R.C.JAIN AND ASSOCIATES LLP

NEWSLETTER

January

2021

"And now let us welcome the new year, full of things that never were."

– Rainer Maria Rilke."

R. C. Jain and Associates LLP

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EDITORIAL TEAM

Income Tax

1. EXTENSION OF TIME LIMITS

Particulars	Existing Dates	Extended Dates
Income Tax Return (required to furnish report in respect of international/specified domestic transactions for whom the due date, as per the provisions of section 139(1) of the Income- tax Act,1961)	31 January,2021	15 February 2021
Date of passing order of issuance of Notice under Direct Taxes and Benami Acts	30 March 2021	31 March 2021

Further, in order to provide relief for the third time to small and middle class taxpayers in the matter of payment of self-assessment tax, the due date for payment of self-assessment tax date is hereby again being extended. Accordingly, the due date for payment of self-assessment tax for taxpayers whose self-assessment tax liability is up to Rs. 1 lakh has been extended to 15th February, 2021

2. CBDT LAUNCHES E-PORTAL FOR FILING COMPLAINTS REGARDING TAX EVASION/BENAMI PROPERTIES/FOREIGN UNDISCLOSED ASSETS

The Central Board of Direct Taxes has launched an automated dedicated e-portal on the e-filing website of the Department to receive and process complaints of tax evasion, foreign undisclosed assets as well as complaints regarding benami properties.

Steps to be followed:

1. The public can now file a Tax Evasion Petition through a link on the e-filing website of the Department under the head "File complaint of tax evasion/undisclosed foreign asset/benami property".

2. After an OTP based validation process (mobile and/or email), the complainant can file complaints in respect of violations of the Income-tax Act, 1961, Black Money (Undisclosed Foreign Assets and Income) Imposition of Tax Act, 1961 and Prevention of Benami Transactions Act (as amended) in three separate forms designed for the purpose.
3. Upon successful filing of the complaint, the Department will allot a unique number to each complaint and the complainant would be able to view the status of the complaint on the Department's website.

3. CLARIFICATION ON PAYMENT OF REMUNERATION BY AN ELIGIBLE INVESTMENT FUND TO AN ELIGIBLE FUND MANAGER

Sec 9A (3) (m) of the Income Tax Act 1961 provides for payment of remuneration by an eligible investment fund to an eligible fund manager in respect of fund management activity which was again amended as on 1.4.2019 vide Notification no 29/2020 dated 27/5/2020 by way of inter-alia adding sub rule 10 and 13 to Rule 10V of Income Tax Rules 1962 where Sub rule 12 provides for the amount of remuneration to be paid by fund to a fund manager.2nd proviso of the said sub rule provides that the fund may seek Boards Approval in case where the amount of remuneration is lower than the amount so prescribed.

Variousrepresentations have been received stating hardship in complying with these provisions from FY 2019-20 since the notified FY is over and FY 2020-2021 was commenced. In order to avoid these, the Board has decided to provide that for the financial years 2019-20 and 2020-

21 in cases where the remuneration paid to the fund manager is lower than the amount of remuneration prescribed under sub-rule (12) of rule l0V of the Rules, but is at arm's length, itshall be sufficient compliance to clause (m) of sub-section (3) of section 9A of the Act.It is stated that the remuneration to be paid to the fund manager, for the financial year 2021-22, shall be in accordance with sub-rule (12) of rule 10V of the Rules and the application for lowerremuneration in terms of 2nd proviso for this year, if any, may be filed not later than 15 February,2021.

-Compiled by Hiloni Shah

Case Laws:

1) Issue Involved:

- **In the ITAT Mumbai, in case of Interactive Avenues Pvt Ltd vs DCIT Circle 14(2)(1), Mumbai [Assessment Year: 2015-16], December 1, 2020 [2020]**

GIST OF THE CASE:

The assesse is an internet advertising agency . During the relevant previous year, the assesse had made certain payments to Facebook Ireland Limited towards the cost of advertisements, carried by facebook, for its clients. In the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assesse has not deducted tax at source from these payments to Facebook Ireland Limited, whereas, for the detailed reasons set out by the Assessing Officer, the tax was deductible from the same under section 195 of the Income Tax Act, 1961.Thus, the Assessing Officer disallowed these payments to Facebook Ireland Limited, in computation of business income, under section 40(a)(i).

