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NEWSLETTER

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Compiled By: CA. Sachin Singhal
CA. Vinit Aggarwal

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Corporate Laws

Latest Updates, News and Judgments

1. Execution of agreement not mandatory in cases pertaining to NBFCs to claim financial debt, CIRP was admitted

Utsav Securities (P.) Ltd. v. Vogue Clothiers (P.) Ltd. - [2020] 116 taxmann.com 122 (NCLT - New Delhi)

The petitioner, a non-banking financial corporation, granted a financial assistance to the corporate debtor. As the corporate debtor failed to service interest, the said loan was recalled by the petitioner. The Corporate debtor had neither liquidated outstanding liability nor reduced the same.

The instant application was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 against the corporate debtor. The Corporate debtor contended that application filed by the petitioner was based on a contractual agreement which provided for an undefined period of loan etc. and, accordingly the said financial transaction did not tantamount to financial claim.

The NCLT held that petitioner was in business of NBFC to grant financial assistance on interest. Though it was confirmed by the petitioner that no agreement was executed, however same was not mandated in cases pertaining to NBFC's. Further grant of financial assistance was evidenced by banking transaction and deduction of TDS duly deposited with Income-tax Authority and substantiated by form 26AS of the petitioner.

Insistence of the corporate debtor that transaction was not a financial debt was inexplicable and defence was frivolously raised in a desperate attempt to resist initiation of CIR process. Since the petitioner was entitled to seek initiation of Corporate Insolvency Resolution process of the corporate debtor for its inability to liquidate its dues, CIRP was to be admitted.

2. Expert committee for valuation professionals submits report to FinMin along with draft 'Valuers Bill, 2020

The Committee of Experts which was appointed to examine the need for an institutional framework for regulation and development of valuation professionals has presented this report to the Ministry of Finance, Government of India. The report is accompanied by a draft of 'Valuers Bill, 2020. The Committee has recommended the least disruptive, yet



modern and robust, institutional framework that learns from the experience of valuation profession in India and abroad, and of other professions in India, while addressing the concerns of today and tomorrow, and ensuring respectability for valuation professionals and accountability for valuation services.

The committee has proposed the institutional framework with three primary objectives, namely, (i) development and regulation of the valuation profession; (ii) development and regulation of market for valuation services; and (iii) protection of interest of the users of valuation services. However, the framework could not be limited to valuations under the Companies Act, 2013 and the Code, as are presently covered under the Valuation Rules. While valuations under the Companies Act, 2013 and the Code may be mandatory to begin with, the framework should cover valuations under other laws in a phased manner in due course, depending on experience and the needs of the time.

3. COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)

General Circular No. 15 /2020 F. No. CSR-01/4/2020-CSR-MCA

The Ministry has been receiving several references/ representations from various stakeholders seeking clarifications on eligibility of CSR expenditure related to COVID-19 activities. In this regard, a set of FAQs along with clarifications are provided below for better understanding of the stakeholders:

S. No.	Frequently Asked Questions (FAQs)	Reply
1	Whether contribution made to ‘PM CARES Fund’ shall qualify as CSR expenditure?	Contribution made to ‘PM CARES Fund’ shall qualify as CSR expenditure under item no (viii) of Schedule VII of the Companies Act, 2013 and it has been further clarified vide Office memorandum F. No. CSR-05/1/2020-CSR-MCA dated 28th March, 2020.
2.	Whether contribution made to ‘Chief Minister’s Relief Funds’ or ‘State Relief Fund for COVID-19’ shall qualify as CSR expenditure?	‘Chief Minister’s Relief Fund’ or ‘State Relief Fund for COVID-19’ is not included in Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds shall not qualify as admissible CSR

		expenditure.
3.	Whether contribution made to State Disaster Management Authority shall qualify as CSR expenditure?	Contribution made to State Disaster Management Authority to combat COVID-19 shall qualify as CSR expenditure under item no (xii) of Schedule VII of the 2013 and clarified vide general circular No. 10/2020 dated 23rd March, 2020.
4.	Whether spending of CSR funds for COVID-19 related activities shall qualify as CSR expenditure?	Ministry vide general circular No. 10/2020 dated 23rd March, 2020 has clarified that spending CSR funds for COVID-19 related activities <u>shall qualify</u> as CSR expenditure. It is further clarified that funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. Further, as per general circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.
5.	Whether payment of salary/wages to employees and workers, including contract labour, during the lockdown period can be adjusted against the CSR expenditure of the companies?	Payment of salary/ wages in normal circumstances is a contractual and statutory obligation of the company. Similarly, payment of salary/ wages to employees and workers even during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. Thus, payment of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements) shall not qualify as admissible CSR expenditure.
6.	Whether payment of wages made to casual /daily wage workers during the	Payment of wages to temporary or casual or daily wage workers during the lockdown period is part of the moral/ humanitarian/

	<p>lockdown period can be adjusted against the CSR expenditure of the companies?</p>	<p>contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. Hence, payment of wages to temporary or casual or daily wage workers during the lockdown period <u>shall not</u> count towards CSR expenditure.</p>
7.	<p>Whether payment of ex-gratia to temporary /casual /daily wage workers shall qualify as CSR expenditure?</p>	<p>If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a one- time exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.</p>

4. Cos. may send notice of EGM through e-mail to its members during COVID-19 pandemic: MCA General Circular no. 17/2020, Dated 13.04.2020

The MCA has received representation from stakeholders related to difficulties in serving and receiving of notice by Post during the current circumstances. In view of the same, and to bring in greater clarity on the modalities to be followed by Cos. to conduct EGM during COVID-19 pandemic. The MCA has clarified that Companies may send notice of EGM through e-mail to its member during COVID-19 pandemic. Along with that, the company must attach the statement with notice which shall specify that the EGM has been convened through Video Conferencing (VC) or other Audio Visual means (OAVM) in compliance with the applicable provision of the Act, date and time of EGM, availability of notice of the meeting of notice of the meeting on the website of the company or any other details may be considered necessary.

The MCA circular clarified that, the company shall also specify the manner in which the members who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting.

It is pertinent to note that the chairman of the meeting shall himself satisfy and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have been made by the Co. to enable members to participate and vote on the items being considered in the meeting.

5. CIRP admitted as there was no record of pre-existing dispute and corporate debtor admitted its liability for over dues

Jupiter Food Products (P.) Ltd. v. Delecto Foods (P.) Ltd. - [2020] 116 taxmann.com 117 (NCLT - Hyd.)

In the instant case, the operational creditor had supplied food products, i.e., Liquid chicory to the corporate debtor and raised invoices as well as debit notes. A demand notice was issued by the operational creditor as the corporate debtor failed to pay amount against certain invoices raised.

The Corporate debtor in its reply admitted liability towards the outstanding dues however, no payment was made. In the instant petition, the corporate debtor contended that supplies made by the operational creditor had repeated issues of shortages in quantity, damaged drums, quality issues etc. due to presence of dust particles and oil in liquid chicory and had suffered heavy loss of business.

The NCLT held that some of consignments had quality issues, which were resolved by way of return of goods and raising of debit notes by the corporate debtor. Further, the corporate debtor had neither brought to notice of the operational creditor any pre-existing dispute nor sent any evidence of payment of amount claimed. Since the operational creditor has proved its case by placing evidence that default had occurred for which the corporate debtor was liable to pay, the instant CIRP application was to be admitted.

6. CIRP plea was to be rejected as operational creditor failed to commission plant successfully as per purchase order

SSP (P.) Ltd. v. Athani Sugars Ltd. - [2020] 116 taxmann.com 110 (NCLT-Beng.)

In the instant case, an agreement was executed between the operational creditor and the corporate debtor for design manufacturing, supply, Erection and commissioning of seven effect falling film evaporator with TVR effluent treatment plan. As per agreement,



the operational creditor supplied, installed and commissioned plant at factory premise of the corporate debtor and raised invoices. Since, the corporate debtor made only part payment, a demand notice was issued by the operational creditor.

