KRESTON SGCO

Newsletter

August 2018

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NEW
BALANCE
619.80
9.80
.30
.30
28447.30
24031.30
NEW
BALANCE
17447
28
28
97.28

DIRECT TAX

Press Release and notifications

CBDT defers reporting under Clause 30C (GAAR) and Clause 44 (GST) of Revised Tax Audit Report (TAR) Form 3CD upto 31 March 2019

The Central Board of Direct Taxes (CBDT) vide Circular No. 6 / 2018 dated 17th August, 2018 has decided that the reporting under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the (TAR) shall be kept in abeyance till 31st March, 2019.

Therefore, for Tax Audit Reports to be furnished on or after 20th August, 2018 but before 1st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C and clause 44 of the (TAR).

However, it may be noted that relief from reporting GST details in Form 3CD is applicable only for taxpayers those who are liable to tax audit, i.e. this relief has nothing to do with ITR Form 6 requiring a company, which is not subject to tax audit, to give various details relating to GST.

Clarification on the immunity provided u/s 270AA of the Income-tax Act, 1961(Act).

- FA 2016 had introduced section 270AA which grants immunity to an assessee from imposition of penalty under section 270A and initiation of prosecution under section 276C or 276CC on compliance of following two conditions:

  - payment of demand raised for tax and interest as per the assessment order within the specified time; and
  - assessee files no appeal against the assessment order of tax authority.

  However, the benefit of immunity provision is not available to assessee if the penalty is levied due to "misreporting of income".

- Apprehensions were raised before the CBDT that if any assessee avails the benefit of immunity under section 270AA of the Act and penalty is initiated under section 271(1)(c) of the Act on same issue in the case of assessee for earlier year(s), the tax authority may view the same as acceptance of default by the assessee for earlier year(s). Hence, the tax authority may take an adverse view in the penalty proceedings in the case of assessee for earlier year(s) under section 271(1)(c) of the Act

The CBDT, vide Circular No. 05/2018 dated 16 August 2018, has clarified that an application made by an assessee under section 270AA of the Act seeking immunity, will not bar the assessee from contesting the same issue in any earlier assessment year. The circular also clarifies that the tax authority shall not take an adverse view in penalty proceedings for earlier assessment years under old penalty regime merely because the taxpayer has applied for immunity under the new penalty regime (i.e., section 270AA).

Amendment in Circular relating to monetary limit for filing appeal by the Department

The CBDT vide its Circular No. 3/2018 dated 11th July 2018 has revised the monetary limits for filing of appeals by the department before the Income Tax Appellate Tribunal (ITAT), High court(HC) & Supreme court(SC).The said circular shall supersede the Circular No 21 of 2015 dated 10th December, 2015 As per the Circular, appeals /SLPs shall not be filed in case where the "tax effect"(defined in the Circular) does not exceed the monetary limits as under:-

Sr No	Appeals/ SLPs in Income-tax matters	Monetary Limit (Earlier) (Rs.)	Monetary Limit (revised) (Rs.)
1.	Before Appellate Tribunal	10,00,000	20,00,000
2.	Before High Court	20,00,000	50,00,000
3.	Before Supreme Court	25,00,000	1,00,00,000

Para 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular No.3 of 2018 dated 11.07.2018 is amended as under

"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

c) Where Revenue Audit objection in the case has been accepted by the Department, or

d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets/ undisclosed foreign bank account.

e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBII ED/ DR/ SFO Directorate General of GST Intelligence (DGGI).

f) Cases where prosecution has been filed by the Department and is pending in the Court.

g) The said modification shall come into effect from the date of issue of this letter.

Income Tax

Case Laws

M/s Anjappar Chettinad A/C Restaurant vs ACIT, ITAT Chennai (AY 2014-15)

Facts

- The assessee Anjappar Chettinad Restaurant), a partnership firm was initially established by Shri Anjappan and after his death, his 4 legal heirs inherited the restaurant and constituted a partnership firm.
- The assessee firm permitted third parties to run the restaurant in the name of Anjappan Chettinad in the overseas market on franchise basis and received royalty income from FY – 2008-09.
- However, there was disputes/misunderstanding among the family members over the property and the business of the partnership firm.
- To avoid litigation, an amicable solution was arrived at among the partners/legal heirs and accordingly, assessee made a payment of 2.26 Cr. to the retiring partner and his wife. Since the partner had outstanding loans in some of the banks, it was agreed by the members of the family and the retiring partner that the payment may be made by the partnership firm to the banks directly.
- During A.Y.2014-15 the Assessing Officer (AO) disallowed the aforementioned amount contending that the said payment to the retiring partners and his wife had no connection with the business of the assessee-firm and therefore cannot be allowed as business expenditure.
- Aggrieved by the same the (AO) assessee filed an appeal before Commissioner of Income Tax (Appeals) CIT(A). However, CIT(A) confirmed AO's order
- Aggrieved, assessee filed an appeal before Chennai ITAT.

Held

- Under the normal circumstances, when the asset of the firm is distributed to the partner on retirement it would attract capital gain tax u/s 45 of the Act. However, in the present case there was no transfer of capital asset, hence the payment made to the retiring partner was not taxable as capital gain u/s 45 of the Act.
- ITAT was of the view that the aforesaid payment was not made towards business expenditure or towards royalty but was only a distribution of asset of the partnership firm or retirement of the partner due to family settlement.
- ITAT stated that the business and its assets were kept intact by the coparceners, therefore even though it cannot be construed as expenditure for business or for royalty, certainly it was a division / distribution of partnership firm's asset by way of paying compensation.
- ITAT stated that merely because the payment was made to financial institutions and banks at the instructions of the retiring partner to compensate for the loan taken by them that will not change the character of the payment.
- Since the capital of the assessee was kept intact and the business was continued by other coparceners / partners, this payment made to retiring partner, consequent to family settlement, was allowable/ deductible while computing the taxable income.
- Accordingly, orders of both the authorities below were set aside and the disallowance made by the AO as confirmed by the CIT(Appeals) was deleted.

M/s. Apple India Pvt. Ltd. v/s CIT (A) - ITAT Bengaluru (AY 2013-14 and AY 2014-15)

Facts

- Apple India Pvt. Ltd. (assessee) was engaged in the business of marketing and related services for software products of Apple Co.

- During assessment proceedings, AO held as under : -

  - Assessee had claimed deduction of provision for warranty expenses of Rs. 147.40 crores in addition to opening provision for warranty expenses of Rs.21.41 crores. AO agreed in principle on the allowability of the provision for warranty expenditure.

