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

KALYAN DOMBIVALI BRANCH OF WIRC OF ICAI

eNews Letter

Issue No.7
October 2019

Josh : Joy of Sharing & Helping

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Driven by Values

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Seasons Greetings to all of you,

Its always a pleasure to interact with the Members of the Branch, as it provides us an opportunity to share the activities of the Branch with you. It also gives an opportunity to invite attention to the future programs of the Branch and off course the efforts taken by the Newsletter committee results into a very useful gist of updates and information for the benefit of the Members. We are thankful for the encouraging responses by the users of the Newsletter.

The contributors are really passionate about the newsletter and are committed to give their best to the Newsletter. One such example is of CA Prerna Peshori, who is currently out of India for further studies in her area of expertise but she is readily available to be a part of the Newletter. I express my humble regards to all the members who are sparing time for the Newsletter.

Our Branch is a Mega category branch and the membership is increasing fast. Credit goes to the efforts of the students and their principals due to which in every final exam about 150 new CAs emerge. Branch was really pleased to felicitate the newly qualified CAs in a very well responded program at Agrawal College auditorium, Kalyan on 14/09/2019. Apart from the felicitation of the Students, branch had also scheduled Career guidance sessions from various experts such as CA Murtuza Kachwala, CA Kishore Peshori and CA Vymoesh Pathak. Branch was pleased to have WIRC Chairperson CA Priti Savla as chief guest and CA Pramod Ghorpade, Group CFO of Teva India to guide the young CAs.

Branch is also conducting Mock tests for the Foundation, IPCC, Inter and Final Students which are extremely well responded by the Students. I take this opportunity to urge you to kindly encourage students in your contact sphere to take benefit of the Mock Test which are really helpful while appearing in the actual exams. Branch has also scheduled Crash courses for select subjects for which the students always seek to have further guidance by way of Crash courses.

All the Study circles of the Branch are real pillar of support for the Branch. As the members were wanting to have refresher sessions in Tax audits, Kalyan, Dombivli study circles organized sessions on Tax Audits as well as topics such as Amnesty scheme under service tax by the GOI. Many members took benefits of the same.



Branch is Planning a two day conference in the Month of December 2019. One day will be dedicated to the Direct Taxes including a **Mock Tribunal** and one day for specific benefit of young members to get hand on New Ares of Practice for building their career. **Tentative dates are 7th and 8th December 19**. I request all the Members to please spare the dates.

Countdown has also begun for the first National Conference of the Students which is allotted to our Branch by BOS. We will share the details of the conference very soon. However, the dates are finalized as 23rd and 24th December 2019. This will allow the students of the Branch to experience a very good program which is really going to benefit them in their academic career. It will also groom them as prospective Chartered Accountants. All the members are requested to kindly share this with the article students and help the branch by maximizing the participation for the conference.

Branch has scheduled various career counselling programs in November 19 and December 19. These are targeted at spreading more awareness about the CA Curriculum and to enable more students to take the advantage of this extremely prestigious course. Thanks to the BOS and WIRC, the honorarium is allowed to be given to the faculties for their efforts in this regards. It is also an opportunity to young CAs to contribute to the profession as faculty for career counselling sessions. I request the members who would like to be part of the career counselling sessions as faculties to send their communication to the Branch on kalyandombivali@icai.org

October 19 is the month of festivals as well as Tax Audits, although the due date for certain assesses has been extended from 30th September 19 to 31st October 19, its going to be a hectic period to meet the deadline. I request all the members to kindly take care of their health as well as family time while providing our noble services to our clients.

I also take this opportunity to congratulate and wish a successful time ahead to CA Jeetu Ramrakhiyani, CA Alpesh Malde, CA Ronak Gada and CA Keyur Gangar who have shifted to New offices for better prospects and spreading their wings . Branch is really proud of your success. Wishing you yet again a very happy festive season and a great time ahead.

I remain with a positive quote :

"Life is 10% what happens to us and 90% how we react to it "

CA Saurabh S. Marathe

Chairman

Kalyan Dombivli Branch of WIRC of ICAI



I N D E X



Direct Tax Laws Update's

(Contributed by CA Shekhar S. Patwardhan)

1. CBDT Excludes Bogus Penny Stocks Scam Cases From Benefit Of Low-Tax Effect Circular :

The CBDT has vide Circular No. 23 of 2019 dated 6th September 2019 stated that cases where organised tax-evasion scam is noticed through bogus Long-Term Capital Gain (LTCG)/Short Term Capital Loss (STCL) on penny stocks will be excluded from the benefit of the enhanced monetary limits stipulated in Circular no. 17 of 2019 dated 08.08.2019. The CBDT may by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity.

2. CBDT Circular regarding Prosecution Of Offenses:

The CBDT has vide Circular No. 24/2019 dated 09.09.2019 specified the procedure for identification and processing of cases for prosecution under Direct Tax Laws. The CBDT has specified detailed criteria to ensure that only deserving cases get prosecuted. The objective is to ensure that while habitual defaulters are not spared, casual offenders where the amounts involved is less than Rs. 25 lakh are not harassed.

3. CBDT Clarification regarding Delay in filing of Form 10 B for AY 2016-17 AND AY 2017-18 :

In supersession of this office Circular No 10 dated 22.05.2019 on the above mentioned subject, the date mentioned in sub para (ii) of Para 4 may be read as 31.03.2020 instead of 30.09.2019. Thus the date stands extended up to 31.3.2020.

4. CBDT Guidelines for Manual Selection of Returns for Complete Scrutiny during FY 2019-20 :

(i) Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact: –

a. exceeding Rs. 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune while at other charges, quantum of addition should exceed Rs. 10 lakhs;

b. exceeding Rs. 10 crore in transfer pricing cases. and where such an addition:-

1. has become final as no further appeal has been filed against the assessment order; or
2. has been confirmed at any stage of appellate process in favour of revenue and assessee has not filed further appeal; or
3. has been confirmed at the 1st stage of appeal in favour of revenue or subsequently; even if further appeal of assesses is pending, against such order.

(ii) Cases pertaining to Survey under section 133A of the Income-tax Act, 1961 ('Act') excluding those cases where books of accounts, documents, etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year.



(iii) Assessments in search and seizure cases to be made under section(s) 153A, 153C, 158BA, 158BC & 158BD read with section 143(3) of the Act and also for return filed for assessment year relevant to previous year in which authorization for search and seizure was executed under section 132 or 132A of the Act.

