

At a Glance

(Brief Updates from the world of Tax and Finance)

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November 2018

Income Tax

CBDT amends Form No. 36 and 36A for filing appeal and cross objection before Income Tax Appellate Tribunal (ITAT)

CBDT has notified Income-tax (10th Amendment) Rules, 2018 to amend the Income-tax Rules, 1962 whereby Form No. 36 (Form of Appeal to the Appellate Tribunal) and Form No. 36A (Form of memorandum of Cross-Objection to the Appellate Tribunal) have been amended. These new forms have been held to be applicable from the date of their notification in the Official Gazette, i.e. with effect from 23rd October, 2018.

[Notification No. 72 of 2018 dated October 23, 2018]

Amendment made to Income-tax (Dispute Resolution Panel) Rules, 2009

In pursuance of powers conferred under Section 144C(14) of the Income-tax Act, 1961, CBDT has issued Income-tax (Dispute Resolution Panel) (First Amendment) Rules, 2018 to amend the existing rules. In Rule 14 of the Income-tax (Dispute Resolution Panel) Rules, 2009, the words "Form No. 36B" have been substituted with the words "Form No. 36".

[Notification No. 73 of 2018 dated October 23, 2018]

CBDT notifies the list of transactions of acquisition of equity shares for which the condition of payment of Securities Transaction Tax (STT) will not be relevant as per the provisions of Section 112A of the Act

Sub-clause (a) of clause (iii) of Section 112A(1) of the Act specifies that the provisions of said section are applicable in case of sale of a long-term capital asset being equity share in a company, only if STT has been paid on acquisition and transfer of such capital asset. Sub-section (4) of Section 112A of the Act, however, states that CG may, by notification specify the nature of acquisitions in respect of which such condition of payment of STT will not apply. The CBDT, thus, vide this Notification has specified the list of various transactions of acquisition of equity shares on which such condition of payment of STT will not be applicable. The said notification will into force with effect from 01.04.2019 and will accordingly apply in relation to A.Y. 2019-20 and subsequent A.Ys.

[Notification No. 60 of 2018 dated October 01, 2018]

Order of Assessing Officer (AO) rejecting the Income

Tax Return (ITR) without providing opportunity to rectify defect under Section 139(9) of the Act was liable to be set-aside

For A.Y. 1998-99, assessee filed its return declaring certain taxable income. Subsequently, assessee filed a revised return under Section 139(5) of the Act within the prescribed time period. AO, however, rejected the revised return at very threshold on the ground that it was not accompanied with tax audit report. The order of AO was upheld by the Tribunal as well. The High Court, however, was of the view that if, in opinion of AO, return was defective, the procedure contemplated under Section 139(9) of the Act should have been followed. Thus, the High Court concluded that since assessee had not been given an opportunity to rectify defects as contemplated under Section 139(9) of the Act, the impugned order passed by the AO was to be set-aside and matter was to be remanded back for fresh disposal.

[Zeenath International Supplies v. CIT – Madras High Court] (98 taxmann.com 219)

No addition under Section 68 of the Act if identity of share applicants was clearly revealed

In the course of assessment, AO noted that assessee was a sick company during the relevant year but has nevertheless collected substantial amounts from two share applicants. AO took a view that identity of shareholders and genuineness of transaction had not been established and accordingly, brought to tax said amount. It was noted by the Tribunal as well as the High Court that identity of share applicants was clearly revealed, but AO did not conduct any enquiry except resting his conclusions on surmises. Accordingly, addition made by the AO was deleted by the Tribunal as well as the High Court. Considering these facts, the SLP filed by Revenue against order of High Court has been dismissed.

