

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



**KALYAN DOMBIVALI BRANCH OF WIRC OF ICAI**

# e News Letter

**Issue No.14**  
**May 2020**

**Lockdown**

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## Newsletter Committee

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Respected seniors and my dear friends,

This is my third communication with all of the members. Hope you and your family members are healthy and safe in these uncertain and unprecedented time. I would request the members to engage yourself in your hobby, enhancing our knowledge base & be happy and healthy. The golden mantra is **Swast Raho, Vyast Raho aur Mast Raho**



Dear members, our generation has witnessed great revolutions in the past few years; Economic Reform- Nov 2016, Tax revolution - GST July 2017 and now the Corona crisis in early 2020. The economic impact of corona crisis is expected to be more devastating than its medical impact. We have learnt that life cost very little, it is lifestyle we spent money on, We need to find a balance between life and lifestyle. Many manufacturing companies are withdrawing their investment from China and India seems to be the attractive destination. Its a blessing in disguise; and very positive for our economy.

For the continuous updation of knowledge of students and members, branch has arranged various webinars. We have launched international tax series, Direct tax series, webinars on latest controversies in GST, subsidies and PSI 2019, Vivad se Vishwas scheme, RERA and How to make money in Stocks. On 3rd May 2020, We have organized a special session dedicated for women CA members, How to be successful in professional life after marriage by renowned speaker from Pune, Shreya Shah. We are also planning webinars on Standards on auditing and Company Law for our members. We are bringing the best speakers across the country. We have also arranged technical and non technical session for students of our branch. For one of the session by J K Mittal sir we had a record participation of 382 members in the webinar. We are very happy and satisfied with the active participation of members and students.

We have received six research papers from our members - CA Ashutosh Trivedi, CA Mayur Jain, CA Mukesh Soni, CA Santosh Jagdale, CA Umesh Jeswani and CA Keyur Gangar along with his team CA Paras Kenia, CA Ankur Gada, CA Ronak Gada and we have forwarded to WIRC. I am thankful for their dedicated efforts and accepting the request to prepare the research papers. I am very confident that these research papers will be very vital for our members and the institute. It gives immense pleasure to see our various young members CA Mukesh Soni, CA Prakash Thakkar have started with their online presentations on technical topics. Our branch really needs young speakers to come forward and deliver.

Dear members, I assure, we managing committee members will leave no stone unturned in professional excellence and imparting knowledge to our members and students. We have also come up with a Youtube channel **KDUB ki Pathshala** It is a library of webinars, where you can view the recorded webinars, in case you have missed any or you want it for further reference. Please Subscribe the channel for updates ([www.youtube.com/channel](http://www.youtube.com/channel)). Friends, I am happy to share you that we are also in the final stage of development of website and mobile application.

I once again request you to take care of your health and very soon we will back to our professional responsibilities. In case of any suggestions or feedbacks, feel free to contact me or any of our Managing Committee Member.

Stay Healthy and Best Wishes...

Yours in Professional Service and Always with all of You,

CA Ankit R. Agarwal

Chairman

Kalyan Dombivli Branch of WIRC of ICAI



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Contributed by  
CA Shekhar Patwardhan

### CBDT Circulars:

#### **Circular Reg Tax Audit Report Reporting Requirements U/s 44AB Of the Income-Tax Act**

Order under section 119 of the Income-tax Act, 1961

Section 44AB of the Income-tax Act, 1961 ('the Act') read with rule 6G of the Income-tax Rules, 1962 ('the Rules') requires specified persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide notification no. GSR 666(E) dated 20th July, 2018 with effect from 20th August, 2018. However, the reporting under clause 30C and clause 44 of the Tax Audit Report was kept in abeyance till 31st March, 2019 vide Circular No. 6/2018 dated 17.08.2018, which was subsequently extended to 31 .03.2020 vide Circular No. 9/2019.

Several representations were received by the Board with regards to difficulty in implementation of reporting requirements under clause 30C and clause 44 of the Form No. 3CD of the Income-tax Rules, 1962 in view of the Global Pandemic due to COVID-19 virus and requested for deferring the applicability of the above provisions.

The matter has been examined and in view of the prevailing situation due to COVID-19 pandemic across the country, it has been decided by the Board that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31 st March, 2021.



Contributed by  
CA Shekhar Patwardhan

### **SUPREME COURT DECISIONS**

#### **1. New Delhi Television Ltd VS DCIT : Civil Appeal No 1008 of 2020 : DOP : 3<sup>rd</sup> Apr 20 : Sec 147,148 : AY 08-09**

##### **Conclusion: - In favour of Assessee**

S. 147/ 148 Reopening: (i) Merely because the original assessment is a detailed one, the powers of the AO to reopen u/s 147 is not affected, (ii) Information which comes to the notice of the AO during proceedings for subsequent AYs can definitely form tangible material to reopen the assessment, (iii) As regards "full & true disclosure of material facts", the assessee has the duty to disclose the "primary facts". It is not required to disclose the "secondary facts". The assessee is also not required to give any assistance to the AO by disclosure of other facts. It is for the AO to decide what inference should be drawn from the facts, (iv) If the AO intends to rely upon the second Proviso to s. 148 for the extended period of 16 years limitation, the same should be stated either in the notice or in the reasons in support of the notice. It cannot be done in the order rejecting the objections or at a later stage

