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Newsletter

MAY-June Edition - 2017

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Message from the Editor

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Respected Members ,

Presenting June 2017 edition before you all members covering latest amendments and recent legal updates and case laws.

This is last edition of our editorial team. Thanks to all members for your support and cooperation. This was a very good experience for me to serve as editor of IT Bar NewsLetter.

Bharat Mata Ki Jai

SUBMIT STATEMENT OF FINANCIAL TRANSACTIONS (SFT) IN FORM 61A BY 30.062017

Directorate of Income Tax (Intelligence and Criminal Investigation), Mumbai

Submission of Statement of Financial Transactions (SFT) in Form 61A – Due date- 31.5.2017

Legal Framework

Section 285BA- Obligation to furnish Statement of Financial Transactions (SFT)

Rule 114E – Furnishing of Statement of Financial Transactions in Form 61A

Form 61A – Format and Instructions

IDENTIFYING TRANSACTIONS TO BE REPORTED – SUB-RULES OF RULE 114E

Class of persons (reporting person)	Nature and Value of Transaction
Banks	Cash payment for purchase of DDs/POs of amount aggregating Rs 10 lakh or more in a year ET
Banks of	Cash payment of Rs 10 lakh or more for purchase
Banks	prepaid RBI instruments (RBI bonds, etc.) Cash deposit/withdrawal aggregating Rs 50 lakh or more from current a/c of a person
Banks/Post Master General any	Cash deposit aggregating Rs 10 lakh or more in
current	one or more accounts of a person (other than
Banks/Post Master General/Nidhi/NBFC through	account and time deposit) One or more time deposits (other than those
Banks	renewal of another time deposit) of a person aggregating Rs 10 lakh or more Payment in cash aggregating in a year Rs 1 lakh or more (in cash) or Rs 10 lakh or more (by any other mode) against credit card bill issued to a person during the year
Company/Institution issuing bonds/debentures	Receipt aggregating Rs 10 lakh or more in a year from a person for acquiring bonds/debentures
Company issuing shares	Receipt from a person aggregating Rs 10 lakh or more for acquiring shares (including share application money)
Company listed in recognized stock exchange	Buy back of shares from any person (other than bought from open market) for an amount aggregating Rs 10 lakh or more

Mutual Fund Trustee/Manager	Receipt from a person aggregating Rs 10 lakh or more for acquiring units of Mutual Fund
Foreign Exchange Dealer	Receipt from a person for sale of foreign currency, including against foreign exchange card or expenditure in such currency against debit/credit card or issue of travellers cheque or draft aggregating Rs 10 lakh or more
IG Registration or Registrar/Sub-Registrar of Property	Purchase/Sale by any person of immovable property for Rs. 30 lakh or more or valued by the stamp valuation authority at Rs 30 lakh or more
Any person liable for audit u/s 44AB of the Act	Receipt of cash payment exceeding Rs 2 lakh by any person for sale of goods/services (other than those specified above)

Aggregation Rule

[Applicable for all transaction types except SFT- 012 (Purchase or sale of immovable property) and SFT-013 (Cash payment for goods and services).

[Reporting person shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person

(a) take into account all the accounts of the same nature maintained in respect of that person during the financial year;

(b) aggregate all the transactions of the same nature recorded in respect of that person during the financial year;

(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

Consequences of non-compliance

Penalty @ Rs.100/- per day of default

Penalty, on non-compliance to notice calling for return, @ Rs. 500/- per day

Penalty ofRs. 50,000/- for providing inaccurate information in the statement

RECENT NOTIFICATIONS

Notification No. 95 dt 30th Dec 2015

Notification dt 30th Dec 2016- registration for filers

Notification dt 17th Jan 2017 (Explanation/Guidance)

Resource	Description	Where Available
Systems Notification No.1 dated 17 Jan 2017 on SFT	Notification issued by the Directorate of Systems specifying the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies	E-filing Portal (https://incometaxindiaefiling.gov.in) and National Website (http://www.incometaxindia.gov.in) of Income Tax Department
User Manual for ITDREIN Registration and Upload	User Manual to explain steps in registration of filer and upload of SFT (Form 61A)	
SFT Report Generation Utility User Guide	User Guide to explain steps in using the Java utility to assist the filer in preparation of SFT (Form 61A) in XML file	User Manuals section under the Help Button on E-Filing portal Home page
SFT Quick Reference Guide	One page document with steps for preparation of SFT	
SFT Report Generation Utility	Java utility to assist the filer in preparation of SFT (Form 61A) in XML file	Forms (Other than ITR) link under the Downloads Section on E-Filing portal Home page
Form 61A Schema (For Developers)	XSD file which contains the schema in which SFT (Form 61A) needs to be prepared and uploaded/submitted	Schema link under the Downloads Section on E-Filing portal Home page

Circular No. 10/2017

F.No 133/23/2016-TM

Government of India

Ministry of Finance

Department of Revenue

Central Hoard of Direct Taxes

(TPL Division)

Date 23rd March, 2017

Subject: Clarifications on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961.

Sub-section (1) of section 145 of the Income-tax Act, 1961(the Act') provides that the income chargeable under the head "Profits and gains of business or profession" or -Income from other sources" shall, subject to the provisions of sub-section (2), he computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Sub-section (2) of section 145 provides that the Central Government may notify Income Computation and Disclosure Standards (ICDS) for any class of assessees or for any class of income. Accordingly, the Central Government notified 10 ICDS vide Notification No. S.O.892(E) dated 31st March, 2015 with effect from assessment year 2016-17.

After notification of ICDS, it has been brought to the notice of the Central Board of Direct Taxes ('the Board') by the stakeholders that certain provisions of ICDS may require amendment/clarification for proper implementation. The matter was referred to an expert committee. The Committee after duly consulting, the stakeholders in this regard has recommended a two-fold approach for the smooth implementation of ICDS i,e amendment to the provisions of ICDS in respect of certain issues and issuance of clarifications by way of FAQs for the rest of issues. Accordingly, vide Notification no 87. dated 29th September,2016 Central Government notified amended ICDS with effect from the assessment year 2017-18.

Further, the issues which require further clarification has been considered by Board and following clarifications arc issued:

Question 1: Preamble of ICDS-I states that this ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purposes of maintenance of books of accounts. However, Para I of ICDS I states that it deals with significant accounting policies. Accounting policies are applied for maintenance of hooks of accounts and preparing financial statements. What is the interplay between ICDS-I and maintenance of hooks of accounts?

