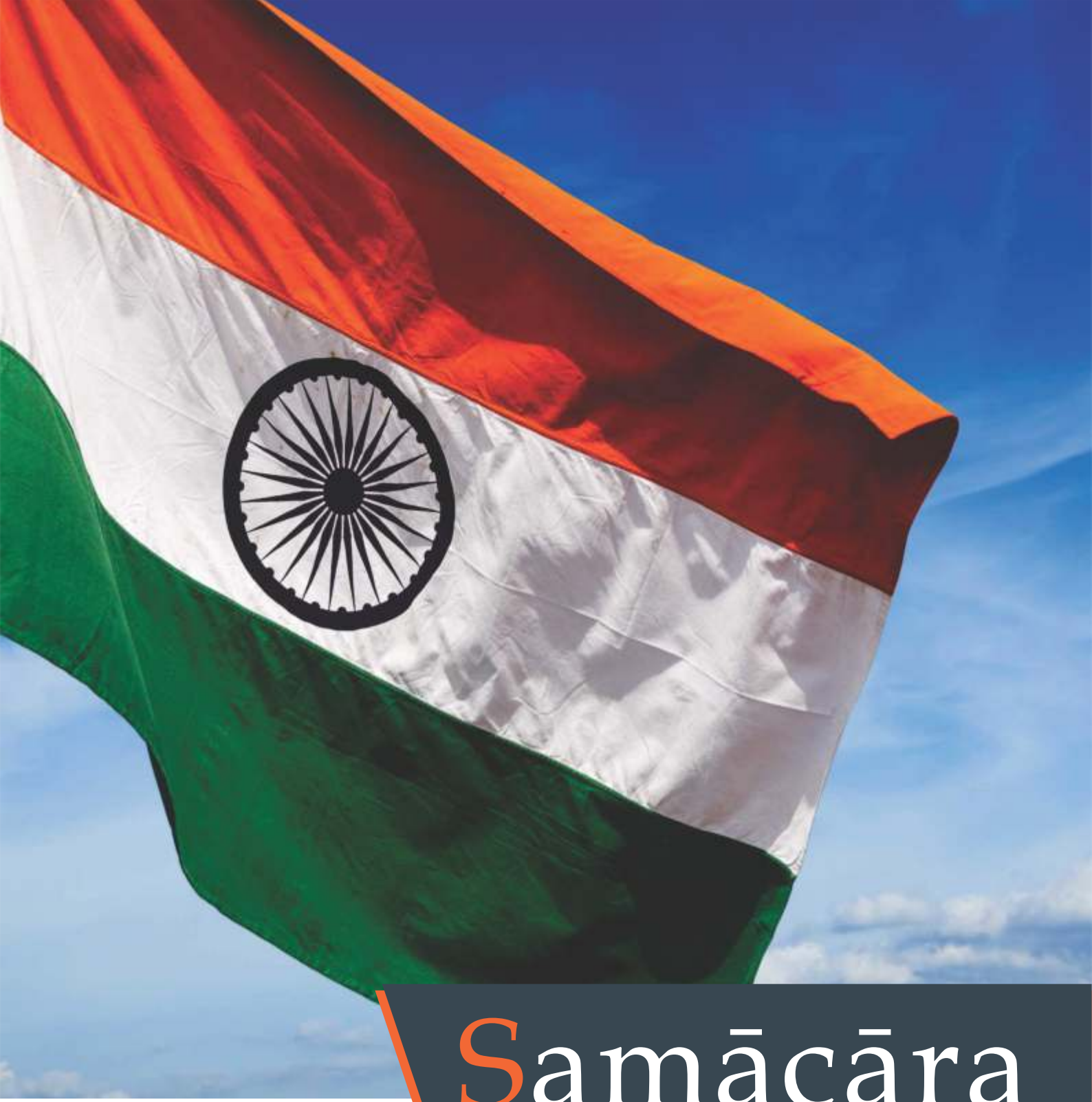

# Samācāra

## AUGUST 2018


S P C M & ASSOCIATES

Chartered Accountants

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# INDEX

# EDITORIAL

Dear All,

"Salute to the ones who have kept us safe and whose sacrifices keep us free, to live the lives we want to."

**Wishing you all a very Happy Independence Day!**

This month marks the beginning of festive season. These are the occasions when we meet our families and friends. The time spent with our family and friends is the best moment of our life which we always cherish. Along with this festive season, we, the professionals also have to adhere to our professional commitments and it is the proper time management that helps us to maintain the balance between work, family and friends.

On the GST front from the recommendations of the 28th GST Council Meeting and actions taken by issuing various notification regarding reduction in rates of various commodities clearly indicates the efforts taken by the Council to simplify business processes especially for the Small and Medium Enterprises (SMEs). In particular:

1. Recommendation of a new process requiring the filing of a single return
2. Increase in the Eligibility Limit for Composition Scheme up to Rs. 1.5 crores and permission to opt for composition even in cases where there is insignificant value of services rendered
3. Eligibility to issue single debit/credit note against multiple invoices
4. Reopening of the GST Migration Window in certain cases.

The Negotiable Instruments (Amendment) Bill, 2018, which was passed in the Lok Sabha on July 23, was passed by the Rajya Sabha by a voice vote. The latest amendments aim to insert Section 143A and Section 148 in the Act to provide that a court trying a cheque bounce offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant. These amendments have been made to ensure that people have trust and faith on issuing cheques.

The CBDT has widened the scope of a tax auditor's reporting by including details from GAAR to GST and TDS to cash transactions of over Rs 2 lakh. The CBDT has issued a revised Form 3CD which is part of the I-T audit report. For instance, details of transactions that would be covered by GAAR, cash transactions exceeding Rs 2 lakh, GST details (not just of the taxpayer but also of parties with whom the taxpayer has transacted), details of transactions subject to TDS, a host of particulars relating to transactions with related parties such as payment of excess interest etc. are now required to be reported. The new form, comes into effect from 20th August, 2018. The challenge is that there are no objective criteria laid down in law to determine whether a transaction passes the muster of GAAR and there is a lot of subjectivity involved therein. Further, the tax auditor not only has to determine the tax benefit arising to his client, but also has to determine the tax benefit arising to all parties involved in the arrangement.

