



India tax konnnect

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Direct Tax

Government further extends the due date of furnishing of Income Tax Returns and Audit Reports

In view of the spread of COVID-19 pandemic, the Ministry of Finance issued a press release and a notification to extend various due dates (i.e. Income-Tax Returns, Tax Audit report, Transfer Pricing report, Payment of self-assessment liability in the case of small and middle-class taxpayers, etc.) which are specified as follows:

- The due date for furnishing of Income Tax Returns for the following persons has been extended to 31 January 2021:
 - Person other than a company or a partner of a firm who are required to get their accounts audited
 - A company

- Taxpayers who are required to furnish report in respect of international/specified domestic transactions.

- The due date for furnishing of Income Tax Returns for the other taxpayers [for e.g. Individuals/non-audit cases for whom the due date was 31 July 2020] has been extended to 31 December 2020.
- The date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction has been extended to 31 December 2020.
- The due date for payment of self-assessment tax for taxpayers whose accounts are required to be audited or where a report is required to be submitted in respect of international/specified domestic transactions and whose self-assessment tax liability is up to INR 1 lakh has been extended to 31 January 2021. For the other taxpayers whose due date for furnishing of Income Tax Returns was 31 July 2020 has been extended to 31 December 2020.

Decisions

Depreciation allowed on goodwill arising from amalgamation

The Ahmedabad Tribunal¹ dealt with the issue of claim of depreciation on goodwill arising in a scheme of amalgamation. The Tribunal held that such goodwill is a part and parcel of intangible assets. Hence, the taxpayer is eligible for depreciation on the goodwill. The Tribunal held that the taxpayer had not acquired any goodwill from the amalgamating/transferor company and hence restrictions with respect to depreciation, actual cost of transferred asset and written down value² did not apply in the present case. Further,

¹ Urmin Marketing P. Ltd. v. DCIT - [ITA.No.1806/2019 AY 2015-16] (Ahm)

² 6th proviso to Section 32, Explanation 7 to Section 43(1) and Explanation 2 to Section 43(6)(c)

the transaction cannot be regarded as a colorable device merely because the taxpayer had claimed depreciation on goodwill in the scheme of amalgamation.

Foreign exchange gain on redemption of shares in foreign subsidiary is not taxable as capital gains in India

The Delhi Tribunal³ held that the foreign exchange gain realised on the amount received on redemption of shares in foreign subsidiary is not taxable in India as there was no gain on transfer/redemption of the shares in so far as the shares were redeemed at par value. The exchange gain was only a consequence of repatriation of the consideration received in Euro to INR and cannot be construed to be a part of consideration received on redemption of shares. Thus, the capital gain provisions under Section 45 does not apply.

TDS provisions are not applicable on foreign employees who come to India for project work

The Delhi Tribunal⁴ held that the salary paid to a foreign employee for a project work in India was not liable for TDS. The salary was paid abroad by the foreign company to its employees and the head office had apportioned a part of the salary expenses to the taxpayer which the taxpayer had debited and reimbursed to the Head Office without any mark up. Therefore, the disallowance provisions of Section 40(a)(i) are not applicable. The provisions of TDS are not applicable when the basic requirement is not fulfilled i.e. the sum paid should be chargeable to tax in India.

³ Havells India Ltd. v. ACIT - [ITA No. 4695/2012 AY 2008-09] (Del)

⁴ Ecorys Nederlands B. V. v. ADIT (ITA No. 6494/2016, AY 2011-12) (Del)

⁵ CBDT Notification No. 85 of 2020, dated 27 October 2020

Notification / Circular / Press Release

- In October 2020, the Ministry of Finance issued a Notification⁵ and a Circular⁶ relating to Direct Tax Vivad se Vishwas Act, 2020 (the Act / the Scheme) to provide that where a declaration is filed under the Scheme on or before 31 December 2020, the declarant can make payment without any additional amount on or before 31 March 2021.
- On 29 October 2020, CBDT amended the Equalisation Levy Rules⁷ to extend their application to the new Equalisation levy at the rate of 2 per cent. The amended Rules have come into effect from 28 October 2020. New Rules cover e-commerce operators within its ambit and amend Form No. 1 (Statement of specified services or E-commerce supply or services), Form No. 3 [Appeal to Commissioner of Income-tax (Appeals)] and Form No. 4 (Appeal to Income-tax Appellate Tribunal) to cover the consequential changes.

