# VIPCAA
## Monthly E-Zine

January 2019

VIP ROAD CHARTERED ACCOUNTANTS' ASSOCIATION

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# Recent Orders

**CIT vs. Gundecha Builders (Bombay HC)**
S. 22 ALV: If the assessee is a builder but is not engaged in the business of letting of property, the unsold flats held as stock in trade is assessable to tax under the head 'income from house property'.

In the present facts it is undisputed that the respondent assessee is in the business of development of real estate projects and letting of property is not the business of the respondent assessee. In both the decisions relied upon by Mr. Pinto i.e. Chennai Properties (supra) and Rayala Corporation (supra), the Supreme Court on facts found that the appellant was in the business of letting out its property on lease and earning rent therefrom. Clearly it is not so in this case. In the present case, the judgement was concluded against the appellant revenue and in favour of the respondent assessee.

**Lal Products vs. Intelligence Officer (Kerala HC)**
Entire law on whether the situs of sale of intangible property like trademarks & patents is the place where the contract is entered into or where the intangible is registered or where the owner is resident explained in the context of s. 9(1)(i) of Income-tax Act & the law on sales-tax.

Though intangible and incorporeal, it has an existence and its situs also has to be pinned down to a particular place with reference to the owner. The situs of the principal place of business, from where the owner of such trademark exercises his right to sell specified goods, under the trademark or enforces his patent rights, which has been obtained by them as a statutory right, is the place where the goods exist.

**Doshi Accounting Services Pvt Ltd vs. DCIT (ITAT Ahmedabad Special Bench)**
Guidelines specified to ensure expeditious hearing of cases referred to Special Benches and Third Members: Inordinate delay in fixation of hearing of Special Bench & Third Member cases is inappropriate and contrary to the scheme of the Act. It also reduces the efficacy and utility of the mechanism to deal with important matters

We share the anguish of the learned counsel. The sequence of events, as set out above, does clearly shows inordinate delay in the special bench case being taken up. It appears that despite specific requisition by the learned Judicial Member and for the reasons best known to the persons concerned, the Registry has not taken care to do the necessary follow up and ensure that the matter is listed for hearing expeditiously, so as to ensure timely disposal of appeals referred to the special benches. The importance of timely disposal of special bench cases and Third Member cases can hardly be over-emphasised. These cases deserve to be taken up on top priority basis. We are of the view that such an inordinate delay in fixation of hearing of special benches cases, particularly when stay is granted, is not only inappropriate and contrary to the scheme of the Act, but it does reduce the efficacy and utility of the mechanism of special benches to deal with important matters on which there is divergence of views by the division benches or which are otherwise of wider ramifications and national importance. Similarly, inordinate delays in disposal of Third Member cases, by itself, makes the expression of dissenting opinion less effective and useful. We, therefore, deem it fit and proper to formulate the following guidelines with a view to ensure the expeditious hearing of cases referred to Special Benches and Third Members.

## Upcoming Due Dates

| Date | Event Details |
|---|---|
| 7h Jan | TCS & TDS Payment For Dec |
| 11th Jan | GSTR 1 for Dec 2018 for turnover of above 1.5 cr |
| 15th Jan | PF & ESIC Payment for Dec<br><br>Quarterly statement of TCS deposited for the quarter ending Dec 30, 2018 |
| 20th Jan | Form GSTR-3B, GSTR-5 & GSTR-5A for Dec |
| 25th Jan | PF Return filing for Dec |
| 31st Jan | Quarterly statement of TDS deposited for the quarter ending Dec 30, 2018<br>GSTR 1 for Oct to Dec 2018 for turnover of upto 1.5 cr |

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**Nu-Tech Corporate Services Ltd vs. ITO (Bombay High Court)**
Severe strictures issued against DCIT for illegal tax recovery. DCIT directed to pay costs of Rs. 1.50 lakh from salary to the assessee. Dept directed to make entry of lapse & error in the Annual Confidential Report of the AO. Strictures also passed against DCIT for overreaching authority & power by not allowing Dept's Counsel to argue. Such conduct of DCIT does not enhance the image and reputation of Dept.

If we allow such oral routine explanation to be tendered and accepted, we do not think that the state of affairs will ever improve. The superiors in the hierarchy have never bothered as to whether the discipline demanded from these officers is indeed in place. Though there is lack of discipline and there is gross insubordination, still, the acts of omission and commission are overlooked.

**Etiam Emedia Limited vs. ITO (Madhya Pradesh High Court)**
S. 147 Reopening to assess Bogus share capital: Law explained whether allegation that assessee is a dummy concern used to route unaccounted money by way of bogus share application money is sufficient to reopen assessment (all imp judgements referred).

The respondents have stated that there are large number of dummy/bogus/shell/ briefcase/ paper entities including the petitioner/company in the group, which is being managed and controlled by Shri Anand Bangur for the purposes of routing unaccounted money and the department with great difficulties and after examining huge evidence, has arrived at a conclusion to initiate the proceedings against the petitioner and it is not a case where some unilateral action has been taken against the petitioner, it is a case where petitioner will receive every opportunity to defend himself and the entire mechanism has been provided under the Income Tax Act, 1961 and the respondents have prayed for dismissal of the writ petition.

**PCIT vs. The Executor of Estate of Late Smt. Manjula A. Shah (Bombay High Court)**
S. 50C Capital Gains: The valuation of the stamp authority cannot be adopted for the purpose of collecting capital gain tax in the hands of the assessee if there is a long gap between the date of execution of the MOU and the execution of a formal development agreement.

The assessee can be taxed only on the gain which is oozing out from the sale consideration, thus, no adverse inference can be drawn while invoking the provision of section 50C of the Act. No evidence has been produced by the Revenue at any stage that the assessee actually received the value which was adopted by the stamp valuation authority.

**Kerala State Co-op Agricultural And Rural Development Bank Ltd vs. ITO (Kerala High Court)**
S. 220(6) Stay of demand: If the assessee has exercised on time its statutory remedy of filing an appeal and also filed a stay petition, procedural fairness demands that the authorities may wait, before taking further steps, until the appellate authority decides on the stay petition.

I reckon the petitioner has exercised on time its statutory remedy of filing an appeal. It appears that it has also filed a stay petition. Procedural fairness demands that the authorities may wait, before taking further steps, until the appellate authority decides on the stay petition.

**HDFC Bank Ltd vs. ACIT (Bombay High Court)**
**S. 92BA(i)/ 40A(2)(b) Domestic Transfer** Pricing: Entire law on what constitutes "Specified Domestic Transactions" explained. The Dept's contention that a shareholder has beneficial interest in the assets of the company is contrary to all canons of Company law.

We cannot, and the law does not permit us, to hold that HDFC Ltd. is the beneficial owner of 22.64% of the shares in the Petitioner by clubbing the share holding of HDFC Investments Ltd. with the shareholding of HDFC Ltd. If we were to do this, we would be effectively holding that HDFC Ltd., being a shareholder of HDFC Investments Ltd., is the beneficial owner of the shares which HDFC Investments Ltd. holds in the Petitioner. This, in law, is clearly impermissible because a shareholder of a company can never have any beneficial interest in the assets (movable or immovable) of that company. In the present case, if we were to accept the contention of the Revenue, it would mean that HDFC Ltd. is the beneficial owner of the shares which HDFC Investments Ltd. holds in the Petitioner. This would be contrary to all canons of Company Law. It is well settled that a shareholder of a company can never be construed either the legal or beneficial owner of the properties and assets of the company in which it holds the shares. This being the position in law, we find that the Revenue is incorrect in trying to club the shareholding of HDFC Investments Ltd. in the Petitioner along with the shareholding of HDFC Ltd. in the Petitioner, to cross the threshold of 20% as required in explanation (a) to section 40A(2)(b). We are supported in the view that we take by a decision of the Supreme Court in the case of Bacha F. Guzdar Vs. Commissioner of Income Tax [(1955) 27 ITR 1].

