



WISH YOU A VERY HAPPY NEW YEAR TO  
RESPECTED MEMBERS

It's a pleasure to share this newsletter to you which is full of extremely informative topics and articles which will surely be of great value to the users. A budget synopsis which was extremely well created by CA Utkarsh Mehta is the highlight of the newsletter. This Union Budget 2020 was very crucial by all means and it has lot of provisions which will have impact on economy as well as profession of Chartered accountants. Hence, we have tried to have a summary of important factual aspects of budget for better understanding of the users of the newsletter. Apart from that we have direct tax updates from past chairman CA Shekhar Patwardhan, Updates on GST law and also case study as we have introduced few months ago.



This Newsletter will be the last newsletter by me as Chairman of the beloved Kalyan Dombivli Branch of WIRC. I really feel honored that I could get this opportunity to head the Branch for 2019-20 and could do my bit for the betterment of the Branch and thereby Members and Students. I want to express my gratitude towards my managing committee for having faith in me and supporting wholeheartedly to all the steps and efforts taken during the year. Also a big thank you to all my past Chairmen for providing me a great platform, to all the faculties for sparing time for the branch, to seniors for guiding us, to WICASA and Students for participating enthusiastically in all endeavors of the Branch, Staff of the Branch for their continuous efforts, members of various committees, auditors of the Branch for their guidance and most importantly WIRC and Central council for their valuable support and guidance.

I am lucky to have very young managing committee and though my colleagues in the committee were elected for the first time to the Branch, they have really put in great efforts to steady the progress of the Branch and to chalk out the future journey of the Branch for the entire term.

During the year we could start the Orientation Batches at all possible locations under the Branch, we could organize regular MCS and ITT and Advance ITT courses to full capacity. We were able to get the new IT Hardware for the ITT center which was pending since many years. We organized mega Students Festival as well as Students Conference during the year. Students conference was the biggest event of the year and it was first ever conference under the Branch. We were lucky to have Hon'ble president to inaugurate the same. Even though it was the first conference it witnessed a very good participation. It also had participation from paper presenters from Ahmedabad, Hyderabad and Pune.

### Managing Committee

**CA Saurabh S. Marathe**

Chairman

**CA Ankit R. Agarwal**

Vice Chairman

**CA Jeetu A. Ramrakhiyani**

Secretary

**CA Mayur K. Jain**

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**CA Kiran R. Gangwani**

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**CA Kaushik Z. Gada**

Committee Member

**CA Parag S. Prabhudesai**

Committee Member

### Newsletter Committee

**CA Parag S. Prabhudesai**

Chairman

**CA Jeetu A. Ramrakhiyani**

Convener

### Members

**CA Shekhar S. Patwardhan**

**CA Rohan R. Pathak**

**CA Amit A. Mohare**

**CA Keyur M. Gangar**



Feedback from students says that conference was extremely well organized in terms of choice of topics, speakers and time management. We are extremely happy that the branch has started with Students Conference and in coming years will take it to a great height. Branch is thankful to the Board of Studies and Central council as well as WIRC for all the support extended to us. I also appeal to the members to not only encourage but pursue your articles and students to participate in such event in future as well.

Apart from this, Mock tests witnessed rise in the participation we also conducted crash courses targeting specific issues faced by the students. Branch also conducted unique programs on Internal Audit, sessions on composition scheme for Builders under GST, Corporate Law, RRCs for Members as well as Students, DISA course, Sports Day for members and students, Industrial visits and much more. We are also working on Branch proposal for Land from KDMC and I can say confidently that we are very close to get the possession of the Plot very soon. Apart from that the proposed reading room & ITT center at Ulhasnagar also will be materialized very soon.

There are many things which are planned for the term by the committee and I am sure we will accomplish all of them not immediately but definitely. The Institute and the Branch is perpetuity and we are here merely to take the baton from our seniors, run our course and pass it on to the next in line. I am very confident that the incoming office bearers of the Branch will work with great energy and vision and our branch would progress to great heights in coming years.

Branch is organizing its sports day on 09/02/20 at Kalyan. Details of the same are shared by social media, members and students are appealed to take active part in the same. Branch also has organized a public meeting on union budget on 10/02/20 @ Shubhamangal hall at 6.30 pm, Shri. Chandrashekhar Tilak VP of NSDL will address the meeting. Branch is also participating in Dombivli Pride run organized by the rotary club of dombivli west on 01/03/20. Funds raised from run will be used to make a school at shahapur independent of water supply. We appeal to members and students to participate in the run and support the cause. Branch is also planning felicitation of the newly passed CAs this month.