(iv) Cases where registration/approval under various sections of the Act such as 12A, 35(1)(ii)/(iia)/ (iii), lO(23C), etc. have not been granted or have been cancelled/withdrawn by the Competent Authority, yet the assessee has been found to be claiming tax-exemption/deduction in the return. However, where such orders of withdrawal of registration/approval have been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.

(v) Cases in respect of which specific information pointing out tax-evasion for the relevant year is given by any law-enforcement /intelligence/regulatory authority or agency. However, before selecting a return for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from jurisdictional Pr. CIT/Pr.DIT/ CIT/DIT concerned.

2. Through Computer Aided Scrutiny Selection (CASS), cases are being selected in two categories viz. Limited Scrutiny & Complete Scrutiny in a centralized manner under CASS-2019. CASS is a system-based method for scrutiny selection which identifies the cases through data-analytics and three-hundred sixty-degree data profiling of taxpayers and in a non -discretionary manner. The list of these cases is being/has been separately intimated by the Principal DGIT(Systems) to the Jurisdictional authorities concerned for further necessary action. In respect of cases selected under CASS cycle 2019, the following guidelines are specified.

(i) Cases where returns are selected for scrutiny through CASS but are not verified by the assessee within the specified period of e-filing and such ret urns remain unverified before the due date for issue of notice u/s 143(2), should be reopened by issue of notice under section 148 of the Act.

(ii) Cases selected for ‘Limited Scrutiny’ but credible specific information has been/is received from any law- enforcement/intelligence/ regulatory authority or agency regarding tax-evasion in such cases, then only issues arising from such information can be examined during the course of conduct of assessment proceedings in such ‘Limited Scrutiny’ cases, with prior administrative approval of the Pr. CIT/CIT concerned as per the procedure laid down in Board’s letter dated 28.11.2018 issued vide F.No.225/402/2018/ITA-1 1. In such ‘limited Scrutiny’ cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue’s on which the case was flagged for ‘Limited Scrutiny’ and the issue’s arising from the information received from the above referred agency or authority.



Direct Tax Case Laws Update's

(Contributed by CA Shekhar S. Patwardhan)

HIGH COURT DECISIONS

GUJRAT HIGH COURT

1. Pankajbhai Jaysukhlal Shah Vs ITO : CIVIL Appeal No 230 of 2019 Date of Publication 7th September 2019 Sections 147,148 292 B AY 2011-12

Conclusion: -

S. 147/148/292B: The officer recording the reasons u/s 148(2) for reopening the assessment & the officer issuing notice u/s 148(1) has to be the same person. If the reasons are recorded by the DCIT but the notice is issued by the ITO, the reassessment proceedings are invalid. The s. 148 notice is a jurisdictional notice. Any inherent defect therein cannot be cured u/s 292B. The fact that the assessee participated in the proceedings is irrelevant.

BOMBAY HIGH COURT GOA BENCH

2. Fomento Resorts and Hotels Ltd Vs ACIT : Tax Appeal No 63 of 2007 Date of Publication 14th September 2019 Sections 147,148 AY 1997-98

Conclusion: -

S. 147/148: It is mandatory for the AO to follow the procedure laid down in GKN Driveshafts 259 ITR 19 (SC) and to pass a separate order to deal with the objections. The disposal of the objections in the assessment order is not sufficient compliance with the procedure. The failure to follow the procedure renders the assumption of jurisdiction by the Assessing Officer ultra vires (Bayer Material Science 382 ITR 333 (Bom) & KSS Petron (Bom) followed)

TRIBUNAL DECISIONS

DELDHI TRIBUNAL

3. Shri Govind Kumar Khemka Vs ACIT : ITA No 2963 Del / 2019 Date of Publication 16th September 2019 Sections 56 and 69 B : AY 2015-16 :

Conclusion: -

Addition u/s 56(2)(vii)(b) and Section 69B - Family Settlement - assessee has acquired the Bungalow due to relinquishment of rights in the said property by three brothers of the assessee for Rs.NIL - no commercial transaction have been entered into between the assessee and his brothers and there is no colourable device. – Tribunal.



Addition u/s 56(2)(vii)(b) and Section 69B - Family Settlement Deed - on perusal of the Memorandum of Family Settlement (MFS) noted that assessee has acquired the Bungalow due to relinquishment of rights in the said property by three brothers of the assessee for Rs.NIL. - HELD THAT:- In this case, since there was a Family Settlement between the assessee and three brothers and they have acted upon Family Settlement Deed and distributed various properties among themselves and necessary rights and title are transferred in favour of each brother would show that parties have entered into genuine transaction. As per the Family Settlement Deed, it was agreed that property in question with superstructure shall be taken by the assessee and that as per the Settlement Deed, the assessee has to contribute a sum of Rs. 20 crores from his own resources/ capital or through the borrowed funds as part of the Family Settlement to balance the settlement between brothers.

Therefore, no commercial transaction have been entered into between the assessee and his brothers and there is no colourable device. We may also note that admittedly settlement was executed for distribution of different properties between the assessee and his brothers which was having no commercial purpose. It may also be noted here that authorities below rejected the claim of assessee because the transaction was not executed out of natural love and affection. The word 'natural love and affection' have not been specified in Section 56(2)(vii)(b) of the I.T. Act.

Therefore, this term has no consequence to the above provisions in which the A.O. made the addition. Since the amount of Rs. 12 crores have been taken by assessee as loan from the Bank through the respective agreements referred to above, therefore, it could not be treated as undisclosed income of the assessee. The assessee has explained source of Rs. 12 crores through the loan taken from the Bank.

Therefore, provisions of Section 69B would not apply to the case of the assessee. Further, it was not the case of the A.O. that provisions of Section 69B are attracted in the case of assessee. CIT(A), could not have bring to tax the aforesaid amount through new source of income. Considering the above discussion in the light of above decisions, it is clear that provisions of Section 56(2)(vii)(b) and Section 69B of the I.T. Act are not applicable in this case. In this view of the matter, there was no justification for the authorities below to make the addition against the assessee under the above provisions of Law.



International Taxation Update's

(Contributed by CA Prerna K. Peshori)

Changing Definition of Permanent Establishment

The globalization has given impetus to the growth of MNEs resulting into a shift from counry-specific operating models to global models which have enabled them to structurize and locate their operations in tax efficient jurisdictions without there being substantial economic activities.

