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

KALYAN DOMBIVALI BRANCH OF WIRC OF ICAI

eNews Letter

Maharashtra Assembly Elections 2019

Issue No. 9
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Josh : Joy of Sharing & Helping
Powered By Professionalism
Driven by Values

Seasons Greetings to the respected Members,

It's a pleasure to send this newsletter for December 2019. December is always a month of festivity and joy. Everyone is preparing for new calendar year, new resolutions are made and people get ready to welcome new year. As far as ICAI is concerned December is always marked as month of Conferences, Residential courses and Students Activities.

Kalyan Dombivli Branch has planned its activity calendar trying to include vibrance, creativity and learning combined together. In November 2019 branch organized industrial visit to Sahyadri Farms in Dindori. This is a multi-level farm producers company which has adopted innovative and hi-tech ways in collective pharming which ensures benefit and value addition to the Farmers as well as Company. 75 Students took benefit of an excellent visit.

Branch has organized two days CPE conference on 14th and 15th December 2019. The Conference is scheduled on Companies Act, Direct Taxes and Internal Audit. Eminent speakers like CCM CA Shriniwas Joshi, RCM CA Murtuza Kachwala, CA Bhadresh Doshi will deal with the topics of importance for members. Members are requested to kindly register for the conference in large numbers :

Corporate Law & Direct Taxes : https://forms.gle/pmC4oWTrFRhCRnkW9

Internal Audit : https://forms.gle/HsaM4rFBTLMmRwUK9

23rd and 24th December 2019 will be an historical day for our beloved branch. BOS has approved students conference for the first time to the Branch. Our branch is one of the largest branch and we believe the students of the branch will be benefited due to the Conference which provides an opportunity to develop and groom as a professional while pursuing CA degree. Eminent speakers who are great entrepreneurs, successful CAs, Business coach will be delivering sessions on various topics. Honorable president of ICAI, CA Deepak Ghaisas (Chairman of Gencoval Group), WIRC Chairperson and various dignitaries of ICAI will grace the occasion. Its an excellent opportunity for students which must not be missed. I sincerely request the members of the Branch to encourage the articles and students to register for the conference. I also request the members to kindly thrust upon the students importance of grooming and importance of such conferences and kindly support the students conference by helping large number of students registration. Registration for Students conference can be done on https://bosactivities.icai.org/ or Consolidated cheque can be collected by the WICASA Team from the offices. We are sure to make the conference a big success with your support for the branch.

In January Branch is planning to organize Mock Tribunal for the benefit of the members, especially those who look for the practice in the areas of litigation and appeals.

Branch also organized reach out program initiated by Deputy Commissioner of CGST Thane Rural, @ Agrawal College auditorium at Kalyan on 07/12/2019. The program was on new return scheme for GST returns to be introduced. The program was highly appreciated by stake holder and practicing CAs attending the program.

Our Newsletter committee is always taking great efforts to make the Newsletter more useful every time and I sincerely thank the contributors to the Newsletter and the Newsletter committee for the initiative. The case studies and opinions of the members has been highly successful and we request all the members to take active interest in providing their valuable opinions on the case studies which are published in newsletter for discussion.

I remain wishing you all a very happy time professional as well as personal in the month of December 2019. Looking for your kind support to the Branch activities and initiatives.

CA Saurabh S. Marathe

Chairman

Kalyan Dombivli Branch of WIRC of ICAI

I N D E X

Direct Tax Law Update's

(Contributed by CA Shekhar S. Patwardhan)

CBDT GUIDELINES

CBDT Issues Guidelines For Scrutiny Of Invalid Returns Selected Through CASS Cycle In AY 2017-18 F. No 225/333/2019

It has been brought to the notice of Board that notices under section 143(2) of the Income-tax Act, 1961 ('Act') were generated in respect of certain invalid returns of the Assessees filed for the Assessment Year 2017-18 through CASS Cycle 2018. As the scrutiny of such returns will pose a challenge for the AO and is bad in law, I am directed to state that Assessing Officers shall drop the proceedings u/s 143(2) of the Act in such cases and reopen the same by issue of notice under section 148 of the Act.

Direct Tax Law Update's

(Contributed by CA Ronak P. Gada)

FTS- 1275045/2019

Prescribing of certain electronic modes of payment under Section 269SU of the Income-tax Act, 1961-Invitation for application

1. In furtherance to the declared policy objective of the Government to encourage digital economy and move towards a less-cash economy, a new provision namely Section 269SU was inserted in the Income-tax Act 1961, *vide* the Finance (No. 2) Act 2019, which provides that every person having a business turnover of more than Rs 50 Crore shall mandatorily provide facilities for accepting payments through prescribed electronic modes.

