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# NEWSLETTER JUN 20

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WHAT'S INSIDE

# DIRECT TAX

## INCOME TAX

***Waiver of Working Capital Loan will not be taxed u/s 41(1), where no deduction has been claimed in earlier years.***

***ITO v. Sri Vasavi Polymers (P.) Ltd [2020] 117 taxmann.com 236 (Visakhapatnam - Trib.)***

**Facts of the case:**

- During the assessment proceedings, the AO found that the assessee has received a benefit of Rs. 1.70 crores as a result of one-time settlement of loan by the Indian Overseas bank. Thus, AO added the same to the total income of the assessee u/s 41(1) of the Act considering it as cessation of trading liability.

- On Appeal to the CIT(A), CIT(A) deleted the said addition made by AO.

- Aggrieved by the said order, Revenue preferred an appeal before the ITAT.

**Held**

- It is observed that section 41(1) is applicable when the assessee has incurred any trading liability or expenditure or loss and claimed the deduction of the same in earlier years. Two conditions for taxing the benefit received by the assessee is the expenditure should be Revenue Expenditure or loss incurred and the same has been claimed as deduction in earlier years. In the instant case the assessee has never claimed the amount of principal loan as deduction in earlier years and hence the same cannot be taxed u/s 41(1) on waiver of the said loan. The AO also did not make out a case that the principal amount was debited to the Profit & Loss account in the earlier years.

- Hon'ble Supreme Court in the case of CIT v. Mahindra & Mahindra Ltd considered the similar issue and held as under –
    a. The objective behind this Section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability.
    b. We deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41 (1) of the IT Act particularly deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Hence, we find no force in the argument of the Revenue that the case of the Respondent would fall under Section 41 (1) of the IT Act.
    c. Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money.

- Appeal of the revenue is thus dismissed

***INCOME TAX : Where in terms of one time settlement, creditor bank waived off principal amount of loan payable by assessee, said amount could not be brought to tax under section 41(1) because assessee never claimed same as deductible expenditure in earlier assessment years***

**[2020] 117 taxmann.com 236 (Visakhapatnam - Trib.)**
**IN THE ITAT VISAKHAPATNAM BENCH**
**Income Tax Officer**
***v.***
**Sri Vasavi Polymers (P.) Ltd.**
V. DURGA RAO, JUDICIAL MEMBER
AND D.S. SUNDER SINGH, ACCOUNTANT MEMBER
IT APPEAL NO. 606 (VIZ.) OF 2018
[ASSESSMENT YEAR 2013-14]
JUNE 5, 2020



**Section 41(1) of the Income-tax Act, 1961 - Remission or cessation of trading liability - (Loan) - Assessment year 2013-14 - During relevant year, assessee received certain benefit as a result of one time settlement of loan with creditor bank - In course of assessment, Assessing Officer brought principal amount of loan waived off to tax under section 41(1)- Commissioner (Appeals) deleted said addition - Whether an amount can be brought to tax under section 41(1) when benefit received by assessee relating to such expenditure has been claimed and allowed in earlier years - Held, yes -Whether , since , in instant case, assessee never claimed principal amount of loan as deductible expenditure in earlier assessment years, benefit received in respect of same could not be brought to tax under section 41(1) - Held, yes [Para 7] [In favour of assessee]**

**S. Ravi Shankar Narayan, CIT-DR** *for the Appellant.* **Y.A. Rao, AR** *for the Respondent.*

**ORDER**

D.S. Sunder Singh, Accountant Member - This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-9, Hyderabad in ITA No.10300/CIT(A)-9, Hyd/2017-18 dated 09.08.2018 for the Assessment Year (A.Y.) 2013-14. with the delay of 1 day. The department has filed condonation petition and submitted that the delay was due to the administrative reasons beyond the control of the department, hence requested to condone the delay and admit the appeal. After hearing both the parties, we condone the delay and admit the appeal.

2. All the grounds of appeal are related to the addition made by the Assessing Officer (AO) for a sum of Rs.1,70,00,000/- u/s 41(1) of the Income Tax Act, 1961 (in short 'Act') which was deleted by the Ld.CIT(A). During the course of assessment proceedings, the AO found that the assessee had received the benefit of Rs.1,70,00,000/- as a result of one time settlement of loan by the Indian Overseas bank. The assessee was due to Indian Overseas Bank, Visakhapatnam in respect of term loan & OCC for a sum of Rs. 4.3 crores which included the interest subsidy as well as the working capital loan. The interest of Rs.43,81,572/- was added back to income and taxed u/s 43B of the Act. However, the sum of Rs.1.7 crores which represent the waiver of working capital loan was added as income u/s 41(1) of the Act in the assessment order made u/s 143(3) of the Act.

3. Against the order u/s 143(3), the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition following the order of Hon'ble ITAT Mumbai in the case of M/s SHRM Food & Allied Services Pvt. Ltd., in I.T.A.No.657/Mum/2009, 595/Mum/2008 & 1116/Mum/2013 and ITAT Hyderabad in the case of Tini Pharma Ltd., Hyderabad dated 23.05.2018 and also the decision of Hon'ble Apex Court in the case of Mahindra & Mahindra.

4. Against which the department has filed appeal before this Tribunal. The department has raised following grounds in this appeal.

- The Ld. CIT(A) erred on both facts and law in deleting the addition made by the AO of Rs. 1.70 crores on account of benefit of waiver of OCC loan amount received by the assessee during the year.
- The Ld. CIT(A) ought to have appreciated that the 0CC facility was availed by assessee for working capital requirements and waiver of any such 0CC loan amount either partly or fully is a revenue receipt u/s. 28(i) of the I.T. Act, in view of the decision of the Apex Court in the case of CIT v. T.V. Sundaramlyengar and Sons Ltd. (222 ITR 344).
- The Ld. CIT(A) ought to have further considered that the assessee itself carried the loan amount waived of Rs. 1.70 crore to any 'other reserve' instead of capital reserve under the head 'reserves and surplus in the balance sheet as on 31.03.2013 and therefore such benefit is liable to be assessed as income u/s. 28(i) of the I.T. Act.
- The Ld. CIT(A) ought to have also appreciated that the 0CC loan facility, a part of which was waived during the year, was not taken directly or indirectly for the purpose of acquisition of any capital asset though the assessee claimed that the part of the OCC loan was utilized indirectly for repayment of old term loans availed by the assessee from SBI.
- The appellant craves leave to add or delete or substitute or amend any ground of appeal before and / or at the time of hearing of the appeal.

5. During the appeal hearing, the Ld.DR submitted that the amount of Rs.1,70,00,000/- represent waiver of working capital loan which was used for day to day running of the business, therefore, submitted that the same required to be brought to tax u/s 28(i) of the Act. The Ld.DR relied on the following decisions :

(a) Hon'ble High Court of Bombay in the case of Solid Containers Ltd. v. Dy.Commissioner of Income Tax

(b) Hon'ble High Court of Delhi in the case of Rollatainers Ltd. v. Commissioner of Income Tax (2011) 15 taxmann.com 111 (Delhi)

© Hon'ble High Court of Madras in the case of Commissioner of Income Tax, Chennai v. Ramaniyam Homes (P.) Ltd. [2016] 68 taxmann.com 289 (Madras)

6. On the other hand, the Ld.AR submitted that the AO made addition u/s 41(1) of the Act, but not under section 28(I) of the Act. The amount waived by the bank was relating to working capital loan which is not covered u/s 41(1) of the Act. The AO disallowed the interest debited to Profit and Loss account in the year, therefore, there is no trading liability claimed by the assessee representing the working capital in the earlier years, hence, argued that there is no case for taxing the waiver of working capital u/s 41(1) of the Act, therefore, argued that the Ld.CIT(A) has rightly deleted the addition and no interference is called for. The Ld.AR further argued that the AO's case is the addition u/s 41(1) of the Act, but not the case of section 28(i)/(iv) of the Act, hence, submitted that the department's grounds and arguments with regard to taxing the waiver under section 28(i)/(vi) are not relevant to the addition made and the same should not be considered since, neither the AO nor the Ld.CIT(A) considered the issue u/s 28(i) of the Act. The Ld.AR relied on the decisions relied upon by the Ld.CIT(A).

