reopening the assessment. ***Held:*** AO, while rejecting the objections raised by assessee, had not passed a speaking order and on the other hand, rejected the same with a single line observation. Considering the fact that order rejecting objections was not a speaking order, the Court was inclined to remand the matter back to AO for passing a speaking order on the objections filed by assessee against the reasons for reopening.

Dt.Ord.: *30 September, 2019* ✓ **In assessee's favour by way of remand**

➲ **Redington India Ltd. v. Asstt. CIT** *(2020) 172 TR (A) 436 (Mad-HC) : 2019 TaxPub(DT) 7071 (Mad-HC)*

S. 153A

A.Y. 2011-12

Search and seizure—***Addition on account of undisclosed jewellery declared under section 132***—*Purchase of jewellery explained by assessee*

Though assessee had offered jewellery as undisclosed income in statement recorded under section 132(4), but the assessee had completely explained purchase of jewellery with reference to bills, vouchers and payment details, therefore, the same could not be treated as 'undisclosed income', thus, AO was directed to delete addition. ■

Assessee raised issue against confirmation of addition by CIT(A) as made by AO towards undisclosed jewellery declared by the assessee during the search proceedings under section 132. ***Held:*** The jewellery was found during the course of search under section 132(4) of the Act, which was offered as undisclosed income in the statement recorded under section 132(4). However, at the time of filing the returns in response to notice under section 153A, the assessee did not offer the same to tax on the ground that the statement under section 132(4) was given under tremendous pressure and mental strain was wrong. The jewellery stood disclosed in return of wealth of wife of the assessee. The assessee also produced sale bills of the seller along with payment details. The assessee had completely explained the purchase of jewellery with reference to bills,

vouchers and payment details, therefore, the same could not be treated as 'undisclosed income'. Thus, the order of the CIT(A) was set aside and the AO was directed to delete the addition.

Dt.Ord.: *14 August, 2019* ✓ **In assessee's favour**

➲ **Sanjay Dangi v. Dy. CIT** *(2020) 172 TR (A) 436 (Mum-Trib) : 2019 TaxPub(DT) 7030 (Mum-Trib)*

S. 153C

A.Y. 2008-09 to 2011-12

Search and seizure—***Proceeding under section 153C***—*Jurisdiction of AO of 'other person'—No satisfaction by AO of searched person*

As satisfaction in this case was not recorded by the AO of the searched party, which is a pre-condition for invoking jurisdiction under section 153C hence, assessment framed under section 153C read with section 143(3) was bad-in-law and thus, quashed. ■

AO noted that during the course of search under section 132, the documents/papers belonging to the assessee company were found from the premises of Citipoint, Telly Gally, Andheri (E), Mumbai. As the noting belong to the assessee were found in the premises of Lalit Jobanputra Group of cases, the provisions of section 153C were attracted. CIT(A) had reproduced documents seized along with the details filed by the assessee and consider that these notes were not incriminating documents and deleted the addition by holding that the seized papers were duly recorded in the regular books of account and hence, cannot be held to be incriminating in nature. Appeals of revenue was against the order of CIT(A) deleting the addition made by AO on account of undisclosed receipts noted on seized documents found during the course of search and seizure action u/s 132. ***Held:*** Even in cases where the AO of the person searched and the assessee who was sought to be assessed under section 153C was the same, the AO was required to record his satisfaction that the assets/documents seized belonged to a person, i.e., the assessee, other than the searched person. In the given facts and circumstances of the case and the legal position clarified by CBDT vide *Circular No. 24/2015 (F. No. 273/Misc./140/2015/ITJ), dated 31-12-2015* and the case laws cited satisfaction in this case was not recorded by the AO of the searched party, which is a pre-condition for invoking jurisdiction under section 153C and hence, the assessment framed under section 153C read with section 143(3) was bad-in-law and hence, quashed.

IMPORTANT

Dt.Ord.: *3 September, 2019* ✓ **In assessee's favour**

Followed: CIT v. Calcutta Knitwears (2014) 362 ITR 673 (SC) : 2014 TaxPub(DT) 1547 (SC) and CIT v. Mechmen (2016) 380 ITR 591 (MP) : 2015 TaxPub(DT) 2976 (MP-HC).

➲ **Dy. CIT v. JAC Air Services (P) Ltd.** *(2020) 172 TR (A) 437 (Mum-Trib) : 2019 TaxPub(DT) 6731 (Mum-Trib)*

S. 194H

Tax deduction at source—***Under section 194H***—*Discount given by assessee to its distributors on prepaid SIM Cards*

Discount allowed to distributors by assessee was on account of principal to principal relationship and not that of principal to agent. Tribunal followed the decision of High Court in the case of *Bharti Airtel Ltd. vs. Dy.CIT [(2014) 372 ITR 33 (Karn) : 2014 TaxPub(DT) 4369 (Karn-HC)]* and held that sale of SIM cards/recharge coupons at discounted rate to the distributors was not commission, therefore not liable to deduct the TDS under section 194H. ■

Issue arose under consideration as to whether Tribunal erred in holding the discount given by assessee to its distributors on prepaid SIM Cards did not require deduction of tax under section 194H. ***Held:*** Tribunal noted the observations of AO that the discount allowed to the distributors by assessee was on account of principal to principal relationship and not that of principal to agent. Tribunal followed the decision of High Court in the case of *Bharati Airtel Ltd. vs. Dy.CIT [(2014) 372 ITR 33 (Karn) : 2014 TaxPub(DT) 4369 (Karn-HC)]* and held that sale of SIM cards/recharge coupons at discounted rate to the distributors was not commission and therefore not liable to deduct the TDS under section 194H.

Dt.Ord.: *13 January, 2020* ✓ **In assessee's favour**

➲ **CIT v. Idea Cellular Ltd.** *(2020) 172 TR (A) 437 (Bom-HC) : 2020 TaxPub(DT) 366 (Bom-HC)*

S. 201(1A)

Tax deduction at source—***Assessee-in-default***—*Belated deposit of TDS—Interpretation of 'month' in context of section 201(1A)—Whether British calendar month or a period of 30 days*

For purpose of computation of interest payable under section 201(1A)(ii) of Act read with rule 119A(b), month is to be interpreted as period of 30 days, and not British Calendar Month and thus, AO was directed to recompute interest payable under section 201(1A) by taking a period of 30 days as a month instead of British Calendar Month. ■

There was delay in deposit of TDS to the credit of Central Government ranging from 15 days to 35 days. Revenue counted month of deduction of TDS as one month as well subsequent month in which payment of TDS was paid by assessee to the credit of Central Government was counted as second month for computing interest payable by assessee on late deposit of TDS to the credit of Central Government, while on the other hand, the assessee had taken 30/31 days as a month. ***Held:*** For purpose of computation of interest payable under section 201(1A)(ii), Act read with rule 119A(b) month is to be interpreted as period of 30 days, and not British Calendar Month. AO was directed accordingly.

IMPORTANT

Dt.Ord.: *1 July, 2019* ✓ **In assessee's favour**

Relied: Navayuga Quazigund Expressway Private Ltd. v. DCIT in ITA No. 1651/Hyd/14 vide Order, dated 13-3-2015, E.I DuPont India Private Ltd. v. DCIT in ITA No. 386 & 387/Del/2016 vide Order, dated 24-1-2019, CIT v. Laxmi Rattan Cotton Mills Co. Ltd. (1974) 97 ITR 285 (All) : 1974 TaxPub(DT) 175 (All-HC) and CIT v. Arvind Mills Ltd. 2012 TaxPub(DT) 794 (Guj-HC).