  - Provisions for warranty expenses were excessive, created on ad-hoc basis, no scientific method was adopted and were not based on historical trends.
  - Assessee didn't reverse the excess provision created in earlier year after expiry of the warranty period, which resulted in accumulation of warranty provision.
  - Closing balance of provision for warranty was increasing incrementally on account of non-utilization.
  - Provision of warranty in terms of percentage of sale was not constant and varied from year to year which increased from 2% to 10%

- Based on the data for the provisions for warranty and actual expenses incurred on warranty for earlier and subsequent years, AO held that provision for warranty expenditure should be restricted to 2.14% of the sales and accordingly, the AO allowed Rs.64.84 crores as against the claim of Rs.147.74 crores thereby disallowing the sum of Rs.82.56 crores.
- CIT(A) confirmed the order of the AO.
- Aggrieved, assessee filed an appeal before Bengaluru ITAT.

Held

- Before the ITAT, the Assessee relying on Delhi HC decision in the case of Ericssion Communications (P.) Ltd. submitted that provision for warranty was based on global policy of the group companies for warranty provision which conformed to the principles of accrual and prudence and hence was deductible. Assessee also submitted that this policy was being consistently followed and which was in conformity with the para-meters laid down by the Apex Court in Rotork Controls India (P) Ltd. as well as the Accounting Standard 29.

- ITAT took note of the undisputed fact that AO as well as the CIT(A) did not dispute in principle the allowability of the provision for warranty expenditure. ITAT observed the only dispute was with regard to methodology adopted by the assessee for computing provision for warranty expenditure, and as whether it was based on scientific method or based on historical data of the past years or was done on ad hoc basis.

- Referring to the Accounting Standard (AS) 29 which provided for allowability of warranty provision, ITAT analyzed the requirements of AS 29 in this regard, i.e.,

  a) An enterprise has a present obligation as a result of a past event;

  b) It is probable that an outflow of resources will be required to settle the obligation; and

  c) A reliable estimate can be made of the amount of the obligation

  ITAT opined that the assessee satisfied conditions (a) and (b) above. Further, ITAT observed that dispute was around the issue of reliable estimate of obligation to be settled for provision of warranty expenditure. In this regard, ITAT referred to SC ruling in Rotork Controls India (P) Ltd. which had laid down that if the warranty was based on past experience i.e. historical trend, the estimate could be said to be reliable.

- Referring to the facts of the case, ITAT observed/ noted as follows: -

  - Analysis of the chart showing provision for preceding, succeeding AYs as well as for the year under consideration, ITAT noted that year-end provision were getting accumulated disproportionately to increase in turnover which suggested that the system of accounting for provision for warranty was not robust/reliable.

  - There was a huge difference in the amount of provision made and actual utilization.

- There was no system in place for re-assessment or evaluation of provision for warranty at the year end or any reversal of pro rata based on actual expenditure incurred in respect of period for which warranty was expired.
- Assessee failed to demonstrate that the global policy of the company to provide for warranty expenditure met the conditions laid down by the Apex Court in Rotork Controls India (P.) Ltd.(supra).
- Working of the provision furnished did not demonstrate that the amount of provision worked out was in accordance with stated policy of the company for provision for warranty expenditure.

- ITAT also rejected assessee's reliance on Delhi HC in Ericssion Communications (P.) Ltd. and elaborated that it nowhere laid down the proposition of law that when the methodology adopted by the assessee for the provision of warranty expenditure did not meet the parameters laid down by the Apex Court in Rotork Controls India (P.) Ltd. and AS 29, still it could be allowed as a deduction. Further, ITAT distinguished Ericssion Communications case based on facts and clarified that in that case, there was no accumulation of provision for warranty expenditure disproportionate to the increase in turnover and also unutilized portion of the provision was offered to tax in subsequent years.
- However, ITAT re-iterated that in present case, there was no system of reversal of provision created earlier and the percentage of sales adopted for computation of provision for warranty expenditure was increasing from year to year, thereby resulting in accumulation of provision for warranty expenditure.
- Thus, ITAT opined that the assessee derived advantage by deferring its income to the extent of excess warranty provision to subsequent years, hence, such excess provision could not be allowed as a deduction. ITAT further opined that the provision made for warranty could not be said to be reliable. Thus, ITAT upheld the order of the lower authorities restricting the amount of allowable provision for warranty at the rate of 2.14% of sales.

M/s.Asianet Communicaions Ltd v/s The Commissioner of Income Tax, Chennai (Madras HC)(A.Y 2000-01)

Facts

- Asianet Communications Ltd (Assessee) was engaged in the business of television broadcasting, and was formed in the year 1991. The company was managed by one of the Directors, Mr.SK and he was also the President of the company, managing all the affairs of the company till April, 1999. Mr.SK had 50% shareholding and the balance was held by a Non-Resident Indian, viz., Dr. RM. Mr. SK and Dr. RM decided to part ways and an agreement was arrived at between them by which Mr.SK agreed to sell 50% of his shareholding to Dr. RM or his nominees and to renounce his management of the company.
- It was agreed that Mr.SK would not compete with the business of the Assessee for a period of five years for which the company agreed to pay him a sum of Rs.10.5 crores during the AY 2000-01. assessee claimed it as a business expenditure in computing the income for the same year.
- AO disallowed Assessee's claim and held that the alleged payment was of capital nature and was not allowable u/s 37(1).
- Aggrieved by the same the assessee filed an appeal. On appeal, the CIT(A) as well as the Tribunal confirmed the conclusion of the AO.
- Aggrieved, assessee filed an appeal before Madras HC.

Held

- HC referred to Sec. 27 of the Indian Contract Act, 1872 and noted that any contractual term that imposed restraint on a contracting party from engaging in any business for a reasonable term ought to be backed by consideration. Thus, HC observed that the non-compete compensation was a consideration paid to the party who was kept out of competing business during the term of the contract.
- HC elaborated that the non-compete compensation, from the stand point of the payee of such compensation, was so paid in anticipation that absence of a competition from the other party to the contract may secure a benefit to the party paying the compensation. HC highlighted that there was no certainty that such benefit would accrue. HC explained that inspite of the fact that a competitor is kept out of the competition, one may still suffer loss. If it were to be a capital expenditure whether or not, an assessee makes a business profit, the character and value of the capital assets will, subject to depreciation, remain unaltered.

- HC observed that the facts clearly disclosed that on account of the payment of non-compete fee, the assessee didn't acquire any new business, profit making apparatus remained the same, the assets used to run the business remained the same and there was no new business or no new source of income, which accrued to the assessee.

    - The HC placed reliance on the judgements of Empire Jute Co. Ltd (SC), G.D.Naidu (Madras HC) and Carborandum Universal Ltd. (Madras HC) and distinguished various other judgements on various grounds to hold that payment made by the assessee was revenue in nature and allowable as a deduction u/s 37(1) of the Act.

    - Thus, HC reversed the order of the ITAT and ruled in assessee's favour.

