



Quarterly India Tax updates

January – March 2020

April 2020

Subject matter experts



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We will discuss...

- **Regulatory and Direct tax Updates**
 - Regulatory and other updates
 - Covid-19 related updates
- **Indirect tax updates**
- **Direct tax updates**
 - Major changes in Finance Act (FA) 2020
- **Recent judicial pronouncements**
 - Sesa Goa Ltd.
 - Bid Services Mauritius
 - Dalmia Power Ltd.
 - Vodafone M Pesa Ltd.
 - Mohit Minerals Vs Union of India
 - GE T & D India Ltd.
- **Annexure - Other updates**
 - MLI - Key changes effective from 1 April 2020
 - Key administrative changes







Regulatory and Direct Tax updates

Regulatory and other updates

Regulatory and other developments



World and Indian economic growth to be severely impacted owing to Covid-19 and the resultant lock down of economic and social activity



Measures announced by the Indian authorities to meet the triple shocks on supply, demand, and liquidity



Tax measures announced by the Indian authorities in the wake of the lock down

Covid-19 related updates

Direct tax related updates

The Taxation and other Laws (Relaxation Of certain provisions) Ordinance 2020

- Extension of last date to file belated/ revised income-tax return for FY 2018-19 to 30 June 2020
- Vivad se Vishwas Scheme–Declaration & payment upto 30 June 2020 without 10% addl. liability
- Reduced interest rate of 9% and no penalty/ prosecution for non-payment of taxes [advance tax, TDS, TCS, EQL etc.,] due between 20 March to 29 June 2020 if paid by 30 June 2020
- Extended time of 30th June to apply for issue of notices, orders, completion of proceedings, filing of appeal, applications, etc. under various laws such as Income Tax Act, STT, Equalization levy etc., where the prescribed time limit falls within 20 March 2020 to 29 June 2020
- Investment/ payment upto 30 June 2020 in prescribed savings instruments under Section 80C, Medical insurance under section 80D, Donations under section 80G shall qualify for deduction for FY 2019-20. Similar extension for roll over benefit of prescribed capital gains
- Date of commencement of operations of SEZ units which have obtained letter of approval under SEZ Act by 31 March 2020 shall stand extended to 30 June 2020
- Donation to PM CARES Fund eligible for flat 100% deduction under section 80G – also applicable to companies opting for concessional tax regime. Payment upto 30 June 2020 shall qualify for deduction for FY 2019-20.

CBDT notification on Nil/ lower withholding certificates

- Validity of nil/ lower withholding tax certificates issued for FY 2019-20 extended to 30 June 2020
- Modified procedure for applications for FY 2020-21 – Via email to Assessing Officer alongwith prescribed data and documents
- Liberalised procedure for pending applications for FY 2019-20 and extension of specified declaration forms for small taxpayers until 30 June 2020 (April 3rd and 4th)

GST compliance related updates



Turnover more than 5 crores – GSTR 3B

- Relaxation in Interest and Late fee for delayed filing in GSTR 3B
- Returns due in February, March and April 2020 can be filed by 24th June but the same would attract reduced rate of interest @ 9% per annum from 15 days after the due date
- **No late fee and penalty will be charged for above**
- GSTR 3B for May can be filed by 27th June 2020



Turnover between 1.5 to 5 Crores – GSTR 3B

- Returns due in February, March can be filed by 29th June 2020. For April Return can be filed by 30th June 2020
- Where Turnover is less than 1.5 crores, Returns can be filed upto 30th June, 3rd July and 6th July for February, March and April respectively
- **No interest, late fee or penalty would be charged for above**
- For GSTR 3B for May, State specific dates prescribed where turnover is less than 5 crores. Due date is 12th July and 14th July



Conditional ITC Rule 36(4) – GSTR – 3B

- Non-availment of ITC for invoices which does not match with GSTR-2A will not apply to ITC availed for the months of **February to August 2020**
- However, the said condition would cumulatively apply for Sep'2020
- GSTR 3B for Sep 2020 to have cumulative adjustment of ITC for 7 months + Sep'20)



No Late fee for GSTR 1

- Late fee payable stands waived for the month of March, April, May, 2020, and for quarter ending 31st March 2020 who fail to furnish outward details in FORM GSTR-1 by the due date
- Subject to condition that the same is filed before 30th June 2020



E-Way Bill

- Any e-way bill generated where its validity expires during the period 20th March to 15th April, 2020, the validity period of such e-way bill is extended till 30th April, 2020



Taxation Ordinance

- Enabling provision made in CGST Act through Section 168A giving powers to extend time limit through notifications for actions cannot be completed due to '*force majeure*'
- Time limit for any compliance under the GST laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020. This includes, filing of appeal, furnishing of return, statements, applications, reports, any other documents

