CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

Prince Arcade, 2-L, Rear Block, Second Floor,
22-A, Cathedral Road (Next to Stella Maris College)
Chennai - 600 086. Phone : 044 - 28114283
Website : www.casconline.org

Volume 60 | Issue 12 | Monthly | March 2019 | Rs.25/-

INDEX

MEETINGS

Date	Time	Speaker	Topic
09.03.2019 Saturday	09.00 am*	CS. Priya Kannan	The Companies (Amendment) Ordinance, 2019 - Amendments and Compliance
21.03.2019 Thursday	06.30 pm**	Adv. Vaitheeswaran	The Banning of Unregulated Deposit Schemes Ordinance, 2019 - An Analysis

*Preceded with Breakfast half an hour before the scheduled time of meeting

** Preceded with High Tea half an hour before the scheduled time of meeting

CASC Annual Members are requested to renew their subscription for 2018 - 2019

THE MONTHLY MAGAZINE FROM CASC

ES

ADVISORY

esas™

Accounting Services Professional

Accounting Advisory Services & One Stop Financial Solution.,

For all your esteemed Client Needs

ACCOUNTING SERVICES IN TALLY

Along with

Statutory Compliances

At Your Business Premises

(or)

In our Back office support

Contact	:	**U. Elango,** CEO
H / P	:	98410 20581, 98416 20581
Tel	:	044 26184581 / 26184582
Direct	:	044 26186537
E-mail	:	esasbpo@gmail.com, esaskpo@gmail.com
Address	:	No 24/20, Thirumangalam Road, Villivakkam, Chennai - 600 049. (Near IOB Kambar Colony Branch)

EDITORIAL

***Compliance-mania*:**

The Business Community are getting thrusted with more compliances through delegated authorities particularly under the Companies Act. What is more disturbing is the authority does not come out with sharing of information why such compliances is now brought about. In certain cases they come with circular / notification without back end preparation. Now every company which has been incorporated before 31st December, 2017 (Why this date?) has to file a form called INC – 22A which is being said to be a KYC requirement. This was notified on 21st February, 2019 and compliance is to be completed on or before 25th April, 2019. There is no communication from the Minister of Company Affairs why is this additional compliance has been brought in when majority of the information called for is already available with MCA under various other Forms. It is said that this will weed out the Shell Companies. The Government has taken various steps to weed out these shell companies. Under the Companies Act, a company can be deregistered under section 248 and using the said power the Government had struck off 2.26 lakh companies from the register of companies as on 31st December, 2017. According to written reply by the Minister of State for Corporate Affairs to the Lok Sabha "During financial year 2018-19, a total of 2,25,910 companies have been identified for action under Section 248 of the Act and after following due process of law, names of 1,00,150 companies have been struck off from the register of companies. This is a continuous process."

When one gets into the requirement of the form INC-22A, it is more of compilation of the various forms already filed and additional requirement is attaching "Photograph of registered Office showing external building and inside office also showing therein at least one director/KMP who has affixed his/her Digital Signature to this form." This form is again has to be counter signed by a professional and thus the risk is passed on.

It would be worthwhile to note that the section referred to in the Notification dated 21st February, 2019, is Section 12(9) and Sub Section (1) and (2) of Section 469. Section 469 empowers the Central Government to make rules and sub sections states as under

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.

The sub section (1) is a general power and the sub Section (2) is to specific power and the lawmakers are not able to decide whether this notification would fall under general or specific clause. The Notification only states that this form has to be filed but without any clarity as to whether this has to be filed every time there is a change in registered office (another area of misuse) or the signing authority has resigned and or expired. Kindly note this form does not require approval. The website says that the Form INC-22A will be available with effect from 25th February, 2019. Hope this happens!

The MCA had earlier brought in two "one-time" forms – MSME Form I for outstanding to MSME and the other – Form DPT 3 – relating a onetime return of outstanding receipt of money or loan by a company but not considered as deposits. The MSME Form 1 was to be filed on or before 22nd February, 2019 and the same was not made available. Now the General Circular No. 1 / 2019 dated 21st February, 2019, states the due date stands extended and the due date will be 30 days from the date the said form will be available on the website. Why this circular is released on the last date when they would have been aware of the development?

Ordinance Route

Ordinances are unique power bestowed upon the Government to take immediate legislative action and according to Article 123, the promulgation of an ordinance can be only when 3 conditions are fulfilled namely both Houses – Lok Sabha & Rajya Sabha – are not in session, extant provisions of law are felt inadequate, under compelling circumstances and the president is satisfied for the need of immediate action.

The President of India on 21-02-2019 has promulgated the following four Ordinances, namely:––

- **1. The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 (Ord. 4 of 2019).**
- **2. The Indian Medical Council (Amendment) Second Ordinance, 2019 (Ord. 5 of 2019).**
- **3. The Companies (Amendment) Second Ordinance, 2019 (Ord. 6 of 2019).**
- **4. The Banning of Unregulated Deposit Schemes Ordinance, 2019 (Ord. 7 of 2019).**

The last one "The Banning of Unregulated Deposit Schemes Ordinance, 2019" is made applicable with effect from 21st February, 2019 and the same was first approved by the cabinet as a Bill on 20th February, 2018. In one full year this was not taken for discussion and passage. The Bill was passed by the Lok Sabha on the last day i.e., 12th February, 2019 and the same day the Rajya Sabha was also adjourned sine die. This Bill could never have been passed as an Act. The Cabinet approves the Promulgation of Unregulated Deposit Schemes Ordinance, 2019, on 19th February, 2019, and the press release talks about the benefits of the said ordinance – "The proposed Ordinance will immediately tackle the menace of illicit deposit taking activities in the country launched by rapacious operators, which at present are exploiting regulatory gaps and lack of strict administrative measures to dupe poor and gullible people of their hard-earned savings, by altogether banning unregulated deposit taking schemes, and having adequate provisions for punishment and disgorgement / repayment of deposits in cases where such schemes nonetheless manage to raise deposits illegally." If this was so important and beneficial, then why this was taken for discussion on the last day of the 16th Lok Sabha? Be that as it may, this Ordinance will have far reaching impact and requires in-depth analysis.

First International Annual Residential Conference

CASC had its first International Annual Residential Conference was successfully conducted in Sri Lanka and the delegates and the participants returned on 27th January, 2019. Mr. Ramana Kumar, one of the delegate, has penned the experience under the title "Siksha at Sri Lanka" which is carried elsewhere in this Bulletin.

Appeal

Members are requested to attend the programs conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent by hard copy to the office of the CASC or emailed to admin@casconline.org or any of the Members on the Management Committee.

For and on behalf of Editorial Board

CA. Uttamchand Jain

DISCLAIMER

The contents of this Monthly Bulletin are solely for informational purpose. It neither constitutes professional advice nor a formal recommendation. While due care has been taken in assimilating the write-ups of all the authors. Neither the respective authors nor the Chartered Accountants Study Circle accepts any liabilities for any loss or damage of any kind. No part of this Monthly Bulletin should be distributed or copied (except for personal, non-commercial use) without express written permission of Chartered Accountants Study Circle.

ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

READER'S ATTENTION

You may please send your Feedback Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to ***admin@casconline.org***

For Further Details contact :

"The Chartered Accountants Study Circle"

"Prince Arcade", 2-L, Rear Block, 2nd Floor, 22-A, Cathedral Road,
Chennai - 600 086. Phone 91-44-28114283

Log on to our Website : **www.casconline.org**
For updates on monthly meetings and professional news.
Please email your suggestions / feedback to admin@casconline.org

Mismatch:

In the case of mismatch of reporting of purchases and sales by the respective dealers in the official website, it is well settled by the judgment of this Court in M/s. JKM Graphics Solutions Private Limited, Vs. CTO, Vepery Assessment Circle, Chennai, reported in (2017) 99 VST 343 (Mad), that the assessing authority shall independently apply his mind before arriving at the proposals regarding the defects and it is expected to conduct an intra-departmental enquiry to verify the correctness of the transactions with the other end dealers. But, in the instant case, it has not been done so. Further, the assessing authority, without even furnishing necessary documents, has passed the impugned orders. In fact, without furnishing the materials to the dealer calling for the objection by itself is violative of principles of natural justice as the dealer is deprived of effectively defending his case. In view of the above, the impugned orders are set aside and the matter is remanded to the file of the respondent. The respondent is directed to follow the guidelines given in the judgment of this Court in M/s. JKM Graphics Solutions Pvt Ltd., Vs. Commercial Tax Officer, Chennai,

CA. V.V. SAMPATHKUMAR

reported in 2017 (99) VST 343 and provide necessary documents to the petitioner for the purpose of filing additional objections and pass an order later. **M/s. N. R. Traders, Vs. The Commercial Tax Officer, Chokkikulam Assessment Circle, Madurai. W.P (MD) Nos.18781 of 2018 and 18782 of 2018 DATED: 10.09.2018**

Personal Hearing:

A notice was issued by the respondent on 25.09.2017, for which objections were filed by the petitioner on 17.10.2017. The respondent, thereafter, not fixing a date for personal hearing and communicated impugned order. The Commissioner, pursuant to the recommendations of the Honourable Justice Sri Ramanujam Committee, issued a circular, laid down certain procedures to be followed by the assessing authority before passing final orders. That circular is binding on the respondent. It mandates that personal

hearing shall be given even such an opportunity is asked or not. But, in contravention of the circular, without providing an opportunity of personal hearing after filing of the objections, the respondent has passed the impugned orders. A Division Bench of this Court in an unreported decision in W.A. (MD) No.234 to 240 of 2015 (G.V. Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle Corporation of Shopping Complex, Coimbatore), dated 16.03.2018, has held that the opportunity of personal hearing cannot be denied, even if the objections not filed. The respondent, without any independent application of mind on the petitioner's objections, has simply confirmed the proposal, by the impugned orders without following the ratio of the rulings in Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri, reported in (2015) 81 VST 560, In view of the above, the impugned orders passed by the respondent are set aside and the matter is remanded back to the file of the respondent for fresh consideration.

M/s. K.K.A. Enterprises, Alampatti Village, Sattur Taluk. Vs. The State Tax Officer (Main) (FAC),Sattur. W.P (MD) Nos.20369 of 2018 to 20371 of 2018 DATED: 25.09.2018

Natural Justice:

The materials with regard to the purchase omissions for the assessment year 2013-14 to 2015 16 ere not produced to the petitioners by the Assessing officer. Therefore, it is very clear that the impugned orders came to be passed without providing the materials relied on by the respondents. Non production of materials relied on by the respondents, which is provided to the petitioner enabling him to file objections effectively will amount to violation of principles of natural justice and set aside by remitting back the matters to the respondents for fresh consideration. The respondents are directed to provide all the materials relied on by them before issuing the proposals, call for objections and pass final orders, after giving opportunity of personal hearing to the petitioner. **Tvl.Ganesa & Co., Madurai Vs The Assistant Commissioner (ST) Munichalai Road Assessment Circle, W.P.(MD) No.13586 of 2018 to 13588 of 2018 DATED: 12.07.2018**

Opportunity:

When the mode of service of revision notice was questioned, the Court, after hearing the learned counsel for the parties and perusing the material papers on

record, observed that they do not find any error in the finding rendered by the Writ Court, since the duty of the Department is to serve notice on the dealer in terms of the said Rules, which has been done in the instant case and that they cannot embark upon an exercise as to whether the person, who received the said revision notice was authorized or not. However, considering the peculiar facts and circumstances of the case namely that the business of the appellant was closed down, that his wife was under continuous medical treatment and his son met with an accident and sustained grievous head injuries, the Court was inclined to grant s one opportunity to the appellant to go before the Assessing Officer. **M/s.Reva Aqua, Vs The Commercial Tax Officer, Bhavani Assessment Circle, Writ Appeal No.2438 of 2018 Dated: 01.11.2018**

Input tax credit Denial:

Assessment notices were issued by the respondent seeking denial of ITC claim on purchase of goods on the ground that they were used for personal use without detailing any basis for this. The Court held that there is no point in keeping these writ petitions pending before this Court. The notices were issued calling upon the petitioner to pay the amount. Needless to state that there is a violation of principle of natural justice as no opportunity has been given to the petitioner to rebut the basis of the demand in the impugned notices. Ends of justice will be met, if the impugned notices are treated only as a show cause notices as to show cause as to why the amount mentioned in the impugned notices shall not be recovered from the petitioner and the petitioner is given an opportunity to file their detailed reply to the notices impugned in these writ petitions. Accordingly, the petitioner is directed to file a detailed reply to the respective notices, within a period of four weeks from the date of receipt of a copy of this order. The respondent shall thereafter pass a speaking order on merits, after affording an opportunity of personal hearing to the petitioner. **M/s. Thiagarajar Milla (P) Limited, Vs. The Assistant Commissioner (CT), Thirupparankundram Assessment Circle, Writ Petition (MD) Nos.16471 to 16473 of 2013 DATED: 09.11.2018**

Goods sent outside the State and Input Tax credit:

Petitioner after purchasing raw materials such as gold bullion from the registered dealers, within the State of Tamilnadu, it is being sent outside the State of Tamilnadu for conversion to the job

workers viz., Goldsmith in other State and receive back the finished goods i.e. jewellery to Chennai for sale within the State of Tamilnadu. The petitioner is discharging tax on the sale of jewellery which are made to registered dealers inside the State and availed tax credit to the extent of tax paid on the purchase of bullion. Based on the audit report of the Enforcement Wing, first respondent placing reliance on Section 19(2) (ii) of the Tamil Nadu Value Added Tax Act, 2006, stated that input tax credit cannot be allowed since the manufacturing activity took place outside the State and not within the State. The denial of ITC on purchase of bullion to the petitioner on mere ground that it was sent for conversion to other States is contrary to law. When the provisions section 19(2) (ii) of the said Act was challenged before the Division Bench of this Court in PATINA GOLD ORNAMENTS PVT. LTD. CASE [CITED SUPRA], wherein the Division Bench of this Court, referring to the various decisions of the Hon'ble Supreme Court, while declaring Section 19(2) (ii) of the Act, 2006 bad in law and invalid to the extent that it denies ITC in respect of those units which despatch tan suffered raw materials, for concession into final product. In the facts and circumstances of the case, the Division Bench judgment cited supra, is squarely apply to the present case. Therefore, the impugned orders, for the assessment years passed by the first respondent are quashed and remitted to the first respondent to consider afresh in the light of the Division Bench judgment (cited supra) and pass appropriate orders, as expeditiously as possible, after providing opportunity to the parties concerned, in accordance with the provisions of the Act. **Jinendra Jewellers Vs. The Assistant Commissioner (CT), Moor Market (North) Assessment Circle,** W.P.No.4780 and 4781 of 2011 DATED: 29.11.2018

Slump sale:

The appellant is in the business of garments and also owns wind mills. The appellant sold three business units, each consists of one wind mill by way of sale of business as a whole. By this, the appellant meant that all the assets including intangible assets stood transferred in favour of the purchaser/ assignee. Further, in the memorandum of understanding dated 28.8.2011, the assignee – M/s. GEE AAR Kaush Energy Private Limited also took over the employees of the undertaking and

therefore, the appellant contended that the transfer falls within the ambit of Explanation III to Section 2(41) of the TNVAT Act and hence, it should not be included in the turnover of the assets of the appellant. The Assessing Officer issued the notice stating that the appellant sold two wind mills and that the sale could not be considered as a slump sale under Section 2(41) of the TNVAT Act, proposed to tax the appellant on the sale value of the two wind mills at 5% and called upon the appellant to show cause as to why tax should not be demanded. Nearly after a year, the Assessing Officer issued the notice, wherein the Assessing Officer stated that the appellant had sold the wind mills, but did not pay tax on the sale of the wind mill during the year 2012-13.