2. Further, a new provision namely Section 10A was also inserted in the **Payment and Settlement Systems Act 2007**, which provides that no Bank or system provider shall impose any charge on a payer making payment, or a beneficiary receiving payment, through electronic modes prescribed under Section 269SU of the Income-tax Act 1961.

3. These provisions shall come into force with effect from 1st November, 2019. The Central Government proposes to prescribe certain electronic modes of payment for the purposes of Section 269SU.

4. Accordingly, applications are hereby invited from the Banks and Payment System Providers, operating an authorised payment system under the Payment and Settlement Systems Act 2007, who are willing that their payment system may be taken into consideration for being prescribed as an eligible electronic payment mode under Section 269SU of the Income-tax Act 1961.

5. The application shall be made in the format given below, and shall be duly signed by the authorised signatory.

Name of the Bank/payment system provider	Complete address	PAN	Details of license/ registration number to operate the payment system	Brief note/description on the payment system proposed to be prescribed u/s 269SU

Direct Tax Law Update's

(Contributed by CA Shekhar S. Patwardhan)

TRIBUNAL DECISIONS

ITAT DELHI

Agson Global PvtLtd Vs ACIT: ITA No 3741 TO 3746 : Section68, 69 CAY 2012-13 to 2017-18

Conclusion: -

68/ 69C: Bogus share capital + Bogus purchases: Photocopies of blank share transfer forms, blank signed receipts etc necessary for transfer of shares found with assessee are not admissible as evidence u/s 61 of Evidence Act and not incriminating in nature. On merits, all investors are assessed & have filed confirmations with trail of funds. AO did not make further inquiry into the documentary evidences or verify the trail of source of funds. As regards bogus purchases, the AO cannot blow hot & cold by disallowing the purchases from a party as bogus while treating sales to same party as genuine.

ITAT MUMBAI

Keva Industries Pvt Ltd Vs ITO : ITA No 1703 /MUM / 2019 : Section 56 (2)(viia)AY 2015-16

Conclusion: -

Section 56(2)(viia) cannot apply to a foreign company as Rule 11U(b)(ii) (prior to 01.04.2019) which defines "balance sheet" was not applicable to a foreign company. If the computation provisions cannot apply, the charging section cannot apply. The amendment to Rule 11U with effect from 1.4.19 is prospective in nature (B. C. Srinivasa Shetty 128 ITR 294 (SC), Palai Central Bank Ltd (1985) 1 SCC 45 followed)

ITATAMRITSAR

Bhagwati Colonizers Pvt Ltd Vs ITO : ITA NO 169 / ASr /2015 : Section 254

Conclusion: -

Condonation of delay of 571 days: Mistake of counsel may be taken into account in condoning delay. Claim that the delay was caused by Counsel not communicating the order has to be accepted unless it is shown that blame put on counsel is with malafide intentions in order to cover up mistake/lapse on the part of the assessee. As per human conduct and probabilities, a professional counsel cannot be expected to admit his lapses as it may affect his reputation. Also, if the appeal is adjudicated on merits, refusing to condone the delay is an error.

HIGH COURT DECISIONS

BOMBAY HIGH COURT

PCIT Vs Goa Coastal Resorts and Recreation Pvt Ltd : Tax Appeal No 24 of 2019 : Section 271(1) (c)

Conclusion: -

Levy of penalty u/s 271(1)(c) is not valid if (i) there is no record of satisfaction by the AO that there was any concealment of income or that any inaccurate particulars were furnished by the assessee or (ii) If the notice is issued in the printed form and the inapplicable portions are not struck off (Samson Perinchery 392 ITR 4 (Bom) & New Era Sova Mine [2019 SCC OnLineBom 1032] followed, Mak Data 358 ITR 593 (SC) distinguished).

Senior Bhosale Estate (HUF) Vs ACIT : CIVIL APPEAL NO 7637 of 2008

Conclusion: -

Condonation of delay of 1754 days: If the stand of the Applicant in the Affidavit that he had no knowledge about the passing of the order is not expressly refuted by the Respondent, the question of disbelieving the stand of the Applicant cannot arise. For this reason, indulgence should be shown to the Applicant by condoning the delay

International Taxation Update's

(Contributed by CA Prerna K. Peshori)

Does the current OECD/ Inclusive Framework project on taxation of the digitalized economy make less or more relevant the UN Model and its special features.

The United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries represents a compromise between the source principle and the residence principle, giving more weight to the source principle than the OECD Model Convention.

