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EDITORIAL

Friends,

The government has introduced a The Direct Tax Vivad Se Vishwas Bill on 5th February 2020 in order to settle pending appeals to reduce tax litigations.

The Finance Bill, 2020 has proposed that an Indian citizen shall be deemed to be resident in India, if he is not liable to be taxed in any country or jurisdiction which is an anti-abuse provision since it is noticed that some Indian citizens shift their stay in low or no tax jurisdiction to avoid payment of tax in India.

The new provision is not intended to include in tax net those Indian citizens who are bonafide workers in other countries. However, the new provision is being interpreted as that those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India on the income that they have earned there which is not correct.

In order to avoid this, it has been clarified that in case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession. Necessary clarification, if required, shall be incorporated in the relevant provision of the law.

The GST Council has approved introduction of 'e-invoicing' or 'electronic invoicing' in a phased manner for reporting of Business to Business (B2B) invoices to GST System.

An e-invoice standard has been finalized after consultation with trade/industry bodies as well as ICAI. Adoption of this new standard ensures complete inter-operability of e-invoices across the entire GST eco-system. The new system eliminates the need for fresh data entry, reduction of reconciliation errors and population of invoice details directly into Return through Invoice Reporting Portal (IRP).

Being key players in Indian business eco-system, the role and support of Accounting and Billing Software Providers is crucial for successful implementation of GST e-invoice System.

In the coming months when e-invoice implementation takes place, GSTN intends to interact closely with Accounting and Billing Software Providers. This is to get suggestions and feedback as well as to keep them abreast of developments on new e-invoice framework.

We do hope that this bulletin adds value to your professional sphere.

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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Overview on the Direct Tax Vivad Se Vishwas Scheme

"The Direct tax Vivad Se Vishwas" a scheme introduced to reduce litigations in Direct Tax which is around 4 lakhs approx. Here a taxpayer would be required to pay only the amount of the disputed taxes and will get a complete waiver of interest and penalty provided he pays by 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay 10% more as interest and penalty. The scheme will remain open till 30th June, 2020.

Further, in case where the litigation is over interest and penalty the matter could be settled by paying 25% of the amount by March 31 and 30% after the cut-off date.

The scheme will cover all tax litigation, including those against individuals. Many companies and individuals who are facing litigation will use the new scheme to settle the cases. The government will be able to monetise a chunk of money that is currently stuck in litigation over the years as in several cases the interest and penalty come to more than 100% of the tax demand. Several companies had already started reaching out to their tax advisers and lawyers to check if they could take advantage of the scheme. This could also be a big draw for the multinationals that could resolve some legacy tax issues.

Furthermore, this scheme is in line of the Sabka Vishwas Scheme as the same was introduced in the last year Union Budget 2019, named as **"Sabka Viswas Legacy Dispute Scheme"** for pending cases of service tax and excise.

As on 1st February 2020, more than 1.89 lakhs cases have been closed as per the Budget speech.

The Vivad se Vishwas Scheme has proposed amendments to the following sections of the Income Tax Act:-

- Section 143(3A)
- Section 250 (6B), (6C) and (6D)
- Section 274

SYNOPSIS

TAX CALENDAR

Due date	Form	Description
10th February, 2020	GSTR-8	Details of TCS collected at source and deposit of TCS collected for the month of January, 2020.
11th February, 2020	GSTR-1	Details of outward supplies of goods or services or both for the month of January, 2020 for Persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year.
13th February 2020	GSTR-6	Return for the month of January, 2020 applicable for input service distributors (ISD)
14th February 2020	Form 16B	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of December, 2019.
14th February 2020	Form 16C	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of December, 2019.
15th February 2020	Form 24G	Due date for furnishing of Form 24G by an office of the Government Where TDS for the month of January 2020 has been paid without the production of a challan.
15th February 2020	Form 16A	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) For the quarter ending December 31, 2019.

INCOME TAX

CASE LAW

BHARTI AIRTEL LTD. AND OTHERS VERSUS DEPUTY COMMISSIONER OF INCOME-TAX AND COMMISSIONER OF INCOME TAX, BANGALORE [KARNATAKA HIGH COURT]

Brief: Liability to deduct TDS on discount/commission made u/s 194H.

