Monthly Updates

May, 2018

CONTENT

DIRECT TAXES

Press Release and notifications

Draft notification prescribing the manner of determination of fair market value of the inventory in case of conversion of inventory into capital asset

- The Finance Act, 2018 inserted clause (via) to section 28 of the Income-tax Act, 1961 ('the Act') so as to pro vide that any profit and gains from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income

- The fair market value of inventory on the date of conversion or treatment (determined in prescribed manner) shall be deemed to be the full value of consideration. In view of the above, the CBDT has proposed to insert a new rule 11UAB in the Income-tax Rules, 1962 for prescribing the manner of determination of fair market value of the inventory which has been converted into, or treated as, capital asset

- Draft Rule 11UAB (effective from AY 2019-20 onwards) is as follows:-

Nature of Property	Determination of FMV	Date
Immovable Property (land or building or both)	Value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of such immovable property	Date on which the inventory is converted into, or treated, as a capital asset

Nature of Property	FMV	Date
Jewellery, Archaeological collections,Drawings, Paintings, Sculptures, Any work of art, Shares or Securities referred to in rule 11UA	Value determined in the manner provided in sub-rule (1) of rule 11UA	Date on which the inventory is converted into, or treated, as a capital asset
Any other property other than mentioned above	Price that such property would ordinarily fetch on sale in the open market	Date on which the inventory is converted into, or treated, as a capital asset

Suggestions were requested for from stakeholders upto 14.05.2018

CBDT notifies the Protocol amending the Double Taxation Avoidance Agreement (DTAA) between India and Kuwait

- The Protocol updates the provisions in the DTAA for exchange of information as per international standards. Further, the Protocol enables sharing of the information received from Kuwait for tax purposes with other law enforcement agencies with authorisation of the competent authority of Kuwait and vice versa.
  (The said Protocol has been entered into force on 26.03.2018 and is notified in Official Gazette on 04.05.2018.)

Notification No. 24 dated 24th May 2018

CBDT has notified that the provisions of Section 56(2)(viib) shall not apply to any consideration received by a company for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification

This notification shall be deemed to have come into force retrospectively from April 11, 2018

Notification No. 23 dated 24th May 2018

CBDT has amended Rule 11U and Rule 11UA(2)(b) and omitted the word “Accountant”.

Accordingly, the fair market value of unquoted equity shares as per the Discounted Free Cash Flow method as required under Section 56(2)(viib) of the Act shall be determined only by a merchant banker

Return Filing

All ITRs for AY 2018-19 are now available for e-Filing

Income Tax

Case laws

The Commissioner of Income Tax vs Mahindra and Mahindra Ltd. (Supreme Court)

Facts

- The assesses entered into an Agreement with Kaiser Jeep Corporation (KJC), America on 18.06.1964, wherein KJC agreed to sell dies, welding equipments and die models to the assesses for $6,50,000/- including cost, insurance and freight (CIF). All requisite approvals were taken by the assesses from the government. The said tools were supplied by Kaiser Jeep International Corporation (KJIC), subsidiary of KJC

- KJC provided loan to the assesses at 6% interest repayable after 10 years in installments. The assesses obtained approval for the said loan from RBI and the concerned ministry

- Later on, American Motor Corporation (AMC) took over KJC and waived off the principal amount of loan advanced by KJC to the assesses and agreed to cancel the promisory notes as and when they got matured

- On 30.06.1976 the assesses filed its return and showed Rs.57,74,064/- as cessation of its liability towards AMC. Income tax officer (ITO) concluded that the waiver of the loan amount, was taxable u/s 28(iv) of the Income tax Act (ITA), 1961

- The CIT (A) upheld the order of the ITO with certain modifications. The ITAT set aside the order passed by learned CIT (A) and decided the case in favour of the Assesses

- Being Aggrieved, the Revenue filed a Reference before the High Court at Bombay. The HC decided the issue in the favour of the assesses.

Points for Consideration (before the Supreme Court)

- Whether in the present facts and circumstances of the case the sum of Rs. 57,74,064/- due by the assesses to KJC which was later on waived off by the lender constituted taxable income of the assesses either u/s 28(iv) or u/s 41(1) of the ITA?

