

R C JAIN AND ASSOCIATES LLP

NEWSLETTER

December

2020

*“If you are working on something that you
really care about, you don’t have to be pushed.
the Vision pulls you.....*

-Steve Jobs”

INDEX

1. Income Tax _____	1
2. Case Law _____	6
3. GST _____	8
4. RBI _____	14
5. Corporate Law _____	17
6. Hunar Haat _____	20

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DIRECT TAX

Income Tax

1. DUE DATE EXTENSIONS FOR FILING INCOME TAX RETURN, TAX AUDIT REPORT:

Particulars	Revised Due Dates
Income Tax Return (Non-Audit Assessee)	10 th January 2021
Tax Audit Report	15 th January 2021
Income Tax Return for Audit Cases and Partners	15 th February 2021
Vivad Se Vishwas	31 st January 2021

2. EXTENDED DATE FOR FILING AUDITED ACCOUNTS TO THE CHARITY COMMISSIONER MAHARASHTRA:

Vide Circular No 584 dated 29/12/2020 the due date for online filing of Audited Accounts for the Financial Year 19-20 with the office of Charity Commissioner, Maharashtra stands extended till 31st January 2021.

3. CLARIFICATION ON THE PROVISIONS OF DIRECT TAX VIVAD SE VISHWAS SCHEME:

As per Circular no 21/2020 dated 4/12/2020,

The date for payment without additional amount under Vivad se Vishwas was extended from 31st December 2020 to 31st March 2021.

This circular is being issued in continuation of circular dated 22nd April, 2020 (which covered Q. no. I - 55) under section 10 and 11 of the Vivad se Vishwas to provide answers to 34 more FAQs (Q. no. 56 - 89). It may be noted that in the FAQs, Income Tax Act, 1961 has been referred to as the Act, Designated Authority (under Vivad se Vishwas) has been referred to as the DA, Assessing Officer has been referred to as the AO, Commissioner (Appeals) has been referred to as CIT(A), and the Income Tax Department has been referred to as the Department.

DIRECT TAX

Questions related to Consequences

Q. Whether appeal against penalties that are not related to quantum assessment like penalty U/S 271B, 271BA, 271DA of the Act etc. are also waived upon settlement of appeal relating to 'disputed tax'?

Ans. No, appeal against such penalty order is required to be settled separately.

Q. If appeal involving issue of disallowance under section 40(a)(i)/(ia) of the Act is settled under the Scheme, whether consequential relief will be available in proceedings under section 201 of the Act initiated qua the same payment deduction.

Ans. No.

Q. The declarant has filed a declaration for disputed penalty. He is required to Answer: pay 25% or 30% of disputed penalty to settle the dispute. Will interest levied or leviable be waived in this case?

Ans. Yes. Once the required amount of disputed penalty has been paid by the declarant, interest relating to such penalty would be waived.

Question Related To Procedure

Q. Once declaration is filed by assessee U/S 4 of Vivad se Vishwas can the same be revised? If Yes, at what stage of the proceedings will the same be allowed?

Ans. Yes, declaration can be revised any number of times before the DA issues a certificate under section 5(1) of Vivad se Vishwas.

Q. Separate orders were passed U/S 201(1) & 201(JA) of the Act for a particular assessment year. Assessee has filed two separate appeals for principal portion U/S 201(1) of the Act and interest portion U/S 201(1A) of the Act. Can he file only one declaration under Vivad se Vishwas against 201(1) order and seek 100% waiver of interest levied U/S 201 (1A) of the Act

DIRECT TAX

Ans. Yes, once appeal against order u/s 201(1) of the Act is settled under Vivad se Vishwas, there would be 100% waiver of interest levied u/s 201(IA) of the Act.

Questions on Scope/Eligibility

Q. Whether cross objections filed and pending as on 31 January 2020 will also be covered by the scheme?

Ans. Yes. However, the main appeal is also required to be settled along with cross objection.

