July 2020

Newsletter

Vishnu Daya & Co LLP
Chartered Accountants

Index:

INDIRECT TAX

THE GOODS AND SERVICE TAX

CIRCULARS AND NOTIFICATIONS

- **Revised Format / Schema for e-Invoice under GST, Exemption to SEZ & Eligibility of E-Invoice**

  The Central Government has substituted the "FORM GST INV-01" with new "FORM GST INV – 1" & made it applicable for registered persons having aggregate turnover above 500 crore rupees (with enhanced aggregate turnover) in a financial year w.e.f 1st October 2020. Further SEZ units have been excluded from the requirement of issuance of E-invoice.

  Earlier it was made applicable to the registered persons whose aggregate turnover in a financial year exceeds 100 crore rupees.

  [Notification No. 60/2020- Central Tax dated 30th July 2020] & [Notification No. 61/2020- Central Tax dated 30th July 2020]

- **Extension of due date for filing FORM GSTR-4 for financial year 2019-2020**

  The Central Government has further extended the due date of filing of GSTR-4 for the year ending 31st March 2020 till 31st August 2020.

  [Notification No. 59/2020- Central Tax dated 13th July 2020]

RECENT JUDICIAL PRONOUNCEMENTS

- **Renting of Villa is chargeable GST @ 18%**

  Facts: Applicant is engaged in the activity of giving luxurious villa on rent to its clients in Goa and Tamil Nadu and intends to initiate the said business in Maharashtra. Each villa consists of two to six rooms and is offered to clients on a per day basis for entire villa. Per day rent of an entire villa will be more than Rupees seven thousand five hundred at any given point of time, however, if one calculates the cost per room per villa, then it would be less than Rs.7500/-. Whether GST is chargeable at 18% or 12%.

  Ruling: Villa, per se is 'indivisible unit' in applicant's business parlance and the declared tariff is only for the villa as a whole. Villa is to be treated as 'per unit' as specified under Entry no. 7 of 11/2017-CTR. If per day rent of an entire villa will be more than Rs. 7,500/- at any given point of time, chargeable to GST @18%.

  Citation Isprava Hospitality Pvt Ltd, 2020-TIOL-170-AAR-GST

- **Renting of building for Non-residential purpose shall be taxable at 18% under SAC – 997212**

  Facts: Monthly rentals received by applicant on lease of her residential building. Though the applicant claims that she has rented out residential dwelling for use residence, it appears that the premise is a non-residential property. Considering the number of rooms and amenities provided in it, boarding and hospitality services extended to the inmates, it appears that the building was constructed for the purpose of running a lodge house.

Ruling: As the lessor has rented out for commercial activity, supply of such services, in the facts and circumstances of the case are classifiable as 'Rental or leasing services involving own or leased non-residential property' under SAC 997212. Same is taxable in the hands of the lessor and is liable for IGST @18%. Applicant is not entitled to claim Nil rate of tax in terms of Sl. no. 13 of notification 9/2017-ITR.

Citation Lakshmi Tulasi Quality Fuels, 2020-TIOL-188-AAR-GST

- **Activity of mounting/fabrication of bodies on chassis shall be classified under SAC 998881**

Facts: Supply towards provision of services in respect of activity of mounting/fabrication of bodies on chassis provided by the customer should be treated as supply of 'bus' or provision of services in respect of activity of mounting/fabrication is outsourced to the applicant by owner/provider of chassis.

Ruling: This shall be treated as Supply of service as ownership of the chases belongs to owner/provider of chassis. Hence the services are taxable under SAC 998881 'Motor Vehicle and trailer manufacturing services' and under Entry no. 26(ii) as 'Manufacturing services on physical inputs (goods) owned by other' - taxable @18% GST

Citation M/s V E Commercial Vehicles Ltd, 2020-TIOL-199-AAR-GST

- **Lifts installed in Building becomes an integral part of the building, hence No ITC available**

Facts: The applicant company was established with the objective of constructing a hotel at Jabalpur. The hotel is in construction stage. The applicant approached the AAR seeking to know whether the ITC on purchase of lift would be available to the hotel as it has been used in the course of furtherance of business.

Ruling: The ITC of tax paid on lifts procured and installed in the hotel building shall not be available to the applicant as the same is blocked in terms of Section 17(5)(d) of the CGST Act, becoming an integral part of the building.

Citation Jabalpur Hotels Pvt Ltd, 2020-TIOL-196-AAR-GST

- **Person has liberty to avail the benefit of Amendment of Law in Future date**

Facts: Applicant seeks recall/revoke/modification or vacating the order dated 26th June, 2020 and seeks refund of the amount deposited by the Applicant as soon as law amending Section 50(1) of CGST Act, 2017 is enacted/notified.

Ruling: Bench makes it clear that if Section 50(1) of CGST Act, 2017 is amended in future and if according to the Applicant, it is entitled to seek refund of any such amount, the Applicant would be at liberty to make an application for refund which would be decided by the Appropriate Authority in accordance with law.

Citation Jai Sai Ram Mech And Tech India Pvt Ltd Vs UoI, 2020-TIOL-1196-HC-MUM-GST

- **Interest/penalty collected for delay in payment shall be taxed as per original supply**

Facts: Applicant is engaged in conducting chit auction. In order to maintain discipline in payment and also to cover the interest cost, the applicant charges interest/penalty, by whatever name called, from the members paying the subscriptions belatedly and the interest is dependent upon

the period of delay from specified date to actual date of payment. What is the treatment for such additional amount collected?

