The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

HYDERABAD BRANCH OF SIRC

E-NEWSLETTER

JANUARY-2021

Chairman Writes....

Dear Professional Colleagues,

Let me wish you Happy Sankranti & Seasons Greetings to all our members, Students and their families. January 2021 has dawned with new hopes and opportunities and it is for us to make the best use of it.

We are all aware the due dates for compliances with respect to Income Tax have been extended to January 10/15, 2021. I urge all my colleagues to make use of this extension and complete the assignments on time. At the same time I would also request you to take care of your health.

ICAI has extended the completion of structured CPE hours for various categories of members to January 31, 2021 and ICAI has also permitted attending Virtual CPE Programmes so as to comply with CPE requirements. I urge all members to make use of the opportunity and complete the prescribed CPE hours. Hyderabad branch of SIRC is also conducting certain virtual CPE programmes and the details of the same are also published in the newsletter.

It gives me immense pleasure to inform you that ICAI has launched a special initiative tilted "**Inactive and Non-member drive & V Care Drive**" wherein we are reaching out to members whose names have been removed due to non-payment of fees and requesting them to restore their membership. As part of this initiative we are also reaching out to students who have qualified and yet to apply for membership, so that our membership strength is also enhanced. Hyderabad Branch of SIRC is proud to be associated with ICAI in this drive to enhance the membership strength of our profession.

I sincerely hope that in 2021 we will also witness the successful arrival of Covid antidote for which the world have been waiting. The vaccine dry run which has commenced at various states is also nearing completion and it is expected that the vaccine is expected to be rolled out by latter half of January 2021. We at Hyderabad Branch of SIRC are also optimistic of commencing our normal activities as in the past, during the year 2021.

Signing off with a quote:

"Success is the sum of small efforts repeated day in and day out."

CA Pankaj Kumar Trivedi
Chairman
chairman.hyd@icai.in

January 2021 Virtual CPE Program Sheet

Date & Day	Timing	Topice	Speaker	CPE	Delegate Fee
Monday 18th January 2021	12:00 PM to 01:30 PM	Vivad Se Vishwas Scheme	Shri.. J. B Mohapatra, IRS, Pr CCIT	-	
Friday & Saturday 22nd & 23rd January 2021	05:00 PM to 08:00 PM	Two Days International Taxation	Eminent Speakers	6hrs	950/- Incl GST
Tuesday 26th January, 2021	72nd Republic Day Celebration Flag hoisting 9AM onwards				
Wednesday 27th January, 2021	06:00 PM to 08:00 PM	Understanding Stock Market	CA. Manoj Kumar Trivedi	2hrs	118/- Incl GST
Saturday 30th January,2021	11.00 AM to 01.00PM	Ind AS 103 - Business Combination	Dr. CA. Gopalakrishna Raju	2hrs	118/- Incl GST

Announcements

Extension of last date for complying with the mandatory CPE hours requirement for the Calendar Year 2020

This is for kind information of the members that the last date for complying with the mandatory CPE hours' requirement for the Calendar Year 2020 (either in physical/offline mode or in virtual mode through Virtual CPE Meetings/ Digital Learning Hub) has been extended from 31st December, 2020 to 31st January, 2021.

The members who could not complete their respective mandatory CPE hours requirements up to 31st December, 2020 for the Calendar year 2020 are requested to complete the same at the earliest and latest by 31st January, 2021 as no further extension will be granted for completion of mandatory CPE hours requirement for calendar year 2020.

Regards

Secretary
Continuing Professional Education Directorate
The Institute of Chartered Accountants of India
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Recent Changes in GST – are we heading in right direction?

- CA Satish Saraf & CA Vekata Prasad. P

With view to curb the frauds or evasion in GST, the Government has made certain changes most of them are effective from 01.01.2021. an attempt is made in this article to explain the important changes and its impact.