**S. Rajalakshmi vs. ITO (Bombay High Court)**
S. 147 Reopening: If the assessee's son contends in his assessment that certain investments belong to the assessee, that gives "reason to believe" to the AO to reopen the assessment. The subjective satisfaction of the AO has to seen and whether that satisfaction suffers from any perversity (Maniben Valji Shah 283 ITR 354 (Bom) distinguished).

The reopening of assessment u/s 147 on the basis of information in the form of observations of ITAT is on sound footing and which constitutes a tangible material for the purpose of reopening as the assessee did not file her return of income as required u/s 139(1) of the Act explaining the source of investment. Therefore, we are of the considered view that the reopening of assessment is on sound basis and there is no merits in the arguments of the assessee that the AO has reopened the assessment without any tangible material which suggests escapement of income within the meaning of section 147 of the Act.

**ACIT vs. Karam Chand Rubber Industries (ITAT Delhi)**
Bogus Purchases: The fact that the vendors are not available at the given address is not sufficient to treat the purchases as bogus if the assessee has discharged primary onus and substantiated the purchases through documentary evidence and payment is made through banking channels. None of these documents have been proved to be false or untrue and thus the initial burden cast on the assessee was duly discharged.

It is an admitted fact that during the course of search nothing adverse was found from the premises of the assessee regarding the purchases made from the four parties concerned. Only during post search enquiry it was found that those four parties are not available at the given address. However, it is a fact that the payments have been made through banking channel and the assessee had substantiated the purchases by providing documents such as purchase invoices, copy of the ledger accounts, evidences for having made payments through banking channels, C Form issued to the suppliers, copy of VAT return duly reflecting the said purchases, etc.

**Anil Kumar Nehru vs. ACIT (Supreme Court)**
S. 260A Condonation of delay of 1662 days: The High Court should not take a technical approach and refuse to condone the delay when appeals for earlier years with identical issues are already pending before it.

It is a matter of record that on the identical issue raised by the appellant in respect of earlier assessment, the appeal is pending before the High Court. In these circumstances, the High

Court should not have taken such a technical view of dismissing the appeal in the instant case on the ground of delay, when it has to decide the question of law between the parties in any case in respect of earlier assessment year.

**Purviben Snehalbhai Panchhigar vs. ACIT (Gujarat High Court)**
S. 147 Reopening of s. 143(1) assessment: Law on whether reopening to assess alleged Bogus Capital gains from penny stocks is permissible explained in the context of Rajesh Jhaveri 291 ITR 500 (SC) & Zuari Estate 373 ITR 661 (SC).

In the present case the Assessing Officer has heard the material on record which would prima facie suggest that the assessee had sold number of shares of a company which was found to be indulging in providing bogus claim of long term and short term capital gain. The company was prima facie found to be a shell company. The assessee had claimed exempt of long term capital gain of Rs.1.33 crores by way of sale of share of such company.

**Vinod Soni vs. ITO (ITAT Delhi)**
S. 194-IA TDS: The exemption of Rs. 50 lakh in s. 194-IA(2) is applicable w.r.t. the amount related to each transferee and not with reference to the amount as per sale deed. Each transferee is a separate income tax entity and the law has to be applied with reference to each transferee as an individual transferee / person.

Each transferee is a separate income tax entity therefore, the law has to be applied with reference to each transferee as an individual transferee / person. It is also noted that Section 194-IA was introduced by Finance Act, 2013 effective from 1.6.2013. It is also noted from the Memorandum explaining the provisions brought out alongwith the Finance Bill wherein it was stated that "in order to reduce the compliance burden on the small tax payers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakhs rupees."

**ACIT vs. Subhodh Menon (ITAT Mumbai)**
S. 56(2)(vii) is a counter evasion mechanism to prevent money laundering of unaccounted income & does not apply to bona fide business transaction done out of business exigency. The difference between alleged fair market value of share and the subscribed value of shares cannot be assessed as income u/s 56(2)(vii)(c) (CBDT Circulars & case laws referred).

Section 56(2)(vii) does not apply to bonafide business transaction. As explained hereinabove, shares were issued by the company to comply with a covenant in the loan agreement with State Bank of India which required the promoters to increase the total net worth of the company to Rs. 150 crores by 31 March, 2010. Therefore, the shares were issued by the company for a bonafide reason and as a matter of business exigency. Circular No.1/2011 dated 6 April, 2011 issued by the CBDT explaining the provision of section 56(2)(vii) specifically states that the section was inserted as a counter evasion mechanism to prevent money laundering of unaccounted income. In paragraph 13.4 thereof where it is stated that "the intention was not to tax transactions carried out in the normal course of business or trade, the profit of which are taxable under the specific head of income".

**CIT vs. Shyam Telelink Ltd (Delhi High Court)**
S. 4/ 145: Law on accrual on income, matching concept & principles of Revenue Recognition as per Accounting Standards (AS-9, AS-22) explained in the context of sale of prepaid mobile cards (All important judgements referred).

Matching Concept is based on the accounting period concept. The paramount object of running a business is to earn profit. In order to ascertain the profit made by the business during a period, it is necessary that "revenues" of the period should be matched with the costs (expenses) of that period. In other words, income made by the business during a period can be measured only with the revenue earned during a period is compared with the expenditure incurred for earning that revenue. However, in cases of mergers and acquisitions, companies sometimes undertake to defer revenue expenditure over future years which brings in the concept of Deferred Tax Accounting. Therefore, today it cannot be said that the concept of accrual is limited to one year. It is a principle of recognizing costs (expenses) against revenues or against the relevant time period in order to determine the periodic income. This principle is an important component of accrual basis of accounting. As stated above, the object of AS 22 is to reconcile the matching principle with the Fair Valuation Principles. It may be noted that recognition, measurement and disclosure of various items of income, expenses, assets and liabilities is done only by Accounting Standards and not by provisions of the Companies Act.

**In Re Gabs Investments Pvt Ltd & Ajanta Pharma Ltd (NCLT Mumbai)**
GAAR: Objections of the Dept that the scheme of amalgamation is a deliberate measure to avoid tax burden and is an 'Impermissible Avoidance Agreement' because it results in avoidance of Divided Distribution Tax (DDT), tax on business profits and MAT u/s ll5JB etc has merit. The scheme is not in public interest & cannot be sanctioned.

Since Income Tax department (IT) has raised strong objections about tax benefit, tax avoidance, tax loss as discussed above, we are of the opinion that it would be advisable to settle the important /crucial issue of huge tax liability before sanctioning the scheme by the Tribunal rather than disputing the same at a later stage after the scheme is sanctioned by the Tribunal. It is mandatory as per section 230 (5) of the Companies Act, 2013, a notice under sub section (3) along with all the documents in such form shall also be sent to central government , Income Tax Authorities, RBI, SEBI, ROC, stock exchanges, OL, CCI and other Sectoral regulators or Authorities for their representations. In response to the notice received as per above section the Income Tax Department has raised valid observation/objections as detailed above, we find merit in the objections raised by Income Tax Department and we are also inclined to agree with the objections raised.