[Pr. CIT v. Himachal Fibres Ltd. – Supreme Court] (98 taxmann.com 173)

Once genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on ground that shares were issued at excess premium

High Court in this case has held that issuing share at a premium is a commercial decision and it is the prerogative of Board of Directors of a company to decide premium amount and it is the wisdom of shareholders whether

they want to subscribe shares at such premium or not. High Court further observed that in day-to-day market, unless and until rate is fixed by any Government Authority or unless there is any restriction on amount of share premium under any law, price of shares is decided on mutual understanding of parties concerned. The Court, thus, concluded that once genuineness, creditworthiness and identity of investors are established, revenue should not justifiably put itself in armchair of a businessman or in position of Board of Directors and assume role of ascertaining how much is a reasonable premium having regard to circumstances of the case.

[Pr. CIT v. Chain House International (P.) Ltd. – Madhya Pradesh High Court] (98 taxmann.com 47)

Expenditure incurred on education of partner in foreign country was allowable if it was linked with business of firm

The firm was carrying on engineering consultancy profession for leading Indian corporate clients. One of partner's son joined the firm in April 2000 as a partner, after completing his B.E. degree. He took active part in conduct of business of firm. He was sent to Australia for higher education and expenditure in this regard was claimed by assessee as business expenditure. It was a fact on record that post graduate course underwent was directly related to profession carried on by assessee. Also, it was noticed by lower authorities that professional fee received by assessee had substantially increased after completion of post graduate degree of the partner and several important contracts were secured by assessee, which the assessee attributed to educational qualification and expertise acquired by said partner abroad. Considering these facts, the High Court concluded that expenditure incurred by assessee was to be allowed as business expenditure.

[Aswathanarayana & Eswara v. DCIT – Madras High Court] (97 taxmann.com 572)

International Taxation

There is no question of law involved in case of acceptance or rejection of a particular comparable for the purpose of computation of Arm's Length Price

In this case, the High Court has concluded that the categorical finding of fact by the Tribunal that a comparable is engaged in qualitatively different and diversified business than that of the assessee cannot be challenged as a substantial question of law, as the finding is not perverse or vitiated by any error apparent on the fact of the record.

[Pr. CIT v. NVP Venture Capital India Pvt. Ltd. – Bombay High Court]

Line Production Services cannot be termed as technical, managerial or consultancy services and brought under the definition of 'Fee for Technical Services'

In this case, the Tribunal has concluded that Endemol India was commissioned to produce television series 'Fear Factor' for broadcast in India and hired assessee for shooting episodes in South Africa. The Tribunal further observed that assessee was hired for carrying out line production services in South Africa on work-for-hire basis, since various coordination and facilitation services were rendered by assessee. It was taken note of that such services included arranging of locational crew, producer, transportation, paper work for various stunts to be performed and other requirements for setting up and filming series. The Tribunal, thus, on these facts, concluded that such services were in the nature of line production services and cannot be termed as technical managerial or consultancy services. The Tribunal, therefore, concluded that the consideration received by assessee for rendering aforesaid services, which are purely administrative in nature, cannot be brought within the sweep of definition of 'Fee for Technical Services', within the meaning of Explanation 2 to Section 9(1)(vii) or Article 12 of India-South Africa tax treaty.

[Endemol South Africa (Proprietary) Ltd. v. DCIT – ITAT Mumbai] (98 taxmann.com 227)

Where relevant bad debts related to sales made in earlier years by company acquired by assessee, same could not be added as part of operating cost for computing operating profit of assessee

Pursuant to global acquisition of HSG group by parent company, HSG business was acquired by assessee during financial year 2001-02. Debts of HSG were taken over by assessee company as part of said acquisition and amount of such debts, to extent could not be recovered was provided for as bad and doubtful debts. Thus, it was observed by the Tribunal that the provision in question made for bad and doubtful debts was not with respect to sales made by assessee company during year under consideration, but same was with respect to sales made during earlier year and that too by HSG, i.e. the company acquired. Therefore, it was concluded that such provision for bad and doubtful debts could not be treated as part of operating cost for the purpose of computing operating profit of assessee company for the year under consideration.