Ruling: The additional amount being charged on delayed payment and termed as interest, late fee or penalty on the delay in paying the subscription amount cannot be bifurcated as such. Any additional payment does not have its own classification and it is taking colour from the original supply i.e. supply of financial and related services. Hence additional amount charged on delayed payment shall be taxed as per original supply i.e. supply of financial and related services; chargeable @12% GST as per Sl. no. 15 of 8/2017.

Citation Ushabala Chits Pvt Ltd, 2020-TIOL-192-AAR-GST

- **The time limit is mandatory and not directory for filing TRAN-1 as per Section 140 of CGST Act, 2017**

Facts: Validity of Rule 117 of the CGST Rules, 2017 is under challenge on the grounds that it is ultra vires Section 140 of the CGST Act and infringes Articles 14 and 300A of the Constitution - Petitioner further prays that the Respondents should be directed to permit the Petitioner to file Form GST TRAN-1 either electronically or manually to claim the transitional input tax credit.

Ruling: Section 140 of the CGST Act read with Rule 117 of the CGST Rules enables a registered person to carry forward the accumulated ITC under erstwhile tax legislations and claim the same under the CGST Act. Thus, the object and purpose of Section 140 clearly warrants the necessity to be finite - ITC has been held to be a concession and not a vested right. Hence the time limit is mandatory and not directory. Hence Petition dismissed from claiming transitional credit.

Citation PR Mani Electronics Vs UoI, 2020-TIOL-1198-HC-MAD-GST

CENTRAL EXCISE, CUSTOMS AND SERVICE TAX

CIRCULARS AND NOTIFICATIONS

- **Extension of date of re-import**

Amends Notification No. 09/2012-Customs dated 9th March 2012 to extend the last date of re-import by three months, for those cases where the last date of such re-import falls between 01.2.2020 and 31.7.2020 due to the outbreak of COVID-19 pandemic.

Notification No. 30/2020-Customs dated 10th July 2020

- **Levy of safeguard duty on import**

Seeks to continue the levy of Safeguard duty on imports of 'Solar Cells whether or not assembled in modules or panels' for a period of one year for the following HSN:

Tariff items 8541 40 11 or 8541 40 12

The levy shall not apply when such goods are imported from countries notified as developing countries vide notification No. 19/2016-Customs (N.T.), dated the 5th February 2016, except People's Republic of China, Thailand and Vietnam

Notification No. 02/2020-Customs dated 29th July 2020

RECENT JUDICIAL PRONOUNCEMENTS

Corporate insolvency resolution process

Facts: Assessee and co-noticees had filed appeals challenging the order passed by the CCE, Dibrugarh confirming the demands raised and imposing penalties. Further, the Appellants has in terms of their application filed before the BIFR and the Corporate Insolvency Resolution Process approving the Final Resolution Plan and approved by the NCLT Guwahati Bench, amount, paid as one time settlement payment of the ongoing litigations against Corporate Debtor.

Ruling: All dues of the appellant has been settled as one time settlement and paid in full and therefore the appeals have become redundant and therefore dismissed as infructuous.

KITPLY Industries Ltd Vs CCE [2020-TIOL-955-CESTAT-KOL]

Adjudication order passed rendering the appeal infructuous

Facts: Assessee filed the refund application seeking refund of excess duty of Rs.2,93,41,347/-. Same was rejected by the Adjudicating authority. On appeal, Commissioner (A) allowed the assessee's appeal. Against the said order, revenue filed the appeal before Tribunal. During the pendency of the appeal of Department before the Tribunal, the adjudicating authority has pursuant to the impugned order of Commissioner(A) held a fresh personal hearing in the matter on the grounds that the case had been taken up for disposal on instructions of the competent authority and that the Tribunal had not granted any stay in the appeal filed by the Department and hence passed an adjudication order.

Ruling: The Department has compiled with the order dated March 18, 2010 of the Commissioner(A) and has given effect thereto. As such, the present appeal of the Department has been rendered infructuous.

CCE Vs TATA Steel Ltd [2020-TIOL-1058-CESTAT-KOL]

No recovery of CENVAT Credit

Facts: Appellant treated lamination as manufacture and availed cenvat credit on bare films and paid central excise duty on laminated rolls and cleared the same along with other manufactured goods. However pursuant to SC decision that lamination does not amount to manufacture, proceedings were initiated against the appellant and SCN was issued to recover cenvat credit availed on the such bare films under Rule 14 of CCR, 2004. There was also another proposal to recover amount being a specific percentage of the value of laminated films cleared under the provisions of Sub Rule (3) of Rule 6 of CCR, 2004.

Ruling: Based on relied upon cases it was held that when cenvat credit is availed and the same is utilized for payment of central Excise duty on the goods which were not attracting excise duty, under such circumstances such cenvat credit cannot be recovered. Further, on the applicable of Rule 6(3) of CCR, 2004, since such laminated rolls were cleared on payment of duty, the same shall not apply. Impugned order set aside.

Surya Food and Agro Ltd Vs CCE [2020-TIOL-1004-CESTAT-ALL]

Cash refund not allowed if not export of goods/services

Facts: The assessee was availing the benefit of MODVAT credit under erstwhile CER, 1944. They filed a refund claim with the JC pursuant to order issued by Settlement Commission. The original authority examined the application and found that the Settlement Commission has only ordered MODVAT credit to be given and not cash refund. In terms of Rule 5 of CCR, 2004, refund of credit can only be allowed in case input or input services are used in export of goods or services and for any reason, such credit cannot be used towards domestic clearance of goods.