**DCIT vs. Rakesh Saraogi & Sons (HUF) (ITAT Raipur)**
S. 10(38) Bogus Capital Gains Penny Stocks: Assuming brokers may have done manipulation, assessee cannot be held liable when the entire transaction is done through banking channels duly recorded in Demat accounts with Govt depository and traded on stock exchange Nothing on record to suggest assessee gave cash and purchased cheque from broker (Sanjay Bimalchand Jain (Bom HC) distinguished).

There is no denying that consideration was paid when the shares were purchased. The shares were thereafter sent to the company for the transfer of name. The company transferred the shares in the name of the assessee. There is nothing on record which could suggest that the shares were never transferred in the name of the assessee. There is also nothing on record to suggest that the shares were never with the assessee. On the contrary, the shares were thereafter transferred to demat account. The demat account was in the name of the assessee, from where the shares were sold. In our understanding of the facts, if the shares were of some fictitious company which was not listed in the Bombay Stock Exchange/National Stock Exchange, the shares could never have been transferred to demat account.

**ACIT vs. Janak Global Resources Pvt. Ltd (ITAT Chandigarh)**
S. 36(1)(iii): Dept's argument that Maxopp Investment/Avon Cycles 402 ITR 640 (SC) overrules the presumption that advances to sister concerns are made from own funds and

not borrowed funds is not correct. Law on interpretation of judgements explained.

It is evident from the above that the issue before the Hon'ble Apex Court was not whether the presumption theory would apply or not where there are mixed funds and the assessee had demonstrated availability of sufficient own funds for making the investments. No discussion on this aspect has also been done by the Hon'ble Apex Court and merely noting that the assessee had utilized mixed funds, the Hon'ble Apex Court held that the principle of apportionment would apply. Without any discussion or deliberation on the presumption theory, the proposition laid down in the case of Avon Cycles Ltd. (supra) by the Hon'ble Apex Court has to be restricted to the extent of the issue before the Hon'ble Apex Court and facts before it and not beyond that. And on that basis the decision of the Hon'ble Supreme Court in the case of Avon Cycles Ltd. (supra) can be read only to the extent of upholding the principle of apportionment of expenses incurred in the context of the limited fact of mixed funds available with assessee and no further. The proposition laid down cannot be stretched even logically to address the fact situation where sufficient own interest free funds are available with assessee, which fact was not there before the Hon'ble Apex court in the case of Avon Cycles (supra), and to negate the presumption that the own funds were used for making the investment, which was neither the question raised before the apex court and therefore not addressed by it also.

**FIS Global Business Solutions India Pvt. Ltd vs. PCIT (Delhi High Court)**
S. 147/ 148: A report of the Revenue audit party is merely information and opinion. It is not new or fresh or tangible material. If the reassessment notice is solely based on an audit opinion, it means it is issued on change of opinion which is not permissible.

We find that the arguments on behalf of the petitioner are well founded and it must succeed. The audit report merely gives an opinion with regard to the non-availability of the deduction both under section 80-IA was not deducted from the profits of the business while computing deduction under section 80HHC. Clearly, therefore, there was no new or fresh material before the Assessing Officer except the opinion of the Revenue audit party. Since it is settled law that mere change of opinion cannot form the basis for issuing of a notice under section 147/148 of the Act, therefore, we do not propose to burden out judgment with the said judgments.

**Ramprasad Agarwal vs. ITO (ITAT Mumbai)**
S. 10(38) Bogus capital gains from penny stocks: If the holding of shares is D-mat account cannot be disputed then the transaction cannot be held as bogus. The AO has also not disputed the sale of shares from the D-mat account of the assessee and the sale consideration was directly credited to the bank account of the assessee. Once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares then, in the absence of any contrary material brought on record the same cannot be held as bogus transaction merely on the basis of statement of one Anil Agrawal recorded by the Investigation Wing, Kolkata wherein there is a general statement of providing bogus long term capital gain transaction to the clients without stating anything about the transaction of allotment of shares by the company to the assessee.

**Jupiter Capital Pvt. Ltd vs. ACIT (ITAT Bangalore)**
S. 2(47) Transfer: The reduction of share capital of a company by way of reducing the face value of each share from Rs. 1,000 to Rs. 500 amounts to "extinguishment of rights" and is a "transfer" u/s 2(47) of the Act. The assessee is eligible to claim a capital loss therefrom (Kartikeya V. Sarabhai vs. CIT 228 ITR 163 (SC) & other judgements followed).

Sec. 2(47) which is an inclusive definition, inter alia, provides that relinquishment of an asset or extinguishment of any right there in amounts to a transfer of a capital asset. While, it is no doubt true that the appellant continues to remain a shareholder of the company even with the reduction of a share capital but it is not possible to accept the contention that there has been no extinguishment of any part of his right as a shareholder qua the company. It is not necessary that for a capital gain to arise that there must be a sale of a capital asset. Sale is only one of the modes of transfer envisaged by s. 2(47) of the Act. Relinquishment of the asset or the extinguishment of any right in it, which may not amount to sale, can also be considered as a transfer and any profit or gain which arises from the transfer of a capital asset is liable to be taxed under s. 45 of the Act.

**ACIT vs. Celerity Power LLP (ITAT Mumbai)**
S. 47(xiiib) r.w.s 47A(4): The conversion of a company into a LLP constitutes a "transfer". If the conditions of s. 47(xiiib) are not satisfied, the transaction is chargeable to 'capital gains' u/s 45 (Texspin Engg 263 ITR 345 (Bom) distinguished). If the assets and liabilities of the company are vested in the LLP at 'book values' (cost), there is in fact no capital gain. The argument that u/s 58(4) of the LLP Act, the LLP is entitled to carry forward the accumulated losses & unabsorbed depreciation of the company, notwithstanding non-compliance with s. 47(xiiib) is not acceptable.

We find from a perusal of the 'memorandum' explaining the purpose and intent behind the enactment of sub-section (xiiib) to Sec. 47, that prior to its insertion, the 'transfer' of assets on conversion of a company into a LLP attracted levy of "capital gains" tax. The legislature in all its wisdom had vide the Finance Act, 2010 made Sec. 47(xiiib) available on the statute, with the purpose that the transfer of assets on conversion of a company into a LLP in accordance with the Limited Liability Partnership Act, 2008, subject to fulfilment of the conditions contemplated therein, shall not be regarded as a 'transfer' for the purposes of Sec. 45 of the Act. In so far, the reliance placed by the ld. A.R on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Texspin Engg. & Mfg. Works (2003) 263 ITR 345 (Bom) is concerned, the same in our considered view is distinguishable on facts.