Customs, Excise & Service Tax related updates



Customs

- 24 X 7 Customs clearances . Bond requirement for clearance of goods is eased uptill 30th April 2020. An undertaking can be submitted for clearances
- **No Detention charges:**
Shipping Lines at Indian Sea ports are advised not to impose container detention charges on import & export shipments from 22nd March to 14th April 2020 – Directorate General of Shipping Mumbai
- **No Late fee filing charges on late filing of BOE – Mumbai Commissonerate:**
 - Bills of entry which pertain to IGMs filed on or after 20th March 2020, if filed late for clearance of consignments due to lockdown, will not attract any late fee charges
 - Time limit for filing any appeal, statements etc. where the time limit is expiring between 20 March 2020 to 29th June 2020 shall be extended to 30th June 2020
 - Retrospective **issuance of certificates of origin** under India's FTA's, Comprehensive economic partnership agreements Preferential Trade Agreements. Customs authorities will allow benefit subject to subsequent production of these certificates of origin by Indian Exporters



Excise & Service Tax

- Time limit for filing any appeal, statements etc. where the time limit is expiring between 20 March 2020 to 29th June 2020 shall be extended to 30th June 2020
- **Sabka Vishwas scheme payment extended till 30th June**
- The date for making payment to avail the benefit under this scheme has been extended to 30 June 2020 thus giving more time to taxpayers to get their disputes resolved

Foreign Trade Policy related updates

Particulars	Changes in Foreign Trade Policy (FTP)
FTP	<ul style="list-style-type: none">Extended till 31st March 2021
MEIS (Merchandise Exports from India Scheme)	<ul style="list-style-type: none">MEIS application is to be filed within 12 months from Let Export date. Shipping Bills where Let export date falls within February 2020 to May 2020, application to be allowed period of 15 months instead of 12 months
SEIS (Service Exports from India Scheme)	<ul style="list-style-type: none">SEIS application's date extended to 31 December 2020 for FY 18-19Service categories eligible and reward rates on such services rendered for April 19 to March 20 would be notifiedScheme's continuation from 1st April 2020 to be decided subsequently
Status certificates	<ul style="list-style-type: none">Status certificates issued under FTP are now valid and recognized till 31st March 2021 instead of 31st March 2020
Advance Authorization	<ul style="list-style-type: none">Imports against Advance Authorization for physical exports are exempted from Integrated Tax now till 31st March 2021 instead of 31st March 2020Where Validity of imports issued against Advance Authorization is expiring between February 2020 to July 2020, it stands extended by 6 months.Similarly export obligation to be fulfilled during this period also extends by 6 months

Foreign Trade Policy related updates

Particulars	Changes in Foreign Trade Policy (FTP)
EPCG (Export Promotion Capital Goods)	<ul style="list-style-type: none">• Exemption from payment of IGST on imports extended till 31st March 2021 from March 2020• Requirement to submit Certificate for installation of Capital goods by EPCG holder in case falls between February 2020 to July 2020 is extended by six months• Blockwise Export obligation period expiring between February to July 2020 is extended by 6 months
EOU's (Export Oriented Units)	<ul style="list-style-type: none">• Exemption from BCD and IGST on imports and/ or procurement from bonded warehouse in DTA extended till 31st March 2021 instead of 31st March 2020• Letter of Intent /Approval given to EOU's whose extended validity expires on 1st March 2020 is extended till 31st December 2020
RoSCTL (Rebate of State and Central Levies and Taxes)	<ul style="list-style-type: none">• RoSCTL scheme to support Textile sector extended by 3 months till 30th June 2020
RCMC Registration cum Membership certificate	<ul style="list-style-type: none">• Extension of validity of Registration cum Membership certificate issued by Export Promotion Councils (EPC's) for any incentive/authorization under FTP is extended till 30th September 2020



Indirect tax updates

Relevant changes pursuant to 39th GST Council Meet



Interest on net tax liability

- Council has recommended interest liability on delayed payments of GST on Net liability paid in cash
- The said amendment will be retrospective w.e.f 1 July 2017
- The recommendation is in line with the Judgment of the Refex industries of Gujarat High Court.
- Formal Notification to follow



Extension in filing Annual Return

- Due date for furnishing the annual returns in FORM GSTR-9, FORM GSTR-9C for the Financial Year 2018 – 2019 extended till 30 June 2020



Deferment in New GST Returns

- GST returns proposed to be introduced by the Government from 1 April 2020 has been deferred
- Existing Return format of GSTR 1 and GSTR 3B will continue till 30 September 2020. Prescribed date provided in Notification



Deferment of E-invoice & QR Code

- Date for implementation of e-invoicing and QR Code extended to from 1 April 2020 to 01 October 2020
- Further, certain class of registered person exempted from E-Invoice (Insurance company, banking company, financial institution, non-banking financial institution, GTA, passenger transportation service etc.)



