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Income Tax

ITAT Quashes TDS-CPC order rejecting corrections in TDS Return due to internal policy of restricting PAN correction of 2 alfa and 2 numerical characters only

Income Tax Appellate Tribunal (ITAT) Ahmedabad in a recent judgment in case of Oil & Natural Gas Corporation Ltd (ONGC) (Appellant) vs Dy. Commissioner of Income tax, Central Processing Cell (CPC) TDS, Ghaziabad (Respondent) in its order dated 23-11-2015 has quashed TDS CPC order rejecting correction in TDS return/statement due to its internal policy of restricting the correction in PAN details change of two alfa and two numerical characters only.

It has held that "correction can be made by way of deleting the entry, adding of a deductee, change in details mentioned about the deductee including his PAN, adding of TDS challans etc. meaning thereby that deductor can rectify any kind of mistake which has been inadvertently made by it at the time of filing original return and also this correction statement can also be filed for multiple times. Applying the facts of the case of assessee to the above discussion made by us we are of a clear view that refusal of the various agencies not to accept change in character in PAN details filed by deductee in its correction statement was not correct and justifiable."
(Oil & Natural Gas Corporation Ltd (ONGC) Vs Dy. Commissioner of Income tax, (CPC) TDS, Ghaziabad)

Widening of Tax Net

To widen the tax base, a Parliamentary panel has asked the government to use its resources with "strict vigil" over non-TDS income group and which are lying above Rs 5 lakh annual income bracket.

The report said that government strongly believes that time has come to reinvent the tax collection approach i.e. to move towards the untapped or lesser tapped brackets of income which mostly comprise the unorganized sector and the cash economy.

For this purpose, the Committee would expect the Finance Ministry to diligently use their manpower and other resources with a strict vigil over non-TDS (Tax Deduction at Source) income group and which are lying above Rs 5 lakh annual income bracket

This becomes more important in the light of the submission made by the Ministry that presently three out of four tax payers are from the sub-five lakh bracket, while tax collection from this bracket is merely around 12 per cent of the total tax collection, the report said.

CBDT Directions to Issue Refunds below Rs. 50,000/- on priority basis

CBDT has directed Income Tax Department to expeditiously process and determine refunds in cases having claim of refund of less than Rs.50,000/- and issue the same as early as possible.

Direction has been given that refunds in respect of cases not selected under CASS and involving refund of less than Rs.50,000/- for the assessment years 2013-14 and 2014-15 may be issued as early as possible & that to expeditiously process and determine refunds in non-CASS cases having claim of refund of less than Rs.50,000/- and issue the same as early as possible.
(F.No.312/109/2015-OT dated 02-12-2015)

Unreasonable payments and/or payments without basis to relatives can attract disallowance:

Punjab & Haryana High Court in case of Sh. Subhash Chander Malik Versus Deputy Commissioner of Income Tax Circle (I) Chandigarh has held:

That amount paid for rent which is excessive and way higher than what had been paid in previous year calls for disallowance irrespective of the fact that TDS had been deducted on the said payments.

That the commission paid to relatives without any justification for the nature of services rendered, without credible evidences to establish the genuineness, needs to be disallowed as it cannot be considered as being paid wholly & exclusively for the purpose of business as per the provisions of section 37 of The Income Tax Act.
(Sh. Subhash Chander Malik Vs DCIT Circle (I) Chandigarh)

Service Tax

Clarifications on Levy of Swachh Bharat Cess

The Central Board of Excise and Customs (CBEC) had issued certain notifications / clarifications on Swachh Bharat Cess (SBC).

Please see below the summary of the important points:

SBC is leviable **@ 0.50%** on the value of taxable services **with effect from November 15, 2015**

SBC should be charged separately on the invoice, accounted separately in the books of accounts.

SBC should be paid under a separate accounting code and the relevant codes are as under

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

Rule 5 of Point of Taxation Rules, 2011 would apply in respect of levy of SBC and SBC would not be applicable in the following scenarios:

• Where both payment is received and invoice is raised prior to November 15, 2015; and

• Where payment is received prior to November 15, 2015 and invoice is raised up to November 29, 2015 (i.e. 14 days from November 15, 2015)

SBC will also be applicable on the payments to be made under reverse charge mechanism. The point of taxation for SBC on reverse charge transactions will be determined as per rule 7 of Point of Taxation Rules, 2011 i.e. the date of payment of the consideration to the service provider.

