VIPCAA
Monthly E-Zine

October 2018

VIP ROAD CHARTERED ACCOUNTANTS' ASSOCIATION WWW.VIPCA.IN

Recent Orders

Supernova System Pvt Lt vs CCIT (Gujarat HC)
S. 276C/ 279 Compounding of offenses: The expression "amount sought to be evaded" in CBDT's compounding guidelines dated 23.12.2014 means the amount of "tax sought to be evaded" and not the amount of "income sought to be evaded"

In the prescription of punishment thus, when there is a reference to amount sought to be evaded, it must be seen in light of the willful attempt on the part of the concerned person to evade tax, penalty or interest. This provision thus, links the severity of punishment on the amount sought to be evaded and thus, in turn has relation to the attempt at evasion of tax, penalty or interest. Thus, when the CBDT circular refers to the amount sought to be evaded, it must be seen and understood in light of the provisions contained in section 276C(1) and in turn must be seen as amount sought to be evaded. 100% of tax sought to be evaded would be the basic compounding fees

PCIT vs. Radan Multimedia Ltd (Bombay HC)
There is no discipline in the manner the Dept conducts matters. The Dept should not take legal matters casually and lightly. There should be a dedicated legal team in the department. Lack of preparation is affecting the performance of the advocates. They do not have full records & do not have the assistance of officials who can give instructions. The CsIT should devote more time to their work rather than attending some administrative meetings and thereafter boasting about revenue collection in Mumbai.

Devarsh Pravinbhai Patel vs. ACIT (Gujarat HC)
S. 192/ 205: If the deductor has deducted TDS and issued Form 16A, the deductee has to be given credit even if the deductor has defaulted in his obligation to deposit the TDS with the Government revenue.

In case of the petitioner the employer for the assessment year 2012-13 while paying salary had deducted tax at source to the tune of Rs.2,68,498/ but had not deposited such tax with the Government revenue. The short question is under such circumstances can the Department seek to recover such amount from the petitioner or whether the petitioner is correct in contending that he had already suffered the deduction of tax, the mere fact that the deductee did not deposit such tax with the Government revenue could not permit the Income tax Department to recover such amount from the petitioner

Bhojison Infrastructure Pvt. Ltd vs. ITO (ITAT Ahmedabad)
S. 2(14)/ 28(va): The "right to sue" which arises on breach of a development agreement is a "personal right" and not a "capital asset" which can be transferred. Consequently, the damages received for relinquishment of the "right to sue" is a non-taxable capital receipt (all judgements considered).

A development agreement was executed which enabled the assessee to utilize the land for construction and for sharing of profits. This right/advantage accrued to the assessee was sought to be taken away from the assessee by way of sale of land. The prospective purchaser as well as the defaulting party (owner)

Upcoming Due Dates

Date	Event Details
7h Oct	TCS & TDS Payment For Sept
15th Oct	PF & ESIC Payment for July Quarterly statement of TCS deposited for the quarter ending September 30, 2018
20th Oct	Form GSTR-3B, GSTR-5 & GSTR-5A for Sept
25th Oct	PF Return filing for Sept
31st Oct	Annual Return for the F.Y. 2018-19 for: - Corporate-assessee - Non-corporate assessee (whose books of account are required to be audited) - Working partner of a firm (whose accounts are required to be audited) Quarterly statement of TDS deposited for the quarter ending September 30, 2018 GSTR 1 for July 2017 to Sept 2018 for turnover of above 1.5 cr GSTR 1 for July 2018 to Sept 2018 for turnover of upto 1.5 cr

perceived threat of filing suit by developer and consequently paid damages/ compensation to shun the possible legal battle. The intrinsic point with respect to accrual of 'right to sue' has to be seen in the light of overriding circumstances as to how the parties have perceived the presence of looming legal battle from their point of view. It is an admitted position that the defaulting party has made the assessee a confirming party in the sale by virtue of such development agreement and a compensation was paid to avoid litigation. This amply shows the existence of 'right to sue' in the perception of the defaulting party.

