EY Tax and Regulatory Alert

September 2020

Prepared for ACMA

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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 September 2020

- **Clarification with respect to GSTN's new functionality of comparison of liability declared & ITC claimed on main page** clarifies that the functionality "Comparison of liability declared and ITC claimed" has been removed from Return Dashboard ; It has now been made available on the main page, under the 'Services' tab, 'Return' sub-tab as "Tax liabilities and ITC comparison", to make it more user friendly and for ease of access by the taxpayers ; Specifies that the functionality can now be accessed as per the following navigation (Post-login): Home > Services > Returns > Tax liabilities and ITC comparison.

- **Notification No. 66/2020, dated 06.09.2020** issued by DGFT , to provide relief in regard to compliance of Section 31(7) of the CGST Act, 2017, which provides for time limit for issuance of tax invoice in cases where goods are sent on approval for sale or return before supply. In this regard, Section 31(7) reads as "(7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier." In view of such provision, Notification No. 66/2020 has been issued to provide that in cases where time limit as per above provision, in respect of goods being sent or taken out of India on approval for sale or return, falls during the period from the 20.03.2020 to 30.10.2020, then, the time limit for compliance of such provision, shall stand extended up to the 31.10.2020.

- **Recent updation in GSTR-1 functionality, for de-linking of Debit/Credit notes from their corresponding Original document reference.** Below the key changes relevant for the Company from GSTR-1 perspective for Credit/Debit Note details and Credit/Debit Note amendment details:

✓ Original Document No. and Date fields are disabled for GSTR-1 from September 2020 onwards (screenshot enclosed for reference);

✓ Incremental details required during GSTR-1 submission:

- Place of Supply
- Supply Type (Regular/ SEZ/ Deemed Export/ Intra-State attracting IGST)
- RCM Flag (Y/N)

- **Frequently asked questions (FAQs) in respect of GST E-invoices/ IRN system issued by GST Authorities,** below are the highlights of the same:

- Printing of QR code is mandatory on the invoice and the same can be placed on the invoice with any size provided it should be readable by standard mobile devices. It is to be noted that QR code cannot be printed on a separate paper. Further, remaining particulars generated by IRP portal namely IRN No, Acknowledgement No and Date are optional for printing on invoice and are only for IRP records.
- In ideal conditions, it has been advised to issue the existing invoices with company logo, T&C etc. Only the incremental requirement to be inserted in the existing invoices is of printing the QR code.
- The applicability of E-invoicing is strictly basis the turnover guidelines and an entity not meeting the said thresholds cannot opt for voluntary e-invoicing.
- Clarification on TCS of income tax not being a part of E-invoice schema shall be provided soon by the Government.

- In case of RCM invoices, following clarification has been provided:

  - In case of B2B RCM invoices, if the supplier is notified to generate IRN, he shall do so using the RC flag in invoice; and

  - In case of B2C RCM invoices or self-invoices, there is no need to generate the IRN

- Relaxation in time limit has been provided for generation of IRN. Previously, a time limit of 24 hours was provided for IRN generation post preparation of invoice by tax payer. Now, the said validation has been dropped and IRN can be generated at any time before issuing the invoice to the other party or movement of goods.

- For items outside GST levy, it has been suggested to issue a separate invoice and not merge the GST leviable and non-leviable particulars in a single invoice.

- Maximum number of line items in a single invoice has been currently kept at 1000. The said limit can be enhanced on a taxpayer level by contacting NIC support team.

- For the credit and debit notes, presently, there is no linkage or validation with original invoice values.

► **GSTN enables new Form GSTR-2B and import data in GSTR-2A, below are the** highlights of the same :

- Launch of new Form GSTR-2B from the month of July 2020 onwards

- GSTR-2B is an auto-drafted ITC statement which will be generated for every registered person on the basis of the information furnished by his suppliers in their respective GSTR-1, GSTR-5 (non-resident taxable person) and GSTR-6 (input service distributor). The statement will indicate availability of ITC to the registered person against each document filed by his suppliers

- GSTR-2B is a static statement and will be made available for each month on the 12th day of the succeeding month

- GSTR-2B for a month (M) will contain the details of all the document filed by his suppliers in their respective GSTR-1/5/ 6 between the due date of furnishing of GSTR-1 for previous month (M-1) to the due date of furnishing of GSTR-1 for the current month (M)

- The documents furnished by the supplier in any GSTR-1/5/6 would reflect in the next open GSTR-2B of the recipient irrespective of the date of issuance of the concerned document. For e.g., if a supplier furnishes a document INV-1 dated 15.05.2020 in the Form GSTR-1 of July 2020 filed on 11.08.2020, the details of such invoice will reflect in GSTR-2B of July 2020 (generated on 12.08.2020) and not in the GSTR-2B of May 2020

- Information on import of goods from the ICEGATE system including inward supplies of goods received from SEZ Units / Developers will also be made available in GSTR-2B. These details will be updated on near real time basis from the ICEGATE system. The ICEGATE reference date will be the date from which the recipient will be eligible to take ITC

  - Two important tables that are provided in this Form are as follows –

  - Table 3: ITC Available Summary – It is divided into further two parts: Part A captures the summary of credit that may be availed in relevant tables of FORM GSTR-3B and Part B captures the summary of credit that shall be reversed in relevant table of FORM GSTR-3B

  - Table 4: ITC not available summary – This summary covers two scenarios as follows:

A. Invoice or debit note for supply of goods or services where the recipient is not entitled to input tax credit as per Section 16(4) of CGST Act, 2017 (i.e. cases where time period for availing credit has lapsed due to invoice date older than permissible time limit); and

B. Invoice or debit note where the Supplier (GSTIN) and place of supply are in the same State while recipient is in another State

- As per the advisory note released, taxpayers have been advised to ensure that the data generated in GSTR-2B is reconciled with their own records and books of accounts
- Addition of two new tables in existing Form GSTR-2A
- Two new tables have been added to existing Form GSTR-2A on a trial basis for displaying the following details:
  - Import of goods from overseas
  - Inward supplies made from SEZ units / developers

- As per the press release, the system is currently displaying data up to 6.08.2020 only. Further, the following data will also be made available in above tables shortly which has not been uploaded currently.

- Import information for bill of entries filed at non-computerized ports (non-EDI ports)
- Imports made through courier services/ post office
- Information of amendments made in the details of bill of entries.

► **Notification No. 63/2020, dated 25.08.2020,** issued by CBIC to notify 01.09.2020 as the date on which the proviso to Section 50(1) of CGST Act shall come into force. In this regard, it may be noted that the said proviso provides that interest on delayed payment of tax will be levied on that portion of tax which is paid by debiting the electronic cash ledger. The said proviso in Section 50(1) of the CGST Act was inserted vide Section 100 of the Finance Act, 2019 which reads as "100. In section 50 of the Central Goods and Services Tax Act, in sub-section (1), the following proviso shall be inserted, namely:--

- "Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.."