OUR COMMENTS: On delivery of the prepaid card, the assessee raises invoices and updates the accounts - In the first instance, sale is accounted for ₹ 100/-, which is the first account and ₹ 80/- is the second account and the third account is ₹ 20/- the sales is for ₹ 100/-, commission is given at ₹ 20/- to the distributors and net value is ₹ 80/- The assessee's sale is accounted at the gross value of ₹ 100/- and thereafter, the commission paid at ₹ 20/- is accounted - the essence of the contract of the assessee and distributor is that of service and therefore, Section 194H of the Act is attracted - however, in the first instance, if the assessee accounted for only ₹ 80/- and on payment of ₹ 80/-, he hands over the prepaid card prescribing the MRP as ₹ 100/-, then at the time of sale, the assessee is not making any payment - the distributor is not earning any income - this discount of ₹ 20/- if not reflected anywhere in the books of accounts, in such circumstances, Section 194H of the Act is not attracted

The assessees sell prepaid cards/vouchers to the distributors - at the time of the assessee selling these pre-paid cards for a consideration to the distributor, the distributor does not earn any income - In fact, rather than earning income, distributors incur expenditure for the purchase of prepaid cards - Only after the resale of those prepaid cards, distributors would derive income - at the time of the assessee selling these pre-paid cards, he is not in possession of any income belonging to the distributor - Therefore, the question of any income accruing or arising to the distributor at the point of time of sale of prepaid card by the assessee to the distributor does not arise.

The condition precedent for attracting Section 194H of the Act is that there should be an income payable by the assessee to the distributor – the income accrued or belonging to the distributor should be in the hands of the assessees - the assessee sells SIM cards to the distributor and allows a discount of ₹ 20/-, that ₹ 20/- does not represent the income at the hands of the distributor because the distributor in turn may sell the SIM cards to a sub-distributor who in turn may sell the SIM cards to the retailer and it is the retailer who sells it to the customer - The profit earned by the distributor, sub-distributor and the retailer would be dependent on the agreement between them and all of them have to share ₹ 20/- which is allowed as discount by the assessee to the distributor - There is no relationship between the assessee and the sub-distributor as well as the retailer.

Thus, it is a sale of right to service - The relationship between the assessee and the distributor is that of principal to principal and, therefore, when the assessee sells the SIM cards to the distributor, he is not paying any commission; by such sale no income accrues in the hands of the distributor and he is not under any obligation to pay any tax as no income is generated in his hands - The deduction of income tax at source being a vicarious responsibility, when there is no primary responsibility, the assessee has no obligation to deduct TDS - the right to service can be sold then the relationship between the assessee and the distributor would be that of principal and principal and not principal and agent – thus, the order passed by the authorities holding that Section 194H of the Act is attracted to the facts of the case is unsustainable.

The matter is remitted back to the assessing authority only to find out how the books are maintained and how the sale price and the sale discount is treated and whether the sale discount is reflected in their books - If the accounts are not reflected Section 194H of the Act is not attracted.

[Decided in favour of the assessee]

NOTIFICATION/ CASE LAW

EXTENSION OF THE DUE DATE FOR FILING GSTR-3B

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 07/2020 dated 3.02.2020** has extended the due date for filing form GSTR-3B for the month of January- March 2020 for the taxpayers having aggregate turnover of upto Rs. 5 crores for the previous financial year as follows:-

Principal Place of Business in the States	Due Date (Day of the Next Month)
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	22nd Day
Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	24th Day

M/S PITAMBRA BOOKS PVT. LTD. VERSUS UNION OF INDIA & OTHERS [DELHI HIGH COURT]

Brief: Refund of unutilized CENVAT credit - zero rated supplies - clubbing of successive calendar months/quarters across different financial years

OUR COMMENTS: In the given case, by way of the impugned circulars, though the respondents recognise the difficulties faced by the exporters and have permitted them to file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters, yet the restriction pertaining to the spread of refund claim across different financial years is arbitrary. There is no rationale or justification for such a constraint. In the instant case, where exports are not made in the same financial year, question arises as to whether Respondents can restrict the filing of the refund for tax periods spread across two financial years and deprive the petitioner of its valuable right accrued in his favour. In exports, availability of the rotation of funds is essential for the business to thrive. Moreover, businesses do not run according to the whims of the executive authorities. The business world cannot be told when to place orders for exports; when to manufacture the goods for export; and; when to actually undertake the exports. Respondents' impugned circulars have thus blocked the capital of the petitioner and the unutilised ITC and it has accumulated huge amount of unutilised ITC to the tune of ₹ 30 crores. Merely because the petitioner made exports in the month of June, 2018, we do not see any justification to deny the refund of the ITC which have accumulated in the previous financial years.

