

Manubhai & Shah LLP

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NEWSLETTER

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Expertise & Experience

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DIRECT TAX UPDATES

I. Circulars & Notifications

1. Circular Explaining Provisions of Finance Act, 2023

(C.B.D.T. Cir.No.01/2024 dated 23.01.2024)

CBDT has explained provisions of Finance Act, 2023 vide this Circular. Circular can be accessed at:

<https://incometaxindia.gov.in/communications/circular/circular-1-2024.pdf>

II. High Court Decision

1. Redemption of Mutual funds is Chargeable as Business Income or Capital Gain?

Pr. C.I.T. V. Wig Investment - [2024] 158 taxmann.com 379 (Delhi)

Facts:

Assessing Officer added gain on redemption of mutual funds, Rs.4,28,82,839/-, under the head "profits and gains of business or profession" as against shown by assessee under capital gain.

It is held by the Delhi High Court at Para 11 that:

“whether the transactions carried out by the respondent/assessee concerning mutual funds were in the nature of “investment” or “stock-in-trade”, is an aspect which is fact-centric, juxtaposed with the law enunciated qua like transactions. Thus, what the adjudicating authority has to discern is the intent of the assessee. The intent has to be ascertained keeping in mind the magnitude and frequency of the transactions, the period for which shares are held, the purpose for which they are held, and how transactions are disclosed in the books of account. There is no presumption in law that the acquisition of shares by an assessee is necessarily for trade as against investment.”

III. Tribunal Decision

Loss arising on reduction of capital of investee company is a Capital Loss

Tata Sons Ltd. v. CIT [2024] 158 taxmann.com 601 (Mumbai - Trib.)

Facts:

The assessee was holder of 288,13,17,286 equity shares in Tata Tele-Services Company Ltd. (TTSL). Under the “Scheme of Arrangement and Re-structuring” between TTSL and its shareholders effected u/s. 100 to 103 of the Companies Act, 1956, the paid-up equity share capital of TTSL was to be reduced by way of reduction of the number of equity shares of the company and no consideration was payable to the shareholders in respect of the shares which were to be cancelled. Thus, as a result, assessee’s shareholding of 288,13,17,286 equity shares in TTSL was reduced to half, i.e., 144,06,58,643, that is, equity shares were cancelled as a result of reduction of capital. In the return of income for the A.Y. 2009-10, assessee had shown long term capital loss on reduction on the shares of TTSL which was accepted by AO in his order U/sec 143(3).

Thereafter, Pr.CIT pass order U/sec 263 in which one of the basis was wrong allowance of Capital Loss by AO on reduction of share capital of TTSL on the ground that it was a notional loss.

Decisions of the Mumbai Tribunal:

The Tribunal has held that the reduction of a capital has been provided u/s. 100(1) of the companies Act. **Thus, there is a consideration envisaged in the reduction of capital. If the right of the assessee in the capital asset stands extinguished either upon amalgamation or by reduction of shares it amounts to transfer of share within the meaning of 2(47) and therefore, computation of capital gains has to be made.** The Tribunal set aside the order of Ld. PCIT U/sec 263 of the Act and held that the AO has rightly allowed the computation of long term capital loss to be set off against the capital gain shown by the assessee on following ratios:

- firstly, in this case the reduction of capital is extinguishment of right on the shares and it amounts to transfer within the meaning and scope of section 2(47);
- secondly, the loss on reduction of shares is a capital loss and not notional loss; and
- lastly, even when assessee has not received any consideration on reduction of capital but its investment has reduced to loss resulting into capital loss and while computing the capital gain, capital loss has to be allowed or set-off against any other capital gain.

SEBI

SEBI UPDATES

A. Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2024:

SEBI has notified Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2024 further to amend Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 amending a few regulations in respect of dematerialisation of investments held by AIFs and appointment of Custodian of such AIFs etc.

The circular can be accessed at:

https://www.sebi.gov.in/legal/regulations/jan-2024/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2024_80608.html

B. Extension of timeline for verification of market rumours by listed entities:

It has been decided to extend the timeline for effective date of implementation of the proviso to regulation 30(11) in respect of verification of market rumours by listed entities of the LODR Regulations for top 100 listed entities by market capitalization, from February 1, 2024 to June 1, 2024 and for top 250 listed entities by market capitalization, from August 1, 2024 to December 1, 2024.

The circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/jan-2024/extension-of-timeline-for-verification-of-market-rumours-by-listed-entities_80867.html



COMPANY LAW UPDATES

A. Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024:

These regulations apply to unlisted public companies and listed public companies issuing securities for listing on approved stock exchanges in permissible jurisdictions, such as the IFSC (International Financial Services Centre). The Permitted exchanges include the India International Exchange and NSE International Exchange.

The Rules stipulate the reporting requirement requiring an unlisted public company to submit its prospectus using e-Form LEAP-1 after finalizing and filing it with the authorized international stock exchange.

The circular can be accessed at:

<https://www.mca.gov.in/bin/dms/getdocument?mds=qclDsiX0Le%252F2EMv7m1iyEw%253D%253D&type=open>



Article on: GST

Article on: GST Implications on transfer of Land Leasehold Rights in State Industrial Undertaking

In various states, a heated debate is ongoing regarding the imposition of Goods and Services Tax (GST) on the transfer of leasehold rights of State Industrial Development Corporation (SIDC) land by private entities. This article delves into the conflicting perspectives of tax authorities and taxpayers on whether GST is applicable to the further transfer of leasehold rights and examines relevant legal provisions, circulars, and notifications.

- Relevant Provision of CGST Act, 2017:

The GST law, under Section 7 of the CGST Act, defines the term 'supply' inclusively, covering all forms of goods or services, including leases. According to Section 7(1A) and Schedule II, any lease, tenancy, easement, or license to occupy land is considered a supply of services. However, the sale of land itself is outside the purview of GST as per Clause (5) of Schedule III and Section 7(2) of the act.

- Contention of the Department:

The tax department argues that the assignment and subsequent transfer of leasehold rights fall within the inclusive definition of supply in the CGST Act. Circular no. 44/18/2018-CGST, dated 02.05.2018, emphasizes that transactions involving the assignment of tenancy rights for a one-time premium are subject to GST. The department contends that the transfer of leasehold rights of SIDC land is within the scope of supply and, therefore, subject to GST, except for the initial assignment exempted under notification 12/2017-Central Tax (Rate) dated 29.06.2017.

The Bombay High Court, in the Builder Association case, upheld the validity of GST on a one-time lease premium for a 60-year lease on CIDCO-allocated land. The court's decision affirmed that long-term leases, irrespective of tenure, are considered supplies for GST purposes, supporting the department's position.

- Contention of the Assesseees:

The taxpayers argue that GST is not applicable to the sale of land, a term not explicitly defined in the CGST Act. They draw on definitions from other statutes like the Land Acquisition Act, 1894, and Gujarat Land Revenue Code of 1879, which include 'any benefits arising out of land' in the definition of land. Therefore, the long-term leasehold rights to SIDC land are viewed as benefits arising from land and should be deemed as land, making the transfer subject to GST.

This contention aligns with the Madras High Court's ruling in Archaka Sundara Raju v Archaka Seshadri Dikshatulu, equating long-term leases to the sale of land. The Income Tax Act also considers such assignments as 'deemed sales,' providing consistency in legal interpretation. The argument stresses that inconsistent interpretations in the Income Tax Act and CGST Act for the same transaction disrupt legal certainty.

Presently, writ petitions challenging the department's show cause notices have been filed in the Gujarat High Court and Bombay High Court. The Gujarat High Court has temporarily stayed the recovery of tax demands on these transactions. Additionally, the Supreme Court is set to determine the constitutional power of the Union Government to tax land leases.

The conflicting views on the treatment of long-term leasehold rights transfers have unsettled past transactions since the inception of GST. Taxpayers face an extra burden due to the lack of Input Tax Credit on GST charged for further transfers. The resolution of this issue by the courts is eagerly awaited, emphasizing the need for caution among taxpayers entering into transactions of transfer of long-term leasehold land rights of SIDC land.



Article on: Income Tax Act

Claim of delayed payment to micro & small enterprise under Income Tax Act

CA DALPAT SHAH

A business entity can claim certain deductions under section 43B of the Income tax Act, 1961 (the Act) on actual payment basis only. However, Proviso to section 43B also permit the claim if payment is made after 31st March but on or before filing of income tax return under section 139(1) of the Act.