► **Press release, dated 07.09.2020,** released by CBIC on e-invoicing. Below are the highlights of the same:

- Mobile app for verification of QR code and signed e-invoice file has been released by the Government. However, the same is not operational yet;
- Taxpayers having an aggregate turnover of INR 500 Crore during any of the 3 financial years of the GST regime have been enabled to self-register for the e-invoicing system by the Government;
- The 'Generate EWB by IRN' has been improved to enable the generation of EWB in case of export by passing the address of the port from where it is getting exported later;
- E-Commerce Operators have been enabled to register and test the APIs on the sandbox system; and
- Further, the following improvements in the validations for generating the IRN have been carried out:

a. For Credit and Debit Notes, the tax rate can be passed with any value;

b. The IGST value of the item will not be validated if the same is '0' even when actual rate of tax has been passed in case of Export Without payment of taxes ('EXPWOP') and SEZ supplies Without payment of taxes ('SEZWOP')

c. The tolerance limit for Total invoice value can be between the total invoice value rounded down to previous rupee and total invoice

value rounded up to the next rupee. (For example: If the calculated total invoice value' is 10241.61 then the tolerance limit for total invoice value is between 10241.00 and 10242.00)

- Below are the relevant URL for ready reference below:

A. https://einvoice1.gst.gov.in/Documents/einvoice_release.pdf

B. https://einvoice1.gst.gov.in/Others/QRCodeVerifyApp

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of September 2020

- **Circular No. 38/2020, dated 14.08.2020**, issued by CBIC for notifying the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR, 2020') which are effective from 21.09.2020. The Rules require an importer claiming benefits under Free Trade Agreements/Preferential Trade Agreement to maintain/possess minimum information as indicated in Form I for each bill of entry to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria have been fulfilled. The said information is required to be preserved for 5 years. Also, stringent timelines have been introduced to produce specific information, if any, asked by Custom Officer and in case of non-submission of requisite information, preferential treatment may be denied and penal action may be taken against the importer. The said rules can have a potential impact on the supply chains and the immediate action point would be sensitizing the overseas suppliers, checking with them whether the relevant information could be produced by them, if required by the Customs authorities and putting the systems/compliance framework in place.

- **Circular No. 41/2020, dated 07.09.2020**, issued by CBIC has allowed the facility of Auto let export order (LEO) under the express cargo clearance system (ECCS). Below are the summarized the key aspects of the circular for ready reference:

  - The facility of auto LEO has been developed by Directorate General of System and Data Management and is ready for launch.
  - The courier shipping bills filled for clearance of export goods under ECCS are subject to Risk Management System (RMS), after the registration of goods by the custodian (arrival scan and weight record). The RMS would either facilitate or interdict a courier shipping bill as per risk parameters.
  - Goods to be exported covered under courier shipping bills which are fully facilitated by RMS (no assessment, no examination) and cleared for customs x-ray scanning shall be automatically given LEO by the ECCS.
  - This facility would reduce the dwell time of clearance of export shipments through courier.

- **Advisory No. 81/2020, dated 21.08.2020**, issued by CBIC further to the notification 81/2020 - Customs (N.T.) dated 21.08. 2020 which provides for the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 which provides for the regulations that would apply to import of goods into India under a Preferential Trade Agreement / Free Trade Agreement. In this regard, Indian Customs EDI System ('ICES') has made the relevant changes for the Bill of Entry format and the documents to be uploaded on e-SANCHIT.

  Following are certain changes will come into effect in ICES w.e.f 21.09.2020:

  - Whenever an FTA/PTA Notification is claimed, it will be mandatory to declare the item wise details as per in the BE_SW_INFO_TYPE table of the Bill of Entry, as mentioned in the Annexure 1 of the advisory
  - Mandatory defacing of documents before out of charge.

- **Circular No. 40/2020, dated 04.09.2020**, issued wherein Indian Customs has decided to roll-out Faceless Assessment for all imports at an All India level in all ports of import by 31.10.2020.

The detailed roll-out plan in phases covering different Customs Zones and Chapters of the Customs Tariff Act, 1975, including the existing Phases I and II, is given in Annexure I.

- Vide Circular No.28/2020-Customs, dated 05 June 2020, it was intimated that the designated nodal Commissioners would be precursors to the National Assessment Centres (NACs). Accordingly, CBIC has decided to constitute total 11 NACs, as mentioned in the Annexure II. The said NAC are organized commodity-wise according to the First Schedule to the Customs Tariff Act, 1975.

- The rationale of selection of a zone in the NAC would be based on the share of volume of the import of the particular commodity group in its zone as compared to the all India imports and/or share of imports contributed by the said commodity group or the share of import of the particular commodity group in their own zones.

- Each NAC shall be co-convened by the Principal Chief Commissioners/Chief Commissioners of the zones and each NAC shall consist of the Principal Commissioners/ Commissioners of Customs from the zones.

Key Responsibilities of NAC

- Monitor the assessment practice for enhancing uniformity of classification, valuation, exemption benefit and compliance with import policy conditions
- Assess the application of Compulsory Compliance Requirements (CCRs) and ensure uniform practices in accordance with the relevant statutes/legal provisions.
- Study audit objections and take corrective actions regarding assessments, wherever necessary and provide inputs to the concerned ports of import.
- Analyse the RMS facilitated Bills of Entry pertaining to chapters falling under their purview and advise the DGARM regarding possible interventions or review of risk parameters.
- Liaise with Principal Commissioner/ Commissioner of Customs at ports of import about interpretational issues pertaining to classification, valuation, scope of exemption notifications and trade policy conditions.
- Interact with sectoral trade and industry for inputs, and on issues relating to assessment.
- Examine the orders/appellate orders in relation to assessment practices pertaining to goods assigned to each Faceless Assessment Group and provide inputs to the Commissionerate's for uniformity of assessment orders before legal form:
  - Constitution of working group for matters relating to:
  - Monitoring for timely assessment of Bills of Entry
  - Valuation and related issues
  - Classification and related issues
  - Restrictions and prohibitions and Co-ordination with PGAs
  - Communication and Outreach for departmental officers and trade
  - Any other matter relevant to timely and uniform assessment, as may be decided.
- Function as a knowledge hub or repository for that particular chapter.

The detailed manner of coordination among various NAC commissioners and other Directorates has been provided in the said Circular along with the responsibilities of NAC.