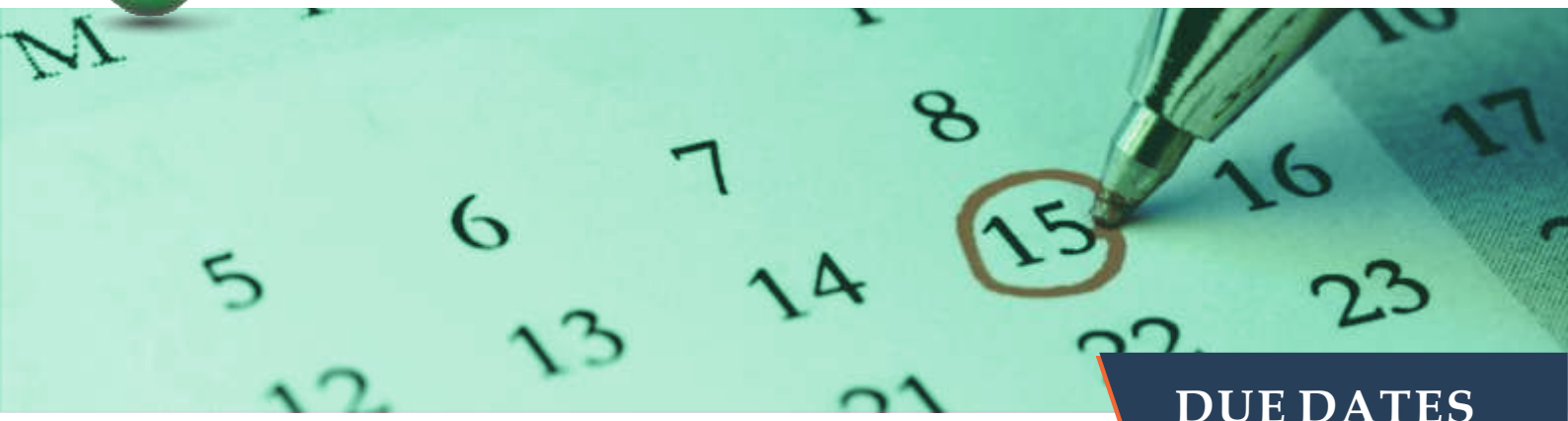
Even though the CBDT extended the due date for filling of returns for non-audit assesses from 31.07.2018 to 31.08.2018, our SPCM team has taken the efforts for completing the task by July itself and not requiring any extension. In the world that reverberates with 'nyets' our SPCM team is ready with 'ayes' and this positivity will be our focus for this entire year

At the end, I conclude with:

"Thousands of candles can be lighted from a single candle, and the life of the candle will not be shortened. Happiness never decreases by being shared"

Jai Hind!

CA. Suhas P. Bora



# DUE DATES

## MONTHLY DUE DATES REGISTER FOR AUGUST 2018

| ACT | Particulars | Due Date |
|---|---|---|
| GST | GSTR-1 for the month of July 2018 | 10th Aug, 2018 |
| GST | Due date for GST payment for the month of July 2018 | 20th Aug, 2018 |
| GST | GSTR 3B for the month of July 2018 | 20th Aug, 2018 |
| INCOME TAX | TDS/TCS Payment for the month of July 2018 | 07th Aug, 2018 |
| INCOME TAX | Due date for filing of Income Tax Returns for the assessment year 2017-18 has been extended from July 31, 2018 to 31st Aug, 2018 | 31st Aug, 2018 |
| INCOME TAX | Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of June, 2018 | 15th Aug, 2018 |
| INCOME TAX | Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of July, 2018 | 30th Aug, 2018 |
| INCOME TAX | Due Date for issue of TDS Certificates (Form 16A/27D for F.Y 2018-19 Quarter-1 | 15th Aug, 2018 |
| PF | Provident Fund Payment for the month of July 2018 | 15th Aug, 2018 |
| ESI | Employee State Insurance Corporation Payment for the month of July 2018 | 15th Aug, 2018 |
| PROFESSION TAX | E-Payment of Monthly Tax for July 2018 | 31st Aug, 2018 |
| MCA | Due Date for filing of DIR-3 KYC | 31st Aug, 2018 |


# EVENTS & CONTRIBUTIONS

## 1ST JULY CA DAY CELEBRATIONS AT SPCM AND ASSOCIATES

SPCM Senior Partners, CA. Suhas P. Bora and CA. Pradeep M. Katariya in que for Blood Donation

SPCM Junior Partner, CA. Rohan R. Nahar in que for Blood Donation

Shri Omprakashji Ranka having a conversation with CA. Suhas P. Bora and CA. Pradeep M. Katariya

SPCM Registration Counter Team welcoming the Blood Donors

SPCM Team and WMTPA Team

(From left to right) CA. Tejal A. Jain, CA. Pradeep M. Katariya, CA. Rajesh Khandelwal (Vice-Chairman, Pune Branch of WIRC, ICAI), CA. Satyanaryan Mundada (Regional Council Member, WIRC), Adv. Sanket S. Bora, Adv. Neeta S. Bora, CA. Suhas P. Bora

(From left to right) CA. Suhas P. Bora, CA. Anand R. Jakhotiya (Chairman, Pune Branch of WIRC, ICAI), CA. Pradeep M. Katariya, Adv. Abhay H. Bora.

(From left to right) CA. Pradeep M. Katariya, Sou. Shobhaji Dhariwal, Miss. Jhanvi Dhariwal, Adv. Neeta S. Bora, CA. Suhas P. Bora, Shri. Amitji Lunkad

Shri Tejpalji Ranka participating in the Blood Donation

Shri Vastupalji Ranka being felicitated for his Blood Donation

SPCM CA Day Celebration Event Managing Team


# UPDATES

## INCOME TAX

### NOTIFICATIONS

**1. Notification No. 30/F.No. 503/05/1996-FTD-I, dated 5th July, 2018**

The Central Government notifies the Protocol, amending the Convention between the Government of the Republic of India and the Government of the Republic of Armenia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed at New Delhi on the 31st October, 2003, has been signed at New Delhi on the 27th January, 2016.

