

**Josh : Joy of Sharing & Helping**

Powered By Professionalism  
Driven by Values



## KALYAN-DOMBIVLI BRANCH OF WIRC OF ICAI

# NEWSLETTER APRIL 2019

*First & foremost*



Dear Professional Colleagues,

It gives me a great pleasure to place on your desk, first Newsletter of the Term by Kalyan Dombivli Branch. At the outset I take this opportunity to Wish you all a great new financial year and a very happy GUDI PADVA.

As you are aware the triennial elections were conducted and new managing committee was elected in February 2019 and I got elected as Chairman for 2019-20. This committee consists of the young and energetic members. Many of them have worked as CPE conveners in the past and therefore they also carry the necessary experience of administration. We as a committee are focused and committed towards the Branch.

I got an opportunity to interact with Hon'ble President of ICAI CA Prafulla Chhajed and Vice President of ICAI CA Atul Gupta during the Branch orientation meeting held at Lonavala. Both of them have shared their vision for the year which is primarily targeted at streamlining the functioning of the institute, improving discipline at all levels of the institute, providing relevant and structured learning and skill development opportunities for members of the Institute, taking visible steps to strengthen the Brand ICAI and to gain back the Glory to the profession. The focus of the apex authorities is on doing the basics well, avoiding volumes and pushing Value in the system. WIRC Chairperson CA Priti Savla also in her interaction has shared similar vision. Mission statement of WIRC is JOSH (Joy of Sharing and Helping)

Branch highly appreciates the vision of the Hon'ble President and we all are committed to support it in best possible manner. We have aligned the Branch functioning to this vision. As the Profession is passing through a stage of transformation and challenges posed for all of us, it's very important for us to be united and make a collective effort to upgrade ourselves to convert the challenges into opportunities. Branch is committed to schedule such programs which will help the cause.

Few of the GOALS which are of priority for the Branch are :  
Strengthening the Branch Infrastructure, Scheduling Orientation course for students at Ulhasnagar, De-centralizing the activities of the Branch further, scheduling relevant and timely sessions for updation and skill development of the Members as well as Students, Continuing with Students activities such as Mock Tests, Crash Course, IVs, RRCs, Seminars on GST/ Income Tax and Company law @ multiple locations.

### Managing Committee

**CA Saurabh S. Marathe**

Chairman

**CA Ankit R. Agarwal**

Vice Chairman

**CA Jeetu A. Ramrakhiyani**

Secretary

**CA Mayur K. Jain**

Treasurer

**CA Kiran R. Gangwani**

WIGASA Chairperson

**CA Kaushik Z. Gada**

Committee Member

**CA Parag S. Prabhudesai**

Committee Member

### Newsletter Committee

**CA Parag S. Prabhudesai**

Chairman

**CA Jeetu A. Ramrakhiyani**

Convener

Members

**CA Shekhar S. Patwardhan**

**CA Rohan R. Pathak**

**CA Amit A. Mohare**

*Continued...*

We also have an agenda to develop speakers from our region who will contribute in regular CPE meetings. Hence Branch will initiate to provide an opportunity to the new speaker at all possible times, which will help the speakers in grooming themselves. Branch is aiming better co-ordination amongst the CPE study circles in coming period. All Study circles are requested to focus on having regular CPE meetings wherein members get a chance to present their papers on the subjects in addition to learn it from renowned speakers.

Branch is in process of formulating various sub-committees which will not only help the branch in better functioning but also will provide an opportunity to members to participate in the Branch working and contribute to the Profession. Members are requested to provide their valuable support to the Branch by contributing towards various sub-committees.

This Newsletter is possible due to the efforts of the Newsletter committee headed by CA Parag S. Prabhudesai. I sincerely thank members of Newsletter committee and all the members who have contributed to and will contribute to the Newsletter. It contains various updates on Direct Taxes, Indirect Tax and Company Law. It also has compilation of Branch activities recently carried out in pictorial way. I also request to the Members to share their accolades and accomplishments which we would be glad to share with the fraternity. We will also keep on modifying and adding different subjects in the newsletter.

We recently conducted sessions for CA students on how to face CA exams at various locations. Branch also took pride in felicitating 130 plus newly passed CAs at the hands of Women Chartered Accountants on 10<sup>th</sup> March on the occasion of Women's Day. Branch also conducted timely programs on Bank Branch Audit, Unregulated Deposit ordinance and MVAT Amnesty.