➲ **UTI Mutual Fund v. Dy. CIT** *(2020) 172 TR (A) 438 (Mum-Trib) : 2019 TaxPub(DT) 4905 (Mum-Trib)*

S. 220

Recovery—***Stay of demand***—*Assessee was directed to pay 15% of demand—Refund of excess amount collected*

If assessee pays an amount that he was required to pay out of the amounts ordered by Assessing Authority/Appellate Authority, as condition for the grant of stay of recovery of balance amount confirmed against him by assessment orders, then authority should promptly, and at any rate within two weeks from today, re-credit the balance amount from the amounts already recovered from the petitioner, to the respective Bank account. ■

Assessee filed stay application before the 2nd appellate authority. In the stay application that was filed along with appeal, Appellate Authority directed the petitioner to pay 15% of the confirmed demand. The said amount had to be paid by assessee in three monthly instalments. On finding that assessee had not complied with conditions for stay against recovery, Authority proceeded to recover entire tax demand confirmed against the petitioner from its Bank account. ***Held:*** Taking note of the plea of financial hardship urged by assessee that, he had effectively complied with the directions of first Appellate Authority as also assessing authority, he would have been obliged to pay only an amount which he did not. If assessee pays an amount that he was required to pay out of the amounts ordered by Assessing Authority/Appellate Authority, as condition for the grant of stay of recovery of balance amount confirmed against him by assessment orders, then authority should promptly, and at any rate within two weeks from today, re-credit the balance amount from the amounts already recovered from the petitioner, to the respective Bank account.

Dt.Ord.: *10 October, 2019* ✓ **Directions issued**

➲ **M. Brijesh v. ITO** *(2020) 172 TR (A) 438 (Ker-HC) : 2019 TaxPub(DT) 7065 (Ker-HC)*

S. 220

Recovery of tax—***Stay of demand***—*Assessee directed to pay 20% of the total demand, as a condition for stay of the balance 80% of demand*

Order was a laconic one bereft of any reasoning, and hence, could not be legally sustained. Revenue was directed to pass fresh orders on the stay petition after hearing the petitioners. Revenue should pass order in the matter, as directed and that recovery steps for recovery of amounts confirmed against assessee should be kept in abeyance till such time as orders were passed. ■

Assessee filed a stay application filed along with an appeal against an order of assessment contending that there was no mention of any reason as to why appellate authority deemed it necessary for assessee to pay 20% of the total demand, as a condition for stay of the balance 80% of the demand arising from the assessment order during the pendency of the appeal. ***Held:*** Order was a laconic one bereft of any reasoning, and hence, could not be legally sustained. Order was quashed and Revenue was directed to pass fresh orders on the stay petition after hearing the petitioners. Revenue should pass order in the matter, as directed and that recovery steps for recovery of amounts confirmed against assessee should be kept in abeyance till such time as orders were passed.

Dt.Ord.: *10 October, 2019* ✓ **Directions issued**

➲ **Shyla Pushpan v. CIT** *(2020) 172 TR (A) 439 (Ker-hC) : 2019 TaxPub(DT) 7072 (Ker-HC)*

S. 221(1) A.Y. 2007-08

Penalty under section 221(1)—***Non-payment of self-assessment tax***—*Sufficient and reasonable cause*

If due to huge financial crunch and hardships assessee had no liquidity to pay the self-assessment tax liability on time, then penalty under section 221(1) would not be levied and assessee would not be considered as willful defaulter because financial stringency is considered to be good and sufficient cause for not levying penalty under section 221(1). ■

Assessee-company was engaged in the business of hotel consultancy and operations. AO levied penalty under section 221 on the ground that assessee had not paid the self-assessment tax till the date of filling of return of income. Assessee contended that due to stringent financial difficulties self-assessment tax could not be paid on time, however, the same had been paid in installment over the period of time. ***Held:*** Though the assessee could not pay the self-assessment tax at the time of filing return of income but the same had been paid subsequently in installments over a period of time. Moreover, as the assessee had given very elaborate reasons that due to huge financial crunch and hardships, it did not have any liquidity to pay the self assessment tax liability and also there exist umpteen number of judgments, wherein it has been held that financial stringency is considered to be good and sufficient cause for not levying penalty under section 221(1). Hence, AO was not justified in levying penalty under section 221.

Dt.Ord.: *3 June, 2019* ✓ **In assessee's favour**

Relied: CIT v. Bhikaji Ramchandra (1990) 183 ITR 478 (Bom) : 1990 TaxPub(DT) 0082 (Bom-HC), CIT v. Raunaq & Co. Pvt. Ltd. (1983) 140 ITR 407 (Del) : 1983 TaxPub(DT) 0494 (Del-HC), Addl. CIT v. Free Wheels India Ltd. (1982) 137 ITR 378 (Del) : 1982 TaxPub(DT) 0764 (Del-HC), Life Time Realty Pvt. Ltd. v. Dy. CIT (2017) 163 ITD 553 (Mum) : 2017 TaxPub(DT) 1016 (Mum-Trib) and ACIT v. Rakesh Kumar Garg 2015 TaxPub(DT) 2531 (Del-Trib)

➲ **Dy. CIT v. Tulip Star Hotels Ltd.** *(2020) 172 TR (A) 439 (Del-Trib) : 2019 TaxPub(DT) 5483 (Del-Trib) : (2019) 73 ITR (Trib) 694 (Del-Trib)*

S. 250

Appeal (CIT(A)—*Condonation of delay*—*Demand raised under section 200A—Demand raised by way of fee under section 234E for belated filing of Statement of TDS***

Demand mentioned in Default Summary was correct and further the demand raised under section 234E was machine computed demand, no useful purpose would be served in insisting upon the copies of intimations, since the said intimations also would show the very same demand raised under section 234E. CIT(A) should have proceeded to dispose of the appeals by taking cognizance of the default summary furnished by the assessee along with the return of income. Accordingly delay was condoned. ■

Assessee filed this appeal against the orders passed by CIT(A) raising demand under section 200A for various quarters falling in financial years relevant to the assessment years 2013-14 and 2014-15. All these appeals were barred by limitation by 33 days. Assessee had filed a petition pleading the bench to condone the delay. It was stated in the petition that appeal papers were prepared initially for assessment year wise. Later, it came to the knowledge of assessee that separate appeal was required to be filed for each of the quarter for which CIT(A) had passed the order. Hence it took some time in transmission and re-transmission of documents causing delay of 33 days in filing these appeals. ***Held:*** When demand mentioned in the Default Summary is correct and further the demand raised under section 234E was machine computed demand, no useful purpose would be served in insisting upon the copies of intimations, since said intimations also would show the very same demand raised under section 234E. CIT(A) should have proceeded to dispose of the appeals by taking cognizance of the default summary furnished by assessee along with the return of income. Accordingly, assessee was directed to download copies of intimations and if it was not able to

download so, it might sought the assistance of concerned authorities for downloading the intimations and after the copies of intimations were downloaded, they might be filed with CIT(A). Thus delay was condoned that occurred between the date of intimation under section 200A and the date of downloading of 'Default Summary'.

