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COMPLIANCE CALENDAR

Income Tax/PF/ESI

S. No.	Particulars	Due Date
1	Due date for deposit of Tax deducted/collected for the month of Aug, 2021	07.09.2021
2	Due date for deposit of Equalization Levy for the month of Aug, 2021	07.09.2021
3	Due date for issue of TDS Certificate for tax deducted u/s 194-IA, 194-IB, 194-M for the month of July, 2021	14.09.2021
4	Due date for deposit of PF, ESIC for the month of Aug, 2021	15.09.2021
5	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of Aug, 2021 has been paid without the production of a challan	15.09.2021
6	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of Aug, 2021	15.09.2021
7	Second installment of advance tax for AY 2022-23	15.09.2021
8	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M for the month of Aug, 2021	30.09.2021
9	Payment of tax under the Direct Tax Vivad se Vishwas Act, 2020 without additional charge	30.09.2021

Goods & Services Tax

S. No.	Particulars	Due Date
1	GSTR 7: A return to be filed by the persons who is required to deduct TDS (Tax deducted at source) under GST for August, 2021	10.09.2021
2	GSTR-8: A return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST for August, 2021	10.09.2021
3	GSTR-1: Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return for August, 2021	11.09.2021
4	GSTR 1 IFF (QRMP): GST return for the taxpayers who opted for QRMP scheme (Optional) for August 2021	13.09.2021
5	GSTR 6 by Input Service Distributors (ISDs) for August, 2021	13.09.2021
6	GSTR-3B: Taxpayers having an aggregate turnover of more than Rs. 5 Crores or opted to file Monthly Return for August, 2021 with NIL interest and No Late Fee	20.09.2021
7	GSTR 5 & 5A: Return by Non-Resident Taxpayers and ODIAR services provider for August, 2021	20.09.2021
8	GST Challan Payment if no sufficient ITC for August, 2021 (for all Quarterly Filers)	25.09.2021

Companies Act

S. No.	Particulars	Due Date
1	E-Form DIR-3 KYC/ Web DIR-3 KYC: Director KYC submission for DIN holders as on 31 March 2021 and the status of the DIN is '**Approved**'	30.09.2021
2	Notice & Agenda of **Annual General Meeting (AGM)** and Annual	Atleast 21 Clear

	Report for the financial year ended on 31.03.2021.	Days before the AGM
3	Due Date of AGM: AGM for the financial year ended on 31.03.2021. (AGM shall be held within 06 month from closure of F.Y. subject to the 15 Months from Previous AGM)	30.09.2021 (Subject to 15 Months from Previous AGM)
4	E-Form FC-3: Every **Foreign Company** shall file to RoC, the financial statement and a list of all the business places established in India as on the date of balance sheet.	30.09.2021 (Within a period of Six months from the Close of FY)

INCOME TAX ACT

CIVIL APPEAL NO. 9606 OF 2011

SOUTH INDIAN BANK LTD. VS. COMMISSIONER OF INCOME TAX

FACTS

The assesse is scheduled bank engaged in the banking business having earning from the investment in the bond securities and share and assesse also received tax free dividend for making such investment the assesse has also taken the loan and paid the interest there on. The assesse did not maintain any separate account in order to show which fund has been invested in such shares or securities and weather such funds are own fund or borrowed fund thus there fixed fund through such investment were made.

Legal proceedings

In the absence of separate account investment, the AO made propionate disallowances of interest attributable to the fund invested to earn tax free income. The CIT appeal concurred the absence of separate identifiable fund utilized by assesse bank in making investment in tax free bond and shares and noticed that it has a surplus fund and reserve from which the investment can be made and therefore accepted the assesse plea that investment were not made of the borrowed fund alone and allowed the assess appeal. The High Court reserved the plea of the revenue that separate account has not been maintained the assess was an appeal before Supreme Court against the impugned order of the High Court.

ISSUE IN THE FACT

Weather the section 14A enable the department to make disallowances of the expenditure incurred for earning tax free income were assesse do not maintained separate account for the investment and other expenditure incurred for such tax free income.

ARGUMENT

The assesse argued that its interest free fund is substantial more than the investment made for such tax free income and so therefore interest paid by the assesse on its deposit and other borrowing should not be considered to be an expenditure in relation to tax free income so there should not be any disallowances under section 14A.