SBC will be applicable on the abated value of the taxable service (Example if taxable value is INR 1,000 and the abated value is 40% of taxable value than 0.5% SBC will be applicable on INR 400)

The effective rate of Service Tax plus SBC in case of original works and other than original works under the works contract service would be 5.8% [(14% + 0.5%)*40%] and 10.15% [(14% + 0.5%)*70%] respectively.

SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax. Thus payment of SBC is to be made in cash only. Hence, refund of such SBC will also not be available to a service exporter.
Notifications 21, 22 – ST dated November 6, 2015 / Notifications 23, 24 and 25 dated November 12, 2015 Circular 188/7/2015-ST dated November 16, 2015

CBEC issues guidelines for speedy disbursal of pending refund claims to exporters of services

The Central Board of Excise and Customs (CBEC) vide various Circulars/Instructions had laid down simplified procedures for sanction and disbursal of refund claims in the past under various notifications. Now, the Board has issued yet another circular in order to facilitate fast track sanction of refund of accumulated CENVAT credit to exporter of services.

Gist of the scheme for speedy disbursal of pending refund claims to exporters

Applicability of the scheme: It is applicable to Service tax registrants, who are exporter of services, with respect to refund claims under Rule 5 of the CENVAT Credit Rules, 2004 (“the Credit Rules”), which have been filed on or before March 31, 2015 and which have not been disposed of as on date of the issue of the Circular.

Further, refunds which had been finalized earlier by issuance of an adjudication order but have been remanded back to the original sanctioning authority will not be covered under this scheme since re-examination of such claims will have to be done strictly in terms of the remand order of the Commissioner (Appeals)/ CESTAT/ High Court.

Additional documents to be submitted: In addition to the specified documents required to be filed along with the refund claim, the following are the additional documents need to be submitted:

A certificate from the Statutory Auditor in the case of companies, and from a Chartered Accountant in the case of other assessees, in the format as given in Annexure-1 to the Circular.

An undertaking from the claimant in the format as given in Annexure-2 to the Circular.

Operation of the scheme: On receipt of the additional documents in respect of pending claims, the Jurisdictional Deputy/Assistant Commissioner will give a dated acknowledgement to the claimant. Thereafter, he will make a provisional payment of 80% of the amount claimed as refund, within 5 working days of the receipt of the documents. Further, the Board has prescribed other procedures as well for effective operation of the scheme.

The refund claims would be verified as per the applicable norms. If any part of the refund is found to be inadmissible, a show cause notice would be issued for denial of refund claim and recovery of refund already paid, where applicable.

Monitoring and reporting: The claimant shall be required to submit an MIS report in the format specified in Annexure-4 to the Circular by the 10th of every month by email to st-cbec@nic.in.

Further, Principal Commissioners/Commissioners should ensure that the provisional payment of refunds should be done strictly in terms of the time lines specified and that there should be no complaints regarding delays of refund.

Circular No. 187/6/ 2015 – Service Tax dated November 10, 2015

VAT AND PROFESSION TAX MAHARASHTRA

Revision in Rates of Interest on delay in payment of Taxes

Earlier under rule 88(1) the rate of Interest was 1.25% per month of the amount of delayed tax payment.

As per the Trade Circular no. 18T of 2015 of Department of Sales Tax, the interest on late payment of taxes will be as follows:

Sr. No.	Period	Rate of Interest
1.	- Upto 1 month	- 1.25% p.m.
2.	- Upto 3 month	- 1.25% p.m. for the 1st month - 1.5% p.m. for the next 2 months
3.	- More than 3 months	- 1.25% for the 1st month - 1.5% p.m. for the next 2 months - 2% p.m. for delay beyond 3 months

The said amendment is effective from 1st December, 2015.

