

R.C. JAIN AND ASSOCIATES LLP

NEWSLETTER

December 2022

*“Inspiration does exist, but it must
find you”*

- Jay Gudhka



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Notification No. 128/2022

With respect to the provisions referred in sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961, The Central Government hereby specifies the pension fund, namely, 1000242244 Ontario Inc. (PAN: AACCCZ0457B), (hereinafter referred to as the assessee) as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as the said investments) subject to the fulfillment of the following conditions, namely:-

- (i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;
- (ii) the assessee shall furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10 of the Act, during the financial year from an accountant as defined in the Explanation below sub-section (2) of section 288 of the Act, as per the provisions of clause (vi) of Rule 2DB of the Act;
- (iii) the assessee shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB;
- (iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;
- (v) the assessee shall continue to be regulated under the law of the Government of Ontario, Canada;
- (vi) the assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death

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benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;

- (vii) the earnings and assets of the assessee should be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (vi) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person; barring any payment made to creditors or depositors for loan or borrowing [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] taken for the purposes other than for making investment in India;
- (viii) the assessee shall not have any loans or borrowings [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act], directly or indirectly, for the purposes of making investment in India; and
- (ix) the assessee shall not participate in the day to day operations of investee [as defined in clause (i) of Explanation 2 to clause (23FE) of section 10 of the Act] but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee.
- (x) the said investment of the assessee shall be held for at least three years as required under sub-clause (ii) of clause (23FE) of section 10 of the Act.

Violation of any of the conditions as stipulated in the said clause (23FE) of section 10 of the Act and this notification shall render the assessee ineligible for the tax exemption.

This notification shall come into force from the date of its publication in the Official.

~ Compiled by Pooja Thopate

Income Tax

Case Law I:

Reference: [2022] 144 taxmann.com 221 (SC)

Case Details: TDS Applicability under section 194H - TDS on Commission Income.

Singapore Airlines Ltd. vs. Commissioner of Income-tax

Facts of the Case

The Supreme Court has given a significant ruling on the applicability of Section 194H TDS on commission income. The Court has held that Section 194H applies to the additional amount, over and above net airfare, charged by agents from customers.

The lack of control that the assessee has over the actual airfare charged by the agents over and above the net airfare cannot form the legal basis for the assessee to avoid its liability to deduct tax under Section 194H.

Assessee-company engaged in the business of air transport services. The business mechanism of the assessee involves booking tickets through travel agents. International Air Transport Association (IATA) sets the base fare for air tickets. However, the airlines may sell their tickets for a net fare lower than the base fare but not higher.

Travel agents act on behalf of airlines to market and sell tickets and are entitled to a commission on the basic fare of the ticket fixed by the IATA.

Further, airlines have no control over the actual fare at which the agents sell tickets, and the agents are at liberty to set a price lower than the base fare fixed by IATA but still higher than the net fare demanded by the airline.

The additional amount charged by travel agents over and above the net fare quoted by airlines was retained by the agents as their own income.

The issue before the Supreme Court was:

Supreme Court Held

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The Supreme Court held that there is a distinction between a contract of agency and a contract of sale. A contract of sale is executed when the seller transfers the title of the goods to the buyer.

As per the agreement between the airline and the agent, the agent would sell the ticket as per the directions of the airline, and in case of any loss incurred by the agent, he would be indemnified by the airline.

There was no contract of sale between the assessee and the travel agent. The airline retains title over the travel tickets and is responsible for the actual services provided to the final consumer.

Further, as per the agreement, "all monies" collected by the agents on the sale of air tickets will be held by them in a fiduciary capacity. Accordingly, there was a contract of agency and not a contract of sale.

Further, the arrangement between the purchaser of the ticket and the agent is merely a part of the agency agreement and not a separate agreement. The extra benefit gained by the agent on the sale of tickets is due to the agency agreement entered with the airline.

The lack of control that the airlines have over the actual fare charged by the travel agents over and above the net fare cannot form the legal basis for the assessee to avoid its liability to deduct tax under Section 194H.

Thus, these amounts were incidental to the transaction by which the air tickets were sold on behalf of airlines and were for the benefit of agents. Such incidental benefit must come under the ambit of the principal-agent relationship.

