

# At a Glance

*(Brief Updates from the world of Tax and Finance)*

For Private Circulation Only

April 2019

## Message

March brought the end of another fiscal year. As is with all year ends, the industry and business worked hard to achieve their goals. However, this time even the Government machinery was in active mode with officers active in ensuring collections do not fall short. The efforts reaped dividends with the GST collections in the month of March reaching an all time high of Rs. 1.06 Crores.

The stock market also ended near all-time highs largely fuelled by increased foreign investment in the market. This also resulted in the strengthening of the Rupee which fared quite well in March.

With elections due in April, the model code of conduct became applicable and as expected, no big policy decisions were announced. The Government was however successful in making the payment of Rs. 2000 to the farmers as promised under the PM-KISAN scheme in the budget.

The GST Council also clarified on the rates for real estate industry meeting once more in the middle of the month. The Government also reduced the fee for incorporation for small companies and eased the procedure for obtaining GST, PF and ESI registrations under a single form.

With elections due in April and May, the Government machinery may remain slightly dormant in the coming months. However, the election fever will keep the whole country gripped and hanging. The new financial year is an opportune time to fix up your goals and set new targets. With that, wishing our readers the very best for the near year ahead.

With Warm Regards  
Ankit Jain

## Income Tax

**Considering the difficulties faced by the start-ups, the central government has provided the exemption for start-ups under section 56(2)(viib) of the Income Tax Act, 1961.**

In exercise of the powers conferred by clause (ii) of the proviso to clause (viib) of sub-section (2) of section 56 of the Income-tax Act, 1961, the Central Government, hereby notifies that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration has been received from a person, being a resident, by a company which fulfils the conditions specified in para 4 of the notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade (DPIIT) and files a declaration in Form 2 to DPIIT that it fulfills the conditions mentioned in para 4.

This notification shall be deemed to have come into force retrospectively from the 19th February, 2019.

**[Notification No. 13 of 2019 Dated March 05, 2019]**

## Government increases Gratuity exemption limit u/s 10(10)(iii) of the Income Tax Act, 1961

Section (10)(10) of the Act grants exemption from tax in respect of gratuity amount received by employees, whose employment is terminated for any reason, subject to the specified limits therein. In this regard, Central Government vide this notification has increased the said exemption limit from Rs. 10 Lakh to 20 lakhs for the purpose of employees.

**[Notification No. 16 of 2019 Dated March 08, 2019]**

## Direct Tax – Judgements

**HC: Rentals from letting-out shops in Mall, constitutes Builder's business income, not house-property**

Kerala HC dismisses Revenue's appeal for AY 2009-10, rules that rental charges received by assessee-builder on letting out the shop rooms in the mall constructed by it was assessable as business income and not income from house property; HC accepts assessee's stand that letting out the shop rooms in the mall amounts to commercial exploitation of the building constructed by it; HC observes that management of the shopping mall was done by

assessee involving a host of services, states that “it is not a letting out of property simpliciter.”

**[CIT v. Oberon Edifices and Estates Pvt. Ltd. {ITA No. 166 of 2016} – Kerala High Court]**

**Co-owned property ‘let-out’ to mother, interest restriction under Section 24 for Self Occupied property**

Rent received from mother, co-owner of property - Shown nil annual value in return later claimed as let out and rent received in cash - AO denied claim u/s 23(3) and allowed deduction u/s 23(2) as self-occupied property only - HELD THAT:- The assessee has claimed that the residential house was actually let out during the year to his mother for which he has received rent of 30,000/- from mother albeit in cash. On the basis of property being let out, the assessee seeks claim of interest deduction to full extent. The assessee has also tried to support his case of let out by an affidavit. When seen in the context, it is very difficult to believe the position taken by the assessee.

**[Shri Hitesh Budhbhatti v. ITO (ITA No. 1604/Ahd/2016) – ITAT Ahmedabad]**

**ITAT Delhi not treated Capital reserve created on Amalgamation as revaluation reserve**

Delhi ITAT deletes AO’s adjustment to book-profit u/s 115JB by treating capital reserve created on amalgamation (excess arising on transfer of assets and liabilities) as revaluation reserve during AY 2015-16; Under the scheme of amalgamation, assessee had received certain shares from amalgamating companies which were revalued at the time of amalgamation and the difference arising between the book value shown in the books of amalgamating companies and the fair market value was to form part of the capital reserves of the assessee company as per the Scheme of Amalgamation, however, AO treated the same as revaluation reserve as per Explanation 1(j) to Sec. 115JB.