Branch also participated as knowledge partner in full day session conducted by B K Birla college on 26<sup>th</sup> April 19 wherein WIRC Chairperson CA Priti Savala was chief guest and RCM CA Murtuza Kachwala was Guest of honour. Senior Member of our Branch and Chairman of DNS Bank CA Uday Karve participated in panel discussion during the program and provided his valuable inputs and guidance to the participants on Banking industry along with CA Tushar Jain. Branch is proud to share that CA Tushar Jain and CA Prakash Thakkar are also contributors to the manual published by WIRC on Audit of Banks.

To summarise this has been a eventful month and branch has started its activities with a bang. With support from all of you I sure we will make a mark on ICAI forum this year. Lets building a robust team Kalyan Dombivli Branch.

***As Steve Jobs said "Great things in business are never done by one person; they are done by team of people"***

Wish all the members a prosperous financial year. April being month of Bank audits I wish all the members a happy auditing season.

With Best Regards,

CA Saurabh S. Marathe

Chairman

Kalyan Dombivli Branch of WIRC of ICAI

## **Goods and Services Tax**

### **Composition Scheme of GST @ 6% to Intra-State Suppliers of Goods or Services (Notification No. 02/2019—Central Tax (Rate) dated 7<sup>th</sup> March 2019)**

A composition scheme has been introduced effective April 1, 2019 wherein an intra-state supplier whose aggregate turnover of supplies does not exceed Rs. 50 lakhs during the previous financial year can now pay GST at the rate of 6% (3% for Central and 3% for respective State) on first supplies of goods or services for Rs. 50 lakhs made on or after the 1st day of April in any financial year. The benefit of this scheme shall not be available to service providers who are rendering services in multiples states or through e-commerce websites.

In case the supplier opts for composition scheme as mentioned above, the unutilised balance of input tax credit available in the electronic credit ledger shall lapse. Further, the rules applicable in case of composition dealers shall also apply mutatis mutandis to such supplier.

### **Threshold Limit for composition scheme increased to Rs. 1.5 crores (Notification No. 14/2019 - Central Tax dated 7<sup>th</sup> March 2019)**

The existing threshold of gross turnover in previous financial year to avail the composition scheme has been increased from Rs. 1 crore to Rs. 1.5 crores whereas for North Eastern States it has been increased from Rs. 50 Lacs to 75 Lacs effective April 1, 2019

### **Threshold limit to take registration increased to Rs. 40 lakhs (Notification No. 10/2019 - Central Tax dated 7<sup>th</sup> March 2019)**

Threshold limit to take registration has been increased to Rs. 40 lakhs who is engaged in exclusive supply of goods. In other words, any person who is engaged in supply of goods and his total turnover in the current financial year does not exceed Rs. 40 lakhs, he is not required to take registration under GST. This exemption from GST registration is subject to various conditions, inter-alia, he is not making any inter-state supply, he is not a non-resident taxable person, etc

### **Due date for filing of GSTR-1 and GSTR-3B (Notification No. 11/2019, 12/2019, 13/2019 - Central Tax dated 7<sup>th</sup> March 2019)**

The due dates for filing of GSTR-1 and GSTR-3B for the months of April, May and June of 2019 has been notified, which shall be as follows:

Type of return	April, 2019	May, 2019	June, 2019
GSTR-1 (Turnover more than 1.5 crore)	May 11, 2019	June 11, 2019	July 11, 2019
GSTR-1 (Turnover up to 1.5 crore)	July 31, 2019		
GSTR-3B	May 20, 2019	June 20, 2019	July 20, 2019

Turnover limit of current or previous financial year shall be considered to determine the eligibility of the supplier for filing of monthly or quarterly GST return.

**Order of Utilization of ITC (Notification No. 16/2019 - Central Tax dated 29<sup>th</sup> March 2019)**

Rule 88A has been inserted in the CGST Rules to state that input tax credit on account of integrated tax (IGST) shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax (CGST) and State tax (SGST) or Union territory tax (UTGST), as the case may be, in any order.

As such, IGST credit shall now first be utilised to pay off IGST liability and the balance of IGST credit, if any, can be utilised to pay off SGST or CGST liability, in any order. It may be noted that the credit of SGST or CGST can be utilised only after exhausting the IGST credit.