7. We have heard both the parties and perused the material placed on record. The AO made the addition u/s 41(1) of the Act, but not u/s 28 of the Act. As per section 41(1) of the Act, trading liability or expenditure or the loan which was already claimed as incurred by the assessee and subsequently during any previous year received the benefit in respect of such trading liability by way of remission or cessation of liability is deemed

to be profits and gains of the business or profession and accordingly chargeable to tax as the income of the previous year. From section 41(1), it is observed that there must be trading liability or expenditure or loss which was incurred by the assessee in the earlier years and allowed the same as deduction to tax the same u/s 41(1). The twin conditions required to be satisfied for taxing the benefit received by the assessee. i.e., the expenditure should be Revenue expenditure or the loss incurred and the same ought to have been allowed as deduction. The benefit received by the assessee should be relating to such expenditure which was claimed and allowed in the earlier years. In the instant case, the trading liability or the expenditure or deduction was claimed by the assessee in respect of interest paid on the OCC loan. In respect of principal amount, though the assessee has gained the benefit by way of one time settlement the same cannot be brought to tax u/s 41(1) because the OCC loan represents the principal which was never claimed as expenditure. The AO also did not make out a case that the principal amount was debited to the Profit & Loss account in the earlier years. Therefore there is no case for making addition u/s 41(1) in respect of the principal amount. The Hon'ble Supreme Court in the case of CIT v. Mahindra & Mahindra Ltd considered the similar issue and held as under :

"15. On a perusal of the said provision, it is evident that it is a sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax under Section 41 of the IT Act. The objective behind this Section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability. It is undisputed fact that the Respondent had been paying interest at 6 % per annum to the KJC as per the contract but the assessee never claimed deduction for payment of interest under Section 36(1)(iii) of the IT Act. In the case at hand, learned CIT (A) relied upon Section 41 (1) of the IT Act and held that the Respondent had received amortization benefit. Amortization is an accounting term that refers to the process of allocating the cost of an asset over a period of time, hence, it is nothing else than depreciation. Depreciation is a reduction in the value of an asset over time, in particular, to wear and tear. Therefore, the deduction claimed by the Respondent in previous assessment years was due to the deprecation of the machine and not on the interest paid by it.

16. Moreover, the purchase effected from the Kaiser Jeep Corporation is in respect of plant, machinery and tooling equipments which are capital assets of the Respondent. It is important to note that the said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Here, we deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41 (1) of the IT Act particularly deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Hence, we find no force in the argument of the Revenue that the case of the Respondent would fall under Section 41 (1) of the IT Act.

17. To sum up, we are not inclined to interfere with the judgment and order passed by the High court in view of the following reasons:

(a) Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money.

(b) Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act qua the payment of interest in any previous year.

The Hon'ble Supreme Court also considered the issue with regard to taxing the remission of liability u/s 28(iv) and decided the issue against the revenue and in favour of the assessee, since, the receipt was in the nature of cash or money. The Hon'ble Supreme Court held that section 28(iv) of the Act has no application since the receipt was in the nature of cash or money. In the instant case what the assessee has received was remission of liability which was in the form of cash or money and the difference amount of principal which was settled by onetime payment was never debited to Profit & Loss account. Therefore, the decision of Hon'ble Supreme Court is squarely applicable in the instant case. The Ld.DR relied on the decision of Hon'ble Delhi

High Court in the case of Rollatainers Ltd. v. Commissioner of Income Tax [2011] 15 taxmann.com 111 (Delhi) and the decision of Hon'ble High Court of Madras in the case of Commissioner of Income Tax, Chennai v. Ramaniyam Homes (P.) Ltd., the judgements were delivered prior to the judgement of Hon'ble Supreme Court in the case of Mahindra and Mahindra supra and the Hon'ble High Courts have no occasion to consider the decision of Hon'ble Supreme Court. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and accordingly, we uphold the same. The appeal of the revenue is dismissed.

8. In the result, appeal of the revenue is dismissed.

SG

* In favour of assessee.

# Indirect Taxation

## Usage of the property has to be considered in determining whether the property is Residential Property or Commercial Property.
## Navin Jolly v. ITO [2020] 117 taxmann.com 323 (Karnataka HC)

### Facts

1. The assessee being an individual filed its return of income for AY 2006-07 declaring total income of Rs. 53 Lakhs. The assessee sold shares of M/s. Corporate Leisure Resorts and Hotels Pvt. Ltd and earned long term capital gains of Rs. 1.55 crores, against which assessee claimed exemption u/s 54F, for constructing residential property, to the tune of Rs. 1.55 cores.

2. During the assessment proceedings, the AO pointed out that the assessee owns 9 residential flats and deriving income from each such flat and offering the same under Income from house property (IFHP). In view of proviso (a)(i) and (b) to Section 54F (1), AO denied exemption u/s 54F as the properties were residential apartments.

3. CIT(A) & ITAT both confirmed the addition made by AO stating that it is immaterial that the property is utilized for residential purpose or commercial purpose so long as these units were recognized as residential units.

### Held

1. It is pertinent to note that under section 22 of the Act any income from any buildings irrespective of the use has to be treated under the head 'IHFP'. It is well settled legal proposition that a provision in a taxing statute providing incentive for promoting growth and development has to be construed liberally so as to advance the object of the Section and not to frustrate it.

2. In case of Sambandam Uday Kumar Supra while interpreting Section 54F of the Act has held that provisions of Section 54F is a beneficial provision for promoting construction of residential houses and has to be construed liberally. Kerala, Delhi, Allahabad, Calcutta and Hyderabad High Courts have taken a view that usage of the property has to be considered in determining whether it is a residential property or a commercial property and Madras High Court in C.H.KESVA RAO supra has held that expression 'residence' implies some sought of permanency and cannot be equated to the expression 'temporary stay' as a lodger.

3. Thus, the usage of the property has to be taken into consideration in determining whether the property is residential property or commercial property. Similar view was also taken by Delhi High Court in case of Geeta Guggal wherein it was held that a residential house which consists of several independent residential units would be entitled to exemption under section 54F(1) of the Act. SLP was also dismissed by the Supreme Court against such High Court Order.

4. Thus, the appeal is allowed and in favour of the assessee.

## Indirect Taxation

**INCOME TAX : Assessee's claim for deduction under section 54F(1) was to be allowed where two apartments owned by him even though had been sanctioned for residential purpose, yet same were infact being used for commercial purpose as service apartments**

**[2020] 117 taxmann.com 323 (Karnataka)**

**HIGH COURT OF KARNATAKA**

**Navin Jolly**

**v.**

**Income Tax Officer***

ALOK ARADHE AND M. NAGAPRASANNA, JJ.