## VIPCAA Wishes Its Members A Very Happy Birthday & Anniversary

| | |
|---|---|
| Binod Dugar | January 7th |
| Dalam Bhandari | January 7th |
| Deepak Agarwal(II) | January 7th |
| Jitendra Bhartia | January 7th |
| Lalit Chhotaria | January 7th |
| Manoj Sharma | January 8th |
| Manish Drolia | January 9th |
| Uma Agarwal | January 9th |
| Nitesh More | January 10th |
| Mahendra Jain | January 10th |
| Sushil Ladia | January 10th |
| Pankaj Verma | January 10th |
| Vishal Agarwal | January 11th |
| Daya Agarwala | January 11th |
| Narayan Poddar | January 12th |
| Amit Shyamsukha | January 12th |
| Ram Taparia | January 12th |
| Nirmal Chirania | January 13th |
| Pradeep Agarwal | January 13th |
| Tara Kehtan | January 14th |
| Vasant Parekh | January 15th |
| Sanjay Khandelwal | January 18th |
| Vikash Jain | January 22nd |
| Pawan Agarwal | January 23rd |
| Pradeep Patwari | January 23rd |
| Subhash Chanani | January 23rd |
| R.S. Khandelwal | January 25th |
| Sanjay Nahata | January 26th |
| Rakesh Agarwal | January 30th |
| Vijay Agarwal | January 30th |

**ITO vs. Ashok Jain (ITAT Surat)**
S. 148/ 151: If the AO issues the notice for reopening the assessment before obtaining the sanction of the CIT, the reopening is void ab initio. The fact that the sanction was given just one day after the issue of notice makes no difference.

No doubt in the present case, the ld.AO has applied for such approval which was granted on 29.3.2017, but before grant of approval, the ld.AO has already issued notice on 28.3.2014 which is without any jurisdiction. He can issue notice only after getting approval. Thus, the ld.CIT(A) has rightly quashed the assessment because the very foundation for issuance of notice under section 148 is the approval from the competent authority, i.e. Commissioner of Income Tax, and in the absence of such, such notice is void ab initio.

**Amount kept in Impress Account can't be treated as 'Business Advance': ITAT Chandigarh**
While deleting a penalty order, the Tribunal held that the amount kept in the impress account cannot be treated as 'business advance' for the purpose of section 36(1)(iii) of the Income Tax Act.

The Assessing Officer imposed penalty on the appellant on account of addition made to the income of the assessee by way of disallowance of interest of Rs.20,31,600/- under section 36(1)(iii) of the Income Tax Act on the amounts kept in the imprest account holding that the same was for non-business purpose and borrowed funds had been used in the same.

The Tribunal noted that there was no reason for making any disallowance of interest expenses at all in the first place. Admittedly, the disallowance is in relation to amounts kept in imprest account. According to the Tribunal, the imprest account means the amounts kept aside and kept ready for use for the business of the assessee. It is not in the nature of any advance given to any person. Therefore, it cannot be termed as non-business advance.

Finance Charges paid to NBFCs not subject to TDS: ITAT Kolkata
The Tribunal has held that the finance charges to Non-Banking Financial Companies (NBFCs) are not subject to Tax Deduction at Source ( TDS ) under the provisions of section 194A of the Income Tax Act.

The assessee has debited in his profit and loss account an aggregate sum of Rs.5,68,40,472/- under the head interest and finance charges. While completing the assessment proceedings, the Assessing Officer held that such amounts were payable/paid to different non-banking financial companies and no tax has been deducted at source under section 194A of the Act.

According to the assessee, the finance charges do not interest and hence, section 194A is not attracted since his business was that of hiring out industrial crane and equipment which are acquired on hire purchase finance from the bank and other financial companies. It was contended that the monthly hire -purchase installments were paid in which financial charges were also included.

**Frequent Withdrawal and Deposit of Own Money not Prohibited by Law: ITAT Lucknow**
The Lucknow bench of the Income Tax Appellate Tribunal (ITAT) held that the Assessing Officer cannot make an addition merely on the ground of the assessee made frequent withdrawal and deposit of his own money, which is not prohibited under any law.

The Assessing Officer made addition against the assessee by relying on the fact that he the cash amounting to Rs.1,35,61,000/- was deposited on different dates in assessee's bank accounts with Union Bank of India, Unnao. As the amount was deposited in cash in her bank accounts, the onus lies upon the assessee to prove the source of the same. On the first appeal, the appellate authority granted relief to the assessee. On appeal by the department, the Tribunal noted that the addition has been made by the Assessing Officer, on the ground that cash deposits were from some other source of income which is not disclosed to the Revenue.

The Tribunal noted the fact that the Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having an additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee were from some undisclosed source.

**Notice for Penalty issued to Dead Person is Bad in Law: ITAT Kolkata**
The Tribunal held that the penalty notice issued against a dead person is bad in law under the provisions of the Income Tax Act. The assessment was completed against the assessee, an individual, on the basis of conclusions made after the search proceedings.

The Assessing Officer was of the view that the assessee had undisclosed income. Accordingly, penalty proceedings under section 271AAB were also initiated by the Assessing Officer and since the explanation offered by the assessee in response to the show-cause notice issued during the course of the said proceedings was not found satisfactory by him, the Assessing Officer imposed penalty under section 271AAB of the Act at the rate of 30% of the undisclosed income admitted and surrendered under section 132(4) of the Act.

The assessee made a contention that the penalty proceedings have been initiated against a dead person, initiation itself was bad-in-law and the penalty imposed under section 271AAB is, therefore, not sustainable. He has pointed out that the notice initiating penalty proceedings under section 271AAB was issued by the Assessing Officer on 13.10.2015 in the name of the assessee, who had already expired on 29.04.2015. a copy of the death certificate was also produced before the Tribunal.

**Payment of Municipal Taxes being directly related to letting out of Property, can't be Deducted from 'Other Income': ITAT Mumbai**
The Tribunal held that the payment of municipal taxes cannot be deducted under section 57(iii) of the Income Tax Act since the same is directly related to the letting out of the property. The assessee, in its return, had shown gross rental income of Rs.12,98,00,004/- as regards the lease and amenities charges received from letting out its property situated at Vile Parle (East), Mumbai to HSBC during the year. The assessee firm had entered into two different agreements with HSBC bank for the lease rentals and amenities charges for letting out its aforesaid property. The assessee, under the said agreement, paid municipal taxes and claimed the deduction of the same from the Other Sources. While completing assessment proceedings, the Assessing Officer assessed the rental receipts under the head "income from house property" and the amenities charges received for giving services to the lessee were brought to tax by him under the head "income from other sources". He further held that the municipal taxes paid cannot be deducted from the head Other sources. He was of the view that the amenities agreement could not be given the color and character as that of a lease agreement, as the same only provided for the terms of sharing of expenditure between the lessor and the lessee.

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

# Recent update on Ind AS

Compiled by CA Harsha Saraf

**1. ITFG 17**

Ind AS Technical Facilitation Group' (ITFG) of Ind AS Implementation Group formed by ICAI, considered some issues received from members and decided to issue clarifications on December 19, 2018. This ITFG addressed 11 issues majorly covering around – government grant, financial instruments and consolidated financial statements.

**2. Following are certain amendments in Schedule III of Companies Act 2013:**

**Division I (for companies following AS): In the balance sheet and related notes section:**

- Term 'fixed assets' changed to 'property, plant and equipment'.
- Term 'securities premium reserve' changed to 'securities premium'.

**Division II (for companies following Ind AS, other than NBFCs):**

- Trade payable to be further categorized into: (a) Total outstanding due to micro enterprises and small enterprises and (b) Total outstanding due to creditors other than micro enterprises and small enterprises.
- Trade / loan receivable to be further classified into: (a) Trade / loan receivable considered good – Secured (b) Trade / loan receivable considered good – Unsecured (c) Trade / loan receivable which have significant increase in credit risk and (d) Trade / loan receivable – credit impaired.