M/s. Milan Intermediates LLP v/s The Income Tax Officer (ITAT Ahmedabad)

Facts

- Milan Intermediates LLP (the assessee), filed an appeal before the ITAT against the order of the AO in limiting the claim of the assessee for reduction in book profits by lower of loss brought forward or unabsorbed depreciation, as computed under section 115JB of the Income-tax Act, 1961 (the Act), which was confirmed by the CIT (A).

- The assessee had been consistently following FIFO method for setting off year -wise brought forwarded losses. Following this method, unabsorbed loss of earlier year, longest outstanding, was first set off against the current year's book profit and thereafter in tandem. Secondly, while applying the aforesaid method, the assessee had first adjusted the book profit of the current year out of brought forward business losses accumulated in preference to the unabsorbed depreciation (quantified to the extent of the lower of the two) regardless of the fact that amount set off represents unabsorbed depreciation being a lower figure. The said methodology was disputed by the AO in the return filed by the assessee for AY 2011-12

- AO was of the view that the assessee wrongly calculated the eligible amount of set off towards lower of the brought forward losses and unabsorbed depreciation while computing the book profits u/s 115JB. Thus, AO limited the claim of the assessee for reduction in book profit by the amount of loss brought forward or unabsorbed depreciation whichever was less, as per books of account to Rs. 18,43,991/ - as against the claim of the assessee for Rs. 55,01,780/-

- CIT(A) upheld AO's order. Aggrieved by CIT(A)'s order Assessee filed an appeal before Ahmedabad ITAT.

Held

- The ITAT observed that the issue was computation of 'book profit' under section 115JB with reference to Explanation (1) (iii) below 115JB and its interpretation.

- ITAT illustrated by way of an example that assessee had carried forward unabsorbed loss of Rs. 75 and unabsorbed depreciation of Rs. 25 from the preceding financial year and the book profit, say, Rs. 35 in the current year. ITAT explained that the assessee reduced Rs. 25/- (being lower of unabsorbed losses and unabsorbed depreciation) from the book profit and adjusted the same under unabsorbed losses and consequently carried forward unabsorbed loss at Rs. 50 and unabsorbed depreciation at Rs. 25 in the succeeding AY as an available set off against the book profit of that year. In this regard, ITAT observed assessee's stand that the tax payer was fully entitled to exercise its discretion in claiming reduction out of unabsorbed losses in preference to unabsorbed depreciation in the absence of any specific suggestion in Explanation to Sec. 115JB.

- Explaining the illustration, ITAT observed that notwithstanding that the assessee restricted the quantification of set off to be lower to the two (i.e., unabsorbed loss and unabsorbed depreciation) however, gave primacy to unabsorbed losses in the matter of reduction and quantification of unabsorbed loss in preference to unabsorbed depreciation available for set off in succeeding year. ITAT rejected the impugned methodology adopted by the assesse.

- In this regard, ITAT interpreted Clause (iii) to Explanation 1 to Sec. 115JB, which provided for deduction of lower of unabsorbed loss or unabsorbed depreciation out of book profits. ITAT observed that benefit of Explanation to Clause (iii) was not available in the event either unabsorbed loss or unabsorbed depreciation becoming NIL. Thus, ITAT clarified that in the event where either of the two became zero, the assessee would not be entitled for set off against books profits as beneficially provided in Clause (iii) to Explanation 1. ITAT remarked that the spirit of the clause thus requires to be gauged from this restriction placed statutorily. If the methodology adopted by the assessee is endorsed, it

may generally defeat a situation where one of the two i.e. unabsorbed loss and unabsorbed depreciation turning NIL.

- Thus, to give effect to the object of Clause (iii), ITAT held that "like should be reduced from like and not differently". ITAT clarified that if the lower of the two happened to be unabsorbed depreciation, reduction to be done from depreciation kitty and not out of unabsorbed loss. ITAT opined that "Doing so would give fair treatment to the language employed and will be in consonance with the object of Clause (iii) for the purposes of set off".

- In this regard, ITAT also referred to AAR ruling for Rastriya Ispat Nigam Ltd. wherein almost similar view was taken.

- Thus, on first principles and without going into arithmetical accuracy of working of carry forward of set off losses etc., ITAT held that the methodology adopted by the assessee to prioritise set off of unabsorbed loss regardless of unabsorbed depreciation being lower was not in tune with the aim and object of Clause (iii) to Explanation 1 of Sec. 115JB.

International Tax
Case Laws

Poddar Pigments Ltd Vs ACIT (Delhi ITAT)

(A.Y. 2008-09 to A.Y 2011-12)

Facts

- Assessee is a company engaged in the business of manufacturing of master batches and engineering plastic compounds.

- In AY 2008-09, the Assessing Officer (AO) observed that assessee had paid technical fees of Rs. 3,36,150/- to Dr. Thiele a German individual resident and the assessee had not deducted tax at source (TDS).

- The assessee contended that the payment was made to an individual resident of Germany towards consultancy charges, who was a scientist engaged in developing new products by applying different chemistry of raw material used by the assessee for production of master batches and carried out chemical test for new products. The assessee submitted various bills backed by an agreement.

- Further, it was contended by the assessee that the payment for professional services to an individual for independent scientific activities fell under Article 14 of Double Tax Avoidance Agreement (DTAA) between India and Germany. Since Dr. Thiele did not have any fixed base in India and had not stayed for more than 120 days in India, therefore, he was not chargeable to tax in India and no tax was required to be deducted on the above sum.

- The AO rejected the contention of the assessee stating that payment has been made for production process training for technical research agreement for development and production of new products and for supervision of erection and commissioning of Henshel High intensity mixer machine. Therefore, he held that such payment fell under the category of "fees for technical services" u/s 9(1) (vii) of the Income-tax Act, 1961 (herein after referred to as "the Act") as well as under Article 12 of the DTAA. He further stated that in the books of account the assessee itself has treated it as technical consultancy. According to the AO, Article 12 of the DTAA was applicable as against Article 14 as contended by the assessee. He therefore, held that the assessee should have deducted tax @ 10% of the above sum and therefore, disallowed the same u/s 40(a) (i) read with section 195 of the Act

- The Assessee preferred an appeal before the CIT(A) who confirmed the disallowance

- Aggrieved, the Assessee filed an appeal before Delhi ITAT. Four Appeals were filed by the Assessee involving common issues for 4 years AY 2008-09 to AY 2011-12.

Held

For AY 2008-09, the ITAT held as follows:-

- According to section 5(2) read with section 9(1)(vii) of the Act, the said services were chargeable to tax under the Act. This had also been confirmed in the case of the assessee for AY 2007-08 by the coordinate bench that such sum was chargeable to tax u/s 9(1) (vii) of the Act.

- As the recipient of the income was a resident of Germany, therefore, the provision of DTAA between India and Germany applied to him and hence, he was entitled to the beneficial treatment, if available, under DTAA.

