INTERNATIONAL BUSINESS ADVISORS

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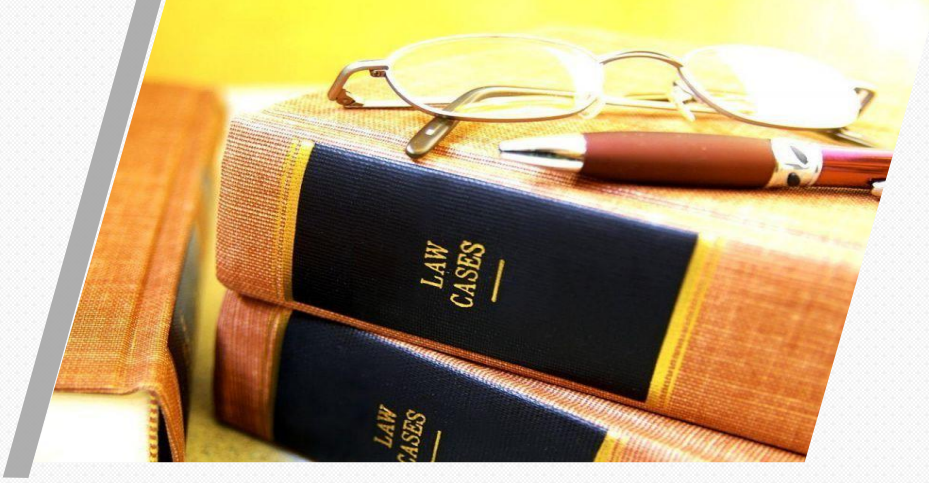
January - 2020

Content

Direct Tax Case Laws



Case Law 1:

While determining assessee's claim for deduction under section 54F in respect of purchase of flat from builder, date of issuance of allotment letter by builder has to be taken as date of acquisition of property

Where assessee claimed deduction under section 54F in respect of purchase of a residential house, mere fact that said house consisted of several independent units could not be a ground for denying assessee's claim of deduction

In order to claim deduction under section 54F, new residential house need not be purchased by assessee in his own name or exclusively in his name

Where assessee utilised entire sale proceeds in acquisition of new residential house prior to filing of return under section 139(4), her claim for deduction under section 54F was to be allowed.

During relevant year, the assessee sold a piece of land on 20/04/2010 and the amount received on sale of land was invested in purchase of four flats and accordingly deduction under section 54F was claimed by the assessee. In the course of assessment proceedings the assessee was asked to justify her claim of deduction in view of the fact that assessee had not file the return of income within the time period under section 139(1) and, had not invested the unutilized amount in Capital Gain Account Scheme under section 54F of the Act. The submissions made by the assessee were not found acceptable to the Assessing Officer. The Assessing Officer further noted that assessee could not produce any evidence to justify that the four flats purchased were used as one single residential house.

The Assessing Officer therefore opined that assessee had purchased the flats for commercial purpose i.e., giving them on rent. Assessing Officer also noted that the four flats that were purchased by the assessee were from the Builders, which was a partnership firm in which the sons of the assessee were the partners and the flats were purchased in the joint names i.e., in the name of assessee and her son. The Assessing Officer therefore concluded that the purchase of four flats was a transaction to avoid the tax. Considering the facts, the Assessing Officer denied the claim of deduction under section 54F to the assessee.

The Commissioner (Appeals) upheld the order of Assessing Officer. The claim of deduction under section 54F has been denied to the assessee for the following reasons:

- Assessee has claimed deduction for 4 flats purchased by her and not a single flat.
- The flats were purchased in joint name i.e., of the assessee along with her son.
- Assessee had purchased the flat beyond the period of two years prescribed under the provisions.

Direct Tax : Case Laws

- Unutilized portion of the amounts subject to capital gains tax was not deposited in capital gain account scheme as mandated under section 54F of the Act

So, with respect to purchase of four flats, it is an undisputed fact that the flats were booked by the assessee with allotment letter, dated 12-7-2011, when the building was under construction. The entire payment for the purchase of flats has been made up to September 2012 i.e., up to the date of filing of return of income. It is revenue's contention that the assessee had acquired the new asset only when the agreement was entered into on 19-3-2013 i.e., after the stipulated period. The High Court in the case of CIT v. Vembu Vaidyanathan after considering the CBDT Circular has held that the date of issuance of allotment letter by the builder is the date of acquisition of property.

As far as the issue of deduction on four flats purchased by the assessee is concerned, the submission of the assessee that all the four residential flats are adjacent flats located on the same floor of the building . The High Court in the case of CIT v. Gita Duggal has held that the fact that residential house consists of several independent units cannot be the reason for denying the claim of deduction under section 54F of the Act.