The old rates of interest will apply where the defaults starts and ends before 1st December 2015. In other words, if the tax has become due before 1st December, 2015 and the default continues after 1st December 2015, then for the period of default before 1st December 2015, the old rates of interest shall apply and in so far as the default continues on or after 1st December 2015, the new rates will apply as per the slabs which shall commence on 1st December 2015.

(Notification No. VAT 1515/CR-81/ Taxation- 1 dated 5th November, 2015)

Revision in Rates of products under MVAT Act, 2002

Sch. Entry	Name of the commodity	Prevailing Rate	Revised Rate
B-1	Articles made of precious metals of fineness not less than fifty per cent. whether or not containing precious stones, semi-precious stones, diamonds or pearls whether real or cultured and to which entry 105 m Schedule "e" does not apply but excluding industrial goods and industrial tools to which entry 53A of Schedule ‘'C" applies.	**1%**	**1.2%**
B-2	Precious metals that is to say Gold. Silver, Platinum. Osmium, Palladium, Rhodium, Ruthenium and alloys of any of them. Explanation. - For the purposes of this entry, an alloy of precious metal means a precious metal of fineness of not less than fifty per cent.	**1%**	**1.2%**
B-3	Precious stones including diamonds, semi-precious stones and pearls whether real or, cultured. Schedule entries B-3 and B-3A have been clubbed together and single entry B-3 has been inserted with some technical changes.	**1%**	**1.2%**
B-4	Hairpins, Imitation Jewellery, beads of glass, plastics or of any metal other than precious metals and parts and components thereof.	**1%**	**1.2%**
D-1	Foreign liquor as defined, from time to time, in rule (3)(6)(I) of the Bombay Foreign Liquor Rules, 1953, excluding Wine.	**50%**	**60%**
D-2	Country liquor as defined in the Maharashtra Country Liquor Rules, 1973	**50%**	**60%**
D-3	Liquor, imported from any place outside the territory of India as defined, from time to time, in rule 3(4) of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963, excluding wine.	**50%**	**60%**
D-5	High Speed Diesel Oil (a) When delivered,-- (I) to a retail trader for trading from a place of business situated within the geographical limits of the Municipal Corporations of the Brihan Mumbai, Thane, Navi-Mumbai and within such other areas for such period as may be notified by the State Government in the Official Gazette and (ii) to a person other than the retail trader having place of business situated within the geographical -limits of Municipal Corporation of the Brihan Mumbai, Thane, Navi Mumbai and within such other areas for such period as may be notified by the State Government in the Official Gazette. (b) In circumstances other than those mentioned in clause (a) above.	**24%** **21%**	**24% + Two rupees per litre** **21% + Two**

			rupees per litre
D-13	Aerated and Carbonated non-alcoholic beverage whether or not containing sugar or other sweetening matter or flavor or any other additives.	**20%**	**25%**
D-14	Cigar and cigarettes.	**25%**	

(Notification No. VAT. 1515/ C.R.128A/Taxation 1.Dated 30th September 2015)

FEMA

Software Export – Filing of bulk SOFTEX - further liberalization

In terms of the existing regulations, a software exporter, whose annual turnover is at least Rs. 1000 Crores or who files at least 600 SOFTEX forms annually on an all India basis, is eligible to declare all the off-site software exports in bulk in the form of a statement in excel format, to the competent authority for certification on monthly basis.

In order to provide benefits to small exporters also, it has been decided by the Reserve Bank of India (RBI) to extend this facility to all software exporters. Accordingly, all software exporters can now file single as well as bulk SOFTEX form in excel format to the competent authority for certification. Since the SOFTEX data from STPI/SEZ is being transmitted in electronic format to RBI, the exporters are required to submit the SOFTEX form in duplicate as per the revised procedure. STPI/SEZ will retain one copy and handover the duplicate copy to the exporters after due certification.

As hitherto, the software exporters can generate SOFTEX form number (single as well as bulk) for use in off-site software exports from the website www.rbi.org.in. In order to generate the SOFTEX number/s, the applicant exporter has to fill-in the online form.

