FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

The Policy updates and Verdicts of Supreme Court and various High Courts are enclosed in this newsletter.

Attention of readers is invited to the Extension of due dates for filing GST returns in Odisha, Networth Requirements for Clearing Corporations in International Financial Services Centre(IFSC), Extension of due date to apply for legal identifier code and Decision of Honorable Supreme Court Of India in Principal Commissioner of Income-tax v. Ballarpur Industries Ltd.

Regards
For Raju and Prasad
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Your Knowledge Partners

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Policy Watch

Indirect Taxes

Clarification regarding filing of application for revocation of cancellation of registration

Section 29 of CGST Act, 2017 empowers a proper officer to cancel the registration, including from a retrospective date, of a registered person on account of non-furnishing of returns in FORM GSTR-3B or FORM GSTR-4. Section 30 of the said Act provides an option for such persons to apply for revocation of cancellation of registration within 30 days of cancellation of registration. The Central Board of Indirect Taxes and Customs vide Circular No. 99/18/2019-GST dated 23/04/2019 has clarified the provisions regarding the filing of application for revocation of cancellation of registration. Rule 23 of the CGST Rules provides that where the registration has been cancelled with effect from the date of order of cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed. Where the registration has been cancelled with retrospective effect, the common portal doesnot allow furnishing of returns after the effective date of cancellation. In such cases it was not possible to file the application for revocation of cancellation of registration. Therefore, a third proviso was added to sub-rule (1) of rule 23 of the said Rules enabling filing of application for revocation of cancellation of registration, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of thirty days from the date of order of such revocation of cancellation of registration.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-99-18-2019-GST.pdf

Provisions of rule 138E of the CGST Rules notified – Restriction on generation of e-way bill

As per Rule 138E, if an assessee, who is a composition dealer has not filed GST returns for two consecutive tax periods, e-way bill cannot be generated for making supply to him. In case of assessees other than composition dealers, if they do not file their GST returns for a consecutive period of two months, e-way bill cannot be generated for making supply to him. The Central Board of Indirect Taxes and Customs vide Notification No. 22 /2019 – Central Tax dated 23/04/2019 has notified 21-06-2019 as the date from which Rule 138E shall come into force.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-22-central-tax-english-2019.pdf;jsessionid=ABCD39FE5243A1D99F612D747FF5508A

Extension of due date for furnishing GSTR 1 and GTSR 3B for registered persons in specified districts in Odisha till 10th June and 20th June respectively

GSTR 1 and GSTR 3B for the month of April 2019 has to be filed by 10th May 2019 and 20th May 2019 respectively. The Central Board Of Indirect Taxes and Customs vide Notification No. 23/2019 – CT dated 11th May 2019 has extended the due date for furninshing GSTR 1 for April 2019 till 10th June 2019 for registered persons in specified districts in Odisha. Similarly, due date for furnishing GSTR 3B of April 2019 has been extended till 20th June 2019 for registered persons in specified districts in Odisha.

- http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-23-central-tax-english-2019.pdf;jsessionid=51D2AF089A777C4C729812F7350D6267
- http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-24-central-tax-english-2019.pdf;jsessionid=3CC1449E9BABA97E4F31D202B8082684

"Many of life's failures are people who did not realize how close they were to success when they gave up"

- **Thomas Alva Edison, American Scientist**

SEBI

Permitting Foreign Portfolio Investors (FPI) to invest in Municipal Bonds

RBI vide A.P. Circular No. 33 dated25-04-2019 has permitted FPIs to invest in municipal bonds. SEBI vide Circular No. IMD/FPIC/CIR/P/2019/62 dated 08-05-2019 has decided to permit FPIs to invest in municipal bonds in accordance with the provisions of Regulation 21(1)(p) of SEBI (Foreign Portfolio Investors) Regulations, 2014.

https://www.sebi.gov.in/legal/circulars/may-2019/permitting-foreign-portfolio-investors-fpi-to-invest-in-municipal-bonds_42927.html

Net worth Requirements for Clearing Corporations inInternational Financial Services Centre (IFSC)