HELD:

Provision of section 40(a)(i) relevant extracts from which are as follows:

Section 40: Amounts not deductible

Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee—

(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has notbeen deducted or, after deduction, has not been paid on or before the due datespecified in sub-section (1) of section 139.

After a Plain reading of the above section, it can be easily understood that for an expenditure to be disallowed, it is necessary that the expenditure should be claimed as deduction u/s 30 to 38. In the present case, assesse has not claimed any deduction in respect of expenditure incurred on payments made to Facebook Ireland Limited, and, therefore, the impugned disallowance of payment made to Facebook Ireland Limited is wholly devoid of any legally sustainable merits.

Thus it can be concluded that if no deduction has been claimed of an expenditure, the question of disallowance does not arise.

2) Issue Involved:

The assesse had earned Long term capital gain and claimed exemption u/s 10(38) of the act. The A.O concluded that the assesse had adopted a colorable device to avoid tax and made an addition of bogus LTCG solely on the basis of report of the investigation wing Kolkata.

- **In the High Court of New Delhi, in the case of PCIT -12 v. SMT Krishna Devi [ASSESSMENT YEAR 2015-16], 15.01.2021.**

GIST OF THE CASE:

The Respondent-Assessee is an individual who has derived income from interest on loan, FDR, NSC and bank interest under the head of 'income from other sources' in respect of A.Y. 2015-16. She filed her return of income, declaring total income of Rs. 13,96,116/-. After claiming deduction of Rs. 1,60,000/- under Chapter VI-A, the total taxable income of Respondent was declared to be Rs. 12,36,120/-. The case was selected for scrutiny. During the scrutiny proceedings, the AO noticed that for the relevant year under consideration, the Respondent had claimed exempted income of Rs. 96,75,939/- as receipts from Long Term Capital gain under Section 10(38) of the Act. He concluded that the assesse had adopted a colorable device of LTCG to avoid tax and accordingly framed the assessment order under Section 143(3) of the Act at the total income of Rs. 1,09,12,060/-, making an addition of Rs. 96,75,939/- under Section 68 read with 115BBE of the Act on account of bogus LTCG on sale of penny stocks of a company named M/s

Gold Line International Finvest Limited. The appeal before the CIT(A) was dismissed and additions were confirmed with the observation that the Respondent had introduced unaccounted money into the books without paying taxes. Further appeal filed by the Respondent before the learned ITAT was allowed in her favour, and the additions were deleted. Aggreived by the order of the ITAT, revenue filed an appeal before high court.

HELD:

The Ld A.O formed a conclusion that the assesse had entered into an agreement to convert unaccounted money by claiming fictitious LTCG. The A.O extensively relied upon the survey operations conducted by the Investigation wing, Kolkata. However, the A.O did not make necessary actions to obtain necessary evidence to form a conclusion that they were accommodation entries. The Ld ITAT held that the assesse has successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. Therefore, it was held that no substantial question law arises of the consideration of High Court.

-Compiled by Hitesh Lund

GST

Notifications

1) Notification No.95/2020–Central Tax, Dated 30th December, 2020

As per this notification the time limit for furnishing GST Annual Return & Audit for the FY 2019-20 is extended to 28.02.2021

2) Notification No. 01/2021–Central Tax, Dated 1stJanuary, 2020

As per the notification the Central Government has made following amendment in the CGST Rules, 2017

1. A registered person shall not be allowed to furnish the details of outward i.e in FORM GSTR-1, who fails to file the return of GSTR-3B for the two consecutive month (in case of monthly return) or for the preceding tax period (in case of quarterly return).

2. The Rule 86B - restriction on availment of Input Tax Credit (available in Electronic Credit Ledger), where the tax liability for the month or tax period exceeds Rs. 50 Lakhs (only taxable supply), the taxpayer need to pay 1% of the total tax liability in cash i.e. through Electronic Cash ledger, in short the Tax payer will be eligible to utilise ITC - 99% only of total available ITC.

The above taxpayer shall not be allowed to furnish the details in GSTR-1 if he has not furnished the return GSTR 3B for preceding tax period.

