

# At a Glance

*(Brief Updates from the world of Tax and Finance)*

For Private Circulation Only

March 2020

## Message

The spread of Covid-19 has been the talk of the town for the last month. The virus has started spreading outside China with Iran and Italy becoming the new epicenters. India has till now been lucky with limited cases. The Government of India has been able to quarantine all identified cases quickly to limit the spread. In the interest of the health and of economy, it is important that each jurisdiction takes all steps required to contain the virus. Tough small steps initially can help in reducing significant pain at a later stage.

Indian economy, however, fared reasonably well during February. The spread of Covid-19 did jitter the sensx during the late part of the month. However, GST collections continued to cross the Rs. 1 lakh crore barrier again in February 2020.

On the income tax front, clarifications were released by the Government of India on the Vivaad se Vishwas Scheme, expanding the scope of the scheme. The forms for taking the benefit of the reduced rates of corporate

tax of 22% and 15% were also notified. The same need to be filed before filing of income tax return.

Ministry of Corporate Affairs (MCA) notified the new forms for incorporation of companies which provide mandatory registration with ESI and EPFO, opening of bank account and optional registration under GST. Under GST, time limit of filing of TRAN-1 for those suppliers who could not submit due to technical difficulties was extended till March 31, 2020.

Coming month sees the due date for deposit of advance tax and the year end as well. While the industry will be looking to reach their targets, the Government would also be focussing on achieving theirs. The progress of Covid-19 may play spoilsport with the economy. Hopefully, we will be able to keep it in arrest and it will tide over soon. Till such time, keep yourself safe and healthy.

With Warm Regards  
**Ankit Jain**

## Income Tax

### CBDT notifies Rules and Forms for reduced tax regime.

Government of India vide Ordinance dated 20/09/2019 provided an optional tax regime wherein following reduced income tax rates were prescribed if no exemption / incentive is claimed:

- 15% for companies incorporated on or after 01/10/2019 and production is started on or before 31/03/2023;
- 22% for any other company.

Above tax regime was to be opted for by furnishing a declaration in this regard. Now, CBDT has notified Rule 21AE & 21AF and Form no. 10-IC and Form no. 10-ID for opting the scheme. Option once exercised, will be applicable for subsequent assessment years also and

such option is to be exercised before due date of filing of income tax return u/s 139(1).

**[Notification G.S.R. 110(E) [NO. 10/2020/F. NO./370142/34/2019-TPL] dated 12.02.2020]**

### PAN will be inoperative if not linked with Aadhaar upto 31/03/2020.

CBDT vide this notification has inserted rule 114AAA wherein it has been provided that where a person, who has been allotted pan as on 1st day of July, 2017 and is required to intimate aadhaar number and has failed to intimate the same on or before 31st day of March, 2020, then, PAN of such person shall become inoperative.

After the specified date, if such persons is required to quote PAN under the Act, then, it shall be deemed that such person has not quoted PAN and all the consequences for not quoting the PAN will be applicable.

Thereafter, whenever the person intimates his aadhaar number after 31st March, 2020 his pan shall become operative from the date of such intimation.

**[Notification G.S.R. 112(E) [NO.11/2020/F. NO.370149/ 166/2019-TPL] dated 13.02.2020]**

### **CBDT condones delay in filing of Return of Income for A.Y. 2016-17, 2017-18, 2018-19 for Charitable Institutions.**

Under the provisions of section 11 and 12 of IT Act, charitable trust or institutions are exempted from payment of income tax if 85% of total receipts are applied towards charitable activities, however, if 85% amount could not be spent on charitable activities, then the same could be accumulated under section 11(2) and explanation to section 11(1) and same is to be intimated to Income Tax department in Form no. 10 and 9A respectively and such amount is to be invested in the modes specified u/s 11(5) i.e. F.D.R. with scheduled bank, Government Securities etc.