**Division III (for NBFCs on which Ind AS is applicable):**

- Disclose purpose of each reserve, included in 'other equity' in notes to statement of changes in equity.
- Balance Sheet: 1. Items presented to be classified as 'financial' and 'non-financial'. 2. NBFCs are permitted to present assets and liabilities in the order of liquidity. 3. Disclosures related to derivative financial instrument and subordinated liabilities to be made on face of balance sheet.
- Statement of profit and loss: 1. Disclose items comprising 'revenue from operation' and 'other comprehensive income' on face of statement of profit and loss. (2) Items of other income and other expenditure in excess of 1% of total income to be disclosed in note.
- Statement of changes in equity: 1. Disclose statutory reserve as part of 'other equity'.

**3. Expert Advisory Committee (EAC) opinions issued by ICAI during quarter ended December 2018:**

i. Provisioning for expected credit loss on the amount due in the course of business from government organization (under Ind AS) – October 2018

ii. Provision for un-cashable portion of half pay leave as per AS 15/Ind AS 19 – November 2018

iii. Treatment of disputed amount (principal and interest) in respect of cases pending before various regulatory authorities (under Ind AS) – December 2018.

**4. Recent changes in results submitted to stock exchange**

NSE Ltd and BSE Ltd through a circular on November 22, 2018 clarified certain amendments in Schedule III for listed companies as follows:

- For quarter ended December 31, 2018: Follow existing format of Schedule III. In addition, entities may submit results as per new format (amended Schedule III).
- For quarter / year ending on or after March 31, 2019: All entities (including NBFC) should present results as per new format (amended Schedule III).

**5. Recent changes in SEBI regulation:**

NSE Ltd and BSE Ltd through a circular on Nov 19, 2018 clarified following:

i. A listed entity which does not submit its financial result in within the mentioned timelines (quarterly and YTD within 45 days from the end of last quarter, annual within 60 days from the end of FY), are required to disclose reason for such delay to stock exchange within 1 working day of the due date.

ii. If decision for delay was taken prior to the due date, detailed reason should be disclosed within 1 working day of such decision.

# Recent update on GST

Compiled by CA Shubham Khaitan

**Extension of Due Date for taking ITC**

ITC in relation to invoices issued by the supplier during FY 2017-18 may be availed by the recipient till the due date for furnishing of FORM GSTR-3B for the month of March, 2019. This is subject to the condition that the details have been uploaded by the supplier. Parallelly, the uploading of invoices and rectification of error or omission in Form GSTR 1 for the FY 2017-18 has been allowed till the due date of furnishing Form GSTR 1 for the month of March 2019. It may be noted here that the due date for rectification is in respect of Form GSTR 1 and that of availment of ITC is the due date of Form GSTR 3B for the month of March 2019. (Order No. 2/2018-Central Tax dated 31st December 2018)

**Annual Return and GST Audit related changes**

The due date for furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the Financial Year 2017 – 2018 has been extended till 30.06.2019 (Order No. 3/2018-Central Tax dated 31st December 2018)

Following are the major changes which have been carried out in Form GSTR 9 and GSTR 9C in the format and the instructions:

o Amendment of headings in the forms to specify that the return in FORM GSTR-9 & FORM GSTR-9A would be in respect of supplies etc. 'made during the year' and not 'as declared in returns filed during the year';

o All returns in FORM GSTR-1 & FORM GSTR-3B have to be filed before filing of FORM GSTR-9 & FORM GSTR-9C;

o All returns in FORM GSTR-4 have to be filed before filing of FORM GSTR-9A;

o HSN code may be declared only for those inward supplies whose value independently accounts for 10% or more of the total value of

inward supplies; o Additional payments, if any, required to be paid can be done through FORM GST DRC-03 only in cash;

o ITC cannot be availed through FORM GSTR-9 & FORM GSTR-9C;

o All invoices pertaining to previous FY (irrespective of month in which such invoice is reported in FORM GSTR-1) would be auto-populated in Table 8A of FORM GSTR-9;

o Value of "non-GST supply" shall also include the value of "no supply" and may be reported in Table 5D, 5E and 5F of FORM GSTR-9;

o Verification by taxpayer who is uploading reconciliation statement would be included in FORM GSTR-9C.

**Refund related changes**

Following clarifications were issued by the GST Policy Wing of CBIC vide Circular No. 79/53/2018-GST dated 31st December 2018:

1. Calculation of refund amount for claims of refund of accumulated ITC on account of inverted duty structure

- As per rule 89(5) of the CGST Rules, the term Net ITC covers ITC availed on all inputs in the relevant tax period, irrespective of their rate of tax. There b yeven if part of the inputs is procured at equal or lower rates as compared to the output, refund under inverted duty structure will be available. This will be allowed provided some of the inputs are at higher rate which causes accumulation of ITC under inverted duty structure.

- For instance, if inputs @ 5% and 18% are used for an outward supply @ 12%. Maximum refund amount would be the Total ITC after deducting the tax payable on such inverted supply of goods/services

2. Disbursal of refund amount after sanction

- If any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest @ 6% on the refund amount will be applicable.

- Interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the claimant.

- The tax authorities have been advised to issue final sanction order in FORM GST RFD – 06 within a period of 45 days of the date of generation of ARN

3. Refund application generated on the portal but physically not submitted with jurisdictional tax office

- Where application of refund has been filed in respect of electronic credit ledger before the rollout of online functionality and the documents have not been submitted,

o The supporting documents are still to be submitted physically.

o If not submitted within 60 days of generation of ARN at the jurisdictional office, the claimants will be sent communication on where to submit the application.

o If application is still not submitted within 15 days of the email, the application will be rejected and the debited amount will be re-credited.

o Refund application of amount less than Rs. 1000 will automatically stand rejected.

- Where application of refund has been filed in respect of electronic cash ledger before the rollout of online functionality and the documents have not been submitted:

o The amount debited in the electronic cash ledger in such applications may be re-credited through FORM GST RFD-01B provided that there are no liabilities in the electronic liability register.

o The said amount shall be re-credited even though the return in FORM GSTR-3B, as the case may be for the relevant period has not been filed.

- In case of refund application generated after issuance of this circular or refund application generated before issuance of this circular and physically submitted with the jurisdictional tax offices before issuance of this circular, guidelines as modified by this circular shall be followed.

4. Non – consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period

- The input tax credit of invoices issued in preceding month/year but availed in subsequent month/year cannot be excluded from the calculation of the refund amount for the relevant period.

- Input tax credit is said to have been "availed" when it is entered into the electronic credit ledger of the registered person subject to conditions laid down in section 16(4) of CGST Act.

5. Meaning of the term inputs

- Input tax credit on inputs is available if it satisfies the description laid down in section 2(59) of the CGST Act.

- ITC on stores and spares, packaging, printing and stationery, material purchased for machinery repairs etc. will be available if used for business purpose and /or effecting taxable supplies including zero rated supplies and subject to section 17(5) of the CGST Act.

- ITC on capital goods are available if used for making taxable supplies including zero rated supplies. Expenditure of capital goods which are charged as revenue expenses in the books of accounts cannot be held as capital goods.

6. Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure

- Refund of accumulated ITC on account of inverted duty structure shall be available in respect of inputs only.

- ITC of input services and capital goods are not to be included while calculating Net ITC.

7. Refund of accumulated ITC of Compensation Cess

- Refund of accumulated ITC of compensation cess on account of zero-rated supplies made under LUT/Bond is to be recomputed as if the same was available for the relevant tax period for which refund application for un-utilised ITC was filed.

- Aggregate of the recomputed refund of compensation cess of the respective months would be admissible if it is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed.