Held

- Before the SC, the Revenue submitted that :-

- The assesses had received the amount of Rs.57,47,064/- from AMC as loan waiver, which it had initially borrowed from the KJC/ AMC as loan in order to enable it to purchase dies,tools etc. for manufacture of jeeps

- Waiver of loan was done by AMC, who overtook KJC, as a measure of compensation for certain loss including goodwill, the benefit of association, and also for sudden change to AMC as a share holder, which was credited by the assesses to its account and was claimed as exemption from taxation being capital receipt

- Since an amount was waived off and assesses was claiming an exemption, It amounted to income in the hands of the assesses (an amount which ought to be paid by it is now not required to be paid)

- It falls under the ambit of section 28(iv) and, alternatively within section 41(1) of IT Act

- **The Assesses submitted that**

- Supply of toolings by KJIC and loan given by KJC were independent transactions

- Purchase of toolings was not a transaction for the purchase of goods on credit in the ordinary course of business nor could it be equated to unpaid purchase consideration to be liquidated over a period of time

- The amount of $6,50,000 provided by KJC was a loan on which interest was being paid regularly

- Loan had been shown in the balance sheet under the head "Loans-unsecured"

- Waiver of a loan liability is of capital amount and not in the nature of income

The SC observed and held as follows:

- The term "Loan" generally refers to borrowing something, that is to be paid back along with interest. In other terms the debtor is under a liability to pay back the principal and interest within a stipulated time

- Creditor or his successor may exercise their "Right of waiver" (partly or complete) to absolve the debtor from his liability to repay. Waiver of loan by creditor results in receipts (extra cash) in the hand of debtor

- With regards to applicability of Section 28(iv), the benefit which is received has to be in some other form other than in shape of money. In the present case the amount of INR 57,74,064/- was received as a cash receipt due to the waiver of loan. Therefore, the very first condition of Section 28 (iv) was not satisfied in the present case. Hence s Section 28(iv) was not applicable

- With regards to applicability of Section 41(1), there should be an allowance or deduction claimed by the assesses in any assessment year in respect of loss, expenditure or trading liability incurred by the assesses. Then, subsequently, if creditor waives such liability, then the Assesses is liable to pay tax under section 41(1) of the ITA. In the present case, the Assesses had been paying interest @ 6% p.a. to KJC but never claimed deduction for the said interest u/s. 36(1)(iii). The deduction claimed by the assesses was due to depreciation of the machine and not interest paid. The purchase amount, being purchases of capital assets had not been debited to the trading account or to the profit or loss account in any of the assessment years. In the present case waiver of loan did not amount to cessation of trading liability, it resulted into cessation of other than trading liability. Hence, section 41(1) was not applicable

Income Tax

Case Laws

Gagan Infraenergy Ltd. vs DCIT, New Delhi (ITAT, New Delhi)

Facts

- The assesses was holding 1,11,59,010 shares on 31/03/2008 for Rs.17,29,64,655. assesses received 5 bonus shares for each shares held and received 5,57,95,050 equity shares as bonus on 19/09/09 totalling to 6,69,54,060 equity shares against investment of Rs.17,29,64,655. The Company transferred 1,76,94,108 equity shares on 20/03/2014 to its sister concern M/s Giebe Trading Pvt.Ltd (of which 1,11,59,010 acquired before
  31/03/2008 and balance 65,35,098 allotted as. Bonus). The FMV on the date of gift was Rs. 280.70 (as per NSE statement) The said gifted shares had not yet been sold by Giebe Trading Pvt. Ltd.

- The AO after considering the submissions of assesses, decided the issue by observing as under:
  - o By way of transferring its investment to its sister concern without any consideration, the company not only reduced its invesment to Nil and booked losses which were adjusted against Reserves of the com pany but also reduced its income to the extent that would have been accrued, if the company would have sold these shares in the open market at the market price

- That gifting of shares was sham transaction arranged by the taxpayer to avoid taxes
- A gift by a corporation to another corporation (which is always claimed a independent legal entity) is a strange transaction unless it be one which has been set up for some purpose as there cannot be gift be tween artificial entities/ persons
- Gift of shares held in a company by one company to another company would not fall under section 47(iii) of the Act as gifting was possible by an individual or a Joint Hindu Family or a Human Agency and not by an artificial person otherwise there was no need to insert section 47(iv) and section 47(v) in the Income-tax Act
- No genuineness in the transaction. There was no written gift deed or MOU. it was not proved that the articles of association of company empowered the assesses company to transfer its share without any consideration that too on oral understanding
- The transaction also failed the test of commercial expediency and business prudence. By transferring the said assets for Nil consideration the assesses company is trying to evade capital gain, which other wise would be payable at the market value
- The AO held that since the provision of section 47(iii) do not apply, the transfer was within the meaning of section 2(47) and taxed it under section 45 and computed the value of shares transferred to Giebe Trading Pvt. Ltd. by taking market value of each share transferred at Rs. 280.70/-

