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CBDT Circulars & Notifications

- Circular No. 22/2019 CBDT issued **consolidated circular** for ease of compliance in **start-ups**.
- CBDT clarifies that circular 17/2019 under section 268A of the IT Act, the enhancing of the monetary limit for appeals issued will not apply to the cases involving **bogus claims through penny stock**.
- CBDT notified that vide a **special order** CBDT can direct the filing of appeals on basis of merits in each cases even where **the monetary limit is lower** than the prescribed in the notification.
- **Startup cell** has been created vide Circular dated August 30, 2019 for handling redressal of grievances of start ups. In this regard, CBDT sets stringent timelines for resolving grievances.
- CBDT relaxes timelines on filing of **application for compounding of an offence**. The Application for compounding of offence is required to be filed on or before 12 months from filing of complaint in court. As a one-time measure to grant relief to the deserving taxpayers, CBDT has relaxed such requirement if the application is made to Pr. CCIT/CCIT/Pr. DGIT/DGIT on or before December 31, 2019.
- CBDT notifies e-assessment proceedings from September 12, 2019. The key features of E-assessment proceedings are:
 - i) E-Assessment units which consist of national E-assessment centre, regional e-assessment centre, Assessment units, verification units, technical units and review units.
 - ii) The units have the following powers; imposition of penalty, collection and recovery of demand, rectification of mistake and giving effect to order.
 - iii) Appellate proceedings are transferred to the respective CIT(A) having jurisdiction over AO.
- v) No Appearance before the Assessing Officer unless for the reasons notified.
- Circular 26/2019 - CBDT issued clarification in respect of filing of ITR-5, ITR-6 & ITR-7 Source: https://www.incometaxindia.gov.in/communications/circular/circular_26_2019.pdf
- CBDT directs the conduct of assessment framed under section 143(3) to be conducted electronically. The Assessee are required to furnish information against notice in electronic mode in E-filing portal.
- Cost inflation index for the financial year 2019-20 is notified. CII for 2019-20 is **289**.
- Ministry of Finance notifies the meaning of wholesale trading in reference to international transaction and specified domestic transactions. The wholesale trading is one which fulfils the following conditions:
 - i) Purchase cost of finished goods is **eighty percent or more** of total cost pertaining to trade.
 - ii) Average closing inventory of such goods is **less than 10 percent or less of sales pertaining to trading**.
- CBDT extends the due date for filing tax audit report under section 139 to October 31, 2019 However, **interest under section 234A** is applicable.
- Due date for **linking PAN and Aadhar** as per section 139AA of the Act is extended till December 31, 2019.
- **CBDT issued updated form ITR 6 for filing return of income pursuant to clarifications on the form. One should ensure to use appropriate form for the purposes of filing the return for the Companies that has filed return on or before September 30, 2019 to mitigate interest exposure.**

- Notification G.S.R 694(E) CBDT notifies TDS credit rules for payment under section 194N by insertion of new rule 3A, the TDS credit is available to **the person from whose account the tax is deducted.**
- Notification No. 70/2019 - Provisions of section 194N will not be applicable to commission agent or trader operating under agricultural produce market committee who has intimated the bank or the cooperative society the details of PAN & the account through which he proposes to withdraw more than INR 1 Crore in cash.
- CBDT extends timeline for completion of assessment under **demonitization cases** to December 31, 2019.
- CBDT notifies new **form 3CEI** for making reference to the approving authority under sub section (4) of section 144BA(GAAR) of the IT Act.
- CBDT deletes sub rule (5) of rule 2F, thereby waiving-off **minimum maturity period of 5 years and minimum lock-in period of 3 years** for non-resident investors for investment in **Infrastructure Debt Fund**
- CBDT strengthens procedure for processing of cases for prosecution. The key excerpts of this notification are as follows:
 - i) Prosecution proceedings shall not be initiated for Failure to pay tax to the credit of central government which is below **INR 25 lakhs or delay in deposit is less than 60 days.**
 - ii) It has been clarified that prosecution under this section, 276(1)(c) willful attempt to evade tax, 276CC(failure to furnish returns of Income) shall be initiated only with prior approval of two CCIT/DGIT rank officers.