[Philips Medical Systems (P.) Ltd. v. ITO – ITAT Kolkata] (98 taxmann.com 296)

Goods & Services Tax (GST)

Due date for filing of GSTR-3B return extended

The due date for furnishing the return in Form GSTR-3B for the month of September 2018 was extended by the Government by a period of 5 days to 25th October, 2018. The due date was extended with a view to allow suppliers to reconcile their books of accounts as the return for September is the last return in which a supplier can claim credit for the previous financial year ended March 31, 2018.

[Notification No. 55/2018 – CGST dated October 21, 2018]

Extension of due date to furnish final return in Form GSTR- 10

For the tax payers whose registration under the Act has been cancelled by the officer on or before the 30th September 2018, the due date to furnish final return in FORM GSTR-10 of the said rules has been extended till 31st December, 2018.

[Notification No. 58/2018 – CGST dated 26.10.2018]

Extension of time limit for furnishing FORM GST ITC-04

The time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker or sent from one jobworker to another, during the period from July, 2017 to September, 2018 has been extended till 31st December, 2018.

[Notification No. 59/2018 – CGST dated 26.10.2018]

Scope of handicraft goods eligible for exemption for obtaining registration expanded

In September 2017, CBIC had exempted suppliers making inter-state supplies of goods from obtaining registration where their aggregate turnover was below Rs. 20 Lakhs/ Rs. 10 Lakhs. The list has now been further expanded to include goods for which the rates were reduced vide Notification No. 21/2018 CT-Rate. The requirement that supplier should not exceed aggregate turnover of Rs. 20 lakhs/Rs. 10 Lakhs still applies. With reference to sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017, the categories of casual taxable persons shall be exempted from obtaining registration who are making inter-state taxable supplies of handicraft goods provided that the aggregate value of supplies does not exceed the turnover limit of twenty lakh rupees (for special category states turnover shall not exceed ten lakh rupees).

[Notification No. 56/2018 – CGST dated 23.10.2018]

Clarification on the manner of filing the Quarterly Return by Composition Dealers in FORM GSTR-4

A clarification has been issued for composite dealers that such dealers need not furnish the data regarding inward supplies received from a registered supplier (other than supplies attracting reverse charge). The Ministry of Finance had issued the clarification due to doubts regarding the manner of filing such Quarterly Return in absence of auto-population of details of inward supplies (other than supplies attracting Reverse Charge) received from registered suppliers.

CBIC clarifies procedure for return of time expired drugs or medicines

With respect to the procedure of return of expired drugs or medicines under GST, CBIC has issued a circular to maintain uniformity under GST law. Return of such expired goods shall be treated as fresh supply under GST. The recipient manufacturer/wholesaler shall be eligible to avail ITC of tax levied on said return subject to

conditions. In such case, a credit note may be issued by a manufacturer/wholesaler who has supplied goods to wholesaler/ retailer without any time frame except with regard to adjustment of tax liability in case of credit notes issued prior to September month following end of financial year and those issued after it. However, the circular has also clarified that if such expired goods are destroyed by the manufacturer, then ITC attributable to manufacture of such goods shall need to be reversed, as per section 17(5) (h) of CGST Act. This will in effect be a heavy penalty to the manufacturers for any unsold stock since the tax paid on such goods would be a direct loss to them.

[Circular No. 72/46/2018-GST dated October 26, 2018]

CBIC issues clarification on issues relating to cancellation of registration

In present GST regime, various issues had emerged related to processing of applications for cancellation of registration filed by taxpayers in FORM GST REG-16. At times, it might be difficult to identify the day on which occurrence of the event warranting cancellation of registration occurs. In relation to this, CBIC stated that 30-day deadline may be liberally assumed and also such application for cancellation of registration may not be rejected because of possible violation of deadline. It is further directed to proper office to accept all the applications within 30 days since cancellation of registration has no effect on liability of taxpayer for any acts of commission/omission committed before or after date of cancellation. In case of person whose registration has been cancelled shall file a final return in FORM GSTR-10, failing which notice in FORM GSTR-3A has to be issued and in case the failure continues, assessment order in FORM GST ASMT-13 under section 62 shall be issued to determine liability of taxpayer.