In reply to said notice, the corporate debtor contended that the operational creditor failed to commission plant successfully which resulted in huge losses to corporate debtor and also failed to submit performance guarantee of 10 % of purchase order value as per purchase order.

The NCLT held that the Operational Creditor failed to perform its responsibilities, as per the purchase order and the agreement in question and having failed to get requisite service, the corporate debtor got such service from the other suppliers. Since there was a pre-existing dispute over claim made in the instant petition and the operational creditor also failed to explain laches and limitation, therefore, the instant Corporate Insolvency Resolution Process (CIRP) petition was to be rejected.

7. Resolution plan approved by CoC with 92.65% voting and compliant with all provisions of law was to be admitted: NCLT

Durga Enterprises v. SRS Meditech Ltd. - [2020] 116 taxmann.com 109 (NCLT-Chd.)

The operational creditor filed an application under section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency and Resolution Process (CIRP) against the corporate debtor. The Adjudicating Authority admitted the said application and, accordingly a Resolution Professional was appointed. The resolution plan submitted by the resolution applicant was approved by 92.65 % of voting by members of CoC.

The NCLT observed that in terms of said plan apart from upfront payment to creditors, deferred payment from recovery of outstanding receivables of Government departments and market or fresh contribution of the resolution applicant was to be paid to creditors. Further the resolution applicant would also infuse into the corporate debtor for building infrastructure of factory and for working capital requirements. Since resolution plan complied with all provisions of I & B Code and regulations and did not contravene any of provisions of law for time being in force. Hence, plea was to be admitted.



8. RP's plea seeking release of consignment held by container freight station and not by corporate debtor to be rejected

R. Venkatakrisnan, RP v. Continental Warehousing Corporation (Nhava Sheva) Ltd. - [2020] 116 taxmann.com 104 (NCLT- Chennai)

During the moratorium period, the corporate debtor transferred Rs. 4 lakh to the respondent-custom bonded warehouse and Container Freight Station (CFS) towards two bonded consignments belonging to its constituent 'S'.

The Respondent however, released only one container and as to other consignment, the respondent held back same on account of payments outstanding in respect of which claim had already been filed and admitted by the Resolution Professional (RP). The RP of the corporate debtor filed an application under section 74(2) of the Insolvency and Bankruptcy Code, 2016 for seeking directions against the respondent to release consignment on ground that respondent was not entitled to have any lien in respect of the corporate debtor's goods during moratorium period.

The NCLT held that corporate debtor was a custom house agent and was only engaged by 'S' to provide clearance services and thus, goods lying with respondent was not assets of corporate debtor and for goods not belonging to corporate debtor, the corporate debtor, by virtue of invocation of moratorium, could not ask for custody of goods showing as if same belongs to corporate debtor. Thus, instant application filed by RP was to be dismissed.

9. CIRP plea admitted as corporate debtor admitted debt payable to operational creditor towards supply of raw material

B.G. Textile v. H. Sakhiya Fashions (P.) Ltd. - [2020] 116 taxmann.com 105 (NCLT - Ahd.)

In the instant case, the applicant-operational creditor supplied textile raw material to the respondent-corporate debtor. Against the said supplies, certain amount was outstanding and was required to be paid by the corporate debtor.

Despite several reminders, the corporate debtor did not clear outstanding amount. Having failed to receive any reply from the corporate debtor, the operational creditor issued demand notice to the corporate debtor. Thereafter, the Corporate debtor filed a reply in affidavit stating that due to demonetization and implementation of the GST, textile business in Surat was severally hit thereby affecting job work orders of



the corporate debtor and resulting into non-payment of outstanding amount.

Aggrieved by this, the operational creditor filed the instant CIRP petition. However, during the course of hearing, the corporate debtor fairly admitted debt and its inability to make payment.

The NCLT held that operational debt was due to the operational creditor and no dispute was raised by the corporate debtor, existence of debt as well as occurrence of default being established, CIRP petition was to be admitted.

10. CIRP plea u/s 7 admitted as corporate debtor acknowledged existence of financial debt but failed to repay same

Amritvani Exim (P.) Ltd. v. Ajanta Offset And Packaging Ltd. - [2020] 116 taxmann.com 46 (NCLT - New Delhi)

In instant case, the financial creditor disbursed unsecured loan to the corporate debtor and the Corporate debtor repaid part of principal amount, however it failed to pay outstanding balance amount on maturity date. The financial creditor sent a letter seeking confirmation of accounts to the corporate debtor which the corporate debtor duly acknowledged but failed to repay loan. On being aggrieved, the financial creditor filed the instant Corporate Insolvency Resolution Process (CIRP) application.

The NCLT noted that since from material on record it was clearly established that the corporate debtor committed default in payment of debt amount and corporate debtor by its own admission had acknowledged existence of financial debt, CIRP application was to be admitted.

11. Govt. issues ordinance to cut salaries of MPs by 30% to meet exigencies arising out of Covid-19 pandemic

Act of Parliament No. 3 of 20, Dated 07.04.2020

In order to manage and control the situation arising out of Corona virus pandemic, the Government of India has decided to reduce the salaries and allowances of Members of Parliament, and accordingly, an Ordinance has been issued to amend the Salary, Allowances & Pension of members of Parliament Act, 1954 whereby a new sub-section (1A) has been inserted to the Section 3 of the Act providing that the salary payable to members of parliament shall be reduced by 30% for a period of 1 year commencing



from April 1, 2020, to meet the exigencies arising out of Corona Virus pandemic.

12. CIRP rejected as operational creditor failed to produce evidence that claimed amount was due and payable

Sirius Transtech (P.) Ltd. v. Akshara Enterprises (P.) Ltd - [2020] 116 taxmann.com 43 (NCLT - Hyd.)

In the given case, the operational creditor entered into a consortium agreement with the corporate debtor to participate in a bid for a project. As per the consortium agreement, the operational creditor was responsible for equipment service and maintenance service and manpower service as required during warranty and corporate debtor was responsible for project including bid management contract signing.

On award of contract, the operational creditor started providing support to the corporate debtor as per consortium agreement and the corporate debtor orally requested the operational creditor to supply manpower at SHQ and AHQ levels also but issued only one purchase order against four quotations submitted by the operational creditor for such services.

Thereafter, the operational creditor requested corporate debtor to settle their outstanding dues but corporate debtor failed to pay dues. The Operational creditor issued demand notice to corporate debtor but Corporate debtor denied to pay debt by stating that operational creditor failed to provide any services in accordance with consortium agreement and, therefore, no invoices were raised by operational creditor as per terms of purchase order.

The NCLT observed that the operational creditor had not assailed contention of the corporate debtor that not even a single invoice was raised with reference to purchase order. That work on other three quotations was done on oral request was also not evident from material on record. Since the petitioner had failed to submit any documentary evidence to prove that claimed amount was due and payable by the corporate debtor and there were disputes pre-existing, application filed by the operational creditor deserved to be rejected.



13. CIRP plea admitted as corporate debtor admitted averments made in petition and claim was already crystallised by DRT

State Bank of India v. Sri Bir Ispat (P.) Ltd. - [2020] 116 taxmann.com 16 (NCLT - Kolkata)

In instant case, the financial creditor granted loans and various credit facilities to corporate debtor and secured its loan by executing various documents like agreement of Loan-cum-Hypothecation, Guarantee Agreements etc. the corporate debtor failed to make payment.

Due to non-payment, the account of corporate debtor was declared as NPA. Thereafter, the financial creditor initiated proceedings under SARFAESI Act and filed application before DRT against corporate debtor. As the payment was still not made, financial creditor filed instant petition under section 7 of the Code.