OECD/ Inclusive Framework project on taxation of the digitalized economy - The digitalisation has posed very serious issues for taxing digitalised economy and has raised global debates. Recently, in October 2019, OECD Secretariat has proposed Unified Approach under Pillar One for taxing the digitalised economy by suggesting three tier approach. However, the Unified Approach suggested by OECD is highly complex and subjective due to formulaic approach. Further, the same is being criticized for being complex and difficult to apply practically. Though it claims to increase the tax share of the market jurisdictions, however, it was being debated during public consultation that, the market countries would get limited share of pie in the overall taxes. Developing countries are generally market countries and "net digital importers" and therefore, it is imperative for the countries to have the fair share in taxing the digital economy. However, the current proposal by OECD Secretariat – Unified Approach to tax digital economy does not seem to solve issues of market jurisdictions and still favours resident countries. Therefore, the market jurisdictions are adopting unilateral measures. Though the UN Model (2017) attempts to strengthen the rights of the source jurisdiction by focusing by addressing BEPS concerns. However, the same is again majorly based on OECD Model (2017). The introduction of Article 12A in 2017 update is step in right direction as it addresses the base erosion concern for source countries. However, it becomes highly relevant that source based taxation of digitalised economy also finds the place in UN Model to answer longstanding claims of developing/market countries especially in the light of OECD's inability to provide for balanced solution and unilateral measures.

The OECD/G20 Inclusive Framework on BEPS - The OECD/G20 Inclusive Framework has 135 member nations who have taken active role in drawing up and implementation of the BEPS Action Plan. However, the work of the Inclusive Framework has been criticized as many of the developing economies were not involved for discussions during the working stages of the project and were just presented the final output. Nicknamed 'the rich man's club', the OECD is neither inclusive with regard to its membership nor operates in a political vacuum; its policies serve first and foremost the interest of the member countries. Critics therefore argue that the OECD is not the appropriate forum for discussions and decisions on international tax matters. The UN with a member strength of around 193 countries, through it's Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) with an inclusive approach, plays a significant part by bridging the gap between developing and developed economies' international tax

policies. However, despite the universal membership, the decision-making process within the UN itself has often been criticised for being 'undemocratic' as it presumably lacks electoral representation, principles of separation of powers, transparency and/or broad public participation.

Recommendations

UN as voice of developing countries: In an official response to the UN BEPS questionnaire, India criticised the OECD for addressing only the superficial BEPS issues while sweeping the real ones under the carpet and implored the UN to take action to 'prevent the international taxation rules from getting unjustly skewed in favour of the developed countries', and in particular 'to take the interest of the developing countries while carrying out work on BEPS'. There is, in fact, a growing recognition that despite the often very useful and usually technically strong contributions of the 30 -Member OECD in the tax area, the only truly global forum to discuss tax matters is the 193- Member United Nations. Therefore, irrespective of its past legacy, the UN Tax Committee can make amends by renewing itself. Further, With OECD being a rule setter, the UN tax committee can endeavour to be a primary tax dispute settlement body or can act also as a World Tax Court.

Revising PE definition to include Significant Economic Presence: Further, to address the claims of market countries for taxing digitalised economy, the UN Committee has an important role to play to develop a provision in the UN Model on a new nexus rule and a related profit allocation methodology to address the peculiarities of digital business models. Further, since UN Model protects the right of the source countries, it is suggested that the Committee may consider whether to modify the permanent establishment definition (Article 5) to include remote activities that involve intensive engagement by MNEs with market economies (e.g., by mobilization of contributions from users). Another approach could be to consider rules similar to those concerning taxation of passive income to allow source taxation of digital services (e.g., a new Article 12 B).

This would provide the greater taxing rights to the market jurisdictions/developing countries and the UN as an inter-governmental organisation could be a voice of the developing countries.

Indirect Tax Law Update's

(Contributed by CA Keyur M. Gangar)

Applicability of GST rate on Job work :

Services by way of treatment or processing undertaken by a person on goods belonging to another registered person will attract GST @ 12%.

Manufacturing services which are carried out on physical inputs (goods) owned by persons other than those registered under the CGST Act, 2017 will attract GST @ 18%.

Job work means any treatment or processing undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly.

[Source: Circular No. 126/45/2019-GST dated 22.11.2019]

Fully electronic refund process through GST – RFD-1 and single disbursement :

In order to make the process of submission of the refund application electronic, **Circular No. 79/53/2018-GST dated 31.12.2018** was issued wherein it was specified that the refund application in FORM GST RFD-01A, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of the refund application continued to be manual.

The necessary capabilities for making the refund procedure fully electronic, in which all steps of submission and processing shall be undertaken electronically, have been deployed on the common portal with effect from 09.2019.

The Circulars issued earlier laying down the guidelines for manual submission and processing of refund claims have been suitably modified and a fresh set of guidelines needs to be issued for electronic submission and processing of refund claims.