As far as the issue of purchasing flats in joint name is concerned, it is the assessee's contention that the entire consideration towards the purchase of flats was invested by the assessee and no amount was contributed by her son and further the name of the son was included as joint owner to avoid legal complication as the assessee is an old lady.

The High Court in the case of DIT v. Mrs. Jennifer Bhide has observed that to attract section 54F, what is the material is investment of sale consideration in acquiring the residential premises or constructing a residential premises. It further observed in the entire section of 54F, the requirement that purchase to be made or the construction to be put up by the assessee is in the name of the assessee is not expressly stated.

As far as the issue of not depositing the unutilized portion of amount in capital gain account scheme is concerned, it is fact that assessee had not filed the return under section 139(1) but had filed the return of income within the time limit prescribed under section 139(4) which was up to 31-3-2013.

It is assessee's case that prior to filing of return, assessee had utilized the entire sale proceeds in acquisition of the new residential house. The High Court in the case of CIT v. Ms. Jagriti Aggarwal has held that benefit of section 54F is allowable when the assessee has acquired the new asset before filing of return of income. In view of the aforesaid facts and relying on the aforesaid decisions, it is held that assessee is eligible for deduction under section 54F of the Act.

Mrs. Kamal Murlidhar Mokashi v ITO

Case Law 2:

So, Where a firm purchased land and subsequently revalued it, after taking over of said firm by a company, cost of acquisition would still be original purchase price; and not revalued amount.

During the year Assessee company had sold the land. The assessee company was called upon to furnish the details of the property sold. In response thereto, the assessee company has filed its reply wherein it was submitted that M/s. SCS which is a firm had

purchased the land and the value of the land was shown as Rs. 2,50,000/- in the return of income. In the relevant assessment year, the cost was revalued and valuer enhanced book value to Rs. 3.70 crore.

It was further submitted that re-valuation of asset does not result in any gain and, therefore, no capital gain was shown in the return of income in the relevant year. The firm was taken over by Assessee company (Utsav Cold Storage) along with its assets and liabilities. It was further submitted that the book value of the assets sold in the hands of the assessee company was Rs. 3,70,00,000/- and, therefore, when the property was sold, a total sale consideration of Rs. 2,00,00,000/- was received. There was a capital loss of Rs. 1,70,00,000/- in the hands of the assessee.

AO mentioned that the firm who had purchased the land for Rs. 2,50,000/- has revalued it to Rs. 3,70,00,000/- before transferring the assets and liabilities in the assessee company. The said land was sold during the year under consideration for Rs. 2,00,00,000/- and the DLC rate was also assessed at Rs. 2,00,00,000/-. Thus the assessee has deliberately revalued the land to a figure of Rs. 3,70,00,000/- which is more than the DLC rate which is sufficient to establish the mala fide intention of the assessee to evade the Capital Gain on sale of property by claiming the loss.

The Assessing Officer took cost of acquisition in hands of assessee-company at Rs. 2.50 lakh instead of enhanced value of Rs. 3.70 crore and accordingly computed gains in hands of the assessee. On appeal, the Commissioner (Appeals) accepted the order of the Assessing Officer. From the bare reading of two sections i.e. section 47 and section 49, it is clear that section 47 deals with the transaction not regarded as transfer whereas section 49 deals with the cost with reference to certain mode of acquisition. Under section 47, if a firm by way of succession became the company, then the transaction i.e. migration of the firm to the company would not be treated as transfer. However, section 47 do not provide the calculation of cost of acquisition by way of succession from firm to the company.

Section 49 specifically provide transfer by way of succession or inheritance. The firm is succeeded by the company, therefore, the cost of acquisition of the company would be as that of acquisition of the firm. The valuation of land and assets of firm though valued by the valuer will not change or alter the cost of acquisition of the firm despite valuation of assets of the firm and would remain the same, and, therefore, the cost of acquisition of the company would be cost of acquisition of the firm. The firm is being succeeded by the company and the company is not buying or purchasing the assets of the firm.

In view thereof, the issue is to be decided against the assessee and it is to be held that the cost of acquisition of the company (assessee) would be the cost of acquisition of the firm.

Therefore, the assessee would only be entitled to the indexation on the cost of acquisition of the firm on the amount of Rs. 2,50,000. The argument of the assessee that the AO has wrongly calculated the cost of acquisition of the assessee under section 49, is not correct as both the Assessing Officer and Commissioner (Appeals) have applied the cost of acquisition of the firm. The assessee, has wrongly got confused with the principles laid down under section 47 which talks about the transaction which are not regarded as transfer, with that of principles for determining of cost of acquisition under section 49.

Direct Tax : Case Laws

The cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it.

Utsav Cold Storage Pvt Ltd v ITO

Case Law 3:

Assessee had purchased 90 preference shares, each of the face value of Rs. 1,000 at a price of Rs. 420 per share, of a company called S Ltd. Share reduction was done at 2 stages. At first stage a sum of Rs. 500 per preference share was paid off to the assessee upon a reduction of a share capital of the company. This was done by reducing the face value of each share from Rs. 1,000 to Rs. 500 and by paying off Rs. 500 in cash.