Q. Whether search cases where assessment was made under section 158BA (i.e. block assessment) of the Act are covered under Vivad se Vishwas?

Ans. Appeal, writ or Special Leave Petition in respect of block assessment is eligible if the disputed tax does not exceed five crore rupees for the said block assessment.

Q. Whether Vivad se Vishwas can be availed in a case where proceedings are pending before Income Tax Settlement Commission (ITSC) or where writ has been filed against the order of ITSC?

Ans. No

Q. A trust has been denied registration U/S 12M of the Act. Whether appeal against such order is eligible for Vivad se Vishwas?

Ans. No.

Q. If the prosecution is for a different assessment year and the appeal for a different one, would it debar the assessee from the benefit of this scheme?

Ans. Prosecution in one assessment year does not debar the assessee from filing declaration for any other assessment year if it is otherwise eligible

More FAQs answered by the IT Department are available on the below Link:

<https://www.incometaxindia.gov.in/communications/circular/circular-21-of-2020.pdf>

-Compiled By Bhavesh Bang

Case Laws:

1. Issue Involved :-

The assessee was obliged u/s 139D read with Rule 12 of Income Tax Rules, 1962 to file return of income electronically with his digital signature. While filing such return he noticed that there was no reflection of the set off available u/s 72 i.e. Setting off of current year's business profits against the carry forward loss from the earlier years. This was because in electronic form some columns are auto populated by system and they cannot be changed manually. So the assessee was unable to change those figures and make claim for set off u/s 72.

Samir Narain Bhojwani v. Deputy Commissioner of Income Tax , High Court of Bombay , Writ Petition no. 2825 of 2019, Dated (22-10-2019).

GIST OF THE CASE:

- Assessee- Individual carrying business as a developer and landlord i.e. giving flats constructed by him on rent / leave and license basis and showing rent received as "business income". And these flats are business assets .
- During the previous year relevant to the subject assessment year he sold 3 flats and incurred 77 crores of short term capital gains . Also, there was Business loss of 57 crores which he can set off against STCG of that year as per Section 71 and therefore remains with 20 crores as taxable income against which 20 crores (out of carry forward loss of 166 crores) can be set off u/s 72.
- But as discussed above there was no such reflection in electronic form, so he was unable to claim such set off.
- So if he files return as it is then in future there will be demand of excess income tax and if he does not file return before due date (31-10-2019) then he will be assessed under penal proceedings.
- Such fundamental issue , which needs to be addressed by CBDT. Hence assessee made representation to CBDT.
- In meantime till the CBDT takes decision, assessee can file his return (in both forms electronic as well as paper) before last day of filing and AO would not act upon electronically filed return to initiate recovery proceedings also AO would accept the paper form of return.

HELD:-

- what is provided by Act cannot be taken away by Rules
- AO cannot allow claims not represented in return, the only way to avail any claim missed in originally filed return is by filing revised return.

DIRECT TAX

- In given case there will not be any benefit to file revise return as that electronic revised return also will fail to show claim to set off
- The purpose of e-filing of return to have simplicity and uniformity therefore it cannot bar an assessee from making any claim. It is AO's job to allow or disallow any claim. Therefore the only way assessee can claim set off is by filing return in paper form.

2. Issue Involved :-

The assessee filed return of loss and claimed refund being excess amount paid as tax deduction at source done by its customers. Despite of sending several letters the return of income was not processed by department and therefore refund was not initiated.

Aegis Customer Support Service (P) Ltd v. Income Tax Officer, High Court of Bombay, Writ Petition no. 2640 of 2019, Dated (18-10-2019).