This Circular stipulate the modalities to be followed for all refund application filed in Form GST RFD-1 on common portal w.e.f. 26.06.2019, i.e., in relation to:

- Refund forms
- Deficiency memos
- Scrutiny of applications
- Re-crediting of electronic credit ledger on account of rejection of refund claims
- Application for refund of IGST paid on export of services and supplies made to SEZ
- Disbursal of refunds
- Refund of unutilized input tax credit
- Refund of tax paid on deemed exports guidelines for refund claim of Compensation Cess
- Zero rated supplies
- Refund of transitional credit
- Restrictions under Rule 96(10)
- Calculation of refund amount for claims of refund of accumulated input tax credit on account of inverted duty structure refund of TDS / TCS deposited in excess
- Debit of electronic credit ledger by using Form GST DRC-3
- Refund of IGST paid on exports etc

[Source: Circular No. 125/44/2019- GST dated 18.11.2019]

Optional filing of annual return under Notification No. 47/2019- CT dated 09.10.2019 :

Notification No. 47.2019-CT dated 09.10.2019 provided for special procedure for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under section 44(1) / Rule 80(1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the **Central Goods and Services Tax Rules, 2017**. It provided that the annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date for the financial year 2017-18 and 2018-19, in respect of those registered persons.

CBIC has issued certain clarifications to ensure uniformity in implementation of law, viz, :

(i) For persons paying tax u/s 10, the tax payers under composition scheme, may, at their own option file FORM GSTR-9A for the financial years 2017-18 and 2018-19 before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9A for the said period.

(ii) For persons paying tax u/s 51 or 52, the tax payers, may, at their own option file FORM GSTR-9 for the financial years 2017-18 and 2018-19 before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9 for the said period.

(iii) If any registered tax payer, during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit, he may pay the same through FORM GST DRC-03.

[Source : ***Circular No. 124/43/2019- GST dated 18.11.2019***

Migration Plan from J & K State to Union Territories :

As per Jammu and Kashmir Reorganization Act, 2019, the State of J & K has been divided between Union Territories, namely, UT of J & K and UT of Ladakh. Accordingly, CBIC notified the transition plan with respect to J & K reorganization w.e.f. 31.10.2019. It has prescribed a special procedure for those persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October, 2019 onwards. This special procedure is to be followed till 31st December 2019.

[Source : ***Notification No. 62/2019- Central Tax dated 26.11.2019]***

CBIC Notifications issued in respect of Jammu & Kashmir and Ladakh

Last date for filing Form GSTR-1 for the period July, 2019 to September, 2019 (Monthly) extended to 30.11.2019

[Source : ***Notification No. 57/2019- Central Tax dated 26.11.2019]***

Last date for filing Form GSTR-1 for the period October, 2019 extended to 30.11.2019

[Source : ***Notification No. 58/2019- Central Tax dated 26.11.2019]***

Last date for filing Form GSTR-7 (TDS) for the period July, 2019 to October, 2019 extended to 30.11.2019

[Source : ***Notification No. 59/2019- Central Tax dated 26.11.2019]***

Last date for filing Form GSTR-3B for the period July, 2019 to September, 2019 (Monthly) extended to 30.11.2019

[Source : ***Notification No. 60/2019- Central Tax dated 26.11.2019]***

Last date for filing Form GSTR-3B for the October, 2019 extended to 30.11.2019

[Source : ***Notification No. 61/2019- Central Tax dated 26.11.2019]***

Amendments in and Simplification of the annual return / reconciliation statement

- FORM GSTR 9: Table – 4 & 5 (Outward Supply): 4B To 4E can be filled net of Credit Notes, Debit Notes and Amendments, Instead of reporting in separately in 4I, 4J 4K & 4L;
- Table 5A to 5F can be filled net of Credit Notes, Debit Notes and Amendments, Instead of reporting in separately in 5H, 5I, 5J & 5KJ; In case of Table 5D, 5E & 5F (exempted, nil rated and Non-GST supply) – Single figure can be reported against EXEMPTED in 5D;
- Table 6 – ITC availed during the FY, In Table 6B, 6C, 6D & 6E the registered person can report the entire input tax credit under the "inputs" row only;
- Table 7 – ITC Reversal: Details of table 7A to 7E can be reported under 7H (Other Reversal); However TRAN I & II reversal has to be reported respectively;
- Table 8 – Other ITC related information: The registered person can upload the details for the entries in Table 8A to 8D (Reconciliation of GSTR 2A with GSTR 3B) duly signed, in PDF format in Form GSTR-9C (without the CA certification); Table 15, 16, 17 & 18 (HSN summary also) has been made optional
- FORM GSTR 9C: Some relaxation has been made in this form also which are as below: Detail of turnover adjustments required in Table 5B to 5N made optional and all the adjustment required to be reported can be reported in Table 5O;
- Table 12B, 12C and 14 (ITC reconciliation) has also been made optional; Some minor changes in Declaration part also.