As a result thereof, the assessee became a holder in respect of 90 preference shares of the value of Rs. 500 per share, in place of being the holder of shares of the face value of Rs. 1,000 per share. In second stage, extraordinary general meeting of S Ltd. was held, a special resolution was passed by the company by virtue of which it reduced its liability on the preference shares from Rs. 500 per share to Rs. 50 per share by paying off in cash a sum of Rs. 450 per share. Thus, the share held by the assessee which was originally of the face value of Rs. 1,000 became a share of the face value of Rs. 50 only.

This reduction had taken place in two stages, firstly, when the face value was reduced from Rs. 1,000 to Rs. 500 per share and secondly, when the face value was reduced from Rs. 500 per share to Rs. 50 per share. The ITO was of the opinion that a sum of Rs. 450 per share, which was now received by the assessee, was liable to be subjected to levy of capital gain tax.

The assessee, however, contended that such reduction of the face value did not result in extinguishment of the assessee's right and there was no transfer within the meaning of that expression as contained in section 2(47). The ITO did not accept the assessee's contention and taxed the said amount. The High Court considered the matter and came to the conclusion that the Tribunal had rightly held that the assessee had made capital gains on the reduction of preference share capital and the same was liable to capital gains tax.

It was submitted that reduction of the face value of the share from Rs. 500 to Rs. 50 per share did not amount to extinguishment of any right and, therefore, could not be regarded as transfer within the meaning of section 2(47) and the assessee continued to be a shareholder of the company. It was also submitted that there can be no transfer where shareholders get back money from the company. Lastly, it was submitted that section 45 of the Act was not applicable as the assessee had not made any sale.

It was submitted that as a result of the company's special resolution, the assessee got the money against surrender of shares and this would not amount to a sale. Section 2(47) in relation to capital asset included : the sale, exchange or relinquishment of the asset or the extinguishment of any rights. Section 2(47) provides that relinquishment of an asset or extinguishment of any right amounts to a transfer of a capital asset.

While, it is no doubt that the assessee continues to remain a shareholder of the company even with the reduction of a share capital, but it is not possible to accept the contention that there has been no extinguishment of any part of his right as a shareholder. It is not necessary that for a capital gain to arise there must be a sale of a capital asset. Sale is only one of the modes of transfer envisaged by section 2(47).

Direct Tax : Case Laws

Relinquishment of the asset or the extinguishment of any right in it, which may not amount to sale, can also be considered as a transfer and any profit or gain which arises from the transfer of a capital asset is liable to be taxed as capital gain tax. When as a result of the reducing of the face value of the share, the share capital is reduced, the right of the preference shareholder to the dividend or his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Whereas the assessee had a right to dividend on a capital of Rs. 500 per share before reduction, that stood reduced to his receiving dividend on Rs. 50 per share. Similarly, if the liquidation was to take place whereas he originally had a right to Rs. 500 per share, now his right stood reduced to receiving Rs. 50 per share only.

Even though the appellant continues to remain a shareholder, his right as a holder of those shares clearly stands reduced with the reduction in the share capital. Gujarat High Court had in another case of Anarkali Sarabhai. That was a case where there had been redemption of preference share capital by the company and money was paid to the shareholders. It was held that difference between the face value received by the shareholder and the price paid for preference share was liable to capital gains tax.

It had been contended by assessee in Anarkali Sarabhai's case is that reduction of preference share was not a sale or relinquishment of asset and, therefore, no capital gains tax was payable. But Court considered the definition of word 'transfer' occurring in section 2(47) and reading the same along with section 45, it came to the conclusion that when a preference share is redeemed by a company, what the shareholder does in effect is to sell the share to the company. The company redeems its preference shares only by paying the preference shareholders the value of the shares and taking back the preference shares.

Further, referring to the provisions of the Companies Act, it held that the reduction of preference shares by a company was a sale and would come within the phrase 'sale, exchange or relinquishment' of an asset under section 2(47). In this connection, it was noted that when preference shares are redeemed by the company, the shareholder has to abandon or surrender the shares in order to get the amount of money. The decision of this Court in Anarkali Sarabhai's case is applicable in the instant case.

The only difference in the present case and Anarkali Sarabhai's case is that whereas in Anarkali Sarabhai's case, preference shares were 100% redeemed, but in the present case there has been a reduction in the share capital in as much as the company had redeemed its preference share of Rs. 500 to the extent of Rs. 450 per share. The liability of the company in respect of the preference share which was previously to the extent of Rs. 500 now stood reduced to Rs. 50 per share.