Rate change - Mobiles

- Rates on Telephone sets for cellular networks increased from 12% to 18%
- Inputs used for assembling / manufacturing were taxable at 18% leading to piling of input tax credit as output was at 12%
- Rate was effective from 1 April 2020



Know your supplier

- New Facility is being introduced 'Know your supplier' so as to enable a registered person to have some basic information about the suppliers with whom they conduct business
- Formal Notification is awaited

GST Refunds

Circular No. 135/05/2020 dated 31 March 2020

Issue	Clarification
Bunching of Refund claims across financial years	<ul style="list-style-type: none">• Earlier a taxpayer was allowed to combine multiple tax periods within a financial year to file a consolidated refund application• Now taxpayer has an option to file refund claim of multiple tax periods falling in different financial years.
ITC refund only on invoices being reflected in GSTR 2A	<ul style="list-style-type: none">• Refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant
Change in Manner of refund of tax paid on supplies other than zero rated supplies	<ul style="list-style-type: none">• Refund shall be paid in the same proportion in which the cash and credit ledger was used for discharging the tax liability. Clarification issued consequent to insertion of Rule 86(4A) CGST Rules• Specified cases include Refund of excess payment of tax, Refund of intra-state, subsequently held as inter-state and vice versa etc.
Refund of accumulated input tax credit (ITC) on account of reduction in GST rate	<ul style="list-style-type: none">• Refund of accumulated ITC on account of inverted duty structure would not be applicable in cases wherein input and output supplies are same and ITC has been accumulated merely due to change of tax rate of the goods
CGST Amendment	
Rule 96(10)	<ul style="list-style-type: none">• Option of Rebate (to claim Refund) cannot be exercised by Persons under Rule 96(10)-<ul style="list-style-type: none">– Which are receiving supplies considered as Deemed Exports under GST– Persons (EOU's, STP's EHTP') importing goods and claiming exemption of Basic Customs Duty and IGST– Persons importing goods under Advance Authorization
Rebate (Refund)	<ul style="list-style-type: none">• Rule amended to provide that Option of Rebate can be claimed where only exemption from BCD has been availed on procurement of inputs but IGST has been paid



Direct tax updates

Major changes in Finance Act (FA) 2020

Expanded charge of Equalisation Levy (EL)

Key features of the new EL

- Scope expanded to include EL of 2% on consideration received of INR 20 million or more, by an 'e-commerce operator' from 'e-commerce supply or services' to 'specified payer' w.e.f. 1 April 2020
- EL to be paid by the non-resident (NR) e-commerce operator, subject to certain exclusions
- Consequential income-tax exemption for income liable to EL *on or after 1 April 2021*

Some relevant definitions

'e-commerce operator'	NR who owns, operates or manages digital/ electronic facility or platform for online sale of goods or online provision of services or both.
'e-commerce supply or services'	online sales of goods, online provision of services, or facilitation by e-commerce operator for either of the above (or any combination of the above)
'specified payers'	<ul style="list-style-type: none"> • a person resident in India; or • a NR in 'specified circumstances'; or • a person who buys such goods or services or both using internet protocol address located in India

Exclusions from EL

- NR e-commerce operators which have PEs in India and e-commerce supply/ services effectively connected therewith
- Cases where EL is already leviable on online advertisement and related activities
- Cases where sales, turnover or gross receipts of the NR e-commerce operators from online sale or services, are less than INR 20 million during the financial year

Certain critical aspects (illustrative)

- Meaning of the terms 'digital' and 'electronic facility';
- Interplay of royalty/ fee for technical services and EL;
- Impact on intra group services;
- Applicability on online provision of software; etc.

Changes in dividend taxation regime

Dividend

I. Dividend Distribution Tax (DDT) on companies abolished

- Dividend income will now be taxable in the hands of shareholders
- Domestic company will be liable to withhold tax on dividend
- Interest expenses, if any, upto 20% of the dividend allowed as a deduction. No other deduction allowed

Lower rate of tax withholding can be explored under tax treaties, subject to satisfaction of residency requirements, PPT and domestic GAAR.