- Article 14 of the DTAA provides that Income derived by an individual being resident of Germany, from the performance of professional services or other independent activities shall be chargeable to tax only in Germany. However, the same shall become taxable in India if the individual has any fix base regularly available to him in India for performing his activities or he stays in India for a period or period exceeding 120 days in the relevant previous year. On analysis of various documents, the ITAT held that the services rendered by Dr. Thiele were "independent personal services" covered by Article 14 of the Indo-Germany DTAA.

- The ITAT also observed that in the immediately preceding year claim of Article 14 was rejected by the coordinate bench for the only reason that assessee could not prove with evidence that the payments fall under the category of Independent personal services as per Article 14 of the DTAA. Such was not the case for the year under consideration as the assessee had provided exhaustive details.

- Where the income was chargeable to tax under Article 14 as well as article 12 of the DTAA, it is also an established rule of the Interpretation of Treaties that specific or special provision in treaty shall prevail over and take precedence over the general ones. In the present case, the provision of article 14 of the DTAA was more specific as it applied specifically to "professional services" provided by the "Individual resident". Further the meaning of the Term "Fees for technical services" in Article 12 (4) of the DTAA excluded only income covered under Article 15 i.e. "Dependent personal Services" and not income covered under Article 14 of the DTAA. Only distinguishing

feature was that Article 12 was an omnibus provisions for such income where as Article 14 was a specific provisions related to individuals.

- Article 14 being a more specific Article applicable to the impugned income of the non-resident, same shall be applied and not the General Provision of Article 12 of The DTAA. In view of this, it was held that the payment made by the assessee to Dr. Thiele was chargeable to tax u/s 9(1)(vii) of the Act but by virtue of Article 14 of the DTAA, income was chargeable to tax only in Germany. Therefore, assessee was not required to withhold any tax under section 195 of the Act and therefore, no disallowance u/s 40(a)(i) could be made

- In AY 2009-10, the assessee had made payment to a Swiss Resident/ National. The services of the said individual were covered under Article 14. He did not have a fixed base in India nor had he stayed for more than 183 days in India. Further, Article 12 of the India-Swiss DTAA excluded professional services under article 14 and 15 of that DTAA. The services were similar to that of the German resident and thus the services were independent, personal services in the nature of independent scientific services which were taxable only in Swiss confederation. Hence, no tax was required to be deducted on sum paid by the assessee to the Swiss national u/s 195 of the Act.

Bellsea Ltd. Vs. ADIT (ITAT Delhi)

Facts

- Bellsea Limited (assessee) was a company incorporated in Cyprus and a tax resident of Cyprus. The assessee was mainly engaged in the business of dredging and pipeline related services to oil and gas installations

- During the relevant financial year, the assessee was awarded a contract by Allseas Marine Contractors SA (herein after referred to as AMC) for placement of rock in sea bed for protection of gas pipelines and umbilical of subsea structures in oil and gas field developed at Krishna Godavari Basin, East Coast of India

- Under the terms of the contract, the work was intended to commence from 4th January, 2008 which had been mentioned as "effective date" in the contract. Under the said contract itself, the completion of the work was reckoned from the date issuance of completion certificate by AMC. Since the completion certificate was issued in the month of September, 2008, the completion date was thus taken as 30th September, 2008.

- Thus, according, to the assessee since the contract lasted for less than 12 months which was the threshold period for the establishment of permanent establishment (PE) in India in terms of Article 5(2) (g), of India Cyprus DTAA, therefore, it was claimed by the assessee that no income earned from such contract can be attributed or taxed in India.

- However, the Assessing Officer (AO) after examining the scope of work, deduced that assessee was carrying out various functions as per the contract and came to a conclusion that the assessee was responsible for multifarious functions

- Thus, according to the AO, from terms of contract and scope of work it cannot be said that role of the assessee was limited to mere rock placements in river sections, so as to fall within ambit of Article 5(2)(g) of the India Cyprus DTAA.

- Further, AO held that even if the assessee's contention was accepted that its activities are covered u/s 5(2)(g), then also they constitute a PE, because one of the employee of the assessee had come to India as early as on September, 2007 to collect data and information. Hence, he concluded that the assessee has rendered service for a period of more than 12 months and therefore, there was an installation PE; and accordingly, the AO computed income u/s 44 BB i.e. @ 10% of gross receipt of Rs. 58,49,67,946.

- DRP by and large confirmed the action of the AO in so far as establishment of PE in India u/s 5(2)(g) and observed that assessee's activity under the contract does constitute installation PE in India

Held

The ITAT observed/ held as follows:-

- The moot question was, whether the scope of work under the contract and the activities carried out by the assessee in respect of the aforesaid work had crossed the threshold period of 12 months given in Article 5(2)(g) of India-Cyprus DTAA. To constitute a PE, it is important that the activities defined therein should be carried out/or is continued for a period of more than 12 months.

- The ITAT observed that revenue's case was as follows:-

  - One of the employee of the assessee company had visited India in September, 2007 and thereafter activities of the assessee had started from September, 2007;

- Prior to the effective date of 4th Jan 2008, a full review was undertaken before entering into contract and thus, the activities carried out prior to the contract date should be treated as extension/continuation of the installation activity;
- There was pre-engineering survey and soil investigation studies under the scope of work for which assessee has made surveys much before the effective date which is 4th January,2008;
- The assessee had not provided any relevant details of arrivals and stay etc., of the employees visiting India prior to the date of contract;
- The responsibility matrix showed that assessee was required to carry out other various activities which required pre installation activities and also to obtain various permits and authorisations which has also been taken as part of installation activity itself;
- Lastly, the completion certificate as given by the assessee did not reflect the final completion, because there was a condition that final completion certificate would be given once various conditions had been satisfied and till the final completion certificate was issued the activity of the project had to be construed as continuing

- The ITAT held that auxiliary and preparatory activity, purely for tendering purpose before entering of the contract and without carrying out any activity of economic substance or active work qua that project cannot be construed as carrying out any activity of installation or construction. Clause (g) of Article 5(2) ostensibly refers to activity based PE, because the main emphasis was on "where such site project or activity continues for a period of more than 12 months. The duration of 12 months per se was activity specific qua the site, construction, assembly or installation project. All such preparatory work for tendering purpose before entering into contract could not be counted while calculating the threshold period

- The ITAT observed as follows-

  - No preparatory work had started at the installation sites prior to 4th of Jan 2008. The period from which it can be reckoned that enterprise has started to perform the activities in connection with installation project or site etc. is when the actual purpose of the business activity had started.

  - The performance of the activities in the present case can only be reckoned from 4th January, 2008; and not before that as the preparatory work if any, was for tendering purpose and to get the contract.

