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MCTC Bulletin

"Every Passing Minute is Another Chance to Turn it Around"

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President's Communiqué



My Dear Professional Colleagues,

In the last month, the MCTC successfully could organize 2 events. It's a moment of immense pride for the team, but special thanks to the members who show such enthusiasm in every event organized by us whether it is a Study Circle, Seminar, Workshop or Lecture of any kind. The 14th Dr. Bharat D. Vasani – Sarasvati Sanman Samarambh and Diwali get together was an event for which we received extremely positive feedback. The credit for the success goes to the extremely articulate speaker – Mr. Jigar Shah. We are planning to conduct such self-development lectures every quarter which I feel is the need of the hour.

A workshop for students was conducted as the second event. The Chamber has always been very firm on the upliftment of the quality of future professionals. Thus, such a workshop was in line with our vision to impart professional wisdom to Students. We are happy to announce that the workshop was attended by 225 students. The event was a collaborative effort of WIRC, MCTC and SNTD college. Ms. Preeti Savla, Chairperson of the prestigious WIRC also attended the seminar and played the role of torch bearer for the students. MCTC thanks her for this gesture and wishes several such collaborations in future.

Stepping into the last month of the year, one witnesses a mixture of emotions. The traditional habit of making new year resolutions is very common to find. This time, I urge everyone to make resolutions keeping few points in mind – resolutions are for those who actually want a change. Do not make a resolution falling prey to herd mentality. Resolutions are for a change that you want in yourself and not what society wants from you. Lastly, the resolution should be SMART – *Specific, Measurable, Attainable, Relevant, Time-bound*.

Looking forward, the details of the next event will be sent shortly. The event is related to GST new forms and amendments. It would be very resourceful and the insights of the speakers would be something that shouldn't be missed at any cost.

Merry Christmas And Happy New Year!

Thank you

CA Viresh Shah

President

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DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

- **SECTION 119 OF THE INCOME-TAX ACT, 1961 – CENTRAL BOARD OF DIRECT TAXES – INSTRUCTION TO SUBORDINATE AUTHORITIES - EXTENSION OF DUE DATE OF FILING INCOME TAX RETURN AND TAX AUDIT REPORT FOR ASSESSEES OF JAMMU & KASHMIR AND LADAKH**

CBDT ORDER [F. NO. 225/306/2019-ITA-II], dated 31-10-2019

On consideration of reports of disturbances in internet facility in certain areas of Jammu and Kashmir, the Central Board of Direct Taxes (CBDT), hereby further extends the 'due-date' for filing of Income-tax Returns/Tax Audit Reports to **30th November, 2019** in respect of **all categories of income-tax assesseees in the Union Territory of Jammu and Kashmir and Union Territory of Ladakh** who were/are required to file the Income-tax Returns/Tax Audit Reports by the due date specified under section 139(1) of the Act read with orders of CBDT under section 119 of the Act dated 23-7-2019 and 27-9-2019.

INCOME-TAX (TWELFTH AMENDMENT) RULES, 2019 – AMENDMENT IN APPENDIX-II

NOTIFICATION NO. 95/2019 [G.S.R. 825(E) (F. NO. 370142/15/2019-TPL)], DATED 6-11-2019

In exercise of the powers conferred by section 139A, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes has by the Income-tax (12th Amendment) Rules, 2019, substituted the words and letters "Permanent Account Number", wherever they occur, with the words "Permanent Account Number or Aadhaar Number" in the Income-tax Rules, 1962, in Appendix-II. This amendment shall be deemed to have come into force from the 1st day of September, 2019.

■ ■ ■

Restriction imposed on availment of Input Tax Credit by inserting Sub-Rule (4) in Rule 36 of CGST Rules, 2017 w.e.f. 9-10-2019

Compiled by CA Bhavin Mehta

It is reported in the newspaper that in the month of September 2019, the investigative wing of Finance Ministry conducted operation against exporters who were claiming refund of IGST fraudulently. It was found that ITC of more than ₹ 470 crore against invoice value of approximately ₹ 3,500 crore was bogus/fake. In reply to a question in the Lok Sabha, the government said during 2018-19, 1,620 cases of fake invoice(s) involving fraudulent ITC of ₹ 11,251 crore were booked by Central GST authorities.

The Government, under immense pressure of fiscal deficit, is experimenting with a novel way to tap additional GST resources. In order to curtail the problem of fake trading, generation of fake invoices and wrongful availment of ITC, it appears amendment is made to the GST provisions by inserting a new rule.

