



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Western India Chartered Accountants Newsletter

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Powered by Professionalism
Driven by Values



Dear Professional Colleagues,

वक्रतुण्ड महाकाय सूर्यकोटि समप्रभ ।

निर्विघ्नं कुरु मे देव सर्वकार्येषु सर्वदा ॥

The season of festivities has begun. We welcome Shri Lord Ganesha, who has a huge body, curved elephant trunk and whose brilliance is equal to billions of suns. The significance of

Lord Ganesha: Big Head – Think Big, Learn More, Use your Intellect to your Fullest Potential, Large Ears – Listen More, Small Mouth – Speak Less, Small Eyes – Concentrate, Trunk – High Efficiency and Adaptability, Upraised Hand – Protection. We need to develop the skills to think big, listen more, speak less, concentrate on work and goals, be adaptive to the changes and deliver with high efficiency for managing complex issues in the VUCA environment and achieving adaptive advantage. At this juncture, I remember the words of Jesse Owens “We all have dreams. But in order to make dreams come into reality, it takes a lot of determination, dedication, self-discipline, and effort.”

Lord Ganesha shows the *abhaya* (don't fear) gesture by holding a tusk in his hand to assure us complete safety. A Chartered Accountant plays a stellar role and is entrusted to carry its attested function without fear to protect the stake holders. Mahatma Gandhi has said that “Truth never damages a cause that is just.”

At present, the economic environment has posed various challenges. The inverse interest curve also projects the recession in global economies. The Central Government has announced the first round of measures to propel the economy forward. It is believed that Lord Ganesha will bring prosperity if his trunk is touching the ‘Modak’ (laddu). Let us pray to Lord Ganesha to bless us all with prosperity.

“Be more dedicated to making solid achievements than in running after swift but synthetic happiness.”
A. P. J. Abdul Kalam.

It is our endeavour to serve in the best possible manner members of the region & we are committed towards the same. WIRC continuously innovates to find better ways of doing things and strives for professional excellence. One amongst them was the recently held grand and successful ‘Regional Conference – AWAKE – Arise With Aim of Knowledge Enrichment’. It was the first & foremost initiative of WIRC to provide free access to Cloud based Accounting Software, Office Automation & Practise

Management Software as well as a Global Forex Card to all participants of the Regional Conference. I am grateful to the ICAI torch bearers – President, Vice President, Colleagues in the Central & Regional Council, all the Speakers and Panellists, Branch Committees, Study Circle core teams, Sponsors, Participants, and all the members who have directly & indirectly provided support towards making the 34th Regional Conference a truly memorable event.

From February 25, 2019 till date, we have tried to provide the best support to members by organising innovative qualitative programs, releasing various publications and making representations at various levels for the benefit of members & society at large.

In the days to come, WIRC is organising the Banking Summit, IT Conclave – Profession 2.0 – Building Digital Competency, IDTRC – GST 2.0, National Women Conference, Capital Market Summit, International Tax Conclave and various other highly relevant programs which Members can take benefit from.

We have set high targets and planned massive ‘Career Counselling & Guidance Seminars’ at various colleges in Mumbai and across the Region to guide students towards selecting a career in Chartered Accountancy. I invite members to join as faculty for career guidance programs to bring awareness about the CA course amongst students.

My compliments to the Amravati Branch for organising a successful National Conference ‘Pragya Chakshu’ and to the Ahmednagar Branch for the successful National Residential Refresher Course ‘Vibrant’ at Shirdi.

I am indeed saddened for the people affected by the devastating flood in various parts of the Western Region. We at WIRC have created the fund ‘ICAI – Western Region Relief Fund’ for supporting the affected people. My humble request to all members is to generously donate for this cause. *‘We cannot control the wind, but we can direct the sail’.*

On the occasion of Samvatsari Mahaparv – Festival of Forgiveness, I say with folded hands, If I have hurt you, knowingly or unknowingly, in thought, word or deed, then I seek your forgiveness. Michhami Dukkadam....