**2. Notification No. 31/2018/F.No. 370142/34/2016-TPL (Part), dated 13th July, 2018**

The Central Board of Direct Taxes notifies the Income-tax (7th Amendment) Rules, 2018, which shall come into force from the date of their publication in the Official Gazette.

**3. Notification No. 32/2018/ 504/6/2004-FTD-II(Pt.1), dated 17th July, 2018**

The Central Government hereby notifies that the provisions of Mutual Agreement between Government of the Republic of India and the Government of the State of Qatar for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed on the 7th April, 1999, through exchange of letters, as annexed in the notification, shall be given effect to in the Union of India with effect from 29th April, 2018.

**4. Notification No. 33/2018/F.No. 370142/9/2018-TPL, dated 17th July, 2018**

The Central Board of Direct Taxes notifies the Income-tax (7th Amendment) Rules, 2018, which shall come into force from 20TH August, 2018.

**5. Notification No. 34/2018/ F. No. 225/245/2018-ITA. II, dated 25th July, 2018**

The Central Government, hereby specifies Director General, Central Economic Intelligence Bureau (CEIB), Department of Revenue, Government of India for purposes of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961.

Deepali R. Shah

## GST

### CENTRAL TAX NOTIFICATIONS

**1. Notification No. 26/2018-Central Tax, dated 13th July, 2018.**

The Central Government notifies the Central Goods and Services Tax (Seventh Amendment) Rules, 2018 which shall deemed to have come into force with effect from the 12th day of June, 2018.

### CENTRAL TAX RATE NOTIFICATIONS

**1. Notification No. 13/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government amends Notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

**2. Notification No. 14/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government amends Notification No.

12/2017- Central Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018

**3. Notification No. 15/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government amends Notification No. 13/2017- Central Tax (Rate) so as to specify services supplied by individual Direct Selling Agents (DSAs) to banks/ non-banking financial company (NBFCs) to be taxed under Reverse Charge Mechanism (RCM).

**4. Notification No. 16/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government amends Notification No. 14/2017- Central Tax (Rate) to notify that services by way of any activity in relation to a function entrusted to a municipality under Article 243W shall be treated neither as a supply of good nor a service.

**5. Notification No. 17/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government inserts an explanation with respect to the term "business" apropos activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities under Notification No. 11/2017 – Central Tax (Rate).

**6. Notification No. 18/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government amends Notification No. 01/2017-Central Tax (Rate), dt. 28-06-2017 so as to notify CGST rates of various goods as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

**7. Notification No. 19/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government amends Notification No. 02/2017-Central Tax (Rate),dt. 28-06-2017 to exempt various articles such as sanitary towels or napkin, rakhi (other than those falling under Chapter 71), etc. as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

**8. Notification No. 20/2018-Central Tax (Rate), dated 26th July, 2018.**

The Central Government amends Notification No 05/2017-Central Tax (Rate),dt. 28-06-2017 which deals with Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54(3) as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

**9. Notification No. 21/2018-Central Tax (Rate), 26th July, 2018.**

The Central Government prescribe concessional CGST rate on specified handicraft items, such as, Handcrafted candles, Handbags including pouches and purses; jewellery box, Articles made of paper mache, Furniture of bamboo, rattan and cane, Hand paintings drawings and pastels (incl Mysore painting, Rajasthan painting, Tanjore painting, Palm leaf painting, basoli etc), etc as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

## INTEGRATED TAX RATE NOTIFICATIONS

**1. Notification No. 14/2018-Integrated Tax (Rate), dated 26th July, 2018**

The Central Government amends notification No. 8/2017-Integrated Tax (Rate) so as to notify IGST rates of various services as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

**2. Notification No. 15/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government amends notification No. 9/2017-Integrated Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

**3. Notification No. 16/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government amends notification No. 10/2017- Integrated Tax (Rate) so as to specify services supplied by individual Direct Selling Agents (DSAs) to banks/ non-banking financial company (NBFCs) to be taxed under Reverse Charge Mechanism (RCM).

**4. Notification No. 17/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government amends notification No. 11/2017- Integrated Tax (Rate) to notify that services by way of any activity in relation to a function entrusted to a municipality under Article 243W shall be treated neither as a supply of good nor a service.

**5. Notification No. 18/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government inserts explanation with respect

to the term "business" apropos activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities under in notification No. 8/2017 – Integrated Tax (Rate) by exercising powers conferred under section 6(3) of IGST Act, 2017.

**6. Notification No. 19/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government amends Notification 01/2017-Integrated Tax (Rate),dt. 28-06-2017 to give effect to the recommendations of the GST Council in it's 28th meeting held on 21.07.2018

**7. Notification No. 20/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government amends Notification 02/2017-Integrated Tax (Rate),dt. 28-06-2017 to exempt various articles such as sanitary towels or napkin, rakhi (other than those falling under Chapter 71), etc. to give effect to the recommendations of the GST Council in it's 28th meeting held on 21.07.2018

**8. Notification No. 21/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government amends Notification 05/2017-Integrated Tax (Rate),dt. 28-06-2017 which deals with Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54(3) to give effect to the recommendations of the Goods and Services Tax Council in it's 28th meeting held on 21.07.2018

**9. Notification No. 22/2018-Integrated Tax (Rate), dated 26th July 2018**

The Central Government prescribe concessional IGST rate on specified handicraft items, such as, Handcrafted candles, Handbags including pouches and purses; jewellery box, Articles made of paper mache, Furniture of bamboo, rattan and cane, Hand paintings drawings and pastels (incl Mysore painting, Rajasthan painting, Tanjore painting, Palm leaf painting, basoli etc), etc as recommended by Goods and Services Tax Council in its 28th meeting held on 21.07.2018.

