

**N. D. KAPUR & CO.
CHARTERED ACCOUNTANTS**

Monthly Updates

APRIL 2024

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(I) CORPORATE LAW

MINISTRY OF CORPORATE AFFAIRS HAS INVITED COMMENTS ON THE RULES PRESCRIBED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The Ministry of Corporate Affairs (MCA) has initiated a comprehensive review and sought feedback on various rules associated with the implementation of the Insolvency and Bankruptcy Code, 2016 (“Code”). As part of this initiative, the MCA has issued a notice inviting public comments on the following rules prescribed within a timeframe of 30 days:

1. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The IBBI (Form of Annual Statement of Accounts) Rules, 2018.
3. The IBBI (Annual Report) Rules, 2018.
4. The Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.
5. The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
6. The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantor to Corporate Debtor) Rules, 2019.
7. The Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021.

This review is a strategic step undertaken by the MCA, aligning with the policy outlined earlier in January of the current year. The policy underscores the importance of public consultation in framing and revising rules and regulations governed by the MCA. Notably, the comprehensive review exercise is expected to conclude by the end of the fiscal year 2024-25.

(II) INDIRECT TAXATION

ENHANCEMENT IN THE GST PORTAL

GSTN has introduced an enhanced version of the GST portal which would be launched on May 3, 2024. The effort is to improve user experience and ensure that the information you need is accessible and easy to navigate. Key Enhancements includes:

- a) **News & Updates Section:** A dedicated tab for all news and updates has been introduced, This section now includes beta search functionality, module wise drop down and access to archived advisories dating back to 2017.
- b) **User Interface Improvements:** Minor tweaks have been made to the homepage to enhance usability and aesthetics especially to make it convenient to use.
- c) **Updated Website Policy:** The website policy, including the data archival policy has been updated. Details regarding web managers have also been included.

These changes are scheduled to go live at midnight on May 3, 2024.

GUIDELINES TO BE FOLLOWED IN THE CGST ZONES WHILE ENGAGING IN INVESTIGATION.

Instruction No. 01/2023-24-GST (Inv.) dated March 03, 2024, has been issued prescribing guidelines for maintaining ease of doing business while engaging in investigation with regular taxpayers:

- a) As per Notification No. 02/2017-CT dt. 19.06.2017, the (Pr.) Commissioner is responsible for developing and approving any intelligence, conducting search, and completing investigation in a case and the relevant subsequent action, including in the divisional formations, etc. within the allocated jurisdiction of the Commissionerate.
- b) Any information or intelligence which pertains to another CGST field formation, that may have been generated /collected /received /recorded by such field formation shall be forwarded by the (Pr.) Commissioner to the concerned CGST field formation or DGGI, as the case may be. Each investigation must be initiated only after the approval of the (Pr.) Commissioner. However, the prior written approval of the zonal (Pr.) Chief Commissioner shall be required in the following four categories:
 - i. matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time, whether in Central Excise or GST.\
 - ii. big industrial house and major multinational corporations
 - iii. sensitive matters or matters with national implications.
 - iv. In matters which are already before GST Council.

In all the above four categories of cases, the concerned CGST field formation should also collect details regarding the prevalent trade practices and nature of transactions carried out from the stakeholders and study the implications / impact so as to have adequate justification for initiating investigation and taking action.

- c) The fact of initiation of inquiry, if any, already on the same subject matter with respect to the same taxpayer/ GSTIN by another investigating office/ tax administration must be ascertained and placed before the approving authority, before initiating any inquiry.
- d) During the investigation, the Commissioner may come across the below-mentioned situations.

Situation 1): Where it comes to the Commissioner's notice that either the DGGI or the State GST department is also simultaneously undertaking record-based investigation of the same taxpayer on different subject matters

Report of Action: The (Pr.) Commissioner must engage in dialogue with the other investigating office(s) to consider the feasibility of only one of the offices pursuing all these subject matters with respect to the taxpayer, and the other offices consolidating their material with that office. If this outcome is not feasible, the reasons therefor should be confirmed on file by such (Pr.) Commissioner.

Situation 2): Where the (Pr.) Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction and the issue is relevant to:

- a) some or all of that taxpayers' GSTINs registered (under the same PAN) in multiple jurisdictions. If the matter also falls in the charter of DGGI and is not such that DGGI avoids taking up (as it is more appropriately in the purview of return scrutiny or audit etc.).

The (Pr.) Commissioner shall expeditiously make a self-contained reference to its zonal (Pr.) Chief Commissioner who shall request the Pr. DG, DGGI to take up the matter in accordance with DGGI guidelines.

- b) other taxpayers' GSTINs registered (under multiple PANs) across various CGST jurisdictions.

The (Pr.) Commissioner shall within 30 days of initiation of investigation take either of the following two actions with the approval of zonal (Pr.) Chief Commissioner -

- c) Description of GSTINs or similar entity types involved (or likely to be involved) across various jurisdictions related to the issue or topic is available, the self-contained reference shall be shared with each concerned Zone or all the Zones.
- d) In other situations, Pr. DGDGGI shall be requested to issue suitable alert.