The Foreign Exchange Management Act (FEMA), 1999 requires exporters to complete the SOFTEX form using the number so allotted and submit it first to the competent authority for certification and then to the AD for further necessary action, as hitherto.
(RBI/2015-16/231 A. P. (DIR Series) Circular No. 27 dated November 5, 2015)

Import of Goods into India – Evidence of Import

In terms of the existing regulations, an importer has to submit as evidence of import, (a) the exchange control copy of the Bill of Entry for home consumption; (b) the exchange control copy of the Bill of Entry for warehousing, in the case of 100% Export Oriented Units (EOUs); or (c) Customs Assessment Certificate or Postal Appraisal Form as declared by the importer to the Customs Authorities.

With the establishment of Free Trade Warehousing Zones / SEZ Unit warehouses, imported goods can be stored therein, for re-export / re-selling purposes for which Customs Authorities issue Ex-Bond Bill of Entry. AD banks are advised to consider the Bill of Entry issued by Customs Authorities named as Ex-Bond Bill of Entry or by any other similar nomenclature, as evidence for physical import of goods.
Further, in cases where goods have been imported through couriers, the Courier Bill of Entry, as declared by the courier companies to the Customs Authorities, may also be considered as evidence of import of goods.
(RBI/2015-16/248 A. P. (DIR Series) Circular No. 29 dated November 26, 2015)

External Commercial Borrowings (ECB) Policy – Revised framework

As sufficient time has passed since the existing ECB framework was operationalised, a need was felt by the RBI to undertake a review based on the experience gained in administering the ECB regime and the current financing ecosystem which, interalia, allows issuance of Indian Rupee (INR) denominated bonds overseas by a wide set of borrowers. Accordingly, a draft of the proposed ECB framework was placed in the public domain on September 23, 2015 for wider consultation. Based on the responses received and, in consultation with the Government of India, a revised ECB framework based on the following overarching principles has been finalized:

A more liberal approach, with fewer restrictions on end uses, higher all-in-cost ceiling, etc. for long term foreign currency borrowings as the extended term makes repayments more sustainable and also minimizes roll-over risks for the borrower;

A more liberal regime for INR denominated ECBs where the currency risk is borne by the lender;

Expansion of the list of overseas lenders to include long-term lenders, such as, Insurance Companies, Pension Funds, Sovereign Wealth Funds;

Only a small negative list of end-use restrictions applicable in case of long-term ECB and INR denominated ECB;

Alignment of the list of infrastructure entities eligible for ECB with the Harmonized List of the Government of India.

The revised ECB framework will comprise the following three tracks:

Track I	**:**	Medium term foreign currency denominated ECB with Minimum Average Maturity (MAM) of 3/5 years.
Track II	**:**	Long term foreign currency denominated ECB with MAM of 10 years.
Track III	**:**	Indian Rupee denominated ECB with MAM of 3/5 years.

The guidelines for the revised ECB framework specifying the parameters and other terms and conditions are set out in the Annex to A.P. (DIR Series) Circular No.32 dated November 30, 2015.

Entities raising ECB under extant framework can raise the said loans by March 31, 2016 provided the agreement in respect of the loan is already signed by the date the new framework comes into effect. For raising of ECB under the following carve outs, the borrowers will, however, have time up to March 31, 2016 to sign the loan agreement and obtain the Loan Registration Number (LRN) from the Reserve Bank by this date:

ECB facility for working capital by airlines companies;

ECB facility for consistent foreign exchange earners under the USD 10 billion Scheme; and

ECB facility for low cost affordable housing projects (low cost affordable housing projects as defined in the extant Foreign Direct Investment policy)

The new ECB framework will come into force from the date of publication, in the Official Gazette, of the relative Regulations issued under FEMA.
(RBI/2015-16/255 A. P. (DIR Series) Circular No. 30 dated November 30, 2015)

Major FDI Policy

Major Foreign Direct Investment (FDI) Policy changes were announced by the Government on 10 November, 2015. In continuation to this, the Department of Industrial Policy and Promotion (DIPP) issued Press Note 12 notifying the amendments to the FDI Policy. **The changes announced come into effect from 24 November, 2015.** The amendments notified include increase in sectoral caps, bringing in more activities under the automatic approval route, easing entry conditionalities, etc. In addition to these changes, the Government has also added to the FDI Policy the definition of 'manufacture', definition of the 'control' and 'owned by resident Indian citizen'

from an LLP perspective, the term ‘internal accruals’ for the purposes of downstream investments. Besides, for some sectors, a number of entry conditionalities have been eased and or substituted with less onerous conditionalities.

