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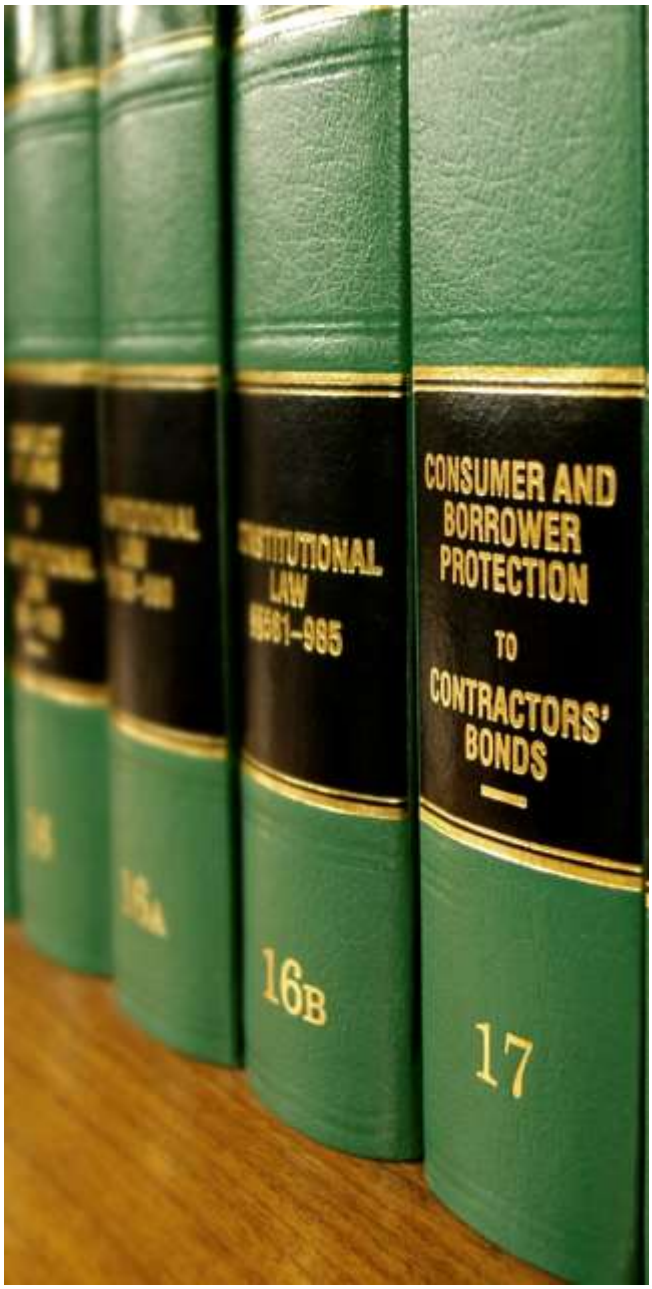

Case law-1

No disallowance for TDS default where payment becomes liable to TDS due to retro-amendment

Facts

Assessee, a partnership firm was engaged in the business of import of rough diamond, cutting and polishing and sale thereof.

Assessee made payment to M/s. HRD, Antwerp NV, Belgium (hereinafter referred to as 'HRD') amounting to INR 22.95 lakhs. This was towards grading and certification of diamonds.

The assessee sent cut and polished diamonds to HRD's office for necessary certification for which a separate series of invoice numbers are prepared in the name of HRD giving quantitative and qualitative details and the shipping bill for such transaction is certified by the Customs Department.

Upon completing the certification of diamonds received, HRD raised an invoice in favour of the assessee with necessary particulars and the diamonds were shipped back to the assessee along with certification and other documents like invoice, airway bill, etc.

Assessing Officer (AO) by treating the expense as 'fees paid for technical services', disallowed the same by invoking Sec. 40(a)(i) of the Income Tax Act, 1961 ('Act') on the ground that assessee failed to deduct tax at source on such payment.

The assessee contended that the goods were directly sent to HRD at Belgium and the said concern does not have a Permanent Establishment (PE) or agency in India to receive the goods on its behalf; secondly, it was contended that the service of certification is carried out by HRD entirely outside India, i.e., in Belgium.

Further, it was also pointed out that the gradation certificate/report given by HRD was only an analysis of the quality of each piece of diamond and did not constitute transfer of any technology, commercial interest, skill or technical knowledge in favour of the assessee and, therefore, such services could not be regarded as 'fees paid for technical services'.

The CIT(A) removed the disallowance by holding that Sec. 40(a)(i) of the Act was inapplicable since assessee was not required to deduct tax at source on such payment.

