EY Tax and Regulatory Alert

June 2023

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INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of June 2023

- **Instruction No. 02/2023-GST Dated: 26.05.2023** The Central Board of Indirect Taxes and Customs (CBIC) has issued a new Standard Operating Procedure (SOP) for scrutinizing Goods and Services Tax (GST) returns from the financial year 2019- 20 onwards.

- The SOP adopts a risk-based approach, selecting returns for scrutiny based on factors such as tax amounts, business nature, and compliance history of the taxpayer.

- It outlines a comprehensive process for scrutinizing returns, including documentation requirements and actions that may be taken by tax authorities upon identifying discrepancies.

- The SOP aims to enhance certainty and transparency for taxpayers, ensuring fair and impartial scrutiny of returns

- **Instruction No. 03/2023-GST Dated: 14.06.2023** CBIC has issued guidelines for filed formations to address the problem of fake GST registrations and fraudulent invoicing.

- The guidelines emphasize the need for thorough scrutiny and verification of registration applications.

- In order to facilitate targeted approach, a risk rating system has been implemented, where applications are categorized as high, medium, or low risk based on data analytics and risk parameters and the same is shared with various filed formations.

- If an application is deficient or requires clarification, the proper officer must issue a notice to the applicant electronically.

- Physical verification of the place of business may be conducted when necessary, either through on-site visits or by uploading a physical verification report.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of June 2023

- **Instruction No. 17/2023-Customs Dated : 18.05.2023** The Central Pollution Control Board (CPCB) had introduced the Battery Waste Management (BWM) Rules, 2022, issued on 22 August 2022 which replace the Batteries (Management and Handling) Rules, 2001.

- Importers involved in import of all types off batteries are required to register with the CPCB through the online portal (www.eprbatterycpcb.in) in accordance with the BWM Rules, 2022.

- Customs authorities are instructed to verify the CPCB-issued EPR registration certificate during the customs clearance process for battery importers. Any implementation challenges faced to be reported to the Board by the field formations.

- **DGFT Trade Notice No. 06/2023-2024 Dated: 31.05.2023** The Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industry, Government of India, has announced the introduction of an online facility to facilitate exporters' requests for virtual meetings and personal hearings, effective from 1st June 2023, as a part of their Trade Facilitation initiative.

- Exporters can now apply for online personal hearings via the DGFT website, following which the concerned officers at Regional Authorities (RAs) of DGFT will provide a suitable time and link for the virtual hearing. Guidance for this process can be accessed through the 'Application Help & FAQs' section on the DGFT website.

- **Circular No. 16/2023- Customs Date 07.06.2023**: CBIC has issued a recent circular outlining the procedure for payment of IGST and cess on non-fulfillment of pre-import conditions by taxpayers.

- The said circular is issued in furtherance of SC judgement in the case of UOI vs Cosmos films limited, [2023-VIL-47-SC] wherein validity of pre-import condition under the Advance Authorization scheme during the period from October 13, 2017 to January 9, 2019 is upheld.

- The Court also instructed the revenue to allow taxpayers to claim refund of GST paid.

- The detailed procedure is issued by CBIC due to constraint of transfer of data from Customs to GSTN portal on payment of taxes through TR-6 challan. Per CBIC, TR-6 challan is not a prescribed document for availment of credit under GST law.

- Accordingly, CBIC issued detailed procedure for re-assessment of bill of entries of the taxpayers on payment of taxes enabling them to claim ITC on the same.

Foreign Exchange Management Act

This section summarizes the regulatory updates for the month of June 2023

1. **Reserve Bank of India ('RBI') notifies additional purpose for which remittances to International Financial Services Centres ('IFSCs') can be made under Liberalised Remittance Scheme ('LRS')**

RBI has permitted remittances by resident individuals for studies in IFSCs under LRS.

The highlights are summarized as below:

- As per the notification, remittances to foreign universities or foreign institutions in IFSCs for pursuing specified courses (Financial Management, FinTech, Science, Technology, Engineering and Mathematics) as covered under the purpose 'studies abroad' in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, has now been permitted.

- Earlier, remittances to IFSCs under LRS could be made only for making investments in securities.

Direct Tax

This section summarizes the regulatory updates under DT for the month of June 2023

1. CBDT issues draft valuation rules for angel tax provisions for public consultation

Background

- Section 56(2)(viib) (popularly known as the "angel tax" provision) is an anti-abuse provision which applies when a CHC issues shares (including preference shares) at a premium and receives consideration which is in excess of the FMV of the shares. The excess amount so received is deemed as income from other sources in the hands of the CHC in the year of issue of the shares.