CBDT, w.e.f. AY 2016-17 introduced e-filing of such forms, however, being in the initial period of e-filing, in many cases such forms could not be filed online, therefore, CBDT condoned the delay in filing of forms for AY 2016-17, AY 2017-18 and AY 2018-19 with certain conditions, however, in the cases where Income Tax Returns have also been filed beyond the due date prescribed u/s 139(1) of the Act, the respective condonation is not of any help to the assessee as section 13(9) of the Act stipulates that for accumulation of funds, twin conditions has to be satisfied i.e. filing of Forms 9A / 10 and also filing of Return of Income before the due date.

Accordingly, in continuation of earlier Circulars issued in this regard, CBDT has decided that where the application of condonation of delay in filing Forms 9A/10 has been filed, and the Return of income has been filed on or before 31st March of respective assessment years, the CITs are authorized to admit condonation application u/s 119(2) of the Act of delay in filing Return of Income and decide on merit.

**[Circular No. 6/2020 [F. NO. 197/55/2018/-ITA-I] dated 19-02-2020]**

### **CBDT notifies class of persons to whom Common Application Form will be applied.**

Ministry of Finance, Department of Economic Affairs has notified a Common Application Form (CAF) for the purpose of Registration, Opening of Bank and Demat Account and PAN Application. Rule 114 provides that

CBDT will notify classes of persons to which CAF will apply.

Accordingly, vide this notification, this form has been made applicable to 'New Foreign Portfolio Investors'. After due examination and generation of FPI certificate, SEBI will forward data in form 49AA to prescribed Income Tax Authority through the signature of Authorised Signatories of its Designated Depository Participants (DDPs).

**[Notification NO.11 of 2011 [F. NO. PR. DGIT(S)-1/FPI/04/2019-20-PART], dated 07.02.2020]**

## **Direct Tax – Judgements**

### **SC: a newly registered Trust is entitled for registration under section 12AA on basis of its objects, without any activity having been undertaken.**

The Apex Court held that Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied.

The court observed that section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done. The term 'activities' in the provision includes 'proposed activities', that is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust.

**[DIT (E) vs. Foundation of Ophthalmic and Optometry Research Education Centre (Civil Appeal No 4702/2014 dated 19.02.2020) Supreme Court]**

### **Gujarat HC: the time limit for issuance of notice under 143(2) is to be computed with reference to such original date of filing of return of income under section 139(1) in case where the assessee filed a defective return u/s 139(1) and the assessee subsequently corrects the same in response to the notice under section 139(9) within the time prescribed in the notice.**

The High Court held that notice under section 143(2) is a statutory notice, upon issuance of which, the Assessing Officer assumes jurisdiction to frame the scrutiny assessment under section 143(2). Consequently, if such notice is not issued within the period specified in section 143(2) viz. before the expiry of six months from the end of the financial year in which the return is furnished, it is not permissible

for the Assessing Officer to proceed further with the assessment.

In the present case, the petitioner filed its return of income under section 139(1) of the Act on 10.09.2016. Since the return was defective, the petitioner was called upon to remove such defects, which came to be removed on 07.07.2017, that is, within the time allowed by the Assessing Officer. Therefore, upon such defects being removed, the return would relate back to the date of filing of the original return, that is, 10.09.2016 and consequently, the limitation for issuance of notice under section 143(2) of the Act would be 30.09.2017, viz. six months from the end of the financial year in which the return under section 139(1) was filed. In the present case, it is an admitted position that the impugned notice under section 143(2) of the Act has been issued on 09.08.2017, which is much beyond the period of limitation for issuance of such notice as envisaged under that sub-section. The impugned notice, therefore, is clearly barred by limitation and cannot be sustained.