GIST OF THE CASE:

- Assessee filed return of loss on 17th October 2018 and claimed refund of Rs. 20.24 crores (approx..) being excess amount paid as tax deduction at source done by its customers.
- On 10th May 2019 the notice u/s 143(1)(a) was issued seeking explanation as to a proposed adjustment of Rs. 1.33 lakhs claimed under section 36(1)(va). The assessee replied to notice on 27th May 2019 stating that they were entitled to for such deduction. After that there was no action by AO or Director of Income Tax.
- Assessee by various letters sought an early processing of returns because he was suffering from cash flow difficulty. According to assessee this problem mainly arose due to non-acceptance of his application under section 197 seeking NIL deduction of tax in previous year and only partial deduction of tax at source was granted. The assessee filed writ petition in front of court.

HELD:-

- It was noted that there was undue hardship suffered by assessee due to authorities not discharging their duties.
- The authorities were directed to process return of income as early as possible but definitely within a period of 3 weeks from passing of order and must pay refund due along with interest in the period of 2 weeks from the date the return is processed.

-Compiled by Sonam Hotchandani

GST

Notifications

1) Notification No. 90/2020–Central Tax, Dated 1st December, 2020

As per this notification, the Central Government, on the recommendations of the Council, hereby notifies that makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017. Provided further that for class of supply as specified in column (2) and whose HSN Code as specified in column (3) , a registered person shall mention eight number of digits of HSN Codes in a tax invoice issued by him under the said rules .

Certain HSN code are changed which can be viewed on below link.:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-90-central-tax-english-2020.pdf>

2) Notification No. 91/2020 – Central Tax, Dated 14th December, 2020

As per the notification, the CG on the recommendations of the Council hereby notified that where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the “30th day of March, 2021”, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the “31st day of March, 2021” including for the purposes of –

- (a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by

INDIRECT TAX

- (b) whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or
- (c) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

This notification shall be deemed to have come into force with effect from 1st day of December, 2020.

3) Notification No. 92/2020 – Central Tax, Dated 22nd December, 2020

The Central Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the said Act shall come into force.

4) Notification No. 93/2020 – Central Tax, Dated 22nd December, 2020

In the said notification, Late fees have been waived on delay in filing GSTR 4 of FY 19-20 for November to December 2020 for those having principal place of business in Union Territory of Ladakh.

5) Notification No. 94/2020 – Central Tax, Dated 22nd December, 2020

1) Restriction on claim of ITC as per Rule 36(4)

The claim of ITC in respect of invoices not furnished by the corresponding vendors has now been restricted to 5% of the credit available in GSTR 2B. This limit earlier was 10% of ITC available. This would mean that a taxpayer's ITC claim shall now be restricted to 105% of the Credit reflected in his GSTR 2B.

Any claim exceeding the specified limit shall result in violation of CGST Act read with rules which may result into suspension of GSTIN as described above. The provision shall come into effect from 1st January 2021.

INDIRECT TAX

2) GSTR 1 to be blocked in case of non-filing of GSTR 3B of two consecutive periods.

Where a taxpayer fails to file GSTR 3B for two consecutive months, his GSTR 1 shall now be blocked. Earlier non filing of GSTR 3B used to result in blocking of E-way Bill facility but from now on it shall also result in blocking of GSTR 1 of the taxpayer. Similarly, for quarterly return filers, the taxpayer failing to file GSTR 3B for the preceding quarter shall not be permitted to file GSTR 1 of subsequent quarter.

3) Time limit for GST Registration increased

The time for system-based registration has been enhanced from 3 days to 7 days. That means, now department shall be required to review and grant registration within 7 days against 3 days as provided earlier from the date of filing of registration application.

In cases applicant does not do adhaar authentication or where department feels fit to carry out physical verification, the time limit for grant of registration shall be 30 days instead of 7 days.

4) More Powers for cancellation of GSTIN to Department

The officer can proceed for cancellation of GSTIN where a taxpayer avails Input Tax Credit (ITC) exceeding than that permissible in Section 16. Clause (e) has been inserted in Rule 21 of CGST Rules 2017.