II. TDS rate of 20% prescribed on dividend paid to non-residents (NR)/ foreign company – Aligned with the tax rate applicable to NR on dividend income (section 115A)

III. Surcharge on dividends capped at 15% for individuals and trusts

IV. Deduction for inter-corporate dividends (Section 80M)

- Domestic company eligible to deduct amount of dividend paid from dividend income received from other domestic company/ business trust/ foreign company
- Deduction available if dividend distributed on or before the 'due date', i.e., one month prior to the due date of filing the return of income
- For companies adopting concessional rate of tax, deduction u/s 80M available from FY 2020-21

Amendments in Tax Collection at Source (TCS) provisions



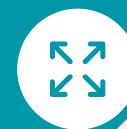
TCS by Authorised Dealer

- 5% of amount exceeding INR 700,000 in a financial year received for remittance under liberalised remittance scheme, other than for overseas tour program package
- 0.5% on amount exceeding INR 700,000 in a financial year, if it is remitted out of loan obtained from any financial institution specified in section 80E for educational purposes



TCS by Seller

- **Seller of overseas tour package program**
5% of any amount received by the seller of an overseas tour package program
- **Seller* of goods**
0.1% of sale consideration exceeding INR 5 million in any previous year from sale of any goods, other than the goods being exported out of India



Exclusions

Buyer:

- Who is liable to tax deduction at source and has deducted such tax at source; or,
- Being the Central Government, a State Government, an embassy, etc., or any other person to be notified; or,
- Who is importing goods into India

The amendments above are effective from 1 October 2020

*A seller whose turnover from business exceeds INR 100 million during the immediately preceding financial year



Recent judicial pronouncements

Sesa Goa Ltd vs JCIT, Goa (ITA 17 & 18 of 2013) (Bombay High Court)

Sesa Goa Ltd vs JCIT, Goa (ITA 17 & 18 of 2013) (Bombay High Court)

Education cess is not disallowable under Section 40(a)(ii) of the Act

Facts:

- Sesa Goa Limited (taxpayer) is in the business of mining and export of iron ore and manufacture and sale of metallurgical coke.
- Claim for deduction of Education Cess not made in the original/ revised return of income but through a letter filed during the course of assessment.
- Assessing Officer rejected such claim relying on SC decision on Goetze India Ltd.
- Commissioner of Income Tax (Appeals) upheld the action of the Assessing Officer
- The Income Tax Appellate Tribunal (ITAT), ruling on the merits, decided against the taxpayer holding that education cess is levied as part of income tax hence disallowable u/s 40(a)(ii) of the Act
- Aggrieved by the order of the ITAT, the taxpayer challenged the same before the Bombay High Court
- Question before the High Court - Whether cess to be allowed in the year of payment?

Sesa Goa Ltd vs JCIT, Goa (ITA 17 & 18 of 2013) (Bombay High Court)

Education cess is not disallowable under Section 40(a)(ii) of the Act

Decision of the High Court:

Applying the principles of interpretation relating to a taxing statute as laid down by various Courts, it was held that there is no reference to Cess under section 40(a)(ii). Nothing to read into the provision/ no room for intendment.

Legislative intention clear by not specifically including Cess under the 1961 Act. Original provision when introduced in 1961 Bill included Cess, however deleted during the enactment stage. Corresponding Section 10(4) of 1922 Act expressly disallowed Cess.

Reference to CBDT Circular No. F. No.91/58/66-ITJ(19), dated 18th May, 1967 – binding on the income-tax authorities.