As always, this newsletter is highly useful for members and practicing members in particular. Our Newsletter committee has taken great efforts to compile yet another value adding news letter for you. I am sure that you would be of same opinion on reading the Newsletter. I urge members to contribute towards the News letter and share your expertise with members.

I remain wishing you a great time ahead.

CA Saurabh S. Marathe

Chairman

Kalyan Dombivli Branch of WIRC of ICAI





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## **Direct Tax Case Law Update's**

(Contributed by CA Shekhar S. Patwardhan)

### **TRIBUNAL DECISIONS**

#### **ITAT DELHI**

**Clearview Healthcare Pvt Ltd Vs ITO : ITA No 2222/ Del / 2019 : Date of Publication 11<sup>th</sup> January 2020 : Sec 56(2) (Viib) AY 2014-15**

#### **Conclusion: -**

S. 56(2)(viib)/ Rule 11UA: The legislative intent is to apply s. 56(2)(viib) where unaccounted money received in garb of share premium. The AO has not made out a case that stated money is not clean money. Also, the assessee has given approved valuer (CA) report justifying share premium raised based on valid and prescribed method being DCF and said report is in accordance with ICAI norms. AO has not countered the said report by substitute valuation. Also, if the shares are sold in next FY at much higher amount, the premium cannot be said to be excessive (Lalithaa Jewellery 178 ITD 503 (Chennai) followed)

#### **ITAT JAIPUR**

**Krish Homes Pvt Ltd Vs ITO : ITA No 237 /JP / 2019 Date of Publication 11<sup>th</sup> January 2020 : Section 147, 148, 263 AY 2013-14**

#### **Conclusion: -**

If the AO has incorrectly or erroneously applied law and income chargeable to tax has escaped assessment, the Revenue should resort to s. 263 and revise the assessment and not reopen u/s 147. When matter was referred to the CIT for seeking approval, instead of holding that the matter falls u/s 263 and not u/s 148, has given approval u/s 151 which shows non-application of mind and mechanical grant of approval. Therefore, the assumption of jurisdiction u/s 147 cannot be sustained and is held as invalid in eyes of law.

#### **ITAT RANCHI**

**Bajrang Lal Naredi Vs ITO : ITA NO 327 /Ran /2018 : Date of Publication 25<sup>th</sup> January 2020 : Section 56(2)(viib)**

#### **Conclusion: -**

The amendment w.e.f AY 2014-15 will not apply to a purchase transaction of immovable property for which full consideration is paid pre the amendment. Mere registration at a later date will not cover a transaction already executed in the earlier years and substantial obligations have already been discharged and a substantive right has accrued to the assessee therefrom. The Revenue is debarred to cover the transaction where inadequacy in purchase consideration is alleged (ii) Interest u/s 234A & 234B is chargeable with reference to the returned income and not the assessed income.

#### **ITAT Bangalore**

**Rajagumar Subramani Vs ITO : ITA NO 2015 /Bang /2019 : Date of Publication 18<sup>th</sup> January 2020 Section 54F**

#### **Conclusion: -**

S. 54F: The words "in India" cannot be read into section 54F when Parliament in its legislative wisdom has deliberately not used the words. The assessee is entitled to exemption under section 54F of the Act though he has acquired house property in a foreign country. The amendment to Sec. 54F by the Finance Act, 2014 w.e.f. 2015 is applicable only prospectively





## **HIGH COURT DECISIONS**

### **BOMBAY HIGH COURT**

**P.P.Mahatme Vs ACIT : Tax Appeal No 4 OF 2012 Date of Publication 11<sup>th</sup> January 2020 : Se 2(47) , 45,48**

#### **Conclusion: -**

Capital Gains from Family Arrangements: A family settlement which is a settlement amongst family members in the context of their 'pre-existing right' is not a "transfer". Such a settlement only defines a pre-existing joint interest as a separate interest. However, if there is no pre-existing right, the family arrangement constitutes a "transfer". Merely because dispute involved some family members and such dispute is ultimately settled by filing consent terms, the same cannot be styled as a family arrangement or family settlement so as to hold that the consideration received as a result of such settlement, does not constitute capital gain.

