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DIRECT TAXATION

RECENT CASE LAWS

Celebrity Fashion Ltd (Tax Case Appeal no. 26 of 2018) (Madras High Court)

Only expenditure 'proved', not 'assumed' - for earning tax-free income - subject to disallowance under Section 14A

FACTS OF THE CASE

- The taxpayer filed its return of income (**ROI**) declaring NIL income for Assessment Year (**AY**) 2011-12. The case was selected for scrutiny proceedings and assessment was completed under Section 143(3) of the Income tax Act, 1961 (**IT Act**) after making the following adjustments:
- Disallowance under Section 14A on account of investment made in a Mutual Fund and possibility of earning tax-free income thereon; and
- Treating foreign exchange loss arising on account of forward contract as a speculative transaction under Section 45(3) as against the taxpayer's contention that the same is allowable under Section 28 of the IT Act as 'business loss'.
- The Commissioner of Income tax (Appeals) (**CIT(A)**), relying on Delhi High Court (**HC**) decision in case of ***Cheminvest Ltd (378 ITR 33)*** and decision in case of ***M. Baskaran (ITA no. 1717/Mds/2013) (Chennai ITAT)***, accepted the taxpayer's stand that the investment made in growth funds did not constitute a tax free income as against dividend funds. Thus, deleted the disallowance made under Section 14A, which was upheld by the Income tax Appellate Tribunal (**ITAT**). Further, relying on taxpayer's own decision for AY 2009-10, the CIT(A) deleted the disallowance made on account of foreign exchange loss and the same was upheld by ITAT.
- Aggrieved by the order of ITAT, the Tax Officer (**TO**) is now in appeal before the HC.

JUDGEMENT

- The HC noted that in terms of Section 14A, the only expenditure, which is incurred in relation to earning of tax free income, could be disallowed and such provision could not be extended to disallow the expenditure, which was assumed to have been incurred for earning tax free income.
- The HC noted that in absence of finding by the TO on applicability of Section 14A(1) of the IT Act, the TO cannot straightaway proceed to the second limb of Section 14(2) of the IT Act and make a disallowance. ITAT thus held that disallowance made on account of Section 14A was not justifiable.
- The HC upheld ITAT's action of deleting the disallowance by relying on the coordinate bench decision in the case of ***Redington India Ltd (77 taxmann.com 257)*** wherein it was held that the provisions of Section 14A of the IT Act read with Rule 8D of the Income Tax Rules, 1962 (**IT Rules**) cannot be made applicable in a vacuum i.e. in the absence of exempt income.
- HC distinguished TO's reliance on Bombay HC judgement in case of ***Bharat R Ruia (HUF) (337 ITR 452)*** and held that in the aforesaid matter the taxpayer entered into future contracts for purchase of shares of certain companies on a specified future date at a specified price whereas in the instant case, the taxpayer was neither engaged in the business of finance nor involved in the purchase of any commodity.
- The HC upheld the ITAT's action of deleting the disallowance made on account of forward contract by relying on the taxpayer's own decision for the earlier AY wherein the ITAT had relied on the earliest decision of Calcutta HC in case of ***Soorajmull Nagarmull (129 ITR 169)*** to hold that the impugned sum was not a speculation loss but was incidental to the carrying on of the taxpayer's business and as such allowable on revenue account.

Autodesk Asia Pvt Ltd (ITA no. 133 of 2013) (Karnataka HC)

Substitution' has effect of 'deleting old rule'; Grants benefit of 'substituted' fees for technical services (FTS) tax rate

FACTS OF THE CASE

- The taxpayer, a company based in Singapore, was engaged in the business of marketing and sale of software. During the year under consideration, the taxpayer earned income from sale of software licence and ancillary services. Sale of software licence to its authorized distributor constituted 95% of its total revenue.
- The taxpayer filed its ROI declaring NIL income for AY 2006-07. The case was selected for scrutiny proceedings and assessment was completed assessing the income from sale of software license services as royalty and FTS.
- The CIT(A) upheld the order of the TO whereas the ITAT affirmed argument of the taxpayer. The impugned appeal is being filed by the TO against the order of the ITAT.

JUDGEMENT

- The only question that requires adjudication in the impugned appeal was with regards to the rate of tax under the Double taxation Avoidance Agreement (**DTAA**) for AY 2006-07.
- HC stated that it was a well settled Rule of Interpretation with regard to taxing statutes that '*the substitution of a provision results in repeal of earlier provision and its replacement by new provision*'. It placed reliance on the decision of ***U.P. Sugar Mills Assn. v State of U.P (2 SCC 645)*** which was reiterated by the Supreme Court (**SC**) in ***West Up Sugar Mils Association v State of Up (2 SCC 773)*** and by this Court in ***Govardhan M V. State of Karnataka (1 KarLJ 497)***. When a new rule in place of an old rule is substituted, the old one is never intended to keep alive and the substitution has the effect of deleting the old rule and making the new rule operative.
- HC noted that it was evident that paragraph 2 of Article 12, which provided for levy of tax on royalties or FTS at the rate not exceeding 12% had been deleted and, in its place, the provision which provides for levy of tax on the royalties or FTS at the rate not exceeding 10% had been substituted. Thus, the substitution had the effect of deleting the old rule and making the new rule operative.
- HC thus upheld the order of ITAT and held that the ITAT had rightly determined the rate of tax as substituted in Clause 2 of Article 12 of DTAA between India and Singapore, applicable for the entire fiscal year as defined in DTAA. It was therefore liable to be taxed at 10%.

Turner Broadcasting System Asia Pacific Inc (ITA no. 1343/Del/2014, ITA's. No. 631/Del/2015, 4087/DEL/2016, 2610/Del/2017)

US Broadcasting company's TV Channel distribution revenue, not 'royalty'

FACTS OF THE CASE

- The taxpayer, a company incorporated under the laws of the USA, was a tax resident of USA during the AYs 2009-10 to 2013-14. The taxpayer derived advertisement and distribution revenue from grant of exclusive rights to an Indian company to distribute the products.
- The Indian Company acted as an exclusive distributor of the products to the cable operators and other permitted systems on 'principal to principal basis'. As per the distribution agreement, the Indian Company was granted a right to distribute the products to various cable operators and the distribution revenue so collected by the Indian Company was to be shared between the taxpayer and the Indian Company.
- In accordance with outcomes of MAP proceedings of earlier years, the taxpayer had consistently offered 10% of the advertising and subscription revenue received from Indian sources as business income. However, during the subject AY's i.e AY 2009-10 to 2013-14, the TO treated the distribution revenue to be 'Royalty' as per section 9(1)(vi) of the IT Act and also Article 12 of the India-USA DTAA. The various observations of the TO while passing the impugned order was as under:
  - The taxpayer had granted various rights relating to its products including the right to sub-license;

- Allowing Indian Company to sub-distribute the encrypted television signals for commercial exploitation, the taxpayer had granted the right to 'communicate the work to public' which is defined under Section 2(ff) of the 'Copyright Act, 1957'; and
- Subscription/ distribution revenue derived by the taxpayer was assessable to tax as royalty both under the IT Act and the DTAA.

