The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

KALYAN DOMBIVALI BRANCH OF WIRC OF ICAI

eNews Letter

Issue No.13
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STOP CORONAVIRUS

STAY HOME STAY SAFE

Respected seniors and my dear friends,

We have entered in the new financial year and there are various challenges and opportunities ahead. Change is the law of nature. We are once again back to our childhood days watching Ramayan, Mahabharat, Shaktiman with our families. This is a very unique phase of life that we have experienced and I am very sure that all the members are having a great time with their family members and very soon we will be entering out Professional world. **There is a light at the end of every tunnel**

We are experts in converting challenge into opportunities. With the lock down in the country and offices being closed, it is an opportunity to excel our professional competence and knowledge base by reading books on various laws and viewing webinars organized by branch and WIRC.

E Learning :

Ek arzu thi muddat se fursat ki, mili toh iss shart pe kisi se na milo

But thanks to technology, Mr Hiral Shah and our MCM CA Kaushik Gada who have taken special efforts to organize webinar and facilitate spread of professional knowledge. We have successfully organized 3 webinars on Amendments in the Finance Act, Case laws under RERA and Vivad se Vishwas Scheme. I also thanks the speakers CA Pankaj Jain, CA Ashwin Shah and CA Vyomesh Pathak for accepting invitation at short notice and enlighting us. We are also planning lecture series on international taxation.

ICAI Initiatives:-

Option to pay 10 year membership fees in one go

COVID-19 - PREVENTION

COVID - 19 - HOW IT SPREADS

Members are allowed to pay advance COP fee and/or Membership fee for a period upto 10 years with GST. Benefit of decision will be.

In case of any shortfall and/or in case of revision of fee in future, the member will not be responsible for the payment of balance amount and/or refund, as the case may be, and his/her name will not be removed from the register of members on account of shortfall/ revision of fees, and

An ACA who has paid advance membership fee for a certain period not exceeding 10 years and at a later stage, opted for FCA, then the member is only required to pay difference fee (the difference of fee in ACA to FCA) for the remaining period.

In our busy professional schedule and meeting deadlines, there is always a chance that payment deadline for yearly membership/COP fee could be missed unintentionally and in that direction, the above facility will ensure continuity of membership and your association with alma mater. I am sure you will utilize this facility.

Contribution for ICAI Covid-19 Relief Fund

ICAI is partner in nation building and when the nation is facing the crisis of Corona, I request all of you to please contribute generously towards ICAI COVID-19 Relief Fund. It will help government initiatives to fight against the epidemic. The economic impact of corona will be more dangerous than its medical impact.

With 478 cases in last 24 hours, the highest spike so far; I once again request our members to stay safe, stay healthy and stay indoors . As our beloved PM Narendra Modi has said **Jaan hey toh Jahaan Hey** and **Corona se Darna nai Corona se ladna hey**.

आओ जलाएँ दीप वहाँ, जहाँ आज अँधेरा है।

Stay Healthy and Best Wishes...

Yours in Professional Service and Always with all of You,

CA Ankit R. Agarwal

Chairman

Kalyan Dombivli Branch of WIRC of ICAI

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Direct Tax Case Laws Update's

Contributed by
CA Shekhar Patwardhan

SUPREME COURT DECISIONS

1. Super Malla Pvt Ltd VS PCIT : Civil Appeal No 2006-2007 of 2020 : Date of Publication 07/03/2020 : Section 153A ,153C AY 2008-09

   Conclusion: -

   S. 153C: Compliance with the requirements of s. 153C is mandatory. (i) If the AO of the searched person is different from the AO of the other person, the AO of the searched person is required to transmit the satisfaction note & seized documents to the AO of the other person. He is also required to make a note in the file of the searched person that he has done so. However, the same is for administrative convenience and the failure by the AO of the searched person to make a note in the file of the searched person, will not vitiate the proceedings u/s 153C. (ii) If the AO of the searched person and the other person is the same, it is sufficient for the AO to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, the requirement of s. 153C is fulfilled. In such case, there can be one satisfaction note prepared by the AO, as he himself is the AO of the searched person and also the AO of the other person. However, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the AO of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself

2. M/S Ananda Social and Educational Trust Vs CIT : Civil Appeal Nos 5437-5438 /2012 Date of Publication 07/03/2020 Section 11,12 AA

   Conclusion: -

   12AA: Registration can be applied for by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration. The term 'activities' in s. 12AA includes 'proposed activities. The CIT must consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. However, he cannot refuse registration on the ground that no activities are carried out.

3. CIT Vs Chetak Enterprises Pvt Ltd : Civil Appeal No 1764 OF 2010 : Date of Publication 07/03/2020 : Section 80-IA AY 2002-03

Conclusion: -

S. 80-IA(4): As per s. 575 of the Companies Act, the conversion of a partnership firm into a company under Part IX causes a statutory vesting of all assets of the firm into the company without the need for a conveyance. The business of the firm is carried on by the company and the latter is eligible for the benefits of s. 80-IA.

4. Connectwell Industries Pvt Ltd Vs Union of India : Civil Appeal No 1919 OF 2010 : Date of Publication 14/03/2020 Rule 2 of Schedule II

Conclusion: -

Attachment of property under Schedule II: Unless there is preference given to the Crown debt by a statute, the dues of a secured creditor have preference over Crown debts. As a charge over the property was created much prior to the notice issued by the TRO under Rule 2 of Schedule II to the Act and the sale of the property was pursuant to the order passed by the DRT, the sale is valid

5. Union of India Vs P.D.Sunny : Civil Appeal No 1919 of 2010 : Date of Publication 14/03/2020 : Section 220(6)

Conclusion: -

Coercive Recovery of taxes etc during Corona Virus crisis: The orders of the Allahabad & Kerala High Courts directing the authorities to defer coercive recovery of taxes is stayed in view of the stand of the Government that the Government is fully conscious of the prevailing situation and would itself evolve a proper mechanism to assuage concerns and hardships of every one.

HIGH COURT DECISIONS

BOMBAY HIGH COURT

6. Mayur Kanjibhai Shah Vs ITO : Writ Petition No 812 of 2020 : Date of Publication 18/03/2020 : Recovery of Demand

Conclusion: -

Prima facie on the basis of coded language, diary entries and retracted uncorroborated statement of an alleged beneficiary, perhaps the additions made by the Assessing Officer is highly questionable. In such circumstances, We feel that instead of taking a mechanical approach by directing the petitioner to pay 20% of the tax demand or providing installments the department ought to have considered the prima facie case , balance of convenience and financial hardship, if any of the petitioner, from the impugned order we do not find that the department had alluded to the above aspects. In such circumstances We are of the view that it would be in the interest of justice if the demand is kept in abeyance till the disposal of the appeal by the commissioner of Income Tax Appeal, further the CIT Appeals is directed to dispose of the appeal within a period of four months .

TRIBUNAL DECISIONS

KOLKATA TRIBUNAL

7. Neha Chaudhary Vs ITO : ITA NO 1790-1791 / KOL/2019 : Date of Publication 14/03/2020 : Section 10(38) ,45.48

Conclusion: -

Attachment of property under Schedule II: Unless there is preference given to the Crown debt by a statute, the dues of a secured creditor have preference over Crown debts. As a charge over the property was created much prior to the notice issued by the TRO under Rule 2 of Schedule II to the Act and the sale of the property was pursuant to the order passed by the DRT, the sale is valid .

