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A WEEKLY ON GST | INCOME TAX | COMPANY LAW | ACCOUNTS & AUDIT

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EDITOR : RAKESH BHARGAVA

Email : sales@taxmann.com
Website : http//www.taxmann.com

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Weekly Review

Start-ups get partial exemption from angel tax

'Start-up India' is an initiative of the Government of India. The action plan of this initiative is to create a conducive environment for the startups incorporated in India. As a part of the Action Plan, the Finance Act, 2016 introduced tax exemptions for start-ups under Section 80-IAC. An eligible start-up can claim 100% tax deduction under this provision for certain number of years. A start-up, once approved by the Department of Industrial Policy and Promotion (DIPP), becomes eligible for this tax exemptions.

Every start-up needs an innovative concept and seed funding to begin its journey. At every stage of business, start-ups look for more funding from the investors. Fresh capital is raised by the start-up cos. from the investors by issuing new equity shares, generally at a price calculated on discounted cash flow method.

In recent times, startups have faced various income-tax proceedings due to inflated share valuations. For allotment of new equity shares, start-up cos. are required to submit a valuation report from a merchant banker or an accountant based on Discounted Free Cash Flow Method as prescribed in Rule 11UA(2)(*b*) of the Income-tax Rules, 1962. However, these reports were generally rejected or modified by the Assessing Officers because of abnormal valuations done on assumptions. Consequently, additions were made in the residuary income of start-ups as per provisions of Section 56(2)(*viib*). As an immediate relief, the CBDT issued an instruction that no coercive steps shall be taken against the start-ups for recovery of outstanding demand.

Since a start-up gets high investment because of its idea, applying Section 56(2)(*viib*) to recover the tax on pretext of inflated valuation would be prejudicial to the interest of the start-up. The DIPP, therefore, provides a relief to the start-ups by issuing a new notification G.S.R. 2364(E) dated 11-04-2018 (*superseding the existing notification GSR 501(E) 23-05-2017*). This notification requires Startups to file new Form-1 and Form-2 in order to claim tax incentives.

The application in Form-1 shall be filed along with prescribed documents before CBDT to obtain a tax exemption certificate under Section 80-IAC. The Form-2 shall be filed by the start-up to claim exemption from the applicability of Section 56(2)(*viib*). No tax shall be levied on start-up in respect of angel funding, if following conditions are fulfilled by the start-up:

A. The aggregate amount of paid share capital and share premium of the start-up doesn't exceed ₹ 10 crores

B. The investor who proposed to subscribe shares of start-up has average returned income of ₹ 25 lakhs or more in last 3 financial years or its net worth is ₹ 2 crores or more on the last date of preceding financial year.

C. Start-up has obtained a valuation report from a merchant banker specifying fair market value of shares in accordance with Rule 11UA of the Income-tax Rules, 1962

●●●

E-way Bill - Will be a Game Changer under GST

VISHAL RAHEJA
CA

Introduction

After introduction of GST, it was expected that road barriers would be removed and it would speed up movement of goods to some extent. However, in absence of physical restrictions on movement of goods, some control is essential to ensure that goods are not clandestinely removed and sold. Hence, a system of e-way bill was introduced but due to technical glitches it was deferred. Now, e-way bill has been made compulsory from April 1st, 2018 for inter-State movement of goods. Central Government has notified www.ewaybillgst.gov.in for generation of e-way bill.

Basic Provisions of E-way Bill

1. E-way bill is required for movement of goods from one State to another, *i.e.,* April 1st, 2018. However, Government has notified 5 States where E-way bill is required for movement of goods within State w.e.f. April 15th, 2018. It is noteworthy that e-way bill is required when value of a consignment exceeds ₹ 50,000. Generation of e-way bill for value less than ₹ 50,000 is optional.

2. However, e-way bill must be generated for inter-State movement, even if value of consignment is below ₹ 50,000 -

   a. Sending material by Principal inter-State for job work or,

   b. handicraft goods transported inter-State under exemption if turnover of person is below ₹ 20/10 lakhs

3. If consignor is not registered under GST but consignee is registered, then the consignee is required to generate e-way bill. If a single consignment is transported in more than one vehicle, each vehicle should have separate e-way bill. If a single vehicle has more than one consignment then one e-way bill is required for each consignment irrespective of one consignor or more than 1 consignor involved in it.

4. E-way Bill once generated cannot be changed. Only transport details can be changed. If there is mistake, only option is to cancel the e-way bill within 24 hours and generate fresh one. If the distance of movement of goods is less than 10 Kms. from place of supplier to place of transporter, details of conveyance/vehicle may not be furnished.
5. If consignor or consignee does not generate e-way bill, transporter himself must generate e-way bill. If he carries the goods without e-way bill, his vehicle can be detained, penalty can be imposed and even vehicle would be liable to confiscation.
6. The e-way bill generated is valid for one day if transport of goods Involves less than 100 Km. Further, one additional day is allowed for every 100 Kms after first 100 Km. If goods can not be transported within that period, fresh e-way bill should be generated.

Procedure for Generation of E-way Bill

The assessee is required to follow these 3 steps to generate e-way bill:

1. Firstly, Part A of Form -GST EWB-01 will be filled electronically by supplier/recipient (or transporter). Here all details of invoice will be entered. After filing Part-A, a unique number will be generated by system. Following details are required for filing Part-A:
   a. GSTIN of supplier
   b. GSTIN of recipient
   c. Place of Delivery - PIN Code of place of delivery shall be indicated
   d. Document Number - Tax Invoice, Bill of Supply, Delivery Challan or Bill of Entry (when goods transported from port/airport/customs warehouse).
   e. Document Date - The date of the aforesaid document should be supplied.
   f. Value of goods - Value as declared in tax invoice, bill of supply or delivery challan.
   g. HSN Code - Four digits if annual turnover was above Rs five crores and two digits if annual turnover is less than Rs five crores. Minimum two digits mandatory.
   h. Reason for Transportation
2. Then, Part B will be filled up by transporter/supplier/recipient where details of vehicle carrying goods will be filled before movement of goods. Following details are required for filing Part-B:
   a. Vehicle Number for Road
   b. Transport Document Number

   Note : Part B is to be filled up in by transporter if goods are booked with transporter for further delivery.

   Note : Part B is to be filled by consignor or consignee if the movement of goods is in own conveyance or hired conveyance or by railways, air or vessel.
3. After that system will generate e-way bill number and date and its validity period.

Miscellaneous Issues

1. *Unregistered person can also generate e-way* bill - If the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in form GST EWB-01 on the common portal.
2. *Tax Invoice or bill of supply to accompany transport of goods when e-way bill not required* - The person-in-charge of the conveyance shall carry a copy of the

tax invoice or the bill of supply in a case where such person is not required to carry an e-way bill.

3. *Generation and cancellation of e-way Bill through SMS* - The facility of generation and cancellation of e-way bill is also made available through SMS. Upon generation of the e-way bill, a unique e-way bill number (EBN) will be generated by GSTN. This number shall be made available to the supplier, the recipient and the transporter on the common portal.

4. *Information in Part A of E-way Bill can be used to furnish details in GSTR-1 return* - The information furnished in Part A of form GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in form GSTR-1.

5. Relaxation if goods transported from place of consignor to transporter or from transporter to place of consignee, and distance is less than 10 Km. - If the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of form GST EWB-01. If distance exceeds 10 Kms, e-way bill is required to be generated.

   Similarly, when transporter delivers goods to ultimate consignee at destination, details of conveyance may not be furnished in GST EWB-01.

6. *Intimation of acceptance of details by recipient/supplier* - The supplier/recipient shall communicate his acceptance or rejection of the consignment covered by the e-way bill. If the recipient does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

7. *Fresh generation of e-way bill if validity expired* - Under circumstances of an exceptional nature, if the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of form GST EWB-0.

E-way Bill- Not Required in Several Cases

E-way bill is not required to be generated in following cases:

- All items (except de-oiled cake) exempted under GST laws. The major items are as follows - Fresh Meat, Fish Chicken, Eggs, Milk, Butter Milk, Curd, Natural Honey, Fresh Fruits and Vegetables, coffee beans, wheat, rye, rice, Flour, Besan, Bread, Prasad, Salt, Bindi, Sindoor, Stamps, Judicial Papers, Printed Books, Newspapers, Bangles, Pooja equipment, jute, khadi, national flag, raw silk.
- The goods which are transported by a non-motorised conveyance.
- The goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs
- Each State has been delegated powers to grant exemptions from provisions relating to e-way bill.
- Alcoholic liquor for human consumption.
- Petroleum crude, HSD, petrol, natural gas or aviation turbine fuel.

- E-way bill is not required for transport of following goods:
  - Liquefied petroleum gas (LPG) for supply to household and non domestic exempted category (NDEC) customers
  - Kerosene oil sold under PDS
  - Postal baggage transported by Department of Posts
  - Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
  - Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
  - Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
  - Currency
  - Used personal and household effects
  - Coral, unworked (0508) and worked coral (9601)

Documents and devices to be carried by a person-in-charge of a conveyance

The person in charge of a conveyance shall carry:

1. the invoice or bill of supply or delivery challan; and
2. a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance

Road checks and Verification of documents and conveyances

The Commissioner may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.

1. *Physical verification on basis of specific intelligence*

   On receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf [*proviso* to rule 138B(3) of CGST Rules]

2. *Inspection and verification of goods during road checks*

   A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.

3. *No further verification in same State if once verification done*

   The physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless specific information relating to evasion of tax is made available subsequently.

4. *Transporter can upload details if vehicle detained for more than 30 minutes*

   If a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.

Concluding remarks

The implementation of e-way for intra-State movement of goods will be game changer

since Government is concerned to raise GST revenue collections. The applicability of e-way for inter-State movement of goods on PAN India basis from April 1st, 2018 and now for intra-State movement of goods in 5 States will surely erode tax evasion to huge extent. On the other hand, transportation service providers such as GTAs will have to comply with provisions of GST during transportation of goods. If there is fault of transporter or driver in complying with provisions of e-way bill during movement of goods, such as movement of goods without e- way bill, then consignor will face huge penalty. It will raise disputes between transporter and consignor in those cases where proper e-way bill has been generated by consignor but transporter/ driver of vehicle misplaces the documents required during transit or failed to submit documents during checking by proper officer. Therefore, widespread awareness programmes must be organized to educate such persons to ensure hassle free implementation of E-way bill provisions.

Applicability of section 292C presumption on cash credits found in seized documents

D.C. AGRAWAL
Advocate,
(Former CIT & Accountant Member of ITAT)

Introduction

1. During the course of search and seizure operations, the Revenue Authorities may find and seize certain loose papers/documents/books which may contain entries/descriptions regarding financial transactions or otherwise. Such loose papers/documents/books may also be impounded during survey u/s. 133A. These loose papers/documents/books may contain entries of receipt or availability of funds and their application/outflow in investment/expenditure which may not be found recorded in the regular books of account on the basis of which assessee may have filed the return of income. The receipt or availability of funds may be in the form of cash loans or cash credit or may be assessee's own unaccounted money. An important question arises as to whether AO can apply the test of "satisfactory explanation about the nature and source of any sum found credited in the books of an assessee" laid down u/s. 68 of IT Act, to cash loan or a credit entry found in such loose paper/document/book seized/impounded during a search/survey, while passing an assessment order for an assessee, from whose possession and control such loose papers/documents/books are found, or whether presumption u/s. 292C may discharge the assessee from explaining the nature and source of cash loan/credit entry found recorded in such loose papers/documents/books. The relevant aspects of this issue are analyzed and discussed in this article.

Analysis of the issue

2. Above issue is broken up into following segments:

2.1 ***What is cash loan?*** - Cash loan indicates inflow of cash as loan. To term an entry in seized/impounded loose papers/documents/books as cash loan, there should be clear indication, or admission by the assessee, of inflow of cash from a lender and liability to repay the same. The loan may be on interest or without interest, it may be with security or without security. The loan which is received

through cheques/drafts and goes into a bank account (of the assessee or of his associates), which is not a disclosed bank account, but is under the control of the assessee will also be a cash loan. Inflow of cash, or cash through cheque/draft and credited into the ledger account of lender in the books of recipient (in the present case assessee) is called cash credit within the meaning of Section 68.

2.2 ***What is a credit entry?*** - In common parlance, a credit entry is an accounting entry acknowledging income or capital items. A credit entry has significance in accounting when there is a corresponding debit entry. Credit entry may arise when purchases are made on credit or there is an accounting adjustment. In both these situations there is no cash flow. When there is a credit entry in respect of capital items, asset account is debited and the seller account is credited.

2.3 ***For which entries Section 68 Applies?*** - Though the heading of Section 68 is cash credit, it is not confined to credits in cash. Other credits by way of liabilities are also covered u/s. 68 and they require explanation under that Section. [Refer- *VISP (P.) Ltd.* v. *CIT* [2004] 136 Taxman 482/265 ITR 202 (MP); *T.P. Abdulla* v. *Asstt. CIT* [2012] 207 Taxman 24/20 taxmann.com 402 (Ker.) (Mag.)]

The use of the words "any sum found credited in the books" in Section 68 indicates that the Section is very widely worded, and the AO is not precluded from carrying out inquiries in the nature and source of such sum, may be cash loan/credit entry or trade credit entry, share application money, etc. [Refer- *CIT* v. *Sophia Finance Ltd.* [1993] 70 Taxman 69/ [1994] 205 ITR 98 (Delhi)].

2.4 ***What is a loose paper?*** - Loose means detached, free, separate, unattached, unbound, unconnected, unfastened, unlatched, or untied papers. A loose paper may be a single sheet of paper on which certain notings may be recorded. They are not bound. There is no apparent continuity from one loose paper to another unless investigation establishes a continuity between two or more sheets/papers. In contrast, a diary or a notebook contains large number of papers which are stapled or bound or punched together, which gives an occasion for a continuous writing spread over a period of time. On the other hand, loose paper or a single sheet of a paper generally contains record of memorandum, short notes or summary of events or of transactions.

2.5 ***What is a document?*** - A document may be written or printed paper that bears the original, official, or legal form of something and can be used to furnish decisive evidence or information. It can be an agreement, deeds, will, orders, returns of income, balance sheets or audited accounts, citations, photographs, etc., which can be used as an evidence during dispute or before any Court of law. A document may contain methodical record of transactions, events, agreements, etc. It can be on hard paper, or on electronic media, or it can be on one sheet or several sheets, it can be loose, or it can be bound. The Hon'ble Supreme Court in *Ramji Dayawala & Sons (P.) Ltd.* v. *Invest import* AIR 1981 SC 2085 observed that the truth of the facts stated in the documents had to be proved by admissible evidence and not by mere handwriting.

2.6 ***What is a book?*** - Books of a businessman in which business transactions are recorded often consist of cash books, Journals, ledgers and various other records of accounts.

A book is a written or printed work consisting of pages glued or sewn together along one side and bound in covers. This term has been explained by the Hon'ble Apex Court in *CBI* v. *V.C. Shukla* AIR 1998 SC 1406 as under-

> "'Book' ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced."

