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Income Tax

Faceless Appeal Scheme Challenged in The Orissa High Court

The Cuttack Tax Bar Association (Life Member of AIFTP) has filed a Writ Petition in the Orissa High Court bearing W.P.(C) No.33457 of 2020 against the Notification of the Union Government for Faceless Appeal Scheme. The Writ Petition was listed for hearing in the Court of Hon'ble Chief Justice on 09/03/2021. Shri Jagabandhu Sahoo, Senior Advocate appeared on behalf of the Bar.

The notice has been issued to the opposite parties to file their reply. The matter will come on 17/05/2021 for hearing before the said Bench.

www.itaonline.org

Time Limit for Linking PAN with Aadhar Extended up to 30.06.2021

The Time limit for linking PAN with Aadhar is Extended from 31.03.2021 to 30.06.2021.

<https://www.incometaxindiaefiling.gov.in/home>

CBDT Delayed Reporting Under Clause 30C & 44 of Tax Audit Report till 31.03.2022

The Central Board of Direct Taxes (CBDT) has once again delayed the "Tax Audit Clause 30C – Details of Impermissible avoidance arrangement and Clause 44 – Break Up of Expenditure under the GST" till the date 31st March 2022 due to the pandemic COVID-19. For the fourth time, the CBDT has once again provided an extension to the aforesaid due date for filing in Form 3CD. As per the Income Tax Act, 1961, it is necessary for companies to include Goods and Services Tax (GST) and GAAR while submitting the tax audit report.

https://incometaxindia.gov.in/communications/circular/circular_no_5_2021.pdf

Clarification of FAQ 70 – Orders to be considered as Search Case under VSV Act.

Earlier if the assessment order has been framed in the case of a taxpayer under section 143(3)/144 of the act based on the search executed in some other taxpayers' case, then such case is to be considered as search case.

On receipt of several representations received seeking further clarity with regard to the classification of a case as a 'Search Case' for the purposes of Vivad se Vishwas. The matter has been examined. In order to remove any uncertainty in this regard and in exercise of powers under section 10 and 11 of Vivad se Vishwas, it is hereby clarified that a 'Search Case' means an assessment or reassessment made under sections 143(3)/ 144/ 147/ 153A/ 153C/ 158BC of the Income-tax Act in the case of a person referred to in section 153A or section 153C or section 158BC or section 158BD of the Income-tax Act on the basis of search initiated under section 132, or requisition made under section 132A of the Income-tax Act. The FAQ no. 70 of circular 2112020 stands modified to this extent.

https://incometaxindia.gov.in/communications/circular/circular_4_2021.pdf

Power given to AO to pass consequential Order after DA Order under VSV Act

Representations have been received from the field authorities that under the Income tax Act, 1961 there is no provision available to the Assessing Officer to give effect to the order passed by the DA under sub-section (1) of section 5 and under sub-section (2) of section 5 of the Vivad se Vishwas in the case of a declarant. Since orders passed by the DA have a consequential effect under the Act, it has been requested that suitable clarifications may be issued to enable the AO to pass consequential orders under the Act.

In view of the foregoing, and in exercise of the powers conferred on the Board under section 10 of Vivad se Vishwas, it is hereby clarified that where the DA has passed orders under sub-sections (1) and (2) of section 5 of Vivad se Vishwas, the Assessing Officer shall pass consequential order under the Act.

https://incometaxindia.gov.in/communications/circular/circular_3_2021.pdf

CBDT notifies scheme for registration and renewal of trusts, religious and charitable institutions registered under sections 12A, 12AA, 12AB and 80G w.e.f. April 1, 2021

All existing trust, religious and charitable institutions registered under sections 12A/12AA, 10(23C), 80G, 35(1)(ii) and 35(1)(iii) are required to file an application of registration/renewal in the form prescribed by the CBDT. Application should be filed online in prescribed form within 3 months from 01.04.2021 i.e., on or before 30.06.2021. The new registration shall be valid for a maximum period of 5 years. In case if any trust/institution fails to apply for the registration/renewal within the stipulated me then their registrations under such sections stands cancelled.

https://incometaxindia.gov.in/communications/notification/notification_19_2021.pdf