SEBI vide Circular No. SEBI/HO/MRD/DRMNP/CIR/P/2019/60 dated 26-04-2019 has specified the net worth requirements for Clearing Corporations operating in IFSC. The requirements are as follows –

Applicant seeking recognition as Clearing Corporation	Rs. 50 Crores
Recognized Clearing Corporation on commencement of operations, at all times	Rs. 50 Crores (or) Capital as determined under regulation 14(3)(a) and 14(3)(b) of SEBI regulations, 2018
Recognized Clearing Corporation over a period of three years from commencement of operations at all times	Rs. 100 Crores (or) Capital as determined under regulation 14(3)(a) and 14(3)(b) of SEBI regulations, 2018

Further, the Clearing Corporations shall regularly review their net worth requirement and ensure that the net worth does not fall below the prescribed threshold. A certificate to this effect, as signed by the Managing Director of the Clearing Corporation, shall be submitted to SEBI within 15 days from the end of every quarter.

https://www.sebi.gov.in/legal/circulars/apr-2019/net-worth-requirements-for-clearing-corporations-in-international-financial-services-centre-ifsc-_42849.html

RBI Updates

Legal Entity Identifier: Extension of deadline

Earlier, Reserve Bank Of India has issued Circular No. FMRD.FMID. No.10/11.01.007/2018-19 dated 29-11-2018 on requirement of Legal Entity Identifier (LEI) for participation in non-derivative markets. LEI is a 20-character unique code assigned to entities who are parties to a financial transaction. All participants, other than individuals, undertaking transactions in the markets regulated by RBI and non-derivative forex markets shall obtain LEI codes by the due date specified in that circular. RBI vide Notification No.RBI/2018-19/177 dated 26-04-2019 extended the due dates to apply for LEI code as follows:

Phase	Net Worth of Entities	Current Deadline	Extended Deadline
Phase I	Above Rs.10000 million	April 30, 2019	December 31, 2019
Phase II	Between Rs.2000 million & Rs.10000 million	August 31, 2019	December 31, 2019
Phase III	Upto Rs.2000 million	March 31, 2020	March 31, 2020

https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11547&Mode=0

Direct Tax

Reporting requirements in Form 3CD

Section 44AB of the Income-tax Act, 1961 requires specified persons to furnish Tax Audit Report in Form No. 3CD. Form No.3CD was amended vide notification no. GSR 666(E) dated 20th July, 2018 w.e.f. 20th August, 2018. However, the reporting under clause 30C (Reporting on impermissible avoidance arrangements) and clause 44 (Break-up of total expenditure of entities registered or not registered under the GST) of the Tax Audit Report was kept in abeyance till 31st March, 2019 vide Circular dated 17-08-2018. The Central Board of Direct Taxes vide Circular No. 9/2019 dated 14-05-2019, has further deferred the reporting requirements under clause 30C and clause till 31st March, 2020.

https://www.incometaxindia.gov.in/communications/circular/circular_9_2019.pdf

Verdicts

Direct Tax

Tribunal being last Court of appeal on facts, its finding on question of fact is of significance, thus, where Tribunal did not correctly appreciate as to what Assessing Officer and Commissioner (Appeals) held and what was their reasoning which led to their respective conclusion, matter was to be remanded back for adjudication afresh

- Vide Decision of Supreme Court Of India in Principal Commissioner of Income-tax v. Ballarpur Industries Ltd.

Facts of the case:

1. The assessee is a Limited Company, which is engaged in the business of manufacturing of various kinds of papers. Case relates to AY 1993-94.
2. According to the assessee, Mr. G.R. Hada and the assessee were the joint promoters of one Company called M/s Andhra Pradesh Rayons Limited.

