

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

October 2023

Volume 10, Issue 8

Dear Reader,

The Policy updates and Verdicts of Various High Courts are enclosed in this newsletter.

We would like to draw your attention to various important updates, including the clarifications issued by CBDT on Procedure for Filing Form 13, RBI's draft master directions on wilful and large defaulters, SEBI's aim to strengthen grievance handling mechanism and Extension of due dates for Various compliances by various authorities.

Hope this issue will find you and your near & dear in good health. Be safe, and healthy

Regards

For Raju and Prasad

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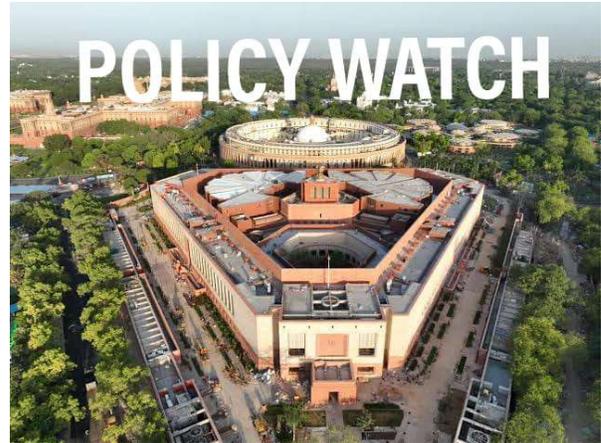
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“Our passion for learning is our tool for survival.”

-Carl Sagan

Policy Watch

Indirect Taxes



CBIC Notifies Central Goods and Services Tax (Third Amendment) Rules, 2023 w.e.f Oct 1st, 2023.

CBIC Vide Notification No. 51/2023, dated 29th September 2023 has issued notification under Section 15(5) to notify that the valuation of supply of online gaming, online money gaming and actionable claims in casino will be determined in a notified manner. In this regard, Rule 31B and Rule 31C have been inserted under the CGST Rules, these rules will be made effective from 01-10-2023.

Section 15(5) empowers the Government to notify certain supplies, the valuation of which shall be determined in a prescribed manner. The same would be notified based on the recommendations of the Council. In this regard, the Government has now issued a notification under Section 15(5) of the CGST Act to notify that the valuation of supply of online gaming,

online money gaming and actionable claims in casino would be determined in a prescribed manner.

Further, Rule 31B and Rule 31C has been inserted under the CGST Rules to prescribe the manner of valuation of supplies relating to online gaming, online money gaming and casinos. Notably, the said rules were earlier inserted vide Notification No. 45/2023-Central Tax, dated 06-09-2023. However, the given notification has now been superseded vide Notification No. 51/2023-Central Tax, dated 29-09-2023. The given rules have been inserted again but with effect from 01-10-2023.

<https://taxinformation.cbic.gov.in/view-pdf/1009873/ENG/Notifications>

Direct Tax



CBDT Notifies Procedure for Filing Form 13 for Lower/Nil TDS Certificate When Payer Details are Unavailable

While the CBDT had notified the e-filing process for Form 13 through notification no. 8/2018, dated 31-12-2018, Annexure II, to be filed by the taxpayer, was not made available. With this notification, CBDT vide notification 02/2023, dated 29.09.2023 has now enabled the filing of Form 13 along with Annexure II, effective from 01-10-2023.

In the exercise of such power, the DGIT (Systems) specifies the procedure, format and standards for electronic filing of Form 13 with Annexure – II. The process for the generation of certificates through TRACES is also notified. The change will be applicable from 01.10.2023.

The board has specified that the taxpayer shall make the application in Form 13 with Annexure II through the TRACES website. Annexure II is to

be furnished for the issue of the certificate under proviso to the sub-rule (4) of rule 28AA. The taxpayer is required to provide supportive documents while furnishing Form 13 along with Annexure II.

<https://incometaxindia.gov.in/communications/notification/notification-02-2023-27-09-2023.pdf>

Form 60 Can't be Submitted by a Company or Firm that is Involved in a Transaction Specified Under Rule 114B.

Income tax vide Notification No. 88/2023, dated 10.10.2023 has amendments rules 114B, 114BA and 114BB, which are discussed in the following paragraphs:

1. Amendment in Rule 114B: Rule 114B points out various transactions in relation to which quoting of PAN is mandatory. The second proviso to Rule 114B allows a person to furnish a declaration in Form No. 60 if he doesn't possess a PAN.

The CBDT has amended this proviso to exclude a company or a firm from the requirement to furnish Form No. 60.

Also, a new proviso has been inserted to allow a foreign company to furnish a declaration in Form No. 60 if such foreign company has no income which is chargeable to income tax in India and does not have PAN.

