NANUBHAI DESAI & CO.

March 2020

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Contents

INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

Section 11 sub-section (5) clause (xii) read with section 295 of the Income-tax Act, 1961

- In the Income-tax Rules, 1962, in rule 17C, after clause (v), the following clause shall be inserted, namely: -.

  "(va) investment made by a person, authorised under section 4 of the Payment and Settlement Systems Act, 2007, in the equity share capital or bonds or debentures of a company

  A. which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and abroad and is approved by the Reserve Bank of India for this purpose; and

  B. in which at least fifty-one per cent of equity shares are held by National Payments Corporation of India."

  (Notification No. 15/2020/ F.No. 370142/5/2020-TPL, dated 05th March, 2020)

Case laws

Principal Commissioner of Income-tax vs. Rattanchand Rikhabdas Jain Chemical Works, March 03, 2020

Facts:

- Section 80-IB of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertakings - Assessment year 2011-12
- Assessee a partnership firm was engaged in business of developers and builders
- It fled e-return of income declaring total income at Nil following claims of deduction under section 80-IB
- During assessment proceedings, assessee stated before Assessing Officer that completion certificate for building in question was under process, though building project was completed
- However, Assessing Officer did not allow claim of assessee for deduction under section 80-IB which was thereafter added to income of assessee and treated as its income
- Commissioner(Appeals) upheld order of Assessing Officer on ground that assessee did not produce completion/occupation certificate within stipulated time limit
- Tribunal noted that assessee had furnished commencement certificate and, occupation certificate issued by Municipal Corporation, besides other documents evidencing full occupation/permission for all blocks of building project within stipulated time limit and accordingly allowed claim of assessee under section 80-IB(10)
- Whether conclusion reached by Tribunal that building was completed within stipulated time was a finding of fact and revenue had not questioned that this finding was incorrect or had not questioned veracity of completion/occupation certificate produced before Tribunal - Held, yes - Whether therefore, no question of law arose from order of Tribunal and accordingly appeal against same was to be dismissed - Held, yes

Issue:

Where Tribunal allowed claim of assessee under section 80-IB(10) finding that building in question was completed within stipulated time, said finding being a finding of fact and revenue not having questioned that this finding was incorrect and had also not questioned veracity of completion/occupation certificate produced before Tribunal, appeal against order of Tribunal would not be maintainable

Held:

- This appeal has been preferred by the revenue under section 260A of the Income-tax Act, 1961 (for short "the Act") against the order dated 3-11-2016 passed by the Income-tax Appellate Tribunal, "D" Bench, Mumbai (for short "Tribunal") in Income-tax Appeal No. 1532/Mum/2014 for the Assessment Year 2011-12.
- The appeal has been preferred projecting the following questions as substantial questions of law :
    1. Whether on the facts and in the circumstances of the case and in law, Tribunal erred in overlooking the categorical finding of the CIT(A) that the assessee had been unable to produce the completion/occupation certificate evidencing the completion of the project till 31-3-2013, and in admitting fresh evidence produced before it for the first time, without recording its satisfaction, in violation of Rule 29 of the ITAT Rules, 1963 ?
    2. Whether on the facts and in the circumstances of the case and in law, Tribunal erred in law by not setting aside the assessment to the file of the Assessing Officer for examination of additional evidence produced by the assessee before the Tribunal ?
- Basic objections of Mr. Walve, learned standing counsel is that Tribunal did not follow the procedure laid down in Rules 29 and 30 of the Income-tax (Appellate Tribunal) Rules, 1963 vide accepting additional evidence adduced by the respondent-assessee. He has also referred to the provisions contained in Section 143(2) of the Act to contend that if at all Tribunal desired to have the additional evidence, respondent-assessee ought to have been relegated to the forum of the Assessing Officer. That having not been done, the same has vitiated the impugned order giving rise to the two aforesaid substantial questions of law.
- To appreciate the contention of Mr. Walve, let us briefly advert to the orders passed by the authorities below.
- Respondent-assessee is a partnership firm engaged in the business of "developers and builders". In the assessment proceeding for the assessment year under consideration, assessee fled e-return of income declaring total income at Nil following claims of deduction under section 80-IB of the Act for an amount of Rs. 7,06,04,247.00. During the assessment proceeding, Assessing Officer queried about the completion certificate of the buildings in question.