IT APPEAL NO. 320 OF 2011†

JUNE 18, 2020

**Section 54F of the Income-tax Act, 1961 - Capital gains - Exemption of, in case of investment in residential use (Useage of property) - Assessment year 2006-07 - During relevant year assessee earned long term capital gain from sale of shares - He constructed residential house property and claimed deduction under section 54F - Assessing Officer held that assessee owned nine residential flats in his name and, thus, he was not eligible to claim deduction in terms of proviso (a)(I) and (b) to section 54F(1) - Tribunal confirmed order passed by Assessing Officer - It was noticed that out of nine apartments, seven had been sanctioned for commercial purpose - As regards remaining two apartments, even though those apartments had been sanctioned for residential purpose, yet same were being used for commercial purpose as serviced apartments - Whether usage of property has to be considered for determining whether property in question is a residential property or a commercial property - Held, yes - Whether since it was not in dispute that two apartments in question were being put to commercial use, said apartments could not be treated as residential apartments - Held, yes - Whether, even otherwise, in view of fact that assessee owned two apartments of 500 square in same building ,they were to be regarded as one residential unit and, thus, assessee was entitled to benefit of deduction under section 54F(1) - Held, yes - Whether,in view of aforesaid, impugned order passed by authorities below was to be set aside - Held, yes [Paras 10 and 11] [In favour of assessee]**

**A. Shankar,** Sr. Adv. and **M. Lava,** Adv. *for the Appellant.* **K.V. Aravind,** Adv. *for the Respondent.*

### JUDGMENT

Alok Aradhe, J. - This appeal under section 260A of the Income-tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2006-07. The appeal was admitted by a bench of this Court vide order dated 6-6-2012 on the following substantial questions of law:

- Whether the tribunal is justified in law in confirming the denial of exemption claimed by the appellant under section 54F of the Income-Tax Act, 1961, on the facts and circumstances of the case?
- Whether the tribunal erred in law in interpreting the meaning of the word residential house used in Section 54F(1) proviso (a) (i) of the Income-tax Act?
- Whether the authorities below are justified in law in holding that a property used for the commercial purpose, falls within the meaning of residential house as per the proviso (a) (i) to Section 54F(1) of the Act on the facts and circumstances of the case?

2. Facts leading to filing of this appeal briefly stated are that assessee is an individual and is Director of M/s Aburge India Property Services Pvt. Ltd., Bangalore. The assessee filed his return of income for Assessment year 2006-07 on 30-10-2006 declaring income of Rs. 53,06,473/-. The return filed by the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued. The assessee stated that he had sold shares in the company viz., M/s. Corporate Leisure Resorts and Hotels Pvt. Ltd., during financial year 2005-06 and derived long term capital gain of Rs. 1,55,47,315/-. The appellant further declared that he had constructed a residential property during the year situate at 808/7 and 808/8 Kaikondanahalli, Sarjapur, Bangalore. The appellant claimed exemption under section 54F of the Act to the extent of Rs. 1,55,47,315/-. Before the assessing officer, the assessee agreed voluntarily to offer a sum of Rs. 4,17,339/- for taxation.

3. The assessing officer vide order dated 31-12-2008 inter alia held that the assessee owns nine residential flats in his name and that he is deriving the income from the residential flats and declared the same under the head income from house property during Assessment year 2006-07 and is therefore, not eligible to claim exemption by invoking proviso (a)(I) and (b) to Section 54F (1). The assessing officer further recorded a finding that properties owned by the appellant are residential apartments. Accordingly, exemption under section 54F of the Act was denied.

4. Being aggrieved, the assessee filed an appeal. The Commissioner of Income-tax (Appeals) by an order dated 31-5-2010 inter alia held that by virtue of clauses (a)(I) and (b) of proviso to Section 54F(1), the assessee is ineligible to claim exemption. It was further held that from perusal of the record, it is evident that out of nine properties two properties viz., Unit No. 204 and 605 of Oxford Suites have got plan sanction of residential in nature and therefore, the claim of the assessee that the properties be not treated as residential houses cannot be accepted. It was further held that on the date of transfer of original asset the assessee was in possession of atleast two residential houses and therefore, the appellant is not entitled to the benefit of exemption under section 54F of the Act. It was also held that in respect of six out of seven properties, from the records it is evident that they have been let out by the assessee to different companies and rental income is being shown regularly in the returns as income from house property and even if the nature of plan sanction is commercial, the appellant cannot be allowed to take a different stand and to contend that the properties are not residential houses. It was also noted that by explanatory circular dated 30-6-1982, the word 'residential house' includes not only self occupied properties but also let out properties. It was further held that the assessee is not entitled to benefit of deduction under section 54F of the Act. Accordingly, the appeal was dismissed.

5. The assessee approached the Income-tax Appellate Tribunal. The tribunal by an order dated 29-3-2011 inter alia held that assessee should not have more than one residential unit on the date of transfer of the original asset. It was further held that it is immaterial as to how the assessee utilized the residential units and whether these residential units are used for commercial purposes or residential purposes, so long as these units were recognized as residential units. Therefore, it was held that the assessee cannot claim the benefit of exemption under section 54F of the Act. The appeal preferred by the assessee was therefore, dismissed. In the aforesaid factual background, this appeal has been filed.

6. Learned Senior Counsel for the assessee submitted that apartments No. 204 and 605 viz., Oxford suites is a building comprising units offered for serviced apartments and each floor consists of eight apartments of 500 square feet floor area and the appellant had let out both the properties to be used as commercial/serviced apartments. Therefore, the aforesaid serviced apartments could not have been treated as residential units and in fact the same were commercial units and were being used by serviced apartments by the companies to accommodate their guests. It is also urged that clause (a) (i) of proviso to Section 54F(1) are not attracted and clause (b) of proviso to Section 54F(1) are also not attracted. It is further submitted that the authorities erred in law in interpreting the meaning of the word 'residential house' used in proviso (a)(i) to Section 54F(1) of the Act and it is submitted that the expression 'residence' implies some sought for permanency and cannot be equated to the expression 'temporary stay' as a lodger. It is also argued that usage of property has to be taken into account while determining whether the property is a residential property or commercial property and the beneficial provisions of the Act have to be construed liberally in order to achieve the purpose for which it were incorporated. Alternatively, it is submitted that even if two apartments are treated to be residential, then also since, they are situate in the same building, therefore, the apartments have to be treated as one residential only. In support of aforesaid submissions, reliance has been placed on the following decisions 'CIT v. I. Ifthiqar Ashiq', (2016) 239 Taxman 443 (Madras), 'Firm Ganga Ram Kishore Chand v. Firm Jai Ram Bhagat Ram', AIR 1957 Punjab 293, 'Globe Theatres Ltd. v. Khan Saheb Abdul Gani and another', 1956 Mysore 57 ((s) AIR v 43 C 25

Dec.), 'C.H. Kesava Rao v. CIT', (1985) 156 ITR 369 (Madras), 'CIT v. Ouseph Chacko', 271 ITR 29 (Kerala), 'Sanjeev Puri v. DCIT', (2016) 180 TTJ 649 (Delhi - Trib), 'P.N. Shukla v. CIT', (2005) 276 ITR 642 (Allahabad), 'CIT v. Smt. Shyama Devi Dalmia', (1992) 194 ITR 114 (Calcutta), 'ITO v. Smt. Rohini Reddy', (2010) 122 ITD 1 (Hyderabad), 'Bajaj Tempo Ltd. v. CIT', (1992) 196 ITR 188 (SC), 'CIT v. Srisambandam Udaykumar', (2012) 345 ITR 389 (Karnataka), 'Gita Duggal (2013) 357 ITR 153 (Delhi) and 'Gita Duggal (2015) 228 taxman 62 (SC).