The Hon'ble Supreme Court has held , the assessee disclosed all the primary facts necessary for assessment of its case to the assessing officer. What the revenue urges is that the assessee did not make a full and true disclosure of certain other facts. We are of the view that the assessee had disclosed all primary facts before the assessing officer and it was not required to give any further assistance to the assessing officer by disclosure of other facts. It was for the assessing officer at this stage to decide what inference should be drawn from the facts of the case. In the present case the assessing officer on the basis of the facts disclosed to him did not doubt the genuineness of the transaction set up by the assessee. This the assessing officer could have done even at that stage on the basis of the facts which he already knew. The other facts relied upon by the revenue are the proceedings before the DRP and facts subsequent to the assessment order, and we have already dealt with the same while deciding Issue No.1. However, that cannot lead to the conclusion that there is nondisclosure of true and material facts by the assessee.

#### **2. Basir Ahmed Sisodiya Vs ITO : Civil Appeal Nos 6110 of 2009 Date of Publication 24<sup>th</sup> April Section 68**

##### **Conclusion: - In favour of Assessee**

68 Bogus Purchases: Though the assessee failed to prove the genuineness of the purchases during the assessment proceedings, he filed affidavits and statements of the dealers in penalty proceedings. That evidence fully supports the claim of the assessee. The CIT (A) accepted the explanation of the assessee and recorded a clear finding of fact that there was no concealment of income or furnishing of any inaccurate particulars of income by the assessee. Consequently, the quantum addition will also have to be deleted. The Hon'ble Supreme Court held Indeed, at the time of assessment, the appellant/assessee had failed to produce any explanation or evidence in support of the entries regarding purchases made from unregistered dealers. In the penalty proceedings, however, the appellant/assessee produced affidavits of 13 unregistered dealers out of whom 12 were examined by the Officer. The Officer recorded their statements and did not find any infirmity therein including about their credentials. The dealers stood by the assertion made by the appellant/assessee about the purchases on credit from them; and which explanation has been accepted by the appellate authority in paragraphs 17 and 19 of the order dated 13.1.2011.



To put it differently, the factual basis on which the Officer formed his opinion in the assessment order dated 30.11.2000 (for assessment year 1998-99), in regard to addition of Rs.2,26,000/( Rupees two lakhs twenty six thousand only), stands dispelled by the affidavits and statements of the concerned unregistered dealers in penalty proceedings. That evidence fully supports the claim of the appellant/assessee.

**3. Yum Restaurants (Marketing) Pvt Ltd Vs CIT : Civil Appeal No 2847 of 2010 Date of Publication 24<sup>th</sup> April 2020 : Section 4 AY2001-02**

**Conclusion: - In favour of Revenue**

Entire law on principles of mutuality are reiterated in the present case. The doctrine of mutuality bestows a special status to qualify for exemption from tax liability. It is a settled proposition of law that exemptions are to be put to strict interpretation. If the assessee fails to fulfil the stipulations and to prove the existence of mutuality, the question of extending exemption from tax liability to the assessee, that too at the cost of public exchequer, does not arise. Taking any other view would entail in stretching the limits of construction.

**4. UOI Vs Exide Industries Limited : Civil Appeal No 3545 / 2009 : DOP 25<sup>th</sup> April 2020 : Section 43B**

**Conclusion: - In favour of Revenue**

Disallowance u/s 43B(f) to provision for leave encashment: Argument (inter alia) that s. 43B(f) is unconstitutional because it supersedes the judgement of the Supreme Court in Bharat Earth Movers vs. CIT 245 ITR 428 is wrong. S. 43B does not place any embargo upon the autonomy of the assessee in adopting a particular method of accounting, nor deprives the assessee of any lawful deduction. It merely imposes an additional condition of actual payment for the availment of deduction qua the specified head.

The Hon'ble Supreme Court held that the leave encashment scheme envisages the payment of a certain amount to the employees in lieu of their unused paid leaves in a year. The nature of this payment is beneficial and pro employee. However, it is not in the form of a bounty and forms a part of the conditions of service of the employee. An employer seeking deduction from tax liability in advance, in the name of discharging the liability of leave encashment, without actually extending such payment to the employee as and when the time for payment arises may lead to abhorrent consequences. When time for such payment arises upon retirement (or otherwise) of the employee, an employer may simply refuse to pay. Consequently, the innocent employee will be entangled in litigation in the evening of his/her life for claiming a hard earned right without any fault on his part. Concomitantly, it would entail in double benefit to the employer – advance deduction from tax liability without any burden of actual payment and refusal to pay as and when occasion arises. It is this mischief clause (f) seeks to subjugate and hence it perfectly valid.