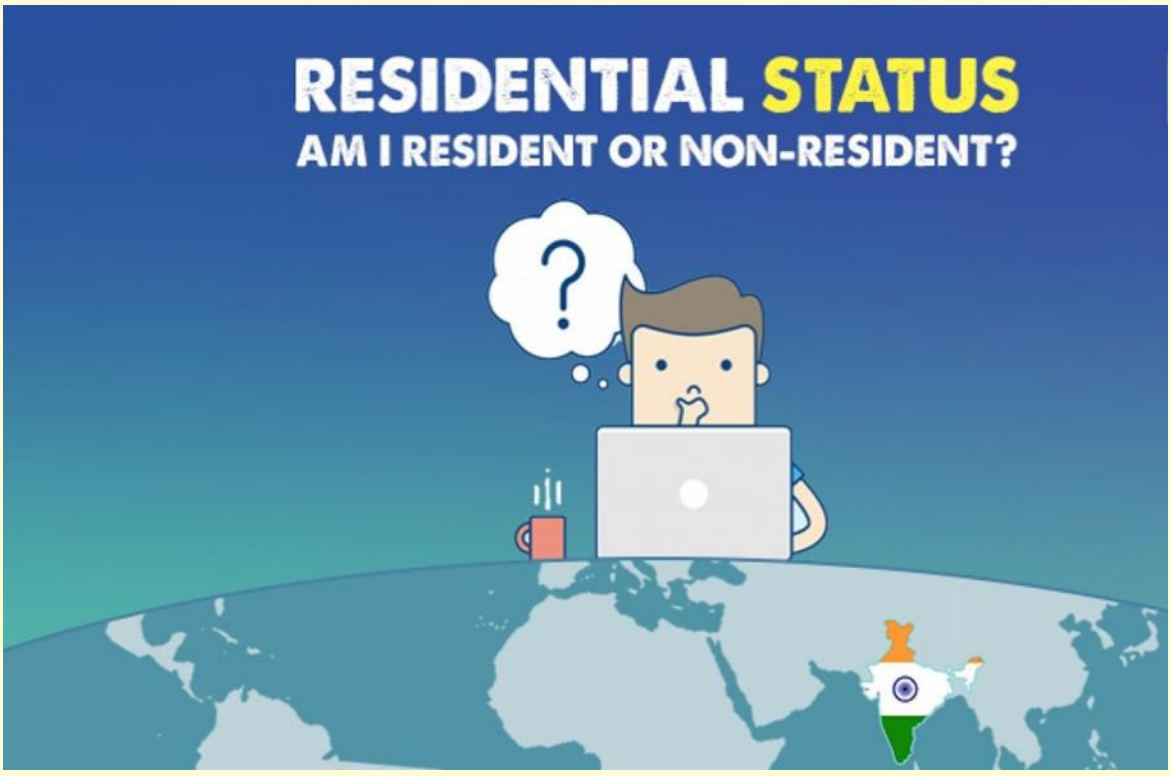
DELHI BENCH

8. Aricent Technologies Holdings Ltd Vs ACIT: ITA No 5708/DEL/2019: Date of Publication 28/03/2020: Sec 195,201,205

Conclusion: -

S. 199/205: In a case where the deductor has deducted tax at source but has not deposited the tax with the Govt, the assessee cannot be made to suffer. U/s 205, the assessee/ deductee cannot be called upon to pay the tax. Credit for the tax deducted at source has to be allowed in the hands of the deductee irrespective of whether the same has been deposited by the deductor to the credit of the Central Government or not (Yashpal Sahani 165 TM 144 (Bom), Sumit Devendra Rajani 49 TM.com 31 (Guj) & Pushkar Jain 103 TM.com 106 (Bom) followed)

International Taxation Update's



Contributed by
CA Prerna K. Peshori

Cacophony in Individual Residency Aenigma

An individual is said to be resident in India if:

a) He is present for 182 days or more during the current year

b) He was present for 365 days or more in 4 preceding years and 60 days or more during the current year.

An exception has been carved out under Explanation 1 whereby for the Indian citizens who are going outside India for employment or who being outside India, visit India, 60 days in condition (b) shall be read as 182 days. Therefore, for such individuals, only 182 days criteria exists.

a) Citizen of India, who leaves India as member of crew of Indian ship or for the purposes of employment outside India

b) Citizen of India or person of Indian origin, who being outside India, comes on visit to India in any previous year.

This provision was being easily misused as individuals, who are carrying out substantial economic activities from India, manage their period of stay in India, to remain a non-resident in perpetuity and not be required to declare their global income in India. Therefore, the Finance Bill 2020 amended the criteria for the Indian citizen/person of Indian origin, who are outside India, visits India is reduced from 182 days to 120 days.

However, in the Bill as passed by Lok Sabha, this condition was again restored back to 182 days. Therefore, the amendment stands deleted and for Citizen of India or person of Indian origin, who being outside India, comes on visit to India in any previous year, 60 days shall be read as 182 days only (as it was earlier before the amendment through Finance Bill).

However, for an Indian Citizen or person of Indian origin, who is outside India, 60 days will be read as 120 days only if his total income (other than income from foreign sources) is more than INR 1.5 Mn.

Stateless Persons

A stateless person or a nomadic person is one who is not considered as national of any country and therefore, is not liable to tax in any jurisdiction. This arrangement is typically employed by high net worth individuals (HNWI) to avoid paying taxes to any country/ jurisdiction on income they earn. The current rules governing tax residence make it possible for HNWIs and other individuals, who may be an Indian citizen to not to be liable for tax anywhere in the world.

Therefore, Finance Bill introduced deemed residency provisions whereby an individual, being a citizen of India, shall be deemed to be resident in India in any previous year, if he is not liable to tax in any other country or territory because of his domicile or residence or any other criteria of similar nature, irrespective of whether or not he has been present in India. However, this provision created panacea among investor community and Indian community who are employees in UAE (since in UAE, individuals are not taxed). Therefore, CBDT vide the press release clarified the concerns that "those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India on the income that they have earned there.. is not correct". It stated that only Indian sourced business or profession income will be taxable in India.

In the bill as passed by the Lok Sabha it is provided that Indian citizen, having total income (from other than foreign sources) exceeding INR 1.5 Mn shall be deemed to be resident in India, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

It would be interesting to see how interplay with the tie-breaker clause under Article 4.

Author's View

- This provision is targeted for nomadic citizens and is an anti-abuse measure as clarified by CBDT Press release.
- Further, it is not clarified as to what is meant by liable to tax i.e. if a person has exempt income or he has losses or his income is below the taxable limit, would he be still liable to tax. I think yes, because, the provision states 'liable to tax' which does not mean actual payment of tax and there are several judicial precedents which have clarified the meaning of the liable to tax used in the treaty. However, to avoid different interpretations, it would be better if CBDT clarifies meaning of this term.

Resident and not-ordinary resident

A resident can be ordinary resident or not ordinary resident. The category of not ordinary resident had been essentially introduced to ensure that a non-resident is not suddenly faced with the compliance requirement of a resident, merely because he spends more than the specified number of days in India during a particular year.