- However, investments by venture capital funds (VCFs) in venture capital undertaking are exempted from angel tax.

- Rule 11UA of the Income Tax Rules prescribes the valuation methodology for determining the FMV of various types of assets (including unquoted equity shares), not only for the purposes of the angel tax provision, but also for other anti-abuse provisions involving transfer of assets without consideration or at a value less than the FMV.

- The FMV of unquoted equity shares for the purpose of the angel tax provision read with existing Rule 11UA is the higher of the following:

  - Net asset value as reflected in the audited balance sheet of the CHC (NAV method); or

  - The Discounted Cash Flow (DCF) value as determined by a Category-I Merchant banker (DCF method); or

  - The value that the CHC is able to substantiate to the satisfaction of the tax authority, basis the holding of various intellectual property rights (IPRs) like goodwill, know-how, patents, copyrights, etc.

- Rule 11UA prescribes valuation of preference share at a price it would fetch if sold in the open market on the valuation date and the CHC may obtain a report from a merchant banker or an accountant in respect of such valuation.

- Prior to amendment by the Finance Act 2023 (FA 2023), the angel tax applied only to shares issued to a resident. FA 2023 amended the angel-tax provisions, with effect from tax year 2023-24, to extend it to issue of shares by a CHC to NR investor. FA 2023 also extended the exemption from angel tax to investments in CHC by VCFs set up in IFSC (specified funds).

- The expansion of angel tax provisions gave rise to concerns regarding trigger of angel tax and valuation disputes on investments made by genuine and regulated NR investors in Indian companies (including start-ups registered with DPIIT).

- In response to such concerns, the CBDT issued a Press Release on 19 May 2023 announcing a slew of reliefs from "angel tax".

- Pursuant to the above, on 24 May 2023, CBDT issued Notification Nos. 29 and 30 of 20239 which prescribe as under:

  - Notification No. 29/2023 (effective from 24 May 2023) enlists categories of persons whose investments in CHC shall not be subject to trigger of angel tax provisions like (i) Government and Government related investors, (ii) banks or regulated entities involved in insurance business and (iii) investors resident in any of the 21 jurisdictions and regulated in the country where it is established, incorporated or resident like category-I foreign portfolio investors, endowment funds, pension funds and broad-based pooled investment vehicles or funds.

- Notification No. 30/2023 (effective retrospectively from 1 April 2023) exempts start-up companies from the angel tax provision if the start-up company fulfils the conditions specified by DPIIT in para 4 of its Notification No. G.S.R 127(E) dated 19 February 2019 and files a self- declaration to that effect. The exemption is applicable where a start-up company issue shares for a consideration at a premium to any person (whether resident or NR).

- On 26 May 2023, the CBDT has issued the public consultation document which provides draft of amended Rule 11UA. The proposed amended Rule 11UA is aimed to prevent valuation disputes on investment by resident and NR investors in CHC. The CBDT has sought public comments within 10 days until 5 June 2023 on the proposed amended Rule 11UA.

Proposed amendment to Rule 11UA

- **Effective date:** The proposed amended Rule 11UA shall be effective from the date of publication in Official Gazette. FA 2023 expanded the scope of angel tax provisions to cover NR investments from 1 April 2023, however, the rules are proposed to be applied from a later date.

- **Valuation methods:** The proposed amended Rule 11UA provides different valuation methods for equity shares issued to resident and NR investors. The resident and NR investors have option to select from any of the given valuation methods.

  - The valuation methods for issue of unquoted equity shares shall continue to be NAV and DCF.

  - Proposed amended Rule 11UA provides five new valuation methods in addition to existing NAV and DCF methods for equity share investments by NR investors. The five new methods are:

    (i) Comparable Company Multiple Method
    (ii) Probability Weighted Expected Return Method
    (iii) Option Pricing Method
    (iv) Milestone Analysis Method
    (v) Replacement Cost Methods

- ***Price matching facility for both resident and NR investment:***

- The price at which equity shares are issued by CHC to NR entities notified in Notification No. 29/2023 shall be adopted as the FMV for the purposes of benchmarking equity investments by both resident and NR investors, subject to compliance of following conditions:

  - The consideration received from other investors at such FMV does not exceed aggregate consideration received from notified NR entity; and

  - Consideration is received by CHC from notified NR entity within a period of 90 days of the date of issue of shares which are the subject matter of valuation.