Answer: As stated in the Preamble, ICDS is not meant for maintenance of books of accounts or preparing financial statements. Persons are required to maintain books of accounts and prepare financial statements as per accounting policies applicable to them. For example, companies are required to maintain books of account and prepare financial statements as per requirements of Companies Act 2013. The accounting policies mentioned in ICDS-I being fundamental in nature shall be applicable for computing income under the heads "Profits and gains of business or profession" or "Income from other sources".

Question 2: Certain ICDS provisions arc inconsistent with judicial precedents. Whether these judicial precedents would prevail over ICDS?

The ICDS have been notified after due deliberation and after examining judicial views for bringing certainty on the issues covered by it. Certain judicial pronouncements were pronounced in the absence of authoritative guidance on these issues under the Act for computing Income under the head "Profits and gains of business or profession" or Income from other sources. Since certainty is now provided by notifying ICDS under section 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to assessment year 2017-18 and subsequent assessment years.

Question 3: Does ICDS apply to non-corporate taxpayers who are not required to maintain hooks of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?

Answer: ICDS is applicable to specified persons having income chargeable under the head Profits and gains of business or profession' or 'Income from other sources'. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the ease may be.

Question 4: If there is conflict between ICDS and other specific provisions of the Income-tax rules,1962(`the Rules') governing taxation of income like rules 9A, 9B etc. of the Rules, which provisions shall prevail?

Answer: ICDS provides general principles for computation of income. In case of conflict, if any, between the provisions of Rules and ICDS, the provisions of Rules, which deal with specific circumstances, shall prevail.

Question 5: ICDS is framed on the basis of accounting standards notified by Ministry of Corporate Affairs (MCA) vide Notification No. GSR 739(E) dated 7 December 2006 under section 211(3C) of erstwhile Companies Act 1956. However, MCA has notified in February 2015 a new set of standards called 'Indian Accounting Standards' (Ind-AS). How will ICDS apply to companies which adopted Ind-AS?

Answer: ICDS shall apply for computation of taxable income under the head " Profit and gains of business or profession" or "Income from other sources" under the Income Tax Act. This is irrespective of the accounting standards adopted by companies i.e. either Accounting Standards or Ind-AS.

Question 6: Whether ICDS shall apply to computation of Minimum Alternate Tax (MAT) under section 115JB of the Act or Alternate Minimum Tax (AMT) under section 115JC of the Act?

Answer: MAT under section 115.113 of the Act is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments. Since, the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of MAT.

AMT under section 115JC of the Act is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act. Hence, the provisions of ICDS shall apply for computation of AMT.

Question 7: Whether the provisions of ICDS shall apply to Banks, Non-banking financial institutions, Insurance companies, Power sector, etc.?

Answer: The general provisions of ICDS shall apply to all persons unless there arc sector specific provisions contained in the ICDS or the Act. For example, ICDS VIII contains specific provisions for banks and certain financial institutions and Schedule 1 of the Act contains specific provisions for Insurance business.

Question 8: Para 4(ii) of ICDS-I provides that Market to Market (MTM) loss or an expected loss shall not he recognized unless the recognition is in accordance with the provisions of any other ICDS. Whether similar consideration applies to recognition of MTM gain or expected incomes?

Answer: Same principle as contained in ICDS-I relating to MTM losses or an expected loss shall apply mutatis Mutandis to MTM gains or an expected profit.

Question 9: ICDS-I provides that an accounting policy shall not he changed without 'reasonable cause'. The term 'reasonable cause' is not defined. What shall constitute `reasonable cause'?

Answer: Under the Act, 'reasonable cause' is an existing concept and has evolved well over a period of time conferring desired flexibility to the tax payer in deserving cases.

Question 10: Which ICDS would govern derivative instruments?

Answer: ICDS –VI (subject to para 3 of ICDS-VIII) provides guidance on accounting for derivative contracts such as forward contracts and other similar contracts. For derivatives, not within the scope of ICDS-VI, provisions of ICDS-1 would apply.

Question 11: Whether the recognition of retention money, receipt of which is contingent on the satisfaction of certain performance criterion is to be recognized as revenue on billing?

Answer: Retention money, being part of overall contract revenue, shall be recognised as revenue subject to reasonable certainty of its ultimate collection condition contained in pars 9 of on Construction contracts.

Question 12: Since there is no specific scope exclusion for real estate developers and Build -Operate- Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS-III and ICDS-IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.

Answer: At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.

Question 13: The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?

Answer: As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non recovery in either cases can be claimed as deduction in view of amendment to 5.36 (1) (vii). Further, the provision of the Act (e.g. Section 43D) shall prevail over the provisions of ICDS.

Question 14: Whether ICDS is applicable to revenues which arc liable to tax on gross basis like interest, royalty and fees for technical services for non-residents u/s. 115A of the Act.

Answer: Yes, the provisions of ICDS 'hall also apply for computation of these incomes on gross basis for arriving at the amount chargeable to tax.

Question 15: Para S of ICDS-V states expenditure incurred on commissioning of project, including expenditure incurred on test runs and experimental production shall be capitalized. It also states that expenditure incurred after the plant has begun commercial production i.e., production intended for sale or captive consumption shall be treated as revenue expenditure. What shall be the treatment of expense incurred after the conduct of test runs and experimental production but before commencement of commercial production?

Answer: As clarified in Para 8 of ICDS-V, the expenditure incurred till the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as capital expenditure.

Question 16: What is the taxability of opening balance as on 1st day of April 2016 of Foreign Currency Translation Reserve (FCTR) relating to non-integral foreign operation, if any, recognised as per Accounting Standards (AS) 11?

Answer: FCTR balance as on 1 April 2016 pertaining to exchange differences on monetary items for non-integral operations, shall be recognised in the previous year relevant for assessment year 2017-18 to the extent not recognised in the income computation in the past.

Question 17: For subsidy received prior to 1st day of April 2016 but not recognised in the books pending satisfaction of related conditions and achieving reasonable certainty of receipt, how shall the same he recognised under ICDS on or after 1st day of April 2016?