Pre-launch preparation for Faceless Assessment

- Before the rollout of Faceless Assessment, the Nodal Commissioners in the NAC shall co-ordinate to take all measures to ensure that Faceless Assessment is smooth and creates no disruption in the assessment and clearance of goods.
- The following important measures may be undertaken by the NAC before the launch:
- The Customs locations within each zone, performing Faceless Assessment may be identified. The volume of import and availability of adequate officers may be taken into consideration for such identification.

- Nominate sufficient number of officers for the Faceless Assessment. The officers should be more than two at all levels, to ensure availability.

- Identify variations, if any, in assessment practices and harmonise them for application across FAGs.

- Take into account audit objections, judicial and quasi-judicial decisions accepted by the Department relating to the assessment of the goods to be handled by the Faceless Assessment Groups under the concerned NAC and circulate among the FAGs for uniformity of assessment.

- Organize training on roles and functionalities in ICES related to Faceless Assessment including MIS reports and dashboards.

- The Joint Secretary, Customs, CBIC would be responsible for coordinating with the NACs in organizing a Conference on Tariff & Other Customs Matters every 6 months to review the functioning of the NACs and FAGs. The Conference would be chaired by Member (Customs).

- **Notification No. 85/2020, dated 04.09.2020**, issued by CBIC by virtue of which the Commissioners of Customs (Appeals) are empowered take up appeals filed in respect of Faceless Assessments pertaining to imports made in their jurisdictions even though the Faceless Assessment officer may be located at any other Customs station. To illustrate, Commissioners of Customs (Appeals) at Bengaluru would decide appeals filed for imports at Bengaluru though the Faceless Assessment officer is located at any other port of the country, say Delhi.

Direct Tax

Part-A Key Direct Tax updates

1. Central Government introduces Bill to codify COVID-19 reliefs, faceless proceedings and supplement some Finance Act 2020 amendments

Proposed amendments under TTAOLB 2020 (The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020

i. **Provisions relating to COVID-19 compliance reliefs under the direct tax laws in India:**

- Since March 2020, with the advent of COVID-19 pandemic and varying degrees of lockdown in different parts of the country, the CG undertook various significant measures to provide relaxation to taxpayers to ease compliance requirements under the ITL.

- The CG brought the Ordinance on 31 March 2020, which extended time limits for various compliances, reduced rate of interest and waived penalties and prosecution during COVID-19 disruption period. It also gave statutory recognition to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund by granting exemption on its income and 100% deduction to donors.

- In partial modification to the timelines provided under the above Ordinance, vide CBDT notifications dated 24 June 20209 and 29 July 2020, the CG further extended various compliance timelines and requirements as previously covered by the Ordinance.

- The TTAOLB 2020 proposes to consolidate and statutorily codify all the above reliefs provided through Ordinance and notifications.

- More specifically, it may be noted that the TTAOLB 2020 offers no further extension or relief in relation to timelines for various compliances to what has been already provided earlier through the Ordinance and notifications.

ii. **Removal of certain anomalies in amended residency rules for individuals**

Indian citizen or Person of Indian Origin (PIO) coming on a visit to India

- The FA 2020 tightened the residency rules for individuals as an anti-abuse measure with effect from tax year 2020-21 onwards. Prior to amendment, as one of the conditions to trigger residency in India, an individual should be present in India for 60 days (or more) in the relevant financial year and 365 days (or more) in the past four years. The 60 days threshold is extended to 182 days in case of an individual being a citizen of India or PIO who, being outside India, comes on a visit to India.

- FA 2020 reduced the number of days of stay from 182 days to 120 days for an Indian citizen or PIO having a total income, other than income from foreign sources, exceeding INR 1.5m during the relevant tax year and also provided that such individual shall be treated as “not ordinarily resident” (120-days residency rule). However, the language raised an anomaly about whether such an individual need not be based outside India and comes on a visit to India to trigger this rule. The TTAOLB 2020 proposes to rectify this anomaly by clarifying that the new rule will apply to an Indian citizen or PIO who, being outside India, comes on a visit to India.

Deemed residency for an Indian citizen

- FA 2020 inserted a new deemed residency rule whereby an individual, being Indian citizen, shall be deemed to be a resident in India (but not ordinarily resident) in any tax year if his total income, other than income from foreign sources, exceeds INR 1.5m in the relevant tax year and he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature (deemed residency rule). However, the language raised an anomaly about whether an individual who otherwise qualifies as a resident under the normal rule (i.e., ordinary resident) can claim himself to be not ordinarily resident under the deemed residency rule.

- The TTAOLB 2020 proposes to rectify this anomaly by clarifying that the deemed residency rule shall not apply to an individual who qualifies as a resident under the normal rule.

Clarification on scope of "income from foreign sources"

- For the purposes of the above referred amendments, FA 2020 inserted the definition of "income from foreign sources" to mean income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India). The definition raised an ambiguity about whether or not incomes which actually accrue or arise outside India but are deemed to accrue or arise in India (for instance, interest, royalty, fees for technical services etc., received from residents) will be treated as "income from foreign sources".

- The TTAOLB 2020 proposes to clarify this by specifically providing that "income from foreign sources" shall not include incomes which are deemed to accrue or arise in India.

- This implies that incomes which are deemed to accrue or arise in India will need to be included for computing the threshold of total income of INR1.5m which can trigger residency in India under the above referred amended provisions. However, certain ambiguities in relation to computation of "total income, other than the income from foreign sources" persist. For instance, there is still no clarity on how certain incomes which are exempt in the hands of non-residents or not ordinarily residents should be treated in computing the threshold of INR 1.5m without determining the residential status of the individual.

- The aforesaid amendments are proposed to be effective from tax year 2020-21 in line with the effective date of the amendments made by FA 2020.

iii. **Extension of scheme of conducting faceless proceedings in various other proceedings under ITL:**

- In order to impart greater efficiency, transparency and accountability in assessment proceedings, the CG had introduced new provision in the ITL vide FA 2018 to implement a scheme for conducting assessments in faceless and team-based manner. Pursuant to such powers, the CG had implemented Faceless Scheme for:

  - Eliminating interface between Tax Authority and taxpayers during proceedings to the extent technologically feasible;

  - Optimizing utilization of resources through economies of scale and functional specialization;