Note: The detailed information relating to the Rule 86B was given in the newsletter for the month of Dec-20.

http://www.rcjainca.com/Image/Dec-Newsletter.pdf

3) Notification No. 02/2021–Central Tax, Dated 12thJanuary, 2021

As per the notification following amendment is made in the earlier notification no. 2/2017-Central Tax, dated the 19th June, 2017

Before Amendment	**After Amendment**
Commissioner (Appeals I) Delhi and Additional Commissioner (Appeals I) Delhi	Commissioner (Appeals I) Delhi and Additional Commissioner **(Appeals II)** Delhi Jurisdiction – Delhi I & Delhi II
Commissioner (Appeals I) Mumbai and Additional Commissioner (Appeals I) Mumba	Commissioner **(Appeals II)** Mumbai and Additional Commissioner (Appeals I) Mumbai. Jurisdiction – Mumbai I &Mumbai II

-Compiled by Radhika Yadav

RBI

1. **RBI/2020-21/83**

Ref.No.DoS.CO.PPG./SEC.04/11.01.005/2020-21

Risk Based Internal Audit (RBIA) Framework – Strengthening Governance arrangements

1. In terms of the Guidance Note on Risk-Based Internal Audit issued by RBI banks are required to put in place a risk based internal audit (RBIA) system as part of their internal control framework that relies on a well-defined policy for internal audit, functional independence with sufficient standing and authority within the bank, effective channels of communication, adequate audit resources with sufficient professional competence, among others.

2. To bring uniformity in approach followed by the banks, as also to align the expectations on Internal Audit Function with the best practices, banks are advised as under:

a) Authority, Stature and Independence - The internal audit function must have sufficient authority, stature, independence and resources within the bank, thereby enabling internal auditors to carry out their assignments with objectivity. Accordingly, the Head of Internal Audit (HIA) shall be a senior executive of the bank who shall have the ability to exercise independent judgement. The HIA as well as the internal audit function shall have the authority to communicate with any staff member and have access to all records or files that are necessary to carry out the entrusted responsibilities.

b) Competence - Requisite professional competence, knowledge and experience of each internal auditor is essential for the effectiveness of the bank's internal audit function. The desired areas of knowledge and experience may include banking operations, accounting, information technology, data analytics and forensic investigation, among others. Banks should ensure that internal audit function has the requisite skills to audit all areas of the bank.

c) Staff Rotation - Except for the entities where the internal audit function is a specialised function and managed by career internal auditors, the Board should prescribe a minimum period of service for staff in the Internal Audit function. The Board may also examine the feasibility of prescribing at least

one stint of service in the internal audit function for those staff possessing specialized knowledge useful for the audit function, but who are posted in other departments, so as to have adequate skills for the staff in the Internal Audit function.

d) Tenor for appointment of Head of Internal Audit - Except for the entities where the internal audit function is a specialized function and managed by career internal auditors, the HIA shall be appointed for a reasonably long period, preferably for a minimum of three years.

e) Reporting Line - The HIA shall directly report to either the Audit Committee of the Board (ACB) / MD & CEO or Whole Time Director (WTD). Should the Board of Directors decide to allow the MD & CEO or a WTD to be the 'reporting authority' of the HIA, then the 'reviewing authority' shall be with the ACB and the 'accepting authority' shall be with the Board in matters of performance appraisal of the HIA. Further, in such cases, the ACB shall meet the HIA at least once in a quarter, without the presence of the senior management, including the MD & CEO/WTD. The HIA shall not have any reporting relationship with the business verticals of the bank and shall not be given any business targets. In foreign banks operating in India as branches, the HIA shall report to the internal audit function in the controlling office / head office.

f) Remuneration – The independence and objectivity of the internal audit function could be undermined if the remuneration of internal audit staff is linked to the financial performance of the business lines for which they exercise audit responsibilities. Thus, the remuneration policies should be structured in a way that it avoids creating conflict of interest and compromising audit's independence and objectivity.

3. The internal audit function shall not be outsourced. However, where required, experts, including former employees, could be hired on contractual basis subject to the ACB being assured that such expertise does not exist within the audit function of the bank. Any conflict of interest in such matters shall be recognised and effectively addressed. Ownership of audit reports in all cases shall rest with regular functionaries of the internal audit function.