The company the Companies Act has a right to reduce the share capital and one of the modes, which can be adopted, is to reduce the face value of the preference shares. This is preciously what has been done in the instant case. Instead of there being a 100 per cent extinction of the right which was there in the Anarkali Sarabhai's case, here the right as a preference shareholder of the assessee stands reduced from Rs. 500 to Rs. 50 per share. A sum of Rs. 450 per share has been paid by the company to the assessee on account of the extinguishment of his

right. Another right which isalso effected as a consequence of this reduction is with regard to the voting right.

A holder of a preference share has a right to vote only on resolution placed before the company which directly affects the rights attached to his preference share. In the case of cumulative preference share, if dividend remains unpaid for not less than two years, then even a preference shareholder gets a right to vote on every resolution placed before the company at any meeting like a member holding equity shares. Therefore, with the reduction in the face value of the share from Rs. 500 per share to Rs. 50 per share, the value of the vote of the assessee would stand considerably reduced.

Such reduction of the right in the capital asset would clearly amount to a transfer within the meaning of that expression in section 2(47). The SC held that High Court was right in coming to the conclusion that the assessee was liable to pay capital gains tax as a result of reduction in the preference share in S Ltd.

Kartikeya V. Sarabhai v CIT

Direct Tax Notifications

1. Notification No. 107/2019 [F No. 225/75/2019 – ITA.II] / SO 4708(E)

In exercise of the powers conferred under sub-section (2) of section 139AA of the Income-tax Act, 1961 ('Act') (43 of 1961) , the Central Government hereby amends the notification of the Ministry of Finance (Department of Revenue), dated 28th September, 2019 published in the Gazette of India. In the said notification, 1st December, 2019 shall be substituted by 31st March, 2020.

https://www.incometaxindia.gov.in/communications/notification/notification_107_2019.pdf

2. Notification No. 106/2019 [F No. 225/214/2019 – ITA.II] / SO 4709(E)

In pursuance of section 138 of the Income-tax Act, 1961, It is clarified that income-tax authority shall, furnish only relevant and precise information and convey to the authority to maintain absolute confidentiality in respect of information being furnished.

https://www.incometaxindia.gov.in/communications/notification/notification_106_2019.pdf

3. Notification No. 105/2019 [F No. 370142/35/2019 – TPL] / GSR 960(E)

In exercise of the powers conferred by the Central Board of Direct Taxes, it hereby makes the following rules further to amend Income-tax Rules, 1962, namely:—"119AA. Every person, carrying on business, if his total sales, turnover or gross receipts, as the case may be, in business exceeds fifty crore rupees during the immediately preceding previous year shall provide facility for accepting payment through the electronic modes

https://www.incometaxindia.gov.in/communications/notification/notification_105_2019.pdf

4. Notification No. 104/2019 [F No. 370142/28/2019 – TPL] / GSR 937(E)

In exercise of the powers conferred by section 80JJAA read with section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby amends the Income-tax Rules, 1962 that these rules may be called the Income –tax and hey shall come into force from the date of their publication in the Official Gazette.

https://www.incometaxindia.gov.in/communications/notification/notification_104_2019.pdf

5. Notification No. 103/2019 [F No. 370149/159/2019 – TPL] / SO 4455(E)

In exercise of the powers conferred by section 187 of the Finance Act, 2016, the Central Government hereby specifies that the persons who have made a declaration but have not made payment of the tax and surcharge payable under section 184, may make the payment of such

Direct Tax Notifications

amount on or before the 31st day of January, 2020, along with interest on such amount, at the rate of one per cent. for every month or part of a month.

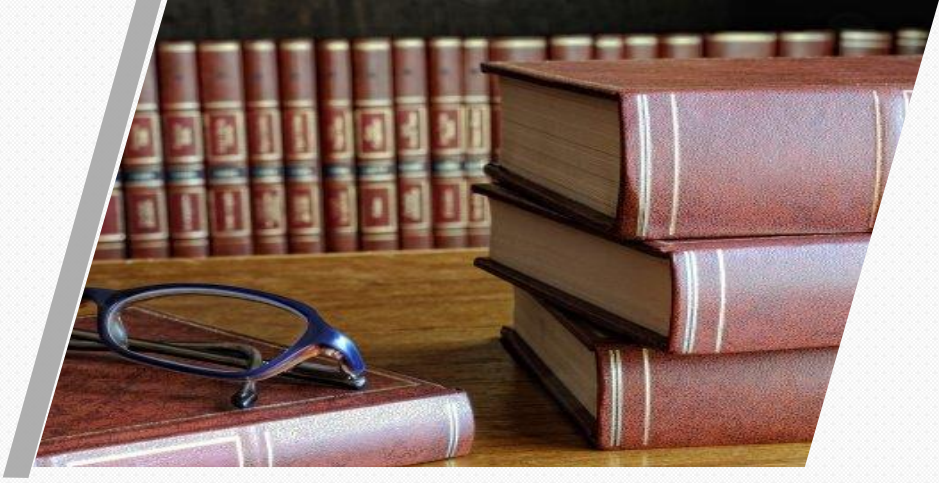
https://www.incometaxindia.gov.in/communications/notification/notification_103_2019.pdf