Further reference about the concept of book may be made to the decision of the Hon'ble Bombay High Court in *Sheraton Apparels* v. *Asstt. CIT* [2002] 123 Taxman 238/256 ITR 20 (Bom.).

A books of account as per Black's law dictionary means: "a detailed statement in the nature of debits and credits between persons and account of records of debits and credits kept in a book; a book in which a detailed history of business transaction is entered; a record of goods sold or services rendered; statement in detail of the transactions between the parties." The books of account also mean books in which merchants, traders and businessmen generally keep their accounts; entries made in the regular course of business; serial, continues and permanent memorials of the business affairs.

However, Section 68 refers to the expression "books of the assessee, maintained for any previous year" and not "books of account". The expression "maintained" signifies that the books are regularly written and contain record of financial transactions, such as sale and purchase, acquisition and disposal of capital assets, borrowing and payment of money and of profit and loss in the previous year. However, Section 68 does not restrict the maintenance of books only for business purposes, it could be for the personal purposes also, but would necessarily contain record of financial transactions, irrespective of whether it is for business purposes or personal purposes. Therefore, a memorandum in the shape of a book which contains the entries of financial transactions would fall within the expression "books of an assessee" within the meaning of Section 68.

2.7 *What is a dumb document?* - A document may be speaking or dumb. It all depends on whether all the ingredients/components for levying taxation are clearly decipherable from the document either on standalone basis or in association with other documents or investigation. The components which enter into the concept of taxation are first, the transaction/events which attract the levy, second, the person on whom the levy is imposed and who is obliged to pay the tax, third, the assessment year in which charge of income-tax is levied, fourth, whether any taxable income arises from the transaction recorded in the document and fifth, the rate or rates at which tax is to be imposed. The rates are prescribed in the annual Finance Act and, therefore, this component has no value in determining the total income arising from a seized document. Thus, other four elements are relevant. [refer- *ACIT* v. *Satyapal Wassan* (2007) 295 ITR (A.T.) 352 (Jbl)]

A charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The document should be clear and unambiguous in respect of all the four components of the charge of tax. If it is not so, the document is only a dumb document. No charge can be levied on the basis of a dumb document.

Thus, a document will be dumb document where any of the four ingredients is missing and the AO fails to supplement the missing ingredient with the help of other documents or from post-search investigation/inquiries. Examples of how a document is held as dumb can be seen in following cases- *Asstt. CIT* v. *Dr. Kamla Prasad Singh* [2010] 3 ITR (TRIB.) 533 (Pat.); *CIT* v. *Girish Chaudhary* [2007] 163 Taxman 608/[2008] 296 ITR 619 (Delhi); *CIT* v. *S.M. Aggarwal* [2007] 162 Taxman 3/293 ITR 43 (Delhi); *Pankaj Dahyabhai Patel* (*Huf*) v. *Asstt. CIT* [1999] 63 TTJ 790 (Ahd.); *Ashwani Kumar* v. *ITO* [1991] 39 ITD 183 (Delhi); *Pr. CIT* v. *Ajanta Footcare* (*India*) (*P.*) *Ltd.* [2017] 84 taxmann.com 109 (Calcutta); *Dy. CIT* v. *C. Krishna Yadav* [2011] 12 taxmann.com 4/[2011] 46 SOT 250 (URO) (Hyderabad); *Harish Textile Engineers Ltd.* v. *Dy. CIT* [2015] 63 taxmann.com 66/379 ITR 160/[2016] 236 Taxman 420(Bom.)(HC); *CIT* v. *Jai Pal Aggarwal* [2012] 28 taxmann.com 269/[2013] 212 Taxman 1 (Delhi)

2.8 ***Whether loose paper/document can be called as a book within the meaning of Section 68?*** - As explained above, book has to be a bound record, maintained by the assessee. Therefore, loose papers/loose sheets or documents will not fall within the meaning and scope of books of the assessee maintained for any previous year. In *S.P. Goyal* v. *Dy. CIT* [2002] 82 ITD 85 (Mum.) (TM) it was held by third member that if the loose papers seized in the premises of the assessee were examined in the light of the ratio of the Supreme Court in *V.C. Shukla* (*supra*), it was quite clear that these loose papers could not be termed as books of account an assessee maintained for any previous year. The loose papers did not contain closing balances or opening balances and there was no reconciliation of these entries. Therefore, these could not be termed as books maintained by the assessee within the meaning of section 68.

2.9 ***What are the ingredients of Section 68?*** - It has been consistently held by the Courts that when an assessee claims that he had borrowed money from a third party, initial onus lies on the assessee to establish: (*i*) the identity of the third party, (*ii*) ability of the third party, *i.e.,* his creditworthiness, and (*iii*) *prima facie* the loan is genuine, *i.e.,* genuineness of loan transactions. When assessee is able to establish the aforesaid three ingredients, the onus will shift on the Department to disprove the same. If there are large number of such credits, the assessee has to discharge the burden in respect of each credit. Once assessee discharges his burden then it is for the Revenue to disprove with cogent evidence what is stated by the assessee. For further details about the nature of three ingredients one may refer to following Authorities- *Shankar Industries* v. *CIT* [1978] 114 ITR 689 (Cal.); *CIT* v. *United Commercial & Industrial Co.* (*P.*) *Ltd.* [1991] 56 Taxman 304/187 ITR 596 (Cal.); *Oceanic Products Exporting Co.* v. *CIT* [2000] 241 ITR 497 (Kerala); *Prem Nath Goel & Co.* v. *CIT* [2004] 136 Taxman 340/271 ITR 390 (Delhi); *Dr. Chhangur Rai* v. *CIT* [2017] 88 taxmann.com 458/394 ITR 611 (Allahabad); *CIT* v. *Peoples General Hospital Ltd.* [2013] 35 taxmann.com 444/216 Taxman 320/356 ITR 65 (Madhya Pradesh); *Riddhi Promoters* (*P.*) *Ltd.* v. *CIT* [2015] 58 taxmann.com 367/232 Taxman 430/377 ITR 641 (Delhi)

2.10 ***Whether Section 68 can be applied to entries in loose papers seized/impounded in search/survey ?*** - Since loose papers do not fall within the meaning and scope of "books of the assessee maintained for the previous year", the benefit of deeming fiction u/s. 68 cannot be taken by the AO. However, the AO is not precluded from considering the entries made in a speaking document. A loose paper found during search on standalone basis cannot be used for making addition u/s. 68 without the company of any other supportive material and evidence. (refer-*Asstt. CIT* v. *Sharad Chaudhary* [2015] 55 taxmann.com 324 (Delhi - Trib.); *Asstt. CIT* v. *JP Morgan India* (*P.*) *Ltd.* [2011] 12 taxmann.com 2/46 SOT 250(Mumbai))

However, a loose paper considered alongwith the statement recorded under section 131 can certainly be considered as relevant material having evidentiary value. The nature and details of the transactions can be explained on the basis of statement recorded u/s. 131/132(4). Further, such statement should be considered and accepted as a whole if the Assessing Officer wants to use it in evidence. The Assessing Officer could not be allowed to blow hot and cold simultaneously. The revenue could not be permitted to use that part of the statement which is beneficial to it and reject the other part of the statement which is detrimental to it. The loose papers are maintained and kept by the assessee for his private knowledge and information and not meant for disclosing to the department. If the statement of the assessee was to be rejected in toto, then no addition could be made on the basis of loose papers since those would be dumb papers. If the statement of the assessee was accepted in toto, then

contents of the statement were to be accepted and the borrowings mentioned in those loose papers had to be accepted as genuine. (refer- *Chander Mohan Mehta* v. *Asstt. CIT* [1999] 71 ITD 245 (PUNE))

2.11 ***Loose papers/documents/books seized/ impounded in search/survey should be relied upon as a whole*** **-** As pointed out above in the case of *S.P. Goyal* v. *DCIT* (*supra*) a document found in the search/survey has to be relied upon as a whole. There is no discretion available with the Revenue or the assessee to rely upon a part of the document favourable to it and plead for rejection of the other part which is not favourable to it, or in respect of which no supporting material is found. However, in certain circumstances some part of the seized document has to be ignored for the reason that it may not represent any financial transaction or is only scribblings not decipherable. But in general, the contents of the document seized have to be accepted as true irrespective of whether it is favourable to assessee or Revenue. [refer- *Chander Mohan Mehta* v. *Asstt. CIT* (*supra*)]. For the proposition that a seized document should be read as a whole, reference may be made to the following Authorities- *Dhanvarsha Builders & Developers* (*P.*) *Ltd.* v. *Dy. CIT* [2006] 102 ITD 375 (Pune); *Asstt. CIT* v. *Omprakash & Co.* [2003] 132 Taxman 99 (Mag.)/[2004] 2 SOT 1 (Mum.); *Vivek Kumar Kathotia* v. *Dy. CIT* [2013] 32 taxmann.com 331/142 ITD 394 (Kolkata - Trib.); *CIT* v. *D.D. Gears Ltd.* [2012] 25 taxmann.com 562/211 Taxman 8 (Delhi)(Mag.)

Presumption u/s. 292C

3. Section 292C inserted by the Finance Act, 2007 w.r.e.f. 01-10-1975 provides presumption as to assets, books of account, etc., to the effect that (*i*) such assets, books of account, etc., belong to the person from whose possession and control they were seized; (*ii*) that the contents of such books of account and other documents are true and (*iii*) signature; and every other part of such books of account and other documents are in the handwriting of such person. The Finance Act, 2008 extended the operation of this Section to books of account/documents impounded during survey and books of account/documents/assets requisitioned u/s. 132A.

Prior to insertion of Section 292C presumption about books of account/documents as to the truthfulness of their contents or they belonged to the person from whose possession and control they were found was also provided u/s. 132(4A). However, Courts have held that such presumption u/s. 132(4A) is available only to the summary proceedings u/s. 132(5) and could not be extended to assessment proceedings. Section removed this deficiency and enabled the Authorities to invoke the presumption in any proceedings under the Act.

When two Sections 132(4A) and 292C are compared, one finds a common factor, *i.e.*, "may be presumed". The Hon'ble Apex Court in *P. R. Metrani* v. *CIT* [2006] 157 Taxman 325/287 ITR 209 (SC) explained the concept of presumptions and expression "may be presumed" as under-

> "22. A presumption is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorized to draw a particular inference from a particular fact. It is of three types, (*i*) "may presume", (*ii*) "shall presume" and (*iii*) "conclusive proof". "May presume" leaves it to the discretion of the Court to make the presumption according to the circumstances of the case. "Shall presume" leaves no option with the Court not to make the presumption. The Court is bound to take the fact as proved until evidence is given to disprove it. In this sense such presumption is also rebuttable. "Conclusive proof gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense, this is irrebuttable presumption"

Earlier similar view was expressed by the Hon'ble Allahabad High Court in *Pushkar Narain Sarraf* v. *CIT* [1990] 50 Taxman 213 (All.). This view of the Hon'ble Allahabad High Court was affirmed by the Hon'ble Apex Court in *P. R. Metrani* v. *CIT* (*supra*).

The expression "may be presumed" raises a rebuttable presumption. Therefore, the onus is on one who contends otherwise, *i.e.,* who challenges the said presumption, which considers/presumes the apparent as real. The scope of this presumption was also explained by the various Courts/Tribunal in following cases- *Asstt. CIT* v. *Vatika Greenfield (P.) Ltd.* [2009] 121 TTJ 208 (Delhi); *CIT* v. *Devendra Kumar Singhal* [2014] 45 taxmann.com 148/223 Taxman 44 (Allahabad) (Mag.); *Vivek Kumar Kathotia* (*supra*) as quoted in *Fort Projects (P.) Ltd.* v. *Dy. CIT* [2013] 29 taxmann.com 84 (Kolkata - Trib.); *Nirmal Fashions (P.) Ltd.* v. *Dy. CIT* [2008] 25 SOT 387 (Kolkata); *Surendra M. Khandhar* v. *Asstt. CIT* [2010] 321 ITR 254 (Bom.).

Whether Section 292C is applicable to regular books of account also?

4. In the course of the search/survey the Authorities may come across regular books of account as well as undeclared books of account/document/loose papers. The expression "found" used in Section 292C as well as in Section 132 makes distinction clear. This expression indicates discovery. Regular books of account cannot be said to be "found" because they are already in the knowledge of the Department as they are declared and form the basis for declaring income. It is other set of account which is undisclosed which can be said to be "found" or discovered during the course of the search u/s. 132 or survey u/s. 133A. In Section 132(1) also it is mentioned that inspite of summons being issued, the person would not produce or cause to be produced any books of account/documents which will be useful or relevant to income tax proceedings. Entire search and seizure operation is based on the reasoning that the person searched is in possession and control of books of account/documents which are not intended to be disclosed to the Department. They are found during the course of the search and subsequently seized. [refer- Clauses (*iib*) and (*iii*) of Section 132(1)] Therefore, the presumption provided u/s. 292C can be raised only in respect of undisclosed books of account. So far as declared books of account are concerned, there is no dispute that they would belong to the person who has filed the return of income on its basis, there will also not be any dispute regarding true nature of contents of such declared books of account/documents as all transactions recorded therein are accepted as true while filling the return of income. Hence, presumption u/s. 292C is invokable only in respect of undisclosed books of account/document found and seized/impounded during the course of the search/survey.

Whether Section 292C alters the burden cast u/s. 68 and if yes, then to what extent?

5. An important issue arises whether the onus lying on the assessee u/s. 68 in respect of undeclared books of account seized/impounded in the search/survey is to be discharged to the same extent and in the same manner as is required to be discharged in respect of declared books of account which form the basis of filling return of income. It is already submitted above, that Section 292C is applicable to undeclared books of account found and seized during the course of the search. Clause (*ii*) of Section 292C(1) enables the adjudicating Authority to raise a rebuttable presumption that the contents of such books of account and other documents are true. So far as loose papers are concerned, which are seized in the search and have an entry of cash inflow, are not books of account, therefore, burden cast u/s. 68 cannot be attributed in respect of such loose papers. However, so far as undeclared books, where cash credit entry in some name is found, are concerned,

a presumption u/s. 292C can be raised to the effect that contents of such books are true, which means that correctness or truthfulness of cash inflow as cash credit is presumed to be true. It also means that transaction in respect of borrowing of cash is true, *i.e.*, cash has come. Once the fact of cash coming to the assessee is presumed to be true then the question of establishing genuineness of the transaction and creditworthiness will not arise.

Thus, Section 292C curtails/reduces the burden cast on the assessee to the extent that he is not required to prove creditworthiness of the creditor and genuineness of the transaction in respect of credit entry found recorded in seized undisclosed books of account as these two ingredients are proved by presumption u/s. 292C. Otherwise Section 292C will loose significance and will become redundant/otiose and, therefore, undisclosed books of account/documents will be placed at par with regular books of account which is not the intention of the legislature.