2. **RBI/2020-21/86**
   DOR.No.CRE.BC.33/21.06.007/2020-21

   Prudential Guidelines on Capital Adequacy and Market Discipline - New Capital Adequacy Framework (NCAF) - Eligible Credit Rating Agencies – CRISIL Ratings Limited

   CRISIL Limited has been accredited for the purpose of risk weighting the banks' claims for capital adequacy purposes along with other credit rating agencies (CRAs) registered with Securities and Exchange Board of India (SEBI). The rating business of CRISIL Limited has since been transferred to CRISIL Ratings Limited, a wholly owned subsidiary of CRISIL Limited. Banks may therefore, use the ratings of the CRISIL Ratings Limited for the purpose of risk weighting their claims for capital adequacy purposes. The rating-risk weight mapping for the long term and short-term ratings assigned by CRISIL Ratings Limited will be the same as was in the case of CRISIL Limited and there is no change in the rating symbols earlier assigned by CRISIL Limited.

3. **RBI/2020-21/87**
   CEPD.CO.PRD.Cir.No.01/13.01.013/2020-21

   Strengthening of Grievance Redress Mechanism in Banks

   1. As part of the disclosure initiative, banks were advised to disclose in their annual reports, summary information regarding the complaints handled by them; and certain disclosures were also being made in the Annual Report of the Ombudsman Schemes published by the Reserve Bank. To further strengthen grievance redress mechanisms, banks were mandated to appoint an Internal Ombudsman (IO) to function as an independent and objective authority at the apex of their grievance redress mechanism.

   2. Effective grievance redress should be an integral part of the business strategy of the banks. It is, however, evident from the increasing number of complaints received in the Offices of Banking Ombudsman (OBOs), that greater attention by banks to this area is warranted. More focused attention to customer service and grievance redress will ensure satisfactory customer outcomes and greater customer confidence.

   3. In view of the above, and to further strengthen the customer grievance redress mechanism in banks, it has been decided to put in place a comprehensive framework comprising of enhanced disclosures by banks on

customer complaints, recovery of cost of redress from banks for the maintainablecomplaints received against them in OBOs in excess of the peer group average, and undertaking intensive review of the grievance redress mechanism and supervisory action against banks that fail to improve their redress mechanism in a time bound manner.

4. **RBI/2020-21/84**
   DGBA.GBD.No.SUO 546/45.01.001/2020-21

   Withdrawal of circulars - on Recovery of excess pension made to pensioners

   It has been brought to the notice of RBI that the recovery of excess /wrong pension payments from the pensioners are being made in a manner that is not in keeping with the extant guidelines / Court orders. This issue has been examined by RBI and it has been decided that the earlier circulars issued by Department of Government and Bank Accounts, Reserve Bank of India related to recovery of excess pension paid by agency banks stands withdrawn.

   -Compiled by Vinayak Gupta

ROC

1. **Scheme for Condonation of Delay for Companies Restored During Dec 2020 u/s 252 of the Companies Act 2013:**

   The above scheme provides for companies who had preferred an appeals under section 252 of the act, decided that such companies may be provided with the benefit of wavier of additional fees in respect of overdue filings u/s 252 of the act, without any immunity in civil/ criminal proceedings.

   Details of The Above Mentioned Scheme:

   1. Effective Date: 01 February, 2021.

   2. Applicablity: Companies who filed an appeal under section 252 of the act for restoration of name in month of december 2020.

   3. Duration of Scheme: The last date of filing of overdue e-form shall be 31/03/2021.

   4. Forms For Which Scheme Is Applicable: All e-forms (except : Forms SH-7,CHG-1,CHG-8 And CHG-9).

   5. Fees: Normal fees and no additional fees on forms on which above scheme is applicable.

2. **Report of the Company Law Committee on Decriminalization of the Limited Liability Act 2008**

   The company law committee recommended recategorizing 16 out of the 81 overall offences compoundable under Companies Act 2013.The recategorizing of the offences would be done to an in-house adjudication framework, wherein the adjudicating officer would levy a heavy penalty in the event of a default. As for now, non-compoundable offences, no change was recommended. These move will not only reduce the burden on NCLT but it will also help the litigators as the in-house adjudication mechanism is cost and time effective. For more details refer:

   http://www.mca.gov.in/Ministry/pdf/Report%20of%20the%20Company%20Law%20Committee%20on%20Decriminalization%20of%20The%20Limited%20Liability%20Partnership%20Act,%202008.pdf

3. **Companies (CSR Policy) Amendment Rules,2021**

MCA has released order notifying the amendments in CSR Rules for companies.