[Circular No. 69/43/2018-GST dated October 26, 2018]

GST on supply of food to employees for consideration in Canteen run by Company

Kerala AAAR upholds order of AAR that the supply of food items to the employees for consideration in the canteen run by the company would come under the definition of 'supply' and would be taxable under GST. The said service cannot be considered same to services as stated under Schedule III, Clause I of CGST Act, 2017 which exempts services of an employee to the employer in the course of or in relation to his employment.

Further, the appellant would be covered under the definition of 'supplier' as provided in sub-section (105) of Section 2 of the GST Act, 2017 and moreover, since the applicant recovers the cost of food from its employees, there is consideration as defined in Section 2(31) of CGST Act. Therefore, such transaction will be covered under GST.

[Caltech Polymers Pvt. Ltd. - Kerala AAAR] (98 taxmann.com 355)

ITC eligibility for 'medical equipment' manufacturer's 'Mechanical' & 'Electrical' Works

In a recent ruling, the Maharashtra AAR has allowed ITC of various 'Mechanical' and 'Electrical' Works to applicant engaged in manufacture of medical equipment. With reference to section 16 of CGST Act, it states that credit can be availed by registered person on supply of goods or services which are used in the course or furtherance of business. Further, Section 17(5)(c) and 17(5)(d) of CGST Act, disallows ITC on works contract services and goods and/or services for construction of immovable property (other than plant and machinery). However, the AAR clarified that credit shall be admissible on plumbing work i.e. Internal Sewer and Venting System, Sanitary Ware and CP Fittings, and other mechanical works such as air conditioning work, utility work and also for electrical works including DG set, main feeder distribution, lighting system, emergency and exit light features, telephone & LAN system, fire alarm system, demolition work.

[Nipro India Corporation Pvt. Ltd. - Maharashtra AAR] (98 taxmann.com 319)

ITC ineligible on repair, maintenance of employees' residential accommodation, hospitals, guest houses

Odisha AAR holds that input tax credit cannot be claimed on various inputs received for maintenance and repair work of the townships, guest houses, hospitals etc. Such input services are in the nature of welfare activities and not in course or furtherance of business. Further, services under works contract related to repairs and maintenance of various immovable property and assets, the ITC of which is blocked u/s 17(5) of CGST/SGST Act. Also, the services by way of residential accommodation, alteration or maintenance service of goods or service or goods received does not qualify for ITC in terms of Section 17(2) of CGST/SGST Act. Further, the hospital/ dispensary maintained for the employees and society is covered under the Sr. No. 74, heading 9993 of Notification No. 12/2017- Central Tax (Rate), thereby ITC stands ineligible and cannot be claimed.

[National Aluminium Company Ltd. – Odisha AAR] (98 taxmann.com 245)

Reimbursement by head office (HO) to liaison office not liable to GST as no supply

Tamil Nadu AAR holds that undertaking liaison activities between parent company and Indian supplier of goods in line with condition specified by RBI permission letter does not constitute 'supply' under CGST and SGST Act. It is stated that there shall be no consideration from supplier as well as no such fees/commission or any other remuneration received/income earned by office in India for liaison activities/ services. Only the parent company may reimburse expenses incurred for the operations in India which are in nature of salary, rent, security, electricity, travelling etc. and further there is no any other source of income. Also, the liaison office shall be restricted to undertake any activity of trading, commercial or industrial nature or entering into any

business contracts in own name. With reference to definition of 'supply' given u/s 7 and Schedule I of CGST Act, states that supply of services between related parties or distinct persons constitutes a 'supply' as per Section 25, even without consideration. Tamil Nadu AAR states that undertaking liaison activities is not covered under 'supply' definition and hence not required to obtain registration u/s 22 of CGST /SGST Act or pay CGST/SGST or IGST.