Ruling: There is no provision in CENVAT Credit Rules for refund of cenvat credit if the assessee is not able to utilise it for any other purpose, such as the factory being closed. Further, ratio of judgment of Larger Bench of High Court binding and prevails and accordingly no refund of MODVAT/Cenvat credit can be sanctioned to the assessee. Further, reliance placed upon Supreme Court judgment wherein it was held that fiscal laws must be interpreted as they are, without any intendment, regardless of the consequences.

CCE, C & ST Vs Rani Plastic Pipe Industries [2020-TIOL-994-CESTAT-HYD]

Penalty u/s 76 set aside

Facts: Appellant had not paid the service tax due to severe financial constraints faced by the appellant. There were several pending payments from the appellant's clients because of which the appellant was unable to meet its day-to-day financial needs and also huge amount of refund was pending from the Income tax department. Appellant prays it was not a case of wilful non-payment or short payment.

Ruling: Appellants had no intention to evade tax and it was only a case of mere delay in paying tax on account of delay in receiving payments from clients. Penalty u/s 76 is therefore unwarranted and therefore set aside.

RS Development and Constructions India Pvt Ltd Vs CGST & CE [2020-TIOL-1024-CESTAT-MAD]

Statement based on earlier SCN, set aside

Facts: Appellant was a dealer in electronic goods manufactured by various companies like – APPLE, ACER and they received incentives in lieu of the sales which were accounted in books as “Incentives, Commission and discounts”. Revenue opined such amounts as consideration for Business Auxiliary Services and hence a statement was issued giving reference to the SCN issued for the earlier period

Ruling: Incidentally in the matter of the earlier SCN, the Commissioner (A) for the same matter had held that Incentives, Commissions & Discounts received by the appellant were based on volume of sale effected by the appellant and therefore, the said consideration was in respect of sale and purchase transaction and therefore, there was no ground to charge Service Tax. Since the present statement was based on the said SCN which was found to be unsustainable by Commissioner (Appeals) in said Order-in-Appeal, the present OIA does not have any merits and is therefore set aside.

MKG Computers Pvt Ltd Vs CGST, C & CE [2020-TIOL-1047-CESTAT-ALL]

Deputation of manpower not liable for Service Tax

Facts: Issue is discharge of service tax liability in respect of man-power supply by appellant to group companies, in particular, deputation of their senior officers to group companies.

Ruling: No tax liability arises as held by the Tribunal in the cited cases. Revenue Department's appeal against Tribunal order in Krohne Marshall Pvt. Ltd. 2015-TIOL-2860-CESTAT-MUM has also been dismissed by the Supreme Court. Impugned order is, therefore, set aside.

Rajayapalayam Mills Ltd Vs CCE [2020-TIOL-1035-CESTAT-MAD]

- **No time limit for amendment of shipping bills**

Facts: Appellants request seeking conversion of 13 Advance Authorisation Shipping Bills to Drawback shipping Bills was rejected by the Commissioner on the ground that they have not submitted the request for conversion within three months from the date of Let Export Order. Hence, this appeal before CESTAT.

Ruling: Provisions of Section 149 of the Customs Act, 1962 do not prescribe time limit for amendment of shipping bills. Board Circular cannot go beyond mandate of law CESTAT**.**

Prudential Rubber Pvt Ltd Vs PR CC [2020-TIOL-1056-CESTAT-BANG]

- **Import of prohibited goods to be re-exported**

Facts: Appellant imported used ventilators and filed Bill of Entry for home consumption. The customs officers took the help of Chartered Engineer to examination the goods and certify the goods. On perusal of said Schedule VI of the Hazardous and Other Wastes (Management, Handling and Transboundary Movement) Rules 2016, Bench notes that at Basel No. B1110 used critical care medical equipment for reuse are included. Import of the same is not permitted and the same were not eligible to be cleared for home consumption. Therefore, through OIO goods were confiscated and allowed to redeem the same on payment of redemption fine and ordered to re-export the same and redeem the same and penalty also imposed.

Ruling: Under the provisions of Section 125 of Customs Act, 1962 the option to redeem the same is provided. However, the said option cannot be compelled. If the appellant does not redeem the goods, then they shall remain in India and cannot be re-exported. We therefore modify the impugned order and set aside confiscation of goods so as to facilitate re-export of impugned goods. Once the confiscation is set aside, the question of imposition of redemption fine and penalty does not arise and therefore they are also set aside. Direction provided to the appellant to re-export the goods in above terms.

Skylark Office Machines Vs CC [2020-TIOL-1025-CESTAT-MAD]

DIRECT TAX

RECENT JUDICIAL PRONOUNCEMENTS

- **Bangalore ITAT: CSR donations eligible for Sec. 80G deduction subject to specific exclusions**

Bangalore ITAT rules on allowability of CSR expenditure u/s 80G in case of assessee-company for AY 2015-16.

Notes that assessee's deduction claim u/s.80G was denied by the AO on the ground that the amount being expended as part of CSR policy was ineligible for deduction u/s.80G.

Perusing Sec.80G, ITAT observes that Clauses (iiihk) & (iiihl) of Section 80G(2) specifically excluded contribution to Swachh Bharat Kosh and Clean Ganga Fund, opines that "Where these two exceptions are provided in Section 80G of the Act, it can be inferred that the other contributions made u/s. 135(5) of the Companies Act are also eligible for deduction u/s. 80G of Income Tax Act subject to assessee satisfying the requisite conditions prescribed for deduction u/s.80G of the Act."

