Direct Tax Vista

Your weekly Direct Tax recap

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1. Cross border Payment Aggregators like Amazon (Pay) India, Google India, Razorpay, Pine Labs, PayPal, Cashfree, Paymate, etc to be directly regulated by RBI now

The RBI will directly regulate all entities facilitating cross-border payment transactions for the import and export of goods and services. That the Indian digital payments ecosystem will get heavily regulated now – is a clear message that has been given by RBI, with issuance of Payment Aggregator-Cross Border (PA-CB) guidelines, to players like Amazon (Pay) India, Google India, Razorpay, Pine Labs, PayPal, Cashfree, Paymate, etc. The RBI has moved away from a light-touch regulatory approach towards a full licensed regime for cross-border PAs. In the future UPI service providers like PhonePe and Google Pay might get regulated directly too.

All entities that facilitate cross-border payments for import and export of goods and services in online mode, i.e. 'Payment Aggregator – Cross Border' ("PA-CB") have been brought under the direct regulation of RBI, through the circular 'Regulation of Payment Aggregator – Cross Border' ("Regulations"), issued on October 31, 2023. A PA (also known as a merchant aggregator) is a third-party service provider that allows merchants to accept payments from customers by integrating it into their websites or apps. It facilitates different types of payment transactions, including cash and cheques, online payments through multiple payment sources, or offline touchpoints. It allows merchants to accept bank transfers without setting up a bank-based merchant account. It means a merchant need not have a merchant account directly with the bank.

Payment gateways, which provide the technology infrastructure for online monetary transactions, have been facing challenges in obtaining payment aggregator licenses,

with the RBI granting in-principal approvals but delaying final approvals for sometime now. Payment Aggregators play a crucial role in enabling e-commerce sites and merchants to accept various payment instruments from customers and fulfill their payment obligations without needing to create their own systems. They collect payments from customers, pool them, and transfer them to the merchants, streamlining the payment process.

Non-banks providing PA-CB services as on the date of circular should have a minimum networth of ₹15 crore at the time of application for authorisation and a minimum networth of ₹25 crore by March 31, 2026. If the per unit goods/ services imported exceeds ₹2.5 lakh, then the PA-CB concerned must undertake due diligence of the buyer also. Customer due diligence should be undertaken by the merchant (that is, directly onboarded Indian merchants, e-commerce marketplaces, or entities providing PA services), and proceeds from the Export Collection Account (ECA) shall be settled only in the account of such merchants.

PA-CB activities are classified into the following 3 categories: (a) export only PA-CB; (b) import only PA-CB; and (c) export and import PA-CB. All non-bank entities that propose to undertake PA-CB services, including the entities that currently provide PA-CB services, will require an authorisation from the RBI as a payment system operator (PSO) under the Payment & Settlement Systems Act, 2007. All entities that currently undertake PA-CB services are required to apply for such authorisation by April 30, 2024. Such PA-CB's can continue these activities until RBI has made a decision on their application. However, authorised dealer category – I scheduled commercial banks ("AD Banks") do not require separate approval for undertaking PA-CB activity from the RBI.

Non-bank payment aggregators ("PAs") that are presently engaged in any PA-CB activities are required to intimate the RBI about their preference to continue with the PA-CB activities within 60 days from the date of the Regulations (i.e., October 31, 2023) prior to seeking approval for such activities from the RBI. Also, the Regulations clarify that PA-CBs authorised for a particular activity (for example, for

imports transactions) will require a prior approval for undertaking an additional activity (for export transactions).

Companies that have received an in-principal nod from the regulator will also need to get explicit permission from RBI to offer cross-border payment services. While it may increase the compliance cost of payment aggregators, RBI's new guidelines on PA CB (Payment Aggregator Cross Border) are a step in the right direction from a regulatory framework standpoint, in taking the cross-border payment agenda of the country forward.

2. Transporters income tax assessments will have volume and payment to unorganised sectors... AOs need to dig into nitty gritties

Each Industry has its own set of nuances and the AOs need to conclude assessments taking into account these nuances. For transporters, it will always be the case where payment have been made to numerous truck drivers whose services are hired by the transporting company. Further the trucks will get glitches, parts will get damaged and will require repair. The nitty gritties have to be taken into account and represented accordingly and AOs need to take the same into account.