However, burden to establish the identity of the lender is relevant in the context of applicability of Section 68 to a credit entry found recorded in the seized book for several reasons. The first is - if on the left-hand side of the books of account seized, shows the name and the amount, then the factum of receipt/availability of money is presumed to be true but there is no presumption that the person named is a living/existing person. Secondly, if name is recorded in an abbreviated form then onus would lie on the assessee to decipher the same. There is no presumption that money would come from some unknown/hypothetical/non-existent person. Thirdly, if the seized book shows investment/expenditure out of money so received as cash credit and assessee takes the benefit of such cash inflow (as cash loan/cash credit) in out flow for investment/expenditure then availability of cash is confirmed to be true, then in absence of identifiable person, inflow from outside source cannot be accepted as true. In such circumstances, section 69/69A can be invoked as inflow of money from outside source (by identifying the person who has paid the money as cash credit) is not established.

Where seized book does not show any investment/expenditure and the identity of the creditor is not established then the corresponding document becomes dumb and no taxable income can be computed on that basis. Therefore, wherever seized books of account show proven/admitted outflow/investment in addition to cash credit, it is imperative on the part of the assessee to identify the lender, otherwise AO can successfully make addition u/s. 69/69A.

Discharging of onus u/s. 68 in respect of seized papers/documents/books

6. As explained above, in respect of credit entry found recorded in the seized paper/books of account, the onus of the assessee is limited to identify the lender and support the contents of seized loose paper/books of account through an Affidavit of the self and Affidavit of the lender. No further onus would lie on the assessee to prove the creditworthiness of the lender or the genuineness of the transaction, as these two ingredients stand proved by presumption u/s. 292C.

There may be different situations under which degree of burden on the assessee may vary in respect of loan entry found recorded in the seized document loose paper/books.

(*i*) *In seized books of account where the lender is identifiable* - Where the lender from whom cash loan/credit entry is found recorded in the seized books is identifiable and the lender also confirms through his Affidavit or confirmation, then the contents of the document showing loan entry stand proved and the presumption "may be presumed" u/s. 292C takes the colour and scope of "shall be presumed" and onus would lie on the Revenue to disprove what is stated in the document, and by the

lender/assessee. If this onus is not discharged by the Revenue, the loan entry cannot be treated as income. There is no further onus on the assessee to prove the creditworthiness of the lender or genuineness of the transaction.

(*ii*) *In seized books of account where the lender is not identifiable* - if the seized books of account do not provide any detail such as date of receipt of the loan, and its application, *i.e.,* only an amount and name are mentioned and the document is silent as to whether it is a loan or it is a payment or it is some other number, then the document would fall in the category of dumb document. No addition can be made on the basis of dumb document.

(*iii*) *Where the lender is not identifiable but seized books of account provide other details* - where the investment/expenditure/outflow recorded in the seized book is proved by admission of the assessee or other evidence then the onus would be on the assessee to provide the identity of the lender and if he fails to do so, then the case would fall within the scope of Section 69/69A.

(*iv*) *In respect of loose papers* - no onus lies u/s. 68 in respect of credit entry found recorded in the loose papers. Where no further details except name and amount are mentioned, the document will be dumb then no addition is called for. Where document shows outflow(which can be proved by other evidence), also or other details, it would be necessary to identify the lender for explaining outflow otherwise Section 69/69A can be invoked. Where neither lender can be identified, nor outflow can be established, even though the contents of the document are presumed to be true, no taxable income would arise as there is no evidence other than the document itself. It will not be proper to accept that part of the document which shows outflow as true(without being substantiated or admitted by the assessee) and levy tax on that basis and reject other part of the document which shows inflow of money. If there is any imbalance in the sense that outflow is more as compared to inflow, and assessee fails to prove the inflow of difference, the same can be taxed u/s. 69/69A.

Conclusion

7. The Revenue Authorities cannot apply the test of "satisfactory explanation about the nature and source of any sum found recorded in the books of the assessee" laid down u/s. 68 of the IT Act, to cash loan or a credit entry found in a loose paper, document or book seized/impounded during a search/survey, while passing an order u/s. 143(3) in the same way and to the same extent as it is applied to a cash credit entry found recorded in the regular books of the assessee because (*i*) loose papers seized/impounded, are not books of the assessee within the meaning of Section 68; (*ii*) Section 292C is applicable in favour of assessee also and, therefore, the transaction recorded in loose papers/books of account seized/impounded has to be accepted as true unless proved with cogent evidence, as untrue by the party claiming so.

However, the identity of the lender in whose name inflow of money is recorded as loan/credit in the seized books/loose papers, requires to be proved by the assessee by way of an Affidavit/confirmation, PAN, address/Aadhaar of the lender. The assessee can also file his Affidavit in support of the seized document. The proof of identity is required because mere name recorded in the seized paper/books of account is not sufficient to establish the inflow of money by way of cash loan/cash credit.

High Sea Sale transactions under GST

NITISH AGNIHOTRI
CA

Meaning of High Sea Sales

1. High Sea Sales, from the point of view of an entity incorporated in India, refer to the sale of goods which is made after the goods cross the Custom Barriers of the Foreign Nation before crossing (entering) the Custom frontiers of India by way of transfer of document of title.

Definition of Non-taxable Territory

2. *As per Section 2(79) of the CGST Act, 2017-* Non-taxable territory means the territory which is outside the taxable territory. A taxable territory means the territory to which the provision of GST Law applies. Accordingly, in CGST law the taxable territory would cover all locations covered under the extent of law., *i.e.*, whole of India.

- Accordingly, locations outside India would be considered as non-taxable territories, being the territories outside taxable territory.

In this regard, it would be relevant to understand the geographical extent covered within the meaning of the term "India".

Supply taking place in a "non-taxable territory" would be outside the jurisdiction for imposing any GST. High Sea Sales (first supply) are not liable to GST.

Nature of supply in case of "High Sea sale" transactions

3. As per section 7(2) of the IGST Act, 2017 supply of goods imported into territory of India, till they cross custom frontiers of India, shall be treated a supply of goods in the course of inter-State trade or commerce.

Custom frontiers of India include:-

(*a*) Custom Port

(*b*) Custom Airport

(*c*) International Courier Terminal

(*d*) Foreign Post Office

(*e*) Land Custom Stations

(*f*) Area in which imported goods meant for export are ordinarily kept before clearance by Custom Authorities.

(*g*) Bonded Warehouse

Where a transfer of documents of title takes place during import, the question of payment of tax by the importer would not arise since the documents of title would be transferred before the goods cross the customs frontiers of India.

It has been clarified *vide* **Circular No.- 33/2017-Customs dated 1st August 2017**, that IGST on High Sea Sales transaction on imported goods, whether one or multiple, shall be levied and collected only at the time of importation, *i.e.*, when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time.

Kinds of transactions in High Sea sale

4. In case of high sea sale there can be following 2 kinds of transactions-

4.1 ***Transaction commences outside the territory of India and is concluded also outside territory of India.***

For example - A company in Germany supplies goods from Germany to another company in Sri Lanka — this is not a supply in the course of inter-State trade or commerce, because it commences and concludes outside the territory of India. It would be so, even if the goods were supplied by the company in Germany from Germany to a customer incorporated in India if the goods are not 'brought' into India but sold in high seas to yet another company in Singapore.

In order to ensure that every supply comes within the operation of section 7(2) of the IGST Act it requires that the resultant effect of the supply must cause the goods to enter the territory of India.

This Act **does not enjoy extra-territorial jurisdiction** and is limited to imposing tax if the goods are imported into the territory of India.

The same is supported by Authority of **Advance Rulings Kerala Order No.- CT/2275/18-3 dated March 26, 2018.**

4.2 ***Transaction commences outside the territory of India but is concluded by entering into the territory of India.***

For example:- Goods have been imported from France by a company incorporated and registered in Nasik which have landed at Mumbai port but during their clearance are supplied by the Nasik based company to accompany in Pune, this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in Pune, since the goods have not yet crossed the customs frontiers of India at the time of supply this supply would come within the operation of section 7(2) of the IGST.

Transactions taking place before filing of bill of entry are termed as "high sea sales" transactions under common trade practice where the original importer sells the goods to a third person before the goods are entered for customs clearance. This supply is covered within definition of inter-State supply. Provisions of section 3(12) of the Customs Tariff Act, 1975 inasmuch as in respect of imported good provide that all duties, taxes, cess', etc., shall be collected at the time of importation, *i.e.*, when the import declarations are filed before the customs authorities for the customs clearance purposes.

High sea sale transactions, though are regarded as supplies in the course of inter-State trade or commerce, are not subject to levy of IGST as the supply takes place before filing of Bill of entry and IGST in case of importation of goods can be levied at the time of filing of Bill of Entry.

Hence, IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation.

Conclusion

5. Goods are liable to IGST when they are **imported into India** and the IGST is payable at the time of importation of goods into India.

Proposed changes under SEBI (Buy-Back of Securities) Regulations, 2018 - An overview

NIKITA SNEHIL
Manager,
Vinod Kothari & Company

Introduction

1. SEBI at its meeting held on March 28, 2018[1] has approved of the proposal of undertaking a public consultation process for reviewing the SEBI (Buy-Back of Securities) Regulations, 1998 (Regulations, 1998) with an objective of simplifying the language, removing redundant provisions and inconsistencies, updating the references to the Companies Act, 2013/other new SEBI Regulations, and incorporating the relevant circulars, FAQs, informal guidance in the regulations, wherever possible. The present Article presents a brief of the changes as suggested in the discussion paper by the SEBI:

2. Overview of changes suggested in discussion proper by SEBI

2.1 ***Maximum limit of buy-back of securities :***

2.1.1 *Proposed provision[New insertion]* - The maximum limit of any buy-back shall be twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:

Explanation - In respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this regulation shall mean its total paid-up equity capital in that financial year;

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68 (2)(*c*) of the Companies Act, 2013.

2.2 ***Ratio of the aggregate of secured and unsecured debts :***

2.2-1 *Proposed provision [New insertion]* - The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back shall not be more than twice the paid-up capital and free reserves:

Provided that the Central Government may, by an order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68 (2)(*d*) of the Companies Act, 2013.

2.3 ***Fully paid-up securities :***

2.3-1 *Proposed provision [New insertion]* - All shares or other specified securities for buy-back shall be fully paid-up.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68 (2)(*e*) of the Companies Act, 2013

2.4 ***Reduction of share capital :***

2.4-1 *Proposed provision [New insertion]* - A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is effected.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 67(1) of the Companies Act, 2013

2.5 ***Buy-Back can be undertaken through :***

2.5-1 *Proposed provision [New insertion] :*

(*a*) its free reserves;

(*b*) the securities premium account; or

(*c*) the proceeds of the issue of any shares or other specified securities:

Provided that no such buy-back shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68 (1) of the Companies Act, 2013.

2.6 ***Restrictions on purchase of own shares or securities :***

2.6-1 *Proposed provision [New insertion]* - No company shall directly or indirectly purchase its own shares or other specified securities:

(*a*) through any subsidiary company including its own subsidiary companies;

(*b*) through any investment company or group of investment companies; or

(*c*) if a default is made by the company in the repayment of deposits accepted either before or after the commencement of the Companies Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 70 of the Companies Act, 2013.

2.7 ***Restrictions on further issuance of the same kind of shares or other securities post buy-back :***

2.7-1 *Proposed provision [New insertion]* - Where a company completes a buy-back of its shares or other specified securities, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under applicable provisions of Companies Act or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68(8) of the Companies Act, 2013.

2.8 ***Authorization/approval for buy-back :***

2.8-1 *Proposed provision [New insertion]* - The company shall not authorise any buy-back (whether tender offer or from open market or odd lot) unless:

(*a*) The buy-back is authorised by the company's articles;

(*b*) Except otherwise specified in this regulation, a special resolution has been passed at a general meeting of the company authorising the buy-back;

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68(2) of the Companies Act, 2013.

2.9 ***Max tenure to complete the buy-back process :***

2.9-1 *Proposed provision [New insertion]* - Every buy-back shall be completed within a period of one year from the date of passing of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68(4) of the Companies Act, 2013.

2.10 ***Filing of form post the completion of the buy-back :***

2.10-1 *Proposed provision [New insertion]* - The company shall, after the completion of the buy-back, file with the Registrar of Companies and the Board, a return containing such particulars relating to the buy-back within thirty days of such completion, in the format as may be specified.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68 (10) of the Companies Act, 2013.

2.11 ***Exemption from seeking shareholder's approval :***

2.11-1 *Proposed provision [New insertion]* - Nothing contained in sub-regulation (*iv*) of this regulation shall apply to a case where—

(*a*) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and

(*b*) such buy-back has been authorised by the Board of Directors of the company by means of a resolution passed at its meeting;

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68 (2)(*b*) of the Companies Act, 2013

2.12 ***Mode of dispatch :***

2.12-1 *Proposed provision [New insertion]* :

1. Letter of Offer may also be dispatched through electronic mode in accordance with the provisions of the Companies Act.
2. On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.
3. The aforesaid shall be disclosed in the letter of offer.

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of the Companies Act, 2013.

2.13 ***Participation of an eligible public shareholder, who does not receive the tender offer/offer form :***

2.13-1 *Proposed provision [New insertion]* - Even if an eligible public shareholder does not receive the tender offer/offer form, he may participate in the buy-back offer and tender shares in the manner as provided by the Board.

VK&Co. Comments - The proposed amendment has been brought to safeguard the interest of the shareholders.

2.14 ***Rights of an unregistered shareholder to participate in the buy-back process :***

2.14-1 *Proposed provision [New insertion]* - An unregistered shareholder may also tender his shares for buy-back by submitting the duly executed transfer deed for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any.

VK&Co. Comments - The proposed amendment has been brought to safeguard the interest of the shareholders.

2.15 ***SEBI's power to allow tendering of shares and settlement of the same, through the stock exchange mechanism :***

2.15-1 *Existing provision* - "The acquirer or promoter shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board."

2.15-2 *Proposed provision* - "The company shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism in the manner as provided by the Board."

- *VK&Co. Comments* - The proposed amendment makes the entire company responsible for facilitation of the tendering of shares and its settlement. Earlier the responsibility was only limited to the promoters/acquirer.

2.16 ***Register of shares or other securities which have been bought-back :***

2.16-1 *Existing provision* - "The company shall maintain a record of security certificates which have been cancelled and destroyed as prescribed in sub-section (9) of section 77A of the Companies Act."

2.16-2 *Proposed provision* - "Where a company buys back its shares or other specified securities under these regulations, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed in sub-section (9) of section 68 of the Companies Act."

- *VK&Co. Comments* - Clarificatory change, updating reference to provisions of Section 68 of the Companies Act, 2013 read with Rule 17 (12)(*a*) of the Companies (Share Capital and Debenture) Rules, 2014.

2.17 ***Interest bearing escrow account :***

2.17-1 *Proposed provision [New insertion]* - The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.