Particulars	IGST	CGST	SGST
<b>Output tax liability (A)</b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>Available ITC (B)</b>	<b>200</b>	<b>50</b>	<b>50</b>
<b>Up to January 31, 2019</b>			
ITC utilized (C)	100	50	50
Balance ITC (D = B-C)	100	-	-
Unpaid output liability (E = A - C)	-	50	50
Utilization of IGST for payment of CGST/SGST	-	50	50
Balance ITC	-	-	-
Net Liability	-	-	-
<b>On or After February 1, 2019 but upto March 31,2019</b>			
Utilization of IGST for payment of IGST, CGST and SGST (C = B - A)	100	100	-
Utilization of SGST for payment of SGST (C = B - A)	-	-	50
Balance ITC (D = B - C)	-	50	-
Unpaid output liability	-	-	50
Balance ITC	-	50	-
Net Liability to be paid in cash	-	-	50
<b>On or After April 1, 2019 - Option - I</b>			
Utilization of IGST for payment of IGST, CGST and SGST (C = B - A)	100	100	-
Utilization of SGST for payment of SGST (C = B - A)	-	-	50
Balance ITC (D = B - C)	-	50	-
Unpaid output liability	-	-	50
Balance ITC	-	50	-
Net Liability to be paid in cash	-	-	50
<b>On or After April 1, 2019-Option -II</b>			
Utilization of IGST for payment of IGST, SGST and CGST (C = B - A)	100	-	100
Utilization of CGST for payment of CGST (C = B - A)	-	50	-
Balance ITC (D = B - C)	-	-	50
Unpaid output liability	-	50	-
Balance ITC	-	-	50
Net Liability to be paid in cash	-	50	-

**Clarification on promotional offers (Circular No. 92/11/2019 Dated the 7<sup>th</sup> March 2019)**

**Free Samples and Gifts**

Goods or services or both which are supplied free of cost (without any consideration) shall not be treated as “supply” under GST (except in case of activities mentioned in Schedule I of the CGST Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

It is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of “supply” on account of the provisions contained in Schedule I of the CGST Act, the supplier would be eligible to avail of the ITC.

**Buy one get one free offer:**

Where two or more individual supplies for which single price is being charged for the entire supply can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the CGST Act. It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

**Discounts including ‘Buy more, save more’ offers**

Discounts offered by the suppliers to customers (including staggered discount under “Buy more, save more” scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the CGST Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier whereas the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

**Secondary Discounts**

Secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the CGST Act are not satisfied.

**Transfer of credit in case of change in ownership (Circular No. 96/15/2019 Dated the 7<sup>th</sup> March 2019)**

Doubts have been raised whether sub-section (3) of section 18 of the CGST Act provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. It is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee.



**Decisions taken by the GST Council in the 34<sup>th</sup> meeting held on 19<sup>th</sup> March, 2019 regarding GST rate on real estate sector**

GST Council in the 34th meeting held on 19th March, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33<sup>rd</sup> meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other than affordable house. The council decided the modalities of the transition as follows.

**Option in respect of ongoing projects:**

The promoters shall be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.

The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

**New tax rates:**

The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.

*(i) New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,*

- (a) all houses which meet the definition of affordable houses as decided by GSTC (area 60 sqm in non-metros / 90 sqm in metros and value up to RS. 45 lakhs), and
- (b) affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3<sup>rd</sup> land abatement).

*(ii) New rate of 5% without input tax credit shall be applicable on construction of,-*

- (a) all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.
- (b) all houses other than affordable houses in new projects.
- (c) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

**Conditions for the new tax rates:**

The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-

- (a) Input tax credit shall not be available,
- (b) 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis.

However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

**Transition for ongoing projects opting for the new tax rate:**

Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.

For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

### **Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019**

The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.

The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector.

### **Amendment to ITC rules:**

ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/circulars which alone shall have force of law.

## **Maharashtra VAT**

### **Maharashtra Amnesty Scheme 2019**

The Maharashtra Government has announced Amnesty Scheme 2019 vide Ordinance No V of 2019 dated 6th March 2019 to provide for settlement of arrears of tax, interest, penalty or late fee which were levied, payable or imposed, respectively under various Acts administered by the Goods and Services Tax Department and for the matters connected therewith or incidental thereto. It will have 2 phases. First is from 1st April 2019 to 30th June 2019 and second from 1st July 2019 to 31st July 2019.

Under this scheme two sets of periods allowed for relief. First one disputes before 31st March 2010 and second one from 1st April 2010 to 30th June 2017.