7. On the other hand learned counsel for the revenue submitted that clause (a) to proviso to Section 54F(1) does not apply but clause (b) to proviso to Section 54F(1) applies to the fact situation of the case. It is submitted that the question whether the property is a residential or commercial property has to be determined on the basis of the sanction granted in respect of the same and the nature of its use by the assessee is not the criteria. It is also argued that the classification of the property either as residential or commercial has to be taken into account for the purpose of taxation. It is however submitted that out of nine flats, seven flats have been sanctioned for commercial purposes and only two flats have been sanctioned as residential units which are being used for commercial purposes. It is also urged that requirement as prescribed in proviso to Section 54F(1) is of owning a residential house and not of its user. Our attention has also been invited to Section 32(1) of the Act and it has been stated that the legislature in Section 32(1) of the Act has used the expression 'owned' and 'used' simultaneously, whereas, the same has not been done in proviso to Section 54F(1) of the Act. It is argued that language of a taxing statute should ordinarily be understood in the sense in which it is harmonious with the object of statute to effectuate the legislative animation and taxing statute deserves to be strictly construed. In support of aforesaid proposition, reliance has been placed on decision of the supreme court in 'Commissioner of Income-tax-III v. Calcutta Knitwears', (2014) 43 taxmann.com 446 (SC).

8. We have considered the submissions made on both the sides and have perused the record. Before proceeding further, it is apposite to take note to Section 54F(1) of the Act, which is reproduced below for the facility of reference:

> 54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—
>
> - if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;
> - if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:
>
> Provided that nothing contained in this sub-section shall apply where—
>
> (a) the assessee,—
>
> (i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or
>
> (ii purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
>
> (iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and
>
> (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".
>
> Explanation.—For the purposes of this section,—
>
> "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

9. From close scrutiny of Section 54F(1) of the Act, it is evident that in order to attract Section 54F(1) of the Act, the conditions stipulated in clauses (a) and (b) of proviso to Section 54F(1) have to be complied with as the legislature has used the expression 'and' at the end of clause (a) of proviso to Section 54F(1) of the Act. It is pertinent to note that under section 22 of the Act any income from any buildings irrespective of which the use which has to be treated under

the head 'income from house property'. It is well settled legal proposition that a provision in a taxing statute providing incentive for promoting growth and development has to be construed liberally so as to advance the object of the Section and not to frustrate it. [See: 'CIT v. Strawboard Mfg. Co. Ltd.', (1989) 177 ITR 431 (SC) and 'Bajaj Tempo Ltd. Supra]. A bench of this court in Sambandam Uday Kumar Supra while interpreting Section 54F of the Act has held that provisions of Section 54F is a beneficial provision for promoting construction of residential houses and has to be construed liberally. Kerala, Delhi, Allahabad, Calcutta and Hyderabad High Courts have taken a view that usage of the property has to be considered in determining whether it is a residential property or a commercial property and Madras High Court in C.H.KESVA RAO supra has held that expression 'residence' implies some sought of permanency and cannot be equated to the expression 'temporary stay' as a lodger.

10. In the backdrop of aforesaid well settled legal principles, the facts of the case in hand may be examined. Learned counsel for the revenue have fairly submitted that out of nine apartments, seven flats have been sanctioned for commercial purposes. Therefore, the dispute only survives in respect of two apartments, which have been sanctioned for residential purposes and are being used for commercial purposes as serviced apartments. The usage of the property has to be considered for determining whether the property in question is a residential property or a commercial property. It is not in dispute that the aforesaid two apartments are being put to commercial use and therefore, the aforesaid apartments cannot be treated as residential apartments. The contention of the revenue that the apartments cannot be taxed on the basis of the usage does not deserve acceptance in view of decisions of Kerala, Delhi, Allahabad, Calcutta and Hyderabad High Courts with which we respectfully concur.

11. Alternatively, we hold that assessee even otherwise is entitled to the benefit of exemption under section 54F(1) of the Act as the assessee owns two apartments of 500 square feet in same building and therefore, it has to be treated as one residential unit. The aforesaid fact cannot be permitted to act as impediment to allowance of exemption under section 54F(1) of the Act. Similar view was taken by Delhi High Court in case of Geeta Duggal wherein the issue whether a residential house which consists of several independent residential units would be entitled to exemption under section 54F(1) of the Act was dealt with and the same was answered in the affirmative. The appeal against the aforesaid decision was dismissed by the Supreme Court by an order reported in (2014) 52 taxmann.com 246 (SC). We agree with the view taken by Delhi High Court.

12. For the aforementioned reasons, the substantial questions of law are answered in favour of the assessee and against the revenue. In the result, the orders of the assessing officer and Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal insofar as it pertains to denial of exemption under section 54F(1) of the Act to the appellant is hereby quashed. In the result, appeal is allowed.

# Indirect Taxation

## JUDICIAL UPDATES

## GST

## ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

## Sale of the assets of a corporate debtor by the liquidator (appointed by NCLT) is a supply of goods and is required to take registration under section 24 of the GST Act, 2017

## AAR-Wes Bengal, M/s. Mansi Oils and Grains Pvt Ltd ruling no:02/WBAAR/2020-21 dated 29 June 2020



### Facts of the case

- M/s. Mansi Oils and Grains Pvt Ltd ('Taxpayer'), was registered under the West Bengal Value Added Tax Act, 2003 and its business had been closed for ten years. It did not file REG-26 and did not migrated to the GST regime;
- The National Company Law Tribunal ('NCLT'), Kolkata Bench, passed an order on 19 July 2019, declaring the taxpayer as a corporate debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 ('IBC') and appointed a liquidator.

### Question raised before AAR

- Whether any sale of assets of the corporate debtor by liquidator results in a supply of goods and/or services or both within the meaning of 'Supply' as defined under section 7 of the CGST Act, 2017.
- If the answer is affirmative, what will be the rate of GST?
- Whether the liquidator needs to get registered under the GST Act?

### Contention of Taxpayer

- Taxpayer submitted that NCLT has appointed Smt. Rachna Jhunjhunwala as liquidator, having IP registration no: IBBI/IPA-001/IP-P00389/2017-18/10707. After her appointment as liquidator, all powers of directors in decision making are vested in liquidator under section 34(2) of IBC, 2016;
- Plant and machinery, office equipment and furniture of the taxpayer were auctioned as per regulation laid down under section 32© of the IBC at the price INR 28.2 Mn.

### Observations and ruling by the AAR

- The AAR observed that the liquidator is appointed after NCLT initiates liquidation in terms of section 33 of IBC. As the taxpayer (the corporate debtor) is not a going concern, the liquidator is required to sell its assets under clauses (a) to (d) of regulation 32 of the Insolvency and Bankruptcy Board of India (liquidation process) Regulations;
- Referring to entry no:4(a) of schedule II of the CGST Act, 2017 which says "where goods forming part of the assets of a business are transferred or disposed-off by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.";
- The AAR observed that the sale of the taxpayer's assets like the plant and machinery, office equipment & furniture is, therefore, a supply of goods by the liquidator and is required to take registration under section 24 of the CGST Act, 2017;

Further, the liquidator shall be treated as a distinct person of the corporate debtor in terms of notification no:11/2020-CT dated 21 March 2020 until the liability ceases under section 29(1)(c) of the CGST Act, 2017. According to the taxpayer, the goods sold are plant and machineries, office equipment and furniture which relates to broad categories classifiable under different HSN and taxable under appropriate entry nos of the schedules under notification no:1/2017-CT(R) dated 28 June 2017;

- The sale of the assets of the taxpayer by the liquidator is a supply of goods. The liquidator is required to take registration under section 24 of the CGST Act, 2017. If the liquidator is already registered as a distinct person of the corporate debtor in terms of notification no:11/2020- CT dated 21 March 2020, the registration shall continue to remain until the liability ceases under section 29(1)(c) of the CGST Act, 2017.