Decision by ITAT

Though at the ITAT level, the decision of CIT(A) was upheld, the assessee in its alternative appeal submitted that even if the services rendered by HRD were in the nature of technical services, and were rendered and utilised in India so as to be taxable in terms of Sec. 9(1)(vii) of the Act, even then the disallowance is not warranted. In this regard, the requirement of 'rendering of services in India' in order to attract Sec. 9(1)(vii) of the Act was removed by insertion of the Explanation by the Finance Act, 2010 with retrospective effect from 1st April, 1976.

According to the Revenue, though the services were rendered by HRD outside India, the same would be deemed to be taxable in India in view of the aforesaid amendment and, therefore, according to the Revenue assessee was liable to deduct tax at source u/s 195(1) of the Act.

In this regard, ITAT held that retrospective amendment is determinative of the tax liability in the hands of a recipient of income, but in the present case, what was held against the assessee was the failure to deduct tax at source at the time of payment of such income. Ostensibly, not considering the aforesaid amendment, the impugned income was not subject to tax deduction in India as per the prevailing legal position when the payments were made.

Thus, the taxability of a sum in the hands of the recipient on account of a subsequent retrospective amendment would not expose the assessee to an impossible situation of requiring deduction of tax at source on the anterior date of payment of such income. Thus, on this count, assessee was not held to be in default for not deducting tax at source so as to trigger the disallowance u/s 40(a)(i) of the Act.

A. Commissioner of Income-tax, Mumbai v. D.A. Jhaveri

Case Law-2

In case of no gain or profit at time of conversion of partnership firm into a company, irrespective of non-compliance with clause (d) of proviso to section 47(xiii) by premature transfer of shares, transferee company is not liable to pay capital gains tax.

Facts

Assessee was a non-resident company incorporated under the laws of Luxembourg. It purchased entire shareholding of an Indian company named Anandeya Zinc Oxides Private Limited.

This company was incorporated as a private limited company succeeding erstwhile firm M/s. Anandeya Zinc Oxides. On the date of the conversion, the partners of the erstwhile firm continued as shareholders having shareholding identical with profit sharing ratio of the partners.

The assessee filed an application before the AAR seeking a ruling on question as to whether notwithstanding the non-compliance with clause (*d*) of proviso to section 47(*xiii*), it was liable to pay capital gain tax.

The AAR noted that the assessee had clarified that whilst converting the partnership firm into a company, there was no revaluation of the assets and the assets and liabilities of the firm as also the partners, capital and current accounts were taken at their book value in the accounts of the company. It was in such circumstances the AAR ruled that notwithstanding premature transfer of shares as specified in clause (*d*) of proviso to section 47(*xiii*), the assessee-company was not liable to pay capital gain tax.

Decision by High Court

On perusal of the below facts, it was opined by the Hon'ble High Court that AAR in a very reasoned order, took a view that no capital gains accrued or attracted at the time of conversion of the partnership firm into a private limited company. Therefore, notwithstanding the non-compliance with clause (d) of the proviso to section 47(xiii) by premature transfer of shares, the said Company was not liable to pay capital gains tax. These findings were arrived at essentially looking into the fact that there was no revaluation of assets at the time of conversion of the firm M/s. Anandeya Zinc Oxides.

The AAR noted that section 47(*xiii*) specifically excludes different categories of transfers from the purview of capital gains taxation but it is subject to fulfilling the conditions laid down clauses (*a*) to (*d*). The conditions from (*a*) to (*c*) were satisfied in the assessee's case and the same was not in dispute but, however, the question was whether clause (*d*) requires to be satisfied.

The AAR has rightly pointed out that the first part of clause (*d*) was duly satisfied however, it is noted by the AAR that the requirements of second part of clause (*d*) *i.e.* the shareholding

of 50 per cent or more should continue to be as such for the period of five years from the date of succession, was not fulfilled in the instant case by reason of the transfer of shares by the Indian Company to the non -resident assessee before the expiry of five years.

The AAR has also noted that the consequences of violation of those conditions have been specifically laid down in sub-section (3) of Section 47A It is further pointed out that if no profit or gains arose earlier when the conversion of the firm into a Company took place or if there was no transfer at all of the capital assets of the firm at the point of time, the deeming provision under section 47A(3) cannot be inducted to levy the capital gain tax.

The AAR further found that the shares allotted to the partners of the existing firm consequent upon the registration of the firm as a Company, did not give rise to any profit or gains. It is further noted that by such reconstitution of the Company, the assets automatically got vested in the newly registered Company as per the statutory mandate. It was further found that it cannot be said that the partners have made any gains or received any profits assuming that there was a transfer of capital assets. It was also noted that worth of the shares of the company was not different from the interest of partners in the existing firm.