The Assessing Officer did not afford any opportunity of personal hearing, but, passed the impugned order dated 11.1.2017.In the notice dated 25.11.2016, there were reference as to inter departmental communications in various levels, including the Additional Commissioner (Audit), Chennai, the Deputy Commissioner (CT), Tirupur, the Accountant General (Economic & Revenue Sector Audit), the Commercial Tax Officer, Special Circle I, Tirupur and the Joint Commissioner (CT), Coimbatore. All these inter departmental communications are much after the first notice dated 30.11.2015 and the appellants' objections dated 29.12.2015. If the Department does not claim any privilege over such inter departmental communications, the appellant would be entitled to copies of those documents or the appellant would be entitled to know the contents of those documents, which appear to be the basis for the issuance of the notice dated 25.11.2016. Without issuing a show cause notice and making it known to the appellant as to why their case cannot be accepted as a transfer of business as a going concern, the Assessing Officer should not have completed the assessment. For all the above reasons, amongst others, the writ appeal is allowed, the writ petition is also allowed and the impugned order in the writ petition dated 11.1.2017 is set aside and matter is remanded with directions and conditions **M/s. SCM Garments Pvt. Ltd., Vs The Assistant Commissioner (CT), Tirupur North Assessment Circle, Writ Appeal No.2372 of 2018 Dated: 30.10.2018**

(The author is a Chennai based Chartered Accountant. He can be reached at vvsampat@yahoo.com)

CASC CHENNAI, MEMBERSHIP FEE

Corporate Membership	**Rs.**
Corporate Annual Membership	3,000.00
Corporate Life Membership (20 Years)	20,000.00
Individual Membership	
Annual Membership	750.00
Life Membership	7,500.00

CASC - HALL RENT

HALL RENT FOR 2 HOURS	1,000.00
HALL RENT FOR 2-4 HOURS	1,500.00
HALL RENT FOR FULL DAY	2,500.00
LCD RENT FOR 2 HOURS	600.00
LCD RENT FOR 2-4 HOURS	800.00
LCD RENT FOR FULL DAY	1,200.00

CASC BULLETIN - ADVERTISEMENT TARIFF - PER MONTH

Full Page Back Cover	2,500.00
Full Page Inside Cover	2,000.00
Half Page Back Cover	1,500.00
Half Page Inside Cover	1,250.00
Full Page Inside	1,200.00
Half Page Inside	750.00
Strip Advertisement Inside	500.00

Minimum 6 months advertisement is required.

If advertisement is 12 months or above, special discount of 15% is available

The above amounts are Exclusive of Government Levies like GST. Applicable taxes will be added

Your demand draft / cheque at par should be drawn in the name of **"The Chartered Accountants Study Circle"** payable at Chennai.

Kindly contact admin@casconline.org for the Clarifications and or queries.

GST - ADVANCE RULINGS CASE LAWS

1. <u>CENVAT Credit – Premium Paid On Workmen Compensation Insurance Policy – Admissible</u>

CA. VIJAY ANAND

In Ganesan Builders Ltd. V. CST, Chennai 2019(20) GSTL 39(Mad.), the assesse is a builder and is engaged in rendering commercial construction service ; construction of residential complex, works contract services and GTA Services (as a recipient). The adjudicating authority denied the CENVAT credit availed of the service tax paid on workman compensation insurance policy on the ground that the payment of insurance premium for availing the insurance policy stand excluded from the definition of input services, pursuant to the definition of Input Services, after 01.04.2011. This denial was also sustained by the Commissioner (Appeals) & the Tribunal. On a further appeal filed before High Court, it was observed as under:

1. The Tribunal interpreted exclusion clause (c) of sub-rule (l) of Rule 2 of the CENVAT Credit Rules, 2004 (CCR for short) and stated that in so far as the expression "and" used between two expressions "health insurance" and "Travel benefits" is disjunctive and is not required to be read along with the expression "health insurance". Further, it held that the exclusion clearly mentions various services, including life insurance and health insurance, as not covered by input services. It is further held that the travel benefits extended to the employees at the time of leave or home travel concession also stand excluded and therefore, there is no warrant to read excluded health insurance services with the travel benefits for leave etc. and the contention of the assesse that the health insurance services, which stand excluded are only which are extended during leave, cannot be accepted.

2. Further, the Tribunal observed that the contention of the assesse that they are obliged to provide such services under the Employees' State Insurance Act, 1948 cannot be a ground to allow the credit, in as much the legislation is within its right to amend the definition of "input services" and to include or exclude any of the services from its

ambit and that the Tribunal is not within its jurisdiction to decide the vires of the said amendments.

3. The first and foremost factor, which should have weighed the mind of the Tribunal is the nature of the policy availed by the assesse; the beneficiary of the policy; and the Statute, under which, the policy is required to be availed. These three are very important factors in the instant case.

4. A perusal of the copies of a few policies indicate that they are Workmen Compensation Policies wherein the name of the insured is the assesse and specify the area, where the construction works are being carried on, the description of the employees for whom premium has been paid are not described by their names, but by their vocation/skill, namely, mason, helper, stone cutter, bar bender and his helper, carpenter and his helper, painter and his helper, store keeper, electrician, supervisor, plumper, welder, tiles mason, etc.

5. The above policies are taken because of a statutory requirement under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (in short, the 1996 Act) wherein the Workmen's Compensation Act, 1923 has been included in the Second Schedule of the 1996 Act and the provisions of Workmen's Compensation Act, 1923 has been made applicable to the building workers.

6. The policy does not name the employees, but categorized the employees based on their vocation/ skill. The insured is the assesse and the intention of the policy is to protect the employees, who work in the site and not to drive them to various forums for availing compensation in the event of an injury or death. Therefore, the availment of the policy appears to be a statutory requirement and this service is not used primarily for personal use or consumption of an employee and this, being the statutory requirement, it is insured (assesse) specific and not employees specific.

Hence, the appeal filed by the assesse is allowed and the substantial questions of law are answered in favor of the assesse and against the Revenue.

2. <u>GST – ADVANCE RULING – SUPPLY OF SERVICES BY SOCIAL WELFARE ORGANISATION AFFILIATED TO THE INTERNATIONAL INNER WHEELS CLUB – SUPPLY</u>

In RE: Association of Inner Wheel Clubs In India 2019(20) GSTL 119(AAR-GST), the applicant is affiliated to International Inner Wheel and the administrative body for all Inner Wheel Clubs spread in 27 Inner Wheel Districts all over India (two of which fall within West Bengal), seeks a Ruling on whether the activities that are undertaken by them maybe termed as "Business" and "Supply of services" as defined under the WBGST/CGST Act,2017 (hereinafter referred to as "The GST Act").

The authority observed as under:

1. The applicant is affiliated to International Inner Wheel, one of the largest women's service voluntary organizations in the world active in more than 103 countries, and the organization is involved in social welfare work with the aim of helping people live better lives. Members of the Clubs which fall under the applicant organize events which combine personal service, fundraising, fellowship and fun, united by friendship and to serve the local community. They provide financial and other practical support to the financially disadvantaged classes, including people suffering from natural disaster or in war-torn regions. The club accumulates funds through subscriptions, sponsorship fees, the sale of souvenirs etc.

2. The clubs which fall under the applicant do not provide any facility or benefit to any of its members. The subscriptions/membership fees collected from the members are utilized entirely for funding charitable work. The applicant submits that although funds are collected through sponsorship fees, advertisements, sale of souvenirs etc. such activities do not fall within the ambit of "Business" within the meaning of Section 2(17) of the GST Act, as they are undertaken to facilitate and are ancillary to "Charitable service" which is not covered in the above clause.

3. In CST v. Sai Publication Fund, the Supreme Court held that if the main activity is not business, then activities ancillary to the main activity are not to be treated as a business.

4. It is clear, from the above reads that the Inner Wheel Clubs have specific objectives and members are granted various facilities and/or benefits, enabling them to attend conventions/ meetings for the furtherance of the objectives of the Organization, against subscriptions or fees, renewable annually. In other words, the annual membership subscription facilitates the member to further the objectives of the Organization and be associated with other similar organizations, both nationally and globally, arranged for

by the Organization. Such facilities/ benefits are not available to the non-members of the Organization.

5. There is also a provision by the Inner Wheel Clubs to award their members for their outstanding services. The Margarette Golding Award is one such award, which appears to be the equivalent of ten pounds sterling (plus the bank draft fee) payable by the presenting Club or District or the National Governing Body to the National Treasure. The applicant's Income and Expenditure and Receipts and Payments Accounts for FY 18 and the Balance Sheet as on March 31, 2018, provide an idea of the nature of financial transactions made by the Inner Wheel Clubs.

6. It appears that the fund collected is mainly spent on organizing meetings and conventions like Triennial etc. Clearly, such meetings and gatherings provide facilities and benefits to the members in the form of a platform for social mixing, networking, promotion of friendship etc.

7. The term "Business" under the GST Act includes, under Section 2(17), sub clause (e) "provision by a club, association, society, or any other body (for a subscription or any other consideration) of the facilities or benefits to its members.

8. It is, thus, clear that the applicant is doing "business" as defined under section 2(17)(e) of the GST Act. The subscription and membership fee is to be considered as consideration for the supply of such services, which are classifiable under SAC Heading 99959 under the category ''Services furnished by other membership organization''.

9. W.r.t. the claim of exemption for charities and causes across the world with the aim of helping people live better lives, activities undertaken by the Applicant do not conform entirely to the definition "Charitable Activity" under clause 2(r) of Notification No. 12/2017-CT (Rate) dated 28.06.2017. Such activity by an entity is an "adventure" and maybe be treated as a business under Section 2(17)(a) of the GST Act, and a taxable supply of service if consideration is charged from the recipient.

10. However, the applicant also has activities which involve providing space for advertisements, raising sponsorship etc, and the transactions regarding these activities are, therefore, business transactions within the meaning of section 2(17)(b), being transactions undertaken in connection with or incidental or ancillary to the social welfare activities of the Applicant, and are supplies in terms of Section 7(1) of the GST Act. Such

services are classifiable under SAC Heading 99836 under the category 'Advertising services'. Sale of souvenirs is to be treated as a supply of goods.

11. The decision of the apex court in Sai Publication Fund (supra) is clearly not applicable in the present context, as the main activity is to be treated as a business.

Hence, the authority ruled as under:-

A. The applicant's activities involve supply of services classifiable under SAC Heading 99959 against consideration received in the form of subscription and membership fees services classifiable under SAC Heading 99836 are also supplied.

B. Sale of souvenirs is to be considered as a supply of goods.

C. The nature of supply for miscellaneous income as recorded in the Financial Accounts is to be determined by the nature of the supply.

3. <u>COMPOSITE SUPPLY – HEALTH CARE, FOOD AND MEDICINES TO IN-PATIENTS – EXEMPT WITH THE PRINCIPAL SUPPLY BEING HEALTH CARE SERVICES – NOT COVERED FOR SERVICES TO ATTENDANTS OF THE PATIENTS – WHERE SUPPLY OF MEDICINES AND FOOD AND DRINKS DO NOT FORM PART OF THE HEALTH CARE SERVICES THEN THEY ARE MIXED SUPPLY</u>

In RE: Columbia Asia Hospitals Pvt. Ltd. 2019(20) GSTL 154(AAR-GST), the applicant is a private limited company engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The Company is also engaged in supply of medicines (pharmacy) to in-patients and out-patients. It also operates Restaurant/Canteen services in its premises which is used for supplying food and other eatable items to its patients and their attendants.

An application for advance ruling was filed seeking answer as to the following:

(a) "Whether two or more supplies of goods or services which are naturally bundled in which principal supply is exempt and others are taxable, can be treated as composite supply and if yes, principal supply being exempt supply, can the said composite supply be treated as exempt supply or the same cannot be treated as composite supply?

(b) If not treated as composite supply, is registered person allowed to claim input tax credit of tax paid on procurement of capital goods, inputs and input services related to both taxable supply and exempted supply?"

4. The applicant furnishes some facts relevant to the stated activity:

a. The applicant states that he is a private limited company and is an international healthcare group operating a chain of modern hospitals across Asia. The Company is currently operating across six different states having eleven hospitals out of which six units are in the state of Karnataka. The Hospitals owned by the applicant are engaged in providing secondary and tertiary Healthcare services which in turn categorizes as In-patient (IP) and Out-patient (OP) services.

b. In case of inpatient services, the patients get admitted in the hospital for an invasive or non-invasive procedure. During the course of such treatment, all the necessary medicines, medical and non-medical consumables, implants, etc. are supplied to the patients. At the time of discharge, the charges for all the goods and services supplied would be collected by raising a consolidated invoice.

c. In case of outpatient services, the patients would avail the healthcare services on out-patient basis without getting themselves admitted in the hospital. Such outpatient services include medical consultation, administration of medicine, dressing, etc. The hospitals also have an in-house Restaurant or Canteen services in its premises to meet the dietary and food requirements of its patients, their attendants and hospital staff.

d. With respect to health care services provided by the applicant company to in-patients, Company also provides food and medicines which are provided in conjunction with health care service. Under the pre-GST regime, the applicant company was not required to discharge the service tax liability as Healthcare service was exempted from service tax vide Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012. However, the applicant company was discharging VAT liability on medicines provided to both in-patients and out-patients.

e. The applicant has taken support of the provisions of section 7(1), section 2(30), section 2(47) of the Central Goods and Services Tax Act which define the "supply", "composite supply" and "exempt supply" and states that as per entry no.74 of the Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017, healthcare services are exempted from GST. However, supply of medicines (pharmacy), consumables and supply of food are taxable at different rates under GST.

f. With these facts, the applicant has sought an advance ruling on the matters already enumerated above.

The authority observed as under:

1. In view of the fact that the healthcare services are exempt from tax under section 11, the same are exempt supplies. But the definition of taxable supplies includes those supplies of goods which are leviable to tax and chosen to be exempted under section 11 and hence the exempt supplies also fall under the category of taxable supplies and hence the supply of goods and services supplied by the applicant company in conjunction with the healthcare services fall under the definition of "composite supply" as the services of supply of food and medicines to the patients are as advised by the doctor or nutritionists.

2. However, in case where the supply of food is not as advised by the doctor or nutritionists and is supplied to the patients, then such supply of food cannot be treated as "naturally bundled" supplies and supplies made in conjunction with each other and hence are separate supplies and needs to be treated not as composite supplies.

3. W.r.t. medicines supplied to the inpatients are concerned, they form part of the healthcare services supplied to the concerned patients and hence are part of the composite supplies of health care services where the principal service is "healthcare services" and is exempt from tax vide Notification No.12/2017- Central Tax (Rate) dated 28.06.2017. However supplies of medicines or food and drinks to persons other than patients, like attendants of the patients and when supplied to the patients not as advised by the doctor or nutritionists, then such supplies would not form part of the composite supplies and would attract applicable tax. This is also clarified in the Circular No.32/06/2018-GST dated 12th February, 2018.

4. In case of outpatients, the doctors prescribe the medicines and the patients, if they are free to purchase the medicines from any pharmacist (need not be from the same hospital), then such purchase of medicines from the pharmacies of the applicant cannot be treated as a part of the composite supplies as they are independent of the healthcare services provided by the applicant. Similar treatment also needs to be provided in case of food and drinks supplied to patients. But in case where the supply of medicines and food and drinks form part of the supply of healthcare services and there is no choice for the patients to choose them separately, then they would form a composite supply with healthcare services being the principal supply.

5. The applicant has raised a question on valuation of the items of medicines and food and drinks when they form a part of the composite supply, the same needs to be answered as under:

a. In case where the medicines and articles of food and drinks form part of the single price including the supply of healthcare services, then there is no need for separate valuation of the same; and

b. In case where the same do not form a part of the composite supply but still are supplied for a single price, then they would constitute a mixed supply and the entire price received would be liable to be taxed at the highest rate applicable to the goods or services supplied as per section 8 of the CGST Act, 2017.

c. In case where supplies of medicines, food and drinks and healthcare services are not supplied for a single price and form separate and independent supplies, then such supplies are to be taxed separately at the rates applicable to such supply of goods or services. Here the valuations of the individual supplies are to be valued on the basis of the provisions of section 15 of the CGST Act.

d. Since the applicant is using the inputs and input services in the course or furtherance of his business, credit of such tax paid on such inward supplies can be claimed by him u/s 16 of the CGST Act wherein the amount of credit claimed needs to be restricted to so much of input tax as is attributable to the supplies which are taxable under the CGST Act. The healthcare services being an exempted supply, either as an individual supply or as a composite supply, credit of input tax claimed which is attributable to such supplies of healthcare services needs to be reversed. The reversal of input tax credit claimed shall be made as per the provisions of section 17 of the CGST Act 2017 read with Rule 42 of the Central Goods and Service Tax Rules, 2017.