[Takko Holding GmbH -Tamil Nadu AAR] (98 taxmann.com 334)

'Liquidated damages' awarded pursuant to arbitration constitutes 'supply'

Maharashtra AAR has held that liquidated damages awarded to the applicant by the International Chamber of Commerce ("ICC") pursuant to arbitration would qualify as 'supply' as per Sr. No. 5(e) of Schedule II of the CGST Act which reads "agreeing to the obligation to refrain from an act or to tolerate an act or a situation or to do an act". In the present case, having presence of clear understanding/ agreement between the parties to foresee and tolerate an act shall be for monetary consideration and in case of change of name such as 'damages' or 'compensation' would not change the nature of contract and thus will be taxable.

Further, in the present case, it is clarified that time of supply shall be determined as per Section 13 of the CGST Act i.e. after the award of arbitration proceedings is given by Arbitration Tribunal as administered by ICC as per Association Agreement by the parties to dispute, in present proceedings. Maharashtra AAR holds that value of supply shall be actual liquidated damages cum consideration as pronounced in award administered by ICC.

[North American Coal Corporation India Private Limited - Maharashtra AAR] (98 taxmann.com 331)

Prohibition of Benami Property Transactions (PBPT)

Notices sent under Benami Act to 10,000 depositors post demonetisation

The revenue department has issued preliminary notices to about 10,000 people under the Benami law, seeking source of income details, as it analyses data on deposits of cancelled notes after the November 2016 demonetisation. It has been brought to knowledge that the income tax department is using big data analytics including phone records, credit cards, PAN details, tax returns and even data available on social media platforms to detect evasion.

Lalu Prasad Yadav's family set to lose prime Benami properties

Former Bihar chief minister Lallu Prasad's family members may lose possession of their farm houses in Delhi and other properties in posh localities of

the national capital region (NCR) and in Patna, as the adjudicating authority under Prohibition of Benami Property Transactions Act recently confirmed the provisional attachment of 17 properties worth over Rs.128 crores. The attached properties were purchased by close aides of Lalu Prasad when he was the railway minister, allegedly using shell companies. The beneficial ownership of these companies and properties were later transferred to his family members, including his wife, son, daughters and son-in-law.

Amendment made to Section 48 of the Act regarding the definition of “Authorised Representative”

Sub-section (1) of Section 48 of the Act provides that a person preferring an appeal to the Appellate Tribunal may either appear in person or take assistance of an authorised representative. Sub-section (2) of this section provides that the CG may authorize one or more of its officers to act as presenting officers on its behalf, for representation of any appeal before Appellate Tribunal. The following amendments have been made to the provisions of this Section:

- In sub-section (1), the words “A person preferring an appeal to” have been substituted with the words “a person, including the Initiating Officer, who is a party to any proceedings before”
- In the Explanation below this section, the words “means a person authorised by the appellant” have been substituted with the words “in relation to – (i) the Initiating Officer, means a person authorised by the Central Government; (ii) any other party to the proceedings, means a person authorised by the party;”

[Order No. SO 5194(E) dated 09.10.2018]

Prevention of Money Laundering (PMLA)

Enforcement Directorate (ED) moves Court against Sterling Biotech group promoters in lieu of Rs.8100 crore bank loan fraud

The ED on 26.10.2018 moved a Special Court to get the owners of Gujarat based Sterling Biotech group, charged in an alleged Rs.8100 crore bank loan fraud case, who have also been declared fugitive economic offenders under the new law. The central agency has also filed a plea before a Special Court of the Prevention of Money Laundering Act, seeking to declare Nitin Sandesara, Chetan Sandesara, Dipti Sandesara and Hitesh Patel fugitives under Section 4 of the Fugitive Economic Offenders Act, brought by the Government this year to check cases of large bank frauds and similar crimes.