1. **Restriction for payment of taxes through ITC – Rule 86B (Notification No. 94/2020 – Central Tax dated 22nd December 2020):**

   New Rule 86B was introduced to specify that ITC shall be used to discharge 99% liability only thereby mandating the compulsory cash payment of 1% if the value of taxable supply (other than exempt supply and zero-rated supply) in a month exceeds 50 lakh rupees. However, this restriction would not be applicable to the following cases:

   - The said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid > 1 lakh as income tax in each of the last 2 financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or
   - He has received a refund amount of > Rs.1 lakh in the preceding financial year on account of unutilised ITC in case of zero-rated supplies without payment of taxes or Inverted duty structure; or
   - Paid liability in cash in excess of 1% of the total output tax liability (cumulatively) up to the said month in the current financial year; or
   - Government Department; or a Public Sector Undertaking; or a local authority or a statutory body

   The Commissioner or an officer authorised by him may remove the said restriction after such verifications and such safeguards as he may deem fit.

Authors comments: While the objective of the amendment is appreciable but the way in which it was enacted is troublesome for more than one reason.

Firstly, the legal validity of this rule itself is highly doubtful as there is no sufficient rule making power here and also the rule being unreasonable & arbitrary. It appears that Government is assuming unlimited powers in making rules without actually looking at the soul of the GST and long settled jurisprudence.

Secondly, though the amendment was aimed at curbing the frauds of fake ITC transactions but practically it troubles the genuine tax payers more specifically the start-ups, loss making companies.

Thirdly, The powers are given to department officers to relax the rule which leads unnecessary hurdles & harassment.

2. **Amendment in Rule 36(4) (Notification No. 94/2020 – Central Tax dated 22nd December 2020)**

Rule 36(4) was introduced to restrict the availment of credit on invoices and debit notes uploaded by the supplier in GSTR 1 up to 10% of the eligible credit available on invoices and debit notes details of which have been uploaded by the suppliers in GSTR 1. Following are the amendment made to this provision w.e.f. 1st January 2021:

- Recipient could avail the eligible credit on invoices and debit notes uploaded in GSTR 1 which has been furnished by the supplier. Earlier only uploading the details in GSTR 1 but GSTR 1 not furnished would suffice the compliance of such provision. However, now filing of GSTR 1 by the supplier has been mandated to avail the credit by the recipient.
- Restriction on availment of ITC has been reduced from 10% to 5%. Recipient can take the credit up to 105% of the eligible credit available on invoices and debit notes which have been furnished by the supplier in GSTR 1.

Authors comments: Additional availment of credit was allowed up to 20% from 01st October 2019 which was then reduced to 10% from 01st January 2020 and now reduced to 5% from January 2021. Seeing the earlier trend there could be possibility that credit would not be allowed in future if supplier has not uploaded details in GSTR 1 and filed the same. Recipient

of supplies shall ensure that all the vendors upload the invoices in GSTR 1 and file the returns which will ensure compliance of this Rule**.**

It is worth noting that the legal validity of the rule itself is questionable for various reasons.

3. **Restriction in filing of GSTR-1 returns (Notification No. 94/2020 – Central Tax dated 22nd December 2020)**

Rule 59 of CGST Rules, 2017 was amended to specify that the filing of GSTR 1 is not allowed if

- GSTR-3B was not filed for preceding 2 months.
- GSTR-3B has not filed for preceding quarter (Quarterly return filers).
- Falling under rule 86B (explained above) and has not filed GSTR 3B for preceding tax period.

Authors Comments: This amendment was made to curb the practice of defaulters who are filing GSTR-1 (to enable ITC to the recipients) but not paying tax to the Government & not filing GSTR-3B.

4. **Registration procedure under GST Law (Notification No. 94/2020 – Central Tax dated 22nd December 2020)**

Earlier physical verification of place of business for GST registration is required only when Aadhar authentication is failed or not opted for Aadhar authentication. Now the amendment was brought giving the discretionary powers to the officers for physical verification even in case Aadhar authentication is made.