International Tax

France: The French Government outlined a number of measures that will be included in the 2020 Finance Law to ensure the payment of value-added tax on items bought by French residents from online marketplaces.

Sweden: The Swedish Ministry of Finance commenced a consultation on proposals to tackle hybrid mismatch arrangements.

It is observed that every country is taking steps to protect their interest amidst hybrid mismatch in the tax treaties.

Taxation Laws Amendment Ordinance

Government of India introduced Taxation laws Amendment Ordinance. The key highlights of the ordinance are available at- <http://vcmv.in/wp-content/uploads/2019/10/India-Surging-Ahead-September-2019.pdf>

FEMA

- RBI has directed all the Indian parties having **corporate guarantees** (including performance guarantees, bank guarantees and SBLC) to **report** the same in **the form ODI-1** through their designated AD. Further, RBI has clarified that guarantees issued by banks in favour of WOS/JVs would be subject to prudential norms by RBI.
- RBI issued a directive to disclose unique identification number allotted to each JV/WoS abroad in all the correspondence to RBI.

Goods and Services Tax Corner

- GST Council's 37th meeting was held on 20th September 2019 and Notifications giving effect to those recommendations were issued by CBIC on 30th September 2019, effective 1st October 2019. Synopsis of these changes/amendments will be shared along with October newsletter.
- Some of the significant changes are captured below.
- a. Relaxation in filing of annual returns for MSMEs for FY 2017-18 and FY 2018-19.

b. A Committee of Officers is to be constituted to examine the simplification of Forms for Annual Return and reconciliation statement.

c. New GST return system to be introduced from April 2020 (earlier proposed from October 2019)

- Constitution of GST Appellate Tribunal held as Unconstitutional by the Hon'ble High Court of Madras in WP Nos. 24117 & 24118 of 2018 in

Key Judicial Precedents

A. Trustee could also be beneficiary of the Trust?

M/s. ISARC 14/2010-11 Trust vs. ITO [2019] ITA No. 2701/Mum/2017 (Mumbai ITAT):

Facts:

- Assessee is a trust formed as per the provisions of the Indian Trust Act, 1888 and SARFAESI
- India SME Asset reconstruction company ('ISARC') Co. Ltd is an ARC who is settlor and trustee of the Trust. ISARC is the sole investor in the Trust and investors are the beneficiaries.
- The income of the trust is to be distributed to the beneficiaries in the ratio of their capital contribution.
- The Investors are entitled to revoke the contributions made by them at any time during the term of the deed subject to consent from not less than 75% of the investors.
- Given the above, the income earned by the Trust has been clubbed in the hands of the beneficiaries and no income is offered to tax in the hands of the trust.

Department's Contention:

- The Trustee cannot be settlor as well as beneficiary of the Trust.
- The contribution is revocable only when 75% of the contributor consents to it.
- The shares of the beneficiary are unknown as the same are not disclosed in the trust deed.
- Given the above, the income is chargeable to tax as AOP under section 167B of the Act at Maximum Marginal Rate.

Held:

Revenue Bar Association vs Union of India [2019].

- End to end online refund processing has been deployed by GSTN. Consequently, refund ARNs generated from 26.09.2019 would be processed online.
- Circular No. 1072/05/2019-CX dated 25th September 2019 issued on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

- Relying on the decision of Hon'ble Mumbai High court in the case **PCIT vs M/s Milestone Army Navy Trust in ITA No. 1826 of 2016**, since the shares of the beneficiaries are in the ratio of the investment, it cannot be held that share of the beneficiaries are not known.
- The income from the activity had been disclosed in the return of the investors and further, income tax authorities could also verify the same.
- The security holders invested in the security receipts which are revocable, hence under section 61 of the Act, the income is includable in the income of the contributors.