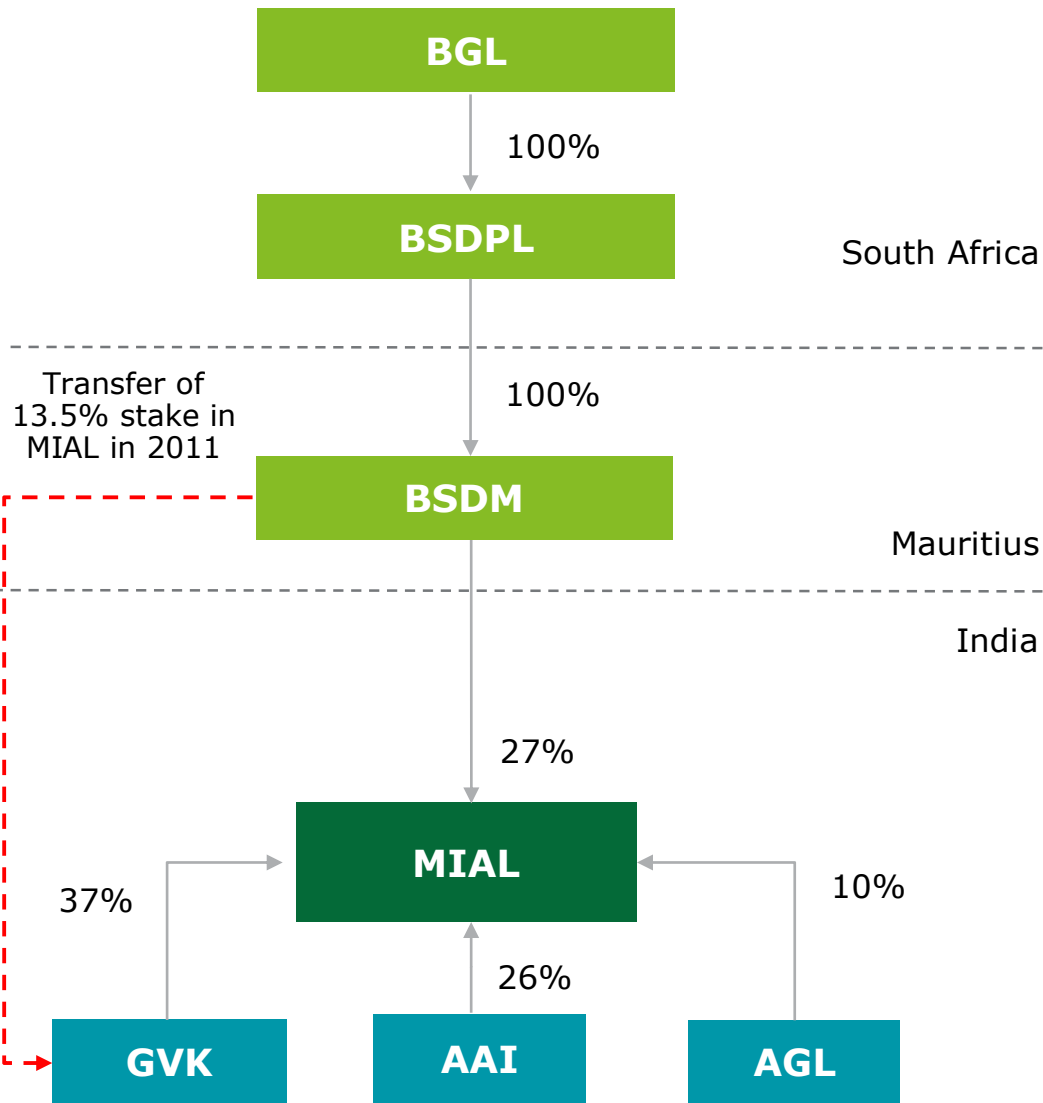
Rajasthan High Court in Chambal Fertilizers decided the issues in favour of the taxpayers and the same was followed by some other Tribunals.

High Court decided the appeal in favour of the taxpayer allowing Cess as a deduction

M/s Bid Services Division (Mauritius) – AAR dated 17 February 2020

M/s Bid Services Division (Mauritius) – AAR dated 17 February 2020

Denial of India-Mauritius treaty benefit



Facts:

- Bid Services Division (Mauritius) ('BSDM'), was incorporated on 23 August 2005 as a WOS of Bid Services Division (Proprietary) Limited ('BSDPL'), South Africa.
- BSDM holds Global Business License 1 and a valid Tax Residency Certificate issued by Mauritius Revenue Authority ('MRA').
- Airport Authority of India ('AAI') selected the applicant in consortium with GVK Airport Holdings Private Limited ('GVK') and ACSA Global Limited ('AGL') as JV partners in Mumbai International Airport Private Limited ('MIAL').
- MIAL is an Indian company incorporated for undertaking development, operation and maintenance activities (OMDA).
- Shareholders and OMDA agreement entered between the relevant parties on 4 April 2006.
- BSDM enters into share purchase agreement in 2011 for transfer of 13.5% stake in MIAL to GVK for US\$ 231 million.
- AAR ruling sought on taxability of capital gains arising from sale of shares under Article 13(4) of the India-Mauritius tax treaty ('DTAA').