Dt.Ord.: *10 January, 2020* ✓ **In assessee's favour**

➲ **Total Transport Systems Ltd. v. ITO** *(2020) 172 TR (A) 440 (Bang-Trib) : 2020 TaxPub(DT) 338 (Bang-Trib) : (2020) 203 TTJ (Bang-Trib) 385*

S. 250(6) A.Y. 2012-13

Appeal (CIT(A)—***Order of CIT(A)***—*Restriction of disallowance made by AO on ad hoc basis merely considering magnitude of disallowance—No documents examined by CIT(A)*

CIT(A) noticed that assessee had not filed detail of expenses before AO, still he restricted disallowance for other expenses to 10% of total expenses without any justification and only on the basis of magnitude of disallowance. CIT(A) should have examined books of accounts along with bills and vouchers to decide the issue of disallowance of other expenses and depreciation. The action of CIT(A) of sustaining disallowance on *ad hoc* basis was not justified. Matter was restored to AO for deciding afresh with direction to assessee to produce necessary documents in support of its claim including books of account and bills and voucher in relation to other expenses and additions to assets for justifying the claim of depreciation. ■

AO disallowed 50% of depreciation and also 50% of the expenses claimed by assessee under the head 'other expenses'. On the reasoning that books of accouns and bills and voucher in respect of other expenses as well as addition to assets were not produced before him. CIT(A) restricted disallowance under the head 'expenses' to 10% of total expenses and restricted depreciation to 1/5th of the total depreciation on fixed assets added during the year under consideration. ***Held:*** CIT(A) noticed that assessee had not filed detail of expenses before AO, still he restricted disallowance for other expenses to 10% of total expenses without any justification and only on the basis of the magnitude of disallowance. CIT(A) should have examined books of accounts along with bills and vouchers to decide the issue of disallowance of other expenses and depreciation. The action of CIT(A) of sustaining disallowance on ad hoc basis was not justified. Matter was restored to AO for deciding afresh with direction to assessee to produce necessary documents in support of its claim including books of account and bills and voucher in relation to other expenses and additions to assets for justifying the claim of depreciation.

Dt.Ord.: *15 October, 2019* ✓ **Matter remanded**

➲ **Devyani Food Industries Ltd. v. Asstt. CIT** *(2020) 172 TR (A) 441 (Del-Trib) : 2019 TaxPub(DT) 7103 (Del-Trib)*

S. 261

Appeal (Supreme Court)—***Special Leave Petition***—*Penalty, whether to be imposed automatically after rejection of assessee's claim in quantum proceedings—Validity*

Where the Department preferred SLP to appeal against the judgment of Bombay High Court in *Pr. CIT v. Ashokkumar Maneklal Parikh [ITA No. 75 of 2017, dt. 8-4-2019] : 2019 TaxPub(DT) 3699 (Bom-HC)*,

whereby it was held that during the assessment proceedings undoubtedly assessee had made full representation as to why, according to his belief, the receipt was not chargeable to tax, that merely because AO did not accept such a stand of assessee, it would not automatically permit revenue to levy penalty, the Supreme Court dismissed the SLP. ■

Department preferred SLP to appeal against the judgment of Bombay High Court in *Pr. CIT v. Ashokkumar Maneklal Parikh [ITA No. 75 of 2017, dt. 8-4-2019] : 2019 TaxPub(DT) 3699 (Bom-HC)*, whereby it was held that during the assessment proceedings undoubtedly assessee had made full representation as to why, according to his belief, the receipt was not chargeable to tax, that merely because AO did not accept such a stand of assessee, it would not automatically permit revenue to levy penalty. ***Held:*** The Supreme Court dismissed the SLP.

Dt.Ord.: *6 January, 2020* ✓ **SLP dismissed**

➲ **Pr. CIT v. Ashok Kumar Maneklal Parikh** *(2020) 172 TR (A) 441 (SC) : 2020 TaxPub(DT) 217 (SC)*

S. 263

Revision under section 263—***Validity***—*Bogus purchases—AO estimated the gross profit @ 7% of the alleged non-genuine purchase*

Since PCIT had not expressed any opinion as to whether entire purchase should have been disallowed or only profit element has to be added and when AO had already passed the assessment order after making necessary enquiry and applying his mind to the materials brought on record, it was not understood what more could be achieved by setting aside assessment order, therefore, exercise of power under section 263 was not valid. ■

Assessee was engaged in business of trading in diamond. AO found that assessee had shown purchases during the year. AO called upon assessee to furnish various details to prove the purchases. AO was of view that assessee had not purchased the diamond from M/s. A but had purchased them from grey market and to regularize such purchase had obtained accommodation bills from the concerned party. On the basis of such conclusion, AO estimated the gross profit @ 7% of alleged non-genuine purchase. PCIT in exercise of power conferred under section 263 called for assessment record and after examining it was of the view that assessment order was erroneous and prejudicial to interests of Revenue. AO without proper enquiry and application of mind has estimated the profit at 7% of non-genuine purchases. ***Held:*** During assessment proceedings, AO had not only enquired into alleged purchase transaction, but also applied his mind to the materials brought on record. In view of factual position, observations of PCIT that AO had not applied his mind or had not made enquiry which he should have made was without any factual basis. PCIT had not expressed any opinion as to whether entire purchase should have been disallowed or only profit element has to be added. When AO had already passed assessment order after making necessary enquiry and applying his mind to the materials brought on record, it was not understood what more could be achieved by setting aside assessment order. Therefore, exercise of power under section 263 was not valid.

Dt.Ord.: *17 January, 2020* ✓ **In assessee's favour**

➲ **Mayur Rajnikant Shah v. Pr. CIT** *(2020) 172 TR (A) 442 (Mum-Trib) : 2020 TaxPub(DT) 385 (Mum-Trib)*

S. 263

A.Y. 2012-13

Revision under section 263—***Erroneous and prejudicial order***—*AO having allowed expenses including depreciation and interest, etc., against income surrendered during survey*

At any stage revenue had not disputed the fact that alleged amount surrendered during survey was unaccounted business income of the assessee and not from any other sources. Section 115BBE was inserted by Finance Act, 2012 with effect from 1-4-2013 which restricts the claim of deduction in respect of any expenditure or allowance or set off of any loss against income shown by assessee or assessed under section 68, 69, 69A, 69B, 69C and 69D. Assessee's case related to assessment year 2012-13 and, therefore, would not be hit by provisions of section 115BBE(2) and assessment order could not be held as erroneous and prejudicial to interest of revenue. ■

CIT held assessment order as erroneous and in sofar prejudicial to the interest of revenue on the ground of AO having allowed claim of deduction expenses on account of depreciation, interest, remuneration and other expenses against income surrendered by the assessee as unaccounted investment in hotel building during the course of survey. ***Held:*** At any stage revenue had not disputed the fact that alleged amount surrendered during survey was unaccounted business income of the assessee and not from any other sources. Section 115BBE was inserted by Finance Act, 2012 with effect from 1-4-2013 which restricts the claim of deduction in respect of any expenditure or allowance or set off of any loss against income shown by assessee or assessed under sections 68, 69, 69A, 69B, 69C and 69D. Assessee's case related to assessment year 2012-13 and, therefore, would not be hit by provisions of section 115BBE(2) and assessment order could not be held as erroneous and prejudicial.