*[Source : **Notification No. 56/2019- Central Tax dated 14.11.2019***

Due date extension of FORM GSTR-9 and 9C

CBIC has extended the due dates of filing annual return in Form GSTR-9 and reconciliation statement in Form **GSTR-9C** for F.Y. 2017-18 to December 31, 2019 and for F.Y. 2018-19 to March 31, 2020.

*[Source : **Order No. 08/2019-Central Tax, dated November 14, 2019]***

Indirect Tax Case Law Update's

(Contributed by CA Keyur M. Gangar)

Court Judgments

1. Delhi High Court – M.D.Overseas Limited v UOI :

Notification issued by DGFT restricting import of Gold coins published in Electronic Gazzete

Section 8 of the Information Technology Act

Notification dated 25th August, published on 28th August

- Notification restricting imports came into force with effect from the date and time when they were electronically printed in the Gazzete
- Restriction not applicable on goods imported on 25th August

2. Gujarat High Court – F S Enterprise v State of Gujarat :

Goods detained while in movement on the ground that the transport receipt was a photocopy and the details filled in the transport receipt were hand written

- Detention of transport vehicle on the ground of discrepancy in transport certificate, which is not a statutory requirement was not justified
- Taxpayer is not prohibited from supplying goods other than those mentioned in registration certificate as the details of only top five goods are required to be furnished in application for registration
- When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons

3. Madras High Court – Commissioner of CE v J S Jesudasan :

Monetary limits for Department to file appeals – Instruction dated 22.08.2019 issued by CBIC fixing such limit at Rs. 1 crore

- Monetary limit applicable not only to fresh cases but also to pending cases
- Appeal involving lesser amount dismissed as withdrawn and substantial question of law raised in the appeals left open

4. CESTAT Delhi - Accounts Officer, Madhya Pradesh Kshetra Vidyut Vitran Company Limited vs Commissioner :

Deduction from bills of service provider being penalty for delay in commencing the work, stopping the work or delay in completing the work

Deducted amount credited to 'miscellaneous income'

- Deduction out of already taxed amount cannot be subjected to tax again
- The amount deducted is not for any service rendered. Section 66E€ of the Finance Act, 1994 not attracted.

5. Delhi High Court – Linde AG v Dy Director of Income Tax

Tests for presence of Association of Persons (AOP)

- The fact that a third party is desirous to deal with the members as one consortium cannot be determinative factor in considering whether the members constitute an AOP for the purposes of being assessed for taxation.
- Acceptance of joint and several liability by members towards a third party, does not by itself lead to a conclusion that the said members had formed an AOP.
- A mere cooperation of one person with another in serving one's business objective would not be sufficient to constitute an AOP merely because business interests are common
- Mere obligation to exchange information, between independent agencies, for co-ordinating their independent tasks would not result in an inference that the agencies had constituted an AOP.

6. Delhi High Court – Khanwala Enterprises Pvt Ltd v UOI

Import of Gold coins – Foreign Trade Policy – CBIC circular conveyancing non-acceptance of Tribunal judgment and filing appeals there against

- It was completely impermissible for the CBIC to direct field formations to deal with consignments pending clearance at airports in accordance with the view of CBIC, rather than the orders of the Tribunal
- Gold coins are classifiable under TH 7118 9000 (Coins – Other) and not under TH 7114 1910 (Article of gold).
- Where an item is covered by an entry specific thereto, it has to be classified under the said entry and resort to all other entries would, ex facie, stand proscribed.

7. Kerala High Court – Kannangayathu Metals v Asst Sales Tax Officer

Detention of goods and vehicle for the reason of alternate route taken by the driver rather normal route

- There cannot be a mechanical detention of a consignment solely because the driver of the vehicle had opted for a different route, other than what is normally taken by other transporters

8. Supreme Court – Senior Bhosale Estate (HUF) v Asst Comm of Income-tax :

Condonation of delay of 1754 days in filing appeal – Sufficient cause – Taxpayers asserting on affidavit regarding absence of knowledge about passing of order subject to appeal

- Unless the fact asserted by the taxpayer regarding absence of knowledge is refuted by the Department, the question of disbelieving the stand taken by the taxpayer cannot arise
- The High Court should have shown indulgence to the appellants by condoning the delay

Case Study Update's

(Contributed by CA Paras D. Kenia)

Facts of the Case:-

Assessee invests the capital gain in the property situated outside India to claim the benefit u/s.54

Opinion Sought:-

Discuss the allowability of the claim of exemption under the provision of Income Tax Act, 1961

Understanding of the Case

The assessee has earned capital gain from transfer of a long term capital asset being property used for residence within the meaning of Section 45 of the Income Tax Act, 1961 and has claimed the exemption available u/s.54 of the Income Tax Act, 1961. The issue involved is whether the amount of capital gain invested in property situated outside India qualifies for exemption considering the conditions prescribed u/s.54 of the act.