**5. Vodafone Idea Ltd Vs ACIT : Civil Appeal No 2377 of 2020 Date of Publication 30<sup>th</sup> April 2020 : Section 143(3) 143(2), 241 A AY 2017-18**

**Conclusion: - In favour of Revenue**

Grant of refund u/s 143(1): Till AY 2016-17, if a scrutiny notice u/s 143(2) is issued, the return is not required to be processed u/s 143(1) for grant of refund to the assessee. From AY 2017-18 & onwards, a different regime is prescribed by Parliament. S. 241-A requires separate recording of satisfaction on part of the AO that having regard to the issue of notice u/s 143(2), the grant of refund is likely to adversely affect the revenue. The withholding of refund requires the previous approval of the PCIT with reasons to be recorded in writing

In the premises, we hold that in respect of Assessment Years ending on 31st March 2017 or before, if a notice was issued in conformity with the requirements stated in sub-section (2) of Section 143 of the Act, it shall not be necessary to process the refund under subsection (1) of Section 143 of the Act and that the requirement to process the return shall stand overridden. However, insofar as returns filed in respect of assessment year commencing on or after the 1st April, 2017, a different regime has been contemplated by the Parliament. Section 241-A of the Act requires a separate recording of satisfaction on part of the Assessing Officer that having regard to the fact that a notice has been issued under sub-section (2) of Section 143, the grant of refund is likely to adversely affect the revenue; whereafter, with the previous approval of the Principal Commissioner or Commissioner and for reasons to be recorded in writing, the refund can be withheld.

**TRIBUNAL DECISIONS**  
**MUMBAI TRIBUNAL**

**6. Pandhes Infracon Pvt Ltd Vs ACIT : SA No 184/Mum /2020 DOP : s24<sup>th</sup> April 20 : Section 254(2A)**

**Conclusion: - In favour of Assessee**

As the physical office of the ITAT is not functioning due to the lockdown, the stay petition was heard through video conferencing, from home offices of the respective Members. Attachment of bank account lifted and stay against coercive recovery granted as all of us are traversing through one of the toughest patch of time, facing the Covid 19 pandemic, and the poorer sections of society are hardest hit. It is necessary for every employer company to take care of its employees. The assessee not in a position to perform these obligations in view of the attachment of its bank accounts and debtors.

As all of us are traversing through one of the toughest patch of time, facing the Covid 19 pandemic, and the poorer sections of society are hardest hit. It is, therefore, all the more necessary for every employer company to take care of its employees. We find that in view of the attachment of assessee's bank accounts and assessee's debtors, the assessee is stated to be not in a position to perform these obligations. Given this situation, we are satisfied that this situation calls for our interference.





Contributed by  
CA Prerna K. Peshori

## Analysis of new Equalisation levy on Non-resident E-commerce operators

The Finance Act, 2016 introduced Equalisation Levy with effect from 01-06-2016 @ 6% from the consideration paid or payable to a non-resident person for the online advertisement services. Finance Act 2020 has extended the scope of equalisation levy.

From 01-04-2020, the equalisation levy shall be charged at the rate of 2% from the consideration received or receivable by an e-commerce operator from e-commerce supply of goods or services made or provided or facilitated by it to the following persons:

- a) A person resident in India;
- b) A person who buys such goods or services or both using internet protocol address located in India;
- c) A non-resident person in the following circumstances:
  - i) Sale of advertisement which targets a customer who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and
  - ii) Sale of data collected from a person who is resident in India or from a person who uses internet protocol address located in India.

Unlike Equalisation levy @ 6% which is charged on Indian resident making payment to Non-resident, this is charged on non-resident e-commerce directly.

**E-commerce operator:** E-commerce operator means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

### **E-commerce supply or services:**

- a) Online sale of goods owned by the e-commerce operator;
- b) Online provision of services provided by the e-commerce operator;
- c) Online sale of goods or provision of services or both facilitated by the e-commerce operator; or
- d) Any combination of above activities

### **Exceptions:**

- A) Online advertisement service covered under Section 165 (where Equalisation levy is charged @6%)
- B) If the sale, turnover or gross receipts of the ecommerce operator from e-commerce supply or services made or provided or facilitated to the persons mentioned above is less than INR 20 Mn during the previous year.
- C) If the e-commerce operator has a PE in India and the service is effectively connected with such PE.



## Payment Time-line

Unlike the equalisation levy on online advertisement services which is payable on monthly basis by 7th day of the next month, the equalisation levy in respect of online supply of goods and services shall be paid to the credit of central government on quarterly basis. The due dates for payment of equalisation levy in respect of online supply of goods and services have been prescribed in the below table:

### Consequences of non-payment:

A) **Interest:** An e-commerce operator who fails to deposit the equalisation levy to the credit of central government by due date shall be liable for payment of simple interest at the rate of 1% of such levy for every month or part of the month during which such failure continues.

Period	Due date
April 1st – June 30th	7th July
July 1st – September 30th	7th October
October 1st – December 31st	7th January
January 1st – March 31st	31st March

B) **Penalty:** Where an e-commerce operator fails to pay whole or any part of the equalisation levy required to be paid by him, he shall be liable for payment of penalty of an amount equals to the amount of equalisation levy that he failed to pay.

### Statement of equalisation levy

Every e-commerce operator shall prepare and deliver a statement of equalisation levy in respect of all e-commerce supply or services by 30<sup>th</sup> June of the financial year immediately following the financial year in which equalisation levy is chargeable. Statement of equalisation levy is to be furnished in Form 1. Such form can be furnished in the following manner:

- Electronically under digital signature; or
- Electronically through EVC (Electronic Verification Code) i.e. a code generated for the purpose of electronic verification of the person furnishing statement.

Any e-commerce operator who has not furnished statement by the due date, he can furnish such statement at any time before the expiry of 2 years from the end of the financial year in which such e-commerce supply or services was made or facilitated.

Similarly, an e-commerce operator who has furnished such statement, notices any omissions or wrong particulars therein, he may furnish a revised statement at any time before the expiry of 2 years from the end of the financial year in which such ecommerce supply or services was made or facilitated.