**Applicability of GST under Reverse Charge Mechanism ("RCM") where the services are provided by Indian branch on behalf of its foreign entity**

**AAR-West Bengal, M/s. IZ-Kartex, ruling no:04/WBAAR/2020-21 dated 29 June 2020**

## Facts of the case

- M/s. IZ-Kartex ('Taxpayer') is a branch of Russian entity ('foreign company') which is involved in supply of maintenance and repair services for machinery and equipment supplied by the foreign company;
- The taxpayer is engaged in providing said services to Indian customers on behalf of foreign company.

**Questions before the AAR**

Whether GST is applicable under RCM on services provided by the taxpayer on behalf of foreign company?

## Contention of Taxpayer

- The taxpayer submitted that the foreign company provides the maintenance and repair services under a specific Maintenance and Repair Contract ('MARC') to customers in India;
- Further, as the Indian customer is importing service from the foreign company, tax should be payable under RCM by the Indian customer; and
- Accordingly, no tax liability should arise on the taxpayer as well as the foreign company.

## Observation and ruling by AAR

- The AAR looked upon the specific clauses in MARC and stated that to perform the services as specified in MARC, it is important for the taxpayer to train the employees of the Indian customer for which it may have to depute staff at the premises of the Indian customer;
- It is also important for taxpayer to ensure that timely delivery of spares etc. is being made at the premises of Indian customer;
- Therefore, supply of MARC is not import of service by the Indian customer but is a supply of service by the taxpayer; and
- Accordingly, taxpayer is liable to pay GST under forward charge.

## NOTIFICATION

### GST

- **Filing of Nil return through SMS**
  The CBIC has notified 8 June 2020 as the date from which rule 67A which enables filing of Nil return through SMS facility, shall come into effect.
  *[Notification no:44/2020 Central Tax dated 8 June 2020]*

- **Extension of period of special procedure for taxpayers of Union Territory of erstwhile Daman and Diu or Dadra and Nagar Haveli**
  Special procedure had been notified for taxpayers of the above-mentioned union territories owing to the merger of these union territories from 27 January 2020. The taxpayers were required to comply with these procedures until 31 May 2020. The said timeline has been extended till 31 July 2020.
  *[Notification no:45/2020 Central Tax dated 9 June 2020]*

- **Extension of period to pass refund order**
  Section 54(7) of the CGST Act, 2017, specifies a time limit of 60 days for the passing of refund order from the date of receipt of application, complete in all respects. Owing to the COVID-19 outbreak in the country, in cases of refund claims where notice has been issued to the taxpayer for partial/full rejection of refund and the time limit for issuance of order falls in the period 20 March 2020 and 29 June 2020, such time limit shall be extended by 15 days from the receipt of reply from the taxpayer or 30 June 2020, whichever is later. This amendment has been made with retrospective effect from 20 March 2020.
  *[Notification no:46/2020 Central Tax dated 9 June 2020]*

- **Extension of Validity of E-way Bill**
  In April, as part of the COVID-19 reliefs extended by the CBIC, validity of E-way bills expiring between the period 20 March 2020 and 15 April 2020, was extended up to 31 May 2020 vide notification no:35/ 2020 – CT dated 3 April 2020. A new proviso has been inserted in the notification which specifies that any E-way bill generated on or before 24 March 2020 and whose validity expires on or after 20 March 2020, shall be extended up to 30 June 2020. This amendment has been made with effect from 31 May 2020.
  *[Notification no:47/2020 Central Tax dated 9 June 2020]*

- **Electronic verification of GSTR-1 & GSTR-3B**
  Central Board of Indirect taxes and Customs (CBIC) had, earlier, introduced the facility of furnishing the GSTR-3B return, during the period 21 April 2020 to the 30 June 2020, verified through Electronic Verification Code (EVC) for companies registered under the provisions of the Companies Act, 2013. The said facility has been extended till 30 September 2020. Moreover, EVC facility has been extended for the filing of GSTR-1 returns also during the period 27 May 2020 to the 30 September 2020.
  *[Notification no:48/2020–Central Tax dated 19 June 2020]*

- **Power to setup Appellate Tribunal, Change in the list of Union Territory, etc.**
  - Ladakh is included in the list of Union Territories (UT) and due to merger of 'Dadra and Nagar Haveli' and 'Daman and Diu', appropriate changes are made in the definition of UT;
  - Removed the restriction on the Central government in setting-up of the Bench of the Appellate Tribunal in the erstwhile state of Jammu & Kashmir and also deleted the proviso, which gives power to Jammu and Kashmir GST Act, 2017 to constitute Appellate Tribunal. It will enable the Government to constitute of Appellate Tribunal under the CGST Act, 2017 in the Union territory of Jammu and Kashmir and Ladakh, as applicable to other States;
  - As per section 168(2) of CGST Act, 2017 the Commissioner or Joint Secretary can exercise the powers specified in the sections stated in section 168(2) of CGST Act, 2017 with the approval of the Board. Withdrawn the following matters from its purview:
    - Section 66(5) of CGST Act, 2017 - In case of special audit under section 66 of CGST, 2017, the expenses of the examination and audit of records, including the remuneration of Chartered

accountant or Cost accountant, shall be determined and paid by the Commissioner and such determination shall be final;

- o Second proviso of section 143(1) of CGST Act, 2017 - In case of job work procedure the period of one year and three years for return of inputs and capital goods may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

- If any difficulty arises in giving effect to any provision of CGST or IGST Act, 2017 the Government may, on the recommendations of the GST Council, by a general or a special order published in the official gazette, make such provisions not inconsistent with the provisions of the Acts or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty within the period of 3 years from the date of commencement of the CGST or IGST Act. The said period has been extended till 5 years. The amendments will be effective from 30 June 2020.

*[Notification no:49/2020-Central Tax & 04/2020- Integrated Tax dated 24 June 2020]*

- **GST rates for Composition dealers**

CBIC has amended rule 7 of CGST Rules, 2017 to include the entry in the composition rate table that prescribes 6% (CGST + SGST) _composition rate. The effective date for the changes will be 01 April 2020. The substituted table is as follows:

*[Notification no:50/2020–Central Tax dated 24 June 2020]*

| Sl.No | Section under which composition levy is opted | Category of registered persons | Rate of tax (CGST) |
|---|---|---|---|
| 1. | Sub-sections (1) and (2) of section 10 | Manufacturers, other than manufacturers of such goods as may be notified by the Government | 0.5% of the turnover in the State or Union territory |
| 2. | Sub-sections (1) and (2) of section 10 | Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II | 2.5% of the turnover in the State or Union territory |
| 3. | Sub-sections (1) and (2) of section 10 | Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10 | 0.5% of the turnover of taxable supplies of goods and services in the State or Union territory |
| 4. | Sub-section (2A) of section 10 | Registered persons not eligible under the composition levy under sub-sections (1) and (2), but eligible to opt to pay tax under sub- section (2A), of section 10 | 3% of the turnover of taxable supplies of goods and services in the State or Union territory |