The newly inserted Rule 36(4) provides that a taxpayer can avail ITC pertaining to outward supplies not declared by his supplier in Form GSTR-1 only to the extent of 20% of the eligible credit available in respect of invoices declared by his supplier in Form GSTR-1 which is reflected in Form GSTR-2A, which is a big blow to unorganised sectors and is creating incomprehensible difficulties for every law-abiding taxpayer. This new 20 per cent rule has created considerable unrest in the corporates giving them extreme timelines to match tax credit on a monthly basis.

Sub-rule (4) inserted in Rule 36 of CGST Rules, 2017 is reproduced below:

"(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37".

It is cardinal principle of Input Tax Credit, a purchaser is entitled to claim the credit of the taxes paid on purchases. However, under the new sub-rule, the taxpayer will not be entitled to claim the ITC on purchases unless such transaction gets reflected in the GSTR-2A after seller has submitted GSTR-1 return. The purchaser has to ascertain the ITC from the auto-populated Form GSTR-2A as available before filing of his return in GSTR-3B. CBIC has issued clarification *vide* circular No. 123/42/2019-GST dated 11-11-2019. Some of the clarifications issued in respect of said sub-rule (4) are listed below:

- The ITC restriction is not imposed through common portal and it is the responsibility of the taxpayer to ensure that the credit is availed in terms of the said rule. Therefore, the availment of restricted credit in terms of sub-rule (4) shall be done on self-assessment basis by the taxpayer.
- The restriction under sub-rule (4) will be applicable only on the invoices / debit notes on which credit is availed after 09-10-2019. It means those invoices on which ITC is availed till 09-10-2019 will remain unaffected by the restriction imposed in sub-rule (4).

- (iii) The restriction imposed under sub-rule (4) would not be applicable to ITC in respect of IGST paid on import, tax paid under RCM and credit received from ISD, because they are outside the ambit of sub-section (1) of section 37.
- (iv) The restriction imposed is not supplier wise. The credit available under sub-rule (4) of Rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers.
- (v) The calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20% of the eligible credit available. Similarly, those invoices which may be reflecting against the registered person but no corresponding supplies is received, have to be excluded.
- (vi) The restriction of 20% applies with respect to eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period. However, CBIC clarification is totally silent on quarterly return filers. In the case of quarterly taxpayer, they could not upload monthly invoices.
- (vii) The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded remains under 20 per cent of the eligible Input Tax Credit, the details of which are uploaded by the suppliers.

My Comments

1. The sub-rule (4) of Rule 36 derives the authority from section 43A, which was inserted by the CGST (Amendment) Act, 2018. However, section 43A is yet to be notified. It means so long as section 43A is not applicable said sub-rule (4) would become redundant.
2. Clause (c) of section 16(2) section 43A is amended by the CGST (Amendment) Act, 2018, wherein along with section 41 the provision of section 43A would also be made applicable, from the date which is yet to be notified.
3. In terms of sub-section (4) of section 43A, the procedure for availing Input Tax Credit in respect of outward supplies not furnished under sub-section (3) of section 43A and such procedure may include the maximum amount of the Input Tax Credit which can be so availed, not exceeding twenty per cent of the Input Tax Credit available, on the basis of details furnished by the suppliers under the said sub-section.
4. It may be noted that matching, reversal and reclaim of ITC provided under section 42 would become redundant on operation of section 43A. Thus matching would become redundant under the new return procedure under section 43A as credit is allowed only to the extent auto-populated in ANX-1. However, so long as section 43A is not notified matching requirement is still in force as per section 42. Rule 36(4) runs counter to the mandate of matching provision contained in section 42 and thereby Rule 36(4) would be treated as *ultra-vires* section 42.
5. Sub-rule (4) of Rule 36 provides for restriction of ITC to be availed by a registered person in respect of details of outward supplies not uploaded by the suppliers under sub-section (1) of section 37. The registered person have to provide details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period in terms of sub-section (1) of section 37. However, sub-section (3) of section 37 provides where registered person who has furnished details under sub-section (1) for tax period and which remained unmatched, shall upon discovery of any error or omission therein can be rectified till the due date of the return for the month of September following the end of the financial year to which such details pertains or furnishing of annual return, whichever is earlier. This implies the due date for matching of details is up to return of September following the end of financial year. In other words, the exercise of sub-rule (4) may be done after the due date of filing of return of September following the end of financial year.
6. This absence of facility to claim missing ITC may pose a genuine problem to the taxpayers. Those small suppliers, who file quarterly return may not upload their invoices on a real-time basis and thus the recipient would not be able to claim ITC. This Rule has been challenged in the High Court of Gujarat. After the first hearing, the Court has issued notices to five respondents, including the GST Council, the CBIC and the Goods and Services Tax Network (GSTN), and fixed December 18 as the next date of hearing. The Gujarat High Court has issued notices to Centre and the State Government besides three others, on limiting the Input Tax Credit to assesseees in case the details have not been uploaded by the supplier.