Respondent-assessee stated before the Assessing Officer that the completion certificate was under process though the building project was completed. By the assessment order dated 14-3-2013, Assessing Officer did not allow the claim of the assessee for deduction under section 80-IB of the Act which was thereafter added to the income of the assessee and treated as its income.

- Aggrieved by the aforesaid decision of the Assessing Officer, respondent-assessee preferred appeal before the Commissioner of Income-tax (Appeals)-25, Mumbai, also referred to as the first appellate authority hereinafter. In the appellate proceedings too, the first appellate authority noted that respondent-assessee did not produce the completion/occupation certificate within the stipulated time limit i.e. on or before 31-3-2013. Before the appellate authority also, the said certificate was not produced. Accordingly, by the appellate order dated 1-1-2014, the first appellate authority held that the respondent-assessee was not entitled to get deduction under section 80-IB(10) of the Act.
- Respondent-assessee thereafter preferred further appeal before the Tribunal. Tribunal noted that respondent- assessee had furnished the commencement certificate issued by the Bombay Municipal Corporation dated 10-9-2007 and, occupation certificate issued by the Municipal Corporation of Greater Mumbai dated 26-2-2013, besides other documents which clearly shows that there were approvals which cover full occupation/permission for all the blocks of the building project. In view of the above facts, Tribunal vide the order dated 3-11-2016, accepted the contention of the respondent-assessee that the building was completed on 31-3-2013 and occupation in respect of all the blocks of the project were obtained within the stipulated time limit on 31-3-2013. There being no violation of any of the conditions mentioned in Section 80-IB(10)of the Act, the above claim of the respondent-assessee was allowed by the Tribunal.
- In so far contention of Mr. Walve is concerned, we feel that the same is more on form rather than on substance. Even during the assessment proceeding, respondent-assessee had asserted that the completion certificate to be issued by the Municipal Corporation was under process but the project was completed. It has to be noted that the certificate was issued by another authority i.e. Municipal Corporation over which the respondent-assessee had no control. When the completion/occupation certificate was handed over to the respondent-assessee, the same was produced before the Tribunal. We see no harm in the Tribunal taking cognizance of this certificate. In so far reference to Rules 29 and 30 of the Income-tax (Appellate Tribunal) Rules, 1963 is concerned, it is trite that rules and procedures are the handmaid of justice

which are required to be applied to advance the cause of justice and not to frustrate the same.

- Be that as it may, the conclusion reached by the Tribunal that the building was completed within the stipulated time on 31-3-2013 is a finding of fact. Revenue has not questioned that this finding is incorrect or has not questioned the veracity of the completion/occupation certificate produced before the Tribunal. If that be so than it is merely an objection on procedure. In the light of the above, we are of the view that no question of law, much-less any substantial question of law, arises from the order of the Tribunal.
- The appeal is devoid of merit and is accordingly dismissed. No cost..

Principal Commissioner of Income-tax LTU, New Delhi.vs Oriental Insurance Co. Ltd, March 04, 2020

Facts:

- Expenditure incurred in relation to income not includible in total income (Computation of income) - Assessment year 2011-12
- Tribunal dismissed an appeal filed by revenue holding that applicability of section 14A was excluded in relation to computation of income of assessee, an insurance company
- Revenue filed an appeal claiming Tribunal should have remanded said matter to Assessing Officer for computation of income of assessee in terms of first schedule
- Whether since revenue confined its challenge only in respect of applicability of section 14A and its claim was not even a ground urged before Tribunal, there was no fault in order of Tribunal - Held, yes

Issue:

Where Tribunal dismissed revenue's appeal holding that applicability of section 14A was excluded in relation to computation of income of assessee, an insurance company and revenue claimed that matter should have been remanded to Assessing Officer for computation of assessee's income, since revenue confined its challenge only in respect of applicability of section 14A and its claim was not even a ground urged before Tribunal, there was no fault in order of Tribunal