The said finding of fact were not disputed by the revenue and, as such, the finding of the AAR that there was no capital gains in the transaction in question was decided not to be at fault. It was also noted that even immediately after such conversion in question from the partnership firm into a private limited company, the assessment with regard to the income of the new company as well as of the respective partners were carried out and there was no objection or grievances raised by the Assessing Officer that any capital gains tax had to be paid on account of the incorporation of the company.

Commissioner of Income-tax v. Umicore Finance Luxemborg

Case Law-3

Provisions of section 115JB have overriding effect upon other provisions of Act and, thus, any deduction which is otherwise not provided by Explanation would be outside scope of operation of section 115JB

Facts

The assessee filed its return and submitted books of account. In the books of account, profit was shown at Rs. 43.97 lakhs. However, in the Schedule under the head 'other income', assessee claimed deduction of Rs. 43 lakhs as capital receipt and filed 'Nil' return.

In the assessment proceedings, the Assessing Officer opined that section 115JB was a self-contained code and would apply notwithstanding any other provisions of the Act. There was no scope of any deduction under any other head than provided by way of Explanation under section 115JB. He thus treated the book profit shown as per profit and loss account for the purpose of applying tax rate at 7.5 per cent.

Decision by High Court

The High Court, in its decision stated the below points -
Books of account certified by the authorities under the Companies Act for the purpose of computing income is to be accepted as per section 115JB and any increase or reduction is permissible only to the extent provided under Explanation to the said section. In other words, there is no jurisdiction for the Assessing Officer to go beyond the profit shown in the 'profit and loss account' except to the extent provided in the Explanation to section 115JB.

The assessee contended that while giving the treatment to profit and loss account, one has to see the taxable liability of the income. According to assessee, capital receipts cannot be termed as 'profit' for the purpose of tax and therefore if it was not liable to be added as income for the purpose of Act or there is no taxable liability as it is not a business income, the adjustments made or deduction claimed as per the statement should be accepted irrespective of the fact that whether it falls under the Explanation of section 115JB or not.

The revenue contended that section 115-JB is having overriding effect over any other provisions of the Act and it is a complete code by itself. The Assessing Officer was bound to treat profit as per profit and loss account in the account prepared by the assessee as per the Companies Act and such amount of profit can either be reduced or added if any of the conditions specified in the Explanation to section 115JB is satisfied, otherwise not.

It was opined by the High Court that Tribunal has rightly placed reliance on decision of the Apex Court in the case of Apollo Tyres Ltd. v. CIT where the same issue was dealt with.

When the provisions of section 115JB have overriding effect upon other provisions of the Act and when the mechanism or operation of the area is a complete code by itself, any deduction which is otherwise not provided by the Explanation would be outside the scope of operation of section 115JB. The Tribunal has not committed any error. The appeal of revenue was disposed of accordingly.

B & B Infratech Ltd. v. Income tax Officer, Ward 12(1), Bangalore

Case Law-4

No auto import of 'Make Available' in India-Swiss DTAA without order effecting terms of MFN clause

The assessee manufactured and marketed pharmaceutical products. It remitted payments to overseas payees located at Switzerland, Canada and USA without deducting any tax at source thereupon for rendering consultancy services.

The Assessing Officer holding that the above remittances were in fact in the nature of fee for royalty/technical services covered by deeming fiction under section 9(1)(vi) and (vii) passed sections 201 and 201(1A) order raising demand. He rejected assessee's contention that payees' in question had not 'made available' any technical know-how as well.

The Commissioner (Appeals) considered the following:

Remittance to Switzerland: The payment is in the nature of fee for technical services as per section 9(1)(vii) as the Switzerland Company was to conduct tests for research which is a technical service. The same was also taxable in India as per India-Switzerland DTAA Agreement.

Remittance to Canada: The services rendered by the Canada party would be taxable in India as per Section 9 (1)(vii) as the services are in the nature of technical services and are utilized for earning income from source in India. However, applying the beneficial provisions of the India Canada DTAA, the services would not be taxable as the same is not made available to the assessee.

Remittance to USA: The income accrues in India in view of sec.9(1)(vii) as Fees for technical services' as sales are made outside India but are to be made from India of goods manufactured in India. However, these services are of the nature of fees for included services' as per Article 12(4) of the India USA DTAA but do not 'make available' the knowledge, experience etc. Further, there is no PE of the US concern in India and therefore, it is not taxable under Article 7 as business profits. Thus, applying the beneficial provisions of the India USA DTAA, the services would not be taxable in India.