Further, globalization has also resulted in growing importance of service industry and digitization of various industries making it possible to locate activities in the jurisdiction without having any physical place of business. It is stated in OECD BEPS Action Plan 1 states that digital economy has become an economy itself. The digital economy has challenged the current rules of source and residence. The evolution of business models in general, and the growth of the digital economy in particular, have resulted in non-resident companies operating in a market jurisdiction in a fundamentally different manner today than at the time international tax rules were designed.

Especially it was observed due to absence of physical place of business, the current definition of PE has not been able to capture the digital transactions within the tax net. This is due to the fact that the existing thresholds for taxation rely on physical presence to conduct substantial sales of goods and services into a market jurisdiction. The fact that less physical presence is required in market economies in typical business structures today therefore raises challenges for international taxation

The current rules of taxation have revealed weaknesses to capture these new ways of doing businesses as when the existing rules were formulated, such advancements were never envisaged. All this has resulted into double non taxation or low taxation by shifting profits away from jurisdictions where the activities creating those profits take place. This has led to base erosion and profit shifting (BEPS) concerns which were never intended by the treaty partners. All this has led to global consensus for formulating 15 BEPS Action Plans to restore source and residence taxation in cases where cross-border income would otherwise go untaxed or would be taxed at very low rates. Base erosion and profit shifting ("BEPS") is a phrase commonly used to refer to tax avoidance strategies that taxpayers use to shift their profits from high tax jurisdictions to low tax jurisdictions.

Changes to the definition of PE were felt necessary to address the BEPS concern resulting from the existing rules. OECD BEPS Action Plan 7- Preventing the Artificial Avoidance of Permanent Establishment Status is result of such a call made by the G20 and OECD member nations. OECD BEPS Action Plan 7 has suggested changes in OECD MC and OECD Model Commentary.

The BEPS concerns identified under the OECD BEPS Action Plan 7 and the recommendations therein are discussed below. The articles of treaty which are identified underOECD BEPS Action Plan 7 are as under:

1. Agency PE
   a. Dependent Agent [Art. 5(5)]
   b. Independent Agent [Article [5(6)]
2. Exclusions to the scope of PE [Article 5(2)]
3. Construction/Installation/Service PE [Article 5(3)]



These provisions of these articles have been identified to give rise to the BEPS concerns. Therefore, changes are suggested in the provisions of these articles to curb the BEPS concern.

The BEPS concerns and the recommendations and the impact on Indian tax treaties is discussed below.

Impact of Multilateral Instrument

Amendment to individual DTAAs would be required to incorporate the recommendations suggested under OECD BEPS Action Plan 7. Amending individual treaties through bilateral negotiations would be a long drawn and delayed process and would require considerable consensus between the treaty partners.

Therefore, BEPS Action Plan 15, Developing a Multilateral Instrument(MLI) to Modify Bilateral Tax Treaties, provides a flexible option of implementation of changes to treaty provisions through a multilateral instrument. Basically, an MLI would be applied alongside existing treaties and would modify the application of an existing treaty between two countries only when both the contracting states cover the tax treaty and agree to the same changes as proposed in the MLI.

Recently in Paris, on June 7, 2017, 68 developed and developing countries signed the "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting", otherwise referred to as the Multilateral Instrument ("MLI"), to modify a large number of bilateral tax treaties entered into by over 68 countries.

After the MLI comes into force, it will not automatically apply to all the treaties of a country that is a party to the MLI ("Party" / "Parties") but will apply only to those tax treaties where both Parties to such tax treaty have conveyed their intention (by way of a notification) for such treaty to be covered by the MLI, such treaties being referred to in the MLI as "Covered Tax Agreements" ("CTA"). In other words, the MLI will be applicable to a bilateral tax treaty only if both parties to such treaty notify it as a CTA.

When a bilateral treaty is amended by a protocol the treaty text would be amended by the deletion and addition of words. This doesn't happen with an MLI, it doesn't modify the text of the bilateral treaty, it simply brings in amended rules on top of the text of the bilateral tax treaties where such treaty is a covered tax agreement and there is a matching of choice by both the contracting states.

A party to the MLI may reserve the right for provisions of the MLI to not apply: a. to its covered tax treaties in their entirety; or b. a subset of its covered tax treaties. Where one of the Parties reserves the right for provisions of the MLI to not apply to a CTA, the relevant provisions of the MLI will not apply to the CTA irrespective of whether or not the Treaty Partner has made a similar reservation. Part IV of the MLI containing Art 12 to Art 15 deals with artificial avoidance of PE status.

Agency PE

A PE is projection or substantial presence of foreign enterprise through the business carried out in the source state. Such projection or presence need not be only through existence of fixed place of business in the source country. A foreign enterprise may carry on the business through agent which may constitute PE of the foreign enterprise by virtue of the activities it performs in the source state on behalf of the foreign enterprise. Article 5(5) of the OECD MC deems a dependent agent as PE of the foreign enterprise.



Article 5(5) of the OECD MC states that:

"Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent statusto whom paragraph 6 applies – is acting on behalf if an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph."

Article 5(5) of the OECD MC provides that an agent may constitute dependent agency PE for the non-resident enterprise if the following conditions are satisfied:

- The agent is not an independent agent as referred to in Article 5(6) of the OECD MC [Article 5(7) of the OECD MC]
- The agent acts on behalf of a non-resident enterprise
- Has authority to conclude contracts on behalf of non-resident enterprise
- He is habitually exercising the authority to conclude the contracts
- The activities of an agent are not limited to those mentioned in Article 5(4) of the OECD MC (i.e. preliminary/ auxiliary activities)

Further, the UN MC deems an agent to constitute PE of the non-resident enterprise if he habitually maintains stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the foreign enterprise.

Section 182 of the Indian Contract Act defines "agent" as a person employed to do any act for another or to represent another in dealing with third parties. There is one fundamental latin legal maxim for the agency "qui facit per aliumfacit per se" which means that he who acts through another does the act himself. This implies that an agent legally binds the principal by his acts i.e. a principal is responsible to the third parties by the act of the agent. In agent principal relationship, there is unity of interest and profit- making.

