

# INDIRECT TAX

## Judicial Rulings

### CBIC issues guidelines for processing of applications for registration under GST

Earlier, to address the problem of fake registration and fake input tax credit, Instruction No. 01/2023-GST dated 04.05.2023 had been issued. In order to strengthen the process of scrutiny and verification of applications for GST registration at the end of tax officers, the CBIC has issued the certain guidelines which includes the following in brief -

- Close scrutiny of details of the places of business and the corresponding documents uploaded to verify completeness and correctness of such address.
- Special attention to be provided to the cases where "High" risk rating has been assigned to an application by Directorate General of Analytics and Risk Management based on data analytics and risk parameters.
- Where the applicant has either failed to undergo authentication of Aadhaar number or has not opted for the same, the proper officer shall initiate the process for physical verification of the place of business.
- The proper officer must ensure that the entire process relating to registration is completed within the prescribed timeline and no application is approved on deemed basis for want of timely action on the part of tax officers.
- In case registration is granted in specified cases without physical verification of the place of business, the jurisdictional Commissionerate shall conduct such verification of the place within 15 days of registration.

Instruction No. 03/2023-GST dated 14.06.2023

- Special attention to be provided to the cases where "High" risk rating has been assigned to an application by Directorate General of Analytics and Risk Management based on data analytics and risk parameters.
- Where the applicant has either failed to undergo authentication of Aadhaar number or has not opted for the same, the proper officer shall initiate the process for physical verification of the place of business.
- The proper officer must ensure that the entire process relating to registration is completed within the prescribed timeline and no application is approved on deemed basis for want of timely action on the part of tax officers.
- In case registration is granted in specified cases without physical verification of the place of business, the jurisdictional Commissionerate shall conduct such verification of the place within 15 days of registration.

Instruction No. 03/2023-GST dated 14.06.2023

## DIRECT TAX

### Instructions

#### Directorate of Income Tax (Systems) provides 21 days for Assessee(s) to respond to Sec.245(1) intimation

Consequential to deployment of online response mode which has been in place for sufficiently long period of time and with an intent to avoid delays in issuing refunds, Directorate of Income-tax (Systems) provides 21 days time-limit to the assessee(s) to respond to Section 245(1) intimations issued by CPC. Section 245(1) provides where a refund is due to any person, then AO has a right to set off the refundable amount, wholly or in part, against the sum payable by such person after giving an intimation in writing to such person of the action proposed to be taken. The Instruction also provides step-by-step procedure for the Assessee(s) to furnish response to intimation under Section 245(1) on e-filing portal.

Instruction No 1 of 2023 dated 23 May 2023

## DIRECT TAX

### **CBDT reduces AO's time of response on refund intimation to 21 days**

The period of 45 days was granted to the AOs which was pursuant to the directions issued by Delhi High Court in the case of **Own Motion v/s UOI** to streamline the issuance or adjustment of refunds. CBDT, vide Instruction No. 1/2023 dated June 13, 2023, reduces time granted for the AO for responding to CPC on Section 245(1) intimation to 21 days from 45 days with immediate effect. Recently, vide above mentioned instruction, Directorate (Systems) issued Instruction to provide 21 days to the Assessee(s) for responding to Section 245(1) intimation.

*Instruction No. 1/2023 dated 13 June 2023*

## Judicial Rulings

### **Existence of a Permanent Establishment ('PE') in one year does not automatically imply its existence in subsequent assessment years without looking into the relevant facts of that year**

- The Appellant, a foreign company, was engaged in supply of spares parts/equipments in India and earned INR 2350 million in AY 2018-19 which was not offered to tax as the title over the goods passed outside India.
- Revenue, based on the material found during the course of survey conducted on **General Electric International Operations Company**, observed that appellant had a PE in the form of an office in New Delhi where non-preparatory/auxiliary activities were conducted. Revenue also observed that **GE India Industrial Pvt. Ltd.** constitutes a dependent agent of the Assessee, establishing a dependent agent PE in India.
- Revenue relied on past assessment history and rulings for previous AYs including ITAT and jurisdictional HC rulings for AY 2002-03 to 2006-07 and AY 2008-09 where the

assessee was found to have a PE in India.

- Based on the above, Revenue, attributed 2.6% of the total value of offshore supplies as the income of the PE in India and also held that amount received towards onshore services were effectively connected to the PE in India, thus, taxable under Section 44DA as business profit;
- Delhi ITAT sets aside Revenue's finding of fixed place PE and dependent agent PE against an Italian company stating –
  - Assessee provided evidence of substantial changes in facts regarding the existence of a PE during the impugned assessment year such as (i) New Delhi office was vacated, (ii) no expatriates visited India during the year and (iii) liaison office was closed.
  - Appellant brought on record cogent evidences to demonstrate that there was substantial change in facts in impugned AY with regard to the existence of PE which was not controverted by the Revenue with any specific factual finding;
  - Merely because in one year, the appellant had a PE in India, that by itself cannot lead to the conclusion that the appellant must be having a PE in subsequent assessment year, without looking into the relevant facts;
  - Relies on SC ruling in **E-Funds** where it was held that the onus to establish the existence of PE is entirely on the Revenue and co-ordinate bench ruling in **Bentley Nevada** where it was held that existence of a PE is to be determined year-to-year;
  - Relies on jurisdictional HC ruling in **Blackstone** to hold that the Revenue cannot merely do a cut and paste job by following the decisions of the past AYs without independent application of mind to the facts brought on record by the assessee;

*Nuovo Pignone International Vs DCIT (ITA No. 999/Del/2022)*