With Best Wishes,

Priti Savla

CA. Priti Paras Savla
Chairperson

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WIRC Celebrates 73rd Independence Day at ICAI Tower, BKC, Mumbai

Launch of Revamped WIRC Website and Article Vacancy Portal



CA. Sachin Rokade, CA. Maitri Chheda, CA. Dinesh Tejwani, CA. Prafulla Chhajed, President, ICAI, CA. Yashwant Kasar, Treasurer, WIRC, Chief Guest CA. Farokh N. Subedar, CA. Atul Kumar Gupta, Vice President, ICAI, CA. Priti Savla, Chairperson, WIRC, CA. Umesh Sharma, Vice Chairman, WIRC

Seminar on GST Annual Return & Audit Documentation



CA. Akshay Tambe, CA. Manish Gadia, RCM, CA. Ashit Shah, Faculty, CA. Priti Savla, Chairperson, WIRC, CA. Raj Khona, Faculty, CA. Kamlesh Kothari



CA. Rajat Talati



CA. Keval Shah

National Conference at Amravati



National Residential Refresher Course at Shirdi





Date & Day	Time & Fees	Topics	Speakers	Regional Council Members (Chief Co-ordinators)	Co-ordinators
05/10/2019 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ` 1,416/- (Incl. GST)	Seminar on Forensic Audit <ul style="list-style-type: none"> Window to the World of Frauds, Why frauds occurs, Types of frauds, Fraudster behaviour, Simple but effective forensic tests on documents and spreadsheets Fraud Investigative Methods, Novel and Traditional methods of fraud detection and investigation. How to spot red Flags? Computer Aided Audit Tools and Techniques, MS Excel as a CAAT tool, How to find latent errors and omissions in spreadsheets and data and how to spot patterns of fraudulent transactions. Sampling Techniques, The 8 point CAAT technique Typical case studies, Interviews, Field investigation & Surveillance – Overview in the Investigation Process. Case studies and Conclusion 	CA. Chetan Dalal CA. Mahesh Bhatki CA. Jatin Jhaveri CA. Rajan Gupte CA. Govindsingh Purohit	CA. Arpit Kabra 9819007027 CA. Jayesh Kala 9820010113 CA. Abhijit Kelkar 9422126890	CA Gautam Mota 9594339945 CA. Rahul Soni 9773123976 CA. Hetal Sangoi 9022211246
09, 11, 14, 16 & 17/10/2019 Wednesday, Friday, Monday & Thursday 15 CPE Hrs	4.00 p.m. to 8.00 p.m. ` 3,540/- (Incl. GST)	IDT Refresher Course – GST 2.0 Wednesday, 9th October, 2019 <ul style="list-style-type: none"> Inauguration and Overview of GST, Act & policy Issues in supply & valuation Friday, 11th October, 2019 <ul style="list-style-type: none"> GST New returns Intricacies in GST audit Monday, 14th October, 2019 <ul style="list-style-type: none"> Issues in place of supply Import, exports & cross charge mechanism Wednesday, 16th October, 2019 <ul style="list-style-type: none"> Sabka vikas sabka vishwas Interest, Penalties & adjudication under GST Thursday, 17th October, 2019 <ul style="list-style-type: none"> Recent Court Decisions and Advance Rulings Brain Trust 	CA. Upender Gupta* Commissioner GST, CBEC CA. Udayan Choksi CA. Mandar Telang Eminent Faculty CA. A. R. Krishnan CA. Rohit Jain Eminent Faculty Adv. Shailesh Sheth Adv. L. Badri Narayanan CA. S. S. Gupta CA. Bhavna Doshi	CA. Umesh Sharma 9822079900 CA. Yashwant Kasar 9822488777 CA. Vikash Jain 9327715892	CA. Sanjay Gajra 9821441740 CA. Chintan Rambhia 9867383060 CA. Sachin Maher 9833982729 CA. Heenal Shah 9819758647

Hotel ITC Grand Central, Parel, Mumbai

12/10/2019 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ` 2,360/- (Incl. GST)	Banking Summit <ul style="list-style-type: none"> Banking in current turbulent environment Panel Discussion Bank Finance – various schemes & options Panel Discussion Forex loans, hedging – Intricacies & benefits Alternate funding options Panel Discussion 	Eminent Faculties	CA. Hitesh Pomal 9824049402 CA. Sushrut Chitale 9821112904 CA. Jayesh Kala 9820010113	CA. K V S Shyamsunder 9819660635 CA. Arvind Nagda 9322276820 CA. Chirag Vajani 9833160607
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Yogi Sabhagruh, Dadar, Mumbai

18/10/2019 Wednesday 3 CPE Hrs	5.00 pm to 08.30	Lecture Meeting <ul style="list-style-type: none"> CA - Powered by professionalism; Driven by values Recent Amendments in GST 	Pujya Gnanvatsal Swamiji CA. Sunil Gabhawalla	CA. Rakesh Alshi 9819427242 CA. Umesh Sharma 9822079900 CA. Yashwant Kasar 9822488777	CA. Hemant Joshi 9821127103 CA. Hinesh Doshi 9820232635 CA. Premal Gandhi 9324383636
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* Subject to Confirmation



DIRECT TAX – LAW UPDATE CA. Haresh P. Kenia, CA. Deepak Lala



Finance (No.2) Bill, 2019

264 Taxman (st.) 1.

A bill to give effect to the financial proposal for the financial year 2019-20 as introduced in Lok Sabha on 5/7/2019. The finance bill, speech of Minister of Finance Nirmala Sitharaman and Memorandum explaining the provisions relating to Direct Taxes are available on above citation of Magazine.

