



## The Chamber of Tax Consultants challenges the constitutional validity of ICDS

### Background

Recently, the Chamber of Tax Consultants (CTC) has filed a writ petition<sup>1</sup> before the Delhi High Court challenging the constitutional validity of Section 145 of the Income-tax Act, 1961 (the Act) requiring compliance with Income Computation and Disclosure Standards (ICDS). The petitioner has also challenged Notification No.87/2016<sup>2</sup> and Circular No. 10/2017<sup>3</sup> requiring compliance to 10 ICDS.

### Contention before the Delhi High Court

- As per the news reports<sup>4</sup>, the petitioner contended that the 10 ICDS notified vide Central Board of Direct Taxes (CBDT) Notification<sup>5</sup> are contrary to the settled judicial precedents by various Courts<sup>6</sup>. The petitioner further contended that the central government (through CBDT), notified ICDS, in exercise of delegated legislation, cannot have such 'uncontrolled, unfettered or absolute powers' while prescribing ICDS in terms of Section 145(2) of the Income-tax Act, 1961 (the Act), so as to nullify the effect of various Supreme Court/High Court decisions.
- The petitioner contended that the exercise of such powers by the central government clearly amounts to the transgression of powers and violation of the mandate laid down in Article 141 and Article 144 of the Constitution of India. By notifying the 10 ICDS, CBDT has violated the mandate laid down in Article 265 of the Constitution of India, as per which no tax shall/can be levied or collected except by authority of law.

- The petitioner also contended that a circular cannot override the judicial decisions rendered on the interpretation of the law and statutes unless it is for the benefit of the taxpayer. The CTC also assails ICDS on the grounds that it violates Article 19(1)(g)<sup>7</sup> of the Constitution, arguing that it will increase compliance burden, and taxpayers will have to spend considerable amount of time, energy and man hours in preparing and reconciling income as per ICDS and as per the current accounting standards.
- The petitioner contended that the requirement for compliance of the ICDS would arise at the time of filing of returns and therefore it is important that the petition be heard at an early date after completion of pleadings.

### High Court's decision

- The Delhi High Court has directed the tax department to file a reply not later than four weeks and in any event on or before 11 August 2017. A rejoinder thereto is to be filed within two weeks thereafter. The High Court has fixed hearing on 28 August 2017.
- The High Court stated that in the meantime, the pendency of this petition will not preclude respondents from holding consultations with the petitioners and other professional bodies and consider the representations already stated to have been made by them on the issue.

<sup>1</sup> The Chamber of Tax Consultants & Anr v. Union of India [W.P(C) 5595/2017] – Delhi High Court

Source - <http://delhihighcourt.nic.in>

<sup>2</sup> CBDT Notification No.87/2016, dated 29 September 2016

<sup>3</sup> Circular No. 10/2017, dated 23 March 2017

<sup>4</sup> Taxsutra.com

<sup>5</sup> CBDT Notification No.87/2016, dated 29 September 2016

<sup>6</sup> ICDS IX dealing with borrowing costs is contrary to the Supreme Court decision in the case of CIT v. Bokaro Steel Ltd. – [1999] 236 ITR 315 (SC)], ICDS IV dealing with revenue recognition are also contrary to various Supreme Court and High Court decisions on the contentious issues

<sup>7</sup> Article 19(1)(g) in The Constitution Of India 1949 - Protection of certain rights regarding freedom of speech etc. - All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business

## Our comments

The Central Government has notified the 10 standards under the provisions of Section 145(2) of the Act. These standards have a far-reaching impact as they are applicable to all types of taxpayers following mercantile system of accounting and for computing income under the heads 'Profits and gains of business or profession' and 'Income from other sources'.

The Income Tax Simplification Committee headed by Justice Easwar has noted in its report that many of the provisions of the ICDS are capable of generating a legal debate about which at present there is no clarity. Also, the taxpayers are already grappling with different regulatory changes like Companies Act, 2013, Ind-AS, Goods and Services Tax, etc. Hence, various representations were made that the industry should be allowed more time to deal with another change of this nature and implementation of ICDS should be deferred. In spite of such a recommendation by the committee, the Government has decided to go ahead with the implementation of ICDS from Assessment Year (AY) 2017-18.

Tax professionals are going to face multiple challenges while finalising returns for AY 2017-18 being the first year of implementation of ICDS. These standards are going to have a material impact especially for large companies and are likely to result in litigation due to the absence of clarity on various issues. Various representations were also made to scrap the 10 ICDS notified by CBDT.

The Indian system of governance is broadly divided into three wings i.e. legislative wing, judicial wing and executive wing. The legislature delegates certain powers to executives. In this context, it would be interesting to note the decision of seven-judge bench of the Supreme Court in case of Harishankar Bagla<sup>8</sup> wherein it was held that while delegating powers of legislation to executive, the legislature must declare the policy of the law and the legal principles which are to control the given legislation and must provide a standard to guide the officials or body in power to execute the law. Further, in the case of Vasantlal Maganbhai Sanjanwala<sup>9</sup>, the Supreme Court held that the legislature has to lay down the policy and principle to afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf.

It would be interesting to see how Delhi High Court would deal with the present petition. If the High Court upholds the taxpayer's writ, the tax department may challenge the High Court's decision. The decision is expected to have far reaching implications on the taxpayers since ICDS is now mandatory from AY 2017-18.



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<sup>8</sup> Harishankar Bagla And Another v. The State Of Madhya Pradesh [AIR 1954 SC 465]

<sup>9</sup> Vasantlal Maganbhai Sanjanwala v. The State Of Bombay [AIR 1961 SC 4]

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