The commission under Section 194H includes any payment received directly or indirectly by the agent on behalf of the principal. It does not distinguish the payment based on the source of such receipt.

Therefore, the amount retained by the agents on the sale of air tickets was a supplementary commission, liable for tax deduction under Section 194H.

Case Law II:

Reference: [2022] 143 taxmann.com 278 (SC)

Case Details: Assistant Commissioner of Income-tax (Exemptions) v. Ahmedabad Urban Development Authority

Facts of the Case

The primary question before the Supreme Court was the correct interpretation of the *proviso* to Section 2(15), which defines 'Charitable purpose'.

ITAT Held

The Supreme Court has clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce, or business or provide service in relation thereto for any consideration.

However, in the course of achieving the object of General Public Utility (GPU), the concerned organisation can carry on trade, commerce, or business or provide services in relation thereto for consideration, provided that:

- The activities of trade, commerce, or business are connected to the achievement of its objects of GPU; and
- The receipt from such business or commercial activity or service in relation thereto does not exceed the quantified limit of 20% of total receipts of the previous year.

Charging of any amount towards consideration for such an activity (advancing general public utility), which is on a cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto.

It is only when the charges are significantly above the cost incurred by the assessee, they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business".

Further, Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities should be conducted in the course of achieving the GPU object, and the income, profit, or surplus or gains must, therefore, be incidental.

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The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the *proviso* to Section 2(15) has not been breached.

The assessing authorities must, every year, scrutinise the record to discern whether the *nature* of the assessee's activities amounts to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on a cost-basis or significantly higher).

If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in the *proviso* to Section 2(15), has been breached, thus disentitling them to exemption

~ *Compiled by Omkar Malekar*

1. **RBI/2022-23/159**
DOR.CRE.REC.92/07.10.002/2022-23

Date: 30th December 2022

Individual Housing loans - Revised limits under four-tiered regulatory framework

The is for all primary (urban) Co-operative banks,

In terms of the circular DOR.CRE.REC.42/09.22.010/2022-23 dated June 8, 2022, ceilings on housing loans to individuals are prescribed as Rs.60 lakh for Tier-I UCBs and Rs.140 lakh for Tier-II UCBs. Consequent upon classification of UCBs into four tiers under the revised regulatory framework, it has been decided to specify the limits on housing loans sanctioned by UCBs to an individual borrower as Rs.60 lakh for Tier-1 UCBs and Rs.140 lakh for UCBs categorized in Tier-2 to 4. Other terms and conditions of the circular *ibid*, remain unchanged.

The limits prescribed under this circular are effective from the date of this circular. However, existing housing loans sanctioned prior to the date of this circular, which may be in breach of the ceiling, will be allowed to run off till maturity.

2. **RBI/2022-23/158**
CO.DPSS.OVRST.No.S1619/06-08-005/2022-2023

Date: 26th December 2022

Central Payments Fraud Information Registry - Migration of Reporting to DAKSH

As announced in the Monetary Policy Statement 2019-20 on August 07, 2019, the Reserve Bank of India (RBI) had operationalized the Central Payments Fraud Information Registry (CPFIR) in March 2020 with reporting of payment frauds by scheduled commercial banks and non-bank Prepaid Payment Instrument (PPI) issuers.

To streamline reporting, enhance efficiency and automate the payments fraud management process, the fraud reporting module is being migrated to DAKSH - Reserve Bank's Advanced Supervisory Monitoring System. The migration will be effective from **January 01, 2023**, i.e., entities shall commence reporting of payment frauds in DAKSH from this date. In addition to the existing bulk upload facility to report payment frauds, DAKSH provides additional functionalities, viz. maker-checker facility, online screen-based reporting, option for requesting additional information,

facility to issue alerts / advisories, generation of dashboards and reports, etc. The reporting guidelines are mentioned in the Annex.

These directions are issued under Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007).

For detailed annexure kindly refer the above circular.

3. **RBI/2022-23/155**
DOR.ACC.REC.No.91/21.04.018/2022-23

Date: 13th December 2022

Reserve Bank of India (Financial Statements - Presentation and Disclosures)
Directions, 2021 - Disclosure of material items

Kindly refer to the notes and instructions for compilation of Balance Sheet and Profit and Loss Account, for commercial banks, as specified in Annexure II to the Reserve Bank of India (Financial Statements-Presentation and Disclosures) Directions, 2021 (hereinafter referred to as "Directions").