The NCLT held that since corporate debtor did not oppose content of petition and claim of the financial applicant had already been crystallized by DRT in its proceedings, petition to initiate CIRP against the corporate debtor was to be admitted.

14. Life insurance policyholders gets additional 30 days grace period for paying premium falling due in Mar and Apr, 2020

Circular No. IRDAI/Life/Cir/Misc/078/04/2020, Dated 04.04.2020

The Insurance Regulatory and Development Authority of India (IRDAI) has received various representations from Life Insurers and the Life Insurance Council expressing various operational constraints and difficulties being faced by policyholders due to nationwide three week lockdown and social distancing norms. Therefore, in order to tackle such problem, IRDAI has decided to provide an additional 30-days grace period for life insurance policyholders to pay the premium on policies, whose renewal date falls in March and April. The grace has been offered to provide some relief to the policyholders amid the lockdown imposed to fight against corona virus pandemic. Furthermore, the IRDAI has tried its level best by providing one time Settlement Options for maturity payout of Unit Linked Policies. Extra time has been granted to the policyholders for making payment of renewal premium for health insurance policies and motor third party insurance policies.



15. IRDAI allows insurers an additional time for filing regulatory returns

Circular No. IRDAI/Life/Cir/Misc/079/04/2020, Dated 04.04. 2020

IRDAI has issued an addendum to COVID-19 Instructions issued vide Circular Ref: IRDAI/ INSP/ CIR/ MISC/ 077 /03/2020 dated March 30, 2020 whereby additional time limit has been allowed for filing of Regulatory Returns. In case of filing monthly returns, the additional time is 15 days, while in case of quarterly, half-yearly and yearly returns insurers will get 30 days more and for cyber security audit additional 30 days has been provided.



Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. Anticipatory bail allowed to assessees arrested for offence committed under GST on execution of bond with surety: HC

Manmohan Lalman Agarwal v. State of Gujarat - [2020] 116 taxmann.com 126 (Gujarat)

The two assessees were arrested for committing an offence punishable under the GST Act. The arrested assessees filed an application before the High Court of Gujarat for grant of anticipatory bail in connection with FIR registered for offence punishable under the GST Act.

The GST authorities opposed the bail application and submitted that assessees were engaged in availment of illegal input tax credit on the basis of fake and fabricated documents, thereby causing huge loss to the revenue department.

The Honourable High Court observed that one assessee aged 69 years, was having serious medical ailments while the other one was a female, aged 65 years. Moreover, the GST authorities were unable to bring on record any special circumstances against assessees.

The Honourable High Court directed the GST authorities to release the assessees on bail on their furnishing of bond of Rs. 10,000 each with one surety of same amount.

The assessees were required to cooperate with investigation and not make any inducement, threat or promise to any person acquainted with the case.

2. Sale of under construction building under 'Business Transfer Agreement' is supply of service, exempt from GST

Rajeev Bansal & Sudershan Mittal, In re - [2020] 116 taxmann.com 158 (AAR - UTTARAKHAND)

The applicant is engaged in the business of constructing residential/ commercial complexes and selling the same. It has sought an advance ruling to determine



applicability of exemption notification on 'Business Transfer Agreement' as a going concern which consists of transferring under construction project.

The Authority for Advance Ruling observed that in the given case, the applicant has sold the under-construction building, as a whole, with all its assets and transfer the rights of the same to the buyer. The buyer has purchased the under-construction building to carry on the same kind of business as he was also engaged in construction and selling business.

As per the exemption notification for services under GST, services by way of transfer of a going concern, as a whole or independent part, is to be treated as supply of service being exempted from GST. 'Transfer of going concern' is a transfer of a running business which is capable of being carried on by the purchaser as an independent business.

Therefore, the Authority for Advance Ruling ruled that the transfer of business in the given case shall be treated as a going concern and exempted from levy of GST.

3. Challenges faced by taxpayers in GST due to COVID-19 pandemic clarified by CBIC

Circular No. 137/07/2020-GST, dated 13-4-2020

On account of certain challenges faced by taxpayers in adhering to compliances under GST due to COVID-19 pandemic, CBIC has given certain clarifications. It includes extension of time limit for filing of LUT for FY 2020-21 to 30-06-2020; due date for furnishing of FORM GSTR-7 extended till 30-06-2020, due date for filing refund application falling during the period 20-3-2020 to 29-6-2020 also extended till 30-06-2020 and other clarifications made.

4. Authority to consider assessee request of refund of IGST paid on exports but failed to mention in shipping bills: HC

Heavy Metal & Tubes (India) (P.) Ltd. v. Principal Commissioner of Customs - [2020] 116 taxmann.com 116 (Gujarat)

The assessee was a manufacturer, exported goods under various invoices on payment of IGST. However, on account of some clerical error, the amount of IGST paid was not mentioned in the shipping bills.



Later, the shipping bills were amended and details of IGST were incorporated in those shipping bills. The assessee communicated the amendment to the Competent Authority and requested for sanction of refund of IGST. However, the Competent Authority was not responding to the request with regard to sanction of refund of IGST paid in connection with goods exported. The assessee filed a writ petition before the High Court of Gujarat seeking relief in this regard.

The Honorable High Court directed the concerned Deputy Commissioner of Customs to immediately look into the matter and take an appropriate decision in accordance with law.

5. **GST on Director Remuneration**

In the recent Advance Ruling Dt.05.02.2020, in the case of Clay Craft India Pvt. Ltd. the Rajasthan Authority for Advance Ruling (AAR) held that GST is payable under reverse charge as covered by entry no 6 of Notification NO 13/2007 dated 28.6.2017 on payment of remuneration to directors. The said Advance Ruling does not differentiate between Independent Director and Employee Director.

Similarly in Advance Ruling in the case of Alcon Consulting Engineers (India) Pvt Ltd, The AAR- Karnataka held that director is not an employee of the company and therefore GST, under reverse charge is payable on the consideration paid to directors. It was held that the services provided by the directors are not covered under clause 1 of the Schedule III to the CGST Act,2017 'as directors are not the employee of the company'.

It is a fact that Notification No.13/2017-CE (Rate) Dt.28.06.2017 provides that in the case of services supplied by director of the company or a body corporate to that company or body corporate, GST is payable under reverse charge by the company or body corporate. This provision does not differentiate between independent director and employee director.

In our opinion, the applicability of GST on the payments made to directors would be as under.

Remuneration paid to whole time (Employee) Directors:- As per clause 1 of the Schedule III of the CGST Act, 2017 services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services. Therefore, in our opinion, no GST is payable on the



remuneration paid to whole-time, executive (employee) directors.

Sitting Fees, Commission etc paid to Independent / non executive Directors:- As per Notification No.13/2017-CE (Rate) Dt.28.06.2017, in the case of services supplied by director of the company or a body corporate to that company or body corporate, GST is payable under reverse charge by the company or body corporate.

Services supplied by directors in their individual capacity:- Individual may offer different services as lessor, **landlord** or consultant in different capacities. These services are not supplied in the capacity of director. What is subject to reverse charge is services supplied to company incapacity of director. In case of other services supplied to company, the person himself will be liable to pay GST under forward charge, where applicable.

In our **opinion** advance ruling cannot be said to be a reasoned ruling or speaking order and both the advance rulings have either missed or ignored the basic fact that the services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.

As regards the applicability of the said Advance Ruling to other taxpayers, it is important to understand the **implication** of the advance ruling and its binding nature. Section 103(1) of the CGST Act, provides that- The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

- (a) on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

In view of the specific provision under Sec 103 of the CGST Act,2017, the Advance Rulings in the case of Clay Crafts India Pvt. Ltd and Alcon Consulting Engineers (I) Pvt. Ltd. are not binding on the other taxpayers.

However, the Advance Rulings on the subject have nuisance value. Therefore, the issue of the applicability of GST on the consideration paid to employee director is not free from the litigations.