Finance (No.2) Act, 2019

264 Taxman (st.) 213

An Act to give effect to the financial proposal of the central government for the financial year 2019-20 as assented by president of India on 1/8/2019. The Act may be called Finance (No.2) Act, 2019. The certain provisions are deemed to have effect from 1st April, 2019. The certain provision are came to effect on such date as the central government may notify in the official gazette specify.

Section 139-Income tax return – Extension of Due date of filing Income tax return for the Assessment year 2019-20

264 Taxman (st.) 195

The CBDT *vide* circular F No. 225/157/2018/ITA.II dated 23/7/2019 hereby extend the “due date” as prescribed u/s. 139(1) of the Act for filing Income tax returns from 31st July 2019 to 31st August 2019 in cases of all tax payers who are liable to file their Income tax returns by the due date. The due date for filing Income tax return for the assessment year 2019-20 is 31st July 2019. The CBDT has clarified that the some of the tax payer are facing difficulties in filing their Income tax return due to various reason including extension of due date for issue of Form 16 for the assessment year 2019-20.

DTAA – Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries – China – Amendment in notification No. GSR 331 (E) dated 5/4/1995

264 Taxman (st.) 205

The Central Government *vide* notification no SO 2562 (E) {No. 54/2019(F. No. 503/02/2008-FTD-II)} dated 17/7/2019 notifies the protocol, amending the agreement between the Government of the Republic of India and the Government of the People’s Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on Income which was sign at New Delhi, India on 18/7/1994. The protocol has been sign at New Delhi on 26/11/2018. The readers may refer to above citation for complete text of the notification.

Income declaration scheme, 2016-Section 187 of the scheme- Time for payment of tax-Issues in respect of third instalment under the Income Declaration Scheme, 2016

264 Taxman (st.) 193

The Central Board of Directs Taxes *vide* circular no. 15/2019(F. No. 225/282/2017-ITA.II), dated 12/7/2019 has issued the following clarification in respect of difficulties faced by the declarants of Income declaration scheme, 2016(IDS). Who are required to pay their determined liability towards tax, surcharge and penalty pertaining to 3rd Instalment as per the Form-2 issued by the Pr.CIT/CIT, by 30/9/2017. The declarants were facing the difficulties while effecting payment of 3rd Instalment of IDS around 30/9/2017 due to closure of Banks on account of holidays due to which they couldn’t effect payment of 3rd

Instalment within the stipulated time. The representation were made to the Board u/s. 119 of the Income tax Act read with section 195 of the IDS to grant the appropriate relief.

- The CBDT, in accordance with the provisions of section 10 of the General Clause Act, 1897, hereby directs that all payment made/effectuated by the declarants on 3/10/2017 shall also be deemed to have been paid by the due date for the 3rd Instalment i.e. 30/9/2017.
- The CBDT clarified that the payment effectuated through cheque/RTGS/Electronic transfer by the declarant 3/10/2017, deemed extended date for the 3rd Instalment, which was credited by the Bank till 5/10/2017 shall be deemed to be paid by 30/9/2017.

The CBDT also instructed that the all actions which are to be completed as a consequence of this order either by the declarants or the departmental authorities are to be completed, by 31/8/2019.

DIRECT TAX – RECENT JUDGMENT CA. Paras K. Savla, CA. Hemant R. Shah



S. 292BB – Not applicable if no notice served

According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself - CIT v. Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC)

S. 293BB Notice issued in the name of amalgamating Company is substantive illegality

The amalgamating company ceased to exist as a result of approved scheme of amalgamation and hence issuance of jurisdictional notice and there after passing the assessment order in the name of non-existing company is a substantive illegality and not a procedural violation which can be cured by virtue of section 292BB - PCIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC)

INTERNATIONAL TAXATION CA. Hinesh Doshi, CA. Ronak Soni



M/s. Kingfisher Airlines Ltd vs. The Deputy Director of Income Tax, International Taxation, (IT), Circle-1(1) [TS- 430-ITAT-2019(Bang)] dated 23rd July, 2019

Facts: The assessee company made payments to non-residents for training pilots and cockpit crew to Dubai, Germany and Singapore respectively.

