EY Tax and Regulatory Alert

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Contents

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Indirect Tax

This section of Tax alerts summarizes the Indirect tax updates for the month April 2019

Judicial Precedents

1. M/S Ford India Pvt Ltd

Vs
Commissioner Of GST & Central Excise, Chennai
[2019-VIL-182-CESTAT-CHE-ST]

Backgrounds and Facts of the case

- The appellants M/s Ford India Pvt Ltd are engaged in manufacture of passenger cars and are availing the facility of CENVAT credit on excise duty paid on inputs, capital goods and service tax paid on various input services.

- During the audit of accounts on one of the service providers of the appellant, it was noticed that the service provider namely M/s. Sunmar Constructions had constructed roads for the appellant inside the factory premises.

- M/s. Sunmar Constructions had paid service tax on the construction activities provided to the appellant and the service tax was also collected from the appellant. The appellant then availed credit of the service tax being input service for them.

- The department was of the view that construction of roads does not amount to Commissioner or Industrial Construction Service and that the construction of roads is specifically excluded in the said definition.

- The department alleged that M/s. Sunmar Constructions ought not to have paid service tax on the said services. The credit therefore availed by the appellant is ineligible.

- After due process of law, the original authority confirmed the demand, interest and imposed penalties. Hence this appeal.

Discussions and Findings

- Placing reliance on the judgement of the Hon'ble Apex Court in the case of Commissioner of Central Excise Vs. MDS Switchgear Ltd. – 2008 (229) ELT 485 (SC) where it was held that the MODVAT credit enables the recipient manufacturer to avail the benefit of duty paid by the supplier manufacturer

- In the present case, CENVAT scheme enables the service recipient to avail credit of the service tax paid by the service provider.

- The basis fundamental concept for availment of CENVAT credit is to avoid cascading effect of tax and it is a compensation for arrangement for the recipient of goods or services who has suffered tax or duty at the hands of the provider or supplier. The CENVAT scheme therefore allows the manufacturer or service recipient to avail the credit of duty to the extent that has been paid by the supplier or provider and in the invoices in full unless the same is restricted or barred by some other legal provision in law.

Ruling

- The manufacturer or service recipient cannot be denied the credit only on the score that the same has been short-paid or has been paid when not required. This is the ratio that has been granted in slew of decisions of the higher appellate forums.

- The impugned order is set aside, and the appeal is allowed with consequential relief, if any.

2. M/S Orix Auto Infrastructure Services Limited

Vs

Kerala Authority For Advance Ruling [Goods And Services Tax Department] [2019-VIL-98-AAR]

Backgrounds and Facts of the case

- The petitioner is supplying services of transportation of passengers or renting of Motor Vehicles (internally called as RAC business) with or without chauffeurs and also leasing of vehicles.
- The petitioner operates the renting and leasing business as separate division. The motor vehicles procured for renting business are exclusively used for the said business and the same are not interchanged with those in respect of leasing business at any point of time until their disposal. The motor vehicles purchased for the above business is capitalized in the books of accounts.
- The petitioner requested advance ruling on the eligibility to take credit of the input tax credit as defined in Section 2(g) of the GST (Compensation to States) Act, 2017 of the cess paid.

Discussions and Findings

- It is pointed out that in leasing business the applicant purchases motor vehicles from vehicle dealers on payment of GST and Compensation Cess. After purchasing such vehicles, the applicant, on operating lease basis, transfer the right to use of such vehicles to his customers
- The CGST Act and Compensation Cess Act are pari-materia in nature and levy two separate taxes, i.e., GST and Compensation Cess respectively on simultaneous basis on a supply of goods or services or both.
- As per Notification No.2/2017 - Compensation Cess (Rate) dated 28-06-2017, services of transfer of right to use any goods is liable for Compensation Cess, whereas the rental services and passenger transport services are not liable for Compensation Cess as it does not involve transfer of right to use of motor vehicles.

Ruling

- Considering the provision envisaged in Rule 43 of GST Rules, applicant is eligible to ITC of entire amount of Compensation Cess paid on the purchase of vehicles used for rental business. Such ITC claimed shall be reversed every month equally apportioned over the prescribed period of 60 months to the extent of usage of exempted supply of service.
- As per Rule 43(c) of GST Rules, applicant is eligible to claim ITC of Compensation Cess paid at the time of purchases of Motor Vehicles and need to reverse a proportionate amount of ITC every month based on the turnover of rental service business and utilize balance ITC for discharging liability of Compensation Cess arising at the time of sale of such vehicles.

3. M/S Kondody Autocraft (India) Pvt Ltd

Vs

Kerala Authority for Advance Ruling [Goods And Services Tax Department] [2019-VIL-97-AAR]

Backgrounds and Facts of the case

- Applicant is engaged in bus body building on the chassis given by the customers on job work basis.
- The customers purchase chassis and handed over to the applicant's yard for fabricating the bus body. On receipt of chassis, a work order with the specifications of the Bus Body will be raised and on acceptance of the customer the materials used for structural fabrication of buses will be procured and build bus body on the chassis.
- Applicant requested advance ruling on the following:

i. Whether the activity of Bus Body Building on job work basis, on the chassis supplied by the customer, is supply of goods or supply of service?

ii. If it is supply of Goods, what is the applicable rate of GST?

iii. If it is supply of Services, what is the applicable rate of GST?

