KRESTON SGCO

Newsletter

June 2018

CONTENT

1. DIRECT TAXES

2. IDTX

3. SEBI,MCA & RBI/FEMA

4. Due Dates

5. CONTACT

DIRECT TAXES

Press Release and notifications

CBDT notifies Capital Gains Bond by IRFCL for Section 54EC exemption

Central Government specifies "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited for the purpose of the said clause.

The benefit under the said proviso shall be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs Indian Railway Finance Corporation Limited by registered post within a period of sixty days of such transfer.

CBDT notifies Capital Gains Bond by PFC for Section 54EC exemption

Central Government specifies "Power Finance Corporation Limited 54EC Capital Gains Bond" issued by Power Finance Corporation Limited for the purpose of the said clause.

The benefit under the said proviso shall be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs Power Finance Corporation Limited by registered post within a period of sixty days of such transfer.

CBDT notifies cost inflation index for FY 2018-19

CBDT notifies 280 as cost inflation index for FY 2018-19

CBDT notifies Place of Effective Management (PoEM) rules w.e.f. 01.04.2017

Applicability Conditions :-

1. A foreign company resident in India on account of its Place of Effective Management (hereinafter referred to as PoEM) being in India under section 6 (3) of the Act in any previous year and

2. Such foreign company has not been resident in India in any of the previous years preceding the said previous year,

Exceptions, modifications and adaptations for the said previous year with regards to: -

Computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply to the foreign company

SR No	Particulars	If Foreign Co assessed to tax in foreign jurisdiction	If Foreign Co not assessed to tax in foreign jurisdiction
1	Opening WDV of depreciable asset for said previous year		
A	Requirement of taking Depreciation in COTI	WDV of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year	WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction
B	Other than A	WDV shall be calculated in the manner, as though the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction and the WDV so arrived at as on the 1st day of the previous year	WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction
2	Brought Forward loss and unabsorbed depreciation*	As per the tax record shall be determined year wise on the 1st day of the said previous year.	As per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year

* 1. Allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time making that year as the first year
2. Set off allowed only against such income of the foreign Co.chargeable to tax in India on account of it being Indian resident
3. In case of revision in the foreign jurisdiction of broughtforward loss and unabsorbed depreciation as originally adopted in India, the amount of loss and unabsorbed depreciation shall be revised or modified for set off and carry forward.

- Different Accounting Years (i.e. accounting year not ending on 31st march)

1. Requirement to prepare P&L account and balance sheetfor the period starting from the date on which the accounting year immediately following said accountingyear begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident.

2. For Carry forward of loss and unabsorbed depreciation:

Period starting from the date on which immediately following year begins upto 31st March of the year, immediately preceding the period beginning with 1st April and ending on 31st March during which it has become resident	Accounting Year
Less than 6 months	Included in Accounting Year
>= 6 months	Period treated as separate accounting year

Loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis

- More than one provision of Chapter XVII-B of the Actapplies to the foreign company as resident as well as foreign company - Provision applicable to the foreign company alone shall apply
- Section 195(2) continues to apply to include payment to foreign company, foreign company eligible for relief/deduction of taxes as per section 90 or 91

- Where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed in the same proportion across those years

  Exceptions, modifications and adaptations referred above shall not apply in respect of such income of the foreign company becoming Indian resident on account of its PoEM being in India which would have been chargeable to tax in India, even if the foreign company had not become Indian resident.

  Foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly.

Foreign Company Provisions	Applicable
Non-resident Person provisions	Not applicable
Provisions specifically applicable to resident	Applicable

In case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. E.g. Rate of tax – tax applicable to foreign company to apply

Income Tax

Case Laws

M/s. Chemical Process Piping Pvt. Ltd. vs Addl CIT 14(2), Mumbai (ITAT, Mumbai)

Facts

- M/s. Chemical Process Piping Pvt. Ltd (assessee company) was engaged in the business of export of special pipes.
- During AY 2011-12, the following additions were made bythe A.O. which were partly upheld by the CIT(A):

SR No	Particulars (Disallowances)	Addition by AO	Addition by CIT(A)
1	Bogus Purchases CIT(A) – 12.5% of purchases	27.92 L	3.49 L
2	Sec 40A(2)(b) – payments to related parties	40.41L	0.62L
3	Sec 40a(i) – non deduction of tax of payments made to 2 foreign parties Party name: M/s Thermo & Plast of Slovania	64.77L	 13.97L

- During AY 2012-13, the following additions were made by the A.O. were partly upheld by the CIT(A):

SR No	Particulars (Disallowances)	Addition by AO	Addition by CIT(A)
1	Sec 40A(2)(b) – payments to related parties	13.66L	1.90L
2	Sec 40a(i) – non deduction of tax of payments made to foreign parties		
	Supervision charges paid to M/s Thermo & Plast of Slovania	29.67L	29.67L
	Testing Charges paid to M/s TUV SUD Industries Services BMBH	4.67L	4.67L

- Aggrieved, the Assessee filed appeal before the ITAT.

Held

The ITAT held as follows:

1.Bogus Purchases

- Assessee had failed to prove the authenticity of the purchase transactions
- The assessee had failed to produce the parties for examination and the confirmations.
- The ITAT concluded that the assessee had made the purchases of the goods under consideration, though not from the aforementioned parties, but from the open/greymarket. The assessee would have been benefittedmonetarily by making the purchases of the goods from the open/greymarket, therefore, the profit element involved in making of such purchases could safely be taken @ 12.5% of the aggregate value of the purchases.
- Reliance was placed on the Judegment of Hon'ble High Court of Gujarat in the case of CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj)

2.Disallowance u/s. 40A(2)(b)

ITAT observed that assessee itself had accepted of having made an excess payment to the related parties for carpenter services and hence sustained the disallowance made thereby.

3.Disallowance u/s. 40(a)(i)

Payment to M/s Thermo & Plast of Slovania

- Payment was made by the Assessee towards consultancy charges i.e. Excel programme for calculation of the pipe thickness in base of TUV report, excel programme for underground pipe verification according to the relevant AWWA standard, and fabrication trading for steel moulds for construction of the bell and for coupling.
- From the documents on record, the ITAT observed that payment was made by the Assessee to the said foreign party towards supervision charges for installation of GRP pipes manufactured by the assessee at its Nickel project at Koniambo, New Caledonia. It could be characterised as having been made in context of assembly project undertaken by the latter.
- The ITAT concluded that the said payment would squarely fall within the sweep of the exceptions carved out in Explanation 2 of Sec. 9(1)(vii) of the Act, and thus could not be held as FTS

- The disallowance was deleted.