Adv. Abhay H. Bora

# CUSTOMS

## TARIFF NOTIFICATIONS

**1. Notification No. 51/2018 Customs, dated 9th July, 2018**

The Central Government amends the Notification No. 27/2011-Customs dated 01st March, 2011 so as to reduce the export duty on export of Iron Ore by MMTC Limited (only NMDC origin) to Japan and South Korea under the Long Term Agreement (LTA), from 30% to 10%, upto and inclusive of 31.03.2021.

**2. Notification No. 52/2018 Customs, dated 14th July, 2018**

The Central Government amends Notification No. 50/2017-Customs dated 30.06.2017 to expand list of exempt items for Handicraft Sector.

**3. Notification No. 53/2018 Customs, dated 16th July, 2018**

The Central Government amends Basic Custom Duty rates on certain textile goods.

**4. Notification No. 54/2018-Customs, dated 20th July, 2018**

The Central Government amends Notification Number 50/2017- Customs dated 30.06.2017.

**5. Notification No. 55/2018 Customs, dated 26th July, 2018**

The Central Government exempts IGST calculated on the assessable value over and above the value (Pool in Price) at which Urea is sold by Department of Fertilizers to Fertilizer Marketing Entities on high sea sale basis.

## NON-TARIFF NOTIFICATIONS

**1. Notification No. 08/2018-Cus (NT/CAA/DRI) dated 2th July, 2018**

The Director General, Revenue Intelligence appoints Common Adjudicating Authority to exercise the powers and discharge the duties conferred or imposed on officers mentioned in the table.

**2. Notification No. 09/2018-Cus (NT/CAA/DRI) dated 10th July, 2018**

The Director General, Revenue Intelligence appoints Common Adjudicating Authority to exercise the powers and discharge the duties conferred or imposed on officers mentioned in the table.

**3. Notification No. 10/2018-Cus (NT/CAA/DRI) dated 24th July, 2018**

The Director General, Revenue Intelligence appoints Common Adjudicating Authority to exercise the powers and discharge the duties conferred or imposed on officers mentioned in the table.

**4. Notification No. 61/2018-Cus (NT) dated 11th July, 2018**

The Central Board of Indirect Taxes and Customs amends Notification No. 12/97-Customs (NT) dated 2nd April, 1997.

**5. Notification No. 61/2018-Cus (NT) dated 13th July, 2018**

The Central Board of Indirect Taxes & Customs amends Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

**6. Notification No. 63/2018-Cus (NT) dated 19th July, 2018**

The Central Board of Indirect Taxes and Customs determines the rate of exchange of conversion of each of the foreign currencies as specified in the table.

**7. Notification No. 64/2018-Cus (NT) dated 27th July, 2018**

The Central Board of Indirect Taxes and Customs notifies the Levy of Fees (Customs Documents) Amendment Regulations, 2018 which shall come into force on the date of their publication in the Official Gazette.

CA. Chetan R. Parakh

## MAHARERA

**1. MahaRERA Circular No. 18/2018, dated 17th July, 2018**

The Maharashtra Real Estate Regulatory Authority, notifies the revised Standard Operating Procedure (SOP) for handling the complaints.

### INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

**1. Circular No. IBBI/IPE/014/2018, dated 6th July, 2018**

Insolvency and Bankruptcy Board of India clarifies the role of Insolvency Professional Entity (IPE) in providing services to Insolvency Professionals (IP).

**2. Circular No. IBBI/CIRP/015/2018 dated 13th July, 2018**

Insolvency and Bankruptcy Board of India clarifies the appointment of Authorised Representative for Classes of Creditors under section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016

Adv. Sanket S. Bora

# Analysis of section 45(3) and 50c under the Income Tax Act, 1961

**On perusal of Section 45(3) and Section 50C various questions arise such as:**

- Will section 50C applies in case of land contributed by a partner to the firm as capital contribution at cost?
- Can it be argued that section 50C does not apply as
  - what will be full value of consideration has been defined in section 45(3) and ultimately, the transfer is not to any outsider but by partner to firm who are treated as same under the general laws?
- Whether Section 50C overrides section 45(3) being a special provision?

**Let us analyse the provisions and find out answers to the questions:**

**1. Sec. 45(3) reads as follows:**

*"The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset."*

**2. Sec. 50C reads as follows:**

*"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed 11[or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed 11[or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."*

**3. The notable aspect is that s. 50C does not contain any "non -obstante" clause. Both provisions provide for what is to be the deemed consideration.**

**4. Sec. 50C was inserted with a specific object i.e. to prevent the sale of property at an undervaluation and receiving the difference in cash. In an introduction into partnership, there is no question of the partner getting anything in cash (unless the partnership itself is bogus). So, having to the object of s. 50C, it should not apply to another deeming provision in s. 45(3).**

**5. Both provisions are deeming fictions. Hence, where there is a specific deeming fiction in form of 45(3) stating that the value recorded in books of firm shall be treated as consideration then such deeming fiction cannot be overridden by another deeming fiction of 50C. Therefore, 45(3) would always prevail over 50C.**

**6. Why section 45(3) exists?**

- The Finance Act, 1987 introduced section 45(3) in the Income Tax Act, 1961 so as to counter the effect of the verdict in Sunil Siddharthbhai v. CIT (1985) 156 ITR 509 (SC): AIR 1986 SC 368.
- In Sunil Siddharthbhai case (supra) it was held that the capital contribution in a firm by a partner in the form of capital asset is like transfer to one self, there cannot be a value attributed to such transfer as it is impossible to conceive such a gain and there was no profit earned in such transfer to the partner.
- Thus, section 45(3) deems or presumes that the value attributed to the transfer of a capital asset by a person to a firm or an AOP/BOI for becoming a partner shall

be a transfer chargeable to capital gains tax in the year of such transfer with the value recorded in the firm as the full consideration received arising out of such transfer.

- In short, section 45(3) is a charging section specifically to handle scenarios of capital assets transferred as capital contribution by deeming the value recorded in the firm as the transfer value subject to capital gains. While still whether section 45(3) brings into tax a profit factually or only a notional profit is still a debatable issue in its wording or deeming that being aside the interplay of this section with section 50C is an interesting read.