States that the AO in the present case has prima facie, considered the contributions as not voluntary but a legal obligation and has accepted the genuineness of the contributions but has not dealt on aforesaid aspects, remits the matter back to AO for examination and verification of facts subject to the assessee satisfying the requirements of claim u/s.80G.

Click here to read the Judgement.

- **Supreme Court upholds Sec. 40(a)(ia) disallowance on amounts 'paid', follows Palam Gas ruling**

SC upholds Rajasthan HC order, dismisses assessee-transporter's appeal with costs for AY 2005-06.

Rules that "Section 194C were indeed applicable and the assessee-appellant was under obligation to deduct the tax at source in relation to the payments made by it for hiring the vehicles for the purpose of its business of transportation of goods"

Further rules that "disallowance u/s. 40(a)(ia) of the Act is not limited only to the amount outstanding and this provision equally applies in relation to the expenses that had already been incurred and paid by the assessee"

Also, Rules that 2014 amendment to Sec. 40(a)(ia) not retrospective, remarks that "that the benefit of amendment made in the year 2014 to the provision in question is not available to the appellant in the present case". Section 40(a)(ia) amended vide the Finance Act, 2014 w.e.f. 01.04.2015 provides for restricting a disallowance made u/s 40(a)(ia) to 30%.

Click here to read the Judgement

- **High Court upholds Rule 8D invocation for assessee's failure to make 'indirect expenses' disallowance u/s. 14A**

Madras HC reverses ITAT order & rules in favour of Revenue, upholds invocation of Rule 8D(2)(iii) for indirect expenses in respect to exempt 'dividend' income arising to assessee co. from strategic investments during AY 2011-12, holds that "it cannot be stated to be the case where there is a failure to follow the procedure u/s. 14A(2).." of recording mandatory satisfaction by AO.

HC notes that the AO had pointed out that while computing Sec. 14A disallowance, assessee had "ignored sub rule iii of the said rule".

Further, HC observes that "It appears that this was pointed out to the assessee. However, the assessee did not address the issue of computation of the third limb of Rule 8D", while filing its response to AO.

HC rules that "The finding recorded by the AO is sufficient and a clear indication of his compliance of the procedure u/s. 14A(2), the AO at the first instance has considered whether the claim of the assessee is correct and thereafter only has proceeded to determine the amount by adopting the procedure under Rule 8D".

Lastly, HC holds that the ITAT committed an error in not only allowing the appeal of the assessee, but also directed the AO to accept the figure mentioned by the assessee. Relies on Bombay HC decision in Godrej & Boyce Manufacturing Co. Ltd., remits matter back to AO to compute Sec. 14A disallowance in accordance with law.

Click here to read the Judgement.

- **Delhi ITAT allows set-off of loss from hotel unit, LLCs in USA against salary earned in India**

Delhi ITAT rules in favour of assessee-individual, holds that loss from hotel unit in USA and share of loss from investment in Limited Liability Company (LLCs) is to be assessed under the head 'Income from other sources' (IFOS) and not as business loss for AY 2016-17.

Assessee had made investment in one hotel unit and certain LLCs in the US while he was a non-resident and was employed with a US company, however, during subject AY, assessee had claimed set off of the loss arising from such from such hotel unit and LLCs against his salary income as a Whole Time Director earned in India, which was rejected by the AO.

Notes that the assessee had entered into hotel maintenance and operation agreement in respect of the Hotel Unit, observes that revenue is being generated for each Hotel Unit without the active participation of the unit owners.

Noting that the control and decision making powers was not with the assessee, ITAT opines that "it is evident from the conduct of the assessee that the assessee was not intending to run a unit in Trump Hotel International himself, at no point of time has the assessee ever been engaged in running the Hotel Unit on his own.", thus holds that "for all practical purposes the unit under consideration cannot be considered to be a business undertaking of the assessee."

As regards loss from LLC's, opines that "by virtue of being the whole-time employee Director in an oil exploration company, could not have made the capital outlay in the two limited liabilities company for the purpose of business".

The Assessing Officer has at no point of time established that the intention of the assessee was to earn out of business. The Assessing Officer also has chosen to ignore the fact that in the preceding assessment years, the investment of this nature have consistently not been treated as business. Therefore, even on the ground of consistency, the impugned loss should have been treated as loss under other sources.

Click here to read the Judgement

- **Delhi ITAT directs AO to consider assessee's FTC claim on Sec. 10A income following Wipro ruling, Karnataka HC**

Delhi ITAT rules in favour of assessee co., directs AO to consider assessee's claim of foreign tax credit [FTC] for AY 2006-07 as per the directions of the Karnataka HC in Wipro's case.

During AY 2006-07, assessee had paid taxes in USA w.r.t income arising from its PE in USA and the said income was included in the total income of the assessee in India and Sec.10A deduction was claimed thereon, however, assessee did not claim credit of foreign taxes in the return of income.

At the outset, ITAT admits assessee's additional ground raised for the first time before the Tribunal [pursuant to the law being clarified by Karnataka HC] on allowing FTC in respect of income on which no tax was paid in India on account of deduction claimed u/s. 10A.