PCIT vs. M/s. Chamundi Winery and Distillery (Karnataka High Court)
Entire law on "real income theory" and distinction between "application of income" vs. "diversion of income by overriding title" explained with reference to case laws. Law on whether if an amount is not treated as "diversion of income", it can be allowed as "business expenditure" u/s 37(1) or as a "trading loss" u/s 29 also explained. Issue of "Base Erosion and Profit Shifting" (BEPS) also raised in the context of "tax avoidance vs. tax evasion" and diversion of income by a MNC

Courts and the Tax Authorities can look into the real purpose of the commercial arrangements and transactions to reach the truth and the transactions having the sole purpose of tax avoidance may be held to be having no effect on the actual tax liability of the taxpayer. Book entries and Method of Accounting is not determinative and conclusive for deciding the computation of 'taxable income' in the hands of the Assessee though they may be relevant to be considered. "Diversion of income by transfer of overriding title at source" should normally have the support of the statutory requirements or some decretal binding character of Courts of law and even though the private contractual obligations can also bring about such "diversion of income at source" but in this last sphere of private contractual obligations, the Courts and the Income Tax Authorities have to examine such aspects carefully in comparison to the above two other categories of statutory requirements and the Court decrees and then examine the real purport and object of such private arrangements and Contracts

Mumtaz Haji Mohmad Memon vs. ITO (Gujarat High Court)
S. 147/148: If the AO reopens the assessment on the incorrect premise that the assessee has not filed a return, the reopening is invalid. The fact that the AO may be justified in the view that income has escaped assessment owing to the capital gains not being computed u/s 50C cannot save the reopening as the reasons do not refer to s. 50C

The Assessing Officer may be correct in pointing out that when the sale consideration as per the sale deed is Rs.50 lakhs but the registering authority has valued the property on the date of sale at Rs.1,18,95,000/for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment

M/s. Sree Alankar vs. PCIT (ITAT Cuttack)
S. 263 Revision: U/s 114(e) of the Evidence Act, there is a presumption that a s. 143(3) assessment order is regularly passed after application of mind. If the assessee is consistently following the same method of valuation of closing stock, the CIT is not entitled to disturb the consistent method (all judgements referred).

The conclusions being drawn up as a result of enquiry is a highly subjective exercise and as to what is appropriate conclusion is something on which perceptions vary from person to persons. These variations in the perceptions of the Assessing Officer vis-a- vis that of the Commissioner, cannot render an order erroneous and prejudicial to the interest of the revenue.

CIT vs. JRD Stock Brokers Pvt Ltd (Delhi HC)
S. 68 Cash Credits: In order to avail of the theory of "peak credit", the assessee has to make a clean breast of all facts. He has to explain each of the sources of the deposits and the corresponding destination of the payment without squaring them off. The ITAT cannot proceed merely on the basis of accountancy and overlook the settled legal position.

The legal position in respect of an accommodation entry provider seeking the benefit of 'peak credit' appears to have been totally overlooked by the ITAT in the present case. Indeed, if the Assessee as a self-confessed accommodation entry provider wanted to avail the benefit of the 'peak credit', he had to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destination of all payments from the accounts. The Assessee should be able to show that money has been transferred through banking channels from the bank account of creditors to the bank account of the Assessee, the identity of the creditors and that the money paid from the accounts of the Assessee has returned to the bank accounts of the creditors. The Assessee has to discharge the primary onus of disclosure in this regard.

L&T Finance Limited vs. DCIT (Bombay HC)
Gain arising to the assessee on account of securitization of lease receivables and credited to the Profit & Loss Account is a taxable receipt in the year of securitisation as per T. V. Sunderam Iyengar 222 ITR 344 (SC). Argument that the entry represents hypothetical income and not real income and that the amount is assessable in subsequent years on receivable basis is not correct. Question of whether income can also be deferred to subsequent years under the "Matching concept" as per Taparia Tools 260 ITR 102 (Bom)/ 372 ITR 605 (SC) left open.

Thus, if the assessee claims the expenditure in that year, the Department cannot deny it. However, in a case where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of the "matching concept" is satisfied, which up to now has been restricted only to cases of debentures. Whether the 'matching concept' would also apply to "income" is wholly a different matter and which would be considered in an appropriate case, as and when it so arises, provided the factual foundation is laid for the same.

Ambuja Cements Limited vs. CIT (ITAT Mumbai)
S. 263(1) obligates the CIT to give the assessee an opportunity of being heard before passing of his order. While the CIT is entitled to consider a point which is not stated in the show-cause notice, he cannot pass the revision order unless the assessee is given the opportunity of being heard. Such an order is untenable in the eyes of law (Amitabh Bachchan 384 ITR 200 (SC) followed).