- The aforesaid view was upheld by the DRP and the final assessment order was passed assessing the income as royalty. Aggrieved, the taxpayer is now in appeal before the ITAT.

JUDGEMENT

- ITAT took note that in earlier years 10% of the advertisement and subscription revenue received from the Indian sources was deemed to be net profit from the business chargeable to tax in India following the MAP order passed by competent authority of the USA and India, however only during the impugned years [2009-10 to 2012-13], TO took a different position without there being any material change in the facts and circumstances or the terms of agreement or the business. Thus, ITAT accepted taxpayer's contention that following the rule of consistency, the said position should not be altered.
- Referring to clause 5 of the agreement [which dealt with ownership], ITAT observed that the sole ownership of the rights and the contents of the products was of the taxpayer and the Indian Company had no right to copy, modify or alter the content therein.
- ITAT held that the taxpayer only granted commercial rights in the nature of 'broadcast reproduction right' to the Indian Company, which has been separately defined under Section 37 of the Copyright Act and not reckoned as a 'Copyright' under the said Act. It therefore cannot be held that revenue derived by the taxpayer for distribution of products is taxable as 'royalty' albeit it is a business income of the taxpayer.
- ITAT reiterated that it is a copyright of the content in the product which always remained with the taxpayer and was never transferred. The clause 5 of the agreement merely provides right to distribute the product.
- ITAT rejected TO's justification to tax the distribution revenue as royalty by applying the retrospective amendment made in Explanation 6 to Section 9(1)(vi). The ITAT remarked that such an approach cannot be upheld because there is no similar amendment in the definition of royalty under the DTAA.
- ITAT held that the instant case is covered by Bombay HC judgement in case of ***MSM Satellite (Singapore) Pte Ltd (ITA No. 2523/Mum/2010)*** wherein the Hon'ble Bombay HC emphatically observed that there is a difference in copyright and 'broadcast reproduction rights'.
- ITAT thus held that the distribution revenue earned by the taxpayer cannot be taxed as royalty albeit as a business income. Since, the taxpayer had already offered income as business income in terms of the MAP, therefore, the income as declared by the taxpayer in accordance with MAP and accepted by the TO in the earlier years has to be accepted. Accordingly, the additions made by the TO were deleted.

Telstra Singapore Pte Ltd (ITA no. 1548/Del/2015, 286/Del/2016, 6733/Del/2015, ITA no. 3020/Del/2017) (Delhi ITAT)

Singaporean Co.'s income from bandwidth services, not taxable as royalty

FACTS OF THE CASE

- The taxpayer, a company incorporated in Singapore, was engaged in in the business of providing bandwidth services outside India to its customers.
- The taxpayer entered into Global Business Service Agreement (**GBSA**) with various customers and One Stop Shopping Services Agreement (**OSS**) with an Indian telecom operator where services are provided by Indian telecom operator in India and services outside India are provided by the taxpayer. Under the agreement with the

customer, uninterrupted 24X7 services are available to it. In case, the services are unavailable or not available at the requisite speed, the customer shall be entitled to rebate as per the rates agreed upon.

- The taxpayer filed its ROI declaring NIL income. However, the TO after placing reliance on various judicial precedents, held that the amount received from Indian customers for the provisions of bandwidth services outside India was equipment/process royalty under Section 9(1)(vi) of the IT Act read with Article 12(3) of the India Singapore DTAA.
- The aforesaid view was upheld by the DRP in view of the ratio laid down by the Madras HC in the case of ***Verizon Singapore Pte Ltd (39 taxmann.com 70)*** and accordingly, final assessment order was passed assessing the income as royalty.
- Aggrieved the taxpayer is now in appeal before the ITAT. It was the contention of the taxpayer that mere receipt of service using equipment under the control, possession and operation of service provider would only be transaction of a service and not to 'use or right to use' an equipment, and would not attract 'Royalty' under the IT Act or the DTAA. On the contrary, it contended that consideration received falls within the definition of royalty under the IT Act and DTAA.

JUDGEMENT

- ITAT followed the Delhi HC ruling in the case of ***Asia Satellite Telecommunication Co.*** **Ltd (232 ITR 340)** which inturn has been followed by ***New Skies Satellite BV (2) Shin Satellite Public Co. Ltd. (382 ITR 114),*** wherein it was held that the transaction does not result in 'Royalty' (equipment or process) as Section 9(1)(vi), (prior to amendment by Finance Act, 2012), was Pari Materia with the definition of 'Royalty' as per the DTAA.
- Further, ITAT relied on Bombay HC ruling in the case of ***Reliance Infocomm Ltd (ITA no. 1395 of 2016***) wherein it was held that mere amendments in the IT Act would not override the provisions of DTAA.
- ITAT further relied on the decision of ***John Deere India Pvt. Ltd (102 taxmann.com 267)*** wherein Pune ITAT at para 100 relied on decision of Delhi HC in the case of Asia Satellite Telecommunications Co. Ltd (*supra*) and held that there was no lease of equipment but only use of broadband facility. Applying the aforesaid judgement to the facts of the present case, ITAT held that there is no question of any equipment royalty where the taxpayer was only using lease lines for transmitting data and it cannot be said to be a case of equipment Royalty.
- ITAT thus held where the DTAA between India Singapore specifically does not include 'transmission by satellite, cable, optic fibre or similar technology' within the definition of 'Royalty' under the DTAA and also where the DTAA had not undergone any amendment, the provisions of DTAA being more beneficial to the taxpayer are attracted and the taxpayer was not liable to be taxed on the amount received from Indian customers for the provision of bandwidth services outside India.

Honda Motorcycle and Scooters India Pvt Ltd (ITA no. 7463 and 7464/Del/2018) (Delhi ITAT)

Taxpayer, a license-manufacturer, not contract-manufacturer; Deletes Transfer Pricing adjustments on royalty & export-commission

FACTS OF THE CASE AND JUDGEMENT

- The taxpayer, a subsidiary of Honda Motor Company Ltd, Japan (**HMJ**) was engaged in the business of manufacture and sale of motorcycles and scooters. During AY 2013-14, the taxpayer had entered into various international and specified domestic transaction with its associate enterprise (**AE**).
- The taxpayer had entered into two types of agreement i.e. for use of technical know-how and export of two-wheeler. The taxpayer agreed to pay an export commission at the rate of 5% of the FOB value of export of specific two-wheeler model to its AE i.e. HMJ. Operating profit ratio of the taxpayer, applying TNMM method was higher

compared to its comparable companies, thus the taxpayer stated that the international transactions were at arm's length price (**ALP**).