- Recomputed eligible refunds of compensation cess would not be admissible if goods are exported on payment of IGST in past periods.

- ITC of compensation cess is available on inputs used or intended to be used by a supplier in the course or furtherance of business.

- ITC cannot be denied even if the goods or service is used as an intermediary by the registered tax person for manufacturing of final product.

- ITC which is reversed cannot be part of refund of unutilized ITC on account of zero-rated supplies.

- If reversed ITC is reclaimed later on, refund for the same is to be re-computed like the refund

on account of compensation cess as stated above.

- As earlier the reversed ITC was considered as a part of cost in the books of account, the same should be removed as a part of cost if reclaimed later on.

8. Physical submission of refund claims with jurisdictional proper officer

- All documents/undertaking/statements to be submitted along with the claim for refund in FORM GST RFD-01A shall be uploaded on the common portal at the time of filing of the refund application. No physical submission would be required in the office of the jurisdictional proper officer.

- Taxpayers if willing to submit the documents physically with the proper officer may do so.

- Taxpayer who still remains unallocated to the Central or State Tax Authority will necessarily have to submit the refund application physically before the jurisdictional proper officer of either the State or the Central tax authority.

- ARN will be generated only after filing of FORM GST RFD-01A, all the supporting documents are uploaded on the common portal and amount is debited in the Electronic Credit ledger

- Once the ARN is generated all the documents uploaded would be made available to the proper officer electronically

- The refund application shall be deemed to have been filed when the ARN is generated and the time limit of 15 days to issue an acknowledgement is counted from the that date

- Acknowledgement for the complete application or deficiency memo to be issued electronically by the proper officer based on documents uploaded

- Refund application if electronically transferred to incorrect jurisdictional officer, the same should reassign it to correct jurisdictional officer within 3 days. Application would be deemed to have been filed only when it is reassigned

- No deficiency memo to be issued on ground of incorrect electronic transmission of the application. If re-assignment facility is not available, present arrangement to be continued.

- Rectified refund application to be submitted physically with the proper officer under the earlier ARN if deficiency memo is issued. The rectified application is to be treated as a fresh application.

- Only the method of submission of the refund application along with supporting documents have been changed from physical mode to electronic mode. The processing of refund claim in FORM RFD-01A to be carried out manually by the proper officer for time being.

9. Changes in FORM RFD-01A

- Now the below mentioned refund will be available through RFD-01A -

o Refund on account of Assessment/Provisional Assessment/Appeal/Any Other Order;

o Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice-versa;

o Excess payment of Tax; and

o Any other refund

- Relevant statements have been inserted in Annexure-1 of FORM RFD-01 A

(Notification No. 74/2018 – Central Tax dated 31st December, 2018)

**Extension of due dates**

- The due date for furnishing FORM GSTR-8 by e-commerce operators for the months of October, November and December, 2018 shall be extended till 31.01.2019. (Order No. 4/2018-Central Tax dated 31st December 2018)

- The due date for submitting FORM GST ITC-04 for the period July 2017 to December 2018 shall be extended till 31.03.2019.

(Notification no. 78/2018-Central Tax dated 31st December 2018)

- Late fee shall be completely waived for all taxpayers in case FORM GSTR-1, FORM GSTR-3B &FORM GSTR-4 for the months / quarters July, 2017 to September, 2018, are furnished after 22.12.2018 but on or before 31.03.2019.

(Notification no. 75/2018, 76/2018 and 77/2018-Central tax dated 31st December 2018)

- One more window for completion of migration process is being allowed. The due date for the taxpayers who did not file the complete FORM GST REG-26 but received only a Provisional ID (PID) till 31.12.2017 for furnishing the requisite details to the jurisdictional nodal officer shall be extended till 31.01.2019. Also, the due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period July, 2017 to February, 2019/quarters July, 2017 to December, 2018 by such taxpayers shall be extended till 31.03.2019.

(Notification no. 67/2018-Central tax dated 31st December 2018)

**RCM related amendments:**

- Services provide by GTA to the following entities registered under GST only for the purposes of deduction of tax shall be exempt:

a) a Department or Establishment of the Central Government or State Government or Union territory; or

b) local authority; or

c) Governmental agencies.

- GST is to be paid for the following services under RCM:

a) Services provided by business facilitator to a banking company

b) Services provided by an agent of business correspondent to business correspondent.

c) Security services provided to a registered person.

However, the above services when supplied to the following entities registered under GST, tax will not be applicable under RCM:

a) a Department or Establishment of the Central Government or State Government or Union territory; or

b) local authority; or

c) Governmental agencies;

d) A person liable to pay tax under composition scheme.

(Notification No. 29/2018- Central Tax (Rate) dated 31st December 2018)

**Tax Treatment of outsourced value in case of export of services**

Following clarification were issued by the GST Policy Wing of CBIC vide Circular No. 78/52/2018-GST dated 31st December 2018:

- When an exporter of service located in India supplies service to a person located outside India, either wholly or partly through any other supplier of service located outside India it will be treated as two individual supplies -

o Supply of services from the exporter of the services located in India to the recipient of services located outside India for full contract value

o Import of services by the exporter of services located in India from the supplier of services located outside India to the extent of outsourced portion of the contract.

- The agreed contract value will be considered as full value of consideration for export of services even if a portion of the service is provided by the other supplier located outside

India subject to fulfilment of conditions laid down in section 2(6) of the IGST Act read with section 13(2) of the IGST Act.

- Services received by the exporter from person located outside India will be treated as import of Service and IGST shall be paid under Reverse Charge Mechanism.

- The exporter located in India shall be eligible to avail ITC in respect of IGST paid on reverse charge basis for such import of services.

- Direct payment by the recipient of services located outside India to the supplier of services located outside India for the outsourced part of the service to be treated as receipt of consideration for services provided:

o IGST has been paid by the exporter on services directly provided by the supplier of services located outside India to the recipient of services located outside India.

o RBI has approved that a part of consideration for such export can be retained outside India.

- Full contract value to be treated as receipt of consideration for services even if full consideration is not received in convertible foreign exchange by the exporter on account of direct payment by the recipient of services located outside India to the supplier of services located outside India.

**Clarifications**

- It has been clarified that provisions of section 51 shall not apply to the supply of goods or services or both that takes place between the following persons specified as under section 51 of the said Act. Person specified are:

a) A department or establishment of the Central Government or State Government; or

b) Local authority; or

c) Government agencies

d) an authority or a board or any other body, set up by an Act of Parliament or a State Legislature; or established by any Government, with fifty-one per cent. or more participation by way of equity or control, to carry out any function;

e) Society registered under the Societies Registration Act,1860; f) Public sector undertakings.

(Notification no. 73/2018-Central tax dated 31st December 2018)

- It has been clarified that respective government departments shall be liable to get registered and pay GST on intra and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person.

(Circular no. 76/50/2018-GST dated 31st December 2018)

- The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of return in GSTR 3B because tax along with applicable interest has already been paid but after the due date of payment of tax. Accordingly, penalty under section 73(11) of CGST Act is not payable in such cases. However, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

(Circular no. 76/50/2018-GST dated 31st December 2018)

- It has been clarified that in case of revision of prices after the appointed date (i.e., 01.07.2017), of any goods or services supplied before the appointed date which requires issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable. (Circular no. 76/50/2018-GST dated 31st December 2018)

- It has been clarified that the provisions of section 51 of the CGST Act in respect of authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government is applicable only if fifty-one per cent. or more participation by way of equity or control is with the Government.