Decision by ITAT

With reference to remittance to Switzerland, there is hardly any dispute about section 90(2) of the Act envisaging that in case there exists a DTAA of any country, provisions of the Act apply to the extent they are more beneficial to such an assessee and not otherwise. The assessee in the instant case refers to Indo-Portuguese DTAA containing "make available" condition to be applied in case of its Swiss remittances as perIndo-Swiss DTAA Protocol on the ground that although such a "make available" condition in respect of technical services is not explicitly contained in latter DTAA, same is deemed to have been applicable by virtue of Indo-Portuguese DTAA Protocol specified hereinabove involving a specific condition to this effect. The ITAT clarified that no "make available" articles in respect to fee for technical service is used in Indo- Swiss protocol. The said protocol only postulates that India and Swiss shall enter into negotiation to this effect if former State enters into a DTAA with a member of OECD State either reducing rate of tax or restricting the scope of specified categories of income hereinabove.

With reference to remittances to Canada and USA, the Revenue failed to show any evidence that the payees have made it available their expertise and technical knowhow thereby enabling it to use the same independently without their assistance. It transpires that these payees have merely rendered consultancy services without imparting any knowledge.

Torrent Pharmaceuticals Ltd. v. Income-tax Officer, (International Taxation) III, Ahmedabad

NOTIFICATION

Circular

Directions under section 119 of the Income-tax Act, 1961

Recent initiatives by the Government to curb circulation of black money in the country has encouraged people to shift towards digital mode of payment while making financial transactions.

By adopting digital mode of payment, no financial transactions would remain undisclosed and consequently an enhanced turnover of business might get reflected in the books of accounts.

Under the circumstances, an apprehension has been raised that increased turnover in the current year might lead to reopening of earlier years' cases u/s 147 of the Income-tax Act, 1961 ('Act') involving lower turnover by the Assessing Officer causing undue harassment to tax payers.

It was clarified that reopening of cases u/s 147 of the Act is feasible only when the Assessing Officer *"has reason to believe that any income chargeable to tax has escaped assessment for any assessment year"* and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years.

The Assessing Officers were accordingly instructed not to reopen past assessments in above cases merely on the ground that the current year's turnover has increased.
For detailed notification, refer the link below –

http://www.incometaxindia.gov.in/communications/circular/circular402016.pdf

India removes Cyprus from 'notified jurisdictional area'

Providing a major relief to Cyprus-based investors who have invested in India, the Government vide Notification No. 114/2016 de-notified Cyprus from being a 'non-cooperative jurisdiction' under the provisions of Sec. 94A. Cyprus' removal from the tax blacklist came pursuant to Cyprus agreeing to exchange of information as well as changing the provisions relating to capital-gains taxation under the India-Cyprus DTAA.

For the notification, refer link below –

http://www.incometaxindia.gov.in/communications/notification/notification1142016.pdf

Indirect Tax

CASE LAWS

Refund under Rule 5 eligible if testing services given to foreign clients.

M/s PPD Pharmaceutical Development (I) Pvt. Ltd. was engaged in providing services of inspection and testing the goods in India. Their samples were drawn for such testing and analysis. The clients were located abroad. Reports of such tests and analysis were sent abroad. The respondent was of the view that such services are export of services under Business Auxiliary Services and refund should be admissible as per Rule 5 of the CENVAT Credit Rules, 2004.Revenue rejected the refund claim on the ground of limitation that services are rendered to a person situated abroad in respect of the goods located in India. The HC takes a view that if services were rendered to such foreign clients located abroad, then, the act can be termed as 'export of service'. Such an act does not invite a service tax liability. The Tribunal relied upon the circulars issued in the past & the view taken by it in the case of KSH International Pvt. Ltd. V. Commissioner and B.A Research India Ltd. The case of the present respondent was said to be covered by orders in these two cases. HC holds that if services were rendered to such foreign clients located abroad, then, the act can be termed as export of service.

[M/s PPD Pharmaceutical Development (I) Pvt. Ltd. Versus Commissioner of Service Tax, 2016 (12) TMI 1234-CESTAT MUMBAI]

Service tax chargeable on constructed area provided by developers to land owners in lieu of development rights.

N. Bala Baskar along with his brothers and two sisters entered an agreement for development with M/s. Lcs City Makers Pvt. Ltd. ("LCS" or "the Developer") for developing the land owned by petitioner into a complex of residential houses. In terms of the Agreement, LCS was under an obligation to construct a super built up area and handed over 65% of constructed area to the petitioner and his siblings and was entitled to retain remaining 35% of the undivided share of land. The Developer demanded Service tax together with VAT from the petitioner in respect of 35% agreed share of the property.

