

NEWSLETTER DEC'19

"Strive not to be success but rather to be of value"

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DIRECT TAX

INCOME TAX

Dalmia Power Ltd. v. ACIT. [2019] 112 taxmann.com 252 (SC)

Revised return can be filed beyond the due date specified pursuant to the Scheme of Arrangement or Amalgamation approved by NCLT

Facts of the case:

- M/s Dalmia Power Limited (Appellant No.1) was engaged in the business of building, operating, maintaining, and investing in power and power related businesses, directly or through downstream company. It filed its original Return of Income under Section 139 (1) of the Income Tax Act on 30.09.2016 for A.Y. 2016-2017 declaring a loss of Rs. 6 crores.
- Similarly, M/s Dalmia Cement (Bharat) Limited (Appellant No.2) was engaged in the business of manufacturing and selling of cement, generation of power, maintaining and operating rail systems and sold waste management system which provide services to the cement business & it filed its original Return of Income under Section 139 (1) of the Income Tax Act on 30.11.2016 for A.Y. 2016-2017 declaring NIL income.
- With a view to restructure and consolidate their businesses, the Appellants entered into Scheme of Arrangement & Amalgamation, which was duly approved and sanctioned by NCLT. The appointed date of said scheme was 01.01.2015 and would come into effect from 30.10.2018.
- It was impossible to file revised returns before the prescribed date of 31.03.2018 as NCLT passed the final order on 01.05.2018, therefore the appellants manually filed its revised return on 27.11.2018.
- Notice was issued on 04.12.2018 to give effect to the approval of scheme. However, subsequently, the same was recalled on 05.12.2018 on the grounds that the appellant had belatedly filed their revised return without prior approval from CBDT for condonation of delay under Section 119(2)(b) of the Income Tax Act, 1961 read with CBDT Circular No. 9/2015 dated 09.06.2015.
- A writ petition was filed before learned Single Judge of the Madras High Court for completion of assessments for AY 15-16 and AY 16-17 after considering the belated revised returns filed as well as the order of the NCLT. High Court held that Section 119(2)(b) read with CBDT Circular No. 9/2015 dated 09.06.2015 is not applicable where revised return is filed pursuant to the order of the NCLT and Department cannot override an approved Scheme of Arrangement and Amalgamation, which has statutory force.
- Aggrieved by the above judgment, Department filed Writ Appeals under Clause 15 of the Letters Patent Act, where Division bench of Madras High Court reversed the judgement of the Learned Single Judge.
- Aggrieved by the Judgment of the Division Bench, the Appellants filed a common Civil Appeals before the Supreme Court.

Held

- Sec 139(5) enables the assessee to file revise return of income on account of an omission or wrong statement contained therein. The same is not applicable in the present case as the revised return was filed on account of delay sanction of the Schemes of Arrangement and Amalgamation by the NCLT.
- Section 119(2)(b) enables an assesses to seek for condonation of delay by making a representation before the CBDT. A perusal of Section 119(2)(b) shows that it is applicable in cases of genuine hardship to admit an application, claim any exemption, deduction, refund or any other relief under this Act after the expiry of the stipulated period under the Income Tax Act. Thus, the need for condonation would not be applicable where an assessee has restructured their business and filed a revised Return of Income with the prior approval and sanction of the NCLT, without any objection from the Department.
- Rules of procedure have been construed to be the handmaiden of justice. The purpose of assessment proceedings is to assess the tax liability of an assessee correctly in accordance with law.
- Therefore, learned Single Judge had rightly allowed the Writ Petitions and set aside the Judgement of Division Bench of Madras High Court. The Department is directed to receive the revise return and complete the assessment after taking into account the revised return filed and order of the NCLT.

H.S. Ramchandra Rao vs. CIT [2019] 112 taxmann.com 135 (SC)

Relinquishment of Life membership or Secretaryship of an educational society is not a capital asset and hence taxable as Revenue receipt

Facts of the case:

- In the course of search proceedings conducted at the residential premises, the assessee admitted that he had received a sum of Rs. 42 lakhs from Paramahansa Foundation and Trust for relinquishing his life membership and secretaryship in Jayanagar Education Society. The same has been treated as Capital Receipt by the assessee.
- The Assessing Officer considered the same as revenue receipt and taxed under the head Income from Other Sources as undisclosed income. Aggrieved by the same assessee preferred the appeal against the CIT (A). However, CIT(A) rejected the contentions of the assessee and upheld the order of the Assessing Officer.
- On appeal before the Tribunal, the Tribunal held that the intrinsic link between the profession and avocation of the appellant stands established and concluded that the said receipt is directly referable to the profession/avocation and relied upon the judgment in **P Krishna Menon Vs. CIT (35 ITR 48) (SC)** wherein it had been held that teaching is an avocation if not a profession and teaching 'Vedanta' is just as much teaching as any other teaching and therefore an avocation and on this premise granted the relief to the assessee that the amount received is Capital receipt.
- Aggrieved by the said ruling of the Tribunal, Revenue preferred the appeal before the High Court of Karnataka.
- Supreme Court and High Court held as under –