- **Interest on belated filing of GSTR-3B**
  CBIC has also issued a circular providing clarification in respect of manner of calculation of interest and late fees for the applicable tax periods and taxpayers.
  *[Notification no:51&52/2020–Central Tax dated 24 June 2020 read with Circular no:141/11/2020-GST dated 24 June 2020]*

| Sl. No. | Class of Registered Person | Place of business/ Period | Feb-20 | March-20 | April-20 | May-20 | June-20 | July-20 |
|---|---|---|---|---|---|---|---|---|
| 1 | Aggregate turnover up to INR 50 Mn in the preceding financial year | Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep | Upto 30 June 2020- NIL 9 % - thereafter till 30 September 2020 | Upto 3 July 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 6 July 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 12 September 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 23 September 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 27 September 2020 - NIL 9 % - thereafter till 30 September 2020 |
| | | Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi | Upto 30 June 2020- NIL 9 % - thereafter till 30 September 2020 | Upto 05 July 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 9 July 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 15 September 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 25 September 2020 - NIL 9 % - thereafter till 30 September 2020 | Upto 29 September 2020 - NIL 9 % - thereafter till 30 September 2020 |
| 2 | Aggregate turnover of more than INR 50 Mn in the preceding financial year | All states | First 15 days from the due date – NIL and; 9% thereafter till June 24, 2020 | | | NA | NA | NA |

- **Waiver of late fee payable on belated GSTR-3BI**

| Sl.No. | Class of Registered Person | Principal Place of Business | Tax Period | Condition for filing GSTR 3B- To be filed on or before |
|---|---|---|---|---|
| 1. | Aggregate turnover of more than INR 50 Mn in the preceding financial year | All States | February 2020, March 2020, April 2020. | 24 June 2020. |
| 2. | Aggregate turnover of up to INR 50 Mn in the preceding financial year | Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep | February 2020 | 30 June 2020. |
| | | | March 2020 | 03 July 2020. |
| | | | April 2020 | 06 July 2020. |
| | | | May 2020 | 12 Sept 2020. |
| | | | June 2020 | 23 Sept 2020. |
| | | | July 2020 | 27 Sept 2020. |
| | | Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi | February 2020 | 30 June 2020. |
| | | | March 2020 | 05 July 2020. |
| | | | April 2020 | 09 July 2020. |
| | | | May 2020 | 15 Sept 2020. |
| | | | June 2020 | 25 Sept 2020. |
| | | | July 2020 | 29 Sept 2020. |

| Sl.No. | Amount of late fee waived | Condition |
|---|---|---|
| 1. | The total amount of late fee payable for a tax period shall stand waived which is in excess of an amount of two hundred and fifty rupees. | If the registered person who failed to furnish the return in FORM GSTR-3B for the months of July 2017 to January 2020, by the due date but furnishes the said return between the period from 01 July 2020 to 30 September 2020. |
| 2. | The total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period shall stand waived. | |

- **Waiver of late fee payable on belated GSTR-1**

The amount of late fee payable shall be waived for the months or quarter as mentioned in the table below for the registered persons who furnishes the details of their outward supplies in Form GSTR-1 on or before the said dates:

| Sl. No. | Month / Quarter | Dates (on or before) |
|---|---|---|
| 1. | March 2020 | 10 July 2020 |
| 2. | April 2020 | 24 July 2020 |
| 3. | May 2020 | 28 July 2020 |
| 4. | June 2020 | 05 August 2020 |
| 5. | January to March 2020 | 17 July 2020 |
| 6. | April to June 2020 | 03 August 2020 |

*[Notification no:53/2020–Central Tax dated 24 June 2020]*

- **Extension of the due date of filing FORM GSTR-3B**

CBIC has extended the due date of filing FORM GSTR-3B for the tax period August 2020 to the class of registered person whose aggregate turnover during the previous financial year does not exceed INR 50 Cr.

| Class of Registered Person | Place of business/ Period | Dates |
|---|---|---|
| Aggregate turnover up to INR 50 Mn in the preceding financial year | Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep | On or before October 1, 2020 |
| | Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi | On or before October 3, 2020 |

*[Notification no:54/2020–Central Tax dated 24 June 2020]*

- **Extension of completion /compliance of any action**

Central Board of Indirect Taxes and Customs (CBIC) vide notification no:35/2020-Central Tax dated 03 April 2020 had deferred the compliances of a specified period upto certain date. The same has been further extended in the following manner.

Any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the CGST Act, 2017 which falls during the period from 20 March 2020 to 30 August 2020 (earlier it was 29 June 2020), and where completion or compliance of such action has not been made within such time, the time limit for completion or compliance of such action, shall be extended upto 31 August 2020 (earlier it was 30 June 2020), for different purposes as stated in notification no:35/2020-Central Tax dated 03 April 2020.

*[Notification no:55/2020–Central Tax dated 27 June 2020]*

- **Extension of time limit to pass refund order**

  CBIC vide notification no:46/2020-CT dated 09 June 2020 had deferred the compliances related to refund for specified period upto certain date. The same has been further extended in the following manner.

  Section 54(7) of the CGST Act, 2017, specifies a time limit of 60 days for passing of refund order from the date of receipt of application, complete in all respects. Owing to the COVID-19 outbreak in the country, in cases of refund claims where notice has been issued to the taxpayer for partial/full rejection of refund and the time limit for issuance of order falls during the period 20 March 2020 and 30 August 2020 (earlier it was 29 June 2020), such time limit shall be extended by 15 days from the receipt of reply from the taxpayer or 31 August 2020 (earlier it was 29 June 2020), whichever is later. This amendment has been made with retrospective effect from 20 March 2020.

  *[Notification no:56/2020–Central Tax dated 27 June 2020]*

- **Late fee waiver**

  The total amount of late fee payable on belated furnishing of FORM GSTR-3B, shall stand waived in excess of INR 250/- in case of registered persons mentioned in the table below and shall stand fully waived for those taxpayers where the total amount of central tax payable in the said return is nil. The waiver is subject to the furnishing of returns by all taxpayers for the period February 2020 to July 2020 by 30 September 2020.

  This notification shall be deemed to have come into effect from the 25 June 2020.

  *[Notification no:57/2020–Central Tax dated 30 June 2020]*

## CIRCULARS

### Clarification in respect of refund related issues

Circular no:135/05/2020 dated 31 March 2020 had imposed a restriction on refund of unutilized input tax credit, only to the extent of invoices that are available in Form GSTR-2A. Due to lack of clarity in the said circular, various refund authorities were restricting refund in respect of imports, ISD and RCM invoices for non-appearance in Form GSTR-2A.

Thus, it has been clarified that ITC in respect of imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of circular no:135/05/2020-GST dated 31 March 2020 (i.e. matching with Form GSTR-2A is not required for refund of such invoices).

*[Circular no:139/09/2020 dated 10 June 2020]*

### Clarification in respect of director's remuneration

The entire debate on taxability of director's remuneration under reverse charge mechanism ('RCM') had started with the Rajasthan Advance Ruling in the case of M/s Clay Craft India Private Limited (Advance Ruling no:RAJ/AAR/2019-20/33), wherein it was held that GST on services by Directors to the Company is to be paid under RCM by the Company.

Subsequently, there was a ruling issued by the Karnataka Advance Ruling Authority in the case of Mr. Anil Kumar Agrawal (Advance Ruling no:KAR ADRG 30/2020), wherein it was held that if employment can be proved by way of employment contract, position under allied laws, etc. then the remuneration paid to directors would not be liable to GST under RCM. In absence of such documentary evidence, GST would need to be paid under RCM.

Considering the above contradictory rulings, the CBIC has issued the following clarifications in respect of directors remuneration. The circular has created a distinction between independent directors or non-employee directors and whole- time directors or employee directors, since schedule III (activities which are neither goods not services) to the CGST Act, 2017, covers services by an employee to employer in course of or in relation to his employment.