Answer: Para 4 of ICDS-VII read with Para 5 to Para 9 of ICDS-VII provides for timing of recognition of government grant. The transitional provision in Para 13 of ICDS-VII provides that a government grant which meets the recognition criteria on or after 1st day of April 2016 shall he recognised in accordance with ICDS-VII. All government grants actually received prior to 1st day of April 2016 shall he deemed to have been recognised on its receipt in accordance with Para 4(2) of ICDS-VII and accordingly will be outside the transitional provision and therefore the government grants received on or after 1st day of April 2016 and for which recognition criteria provided in Para 5 to Para 9 of ICDS-VII is also satisfied thereafter, the same shall be recognised as per the provisions of ICDS-VII. The grants received prior to 1st day of April 2016 shall continue to be recognised as per the law prevailing prior to that date.

For example, if out of total subsidy entitlement of 10 Crore an amount of 6 Crore is recognised in the books of accounts till 31st day of March 2016 and recognition of balance 4 Crore is deferred pending satisfaction of related conditions and/or achieving reasonable certainty of The balance amount of 4 Crore will be taxed in the year in which related conditions are met and reasonable certainty is achieved. If these conditions are met over two years, the amount of 4 Crore shall be taxed over the period of two years. The amount of 6 Crore for which recognition criteria were met prior to 1st day of April 2016 shall not be taxable post 1st day of April 2016.

But if the subsidy is already received prior to 1st day of April 2016, Para 13 of ICDS-VII shall not apply even if some of the related conditions are met on or after 1 April 2016. This is in view of Para 4(2) of ICDS-VII which provides that Government grant shall not be postponed beyond the date of actual receipt. Such grants shall continue to be governed by the provisions of law applicable prior to 1st day of April 2016.

Question 18: If the taxpayer sells a security on the 30th day of April 2017. The interest payment dates are December and June. The actual date of receipt of interest is on the 30st day of June 2017 but the interest on accrual basis has been accounted as income on the 31st day of March .2017. Whether the taxpayer shall he permitted to claim deduction of such interest i.e. offered to tax but not received while computing the capital gain?

Answer: Yes, the amount already taxed as interest income on accrual basis shall be taken into account for computation of income arising from such sale.

Question 19: Para 9 of ICDS-VIII on securities requires securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value (NRV) at the end of that previous year, whichever is lower. Para 10 of Part-A of ICDS-VIII requires the said exercise to be carried out category wise. How the same shall be computed?

Answer: For subsequent measurement of securities held as stock-in-trade, the securities are first aggregated category wise. The aggregate cost and NRV of each category of security are compared and the lower of the two is to be taken as carrying value as per ICDS-VIII. This is illustrated below

Security	Category	Cost	NRV	Lower of cost or NRV	ICDS Value
A	Share	100	75	75	
B	Share	120	150	120	
C	Share	140	120	120	
D	Share	200	1 90	190	
	Total	560	535	505	535
E	Debt Security	150	160	150	
F	Debt Security	105	90	90	
G	Debt Security	125	135	125	
H	Debt Security	220	230	220	
	Total	600	615	585	600
Securities Total	**1160**	**1150**	**1090**	**1135**	

Question 20: There are specific provisions in the Act read with Rules under which a portion of borrowing cost may get disallowed under sections like 14A, 4311, 40(a)(i), 40(a)(ia), 40A(2)(b), etc of the Act. Whether borrowing costs to be capitalized under ICDS-IX should exclude portion of borrowing costs which gets disallowed under such specific provisions?

Answer: Since specific provisions of the Act override the provisions of ICDS, it is clarified that borrowing costs to be considered for capitalization under ICDS IX shall exclude those borrowing costs which are disallowed under specific provisions of the Act. Capitalization of borrowing cost shall apply for that portion of the borrowing cost which is otherwise allowable as deduction under the Act.

Question 21: Whether bill discounting charges and other similar charges would fall under the definition of borrowing cost?

Answer: The definition of borrowing cost is an inclusive definition. Bill discounting charges and other similar charges are covered as borrowing cost.

Question 22: flow to allocate borrowing costs relating to general borrowing as computed in accordance with formula provided under Para 6 of ICDS-IX to different qualifying assets?

Answer: The capitalization of general harrowing cost under ICDS-IX shall he done on asset-by-asset basis.

Question 23: What is the impact of Para 20 of ICDS X containing transitional provisions?

Answer: Para 20 of ICDS X provides that all the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st day of April 2016 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st day of March, 2016.

The intent of transitional provision is that there is neither 'double taxation' of income due to application of ICDS nor there should be escape of any income due to application of ICDS from a particular date. This is explained as under –

Provision required as per ICDS on 31 March 2017 for items brought forward from 31[51] day of March 2016 …(A)	INR 3 Crores
Provisions as per ICDS for FY 2016-17 …(B)	INR 5 Crores
Total gross provision …(C) = (A) + (B)	INR 8 Crores
Less: Provision already recognised for computation of taxable income in FY 2016-17or earlier …(D)	INR 2 Crores
Net provisions as per ICDS in FY 2016-17 to be recognised & per transition provision …(E) = (C) — (D)	INR 6 Crores

Question 24: Expenditure on most post-retirement benefits like provident fund, gratuity, etc. are covered by specific provisions. There are other post-retirement benefits offered by companies like medical benefits. Such benefits are covered by AS-15 for which no parallel ICDS has been notified. Whether provision for these liabilities are excluded from scope of ICDS X?

Answer: It is clarified that provisioning for employee benefit which are otherwise covered by AS 15 shall continue to he governed by specific provisions of the Act and are not dealt with b[y] ICDS-X.

Question 25: ICDS-I requires disclosure of significant accounting policies and other ICDS requires specific disclosures. Where is the taxpayer required to make such disclosures specified in ICDS?

Answer: Net effect on the income due to application of ICDS is to be disclosed in the Return of income. The disclosures required under ICDS shall he made in the tax audit report in Form 3CD. however, there shall not be any separate disclosure requirements for persons who are not liable to tax audit.

Lakshmi Narayanan
Under Secretary TPI,
CBDT

GST Council lowers rates for 66 items, increases limit for Composition Levy

The all-powerful GST Council headed by the Hon'ble Finance Minister, Mr. Arun Jaitley met for the sixteenth time with an agenda to review the rates on basis of representation made by the Industries & Traders & take up pending Draft Rules. Ahead of this meeting, we have moved one step more closure towards GST rollout from July 1, 2017 as envisaged.