Relevant Clauses of the Act

As per section 45 of the Income Tax Act, 1961 which is the charging section for capital gain, any profits or gains arising from the transfer of a capital asset effected in the previous year shall, **save as otherwise provided in sections 54**, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

As per section 54 of the Income Tax Act, 1961 where the assessee, being an individual or a Hindu undivided family (HUF), has within a period of one year before or two years after the date on which the transfer took place has purchased, or has within a period of three years after that date constructed, one **residential house in India**, then, in-stead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, the capital gain shall not be charged u/s. 45 if the amount of capital gain is equal to or less than the cost of the new asset.

The requirement of making investment only in India was inserted by an amendment to Section 54 of the Income Tax Act, 1961 by Finance (No.2) Act, 2014.

Analysis of the Legal Provisions supported by Case Laws

From the plain reading of section 54 as amended by Finance (No.2) Act, 2014 it is clear that :

1. The benefit is available only to an assessee being Individual or an HUF irrespective of residential status.
2. Investment shall be made to purchase or construct residential house which means new asset shall be residential house only.
3. Only residential house purchased within a period of one `year or after the period of two years from the date of transfer qualifies for exemption; and in case the assessee construct the residential house, the construction of house shall be completed within the period of three years from the date of transfer of capital asset.
4. Further as per the amendment made by Finance (No.2) Act, 2014, section 54 specifically requires that residential house purchased or constructed shall be situated in India only. So, with effect from assessment year 2015-16 a residential house purchased, acquired or constructed outside India do not qualify for exemption.

In the instant case study, the year in which the transfer of capital asset took place has not been mentioned and hence it is essential to verify the allowability of the benefits prior to this amendment. **The question here is whether the amendment made to insert the words "in India" is retrospective in nature or prospective in nature.**

A reference can be made to the case of **Vaijanthi Mahavir Oza vs. ITO (ITA No.5799/Mum/2017) before ITAT, Mumbai** wherein this issue was discussed at length. It was argued before the bench that words "in India" are intrinsically associated and automatically read with the charging sections. This was clarified by explaining the structure of the Income Tax Act and one example which is as under –

1. Section 4, which is a general charging section, provides for charge of Income Tax for the Total Income of the person.
2. Total Income has been defined in Section 5 to include not only income accruing or arising etc. 'in India', but also any income accruing or arising from whatever sources derived anywhere outside India in case of a 'resident', but in case of a 'non-resident', it only uses the words 'in India'. The impact of this is two-fold.
    a. First, section 4 gets inextricably and intrinsically linked to section 5,
    b and second, the charging sections under different heads get precluded from including the word 'in India' as it would prevent the charge of income accruing or arising from anywhere outside India in case of residents.
3. It is only by virtue of section 5 that the separation is made in case of residents and non-residents.
4. Both these sections i.e. section 4 and section 5 in turn are linked with section 14 of the Act, which provides that there has to be a separate charge for income classified under each of the five heads of income and also for computation of 'total income'. The Computation of total income is to be made in accordance with provisions contained in Chapter IV of the Act. In this regard, section 14 provides that unless it is provided otherwise, all income shall, for the purposes of charge of income tax and computation of total income, be classified under the heads of income 'salaries', 'income from house property', 'profits and gains of business or profession', 'capital gains' and 'income from other sources' only. Thus, section 14 also links charge and total income together, thereby bringing section 5 into play.

5. For the better understanding of Section 5 the same is reproduced here below-

> *"5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—*
> *(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or*
> *(b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or*
> *(c) accrues or arises to him outside India during such year :*
> *Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.*
> *(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—*
> *(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or*
> *(b) accrues or arises or is deemed to accrue or arise to him in India during such year."*

6. On careful reading of condition of Section 54 it is clear that if new asset is transferred within a period of three years of its purchase or construction, then for the purpose of computing capital gain on transfer of **such new asset**
   - cost of new asset shall be taken as *nil* in case the amount of capital gain is grater than cost of new asset; or **...Sec 54(1)(i)**
   - cost of new asset shall be reduced by the amount of capita gain if the capital gain is equal to or less than the cost of new asset **…Sec 54(1)(ii)**

7. As has been mentioned above, section 45, the charging section in case of capital gains, deems such income to be the income in the previous year in which the transfer of capital asset takes place, Section 54(1) qualifies and modifies this charge.