The training facilities were all located outside India, the training was given in the said countries and payments for the same were also made outside India.

The assessee did not treat these services as fees for technical services (FTS) as it claimed the training given by the companies



to be part of their routine business and it did not involve any transfer of any technology to employees of the assessee.

AO opined that these payments having character of FTS u/s 9(1) (vii) as well as relevant DTAA between India and respective countries and hence, it treated the assessee as defaulter under section 201(1) and 201 (1A) for non-deduction of TDS.

Aggrieved, both assessee and revenue appealed before Bangalore ITAT.

Issue

Whether the payment made to foreign aviation academies be regarded as FTS or Royalty?

Held

In case of payment made to M/s. Lufthansa, Germany, ITAT noted that a flight simulator was an essential part of training imparted to the pilots and aircraft crew

ITAT held that without the imparting of training by the instructors, the hiring of simulator on its own did not have any purpose and hence it could not be said that the assessee paid royalty for use of simulator.

Relying on the case of ABB FZ-LLC, ITAT held that the payment was not in the nature of Royalty.

In case of payments made to M/s. Alteon Singapore, ITAT noted that even if the provision of explanation 2 to section 195 did not exist at the time when the assessee made such payments it was not possible for the assessee to foresee an obligation to deduct tax at source by a retrospective amendment to the law.

Relying on Kerala Vision Ltd, ITAT held that the liability to deduct TDS cannot be fastened on an assessee due to such retrospective amendment in law.

ITAT held that CIT (A) erred in holding that FTS was taxable in India and ITAT thus allowed assessee's appeal.

Adidas India Marketing (P) Ltd vs. Income tax officer – Ward 1(3), New Delhi [TS-439-ITAT-2019 (Del)] dated 29th July, 2019

Facts

The assessee company was engaged in the business of sourcing, distribution and marketing products of brand name "Adidas" in India.

During the survey by IT department, it was observed that there was loss of stock by fire and the assessee had received the claim from Indian Insurer in respect of fire insurance policy.

It was further observed that the German parent Company of the assessee, received insurance claim after deduction of claim received by the assessee in India from the Indian Insurer with respect to Global Insurance Policy (GIP) taken with overseas insurer.

AO made addition of insurance claim received abroad by the parent company in the hands of the assessee.

Aggrieved, the assessee appealed before Delhi ITAT.

Issue

Whether insurance claim received by the German parent company is taxable as income in the hands of assessee under Income Tax Act?

Held

ITAT noted that the insurance policy against loss of stock by fire taken by the assessee from Indian Insurer was to secure stock in

trade, tangible asset, whereas GIP taken by the German parent company from overseas insurer was for the purpose of securing investment made in subsidiaries or erosion of financial interest held in subsidiary, an intangible asset.

ITAT held that the loss in economic value of the financial interest constituting insurable interest in the case of German parent company, which though had been computed with reference to loss of stock by the fire in the hands of the assessee, was distinct and separate from the insurance claimed by the assessee from the Indian insurer.

ITAT noted that the German parent company paid premium separately for GIP and no part of it had been allocated to the assessee or reimbursed by the assessee.

ITAT observed that assessee was not a party to the contract under GIP. The assessee had no right or obligation under the said GIP to receive the said insurance claim from foreign insurer and thus income cannot be assessed in the hands of the assessee.

Relying on SC decision in case of ED Sassoon & Co Ltd, ITAT ruled that, the claim of insurance received by German parent company was not taxable in the hands of the assessee either u/s. 5 or u/s. 9(1)(i) of the Act.

FEMA

**CA. Manoj Shah, CA. Sudha G. Bhushan,
CA. Mitesh Majithia**



Rationalisation of End-use Provisions of External Commercial Borrowings (ECB) Policy

A.P. (DIR Series) Circular No.04 dated July 30, 2019

As per the existing ECB Policy, ECB proceeds cannot be utilized for working capital purposes, general corporate purposes and repayment of rupee loans except when the ECB is availed from foreign equity holder for a minimum average maturity period of 5 years.

However, based on the feedback from stakeholders and with a view to further liberalize the ECB framework, it has been decided, in consultation with Government of India, to relax the end use restrictions.

Accordingly, eligible borrowers will now be permitted to raise ECBs for various purposes mentioned in the aforesaid Circular from recognized lenders, except foreign branches/overseas subsidiaries of Indian Banks subject to paragraph 2.2 (Limits and leverage) of the Master Direction No. 5 dated March 26, 2019.