Therefore, it is pertinent to note that the primary requirement of creating dependent agency PE is that the agent should have an authority to conclude the contracts in the name of the non-resident enterprise so as to legally bind that enterprise in the source state. Accordingly, if an agent has been authorized by a non-resident enterprise to negotiate substantial elements and details of contract which are binding on such enterprise, he may be considered as a dependent agent of the non- resident enterprise.

The enterprises are able to circumvent the provision of Article 5(5) by formally concluding the contracts in the resident state through finalization or authorization even though the substantial elements of the contract are negotiated in the source state.

This can be understood with the help of the following example provided under the OECD BEPS Action Plan 7:

RCO, a company resident of State R, distributes various products and services worldwide through its websites. SCO, a company resident of State S, is a wholly-owned subsidiary of RCO. SCO's employees send emails, make



telephone calls to, or visit large organisations in order to convince them to buy RCO's products and services. The remuneration of employees is partially based on the revenues derived by RCO from the customers. The employee indicates the price of the product & explains the standard terms of RCO's contracts to cutomers (fixed by RCo which SCo is not able to modify). Customers subsequently concludes that contract online with RCo for the quantity discussed with SCO's employee and in accordance with the price structure presented by that employee.

In this example, SCO's employees play the principal role leading to the conclusion of the contract between the customer and RCO and such contracts are routinely concluded without material modification by the enterprise. The fact that SCO's employees cannot vary the terms of the contracts does not mean that the conclusion of the contracts is not the direct result of the activities that they perform on behalf of the enterprise. Convincing the customer to accept these standard terms is crucial element leading to the conclusion of the contracts between the account holder and RCO. However, as per the current definition of PE, if SCO does not actually conclude the contracts in State S, it would not constitute PE of RCO

Therefore, the MNEs have been able to circumvent the PE exposure by demonstrating that the contracts were not formally concluded by the agent in the source state as they were approved outside the source state even though substantive activities leading to conclusion of contracts were performed by the agent in the source state.

Therefore, to counter such arrangements and similar strategies, BEPS Action Plan 7 has recommended changes in Article 5(5) to provide that

"Notwithstanding the provisions of paragraph 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

a) in the name of the enterprise, or
b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph."

Therefore, if a person (agent)

(i) habitually concludes contracts in the name of the enterprise
(ii) habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise.

Such an agent would constitute dependent agency PE of the non-resident enterprise. The contracts may be:



(a) in the name of enterprise
(b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
(c) for the provision of services by that enterprise

This phrase "or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise" is aimed to cover the situations where formal conclusion of contracts takes place outside the Source state even where the substantial activities leading to conclusion of contract are performed in the source state. Now if the agent who although does not conclude the contracts but plays a principal role leading to conclusion of contracts that are routinely concluded without the material modification by the enterprise, such agent would also constitute dependent agent PE of the enterprise. This was to counter the practices where as per the relevant contract law, the contract was concluded outside the source state but substantial activities that lead to conclusion of contracts take place in the source state.

The principal role leading to the conclusion of the contract will apply for eg where a person solicits and receives (but does not formally finalise) orders which are sent directly to a warehouse from which goods belonging to the enterprise are delivered and where the enterprise routinely approves these transactions.

Therefore, as referred to in the example above where SCO even where it performed principal activities leading to conclusion of contracts in State S but the actual contracts were concluded by RCO, SCO did not constitute PE of RCO. Now under the modified Article 5(5) SCO would constitute RCO's PE in State S since it habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by RCO.

Changes in OECD Model Commentary

The Action Plan 7 has suggested the changes to the OECD Model Commentary to provide that a contract may be concluded

- even without active negotiation of the terms of the contract
- signing of the contract place outside the source state

However, mere promotion and marketing of the goods or services of an enterprise does not result in the conclusion of the contracts.

For eg., representatives of a pharmaceutical enterprise that actively promote drugs produced by that enterprise by contacting doctors would not constitute PE as the marketing activity does not directly result in the conclusion of the contracts between the doctors and the enterprise even if due to the marketing activities, sale of the drugs has increased substantially.

The requirement that an agent must "habitually" conclude contracts or play the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise reflects the underlying principle in Article 5 that the presence which an enterprise maintains in a Contracting State should be more than merely transitory i.e. there should be repeated occurrence of the conclusion of contracts rather than isolated transactions.



Further, OECD BEPS Action Plan 7 provides that the mere fact that a person has attended or even participated in negotiations in a State between an enterprise and a client will not be sufficient, by itself, to conclude that the person has concluded contracts or played the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise.

Amendment to Sec.9(1)(i).

Finance Act 2018 expanded the scope of business connection which includes dependent agent under Sec.9(1)(i) in line with BEPS Action Plan 7.

"business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

(a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—

(i) in the name of the non-resident; or

(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or

(iii) for the provision of services by the non-resident;

Therefore, unlike earlier, where the agents in India could come out of the clutches of PE definition by doing all activities but not formally concluding contracts, now in line with these amendments, agency agreements have to be drafted with caution.



Indirect Tax Law Update's

(Contributed by CA Rohan Pathak)

Various Notifications issues in September-19 as follows:

Particulars	Notification No.
Changes in CGST rates for specified goods wef 01.10.2019	Notification No. 14/2019-Central Tax (Rate)
IGST: Grant of alcoholic liquor license is not a supply of goods/service	Notification No. 24/2019-Integrated Tax (Rate)
IGST: CBIC amends entry related to GST on cement under RCM	Notification No. 23/2019- Integrated Tax (Rate)
IGST: Explanation on applicability of provisions related to supply of development rights	Notification No. 22/2019-Integrated Tax (Rate)
IGST: CBIC notifies certain services under RCM wef 01.10.2019	Notification No. 21/2019- Integrated Tax (Rate)
CBIC exempts certain services from IGST wef 01.10.2019	Notification No. 20/2019- Integrated Tax (Rate)
Changes in IGST rates of various services wef 01.10.2019	Notification No. 19/2019- Integrated Tax (Rate)
IGST Exemption on supply of goods for specified projects under FAO	Notification No. 18/2019-Integrated Tax (Rate)
CBIC exempt IGST on supplies of silver & platinum by nominated agencies to registered persons	Notification No. 17/2019-Integrated Tax (Rate)
CBIC extends concessional IGST rates to specified projects under HELP/OALP	Notification No. 16/2019-Integrated Tax (Rate)
IGST exemption to dried tamarind and cups, plates made of leaves, bark and flowers of plants	Notification No. 15/2019-Integrated Tax (Rate)
Changes in IGST rates for specified goods wef 01.10.2019	Notification No. 14/2019-Integrated Tax (Rate)
CBIC notifies place of supply of R&D services related to pharmaceuti-cal sector	Notification No. 04/2019- Integrated Tax
Aerated water manufacturers cannot opt for GST composition scheme	Notification No. 43/2019-Central Tax