- However, the transfer pricing officer (**TPO**) treated ALP on export commission paid to AE at NIL and held that the taxpayer was a contract manufacture. Through export activities the taxpayer was developing the brand of the AE and carried out services to the AE.
- ITAT observed that the taxpayer had independent sales in domestic and export segments. AE sales were made on principal to principal basis and further, the taxpayer earned a premium which would not be in the case of a contract manufacturer.
- ITAT observed that TPO/ Dispute Resolution Panel (**DRP**)'s contention that the taxpayer was only a contract manufacturer was outright rejected by the ITAT in the taxpayer's own case in earlier AY. Further, ITAT rejected NIL ALP determination of export commission paid to AE. ITAT observed that the taxpayer benefitted from making the exports as the average price in respect of exports to AE's was higher than the price of the same product sold in the domestic market to non-AEs.
- Discarding TPO/ DRP's basis that no services were rendered by the AE's and that taxpayer was a contract manufacturer, ITAT stated that TPO/ DRP have grossly failed in distinguishing between the function of the license manufacturers and contract manufacturers.
- ITAT held that the taxpayer was a license manufacturer entitled to returns attributable to exploitation of intangibles such as technical know-how etc. i.e. market determined prices, and that the taxpayer had demonstrated the benefits of such exports. ITAT thus, deleted TP adjustment made on account of export commission.

Open Solution Software Services Pvt Ltd (ITA no. 6692/Del/2018) (Delhi ITAT)

Excludes comparable not mentioned in SCN sans opportunity to taxpayer to contest

FACTS OF THE CASE

- The taxpayer, a private limited company, was engaged in the business of providing software development research and related services to its AE and was compensated on total cost-plus margin of 15%. The taxpayer computed Profit Link Index (**PLI**) of 12 comparable companies applying TNMM method at 7.05%. The taxpayer in its transfer pricing documentation held that the transactions undertaken were at ALP.
- However, the TPO recomputed PLI of the taxpayer at 15.72% and PLI of the comparable companies, after carrying out fresh search and selecting 16 comparable, at 30.30%. The TPO thus, proposed an upward adjustment on account of IT services and ITES services in the draft assessment order.
- The taxpayer filed objections against the order of TPO before the DRP. The DRP reduced proposed adjustment made under IT sector (Retained 12 comparable companies whose PLI stood at 27.37%) and deleted addition proposed under ITES segment. The final assessment order was passed making an upward adjustment on account of the IT sector.
- The taxpayer filed an appeal before the ITAT contesting deletion of the following comparable namely:
  - Persistent Systems Ltd;
  - Larsen and Toubro Infotech Ltd;
  - Sasken Technology Ltd;
  - Cybercom Datamatic Information Solutions Ltd.

JUDGEMENT

Comparable Company	ITAT observations
Persistent Systems Ltd	▪ ITAT observed that for comparable analysis TPO had not used consolidated financial statements and rather selected this company as comparable on a standalone basis. ITAT noted that this company derived revenue only from the sale of software services and therefore, it was apparent that there was no sale of any product in given AY. ▪ Regarding taxpayer's reliance on co-ordinate bench ruling in taxpayer's own case for AY 2010-11 wherein this company was excluded, the ITAT noted that it earned income from both software services and products in its income segment. There was, however, no segmental information. ITAT thus distinguished the same noting that in the given AY there was no requirement of segmental information since there was no product sale but only one segment i.e. services. ▪ ITAT further noted that with respect to the commission paid, it was also paid to a related party and with respect to sales only. ▪ Regarding taxpayer's reference of Accelerite Products related to Santa Clara, California relates to US subsidiary Persistent Systems incorporated, ITAT noted that this was an overview business of Persistent Systems, including its subsidiary, and not of this company only. ▪ ITAT further distinguished the taxpayer's reliance on the coordinate bench ruling in Saxo India Private Limited (subsequently upheld by the jurisdictional HC) wherein this company was excluded - noting the difference in the functional profile of the taxpayer - since in that case, the taxpayer was engaged in the business of design and development of customized software application and was also providing technical support services. ▪ ITAT also opined that '*If that is presumed to be the law, then all the requirement of Maintaining information and documents to be kept in maintain under Section 92D with respect to the international transaction is futile. Then for the comparability analysis, only the judicial precedents where the comparable having the higher margin is excluded is required to be maintained for its exclusion. That is not the mandate of the law*'. ▪ Accordingly, ITAT dismissed taxpayer's plea and upheld the inclusion of this company in the final list of comparable.
Larsen and Toubro Infotech Ltd	▪ Before ITAT, the taxpayer submitted that it filed an objection before the DRP, however the same had not been considered by the DRP. Accordingly, ITAT remitted comparability back to DRP to decide on the objections of the taxpayer.
Sasken Technology Ltd	▪ ITAT noted that the only objection of the taxpayer was that this company had a different margin shown in the show cause notice and order of the TPO. ITAT noted that as per the show cause notice, the margins of this comparable was shown to be 7.28% whereas in the TPO as well as DRP order, margin of this comparable was taken at 33.2% and there was no justification or reasons found in the TPO order for change in the margins. ▪ Accordingly, ITAT remitted the comparability back to TPO to show the taxpayer how he changed the above margin and on what basis the margins have gone up to 33.2% from 7.28%.
Cybercom Datamatic Information Solutions Ltd	▪ On perusal of show cause notice, ITAT accepted the taxpayer's contention that this company should be excluded from the final list of comparables as it was never part of the show cause notice issued and was straight taken into the order under Section 92CA(3) of the IT Act.

VVA Hotels Private Limited (T.C.A.No.670 of 2019) (Madras HC)

Difference in projected and estimated value, no reason for excess share premium addition under Section 56(2)(viib)

FACTS OF THE CASE

- VVA Hotels Private Limited (**The taxpayer**) had issued 2,04,594 shares with a face value of INR 10 each at a premium of INR 1,000 per share.
- During the course of the assessment proceedings, the taxpayer was directed to explain the method of valuation to substantiate the share premium collected on issue of shares. Against this, the taxpayer submitted that the valuation of shares was carried out as per Discounted Free Cash Flow (DCF) method and was supported by the report of a Chartered Accountant.
- The TO concluded that while determining the value of shares, the taxpayer made an excessive projection of revenue without any reasonable basis. Accordingly, applying the provisions of Section 56(2)(viib) of the IT Act read with Rule 11UA(2) of IT Rules, the TO held that the net asset value (NAV) method is the appropriate method, which should have been adopted for valuation of the shares. Thus, after computing the value of shares as per NAV, the TO made certain adjustments to the total income of the taxpayer under Section 56(2)(viib) of the IT Act.
- Challenging the said order, the taxpayer preferred appeal before the CIT(A). The CIT(A) and subsequently the ITAT ruled in favor of the taxpayer. The tax department filed an appeal contending that two substantial questions of law arise for consideration.