In terms of Part A of Annexure II to the Directions, in case any item under the subhead "Miscellaneous Income" under the head "Schedule 14-Other Income" exceeds one per cent of total income, particulars shall be given in the notes to accounts. Similar instructions exist in case of subhead "Other expenditure" under the head "Schedule 16-Operating Expenses".

In order to ensure greater transparency, it has been decided that banks shall also disclose the particulars of all such items in the notes to accounts wherever any item under the Schedule 5(IV)-Other Liabilities and Provisions- "Others (including provisions)" or Schedule 11(VI)-Other Assets- "Others" exceeds one per cent of the total assets.

Further, Payments Banks shall also disclose particulars of all such items in the notes to accounts, wherever any item under the Schedule 14(I)-Other Income- "Commission, Exchange and Brokerage" exceeds one per cent of the total income.

Also with reference to Clause 6 of the Chapter IV of the Directions *ibid*, in terms of which more comprehensive disclosures than the minimum required are encouraged, especially if such disclosures significantly aid in the understanding of the financial position and performance of banks.

Applicability

These instructions are applicable to all commercial banks. These instructions shall come into effect for disclosures in the notes to the annual financial statements for the year ending March 31, 2023 and onwards.

The Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 shall stand updated to reflect these changes.

4. RBI/2022-2023/94

A. P. (DIR Series) Circular No. 20

Date: 12th December 2022

Master Direction - Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022

Within the contours of the Regulations, the Reserve Bank issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act, 1999 (Act 42 of 1999). These Directions lay down the modalities for the AD Cat-I banks for facilitating hedging of commodity price risk and freight risk in overseas markets by their customers / constituents.

The Master Direction - Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022 are enclosed herewith. AD Cat-I banks may bring the contents of these Directions to the notice of their customers / constituents concerned.

The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

The Reserve Bank of India, in exercise of the powers conferred under Sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999), hereby issues the following Directions.

Kindly refer the link for detailed annexure:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12427&Mode=0>

~ Compiled by Hrithik Jain

GST

Notifications:

❖ Notification No. 26/2022-Central Tax, Dated 26th December, 2022

1. **Generation of OTP from GST Portal**

Current	Proposed
OTP shall be sent to mobile number and E-mail Address registered with GST Portal.	OTP shall be sent to mobile number and E - mail address linked to PAN.

2. **Aadhar Authentication is mandatory for GST Registration:**

- Application for Registration under GST is complete only when Aadhar Authentication is completed.

3. **Physical Verification of premises mandatory for GST Registration:**

- Application for Registration will be approved *only after physical verification of the premises* even after Aadhar authentication if the said person is identified on the common portal based on data analysis and risk parameters, for carrying out physical verification of places of business.

• **Input Tax Credit**

1. **Rule 37A inserted (w.e.f. 1st October 2022)**

Where GSTR 3B pertaining to ITC in respect of Invoice or Debit Note has *not been furnished* by the corresponding supplier *till the 30th day of September following the end of the FY* in which the ITC in respect of Invoice or Debit Note has been availed,

The said amount of ITC shall be reversed by the said registered person, while furnishing a return in Form GSTR 3B *on or before the 30th day of November following the end of such FY*

Proviso 1

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Where the said amount of ITC is *not reversed* by the registered person in a return in Form GSTR 3B *on or before the 30th day of November* following the end of such FY during which such ITC has been availed, *such amount shall be payable by the said person with interest thereon under section 50.*

Proviso 2

Where the said supplier subsequently furnishes the return in Form GSTR 3B for the said tax period, the said registered person may **re - avail** the amount of such credit in the return in Form GSTR 3B for a tax period thereafter.

- **Payment**

2. **Rule 87(8) proviso inserted**

Rule 87(8) proviso:

Where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e - Scroll of the Reserve Bank of India in cases where the details of the said e - Scroll are in conformity with the details in challan generated in Form GST PMT - 06 on the Common Portal.

3. **Rule 88C inserted**

Rule 88C: Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.

When this rule applies?