Payment to M/s TUV SUD Industries Services BMBH

- The Assessee contended that as per the provision of Sec. 9 of the Act, any payment made for rendering services outside India for earning income outside India was not taxable in India

- The AO observed that as per the retrospective amendment in Explanation of Sec. 9(2) of the Act by the Finance Act, 2010, payment made to a non-resident outside India shalll be taxable in India, regardless of the fact that whether the services have been rendered in India or not. The AO concluded that the payment made by the Assessee to the said party was as per Sec. 9(1)(vii) and Article 12 of India-Germany tax treaty towards FTS and therefore liable to TDS u/s. 195 and accordingly disallowed u/s. 40(a)(i).

- The Assessee further averred that as per CBDT circular No. 3/2015, dated 12.02.2015, the Board referring to its earlier Instruction No. 02/2014, dated 26.02.2014 had clarified that in cases where tax is not deducted at source under Sec.195 of the Act, the A.O shall determine the appropriate portion of the sum chargeable to tax, as mentioned in Subsection (1) of Sec.195, in order to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under Sec. 201 of the Act and that in the aforesaid circular it has been clarified that for the purpose of disallowance under Sec. 40(a)(i) which is interlinked with the sum chargeable under the Act as mentioned in Sec. 195, only appropriate portion of such sum which is chargeable to tax under the Act shall be disallowed under the aforesaid statutory provision.

- The ITAT held that that the aforesaid Circular No. 3/2015, dated 12.02.2015 was issued by the CBDT in order to dispel doubts as regards the scope of disallowance contemplated under Sec. 40(a)(i) of the Act in context of "other sum" chargeable under the Act, which are payable outside India or in India to a non-resident, not being a company, or to foreign company.

- The disallowance under Sec. 40(a)(i) in the case of the assessee was in context of the amounts paid by it towards "fees for technical services" to the aforesaid party, and not towards "other sum" chargeable under the Act, therefore, the aforesaid CBDT circular would not be of any assistance for its case. The disallowance was upheld.

Income Tax

Case Laws

Binod Kumar Agarwala vs Commissioner of Income Tax. (High Court, Calcutta)

Facts

- Binod Kumar Agarwala (assessee) in order to avail credit facilities from a bank got a balance sheet (with figures which may not have been commensurate with what was reflected in the books of accounts of the Assessee) prepared from Roy Ghosh and Associates. The assessee also obtained a certificate in Form 3CB under Rule 6G(1)(b) of the Income Tax Rules,1962 as per the balance sheet dated July 18, 2005.

- Later, the assessee filed his return of income based on a different/ varied balance sheet dated October 10, 2005 as signed by Naredi & Company, Chartered Accountant.

- The Assessing Officer sought to pin the assessee down on the basis of the figures contained in the balance-sheet of July 18, 2005

- The CIT(A) had deleted the addition, however, the ITAT sustained the addition made by the assessing officer.

- The Assessee contended that July audited report was made only on estimated basis and the October Balance Sheet was the correct one. The difference in the fixed assets was due to the over valuation of fixed assets for availing of the bank loan.

The ITAT held that :

- The audited balance sheet and profit and loss account no-where states that these are on the basis of estimate

- A Chartered Accountant is governed by certain disciplines and must act in accordance with the provision and rules of the Chartered Accountants Act. Schedule II and part 1 holds a chartered accountant guilty of professional misconduct if he permits his name or his firms name to be used in connection with the audit based on estimates.

- AO was bound to rely on the audited financial accounts dated 18.7.2005 for making the assessment and determining the taxable income of the assessee

- Section 44AB does not require that the tax audit should be conducted twice

- A party or an auditor cannot be permitted to get away from the consequence of the information which he has given by way of a certificate subsequently when he has been caught merely by stating that the information was simply estimates for getting the bank loan. The assessing officer is bound to rely on the certificate issued by a professional whose profession is regulated by certain conduct rules.

- Being Aggrieved, the assessee filed a Reference before the High Court at Calcutta. The HC decided the issue in the favour of the Revenue.

Point for Consideration (before the High Court)

- Whether any addition to income can be made on the basis of balance sheet and profit and loss accounts certified to have been prepared on estimate basis to avail bank loan and having no relation with the actual?

Held

- Before the HC, the Assessee submitted as follows:-
  - Paragraph 2(A) of the Form 3CB certificate mentions as follows:
    "(A). We are giving the information and explanations herewith purely based on estimate basis and have no relation with the actual figures and to avail the bank loan."

  - Particulars which were required to be furnished under Section 44AB of the Income Tax Act, 1961 are in Form No. 3CD. Certificate of July 18, 2005 of Roy Ghosh and Associates was not in Form No.3CD

The HC held as follows: -

- The substance of the Assessee's submission was that to suit a person's purpose before one authority or the other, different pictures as to the financial position of such a person may be presented.

- The question was larger than any legal issue and a matter of public policy.

- The certificate issued on July 18, 2005 by Roy Ghosh and Associates purported to give an impression that it was in exercise of an audit as required under Section 44AB of the Act of 1961. It was also presented in a statutory form with the fine print in paragraph 2(A) thereunder indicating that it was only an estimate. It is scarcely expected of a banker to question the veracity of any accounts certified by a firm of chartered accountants or to look into the fine print and comprehend therefrom that utterly bogus figures had been furnished only for the purpose of availing of the credit facilities from the bank.

- Balance sheet and profit and loss account of an assessee accompanied by a certificate as to its fairness, notwithstanding the caveat as noticed in paragraph 2(A) cannot be tailor made to suit a particular purpose or window-dressed to make it attractive for bankers to rely thereupon and all the gloss and sheen removed thereafter when it was the time to pay tax.

- The doctrine of pari delicto would apply and preclude the appellant herein from detracting from the figures contained in the financials certified on 18.07.2005 at any subsequent stage.

- When the assessee presented the financial position of the assessee as in the balance-sheet of July 18, 2005, the assessee could no longer resile from such position.

- The High Court dismissed the appeals with cost of Rs.10,000 to be paid to the Department within 4 weeks from date by the assessee.

- The Registrar will forward a copy of the order to the Institute of Chartered Accountants of India for appropriate steps to be taken against Roy Ghosh and Associates for appropriate action to be taken.