On merits, ITAT observes that "the facts of the case in hand are in parity with the facts considered by the Hon'ble Karnataka HC". Thus, ITAT directs assessee to furnish necessary evidences before the AO, who shall consider assessee's claim in view of Wipro ruling.

Note:
Karnataka HC had allowed foreign tax credit to Wipro Ltd. [TS-565-HC-2015(KAR)] on a portion of its Sec. 10A tax holiday income. Interpreting Sec.90 as well as Article 25 of the India-USA DTAA, HC had clarified that "it is not the requirement of law that the assessee, before he claims credit under the Indo - US convention or under this provision of Act should pay tax in India on such income." Click here to read the Ruling held in Wipro Ltd.

Click here to read the Judgement of Delhi ITAT.

- **Software license payment for database access, not royalty under India-Singapore DTAA**

Mumbai ITAT holds that software license payment made by assessee (an Indian Co. providing support services) to a Singaporean entity, doesn't constitute royalty under India-Singapore DTAA, rules that TDS u/s 195 was not applicable.

Although assessee had deducted TDS @10%, while making the remittance, the assessee preferred an appeal u/s. 248 against the TDS liability, claiming that no tax is deductible from licence fee paid for software.

Rejects CIT(A)'s view that the payment was royalty since access to "significant proprietary database" was being allowed to the assessee by the software.

ITAT cites Ahmedabad ITAT decision in case of Cadila Healthcare Ltd. wherein access to database, "in the context of materially similar DTAA provision, has been held to be outside the ambit of "royalty".

ITAT remarks that "When database access by itself does not result in taxation as royalty, such database access being coupled with software licence cannot bring the software consideration within the scope of royalty.". Relies on co-ordinate bench decision in case of TII Team Telecom International Ltd.

Click here to read the Judgement.

- **Supreme Court decision: Samsung's Mumbai Project Office, not 'fixed place' PE sans 'core business' conduct.**

SC holds Project Office (PO) established by Samsung Heavy Industries (a Korean company) for executing the ONGC Contract does not constitute a 'fixed place' Permanent Establishment (PE) in India as per Article 5(1) of India-Korea DTAA absent 'core business' of the assessee being carried out through the said PO, dismisses Revenue's appeal.

Refers to a host of precedents rendered by the coordinate benches and elucidates that the condition precedent for applicability of Article 5(1) of the DTAA and the ascertainment of a PE is that it should be an establishment "through which the business of an enterprise" is wholly or partly carried on and the profits of the foreign enterprise are taxable only where the said enterprise carries on its 'core business' through the PE.

Holds ITAT's finding that the PO was not a mere liaison office, but was involved in the core activity of execution of the project as perverse, refers to the Board Resolution accompanying application to RBI for opening of the PO and observes that the PO was established to coordinate and execute "delivery documents in connection with construction of offshore platform modification of existing facilities for ONGC".

Also notes that only two persons were working in the PO, neither of whom was qualified to perform any core activity of the Assessee, also considers that no expenditure relating to the execution of the contract was incurred.

Accepts assessee's submission that the Mumbai PO would fall within clause (e) of Article 5(4) (listing down exceptions to PE constitution) of the DTAA, in as much as PO was solely an auxiliary office, meant to act as a liaison office between the assessee and ONGC.

Click here to read the judgement.

- **Web-hosting charges, not FIS under Indo-US DTAA**

Ahmedabad ITAT rules that payment of web hosting fees by assessee-company (engaged in business of web designing , web advertising) to a US co. doesn't constitute Fees for Included Services [FIS] under Article 12 of India-USA DTAA, deletes disallowance u/s 40(a)(i) for AY 2013-14.

Observes that the assessee had obtained the services of web promotion, social media management from the US co. and they had used many techniques such as web content development, search engine optimization to increase the site traffic, notes that the entire transaction took place on internet through virtual servers which were "located worldwide outside not under the control of payer and it was used for hiring of space for domain hosting and display of advertisement on the server located worldwide."

Accepts assessee's contention that there was no sharing of knowledge or know-how or any technology to the assessee during the provision of Web Hosting Services as prescribed under Article 12(4) of the DTAA, holds that TDS u/s.195 was not applicable.

Click here to read the judgement.

- **Consideration towards database access, not 'royalty' under India-Swiss DTAA**

Mumbai ITAT holds that consideration received by assessee [a Swiss co.] during AY 2013-14 for granting access to database (on information collected & processed by the assessee particularly in the field of medicine and pharmaceuticals), not royalty under Article 12(3) of Indo-Swiss DTAA.

Relies on AAR ruling in case of Dun and Bradstreet Information Services India Pvt Ltd. (D & B) rendered in context of India-Spain DTAA wherein under similar facts, it was held that such consideration was towards supply of publicly available information, which could not be treated as royalty or fee for technical services.

Also notes that the jurisdictional HC had approved the ratio of the AAR, opines that "Article 12(3) of Indo Swiss DTAA, that we are currently dealing with, is verbatim the same as Article 13(3) of India Spain DTAA that Hon'ble Authority of Advance Ruling was dealing with.", holds that the conclusions arrived at by the AAR, which was now approved by the HC also, are equally applicable in the context of Indo Swiss DTAA as well.

States that "Once our Hon'ble jurisdictional High Court has expressed a view, it cannot be open for us to be swayed by a contrary view expressed by any other Hon'ble High Court", especially when no contrary decision was brought to the notice of ITAT.

Click here to read the judgement.

