



WORK FROM HOME

# The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)



Issue No.15  
June 2020

KALYAN DOMBIVALI BRANCH OF WIRC OF ICAI

## eNews Letter



### Managing Committee

CA Ankit R. Agarwal

**Chairman**

CA Jeetu A. Ramrakhiyani

**Vice Chairman**

CA Mayur K. Jain

**Secretary**

CA Parag S. Prabhudesai

**Treasurer**

CA Kaushik Z. Gada

**WICASA Chairman**

CA Saurabh Marathe

**Committee Member**

CA Kiran Gangwani

**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

Branch Nominee : CA Murtuza Kachwala

Respected Seniors and my Dear friends,

Hope you all are Swasth, Vyast & Mast. I request all of you to take care of your health and take measures to boost your immunity. Gradually we have started adapting work from home and very soon we will resume to normalcy. FM has announced stimulus package of 20 lac crore which will be **Sanjivani** for our economy. The government is strengthening on agriculture, rural economy, infrastructure and boosting the domestic production (Make in India & Vocal for Local) to create a Self Reliant India. The Cabinet under the leadership of Hon'ble PM Shri Narendra Modi Ji approved 3 lakh crore through Emergency Credit Line Guarantee Scheme with 100% credit guarantee coverage. It will build confidence and momentum of MSME and Mudra borrowers. Branch has been proactive in organising activities for members & students.



### Gist of activities in lockdown

#### Total 54 webinars/ Virtual CPE Meetings for members and students in lockdown

1. **28 webinars** for Members, covering **Major Avenues of Practice** like International tax, Direct tax, Company Law, GST, RERA, Subsidies, Stock market, Guidance note on COVID Impact & Special Webinars for Women members. We have organized one virtual structural cpe meeting on Post Covid SMP. We are also organising 10 virtual structural cpe meetings in month of June on various topics like Professional opportunities in public finance & govt accounting, Code of ethics, SA, Forensic audit, ABCD of Technology and IND AS. So there are total **39 knowledge oriented sessions held on virtual mode** till 30th June 2020
2. WICASA of our branch has organized **15 webinars** for Students on technical and non technical topics. We had also organized crash course for IDT
3. Submitted Maximum **6 research reports** to WIRC
4. Launched You tube Channel of branch **KDUB KI PATHSHALA** where we have recordings of all webinars
5. Updated **Websites** of Branch and **Mobile App** is in process
6. Submitted representation for **Revival of Real Estate Sector** and For Growth of our profession **Opportunities for CA, Innovations in bank audit and tie up with Banks for professional loan at lower rates.**
7. Started **VIDWAN E** Newsletter montly for students and for members
8. We have launched **Mission Kalam** a new initiative for members to showcase their writing skills and boost their self confidence. It is a golden opportunity to be authors of publication which be published by the branch. We have received **13 registrations for Mission Kalam**
9. **Donation** amount during COVID crisis by our branch members is around **10 lacs**. We are yet to receive donation details of few members.
10. We have launched **Rising stars Project** a new initiative to develop young speakers. We are allotting first 15 mins to **first time speakers** before the webinar to groom & develop them. We have received name of **20 young members** who wish to be part of Rising Stars Project.
11. We also formed **excel group** (500 members), **subsidy group**, **Stock market group**, **Direct tax and International Tax group** (250 members each) where experts are sharing their knowledge and solving queries of members.
12. Conducted **First virtual career counselling session** for students.

I am heartfully thankful to all the members who participated in Rising Star Project & Mission Kalam. Special thanks to coordinators CA Suhas Ambekar, CA Saurabh Marathe, CA Vyomesh Pathak, CA Mayur Jain & my Managing Committee whose efforts made this initiatives a reality.

Before signing off would like to remember a quote, ***Dream it, believe it and build it.*** After the lockdown is lifted, we have a great role to play for the financial success of our client and economy.

Stay Healthy and Best Wishes

Yours in Professional service and always with all of you.

A handwritten signature in blue ink that reads "Ankit Agarwal". The signature is written in a cursive style with a horizontal line under the name.