Please refer aforesaid circular available on RBI website at

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11636&Mode=0>

Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019 – Acceptance of Deposits by issue of Commercial Papers

A.P. (DIR Series) Circular No.06 dated August 16, 2019 and Notification No. FEMA 5(R)(2)/2019-RB dated July 16, 2019

Regulation 6(3) of Foreign Exchange Management (Deposit) Regulations, 2016 (Deposit Regulations), in terms of which a Company may accept deposits through issue of Commercial Paper (CP), has been reviewed by RBI vis-à-vis other Statutes/



Regulations – notably Section 45 U(b) of RBI Act, 1934 describing CP as one of the Money Market Instruments and Section 2(c) of Companies (Acceptance of Deposits), Rules 2014 which excludes any amount received against issue of, inter alia, CPs from definition of deposits. It has also been considered that Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 – FEMA 20(R), already allow investments in CPs issued by the Indian Companies.

Therefore, with a view to bring in consistency in statutory provisions/regulations relating to Commercial Papers (CPs), the RBI has also amended the Deposit Regulations and deleted Regulation 6(3) of FEMA 5(R)/2016-RB vide Notification No. FEMA 5(R)(2)/2019-RB dated July 16, 2019.

TRANSFER PRICING

CA. Bhavesh Dedhia, CA. Bhavya Goyal,
CA. Shazia Khatri



1. The Ministry of Corporate Affairs has amended the Companies (Share Capital & Debentures) Rules by removing Debenture Redemption Reserve requirement for Listed Companies, NCFs and HFCs wide a press release dated 19th August 2019.
2. Companies (Share Capital and Debentures) Amendment Rules, 2019 – Amendment in Rules 4, 5, 12 & 18 vide Notification G.S.R. 574(E) [F. No. 1/4/2013-CL-V-Part-III], dated 16/8/2019
3. Central Government has made Protection of Children from Sexual Offences (Amendment) Act, 2019 (25 of 2019) applicable from 16th August 2019.

Case Law Update

The Pr. Commissioner of Income Tax vs. M/s. S. G. Asia Holdings (India) Pvt. Ltd. [Supreme Court in Civil Appeal No. 6144 of 2019 @ SLP(C)No.12126 of 2019]

The Assessee had entered into an international transaction of receipt of brokerage income from its parent company. The Assessing Officer ('AO') was of the view that the brokerage rate charged was lower than that prevalent in the market. The AO accordingly, made a transfer pricing adjustment under Section 92 of the Act. The said adjustment was made without a reference to the Transfer Pricing Officer ('TPO'). The CIT(A) upheld the order of the AO. The ITAT setting aside the orders held that the transfer pricing adjustment made by the AO was contrary to the mandatory instructions issued by CBDT in its Instruction No.3/2003 dated 20/5/2003 and therefore bad in law. ITAT has refused to restore the matter observing that "The Tribunal cannot make any good to such lapse made by the AO." The Hon'ble High Court upheld the order of ITAT.

The Hon'ble Supreme Court observed that a discretion was vested with the AO as per Section 92CA of the Act and it would not be mandatory refer every single case to the TPO. However, the CBDT's instruction No.3/2003 put across a different perspective wherein it stated that if the aggregate value of international transactions exceeded INR 5 crs, the transactions should be referred to the TPO. In view of the guidelines issued by the CBDT, the Hon'ble Supreme Court upheld that by not making reference to the TPO, the AO had breached the mandatory instructions.

However, the Hon'ble Supreme Court observed that the ITAT ought to have accepted the submission made by the Departmental Representative and restore the file to the AO so that appropriate reference could be made to the TPO. Accordingly, Hon'ble Supreme Court stated - "We, therefore, allow this Appeal to the aforesaid extent and direct that it would now be upto the Assessing Officer to take appropriate steps in terms of Instruction No.3/2003."

Toyota Kirloskar Motor Private Limited vs. Union of India & Others. [TS-657-HC- 2019(KAR)-TP]

The Assessee is engaged in the manufacture and trading of passenger car and multi-utility vehicles. The Assessee was subject to TP adjustment during the course of assessment proceedings in relation to its international transactions with its AE. The AO also issued a penalty notice calling upon the Assessee to show-cause why a penalty should not be imposed under Section 271(1)(c) of the Act. The Assessee initiated Mutual Agreement Procedure ('MAP') under India – Japan DTAA along with appellate route under Indian domestic law. MAP agreement between the competent authorities of India and Japan resulted in the reduction of TP adjustment. This reduced TP adjustment was accepted by the Assessee. The AO gave effect to the MAP and also imposed the penalty on the TP adjustment sustained in the MAP. The Assessee filed an appeal against the penalty order before the CIT(A) on merit and simultaneously preferred a writ petition before the Hon'ble HC challenging the constitutional validity of the penalty proceedings for adjustments sustained under MAP.