**[Priapus Developers Pvt. Ltd. v. ACIT (ITA No.170/Del/2019)– ITAT Delhi]**

**Option money for grant of ‘first rights of stake purchase’, not business income**

Delhi ITAT quashes revision u/s. 263 for AYs 2013-14 & 2014-15, rules that option price received by assessee (Dabur invest Corp.) for granting of first rights of stake purchase to CUIH [a company incorporated in England] pursuant to a JV agreement, is a capital receipt; In 2001, the assessee had entered into a JV agreement with CUIH to co-promote a company in the field of insurance sector [Aviva Life Insurance Co. Ltd.], CUIH originally held only 26% stake in the JV co. owing to the restrictions imposed by FIPB for insurance sector and it was decided that as and when the government eases the norms, the first right of refusal shall be with CUIH and if it refuses to purchase shares of the assessee, the same can be sold to third parties, such option was granted to CUIH upon payment of option price annually as agreed.

**[Dabur Invest Corp. v. PCIT (ITA No.1763/Del/2018) – ITAT Delhi]**

**International Taxation & Transfer Pricing**

**Bombay HC held that TPO has no jurisdiction to determine ALP of specified domestic transaction (SDT) not reported to him by AO u/s 92CA(1)**

Bombay HC lays down law, holds that TPO has no jurisdiction to determine ALP of specified domestic transaction (SDT) not reported to him by AO u/s 92CA(1); Notes that, in the present case, TPO proposed TP-adjustment of Rs.26.55cr towards payment of subscription fees for distribution services (which was reported in Form 3CEB) and TP-adjustment of Rs.57.54cr towards SDT of payment to creditors in demerger process (which was not reported in Form 3CEB, not reported by AO but came to notice of TPO during his assessment); States that since TPO had jurisdiction to examine a transaction [whether an international transaction or SDT] only upon reference made by AO u/s 92CA.

Further, stressing that reference to be made by AO is not an empty formality and legislature requires AO to obtain approval from Pr. CIT/CIT (a senior Revenue Authority) before a reference is made, HC opines that “Such requirement cannot be jettisoned by the TPO exercising sue motu jurisdiction over the transaction not reported to him...TPO exercising such powers suo motu...would be transgressing his jurisdiction and in the process would render the requirement of sub-section (1) of Section 92CA redundant”.

**[Times Global Broadcasting Company Ltd. v. Union of India & Ors. {WP No.3386 of 2018}]**

**Corporate Laws**

**Zero fees for incorporation of new companies with nominal capital of less than or equal to Rs. 15 lacs**

MCA vide Notification No. G.S.R. 180(E) dated 06th March, 2019 has amended the Companies (Incorporation) Rules, 2014 and revised the limit of Rs. 10 Lacs to Rs. 15 Lacs, with effect from 18th March, 2019.

Last year on 26.01.2018, while introducing Spice forms for incorporation of companies with the intent of ‘Ease of Doing Business’, MCA implemented the rule of Incorporation with Zero fees for the proposed companies with a nominal capital of less than or equal to Rs. 10 Lacs and in respect of proposed companies not having share capital, whose members does not exceed 20. Now, with effect from 18.03.2019, this limit of 10 lacs has been revised to Rs. 15 lacs.

**[Companies (Incorporation) Second Amendment Rules, 2019, G.S.R. 180(E) dated 06th March, 2019]**

**Company incorporation accompanied with applications of GSTIN, EPFO and ESIC registrations.**

Ministry of Corporate Affairs has notified the Companies (Incorporation) Third Amendment Rule, 2019 and inserted

rule 38A in the Companies (Incorporation) Rules, 2014. Every application of incorporation of a company through SPICE under rule 38 of Companies (Incorporation) Rules, 2014 shall be accompanied by a new e-form AGILE (INC-35) containing the application for GSTIN, EPFO and ESIC Registrations. AGILE refers to Application for Goods and services tax identification number, employee state Insurance corporation registration plus Employees provident fund organisation registration.

