

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

May 2019

Message

Rallies and Road Shows took centrestage this month as the world's biggest democracy kicked off the world's largest election exercise. With more than 90 crores people eligible to vote, these elections will determine the destiny of the country for the next five years. Around 15000 candidates will contest the election spread over seven phases covered in 2 months.

The sheer scale of the exercise has got not only the politicians busy but also the bureaucrats who are tied up in election duty. Businesses noticed stuck files and refunds on account of such duties. However, this did not deter the GST collections. April recorded a record Rs. 1.23 crores of GST collections. The GST Network also seemed to have faced higher number of returns as the Government had to extend the due date of filing returns twice on account of the increased load. This could be on account of the fact that March 2019 was the last date for claiming any credit for input taxes for the financial year 2017-18. Another reason could be the increased election expenditure and spend. We may see a similar, if not higher, figure for such collections in May also when the taxes for the month of May will get deposited.

The RBI reduced the interest rates by 25 basis points to fuel the economy. However, the benefit of such rate cuts is yet to translate to the business as the overall interest rates remained the same. The USD exchange rate rose slightly but it is the slowly creeping oil rates which may become trouble for the incoming government.

The Government notified the new return forms for filing of tax returns for the financial year 2018-19. Revised formats for TDS returns of salary were also issued. Employers have to also issue the Form 16 in the new forms effective May 12th. Under corporate laws, due dates of INC-22A, DIR-3 KYC, DPT-3 and MSME-1 were also extended, keeping in mind the various challenges.

By the time of the next edition of this newsletter, the shape of the new Government would have unfolded. With a large young, skilled and dynamic population, India is rightly poised to become the world leader in growth. Let us all ensure that we use our right to vote and make this vision come true through our choice. "

With Warm Regards
Ankit Jain

Income Tax

CBDT mandates quoting of Aadhaar number for the purpose of filing of Income-tax return w.e.f. 01st April 2019

CBDT has made it mandatory to quote Aadhaar number while filing Income Tax return either electronically or manually unless specifically exempted by CBDT w.e.f. 01/04/2019. It is further clarified that return filed prior to 01/04/2019 without quoting of aadhaar number will have no adverse impact and they will be taken up for processing.

[Circular No. 6/2019 dated March 31, 2019]

CBDT made PAN-Aadhaar linking mandatory by 30/09/2019.

CBDT has notified that every person who was holding PAN as on 01st July, 2017 and is eligible for obtaining aadhaar number, shall intimate Aadhaar number to

Income Tax department by 30/09/2019 by way of PAN-Aadhaar linking.

[Notification No. 31 of 2019 Dated March 31, 2019]

CBDT notifies ITR Form for filing of Income - Tax Returns of AY 2019-20 / FY 2018-19.

CBDT vide this notification has amended the rule 12 related to applicability of various Income Tax return forms to various class of persons. The new rules have changed applicability of income tax return forms, some of the changes are as under:

- i. ITR 1 and 4 are not applicable for a person who is a director in any company or who has claimed deduction u/s 57 (other than iia) or a person who is holding shares of an unlisted company;
- ii. ITR 4 is applicable only for residents;
- iii. ITR 4 is not applicable if total income exceeds fifty lakhs or has any assets / signing person / source of income located outside india or owns more than

one house property whose or who has brought / carried forward losses.

Further, new Income Tax Return forms for filing of income tax return for Assessment Year 2019-20 have also been notified.

[Notification No. 32 of 2019 Dated April 01, 2019]

CBDT Extends CbCR deadline for constituent entities having parent entity in USA

The CBDT has extended due date for furnishing of Country-by-Country Reports (CbCRs) by constituent entities, whose parent entities are resident in USA in respect of reporting accounting years ending up to 29th April 2018. This extension has been provided to facilitate constituent entities and to remove genuine hardship arising due to agreement between India and the USA for the exchange of CbCRs has been signed but not yet notified by the Government. Earlier it was extended to 31st March 2019 vide circular no. 09 of December 2018. As per this circular this date has been extended to 30 April 2019.

[Circular No. 7 of 2019 Dated April 08, 2019]

CBDT notifies detailed format of Form 16 (TDS Certificate) and Form 24Q (TDS Return)

Every person being an employer is required to issue a TDS certificate to its employees in Form 16, evidencing deduction of tax at source from salary of employees and deposited with the Income-tax authorities. Employers are also required to file salary TDS return with respect to details of salary paid to the employees and TDS deducted on such payments in Form 24Q. Vide this notification the CBDT has notified Income-tax (3rd Amendment) Rules, 2019 to amend the Income-tax Rules, 1962 whereby above mentioned Form 16 and Form 24Q have been revised by CBDT to provide more details related to exemption and deductions etc. This step has been taken to curtail the false deductions being claimed by the employees. This notification shall be applicable from with effect from 12th May, 2019.

