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AKGVG Weekly Insight-Vol VI

25th July, 2018

Coverage:

- Income Tax Updates
- GST Updates
- MCA News

Regulatory Updates

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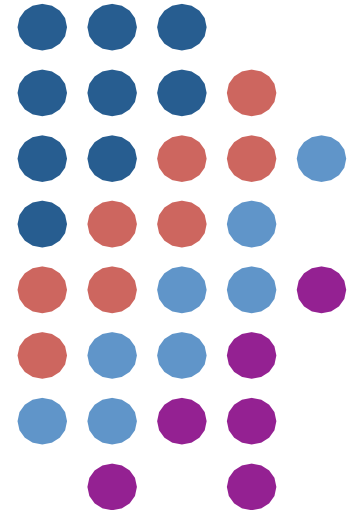
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[Dr.P.N.Bhaskaran \[TS-333-HC-2018\(KER\)\]](#)

Conclusion: Kerala HC upholds revision proceedings u/s. 263 thereby denying long term capital gains ('LTCG') claim on assets sold during AY 1999-00 by assessee-partner to the extent of value of assets released in his favour by the other partner upon dissolution of erstwhile firm in March 1997 however, to the extent of own share in assets on dissolution. HC allows Sec. 54EA benefit and notes that upon dissolution, assessee became exclusive owner of all the firm's properties as the other (only-remaining) partner released her share in assets in favour of assessee. HC acknowledged that allotment of assets of partnership firm on dissolution being the realisation of a pre-existing right, doesn't amount to 'transfer. However, HC held that "on the release of the share of the other partner, there is a transfer occasioned and the rights over that property accrues to the assessee, only on such release being effected by the other partner", thus held the gains as short term with respect to share released by other partner. With respect to Revenue's stand that in view of sec. 45(4), the entire transaction arising from allotment of assets on dissolution amounts to 'transfer'. HC clarified that "Herein, we are not concerned with whether the firm was assessed at the time of dissolution and are only concerned with the erstwhile partners assessment as an individual", remanded matter to ITAT, to decide the quantum of LTCG/STCG after determining valuation.

CBDT amended Form 3CD

CBDT via [Notification no.33/2018 dtd.20.07.2018](#) has amended form 3CD which shall be effective from 20th August, 2018. The amended form 3CD seeks following details in the clause numbers as stated:

- 4 - GSTIN to be mentioned.
- 19 - Allowance under Section 32AD is to be reported.
- 24 - Deemed gains under Section 32AD to be reported.
- 26 - Clause (g) of Section 43B (sum payable to Indian Railways for use of assets) is to be reported.
- 31 - Cash receipts more than INR 2,00,000 under Section 269ST is to be reported.
- 34 - Details with respect to transactions not disclosed in TDS Return/ TCS Return is to be mentioned
- 29A - Advance received on capital asset forfeited to be reported here {Section 56(2)(ix)}.
- 29B - Income of gifts exceeding INR 50,000 to be reported here {Section 56(2)(x)}.
- 30A - Details about "Primary Adjustments" in transfer pricing to be reported here as per Section 92CE.
- 30B - Limitation of interest deductions for borrowings from a AE upto 30% of EBITDA is to be furnished here.
- 30C - Details of Impermissible Avoidance Agreement to be furnished as referred to in Section 96
- 36A - Dividend received under Section 2(22)(e) is required to be reported here.
- 42 - Details w.r.t. Form 61 (details of no PAN Form 60 received), Form 61A (SFT) and Form 61B (SRA) is to be provided here.
- 43 - Details w.r.t. CbC Reporting as referred to in Section 286 is required to be reported.
- 44 - BREAK UP of total expenditure in respect of GST Registered and Unregistered Entities is required to be given.

Releasing share to other partner upon firm's dissolution amounts to 'transfer': Kerala HC

Inflating goodwill consideration unsustainable as reputation stands transferred with trademark transfer: Gujarat HC

[Bisleri International Ltd \[TS-335-HC-2018\(GUJ\)\]](#)