Held

- The amount received by the assessee is for foregoing of life membership or secretaryship and cannot be treated as capital receipt as there was no transfer of Capital Asset in favour of Dr Paramhansa.
- The assessee did not lose monetarily by relinquishment of life membership or secretaryship as the assessee was not earning any income or making profit out of the said posts and thus the entire amount received from Dr. Paramahansa cannot be treated as Capital Receipt. The order of the Assessing Officer & CIT(A) is upheld.
- The Supreme Court observed that the lower authorities are relying on the admission of the appellant that the sum received is for relinquishing his life membership and secretaryship in Jayanagar Education Society.
- Taking over-all view of the matter, Supreme Court upheld the order of the High Court that the said amount received cannot be considered as Capital Receipt.

Transfer Pricing

M/s. MAN Diesel & Turbo India Private Limited vs ACIT, Circle -1 Aurangabad [ITAT Pune] [AY 2012-13] [ITA No.1049/PUN/2017]

The transactions of Production and Distribution segments cannot be clubbed because it is neither a case of package deal nor the two sets of transactions are structured in such a manner that the Assessee has no option to accept one and reject the other nor they are so inextricably linked that one cannot survive without other.

Facts:

- M/s. MAN Diesel & Turbo India Pvt Limited ('the Assessee') is an Indian company engaged in the trading of spare parts, installation/erection and commissioning of DG sets and is also acting as a commission agent by facilitating the sales of DG sets on behalf of its Associated Enterprises (AEs). It is a part of a Group which is a world market leader for large diesel engines for use in ships and power stations.
- The Assessee was engaged only in trading operations but in the preceding year, a manufacturing unit came to be set up by it, which became operational for some time of the preceding year. In relation to AY 2012-13, it being the first year for Assessee's manufacturing operation, it declared total income of INR 10,46,63,900 in its income tax returns and also reported international transaction with its AE.
- For benchmarking, the Assessee clubbed all the international transactions concerning the manufacturing and trading segment except Design Engineering services. The Assessee claimed to have incurred losses in the Production activity for which import of raw material was made from its AEs and sale of diesel engines was also made to the Aes.
- The TPO opined that both the Distribution and Production segments ought to have been benchmarked separately. Thus, the TPO made an adjustment in the manufacturing segment.
- Aggrieved, the Assessee filed an appeal before the ITAT.

Held

- The Assessee submitted that there is a close link between the 'sale of diesel engines' (manufacturing segment) and 'sale of spare parts' (trading segment) because it is only with the help of traded goods, namely, spare parts that the Assessee can survive in the years to come by providing parts of the diesel engines sold by it as and when getting faulted. Due to the close nexus between the sale of diesel engines manufactured by the Assessee and sale of the related spare parts traded by the Assessee, both should be aggregated for the purpose of benchmarking.
- The Tribunal observed/ held as follows: -
 - In so far as the determination of the ALP under the machinery of computation under the methods as given in Rule 10B is concerned, the term 'transaction' also includes a plural of transactions. However, the caveat is that in order to be aggregated within the term 'transaction' under Rule 10A(d), it is sine qua non that such number of transactions must be closely linked.
 - The Assessee exported diesel engines to its AEs and there is no sale of spare parts to the AEs as the entire sale of spare parts is in India to the third parties. It is only the import of such spare parts, which has been occasioned from the AEs. It is ergo evident that the sale of traded spare parts does not extend to its customers to whom the goods manufactured by it were sold. The mere fact that spare parts sold by the Assessee in Indian market would be of some help in subsequent years when the manufactured diesel engines would require servicing, cannot now make the transactions as 'closely linked transactions', so as to come up for consideration in an aggregate manner.
 - Closely linked transactions means similar or alike transactions of purchase or sale etc. of goods or services.

- In so far as the determination of The Tribunal relied on the decision of the Hon'ble Punjab & Haryana High Court in Knorr Bremse India (P) Ltd. Vs. ACIT (2016) 380 ITR 307 (P&H) where the question of aggregation of international transactions was considered. it was held that in case of a package deal where each item is not separately valued but all are given a composite price, these are to be taken as one international transaction. Further, where a number of transactions are priced differently but on the understanding that the pricing was dependent upon the Assessee accepting all of them together (i.e. either take all or leave all), then also it is one international transaction. In that case, it will be on the Assessee to prove that although each is priced separately, but they were provided under one composite agreement. It still further held that aggregation can be done when albeit each transaction is priced differently, but they are so inextricably linked that one cannot survive without other
- Relying on the principles enunciated by the Hon'ble High Court, the Tribunal held that the transactions of Production and Distribution segments cannot be clubbed because it is neither a case of package deal nor the two sets of transactions are structured in such a manner that the Assessee has no option to accept one and reject the other nor they are so inextricably linked that one cannot survive without other. In fact, in all the earlier years, the assessee was exclusively in the trading of components and the manufacturing activity started at the fag end of the preceding year only
- The Tribunal accepted the view of the TPO that the Manufacturing segment cannot be aggregated with the Distribution segment and both need to be benchmarked independent of each other and upheld the Transfer Pricing adjustment