Following illustrations given below may help in immediate understanding of sub-rule (4) of Rule 36:

Illustration 1: M/s Confused Enterprise has availed ITC amounting to ₹ 1,75,000 in the month of November, 2019 as under:

Vendor	Invoice no.	GST amount (₹)	Remarks
A Ltd.	1	1,00,000	Invoice is received and is reflected in GSTR-2A
B Ltd.	2	50,000	Invoice is received but is not reflected in GSTR-2A
C Ltd.	3	25,000	No invoice is received but is reflected in GSTR-2A

Basis invoice received, M/s. Confused Enterprise would claim ITC of ₹ 1,50,000 in the monthly GSTR-3B return. However, ITC as per GSTR-2A reflects ₹ 1,00,000 (ITC cannot be claimed of invoice which is not received by the purchaser).

In terms of sub-rule (4), M/s. Confused Enterprise can claim ITC of ₹ 1,20,000 (120% of matched ITC of ₹ 1,00,000)

Illustration 2: In the illustration given above let us presume B Ltd has shown invoice of M/s. Confused Enterprise in its GSTR-1 of December 2019 filed by 10th January 2020 and thereby ITC of ₹ 50,000 gets reflected in GSTR-2A.

M/s. Confused Enterprise would be entitled to claim the ITC of ₹ 50,000 but subject to maximum of balance unmatched ITC i.e., ₹ 30,000 (1,50,000–1,20,000) while filing its December 2019 GSTR 3B.

Illustration 3: M/s. Confused Enterprise has availed ITC amounting to ₹ 2,00,000 in the month of November, 2019 as under:

Vendor	Invoice no.	GST amount (₹)	Remarks
A Ltd.	1	1,00,000	Invoice is received and is reflected in GSTR-2A
B Ltd.	2	50,000	Invoice is received and is reflected in GSTR-2A
C Ltd.	3	25,000	Invoice is received but is not reflected in GSTR-2A
D Ltd.	4	25,000	Invoice pertaining to health insurance of employees and is reflected in GSTR-2A

ITC as per GSTR 2A reflects ₹ 1,75,000 (Aggregate of ITC against invoices of A Ltd., B Ltd and D Ltd.). However the eligible ITC matched with GSTR-2A is ₹ 1,50,000 (Invoices of A Ltd and. B Ltd.).

ITC as per sub-rule (4) = 120% of ₹ 1,50,000 = ₹ 1,80,000.

However the total ITC claim would be restricted to ₹ 1,75,000 (Aggregate of ITC against invoices of A Ltd., B Ltd. and C Ltd.).

Illustration 4: M/s. Confused Enterprise has following purchases made in the month of September 2019. They have claimed the aggregate ITC of ₹ 1,75,000 of their eligible purchases in their ITC register in the month of September 2019 and have claimed the same in their September 2019 GSTR-3B return, which was filed on 20-10-2019.

Vendor	Invoice no.	GST amount (₹)	Remarks
A Ltd.	1	1,00,000	Invoice is received and is reflected in GSTR-2A
B Ltd.	2	50,000	Invoice is received and is reflected in GSTR-2A
C Ltd.	3	25,000	Invoice is received but is not reflected in GSTR-2A
D Ltd.	4	25,000	Invoice pertaining to health insurance of employees and is reflected in GSTR-2A

GSTR-3B return of September 2019 filed within stipulated date can be treated as to have claimed the ITC in the month of September 2019 itself. Basis invoice received by M/s. Confused Enterprise and ITC claimed in the register before 09-10-2019, it may be possible to argue that once ITC is claimed in the register would be considered as ITC availed and filing of return can be considered as compliance of intimating the ITC claimed by the taxpayer in the month of September 2019.

Conclusion: In the view of author till the time section 43A is made applicable, operation of Rule 36(4) is *ultra vires* and therefore read with section 16(2) restriction on ITC claim may not be applicable.



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Piramal Investment Opportunities Fund vs. ACIT, Mumbai, Bombay HC, [2019] 111 taxmann.com 5, 4th September 2019

Rectification order u/s. 154 during pendency of appeal proceedings

Facts of the case

The assessee filed original return with total income of ₹ 65.66 crores being interest income earned on its investment. The assessee paid advance tax of Rs.16.80 crores. Subsequently, in revised return assessee declared income as NIL. In scrutiny assessment, order was passed without giving effect to the advance tax paid of ₹ 16.8 crore.

The assessee filed an appeal against this order before CIT(A) and filed a rectification application before jurisdiction AO for giving credit for advance taxes paid.

ACIT rejected the rectification application stating that assessee did not inform that an appeal was filed on the same issue for which rectification was sought. Since the assessee was agitating on similar ground before the appellate authority, following the doctrine of judicial discipline, rectification application assumed character of a matter being sub-judice and hence was rejected.