With the conclusion of the 16th GST Council meet on June 11, 2017, the gist of the key takeaways from the meeting of the GST Council are as under:

Revised GST rates for certain goods:

The GST Council has reduced the GST rates on 66 items i.e. nearly half the 133 items on which representations had been received including cashew nuts, packaged foods such as sauces and pickles, agarbatti, insulin, school bags, children's colouring books, cutlery and some tractor components etc. In this regard, the Hon'ble Finance Minister, Mr. Arun Jaitley has said that "in certain cases the rate fitment committee went beyond the equalisation principle of maintaining the current tax incidence".

Gist of the Schedule of Revised GST Rates for Certain Goods:

Sl. No.	Description of Goods	Earlier GST Rate	Revised GST Rate
1.	Plastic beads	28%	12%
2.	Rough precious and semi-precious stones	3%	0.25%
3.	Aluminium foil	28%	18%
4.	Fixed Speed Diesel Engines	28%	12%
5.	Printers [other than multifunction printers], Computer monitors not exceeding 17 inches	28%	18%
6.	Ball bearing, Roller Bearings, Parts & related accessories	28%	18%
7.	Transformers Industrial Electronics, Electrical Transformer	28%	18%
8.	Electrical Filaments or discharge lamps	28%	18%
9.	Insulin, Agarbattis, Cashew nut & Cashew nut in shell	12%	5% (in case of Cashew nut in shell, under reverse charge)
10.	Kitchen use items like pickles, mustard sauce, and morabba	18%	12%

Decisions in regard to Services taken up by the GST Council:

The GST Council has taken various decisions in regard to Services, which are discussed as under:

a) In the list of Service Tax Exemptions to be continued in GST as approved by the GST Council, after S. No. 83, the following has been inserted:

S. No.	Particulars
84.	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to Government, a local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or to any function entrusted to a Municipality under Article 243W of the Constitution
85.	Services provided to the Government under any insurance scheme for which total premium is paid by Government
86.	Services provided to the Government under any training programme for which total expenditure is borne by the Government

b) In the Schedule of GST Rates for Services as approved by the GST Council, after S. No. 13, the following has been inserted:

S. No.	Description of Services	GST Rate
13A.	Services by way of job work in relation to – a) Textile yarns (other than man-made fibre/filament) & textile fabrics b) Cut and polished diamonds; precious and semi-precious stones, or plain and studded jewellery of gold and other precious metals, falling under chapter 71 of HSN c) Printing of books (including braille books), journals and periodicals a) d) Processing of leather	5% with Fullx ITC
27A.	Services by way of right to admission to exhibition of cinematographic films where the consideration for admission is Rs. 100 or less	18% with Full ITC

c) Exemption from registration under Section 23(2) of the CGST Act, 2017 has been extended to –

1. Individual advocates (including senior advocates)
2. Individual sponsorship service providers (including players)

Final approval to Draft Rules for Accounts & Records along withits Formats:

The GST Council has approved the following Draft Rule along with its Format which has been uploaded immediately after the GST Council's decision:

a) Final Rules for Accounts & Records

b) Final Accounts & Records Format

Further IGST Exemptions under GST:

Another list of IGST Exemptions under GST has been uploaded after the 16th GST Council meet, which are as under:

a) Bilateral Commitments – Imports under Agreement between India and Pakistan/Bangladesh for regulation of Bus Service

b) Technical Exemptions for Temporary import/Re-Import

Increased Threshold Limit for Composition levy:

It is to be noted that in terms of proviso to Section 10(1) of the CGST Act, 2017, the Government may, by notification, increase the limit of Rs. 50 lakh for Composition levy to such higher amount, not exceeding Rs. 1 crore, as may be recommended by the Council.

In this meeting, the GST Council has recommended increase in the turnover limit for Composition levy for CGST and SGST purposes from Rs. 50 lakh to Rs. 75 lakh in respect of all eligible registered persons i.e. Manufacturer, Trading & Restaurants. However, whether the same increased turnover limit for Composition levy will apply in case of Special Category States or not will be decided in the next GST Council meeting to be held on June 18, 2017.

I. NOTIFICATIONS

1. Amendment in Notification No. 75/2009, dated 30.09.2009 expanding the jurisdiction of cases in respect of which CIT, CPC, Bengaluru can exercise the specified concurrent powers-Notification No. 16/2017, dated 22-03-2017

Section 120 deals with the jurisdiction of income tax authorities and provides that such authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the CBDT may issue for the exercise of the powers and performance of the functions by all or any of those authorities. Accordingly, Notification No. 75/2009 dated 30.09.2009 was issued which, inter alia, provided that the Commissioner of Income-tax, Centralised Processing Centre, Bengaluru (CIT, CPC) having headquarters at Bengaluru, Karnataka shall have jurisdiction over all the cases where the return of income has been furnished in—

(I) electronic form except where the original return under Section 139(1) has been furnished in paper form, and

(ii) paper form, in the State of Karnataka and Goa having jurisdiction over such return. The CIT, CPC, vide the above notification, was directed to exercise the concurrent powers of processing income-tax returns under Section 143(1), rectifying the mistakes which are apparent from processing of returns under Section 154, calling for information under Section 133, declaring return of income filed by the assessee as invalid return for non-compliance of procedure or otherwise or as defective return under Section 139(9), setting off or adjustment of refunds against outstanding tax liability of the assessee under Section 245 and issue of notice of demand under Section 156 in respect of such territorial area or such cases or classes of cases or such persons or classes of persons specified in cases where the return of income has been furnished in the manner mentioned in (i) and (ii) above. Vide this Notification, CIT, CPC, Bengaluru shall w.e.f. 22.03.2017 have jurisdiction over all the cases where the return of income has been furnished in:-

(I) electronic form, and

(ii) paper form.

Thus, he can now exercise the above mentioned concurrent powers in respect of such territorial area or such cases or classes of cases or such persons or classes of persons where the return of income has been furnished in electronic form or paper form.

2. CBDT notifies new Income Tax Return Forms for AY 2017-18-Notification No. 21/2017, dated 30-03-2017 The CBDT has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2017-18 vide this notification

One of the major reforms made in the notified ITR Forms is the designing of a one page simplified ITR Form-1(Sahaj). This ITR Form-1(Sahaj) can be filed by an individual having total income up to Rs 50 lakh and who is receiving income from salary, one house property/other income (interest etc.). Various parts of ITR Form- 1 (Sahaj) viz. parts relating to tax computation and deductions have been rationalised and simplified for easy compliance. This will reduce the compliance burden to a significant extent on the individual tax payer. This initiative will benefit more than two crore tax-payers who will be eligible to file their return of income in this simplified form.

