

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

December 2019

Message

The month of November threw its share of lemons to the Indian economy. The GDP growth rate for the last quarter fell to 4.5% falling below the 6% mark after a period of seven years. The core sectors also showed a decline of 6% in October. The private consumption growth also slowed down to 3.1%. Add to that the woes of the telecom sector, struggling with last month's Supreme Court order ordering them to pay up Rs. 1 lakh crores to the Government.

While it may seem that the economy may be facing a tough challenge at this time, India still shines compared to its peer globally. China had its worst quarter (Jul – Sept 2019) in 27 years. Growth in economies like Brazil, Germany, Russia and Japan was stuck at around 1%. This clearly indicates that the slowdown in India is more related to the global recession. The slowdown is cyclical and it seems that we have bottomed out. This was also felt by the stock markets with both SENSEX and NIFTY trading at all time highs through all of November.

Tax collections under GST were up 6% year on year basis. This is primarily on account of the festive season and improving compliances. However, it is still short of the 14% growth promised by the Centre to the State Governments and the Centre may have to cough up a higher percentage of Compensation to the states to maintain those figures.

The third installment of advance tax becomes due in the month of December. The numbers this time might be slightly muted due to the sharp reduction in corporate tax rates announced in September. GST Council also plans to meet this month with the agenda to increase collection, possibly through increase in rates.

With just a month left, we wish that our readers have a fabulous period riding on to new year on a high of success and growth.

With Warm Regards
Ankit Jain

Income Tax

CBDT exempts recently regularized unauthorized colonies in NCT of Delhi from the provisions of 56(2)(x) i.e. deemed income.

Section 56(2)(x) of Income Tax Act, 1961 provides for the cases where income will be taxed in the hands of recipient, if any property is acquired without consideration or for a consideration which is less than the fair market value and difference exceeds Rs. 50,000/-.

Recently, Central Government regularized certain unauthorized colonies in NCT of Delhi where residents are owning the properties through Power of Attorney, Will, Agreement to Sale, possession

letter etc., however, being in unauthorized colony ownership of such property was not registered in their names in revenue records as no transfer was being recorded. Now, pursuant to regularization of such unauthorized colonies these residents are eligible for getting their properties registered in their names through registered title deeds. However, such registration will attract provisions of section 56(2)(x) as no consideration will be paid now at the time of registration of such properties.

Now, CBDT has inserted Rule 11UAC which provides that immovable property, being land or building or both, received by a resident of unauthorized colony in NCT of Delhi will not be regarded as a transaction on which section 56(2)(x) will be applicable.

[Notification No. 96 of 2019 Dated November 11, 2019]

Amendment in Rule 30, 31 and 31A vide Income Tax (14th Amendment) Rules, 2019

Finance Minister vide Finance Budget presented in the month of July, 2019 mandated the deduction of tax at source by individuals and HUF (otherwise not liable to deduct tax at source) on payment of professional fees, commission or contractual payments if they exceed Rs. 50 Lacs in a financial year to one person.

CBDT has prescribed Form no. 26QD being challan cum TDS return for payment of tax and Form 16D being TDS Certificate to be issued to deductee in respect of tax deducted at source as per above. Payment is to be made online via filing of Form 26QD within 30 days from the end of the month in which tax is deducted and TDS certificate in Form 16D is to be issued within 15 days from the due date of furnishing the Form 26QD.

[Notification No. 98 of 2019 Dated November 18, 2019]

Direct Tax – Judgements

SC: Dismisses SLP filed by assessee against Delhi High Court denying long term capital gain (LTCG) exemption on ‘penny stock’ sale

SC dismisses SLP filed by assessee against Delhi High Court order denying LTCG exemption on sale of ‘penny stocks’. The facts of the case are that AO has not allowed LTCG exemption by treating the transaction pertaining to purchase of shares by the assessee of M/s Smartchamps IT and Infra Ltd. which was merged with M/s Cressanda Solutions Ltd. as bogus. ITAT upheld AO’s stand. HC has relied on the ITAT’s extensive discussion on the evidence and materials and held that (i) the assessee has failed to furnish evidences as to financials, growth & operations of Company regarding the sale of shares, except the copies of the contract notes, (ii) the earnings @ 491% over a period of 5 months from the date of allotment was beyond human probability and defied business logic of any business enterprise dealing with share transactions etc. and (iii) the brokers who coordinated the transactions were also unknown to the assessee. SC dismisses the SLP filed by assessee against the order of HC.