**7. Roots of section 50C**

- Section 50C was inserted by the Finance Act, 2002 so as to prevent cash transfer of difference of the value determined for stamp purposes as against the consideration escaping capital gains tax by establishing that the stamp value if this is more than the consideration, then it shall be deemed to the full value of consideration received arising out of such transfer.
- The word assessed was amended to read as assessed or assessable vide Finance (No.2) Act, 2009 so as to widen even cases where stamp assessment might not be applied but ought to have been applicable.

**8. Section 45(3) verses 50C**

- Section 50C is a special provision in the statute, thus logically has to override normal provisions on the maxim generalia specialibus non derogant. So, section 45(3) also gets overridden by section 50C which is one interpretation.
- However, since both sections being artificial deeming provision the deeming effect cannot be read beyond their intended purpose conflicting or overriding each other or super imposing into one another. Thus, section 50C cannot apply to a case where section 45(3) is applicable this is another interpretation.
- The Mumbai bench of the Income-tax Appellate Tribunal (ITAT) has delivered a ruling favoring the taxpayer (Amartara Pvt. Ltd v DCIT, ITA No. 6114/Mum/2016)
  - The ITAT, distinguished the Carlton ruling decision on facts, and decided the issue in favour of the taxpayer. The ITAT held that section 45(3) is a specific provision for the following reasons:
    - section 45(3) specifically deals with cases of capital contribution by a partner to a partnership firm/LLP;
    - section 45(3) provides for computation mechanism of capital gains and also provides for the value to be adopted for the purpose of determination of full value of consideration.
  - Thus, the ITAT held that where there is a transfer of an asset as contribution by a partner to the partnership firm/LLP – section 45(3) should apply to the contribution of immovable property by the taxpayer. Consequently, the addition made by the AO and CIT(A) were deleted and the issue was decided in favour of the taxpayer.
  - Further, the ITAT relied on the judgment of the Supreme Court in CIT v Moon Mills Limited (1966) 59 ITR 574, wherein it was observed that one deeming fiction cannot be extended by importing another deeming fiction. Accordingly, the ITAT, held that another deeming fiction provided by way of section 50C cannot be extended to compute deemed full value of consideration as a result of transfer of capital asset under section 45(3) of the IT Act.

**9. Analysis of the Case Law**

- This is a welcome decision by the ITAT, as it seeks to put to rest the controversy regarding the manner of computation of capital gains in relation to capital contribution in the form of immovable property by a partner to a partnership firm/LLP – i.e. whether to adopt the Book Value as consideration or to adopt the Stamp Duty Value as consideration. In doing so, the ITAT has given precedence to special provision qua the transaction (i.e. section 45(3)) and not to the special provision qua the asset (i.e. section 50C).
- Further, it is interesting to note that the Authority for Advance Rulings (AAR), had, in the case of Canoro Resources Limited, a Canadian partnership firm, held that for computing capital gains in the hands of a partner in relation to capital contribution, the transfer pricing provisions being special provisions would override the provisions of section 45(3), thus upholding the requirement to contribute the assets at fair value. This case has not been discussed in the instant Ruling. Also, it is worth noting that established principles of statutory interpretation that the law which is later in time should prevail was not argued by

the department in the Ruling.

- Though the Ruling provides respite to partners in a partnership firm/ LLP, one would need to test the applicability of section 56 of the IT Act in the hands of the recipient partnership firm/LLP in case the Book Value of a partner's capital contribution falls short of the Stamp Duty Value (in case of immovable property) or fair market value (in case of other assets). Moreover, it needs to be borne in mind that any structuring regarding contribution of assets at book value by partner would need to pass the smell test under general anti avoidance rules, which have come in force from 1 April 2017.
- Further, while this Ruling dealt with a period when section 50CA – which contains a fair market value based deeming fiction for computing capital gains in relation to transfer of unquoted shares - was not in the IT Act, one would hope that the principle upheld by this Ruling i.e. precedence to special provision qua the transaction (i.e. section 45(3)) would be followed even in relation to capital contribution in the form of unquoted shares.
- The principles enunciated in this Ruling would give a fillip to use of a LLP as a preferred form of business entity.
- When we go through the object of insertion of Section 50C, we find that it was inserted to tackle unaccounted income by practice of under-statement of consideration in acquisition of a property. Whether stamp duty is payable or not, is not a factor relevant for attracting section 50C and this is clear from the circular of Central Board of Director Taxes (herein after referred to as "CBDT"), Circular No. 8/2002, dated 27 August, 2002: (2002) 258 ITR St.) 13, paras 37.1 to 37.4, which read as under :-

***"37. Computation of capital gains in real estate transactions. - 37.1 The Finance Act, 2002, has inserted a new section 50C in the Income-tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property.***

***37.2 It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration, and capital gains shall be computed accordingly under section 48 of the Income-tax Act.***

***37.3 It is further provided that where the assessee claims that the value adopted or assessed for stamp duty purposes exceeds the fair market value of the property as on the date of transfer, and he has not disputed the value so adopted or assessed in any appeal or revision or reference before any authority or court, the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section 55A of the Income-tax Act. If the fair market value determined by the Valuation Officer is less than the value adopted for stamp duty purposes, the Assessing Officer may take such fair market value to be the full value of consideration. However, if the fair market value determined by the Valuation Officer is more than the value adopted or assessed for stamp duty purposes, the Assessing Officer shall not adopt such fair market value and shall take the full value of consideration to be the value adopted or assessed for stamp duty purposes.***

***37.4 This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-04 and subsequent years."***

- In this decision in respect of transaction with Canadian partnership firm, it is held that When a transaction referred to in s. 45(3) is in the nature of international transaction, the value of consideration shall not be the value as recorded in the firm's account books, but the same shall be determined on the basis of arm's length price in accordance with transfer pricing provisions contained in Chapter X.
- In this case it is held that, since transfer pricing provisions are later in time, the rule of leges posteriores priores contrarias aborgant would be attracted. However, leaving that apart, it appears from the close reading of CBDT Circular No. 495, dt. 22nd Sept., 1987 that the mischief which was sought to be curbed by insertion of sub-s. (3) in Sec..45 related to the prevailing domestic practice. It was perhaps the propensity of some residents to avoid payment of capital gains tax by making transfer of asset look like capital contribution to the firm. However, the wordings of the said sub-s. (3) are wide enough to cover even an international transaction. On the other hand, ss. 92 to 92F apply exclusively to international transactions carried out between associated persons — whether individuals, firm or company. These provisions are aimed at