- The CIT(A) upheld the older of the AO

- Aggreived, the assesses filed an appeal before the ITAT

Held

- **Before the ITAT, the assesses submitted that:-**
  - o Said transfer was pursuant to an internal family realignment
  - o Shares were gifted pursuant to Board Resolution and special resolution which had not been disputed.
  - o Authorization for said transaction is from MOA
  - o due to internal family realignment, transfer of shares was made as a gift to Giebe Trading Pvt. Ltd., which was exempt from capital gains by virtue of provisions of section 47 (iii) of the Act
  - o No prohibition under any law in assesses/ Company gifting shares held as investment, to another com pany and natural love and affection was not a precondition for the purpose of making gift. Provisions of Gift Tax Act an Transfer of Property Act were relied upon to support validity of the said transation
  - o Shares were transferred in the form of gift and the assesses cannot be taxed on notional income, which is not deemed to have been received by the assesses
  - o Since no consideration had been passed for the transfer, the transaction could not be taxed under section 45 of the Act read with Section 48 of the Act
  - o The assesses placed reliance on various decisions in support of its claim

- The Revenue submitted the said transaction had not been proved genuine by the assesses by way of any written contract/ agreement. The assesses had not established in what way Giebe Trading Pvt. Ltd. was a part of OP Jindal group (it was nowhere mentioned that is an associate company or entity where assesses was having common control). The Revenue seriously doubted the genuineness of the transaction and sub mitted that the alleged transfer as a sham

- The Tribunal were surprised to note that huge volume of shares in a public limited company were trans ferred by assesses to another company without any consideration, without any proper documentation being executed as per law and giving it a nomenclature of "gift"

- The Tribunal distinguished various case laws relied upon by the assesses on the following grounds:-
  No supportive documents i.e. gift deed/ family settlement deed executed by parties. Merely by executing board resolution, the alleged transfer had been effectuated. Neither there was any family arrangement/ agreement that had been brought to the notice of authorities. below nor had the assesses declared what had been received by them in lieu of alleged transfer of shares. Failure to establish relationship with Geibe Trading Pvt Ltd. No establishment of any commercial need/ urgency for the said transfer to establish genu iness of the transaction

- The Tribunal thus directed the assesses to provide all necessary and relevant information/details to assist A.O., as called for, in determining correct nature of alleged transaction as per law

- The Tribunal also directed that in the event assesses failed to provide any document as called for, in order to establish the genuineness and validity of alleged transaction, as had been submitted to be for a family realignment, the A.O. may compute income in the hands of assesses as per law

- On the contrary if assesses was able to prove to the satisfaction of Ld.AO regarding genuineness and validty of the transaction, no addition should be called for

- Thus with the above directions, the Tribunal set aside the issue raised by the assesses back to AO. to decide the issue as per facts and law, after giving due opportunity of being heard to the assesses

International Tax

Case Laws

DCIT vs. M/s. Dominos Pizza International Franchising Inc. (ITAT, Mumbai)

Facts

- The assesses Company was a tax resident of USA. It filed its return of income for AY 2012-13 declaring total income of Rs. 1,65,33,247/-.
- The assesses offered the royalty income [income from franchise fee and consultancy services provided to M/s Jubilant Food Works Limited (Jubilant) for opening of store] to tax @ 10% as per India-USA Double Taxa tion Avoidance Agreement (DTAA)
- The AO while passing the draft assessment order held that assesses constituted a dependent agency/perma nent establishment in India as per Article-5 of DTAA between India and USA and allowed 5% of the total income as deduction and held that 95% of the income offered by assesses was subjected to tax @ 40% with surcharge
- The DRP accepted the contention of assesses that the Jubilant did not constitute a PE or dependent agency or an agency PE of the assesses. The action of the AO in treating the royalty income as Profit & Gain from business under section 44DA was set-aside
- Aggrieved by the directions of DRP, the revenue filed the appeal before ITAT, Mumbai

Held

Submissions by Revenue before the ITAT

- Jubilant was an agency PE of the assesses as per definition provided under India US DTAA
- The revenue also relied on the provisions of 'business conection in India', definition of PE u/s. 92F of the Act and the decision of Formula One World Championship Ltd. vs. CIT 394 ITR 80/[2017] 80 Taxmann.com 347 (SC)

Submissions by Assesses before the ITAT

- The Assesses had entered into Master Franchises Agreement (MFA) with Domino Pizza India Limited, now known as Jubilant and for the franchise of Dominos Pizza Store
- The said MFA provided certain store/consultancy services to Jubilant. In consideration that Jubilant paid store opening fees for those services. The franchise fee was received by assesses from Jubilant for ongoing use of Dominos Trademark and also for the right to use the new technology, new product development and system improvement. The assesses was entitled to charge 3% of the sales of store of Jubilant and further 3% on sale of their sub-franchise store
- Relying on various clauses of the MFA, the assesses submitted that Jubilant had complete independence with regards to its business dealing and transaction and did not act on behalf of assesses or under its instruction as follows:
  Irrevocable right to Jubilant to establish or appoint its commissionaire in India, for the purpose of supply

of food ingredients and beverage product and other supply

The ITAT on perusing the MFA, sub-franchisee agreements and India US DTAA held as follows