**Annexure A  
For Period Up to 31 March 2010**

Sr No (A)	Amount (B)	First Phase		Second Phase	
		Amount to be paid (C)	Amount of Waiver (D)	Amount to be paid (E)	Amount of Waiver (F)
1	Un-Disputed Tax	100 % of Amt in Col (B)	-	100 % of Amt in Col (B)	-
2	Disputed Tax	50 % of Amt in Col (B)	50 % of Amt in Col (B)	60 % of Amt in Col (B)	40 % of Amt in Col (B)
3	Amount of Interest Payable As per any Statutory Order or return or revised Return	10 % of Amt in Col (B)	90 % of Amt in Col (B)	20 % of Amt in Col (B)	80 % of Amt in Col (B)
4	Outstanding Penalty order as per statutory Order	5 % of Amt in Col (B)	95 % of Amt in Col (B)	10 % of Amt in Col (B)	90 % of Amt in Col (B)
5	Amount of Post Assessment Interest or Penalty or Both leviable but not levied upto the date of application by dealer under Relevant Act	0 % of Amt in Col (B)	100 % of Amt in Col (B)	0 % of Amt in Col (B)	100 % of Amt in Col (B)
6	Late Fees payable returns filed during period	0 % of Amt in Col (B)	100 % of Amt in Col (B)	0 % of Amt in Colum (B)	100 % of Amt in Col (B)

**Annexure B  
For Period from 01st April 2010 to 30th June 2017**

Sr No (A)	Amount (B)	First Phase		Second Phase	
		Amount to be paid (C)	Amount of Waiver (D)	Amount to be paid (E)	Amount of Waiver (F)
1	Un-Disputed Tax	100 % of Amt in Col (B)	-	100 % of Amt in Col (B)	-
2	Disputed Tax	70 % of Amt in Col (B)	30 % of Amt in Col (B)	80 % of Amt in Col (B)	20 % of Amt in Col (B)
3	Amount of Interest Payable As per any Statutory Order or return or revised Return	20 % of Amt in Col (B)	80 % of Amt in Col (B)	30 % of Amt in Col (B)	70 % of Amt in Col (B)
4	Outstanding Penalty order as per statutory Order	10 % of Amt in Col (B)	90 % of Amt in Col (B)	20 % of Amt in Col (B)	80 % of Amt in Col (B)
5	Amount of Post Assessment Interest or Penalty or Both leviable but not levied upto the date of application by dealer under Relevant Act	0 % of Amt in Col (B)	100 % of Amt in Col (B)	0 % of Amt in Col (B)	100 % of Amt in Col (B)
6	Late Fees payable returns filed during period	0 % of Amt in Col (B)	100 % of Amt in Col (B)	0 % of Amt in Colum (B)	100 % of Amt in Col (B)

**Exemption of late fees in filing returns of Profession Tax (Trade Circular No. 11T of 2019 dated 30th March 2019)**

Whole of the late fees payable by registered employers in respect of monthly or annual returns for the period April 2016 to March 2019 have been exempted due to technical difficulties faced by the tax payers subject to following conditions -

1. Any amount payable as per return should have been/shall be paid on or before the due date.
2. The aforesaid employers should submit the monthly or, as the case may be, annual returns pertaining to the periods up to March 2019 on or before 30th April 2019.

No refund or adjustment against any tax liability shall be allowed where late fee has already been paid. If it is found that the employer has not fulfilled the conditions or has submitted false information to avail the benefit of exemption then, his exemption of late fee shall be revoked and action will be taken against him as per the provisions of law.



## **Supreme Court**

### **CIT Vs Reliance Industries Limited—Appeal No 37 of 2019 Date of Publication 23<sup>rd</sup> March 2019 (Sections 14A, 36(1)(iii) AY 2003-04 TO 2006-07)**

The Supreme Court has held that If the interest free funds available to the assessee are sufficient to meet its investment, it could be presumed that the investments are made from the interest free funds available with the assessee and not from borrowed funds. It's a Revenue Appeal filed against the Bombay High Court Judgement against a common order for all the Assessment Years.

The Question before the Honourable Supreme Court was whether the High Court is correct in holding that interest amount being interest referable to funds given to subsidiaries is allowable as deduction under Section 36 (1)(iii) of the Income Tax Act, 1961 whereas the Department argued that the interest would not have been payable to banks, if funds were not provided to subsidiaries;

The Honourable Supreme Court held that the High Court has already noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03 and hence Court held that there is no reason to interfere with the judgement of the Bombay High Court. Hence the Appeal filed by the revenue is dismissed.

## **High Court**

### **The Chamber of Tax Consultants Vs CBDT (Bombay High Court)**

#### **Writ Petition 3343 of 2018 Date of Publication 25<sup>th</sup> March 2019—Section 250 of the Income Tax Act 1961**

The Present Appeal is against the CBDT directives issued to CIT (Appeals) regarding the disposal of Appeals. The challenge of the Petitioners is in two parts.