Particulars	Notification No.
All about Availability of Online GST Refunds functionality in CBIC-GST Application	Advisory No.29 — Online Refund Functionality
DGGI detects fraudulent ITC refund claim of more than Rs. 400 crore	F. No. DGGI/AZU/Gr 'A'/12(4)/118/2019-20
Rules pertaining to single disbursement of GST refund claims effective from 24.09.2019	Notification No. 42/2019 – Central Tax [G.S.R. 683(E).]
Registration of Property under projects which requires registration with MahaRERA	
Reimbursement of SGST applicable on tickets of Mission Mangal movie	Trade Circular No. 48T of 2019
UTGST: Grant of alcoholic liquor licence is not a supply of goods/service	Notification No. 25/2019-Union Territory Tax (Rate)
UTGST: Govt amends entry related to GST on cement under RCM	Notification No. 24/2019-Union Territory Tax (Rate)
UTGST: Explanation on applicability of provisions related to supply of development rights	Notification No. 23/2019-Union Territory Tax (Rate)
UTGST: Govt notifies certain services under RCM wef 01.10.2019	Notification No. 22/2019-Union Territory Tax (Rate)
Govt exempts certain services from UTGST wef 01.10.2019	Notification No. 21/2019-Union Territory Tax (Rate)
Changes in UTGST rates of certain services wef 01.10.2019	Notification No. 20/2019-Union Territory Tax (Rate)
UTGST Exemption on supply of goods for specified projects under FAO	Notification No. 19/2019-Union Territory Tax (Rate)
UTGST: Manufacturers of aerated waters excluded from purview of composition scheme	Notification No. 18/2019- Union Territory Tax (Rate)
UTGST exemption on supplies of silver & platinum by nominated agencies	Notification No. 17/2019-Union Territory Tax (Rate)
CBIC extends concessional UTGST rates to specified projects under HELP/OALP	Notification No. 16/2019-Union Territory Tax (Rate)
UTGST exemption to dried tamarind and cups, plates made of leaves	Notification No. 15/2019-Union territory Tax (Rate)
Changes in UTGST rates for specified goods wef 01.10.2019	Notification No. 14/2019-Union territory Tax (Rate)



Particulars	Notification No.
CBIC disallows refund of compensation Cess in case of inverted duty structure for tobacco and manufactured tobacco substitutes	Notification No.3/2019-Compensation Cess (Rate)
Changes in Compensation Cess rate on Caffeinated Beverages & Motor vehicles	Notification No. 2/2019-Compensation Cess (Rate)
CGST: Grant of alcoholic liquor licence is not a supply of goods/service	Notification No. 25/2019-Central Tax (Rate)
CGST: Govt amends entry related to GST on cement under RCM	Notification No. 24/2019-Central Tax (Rate)
CGST: Explanation on applicability of provisions related to supply of development rights	Notification No. 23/2019-Central Tax (Rate)
CGST: Govt notifies certain services under RCM wef 01.10.2019	Notification No. 22/2019-Central Tax (Rate)
Govt exempts certain services from CGST wef 01.10.2019	Notification No. 21/2019-Central Tax (Rate)
Changes in CGST rates of various services wef 01.10.2019	Notification No. 20/2019-Central Tax (Rate)
CGST Exemption on supply of goods for specified projects under FAO	Notification No. 19/2019-Central Tax (Rate)
CBIC excludes manufacturers of aerated waters from purview of com-position scheme	Notification No. 18/2019-Central Tax (Rate)
CBIC exempt CGST on supplies of silver & platinum by nominated agencies to registered persons	Notification No. 17/2019-Central Tax (Rate)
CBIC extends concessional CGST rates to specified projects under HELP/OALP	Notification No. 16/2019-Central Tax (Rate)
IGST exemption to dried tamarind and cups, plates made of leaves, bark and flowers of plants	Notification No. 15/2019-Central Tax (Rate)



Profession Tax Updates

Contributed by CA Rohan Pathak)

Maharashtra Profession Tax- One Time Payment of Tax Scheme 2019 under Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975

1. Commencement :—

(a) This Scheme shall be called the **One Time Payment of Tax Scheme, 2019**.

(b) It shall be deemed to have come into force on the 9th July 2019.

2. Definitions :—

In this Scheme unless the context otherwise requires,—

(a) Act means the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (Mah. XVI of 1975);

(b) Scheme means the One Time Payment of Tax Scheme.

3. To avail the benefit under Scheme, the conditions and restrictions are as follows : —

(a) The person must be enrolled under the said Act.

(b) The enrolled person can opt the Scheme on the Department's website www.mahagst.gov.in at any time after his enrollment.

(c) Such enrolled person opting for Scheme shall select the period for the Scheme as well as tax rate applicable to him and shall pay requisite amount as provided in the TABLE annexed to this Scheme.

(d) The Scheme shall be restricted to the period selected by an enrolled person. Such person may opt for the Scheme again after earlier period under the scheme is over. However the benefit can be availed at a time for a minimum period of three years upto a maximum period of thirty five years.

(e) The amount payable as per the TABLE shall be paid electronically.

(f) The enrolled person who has discharged his liability for payment of tax for a total continuous period of five years by making payment in advance of a lump-sum amount under provision of clause (a) of sub-section (3) of section 8 of the Act, prior to 1st April 2018, may also opt for the Scheme after completion of such period of five years.

(g) The enrolled person who has already paid Profession Tax for the year 2018-2019 or has paid any lump-sum amount on or after 1st April 2018 for the periods starting from 1st April 2018, can also avail the benefit of Scheme by paying the balance amount payable for the period opted under the scheme as per the TABLE.

(h) If the enrolled person, who has availed the benefit of Scheme and has discharged his liability of Profession tax for a particular period, joins any employment during the period covered under the Scheme then, such person shall furnish to the employer 'One Time Profession Tax Payment Certificate' in Form A appended to this Scheme. In such case his liability to pay profession tax shall be restricted to the amount paid under the Scheme



and the employer shall not be liable to deduct Profession Tax of the said person until completion of his period under Scheme.