Also, consequential amendment has been made to Sec.10(50) to exempt the consideration subjected to equalisation levy.





Equalisation levy @ 6%	Equalisation levy @ 2%
Applicable Services: a) Online advertisement b) Any provision for digital advertising space or facilities/ service for the purpose of online advertisement	Applicable Services : a) Online sale of goods owned by the e-commerce operator; b) Online provision of services provided by the e-commerce operator; c) Online sale of goods or provision of services or both facilitated by the e-commerce operator
Coverage: Provision of online advertisement or digital advertising space by Non-resident to Resident carrying on business/Non-resident having PE	Coverage: E-commerce supply of goods or services made or provided or facilitated by it to the following persons: a) A person resident in India; b) A person who buys such goods or services or both using internet protocol address located in India; c) A non-resident person in the following circumstances: i) Sale of advertisement which targets a customer who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and ii) Sale of data collected from a person who is resident in India or from a person who uses internet protocol address located in India.
Levied on: Indian resident who carries on business/profession or Non-resident having PE who is service recipient	Levied on: Non-resident E-commerce operator
Time-limit to deposit: 7 <sup>th</sup> of following month	Time-limit to deposit: 7 <sup>th</sup> of every quarter
Failure to comply: Disallowance of such expenditure in the hands of the payer	Failure to comply: No disallowance of such expenditure in the hands of the payer

However, there are various issues which needs to be addressed:

1. The same payment can fall under royalties u/s 9(1)(vii) and equalisation levy. Therefore, there could be overlap between them.
2. Could one claim to apply the beneficial rate of equalisation levy @ 2% and claim exemption u/s 10(50), thereby not tax the same payment to royalty @ 10%.
3. Whether the credit can be claimed for the equalisation levy under the DTAA is doubtful as there are 2 views. One could say it is in the nature of Income-tax, however, the same is introduced through a separate chapter under the Finance Act and not as separate section under Income-tax Act. Therefore, one could also claim that it is not Income-tax and hence not creditable.
4. Also, there would double taxation as there could be TCS under the GST law as well as the equalisation levy. Hence, there would be resultant double taxation.

All these issues needs to be duly addressed especially in these turbulent times, when the businesses have issues under the lock-out. Since this is applicable from April 1, 2020, this could affect the businesses liquidity positions and to enable them to understand the implications, it is suggested that deferral should be made to give time to the non-resident taxpayers.

# GST

## Goods & Service Tax



Contributed by  
CA Rohan Pathak

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

### Notification.30/2020 dated 03.04.2020

#### a) Opting to pay tax under sec. 10 of the CGST Act

Nature of form	Period	Actual date	Extended date
Form GST CMP-02 (Intimation)	F.Y. 2020-21	Prior to commencement of F.Y.(Rule 3(3))	30.06.2020
Form GST ITC-03 (For Lapse of credit)	F.Y. 2020-21	Within 60 days from commencement of relevant F.Y.( Rule 3(3))	31.07.2020

#### b) Proviso inserted in Rule 36(4)- capping 10% of ITC as per eligible credit of Form GSTR-2A

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

### Notification.31/2020 & 32/2020 dated 03.04.2020

#### 1) GSTR 3B

##### a) Taxpayers having aggregate turnover of more than Rs. 5 crore in the preceding Financial year

Month	Due Date (is not extended)	Cut off date	Interest	Late Fees
Feb 2020	20.03.2020	24.06.2020 (Interest /Late fee waiver last cut off date)	Nil till 04/04/2020 i.e (15 days from due date) and thereafter, @ 9% p.a (to be calculated on basis of days of default). If the return is filled up to 24.06.2020. Note: If return is filed after 24.06.2020 then 18% interest will be charged from due date i.e 20-03-2020. Notification.31/2020	Complete Waiver of Late fees if filed on or before 24/06/2020 Notification.32/2020



Month	Due Date (is not extended)	Cut off date	Interest	Late Fees
March 2020	20.04.2020	24.06.2020 (Interest /Late fee waiver last cut off date).	Nil till 05/05/2020 and thereafter, @ 9% p.a (to be calculated on basis of days of default), If the return is filled up to 24.06.2020.  Note: If return is filed after 24.06.2020 then 18% interest will be charged from due date i.e 20-04-20  Notification.31/2020	Complete Waiver of Late fees if filed on or before 24/06/2020  Notification.32/2020
April 2020	20.05.2020	24.06.2020 (Interest /Late fee waiver last cut off date).	Nil till 04/06/2020 and thereafter, @ 9% p.a (to be calculated on basis of days of default), If the return is filled up to 24.06.2020.  Note: If return is filed after 24.06.2020 then 18% interest will be charged from due date i.e 20-05-20  Notification.31/2020	Complete Waiver of Late fees if filed on or before 24/06/2020  Notification.32/2020
May 2020	20.06.2020	27.06.2020 (Extended date)	Interest @18% if filed after 27.06.2020	Applicable, if filed after 27.06.2020  Notification.36/2020

b) Taxpayers having aggregate turnover of more than Rs. 1.5 Cr but up to 5 Cr in the preceding Financial year