6. Notification No. 102/2019 [F No. 285/36/2019 – IT (Inv.V) CBDT] / SO 4344(E)

In exercise of the powers conferred by section 280A of the Income-tax Act, 1961 and Imposition of Tax Act, 2015, the Central Government hereby designates the Civil Judge-cum-JMIC (3), Shimla and Civil Judge-cum-JMIC(2), Hamirpur as Special Courts for the purposes of section 280A of the Income-tax Act, 1961 and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 within their respective jurisdiction.

https://www.incometaxindia.gov.in/communications/notification/notification_102_2019.pdf

Indirect Tax : Case Laws



Case Law 1:

ITC admissible even if the consideration is paid through book adjustments

The applicant is engaged in the manufacturing and retailing of jewelry, articles of gold, silver, platinum, diamonds and other precious stones. The applicant also maintains a network of franchise-oriented stores wherein it raises tax invoices on the Franchisee for supply of jewelry and franchise support services. Moreover, the franchisee also raises tax invoices on the applicant. The applicant intended to settle the mutual debts through book adjustments and thereby had sought an advance ruling on whether the Input tax credit is admissible in the said book adjustments. The applicant submitted that only Section 16(2) of the CGST Act 2017 governs the mechanism of availing of ITC wherein there is no mention of mode of payment to the vendor. Further, it submitted that AS 32 provides for settlement of financial asset and liability while reporting in the financial statements. The concerned GST officer submitted that section 49 of the CGST Act provides for payment of any amount through online modes of payment and thus the ITC is ineligible if the payment is made by way of book adjustment. The ruling authority observed that section 49 only deals with the payments to be made to the Government and has no restriction on availment of ITC. Additionally, meaning of consideration as defined u/s 2(31) includes almost all modes of payment and since there is no such restriction in the GST Act which was provided under Rule 19(8) of the West Bengal VAT Rules 2005 which specifically provided that ITC shall only be available if payment was made by account payee cheque, draft or electronic banking, the authority ruled that the applicant can pay the consideration by way of setting off book debt and the ITC on the invoices raised thereon is admissible subject to the conditions specified u/s 16 and 49 of the CGST Act 2017.

AUTHORITY FOR ADVANCE RULINGS – WEST BENGAL IN M/s SENCO GOLD LTD (AAR NO. 02/WBAAR/2019-20 DATED 08th May 2019)

Case Law 2:

SCN Issued without any whisper as to invoking the larger period of limitation. Hence, the demand cannot sustain, and appeal is allowed

A Show Cause Notice dated 14.03.2018 was issued inter alia alleging that the appellant had wrongly availed CENVAT Credit of Service tax paid on the rental premises, which was in fact factory premises, of INR 1,41,323 pertaining to period April 2015 to June 2015 and the same was to be recovered. The appellant responded that the CENVAT credit was availed in respect of the rental premises being used as an office space required to undertake the manufacturing activities. The appellant also

argued that the Show Cause notice was issued without any intimation or warning as to invoking the larger period of limitation since the proposal to raise the demand was for a much earlier period. If the proposal to raise the demand is for an earlier period beyond one year, then the authority has to invariably invoke the extended period of limitation. In view of this, the authorities have not been able to justify the invocation of extended period of limitation and hence, the demand cannot sustain. For this reason alone, the impugned order is set aside.

M/s INDIA YAMAHA MOTOR PRIVATE LIMITED Vs. THE COMMISSIONER OF G.S.T. AND CENTRAL EXCISE, CHENNAI [FINAL ORDER No. 41647/2019 dated 05.12.2019]

Case Law-3

No ITC available for construction of Marriage hall used in furtherance of 'renting' business

The applicant has built a marriage hall for leasing/renting for various occasions and accordingly charged GST for the same. Perusing the invoices, notes that applicant has received various materials such as cement, steel, wood, fittings, etc., along with various services from labor, architect, etc. which have been used by the applicant for constructing the marriage hall. Tamil Nadu AAR holds that no ITC is available against any goods/ services received by applicant for construction of Marriage Hall on own account even if used in course or furtherance of his business of renting the place. Section 17(5)(d) provides that no ITC is available for goods or services received by a taxable person for construction of an immovable property on his own though used in course or furtherance of business. As the suitability and requirement of taxpayer varies from person to person, rule/Act, cannot be changed/amended accordingly and it is mandatory for the taxpayers to adhere the restrictions prescribed in Act and Rule. Thus it was held that as the applicant has built the marriage hall for leasing/renting to customers, no ITC shall be available on any goods or services received by him for such construction in terms of Section 17(5)(d) as there is no GST liability on sale of immovable property.