M/s Bid Services Division (Mauritius) – AAR dated 17 February 2020

Denial of India-Mauritius treaty benefit

Taxpayer's contentions

- CBDT circulars clarify that TRC issued by MRA constitutes sufficient evidence of residence and beneficial ownership for DTAA - binding on the revenue authorities and cannot be questioned
- Validity of CBDT Circulars upheld by SC in *Azadi Bachao Andolan*
- Reliance on other AAR rulings pronounced in 2010 and 2011 upholding the DTAA benefits to investment holding companies
- Absence of LOB clause under the DTAA - Reference to SC decision in *Vodafone International Holdings BV*
- General practice to project the HQ for bid purposes for projecting technical and financial competency. However, investments through separate SPVs for commercial reasons

Revenue's contentions

- BSDM should be denied DTAA benefits due to the following:
- Not involved as one of the consortium members during the bidding process.
 - Incorporated just two weeks prior to submission of binding bid.
 - Its inclusion lacks commercial substance & bonafide business purpose, and a clear design to avoid tax in India
 - Two South African citizens as directors of BGL and BSDM, other two Mauritian directors had no real powers
 - It is entirely dependent on BGL for funds
 - Substance of the transaction to be looked into if it is established as a sham
 - BGL's direct investment would have resulted in taxable capital gains under India-South Africa tax treaty. Interposing BSDM is clear misuse of the DTAA.

AAR ruling

- BSDM is a shell company formed for routing funds and without any tangible assets, employees, office space, etc.
- It could not establish commercial and business rationale as it had –
 - not hired any experts
 - no critical inputs in board meetings
 - no independent source of funds
 - no activity other than holding shares of MIAL.
- Mere holding of TRC does not justify treaty benefits, if it is a device to avoid tax.
- Overall facts indicate that BSDM is interposed as a device for tax avoidance, and thus open for tax department to discard the device and consider the real transaction between the parties.
- BSDM not entitled to Article 13(4) of the DTAA.

**Dalmia Power Ltd. [2019] 112
taxmann.com 252 (SC)**

Dalmia Power Ltd. (Supreme Court)

Supreme Court allows filing of revised return of income (ROI) beyond the time limit prescribed in the Income-tax law

Dalmia Power Limited (DPL)/ Dalmia Cement Limited (DCL) (Taxpayers)

Filed original ROIs for AY 2016-17 within the applicable due dates

Entered into separate amalgamation schemes with appointed date of 1 January 2015

Schemes were duly sanctioned by the NCLT. The approved Schemes contained clauses enabling amalgamated company to file revised return

Both DPL and DCL filed revised returns manually on 27 Nov 2018 and claimed losses to be carried forward to future years

Dalmia Power Ltd. (Supreme Court)

Supreme Court allows filing of revised ROI beyond the time limit prescribed in the Income-tax law

Revenues' contentions

- The revised ROIs were filed after the expiry of the statutory time limit prescribed;
- Relevant provisions of the Income-tax law prescribe filing revised ROIs in electronic form only; and
- No condonation of delay was sought from CBDT for filing revised returns beyond the prescribed time limit.

Tax Authorities rejected manual tax returns filed by the Taxpayers

High Court Division Bench's Ruling

- The mention in the NCLT order that the companies can file revised returns is only an enabling clause;
- NCLT specifically mentioned in the order that the taxpayers need to undertake compliances and obtain necessary permissions from the relevant statutory authorities;
- Therefore, revised ROIs filed beyond the applicable due dates can be treated as valid only if they follow the prescribed procedure and conditions for condonation of delay under the Act.

High Court Division Bench ruled in favor of Revenue

Supreme Court's Ruling

- The Schemes permitted filing of revised returns after the expiry of statutory time limit;
- Tax department did not object to the Schemes before the NCLT;
- The provisions for filing revised ROIs will not apply as there is no error or omission in the original ROIs;
- The procedure for condonation of delay for filing belated ROIs will not apply as it covers cases of genuine hardship, not one of business restructuring post amalgamation;
- The provisions relating to succession of business will apply. The tax authorities are accordingly directed to take into account the revised ROIs.

SC ruled that the revised ROIs filed by the taxpayers are valid

Vodafone M Pesa Ltd. vs. DCIT (ITA No. 1073/Mum/2019) (ITAT Mumbai)

Vodafone M-Pesa Ltd (Mumbai ITAT)

No deemed income on issuance of shares at a premium if share valuation is as per the Discounted Cash Flow ('DCF') method

Facts:

- Vodafone M-Pesa Ltd. (taxpayer), an Indian company, is a 100% subsidiary of Vodafone Idea Limited (VIL), also an Indian company
- During assessment year (AY) 2015-16, taxpayer issued equity shares at a premium of INR 14.70 per share based on a valuation report which applied DCF method
- AO cited the following statement in the valuation report:
"In particular, it may be noted that we have relied upon the information provided by the management. We have been given to understand that the information provided is correct and accurate....."
- AO disregarded the valuation report alleging:
 - It was prepared based on the information/projections provided by the taxpayer;
 - The valuer did not independently verify the information and simply relied on the taxpayer's information/projections;
 - The projections were nowhere near the actual state of affairs
- AO added the 'excess' share premium received by the taxpayer as its deemed income by taking the FMV of the equity share (using NAV method) at INR 4.15