International Tax & Transfer pricing

International Tax

Case Laws

DCIT vs. M/s. D.B. International (Asia) Ltd. (ITAT, Mumbai)

Facts

- DB International (Asia) Limited ("assessee"), a tax resident of Singapore carried on its business operations including trading in securities from Singapore

Ground No. 1

- During AY 2011-12, the assessee incurred loss of INR 21,29,40,000 on cancellation of forward foreign exchange contract which had been treated as short term capital loss and carried forward the same to future years. The Assessee submitted that forward foreign exchange contracts were entered into only for hedging against the foreign exchange rate variation in respect of investment made by the assessee in India. Since, the investments were capital assets, forward foreign exchange contract were in capital field and loss arising on cancellation of such contract was on capital account

- However the AO was not convinced with the submissions and assessed the said loss under "Income from Other Sources" and referring to Article 11 and 23 of India Singapore DTAA held that the said loss could be neither set off or carried forward

- Being aggrieved with the decision of the AO, the Assessee raised objections with DRP

- The DRP, after considering the submissions of the assessee and taking note of the fact that the Tribunal in assessee's own case for earlier AYs held that the loss arising from cancellation of forward foreign exchange contract was to be assessed under the head "Capital Gain" and deleted the addition

Ground No. 2

- The assessee had derived capital gain on sale of shares, debt instruments and derivative and claimed the same as exempt under Article- 13(4) of the India-Singapore DTAA

- The Assessee submitted that it was liable to tax in Singapore on its worldwide income and hence, as per Article-13(4) of the DTAA, the capital gain was taxable in Singapore. The Assessee also contended that the remittance of such income to Singapore was of no relevance for the purpose of claiming benefit under Article 13(4) of the India Singapore DTAA

- As per the AO, in terms of Article-24 of the DTAA, the income from capital gain was not repatriated to Singapore and thus it was liable to be taxed in India under the Indian Income Tax Act, 1961 and benefit of Article-13(4) of the DTAA could not be allowed.

- The DRP, after considering the submissions and materials on record including letter issued by IRAS, confirmed that capital gain derived by the assessee from sale of equities, debt securities and derivatives in India constituted trade source income accruing in or derived from Singapore and was subject to tax in Singapore by reference to the full amount and not with respect to the amount which is remitted or received in Singapore. Further, DRP observed that the assessee was a tax resident of Singapore and did not have PE in India. The assessee was carrying on its business operation including trading in securities from Singapore and thus under Article 13(4) of India Singapore DTAA, Singapore had the right to tax the said income. The DRP also observed that the applicability of Article-24 became redundant when it was held that the capital gain was to be taxed in the country of residence of the assessee and since the income was taxable in Singapore with reference to full amount and not with reference to the amount remitted or received in Singapore, the DRP directed the AO to delete the addition.

- Aggrieved, Revenue filed an appeal before Mumbai ITAT.

Held

Ground No. 1

- The ITAT observing the same as a recurring dispute between Assessee and the Department and decisions in favour of Assessee in earlier years, held that the loss arising from cancellation of forward exchange contract had to be treated as capital loss. The DRP having followed the decision of the Tribunal in assessee's own case, the ITAT did not interfere with the directions of the DRP on the issue.

Ground No. 2

- The Assessee relied upon the observations of the DRP and upon the decision of the Tribunal, Mumbai Bench, in Citicorp Investment Bank Singapore Ltd. v/s DCIT, 2017-EII-59-ITAT-MUM-INTL.

- The Hon'ble ITAT held as follows:-

› The conclusion of the AO with regards to Article 24 that the exemption would apply only to the extent of the amount repatriated / remitted to Singapore was a misconception of the India Singapore DTAA.

› Capital gain derived by the assessee from sale of Indian Securities would fall under Article-13(4) of the India Singapore DTAA and the gain derived by the resident of a contracting State from sale of any property shall be taxable only in that State (i.e. where assessee is resident i.e. Singapore).

› Article-24 of India Singapore DTAA, states that if income derived from a contracting State is either exempt from tax or taxed at a reduced rate in that contracting State (India in this case), the amount remitted or received out of such income in other contracting State is taxable in the other contracting State to the extent of such remittance or

receipt, then the exemption or reduction of tax to be allowed under the DTAA in respect of income derived in the contracting state shall be limited to the amount remitted or received in the other contracting State. Therefore, the first condition which Article-24 imposes is, the income derived from a contracting State should either be exempt from tax or taxed at a reduced rate in that contracting State.

- Article-13(4) in clear and unambiguous terms expressed itself as not an exemption provision but it spoke of taxability of particular income in a particular State by virtue of residence of the assessee.

- The provisions of Article-24 of India Singapore DTAA would not have much relevance insofar as it related to applicability of Article-13(4) to income derived from capital gain. The expression 'exempt' with reference to the capital gain derived by the assessee, had been loosely used.

- ITAT upheld assessee's reliance on order of Mumbai bench of ITAT for Citicorp Investment Bank Singapore Ltd. and also noted that the overriding nature of Article 13(4) of the DTAA made the capital gain taxable only in the country of residence of the assessee.

- Thus, ITAT ruled in favour of the assessee.

Case Laws

Skaps Industries India (P) Ltd vs Income tax Officer (ITAT-Ahmedabad)

Facts

- Skaps Industries India (P) Ltd ("assessee") made payments to a US entity Teems Electric Inc. ("TEI") towards services rendered by TEI's personnel for installation and commissioning of certain equipments purchased aggregating to Rs. 74,70,220 (AY 2013-14) and Rs.2,97,45,710 (AY 2014-15), without deducting TDS

- The AO was of the view, that these payments being in the nature of payment for electrical labour and mechanical labour was for services of engineers in India and was covered by the definition of fees for technical services under section 9(1)(vii) of the Income Tax Act, and the assessee was liable for withholding of tax

- Seeking treaty protection, the stand of the Assessee and arguments of the AO were as under:

SR No	Stand of the Assessee	View of the AO
1	Installation and commissioning activities were inextricably linked to the purchase of the equipment	Said two transactions not interdependent transactions since: ✓ Different vendors ✓ Separate commercial transactions ✓ Services rendered by TEI went well beyond the scope of installation and commissioning activity Thus, the said 2 transactions were not linked
2	No transfer of "technology" or "technology being made available"	TEI was the only source of obtaining such high degree of technical expertise that irrespective of (who supplies the plant) materials supply, only it had the desired level of expertise is installing and commissioning of a particular machine owned by the assessee" and therefore, the services provided by TEI clearly fell within the clause 4(a) as well as clause 4(b) of Article 12 of the applicable tax treaty"
3	Capitalization of entire installation charges	Irrelevant from the point of view of tax deductibility as the character of receipt had to be seen in the hands of the receiver and not the payer and that it may be that the services were being utilized in setting up of a plant but for the US entity, it was an income on the revenue account.