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However, the petitioner contended that any activity, which constituted merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner, would not come within the definition of the expression 'service'. The Madras High Court observed that in case of joint development agreements, where the developer constructed and handed over the agreed share of built-up area to the land owner in consideration for a share in the undivided land and ownership of balance built-up area, such activity of construction for the land owner was subject to service tax on the ground that it was possible for Revenue to contend that a person, who is the owner of land, had engaged a contractor to put up a construction for themselves upto a particular limit. Since the cost of construction could not be paid by the owner in the form of cash, they agreed to exchange the undivided share of the land with the Developer. HC holds that the writ petition is not maintainable and rejected the petitioner claim.

(N. Bala Baskar Vs. Union of India & Others[TS-176-HC-2016(MAD)-ST)

FOC supplies under warranty are not exigible to VAT.

Assessee act on behalf of manufacturer i.e. M/s. Tata Motors Ltd. purchase automobile & related spare parts from the manufacture for further sale. Assessee is a registered dealer under the U.P. VAT Act, 2008. For assessment year 2009-10, Assessee replaced some defective spare parts under free warranty replacement to manufacturer's customers as per the agency agreement. The cost of spare parts given to customer, is reimbursed by the manufacturer to the assessee by issuing credit note. The assessing officer completed the assessment and tax was levied on such transaction. The assesse took the stand that transfer of such spare parts by way of replacement of the old/defective parts of the vehicles sold to customers was on account of warranty given by manufacturer and thus there was no sale. The assessee also took the stand that the parts so replaced were given free of cost to the customer and value thereof was adjusted by manufacturer by issuing credit note to the assessee. The assessing authority did not accept the contention of assessee and accordingly imposed tax on such sale of spare parts.

Indirect Tax
CASE LAWS

HC held that there is no obligation on the part of the assessee under the warranty of the manufacturer to customers to replace the defective parts. The assessee is not even a party to that warranty. The supply of parts by the assessee to customers to replace the defective parts and receipt of consideration through credit notes in lieu thereof from the manufacturer is a separate transaction of sale. The hon'ble court held that assessee has sold spare parts for valuable consideration attracting liability to tax.
[The Commissioner, Commercial Tax Vs. S/S Maskat Motors Pvt. Ltd. 2016 (12) TMI 1305-ALLAHBAD HIGH COURT]

Multiple CENVAT Credit issued settled.

In the case of Jaya Hind Industries Limited Vs. Commissioner of Central Excise, CENVAT credit was denied on certain grounds as follows

1). The invoices were not in the name of appellant company but in name of directors and employees of the company. HC holds that credit should be allowed since all these expenditures were incurred by the appellant company and the same had been booked as expenditure in their books.

2). In respect of denial of Cenvat credit on the bank charges for non-availability of bills. HC holds that in the Cenvat Credit Rules, there is specific relaxation for banking services, even if there are no invoices but from any documents i.e. (Bank statement) of the bank payment of service tax is established credit must be allowed.

3). In respect of service tax registration number not mentioned in invoice, HC holds that cenvat credit cannot be denied due to non-mentioning of the registration number on the invoice.

4). In respect of services not considered as input services, HC holds that services involved are of construction of foundation in the factory, construction of security cabin, etc. Services are directly related to activity of manufacturing unit and the same was included in the definition of the input services, hence credit admissible. As regard the services of civil works, these services are not related to the factory but to the staff quarters, therefore, cannot be treated as input service. As regard air fair and cleaning services, it is related to business activity of the appellant company, hence Credit admissible.

[Jaya Hind Limited Vs. Commissioner of Central Excise, Pune 1, Commissionerate E/34/11.]

Notifications

Notification

Due date extended for filing Annual Return in Rajasthan VAT for F.Y. 2015-16
Rajasthan Government has extended due date of filling Annual Return for the year 2015-16 from 15th January to 31st January.

[Notification No. F26 (315) ACCT/MEA/2016/1999 Dated: December 19, 2016.]

Amendments to the HS Nomenclature effective from 1 January 2017

The World Customs Organization (WCO) announced that the 2017 edition of the WCO Harmonized System Nomenclature will enter into force on 1 January 2017. It includes **233 sets of amendments** which have been divided as follows : Agricultural sector 85; Chemical sector 45; Wood sector 13; Textile sector 15; Base metal sector 6; Machinery sector 25; Transport sector 18; Other sectors 26.