Situation 3): Where an issue investigated by one of the (Pr.) Commissioners is based on an interpretation of CGST Act/ Rules, notifications, circulars etc, and it is in the direction of proposing non-payment or short payment of tax, however, the background is that the taxpayer(s) is/are following, or have followed, a prevalent trade practice based on particular interpretation on that issue in the sector/industry.

In such a case, it is desirable that the zonal (Pr.) Chief Commissioner make a self-contained reference to the relevant policy wing of the Board i.e., the GST Policy or TRU. The endeavor, to make such reference before concluding investigation, as early as possible of the earliest due date for issuing of show cause notice, may be useful in promoting uniformity or avoiding litigation if the matter, after being processed, is amongst those that also gets placed before the GST Council.

- a) In initiating investigation with respect to a listed company or PSU or Corporation or Govt Dept./agency or an Authority established by law, or seeking details from them, the CGST officials should initially address official letters (instead of summons) to the designated officer of such entity (detailing the reasons for investigation, and the legal provisions) and requesting the submission of the relevant specified details in a reasonable time period as mentioned in the letter. Divergence from this practice at the initial stage must be backed up by written reasons.
- b) The letter issued for seeking information/ documents from regular taxpayer should not contain vague (or general) expressions such as making inquiry in connection with "GST enquiry" or "evasion of GS?". The reference can be to inquiry "with respect to" or "in connection with" that entity.
- c) The information available digitally/online on GST portal cannot be called for underletters/summons. Further, a letter or summons should not be used as a means to seek information filled in formats or proforma (specified by investigation). The summons in conduct of investigation must not convey requests outside the scope defined for summons.
- d) The content of the summons to be printed by the summoning officer, including in terms of what is being sought and the time frame to be provided being reasonable for its compliance should have a prior reasoned approval (of officer not below Dy/Asst. Commissioner level).
- e) Where for strictly operational reasons, it is not possible to obtain such prior written permission, the approval by such an officer can be verbal, however, this all must be confirmed in writing at the earliest opportunity.
- f) Scanned copy of a statement (recorded under summons) along with the outcome of search/inspection conducted, including panchnama (if any) needs to be uploaded in the same e-office file in which approval was obtained to issue summons. The e-file should be submitted for information to Addl./Jt. Commissioner in not more than 4 working days from date of statement, completion of search/inspection.
- g) An investigation initiated must reach the earliest conclusion which is not more than one year. It is not necessary to keep investigation pending till limitation in law approaches. Show cause notice and the closure report consequent to the appropriate payment of government dues by the person concerned

should not be delayed and should have a brief self- explanatory narration of the issue and the period involved.

- h) Conclusion of investigation may also take the form of recording that investigation is not being pursued further as nothing objectionable was found in terms of matter investigated.

Grievance Redressal

Commissioner is to be proactive in a manner that prevents complaints from arising in respect of the investigation and related work being undertaken within the jurisdiction.

Taxpayer may approach with grievance, if any, related to an ongoing investigation, for appropriate redress to the Addl./Jt. Commissioner in-charge of investigation through letter, email or by appointment. In case the reasonable grievance persists, the (Pr.) Commissioner may consider meeting, by appointment, with the taxpayer.

(III) DIRECT TAXATION

FUNCTIONALITIES TO FILE COMMONLY USED ITRS ENABLED BY CBDT ON APRIL 1, 2024

The Central Board of Direct Taxes (CBDT) has facilitated taxpayers to file their Income Tax Returns (ITRs) for the Assessment Year 2024-25 (relevant to Financial Year 2023-24) from April 1, 2024, onwards. The ITR functionalities i.e. ITR-1, ITR-2 and ITR-4, commonly used by taxpayers are available on the e-filing portal from 1st April 1, 2024, onwards for taxpayers to file their Returns. Companies will also be able to file their ITRs through ITR-6 from April 1 onwards.

CBDT CLARIFIES ON MEDIA REPORTS CLAIMING SPECIAL DRIVE TO REOPEN CASES WITH REFERENCE TO HRA CLAIMS

In response to recent media reports alleging a special initiative by the CBDT to reopen cases related to House Rent Allowance (HRA) claims, the CBDT clarified that such claims are part of routine data verification exercises. The CBDT noted instances of information mismatch between taxpayer filings and department records and has notified taxpayers to rectify discrepancies. However, concerns over retrospective taxation or reopening of cases regarding HRA claims were deemed baseless by the CBDT.

CBDT EXTENDS DUE DATE FOR FILING FORM 10A/10AB UPTO JUNE 30, 2024

The CBDT has issued Circular No. 07/2024 dated April 25, 2024, further extending the due date for filing Form 10A/ Form 10AB under the Income-tax Act, 1961 upto June 30, 2024 in respect of certain provisions of section 10(23C)/ section 12A/ section 80G/ and section 35 of the said Income Tax Act.