The Respondents cannot, artificially by acting contrary to the fundamental spirit and object of the law, contrive ways to deny the benefit, which the substantive provisions of the law confer on the tax payers. Thus, the petitioner has a strong prima facie case, and we cannot deny the petitioner of its right to claim refund which is visible from the mechanism provided under the Act. The impugned circulars take away the vested right of the taxpayer that has accrued in the relevant period.

Respondents are directed to process the petitioner's claim in accordance with law once the tax refund is filed - petition allowed by way of remand.

[Decided in favour of petitioner]

CASE LAW

KK. KUDA VERSUS CHIEF ENFORCEMENT OFFICER, ENFORCEMENT DIRECTORATE & ANOTHER [SUPREME COURT]

Brief: Credit of Non-convertible Rupee Funds into the Non-Resident (External) Account of the person concerned.

OUR COMMENTS: In the present case, the crediting of Non-Convertible Rupee Funds in the Non-Resident (External) Account of Dr. P.K.Ramakrishnan happened during the period August to December, 1991. Three officials of ANZ Grindlays Bank were involved in it and Show Cause Notice was issued by Respondent No.1 on 21.1.1994 to the Bank as well as the Officials for contravention of Section 6(4), 6(5) read with Section 49 of FERA, alleging that it had taken place with the consent, connivance of and attributable to the negligence on the part of the Officials. It is true that the respondent by letter dated 10.7.2001 ordered that the charges relating to 'consent' and 'connivance' shall stand deleted from the Show Cause Notice. Though FEMA came into force on 1.6.2000, Sunset clause under Section 49 of the said Act provided for filing of complaints under the FERA, 1973 till 31.5.2002. Taking advantage of it, the Respondent No.1 issued Opportunity Notice to all the three officials on 12.5.2002 and lodged the complaint on 29.5.2002. The Additional Chief Metropolitan Magistrate, New Delhi, on the same day took cognizance of the complaint for the offence under Section 56 of FERA and issued summons.

In spite of having dropped the allegations of 'consent' and 'connivance', the respondent in their complaint levelled allegations of all the three components, namely, consent, connivance and negligence. The contention of the appellant that the cognizance was taken on irrelevant consideration, is to be countenanced. There was suppression and also material omission in non-mentioning of reply sent by the appellant to the Opportunity Notice, in the complaint. Further, to substantiate the averments in the complaint, not even a single original document was enclosed. It is not known as to, on what material the Additional Chief Metropolitan Magistrate applied his mind, while taking cognizance of the statutory offence. Though the allegation of negligence can be independently looked into, considering the standard of proof in criminal prosecution, we are of the view that, in the present case, the continuance of prosecution against the appellant is not tenable in law and the proceedings are liable to be quashed.

[Decided in favour of appellants]

CUSTOMS

NOTIFICATION/ CASE LAW

AMENDMENT OF RATE OF EXCHANGE OF FOREIGN CURRENCY INTO INDIAN CURRENCY AND VICE-VERSA

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 11/2020-Customs (N.T) dated 6.02.2020** has amended the rate of exchange of conversion of each of the foreign currency into Indian currency and vice-versa.

BORIS SOBOTIC MIKOLIC VERSUS UNION OF INDIA [DELHI HIGH COURT]

Brief: Prayer for direction to the respondents to place on record the detention order.

OUR COMMENTS: In the present case the facts not in dispute are that far from avoiding the processes of law, the petitioner responded to the notices issued to him by the DRI. In the first instance after being detained for more than two months he applied for and obtained statutory bail under Section 167(2) Cr. PC. That order, as already noted, was subject to stringent conditions including an LOC having to be opened by the authorities to ensure that the petitioner is not able to leave the country notwithstanding that his passport is in the custody of the DRI. It is not the case of the respondents that any of those conditions have been violated by the petitioner - If indeed the petitioner was refusing to co-operate in the investigations concerning him, an application ought to have been filed before the Learned CMM for cancellation of his bail. There is no such application till date - Thirdly, the petitioner did respond to the SCN issued by the DRI on 13th October, 2017. He appeared before the Adjudicating Authority i.e. the Principal Commissioner of Customs (Preventive) along with his Advocate on 24th October 2017.