JUDGEMENT

- The HC noted the following observations made by the CIT(A) in its order:
  - The taxpayer has established a new hotel in the central part of Chennai city and the construction was completed and the hotel was opened in the financial year under consideration;
  - The taxpayer has an option to adopt the NAV method or DCF method to arrive at the valuation of unquoted shares. It is relevant to point out that the CIT(A) very pertinently observed that unless the TO is able to bring out any evidence of abuse of benevolent provisions with an intention to defraud the revenue, the option given to the taxpayer shall be held to be absolute. Thus, DCF method of valuation adopted by the taxpayer was one of the permissible methods of valuation under Rule 11UA of the IT Rules for arriving at the value of the shares allotted and the share premium received;
  - On facts, the difference between the actual sales revenue over the years with that of the projected sales revenue adopted in the DCF method is very marginal;
  - Nature of business, which was done by the taxpayer and the vagaries of business atmosphere in the country in general and in Chennai in particular;
  - The taxpayer has not abused the privilege of choosing the DCF method for arriving at the value of the shares instead of NAV method;
- Further, the HC noted the following observations of the ITAT:
  - The taxpayer has adopted the method of valuation as stipulated under Rule 11UA of the IT Rules and this accepted method of valuation does provide for estimation;
  - The TO had discarded the DCF method adopted by the taxpayer on the grounds that the actual revenue varied from the projected revenue for four years. The projected value is an estimate and the variation in the estimate is marginal;
  - There was no material to hold that the taxpayer's projected sales revenues are fabricated or manipulated;

- The TO did not point out any flaw in the method of calculation of the value of shares by adopting the DCF method but, out rightly rejected the same, which should not have been done.

- The HC held that both the CIT(A) and the ITAT on careful appreciation of the facts and circumstances, have granted relief to the taxpayer and there is no question of law, much less substantial question of law arises for consideration in this appeal.

M/s Mavenir India Pvt Ltd (ITA No. 203/DEL/2020) (Delhi ITAT)

Draft assessment order along with demand/penalty notice culminates proceedings, subsequent orders non-est

FACTS OF THE CASE

- Mavenir India Pvt Ltd (**The taxpayer)** is engaged in the business of provision of services to its AE and third parties. In order to render services to its customers, the taxpayer had availed certain support and management services from its AEs.

- The taxpayer's ROI was selected for scrutiny assessment and the case was referred to transfer pricing officer who proposed transfer pricing adjustment to the income of the taxpayer by recomputing ALP for provision of software development services, provision of sales and post-sales support services and management services.

- The TO passed framed an order captioned as 'Draft Assessment Order' under Section 143(3) r. w. s. 144C of the IT Act, but such order was accompanied by notice of demand under Section 156 of the IT Act and the notice for initialization of penalty proceedings.

- Aggrieved the taxpayer challenged the validity of draft assessment order before the Delhi Bench of ITAT by stating that the TO has completed the proceedings by issuing demand notice and initiating penalty proceedings.

JUDGEMENT

- The ITAT observed that perusal of Section 144C of the IT Act shows that TO shall, at the first instance, forward a draft of the proposed order of assessment and on receiving such order, the taxpayer may approach the DRP by raising objections. If the taxpayer accepts the variation, then the TO shall proceed by framing the final assessment order and if the objections are raised before the DRP, then, upon receipt of directions issued by the DRP, the TO shall complete the assessment.

- However, in the present case, while framing the said draft assessment order, the TO not only issued and served demand notice, but has also initiated the penalty proceedings. Thus, the TO had quantified the taxable income and determined tax payable by serving the demand notice under Section 156 of the IT Act.

- Placing reliance on the decision of Delhi ITAT in case of ***Perfetti Van Melle India Pvt Ltd (ITA 9116/DEL/2019)***, the ITAT ruled that the above action of the TO had brought the proceedings to an end and the proceedings initiated under Section 144C of the IT Act stand concluded.

Yakult Danone India Pvt. Ltd (ITA No. 1886/Del/2017) (Delhi ITAT)

Advertisement, Marketing, and Promotion expense (AMP) adjustment for Yakult Danone deleted by ITAT in the absence of establishment of international transaction

FACTS OF THE CASE

- Yakult Danone India Pvt. Ltd (**The taxpayer**) is a manufacturer and seller of probiotic milk in India and performs all business functions relating to sale of such products.

- During the year under consideration, the taxpayer had entered into five different international transactions including purchase of raw material, packing material, stores and spares and payment of royalty. These transactions were benchmarked adopting transactional net margin method by adopting profit level indicator of operating profit by operating Income.

- The taxpayer's case was selected for scrutiny assessment and the matter was referred to a transfer pricing officer, who proposed certain transfer pricing adjustments towards AMP expenses by noting that the brand marketing strategy of the taxpayer is largely driven by the global brand strategy and it cannot be mere coincidence that the brand that is owned by the taxpayer's Japanese associated enterprise is following a completely independent strategy for brand building. The transfer pricing officer adopted the primary approach of bright line test and alternative approach of transactional net margin method for benchmarking the AMP expenditure.
- The taxpayer was aggrieved by the transfer pricing adjustment made on account of AMP expenses and it preferred an appeal before the ITAT.

JUDGEMENT

- The ITAT observed that unless it is established by the transfer pricing officer that the transaction is an international transaction, question of determination of its ALP does not arise.
- The Co-ordinate bench of ITAT in the earlier year had rejected the Bright line test applied by the transfer pricing officer and further held that AMP expenditure cannot be considered as an international transaction in the facts and circumstances of the case of the taxpayer. The departmental representative could not show any reason to deviate from such an order in taxpayer's own case for earlier year.
- By following the decision of the co-ordinate bench in taxpayer's own case for AY 2011-12, the ITAT also held that the approach of the transfer pricing officer of determining ALP of international transaction of incurring of higher AMP expenditure cannot be benchmarked either on Bright line test basis or on transactional net margin method unless first it is established that there existed an international.

Texas Instruments Incorporated(Karnataka HC) (ITA no. 171 of 2011)

Short TDS-deduction by Indian payer doesn't trigger Section 234B interest liability on foreign payee

FACTS OF THE CASE

- Texas Instruments Incorporated (**The taxpayer**) is a company incorporated in USA. It is engaged in manufacture of semi-conductor components. The taxpayer received a sum towards EDA charges from its Indian AE, which were accrued in India under Section 9(1)(vi) of the IT Act.
- During the course of the assessment proceedings, the TO observed that the taxpayer had declared only 20% of its receipts as income accruing in India. After going through the agreements, the TO concluded that 15% of the receipts towards salaries of employees and 15% of the receipts towards equipment were taxable in India as royalty and not only 20% of the total receipts as offered by the taxpayer. Accordingly, the TO raised a demand for the balance amount and levied interest under Section 234B of the IT act for short payment of advance tax.
- The taxpayer filed an appeal before the CIT(A). The CIT(A) ruled against the taxpayer and subsequently, the taxpayer preferred an appeal before the ITAT.
- The ITAT allowed the taxpayer's appeal and the revenue filed an appeal before the HC. The issue under consideration before the HC was that whether the taxpayer is liable to pay interest under Section 234B of the IT Act on the ground of non-payment of advance tax.