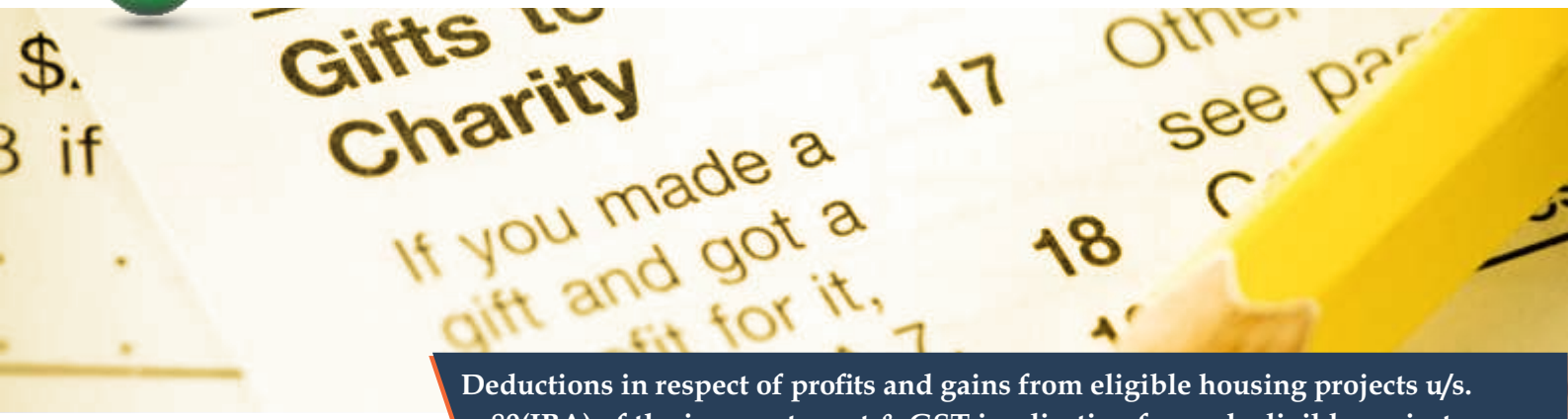
tackling the issue of price manipulation associated with international transactions. The apprehension of price manipulation is real even in international transactions between partners and firm, who are associated persons. Therefore, transfer pricing provisions should apply to such transactions as well. Otherwise, the purpose for which these provisions have been made will not be fully achieved and many transactions will go out of its purview. We are of the view that the provisions of sub-s. (3) of s. 45 and the relevant transfer pricing provisions, when read in harmony, would lead to the inference that sub-s. (3) would not apply to international transactions, which should be dealt with in accordance with the transfer pricing provisions. As such, when a transaction referred to in s. 45(3) is in the nature of international transaction, the value of consideration shall not be the value as recorded in the firm's account books, but the same shall be determined on the basis of arm's length price in accordance with transfer pricing provisions contained in Chapter X of the

- Ruling of AAR are binding on the applicant in respect of the transaction for which the ruling has been sought, and on the commissioner and the income-tax authorities subordinate to him, except where:
  - there is a change in law, or
  - there is a change in facts, or
  - if the ruling has been obtained by the applicant by fraud or by misrepresentation.
- In support of above contention reliance is place on the decision of Bombay High Court in the case of Prudential Assurance Company Ltd. vs DIT [324 ITR 381]
- Similarly, in the case before the AAR decision of Hon'ble SC in CIT v Moon Mills Limited (1966) 59 ITR 574, wherein it was observed that one deeming fiction cannot be extended by importing another deeming fiction. has not been referred to and therefore decision of AAR is per incuriam in the light of decision of Hon'ble Supreme Court in the case of CIT vs Moon Mills Ltd.
- A Constitution Bench of the Supreme Court, in the case of Ashoka Marketing Ltd. vs. Punjab National Bank (1990) 4 SCC 406 considered an apparent conflict between the provisions of the Delhi Rent Control Act, 1958 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, with regard to the manner of eviction of a tenant whose tenancy has been terminated. While reconciling the conflict, the Court referred to a large number of cases on the subject decided earlier. The Court Held:
  - "The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein."

## CONCLUSION

In view of above, since both the provisions are deeming fictions and therefore, where there is a specific deeming fiction in form of 45(3) stating that the value recorded in books of firm shall be treated as consideration then such deeming fiction cannot be overridden by another deeming fiction of 50C. Therefore, 45(3) would always prevail over 50C of the Act.

CA. Suhas P. Bora




# Deductions in respect of profits and gains from eligible housing projects u/s. 80(IBA) of the income tax act & GST implication for such eligible projects.

***(Please note that, following note is applicable for the projects sanctioned during the F.Y. 2017-2018 (A.Y. 2018-2019) or thereafter, since these are amended provisions as compare to F.Y. 2016-2017 (A.Y. 2017-2018).***

(1) Where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall, subject to the provisions of section 80(IBA), be allowed, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business.

(2) To claim the benefit of Sec. 80(IBA), a housing project shall be a project which fulfills the following conditions, namely:-

(a) the project is approved by the competent authority after the 1st day of June, 2016, but on or before the 31st day of March, 2019;

(b) the project is completed within a period of 5 Years from the date of approval by the competent authority:

Provided that,-

(I) where the approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority; and

(ii) the project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority;

(c) the built-up area of the shops and other commercial establishments included in the housing project does not exceed three per cent of the aggregate Carper Area;

(d) the project is on a plot of land measuring not less than-

(i) one thousand square metres, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai; or

(ii) two thousand square metres, where the project is located in any other place;

(da) the project is the only housing project on the plot of land as specified in clause (d);

(e) the CARPET area of the residential unit comprised in the housing project does not exceed-

(i) thirty square metres, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai; or

(ii) sixty square metres, where the project is located in any other place;

(f) where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual;

(g) the project utilises-

(i) not less than ninety per cent of the floor area ratio permissible in respect of the plot of land under the rules to be made by the Central Government or the State Government or the local authority, as the case may be, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai, or

(ii) not less than eighty per cent of such floor area

ratio where such project is located in any place other than the place referred to in sub-clause (Iand

(h) the assessee maintains separate books of account in respect of the housing project.