VK&Co. Comments - The proposed amendment will eliminate the loss of interest of the amounts, deposited by the companies in the escrow account.

2.18 ***Deletion of certain provisions :***

The entire provisions related to:

(*a*) Power of the Board to order investigation;

(*b*) Duty to produce records, etc.;

(*c*) Submission of Report to the Board

under Regulation 1998, has been deleted

●●●

1 https://www.sebi.gov.in/media/press-releases/mar-2018/sebi-board-meeting_38473.html

Export procedure under GST regime- A huge sigh of relief

DEBASISH BANDYOPADHYAY
LL.B, PGDFM

Introduction

1. Implementation of GST has brought about a sea change in the procedural landscape of cross-border transactions. GST has impacted many aspects of businesses in the country-most importantly, Indian exports have been hit badly due to introduction of such a big ticket reform without having adequate pre-planned measures or safeguards in place. It is always difficult to foresee unintended consequences of formulating a policy. Sometimes such factors may cause havoc on the entire economic health of the country. Going by the common sentiments that have been buzzing around in the trade that hasty implementation of the GST almost immediately after demonetisation, led to our export sectors witnessing such a sorry state of turmoil resulting into slowdown of our economic growth. Post-GST exports have been suffering from many challenges, such as liquidity crisis, blockage of refunds, issues related to procedural rationalization, etc. This article is to discuss about one of such procedural challenge faced by the export community in the country, *i.e.*, furnishing of Bond/Letter of Undertaking (LUT) for exports without payment of integrated tax.

Exports under Bond/Letter of Undertaking

2. Procedures for exports of goods under the GST regime are laid down in Rule 96A of the Central Goods and Services Tax, 2017. The relevant extract of the said Rule is given below;

> ***"RULE 96A. Refund of integrated tax paid on export of goods or Services under bond or Letter of Undertaking****. - (1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of -*

(a) *fifteen days after the expiry of three months [or such further period as may be allowed by the Commissioner] from the date of issue of the invoice for export, if the goods are not exported out of India; or*

(b) *fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange……."*

In this regard, Board has also issued Notification No. 37/2017 - Central Tax dated 4th October, 2017 specifying the related conditions and safeguards for furnishing a Letter of Undertaking in place of a Bond by a registered person who intends to supply goods or services for export without payment of integrated tax as under;

(*i*) Exporters without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees;

(*ii*) The Letter of Undertaking shall be furnished on the letter head of the registered person, in duplicate, for a financial year in the annexure to FORM GST RFD - 11;

(*iii*) Where the registered person fails to pay the tax due along with interest, within the prescribed period, the facility of export without payment of integrated tax will be deemed to have been withdrawn.

Furthermore, in order to promote consistency and uniformity in the trade, Board, *vide* Circular No. 8/8/2017-GST dated 4th October, 2017, has clarified that exporters shall furnish the duly filled up FORM GST RFD-11 to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. It is also clarified that the LUT shall be furnished on the letter head of the registered person in duplicate along with self-declaration to the effect that the conditions of LUT have been fulfilled. Accordingly, it has been prescribed that the LUT shall be accepted unless there is specific information otherwise.

Procedural Bottlenecks

3. At this stage it is significant to note that in spite of liquidity complications, exporters have been putting a brave front but the procedural challenges or regulatory roadblocks are severely hurting their businesses and affecting their ability to be competitive in international markets. While, the Government has all along been responsive and trying to smoothen the processes but the obstinacy and inflexibility of the field formations are throwing the entire system out of gear in terms of smooth implementation of procedural reforms. Thus, it has widely been reported that the exporters have been facing grave difficulties in submitting LUT with the jurisdictional officers having jurisdiction over their principal place of business. It has been observed that procedures to submit LUT manually to the jurisdictional officer have become a matter of great difficulty and are fraught with complexities, since humongous documents are being insisted upon by the department making a complete departure from the intended policy of the government. It is seen that the following documents are being asked for by the field formations for submission physically along with the LUT:

- Covering letter requesting acceptance of LUT,
- Copy of GST Registration Certificate,
- GST FORM RFD-11- in duplicate,

- Annexure- Letter of Undertaking (LUT)- in duplicate,
- Identity proof of witnesses signing on LUT,
- Self-Declaration on letter-head that the entity has not been prosecuted for any offence under GST Act, or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees,
- Incorporation documents of the entity,
- Identity Proof of Director/Partner/Proprietor, signing the documents,
- Copy of Trade Licence of the entity,
- Copy of IEC code, etc.

It is abundantly clear from the above that in absence of proper implementation of any process or due to high-handedness applied by the field formations in implementation, whole objective and the purpose of any reform may get jeopardised leading to ambiguity and confusion in the trade. It is not understandable as to why the department needs so many documents physically for such a simple process? Is it not a complete disregard of the government's intent and policy of digital India!

Bold Step Forward

4. At this juncture it is inspiring to note that the Board has acted rapidly and in order to resolve the matter, issued **Circular No. 40/14/2018 - GST dated 06.04.2018** addressing certain issues relating to furnishing of Bond/ LUT giving substantial relief to the export community. Accordingly, in partial modification of Circular No. 8/8/2017-GST dated 4th October, 2017, sub-paras (*c*), (*d*) and (*e*) of para 2 of the said Circular are modified as follows:

- An LUT shall be deemed to be accepted as soon as an acknowledgement for the same bearing the Application Reference Number (ARN) is generated online.
- **No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.**
- If it is discovered that an exporter whose LUT has been so accepted was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection.

Thus, the execution of LUT has again been made plain and simple by mandating that the online submission of LUT shall suffice to be considered as acceptance of LUT in case an acknowledgement for the same, bearing the ARN, is generated online. There is no requirement of physical submission of the same to the jurisdictional office. This is not only a bold initiative by the government but a true reflection of its intent of making the administration free of regulatory bottlenecks.

Conclusion

5. The country needs a robust tax administration in such trying times of economic reforms. Therefore, it is hoped that by promoting clarity and certainty in tax administration, the government should take appropriate measures or issue necessary directions to the field formations in order to make the export procedures free of regulatory blockages in the GST regime. However, the simplification of measures through Circular No. 40/14/2018 - GST has brought huge sigh of relief to the exporter community of the country.

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Legal position of winding-up vis-à-vis insolvency & bankruptcy code

PRATEEK GATTANI
PARTNER - Cogito Legal

NIPUN SINGHVI
Head - Cogito Legal

Introduction

1. Winding up proceedings were Earlier initiated and conducted under the Companies Act, 1956 ('1956 Act'). However, with the coming into force of the Companies Act, 2013, and the Insolvency and Bankruptcy Code, 2016 (IBC), the process underwent a change. The 1956 Act provided a statutory right to file a winding up petition on the ground of inability to pay debts. Further, provisions of the winding up under the Companies Act, 2013 ('2013 Act') have never been notified. The 2013 Act does not provide a similar right as now insolvency proceedings can be initiated only under the IBC on account of default of either a financial or operational debt.

Section 434 of the 2013 Act provides for transfer of proceedings pending under the 1956 Act. Section 434, read with subsequent notifications issued by the central government led to ambiguity as far as initiation of proceedings under the IBC was concerned. The National Company Law Tribunal (NCLT) primarily admitted proceedings under the IBC in cases where no order of winding up had been passed by a High Court and proceedings were merely pending.

Central Government had notified the Companies (Transfer of Pending Proceedings) Rules, 2016 ("Transfer Rules")[1] to, *inter alia,* provide for transfer of pending winding proceedings to the NCLT. Rule 5 of the Transfer Rules, provides for transfer of all petitions relating to winding up of a company on the ground of inability to pay debts under section 433(e) of the CA 1956, before a High Court. Where the petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959 transfer to an NCLT bench based on territorial jurisdiction. The Transfer Rules provide that any party or parties to the petitions shall be eligible to file fresh applications under section 7 or 8 or 9 of the Code, as the case may be. The Transfer Rules also provide that a petition relating to winding up of a company which is not transferred to the NCLT under the said rule and which remains in the High Court and where there is another

petition under section 433(e) of the CA 1956 for winding up against the same company pending as on 15 December, 2016, such other petition shall not be transferred to the NCLT, even if the petition has not been served on the respondent. The Committee noted that winding up proceedings that are covered by rule 5 of the Transfer Rules evidently need to be transferred to relevant benches of the NCLT and dealt with under the Code. However, ambiguity exists with respect to applicability of the Code and transferability of pending winding up proceedings not covered by rule 5 of the Transfer Rules, and which are retained.

Present view of NCLAT

2. The National Company Law Appellate Tribunal (NCLAT) recently settled the ambiguity, in an order in *Forech India (P.) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.* [2018] 91 taxmann.com 163 (NCLAT) dated 23 November, 2017, and an order in *Unigreen Global Pvt. Ltd.* v. *Punjab National Bank* [2018] 89 taxmann.com 17/145 SCL 272 (NCLAT) dated 1 December, 2017. The NCLAT held that where winding up proceedings stand initiated by the High Court, application under the IBC is not maintainable on account of the bar under section 11(d) of the IBC. NCLAT concluded that "winding up" under the 2013 Act is synonymous with "liquidation" under the IBC. Thus, a winding up order passed under the 1956 Act has been equated with a liquidation order under the IBC and, accordingly, the bar under section 11(d) of the IBC was held to be applicable in such cases.

The present view of the NCLTs as upheld by the NCLAT is that mere pendency of winding up proceedings before the High Court is not a ground to reject an application filed by a financial creditor or an operational creditor under section 7 or section 9 of the IBC respectively. This view is in consonance with the object and purpose of the IBC, which is time-bound resolution/reorganization of companies undergoing a financial crunch. However, the NCLAT's finding that "winding up order" under the 1956 Act is synonymous with "liquidation order" under the IBC appears to be a general categorization.

On 12 January 2018, in the matter of *Ameya Laboratories* v. *Kotak Mahindra Bank* [2018] 89 taxmann.com 420/145 SCL 676 (NCL - AT), the NCLAT held that even in a case where a stay order for appointment of a liquidator by a division bench of the High Court was implemented, the aspect of winding up proceedings is evident, and, thus, proceedings under section 10 of the IBC are legally untenable.

Further, there are several other judgments of the NCLT including NCLT's principal bench judgment on the captioned subject 4. In the matter of *Union Bank* v. *Era Infra Engg. Ltd.* [2018] 91 taxmann.com 257 (NCLT - New Delhi). *Nowfloats Technologies (P.) Ltd.* v. *Getit Infoservices (P.) Ltd.* [2017] 84 taxmann.com 26/143 SCL 139 (NCLT - New Delhi) (SB); *Alcon Laboratories (India) Pvt. Ltd.* v. *Vasan Health care Ltd.* [2017] 81 taxmann.com 393/141 SCL 560 (NCLT - Chennai); *Nauvata Engg. (P.) Ltd.* v. *Punj Llyods Ltd.* [Company Petition No. (IB)-217(PB)/2017 dated 19 July, 2017] had been referred to a special bench of NCLT, New Delhi which held that there is no bar on NCLT to trigger a CIRP on an application filed under sections 7, 9 and 10 if a winding up petition is pending, unless an Official Liquidator has been appointed and a winding up order has been passed.

Further, recently the Hon'ble High court of Bombay in the case of *Jotun India (P.) Ltd.* v. *PSL Ltd.* [2018] 89 taxmann.com 58/145 SCL 601 (Bom.) held that application for initiating Corporate Insolvency Resolution Process (CIRP) under Sections 7, 9 and 10 of Insolvency and Bankruptcy Code 2016 by Financial Creditor, Operational Creditor and Corporate Debtor, respectively, can still subsist even if the winding up proceedings are pending before the Hon'ble High Court.

The Hon'ble High Court has discussed in detail the arguments put forward by all the parties to the Application including the interveners who have filed an application for intervening. The brief facts of the case which was before the Hon'ble High Court of Bombay was that against the Respondent/ Applicant, the Petitioner-company had filed a winding up petition before the Hon'ble High Court of Bombay. During the time when the petition was pending, the Respondent-Company (Applicant in present Company Application) moved to BIFR under SICA regulations. In December, 2016 when IBC came into effect, SICA got repealed and a window of 180 days was given to Companies who had their reference pending before BIFR to make an application under Section 10 of IBC before the Adjudicating Authority, *i.e.*, NCLT.

The Respondent-Company, accordingly, filed an application under Section 10 of the Code before the Hon'ble Adjudicating Authority, *i.e.*, NCLT of Ahmedabad. The Petitioner thereafter filed a Company Application before the Hon'ble High Court in the Company Petition already pending to stay the proceedings under IBC filed by the Respondent. The Hon'ble High Court *vide* its order of July, 2016 stayed the said proceedings. Another Company Application in the same Company petition was thereafter filed by the Respondent-Company against the stay order of the Hon'ble High Court w.r.t proceedings before NCLT Ahmedabad. The Hon'ble High Court of Bombay *vide* its order dated 5th January, 2018 vacated the stay order earlier passed w.r.t proceedings under IBC pending before the Hon'ble Adjudicating Authority, Ahmedabad and allowed the Company Application filed by Respondent/ Applicant-Company. Some of the issues which were discussed and decided in the said application have been discussed herein after:

(*a*) *Background and Object* - Purpose of Insolvency Code While relying on the decision of the Hon'ble Supreme Court of India in *Innoventive Industries Ltd.* v. *ICICI Bank* [2017] 84 taxmann.com 320/143 SCL 625, the Hon'ble Supreme Court held that it is apparent from a reading of the object and purpose for which the IBC has been enacted is to set-up Insolvency and Bankruptcy resolution process, which has to be implemented in a strict time bound manner, by the appointment of an IRP and creation of a creditors Committee. These are powers which can be exercised only by NCLT (Adjudicating Authority) and not by the Company Court. It is for this reason that pending the Insolvency Resolution Process a moratorium is provided under Section 14 of the IBC.

(*b*) *Fundamental Distinction between Companies Act and IBC* - The Hon'ble High Court held that the fundamental distinction between the two is that under the Companies Act winding up would be a matter for the Court alone to decide. On the other hand, in IBC there is a paradigm shift in as much as it displaces the management of the Company and an IRP is appointed and the Creditors Committee is left to decide the fate of the Company.

(*c*) *Admission of a winding up petition does not entail stay of NCLT proceedings* - While discussing on the fate of proceedings pending, if any, under the IBC before NCLT (Adjudicating Authority), the Hon'ble High Court observed that admission of the winding up petition by the Jurisdictional High Court would not mean that NCLT either losses jurisdiction or cannot exercise jurisdiction in case of a petition which is filed by another creditor. The Hon'ble Court further observed that the legislature while enacting IBC was well aware of an existing law, *i.e.*, the Companies Act.

In case the intention of the legislature was that those winding up petitions about which the jurisdictional high court remain seized of, would have primacy over NCLT proceedings

then the legislature would have clarified so either in IBC or in the transfer rules notification dated 07th December, 2016. On the contrary, as per the Hon'ble High Court, the provisions of Section 64(2) of the IBC would indicate that the legislature did not intend that the Company Court would have the power to injunct proceedings before NCLT.