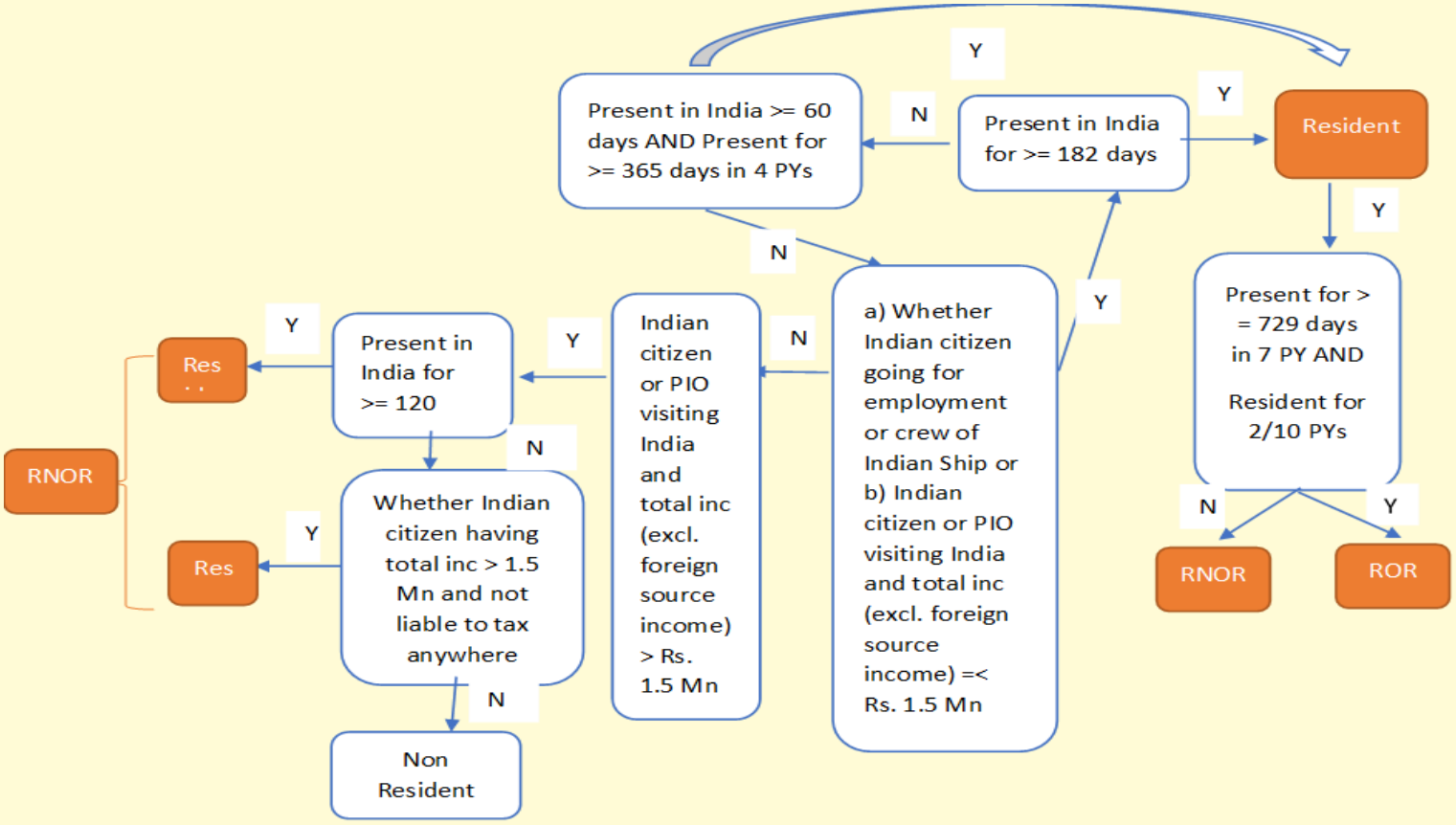
Currently, Sec.6(6) provides for situations in which an individual or HUF shall be "not ordinarily resident" in a previous year if an individual has been non-resident in 9 out of 10 previous years preceding that year, or has during 7 previous years preceding that year been in India for an overall period of 729 days or less.

The Finance Bill had proposed to replace this existing condition by the condition that an individual or a HUF shall be said to be "not ordinarily resident" in India in a previous year if the individual or the manager of the HUF has been a non-resident in India in 7 out of 10 previous years preceding that year.

However, the bill as passed by the Lok Sabha deleted the amendment proposed in the Finance Bill, therefore, the original conditions remain restored.

However, the deemed resident as also the Indian citizen or person of Indian origin, whose stay in India exceeds 120 days but is less than 182 days will be treated as not ordinarily resident.

Therefore, the residency requirement will be:



Author's View

1) For Indian citizens or PIOs visiting India and having total income more than INR 1.5 Mn only Indian sourced income will be taxable in India since they are categorized as RNOR.

2) Even in case of deemed residents, Indian sourced income will be taxable in India since they are categorized as RNOR.

3) Considering no amendment had been made and such individuals were non-resident, even then their Indian sourced income would have been liable to tax in India. Therefore, there is no rationale served for introducing these amendments as already Non-residents only Indian sourced income is taxable in India. Therefore, even after amendment the position will remain the same.

2) RNOR is also not liable to declare his global assets. Therefore, even this will also not change after the amendment.

3) As per tie-breaker rules under Article 4, India may loose out on residency most likely than not, the individual who has been always outside India, will have habitual abode or personal and economic ties outside India and therefore, he will tie-break in foreign country. Also, since beneficial provision of DTAA overrides domestic tax law, the individual may not be considered as resident in India.

4) However, with respect to tax rates, there could be variations now, since different rates are applicable for residents and non-residents. For eg, for people above age of 60 years or 80 years who are Indian residents, they have higher slab available, which was not there for non-residents. However, now if such individuals are considered as RNOR, this higher slab may be available.

5) Further, if these individuals tie-break in another jurisdiction, they may get the treaty relief with respect to lower withholding taxes. However, if they tie-break in India, in that case, they may not get any treaty relief and rates under the Act will apply.

6) Also, if they tie-break in foreign country, they can claim the relief of taxes paid in India against the tax liability in the foreign country. Further, since foreign income will not be taxed in India, there will be no claim of double tax credit of foreign taxes paid in India.

7) However, it is pertinent to mention that India has opted for Option C – Credit Method under MLI with respect to giving double tax relief. This Option C includes the wording "(except to the extent that these provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdiction)". Therefore, if India taxes such RNORs at rates applicable to the resident (though they may tie break in another country), then the foreign country may not give credit (if that country also follows credit method) for the taxes paid in India at rate over and above DTAA rate. This will result in unintended double taxation.

Therefore, instead of simplifying it the Government has complicated the residency requirements, without serving the intend with which these amendments were introduced. US considers its citizens as its residents and taxes on worldwide income. However, it has made the appropriate provisions under its DTAA too for taxing its citizens though they may be residents of other jurisdictions as also for granting treaty relief. The links under Indian residency provision are at discord and broken, which require rehaul by the Government to bring it into shape as to give effect to the intent with which these provisions were introduced.