**PCIT Vs Pinaki D. Panani : Tax Appeal No 1543 OF 2017 Date of Publication 18<sup>th</sup> Jan 2020 : Section 68 ,69C**

#### **Conclusion: -**

S. 68/ 69C Bogus purchases: Even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed. As the AO did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated (Mohommad Haji Adam & Paramshakti Distributors followed)





## **International Tax Case Law Update's**

(Contributed by CA Purna K. Peshori)

### **Deemed Residency – a Nightmare to Stateless Individuals**

Budget 2020 yesterday created panic amongst NRI community by proposing that an Indian citizen who is not liable to tax in any other country or territory, is deemed to be a resident of India. Indian residents have to pay tax on their global income in India.

Many countries like Bahamas, The British Virgin Islands, Brunei, Cayman Islands, Monaco, Oman, Turks and Caicos, Vanuatu and UAE have zero personal taxation. The NRIs in these countries were especially workforce of UAE were fearful that the amendment will hit them hard and their global income will be taxable in India. However, the provision is being directed against the nomadic or stateless person who try to take citizenship of tax haven countries and they spend their days in various countries in such a way that they are not resident of any country. Therefore, the provision aims to deem such stateless persons as deemed Indian resident.

The provision was being interpreted to mean that individuals who are not liable to tax in their home country will be deemed to be resident of India.

Thanks to the welcoming clarification soothing the frayed nerves by providing that new provision is not intended to include in tax net those Indian citizens who are bonafide workers in other countries. The press release clarifies that the rumours and misinterpretation of the provision 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”.

The press release provides that Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession.

### **The following issues emerge as to whether:**

1. If the business or profession is carried out in India the same will be taxed if there is business connection or PE in India under DTAA. That shall be taxable even when the person is non-resident. If the income earned outside India is not to be taxed then the deemed resident provision would not change the situation. Further, the person can come out of tax net through DTAA tie-breaker rule.
2. If he is deemed resident does he has liability to declare foreign assets in ITR?
3. Further, what if a person has exempt income or he has losses, 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.
4. Further, the global income of the resident is taxable as per Sec.5. So therefore the amendment need to be carried out in Sec.5 so as to carve out an exception for such Indian citizens deemed as resident of India.

It is expected that the Government should provide the necessary clarifications.



## **Indirect Tax Law Update's**

(Contributed by CA Rohan Pathak)

Various Notifications/Circulars issued in the month of January-20 are summarized as follows:

### **Notification No. 01/2020-Central Tax dated 1 January 2020**

This Notification makes applicable certain provisions of the Finance Act, 2019 w.e.f. 1 January 2020.

#### **Section 49 (Intra-head adjustment in Electronic Cash ledger)**

As per the amendment, any amount outstanding in the electronic cash ledger may be transferred to any other head in CGST, SGST and IGST in the electronic cash ledger and such transfer shall be deemed to be a refund under the Act. This adjustment is a welcome step as in many cases amount deposited under the wrong head had to be deposited again and the amount wrongly deposited had to be claimed as refund from the GST authorities.

### **Notification No. 02/2020 – Central Tax dated 01st January, 2020**

Amendments to CGST Rules, 2017 to prescribe a schema for e-invoices which has been made optional from 01.01.2020.

### **Notification No. 05/2020-Central Tax dated 13<sup>th</sup> January, 2020**

CBIC authorises following as Revisional Authority under section 108 of **Central Goods and Services Tax Act, 2017**

- (a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
- (b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.

### **Circular No.131/1/2020-GST dated 23 January 2020**

Under the GST regime, several cases of monetization of fraudulent input tax credit have been observed. In such cases, it was often found that the exporters were non-existent at the addresses provided. It was also observed that these exporters were claiming ITC on the basis of fake invoices and were using this ITC to pay tax on exports which was later claimed as refund at the time of filing the GST returns. To curb this menace of fraudulent GST refunds CBIC has, through the captioned Circular, introduced the following Standard Operating Procedure (SOP) to be followed by exporters:

1. At the outset, the Board through tools of Artificial Intelligence and Data Analytics, shall select a small percentage of exporters for further verification. Till the verification is complete, the refund scrolls with respect to such exporters shall be kept in abeyance and their export consignments shall be subjected to 100 % examination at the customs port. Further, the jurisdictional CGST or Customs authorities of the concerned exporter shall inform him at the earliest to avoid any inconvenience to the genuine exporter. The concerned exporter, on being informed or his own volition, shall furnish certain information in the Format as per Annexure-A to the circular.
2. On the basis of the information furnished, the Jurisdictional CGST authorities shall complete the verification procedure within 14 days, failing which it has to be brought to the knowledge of nodal cell constituted in Pr. Chief Commissioner / Chief Commissioner Office.
3. After completion of 14 days from the date of submission of information to the jurisdictional CGST authorities, the exporter may escalate the matter to the Chief Commissioner by sending him an email concerned (email ids of the jurisdictional Chief Commissioner given in Annexure-B to the circular). The jurisdictional Pr. Chief Commissioner / Chief Commissioner shall get the verification procedure completed within the next 7 working days.



4. In any case, where the refund remains pending for more than a month, the exporter may file a grievance at [cbic.gov.in/issue](http://cbic.gov.in/issue) by giving all the relevant details like GSTN, IEC, Shipping Bill no., Port of Export and CGST formation where the details in the prescribed format of Annexure-A were submitted by the exporter. These grievances shall be resolved by a Committee headed by Member GST, CBIC.

## **Key Budget 2020 Update's**

(Contributed by CA Utkarsh Mehta)

### **Proposals: - Income Tax Act, 1961 ('the Act')**

- ⇒ Rate of Income Tax of Individual or HUF
- ⇒ Rate of Income Tax for Others
- ⇒ Rationalization of Provisions for Start-up
- ⇒ Modification in Due Dates
- ⇒ Business and Profession & Capital Gains
- ⇒ Taxability of Dividend
- ⇒ Residential Status
- ⇒ Taxation of Non-Residents
- ⇒ Tax Withholding (Tax Deducted at Source and Tax Collected at Source)
- ⇒ Deduction under Chapter VI-A
- ⇒ Miscellaneous Provisions

### **Proposals: - Goods and Services Tax (GST)**

Kindly Note that these are proposals and not final enacted provisions. These are subject to modification and yet to receive assent of President of India.

## **A) Rate of Income Tax**

### **Individual / HUF**

- ⇒ For Individuals / HUF a new tax regime has been introduced under section 115BAC.
- ⇒ Comparison of tax rate under Existing & New Tax Regime–

*There is no change in the rate of Surcharge and Education Cess.*





Total Income slab	Existing Tax Regime	Optional and New Tax Regime
Upto 2,50,000	Nil	Nil
From 2,50,000 to 5,00,000	5%	5%
From 5,00,001 to 7,50,000	20%	10%
From 7,50,001 to 10,00,000		15%
From 10,00,001 to 12,50,000	30%	20%
From 12,50,001 to 15,00,000		25%
Above 15,00,000	30%	30%

### Important Points for New Tax Regime are:

⇒ Opting of New tax regime:

- ⇒ Individuals / HUF having no business income, can every year analyze and pay tax either under Old regime or New regime.
- ⇒ Individuals / HUF having business income can exercise option of new tax regime in any previous year. Once the option is exercised, it shall apply to all subsequent assessment years and it cannot be withdrawn.

⇒ Under new tax regime, Hon'ble Finance Minister has proposed to remove around 70 exemptions and deductions. Certain important exemption / deductions which are no allowed to be claimed under New tax regime are specified below:

- ⇒ Leave Travel Concession (LTA), House Rent Allowance (HRA), Standard Deduction of Rs 50,000, Deduction of interest for Housing Loan for Self-occupied Property, any exemption or deduction for allowances/perquisite by whatever name called, Chapter VI A deductions like 80C, 80D, 80DD, 80DDB, 80E, 80G etc.
- ⇒ Brought forward Loss or Depreciation will not be allowed to be set-off if such loss or depreciation is attributable to any of the deductions which are removed in new regime.
- ⇒ House property loss cannot be set off with any other head of income
- ⇒ Depreciation can be claimed however, additional depreciation cannot be claimed under new tax regime.
- ⇒ Alternate Minimum Tax (AMT) shall not apply to Individual or HUF opting for new tax regime. Further, provisions relating to carry forward and set off of credit of AMT, if any, shall not apply to such Individual or HUF.
- ⇒ The option shall become invalid for a previous year if the Individual or HUF fails to satisfy the conditions.