**[Companies (Incorporation) Third Amendment Rule, 2019 dated 29th March, 2019]**

### **MCA Notifies Companies (Ind AS) Amendment Rules, 2019**

MCA has notified the Companies Indian Accounting Standards (Ind AS) First and Second Amendment Rules, 2019, applicable w.e.f. 1 April, 2019, to amend the 'Annexure B on Indian Accounting Standards (Ind AS)' to the Companies (Ind AS) Rules, 2015 (the principal rules), by way of inserting/ substituting various paragraphs, annexures, etc. in different Ind AS.

In short, Ind AS 1, 2, 7, 12, 16, 17, 19, 21, 23, 28, 32, 37, 38, 40, 41, 101, 103, 104, 107, 109, 111, etc. have been amended. Further, new 'Ind AS 116 – Leases' has been inserted/ notified.

**[Companies (Indian Accounting Standards) Amendment Rules, 2019 dated 30th March 2019, Companies (Indian Accounting Standards) Second Amendment Rules, 2019 dated 30th March, 2019]**

## **Goods & Services Tax**

### **Decisions taken in 34th GST Council Meeting**

34th GST Council Meeting was held on 19th March 2019 in New Delhi to discuss the operational details for implementation of the recommendations made by the council in its previous GST council meeting held on 24th February 2019 to provide relief to the home buyers and boost to the real estate/ housing sector. Notifications no. 03/2019 to 08/2019 of Central Tax (rate) have been issued on 29th March, 2019 to make the following changes applicable w.e.f. 01st April, 2019:

#### **a. Option in respect of ongoing projects (not completed by 31.03.2019):**

The promoters shall be given a one-time option to continue to pay tax at the old rates (i.e. effective rate of 8% or 12% with ITC) on ongoing projects where construction & actual booking have both started before 01.04.2019 but have not been completed by 31.03.2019. The option shall be exercised once by 10.05.2019, otherwise the new rates shall apply.

#### **b. Conditions for the new tax rates:**

The new tax rates of 1% and 5% shall be available subject to following conditions:

- Input tax credit shall not be available;
- 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates. RCM under section 9(4) of CGST Act has been notified in N/N 07/2019-Central Tax (rate) for such transactions.

#### **c. Transition for ongoing projects opting for the new tax rate:**

- Transition would be on pro-rata basis based on a simple formula mentioned in N/N 03/2019 – Central Tax such that credit in proportion to booking of the flat and invoicing done for the booked flat is available.
- For a mixed project, ITC shall be allowed on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

**[Source: cbic.gov.in, Press release dated 19th March, 2019 & N/N 03/2019 to 08/2019 of Central Tax(rate)]**

### **CBIC clarifies that TCS under IT Act not to be considered for GST determination**

CBIC vide Corrigendum dated March 7, 2019 issued to Circular No. 76/50/2018-GST dated December 31, 2018, clarifies that TCS under Income tax Act is not to be considered for determining value of supply under GST. The CBIC relies upon the clarification given by CBDT that TCS is not a tax on goods but an interim levy on the possible "income" arising from the sale of goods by the buyer and to be adjusted against the final income- tax liability of the buyer

**[Corrigendum to Circular No. 76/50/2018-GST]**

### **CBIC clarifies treatment of sales promotion schemes under GST**

The CBIC vide Circular No. 92/11/2019-GST, dated 7th March, 2019, clarifies impact of GST on some of the promotional schemes, which are offered by taxable persons to increase sales volume and to attract new customers for their products, detailed hereunder:

#### **Free samples and gifts:**

Supply of goods and/or services, which are supplied free of cost (including free samples & gifts), will not be treated as "supply" under GST law. However, input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope

of “supply” on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

**‘Buy one, get one free’ offer:**

It is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It is clarified by CBIC that taxability of such schemes will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act. Further, ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

**Discounts including ‘Buy more, save more’ offers:**

In case of ‘Buy more, Save more’ offer or staggered/ volume discounts offered by the suppliers to customers where rate of discount is increased after volume of purchase is increased, discounts shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier. However, the supplier will be entitled to ITC on inputs, input services and capital goods used in relation to such supplies.