- The AO held that in respect of the fees for technical services under Section 9(1)(vii) read with Section 115A, and the applicable tax rate under Section 115A at 10% being lesser than the tax rate at 15% envisaged by the Indo US tax treaty

- The payment was already been made by the assesse without deducting tax at source, hence the AO directed the assessee to apply section 195A for grossing up of the tax liability

- Aggrieved, assessee carried the matter in appeal before the CIT(A) where new issues where taken up which were as follows:

SR No	Issues raised by CIT(A)	Held by CIT(A)
1	Tax residency certificate ("TRC") requirement under section 90(4)	In the absence of a TRC and in view of the specific provisions of Section 90(4), the TEI cannot be granted protection of Indo US tax treaty
2	Declaration of non-existence of the PE TEI Ascertaining the number of days of stay of employees and associates of TEI	In the absence of information about the days of stay of the TEI employees, and given the admitted facts on records, it is reasonable to conclude that the work continued in India for 16 weeks plus 30 days, and, therefore, the TEI had an installation PE under article 5(2)(k) of Indo US tax treaty

- The CIT(A) further held as follows:

- Installation and commissioning services cannot be said to be purchase of equipment, and thus covered by exclusion clause in Article 12(5)(a) of treaty, as the vendors for service and equipment are different
- Services rendered by TEI apparently included training of employees of the tax deductor company and also development of documentation and that the work involved being highly technical, the services rendered

by the TEI amount to making available knowledge, skill, technical knowhow and process, and, such, covered by the definition of 'fees for included services' under article 12(4)
Since the TEI has a PE in India, the fees earned by TEI in India would be taxable in India on net basis and under section 44DA of the Act

- Being aggrieved, the Assessee went to the Tribunal

Held

- The first question that the ITAT took upon to address was whether TEI, i.e. the US entity to which the payments were made by the assessee company, was entitled to the benefits of Indo US tax treaty. There were two aspects to this fundamental question viz. first, whether the treaty protection could be declined to TEI simply on the short ground that the TEI was not able to, or did not, furnish the tax residency certificate under section 90(4) of the Act; second, whether TEI did not, on merits, satisfy the requirements of the Indo US tax treaty

- As per GAAR provision u/s. 90(2A), which starts with a non-obstante clause, is the only rider to the treaty override provision set out in Sec. 90(2)

- In the absence of a non-obstante clause, Section 90(4) cannot override the provisions of Section 90(2)

- Punjab and Haryana HC ruling in Serco BPO P. Ltd. was cited before ITAT that judicially approved the use of Section. 90(4) in favour of the assessee

- Tribunal ruled that mere non-furnishing of Tax Residency Certificate ("TRC") cannot per se be treated as a trigger to disentitle the treaty benefits

- ITAT opined that an eligible assessee cannot be declined the treaty protection u/s. 90(2) on the ground that the said assessee was not able to furnish a valid TRC

- However, ITAT ruled that even if Sec. 90(4) is inapplicable, there has to be reasonable evidence about entitlement of treaty benefits to the US entity and held that the onus is on assessee to give sufficient and reasonable evidence of satisfying the requirements of Article 4 (Residence) so as to be entitled for treaty protection

- Form W9 (which is used in the context of domestic tax withholding requirements in the United States)was submitted by assessee as evidence for satisfying the requirements of Article 4 (Residence). ITAT referred to the

- information contained in US IRS website (where Form W9 is filed with as per requirements in United States), and observed that it was merely a declaration so as to provide inputs to the tax-deductor for fulfilling reporting obligations to the US IRS and had no relevance to prove that the assessee was a tax resident of the US

Since at no stage assessee was asked to submit evidences in support of the residential status, ITAT remanded the matter back to CIT(A) on the fundamental aspect of treaty entitlement and also on other issues for fresh adjudication

Transfer Pricing

Case Laws

Open Text Corporation India Pvt. Ltd vs Dy. CIT, Circle-1(2), Hyderabad

Facts

- Open Text Corporation India Pvt. Ltd. (hereafter referred to as "the Assessee") was engaged in the business of providing software development services, consultancy and reselling services.

- During AY 2011-12, the TPO observed that a sum of Rs. 45.12 crores out of total receivable by the assessee at the end of the year had been received after considerable delay.

- The TPO relied upon the decision of the Tribunal at Bengaluru in the case of Logix Micro Systems Ltd., in ITA No. 524/Bang/2009 (42 SOT 525), for charging interest @12% p.a and proposed an adjustment under Sec. 92CA of the Act.

- The DRP confirmed the order of the AO/ TPO, but restricted the interest to 5% as against 12% applied by the TPO.

- Aggrieved, the assessee filed an appeal before the ITAT.

Held

- **The Assessee raised the following grounds of appeal:**

- Instant transaction not covered in the definition of international transaction as defined u/s 92B of the Act for the relevant year.

- Receivables closely linked to the principle transaction of provision of software services and hence aggregated for determination of ALP under TNMM

- The facts and circumstances surrounding the receivables and re-characterizing the outstanding receivables as unsecured loans advanced to AEs is unwarranted.

- Under TNMM, the impact of outstanding receivables on the working capital adjustments have already been taken into account while determining the arm's length margin for the international transactions and hence is no need of imputing interest on outstanding receivables again.

- Outstanding receivables due from overseas AE's in foreign currency and hence interest, if any, to be benchmarked with rates prevalent in international market for foreign currency loans (i.e. at USD "LIBOR plus").

The ITAT held as follows:-

- Following the decision of Pegasystems Worldwide India (Pvt) Ltd, the ITAT held that notional interest on outstanding receivables was not chargeable and no TP adjustment could be made.

- Working Capital adjustment takes into consideration the interest on receivables. For the said conclusion, the ITAT placed reliance on the judgement by the Delhi ITAT in the case of Kusum Healthcare Pvt. Ltd., in ITA No. 6814/Del/2014 dated 31.03.2015 which had been confirmed by the Delhi HC (SLP filed before SC pending) and EPAM Systems India Pvt Ltd in ITA No. 192/ Hyd/ 2017 dated 24.10.2017.

International Taxation

- **Emami Limited [TS-468-ITAT-2018(Kol)-TP**

Emami Limited, is in FMCG Industry and manufactures branded products such as Boroplus, Navaratna, Fair & Handsome, Zandu Balm, KesriJivan etc. It also manufactures specific products saleable in foreign countries such as Ayucare, Emita etc.

Ground 1: Interest on Loan (AY 2011-12)

Facts

- During AY 2011-12, the assessee entered into international transactions of sales of goods to its AE and loan given. During the year, the Assessee gave a foreign currency loan to its AE, Emami International FZE Ltd and charged interest @ 8% p.a.

- The interest cost of the assessee for the unsecured loan in US dollars was around 5% p.a. Accordingly, the assessee computed the rate of interest 8% p.a charged by it for loan given to its subsidiary at Arm's Length.

- However, TPO rejected assessee's benchmarking as the same failed to consider the financials of the Emami FZE and also failed to provide any information regarding possible rate of interest to be charged on loan advanced to it by any banking company/ financial institutions on the basis of the financials of Emami International FZE, independent of its holding company. Thus, TPO determined Arm's Length interest at 5% (assessee's cost of ECB loan) plus 600 bps (as per information available regarding pricing of loan by banks), i.e. 11% p.a. and made an adjustment of Rs. 48.94 lakhs. In appeal, CIT(A) deleted the interest adjustment.

- Aggrieved by the order of the ld. CTI(A), the Revenue filed an appeal before the ITAT.