### Remuneration paid to Independent directors or non- employee directors

- The circular draws reference to the definition of 'directors' mentioned in the Companies Act, 2013 and states that the definition of 'whole-time director' is inclusive and may include a non-employee as well. However, the definition of independent director, clearly mentions that the person should not be an employee, proprietor or partner of the company;
- Accordingly, it has been clarified that independent directors or non-employee directors are excluded from the scope of schedule III and any remuneration paid to such directors shall be liable to GST under RCM by the company.

**Remuneration paid to whole-time directors or employee directors**

- The circular aims to differentiate between 'contract of service' (i.e. employment) and 'contract for service'. It has been clarified that a director may act in dual capacities, i.e. as a director as well as an employee;
- The circular draws reference to tax deduction at source ('TDS') under the Income Tax Act, 1961, wherein 'TDS under salaries' is deducted under section 192 of the said Act and 'TDS under professional fees' is deducted under section 194J of the said Act;
- Accordingly, it has been clarified that the test to satisfy employee-employer relationship for directors remuneration would be the accounting in the books of accounts as salary and TDS deduction under section 192 of the Income Tax Act, 1961;
- Any amount paid to directors which is not falling under the test above, would generally have been classified under professional fees and accordingly, such services provided by directors are liable to GST under RCM by the company.
  *[Circular no:140/09/2020 dated 10 June 2020]*

## PRESS RELEASE

**Recommendations of GST council Measures for Trade facilitation**

| Category | Tax period | Measures |
|---|---|---|
| Reduction in late fee for past Returns | July 2017 to January 2020 | Late fee on non-furnishing of GSTR-3B has been reduced/ waived as under:<br>▪ 'NIL' late fee if there is no tax liability;<br>▪ Maximum late fee capped at INR 500/- per return if there is any tax liability.<br>Condition: The reduced late fee is applicable only if the returns are furnished between 01 July 2020 to 30 September 2020 for the said tax periods. |
| Relief for small taxpayers (aggregate turnover up to INR 50Mn) | Februar y, March and April 2020 | The rate of interest for belated return-GSTR 3B for the said tax periods beyond specified dates(staggered up to 6 July 2020) is reduced from 18% per annum to 9% per annum till 30 September 2020. |
| Relief for small taxpayers (aggregate turnover up to INR 50Mn) | May, June and July 2020 | Waiver of late fees and interest on GSTR-3B, if the same furnished by September 2020 (staggered dates to be notified). |
| One-time extension in period for seeking revocation of cancellation of registration | - | Taxpayers who could not get their cancelled GST registrations restored in time, an opportunity is being provided for filing of application for revocation of cancellation of registration up to 30 September 2020, in all cases where registrations have been cancelled till 12 June 2020. |

Certain amendments to CGST Act, 2017 proposed in the Finance Act, 2020 will be brought into force from 30 June 2020

***Note: It would be given effect through relevant circulars/notifications which alone shall have the force of law.***

***[PIB Press release - Ministry of Finance dated 12 June 2020]***

# MCA UPDATES

## *AMENDMENTS IN COMPANIES ACT, 2013*

**A. EXTENSION OF TIME LIMIT TO CREATE DEPOSIT REPAYMENT RESERVE AND TO INVEST/DEPOSIT AMOUNT OF DEBENTURES MATURING DURING THE YEAR**

- Time period for creation of deposit repayment reserve of at least 20% of Deposits maturing during the year and investment / deposit of at least 15% of Debentures maturing during the year, has been extended up to September 30, 2020.
- The link for aforesaid circular is mentioned below: https://bit.ly/2ZseqO8

**B. EXTENSION OF TIME LIMIT FOR ONLINE REGISTRATION OF INDEPENDENT DIRECTORS**

- MCA has further extended the last date for registration of details of Independent Directors in the Independent Directors Data Bank for further three months, i.e. up to September 30, 2020.
- The link for aforesaid circular is mentioned below: https://bit.ly/2NLTFrr

**C. EXTENSION OF TIME PERIOD FOR HOLDING VIRTUAL BOARD MEETINGS**

- MCA has extended the time period for companies to conducting board meetings through video conference or other audio-visual means up to September 30, 2020.
- The link for aforesaid circular is mentioned below: https://bit.ly/2YZslMQ

**D. INTRODUCTION OF FORM STK-3A**

- MCA has notified that in case of strike off of Government Company or subsidiary of Government Company, Indemnity Bond to be given under Form No. STK – 3A, which shall be attached with the application for striking off name of the Company.
- The link for aforesaid circular is mentioned below: https://bit.ly/2NQFaTa

## *EXTENSION OF TIME PERIOD FOR RESERVATION OF NAME AND RESUBMISSION OF FORMS*

- MCA has further extended the validity of approved names for incorporation of companies or LLPs or for change of name of existing companies or LLPs. Certain revised timelines are as follows:

| Sr. No. | Issue description | Period/Days of Extension |
|---|---|---|
| 1 | Names reserved for 20 days for new company incorporation. Form SPICe+ needs to be filed within 20 days of name reservation. | Names expiring any day between March 15, 2020 to July 31, 2020 would be extended by 20 days beyond July 31, 2020 |
| 2 | Names reserved for 60 days for change of name of company. INC-24 needs to be filed within 60 days of name reservation. | Names expiring any day between March 15, 2020 to July 31, 2020 would be extended by 60 days beyond July 31, 2020 |
| 3 | Names reserved for 90 days for new LLP incorporation/change of name. FiLLiP/Form 5 needs to be filed within 90 days of name reservation. | Names expiring any day between March 15, 2020 to July 31, 2020 would be extended by 20 days beyond July 31, 2020 |

- The link for aforesaid circular is mentioned below: https://bit.ly/3ioiBmR

## *GUIDELINES FOR REGISTRATION AND CLASSIFICATION OF MSMEs*

- Ministry of Micro, Small and Medium Enterprises has introduced a consolidated notification elucidating the detailed criteria for classification of an enterprise as MSME and procedure for registration of an enterprise as MSME. The said Notification shall supersede all previous notifications in this regard.

- The link for aforesaid circular is mentioned below: https://bit.ly/31KHV0q

# SEBI UPDATES

- **Collection of stamp duty on issue, transfer and sale of units of AIFs**
  - As regards transactions (issue, transfer and sale of units of AIFs in demat mode) through recognized stock exchange or depository as defined under SCRA, 1956 and depositories Act 1996 respectively, the respective stock exchange/ Authorized clearing corporation or a Depository is already empower to collect stamp duty as per the amended Indian Stamp Act, 1899 and the rules made thereunder.
  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/collection-of-stamp-duty-on-issue-transfer-and-sale-of-units-of-aifs_46983.html

- **Relaxation of Gap between two board meeting/Audit Committee Meetings of listed entities due to CoVID-19**
  - As per this circular SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/110 dated 26th June 2020, the relaxation of maximum gap between two board meetings/Audit committee meetings as provided in SEBI Circular dated 19th March 2020 is further extended till 31st July 2020.
  - However, the board of directors and audit committee of listed entities shall ensure that they meet atleast four times a year as prescribed under Regulations 17(2) and 18(2)(a) of the LODR Regulations.
  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/relaxation-of-time-gap-between-two-board-audit-committee-meetings-of-listed-entities-owing-to-the-covid-19-pandemic_46945.html