Hence, the authority held as under:

1. The two or more supplies of goods or services or both which are naturally bundled in which the principal supply is exempt and others are taxable can be treated as a composite supply of the principal supply if such principal supply is not a non-taxable supply as per sub-section (78) of section 2 of the Central Goods and Service Tax Act, 2017 and such composite supply with the principal supply being exempt supply would be treated as an exempt composite supply.

2. The applicant is eligible to claim credit of input tax credit only on for such taxes paid on the inputs, input services and capital goods which are attributable to the supplies of goods or services which are taxable under the provisions of the Central Goods and Services Tax Act, 2017 and not attributable to exempt supplies of goods or services under the Central Goods and Services Tax Act, 2017.

4. <u>GST – ADVANCE RULING – TRANSFER OF CONSTRUCTED AREA TO A DEVELOPER TO DEVELOP HIS LAND – 50% SHARE OF 4000 SQ.FT. OF COMMERCIAL CONSTRUCTION IS SUPPLY LIABLE TO GST</u>

In RE: Patrick Bernardinz D'sa 2019(20) GSTL 181(AAR-GST), the applicant, a land owner, entered into an agreement for joint development and promotion of the "N Force - Pauline", the residential/commercial building at Valencia, Mangalore. The builder offered to develop and promote a multistoried residential apartment cum commercial building in the property belonging to the Applicant as well as the other land owners. An application was filed seeking advance ruling as to whether the applicant being the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members.

The authority observed as under:

1. The applicant entered into an agreement with M/s. Nforce Infrastructure India Private Limited, Mangalore to develop his land out of which, for his contribution of land, he gets a share of 50% of the total 12 flats constructed and also 50% share out of 4000 sq. ft. of commercial construction. The Joint Development Agreement was signed by him in January 2016 and the construction is stated to be completed in January 2018.

2. Notification No.4/2018-Central Tax (Rate), dated 25.01.2018, which notifies the following classes of registered persons as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) below and in the form of development rights referred to in clause (b) below, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter) namely:-

(a) Registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and

(b) Registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights.

3. The above notification notifies that a person or persons who supply development rights to a developer/ builder etc., against a consideration, which may be in the form of construction service, is liable to be registered under GST. It also provides that the person who supplies the development rights shall pay central tax at the time when the developer/ builder transfers possession or right in the building by way of conveyance deed or similar instrument.

4. Therefore the applicant, being the person who has supplied development rights to a developer in respect of his land, is liable to registration and payment of tax.

5. The developer M/s. Nforce Infrastructure India Private Limited, with whom the applicant entered into an agreement for development of his land, has also filed an application seeking advance ruling on certain questions based on the same Joint Development Agreement. Therefore the ruling in the developer's case may also be interest to this applicant.

Hence, the Authority ruled that the Applicant is a supplier of a taxable service by way of transfer of undivided share of land and hence is liable to register himself and discharge the tax accordingly.

5. GST – ADVANCE RULING – JOINT DEVELOPMENT OF LAND FOR THE CONSTRUCTION OF BUILDING – EXIGIBLE TO GST

In RE: Nforce Infrastructure India Pvt. Ltd. 2019(20) GSTL 184 (AAR-GST), the applicant entered into an agreement with Mr. Patrick B D'sa & others for the construction and handing over of 8828 square feet of residential apartment area, 1630 square feet of commercial area and 8 car parking's on the land belonging to the land owners. The applicant is of the view that they were liable to pay service tax on the taxable value of building constructed & handed over to the land owner, at the time of completion of the project, in terms of Circular No.151/02/2012-ST

dated 10.02.2012. The project is completed post 01.07.2017 i.e. in the GST regime. The applicant is also of the view that they are liable to pay GST @ 12% on the aggregate value of the building constructed and handed over to the land owner and the underlying value of the land. Therefore an application for advance ruling was filed as to the following:-

1. Whether the applicant is liable to pay GST on the value of building constructed and handed over to the land owner in terms of the Joint Development Agreement?

2. If there is liability to pay GST on what value is the GST to be paid since there is no monetary consideration involved?

3. Is the applicant liable to pay service tax up to 30.06.2017 and GST thereafter?

The authority observed as under:

1. Notification No.4/2018-Central Tax (Rate), dated 25.01.2018, which notifies the following classes of registered persons as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) below and in the form of development rights referred to in clause (b) below, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter) namely:-

(a) Registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and

(b) Registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights.

2. In the instant case, the applicant, a registered person, is supplying the construction service of building/civil structure to supplier of the development rights (the land owner) against consideration in the form of transfer of development rights. Notification No.4/2018-Central Tax (Rate) dated 25.01.2018, at para (b), stipulates that the supplier of construction service, to the supplier of development rights, is liable to pay

GST for the service provided to the land owner in terms of the Joint Development Agreement.

3. The applicant needs to pay tax towards the construction service provided to the land owner, on the value to be determined in terms of para 2 of the Notification No.1l/2017-Central Tax (Rate) dated 28.06.2017.

4. A perusal of Section 142(11)(b) makes it evident that the service tax is liable to be paid, which is liable under the Finance Act' 1994, on the services provided up to 30.06.2017. Also the GST is liable to be paid under the CGST Act/ KGST Act, on the services provided after 01.07.2017. Therefore, the Applicant has to pay service tax/ GST proportionate to the services provided before/after 30.06.2017 respectively.

Hence, the authority ruled as under:

1. The applicant is liable to pay GST on the value of building constructed and handed over to the land owner in terms of the Joint Development Agreement.

2. The value on which the applicant is liable to pay GST is to be determined in terms of para 2 of Notification No.11/2017-Central Tax (Rate} dated 28.06.2017.

3. The Applicant is liable to pay service tax/GST proportionate to the services provided before/after 30.06.2017 respectively.

6. SERVICE TAX – ADVISORY SERVICES PROVIDED TO OVERSEAS CLIENTS REGARDING INVESTMENT OPPORTUNITIES IN INDIAN COMPANIES – MANAGEMENT CONSULTING SERVICES – EXPORT OF SERVICES - REFUND ADMISSIBLE

In CDP Real Estate Advisory India Pvt. Ltd. V. CCE, Delhi 2019(20) GSTL 248 (Tri.-Del), the appellant entered into an agreement with Quebec Inc., Canada, which is located outside India and is engaged in the business of providing investment advisory services in India to its respective clients in relation to companies in India for which they received fees in convertible foreign exchange. The appellant filed applications for the period from October 2009 to September 2010, claiming refund of CENVAT credit lying un-utilized in its books of accounts, which were rejected on the ground that the appellant was engaged in rendering the service under the category of "Real Estate Advisory Service" (REAS and that the appellant rendered the service in respect of the properties situated in India and

therefore, the services cannot be treated as export of service. The rejection was also sustained by the Commissioner (Appeals). On further appeal, the Tribunal observed as under:-

1. A perusal of the scope of the agreement indicates that the appellant's task was mainly confined to providing of advisory services in respect of investments identified by overseas client and advise it with respect of investment opportunities in the companies, who are engaged in developing the real estate projects.

2. The definition of 'management or business consulting services' (MBCS) includes the service of any person, who renders any advice, consultancy or technical assistance in relation to financial management.

3. The Commissioner (Appeals) observed that the appellant was in fact, assisting its foreign client for making investment in the Indian real estate companies and therefore, such service is confirming to the definition of "REAS". Further, it has also been observed that the services were consumed in India and as such, the benefit of Export of service should not be available to the appellant.

4. The appellant rendered the services to the overseas client as advisor of the investment opportunities in Indian company, which is clearly covered within the definition of MBCS. By investing in a company in real estate sector, the investor does not acquire or purchase the real estate property itself. In AMP Capital Advisors India Pvt. Ltd. Vs. CST, Mumbai 2015 40 STR 577 (Tri. – Mum.), it was observed that the appellant providing advisory services to AMP capital, Australia and the service recipient using said advice received for further advising for their customers in India, would qualify for export of service.

Hence, it was held that the activities rendered by the appellant within the ambit of MBCS, consequent to which the appellant was entitled to obtain refund.

7. <u>SERVICE TAX – DEMAND ON DISCOUNT GIVEN BY MANUFACTURER TO WHOLESALER WHO SUPPLIES GOODS FOR FURTHER DISTRIBUTION UNDER BUSINESS AUXILIARY SERVICE – NOT TENABLE</u>

In Prabhakar Marotrao Thaokar & Sons V. CCE, Nagpur 2019(20) GSTL 294(Tri.-Mumbai), the appellant is acting as 'Wholesale dealer' for the sale of the product Jarda (Chewing

Tobacco) under the brand name of 'Sarvotkrusht Nagpuri Jarda' manufactured by M/s. Gunaji Marotrao Thaokar & Co. The appellant M/s. Gunaji entered into an agreement and one of the condition is that the manufacturer M/s. Gunaji gives discount to the appellant while supplying the goods for further distribution. The case of the department is that the said discount is nothing but a sales commission which is liable to service tax under the category of Business Auxiliary Service under Section 65 (105) of the Finance Act, 1994. The adjudicating authority confirmed the demand of service tax on the said discount treating it as commission and was sustained by the Commissioner (Appeals). On appeal, the Tribunal observed as under:

1. A perusal of the agreement and the invoice indicate that the transaction between the manufacturer M/s. Gunaji and the appellant is clearly of sale. In the invoice the manufacturer has charged 20% VAT, the transaction is clearly at arm's length consequent to which the sale transaction is on principle to principle basis and that a trade discount was passed on by the manufacturer to the appel lant.

2. Once, the transaction is of sale, there is no relationship of service provider and service recipient between the manufacturer and the buyer (the present appellant). Accordingly, the discount passed on by the manufacturer to the appellant cannot be construed as a commission and the same is not the subject matter of levy of service tax.

3. It is further seen that the appellant also, after purchase of goods from the manufacturer further sold to various traders.

4. A perusal of the copy of the sale invoice issued by the appellant indicates that it is clearly a sale invoice under which the appellant also paid the VAT. This shows that the transaction from the manufacturer to the appellant and subsequent from appellant to the individual traders are clearly sale transactions.

Hence, it was held that no service was involved and that a trading margin cannot be subject matter of levy of service tax. Consequently, the impugned order is set aside the appeal is allowed.

8. <u>GST – ADVANCE RULING – LIONS CLUBS & LIONS DISTRICTS – COLLECTION OF MEMBER'S FEES – NOT LIABLE</u>

In RE: Lions Club of Poona Kothrud 2019(20) GSTL 625(AAR.-GST), the appellant has received fees from their

members towards registration. An application seeking advance ruling was made as to the following:

Since the amount collected by individual Lions clubs and Lions District is for convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single bank account. As there is no furtherance of business in this activity and neither any services are rendered nor are any goods being traded. Whether registration is required?

The authority observed as under:

1. The purpose of receipt of subscription fees and the utilization thereof has to be interpreted in terms of the provisions of the GST Act. Does the applicant club engage in any form of supply of goods or services to its members? Whether the collection of 'fees' from the members is for any supply by the Club to the members? We have seen the earlier submission

2. Clause (e) of sub-section (17) of section 2 of the CGST Act, which defines business, speaks about subscription. But this subscription is for the facilities or benefits that would be provided. The definition requires that the club, association, society, or any such body has to provide facilities or benefits to its members.

3. And these facilities or benefits are to be provided for a subscription or any other consideration. In the facts of the instant case, the amounts collected as 'fees' from the members are not for the purposes of making any 'supply'.

4. All are aware that the definition of 'supply' under the provisions of the GST Act is an inclusive one. However, it is one for 'supply' and the 'supply' is of goods or services.

5. A supplier, as per section 2(105) of the GST Act, is one who provides goods or services, whether on his own or on behalf. In the present case, the club is not formed to provide any facilities or benefits to its members. The fees collected are used for social causes and to meet the expenses incurred in furtherance of the objectives of the club.

6. The club is not formed to provide services to members but people gather under the umbrella of the club to perform socially relevant activities. A club, association or society as understood under section 2(17) is one which would provide goods or services or both to its members such as recreation, sports, food etc.

7. There should be no dispute that applicant club does not supply any facilities or benefits in terms of goods or services to its members consequent to which it is to be held that the club is not formed to provide any supply of goods or services to its members qua the fees received from them.

8. In view of the fact that there being no supply qua the fees received, there arises no occasion for us to visit the definition of 'supply' under the GST Act. The applicant club as per the facts put up before us does not render any 'supply' for the purposes of the GST Act.

Hence, the authority held that in view of the fact that the amount collected by individual Lions clubs and Lions District is for convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single bank account & there is no furtherance of business in this activity and neither any services are rendered nor any goods being traded, there is no requirement to get the registration under the GST laws.

9. <u>GST – APPELLATE AUTHORITY ADVANCE RULING – SERVICES PROVIDED BY EMPLOYEES OF INDIA MANAGEMENT OFFICE (IMO) OR CORPORATE OFFICE TO OTHER UNITS OF THE SAME ENTITY – SUPPLY</u>

In RE: Columbia Asia Hospitals Pvt. Ltd. 2019(20) GSTL 763(AAR.-GST), the appellant is having an international healthcare group operating a chain of modern hospitals across Asia and is engaged in providing health care services. The appellant is a private limited company. The appellant is presently operating across six different states having eleven hospitals out of which six units are in the state of Karnataka.

The appellant has its "India Management Office (IMO)" i.e. Corporate Office in Karnataka and some of the activities like accounting, administration and Maintenance of I System are carried out by the employees stationed at IMO which forms part of the registered person in Karnataka and the consequential benefit of which flows across the Company/units located in other states. Further, certain services such as rent paid on immovable property, telephone services and business consultancy services are availed at the IMO but, since these services are used for the entity as a whole, the cost of such services is attributable to all registered persons located in other states as well. Accordingly, the GST paid on certain expenses such as rent paid on Immovable Property and other equipment's, travel expenses, consultancy services, communication

expenses etc, which were incurred towards services used by the IMO are availed by the registered person in the State of Karnataka and subsequently, registered person in Karnataka is discharging IGST on the expenses proportionately attributable to the other units located outside the State of Karnataka, treating the same as taxable supplies.

The Karnataka Authority for Advance Ruling held that the IMO and its different units registered in different states are to be treated as 'related persons' and therefore, in terms of the entry 2 of Schedule 1, the activities of accounts and management done by the IMO for the individual units located both within the State and outside the State amount to supply of services from the IMO, even if made without consideration. Regarding the issue relating to the activities performed by the employees at the corporate office, the Authority held that, there is an employee-employer relationship only in the corporate office. Since the Corporate office and its other units registered in other States are distinct persons as per Section 25(4) of the CGST Act, the employees in the IMO have no employee-employer relationship with the other distinct offices. The services provided to the corporate office by the persons working in the corporate office are in the nature of employee-employer relationship. Since the corporate office and the units are distinct persons under the Act, there is no such relationship between the employees of one distinct entity with another distinct entity as per the GST Act, even if they are belonging to the same legal entity. On appeal, the Appellate Authority for Advance Ruling observed as under:-

1. In order to qualify as "supply" in terms of Section 7 of the CGST Act, the following conditions are to be fulfilled:

(i) The activity has to involve a transaction in either 'goods' or 'services' or both;

(ii) The activity should be undertaken for a consideration;

(iii) There should be agreement to engage in the transactions of the nature specified;

(iv) The activity should be in course or furtherance of business.

2. Broadly speaking, when the above circumstances are accomplished by (at least) the two persons involved in the transactions, then it can be inferred that the activity is a 'supply' under GST law and thereby chargeable to GST. There are however, certain exceptions to the above principles viz.

(i) Certain activities have been termed as a 'supply' even when they are made without a consideration. Such supplies have been listed in Schedule I to the CGST Act; and

(ii) Certain activities, even when made for a consideration, have been termed as not a supply of either goods or services and thus kept outside the scope of levy of GST. These activities have been listed in Schedule III of the CGST Act.

3. In the case of the Appellant, the IMO is the corporate office of the legal entity Columbia Asia Hospitals Pvt Ltd. It is a central administrative body of the entity as whole. The role of the head office in an organization takes various forms and is affected by both internal and external factors. Nevertheless, some general tendencies are apparent. Broadly speaking, there are three core functions for a head office, viz:

(a) The strategy role: This includes the formulation of corporate strategy, the definition of a business portfolio and the development of the organizational structure and the culture of the organization.