B. Whether separate marketing group companies constitute a Permanent Establishment?

M/s. Audi AG vs ADIT [2019] ITA No. 1781/Mum/2014 (Mumbai ITAT):

Facts:

- The Assessee Company is a tax resident in Germany and part of Volkswagen Group Sales India Private Limited ('VW India').
- VW India is the sole distributor for Audi Cars in India. The Assessee sold completely Built Car to VW India and also sold car parts to Skoda India for assembly and which in turn sells to VW India.
- The cars were sold by the Assessee at FOB and the inbound delivery of units of car is undertaken by VW India.
- The Assessee offered to tax only the income arising from fees for technical service and interest income.
- Revenue contended that VW India is a PE of Audi AG and attributed profits based on the net profit ratio as per the global audited financials.

Held:

- Relying on the Hon'ble Apex Court ruling on ACIT v. E-Funds IT solutions Inc 100 CCH 0048, since the assessee does not have a place at its disposal in India, Fixed place PE is not applicable.
- Business of the Assessee is restricted to the export of cars to the VW India. VW India undertakes the sales promotional activities. Further, the VW India does not have authority to conclude contract. Therefore, the transaction is of principal to principal basis and Agency PE is not attracted.
- Sale by Audi AG is concluded outside India, therefore in the absence of PE, it is not possible to attribute profits for the sale that did not take place in India.

C. Section 68 Applicability on IHC structures:

M/s. Hinduja Realty Ventures v. Dy. CIT [2019] ITA No. 1090/Mum/2019

Facts:

- Assessee is an Indian Company engaged in the business of real estate development and management of properties.
- M/s. Rabna Holdings Ltd. ('RHL') a company incorporated in Mauritius holding valid Tax Residency Certificate subscribed to share capital of the Assessee Company i.e. 3,10,000 shares at INR 5,000 per share.
- During the Assessment proceedings, Assessee submitted the source of funds for investor to make investment and the veracity of document is cross verified with Mauritius Tax department by exercising Article 26 of DTAA.
- From the above, it was observed that RHL received a loan from M/s. Awas Ltd from Bahamas for making investment in India. The list of offshore leak database of International Consortium of Investigative Journalism contained M/s. Awas Ltd as Bahamas Leak list.
- Given the above, the AO and CIT(A) held that the source of Awas Ltd is not explained by the Assessee and added the income to tax under section 68.

Held:

- As per section 68 of the IT Act, the Assessee is required to explain the nature of credit in the books and source of such credit. The Assessee has proved beyond doubt that the nature of credit is subscription to the share capital and source is from RHL. Further, the Assessee has also proved the source of funds for RHL i.e. loan advanced by Awas Ltd. Therefore, the addition under section 68 is not tenable.

D. Whether one time Subvention income to be included in Computation of PLI?

Nalco Waters India Private Limited Vs. CIT [2019] ITA No. 742/Pun/2017 (Pune ITAT):

Facts:

- The Assessee Company is part of the Nalco US group which is a leader in providing global water treatment and process improvement solution.
- The Assessee Company during the previous years has received subvention from US Company so that the assessee does not become sick and meet its operational expenditure.
- The subvention income was first offered to tax but later through additional grounds of appeal to DRP the Assessee pleaded that the subvention income was capital receipt and the same was allowed. (Relied on the Apex Court ruling on Siemens Public Communication network P. Ltd. v. CIT 390 ITR 1[SC]).
- Department held that since the subvention received is not operational in nature, the same should not be included for the purposes of computing PLI of the assessee and thereby making addition to the extent of difference..
- Department also observed that the subvention is a onetime payment and an exceptional item and therefore, not considered for computation of PLI.