## **B) Rate of Income Tax : Others**

### **COMPANIES:**

- ⇒ There is no change in tax rate of Domestic or Foreign Companies
- ⇒ New Domestic Companies to be engaged in the business of Power Generating shall have option to pay tax at concessional rate of 15%





### **PARTNERSHIP FIRM**

⇒ No Change in Taxation of Partnership Firm

### **CO-OPERATIVE SOCIETIES**

⇒ Concessional rate of tax of 22% plus Surcharge (10%) and Education Cess (4%) is being proposed for co-operative societies subject to certain conditions.

### **Rationalization of Provision for Start-up**

⇒ Profit and Gains derived by eligible start-ups are exempt from tax for any 3 consecutive years out of 7 years subject to limit of turnover of up to Rs 25 Crore. This limit of Rs 25 Crore is relaxed to **Rs 100 Crore** and limit of 7 years is rationalized to **10 years**.

⇒ The taxability of perquisite in case of ESOP has been deferred to the earliest of

- ⇒ 48 months from relevant assessment year,
- ⇒ date of sale of such share;
- ⇒ date of discontinuation of employment with such employer

### **D) Modification in Due Dates :**

Particulars	Revised Due Date
Income Tax return (having existing due date of 30 <sup>th</sup> September)	31 <sup>st</sup> October
Transfer Pricing Audit under section 92E	“One month” prior to the due date of furnishing return of income u/s 139(1)
Tax Audit under section 44AB	
Report to be filed under section 32AB, Section 33AB, Section 33ABA, Section 35D, Section 35E, Section 44DA, 80JJAA	

### **E) Business and Profession & Capital Gain**

#### **Tax Audit Applicability:**

For applicability of Tax Audit, the threshold limit of Turnover for a person carrying on business has been revised from Rs 1 crore to Rs 5 crores in cases where:

- ⇒ Cash receipts does not exceeds 5 % of total amount received during the year and
- ⇒ Cash payment does not exceeds 5 % of total amount paid during the year

#### **Transfer of Land or Building or both (Section 43CA/50C)**

While calculating income, stamp duty value shall be considered as Sale Consideration only if it exceeds 10% of the Sales price.



## F) Taxability of Dividend

### Current Provisions

- ⇒ Dividend declared, distributed or paid on or before 31st March, 2020
  - ⇒ Dividend Distribution tax is applicable
  - ⇒ Dividend in excess of Rs 10,00,000 is taxable in the hands of recipients

### Proposed Provisions

- ⇒ Dividend declared, distributed or paid on or after 1st April, 2020
  - ⇒ Dividend Distribution Tax is not applicable
  - ⇒ Entire Dividend is taxable in the hands of recipients
  - ⇒ No deduction shall be allowed against dividend except deduction for Interest expenses subject to 20% of amount of dividend income
- ⇒ To remove the cascading effect of dividend received from another domestic company, set off will be allowed only if dividend is distributed by the Company **one month** prior to the due date of filing of return (*section 80M has been reinserted with some modification*)
- ⇒ Tax Deduction at Source at the rate of 10% on dividend exceeding Rs 5,000/- shall be applicable.

## G) Residential Status

- ⇒ For determining residential status of individuals (residing outside India) who is on a visit to India:
  - ⇒ condition of number of days stay in India is 182 days at present
  - ⇒ Such condition of 182 days has been reduced to 120 days with effect from previous year 2020-21. [Section 6(1), Explanation 1 - clause (b)]
- ⇒ An Indian citizen who is not liable to tax in any other Country or Territory shall be deemed to be resident in India. Accordingly, all the provisions which are applicable to resident shall apply to such person including provisions for interest, penalty, fee, prosecution etc [insertion of clause (1A) to Section 6) with effect from previous year 2020-21]
- ⇒ For Individuals and HUF, new provisions are introduced to determine status as “not-ordinarily resident”. Accordingly, they will be considered as “not ordinarily resident” in India, if such individual or the manager of HUF has been a non-resident in India in 7 out of 10 previous years preceding that year (*as against 9 out of 10 previous year earlier*).