  - Introducing team-based assessment with dynamic jurisdiction

- Faceless Scheme was initially implemented through notifications for completing assessment proceedings and these provisions are now proposed to be incorporated under the ITL with effect from 1 April 2021 with following modification:
  - The proposed provision of faceless assessment will apply to assessment order passed on or after 1 April 2021. However, assessment orders which are passed on or before 31 March 2021 will be governed by Faceless Scheme under the existing notifications.
  - The proposed provision also provides mechanism to approach Dispute Resolution Panel (DRP) at the stage of draft assessment order passed under the proposed provisions in faceless manner.
  - Any assessment order passed on or after 1 April 2021 otherwise than in faceless manner (except in case where proceedings are transferred to jurisdictional Tax Authority pursuant to powers in the proposed provisions) will be treated as non-est.
- Additionally, with a view to achieve similar objectives and conducting various proceedings under the ITL in faceless and team-based manner under dynamic jurisdiction, with effect from 1 November 2020, it is proposed to grant powers to the CG for formulating faceless schemes in relation to:

  a) Proceedings before Transfer Pricing Officer for determination of arm's length price in relation to international and/or domestic transactions with associated enterprises;

  b) Proceedings before DRP

  c)Appeal proceedings before Income Tax Appellate Tribunal.

  d)Reassessment and related proceedings

  e) Proceedings in relation to rectification application, issuance of demand notice, intimation of loss eligible to be carried forward by taxpayer, etc.

  f) Revision proceedings

  g) Proceedings in relation to passing of order giving effect to orders of various authorities and courts

  h) Proceedings for issuing Nil or lower deduction/collection certificate and proceedings for default in deduction/collection of tax at source;

  i) Proceedings in relation to payment of advance tax; for reduction or waiver of interest on any demand payable under the ITL, for extension of time limit for payment of any demand under the ITL, all proceedings in relation to taxpayer being "assessee-in-default" for collection of demand including levy of interest and penalty, various proceedings before Tax Recovery Officer, issuance of tax clearance certificate, etc.

  j) Proceedings in relation to initiation of prosecution as well as compounding of any offence under the ITL

  k) Proceedings in relation to grant/withdrawal of any approval or registration by Tax Authority under the ITL

  l) Proceedings for exercising powers or performance of functions by the Tax Authority in relation to vesting of jurisdiction, transfer of cases amongst Tax Authority, providing opportunity of being reheard to taxpayer in case of change of office of Tax Authority;

  m) Proceedings for (i) calling for any information from any taxpayer (ii)collection of information from the place/building belonging to taxpayer (iii)

inspection of register for companies (iv) to conduct any enquiry, etc.

n) Proceedings for calling information from the taxpayer for undertaking any assessment proceedings under the ITL, issuance of directions for conduct of special audit by Tax Authority and for proceedings before valuation officer for estimating value of assets/property/ investment.

- It is proposed that the CG shall introduce a scheme for above proceedings by way of a notification in Official Gazette.

- Further, in order to give effect to and smooth functioning of any scheme so introduced for aforesaid proceedings, it is proposed that the CG will have power to issue a notification directing that certain provisions of the ITL shall not apply or shall apply with such exceptions, modifications and adaptation as may be specified. However, any such directions are to be issued on or before 31 March 2022.

- The Scheme so introduced along with any direction issued by the CG for effective implementation of the Scheme are to be placed before each House of Parliament.

iv. **Centralization of powers for conducting survey proceedings:**

- Recently, the CBDT vide its order dated 13 August 2020 withdrew the power to conduct survey action under provisions of the ITL from the jurisdictional Tax Authority and confers "only and exclusive authority" to conduct survey by Directorates of Investigation (Investigation Wing) and Commissioner of Income Tax (TDS).

- To give effect to the aforesaid order, TTAOLB 2020 proposes to make appropriate amendment to the provisions governing survey action under the ITL.

v. **Reduction in withholding and tax collection rates for payments made to/received from residents**

- As part of Covid-19 stimulus package, on 13 May 2020, the CBDT issued a Press release providing for reduction in withholding and tax collection rates by 25% for the payments made (other than salary) to or received from residents for the period from 14 May 2020 to 31 March 2021.

- TTAOLB 2020 proposes to statutorily codify the announcement with retrospective effect from 14 May 2020.

vi. **Specifying authority to approve eligible projects and schemes**

- The ITL provided deduction of expenditure on certain eligible social development project and schemes either directly incurred by a company or by way of payment of any sum to specified payees.

- The deduction was subject to approval of the project or scheme or specified payee by a National Committee, constituted by the CBDT from amongst persons of eminence. This deduction has been discontinued from tax year 2017-18.

- In case the National Committee withdraws its approval upon violation of conditions subject to which approval was granted, deduction claimed in respect of the expenditure directly incurred by a company or payment received by the specified payee in an earlier year is deemed as income of such company or specified payee in the tax year in which such approval is withdrawn and tax is chargeable thereon at the maximum marginal rate. Since the deduction is discontinued from tax year 2017-18, presently, this provision has relevance only for the purpose of such claw back.

- TTAOLB 2020 proposes to substitute the National Committee (which has powers to withdraw approval in case of non-compliance) with Principal Chief Commissioner of Income Tax (Exemption) or the Chief Commissioner of Income Tax (Exemption).

- The amendment is effective from 1 November 2020.

vii. **Extension of date of compliance/payment under VSVA**

- The Ordinance had extended last date for making payment under the first tranche (without any additional amount of 10%) for resolving past direct tax disputes under

- VSVA from 31 March 2020 up to 30 June 2020. The Finance Minister on 13 May 2020 had announced further extension from 30 June 2020 to 31 December 2020 as part of first tranche of Covid-19 stimulus measures. As per Press Release dated 24 June 2020, this extension required necessary legislative amendments, which was to be moved in due course.

- In line with the aforesaid Press Release, TTAOLB 2020 proposes to extend last date for making payment under the first tranche (without any additional amount of 10%) till 31 December 2020. Separately, TTAOLB 2020 proposes that any payment made under the second tranche (on or after 1 January 2021 but before the last date for availing benefit of VSVA) shall attract an additional amount of 10%.

viii. **Power to remove difficulties:**

- TTAOLB 2020 proposes to empower the CG to remove difficulty, if any, arising in giving effect to the provisions or inconsistent with the provisions of the ITL, within two years from the end of the month in which TTAOLB 2020 receives assent of the President of India.

2. CBDT - Directs banks to refund charges collected on transactions carried through prescribed electronic modes u/s.269SU post-Jan 2020 CBDT (Circular No. 16 of 2020 dated 30-08-2020)

- CBDT advises banks to immediately refund the charges collected, if any, on transactions carried out using electronic modes prescribed u/s.269SU on or after 1st January 2020.

- CBDT states that representations have been received that some banks are imposing & collecting charges on transactions carried out through UPI.

- CBDT further states that “Such practice on part of banks is a breach of Section 10A of the PSS Act (Payment and Settlements Act) as well as section 269SU of the ITL. Such breaches attract penal provisions under section 271DB of the ITL as well as section 26 of the PSS Act.”

- CBDT further advises banks to not to impose charges on any future transactions carried through the prescribed modes.