The highlights are summarized below:

Liberalization of FDI policy in several sectors including defense, retail development sector.

The term “manufacturing" has been defined for the purpose of attracting foreign direct investment (FDI).

A manufacturer is permitted to sell products made in India through wholesale, retail including through ecommerce platforms without government approval.

Opening up of 15 sectors including real estate, defense, civil aviation and news broadcasting in a bid to push up reforms.

Liberalization of the policy in plantation sectors. Foreign investment is now allowed in coffee, rubber, cardamom, palm oil tree and olive oil tree plantations.

In defense sector, 49% foreign investment is allowed through

FDI cap was increased in teleport, DTH, cable networks and mobile TV besides FDI limit was raised to 49% in up-linking of news and current affairs channels.

Foreign investment cap in non-scheduled air transport service was increased to 100% through automatic route.

Easing of the norms in construction development and single brand retail trading.

100 % FDI in LLPs permitted under the automatic rote.

Raising of threshold limit for foreign investments from INR 30 Billion to INR 50 Billion for approval by FIPB.
(DIPP Press Note 12 dated 24th November 2015)

International Tax

Payment to a Hong Kong based company for the services of seconded employees is taxable as fees for technical services under the Income-tax Act

Based on the facts and in the circumstances of the case, recently the Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Food World Supermarkets Ltd. held that a payment made to a foreign company for the services of the deputed personnel under the Secondment agreement is taxable as Fees for Technical Services (FTS) under the Income-tax Act, 1961 (the Act).

The Tribunal observed that the concept of income included positive as well as negative income or nil income. In the case of payment being FTS or royalty as per Section 9(1) of the Act, it is irrelevant whether any profit element is included in the income or not.
(Food World Supermarkets Ltd. v. DDIT (ITA Nos. 1356 & 1357/Bang/2013) – Taxsutra.com)

A taxpayer is entitled to foreign tax credit against the MAT liability

Based on the facts and in the circumstances of the case, recently, the Bangalore Bench of the Income-tax Appellate Tribunal in the case of Subex Technology Ltd. held that credit for the tax paid in a foreign country would be available against the tax liability under the Minimum Alternate Tax provisions of the Income-tax Act, 1961.

It is pertinent to note that under the computation of tax liability of total income in the income tax return, tax relief u/s 90, 90A and 91 is available from the tax payable whether under the MAT or other provisions of the Act. This indicates that the pre-defined procedural format is already sync with the Bangalore Tribunal's interpretation.
(DCIT v. Subex Technology Ltd. (ITA No. 913(B)/2013 (AY 2009-10)) - Taxsutra.com)

Company Law

Relaxation of additional fees and extension of last date of in filing of form MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013

In continuation of Ministry's General Circular 14/2015 dated 28.10.2015, keeping in view requests received from various stakeholders, it has been decided to relax the additional fees payable on e-forms AOC4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 up to 30.12,2015, wherever additional fee is applicable.
(General Circular 15/2015 dated 30/11/2015)

Legal heir of director was entitled to file plea to seek ownership and transfer of shares in his name

Where upon death of director of company, petitioner being legal heir filed company petition seeking declaration of ownership over shares and their transfer in his name, petition would be maintainable.

Where respondents had without any sufficient cause, refused to transmit shares in name of petitioner and rectify Register of Members, it constituted an act of oppression.
([2015] 64 taxmann.com 115 (CLB - Mumbai)/[2015] 129 CLA 251 (CLB - Mumbai))

HC founds share exchange in Amalgamation Scheme as unfair; directs ROC to determine such ratio
Where Court in principle agreed to sanction scheme of amalgamation whereby entire undertaking of transferor Company was proposed to be transferred to Transferee Company but found exchange ratio to be unfair and unjust and not based on market realities, Registrar of Companies was to be directed to examine matter through experts and determine a fair and just exchange ratio.
([2015] 64 taxmann.com 11 (Gauhati))