(3) It may please be noted that deduction under this section shall not be available to any assessee who executes the housing project as a works-contract awarded by any person (including the Central Government or the State Government).

(4) Where the housing project is not completed within the period specified under clause (b) of point No. (2) above and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the period for completion so expires.

(5) Where any amount of profits and gains derived from the business of developing and building housing projects is claimed and allowed under this section for any assessment year, deduction to the extent of such profit and gains shall not be allowed under any other provisions of this Act.

(6) For the purposes of this section,-

(a) "Carpet area" means the net usable floor area of an apartment (excluding (a) the area covered by the external walls, (b) Areas under services shafts / exclusive balcony or verandah area / exclusive open terrace area, but including the area covered by the internal partition walls of the apartment)

(b) "competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;

(c) "floor area ratio" means the quotient obtained by dividing the total covered area of plinth area on all the floors by the area of the plot of land;

(d) "housing project" means a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may approve subject to the provisions of this section;

(e) "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.

## GST IMPLICATIONS

The Projects, which are eligible housing projects U/s. 80IBA of The Income Tax Act, 1961 invariably complies with the conditions given in GST Notification No. 1/2018, Central Tax (Rate) dated 25/01/2018 and thus will be eligible for lower rate of GST 12% with 1/3 deduction for land (Thus Effective GST rate of 8%).

Since these eligible projects fit into the definition of "Infrastructure Projects" and gain the status of "Infrastructure Projects" vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017 and therefore complies with the conditions given in sub-clause (da) of clause (v) of the above referred Notification and thus lower rate of GST (i.e. 8% of the agreed consideration) will be applicable for such eligible projects.

CA. Chetan R. Parakh


# Amendment in the Negotiable Instruments Act, 1881

## HISTORY OF THE NEGOTIABLE INSTRUMENTS ACT, 1881

The Negotiable Instruments Act, 1881 (Act) was originally drafted in 1866 by the 3rd India Law Commission and introduced in December, 1867 in the Council and it was referred to a Select Committee. Objections were raised by the mercantile community to the numerous deviations from the English Law which it contained. The Bill had to be redrafted in 1877. After the lapse of a sufficient period for criticism by the Local Governments, the High Courts and the chambers of commerce, the Bill was revised by a Select Committee. In spite of this Bill could not reach the final stage. In 1880 by the Order of the Secretary of State, the Bill had to be referred to a new Law Commission. On the recommendation of the new Law Commission the Bill was re-drafted and again it was sent to a Select Committee which adopted most of the additions recommended by the new Law Commission. The draft thus prepared for the fourth time was introduced in the Council and was passed into law in 1881 being the Negotiable Instruments Act, 1881 (Act No.26 of 1881).

## FIVE OF THE OFFENCE UNDER SECTION 138

**It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:**

1. a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account

2. the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

3. that cheque has been presented to bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;

4. that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

5. the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

6. the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

## THE NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2017

**The Bill was first introduced in the Lok Sabha on January 2 2018.**

The Rajya Sabha has passed the Negotiable Instruments (Amendment) Bill, 2017 on July 26, 2018 whereas the Lok Sabha had passed the Bill on July 23, 2018.

**Following are important features of the amendment:**

1. Interim compensation:

- The Bill inserts Section 143A, allowing a court trying an offence related to cheque bouncing, to direct the

drawer (person who writes the cheque) to pay interim compensation to the complainant.

- This interim compensation may be paid under certain circumstances, including where the drawer pleads not guilty of the accusation.
- The interim compensation will not exceed 20% of the cheque amount and will have to be paid by the drawer within 60 days of the trial court's order to pay such a compensation.

**2. Deposit in case of appeal:**

- The Bill inserts Section 148, specifying that if a drawer convicted in a cheque bouncing case files an appeal, the appellate court may direct him to deposit a minimum of 20% of the fine or compensation awarded by the trial court during conviction.
- This amount will be in addition to any interim compensation paid by the drawer during the earlier trial proceedings.

**3. Returning interim compensation:**

- As per Section 143A(4) and Proviso to Section 148(3), if the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant..

Adv. Sanket S. Bora

## A PERSPECTIVE ON LIFE

### IT'S MADNESS

- to hate all roses because you got scratched by one,
- to give up on all your dreams because one did not come true,
- to give up on all your efforts because one of them failed,
- to lose faith in players because one was not answered,
- to condemn all your friends because one of them betrayed you,
- not to believe in people because some were unfaithful.

**Remember, some other chance may be right there waiting at your doorstep:**

- A new dream
- A new friend
- New people
- Altogether a new life

However hard it may get, however tedious and wearisome it may get, never ever give up on anything. It's true that:

'We don't know what we've got until we lose it!'

But it's also true that we've been missing that same thing until it arrives!

Although, it's doesn't matter how many breaths you took, but, how many moments took your breaths away!

Rather, smile because this is the only way to survive this madness…

Riya V. Oswal

# CASE LAWS

## UNREPORTED CASE LAWS IN INCOME TAX

**1. S. 28(IBusiness loss - The claim of loss arises out of write-off of obsolete stock as a business loss - was incidental to its regular business – Allowable**

The assessee company is engaged in the business of manufacturing and service of flame arresters and industrial safety valves. The AO during the course of the assessment proceedings observed that the assessee had written-off stock of ` 52,43,318/-. However, the AO was not persuaded to accept the contention of the assessee that the actual stock write-off of material used in manufacturing and trading activity was to be taken as a revenue loss while computing the income of the assessee as per the normal provisions. The AO holding a conviction that the write-off of the stock was an item of the balance sheet, therefore, added the same to the total income of the assessee.

