# Direct Tax Vista

Your weekly Direct Tax recap

**Edn. 38 – 27th December 2022**

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### 1. Global Minimum Tax & BEPS – Work in fast track

A year after the international community reached a landmark agreement on a two-pillar solution to reform the international tax rules to address the tax challenges arising from globalisation and digitalisation, progress continues fast towards its implementation across both pillars.

We had reported in our DTV Edn 36 that The OECD had 2 weeks ago released a document inviting public comments on how to outline the progress made in defining what in country baseline marketing and distribution arrangements are, how they may be identified in practice, and subsequently how in-scope arrangements may be priced in a simplified and streamlined manner, in accordance with the arm's length principle.

Now the OECD has sought public comments on the Draft Multilateral Convention (MLC) Provisions on Digital Services Taxes (DSTs) and other Relevant Similar Measures of Amount A of Pillar One. The OECD has also sought public comments on compliance and co-ordination aspects of the Pillar Two global minimum tax.

The draft MLC provisions aims at removal of all existing DSTs and other relevant similar measures and the standstill of future measures, which are an integral part of achieving Pillar One's goal of stabilising the international tax architecture. This follows the recent release of the consultation document on Amount B which completes the consultation on all the building blocks of Pillar One.

Under Pillar Two, the Inclusive Framework is releasing an implementation package relating to Pillar Two Global Anti-Base Erosion (GloBE) Rules, which provide a coordinated system to ensure that multinational enterprises (MNEs) with revenues above EUR 750 million pay at least a minimum level – at an effective rate of 15% – on the income arising in each of the jurisdictions in which they operate.

Going forward, the Inclusive Framework expects to release administrative guidance on the interpretation or administration of the global minimum tax on a rolling basis, with the first package of administrative guidance to be released in early 2023. Work is also proceeding on the finalisation of the subject to tax rule and the related multilateral instrument to assist in its implementation.

## 2. Entries reflected in GSTR-2A lead to Income Tax Demands

We have witnessed various disputes under GST on account of GSTR2A Vs GSTR 3B mismatches wherein the ITC claimed in GSTR 3B does not appear in GSTR 2A. However, there is a reverse twist to the case also. Incase certain transactions appear in the GSTR-2A but are not taken in the purchases, then there may be an allegation of suppression of turnover. Further it may also lead to a dispute in Income Tax also.

As we have discussed earlier that Data sharing between GST department and Income Tax is now the order of the day. Admitted/demanded tax in one statue would lead to a demand in another. One must also be careful of auto-populated data and corresponding demands in one law as this may lead to demand in another law also. We know that under GST, demands are raised for fake invoices when the allegation may be that the recipient of goods or services are beneficiaries and master minds of transactions. The said demand is for the mischief of receipt of invoices without corresponding supply of goods/services. Now, many a times it is seen that the transaction appeared in the GSTR-2A and even though the ITC may not be availed, even then allegations are raised by The GST Department for suppression of turnover.

Denial of such allegations as well as certificates from professionals would not suffice until and unless one has disputed the fact of the transactions appearing in GSTR - 2A itself. Further even though there may be an uncrystallised demand in GST, the matter can still be opened in Income Tax also. One may refer to the decision in the case of JENENDRA KUMAR JAIN Vs INCOME TAX OFFICER [2022-VIL-1618-ITAT-HYD].

### 3. Interior work in Rented Premises is Revenue Expenditure

We have discussed the tests to classify a particular expenditure as Capital or Revenue Expenditure in DTV Edn 36 as follows –

A. If the outgoing expenditure is so related to the carrying on or the conduct of the business that it may be regarded as an integral part of the profit-earning process the expenditure may be regarded as revenue expenditure.

B. If an asset or a right of a permanent character comes into existence due to incurring an expenditure, the possession of which is a condition of the carrying on of the business, then the expenditure may be regarded as capital expenditure.

Now the question is whether interior expenses done on the rental shop for the purpose of its smooth running of the business is a capital expenditure or revenue expenditure? Lets answer this by following the above test –

1. The expenses were advantageous only for facilitating the business activities.
2. The nature of expenses included painting, plaster of Paris and the labour charges
3. No fixed assets or right of permanent character came into existence due to such expenditure.

Hence, the expenses for Interior work in Rented Premises would be treated as revenue expenditure.

Incase the lease agreement was executed for a long period of time, say 22 months or even more – can it be contended that the expenditures incurred on the renovation of the business premises will generate benefit to the assessee over a long period of time and hence it will be treated as a capital expenditure? The Hon'ble ITAT answered this question in the case of VED INDIAN HERITAGE HAAT FOUNDATION Vs INCOME TAX OFFICER [2022-VIL-1609-ITAT-AHM]. It held that There is no ambiguity that the assessee shall gain the benefit out of the interior expenses incurred by it. But the benefit is in the nature of smooth and efficient running of the business. As such the benefit to the assessee, though enduring in nature, but the same is not on capital transaction rather it directly relates to the revenue transaction of the assessee. Thus, the same i.e. interior expenses cannot be categorized as capital in nature.

**4. Payments more than 20K per day allowed even other than circumstances as per Rule 6DD**

In some businesses, it is a practise that the suppliers insist on cash payment before delivery of the product and the payment is thus made as business cannot continue disregarding the said practise, especially if it is a new player. The Hon'ble Apex Court in Attar Singh Gurmukh Singh Vs ITO (59 Taxman 11) held that the terms of Sec. 40A(3) were not absolute. The consideration of business expediency and other relevant facts are not excluded. It was open for assessee to demonstrate the circumstances under which the payment as prescribed u/s 40A(3) was not practicable or would have cause genuine difficulty to the payee.

Further, the provisions of Sec.40A(3) and Rule 6DD were intended to regulate the business transactions and meant to prevent the use of unaccounted money. To cover the said intent of The Statute, notices may be sent to suppliers and their statement recorded u/s.131 to substantiate the said transactions have actually been offered for tax by these suppliers or not.

Furthermore, payment to any supplier acting as an agent of the suppliers which are exempt u/r 6DD would be exempted as per Rule 6DD(k).

Hence it was held in the case of INCOME TAX OFFICER Vs SHIVAJI HI-TEK FOODS PVT. LTD [2022-VIL-1610-ITAT-CHE] that such payments for purchase would not be subject to disallowance u/s 40A(3) even though made in cash over the specified limit.

### 5. Is retention money taxable on accrual basis or receipt basis?

The question is whether the retention money has to offered for tax in the year in which it accrues and finds a place in Form 26AS and also shown the ledger account of the customer; or just for retention money, the assessee can follow a cash system of accounting. As per ICDS on Revenue Recognition, Revenue for goods shall be recognised when there is reasonable certainty of its ultimate collection. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved. Incase of Services also, the revenue should be recognised only when the same are considered as rendered.

It was held in the case of Associated Cables 286 ITR 0596 (Bom) that the right to receive the retention money is crystallized only after the obligations under the contract are fulfilled. Hence the service would not be considered to being rendered before the lapse of such time. Hence, it would not amount to an income of the assessee in the year in which the amount is retained.

Even It was held in the case of D.C.I.T. Vs M/s. McNally Bharat Engineering Co. Ltd.(ITAT Kolkata) that Retention money cannot be regarded as income even for the purpose of book profits u/s.115JB of the Act though credited in the profit and loss account and have to be excluded for arriving at the book profits u/s.115JB of the Act.

The question was answered in favour of the assessee and held accordingly on the same lines in the case of NAGIN G. SUTHAR Vs ITO-22(2) (4) [2022-VIL-1604-ITAT-MUM]

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