  - The activity qua the project comes to an end when the work gets completed and the responsibility of the contractor with respect to that activity comes to end. Here activity of the assessee qua the project as per the terms of contract had come to an end on or before 30th September, 2008 for the reason that; firstly, last sail out of barge/vessel was 25th September 2008 and Customs authorities had also certified the demobilization by this date; secondly, all the payments relating to contract work were received by the assessee much before the closing of September, 2008; thirdly, the completion certificate too mentioned the date of completion as 30th September, 2008, though the formalities of final completion certificate may had exceed uptill November 2008, but the date mention for completion in the certificate was 30th September 2008 only; and lastly, there was nothing on record to suggest that any activity post completion had been carried out beyond 31st December, 2008 or the project of the assessee was not completely abandoned before the period of 12 months.

- Contentions of the Revenue were based on presumptions without any corroborative material.

- The ITAT held that threshold period of 12 months had not exceeded in the present case and consequently no PE could be said to have been established in Article 5(2)(g). Accordingly, no income of the assessee under the Contract executed by assessee in India could be held to be taxable in terms of Article 7.

Transfer Pricing

Case Laws

M/s. Firmenich Aromatics India P. Ltd. v/s DCIT- ITAT Mumbai

Facts

Ground 1 : Royalty Payment

- Firmenich Aromatics India P. Ltd ('the assessee'),engaged in the business of manufacturing and marketing of industrial flavours, fragrances and chemical specialties, had entered into flavours and fragrances license agreement on April 1, 2009 with the Firmenich S.A Switzerland ('AE'), which was renewed from time-to-time, for availing technical knowhow. As per the agreement terms, assessee was required to pay royalty @ 5% on local sales and 8% on export sales, net of Indian taxes. The technical knowhow was in the nature of licensor secret formula, trade secret,

manufacturing procedures, methods and other technical information relating to the manufacturing, compounding, quality control, testing and servicing of the licensed products. The assessee was paying royalty at the same rate from 1997 onwards and there was no increase in the royalty payment even though there was increase in sale and profit and royalty at the same rate had been accepted by the TPO in the previous AYs. There was just a change in the system of payment of royalty to A.E. from net sales to gross sales w.e.f. 1st April 2009 due to change in FDI policy. The Assessee benchmarked the said transaction using TNMM

- The TPO wished to apply CUP method using royalty stat data base extracted three agreements stated to be in similar line of business wherein royalty was paid @ 1% on net sales.

- The TPO ultimately held that the payment of royalty in the given facts and circumstances of the case was not justified, hence, the same disallowed under section 37(1) of the Act. Further, he observed, considering that the assessee might be getting some technical inputs to run his manufacturing plant, the assessee would be required to pay 10% of the royalty which was paid during the year. The TPO further held that if at all assessee's claim of royalty payment is to be allowed, it should be calculated on the basis of net value added sales which is equal to net of Indian taxes, of the net ex-factory sale price of the licensed product, exclusive of excise duty, minus the cost of standard bought out component and landed cost of imported components irrespective of source of procurement

- The DRP upheld the adjustment. Aggrieved the Assessee filed an appeal before the ITAT

Ground 2 : Information Systems Services

- The Assessee had paid Rs.12.96cr for availing software services(out of which, Rs.5.34cr was capitalized and Rs.7.61cr was claimed as revenue expenditure).

- TPO, after referring to the OECD Guidelines, US Regulations and certain judicial precedents concluded that assessee had failed to demonstrate that services had actually been provided, the basis for quantification etc. TPO proceeded to quantify ALP by stating that the number of man hours rendered by the employees towards rendering of services to assessee was 365 man hour per year. Applying the man hour rate of Rs.8.05 lakhs per hour, which according to TPO could be considered as CUP, he determined ALP of the services availed by assessee at Rs.62.05 lakhs. In addition, TPO estimated an amount of Rs.1cr towards cost of software to be paid annually by the assessee. Thus, TPO determined the ALP of the services rendered by the AE at Rs.1.62cr as against the payment made by the assessee at Rs.12.96cr and made a TP-adjustment of Rs.11.34cr.

- In appeal, DRP confirmed the TP-adjustment but directed TPO to reduce the capitalized software charges from the cost of asset eligible for depreciation.Aggrieved the Assessee filed an appeal before the ITAT.

Held

Ground 1

- Before the ITAT, the Assessee submitted as under:-

  - Assessee did not undertake any research and development activity
  - Assessee was using intangibles developed by the AE. IPRs remained with the AE
  - If the assessee stopped paying royalty, it would have to stop all its manufacturing activity
  - TPO had not followed any of the prescribed method as provided in the statute and simply made an ad-hoc adjustment on estimated basis which was not legally permissible
  - TNMM had to be adopted as it was inextricably linked to other transactions. Payment of royalty being closely connected to manufacturing activity, benchmarking of royalty independently was improper

The ITAT held as follows:-

- Duty of the TPO was restricted only to the determination of ALP of an international transaction between two related parties by applying any of the methods prescribed under section 92C of the Act r/w rule 10B of the Rules. There was no provision under the Act empowering the TPO to determine the ALP on estimation basis, that too, by entertaining doubts with regard to the business expediency of the payment and in the process stepping into the shoes of the Assessing Officer for making disallowance under section 37(1) of the Act

- The TPO is duty bound to determine the ALP of the international transaction by adopting one of the method prescribed under the statute and cannot deviate from the restrictions/conditions imposed under the statute

- Only because the manufacturing activity was being carried on from past several years, it does not mean that the assessee would not require the technical knowhow of the AE, hence, there is was necessity for paying royalty to the AE

- Keeping in view the relevant statutory provisions and the principles laid down in the judicial precedents relied upon, the ITAT held that determination of arm's length price @ 10% of the amount paid by the assessee on mere assumption and presumption and without any reasonable basis cannot be upheld

- With regards to the TPO's alternative benchmarking approach under CUP Method using royaltystat, the ITAT held that the comparables in different geographical locations cannot be compared

- Further, the TPO having not determined the arm's length price in conformity with statutory provision and in the process having failed to demonstrate that arm's length price shown by the assessee is incorrect, the contention of the Department to restore the issue to TPO for fresh determination of ALP was not accepted

- The addition made to royalty payment was deleted

Ground 2

- ITAT stated that though TPO alleged that assessee failed to furnish any evidence to substantiate its claim that the payment made to the AE for availing Information System Services, however, the material on record revealed that assessee had not only undertaken a benchmarking process for determining ALP of the transaction in the TP-study report which was filed before TPO, but, other relevant and necessary documents like copy of the agreement, invoices raised, certificate from independent Chartered Accountant Firm, KPMG, details of users etc. were also furnished before TPO. ITAT further opined that, non–furnishing of certain documentary evidences, as alleged by the TPO, does not empower him to embark upon determining the arm's length price of the international transaction on estimation basis.

- Though, the TPO had observed that he had applied CUP method for determining the ALP, however, he had not brought on record even a single comparable to support the ALP determined by him even on estimate basis. The estimation of service charges on so called man hour basis was without any supporting material

- Determination of ALP by the TPO was not as per any one of the methods prescribed under section 92C of the Act r/w rule 10B. Such determination of ALP on ad–hoc/estimation basis was not permissible under the scheme of the Act was the TPO was duty bound to determine the ALP by following any one of the most appropriate method prescribed under the statute.