[Notification No. 36 of 2019 Dated April 12, 2019]

Direct Tax – Judgements

SC: Dismisses SLP against Sec. 43B disallowance deletion on 'unpaid service tax'

SC dismisses Revenue's SLP challenging Bombay HC judgment upholding deletion of Sec 43B disallowance for unpaid service tax; HC had relied on its co-ordinate bench ruling in Ovara Logistics Pvt. Ltd. and had dismissed Revenue's appeal for AY 2006-07; HC had observed that unpaid service tax relates to consideration amount not received from the parties to whom services were rendered; HC had ruled that when services are rendered, the liability to pay the service tax in respect of the consideration payable will arise

only upon the receipt of such consideration and not otherwise.

[Pr. CIT v. Tops Security Ltd. (SLP (Civil) Diary No. (s) 10049/2019 Supreme Court]

HC: Relief to senior citizen, lifts provisional attachment of his bank accounts without disturbing the attachment of immovable properties, till the litigation with respect to alleged undisclosed foreign income is over

Provisional attachment of Bank Accounts and properties - undisclosed foreign investment - exercise of powers u/s 132(9B) - search proceedings - case of the petitioner is that he does not have any taxable income. He is a second account holder in bank accounts maintained at U.K. His son is a permanent resident of U.K. who earns sizable income. The balance in the accounts does not belong to the petitioner. The petitioner has inherited sizable funds and properties from which he makes investments - HELD THAT:- Department has virtually prevented the petitioner for accessing his own funds in the bank accounts which would undisputedly cause great difficulty to the petitioner in meeting his day to day expenses, to meet with special requirements for medical attention for himself and his aged mother. While, therefore, without harming the interest of the Revenue, we would like to give limited relief to the petitioner against such action of the Department.

[Darius Sammotashaw v. DIT (Inv.) {WP No. 675 of 2019} – Bombay High Court]

ITAT Delhi: CIT(A) can't impose Rule 11UA when taxpayer 'substantiated' higher valuation u/s. 56(2)(viib) before AO

Delhi ITAT deletes enhancement made by CIT(A) for alleged excess share premium receipt u/s 56(2)(viib) for AY 2013-14; During relevant AY, assessee (an India Today group of company) had issued certain shares to M/s. Living Media India Ltd. (shareholder) @ Rs. 30/- per share (of Face value Rs. 10/-) based on the valuation report certified by an independent Chartered Accountant, the AO did not disturb the method or value substantiated by assessee except for adjusting the value marginally for difference in percentage stake held by assessee in its subsidiary co., accordingly the AO had taken the value of shares @ 27.75 /- per share and made addition u/s. 56(2)(viib) for the differential Rs. 2.25/- per share, however, CIT(A) had enhanced the addition based on several grounds; Observes that in present case assessee has substantiated the higher valuation to the satisfaction of the AO by various precedence and material placed on record apart from Valuation report in terms of sub clause (ii) of Explanation (a) to Sec. 56(2)(viib); ITAT opines that "when AO has accepted the valuation method which was also based on several precedence on the date of the issuance of

the shares, then Ld. CIT(A) cannot acquire jurisdiction to tinker with such a valuation or valuation method.”; Noting that the CIT(A) had doubted the substantiation on the ground that the valuer had not adopted the method prescribed in Rule 11UA.

[India Today Online Pvt. Ltd. v. ITO (ITA No.6453/6454/Del/2018)– ITAT Delhi]

ITAT Mumbai rules that Advertisement hoardings rent of developer taxable as ‘house property income’, not Income From Other Sources

Mumbai ITAT rules that rent received by assessee-firm (builders and developers) during AY 2011-12 for giving permission to mount advertising display on boundary walls of property under re-development, is assessable as ‘income from house property’, allows deduction u/s.24; AO had treated the rent as ‘income from other sources’ (IFOS) holding that assessee did not actually let out any building or land appurtenant thereto, but only provided some space of land to erect the G.I. Sheet for displaying advertisement/hoarding, while CIT(A) had held that it was the co-operative society which was the owner and not the assessee; Rejects Revenue’s argument that the assessee had only limited ‘re-development’ rights over the property, rules that the conveyance agreement clearly indicated that the assessee was the ‘owner’ and had obtained development rights of the land.