5) Taxable value and tax both should be same in GSTR 1 and GSTR 3B.

If the liability declared in GSTR 3B is less than that declared in GSTR 1 in a particular month, department may now proceed with cancellation of GSTIN. There might be some practical difficulties in implementing such a provision as there are number of corrections which are made in GSTR 3B which may result

INDIRECT TAX

in lower tax liability as compared with GSTR 1. The clause (f) newly inserted talks

about details of outward supply to which we understand that Taxable value and tax both should be in synchronization between GSTR 1 and GSTR 3B.

6) Taxpayers Registration can be cancelled without opportunity of being heard

Now, no opportunity of being heard shall be given to a taxpayer for suspension of GSTIN, where the proper officer (PO) has reasons to believe that the registration of person is liable to be cancelled. The words “opportunity of being heard has been omitted from clause (2) of Rule 21A.

7) Notice in FORM GST REG 31

Significant deviation/anomalies between details of outward supply between GSTR 3B and GSTR1 or inward supplies (ITC) between GSTR 3B and GSTR 2B which indicate contravention of Act, department shall now serve a notice in FORM GST REG 31 to call explanation as to why GSTIN should not be cancelled. Taxpayer shall be required to submit his reply within 30 days of such notice being served to him.

8) GSTIN is suspended no refund

Where a GSTIN is suspended no refund u/s 54 of CGST Act 2017 can be availed by the taxpayer. This means that first GSTIN Suspension proceedings have to be closed before applying refund.

9) Restricted to avail ITC as per rule 86B

Taxpayer whose is restricted to avail ITC as per rule 86B shall also not be permitted to file GSTR 1 where he has not filed GSTR 3b for the preceding tax period.

INDIRECT TAX

New Rule 86B shall be affected from 1st January 2021 wherein restriction has been placed on setting off more than 99% of tax liability from Input tax credit where the value of taxable supplies other than exempt supply and zero rated supply exceeds

Rs. 50 lakhs in a month. Though few exceptions have been provided to this rule which are as follows:

- (i) Where the taxpayer has paid Income Tax exceeding Rs. 1 lakh in two preceding financial year.
- (ii) Where taxpayer has received refund exceeding Rs. 1 lakhs u/s 54 of CGST Act 2017.
- (iii) Where taxpayer has used electronic cash ledger to pay of liability on outward supplies which cumulatively makes 1% of the total liability up to the said month
- (iv) Where a person is a Government Department, Public Sector Undertaking (PSU), local authority or a statutory body.

10) Validity of Eway bill to 200 Kms in a day

Earlier one day was permitted for distance up to 100 kms under e way bill provision. Now the same has been increased to 200 kms. This means that only one day validity shall be granted to cover a distance up to 200 kms which was earlier 100 km.

11) Restriction on furnishing of information in PART A of FORM GST EWB-01

The registered person will not be able to generate e way bill if

- he has not furnished returns for 2 tax periods
- whose registration is suspended

Circulars

1) Circular No. 144/14/2020- GST

Clarification regarding Waiver from recording of UIN on the invoices for the months of April 2020 to March 2021-

It has been brought to the notice of the Board that the issue of non-recording of UINs has continued even after 31st March, 2020. Therefore, it has been decided to give waiver from recording of UIN on the invoices issued by the retailers/suppliers, pertaining to the refund claims from April 2020 to March 2021, subject to the condition that the copies of such invoices are attested by the authorized representative of the UIN entity and the same is submitted to the jurisdictional officer.

-Compiled By Jay Gudhka

RBI

1. **RBI/2020-21/70**
DPSS (CO) RTGS No.750/04.04.016/2020-21

24x7 Availability of Real Time Gross Settlement (RTGS) System

A) RBI has decided to make RTGS available round the clock on all days of the year with effect from 00:30 hours on December 14, 2020. Members are advised as under:

- i. RTGS shall be available for customer and inter-bank transactions round the clock, except for the interval between 'end-of-day' and 'start-of-day' processes, whose timings would be duly broadcasted through the RTGS system.
- ii. Intra-Day Liquidity (IDL) facility shall be made available to facilitate smooth operations. The Intra-Day Liquidity (IDL) availed, if any, shall be reversed before the 'end-of-day' process begins.