**[Kunal Structure (India) (P.) Ltd. vs. CIT in R/Special Civil Application No. 13924 of 2018 Gujarat High Court]**

**ITAT Kolkata held that if the advances have subsequently been recorded as sales and that these sales have been accepted as income by the Assessing Officer during the year, no additions can be made under any other provision of the Act.**

The ITAT held that if the advances have subsequently been recorded as sales of the assessee firm and that these sales have been accepted as income by the Assessing Officer during the year. In case he has not disturbed the sales of the assessee and consequently a receipt is accounted for as income, no separate addition of the same amount as income of the assessee under any other section of the Income Tax Act can be made. Any addition made thereafter will lead to double addition of the same income.

**[New Pooja Jewellers v. ITO in ITA No. 1329/Mum/2018 – dated 26.02.2020 ITAT Kolkata]**

## **International Taxation & Transfer Pricing**

**ITAT Surat classifies interest-free AE-loans advanced to redeem preference shares as quasi capital and deletes the Transfer Pricing adjustment**

ITAT deletes the Transfer Pricing adjustment in respect of interest-free loan advanced by the assessee to its

Singapore-AE for the purpose of redeeming preference shares held by assessee.

ITAT holds that the transaction is quasi capital in nature and notes that Singapore-AE was a special Purpose Vehicle (SPV) formed to hold investment with no purpose to engage in any other activity. Further the ITAT also observed that the assessee wound up the AE and all the capital was remitted and gains on disposal of investments had been completely brought back to India and taxes paid thereon. ITAT inferred that “transaction in the case of assessee is therefore, be considered as a quasi-equity in substance, as against the transactions considered and characterized by the TPO as pure loan simplicitor as given by a financial institution. Further, it holds that these transactions of advancement of loan for purpose of redemption of preference shares are closely linked/integrated transactions in terms of Rule 10A(d) i.e. as shareholder’s function and hence, shall be considered as quasi-equity capital for the purpose of determining ALP. Lastly, holds that “amount representing loan was towards investment in share capital of the subsidiaries outside India as the transactions are not in the nature of transactions referred to section 92-B of the IT Act and the transfer pricing provisions are not applicable as there is no income”.

**[Bialkhia Holdings Pvt. Ltd. v Addl. CIT (ITA No. 507/Ahd/2013) dated 04.02.2020 – ITAT Surat]**

## **Corporate Laws**

**MCA publishes the Companies (Auditor’s Report) Order 2020**

The MCA vide notification dated 25.02.2020 has issued revised Companies (Auditor’s Report) Order 2020 in supersession of CARO 2016. While there are no changes in the applicability for CARO, major changes have been made in clauses to be included in the Audit report.

There are a total of 21 clauses in CARO 2020 as compared to 16 clauses in CARO 2016. Additional clauses have been added for disclosure of previous unrecorded income, internal audit systems, cash losses, resignation of statutory auditors, transfer of the unspent amount of CSR to specified Fund, material uncertainty regarding meeting its liabilities transactions.

Major changes have also been made in clauses related to immovable properties, repayment of loans and disclosures related to NBFCs or Nidhi Companies.

**[MCA issued Companies (Auditor’s Report) Order dated 25th February 2020]**

## Introduction of new Incorporation process, SPICe+ and AGILE PRO

As part of Government of India's ease of doing business initiatives, MCA has notified and deployed a new web form "SPICe+" (Spice Plus) replacing the existing SPICe Form and applicable for all new Company incorporation w.e.f. 23rd February 2020.

SPICe+ would offer 10 services by 3 Central Govt. Ministries & Departments (MCA, Ministry of Labour and Department of Labour) at one place, thereby saving procedures, time and cost.

Name reservation & incorporation of company would be done by web service SPICe+. AGILE PRO offers mandatory ESI & EPFO registration, Profession tax registration (Maharashtra), mandatory opening of bank account (PNB or Kotak Mahindra), and optional registration for GSTIN.

For change of name web service RUN would continue.