**[Circular No. 92/11/2019-GST dated March 7, 2019]**

**New GST return formats as applicable from April 01, 2019 now available on GST Portal**

The new GST return formats named “Normal”, “Sahaj”, “Sugam” have been placed on GST portal by the Goods and Services Tax Network (GSTN). Such return formats are likely to simplify the compliance process for taxpayers having turnover of up to Rs. 5 crore in the last financial year. The said new formats are available under the tab “Downloads>Proposed Return documents” on GST portal.

**Govt. notifies formation of National Bench of GST Appellate Tribunal at New Delhi**

The Central Government, on the recommendation of the GST Council, notifies the creation of the National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi, in exercise of the powers conferred by the section 109 of the CGST Act, 2017.

**[Notification No. 1/2019 dated March 13, 2019]**

**Major Changes proposed in GST E-way Billing System**

Following are some of the major forthcoming changes in E-way Billing system:

- a) Auto calculation of route distance based on PIN code for generation of e-way bill;

- b) Blocking of generation of multiple e-way bills on one invoice/document;
- c) Extension of e-way bill in case consignment is in transit; and
- d) Blocking of interstate transactions for composition dealers.

**Govt. extends due date for filing of GST ITC-04 up to June 30, 2019**

CBIC extends the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker during the period from July, 2017 to March, 2019 till the 30th day of June, 2019.

**[Notification No. 15/2019 – Central Tax dated 28th March, 2019]**

**GST Council specifies services to be taxed under RCM for real estate sector**

Following services have been made liable to reverse charge under section 9(3) of CGST Act, 2017 vide Notification no. 5/2019-Central Tax (Rate):

Sl. No.	Category of supply of services	Supplier of service	Recipient of service
5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter	Any person	Promoter
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter	Any person	Promoter

**[Notification No. 05/2019-Cenryal Tax (Rate) dated 29th March, 2019]**

**Composition scheme turnover limit enhanced to Rs. 1.5 crores w.e.f. 01-04-2019**

The Central Government, on the recommendations of the Council, specifies that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh

rupees, shall be eligible to avail composition scheme u/s 10 of the CGST Act, 2017. However, the threshold limit for the composition scheme has been enhanced to 75 lakhs for (i) Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim, (vii) Tripura, and (viii) Uttarakhand.

**[Notification No. 14/2019-Central Tax dated March 7, 2019]**

#### **Circulars issued by CBIC for clarifications on various issues**

In order to bring clarity & ensure uniformity in the implementation of the provisions of law, CBIC has issues following three circulars:

- a) 94/2019, dated March 28, 2019 for clarification regarding certain refund related issues under GST
- b) 95/2019, dated March 28, 2019 for clarification regarding verification for grant of new registration, whose another registration has been cancelled in the same state
- c) 96/2019, dated March 28, 2019 for clarification in respect of transfer of input tax credit in case of death of sole proprietor

#### **Announcement of availability of facility to file GSTR-9 & GSTR-9A**

Finance Ministry through a Press release informs that facility for filing of annual return for FY 2017-18 in FORM GSTR-9 and FORM GSTR-9A is now available on common portal. Ministry urges taxpayers to file returns at their earliest as the last date for filing Form GSTR-9 and GSTR-9A for FY 2017-18 is June 30, 2019 and also warns them to exercise caution while filing annual return, as facility to revise the FORM GSTR-9 and FORM GSTR- 9A is not available.

**[Ministry of Finance Press Release dated 07th March, 2019]**

#### **Gujarat HC issues notice to Revenue in writ challenging prohibition order w.r.t. confiscation u/s 67(2) of CGST Act**

In this case, revenue confiscated/seized goods in terms of section 67(2) of the CGST Act, 2017, wherein it is

stated that if the proper officer has reasons to believe that any goods liable to confiscation are secreted in any place, a search or seizure can be carried out, and such goods, documents or books or things can be seized. HC notes petitioner's plea that the goods are accounted for in the books of account and are not secreted anywhere and hence, the order of prohibition issued under rule 139(4) is contrary to the provisions of sub-section (2) of section 67 of the Act.