(Circular no. 76/50/2018-GST dated 31st December 2018)

- It has been clarified that taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.

(Circular no. 76/50/2018-GST dated 31st December 2018)

- It has been clarified that either the consignor or the consignee should be deemed to be the owner of the goods, if the invoice or any other specified document is accompanying the consignment of goods. If the document is not accompanied, the proper officer should determine 'owner of the goods '.

(Circular no. 76/50/2018-GST dated 31st December 2018)

- Any inter-state movement of goods machinery like tower cranes, rigs, batching plants, concrete pumps and mixers which are not mounted on wheels, but require regular means of conveyance (used by companies in Infrastructure business) for provision of service on own account by a service provider, where no transfer of title in such goods or transfer of goods to the distinct person by way of stock transfer is not involved, does not constitute a supply of such goods and hence not liable for GST.

(Circular No. 80/54 /2018-GST dated 31st December 2018)

**Composition related clarification**

- It has been clarified that the composition taxpayer shall pay tax as a normal tax payer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter.

- It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in FORM GST CMP-04. Such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed.

- In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

- It is also clarified that the registered person shall be liable to pay tax under section 9 of the CGST Act from the date of issue of the order in FORM GST CMP-07.

(Circular no. 77/51/2018-GST dated 31st December 2018)

**E-way bill related amendments**

- Furnishing of information in PART A in FORM GST EWB-01 will not be allowed if :

registered person paying tax u/s 10 has not furnished its return for two consecutive tax periods; other registered person has not furnished its returns for two consecutive months.

- The Commissioner may on sufficient cause being shown, allow furnishing of such information in PART A of FORM GST EWB-01.

- A reasonable opportunity of being heard shall be given to such person before rejecting his request for furnishing the required information.

(Notification no. 74/2018-Central tax dated 31st December 2018)

**Revision related amendments**

- Where the Revisional Authority passes an order to rectify a mistake under section 108 which is likely to affect the person adversely, the Revisional Authority shall give a notice to him in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.
- The Revisional Authority shall issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

**GST Rules related Amendments**

- A person applying for registration for collection of tax at source, in a place where he does not have a physical presence, shall mention the name of the state in PART A of GST REG-07 and mention the name of the state or union territory in PART B in which it has a principal place of business.

(Notification no. 74/2018-Central tax dated 31st December 2018)

- The details of challans in respect of goods dispatched from one job worker to another during a quarter shall be not be included in FORM GST ITC-04.

(Notification no. 74/2018-Central tax dated 31st December 2018)

- Documents required for completion of application for refund of integrated tax paid on the goods exported out of India now allows the inclusion of "a departure manifest"

(Notification no. 74/2018-Central tax dated 31st December 2018)

- Signature or digital signature of the supplier is not required in the case of issuance of an electronic invoice/electronic bill of supply/consolidated tax invoice/ticket for transportation of passengers, in accordance with the provisions of the Information Technology Act, 2000.

(Notification no. 74/2018-Central tax dated 31st December 2018)

- For the purpose of sub-rule (5) of rule 89 i.e. refund under inverted duty structure, "Relevant period" has been defined to mean the period for which the claim has been filed.

(Notification no. 74/2018-Central tax dated 31st December 2018)

- The period of audit to be conducted under sub section (1) of section 65 shall be a financial year or multiples or part thereof. Thereby, audit is allowed even for the part of the financial year.

(Notification no. 74/2018-Central tax dated 31st December 2018)

**Place of Supply related Amendment**

- In the case of advertisements over internet, the service shall be deemed to have been provided all over India and the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory.
- The supply of services attributable to different States or Union territory in case of any immovable property or boat or vessel is located in more than one State or Union territory, shall be taken proportionately.

➢In the absence of any contract between the supplier of service and recipient of services Place of Supply shall be determined as below:

| Section | Rule | Location of supplier & recipient of service | Services Provided | Basis |
|---|---|---|---|---|
| 12(3) | 4 | In India | Lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called. | No. of nights stayed in each such property. |
| 12(3) | 4 | In India | Accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called. | In proportion to the area of the immovable property lying in each State or Union territory; |
| 12(3) | 4 | In India | Lodging accommodation by a house boat or any other vessel and services ancillary to such services. | In proportion to the time spent by the boat or vessel in each such State or Union territory |
| 12(7) | 5 | In India | Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair exhibition, celebration or similar events and services ancillary to such services. | By application of the generally accepted accounting principles. |
| 12(11) | 6 | In India | Supply of services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory. | In proportion to the number of points lying in the State or Union territory |
| 13(7) | 7 | Location of either the service provider or service recipient is outside India. | Services as per section 13(2), (3), (4).<br>i. In the case of services supplied on the same goods<br>ii. In the case of services supplied on different goods<br>iii. In the case of services supplied to individuals | Equally dividing the value of the service in each of the States and Union territories where the service is performed.<br>Ratio of the invoice value of goods in each of the States and Union territories, on which service is performed.<br>Apply generally accepted accounting principles. |
| 13(7) | 8 | Same as rule 7 | Services mentioned in Rule 4 as described above. | Same as rule 4 |
| 13(7) | 9 | Same as rule 7 | Services mentioned in Rule 5 as described above. | Same as rule 5 |