Discussions and Findings

- It was clarified vide Circular No. 52/26/2018-GST dated 9 August 2018 that fabrication of buses may involve the following two situations:

  a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus. In this situation supply made is that of bus and attract 28% GST.
  b) Bus body builder builds body on chassis provided by the principal for body building, and realize fabrication charges, including certain materials that was consumed during the process of job work. In this situation supply of building and mounting of body on the chassis of principal is a supply of service and attract 18% GST.

Ruling

- The activity of Bus Body Building on job work basis, on the chassis supplied by the customer, is supply of service.

- It is a service covered under SAC Code 9988 and thereby attract 18% GST.

4. M/s Narsingh Transport

Vs
Authority For Advance Ruling - Madhya Pradesh [GST] [2019-VIL-107-AAR]

Backgrounds and Facts of the case

- The present application has been filed u/s 97 of the CGST Act and MPSGT Act by M/s. Narsingh Transport, Indore (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.

- The applicant has recently purchased cars and has provided them to various companies on lease rent under a Lease Agreement entered between them on monthly basis for their use in furtherance of their business. The applicant while purchasing the cars for their business purpose i.e. for providing to other companies on a monthly lease rent under a lease agreement has paid GST as applicable.

- The applicant desires the advance ruling on the subject that whether the GST paid on these cars provided to their different customers on lease rent will be available to it as Input Tax Credit (ITC) in terms of Section 17(5) of Central Goods and Service Tax Act, 2017

Discussions and Findings

- The issue raised in the Application is squarely covered under Section 97(2)(d) of the CGST Act 2017 being a matter related to 'admissibility of input tax credit paid or deemed to have been paid', and the applicant has complied with the all the requirements for filing this application as laid down under the law.

- It is pertinent to mention here that the taxable event under GST is the supply of goods and / or services made for consideration in the course or furtherance of business.

- Thus we find that the activities carried out by the applicant are in the nature of "taxable Supply"

- Further, the activities carried by the Applicant regarding supply of tax paid motor vehicles on monthly lease rent plus Goods & Service Tax as applicable to their customer under a proper agreement properly satisfies the conditions laid down under Section 17(5) (a) (i) (A) before the amendment and under sub-section 5(a)(A) after the amendment to make it eligible for availment of input tax credit on motor vehicle for the Tax paid by it while acquiring the said vehicles

Ruling

- The Applicant is entitled to avail ITC on cars (passenger vehicles) which are further supplied to customers on lease rent, subject to condition applicable in such supply of services as per notification number 11/2017-Central Tax(Rate) Dated 28.06.17 as amended from time to time and corresponding notifications issued under MPGST Act.
- The provision of rule 42 shall also be applicable if required so.
- At the termination of lease agreement/contract, if the vehicle is not further leased to same or other customer, the applicant shall be liable to reverse the ITC so availed as per law.
- Such vehicles should abide by the norms and regulations of The Motor Vehicle Act. in accordance to be registered for commercial use with the Transport authority and not put to own use by the Applicant.

5. Mercedez Benz India Pvt Ltd

Vs
CCE, Pune-I
[2019-VIL-225-CESTAT-MUM-CE]

Backgrounds and Facts of the case

- Mercedez Benz India Pvt Ltd., the appellants are engaged in the manufacture of motor vehicles, which are marketed through dealers.
- The issue involved is whether the Appellants are entitled for refund of the duty paid by them on Road Delivery Charges (RDC) collected by them from the dealers.
- The appellants did not include the RDCs in the assessable value of vehicles sold to the dealers. The Appellants sometimes collected RDCs in excess of the actual cost and sometimes less than the actual cost. The Appellants adjusted the excess recovery against the short recovery and under protest paid the excise duty on the differential excess amount of RDCs collected by them.

Discussions and Findings

- The Tribunal vide order no. A/463470/08/C-I/ED dated 26.05.2008 held that the element of freight and transit is not includible in the assessable value. On the basis of the same, the Appellants filed claim for refund of excise duty of Rs.1,64,07,546/-.
- A show cause notice dated 23.06.2009 was issued to the appellants proposing to reject the refund claim on various grounds including unjust entrenchment.
- The Adjudicating Authority vide order dated 24.09.2009 allowed the refund claim of the Appellants but ordered to credit the refund amount to the Consumer Welfare Fund on the ground that the Appellants have failed to rebut the presumption of unjust entrenchment.
- Both the appellants as well as Revenue filed separate appeals against the aforesaid order dated 24.09.2009 before the Commissioner (Appeals).
- In the meantime, this Tribunal vide order dated 20.11.2009, while distinguishing the decision of the Tribunal order dated 26.05.2008 (supra) held that the excess amount collected from the dealers over and above the actual amount incurred towards RDCs, is includable in the assessable value and chargeable to duty.
- This order of the Tribunal was challenged before the Hon'ble High Court of Judicature at Bombay by Mercedes Benz India Pvt Ltd. and the Hon'ble High Court vide order dated 17.03.2010 reported in 2010 (252) ELT 168 (Bom.) set aside the order dated 20.11.2009 passed by this Tribunal and remanded the

matter back to the Tribunal to decide it afresh.