Legal & Regulatory

NOTIFICATION

MINISTRY OF CORPORATE AFFAIRS

The Insolvency and Bankruptcy Board of India has published the Syllabus, Format and Frequency of the "Limited Insolvency Examination"

(IBBI dated November 30, 2016)

Under Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, Chartered Accountants, Company Secretaries, Cost Accountants and Advocates having ten years of experience whether in employment or in practice, are required to pass Limited Insolvency Examination, for registration as an insolvency professional.

The Board has specified the syllabus, format and frequency of such Limited Insolvency Examination.

http://www.ibbi.gov.in/limited.html

Commencement of provisions under the Companies Act, 2013 (Winding up, Compromises, Arrangements and Amalgamations, Reduction of Share Capital, Variation of Shareholder's Rights)

(MCA Notification dated December 7, 2016)

The Ministry of Corporate Affairs vide its notification dated December 7, 2016 has notified various significant section under Companies Act, 2013 which were previously governed by Companies Act, 1956. These sections shall be effective from December 15, 2016.

Notified Section primarily relates to Winding up, Compromises, Arrangements, Amalgamations, Reduction of Share Capital and Variation of Shareholder's Rights wherein the NCLT was given the role to deal with the above said provisions under new Act.

http://www.mca.gov.in/Ministry/pdf/commencementnotif_08122016.pdf

The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

(IBBI Notification dated 15th December, 2016)

The Ministry of Corporate Affairs - IBBI has notified the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which shall come into force on the date of their publication in the Official Gazette. These Regulations shall apply to the liquidation process under Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and it comprises of the provisions relating to the appointment and remuneration of the liquidator, powers and functions of the liquidator, claims and distribution of proceeds.

The fee payable to the liquidator shall form part of the liquidation cost and the liquidator shall be entitled to such fee and in such manner as has been decided by the committee of creditors before a liquidation order is passed under sections 33(1)(a) or 33(2).

http://www.ibbi.gov.in/Law/IBBI%20(Liquidation%20Process)%20Regulations,%202016%2015%20DEC.pdf

Commencement of the provisions relating to reduction of share capital under Companies Act, 2016

(MCA Notification dated December 15, 2016)

Legal & Regulatory

NOTIFICATION

The Ministry of Corporate affairs (MCA) vide its notification dated December 15, 2016 had notified the commencement of the provisions for 'Reduction of Share Capital of the Company' under Section 66 of the Companies Act, 2013, with effect from December 15, 2016, which was earlier being governed under section 100 of the previous Act.

Post notification of the said provisions under the Companies Act, the MCA has also notified the NCLT (Procedure for reduction of Share Capital of Company) Rules, 2016 vide notification dated December 15, 2016, coming into effect from the same date itself.

The rules notified prescribe the detailed procedure to be complied with before application to NCLT for reduction of Share Capital. The rules also prescribes the provisions relating to form of application, timelines at various stages and fees applicable for reduction of share capital etc.

http://www.mca.gov.in/Ministry/pdf/NCLTRules2016.pdf

Delegations of Powers to Regional Directors under Companies Act, 2013

(MCA Notification dated December 19, 2016)

The Ministry of Corporate Affairs vide its notification dated December 19, 2016 has specified sections in which the powers have been delegated to the jurisdictional Regional Director(RD), subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest.

Following are the few sections where the powers have been delegated to RD :

- Alteration of Memorandum of Association and Articles of Association of Section 8 Companies (Non-Profit Organization);
- The power to revoke license granted to Section 8 Companies (Non-Profit Organization);
- Shifting of Registered office of the Company from one state to another;
- Rectification of Name of Company;
- Rectification by Central Government in Register of Charges;
- The Power of Central Government - Circulation of members resolution;
- Removal of Auditor before expiry of his term;
- Power to allow inspection of documents filed under section 26 & 388;
- Maintaining Mediation and Conciliation Panel

http://www.mca.gov.in/Ministry/pdf/Notification_PowerRD_20122016.pdf

National Company Law Tribunal (Amendment) Rules, 2016

(MCA Notification dated December 20, 2016)

The Ministry of Corporate Affairs vide its notification dated December 20, 2016 has made certain amendments in the National Company Law Tribunal Rules, 2016 (referred to as the Principal Rules) and issued the National Company Law Tribunal (Amendment) Rules, 2016.

Key highlights of the amendments in the rules are as follows:

NOTIFICATION

a) Presentation of Joint petition

The amendment brings in the provision for presentation of joint petition, wherein the Bench may permit more than one person to join together and present a single petition if it is satisfied that there is a common interest in the matter.

Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Act.

b) Provisions for Multiple remedies

Rule 38A has been inserted to provide Multiple remedies, which states that a petition shall be based upon a single cause of action and it may seek one or more reliefs provided that the reliefs are consequential to one another.

http://www.mca.gov.in/Ministry/pdf/NCLT(Amendment)Rules_21122016.pdf

RESERVE BANK OF INDIA

RBI AMENDS MASTER CIRCULAR ON ISSUANCE AND OPERATION OF PRE-PAID PAYMENT INSTRUMENTS

(RBI Notification dated 27 December, 2016)

The Reserve Bank of India had notified the framework for the regulation and supervision of persons operating payment systems involved in the issuance of Pre-paid Payment Instruments (PPIs) in the country and to ensure development of this segment of the payment and settlement systems in a prudent and customer friendly manner vide Master circular DPSS.PD.CO.PPI.No.01 /02.14.006/2016-17 dated July 01, 2016 on Issuance and Operations of Prepaid Payment Instrument (PPIs) in India.

In order to facilitate the usage of digital payments/cashless mode of payments, RBI vide its notification dated December 27, 2016 has now allowed the banks to issue PPIs to unlisted corporates, partnership firms, sole proprietorship, public organizations like municipal corporations, urban local bodies, etc. for onward issuance to their staff / employees / contract workers, etc.

Earlier to this notification, banks were allowed to issue PPIs only for onward issuance to the employees of corporate entities listed in the stock exchanges in India.

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT1969655319BEB9444BAB1CCE28BFB87D45C.PDF

GROFERS- Digital Marketing For The E-tailing Era :- Alvinder Dhindsa

Alvinder is from Patiala in Punjab. He did his engineering from IIT Delhi and worked as transportation analyst at URS Company in America. Then he pursued his MBA, left his job, and came back to India. He started working with Zomato.com.

When he was working in America, he saw a big gap in logistics and delivery industry. He saw that the transactions between consumer and merchants in hyper local space were mismanaged. During this time, he met Saurabh Kumar. When they both discussed it, they realized that this is a great niche market opportunity.

Online platform for local needs –

He talked to vendors and businessmen regarding this and found out that local pharmacy shops deliver around 50-60 deliveries daily in an area of three to four km. Due to lack of infrastructure, logistics was a big problem for them.

Seeing the problems faced by businessmen, Alvinder thought of launching such a platform, which would help both the businessmen and customers. So he launched the Startup and one number. The idea behind one number was to provide pharmacy, grocery and restaurant on- demand pick and drop services for customers in nearby areas.

This was a one-stop solution for local needs of the customers. When the work started moving forward, he realized that 90% orders were coming for grocery, pharmacy, and not restaurants.

So he decided to focus on these two sectors. He rebranded the company as one number co Grofers.

Achieved a commendable place in two years –

At present Alvinder's company provides home delivery for more than 20,000 products from different categories. He is providing services in 10 cities of India from his platform. The cities with Grofer services are Ahmadabad, Bengaluru, Chennai, Delhi-NCR, Hyderabad, Jaipur, Kolkata, Lucknow, Mumbai, and Pune. The company has around 1000 employees with a turnover of 1.8 crores.

Column

All about Foreign Remittances
By
Sakshi Jain

Introduction

Any sum payable to a non-resident including a foreign company is liable to withholding of tax under section 195 of the Income Tax Act, 1961. The tax rate may vary in accordance with the nature of the remittance which should fall within the scope of Section 9.

Further, in accordance with the penal provisions of 206AA, which overrides the entire act, tax is to be withheld at a penal rate of 20% if Permanent Account Number (PAN) of the non- resident is not made available to the remitter. However, a new rule, 37BC inserted with effect from June 24, 2016 provides relief from the penal rate of 20%, when the below mentioned documents are furnished to the remitter:

- Contact details of the remittee
- Tax Residency Certificate (TRC) of the foreign country valid for the Financial Year in which the remittance is to be made is mandatory.
- Tax Identification Number (TIN) of the remittee of its place of residence outside India

However, to curb the issue of Double Taxation, one may refer the Double Tax Avoidance Agreement (DTAA). DTAA is a tax treaty entered between India and the country to which the remittance is to be made. It is entered to eliminate double taxation in case of incomes that are taxable in both the countries. To avail the beneficial tax rate as specified under the Articles of DTAA, availability of TRC, as explained above, is a mandatory pre-requisite.

Procedural Requirements

For the bank to process the foreign remittance, the remittee has to conform with a set of procedural requirements in which it has to issue Form 15CA to the bank.