The Hon'ble HC upholding the constitutional validity of imposing penalty on TP adjustment determined under MAP observed that "unless a specific provision is made in the Double Taxation Avoidance Agreement in as much as penalty is concerned, the provisions of Section 271[1][c] of the Act shall continue to apply." The Hon'ble HC observed that unless specific provision is made in MAP waiving the penalty, the penalty under Section 271(1)(c) of the Act would continue to apply.

Having said that, the Hon'ble High Court observed that penalty on TP adjustment sustained in MAP is not automatic. The levy of penalty needs to be adjudicated based on the merits, facts and circumstances and in accordance with the law.

Dy. Commissioner of Income Tax vs. M/s TMW ASPF I Cyprus Holding Company Limited [2019-TII-197-ITAT-DEL-INTL]

The Assessee, resident of Cyprus, is engaged in the business of making investment in real estate sectors via fully convertible debentures ('FCCDs'). Due to this investment, the investee companies and the Assessee are treated as Associated Enterprises. Per the investment agreements between Assessee and investee companies, there were three independent events:

- a) Subscription to FCCDs bearing an annual interest of 4%;
- b) Conversion of FCCDs into equity at a conversion price on the completion of the specified term or as may be determined by the parties; and
- c) Post conversion, sale of equity shares to the promoters at a consideration providing annualized 18%/19% return on investment.

The last two events are contingent and futuristic. Due to bad



financial positions and cash crunch, the investee companies requested for waiver of annual interest and such request was accepted by the Assessee. Also, part of FCCDs held in one of the investee company was sold to a third party during the year at a loss.

During the TP assessment proceedings, the TPO observed that an independent company would be compensated at higher value than the rate of 4% agreed by the Assessee. Further, the TPO observed that the Assessee was to earn an assured interest rate of 18%. As the interest paid also includes payable, the TPO computed TP adjustment with respect to notional interest income in the hands of non-resident Assessee at the rate of 18% instead of 4%. The DRP deleted the adjustment. Revenue Department filed an appeal before the ITAT.

The ITAT observed that, the TP adjustment has been made on hypothetical amount of interest receivable and based on contingent event which Assessee was supposed to receive. The ITAT upholding the directions of DRP ruled that – “If income is not taxable in terms of section 4, then chapter X cannot be made applicable, because section 92 provides for computing the income arising from international transactions with regard to the ALP. Only the interest income chargeable to tax can be subject matter of transfer pricing in India. Making any transfer pricing adjustment on interest which has neither been received nor accrued to the assessee cannot be held to be chargeable in terms of the Income Tax Act read with Article 11(1) of DTAA. Here it cannot be the case of accrual of interest also, because none of the investee companies have acknowledge that any interest payment is due, albeit they have been requesting for waiving of interest of even coupon rate of 4%, leave alone the return of 18% which was dependent upon some future contingencies.”

GOODS AND SERVICES TAX CA. Rajiv Luthia



CBIC vide Notification No. 35/2019 – CT dated 29th July, 2019 has extended the time limit for furnishing Form GST CMP - 08 (return by composition dealer) for quarter April to June, 2019 till 31st August, 2019.

CBIC vide Notification No. 36/2019 – CT dated 20th August, 2019 has extended the applicability of Rule 138E (restriction for generating E-way bill) of CGST Rules from 21st August, 2019 to 21st November, 2019. In view of above no e-way bill shall be allowed to be generated in cases of default in furnishing GST return for consecutive 2 tax periods.

CBIC vide Notification No. 37/2019 – CT dated 21th August, 2019 has extended the due date for filing FORM GSTR 3B for month of July, 2019 from 20th August, 2019 till 22nd August, 2019.