Indirect Tax Laws Update's

Contributed by
CA Rohan Pathak

Currently we are under Lockdown till 14th April, 2020 as a measure to fight against the pandemic of COVID-19, let us stay at home, stay healthy and use this off time as learning time.

Various Notifications/Circulars :

Notification No. 1/2020- Central Tax (Rate) dated 21.02.2020:-

The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher. **Organising State** has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

Earlier a uniform rate of 28% was fixed for Lottery being applicable from 1st March 2020,

There is no distinction for lottery authorized by State Governments and lottery run by State Governments for the purpose of taxability and, hence, the standard rate of 28% shall apply. Now the corresponding changes in valuation mechanism in rule 31(A)(2) have also been made.

Circular No. 123/42/2019– GST-Relevant date of which GSTR-2A is used to calculate Restriction on ITC of 10%:-

The amount of input tax credit in respect of the invoices / debit notes whose details have not been uploaded by the suppliers shall not exceed 10% of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub- section (1) of section 37 as on the due date of filing of the returns in **FORM GSTR-1** of the suppliers for the said tax period i.e. **11th of the Following Month.** The taxpayer may have to ascertain the same from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.

Notification No. 12/2020- Central Tax dated 21st March 2020-Waiver from filing GSTR-1 for 2019-20 for specified taxpayer:-

The Central Government vide Notification No. 12/2020- Central Tax dated 21st March 2020 has exempted those registered persons from filing **GSTR-1** for **2019-20** who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 by filing FORM CMP-02 & have furnished a return in **FORM GSTR-3B** instead of furnishing the statement containing the details of payment of self-assessed tax in **FORM GST CMP-08** under the Central Goods and Services Tax Rules, 2017

Circular No. 134/04/2020-GST dated 23-03-3020- Clarification on issues under GST for companies under IBC, 16

Various representations have been received from the trade and industry seeking clarification on issues being faced by entities covered under **Insolvency and Bankruptcy Code, 2016** (hereinafter referred to as the "IBC").

1. As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT")

2. To address the aforementioned problems, **notification No.11/2020- Central Tax, dated 21.03.2020** has been issued by the Government prescribing special procedure under section 148 of the **Central Goods and Services Tax Act, 2017** (hereinafter referred to as the "CGST Act") for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in the table below:-

Sr.No.	Issue	Clarification
1	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.
2	Should the GST registration of corporate debtor be cancelled?	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the **CGST Act, 2017**. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be
3	Is IRP/RP liable to file returns of pre-CIRPperiod?	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
During CIRP period		
4	Should a new registration be taken by the corporate debtor during the CIRP period?	The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of **notification No.11/2020- Central Tax, dated 21.03.2020**, he shall take registration within thirty days of issuance of the said notification, with effect

5	How to file First Return after obtaining new registration?	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.
6	How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of **notification No.11/2020- Central Tax, dated 21.03.2020** and no return has been filed by the IRP during the CIRP ?	The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40. The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide **notification No.11/2020- Central Tax, dated 21.03.2020**. This exception is made only for the first return filed under section 40 of the CGST Act.
7	How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the **notification No.11/2020 – Central Tax, dated 21.03.2020**?	Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules.
8	Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. The instructions contained in **Circular No. 125/44/2019-GST dt. 18.11.2019** stands modified to this extent.

The 39th GST Council meeting held on Saturday, 14th March 2020 at New Delhi. The Union FM Nirmala Sitharaman chaired this meeting and took decisions on certain crucial issues under GST.

Highlights of the 39th GST Council Meeting

1. Deferment of the new GST return system and e-invoicing

- The implementation of the new GST return system has been postponed to 1st October 2020.
- Implementation of e-invoicing has been deferred to 1st October 2020-**(Notification No. 13/2020–Central Tax [G.S.R. 196(E)] dated 21-03-2020)**
- Implementation of QR code has been deferred to 1st October 2020-**(Notification No. 14/2020–Central Tax [G.S.R. 196(E)] dated 21-03-2020)**
- The present return system (GSTR-1, GSTR-2A & GSTR-3B) will be continued until September 2020. **(Notification No. 28/2020 & 29/2020-Central Tax dated 23-03-2020)**

2. Changes in the GST rates

- GST on mobile phones and specified parts was increased from 12% to 18%. This decision was taken to avoid difficulties due to the inverted duty structure- **(Notification No. 03/2020-Intergrated Tax (Rate) [G.S.R. 217(E) dated 25-03-2020)**
- All types of matches have been rationalised to a single GST rate of 12%. Till now, the handmade ones were taxed at 5% and the rest was taxed at 18%.**(Notification No. 03/2020-Intergrated Tax (Rate) [G.S.R. 217(E) dated 25-03-2020)**
- GST on Maintenance, Repair and Overhaul (MRO) service in respect to aircraft was reduced from 18% to 5% with full ITC. (**Notification No. 02/2020-Union Territory Tax (Rate) [G.S.R. 1211(E) dated 23-03-2020)**
- All these rate changes will come into effect from 01 April 2020.

3. Interest on delayed payments

Now, the interest for delayed GST payment will be calculated on the net tax liability. This amendment will apply retrospectively from 1st July 2017.

4. Extension of GSTR-9 and 9C : (Notification No. 15/2020-Central Tax dated 23-03-2020)

The GSTR-9 & 9C deadline is extended to 30 June 2020 for FY 2018-19. Also, the turnover limit will be increased from Rs 2 crore to Rs 5 crore for mandatory annual return filing. Hence, filing GSTR-9C is optional for the taxpayers having the turnover less than Rs 5 crore.

The taxpayers with an aggregate annual turnover of less than Rs 2 crore in FY 2017-18 and FY 2018-19 will not pay any late fee for delayed filing of GSTR-9.

5. Know your supplier

A new scheme called 'Know your Supplier' has been introduced so that the taxpayers are informed about the basic details of the suppliers with whom they transact or propose to conduct business.

6. Waiver and extension of due dates

The GSTR-1 for 2019-20 will be waived for certain taxpayers who could not opt for the special composition scheme (notification No. 2/2019-Central Tax (Rate) dated 7th March 2019) by filing Form CMP-02.

The due date of Form GSTR-3B for July 2019 to January 2020 is extended till 24th March 2020 for taxpayers with a principal place of business in the Union Territory of Ladakh. Also, a similar extension is recommended for Form GSTR-1 and Form GSTR-7.

7. Amendment to revocation of cancellation

Taxpayers who have cancelled their GST registration till 14th March 2020 can file an application for revocation of cancellation of registration. The window to fill this application is available till 30th June 2020. The extension is a one-time measurement to facilitate those who want to continue conducting the business.

8. Other decisions

- Infosys Chairman, Mr Nandan Nilekani to present progress updates about the GST IT systems at the next three GST Council meetings.
- The time limit for finalisation of the e-Wallet scheme for consumers is extended till 31st March 2021.
- A special GST procedure was prescribed during the CIRP period for the GST registered corporates who are undergoing insolvency/resolution procedure under IBC Code, 2016.
- A transition plan is laid down till 31st May 2020 for the taxpayers belonging to Dadra and Nagar Haveli & Daman and Diu, due to the merger in January 2020.
- Refund claims will now be processed in bulk for the benefit of the exporters.
- Present IGST and cess exemptions on the imports made under the AA/EPCG/EOU schemes will continue up to 31st March 2021.