Notably, section 263(1) of the Act obligates the Commissioner to give the assessee an opportunity of being heard before passing of his order. No doubt the Commissioner is not disentitled to consider a point which is not stated in the notice so issued. However, the obligation to given an opportunity to the assessee of being heard on the point on the basis of which he finds it expedient to treat the assessment order erroneous in so far as it is prejudicial to the interests of the Revenue, is definitely cast on the Commissioner, as opined by the Hon'ble Supreme Court in the case of Amitabh Bachchan 384 ITR 200.

Binod Kumar Agarwala vs. CIT (Calcutta HC)
Strictures against CA for certifying bogus accounts with a view to mislead bankers. The matter is typical of how business is conducted in this country and why loans obtained from banks remain unpaid. The ITAT may only be faulted for not reporting the CA to the ICAI for having apparently abetted in the commission of a colossal act of misrepresentation. ICAI directed

to look into the matter and take necessary action.

A rosy picture as to the financial position of the applicant seeking credit facilities from a bank would be presented before the bank for the bank to assess the creditworthiness of the applicant and the desirability of extending credit facilities to such applicant; but later another balance-sheet and profit and loss accounts would be slipped into the file, possibly indicating a less robust financial position of the constituent. If such was the object on the exercise, to which Roy Ghosh and Associates appear to have been a willing accomplice, the assessee has been appropriately dealt with by the fora below. The balance-sheet and profit and loss accounts of an assessee accompanied by a certificate as to its fairness, notwithstanding the caveat as noticed in paragraph 2(A) thereof, cannot be tailor-made to suit a particular purpose or window-dressed to make it attractive for bankers to rely thereupon and all the gloss and sheen removed thereafter when it was the time to pay tax.

Ramchandran Ananthan Pothi vs. UOI (Bombay High Court)
S. 276(C)(1) Prosecution for bogus transaction: If a stay application is filed before the CIT(A) to seek a stay of the assessment order, during the pendency of such application, the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceed.

In the event, the petitioner seeks a stay of the order passed by the Assessment Officer by making a stay application, then, during the pendency of such application, the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceed. Thus, the ad interim stay granted by this Court would continue till the disposal of the application for stay by the First Appellate Authority.

Rakesh Kumar vs. CIT (ITAT Delhi)
S. 194-H TDS: The law in Idea Cellular 325 ITR 148 (Del) that there is a principal-agent relationship between the telecom company and the dealers does not mean that a similar relationship can be inferred between the dealers and the sub-dealers. The incentive paid by the dealers to sub-dealers cannot be equated with commission as stipulated u/s194H and so there is no requirement for deducting TDS.

There is no agency agreement between the assessee and his dealers/sub-dealers. The agency relationship between the assessee and the cellular operators cannot be inferred or presumed in the transaction between the assessee and his sub-dealers. The reason being the SIM cards, vouchers belonged to the cellular operators/cellular entities and these cellular operators/telecom entities ensure that payment is received in respect of those prepaid vouchers and SIM cards which are sold to the subscribers and unsold SIM cards are returned back to them and even if such SIM cards are returned, then these cellular/telecom entities are required to be made payment against them and the SIM card stocked with the distributors are the property of service provider, i.e., the telecom/cellular entities.

Sonia Gandhi vs. ACIT (Delhi High Court)
S. 147/ 56(2)(vii): Law explained on (i) reopening of assessment by issue of s. 148 notice at the 11th hour and based on "stale" material, (ii) nature of sanction to be accorded by the CIT u/s 151 and (iii) scope of s. 56(2)(vii) and whether difference between 'fair market value' and face value of unquoted shares can be assessed as income. All important judgements referred.

When the assessees acquired the shares through allotment, the taxing event, as it were, occurred on account of the differential between what is said to be market value and what was value paid by them. As a result, it is held that the primary obligation to disclose about the acquisition of shares, was not relieved by virtue of the notification under Section 25 (6) of the (now repealed) Companies Act, 1956. It is, therefore, held that prima facie, there is no merit in this argument; it cannot be said that the effect of the exemption notification was to relieve the assessees from their obligation to disclose about the acquisition of the shares, which appears to be the taxing event (on account of the differential between the acquisition cost and the fair market value).