Held

The ITAT held as follows:-

- The ITAT accepted the working of cost of funds at 5% but considered the risk premium of 600 bps taken by the TPO as excessive.

- The ITAT noted that the suitable risk premium could not exceed 3%, by referring to the credit rating of the assessee company, which was BBB/BBB+, and even if the credit rating of the wholly owned subsidiary was considered two notches lower than the credit rating of the assessee company, in that scenario also the difference in US bond yield i.e. the risk premium works out to a figure which is much lower than 300 bps.

- The ITAT noted that the ld. TPO/Assessing Officer had grossly erred in applying notional interest @11% (i.e. cost of procurement of funds by assessee @5% + 600 basis points) whereas the cost of procurement of similar funds from third part was LIBOR + 600 basis points, which comes at 7.20%.(that is, prevailing USD LIBOR rate, which was 1.2% plus 600bps).

- The ITAT observed that the loan was advanced to the AE in earlier years which continued in the relevant FY 2010-11 and the subsequent years as well and also Revenue had accepted the interest of 8% charged on the same loan to be at arm's length in the earlier as well as succeeding transfer pricing assessments. Following the consistency principle and relying on the order of Hon'ble Supreme Court in RadhasoamiSatsang vs. CIT 193 ITR 321 (SC), the ITAT noted that Ld. TPO had not pointed out any change in facts or any provision of law which led him to take a view contrary to the view taken by his predecessors. The Department cannot take a contrary view and disturb the settled facts unless there is a change in law or facts.

- The ITAT also noted that if the loan was given in foreign currency then LIBOR / EURIBOR rate, should be considered to benchmark the loan provided by the Indian enterprise to its AE. Based on the above facts and circumstances and principle of consistency as discussed above, the ITAT noted that the ld. TPO/Assessing Officer had wrongly applied notional interest @11% (i.e. cost of procurement of funds by assessee @5% + 600 basis points) whereas the cost of procurement of similar funds from third party was LIBOR + 600 basis points, which comes at 7.20%. (that is, prevailing USD LIBOR rate, which was 1.2% plus 600bps).

- Thus the rate of 8% adopted by the Assessee was accepted.

Ground 2: CUP method (AY 2012-13)

Facts

- The assessee had applied TNMM to benchmark its transaction of sale of Finished Goods to its wholly owned subsidiaries in Bangladesh, Dubai and the United Kingdom (AE). The assessee also exported goods directly in other countries like Sri Lanka, Nepal, Africa, etc.

- During the assessment proceedings, TPO substituted TNMM with CUP method to benchmark the transaction and made adjustment of Rs.3.51 crores.

In appeal, CIT(A), rejecting TPO's application of CUP, upheld

TNMM as MAM.
Aggrieved, Revenue filed an appeal before ITAT.

Held

- **The ITAT held as follows:**

In order to make CUP method applicable, the conditions mentioned in Rule 10B(1) (a) (ii) are essential to fulfill.

- For application of the CUP method, highest degree of comparability is required. The CUP cannot be applied without adjustments on account of differences in market and economic conditions of countries in which products have been sold to independent third parties. In the said case, the TPO/AO had ignored the disparate economic and market conditions of Kenya, Congo, Angola, Uganda, Sri Lanka, USA, and have made no adjustment for the same.

- It was noted by the ld CIT(A) that in few instances [12 products out of 56, as picked up for comparison by the TPO] had been sold at a price which is higher than those sold to Non-AE. These products were later eliminated by the Ld. TPO without assigning any reason. The TPO had also missed out benchmarking the 194 out of 250 products sold to AEs & non-AEs.

- The TPO/AO had failed to do adjustment on account of market preference (the market for the same product in USA is different than in Bangladesh) and customer preference (normally the customer prefers to buy the product, where he gets 1+1, that is, where he gets one free unit, on purchase of one unit) and market strategy to sale the product in different geographical area.

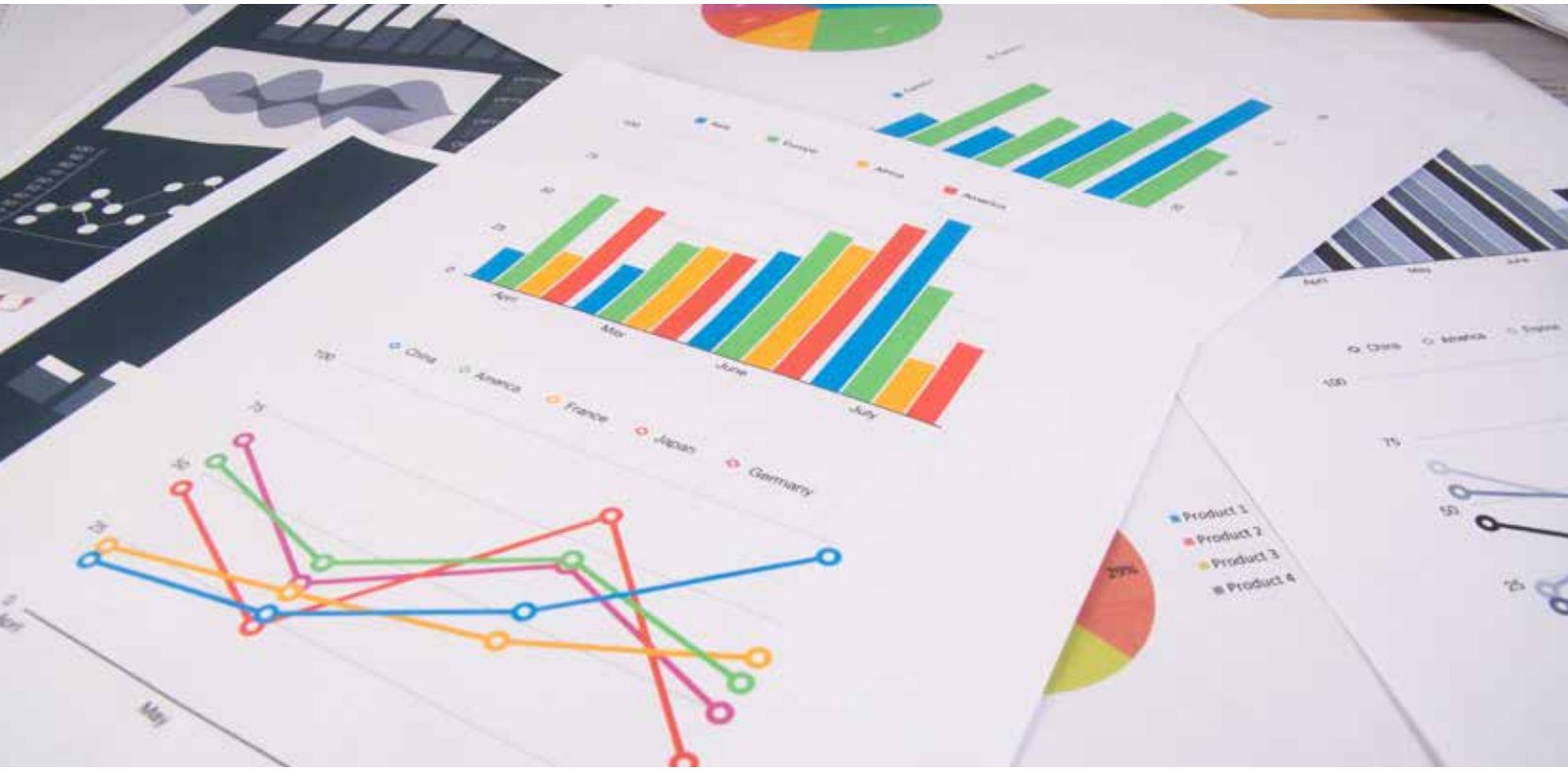
- Even though both the compared products appeared to be similar in terms of basic function i.e. cream, lotion, powder, etc but their labelling, packaging, ingredients were different. CUP requires high degree of comparability and where the product mix, material, composition etc. are not identical, application of CUP fails.