- The sub-franchise agreement (SFA) was executed between Jubilant and sub-franchise and not between the assesses and sub-franchise. The assesses was entitled to only charge 3% of the sales of store of Jubilant and further 3% on sale of their sub-franchise store. The profit and loss from the business belonged to Jubilant or sub-franchise. The assesses was entitled only to royalty and store opening fees
- None of the condition prescribed under clause-(a) to clause-(l) of Article-5.2 or Clause (a), (b) or (c) of Article-5.4 of India US DTAA were applicable on the assesses
- Jubilant was an independent business entity. The restrictions provided in MFA and SFA were only to safeguard the brand value and to ensure the correct receipt of royalty income
- The ITAT distinguished the case law of Formula One World Championship Ltd relied by the Revenue on the ground that there was no physical control on the business of franchise and sub-franchise by the assesses
- The assessment order passed in pursuance of direction of DRP was upheld

Transfer Pricing

Case Laws

Aramex India Pvt Ltd vs DCIT (ITAT, Mumbai)

Facts

- Aramex India Pvt. Ltd (the assesses) was engaged in the business of transportation of time-sensitivepackages, documents and cargo to various destinations in the domestic and international sectors.The assesses operated in four segments: International express services (involved transactions with AEs), Freight forwarding services (involved transactions with AEs), Domestic distribution services and Logistics
- It maintained separate segment accounts in its audited financial statements. Major costs (92%) had been allocated to the segments by the auditor on the basis of volume, weight and revenue depending on nature of expenses. Balance 8% costs being general and administrative expenses were allocated by the assesses to all segments on basis of revenue for TP Purposes
- For AY 2013-14, the assesses benchmarked the international transactions in the International Express (16.95%) and International Freight Forwarding (3.68%) segments using TNMM. The margin earned by the Assesses in the above 2 segments was higher than that earned by comparable uncontrolled transactions and thus the transactions were concluded to be at ALP
- The TPO rejected the segmental accounts and adopted the entity level margin (-1.33%) on the following grounds:-
    - o Losses incurred by the Assesses in the domestic segment
    - o Wrong allocation key being ‘Volume’ instead of ‘weight’ adopted, resulting in 90% expenses being pushed todomesticsegment and thus loss in the domestic segment

- Domestic courier segment being set up to absorb the infrastructure of the international express business and was an extension of the international express business since FAR for both domestic and international segments was identical
- The FAR profile of the domestic business and international business is the same

- The TPO rejected 1 out of 4 comprable companies selected by the Assesses and also additionally identified 6 companies. The TPO arrived at comparables margin of 3.06% and made a TP adjustment of INR 9.91 Crores. The DRP although accepting that the assessee's case was covered by the orders for the earlier years, upheld the additions made by the TPO
- Aggrieved, the Assesses filed before the ITAT

Held

The Tribunal observed and held as follows:

Rejection of Segmental Accounts and adoption of entity level margin

- Assesses had used a combination of revenue, volume or weight as allocation keys depending on the nature of each expense which had been validated by the auditors
- Expenses allocated by the Assesses to the domestic courier segment was only 49% of the total expenses. If 'weight' was used as the allocation key, the margin earned by the Assesses in the international express courier segment increased. TPO’s observations were misplaced and not supported by actual results
- Placing reliance on various judicial pronouncements, the Tribunal held that the segments prepared by the

assesses for the purpose of benchmarking the transaction with the AE could not be rejected and the TPO must consider the segments prepared by the Assesses for the purpose of making any adjustment

- Losses in the domestic segment was purely due to market forces and stiff competition in the domestic market along with the service quality maintained by the Assesses. The Group regularly infused significant capital into the assesses company to support the domestic business. Also, the domestic business had a long gestation period
- The AO had accepted the loss incurred by the assesses and no disallowance had been made in this regard. The only adjustment made was the transfer pricing adjustment. Further, the overall costs debited/ expenses incurred by the Assesses had not been disturbed
- Domestic business was around 10 times the size of the international express business and operated as an independent business of the assesses. The domestic courier business was a regular business carried on by the Aramex Group across the world
- Neither the AO nor the TPO had brought anything on record to show that the losses incurred by the assesses were incorrect or superficial. Genuine losses incurred by the Assesses in a particular segment could not be a basis to doubt the correctness of the segmental accounts prepared by the assesses
- This reason for loss in the domestic segment has also been accepted by the Hon'ble ITAT in AY 2009-10 and hence the TPO cannot rely on this same reason for rejecting the segmental accounts in the year under consideration
- The FAR profile of the domestic business could not be compared with the FAR profile of the international express or the international freight segments of the Assesses. These were completely difference businesses and were also considered separate for segmental reporting purposes in the audited financial statements of the assesses which are governed by Accounting Standard 17 on segment reporting