Finance Act 2023 has inserted clause (h) to section 43B providing that any delayed payment to a Micro or Small Enterprise is beyond the time limit specified under section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). The intention of the Finance Minister was to promote timely payment to such Micro or Small Enterprises in order to meet their working capital requirements.

Before we proceed to discuss the impact of this amendment, let us first understand the meaning of Enterprise, Micro and Small Enterprises. Both these terms are defined as under:

"Enterprise" is defined under section 2(e) of the MSMED Act as "an industrial undertaking or a business concern or any other establishment, by whatever name called, **engaged in the manufacture or production of goods**, in any manner, **pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services**;

'Micro Enterprise' is defined under section 2(h) read with section 7(1)(a)(i) and 7(1)(b)(i) of the MSMED Act. Accordingly, 'Micro Enterprise' is an enterprise where the investment in plant and machineries or investment in equipment does not exceed Rs. 1 Crores and Turnover does not exceed Rs. 5 Crores.

'Small Enterprise' is defined under section 2(m) read with section 7(1)(a)(ii) and 7(1)(b)(ii) of the MSMED Act. Accordingly, 'Small Enterprise' is an enterprise where the investment in plant and machineries or investment in equipment is more than Rs. 1 Crores but does not exceed Rs. 10 Crores and Turnover does not exceed Rs. 50 Crores.

This new clause (h) is effective from 1st April, 2024.

Clause (h) and Proviso with Explanation to section 43B are reproduced here under:

"43B (a).....

- (h) any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006),

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.

Provided that nothing contained in this section except the provisions of clause (h) shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

Explanation 1

Explanation 4.—For the purposes of this section

(a).....

(e)"micro enterprise" shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);.....

(g)"small enterprise" shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).

It is worth noting that Clause (h) is applicable to payment due to Micro and Small enterprises only. So this clause is not applicable to any payment made to a Medium Enterprises.

But the Proviso to section 43B excludes the benefit of claim in the case of delayed payment to micro or small enterprises made on or before filing of income tax return under section 139(1) of the Act. The due date to Micro and Small enterprises has been defined in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006, which is reproduced here under:

"15. Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance"

Further, appointed day has been defined under section 2(b) of MSME Act, 2006 as under:

"2(b) "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier"

So when an assessee has an agreement with a micro/small enterprise then due date for payment can be maximum 45 days and when there is no agreement entered into, the payment should be made within appointed date, i.e. 15 days of the transaction.

Therefore, the due date of payment to a Micro and Small enterprises is 45 days when agreement exists and 15 days when no agreement exists. Accordingly, any payment made to a Micro and Small enterprise beyond the specified period can be claimed as a deduction only in the year of payment only and cannot be claimed as a deduction under the Proviso to section 43B of the Act.

The provisions are illustrated here under in different situations:

Situation	Transaction Date	Payment Due Date	Date of Payment	Claim Allowable u/s.43B(h)
Agreement Exist	01.04.2023	15.05.2023	15.06.2023	FY 2023-24
Agreement Exist	01.03.2024	14.04.2024	10.04.2024	FY 2023-24
Agreement Exist	01.03.2024	14.04.2024	10.06.2024	FY 2024-25
No Agreement Exist	01.04.2023	15.04.2023	15.06.2023	FY 2023-24
No Agreement Exist	20.03.2024	03.04.2024	01.04.2024	FY 2023-24
No Agreement Exist	20.03.2024	03.04.2024	01.05.2024	FY 2024-25

In Conclusion

In conclusion the Proviso to section 43B does not prohibit claim of deduction on delayed payment to Micro and Small enterprises, however, the same shall be allowable in the year of payment unlike other clauses of section 43B in which case even though belated payment is allowable under section 43B if paid on or before filing of income tax return under section 139(1) of the Act. The new clause (h) to section 43B is applicable to a micro and small enterprise engaged in the business of manufacturing or production of goods specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services. Accordingly, a trader of goods such as retailer or wholesaler are excluded from the applicability of this clause.