CA Ankit R. Agarwal

Chairman

Kalyan Dombivli Branch of WIRC of ICAI

# INDEX

<b>Sr. No.</b>	<b>Particulars</b>	<b>Page No.</b>
1	Direct Tax Case Law Update's	04
2	International Tax Case Law Update's	07
3	Indirect Tax Law Update's	09
4	Case Study	13



Contributed by  
CA Shekhar Patwardhan

### SUPREME COURT DECISIONS

**ACCT Vs Glaxo Smith Kline Consumer Health Care Ltd : Civil Appeal No2413/2020 : Date of Publication 7<sup>th</sup> May 2020 : 5 of Limitation Act**

**Conclusion: - In favour of Revenue**

The present case is not about the Income Tax Law. However, the conclusion stated is applicable to all the tax laws including the Income Tax Law Power of Supreme Court & High Court under Articles 142 and 226 to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stands foreclosed by the law of limitation: The statutory period prescribed for redressal of the grievance cannot be disregarded and a writ petition entertained. Doing so would be in the teeth of the principle that the Court cannot issue a writ which is inconsistent with the legislative intent. That would render the legislative scheme and intention behind the statutory provision otiose

A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution

### HIGH COURT DECISIONS

**Bombay High Court ( Goa Bench )**

**Anand Developers Vs ACIT : Writ Petition No 17 of 2020 : Date of Publication 7<sup>th</sup> May 20 : Section 147, 148**

**Conclusion: - In favour of Assessee**

A mere bald assertion by the AO that the assessee has not disclosed fully and truly all the material facts is not sufficient. The AO has to give details as to which fact or the material was not disclosed by the assessee, leading to its income escaping assessment. Otherwise, the reopening is not valid. In the present case, there is absolutely no reference to any alleged material facts which the Petitioner failed to disclose in the course of the assessment proceedings. Rather, the impugned notice refers to the list, as well as the letter issued by the Petitioner itself, which is sought to be made basis for reopening of the assessment. In this case, it is apparent that all the primary facts were disclosed by the Petitioner. In fact, the Petitioner had disclosed truly and fully all the material facts and it was open to the AO to take the same into account in the course of the assessment proceedings or, in any case, it was open to the AO to issue notice for reassessment within normal period of 4 years from the date of assessment

## Karnataka High Court

ACIT Vs N Ramakrishnan : IT Appeal No 234 of 2011 : DOP 18<sup>th</sup> May 2020 : Section 158 BC and 158 BD

### Conclusion: - In favour of Revenue

Recording of satisfaction :- Satisfaction of AO can be recorded at the time of or along with the initiation of proceedings against the searched person u/s 158 BC or along with the Assessment Proceedings u/s 158 BC or immediately after the Assessment proceedings u/s 158 BC .In the present case satisfaction has been recorded immediately after completion of Assessment u/s 158 BC . Tribunal was not therefore justified in setting aside the order of AO on the ground that satisfaction was not recorded before the completion of Assessment u/s 158 BC

## Karnataka High Court

Director of Income Tax Exemptions Vs Karnataka Text Book Society : ITA No 398 of 2012 Date of Publication 18<sup>th</sup> May 2020 : Section 10(22) and 10(23) (iiiab)

### Conclusion: - In favour of Assessee

Government Society engaged in Printing , publication and distribution of school text books is entitled to exemption under 10(23) (iiiab) . Since the Assessee has been constituted to implement the educational policy of the State has to be treated as an educational institution

## **TRIBUNAL DECISIONS**

### **MUMBAI TRIBUNAL**

DCIT Vs JSW Limited : ITA No 6103 and 6264/Mum/2018 DOP 15<sup>th</sup> May 20 : Section 14A, 254(1), Rule 34(5)(c)

### Conclusion: - In favour of Assessee

The Tribunal held that the expression ‘does not form part of the total income’ in Section 14A envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year. In view of the above discussions, and in the light of undisputed facts of this case that there was no tax exempt income in the relevant previous year, we hold that no disallowance under section 14A could have been made, on the facts of this case and in the year before us.

Another important aspect discussed is about the Rule 34(5) of the ITAT Rules . It provides that “ordinarily” the order on an appeal should be pronounced within no more than 90 days from the date of concluding the hearing. A pedantic view of the rule cannot be taken. The period of 90 days should be computed by excluding at least the period during which the lockdown due to Covid-19 was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted

Income Tax Officer Vs Newtech (India ) Developers : ITA No 3251/Mum/ 2018 AY 2009-10 DOP - 27<sup>th</sup> May 2020 : Section 5 and 45