JUDGEMENT

- The HC noted ITAT's observation that Section 195(1) of the IT Act provides for deduction of tax at source (TDS) by any person responsible for paying to a foreign company any other sum chargeable under the provisions of the IT Act at the time of credit of such income to the account of the payee. The HC upheld that once the it is found that the liability was that of the payer, the liability to pay tax on the non-resident taxpayer arises only upon default by the payer to deduct tax
- It was further observed that as per Section 209(1)(d) of the IT Act, the taxpayer was entitled to, in its computation of its advance tax liability to take a tax credit of the amount, which was deductible or collectible irrespective of

fact whether the amount was actually deducted or collected. Under the aforesaid provision, the taxpayer was entitled to tax credit of an amount that was deductible even if it was not actually deducted.

- The HC dismissed the departmental appeal and affirmed the order of the ITAT that Section 234B is not leviable in case of a non-resident payee on account of short deduction of TDS under Section 195 of the IT Act.

Emgeeyar Pictures P.Ltd.(T.C.A.No.788 of 2016) (Madras HC)

HC Quashes ITAT's 'superficial' orders allowing taxpayer to go 'scot free'; Directs 'capital-gains' imposition

FACTS OF THE CASE

- Emgeeyar Pictures Private Limited (**The taxpayer**) entered into a Joint Development Agreement with another firm Doshi Builders in December 2000, for development of a property.
- In March 2003, the taxpayer effected sale of such flats, wherein two flats were transferred in favor of the company's director and the other flats were sold to other persons in the relevant financial years 2003-04.
- During the assessment proceedings & appeal before CIT(A) for AY 2003-04/2004-05, the issue under consideration was whether Section 50C can be invoked in respect of the sale consideration.
- For the first time before the ITAT, taxpayer changed its admitted position as per return and contended that since JDA was entered only on December 25, 2000 and possession of the property was also handed over to M/s. Doshi Builders, the 'Capital Gains' tax, if any, could be assessed only for the previous AY 2001-02 and not in the AYs involved before the ITAT viz., AY 2003-04 and AY 2004-05, even though no sale of flats had taken place in the year relevant to AY 2001-02. ITAT accepted the said change of stand of the Taxpayer and held that no 'Capital Gains Tax' was liable to be taxed at the hands of the taxpayer in the AY 2003-04 and AY 2004-05 on the sale of flats by the taxpayer.
- The miscellaneous application filed by the department inter alia contending that CIT(A) did not deal with the said change of stand of the taxpayer, the matter ought to have been remanded back by the ITAT instead of allowing the appeal of the taxpayer, was dismissed by a cursory order.
- Subsequently, the TO initiated the reassessment proceedings for AY 2001-02 to tax the said capital gains. However, the same was quashed by the ITAT holding it to be barred by limitation and held that the reassessment could not be made for this year to bring to tax, the said transaction of sale of flats by the taxpayer.

JUDEGMENT

- The HC ruled in favor of the department by setting aside the ITAT order which quashed the re-assessment proceedings. The HC held that ITAT erred in passing the following orders:
  - AY 2003-04 and AY 2004-05: By holding that no capital gains tax was leviable and missed the basic facts altogether that capital gains was in respect of sale of flats by taxpayer and not on the transfer of land for JDA;
  - Quashing the reassessment proceedings initiated by the TO for taxing the said capital gains in subject AY 2001-02 holding it to be time barred and not covered by exception under Section 150(1) of the IT Act.
- The HC noted that these two sets of orders passed by ITAT have resulted in a serious miscarriage of justice, which cannot be permitted, accepts department's contention that by the two sets of orders passed by the ITAT for these years, the taxpayer will go away 'Scot Free' without any tax imposition under the head 'Capital Gain' despite its own admission of such capital gains tax liability in AY 2003-04 and 2004-05.
- The HC rejected the taxpayer's contention that in absence of specific direction by the ITAT to levy capital gains tax in AY 2001-02, exception contained in Section 150(1) of the IT Act would not apply, states that the taxability of capital gains tax in the hands of the taxpayer is likely to completely escape taxation, if the contentions raised before us was to be accepted;

- The HC opined that all this happened, because the ITAT superficially dealt with the matter while passing a wholly erroneous order by wrongly allowing the taxpayer to take a changed and wrong stand before it in the first instance and then later on holding that reassessment for AY 2001-02 was time barred.
- Thus, sets aside all the orders passed by the ITAT for all the three years and directed the TO "to impose the appropriate 'Capital Gain Tax Liability' by undertaking the fresh reassessment proceedings under Section 150(1) of the IT Act in pursuance of directions issued by the HC".

Sutherland Global Services Pvt. Ltd. (TA no. 32 of 2019) (Madras HC)

Issue concluded under TDS-proceedings can't be agitated during assessment by way of disallowance under Section 40(i)(ia)

FACTS OF THE CASE

- Sutherland Global Services Private Limited (**The taxpayer**) is subsidiary of a company based out of US. The taxpayer is engaged in the business process outsourcing and IT enabled services to enterprises located across the globe. The taxpayer did not undertake any marketing activity and the US company was responsible for business development of the group including the taxpayer.
- The taxpayer had entered into a contract with a foreign company for the purpose of rendering marketing services for which it paid business development commission (**BDC**). During the year under consideration, the taxpayer paid BDC to the foreign company.
- The taxpayer contended that the BDC was not an income chargeable to tax in India in the hands of foreign company and thus, no withholding tax was required to be deducted under Section 195 of the IT Act while making such payment to the foreign company.
- Proceedings were initiated under Section 201 for non-deduction of withholding tax and the order under Section 201 was challenged before the CIT and the CIT ruled in favor of the taxpayer.

JUDEGMENT

- The HC observed that as the issue had attained finality pursuant to the favorable order of the CIT(A) against the order under Section 201, which was not challenged further by the department. The HC further observed that the ITAT has no jurisdiction to direct the TO by virtually reopening the proceedings concluded under Section 201 of the IT Act.
- The HC pointed out one more aspect that the ITAT observed in paragraph 11 that the TO has to examine as to whether there was any concerted effort to shift profits by camouflaging it as commission on sales. This was never the case of the department either before the TO, CIT(A) or the ITAT. The tenor of the observations gives a different impression to the transaction done by the taxpayer, which was not called for.
- In the light of the above discussions, the HC held that the ITAT exceeded in its jurisdiction while remanding the matter to the TO, which has the effect of reopening a concluded proceeding. Accordingly, the HC allowed the taxpayer's appeal and held that the order of ITAT remanding the matter was without jurisdiction.