B) Members are advised to put in place necessary infrastructure to provide RTGS round the clock to their customers. RTGS transactions undertaken after normal banking hours are expected to be automated using 'Straight Through Processing (STP)' modes.

2. **RBI/2020-21/71**
DPSS.CO.PD No.752/02.14.003/2020-21

Card transactions in Contactless mode - Relaxation in requirement of Additional Factor of Authentication

1. As per the Previous months notification issued by Reserve Bank of India (RBI), wherein Additional Factor of Authentication (AFA) requirement was relaxed for values up to ₹ 2,000/- per transaction for card transactions in contactless mode at Points of Sale (PoS) terminals. Subsequently, it was clarified that transactions beyond this limit can be processed in contactless mode, but with AFA.

2. On "Enhancing Security of Card Transactions", wherein users were provided option of switch on / off or to set limits for various card features, including for contactless transactions. The instructions, which came into effect from October 1, 2020, have made card transactions more secure by

empowering users to enable card features and set requirements according to their need and comfort.

3. The present COVID-19 pandemic has underlined the benefits of contactless transactions. Keeping this in view and based on stakeholder feedback, it was announced that per transaction limit for AFA relaxation for contactless card transactions will be increased. Accordingly, given the sufficient protection available to users, it has been decided to increase the per transaction limit to ₹ 5,000/-. All other requirements, including the discretion of cardholder to use contactless or contact mode of transaction, shall continue to remain applicable, as hitherto.

4. This directive shall come into effect from January 1, 2021.

3. RBI/2020-21/74

DPSS.CO.PD No.754/02.14.003/2020-21

Processing of e-mandates for recurring transactions

In continuation to the above notification, these instructions were later extended to Unified Payments Interface (UPI) as well. But in case of not compliant with the aforesaid instructions, processing of recurring transactions (domestic or cross-border) using cards / Prepaid Payment Instruments (PPIs) / UPI under arrangements / practices shall not be continued beyond March 31, 2021.

4. RBI/2020-21/75

DOR.BP.BC.No.29/21.02.067/2020-21

Declaration of dividends by banks

In view of the ongoing stress and heightened uncertainty on account of COVID-19, it is imperative that banks continue to conserve capital to support the economy and absorb losses. In order to further strengthen the banks' balance sheets, while at the same time support lending to the real economy, it has been decided that banks shall not make any dividend payment on equity shares from the profits pertaining to the financial year ended March 31, 2020.

5. RBI/2020-21/79

DOR.No.BP.BC.30/21.04.048/2020-21

Opening of Current Accounts by Banks - Need for Discipline

On a review, it has been decided to permit banks to open specific accounts which are stipulated under various statutes and instructions of other regulators/ regulatory departments, without any restrictions placed in terms of the-mentioned circulars DOR.No.BP.BC/7/21.04.048/2020-21 dated August 6, 2020

6. RBI/2020-21/77**A.P. (DIR Series) Circular No. 08****External Trade – Facilitation - Export of Goods and Services**

With a view to further enhance the ease of doing business and quicken the approval process, it has been decided to delegate more powers to the Authorised Dealer Category – I banks (AD banks) in the following areas:

1. Direct Dispatch of Shipping Documents
2. “Write-off” of unrealized Export bills
3. Set-off of Export receivables against Import payables
4. Refund of Export Proceeds

For more details, refer the website rbi.org.in

-Compiled by Aaradhana Pandey

ROC

1. No Change in the additional fee of eform MGT-7 and AoC-4/AOC-4 XBRL/AOC-4 CFS/AOC-4 NBFC for the FY 2019-20:

MCA came out with a clarification that there shall be no change in the additional fee of eform MGT-7 and AoC-4/AOC-4 XBRL/AOC-4 CFS/AOC-4 NBFC for the FY 2019-20 w.e.f 01 January 2021 since extension was provided to all the Companies for conducting Annual General Meeting (AGM) and not for filing the form.