Another amendment is made to provide 7 days' time limit for grant of registration against the 3 days' time existing earlier.

Authors comments: The physical verification of the business premises would be unavoidable in getting the GST registration now.

5. **Registration cancellation – reasons added now:**

Now, following additional reasons have been added where registration can be cancelled:

a. Avails ITC in violation Section 16 & the rules made thereunder;
b. Details of outward supplies in GSTR-1 for one or more tax periods in excess of details declared in GSTR-3B.
c. Violates the provisions of Rule 86B (compulsory 1% cash payment liability).

Authors comments: These changes give more powers to the officers to cancel the registration and arbitrary powers are given to cancel the registration. There is high possibility of the misusing these rules to harass the tax payers despite genuine cases. Hence, it is recommended to give standard guidelines for invoking these rules and avoid misuse of the rules.

6. **Registration suspension - changes:**

Following changes are made in GST registration suspension:

a. Amendment is made to dispense the requirement of giving a 'opportunity of being heard' before suspension of the registration.

b. Details of outwards supplies and/inward supplies or any other analysis (on council recommendation) show that there are significant differences or anomalies indicating contraventions, leading to cancellation of registration of the said person, his registration shall be suspended.

Authors comments: Here again, the arbitrary powers are given to the officers for registration suspension which ultimately leads to unnecessary harassment to the genuine tax payers. Further dispensing the 'opportunity of being heard' is contrary to the elementary principle of natural justice and hence do not stand in the judicial scrutiny.

7. **Changes in E-way bill provisions (Notification No. 94/2020 – Central Tax dated 22nd December 2020)**

a. **Narrowing the validity of E way Bill – Rule 138(10)**

Earlier one day was permitted for transportation of goods under cover of E way bill for 100 km, now the same has been increased to 200 km w.e.f. 1st January 2021.

Authors Comments: Validity for 200km was earlier 2 days which has been reduced to 1 day and for every additional 200 km or part thereof also e way bill validity has been reduced to 1 day. This would be very difficult for the transporter to ensure that this time limit is met for compliance for validity of E way Bill.

b. **Addition reason for blockage of E way bill facility – Rule 138E**

If the GST registration is suspended then the E-way bill generation is blocked now.

8. Notified sections of Finance Act 2020 (Notification No. 92/2020 – Central Tax dated 22nd December 2020)

Amendments made vide Finance Act 2020 in the following sections are notified w. e. f. 1st January 2021.

a. Section 119 - Amendment in the Composition Scheme
b. Section 120 - Time-limit for taking credit in case of Debit Notes
c. Section 121 - Cancellation / Suspension of registration
d. Section 122 - Powers to extend the time for Revocation of cancellation of registration
e. Section 123 - Power to prescribe exclusion from issuing tax invoice for specified categories of services or any document which may be deemed to be a tax invoice for such services be issued
f. Section 124 - Powers to notify the form of TDS certificate
g. Section 126 & 127 - Penalty / punishment for certain offences
h. Section 131 - Retrospective change to scope of certain Schedule II entries

Conclusion remarks:

'Let Hundred guilty be acquitted but one innocent should not be convicted' is one of the principles that being followed by the Indian jurisprudence. The recent amendments in GST though aimed at punishing the culprits but unnecessarily causing burden to the genuine tax payers, which runs contrary to the above long-standing belief system. Further, the discretionary powers given to the officers tends to misuse and causes unnecessary burden on the businessman which kills the stated objective of Government to 'ease of doing business'.