2. Amendments in Rule 114BA and Rule 114BB:

Rule 114BA lists the following three additional situations in which a person is required to obtain PAN:

- a. Cash deposit of Rs. 20 lakh or more with bank or post office;
- b. Cash withdrawal of Rs. 20 lakh or more with bank or post office;
- c. Open a current account or cash credit account with the bank or post office

Further, Rule 114BB stipulates that a person must quote either his PAN or Aadhaar number if he enters into any of the above three transactions.

Both rules have been amended to offer clarity with respect to non-residents and foreign companies.

<https://incometaxindia.gov.in/communications/notification/notification-88-2023.pdf>



Extension of Due dates:

The due date of furnishing audit reports in Form 10B/Form 10BB for the F.Y. 2022-23, which is 30.09.2023 has now been extended by CBDT to 31.10.2023 vide circular no. 16/2023 dated 18.09.2023

The due date of furnishing of Return of Income in Form ITR-7 for A.Y. 2023-24, which is 31.10.2023 is also extended to 30.11.2023.

RBI Updates



RBI adds 30 banks to UDGAM making 90% unclaimed deposits in 'Depositor Education & Awareness Fund' accessible

Earlier, the RBI launched a Centralised Web Portal UDGAM (Unclaimed Deposits Gateway to access information). This portal has been developed for use by public, making it easier to search for unclaimed deposits across multiple banks at one place. The search facility was initially made available for seven banks on the portal. Now, the search facility for 30 banks has been made available on the portal, covering around 90% of unclaimed deposits in the Depositor Education and Awareness Fund.

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=56498

RBI issues draft master directions on treatment of 'Wilful Defaulters and Large Defaulters'

Originally initiated in 1999, the RBI scheme has now been fine-tuned to better identify and tackle wilful defaulters. After meticulous scrutiny, RBI has issued a comprehensive 'Draft Master Direction on Treatment of Wilful Defaulters and Large Defaulters

These fresh directives expand the scope for Regulated Entities to classify borrowers as wilful defaulters, redefine what constitutes wilful default, and streamline the identification process.

But that's not all – the new guidelines also set stringent timelines. They mandate a swift review and finalization of wilful default aspects within six months of an account being classified as a non-performing asset (NPA). The dawn of this proactive approach promises to redefine the financial landscape for the better

RBI Mandates Swift Action: Identifying 'Wilful Defaulters' w.r.t. loans value Rs. 25 lakhs and above

The Draft Guidelines require the Lenders to evaluate the "wilful default" status for accounts with outstanding amounts of Rs. 25 lakhs or

more, as specified by the RBI. They must complete the classification of a borrower as a wilful defaulter within 6 months of the account becoming a non-performing asset

Refer complete Draft Master Directions here:

https://www.rbi.org.in/scripts/bs_viewcontent.aspx?id=4318

SEBI



SEBI Strengthens the Framework for Handling of Complaints Received via SCORES Platform

SEBI Vide Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/156, dated 20.09.2023 has issued the revised framework for handling of the complaints received through the SCORES platform for entities and monitoring the complaints by the designated bodies.

This aims to strengthen the existing investor grievance handling mechanism via SCORES. Now, the designated bodies may apply for SCORES authentication and/or for

Application Programming Interface integration within the prescribed period to ensure compliance with this circular by 04.12.2023.

Further, Market Infrastructure Institutions and Designated Bodies must bring the provisions of this Circular to the notice of all listed companies and registered intermediaries and disseminate the same on their respective websites.

https://www.sebi.gov.in/legal/circulars/sep-2023/redressal-of-investor-grievances-through-the-sebi-complaint-redressal-scores-platform-and-linking-it-to-online-dispute-resolution-platform_77159.html

SEBI Extends Timeline for Nomination of Mutual Fund Unitholders by 3 Months

SEBI Vide Circular No: SEBI/HO/IMD/IMD-IPOD1/P/CIR/2023/160; Dated: 27.09.2023 has extended the timeline for nomination of mutual fund unit holders either solely or jointly from 30.09.2023 to 31.12.2023. Further, non-compliance of it will result in freezing of folios w.e.f 01.01.2024.

Further, in order to protect the interest of investors and regulate the securities market, AMCs and RTAs must encourage the unit holder(s) to fulfil the requirement for nomination/opting out of nomination by sending a communication on a fortnightly basis by way of emails and SMS to unit holder(s).