- Upon being remand, this Tribunal vide order dated 11.08.2010 reported in 2010 (260) ELT 149 (Tri.-Mum) allowed the appeal filed by the Appellant therein and held that the excess amount collected from the dealers over and above the actual amount incurred towards RDCs will not qualify as additional consideration under Rule 6 of the Valuation Rules and, hence not includible in the assessable value.
- In the meantime, the Commissioner (Appeals) vide order 23.12.2009, relying upon the earlier decision of this Tribunal reported in 2010 (which has been set aside by the Hon'ble High Court later on), rejected the appeal filed by the Appellant from the adjudicating order dated 24.09.2009 and by another order dated 26.04.2010 allowed the appeal filed by Revenue from the Adjudicating Order dated 24.09.2009.

Ruling

- The aforesaid order dated 20.11.2009 was set aside by the Hon'ble High Court as mentioned supra and the matter was remanded to the Tribunal for a fresh decision.
- Upon remand, the Tribunal decided the issue in favour of assessee while relying upon the decision of the Hon'ble Supreme Court in the matter of Baroda Electric Meters Ltd. vs. Collector of Central Excise 1997 (94) ELT 13(SC) and also relying upon the decision of the Tribunal in the matter of Kothari Sugar and Chemicals vs. Commissioner of Central Excise 2005 (192) ELT 447 (Tri.-Chennai).
- Since there was no occasion for the learned Commissioner to deal with the latest decision of the Tribunal and since the foundation of the impugned order, i.e. the decision of the Tribunal dated 20.11.2009, is not in existence, the appeals are allowed by way of remand.

6. Bajaj Auto Limited

Vs

Union of India & Ors

[2019-VIL-11-SC-CE]

Backgrounds and facts of the case

- The appellant Bajaj Auto Limited is a limited company, established a manufacturing unit of two-wheeler vehicles in the year 2007. The appellant was exempted from, inter alia, CENVAT, by virtue of its manufactured products falling under the Second Schedule of the Central Excise Tariff Act, 1985.
- Bajaj Auto Limited was apparently paying an automobile cess, but the National calamity contingent duty (hereinafter referred to as NCCD), Education Cess and Secondary & Higher Education Cess were not being paid. The dispute arose on account of an audit conducted on 27/28.2.2009. The dispute pertains to the liability of the appellant to pay the unpaid three cesses referred to aforesaid.
- The appeal raises the legal question of the liability towards NCCD, Education Cess and Secondary & Higher Education Cess of a manufacturing establishment.
- Subsequently, an Office Memorandum was issued on 7.1.2003, announcing a package of incentives providing for "New Industrial Policy and other concessions for the State of Uttaranchal and the State of Himachal Pradesh.
  - 100% outright excise duty exemption for a period of 10 years from the date of commencement of commercial production.
  - 100% income tax exemption for initial period of five years and thereafter 30% for companies and 25% for other than

companies for a further period of five years.

Discussions and Findings

- On account of the audit conducted of the appellant, an audit objection report was prepared on account of the failure of the appellant to pay the aforementioned three cesses, and consequent queries were raised vide letter dated 27.2.2009, by the Superintendent (Audit), Central Excise Meerut-II on the appellant. This was followed by a show cause notice dated 26.8.2011.
- The appellant filed a writ petition before the High Court of Uttarakhand on 13.10.2011, however, did not succeed and the writ petition was dismissed by the learned Single Judge, vide order dated 9.10.2014 - 2014-VIL-324-UTR-CE. The appeal preferred before the Division Bench also met the same fate, vide impugned order dated 16.3.2017 - 2017-VIL-163-UTR-CE.
- Reasoning of this Court is that since these cesses are a surcharge levied and collected on the total value of the excise duty, and the excise duty itself is exempted, there cannot be any question of any recovery of these cesses, as the substratum does not exist.
- On a proper appreciation of the judicial pronouncement in SRD Nutrients Pvt. Ltd. v. Commissioner of Central Excise, Guwahati [(2018) 1 SCC 105] - 2017-VIL-43-SC-CE, we are not inclined to take a different view from the one taken for Education Cess and Secondary & Higher Education Cess, even while considering the issue of NCCD.

Ruling

- The impugned orders are set aside and the show cause notice dated 26.8.2011 is quashed while holding that the appellant is not liable to pay NCCD, Education Cess and Secondary & Higher Education Cess.
- The appeal is allowed, leaving the parties to bear their own costs.