- Moreover, when the TPO himself agreed that the AE had provided software and certain services, there was no reason for not accepting the payment made to the AE to be at arm's length in the absence of any contrary evidence brought on record and by simply applying the benefit test. If the TPO did not agree to the ALP shown by the assessee it was open for him to determine the ALP by applying one of the most appropriate methods being backed by supporting material. Without complying to the statutory provisions, the TPO certainly cannot determine the ALP on ad–hoc / estimation basis.

- The addition made by the TPO was deleted.

M/s. Spencer Stuart (India) Private Limited v/s ACIT- ITAT Mumbai

Facts:

- The Assessee, a subsidiary of Spencer Stuart International BV [Associate Enterprise ('AE')] was engaged in the business of high end executive search services i.e.,recruitment of senior personnel through a direct approach to potential candidates. The Assessee entered into various international transactions

Ground 1

- For 4 AYs (AY 2008-09 – AY 2011-12) under the said appeal, the AO made Transfer Pricing adjustments in respect of international transactions – payment of license fees and Multi Country executive fees. The DRP confirmed the additions made by the AO

- The Assessee had entered into an APA with the CBDT in August 2016, which was applicable to 5 consecutive years for AY 2014-15 to AY 2018-19 and also applied to 4 consecutive rollback years for AY 2010-11 to AY 2013-14. The modified return of income was filed in pursuance to section 92CD r.w. Rule 10RA. The APA laid down the application of the Most Appropriate Transfer Pricing Method and the Arm's Length Price for the captioned transactions and discussed the FAR analysis in detail

Ground 2

- The Assessee had made payments to AE, SSI BV towards reimbursement of expenses. The expenses reimbursed to SSI BV by the assessee were mainly towards travel and stay, video conferencing charges, insurance, reimbursement for purchase of fixed assets and other miscellaneous expenses The same were in the nature of

pure reimbursement without any mark-up and also supported by third party invoices

- The DRP erred in treating the reimbursement of expenses as intra group services

Held

Ground 1

- The ITAT placed reliance on various cases where in the High Court / ITAT held that the APA holds persuasive value even in respect of the years which does not get covered by the term of the agreement and the benchmarking mechanism suggested in the agreement should necessarily be followed in determining the ALP of the transactions

- In respect of AY 2008-09 and 2009-10 (the years which were not covered by APA), ITAT held that the principles laid down in the APA for benchmarking/comparability analysis in respect of the international transactions shall have a guidance value since there was no change in the nature of the international transactions in the said AYs and FAR profile of the Assessee and the AEs

- ITAT also directed the Department to pass an order giving effect u/s.92CD(5) in AY 2011-12 and AY 2012-13

Ground 2

The ITAT observed as follows:-

- The Service Agreement defined what would be forming part of the search services which were billed. The reimbursement related to search services would form part of the search fees. SSI BV had also from time to time incured certain expenses on behalf of the assessee and shall separately bill the same These expenses were not part of search services and hence the same were not related to search fees

- The reimbursements under consideration were not related to search services and the same were backed by third party invoices

- ITAT relied upon SC ruling in A.P. Moller Maersk and various other judgements wherein it was held that once the character of the payment was found to be in the nature of reimbursement of the expenses, it cannot be treated as income chargeable to tax.

- ITAT also relied on various decisions of the Mumbai Tribunal wherein it was held that payment of expenses at cost to group entity which paid the expenses on behalf of the assessee was in the nature of reimbursement if it did not involve margin or value addition

- The ITAT held that reimbursements paid being backed by third party invoices without any element of mark-up, cannot be benchmarked at NIL as done by TPO. Accordingly, the ITAT deleted the addition so made by the AO.

M/s. Technocraft Industries (I) ltd vs DCIT – (ITAT Mumbai)

Facts

- The Assessee is a company engaged in the business of manufacturing and exporting of drum closures, pipes and cotton yard.

- During the year under consideration, the TPO made upward adjustment in respect of international transaction entered into by the assessee with its associated enterprises in respect of guarantee provided to its AE.

- The Assessee argued that guarantee was advanced as a matter of commercial presidency to protect the business interest of the group and in the absence of guarantee, assessee would have provided the funds to its subsidiary. Hence provision of guarantee did not lead to any additional risk in the assessee warranting compensation. The Assessee relied on various case laws wherein guarantee commission was determined at 0.5%.

Held

The ITAT held as follows:-

- Rates (0.25% - 0.50%) as discussed in various judgements were in case of corporate guarantee, whereas in case of assessee, it was issuance of SBLC and so the said rates were not applicable.

- the assessee had been charged a rate of 0.9% by an Indian bank for SBLC. The ITAT adopted internal CUP and considered the rate of commission of 0.9% p.a. as arm's length rate of commission.

- With regards to addition on account of interest charged on loan advanced to AE, relying on the decision of Delhi High Court in the case of Cotton Naturals (I) Pvt. Ltd., directed the AO to compute interest as per the interest rates applicable to currency in which loan was required to be repaid by the assessee

IDTX

CGST (Amendment) Act, 2018

- **Section 140 (1): Transitional Input Tax Credit w.e.f. 01.07.2017.**

  Retrospective amended is inserted in section 140(1) for removal of doubts that eligible duties and taxes excludes any cess. Accordingly, transition of various cesses like Education cess, Higher Education cess and Krishi Kalyan Cess and Additional Duties of excise (on textile and textile article) are not permitted.

- **Section 143(1)(b) : Job Work Procedure**

  Time limit for return of inputs or capital goods of one year and three year respectively made extendable, on sufficient cause being shown, by commissioner for a further period not exceeding one year or two year respectively.

- **Schedule I (Para 4)**

  Any person importing from related person or from any of his other establishment outside India, in the course or furtherance of business, will have to compulsory register under GST and pay tax on RCM basis.
  Earlier this liability was only on Taxable Person, now it is made applicable to all persons.

- **Transactions not liable to GST**

  - Out and Out transactions i.e. purchase and sale of goods, not entering India;
  - High Sea Sales;
  - Supply of Warehoused goods before clearance for home consumption (meaning of warehoused goods as per customs law).