- **Relaxation in Timelines for compliance with regulatory requirements**

| Sr. No. | Particulars | Extended time Limit |
|---|---|---|
| 1 | Processing of Demat request form by issuer/RTA | Period excluded from 23rd March 2020 till 31st July 2020<br>A period of 15 days after 31st July 2020 is allowed to DPs, to clear the back log |
| 2 | Processing of Demat request form by DP | Period excluded from 23rd March 2020 till 31st July 2020<br>A period of 15 days after 31st July 2020 is allowed to DPs, to clear the back log |
| 3 | Submission of half yearly internal Audit report by DPs for half year ended on 31st March 2020 | 31st July 2020 for half year ended on March 31, 2020. |
| 4 | Redressal of investor grievances | Period excluded from 23rd March 2020 till 31st July 2020<br>A period of 15 days after 31st July 2020 is allowed to DPs, to clear the back log |
| 5 | Transmission of securities | Period excluded from 23rd March 2020 till 31st July 2020<br>A period of 15 days after 31st July 2020 is allowed to DPs, to clear the back log |
| 6 | Closure of Demat Account | Period excluded from 23rd March 2020 till 31st July 2020<br>A period of 15 days after 31st July 2020 is allowed to DPs, to clear the back log |
| 7 | Time for reporting of Artificial Intelligence and machine learning by trading members, clearing members | Extended till 31st July 2020 for the quarter ending on June 30, 2020 |

- The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_46967.html

- **Further extension of time for submission of Annual Secretarial Compliance Report listed entities to continuing impact of the CoVID-19 Pandemic.**
  - As per the SEBI Circular in accordance with the section 11(1) of the SEBI, 1992 & Regulation 101 of LODR Regulations it has been further decided to extend the timeline for submission of the Annual Secretarial Compliance Report by one more month, to July 31, 2020.
  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/further-extension-of-time-for-submission-of-annual-secretarial-compliance-report-by-listed-entities-due-to-the-continuing-impact-of-the-covid-19-pandemic_46933.html

- **Guidelines for Order to trade ratio (OTR) for Algorithmic trading.**

  - Stock exchanges may permitted to introduce additional slabs upto from OTR of 500 to OTR of 2000 and for OTR more than 2000.
  - Such slabs can be introduced with deterrent incremental penalty
  - On the third instance of OTR being 2000 or more, in last 30 days, the concerned member shall not be permitted to place any orders for the first 15 minutes on the next trading day as a cooling off action.
  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/guidelines-for-order-to-trade-ratio-otr-for algorithmic-trading_46925.html

- **Further extension of time for submission of financial results for quarter/half year/financial year ending 31st March 2020 due to the continuing impact of the CoVID-19 Pandemic.**

  - As per the circular, it has been decided to further extend the timeline for submission of financial results under Regulations 33 of LODR Regulations, by a month, to July 31, 2020, for the quarter and the year ending 31st march.
  - Similarly the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for period ending on 31st March 2020 for entities that have listed NCDs, NCRPs, CPs, MDs is also extended to 31st July 2020.
  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/further-extension-of-time-for-submission-of-financial-results-for-the-quarter-half-year-financial-year-ending-31st-march-2020-due-to-the-continuing-impact-of-the-covid-19-pandemic_46924.html

- **Temporary relaxation in processing of documents pertaining to FPI due to CoVID-19**

  - Relevant Provisions: Section 11 of the SEBI Act, 2020 & Rule 9 of the Prevention of Money- Laundering (Maintenance of Records) Rules, 2005.
  - Purpose:
    1. To protect the interest of investors in securities.
    2. To promote the development of and to regulate the securities market.
  - As per the circular it has been decided that the temporary relaxations shall be extended to August 31st, 2020.
  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/temporary-relaxation-in-processing-of-documents-pertaining-to-fpis-due-to-covid-19_46915.html

- **Conducting meeting of unitholders of InvITs and REITs through Video Conferencing or other Audio-Video Means**

  - As per the Regulation 22 of SEBI (InvIT) Regulations, 2014 which provides for holding annual meeting of all unitholders not less once a year so by this circular it is clarified that InvIT/REITs may conduct meeting of unitholders through VC or OAVM.
  - For meetings, other than annual meetings of unitholders, the facility for conducting meeting of unitholders through VC or OAVM shall be available upto 30th September, 2020.
  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/conducting-meeting-of-unit-holders-of-invits-and-reits-through-video-conferencing-vc-or-through-other-audio-visual-means-oavm-_46906.html

- **Relaxation in timelines for Compliance with regulatory requirements**

  - As per circular it has been decided to further extend the timelines for compliance with the regulatory requirements by the Trading members/ clearing members/DPs, mentioned as under.

| Sr. No. | Particulars | Extended Timeline |
|---|---|---|
| 1 | Client funding reporting | Till 31st July 2020 for the months of April, May, and June 2020 |
| 2 | Reporting for Artificial Intelligence and Machine Learning Applications | Till 31st July 2020 for the quarter ended on March 31st 2020 |
| 3 | Compliance certificate for Margin Trading for CM Segment | July 31, 2020 |
| 4 | Risk based supervision | July 31st, 2020 |
| 5 | Internal Audit Report for half year ending on March 31st 2020 | Till July 31st 2020 for the half year ending on March 31st 2020 |
| 6 | Net worth certificate in margin trading for CM Segment for half year ending on 31st March 2020 | Till July 31st 2020 for the half year ending on March 31st 2020 |
| 7 | Net worth certificate for all members for HYE March 2020 | Till July 31st 2020 for the half year ending on March 31st 2020 |
| 8 | Penalty for non-collection/short collection of upfront margins in cash segment | July 31, 2020 |
| 9 | Maintaining call recordings of orders/instructions received from clients | July 31, 2020 |
| 10 | Submission towards weekly monitoring of client funds under the provisions of Enhanced Supervision | July 31, 2020 |
| 11 | Submission of data on monthly basis towards clients' and fund balance under the provisions of Enhanced Supervision | July 31, 2020 |
| 12 | Daily margin trading reporting | July 31, 2020 |
| 13 | Update in Income Tax Permanent Account Number of Key Management Personnel/Directors | Three months from the due date |
| 14 | Issue of Annual Global Statement to clients | Three months from the due date |

  - The link for aforesaid circular is mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_46899.html

# FEMA UPDATES

## *EXTENSION OF DUE DATE FOR FILING FLA RETURN*

- As per the information available on the FLAIR portal of RBI, the due date for filing return with RBI for foreign assets and liabilities, i.e. FLA Return has been extended up to Jul 31, 2020.

- The link for aforesaid circular is mentioned below: https://bit.ly/2Z20trr

# IBC UPDATES

***Key highlights of the Ordinance issued under IBC on 05 June 2020 and made effective immediately are as under:***

- No Fresh initiation of insolvency under sections 7, 9 and 10 under IBC stand suspended for a period of six months for any defaults arising on or after 25 March 2020 for a period of six months, or such further period not exceeding a period of one year.
- After section 10 of the principle Act, a new section 10A has been inserted to incorporate the amendments.
- No application shall ever be filed for initiation of insolvency proceedings against a Corporate Debtor for default occurring during this period of suspension of IBC.
- The provisions of this section shall not apply to any default committed before 25 March 2020.
- Under section 66 of the principal Act, a sub-section 3 has been inserted prohibiting a resolution professional from filing an application under Section 66 (sub-section 2) in respect of default against which initiation of insolvency proceedings are suspended under section 10A.

The link for aforesaid circular is mentioned below: https://ibclaw.in/wp-content/uploads/2019/08/IBC-Ordinance-2020-05.06.2020.pdf

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