Concluding Remarks

3. The Hon'ble Bombay High Court further held that NCLT is not a court subordinate to the High Court and, hence, as prohibited by the provisions of Section 41(b) of the Specific Relief Act, 1963 no injunction can be granted by the High Court against a Corporate Debtor from institution of proceedings in NCLT. Similarly, under the Companies Act, 1956 there is no provision wherein proceedings under NCLT instituted under IBC can be injuncted. The Court further observed that there is an express bar contained in Section 64(2) of IBC which prevents any court, tribunal or authority from granting any injunction in respect of any action taken, or to be taken, in pursuance of any power conferred on NCLT under IBC. However, mere pendency of a petition for winding up, where no order of winding up or order of liquidation has been passed, cannot be ground to reject the application under Section of the IBC.

Further, Insolvency Law Committee ('the Committee') has also discussed treatment of Winding up Proceedings Initiated under 1956 Act/2013 Act *vis-a-vis* IBC in its report.

The Committee underscored the need to avoid multiple and possibly conflicting orders in winding up/liquidation proceedings of the same corporate debtor whether under the 1956 Act or under IBC. The Committee was also mindful of the underlying principle with regards to existence of a moratorium once winding up/CIRP is initiated whether under the 1956 Act (section 446)/2013 Act (section 279) or under the IBC (section 14 during CIRP, section 33 during liquidation). The Committee noted that under the 1956 Act and 2013 Act, during the moratorium, legal proceedings could be initiated or continued with the leave of the Court/NCLT. Accordingly, for cases which were not expressly transferred to the NCLT pursuant to the Transfer Rules, the Committee felt that the assumption was that the case was at an advanced stage and, therefore, the Court hearing the matter was best suited to grant or deny leave to initiate insolvency proceedings under the Code. Finally, based on the available jurisprudence, the Committee felt that the leave of the High Court or NCLT, if applicable, under section 446 of the 1956 Act or section 279 of the 2013 Act, must be obtained, for initiating CIRP under the Code, if any petition for winding up is pending in any High Court or NCLT against the corporate debtor. The Committee agreed that necessary amendments be made to schedule XI of the Code (which will result in amendment to the CA 2013) to ensure that the leave of the High Court or the NCLT, may be obtained, if applicable, where such winding-up petition is pending for initiation of CIRP against such corporate debtor, under the provisions of the Code. Corresponding amendments may also be made to the Transfer Rules.

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1. The Transfer Rules were notified in exercise of the powers conferred under section 434(1) and (2) of the Companies Act, 2013 read with section 239(1) of the IBC.

TDS on transmission & wheeling charges of power transmission companies

MAYANK MOHANKA
CA

Introduction

1. The distribution of electricity by power distribution companies, to end-consumers is preceded by two important intermediate steps – namely, production of electricity by power generation companies and its transmission from point of production to the point of distribution by power transmission companies.

The process of transmission of electricity from the generation point of the power generation company to the distribution point of the power distribution company through the transmission system network of the transmission company, in technical parlance is termed as "Wheeling".

For availing of the benefits of this standard facility, *viz*., the transmission system network of power transmission companies, for the purpose of transmission of electricity from the generation point to the distribution point, the power distribution companies make payment of the Transmission & Wheeling Charges to the transmission companies. The Transmission & Wheeling Charges are determined by concerned State Electricity Regulatory Commissions, which are Regulatory Bodies constituted under the Electricity Regulatory Commission Act.

The issue of applicability or otherwise of TDS on transmission and wheeling charges, has always been a contentious and litigative issue. The Revenue Authorities, have, time and again, subjected the said transmission & wheeling charges, to the deduction of TDS, by the power distribution companies, either under section 194J, or u/s 194-I or u/s 194C. Interestingly, this hit and trial approach makes it amply clear that even Revenue Authorities themselves are not very clear about the exact nature of the transmission & wheeling charges, so as to apply a standard section for the purpose of TDS deductibility.

It will be worthwhile to examine the applicability or otherwise of TDS on Transmission & Wheeling Charges under all the stated three

sections, *viz*., sections 194J, 194-I & 194C of the Income-tax Act as under:

Applicability or otherwise of TDS on transmission & wheeling charges u/s 194J of the Income Tax Act

2. The Revenue Authorities, very often, consider "Transmission & Wheeling Charges", as "Fees for Technical Services", u/s 194J of the Act.

Explanation to section 194J defines "technical services", as:

(b) "fees for technical services" shall have the same meaning as in Expln. 2 to clause (vii) *of sub-section (1) of section 9;"*

Explanation 2 *to Section 9(1)*(vii) *of the Act provides that, For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries."*

However, there is a need to appreciate & recognize the distinction between "Technical Services" & "Technology Driven Services".

Technical Service referred to in the *Explanation 2* to section 9(1)(*vii*) of the Act contemplates rendering of a technical service to the payer of the fees & not technology driven services.

Installation & operation of sophisticated equipments with a view to earn income by allowing the users to avail of the benefits of such equipments does not tantamount to rendering of "Technical Services" within the meaning of the *Explanation 2* to section 9(1)(*vii*) of the Act.

Mere collection of a fee for making available a standard facility provided to all those willing to pay for it does not amount to the fees having been received for technical services.

Where a person has developed a technical system consisting of sophisticated instruments and the technical ability and knowledge to operate and maintain the system, it does not result in providing any technical service to others. Rendering of services by using some sophisticated equipments/technical systems is different from charging fees for rendering technical services.

The power distribution companies make payment of transmission & wheeling charges to the transmission companies, in consideration of availing of the benefits of the standard technical facility, *viz*., the Transmission System Network of the transmission companies, for the purpose of transmission of electricity from the generation point to the distribution point and, as such, by merely making available the benefits of its sophisticated Transmission System Network to the distribution company, the transmission company does not render any "Technical Services" within the meaning of the *Explanation 2* to section 9(1)(*vii*) of the Act. Also, the benefits of the said standard facility, *viz*., the transmission system network of "RVPN" may be availed by any distribution company within the framework & guidelines of prescribed open access transmission norms.

The Hon'ble Delhi High Court in the case of "*CIT* v. *Bharati Cellular Ltd.* [2008] 175 Taxman 573/[2009] 319 ITR 139", has categorically held that technical services which are relevant for the purpose of section 194J would be those technical services which involve human interface/element. In other words, the expression 'technical service' could have reference to only technical service rendered by a human and that it would not include my service provided by machines or robots.

The said judgment of the Hon'ble Delhi High Court, has been affirmed by the Hon'ble Supreme Court in 193 Taxman 97 (SC).

Without prejudice to above analysis, this aspect can be looked at from another perspective also.

The respective State Governments, confer the status of "State Transmission Utility "(STU) on the concerned power transmission companies.

Section 39 of the Electricity Act, 2003 mandates the STU to undertake various functions wherein sub-section (2) of section 39 provides as under;

> *"(2) The functions of the STU shall be –*
>
> *(a) to undertake transmission of electricity through intra-State transmission system;*
>
> *(b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with –*
>
> *(i) Central transmission utility;*
>
> *(ii) State Governments;*
>
> *(iii) Generating companies;*
>
> *(iv) Regional power committees;*
>
> *(v) Authority;*
>
> *(vi) Licensees;*
>
> *(vii) any other person notified by the State Government in this behalf;*
>
> *(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centers;*
>
> *(d) to provide non-discriminatory open access to its transmission system for use by –*
>
> *(i) any licensee or generating company on payment of the transmission charges; or*
>
> *(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission" :*

Further, Section 34 provides that every transmission licensee shall comply with such technical standards of operation and maintenance of transmission lines, in accordance with grid standards as may be specified by authority. These grid standards are described in Indian electricity code prescribed by Central Electricity Regulatory Commission.

From the aforestated provisions of the Electricity Act, 2003, it becomes clear that all the entities involved in generation, transmission and distribution of electricity are discharging their respective statutory functions and are complying with the directions of State Load Dispatch Centre and the Regulatory Commission for achieving the economy and efficiency in the operation of power system and, therefore, question of any entity rendering any technical service to another does not arise.

The aforesaid views also get fortified by the decision of the Hon'ble Delhi High Court in the case of *CIT* v. *Delhi Transco Ltd.* [2015] 62 taxmann.com 166/234 Taxman 779, wherein the Hon'ble Delhi High Court *vide* para Nos. 34 & 35, has held as under:-

> *"34. To reiterate, by virtue of the BPTA agreement between DTL and PGCIL there is transportation of the electricity from PGCIL to DTL, through the equipment and network required statutorily to be maintained by PGCIL through its technical personnel using technical expertise. This, however, does not result in PGCIL providing technical services to DTL. Therefore the wheeling charges paid by DTL and PGCIL for such transportation of electricity cannot be characterized as fee for technical service.*
>
> *35. The ultimate conclusion of the ITAT is, therefore, not erroneous. Accordingly, the question framed by the Court is answered in the negative,* i.e., *against the Revenue and in favour of the Assessee. Since the same question is involved in all the AYs.*

in question, all these appeals are dismissed affirming the impugned order of the ITAT, but in the circumstances with no order as to costs."

Against the aforesaid decision of the Hon'ble Delhi High Court in the case of *Delhi Transco Ltd.* (*supra*), the Revenue Authorities, went in Appeal before the Hon'ble Supreme Court of India in SLP(C) No. 853/2016 in the case of *CIT (TDS)* v. *Delhi Transco Limited*, which has since been dismissed by the Apex Court *vide* its order dated 22/01/2016 by holding as under:-

"We find no reason to entertain this Special Leave Petition, which is, accordingly, dismissed."

Therefore, the present legal position, in relation to the applicability of TDS on Transmission & Wheeling Charges, u/s 194J of the Act, stands settled and concluded by the aforestated dismissal of Special Leave Petition (SLP), of Revenue Authorities, by the Hon'ble Apex Court in SLP(C) No. 853/2016 in the case of *CIT (TDS)* v. *Delhi Transco Ltd.* [2016] 69 taxmann.com 92/239 Taxman 263, and, as such, the transmission & wheeling charges, can't be considered as "Fees for Technical Services" so as to attract TDS applicability u/s 194J of the Act.

Applicability or otherwise of TDS on transmission & wheeling charges u/s 194-I of the Income Tax Act

3. The meaning of Rent as specifically provided by the *Explanation* to section 194-I of the Act is as follows:

Explanation to Section 194-I : For the purposes of this section,-

"(i) "rent" means any payment , by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

(a) land; or

(b) building (including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

(e) plant; or

(f) equipment; or

(g) furniture; or

(h) fittings,

whether or not any or all of the above are owned by the payee."

It is clearly evident that the key words in this definition are *"for the use of"*. In other words, to consider any payment as rent u/s 194-I, it must be towards the use of any particular asset.

The Revenue Authorities contend that the transmission & wheeling charges paid by distribution companies to transmission companies are consideration towards the use of plant & machinery, *i.e.*, transmission system network of the transmission companies and, as such, are liable for deduction of TDS u/s 194-I of the Act.

However, this contention of the Revenue Authorities ignores one basic fact that in order to use any plant & machinery or equipment, so as to come under the purview of TDS applicability u/s 194-I of the Act, one has to have the physical possession or custody of the same. In other words one can't use anything which one does not possess.

The transmission system networks apart from being owned, managed, controlled & operated by the transmission companies, are always in the physical custody and possession of transmission companies only and not the distribution companies. Thus, the availment of the benefits of a standard facility, *i.e.*, transmission system network of the transmission companies, by the distribution companies, can't be considered as "use" of the same by the distribution companies, so as to attract TDS liability u/s 194-I of the Act.

Reliance can be placed on the judgment of the Hon'ble Bombay High Court in the case of "*CIT* v. *Maharashtra State Electricity Distribution Company Ltd.* [2015] 58 taxmann.com 339/232 Taxman 373 (Bom.), wherein the Hon'ble Bombay High Court, has held that,

> *"36.The argument of the revenue that payments to MSETCL amounts to rent cannot be accepted. According to the Black's Law Dictionary, 'Rent' is defined as consideration paid for periodical use or occupancy of property. Various types of rent are contemplated such as ceiling rent, crop rent, ground rent, etc. Even taking the widest possible definition of rent, in our view the WT charges cannot be considered as rent. It is well settled that the Court may in its discretion construe the legislative provisions so as giving effect to the intended use and applying the test of contextual interpretation. We are of the view that the expression 'rent' used in Section 194-I does not apply to WT charges or any other part thereof.*
>
> *37. In our view, the expression rent would also entail an element of possession. In each of the instances contemplated by the* Explanation *to Section 194-I, we see in them an element of possession, be it land, building (including factory building), land appertaining to a building, plant, equipment, furniture or fittings. The person using it has some degree of possessory control, at least momentarily, although it cannot entrust the user title to the subject matter of the charge. Even the mere right to "use" is vested with an element of possessory control over the subject matter. In the present case, WT charges are bereft of such possessory control and hence in our view, completely outside the purview of the* Explanation *to Section 194-I."*

Similar reliance can be placed upon the Judgment of the Honourable Authority For Advance Ruling in the case of "*Dell International Services India (P.) Ltd.* [2008] 305 ITR 37/172 Taxman 418.

The relevant extracts of the key observations & findings of the Hon'ble Authority in this regard are as follows:

> *"12.8. The word 'use' in relation to equipment occurring in (iv.a) is not to be understood in the broad sense of availing of the benefit of an equipment. The context and collocation of the two expressions 'use' and 'right to use' followed by the words "equipment" suggests that there must be some positive act of utilization, application or employment of equipment for the desired purpose.*
>
> *If an advantage is taken from sophisticated equipment installed and provided by another, it is difficult to say that the recipient/customer uses the equipment as such. The customer merely makes use of the facility, though he does not himself use the equipment."*

The Hon'ble ITAT Mumbai Bench, in the case of *Chhattisgarh State Electricity Board* v. *ITO (TDS)* [2012] 18 taxmann.com 150/50 SOT 33/143 TTJ 151, has also categorically held that,

> *"17. ….When control of the asset (transmission lines in the present case) always remains with the PGCIL, any payment made to the PGCIL for transmission of power on the transmission lines and infrastructure owned controlled and in physical possession of PGCIL cant be said to have been made for the use of these transmission lines or other related infrastructure.*
>
> *Viewed in this perspective, Section 194-I has no application so far as the impugned payments for transmission of electricity is concerned."*

Therefore, in view of aforesaid legal and factual propositions, transmission & wheeling charges, paid by the power distribution companies, for availing of the benefits of transmission system networks of power transmission companies, can't be considered as rent for use of such network, so as to attract TDS applicability u/s 194-I of the Act.

