

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

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

Attention of readers is invited to increase in threshold limit of aggregate turnover for availing Composition Scheme under GST, Revision in Haircut on Central Government Securities accepted as Collateral by SEBI and the Decision of Supreme Court Of India in Commissioner of Income-tax (Exemption) v. Managing Committee, Arya High School, Punjab.

Regards

For Raju and Prasad

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Policy Watch

Indirect Taxes



Increase in threshold limit of aggregate turnover for availing Composition Scheme u/s 10 of the CGST Act, 2017

The Central Board of Indirect Taxes and Customs Vide Notification No 14/2019 – Central Tax dated 07th March 2019 has increased the threshold limit of aggregate turnover to opt for composition scheme from 1 Crore to 1.5 Crores.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-14-central-tax-english-2019.pdf;jsessionid=7A6BD4ADAEB327BC9D6401EBAFA17229>

Nature of Supply of Priority Sector Lending Certificates (PSLC)

Earlier, Notification No. 11/2018-Central Tax (Rate) dated 28.05.2018 was issued to levy GST on trading of PSLC (Priority Sector Lending Certificates) on reverse charge basis from 28.05.2018 onwards to be paid by the buyer bank. The Central Board Of Indirect Taxes and Customs vide



Circular No. 93/12/2019 - GST has clarified that nature of supply of PSLC between banks may be treated as an inter-state supply of goods. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI for both periods i.e 01.07.2017 to 27.05.2018 and from 28.05.2018 onwards. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-93.pdf;jsessionid=2FD6A06BFADEC8E8A148C04DD589C9A9>

Customs

Discontinuation of printing of Advance Authorisations / Export Promotion Capital Goods (EPCG)

Authorisations on security paper by DGFT for authorisations issued with EDI ports as port of registration

In order to enhance the ease of doing business for exporters, DGFT vide Circular No. 07/2019 dated 21st February 2019 has decided to discontinue the issuance of Advance/EPCG Authorisations on security paper as was the practice so far. This shall come into effect for authorisations issued from 01.03.2019 onwards for cases where the port of registration is an EDI port. Advance/EPCG Authorisations shall continue to be transmitted electronically by DGFT to the Customs server. The details of the said authorisations would be visible in ICES to all officers involved in import/export cycle. The process of registration of authorisations and taking bond/bank guarantee remains unchanged except that no physical copy of the authorisation shall be presented by the authorisation holder.

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2019/Circular-07-2019-Customs.pdf?jsessionid=0AFB3D0F1BCBEAA3C1AF441374286156>

SEBI



Revision in Haircut on Central Government Securities accepted as Collateral

Based on the feedback received from the Clearing Corporations and the recommendations of the Risk Management Review Committee of SEBI, SEBI vide Circular No. SEBI/HO/MRD/DRMNP/CIR/P/2019/33 dated 21st February 2019 has decided to revise the minimum haircuts applicable to the Central Government securities deposited by clearing members. The revised haircuts are as follows:

S No	Type and Tenor of Securities	Hair cut
A	Treasury Bills, and Liquid Government of India dated Securities having maturity of less than 3 years	2%
B	Liquid Government of India dated Securities having residual maturity of more than 3 years	5%
C	For all other Semi - liquid & Illiquid Government of India Dated Securities	10%

The classification of the Government of India Dated Securities, as above, shall be reviewed on 15th of every month. The revision in classification, if any, shall be implemented with effect from 1st of the next month.

https://www.sebi.gov.in/legal/circulars/feb-2019/revision-in-haircut-on-central-government-securities-g-sec-accepted-as-collateral_42112.html



RBI Updates

Re-categorization of IDBI Bank Ltd. as a Private Sector Bank

Reserve Bank Of India vide its Press Release dated 14th March 2019 has categorized IDBI Bank Limited as a 'Private Sector Bank' for regulatory purposes with effect from January 21, 2019 consequent upon Life Insurance Corporation of India acquiring 51% of the total paid-up equity share capital of the bank.