Article on Unlocking Operational Excellence:

Article on Unlocking Operational Excellence:

The Power of Procurement to Pay

In the intricate web of processes that define a fully functional organization, from Hire to Retire, Manufacturing to Dispatch, Order to Cash, one crucial activity stands out-Procurement to Pay (P2P). This pivotal process involves a series of steps that span the entire spectrum of procuring goods or services, from the identification of a need to the final payment. In this edition, we embark on an exploration of P2P, delving into its components and shedding light on the profound impact of an effective P2P process on an organization's bottom line.

Unveiling the P2P Process

The Procurement to Pay (P2P) process is a comprehensive, end-to-end journey encompassing the following key steps:

1. Identification of Need: Recognizing the requirement for a specific product or service.
2. Purchase Requisition: Creation and approval of a purchase requisition.
3. Vendor Selection: Finding a suitable vendor to fulfil the procurement need.
4. Purchase Order Issuance: Formalizing the transaction with the issuance of a purchase order.
5. Goods/Services Receipt: Receiving the procured goods or services.
6. Invoice Receipt and Verification: Processing and verifying the received invoices.
7. Payment to Vendor: Completing the financial transaction by making the payment.

The Strategic Importance of Effective P2P

Efficient P2P processes play a pivotal role in enhancing operational efficiency, exerting control over costs, and managing cash flow effectively. By streamlining the purchasing activities, organizations can reduce cycle times, minimize errors, and wield greater negotiating power with suppliers. A well-functioning P2P process ensures timely acquisition of goods and services at the right quantity, quality, and price.

Direct Impact on the Bottom Line

Optimizing the P2P process contributes directly to a company's bottom line by:

1. Reducing Procurement Costs: Through improved negotiation strategies and effective vendor management.
2. Enhancing Cash Flow Management: Aligning payment terms with revenue cycles for optimal financial control.
3. Mitigating Risks: Minimizing the likelihood of fraud, errors, and compliance violations.

Furthermore, efficient P2P processes liberate resources that can be redirected toward strategic initiatives, thereby propelling overall business success.

Safeguarding Financial Health and Future Success

In conclusion, mastering the Purchase-to-Pay process transcends mere efficiency; it safeguards the financial health and secures the future success of any organization. Stay tuned for our upcoming newsletters, where we will delve deeper into the intricacies of P2P, unravelling advanced strategies and best practices to empower your organization in navigating this critical domain.

DUE DATES

Due dates of various compliances falling in the month of February 2024

Sr.No	Due Date	Act/Authority	Compliance Description
1.	07-02-2024	Income Tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of January – 2024
2.	07-02-2024	Income Tax	Deposit of Securities Transaction Tax/Commodities Transaction Tax collected for the month of January, 2024
3.	10-02-2024	GST	GSTR-7 for the month of January - 2024 for persons required to deduct TDS
4.	10-02-2024	GST	GSTR-8 for the month of January - 2024 for e-commerce operator required to Collect TCS
5.	11-02-2024	GST	GSTR-1 for the month of January - 2024 for taxpayers having turnover more than Rs. 5 crores or opted to file Monthly Return
6.	13-02-2024	GST	GSTR-5 by Non-resident taxable person carrying out business in India for the month of January – 2024
7.	13-02-2024	GST	GSTR-6 for the month of January - 2024 for Input Service Distributor
8.	14-02-2024	Income Tax	Due date for furnishing of issue of TDS Certificate (Form 16B,16C,16D,16E) for tax deducted under section 194-IA,194-IB,194M and 194S in the month of December 2023
9.	15-02-2024	PF/ESIC	Payment of PF / ESIC for the month of January-2024
10.	20-02-2024	GST	Payment of GST & Filing of GSTR-3B for the month of January - 2024, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
11.	20-02-2024	GST	GSTR-5A by Non-resident taxable OIDAR Service Provider for the month of January - 2024
12.	21-02-2024	GujRera	Due date for Quarterly Progress Report (QPR) Compliances for the financial quarter ended December 31, 2023 at Guj RERA Web Portal 2.0. (Extended Due date by Order No. 87, dated January 05, 2024.)
13.	25-02-2024	GST	Payment of GST in form GST PMT-06 for the month of January-2024 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option

**“ The journey of a
thousand miles begins
with a single step ”**

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