

DIRECT TAX

Judicial Rulings

Uphold assessee's 'yield spread' method for benchmarking commission on corporate guarantee

- The assessee company has given corporate guarantees to Bank for loan given to associated enterprise (AE) of assessee.
- The Assessee adopted 'yield spread approach' to benchmark the guarantee commission. The yield spread analysis is based on calculating the difference in the current market interests for the guarantor (Assessee) and the guarantee recipient (AE), and which is divide between the guarantor and the guarantee recipient.
- On the basis of quote obtained from the Royal Bank of Scotland (RBS), 70 bps was computed as yield spread and, accordingly, 0.35% computed as arm's length price of the corporate guarantee benefit.
- The TPO ascertained the ALP of corporate guarantee at 1.5%. However, the CIT(A) restricted the ALP adjustment to 0.5%, following Bombay HC ruling in Everest Kento Cylinder.
- Mumbai ITAT upholds 'yield spread' method adopted by assessee to benchmark corporate guarantee at 0.35% -
 - While adopting the yield spread approach, it is not necessary that the quotes strictly be as on the date of entering into transaction. The rate differential is an approximation, no matter how scientific or reasonable it is.
 - the quotations obtained from HDFC and SBI were for the bank guarantees simplicitor and not corporate guarantees.

- Riders are usual features of legally guarded business quotations, and the presence of such rider does not vitiate the nature of quotation for indicating approximate prevailing rates. This cautious language is quite common in such commercial documents.
- Yield spread method adopted by the assessee has not been faulted by the authorities for any legally sustainable reasons.

Sikka Ports & Terminals Ltd. [TS-418-ITAT-2022 (Mum)- TP]

Section 115BAA benefit (concessional tax rate of 22%) allowed for AY 2020-21 even when requisite form filed after due date in light of TOLA

Mumbai Tribunal allows assessee's appeal to exercise option u/s 115BAA for AY 2020-21 where the requisite Form 10-IC was filed on March 31, 2021 along with ITR, while the extended due date for filing ITR was February 15, 2021. The Tribunal held that however section 115BAA unambiguously provides that the benefit of section will be available only when option is exercised on or before due date of tax return filing u/s 139(1) but the scheme was diluted when different treatment was accorded by Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act, 2020 ('TOLA') for "furnishing of return" and "filing of other income tax forms". ITAT observes that furnishing of tax return and filing of Form 10-IC are distinct obligations and hence due date of furnishing Form 10-IC should be March 31, 2021 for AY 2021-22.

Suminter India Organics Pvt. Ltd (TS-588-ITAT-2022(Mum))

DIRECT TAX

Judicial Rulings

Payment to digital media agency covers under Section 194C and not Section 194J

- Assessee company has made payment to digital media advertisement agency towards certain services such as email services, online media buying and influencer charges.
- Assessee Company has deducted TDS @ 2% under Section 194C of the Income Tax Act, 1961 ('the Act').
- However, AO concluded that such payment would fall within the ambit of professional services u/s 194J of the Act and liable to TDS @ 10%. CIT(A) also confirmed the order of AO.
- ITAT holds that such services falls under the ambit of section 194C of the Act and not u/s 194J –
 - contractual payment to digital media agency (including charges for art work and other related jobs) is in pursuance of contract of work entered into between assessee and advertisement agency
 - Ad agency engages various professional artist for preparation & execution of advertisement content & such professionals provide the ultimate advertisement content in digital platform with no direct connection or agreement with the assessee.
 - CBDT Circular No. 714 dated Aug 03, 1995 provides clarification on applicability of section 194C or 194J in case payment to advertisement agency

- CBDT Circular No. 715 dated Aug 08, 1995 clarifies that payment towards consolidated bill including charges for art work and other related jobs shall be subject to TDS u/s 194C of the Act

Cowtown Software Design Pvt. Ltd., (Formerly known as Nabhiraja Software Design Pvt. Ltd.,) [ITA No. 294/Mum/2022]

Notifications/Circular

Time limit for verification of tax return reduced from 120 days to 30 days

CBDT notifies that w.e.f August 1, 2022 time limit for verification of tax return in ITR-V to CPC shall be 30 days instead of 120 days from submission of tax return. Further, where tax return is not verified within prescribed time limit, it shall be deemed that tax return was never submitted and assessee would be required to re-submit tax return and follow it up by submitting ITR-V within 30 days.

It has been further clarified that where tax return has been submitted before August 1, 2022 time limit for verification shall be 120 days.

Notification No. 5/2022 dt. Jul 29, 2022

Indirect Tax

Notifications/Circular

Key changes in FORM GSTR-9

CBIC has issued notification and carried out following changes -

- It is mandatory to report non-gst supply
- Option to taxpayer to either separately report its supplies as exempted and Nil rated supply or report consolidated information for these two heads in exempted category.
- CBIC has made mandatory to report HSN wise summary of outward supplies for –

Turnover in Preceding FY	HSN	Supply Type
Above Rs. 5 Cr	6 digits	All B2B and B2C
Upto Rs. 5 Cr	4 digits	Only B2B

CT Notification No. 14/2022 dt. Jul 05, 2022

GST on Goods Transport Agency (GTA) at the rate of 5% or 12%

CBIC has issued a notification to provide an option to GTA to pay tax @ 5% (without ITC) or 12% under forward charge and file the declaration for exercising option under forward charge on or before the 15th March of preceding financial year.

Further for FY 22-23, GTA shall exercise the option on or before 16th August 2022.

No change in tax on GTA under RCM.

CT Rate Notification No. 5/2022 dt. Jul 13, 2022

Exemption withdrawn on renting of residential dwelling to registered person

Up to July 17, 2022, “services by way of renting of residential dwelling for use as residence” were exempt from the levy of GST irrespective of the registration status of the supplier or the recipient of services as the case may be.

With effective from July 18, 2022, the above exemption shall stand withdrawn where the residential dwelling is rented out to a person registered under GST.

CT Rate Notification No. 4/2022 dt. Jul 13, 2022

GST on residential dwelling

The services by way of “renting of residential dwelling to a registered person” shall be governed by reverse charge provisions. In other words, where service are provided by a registered person or un-registered person, GST shall be payable by the person receiving such services, subject to the condition that such recipient is registered under GST.

Below mention some cases of renting of residential dwelling by unregistered person –

Cases	Taxability	RCM
for use as residence rented to unregistered person	Exempt	No RCM
for use as residence rented to registered person	Taxable	RCM
not for use as residence rented to registered person	Taxable	RCM

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