- Dissimlar sizes, volume difference, quality difference. As in FMCG sector the pricing of product, as per unit/quantity is never done proportionately. The rationale is that in FMCG sector packaging cost, transportation cost, handling cost, marketing cost can never be proportionate to the unit size of the product. Prices of small packaged products per unit are usually higher than per unit price of large size products in order to promote higher sales and achieve economies of scale. The arbitrary rate of 3% adopted by the TPO towards adjustment for size difference had no empirical basis or logic whatsoever but is a pure estimation based on TPO's conjectures & surmise.

- The assessee had been consistently exporting goods to its AEs located abroad. In all the earlier years, the transactions involved sale of goods were benchmarked under the TNMM Method and were accepted by the Revenue to be at arm's length under the TNMM method, therefore it was imperative for the Ld. TPO to bring on record the change in facts or law and give cogent reasoning before departing from the settled position and rejecting the application of TNMN Method.

- The standard comparability under Transfer Pricing analysis not necessarily entails complete identity between the two transactions but sufficient similarity. It can be held to be sufficient similar if the differences between them is not material so as to effect price or profit in the open market and if there is one such thing, then such a material difference needs to be eliminated through adjustments. Business strategies, market penetration, increase or save its market share are relevant and material factors determining prices and profit. All these factors have to be taken into consideration while eliminating the material effects which warrants some kind of reasonable accurate adjustments.

- The ITAT held that that selective application of CUP Method by TPO was ad hoc, and without any cogent basis, hence the entire approach followed by the TPO in rejecting the TP study of assessee for application of TNMM method was unjustified.


April
May
June
July
China
America
France
Japan
Germany
Product 1
Product 2
Product 3
Product 4
29%

IDTX

GST
Notification

Amendment to CGST Rules, 2017

1. Second proviso added to Rule 37(1) of CGST Rules.
Rule 37(1) requires reversal of ITC, where value of supply is not paid within the stipulated period. Second proviso now added, which deems value to be paid in cases covered by Section 15(2)(b) i.e. any amount which the supplier is liable to pay in relation to supply which has been incurred by the recipient.

2. Formula for refund on account of inverted duty structure, made effective from 01.07.2017 - (Rule 89(5))

   Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and service.

3. Powers of anti-profiteering authority - Rule 133 (3)

   Powers given to anti-profiteering authority to deposit of the amount,(equivalent to the amount not passed on by way of commensurate reduction in prices along with applicable interest at the rate of eighteen per cent) @ 50% each in the Consumer Welfare Fund of Centre (Section 57 of CGST Act) and Consumer Welfare Fund of the respective State (Section 57 of SGST Act), In cases, where the eligible person does not claim refund of the amount or is not identifiable.

4. Clause (o) inserted in rule 138(14): no e-way bill required for movement of empty cylinders for packing of LPG for reasons other than supply.

5. Composition Dealer shall not be required to furnish serial 4A of Table 4 of GSTR -04, for the tax periods January 2018 to March 2018 and April 2018 to June 2018. Earlier this was waived till December 2017.

6. In form GST RFD-01, Statement 1A (Refund on account of inverted rate structure) and 5B (Refund on account of deemed exports, substituted. The new statement additionally requires the GSTN no of supplier.
Vide Notification No. 26/2018-Central Tax, dated 13 June 2018.

---

7. 17 categories of goods are notified, which shall, as soon as may be after its seizure, be disposed of by the proper officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods.
Vide Notification No 27/2018-Central Tax, dated 13 June 2018

---

8. Transporter who is registered in more than one State having the same PAN, may apply for a unique common enrolment number (UEN) by submitting the details in FORM GST ENR-02 using any one of his GSTIN, and upon validation of the details furnished, a UEN shall be generated and communicated to the said transporter. Once a transporter has obtained a UEN, he shall not be eligible to use any of the GSTIN for the purposes of E-Way Bill. transporters can use the UEN for their pan-India activities.

9. Proviso inserted after Rule 138 C (1), Whereby, power given to Commissioner (or any other officer authorised by him) to extend time for recording the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

10. Rule 142 (5) amended - A summary of the order passed under Section 129 (Detention/seizure of goods & conveyances in transit) or Section 130 (Confiscation of goods or conveyances and levy of penalty) has to be uploaded in Form GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.
Vide Notification No. 28/2018-Central Tax, dated 19 June 2018.

11. **Notification No. 12/2018-Central Tax (Rate) ,dated 29 June 2018 and Notification No. 13/2018-Integrated Tax (Rate) ,Dated 29 June 2018**

    Exemption of GST, on supplies of goods or services or both received by a registered person from any unregistered supplier, extended till 30 September 2018. (Earlier it was 30 June 2018).

Circulars

1. It is being clarified **vide Circular 46/2018 dated 06 June 2018** that Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips attract GST @ 12 % under heading 4907, Schedule II, and not 18% as per Earlier Circular No. 34/8/2018- GST dated 01 March 2018.

2. Clarifications of certain issues under GST – **Circular 47/2018 dated 08 June 2018**

   - Moulds and dies owned by the Original Equipment Manufacturers (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on free of cost (FOC) basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM.

   - Where a supply (Servicing of car) involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately

3. Circulars clarifying miscellaneous issues related to SEZ and refund of unutilized ITC for job workers – **vide Circular 48/2018 dated 14-06-2018**

   - Clarifies that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply. Also clarifies that if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

- Fabric Processors (Job workers) to be entitled to refund under inverted rate structure even if the goods (fabrics) supplied to them are covered by Notification No. 05/2017-Central Tax (Rate) dated 28.06.2017 Notification No. 05/2017-Central Tax (Rate) notifies the goods in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods. In above case, output supply is services.