Hence, the due date of form filing shall be computed based on the actual date of AGM or due date/extended due date of AGM as the case may be.

Post 31st December 2020, additional fees shall be applicable from the actual date of AGM or due date/extended due date of AGM + 30/60 days as the case may be and Rs.100 per day shall be charged starting from such day even if such date falls prior to 31st December 2020.

2. SRN of the application filed for extension' (GNL-1) in eform MGT-7 is made optional for FY 2019-20:

In Form MGT 7, field 'SRN of the application filed for extension' (GNL-1) is made optional for FY 2019-20 w.e.f 01 January 2021. Consequently, eForm MGT-7 has been revised and the same shall be downloaded MCA21 Company Forms Download page w.e.f 1st January, 2021.

3. Extension of reservation of name in certain cases:

MCA circular dated 24.12.2020 extending reservation of name in certain cases, stated that upon payment of fees provided by MCA, Registrar shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

(a) forty days from the date of approval under rule 9, on payment of fees of rupees of one thousand rupees made before the expiry of twenty days from the date of approval under rule 9;

(b) sixty days from the date of approval under rule 9 on payment of fees of rupees two thousand made before the expiry of forty days referred to in clause (a) above;

(c) sixty days from the date of approval under rule 9 on payment of fees of rupees three thousand made before the expiry of twenty days from the date of approval under rule 9:

Provided that the Registrar shall have the power to cancel the reserved name in accordance with sub-section (5) of section 4 of the Act.”

4. Change in Form SH-7:

MCA circular dated 24.12.2020 stated change in Form SH-7 w.e.f from December 25, 2020 filed for increase in authorised share capital under section 61 of the Act. “Cancellation of unissued shares of one class and increase in shares of another class” is inserted under the tab “Purpose of the form.”

Further the revised eForm SH-7 shall be downloaded from MCA21 Company Forms Download page w.e.f 25th December, 2020.

5. Change in Companies (Appointment and Qualification of Director) Rules, 2014:

In wide circular dated 08.12.2020 the following changes are stated:

1. In sub-rule 4 of Rule 6 of Companies (Appointment and Qualification of Director) Rules, 2014, every individual whose name is so included in the data bank under sub-rule (1) of Rule 6 shall pass an online proficiency self-assessment test conducted by the institute within a period of [Two year from] the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the Institute.

The period one year in the above stated rule is substituted to two years.

2. “Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has fulfilled the conditions mentioned which can be obtained through the below link :

http://www.mca.gov.in/Ministry/pdf/FifthAmdtRules_18122020.pdf

6. Investor Education& Protection Fund Authority (IEPFA):

1. Investor Education& Protection Fund Authority (IEPFA) invites applications for preparation of panel for engagement of Consultants from amongst retired of Officers of Central Government/ PSUs/SEBI purely on contract basis.

2. The general requirement and other terms and conditions of engagement can be obtained on the below site:

http://www.mca.gov.in/Ministry/pdf/Circular_03122020.pdf

-Compiled by Nikeeta Haryan



HUNAR HAAT

Let's speak up.....

-A poem By Kapil Goyal

Hear to the voice behind the walls,

With the mentality so small

Misery, agony, pain they suffer

Hardest time, arduous to buffer.

You say it a deep silence, but scars are loud

Hiding the violence, like everything felt sound.

Fly high as you can, be out of a cage

You the answer, be out as a sage.

365 Days is equal to 365 New Chances, Wishing you all a healthier,happier and a
sparkling New Year 2021

Allow us to tell you more!



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