The form has been categorised under 4 subheads out of which 1 is to be selected and filled.

Part A: This part of the form is to be filled when a single remittance or an aggregate of all remittances to be made, to all the remittees, within a Financial Year (FY) does not exceed Rs.5,00,000.

Part B: This part of the form is to be filled when the below mentioned conditions are fulfilled:

- The remittance, or the aggregate of the remittance within a FY exceed Rs.5,00,000 **and**
- A low deduction certificate is obtained from the Assessing Officer u/s 197 **or**,
- A certificate has been obtained from the Assessing Officer u/s 195 (2) for non-deduction of tax under certain payments **or**,
- A certificate has been obtained by the Assessing Officer u/s 195 (3) for non-deduction of tax on receipt of interest income or certain sum that is otherwise chargeable to tax at specified rates.

Part C: Under this part, a certificate in **Form 15CB**, to be issued by a Chartered Accountant is required to be furnished before filling Form 15CA. This requirement should be met when the remittance, or an aggregate of such remittance during the FY exceed Rs.5,00,000.

Column

Part D: This part of the form is to be filled when the remittance is not chargeable under the provisions of the Act.

Filing Technique

While 15CA was always furnished electronically, it has become mandatory to issue CA Certificate in Form 15CB electronically with effect from 01.04.2016.

When issuing Form 15CA under Part C, whereby Form 15CB is also a requirement, Part B of 15CA gets auto filled once the 15CB utility is imported. Form 15CA stands complete only after 15CB has been uploaded and its acknowledgment number is mentioned in Part A of 15CA.

However, one can withdraw the uploaded Form 15CB within 7 days from the date of upload.

Exceptions to Procedural Requirements

Below mentioned are the exceptions where the procedural requirement of filing Form 15CA/15CB is not required to be met:

1. Remittances to be made which do not require Reserve Bank of India's (RBI) approval under the Liberalised Remittance Scheme.

2. Remittances specifically mentioned in Rule 37BB, which has an exhaustive list of 33 nature of payments.

Inference

In order to facilitate foreign remittances, the income tax department has tried to cut down on paper usage and aims at a paperless economy. Further, a relaxation has been granted for remittances that fall below the threshold limit of Rs.5,00,000, in order to cut down on administrative hassles. The Java e- filing utilities for Form 15CB and Form 15CA can be downloaded from the e-filing portal of Income Tax i.e. https://incometaxindiaefiling.gov.in/e-Filing/UserLogin/Login.html#.

THOUGHTS WHICH INSPIRE US

"Let go, move on. Set yourself free. Memories are beautiful but life is even better."

"Your work is going to fill a large part of your life, and the only way to be truly satisfied is to do what you believe is great work. And the only way to do great work is to love what you do"

"There are two primary choices in life: to accept conditions as they exist, or accept the responsibility for changing them."

"Knowing Is Not Enough; We Must Apply. Wishing Is Not Enough; We Must Do"

JOKES

- What if dogs fetch the ball back only because they think you really like throwing it?
- Why do couples hold hands during their wedding? It's a formality just like two boxers shaking hands before the fight begins!
- Q: Is Google male or female?

  A: Female, because it doesn't let you finish a sentence before making a suggestion.

INTERESTING FACTS

- The attachment of the human skin to muscles is what causes dimples.
- Do you know the names of the three wise monkeys? They are: Mizaru(See no evil), Mikazaru(Hear no evil), and Mazaru(Speak no evil)
- You're born with 300 bones, but by the time you become an adult, you only have 206..
- Your left lung is smaller than your right lung to make room for your heart

Birthdays of the Month

Avdesh Kumar	**1-January**
Sameer Khan	**1-January**
Utkarsh Gambhir	**3-January**
Alok Gupta	**5-January**
Kumar Sanu	**17-January**

IBA wishes You a Happy Birthday and a great year ahead!!

January 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5 Excise Duty Payment Service Tax Payment corporates	6 Online Excise Duty Payment Service Tax Payment corporates	7 Tax deducted/ collected for the month of December
8	9	10 Filing of Excise Return Form ER-1 Form ER-2 Form ER-3 Form ER-8	11	12	13	14
15 Filing of TCS Return for 3rd Quarter	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31 Revised Excise Return Form ER-1 Form ER-2 Form ER-3 & Filing of TDS Return for 3rd Quarter				

About Us

IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity so as to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Ten years into conception, IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimise client service.
Our service lines are headed by experts from the varied fields of Financial Outsourcing, Assurance, Risk, Taxation, Regulatory, Mergers and Acquisition who ensure timely delivery of value added services to our clients.

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