The revenue relied on the CIT appeal and High Court order the Court observed that where the investment has been made from the mixed fund (own fund +borrowed fund) a presumption can be taken in favour of assesse

that the investment has been made out of interest free fund therefore it is the assesse who has a right of appropriation and right to assert from what part of fund a particular investment is made and it is not permissible for the revenue to make a estimation of the proportionate figures for this purpose Supreme Court relied on the case of principle bench CIT vs. Bombay Dyeing and Mfg. CO.ltd I.T.A. No. 1225 of 2015 of the Bombay High Court were similar question was answered in the power of assess and the revenue appeal was dismissed in Supreme Court merit.

The Supreme Court also followed its own order in case of Commissioner of income tax vs. reliance industries Ltd. (2010)410 ITR SC/(2019) 20 SCC 478.as that whre there is a finding of the fact that the intrest free fund is available to the assessee were sufficient to meet its investment a presumption can be drawn that investment has been made from such intrest free fund.

The Supreme Court also relied on the case of HDFC Bank ltd. Vs. Deputy Commissioner of income tax, (2016) 383 ITR 529(Bom)2016SCC Online Bom 1109.were such presumption in favour of assesse has been upheld with the conclusion in such situation 14A will not apply the Supreme Court case CIT VS. Microlabs ltd. (2013)354 ITR 630 (Guj) 2013 scc online Guj 8613. And CIT Max India ltd. (2016)383 ITR 490 (karn)/2016 SCC Online Kar 8490. The revenue relied upon the case of SA Builder vs. CIT (2007) 1 SCC 781. Sating that on the similar set of fact the case SA. Builder has been referred to the larger bench in the case Tulip star hotel ltd. However the Supreme Court did not agree by distinguish the SA builder case were in loan were extended to the sister concern were as in this case the mixed fund was invested in an investment to earn tax free income on the issue of the requirement of the separate account for disallowances under section 14A the revenue was not able to mention any statutory requirement.

Supreme Court dealt with the case of Maxopp Investmet ltd. Vs. CIT.10 (20180 15 SCC 523. On with both parties had relied and distinguish the present case with the present case with the moxopp case which was on the section 14A read with rule 8D.

The Supreme Court also relied on the case law Godrej and Boyce Manufacturing Company ltd. Vs. DCIT 11(2017)7SCC 421. Were the Supreme Court concluded that for attracting the provisions of 14A the proof of facts regarding such expenditure being incurred for earning exempt income is necessary. The Supreme Court further relied on the CBDT Circular 18 of 2015 dated 2.11.2015 were the CBDT clarified that shares and securities which are not bought to maintain the statuary liquidity Ration (SLR) re its stock in trade on investment and income bout of those is attributable to business of banking. The case of principle CIT vs. state Bank of Patiala as reported in 393 ITR 476 TO Held that such securities are stock in trade and not investment.

In view of above Supreme Court concluded that there is no finding that such securities are investment therefore tax implication could not applied from the above said RBI circular. the court concluded that the investment is made out of common fund and the assesse has mixed fund available to him is larger than such investment then such investment then a presumption can be drawn that the investment has been made about of his own fund and in such case 14A will not applicable.

GST AND OTHER INDIRECT TAX LAWS

Relevant Judgments and updates of the week;

De-Activation of IECs not updated on the DGFT

The DGFT has issued notice to provide that IECs which are not yet updated shall be de-activated with effect from 06.10.2021. However, IEC holders are provided one final opportunity to update their IEC till 05.10.2021.

Any IEC so de-activated, would have the opportunity for automatic re-activation without any manual intervention or a physical visit to the DGFT RA. For IEC re-activation after 06.10.2021, the said IEC holder may navigate to the DGFT website and update their IEC online. Upon successful updation the given IEC shall be activated again and transmitted accordingly to Customs system with the updated status.

Clarification on doubts related to scope of "Intermediary"

Through this circular, it has been clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8"

Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 . Similarly, the supply

from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfillment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

Clarification in respect of certain GST related issues

Through this circular, it has been clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

Further, it has also been clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

Rule 89(5) which denies refund of unutilised ITC of input services is not ultra vires

Union of India *v.* VKC Footsteps India Pvt Ltd.