- Even if the FAR profile of the assesses in the international express and freight segments were considered similar to the domestic courier segment, then CUP could be considered as the most appropriate method for benchmarking the international segments. Even based on such CUP analysis, the assessee's international transactions were at arm's length since the rate 'per shipment' as well as 'per kg' for the international express shipments was higher than that of the domestic shipments"
- The Tribunal held that the segmental accounts maintained by the assesses should be accepted. Even if the segmental accounts of the assesses were rejected and entity wide margins are considered, the adjustment should be restricted to the value of the international transactions

Inclusion, Exclusion of Various comparables

- Some additional comparables selected the TPO were rejected on various grounds as follows:- functionally different on the basis of activities and assets, insufficient segmental information to determine profitability from each activity on a standalone basis, incorrect use of consolidated financials, no foreign exchange earnings indicating that lack of international operations, different financial year (could not be considered for comparability analysis unless adjustments made to align the financial period)
- On totality of the facts and circumstances , the Tribunal following the order of the tribunal in assessee's own case for A.Y. 2009-10, did not find any justification for the addition made by the AO/ TPO

Transfer Pricing

Case Laws

Britannia Industries Ltd vs DCIT (ITAT, Kolkata)

Facts

- Britannia Industries Ltd (hereafter referred to as “the assesses”) was engaged in the business of manufacturing and trading of bakery and dairy products

- The assesses during the year of consideration (AY 2012-13) provided corporate guarantee to its AEs (“Associated Enterprise”), namely BAMPL, Mauritius, and Strategic Food International Co. LLC, Dubai. The assesses provided corporate guarantee to ABN and AMRO Bank NV (The Royal Bank of Scotland NV). An average of 0.2% was adopted as ALP by the assesses based on quotes obtained from Royal Bank of Scotland (0.25%) and Indusind Bank (0.15%)

- The TPO determined ALP of the said transaction @3%. The DRP adopted an interbank lending rate of 1.50% as a benchmark for determination of ALP on the basis of low credit rating of the AEs and varying interbank lending rate (150 and 2bps)

- Aggrieved, the assesses appealed before the ITAT on the following grounds:

  o Issuance of corporate guarantees did not have any bearing on profits, incomes, losses or assets of the appellant and therefore it was not covered within the purview of international transactions' under

Section 92B and the transfer pricing adjustment was impermissible

- o Amendment brought in the definition of 'international transaction' by the Finance Act, 2012 in Explanation to Section 92B, is applicable prospectively from FY 2012-13 and onwards and therefore not applicable in the relevant FY 2011-12 and thus issuance of corporate guarantees by the appellant to its AEs could not be treated to be "international transaction" under Section 92B
- o Corporate guarantees were given by the appellant to AEs for pure business considerations and in the nature of an owner-shareholder activity and hence no transfer pricing adjustment was required
- o Manner & methodology adopted by DRP to ascertain the fees for corporate guarantee at 150 bps was unjustified, flawed & incorrect
- o The CG Commission quote of 0.20% obtained by the appellant from banking institution was a good parameter to benchmark the corporate guarantee commission of 0.20% charged from the AEs

Held

- The Tribunal held the interbank lending rate adopted by DRP as inappropriate, as these rates were for fund based transaction whereas issuance of corporate guarantee was a non-fund based transaction
- The Tribunal observed that the fee quotes provided by RBS and Indusind Bank were given taking into consideration the credit rating and other financial data of the Assesses. Thus the fee quotes taken by the Assesses were relevant for determination of ALP
- The Tribunal held that credit rating of an organization, geographical location, local government regulations, etc, were important in determination of the rate
- The Tribunal held that the average adopted by the assesses was not the right approach as averages do not always give logical results. Further the Tribunal considered the fee quote of 0.25% given by RBS as ALP, as this quote was the basis on which this transaction had taken place

IDTX

AAR

ADVANCE RULINGS

GKB LENS PVT LTD (2018-TIOL-42-AAR-GST) ADVANCE RULING IN WEST BENGAL

Supplier allowed to value goods, transferred to its branches for further supply at cost price, where the cost will be deemed as open market value of goods under Second Proviso to Rule 28.