Month	Due Date (is not extended)	Cut off date	Interest	Late Fees
Feb 2020	22.03.2020/ 24.03.2020	29.06.2020 (Interest /Late fee waiver last cut off date)	Nil, if return filed up to 29.06.2020 Notification.31/2020	Nil, if return filed up to 29.06.2020 Notification.32/2020
March 2020	22.04.2020/ 24.04.2020	29.06.2020 (Interest /Late fee waiver last cut off date)	Nil, if return filed up to 29.06.2020 Notification.31/2020	Complete Waiver of Late fees if filed on or before 24/06/2020 Notification.32/2020
April 2020	22.05.2020/ 24.05.2020	30.06.2020 (Interest /Late fee waiver last cut off date)	Nil, if return filed up to 30.06.2020 Notification.31/2020	Complete Waiver of Late fees if filed on or before 24/06/2020 Notification.32/2020
May 2020	22.06.2020/ 24.06.2020	12.07.2020/ 14.07.2020 (As per States) (Date Extended)	Interest @18% if return filed after extended due date.	Applicable, if filed after 12.07.2020/ 14.07.2020. Notification.36/2020



c) Taxpayers having aggregate turnover of up to Rs. 1.5 Cr in the preceding Financial year

Month	Due Date (is not extended)	Cut off date	Interest	Late Fees
Feb 2020	22.03.2020/ 24.03.2020	30.06.2020 (Interest / Late fee waiver last cut off date)	Nil, if return filed up to 30.06.2020 Notification.31/2020	Nil, if return filed up to 30.06.2020 Notification.32/2020
March 2020	22.04.2020/ 24.04.2020	03.07.2020 (Interest / Late fee waiver last cut off date)	Nil, if return filed up to 03.07.2020 Notification.31/2020	Complete Waiver of Late fees if filed on or before 03.07.2020 Notification.32/2020
April 2020	22.05.2020/ 24.05.2020	06.07.2020 (Interest / Late fee waiver last cut off date)	Nil, if return filed up to 06.07.2020 Notification.31/2020	Complete Waiver of Late fees if filed on or before 06.07.2020 Notification.32/2020
May 2020	22.06.2020/ 24.06.2020	12.07.2020/ 14.07.2020 (As per States) (Extended Date)	Interest @18% if return filed after extended due date	Applicable, if filed after 12.07.2020/ 14.07.2020 Notification.36/2020

**Notification.33/2020 dated 03.04.2020 : GSTR 1**

Month	Return	Due date (Not Extended)	Cut off Date	Interest	Late Fees
Mar 2020	GSTR 1 Monthly	11.4.2020	30.06.2020	Not Applicable	Nil, If filed upto 30.06.2020
Apr 2020		11.05.2020	30.06.2020	Not Applicable	Nil, If filed upto 30.06.2020
May 2020		11.06.2020	30.06.2020	Not Applicable	Nil, If filed upto 30.06.2020
Jan – Mar 2020	GSTR 1 Quarterly	30.04.2020	30.06.2020	Not Applicable	Nil, If filed upto 30.06.2020

**Notification.34/2020 dated 03.04.2020 : Due date to furnish CMP-08 & GSTR-4 extended for March Quarter**

Taxpayers opting for the Composition Scheme for the financial year 2020-21 allowed to file their option in FORM CMP-02 till 30th June 2020.

**Extension of time limit for furnishing of the following for taxpayers opting for the Composition scheme for the financial year 2020-21 as under:-**

Nature of form	Period	Actual date	Extended date
Form GST CMP -08	Quarter ending March	18 <sup>th</sup> day of succeeding quarter i.e 18 <sup>th</sup> April	7 <sup>th</sup> July 2020
Form GSTR-4	F.Y. ending 31.03.2020	30 <sup>th</sup> April 2020	15 <sup>th</sup> July 2020



## Notification No. 35/2020 dated 03.04.2020

### General/ Blanket Extension

As per power conferred by sec 168A (Act amended through ordinance\_(valid till 6 months of next Parliament Sitting) Done due to Power given to CG to give blanket exemption in case of natural calamities etc. Due to COVID-19 On recommendation of council Extend Time Period to 30.06.2020

#### a. Departmental Action

Completion of any proceedings or Passing of any order or Issuance of any notice, intimation, notification, sanction or approval or such other action by whatever name called, by any authority , commission or tribunal, by whatever name called, under the provisions of the Acts stated above.

#### b. Assesse Action

Filing of any appeal, reply or application or furnishing of nay report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above.

### (Falling due from 20.03.2020 to 29.06.2020)

#### Exclusions to Blanket Extension

The following are Certain Exclusions provided under this notification, on which, Extension will not applicable, which are explained in the following Table:

Provisions	Explanation	Remarks
Chapter IV	Time and Value of Supply	Time and valuation of supply provision remains unaffected
Section 10(3)	Lapse of Option availed by Composition dealers	Option availed u/s 10(1) by a composition dealer wrt composition levy shall stands lapsed wef date on which his aggregate turnover exceeds the specified limits. If such date falls between 20.3.20 to 30.06.2020, there shall be no extension for such person for switching to regular person.
Section 25	Application for Registration	No extension for person liable to get himself registered u/s 22 and 24 within the time limits prescribed.
Section 27	Casual Taxable person and Non Resident taxable person	No extension in time limits for Registration by a Casual Taxable person and Non Resident taxable person liable to register.
Section 31	Tax invoices	No extension in time limits prescribed for issuance of a tax invoice as per provisions of Act. ie Tax Invoice has to be issued if any supply of Goods or Services are made between the specified period as per existing provisions only.
Section 37	Details of Outward Supplies GSTR	No extension shall apply to the provisions of furnishing of details of outward supplies on the common portal i.e GSTR-1
Section 47	Late Fees	This notification shall not extend the levy of late fees applicable under the Act except for certain specific provisions under other notification issued.
Section 50	Interest	This notification shall not extend the levy of any interest chargeable @ 18% or 24% under the Act except for certain specific provisions under other notification issued. For eg: if any interest is chargeable for wrong availment of ITC and its subsequent reversal, the same shall be chargeable even if done within the specified period.