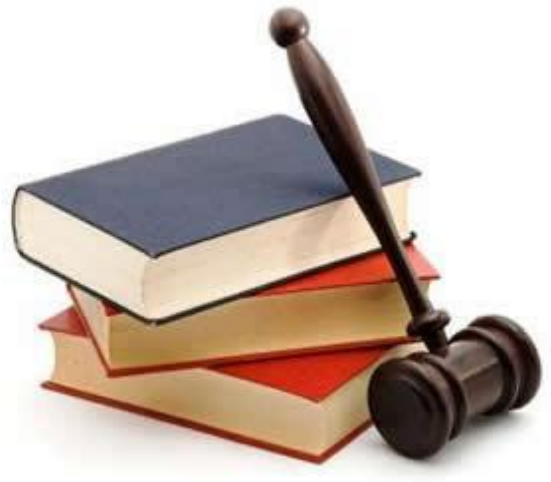
3. Since a dispute arose amongst the promoter shareholders, Mr. G.R. Hada filed a civil suit against the assessee and other promoter shareholders on the basis of an agreement, which was entered into amongst the promoter shareholders.
4. In the above mentioned suit, a compromise was arrived at between the assessee and Mr. G.R. Hada. Pursuant to the said compromise, the assessee paid a sum of Rs.3.25 crores to Mr. G.R. Hada.
5. The assessee claimed a deduction of Rs.3.25 crores as revenue expenditure because, according to them, they had paid the said sum to Mr. G.R. Hada for running their business.
6. The AO examined the claim and held that the claim cannot be considered as "revenue expenditure".

7. The assessee felt aggrieved by the order of the AO and filed an appeal to the CIT - Appeals. The CIT - Appeals also confirmed the addition made by the AO.
8. The assessee filed a second appeal in the Income Tax Appellate Tribunal. The Tribunal allowed the appeal and directed the AO to allow the deduction of Rs.3.25 crores as claimed by the assessee.
9. Aggreived by the order of Tribunal, Revenue filed an appeal in the High Court of Mumbai. By impugned order, the High Court dismissed the appeal.
10. Revenue further appealed to the Supreme Court.

Judgement:

The Honorable Supreme Court set aside the impugned order as well as the order of the Tribunal and remanded the case to the Tribunal. The need to remand the case to the Tribunal has arisen for the following reasons.

- From the perusal of the order of the Tribunal, it was found that the Tribunal has recorded a finding, which reads as under:-



"The AO did not dispute the fact that the expenditure related to the business of the assessee. The CIT (A), however, reversed the findings of the AO and held that the expenditure cannot be considered as business expenditure. A perusal of the CIT (A)'s order can only lead to a conclusion that the CIT(A) was of the view that the expenditure in question was not a capital expenditure but of a revenue nature……."

- The aforesaid observation of the Tribunal, on what AO and CIT - Appeals held, does not seem to be correct and rather inconsistent when we peruse the finding of the AO. We find that the Tribunal did not correctly appreciate as to what AO and CIT - Appeals held.

- The High court did not notice the aforesaid observation of the Tribunal and upheld the order of the Tribunal.

Keeping in view the question involved, the matter deserves to be remanded to the Tribunal for deciding the appeal filed by the assessee afresh on merits because the Tribunal being the last Court of appeal on facts, its finding on the question of fact is of significance.

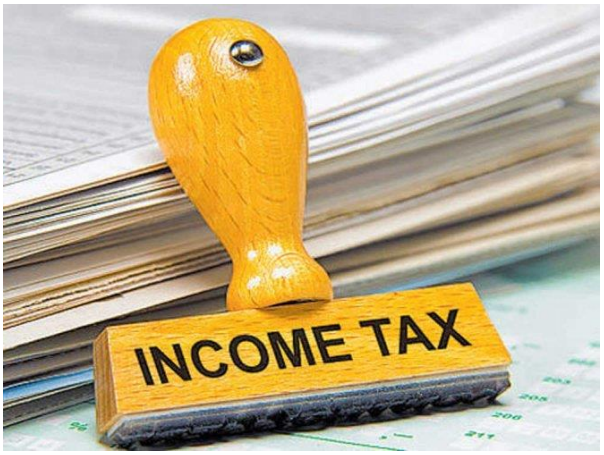
https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000187831&isxml=Y&search=&tophead=true&tophead=true

Reimbursement of service tax, by ONGC to assessee not a part of aggregate amount specified in sub-section (2) of section 44BB

- Vide Decision of High Court Of Uttarakhand in Director of Income-tax International Taxation v. Schlumberger Asia Services Ltd.