Gautam Jhunjhunwala vs. ITO (ITAT Kolkata)
S. 2(47)/ 54: Though an unregistered agreement to sell does not entitle the parties to seek part performance u/s. 53A of the Transfer of Property Act, 1882, it can be a basis for a suit for specific performance in view of s. 49 of the Registration Act. Consequently, even an unregistered agreement creates a right in favour of the buyer and constitutes a "transfer" of the old property u/s 2(47) for purposes of determining whether the purchase of the new property is within one year of the date of "transfer" of the old property.

Thus, a right in respect of the capital asset (old residential property in question) has been transferred by the assessee in favour of the vendee/transferee on 16.09.2011 and, therefore, since purchase of the new property on 04.10.2010 which fact has been disputed by the AO/Ld. CIT(A) the purchase of the property is well within one year from the date of transfer as per sec. 2(47) of the Act, therefore, we allow the appeal of the assessee.

DCIT vs. Saurabh Mittal (ITAT Jaipur)
S. 68 Bogus capital gains from penny stocks: Reliance by AO on statements recorded by the Investigation Wing to conclude that the capital gains are bogus without giving an opportunity of cross examination is a complete violation of principles of natural justice as held in CCE Vs Andaman Timber Industries 127 DTR 241(SC). The AO has not controverted the evidence of purchase bills, payment of consideration through bank, DEMAT account, allotment of amalgamated shares, sale of shares through stock exchange at prevailing price, payment of STT etc.

The Assessing Officer has not brought any material on record to controvert the fact duly established by the supporting evidence of purchase bills, payment of consideration through bank, dematerialization of shares in the DEMAT account, allotment of the shares amalgamated new entity in lieu of the earlier two companies of equal number of shares. Sale of shares from the DEMAT account through stock exchange and at the prevailing price as on the date of sale and further payment of STT on the transaction of sale has been duly established. In absence of any contrary fact, the mere reliance by the Assessing Officer on the report of Investigation Wing, Kolkata is not sufficient to establish the fact that the transaction is bogus.

ITO vs. Eid Mohammad Nizamuddin (ITAT Jaipur)

Though s. 206C does not impose any limitation period for the AO to hold the assessee to be in default for collection of tax at source, a reasonable time limit of four years has to be read into the statute. Orders passed after this period are beyond the limitation and are void. The fact that the Dept became aware of the default later is irrelevant. The fact that the assessee admitted his liability is also irrelevant.

There is no dispute that Section 206C or any other provisions of the Income Tax Act do not provide any limitation for passing the order by the Assessing Officer U/s 206C(6)/206C(7) of the Act holding the assessee in default due to failure to collect tax at source. However, non-providing the limitation in the statute would not confer the jurisdiction/powers to the Assessing Officer to pass order U/s 206C at any point of time disregarding the amount of time lapse from such default of collection of tax at source.

PCIT vs. Dhariwal Industries Ltd (Bombay High Court)

S. 271(1)(c) Penalty: If appeals with reference to the quantum proceedings have been admitted by the Court on substantial questions of law, it means that there were debatable and arguable questions raised and so penalty u/s 271(1)(c) cannot be levied (PCIT v. Shree Gopal Housing 167 DTR 236 distinguished). Penalty also cannot be levied if the claim was as per judicial precedents prevalent at the time of filing the ROI. Also, there must be a finding that the details supplied by the assessee in its return were incorrect or erroneous or false.

In all these appeals, the court found that the appeals with reference to the quantum proceedings have been admitted by the Honourable Court on a substantial question of law. That has also been recorded by the Tribunal in the impugned order and the same is also not disputed before them. The court found that the appeals were admitted as the Court found that there were debatable and arguable questions raised in the quantum proceedings. This being the case, the court find that the Tribunal, in the facts and circumstances of the present case, was fully justified in confirming the order of the CIT (A) in all the three assessment years for deleting the penalty.

Alankar Sahkari Griha Rachana Sanstha Maryadit vs. Atul Mahadev Bhagat (Bombay High Court)

A co-operative housing Society is not expected to indulge into profiteering business from its members. Transfer fees cannot be charged under the pretext of "voluntary donation". Amount which is accepted above permissible limits towards transfer fee is illegal and taxable as income in the hands of the society.

The Society is not expected to indulge into profiteering business from the members and if such amount is earned, then it is taxable under the law. There is no bar for any member to pay donation to the Society, however, it should be voluntary without any compulsion and coercion. No manner the transfer fees can be charged under the pretext of donation.