Dt.Ord.: *26 July, 2019* ✓ **In assessee's favour**

➲ **ACIT v. A One Enclave** *(2020) 172 TR (A) 443 (Ind-Trib) : 2019 TaxPub(DT) 5020 (Ind-Trib)*

S. 263

Revision under section 263—***Erroneous and prejudicial order***—*Non-application of mind by AO*

Where AO had allowed assessee's claim of exemption under section 54F on assuming incorrect facts, i.e., without examining the claim of assessee in terms of law contemplated therein, then the PCIT had rightly invoked its jurisdiction under section 263 as the order passed by AO indicates non application of mind and lack of enquiry. ■

Assessee was engaged in trading of batteries and coolers. PCIT invoked section 263 on the allegation that the order passed by the AO was erroneous and prejudicial to the interest of revenue as the claim of assessee was allowed by the AO under section 54F in violation of the conditions mentioned in said section because assessee had made investment in two residential units. Further, as the purchase price of property was shown at 1346% above market price but the AO had failed to verify the issue by examining the flats nearby. Assessee contended that the date of execution of sale deed by the developer was to be considered as date of purchase of residential unit. Further, he contended that the value ascertained by the Stamp Valuation Authority was only to facilitate the payment of stamp duty for registering the sale deed was always varies

from market value. ***Held:*** Assessee had shown investment in two residential units and that units were purchased by him beyond the allowed period of one year before sale of capital asset. Thus, AO had assumed incorrect facts to satisfy the requirement under section 54F. Hence, there was a lack of enquiry by the AO. Further, as regards the substantial increase of sale price shown by assessee vis-a-vis the value of price ascertained by Stamp Valuation Authority, it appeared by the time of framing of assessment that the reply from the Assistant Valuation Officer (AVO) as regards the valuation of land and the cost of acquisition as on 01-04-1981 had not been received by the AO and without considering the same he completed the assessment and allowed the claim of assessee under section 54F. Thus, AO had failed to examine the claim of assessee in terms of law contemplated therein. Hence, as the AO had failed to apply his mind to the case in all perspective in terms of conditions contemplated in provisions under section 54F, PCIT rightly invoked its jurisdiction under section 263.

Dt.Ord.: *10 January, 2020* ✓ **In assessee's favour**

➲ **Muzaffer Mahmood Khan v. Pr. CIT** *(2020) 172 TR (A) 443 (Pun-Trib) : 2020 TaxPub(DT) 388 (Pune-Trib)*

S. 263

A.Y. 2011-12

Revision under section 263—***Erroneous and prejudicial order***—*Validity—CIT revised assessment framed by AO in the hands of a non-existent entity*

Assessment in itself having been framed in the hands of a non-existent entity was *non-est* in the eyes of law, the same thereafter could not be revised by CIT under section 263. ■

CIT revised assessment framed by AO in the hands of a non-existent entity. ***Held:*** Assessment in itself having been framed in the hands of a non-existent entity was non-est in the eyes of law, the same thereafter could not be revised by CIT under section 263.

Dt.Ord.: *11 October, 2019* ✓ **In assessee's favour**

➲ **Tech Mahindra Ltd. v. Principal CIT** *(2020) 172 TR (A) 444 (Mum-Trib) : 2019 TaxPub(DT) 7163 (Mum-Trib)*

S. 263

Revision under section 263—***Validity***—*Order passed under section 143(3) read with section 144C*

Where order under section 263 was passed against draft assessment order and draft assessment order was not a final order or was not any order which is described under section 263 and it was a proposal given to assessee upon which assessee had a right to raise objections before DRP who had a full authority to direct/propose certain additions or to delete certain additions, therefore, it is a foolproof mechanism which cannot be doubted by CIT by invoking section 263. ■

Assessee's return was processed under section 143(1) and subsequently, the case was selected for scrutiny and notice under section 143(2) was issued to assessee. A reference under section 92CA was made by DCIT to TPO and TPO vide order under section 92CA(3) proposed AO to enhance the income of assessee company being ALP international transactions relating to ITES services provided by assessee-company to its AE. DRP issued certain directions and in meanwhile, on examination of assessment record of instant assessment year, PCIT found that order passed under section 143(3) was erroneous and prejudicial to the interest of Revenue

and thus issued show-cause notice under section 263. ***Held:*** Order under section 263 was passed against draft assessment order and the said draft assessment order was adjudicated before DRP, therefore, it was in the matter of scrutiny before Dispute Resolution Panel. Draft assessment order was not a final order or was not any order which is described under section 263. It was a proposal given to assessee upon which assessee had a right to raise objections before DRP who had a full authority to direct/propose certain additions or to delete certain additions. Therefore, it is a foolproof mechanism which cannot be doubted by CIT by invoking section 263 which was a revisional power in respect of final assessment order or any order but not to a proposal which was called draft assessment order.

Dt.Ord.: *15 January, 2020* ✓ **In assessee's favour**

➲ **Louis Dreyfus Company India (P) Ltd. v. Addl. CIT** *(2020) 172 TR (A) 444 (Del-Trib) : 2020 TaxPub(DT) 379 (Del-Trib)*

S. 271(1)(c) A.Y. 2011-12

Penalty under section 271(1)(c)—*Concealment or furnishing of inaccurate particulars*—*Additional income declared in revised return filed after service of section 143(2) notice*

Had it been the intention of assessee to make a full and true disclosure of its income, it would have filed a revised return of income before issuance of the notice 143(2)/142(1) by AO. Between the period of filing of original return of income and receipt of notice under section 143(2), assessee had a time of approximately one year but he failed to file revised return of income, therefore, AO rightly held that assessee has deliberately and consciously failed to furnish full and true particulars of income and attempted to conceal income and levy of penalty under section 271(1)(c) was confirmed, however, penalty was not levable on disallowance under section 14A claimed by assessee in revised return. ■

Assessee filed return of income for assessment year 2011-12 on 30-9-2011 declaring total income of Rs. 9,733. AO held that it was an attempt on part of assessee to evade legitimate taxes and clearly it was a case of furnishing of inaccurate of particulars of income leading to concalment. Therefore, AO levied a penalty under section 271(1)(c) @ 100% of the tax sought to be evaded. ***Held:*** Had it been the intention of assessee to make a full and true disclosure of its income, it would have filed a revised return of income before issuance of the notice 143(2)/14291) by AO between the period of filing of original return of income and receipt of notice under section 143(2), assessee had a time of approximately one year but he failed to file revised return of income. Therefore, AO rightly held that assessee has deliberately and consciously failed to furnish full and true particulars of income and attempted to conceal income and levy of penalty under section 271(1)(c) was confirmed, however, penalty was not levable on disallowance under section 14A claimed by assessee in revised return.

Dt.Ord.: *30 September, 2019* ✓ **Partly in assessee's favour**

➲ **Bhavesh Pravinchandra Sheth v. Asstt. CIT** *(2020) 172 TR (A) 445 (Mum-Trib) : 2019 TaxPub(DT) 6863 (Mum-Trib)*

S. 271(1)(c) A.Y. 2006-07

Penalty under section 271(1)(c)—*Concealment or furnishing of inaccurate particulars*—*Leviability—Disallowance of bona fide claim not availed of by assessee in quantum appeal*

Merely for the reason that disallowance of *bona fide* claim had not been assailed by assessee in its quantum appeal before Tribunal, penalty under section 271(1)(c) could not be imposed. ■

Assessee in its revised return of income claimed coal cost freight issue—Bhusaval of Rs. 16 crores expenditure pertaining to the year under consideration. AO disallowed deduction and accordingly levied penalty under section 271(1)(c). ***Held:*** Assessee claimed expenditure in question on the basis of remarks and report of its statutory auditors. Though assessee specifically raised the claim in its revised return of income, however, AO did not record any observation to dislodge veracity of the claim of expense so raised. Merely for the reason that disallowance of *bona fide* claim had not been assailed by assessee in its quantum appeal before Tribunal, penalty under section 271(1)(c) could not be imposed.