(i) If the enrolled person has paid the Profession tax under the Scheme for a particular period and subsequently he is covered by any other entry having higher rate of tax than the rate applicable at the time of opting the scheme then, his liability to pay tax shall not be varied due to such change in the entry under Schedule I.

(j) Once the amount is paid under the Scheme, no refund of the amount paid shall be granted under any circumstances.

(k) If it appears that, the person has availed the benefit of the Scheme by suppressing any material information or particulars or by furnishing any incorrect or false information or, if any suppression of material facts, concealment of any particulars is found then the benefits availed under the Scheme shall be withdrawn. Such person shall be liable to pay tax at the rate specified in Schedule I of the Act.



IBC Update's

(Contributed by CA Ajay Marathe)

INSOLVENCY RESOLUTION UNDER IBC 2016

Industrial sickness is chronic problem in the Indian economy and this has adversely effected Industrial growth, availability of credit, optimum utilization of resources, employment generation, and so on. There are many numbers of internal and external factors responsible for this epidemic. Internal factors within the organizations includes over optimism, mismanagement, overestimation of demand, wrong location, delay in project implementation, unwarranted expansion, diversion of funds, failure to modernize and poor labor-management relationships. External factors included an energy crisis, shortage of raw materials, inadequate infrastructure facilities, inadequate credit facilities, technological obsolescence, lack of demand, new and improved products introduced by competitor and global market forces. This problem needs to be remedied as quickly as possible to ensure sustainable economic & industrial growth.

Prior to enactment of Insolvency & Bankruptcy Code 2016 (IBC) Insolvency resolution, liquidation and bankruptcy of financially and operationally distressed entity was governed by various laws. For the Companies it is governed by Sick Industrial Companies (Special Provisions) Act, 1985, The Companies Act 1956, The Companies Act 2013. For individuals and partnership firm applicable law is The Presidency-Towns Insolvency Act, 1909 and The Provincial Insolvency Act, 1920. Apart from this there were other means to address these issues which includes Corporate Debt Restructuring, Strategic Debt Restructuring, Joint Lending Forum etc. This existing fragmented framework is inadequate, ineffective and yields no proper resolution because of overlapping jurisdiction of laws, absence of definitive time lines, uncertainty about the outcome, multiple adjudicating authorities with their appellate forums. With such an environment of legislative and judicial uncertainty, the outcomes on insolvency and bankruptcy are poor. World Bank (2014) reports that the average time to resolve insolvency is four years in India, compared to 0.8 years in Singapore and 1 year in London. As a result the Non Performing Assets (NPA) in Indian banking system has increased to 11.4% of the total lending.

The long awaited reforms were required to fill this lacuna and reinforce the insolvency regime. Recognizing these The Bankruptcy Law Reform Committee ("BLRC" or the "Committee") was set up by the Department of Economic Affairs, Ministry of Finance, under the Chairmanship of Mr. T.K. Vishwanathan (former Secretary General, Lok Sabha and former Union Law Secretary) on August 22, 2014 to study the "corporate bankruptcy legal framework in India" and submit a report to the Government for reforming the system. The Committee divided the project into two parts: (i) to examine the present legal framework for corporate insolvency and suggest immediate reforms, and (ii) to develop an 'Insolvency Code' covering all aspects of personal and business insolvency. The BLRC submitted its report in two volumes, volume I - text of finding and recommendation and volume II Draft Insolvency and Bankruptcy Code. The draft code was subsequently referred to a Joint Parliamentary Committee (JPC), which submitted a detailed report, including a revised draft of the code. On the basis of recommendation of JPC Parliament passed new law Insolvency and Bankruptcy Code 2016 (IBC) on 11 May 2016 and it received president assent on 28th May 2016.



Provisions of IBC are applicable to

1. any company incorporated under the Companies Act
2. any other company governed by any special Act for the time being in force,
3. Limited Liability Partnership
4. such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;
5. personal guarantors to corporate debtors;
6. partnership firms and proprietorship firms; and
7. individuals, other than persons referred to in clause (e).]

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

Framework of IBC

Following Institutional structure is created for efficient implementation of IBC

Insolvency & Bankruptcy Board of India (IBBI): The IBBI is established under sub section (1) of Section 188 of IBC. IBBI is unique regulator and resposible for effective implementation of code. It regulates a profession as well as processes. It registers insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations.

Insolvency Professional Agency (IPA): IPA enrolls Insolvency professionals as it professional members. It develops professional standards, code of ethics, monitor performance and is first level regulator of it members.

Insolvency Professional (IP): IP is an individual possessing minimum educational qualification, experience, enrolled with Insolvency Professional Agency (IPA) and registered with IBBI. IP is responsible for conducting insolvency resolution, Liquidation & Bankruptcy process.

Adjudicating Authority (AA) and Appellate Authorities: The AA shall have power & jurisdiction to admit, entertain, dispose of any application for insolvency resolution, liquidation or bankruptcy and to decide on any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution, liquidation or bankruptcy proceedings.

AA for The Companies, Corporate person & Limited Liability partnership is National Company Law Tribunal (NCLT) having territorial jurisdiction over the place where registered office of corporate debtor is located. Appellate authority is National Company Law Appelate Tribunal (NCLAT).

AA for individuals & partnership firms is Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain. Appellate authority is Debt Recovery Appelate Tribunal (DRAT)

Information Utility (IU): An IU maintains authanticate data relating to financial information, defaults and debts submitted to it by financial & operational creditors. Access of the same is made available to the Insolvency Professionals, Creditors, IBBI and other stakeholders in the Insolvency resolution and liquidation Process. Information stored by IU has evidentiary value.

Corporate Insolvency Resolution

Chapter II of Part II of The IBC, IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 contains



provisions & procedures for initiation & conduct of insolvency resolution for corporate persons. The object of IBC is not recovery of debts which is in default but to resolve the insolvency of corporate debtor (CD) with collective efforts and keep it as going concern for maximization of value of assets and balancing interest of all the stakeholders. Default means failure to honor obligation of payment on due date. Taking immediate step to resolve insolvency is enshrined in the code. During early period of default enterprise value of CD is more than liquidation value this motivates resolution than winding up. To achieve this, immediately on occurrence of default Operational Creditor (OC), Financial Creditor (FC) or CD himself can initiate corporate insolvency resolution process (CIRP) by applying to AA. To initiate CIRP minimum amount of default should be more than Rs.1 Lac. In case of OC the overdue amount of claim should not be subject to any pre existing dispute. As per definition "dispute" includes a suit or arbitration proceedings relating to–the existence of the amount of debt; the quality of goods or service; or the breach of a representation or warranty.