Facts

- GKB Lens Pvt Ltd is a Re-seller and Importer of Sun Glasses, Frames, Lenses, etc. having head Office in West Bengal
- Optical Lenses and Frames for Spectacles and Accessories (Trading Stock) are transferred from Head Office in West Bengal to its branches in other states
- Head office also supplies Non-trading stock like Printing & Stationary, Office Equipment etc
- The Applicant has informed that separate registrations have been obtained for business establishments in different states. Therefore, supplies to these branches, qualify as supplies made between the distinct persons, and provisions of Rule 28 will be applicable for valuation of such supplies

Issue Involved:

- Whether such goods supplied to branches in states, other than West Bengal, can be valued in terms of Cost Price under Second Proviso to Rule 28 of CGST Rules, 2017, instead of 90% of MRP as required under First Proviso of the said Rule.

Held

- The First Proviso to Rule 28 states that where goods are supplied to a recipient for further supply as such, valuation of these goods, at the option of supplier, be determined at 90% of the price that will be charged by recipient to its non-related customer. The two clauses important to note in this Proviso are:
  a) goods received by the recipient are to be sold to a customer not being a related person and
  b) the determination of value at 90% of the price that will be charged by the recipient to his customer, is an option. Whether or not, Supplier avails of this option is solely the discretion of the Supplier
- The Second Proviso to Rule 28 states that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services
- The Second proviso, does not mention, unlike the First Proviso, "where goods are supplied to a recipient for further supply as such", nor is the Proviso barred to such goods when further supplied as such
- As per section 17(1), where the goods / services/ both are used by registered person partly for the purpose of any business and partly for other purpose, the amount of credit shall be restricted to so much of input tax credit as is attributable to the purpose of his business
- Accordingly, The expression “where the recipient is eligible for full input tax credit”, used above, means that the recipient will be eligible to take full input tax credit of the amount of tax paid by the supplier in

the respective invoice or any other document valid under Section 16(2)(a) of CGST Act, in the light of section 17(1) of GST Act

- In other words, the Second Proviso is applicable for both, goods further supplied to non-related customers and to goods used in and for the course of business. It is stated that the value declared in the invoices shall be deemed to be the open market value of the goods where the recipient is eligible for full input tax credit
- Based on above facts AAR has confirmed that goods supplied to distinct person can be valued under 2nd proviso of Rule 28 of CGST Rule, 2017

ADVANCE RULINGS

M/s ROD RETAIL PVT LTD (2018-TIOL-08-AAR-GST) ADVANCE RULING NEW DELHI

Outlet situated at international airport is not outside India but within territory of India - Applicant is not supplying goods out of India, hence supply cannot be called 'Export' or 'zero rated supply'

Facts

- M/s Rod Retail Pvt Ltd is engaged in business of retail sale of sunglasses. They have one retail outlet at Terminal 3 (International Departure), Indira Gandhi International Airport, New Delhi
- The applicant's retail outlet is in Security Hold Area on crossing Customs & Immigrations. The said outlet is permitted to function beyond Customs Area and within Security Hold Area of the IGI Airport vide an

arrangement with Delhi International Airport Private Limited

- For the purposes of sale from said outlet, applicant procures supplies from Sunglass Hut brand owner M/s Luxottica India Private Limited, Gurgaon, after payment of Integrated Tax @ 28%
- These sunglasses are further supplied by applicant to International passengers travelling to outside India against a valid international boarding pass
- Presently, applicant is charging SGST/CGST on supply invoice issued to International passengers. However, applicant is of the view that, its supply of goods to international passengers is a zero rated transaction, being 'export sale' as stated under Section 2(5) of the IGST Act

Issue Involved:

- Whether supply of sunglasses from retail outlet of applicant at Terminal 3, IGI Airport (International Departure), New Delhi, to outbound international passengers against international boarding pass is liable to SGST and CGST or is it a zero rated "export" supply within the meaning of Section 2(23) r/w Section 2(5) of the IGST Act, 2017?

