Just 5 Minutes

TAXCON™ INDIA PRIVATE LIMITED

INCOME TAX

1. *CBDT exempts certain non-residents, foreign investors from filing ITR FY21 onwards*

The income tax department has exempted certain non-residents and foreign investors from filing Income Tax Return (ITR) from 2020-21 onwards, who do not earn any income other than income from investment in 'specified fund'. Further, eligible foreign investors (non-residents who operate in accordance with SEBI instructions), who during the financial year, have only transacted in capital asset like GDR, Rupee Denominated Bonds, derivatives or other notified securities, listed on recognised stock exchange, have also been exempted from ITR filing.

This is subject to the condition that the consideration for transfer of such asset is discharged in foreign currency and no other income is earned by such class of persons in India.

INCOME TAX

2. *India may have to withdraw equalisation levy*

India may have to withdraw digital services tax or the equalization levy and give a commitment not to introduce such measures in the future if the global minimum tax deal comes through. In a major reform of the international tax system, 136 countries, including India, have agreed to an overhaul of global tax norms to ensure that multinationals pay taxes wherever they operate and at a minimum 15%.

GST

1. *Advisory issued reg. ITC availability*

The Goods and Services Tax Network ("GSTN") issued Advisory regarding the availability of Input Tax Credit ("ITC") for Financial Year 2020-21.

The due date for the GSTR-3B for September 2021 is either Oct, 20 2021 for monthly filers and Oct 22, 2021 or Oct 24, 2021 depending on the State/UT of registration of the taxpayer, for quarterly filers. In view of the same, it has been clarified that the taxpayers may ensure that their records pertaining to FY 2020-21 are reported on or before the due date of their GSTR-3B for the month Sep 2021, or for the quarter of July to Sept 2021 in case of quarterly GSTR-3B filers.

Further availment of ITC by the recipients contrary to the legal provisions in GST may entail action by the tax administrations in accordance with law.

CASE LAWS - INCOME TAX

1. *M/s Flight Raja Travels Pvt. Ltd. v. The ACIT Circle-3 (1) (1), Bengaluru*

It has been held that where the assessee has shown the amount as outstanding from 5 parties and no confirmation was filed by the assessee from those 5 parties, the amount was considered as cessation of liability u/s 41(1) of the Act. The assessee was not able to produce any evidence to suggest that the said amount was actually outstanding on the date of balance sheet. Hence, lower authorities justified in treating it as a cessational liability by invoking the provisions of sec. 41(1) of the Act.

2. *M/s. Adama Solution P. Ltd. V. The Asst. Director of Income Tax, CPC Bangalore* ***2021***

It has been held that since the assessee admittedly has deposited the employees' contribution to PF & ESI before the due date of filing of the income tax return, therefore the Ld. CIT(A) is not justified in sustaining the adjustment made by the A.O-CPC on account of belated payment of employees' contribution to PF and ESI.

CASE LAWS - INCOME TAX

3. *LG Electronics India (P) Ltd.*

It has been held that payment made by applicant company to Mauritius company, incorporated by international sports body, for advertisement and publicity of brand name and promotion of products during sports events outside India, is not chargeable under provisions of Income Tax Act as payment of is neither in the nature of royalty nor FTS (Fee for Technical Services). Payment can be considered as business income but in the absence of any PE (Permanent Establishment), is not eligible to tax.

4. *Kalyan Buildmart (P.) Ltd. vs. Initiating Officer*

It has been held that purchase of property by a company in its own name with share capital money cannot be said to be a benami transaction on the basis that it is a purchase of property in company's name with consideration provided by others (shareholders) since share capital contributions received by a company from its shareholders are company's own funds and assets; hence company cannot be treated as benamidar of its shareholders in respect of property held in its name

CASE LAWS - INDIRECT TAX

1. *Manoj Kumar v. The State of Bihar and Ors.*

It has been held that a demand made under GST laws on the basis of orders passed where the assessee was not given a reasonable opportunity to be heard is not maintainable as it violates the principles of natural justice.

2. *ARR in the matter of ST. Thomas Hospital (2021)*

The Kerala Authority for Advance Ruling has held that supply of food to in-patients admitted to hospital for diagnosis, or medical treatment or procedures is a composite supply where principal supply is healthcare services, which are exempt from GST.

CASE LAWS - INDIRECT TAX

3. *Gujrat AAR - Canteen services for employees out of GST net*

In a recent ruling, the Gujarat Authority for Advance Ruling (AAR) has held that GST is not applicable on the amount collected from the employees towards canteen charges, which is paid to the canteen service provider. The AAR ruled that in cases where the company is not making any profits on this amount and merely acting as an intermediary, GST cannot be levied.

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