Applicability or otherwise of TDS on transmission & wheeling charges u/s 194C of the Income Tax Act

4. The Revenue Authorities contend that if transmission & wheeling charges can't be considered as either fees for technical services u/s 194J or rent u/s 194-I of the Act, then alternatively, they may be considered as "consideration towards any work carried" u/s 194C of the Act, within the limb of "*consideration towards carriage of goods or passengers by any mode of transport other than by Railways.*"

However, it needs to be appreciated that transmission of electricity or wheeling via the transmission system network of a power transmission company is a process and it can't be considered as carriage of goods simpliciter. Also, treating the transmission system network of the transmission companies, as mode of transportation, will be highly presumptuous.

The Hon'ble Cuttack ITAT, in the case of *GRIDCO Ltd.* v. *Asstt. CIT* [2012] 49 SOT 363/[2011] 15 taxmann.com 354 had observed as under:

> *"Further the scope of Section 194C was extended by inserting* Explanation III *by including the specific items within its provision. Accordingly by inserting* Explanation III *to section 194C w.e.f. 1.7.1995, the provisions relating to deduction of tax at source has been enlarged by bringing some of the service contracts within the provisions of Section 194C. In a way by inserting* Explanation III *the word work in Section 194C has been extended so as to include four types of service contracts within the purview of section 194C. Therefore, Section 194C now covers only four types of services beyond what was original enacted* i.e., *advertising, broadcasting and telecasting including production of programs for such broadcasting or telecasting, carriage of goods and passengers by any mode of transport other than by railways, and catering. Undisputedly the transmission and wheeling charges are not covered in this amendment. Accordingly it could not be said that transmission charges or wheeling charges require deduction of tax at source u/s.194C of the Act."*

Conclusion

5. For the sake of brevity, the above stated comprehensive analysis may be summed up as under:

(*i*) Transmission & Wheeling Charges can't be considered as Fees for Technical Services u/s 194J of the Income-tax Act as installation & operation of sophisticated equipments with a view to earn income by allowing the users to avail of the benefits of such equipments does not tantamount to rendering of "Technical Services" within the meaning of *Explanation 2* to section 9(1)(*vii*) of the Act. Rendering of services by using some sophisticated equipments/technical systems is different from charging fees for rendering technical services.

The present legal position, in relation to the applicability of TDS on Transmission & Wheeling Charges, u/s 194J of the Act, stands settled and concluded by the dismissal of Special Leave Petition (SLP), of Revenue Authorities, by the Hon'ble Apex Court in SLP(C) No. 853/2016 in the case of *Delhi Transco Ltd.* case (*supra*), and as such the transmission & wheeling charges, can't be considered as "Fees for Technical Services" so as to attract TDS applicability u/s 194J of the Act.

(*ii*) Transmission & Wheeling Charges can't be considered as Rent u/s 194-I of the Income-tax Act, as if an advantage is taken from sophisticated equipment installed and provided by another, it can't be construed that the recipient/customer uses the equipment as such. The customer merely makes use of the facility though he does not himself

use the equipment. The transmission system networks are owned, controlled, operated and physically possessed by transmission companies, and, as such, the availment of benefits of the standard facility, *viz*., transmission system network by power distribution companies can't be construed as use of such facility so as to attract TDS liability u/s 194-I of the Act. There are several judgments of ITAT & High Courts (as mentioned *supra*), in this regards, so present legal position is also more or less settled in this regards.

(*iii*) Applicability or Otherwise of TDS on Transmission & Wheeling Charges u/s 194C of the Act: The transmission of electricity *via* the transmission system network of transmission companies, being a systematic process, ought not to be considered as merely carriage of goods simplicitor and the transmission system network, ought not to be treated as mode of transport, so as to attract TDS liability u/s 194C of the Act.

If Transmission of Electricity is to be considered as "Work in relation to Carriage of Goods" so as to warrant deduction of TDS under section 194C of the Act, then on the same footing, Distribution of Electricity may also have to be considered as "work" so as to require deduction of TDS u/s 194C, from our electricity bills. But this cannot be so. However, at present there are a very few legal precedents in this regard.

Your Queries on IND-AS

Queries Addressed

1. Classification Of MAT Credit Entitlement In IND-AS Balance Sheet
2. Cash Flow Classification Of Acquisition Of Non-Controlling Interest In Subsidiaries
3. Recognition Of Interest Income On Debt Instruments Investments
4. Accounting Policy For Financial Guarantees Issued
5. Presentation Of Trade Receivables Bills Discounted

VINAYAK PAI V.
CA, CMA

Classification of MAT Credit Entitlement in IND-AS Balance Sheet

1. Our company is a Phase 2 IND-AS entity. At the date of transition we have a brought forward "MAT Credit Entitlement" asset that was presented as a separate line item in our previous GAAP Balance sheet.

How should the same be presented in the IND-AS balance sheet?

•

IND-AS defines deferred tax assets so as to include the amounts of income-taxes recoverable in future periods in respect of the carry forward of unused tax credits.

The balances in "MAT Credit Entitlement" account both at the date of transition and at subsequent reporting dates need to be presented as "Deferred Tax Assets" in the balance sheet prepared under the Indian Accounting Standards (IND-AS) framework.

Per IND-AS 12, deferred tax assets are the amounts of income-taxes recoverable in future periods in respect of:

- Deductible temporary differences,

- The carry forward of unused tax losses, and
- The carry forward of unused tax credits.

A deferred tax asset is required to be recognized for the carry forward of unused tax credits to the extent that it is probable that future taxable profit will be available against which the unused tax credits can be utilized.

You would also need to bear in mind the flow through effect of this on tax reconciliation disclosures.

Cash flow classification of acquisition of non-controlling interest in subsidiaries

2. Our company has increased its degree of control over one of its Asian subsidiaries during the year ended March 31, 2018. The increase in the controlling stake has been totally discharged by way of cash consideration.

We need your inputs on how this cash outflow needs to be classified in the IND-AS cash flow statement (Group Cash Flow Statement)? Can the same be treated as an investing cash flow as we have stepped up the investment in the subsidiary?

•

The said cash flow cannot be classified as investing cash flows as IND-AS permits only the cash flows arising from obtaining or losing control of subsidiaries to be presented separately and classified as investing activities.

Indian Accounting Standards (IND-AS) treat the increase in the stake in the subsidiary by way of acquisition of non-controlling interest in a subsidiary as a transaction with owners.

Per IND-AS changes in ownership interests in a subsidiary that do not result in a loss of control, such as the subsequent purchase or sale by a parent of a subsidiary's equity instruments are accounted for as equity transactions and, accordingly, the resulting cash flows are required to be classified in the same way as other transactions with owners, *viz.*, Financing Activities.

The line item "Payment for acquisition of Non-Controlling Interest in Subsidiary" needs to be classified as "Cash Flows from Financing Activities" in the IND-AS Group Statement of Cash Flows.

Recognition of interest income on debt instrument investments

3. We have a portfolio of investment in debt instruments in our balance sheet. Kindly let us know the interest income accounting requirements for such investments under IND-AS.

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The provisions of IND-AS109 on financial instruments govern the classification of investments in debt portfolio in balance sheets.

The related interest income on debt instruments that is measured either at amortized cost or at fair value through other comprehensive income (FVTOCI) is required to be recognized using the effective interest rate applying the effective interest method.

The effective interest method is a method that is used in calculation of the amortized cost of a financial asset or a financial liability and in the allocation and recognition of the interest revenue or interest expense in profit or loss over the relevant period.

The Effective Interest Rate is the rate that exactly discounts the estimated future cash receipts over the expected life of the financial asset to its gross carrying amount at initial recognition.

The reporting entity is required to take into consideration the estimates of expected cash flows by considering all the contractual terms of the debt instruments including prepayment, call and similar options but not considering expected credit losses.

Accounting policy for financial guarantees issued

4. Our company has issued financial guarantees to third parties that is a general feature of our business. We require inputs on developing a model accounting policy for such financial guarantees issued.

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IND-AS defines a financial guarantee contract as a contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instrument.

A model accounting policy for financial guarantees issued for the IND-AS financial statements is provided herein below.

- Financial guarantee contracts that are issued by the company are those contracts that require the company to make a payment to reimburse the holder for a loss it incurs because the specified debtor fails to make a payment when due in accordance with the terms of the instrument.
- Financial guarantee contracts are recognized initially as a liability at fair value through profit or loss, adjusted for the transaction costs that are directly attributable to the issuance of the guarantee.
- Subsequently, the liability is measured at the higher of the amount of loss allowance determined as per the impairment requirements of IND-AS 109 and the amount recognized less cumulative amortization.

Presentation of trade receivable bills discounted

5. As part of our company's financing arrangements, we regularly enter into bill discounting arrangements with financial institutions for our in-scope trade receivables.

Kindly let us know the IND-AS accounting guidance for such arrangements.

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The contractual provisions of the bill discounting arrangements with the financial institutions need to be analyzed. The company transfers the relevant trade receivables to the financial institution in exchange for cash but it is important to consider whether company has retained any risks in the transferred assets. For instance, the company might retain late payment risk and credit risk. In such instances, the company needs to continue to recognize the transferred trade receivables in the balance sheet and the amount of cash received needs to be accounted as unsecured borrowings.

In the balance sheet the trade receivables need to be presented separately as receivables subject to bill discounting and the associated liability needs to be classified and presented as a financial liability.

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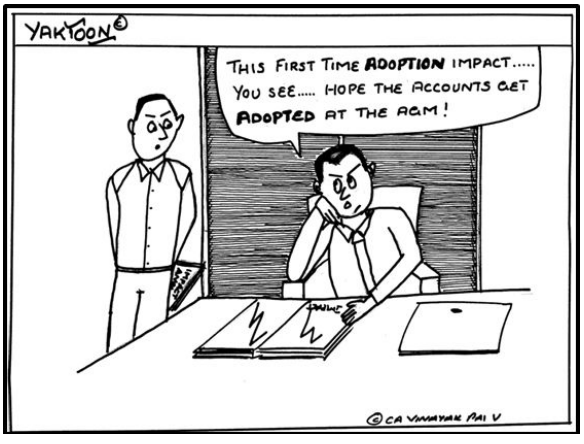

Your Queries

Goods and Services Tax

(*Contributed by CA Mohammad Salim*)

Issue of self-invoice and payment voucher under Reverse charge

Whether payment voucher and self-invoice are required to be issued by recipient in all cases where payment is required to be made on reverse charge mechanism?

As per Section 31(3)(*f*) of the CGST Act, 2017 a registered person who is liable to pay tax on notified goods or services under Section 9(3) of the CGST Act or on supplies received from unregistered person as per Section 9(4) of the CGST Act shall issue an invoice (self-invoice) in respect of goods or services or both received by him from an unregistered supplier. Thus, only in cases where supplies are received from unregistered suppliers the issue of self-invoice would arise. In this regard it is also important to note that *vide* Notification No. 38/2017-Central Tax (Rate), dated 13-10-2017 exemption was granted from payment of tax under section 9(4) till 31-3-2018 which has been further extended to 30-6-2018 *vide* Notification No. 10/2018-Central Tax (Rate), dated 23-3-2018. In view of above exemption in case of supplies received from unregistered person no self-invoice would be required to be issued except in cases where the notified goods or services under Section 9(3) are being received by prescribed recipients from unregistered suppliers. Further, in case notified goods or services are received from registered suppliers then self-invoice is not required despite payment under reverse charge mechanism.

Further, as per Sections 31(3)(*f*) of the CGST Act, 2017 a registered person who is liable to pay tax on notified goods or services under Section 9(3) or on supplies received from unregistered person as per Section 9(4) shall issue a payment voucher at the time of making payment to the supplier. As stated earlier that payment of tax under reverse charge as per Section 9(4) has been deferred till 30-6-2018, thus in such cases there will also be no requirement to issue payment voucher. However, payment voucher would be required to be issued in cases where payment of tax is required to be made under

reverse charge basis on notified goods or services as per Section 9(3).

Letter of Undertaking (LUT) by exporters

What documents are required to be submitted physically for grant of approval of LUT for export of goods or services without payment of tax? What period has been prescribed for acceptance of LUT?

As per Circular No. 40/14/2018-GST dated 6-4-2018 the registered person (exporters) shall fill up and submit the letter of undertaking (LUT) in FORM GST RFD-11 on the common portal. Further, no document needs to be physically submitted to the jurisdictional office for acceptance of LUT. It shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. However, if it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected *ab initio*.

Direct supply of goods from job-workers place

I am a registered person located in Delhi and have sent goods to a job worker in Haryana and subsequently I supplied these goods directly from job workers place to a recipient located in Delhi. Whether such supply would be inter-State or intra-State?

Section 143 of the CGST Act, 2017 provides that the principal may supply from the place of business/premises of a job worker, inputs after completion of job work or otherwise or capital goods (other than moulds and dies, jigs and fixtures or tools) within one year or three years, respectively, of their being sent out, on payment of tax within India, or with or without payment of tax for exports, as the case may be. This facility is available to the principal only if he declares the job worker's place of business/premises as his additional place of business or if the job worker is registered.

Since in such cases the supply is being made by the principal, it is clarified *vide* Circular No. 38/12/2018, dated 26-3-2018 that the time, value and place of supply would have to be determined in the hands of the principal, irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It has also been clarified vide above Circular that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal.

In view of above position, you are required to issue the invoice being supplier (principal) in respect of supply from the job worker's place of business/premises. Further, as you as well as the recipient of goods are located in Delhi the said transaction will be an intra-State supply and CGST and SGST would be applicable.

Availing of Input Tax Credit of taxes charged in other State

Can SGST or CGST paid in one State be utilised for payment of SGST or CGST or IGST of another State?

The CGST and SGST to the credit of a State can be utilised for payment of their respective CGST/SGST or IGST liabilities within that State and that too for same GSTIN only, as under GST law claim of ITC is registration and State specific. Every registration is treated as a distinct person. Further, a registered person in one State cannot be allowed to set-off ITC of other State as it will reduce revenue of the other State. *To illustrate* in case an employee of a Company registered in Delhi visits Mumbai for some official assignment and stays in

Hotel, such Hotel will charge CGST and SGST on hotel charges, as place of supply in cases of services related to immoveable property is the location of such immoveable property. Accordingly, in such cases despite the fact that the expense has been incurred for business purposes, input tax credit of CGST and SGST charged in Maharashtra cannot be adjusted against CGST and SGST/ IGST liability in Delhi.

Place of Supply of advertisement services

How would the place of supply be determined in case of advertisement through sms in various States?

As per Rule 3(h)(*i*) of the IGST Rules, 2017 in such cases the amount attributable to the value of advertisement services disseminated in a State or Union Territory shall be calculated on the basis of the telecommunication subscribers in each State or Union territory. In such cases separate invoices will have to be issued State-wise or Union territory-wise indicating the value pertaining to that State.

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Income Tax

(*Contributed by CA V.K. Subramani*)

Consequences of undervalued stock and unaccounted stock

Our firm is engaged in manufacturing activity. A survey under section 133A was conducted in March, 2018 and the stock register of the financial year 2016-17 was verified. It was found that there was difference in stock value of Rs. 15 lakhs by way of under-valuation as at 31st, March 2017. In the statement it was recorded as unaccounted stock, whereas our tax counsel suggested to record the same as undervalued stock. What do the terms "undervalued stock" or "unaccounted stock" signify in income tax assessment?