CIT(A) accepted the method of valuation adopted by the taxpayer. However, comparing the projections with actuals, determined the share premium of INR 1.17 per share

Vodafone M-Pesa Ltd (Mumbai ITAT)

No deemed income on issuance of shares at a premium if share valuation is as per the Discounted Cash Flow ('DCF') method

Following *Cinestaan Entertainment (P) Ltd. [(2019) 106 taxmann.com 300/177 ITD 809 (Delhi - Trib.)]*, the Mumbai ITAT held that:

What is sought to be taxed in the present case is not any 'unaccounted or black money'; rather, a 'deemed income' which would otherwise not be an income of the taxpayer

Such a 'deeming provision' is to be strictly interpreted, i.e. if there are two views possible in interpreting it, then the construction most beneficial to the taxpayer should be adopted.

In this case, the 'deeming provision' prescribes certain methods of valuation. If one of these methods is adopted by the taxpayer, then Revenue is bound to accept it.

Revenue cannot apply its own valuation method. It can also not apply the valuation of another independent valuer (using a prescribed method) to replace the valuation made by the taxpayer's appointed independent valuer under a prescribed method.

ITAT accepted the valuation adopted by the taxpayer

Mohit Mineral Vs Union of India (Gujarat High Court)

Mohit Mineral Vs Union of India (Gujarat High Court)

Issue - Levy of IGST on Ocean Freight charges

Facts and issue

- Writ petitions filed challenging the levy of IGST on Ocean freight for:
 - the services provided by a person located in a non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.
- IGST was levied on ocean freight through Notification No.8/2017-Integrated Tax (Rate).
- Further, the liability to pay tax on such service was fixed on the importer as the recipient of service vide entry at serial no. 10 to Notification No.10/2017-Integrated Tax (Rate).

Petitioner's contentions

- Levy of IGST on ocean freight tantamount to double taxation as IGST gets discharged on the import of goods where such freight amount forms part of the valuation of goods.
- Services of Foreign Shipping lines were procured by the Foreign exporter. Importer of Goods is not a part of the said transaction and hence, cannot be said to be the "recipient" of services for the purpose of payment of IGST.
- Since the Importer is not the recipient of the services, it cannot be made liable to pay tax under reverse charge mechanism (RCM)
- The entire gamut of transaction occurred outside India. Hence levy is unconstitutional

Revenue's contentions

- IGST on ocean freight is levied based on representations received from Indian shipping industry to provide a level playing field to Indian shipping lines.
- IGST paid under RCM was available as input tax credit (ITC) to the importer and hence, there was no additional cost.

Mohit Mineral Vs Union of India (Gujarat High Court)

Issue - Levy of IGST on Ocean Freight charges

Ruling

- A person who is neither the supplier nor recipient cannot be made liable to pay GST under the Act. Importer did not avail the Transportation services. Thus importers are not “recipient” of such services and neither can be deemed to be recipient of services to levy of IGST on ocean freight charges
- The transaction is neither an intra-state nor inter-state supply / import of service under Section 7 of the IGST Act as both the supplier (Shipping line) and recipient (foreign exporter) are outside India
- The transaction is not entered into by supplier or the recipient located in India. The mere fact that the transportation of goods terminates in India, will not make such supply of transportation of goods as taking place in India.
- Accordingly, HC declared the impugned notifications levying IGST on Ocean Freight charges on the importers as unconstitutional being ultra-vires the provisions of IGST Act.

Comments

- The High Court has corrected the anomaly of double taxation in this transaction by holding the Notifications levying GST on Ocean freight as a separate supply unconstitutional
- Importers whose outward supplies were exempted would benefit as IGST paid by them on Ocean Freight was a cost to them
- Even otherwise for Importers who were availing ITC of the tax paid would benefit from a cash flow perspective
- Hopefully the other High Courts would take a similar view and relieve the importer from double taxation. View relied / upheld in Kolkata High Court in the case of **Adani Wilmar Limited vs UOI**

GE T & D INDIA LIMITED 2020 (1)

TMI 1096 – Madras High Court

GE T & D INDIA LIMITED Vs Deputy Commissioner of Central Excise

Issue – Leviability of Service Tax on Notice Pay recovery

Facts and issue

- Employment agreements of the petitioner provides for serving a notice period of 2-3 months before quitting employment.
- The Company had received certain amounts in lieu of notice period not served by the outgoing employees.
- The authorities were of the view that such recovery was covered within the scope of “declared services” defined in clause (e) of Section 66E of Chapter V of Finance Act, 1994 and that the employer was “tolerating an act” of immediate quitting from service, by the employees and such agreement/ toleration results in the rendition of a taxable service.