1. In the first part, the Petitioners have challenged the directions issued by the CBDT for disposal of certain number of Appeals of specified categories within specified time. According to the Petitioners, these time limits are artificially applied, are contrary to the statutory provisions and also have the effect of making hurried orders by the Appellate Commissioner.  
The High Court held that the target set by the CBDT for disposal of the Appeals within the timeframe provided, are directory and not mandatory. Prima facie, we also feel that it may not be impermissible for the CBDT to prioritize the disposal of the Appeals and to set the goals for disposal of certain number of such Appeals by the Appellate Commissioner.
2. The Petitioners' second part of the challenge is to the following portion of the said Chapter: "Incentive for quality orders: (i) With a view to encourage quality work by CITs (A), additional credit of 2 units shall be allowed for each quality appellate order passed. The CIT (A) may claim such credit by reporting such
3. orders in their monthly DO letter to the CCIT concerned. Quality cases would include cases where
  - a) enhancement has been made,
  - b) order has been strengthened, in the opinion of the CCID, and
  - c) penalty u/s 271(1) has been levied by the CIT (A).

The High Court held that the CBDT should reconsider the direction in the Central Action Plan of offering incentives to CIT(A) to enhance assessments and levy penalty. From the action plan, it is not clear as to the utility of the norms set which the CIT(A) has to achieve. If the purpose of setting of norms is to evaluate the performance of the CIT(A) there would be all the more reason why the above quoted portion of the action plan be reconsidered by the CBDT.

On the next date of hearing, the learned Counsel for the Respondent would apprise us about the utility of the norms that the Commissioner would need to achieve and the outcome of the CBDT's deliberations on our recommendation for reconsideration. The next Hearing in the matter is posted on 11<sup>th</sup> April 2019.

**Mrs. Kannammal vs. ITO/ Jayanthi Seeman vs. PCIT (Madras High Court)**

**Section 220(6) - Date of Publication 23<sup>rd</sup> March 2019**

**Stay of Demand** - The 'trinity' of prima facie case, financial stringency & balance of convenience are basic tenets which are indispensable in consideration of a stay petition. The CBDT's Circulars & Instructions are in the nature of guidelines & cannot substitute or override the basic tenets. The AO is required to assist a taxpayer in every reasonable way. The basic principles of Stay of Demand need to be adhered to by the Assessing Officer. Even if the assessee has not specifically invoked the three parameters for grant of stay, it is incumbent upon the AO to do so & pass a speaking order.

**PCIT Vs Rasiklal M Parekh (Bombay High Court)**

**Sections 260A, 271 1(c) — Date of Publication March 29 ,2019**

**S. 271(1)(c) Penalty: Merely because the High Court has admitted the Appeal and framed substantial questions of law, it cannot be said that the entire issue is debatable one and under no circumstances, penalty could be imposed (CIT vs. Dharamshi B. Shah 366 ITR 140 (Guj) followed)**

Admission of a tax appeal by the High Court, in majority cases, is ex parte and without recording even prima facie reasons. Whether ex parte or after by-part hearing, unless some other intention clearly emerges from the order itself, admission of a tax appeal by the High Court only indicates the court's opinion that the issue presented before it required further consideration. It is an indication of the opinion of the High Court that there is a prima facie case made out and the questions are required to be decided after admission. Mere admission of an appeal by the High Court cannot without there being anything further, be an indication that the issue is debatable one so as to delete the penalty under section 271(1)(c) of the Act

**ITAT**

**Sir Mohd Yusuf Trust Vs ACIT (Mumbai ITAT) - Section 50C, AY 2011-12**

The issue before the Tribunal in this matter is whether the learned CIT Appeals was right in confirming the Application of Section 50C by the Assessing Officer When

1. The capital Asset was sold as per the highest bid received in response to public advertisement in July 2003 and was approved by the Honourable Bombay High Court on 01.10.2004.
2. The capital Asset was sold as per the Memorandum of Intent already entered into on 18.12.2003 though the registration of agreement took place on 10.08.2010 whereas the Assessment was made based on the Fair Market Value as on the registration.

The Mumbai Tribunal relied on the Apex Court Judgement of K P Varghese Vs ITO in this matter.

It reiterated the principles laid down by the Apex Court. Accordingly if the revenue seeks to bring a case within section 52(2) , it must show not only that the fair market value of the capital Asset as on the date of transfer exceeds the full value of the consideration declared by the Assessee by not less than 15 per cent of the value so declared but also that the consideration has been understated and the Assessee has actually received more than what is declared by him .There are two distinct conditions which have to be satisfied before sub section (2) can be invoked by the revenue and the burden of showing that these two conditions are satisfied rests on the revenue.