Conclusion: Gujarat HC rejected capital gains addition on goodwill for AY 1994-95 thereby rejecting AO's stand that assessee (Bisleri International P Ltd) undervalued goodwill (at Rs. 15.67 lakhs) by allocating higher valuation to trademark (Rs.313.50 lakhs) for transfer of trademark, goodwill, technical know-how, etc. to Coca Cola Company. HC agreed CIT(A)'s view that transfer of trademark with itself would transfer not only the emblem or figure, but also the reputation of business and therefore a separate deed for transferring goodwill, would make no difference. Thus, HC stated that the sale consideration reflected in agreement between the transferor and transferee cannot be lightly tampered with by AO by adopting a simplistic method of adopting mean of total consideration for goodwill and trademark. HC remarked that, "If the assessee's adoption of the valuation for goodwill was not backed by any material or data on the record, the substitution adopted by the AO suffered from greater vice. There was no basis for him to believe that the trademark and goodwill must value at the same level." HC relied on co-ordinate bench ruling in Parle International Limited wherein the Court had frowned upon the AO for discarding the disclosed consideration in an agreement by doubting its genuineness without any supporting material on record.

The case laws incorporated in this section has been annexed to this mail.



Key recommendations made by GST council in its 28th meeting

GST Council in its 28th meeting held On 21st July, 2018 at New Delhi under the Chairmanship of Shri Piyush Goyal , Union Minister for Railways , Coal , Finance & Corporate Affairs made several recommendations which have been sum up here under:

Return simplification:

- NIL return filers (no purchase and no sale) shall be given facility to file return by sending SMS.
- Quarterly filing of return for the small taxpayers having turnover below Rs. 5 Cr as an optional facility. Quarterly return shall be similar to main return with monthly payment facility but for two kinds of registered persons – small traders making only B2C supply or making B2B + B2C supply. For such taxpayers, simplified returns have been designed called **Sahaj and Sugam**. [Click here to read more](#)

Opening of migration window:

The window has been made for open for those who received provisional IDs but could not complete the migration process till **31st August, 2018**. [Click here to read more](#)

Proposed amendments in GST Acts:

Following recommendations shall be placed before the Parliament and the legislature of State and Union territories with legislatures for carrying out the amendments in the respective GST Acts. Then only the same shall be effective. Major recommendations include:

1. For composition dealers:

- Upper limit of turnover for opting for composition scheme to be raised from Rs. 1 crore to Rs. 1.5 crore.

- Composition dealers to be allowed to supply services (other than restaurant services), for up to a value not exceeding 10% of turnover in the preceding financial year, or Rs. 5 lakhs, whichever is higher.

2. Reverse charge mechanism:

Levy of GST on reverse charge mechanism on receipt of supplies from unregistered suppliers, to be applicable to only specified goods in case of certain notified classes of registered persons, on the recommendations of the GST Council.

3. Revision in threshold limit for north eastern states:

The threshold exemption limit for registration in the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand to be increased to Rs. 20 Lakhs from Rs. 10 Lakhs.

4. GST Registration:

- Taxpayers may opt for multiple registrations within a State/Union territory in respect of multiple places of business located within the same State/Union territory.
- Mandatory registration is required for only those e-commerce operators who are required to collect tax at source.
- Registration to remain temporarily suspended while cancellation of registration is under process, so that the taxpayer is relieved of continued compliance under the law.

5. Transactions to be treated as no supply (no tax payable) under Schedule III:

- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
- Supply of warehoused goods to any person before clearance for home consumption; and
- Supply of goods in case of high sea sales.

6. Consolidated credit/debit notes can be issued:

Registered persons may issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year.

7. Maximum limit of pre-deposit for appeal filing:

Amount of pre-deposit payable for filing of appeal before the Appellate Authority and the Appellate Tribunal to be capped at Rs. 25 Crores and Rs. 50 Crores, respectively.

8. Changes input tax credit provisions:

- ITC shall be available in respect of the following:
 - a. Most of the activities or transactions specified in Schedule III;
 - b. Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
 - c. Motor vehicles for transportation of money for or by a banking company or financial institution;
 - d. Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available; and
 - e. Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.
- In case the recipient fails to pay the due amount to the supplier within 180 days from the date of issue of invoice, the input tax credit availed by the recipient will be reversed, but liability to pay interest is being done away with.
- The order of cross-utilisation of input tax credit is being rationalised.

9. Provisions related to exports:

- Supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI.
- Place of supply in case of job work of any treatment or process done on goods temporarily imported into India and then exported without putting them to any other use in India, to be outside India.