AUTHORITY OF ADVANCE RULINGS- TAMIL NADU M/s. SREE Varalakshmi Mahaal LLP [AAR No. 51/ARA/2019 dated 25.11.2019]

Indirect Tax Notifications

1. Seeks to waive late fees for non- filing of FORM GSTR-1 from July, 2017 to November, 2019

CBIC vide Notification No. 74/2019 – Central Tax waived the late fee payable under section 47 of the said Act for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes the said details in FORM GSTR-1 between the period from 19th December, 2019 to 10th January, 2020.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-74-central-tax-english-2019.pdf

2. Seeks to notify the class of registered person required to issue invoice having QR Code.

CBIC vide Notification No. 72/2019 – Central Tax hereby notifies that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, to an unregistered person (hereinafter referred to as B2C invoice), shall have Quick Response (QR)code

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-72-central-tax-english-2019.pdf

3. Seeks to notify the class of registered person required to issue e-invoice

CBIC vide Notification No. 70/2019 – Central Tax , hereby notifies registered person, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-70-central-tax-english-2019.pdf

Indirect Tax
Orders & Circulars

Removal of Difficulty Order :

1. Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31.01.2020

CBIC vide Order No.10/2019 - Central Tax makes the order of extending the due date of furnishing FORM GSTR-9 and GSTR-9C for the period July 2017 to March 2018 from 31st December 2019 to 31st January 2020

http://www.cbic.gov.in/resources//htdocs-cbec/gst/rod-10-2019-cgst-english.pdf

Circulars :

1. RCM on renting of motor vehicles

CBIC vide F. No. 354/189/2019-TRU clarifies that Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-130-new.pdf

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. EXTENSION OF LAST DATE FOR FILING OF FORM CRA-4.

(MCA circular dated December 30, 2019)

The Ministry of Corporate Affairs (MCA) vide its circular dated December 30, 2019 has extended the time limit for filing of e-form CRA-4 without additional fees till February 29, 2020.

The e-form CRA-4 is required to be filed by eligible companies as per the Companies (Cost Records and Audit) Rules, 2014 for filing of Cost Audit Report with the Central Government within 30 days of receipt of report from Cost Auditor.

http://www.mca.gov.in/Ministry/pdf/Circular17_30122019.pdf

2. EXTENSION OF LAST DATE FOR FILING OF FORM BEN-2.

(MCA circular dated January 01, 2020)

The Ministry of Corporate Affairs (MCA) vide its circular dated January 01, 2020 has extended the time limit for filing of e-form BEN-2 without additional fees till March 31, 2020.

The e-form BEN-2 is required to be filed by every company as per the Companies (Significant Beneficial Owners) Rules 2018 for filing of significant beneficial interest within 30 days of receipt of declaration from the beneficial owners of the Company in form BEN-1.

http://www.mca.gov.in/Ministry/pdf/Circular1_01012020.pdf

3. REVISION IN LIMIT FOR APPOINTMENT OF THE COMPANY SECRETARY

(MCA circular dated January 03, 2020)

The Ministry of Corporate Affairs (MCA) vide its circular dated January 03, 2020 has substituted the provisions of Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 through Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020, stating that every private company having paid up share capital of Rs. 10 Crores or more are mandatorily required to appoint a whole -time Company Secretary.

Previously, private limited companies having paid up share capital of Rs. 5 crores or more were

mandatorily required to appoint a whole -time Company Secretary.

Now, the limit has been revised from Rs. 5 crores to Rs. 10 crores and the said amendment is applicable with effect from 1st April, 2020.

http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

4. CHANGE IN THE LIMIT FOR THE SECRETARIAL AUDIT OF THE COMPANY

(MCA circular dated January 03, 2020)

The Ministry of Corporate Affairs (MCA) vide its circular dated January 03, 2020 has amended the provisions of Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 through Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020.

As per this amendment, now the secretarial audit is applicable on the below mentioned companies:

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more; or

(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.

Previously, the secretarial audit was applicable only to the companies covered in the aforesaid point number (a) and (b) and the said amendment is applicable with effect from 1st April, 2020.

http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

Column

Provisions Of IBC For Financial Service Providers

By –Surbhi Sharma

IBA

SPECIALISED PROVISIONS OF IBC FOR FINANCIAL SERVICE PROVIDERS

The Insolvency and Bankruptcy Board of India vide its Notification on November 15, 2019 has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("Rules"). The Rules became effective from the date of notification. The Rules shall be applicable to only those Financial Service Providers ("FSPs") who shall be notified by the Central Government under Section 227 of Insolvency and Bankruptcy Code, 2016 ("IBC") from time to time.

The Rules stipulate that the provisions of IBC shall apply mutatis mutandis to FSPs, subject to certain modifications.