Circular No. 135/05/2020-GST dated 31-03-2020-CBIC Clarification on GST refund related issues

CBIC vide Circular No. 135/05/2020 – GST dated 31st March, 2020 issued Clarification on GST refund related issues which includes Bunching of refund claims across Financial Years, Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate, Change in manner of refund of tax paid on supplies other than zero rated supplies, Guidelines for refunds of Input Tax Credit under Section 54(3)

1. Various representations have been received seeking clarification on some of the issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the **Central Goods and Services Tax Act, 2017** (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

2. **Bunching of refund claims across Financial Years :**
2.1 It may be recalled that the restriction on clubbing of tax periods across different financial years was put in vide para 11.2 of the **Circular No. 37/11/2018-GST dated 15.03.2018**. The said circular was rescinded being subsumed in the Master **Circular on Refunds No. 125/44/2019-GST dated 18.11.2019** and the said restriction on the clubbing of tax periods across financial years for claiming refund thus has been continued vide Paragraph 8 of the **Circular No. 125/44/2019-GST dated 18.11.2019**, which is reproduced as under:

"8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier."

2.2 Hon'ble Delhi High Court in Order dated 21.01.2020, in the case of M/s Pitambra Books Pvt Ltd., vide para 13 of the said order has stayed the rigour of paragraph 8 of **Circular No. 125/44/2019-GST dated 18.11.2019** and has also directed the Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the Order. Hon'ble Delhi High Court vide para 12 of the aforesaid Order has observed that the Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law.

2.3 Further, same issue has been raised in various other representations also, especially those received from the merchant exporters wherein merchant exporters have received the supplies of goods in the last quarter of a Financial Year and have made exports in the next Financial Year i.e. from April onwards. The restriction imposed vide para 8 of the master refund circular prohibits the refund of ITC accrued in such cases as well.

2.4 On perusal of the provisions under sub-section (3) of section 16 of the **Integrated Goods and Services Tax Act, 2017** and sub-section (3) of section 54 of the CGST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years.

2.5 The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, **circular No. 125/44/2019-GST dated 18.11.2019** stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.

3. **Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate**

3.1 It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

4. **Change in manner of refund of tax paid on supplies other than zero rated supplies**

4.1 **Circular No. 125/44/2019-GST dated 18.11.2019**, in para 3, categorizes the refund applications to be filed in FORM GST RFD-01 as under:

a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
b. Refund of tax paid on export of services with payment of tax;
c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
f. Refund to supplier of tax paid on deemed export supplies;
g. Refund to recipient of tax paid on deemed export supplies;
h. Refund of excess balance in the electronic cash ledger;
i. Refund of excess payment of tax;
j. Refund of tax paid on intra-State supply which is subsequently held to be interState supply and vice versa;
k. Refund on account of assessment/provisional assessment/appeal/any other order;
l. Refund on account of "any other" ground or reason.

4.2 For the refund of tax paid falling in categories specified at S. No. (i) to (l) above i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.

4.3.1 As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, vide notification No.16/2020-Central Tax dated 23.03.2020, sub-rule (4A) has been inserted in rule 86 of the CGST Rules, 2017 which reads as under:
"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03."

4.3.2 Further, vide the same notification, sub-rule (1A) has also been inserted in rule 92 of the CGST Rules, 2017. The same is reproduced hereunder:
"(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger."

4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

5. **Guidelines for refunds of Input Tax Credit under Section 54(3)**

5.1 In terms of para 36 of **circular No. 125/44/2019-GST dated 18.11.2019**, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide **notification No. 49/2019-GST dated 09.10.2019**, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the **circular No. 125/44/2019-GST, dated 18.11.2019** stands modified to that extent.

6. **New Requirement to mention HSN/SAC in Annexure 'B'**

6.1 References have also been received from the field formations that HSN wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure–B of the **circular No. 125/44/2019- GST dated 18.11.2019** so as to easily identify between the supplies of goods and services.

6.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, Annexure-B of the **circular No. 125/44/2019-GST, dated 18.11.2019** stands modified to that extent.

6.3 A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their FORM GSTR-2A. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

Company Laws Update's

Contributed by
CA Ronak P. Gada

Companies Fresh Start Scheme, 2020

The MCA vide its **circular dated 30th March 2020** has issued **Companies Fresh Start Scheme, 2020** to promote defaulting companies to make a fresh start on a clean slate and waive the additional fee as charged under section 403 of Companies Act, 2013 which is applicable on certain forms to be filed with MCA.

Annual Filings by Companies

Companies Act, 2013 requires all companies to make annual statutory compliance by filing the Annual Return and Financial Statements. Apart from this, various other statements, documents, returns, etc are required to be filed on the MCA21 electronic registry within prescribed time limits. Delay in filing these returns will attract penalty fine and penal actions as per Companies Act.

One Time Opportunity

In order to give an opportunity to the defaulting companies and to enable them to file the belated documents, MCA has introduced "Companies Fresh Start Scheme, 2020 (CFSS-2020) for condoning the delay in filing the returns with the Registrar, insofar as it relates to charging of additional fees, and granting of immunity from launching or prosecution or imposing penalty.

Fee Payable for CFSS

Only normal fees for filing of documents in the MCA-21 registry will be payable in such case during the currency or CFSS-2020. There will not be any additional fee for any documents.

Every defaulting company shall be required to pay normal recs as prescribed under the Companies (Registration Offices and FCC) Rules, 2014 on the date of filing of each belated document and no additional fee shall be payable.

Dormant Company

The scheme gives an opportunity to inactive companies to get their companies declared as 'dormant company under Section 455 of the Act by filing a simple application at a normal fee.

Details of CFSS 2020

The scheme shall come into force on the 01.04.2020 and shall remain in force till 30.09.2020

1) "Defaulting company" means company defined under the Companies Act, 2013, and which has made default in filing of any or the documents, statement, returns, etc including annual statutory documents on the MCA-21 registry
2) Immunity certificate"' means the certificate referred to in subparagraph (viii) of paragraph 6 of the Scheme;
3) Inactive Company" means a company as defined in Explanation (i) to sub-section (l) of section 455(1) of the Companies Act, 2013;

Applicability of CFSS 2020

Any 'defaulting company' is permitted to file belated documents which were due for filing on any given date in accordance with the provisions of this Scheme:

Immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any delay associated with the filings of belated documents.

Withdrawal of appeal, if any

Withdrawal of appeal against any prosecution lunched or the proceedings ror imposing penalties initiated:

before filing an application for issue of immunity certificate, withdraw the appeal against any prosecution lunched or the proceedings ror imposing penalties initiated and furnish proof of such withdrawal along with the application.

Application for issue of immunity under the CFSS

An application for seeking immunity in respect of belated documents filed under the Scheme in the Form CFSS-2020, after closure of the Scheme and after the document(s) are taken on file, or on record or approved by the Designated authority as the case may be but not after the expiry of six months from the date of closure or the Scheme. There is no fee payable on this Form.

Provided also that no immunity shall provide in case any court has ordered conviction in any matter, or an order imposing penalty has been passed by an adjudicating authority under the Act and no appeal has been preferred against such orders of the court or of the adjudicating authority.