The AA has to admit application for CIRP within 14 days, if it is complete, default has occurred, there is no dispute and the claim is not time barred. The date on which application is admitted is considered as insolvency commencement date. The entire CIRP is required to be completed within 180 days period from insolvency commencement date with only exception of one time extension up to 90 days. The fast track CIRP is required to be completed in 90 days period with only exception of one time extension up to 45 days. The AA, after admission of the application by an order declare a moratorium for the purposes referred to in section 14; cause a public announcement of the initiation of CIRP and call for the submission of claims; appoint an interim resolution professional (IRP). The period of moratorium starts from date of admission and remain in effect till resolution plan is approved or liquidation order is made. During the moratorium period following actions are prohibited against the CD.

1. Institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
2. Transferring, encumbering, alienating or disposing off by the CD any of its assets or any legal right or beneficial interest therein;
3. Any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
4. Recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD.

It is specifically provided that the moratorium is not applicable to personal and corporate guarantor to CD.

The supply of essential goods or services to the CD as may be specified shall not be terminated or suspended or interrupted during moratorium period. The purpose of moratorium is to grant a calm period to CD. It stabilizes the assets of the CD thereby giving the creditors clarity regarding the financial health of the CD and to formulate an effective resolution plan.

The AA shall appoint an IRP within fourteen days from the insolvency admission date. The term of the IRP shall continue till the date of appointment of the resolution professional (RP) by the Committee of Creditors (CoC). An insolvency professional shall be eligible to be appointed as a IRP or RP if he and all partners and directors of the



the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor. A person shall be considered independent of the corporate debtor, if he:

1. is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;
2. is not a related party of the corporate debtor; or
3. is not an employee or proprietor or a partner:
   - of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or
   - of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in the last three financial years.

From the date of appointment

- IRP has to manage affairs of the CD as going concern
- The powers of the board of directors or the partners of the CD, as the case may be, shall stand suspended and be exercised by the IRP;
- The officers and managers of the CD shall report to the IRP and provide access to such documents and records as may be required by him.

The main duties casted on IRP are given below

- To give public announcement within three days of appointment for receiving claim
- Determine the financial position of the CD
- Receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made
- Constitute the CoC
- monitor the assets of the CD and manage its operations as going concern until a RP is appointed by the committee of creditors

Claims: Within three days of his appointment IRP has to make public announcement inviting all potential creditors to file their claims. Financial creditors, operational creditors, workman, employees and any other creditor are required to file their respective claim in prescribed form with proof to IRP within 14 days from the date of his appointment. A creditor, who fails to submit claim with proof within 14 days, may submit the claim with proof to the IRP or the RP, as the case may be, on or before the ninetieth day of the insolvency commencement date.

The IRP or the RP, shall verify every claim, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it. The list shall be presented at the first meeting of the committee of creditors. If the amount of claim is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him. The claims denominated in foreign currency shall be valued in Indian currency at the reference rate published by the Reserve Bank of India as on the insolvency commencement date.

Committee of Creditors (CoC): The IRP shall after determination of the financial position of the corporate debtor, constitute a CoC and file report certifying constitution of CoC to AA. The CoC should consist of all the financial creditors except CD's related party financial creditors. Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be formed by eighteen largest operational creditors by value, one representative elected by all workmen, one



representative elected by employee other than workman. The members of CoC stands on equal footing with respect to each other and their voting share is determined on the basis of debts due to them. The IRP shall hold the first meeting of the committee within seven days of filing the report to AA. The CoC in its first meeting decides either to appoint IRP as RP or replace IRP by another Resolution professional. Thereafter entire CIRP is conducted by RP. RP needs to take prior majority approval of CoC for certain important decision relating to management of affairs of CD. A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights. The RP shall exercise all such powers duties as are vested in IRP.

Withdrawal of application for CIRP: The AA may allow withdrawal of CIRP on a request made by resolution applicant subject to compliance with conditions laid down in CIRP regulation. The application has to be approved by 90% voting share of CoC, it should be filed to AA before inviting expression of interest by RP, the application shall be accompanied by bank guarantee towards estimated cost incurred by RP & fees to be paid to RP, Insolvency professional entity & other professionals engaged by RP.

Appointment of valuer

RP shall appoint two registered valuer within seven days of his appointment to determine fair value & liquidation value of CD. The registered valuer should determine fair value & liquidation value as per internationally accepted valuation standard after physical verification of inventory and fixed asset of CD. Strict confidentiality has to be maintained regarding fair value & liquidation value till the time of receipt of resolution plan.

Information Memorandum

The resolution professional shall prepare an information memorandum and submit in electronic form to each member of the CoC within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier for formulating a resolution plan. The information memorandum should contain following information of CD

1. Assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.
2. Latest annual financial statements;
3. Audited financial statements for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
4. List of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
5. Details of a debt due from or to the corporate debtor with respect to related parties;
6. Details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
7. The names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
8. Details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
9. the number of workers and employees and liabilities of the corporate debtor towards them;
10. Other information, which the resolution professional deems relevant to the committee.



Case Study Update's

(Contributed by CA Paras Kenia)

Facts of the Case :-

The Assessee received the Notice u/s 148 on 25th March 2018 for the AY 2011-12 from Income Tax Officer Ward 3(2) Kalyan. In response to the said Notice the Assessee filed a reply stating that return filed on 31.08.2012 to be considered as return in response to Notice u/s 148 and asked for the reasons for the reopening. Meanwhile the case of the Assessee was transferred to Assistant Commissioner of Income Tax Circle 3 who is the current jurisdictional officer of the Assessee. Upon receipt of the reasons recorded the Assessee found that the same has been recorded by the Deputy Commissioner of Income Tax Circle 3.