Key Indirect Tax updates

This section summarizes the regulatory updates for the month of April 2019

1. *Notification No. 11/2019-Customs dated 29 March 2019*, issued by CBIC further amends Notification No. 50/2017-customs dated 30th June 2017 to postpone the implementation of increased customs duty on specified imports originating in USA from 1st April 2019 to 2nd May 2019;
2. *Trade Notice No. 51/2018-19 dated 29 March 2019*, issued by DGFT regarding online filing, processing and system-based approval of MEIS applications in respect of SEZ shipping bills;
3. *Notification No. 10/2019 – Customs dated 28 March 2019*, issued by CBIC to further amend Notification No. 69/2011-Customs dated 29 July 2011 to extend deeper tariff concessions to imports of specified goods from Japan under India-Japan CEPA (IJCEPA) w.e.f. 1st April 2019;
4. *Circular No. 94/13/2019-GST dated 28 March 2019*, issued by CBIC to provide clarification regarding certain refund related issues under GST;
5. *Circular No. 95/14/2019-GST dated 28 March 2019*, issued by CBIC to provide clarification regarding verification for grant of new registration;
6. *Notification No. 25 /2019-Customs (N.T.) dated 25 March 2019*, issued by CBIC to notify Shipping Bill and Bill of Export (Forms) Amendment Regulations, 2019 to amend the format of Shipping Bill and Bill of Exports forms, which are required to acquire a clearance for export from the Customs. After the amendments, the authorities concerned has inserted two more rows in SB I form and asked for item level details at invoice level and cargo details for each invoice separately in the respective rows.

Enhancements introduced in e-Waybill system

1. **Auto calculation of route distance based on PIN code for generation of EWB**

   - E-waybill system is being enabled to auto calculate the route distance for movement of goods, based on the Postal PIN codes of source and destination locations. That is, the e-waybill system will calculate and display the actual distance between the supplier and recipient addresses. User is allowed to enter the actual distance as per his movement of goods. However, it will be limited to 10% more than the displayed distance for entry.

2. **Blocking of generation of multiple E-Way Bills on one Invoice/document**

   - Based on the representation received by the transporters, the government has decided not to allow generation of multiple e-way bills based on one invoice, by any party – consignor, consignee and transporter. That is, once E-way Bill is generated with an invoice number, then none of the parties - consignor, consignee or transporter - can generate the E-Way Bill with the same invoice number.

3. **Extension of E-Way Bill in case Consignment is in Transit**

   - The transporters had represented to incorporate the provision to extend the E-way Bill, when the goods are in transit. The transit means the goods could be on Road or in Warehouse. This facility is being incorporated in the next version for the extension of E-way Bill

   - During the extension of the e-way bill, the user is prompted to answer whether the Consignment is in Transit or in Movement. On selection of In Transit, the address details of the transit place need to be provided. On selection of In Movement the system will prompt the user to enter the Place and Vehicle details from where the extension is required.

4. **Blocking of Interstate Transactions for Composition dealers**

   - As per the GST Act, the composition tax payers are not supposed to do Interstate transactions. Hence next version will not allow generation of e-way bill for inter-state movement, if the supplier is composition tax payer. Also, the supplies of composition tax payers will not be allowed to enter any of the taxes under CGST or SGST for intrastate transactions. In case of Composition tax payer, document type of Tax Invoice will not be enabled.

Direct Tax

This section of tax alert summarizes the Direct tax updates for the month of April 2019.

Key Direct Tax Developments

1. **Bombay HC accepts taxpayer's reliance on FCCB Scheme for determination of cost of acquisition of shares issued on conversion of FCCB**

Background

Relevant provisions under the Income Tax Law (ITL)

- As per the ITL, the income chargeable under the head "capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset and the cost of any improvement thereto.

- Shares which are listed on recognized stock exchange and held for a period of not more than 12 months, are to be treated as short term capital asset. In any other case, they are to be treated as long-term capital asset. Gains arising on transfer of short term capital asset which are liable to securities transaction tax (STT) are taxable at the rate of 15%. Gains arising on transfer of long term capital asset which are liable to STT were exempt from tax in India during the tax year 2011-12 under reference.

- However, the ITL exempts, inter alia, the transaction of conversion of debentures, debenture stock, deposit certificates or bonds of a company into shares or debentures of that company. This provision was inserted in 1991 with retrospective effect from 1962 without reference to "bonds". But the reference to "bonds" in this provision was inserted in 1992 with retrospective effect from 1962 contemporaneous with insertion of new scheme of taxation for Foreign Currency Convertible Bonds (FCCBs).

- Further, the ITL also contains "cost substitution" provision in terms of which in case of exempted capital gains transaction, the cost of old capital asset is substituted for the new capital asset. Till 2008, one of the limbs, inter alia, covered conversion of debentures, debenture-stock or deposit certificates of a company into shares or debentures of the same company. However, there was no specific reference to conversion of "bonds" into shares.