Tax payable as per **GSTR 1** > Tax payable as per **GSTR 3B** by such amount and such percentage, as may be recommended by the Council

Provision

The said registered person shall be intimated of such difference in *Part A of Form GST DRC - 01B*, electronically on the common portal and a copy of such intimation shall also be sent to his E-mail address provided on the GST portal, highlighting the said difference and directing him to -

a. pays the differential tax liability, along with interest under section 50, through Form GST DRC - 03; or

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b. explains the aforesaid difference in tax payable on the common portal, within a period of seven days.

(All the taxpayers are thereby requested to ensure that there are no differences between GSTR 1 and GSTR 3B filed).

Steps to be undertaken by the Registered Person to whom intimation is sent

The Registered Person shall upon receipt of the intimation referred above, either

a) **pay the amount** of differential tax liability, as specified in Part A of Form GST DRC - 01B, fully or partially, along with interest under section 50, through Form GST DRC - 03 and furnish the details thereof in Part B of Form GST DRC - 01B electronically on the common portal; or

b) **furnish a reply electronically on the common portal**, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of Form GST DRC - 01B within a period of seven days

Consequence of non - payment or non - furnishing of reply or reason furnished by the Registered Person to whom the intimation is sent is not acceptable.

Where the amount specified in the intimation remains unpaid within the period of **seven days** and

where no explanation or reason is furnished by the registered person in default or

where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, **the said amount shall be recoverable in accordance with the provisions of section 79 (Recovery of Tax).**

- **Returns**

4. Rule 59(6)(d) inserted

Rule 59(6)(d)

A registered person, to whom the intimation has been issued on the common portal under the provisions of Rule 88C(1) in respect of a tax period,

shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in Form GSTR 1 or using IFF for a subsequent tax period,

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unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of rule 88C(2).

(Tax payer will not be allowed to file GSTR 1 in case no reply done to notice issued under section 88 C)

- **Tax Invoice, Debit Notes and Credit Notes**

5. Rule 46(f) Proviso inserted

Rule 46(f) Proviso

Where any taxable service is supplied by or through an electronic commerce operator or by a supplier of OIDAR services *to a recipient who is un-registered*, irrespective of the value of such supply,

A tax invoice issued by the registered person shall *contain the name and address of the recipient along with its PIN code* and the name of the State and the said address shall be deemed to be the address on record of the recipient

Earlier the name and address of the recipient was required to be mentioned in the tax invoice in case the value of taxable supply is less than Rs. 50,000/- only if the recipient requests for the same.

6. Rule 46A proviso inserted

The said single “invoice cum bill of supply” shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

❖ **Notification No. 27/2022 –Central Tax, Dated 26th December, 2022:**

New CGST Rule 8(4A) to apply in Gujarat State only hereby specifies that the provisions of sub-rule (4A) of rule 8 of the said rules shall not apply in all the States and Union territories except the State of Gujarat. **Amended Rule 8(4A)** of the CGST Rules to state that the application for registration shall be deemed to be complete only after **the biometric-based Aadhaar authentication and taking photograph of the applicant** in case of an individual or of such individuals in relation to the applicant as notified where the applicant is not an individual.

~ *Compiled by Adarsh Shah*

- **Migration of Company e-forms from MCA V2 into V3 Portal:**

Ministry of Corporate Affairs is launching Second set of Company Forms covering 56 forms in two different lots on MCA21 V3 portal. 10 out of 56 forms will be launched on 09th January 2023 at 12:00 AM and the remaining 46 forms on 23rd January 2023. Following forms will be rolled-out on 09th January 2023:

SPICe+ PART A, SPICe+ PART B, RUN, AGILE PRO-S, INC-33, INC-34, INC-13, INC-31, INC-9 and URC-1.

Click here to view list of 46 forms which will be rolled-out on 23rd January 2023.:
<https://www.mca.gov.in/content/dam/mca/configurations/new-forms-20221226.pdf>

To facilitate implementation of these forms in V3 MCA21 portal, stakeholders are advised to note the following points:

- (1) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 08th January 2023 11:59 pm for 10 forms which are planned for roll-out on 09th January 2023.
- (2) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 22nd January 2023 11:59 pm for 46 forms which are planned for roll-out on 23rd January 2023.

~ Compiled by Pritesh Nakashe

#HUNAAR HAAT



~ Priya Suthar

Allow us to tell you more!



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