Simultaneously, the number of ITR Forms have been reduced from the existing nine to seven forms. The existing ITR Forms ITR-2, ITR-2A and ITR-3 have been rationalized and a single ITR-2 has

been notified in place of these three forms. Consequently, ITR-4 and ITR-4S (Sugam) have been renumbered as ITR-3 and ITR-4 (Sugam) respectively. Specified fields have been inserted in these new ITRs requiring disclosure of cash deposits exceeding Rs 2 lakh in aggregate during the period of demonetisation and certain other details to give effect to the amendments made by the Finance Act, 2016 and Taxation Laws (Second Amendment) Act, 2016. Further, a specific field for quoting Aadhar Number or Aadhar Enrolment ID has been inserted in ITR 1, 2, 3 & 4 in line with insertion of new Section 139AA by the Finance Act, 2017, with effect from 01.07.2017. Further, ITR 5 requires quoting of Aadhaar Number of Partner/Members in the Firm/AOP/BOI and ITR 7 requires quoting of Aadhaar Number of author(s)/founder(s)/trustee(s)/manager(s) of the trust.

There is no change in the manner of filing of ITR Forms as compared to last year. All these ITR Forms are to be filed electronically. However, where return is furnished in ITR-1 (Sahaj) or ITR-4 (Sugam), the following persons have an option to file return in paper form:-

(i) an individual of the age of 80 years or more at any time during the previous year; or

(ii) an individual or HUF whose income does not exceed five lakh rupees and who has not claimed any refund in the return of income,The notified ITR Forms are available on the department's official website www.incometaxindia. gov.in.

3. Restriction on cash transaction u/s. 269ST not to apply to withdrawal of cash from a bank, cooperative bank or a post office savings bank-Notification No. 28/2017, dated 05-04-2017

The Finance Act, 2017 has introduced new Sections 269ST & 271DA for placing restriction on cash transactions. Section 269ST provides that no person (other than those specified therein) shall receive an amount of two lakh rupees or more,

(a) in aggregate from a person in a day;

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

Any contravention to the said provision shall attract penalty of a sum equal to the amount of such receipt under Section 271DA. However, the restriction contained in Section 269ST is not applicable to any receipt by Government, banking company, post office savings bank or co-operative bank.

Vide this notification, it is provided that such restriction on cash receipt shall not apply to receipt of cash by any person from a bank, co-operative bank or a post office savings bank. Thus, cash withdrawals from a bank, co-operative bank or a post office savings bank would not be hit by the provisions of Section 269ST. This notification is deemed to be effective from 01.04.2017.

The complete text of the above Notifications can be downloaded from the link below: http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

1. Guidelines for waiver of interest charged under Section 201(1A) of the Income-tax Act, 1961-Circular No. 11/2017, Dated 24-03-2017

In exercise of the powers conferred under Section 119(2)(a), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under Section 201(1A)(i) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under Sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest under Section 201(1A)(i) can be considered, are as follows:

(i) Where during the course of proceedings for search and seizure under Section 132, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVIIB of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account.

(ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.

(iii) Where the default under Section 201 relates to non-deduction or a lower deduction of tax under Section 195 in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in Section 90 or 90A of the Act, and where—

(a) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under Section 90 or 90A of the Act;

(b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under Section 201;

(c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and

(d) the person in default under Section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of Rule 44H(4) of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him.

Even if the interest under Section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor,

if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by Chief Commissioner of Income-tax or Director General of Income-tax, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT

PRESS RELEASE

1. Mandatory Quoting of Aadhaar for PAN Applications & Filing Return of Income–Press Releases, dated 05-04-2017

Section 139AA as introduced by the Finance Act, 2017 provides for mandatory quoting of Aadhaar / Enrolment ID of Aadhaar application form, for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 01.07.2017.

It is clarified that such mandatory quoting of Aadhaar or Enrolment ID shall apply only to a person who is eligible to obtain Aadhaar number. As per the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, only a resident individual is entitled to obtain Aadhaar. Resident as per the said Act means an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment. Accordingly, the requirement to quote Aadhaar as per Section 139AA shall not apply to an individual who is not a resident as per the Aadhaar Act, 2016

2. CBDT issues PAN and TAN within 1 day to improve Ease of Doing Business–Press Releases, dated 11-04-2017

In order to improve the Ease of Doing Business for newly incorporated corporates, CBDT has tied up with Ministry of Corporate Affairs (MCA) to issue Permanent Account Number (PAN) and Tax Deduction Account Number (TAN) in 1 day.

Applicant companies submit a common application form SPICe (INC 32) on MCA portal and once the data of incorporation is sent to CBDT by MCA, the PAN and TAN are issued immediately without any further intervention of the applicant. The Certificate of Incorporation (COI) of newly incorporated companies includes the PAN in addition to the Corporate Identity Number (CIN). TAN is also allotted simultaneously and communicated to the Company. Till 31.03.2017, 19,704 newly incorporated companies were allotted PAN in this manner. During March, 2017, of the 10,894 newly incorporated companies, PAN was allotted within 4 hrs in 95.63% cases and within 1 day in all cases. Similarly, TAN was allotted to all such companies within 4 hrs in 94.7 % cases and within 1 day in 99.73% cases.

This initiative of CBDT is expected to significantly improve the ranking of India in the Ease of Doing Business Study conducted by World Bank by reducing the number of processes of registration before various authorities under law, reducing the time taken for allotment of the registration number (CIN, PAN, TAN) and making the entire registration process for new companies much simpler.

CBDT has also introduced the Electronic PAN Card (E-PAN) which is sent by email, in addition to issue of the physical PAN Card, to all applicants including individuals where PAN is allotted.

Applicant would be benefited by having a digitally signed E-PAN card which they can submit as proof of identity to other agency electronically directly or by storing in the Digital Locker (https://digilocker.gov.in).