- The above referred cost substitution provision was amended in 2008 pursuant to introduction of Foreign Currency Exchangeable Bonds (FCEB) which involves issue of foreign currency bonds by a company which can be converted into shares of another company. Post amendment in 2008, it now covers conversion of debentures, debenture-stock, bond or deposit certificates into shares or debentures. The controversy in the present case revolved around interpretation of this provision relied upon by the Tax Authority.

- Apart from "cost substitution" provision, the ITL also contains "holding period inclusion" provision in terms of which in case of exempted capital gains transaction, the holding period of old capital asset is included in the holding period of the new capital asset. However, during the relevant tax year 2011-12, this provision did not specifically deal with conversion of debentures, debenture-stock, bond or deposit certificates into shares or debentures.

Relevant provisions of FCCB Scheme notified by the Government of India (GoI)

- The FCCB scheme was notified by GoI in 1993 pursuant to new scheme of taxation introduced for FCCBs. FCCB Scheme, inter alia, specifies the following tax implications:
    - Conversion of FCCB into shares shall not give rise to capital gains liable to income tax in India

- Transfer of FCCB outside India by a non-resident to another non-resident shall not give rise to capital gains liable to income tax in India.

- The cost of acquisition of equity shares which are allotted upon conversion of FCCB, would be the conversion price determined basis of the price of the shares at the Bombay Stock Exchange (BSE) or the National Stock Exchange (NSE), on the date of conversion of FCCB into shares. The controversy, in the present case, revolved around significance of this cost step up provision relied upon by the Taxpayer.

Facts

- ► The Taxpayer, a Cayman Islands entity, entered into an agreement with a non-resident investor (L Co) in June 2008 to purchase 352 Zero-Coupon FCCBs of a listed Indian company, Nava Bharat Ventures Ltd. (I Co). L Co had acquired such FCCBs of I Co in September 2006.

- ► Out of 352 FCCBs, the Taxpayer converted 323 FCCBs into equity shares of I Co in August 2011 and redeemed balance FCCBs in November 2011. During the period January-March 2012, the Taxpayer sold through stock exchange a part of equity shares acquired on conversion of FCCBs.

- ► The Taxpayer treated the capital gains arising on sale of shares through stock exchange liable to STT as short-term capital gains since the shares were sold within one year of acquisition upon conversion of FCCBs. For the purpose of computing the quantum of capital gains, the Taxpayer adopted closing price of equity shares of I Co on the NSE on the date of conversion of FCCBs into shares as its cost of acquisition, as per the FCCB Scheme. This was higher than the cost incurred by the Taxpayer in 2008.

- ► On the other hand, the Tax Authority was of the view that cost substitution provisions of the ITL post amendment in 2008 are applicable. Hence, the Tax Authority adopted pro-rata cost incurred by the Taxpayer on purchase of FCCB in 2008 as its cost of acquisition. According to the Tax Authority, the statutory cost substitution provision will override the cost step up provision of FCCB scheme notified by the GoI.

- ► Aggrieved, the Taxpayer filed a revision petition before the Commissioner of Income tax, the Revisional Authority. However, the Revisional authority rejected the Taxpayer's contention of cost step up. Aggrieved by the order of Revisional Authority, the Taxpayer filed a writ petition before the Bombay High Court (HC).

Issue before the Bombay HC

- ► Whether the Taxpayer was entitled to cost step up benefit in terms of FCCB scheme for conversion of FCCB into shares despite amended cost substitution provision post 2008 which specifically refers to conversion of bonds into shares?

Bombay HC's ruling

Cost of acquisition of shares acquired upon conversion of FCCB

- ► The HC upheld the Taxpayer's contention of cost step up as per FCCB scheme despite amended cost substitution provision, post 2008.

- ► For arriving at this conclusion, the HC extensively analyzed the various relevant provisions of the ITL and FCCB Scheme. Further, it also traced the legislative history of cost substitution provision as follows:

  - The conversion of FCCB into shares is specifically exempt under both the ITL and FCCB scheme. The ITL provision was specifically amended in 1992 to cover conversion of "bonds" into shares with retrospective effect from 1962.

  - However, when FCCB scheme was notified with effect from 1992, the relevant cost substitution provision merely referred to conversion of "debentures" and not "bonds". Hence, there was no cost substitution for conversion of bonds into shares. It is here that cost step up provision of FCCB scheme becomes relevant which provides that cost of shares shall be reckoned on the basis of ruling price on the stock exchange on the date of conversion.

- The Legislature further amended the capital gains exemption and cost substitution provision in 2008 to cover FCEB scheme which is distinct and independent of FCCB scheme. Under FCEB scheme, bonds issued by one company can be converted into shares of another company.

- It is true that post the amendment in 2008 the cost substitution provision refers to capital gains exemption provision for both FCCB and FCEB. However, since the context of amendment in 2008 was to cover FCEB scheme, the cost step up provision of FCCB scheme remains unaffected by this amendment. The difference in language of this provision before and after 2008 amendment is crucial which supports this interpretation. Before amendment, it did not cover “bonds” and post amendment it covers “bonds” which contextually covers FCEBs and not FCCBs.