6. Authority to take fresh action against legal heir as order passed against deceased assessee was nullity in eye of law

Vimal Raj v. State Tax Officer-1 - [2020] 116 taxmann.com 103 (Kerala)

The Competent Authority passed an assessment order against a deceased assessee. One of the legal heirs of the deceased assessee filed a writ petition before the High Court of Kerala seeking relief in this regard.

The Honourable High Court observed that the assessee was dead on 27-3-2018, however, series of assessment orders were passed in March, 2019 against the dead assessee. Therefore, the said assessment orders passed by the authority against an assessee who was already dead were nullity in the eye of law.

The Honourable High Court directed the Competent Authority to take fresh action in said assessment proceedings after ascertaining from the Revenue Officials all were legal representatives or legal heirs of deceased assessee and accordingly the authority would finalise the assessment proceedings in accordance with law.

7. Assessee to file reply for confiscation notice issued by authority after payment made for release of goods & vehicle

Vivek Ramvilas Bansal v. Deputy Commissioner of State Tax - [2020] 116 taxmann.com 38 (Gujarat)

The Competent Authority had seized goods under transport as well as vehicle of the assessee on the ground that goods had been undervalued. Later on, a seizure notice was passed by the authority determining the amount to be paid towards tax and penalty. The assessee paid the requisite amount and his goods and vehicle had been released. Thereafter, the Competent Authority issued a confiscation notice to the assessee to show cause as to why goods and vehicle should not be confiscated. The assessee filed a writ petition before the High Court of Gujarat seeking relief in this regard.

The Honourable High Court observed that the assessee was engaged in the business of plywood. It had ordered the goods, i.e. plywood, from a manufacturer in Haryana. The manufacturer, issued a tax invoice for the value of goods estimated at Rs. 4,38,034/- plus Rs. 78,486/- IGST. While the goods were in transit, the vehicle was intercepted and detained by the GST officers on the ground that the goods had been undervalued. According to the Department, the goods are worth of Rs. 11 lakhs. Pursuant to the seizure notice issued determining the amount to be paid towards the tax, the vehicle and goods

were released after payment of the requisite amount by the assessee. Thereafter, a confiscation notice was issued calling upon the assessee to show-cause as to why the goods and conveyance should not be confiscated.

The GST Act provides that the proper officer detaining or seizing the goods or vehicle shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty.

The Honourable High Court directed the assessee to appear before the Competent authority and file an appropriate reply to the confiscation notice issued by the said authority.

8. Competent Authority to release goods & vehicle on furnishing of bank guarantee for tax & penalty by the assessee

M. R. Traders v. Assistant State Tax Officer - [2020] 116 taxmann.com 37 (Kerala)

The assessee, registered under GST in Kerala, engaged in the business of timber and timber products and had recently started a new branch of business in Kerala. The goods were being transported from Karnataka to this branch. The assessee had done everything in their capacity to ensure that details of new branch was updated in the official site, still the same was showing as processing. During the generation of e-way bill, the assessee was under the assumption that the Kerala new branch's address would automatically appear on the e-way bill.

The Authorities seized and detained the vehicle along with goods. The goods were being unloaded on the grounds that tax invoice and e-way bill were addressed to a different location. The pressure was exerted on the assessee to make the payment of penalty to get the goods released. The assessee was also incurring huge amount of hire and waiting charges by the owner of the vehicle.

The Honourable High Court observed that the issue involved of address shown in the invoice being different from the address shown in the e-way bill was only a clerical mistake but not a serious mistake to justify detention and penalty proceedings.

Therefore, the Court ordered the immediate release of detained vehicle and goods on furnishing of bank guarantee by the assessee.



9. Visvesvaraya National Institute of Technology is not a Governmental Authority, ineligible for GST exemption

Securities and Intelligence Services (India) Ltd. In re - [2020] 116 taxmann.com 30 (AAR - MAHARASHTRA)

The applicant is providing security services to Visvesvaraya National Institute of Technology, Nagpur (VNIT). It submitted an application for rectification of earlier advance ruling pronounced by Authority for Advance Ruling.

The applicant in its rectification application contended that VNIT has been conferred Deemed University status and declared as an institute of National importance by an Act of Parliament and, therefore, it would qualify as a 'Governmental Authority'. It requested to rectify the original advance ruling order and hold the VNIT as Governmental Authority.

The Authority for Advance Ruling held that it had rightly decided the matter and there is no mistake apparent from the record, to be rectified in the earlier order. Therefore, the rectification application of the applicant is not non-maintainable and, hence, rejected.

10. Assessee arrested for issuing fake invoices of more than Rs. 900 crore, not entitled for bail: HC

Sanjay Dhingra v. Director General of Goods & Services tax Intelligence - [2020] 116 taxmann.com 35 (Punjab & Haryana)

The assessee was arrested for issuing fake invoices, availing and utilizing wrongful input tax credit on the basis of such invoices. He avoided GST liability of approximately of Rs. 127 crores by generating bogus bills. The assessee filed a petition for grant of regular bail.

The Honourable High Court observed that the assessee was involved in the business of generation and selling of fake tax invoices without actual supply of goods through various firms/companies which were created in the name of assessee's employees or his known persons. There were serious allegations against the assessee that fake invoices of approximately Rs. 931 crores involving GST component of approximately Rs. 127 crores without movement of goods were issued and input tax credit had been availed.



Therefore, assessee was alleged in committing economic offence of high magnitude under the GST Act. Hence, on the basis of facts and circumstances of the given case, the Honourable High Court denied bail to the assessee.

11. Competent Authority to adjudicate issue involved in demand notice after hearing the assessee's objections: HC

Mozart Global Furniture v. State Tax Officer (Intelligence), Nilambur - [2020] 116 taxmann.com 29 (Kerala)

The assessee is served with notice under GST demanding tax/penalty from estimated turnover for the assessment years 2017-2018 and 2018-2019. It submitted that it was neither permitted to take copies of the documents seized from their premises nor was provided an opportunity to submit the objections regarding the same. The concerned authority was proposing to proceed with the adjudication proceedings pursuant to the notices served on it. The assessee filed the writ in this regard.

The Honourable High Court observed that the assessee had the approached the concerned authority with applications to provide the copies of the documents seized from its premises. As the adjudication proceedings pursuant to issue of notice had not been commenced, thereby, denying the request of the assessee for copies of the documents seized from its premises, amounts to a violation of the principles of natural justice.

The Honourable High Court directed the Competent Authority to furnish the assessee copies of documents seized from its premises. After, receiving such copies the assessee would file objections and the said authority would adjudicate the case after hearing the assessee.

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020(hereinafter referred to as 'Ordinance, 2020') issued on 31-03-2020 has inserted a new Section 168A in the CGST Act, 2017, which empowers the Government to extend the time limit, on the recommendations of GST Council, in respect of actions which could not be completed due to force majeure, namely, war, epidemic, flood, drought, etc. or any other calamity caused by nature affecting the implementations of provisions of CGST Act, 2017. The relevant notifications have also been issued to give effect to the extension of time limits announced in the press



release dated 24-03-2020 and 31-03-2020.

The article provides new due dates for GST returns, relaxation in levy of late fees and interest, extension of time limit for other proceedings in GST, extension of proceedings under Central Excise Act, 1944, Customs Act 1962, Customs Tariff Act, 1975 and Finance Act, 1994 and extension of due dates for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in tabular form.

12. Assessee to file reply for confiscation notice issued by authority after payment made for release of goods & vehicle

JMK Solar Energies (P.) Ltd. v. State of Gujarat - [2020] 116 taxmann.com 10 (Gujarat)

The Competent Authority had detained the goods in transit as well as vehicle of the assessee and issued detention notice indicating the amount to be paid towards the tax and liability. The assessee paid the requisite amount after which the goods and vehicle were released. The Competent Authority thereafter issued a confiscation notice and called upon assessee to show cause as to why its goods and vehicle should not be confiscated. The assessee filed a writ petition before the High Court of Gujarat seeking relief in this regard.