**[MCA issued Companies (Incorporation) Amendment Rules, 2020 vide its notification dated 18th February 2020]**

## Filing of e-forms by Companies under Insolvency or Liquidation Process

Most corporates under CIRP process had to face the issue of filing the relevant e-forms on the MCA portal, since the power of the Board of Directors get suspended, once the CIRP process is initiated.

MCA has now allowed the filing of forms in the registry of MCA21 by the Resolution or Insolvency Professional/ Liquidator as appointed by NCLT. But they have to file copy of order of NCLT for their appointment in Form INC-28 before filing any other e-form and insolvency professional will be allowed to file the e-forms of the Company (under CIRP) by affixing his DSC as 'Chief Executive Officer' under the authorized signatory details of the company. The status of the company will be shown as under CIRP or Liquidation.

On completion of the insolvency process, the insolvency professional is required to file e-form INC-28 once again, to change the status of the company on the MCA portal.

**[MCA issued General Circular No. 04/2020 dated 17th February 2020]**

## Condonation of Delay for filing applications/ documents by LLPs

MCA directs that provisions of section 460 of the Companies Act, 2013 (Condonation of Delay by Central Government in certain cases) shall also apply to a limited liability Partnership (LLP).

Section 460 of the Companies Act, 2013 deals with the Condonation of delay by Central Government (MCA) in certain cases. The same provision is now made applicable to LLP implying LLPs can also apply to MCA for condoning delay in filing applications/ documents under the LLP Act.

**[MCA issued Notification GSR 59[E] dated 30th January 2020]**

## Goods & Services Tax

### CBIC notifies single GST rate @ 28% on Lottery

CBIC notifies single GST rate of 28% on 'Lottery' w.e.f. March 01, 2020 pursuant to announcement made during GST Council meeting. It omits S. No. 242 and entries relating thereto in Schedule II, and substitutes S. No. 228 in Schedule IV.

**[Notification 01/2020- Central Tax (rate) dated 21st February 2020]**

### Extension of Time limit for furnishing TRAN-1 till 31st March, 2020

CBIC extends the time limit for submitting the declaration in form GST TRAN-1 under rule 117(1A) till 31st March, 2020 for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.

**[Order No. 01/2020- GST dated 7th February 2020]**

### AAR Maharashtra: Disallows ITC on replacement of lift/elevator being an integral part of building

Maharashtra AAR holds that manufacture, supply, installation and commissioning of lifts/ elevators is in the nature of works contract activity which results in creation of an immovable property, therefore, applicant is not entitled to ITC of GST paid on replacement of existing lift/elevator. It further explains that the lift, after erection and installation, becomes part of an immovable property i.e. building and is considered as integral part of building itself. It

notes that Explanation to section 17(5) of CGST Act clarifies that ITC is available for 'plant and machinery' but excludes land, building or any other civil structure. It refers to Apex Court ruling in case of Triveni Engg. Industries Ltd. and Quality Steel Tubes (P) Ltd. and observes that a lumpsum contract price is paid for replacing the lift and hence it will be considered as an indivisible works contract involving high technical skill, knowledge and experience of mechanical, electrical as well as civil engineering.

**[In the matter of Las Palmas Co-Operative Housing society Limited]**

**AAAR Karnataka: Entire contribution received by 'Association' from apartment owners/members taxable, upholds AAR**

AAAR Karnataka holds that entire contribution received towards the maintenance of common areas/facilities by appellant, an association of apartment owners, from its members is taxable. It refers to scope of 'supply' contained u/s 7 of CGST Act, 2017, infers that "meaning of service is to be taken from the recipient's point of view and accordingly, it can be said that any transaction which gives the recipient a benefit can be considered as a service". After applying the said analogy, the authority explains that in the present case, association's activity of maintenance and upkeep of residential apartment complex by procuring the services and goods from third parties benefits every member of the Association and hence, it can be said that "there is a service rendered by the Association to its members". Further, the activity of providing facilities or benefits to members for a subscription is a 'business' under section 2(17) of CGST Act and hence, transactions between the association and its members is a service.