At the outset, it may be noted that the under valuation of closing stock, i.e., stock as on 31.03.2017 when adjusted to correct figure, it will be tax neutral as the opening stock as on 01.04.2017 will get enhanced to the same extent.

However, when the difference in stock value as per stock register and your financial statement used for the purpose of income-tax show difference, the tax officers will tax the amount first as income of the assessment year 2017-18. This, however, would get subsumed in the assessment year 2018-19 because of the adjustment in opening stock value, i.e., as on 01.04.2017.

The term 'undervalued stock' means that the difference of Rs. 15 lakhs added to your income is business income and will be chargeable to tax at the regular rate of 30.9%. Where the working partner's salary was partly disallowed because of the limits prescribed by section 40(b) this increase in income would get partly absorbed in working partner salary.

On the other hand, if the inventory is taken as 'unaccounted stock' it could be subjected to tax under section 115BBE at 60% plus surcharge @ 25% thereon besides education cess. The effective rate would be 77.25%. This is independent of the penalty imposable under section 271AAC. Perhaps your tax counsel might have considered these aspects in advising you to admit the difference as difference in valuation of stock instead of terming it as 'unaccounted stock'.

Revision under section 264 when appeal is pending for some other assessment year for the same issue.

Our company preferred an appeal against the assessment made under section 143(3) for the assessment years 2013-14 and 2014-15. For the very same issue, there is an addition for the assessment year 2015-16 as well. We filed revision under section 264 for the assessment year 2015-16 instead of filing an appeal. The CIT is hesitant to adjudicate revision under section 264 as the identical issue is pending before appellate authorities. Is there any legal embargo in CIT admitting and making revision under section 264 for the assessment year 2015-16?

When you have preferred revision under section 264 it means that you are waiving of the right of appeal and regardless of the outcome of revision under section 264 whether in your favour or not, you will accept the verdict of the CIT. Even where you have preferred an appeal on some of the issues dealt with in the assessment order and preferred revision under section 264 in respect of some other issues (not covered in appeal) then revision under section 264 is not possible.

In your case the identical issue relating to preceding assessment years is pending before the appellate authorities. There is no legal bar in preferring an appeal for one assessment year and preferring a revision for some other assessment year, even though the subject matter may be one and the same.

Hence, there is no reason for CIT to hesitate in passing an order under section 264, even though the identical issue is pending in appeal for the earlier or later assessment year. The CIT must consider the revision preferred under section 264 objectively and his opinion will not be binding or influencing the appellate authorities and in this background, he must give disposal for the revision petition.

Eligibility for deduction under section 80-IA for successor

My client was engaged in generation and distribution of power. He availed of deduction under section 80-IA in respect of such income. He died in August, 2017 and his son succeeded the business as per 'will' executed by the deceased. His son wants to know whether he can claim deduction under section 80-IA for the balance number of assessment years. Decide.

Section 80-IA(2) provides the option to the taxpayer to claim deduction for any 10 consecutive assessment years out of 15 years beginning from the year in which the undertaking generates power or commences transmission or distribution of power.

In this case the father claimed deduction under section 80-IA and after some years his son succeeded the business in accordance with the 'Will' of father. The son wants to claim deduction in respect of the income from such undertaking for the balance number of assessment years. For example, if the father has claimed deduction for 6 years now the son as successor wants to claim deduction for the balance 4 assessment years.

The accent of section 80-IA is with reference to profits and gains derived from the undertaking by the assessee which forms part of his gross total income. Therefore, the successor who admits the income from such activity is

eligible to claim deduction under section 80-IA for the balance assessment years. Section 80-IA(12) explicitly allows the successor company in a scheme of amalgamation or demerger to claim the deduction but does not deal with other kinds of succession. Nevertheless, there is no voluntary action on the part of the taxpayers to shift the income and avail of tax benefit. Hence, the benefit of deduction must be allowed in your case. You can refer to *Kanan Devan Hills Plantations Co (P) Ltd.* v. *Asstt. CIT* (2018) 400 ITR 43 (Ker.).

Power of CIT (Appeals) for making a new addition.

I filed an appeal against the order passed by AO under section 143(3) of the Act. During the course of hearing, it was found that the additional depreciation on office appliances was allowed inadvertently by the AO. The CIT (Appeals) wants to disallow additional depreciation but it is beyond the scope of my appeal. Is the CIT (Appeals) empowered to consider issues not contested in appeal by the taxpayer?

Section 32(1)(iia) provides for additional depreciation @ 20% of the actual cost of machinery or plant besides the regular/ normal depreciation. It is not applicable for office appliances. The Assessing Officer has not disallowed the additional claim of depreciation for office appliances while doing the assessment under section 143(3).

Section 251 deals with power of the CIT (Appeals). He has the power to confirm, reduce, enhance or annul the assessment of the Assessing Officer. The powers of the CIT (Appeals) are co-terminus with that of the Assessing Officer. He can do what the ITO can do. He can also direct the Assessing Officer to do what he has failed to do earlier. Refer to *CIT* v. *Kanpur Coal Syndicate* (1964) 53 ITR 225 (SC) and *CIT* v. *K.S. Dattatreya* (2011) 9 taxmann.com 106 (Kar.). Hence, the CIT (Appeals) is empowered to consider the issues which come to his notice during the course of hearing. However, he cannot make enquiries on issues which are not connected to matters preferred in appeal. *CIT* v. *Shapoorji Pallonji Mistry* (1962) 44 ITR 891 (SC).

Corporate Laws

Cash flows from interest & dividends to be disclosed separately

Is there any requirement to separately disclose cash flows from interest and dividends in cash flow statement?

Cash flows from interest and dividends shall be disclosed separately in the cash flow statement. An entity should disclose cash flows arising from interest and dividends paid as cash flows from financing activities while interest and dividends received should be classified as cash flows from investing activities. But if the entity is a financial institution, then interest paid and interest & dividends received is classified as cash flows arising from operating activities.

Classification of cash flows used in income tax

In what situation is 'cash flows used in income tax' required to be classified as cash flows arising from investing/financing activities?

Cash flows arising from income tax shall be presented under cash flows from operating activities. However, when it is practicable to identify the tax cash flow with an individual transaction that gives rise to cash flows that are classified as investing or financing activities, the tax cash flow is required to be classified as cash flows from investing or financing activities, as the case may be.

Disclosure of non-cash investing and financing transactions

Some investing and financing transaction does not involve transfer of cash and cash equivalent, like conversion of debt into equity. Whether such transactions are required to be disclosed in the cash flow statement?

No. Investing and financing transactions that do not require the use of cash and cash equivalents shall not be disclosed in the cash flow statement. However, such transactions are required to be disclosed elsewhere in the financial statements.

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Weekly Review

A Weekly Guide to
Statutory Changes & Landmark Rulings

Goods and Services Tax

CASE LAWS

No ST on fees received by Mumbai police for performing statutory duties

***Mumbai Police* v. *CST* [2018] 92 taxmann.com 92 (Mum. - CESTAT)**

The assessees, Mumbai Police, are providing security services to banks, individuals, security for cricket matches, Mumbai Port Trust and for other functions. It contended that the police was deployed for the purpose of maintaining law and order. Thus, such service was not liable to service tax.

The department issued a show cause notice on the assessees demanding service tax along with interest and penalty on the charges received for providing security on the ground that such activity was undertaken for a consideration which was not a statutory fee. Thus, such service was liable to service tax under the category of "Security Agency Services". The assessee filed an appeal in the Tribunal against the same.

The Tribunal held that the police department, which was an agency of the State Govt., could not be considered as "person" engaged in the business of running security services. Therefore, the activity undertaken by the police was not covered under the definition of Security Agency service. Hence, there could be no levy of service tax on such activities carried out by the police department because these were in nature of statutory duties.

Creating infrastructure for providing parking facility during CWG not covered under 'Works Contract Service'

***Punj Lloyd Ltd.* v. *CST* [2018] 92 taxmann.com 35 (New Delhi - CESTAT)**

The assessee entered into an agreement with MCD for covering certain area for providing parking facility during Commonwealth Games-2010. It contended that such service was not taxable under 'works contract service'. The department held that the construction activity undertaken by the assessee was covered under the category of 'works contract

service'. The assessee filed an appeal in the Tribunal against the same.

The Tribunal held that the structure created for such sport event could not be considered as commercial or industrial venture. Hence, the said activity undertaken by assessee could not fall under the category of 'works contract service'. Thus, the impugned order was not legally sustainable.

Goods confiscated by AA was to be released on payment of differential duty at rate of 5% IGST: HC

***Priyanka Enterprises* v. *Jt. CC* [2018] 92 taxmann.com 53 (Mad.)**

The department confiscated the imported goods of the assessee. The assessee filed a writ petition in the High Court seeking release of imported goods on the ground that the imported goods had a shell life of only 6 months and further delay would render the product useless.

The High Court directed the assessee to pay the differential duty by calculating the IGST at the rate of 5%. On remittance of the differential duties, the department would provisionally release the goods within a period of 7 days.

Photocopies of invoices aren't valid document for availing Cenvat Credit: CESTAT

***Terex India (P.) Ltd.* v. *CCE* [2018] 92 taxmann.com 52 (Chennai - CESTAT)**

The assessee was engaged in the manufacture of crushing machines and screening machines. It availed of Cenvat credit on certain input services on the basis of photocopies of invoices. It submitted that the original invoices were misplaced. The department denied the Cenvat credit on such input services. The assessee filed an appeal in the Tribunal against the same.

The Tribunal held that photocopies were not valid documents for availing of credit. Further, if such practice of availing of credit on the basis of photocopies of invoices was allowed, then it would lead to false claims of credit made by assessees. Therefore, the claim of assessee was disallowed.

'Network Switches' are classifiable as 'other units of automatic data processing machines' under excise law

***D-Link (India) Ltd.* v. *CCE* [2018] 92 taxmann.com 47 (Mum. - CESTAT)**

The assessee contended that 'Network Switches' were classifiable under Heading No. 8471 80 as they were only useable in the local area network. The department held that 'Network Switches' were data communication equipments and, hence, the same were classified under Heading No. 8517 50. The assessee filed an appeal in the Tribunal against the same.

The Tribunal held that the onus was on the department to prove that the classification claimed by the assessee was incorrect. In the instant case, the revenue failed to bring out the evidence. Therefore, 'Network Switches' were classified as 'other units of automatic data processing machines' under Heading No. 8471 80.

Recovery of food expenses from employees for canteen services is taxable under GST: AAR

***Caltech Polymers (P.) Ltd. In Re* [2018] 92 taxmann.com 142 (AAR - Ker.)**

The assessee preferred an application for Advance Ruling for taxability of recovery of food expenses from employees for the canteen service provided by it. It submitted that they were providing canteen services exclusively for their employees. All the canteen expenses were recovered from its employees without

any profit margin. It further contended that such service was not being carried out as a business activity.

The Authority for Advance Ruling (AAR) held that the recovery of food expenses from the employees for the canteen services provided by company would come under the definition of 'Outward Supply'. Therefore, it would be taxable as a supply of service under GST.

Sale of goods procured from one country & supplied to another doesn't attract IGST: AAR

Synthite Industries Ltd. **In re [2018] 92 taxmann.com 144 (AAR - Ker.)**

The assessee received an order from a customer in USA for the supply of spice products. It placed a corresponding order to a supplier in China for supplying the goods ordered by the customer in USA. The Chinese supplier shipped the goods directly to the customer in USA. It issued the invoice to the assessee. Subsequently, the assessee raised the invoice on the customer in USA.

The assessee preferred an application for advance ruling for levy of GST on the sale of goods to the USA Company, when such goods were shipped directly from China to USA without entering India.

The Authority for Advance Ruling (AAR) held that the goods were liable to GST when they were imported into India. Therefore, the assessee was not liable to GST on the sale of goods procured from China and directly supplied to USA, as the goods were not imported into India at any point.

Statutory Changes

E-way Bill for Intra-State Supplies is must from April 15 in 5 States

PRESS RELEASE, DATED 10-04-2018

E-way bill is a document to be generated electronically by the supplier every time goods involve movement from one place to another. This mechanism is introduced in GST to ensure that the taxable goods are changing hands only after payment of GST. E-way Bill can be generated from the GST portal which requires information about the supplier, recipient, goods, location, etc. This compliance helps the Govt. to keep a track of the movement of goods and to check the tax evasion. An e-way bill has been bifurcated in two parts, Part A and Part B. Part A includes all the details related to the transported goods and invoice related details. Part B includes Vehicle Number in which the goods are being transported and the transport document number.

The requirement to generate an e-way bill is mandatory when the supply involves taxable goods and the value of a consignment exceeds ₹ 50,000. The responsibility of generation of an e-way bill be on the supplier (consignor) or recipient (consignee). There is a provision in Rule 138(7) of the CGST Rules, 2017 which provides that in case the consignor or consignee has not generated the e-way bill because the value of consignment is less than ₹ 50,000, the transporters are required to generate E-way bill if aggregate value of all consignment being carried in the vehicle is more than ₹ 50,000 in an inter-State supply. However, this provision of independently generating e-way bill by a transporter has been deferred for the time-being.

From April 1, 2018, it is mandatory to generate the e-way bill for every inter-State movement of goods if the consignment value exceeds ₹ 50,000. However, for movement of goods within the State, *i.e.*, intra-State supply, it has been made operational from April 1, 2018 only in the State of Karnataka. The E-way bill is now made mandatory from April 15, 2018 for intra-State supplies in the states of, Andhra Pradesh, Gujarat, Kerala, Telangana and Uttar Pradesh.

No GST on supply of food directly to students by schools; Govt. clarifies

PRESS RELEASE, DATED 11-4-2018

Govt. has clarified on two issues regarding the GST rate applicable on supply of food and drinks in educational institutions. It has clarified that GST rate on supply of food and drinks in a mess or canteen in an educational institution will attract 5% GST without input tax credit. But there would be no GST on supply of food directly to students by schools.

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Income-tax

Technical defect of issuing re-assessment notice in name of erstwhile entity could be cured u/s 292B: SC

Sky Light Hospitality LLP* v. *Asstt. CIT
[2018] 92 taxmann.com 93 (SC)

The assessee previously called as M/s. Sky Light Hospitality Pvt Ltd. was presently known as M/s. Sky Light Hospitality LLP having converted into LLP from company under Limited Liability Partnership Act, 2008.

Assessing Officer (AO) issued reassessment notice in name of company which had ceased to exist and was dissolved. Assessee raised the contention that the notice issued to a dead juristic person was invalid and void in the eyes of law.

However, AO didn't accept the said mistake and held that the notice in the name of erstwhile company was valid as this error was protected and shielded under section 292B.