The Honourable High Court observed that pursuant to the detention notice issued, the requisite amount had been paid by the assessee and the goods and the vehicle were released by the authority. Later on, a confiscation notice was also issued calling upon the assessee to show-cause as to why the goods and conveyance should not be confiscated.

The Honourable High Court ordered the assessee to appear before the Competent Authority and file an appropriate reply for the confiscation notice issued that deserved to be discharged as the assessee had already made payment for release of detained goods and vehicle.

13. Ordinance 2020 provides relief from compliances under the GST Act

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (hereinafter referred to as 'Ordinance, 2020') issued on 31-03-2020 has inserted a new Section 168A in the CGST Act, 2017, which empowers the Government to extend the time limit, on the recommendations of GST Council, in respect of actions which could not be completed due to force majeure, namely, war, epidemic, flood, drought, etc. or



any other calamity caused by nature affecting the implementations of provisions of CGST Act, 2017.

The Dept. has issued two press releases dated 24-03-2020 and 31-03-2020 to provide relief to the taxpayers amid COVID-19 outbreak by extending the due dates of various compliances under the GST Act. As per the press release, registered persons whose aggregate annual turnover is less than Rs. 5 Crore, no interest, late fee and penalty shall be charged from him if he files the returns by 30-06-2020. For the registered persons with an aggregate annual turnover of Rs. 5 crores or more, interest at the lower rate of 9% per annum shall be levied from 15 days after the due date, however, no late fee and penalty to be charged, if return filing is completed till 30-6-2020.

14. Various relaxations in GST due to Covid-19 Pandemic

Recently, changes have been made vide **CGST Notifications dated 23-03-2020 and 03-04-2020**, in respect of filing GSTR-3B and GSTR-1 for the period Feb-2020 to May-2020. The extension is due to COVID-19 pandemic (Corona Virus).

There is impression that due date of GSTR-1 and GSTR-3B has been extended. In fact, it is not so. There are only relaxation in respect of filing GSTR-3B and GSTR-1 returns to be filed for Tax period Feb-2020 to May-2020 and there is relaxation in respect of interest for late payment. These relaxations are conditional as explained below.

There is no change in 'due dates' of filing GSTR-1 & 3B. It is only that the dates for filing GSTR-1 and 3B returns without payment of late fees have been extended. These can be termed as 'extended dates'.

If the returns have been filed beyond 'due dates' but on or before specified 'extended dates', late fee will not be payable. Further, interest will be reduced/waived, only if returns are filed and taxes are paid on or before 'extended date'. If not so done, interest @ 18% and late fee as applicable and is payable from 'Original date'. If you miss this trap of distinction between 'due date' and 'extended date' for filing return, you can come in deep trouble.

Following are the dates to be taken care of:-



New GSTR-3B Due Dates Considering COVID- 19

Aggregate Turnover in “Previous FY” is of “more than 5 Crores”			
Tax Period	Due Date		
	Original Due Date	Due By when 3B can be filed without paying Interest	*By when 3B can be filed by paying 9% Interest [As against 18% applicable]
February 2020	20 th March 2020	4 th April 2020	24 th June 2020
March 2020	20 th April 2020	5 th May 2020	24 th June 2020
April 2020	20 th May 2020	4 th June 2020	24 th June 2020
May 2020	27 th June 2020	Not Applicable	Not Applicable
Aggregate Turnover in “Previous FY” is of “More than 1.5 Crore and upto 5 Crores”			
Tax Period	Due Date		
	Original Due Date	*By when 3B can be filed without paying Interest	
February 2020	22 th /24 th March 2020, based on state	29 th June 2020	
March 2020	22 th /24 th April 2020, based on state	29 th June 2020	
April 2020	22 th /24 th May 2020, based on state	30 th June 2020	
May 2020	12 th / 14 th July 2020, based on state	Not Applicable	
Aggregate Turnover in “Previous FY” is “upto 1.5 Crores”			
Tax Period	Due Date		
	Original Due Date	*Due Date- For Interest Waiver	
February 2020	22 th /24 th March 2020, based on State	30 th June 2020	
March 2020	22 th /24 th April 2020, based on State	3 rd July 2020	
April 2020	22 th /24 th May 2020, based on State	6 th July 2020	
May 2020	12 th / 14 th July 2020, based on State	Not Applicable	
<p>1. *Beyond this date, if GSTR-3B is filed, the same shall be subject to payment of 18% rate of interest and that too from “Original Due date”.</p> <p>2. *Late fee is waived off for the above months if 3B is filed by said date. Beyond this, late fee would be applicable and that too from “Original Due date”</p> <p>3. For the Tax period Feb-2020 and March- 2020, Previous FY means the FY 2018-19 and for the tax period April-2020 and May-2020 previous FY means the FY 2019-20</p>			

New GSTR-1 Due Dates Considering COVID 19

Tax Period	Original Due Date	*By when GSTR-1 can be filed without payment of Late Fee
March 2020	11 th April 2020	30 th June 2020
April 2020	11 th May 2020	30 th June 2020
May 2020	11 th June 2020	30 th June 2020
QE March 2020	30 th April 2020	30 th June 2020
*Beyond this date, if GSTR-1 is filed, the same shall be subject to payment of late fee and that too from “Original due date”		

Rule 36(4) of CGST Rules kept in cold storage upto August, 2020

rule 36(4) of CGST Rules provides that the ITC availed by recipient on basis of tax



invoices or debit notes (which have been received by recipient) not uploaded by supplier under section 37(1) of CGST Act [i.e.in his GSTR-1] shall not exceed 10% of eligible credit available in respect of invoices and debit notes which have been uploaded by supplier in his GSTR-1 return under section 37(1) of CGST Rules.

Cumulative restriction for period March 2020 to August 2020 due to Corona Virus

The aforesaid condition under rule 36(4) shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above. – proviso to rule 36(4) of CGST Rules, inserted on 3-4-2020 w.e.f. 31-3-2020. In effect, rule 36(4) of CGST Rules has been kept in cold storage upto August, 2020.

Time limit for making payment within 180 days also gets extended

As per second proviso to section 28(2) of CGST Act, if payment is not made to supplier within 180 days, the ITC is required to be reversed. If this period falls during the period from the 20-3-2020 to the 29-6-2020, the due date for making payment will get extended to 30-6-2020 - Notification No. 35/2020-CT dated 3-4-2020.

Relaxation in filing ITC-04 under job work provisions

Where, any time limit for filing ITC-04 return under job work provisions falls during the period from the 20-3-2020 to the 29-6-2020, the due date automatically gets extended to 30-6-2020 - Notification No. 35/2020-CT dated 3-4-2020. Thus, ITC-04 return for quarter ending March 2020 was due on 25-4-2020. Now, this can be filed on or before 30-6-2020.

Dates for filing GSTR-9 annual report and GSTR-9C audit report

For Financial Year 2018-19, the annual return in form GSTR-9 and audit report in form GSTR-9C is to be filed on or before 30-6-2020 – Notification No. 15/2020-CT dated 23-3-2020. For taxable persons with aggregate turnover less than Rs 2 crores, filing of return in form GSTR-9 is optional for FY 2017-18 and 2018-19. Annual return shall be deemed to have been furnished on due date – Notification No. 47/2019-CT dated 9-10-2019. Since the return is deemed to have been furnished on due date, the return will not be accepted by common portal after due date. If there is short payment of tax or ineligible availment of ITC, the amount may be paid through form GST DRC-03 - CBI&C circular 124/43/2019-CT dated 18-11-2019. The monetary limit for getting the accounts audited



and filing GSTR-9C audit report has been increased to Rs five crores for financial year 2018-19 - proviso to rule 80(3) of CGST Rules inserted w.e.f. 23-3-2020.