Particulars	Explanation	Remarks
<b>Section 69</b>	Power to Arrest	There is a provision for arrest u/s 132 and the accused is to be presented before the Magistrate within 24 hours in such cases. No extension shall apply in such cases also.
<b>Section 90</b>	Partners Liability	No extension to the liability of partners of firm to pay tax, interest or penalty.
<b>Section 122</b>	Penalty for offences	This extension shall not be applicable for any offences covered under section 122 covering TDS/TCS.
<b>Section 129</b>	Detention, Seizure and release of goods and conveyances	This notification excludes the provisions of the Act as specified u/s 129 wrt to detention of goods and conveyances in transit and its seizure and release
<b>Section 39 Except sub section (3), (4), (5)</b>	Furnishing of Returns u/s 39 [GSTR 3b, etc]	There is no extension for the returns specified u/s 39 and to be filed except for returns under sub sections: (3)- TDS Returns (4)-ISD Returns (5)-Return- Casual Person
<b>Section 68</b>	E Way Billing	No extension in E Way Bill provisions. The same have to be complied with before the movement of Goods as per relevant provisions of Act and Rules.

Further, there shall be no extension with respect to any rules made with respect to above provision of the Act

### **Circular 136/06/2020**

#### **Issue 8:- What will be the status of e-way bills which have expired during the lockdown period?**

**Clarification:-** In terms of notification No. 35/2020- Central Tax, dated 03.04.2020, Issued under the provisions of 168A of the CGST Act, where the validity of an e-way bill generated under rule 138 of the CGST Rules expires during the **period 20th day of March, 2020 to 15th day of April, 2020**, the validity period of such e-way bill has been extended till the **30th day of April, 2020**.

#### **Issue 9:- What are the measures that have been specifically taken for taxpayers who are required to deduct tax at source under section 51, Input Service Distributors and Non-resident Taxable persons?**

**Clarification:-** Under the provisions of section 168A of the CGST Act, in terms of notification No. 35/2020- Central Tax, dated 03.04.2020, the said class of taxpayers have been allowed to furnish the respective returns specified in sub-sections (3), (4) and (5) of section 39 of the said Act, for the months of **March, 2020 to May, 2020 on or before the 30th day of June, 2020**.

#### **Issue 10:- What are the measures that have been specifically taken for taxpayers who are required to collect tax at source under section 52?**

**Clarification:-** Under the provisions of section 168A of the CGST Act, in terms of notification No. 35/2020- Central Tax, dated 03.04.2020, the said class of taxpayers have been allowed to furnish **the statement specified in section 52**, for the months of **March, 2020 to May, 2020 on or before the 30th day of June, 2020**.

#### **Issue 11:- The time limit for compliance of some of the provisions of the CGST Act is falling during the lockdown period announced by the Government. What should the taxpayer do?**

**Clarification:-** Vide notification No. 35/2020- Central Tax, dated 03.04.2020, issued under the provisions of 168A of the CGST Act, except for few provisions covered in exclusion clause, any time limit for completion or compliance of any action which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, has been extended to **30th day of June, 2020**.

## Notification No. 37/2020 dated 28.04.2020

### CBIC notifies effective date for Rule 87(13) & Form GST PMT09

CBIC notifies 21<sup>st</sup> day of April, 2020 as the date from which Rule 87(13) of CGST Rules & Form GST PMT-09 will come into effect. After this rule comes into effect a registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in **FORM GST PMT-09**.

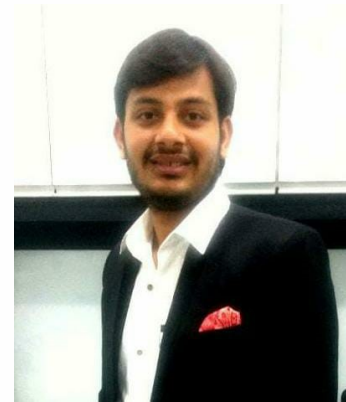
PMT 09 is the prescribed challan for shifting the wrongly paid ITC. It is recently introduced by CBIC. If you have paid a wrong tax, like CGST in place of SGST, you can shift it using this challan. PMT 09 consists of minor and major heads. You can mention the amount of tax you wish to shift as in the details of the amount to be transferred from one account head to another. The reallocation of tax can be from major head to minor head and vice versa.