Dt.Ord.: *7 August, 2019* ✓ **In assessee's favour**

➲ **Dy. CIT v. Maharashtra State Power Generation Co. Ltd.** *(2020) 172 TR (A) 445 (Mum-Trib) : 2019 TaxPub(DT) 6342 (Mum-Trib)*

S. 271(1)(c)

A.Y. 2003-04 & 2004-05

Penalty under section 271(1)(c)—*Concealment or furnishing of inaccurate particulars*—*Validity—AO passed penalty order in the name of erstwhile dissolved company***

Penalty order passed by AO in the name of erstwhile company, i.e., 'M/s. Padampat Gopal Krishna Ramapanti Organization Ltd., instead of passing order in case of V3S Infratech Ltd. was not a procedural violation but a substantive illegality and same could not be cured under section 292B on the ground of assessee's participation in proceedings as there cannot operate an estoppel against law. ■

Assessee challenged penalty levied by AO under section 271(1)(c) on the ground that AO had passed penalty order in the name of Padampat Gopal Krishna Ramapanti Organization Ltd. (Merged with Gohoi Buildwell Ltd. an erstwhile company disssolved in accordance with section 391(2) read with section 394 of Companies Act, 1956. and stood amalgamated with assessee-company. AO sought to take shelter under section 292B. ***Held:*** Penalty order passed by AO in the name of erstwhile company, i.e., 'M/s. Padampat Gopal Krishna Ramapanti Organization Ltd., instead of passing order in case of V3S Infratech Ltd. was not a procedural violation but a substantive illegality and same could not be cured under section 292B on the ground of assessee's participation in proceedings as there cannot operate an estoppel against law.

Dt.Ord.: *13 September, 2019* ✓ **In assessee's favour**

➲ **V3S Infratech Ltd. v. Dy. CIT** *(2020) 172 TR (A) 446 (Del-Trib) : 2019 TaxPub(DT) 6465 (Del-Trib)*

S. 271(1)(c)

Penalty under section 271(1)(c)—*Validity*—*AO was not able to establish either any concealment of material fact, or furnishing of inaccurate particulars by assessee***

Merely because additions made by AO have been partially upheld by the CIT(A), would not confer the ground to initiate proceedings under section 271(1)(c) of imposition of penalty, unless it was found that there was concealment of material facts, or furnishing of inaccurate particulars. ■

Revenue had preferred the present appeal to assail the order passed by Tribunal in upholding order passed by CIT(A) who had set aside penalty imposed upon assessee under section 271(1)(c) while observing that AO had not been able to establish either any concealment of material fact, or furnishing of inaccurate particulars by assessee. ***Held:*** Order passed by AO in the relevant proceedings did not disclose as to what was the concealment of material fact, or furnishing of inaccurate particulars in respect whereof the penalty was sought to be imposed on assessee. Merely because additions made by AO have been partially upheld by the CIT(A), would not confer the ground to initiate proceedings under section 271(1)(c) of imposition of penalty, unless it was found that there was concealment of material facts, or furnishing of inaccurate particulars.

Dt.Ord.: *1 October, 2019* ✓ **In assessee's favour**

➲ **Principal CIT v. Punjab National Bank** *(2020) 172 TR (A) 446 (Del-HC) : 2019 TaxPub(DT) 7069 (Del-HC)*

S. 271AAA

A.Y. 2011-12 & 2012-13

Penalty under section 271AAA—*Leviability*—*Initiation of penalty proceeding on one ground and levying of penalty on different ground*

Since there was no clarity in the stand of revenue for initiation of penalty under section 271AAA, i.e., whether it was for failure of assessee to explain the manner in which undisclosed income was derived or it was the failure of assessee to substantiate the manner in which undisclosed income was derived, therefore, penalty levied under section 271AAA was cancelled. ■

AO initiated penalty proceedings under section 271AAA for explaining the manner in which undisclosed income was derived but levied penalty for assessee's failure to substantiate the manner in which unaccounted income was earned. ***Held:*** Disclosure of manner in which undisclosed income was earned and substantiating the manner in which undisclosed income was earned are two different things. These two different aspects are repeated by clauses (i) and (ii) of section 271AAA(2). Accordingly, there was no clarity in the stand of revenue for initiation of penalty under section 271AAA, i.e., whether it was for failure of assessee to explain the manner in which undisclosed income was derived or it was the failure of assessee to substantiate the manner in which undisclosed income was derived. Accordingly, penalty levied under section 271AAA was cancelled.

Dt.Ord.: *7 May, 2019* ✓ **In assessee's favour**

➲ **Sam India Builtwell (P) Ltd. v. Dy. CIT** *(2020) 172 TR (A) 447 (Del-Trib) : 2019 TaxPub(DT) 3245 (Del-Trib)*

S. 271AAB

A.Y. 2013-14

Penalty under section 271AAB—*Viability*—*Undisclosed income—Expenses offered for disallowance during search not found to be a false claim—Admission by assessee to avoid litigation*

The simplicitor case that assessee during course of search in the statement recorded under section 132(4) admitted this to be the income to avoid litigation and to buy peace of mind. It was good piece of evidence for making assessment but not for levy of penalty under section 271AAB because for levy of peanlty falsity of the expense was a pre-requisite. Hence, penalty was deleted. ■

Assessee during course of search in the statement recorded under section 132(4) offered certain expenses for disallowance, AO framed assesment

under section 153A and made disallowance. Also, AO levied penalty under section 271AAB. Assessee's case was that disallowance had been offered volumtarily to buy peace of mind and no penalty was leviable as claim of expenditure was not false. ***Held:*** Definition of undisclosed income provided in section 271AAB under Expln. (c) of sub-clause (ii) clarifies that any income of specified previous year represented either wholly or partly by any entry represented in respect of expense recorded in books of account maintained in normal course of business should be found to be false. In assessee's case, expenses in question had not been found to be false or it was not a case of revenue that such expenses were not allowable under provisions of the Act. The simplicitor case that assessee during course of search in the statement recorded under section 132(4) admitted this to be the income to avoid litigation and to buy peace of mind. It was good piece of evidence for making assessment but not for levy of penalty under section 271AAB because for levy of peanlty falsity of the expense was a pre-requisite. Hence, penalty was deleted.

Dt.Ord.: *30 October, 2019* ✓ **In assessee's favour**

➲ **Ajanta Pharma Ltd. v. Dy. CIT** *(2020) 172 TR (A) 447 (Mum-Trib) : 2019 TaxPub(DT) 7318 (Mum-Trib)*

S. 271B

Penalty under section 271B—*Time limitation*—*Penalty proceedings initiated after a long gap of more than 4½ years*

Since AO initiated the penalty proceedings after a period of more than 4½ years from the date of original assessment order and there was no such mention of the initiation of penalty proceedings under section 271B in the assessment order, penalty proceeding initiated by the AO was barred by limitation. ■

AO initiated penalty proceedings under section 271B on the ground that assessee had shown receipts from booking (net) freight whereas the gross freight was admitted by assessee to have been received. Against the above receipts, assessee had claimed to have paid an amount. AO, therefore, issued a show-cause notice asking the assessee to explain as to why penalty under section 271B should not be levied. Before CIT(A), it was submitted that penalty proceedings initiated after a long gap of more than 4½ years from the date of original assessment order passed in remanded matter by Tribunal, thus penalty imposed was barred by limitation. However, CIT(A) dismissed the appeal of assessee. ***Held:*** Penalty is not leviable where the penalty proceedings were initiated long after the completion of assessment and order was silent about the levy of penalty under section 271B. Since AO initiated the penalty proceedings after a period of more than 4½ years from the date of original assessment order and there was no such mention of the initiation of penalty proceedings under section 271B, penalty proceeding initiated by the AO was barred by limitation.