(b) The co-ordination role: Included in this role is the exploitation of synergies between business units, the development of the core competence of the company and the provision of expert advice to different units.

(c) The control and policy role: Included in this role is basic control of business units, setting performance targets for units, monitoring unit's achievements, and ensuring a positive image for the company and lobbying political authorities.

4. In addition to these core functions, the head office also has a service provider role. In this role, the head office provides those services that business units require, such as ICT systems and training systems. In the case of the Appellant's organization, the Head Office or the India Management Office is the nodal office which caters to various business processes of all their units located in Karnataka as well as in other States. The IMO handles activities like, accounting, payment of salaries, income tax deductions, provident fund deductions, legal support, strategic directions, technical support and shared knowledge base which benefit all their offices across the country.

5. The IMO is a registered person in Karnataka and is a distinct person in terms of Section 25(4) of the CGST Act. The execution of the above mentioned activities by the IMO which is for the

benefit of all their other units is in the nature of a service by the IMO. As such there is a supply of service by the IMO to the other distinct units of the Company.

6. As per entry 2 of Schedule 1 of the CGST Act, any supply between distinct persons is to be treated as a 'supply' in terms of Section 7 of the said Act. In view of this deeming fiction in the law, the service supplied by the IMO to its other units by way of performing activities which benefits the other distinct persons is liable to be charged to GST. In accounting terminology this concept is referred to as 'cross charge'. The IMO will cross charge the other units of the same entity, the cost of rendering its services which benefit its other units, by raising a tax invoice and charging applicable GST.

7. The valuation for the supply of the service rendered by the IMO to the other distinct persons will be done in terms of Rule 28 or 30 of the CGST Rules. In arriving at the cost of provision of the service by the IMO, the cost of employees working in the IMO has to be factored into. This is because the activities performed at the IMO cannot be done without human workforce and hence the cost of such workforce is an integral part of the service provided by the IMO.

8. Undoubtedly, an individual is employed by the entity and serves the organization. However, the applicability of the entry 1 of Schedule III is to be understood in the background of the GST legal provisions. As already stated earlier, every unit of an entity who is required to obtain a registration in more than one State shall, in respect of each such registration be considered as a distinct person in terms of Section 25(4) of the CGST Act. In other words an entity may have several registered units in different States. Each registered unit albeit part of the same business entity, is treated as a 'distinct person' under the GST law.

9. A distinct person has an independent identity under GST law and the provisions of the GST laws, its procedures and compliances are applicable to every distinct person as an independent registered person. The liability to GST on the supplies made by a distinct person is to be discharged by the said distinct person as a registered person and, the liability cannot be shifted to another distinct person on the grounds that they are part of the same entity. Further, any act of commission or omission by any distinct person attracts penal action on the said distinct person.

10. A transaction between distinct persons even without consideration is termed as a supply under Section 7(1)(c) of the CGST Act read with entry 2 of Schedule I of the said Act. When viewed in this background, the employees stationed at the location of a particular establishment of a distinct person are deemed to be rendering their services only to that establishment of a distinct person and not to any other distinct person even though all distinct persons are of the same business entity. Such services of employees, when rendered in the course of their employment are not considered as a 'supply of service' in terms of entry 1 to Schedule III.

11. However, when the services of employees are benefitting other distinct persons, then such services of employees will be considered as a 'supply of service' by one distinct person to another. It is in this perspective that the entry 1 to Schedule III should be viewed and understood. The employee-employer relationship is to be viewed separately for every registered unit of the business entity.

12. Therefore, in the instant case, the services of the employees at the IMO in so far as they are benefitting the other registered units of the Appellant are to be considered as a 'supply of service' by one distinct person to another, and by virtue of the entry 2 of Schedule I, supply of services between distinct persons even if without consideration is a "supply" within the scope of Section 7 and is liable to GST.

Hence, the authority passed the following order:

The India Management Office (IMO) of the Appellant is providing a service to its other distinct units by way of carrying out activities such as accounting, administrative work, etc with the use of the services of the employees working in the IMO, the outcome of which benefits all the other units and such activity is to be treated as a taxable supply in terms of the entry 2 of Schedule I read with Section 7 of the CGST Act.

10. GST – ADVANCE RULING - ELECTRICITY SUPPLY – DELAY PAYMENT SURCHARGE – INPUT TREATED AS SEPARATE SERVICES BUT TO BE INCLUDED AS PART OF INITIAL SERVICE – PORTION OF EARLIER PAYMENT ATTRIBUTABLE TO EXEMPTED SUPPLY CONTINUES TO BE EXEMPTED WHEREAS THOSE ATTRIBUTABLE TO TAXABLE SUPPLIES CONTINUES TO BE TAXABLE

In RE: Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Ltd. 2019(20) GSTL 810(AAR.-GST),the applicant is a Public Sector Undertaking fully owned by Government of Madhya Pradesh and engaged in distribution and supply of electricity in 20 districts or Madhya Pradesh. The applicant issues bills of supply of electricity to its consumers, which has a particular due date to pay, every payment received after the due date mentioned in bills is liable to pay delay payment charges. An application was received seeking advance ruling as to the following:-

i. Whether applicant is eligible to avail the exemption from the levy of OST under Entry no.25 of Notification 12/2017- Central Tax (Rate) Dated 28/06/2017 bearing description 'Transmission or Distribution of electricity by an electricity transmission or distribution of electricity utility' with respect to the Delay Payment Charges recovered by the applicant from its consumers.

ii. If answer of Question no.i is negative then what will be the applicable rate or tax and HSN/SAC code for Delayed Payment Charges.

The authority observed as under:

i. Vide Notification No.12/2017-Central Tax(Rate) dated 28thJune, 2017 and Notification No.2/2017-Central Tax (Rate) dated 28th June 2017 and corresponding notifications issued under MPGST Act 2017 both the activity of distribution & Transmission and retail supply of Electricity by the applicant is exempted.

ii. Vide Circular No.34/8/2018-GST, dated 1st March 2018, it had been clarified that exemption granted under Notification No.12/2017- Central Tax (Rate) dated 28th June, 2017 and corresponding notification issued under MPGST Act, 2017 is not exhaustive and some of the services that are provided by the DISCO MS are taxable under Goods and Services Tax.

iii. Based on above facts it is important to discuss the nature of service provided by the applicant. The Delayed payment surcharge is a part of Tariff prescribed by MPERC. The Company recovers the said charge at rates fixed by the Authority. The Delayed Payment Surcharge is billed to consumer when the bill is paid by the consumer after the due date mentioned in the bill. The Delayed Payment Surcharge may be mentioned in the bill as Surcharge on Outstanding Amount or Late Payment Surcharge.

Thus the nature of the service is interest/ late fee/ penalty for the delay in payment of consideration.

iv. Section 15(2)(d) or CGST Act, 2017 is clear that any amount recovered in the name of interest or late fee or penalty for delayed payment of any consideration for any supply, than same shall be included in the value of such supply. The component of interest and delayed payment charges are obviously having a direct relation with the value of supply to which such interest/delayed charges relate. These are in fact components of the value of supply and do not have any independent status.

v. Attention is drawn towards fact the applicant is recovering delay payment charges not only towards supply of electrical energy as goods, supply Transmission/ distribution of electricity service as an electricity distribution utility which are exempted, but also towards charges like metering charges and others which are taxable as per Circular No.34/8/2018-GST dated 1st March 2018.

vi. Thus, in the instant case the supply in question is set of both, exempted (i.e., distribution & Transmission, retail supply of Electricity) and taxable supply (i.e., the other services as per circular no. 34/8/2018- GST, dated 1st March, 2018.

vii. Therefore, it can be concluded that the delayed payment surcharge cannot be treated as separate service and same shall be included in the value of initial service. Thus, portion of delayed payment surcharge attributable to exempted supply shall be exempted and portion of delayed payment surcharge attributable to taxable supply shall be taxable.

Hence, the authority held that the delayed payment surcharge/Late Payment Surcharge/Surcharge on outstanding amount (by whatever name called) cannot be treated as separate service and same shall be included in the value of initial supply to which such charges relate and the portion or delayed payment surcharge attributable to exempted supply will be exempted and the portion of Delayed payment surcharge attributable to taxable supply is taxable at the rate on which the corresponding supply is taxed.

(The author is a Chennai based Chartered Accountant. He can be reached at reachanandvis@gmail.com)

ON SETTING UP A WHOLLY OWNED SUBSIDIARY OF FOREIGN COMPANY

CA. C.S. DHANAPAL

Wholly-owned subsidiaries are generally effect of the parent company holding entire (100%) of the subsidiary's shares. Since the parent company owns all of the subsidiary's shares, it has the right to appoint the subsidiary's board of directors, which controls the subsidiary. Wholly owned subsidiaries may or may not be part of the same industry as the parent company or remotely it may be part of an entirely different industry. Generally, a company operating in more than one country may choose to operate a business through a wholly owned subsidiary. The Investment is subject to compliance of FDI Policy.

For the purpose of creating a Wholly Owned Subsidiary, a private limited company in India needs to be incorporated as per and under the provisions of Companies Act, 2013 (Act).

Now let us understand the provisions of the companies act 2013 as under;

As per section 2(68) of the Act,

"Private Company" *means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, –*

(i) restricts the right to transfer its shares;

(ii) Except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that –

A. persons who are in the employment of the company; and

B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) Prohibits any invitation to the public to subscribe for any securities of the company.

Salient features of a Private Company

- Number of Members – Minimum 2 and maximum 200
- Number of Directors – Minimum 2 and maximum 15. For appointment of more than 15 directors, special resolution is required.

- Shares of the company are not freely transferable. Articles should contain restriction on transfer of shares.
- Private Companies cannot make an offer to the public for subscription of its shares.
- Private Companies cannot accept public deposits.
- Private Companies are eligible for certain privileges and exemptions under the Act.

INCORPORATION OF A PRIVATE COMPANY

Pre-requisites for incorporation

A. Name of the Company

Every company shall have a name by which it will be known. In case of a Private Company, the name must end with the words "Private Limited" which signify that it is a Private Limited Company. The name must not be identical to the name of an already existing Company, LLP or Trademark and it must be available for registration. Rule 8 of the Companies (Incorporation) Rules, 2014 provides a set of guidelines which help to ascertain the names which are considered undesirable for registration of a Company.

B. Business to be undertaken

A company may be formed for undertaking any legal business. The Memorandum of Association of the company will contain the objects for which the company is formed.

C. Directors and Members

A Private Company must have a minimum of 2 directors and 2 members. The members and directors can be the same persons. The maximum number of Members for a private limited company is restricted to 200, however for directors there is no upper limit (provided that where more than 15 directors need to be appointed, such proposal shall be approved by the Members by means of a special resolution).

Only individuals, being natural persons, having capacity to contract and being qualified under Section 164 of the Act to act as Director can be appointed as Directors of a company. Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in a financial year. Members can be individuals as well as body corporate and can be Indian citizens or foreign citizens.

D. Place of Business

Every company must have a place as its registered office within 30 days of its incorporation and every time thereafter which is capable of receiving and acknowledging all communications and notices addressed to it.

E. Memorandum of Association and Articles of Association (MOA and AOA)

The Memorandum of Association and Articles of Association are the charter

documents of a company which define the relationship of the company with the outside world and the rules for its internal management and administration. The Memorandum of Association of a Private Company shall be in the format prescribed in Table A of Schedule I of the Act and the Articles of Association shall be as per Table F thereof. The model articles as prescribed in Table F of Schedule I may be adopted by a company as may be applicable, either in totality or otherwise.

PROCEDURE FOR INCORPORATION OF A PRIVATE COMPANY (Wholly owned Subsidiary of a Foreign Company)

Step 1 – Application for Digital Signature Certificate (DSC)

For incorporation of a Company, at least one of the proposed directors must either hold a valid DSC or must apply and obtain the same from a Certification Agency.

Step 2 – Application for ascertaining availability of proposed name of the Company

Application for name availability can either be made in web-form RUN (Reserve Unique Name), prior to filing incorporation form or it can be applied in incorporation form itself.

Web-form RUN is a simple and easy to use web service for reserving a name for a new company prior to its incorporation. Name approval is granted by Central Registration Centre (CRC). Name once approved on filing of web-form RUN is reserved for incorporation till expiry of 20 days from date of approval of the name. The name must not be undesirable and must be available for incorporation.

Step 3 – Drafting of documents for incorporation

Once the name is approved on filing of web-form RUN, or if the name is to be applied through the incorporation form, the documents required to be filed along with incorporation needs to be prepared, signed, stamped and certified as required.

Step 4 – Filing of forms for incorporation

An application for incorporation shall be filed in Form **INC-32**, electronically, along with all requisite details and documents and payment of fees and stamp duty. Once the form is successfully uploaded and fees is paid, a payment challan will be generated with a Service Request Number (SRN).

Step 5 – Issue of Certificate of Incorporation

The Registrar on the basis of documents and information filed shall register all the documents and information in the register and issue a certificate of incorporation in Form 11 to the effect that the proposed company is incorporated under the Act. On and from the date mentioned in the certificate of incorporation issued, the

Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate. The Certificate of Incorporation shall mention permanent account number of the company where it is issued by the Income-tax Department

The company shall maintain and preserve at its registered office copies of all documents and information as originally filed till its dissolution under the Act.

The PAN card and TAN will be dispatched to the office address of the Company as mentioned in SPIC e-form.

Step 6 – Filing verification of registered office address

In case company establishes its registered office after incorporation, the correspondence address shall be the mailing address for company for receiving and acknowledging all communications and notices as may be addressed to it, till the time the registered office is established. In such cases, a verification of the registered office needs to be filed with the ROC within 30 days of incorporation in e-Form INC 22. Intimation of registered office can also be given in the Incorporation form itself, in which case there is no requirement to file Form INC 22 post incorporation.

Step 7 – Commencement of business

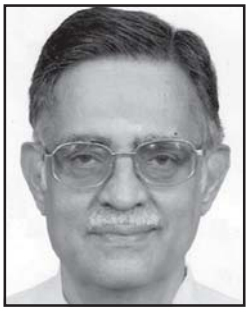
After incorporation, a declaration needs to be filed by a director within a period of 180 days of the date of incorporation of the company in Form No.INC-20A with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and the company has filed with the Registrar a verification of its registered office as provided in sub--section (2) of section 12. A company shall not commence any business or exercise any borrowing powers unless the above declaration is filed by it.

COMPLIANCES UNDER FEMA, 1999

After incorporation, the private limited company (wholly owned subsidiary) needs to be registered on the RBI site by creation of an Entity Master Form. The Authorised Dealer (AD Bank) will perform KYC of the foreign investor and once the subscription money is remitted, it will issue a FIRC. Thereafter once shares are allotted to the subscribers to Memorandum, Single Master Form (SMF) needs to be filed within 30 days of allotment of shares supported by MOA, AOA, resolution for allotment, KYC and CS Certificate. Once the form SMF is approved, a registration number will be allotted by RBI. Company will also need to file an Annual Return on Foreign Assets and Liabilities on or before 15th July every year.

(The author is CS. Dhanapal. He can be reached at csdhanapal@gmail.com)

RESTRUCTURE RELIEF FOR MSMES



CA. M NAGANATHAN & CA. P S NARASIMHAN

A host of factors- demonetization, slow down in economy, introduction of GST, payment delays by big industries etc. All have affected the MSME units. The Regulator after a careful consideration of the problems faced by units in this sector came out on the 7th of February 2018 with a benevolent circular on the asset Classification status of their borrowings from banks/NBFCs , whereby the basis of evaluating performance criteria was extended from 90 to 180 days.

Apparently MSME sector continues to experience difficulties and therefore, the Regulator has now come out with a one-time restructure benefit to this sector. While doing so, the Regulator has retained almost all the stipulations it had come out with when it extended the 180 day norm

Thus:

Such MSME units should have been registered under the GST regime or should be under the exempt list, secondly their aggregate exposure- that is the higher of the limits or outstanding's of both fund and non-fund based limits enjoyed by the enterprise from banks as well as from NBFCs should not exceed Rs 25 cr as of 1 January 2019; and thirdly the account should have remained standard as of 1st January 2019.