NEWS

- The Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020 receives the Presidential assent.
- The Central Board of Direct tax (**CBDT**) amends Tax Audit report and ITR-6 pursuant to newly notified concessional tax regimes
- Income tax Department enables Form 35 for filing appeal under Faceless Appeal Scheme
- CBDT further extends due date for filing of ITR for Assessment year 2019-20 to November 30, 2020 and the time limit for compulsory selection of returns for complete scrutiny to October 31, 2020
- Special Leave Petition (**SLP**) granted against HC's decision holding that consideration received by the taxpayer, a USA company, for provision of satellite transmission services to various customers in India, did not fall within purview of royalties as defined under Section 9 as well as Article 12 of DTAA between India and USA and it was not taxable in India- **CIT v Intelsat Corporation (119 taxmann.com 283**)
- SLP dismissed against HC's decision stating that company having high brand value as compared to the taxpayer could not be selected as comparable. **PCIT v Cadence Design Systems (I) Pvt Ltd (119 taxmann.com 416)**
- United Nation (**UN**) Tax Committee released public comments received the discussion draft proposing change in the definition of 'Royalty' as provided under Article 12 of the Convention to include 'software payments'. The proposal along with the comments will be discussed in the 21st session of the Tax Committee's meeting scheduled between 20th to 29th October. Key comments/ suggestion from the Indian Stakeholders:
  - Overlap with OECD's Pillar 1 and UN's Proposed Article 12B;
  - Option for net basis of taxation;
  - Commentary on 'computer software' and Classification of shrink-wrapped computer software as royalty;
  - Withholding obligations on individuals;
  - Potential Overlap with e-commerce transactions;
  - Gross Vs Net basis of taxation;
  - Comparison with equipment royalty.
- European Union (**EU**) Council revised the list of non-cooperative jurisdictions for tax purposes. The press release states that the Council has decided to add Anguilla and Barbados to the EU list of non-cooperative jurisdictions for tax purposes [i.e. the **tax haven blacklist].** Further, apprises that Cayman Islands and Oman are removed from the list, after having passed the necessary reforms to improve their tax policy framework. Following this revision, 12 jurisdictions remain on the blacklist.
- UN Committee of Experts on International Co-operation in Tax Matters released amended draft paper on New Article 12B on taxation of 'Income from Automated Digital Services' with commentary. The proposal along with the comments received will be discussed in the 21st session of the Tax Committee's meeting scheduled between 20th to 29th October.
- The Organization for Economic Cooperation and Development (**OECD**) released Blueprints on Pillars 1 and 2 and invites public inputs.

INDIRECT TAXATION

RECENT CASE LAWS

Goldman Sachs Services vs Commissioner of Central Tax, Bengaluru East [Service Tax Appeal No 21705 of 2016]

Demand against Goldman-Sachs Services under 'Business-Support', 'Manpower Supply' & 'OIDAR' service set aside

FACTS OF THE CASE

- Dispute in the instant case pertains to following (3) agreements executed by the Appellant:
  - Contract with M/s Hewitt Associates for collating and uploading the details and information of the employees in the database. Contract with M/s Communication Services for call detail processing service i.e. tracking the telephone usage of the employees of the Appellant, preparing a periodic report of the same and submitting it to the Appellant;
  - Appellant was using the global telecommunication channel set-up by its overseas group entities for making long distance international calls, toll free calls, etc. For using the global communication channel, the Appellant had made payment to overseas group entities;
  - Employees of overseas group companies were seconded to the Appellant. In this regard, Appellant entered into separate employment contract with the seconded personnel and employer-employee relationship existed between the Appellant and seconded personnel.
- The Departmental Authorities took a view that the above mentioned activities fall under Business Support Service (**BSS**), Online Information & Database Service (**OIDAR**) and Manpower Recruitment & Supply Agency Services respectively and accordingly show cause notice was issued which culminated into confirmation of demand by issuance of order.
- Appeal was filed before Hon'ble CESTAT against the said Order, and following key questions were under consideration:
  - Whether services received by Appellant from M/s Hewitt Associates and M/s Communication Services qualify as 'Business Support Services';
  - Whether the networking services received by the Appellant from overseas group entities can be classified as 'OIDAR Service';
  - Whether Appellant can be said to have received manpower recruitment and supply agency service from overseas group entities.

JUDGEMENT

- Hon'ble CESTAT held that services received by the Appellant for collating and uploading employee details / call details processing are in the nature of routine administrative functions and are not taxable under BSS before May 1, 2011 in view of insertion of words 'operational or administrative assistance in any manner' within the definition.
- With respect to networking services, Hon'ble CESTAT held that such services cannot be classified as OIDAR services as it is a telecom service in relation to networking of the Appellant's global entities in Japan, Hong Kong, London, USA, etc. It was held that the payments relate to payment for telecommunication services provided to the Appellant by the overseas group companies. Information flows both ways from the Appellants to other global entities and vice-versa and in such a case, the Appellants at times become service providers and at times service receivers.
- Further, with respect to payment made to seconded employees, Hon'ble CESTAT held that such payment is not taxable under manpower services as this position has been settled by various rulings.

- Interestingly, Hon'ble CESTAT also conceded to Appellant's contention that the issue is revenue neutral as being an STPI unit, it would have been eligible to claim refund of service tax paid on input services. Basis the above observations, the appeal of Appellant was allowed.

RECENT ADVANCE RULINGS

Las Palmas Co-op Housing Society [Order No MAH/ AAAR/ RS-SK/ 24/ 2020-21]

Input tax credit on lift installation charges paid to contractor is ineligible

FACTS OF THE CASE

- Appellant is a co-operative housing society and engaged a lift contractor to replace existing lift in the building. Lift contractor raised service invoice on the Appellant for rendering works contract services. The amount incurred towards replacement of lift was recovered from society members along with applicable GST.
- Authority for Advance Ruling (**AAR**), pursuant to an application filed by Appellant, denied the input tax credit (**ITC**) of GST paid to lift contractor for installation of new lift. Against such ruling, Appellant filed an appeal basis following arguments:
  - Relying on the explanation contained in Section 17(5) of the CGST Act and legal dictionaries, new lift should qualify as 'plant and machinery' and thus, restriction imposed under Section 17(5) should not apply;
  - Separately, society is availing works contract services and in-turn rendering such services to its members without altering such services. In view of this, restriction imposed under Section 17(5) should not apply;
  - Reference was also made to Circular 109/ 28/ 2019-GST dated July 22, 2019 which allows ITC on various capital goods to society.

RULING

- Appellate Authority for Advance Ruling (**AAAR**) upheld the ruling of AAR and ITC was held ineligible. The above arguments of Appellant were negated by AAAR as follows:
  - Relying on Apex Court rulings, AAAR held that lift once erected and installed and commissioned in building should be construed as an integral part thereof and be treated as immovable property. Further, list stands excluded from definition of plant and machinery contained in section 17(5) by virtue of express exclusion of 'building and civil structures thereof';
  - Further, society itself is not a works contract service provider and thus, it cannot be construed that Appellant has availed services and in-turn rendered the same to its members;
  - As regards the Circular, it was held that the same deals with eligibility to avail ITC on capital goods and not works contract services. Thus, the same is inapplicable in the instant case.