BEPS/MLI

On 18 November 2020, OECD released⁸ the latest MAP statistics covering 105 jurisdictions and almost all MAP cases worldwide. As per these statistics, there is an increase in the number of MAP cases initiated. The number has nearly doubled since 2016. Around 85 per cent of the MAP concluded for Transfer Pricing cases in 2019 fully resolved the issue (compared to 80 per cent in 2018), which reflects an improvement in the collaborative approach taken by competent authorities. Further OECD has also presented 2019 MAP

⁶ Circular 18/2020, dated 28 October 2020

⁷ CBDT Notification No. 87 of 2020, dated 29 October 2020

⁸ Source: OECD Website

awards. The collaborative award for the pairs of jurisdictions that dealt the most effectively with their joint caseload were India-Japan for transfer pricing cases and Norway-United States for other cases.

Indirect Tax

High Court Orders

Statutory mandate of serving SCN electronically should be strictly followed

The High Court observed⁹ that under the GST law, the mode prescribed for communication of an SCN/order is by way of uploading the same on the website of the revenue. In the instant case, the revenue authorities had communicated the impugned SCN/order via an email. Subsequent to the SCN, the demand raised by the revenue authorities was challenged by the petitioner on the ground that the foundational SCN/order was never communicated to the petitioner.

On the bare perusal of the provisions contained under the GST law and facts of the case, the Court reiterated the principle of law that when a particular procedure is prescribed to perform a particular act then all the other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed.

Basis the above principle and the fact that the statutory procedure for communicating SCN/notice has not been followed in the instant case, the impugned demand raised by the revenue authorities was ordered to be struck down.

⁹ Shri Shyam Baba Edible Oil [W.P. no. 16131/2020]

Commencing of adjudication proceedings after 13 years of issuance of SCN is untenable in law

The High Court in the instant case observed¹⁰ that the revenue authorities had kept the SCN in the call book. The delayed adjudication of the matter after more than a decade defeats the very purpose of issuing SCN. When a SCN is issued to a party, it is expected that the same would be taken to its logical consequence within a reasonable period so that a finality is reached. A period of 13 years cannot be construed to be a reasonable period and the petitioner cannot be faulted for taking a view that the revenue authorities has decided not to proceed with the SCN.

Based on the above, the Court held that commencement of adjudication proceedings after inordinate delay of 13 years post-issuance of SCN is untenable.

GST Authorities cannot resort to any act of violence or torture in the furtherance of any inquiry proceedings

The High Court¹¹ in a recent allegation of physical abuse by the DGGSTI authorities during the conduct of an inquiry proceeding have stated that:

“Merely because the authorities under the CGST Act are not to be treated as police officials, they cannot claim any immunity if they indulge in acts of physical violence against persons they suspect of being guilty of tax evasion.”

The Court further opined that the authorities cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forcibly keeping them in their custody for indefinite period. If it is done, it has to be construed an informal custody and the law relating to an accused in

¹⁰ Parle International Limited [W.P. no. 12904 of 2019]

¹¹ Agrawal Foundries [W.P. no. 28268 of 2019]

custody has to be expressly or impliedly applied.

Further, on the fact that the search operations were continued well past midnight and summons were issued to petitioner to appear at 00:30 hrs, the Court held that they cannot accept the plea of the authorities that the search proceedings were carried out under proper and applicable law.

Further, relying on the divisional bench judgement in the P.V. Ramana Reddy case the Court stated that the inquiry by the officers of the GST Commissionerate is not a criminal proceeding, but it is a judicial proceeding. The proper officer under the CGST Act has the power to summon a person either to give evidence or to produce a document. If such person who is issued summons gives false evidence or fabricates false evidence or intentionally offers any insult or causes any interruption to any public servant, he would be liable for punishment under the provisions contained under the IPC. The High Court can entertain an application for pre-arrest protection, however such power should be exercised by the High Court sparingly.

Basis the above observation, the Court held that the GST authorities shall not use any act of violence or torture against the petitioner or its employees in furtherance of an inquiry proceedings.

GST Notification updates

Penalty waived for non-compliance of QR code provision for B2C supplies

CBIC has issued notification¹² to conditionally waive penalty for non-complying with the provision of QR code for B2C supplies made during the period commencing from 1 December 2020 to 31

¹² Notification no. 89/2020-Central Tax dated 29 November 2020

March 2021. The waiver of penalty is subject to a condition that the said registered person complies with the QR code provision with effect from 1 April 2021.

Eight-digit HSN code prescribed for specified goods

CBIC has issued notification¹³ to mandate mentioning of 8-digit HSN code on tax invoices by taxpayer on supply of 49 specified chemicals.

¹³ Notification no. 90/2020-Central Tax dated 1 December 2020

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