CBDT CIRCULAR NO. 6/2024 ON TDS & TCS

The CBDT, with a view to redressing the grievances faced by deductors/collectors, who have collected Tax Deducted at Source (TDS)/Tax collected at Source (TCS) at normal rate, but were required to deduct /collect at double the rate on account of PAN of the deductee being inoperative, due to non-linkage of such PAN with Aadhar Number from April 1, 2023 has issued a Circular No, 6 on April 23, 2024 not to treat such TDS deductors in default (short deduction) for the tax deducted at normal rate for transactions

entered up to 31.03.2024, if in such cases, the PAN of deductee is linked to Aadhar Number and hence becomes operative on or before 31.05.2024.

In such cases, there will be no liability on the deductor/collector to deduct/collect the tax under section 206AA/206CC at double the rate, since PAN being inoperative due to non-linkage of PAN with Aadhar and hence such deductors will not be required to pay the difference.

Recently, many notices have been issued to deductors for shortfall in tax deducted since PAN of deductee was found to be inoperative.

Accordingly, where notices have been received for short deduction due to this reason, it will be advisable to reach out to the deductee and get his PAN linked with Aadhar immediately and in any case on or before May 31, 2024.

It may be noted that this relief is for transactions up to March 31, 2024.

REDUCTION OF SHARE CAPITAL – MUMBAI ITAT ALLOWS ASSESSEE TO SET-OFF LOSS ON WRITE-OFF OF CAPITAL AGAINST OTHER CAPITAL GAINS (Mumbai bench of Income Tax Appellate Tribunal fated January 23, 2024, in the matter of Tata Sons Ltd., Mumbai Vs. CIT 2, Mumbai 2024 158 Taxmann.com 601 Mumbai-Trib.)

Facts of the case – The assessee, Tata Sons, had various equity shares of Tata Tele-Services Company Ltd (TTSL), a company engaged in the business of providing telecom services. TTSL had incurred substantial losses during its business, resulting in a large part of its paid-up share capital of TTSL being utilized to finance the loss. Accordingly, a Scheme of Arrangement and Re-structuring between TTSL and its shareholders was entered, which reduced the assessee's shareholding to half. As a result of the reduction of capital, while furnishing the return of income, the assessee claimed such loss as long-term capital loss.

The Assessing Officer (AO) approved the claim made by the assessee. Nevertheless, the Principal Commissioner of Income-tax (PCIT) initiated revisional proceedings under section 263 of the Act. The PCIT argued that, as no consideration had been received or accrued to the assessee through the reduction of capital, the computation mechanism outlined in section 48 of the Act has failed. Consequently, the PCIT rejected the permissibility of the long-term capital loss, contending that it constituted a notional loss. The aggrieved assessee filed an instant appeal to the Mumbai Tribunal.

ITAT ruling – The Tribunal held that the Supreme Court, in the case of Kartikeya V. Sarabhai Versus Commissioner of Income-Tax [1997] 228 ITR 163 (SC), held that reduction of capital results in the reduction of the face value of shares, the share capital is reduced and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Such reduction of the right of the capital asset would amount to a transfer within the meaning of that expression in section 2(47) of the Act.

Thus, if the assessee's right in the capital asset stands extinguished either upon amalgamation or by reduction of shares, it amounts to the transfer of shares within the meaning of 2(47) and therefore, computation of capital gains must be made.

The contention that capital gain provisions should apply only to actual receipts also cannot be accepted for yet another reason because acceptance of that would lead to an incongruous and anomalous result, as will be seen presently. The acceptance of this view would mean that even in a case where a sum is received, howsoever negligible or insignificant, it may be, it would result in the computation of capital gains or loss, as the case may be, but in a case where nothing is disbursed on liquidation of a company the extinction of rights, would result in total loss with no consequences.

In other words, when any amount, no matter how small, is received, the entire process of computing capital gains falls under consideration for the "Capital gains" category. This involves calculating income and treating losses according to the provisions of the Act. However, if there is no receipt, the complete extinguishment of rights should be recorded as a write-off without categorizing it as a loss resulting from the computation of capital gains under the Act. Such an interpretation could lead to inconsistent outcomes and should be avoided unless it contradicts the intended purpose of the provision or is not reasonably possible to reach that conclusion.

Accordingly, in view of the ratio and principle laid down by the courts, it was held by the Tribunal as under:

- (i) The reduction of capital is the extinguishment of the right on the shares, and it amounts to transfer within the meaning and scope of section 2(47);
- (ii) The loss on reduction of shares is a capital loss and not a notional loss; and

(iii) Even when assessee has not received any consideration on reduction of capital, but its investment has reduced to loss resulting in capital loss, while computing the capital gain, capital loss must be allowed or set off against any other capital gain.

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