- Similar price matching facility shall also be available with respect to investment made by VCF/venture capital company and specified funds in venture capital undertakings.

  - However, there is a contradiction in the reckoning of the window period of 90 days in the text of the proposed amended Rule 11UA in relation to investment made by VCF and specified funds and illustration provided therein.

  - However, there is a contradiction in the reckoning of the window period of 90 days in the text of the proposed amended Rule 11UA in relation to investment made by VCF and specified funds and illustration provided therein.

- As per text of the proposed amended Rule 11UA, the investment by VCF should be within a period of 90 days of the date of issue of shares which are the subject matter of valuation. But the illustration states that the shares, which are the subject matter of valuation, should be issued within a period of 90 days of receipt of consideration received from VCC. This creates confusion whether the share investment which is the subject matter of valuation should precede or succeed the investment by excluded NR.

- ***90 days window period for merchant banker valuation***

- Existing Rule 11UA requires merchant banker DCF valuation report as on the date of issue of shares.

- The proposed amended Rule 11UA provides flexibility by making the valuation report issued up to 90 days prior to the date of issue of equity shares acceptable for computing FMV for investments by both resident and NR investors.

- In order to avoid genuine hardships in such cases, by exercising its powers under the ITL to give directions, the CBDT has directed the employers to adopt the following approach for withholding taxes under salary withholding provisions for tax year 2023-24 and onwards:

- ***Safe harbor valuation tolerance limit of 10%***

- Existing angel tax provision and Rule 11UA do not provide for any safe harbor valuation tolerance limit.

- The proposed amended Rule 11UA provides a tolerance limit of 10% for both resident and NR investors.

- In case of resident investor, if the issue price for equity shares is within 10% of price determined as per NAV and DCF method, then such issue price shall be deemed to be FMV.

- In case of NR investor, if the issue price for equity shares is within 10% of price determined as per NAV or DCF or any of the five new methods, then such issue price shall be deemed to be FMV.

- As per Press Release, the safe harbor is intended to factor in the variations due to forex fluctuations, bidding processes, other economic indicators, etc. which may affect the valuation of the unquoted equity shares during multiple rounds of investment.

- ***No change in valuation of preference shares***

- There is no amendment proposed to the valuation of preference shares issued to resident and NR investors.

- Accordingly, the following reliefs, as proposed to be provided for the valuation of equity shares, shall not be available for valuation of preference shares:
  - Price matching facility
  - Flexibility of validity of valuation by merchant banker up to 90 days
  - Safe harbor of 10%

Part B- Case Laws

Goods and Service Tax

1. M/s Mcdonalds India Pvt. Ltd. v. Add. Comm. CGST, Appeals (W.P.(C) 11430/2022)

Subject Matter: The Hon'ble High Court sat aside order denying refund to McDonald's India operating as franchise of McD USA w.r.t. services rendered to its US counterpart under a service-agreement; noting that, AA's denial of refund was premised on basis that assessee was performing services on behalf of McD USA.

Background and Facts of the case

- M/s. McDonalds India Private Limited ('Petitioner') is a company incorporated in India and is a subsidiary of McDonald's Corporation, USA ('McD USA').
- The petitioner had entered into a Service Agreement with McD USA to perform services namely research activities on consumer attitudes, demographics, marketing and advertising strategy, activities relating to Joint venture partners/ franchisees/employees, research on modifications relating to McDonald's system, conduct training programmes and alike. The petitioner shall be entitled to consideration on cost plus 10% mark-up basis for the services rendered under the Service Agreement.
- Apart from this, there was one Master Licence Agreement (MLA'), between petitioner and McD USA where Petitioner was granted some non-exclusive rights to certain intellectual property of McD USA including the right to sub-license the same with the approval of McD USA. In terms of such MLA, petitioner had entered into franchisee agreements with various parties.
- The petitioner claims that the services rendered by it to McD USA without payment of tax are 'zero rated supplies' under Section 16 of the Integrated Goods and Services Tax ('IGST') Act, 2017 and therefore is entitled to refund of tax paid on inputs.
- The Appellate Authority upheld the decision of the Adjudicating Authority ('AA') rejecting the refund claim basis that the services rendered by the petitioner were intermediary services and the place of supply was in India.