Held:

- The Revenue has preferred the present appeal to assail the order dated 25.02.2019 passed by the Income Tax Appellate Tribunal (ITAT), Delhi Bench 'C', New Delhi in DCIT v. Oriental Insurance Co. Ltd. [IT Appeal No. 485 (Delhi) 2016 preferred by the Revenue in respect of the assessment year 2011-12. The Tribunal has dismissed the said appeal by placing reliance on its earlier order in relation to Respondent-assessee for assessment year 2005-06 which in turn placed reliance on the earlier orders of the Tribunal in relation to the same assessee for the assessment year 2000-01 and 2001-02.
- The submission of Mr. Ajit Sharma, learned Senior Standing Counsel for the Appellant is that the applicability of section 14A of the Income Tax Act, 1961 does not stand excluded upon reading of section 44 read with the first schedule of the Act. He submits that the object of section 14A is to prevent a double benefit being claimed by the assessee, by claiming deduction of expenditure incurred in deriving income which does not constitute part of the total income i.e. the taxable income.
- He further submits that in any event, if in view of the tribunal, section 14A was not attracted, the Tribunal should have at least remanded the matter back to the Assessing Officer to ensure that the computation of income had been done in terms of the first schedule of the Act in relation to the Respondent-assessee, who is carrying on a business of insurance other than life insurance.
- We have heard learned counsels and are of the view that no substantial question of law arises for our consideration. The Tribunal has interpreted section 44 read with the first schedule and concluded that applicability of section 14A is excluded in relation to computation of income of an insurance company. We have examined the relevant provisions. section 44 begins with a non-obstante clause and overrides the other provisions of the Act as mentioned therein including section 14A. We are not convinced with the submission of Mr. Ajit Sharma that section 14A would be applicable in respect of the Respondent. Section 14A does not have independent legs to stand on. Section 14A inter alia begins with the words "for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of expenditure incurred. . . . . .". The chapter in question is chapter IV. This chapter also contains the provisions relating to computation of profits and gains of business or profession. Section 44 specifically excludes the provisions of the Act relating to computation of income, inter alia, those contained in "Section 28 to 43B". Thus, the exclusion would take within its sweepsection 14A which is an exemption for deductions as allowable under the Act, as

provided under section 28 to 43B. Further, section 44 is a special provision applicable in the cases of insurance companies and applies, notwithstanding anything to the contrary contained in the provisions of the Income-tax Act relating to the computation of income chargeable under different heads. For computing the profits and gains of the business of insurance company, the AO had to resort to section 44 and the prescribed rules, and could not have applied section 28 to 43B, since the same were excluded from the purview of section 44. This necessarily includes the exception provision enshrined under section 14A of the Act. Therefore, in our view, the AO could not have travelled beyond section 44 in the first schedule of the Act. Besides, the tribunal has also invoked the rule of consistency since the same view of the Tribunal has prevailed in respect of the earlier assessment years i.e. 2000-01, 2001-02 and 2005-06.

- We also do not find merit in the submission of Mr. Sharma that the Tribunal should have remanded back the matter to the Assessing Officer for computation of income of the Respondent-assessee in terms of first schedule of the Act, since that was not even a ground urged by the Revenue before the Tribunal. At this stage, it is too late in the day for the Revenue to argue that notwithstanding the grounds urged to challenge the order of the CIT (A), the Tribunal should have ventured into examining the merits of the computation of income of the Respondent assessee in terms of section 44 read with the first schedule of the Act. No doubt, the Tribunal is a final fact-finding body. However, when the Revenue confined its challenge only in respect of the applicability of section 14A, we cannot find fault in the impugned order, on the basis of submissions not advanced before the Tribunal. We, therefore do not find any substantial question of law arising in relation to the view taken by the Tribunal.
- Accordingly, the present petition is disposed of

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

SECTION 47(viiab) OF THE INCOME-TAX ACT, 1961 – TRANSACTIONS NOT REGARDS TRANSFER - TRANSFER OF CAPITAL ASSET - NOTIFIED SECURITIES