[Chaitanya Developers v. Addl. CIT (ITA No.1341/Mum/2017) – ITAT Mumbai]

Merely because the claim of HRA denied in assessment proceedings by AO, it would not attract penalty u/s 271(1)(c)

Delhi ITAT held that there is no dispute that the assessee was 1/3rd owner of the house property for which he has paid rent to the other co-owners, It cannot be said that the assessee paid rent with malafide intention to reduce his tax liability. The rent was actually paid to the co-owners and this fact has also not been disputed by the AO. Merely because the claim of the assessee did not find any favour with the AO would not, ipso facto, become a bogus claim.

[Vinod Ahuja Tower v. ACIT (ITA No.7273/Del/2018) – ITAT Delhi]

International Taxation & Transfer Pricing

ITAT: Excludes Non- Profit Organisation Company as comparable for marketing support service provider

Delhi ITAT agrees with DRP on exclusion of Media Research Users Council, a non-profit Organisation, it can be seen from its account that it is not preparing the Profit and Loss Account, but Income and Expenditure Account and the main source of income is shows as subscription fees. This clearly shows that this is a

nonprofit organization and cannot be used as a good comparable and, therefore, its exclusion is upheld.

[DCIT v. Microsoft Corporation India Pvt. Ltd. (ITA No. 1736/Del/2016- ITAT Delhi)]

ITAT: Prefers internal-CUP over TNMM for benchmarking drug manufacturer’s export transactions

Mumbai ITAT dismisses assessee’s TP-ground, upholds TPO’s rejection of TNMM and adoption of internal CUP for benchmarking international transactions of export of the FDFs (fixed doses form) to the AE’s for assessee engaged in the business of manufacture and sale of prescription drugs for AYs 2010-11, 2011-12, 2012-13; Agrees with TPO’s view that by adopting TNMM, assessee is trying to camouflage the OP/OC of small exports to AE of Rs 5 Crore with the OP/OC of the total export of Rs. 33 Crore and further that assessee has incorrectly benchmarked the transactions of import of API and export of finished drugs with the same set of comparables; Opines that if TNMM was adopted in earlier years on same facts then it was an error and states that “there is no use of perpetuating an error.

[UCB India Pvt. Ltd. v. DCIT (ITA No. 645/Mum/2016-ITAT Mumbai)]

Corporate Laws

Extension of due date of filing e-form INC-22A (Active) from 25th April, 2019 to 15th June 2019

MCA has amended the Rule 25A of the Companies (Incorporation) Rules, 2014 vide its notification dated 25th April, 2019 and extending the due date of filing e-form INC-22A (Active) from 25th April, 2019 to 15th June 2019 without any fee. On or after 16th June, 2019, ROC fee for filing the said form will be Rs.10000/-.

[Companies (Incorporation) Fourth Amendment Rules, 2019 vide its notification dated 25th April, 2019]

Extension of due date of filing DIR-3 KYC from 30th April to 30th June for every financial year

MCA has amended the Rule 12A of Companies (Appointment and Qualification of Directors) Rules, 2014, thus extending the due date of filing the form DIR-3 KYC from 30th April to 30th June of every immediate next financial year. Therefore, Last date to file DIR-3 KYC for the financial year 2018-19 is 30th June, 2019.

[Companies (Appointment and Qualification of Directors) Amendment Rules, 2019 dated 30th April, 2019]

Extension of due date of filing DPT-3 (One Time Return) to 29th June, 2019

MCA has amended Rule 16A of Companies (Acceptance of Deposits) Rules, 2014, thus extending the due date of filling Form DPT-3 (One Time Return). MCA has

amended Rule 16A as the period of 90 days for filing the form will be counted from 31.03.2019 instead of "the date of publication of this notification in the Official Gazette. i.e. 22.01.2019". Hence, as per the notification issued by Ministry of Corporate Affairs, the last date to file Form DPT-3 (One Time Return) is 29th June, 2019.

[Companies (Acceptance of Deposits) Second Amendment Rules, 2019; dated 30th April, 2019]

Due date to file Initial Form MSME-1 and Half Yearly Form MSME-1 shall be 30th May, 2019

Ministry of Corporate Affairs vide its General Circular No. 01/2019 dated 21st Feb, 2019 extended the due date for filing of the initial return i.e. from the date of deployment of e-form on MCA Portal. The e-form MSME-1 will be available from 01.05.2019 and due date for filing initial return is 30 days from 01.05.2019 i.e. 30th May, 2019.