Held:

- As per Hon'ble Apex Court on Siemens Public Communication Network P. Ltd (Supra), the subvention income is capital in nature and not chargeable to tax.
- Hon'ble ITAT upheld the contention of the Assessee, that the nature of receipt as ruled by Hon'ble Apex court for the purpose of

computation of taxable Income does not apply for computation of PLI. Tribunal also observed that the subvention was credited to the profit loss account as an exceptional item (not extraordinary item) and as a result financial performance shifted from loss to profit. Therefore, the same is operational in nature and should be included for computation of PLI.

E. TDS prosecution?

M/s. Shah Developers P Ltd v. Income Tax officer TDS- Mumbai (Addl. Chief Metropolitan Magistrate, Mumbai C.C. No. 53/SW/2014):

Facts:

- The Company deducted TDS as per section 194C, 194J and 194I of the Income tax Act, however, paid the same only after an year from the prescribed date.
- The Principal Officers of the company contended that there was financial crisis and henceforth, could not pay the TDS on time.
- The defense of the Principal Officers also contended that the Directors are first time offenders and leniency to be shown towards them.

Held:

- The Magistrate held that the material evidence is required to be brought onto record to prove otherwise that the accused has culpable mind for delayed deposit of TDS beyond the prescribed timeline to rebut the presumption u/s 278E of the Act, and mere contention of financial crisis does not absolve the criminal liability. Considering the above, the principal officers were levied a fine of INR 5000/- and simple imprisonment for 30 days.

Note: it is also important to note that Hon'ble Delhi District Court has overturned the ruling of the trial court, on grounds that bad financial conditions is a plausible reason for delay in deposit of TDS. [ITO vs. M/s Great India Nautanki Company Pvt. Ltd \[2019\] Criminal Appeal No. 17/2019 \(Tis Hazari Court Central District Delhi\)](#).

F. Advance from subsidiary for strategic Investment a deemed dividend?

M/s. Asian Business Connections Private Ltd v. DCIT [2019] ITA No. 936/Ind/2018 [Indore ITAT]

Facts:

- The Assessee is a company incorporated under Companies Act, 1956 and is mainly engaged in the business of making strategic investments. The Assessee Company is a holding company for a group of companies that operates both in domestic and overseas territories.
- The Company obtained loan from its subsidiary in terms of a MoU wherein the holding company makes strategic investments and the gains are shared among the assessee and the subsidiary subject to a minimum 12% return on Investment. However, Amount received has been disclosed as long term borrowings in its Balance Sheet.
- The advance received from subsidiary company was invested in group companies and various real estate projects and the gains arising from the same is apportioned as per the terms of the MoU and offered to tax.
- The Assessee contended that the advances from the sister concerns are transactions in regular course of business. However, the Department denied the contention and added the loan to income as deemed dividend under section 2(22)(e) of the Act.

Held:

- The Hon'ble ITAT relied on the judgment of Hon'ble Apex court in case of Taparia Tools Ltd. v. JCIT 55 taxmann.com 361 (SC) held that mere treatment in books is not determinative or conclusive evidence to be examined on the touchstone of the provisions of the Act and held that mere disclosure as Long-term borrowing does not change the nature of transaction.
- Considering the facts of the case and MoU, the advances are purely in nature of trade advance in normal course of business and it was undertaken to maximize the profits of the group. Further, there are no intention to avoid Dividend Distribution Tax and held that addition under section 2(22)(e) is unwarranted.

G. Maintainability of Writ Petition:

M/s. Cognizant Technology Solutions India Pvt. Ltd., v. DCIT [2019] W.A No. 2063 of 2019 [Madras HC]

Facts:

- The Learned AO passed an order considering the buyback undertaken by the Assessee would constitute dividend and also attached the bank account of the Assessee without offering “an opportunity of being heard”.
- Single member bench held that petitioner made an attempt to bypass the appeal remedy available in the Act and dismissed the writ petition.
- Single Member Judge also observed that 115-O being taxable under special situations there is no need for issuance of notice before making assessment.

- Given the above, the assessee filed a miscellaneous petition before the larger bench of the High Court.