Aggrieved, the assessee assailed the aforesaid addition made by the AO in appeal before the CIT(A). The CIT(A) observed that the assessee on being queried as regards its claim of stock written-off amount had submitted that being in the business of manufacturing of safety valves and flame filters etc., the stock was written off, as the same had become redundant due to change in the engineering designs of the devices. The AO had also not disputed that the assessee had sold some materials which were spoiled by rusting and had offered such scrap sales to tax under the head 'Other income'. The CIT(A) concluded that the claim of the assessee of loss arising out of write-off of obsolete stock as a business loss was incidental to its regular business.

The Tribunal held that the view taken by the CIT(A) that now when the AO had duly accepted the fact that actual stock write-off was because of the redundancy of the stock of castings due to change in the engineering design of the devices and rusting of the materials therefore, there was no justifiable reason on his part for disallowing the claim of the assessee. The observation of the AO that as the stock was a balance sheet item, therefore, its writing-off as a revenue expenditure was not called for. The stock in question was produced during the business operation, thus any loss arising due to diminution in its value, as had been accepted by the revenue in the past, had to be allowed as a deduction.

*ACIT vs. M/s. Protego India Pvt. Ltd., ITA No.1268 /Mum / 2016, AY 2012-13 dated 23-5-2018 (Mum.) (Trib.)*

**2. Sec 2(47) - Capital Gains – Family Arrangement – No Capital Gains**

The factual matrix of the case is that during the year under consideration the assessee had gifted her 50% right and interest in a family property in favour of her brother in-law by way of gift deed. During the same financial year the assessee also received a cash gift of ` 68,50,000/- from her brother-in-law (the person who received gift from the assessee).

Based on these facts, the Assessing Officer came to the conclusion that the said gifts between the assessee and her brother-in-law are not in nature of gifts between family members, but transfer within the meaning of Section 2(47) of the Income-tax Act, 1961 as the assessee has received a consideration of ` 68,50,000/- for relinquishing her right in the property.

It was the contention of the assessee that she had gifted her share in the property for family settlement as per which the family had decided to buy a separate property for each

member by internal arrangements, therefore, she had relinquished her 50% right in the family property in favour of her brother-in-law. Though she had received cash gift of ` 68,50,000/- in pursuance of relinquishing her right in property, the said transaction was purely a family arrangement between the family members for better peace and harmony. Therefore, the Assessing Officer was incorrect in treating the said transactions within the meaning of transfer as defined under Section 2(47) of the Income-tax Act, 1961.

Hon'ble ITAT held that, the said transactions cannot be considered as transfer within the definition of Section 2(47) of the Income-tax Act, 1961. Although the assessee had received cash gift of ` 68,50,000/- from the person who received gift from the assessee, such an arrangement is as per the family settlement between the members and hence outside the purview of 'Capital Gains'.

**Mrs. Jyoti Rakesh Kapoor vs. ITO 17(2)(1) [ITA No.583/ M/ 2018] 16-5-2018**

Deepali R. Shah

## GST | CUSTOMS | EXCISE | SERVICE TAX | MVAT

**1. Whether Brake Shoes and Disc Brake Pads are covered under Heading 8708 and liable to 28% GST?**

a. In the case before the Authority for Advance Ruling under GST, Uttarakhand, Indo German Brakes Pvt. Ltd., 2018 (14) G.S.T.L. 301 (A.A.R. - GST)

b. The Authority for Advance Ruling under GST (AAR) considered the description under the chapter heads:

   i. 6813: Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads) not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with the textile or other materials

   ii. 8708: Parts and accessories of the motor vehicles of Heading 8701 to 8705

c. The AAR referred to the definition of "basis" from various dictionaries since the same was not defined under the Act and based on the definition, found that the phrase "with a basis of" as found in the article description to heading 6813, requires that asbestos, cellulose or other mineral substance identified in that article be the principal substance or fundamental substance in the article.

d. The priuncipal substance used in the manufacturing of the Disk Brakes Pads or Brake Shoes are Kevlar, Mineral Fibre, Cellulose whereas only a small percentage of mineral substances namely Barium Sulphate and Graphite constitutes is present in the article, hence the Disc Brake Pad or Brake Shoe do not warrant classification under sub-heading 6813.

e. The AAR perused the process of manufacture read with relevant Section/ Chapter Notes and the HSN Explanatory Notes, and held that the Disc Brake Pads and Brake Shoes are required to be classified under Chapter 8708 and hence liable for GST at the rate of 28%.

**2. Whether the Advance Ruling Authority have jurisdiction apropos GST taxability of High Sea Sales**

a. In the case before the Authority for Advance Ruling under GST, Gujarat, Pon Pure Chemical India Private Limited, 2018 (14) G.S.T.L. 136 (A.A.R. - GST)

b. The application was apropos:

   i. Whether the authority is within jurisdiction to admit application especially on the issue of 'place of supply'?

   ii. Whether the issue is related to Customs or is related to Goods and Services Tax?

c. The AAR referred to Section 97(2) of the CGST Act, 2017 and Gujarat GST Act, 2017 which empowers the AAR to decide issues, which are as follows:

   i. Classification of any goods or services or

both;

ii. Applicability of a notification issued under the provisions of this Act;

iii. Determination of time and value of supply of goods or services or both;

iv. Admissibility of input tax credit of tax paid or deemed to have been paid;

v. Determination of the liability to pay tax on any goods or services or both;

vi. Whether applicant is required to be registered;

vii. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

d. The AAR observed that the High Sea Sales are determined on basic questions of fact:

i. Where the goods are; and

ii. At what time the goods can be called to be entering into India.

Both the above questions can be determined under the IGST act, 2017 and since "Place of Supply" is not covered under Section 97(2) of CGST Act, 2017 or Gujarat GST Act, 2017, the AAR does not have the jurisdiction to entertain the application.

e. Further, the AAR observed that the Central Board of Excise and Customs had issued Circular No. 33/2017-Cus., dated 1-8-2017, on the issue of High Sea Sales. Thus, the issue of High Sea Sales falls in the domain of Customs and not under the Goods and Services Tax.

Adv. Sanket S. Bora

# THANK YOU

**Team in Samācāra**

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