FACTS:

A registered person may claim a refund of unutilized ITC. The ITC on account of inverted duty structure can be claimed at the end of any tax period where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. The calculation of refund of ITC under the Inverted Duty

Structure has been incorporated under Rule 89 of CGST Rules. In its original form, as enacted from 1st July, 2017, Rule 89 allowed inclusion of Input Tax on Goods and Services both. On 18th April, 2018, Rule 89 as amended whereby accumulated ITC on account of input services was disallowed with prospective effect. On 13th June, 2018 this was made effective retrospectively from 1st July, 2017.

Writ petitions under Article 226 of Constitution were instituted before Gujarat High Court & Madras High Court challenging the above amendments to the extent that they restrict refund on accumulated ITC only to the amount of input tax on goods. The Gujarat High Court on 24th July, 2020 in *VKC Footsteps (P.) Ltd.* v. *Union of India* held that Rule 89(5) which denies refund of "Unutilised Input Tax" paid on "Input Services" as part of ITC accumulated on account of Inverted Duty Structure to be ultra vires of Section 54(3) of CGST Act. On the other hand, on 21st September, 2021 the Madras High Court in *Tvl. Transtonnelstroy Afcons Joint Venture* v. *Union of India* upheld the validity of the abovementioned amendments. It was held that excluding unutilized input tax credit on account of input services is a valid classification and exercise of legislative power. The divergence between the views of Gujarat High Court & Madras High Court formed the subject matter of the judgment of Supreme Court at hand.

SUBMISSION BY DEPARTMENT AND ASSESSEE

The department submitted that since sub clause (*ii*) of first Proviso to Section 54(3) clearly uses the word 'inputs' while the word 'input services' is absent, there is no ambiguity that the intention of the legislature was to restrict the refund of unutilised ITC to on account of input goods. Had the intention been to include input services, the phrase 'input services' would have found mention. In addition, the starting line of Section 54 (3) mentions 'any unutilised ITC' to save sub clause (*i*) of the first proviso because it was intended that zero rated supplies are able to claim refund of unutilised ITC on account of both inputs and input services. Lastly, Explanation 1 to Section 54(3) defines refund in different parts. For zero rated supplies it extends refunds to 'inputs' and' input services' while for inverted duty structure it limits it as 'inputs'.

The assesses submitted that the reason why sub clause (*ii*) defines inverted duty structure in context of inputs (goods) only because most services are leviable to 18 percent tax while goods have different categories of rates. To avoid a situation where practically all assesses would come under definition of inverted duty structure, the legislature restricted the definition to goods. Once a case fulfills definition of inverted duty

structure, the entire pool of unutilised ITC shall be available as refund and not just the part which is on account of inputs.

HELD

1. **Goods and Services can be treated distinctly**-The Court held that when the statute is clear and unambiguous, the duty of the court is to give meaning to it in plain terms. It held that if the Court were to give equivalence to goods and services and disregard the exclusion under section 54(3) only because it would achieve the ideal form of GST law, it would result into redrawing legislative boundaries which is impermissible. Hence, goods and services can be treated distinctly for purposes as prescribed in the statute.
2. **Provisos to Section 54(3) are restrictions-**The Court held that opening line of first proviso, namely, "no refund shall be allowed" and "in cases other than" operate as a limitation on the expression "claim" used in substantive part of Section 54(3). The fact that Parliament has used double negative format by employing the words "no refund" and "in cases other than" make it abundantly clear that intention of legislature is to confine refund to only two specific situations as spelled out in sub clause (*i*) & (*ii*) of first proviso to Section 54(3). Therefore, it would be impermissible for the court to interpret the provisos as mere conditions and give them an expansive meaning.
3. **'Inputs' does not include 'input services'**-The Court accepted arguments of department that the term 'inputs' cannot be deemed to include 'input services' because even though the term 'inputs' has not been defined under CGST Act, the term 'input' has been defined which means "goods other than capital goods". The court held that there is no reason why 'inputs' should not be construed as plural of 'input' thereby limiting its meaning to input goods. In addition the Court relied upon Explanation 1 to Section 54 which reads as follows :-
   "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3)