## H) Taxation of Non-Residents

- ⇒ Determination of income deemed to accrue or arise in India (u/s 9(1)(i) provided below) shall be subject to safe harbour rules. Further, Advance Pricing Agreement is permitted for determination of such income and attribution:

*“All income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India”*



- ⇒ Exemption from filing of Income-tax return (*amendment in Section 115A(5)*). A non-resident, shall not be required to file return of income if, -
  - ⇒ total income consists of **only** dividend or interest income or **royalty or FTS**; and
  - ⇒ tax on such income has been deducted at the rates which are not lower than the rates prescribed under the Act.
- ⇒ Earlier the relief is provided only towards dividend or interest income. Now, the relief is extended to Royalty and FTS (Fees for Technical Services)
- ⇒ Tax withholding rate (TDS) rate of at 4% is proposed on the Interest payable to Non-resident on the monies borrowed from outside India by issuing Long Term bond or Rupee denominated bond. Further, such bond must be issued before 30<sup>th</sup> July 2023 and must be is listed on Recognized Stock Exchange located in IFSC.
- ⇒ Definition of person responsible for paying tax has been amended to include any authorized person or agent. Accordingly, tax can be recovered from such person by Indian Tax Authorities
- ⇒ Provision of Significance Economic Presence has been amended and its application is deferred till AY 2022-23

## I) Tax withholding Tax Deducted at Source (TDS)

Transaction	Proposal
<u>Payment to Resident:</u> Interest other than Interest on Securities, Payment to Contractors, Commission or Brokerage, Rent, Fees for Professional and Technical Services	Individual / HUF are generally required to withhold tax only if they are covered under tax audit provisions.  It has been proposed that, tax withholding shall be applicable to Individual / HUF if the turnover of exceeds Rs 1 Crore in case of business and Rs 50 Lakh in case of profession irrespective of whether they are covered under Tax Audit or not
Payment to resident Contractor (Section 194C)	Definition of 'Work' <b>exclude</b> the manufacturing or supplying of product as specified by customer, by using the material purchased from party <u>other than customers</u> .  It has been proposed that if material is purchased from the <b>associate</b> of such customer then, it will <b>not be excluded</b> from definition and accordingly, <b>TDS will be applicable</b> .
Payment to resident for Fees for Professional and Technical Services (Section 194J)	TDS Rate on Technical Services – 2% TDS Rate on other Services – 10% <i>(Earlier there was no bifurcation of 2% TDS Rate)</i>
TDS on payments by E-commerce Operators	<ul style="list-style-type: none"> <li>• E-commerce operator is required to deduct tax at the rate of 1% while making payment to E-commerce participants towards sale of any goods or services</li> <li>• Threshold limit of payment /credit is R 5 Lakh</li> <li>• If PAN of E-commerce participant is not available then, TDS u/s 206AA shall be restricted to 5% instead of 20%.</li> </ul>



## Tax withholding

### Tax Collected at Source (TCS)

Transaction	Proposed TCS Rate
<ul style="list-style-type: none"> <li>Authorized dealer receiving amount exceeding Rs 7 Lakh for remitting abroad under Liberalized Remittance Scheme</li> <li>Seller of an overseas tour program package</li> </ul>	5 %
Sale of any goods for aggregate value of Rs 50 Lakh during previous year (except covered under other provisions of TCS)	0.10 %

## J) Deduction under Chapter VI-A

### ⇒ Interest on Housing Loan (Section 80EEA):-

The deduction under section 80EEA shall be available for the housing loan sanctioned up to 31st March 2021 as against 31st March 2020 earlier.

### ⇒ Donation u/s Section 80G:-

- ⇒ Donee has to file a statement of donation
- ⇒ Donor shall be allowed to claim deduction on the basis of statement filed by Donee
- ⇒ Late fee of Rs 200 per day u/s 234G will be levied on Donee for delay in filing statement of donation

### ⇒ Donation u/s Section 80GGA:-

- ⇒ Donor shall be allowed to claim deduction on the basis of statement filed by Donee
- ⇒ Permitted limit of Cash donation has been reduced to Rs 2,000/- from Rs. 10,000

## K) Miscellaneous Provisions

- ⇒ “Vivad Se Vishwas” Scheme giving one-time option for payment of tax under litigation is announced. This scheme provides relief on Interest and Penalty if tax is paid before 30<sup>th</sup> March 2020. Further, if tax is paid after said date, the benefits under the scheme will get reduced. The detailed scheme will follow shortly.
- ⇒ Currently Contribution of Employer in certain fund is taxable in the hands of employee subject to certain limits. It is proposed that aggregate value of Employer’s contribution in excess of Rs 7,50,000/- will be taxable as perquisite. The annual accrual of interest on employer’s contribution will also be subject to this limit. Contribution to following funds is covered:
  - ⇒ Recognised provident fund
  - ⇒ Approved superannuation fund
  - ⇒ Scheme referred to in Section 80CCD(1)
- ⇒ Faceless and Dynamic Jurisdiction (jurisdiction-less) Commissioner Appeal and Penalty Proceedings are proposed. The entire new process shall be notified soon. This is in line with faceless Assessment initiated by tax department.
- ⇒ Procedure for Fresh registration has been provided under Section 12AB for trust and certain institution.