Immunity certificate under CFSS-2020

Based on the declaration made in the Form CFS-S-2020, an immunity certificate in respect of documents filed under this Scheme shall be issued by the designated authority. - Scheme not to apply

This scheme shall not apply

⇒ to companies against which action for final notice for striking off the name u/s 248 of the Act (previously section 560 of Companies Act. 195j has already been initiated by the ROC.
⇒ where any application has already been filed by the companies for action of striking off the name of the company from the register of companies;
⇒ to companies which have amalgamated under a scheme of arrangement or compromise under the Act;
⇒ where applications have already been filed for obtaining Dormant Status under section 455 of the Act before this Scheme
⇒ to vanishing companies;
⇒ Where any increase in authorized capital is involved (Form SH7)
⇒ also charge related documents (CHG-I, CHG-A. CHG-8 and CHG-9);

Effect of Immunity

After granting the immunity, the ROC office shall withdraw the prosecution(s) and the proceedings of adjudication of penalties under section 454 of the Act, if any, in respect of defaults against which immunity has been so granted shall be deemed to have been completed without any further action.

Scheme for Inactive Companies

The defaulting 'inactive companies. while filing documents under CFSS•2020 can, simultaneously, either:

1. Apply to get themselves declared as Dormant Company under section 455 Of the Companies Act, 2013 by filing c-form MSC-I at a normal fee on said form; or
2. Apply for striking off the name of the company by filing e-Form STK-2 by paying the fee payable on form STK.2.

(For full Circular refer Last Page)

Company Laws Update's

Contributed by
CA Ronak P. Gada

LLP Settlement Scheme 2020

The Scheme has been introduced by means of following Circulars of Ministry of Corporate Affairs (MCA):

1. **General Circular No. 6/2020 dated 04th March, 2020** *("Old Scheme")* ***(w.e.f. 16th March, 2020 to 31st March, 20)***; &
2. **General Circular No. 13/2020 dated 30th March, 2020** *("Modified Scheme")* ***(w.e.f. 01st April, 2020 to 30th Sept, 2020)***.

The purpose of both these schemes is to reduce the compliance burden on the LLPs which have defaulted in filing of any of the statutory forms with the Registrar & hence giving a fresh start to the corporate world of the Country.

The attempt is being made to make all the readers understood the essence of law & that too in simplified manner so that the implementation of the same becomes easy.

{Please note that the provisions of Modified Scheme are covered only as the duration of Old Scheme is already over.}

Frequently Asked Questions (FAQs) on Modified LLP Settlement Scheme, 2020

Q. Who can avail this Modified LLP Settlement Scheme, 2020?

Any LLP which has failed or fails to file any mandatory form with Registrar till 31st August, 2020 may avail this scheme.

Q. When the defaulting LLP can avail Modified LLP Settlement Scheme, 2020?

The duration of the scheme is 01st April, 2020 till 30th September, 2020. So the defaulting LLPs need not to panic as sufficient time is available for them.

Q. Will there be any additional fee payable?

The defaulting LLP which avails the scheme has to pay normal fee only. No additional fee is payable on the delayed filing provided the filing is made till 30th September, 2020.

Q. Which forms can be filed under the Modified LLP Settlement Scheme, 2020?

The defaulting LLP can file any form which is due to be filed till 30th August, 2020 like:

1. Form-3 – Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein;

2. Form-4– Notice of appointment, cessation, change in name/address/ designation of a designated partner or partner and consent to become a partner/ designated partner;

3. Form-8 – Statement of Account & Solvency (Annual or Interim);

4. Form-11 – Annual Return of Limited Liability Partnership (LLP).

Q. Can any LLP which has already applied for Voluntary Strike Off by filing Form 24 apply for Modified LLP Settlement Scheme, 2020?

No, such LLP cannot avail the scheme.

Q. If any LLP doesn't avail the scheme, what will be the consequences?

The Registrar has been issued directions to take stringent actions against the LLPs who have not filed their due forms till 30th September, 2020. The consequences may be:

1. Normal fee payable on the forms;

2. Additional fee of Rs. 100 per day of default;

3. Action for Strike Off by the Registrar;

4. Prosecution for the Partners & Designated Partners etc.

The scheme announced is only a one-time relaxation for the defaulting LLPs to avoid their compliance burden & to give them a fresh start. All the LLPs which advertently or inadvertently have made any mistake in past need to rectify the same by availing this scheme. The purpose is to give the defaulting LLPs a fresh start but the moral, social, ethical & professional responsibility lies on the LLPs to ensure that no such mistake is repeated in the future.

(For full Circular refer Last Page)

Case Study Update's

Contributed by
CA Paras Kenia

Facts of the Case:-

Mr. R, the retiring partner had a balance of Rs.1,75,000/- which included his capital and accumulated profits less drawings. The Stamp Duty Value and the Fair Market Value of the Immovable and Movable Properties given to him is Rs.2,45,000/- and Rs.2,65,000/- respectively in lieu of his share in the net asset of the Firm. Discuss the applicability of 56(2)(x) of the Income Tax Act, 1961.

Opinion Sought:-

Whether the consideration received in the form of Immovable and Movable Property exceeding Capital Balance in the firm by Mr. R is taxable under section 56(2)(x) of the Income Tax Act, 1961? We can also analyse if the same is taxable under any other section if not under section 56(2)(x).

Understanding of the Case

Assessee Mr. R, on retiring from the Partnership Firm, getting Properties, the total value of which is 5.1lacs. Since, the value of consideration received by the assessee is more than the amount standing to his capital account at the time of retirement, whether any taxability arise under the Act is to be analysed.

Relevant Clauses of the Acts and Judicial Pronouncements

Section 2(24) of the Act defines 'income'. The definition of 'income' provided in section 2(24) although an inclusive definition, but it specifically provides the income which are intended to be taxed under the provisions of the Act. Even the income in the nature of capital gains as per section 45, and money or properties received without or inadequate consideration etc. as per section 56(2)(x) are included in the definition of income. Thus, under the Income Tax Act **only the receipts which are in the nature of 'income' are subjected to tax**.

Section 56(2) state that *"In particular and without prejudice to the generality of the provisions of sub-clause (1), the* ***following incomes*** *shall be charged to income tax under the head "income from other sources" namely ….."*

Section 56, thus clearly reiterates the law that **what are chargeable to tax under its provision are items of 'income nature'**.

In the instant case study the assessee has received Movable as well as Immovable Property worth 5.1lacs upon his retirement from the partnership firm. Basic question is whether the difference between the value of properties and capital balance shall be considered as income of the assessee. Secondly, if the same is considered as income, whether the same is taxable under section 56(2)(x) or does it amounts to transfer of capital asset in the form of transfer of right or interest in the asset of the firm subject to capital gain in the hands of the assessee.