Dt.Ord.: *14 May, 2019* ✓ **In assessee's favour**

➲ **Amit Sabharwal v. ITO** *(2020) 172 TR (A) 448 (Del-Trib) : 2019 TaxPub(DT) 3868 (Del-Trib)*

Part C

GST & Corporate Laws Mini Magazine

NEWS YOU CAN USE

MCA

Govt ramps up capacity of the NCLT Benches to boost decision-making

The government is ramping up the capacity of the National Company Law Tribunal (NCLT) Benches to boost decision-making and reduce delays.

It will set up dedicated Benches for insolvency and bankruptcy cases and add 40 new positions for NCLT, said Injeti Srinivas, secretary, corporate affairs ministry to the standing committee on finance.

"When the NCLT was set up, IBC was never in the picture. It was only set up as a company law court. The IBC has now sort of dominated," Srinivas said.

Because of the increase in IBC cases, which are getting primacy at the NCLT, company cases are getting badly delayed. The government is also planning to set up specialised Benches for competition law to reduce the burden of the appellate tribunal, which is referred to on all matters from company law and IBC to competition law and the national financial reporting authority.

For speedy disposal of cases, the government on March 15 constituted another Bench of the National Company Law Appellate Tribunal at Chennai to hear the appeals against the orders of NCLT Benches. It will have jurisdiction of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Lakshadweep, and Puducherry.

▸ www.business-standard.com dt. 17-03-2020

NCLAT

Govt appoints Justice B L Bhat as officiating chairman of NCLAT

The government has appointed Justice Bansi Lal Bhat as the officiating chairperson of the National Company Law Appellate Tribunal (NCLAT).

NCLAT Chairperson Justice Sudhansu Jyoti Mukhopadhaya retired on Friday.

"Consequent on the completion of the term of Office of Justice (Retd.) Shri S.J. Mukhopadhaya, as Chairperson NCLAT on March 14, 2020, Central Government hereby appoints, Justice (Retd.) Shri Bansi Lal Bhat, Member (Judicial), NCLAT, as officiating Chairperson," an official notification said.

The appointment of Justice Bhat, a former judge of the Jammu and Kashmir High Court, is "for a period of three months with effect from 15.03.2020 or until a regular Chairperson is appointed or until further orders, whichever is earliest."

In a separate notification, the government appointed Justice Anant Bijay Singh as judicial member and Shreesha Merla and Alok Srivastava as technical members of the appellate tribunal.

▸ www.business-standard.com dt. 14-03-2020

GST

New upgraded IT system for GST by July, e-invoicing to be implemented from Oct 1

The GST Council on Saturday demanded Infosys to upgrade the Information Technology (IT) backbone by July 30. In the meantime, the council decided to defer introduction of e-invoicing till September 30.

Annual Return

Meanwhile, the Council decided to give relaxation to MSMEs (Micro, Small and Medium Enterprises) from furnishing of Reconciliation Statement in FORM GSTR-9C, for the financial year 2018-19, for taxpayers having aggregate turnover below Rs. 5 crore. Due date for filing the Annual return and the Reconciliation Statement for financial year 2018-19 has been extended to June 30 and late fees not to be levied for delayed filing of the annual return and the Reconciliation Statement for financial year 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crore.

Interest on delayed payment

Giving relief to businesses, the council decided Interest for delay in payment of GST to be charged on the net cash tax liability with effect from July 1, 2017. For this law will be amended retrospectively.

▸ www.thehindubusinessline.com dt. 16-03-2020

STATUTES

(2020) 172 TR(C)..... (St.)

CENTRAL GOODS AND SERVICES TAX ACT, 2017

CGST (NOTIFICATION)

Notification No. 08/2020 – Central Tax, dtd. 2-3-2020 [F. No. 20/06/03/2020 – GST]

Central Goods and Services Tax (Second Amendment) Rules, 2020

G.S.R.....(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, with effect from the 1st March, 2020, in rule 31A, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Explanation:–For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.".

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 02/2020 - Central Tax, dated the 01st January, 2020, published vide number G.S.R. 4 (E), dated the 01st January, 2020.

CGST (PRESS RELEASE)

Press Release dtd. 14-3-2020

39th Meeting of the GST Council—Law and Procedure Related Changes

The GST Council, in its 39th meeting held on 14.03.2020, has made the following recommendations:

1. Measures for Trade facilitation

a. Interest for delay in payment of GST to be charged on the net cash tax liability w.e.f. 01-07-2017 (Law to be amended retrospectively).

b. Where registrations have been cancelled till 14-03-2020, application for revocation of cancellation of registration can be filled up to 30-06-2020 (extension of period of application as one-time measure to facilitate those who want to conduct business).

c. Annual Return:

i. Relaxation to MSMEs from furnishing of Reconciliation Statement in **FORM GSTR-9C**, for the financial year 2018-19, for taxpayers having aggregate turnover below Rs. 5 crores;

ii. Due date for filing the Annual return and the Reconciliation Statement for financial year 2018-19 to be extended to 30-06-2020; and

iii. Late fees not to be levied for delayed filing of the Annual return and the Reconciliation Statement for financial year 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crores.

d. A new facility called 'Know Your Supplier' to be introduced so as to enable every registered person to have some basic information about the suppliers with whom they conduct or propose to conduct business.

e. The requirement of furnishing **FORM GSTR-1** for 2019-20 to be waived for taxpayers who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07-03-2019 by filing **FORM CMP-02**.

f. A special procedure is being prescribed for registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 and are undergoing the corporate insolvency resolution process, so as to enable them to comply with the provisions of GST Laws during the CIRP period.

g. A special procedure for registered persons in Dadra and Nagar Haveli & Daman and Diu during transition period, consequent to merger of the UTs w.e.f. 26-01-2020; transition to be completed by 31-05-2020.

h. Extension of due dates for **FORM GSTR-3B** for the month of July, 2019 to January, 2020 till 24th March, 2020 for registered persons having principal place of business in the Union territory of Ladakh. Similar extension is also recommended for **FORM GSTR-1** & **FORM GSTR-7**.

i. Bunching of refund claims allowed across financial years to facilitate exporters.

a. Extension of the time to finalize e-Wallet scheme up to 31-03-2021; and

b. Extension of the present exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes up to 31-03-2021.

2. Deferment of E-invoice and QR Code

a. Certain class of registered persons (insurance company, banking company, financial institution, non-banking financial institution, GTA, passenger transportation service etc.) to be exempted from issuing e-invoices or capturing dynamic QR code; and

b. The dates for implementation of e-invoicing and QR Code to be extended to 01-10-2020.

3. Deferment of e-wallet Scheme

a. Extension of the time to finalize *e-Wallet scheme up to 31-03-2021; and*

b. Extension of the *present exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes up to 31-03-2021.*

4. Continuation of existing system of furnishing **FORM GSTR-1 & FORM GSTR-3B** till September, 2020;

5. Other new initiatives

a. Seeking information return from Banks;

b. To curb fake invoicing and fraudulent passing of ITC, restrictions to be imposed on passing of the ITC in case of new GST registrations, before physical verification of premises and Financial KYC of the registered person.

6. Issuance of circulars in respect of

a. Clarification in apportionment of ITC in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules;

b. Appeals during non-constitution of the Appellate Tribunal;

c. Clarification on refund related issues; and

d. Clarification on special procedure for registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process.

7. Amendments to the CGST Rules

Key amendments are as below:

a. Procedure for reversal of input tax credit in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies under rule 43 (1) (c);

b. ceiling to be fixed for the value of the export supply for the purpose of calculation of refund on zero rated supplies;

c. to allow for refund to be sanctioned in both cash and credit in case of excess payment of tax;

d. to provide for recovery of refund on export of goods where export proceeds are not realized within the time prescribed under FEMA; and

e. to operationalize Aadhaar authentication for new taxpayers.