<u>Facts of the case:</u>

1. Section 44BB of Income Tax Act, 1961 provides that in case of an assessee engaged in the business of providing services or facilities in connection with, or supplying plant and



machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, a sum equal to 10% of the aggregate of

(a) the amount paid or payable the assessee or to any person on his behalf on account of the provision of services, and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India;

(b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services facilities connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or

production of, mineral oils outside India.

shall be deemed to be the profits and gains of such business chargeable to tax.

2. The issue involved in the present case is whether or not reimbursement of service tax, by the ONGC to the assessee forms a part of the aggregate amount specified in sub-section (2) of Section 44BB.
3. Department contended that the phrase used in Section 44BB (2) is "on account of" which is of a wider connotation and includes service tax, reimbursement of service tax along with consideration.
4. Assessee contended that the service tax collected / received by the assessee from its customers is on account of provision of services to be deposited with the Government of India. Since reimbursement of service tax is not on account of services rendered but is on account of 'provision of services and facilities' and is a statutory duty imposed on the assessee, it does not fall within the meaning of "amount" under Section 44BB(1). Also, such an amount is of the nature of 'pure reimbursement' without having an income element.

Judgement: The Honorable Supreme Court of India held that the amount reimbursed to the assessee by the ONGC, representing the service tax paid earlier by the assessee to the Government of India, would not form part of the amounts referred to in Section 44BB as the reimbursement of service tax is not an amount paid to the assessee on account of providing services and facilities in connection with the prospecting for, or extraction or production of, mineral oils in India.

https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000187758&isxml=Y&search=&tophead=true&tophead=true

"Failing to plan is planning to fail."
- Alan Lakein, American Author

Verdicts

Indirect Tax

Interest for late payment of GST payable on gross tax liability and not after set-off of Input Tax Credit

- Vide Decision Of High Court Of Telangana in Megha Engineering and Infrastructures Ltd. v. Commissioner of Central Tax

Facts of the case:

1. Case of the petitioner is that the GST portal is designed in such a manner that unless the entire tax liability is discharged, the system will not accept the return in Form GSTR-3B. For example, even if an assessee was entitled to set off to the extent of 95% by utilizing ITC, the return cannot be filed unless the remaining 5% is also paid.
2. There was an delay on the part of the petitioner in filing the return for the period October 2017 to May 2018 and which was due to shortage of ITC available to offset the entire tax liability. Total tax liability of the petitioner for the period July 2017 to May 2018 was Rs.1014,02,89,385/- and the ITC available during this period was Rs.968,58,86,133/- and the shortfall to the extent of Rs.45,44,03,252/- was required to be paid by way of cash. Due to certain restraints they could not make the payment and file return within the due date but the entire liability was discharged in May 2018- Consequently, the department demanded interest @18% in terms of Sectin 50 of the CGST Act, 2017.

Judgement: The Honorable High Court of Telangana held that -

"In view of Section 50(1), the liability to pay interest arises automatically, when a person who is liable to pay tax fails to pay the tax to the Government within the prescribed period – liability to pay interest is in respect of the period for which the tax remains unpaid. Until a return is filed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. It is only after a claim is made in the return that the same gets credited in the electronic credit leger and it is only after a credit is entered in the electronic ledger that a payment could be made even though the payment is only by way of paper entries - the tax already paid on the inputs of supplies of goods and services available somewhere in the air should be tapped and brought in the form of credit entry in the electronic credit ledger and payment has to be made from out of the same if no payment is made, the mere availability of the same will not tantamount to

actual payment. As the payment of the tax liability, partly in cash and partly in the form of claim for ITC was made beyond the period prescribed, the liability to pay interest u/s 50(1) arises on the gross tax liability. Only when the payment is made, the Government gets a right over the money available in the ledger. Since ownership of such money is with the dealer till the time of actual payment, the Government becomes entitled to interest up to the date of their entitlement to appropriate it. Hence, the claim made by the respondent for interest on the ITC portion of the tax cannot be found fault with.

https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&multipage=false&id=101010000000187824&isxml=Y&search=Megha+Engineering+and+Infrastructures+Ltd.&tophead=true&tophead=true

"The three great essentials to achieve anything worthwhile are, first, hard work; second, stick – to – itiveness; third, common sense"

- **Thomas Alva Edison, American Scientist**

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