Soma Mohite Joint Venture [Order No MAH/ AAAR/ SS-RJ/ 21/ 2019-20]

Construction of tunnel involving excavation of earth, qualifies as an 'earthwork'

FACTS OF THE CASE

- Appellant is *inter alia* engaged in construction of tunnel and allied work for Godavari Marathwada Irrigation Development Corporation (**GMIDC**). The recipient is a Government entity set up under Maharashtra GMIDC Act, 1998, with the objective of promoting and developing irrigation projects, development of hydro-electric energy, etc.
- Activity undertaken by Appellant involves performing earth work such as excavation for tunnel, removing of excavated stuff, providing steel support, rock bolting, reinforcement, etc wherein earth work accounts for more than 75% of total work.

- Appellant made application before AAR to seek clarification on applicable rate of GST on the above contract. Unsatisfied by the clarification provided, Appellant filed an appeal before the AAAR to seek clarification on following aspects:
  - Whether activity performed under the contract qualifies for exemption under entry 3A of Notification No 12/ 2017 – CT (Rate) dated June 28, 2017 (**Notification 12**) as composite supply of goods and services in which the value of supply of goods constitutes not more than 25 % and supply is made to identified entity for identified purpose;
  - Whether activity performed under the contract enjoys concessional GST rate of 5% under Notification No 11/ 2017 – CT (Rate) dated June 28, 2017 (**Notification 11**) as composite works contract service involving predominantly earth work (constituting more than 75 % of the value of the works contract) and rendered *inter alia* to Governmental authority or Government Entity.

JUDGEMENT

- AAAR observed that in so far as qualification of service under entry 3A of Notification 12 is concerned (and consequent exemption), instant project does not qualify as being in relation to any function entrusted to a Panchayat under article 243G or to a Municipality under article 243W of the Constitution, which is *sine qua non* for claiming exemption.
- Further, for qualification under entry 3(vii) of Notification 11 (attracting concessional rate of 5%), it is imperative that earth work should constitute more than 75%. Referring to dictionary meaning of 'earthwork', it was held that excavation should also find coverage within the meaning of earthwork. Instant contract involves earthwork which constitutes more than 92.66% of the contract by value and thus, benefit of concessional GST should be available.
- It was observed that irrespective of whether contract is for construction of building, tunnel, canal, road, etc, if earthwork constitutes more than 75%, then benefit of concessional GST under entry 3 of Notification 11 should be available.

Bajaj Finance Limited [Order No MAH/ AAAR/ SS-RJ/ 24A/ 2018-19]

Additional/ penal interest is exempt from GST - Beneficial Circular to be applied retrospectively

FACTS OF THE CASE

- Appellant is a non-banking financial company and *inter alia* engaged in providing various types of loans. In case of delay in repayment of loan / EMI, Appellant collects additional penal interest for period of delay.
- It was Appellant's view that penal interest recovered from customers is merely in nature of additional interest and should be exempt in terms of entry 27 of Notification 12.
- However, AAR as well as AAAR rejected Appellant's such contention and treated such penal interest as consideration for tolerating an act of its customers covered under entry 5 (e) of Schedule II of the CGST Act, 2017.
- Thereafter, CBIC issued Circular No 102/ 21/ 2019 - GST dated June 28, 2019 which clarified that penal interest charged from borrower is in nature of interest and exempt under entry 27 of Notification 12.
- Pursuant to such circular, Appellant filed an application for rectification of mistake contending that order of AAAR is contrary to the position laid down by the said circular.

RULING

- AAAR observed that beneficial circular which is clarificatory in nature should be given retrospective effect and penal interest received in the instant case should be exempt from GST.

M/s Liberty Translines [Order No MAH/ AAAR/ RS-SK/ 25/ 2020-21]

Mere renting of vehicle as sub-contractor to transporter should not qualify as GTA service

FACTS OF THE CASE

- Appellant is engaged in rendering Goods Transport Agency (**GTA**) services. Query in the instant case pertains to a proposed business model wherein Appellant will enter into a contract with another GTA, M/s Posco, whereby a part of the GTA work of M/s Posco will be sub-contracted to Appellant (since M/s Posco did not have enough fleet of its own).
- Under this model, M/s Posco will receive goods form various consignors and consignees, issue consignment notes and also generate e-way bill. Appellant will issue a lorry receipt for the transportation activity undertaken.
- Appellant sought a ruling before AAR as to whether services rendered by Appellant, which is effectively sub-contracted work from M/s Posco, should also qualify as GTA service and charge GST at the rate of 12% under the forward charge mechanism.
- AAR ruled against the Appellant and against such ruling, Appellant preferred an appeal before AAAR. Appellant argued that instant transaction is akin to sub-bailment and lorry receipt issued by Appellant should qualify as consignment note.

RULING

- AAAR rejected the contentions of Appellant and upheld the order of AAR. Following were broad observations made by AAAR while arriving at the conclusion that Appellant should not qualify as GTA:
  - Appellant is merely supporting M/s Posco in their activity as GTA by way of renting out their transport vehicle;
  - Appellant is not receiving goods from consignor or consignee. Contract for transportation is between M/s Posco and consignor / consignee and receipt of goods is acknowledged by recipient by way of stamping consignment note issued by M/s Posco;
  - E-way bill for the movement of goods is also issued by M/s Posco.
- AAAR thus held that services rendered by Appellant are in the nature of renting of vehicle. Further, Appellant should be eligible to treat other services as GTA, wherein contract for transportation is executed directly with consignor / consignee.

Jinmangal Corporation [Order No GAAR/ AR-2019/ F-59/ B-403/405]

99 year lease is not sale of land, lease premium payment to State Development Authority attracts GST under the reverse charge mechanism

FACTS OF THE CASE

- Applicant secured a bid for leasing certain plots for 99 years from Ahmedabad Urban Development Authority (**AUDA**) for construction of commercial projects. As part of this, Applicant was required to pay one-time lease premium as consideration, in addition to annual lease premium.
- Applicant sought clarification on following queries before the AAR:
  - Whether one-time long-term lease premium payable/ paid by the Applicant to AUDA is supply and thus liable to pay tax as per Section 7 of the CGST Act?
  - Whether Applicant is required to discharge tax under the reverse charge mechanism in accordance to Section 9(3) on above?
  - Whether the annual lease premium payable/paid by the Applicant is supply?

- It was Applicant's contention that long-term lease is akin to sale of land therefore, excluded from purview of GST by virtue of entry 5 of Schedule III of the CGST Act. In this regard, Applicant made reference to Article 30 of the Gujarat Stamp Duty Act wherein transaction of long-term lease is treated as conveyance.

RULING

- AAR observed that Schedule II of the CGST Act treats lease of an industrial place/ land or building as supply. The term 'lease' is undefined under the CGST Act and thus, reference was made to Section 105 of the Transfer of Property Act, 1882. As per said provision, 'lease' can be for perpetuity and thus, quantum of time has no relation in determination of transaction as lease or sale.
- Further, entry 41 of Notification No 12 provides conditional exemption to one-time lease premium. One such condition is that the lease should be in respect of industrial plots/ plots for development of infrastructure for financial business, located in any industrial or financial business area. In absence of any notification declaring instant plot as such, benefits of such exemption should not be available.
- It was further held that Applicant should be required to pay GST under the reverse charge mechanism on one-time lease premium paid to AUDA, in terms of Notification No 13/ 2017 dated June 28, 2017.