It said that it's a undisputed fact that when the land under sale was having encumbrances the adoption of stamp valuation as a Sale Consideration by applying the provisions of section 50C was not justified by the Assessing Officer, in absence of any evidence that the Sale Consideration was more than the value shown in the Memorandum of Intent. Therefore the Tribunal directed the Assessing Officer to work out the capital gain on the basis of consideration shown by the Assessee.

**Murtuza Shabbir Jamnagarwala Vs ITO (Pune ITAT)**

**Pune Tribunal Order Date 08.02.2019 ITA No 1144/PUN/ 16**

**Sections 2(14) 54 B(1) 103 Taxman 166**

**No denial of sec. 54B relief if land sold by assessee was classified as agricultural land in revenue record**

Where land sold by assessee was classified in revenue record as agricultural land and was subjected to land revenue and, further, land was being cultivated on which jowar crop was grown, land transferred by assessee was an 'agricultural land' and capital gain arising from sale of such land was eligible for exemption under section 54B

Section 54B of the Income-tax Act, 1961 – Capital gains – Transfer of land used for agricultural purpose (Agricultural land) – Assessment year 2008-09 – During year, assessee transferred an agricultural land to one DMR, a builder and developer – Assessee had further purchased an agricultural land – Accordingly, he claimed exemption under section 54B – Assessing Officer rejected same on ground that land sold by assessee was not an agricultural land as same was situated within municipal corporation limits – It was noted that land in question was classified in revenue records as agricultural land and it was subject to land revenue – Further, land was cultivated on which jowar crop was grown – Assessee was not a temporary user of such land and he was using it for at least 4 years in a row – Further land was not sold on yardage basis – Therefore the Tribunal held that land transferred by assessee was an agricultural land and capital gain arising from such land was eligible for exemption under section 54B

**Miscellaneous**

**CBDT Directive Regarding Verification of Suspicious Transactions**

The CBDT has issued a directive dated 28th March 2019 on the subject of verification of suspicious transactions in case of struck-off companies. Field authorities have been directed to verify deposits/withdrawals from the bank accounts of companies during the process of striking down and just before that especially during the period of demonetisation to check possible misuse of such companies for money-laundering activities.

## **International Taxation and Double Taxation Avoidance Agreements- An Overview and getting started**

The laws are always subject to different interpretation by the person governed by such laws, authorities as well as the Courts. In India, the Parliament formulates the law and the Judiciary interprets the law. Similarly, in international taxation, the source country may interpret the law different from how the resident country may interpret it and which may lead to conflict. Eg. Meaning of employment – A consultant is engaged by a foreign company to work in India. The foreign country considers the income as professional income & does not consider it to be taxable in India as there is no fixed base in India.

India considers the consultancy contract as employment – due to the terms of the contract. As the services are exercised in India, the income is considered to be taxable in India. Both apply the DTA but the understanding of “employment” is different in both countries.

### **Vienna Convention on Law of Treaties (VCLT)**

The principles of interpretation of international law have been laid down by usage, custom and courts over centuries. These have been codified under the Vienna Convention on the law of Treaties which is a multilateral convention entered into effect from 27<sup>th</sup> January, 1980. VCLT lays down basic principle that a treaty is binding upon the parties and should be applied and interpreted in good faith. As of April, 2014, VCLT has been ratified by 114 countries. However, though India is not a signatory to VCLT, it is open for any country to join in at any time without the approval of existing members.

### **The question arises since India is not a signatory to VCLT, can the principles laid down under VCLT be resorted to for interpretation of treaties entered by India?**

While India is not a party to the Vienna Convention, it contains many principles of customary international law, and Vienna Convention, provides a broad guideline as to what could be an appropriate manner of interpreting a treaty in the Indian context also. Time and again Indian Courts in various cases have resorted to VCLT for interpreting the treaties.

### **Importance of model commentaries in interpreting tax treaties:**

As discussed in the earlier articles, there are 3 model conventions

- a) OECD Model
- b) UN Model
- c) US Model

The model commentaries elaborate and explain these model conventions. The OECD Model is framed by the group of developed nations. India is not a signatory to OECD Model. UN Model is framed by group of developing nations. India is a signatory to UN Model and hence is bound by UN Model. US Treaties are generally based on US Model.

The OECD and UN Models are just models which provide guidance on how the countries can frame DTAA's. The actual DTAA's can be different and would be based on negotiation between the two countries.