Further, as e-form MSME-1 will be available on MCA Portal w.e.f. 01.05.2019, the due date for filing half yearly return is 30 days from 01.05.2019. i.e. 30th May, 2019.

[Specified Companies (Furnishing of Information about payment to Micro and small enterprises suppliers) Order, 2019 dated 22nd Jan, 2019 read with General Circular No. 01/2019 dated 21st Feb, 2019]

Goods & Services Tax

CBIC prescribes special procedure for payment and return filing by composition taxpayers

The Central Government notifies that the registered persons paying tax at a fixed rate either under the composition scheme prescribed under section 10 of CGST Act or by availing the benefit of Notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, shall follow the special procedure as mentioned below for furnishing of return and payment of tax:

- Statement containing details of payment of self-assessed tax shall be submitted for every quarter in FORM GST CMP-08 till 18th day of month succeeding such quarter; and
- Annual return in FORM GSTR-4 shall be furnished on or before the April 30 following the end of such financial year.

[Notification No. 21/2019-Central Tax dated 23rd April, 2019]

CBIC notify the provisions of rule 138E of the CGST Rules w.e.f June 21, 2019

The Central Government notifies that restrictions imposed by Rule 138E i.e. restriction on furnishing

of information in PART A of FORM GST EWB-01 as inserted vide notification 74/2018-CT (Rate) dated December 31, 2018, has been made effective w.e.f. 21.06.2019. As per this rule, no E-way bill facility shall be available for a registered person who has not furnished his GST returns for last two tax periods.

[Notification No. 22/2019-Central Tax dated 23rd April, 2019]

CBIC clarifies that service providers opting for composition levy to file prescribed form by April 30, 2019

The Central Government clarifies that a registered person who wants to opt for payment of CGST @ 3% by availing the benefit of notification no. 02/2019-CT (Rate), has to file intimation in FORM GST CMP-02 by selecting the category of registered person as "Any other supplier eligible for composition levy" as listed at Sl. No. 5(iii) of the said form, latest by 30th April, 2019. Such person shall also furnish a statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (3) of rule 3 of the said rules.

Also, any person who applies for registration and who wants to opt for said notification, if eligible, may do so by indicating the option at serial no. 5 and 6.1(iii) of FORM GST REG-01 at the time of filing of application for registration.

[Circular No. 97/16/2019-GST]

Clarification issued in respect of utilization of input tax credit (ITC) under Rule 88A

CBIC issues clarification in respect of utilization of input tax credit (ITC) under GST after issuance of the newly inserted rule 88A in the CGST Rule, 2017. The said rule allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in any order subject to the condition that the entire input tax credit on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State / Union territory tax can be utilized.

It is to be noted that presently, the common portal supports the order of utilization of input tax credit in accordance with the provisions before implementation of the provisions of the CGST (Amendment) Act. Therefore, till the new order of utilization as per newly inserted Rule 88A of the CGST Rules is implemented on the common portal, taxpayers may continue to utilize their input tax credit as per the functionality available on the common portal.

[Circular No. 98/17/2019-GST dated April 23, 2019]

CBIC's clarification regarding filing of application for revocation of cancellation of registration

CBIC explains that where the registration has been cancelled w.e.f. date of order of cancellation of registration, all returns due till the date are required to be furnished before application for revocation can be filed within a period of 30 days from the date of the order of revocation.

Further, in cases where the registration has been cancelled with retrospective effect, all returns relating to the period from effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

[Circular No. 99/18/2019- GST dated April 23, 2019]

CBIC grants one time opportunity to apply for revocation of cancellation of registration

CBIC provided that the person whose registration was cancelled due to non-submission of the reply of the notice served under sub-section (2) of section 29 and was hence unable to file application for revocation of cancellation of registration against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration by 22nd July, 2019.

[Removal of Difficulty Order No. 5/2019- GST dated April 23, 2019]

Advisory to GST taxpayers on invoice series to be used w.e.f. 1st April, 2019

Rule 46 (b) of the CGST Rules 2017 specifies that the tax invoice issued by a registered person should have a consecutive serial number, not exceeding sixteen characters, unique for a financial year.