Petitioner's Contentions

- The petitioner contended that AA as well as the Appellate Authority has misconstrued the services rendered by the petitioner in terms of the Service Agreement. Further, the petitioner was duly discharging its liability to pay royalty to McD USA.
- It was also contended that the Authorities had confused the MLA with the services provided under the Service Agreement. Further, it was submitted that the services rendered by the petitioner under the service agreement were independent services and did not involve any third-party supplier.
- Petitioner relied upon the decision of this Court in M/s Ernst and Young Limited and M/s Ohmi Industries Asia Private Limited.

Discussion and Findings of the Case

- The Hon'ble HC sat aside order denying refund to McDonald's India operating as franchise of McD USA w.r.t. services rendered to its US counterpart under a service-agreement; noting that, AA's denial of refund was premised on basis that assessee was performing services on behalf of McD USA.
- Further, HC observed that rendering service on behalf of another person does not render the service provider an intermediary. It was also observed that, before rejecting the claim on the ground of 'intermediary services', it is essential to identify the principal supplier and service purchaser to ascertain whether the services performed by assessee are those of a facilitator and

the Order in Original passed by AA has not analysed the said aspect.

Judgement

- Hon'ble High Court sat aside the Appellate Order rejecting the refund on the ground of intermediary services and remanded the matter back to Adjudicating Authority (AA) to consider the matter afresh.

2. M/s. PES Engineers Private Limited Hyderabad (TSAAR Order No.09/2023)- Authority For Advance Ruling Telangana

Subject Matter: The AAR ruled that supply of goods and services under two contracts with separate invoicing cannot be construed as composite supply as these are not naturally bundled in the ordinary course of business.

Background

- M/s. PES Engineer Private Limited ('the Applicant' or 'the Company') is engaged in the construction of various types of Power Projects and entered into entered into two separate contracts with Singarenni Collieries Company Limited ('SSCL') for design, manufacture, test, deliver, install, complete & commission and to conduct guarantee test of certain facilities namely Fuel Gas de-sulphurisation (FGD) system package at their thermal power project.

- The scope of first Contract is sale of goods ex-manufacture / ex-works and therefore the Applicant treat it as a contract for pure sale of goods. Whereas, scope of work under second contract is Inland Transportation of the main equipment, inland transit insurance unloading at site, storage, erection, civil works, testing, commission and conducting guarantee test, which is classified as Works Contract Service under SAC 9954, by the Applicant.

- In this regard, the Applicant sought advance ruling on the following question:

Whether the entire supply which involves two separate contracts however a single bidding document, has to be treated as a composite supply of which the principal supply is the second contract which is a 'works contract' or both the contracts have to be treated as separate transactions for which the 'time of supply' and 'rate of tax' to be levied would differ as per the provisions of the CGST Act, 2017?

Discussions and findings of the case

- The Applicant submitted that although turnkey contract for construction of a single immovable property was entered into but there are two different and severable/ divisible contracts within the same contract agreement.

- It was also submitted that since the first contract involves supply of goods therefore, the Applicant is eligible for benefit of Notification No.66/2017 Central Tax, dated 15th November, 2017 and tax shall not be payable at the time of receipt of advances in case of supply of goods. That, the Applicant is liable to pay tax on goods at the time of supply, which is the date of issue of invoice and not on the date on which he receives advance payments for those goods.

- The reference was made to the CBIC Circular No. 47/21/2018 - GST dated 8 June 2018 where it was clarified that taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of the case namely context of supply, intent of supply provider and recipient, nature of agreements, method of invoicing and nature of payment terms. The Circular also specifically mentioned that multiple supplies can be made within the same contract, when the parties intend to treat them as different supplies and thus intention of the parties is a factor to be reckoned with to decide the nature of supply.

- The AAR observed that facts of the current case are parallel to what was clarified via Circular and therefore, it was held by that there in dispute on the nature of Supply.

- The AAR noted the features of the two severable contract as follows and observed that concept of 'naturally bundled' is not visible in this contract agreement where the two contracts can be executed independently:

  - The first contract terminates with making goods available ex-works and loading them on to the mode of transport;
  - The second contact commences with service of transportation of the said goods supplied under first contract.

Ruling

- The AAR ruled that supply of goods and services under two contracts with separate invoicing cannot be construed as composite supply as these are not naturally bundled in the ordinary course of business. Further, the applicant is eligible for the benefit of Notification No.66/2017 Central Tax, dated 15th November, 2017 and accordingly the tax liability on sale of goods, as per first contract, will arise as specified in clause (a) of sub-section (2) of section 12 of the CGST Act, 2017 i.e. at the time of supply, which is the date of issue of invoice by the taxpayer or the last date on which he is required, under section 31, to issue the invoice with respect to the supply.