Survey, Search and Seizure Update

Compiled By: Hari Agarwal,FCA

1. **Letter from bank cannot establish that draft is related to assessee and amount of draft cannot be treated as unexplained expenditure of assesse.**

Unexplained expenditure — search and seizure — presumption as to documents seized — seizure from third party of drafts on foreign bank in name of company — documents not seized from possession of assessee — letter from bank cannot establish that draft related to assessee — amount of draft cannot be treated as unexplained expenditure of assessee — income-tax act, 1961, ss. 69C, 132, 292C

During the search operation conducted under section 132 of the Income-tax Act, 1961 at the residence of one KT, bank drafts on a foreign bank for payment of 2 million US$ drawn in favour of a company PAD payable at Singapore and one for payment of 2 million US$ drawn in favour of the assessee, payable in India were found and seized. The Assessing Officer added the Indian rupee equivalent of these sums in the hands of the assessee. The Tribunal found that there was no material on record to suggest that such a company did not exist nor evidence of any link between the company PAD and the assessee and held that therefore, the presumption as referred to under section 292C would not arise. The Tribunal confirmed the addition in respect of the bank in the name of the assessee, and deleted the addition in connection with the bank draft in favour of the company PAD. On appeal the Department contended that, during the search operation, it found a document in the nature of a letter from the bank, which stated that, the last date for presentation of the draft in question had expired and that the assessee had to get the draft revalidated and that no such letter would have been written by the bank, unless the assessee was the beneficiary of the payments:

Held, dismissing the appeal, that a mere letter from the bank would not establish a relationship between the payable amount and the assessee, particularly when the draft was in favour of a limited company. As recorded, the documents were not seized from the possession of the assessee but during the raid from a third party. The search was not conducted at the premises of the assessee but at the residence of the third party from where

the bank drafts were recovered. The draft in question did not contain the name of the assessee as payee but of a company PAD. On the facts the Tribunal had refused to accept the Department's contention that the assessee was a beneficiary of such payment and based on the materials on record had reduced the additions made by the Assessing Officer on account of unexplained expenditure. No question of law arose.**[PRINCIPAL COMMISSIONER OF INCOME-TAX vs. HASSAN ALI KHAN, BOMBAY HIGH COURT, [2020] 426 ITR 556 (Bom)]**

2. Cash credits — assessee entry provider to customers making deposits in cash in lieu of cheques for lower amounts — cash deposits accounted for in assessment orders of beneficiaries — restriction of addition to difference between amounts deposited and cheques issued only as commission income as disclosed by assessee — provisions of section 68 not attracted — income-tax act, 1961, ss. 68, 132, 260A

The assessee provided accommodation entries to entry seekers. A search and seizure operation under section 132(1) of the Income-tax Act, 1961 was carried out in the case of one HMB who deposed that he was an entry operator and that he used to arrange cheques of the assessee and another entity GFP. For the assessment year 2003-04, the Assessing Officer computed the income of the assessee and passed an order under section 143(3) read with section 153C against the loss return filed by the assessee. Subsequently another search under section 132 was carried out in one M group of companies, now known as AS, to which the assessee belonged. Thereafter the assessment of the assessee which was completed under section 143(3) read with section 153C was reopened. The Assessing Officer held that the identity of the parties involved and the genuineness of the transactions were not proved by the assessee and added the amount to the income under section 68. The Commissioner (Appeals) following the order of the Tribunal in a group case holding that only 0.15 percent. of the total deposits were to be treated as income from commission in the hands of the respective entities and restricted the addition to 0.15 per cent. of the total deposits as commission in the hands of the assessee. The Tribunal, on the ground that on a similar issue in the case of GFP for the same assessment year 2003-04 it had taken the view that the assessee was only concerned with the

commission earned to provide the accommodation entries and that the commission in the case of GFP the other entry provider was assessed at 0.15 per cent., and since the assessee was part of the group of entities, upheld the order passed by the Commissioner (Appeals) and dismissed the appeal of the Department. On appeal:

Held, dismissing the appeal, that the provisions of section 68 would not be attracted. The assessee had admitted that its business was to provide accommodation entries. In return for the cash credits it issued cheques to its customers and beneficiaries for smaller amounts, the balance being its commission. Moreover, the cash credits had been accounted for in the respective assessment of the beneficiaries. Section 68 would be attracted only when any sum was found credited in the books of the assessee and no explanation was offered about the nature and source thereof or the explanation offered was not in the opinion of the Assessing Officer satisfactory. But it had been the consistent stand of the assessee which had been accepted by the Commissioner (Appeals) and the Tribunal that the business of the assessee centered around the customers and beneficiaries who made the deposits in cash amounts and in lieu thereof took cheques from the assessee for amounts slightly lower than the quantum of deposits, the difference representing the commission realized by the assessee. The assessee had never claimed the cash credits as its income. The cash amounts deposited by the customers, i. e., the beneficiaries, had been accounted for in the assessment orders of those beneficiaries. Therefore, the question of adding such cash credits to the income of the assessee, especially when the assessee was only concerned with the commission earned on providing accommodation entries did not arise. On the issue of the percentage of commission, the Tribunal had already held 0.1 per cent. Commission in similar type of transactions to be a reasonable percentage of commission and therefore, had accepted the percentage of commission at 0.15 per cent. disclosed by the assessee itself. This finding was a plausible one and the rate of commission was not arrived at in an arbitrary manner. The order of the Tribunal did not suffer from any error or infirmity to warrant interference under section 260A. No question of law arose. **[PRINCIPAL COMMISSIONER OF INCOME-TAX vs. ALAG SECURITIES PVT. LTD, BOMBAY HIGH COURT, [2020] 425 ITR 658 (Bom)]**

3. *Assessment orders passed by the assessing officer under section 153A without reference to any incriminating material found search is not sustainable:-*

Search and seizure – Assessment in case of search —Assessee, an individual, filed her return for AY 2008-09 declaring income—Search and seizure action was carried out against RSBL group under section 132-Notice u/s 153A was issued—Assessment under section 143(3) r/w section 154A was completed in case of all years and addition was made under section 68—CIT(A) upheld addition under section 68 but he did not address assessee's challenge to jurisdiction of assessment under section 153A—Held, there is no reference to material found in search with reference to addition made—These assessments are unabated—In case of unabated assessment without reference to incriminating seized material, assessment u/s.153A is not sustainable—Addition made in these assessment orders passed by assessing officer under section 153A without reference to any incriminating material found search is not sustainable—Additions made were not sustainable due to the jurisdictional defect—Assessee's appeal allowed.

Held: *Addition in the present case has been made under section 153A on the basis of statements of various parties obtained under survey and search. The addition of unsecured loan has been made on the basis of entries in the regular books of accounts duly reflected in the assessee's financial accounts. There is no reference to material found in search with reference to the addition made. It is also undisputed that these assessments are unabated.*

A reading of the above makes it clear that it was expounded that in case of assessments which have attained finality no addition under section 153A can be done without seized incrementing material. We are aware that in these cases earlier assessments were not done u/s 143(3). In our considered opinion, the Hon'ble Jurisdictional High Court has never mentioned that it is only assessment which has been completed under section 143(3) that addition under section 153A cannot be done without reference to incriminating seized material. Hon'ble Jurisdictional High Court has clearly mentioned that it is those assessments which are unabated, that is not pending, to which the above said ratio will apply. Assessments which are not pending are not only those which have been completed under section 143(3) but also those for which the time for issuing notice under section 143(2) have already elapsed. In other words the reference is to those assessments

in whose case assessment under section 143(3) cannot now be done. It is not at all the case of the revenue that in the appeals which have been claimed as unabated here there was time for assessment under section 143(3). In this view of the matter, in our considered opinion, the submission of the learned counsel of the assessee succeeds that addition in the case of unabated assessment without reference to incriminating seized material for assessment u/s.153A is not sustainable on the touchstone of above said Hon'ble Jurisdictional High Court decision.

It may not be out of place here to mention that it is specifically provided in section 153A "that assessment or reassessment if any relating to any relevant assessment year or years referred to in this subsection pending on the date of initiation of search under section 132 or making of requisition under section 132 a as the case may be shall abate". This makes it further abundantly clear that only those assessments which are pending abate. Hence sanguine provisions of the act read with Hon'ble Jurisdictional High Court decision as above make it abundantly clear that the assessments which do not abate and assessment and addition under section 153A without reference to incriminating seized material is not sustainable.