### Conclusion: - In favour of Assessee

Assessee had entered into a joint venture agreement under which the Assessee was to receive Rs 5.40 Crores on account of development rights from the joint venture . The Assessee received Rs 86.40 Lakhs and Rs 220.80 Lakhs was to be received on obtaining IOA and commencement certificate by the joint venture and Rs 226.80 lakhs was upon all the slum dwellers vacating said property . It was Assessee’s case that it was not able to get the occupants of the property to vacate the property and as such no income has arisen in the hands of the Assessee . The said claim of the Assessee is very much sustainable based on the facts of the case . Payments to be received by the Assessee cannot be read in isolation with all its obligations under the joint agreement , it was a composite agreement and irrespective of looking at the modifications in the agreement all the terms of the Agreement were to be read in conjunction of each other . When the Assessee had an obligation to perform something and the Assessee had not performed those obligations nor does he even seem to be in a position to perform those obligations it cannot be said that a partial payment for fulfilling these obligations can be treated as income in the hands of the Assessee. Even under mercantile system of accounting the relevant point of time is not the actual receipt of income but the point of time when right to receive that income , income character gets crystallized. Very foundation of the impugned tax liability is thus devoid of any legally sustainable basis.

**Conclusion: - In favour of Assessee**

Assessee was engaged in Trading of Goods in Manufacturing and export of home furnishing articles along with trading business of mobile phones, electronic goods. Assessee's contention is that fire occurred during the year, the traded goods of the Assessee were lost during the year due to Fire and such traded goods were the stock in trade of the Assessee. The traded goods were insured with the insurance co for any loss due to fire, but merely because the Assessee has an insurance, it does not mean that Assessee has not incurred the loss during the year. Trading loss incurred by the Assessee is allowable in the year in which it is incurred as the Insurance claim was not settled till the date of the Assessment.





Contributed by  
CA Prerna K. Peshori

### COVID-19 and International Tax Law

Covid-19 has resulted into change in the world order and has led serious disruptions. Directly or indirectly it has affected many lives. Though it has negatively impacted the globe but one should keep focusing the gifts which it bestowed on the mankind – i.e. time and technology. Work from home and online work spaces have become new normal. Covid-19 has also caused an impact on International tax law through creation of permanent establishment (PE) or place of effective management (POEM). OECD has released guidance on international taxation issues emerging due to Covid-19, which is discussed in this article. The OECD has also encouraged local tax administrations to provide guidance on the application of the domestic law threshold requirements, domestic filing and other guidance to minimize or eliminate unduly burdensome compliance requirements for taxpayers in the context of the Covid-19 crisis.

#### Residency

Many people are stranded in the foreign jurisdictions due to the travel restrictions imposed by the countries. This has resulted in people becoming resident of the foreign jurisdiction. If the number of days of stay threshold is exceeded, these individuals could qualify as resident and their global income would be taxable in that country.

The OECD guidelines provide that countries should not consider such days of stay due to restrictions imposed into computing the period for residency.

Further, CBDT has relaxed residency rules for individuals for financial year 2019-20 by issuing Circular No. 11 of 2020 dated 8 May 2020.

The CBDT has introduced the following relaxations when determining the residential status of an individual for FY 19-20, for individuals who came to India before 22 March 2020, and to whom one of the following sets of circumstances applies:

- Unable to leave India on or before 31 March 2020: The period of stay in India from 22 March 2020 to 31 March 2020 will not be taken into account when determining the residential status;
- Quarantined in India due to COVID-19 on or after 1 March 2020, and either (i) left India via an evacuation flight on or before 31 March 2020, or (ii) was unable to leave India by 31 March 2020: The period of stay in India from the start of quarantine to the date of departure, or 31 March 2020, as appropriate, will not be taken into account when determining the residential status; or
- Departed from India on an evacuation flight on or before 31 March 2020: The period of stay in India from 22 March 2020 to the date of departure will not be taken into account when determining residential status



## Place of Effective Management :

The directors, CEOs and CFOs are conducting board meetings virtually and taking the key management and commercial decisions from their home country. The issue arises whether taking such key decisions in other country can constitute POEM of a company to be situated in that country. The OECD guidelines provide that a temporary change in the location from which the chief executive officers and senior executives of a company carry out their activities due to COVID-19 measures should not affect the place of effective management of the company. When evaluating the tax residence status of a company, reference should be made to a time period which was not affected by the extraordinary situation due to COVID-19.