SERVICE TAX

1. Issues related to levy of service tax on the services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station in India Central Government vide Notification No. 1/2017-ST dated: 12th January 2017 had withdrawn exemption for services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

Now Central Government vide Notification No. 13/2017 -Service Tax, dated: April 13, 2017 has amended the Service Tax Rules, 1994 to provide that, w.e.f 23rd April 2017, in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of such goods by a vessel from a place outside India up to the customs station of clearance in India, the importer (as defined under Section 2(26) of the Customs Act, 1962) of goods would be the person liable for paying service tax. Section2(26) of the Customs Act, 1962 defines Importer as "in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer".

Further, a new sub-rule has been inserted in Rule 6 of Service Tax Rules, 1994, w.e.f 22nd January 2017, to provide that a person liable for paying service tax on aforesaid specified services shall have the option to pay an amount calculated at the rate of 1.4% of the sum of cost, insurance and freight (CIF) value of such imported goods. SBC & KKC accordingly would be calculated at 0.05% each of Customs value of goods.

The Point of Taxation Rules, 2011 have also been amended vide Notification No. 14/2017-Service Tax, dated: April 13, 2017 to provide that, w.e.f 22nd January 2017, the point of taxation in respect of services provided by a person located in non-taxable territory to a person in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, shall be the date of bill of lading of such goods in the vessel at the port of export. No service tax will be levied if the bill of lading is of date prior to 22nd January 2017.

Further, Central Government vide Circular No. 206/4/2017-Service Tax, dated: April 13, 2017 has provided that, w.e.f 22nd January 2017, in case of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer w.r.t. goods destined for India, an option has been provided in the Service Tax Rules to pay Service Tax @ 1.4% of value of imported goods as determined under Section 14 of the Customs Act, 1962 and the rules made thereunder. Swachh Bharat Cess and Krishi Kalyan Cess will be paid accordingly.

It is important to note that the Abatement Notification No. 26/2012- ST dated 20.06.2012 provides an exemption on 70% of value of services of transportation of goods in a vessel subject to the fulfillment of the condition that CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

However, in case of foreign shipping lines, services being exported from their home country, which are zero-rated in their home country have suffered no taxes. Further, the foreign shipping lines do not get registered in India and do not follow the provisions of CENVAT Credit Rules. Hence, benefit of conditional exemption will not be available to them and service tax will have to be paid on full value of services.

Corresponding amendments have been brought in CENVAT Credit Rules, 2004 vide Notification No. 10/2017-Central Excise (N.T.), dated: April 13, 2017 to allow CENVAT Credit on the basis of the challan of payment of service tax by the said importer on the services provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. The changes are as follows:

a) Definition of Input Service to include aforesaid specified services

b) Amendment in Rule 4(7)– New Proviso inserted to provide that w.r.t to aforesaid specified services credit of service tax paid by the person liable for paying service tax shall be allowed after such service tax is paid.

c) Amendment in Rule 9(1)– new clause “ea” inserted:- a challan evidencing payment of service tax by the manufacturer or the provider of output service is a valid document for availing CENVAT Credit.

[Notification No. 13/2017-Service Tax, Notification No. 14/2017 -Service Tax, Circular No. 206/4/2017-Service Tax, all dated: April 13, 2017 and Notification No. 10/2017-Central Excise (N.T.),
dated: April 13, 2017]

CASE LAWS

DIRECT TAX

1. LD/65/135 Commissioner of Income tax vs. Annamalaiar Mills 28th March, 2017

Capital gains: An amount received from a wholly-owned subsidiary in consideration of transfer of shares of the WOS to a group of shareholders is not taxable as capital gains. The Department cannot subject a transaction under the Gift-tax Act and also levy tax under the Income-tax Act.

The respondent, M/s Annamalaiar Mills (P) Ltd., is a holding company of M/s Annamalaiar Textiles (P) Ltd. Hundred per cent shares of M/s Annamalaiar Textiles (P) Ltd. were held by the respondent company. In the respondent company, there were two groups of shareholders; the majority shareholder called Group A was having 61.26 per cent shares whereas the minority shareholders called Group B were holding 38.74 per cent shares. An agreement was entered into between the two groups on 24.06.1985 by which Group A came to hold all the shares in the holding company i.e. the respondent herein and Group B was given 100 per cent shares in the subsidiary company i.e. M/s Annamalaiar Textiles (P) Ltd. However, M/s Annamalaiar Textiles (P) Ltd. also paid a sum of R42.45 lakh to the respondent company. Proceedings under the Gift Tax Act were initiated in respect of payment of R42.45 lakh received by the respondent company. The assessing officer treated the amount of R42.45 lakh paid by the M/s Annamalaiar Textiles (P) Ltd. to the respondent company as capital gain on the footing that since both the companies are now 100 per cent owned by Group A or Group B, as the case may be, payment of R42.45 lakh was to offset valuation of the shares of M/s Annamalaiar Textiles (P) Ltd. The Assessing Officer opined that the respondent herein-assessee was liable to pay tax for capital gains which was upheld in the appeal before the Commissioner of Income Tax (Appeals). However, the Income Tax Appellate Tribunal, Madras, in appeal preferred by the respondent herein accepted the pleas put forth by the respondent herein, set aside the assessment and restored the matter to the Income Tax Officer so that the assessee may approach the Central Board of Direct Taxes.

The Income Tax Officer was further directed to finalise the assessment in accordance with the directions that may be given by the Central Board of Direct Taxes. The matter was taken up before the High Court of Madras and the order of the Tribunal was upheld by the Madras High Court. The question which was considered by the Supreme Court was as to whether the sum of R42.45 lakh paid by M/s Annamalaiar Textiles (P) Ltd. to the respondent company is liable to any capital gains or not. It is not in dispute that M/s Annamalaiar Textiles (P) Ltd. did not pay any amount to the shareholders who ultimately got the shares transferred in their names. The respondent was holding 100 per cent shares of M/s Annamalaiar Textiles (P) Ltd., before it was transferred to Group B. No payment was made to the shareholders belonging to Group B and, therefore, the question of there being any capital gains at the hands of the respondent herein does not arise. Needless to mention that the transaction of payment of Rs 42.45 lakh had been subjected under the Gift Tax Act and the Department cannot claim both under the Gift Tax Act and also levy tax under the Income Tax Act. Accordingly, the Supreme Court dismissed the appeal.