3. CBDT clarifies on the roles of Pr.CCIT(Jurisdictional) vis-à-vis Pr.CCIT(NeAC) under 'Faceless Scheme'(CBDT Order dated 10-09-2020)

- CBDT clarifies on the roles of Pr.CCIT (Jurisdictional) vis-à-vis Pr.CCIT (NeAC) under 'Faceless Scheme', and states that Pr. CCIT (Jurisdictional) will be the cadre controlling authority for the Faceless charges along with the Jurisdictional Hierarchy;

- The Pr. CCIT of the region shall be responsible for completion of disposal targets of the Faceless Hierarchy and accountable for all day to day administrative matters and functioning of the Faceless Hierarchy except those assigned to Pr.CCIT (NeAC);

- It further clarifies that Pr.CCIT (NeAC) will responsible for (i) Overall implementation of Board's policy with respect to Faceless Scheme in the NeAC and ReAC, (ii) Formulating the guidelines, SOPs, and roles of income tax authorities in ReAC, (iii) Ensuring that the Technical Units provide a considered view on legal matters and (iv) Ensuring that thecomputer systems with the ReACs function properly.

4. CBDT issues guidelines for compulsory selection of returns for Complete Scrutiny for FY 2020-21 (dated 17-09-2020)

- Keeping in mind the Faceless Assessment Scheme, 2020 implemented by Department and the difficulties being faced amid Covid-19 pandemic, CBDT prescribes 5 broad parameters for compulsory selection of returns for complete scrutiny for FY 2020-21 with respect to search & seizure, survey cases, cases where Sec. 148 notice have been issued, cases relating to registration / approval under Sections 12A / 10(23C) and cases where notices u/s. 142(1) have been issued calling for return.

- Guidelines are issued for conduct of assessment proceedings in such cases.

- CBDT further clarifies that other than the above, the cases which are selected by the International tax and Central charges following above prescribed guidelines shall continue to be handled by these charges. The exercise of selection of cases for compulsory scrutiny on the basis of above-mentioned parameters shall be completed by 30 September 2020.

5. Central Government (CG) announces Faceless Appeal Scheme, 2020 (FAS) effective from 25 September 2020

- CG through notification no. 76 and 77 dated 25 September 2020 notified and implemented FAS for conducting appeal proceedings in a faceless manner before Commissioner of Income Tax (Appeals) [CIT(A)] under ITL. It is intended to impart greater efficiency, transparency and accountability by eliminating the interface between taxpayers/the tax authority and CIT(A) and making optimal utilization of the administrative resources with dynamic jurisdiction.

- FAS involves a stepwise process to conduct appeal proceedings by harnessing the use of technology for communication between taxpayers/the tax authority and CIT(A) and a team-based appeal process in lieu of the existing manual interface and single officer-based proceedings.

- In FAS, the mode of conducting of appeal has been provided in a stepwise manner to conduct in electronic mode.

Infrastructure of FAS:

- FAS empowers CBDT to set up following units to collectively carry out appeal proceedings and specify their respective jurisdictions:

- **National Faceless Appeal Centre (NFAC)**: To facilitate conduct of appeal proceedings in a centralized manner and have jurisdiction to dispose of appeals in accordance with FAS.

- **Regional Faceless Appeal Centres (RFAC)**: To facilitate conduct of appeal proceedings and have jurisdiction to dispose of appeals in accordance with FAS.

- **Appeal units:**

  - They will include one or more CIT(A) and such other tax authority or staff as considered necessary by the CBDT.

  - The functions of an Appeal Unit are: (a.) To facilitate the conduct of appeal proceedings. (b.) To perform functions of disposing of appeals, including admission of additional grounds of appeal and to seek information/clarification. (c.) To make further inquiry or to direct NFAC or Tax Authority to do so. (d.) To provide opportunity of being heard to the taxpayer. (e.) To analyse material/evidence furnished by the taxpayer. (f.) To review draft appeal order. (g.) Such other functions as may be prescribed.

- **Mode of communication under FAS:**

- All communication between the Appeal Unit and the taxpayer/any other person/National E-assessment Centre (NeAC)/Jurisdictional Tax Authority (JTA), as the case may be, shall be exclusively through NFAC by electronic mode.

- All internal communication between units shall be exclusively by electronic mode.

- **Procedures for disposing appeals in faceless manner as laid down in FAS:**

  NFAC shall assign an appeal filed before CIT(A) to any Appeal unit in randomized manner.

- **Stage 1: Preparation of draft appeal order**

  - The Appeal unit may accept or reject the appeal under intimation to NFAC as the case may be.

  - NFAC shall intimate the taxpayer about admission or rejection of appeal.

  - The Appeal Unit, after admitting the appeal, if so required, may take the following action:

  i. Obtain further information/ document/ evidence.
  ii. Obtain report on grounds of appeal or information/document/evidence filed by taxpayer.
  iii. Give direction to make further inquiry and submit a report thereof.

  - A taxpayer may file an additional ground of appeal specifying reasons for its omission earlier.

  - Once additional evidences are accepted by the Appeal Unit, a specified procedure is to be followed to evaluate the merits of such evidence.

  - **Preparation of draft appeal order:**

  - The Appeal Unit shall prepare a draft appeal order in writing after considering all relevant evidence/documents available on record.
  - The Appeal Unit shall forward the draft appeal order to NFAC, along with details of penalty proceedings, if any, to be initiated therein.

- **Stage 2: Processing of draft appeal order into final appeal order**

- NFAC shall forward the draft appeal order to another Appeal Unit (Review AU) in randomized manner for review in cases where the aggregate amount payable as per draft appeal order exceeds a specified amount.

- In any other case, NFAC shall examine the draft appeal order in accordance with risk management strategy specified by the CBDT and decide:

  - To finalize appeal order;

- To forward the draft appeal order to Review AU for review in randomized manner.

- **Review of draft appeal order** –

- Review AU may review the draft appeal order and concur with the draft appeal order or send necessary variation (suggestions) to such draft appeal order to NFAC. Thereafter NFAC shall finalize the appeal order.

- However, in case NFAC forwards suggestions to another Appeal Unit (Third AU) in randomized manner, the Third AU may follow the normal procedure to prepare draft appeal order if variations intend to enhance an assessment/penalty or reduce the amount of refund. In any other case, prepare revised draft appeal order.

- Third AU shall forward revised draft appeal order to NFAC, along with details of penalty proceedings to be initiated.

- At the end of the aforesaid process, NFAC, after finalizing the appeal, shall:

- Pass the final appeal order.
- Communicate such final order to: (a.) Taxpayer (b.) Principal Chief Commissioner of Income Tax or Chief

  Commissioner of Income Tax or Principal Commissioner of Income Tax or Commissioner of Income Tax, as the case may be, as required under the ITL (c.) NeAC/JTA.

- Serve show cause notice of penalty to the taxpayer, if recommended.