Relaxation in filing GSTR-5, GSTR-5A, GSTR-6, GSTR-7 and GSTR-8 returns

Where, any time limit for filing GSTR-5, GSTR-5A, GSTR-6, GSTR-7 and GSTR-8 return falls during the period from the 20-3-2020 to the 29-6-2020, the due date of filing automatically gets extended to 30-6-2020 - Notification No. 35/2020-CT dated 3-4-2020.

Due date of payment of tax (where applicable) also gets extended to 30-6-2020, as Notification No. 35/2020-CT dated 3-4-2020 is worded very broadly.

Relaxation in filing GSTR-4 and CMP-08 by taxable persons under composition scheme

For the quarter ending 31-3-2020, CMP-08 statement taxable persons paying GST under composition scheme is to be filed by 7-7-2020 – Notification No. 21/2019-CT dated 23-3-2019 as amended on 3-4-2020.

GSTR-4 return by taxable persons paying GST under composition scheme for year ending 31-3-2020 should be filed before 15-7-2020 - Notification No. 21/2019-CT dated 23-4-2019 as amended on 3-4-2020. Some registered persons who were under composition scheme filed returns in form GSTR-3B during 2019-20, instead of in form GST CMP-08. They are not required to file statement of outward supply in GSTR-1 for tax period 2019-20. They are also not required to file GST CMP-08 for tax period 2019-20 – proviso to para 2 of Notification No. 21/2019-CT dated 23-4-2019 inserted w.e.f. 21-3-2020.

Relaxation in Opting Composition

Amendment has been made in CGST rules so as to allow taxpayers option for the Composition Scheme for the financial year 2020-21 to file their option in FORM CMP-02 till 30th June, 2020 and furnish a statement in FORM GST ITC-03 till 31st July, 2020.

Extended Validity of E-Way Bills

In terms of notification No. 35/2020- CT , Dt. 03.04.2020, Issued under the provisions of Sec 168A of the CGST Act, where the validity of an E-way bill generated under Rule 138 of CGST Rules expires during the period 20th day of March, 2020 to 15th day of



April, 2020 , the Validity period of such e-way bill has been extended till 30.04.2020.

Challenges faced by taxpayers in GST due to COVID-19 pandemic clarified by CBIC

On account of certain challenges faced by taxpayers in adhering to compliances under GST due to COVID-19 pandemic, CBIC has given certain clarifications. It includes extension of time limit for filing of LUT for FY 2020-21 to 30-06-2020; due date for furnishing of FORM GSTR-7 extended till 30-06-2020, due date for filing refund application falling between 20-3-2020 to 29-6-2020 extended till 30-06-2020,etc.

Circular No.136/06/2020-GST, dated 03.04.2020 had been issued to clarify doubts regarding relief measures taken by the Government for facilitating taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) on account of the measures taken to prevent the spread of Novel Corona Virus (COVID-19). It has been brought to the notice of the Board that certain challenges are being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act which also need to be clarified.

The issues raised have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies as under.

S.No.	Issue	Clarification
1.	An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust this tax liability in his returns?	<p>In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a “credit note” in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim</p> <p>However, in cases where there is no output liability against which a credit note can be</p>

		adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through FORM GST RFD-01
2.	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	<p>In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a “refund voucher” in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules.</p> <p>The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category “Refund of excess payment of tax”.</p>
3.	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	<p>In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a “credit note” in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case.</p> <p>However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through FORM GST RFD-01</p>
4.	Letter of Undertaking (LUT) furnished for the purposes of zerorated supplies as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 read with rule	Notification No. 37/2017-Central Tax, dated 04.10.2017, requires LUT to be furnished for a financial year. However, in terms of notification No. 35/2020 Central Tax dated 03.04.2020, where the requirement under the GST Law for furnishing of any report, document, return, statement or such other record falls during

	<p>96A of the CGST Rules has expired on 31.03.2020. Whether a registered person can still make a zero-rated supply on such LUT and claim refund accordingly or does he have to make such supplies on payment of IGST and claim refund of such IGST?</p>	<p>between the period from 20.03.2020 to 29.06.2020, has been extended till 30.06.2020.</p> <p>Therefore, in terms of Notification No. 35/2020-Central Tax, time limit for filing of LUT for the year 2020-21 shall stand extended to 30.06.2020 and the taxpayer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30.06.2020. Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents.</p>
5.	<p>While making the payment to recipient, amount equivalent to one per cent was deducted as per the provisions of section 51 of Central Goods and Services Tax Act, 2017 i. e. Tax Deducted at Source (TDS). Whether the date of deposit of such payment has also been extended vide notification N. 35/2020-Central Tax dated 03.04.2020?</p>	<p>As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (3) of section 39 and section 51 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for furnishing of return in FORM GSTR-7 along with deposit of tax deducted for the said period has also been extended till 30.06.2020 and no interest under section 50 shall be leviable if tax deducted is deposited by 30.06.2020.</p>
6.	<p>As per section 54 (1), a person is required to make an application before expiry of two years from the relevant date. If in a particular case, date for making an application for refund expires on 31.03.2020, can such person make an application for refund before 29.07.2020?</p>	<p>As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (1) of section 54 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for filing an application for refund falling during the said period has also been extended till 30.06.2020.</p>

Income Tax

Latest Updates, News and Judgments

1. Govt. notifies Forms under Sovereign Gold Bond Scheme 2020-21

G.S.R. 250(E), dated 13-04-2020

The Government has notified Sovereign Gold Bond Scheme 2020-21. The Scheme has prescribed Forms, eligibility criteria, tax exemption and procedure for making application for subscription of Gold Bonds. The followings are key features of the Scheme:

- 1) The Bonds may be held by a Trust, HUFs, Charitable Institution, University or by a person resident in India.
- 2) “person resident in India” shall have the meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999
- 3) The minimum limit of subscription for the Bonds issued shall be of one gram and maximum limit of subscription per fiscal year shall be of 4 kg for individuals & Hindu Undivided Family (HUF) and 20 kg for trusts.
- 4) Application for the Gold Bonds shall be made to any receiving office in Form A and must be accompanied by the ‘PAN’ issued by the Income-tax Dept.
- 5) Interest on Gold Bond shall be paid at a fixed rate of 2.50 percent per annum on the nominal value.
- 6) The Gold Bonds shall be repayable on the expiration of eight years from the date of the issue of the Bonds. However, premature redemption is allowed after 5 Years.
- 7) The interest on the Gold Bond shall be taxable. However, the capital gains tax arising on redemption of these bonds to an individual is exempted. The indexation benefits will be provided to long-term capital gains arising to any person on transfer of bond.



2. Schools running with no free education or scholarship were to be held established with profit motive: Madras HC

Rajah Sir Annamalai Chettiar Foundation v. CCIT - [2020] 116 taxmann.com 128 (Madras)

Assessee-trust filed an application for registration under section 12AA. Application filed by the assessee was rejected on the ground that the trust deed empowers the trustees to fix fees and charges to be collected from students. Assessee contended that the school qualified as an educational institution solely for educational purpose and not for the purpose of profit.

On writ, the Madras HC held that the relevant document that would be relied for the purpose of granting approval would be the constitution of such person i.e. trust deed. It states that the objective of the assessee was to provide support to an organisation that supports the cause of education etc. The Board of Trustees were empowered to collect fees or charges from students and others for running educational institutions for carrying out the objects of the Trust.

There was no clause in trust deed to provide free education to children and scholarship to privileged children. It showed that there was only profit motive and the institutions were to be run only out of fees collected by admitting children's to their schools. The Trust Deed also seems to indicate that the source of funds of the petitioner's trust was only from the school fees to be collected during these financial years. Therefore, it couldn't be construed that the assessee's Schools were not for the purpose of profit.