- In exercise of the powers conferred by sub-clause (d) of clause (viiab) of section 47 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the following securities for the purposes of the said sub-clause, namely:-
  i. foreign currency denominated bond;
  ii. unit of a Mutual Fund;
  iii. unit of a business trust;
  iv. foreign currency denominated equity share of a company;
  v. unit of Alternative Investment Fund,

  which are listed on a recognised stock exchange located in any International Financial Services Centre in accordance with the regulations made by the Securities and Exchange Board of India under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the International Financial Services Centres Authority under the International Financial Services Centres Authority Act, 2019 (50 of 2019), as the case may be

(NOTIFICATION S.O. 986 (E) [NO. 16/2020/F.NO. 370142/22/2019-TPL], DATED 5-3-2020)

SECTION 115AD OF THE INCOME-TAX ACT, 1961 – INCOME OF FOREIGN INSTITUTIONAL INVESTORS FROM SECURITIES OR CAPITAL GAINS ARISING FROM THEIR TRANSFER – TAXABILITY OF – NOTIFIED FOREIGN INSTITUTIONAL INVESTORS

- In exercise of the powers conferred by clause (a) of the Explanation to section 115 AD of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies that a nonresident being an Eligible Foreign Investor which operates in accordance with the Securities and Exchange Board of India, circular IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017, shall be deemed as Foreign Institutional Investor (FII) for the purposes of transactions in securities made on a recognised stock exchange located in any International

Financial Services Centre (IFSC), where the consideration for such transaction is paid or payable in foreign currency.

- Explanation. -for the purpose of this notification, -
    a. "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);
    b. "recognised stock exchange" shall have the same meaning as assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43 of the Income-tax Act, 1961;
    c. the expression "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

(NOTIFICATION S.O. 1057(E) [No. 17/2020/ F. No. 173/10/2014-ITA-I], DATED 13-3-2020)

SECTION 90 OF THE INCOME-TAX ACT, 1961 - AGREEMENT BETWEEN INDIA AND BRUNEI FOR EXCHANGE OF INFORMATION NOTIFIED

- The Agreement between the Government of the Republic of India and the Government of Brunei Darussalam for the exchange of information and assistance in collection with respect of taxes (hereinafter referred to as the Agreement), was signed in New Delhi, India on 28th of February, 2019. The Agreement has been notified in the Gazette of India (Extraordinary) on 9th of March 2020.
- The Agreement enables exchange of information, including banking and ownership information, between the two countries for tax purposes. It is based on international standards of tax transparency and exchange of information and enables sharing of information on request as well as automatic exchange of information. The Agreement also provides for representatives of one country to undertake tax examinations in the other country. Moreover, it provides for assistance in collection of tax claims.
- The Agreement will enhance mutual co-operation between India and Brunei Darussalam by providing an effective framework for exchange of information in tax matters which will help curb tax evasion and tax avoidance.

(Press Release, Dated 17th March 2020)

Case Laws

ACIT v. Sri Subhatosh Majumder (ITA No. 2006/Kol/2017, AY 2011-12)

Facts

- Recently, the Kolkata Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Sri Subhatosh Majumder1 (the taxpayer) dealt with the taxability of services in the field of Intellectual Property Rights (IPRs) rendered by foreign attorneys to the Indian taxpayer2.
- In the instant case, the taxpayer is a Patent Attorney. The taxpayer3 paid fees in respect of professional services rendered by foreign attorneys in the field of specialised services in IPRs. The Assessing Officer (AO) observed that the payments made by the taxpayer to the foreign attorneys were in connection with profession carried on by him in India. Therefore, such payments would fall within the definition of FTS4.
- However, since the taxpayer had failed to deduct tax at source on such payment5, the AO disallowed the same.