⇒ Existing Form 26AS will be discontinued and new reporting format shall be announced soon to consider information in addition to those which are disclosed in form 26AS.

⇒ **Penalty for False Entry or Omission of Entry: -**

If it is found that there is false entry or omission of any entry in books of accounts of any person then, penalty of a sum equal to the aggregate amount of such false or omitted entry (*new Section 271AAD introduced*).

## Goods and Services Tax

⇒ “Composition scheme is not available to dealer engaged in making:

⇒ supply of services not liable to tax under CGST

⇒ any inter-State outward supplies of services

⇒ outward supply of services through an electronic commerce operator.

⇒ Date of issue of debit note is delinked with the date of invoice. This shall enable to determine the period of availing ITC on such debit notes.

⇒ In case of claim of or passing-on of fraudulent ITC, penalty shall be levied on such beneficiaries of the amount equivalent tax evaded or ITC availed or passed on.

⇒ Fraudulent availment of ITC without proper invoice or bill has been made a cognizable and non-bailable offence.

⇒ Late fees for delay in issuing TDS certificate has been removed.

⇒ CGST Act has been amended to allow cancellation of registration which was obtained voluntarily.



## **Case Study Update's**

(Contributed by CA Paras D. Kenia)

### **Facts of the Case:-**

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.15Lacs. 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).

### **Opinion Sought:-**

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

### **Understanding of the Case**

The assessee agreed to sale all the flats in a building to a company through MOU and receives the advance of Rs.15 Lacs. Later, due to disputes between the parties the completion of project delayed and only after a gap of 7-8 years the assessee executed agreement to sale with the company which was registered after 2 years. The assessee received the balance payment in the year in which the agreement to sale was registered. The issues involved are the year in which the sale of flats to company be recognized in the books of the assessee, year in which taxability will arise and also whether the provision of Section 50C or any similar section is applicable in case the market value of the flats so registered are higher than the consideration agreed.

### **Relevant Clauses of the Acts and Judicial Pronouncements**

In order to determine the year in which the sale should be recognised and the year in which taxability will arise, it is necessary to understand the various provisions and sections of the Income Tax Act, 1961 and also decisions given by various authorities or courts.

In order to consider any transaction as sale, it is necessary to determine as to when the transaction is to be considered as complete. Ordinarily, when goods are sold, income does not arise before the transfer of title in such goods to the buyer. Section 2(47) gives definition of "Transfer" however the same specifically deals with Capital Asset and not asset held as Stock-in-Trade, the same can not be referred to address the issue in hand.



Section 5 of the Act provides for the scope of income. It provides, inter alia, that all income from whatever source derived which accrues or arises or is deemed to accrue or arise, is included in the scope of total income.

Section 145 of the Act talks about Method of Accounting. Sub-section 1 of Section 145 requires that Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. As to receipt basis, there is no difficulty because income is obvious and its physical form is experienced but in case of accrual basis, it is based on right to receive the income and the income would accrue or arise at point of time when the right to receive becomes tangible and enforceable and crystallizes into a particular sum. A right to receive income in the case of construction business is acquired when risks and rewards attached to its ownership are transferred to the buyers and not before or after that. It is but natural that no builder or developer will transfer risks and rewards of ownership to the buyers until he has secured the receipt of sale consideration. So the litmus test of accrual of income of a developer under the mercantile system of accounting is the passing of risks and rewards of ownership to the buyers.

The Central Government in exercise of powers conferred by section 145(2), notified the Income Computation and Disclosure Standards (ICDS) to be applicable from asst. year 2016-17 to all assesseees following mercantile system of accounting, for the purpose of computation of income chargeable to income tax under the head "Profit and gains of business or profession" or "Income from other sources". The said ICDS also includes Income Computation and Disclosure Standard III relating to Construction Contracts. As per the said ICDS, Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. It also states that Contract Revenue shall be recognised when there is reasonable certainty of its ultimate collection. The applicability of ICDS was differed by one year, however since the ICDS on Construction Contract is in line with Accounting Standard (AS) 7 on Construction Contract and Guidance Note on Accounting for Real Estate Transaction issued by ICAI, the AS 7 an Guidance Note can be referred to.