Also, the communication must provide guidance by which the unitholders can provide nomination or opt out of nomination.

https://www.sebi.gov.in/legal/circulars/se-p-2023/nomination-for-mutual-fund-unit-holders-extension-of-timelines_77453.html

Also SEBI Vide Circular No: SEBI/HO/MIRSD/POD1/P/CIR/2023/158; Dated: 26.09.2023 has extended the timeline for existing trading and demat account holders to provide a choice of nomination or formally opt out of nomination through a declaration form by 3 months i.e. 31.12.2023 earlier due date was 30.09.2023.

Verdicts

Direct Tax

Direct
Tax

Act: The Income Tax Act, 1961

1. Mere filing incorrect claim, which was not allowed by Assessing Officer, that by itself would not attract penalty under section 271(1)(c)

Vide Decision of ITAT SURAT BENCH in Purshottam Farmers Co. Op Cotton Ginning & Pressing Society Ltd v. Deputy Commissioner of Income-tax.

Facts of the case:

1. This appeal by the Assessee is directed against the order of National Faceless Appeal Centre, Delhi (in short, the NFAC)/ Commissioner of Income Tax (CIT)
2. Confirming the penalty of Rs. 89,003/- levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short, the Act) for the AY 2012-13
3. The assessee submits that there is a delay of 155 days in filing appeal

- before the Tribunal and has already filed application for condonation of delay.
4. The assessee submits that the impugned order was passed by the CIT(A) on 18/12/2022 and the present appeal is filed on 21/07/2023.
 5. The delay is only for the reasons that the tax consultant gave his telephone number & email on the portal of Income Tax Department, so the assessee society could not become aware whether any order has been passed or not when the recovery proceeding was initiated by the Assessing Officer.
 6. The assessee submits that the Assessing Officer made disallowance under Section 80P(2)(d) of the Act of Rs. 2,98,035/- by taking a view that the assessee is not eligible for such deduction.
 7. The assessee submits that the Assessing Officer made disallowance under Section 80P(2)(d) of the Act of Rs. 2,98,035/- by taking a view that the assessee is not eligible for such deduction
 8. Mere disallowance in every case would not ipso facto lead to levy of penalty. The Assessing officer levied penalty @ 100% of tax sought to be evaded on such disallowance.
 9. Assessing officer says that such disallowance was made on the basis of details available in the Profit & Loss Account which was claimed as exempt.
 10. Though, the assessee before us vehemently argued that no such claim was made by the assessee and that the assessing officer disallowed on wrong presumption. The Assessing Officer disallowed such deduction by taking a view that the assessee is entitled for deduction of interest earned from Cooperative society only.
 11. Before levying penalty, the Assessing officer issued show cause notice to the assessee vide notice dated 16/02/2017.
 12. The assessee filed reply dated 03/03/2017. In the reply, the assessee submitted that the penalty cannot be imposed just for making incorrect claim and relied upon the decision of Hon'ble Apex Court in

the case of CIT v. Reliance Petroproducts (P) Ltd. (supra).

13. The assessee also explained that they have furnished all the details of its expenditure as well as income in its return which was not found to be inaccurate nor could be viewed as concealment of income on their part, it was on the authorities who accepted or not.
14. The assessee requested to drop the penalty. The reply of assessee was not accepted by Assessing Officer.
15. The Assessing Officer held that the assessee willfully admitted to evade tax on the income to the extent of Rs. 2,98,035/- by furnishing inaccurate particulars of income. On appeal before the CIT(A), the action of Assessing Officer was upheld.

Judgement:

ITAT SURAT BENCH held the case as follows:

- a. Thus, considering the facts of the case we find that neither there was concealment of income nor furnishing inaccurate particulars

of income rather it was the Assessing officer who has not accepted the claim of assessee

- b. the ratio of decision of Hon'ble Supreme Court in CIT v. Reliance Petroproducts (P) Ltd. (supra) is clearly applicable on the facts of the present case, wherein it was held that mere filing incorrect claim which is not allowed by the assessing officer, that by itself would not attract penalty under section 271(1)(c).
- c. Thus, Assessing Officer is directed to delete the entire penalty.
- d. In the result, this appeal of assessee is allowed.

2. Imposing Penalty Under Black Money Act for Non-disclosure of Foreign Assets in Schedule FA of ITR.

Vide decision of Mumbai Tribunal in Ms. Shobha Harish Thawani v. Joint Commissioner of Income-tax Appeals

Facts of the case:

1. Assessee and her husband have made a joint investment in Global Dynamic Opportunity

Fund Ltd. Assessee's share in the said investment was 40%. The assessee invested out of funds transferred from India to HSBC Bank in Jersey.