- **Premature exit from FAS:**

- Without prejudice to FAS, NFAC may, at any stage of the appeal proceedings, if considered necessary, transfer the case to any CIT(A)with prior approval of the CBDT.

- Penalty proceeding for non-compliance of any notice/direction/order issued under FAS may be initiated by NFAC on recommendation by Appeal Unit.

- **Rectification proceedings under FAS:**

- NFAC may amend any order passed under FAS for rectification of any mistake apparent from record upon application. Such rectification application can be filed by (a.) Taxpayer (b.) Appeal Unit (c.) NeAC/JTA, as the case may be.

- NFAC shall assign rectification application to any Appeal Unit in randomized manner for examining the rectification application and AU may send notice to applicant through NFAC.

- On receipt of such notice, the applicant shall furnish their response to the Appeal Unit within the specified time or extended time so granted. NFAC shall forward the said response to the Appeal Unit.

- The Appeal Unit shall, after taking into consideration such application and response, prepare a draft order for:
  - Rectification of mistake; or
  - Rejection of the application citing
  - reasons thereof.
- NFAC shall finalize the order and communicate the same to: (a.) Taxpayer/any other person(b.) NeAC/JTA (to take further actions under the ITL).

- An **appeal against the order** passed by NFAC shall lie before the Income Tax Appellate Tribunal (ITAT) having jurisdiction over JTA.

- An **electronic record** shall be **authenticated** by the originator, being NFAC, by affixing its digital signature or being taxpayer or any other person, by affixing his/her digital signature or through electronic verification code.

- **No personal appearance** is required before any unit under FAS. However, request can be placed for personal hearing so as to make oral submissions or present their case before the Appeal Unit.

- On receipt of request for personal hearing, RFAC may approve the request for personal hearing if it falls under specified circumstances. Such personal hearing shall be conducted exclusively through video conferencing and in accordance with the procedure to be laid down by the CBDT.

- Any examination or recording of statement of the taxpayer/any other person shall be conducted by the Appeal Unit exclusively through video conferencing in accordance with the procedure to be laid down by the CBDT.

- Powers are granted to NFAC to lay down standards, procedures and processes, including format, mode, procedure and processes for effective functioning of appeal proceedings under FAS, with prior approval of the CBDT.

Key Regulatory amendments

This section summarizes the regulatory updates for the month of September 2020

Department for Promotion of Industry and Internal Trade ('DPIIT') amends Foreign Direct Investment ('FDI') policy) in defence sector

The DPIIT has reviewed the extant FDI Policy in the defence sector and the key amendments are as follows :

- In terms of the extant FDI policy, for an entity requiring new industrial license, FDI up to 49% is permitted under the automatic route. Pursuant to the revised FDI policy, the limit of FDI in such entities has been enhanced from 49% to 74% under the automatic route.

- Further, in terms of the extant FDI policy, proposals for receipt of FDI in cases that are likely to result in access to modern technology or for other reasons to be recorded, beyond 49%, required prior government approval. Pursuant to the revised FDI Policy, proposals for receipt of FDI in such cases beyond 74% would require prior government approval.

- As per the extant FDI Policy, FDI up to 49% in a company not seeking industrial license resulting in (i) change in the ownership pattern or (ii) transfer of stake by existing investor to new foreign investor, requires government approval. As per the revised FDI Policy, FDI up to 49% in an entity not seeking industrial license or which already has government approval for FDI in defence will mandatorily require a declaration to be submitted by such entity with the Ministry of Defence in case of (i) change in equity/shareholding pattern; or (ii) transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change. For FDI beyond 49% in such entities, government approval will be required.

- In terms of the revised FDI Policy, FDI in the defence sector would be subject to scrutiny on the grounds of national security. Further, the government reserves the right to review any foreign investment in the sector that affects or may affect national security.

- The changes would be effective from the date of the issuance of notification under Foreign Exchange Management Act.

Source: Press Note No 4 (2020) Series dated 17 September 2020

Part B – Case Laws

Goods and Services Tax

1. **M/s Insitel Services Private Limited [TS-797-HC-2020(DEL)-NT]**

Subject Matter: Ruling wherein the Company has challenged the constitutional validity of refund procedures laid under Rule 90(3) of CGST Rules, 2017.

Background and Facts of the case

- The Petitioner had filed a refund application for claiming excess tax inadvertently paid for FY 2019-20. For the said refund application filed, the Company was issued Deficiency Memo (DM) twice.

- The Company now wishes to seek refund of excess tax paid inadvertently along with applicable interest w.e.f. the date of filing of initial application and contends that Rule 90(3) shall be declared as ultra vires Articles 14 and 19(1)(g) of the Constitution of India or Rule 90(3) may be read down to the effect that the rectification of deficiencies shall not be treated as submission of fresh application for the purpose of computing limitation of applying for refund and grant of interest on delayed refund under the CGST Act, 2017.

Discussion and findings of the case

- The Petitioner has filed a writ challenging the refund procedure in Rule 90(3) of CGST Rules, 2017 which provides for the filing of fresh refund application if DM has been issued to the taxpayer. The Company has stated the same as arbitrary, illegal and ultra vires for the reason that issuance of a DM effectively results in rejection of refund application without giving an opportunity of hearing to the applicant;

- Further, the petitioner has contended that by treating refund application as automatically rejected and the second refund application as a fresh application under Section 54 of the CGST Act read with Rule 89 and Rule 90(3) of the CGST Rules, it was deprived of its right to claim interest on refund from the date of the initial application.

Ruling

- Given above, the Hon'ble Delhi HC has accepted the writ application filed by petitioner and has issued notice to the respondents to file counter-affidavits within four weeks.

2. **M/s. Sundharams Pvt. Ltd. [Application no. 36 dated 09.08.2019]**

Subject Matter: Ruling on whether paver blocks shall be classifiable as immovable property and whether ITC would be eligible on them under Section 17(5)(d) of the CGST Act 2017

Background and Facts of the case

- The Applicant is engaged in providing warehousing, storage and support services to the Original equipment Manufacturers (OEMs) of automobile industry.

- Applicant has purchased tax paid Paver Blocks which are laid in the parking area of the land without any attachment to the earth. The object of laying such blocks is to ensure efficient and safe parking of automobiles of OEMs during the contract period.

- Such paver blocks are not to be permanently embedded on earth and are capable of being removed as such without causing damage to them for reuse elsewhere.

- Applicant raised an issued that whether such paver blocks shall be classifiable as immovable property and whether ITC would be eligible on them under Section 17(5)(d) of the CGST Act 2017.

Discussions and findings of the case

- Expenses on the Paver Blocks are not capitalized as a part of immovable property (Land) in the applicant's books of accounts, hence the input credit on the same is not disallowable u/s. 17(5) (d) r.w. explanation to section 17(5) of CGST Act, 2017.