In the background of aforesaid discussion and precedents, the addition made in these assessment orders passed by the assessing officer under section 153A without reference to any incriminating material found search is not sustainable. Hence we set aside the orders of authorities below and direct that the additions made are not sustainable due to the jurisdictional defect. Since we have already held that addition of loan itself is not sustainable the addition of commission is also directed to be deleted as the same is also without reference to any material foundering search.

Conclusion : *Assessment orders passed by the assessing officer under section 153A without reference to any incriminating material found search is not sustainable. [***DINESH SALECHA vs. DEPUTY COMMISSIONER OF INCOME TAX, (2021) 61 CCH 0003 MumTrib]**

4. *Where no incriminating material relating to assessee was unearthed during the search, no additions could be made to the income of assessee:*

Search and seizure – Assessment in case of person other than person searched – Assessee is one of group companies of M/s S – It filed return of income for AY 2001-02 & 2002-03 which were duly processed under Section 143(1) – A search and seizure operation was conducted, under Section in respect of M/s S Group of cases – After recording a satisfaction note, notice under Section 153C was issued to assessee requiring it to file ROI in prescribed form – Thereafter, assessment orders were framed under Section 153/143(3) – CIT(A) allowed appeals in favour of assessee on merits but dismissed challenge as regards issue of validity of assessment under Section 153A/143(3) – ITAT allowed assessee's cross objection that assessment order framed under Section 153A/143(3) – Held, ITAT held that in entire assessment order, AO has not referred to any seized material or other material for year under consideration having being found during the course of search in case of assessee – ITAT held that action of the AO is based upon conjectures and surmises and hence, the additions made was not sustainable in the eyes of law – Revenue was unable to point out any incriminating material related to assessee which could justify action of Revenue – Thus, assumption of jurisdiction under Section 153C cannot be sustained – Revenue's appeal dismissed.

Held

ITAT, after perusing the relevant records, including the orders passed by the Revenue Authorities, observed that in the entire assessment order, the AO has not referred to any seized material or other material for the year under consideration having being found during the course of search in the case of assessee, leave alone the question of any incriminating material for the year under appeal. We also find that the case laws cited by the Ld. CIT(DR) are not relevant to the present case. Therefore, in our considered opinion, the action of the AO is based upon conjectures and surmises and hence, the additions made is not sustainable in the eyes of law, because this issue in dispute is now no more res-integra, in view of the decision dated 29.08.2017 of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax- III, Pune vs. Sinhgad Technical Educational Society reported in (2017) 84 taxmann.com 290 (SC) as well as the decisions of the Hon'ble Delhi High Court passed in the case Commissioner of Income Tax vs. Kabul Chawla reported (2016) 380ITR 573 (Del.) and in the case of Principal Commissioner of Income Tax (Central) -2 vs. Index Securities (P) Ltd.

Upon reading of the aforesaid extracted portion of the impugned order, it is clearly discernable that the ITAT has given a finding of fact that the assessments make no reference to the seized material or any other material for the years under consideration, that was found during the course of search, in the case of the assessee. Mr. Maratha is also unable to point out any incriminating material related to the assessee which could justify the action of the Revenue. Merely because a satisfaction note has been recorded, cannot lead us to reach to this conclusion, especially when the Revenue has not laid any foundation to support their contention. In the factual background as explained above, the assumption of jurisdiction under Section 153C cannot be sustained in view of the decision of this Court in the case of Kabul Chawla (Supra).

Conclusion: *Where no incriminating material relating to assessee was unearthed during the search, no additions could be made to the income of assessee.* [**PRINCIPAL COMMISSIONER OF INCOME TAX & ANR. vs. ALLIED PERFUMERS PVT. LTD. & ANR. HIGH COURT OF DELHI, ITA 391/2019 & ITA 380/2019]**