The **Hon'ble Bombay High Court** while dealing with **Writ Petition** in the case of **Prashant S. Joshi vs. ITO (No.2287 of 2009)** along with **companion petition** in the case of **Dattaram Shridhar Bhosale vs. ITO (No.59 of 2010)** filed challenging the reopening of assessment which was opened believing the amount received by the assessee, being retiring partner, in addition to balance lying to his credit on the capital account has escaped assessment. The assessee claimed the said receipt as capital receipt exempt from tax. The High Court observed, explained and held allowing the petition after relying upon judgements given by Hon'ble Supreme Court as follows –

During the subsistence of a partnership, a partner does not possess an interest in specie in any particular asset of the partnership. During the subsistence of a partnership, a partner has a right to obtain a share in profits. On a dissolution of a partnership or upon retirement, a partner is entitled to a valuation of his share in the net assets of the partnership which remain after meeting the debts and liabilities. An amount paid to a partner upon retirement, after taking accounts and upon deduction of liabilities does not involve an element of transfer within the meaning of Section 2(47). The High Court relied on the decision of **Hon'ble Gujrat High Court in case of ACIT vs. Mohanbhai Pamabhai [1987] 165 ITR 166 (SC) 102** wherein it held that it is true that section 2(47) defines "transfer" in relation to a capital asset and this definition gives an artificially extended meaning to the term "transfer" by including within its scope and ambit two kinds of transactions which would not ordinarily constitute "transfer" in the accepted connotation of that word, namely, relinquishment of the capital asset and extinguishment of any rights in it. But even in this artificially extended sense, there is no transfer of interest in the partnership assets involved when a partner retires from the partnership. The rational for this is explained as follows -

"... What the retiring partner is entitled to get is not merely a share in the partnership assets; he has also to bear his share of the debts and liabilities and it is only his share in the net partnership assets after satisfying the debts and liabilities that he is entitled to get on retirement. The debts and liabilities have to be deducted from the value of the partnership assets and it is only in the surplus that the retiring partner is entitled to claim a share. ***It is, therefore, not possible to predicate that a particular amount is received by the retiring partner in respect of his share in a particular partnership asset or that a particular amount represents consideration received by the retiring partner for extinguishment of his interest in a particular asset****."* (The appeal against the judgment of the Gujarat High Court was dismissed by a Bench of three learned Judges of the Supreme Court.)

On the other hand, the **Hon'ble ITAT, Bangalore** in case of **Smt. Savitri Sudur vs. DCIT (ITA No. 1700/ Bangalore/2016 dated May 03, 2019),** dealing with taxability of amount received by retiring partner in consideration for relinquishment of all his rights, interest in the partnership firm as partner, discussed three different situations and taxability under each situation as follows-

- Retiring partner is paid on the basis of amount lying in capital account
- Retiring partner is paid on the basis of amount lying in capital account plus over and above the sum lying in capital account
- Retiring partner is paid lump sum consideration with no reference to the amount lying in capital account

It held that as far as situation (a) is concerned, there cannot be any dispute that there can be no incidence of tax and the principle laid down by the ***Hon'ble Supreme Court in the case of ACIT vs. Mohanabai Pamabai*** would continue to apply. As far as situation (b) & (c) are concerned, this situation has been subject matter of consideration in several cases and there is conflict of opinion amongst Courts on whether there would be incidence of tax or not. It further held that if the balance in capital account is enhanced on account of revaluation of the assets of the firm and accordingly the consideration is paid, then too no tax consequence arises as there is no prohibition on revaluation of assets of the firm and there are no tax incidence on revaluation of assets of the firm. The credit to the partners' capital account on revaluation cannot be looked at adversely. After considering the facts peculiar to case in hand the ITAT held that amount received in excess of capital balance plus goodwill shall be taxable as capital gain.

Before going to the conclusion, it is also important to understand the concept of income. The concept of 'income' must be understood both in its qualitative sense and quantitative sense. In a qualitative sense, it flaunts the characteristic of a 'gain' resulting to the assessee. In other words, the assessee must become monetarily better off by the transaction of receipt of property. In its quantitative sense, it is a 'measure' of the gain earned in terms of money. It is the 'income' in its qualitative sense that attracts the charge of income tax through the charging section 4 of the Income Tax Act. Once the income is so found chargeable, the next step is to get it measured under the computational provisions pertaining to each head of the income. This is the determination of income in its quantitative sense.

Conclusion

After considering various provisions of the act and the judgements given by ITAT and High Courts following conclusion can be drawn –

If the value of consideration received by the Mr. R is though in excess of amount of capital balance but is not more than his share of net asset of the firm, then there shall not be any taxability either as capital gain or income from other source as per the concept of income and decision of Bombay High Court.

If the terms of retirement of Mr. R are of nature which indicates relinquishment of any interest or right in the asset of the firm then the difference shall be taxed as capital gain as per the decision of ITAT, Bangalore

It is also important to note that section 56(2)(x) was not in existence for the assessment years for which the above decisions are given. So, in a case where consideration paid is more than the share of retiring partner in the net asset of the firm and also it can not reasonably be ascertained that the excess so paid is attributable to relinquishment of right or interest in any particular asset of the firm, Mr. R. can still claim the receipt of consideration as capital receipt exempt from tax and argue based on decision given by Hon'ble Bombay High Court in the case of **Prashant S. Joshi vs. ITO (No.2287 of 2009).**

Section 56(2)(x) is verbatim reproduction of section 56(2)(vii) and was introduced as a counter evasion mechanism to widen the scope of existing sections 56(2)(vii) and 56(2)(viia). A transaction which has been entered into in the normal course of business or trade, a transaction which is genuine in nature and which is subject to tax under other head of income is not covered under this section.

Case Study for the Month of April 2020

The Assessee has signed a development agreement way back in AY 2012-13 . As per the terms of the Development Agreement he is going to get 33% of the constructed area for Sale , PLUS He received Rs 10,00,000/- as cash consideration. However, no development took place till date because of the pending sanctions from government authorities. AO made full addition based on the fact that development agreement has taken place in FY 2011-12 . The Assessee has built a house in a village which comes under the gram panchayat from the proceeds of the Cash Consideration. The Assessee could not claim deduction available if any as the Assessment was u/s 144 R.W.S 147 You are going to appear before CIT A , How you will represent the Case ? What are the documents that you will produce before CIT A Discuss .

KEEP SOCIAL DISTANCE

Lockdown – a Curse or Boon

Corona, a word which has created havoc all over the world. All of us are going through a very tough phase with an option to take a decision regarding "Life" or "Economy". The decision which we have selected with an option that is "Life". Simultaneously we cannot ignore the other option at all but we have to find out the ways to help our economy directly or indirectly. We, the Chartered Accountants, are partners in nation building. Even though we cannot attend our offices, we can utilise the period for planning the pending work, jobs and tasks to be finished after lockdown is over. Let's narrate some of them.

I - Standardisation of Policies

1. Priority of work i.e. Audit/Taxation/GST
2. Leave policy for the articles & staff
3. Office Timings
4. Compensation for additional hours spent during audit period.
5. Bonus and medical assistance
6. Financial assistance to needy staff

II – Time Sheet Management

It can be prepared for each staff and article clerk with rate per hour according to grade/designation.

III – Reimbursement of Expenses

Framing the rules and regulations for reimbursement of expenses incurred on behalf of firm with proper sanctioning

IV – Audit Staff

Team of audit staff to be prepared considering the exam leaves well in advance whether it is bank audit, statutory audit, GST audit, tax audit, internal audit etc. headed by senior staff. Well designed audit program and checklists to be pre pared which may include:

1. Reporting time at clients' place
2. Dress code
3. Daily work sheets
4. Query list – solved and unsolved
5. Confidentiality of client's data

V – Checklists

1. Updating the audit checklists in view of new enactments, reporting requirements
2. Guidelines for preparation and filing online income tax, GST returns
3. Reconciliations of GST data with returns and books
4. List of documents/working papers to be obtained for statutory/tax/GST audit from client
5. Formats of engagement letters/management representations for audit/certification assignment
6. Record of UDIN
7. Format of letter for giving certificate regarding unaudited financial statements
8. Review of previous year's unintentional mistakes by staff so that it's not repeated again.