Further, the CBDT in its Instruction No. 04/2009 dated 30.06.2009 has considered Project Completion Method as also one of the recognised methods of accounting for the purpose of construction contract and the same is supported by - **a)** Decision of Gujarat High Court in the case of Manjusha Estates (P) Ltd Vs ITO reported in (2017) 393 ITR 644 . **b)** Decision of ITAT- Mumbai in the case of Prem Enterprises Vs. ITO reported in (2012) 25 Taxmann.com 179 (Mumbai) **c)** Decision of High Court of Punjab & Haryana in the case of CIT Vs. Principal Officer, Hill view Infrastructure reported in (2016) 384 ITR 451- Follows CIT Vs. Bilahari Investment (P) Ltd. reported in (2008) 299 ITR 1 (SC) **d)** Decision of ITAT-Mumbai in the case of Hardware Infrastructure P. Ltd copy at page 346 of paper book **e)** Decision of ITAT- Ahmedabad in the case of Unity constructions V/s ITO –copy at 350 to 357 **f)** Decision of ITAT- New Delhi in the case of DCIT V/s Sub Infrastructure – 358 paper book **g)** Decision of Delhi High Court in the case of Manish Buildwell Pvt. Ltd. reported in (2016) 16 Taxmann.com 27 (Del).

## Conclusion

For better understanding of the case, the facts are set out in tabular form below-



<b>Date or time of Event</b>	<b>Event</b>	<b>Action</b>
01.04.2007	MOU to Sale the Flats entered into	Company paid advance
After gap of 7-8 Years, lets say 01.04.2015	Agreement to Sale the Flats entered into	Terms & Conditions and Consideration agreed between the parties (may be same as MOU or revised)
After two years, lets say 01.04.2017	Agreement registered	Company paid balance consideration

In the year 2007-08, the assessee has merely entered into MOU to sale the flats against receipt of advance of Rs.15 lacs. Since the flats in respect to which the MOU has been entered into are not even came into existence the question of transfer of risk, reward or title in respect to said flats to the buyer does not arise, and accordingly the receipt of Rs.15 lac can not be considered as income accrued to the assessee.

In the year 2015-16, the agreement to sale the flats was entered into between the assessee and the company. As per the Guidance Note issued by ICAI on Recognition of Revenue by Real Estate Developers, Revenue from sales or service transactions should be recognized when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods. Further from para 5.3(b) of the said Guidance Note it is clear that only when the outcome of a project can be estimated reliably, project revenues and project costs associated with the project should be recognised as revenue and expenses respectively applying the percentage of completion method, that too, if stage of completion of the project reaches a reasonable level of development. A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25 % of the construction and development costs. One more condition as per para 5.3(d) is at-least 10% of the total revenue as per the agreement of sale or any other legally enforceable document is realized at the reporting date.

Considering the fact that the project work was stuck it can reasonably be assumed that assessee has not achieved reasonable level of development. Also, since all the flats in a building are to be sold to the company, considering the advance payment of merely Rs.15lac it can also be assumed that the same is not even equal to 10% of total revenue as per the agreement to sale. So, there is no need to recognise any amount as income in the year in which agreement to sale is entered into between the assessee and the company in case the assessee is following Percentage Completion Method.



The assessee should recognise the revenue in the year 2017-18 if it is following the percentage completion method and reasonable level of development has been achieved by the assessee on reporting date as entire consideration has been received by it. The taxability will arise accordingly. In case the assessee is following project completion method, it need not recognise any amount as revenue if the construction of the project is not over and in that case there will not be any taxability in that year as well.

As regards to applicability of Section 50C of the Act is concerned the same is applicable only for the purpose of determination of sales consideration on transfer of capital asset being land or building or both for the purpose of capital gain and does not apply to any income computed under the head Profit and Gains of Business or Profession however, there is a similar section in the Act i.e. Section 43CA which is applicable to asset (other than capital asset) being land or building or both.

### Case Study for the Month of February 2020

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 moveable properties given to him is Rs. 2,45,000/- and Rs. 2,65,000/- respectively in lieu of his share in the net assets of the Firm . Discuss the applicability of 56(2)(x) of the Income Tax Act ,1961.





## Photo Gallery