The Court would like to add that in the instant case, even when the DRI challenged the order dated 9th October, 2017 of the CMM before this Court, the petitioner in response to the notice issued by this Court filed an affidavit. It is not as if, therefore, the petitioner has tried to avoid the process of law.

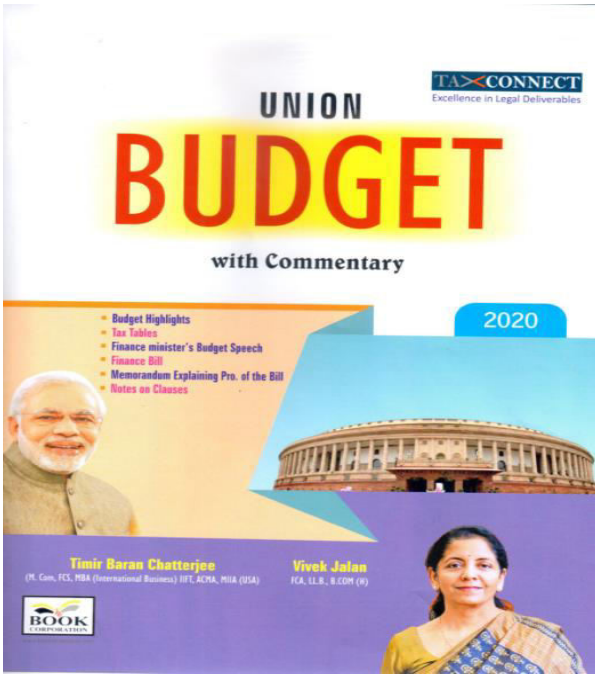
Mr. Diwakar was unable to point out how the case of the petitioner on merits was any different from that of the co-detenues. The only explanation offered is that while the co-detenues underwent some period of detention, the petitioner did not. If on merits, the case of the petitioner is no different from that of the co-detenues and the detention orders in respect of the co-accused have not been confirmed by the Advisory Board, the Court sees no purpose being served in the petitioner being detained on the basis of the impugned detention order, the grounds for which are no different from the detention orders issued in respect of the co-detenues, which have not been confirmed by the Advisory Board.

The Court is also not satisfied that any serious attempt was made during the time when the detention order in respect of the co-detenues was still alive, to execute the impugned detention order to take the petitioner into custody despite the DRI knowing of his participation in the adjudication proceedings pursuant to the SCN issued by it. That stage having been crossed, the Court has no hesitation in holding that the detention order issued in respect of the petitioner has ceased to serve any purpose whatsoever.

[Petition allowed]

IN STANDS

UNION BUDGET WITH COMMENTARY 2020



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1. **Budget Highlights**
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3. **Finance Minister's Budget Speech**
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5. **Memorandum Explaining Pro. Of the Bill**
6. **Notes on Clauses**

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N STANDS

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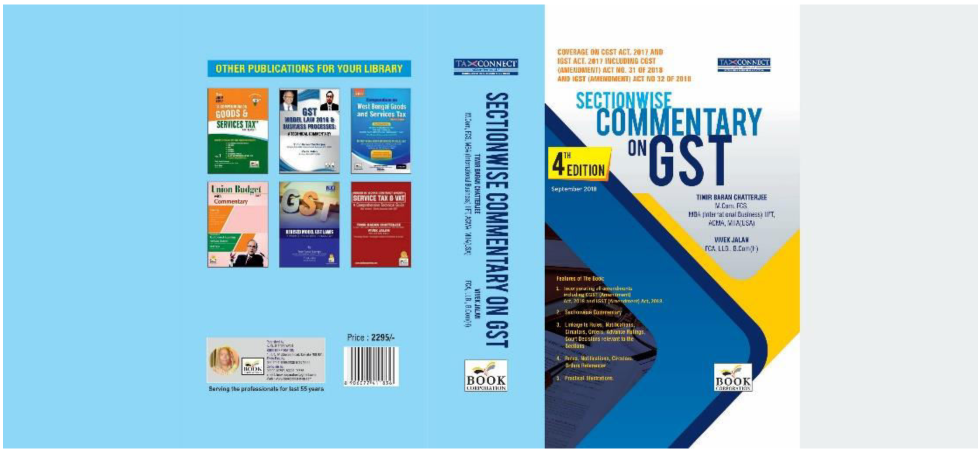

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