- **ITAT: No Fees for Technical Services taxation, Permanent Establishment (PE) constitution on Yum Restaurant's VP deputation to India; Distinguishes Centrica ruling**

Delhi ITAT dismisses Revenue's appeal, rejects FTS taxability under India-Singapore DTAA with respect to salary reimbursements received by assessee-company (Yum Restaurants Asia Pte. Ltd.) from its Indian counterpart [YRIPL] w.r.t. deputation of Vice President [VP] during AY 2008-09, also rejects PE constitution plea.

AO had held that "technical services" were being provided to Indian co. by the VP on behalf of the assessee company, hence the salary reimbursements constituted FTS, further, AO had alleged existence of service Permanent Establishment / Dependent Agent Permanent Establishment (DAPE) and had sought for attribution of business income to the PE on account of marketing activities undertaken by Indian affiliate.

ITAT observes that Article 5(8) conditions for constitution of DAPE were not met. Also distinguishes Delhi HC ruling in Centrica India Offshore Pvt. Ltd. on facts, states that in that case Centrica UK was providing services to Indian company through seconded employees, however it was not so in the present case.

Click here to read the Judgement.

CIRCULARS AND NOTIFICATIONS

- **IT Dept. modifies challan ITNS 285 to enable payment of new Equalisation Levy by E-commerce operators**

IT Department modifies challan ITNS 285 [relating to payment of Equalisation Levy] to enable payment of first instalment of Equalisation Levy 2.0 by E-commerce operators.

Amended challan now adds "E-commerce operator for e-commerce supply or services" under 'Type of Deductor'. Also, amended challan seeks mandatory PAN of deductor.

Click here to access the amended challan.

- **'PAN' - sufficient input under new functionality for ascertaining TDS rate on cash withdrawals u/s. 194N**

CBDT issues press release providing an update around the new functionality enabled by IT Dept. earlier this month for banks & post offices for ascertaining TDS applicability rates u/s. 194N on cash withdrawals.

Apprises that "so far, more than 53,000 verification requests have been executed successfully on this facility."

States that "This functionality has been available as "Verification of applicability u/s 194N" on www.incometaxindiaefiling.gov.in since 1st July, 2020 and has also been made available to the Banks through web-services, so that the entire process can be automated and be linked to the Bank's internal core banking solution."

Clarifies that "now the Bank/Post Office has to only enter the PAN of the person who is withdrawing cash for ascertaining the applicable rate of TDS."

Click here to read and download CBDT press release

- **New Form 26AS - the Faceless hand-holding of taxpayers, facilitates voluntary compliance, ease of e-filing returns**

CBDT issues press release throwing light on the changes made in new Form 26AS notified in May, 2020, states that "The new Form 26AS is the faceless hand-holding of the taxpayers to e-file their income tax returns quickly and correctly.".

Explains that various information such as cash deposit/withdrawal from saving bank accounts, sale/purchase of immovable property, time deposits, credit card payments, purchase of shares, debentures, foreign currency, mutual funds, buy back of shares, cash payment for goods and services, etc., which was received by the Dept. w.r.t individuals having high-value financial transactions since the Financial Year 2016 onwards, would now form part of the new form 26AS.

Remarks that "the information being received by the IT Department from the filers of these Specified Financial Transactions is now being shown in Part E of Form 26AS to facilitate voluntary compliance, tax accountability and ease of e-filing of returns".

Also, states that Form 26AS for any taxpayer, will display in part E of the Form, different fields such as, type of transaction, name of SFT filer, date of transaction, single/joint party transaction, number of parties, amount, mode of payment and remarks etc. and "would help the honest taxpayers with updated financial transactions while filing their returns, whereas it will desist those taxpayers who inadvertently conceal financial transactions in their returns."

Click here to read and download the CBDT Press Release issued in this regard.

- **CBDT amends TDS rules / forms to give effect to newly inserted/ amended withholding provisions vide Finance Act, 2020**

CBDT amends Rule 31A of the Income Rules, prescribes TDS rules with respect to newly inserted Sections 194-O [TDS on e-commerce operators] & Sections 194LBA/194K [TDS on dividends distributed by mutual funds, business trusts] and to give effect to the amendments to Sec. 194N [TDS on cash withdrawals], Sec. 194J [TDS on professional fees], Sec. 194A [TDS on interest] & Sec. 197, vide Finance Act, 2020.

Also, notifies amended TDS statement under Form 26Q.

Click here to read and download the CBDT Notification 43 of 2020.

- **CBDT amends Rule 31AA consequent to newly introduced TCS on Sale of Goods, LRS remittances**

CBDT amends Rule 31AA [relating to Statement of collection of tax], notifies TCS rules for newly introduced TCS on sale of goods u/s. 206C(1H) and TCS on transactions covered under the Liberalised Remittance Scheme ('LRS') and overseas tour program package u/s. 206(1G) vide Finance Act, 2020.

Also notifies consequential amendments in TCS return Form 27EQ. The amended Rule shall come into force with effect from the 1st October 2020.

Click here to read and download the CBDT Notification No. 54/2020.

- **CBDT amends Forms for purposes of Sec.115UB granting 'pass-through' status to investment funds**

CBDT amends Rule 12CB with respect to statement to be filed under section 115UB(7), notifies amended Form 64C and 64D.