8. Example

   Taking the case of a non-resident who has sold residential house in India and purchased or constructed a new residential house outside India, and sells the same **within the period of three years,** the implication of condition of section 54(1)(i) / 54(1)(ii) would be to extend the jurisdiction of the Income Tax Act, 1961 over a non-resident on transfer of a capital asset in form of an immovable property situated outside India for purpose of charging income under the head capital gains and also providing for its cost of acquisition to be reduced by capital gains arising to the non-resident from transfer of property situated in India.

   However, as mentioned above, **the conjoint reading of section 4 with section 5(2) of the Act strictly prohibits this action and is abhorrent to this idea** as according to section 5(2), which deals with income of non-resident, only income accruing or arising in India can be taxed in India. In the above example, because of section 5(2), the capital gain on transfer of new asset situated outside India can not be taxed in India making the conditions of section 54(1) meaning less which would not be the idea or intent of the legislature. When we import the provisions of section 5(2) into section 54 read with section 45, it becomes evident that the application of section 54 in case of non-residents can only be made when the new asset is purchased or constructed in India. Then only can the conditions imposed in section 54 be applied jurisdictionally and be given effect to. This anomaly can be done away with only if the words "in India" are read into section 54 read with section 45 on account of provision of section 5(2) of the Act in case of non-resident.

9. Accordingly it was agued that when Finance (No.2) Act, 2014 inserted the words "in India" into section 54(1) the insertion was only of clarification in nature. It was further argued that when any amendment is curative in nature or it is done to remedy unintended consequences and to make the provision workable, it could be read as retrospective in operation to give effect to the section as a whole and hence benefit of section 54 shall not be given in case the new asset is purchased or constructed outside India even though the transfer of capital asset took place prior to this amendment.

   Hon'ble Gujrat High Court in case of **Leena Jugalkishor Shah v. ACIT reported in (2017) 392 ITR 18 (Guj)** involving issue of investment outside India for the purpose of section 54F held that when the language of a taxing provision is ambiguous or capable of more meanings than one, then the court has to adopt the interpretation which favours the assessee. Further, when section is clear and unambiguous, there is no scope for importing into the statute the words which are not there. Such importation would be not to construe but to amend the statute. If there is any defect in the Act, it can be remedied only by the legislation and not by judicial interpretation.

The ITAT, Mumbai in case of **Vaijanthi Mahavir Oza vs. ITO,** after considering Memorandum to Finance Bill (No. 2) of 2014 and CBDT Circular on above issue, held that since decision of Hon'ble Gujarat High Court in the case of of Leena Jugalkishor Shah(supra) is available, wherein the issue of allowability of claim of deduction u/s 54F with respect to investment made in a residential property situated out side India has been decided in favour of the tax-payer, we are bound to follow the aforesaid decision of the Hon'ble Gujarat High Court as the tribunal being All India body being inferior to Hon'ble High Court is bound by the Hon'ble Jurisdictional High Court decision and in case where their is no decision available of the Hon'ble Jurisdictional High Court , then the tribunal is bound to follow the solitary decision available of Non Jurisdictional High Court. Accordingly the amendment is held to be prospective to be applicable from AY 2015-16 and subsequent years only.

Conclusion

From the above discussion, assuming the assessee being individual or HUF and that the property situated outside India is residential house, it can reasonably be concluded that if the assessee has transferred the long term capital asset during the assessment year 2015-16 or any subsequent assessment years, exemption contained in section 54 is not available. If the long term capital asset has been transferred prior to assessment year 2015-16 the exemption contained in section 54 is available to the assessee.

Case Study for the Month of December 2019

The Assessee is a builder developer. On 1.4.2007 he enters into a MOU to Sale all the Flats in a building which he is constructing to a company . Company pays him an advance of Rs 15 Lacs . However later on a dispute arose between the Assessee and the company over the payment terms and the entire work gets stuck .Then after the gap of 7-8 years an agreement happens between the company and Assessee to Sale the Flats .This particular agreement gets registered after 2 years and in the same year the Assessee receives the balance consideration as well (After adjusting the advance of 15 Lacs as stated above). Give your opinion

1. The year of Taxability for the Builder Developer
2. Applicability of 50 C

Photo Gallery : Industrial Visit

ELECTION SCHEDULE: MAHARASHTRA

CA STUDENTS' CONFERENCE

Path for Success : Learn, Adapt and Accelerate

❖ ORGANISED BY ❖
BOARD OF STUDIES, ICAI

❖ HOSTED BY ❖
KALYAN-DOMBIVLI BRANCH
OF WIRC OF ICAI

TAKEAWAYS FROM STUDCON 2019, CA STUDENTS' CONFERENCE

- Action Packed Days filled with exactly what your Personality Needs.
- Break the Monotony of Mondays, Get a Perfect blend of Motivation and Knowledge.
- It's said that Old ways never open new doors, Expand your horizon by listening to some eminent personalities.
- Get to share the space and network with like minded people.