2. Assessee declared interest income from the foreign investment in AY 2016-17. Said asset was sold, and capital gain was offered to tax in AY 2019-20. However, the assessee didn't disclose foreign assets while filing the return of income (ITR) for AY 2016-17 to AY 2018-19 under schedule FA.
3. Assessing Officer (AO) levied penalty towards the non-disclosure under section 43 of the Black Money Act 2015 (BMA) for each of the assessment years. On appeal, the CIT(A) upheld the levy of penalty. The aggrieved assessee filed the instant appeal before the Tribunal.
4. The Mumbai Tribunal held that section 43 of the BMA contains provisions for the levy of penalty for failure to furnish information or furnish inaccurate particulars about an asset (including

financial interest in any entity) located outside India in ITR.

5. As per said section, a resident and ordinarily resident person is liable for a penalty if he fails to furnish or files inaccurate particulars of investment outside India while filing the return of income under section 139. The disclosure of foreign investments/assets is to be made in ITR Schedule FA.

Judgement:

- a. It was held that even if it is assumed that in the light of the expression "may" used in section 43 of BMA, the AO has the discretion to levy penalty. After examining the facts of the case, AO formed his opinion to levy penalty. He exercised his discretion judiciously. No material was brought to show that AO levied penalty arbitrarily and unjustifiedly.
- b. Further, the provisions of section 43 do not provide any room not to levy penalty even if the foreign asset is disclosed in books since the penalty is levied only towards non-disclosure of foreign assets in schedule FA.



Indirect Tax

Act: Central Goods and Services Act, 2017

1. Electrically Operated Vehicles Including Three Wheeled Electric Vehicles Would be Classified Under Heading 8703 & Taxable at 5%

Facts of case:

The applicant was a manufacturer of low speed electric two wheeler and its spares & accessories. It approached the Advance Ruling Authority (AAR) to determine the taxability of electrically operated vehicles, including two & three wheeled electric vehicles.

Vide Authority for Advance Rulings, Telangana Versatile Auto Components (P.) Ltd.,

Judgement:

The AAR noted that as per Circular No.179/11/2002-GST, electrically operated vehicle including three wheeled electric vehicles would be classified under Heading No. 8703 even if the battery is not fitted to such vehicle at the time of supply.

Therefore, in view of the above clarification, all electrically operated vehicles including three wheeled electric vehicles would be classified under HSN 8703 and taxable at 5% in terms of entry 242A of Schedule I of Notification No. 1/2017-Central Tax (Rate).

2. ITC Can't be Denied Due to Discrepancies in GSTR-2A Without Proof of Collusion Between Assessee and Seller

Vide Authority of High Court of Kerala in Diya Agencies v. State Tax Officer - [2023]

In the present case, the petitioner's claim for input tax credit (ITC) had been denied on ground that invoices were not shown in GSTR-2A as taxpayers were only eligible for ITC shown in GSTR-2A. It filed writ petition and contended that ITC could not be denied merely on ground of amount not mentioned in GSTR-2A for which petitioner did not have any control.

Judgement:

The Honorable High Court noted that credit should not be denied unless collusion between assessee and seller is proved and genuineness of transaction has to be proved by assessee since burden to prove genuineness of transaction would be upon purchasing dealer.

In instant case, the petitioner had to discharge burden of proof regarding remittance of tax to seller by providing evidence.

Therefore, the Court held that the denial of ITC merely on ground that in Form GSTR-2A said tax was not reflected to petitioner was not sustainable and matter was to be

remanded back. Also, the Court directed Revenue to give opportunity to petitioner to give evidence in respect of his claim for Input Tax Credit.

<https://www.taxmann.com/research/gst/caselaws>

Statutory and Tax Compliance

Calendar of November 2023

GOODS & SERVICE TAX	
10-Nov	GSTR 8 for Oct
11-Nov	GSTR 1 for Oct
13-Nov	GSTR 5 for Oct (NRTP)
20-Nov	GSTR 3B for Oct
20-Nov	GSTR 5A for Oct (OIDAR)

STATUTORY	
10-Nov	Professional Tax (PT)
15-Nov	Provident Fund (PF), ESI Payment for Oct
12-Nov	ESI half-yearly return for H1

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INCOME TAX	
07-Nov	TCS Payment for Oct
07-Nov	TDS Payment for Oct
30-Nov	Q2 TDS return Filing
30-Nov	Due date for filing of return of income for the A.Y. 23-24 whose is required to submit a report under section 92E pertaining to international or specified domestic transaction(s).
30-Nov	Due date for filing or return of income in Form ITR-7 for the A.Y. 23-24.

Note: The due date has been extended from Oct 31st to Nov 30th, 2023 vide Circular no. 16/2023, dated 18-09-2023.

Please visit
<http://www.rajuandprasad.com/newsletter.php>
 for earlier issues