

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

September 2018

Dear Reader,

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

Attention of readers is invited to clarification regarding scope of principal-agent relationship under GST Act, Issue of Master Circular for Commodity Derivative Market, Insertion of Rule 11UAB and decision of the honorable High Court of Allahabad in Suresh kumar Sheetlani vs Income Tax Officer-1(3).

Regards

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Contents

Contents	2
Policy Watch	2
Indirect Taxes.....	3
Clarification regarding the scope of principal-agent relationship under GST Act.....	3
Notification of due dates for filing GST returns.....	3
SEBI.....	4
Master Circular for Commodity Derivative Market.....	4
Direct Tax.....	4
Insertion of Rule 11UAB.....	4
Company Law.....	5
Relaxation of additional fees and extension of last date of filings of Form BEN-2.....	5
Verdicts.....	6
Direct Tax	6

Policy Watch

Indirect Taxes



Clarification regarding the scope of principal-agent relationship under GST Act

The Central Board of Indirect Taxes and Customs Vide Circular No. 57/31/2018-GST has clarified the following:

1) If the invoice for further supply is issued by the agent in his name, then such services will be treated as the services provided by the agent on behalf of the principal and hence, the agent is required to obtain registration mandatorily as required by Section 24 of CGST Act.

2) However, if the agent issues an invoice in the name of the principal, such service shall not be treated as a service provided by the agent to the principal and hence, the agent shall obtain GST registration only in case the turnover crosses the specified limits (Rs.10,00,000/- in case of Special

Category States and Rs.20,00,000/- in case of other states). In other words, Section 24 is not applicable in the above case.

http://cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.57.pdf;jsessionid=C079E2A0D7DC4B5EE001DB10FD33D21A

Notification of due dates for filing GST returns

The Central Board of Indirect Taxes and Customs Vide Notification No 32/2018, 33/2018, 34/2018 – Central Tax dated 10/08/2018 has introduced a one-time scheme to waive off late fee payable for delayed furnishing of FORM GSTR-1 for the period from July, 2017 to September, 2018 & extended the due dates as under:

Form	Period	Due date for GSTR 1
GSTR 1- Monthly	July,2017 to September, 2018	30th Oct,2018
GSTR 1- Quarterly	July,2017 to September, 2018	30th Oct,2018

- <http://www.cbic.gov.in/resources//htdo cs-cbec/gst/notfctn-44-central-tax-english.pdf;jsessionid=0D07EB991C1676BF3630CD5D6A39BCFF>
- <http://www.cbic.gov.in/resources//htdo cs-cbec/gst/notfctn-43-central-tax-english.pdf;jsessionid=3B4457D1C2724EF041632519FDAE1FFC>

SEBI

**Master Circular for Commodity
Derivative Market**

Securities Exchange Board of India(SEBI) on 07-09-2018 has issued a Master Circular in relation to Commodity Derivatives Market. It is a compilation of various circulars issued earlier by the Commodity Derivatives Market Regulation Department(CDMRD).

https://www.sebi.gov.in/legal/master-circulars/sep-2018/master-circular-for-commodity-derivatives-market_40276.html

Direct Tax

Insertion of Rule 11UAB

Section 28(via) of the Income Tax Act, 1961 states "*The fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner shall be chargeable to tax under the head "Profits and gains of business or profession"*". Central Board of Direct Taxes vide Notification No. SO 4213(E) dated 30-08-2018 inserted new Rule 11UAB which provides rules for the determination of fair market value of inventory:

Inventory	Fair Market Value
Immovable Property	The value adopted or assessed or assessable by any authority of the Central Govt. or a State Govt. for the purpose of payment of stamp duty on the date on which the inventory is converted into, or treated, as a capital asset.
Jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in rule 11UA	Value determined in the manner provided in sub-rule (1) of rule 11UA on the date on which the inventory is converted into, or treated, as a capital asset.
Any other property	Price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset.



Company Law

Relaxation of additional fees and extension of last date of filings of Form BEN-2

A beneficial owner shall file a declaration disclosing his beneficial interest in Form No. BEN-2 with the company, within thirty days after acquiring such beneficial interest in the shares of the company. The Ministry of Corporate affairs vide Circular No. 07/2018 dated 06/09/2018 stated the following :-

Time limit for filing the BEN-2 form would be 30 days from the date of deployment of BEN-2 e-form on the MCA-21 portal and no additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form.

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.7_06082018.pdf

Verdicts

Direct Tax

Direct
Tax

When department had correct address of assessee furnished in return of income, sending notice at incorrect address available with bank and then drawing presumption of service of notice on ground that notice was not received back unserved, cannot be sustained

- **Vide Decision of High Court of Allahabad in Suresh kumar Sheetlani v Income Tax Officer-1(3)**



The Honorable High Court of Allahabad in the above case has

held that when new address has been furnished by the assessee in his return of income, notices cannot be sent at an old address available on records.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000183116&isxml=Y&search=&tophead=true&tophead=true>

Where assessee had availed deduction under section 80-IC for a period of 5 years at the rate of 100 per cent, he would be entitled to deduction on substantial expansion for remaining 5 assessment years at the rate of 25 per cent and not at rate of 100 per cent

- **Vide Decision of Supreme Court of India in Commissioner of Income Tax v Classic Binding Industries**

Deduction under Section 80-IC is available to manufacturing units situated in the State of Sikkim, Himachal Pradesh and Uttarakhand and North-Eastern States. The exemption under section 80-IC is provided at the rate of 100% of such profits and gains for five

assessment years commencing with the initial assessment years and, thereafter, 25% for next five years. The deduction is limited to a period of 10 years. In the above case, the assessee had claimed a deduction of 100% for the first five Asst. Years. Later, the assessee had again claimed 100% deduction for the 6th Asst. Year on the ground that the assessee had undertaken substantial expansion. The Honorable Supreme Court Of India in this case has held that the assessee after availing deduction for a period of 5 years at rate of 100% would be entitled to deduction for remaining 5 assessment years at rate of 25% only and not at rate of 100%.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000183259&isxml=Y&search=&tophead=true&tophead=true>



Where assessee had entered into agreement with UK based university for providing certain technical services for which it had agreed to bear Indian taxes, liability of assessee to deduct TDS under India-UK DTAA from payments made to UK University was to be computed on gross amount of fees paid to University

➤ **Vide Decision of High Court of Madras in TVS Motor Co. Ltd. v. Income-tax Officer, Chennai**

The Honorable High Court of Madras in the instant case has held that TDS on payments made to non-residents for technical services has to be deducted on the gross amount including the tax liability undertaken by the assessee.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000183448&isxml=Y&search=&tophead=true&tophead=true>

Where petitioner had failed to make full and true disclosure of undisclosed income with reference

to foreign property and foreign bank accounts, of which petitioner was a beneficial owner i.e., Income Tax Settlement Commission had rightly rejected settlement application filed by petitioner as invalid

➤ **Vide Decision of High Court of Delhi in Moin A Qureshi v. Commissioner of Income-tax**

The Honorable High Court Of Delhi in the above case has held that in case the assessee has filed an application with ITSC for the settlement of cases relating to him, the ITSC has right to reject the application made in case the applicant doesn't disclose the details of undisclosed income, bank accounts and the property in his name.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000183441&isxml=Y&search=&tophead=true&tophead=true>

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