3. M/s Kia Motors India Private Limited v. The State of Madhya Pradesh (2023-VIL-366-MP)

Subject Matter: The Hon'ble High Court held that taxpayers are required to furnish information about the movement of goods in Form-A GST, EWB-01 electronically on the common portal along with other information as required

Background and Facts of the case

- M/s Kia Motors India Private Limited hereinafter referred as 'the Petitioner' or 'the Company' has filed petition under Article 226 of the Constitution of India assails the order passed by Appellate Authority (Joint Commissioner, State Tax, Bhopal Division) on 23.12.2019.

- In this regard, the Solitary argument of petitioner is that the demo vehicle was transported in the State of Madhya Pradesh not for sale and therefore, was not exigible to GST.

- The Petitioner contended that as per Section 7 of the Central Goods and Services Tax ('CGST') Act, 2017, bringing of demo vehicle into the State of Madhya Pradesh would not render the transaction exigible to GST since no financial consideration is involved in the absence of sale or purchase.

- On the other side, Respondent relied upon the provisions of Section 129 of CGST Act, 2017 and Rule 138 of CGST Rules, 2017 and contented that movement of goods exceeding the value of INR 50,000/-, even if they do not qualify the definition of supply become exigible to GST.

Judgement

- Hon'ble High Court of Madhya Pradesh referring to the provisions of e-way bill under GST law highlighted the requirement of generation of e-way bill for movement of goods exceeding the value of Rs. 50,000 even for the reasons other than supply.

- The Court held that in absence of furnishing of mandatory information in e-way bill as per Rule 138 of the CGST Rules, the entry of demo cars into the state renders it exigible to GST.

- The Court further held that taxpayers are required to furnish information about the movement of goods in Form-A GST, EWB-01 electronically on the common portal along with other information as required.

4. **M/s Gargo Traders v. Joint Commissioner, Commerical Taxes (State Tax) & Ors (2023-VIL-360-CAL)**

Subject Matter: The Hon'ble High Court set aside the order of the adjudicating authority and held that in the absence of proper verification by the adjudicating authority, it cannot be held that there is a failure on part of the taxpayer and the authority shall pass a speaking order after granting opportunity of being heard to the taxpayer.

Background and Facts of the case

- M/s Gargo Traders hereinafter referred as 'the Petitioner' or 'the Company' has filed writ petition challenging the order passed by Joint Commissioner, State Tax.

- The Petitioner has claimed credit of input tax against supply made from a supplier. The supplier's registration was cancelled with retrospective effect covering the transaction period of the taxpayer.

- The adjudicating authority disallowed the input tax credit alleging the taxpayer did not verify the genuineness of the supplier and alleging the supplier to be fake and non-existent.

Discussions and findings of the case

- The Petitioner relied upon the judgement of Balaji Exim v. Commissioner, CGST & Ors. (2023-VIL-181-DEL) and M/s. LGW Industries Limited & Ors. v. Union of India & Ors.(2021-VIL-868-CAL) and contended that allegation of fake credit availed by parties such as Global Bitumen cannot be a ground for rejecting the petitioner's refund application unless it is established that the petitioner has not received the goods or paid for them.

- On the other side, respondent contended authorities have cancelled the registration of the supplier retrospectively which has been accepted by the supplier.

- Hon'ble High Court observed that the name of the supplier as registered taxable person was already available with the Government record and the taxpayer had paid the amount through bank and not in cash. Further, the authority only relied on the cancellation of registration of supplier to deny the ITC to the taxpayer.

Judgement

- The court set aside the order of the adjudicating authority and held that in the absence of proper verification by the adjudicating authority, it cannot be held that there is a failure on part of the taxpayer and the authority shall pass a speaking order after granting opportunity of being heard to the taxpayer.

Customs

1. **M/S. Sony India Pvt. Ltd v. Union of India & ANR (Special Leave Petition (Civil) Diary No. 2319/2023**

Subject Matter: Supreme Court had dismissed Revenue's appeal against the judgment of Hon'ble Telangana High Court (HC) allowing Sony India to seek amendment of its Bill of Entries (BoE) under Section 149 of the Customs Act, 1962 ('Customs Act') and upheld the decision of Telangana High Court.