Even when creditors are large in numbers, the AO without making any enquiry cannot doubt the genuineness of sundry creditors. Incase of transporters, where payment is made to numerous truck drivers and confirmations are furnished from then which clearly show that there was an opening balance and during the year transportation was done by the truck, then the AO is duty bound to verify the same. The inability of the AO to verify the confirmations of creditors filed by the appellant is not a sufficient reason for rejecting the confirmations. When the entries stand in the name of third party and the appellant establishes the identity of the creditor and produce evidence showing that the entry is not fictitious, initial burden lying on the appellant stands discharged, the burden shifts to the revenue to show that entry represented appellant's" suppressed income. Incase the AO fails to establish that the confirmations were fictitious, the contention is liable to be rejected as was held in the case of ACIT 5(1) Vs SHRI SURESH CHAND JAIN [2023-VIL-1434-ITAT-IND].

The payment made for repair and maintenance of vehicles would not generally be under an agreement as the vehicles may stop at on road and repairs need to be done by local garages. How would TDS be deducted then? This issue was also covered in the said judgement where it was ruled that the payment for repair and maintenance of vehicles to various parties on account of job work charges and spare parts used by the mechanic; and is not covered with in the definition of works contract.

3. Minor changes in Form ITR-7 for trusts from AY 23-24

The CBDT vide Notification No. 94/2023 has notified New Changes in Form ITR-7 for Non-profit making enterprises and these shall come into effect from April 1, 2023. The amendment introduces alterations to Form ITR-7, affecting both Part B–TI and Part B–TTI sections. In Part B–TI, serial number 16 now addresses specified income chargeable under section 115BBI, taxed at 30%, and serial number 17 calculates the aggregate income to be taxed at normal rates. Based on the changes in Part B–TI, Part B–TTI, serial number 1a, computes tax at standard rates. The following are the amendments –

(a) in Part B–TI, the Part B1, for serial number 16 and entries relating thereto, the following serial number and entries thereto shall be substituted, namely:—

"16	*Specified income chargeable u/s 115BBI, included in 13, to be taxed @ 30% (Sl. No 7 of Schedule 115BBI)*	*16*
17	*Aggregate income to be taxed at normal rates (13-14-15-16) (including income other than specified income under section 115BBI)*	*17";*

(b) in Part B–TTI, against serial number 1, for item a and entries relating thereto, the following item and entried thereto, shall be substituted, namely:—

"a	*Tax at normal rates on [Sl. No. 17 of Part B1 of Part B-TI] OR [Sl. No. (13-14) of Part B2 of Part B-TI] OR [Sl. No. 13 of Part B3 of Part B-TI]*

The amendment simplifies and clarifies the method of calculating taxes for the current AY and henceforth. The amendment brings clarity to the tax calculation process.

4. Tax Agreement with Saint Vincent and the Grenadines

The CBDT has notified Tax Agreement between India and Kingstown, Saint Vincent and the Grenadines via issuing Notification 96. The agreement was signed at Kingstown, Saint Vincent and the Grenadines on 19-05-2022. The agreement comprises 13 articles covering the Exchange of Information Upon Request, Potential Refusal of Information Requests, Confidentiality, Mutual Agreement Procedure, and additional provisions. This agreement, which aims to ensure transparency and prevent tax evasion, outlines the scope, procedures, and obligations of both parties.

5. Tax Officers cannot direct taxpayers how to do business; "Managerial services" are not included under "Fees for Included Services"

Tax Officers cannot direct taxpayers how to do business. This is an accepted principle in tax matters and we all have been taught the same from when we began to learn taxation principles. The same is applicable to transfer pricing matters too and here too the AO cannot question the necessity of services and also reject a payment on a cost- benefit analysis of services in question. In Many cases, payment for various services may not yield any desired results. Therefore, TP adjustments cannot be made on the basis of necessity of services and cost benefit analysis. The question maybe whether the services have at all been rendered. This again needs to be determined on persuasive evidences like e-mail communications, agreements, invoices, etc. If these are produced by taxpayers, then the burden to prove that actually the same have not been rendered would certainly be on the officer alleging otherwise. On these considerations, the matter was held in favour of taxpayer in the case of Conference Call Services India Private Ltd Vs Assistant Commissioner Of Income Tax [2023-VIL-1433-ITAT-CHE].

While on another issue on whether Management services in the nature of General Management Services, Marketing and Sales, Finance, Human Resource and

Information Services etc are in the nature of FTS as defined u/s. 9(1)(vii) of the Act and Article 12 of DTAA between India and respective countries or not, it was held that because there is no 'make available' technical knowledge, experience and know-how etc., the same would not be so considered.