While spelling out the last condition, the Circular reads as follows:" The borrower's account **is in default** but is a ' standard asset' as on January 1, 2019 and continues to be classified as a 'standard asset' till the date of implementation of the restructuring."

That the Circular is to facilitate a meaningful restructuring of MSME account that has become stressed is not disputed but should the account exhibit the default as of Jan1, 2019?

'Default' means a default in payment of principal and/or interest or any other dues payable by a borrower .Since the circular says that the asset has to continue in the standard category till the date of implementation of the restructure, the default cannot perhaps be more than 89 days, so as to be within the 90 day norm.

If that were to be so, the condition laid down by the circular that the restructure should be implemented on or before March 31, 2020 falls flat.

Therefore, one can reasonably presume that during the 15 month period starting January 1, 2019, if an account experiences stress on account of a default and the account was Standard as of January 1, 2019, the borrower can opt for one-time restructure and the bank can extend such benefit.

There are a couple of other aspects which require further clarification. The Circular says that all other instructions applicable to restructuring of loans to MSME borrowers shall continue to be applicable.

Would that mean that the earlier instructions in the case of a restructure, relating to calculation of diminution of fair value of accounts by discounting both pre restructured and post restructured cash flows at BPLR/Base Rate plus credit risk premium and term premium applicable to the borrower risk category as on the date of restructuring would apply?

On the other hand, since an additional provision of 5% is being contemplated under para 1 (V) of the circular (DBR.No.BP.BC.18 dated Jan1, 2019), one can possibly conclude that the Regulator has done away with NPV provisioning.

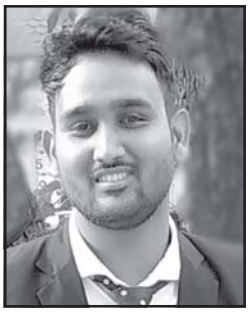
It perhaps goes without saying that a Standard Restructured account would become NPA when it does not demonstrate satisfactory performance during the specified period but obviously the progression cannot be prospective. It's here that one has to refer to

Clause 1 (viii) of the Circular which says that all other instructions applicable to restructuring of loans to MSME borrowers shall continue to be applicable. This would mean that the earlier stipulated repayment schedule would kick in. Thus non-performing status will get determined as per the old schedule.

In the case of operative accounts, attention has always been on the quarter but here in the case of Restructured NPA account of MSME borrower, operative account cannot be upgraded if the operative account is over than the lower of drawing power or the limit, over any thirty day period .

(The authors are Chennai based Chartered Accountants and they can be reached at jandsca@gmail.com)

AMENDMENTS IN GST LAW EFFECTIVE FROM FEBRUARY 01, 2019

CA. DEBASIS NAYAK & CA. AMAN GOYAL

The Government on July 9, 2018 had released a list of 46 proposed amendments to the GST Act and invited the public to provide their valuable suggestions till July 15, 2018. The GST council in its 28th Council meeting held on July 21, 2018 had recommended various changes in the GST Law. Pursuant to that, the GST amendment bill were proposed in the Lok Sabha and accordingly passed in the parliament and got the assent of president on August 29, 2018. However, the provisions of the Amendment Act was not been given immediate effect.

Sub section (2) of Section 1 of the CGST (Amendment) Act, 2018 provides as

Save as otherwise provided, the provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Accordingly the Government have brought into force such amendments with effect from February 01, 2019 vide Notification 2/2019 Central Tax dated 29.01.2019

Summary of the major amendments in CGST law has been provided below as follows

New Additions to Schedule III of the CGST Act

The following transactions have been added to the Schedule III of the CGST Act, which provides for the transactions which shall be treated neither as a supply of goods nor supply of service:

a) Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;

b) Supply of warehoused goods to any person before clearance for home consumption; and

c) Supply of goods in case of high sea sales.

An explanation has been added to the Section 17(3) of the CGST Act, which clearly spells out that *"Value of the exempt supply shall not include value of activities or transaction specified in Schedule-III except those specified in paragraph 5 of the said schedule"*.

Order of Utilization of Credit

The manner of utilization of the input tax credit has been revised. We have illustrated below the new method of utilization:

Previous Position

Payment For	*First Set off from*
IGST	IGST -> CGST -> SGST
CGST	CGST -> IGST
SGST	SGST -> IGST

Current Position

Payment for	*First set off from*
IGST	IGST -> CGST -> SGST
CGST	**IGST -> CGST**
SGST	**IGST -> SGST**

Further, proviso has been inserted in Section 49 in order to order to rationalize the cross-utilization of ITC. It provides that CGST balance needs to be fully exhausted for payment of IGST, only after that SGST/UTGST balance can be utilized for payment of IGST.

Multiple registration within the same state without business vertical

Proviso to Section 25(2) has been amended to allow the persons having multiple place of business in a State or UT to obtain separate registration for each such place of business.

Further, Notification 3/2019 – Central Tax has been issued to give effect of the said provisions subject to the following restriction as follows:

- Such person has more than one place of business as defined in clause (85) of section 2;
- Such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;
- All separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

Further Rule 41A has been inserted vide Notification 3/2019-Central Tax to specify the manner of Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory. The manner is as follows:

a. Filing of Form ITC -02A for transferring unutilized ITC to the newly registered place of business
b. ITC to the new registration shall be transferred in the ratio of value of the asset held by him at the time of registration.

Consolidated Debit Note or Credit Note

Section 34 of the CGST Act has been amended to permit a registered person to issue consolidated debit/credit notes in respect of multiple invoices issued in a Financial Year without linking the same to the individual invoices.

Input Tax Credit

a. Explanation to Section 16(2) (b) has been substituted to provide that the deeming fiction for availing the input tax credit in case of services where services are provided by the supplier to any person on the direction of and on account of such registered person.

b. Credit restrictions on motor vehicles has been relaxed to allow credit on motor vehicles for transport of passengers having a seating capacity of more than 13 persons and also on the special purpose vehicles such as dumpers etc.

c. Specific restrictions on credits pertaining to insurance, servicing and repair and maintenance for vehicles, vessels or aircrafts ineligible for credit have been introduced. In other words, ITC for insurance, repair and maintenance services in respect of motor vehicles is entitled for ITC, only in those cases, ITC for the motor vehicles themselves are entitled.

d. Section 17(5) (b) of the CGST Act has been amended to allow the input tax credit in respect of goods and services or both (like Food and Beverages, health insurance and travel benefit extended to employee) where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.

Retrospective amendment in Transitional Provision

Section 140(1) has been retrospectively amended to substitute the word CENVAT Credit with 'Eligible Duties' and Explanation 3 to the said Section provides the meaning of eligible duties as eligible duties as excluding the cess. In fact, the above Explanation alone is sufficient to fulfil the intention of the Government for not allowing balance of any CESS of the erstwhile law (like EC, SHEC, KKC, and SBC).

Amendment in the Meaning of Supply as defined in Section 7 of the CGST Act

Schedule II of CGST Act enumerates list of certain transactions that shall be regarded as either supply of goods or supply of services. The reference of Schedule II was made earlier in section 7 (1) which was resulting in defining the meaning of "supply". Accordingly, this was leading to a situation where an activity listed in Schedule II would be deemed to be a supply even if it does not constitute a supply as per meaning of supply. This is hampering the intent of the legislature.

Hence, the Section 7(1) of the CGST has been amended to omit the reference to schedule II. A new Section has been inserted as 7(1A) of the CGST Act which specifies "*certain activities or transactions, when constituting a supply in accordance with the provisions of sub-section (1), shall be treated either as supply of goods or supply of services as referred to in Schedule II*"

Pursuant to the amendment, it can be safely concluded that an activities shall be first tested within the parameter of the definition of supply after that schedule II can be referred for classifying it as either goods or services.

Reverse Charge Mechanism

Presently Section 9(4) of the CGST Act, 2017 mandates all the registered person to pay tax under reverse charge mechanism on purchases from unregistered person. However, this provision was suspended till 30 September 2019.

To remove the difficulties and in order to ease the compliance burden this provision has been omitted and Government has kept the power to notify a class of registered person who would be liable to pay tax on reverse charge basis in case of receipt of goods or services from an unregistered person.

Considering this amendment in the CGST Act, the CBIC has rescinded the notification specifying to pay tax on RCM basis on supplies received from unregistered person vide Notification 01/2019-Central Tax (Rate) dated 29.01.2019.

Composition Scheme

Section 10(1) (2) of the CGST Act, 2017 has been amended to provide the following:

- The limit of turnover for eligibility to opt for composition scheme is increased from Rs. 1 Crore to Rs. 1.5 Crore.
- Composition dealers to be allowed to supply services (other than restaurant services), for upto a value not exceeding 10% of turnover in the State in the preceding financial year or Rs. 5 lakhs, whichever is higher.
- Tax rate for composition scheme will be in accordance with Rule 7 of the CGST Rules, 2017 (i.e. rate of 0.5 percent of the turnover of taxable supplies of goods and **services** in the state).

The rationale behind the amendment is that the manufacturer and traders supplying services were not eligible to opt for the scheme even if its service percentage is very small as compared to the supplies of goods.

Simplified Return

Section 39 of the CGST Act, 2017 ("Furnishing of Returns") has been amended to prescribe the procedure for quarterly filing of returns with monthly payment of taxes.

Further, a new Section 43A to the CGST Act has been inserted for prescribing the procedure for furnishing return and availing input tax credit. In pursuance to that, every registered person can verify, validate, modify or delete the details entered by the supplier.

Increase in threshold limit for registration under Goods and Services Tax Law

Threshold limit for taking the registration under GST for state of States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand has been enhanced from ten lakh to maximum of twenty lakh.

Change in other provisions

- **Job Work:** A proviso has been inserted in Section 143 of the CGST Act to provide that the period of one year or three years for receiving the inputs or capital goods from the job worker respectively may, on sufficient cause be extended by the commissioner for a further period not exceeding one year and two year respectively.
- **Doctrine of unjust Enrichment for SEZ:** Section 54(8) has been amended to provide that unjust enrichment have to be proved in cases where refund is arising on account of supplies made to SEZ. Further, rule 89(2) has also amended to provide that *"a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer".*
- **Recovery proceeding:** A new Explanation has been inserted in Section 79 of the CGST Act, 2017 wherein meaning of person has been clarified as inclusive of distinct person. In other words, recovery can be made from distinct persons in different State/Union territories.
- **Pre-deposit:** Maximum cap of 25 crores of pre-deposit for filing of appeal before Appellate Authority and 50 crores for filing of appeal before the Appellate Tribunal has been prescribed.
- **Non-applicability of GST Audit:** GST audit for persons whose turnover exceeds prescribed limit under section 35(5) is not applicable to the departments of Central and State Government who are subject to audit by Comptroller and Auditor General of India or where an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

Summary of the major amendments in Integrated Goods and Services Tax Act, 2017 ('IGST Act') has been provided below as follows:

Definition of Export of Service:

Section 2(6) of the IGST Act, 2017 has been amended to allow the receipt of payment in Indian rupees in case of export of services where permitted by Reverse bank of India.

The Rationale behind this amended is that in case of export to Nepal and Bhutan, payment were received in Indian rupees as per RBI regulations.

Place of supply for the goods transported outside India:

A proviso has been added in Section 12(8) of the IGST Act, 2017 which provides that place of supply in case of transportation of goods by a supplier of service in India to a recipient of service in India when transported to a place outside India, the place of supply shall be the *place of destination of such goods.*

Before the amendment, the place of supply of service in such cases is the location of handing over of goods that is India and hence such services are always liable to GST. However, in order to promote export of goods, the amendment has been made.

Place of Supply in case of goods temporarily imported in India for repair & Export

Second Proviso to Section 13(3) (a) to the IGST Act, 2017 has been amended to provide that specific provision of place of supply for performance related services, in case of goods temporally imported into India for repair ***or for any other treatment or process*** and are exported without put to use, shall not apply.

The scope of this exception has been expanded vide the amendment whereby not only repair services but any other treatment or process is covered.

(The authors are Chennai based Chartered Accountants and they can be reached at debasis.nayak@pwc.com and amangoyal335@gmail.com respectively)

EXCEL TIPS

RANK Function

(This article is repeated from the previous month's bulletin, as there was an inadvertent error of pictures getting wrongly printed. Error is regretted)

RANK.AVG function

CA DUNGAR CHAND U JAIN

Returns the rank of a number in a list of numbers: its size relative to other values in the list; if more than one value has the same rank, the average rank is returned

Syntax

RANK.AVG (number, ref, [order])

The RANK.AVG function syntax has the following arguments:

- **Number** Required. The number whose rank you want to find.
- **Ref** Required. An array of, or a reference to, a list of numbers. Nonnumeric values in Ref are ignored.
- **Order** Optional. A number specifying how to rank number.

Remarks:

- If Order is 0 (zero) or omitted, Excel ranks number as if ref were a list sorted in descending order.
- If Order is any nonzero value, Excel ranks number as if ref were a list sorted in ascending order.

Example 1 :

	A	B	C	D	E	F
1	Number	Rank	Formula Used		Rank Average	Formula Used
2	1400	4	=RANK(A2,$A$2:$A$32,0)		4.5	=RANK.AVG(A2,$A$2:$A$32,0)
3	407	22	=RANK(A3,$A$2:$A$32,0)		22	=RANK.AVG(A3,$A$2:$A$32,0)
4	166	28	=RANK(A4,$A$2:$A$32,0)		28	=RANK.AVG(A4,$A$2:$A$32,0)
5	1106	7	=RANK(A5,$A$2:$A$32,0)		7	=RANK.AVG(A5,$A$2:$A$32,0)
6	1203	6	=RANK(A6,$A$2:$A$32,0)		6	=RANK.AVG(A6,$A$2:$A$32,0)
7	234	25	=RANK(A7,$A$2:$A$32,0)		25	=RANK.AVG(A7,$A$2:$A$32,0)
8	1400	4	=RANK(A8,$A$2:$A$32,0)		4.5	=RANK.AVG(A8,$A$2:$A$32,0)
9	1585	1	=RANK(A9,$A$2:$A$32,0)		1	=RANK.AVG(A9,$A$2:$A$32,0)
10	1445	3	=RANK(A10,$A$2:$A$32,0)		3	=RANK.AVG(A10,$A$2:$A$32,0)
11	626	14	=RANK(A11,$A$2:$A$32,0)		14	=RANK.AVG(A11,$A$2:$A$32,0)
12	1485	2	=RANK(A12,$A$2:$A$32,0)		2	=RANK.AVG(A12,$A$2:$A$32,0)
13	124	30	=RANK(A13,$A$2:$A$32,0)		30	=RANK.AVG(A13,$A$2:$A$32,0)
14	655	13	=RANK(A14,$A$2:$A$32,0)		13	=RANK.AVG(A14,$A$2:$A$32,0)
15	191	27	=RANK(A15,$A$2:$A$32,0)		27	=RANK.AVG(A15,$A$2:$A$32,0)
16	574	17	=RANK(A16,$A$2:$A$32,0)		17	=RANK.AVG(A16,$A$2:$A$32,0)
17	203	26	=RANK(A17,$A$2:$A$32,0)		26	=RANK.AVG(A17,$A$2:$A$32,0)
18	992	9	=RANK(A18,$A$2:$A$32,0)		9	=RANK.AVG(A18,$A$2:$A$32,0)
19	1020	8	=RANK(A19,$A$2:$A$32,0)		8	=RANK.AVG(A19,$A$2:$A$32,0)
20	916	10	=RANK(A20,$A$2:$A$32,0)		10	=RANK.AVG(A20,$A$2:$A$32,0)
21	74	31	=RANK(A21,$A$2:$A$32,0)		31	=RANK.AVG(A21,$A$2:$A$32,0)
22	565	18	=RANK(A22,$A$2:$A$32,0)		18	=RANK.AVG(A22,$A$2:$A$32,0)
23	612	15	=RANK(A23,$A$2:$A$32,0)		15	=RANK.AVG(A23,$A$2:$A$32,0)
24	132	29	=RANK(A24,$A$2:$A$32,0)		29	=RANK.AVG(A24,$A$2:$A$32,0)
25	901	12	=RANK(A25,$A$2:$A$32,0)		12	=RANK.AVG(A25,$A$2:$A$32,0)
26	420	21	=RANK(A26,$A$2:$A$32,0)		21	=RANK.AVG(A26,$A$2:$A$32,0)
27	476	20	=RANK(A27,$A$2:$A$32,0)		20	=RANK.AVG(A27,$A$2:$A$32,0)
28	581	16	=RANK(A28,$A$2:$A$32,0)		16	=RANK.AVG(A28,$A$2:$A$32,0)
29	369	23	=RANK(A29,$A$2:$A$32,0)		23	=RANK.AVG(A29,$A$2:$A$32,0)
30	903	11	=RANK(A30,$A$2:$A$32,0)		11	=RANK.AVG(A30,$A$2:$A$32,0)
31	239	24	=RANK(A31,$A$2:$A$32,0)		24	=RANK.AVG(A31,$A$2:$A$32,0)
32	508	19	=RANK(A32,$A$2:$A$32,0)		19	=RANK.AVG(A32,$A$2:$A$32,0)
33						

The difference between RANK function and RANK.AVG function is evident from the above example that where there are same values available, RANK function provides the same rank twice whereas the RANK.AVG function provides the average of the two.