Period of holding

- The Taxpayer argued that if cost substitution provision is applied as asserted by the Tax Authority, then the period of holding of FCCBs (from 2008 in the present case) should also be included in the period of holding of shares acquired on conversion of FCCBs in 2011. Consequently, the total period of holding being more than a year, the capital gains will be long term capital gains which is exempt since the sale of shares on stock exchange was liable to STT.

- For the above proposition, the Taxpayer, inter alia, relied on the decision of Punjab & Haryana HC (P&H HC) in the case of Commissioner of Income Tax v. Shri Naveen Bhatia. In this ruling, the P&H HC held that considering that the conversion of debentures into shares is not regarded as “transfer” and cost of debentures is substituted for cost of shares, it would be logical to reckon the date of acquisition of convertible debentures as the date of acquisition of such shares.

- The Bombay HC in the present case held that it was incorrect of the Tax Authority to ignore the ratio of P&H HC ruling merely on the grounds that the ruling has not been accepted by the Tax Authority and the Tax Authority’s further appeal to Supreme Court (SC) is pending. The persuasive value of the ruling is not lost due to the pendency of appeal before the SC.

Source: [TS-155-HC-2019(Bom)]

2. CBDT notifies income tax return forms for tax year 2018-19 with substantive additional disclosure requirements

Key changes in the ITR forms

The key changes notified in the ITR forms applicable to tax year 2018-19 as compared to the immediately preceding tax year 2017-18 are summarized below.

Key changes which commonly apply to most of the ITR forms:

- **Capacity in which tax return filed by a representative taxpayer:** If tax return is filed by a representative taxpayer, capacity in which the representative is filing the return needs to be reported separately (Applicable to ITR forms -ITR 2, 3, 4, 5, 6, 7).

- **Disclosure of taxable amount of accumulated balance of recognized provident fund:** In case there is withdrawal of accumulated balance of recognized provident fund which is taxable at special rates involving redetermination of incomes and taxes of past years in which contributions were made, the new ITR requires details of assessment year, income benefit and tax benefit to be provided which forms the basis of computing special rate of tax (ITR 2, 3, 5, 6, 7)

- **Enhanced reporting in case of transfer of immovable property:** In case of transfer of immovable property, details such as name and PAN of the buyer, address of property and in case of more than one buyer, percentage share and amount of each buyer need to be reported (ITR 2, 3, 5, 6).

- **Enhanced break-up of incomes taxable at special rates of tax:** Income chargeable at special rates needs to be disclosed separately such as interest received from infrastructure debt fund, dividends from Global Depository Receipts (GDRs) purchased in foreign currency etc. (ITR 2, 3, 5, 6, 7)

- **Break-up of interest income:** Interest income earned needs to be bifurcated into interest earned from savings bank, deposits, income tax refund, interest in the nature of pass-through income or others. (ITR 2, 3, 5, 6, 7)

- **Break-up of certain specified incomes such as dividend income, winning from lotteries, puzzle, races etc. which are taxed under Income from other sources (IFOS):** The new ITR forms require period wise break-up of specified incomes accrued or received during the year. The break-up period is aligned to the due dates of payment of advance tax (ITR 2, 3, 5, 6, 7).

- **Break-up of monetary donations made in cash and other mode:** Monetary donations made by taxpayer and eligible for deduction under section 80G of the Income Tax Laws (ITL) need to be bifurcated between donation made in cash or in any other mode (like cheque or electronic mode). (ITR 2, 3, 4, 5, 6)

- **Enhanced reporting in relation to foreign assets located outside India:** Instead of information about foreign bank accounts held, the new ITR forms require details of following assets held by resident taxpayers at any time during the tax year in Schedule FA dealing with foreign assets and income from any source outside India (ITR 2, 3, 5, 6, 7)
  - Details of Foreign Depository accounts
  - Details of Foreign Custodial accounts
  - Details of Foreign Equity and Debt interest
  - Details of Foreign Cash Value Insurance Contract or Annuity Contract

  Under each asset category, there is further reporting requirement such as details of country name and code, name and address of institution, account number, date of opening the account, peak balance during the tax year, closing balance, amount of interest/ amount paid/ credit. In case of insurance contract, cash/ surrender value of contract needs to be reported.

- **Enhanced reporting in exempt income schedule (a) If net agricultural income exceeds INR 0.5 Mn or (b) income is not chargeable as per Double Taxation Avoidance Agreement (DTAA) or (c) it is pass-through exempt income:**

- In the schedule of exempt income, where the net agricultural income exceeds INR 0.5M, following details need to be reported separately for each agricultural land (ITR 2, 3, 5, 6)

  - Name of district along with pin code where agricultural land is situated
  - Measurement in acres
  - Whether the land is owned or leased and whether it is irrigated or rain fed

- **Details of pass-through income received by taxpayer from business trusts:** In addition to Schedule PTI dealing with pass-through income received from business trusts, such pass-through income in the nature of house property income, capital gains etc. need to be specifically disclosed under respective head of income schedule in the ITR form as also in the schedule of incomes taxed at special rates (ITR 2, 3, 5, 6, 7).