3. HC upholds recovery proceedings against 'Jindal Ltd' as genuineness of loan transaction was in serious dispute

Jindal ITF Ltd v. Union of India - [2020] 116 taxmann.com 154 (Delhi)

Assessee filed its return of income. The Assessing Officer (AO) doubted the identity, creditworthiness and genuineness of unsecured loans. The assessee failed to discharge its onus regarding establishment of identity, creditworthiness and genuineness of unsecured loans.

AO had made unexplained cash credit addition under section 68 and raised demand on assessee. Stay was granted to assessee, subject to payment of 20 percent of demand in



view of CBDT's 2016 Office Memorandum (OM).

The assessee contended that the assessment was made on high pitched basis, therefore the recovery and collection of tax had to be held in abeyance till disposal of appeal. It argued that revenue erroneously assumed the 20 per cent condition in CBDT's OM to be mandatory, ignoring financial stringency faced by assessees and balance of convenience being in favour of assessees.

On writ, the Delhi HC held that it was not a case of mechanical reliance on circulars/office memorandums. It was a case where proof of identity of the loan depositors, capacity of the creditors to advance loans and genuineness of transaction was in serious dispute.

Though it was open to the statutory authorities to grant relief to deposit an amount lesser than 20 per cent if the facts of the case so warrant. However, on facts of instant case, as determined by the Assessing Officer, a prima facie case was not made out and such a relief was not warranted. Consequently, the instant writ petition and application being bereft of merits was dismissed.

4. Employer is liable to deduct tax as per Sec. 115BAC only after receiving intimation from employee

Circular dated 13-04-2020

The Finance Act, 2020, has inserted section 115BAC to the Income-tax Act, 1961s, with effect from assessment year 2021-22. Section 115BAC provides an option to an individual or HUF to pay taxes at concessional tax rates subject to fulfillment of various conditions. One of such condition is that the assessee has to forego various exemptions and deductions.

In case of assessee having income other than income from business and profession, option is required to be exercised along with the return of income for each year. However, in case an assessee having income under the head "profit and gains of business or profession" (PGBP), option once exercised cannot be changed for the subsequent previous years, except in certain circumstances.

The Central Board of Direct Taxes (CBDT) has clarified that an employee, intending to opt for new taxation regime, may intimate his intention to the employer. Such intimation shall be for the purpose of TDS during the previous year only and cannot be modified during the year. However such intimation wouldn't amount to exercising the



option in term of Section 115BAC(5). Such option to be exercised along with return to be furnished by employee.

The Board also clarified that option at the time of filing of return of income under section 139(1) could be different from the intimation made by such employee to the employer for that previous year. Further, if no such intimation is made by the employee, employer is required to deduct TDS without considering the provisions of section 115BAC.

5. No assessee-in-default due to enhanced surcharge if transaction and payment completed by July 05, 2019: CBDT

Circular no. 8/2020, dated 13-04-2020

The Finance (No. 2) Act, 2019 has introduced two new surcharge rates, i.e., 25% on income exceeding Rs. 2 crore but less than 5 crore and 37% on the income exceeding Rs. 5 crore. These new surcharge rates were applicable w.e.f. April 01, 2019

Several cases have come to the notice of the Govt. wherein deductors/collectors were held to be an assessee-in-default for short deduction of TDS/short collection of TCS in cases where final transaction was done before laying of the Finance (No.2) Bill, 2019 in the Parliament, i.e., 5th July, 2019.

The CBDT has clarified that assessee will not be considered to be an assessee-in-default in respect of transactions where:

1. Such transaction has been completed & entire payment has been made to the deductee/payee on or before 5th July, 2019 and there is no subsequent transaction between the assessee and the deductee/payee from which the shortfall of tax could have been deducted/collected
2. Tax deducted or collected at source at the rate in force as per the provisions prior to the enactment of the Finance (no. 2) Act, 2019 and such tax has been deposited in the account of Central Government on or before the due date of depositing the same.
3. TDS/TCS statement has been furnished by assessee on before the due date of filing of the said statement.



6. Holders to PPF/Sukanya Samriddhi account can make a single deposit for FY 2019-20 till June 30, 2020

Notification no. 14/6/2020, dated 11-04-2020

The Govt. has relaxed the guidelines related to in Public Provident Fund (PPF) and Sukanya Samriddhi Account. The following decisions have been taken to safeguard the interest of Small Savings Depositors in view of the lockdown in the Country due to COVID-19 pandemic:

- a) The holder of such accounts can make a single deposit for Financial Year 2019-20 till June 30, 2020 subject to condition of maximum deposit limit.
- b) An undertaking that deposit will not exceed the maximum deposit ceiling as applicable is required to be given
- c) In case no deposit was made in FY 2019-20, no default fee to be charged if account is regularized by making deposit till June 30, 2020.
- d) All those subscribers whose account were matured on 31-03-2020 and couldn't be extended due to lockdown, may now extend their account by June 30, 2020.

7. Nil or Lower TDS/TCS certificate issued for particular period in FY 2019-20 also valid till June 30, 2020

Circular F.No. 275/25/2020, dated 09-04-2020

The CBDT has issued further clarifications with regards to certificate for lower or nil deduction/collection of tax under section 195, 197 & 206C. The board has clarified that:

- a) The certificate which were issued for a particular period during the financial year 2019-20, (say issued 01-10-2019 to 15-12-2019) to be valid till June 30, 2020 for financial Year 2020-21
- b) The threshold limit mentioned in certificates issued for FY 2019-20 will be taken fresh for period from 01-04-2020 to 30-06-2020 for FY 2020-21 and the amount of threshold limit will be same as assigned in previous certificates.



c) FY 2019-20 certificates shall not be valid if a new/different TAN has been mentioned in the application made for FY 2020-21.

8. Employee making donation to PM CARE FUND through employer eligible to claim deduction based on his Form 16

Circular F.no. 178/7/2020, dated 09-04-2020

The CBDT has clarified that in case where donation is made to PM CARE FUND by an employee through employer, the fund may not be able to issue separate certificate to every such employee as contributions are made by employer in the form of consolidated payment. Thus, deduction to employee to be allowed u/s 80G on the basis of Form 16 issued by employer

9. Withholding tax provisions applicable on shipping Co. to apply if payment is being made to agent of NR ship owner

PCIT v. Summit India Water Treatment and Services Ltd. - [2020] 116 taxmann.com 107 (Gujarat)

The assessee filed its return of income declaring losses. The Assessing Officer (AO) finalised the assessment by passing order under section 143(3). The Principal Commissioner (PCIT) invoked revisional power under section 263 on the ground that the assessee had failed to deduct TDS from the export freight paid to the Indian ocean shipping and logistics services. According to PCIT, the entire amount was required to be disallowed under section 40(a)(ia).

Aggrieved by the order of PCIT, assessee filed appeal before the ITAT. The ITAT found that the assessee paid export freight to an Indian agent acting on behalf of the non-resident shipping company. The ITAT, relying on the circular no. 723, dated 19-05-1995, held that where payment is made to the shipping agents of the non-resident, ship owner or charter, the agent steps into the shoe of the Principal and accordingly the provision of section 172 would be applicable and the provisions of Section 194C or 195 shall not be applicable. Thus, the assessment order couldn't be said to be erroneous or prejudicial to the interest of the Revenue in any manner.

On revenue's appeal, the Gujarat HC held that none of the questions could be termed as substantial questions of law from the order passed by the ITAT. Therefore, the appeal



filed by the revenue was dismissed.

10. Delhi HC quashed reassessment initiated to treat unpaid loan as notional income under section 56

Vanita Sanjeev Anand v. ITO - [2020] 116 taxmann.com 39 (Delhi)

Assessing Officer (AO) issued notice under section 148. In response to such notice assessee filed a return of income and requested for supply of reasons to believe. The AO furnished the same.