  (Schedule III of CGST, new insertion)

- **For Composition Dealer:**

  - Turnover Limit to be raised from INR 1 crore to INR 1.5 crore;

  - Taxpayer friendly measure - Dealer engaged in supply of goods and services can opt for composition scheme provided service turnover does not exceed 10% of previous year turnover of State/UT maximum up to 5 lakhs.
    (Section 10 (1) & (2) of CGST)

- **Exports of Services**

  Receipt of payment in Indian rupees allowed, in case of export of services, where permitted by RBI.
  (Section 2(6) (iv) of IGST)

- **Input Tax Credit (ITC) provisions to be made liberal**

  ITC allowed in following cases: -

  - Motor Vehicle with capacity more than 13 persons, Vessels and Aircraft (including insurance, repairs and maintenance);
  - Motor Vehicle for action of money for a banking company / financial institution;
  - Goods or services to be provided by employer to employee under any Statutory obligation;
  - Schedule III activities now no reversal required except in case of sale of land and building;

- **Compliances made simpler:**

  - Issuance of consolidated credit/ debit notes in respect of multiple invoices issued in a Financial year.
    (Section 34(1) & 34 (3) of CGST)
  - Blanket coverage of RCM applicability on unregistered person may now be restricted only for specified goods and only for class of registered person.
    (Section 9(4) of CGST)

- **Registration related changes:**

  - Compulsory Registration for e-commerce operators only in case required to collect Tax Collection at Source u/s 52 or turnover crosses specified threshold limit.
    (Section 24(x) of CGST)
  - Taxpayers may opt for multiple registration within a state/union territory in respect of multiple place of business located within the same state/ union territory.
    (Section 25(2) of CGST)
  - Registration to remain suspended while cancellation of registration is under process to allow taxpayer of continued compliance under law.

GST Notification

- Time limit extended for filling Form GSTR -01 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from July, 2018 to March, 2019 till 11th day of succeeding month.
  (Notification No. 32/2018 – Central Tax dated 10.08.2018)

- Time limit for furnishing the details of outward supplies in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of up to 1.5 crore rupees in the

preceding financial year or the current financial year, as under

Period	Due Date
July - September 2018	31.10.2018
October - December 2018	31.01.2019
January 2019 - March 2019	30.04.2019

(Notification No. 33/2018 – Central Tax dated 10.08.2018)

- Exemption from payment of tax on supplies received from unregistered person u/s 9(4) of CGST Act, 2017 extended till 30.09.2019.
  (Notification No. 22/2018 – Central Tax (Rate) dated 06 August 2018.)

- It is clarified that the fertilizers supplied for direct use as fertilizers or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% GST and fertilizers items other than clearly to be used as fertilizers attract 18 % Rate.
  (Circular No. 54/25/2018 dated 09.08.2018)

- **Clarification Regarding removal of restriction on refund of accumulated Input Tax Credit (ITC) on fabrics and lapse of accumulated ITC till 31.07.2018.**

  Notification 20/2018 Central Tax (Rate) dated 26.07.2018 seeks to lapse ITC accumulated till 31.07.2018 on account of Notification 5/2017 – Central Tax (Rate) dated 28.06.2018. By this circular it is clarified as follows:
  - ITC lying unutilized, due to inverted duty structure, up to the month of July 2018 will lapse, after the payment of tax.
  - Formula prescribed in rule 89(5) of CGST Rules to apply mutatis mutandis to calculate amount of ITC to be reversed/lapsed.
  - With respect to ITC on input services and capital goods, will not lapse, as Notification No. 5/2017 – Central Tax (Rate) does not put restriction in relation to ITC on Input services and capital goods.
  - Credit accumulation on account, other than inverted duty structure, will not lapse.
  - Notification 5/2017 Central Tax (rate) not to apply for zero rated supplies. Accordingly, ITC accumulated on zero rated supplies shall not lapse.
  - ITC relating to closing stock of finished goods and inputs as on 31.07.2018 shall not lapse.

  (Circular No. 56/30/2018 dated 24.08.2018)

Advance Ruling

AUTHORITY FOR ADVANCE RULING KARNATAKA
M/s COLUMBIA ASIA HOSPITALS PVT LTD
2018-TIOL-113-AAR-GST

Activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act and GST will be applicable on such transaction.

Facts

- M/s Columbia Asia Hospitals Private Limited, (called as the "Applicant" hereinafter), engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services.
- Applicant is currently operating across six different states having eleven hospitals out of which six units are in the state of Karnataka.
- The applicant has its India Management Office ("IMO") i.e. Corporate Office in Karnataka and some of the activities for all the units with respect to accounting, administration and maintenance of IT system are carried out by the employees from IMO which forms part of the registered person in Karnataka.
- Furthermore, GST paid on certain expenses such as rent paid on immovable property and equipment, travel expenses, consultancy services, communication expenses, etc., which are incurred towards services used by the Corporate office, are availed by the registered person in the state of Karnataka and subsequently, the Corporate office in Karnataka is discharging IGST on the expenses proportionately attributable to the units located outside Karnataka, treating the same as taxable supplies.

- However, the applicant states, with respect to employee cost there are no invoices raised by the management office treating the same as activities carried out by employees in the course of or in relation to his employment which does not amount to supply of services.

Issue Involved

- Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the

other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act i.e. "Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business" or

- It shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act i.e. "Services by an employee to the employer in the course of or in relation to his employment.?", activities which are neither to be treated as supply of goods or supply of services.

Held

- As per CGST Act, 2017, Corporate office is covered under one registration in the state of Karnataka and other units are covered under different registrations, and such units are controlled by the Corporate office. Accordingly, both are related persons.

- By implication of Entry 2 of Schedule I, any supply of goods and services from Corporate Office to the separately registered units would amount to supply of goods and services, even if made without consideration.

- Further, activities performed by the employees at the corporate office in the course of or in relation to employment, the employees employed in the Corporate Office are providing services to the Corporate Office and hence there is an employee-employer relationship only in the Corporate Office. The other offices are distinct persons and therefore the employees in the Corporate Office have no employer employee relationship with other offices.

- Accordingly held, that the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act.

SEBI & MCA

MCA

1. **COMPANIES(REGISTRATION OFFICE AND FEES) FOURTH AMENDMENT RULES,2018**

- MCA vide its notification dated August 21, 2018 in the Annexure under head VII of the Companies (Registration Office And Fees)Rules,2014 substituted the following note for filing of e-form DIR-3 KYC.

- For the Current Financial (2018-2019), no fee shall be chargeable till the September 15, 2018 and fee of Rs.5000 shall be payable on or after September 16, 2018.

- It means no fees will be chargeable for filing of e-form DIR-3 KYC on or before the extended due date i.e September 15, 2018 and after that fees of Rs.5000 will be levied.