- Expenditure incurred in relation to exempt income which is disallowed needs to be reported separately (ITR 3, 5, 6)

- **Where TDS credit relates to another person:** In the TDS Schedule, it needs to be specified whether credit of tax deducted at source (TDS) relates to taxpayer or other person and in case credit relates to another person, PAN of such person needs to be reported. Additionally, gross amount of corresponding income offered against which TDS has been claimed and relevant head of income also needs to be disclosed (ITR 2, 3, 5, 6, 7).

- **Furnishing of PAN/ TAN of tenant is mandatory if TDS credit on rent income is claimed by the taxpayer:** While computing house property income, taxpayer needs to mandatorily furnish PAN/ TAN of the tenant if credit for TDS on rent income is claimed by the taxpayer. (ITR 2, 3, 5, 6, 7)

- **Insertion of Manufacturing Account and Trading Account in addition to Profit and Loss Account:** Statement of Profit and Loss has been bifurcated into Manufacturing account, Trading Account and Profit and Loss Account. Certain additional details need to be furnished in the Manufacturing Account such as details of direct wages, direct expenses and factory overheads. (ITR 3, 5, 6).

- **New schedule inserted for donations made to research associations:** Where donation is made to research associations, details such as name, address and PAN of donee, amount of donation made in cash and other modes and eligible amount of donation need to be specifically reported in Schedule RA. (ITR 3, 5, 6)

- **New schedule inserted for donations made for scientific research or rural development:** Where donation is made for scientific research or rural development, details such as name, address and PAN of donee, amount of donation made in cash and other modes and eligible amount of donation need to be specifically reported in Schedule 80GGA. (ITR 2, 5, 6)

Key changes in ITR-6 applicable to corporate taxpayers

- **Date of commencement of business:** In addition to date of incorporation of company, date of commencement of business also needs to be disclosed.

- **Details of business re-organization:** In addition to the existing details about business re-organizations such as name, PAN and address of the other company under amalgamation/ demerger undertaken during the tax year, date of amalgamation/ demerger also needs to be reported.

- **Details of immediate and ultimate parent company to be furnished by foreign company:** Foreign company is to report additional details such as name, address, country of residence, PAN (if allotted) and unique identification of respective country of its immediate and ultimate parent company.

- **Details about start-up recognized by DPIIT:** Taxpayer needs to disclose whether it is recognized as “start-up” by Department for Promotion of Industry and Internal Trade (DPIIT) and if yes, start-up recognition number as allotted by DPIIT needs to be reported. Further, if certificate from inter-ministerial board is received, certificate number also needs to be provided.

- **Specific requirement for taxpayers being unlisted companies and start-ups:** Specified taxpayers are required to provide details of shareholding during the year. It includes details such as name, residential status and PAN of the shareholder, type and number of shares held, face value and issue price per share. These details are required to be reported for shareholders as on the last date of the tax year as also for the shareholder who ceases to be shareholder during the tax year. Details of equity share application money pending allotment at the end of the tax year also needs to be reported.

  Additionally, start-ups also need to provide the category of shareholder such as whether non-resident or venture capital company or venture capital fund or specified company or any other person.

- **Additional disclosure of assets and liabilities at the end of the tax year by unlisted company and start up:** Besides listing of assets and liabilities in the balance sheet schedule, unlisted companies and start-ups are also required to provide exhaustive details in relation to various assets and liabilities as under:

Nature of assets	Details sought
Listed and unlisted equity shares, other securities and capital contribution in other entities	Complete movement of investment (quantity and amount) during the year which includes details of opening and closing balance, purchase and sale
Loans and advances given and received	Party wise details along with opening and closing balance, amount received and repaid during the year, rate and amount of interest
Land or building or both (whether residential or not), other assets such as motor vehicle, aircraft, yatch, jewelry, archaeological collections, drawings, painting, sculptures or any work of art or bullion	Date and cost of acquisition, purpose of use

In the context of start-ups, the above information needs to be furnished from the date of incorporation up to end of the tax year and they also need to report if the specified asset has been transferred during the tax year. This additional disclosure requirement in new ITR form for start-ups is in view of end-user restriction on funds raised by start-ups by issue of shares to residents under "green channel" route permitted by DPIIT and CBDT through recent Notifications for addressing "angel tax" controversy.

- **Disclosures in Goods and Services Tax (GST) schedule relaxed:** The new ITR form requires reporting of party-wise information regarding turnover/ gross receipt (annual value of outward supply as per GST return) with its Goods and Services Identification Number (GSTIN). In the earlier year, for taxpayers not liable to tax audit, there was onerous requirement of reporting break-up of total expenditure with entities registered under GST (whether expenditure relates to goods or services exempt under GST, entities covered by composition scheme and other registered entities) and with entities not registered under GST.