**[In the matter of Vaishnavi Splendour Homeowner Welfare Society]**

**AAR Rajasthan: 'Pure labour contract' service supplied as sub-contractor under PMAY exempt from GST**

Rajasthan AAR holds that services by way of pure labour contract supplied by way of

construction, erection, installation, completion, repair, maintenance, renovation or alteration of a civil structure or any other original works under Pradhan Mantri Awas Yojana (PMAY) is exempted from GST. The Authority observes that the applicant entered into a sub- contract for providing pure labour service in the project of PMAY wherein the services would be used for "Chunai and Plaster Work only" with the applicant having control over the labour and responsible for their dues and other concerns. Perusing Entry 10 of Notification No. 12/2017 -Central Tax (Rate), it observes that "said entry is not person-centric but project-centric" and "entry does not speak of contractor or sub-contractor but supply of pure services by way of construction under certain projects". Authority further explains that, "It clearly stipulates that whosoever is supplying the pure labour contract services for the construction of a civil structure or any other original works under PMAY shall be exempted from GST.

**[In the matter of Sevk Ram Sahu]**

**Gujarat High Court: Directs release of goods confiscated due to undervaluation of invoice value**

Gujarat HC grants ad-interim relief by directing the respondent-authorities to forthwith release truck along with the goods contained therein seized due to undervaluation of an invoice. It observed that goods were seized on the basis of valuation report prepared by Value Team Professional (Government registered Valuer). It further notes the assessee's plea that Section 129 of the CGST Act do not contemplate detention of goods on any ground other than the grounds stated therein and that, undervaluation of an invoice cannot be a ground for detention of goods under section 129 of the CGST Act when all the necessary documents as required under section 68 of the CGST Act read with rule 138(A) of the rules have been furnished.

**[In the matter of Sakul Nazar Mohmd.]**

## Compliance Calendar March 2020

Compliance Particulars	Due Date
<b>1. Income Tax</b>	
Furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of January, 2020	2nd March, 2020
Deposit of Tax deducted/collected for the month of February, 2020	7th March, 2020
Fourth instalment of advance tax for the assessment year 2020-21	15th March, 2020
Due date for payment of whole amount of advance tax in respect of assessment year 2020-21 for assessee covered under presumptive scheme of Section 44AD/ 44ADA	15th March, 2020
Due date for issue of TDS Certificate for tax deducted under Section 194-IA, 194-IB and 194M in the month of January, 2020	17th March, 2020
Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of February, 2020	30th March, 2020
Due date for linking of Aadhaar number with PAN	31st March, 2020
Country-By-Country Report in Form No. 3CEAD for the previous year 2018-19 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group	31st March, 2020
Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2018 to March 31, 2019) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.	31st March, 2020
<b>2. Goods &amp; Services Tax (GST)</b>	
GSTR-8: Summary of Tax Collected at Source (TCS) by E-commerce Operator for the month of February, 2020	10th March, 2020
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of February, 2020	10th March, 2020
GSTR-1: Details for Outward Supplies for the month of February, 2020 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th March, 2020
GSTR-6: Return for a taxpayer registered as Input Service Distributor(ISD) for the month of February, 2020	13th March, 2020
GSTR-3B: Summary Return for the month of February, 2020	20th/22nd/24th March, 2020
GSTR-9 / GSTR-9C: Annual Return / GST Audit for FY 2018-19	31st March, 2020
<b>3. Labour Laws</b>	
Deposit of ESI for the month of February, 2020	15th March, 2020
Deposit of Provident Fund for the month of February, 2020	15th March, 2020

## VED JAIN AND ASSOCIATES

100, Babar Road, Opp. Hotel Lalit, New Delhi – 110001

**Phone** : 23354546, 23354547 **Mail** : mail@vedjainassociates.com

**Website**: www.vedjainassociates.com