NOTIFICATIONS/CIRCULARS

No	Reference	Particulars
1	**Notification No 69/ 2020 - Central Tax dated September 30, 2020**	Extends the due date of furnishing Annual Return in Form GSTR-9 & GSTR-9C for FY 18-19 from September 30, 2020 to October 31, 2020
2	**Notification No 70/ 2020 - Central Tax dated September 30, 2020**	Mandatory e-invoicing is applicable if turnover exceeds INR 500 crore in any financial year from 2017-18 onwards and the same is also applicable for exports
3	**Notification No 71/ 2020 - Central Tax dated September 30, 2020**	Mandatory requirement of Dynamic QR Code on B2C invoices deferred to December 1, 2020. This requirement is mandatory if turnover exceeds INR 500 crore in any financial year from 2017-18 onwards
4	**Notification No 72/ 2020 - Central Tax dated September 30, 2020**	▪ Mandates that an invoice shall contain QR code, having embedded Invoice Reference Number (**IRN**), if invoice has been issued as per sub-rule (4) of rule 48; ▪ Empowers Commissioner to exempt a person or a class of registered persons from issuance of e-invoice for a specified period, subject to such conditions and restrictions; ▪ Further, QR code having an embedded IRN may be produced electronically for verification by the proper officer under Rule 138A, in lieu of the physical copy of tax invoice.
5	**Notification No 73/ 2020 - Central Tax dated October 1, 2020**	Provides relaxation to tax-payers who are unable to comply with e-invoicing requirement to obtain IRN within 30 days of issuance of invoice. Such relaxation is available only for the period from October 1, 2020 to October 31, 2020
6	**Notification No 04/ 2020 - Central Tax (Rate) dated September 30, 2020**	Extends CGST exemption on services by way of transportation of goods by air or by sea from customs station of clearance in India to a place outside India, by one year i.e. up to September 30, 2021
7	**Notification No 36/ 2020 - Customs dated October 5, 2020**	Validity of Rebate of State & Central Taxes and Levies (**RoSCTL**) scheme has been extended from March 31, 2020 to March 31, 2021 or until such date the RoSCTL scheme is merged with the Remission of Duties or Taxes on Export Products (**RoDTEP**) scheme, whichever is earlier
8	**Circular No 142/ 12/ 2020 - GST dated October 9, 2020**	▪ CBIC issues clarification relating to application of sub-rule (4) of Rule 36 of the CGST Rules, 2017 for the months of February to August, 2020 relating to ITC availment in respect of invoices or debit notes, the details of which have not been uploaded by suppliers; ▪ Tax-payers should reconcile the ITC availed in FORM GSTR-3B for the period February to August, 2020 with the details of invoices uploaded by their suppliers till the due date of furnishing FORM GSTR-1 for the month of September, 2020; ▪ The cumulative amount of ITC availed for the said months in FORM GSTR-3B should not exceed 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers; ▪ Advises all the taxpayers to ascertain the details of invoices uploaded by their suppliers u/ s 37(1) for the periods of February, March, April, May, June, July and August, 2020, till the due date of furnishing of the

No	Reference	Particulars
		statement in FORM GSTR-1 for the month of September, 2020 as reflected in GSTR-2A; ▪ The excess ITC availed arising out of reconciliation during this period, if any, shall be required to be reversed in Table 4(B)(2) of FORM GSTR-3B, for the month of September, 2020 and failure to do so would be treated as availment of ineligible ITC during the month of September, 2020.
9	**Press release dated October 9, 2020**	Clarifies that while furnishing details in Table 4, 5,6 and 7 of Form GSTR-9 for FY 18-19, tax-payers are required to report only values pertaining to FY 18-19 and values pertaining to FY 17-18 which may have already been reported or adjusted are to be ignored
10	**Notification No 74/ 2020 - Central Tax dated October 15, 2020**	▪ Notifies special procedure for furnishing GSTR-1 for persons having aggregate turnover of up to 1.5 crores in the preceding financial year or the current financial year; ▪ Clarifies that the time period for filing GSTR-1 for the quarter October 2020 to December 2020 is January 13, 2021 and for January 2021 to March 2021 is April 13, 202.
11	**Notification No 75/2020 - Central Tax dated October 15, 2020**	Extends time-limit for furnishing GSTR-1 for persons having aggregate turnover more than 1.5 Crore for October 2020 to March 2021 till 11th day of the month succeeding such month
12	**Notification No 76/ 2020 - Central Tax dated October 15, 2020**	Prescribes the staggered date for filing of FORM GSTR-3B for the months of October, 2020 to March, 2021 and prescribes the mode and last date for discharge of tax liability as per FORM GSTR-3B
13	**Notification No 77/ 2020 - Central Tax dated October 15, 2020**	Seeks to make filing of annual return for FY 2017-18, 2018-19 and 2019-20 optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date
14	**Notification No 78/ 2020 - Central Tax dated October 15, 2020**	▪ Notifies the number of digits of HSN code required on tax invoice; ▪ Clarifies that for taxpayers having aggregate turnover up to INR 5 crores, 4 digits HSN Code is required and for taxpayers having aggregate turnover more than INR 5 crores 6-digit HSN Code is required.
15	**Notification No 79/ 2020 - Central Tax dated October 15, 2020**	Amends CGST Rules to *inter-alia* allow filing of return or details of outward supplies by SMS facility

Authors: **Adarsh Somani, Gourav Sogani, Rahul Charkha, Sahil Kothari, Pavni Lakhanpal Arpita Chaudhary, Bhagyashree Jain**

ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

MUMBAI

9th Floor, Mafatlal Centre
Vidhan Bhavan Marg
Nariman Point, Mumbai 400 021
T: +91 22 6636 7000

NEW DELHI

801 A, 8th Floor, Konnectus Tower, Bhavbhuti Marg
Opp. Ajmeri Gate Railway Station, Nr. Minto Bridge
New Delhi 110 001
T: +91 11 4152 8400

AHMEDABAD

801, 8th Floor, Abhijeet III
Mithakali Six Road, Ellisbridge
Ahmedabad 380 006
T: +91 79 6605 4480/8

PUNE

202, 2nd Floor, Vascon Eco Tower
Baner Pashan Road
Pune 411 045
T: +91 20 4912 7400

BENGALURU

6th Floor, Rockline Centre
54, Richmond Road
Bengaluru 560 025
T: +91 80 4168 5530/1

CHENNAI

No 18, BBC Homes, Flat-7 Block A
South Boag Road
Chennai 600 017
T: +91 44 4210 4863

elplaw.in

insights@elp-in.com

/elplaw.in

/ELPIndia

/company/economic-law-practice