

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

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

Attention of readers is invited to the Highlights of 34th GST Council Meeting, Framework for Utilization of Regulatory fee foregone by SEBI, Extension of due date for linking of Aadhar and PAN and Decision of Honorable Supreme Court Of India in Commissioner of Income-tax (Exemptions) v. Paramount Charity Trust

Regards

For Raju and Prasad

Chartered Accountants

Your Knowledge Partners

M Siva Ram Prasad

Contact us:

Email : hyderabad@rajuandprasad.com

Website: www.rajuandprasad.com

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Policy Watch

Indirect Taxes



Decisions taken in 34th GST Council Meeting held on 19th March 2019

34th GST Council Meeting was held on 19th March 2019 in which decisions relating to GST Rates for Real Estate Sector were taken. Summary of Rates effective from 01-04-19 are as follows:

New Tax Rates and its Conditions

New GST rate @ 1% on the construction of affordable houses is available for the following:

1. In the case of new projects, houses which meet the definition of affordable houses as decided by GST Council (i.e. non-metros – area of 90 sqm and metros – area of 60 sqm and value up to INR 45 Lakhs); and
2. In case of ongoing projects, affordable houses which are being constructed under the present central and state housing scheme and are eligible for 8%



concessional GST rate are eligible for 1% GST rate.

New GST rate @ 5% will be available for the following:

1. In the case of new projects, all houses other than affordable houses;
2. In case of ongoing projects, all houses other than affordable houses whether booked prior to or after 1st April 2019.
3. If the houses are booked prior to 1st April 2019, the new GST rate 5% shall be available on instalments payable on or after 1st April 2019.
4. In the case of commercial apartments like shops/offices in a residential real estate, wherein, carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments.

Conditions for Availing Benefit of New GST Rates:

1. Input Tax Credit shall not be available in case the new GST rate benefit is availed.
2. It is mandatory for the builders to purchase 80% of inputs and input services from the registered person. If the target of 80% purchase is not achieved, the builder is required to pay the following taxes on reverse charge mechanism (RCM) –
 - The builder is required to pay 18% tax on RCM on a shortfall of purchases from 80%;
 - The builder is required to pay 28% tax on cement purchased from an unregistered person; and
 - The builder is required to pay applicable taxes on capital goods under RCM.

Options in Respect of the Ongoing Projects

In respect of the ongoing projects i.e. projects wherein construction and booking have started before 1st April 2019 and which has not been completed by 31st March 2019, the builders shall be given a one-time

option to continue to pay tax at the old rates i.e. 8% or 12%.

http://www.cbic.gov.in/resources//htdocs-cbec/press-release/Press_release_GST_250319.pdf;jsessionid=D278861F0EA8FCDF83B979024D0BABF1

Extension of due date for furnishing ITC 04 till 30th June, 2019

ITC 04 is required to be filed by a tax payer by giving the details of goods dispatched to or received from job workers. Due date for filing the same is 25th of the month succeeding the quarter. The Central Board Of Indirect Taxes and Customs vide Notification No. 15/2019 – CT dated 28th March 2019 has extended the due date for furnishing ITC – 04 for the periods July 2017 to March 2019 till 30th June 2019.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-15-central-tax-english-2019.pdf;jsessionid=23E4037C263343F2C9DACF1B177B286C>

Extension of due date for furnishing GSTR 1 of March 2019 till 13th April 2019

The Central Board of Indirect Taxes and Customs vide Notification No. 17/2019 has extended the due date for filing GSTR 1 for the month of March

2019 from 10th April 2019 to 13th April 2019.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-17-central-tax-english-2019.pdf;jsessionid=D8AC075BF7E8C6CA3CF A1BC1E2529798>

SEBI



Framework for Utilization of Regulatory fee foregone by SEBI

With a view to encourage the participation by Farmers / Farmer Producer Organizations (FPOs) in agricultural commodity derivatives markets, SEBI has reduced the regulatory fee on Stock Exchanges w.r.t turnover in agricultural commodity derivatives. In order to pass on the desired benefits from reduction of regulatory fees on agricultural commodity derivatives, SEBI vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2019/40 dated 20th March 2019 has decided that the stock exchanges dealing with agricultural commodity derivatives shall create a separate fund earmarked for the benefit of farmers / FPOs in which, the regulatory fee forgone by SEBI shall be deposited

and utilized exclusively for the benefit of and easy participation by Farmers and FPOs in the agricultural commodity derivatives market. Any income on investments from the fund would also be ploughed back into the same fund. In this regard, guiding principles to be followed by the exchanges are outlined in the circular.