Young Indian vs. ADIT (ITAT Delhi)

S. 272A(1)(c) Penalty: The argument that penalty u/s 272A(1)(c) can be levied only for non-compliance of s. 131(1) and not s. 131(IA) is not correct because s. 131(1A) has to be read with s. 131(1). On facts, the penalty is justified because the conduct of the assessee is not bona fide. There is deliberate and complete defiance to the summons issued u/s 131(1A).

So far as the arguments of the ld. counsel for the assessee that there was a reasonable cause on the part of the assessee in not submitting the details as called for by the ADIT (Investigation) is concerned, we find from the record that there was a deliberate defiance on the part of the assessee for non- submission of the same under the pretext that some of the details are available in the records of the Income Tax Department or some of the details are available in the Website of the Ministry of Corporate Affairs.

ACIT vs. Goldmohur Design And Apparel Park Ltd (ITAT Mumbai)

S. 56(2)(viib), 68, 147 Bogus share capital/ premium: Entire law on whether alleged excessive premium charged for allotment of shares and alleged inability to prove genuineness of transaction can be assessed as unexplained cash credit explained in the light of High Court judgements.

It was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders, i.e., they are bogus. The Apex Court in a case in this context to the pre-amended section 68 has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income tax Officer to proceed by reopening the assessment of such shareholder and assessing them to tax in accordance with law. It does not entitle the revenue to add the same to the assessee's income as unexplained cash credit.

Association of National Exchanges Members of India vs. SEBI (Bombay High Court)

Securities Transaction Tax: CBDT's clarification that where a derivative contract is being settled by physical delivery of shares, the transaction would not be any different from transaction in equity share where the contract is settled by actual delivery or transfer of shares and the rates of STT as applicable to such delivery based equity transactions shall also be applicable to such derivative transaction takes care of the grievance of the stakeholders.

In a nutshell, CBDT is of the view that where a derivative contract is being settled by physical delivery of shares, the transaction would not be any different from transaction in equity share where the contract is settled by actual delivery or transfer of shares and the rates of STT as applicable to such delivery based equity transactions shall also be applicable to such derivative transaction.

Sonu Khandelwal vs. ITO (ITAT Jaipur)

S. 147/ 151: S. 150(1) overrides s. 149 but not s. 151. Accordingly, even if the assessment is reopened to make reassessment in consequence of or to give effect to any finding or direction of the appellate authority, the requirement of sanction u/s 151 is mandatory for issuing notice u/s 147. The failure to obtain sanction renders the reopening invalid.

Even if the assessment is reopened to make reassessment in consequence of or to give effect to any finding or direction of the appellate authority the requirement of sanction U/s 151 is mandatory for issuing notice U/s 147 of the Act. Even otherwise from the plain reading of Section 150(1) of the Act, it is clear that it begins with non-obstante clause as far as the limitation provided U/s 149 of the Act and therefore, Section 150(1) has an overriding effect on Section 149 and not over Section 151 of the Act. The requirement of sanction U/s 151 of the Act is in the nature of check and balance and it is a measure against the misuse of power by the assessing authority for assessment or reassessment based the reasons not found satisfactory by the authorities provided U/s 151 of the Act.

Service Tax payable on Composite Contracts only under "Works Contract Services" after 1.6.2017: CESTAT

In a significant ruling, the Chennai bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that any demand after 1.6.17 on composite contracts under construction of complex service or commercial industrial construction service is not sustainable as composite contracts are leviable to service tax only under works contract services as per the Apex Court ruling in Larsen & Toubro case.

The bench was hearing a bunch of appeals wherein the appellants challenged the order of adjudicating authority who held that the Commercial or Industrial Construction Services / Construction of Residential Complex Services (RCS) were taxable even after 1.6.2007.

According to the department, the appellants would have to pay under either RCS or WCS.

Quashing the orders, the Tribunal held that the services provided by the appellant in respect of the projects executed by them for the period prior to 1.6.2007 being in the nature of composite works contract cannot be brought within the fold of commercial or industrial construction service or construction of complex service in the light of the Hon'ble Supreme Court judgment in Larsen & Toubro (supra) upto 1.6.2007.

It was clarified that for the period after 1.6.2007, service tax liability under category of "commercial or industrial construction service" under Section 65(105)(zzzh) ibid, "Construction of Complex Service" under Section 65(105)(zzzq) will continue to be attracted only if the activities are in the nature of services" simpliciter.