8. Certain amendments to be carried out in the GST laws.

Note: *The recommendations of the GST Council have been presented in this release in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/Notifications or amendment in GST laws which alone shall have the force of law.*

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ARTICLES

(2020) 172 TR(C) ….. (Art.)

GST—DEEMED EXPORTS

Deemed Exports Under GST

— CMA. Sudha Rani V —

Under GST Law any supply of goods specified under section 147 of the CGST Act is considered as "Deemed Exports". The learned author provides a detailed analysis of deemed exports in this article.

1. Introduction

Under GST law, "Export of goods" means taking goods out of India to a place outside India. Export of goods or services or both are Zero - rated supply under GST. Certain notified supplies of goods are deemed to be exports, though the goods are not taken out of India to a place outside India.

Registered person under GST is eligible to claim refund of taxes paid for zero, rated supplies or unutilised input tax credit for supplies made under LUT or bond. Though deemed exports does not get covered under Zero - rated supplies, as these supplies deemed to be exports under GST, the taxes paid on deemed exports are eligible to claim as refund.

2. Meaning

The term "Deemed Exports" is defined under section 2(39) of the CGST Act as deemed exports means such supplies of goods as may be notified under section 147 of the CGST Act.

To consider any supply as a deemed goods, it has to meet the following conditions :

1. Goods are manufactured in India and do not leave India
2. Payment for such supplies is received either in Indian rupees or in convertible foreign exchange.
3. Such supplies shall be notified as deemed exports under section 147 of CGST Act.

Notification No. 48/2017-CT, dated 18-10-2017 notified the supplies as deemed exports, which are mentioned below :

1. Supply of goods by a registered person against Advance Authorisation

"*Provided* that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submittal to the jurisdictional Commissioner of GST or any other officer authorised by him within 6 months of such supply :

Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods."

2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation

3. Supply of goods by a registered person to Export-Oriented Unit

4. Supply of gold by a bank or Public Sector Undertaking specified in *Notification No. 50/2017-Customs, dated the 30-6-2017* (as amended) against Advance Authorisation.

In the above mentioned notification, meanings of Advance Authorisation, Export Promotion Capital Goods Authorisation and Export Oriented Unit are explained :

1. "Advance Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs for physical exports.

2. "Export Promotion Capital Goods Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.

3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy, 2015-20.

3. Refund of tax

Explanation 1 provided to section 54 of the CGST Act provides that "refund" includes refund of tax on supply of goods regarded as deemed exports. Therefore, taxes paid on deemed supplies are eligible to claim as refund provided that the supplier and recipient follows the prescribed procedure.

4. Time limit for claiming refund

Any person claiming refund of any tax and interest paid on such tax may make an application before the expiry of two years from relevant date.

The term "relevant date" for the purpose of deemed exports is the date on which the return to such deemed exports is furnished.

5. Who can claim the refund of tax paid on Deemed Exports

3rd proviso to rule 89(1) of the CGST Rules, 2017 states that refund claim may be filed by :

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies

Note : Supplier of deemed export may claim refund only in cases where the recipient does not avail of input tax credit on such supplies and recipient shall furnish an undertaking to the effect that supplier may claim refund.

6. Limitations

Rule 96(9) of the CGST Rules provides that the persons claiming refund of integrated tax paid on export of goods or services should not have received supplies on which the supplier has availed the benefit of *Notification No. 48/2017-Central Tax, dated 18-10-2017* or *Notification No. 40/2017-Central Tax (Rate), dated 23-10-2017* or *Notification No. 41/2017-Integrated Tax (Rate), dated 23-10-2017*.

When supplier avails the benefit of *Notification No. 48/2017- CT(rate) dated 18-10-2017* then recipient of deemed exports can claim refund of input tax credit availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both.

7. Procedure for deemed exports

1. The recipient EOU/EHTP/STP/BTP unit shall give prior intimation in a prescribed proforma in "Form - A" (appended herewith) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made.

The said intimation shall be given to -

(a) the registered supplier;

(b) the jurisdictional GST Officer in charge of such registered supplier; and

(c) its jurisdictional GST Officer.

2. The registered supplier thereafter will supply goods under tax invoice to the recipient EOU/EHTP/STP/BTP unit.

3. On receipt of such supplies, the EOU/EHTP/STP/ BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to–

(a) the registered supplier;

(b) the jurisdictional GST officer in charge of such registered supplier; and

(c) its jurisdictional GST officer.

4. The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU/EHTP/STP/BTP unit.

5. The recipient EOU/EHTP/STP/BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B" (appended herewith).

(i) The software for maintenance of digital records shall incorporate the feature of audit trail.

(ii) While the data elements contained in Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements.

(iii) All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit.

(iv) The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required.

(v) A digital copy of Form-B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen-drive, as convenient to the said unit.

8. Procedure for claiming refund

1. Any person claiming refund of tax on deemed exports may file an application electronically in Form GST RFD-01 through the common portal, either directly or through a facilitation centre notified by the Commissioner.

2. Applicant is required to submit relevant documents as prescribed under Annexure –A of the *Circular No. 125/44/2019-GST, dated 18-11-2019*, which, in turn, refers to the documents mentioned in *Notification No. 49/2017-CT, dated 18-10-2017–GST, dated 6-11-2017*. Four documents each of maximum 5MB may be uploaded along with refund application.

3. Following documents are required to be submitted :

(i) A statement viz., statement 5B containing the number and the date of the invoices along with such other evidence need to be submitted.

(ii) In case, where the amount of refund claimed does not exceed two lakh rupees, a declaration is required to be given to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.

(iii) In case where the amount of refund claimed exceeds two lakh rupees, a certificate in Annexure-2 of Form GST RFD-01 issued by a Cost Accountant or a Chartered Accountant is required to be submitted to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.

Supplier of deemed exports claiming refund is required to produce the following documents to authority concerned as an evidence, apart from above mentioned documents :

(i) Acknowledgment by the jurisdictional tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.

(ii) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.

(iii) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

(iv) An undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest, in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of sections 42 of the CGST Act have not been complied with in respect of the amount refunded.

9. Further documents which are required to be submitted by recipient, in case refund is sought by recipient

(i) An undertaking shall have to be furnished stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed.

(ii) The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies.

Application Reference Number (ARN) will be generated only after submission Form GST RFD-01 along with relevant documents and the amount has been debited from the electronic credit ledger.

The refund application along with submitted documents gets transferred electronically to the jurisdictional proper officer who shall be able to view it on the system.

Proper officer will within 15 days of filing of Form GST RFD-01, scrutinise the application for its completeness and where application is found to be complete then an acknowledgment in Form GST RFD-02 shall be made available to the applicant through common portal electronically. This acknowledgement clearly indicates the date of filing of the claim for refund period for which refund is claimed and reason of refund.

For counting 60 days for passing refund order this date shall be considered, as the refund order shall be passed within 60 days from the date of receipt of refund application.

Once acknowledgment has been issued then no deficiency memo may be subsequently issued for the said application.

Proper officer shall communicate the deficiencies, if any found, to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Applicant need to rectify the deficiencies mentioned in deficiency memo and file fresh refund application electronically in Form GST RFD-01 again for the same period. New ARN would be generated for the said application.

Refund application filed after correction of deficiency is treated as a fresh refund application and shall also have to be submitted within 2 years of the relevant date as defined in the Explanation provided after section 54(14) of the CGST Act.

Note: Where any deficiencies have been communicated in Form GST RFD-03 under SGST Rules, 2017, the same shall also be deemed to have been communicated under the CGST Rules.