- Every entity that intends to undertake any CSR activity will have to register itself with the Central Government by filing the form CSR-1 electronically with the Registrar of Companies, with effect from April 1, 2021.
- Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally.
- On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

*Besides this, companies undertaking CSR activities will have to share:

- Impact Assessment for big CSR projects.
- Carry forward and set off of CSR expenditure Annual action plan for CSR by Board every year in addition to CSR policy.
- Tweaks in reporting formats of Board Report.
- Mandatory disclosure of CSR projects and activities on company website.
- Capital Asset acquisition and its holding restricted to three bodies broadly.
- In the event of the company failing to spend the earmarked two percent of net profits towards CSR, it will "have to specify the reasons for not spending the amount" and, unless the unspent amount relates to any ongoing project, transfer it to a government notified fund.

4. Relaxation of Additional Fees in Filing of E-Forms for the Financial Year ended on 31/03/2021 under Companies Act 2013

Normal fees shall be payable upto 15/02/2021 for the filing of e-forms AOC-4, AOC-4(CFS), AOC-4XBRL, AOC-4 NON-XBRL for financial year ended on 31/03/2020.

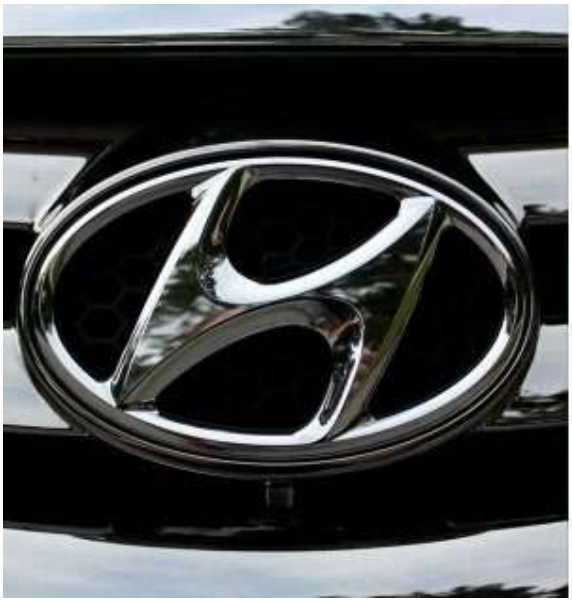
5. Clarification on spending of CSR Funds for Awareness and Public Outreach on Covid-19 Vaccination Programme

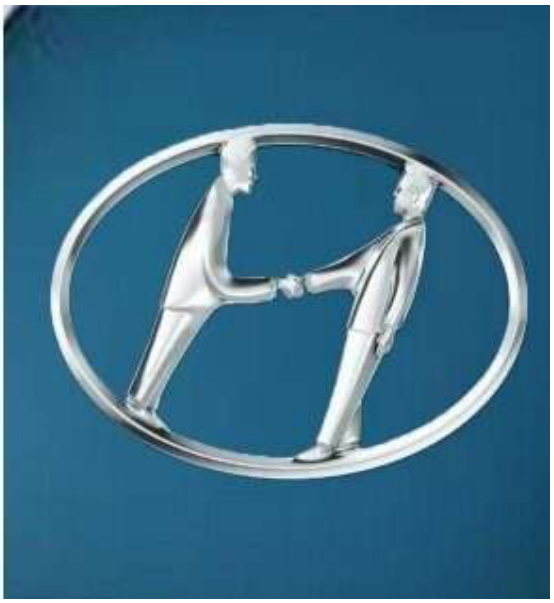
The notification states that spending of CSR Funds for carrying out awareness campaigns/programmes or public outreach campaigns on covid-19 Vaccination Programme is an eligible CSR Activity.

-Compiled by Pooja Gorana

The DID You know section.....

Many people think that the logo of the south Korean company Hyundai is simply the first letter of its name. In fact the letter "H" symbolise two people a client and a representative of a company shaking hands.





Allow us to tell you more!

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