### **Since, India is not a signatory to OECD Model, the question arises can one resort to OECD model commentary for interpreting the tax treaty?**

Although India is not a signatory to OECD Model Convention, however, it serves as an useful guide in interpreting the treaties. Further, there are contrary views expressed by the Indian judiciary on whether reliance could be placed upon OECD Model Convention and Commentary in interpreting the tax treaties. If the language used in the treaties is para materia to OECD Model Convention, then OECD commentary can have a persuasive value in interpreting the tax treaties.

Further, India has expressed certain reservations on OECD/UN Commentary where it has refrained to agree with the views expressed by OECD/UN. Wherever India has expressed reservations on OECD/ UN commentary, it is declaration of India’s intention as to interpretation of the DTAA. And hence reservation is binding on all AOs and Courts of Law while interpreting the law.

**How to read DTAA:**

A DTAA uses certain terms like ‘contracting state’ and ‘other contracting state’. A simple method of trying to grasp the meaning is to change the two phrases: “Contracting State” and “the other contracting state” by specific names of the countries. We take the illustration of India - UK DTAA, Article 7. Given below are:

(i) Article as it is in the DTA and (ii) Article simplified.

**Let us consider an Indian resident has income from UK.**

<b>(i) Article 7 as it is in the DTA: Business Profits</b>	<b>(ii) Article 7 simplified: Business Profits</b>
The profits of an enterprise of a <b>Contracting State</b> shall be taxable only in that <b>State</b> unless the enterprise carries on business in the <b>other Contracting State</b> through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the <b>other State</b> but only so much of them as is directly or indirectly attributable to that permanent establishment.	The profits of an enterprise of <b>India</b> shall be taxable only in <b>India</b> unless the enterprise carries on business in <b>UK</b> through a permanent establishment situated in <b>UK</b> . If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in <b>UK</b> but only so much of them as is directly or indirectly attributable to that permanent establishment.

Further, a DTAA also uses certain terms like ‘may be taxed’, ‘shall be taxed’, ‘may also be taxed’. Let us try and understand with the help of examples.

- **Shall be taxed:** Wherever term ‘shall be taxed’ is used, it grants exclusive taxing right to a jurisdiction and precludes the other jurisdiction from taxing that income. Mostly, this exclusive right is granted to a resident state. Eg. Article 8 (Income from shipping and air transport business) provides that profits from the operation of ships or aircraft in international traffic **shall be taxable** only in the Contracting State in which the place of effective management of the enterprise is situated.
- **May be taxed:** Wherever the term ‘may be taxed’ is used, it grants taxing right in favour of jurisdiction and that jurisdiction may or may not tax that income. This term is mostly used for granting taxing right to source jurisdiction. Eg. As per Article 6 (Income from Immovable Property), Income from immovable property **may be taxed** in the Contracting State in which such property is situated. If nothing is mentioned in the article regarding taxing right of residence jurisdiction, the resident state shall still have right to tax that income and it would grant credit of taxes paid in the source jurisdiction. The term ‘may be taxed’ does not grant exclusive taxing right to the source jurisdiction and it does not preclude the resident state from taxing that income. Although Apex Court in the decision of CIT v PVAL Kulandagan Chettiar (2004) 267 ITR 654 (SC) had held that the term ‘may be taxed’ grants exclusive taxing right to source country and precludes resident country from taxing that income.
- **May also be taxed:** The term ‘may also be taxed’ grants taxing right to both resident as well as source jurisdiction. Eg. Article 10 (Dividends) provides that dividends paid by a company which is a resident of a India to a resident of UK may be taxed in India. However, such dividends **may also be taxed** in UK of which the company paying the dividends is a resident and according to the laws of UK, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10% of gross amount of dividends. Accordingly, the taxing right is granted to both India as well as UK.



## Scope of DTAA

DTAAs are entered into between two countries (i.e. resident country and the source country) to eliminate double taxation arising due to imposition of taxes on the same income by both the countries. It allocates taxing right between both the jurisdictions. It is a fundamental principle of taxation that a resident country following world-wide system of taxation shall always have the right to tax its residents. DTAA does not restrict taxing right of the resident jurisdiction to tax the income. It restricts the taxing right of the source jurisdiction to tax income arising in its jurisdiction. Elimination of double taxation is attempted by the simple mechanism of source country restricting its rights to tax & resident country giving credit for taxes paid in source country or exempting incomes taxed in source country (this shall be discussed later).