GSTN has issued advisory in this respect that with the start of new financial year 2019-20, a new invoice series, unique for the financial year is to be started by all the GST taxpayers. Similar provision is there in Rule 49 of the CGST Rules 2017, in respect of issue of Bill of Supply by registered taxpayers availing Composition Scheme or supplying exempted goods or services or both.

If the provisions of Rule 46 or Rule 49 are not adhered to, apart from being a compliance issue, taxpayers may face problem while generating E-Way Bill on E-way bill system or furnishing their Form GSTR 1 or for applying for refund on GST Portal.

[Advisory by Goods and Services Tax Network]

Form GSTR-9C offline utility with FAQs and User Manual available on GST portal

GSTN provides offline utility for filing FORM GSTR-9C along with FAQs and User Manual. Govt. explains

that the said reconciliation statement reconciling turnover declared in audited Annual Financial Statement with Turnover declared in furnished Annual Return can be filed only after filing the annual return in Form GSTR-9.

Madhya Pradesh AAR holds that ITC is available on passenger vehicles further supplied on lease rent under both pre & post Section 17 amendment

As per the facts of the case, the applicant is providing "Goods Transport Agency Service" and availing the option to pay tax @12% with availability of ITC on vehicle. The applicant has recently purchased cars & provided them to various companies on lease rent under a Lease Agreement. The said authority holds that applicant is entitled to avail ITC on cars (passenger vehicles) further supplied to customers on lease rent subject to conditions stipulated for such supply vide Notification No. 11/2017-Central Tax (Rate). Further clarifies that, words "taxable supply" and "further supply" finding a place in sub-section of Section 17 are of great importance while explaining that term "'further' prefixed to 'supply' is merely in the form of adverb and does not differentiate it from 'Supply' and holds that applicant's activities satisfies conditions laid down u/s 17(5)(a)(i)(A) before the amendment and under sub-section 5(a)(A) after amendment to make it eligible for ITC on motor vehicle for tax paid while acquiring same.

[In the matter of Narsingh Transport]

Madras HC quashes detention order absent mention of reasons in order for seizure of vehicle/goods

Madras HC quashes detention order absent mention of reasons for seizure of the conveyance / goods. Court holds that detention / seizure is provided for only in cases where the Department is prima facie convinced that there is a contravention of the provisions of the Act and the Rules. Court noted that the order is incomplete and wholly non-speaking, leaving even mandatory fields in the order, blank. HC Opines that detention of the conveyance and goods is an extreme step that seriously prejudices an assessee and it is incumbent upon the statutory authority / the Proper Officer to have made mention of the contravention in the field provided in the order for such purpose, which has not been done and therefore allows assessee's writ and directs release of vehicle.

[G. Murugan vs. GOI and the State tax officer]

Compliance Due Dates

Compliance Particulars	Due Date
1. Income Tax	
Due date for deposit of Tax deducted/collected for the month of April, 2019	7th May, 2019
Due date for issue of TDS Certificate for tax deducted under section 194-IA & 194-IB in the month of March, 2019	15th May, 2019
Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2019 has been paid without the production of a challan	15th May, 2019
Quarterly statement of TCS deposited for the quarter ending March 31, 2019	15th May, 2019
Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & 194-IB in the month of April, 2019	30th May, 2019
Quarterly statement of TDS deposited for the quarter ending March 31, 2019	31st May, 2019
Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2018-19.	31st May, 2019
Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA(1)(k) (in Form No. 61B) for calendar year 2018 by reporting financial institutions.	31st May, 2019
Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2018-19 and hasn't been allotted any PAN	31st May, 2019
Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN.	31st March, 2019
2. Goods & Services Tax (GST)	
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of April, 2019	10th May, 2019
GSTR-8: Summary of Tax Collected at Source (TCS) and deposited by E-commerce Operator for the month of April, 2019	10th May, 2019
GSTR-1: Details for Outward Supplies for the month of April 2019 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th May, 2019
GSTR-6: Return by Input Service Distributor for the month of April, 2019	13th May, 2019
GSTR-3B: Summary Return for the month of April, 2019	20th May, 2019
3. Labour Laws	
Deposit of ESI for the month of April, 2019	15th May, 2019
Deposit of Provident Fund for the month of April, 2019	15th May, 2019
4. Corporate Law	
Due date to file BEN-1 by all significant beneficial owners to their reporting companies	8th May, 2019
Due date to file Initial Form MSME-1 and Half Yearly Form MSME-1	30th May, 2019
Due date to file Annual Return of LLP's in Form 11	30th May, 2019

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