Ruling

- The Court observed that the employer cannot be said to have rendered any “service” and has merely facilitated in exit of employee upon imposition of a cost for the sudden exit.
- The definition of “declared service” is not attracted to this scenario as the employer has not “tolerated any act” of the employee but has permitted a sudden exit upon being compensated by the employee.
- Contract of employment has to be read as a whole to charge Service Tax. There are situations in a contract that constitute rendition of service such as breach of a stipulation of non-compete. However, in case of notice pay (in lieu of sudden termination) rendition of service does not arise either by the employer or by the employee. Accordingly, service tax shall not be applicable of notice pay recovery.

Comments

- The Judgment brings relief to companies receiving notices from authorities on Notice pay
- Under the GST regime, businesses should analyze the applicability of GST on notice pay recovery in light of the GST provisions, terms of contract and judicial decisions



Annexure - Other updates

MLI - Key changes effective from 1 April 2020

How the MLI Operates

Indian CTAs | MLI to enter into effect from 1 April 2020

Table A - MLI to enter into effect for India from 1 April 2020 both for WHT and other taxes

Austria	Australia	Belgium
Finland	France	Georgia
Ireland	Israel	Japan
Lithuania	Luxembourg	Malta
Netherlands	New Zealand	Poland
Russia	Serbia	Singapore
Slovak Republic	Slovenia	Sweden
United Kingdom	UAE	

Table B - MLI to enter into effect from 1 April 2020 for WHT and from 1 April 2021 for other taxes

Canada	Latvia	Ukraine
Denmark	Norway	Switzerland
Iceland	Qatar	

Table C - MLI to enter into effect from 1 April 2021 for WHT and other taxes

Cyprus	Saudi Arabia
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- **MLI will not impact a) India-USA tax treaty (since USA has not signed MLI) and b) India tax treaties with China, Germany, and Mauritius (since Indian tax treaties are not notified by said parties)**
- **India and China have recently amended its tax treaty through protocol signed on 26 November 2018. Amongst others, protocol incorporates changes required to implement treaty related minimum standards agreed under BEPS project**

How are MLI/ DTAA provisions to be read

Overview of MLI positions of Select Indian CTA parties

Prevention of treaty abuse

Preamble and PPT to apply to all Indian CTAs

Opted to apply Simplified Limitation on Benefits (SLOB): India, Russia, Norway

Opted to not apply SLOB: France, Netherlands, Singapore, UK, Luxembourg, Australia, New Zealand, Sweden

Narrowing provisions for specific activity exemption (preparatory & auxiliary activities)

Opted to apply*: Option A - India, Netherlands, New Zealand, Australia

Opted to apply Option B/ Opted to not apply: France, Singapore, Luxembourg, Sweden, UK

Anti-fragmentation principle

Opted to apply: India, France, UK, Netherlands, Australia, New Zealand

Opted not to apply: Singapore, Luxembourg, Sweden

PE specific activity exemption

Broader agency PE rule

Opted to apply: India, France, New Zealand

Opted to not apply: Netherlands, Singapore, UK, Luxembourg, Australia, Sweden

Opted to apply: India, Netherlands, New Zealand, Australia

Opted to not apply: France, Singapore, UK, Luxembourg, Sweden

Splitting-up of contracts

*To apply to particular CTA, if both CTA parties chose to apply same option. Also, whilst option A provides that exemption from PE is available only if all the activities carried on are preparatory and auxiliary in nature, option B broadly provides specific activity exemption per OECD Model Convention 2014

Key administrative changes

Key administrative changes

Circular, Notifications, & Press release

10/2020

Notification of Form No 10-IC and Form No 10-ID to opt for concessional tax regime as envisaged under Section 115BAA (existing companies) and Section 115BAB (new manufacturing entities) of the Act

09-01-
2020

Relaxation in eligibility conditions for filing Sahaj ITR 1 and ITR 4 (Sugam) for AY 2020-21 to include taxpayers who own house property in joint ownership or individuals required to file tax returns to disclose – cash deposits in bank exceeding INR 1 crore, expenditure exceeding INR 2 lakhs on foreign travel or expenditure exceeding INR 1 lakh on electricity consumption

01/2020

Instruction prescribing cut-off dates for lower/nil withholding tax applications i.e. for FY 2020-21 application can be filed on or after 28 February 2020 and on or before 15 March 2021

04-03-
2020

Press release on TDS surveys where the Income Tax Department has unearthed huge defaults in deduction of tax and deposit (around Rs 3800 crores)



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