In other words, RANK function compares the number to its position in the list and it skips values by giving each duplicate a rank, whereas RANK.AVG finds the average for them.

It is worth noting that Excel does not average the 2 numbers, but the Rank positions.

Average of 4 and 4 is 4, not 4.5, so what is the function averaging?

RANK.AVG () doesn't average the ranked results, but the ranked positions. In the case of value 1400, that would be 4 and 5; the average of 4 and 5 is 4.5.

Example 2:

Assuming there are 1400 appearing four times representing Rank positions 4,5,6 and 7 then RANK.AVG() returns 5.5, the average of 4, 5, 6, and 7.

	A	B	C	D	E	F	G
1	Number	Rank	Formula Used		Rank Average	Formula Used	
2	1400	4	=RANK(A2,$A$2:$A$32,0)		5.5	=RANK.AVG(A2,$A$2:$A$32,0)	
3	407	24	=RANK(A3,$A$2:$A$32,0)		24	=RANK.AVG(A3,$A$2:$A$32,0)	
4	166	28	=RANK(A4,$A$2:$A$32,0)		28	=RANK.AVG(A4,$A$2:$A$32,0)	
5	1106	9	=RANK(A5,$A$2:$A$32,0)		9	=RANK.AVG(A5,$A$2:$A$32,0)	
6	1203	8	=RANK(A6,$A$2:$A$32,0)		8	=RANK.AVG(A6,$A$2:$A$32,0)	
7	1400	4	=RANK(A7,$A$2:$A$32,0)		5.5	=RANK.AVG(A7,$A$2:$A$32,0)	
8	1400	4	=RANK(A8,$A$2:$A$32,0)		5.5	=RANK.AVG(A8,$A$2:$A$32,0)	
9	1585	1	=RANK(A9,$A$2:$A$32,0)		1	=RANK.AVG(A9,$A$2:$A$32,0)	
10	1445	3	=RANK(A10,$A$2:$A$32,0)		3	=RANK.AVG(A10,$A$2:$A$32,0)	
11	626	16	=RANK(A11,$A$2:$A$32,0)		16	=RANK.AVG(A11,$A$2:$A$32,0)	
12	1485	2	=RANK(A12,$A$2:$A$32,0)		2	=RANK.AVG(A12,$A$2:$A$32,0)	
13	124	30	=RANK(A13,$A$2:$A$32,0)		30	=RANK.AVG(A13,$A$2:$A$32,0)	
14	655	15	=RANK(A14,$A$2:$A$32,0)		15	=RANK.AVG(A14,$A$2:$A$32,0)	
15	1400	4	=RANK(A15,$A$2:$A$32,0)		5.5	=RANK.AVG(A15,$A$2:$A$32,0)	
16	574	19	=RANK(A16,$A$2:$A$32,0)		19	=RANK.AVG(A16,$A$2:$A$32,0)	
17	203	27	=RANK(A17,$A$2:$A$32,0)		27	=RANK.AVG(A17,$A$2:$A$32,0)	
18	992	11	=RANK(A18,$A$2:$A$32,0)		11	=RANK.AVG(A18,$A$2:$A$32,0)	
19	1020	10	=RANK(A19,$A$2:$A$32,0)		10	=RANK.AVG(A19,$A$2:$A$32,0)	
20	916	12	=RANK(A20,$A$2:$A$32,0)		12	=RANK.AVG(A20,$A$2:$A$32,0)	
21	74	31	=RANK(A21,$A$2:$A$32,0)		31	=RANK.AVG(A21,$A$2:$A$32,0)	
22	565	20	=RANK(A22,$A$2:$A$32,0)		20	=RANK.AVG(A22,$A$2:$A$32,0)	
23	612	17	=RANK(A23,$A$2:$A$32,0)		17	=RANK.AVG(A23,$A$2:$A$32,0)	
24	132	29	=RANK(A24,$A$2:$A$32,0)		29	=RANK.AVG(A24,$A$2:$A$32,0)	
25	901	14	=RANK(A25,$A$2:$A$32,0)		14	=RANK.AVG(A25,$A$2:$A$32,0)	
26	420	23	=RANK(A26,$A$2:$A$32,0)		23	=RANK.AVG(A26,$A$2:$A$32,0)	
27	476	22	=RANK(A27,$A$2:$A$32,0)		22	=RANK.AVG(A27,$A$2:$A$32,0)	
28	581	18	=RANK(A28,$A$2:$A$32,0)		18	=RANK.AVG(A28,$A$2:$A$32,0)	
29	369	25	=RANK(A29,$A$2:$A$32,0)		25	=RANK.AVG(A29,$A$2:$A$32,0)	
30	903	13	=RANK(A30,$A$2:$A$32,0)		13	=RANK.AVG(A30,$A$2:$A$32,0)	
31	239	26	=RANK(A31,$A$2:$A$32,0)		26	=RANK.AVG(A31,$A$2:$A$32,0)	
32	508	21	=RANK(A32,$A$2:$A$32,0)		21	=RANK.AVG(A32,$A$2:$A$32,0)	
33							

Note:

1. Common Error

N/A - Occurs if the supplied number is not present within the supplied ref.

(Note that the Rank.Avg function does not recognise text representations of numbers as numeric values, so you will also get the #N/A error if the values in the supplied ref array are text values).

2. Version

The Rank.Avg function is available from version Excel 2010 and onwards

The author is a Madurai based Chartered Accountant. He can be reached at dungarchand@hotmail.com)

SIKSHA AT SRILANKA

Mr. B. RAMANA KUMAR,
A DELEGATE TO SRILANKA

During the 2018 Kanyakumari conference, the international clouds were looming large. There was a general hush-bush that the 20th conference should be a grand gala one. Places ranging from Swiz Alps to Bhutan to Dubai to Singapore were talked about. The conference completed, all left, period.

Suddenly on 19 September 2018 all the members were visited with a mail and the subject was "Enroll for 20th Annual Residential Conference - SRILANKA - JAN 23rd, 2019 TO JAN 27th, 2019". Pleasantly surprised the response was overwhelming. Within a few days the conference was booked to the extent that the organisers in the mail Ca. J Murali, Ca R Ravi, Ca K R Sathyanarayanan (Singam) & R Sundararajan began to bite their nails with to the skin. The grapevine told that they were expecting around 35-50 people with the advisors, Rajan and Anand squeezed their experience to put the number just around 100. With the final tally at 127 people, 62 delegates and a new foreign land, the jamboree begins at the drawing board.

A travel agent was roped into do the bulk booking in the flight, identify the areas, arrange for the Exclusive Vegetarian food for the group and what not. It was said that Singam (Sathya) even licked the sea water in Colombo to check if the salt content was right!

Such was the military precision with which the 4 musketeers of CASC planned that it would put any travel consultant or travel agency to shame.

The payment was also in instalments, to ease the pressure of the members. Edges were ironed out at the periodical meetings of the committee.

What's app played a very important role to disseminate information to the travelers, right from the early days of October on various issues, such as not wearing Buddha printed dress, to the credit cards to be used, exchange of the currencies and what not.

The travel was on the 23rd early morning Indian airline flight AI 172… oops 273. That meant that 22nd night was a forced Sivarathri for all the travelers, partly due to the reporting time of 2.55am at the airport and mostly due to the excitement, thrill and the happiness of the travel.

The delegates and their families were greeted with light blue caps by effervescent Rooban, a regular member of CASC Admin team, at arrival in gate 4 of the Kamaraj International

Airport at Chennai. Siva Shanmugam and Chetta Ramesh Babu were ingenious in giving printed stickers to the baggage, with the names of the delegates, which made identification of the same very easy at the Colombo airport and onwards. The boarding was made easy with dedicated check-in counters for CASC and were greeted by sisterly and brotherly crew of Air India. Breakfast at 6.30 am somewhere near the park straits, 36k feet up was not an event of.

Being the first Air travel of CASC group, leave alone the overseas trip, It was a great moment to have a Photograph inside the Aircraft for the Delegates with our traditional Banner.

We landed on time at the Bandaranaike International Airport. Upon landing, the group was split into 4 with that number of buses waiting to pick up. A divine hand was involved in picking and choosing a homogeneous group of members in each bus. Bus No.2 had all the children, Bus No 1 had the couples, considering MRV and Sunder so … and the like….

The first halt was a breakfast at land, at Heritage Ambepussa, which gave all a taste of things to anticipate and come, especially the food. We were greeted with a flutist playing old Hindi and Tamil film songs with such grace and poise. With a new kind of cuisine, one had to adjust one's pallet to choose the right combination. Two members who were the pilots of the group, joined with us here.

The next stop was a herbal garden, said to be in the Sanjeevani hills. Our own brother CA K.R.Suresh treated many of us with refreshing tender coconuts, which is very famous in Srilanka and was pleased to sponsor the same. Next was for lunch, a very picturesque restaurant, off a cliff named Tea Bush Ramboda. The next stop was the beautiful Hanuman temple built by Chinmaya Mission. This is the place where Lord Hanuman is said to have landed in Lanka. A steep walk for about 1 km from the place where the bus stopped, brought us there. Many opted to take the Tuk-Tuk (auto) for about 200 SLR. One of the first instance where many of us could spend the new local currency.

We were to reach Hotel Ashford at Nuwara Eliya by 3 pm, but due to the wrong calculation of the bus speed by our travel consultant, we reached the beautiful hotel only by about 7 pm. A few of us ventured for a quick walk with some of the children of the group to enjoy the excellent weather which was hovering at 20 degrees. Many did not leave the opportunity for the morning walk at the beautiful place surrounded with vegetable farms and lush green trees.

As planned, we had to vacate the hotel at morning just after breakfast. The next stop was at the Sita Amman temple, which all know as the Asoka Vanam, where mother Sita

was kept captive by the Demon King Ravana. There is beautiful temple with all gold painted at the site. Places like were Sita sat, bathed and the place where Hanuman gave the ring was all seen with folded hands and prostrateing, so much so that even selfies at the places was taken with all reverence!

Since we had to travel almost throughout the day in bus, almost all skipped the Botanical Garden and Victoria Park, which were anyway optional. The fatigue of travel was compensated when we stopped at a very beautiful resort Kitulgala Plantation near Bentota, by the river side for lunch and rest. The caravan then proceeded towards an yet another posh and exquisite resort, Avani at Kalutara. The dinner spread was very good, and the otherwise uneventful day extended well into the midnight with snooker games, ladies chats and surfing the net to catch-up with lost connectivity. Uneventful in the CASC standards is quite different. With a few members, with or without the spouses the hours are spent easily, catching up the past year and enquiring the wellness of all.

The next day was packed with action. Few went for Whale watching in the Indian Ocean, many explored the resort and then all went for the quite boat ride at the Madhu River and to the turtle hatchery to see the baby turtles. Fortunately, none asked for the dish of baby turtles as in the popular movie! Lunch was at a Dhabba at Induruwa and all proceed to the last destination before the take-off, the beach resort Berjaya where the technical deliberations were to be held.

Immediately on arrival, all the delegates were broken into three groups and assembled for the group discussion on the case studies on Income tax. The enthusiasm of the delegates was overwhelming so much so that the organisers were seen telling that they were very happy to see a full house at the group study. The groups studied for about 100 minutes and then was the dinner and the well-earned rest for the professionals, awaiting the dawn to attend the conference, but of course after the visit to the beach for the morning walk.

The Dinner was served with melodious tunes by the Hotel Musical crew putting the delegates to sleepy mode, was broken by the Amateur group of the CASC which burst into Musical Treat coupled with Upbeat drum beats, along with Ferocious dance movements of the youth brigade of CASC. The evening brought into fore unheard nightingales in the form of Neelayadakshi (Sushma) Suresh, Gayathri Banusekar, Mrs. Jayasri from Coimbatore, apart from the regular singers of CASC such as VS Ganesan, KR Suresh, Balaji, Abijith Balaji and so on. This was a continuation from the different buses the earlier day, and we had quiet a few voices in Bus no.1 through Mr.V.V.Sampathkumar, Mrs. Prema.Sampathkumar, Mrs.Alka Ravikumar (swamiji) among other routines as Madhavan.

On the morning of the republic day, Divya Yanmantram, a future delegate, rendered the Vande Mataram in full, bring in the patriotic fervour in all the delegates. The non-delegate members of the group proceeded towards sightseeing namely a Buddhist temple, Murugan temple and local city sightseeing.

Coming to the main picture now! For which the group trouped into Srilanka….

The 62 delegates assembled for the technical sessions. Dr.M R Venkatesh, better known as MRV entwined the gathering with the various provisions of the PMLA, PBPTA, Customs, Black money, IPC and SFIO Acts and the impact of each one of them individually and or in conjunction with each other for about an hour and a half. The audience even after the sumptuous breakfast, did observe the minuets with all attention. K K Neelakantan was the chair on the session, and aptly did what had to be done.

The hour and a half next belonged to Banusekar, who explained the case studies on direct tax laws. He untangled each of the questions in his own unique way with apt case law citations and section references. Not a soul moved, all were seeing taking notes like school students, for it involved each one's bread and butter. B Ramana Kumar, the undersigned, was the chair to the session.

The individual contributions of each of the delegate of CASC brings momentous pleasure to the conference. And this time it is from Meesai Murali who as a spontaneous action sponsored with grace and pleasure, the Mementoes given to the Group Leaders for their able deliberation of Case Studies on Taxes.

After a quick cup of tea, the floor was open to the panel comprising the seasoned VV Sampath Kumar with the youthful K. Vijayaraghavan, with Singam Sathya being the moderator. Questions on GST were discussed threadbare and the team of experienced and youth handled them very effectively and efficiently. The panel discussions cleared many a myth on the minds of the delegates.

The last session was thrown open to all the members of the group including spouses and children with Yanmantram Sathyanarayanan making a very nice presentation on the treasurers ignored by the Indian retail investors. Sathyaji took through the various nuances of investment, both in debt and equity, risk averse and risk taker, for investment and retirement and the investor and non-investor. Due to the lack of time he had to wrap up a very interesting session in 45 minutes.

The valedictory session of any CASC conference is the feedback on the trip. Surprisingly, even when prompted and prodded, there was not a single brickbat. There were of course, some suggestions for improvement which was well taken. Many first timers came forward to express their experience and views. The efforts gone into in arranging this conference was very well realised by one and all. The untiring toil by the committee had paid rich dividends.

The hectic technical sessions was followed by lunch and then Shopping in House of Fashions, the Mega Mall of Lanka textiles. The delegates were taken around the Colombo City with a commentary by the guides. The dinner was followed by the ceremonious distribution of Traditional Thamboolam of CASC in the form of well thought out mementoes to Delegates, spouses and children, in a Sri Lankan flavour, a thoughtful gesture by the organisers, to carry home cherished memories.

Apart from the member volunteers, the contribution worth mentioning is the active involvement of future professionals Mr.Chetan Sharma and Mr.Adithan Natarajan from Team SA who were thoroughly engaged in the activities on and off the entire Conference.

The goofed time estimate on the bus travel was well forgotten with the very lively conference and the committee had raised the bar for itself for the future events.

The by-product of the 20 annual conferences were the bonding of the children of the group. They have become an important force from the last few conferences and their strength, visibility and special requirements cannot be ignored. The children of the delegates who have all almost grown up together have cemented the bond beyond acquaintance or friendship and into a well-knit family. With the second generation of conference goers, namely the children who grew up together coming up, the future is bright and the expectations of the Gen Next at a very high level.