This article shall briefly discuss the modifications that shall be applicable to FSPs under the following:

1. Corporate Insolvency Resolution Process
2. Liquidation Process
3. Voluntary Liquidation process

1. Corporate Insolvency Resolution Process (CIRP)

The Rules stipulate that the provisions relating to CIRP shall be applicable to FSPs subject to following modifications:

i. Initiation of proceedings- Unlike other entities, CIRP against a FSP can be initiated only through an application by the Regulator of the FSP. The application fee for initiation of CIRP has been prescribed to be INR 25000. Such application shall be dealt with in the same manner as an application by a financial creditor under the Code. Upon admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in its application as an Administrator.

ii. Interim Moratorium- An interim moratorium shall commence for the FSP on and from the date of filing of the application till its admission or rejection. The license of the FSP to engage in the activities of providing financial services shall not be suspended during the interim-moratorium and the CIRP.

iii. Advisory Committee- In order to advise the Administrator during the CIRP, the appropriate regulator may constitute an Advisory Committee, within 45 days of the insolvency commencement date. Such committee shall consist of three or more members, who shall be persons of ability, integrity and standing, with expertise or experience in finance, economics, accountancy, law, public policy or any other profession in the area of financial services or risk management, administration, supervision or resolution of a financial service provider.

iv. Resolution Plan- The Resolution plan should contain a statement explaining how the resolution applicant intends to conduct the business of FSP. The Administrator shall be required to seek a "no-objection" from the appropriate regulator after its approval by the Committee of Creditors. The time limit for the appropriate regulator to refuse a "no-objection" shall be 45 working days from the receipt of application, otherwise it shall be deemed that 'no objection' has been granted.

2. Liquidation Process

The Rules stipulate that the provisions relating to Liquidation Process shall be applicable to FSPs subject to the following modifications:

i. The business license or registration of the FSP shall not be suspended or cancelled during the liquidation process, unless an opportunity of being heard has been provided to the liquidator;

ii. The Adjudicating Authority shall provide an opportunity of being heard to the appropriate regulator before passing an order for liquidation or dissolution of FSP.

3. Voluntary Liquidation Process

The Rules stipulate that the provisions relating to Voluntary Liquidation Process shall be applicable to FSPs subject to following modifications:

i. The FSP shall initiate voluntary liquidation process only after permission from the appropriate regulator.

ii. Adjudicating Authority shall provide an opportunity to be heard to the appropriate regulator before passing an order for dissolution of FSP.

Other Specific Modifications for FSP

Insolvency professional for proceedings for FSP under IBC

The Rules prescribe that an insolvency professional proposed by the appropriate regulator, shall

be appointed as such by the Adjudicating Authority shall act as an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be and shall be referred to as Administrator. Such Administrator shall have the same duties, functions, obligations, responsibilities, rights, and powers of an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be, while acting as such in an insolvency resolution and liquidation proceeding of a FSP.

Third Party Assets

The Rules clarify that moratorium will not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties. However, the FSP Rules also provides that an Administrator shall take control and custody of third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties only for the purpose of dealing with them in the manner, as may be notified by the Central Government under Section 227.

Recently, exercising its powers under these rules, RBI has initiated Corporate Insolvency proceedings against DHFL. DHFL had a debt to the tune of Rs 92,715 crore, of which secured loans are Rs 73,833 crore and unsecured loans are Rs 18,881 crore as of September 2019. RBI superseded the Board of DHFL on November 20, 2019 and appointed R Subramaniakumar, former managing director (MD) and chief executive officer of Indian Overseas Bank, as the administrator of DHFL.

In view of the volume of funds caught with debtors with dearth of liquidity of funds, this move may be the respite that many debt saddled FSPs require given the current situation of the economy. However, considering the fact that money of the public is involved, it shall be important for the appropriate regulator to ensure that the reins of a FSP go in capable hands.

IBA NEWS

Christmas Celebration

We enjoyed Christmas with great enthusiasm. It was a fun to have Secret Santa; people were excited to give and get gifts. It was a wonderful experience.

New Year Party

We had unforgettable experience in this new year party. It was great celebration with special performances, DJ, mocktails and cocktails, delicious food, full of fun and enjoyment.

Upcoming Compliances

Date	Compliance
January 11, 2020	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of December 2020
January 13, 2020	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of December 2020.
January 15, 2020	Quarterly statement of TCS deposited for the quarter ending December 31, 2019
January 20, 2020	Due date for filing consolidated return in the Form GSTR-3B for the month of December 2020.
January 30, 2020	Quarterly TCS certificate in respect of tax collected for the quarter ending December 31, 2019
January 31, 2020	Quarterly statement of TDS deposited for the quarter ending December 31, 2019
	Due Date for furnishing of FORM GSTR-1 for the taxpayers filing quarterly returns for the quarter October to December 2019
	Due date for furnishing of GST Annual return and GST Audit Report for the Financial Year 2017-18

Editorial Team




About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity 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.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. 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 optimize client service.