- Further, as per explanation to Section 17(5)(c) & (d) of CGST Act 2017, the prohibition to avail input tax credit is applicable only in respect of expenditure which is capitalized in the books of account. Hence, if the expenditure on purchase of paver block is not capitalized & treated as revenue expenditure, there is no bar on availing credit.

- The Applicant further explains that for placing the paver blocks, the base is prepared with stone and dust which are rolled very firmly. Then coarse aggregate is added on the surface and rolled. Grit powder of 30 mm is applied on the surface. After levelling the paver blocks are placed on the surface manually. The paver blocks are having interlocking and the gaps are filled with sand.

- Paver blocks are easily detachable and removable and therefore the same being movable goods could be used at any other land or site. It does not become the part and parcel of immovable property.

- To serve the applicant's purpose, compact, firm structure and close fixing of blocks is required. However, applicant is silent on whether cementing material or interlocking blocks used or not. But it appears from photographs attached by the applicant that, paver blocks are fastened to land using interlocking blocks and firm support of outer wall. These blocks are not kept loosely on the ground. Hence, mere cementing material not used doesn't mean paver blocks are not fasted to earth. Rather with support of outer wall and interlock system paver blocks are fastened to earth. Further, laying of such block is time consuming, skill full job requires to be carried out with due diligence and same way activity of dismantling also. Therefore, mere capability of removal and reuse elsewhere, doesn't mean blocks are not permanently embedded to earth. One cannot shift paver blocks as when required like moveable goods. It requires certain period of permanency arid also without fixing paver block using either cementing material or interlocking system, you cannot enjoy benefits of laying paver blocks.

- The Revenue cited the case of Indian Oil Corporation Ltd and produced the relevant para as follows:

- “The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test.

- The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a moveable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth.

- The fact that no nuts and bolts were used to imbed the tank to the earth by itself is not conclusive. Though the witness stated that the tank is capable of being shifted, as a fact the tanks were never shifted from the places of erection. By scientific process, the tanks stand on their own weight on the earth at the place of erection as a permanent structure.”

Ruling

- The term 'immovable property' has not been defined under the GST Act. However, there are a catena of decisions of various Hon'ble Courts deliberating on what constitutes an 'immovable property'.
- In the case decided by the Supreme Court in T.T.G. Industries Ltd., the judicial member concluded that, erection of mudgun and tap hole-drilling machine results in erection of immovable property and found support in the decision of the Supreme Court in case of Indian Oil Corpn. Ltd. and held that the twin tests laid down by this Court to determine whether assembly erection would result in immovable property or not were fully satisfied in the facts of this case. It was concluded that the test laid down by the Supreme Court is that if the chattel is movable to another place as such for use, it is movable property but if it has to be dismantled and reassembled or re-erected at another place for such use, such chattel would be immovable property.
- In view of the above discussions, we are of the considered opinion that the subject would qualify as immovable property and therefore Applicant cannot avail ITC in the subject case as per Section 17(5) (d) of the CGST Act, 2017.

3. M/S Tata Motors Limited [2020 (9) TMI 352]

Subject Matter: The taxability of amount recovered by the Applicant from its employees for provision of transportation facility. It was held by AAR that such recovery is not liable to Goods and Services Tax ('GST') and the Applicant is eligible to avail Input Tax Credit ('ITC') to the extent of cost incurred by it.

Background and Facts of the case

- The Applicant has hired buses to make transportation facility available to its employees, in non-airconditioned buses having seating capacity of more than 13 persons.
- To ensure use of facility by authorized employees only, Applicant was issuing passes to employees and nominal amount is recovered on monthly basis. In other words, difference between amount paid to service provider and amount recovered from employees is cost to company as salary cost.

Discussions and findings of the case

- In the above backdrop, Applicant claimed exemption under Notification No. 12/2017-Central Tax dated June 28, 2017. Also, the Applicant claimed ITC to the extent the cost is borne by it.
- Applicant further relied on Press release dated July 10, 2017 to state that transportation facility provided to employees is not a supply under GST Laws.
- The Department too agreed to the Applicant's contention that it is not a supply and thus, no GST shall apply. Also, the Applicant would be eligible to ITC proportionate to the expenses incurred by it.

Ruling

- AAR observed that an employee-employer relationship is must for availing the transportation facility.
- AAR further observed that here the recipient of services is the Applicant and employees are merely the user of transportation services.
- In these facts, AAR held that transportation recoveries made by the Applicant from its employees are not chargeable to GST.
- At the same time, the Applicant is eligible to avail ITC to the extent recovery is not made from the employees.

Part B – Case Laws

Direct Tax

1. Best Trading and Agencies Ltd- [119 taxmann.com 129 (Karnataka HC)]

Subject matter: Karnataka HC rules deduction of indexed cost of acquisition while computing book profits under Minimum Alternate Tax provisions.

Facts

- The taxpayer, an Indian company, was incorporated as a special purpose vehicle for restructuring of Kirloskar Electric Company Ltd. The HC approved the scheme of restructuring. The taxpayer was formed with the object of liquidating securitized assets and distribution of surplus, if any, after clearance of debts of Kirloskar Electric Company.

- Under the said arrangement, the taxpayer received surplus non- manufacturing assets and liquid assets, including real estate for discharging the liabilities.

- During tax year 2004-05, the taxpayer sold land and declared long-term capital loss after claiming indexation benefit. The taxpayer did not pay any tax under the MAT provisions on the premise that the MAT provisions were not applicable in the present case.

- The tax authority rejected the taxpayer's contention of non-applicability of the MAT provisions and computed "book profits" without granting indexation benefit for capital gains.
- On the other hand, the taxpayer contended that all the provisions of the ITL should be made applicable while computing book profits, including the indexed cost of acquisition.

- The first appellate authority provided relief to the taxpayer by allowing the indexed cost of acquisition in computing "book profits" under the MAT provisions. However, on appeal by the tax authority, it was rejected by the Bangalore Income Tax Appellate Tribunal (Tribunal). Aggrieved, the taxpayer filed an appeal before the HC.

Issue before the HC pertaining to MAT computation

- Whether MAT provisions are applicable in the present case and whether the indexed cost of acquisition should be considered for the purpose of computing "book profits" under MAT computation.

Taxpayer's contentions

- Based on the legislative history of introduction of the MAT provisions, the MAT provisions are applicable only in case of companies which have book profits and are paying dividends but are not paying any taxes. In the absence of any dividends being declared in the present facts, the MAT provisions are not applicable.

- Furthermore, the MAT provisions specify that all the other provisions of the ITL should equally be applicable and, hence, the indexed cost should be considered even for computing book profits.