Held

- The Department submitted that applicant had paid VAT liability during FY 2016-17. Sale of sunglasses from said business place was not exempted under DVAT Act, and now if the same is exempted from paying GST, then there would be financial implications. Therefore, it would be appropriate that an inspection be made of all the shops/ retail outlets/ business places located in duty free zone of International departure of IGI Airport, New Delhi to check whether all such retail outlets are exempted from paying GST

- Section 2(56) of CGST Act, "India" means the territory of India as referred to in article 1 of the

Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf,Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters

- The Authority observed that goods can be said to be exported only when they cross territorial waters of India and goods cannot be called to be exported, merely on crossing the Customs Frontiers of India
- It has relied on the apex court decision in Sun Industries - 2002-TIOL-876-SC-CUS holding that u/s 2(18) of the Customs Act, 1962, the export of goods out of India was completed when the ship had passed beyond the territorial waters of India, would squarely apply to the present case as the definition of "export" u/s 2(18) of the Customs Act, 1962 and u/s 2(5) of the IGST Act, 2017
- Therefore, the applicant was directed to pay GST at applicable rates

ADVANCE RULINGS

KANSAI NEROLAC PAINTS LIMITED (2018-TIOL-09-AAR-GST) ADVANCE RULING MAHARSHTRA

Accumulated credit of Krishi Kalyan Cess (KKC) is inadmissible input tax-credit under GST regime.

Facts

- M/s Kansai Nerolac Paints Limited is engaged in business of manufacture of paints and works contract services. The Company has a centralized registration for Head Office (HO), factories and depots at Mumbai. Company also has a separate registration as Input Service Distributor (ISD) to distribute eligible CENVAT credit to its factories and HO

- As an ISD, the company received CENVAT credit at HO. CENVAT credit includes KKC. Company could not distribute KKC to its factories because KKC credit could be utilized only with KKC liability and recipient entities being manufacturing units did not have any KKC liability to set off KKC credit. As a result of which there was accumulation of KKC credit in ISD return
- Therefore, company had carried forward aforesaid accumulated KKC to electronic credit register maintained under CGST Act 2017 but not utilized the same

Issue Involved:

Whether accumulated credit by way of KKC, which is carried forward in the electronic credit ledger maintained by Company under CGST Act 2017, will be considered as admissible input tax-credit?

Held

- Transitional provisions have been prescribed in GST law which provides existing taxpayers to transfer input tax credit available as closing balance in existing tax returns to the GST returns. As specified in the proviso to Section 140(1) of the Act, the taxable person is allowed to carry forward the credit to the extent admissible as INPUT TAX CREDIT under GST. Definition of Input tax as given in section 2(62) does not include any cess
- The GST Act does not have a definition of the words "CENVAT credit". However, we find CENVAT credit rules, 2004 wherein the word "credit" is said to mean "CENVAT credit" as can be seen thus Rule 3 which provides list of items in respect of which CENVAT credit is available but makes no reference to KKC. Therefore, Central Government notified that “A provider of output service shall be allowed to take CENVAT credit of KKC on taxable services” to amend CENVAT Credit Rules, 2004. Further, it was made clear that KKC would

be utilised towards payment of KKC only. It was expressly provided that list of items in respect of which CENVAT credit is available, as enumerated above, would not be utilized for payment of KKC. Thus, there was a clear demarcation of the credit in respect of KKC

- The High Court observed that KKC is to be utilized for payment of KKC only. Therefore, KKC cannot be treated as excise duty or service tax. In view thereof, the CENVAT credit as referred to in Section 140 (1) would not include credit in respect of KKC
- FAQs issued by CBEC also clarify that ITC of KKC cannot be carried forward under GST

In view of the above, the authority concluded that accumulated credit of KKC which is carried forward in electronic credit ledger will not be considered as admissible input tax credit

SEBI & FEMS

- SEBI vide Circular No. **SEBI/HO/CFD/CMD/CIR/P/2018/79 dated May 10, 2018 has recommended implementation of certain Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak;**

i. Under the Chairmanship of Shri Uday Kotak Committee on Corporate Governance has made several recommendations. The recommendation of the Shri Uday Kotak leads to most of amendments in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide notification dated May 9, 2018. Out of which few recommendations are accepted by the Board and implemented through issue of this circular

- SEBI vide Circular No. **Amendment to SEBI Circular No. IMD/FPIC/CIR/P/2018/61 dated April 5, 2018 and Circular No. IMD/FPIC/CIR/P/2018/74 dated April 27, 2018 on Monitoring of Foreign Investment limits in listed Indian companies**

i. In view of the requests from various stakeholders, the SEBI had extended date for the companies to provide the necessary data to the depositories till May 25, 2018

ii. The new system for monitoring foreign investment limits in listed Indian companies shall be made operational on June 01, 2018

- SEBI vide Circular No. **SEBI/HO/CFD/DCR1/CIR/P/2018/85 dated May 28, 2018 introduce System-driven Disclosures in Securities Market wherein in addition to Disclosures under Regulation 29(1) and 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST) and Disclosures under Regulation 7(2) of SEBI (Prohibition of**

Insider Trading) Regulations, 2015 (PIT) pertaining to non-promoters and directors and employees of the company.

system driven disclosure requirement specified under Regulation 29(4) of SAST Regulations shall not be applied to a scheduled commercial bank or public financial institution.