Date : 23rd and 24th December, 2019

Venue : Savitri Bai Phule Auditorium,
Near KDMC Sports Complex, MIDC, Dombivli (E)

23rd December 2019

TIME	PARTICULARS
8.00 to 9.30 am	Registrations & Breakfast
9.30 to 10.30 am	Inaugural Session
10.30 to 11.30 am	**Special Session : I** Board of Studies Presentation and Interaction
11.30 to 12.45 pm	**Technical Session : I** **Paper Presentation** (i) GST- Recent Amendments and way ahead (ii) Input Tax Credit and Reverse Charge Mechanism in GST (iii) Refund in GST **Session Chairman : CA Manish Gadia (RCM)**
12.45 to 1.45 pm	**LUNCH**
1.45 to 3.00 pm	**Technical Session : II** **Paper Presentation** (i) Direct Tax- Recent Amendments (ii) Changes in Corporate Tax Rate & implications on MAT Credit (iii) Presumptive Taxation under Income Tax Act **Session Chairman : CA Nihar Jambusaria (CCM)**
3.00 to 4.00 pm	**Special Session : II** Capital Markets & Opportunities for creating / wealth. **Speaker : Amit Mahajan**
4.00 to 4.30 pm	**High Tea**
4.30 to 5.15 pm	**Special Session : III** Ethical Values in Profession **Speaker : CA Chandrashekhar Vaze**
5.15 to 6.00 pm	**Motivational Session : I** Success Story of The Booklet Guy **Speaker : CA Amrut Deshmukh**

ELIGIBILITY CRITERIA

1. **Students who have registered as IPCC/Intermediate students.**
2. **Students who are pursuing their Articleship Training.**
3. **Students who have completed their Articleship Training but could not qualify their Final Examination and one year has not elapsed from the date of completion of Articleship Training.**

24th December 2019

TIME	PARTICULARS
8.30 to 9.30 am	Breakfast
9.30 to 10.30 am	**Special Session : IV** Ocean of Opportunities for CAs. **Speaker : CA IRS Sarika Jain**
10.30 to 11.45 am	**Technical Session : III** **Paper Presentation** (i) Technical Vs Technological knowhow for CAs (ii) Blockchain & Changing Role of CAs **Session Chairman : CA Murtuza Kachwala (RCM)**
11.45 to 12.45 pm	**Open House Session : I** Debate : Indian Economy 2020 and Future
12.45 to 1.45 pm	**LUNCH**
1.45 to 3.00 pm	**Technical Session : IV** **Paper Presentation** (i) Reporting of Fraud-Recent issues in Banking Sector (ii) Artificial Intelligence and Changing Role of CAs **Session Chairman : CA Shriniwas Joshi (CCM)**
3.00 to 3.45 pm	**Open House Session : II** Mock Scrutiny **Session Chairman : CA Shekhar Patwardhan**
3.45 to 4.15 pm	**High Tea**
4.15 to 5.00 pm	**Motivational Session : II** **Speaker : Bharat Jethani**
5.00 to 6.00 pm	**Selection of Best paper and Valedictory Speech**

DRESS CODE

1. **Formal dress code should be followed both for boys and girls respectively. (Jeans and T-shirt not allowed)**

2. **The Board of Studies shall provide the CA student with a badge and a tie/scarf; the same to be worn compulsorily during the conference.**

Please note that participant who is not following the dress code shall not be allowed to attend the conference.

Kalyan–Dombivli CA Students' Conference
#StudCon 2019


CA Prafulla Chajjed
President, ICAI


CA Deepak Ghaisas
Chief Guest


CA Kemisha Soni
Bos Chairperson, ICAI


CA Durgesh Kabra
Bos Vice-Chairman, ICAI


CA Shriniwas Joshi
Central Council Member


CA Priti Savla
WIRC Chairperson

SPEAKERS


CA Chandrashekhar Vaze


CA IRS Sarika Jain


Bharat Jethani


Amit Mahajan


CA Amrut Deshmukh

CA Saurabh Marathe
Chairman
Kalyan Dombivli Branch of WIRC of ICAI

CA Kiran Gangwani
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Prathamesh Karale
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Dhuni Jain : 7276273716
Vipinkumar Kanojia : 9768136416

Fees: Rs 600/- (Inclusive of Study Kit, Breakfast, Lunch & High Tea)
For Registration visit Kalyan Dombivli Branch
Online Registration at : www.bosactivities.icai.org
Cheque / DD to be drawn in favour of "Kalyan Dombivli Branch of WIRC of ICAI"