## Trade Circular No. 6T of 2020 dated 30.04.2020 Exemption from payment of late fee u/s. 6(3) –

1. Kindly refer to **Trade Circular no. 4T of 2020 dated 19/03/2020**. By this circular the whole of the late fee payable by the registered employer in respect of monthly or annual returns pertaining to periods up to March 2020 was exempted due to technical difficulties faced by the tax payers subject to fulfillment of eligibility conditions.
2. As these technical difficulties are still continuing, it is proposed to extend the date of filing returns without payment of late fee.
3. Hence, considering above circumstances it has decided under the powers conferred by Notification No. PFT-2014/CR-38/taxation dated 21.08.2014 issued by the State Government on the proviso of section 6(3) of the Profession Tax Act, 1975 the whole of the late fee payable by the registered employer in respect of monthly or annual returns pertaining to any periods up to March 2020 and monthly period of April 2020, is exempted subject to fulfillment of eligibility conditions mentioned below:
4. **Eligibility Conditions:-**
  - i) Any amount payable (tax + interest) as per return should have been/shall be paid on or before the filing of returns.
  - ii) The aforesaid employers should submit the returns pertaining to any periods up to **April 20 on or before 31/05/20**
5. Needless to mention that no refund or adjustment against any tax liability shall be allowed where late fee has already been paid.
6. **Revocation of Late fee exemption:** If it is found that the employer has not fulfilled the conditions or has submitted false information to avail the benefit of exemption then, his exemption of late fee shall be revoked and action will be taken against him as per the provisions of law.





Contributed by  
CA Paras Kenia

## Facts of the Case:-

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

## I. Understanding of the Case and Questions of Law

Assessee signed a development agreement. As per the terms of the development agreement, consideration for development agreement was fixed at Rs.10lac plus 33% of constructed area for sale. The assessee received Rs.10lacs however, since the sanctions from government authorities are pending till the date of assessment, the development could not take place, and hence the assessee has not received the 33% of constructed area for sale till the date of assessment. The assessee built the house from the cash consideration of Rs.10lacs. The assessment for the year in which development agreement signed was reopened u/s. 147 of the act and was completed u/s.144 of the act.

### Following questions of law arise from the facts of the case –

1. Whether the transactions in hand envisage a “transfer” exigible to tax by reference to Section 2(47)(v) of the Income Tax Act, 1961 read with Section 53-A of the Transfer of Property Act, 1882?
2. Whether consideration yet to be received can be taxed on a hypothetical assumption arising from the consideration to be received?”



## II. Relevant Clauses of the Acts

### A) Transfer of Capital Asset within the meaning of Section 2(47)(v)

As per **Section 2(47)(v) transfer in relation to capital asset includes** any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882)

Earlier, an agreement to sale which fulfilled the ingredients of section 53A was not required to be executed through a registered instruments. This position however was changed by the Registration and Other Related Laws (Amendment) Act, 2001. **Section 17 and 49 of the Registration Act, 1908** have been amended, clarifying that **unless the document containing the contract to transfer for consideration of any immovable property (for the purpose of Section 53A of 1882 Act) is registered, it shall not have any effect in law, other than being received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by a registered instrument.**

The effect of the aforesaid amendment is that, on and after the commencement of the Amendment Act of 2001, if an agreement, like the Development Agreement in the present case, is not registered, then it shall have no effect in law for the purposes of Section 53A. This being the case, in order to qualify as a “transfer” of a capital asset under Section 2(47) (v) of the Act, there must be a “contract” which can be enforced in law under Section 53A of the Transfer of Property Act. A reading of Section 17(1A) and Section 49 of the Registration Act shows that in the eyes of law, there is no contract which can be taken cognizance of, for the purpose specified in Section 53A after 2001 unless the said contract is registered.

### B) Concept of Income

**Section 2(24)** of the Act defines ‘**income**’. The definition of ‘income’ provided in section 2(24) although an inclusive definition, but it also specifically provides some income which are intended to be taxed under the provisions of the Act. The **income in the nature of capital gains** as per section 45 is one such income which is specifically included in the definition of income.

**Section 45(1)** of the Act states that any **profit or gain** arising from the transfer of a capital asset effected in the previous year shall be deemed to be the income of the previous year in which the transfer took place. **Section 5** which defines the scope of total income, states that **all income** from whatever source derived which is received, accrues, arises or is deemed to be received, accrue or arise shall be included in the total income.

From combined reading of Section 2(24), Section 5 and Section 45, it is clear that some real income must arise on the assumption that there is transfer of a capital asset which must have been received or have accrued under section 48 as a result of the transfer of capital asset. Income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody.



Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him.

Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a 'hypothetical income', which does not materialise.

### **III) Arguments before the CIT A**

Considering the facts of the case and various provisions of the Income Tax Act, 1961 as well as the other relevant acts, one can argue on following grounds –