As per the amended rules, the statement in form 64D, consisting of details of income paid/ credited by investment fund, shall be furnished electronically (generated & downloaded from the web portal) to the Pr.CIT or CIT, within whose jurisdiction the Principal office of the investment fund is situated "by 15th day of June of the financial year following the previous year during which the income is paid or credited,"

Amended Form 64C requires additional information w.r.t details of deemed loss as on 31st March, 2019 in terms of newly inserted sub-section (2A) of section 115UB, also requires bifurcation of LTCG/STCG income as per the chargeable rates u/s 112A/111A as the case may be.

The above amendment is in consequent to Sec.115UB(2A) inserted vide Finance Act(No.2) 2019, which provides that the loss other than the loss under the head "Profits and gains of business or profession", if any, accumulated at the level of investment fund as on the 31st day of March, 2019, shall be,

"(i) deemed to be the loss of a unit holder who held the unit on the 31st day of March, 2019 in respect of the investments made by him in the investment fund, in the same manner as provided in sub-section (1) and

(ii) allowed to be carried forward by such unit holder for the remaining period calculated from the year in which the loss had occurred for the first time taking that year as the first year and shall be set off by him in accordance with the provisions of Chapter VI."

Click here to read and download the CBDT Notification 55 of 2020.

- **CBDT extends belated /revised return filing due date for AY 2019-20 till September 30th, 2020**

CBDT further extends belated /revised return filing due-date for AY 2019-20 till September 30th'.

For senior citizens not required to pay advance tax u/s. 207 for AY 2020-21, CBDT now provides that any self-assessment tax paid by pre extended due date (31 July 2020 in most cases) shall be treated as advance tax.

Click here to read and download the CBDT Notification 56 of 2020.

- **CBDT offers one-time relaxation for verification of last 5 yrs 'e-filed' returns, permits ITR-V submission by Sept 30th**

CBDT provides one-time relaxation for verification of e-filed tax returns for AYs 2015-16 to 2019-20, which are pending due to non-filing of the ITR-V form.

Acknowledges that a large number of electronically filed ITRs still remain pending with the IT Department for want of receipt of a valid ITR-V Form at CPC, Bengaluru from the taxpayers concerned, also takes note of legal consequences of such returns being declared as 'Invalid'.

Therefore, CBDT now permits verification of such returns either by sending a physical copy of the ITR-V to CPC, Bengaluru or through EVC/OTP modes, latest by 30th Sept 2020.

However, clarifies that "this relaxation shall not apply in those cases, where during the intervening period, Income-tax Department has already taken recourse to any other measure as specified in the Act for ensuring filing of tax return by the taxpayer concerned after declaring the return as Invalid.

Click here to read and download CBDT circular no. 13/2020.

CORPORATE & OTHER LAWS

MCA: Further extends last date for filing Form NFRA-2

MCA further extends time limit for filing Form NFRA-2 (Annual Return to be filed by Auditors) for the reporting period FY 2018-19, till 270 days (earlier, 210 days) from the date of deployment of the form on NFRA's website.

States that this extension is in continuation of MCA's Circular dated April 30, 2020
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.26_06072020.pdf

Cabinet approves proposal to extend EPF support for 3 more months

- The Union Cabinet approves the proposal to extend the 24% (12% employees share and 12% employers share) EPF contribution for another 3 months from June to August, 2020 under Pradhan Mantri Garib Kalyan Yojana (PMGKY) / Aatmanirbhar Bharat in light of COVID-19 pandemic;
- Apprises that the total estimated expenditure under the said scheme is of Rs. 4,860 Cr. and over 72 lakh employees in 3.67 lakh establishments will benefit from the same;
- Inter alia specifies for the wage months of June, July and August, 2020, the scheme will cover all establishments having upto 100 employees and 90% of such employees earning less than Rs. 15,000 monthly wage.

https://www.pib.nic.in/PressReleasePage.aspx?PRID=1637219

ICAI issues Technical Guide on easy Incorporation of Companies SPICE+

ICAI through its Corporate Laws & Corporate Governance Committee (CL&CGC) has released this **"Technical Guide on Incorporation of Companies through SPICE+"** to provide detailed guidance on the procedural aspects of this integrated form for the benefit of all the members and other stakeholders. This Technical Guide has been designed and developed in an easy to understand language and is quite comprehensive which elaborates detailed process to incorporate a company through SPICE+

https://resource.cdn.icai.org/60342clcgc49153.pdf

Provisions of Sec. 164(2)(a) cannot be allowed to take a retrospective effect under the Cos. Act, 2013

When disqualification clause was not attracted to directors of private companies under old 1956 Act, same cannot be allowed to take a retrospective effect under 2013 Act, when provision of section 164(2)(a) came into force only from 1-4-2014.

In re: Daisy Antony Vs. Registrar of Companies [[2020] 117 taxmann.com 963 (Madras)]

- **Petitioner to approach RoC for activation of DIN and DSC for filing of STK-2 to enable strike off of name of Co.**

  Where petitioners did not intend to continue company, to file returns and make statutory uploadings of form STK-2 so as to enable a 'strike off' name of company, petitioners should approach ROC for activation of DIN and DSC and ROC should pass appropriate orders.