Issue:

Payments to foreign attorneys for rendering services in the field of IPRs are FTS under Section 9(1)(vii) of the Income-tax Act

Held

- The Tribunal observed that in the present case admittedly payments were made to foreign attorneys who were professionally qualified to render legal services. Under the relevant Patent/IP laws, the applicant or attorney representing him was required to comply with the technical formalities as well as legal procedures contained in relevant laws, rules and regulations of the countries where the patent/IPR was sought to be registered. Having knowledge, experience and expertise in the specialised field of IP laws was an essential pre-requisite for rendering the services.
- Further the foreign attorneys not only advised the taxpayer in preparing the documentation necessary for submission of applications but also represented the applicants before the Patent/IP authorities and provided clarifications and explanations necessary for grant of registration.
- The Tribunal relied on the Supreme Court's decision in the case of GVK Industries Ltd7 and observed that the contractual terms between the taxpayer

and his client nowhere prescribed that the client would be reimbursing the costs and expenses incurred by the taxpayer while discharging his obligations under the terms of engagement. Foreign attorneys performed the services at the behest of the taxpayer for which the requisite invoices were raised and these were paid by him. Prior to making the remittances to the foreign attorneys, the taxpayer had filed certificates with his banker in the prescribed Form 15CB certified by a Chartered Accountant. In the said certificate, these payments were characterised as fees for professional services.

- The services of the foreign attorneys were not engaged by the taxpayer's clients in whose favour the patents or IPRs were registered in foreign countries. Instead the services were engaged by the taxpayer while in discharge of his professional obligations in India. As such, the source of income in connection with which the services of foreign attorneys were used, was located in India. Merely because the Patents or IPs registered in foreign countries granted protection to the Indian clients within the foreign territories, it did not create any 'source of income' for such clients outside India.
- Therefore, the payments made to the foreign attorneys do not fall within the exception of FTS taxability under the Act8. The decisions9 relied on by the taxpayer were distinguishable on the facts of the present case
- The payments made to foreign associates or foreign attorneys came within the ambit of FTS taxability provisions10 and deemed to accrue or arise in India. Thus, the taxpayer had obligation to deduct tax at source under the provisions of the Act.
- With respect to the alternative contention of the taxpayer of the taxability of FTS under a tax treaty, the Tribunal directed the tax authorities to examine whether the payments were non-taxable in India because of the beneficial provisions of the tax treaty with respective countries.

REGULATION GOVERNING INVESTMENTS

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Foreign Exchange Management (Manner of Receipt and Payment) (Second Amendment) Regulations, 2020

- In exercise of the powers conferred by Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 [Notification No. FEMA 14(R)/2016-RB dated May 02, 2016] (hereinafter referred to as 'the Principal Regulations'), namely:
- In the Principal Regulations,
  i. in sub-Regulation 1 (A) of Regulation 3, the following shall be substituted, namely:
  "Members of Asian Clearing Union (ACU)"
  ii. in sub-Clause (a) of Clause (i) of sub-Regulation (1)(A) of Regulation 3, the following shall be substituted, namely:
  "Receipt for export of eligible goods and services by debit to the ACU Dollar account and / or ACU Euro account and / or ACU Japnese Yen account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the ACU Dollar account and / or ACU Euro Account and / or ACU Japnese Yen account of the authorized dealer maintained with the correspondent bank in that member country;"
  iii. in sub-regulation 1(A) of Regulation 5, the following shall be substituted, namely:
  "Members of Asian Clearing Union (ACU)"
  iv. in sub-Clause (a) of Clause (i) of sub-Regulation (1)(A) of Regulation 5, the following shall be substituted, namely:
  "Payment for import of eligible goods and services by credit to ACU Dollar account and / or ACU Euro account and / or ACU Japnese Yen account in India of a bank of the member country in which the other party to the transaction is resident or by debit to the ACU Dollar account and / or ACU Euro account and / or ACU Japnese Yen account of the authorized dealer maintained with the correspondent bank in that member country:"

[FEMA 14(R)/(2)/2020-RB, dated on 04 March 2020]

Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020

- In exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of section 7 and clause (b) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015- RB dated January 12, 2016] (hereinafter referred to as 'the Principal Regulations'),
- In the Principal Regulations, in regulation 9, in sub-regulation (1) and sub-regulation (2)(a), for the words “nine months”, the words “nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time” shall be substituted. Similarly, in sub-regulation (1) (a), for the words “fifteen months”, the words “fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time “shall be substituted.
- In Regulation 9 (1)(b), for the words “period of nine months or fifteen months, as the case may be”, the words “said period” shall be substituted.
- In proviso to Regulation 9 (2)(a), for the words “period of nine months”, the words “said period” shall be substituted.