Further, due date for filing GSTR 3B for month of July, 2019 for registered person whose principal place of business in following district is extended till 20th September, 2019

Name of State	Name of District
Bihar	Araria, Kishanganj, Madhubani, East Champaran, Sitamarhi, Sheohar, Supaul, Darbhanga, Muzaffarpur, Saharsa, Katihar, Purnia, West Champaran

Gujarat	Vadodara
Karnataka	Bagalkot, Ballari, Belagavi, Chamarajanagar, Chikkamagalur, Dakshina Kannada, Davanagere, Dharwad, Gadag, Hassan, Haveri, Kalaburagi, Kodagu, Koppal, Mandya, Mysuru, Raichur, Shivamogga, Udupi, Uttara Kannada, Vijayapura, Yadgir
Kerala	Idukki, Malappuram, Wayanad, Kozhikode
Maharashtra	Kolhapur, Sangli, Satara, Ratnagiri, Sindhudurg, Palghar, Nashik, Ahmednagar
Odisha	Balangir, Sonapur, Kalahandi, Nuapada, Koraput, Malkangiri, Rayagada, Nawarangpur
Uttarakhand	Uttarkashi and Chamoli
Jammu & Kashmir	Entire State of J&K

CBIC vide Notification No. 12/2019 – CT (Rate) dated 31st July, 2019 has reduced the rate of GST on following goods

Particulars	Old Rate	New Rate
Charger or charging station for Electrically operated vehicles	9%	2.5%
Electrically operated vehicles, including two and three wheeled electric vehicles. Explanation:- For the purposes of this entry, “Electrically operated vehicles” means vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E- bicycles.”	6%	2.5%

The notification shall come into force from 1st August, 2019

CBIC vide Notification No. 13/2019 – CT (Rate) dated 31st July, 2019 has exempted hiring of electrically operated vehicle meant for carrying 12 or more passenger by local authority from GST.

Explanation.- For the purposes of this entry, “Electrically operated vehicle” means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.

GST-ADVANCE RULINGS CA. C. B. Thakar, CA. Jinal Maru



Case: Durga Projects and Infrastructure Pvt Ltd. [2019-TIOL-246-AAR-GST (Karnataka)]

The applicant is builder and have executed projects under JDA with Land Owners for an agreed ratio of built-up Area. The liability to pay tax in respect of construction services provided by applicant to land owners for the flats constructed towards land owner share shall arise in GST regime even Construction was commenced during pre-GST regime and continued under GST regime. The contention of the applicant that tax shall be applicable under GST law only on the portion of work executed



under GST law is not acceptable. The time of supply shall be as per notification 4/2018-CT(Rate) i.e. on transfer of possession & value shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as there is no information as to whether the applicant has transferred the possession of the land owner's share of flats or not in pre GST regime.

Case: MRF Ltd. [2019-TIOI-61- AAAR-Tamilnadu]

The GST paid on the commercial price payable to the suppliers is eligible for full ITC in terms of section 16 of the CGST Act. Post supply discount, which is not liable for reduction of the value of supply in view of section 15(3) of the CGST Act shall not interfere the eligibility of full ITC of tax paid by appellants to their suppliers. The contention of the original AAR proportionate reversal of the ITC is required in case of post purchase discount given by the supplier of the goods or services, is not in consonance with the legislative intent of 2nd proviso to section 16 of the Act. The buyer has discharged the GST charged on the undiscounted transaction value at the time of supply - In the circumstances, if the GST charged and paid is not reversed/refunded in whole or part subsequently in any manner or circumstances, the credit availed on the same need not be reversed. Circular No. 122/3/2010 dated 30/4/2010 and Circular No. 877/15/2008-Cx dated 17th November 2008 regarding reversal of CENVAT Credit in case of trade discount have persuasive value.

CO-OPERATIVE HOUSING SOCIETIES

CA. Ramesh Prabhu, CA. Mukul Varma



- (1) Stamp duty Amnesty Scheme, 2019 for deficit stamped documents executed prior to 31st December, 2018 with nominal penalty of 10% is extended upto 31st Dec, 2019 and the scheme is applicable even to commercial units.
- (2) On 20th August, 2019, the Urban Department has issued a notification to reduce the premium by 10% on fungible FSI and other premiums.
- (3) The Consumer Protection Act, 2019 is published on 9th August, 2019 to repeal the Act of 1986. This act provides for mediation and establishes Central Consumer Protection Authority.
- (4) Notification dated 1st August 2019 is published as per the directions of Supreme Court in the Civil Petition No. 558/

2017 to take necessary actions for ULC violations.

- (5) MahaREAT in the appeal to complaint No. SC10000672/691 in the matter of Geetanjali Aman Constructions Vs Hrishkesh Ramesh Paranjpe and others, held that the projects development on land less than 500 sq.meters in spite of having more than 8 units are not required to be registered with MahaRERA.

MAHARERA

CA. Ashwin Shah, CA. Vyomesh Pathak



Judicial Pronouncement by RERA Appellate Tribunal:

1. Sanvo Resorts Pvt Ltd. vs. Ranveer Sharma & others

Issue Before Tribunal:

Appellant Developer raised the issue whether for claim of interest by allottee, the matter has to go to adjudication officer only and Member of Authority has no jurisdiction to decide the claim of interest.