Held:

Relying on various judicial precedents Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal, ((2014) 1 SCC 603), Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337 and series of judicial precedents set by Hon'ble Apex Court, the larger member bench held that the Single member judge with respect to directing the assessee to file an appeal is upheld. However, the “observations” on the nature of the transaction and violation of principles of natural justice as made by the Single Judge Bench are set aside as the same may lead to enhancing the case of the Revenue authorities and hence, have been left open to appellate authorities to decide the issue on merits.

Other Important Precedents

- As the share application money paid against share warrants did not result in acquisition of any right, the forfeiture of the same does not tantamount to extinguishment of rights and therefore, it cannot be construed as Short term Capital loss but merely, a Capital loss - **M/s. Sowraj Investments P Ltd vs DCIT [2019] ITA No. 3175/Chny/2018.**
- Gains on outcome of a decree is not an income from gambling or horserace as defined under article 22 of the Indo-Swiss DTAA and therefore, not taxable.- **M/s. Xstrata Coal Marketing AG & Dalmia Bharat Cement Ltd[2019] Exp 334/2014 (Delhi HC).**
- The testing charges incurred for supply of a machinery does not satisfy twin condition of Service rendered in India and service utilized in India and therefore, does not attract FTS under section 9(vii).- **Mr. Kumar Kondiba Shingare v. DCIT [2019] 182/Pun/2015.**

OECD

- Ecuador, Serbia and Iceland had deposited the instruments of ratification for the multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- OECD establishes working paper on potential of utilizing big data of economics for tax policy purposes.

NBFC

- Announcements are expected from Ministry of finance in relation to the liquidity concerns; rate cut and credit disbursements to improve consumption.

Secretarial Corner- Companies Act, 2013

- **Amendment in National Financial Reporting Authority Rules**

NFRA provides explanation as to what constitutes a Banking company. Therefore, the

rules shall be applicable only to those specified banks.

- i. The companies governed under NFRA Rules are required to file Annual Return on or before November 30 of every year (erstwhile April 30)
- ii. Form NFRA-2 (Annual Return) which is to be filed by the Auditor with the National Financial Reporting Authority is now available.

Constitution of the Company Law Committee:

In order to promote the Ease of Living in the country by providing Ease of Doing Business to

law abiding corporate, the company law committee has been constituted to examine and make recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

- **MCA has extended the due date for filing e-form BEN-2 till 31.12.2019 without the payment of additional fees.**
- **MCA has extended the due date for filing e-form DIR 3 KYC / Web KYC for the FY 2018-2019 till 14.10.2019 without the payment of penalty.**

SEBI

- The Securities Exchange Board of India amended that share buy-back regulations that debt equity ratio for post buyback situation shall be less than or equal to 2:1 based on both standalone and consolidated financial statements of the Company.
- SEBI has prescribed higher debt equity ratios for certain companies which will be in line with ratio prescribed under Companies Act, 2013. However, the post buy-back debt equity ratio cannot be higher than 6:1.
- The Securities Exchange Board of India vide its Notification dated September 12, 2019 has directed that:
 - i. All Listed Entities shall ensure all dues; fines penalties imposed by SEBI, Stock Exchanges and the Depositories have been paid/ settled before filing the draft scheme with the designated stock exchange. Further, in case of any unpaid dues / fines / penalties, the same

shall be disclosed in the prescribed format along with draft scheme.

- The Securities Exchange Board of India notified **new FPI regulations**. The key excerpts of the regulations are:
 - i. Categories of FPI reduced to two from three, Category I consists of Pension Fund, Govt Funds, Entities from FATF jurisdiction, or entity whose fund manager is located in FATF jurisdiction. Category II consists of entities other than those covered under category I.
 - ii. Foreign Portfolio Investors can now invest in Real Estate Investment Trusts, Infrastructure Investment Trusts and Units of Category III, Alternative Investment Funds & Debt securities permitted by the Reserve Bank of India.
 - iii. Foreign Portfolio Investors who operate under multi-investment manager structures and have the same beneficial owner and common PAN can now do off-market transfer of securities.

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