Assessee contended that the AO had proceeded on a wrong premise by treating the genuine loan transaction as income of the assessee under section 56. The AO ignored the creditor's confirmation. The Creditor had confirmed to the investigation wing that the loan was interest bearing and substantial amount was returned in the next year. The said amount was shown as outstanding in his record and couldn't be assumed to be the escaped income of the assessee.

On writ, the Delhi HC held that the nature of transactions depend on the intention of the parties. Both the parties had admitted that the loan was an interest bearing loan. The reasons were completely silent as to how the provisions of section 56 were attracted in respect of outstanding loan. The approach of the AO assuming the outstanding loan as income of the assessee was fundamentally flawed. The reasoning didn't indicate the basis for coming to conclusion that assessee's income had escaped assessment. No material or basis was found to justify the reopening of assessment. Thus, the notice of reopening of assessment was quashed.

11. FinMin to release all pending Income-tax, GST and Custom refunds to provide immediate relief to taxpayers

Press release, dated 08-04-2020

In the context of the COVID-19 situation and to provide immediate relief to the taxpayers, the Ministry of Finance has decided to issue all the pending income-tax refunds up to Rs. 5 lakh, immediately. Further, it has also been decided to issue all pending GST and Custom refunds which would provide benefit to around 1 lakh business entities, including MSME. Thus, the total refund granted will be approximately Rs. 18,000 crore.



12. CBDT extends validity of Forms 15G and 15H of FY 2019-20 by 3 months due to outbreak of COVID-19

Due to outbreak of pandemic COVID-19 virus, there is severe disruption in the normal working of almost all sectors of economy including functioning of banks, other institutions etc. Amidst such situation, there can be instances that some eligible person may not be able to submit the Form 15G and Form 15H timely to banks and other institutions.

To mitigate the genuine hardship of taxpayers, the Central Board of Direct Taxes (CBDT) has clarified that if a person had submitted Form 15G and Form 15H for Financial Year 2019-20 then these forms will be valid up to 30-06-2020 for the Financial Year 2020-21 also

13. AO to dispose of application for lower/nil deduction for FY 2019-20 by 27-04-2020 vide e-mail: CBDT

COVID-19 virus has disrupted normal working of the Income-tax department also. Therefore, the application filed by the taxpayers under sections 195 and 197 of the Income-tax Act for lower or nil rate of deduction of TDS/TCS may not be attended in timely manner by the TDS Assessing Officer (AO). The CBDT vide order dated 31-03-2020, has extended the validity of existing TDS/TCS certificates of FY 2019-20 up to June 30, 2020 for the Financial Year 2020-21 until their application is disposed of by the AO.

It may be possible that application for lower/nil rate of TDS/TCS certificate for the Financial Year 2019-20 is also pending with AO. Thus, the CBDT has directed that all such assesseees, who has timely filed application for lower or nil deduction of TDS/TCS on traces portal for the Financial Year 2019-20 and such application is pending for disposal, shall intimate vide an e-mail addressed to the AO concerned, regarding pendency of such application. Assesseees are required to intimate the concerned AO along with required documents and evidences of filing their application in traces portal. The AO shall dispose of the application by 27-04-2020 and communicate to the assessee regarding issue/rejection of certificate vide e-mail

14. Bombay HC quashes order proposing conduct of special audit as AO didn't give hearing opportunity to assessee

PCIT v. Wilson Particle Board Industries Ltd. - [2020] 116 taxmann.com 12 (Bombay)



The search and seizure was carried out on the premises of the assessee. Assessment order was issued after the date on which assessment proceedings had to be completed. The revenue contended that the assessment order was passed within the time frame as reference was made for special audit and time for getting the special audit was to be excluded.

On appeal, ITAT held that the AO was required to issue a show cause notice to the assessee before making the order proposing the conduct of special audit. Even if the administrative commissioner had approved the said proposal after giving opportunity to the assessee, nonetheless such a course of action would be vitiated because of non-compliance to the principles of natural justice at the stage of making the proposal. Thus, the assessment order passed was beyond the period of limitation and same was invalid and bad in law.

On appeal, the HC upheld the order passed by the ITAT. It was held that it was a statutory requirement that the AO had to provide a reasonable opportunity of being heard to the assessee before directing it to get the accounts audited under section 142(2A). In the absence of pre-decisional hearing, the decision to have special audit was invalid and consequentially all the proceedings conducted thereafter stood vitiated.

15. Penalty to be levied only when it is proved that income was concealed or inaccurate particular was furnished: HC

PCIT v. Dinesh Chandra Jain - [2020] 116 taxmann.com 13 (Allahabad)

Assessee had disclosed the gift received by his minor son in his return of income as exempted income. Assessing Officer (AO) made additions by treating such gifts as income from other sources. The CIT(A) and ITAT upheld the order passed by the AO and no further appeal was filed by the assessee

AO initiated the penalty proceedings under section 271(1)(c) on the ground that the assessee had furnished inaccurate particulars and had concealed the particulars of income. Assessee preferred an appeal before CIT(A). CIT(A) reduced the amount of penalty

On appeal, the HC held that AO didn't record any finding that the assessee had furnished any incorrect, erroneous or false return leading to the fact of furnishing inaccurate particulars and made him liable for penalty under section 271(1)(c). AO had only



doubted the genuineness of gifts on ground of human probabilities. He had doubted the creditworthiness of the donors and genuineness of the transaction

Since no authority had recorded any finding to the effect that details furnished by the assessee to be incorrect, erroneous or false, it was not a case of either concealment of income or furnishing of inaccurate particulars.

16. Provision for revision of pay as per recommendation of committee appointed by Govt. is allowable as business exp.

Housing & Urban Development Corporation Ltd. v. ACIT - [2020] 115 taxmann.com 166 (Delhi)

The assessee claimed deduction for provision made for revision of pay in the books of accounts. The provision was made in pursuance of recommendation of pay Revision committee as appointed by the Government. Assessee's case was selected for scrutiny and order was passed under section 143(3). The Commissioner (CIT) exercised his jurisdiction under section 263 on the ground that the Assessing Officer (AO) had not disallowed the provision for revision of pay as the expenditure was purely a provision against unascertained liability and could not be claimed as expenditure

On appeal, the HC held that it is well settled principle that assessee following mercantile system of accounting is allowed to claim deduction for a liability only when it has accrued. There is a distinction between actual liability in *praesenti* and a liability *de future* which, for the time being is only contingent. Deduction is allowable in respect of former only

In assessee's case liability had already arisen with certainty. The committee was constituted for the purpose of wage revision. The provision was made on scientific foundation and on the basis of past experience. Merely because the making of report and implementation thereof took time, it couldn't be said that the provision was made without any basis. Thus, the assessee was allowed to claim deduction for said provision under section 37(1).

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A & A LAW CORP.

KEY TEAM



CA. Mukesh Aggarwal
(Senior Advisor)



Adv. Vivek Aggarwal
(Senior Partner)



CS. Kumkum Gupta
(Senior Partner)



Adv. Ritika Sharma
(Senior Associate)



CA. Sachin Singhal
(Advisor)



CA. Divya Madan
(Advisor)



CA. Vinit Agarwal
(Advisor)



CA. Arun Bhargav
(Advisor)

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KSMC & ASSOCIATES
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Acropolis Advisory Pvt. Ltd.
www.acroadvisory.in

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www.aalawcorp.com



Email: aalawcorp@gmail.com

CONTACT US

Registered Office

G-5, Vikas House, 34/1,
East Punjabi Bagh,
New Delhi-110026

T: 011-41440483, 42440483

Delhi Branch Office

E-16/391, Sector-8, Rohini,
Delhi - 110085

T: 011- 47506498

M: +91 9811770164

Singapore Office

10, Anson Road,
International Plaza, #33-13,
Singapore - 079903

T: +65 62243466

M: +65 83141339