## Permanent Establishment

Due to travel restrictions, the employees of the organisations are working from home. These employees could constitute service PE or if they are concluding contracts on behalf of the enterprise routinely, they could also constitute agency PE of the foreign enterprise. Further, it could be contended that their home offices are fixed place PE of the foreign enterprise. OECD in its guidelines has stated that if employees work from a home office for a non-tax-resident employer during the COVID-19 crisis, this should not lead to the creation of a PE for the employer, as there will not be a sufficient degree of permanency, nor will the home office be at the disposal of the employer to a sufficient degree. Also, if (remote) employees conclude contracts on behalf of their non-tax-resident employer from a home office for the duration of the COVID-19 restrictions, this should not lead to the creation of a PE as the activities on behalf of the enterprise are not performed in a “habitual” way.

Further, if the construction work is interrupted, the issue arises whether that period of interruption would be included in the threshold for determining if the construction PE is constituted. The OECD Guidelines have stated that period for a construction site to constitute a PE (usually 12 months, depending on the applicable double taxation convention) will not be affected by the COVID-19 restrictions and will continue uninterrupted. If work on the construction site is discontinued for several months and the 12-month period is exceeded as a result, the company will have created a construction site PE abroad.

The OECD guidance are recommendations to the countries and are not binding. Many countries have already implemented these guidelines as part of their domestic tax law and to give relief to the taxpayers eg. UK, Ireland, Australia, USA.

India’s guidance on residency of individuals is a welcome step. However, the same has only been introduced for financial year 2019-20. Indian Government should also release the same for financial year 2020-21. Further, India should also release guidance on PE and POEM mitigation. This would provide certainty to the Indian corporates having business operations outside India and similarly foreign corporations. Taxpayers should also keep their supportive documentation (i.e. travel tickets, itineraries, email correspondence with travel agents, etc.) prepared well in advance so that it can be demonstrated that the period of involuntary stay was indeed, “involuntary.”





Contributed by  
CA Rohan Pathak

Various Notifications/Circulars were issued in the month of May-2020, summaries as follows.

### **Notification No. 38/2020–Central Tax [G.S.R. 272(E)] dated 05.05.2020**

**GSTR 3B- Nil Return by SMS- Companies can file through EVC**

CBIC has enabled the facility to file GSTR-3B through Electronic Verification Code (EVC) and Short Message Service (SMS) to ease the compliance procedure under the Goods and Services Tax (GST) regime.

**Enablement of EVC** – The registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) will be allowed to file GSTR-3B through electronic verification code (EVC) without using DSC during the period from the 21st day of April, 2020 to the 30th day of June, 2020.

This is applicable to for all categories of Companies (including Limited Liability Partnerships and PSUs), registered under Companies Act, 2013.

**Enablement of SMS** – A new clause 67A has been inserted .As per the said provision, a registered person will be allowed to file Nil GSTR-3B for a tax period through a short messaging service using the registered mobile number and Nil GSTR -3B shall be verified by a registered mobile number based One Time Password facility.

Explanation. – For the purpose of this rule, a Nil return shall mean a return under section 39 for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B.

### **Notification No. 39/2020–Central Tax [G.S.R. 273(E)] dated 05.05.2020**

**Central Tax- New GST Registration for corporate debtors undergoing corporate insolvency resolution process.**

Time limit for registration extended due to covid by substituting the following to para 2-

Registration.- The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration)in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later

### **Notification No. 40/2020–Central Tax [G.S.R. 274(E)] dated 05.05.2020**

CBIC extends validity of e-way bills till 31.05.2020 for all those e-way bills which were generated on or before 24.03.2020 and had expiry between the period from 20.03.2020 to 15.04.2020.

### **Notification No. 41/2020–Central Tax [G.S.R. 275(E)] dated 05.05.2020**

CBIC Further Extends due date for furnishing GST annual return/reconciliation Statement (GSTR9 / GSTR 9C) for financial year 2018-2019 to 30th September, 2020.