- a. In the instant case before us, the development agreement is merely signed and not registered and hence reopening of assessment can be challenged as owing to the amendment in Registration Act, 1908 there is no transfer of capital asset took place and hence there is no question of income in the form of capital gain being escaped assessment.
- b. Further, even though it is assumed that the development agreement was registered in the year in which it was signed, then also reopening of assessment can be challenged on the same ground, as in the instant case, it is clear that the income from capital gain on a transaction which never materialized is, at best, a hypothetical income. It is know fact that due to want of sanction, the transaction of development envisaged in development agreement falls apart. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be brought to tax under Section 45 read with Section 48 of the Income Tax Act. **Both the grounds at (a) and (b) are supported by the judgement of Hon'ble Supreme Court in the case of CIT vs. Balbir Singh Maini pronounced on 4<sup>th</sup> October, 2017**
- c. Also, without prejudicing the above grounds, in order to avoid addition of cash receipt of Rs.10lacs, one shall argue that even if assumed but not accepted the said receipt as income since the terms of the agreement are not performed in full and hence the receipt does not partake the nature of income, said Rs.10lac can not be charged to tax under the head capital gain as the assessee has invested the entire sum in constructing house and is eligible to claim deduction u/ s. 54F of the act.
- d. As regards to the fact that claim of deduction u/s. 54F was not made before the AO, one can argue that the AO is duty bound to assess the income at correct figure whether or not the relevant claim is made by the assessee or not. The jurisdiction of the AO is to compute the total income which could be brought to tax in accordance with law. **Both the grounds at (c) and (d) are supported by the judgement of Hon'ble Bombay High Court in the case of CIT vs. Smt. Archana R. Dhanwatey (1981) 24 CTR (Bom) 142 : (1982) 136 ITR 355 (Bom).**
- e. The assessment has been made u/s. 144. One can argue that proper opportunity of being heard was not given to the assessee and hence can take ground of violation of principle of natural justice. This ground helps to produce any additional material or documentary evidence which could not be produced before the AO during the reassessment proceedings.



#### **(IV) Documents to be produced before CIT A**

- ⇒ Development Agreement
- ⇒ Application filed before various government authorities for obtaining sanctions
- ⇒ Order passed, if any, by various government authorities rejecting the applications for sanctions
- ⇒ Evidence in support of the fact that cash consideration has been invested in building the house
- ⇒ Copies of Judgments relied upon

### **Case Study for the Month of May 2020**

#### **CASE STUDY**



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



## Motivational Story

The Alchemist's main theme is finding one's destiny. The whole journey teaches us to follow our hearts and dreams; we should always seize the opportunities life offers in the pursuit of whatever makes us happy.

1. when you want something, all the universe conspires in helping you to achieve it.
2. One is loved because one is loved. No reason is needed for loving.
3. We have stopped for a moment to encounter each other, to meet, to love, to share. This is a precious moment. It is a little parenthesis in eternity.
4. Everyone seems to have a clear idea of how other people should lead their lives, but none about his or her own.
5. Every blessing ignored becomes a curse.
6. This is what we call love. When you are loved, you can do anything in creation. When you are loved, there's no need at all to understand what's happening, because everything happens within you.
7. And, when you can't go back, you have to worry only about the best way of moving forward.
8. You will never be able to escape from your heart. So it's better to listen to what it has to say.
9. The simple things are also the most extraordinary things, and only the wise can see them.
10. When we love, we always strive to become better than we are. When we strive to become better than we are, everything around us becomes better too.
11. Don't give in to your fears. If you do, you won't be able to talk to your heart.
12. If you start by promising what you don't even have yet, you'll lose your desire to work towards getting it.
13. It's the possibility of having a dream come true that makes life interesting.
14. People are capable, at any time in their lives, of doing what they dream of.
15. There is only one way to learn. It's through action. Everything you need to know you have learned through your journey.
16. Remember that wherever your heart is, there you will find your treasure.
17. It's one thing to feel that you are on the right path, but it's another to think that yours is the only path.
18. There is only one thing that makes a dream impossible to achieve: the fear of failure.
19. We have stopped for a moment to encounter each other, to meet, to love, to share. This is a precious moment. It is a little parenthesis in eternity.
20. No matter what he does, every person on earth plays a central role in the history of the world. And normally he doesn't know it.
21. When each day is the same as the next, it's because people fail to recognize the good things that happen in their lives every day that the sun rises.
22. Because true love never keeps a man from pursuing his destiny.
23. Intuition is really a sudden immersion of the soul into the universal current of life.
24. At a certain point in our lives, we lose control of what's happening to us, and our lives become controlled by fate. That's the world's greatest lie.
25. Just follow your Dreams

Contributed by  
Keyur Gangar



## Nominated Members of KDUB Branch

Following members have been nominated to various committees of WIRC of ICAI for the year 2020-21

1. CA Utkarsh Mehta - International Taxation Committee;
2. CA Santosh Jagdale - International Taxation Committee;
3. CA Purna Peshori - International Tax Committee
4. CA Jasmine Chokshi - Direct Taxation Committee;
5. CA Gopal Kedia - Indirect Taxation Committee;
6. CA Mahaveer Jain - Ind. AS Accounting Standards and IFRS Committee;
7. CA Girish Nagpal - Internal Audit Committee;
8. CA Vinit Haria - Insolvency and Bankruptcy Code Committee;
9. CA Viral Karaniya - Editorial Board Committee;
10. CA Shekhar Patwardhan - Professional Development Committee;
11. CA Amit Otwani - Study Circle Coordination Committee;
12. CA Kishore Peshori - Career Counselling Committee;



**Congratulations!**

## Following Research Paper Submitted by Members

Sr. No.	Topics	Name of Members	Downloads
1	Research Paper on Impact of COVID-19 on International Tax Treaties	CA Santosh Jadgale	
2	Research Paper on Maintaining Records under GST (Accounting Methodology under GST)	CA Mukesh Soni	
3	Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act 2013	CA Umesh Jeswani	
4	A study of Lockdown Impact on MSME Textile Units and Relief Expected	CA Ashutosh Trivedi	
5	Precautions to be taken while Purchasing Land in Maharashtra	CA Mayur Jain	
6	Research Paper on Healthcare Sector	CA Keyur Gangar, CA Paras Kenia, CA Ankur Gada, CA Ronak Gada	