[Suman Poddar v. ITO (Civil Appeal No(s). 26864/2019) Supreme Court]

HC sets aside the lower withholding certificate issued by AO under section 197 ; Directs AO to consider Nil rate application again

Assessee [a cargo airline and a wholly owned subsidiary of Lufthansa, having place of effective management (POEM) in Germany] had applied for ‘NIL’ withholding tax certification under section 197 on the grounds that its income is not liable to tax in India in view of Article 8 of the India-Germany DTAA. AO issued certificate under section 197 fixing the rate of deduction @ 0.5%. HC observed that no reasons were given for rejecting assessee’s Nil withholding application and arriving at the withholding rate of 0.5%. HC following co-ordinate bench decision in case of Bently Nevada, directed AO to once again consider assessee’s application u/s. 197 afresh, grants interim relief.

[Lufthansa Cargo AG v. DCIT (W.P. (C) 9136/2019) - Delhi High Court]

ITAT: No addition can be made on account of unearned revenue in case of recognition of revenue as per percentage of completion method

Delhi ITAT held that no addition can be made on account of unearned revenue in case of recognition of revenue as per percentage of completion method. ITAT Observed that the unearned revenue pertains to contracts with various cellular operators for rendering of various services over a period of time and assessee has recognised revenue as per percentage of completion method which is in consonance with the well recognised Accounting Standard - 7 issued by the ICAI. ITAT observed that that the assessee has offered tax in subsequent year amount as and when services are rendered.

[Nokia Solutions and Networks India Pvt. Ltd. v. Addl. CIT (ITA No.1013/Del/2015 – ITAT Delhi)]

ITAT: Rule 11U is not applicable to foreign company for determination of fair market value.

Assessee had purchased shares of a Singaporean company @ 34/- per share as per the DCF valuation carried out by an independent valuer. However AO adopted NAV based valuation invoking Rule 11UA and arrived at Fair Market Value [FMV] of Rs. 2719/-

per share and made addition for Rs. 107 cr. for the difference between the FMV and the purchase price of the shares. ITAT held that AO had wrongly applied Rule 11UA which is applicable in case of issue of shares by unlisted company under section 56(2)(viib), the provisions of section 56(2)(viiia) of the Act cannot apply to a foreign company as the relevant Rule 11U which defines 'balance sheet' was not applicable to a foreign company." ITAT observed that the specific inclusion of a foreign company in Rule 11U was brought only w.e.f 1.4.2019 under Rule 11U(b)(ii), thus no method was prescribed earlier for valuation of shares of a foreign company prior to AY 2019-20.

[Keva Industries Ltd. v. ITO (ITA No.1703/Mum/2019 – ITAT Mumbai)]

International Taxation & Transfer Pricing

ITAT: Non-compete fees received by non-resident individual not taxable in absence of business connection or permanent establishment (PE) in India

The facts of the case are that assessee (a non-resident) who was director/promoter of SIPL, an Indian company, had sold shares in SIPL to a Singapore based company [BVCPL] and offered the same to tax, thereafter, he has entered into a separate independent non-compete and non-solicitation fees agreement with BVCPL and has received a consideration of Rs.7.5 crores for restraint of trade in order not to compete with BVCPL in India for a period of 10 years. ITAT observed that the said fees fell under the ambit of Sec. 28(va) as business income and the business income could be taxed in the hands of the assessee in India only if it is established that there is a permanent establishment in India. ITAT held that AO did not establish that assessee has PE / business connection India by rejecting the contention of AO that since assessee was holding shares in SIPL earlier, the business connection and thereby PE of the assessee stood established in India.

[ITO v. Prabhakar Raghavendra Rao (ITA No.3985/Mum/2018) – ITAT Mumbai]

ITAT: TNMM is most appropriate method for benchmarking import of automotive, not RPM method

ITAT observed that assessee was a limited risk

distributor bearing no significant market, quality or inventory risk. A normal risk taking distributor may earn high profits and incur losses whereas a limited risk distribution, like the appellant, has a limited function and risk profile because the key decisions relating to marketing strategy, pricing, inventory management etc. are taken by the principal. ITAT clarified that companies with high level of intensity of functions cannot be held as comparables for benchmarking transactions applying RPM.

[Mitsubishi Electric Automotive (I) Pvt. Ltd. v. DCIT (ITA No312/Del/2015) – ITAT Delhi]

Corporate Laws

MCA extends due date for filing e-form PAS-6

The Ministry of Corporate Affairs has received representations regarding extension of the last date of filing of Form PAS-6 under rule 9A (8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The matter has been examined and it is stated that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30/09/2019 will be sixty days from the date of deployment of this form on the website of the Ministry.