Further, the CEO and upto two levels below CEO of a company shall be deemed as employees for the purpose of system-driven disclosures

FEMA

External Commercial Borrowings (ECB) Policy – Rationalisation and Liberalisation

The Reserve Bank of India ('RBI') vide circular ('RBI Circular') dated 27 April 2018 has rationalised and liberalised the ECB guidelines considering the requests received from corporates and other entities for relaxations in the existing ECB framework

The summarised version of the RBI Circular is as follows:

Particulars	Track I	Track II	Track II
Revised All-In-Cost ('AIC') for ECB and Rupee Denominated Bonds ('RDBs')	6-month USD LIBOR (or applicable benchmark for respective currency) + 450 basis points		Prevailing yield of the Government of India securities of corresponding maturity + 450 basis points (The said rate shall also be applicable to RDBs)

Expansion of eligible borrow-ers' list (additional borrowers	1.Housing Finance Companies ('HFCs'), regulated by the National Housing Bank (subject to certain conditions)		1.Housing Finance Companies ('HFCs'), regulated by the National Housing Bank (subject to certain conditions)
	2.Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 ('Ports') (subject to certain conditions)		2.Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 ('Ports') (subject to certain conditions) 3.Companies engaged in the busi-ness of Maintenance, Repair and Overhaul and freight forwarding
Additional negative end-use Not applicable when ECB is raised from Direct / indirect equity holders / group compa-ny and for a minimum average maturity of five years	1.Working Capital purpose 2.General Corporate Purpose 3.Repayment of Rupee Loans		1. Working Capital purpose 2. General Corporate Purpose 3. Repayment of Rupee Loans

Negative end-use list for all tracks

Common for all tracks	1. Investment in real estate or purchase of land (certain exceptions prescribed) 2. Investment in capital market 3. Equity Investment 4. On-lending to entities for certain activities (working capital, general corpo rate purpose, repayment of rupee loans)

Revised ECB liability to equity ratio: Revised ratio would be 7:1 (erstwhile it was 4:1) for ECB raised from direct foreign equity holder under the automatic route (not be applicable if total of all ECBs is up to USD 5 million or equivalent)

All other provisions of the ECB policy shall remain unchanged

DUE DATES 2018

Income Tax Department (ITD) Compliances

	Due Date	Form No	Description
1	15-Jun-18	ITNS 280	First instalment of advance tax for the AY 2019-20
2	15-Jun-18	Form 16	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during AY 2018-19
3	15-Jun-18	Form 16A	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ended March 31, 2018
4	30-Jun-18	Form 1/2	Return in respect of securities transaction tax for FY 2017-18
5	30-Jun-18	26QB/QC	Furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA/ 194-IB in the month of May, 2018
6	07-Jul-18	ITNS 281	Deposit of Tax deducted/collected for the month of June, 2018
7	15-Jul-18	Form 16B/ 16C	Due date for issue of TDS Certificate for tax deducted under section 194-IA/ 194-IB in the month of May, 2018
8	15-Jul-18	Form 27EQ	Quarterly statement of TCS deposited for the quarter ending 30 June, 2018
9	15-Jul-18	15G/15H	Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2018

DUE DATES 2018

Indirect Tax Compliances

Sr No.	Due Date	Authority	Form No	Description
1	20-Jun-18	GST	GSTR-3B	Summary Return to be filed for the month of May-18
2	21-Jun-18	State Government (Maharashtra)	VAT Return	Dealers not covered under GST (Eg:Alcohol)
3	30-Jun-18	State Government (Maharashtra)	Challan no MTR-6	Profession Tax Enrollment Certificate (PTEC) 1. For 1 Financial Year: Rs.2,500 2. For 5 Financial Year: Rs.10,000
4	30-Jun-18	State Government (Maharashtra)	IIIB	Monthly PTRC Return of June 18
5	30-Jun-18	GST	GST TRAN- 2	For availing credit of stock held on 30 June 2017 without possession of invoice.
6	10-Jul-18	GST	GSTR-1	Summary of Outward Supplies for the month of June-18 in case of turnover exceeding INR 1.5 Crores

RBI Annual Compliances

Sr No.	Due Date	Form No	Description
1	15-Jul-18	Form FLA- Return	Required to be submitted by all the Indian resident companies which have received FDI and/ or made overseas investment in any of the previous year(s).

4A, Kaledonia-HDIL,
2nd Floor, Sahar Road,
Near Andheri Station,
Andheri (East),
Mumbai - 400 069. India

Tel.: +91 22 6625 6363
Fax: +91 22 6625 6364
E-Mail: info@krestonsgco.com
Web: www.krestonsgco.com