4. Modify Circular No. 41/15/2018- GST - Interception of Conveyance for inspection/detention of goods **vide Circular 49/2018 dated 21 June 2018.**

- Goods to be inspected only once in any state/UT. No further inspection unless specific information received subsequent to first inspection.
- Since the requisite FORMS are not available on the common portal currently, Therefore, hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/ registered person to another tax authority as and when required.
- Only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

GST Portal Updates

Provision to display export ledger to taxpayers on the Track Status screen

- A hyperlink "View Export Ledger" on Track Status page has been provided to taxpayers, to view details of IGST and Cess payment details, return wise, to show them the difference of New Functionality payment details, return wise, to show them the difference of IGST and cess as shown in Form GSTR 3B and Form GSTR 1. Taxpayer can also download this ledger as CSV file.

Customs

1. **Circular 15/2018-Cus dated 06 June 2018 - Clarification in case of Refund of IGST on export of Goods**

SB005 errors: Mismatch between filing invoice details in the shipping bill and the GST returns.

Board has decided to extend the facility of officer interface to Shipping bills filed upto 30.04.2018 (Earlier upto 28.02.2018).

SB003 errors: Mismatch between GSTIN entity mentioned in the Shipping bill and the one filing GSTR-1/GSTR-3B.

Correction facility is provided in cases where GSTIN of both the entities are different, but PAN is same. This happens mostly in cases where an entity filing Shipping bill is a registered office and the entity which has paid the IGST is manufacturing unit/other office or vice versa. However, in all such cases, entity claiming refund (one which has filed the Shipping bill) will give an undertaking to the effect that its other office (one which has paid IGST) shall not claim any refund or any benefit of the amount of IGST so paid.

The Maharashtra State Tax on Profession, Trade, Callings and Employment Act, 1975

5 Year PTEC scheme discontinued

1. The 5 Year scheme of PTEC payment is discontinued from 31 March 2018. Accordingly, the 5 year option is removed from ePayment option. The new attractive one time profession tax scheme (announced in budget) for PTEC holder will be notified shortly.

Advance Ruling - GST

AUTHORITY FOR ADVANCE RULING TELANGANA STATE
M/s MACRO MEDIA DIGITAL IMAGING PVT LTD
2018-TIOL-62-AAR-GST

Printed advertisement materials are classified as 'supply of goods', falling under chapter heading 4911 taxable at the rate of 6% CGST and 6% SGST.

Facts

- M/s. Macro Media Digital Imaging Private Limited, Charlapally, Hyderabad (herein after referred as applicant) has filed an application to sought Advance Ruling on the following issues:
  (i) Whether the printed advertisement materials classifiable as 'supply of goods?
  (ii) If yes, whether it is classifiable under chapter heading 4911 of first schedule to Customs Tariff Act, 1975?

- Applicant is engaged in the business of manufacturing of printed trade advertising material like banner flex using various inputs like ink, paper etc. and sale of such digital printed materials.

- Preparation of such printed material would be undertaken as per the customer specification wherein customers specify the sizes of the advertising material, location of the advertising material to be displayed etc. and all required materials for the preparation of the advertisement materials are procured by Applicant only.

- Applicant also recovers the cost incurred towards transportation, installation, packing etc.

- In pre-GST regime, Applicant had been paying applicable VAT and filed returns accordingly.

Held

- On perusal of Section 2 of CGST Act,
  (i.) "(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be serviced before supply or under a contract of supply"

(ii.) "(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged"

- On conjoint reading of the above two definitions, Applicant understands that 'goods' was defined to mean every kind of movable property and 'service' was defined to mean anything other than goods. Therefore, once anything falls under the ambit of 'goods', it does not become 'services' and vice-versa.

- In the instant case, Applicant supplies the printed trade advertising materials (i.e. Banner flex), which is freely movable from one place to another thereby it becomes 'movable property' and consequently falls under the ambit of 'goods' u/s. 2(52).

- The issue has been examined with reference to the provisions of the CGST/TGST Act, 2017 and the Rules made there under and the notifications issued till date; and the Advance Ruling is given as under:

  (i) The printed advertisement materials manufactured and supplied by the applicant are classifiable as 'supply of goods'.

  (ii) The printed advertisement material are classifiable under chapter heading 4911 of the GST Tariff and the rate of tax applicable is 6% CGST + 6% SGST as given in the Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017.

- **GUJARAT AUTHORITY FOR ADVANCE RULING**
  M/s SHREENATH POLYPLAST PVT LTD
  2018-TIOL-26-AAR-GST

  Amount charged as interest on transaction based short term loan given by Del Credere Agent to buyers of material, is exempt from payment of Goods and Service Tax.

  Applicant is engaged in the business of manufacturing of printed trade advertising material like banner flex using various inputs like ink, paper etc. and sale of such digital printed materials.

  Facts:

- M/s. Shreenath Polyplast Pvt. Ltd. is an applicant appointed as Del Credere Agent (herein after referred as DCA) by the supplier of goods.

- First role of DCA is to promote the sale and take orders for goods to be supplied directly by the supplier of goods (herein after referred as principal).

- Second role of DCA is to guarantee principal for payment of goods supplied. If customers fail to make payment, DCA is required to make the payment to the supplier.

- Applicant reiterated that the role of the DCA is limited to order booking and guaranteeing payment. Supply of material is directly by the principal to the customer.

- DCA does not buy, store or sale any material of principal to any customer and therefore there is no transaction of any purchase or sale of goods in his books.

- At times, when the buyer is not in a position to make payment to principal on the due date, he approaches DCA to extend short term loan and the loan is extended by DCA by making payment to the principal on behalf of the customer.

- For such loan extended by DCA, interest is accordingly charged.

- For interest, DCA raises debit notes on the customers. Customer pays interest while repaying the loan amount. Such interest payments are subject to TDS in terms of Income Tax Act.

- The issue involved is whether an amount charged as interest on transaction based short term loan given by the applicant, working as DCA, to buyers of material, is exempt from Goods and Services Tax.

Held

- **The State Tax, GST Cell has given its opinion as under:**

  The Del Credre agent receives higher commission because he ensures payment to the supplier. Whether the agent extends a loan to the buyer for making payment to the supplier or whether the agent himself makes payment on behalf of the buyer, no amount towards this shall be added to the price and GST will be leviable only on the consideration for supply of goods (on the supplier) and the commission payable to the agent (on the agent)."

- In the above transaction process, DCA gets the commission from principal , for supply of goods to customer and repayment of amount from customer to prinacipal.

- We find that the extension of loan by the applicant (DCA) to the customers is a transaction separate from the transaction of supply of goods by the principal to the customers against consideration wherein the applicant (DCA) also gets the commission from the principal.