2. LD/65/136 Gunjan Girishbhai Mehta vs. Director of Investigation & Ors. 21st March, 2017

Section 158BD: Undisclosed income of any other person SC rejects assessee's stand that since the original search warrant was invalid since it was issued in the name of deceased person, the notice u/s. 158BD on 'legal heir' pursuant to search was also invalid; The information discovered in the course of the search, if capable of generating the satisfaction for issuing a notice u/s. 158BD, cannot altogether

become irrelevant for further action under Section 158BD of the Act

The assessee is the son of Late Mr. Girishbhai K. Mehta (hereinafter referred as 'the deceased'). A search was conducted on assessee's residential premises, and assessment order was passed determining the total undisclosed income of the deceased person as NIL. Further, block assessment proceedings were also invoked and the assessee filed an appeal before Gujarat HC challenging the warrant u/s. 132 and seeking to quash the assessment order framed u/s. 158BC.

Assessee submitted that the warrant was in name of the deceased person and therefore was illegal. HC had referred to SC ruling in the case of Calcutta Knitwears [362 ITR 673], to analyse the intention, applicability and crux of Sec. 158BD. In that case, the SC had observed that the opening words of Section 158BD of the Act are that the AO must be satisfied that 'undisclosed income' belongs to any other person, other than the person with respect to whom a search was made under Section 132 of the Act or a requisition of books were made under Section 132A of the Act and thereafter, transmit the records for assessment of such other person.

Further, the HC had observed that the search warrant was issued for the 'premises' and the search was a part of search in Nirma Group, the deceased person being closely trusted person of the promoter of the Nirma Group and also a Director in an investment company of the group. Also, HC noted that even when the proceedings u/s. 158BC were initiated, no protest was raised by the assessee and returns of the income for the block period was filed and was also signed by the assessee, thereafter the assessment order determining the income as "NIL" was passed. As per HC, a 'legal/valid' search u/s. 132 was not a pre-requisite for Sec. 158BD. Sec. 158BD does not enunciate that there must be a legal and/or valid search u/s. 132. HC observed if assessee's contention that an invalid search u/s. 132 renders consequent validity of Sec. 158D null was true, in that case it means that the words "legal and valid" must be added in Sec. 158BD, which is not permissible. Ruling in favour of Revenue, HC held that the block assessment proceedings initiated u/s. 158BD were not illegal or contrary to the provisions of the statute.

Aggrieved assessee had filed an SLP before the SC. SC observed that the issue of invalidity of the original search warrant was not raised at any point of time prior to the notice u/s. 158BD. SC observed that the assessee had participated in the proceedings of assessment initiated u/s. 158BC. As per SC, the information discovered in the course of the search, if capable of generating the satisfaction for issuing a notice under Section 158BD, cannot altogether become irrelevant for further action under Section 158BD of the Act.

SC rejected assessee's reliance on Punjab and Haryana HC ruling in the case of CIT vs. Rakesh Kumar, Mukesh Kumar and also in case of A. R. Enterprises, on facts. SC thus dismissed the SLP

3. LD/65/137 Director of Income Tax, Exemptions vs. Shree Nashik Panchvati Panjrapole 20th March, 2017

Assessee is entitled for continued registration u/s. 12A where the dominant function of the assessee Trust is to provide an asylum to old, maimed, sick and stray cows and the milk which is obtained and sold by the assessee is an activity incidental to its primary/principal activity of providing asylum to old, maimed, sick and disabled cows

The assessee is a 130 year old trust registered with the Charity Commissioner since 1953. The respondent assessee was granted Certificate of Registration under Section 12A of the Act on 4th August, 1975, the objects of the trust being providing asylum to old, maimed, sick and stray cows, scientific research, education, medical relief, etc. The assessee had income from sale of milk at R1.57 crore and income from interest and dividend at R58 lakh. In view of amended Sec. 2(15) of definition of 'charitable purpose', advancement of object of general public utility shall not be considered as charitable if it involves activity in nature and business whose gross receipts exceed 10 lakh rupees. The DIT(Exemption) issued a show cause notice regarding withdrawal of 12A registration on this ground. The assessee submitted that the activity of selling milk was incidental to its Panjrapole activity and in any case did not involve any trade, commerce or business, so as to be hit by the newly added proviso to Section 2(15) of the Act.

The DIT cancelled the assessee's 12A registration, aggrieved by which the assessee preferred an appeal before the ITAT. HC placed reliance on ruling in Sabarmati Ashram Gaushala Trust vs. ADIT (Exem) [Appeal No.1162 of 2013] wherein it

was held that the activities of selling milk by a Panjrapole will not by itself make the newly added proviso to Section 2(15) of the Act applicable. The HC observed that impugned order of the Tribunal has recorded a finding of fact that the dominant function of the assessee Trust is to provide an asylum to old, maimed, sick and stray cows. Further, only 25% of the cows being looked after yield milk and if the milk is not procured, it would be detrimental to the health of the cows. Therefore, the milk which is obtained and sold by the assessee is an activity incidental to its primary/principal activity of providing asylum to old, maimed, sick and disabled cows. The activity of milking the cows and selling the milk is almost compelled upon the Trust, in the process of giving asylum to the cows.

The activity to be considered in the nature of trade, commerce or business would in most cases have to be carried out on a regular basis with a view to earn the profit. The presence of the profit intent (even if it does not fructify) would normally be a sine qua non for the activity to be considered as trade, commerce or business. It is not as though the keeping of the cows and milking them was with a view to carrying out activity in the nature of trade, commerce or business to earn profits. The Revenue has not shown how even in the absence of profit motive, the activity of obtaining milk and selling the same would still be an activity of trade, commerce or business. The dominant activity carried out by the respondent assessee's Trust for over 130 years is to take care of old, sick and disabled cows.

In these circumstances, an incidental activity of selling milk which may result in receipt of money, by itself would not make it trade, commerce or business nor an activity in the nature of trade, commerce or business to be hit by the proviso to Section 2(15) of the Act.

The Revenue's counsel relied upon an order of CIT(A) regarding denying of benefit of Section 11, which emanated from order of AO u/s. 143(3) for AY 09-10 in case of the assessee, to argue that large percentage of milk was sold at market price by the assessee, thus making this activity a business. The ITAT had heard both the appeals together viz appeal against this CIT(A) order and against the order of DIT(Exemption) which revoked the registration u/s. 12A. The HC did not permit Revenue from relying upon record as found in the other appeal (appeal regarding denial of Section 11 benefit). HC stated that order of the Director of Income Tax (Exemption) has to be decided only on factors which have caused the Director of Income Tax (Exemption) to withdraw the exemption.