**[Golden Cotton Industries vs. Union of India]**

#### **NAA finds no profiteering on supply of "Tiles", base price remains same post GST**

National Anti-Profiteering Authority (NAA) dismisses the allegation against the taxpayer with respect to profiteering on sale of ceramic vitrified tiles. NAA holds that GST rate on product 'Ceramic Vitrified Tiles' Nano series PRE -1 was reduced from 28% to 18% w.e.f. 15.11.2017. On examination of invoices for pre and post GST reduction, NAA notes that the basic price of the product per box was Rs. 232.50, which remained same even after GST rate reduction on 15.11.2017. Therefore, NAA holds that the benefit of rate reduction was passed on and accordingly, provisions of Section 171 of CGST Act, 2017 were not contravened.

**[Kerala State Screening Committee on Anti-Profiteering vs. Velbon Vitrified Tiles Pvt. Ltd.]**

#### **Maharashtra AAR: No ITC on 'gold coins' distributed to customers under sales promotion scheme**

Maharashtra AAR holds that no ITC shall be allowed on gold coins distributed to the customers under sales promotion scheme. The said authority observes that the gold coins are voluntarily given on certain conditions achieved by customers and rejects applicant's contention that gold coins are to be given under contractual obligation with customers. AAR further notes that u/s 17(5), no ITC can be availed on goods given as 'gifts' even if supply is in furtherance of business and thus, clarifies that ITC is not available on gifts when no GST paid at the time of their disposal.

**[In the matter of Biostadt India Limited]**

## Compliance Dates

Compliance Particulars		Due Date
<b>1. Income Tax</b>		
Due date for deposit of Tax deducted by an office of the government for the month of March, 2019		7 <sup>th</sup> April, 2019
Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of February, 2019		14 <sup>th</sup> April, 2019
Due date for issue of TDS Certificate for tax deducted under Section 194-IB in the month of February, 2019		14 <sup>th</sup> April, 2019
Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of March, 2019 has been paid without the production of a challan		30 <sup>th</sup> April, 2019
Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of March, 2019		30 <sup>th</sup> April, 2019
Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in the month of March, 2019		30 <sup>th</sup> April, 2019
Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March, 2019		30 <sup>th</sup> April, 2019
Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2019		30 <sup>th</sup> April, 2019
Due date for deposit of TDS for the period January 2019 to March 2019 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H.		30 <sup>th</sup> April, 2019
<b>2. Goods &amp; Services Tax (GST)</b>		
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of March, 2019		10 <sup>th</sup> April, 2019
GSTR-8: Summary of Tax Collected at Source (TCS) and deposited by E-commerce Operator for the month of March, 2019		10 <sup>th</sup> April, 2019
GSTR-1 for Outward Supplies for the month of March 2019 (with aggregate turnover exceeding Rs. 1.50 Crores)		11 <sup>th</sup> April, 2019
GSTR-6: Return by Input Service Distributor for the month of March, 2019		13 <sup>th</sup> April, 2019
GSTR-4: Return by Composition Taxable Persons for the quarter January 2019 to March 2019		18 <sup>th</sup> April, 2019
GSTR-3B for the month of March, 2019		20 <sup>th</sup> April, 2019
GSTR-1 for Outward Supplies for the quarter January 2019 to March 2019 (with aggregate turnover not exceeding Rs. 1.50 Crores)		30 <sup>th</sup> April, 2019
Due date of TRAN-2 for certain taxpayers who could not complete filing due to technical glitches		30 <sup>th</sup> April, 2019
<b>3. Labour Laws</b>		
Deposit of ESI for the month of March, 2019		15 <sup>th</sup> April, 2019
Deposit of Provident Fund for the month of March, 2019		15 <sup>th</sup> April, 2019
<b>4. Corporate Law</b>		
Forms	Applicability & Purpose	Due Date
E-form-INC-22A (Active Company Tagging Identities and Verification)	Company incorporated on or before 31/12/2017 for filing particulars of the company and registered office with MCA	On or before 25 <sup>th</sup> April, 2019
E-form-DPT-3 (One time)	Every Company other than Government company for disclosure of details of outstanding money or loan received by company but not considered as deposits	On or before 22 <sup>nd</sup> April, 2019
E-form-DIR-3 KYC	Every director to whom DIN has been allotted for updating directors database with MCA	On or before 30 <sup>th</sup> April, 2019

## VED JAIN AND ASSOCIATES

100, Babar Road, Opp. Hotel Lalit, New Delhi – 110001

**Phone** : 23354546, 23354547 **Mail** : mail@vedjainassociates.com

**Website**: www.vedjainassociates.com