### Notification No. 42/2020–Central Tax [G.S.R. 276(E)] dated 05.05.2020

Revised Due dates notified for furnishing monthly returns in Form GSTR-3B for each of the months from November, 2019 to March, 2020 for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir and Union territory of Ladakh vide **Notification No. 42/2020–Central Tax dated 5th May, 2020.**

**GSTR 3B due date for Jammu & Kashmir, Ladakh has been extended as follows**

Union Territory	Month for which GSTR 3B to be submitted	Due Date
Jammu & Kashmir	November, 2019 to February, 2020	24th March, 2020
Ladakh	November, 2019 to December, 2019	24th March, 2020
Ladakh	January, 2020 to March, 2020	20th May, 2020

### Notification No. 43/2020 – Central Tax [G.S.R. 299(E).] dated 16.05.2020

Section 140 of the CGST Act amended retrospectively with effect from 01.07.2017, to prescribe the manner and **time limit** for taking transitional credit

Sub-sections (1), (2), (3), (5), (6), (7), (8), (9) of sec. 140 are amended retrospectively from 1st July 2017 to enable the government to provide by rules **the time limits** to file TRAN-1 and for other compliances

### Circular No. 138/08/2020-GST dated 06.05.2020

CBIC clarifies on Issues related to IBC, GST ITC-04 & Supply to merchant exporter

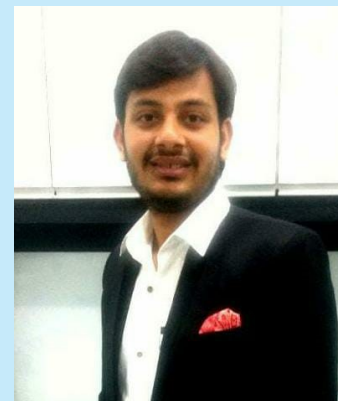
**Circular No. 136/06/2020-GST, dated 03.04.2020** and **Circular No.137/07/2020-GST, dated 13.04.2020** had been issued to clarify doubts regarding relief measures taken by the Government for facilitating taxpayers in meeting the compliance requirements under various provisions of the **Central Goods and Services Tax Act, 2017** (hereinafter referred to as the “CGST Act”) on account of the measures taken to prevent the spread of Novel Corona Virus (COVID-19). Post issuance of the said clarifications, certain challenges being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act were brought to the notice of the Board, and need to be clarified.

The issues raised have been examined and 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 as under:

Sl. No.	Issue	Clarification
<b>Issues related to Insolvency and Bankruptcy Code, 2016</b>		
1.	<b>Notification No. 11/2020 – Central Tax dated 21.03.2020</b> , issued under section 148 of the CGST Act provided that an IRP/ CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that <b>the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.</b>	Vide <b>notification No. 39/2020- Central Tax, dated 05.05.2020</b> , the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide  <b>Notification No. 11/2020 – Central Tax dated 21.03.2020</b> has been extended. Accordingly, IRP/RP shall now be required to obtain registration <b>within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.</b>

S. N.	Issue	Clarification
2.	<p>The notification No. 11/2020– Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment.</p> <p><b>Clarification has been sought whether IRP would be required to take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor (earlier GSTIN) i.e. all the GSTR-3Bs have been filed by the Corporate debtor / IRP prior to the period of appointment of IRPs and they have not been defaulted in return filing.</b></p>	<p>i. The notification No. 11/2020– Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of <b>FORM GSTR-3B</b> under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide <b>notification No. 39/2020 – Central Tax, dated 05.05.2020</b> so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP.</p> <p>ii. Accordingly, it is clarified that IRP/RP would <u>not be required to take a fresh registration</u> in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).</p>
3.	<p>Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably, and in cases <b>where an appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be transferred from the IRP to RP</b>, or both will need to take fresh registration.</p>	<p>i. In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by <u>an amendment in the registration form</u>. Changing the authorized signatory is a non- core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory.</p> <p>ii. The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.</p>

S. N.	Issue	Clarification
<b>Other COVID-19 related representations.</b>		
4.	<p>As per <b>notification no. 40/2017- Central Tax (Rate) dated 23.10.2017</b>, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, <i>inter-alia</i>, that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. Request has been made to clarify the provision vis-à-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020.</p>	<p>i. Vide <b>notification No. 35/2020-Central Tax dated 03.04.2020</b>, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time.</p> <p>ii. <b>Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017</b> was issued under powers conferred by section 11 of the CGST Act, 2017. The exemption provided in <b>notification No. 35/2020-Central Tax dated 03.04.2020</b> is applicable for section 11 as well.</p> <p>iii. Accordingly, it is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.</p>
5.	<p>Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of <b>FORM GST ITC-04</b> in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of <b>FORM GST ITC-04</b> for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought as to whether the extension of time limit as provided in terms of <b>notification No. 35/2020-Central Tax dated 03.04.2020</b> also covers furnishing of <b>FORM GST ITC-04</b> for quarter ending March, 2020</p>	<p>Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or compliance of such action has not been made within such time. Accordingly, it is clarified that the due date of furnishing of <b>FORM GST ITC-04</b> for the quarter ending March, 2020 stands extended up to 30.06.2020.</p>