The Supreme Court upheld the order of High Court which was as under:

Object and purpose behind section 292B is to ensure that technical pleas on the ground of mistake, defect or omission should not invalidate the assessment proceedings, when no confusion or prejudice is caused due to non-observance of technical formalities. Notice may be defective or there may be omissions but this would not make the notice a nullity. Validity of a notice has to be examined from the stand point whether in substance or in effect it is in conformity and in accordance with the intent and purpose of the Act.

In the instant case, re-assessment notice served on assessee had duly complied with law and was legal in all respects.

Therefore, re-assessment notice issued in name of erstwhile company, despite company ceasing to exist as it had been converted into LLP, would not invalidate re-assessment proceedings as same was not a jurisdictional error, but an irregularity and procedural/ technical lapse which could be cured under section 292B.

Market value of other assets has no role in determining value of shares of a co. as per rule 11UA

Minda S M Technocast (P.) Ltd.* v. *Addl. CIT
[2018] 92 taxmann.com 29 (Delhi - Trib.)

The assessee-company was deriving its income under the head 'rental and interest income'. It had acquired shares of M/s. Tuff Engineering Pvt. Ltd. ('TEPL') at ₹ 5 per share.

It valued the shares as per rule 11UA of the Income-tax Rules, 1962, *i.e.*, on basis of book value of assets of TEPL. Valuation Report from the CA firm was also produced in support of claim.

The Assessing Officer (AO) was of the view that the fair market value (FMV) of the land as per the circle rate should be taken into consideration while determining the value of the shares of TEPL. Accordingly, he substituted the book value of the land with FMV of the land as per the circle rate and determined the value of shares at ₹ 45.72 per shares of TEPL.

The Tribunal held in favour of assessee as under:

Rule 11UA determines the fair market value of the property other than immovable property. On the plain reading of the rule, it is revealed that while valuing the shares the book value of the assets and liabilities declared by the TEPL should be taken into consideration.

There is no whisper under the provision of rule 11UA to refer the FMV of the land as was taken by the AO in the year under consideration. Therefore, the share price calculated by the assessee of TEPL at ₹ 5 per shares had been determined in accordance with the provisions of rule 11UA. [2018] 92 taxmann.com 29 (Delhi - Trib.)

No denial of exemption just because DPS made profits from its joint venture with satellite schools

***DIT* v. *Delhi Public School Society* [2018] 92 taxmann.com 132 (Delhi)**

Assessee-Delhi Public School (DPS) Society was registered under the Societies Registration Act, 1860 with the Registrar of Societies, Delhi. It was aggrieved by rejection of its application for grant of exemption for AY 2008-09 onwards as a charitable organization.

The ADIT rejected its exemption application on the grounds that the franchise fee received by DPS from the satellite schools in lieu of its name, logo and motto amounts to a "business activity" with a profit motive.

Assessee challenged the rejection order by filing petition before the High Court.

The High Court held in favour of assessee as under:

The memorandum of association of DPS Society, as well as the joint venture agreements entered into by it with the satellite schools validated the motive of an educational purpose that the Assessee aimed through its business activities.

Assessee had maintained accounts which had been audited in detail for relevant years and such accounts had been maintained in compliance to seventh proviso to section 10(23C)(*vi*) and section 11(4A).

On review of assessee's audited accounts, it could be observed that surpluses accrued to assessee-society were utilised for maintenance and management of DPS schools themselves.

Thus, gains arising out of its agreements were incidental to its educational purpose outlined by its objective. Therefore, assessee fulfilled requirements under section 10(23C)(*vi*) to qualify for exemption.

NIBM imparting education in field of banking & finance management was eligible for sec. 11 relief: ITAT

***National Institute of Bank Management* v. *Addl. DIT* [2018] 92 taxmann.com 25 (Mumbai - Trib.)**

Assessee-charitable institution was established by Government of India through Reserve Bank of India and was responsible for imparting education in field of banking and finance management and had an All-India character.

It claimed exemption under sections 11 and 12 which was denied by Assessing Officer (AO) on grounds that assessee was holding banking coaching classes, seminars

and training programmes against collection of fees and that assessee after introduction of proviso to section 2(15) with effect from 1-4-2009 assessee could only said to be fall under category of 'advancement of any other object of general public utility'.

Mumbai ITAT held that assessee was recognised by a University as an approved centre for post-graduate research and also by Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India.

Since pertinently, upto assessment year 2008-09, assessee was accepted to be an entity engaged in educational activities and in assessment years under consideration there was no any change in its activities, merely because of insertion of proviso to section 2(15), nature of activities would not undergo a change unless it could be made out that profit motive was dominant, thus, said proviso did not disentitle assessee's activities from being considered as for charitable purpose.

Ownership of shares by same person isn't prerequisite to deny set off of loss under sec. 79

***Wadhwa & Associates Realtors (P.) Ltd.* v. *Asstt. CIT* [2018] 92 taxmann.com 37 (Mumbai - Trib.)**

In the instant case, Assessing Officer (AO) asked the assessee to show cause as to why the set off of brought forward house property losses against the current year's house property income would not be denied in view of section 79 as during the year more than 51% of the shareholding pattern of the assessee had changed.

The assessee submitted that the two individuals, *i.e.* Vijay and Vinita, were the beneficial owner of the shares of the assessee-company in the year in which losses were incurred and also in the year in which losses had been set off and were the beneficial owner of shares of the assessee through two companies (RPL and WGH) and also they were directors of the all companies and thus, section 79 had no application in the case of the assessee as beneficial owner of the shares remained the same. AO, however, denied the assessee's contention and disallowed set off of losses.

The Mumbai ITAT held that the word used in section 79 is … 'held' … and not 'owned'. This indicates that ownership of the shares with the same person was not contemplated for denying the set off of the loss. Furthermore the word preceding 'held' is 'beneficially' which is an adjective/adverb of the word 'benefit'. Therefore, what is to be seen is whether the benefit of voting rights is held by the same persons.

The phrase used in section 79(*a*) 'beneficially held by persons who beneficially held' would indicate indirect control of voting rights through Vijay and Vinita through their shareholding in RPL and WGH could be said to be holding 51% voting power in the company. Therefore, the assessee was entitled to set off the loss under consideration in the assessment year.

AO couldn't recover tax dues of mining dept. from person who was awarded tender for settlement of Sand Ghats

***Sainik Food (P.) Ltd.* v. *PCIT* [2018] 92 taxmann.com 9 (Patna)**

The Patna High Court held that section 226(3)(*x*) does not confer arbitrary power to Income-tax department to recover amount of tax liability of mining department from innocent person.

In the instant case, assessee-company was awarded tender for settlement of Sand Ghats located in different districts and it was required to pay settlement amount in three instalments with simultaneous payment of required amount of tax to Sale Tax Department.

It received notice under section 226(3) and was called upon to deposit a sum being income-

tax liability of Mining department for default in deducting TCS from various settlements including that of assessee. Thereafter, income-tax authorities had arbitrarily deducted said amount from bank account of assessee.

It was found that no action was taken by Income-tax department against Mining department for failure to deposit TCS under sections 276B and 276BB. Further, Income-tax department had not carried out any factual enquiry to examine whether there was any liability to be paid by assessee in connection with settlement of Sand Ghat.

The HC held that the tax was the liability of the Mines and Geology Department and instead of taking coercive action under section 276B and section 276BB, action of Income-tax Department by attaching the bank account and directing the same to be recovered from the account of the assessee was most unreasonable.

Statutory Changes

CBDT issues draft notification proposing amendment to Rule 44E in line with BEPS Action 5

NOTIFICATION [F.NO.370142/34/2016-TPL (PART)], DATED 10-4-2018

Under Base Erosion and Profit Shifting (BEPS) Action 5, exchange of Permanent Establishment (PE) rulings (by Authority for Advance Rulings) are required to be done not only with the countries of residence of all related parties with whom taxpayer enters into transaction but also with the country of residence of the immediate parent company and the ultimate parent company. Therefore, in order to implement the recommendations made under Action 5 of BEPS Action Plan to bring greater transparency in cross national transactions, Forms 34C and 34D (Forms for advance rulings) are required to be modified so that details such as name, address and country of the residence of non-resident's immediate parent company or ultimate parent company are captured at application stage itself.

The Central Board of Direct Taxes (CBDT) has issued draft notification proposing an amendment to Rule 44E of the Income-tax Rules, 1961 and Forms 34C, 34D, 34DA as per Base Erosion and Profit Shifting (BEPS) Action 5. The stakeholders are requested to send their comments/suggestions on the draft notification by 25-4-2018 at ts.mapwal@nic.in

CBDT amends PAN application form, transgender included in gender column for individual applicant

NOTIFICATION NO. GSR 352(E) [NO.18/2018 (F.NO.370142/30/2016-TPL)], DATED 9-4-2018

The Central Board of Direct Taxes (CBDT) has amended Form Nos. 49A and 49AA for application for allotment of Permanent Account Number (PAN). CBDT has incorporated 'Transgender' in the column related to Gender in case of individual applicant.

Corporate Laws

Arbitral proceedings couldn't be initiated during moratorium period: NCLAT

***K. S. Oils Ltd.* v. *State Trade Corporation of India Ltd.* [2018] 91 taxmann.com 423 (NCL-AT)**

IBC: Arbitral proceedings pending between corporate debtor and financial creditor could not be proceeded with during moratorium period

HC sets aside auction sale when company court failed to consider validity of sale

***Alex Philip* v. *Ramangalam Tile Works Co. Ltd.* [2018] 91 taxmann.com 468 (Kerala)**

CL: Where Company Court failed to consider important aspects as to validity of auction sale under sections 536 & 537 of the Act and issuance of winding up notice, impugned order setting aside sale in question was to be set aside

Insolvency process was to be rejected due to existence of dispute between parties prior to issue of notice

***Amar Tours & Transport* v. *Go Airlines (India) Ltd.* [2018] 91 taxmann.com 474 (NCLT - New Delhi)**

IBC: Where prior to issue of demand notice under section 8, corporate debtor raised a dispute regarding falsification and tampering of invoices, forged parking receipts including wrong billing by operational creditor, there was pre-existence of dispute and, hence, application under section 9 was to be rejected

Application for insolvency resolution process admitted due to existence of financial debts: NCLAT

***Atul Sharma* v. *Gudearth Homes Infracon (P.) Ltd.* [2018] 92 taxmann.com 13 (NCLAT)**

IBC: Where there were records to prove that on different dates financial creditor had provided financial assistance to corporate debtor, argument advanced by corporate debtor that there was no debt could not be accepted

Winding up petition was to be admitted on non-payment of loan liability: HC

***Vandana Global Ltd. Mumbai* v. *IL & FS Financial Services Ltd.* [2018] 92 taxmann.com 12 (Bombay)**

CL: Where appellant-associate company had entered into option agreement with respondent-bank which was in nature of guarantee for payment of loan taken by borrower from respondent, winding up petition against appellant was to be admitted on non-payment of loan liability.

Statutory changes

IBBI specifies procedure to be followed for registration as a Registered Valuer

PRESS RELEASE, DATED 4-4-2018

The Insolvency and Bankruptcy Board of India has specified the procedure to be followed for registration as a Registered Valuer with the Authority under the Companies (Registered Valuers and Valuation) Rules, 2017

Clearing Corporations must ensure guarantee for settlement of trades: SEBI

NOTIFICATION NO. SEBI/LAD-NRO/GN/2018/04, DATED 2-4-2018

The Securities and Exchange Board of India (SEBI) has amended the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulation 2012 wherein it has been specified that every recognized clearing corporation providing clearing and settlement services for commodity derivatives shall ensure guarantee for settlement of trades including goods delivery.

RBI keeps repo - rate unchanged at 6%

PRESS RELEASE, 5-4-2018

On the basis of an assessment of the current and evolving macro-economic situation, the Monetary Policy Committee (MPC) has decided to keep the policy on repo - rate under the liquidity adjustment facility (LAF) unchanged at 6.0 %. Consequently, the reverse repo - rate under the LAF remains at 5.75 %, and the marginal standing facility (MSF) rate and the Bank Rate at 6.25 %.

RBI prohibits regulated entities from dealing in Bitcoins and other virtual Currencies

CIRCULAR NO. DBR.NO.BP.BC.104/ 08.13.102/ 2017-18, DATED 6-4-2018

The Reserve Bank of India (RBI) has banned regulated entities like banks from dealing in or providing services to any individuals or business entities dealing with or settling virtual currencies with an immediate effect. This move came after giving three warnings to the public at large for being cautious while dealing in crypto - currencies. Further, the RBI has given three months to regulated entities like banks to exit the relationship with entities dealing with crypto - currencies.

RBI revises investment limits for foreign investors in Govt. securities

NOTIFICATION NO. 3 OF 2018, DATED 5-4-2018

The Reserve Bank of India has revised the Investment limit for Foreign Portfolios Investors in Central Government securities. The investment limit would be increased by 0.5% each year to 5.5% of outstanding stock of securities in 2018 -19 and 6% of outstanding stock of securities in 2019-20.

RBI reviews comprehensive guidelines on Derivatives

CIRCULAR NO. DBR.NO.BP.BC.103/21.04.157/ 2017-18, DATED 6-4-2018

The Reserve Bank of India (RBI) has reviewed the comprehensive guidelines on Derivatives. Now, it has been decided that standalone plan vanilla forex options purchased by clients will be exempted from the 'user

suitability and appropriateness' norms. The regulatory requirements will be at par with forex forward contracts.

SEBI introduces new system for monitoring foreign investment limits in listed Indian companies

CIRCULAR IMD/FPIC/CIR/P/2018/61, DATED 5-4-2018

The Market Regulator, Securities and Exchange Board of India has introduced the new system for monitoring of foreign investment limits in listed Indian companies which shall be made operational on May 1, 2018. The existing mechanism for monitoring the foreign investment limits shall be done away with once the new system is operationalized.

RBI issues action points for lead banks on enhancing effectiveness of lead district managers

CIRCULAR NO. FIDD.CO.LBS.BC.NO.20/ 02.01.001/2017-18, DATED 6-4-2018

On basis of the recommendations received from 'Committee of Executive Directors' of bank to study the efficacy of the Lead Bank Scheme, RBI has come up with action points for the Lead District Managers. The Bank said that lead district managers play a critical role and asked bank heads to ensure that they possess necessary leadership skills that they are provided with office infrastructure, skilled computer operator and are given a vehicle.

No new LLP can be formed due to withholding allotment of new DIN to partners of LLPs

PRESS RELEASE, DATED 9-4-2017

The Ministry of Corporate Affairs (MCA) has issued a notice on its website with respect to Temporary suspension of issuance of allotment of new DINs for Designated Partners/Partners of LLPs is being extended till further notice. A suitable message would be posted on the portal after revised DIR-3 is made available for filing purposes for issuance of new DPIN/ DINs for Partners of proposed LLPs.

Earlier, the MCA had re-engineered the whole process of allotment of DIN by allotting DIN to individuals only at the time of their appointment as Directors (If they did NOT possess a DIN) in companies and process for allotment of DPIN for LLPs were kept on hold till 31-3-2018.