If refund application is electronically transmitted to the wrong jurisdictional officer, said officer shall re-assign it to the correct jurisdictional officer electronically as soon as possible but not later than 3 working days from the date of generation of the ARN. Re-assigning facility is already made available to the Commissioner or the officer authorised by him

Refund claim need to be filed only after furnishing all GSTR-1 and GSTR-3B which were due to be furnished on or before the date on which the refund application is being filed.

If the proper officer is satisfied with the eligibility of refund claim, then he may issue final order in Form GST RFD-06 within 7 days of the issuance of acknowledgement.

10. Disbursal of refunds

In case assigned jurisdictional proper officer is a Central Tax Officer, sanction order and corresponding payment order for sanctioned refund amount under all tax heads shall be issued by Central Tax Officer only.

In case, assigned jurisdictional officer is State tax officer then refund of all tax heads shall be disbursed by State Tax Officer only.

Payment orders for sanctioned refund amounts issued by the Central and State Tax Officers shall be disbursed through the Public Financial Management System (PFMS) of the Controller General Accounts (CGA), Ministry of Finance, Government of India.

PFMS communicates the status of the refund amount to common portal and it in turn notifies the same to the taxpayer by email/SMS. These details shall also be made available on the status tracking facility on the dash board.

11. Interest on delayed refunds

Refund order shall be issued within 60 days from the date of receipt of application. In case of delay in sanction of refund then interest at the rate of 6 per cent on refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund of such tax shall have to be paid to the applicant, i.e., till the date of amount credited to the bank account of the applicant.

In this regard, tax authorities were advised to issue the final sanction order in Form GST RFD-06 and the payment order in Form GST RFD-05 within 45 days of the date of generation of ARN, so that disbursement is completed within 60 days from the date of application.

A refund may be claimed by applicant, at his option, for a tax period or by clubbing successive tax periods. However, refund claim cannot be spread across different financial years.

12. Conclusion

Refund of tax paid on deemed exports is the benefit provided either to supplier or recipient. Registered person who is opting to claim refund need to follow the prescribed procedure. Compliances to be followed for supply of deemed exports before supply takes place and after supply takes place are cumbersome. Government is resolving the issues faced by the registered persons while claiming refunds, and fully electronic refund process is implemented w.e.f. 26-9-2019, so that it can ease the refund process.

GST—INTEREST

Interest Under Section 50(1) is Chargeable on Net Tax Liability

— D. Ramachandra Rao —

The present article seeks to make an overview of the issue as to whether interest under section 50(1) shall be chargeable on the gross tax liability before set of input tax credit or on net tax liability which is paid by debiting electronic cash ledger.

1. Introduction

Section 50 of the Central Goods and Services Tax Act, 2017 (in short "CGST Act") deals with interest on delayed payment of tax. Sub-section (1) of section 50 reads as under:

"(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council."

Initially, there was confusion on the issue as to whether the interest under section 50(1) would be chargeable on the gross tax liability (i.e. without making set-off of input tax credit) or on net tax liability (i.e. after deducting input tax credit).

In order to remove confusion as regards the tax amount on which interest shall be chargeable, the Finance (No. 2) Act, 2019 has inserted a proviso under sub-section (1) of section 50 which reads as under:

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger."

The Finance (No. 2) Act, 2019 received assent of the President on 1-8-2019. After enactment of the Finance (No. 2) Act, 2019, the effective date of various proposals relating to Central Goods and Services Tax was notified as 1-1-2020. But, the effective date of proviso to sub-section (1) of section 50 was not notified by the Central Government. Hence, the uncertainty with regard to the effective date of the proviso to sub-section (1) of section 50 prevailed in the minds of taxpayers and departmental officers.

Now, in the Press Release dated 14-3-2020, issued after 39th GST Council Meeting, it has been announced that the interest for delay in payment of GST shall be charged on the net cash tax liability w.e.f. 01-07-2017. For this purpose, the amendment in section 50(1) shall be given retrospective effect w.e.f. 1-7-2017.

2. Telangana High Court decision in Megha Engineering's case

Earlier, in the case of *Megha Engineering & Infrastructures Ltd. v. CCT (2019) 65 GSTR 164 : (2019) 73 GSTC 787 ; (2019) 104 Taxmann.com 393 (Tel-HC)*, the Telangana High Court was also seized with the question as to whether interest under section 50(1) shall be charged on the gross tax liability or net tax liability. It was observed by the Telangana High Court that the interest on delayed payment of tax shall be charged on the gross tax liability without considering the benefit of Input tax credit.

The High Court observed that until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. As a consequence, no payment can be made from out

of such a credit entry. It is true that the tax paid on the inputs charged on any supply of goods and/services, is always available. But, it is available in the air or cloud. Just as information is available in the server and it gets displayed on the screens of our computers only after connectivity is established, the tax already paid on the inputs, is available in the cloud. Such tax becomes an input tax credit only when a claim is made in the returns filed as self-assessed. It is only after a claim is made in the return that the same gets credited in the electronic credit ledger. It is only after a credit is entered in the electronic credit ledger that payment could be made, even though the payment is only by way of paper entries.

The High Court further observed that the tax already paid on the inputs of supplies of goods or services, available somewhere in the air, should be tapped and brought in the form of a credit entry into the electronic credit ledger and payment has to be made from out of the same. If no payment is made, the mere availability of the same, there in the cloud, will not tantamount to actual payment.

3. Madras High Court decision in Refex Industries case

Recently, in the case of *Refex Industries Ltd. v. Asstt. Commr. of CGST & CE (Mad-HC),* the Madras High Court was seized with the question as to whether interest under section 50(1) would be chargeable on the gross tax liability or net tax liability. The High Court held that the interest on delayed payment of tax shall be charged on the net tax liability after considering the input tax credit available for the tax period.

The High Court observed as under:

> "12. The specific question for resolution before me is as to whether in a case such as the present, where credit is due to an assessee, payment by way of adjustment can still be termed 'belated' or 'delayed'. The use of the word 'delayed' connotes a situation of deprival, where the State has been deprived of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, section 50 which is specifically intended to apply to a state of deprival cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. In my considered view, the proper application of section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee. The latter being available with the Department is, in my view, neither belated nor delayed.
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> 13. The argument that ITC is liable to be reversed if it is found to have been erroneously claimed, and that it may be invalidated in some situations, does not militate with my conclusion as aforesaid. The availment and utilization of ITC are two separate events. Both are subject to the satisfaction of statutory conditions and it is always

possible for an Officer to reverse the claim (of availment or utilization) if they are found untenable or not in line with the statutory prescription. Credit will be valid till such time it is invalidated by recourse to the mechanisms provided under the Statute and Rules."

The High Court further observed that the proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 1-8-2019 (actually, as per decision of the GST Council in its 39th Meeting it shall be given retrospective effect from 1-7-2017), but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus be read as clarificatory and operative retrospectively.

4. Summing up

Of late, the CBIC had issued instruction to its field officers for recovery of interest on the delayed payment of tax consequent to delayed filing of monthly returns in Form GSTR-3B by, calculating the interest on the gross tax liability. As per the communication issued by the department, the Government was set to recover a sum of Rs. 43,000 Crore towards interest on the delayed payment of tax. However, after taking into account the genuine hardship of the trade and industry, the GST Council in its 39th Meeting has decided that the interest for delay in payment of GST shall be charged on the net cash tax liability with effect from 1-7-2017. This is a welcome decision of the GST Council and it will pose confidence of the trade and industry in the tax administration.

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