Key amendments to Finance Bill, 2021 at enactment stage

- Slump sale capital gains computation modified to consider fair market value of undertaking on date of transfer (to be prescribed by rules) as full value of consideration and cost of goodwill of business or profession at NIL (except where it is acquired by purchase from previous owner).
- Relief from additional levy of Minimum Alternate Tax (MAT) in case of secondary adjustment or Advance Pricing Agreement (APA) entered by a taxpayer to apply only if the taxpayer has not utilized MAT credit in any subsequent tax years (TYs).
- Mandatory fee for delay in filing of tax return is reduced to INR 5,000 from INR 10,000
- New levy of fees up to INR 1,000 introduced for default in intimating Aadhaar number for taxpayers who are holding valid Permanent Account Number (PAN) as on 1st July 2017.
- Payment or receipt by the way of cheque or bank draft other than by account payee to be treated as payment or receipt in cash for computing 5% threshold to claim benefit of the increased monetary limit to trigger requirement of tax audit.
- Non-qualifying Unit-Linked Insurance Plan (ULIP) with high premium will be eligible for concessional tax rate of 10% on long term capital gains only if minimum equity component (90% or 65%) is maintained throughout the term of such insurance policy.
- Threshold for taxation of interest accruing on employees' contribution to specified provident fund schemes increased from Rs 2.50 lakhs to Rs5 Lakhs where there is no employer contribution.

GST (Goods & Service Tax)

Waiver of Penalty for non-compliance of capturing QR Code in GST Invoice

The Central Board of Indirect Taxes and Customs (CBIC) notified the waiver of penalty for non-compliance of capturing dynamic QR code in GST Invoice for the period from December 1, 2020 to June 30, 2021, subject to the condition that the said tax payer complies with the provisions related to QR Code from July 1st 2021.

[Notification No.06/2021-Central Tax dated March 30, 2021]

Clarification on GST refund related issues

Various representations have been received by CBIC seeking clarification on some of the issues relating to GST refunds. Clarification has been issued with respect to the following:

- **Clarification in respect of refund claim by recipient of Deemed Export Supply**

The para 41 of earlier Circular No. 125/2019 dated November 18th 2019 has been modified. The restriction on the recipient to avail ITC on invoices under deemed export supplies for which refund has been claimed by such recipient has been removed. However, whenever the recipient files a refund application, the portal requires a debit of the same amount from the electronic credit ledger of the claimant.

- **Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a)**

It has been clarified that for the tax periods commencing from July 1st 2017 to 31st March 2021, the registered persons (where the taxpayer inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B) shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

- **The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017**

Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23rd March 2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

It has been clarified that the value of export/ zero-rated supply of goods included while calculating "adjusted total turnover" will be the same as per the amended definition of "Turnover of zero-rated supply of goods" for the purpose of refund calculation.

(Circular No. 147/03/2021-GST dated March 12th 2021)

FEMA

FDI limit in Insurance Sector increased from 49% to 74%

The Insurance (Amendment) Act, 2021 of Parliament received the assent of the President of India on the 25th March, 2021. This Act aims to achieve the objective of Government's FDI Policy by raising the limit of foreign investment in Indian insurance companies from the existing 49 per cent to 74 per cent and to allow foreign ownership and control with safeguards.

The FDI cap of 49% from 26% that was amended in 2015 resulted in inflows of over ₹26000 crore into this sector. Around twenty-eight insurance companies could access foreign investment since the ceiling was raised and asset under management of the insurance sector has increased by 76% hike in 5 years.

The government's decision to increase the foreign direct investment limit in insurance from 49% to 74% is likely to accelerate growth and spur competition in the sector raising hopes of a flux of foreign capital into private Indian insurers. It is also likely to help local private insurers grow fast and expand their presence in India, which has one of the lowest insurance penetration levels globally.

International Taxation

CBDT prescribes process for seeking relief from dual taxation for expats stuck in India due to pandemic

Section 6 of the Income-tax Act, 1961 (the Act) contains provisions relating to determination of residency of a person. The status of an individual, as to whether he is resident in India or a non-resident or not ordinarily resident, is dependent, inter-alia, on the period for which the person is in India during a previous year or years preceding the previous year.

Considering the COVID-19 pandemic and the resultant overstay of an individual who had come to India on a visit before 22nd March 2020, circular no 11 of 2020 dated 8th May 2020 was issued by the Central Board of Direct Taxes (CBDT) under section 119 of the Act relaxing the residency conditions for prescribed individuals to avoid genuine hardship in such cases.

The CBDT has now issued Circular No. 2 of 2021 dated 3rd March 2021 where it has analyzed various aspects and concluded as under:

It can be seen that OECD as well as most of the countries have clarified that in view of the provisions of the domestic income tax law read with the DTAAAs, there does not appear a possibility of the double taxation of the income for PY 2020-21. As explained above, the possibility of double taxation does not exist as per the provisions of the Income-tax Act, 1961 read with the DTAAAs. However, in order to understand the possible situations in which a particular taxpayer is facing double taxation due to the forced stay in India, it would be in the fitness of things to obtain relevant information from such individuals. After understanding the possible situations of double taxation, CBDT shall examine that

- (i) Whether any relaxation is required to be provided in this matter; and
- (ii) If required, then whether general relaxation can be provided for a class of individuals or specific relaxation is required to be provided in individual cases.