10. Miscellaneous:

- Commissioner to be empowered to extend the time limit for return of inputs and capital sent on job work, upto a period of one year and two years, respectively.
- Recovery can be made from distinct persons, even if present in different State/Union territories. [Click here to read more](#)

GST council recommended rate revision on goods:

- Recommendation for allowing refund to fabrics on account of inverted duty structure has also been made.
- GST rates on several items are under consideration for revision. Following is the illustrative list of the items on which rate revision is under consideration:

Exempt from GST	From 12 Percent to 5 Percent	From 28 Percent to 18 Percent
Fortified milk	Fertiliser grade phosphoric acid	Lithium-ion batteries
Sanitary pads	Handloom Dari	Food grinders, mixers
Raw material used in brooms	–	Vaccum cleaners
Commemorative coins circulated by the RBI or government.	–	Shavers, hair clippers
Saal leaves	–	Storage water heaters
Deities made of stone, marbles or wood	–	Watercooler, Ice cream freezer, Paint, Electric smoothing irons, Refrigerators, Perfumes, Hand dryers, Cosmetics, Scents, Varnishes

It is to be noted that these changes are recommendatory in nature. These will be effective as and when notified by CBIC.
[Click here to read more](#)

GST council recommends rate revision on services:

GST council has made recommendations relating to exemptions / changes in GST rates / ITC eligibility criteria, rationalization of rates / exemptions and clarification on levy of GST on services.

It is to be noted that these changes are recommendatory in nature. These will be effective as and when notified by CBIC.
[Click here to read more](#)



Committee set up to review offences under the Companies Act, 2013

The Ministry of Corporate Affairs via [Order dated 13.07.2018](#) has constituted a 10 Member Committee, headed by the Secretary of Ministry of Corporate Affairs, for review of the penal provisions in the Companies Act, 2013. MCA seeks to review offences under the Companies Act, 2013 as some of the offences may be required to be decriminalised and handled in an in-house mechanism, where a penalty could be levied in instances of default. This would also allow the trial courts to pay more attention on offences of serious nature. Consequently, it has been decided that the existing compoundable offences in the Companies Act - 2013 viz. offences punishable with fine only or punishable with fine or imprisonment or both may be examined and a decision may be taken as to whether any of such offences may be considered as 'civil wrongs' or 'defaults' where a penalty by an adjudicating officer may be imposed in the first place and only consequent to further non-compliance of the order of such authority will it be categorised as an offence triable by a special court. It is also required to be seen as to whether any non-compoundable offences under the Companies Act, 2013 may be made compoundable. The Committee shall submit its report within thirty days to the Central Government for consideration of its recommendations. The Committee's constitution, under the Chairmanship of Secretary, has past President of ICSI & ICAI among others.

MCA has extended the time limit for public comments on the draft national guidelines on social, environmental & economic responsibilities of business, 2018

MCA issued the National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business (NVGs) in July 2011 with a view to provide a clear, broad-based framework for carrying out responsible business and be accountable to all its stakeholders. The NVGs were developed based on India's socio-cultural context and priorities as well as global best practices and finalised after extensive consultations

with business, academia, civil society organisations and the government. The Security and Exchanges Board of India (SEBI) has mandated that the top 500 companies furnish Business Responsibility Reports (BRRs) on the uptake of NVGs as part of the listing agreement. The draft NVGs will be available for public comment till **August 10, 2018 only**. [Click here to read more](#)

MCA established the Centralised Scrutiny & Prosecution Mechanism (CSPM)

The Centralised Scrutiny & Prosecution Mechanism (CSPM) has been established in the Ministry and officers have been appointed as inspectors for Compliance of Investor Education & Protection Fund as per the provisions conferred under first proviso to sub-section 4 of Section 206 of the Companies Act, 2013. All Regional Director's and Registrar of Companies are directed not to initiate any scrutiny proceedings against the Company and its directors for non-compliance of Section 124 - 125 of the Companies Act, 2013. Further, all pending and closed scrutiny cases are required to be forwarded to the Inspectors appointed by the MCA, within 14 days, on their email id's. The sanction of prosecution shall be intimated to the concerned Registrar of Companies's along with case file by the Inspector and the Registrar of Companies's are required to file prosecution with in fortnight without fail under intimation to the concerned Inspector.

[Click here to read more](#)

MCA mandates director KYC

MCA notified Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018 which became effective from 10th July, 2018. As per the said rules every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall submit e-form DIR-3-KYC to the central government on or before 30th April of immediate next financial year. For every individual who has been allotted a DIN as at 31st March, 2018 shall submit e-form DIR-3 KYC on or before 31st August, 2018. The deactivated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with the prescribed fee.

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Feedback/Queries can be sent to info@akvg.com

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