| Clausewise changes made in Form GSTR 9 and GSTR 9C | | |
|---|---|---|
| **Para No** | **Before Amendment** | **After Amendment** |
| Part II | Details of Outward and inward supplies declared during the financial year | Details of Outward and inward supplies made during the financial year |
| Table 4 | Details of advances, inward and outward supplies on which tax is payable as declared in returns filed during the financial year | Details of advances, inward and outward supplies made during the financial year on which tax is payable |
| Table 5 | Details of Outward supplies on which tax is not payable as declared in return filed during the financial year | Details of Outward supplies made during the financial year on which tax is not payable |
| Table 5F | Non-GST supply | Non-GST supply (includes no supply) |
| Part III | Details of ITC as declared in returns filed during the financial year | Details of ITC for the financial year |
| Table 6 | Details of ITC availed as declared in returns filed during the financial year | Details of ITC availed during the financial year |
| Table 7 | Details of ITC Reversed and Ineligible ITC as declared in return filed during the financial year | Details of ITC Reversed and Ineligible ITC for the financial year |
| Table 8E | ITC available but not availed (out of D) | ITC available but not availed |
| Table 8F | ITC available but ineligible (out of D) | ITC available but ineligible |
| Instruction 2 | The details for the period between July 2017 to March 2018 are to be provided in this return. | It is mandatory to file all your FORM GSTR-1 and FORM GSTR-3B for the FY 2017- 18 before filing this return. The details for the period between July 2017 to March 2018 are to be provided in this return. |
| Instruction 3 | | It may be noted that additional liability for the FY 2017-18 not declared in FORM GSTR-1 and FORM GSTR-3B may be declared in this return. However, taxpayers cannot claim input tax credit unclaimed during FY 2017-18 through this return. |
| Instruction 4 | Part II consists of the details of all outward supplies & advances received during the financial year for which the annual return is filed. The details filled in Part II is a consolidation of all the supplies declared by the taxpayer in the returns filed during the financial year. | Part II consists of the details of all outward supplies & advances received during the financial year for which the annual return is filed. It may be noted that all the supplies for which payment has been made through FORM GSTR-3B between July 2017 to March 2018 shall be declared in this part. |
| Instruction Table-7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H | Details of input tax credit reversed due to ineligibility or reversals required under rule 37, 39,42 and 43 of the CGST Rules, 2017 shall be declared here. This column should also contain details of any input tax credit reversed under section 17(5) of the CGST Act, 2017 and details of ineligible transition credit claimed under FORM GST TRAN-I or FORM GST TRAN-II and then subsequently reversed. Table 4(B) of FORM GSTR-3B may be used for filling up these details. Any ITC reversed through FORM ITC -03 shall be declared in 7H. | rule 37, 39, 42 and 43 of the CGST Rules, 2017 shall be declared here. This column should also contain details of any input tax credit reversed under section 17(5) of the CGST Act, 2017 and details of ineligible transition credit claimed under FORM GST TRAN-I or FORM GST TRAN-II and then subsequently reversed. Table 4(B) of FORM GSTR-3B may be used for filling up these details. Any ITC reversed through FORM ITC -03 shall be declared in 7H. If the amount stated in Table 4D of FORM GSTR-3B was not included in table 4A of FORM GSTR-3B, then no entry should be made in table 7E of FORM GSTR-9. However, if amount mentioned in table 4D of FORM GSTR-3B was included in table 4A of FORM GSTR-3B, then entry will come in 7E of FORM GSTR-9. |
| Instruction Table-8A | The total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 and reflected in FORM GSTR-2A (table 3 & 5 only) shall be auto-populated in this table. This would be aggregated of all the input tax credit that has been declared by the corresponding suppliers in their FORM GSTR-1 | The total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs) pertaining to FY 2017-18 and reflected in FORM GSTR-2A (table 3 & 5 only) shall be auto-populated in this table. This would be the aggregate of all the input tax credit that has been declared by the corresponding suppliers in their FORM GSTR-1. |
| Instruction Table-8D | | Aggregate value of the input tax credit which was available in FORM GSTR2A (table 3 & 5 only) but not availed in FORM GSTR-3B returns shall be computed based on values of 8A, 8B and 8C. However, there may be circumstances where the credit availed in FORM GSTR-3B was greater than the credit available in FORM GSTR-2A. In such cases, the value in row 8D shall be negative |
| Instruction Table-8E & 8F | Aggregate value of the input tax credit which was available in FORM GSTR2A (table 3 & 5 only) but not availed in any of the FORM GSTR-3B returns shall be declared here. The credit shall be classified as credit which was available and not availed or the credit was not availed as the same was ineligible. The sum- total of both the rows should be equal to difference in 8D | The credit which was available and not availed in FORM GSTR-3B and the credit was not availed in FORM GSTR-3B as the same was ineligible shall be declared here.<br>Ideally, if 8D is positive, the sum of 8E and 8F shall be equal to 8D |

| Para No | Before Amendment | After Amendment |
|---|---|---|
| Instruction 7 | Part V consists of particulars of transactions for the previous financial year but declared in the returns of April to September of current FY or date of filing of Annual Return for previous financial year (for example in the annual return for the FY 2017-18, the transactions declared in April to September 2018 for the FY 2017-18 shall be declared), whichever is earlier | Part V consists of particulars of transactions for the previous financial year but paid in the FORM GSTR-3B of April to September of current FY or date of filing of Annual Return for previous financial year (for example in the annual return for the FY 2017-18, the transactions declared in April to September 2018 for the FY 2017-18 shall be declared), whichever is earlier |
| Instruction Table-13 | Details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April to September of the current financial year or date of filing of Annual Return for the previous financial year whichever is earlier shall be declared here. Table 159 4(A) of FORM GSTR-3B may be used for filling up these details | Details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April to September of the current financial year or date of filing of Annual Return for the previous financial year whichever is earlier shall be declared here. Table 4(A) of FORM GSTR-3B may be used for filling up these details. However, any ITC which was reversed in the FY 2017-18 as per second proviso to subsection (2) of section 16 but was reclaimed in FY 2018-19, the details of such ITC reclaimed shall be furnished in the annual return for FY 2018-19 |
| Instruction Table-17 & 18 | Summary of supplies effected and received against a particular HSN code to be reported only in this table. It will be optional for taxpayers having annual turnover upto Rs. 1.50 Cr. It will be mandatory to report HSN code at two digits level for taxpayers having annual turnover in the preceding year above ₹ 1.50 Cr but upto Rs. 5.00 Cr and at four preceding year above ₹ 1.50 Cr but upto Rs. 5.00 Cr and at four digits' level for taxpayers having annual turnover above Rs. 5.00 Cr. UQC details to be furnished only for supply of goods. Quantity is to be reported net of returns. Table 12 of FORM GSTR1 may be used for filling up details in Table 17 | Summary of supplies effected and received against a particular HSN code to be reported only in this table. It will be optional for taxpayers having annual turnover upto Rs. 1.50 Cr. It will be mandatory to report HSN code at two digits level for taxpayers having annual turnover in the preceding year above ₹ 1.50 Cr but upto Rs. 5.00 Cr and at four digits' level for taxpayers having annual turnover above Rs.5.00 Cr. UQC details to be furnished only for supply of goods. Quantity is to be reported net of returns. Table 12 of FORM GSTR1 may be used for filling up details in Table 17.<br><br>It may be noted that this summary details are required to be declared only for those inward supplies which in value independently account for 10 % or more of the total value of inward supplies |
| Instruction 9 | | Towards the end of the return, taxpayers shall be given an option to pay any additional liability declared in this form, through FORM DRC-03. Taxpayers shall select ―Annual Return‖ in the drop down provided in FORM DRC-03. It may be noted that such liability can be paid through electronic cash ledger only. |
| | **AMENDMENTS IN GSTR – 9C** | |
| **Para No** | **Before Amendment** | **After Amendment** |
| At the end of Reconciliation Statement | | Verification of registered person<br>I hereby solemnly affirm and declare that I am uploading the reconciliation statement in FORM GSTR-9C prepared and duly signed by the Auditor and nothing has been tampered or altered by me in the statement. I am also uploading other statements, as applicable, including financial statement, profit and loss account and balance sheet etc. |
| Instruction 2 | The details for the period between July 2017 to March 2018 are to be provided in this statement for the financial year 2017-18. The reconciliation statement is to be filed for every GSTIN separately. | It is mandatory to file all your FORM GSTR-1, FORM GSTR-3B and FORM GSTR - 9 for the FY 2017-18 before filing this return.<br>The details for the period between July 2017 to March 2018 are to be provided in this statement for the financial year 2017-18. The reconciliation statement is to be filed for every GSTIN separately. |
| Instruction Table 7F | Taxable turnover as declared in Table 4N of the Annual Return (GSTR9) shall be declared here. | Taxable turnover as declared in Table (4N – 4G) + (10-11) of the Annual Return (GSTR9) shall be declared here |
| Instruction 8 | Towards, the end of the reconciliation statement taxpayers shall be given an option to pay their taxes as recommended by the auditor. | Towards the end of the return, taxpayers shall be given an option to pay any additional liability declared in this form, through FORM DRC-03. Taxpayers shall select ―Reconciliation Statement‖ in the drop down provided in FORM DRC-03. It may be noted that such liability shall be paid through electronic cash ledger only. |

# Recent Happenings At VIPCAA

Defending Share Capital Addition with reference to Recent Judicial Pronouncements under Income Tax Act
by CA PK Himamatsingka, 9th December 2018

A Practical Approach: How To Prepare GST Annual Return & GST Audit by CA Navya Malhotra & CA Shivani Shah, 13th Dec 2018

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