ED files chargesheet against P Chidambaram under PMLA

The ED on 25.10.2018 filed a chargesheet in the Rs.35 billion Aircel-Maxis deal case, naming former Finance

Minister P Chidambaram and a few officers. The supplementary prosecution complaint was filed before a Special Court in the Patiala House Courts Complex. The chargesheet named Chidambaram, the chartered accountant of Chidambaram’s son Karti, Aircel Televentures Ltd., a resident of Mauritius and other accused in the case under the provisions of Prevention of Money Laundering Act.

PNB Fraud: ED attached Rs.255 crore assets of Nirav Modi in Hong Kong

The ED on 25.10.2018 said that it has attached valuables and jewellery worth Rs.255 crore in Hong Kong of diamond jeweller Nirav Modi, in connection with the USD 2 billion alleged fraud in PNB. The agency said that it has issued a provisional order under the Prevention of Money Laundering Act for attachment of these assets.

Show cause notice issued and simultaneous order passed cannot be challenged in writ petition in the absence of any legally acceptable ground

In this case, the Court observed that the petitioners were bound to submit their statements, documents to the respondent to establish their innocence at the first instance, so as to avoid further proceedings under the Act. The Court stated that the writ petitions were premature and the complex facts and circumstances raised by the petitioners, cannot be adjudicated in view of the fact that the petitioners have not exhausted the appeal remedies provided under the statutes and has also not participated in the administrative procedures contemplated under the provisions of the Act. Thus, the High Court dismissed both the writ petitions filed.

[Smt. Soodamani Dorai v. Jt. Director of Enforcement – Madras High Court] (W.P. Nos. 8383 and 8384 of 2013 dated 04.10.2018)

Corporate Laws

Relaxation of additional fee and extension of last date for annual filing of Forms regarding Annual Return and Financial Statements under the Companies Act, 2013

Ministry of Corporate Affairs (MCA) has relaxed the levy of additional fee for filing of e-forms AOC-4, AOC (CFS), AOC-4 XBRL and e-Form MGT-7 upto 31.12.2019.

[General Circular No. 10/2018 dated 29.10.2018]

Constitution of National Financial Reporting Authority (NFRA)

MCA has constituted the National Financial Reporting Authority with effect from 01st October, 2018. The Board has also notified various provisions in this regard.

[Notification No. SO 5098(E) and 5099(E) dated 01st October, 2018 and Notification No. SO 5385(E) dated 24.10.2018]

Compliance Dates

Compliance Particulars	Due Date
1. Income Tax	
Deposit of Tax Deducted/ Collected for the month of October, 2018	7th November, 2018
Due date for issue of TDS Certificate for tax deducted under section 194-IA and 194-IB in the month of September, 2018	14th November, 2018
Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2018	15th November, 2018
Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and 194-IB in the month of October, 2018	30th November, 2018
Annual return of income for the A.Y. 2018-19 in the case of an assessee if he/it is required to submit a report under Section 92E pertaining to international or specified domestic transaction(s)	30th November, 2018
Audit report under Section 44AB for the A.Y. 2018-19 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under Section 92E	30th November, 2018
Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction	30th November, 2018
Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2017-18	30th November, 2018
Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2016-17	30th November, 2018
Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA	30th November, 2018
Due date to exercise option of safe harbour rules for specified domestic transaction by furnishing Form 3CEFB	30th November, 2018
Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on November 30, 2018)	30th November, 2018
Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(2) (if the assessee is required to submit return of income on November 30, 2018)	30th November, 2018
Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2017-18 and of foreign tax deducted or paid on such income in Form no. 67. (if due date of submission of return of income is November 30, 2018)	30th November, 2018
2. Goods & Services Tax (GST)	
GSTR - 7 for TDS deducted during the month of October 2018	10th November 2018
GSTR-1 for Outward Supplies for the month of October 2018	11th November, 2018
GSTR-3B for the month of October 2018	20th November, 2018

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