Indirect Taxation

Notifications

[Due date extended till 20 December 2019 for registered persons in J&K, for following forms -](#)

Notification No.	Forms	Period
63/2019- Central Tax	FORM GSTR-1 (having Aggregate Turnover more than 1.5 crore)	July, 2019 to September 2019.
64/2019- Central Tax	FORM GSTR-1 (having Aggregate Turnover more than 1.5 crore)	October, 2019
65/2019- Central Tax	FORM GSTR-7	July, 2019 to October, 2019
66/2019- Central Tax	FORM GSTR-3B	July, 2019 to September 2019
67/2019- Central Tax	FORM GSTR-3B	October, 2019

[E-Invoicing under GST](#)

E-invoicing has been proposed to introduce with the purpose to reduce tax evasion, achieve higher efficiency in tax administration and to provide better taxpayer services.

For reporting of business to business (B2B) invoices to GST System in a phased manner e-invoicing has been brought starting from 1st January 2020 on voluntary basis and mandatory from 01 April 2020.

Registered person whose aggregate turnover exceeds 100 crore rupees shall prepare E-invoice in respect of supply of goods or services or both to a registered person. Other than E-Invoices will be considered as not a valid Invoice.

As per rule 48(4), the invoice shall be prepared with such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number.

Further, all registered persons, having aggregate turnover of more than 500 crore rupees issuing invoice to an unregistered person (B2C) shall have Quick Response (QR) Code.

(Notification No. 68/2019, 70/2019, 71/2019 & 72/2019 – Central Tax dated 13 December 2019)

Common GST Electronic Portal to be used for the purpose of preparation of the E-invoice in terms of rule 48(4) of CGST Rules. **(Notification No. 69/2019 – Central Tax dated 13 December 2019)**

[Extension for filing GSTR-3B](#)

The due date for filing of FORM GSTR-3B for the month of **November, 2019** has been extended till **23 December, 2019**.

(Notification No. 73/2019 – Central Tax dated 23 December 2019)

[Waiver from Late Fees – GSTR-1](#)

Late fees waived for non- filing of **FORM GSTR-1** from **July, 2017 to November, 2019**, provided if the same has been furnished between the period from 19 December 2019 to 10 January 2020.

(Notification No. 74/2019 – Central Tax dated 26 December 2019)

Further, due date for the same has been extended till 17th January 2020.

[Amendments to Central GST Rules, 2019](#)

The credit to be availed shall be restricted to: -

Invoices / debit note reflecting in GSTR – 2A, plus 10% of eligible ITC available. (Before amendment, limit was 20% of eligible ITC available)

**Rule 86A has been inserted: -
Conditions of use of amount available in electronic credit ledger:-**

The Commissioner having reasons to believe that credit of input tax available in electronic credit ledger has been fraudulently availed or is ineligible with subject to certain conditions, may not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability.

The Commissioner, if he is satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, may allow debit of input tax credit.

(Notification No. 75/2019 – Central Tax dated 26 December 2019)

Due date extension for registered persons in Assam, Manipur or Tripura for following forms for month of November 2019-

Notification No.	Forms	Extended Date
76/2019 – Central Tax	FORM GSTR-1 (having aggregate turnover of more than 1.5 crore)	31 December, 2019
77/2019- Central Tax	FORM GSTR-3B	31 December, 2019
78/2019 – Central Tax	FORM GSTR-7	25 December, 2019

RCM on renting of motor vehicles:-

Renting of motor vehicle services was inserted into RCM category w.e.f. 01 October 2019. However, clarification in relation to said subject has been changed, and are effective from 01 October 2019.

RCM shall be applicable on service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from service recipient only if supplier fulfils all the following conditions:-

- Other than a body-corporate;
- does not issue an invoice charging GST @12% from the service recipient; and
- supplies the service to a body corporate.

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(Notification No. 29/2019-CT (Rate) dated 31.12.2019 and Circular F. No. 354/189/2019-TRU)

GST Exemption on Upfront amount payable for Lease:

Exemption to upfront amount payable for long term lease of industrial/ financial infrastructure plots by an entity having 20% or more ownership of Central or State Government. Earlier the exemption was available to an entity having 50% or more ownership of Central or State Government.