Contact Us

S-217, Panchsheel Park,
New Delhi -110017

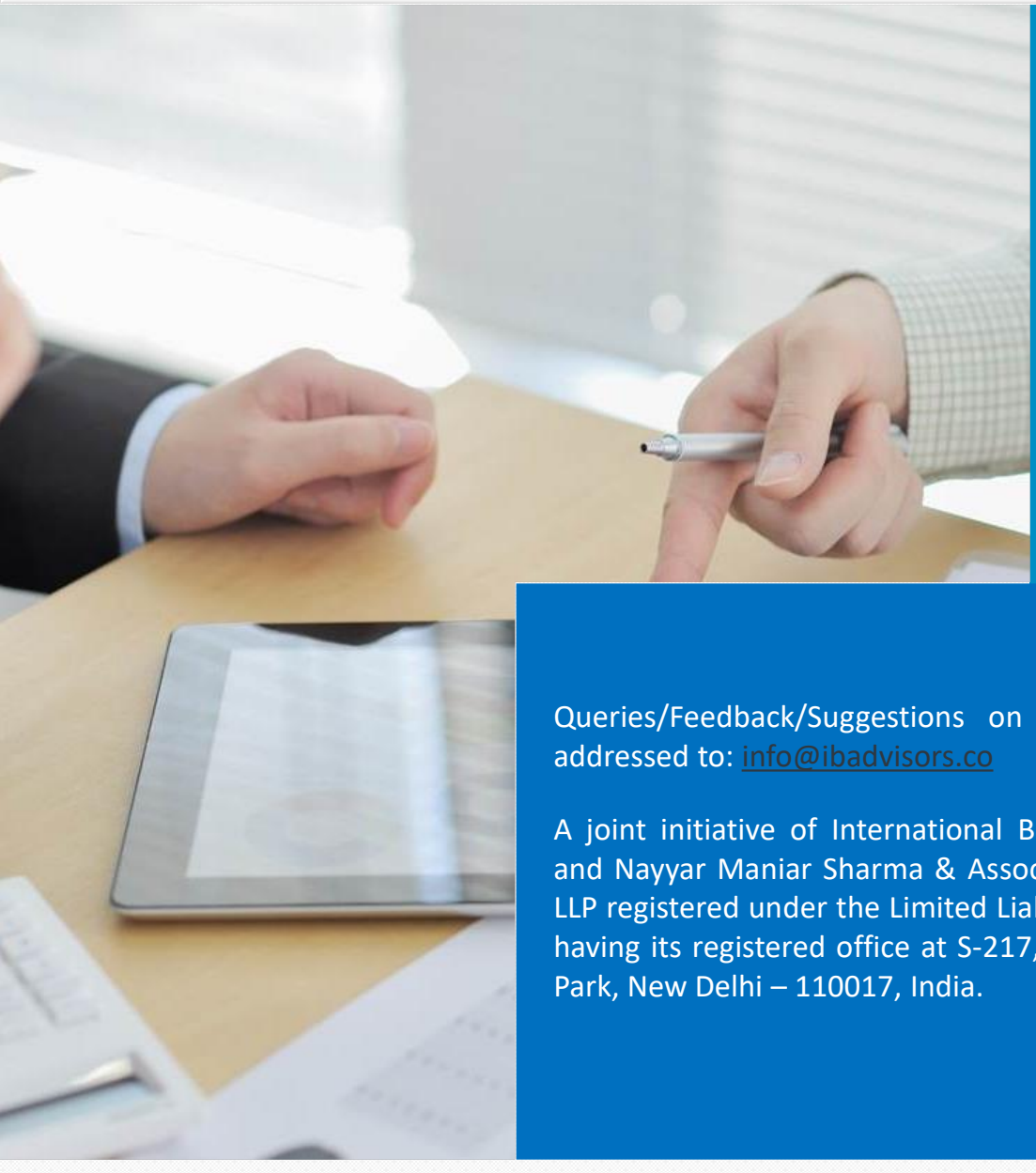
Mail Us
info@ibadvisors.co

Call Us
+91-11-40946000

Visit Us
www.ibadvisors.co

We have our offices in Gurgaon, Mumbai and Bangaluru and associate arrangements in Chennai, Hyderabad, Ahmedabad and Kolkata

INTERNATIONAL BUSINESS ADVISORS



Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

A joint initiative of International Business Advisors LLP (IBA) and Nayyar Maniar Sharma & Associates LLP (NMSA). IBA is a LLP registered under the Limited Liability Partnership Act, 2008 having its registered office at S-217, Ground Floor, Panchsheel Park, New Delhi – 110017, India.

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