What was evident through out the event was the spirit of the organisation. The writer felt as though CASC has acquired a soul of its own now. With a matrix of so many people in the infinite combinations of relationships, the CASC has nurtured so many professionals to their limits. In the process the goodwill has percolated to the families of the members. The 20 annual conferences only cemented this matrix into a tree of life.

Over the years, the family of CASC has grown and keeps growing. The spirit of CASC is a great feeling of togetherness, brotherhood and oneness….. Leaving this thought here for each one of the readers to reflect upon it and add his/her thought.

With the untiring efforts of the various volunteers over the years and the sustained efforts of the committee year after year to raise the bar for themselves have made the organisation a very vibrant one. The annual conferences make the delegates irrespective of age to unwind, destress and relax themselves and be ready for the whole year. Of course, many deals are struck in the side-lines, professional partnership forged in the process and most all, families – intra and inter bonding is at a very high level.

Thanks to Sundararajan R, Aka Sammandhi Mama for his valuable inputs in this memoire

(The author was one of the participant and can be reached at ramanakumar@ovopaxlegal.com)

LEARNING SERIES ON MULTILATERAL INSTRUMENT UNDER TAX TREATIES LS # 1: METAMORPHOSIS - MULTILATERAL INSTRUMENTS

Objectives

1. Prelude
2. Tax Treaties - What are treaties and how countries implement them?
3. Metamorphosis- Why do we need Multilateral Instruments for tax treaties?
4. Debrief

Mr. SUDARSHAN
Advocate
&
CA. VIGNESH
KRISHNASWAMY

I. Prelude

Multilateral Instrument (MLI) is currently the new superhero baby in the tax world and being a special baby is garnering all the necessary attention it deserves to. One of the reasons for garnering significant attention is that MLI will change the way international tax is being practiced currently as this is a significant evolution in tax world. One hand in the Western World, United Kingdom is exiting from Europe and on the other hand in the Eastern World, China has brought around 65 Countries together as part of it Belt and Road Initiative to promote trade and investments. Further due to technology, borders for doing business are shrinking and getting transparent day by day. Hence the application of tax treaties under International tax which are prevalent over the past few decades will now have a makeover with the introduction of the MLI.

It is imperative to note that India along with 86 other countries are signatory to the MLI. MLI is up and active in many countries in the world from 1 January 2019. Since India is yet to ratify the MLI domestically, the MLI has not become effective as of today. However, in all, MLI will enter into force by 2019 or latest by early 2020. Hence the current learning series objective is to ensure that as soon as the baby gets delivered in India (Entry into force), there is a fair understanding on MLI and its mechanics. Over the next few months we will be covering the MLI provisions on a sequential basis and look at the potential challenges that can arise on its application for India Inc.

The first edition of this learning series will endeavour to provide a brief overview on the existing framework of tax treaties and the need for MLI. Over the next few editions, we would be planning to cover the entire provisions and scope of the MLI as learning series. We would be extremely delighted to get fellow professionals' feedback and insights on the learning series, as the objective is to learn and appreciate the different perspectives that could emerge on MLI provisions.

II. Tax Treaties under International Law

International tax law is part of International law, even though there are some difference in treatment from the general applicability of international law. Due to this difference in treatment of tax treaties, the role of international law is being underplayed by stakeholders when it comes to applying International tax law. The reliance on interpretation of tax treaties are majorly on the commentaries of United Nations (UN) Model and Organisation for Economic Co-operation and Development (OECD) than on the Vienna Convention on the Law of Treaties. The Vienna Convention on the Law of Treaties (commonly referred to as 'VCLT') is a treaty on treaties and is considered as the main source of interpretation by International law practitioners and scholars on treaties, agreements etc. One of the most commonly applied VCLT provisions on tax treaties related matters is Article 31 of this treaty, which states that treaties should be interpreted "*in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose*". However, beyond this VCLT provisions have been used rarely under International Tax Law context. It is imperative to mention here that India is not a signatory to the VCLT, however Indian courts have embraced VCLT on matters pertaining to public international law.[1]

Treaties being instruments that create international law is one of the most common and important sources of international law. Treaties are agreements between sovereign states and is binding on every sovereign state signatory to such agreement. A *treaty* is defined by The Vienna Convention on the Law of Treaties (commonly referred to as 'VCLT') as '*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation*'[2].

From the definition, we can derive that a treaty as the following main features:

- an international agreement
- concluded between states
- in written form
- governed by international law

Further it is imperative to note that a treaty under the scope of the VCLT can also be referred as pacts, statutes, charters, protocols etc. Some prominent examples are United Nations Charter, Marrakesh Agreement Establishing the World Trade Organization.

[1] http://opiniojuris.org/2015/04/02/guest-post-indian-court-embraces-the-vienna-convention-on-law-of-treaties/ (last accessed during 20 February 2019)

[2] Article 2(1)(a), VCLT 1969

In some cases, we have agreements having been entered with International Organisations. An international organisation is one that is an "intergovernmental organization"[3] such as the United Nations, World Trade Organisation, the World Bank. Treaties can be bilateral (between two States) or multilateral (between three or more States). Comprehensive Economic Partnership Agreement between the Republic of India and Japan is an example of bilateral treaty and for that matter Double Tax Avoidance Agreements which India entered into are also examples of bilateral treaties. In a similar way, Vienna Convention on the Law of Treaties, Kyoto Protocol, SAARC Agreement on Trade in Services (SATIS) are classic examples of a multilateral treaty.

As much as treaties are source of international law another important source of law is customary international law. Customary international law arises "*from a general and consistent practice of states following them from a sense of legal obligation*".

Therefore, key feature for a practice to become customary international law is:

- there is a consistent and general practice by States- "State practice"
- It is accepted as law or one that is legally obligatory.

International law includes tax treaties which have been entered into between countries on the fundamental premise to protect the interest of the taxpayers in the respective country. International law recognises that every Sovereign state has the right to enter into International treaties. In India, the Supreme Court states that "The State is a creature of the Constitution" in the case of S.R. Bommai v. Union of India[4]. Therefore, every sovereign derives its power to enter into a treaty through the domestic law of that state. In the Indian context, the general treaty making power of the Union of India arises from Article 51, 53 and 73 of the Constitution of India. The guided power of the constitution through a delegated power framed by the parliament under section 90 and 90A of the Income tax Act, 1961 enables the Union Government to enter into Double tax Avoidance Agreements. Likewise, every sovereign state has a domestic framework and powers vested in it through which a treaty is entered into.

Having set the context of (a) what a treaty means and (b) the powers of state to enter into a treaty, we will now look into 'Why MLI?'

[3] Article 2(1)(i) of the VCLT 1969

[4] AIR 1994 SC 1918

III. Metamorphosis - Why MLI?

We all understand that countries have entered into Double Tax Avoidance Agreements (generally referred to as 'DTAA') with several countries bilaterally, with a view to prevent double taxation of income or give relief in respect of doubly taxed incomes. Further to the economic slow-down and the global economic crisis, the international institutions and the fellow nations woke up to recognise aggressive tax planning strategies adopted by Multinational Enterprises (MNEs), having cross border trade and commerce, by eroding the income base of a country and shifting of profits to tax favourable jurisdictions. Due to this governments have been losing substantial corporate tax revenue and this aggressive international tax planning tax planning strategies with a view to exploit gaps in the taxation system to artificially shift profits to low or no-tax locations (where there is little or no economic activity which leads to little or no tax being paid). This led to a situation where these MNEs reduced tax incidence in each state of operation and essentially paying least or no tax in the country of source. These strategies were in violation of the 'Economic Allegiance[5] principle, which was once regarded as the one of the purposes of entering into a DTAA.

Having witnessed the economic effects of the aggressive tax planning and tax mitigation strategies adopted by the MNEs, the G20 countries in September 2013 came together to develop a comprehensive framework to with the help of OECD's Committee of Fiscal Affairs and ('Organisation for Economic Development and Cooperation') mooted to formulate and redesign the international laws to counter the tax avoidance strategies adopted globally. The OECD's Base Erosion Profit Shifting (BEPS) Action Plans was a mission that aimed to overhaul the international tax rules around the foundational pillars of Coherence, Substance and Transparency. The actions of the international organisations are a result of exploitation of the differential tax regime in different countries and misuse of such rules, thereby eroding the profits in high tax jurisdictions and shifting of profits to low tax jurisdictions or to jurisdictions with virtually no taxes. India was part of the Ad Hoc Group of more than 100 countries and jurisdictions from G20, OECD, BEPS associates and other interested countries, which worked on an equal footing on the finalization of the text of the MLI.

As a result of the BEPS action plans and to tackle the aggressive tax planning mechanism adopted by MNEs, 15 Action Plans were brought out by the OECD. The focus of this article being on MLI, in course this introduction will aim to dwell on the aspect of MLI.

[5] Economic allegiance means to compensate to a nation or a kingdom for the benefits that one derived from exploiting that nation or kingdom's resources

Action Plan 15 of the OECD on the BEPS project aimed to bring in one signal document containing, the standard set of regulations to be followed on Treaties of double tax avoidance, reduce inconsistencies in treaty practise, renegotiating treaties across all taxing jurisdictions is time consuming, to have consensus and reservations built in through a single instrument. The purpose of this action plan was to develop a Multilateral Instrument to modify the Bilateral tax treaties. This was seen by the law makers of international tax regulations as an effective mechanism that can implement the agreed changes in a synchronised and efficient manner across the existing agreements without the need to bilaterally renegotiate each and every agreement. Therefore, MLI will have to now be along with the existing DTAAs, only in respect of those sovereign state who is a signatory to the MLI and has deposited the same with the OECD.

IV. Debrief

MLI as a new instrument is looked to be game changer in the in the field of International taxation. Having said this, the complex working of the MLI which would be required to be read along with the DTAAs will be an area of specialization by itself. It would also be interesting to see if this instrument meets it objectives and will keep pace with the evolving business models in the times to come.

The object of this edition is to give a basic prelude into the foundational aspects of MLI. We will deep dive into the MLI provisions and its mechanics in the subsequent learning series.

(The authors are Chennai Based Advocate and Chartered Accountant respectively. They can reached at sudarshan@inbox.com and vignesh.krishnaswamy@outlook.com respectively)

DISCUSSION PAPER ON CHAPTER III - DIRECT TAXES - FINANCE BILL, 2019

CA. VIVEK RAJAN

Introduction- ***Thanking everyone for the response to our Discussion Papers of 2016, 2017 & 2018***

The Finance Bill, 2019 (Bill No. 5 of 2019) was presented in Lok Sabha as part of the Interim Budget on 01st February 2019 by Shri. CA. Piyush Goyal, Union Finance Minister and we can be proud that one of our members has presented the budget. In Chapter III of Finance Bill, 2019, there has been 8 amendments to the Income-tax Act, 1961 given the fact that this is an interim budget.

Interim Budget- When, Why and How

Interim budget is presented when the existing government does not have the time to present a full budget for example when elections are around the corner. The existing government's spending rights are vested by the budget for the year approved by the parliament and it can be exercised only till financial year ending 31st March.

The Government would be requiring parliamentary authority for incurring expenditure in the new fiscal year until the presentation of the full budget. The Parliament passes a vote-on-account that allows the Government to meet the administrative expenses until the formation of new Parliament and passing of full year budget. The existing Government in this scenario would act as a custodian for few months and would generally refrain from bringing big changes.

Coverage

This discussion paper attempts to cover only certain sections of the Finance Bill, 2019 relating only to Direct Taxation. The readers are requested to contact the author, in case of errors (which are unintentional) and also in case of divergent views with the author's note.

Disclaimer

This discussion paper attempts to cover the amendments broadly and **not in detail.** The sections selected for discussion are selected with the sole objective to have a detailed discussion for knowledge sharing with an incidental objective of average coverage of the amendments. It does not provide legal opinions, nor does it contain or purport to contain any specific legal, compliance, accounting, tax or any other advice under any other law for the time being in force in and outside India on the topics covered. It is further

understood that recipients of these series of articles will obtain their own legal and other relevant professional advice, in accordance with their specific interests, needs, and circumstances.

Further unless otherwise specifically mentioned, sections discussed in this paper, relates to Income-tax Act, 1961 and the Finance Bill 2019. Please refer to Finance Bill 2019 and the relevant pronouncements before taking any decision.

Acronym and Description

FA	Finance Act
CG	Capital Gains
IFHP	Income from House Property
LTCG	Long Term Capital Gain
The Act	Income Tax Act, 1961
PY	Previous Year
AY	Assessment Year

1. Increase in Standard Deduction - Amendment of Section 16

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to statement of objects and reasons

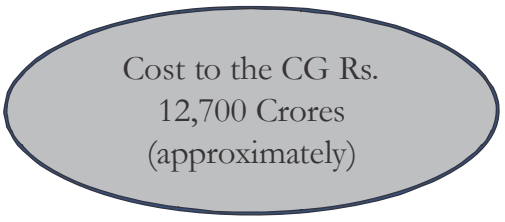
FA 2018 gave marginal relief to the salaried class by way of standard deduction resulting in net benefit of Rs. 5,742 (Point No. 4 of our Discussion Paper of 2018 reduced by 1% of additional cess). The standard deduction is increased to provide more relief to the salaried taxpayers.

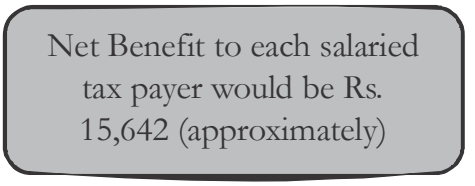
Amendment

The standard deduction is proposed to be increased from Rs. 40,000 to Rs. 50,000

Author's note

The cost for the CG and the benefit for the taxpayer in total is summarised as under (including the effect of FA 2018 amendment)





2. Tax free stay in own second home - *Amendment of Section 23*

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to statement of objects and reasons

In case of income from house property, income-tax on notional rent is payable if one has more than one self-occupied property.

It is proposed to exempt the levy of income-tax on this second self-occupied house on a notional basis, considering the difficulty of middle-class people.

Amendment

Section 23(4) has been amended suitably to replace

- The word "one house" with "two houses" and
- The words "other than the house" with "other than the house or houses"

Author's note

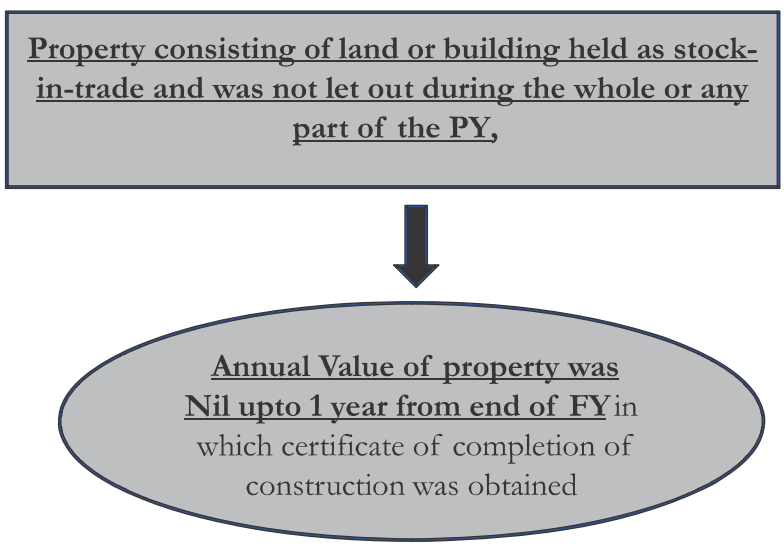
This exemption has the following effects

a. Impetus to buy up to two houses and consequent boost to the real estate sector
b. Beneficial also for Indian resident's holding property outside India

3. Extended relief for property developers- *Amendment of Section 23*

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to statement of objects and reasons



Amendment

Section 23(5) has been amended to extend the period of exemption from one year to **two years.**

4. Restriction of deduction u/s 24- ***Amendment of Section 24 consequential to amendment of Section 23***

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

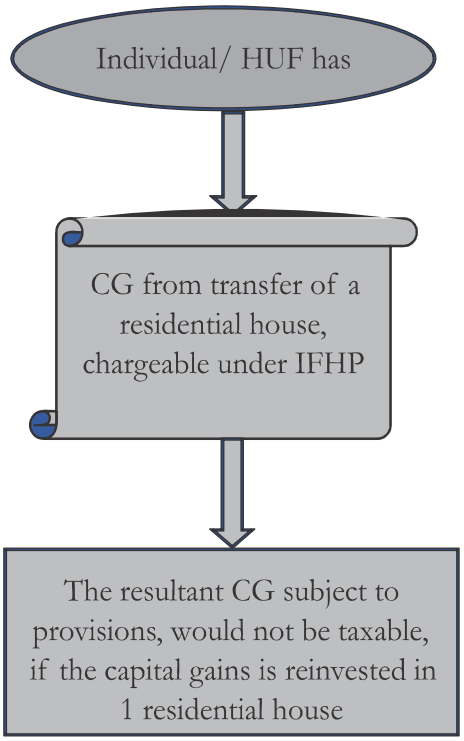
This is a consequential amount to amendment of Section 23. The monetary limit of deduction on account of interest payable on borrowed capital shall apply to aggregate of amounts in case of more than one self-occupied house.