[General Circular No. 16/2019 dated 28th November, 2019]

Goods & Services Tax

Extension of due dates of filing annual return and reconciliation statement

CBIC has extended the due date of filing annual return (GSTR-9) and reconciliation statement (GSTR-9C) for the period from 1st July, 2017 to 31st March, 2018 to 31st December, 2019 and for the period from 1st April, 2018 to 31st March, 2019 to 31st March, 2020. According to the GST portal, the changes in the application software and the offline tools are likely to be made available by 10th December, 2019.

[Removal of Difficulty Order No. 08/2019 - Central Tax dated 14th November, 2019]

Amendments in CGST rules for simplification of the Annual Return/reconciliation Statement

Central Goods and Service tax Rules, 2017 have

been amended to simplify the GST annual return and reconciliation statement for FY 2017-18 & FY 2018-19. Some of the significant changes are as follows-

GSTR-9:

- Details of outward supplies can be furnished net of debit/credit notes and amendments.
- Instead of reporting exempted, nil rated & non GST supplies separately, a consolidated figure can be reported under heading “exempted” supplies.
- All ITC can be reported under “inputs” field only instead of reporting the bifurcation of inputs, input services and capital goods.
- HSN wise summary of outward and inward supplies has been made optional.

GSTR-9C:

- Certain relaxations provided for reconciliation of Gross Turnover as well as for Net Input Tax Credit.
- Reconciliation of ITC declared in Annual Return with ITC availed on expenses as per financial statement has been made optional.

[N/N 56/2019- Central Tax dated 14.11.2019]

Transition Plan with respect to J&K reorganization

CBIC has notified the jurisdiction of Jammu Commissionerate over UT of J&K and Ladakh w.e.f. 31st October, 2019. The taxpayers whose place of business lies in the erstwhile State of J&K till 30th Oct, 2019 and in Union Territory of J&K or Ladakh from 31st October, 2019 shall follow special procedure till 31st December, 2019 (transition date), summarized as below-

- Tax period for Oct month has to be taken from 1st Oct to 30th Oct, 2019 and for Nov month, from 31st Oct to 30th Nov, 2019.
- The appropriate applicable tax shall be paid in the GSTR-3B, irrespective of the particulars of tax charged in the invoices or in other like documents raised from 31st October, 2019 till 31st December, 2019.

- The ITC can be transferred from erstwhile GSTIN to new GSTIN on the basis of turnover of respective UTs after intimating the jurisdictional officer of both the UTs within one month of registration. Transfer can be carried out through return for any tax period before the transition date by debiting the ITC from transferor’s electronic credit ledger and crediting it to transferee’s electronic credit ledger.

[N/N 51/2019-Central Tax dated 31st October, 2019 & 62/2019-Central Tax dated 26th November, 2019]

Clarification issued on various aspects relating to restriction in availment of input tax credit as per Rule-36(4) of CGST Rules,2017

The CBIC has clarified that the restriction to avail ITC upto specified limit is not being imposed through portal, but it will be the responsibility of the taxpayer to avail the same on self-assessment basis. Further, the restriction is imposed only in respect of invoices/debit notes which are not uploaded by the suppliers in GSTR-1 till its due date. Hence, full ITC is available i.r.o. IGST paid on import, documents issued under RCM, credit received from ISD etc. subject to the eligibility. It is also clarified that the restriction is not supplier wise, but on consolidated basis.

[Circular No.123/42/2019 dated 11.11.2019]

Miscellaneous Clarifications

- CBIC has issued a circular clarifying the detailed procedure for filing and processing of refund applications electronically on common portal including the information and documents to be furnished online in this respect.

[Circular No.125/44/2019 dated 18.11.2019]

- CBIC has issued a circular clarifying the changes made in respect of GST rates on job work. It states that the entry specifying GST rate of 12% is applicable only on the Job work service, defined as “services by way of treatment or processing undertaken by a person on goods belonging to another registered person” and therefore, GST rate entry of 18% excludes the above services and covers only such services which are carried out on physical inputs

(goods) which are owned by persons other than those registered under the CGST Act.