ACIT Vs SDV International Logistics Ltd. (ITAT Kolkata)
It is observed that the assessee company was held to be liable to deduct tax at source by the A.O. from the payment of internet connectivity charges and specialised line rental u/s 194J of the Act being in the nature of royalty by relying on Explanations 4, 5 and 6 to section 9(1)(vi) inserted by the Finance Act, 2012 with retrospective effect. The Ld. CIT(A) however did not approve this view of the Assessing Officer by holding that the liability to deduct tax at source was governed by section 9(1)(vi) as it existed before the Finance Act, 2012. As rightly pointed out by the learned counsel for the assessee before us, this view taken by the Ld. CIT(A) is supported by various judicial pronouncements including the decision of Mumbai Bench of this Tribunal in the case of Channel Guide India Ltd. vs ACIT 25 taxmann.com 25 wherein it was held that the assessee cannot be held to be liable to deduct tax at source by relying on the subsequent amendments made in the relevant provision with retrospective effect.

The Tribunal based its decision on the legal Maxim lex non cogit ad impossibilia meaning thereby that the law cannot be possibly compel a person to do something which is impossible to perform. Respectfully following the said decision of Mumbai Bench of this Tribunal, we uphold the impugned order of the Ld. CIT(A) holding that the assessee was not liable to deduct tax at source from the amount in question paid towards internet connectivity charges and specialised line rental u/s 194J and dismiss Ground No. 1 of the Revenue's appeal.

In re Coffee Day Global Limited (GST AAR Karnataka)

The Applicant is in the business of running restaurants under the name and style of Café Coffee Day where non-alcoholic beverages and food items are served. Notification No.46/2017 dated 14.11.2017 provides that restaurants can pay GST @5% (CGST-2.5% and SGST-2.5%), provided they do not avail input tax credit of the tax paid on input goods and services. Notification No.11/2017 dated 28.06.2017, at Sl.No.35, provides for levy of GST @18% (CGST-9% & SGST-9%) on supply of unclassified services and the suppliers are entitled to take input tax credit in the circumstances where they pay output tax.

The question put forth by the applicant is "Whether the applicant is entitled to pay GST @ 18% (CGST @ 9% and SGST @ 9%) and claim input tax credit?". The rate of tax is notified in Notification 11/2017-Central Tax (Rate) dated 28th June 2017. The scheme of the Notification is such that the rate of tax is described in direct conjunction with the classification of the service represented by the Chapter, Section or Heading under which the relevant service falls. Further the explanation given under serial number 4 of the notification reads "Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure)." Therefore the answer to the question raised by the applicant lies in determining the classification of the services rendered by them.

The extract of the Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017, as reproduced in para 7.1 above, indicates that food and beverage services fall under Heading 9963, Group 99633 and Service Code (Tariff) 996331. It is thus evident that the services rendered by the applicant are clearly defined under Heading 9963. The tax rate for the services under Heading 9963 is 5% (CSGT 2.5% and SGST 2.5%). The applicable tax rate is 18% for this entry. The extract of the entry is reproduced in para 7.5 above. This entry is applicable for services which are not specifically described under any other entry in the Annexure. The services provided by the applicant are classifiable under Heading 9963 and such services covered under heading 9963 are squarely covered under serial number 7 of the Notification.

As the services provided by the applicant are covered under a specific heading and the Notification carves out a specific rate of tax for that heading, the same shall be applicable to the applicant. Serial number 35 would qualify for invocation only in respect of services that do not find classification elsewhere. Therefore the applicant is covered by serial number 7 and not 35.

Citadel Fine Pharmaceuticals (P.) Ltd. Vs Asstt. CIT (ITAT Chennai)
Assessee had made provision for audit fees to the account of the payee which had clearly attracted the provisions of section 194J and non-deduction of tax at source would automatically invite disallowance under section 40(a)(ia).

Smt. Anita Singh Vs ACIT (ITAT Indore)
In the year 2006, the assessee along with other persons initiated the process of developing a colony which is proved by the Registration No.40/2006 issued on 21.8.2006. Few months before and the period thereafter all these 18 persons kept on purchasing the land from various land owners and parallely M/s. ADPL was working to develop the project named "Country Walk". Once the area was developed than the sales were affected by demarcating them in various plots sizes and the ADPL was having the power of attorney to decide about the sale and development of the land bank. All the sale transactions were effected through it and the landowners used to get their share excluding the expenditure as well as excluding the portion of land which has been used for development. Through this process the assessee gained substantial amount which has been spread over to A.Y 2012-13 and 2013-14.