Changes to give effect to amendments in the ITL:

- Additionally, all the ITR forms also incorporate certain consequential modifications to give effect to the amendments made by the Finance Act, 2018, which are effective from tax year 2018-19. Illustratively, this includes:
  - Details of standard deduction claimed against salary income
  - Details of sale of listed equity shares in a company, units of equity oriented fund or units of business trust on which securities transaction tax has been paid

Source: Notification No. 32/ 2019 dated 1 April 2019 (Notification) issued by the Central Board of Direct Taxes (CBDT)

3. Mumbai Tribunal condoned the delay in filing appeal and deleted penalty levied by the tax officer

Facts of the case:

- The taxpayer, a multinational company (MNC) had incurred stamp duty charges (capital expenditure) which were erroneously claimed as a deduction while computing the total income while filing the return.
- During the assessment proceedings, the taxpayer realised its mistake and *suo moto* offered to tax franking charges (and did not litigate).
- However, the learned AO, initiated and levied penalty under section 271(1)(c) of the Income-tax Act, 1961 (Act) which was confirmed by the Commissioner of Income-tax (Appeals) [CIT(A)].

- The taxpayer being an MNC did not want to litigate the penalty levied before the Tribunal owing to the smallness of the amount involved and to avoid long drawn litigation. The taxpayer accepted the penalty under contest and filed a letter indicating the same to the AO.

- In the meanwhile, the jurisdictional Principal Commissioner of Income-tax issued a show cause notice seeking reasons why prosecution proceedings should not be launched on the taxpayer, its Principal Officer and other directors (one of which is a non-resident). The taxpayer filed appropriate submissions against the launch of the prosecution proceedings.

- Aggrieved, the taxpayer after evaluating the different options available decided to file a belated appeal before the Tribunal.

Taxpayer's contentions

- The taxpayer submitted that there was sufficient ground to condone the delay as the taxpayer acted in a bona fide manner for not filing appeal in time;

- The taxpayer contended that decision of not appealing the penalty order was owing to the smallness of amount and to buy peace with the Income-tax department. The taxpayer was forced to appeal the penalty order on account of the prosecution proceedings launched on its principal officer and directors.

Revenue's contentions

- The taxpayer took a conscious decision of not filing an appeal and did not show a good cause for condonation of delay

Tribunal's ruling

- The Hon'ble Tribunal placing reliance on various judicial precedents along with the decision of ***B. Madhuri Goud v B. Damodar Reddy*** **[2012] 12 SCC 693 (SC)** and condoned the delay of 280 days on the grounds that the taxpayer had not filed an appeal keeping the cost of litigation in mind, which was accepted as a reasonable cause for not filing an appeal and the taxpayer was compelled to file the appeal due to the launch of the prosecution proceedings.

- On merits, the Hon'ble Tribunal noted that during the scrutiny assessment, the taxpayer had *suo motu* realised its error of not disallowing the franking charges and the said error was unintentional, *bona fide* and on account of a human error.

- In view of the same, the Tribunal directed the AO to delete the penalty levied on taxpayer. The Hon'ble Tribunal did not conclude on the invalidity of the penalty notice as this ground had become academic and concluded the appeal only on merits of the case.

Source: ITA No.7397/Mum/2018

Key Regulatory amendments

This section summarizes the regulatory updates for the month of April 2019.

Notifications/ circulars issued by RBI

1. **RBI amended Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any Other Place of Business) Regulations, 2016**

- In terms of the erstwhile position, for opening of a branch office/ liaison office/ project office ('BO/LO/PO') or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector, prior approval of the RBI was required to be obtained.
- RBI has liberalized the aforesaid provisions stating that for opening of a BO/LO/PO or any other place of business in India, where the principal business of the applicant falls in the aforesaid four sectors, no prior approval of the RBI shall be required, if Government approval or license or permission by the concerned Ministry or Regulator has already been granted.
- It is clarified that the term "permission" does not include general permission, if any, available under Foreign Direct Investment in the automatic route, in respect of the aforesaid four sectors.

Source: A.P. (DIR Series) Circular No.27 dated 28 March 2019

2. **RBI revised the limit for foreign portfolio investor (FPI) investment in Government securities Medium Term Framework**

- RBI has decided to enhance the limits for FPI investment in debt for fiscal year 2019-20.
- FPI limit in total debt has been increased up to INR 6,983 billion in the first half of fiscal year 2019 from existing INR 6,499 billion.
- The said limit would be further enhanced to INR 7,465 billion in the second half of FY 2019-20.
- The revised limits for various categories of investment in Debt is provided as under:

Revised Limits for FPI Investment in Debt 2019-20 (Rupees billion)					
	G-Sec General	**G-Sec Long Term**	**SDL - General**	**SDL - Long Term**	**Corporate Bonds**
Current Limit	2,233	923	381	71	2,891
Revised limit for April–September, 2019	2,347	1,037	497	71	3,031
Revised limit for October - March, 2020	2,461	1,151	612	71	3,170

Source: A.P. (DIR Series) Circular No. 26 dated 27 March 2019

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