https://www.sebi.gov.in/legal/circulars/mar-2019/framework-for-utilization-of-regulatory-fee-forgone-by-sebi_42427.html

Revised Guidelines for System Audit for Mutual Funds / Asset Management Companies (AMCs)

Requirement of system audit for mutual funds was introduced vide SEBI Circular SEBI / IMD / CIR No.9 / 176988 / 2009 dated September 16, 2009. Considering the importance of systems audit in technology driven asset management activity and standardize the systems audit, SEBI vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/57 dated 11th April 2019 has issued revised guidelines which are detailed in the circular.

https://www.sebi.gov.in/legal/circulars/apr-2019/system-audit-framework-for-mutual-funds-asset-management-companies-amcs-_42691.html



RBI Updates

Deferral of Implementation of Indian Accounting Standards (Ind AS) by Banks

Reserve Bank Of India vide its Notification No. RBI/2018-2019/146 dated 22nd March 2019 has decided to defer the implementation of Ind AS till further notice by RBI.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?id=11506&Mode=0>

Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities

Reserve Bank of India vide Notification No RBI/2018-19/154 dated 28th March 2019 has issued guidelines regarding opening of BO/LO/PO in India by foreign entities.

For opening of a BO/LO/PO or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector, no prior approval of the RBI shall be required, if Govt.

approval or license / permission by the concerned Ministry / Regulator has already been granted.

Further, in the case of proposal for opening a PO relating to defence sector, no separate approval of Govt. of India shall be required if the said non-resident applicant has been awarded a contract by/entered into an agreement with the Ministry of Defence / Service Headquarters / Defence Public Sector Undertakings.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?id=11516&Mode=0>



Direct Tax

Extension of due date for linking of Aadhar and PAN

The Central Board of Direct Taxes vide Notification No. 31/2019 dated 31st March 2019 has extended the last date for linking of PAN and Aadhar till 30th September 2019. However, after 01st April 2019, it is mandatory to quote Aadhar Number while filing the income tax return.

https://www.incometaxindia.gov.in/communications/notification/notification_31_2019.pdf

Verdicts

Direct Tax

Direct Tax

Where assessee had developed shopping mall and let out same by providing a variety of services and facilities in mall, it could be found that primary intention of assessee was commercial exploitation of property which constituted its main business, income so derived would be assessed as income from business and not as income from house property

- Vide Decision of High Court Of Kerala in Commissioner of Income-tax v. Oberon Edifices & Estates (P.) Ltd.

Facts of the case:

1. Assessee is a company engaged in the business of construction and promotion of residential and commercial complexes. The assessee constructed a shopping mall by name 'Oberon Mall' in Kochi in the property owned by its sister concern and let out the shop rooms. For the



Assessment Year 2009-10, the assessee has shown the income on letting out the shop rooms as income from business.

2. The assessing officer treated this amount as income from house property and after deducting municipal taxes and statutory benefit of 30%, computed tax on the balance amount.
3. The assessee challenged the same before the Commissioner of Income Tax (Appeals). But the appeal was dismissed.
4. The assessee challenged the aforesaid order before the Income Tax Appellate Tribunal. The Tribunal found that the disputed amount is business income of the assessee and allowed the appeal.

5. Moving further, the revenue has come up in appeal challenging the order of the Tribunal.
6. Revenue contended that the assessee had let out the rooms in the shopping mall and the rental charges received by the assessee are liable to be treated as income from house property and not business income.
7. On the other hand, the assessee contended that amount received by the assessee by letting out rooms in the shopping mall cannot be considered as income from house property. Letting out the shop rooms in the mall amounts to commercial exploitation of the building constructed by the assessee and it is a part of the business activity of the assessee company.
8. Judgement of Calcutta High Court in Commissioner of Income Tax v. Shambhu Investment Private Limited: *"What has to be seen is what is the primary object of the assessee while exploiting the property. If it is found applying such test that the main intention is for letting out the property or any portion thereof, the same must be considered as rental income*



or income from property. In case it is found that the main intention is to exploit the immovable property by way of complex commercial activities, in that event it must be held as business income"

9. In the instant case, Honorable High Court of Kerala has observed that it is not mere letting out of property. A host of services are being provided by the assessee at the shopping mall. The basic purpose is commercial exploitation of the property. The assessee has earned the income not merely by letting out the shop rooms but also by providing amenities and facilities at the shopping mall.