In our considered view as well as in the given factual matrix it is crystal clear that it was a well thought business project carried out by the assessee jointly with 17 other persons by way of taking the services of Developer M/s. ADPL and the intention of entering into an adventure of business was very clear from the very first day of purchase of impugned land and completed on selling the residential plots. We are of the considered view that both the lower authorities have rightly appreciated the facts and concluded that the profits from sale of land situated at Village Jhalaria, Tehsil Indore is a business profit and cannot be taxed as Short Term Capital Gain or Long Term Capital Gain. In the result these common issue raised for both the assessment years is decided against the assessee. We therefore dismiss all the grounds raised in both these appeals of the assessee.

If you wish to contribute to the future editions of VIPCAA Ezine or VIPCAA Newsletter, please write to us at info@vipca.net or reach out to any of the office bearers

Alamelu Veerappan Vs ITO (Madras HC)
Admittedly, the limitation period for issuance of notice for reopening expired on 31.3.2017. The impugned notice was issued on 30.3.2017 in the name of the dead person. On being intimidated about the death, the Department sent the notice to the petitioner – his spouse to participate in the proceedings. This notice was well beyond the period of limitation, as it has been issued after 31.3.2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation i.e. 31.3.2017 is a nullity, unenforceable in law and without jurisdiction. Thus, merely because the Department was not intimated about the death of the assessee, that cannot, by itself, extend the period of limitation prescribed under the Statute. Nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration.

In such circumstances, the question would be as to whether Section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under Section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of Section 159 of the Act have no application.

Assistant Commissioner, CGST & CX, Tollygunge Division, Kolkata South Commissionerate (GST AAAR West Bengal)
From a plain reading of law laid down under section 16 of the GST Act, it is clear that, inter alio, input tax credit is available only when the recipient is in possession of a tax invoice or debit note issued by the supplier registered under the GST Act, and in case of a supply between distinct and/or related persons, as between Head Office and Branches, the value declared in the invoice shall he deemed to be the open market value of the goods or services supplied. It is therefore clear that if the value declared in such invoice is zero no input tax credit is available to the recipient.

Recent Notifications

E-form URC -1 will be available for filing purpose w.e.f. 09.10.2018
URC-1 notified vide Companies (Authorised to Register) Second Amendment Rules, 2018, dated 5th July 2018 would be available for filing purposes w.e.f 9th October 2018.

Purpose of the eForm URC-1
Any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force consisting of seven or more members, may at any time register itself under Companies Act, 2013 as a Part I Company. For this purpose, eForm URC-1 shall be filed along with SPICe.

Commencement of Sec 132 of Companies Act, 2013
In exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 1st October, 2018 as the date on which the provisions of sub-sections (1) and (12) of Section 132 of the said Act shall come into force.

Relaxation of additional fees and extension of last date of filins of Form BEN-2 under the Companies Act, 2013
the last date for filing of e-Form BEN-2 without additional fees on account of Companies (Significant Beneficial Owners) Rules, 2018 notified vide G.S.R. No. 561(E) dated 13.06.2018. The matter has been examined and it is stated that the time limit for filing the BEN-2 form would be 30 days from the date of deployment of BEN-2 e-form on the MCA- 21 portal and no additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form.

Commencement of Sec 66 to 70 (Managerial Personnel) of the Companies (Amendment) Act, 2017
In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 12th September, 2018 as the date on which the provisions of sections 66 to 70 (both inclusive) of the said Act shall come into force

Commencement of Sec 37(CSR) of the Companies (Amendment) Act, 2017
In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 19th September 2018, as the date on which the provisions of section 37 of the said Act shall come into force.