  In re: Tony Joseph Vs. Union of India [2020] 117 taxmann.com 948 (Kerala)

- **Form PAS-6 is made available for filing in MCA portal as eForm w.e.f 15th July 2020 for filing the Reconciliation of Share Capital Audit Report on half yearly basis by unlisted public Companies.**

- **Updated Contact Number of MCA Helpdesk from 17/07/2020 onwards**

  For Any Query Related to Company Name Availability and Company Incorporation, Please Contact
  CRC Helpdesk: **0120-4832500** (Option 1)
  Email: CRC.Escalation@Mca.Gov.In

  For Any Query Related to Company or LLP E-Filings, Payments Or View Public Document (VPD), Please Contact
  Corporate Seva Kendra: **0120-4832500** (Option 2)
  Email: Appl.Helpdesk@Mca.Gov.In

- **Credit flow to Micro, Small and Medium Enterprises Sector**

  The Government of India (GoI), vide Gazette Notification S.O. 2119 (E) dated June 26, 2020, has notified new criteria for classifying the enterprises as Micro, Small and Medium enterprises. The new criteria will come into effect from July 1, 2020. The details are as under:

  A. Classification of enterprises:
  An enterprise shall be classified as a Micro, Small or Medium enterprise on the basis of the following criteria, namely:
  - a micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
  - a small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
  - a medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees

  B. Composite criteria of investment and turnover for classification:

  A composite criterion of investment and turnover shall apply for classification of an enterprise as micro, small or medium.

  If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next higher category but no enterprise shall be placed in the lower category unless it goes below the

ceiling limits specified for its present category in both the criteria of investment as well as turnover.

All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as micro, small or medium enterprise.

C. Calculation of investment in plant and machinery or equipment:
The calculation of investment in plant and machinery or equipment will be linked to the Income Tax Return (ITR) of the previous years filed under the Income Tax Act, 1961.

In case of a new enterprise, where no prior ITR is available, the investment will be based on self-declaration of the promoter of the enterprise and such relaxation shall end after the 31st March of the financial year in which it files its first ITR.

The expression ''plant and machinery or equipment'' of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 framed under the Income Tax Act, 1961 and shall include all tangible assets (other than land and building, furniture and fittings).

The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR.

The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery.

D. Calculation of turnover:
Exports of goods or services or both, shall be excluded while calculating the turnover of any enterprise whether micro, small or medium, for the purposes of classification.

Information as regards turnover and exports turnover for an enterprise shall be linked to the Income Tax Act or the Central Goods and Services Act (CGST Act) and the GSTIN.

The turnover related figures of such enterprise which do not have PAN will be considered on self-declaration basis for a period up to 31st March, 2021 and thereafter, PAN and GSTIN shall be mandatory.

In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise will maintain its prevailing status till expiry of one year from the close of the year of registration. In case of reverse-graduation of an enterprise, whether as a result of re-classification or due to actual changes in investment in plant and machinery or equipment or turnover or both, and whether the enterprise is registered under the Act or not, the enterprise will continue in its present category till the closure of the financial year and it will be given the benefit of the changed status only with effect from 1st April of the financial year following the year in which such change took place. Other aspects relating to registration of enterprises, grievance redressal, etc. are mentioned in the Gazette Notification S.O. 2119 (E) dated June 26, 2020.

Click here to read and download the RBI Notification dated 2nd July 2020.

- **Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2020**

  These Regulations may be called the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2020.

  Amendment to Mode of Payment and Remittance of sale proceeds:

(Investments by Foreign Portfolio Investors)	**A. Mode of payment** (1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. (2) Unless otherwise specified in these regulations or the relevant Schedules, the foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule. **B. Remittance of sale proceeds** The sale proceeds (net of taxes) of equity instruments and units of REITs, InViTs and domestic mutual fund may be remitted outside India or credited to the foreign currency account or a SNRR account of the FPI.
(Investment by a person resident outside India in an Investment Vehicle)	**A. Mode of payment:** The amount of consideration shall be paid as inward remittance from abroad through banking channels or by way of swap of shares of a Special Purpose Vehicle or out of funds held in NRE or FCNR(B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. Further, for an FPI or FVCI, amount of consideration may be paid out of their SNRR account for trading in units of Investment Vehicle listed or to be listed (primary issuance) on the stock exchanges in India. **B. Remittance of sale/ maturity proceeds**: The sale/ maturity proceeds (net of taxes) of the units may be remitted outside India or may be credited to the NRE or FCNR(B) or SNRR account, as applicable of the person concerned.

Click here to download the Notification

DUE DATES

Compliance due dates during the month of August 2020:

Compliance Requirement	Due Date
GST	
GSTR3B for July 2020 *Note: Only for those registered persons whose aggregate turnover in the preceding financial year is above Rs. 5 Crore.*	20th August
GSTR1 of June 2020	5th August 2020
GSTR1 of July 2020	11th August 2020
GSTR1 Quarterly return for the period April 2020 to June 2020	3rd August 2020
ISD Return for July 2020	13th August 2020
GSTR3B for July 2020 *Note: Only for those registered persons whose aggregate turnover in the preceding financial year is above Rs. 5 Crore.*	20th August
GSTR1 of June 2020	5th August 2020
GSTR1 of July 2020	11th August 2020
GSTR4 for the year 2019-20	31st August 2020
SEZ	
MPR for July 2020	5th August
SERF Return for July 2020	10th August
Gist of Contract Return for July 2020	30th August
Softex Return for July 2020	30th August
Service Procurement reporting form for July 2020	30th August
NON-STPI/STPI Units	
MPR for July 2020	30th August
Softex return for July 2020	30th August
Provident Fund	
Payment and Filing of PF – ECR for July 2020	15th August
ESI	
ESI Contribution for July 2020	15th August 2020
Professional Tax	
PT Return for July 2020	20th August 2020

CONTACT US

About Us

Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit, our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide "One Stop Solutions" to all our clients.

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