- Computation of book profits under the MAT provisions, without indexation, does not represent the actual income of a taxpayer. The actual or real gain can be computed only after giving the effect of indexation as per the capital gains provisions of the ITL.

Tax Authority's contentions

- A literal reading of the MAT provisions shows that the taxpayer's case is not excluded from its ambit merely because it has not paid dividends.

Acceptance of the taxpayer's contention will amount to rewriting of the MAT provisions.

- The residual provision in MAT comes into operation after "book profits"' are computed based on P&L as per the Indian Companies Act. It does not apply to computation of "book profits".

HC's Ruling:

The HC ruled in favour of the Taxpayer by adopting the following reasoning:

<u>Non-applicability of the MAT provisions in the absence of dividend payment</u>

- The legislative history of introducing the MAT provisions shows that the intent of introducing the MAT provisions was to tackle companies which were making profits and declaring dividends without paying any taxes. Considering this intent, the MAT provisions are not applicable in the present case as the Taxpayer had not declared any dividend.

- Reliance in this regard was placed on an earlier ruling of the HC itself which upheld the Bangalore Tribunal's decision in the case of MSR Sons Investments v. DCIT, wherein it was held that the MAT provisions are not applicable in a case where a company does not declare dividend.

<u>Indexation benefit while computing book profits</u>

The HC ruled that the indexed cost of acquisition has to be allowed while computing the book profits for the purpose of MAT. Furthermore, the HC also ruled that the capital gains are taxable as per the capital gains chapter under the ITL, being a special provision, as compared to the MAT provisions which are general in nature.

- Reliance was placed on the Madras HC decision in the case of Metal & Chromium Plater (P) Ltd. (supra), wherein it was held that the SC's decision in the case of Apollo Tyres (supra) was rendered in the context of the erstwhile MAT provisions which did not contain a provision analogous to the residual provision under the current MAT provisions. The residual provision in the current MAT provisions makes all other provisions of the TL applicable to the computation of "book profits".

- Reliance was also placed on the HC's own earlier rulings, wherein it was held that the indexed cost of acquisition should be considered while computing book profits under the MAT provisions.

- The indexed cost of acquisition is a claim allowed by the capital gains provision of the ITL to arrive at income from capital gains. The difference between the sale consideration and the indexed cost of acquisition represents the actual gain of the Taxpayer, which is taxable at the rates provided under Section 112 of the ITL. None of the provisions under the ITL prevents claim of the indexed cost of acquisition on the transfer of long-term capital asset in cases where the MAT provisions are applicable.

- In any case, as the indexed cost of acquisition is subjected to tax under a specific provision viz., Section 112 of the ITL, the MAT provisions, which are general provisions, cannot be made applicable.

- Additionally, denial of benefit of the indexed cost of acquisition results in taxing the income other than actual/real income. In other words, a mere bookkeeping entry cannot be treated as income.

2. Ramlord Apparels Firm - [TS-451-ITAT-2020 (Mumbai ITAT)]

Subject matter: Mumbai Tribunal rules that expenditure incurred in foreign currency in excess of INR 20,000 is not allowable as deduction.

Background

- As per the provisions of the ITA, no deduction is allowed for expenditure incurred in respect of payment exceeding INR 20,000 to a person in a day, unless it is paid by way of an account payee cheque, draft or by use of an electronic clearing system through a bank.

- Thus, cash payments exceeding INR 20,000 are not allowed as deduction (disallowance provision). Such restriction is, however, relaxed in certain specified situations representing genuine difficulties where transactions cannot be undertaken through banking channels.

- The taxpayer, a partnership firm, was engaged in the business of manufacturing and export of garments. During the relevant year, the taxpayer filed its return of income and claimed deduction of certain cash expenses incurred in foreign currency outside India. The tax authority disallowed such expense, as the expense incurred in cash exceeded the threshold limit of INR 20,000 specified under the ITA.

- The taxpayer justified the claim of expenditure on the following grounds:

  - The disallowance provision of the ITA restricts deduction of cash expenditure incurred in INR alone and it cannot be extended to cover expenditure incurred in foreign currency.

  - The ITA has jurisdiction over India alone and, hence, it cannot be made applicable to expenditure incurred in foreign currency in a foreign country.

  - In any case, due to the absence of a bank account in the foreign country, it was not possible to make payment by issue of cheque. Hence, its case was covered by specific exceptions to the disallowance provision.

- The Tax Authority, however, contended as under:

  - The threshold of INR 20,000 under the ITA cannot be read in a restrictive manner to suggest that it applies only in respect of cash expenditure incurred in INR and not in any other foreign currency. The threshold of INR 20,000 should be interpreted as expenditure of an amount equivalent to INR 20,000 in rupee terms.

  - Although it was not possible for the Taxpayer to issue a cheque, the payment could have been done through various other banking channel modes, instead of paying in cash. Furthermore, the transaction in question is not covered by specific exceptions to the disallowance provision.

- On the taxpayer's appeal, the First Appellate Authority ruled in favor of the tax authority. Aggrieved, the taxpayer filed an appeal before the Tribunal.

Tribunal's ruling

The Tribunal ruled against the Taxpayer and held as follows:

- The reference to the word "rupee" cannot be interpreted to mean only cash expenditure incurred in INR. What the disallowance provision means is that the expenditure

incurred should not exceed the specified threshold in rupee terms. Merely because the word “rupee” has been used in the ITA, it would not debar the application of the disallowance provision to expenditure incurred in foreign currency.

- The intention of the legislature is quite clear i.e., to disallow any expenditure incurred in cash, whether in Indian or foreign currency, if it exceeds the amount of INR 20,000 in rupee terms. Hence, it would be fallacious to say that if the legislature wanted to exclude expenditure incurred in foreign currency, it should have specified the limits in foreign currencies as well in the ITA.

- Any other view would result in an anomalous situation whereby expenditure incurred by a taxpayer in INR in India would be disallowed but a taxpayer incurring unlimited cash expenditure outside in India would be allowed a deduction.

- The taxpayer had accounted for the expenditure in INR in its P&L account prepared in India. It cannot, thereafter, suggest that expenditure incurred in foreign currency cannot be disallowed.

- Since the expenditure has been claimed as deduction in India, the allowability of such expenditure would be governed by the provisions of the ITA. Hence, the contention of the taxpayer that provisions of the ITA do not apply to the expenditure incurred abroad, is grossly erroneous.

- Although the taxpayer could not have issued a cheque to the payee, there are many other ways open to the taxpayer for making the payment through proper banking channels.

- Furthermore, none of the specified exceptions to the disallowance provision is applicable in the facts of the case. Hence, cash payments made by the Taxpayer in foreign currency cannot be allowed as deduction.

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