Judgement:

The Honorable High Court has held that the amount received by the assessee on letting out the shop rooms has to be treated as business income and it has to

be assessed to tax under the head "Profits and Gains of Business" and not under the head "Income from House Property".

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000187271&isxml=Y&search=&tophead=true&tophead=true>

SLP dismissed against High Court ruling that where objects in original trust deed were sufficiently wide and covered range of charitable activities relating to education, medical aid and help to poor in times of calamities, registration of assessee-trust could not be denied for amended objects clarifying running of diagnostic centre on no profit basis

- Vide Decision of Supreme Court Of India in Commissioner of Income-tax (Exemptions) v. Paramount Charity Trust

Facts of the case:

1. The assessee, a registered public trust, had applied for and was granted registration under Section

12A of the Income-tax Act, 1961. Initially, the object of the Trust had eleven clauses which inter alia included education purpose; research; relief to poor; medical aid in form of donations to the hospitals, dispensaries, convalescent homes, asylums, nursing homes and other public institutes for administering medical relief to the poor and to organize relief works in normal times as well as during natural catastrophes. The trust deed authorize the trustees to amend the objects as long as the same were for public charitable purpose.

2. The trust deed was amended so as to include providing all kinds of medical, diagnostic, family welfare and general health facilities and treatment to the patients, in the field of allopathy, Homeopathy or Ayurved, without any distinction of castes, creed, race, religion or language basis, either on free of charge or no profit basis. Yet another object added was to buy, acquire, hire, take on lease, import medical or diagnostic machineries and equipments to run a hospital, dispensary, maternity home, etc. It was provided that such diagnostic

- treatment center would be providing service either on free of charge or no profit basis.
3. The Commissioner was of the opinion that insertion of these clauses were not informed to him and they mutilated the charitable objects of the trust. On such basis, he passed an order cancelling the registration.
 4. Contending that the existing clauses already enable the trust to open diagnostic center and that therefore, there was no deviation from the charitable objects, the Assessee appealed to the Income Tax Appellate Tribunal.
 5. The Tribunal reversed the contention of the Commissioner. The Tribunal was of the opinion that non-communication of the amendment in the trust deed was a mere irregularity and would not be a ground for cancellation of registration already granted. The Tribunal did not agree with the Commissioner that running of a diagnostic center was a commercial venture.
 6. On appeal by the Revenue to the High Court, High Court upheld the Order of the Tribunal.

7. The instant case is as a result of SLP filed by Revenue against High Court's ruling.

Judgement: The Honorable Supreme Court of India held that the objects in original trust deed were sufficiently wide and covered range of charitable activities relatable to education, medical aid and help to poor in times of calamities and thus, existing objects enabled assessee to support activities of diagnostic center as long as it was done for charitable purpose. Amended objects clarified that such center would run on no profit basis. As the appeal of Revenue is without merit, the Special Leave Petition filed against impugned order was dismissed by the Supreme Court.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=10101000000186982&isxml=Y&search=&tophead=true&tophead=true>

Where assessee-hospital made payments for services rendered towards maintenance of its medical equipments for proper and long functioning, it was required to deduction TDS under

section 194C, and not under section 194J

- Vide Decision of High Court Of Bombay in Commissioner of Income-tax (TDS)-2 v. Saifee Hospital

Facts of the Case:

1. The supplier of medical equipments to the assessee hospital had also rendered services of maintenance of these equipments. The assessee deducted TDS under section 194C while making payment for maintenance services. However, the revenue authorities sought deduction of TDS under section 194J.
2. Further, The Commissioner (Appeals) and Tribunal held that the services which were rendered for maintenance of equipment would not be in the nature of technical services. These services being of routine nature, would not be qualified to be called technical services which would require deduction under section 194J and the purpose of this services was only to ensure a proper maintenance of the machinery/equipment so as to ensure long life for the same.

Therefore, the payments made to the said supplier were payments for work contract covered under section 194C and not fees for technical services under section 194J.

Judgement: On the revenue's appeal to the High Court, High Court dismissed the Appeal for the reason that the concurrent findings of the fact by the earlier authorities has not been shown to be perverse.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&multipage=false&id=10101000000187011&isxml=Y&search=&tophead=true&tophead=true>

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