The fact that the assessee sold milk at a subsidised rate was not disputed by the DIT(Exemption) in his order. Further, the scope of enquiry while cancelling/withdrawing the registration under Section 12A of the Act, is entirely different and distinct from the scope of enquiry while granting of an exemption under Section 11 of the Act. As per HC, merely because the impugned order of the ITAT is a common order disposing of the two appeals emanating from different authorities, would not mean that evidence available before one authority could be used to support an order passed by another authority, even when the authority whose order is under challenge has not even remotely referred to the ground and/or evidence which is sought to be relied upon by the Revenue to support the order.

HC thus dismissed Revenue's appeal and ruled in favour of the assessee

CASE LAWS

Service Tax

1. LD/65/141Indus Integrated Information Management Ltd & Ors vs. Prin. Commissioner of Service Tax 8th March, 2017

HC rejects assessee's contention about show-cause notice being invalid; Adjudicating Authority is entitled to apply the law as applicable to facts of the case notwithstanding the notice containing a different charging section; Although there are differences between Sections 73A and 73, assessee was well aware of charges leveled against it, the objections were duly

considered and negated in adjudication order; Assessee's contention that it could not be charged u/s. 73(1) since show cause notice specified Section 73A of Finance Act, rejected

The assessee had obtained service tax registration for rendering manpower recruitment or agent service as defined in the prevailing Section 65/68 of the Finance Act, 1994. Revenue noticed that the assessee had indulged in 5 different types of businesses, for which no registration was taken. Therefore a show cause notice was issued on 17.10.2012 alleging that the assessee had violated the provisions of Sections 67, 68, 69, 70 and 73A of the Finance Act, r/w Rules 4, 6 and 7 of the Service Tax Rules, 1994. As per Revenue, there was a willful suppression of certain facts relating to providing services, centralised billing/accounting system, amount earned by the petitioners against such services, amount of service tax collected from the recipients of taxable service but not deposited to the credit of the Government with intent to payment of Service Tax.

An initial adjudication order was passed ex-parte on 10.03.2016 on the ground that despite affording opportunity of hearing, the assessee remained evasive throughout such period. Being aggrieved by such order, the assessee filed writ petition before HC. HC set aside the said order on the condition of deposit of R1 cr. Having complied with this condition, personal hearing was afforded to the assessee. Subsequently, on 18.08.2016, the demand of R1.27 cr. was confirmed.

In the instant petition, Assessee submitted that the impugned order was passed on the basis of concerned show cause notice dated 17.10.2012, which was vague and issued on the basis of assumption and that such notice did not contain any allegation that the assessee was liable to pay service tax. Further, according to the assessee, Revenue had also violated natural justice principles. On the contrary, Revenue argued about maintainability of assessee's petition based on availability of alternate remedy. As per Revenue, the assessee was seeking to avoid pre-deposit of an appeal by filing the writ petition.

HC observed that existence of a statutory alternative remedy is not a complete bar to the maintainability thereof. The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of the compulsion, as noted in the case of Sourav Ganguly. A writ petition would be maintainable in the event it was found that the impugned order violated any fundamental right of the assessee, it had been passed wholly without jurisdiction, and it was demonstrably perverse and was fraught with such illegalities that it shocked the conscience of the Court.

HC stated that in the present case, it could not be said that the authorities had acted without any basis in issuing a show cause notice. As per HC, the charges leveled by Revenue were based on cogent materials and evidence. It did not violate any law. The assessee was not able to establish that the department had violated any law in issuing the show-cause notice or that the show-cause notice contains any charges which is contrary to any law. In the previous writ petition filed by the assessee, issues regarding the proceedings on the basis of the show-cause notice were raised. The HC had not set aside the show-cause notice. In the facts of the present case, it was no longer open to the assessee to complain about the legality and validity of the show-cause notice, not having succeeded in having it set aside in the earlier writ petition.

Further, as per HC, the assessee had no case when it contended that since the show-cause notice specified Section 73A, it cannot be charged under Section 73(1) of the Finance Act, 1994. Assessee had been found guilty u/s. 73(2). Assessee was not charged with failing to deposit tax collected to the credit of the Central Government as is the scenario covered under Section 73A. Sections 73 and 73A are two charging sections operating in different scenarios. The liability to pay Service Tax is admitted by the assessee. The adjudicating authority is entitled to apply the law as applicable to the facts of the case, notwithstanding a show cause notice containing a different charging section. The applicability of the section under which the petitioners have been charged is not substantiated to be incorrect. Although there are differences between Section 73A and Section 73 of the Act of 1994, the assessee was well aware of the charges levelled against it. The assessee had answered the charges. Also since the order dated 10.03.2016 had been set aside by the HC, the question of review thereafter did not arise.

HC thus dismissed the petition and ruled in favour of Revenue

2. LD/65/144 Abhi Enterprises vs. Commissioner of Central Excise, Pune-I

When service tax along with interest was paid prior to issuance of SCN in respect of unpaid tax liability admitted in return, show cause proceedings were held to be concluded u/s. 73(3) and penalty imposed u/s. 78 was set aside

The unpaid service tax liability, as shown in the service tax returns, was discharged by appellant along with interest prior to issuance of show cause notice. However, the SCN proposing penalty u/s. 78 was issued to appellant, and upon adjudication, the Adjudicating Authority confirmed penalty. Appellant challenged the same by submitting that by virtue of provisions of Section 73(3), the proceedings shall be closed. Thus, the moot question before the Tribunal was whether the ingredients for resort to proviso to Section 73(1) of Finance Act, 1994 are present to obviate the assessee's contention that Section 73(3) should have been resorted to for closing the matter.

The Tribunal noted the fact that the Service Tax Authorities commenced the correspondence with appellant only after appellant admitting outstanding service tax liability in service tax return. Thus, Tribunal held that there can be no greater claim to candidness than that demonstrated by appellant, in light of admission of outstanding dues in service tax returns, the allegations of intent to evade tax would not sustain and thus, in absence of any justification for allegation or finding that appellant had suppressed or mis-declared any relevant material, it is amply clear that ingredients for invocation of extended period and imposition of penalties are absent in totality.

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Design By : Poorva Graphics # 93012 50527