[FEMA 23(R)/(3)/2020-RBdated 31st March, 2020]

COMPANY LAW

Special Measures under Companies Act, 2013 (CA-2013) and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak

In order to support and enable Companies and Limited Liability Partnerships (LLPs) in India to focus on taking necessary measures to address the COVID-19 threat, including the economic disruptions caused by it, the following measures have been implemented by the Ministry of Corporate Affairs to reduce their compliance burden and other risks: -

- No additional fees shall be charged for late filing during a moratorium period from 01sr April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large, but also enable long-standing noncompliant companies/ LLPs to make a 'fresh start'. The Circulars specifying detailed requirements in this regard are being issued separately.
- The mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA-13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one{ime relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13.
- The Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2O2O-2O21 instead of being applicable from the financial year 2019-2020 notified earlier. This will significantly ease the burden on companies & their auditors for the financial year 2019-20. A separate notification has been issued for this purpose.
- As per Para Vll (1) of Schedule lV to the CA-13, lndependent Directors (lDs) are required to hold at least one meeting without the attendance of Non independent directors and members of management. For the financial year 2019-20, if the lDs of a company have not been able to hold such a meeting, the same shall not be viewed as a violation. The lDs, however, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.
- Requirement under section 73(2)(c) of CA-13 to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be comolied with till 30th June 2020.

- Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with till 30th June 2020.
- Newly incorporated companies are required to file a declaration for Commencement of Business within '180 days of incorporation under section 10A of the CA-13. An additional Period of 180 more days is allowed for this compliance.
- Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the CA-1 3 shall not be treated as a non- compliance for the financial year 2019-20.
  [F.No. 2/1/2020-CL-V, dated 24th March, 2020]

Clarification on contribution to PM CARES Fund as eligible CSR activity under item no. (viii) of the Schedule VII of Companies Act, 2013.

- The Government of India has set up the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund) with the primary objective of dealing with any kind of emergency or distress situation such as that posed by COVID 19 pandemic.
- Item no. (viii) of the Schedule VII of the Companies Act, 2013, which enumerates activities that may be undertaken by companies in discharge of their CSR obligations, inter alia provides that contribution to any fund set up by the Central Government for socio-economic development and relief qualifies as CSR expenditure. The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, it is clarified that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013.
  [CSR-05/1/2020-CSR-MCA, dated 28th March, 2020]

ACCOUNTS & AUDIT

ICAI-guidelines-COVID-Preparation of Financials Statements

In this difficult environment, each regulatory body are releasing relief measures and guidelines for easing out the impact of COVID 19. On the financial and compliance front, announcements have been flowing from the Government authorities in the form of deferment of statutory due dates or relaxation in payment terms to overcome the financial crisis being faced due to lock-down.

Institute of Chartered Accountant of India (ICAI) has come out with its guidelines for care to be taken by the PREPARER of the financial statements and the AUDITOR. This guidance from the ICAI addresses the common issues which would be encountered on account of COVID 19 while preparing the financial statements and its audits and how they should be addressed. For better understanding of the quarterly and year-to date financial results, separate disclosure may be presented in financial statement for aggregate loss incurred due to COVID 19 being irregular and not ordinary in nature. This document focus on guidance provided by ICAI in the areas relevant for the preparer of financial statement and separate document is released for guidance to auditors.