These are some illustrative tasks we can be ready with before the actual battle starts. Apart from the above, there are many webinars conducted by ICAI, WIRC, various branches and study circles. Let's invest our time in gaining knowledge for performing our professional duties to be the Real Partners in Nation Building. It is rightly said by John F. Kennedy that ***"The greater our knowledge increases, the greater our ignorance unfolds."***

Last but not the least, spend quality time with your family which we rarely do in our busy schedule.

Let's prepare ourselves for the battle before it begins.

Take good care of yourself and your family, stay home, stay safe.

"By failing to prepare, you are preparing to fail."

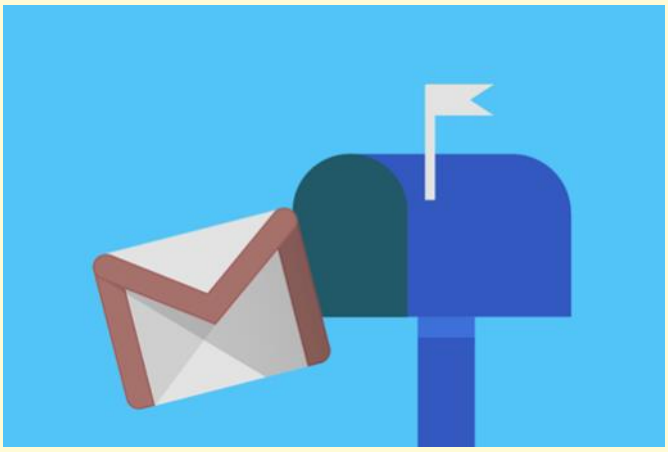
Benjamin Franklin

Contributed by

CA Parag S. Prabhudesai

Chairman of Newsletter Committee of Kalyan Dombivli Branch of WIRC of ICAI

Technique of the Month



Contributed by
CA Keyur M Gangar

Auto forwarding in the G-Mail Account

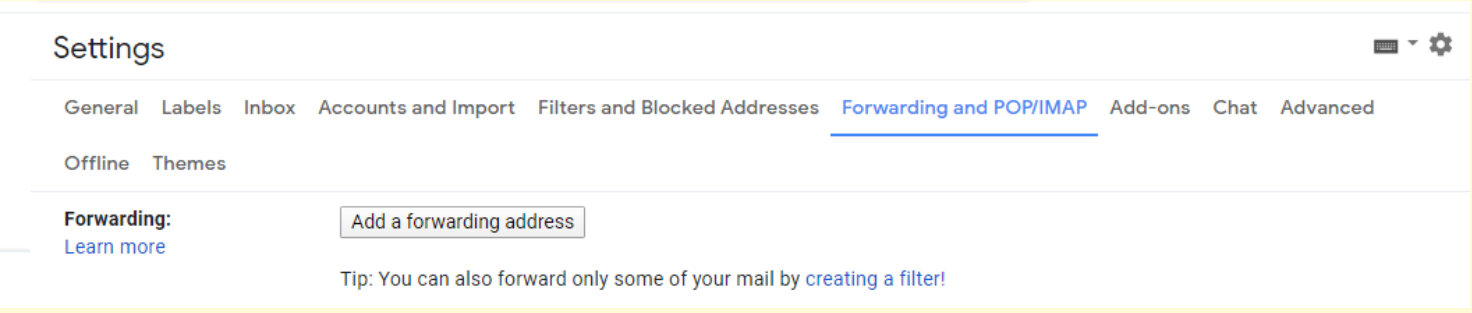
The problem we face as a Chartered Accountant, Non receipt of important mails from client. As the registered mail id is of client in various departments in which they receive different updations such as OTP, Intimation, Notices, Confirmation of forms submission, Acknowledgments etc on client mail id.

We can manage like this that even if the client receive 100 or 1000 mails but the specific mails which are from department to be Auto forwarded to us. For this specific setting is to be done in client mail id

Steps for Auto Forward : -

A. Add a Forwarding Address

1. Open Gmail using the account you want to forward messages from...i.e client (Registered mail id)
2. In the top right, click Settings .
3. Click Settings.
4. Click the Forwarding and POP/IMAP tab.
5. In the



"Forwarding" section, click Add a forwarding address.

6. Enter the email address you want to forward messages to i.e Specific CA (our) ID
7. A verifcation link will be sent to verify the permission for forwarding.just click the link for moving further.
8. Now Forwarding address has been added over here .We can add more than one email id also if required for Different sections or Department heads

B. If we want to forward all mails

1. If we want to forward all mails we can select "Forward a copy of incoming mail to" after that as shown in the above picture.

C. But in our case we require specific mails only to be forwarded i.e mails from the department

1. Once Forwarding address verified Go Back in Gmail Settings >Settings > Filters and Blocked address tab> Click Create a new filter
2. Enter the criteria for the email you'd like to forward in the box that pops up as shown in the above screen. To forward mail from a certain sender i.e intimations@cpc.gov.in , (enter that email address, name, domain, or any part of these) next to From. Select Create filter.
3. We can create filter with different perspective and options also as shown in picture such as to, subject, has the words etc
4. Select the box to the left of Forward it to, select the address to which you want these messages delivered from the drop-down list(only verified address) or add forwarding address from here, and select Create filter. Email matching the criteria you've set will now be forwarded to this address as soon as receives.i.e only mails From intimations@cpc.gov.in will be forwarded to CA Automatically
5. A red notice alert from Gmail Account will be shown on the top reading "Your filters are forwarding some of your email to email@domain.com. This Notice will end in 7 days."
6. Follow the same steps For GST, ROC ,Customs and other email IDs of Department and relaxed

E - Learning

Kalyan Dombivli Branch of WIRC of ICAI introduces its first ever

Lecture Series on key concepts of International Taxation

By CA Prerna Peshori and CA Vyomesh Pathak

Sr. No.	Particulars	Dates	Time (IST)
1	Basics of International tax	8-Apr-20	5 to 6.30 PM
2	Residency	11-Apr-20	5 to 6.30 PM
3	Sec. 195 TDS and Sec.163	15-Apr-20	5 to 6.30 PM
4	Article on Royalty & FTS	18-Apr-20	5 to 6.30 PM
5	Non-resident Capital Gains	22-Apr-20	5 to 6.30 PM
6	Business Connection Sec.9(1)(i)	25-Apr-20	5 to 6.30 PM
7	Permanent Establishment	29-Apr-20	5 to 6.30 PM
8	POEM	2-May-20	5 to 6.30 PM
9	Article on Dividends and Interest	6-May-20	5 to 6.30 PM
10	Foreign Tax Credit	9-May-20	5 to 6.30 PM
11	Transfer Pricing	13-May-20	5 to 6.30 PM
12	GAAR & BEPS Basics	15-May-20	5 to 6.30 PM

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