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=46552

Interest Subvention Scheme for Short Term Crop Loans during the years 2018-19 and 2019-20

Reserve Bank of India vide Notification No RBI/2018-19/137 dated 07th March

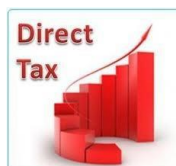
2019 has announced that the Government of India has approved the implementation of the Interest Subvention Scheme with modifications for the years 2018-19 and 2019-20 for short term crop loans up to Rs. 3 lakh with the following stipulations:

- To provide short-term crop loans upto Rs. 3 lakh to farmers at an interest rate of 7% p.a. during the years 2018-19 and 2019-20, interest subvention of 2% p.a. will be provided to Public Sector Banks (PSBs) and Private Sector Commercial Banks.
- To provide an additional interest subvention of 3% p.a. to those farmers repaying on time. This benefit would not accrue to those farmers who repay their crop loans after one year of availing such loans.
- This benefit of interest subvention will be available to small and marginal farmers having Kisan Credit Card for a further period of upto six months post the harvest of the crop at the same rate as available to crop loan against negotiable warehouse receipts issued on the produce stored in

warehouses accredited with Warehousing Development Regulatory Authority.

- To provide relief to farmers affected by natural calamities, an interest subvention of 2% p.a. will be made available to banks for the first year on the restructured loan amount. Such restructured loans will attract normal rate of interest from the second year onwards.
- However, to provide relief to the farmers affected due to severe natural calamities, an interest subvention of 2% p.a. will be made available to banks for the first three years/entire period (subject to a maximum of five years) on the restructured loan amount.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?id=11494&Mode=0>



Direct Tax

Notified provisions of 56(2)(viib)

Section 56(2)(viib) lays down that where a private limited company receives any consideration from any person being a resident, for issue of shares that exceeds the face value of

such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to tax under the head Income from Other Sources. This clause shall not apply where the consideration for issue of shares is received -

by a venture capital undertaking from a venture capital company or a venture capital fund; or

by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

The Central Government vide Notification No SO 1131(E) dated 5th March 2019 has notified that the provisions of the above clause shall not apply to a company which fulfils the conditions specified in para 4 of the notification number G.S.R. 127(E), dated the 19th February, 2019(Deductions - In Respect Of Specified Business - Startup India) issued by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade.

https://incometaxindia.gov.in/communications/notification/notification_13_2019.pdf

Verdicts

Direct
Tax

Direct Tax

Where there was failure of assessee to establish credit worthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company

- Vide decision of Supreme Court of India in Principal Commissioner of Income-tax v. NRA Iron & Steel (P.) Ltd.

Section 68 of the Income Tax Act, 1961:

Where any sum is found credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged to income-tax as the income of the assessee. Provided that where the assessee is private limited company and the sum so credited consists of share application money, share capital, share premium, any explanation offered by such



assessee-company shall be deemed to be not satisfactory, unless -

- the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.

Facts of the case :

- For AY 2009-10, the assessee had filed the income tax return by showing that Rs. 17,60,00,000/- was received through Share Capital/Premium from various companies. It is pertinent to mention that the shares of face value of Rs. 10 per share, were subscribed by the investor companies at Rs. 190 per share. The

Assessee was called upon by the Assessing Officer to furnish details of the amounts received and provide documentary evidences. The Assessee submitted that the entire amount was received through normal banking channels and produced documents such as income tax return acknowledgments to establish the identity and genuineness of the transaction. It was submitted that, there was no cause to take recourse to Section 68 of the Act, and that the onus on the Assessee Company stood fully discharged.

2. Later, The AO issued summons to the representatives of the investors and nobody appeared on behalf of any of the investor companies. The AO independently got field enquiries conducted and came to know that in several cases, the investor companies were found to be non-existent.
3. Therefore, AO has held that the Assessee failed to prove the existence of the identity of the investor companies and genuineness of the transaction and as a consequence, the amount



of Rs. 17,60,00,000/- was added back to the total income of the Assessee.