A clarificatory proviso has also been inserted to restrict the deduction to Rs. 2, 00,000.

5. No Capital Gain on purchase of second residential house-*Amendment of Section 54*

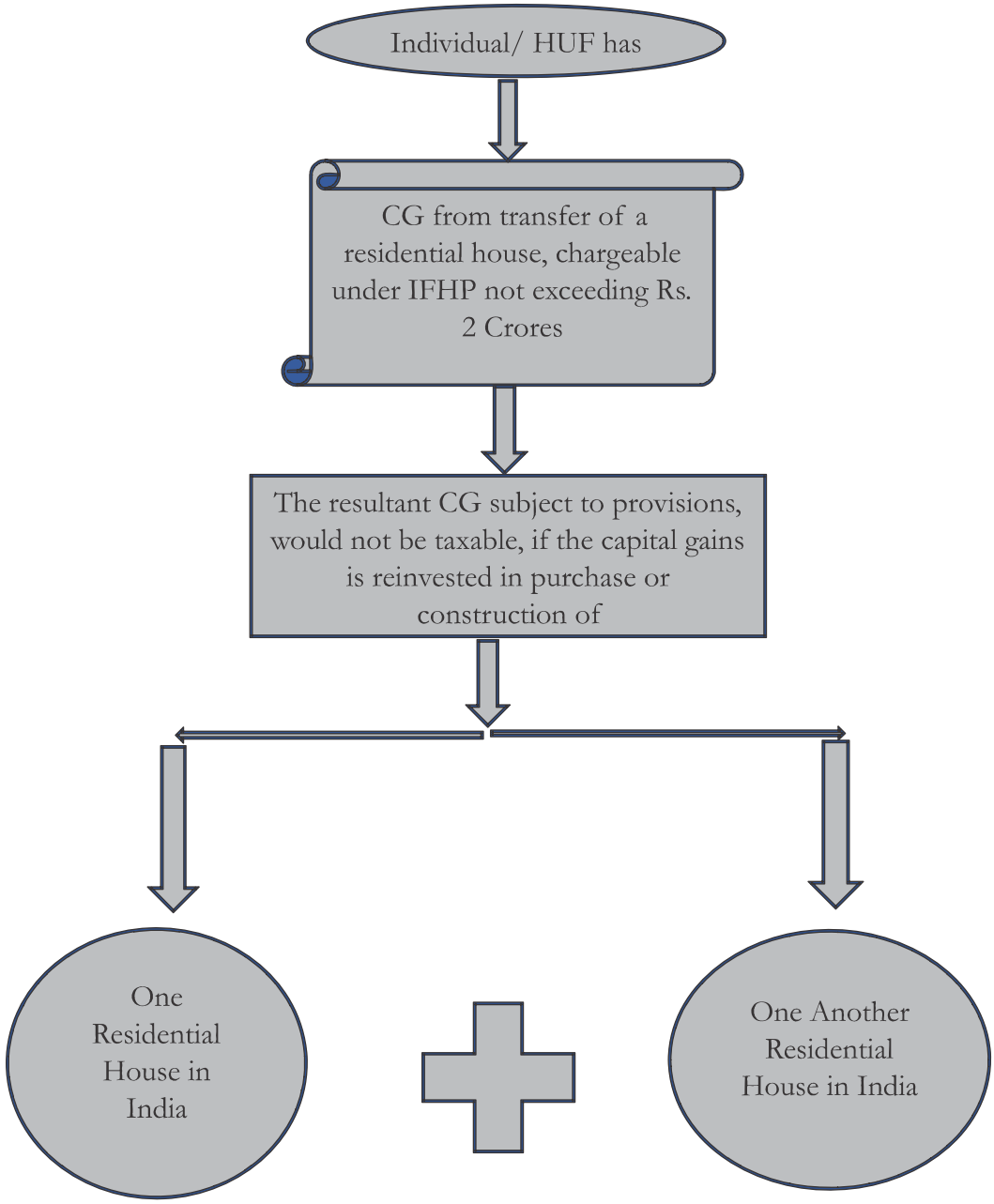
With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to statement of objects and reasons



It is intended to provide relief to taxpayers having LTCG up to Rs. 2 Crore, by affording them one-time opportunity at their option, to utilise the said amount for the purchase or construction of two residential houses in India instead of one currently provided.

Amendment



Author's Note

This once in a lifetime benefit is sure to lure many individuals to purchase more than one house thereby giving the real estate sector much deserved fillip.

6. Extended benefit for developers and builders of housing projects- *Amendment of Section 80-IBA*

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to statement of objects and reasons

Assesses engaged in the business of developing and building housing projects were allowed 100% deduction u/s 80-IBA for projects approved by the competent authority between 01/06/2016 and 31/03/2019 subject to other conditions.

This amendment is made to augment the supply of affordable houses.

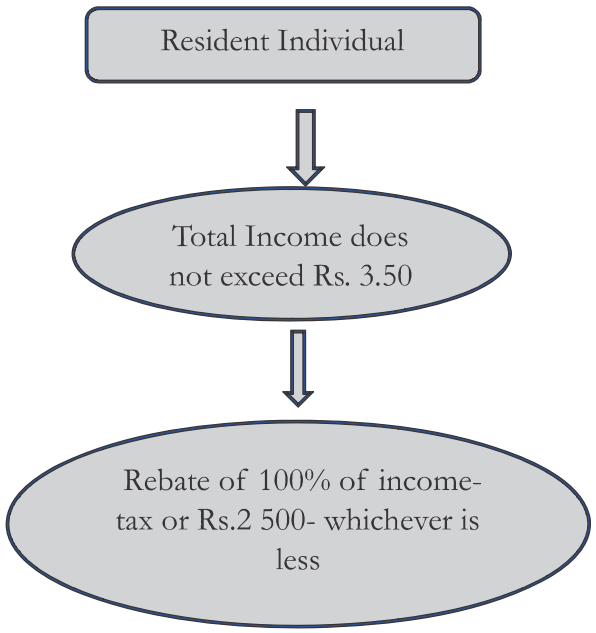
Amendment

The time period for availing the deduction has been extended by **one year to 31st March 2020.**

7. No tax on income up to Rs. 5 Lakhs- Full Tax rebate- Amendment of Section 87A

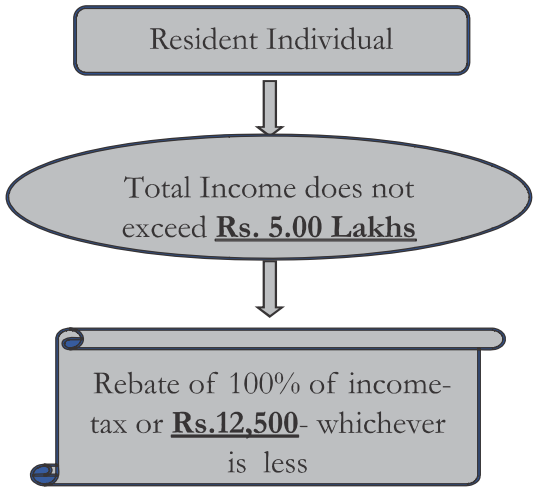
With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to statement of objects and reasons



The amendment is proposed to provide relief to the individual tax payers.

Amendment



Particulars	Amount in Rs, as per Finance Bill, 2019	Amount in Rs, as per Finance Act, 2018	Savings to the tax payer
Income under the head "Salary" after Standard Deduction u/s 16 (Rs. 50,000 – Finance Bill 2019, Rs. 40,000 – Finance Act 2018 , *income under salary thus lower by Rs. 10,000 w.r.t Finance Bill, 2019)*	3,00,000	3,10,000	
Income under the head "Capital Gains". Assumed to be LTCG eligible for Section 10(38) r.w Section 112A of the Act to claim exemption of Rs. 1,00,000	2,00,000 (Rs.3,00,000-Rs. 1,00,000)	2,00,000 (Rs.3,00,000-Rs. 1,00,000)	

Gross Total Income	5,00,000	5,10,000	
Less: Deductions under Chapter VI A	0	0	
Total Income	5,00,000	5,10,000	
Tax on Total Income	23,920	23,920	
Less: Rebate u/s 87A	12,500	0	
Net Tax Liability	**11,420**	**23,920**	**12,500**

Scenario 2

Particulars	**Amount in Rs, as per Finance Bill, 2019**	**Amount in Rs, as per Finance Act, 2018**	**Savings to the tax payer**
Income under the head "Salary" after Standard Deduction u/s 16 (Rs. 50,000 – Finance Bill 2019, Rs. 40,000 – Finance Act 2018 , *income under salary thus lower by Rs. 10,000 w.r.t Finance Bill, 2019)*	2,40,000	2,50,000	
Income under the head "Income from House Property" – Deduction u/s 24	(1,50,000)	(1,50,000)	
Income under the head "Capital Gains". Assumed to be LTCG eligible for Section 10(38) r.w Section 112A of the Act to claim exemption of Rs. 1,00,000	5,00,000(Rs. 6,00,000- Rs. 1,00,000)	5,00,000(Rs. 6,00,000- Rs. 1,00,000)	
Gross Total Income	5,90,000	6,00,000	
Less: Deductions under Chapter VI A	1,50,000	1,50,000	
Total Income	5,00,000#	5,00,000#	

Tax on Total Income	26,000	26,000	
Less: Rebate u/s 87A	12,500	0	
Net Tax Liability	**13,500**	**26,000**	**12,500**

LTCG is taxable at the rate of 10% without benefit of deductions under Chapter VI -A – *Section 112(2) of the Act*. However, the benefit of rebate u/s 87A is available

This benefit coming at a cost of Rs. 18,500 Crores to the CG would benefit approximately 3 Crore tax payers.

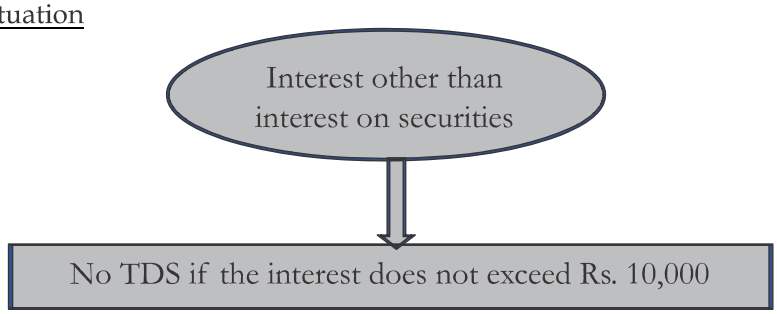
8. Relief to the Senior Citizens/ Small Depositors – No TDS on Interest upto Rs. 40,000- Amendment of Section 194A

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

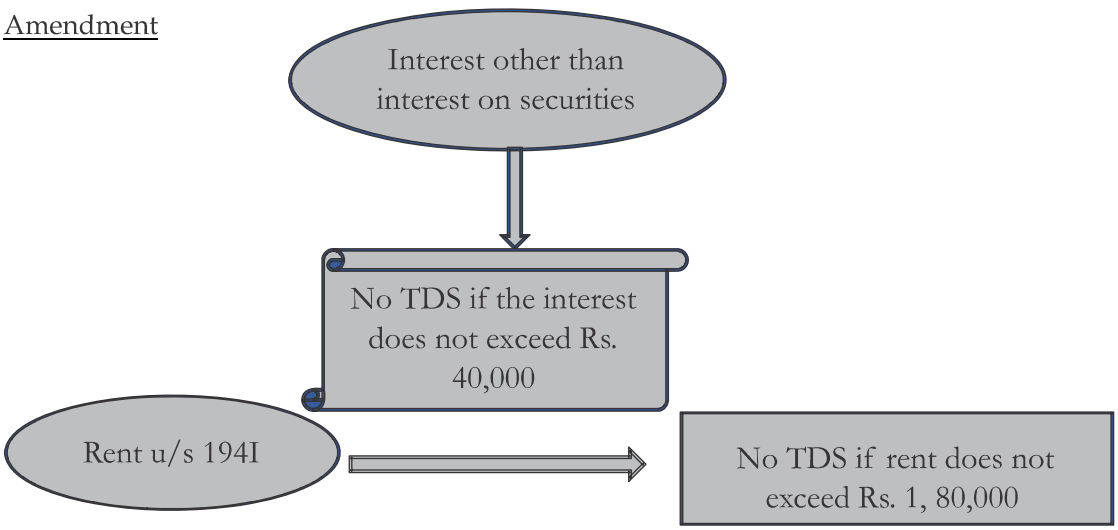
Reference to statement of objects and reasons

This amendment is to benefit the small depositors and non-working spouses.

Present situation



Amendment



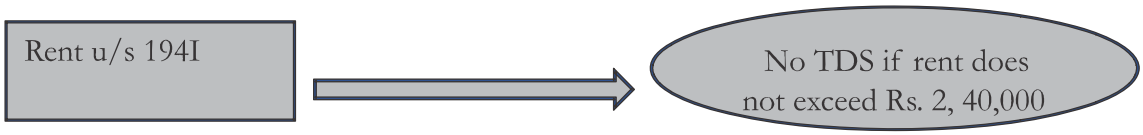
9. Relief to small tax payers – No TDS for rent u/s 194I up to Rs. 2,40,000

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and Reference to statement of objects and reasons

This amendment is to benefit the small depositors and non-working spouses

Amendment



9. Feeling proud as an Indian- Few Glimpses from the Budget Speech

- With job seekers becoming job creators, India has become the world's second largest start-up hub – *Para 41.*
- India is the fastest highway developer in the world with 27 kms of highways built each day- *Para 50.*

10. Vision for the next Decade- Summary Extract from the Budget Speech

The following are the 10 most important dimensions that is required for India to become a **Ten Trillion Dollar Economy** and the same in summarized as under

1. Building of physical as well as social infrastructure and to provide ease of living
2. Creation of Digital India reaching every corner of the country
3. Pollution free nation with green Mother Earth and blue skies
4. Expansion of rural industrialisation using modern digital technologies to generate massive employment
5. Cleaning our rivers and water bodies with safe drinking water to all Indians
6. Developing India's long coastal line and other inland waterways.
7. India becoming the launch-pad of satellites for the World and placing an Indian astronaut into space by 2022.
8. Making India self-sufficient in food and exporting to the world to meet their food needs and producing food in the most organic way.
9. Healthy India
10. Team India – Our Employees working together with the elected Government, transforming India into a Minimum Government Maximum Governance nation.

(The Author is a Chennai based Chartered Accountant and he can be reached at auditorvvr@gmail.com)

CASC - ANNUAL RESIDENTIAL CONFERENCE - 2019

Registered with Register of News Paper of India - TNENG/2002/9058 Postal Regd.No.TN/CH/(C)/170/15-17
Licenced to Post at Egmore RMS/1 (Pathirka Channel) Publication 26th of Every Month.

Published by : Anil Kumar Khicha on behalf of the Chartered Accountants Study Circle,
2-L, Prince Arcade, 22-A, Cathedral Road, Chennai - 600 086. Phone : 2811 4283
Printed by : D. Srikanth at Super Power Press, No.1, Francis Joseph Street, Chennai - 600 001. Phone : 6536 1540
Editor : Anil Kumar Khicha