[Circular No.126/45/2019 dated 22.11.2019]

Gujarat HC quashes the detention order/notice, which are contrary to statutory requirements

After observing that documents prescribed under rule 138A of CGST rules i.e. invoice and e-waybill have been produced by person in charge of the conveyance and given the fact that no discrepancies were found by proper officer (PO) during verification, Gujarat HC quashed the detention order passed by the PO under 129(1) and notices issued under section 129(3). Criticising the Revenue's approach, HC remarks that, "Merely because the petitioner subsequently amended the registration cannot be a ground to submit that reflecting such goods in the registration was mandatory, without referring to the statutory provision which mandates such requirement".

[F.S. Enterprise vs. State of Gujarat]

Gujarat High Court directs Commissioner to take strict action against officers staying at assessee's premises without 'authority of law'

Gujarat High Court directed the Commissioner to carry out proper enquiry and submit a report against officers who stayed at assessee's premises day and night without any authority of law. Court clarified that section 67(2) does not empower the concerned officer to record the statements of family members through force or coercion or to record their conversation in their mobile phones. HC observed that the records of the accounts were brought to the main room and gathered there, further despite there being three ladies in the house and the goods, articles and things being already seized, officers stayed day and night questioning the family members on day to day basis. Thus, HC holds that the activity of officers was totally without any authority of law and requires the Commissioner of State Tax as well as Chief Secretary of the State to look into the matter and do the needful to ensure that such incidents are not repeated.

[Paresh Nathal Chauhan vs. State of Gujarat]

Madhya Pradesh AAR: Promotion of research and publishing of online research journal not exempt as charitable activities

Madhya Pradesh AAR held that promotion of research and publishing of online research journal is not a charitable activity as contemplated in the exemption notification 12/2017-Central tax (rate). It noted that the said activity does not fall under "care or counselling or spreading public awareness or advancement of religion, spirituality or yoga or advancement of educational programmes or skill development". Organizing seminars/symposiums/conventions come under term "spreading of public awareness", if they are for spreading public awareness of preventive health, family planning or prevention of HIV infection. Hence, AAR held that "determinative factor in this case would be to ascertain whether the programme is open for public or not".

[In the matter of World researchers association]

Karnataka AAR holds that land development under Joint Development Agreement(JDA) constitutes a 'supply of service' and not 'sale of land'

Karnataka AAR held that the activities envisaged under the joint development agreement (JDA) between the applicant and the landowners amounts to supply of service and taxable under GST. It rejected the applicant plea that it is primarily engaged in sale of land which is not liable to be taxed in terms of entry no-5 of schedule III of CGST Act, 2017. AAR observed that applicant undertakes development of plots and also constructs roads, lays sanitary pipes and drains etc. and bifurcates the land into sites and amenities and hence core competence and activity carried out is of land development and not sale of land. The fact that entire cost of development is borne by the applicant demonstrates that applicant is engaged in the activity of providing service to landowners and landowners will compensate the applicant for the same.

[In the matter of Maarq Spaces Pvt. Ltd.]

Compliance Calendar December 2019

Compliance Particulars	Due Date
1. Income Tax	
Deposit of Tax deducted/collected for the month of November, 2019	7th December, 2019
Issue of TDS Certificate for tax deducted under section 194-IA & 194-IB in the month of October, 2019	15th December, 2019
Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2019 has been paid without the production of a challan	15th December, 2019
Third Instalment of advance tax for the assessment year 2020-21	15th December, 2019
Furnishing of challan-cum-statement in respect of tax deducted under section 194-IA and 194-IB for the month of November, 2019	30th December, 2019
2. Corporate Law	
Due date to file form BEN-2 (Declaration of SBO)	31st December, 2019
Due date to file form MGT-7 (Annual Return) for the F.Yr. ended 31.03.2019	31st December, 2019
3. Goods & Services Tax (GST)	
GSTR-8: Summary of Tax Collected at Source (TCS) and deposited by E-commerce Operator for the month of November, 2019	10th December, 2019
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of November, 2019	10th December, 2019
GSTR-1: Details for Outward Supplies for the month of November 2019 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th December, 2019
GSTR-6: Return for a taxpayer registered as Input Service Distributor(ISD) for the month of November, 2019	13th December, 2019
GSTR-3B: Summary Return for the month of November, 2019	20th December, 2019
GSTR-9: Filing of Annual Return for FY 17-18	31st December, 2019
GSTR-9C: Reconciliation Statement and GST Audit Report for FY 17-18	31st December, 2019
Filing of TRAN-1 (only in specific cases)	31st December, 2019
4. Labour Laws	
Deposit of ESI for the month of November, 2019	15th December, 2019
Deposit of Provident Fund for the month of November, 2019	15th December, 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