2. **COMPANIES(APPOINTMENT AND QUALIFICATION OF DIRECTORS) FIFTH AMENDMENT RULES,2018**

- MCA vide its notification dated August 21, 2018 has amendment in Rule 12A of the Companies (Appointment And Qualification Of Directors) Rule 2014
- With the aforesaid notification the proviso to Rule 12A is amended and deadline of submission of e-form DIR-3 KYC is extended from August 31,2018 to September 15, 2018
- Also format of e-form DIR-3 KYC has been substituted
- E-form DIR-3 KYC has been revised from August 23,2018 so it is advisable to check the latest version before filing

3 . **COMMENCEMENT OF AMENDED SECTION 42 AND RULE 14 OF COMPANIES(PROSPECTUS AND ALLOTMENT OF SECURITIES)SECOND AMENDMENT RULES,2018**

- MCA vide its notification dated August 07, 2018 has notified section 10 of the Companies Amendment Act ,2017(CAA 2017) which is Section 42 of Companies Act ,2013(Issue of Shares on Private Placement Basis)

- Section 42 of Companies Act 2013 is substituted by Companies Amendment Act 2017 with commencement of amended section 42 and rule 14 of companies (prospectus and allotment of securities) second amendment rules,2014 is also substituted.

SEBI

1. **As per Circular No.: SEBI/CIR/MRD/DoP-1/P/125/2018 dated Aug 24, 2018|Extension of Trading hours of Securities Lending and Borrowing (SLB) Segment.**

- In order to facilitate physical settlement of equity derivatives contracts, it has been decided to permit Stock Exchanges to set their trading hours in the SLB Segment , subject to the condition that The trading hours are between 9 AM and 5 PM.
- The Exchange /Clearing has in place risk management system and infrastructure commensurate to the trading hours.

2. **Amendment to SEBI Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client Requirements for Foreign Portfolio Investors (FPIs).**

- Existing FPIs were required to provide the list of beneficial owners and documents specified within six months of this circular
- All existing FPIs whose clubbed investment in equity shares of a Company is in breach of the provisions of Regulation 21(7) of SEBI (Foreign Portfolio Investors) Regulations, 2014 were required to ensure compliance within six months from the date of the circular.

3. **As per Circular No.: SEBI/HO/DDHS/CIR/P/2018/122 dated Aug 16, 2018| Electronic Book Mechanism for issuance of securities on private placement basis.**

- With a view to further rationalise and ease the process of issuance of securities on EBP platform and in consultation with the market participants, it has been decided to provide for the following additional facilities:
- Closed bidding shall also be permitted on the EBP Platform.
- An issuer can choose either uniform yield or multiple yield allotment, provided the same is disclosed in the PPM/IM.

- Investors are now permitted to place multiple bids in an issue.
- Allotment to the bidders shall be done on the basis of "Yield-time priority". Thus, allotment shall be done first on "yield priority" basis.
- In addition to the current process of pay-in of funds through clearing corporation of Stock Exchanges, the pay-in of funds towards an issue on EBP shall also be permitted through escrow bank account of an issuer.
- In addition to the Stock Exchanges, Depositories can also act as EBP.

4. <u>As per Circular No.: CIR/DDHS/P/ 121/2018 dated Aug 16, 2018 Streamlining the process of Pubic Issue under SEBI Regulations.</u>

- It has been decided to reduce the time taken for listing after the closure of the issue to 6 working days as against the present requirement of 12 working days.

5. <u>As per Circular No.: SEBI/HO/MIRSD/DoP/CIR/P/2018/ 119 dated Aug 10, 2018 Enhanced monitoring of Qualified Registrars to an Issue and Share Transfer Agents.</u>

- SEBI constituted a Committee under the Chairmanship of Shri R. Gandhi, Former Deputy Governor, Reserve Bank of India to review the regulations and relevant circulars pertaining to Market Infrastructure Institutions (MIIs).

- The QRTAs are now advised to formulate and implement a comprehensive policy framework, approved by the Board of Directors ("BoD") of the QRTAs, which shall include the aspects such as Risk Management Policy, Business Continuity Plan, Manner of keeping records, Wind-down Plan, Data Access and Data Protection Policy, Ensuring Integrity of Operations, Scalable infrastructure, Investor Services and Service Standards, Insurance against Risks.

6. As Per Circular No.: SEBI/HO/MIRSD/DoP/CIR/P/2018/117 Dated Aug 03, 2018 Role of Sub-Broker (SB) vis-a-vis Authorized Person (AP)

- SEBI Board in its meeting held on June 21, 2018 decided to discontinue with Sub-Broker as an intermediary to be registered with SEBI.

- The registered Sub-Brokers shall have time till March 31, 2019 in order to migrate to act as an AP and / or Trading Member (TM). The Sub-Brokers, who do not choose to migrate into AP and /or TM, shall deemed to have surrendered their registration with SEBI as Sub-Broker, w.e.f. March 31, 2019.

Due Dates

Income Tax Department (ITD) Compliances

Sr No.	Due Date	Form No	Description
1	30-09-2018	Form 3 CA	Audit report under section 44AB for the assessment year 2018-19 in the case of a corporate-assessee or non-corporate assessee who is required to submit his/its return of income on September 30, 2018.
2	30-09-2018	Form 3 CEB	Annual return of income for the assessment year 2018-19 if the assessee: not having any international or specified domestic transaction (a) corporate assessee (b) non-corporate assessee (whose books of accounts are required to be audited)or (c)working partner of firm (whose accounts are required to be audited)
3	30-09-2018	Form 26QB	Due date for furnishing of challan-cum-statement in respect of tax deducted u/s. 194-IA for the month of Aug, 2018
		Form 26QC	Due date for furnishing of challan-cum-statement in respect of tax deducted u/s. 194-IB for the month of Aug, 2018
4	07-10-2018	Challan No.281	Due date for deposit of Tax deducted/collected for the month of Sept 2018
5	15-10-2018	Form 26QB	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of August, 2018
		Form 26QC	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of August, 2018
6	15-10-2018	Challan 281/ Form 27D	Quarterly statement of TCS deposited for the quarter ending September 30, 2018
7	15-10-2018	Form No. 15G/15H	Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2018

Indirect Tax Compliances

Sr No.	Due Date	Form No	Description
1	20-09-2018	GSTR-5	(Non-Resident Foreign Taxpayer) Monthly Filling
2	20-09-2018	GSTR-3B	Summary Return to be filed for the month of August -18
3	20-09-2018	GSTR-5A	(Non-Resident OIDAR Service Provider)
4	21-09-2018	VAT Return	Dealers not covered under GST (Eg:Alchohol)
5	30-09-2018	GSTR - 06	For the period July 2017 to August 2018 - required to be filed by input service distributor
6	30-09-2018	IIIB	Monthly PTRC Return of Sep 18
7	11-10-2018	GSTR-1	Summary of Outward Supplies for the month of Septmber 18 in case of turnover exceeding INR 1.5 Crores

ROC Compliances

Sr No.	Due Date	Form No	Nature of Compliances
1	15-09-2018	DIR 3	KYC of Directors
2	30-10-2018	AOC 4	Annual accounts
3	15-10-2018	ADT-1	Appointment of auditor event based
4	Within 30 days from receipt of cost audit report	CRA 4	Cost audit report event based
5	within 30 days from date of board meeting or 180 days of the start of financial year , whichever is earlier	CRA 2	Appointment of cost Auditor event based

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