### **A DTAA cannot create any taxing right. It can only restrict taxing right of source jurisdiction.**

E.g. Interest earned by an NRI in his NRE account, is taxable in India as per a DTAA. However, it is exempt u/s. 10(4)(ii) of IT Act. A DTAA cannot create a liability for the NRI, if the Income-tax Act does not create it. The DTAA restricts the right of source jurisdiction in the following ways:

- **Full restriction** – e.g. In certain DTAAs, capital gains arising on sale of shares cannot be taxed in the source country.
- **Conditional restriction** – e.g. the business income would be taxed in the source country only if there is permanent establishment in the source country.
- **Limited/Partial taxation** – e.g. limiting the rate of tax to be charged by the source country. In case of dividends/interest/fees for technical services/royalties the DTAA grants limited taxing right to the source state i.e. say only 10% tax can be levied by the source country.
- **No restriction** – e.g. income from immovable property can be fully taxed by the source country as per its domestic law.

A DTAA does not lay down computation provisions or the manner in which taxes are to be collected. It is the domestic tax law of the respective contracting state that provides for computation of income, disallowance of expenses, collection of taxes (i.e. TDS/TCS/Advance tax/Self-assessment tax).

### **DTAA Applicability:**

Article 1 of DTAA always provides that the convention shall apply only to persons who are residents of one or both contracting states.

Accordingly, for claiming relief under the DTAA, following is sine-qua-non:

- The claimant of relief should qualify as person under the Act as well as per the definition of person provided under Article 3 of DTAA.
- The person should be a resident of one or both the countries under the Act as well as per the definition of resident under Article 4 of the DTAA.

The applicability of DTAA and the categorization of income shall be deliberated upon in the ensuing articles.

### **Companies Incorporated on or Before December 31, 2017 to file E-Form INC-22A**

MCA vide its Notification dated February 21, 2019 amended Companies (Incorporation) Rules, 2014 whereby a new rule 25A was inserted namely Active Company Tagging Identities and Verification (ACTIVE).

As per this rule companies incorporated on or before December 31, 2017 are required to file the particulars of the company and its registered office, in e Form INC-22A on or before 25<sup>th</sup> April, 2019.

This rule shall not apply to companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register.

Further in order to file E-form INC-22A company has to first complete its due filing of financial statements and Annual Return otherwise the company shall be restricted from filing E-form 22A (except where such company is under management dispute and the registrar has recorded the same).

The notification further prescribes that in case in case a company does not intimate the said particulars, following action shall be initiated against the company;

1. Company shall be marked as "ACTIVE-non-compliant" on or after 26<sup>th</sup> April, 2019 and shall be liable for action under sub-section (9) of section 12 of the Act
2. Company shall be restricted from filing of SH-07, PAS-03, DIR-12, INC-22 and INC-28
3. Where a company files "e-Form ACTIVE", on or after 26<sup>th</sup> April, 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of Rs. 10,000.

### **Extension for Last Date of Filing Initial Return In MSME Form I**

Due to pendency of Deployment of MSME Form I on MCA 21 portal and in order to avoid inconvenience to stakeholders on account of various factors, MCA vide its Circular 01/ 2019 dated February 21, 2019 extended the last date of filling of initial return in MSME Form-1 from within 30 days from the date of notification to 30 days from the date of Deployment of E-form MSME form-1 on MCA portal.

### **Introduction of Form AGILE INC-35**

Any user who intends to incorporate company through SPICe e-form can now also apply for GSTIN through this e-form (INC-35). User is required to file application (SPICe) for incorporation of a company accompanying linked e-form AGILE "Application for Goods and services tax Identification number, employees state Insurance corporation registration plus Employees Provident Fund Organisation Registration" along with e-form SPICe MoA (INC-33) and e-Form SPICe AoA (INC-34) to obtain GSTIN.

This process will be applicable only for Companies incorporated by MCA through SPICe application. Other categories of applicants (Tax Deductor, Tax Collector, Casual Taxable person, ISD, etc.) who intends to apply for GSTIN shall follow the existing process of registration through Common Portal for GST registration.

### **Zero Incorporation fee in SPICe**

Now more companies can be incorporated at zero fees with effect from 18.03.2019, whose nominal capital is less than or equal to Rs. 15 Lacs.

As per the amendment to the Companies (Incorporation) Amendment Rules, 2019 dated 06.03.2019, MCA has revised the limit of Rs. 10 Lacs to Rs. 15 Lacs. Last year on 26.01.2018, while introducing Spice forms for incorporation of companies with the intent of 'Ease of Doing Business', MCA implemented the rule of Incorporation with Zero fees for the proposed companies with a nominal capital of less than or equal to Rs. 10 Lacs and in respect of proposed companies not having share capital, whose members does not exceed 20. Now with effect from 18.03.2019, this limit of 10 lacs has been revised to Rs. 15 lacs.

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Mock Test



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