Opinion Sought :-

Discuss the Validity of the said notice and the various recourses that are available to the Assessee

Understanding of the Case

One of the issues involved in the above matter is whether the notice issued under section 148 of the Income Tax Act, 1961 is issued complying the requirement of sub-section (1) and sub-section (2) of section 148 since in the instant case, the reasons for reopening the assessment have been recorded by the Deputy Commissioner of Income Tax whereas the notice under section 148 of the act has been issued by the Income Tax Officer. Other issue is how, where and when the validity of such notice can be challenged i.e. recourses available to the assessee.

Relevant Clauses of the Act

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped the assessment for any assessment year, he may, assess or reassess such income **subject to the provisions of section 148** to 153 of the Income Tax Act, 1961. Sub-section (1) of section 148 requires the Assessing Officer to serve on the assessee a notice requiring him to furnish a return of his income. Sub-section (2) of section 148 requires that the **Assessing Officer shall, before issuing any notice under section 148, record his reasons for doing so**.

Analysis of the Legal Provisions supported by Case Laws

Conjoint reading of sections 147 and 148 of the Act makes it clear that officer recording the reasons under section 148(2) of the Act and the officer issuing notice under section 148(1) of the Act has to be the same person. It is also important to note the *Form of Notice* issued under section 148 which always begins with *"Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year ____-__ has escaped Assessment within the*



meaning of section 147 of the Income Tax Act, 1961. which also implies that the person issuing a notice under section 148 of the Act has to be the same person who records the reasons for reopening the assessment. In very recent case of **Pankajbhai Jaysukhlal Shah vs. ACIT** before the **Hon'ble Gujrat High Court** wherein; the assessee challenged the validity of the notice and thereby assessment as Deputy Commissioner of Income Tax having jurisdiction over the assessee recorded the reason for reopening the assessment but notice under section 148 was issued by Income Tax Officer as the PAN of the assessee was lying with Income Tax Officer and it was not possible to migrate PAN in a period within which the notice under section 148 was required to be issued; the Hon'ble High Court of Gujrat relying on decision given in case of **Hynoup Food and Oil Industries Ltd. vs. ACIT 307 ITR 115(Guj.**) held quashing the assessment that *"A notice under section 148(1) of the Act would be a valid notice if the jurisdictional Assessing Officer records the reasons for reopening the assessment as contemplated under sub-section (2) of section 148 and thereafter the same officer namely the jurisdictional Assessing Officer issues the notice under section 148(1) of the Act."* The court also held that notice under section 148 of the Act is a jurisdictional notice and hence any inherent defect therein cannot be cured under section 292B of the Act.

Conclusion and Recourses available to the Assessee

Considering the above provisions of the Act and case laws involving identical issues, it can rightly be concluded that notice issued under section 148 of the Act is invalid. The Supreme Court in the case of **GKN Driveshafts (India) Ltd. vs. DCIT (2003) 259 ITR 19 (SC)** has laid down the procedure to challenge the reassessment proceedings, according to which when a notice under section 148 of the Income Tax Act, 1961, is issued, the proper course of action

1. is to file the return and seek reasons for issuing the notice.
2. Assessing officer is bound to furnish reasons within a reasonable time.
3. On receipt of reasons, the assessee is entitled to file objections to issuance of notice, and
4. assessing officer is bound to dispose of the same by passing a speaking order.

Assessee, if desires, can file a writ challenging the said order or can proceed with the assessment. However the assessee has still a right to challenge the reopening of assessment after the assessment order is passed, before appellate authority.

So in the instant case, the assessee should file objections challenging the validity of the notice before the assessing officer. If he does not succeed, he can either approach the High Court by filing a writ petition or on completion of assessment challenge the assessment order before the appellate authority.



Expert Opinion :-

Very aptly answered by CA Paras Kenia, He has also taken the reference of the Judgement which is reported in the current months Newletter of Gujrat High Court in the case of **Pankajbhai Jaysukhlal Shah vs. ACIT.** The issue is whether the High Court will admit a writ petition when the recourse is available to the assessee of challenging the reopening in appellate proceedings. High Courts are generally not in favourable of accepting the petition in this scenario. Overall very nicely written opinion by CA Paras Kenia.

Case Study for the Month of October 2019

Assessee invests the capital gains in the property situated outside India to claim the benefit U/S 54,

Discuss the allowability of the same under the provisions of the Income Tax Act , 1961



Other Update's

(Contributed by CA Keyur M. Gangar)

Due dates for Taxes and Returns in the month of October 2019.

Date	Particulars
7 October 2019	Due date for deposit of tax deducted/collected for the month of September, 2019.
10 October 2019	Monthly GSTR-7 and GSTR-8 for September 2019
11 October 2019	Monthly GSTR-1 return with Turnover exceeding Rs. 1.50 Crores or opted to file monthly Return
13 October 2019	GSTR-6 Return
14 October 2019	ADT 1 Auditor appointment
15 October 2019	Monthly PF and ESI Payment for September 2019
15 October 2019	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September, 2019 has been paid without the production of a challan
15 October 2019	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of August, 2019
15 October 2019	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of August, 2019
15 October 2019	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending September, 2019
15 October 2019	Quarterly statement of TCS deposited for the quarter ending September 30, 2019
15 October 2019	Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2019
18 October 2019	CMP-08 (Jul — Sep, 2019)
20 October 2019	GSTR-3B (Sep, 2019) GSTR-5, GSTR-5A
20 October 2019	ITC eligible date under GST for the year 2018-19
25 October 2019	Monthly PF Return for September 2019
30 October 2019	AOC 4 – Financial statement with ROC



30 October 2019	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of September, 2019
30 October 2019	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of September, 2019
30 October 2019	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2019
31 October 2019	Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2018-19.
31 October 2019	Quarterly statement of TDS deposited for the quarter ending September 30, 2019
31 October 2019	Quarterly return of non-deduction of tax at source by a banking company from interest on
31 October 2019	Copies of declaration received in Form No. 60 during April 1, 2019 to September 30, 2019 to
31 October 2019	Statement in Form no. 10 to be furnished to accumulate income for future application under
31 October 2019	Application in Form 9A for exercising the option available under Explanation to section 11 (1) to apply income of previous year in the next year or in future
31 October 2019	Annual return of income for the assessment year 2019-20 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited).
31 October 2019	Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F
31 October 2019	Quarterly return for registered persons with aggregate turnover up to Rs. 1.50 Crores GSTR-
31 October 2019	Audit report under section 44AB for the assessment year 2019-20 in the case of a corporate-

Photo Gallery


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