Contributed by  
CA Paras Kenia

### Facts of the Case:-

The Assessee has taken the commercial premises on lease. It is agreed between the Assessee and the landlord that the Assessee will reimburse the property tax to the landlord. However the Assessee could not make the payment of the said property tax during the previous year, Discuss the allowability of the said expenditure

1. In case the reimbursement has happened before filing of return
2. It has happened after filing of return.

### Opinion Sought:-

Whether the property tax to be reimbursed to the landlord is Statutory Liability covered u/s.43B of the Income Tax Act, 1961 and whether it is allowable expenditure without the actual payment during the year or before the due date applicable in his case for furnishing the return of income u/s. 139(1) of the Income Tax Act, 1961.

#### **i. Understanding of the Case:**

The assessee has taken commercial premises on lease and as per the terms of the lease agreement, in addition to the lease rental the assessee also has to reimburse the property tax paid by the landlord to the Municipal Authority. Although, assessee could not make the actual payment of said Property Tax, the deduction is claimed by providing for that expense by creating a liability. The actual payment may or may not have been made on or before the due date of filing the return of income.

## ii. Relevant Clauses of the Acts and Judicial Pronouncements:

**As per Section 43B** certain expenses are allowed only on actual payment. As per section 43B(a) deduction for *any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force* shall be allowed if such sum is paid in the respective previous year or on or before the due date of filing the return as per section 139(1).

Analysis of Section 43B of the Act indicates that deduction thereunder is to be allowed on fulfilment of the following conditions:

- i) there should be an actual payment of any sum whether “by way of tax, duty, cess or fee, by whatever name”;
- ii) such payment has to be “under any law for the time being in force”;
- iii) the payment of such sum should have been made by the assessee;
- iv) irrespective of the method of accounting regularly employed by the assessee, deduction shall be allowed while computing the income tax for the previous year “in which sum is actually paid” by the assessee;
- v) the expression “any such sum payable” refers to a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.”

The fulfilment of the above statutory conditions is necessary for allowing deduction u/s. 43B. We have to examine the facts of the present case to find out as to whether all the conditions which are necessary for permissible deduction u/s. 43B are present here or not.

As mentioned in the fact of the case that the assessee has to reimburse the property tax to the landlord as per the terms of the lease agreement. The burden of paying the property tax is on the landlord. However, as per the lease agreement between the parties, the assessee has agreed to reimburse the property tax to the landlord. The reimbursement of property tax by the assessee to the licensor is purely contractual and not a statutory liability. Property tax levied by the Municipal Authority is a charge on the property. Undisputedly, the licensor is the owner of the property, hence, liable to pay the property tax. That being the case, the amount equivalent to the property tax reimbursed to the licensor cannot be treated as rate, tax, fee, cess, etc., as provided u/s. 43B(a) of the Act. For assessee, the said expenditure is not an amount or liability due under any law but is merely a contractual liability under the lease agreement. Once the expenditure is not considered as statutory liability the same is out side the scope of section 43B.

The **Hon’ble ITAT, Mumbai** in case of **Areva India Pvt. Ltd. vs Asst. Commissioner of Income Tax** dated 13<sup>th</sup> March, 2020 also held that reimbursement of municipal tax is not a statutory liability wherein the AO had added the General and Administrative Expenses to the tune of 19.37lacs after finding that the said amount represents property tax payable to the Municipal Authority through the landlord as per the terms of leave and license agreement and the same was not actually paid during the year.

### iii . Conclusion

After considering the above and the judgement given by Hon'ble ITAT, Mumbai in case of Areva India Pvt. Ltd. vs Asst. Commissioner of Income Tax dated 13<sup>th</sup> March, 2020 it can be concluded that assessee can claim the deduction of property tax to be reimbursed to the landlord even though the actual payment has not been made in the year under consideration. The position will remain same even though the said amount is not paid on or before the due date of filing the return of income u/s. 139(1) of the act as the expenditure is not covered u/s. 43B of the act.

### Case Study for the Month of June 2020

### CASE STUDY



The learned Assessing officer has disallowed the deduction u/s 80 P for interest received by a co-operative society from a co-operative Banks stating that Co-operative Banks are not co-operative societies and hence the deduction is not available Whether the stand taken by the AO is correct ?