On writ before High Court, it was observed as follows:

Section 154(1) empowers the Authority to rectify and carry out amendments. Section 154(2) empowers the Authority to make an amendment on its own motion and to make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, or the other Authorities. Section 154(1A) provides that where any matter has been considered and decided in any proceeding by way of appeal or revision, contained in any law for the time being in force, such order shall not be amended.

Thus, the restriction on rectifying own order is only in the event of the matter being 'considered and decided' by way of appeal or revision. In the present case, the appeal is only filed. It has not been heard or decided. Therefore, the rejection of rectification application was unwarranted.

Hence the case is remanded back to ACIT for rectification as the matter is still pending before CIT(A) and not decided.

DCIT vs. Regency Property Investments (P) Ltd. ITAT Mumbai, [2019] 110 taxmann.com 374, 7th August 2019

Set-off of business loss and unabsorbed depreciation in case no business income during the current year

Facts of the case

The assessee was engaged in the business of manufacturing of textile garments. It filed return for relevant year, declaring total income at ₹ Nil

Under scrutiny assessment, it was noted that the assessee had discontinued its business in the current year and set-off current years business income against brought forward business loss.

Also, in the current year, income from other sources was set off against brought forward unabsorbed depreciation. DCIT rejected the set-off taking the stand that as the business was discontinued in the current year set-off cannot be taken.

CIT(A) allowed assessee's claim. On this order revenue was in appeal where:

The Tribunal held that

Section 72(1)(i) does not mandate that the business or profession should have been carried on by the assessee during relevant previous year as a precondition for 'set off' of the 'brought Forward' business losses.

Citing example of sum received by the assessee after discontinuance of its business and chargeable to tax as its 'business income' under section 176(3A) in the year of receipt, would irrespective of the fact that the assessee was not carrying on any business in the said year of receipt will be available for 'set-off' of the brought forward 'business losses' of the assessee during the said year

Further, after amendment of Section 32(2), the unabsorbed brought forward loss can be adjusted from Income from other sources.

Thus, set-off of business loss and unabsorbed depreciation was allowed and appeal of revenue was dismissed.



STUDENTS' CORNER

CROWDFUNDING

Compiled by Neel Randeria

When a person has an idea and wants to start a business, the main barrier in front of him is funding. Generally, the obvious choice for funding available to businesses and start-ups is to rely on venture capitalists. But, this concept has a major drawback. The angel investor pumps in money in exchange for a very huge stake. Another flaw is that the investor has immense control over the functioning of the start-up. The involvement of investor in the decision making process of the start-up would be a great deal of botheration for the entrepreneur. Thus, there comes the concept of crowdfunding which is instrumental in eradicating these drawbacks of traditional start-up funding alternatives.

When a businessman or an entrepreneur wants to expand his business or wants to start a new project, he can raise funds from anyone with money. This concept of crowdfunding provides a forum to anyone with an idea to pitch it in front of willing investors.

The framework of crowdfunding is very simple. There are 3 participants. One who wants to raise fund. Another who is willing to provide fund. The third one is the intermediary.

Entrepreneur	Intermediary	Investor
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Entrepreneur wants to raise money. He has two options- Traditional funding or Alternative funding. If he opts for alternative funding, it means he wants to raise money through crowdfunding. For this, he makes use of intermediary. Through the intermediary, he can reach to the investors. The intermediary has 2 options. It can either be social media platforms or crowdfunding platforms.

Entrepreneur would prefer crowdfunding because it prevents his stake from getting diluted to a certain extent and gains fund without losing operational control. Thus, it is highly beneficial to entrepreneur. From investor's point of view, the pros and cons depend on the type of crowdfunding. There are 4 types of crowdfunding. They are:

EQUITY BASED	DEBT BASED	REWARD BASED	DONATION BASED
Investors are given shares in return for their money	Investors are provided with interest for their money	Investors are given preferences in various manners in exchange for their money	The only incentive for the investor is that the contribution is often tax deductible
E.g. Capbridge	E.g. Crowdo	E.g. Ulule	E.g. Patreon

Next, the crowdfunding sites like Kickstarter provide a platform to entrepreneurs to explain their ideas to potential investors and also provide a channel for secure fund transfer from investor to the entrepreneur. The sites generate revenue from percentage of the funds raised. Kickstarter has funded more than 1.6 lakh projects.

This method of raising fund is new but effective. Many start-ups have already being funded in such fashion. This concept is not a huge hit in India still, but the world has accepted it with open arms. Crowdfunding is transforming the way businesses raise capital.



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Glimpse of 3 day work shop

Held at SNDT College by MCTC Jointly with WIRC and SNDT College



Saraswati Samarambh and Diwali Gettogether



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