Companies (Prospectus and allotment of securities) Third Amendment Rules, 2018
In the Companies (Prospectus and Allotment of Securities) Rules, 2014, after rule 9, the following rule shall be inserted, namely:

9A. Issue of securities in dematerialised form by unlisted public companies.-
(1) Every unlisted public company shall
- (a) issue the securities only in dematerialised form; and (b) facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under
(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act 1996 and regulations made there under
(3) Every holder of securities of an unlisted public company,
- (a) who intends to transfer such securities on or after 2nd October, 2019, shall get such securities dematerialised before the transfer; or
(b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure

that all his existing securities are herd in dematerialized form before such subscription.
(4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall in-form all its existing security holders about such facility
(5) Every unlisted public company shall ensure that –
(a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
(b) it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and
(c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.
(6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
(7) Except as provided in sub-rule (s), the provisions of the Depositories Act 1996' the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 and the securities and Exchange Board of India (Registrars to an Issue and share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies
(8) The audit report provided under regulation 55A of the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated
(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and protection Fund Authority
(10) The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India.

CBDT vide Notification No. 42/2018 Notifies Income Tax Rule 11UAB Determination of fair market value for inventory and amended Rule 11U related to Meaning of expressions used in determination of fair market value

S.O. 4213(E).—In exercise of the powers conferred by clause (via) of section 28 read with section 295 of the Income-tax Act, 1961 (43 of 1961), hereinafter referred to as the Income-tax Act, the Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-
1. (1) These rules may be called the Income-tax (9th Amendment), Rules, 2018.
(2) They shall come into force from the 1st day of April, 2019 and shall apply in relation to assessment year 2019-20 and subsequent years.
2. In the Income-tax Rules, 1962,-
(a) in rule 11U, in clause (b), for sub-clause (ii), the following sub-clause shall be substituted, namely:-
"(ii) in any other case,
(A) in relation to an Indian company, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and
(B) in relation to a company, not being an Indian company, the balance-sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;";
(b) after rule 11UAA, the following rule shall be inserted, namely:-
"11UAB. Determination of fair market value for inventory.—(1) For the purposes of clause (via) of section 28 of the Act, the fair market value of the inventory,-
(i) being an immovable property, being land or building or both, shall be the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of such immovable property on the date on which the inventory is converted into, or treated, as a capital asset;
(ii) being jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in rule 1 lUA, shall be the value determined in the manner provided in sub-rule (1) of rule 11UA and for this purpose the reference to the valuation date in the rule 11U and rule 1 lUA shall be the date on which the inventory is converted into, or treated, as a capital asset;
(iii) being the property, other than those specified in clause (i) and clause (ii), the price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset.".

VIPCAA Wishes Its Members A Very Happy Birthday & Anniversary

Naresh Agarwal	October 14th
Rakesh Jain	October 17th
Sumantra Guha	October 18th
Santosh Kanodia	October 19th
Rajesh Rajgaria	October 20th
Shambhu Jajodia	October 20th
Naveen Sureka	October 22nd
Niranjan Agarwal	October 22nd
Sudhir Bhartia	October 22nd
Nirdosh Agarwal	October 23rd
Adesh Jain	October 25th
Shree Kedia	October 26th
Navin Agarwal	October 28th

Central Board of Indirect Taxes and Customs Notification No. 51/2018 – Central Tax

In exercise of the powers conferred by sub-section (3) of section 1 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1 st day of October, 2018, as the date on which the provisions of section 52 of the said Act shall come into force.

TDS provisions under GST will be effective from 1st Oct 2018. The council has also specified such persons or category of persons who will be liable to these provisions:
a. an authority or board or any other body:
i. set up by an Act of parliament or a state legislature or
ii. established by any government
with fifty-one percent or more participation by way of equity or control.
b. The society established by the central government or state government or any local authority
c. Public sector undertakings

TCS to be collected at the rate of 0.5% under CGST Act on the value of net taxable supplies. Similarly, Rate of 0.5% under SGST Act. Total rate of TCS will be 1%.

Income Tax Figures

Direct Tax collections up to September, 2018 (Half-yearly figures) show that gross collections are at Rs 5.47 lakh crore which is 16.7% higher than the gross collections for the corresponding period of last year

Recent Happenings At VIPCAA

Recent changes in Form 3CD (Tax Audit) & CGST Amendment Act 2018 by CA Manoj Tiwari & CA Pradip Modi, 9th September 2018






Compliance with Accounting Standard in Financial Reporting & Common Mistakes in preparation of Financial Statement and CARO Reporting by CA Krishanu Bhattacharya & CA Vivek Agarwal, 15th September 2018


The newsletter contains information about the latest updates & case laws relating to Direct Taxes, Indirect Taxes & Company Law Matters. The information is not an advice and should not be treated as such. We will not be liable in respect of any special, indirect or consequential loss or damage.