6. Natural justice prevails even in case of latches by appellant

Doctrine of latches basically asserts that the court will not help people who sleep over their rights and help only those who are aware and vigilant about their rights, a party is said to be guilty pf laches when they come to the court to assert their right after a reasonable delay in that respect. Adjournments should be taken before the date of hearing and not post that. While it is simple to understand yet sometimes due to prevailing circumstances or due to omissions, taxpayers even delay in filing a one pager adjournment before the hearing. Sometimes they remember and file adjournments after the date of hearing. Even in the ITATs we face a scenario where taxpayers do not appear for hearings on the said dates. These could prove costly as Court's take a serious view of the negligence.

However, where even after the delay an adjournment is filed, the Hon'ble ITAT in the case of M/s JAIPUR COLONIZERS & DEVELOPERS Vs INCOME TAX OFFICER [2023-VIL-1429-ITAT-JAI], directed that natural justice should prevail and taxpayer must get an opportunity of being heard. A small judgement but one which students of taxation may refer to.

7. Apex Court's judgement for NPOs in AUDA Case only for GPU... and not other limbs of Section 2(15)

The Hon'ble Apex Court declared that specific incomes themselves may or may not be exempt under Income Tax Act in the case of trusts in the judgement in 2nd half of 2022, in the case of Ahmedabad Urban Development Authority. In simple words, the entities claiming exemption u/s 11 of The Income Tax Act have to prove the following-

A. That there is no standalone activity in the nature of on trade, commerce or business. If that be so, then separate books of accounts be maintained and the profits be offered for tax.

B. In the course of advancing the object of GPU, the entity can carry on 'connected' activities in the nature of trade, commerce or business. But, the receipts from these activities should not be more than 20% of the total receipts. The consideration for such connected activities should also be on cost-basis or nominally above cost. How much above cost is not mentioned. But, it is a fact that 15% accumulation is officially allowed by The income tax Act and possibly that could be a benchmark.

However, this judgement is only for activity falling under the head objects of General Public Utility (GPU). The department cannot treat the activities of an assessee as "Business" or "trade" when the assessee is engaged in charitable activities of giving relief to poor, distinct from GPU, and especially which was duly accepted by the department in earlier years as well as by the appellate authorities as was held in the case of SASHA ASSOCIATION FOR CRAFT PRODUCERS Vs ITO, WARD-1(3), KOLKATA [2023-VIL-1424-ITAT-KOL]. Similar entities whose object is 'education ' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on account of commercial activity subject to the conditions mentioned above.

8. Provisions contained in section 269SS & 269T is confined to loans and deposits only and does not extend to purchase/sale transaction

CBDT in its explanatory note on the provisions of the Finance Act, 1984 vide Circular No.387 dated 6th July, 1984 clarified that the provisions contained in section 269SS is confined to loans and deposits only and does not extend to purchase/sale transaction. The same is as under:

"With a view to countering this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new section 269SS in the Income-tax Act debarring persons from taking or accepting, after 30th June, 1984, from any other person any loan or deposit

otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs. 10,000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount or the aggregate amount remaining unpaid is Rs. 10,000 or more. The prohibition will also apply in cases where the amount of such loan or deposit, together with the aggregate amount remaining unpaid on the date on which such loan or deposit is proposed to be taken, is Rs. 10,000 or more.

Fears have been expressed in certain quarters that the provision will adversely affect the rural sector and farmers who bring produce to man dies for sale. The prohibition contained in section 269SS is confined to loans and deposits only and does not extend to purchase/sale transactions."

Similar rationale applies in the context of repayment as provided u/s 269T of the Income Tax Act. The Hon'ble Madras High Court in case of CIT vs Rugmini Ram Ragav Spinners (P) Ltd reported in (2008) 304 ITR 417 has similarly held that the rationale behind provisions of section 269SS and 269T is to prevent tax evasion i.e, laundering of concealed income by the parties in the guise of cash loans or deposits in or outside the accounts.

Thus, where there is no repayment of loan or deposit but the adjustment of the advance received from its customer in earlier years was against sales, then there will be no violation of section 269T of the Act as was held in the case of SHRI GURINDER MAKKAR Vs THE DY. CIT CC-3, LUDHIANA [2023-VIL-1426-ITAT-CHD]. Hence there is no question of penalty u/s 271E of The Income Tax Act in this case.

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