Background and Facts of the case

- Sony India Pvt. Limited ('Petitioner') had imported mobile phones for the purpose of trading. Such mobile phones were chargeable to concessional rate of 1% subject to the condition that no credit should have been availed on the inputs or capital goods used in the manufacture of mobile phones. However, at the time of importation, the Petitioner was forced to pay CVD at the full rate of 6% since the assessing authority disputed the eligibility of such exemption and also, the EDI system did not facilitate claim of exemption.

- At this juncture, the Supreme Court in the case of ITC Ltd. vs. Commissioner of Central Excise [(2019) 17 SCC 46] held that refund under Sec.27 would only be permissible when the BoE has been amended or modified under Section 128 of the Customs Act (which allows an aggrieved person to file appeal) or under other relevant provisions of the Customs Act.

- Therefore, the Petitioner requested amendment to 136 BoEs under Section 149 of the Customs Act to reassess the BoEs at concessional rate by applying the exemption and grant subsequent refund. However, such request was rejected. Aggrieved by the said order Petitioner approached the HC.

- The HC took a note of Hon'ble Supreme Court decision in the matter of ITC Ltd. (supra) observed that even the SC clearly indicated that the modification of the assessment order can be either under Section 128 or under other relevant provisions of the Act i.e. Section 149.

Discussions and findings of the case

- The High Court observed that the Assessing Authority had failed to consider the fact that Section 149 of the Act does not prescribe any time limit for amending the Bill of Entry filed and assessed. The instant matter related to incorrect determination of duty by the assessing authority initially and therefore, the Petitioner is compelled to seek amendment of BoE under Section 149.

- The petitioner cannot be penalized for what the authority ought to have done correctly by himself.

- The High Court dismissed the order issued by Revenue and directed to amend the BOEs so that the Petitioner can claim refund of excess CVD paid under Section 27 of the Customs Act.

Direct Tax

1. High Court ('HC') rescues assessee from 'lawyer's failing' in appeal-filing

Background and Facts of the case

- The assessee- company filed Vivad se Vishwas ('VsV') declarations which were rejected on the ground that on the specified date its appeal was not pending;
- The assessee had preferred an appeal before CIT(A) in the physical mode as against the digital mode on Apr 28, 2016.
- Subsequently, CBDT issued Circular 20/2016 dt. May 26, 2016 basis which assessee filed an appeal via online mode as well on Jun 7, 2016;
- CIT(A) passed two separate order for both appeals on Jul 6, 2018 wherein the physical appeal was dismissed on the ground of maintainability whereas the online appeal was decided against the assessee on merits;
- While filing appeal before the ITAT, the assessee inadvertently attached the order passed by CIT(A) in appeal filed in physical mode; ITAT, in an ex-parte order remanded the matter to CIT(A) against which assessee preferred a Miscellaneous Application (MA) bringing to the notice of ITAT, inadvertent mistake of appending the order passed in the physical appeal which was not passed on the merits of the case;
- ITAT dismissed the MA on Aug 30, 2019 holding that there was no error apparent on record whereafter the assessee filed fresh appeal before ITAT on Feb 10, 2020 against the order on merits along with condonation application;
- During the pendency of the second appeal before TAT, VsV Act came into force pursuant to which three declarations were filed and all were rejected;

Discussions and findings of the case

- Delhi HC resolves controversy on validity of VsV declaration over the question of pendency of appeal before ITAT on the specified date under VsV Act i.e. Jan 31, 2020 due to multiplicity of appeals before ITAT as well as CIT(A);
- HC relies on SC ruling in Motilal Padmpat and observes, "Though ignorance of the law is no excuse but still not everyone knows the law" and that the assessee would not have known that only a digital appeal before CIT(A) would be viable thus, holds that the assessee suffered on account of its lawyer's failing;
- HC remarks that ITAT failed to appreciate that the direction for remand of physical order created an incongruous situation, as the merits order passed against online appeal, remained undisturbed;
- HC notes that ITAT via order dated Dec 18, 2020, condoned the delay and admitted the fresh appeal filed against the order on merits; HC finds that there are two ways of looking at the matter, firstly, physical appeal was pending before the CIT(A), thus, declaration under VsV could not be rejected;
- Secondly, an appeal was pending since a fresh appeal against the order on merits was filed and once the ITAT condoned the delay the appeal would be construed as instituted on the date it ought to have been lodged;
- Therefore, HC observes that fresh appeal was filed before the VsV Act came into force, hence, the appeal was pending on specified date;
- Allows the writ petition and directs the Revenue to progress the VsV declarations.

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