- The interest received by the applicant is consideration towards loan extended to the customers and not towards the payment of consideration for supply of goods by the principal to the customers
  As, in the transaction of extension of loan by the applicant, the consideration is received by way of interest, the same is covered by the **S. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017** i.e. services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt and hence exempted from payment of GST.

SEBI,MCA & RBI/FEMA

- SEBI vide Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2018/89 dated 05TH June, 2018 Issued a Guidelines for Preferential Issue of Units by Infrastructure Investment Trusts (InvITs) after an initial offer in a manner specified by Board from time to time. Accordingly, the detailed guidelines for preferential issue by an InvIT.

- SEBI vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2018/92 dated 05th June, 2018 issued a Circular on Go Green Initiative in Mutual Funds wherein All Mutual Funds, Asset Management Companies (AMCs), Trustee Companies and Boards of Trustees of Mutual Funds are required to disclosed below mentioned details:

  - Disclosure of Net Asset Value (NAV)and sale / repurchase prices;
  - Providing Annual Report or Abridged Summary;
  - Portfolio Disclosure;

- Further the All provisions in the circular except paragraph B(2)(d) shall be complied within a period of 30 days from the date of issuance of this circular which is mentioned as under :

  "To ensure that unitholders get sufficient opportunity to communicate their preference of 'opt-in' or 'opt-out' with respect to receiving the annual report or abridged summary thereof in physical copy, Mutual Funds/ AMCs shall conduct one more round of similar exercise for those unitholders who have not responded to the 'opt-in' communication as stated at paragraph above, after a period of not less than 30days from the date of issuance of the first communication. Further, a period of 15 days from the date of issuances of the second communication may be given to unitholders to exercise their option of 'opt-in' or 'opt-out'".

- SEBI vide Circular No. SEBI/ HO/ MIRSD/ DOP2/CIR/P/2018/ 95 dated 06th June, 2018 introduced an Amendment to SEBI (Credit Rating Agencies) Regulations, 1999 which described as under:

- In terms of Regulation 16(3) of SEBI (Credit Rating Agencies) Regulations, 1999, a CRA may withdraw a rating, subject to the CRA having:

  i.) rated the instrument continuously for 5 years or 50 per cent of the tenure of the instrument, whichever is higher.

  ii.) received an undertaking from the Issuer that a rating is available on that instrument.

  Further, at the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release, as per the format prescribed along with reasons for withdrawal.

- **Ministry of Corporate Affairs ("The MCA") vide its Notification dated 13th June, 2018 has exercise the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby informed that w.e.f. 13th June, 2018 Section 22, 24, 25, 26 and 71 shall come into force.**

- **The MCA vide its Notification dated 13th June, 2018 exercise the powers conferred by section 247 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registered Valuers and Valuation) Rules, 2017, namely:-**

  In the Companies (Registered Valuers and Valuation) Rules, 2017, in rule 19, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

  "(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.".

  The MCA vide its Notification dated 13th June, 2018 exercise the powers conferred by Section 90 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely :-

- These rules may be called the Companies (Significant Beneficial Owners) Rules, 2018;

- Rule 3 - Declaration of significant beneficial ownership in shares under section 90 .-

  Every significant beneficial owner shall file a declaration in Form No. BEN-1 to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.

- Rule 4 - Return of significant beneficial owners in shares.-

  Where any declaration under rule 3 is received by the company, it shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it.

- Rule 5- Register of significant beneficial owners.-

  1. The company shall maintain a register of significant beneficial owners in Form No. BEN-3.

  2. The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

- Rule -6 Notice seeking information about significant beneficial owners.-

  A company shall give notice seeking information in accordance with under sub-section (5) of section 90, in Form No. BEN-4.

- **As part of updating its registry, MCA would be conducting KYC of all Directors of all companies annually through a new eform viz. DIR-3 KYC to be notified and deployed shortly.**

RBI/ FEMA

Liberalised Remittance Scheme - Harmonisation of Data and Definitions

- Mandatory furnishing of PAN for making all remittances under LRS
- Alignment of definition of 'relative' with the definition given in Companies Act, 2013 instead of Companies Act, 1956 in case of remittances allowed under LRS for maintenance of close relatives

Foreign Investment in India - Reporting in Single Master Form

- RBI, with the objective of integrating the extant reporting structures of various types of foreign investment in India, will introduce a Single Master Form (SMF). The SMF (format provided online) would be filed online
- Prior to the implementation of the SMF, Reserve Bank would provide an interface to the Indian entities, to input the data on total foreign investment in a specified format (prescribed). Indian entities not complying with this pre-requisite will not be able to receive foreign investment (including indirect foreign investment) and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.

Due Dates

Income Tax Department (ITD) Compliances

Sr No.	Due Date	Form No	Description
1	30.07.2018	Form 26Q	Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2018
		Form 26QB	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of June 2018
2	31.07.2018	Form 26Q	Quarterly statement of TDS deposited for the quarter ending June 30, 2018
		ITR	Annual return of income for the assessment year 2018-19 for all assessee other than: (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E.
		Form No.10	Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(2).
		Form No.67	Due date for claiming the foreign tax credit, Upload statement of foreign income offered for tax for the previous year 2017-18 and of foreign tax deducted or paid on such income in Form no. 67 (if the assessee is required to submit the return of income on or before July 31, 2018).
3	07.08.2018	Challan No.281	Due date for deposit of Tax deducted/collected for the month of July 2018.
4	14.08.2018	Form 26QB	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of June 2018
4	15.08.2018	Form 26Q	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2018

Due Dates

Indirect Tax Compliances

Sr No.	Due Date	Authority	Form No	Description
1	18/07/2018	GST	GSTR-4	Summary of Outward Supplies for the Quarter April to June-18 in case of taxpayer has opted for composition scheme
2	20/07/2018	GST	GSTR-3B	Summary Return to be filed for the month of June-18
3	31/07/2018	GST	GSTR-6	Summary Return to be filed for the months from July-17 to June-18 for Input Service Distributor
4	31/07/2018	GST	GSTR-1	Summary of Outward Supplies for the Quarter April to June-18 in case of aggregrate turnover up to INR 1.5 Crores
5	10/08/2018	GST	GSTR-1	Summary of Outward Supplies for the month of July-18 in case of turnover exceeding INR 1.5 Crores
6	21/07/2018	State Government (Maharashtra)	VAT Return	Dealers not covered under GST (Eg:Alchohol)
7	31/07/2018	State Government (Maharashtra)	IIIB	Monthly PTRC Return of July 18

4A, Kaledonia-HDIL,
2nd Floor, Sahar Road,
Near Andheri Station,
Andheri (East),
Mumbai - 400 069. India

Tel.: +91 22 6625 6363
Fax: +91 22 6625 6364
E-Mail: info@krestonsgco.com
Web: www.krestonsgco.com