Impact of corona virus on financial reporting – Assets & Liabilities

- Inventory: Inventories would have piled up since due to lock-down, supply chain has come to halt. Also fresh production activity is also stopped. This will require entities to examine the need to write down the inventories where the net realisable value is lower than cost price. Also the overhead costs incurred during the lock-down period cannot be loaded to the cost of inventory and will have to be charged off as expense immediately.
- Impairment test for assets: Reassess the need for impairment of non-financial assets like property, plant & equipments, intangibles and goodwill, considering reduced economic activity, change in financial forecast and budgeted cash flows, etc. Management will have to append the explanatory note in financial statements in regard to impairment test carried out along with sensitivity analysis.
- Change in useful life of fixed assets: During lock-down the assets are not functional and kept idle. The management should reassess whether there is any change required in the useful life / residual life of such property, plant and equipment.
- Fair value of financial assets / instruments: Current market sentiments are not the correct representative for the market prices as at year-end. Accordingly,

additional care to be taken in case of the financial assets and financial instruments which are mark-to-market price at the period end.

- Trade receivables – Expected Credit Loss: Year-end outstanding trade receivables would certainly rise due to liquidity constraint being faced by the customers in releasing the over-due payments. In such scenarios, management need to estimate and provide for bad debts and expected doubtful debts.
- Leased assets: In case of modification in lease arrangements like waiver or concession in rental payouts, financial effect need to be factored in financial statement. Further, in case of non-cancellable lease arrangement which are onerous in nature, provision for impairment of leased assets also to be considered.
- Capitalization of borrowing cost: During this lock-down period, the construction projects have come to halt. In such scenario, borrowing cost incurred during such period does not form part of the cost of qualifying asset and will be charged off as expense immediately.
- Going concern assumption need to be reassessed by management: The management will have to assess the impact of COVID 19 on the going concern assumption and accordingly measure its assets and liabilities. Management should include appropriate explanatory note for its impact on the financial statement as on balance sheet date and next 12 months.
- Impact of COVID 19 on significant uncertainties: Financial statement should include disclosure of significant recognition and measurement uncertainties that might have been emerged by the outbreak of the COVID -19 in measuring various assets and liabilities. Management should also disclose how they have dealt with the impact of COVID -19 on the financial positon and financial performance of the entity.

Impact of corona virus on financial reporting – Revenue & Expenses

- Revenue recognition: Measurement of revenue need to be reassessed considering the impact of COVID 19 on expected increase in sales return, primary and secondary discounts to liquidated the inventories, etc. Additionally, disclosure is required for revenue not recognized due to uncertainty of cash flows.
- Recognition of insurance claims filed due to loss on account of COVID 19: Business interruption insurance claim to be recognized as income in books only if the recovery is virtually certainty else it would be in nature of contingent nature. Disclosure of such contingent assets would be required in financial statement prepared under Indian Accounting Standard.
- Re-measurement of deferred taxes: Management should reassess the recognition of deferred taxes like deferred tax asset recognized on carry-

forward business losses, impairment losses, deferred tax liability on distributable profits from subsidiaries, etc

Guideline for auditors

- Auditors approach will certainly be more skeptical to address the risk involved in closing the quarter and year ended 31st March 2020. Alternate audit procedures should be applied to satisfy the assertions as at balance sheet date. Additionally, auditors may draw attention in their report for relying on the key management estimates and assumptions.

GOODS AND SERVICE TAX

Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal

- Various representations have been received wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. It has been gathered that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed. Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act")
- The matter has been examined in detail. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.
- Appeal against an adjudicating authority is to be made as per the provisions of Section 107 of the CGST Act. The sub-section (1) of the section reads as follows: -

  "107. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person."
- Relevant rules have been prescribed for implementation of the above Section. The relevant rule for the same is rule 109A of Central Goods and Services Tax Rules, 2017 which reads as follows

  "109A. Appointment of Appellate Authority.- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

  (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

  (b) any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,

within three months from the date on which the said decision or order is communicated to such person."

- Hence, if the order has been passed by Deputy or Assistant Commissioner or Superintendent, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Joint Commissioner. Further, if the order has been passed by Additional or Joint Commissioner, appeal has to be made to the Commissioner (Appeal) appointed for the same.
- The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the CGST Act which reads as follows: -
  "112 (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal."
- The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
- Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

  [Circular No.132/2/2020-GST, dated 18th March 2020]

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