Therefore, if any individual is facing double taxation even after taking into consideration the relief provided by the respective DTAAAs, he may furnish the information in Form-NR annexed to the circular by 31st March, 2021.

(CBDT Circular No. 2 of 2021 dated March 3, 2021)

Company Law

The Companies (Incorporation) Third Amendment Rules, 2021

The form Spice has been amended to include option for performing Aadhar authentication for GSTIN registration under The Companies (Incorporation) Rules, 2014 effective from 5th March, 2021.

Link:

http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporation3rdAmndtRules_11032021.pdf

The Companies (Management and Administration) Amendment Rules, 2021

Date of Notification: 5th March, 2021.

Effective date of Amendment: 5th March, 2021.

Amendment: The Companies (Management and Administration) Rules, 2014. Has been amended to substitute its Rules as follows:

- i. Rule 11(1) [Annual Return]-** Every company shall file its annual return in Form No. MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.
- ii. Rule 12 [Filing of Annual Return with Registrar]** -A copy of the annual return shall be filed with the Registrar with such fees as may be specified for this purpose.
- iii. In Rule 20 [Voting through Electronic Means],** explanations provided to voting through electronic means are numbered.
- iv. For existing Form MGT – 7,** new Forms MGT – 7 and MGT 7A introduced.

Link:

http://www.mca.gov.in/Ministry/pdf/CompaniesMgmtAdminAmndtRules_11032021.pdf February, 2021.

Notification regarding Commencement of Section 23 (Section 92 of the Companies Act, 2013 – Annual Return) of the Companies (Amendment) Act, 2017

Ministry of Corporate Affairs vide notification dated 5th March, 2021 informs that, Section 23(i) (Section 92 of the Companies Act, 2013 – Annual Return) of the Companies (Amendment) Act, 2017 has been effective from 5th March, 2021.

Link:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_11032021.pdf

Notification regarding amendments to Schedule V of the Companies Act, 2013

Date of Notification: 18th March, 2021.

Effect of the Notification: Schedule V (Conditions to be fulfilled for the Appointment of a Managing or Whole Time Director or a Manager without the approval of the Central Government Appointments) of the Companies Act, 2013 amended to insert/ substitute its Section I, II and III of Part II (Remuneration).

Link:

http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_19032021.pdf

Commencement of Section 32 and 40 of the Companies (Amendment) Act, 2020

Ministry of Corporate Affairs vide notification dated 18th March, 2021 informs that, Section 32 (Section 149 of the Companies Act, 2013 – Company to have Board of Directors) and 40 (Section 197 of the Companies Act, 2013 - Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits) of the Companies (Amendment) Act, 2020 has been effective from 18th March, 2021.

Link:

http://www.mca.gov.in/Ministry/pdf/CommencementNoficaon_19032021.pdf

Manner of Books of Account to be Kept in Electronic Mode)

Original Rule: The Companies (Accounts) Rules, 2014.

Date of Notification: 24th March, 2021.

Effective date of Amendment: 1st April, 2021. (Effective date of Rule Substituted as 1st day of April, 2022)

Amendment: To amend The Companies (Accounts) Rules, 2014 to insert in its Rules 3 (Manner of Books of Account to be Kept in Electronic Mode) and 8 (Matters to be Included in Board's Report) and follows:

i. In Rule 3(1) following proviso is added –

Provided that for the financial year commencing on or after the 1st day of April, 2021*, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

(*Note: Effective date of Rule Substituted as 1st day of April, 2022 by the Companies (Accounts) Second Amendment Rules, 2021 dated 1st April, 2021.)

ii. In Rule 8 (5) after clause (x) following clauses shall be inserted:

(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year along with their status as at the end of the financial year.

(xii) the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

Link:

http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf

Notification regarding amendments to Schedule III of the Companies Act, 2013

Date of Notification: 24th March, 2021.

Effective date of Notification: 1st April, 2021

Effect of the Notification: Schedule III of the Companies Act, 2013 amended to substitute Division I, II and III of Schedule III (General instruction for preparation of Balance Sheet and Statement of Profit and Loss of a Company) of the Companies Act, 2013.

Link:

http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

Commencement of Section 23 and 45

Ministry of Corporate Affairs vide notification dated 24th March, 2021 informs that, Sections 23 (Section 124 of the Companies Act, 2013 – Unpaid Dividend Account) and 45 (Section 247 of the Companies Act, 2013 - Valuation by Registered Valuers) of the Companies (Amendment) Act, 2020 has been effective from 24th March, 2021.

Link:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_24032021.pdf