Held

- Interest for delayed possession is provided u/s. 18 f the Act and Rules provides for rate of interest being 2% above SBI Marginal Cost of Lending Rate.
- Once Member decides that there is case for delay in possession, interest working are automatic as provided under the Act and Rules.
- There was no claim of compensation by the allottee in the original complaint and hence there is no need to refer the matter to adjudication officer for deciding compensation u/s. 7 & 72 of the Act.

2. Prashant Kale Vs Swapnil Promoters & Developers Pvt Ltd

Issue Before Tribunal:

The Appeal filed by Allottee for claim of interest and compensation with principal for delay in possession.

Held

- Allottee in the original complaint sought refund of principal with interest and compensation on account of delay in possession.
- However, the question of compensation under the Act was neither rejected nor answered by the Authority.

- Accounting & Auditing
- GST & Other Indirect Tax
- CA Act & Regulations
- Company Law
- Other Laws
- Income Tax
- Miscellaneous



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- c. It was held that allottee may file separate petition for claim of compensation u/s. 71 & 72 of the Act before Adjudication Officer on the same cause of action i.e delay in possession.

INSOLVENCY AND BANKRUPTCY CODE CA. Pravin Navandar, CA. Viral Doshi



National Company Law Appellant Tribunal Decides on The Requirement Of Seeking Government Approval For Making An Insolvency Application Against A Tea Company

Brief Facts

A.J. Agrochem (Operational Creditor) had filed an application under Section 9 of the Insolvency & Bankruptcy Code, 2016 against Duncans Industries Ltd (“Corporate Debtor”), a tea company, before the Hon’ble National Company Law Tribunal. Conspicuously, the Central Government, by way of its notification dated 28 January 2016, had authorised the Tea Board of India (Tea Board) to take over the management and control of seven tea estates of the Corporate Debtor in terms of the Tea Act. The debt of the Operational Creditor was in relation to supply of goods to one of these seven tea estates which was under the management of the Tea Board.

The Hon’ble Tribunal canned the application of the Operational Creditor claiming the Operational Creditor had failed to comply with the requirement of Section 16G(1)(c) of the Tea Act.

Section 16G(1)(c) of the Tea Act requires approval of the

Central Government to be taken before initiating winding-up proceedings/proceedings for appointment of a receiver in relation to a tea company, whose management has been taken over by the Tea Board.

Aggrieved by the order of the NCLT dismissing its application, the Operational Creditor preferred an appeal before the NCLAT.

Arguments presented before Hon’ble Tribunal by the Operational Creditors/Appellant

- In terms of Section 238 of the Insolvency & Bankruptcy Code, the provisions of the IBC including Section 9 would have a superseding effect over the provisions of the Tea Act. Therefore, requirements of seeking accord under Section 16G of the Tea Act would not be pertinent; and
- Initiation of Corporate Insolvency Resolution process is different from initiation of winding up proceedings. In isolation, Section 16G of the Tea Act is not applicable to the present application.

Arguments presented before Hon’ble Tribunal by the Respondent/Corporate Debtor

- In terms of the statement of objects and reasons of the IBC, it is manifest that the primary objective of the IBC was to ensure revival and continuation of debtor companies by undertaking the CIRP process in a time-bound manner.
- Liquidation is only provided as a last resort and is not a desirable outcome under the IBC.
- Section 238 of the IBC deals only with situations where there is a conflict between the provisions of the IBC and other laws. Since there was no such conflict in the present matter, Section 238 was not applicable to the matter.

Conclusion

The NCLAT set aside the order of the National Company Law Tribunal, Kolkata Bench (NCLT) and inter alia apprehended that no prior approval / sanction of the Central Government is required for making an insolvency application against a tea company, since Section 16G(1)(c) of the Tea Act and Section 9 of the IBC operate in separate domains.

This order provides the flexibility to the operational as well financial creditors to take the corporate debtor into IBC where they believe liquidation is a better / only option, without undertaking formal process of inviting potential resolution applicants etc. This would help in saving time and efforts in certain cases resulting in speedy closure of the process.

A skid of Judicial pronouncement recommending arrangement under section 230 of the company act have tiled the way, which allows the corporate debtor another prospect for its revival.

For more details on updates, visit www.wirc-icai.org

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Obituary

CA. Mahesh Fatehchand Tejawani, M. No. 037194 left for Heavenly Abode on 9/8/2019. May the departed soul rest in peace.

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