4. Aggrieved by the order of AO, the Assessee filed an Appeal before the CIT(Appeals) where the judgement was passed in favour of the assessee.
5. Later, on appeal by the Revenue to ITAT, ITAT dismissed the appeal of Revenue. At a later stage, High Court also upheld the order of ITAT.

Judgement : On appeal, Hon'ble Supreme Court of India has held the following –

“The earlier Court/Authorities did not even advert to the field enquiry conducted by the AO which revealed that in several cases, the investor companies were found to be non-existent and the onus to establish the identity of the investor companies, was not discharged by the assessee. On the facts of the present case, as the

Assessee Company failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income".

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&multipage=false&id=101010000000186856&isxml=Y&search=&tophead=true&tophead=true>

SLP dismissed against High Court ruling that where assessee educational society had utilised its income for purchase of land for further extension of school building, which was for educational purpose only, exemption under section 10(23C)(vi) could not be denied

- Vide decision of Supreme Court Of India in Commissioner of Income-tax (Exemption) v. Managing Committee, Arya High School, Punjab

Facts of the case:

1. The Assessee educational society filed an application for grant of registration under section 10(23C)(vi).

2. Commissioner (Exemptions) denied same on ground that there was no evidence that assessee had utilised its income for educational purpose.
3. The assessee further appealed to the Income Tax Appellate Tribunal. The Tribunal after examining records found that during relevant assessment year, assessee had utilised its income for purchase of land for further extension of school building and thus, assessee was held to be covered within provisions of section 10(23C)(vi).



4. Aggrieved by the order of ITAT, the revenue approached High Court, which by its impugned order held that since amount of receipt during relevant assessment year exceeded more than 1 crore and assessee had utilized same amount for purchase of land for further extension of school building, which was for educational purpose only, exemption under

section 10(23C)(vi) could not be denied.

5. Going further, the Revenue filed a petition with the Supreme Court.

Judgement: 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=101010000000186617&isxml=Y&search=&tophead=true&tophead=true>

Company Law



Only companies other than subsidiary companies, associate companies and joint ventures are eligible for purpose of registration as valuer under rule 3(2) of Companies (Registered Valuers and Valuation) Rules, 2017

- Vide decision of High Court of Delhi in Cushman and Wakefield India (P.) Ltd. v. Union of India

Facts of the case:

1. The petitioners were engaged in the business of real estate consultancy

services including provision of real estate valuation services.

2. The petitioner is a subsidiary of a reputed body corporate and is universally recognized as a lauded leader in providing valuation service.
3. The petitioner filed writ petition for declaring rule 3(2) of the Companies (Registered Valuers and Valuation) Rules, 2017 as unconstitutional.
4. According to petitioner, rule 3(2) of the above stated rules and in particular rule 3(2)(a) explicitly provides that a company shall not be eligible to be a Registered Valuer, if it is a subsidiary, joint venture or associate of another company or body corporate, and this had impaired the right of the petitioners to carry on trade and business, which is guaranteed by the Constitution of India, as it ousted the petitioner from being a Registered Valuer merely on the ground of it being a subsidiary of a body corporate, which was discriminatory and arbitrary.

Judgement: The Honorable Supreme Court in the instant case has held the following - "The objective and intention behind laying down the impugned rule 3(2) is clearly to introduce higher

standards of professionalism in valuation industry. The impugned rule obviates the possibility of conflict of interest on account of diverging interests of constituent / associate entities which resultantly shall undermine the very process of valuation. Keeping in view the position of law and the reasoning given by the respondents and making eligible only companies other than subsidiary companies, associate companies and joint ventures for the purpose of registration as valuer, a separate class has been carved out based on classification and as such the rule 3(2) cannot be faulted. There is no merit in the ground urged by the petitioners. Hence, the petitions are dismissed.”

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&multipage=false&id=101010000000186367&isxml=Y&search=&tophead=true&tophead=true>

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