Conditions imposed to ensure that the leased plots are used for the purpose for which they are allotted; to monitor the intended use and to recover the amount with interest in case of any violations

(Notification No.28/2019-Central Tax (Rate) dated 30th December, 2019)

GST rate change:

GST rate on Woven and Non-Woven Bags and sacks of polyethylene or polypropylene strips or like , whether or not laminated, of a kind used for packing of goods (HS code 3923/6305), and all such bags falling under HS 3923/6305 including Flexible Intermediate Bulk Containers under 6305 3200 (FIBC) raised to a uniform rate of 18%(from 12%)

(Notification No. 27 /2019- Central Tax (Rate) dated 30th Dec, 2019)

Circulars

Ab-initio withdrawal of Circular No. 107/2019

Circular No. 107/2019, wherein certain clarifications were given in relation to various doubts related to supply of Information Technology enabled Services under GST, stands withdrawn ab-initio.

(Circular No. 127/2019 dated 4 December 2019)

Document identification number

Electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of the CBIC across the country.

(Circular No. 128/2019 dated 23 December 2019)

Standard Operating Procedure to be followed in case of non-filers of returns

Following guidelines are prescribed for non-filers of returns: -

(i) A system generated message would be sent 3 days before the due date for filing of returns.

(ii) Once the due date for furnishing the return is over, a system generated mail / message would be sent to all the defaulters immediately after the due date that the return has not yet filed.

(iii) 5 days after the due date of furnishing the return, a notice in FORM GSTR-3A shall be issued electronically to such registered person who fails to furnish return requiring him to furnish such return within 15 days.

(iv) In case the said return is still not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and would issue order in FORM GST ASMT-13. The proper officer would then be required to upload the summary thereof in FORM GST DRC07.

(v) For the purpose of assessment of tax liability the proper officer may take into account the details of FORM GSTR-1, FORM GSTR-2A, e-way bills, or any other information available from any other source.

(vi) In case the defaulter furnishes a valid return within thirty days of assessment order in FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in FORM ASMT-13, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

(Circular No. 129/2019 dated 24 December 2019)

Due date between: 16th December 2019 to 15th January 2020

Sr. No.	Due Date	Authority	Form No	Description
1.	20/11/2019	GST	GSTR - 3B	Monthly return for the month of November 2019 for all taxpayers
2.	20/11/2019	GST	GSTR - 5	Monthly return for the month of November 2019 for Non- Resident foreign Tax Payers
3.	20/12/2019	GST	GSTR - 5A	Monthly return for the month of November 2019 for NRI OIDAR Service Provider
4.	21/12/2019	State Government (Maharashtra)	VAT Return	Dealers not covered under GST (Eg:Alcohol)
5.	30/12/2019	Profession Tax (Maharashtra)	PTRC Return	Payment and filling of return of Professional Tax for the month of November 2019.
6.	10/01/2020	GST	GSTR 7	Monthly return for the month of December 2019 for authorities deducting tax at source
7.	10/01/2020	GST	GSTR 8	Monthly return for the month of December 2019 for e-commerce operators registered under GST
8.	11/01/2020	GST	GSTR - 1	Applicable to those taxpayers with Annual Aggregate Turnover more than 1.5 Crore for the month of December 2019
9.	13/01/2020	GST	GSTR - 6	Monthly return for Input service distributor

MCA UPDATES

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF CRA-4 (COST AUDIT REPORT) FOR FY 2018-19 UNDER THE COMPANIES ACT, 2013 - REG:

- In continuation to this Ministry's General Circular No. 12 / 2019 dated 24.10.2019 on the above subject and in view of several representations received from various stakeholders for extension of last date, it is informed that the last date of filing of CRA-4 (cost audit report) for all eligible companies for the Financial Year 2018-19, without payment of additional fee, has been further extended till 29.02.2020.
- It may be noted that the said extension is given for the entire process starting from 'preparation of Annexures to the Cost Audit Report' to 'submission of Cost Audit Report by the Cost Auditor to the Company' and finally, filing of Cost Audit Report by the Company with the Central Government.

INDEPENDENT DIRECTORS DATA BANK:

- Set up under the Companies Act, 2013, independent directors are required to register themselves with the databank within three months from December 1, as per rules notified by the MCA.
- Independent Directors can register themselves by doing login on the MCA website.
- This was notified on 2nd December, 2019.

SEBI UPDATES

FILING OF OFFER DOCUMENTS UNDER SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

- In partial modification of the above referred circular, it has been decided that the draft offer documents in respect of issues of size up to 750 crores shall be filed with the concerned regional office of the Board under the jurisdiction of which the registered office of the issuer company falls. Merchant Bankers are accordingly advised to file the draft offer documents / offer documents with the concerned office of the Board, based on the estimated issue size as indicated in Circular No CFD/DIL1/CIR/P/2019/0000000154 dated December 11, 2019.

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