It was held that the two different meanings prescribed for the term 'refund' for the two different situations where refund is allowed under section 54(3) indicate that the legislature intended to treat them distinctly. For zero rated supplies 'refund' has been given a meaning where it includes tax paid on both goods and services while for inverted duty structure 'refund' has been given a meaning as prescribed under sub clause (*ii*) of first proviso to Section 54(3) where input services have been excluded. This also clarifies that the term 'any unutilised ITC' was used in the substantive part of Section 54(3) to protect sub clause (*i*) of first proviso, *i.e.* cases of zero-rated supplies and the fact that sub clause (*ii*) limits the refund to input goods does not run contrary to such substantive part of Section 54(3)

4. **Section 54(3) is not violative of Article 14** -The court held that Section 54(3) does not go against Right to Equality because as far as taxation laws are concerned, the legislature has very wide latitude for classification of things and purposes. Perfect equality in taxation is impossible and unattainable because the legislature has to make complex choices keeping in mid economic, social, political factors. It was held that courts must tread carefully when it comes to policy matters and the instant case is one where there is no constitutional guarantee and thus the challenge to constitutional validity of Section 54(3) fails.
5. **Expansive interpretation of Section 54(3) would be Judicial encroachment** -The Court held that accepting arguments of the assessees and expanding the scope of Section 54(3) would basically lead the court into walking in shoes of legislature which is impermissible. The court cannot replace its wisdom for the legislature's when it comes to policy decisions unless there is absurdity or ambiguity which makes the policy unworkable. Mere fact that certain inequities may arise is not enough to strike down or read down a law. Therefore, as the law stands right now, refunds of unutilised ITC in the inverted duty structure can be interpreted to be confined to input goods only.

CORPORATE AND OTHER LAWS

MCA UPDATES: -

MCA has extended the Due Date for Holding of Annual General Meeting (AGM)

MCA has extended the Due Date for Holding of AGM by the companies upto 30/11/2021, i.e. by 2 months from the original due date, in respect of the financial year 2020-21 ended on 31/03/2021. Accordingly, respective ROCs have issued extension Orders, which are available at the link below: -

Extension of tenure of the Company Law Committee (September 23, 2021)

The tenure of the Company Law Committee is further extended by one year from the date of expiry of the last order i.e. till September 16, 2022.

SEBI UPDATES: -

Clarifications with respect to Circular dated April 28, 2021 on 'Alignment of interest of Key Employees ('Designated Employees') of Asset Management Companies (AMCs) with the Unit-holders of the Mutual Fund Schemes' (September 20, 2021)

SEBI, vide its Circular dated April 28, 2021, has provided that a part of the compensation of Key Employees of the AMCs shall be paid in the form of units of the schemes in which they have a role or oversight. In this regard, SEBI has clarified that junior employees (a designated employee of the AMC below the age of 35 years excluding CEO, head of any department and Fund Managers) shall be required to invest 10% during October 01, 2021 to September 30, 2022 and 15% during October 01, 2022 to September 30, 2023, in the MF units. However, all junior employees shall be mandatorily required to invest 20% w.e.f. October 01,

2023 onwards. Further, it has been provided that other designated employees shall be mandatorily required to invest 20% in the MF units w.e.f. October 01, 2021.

SEBI invites proposals for development research group study (September 23, 2021)

- So far, SEBI has completed Development Research Group (DRG) Study Series I and II and has now invited proposals for the third study in this Series, from researchers of all nationalities.
- In a particular year, there would be two six-monthly blocks– January-June and July-December– for submission of proposals under DRG-III.
- For the January-June block, the last date would be June 30 and for the July-December period, the deadline is December 31, as per the notification. The research undertaken under DRG-III will be of two types– academic style and short duration projects.

RBI/BANKING UPDATES: -

Heed to Heal - Climate Change is the Emerging Financial Risk (September 20, 2021)

RBI Deputy Governor M Rajeshwar Rao in CAFRAL Virtual Conference on Green and Sustainable Finance said that there is a need to mainstream green finance and devise ways for incorporating environment impact into commercial lending decisions. The climate risk in the financial sector should be the joint responsibility of stakeholders as it would affect the resilience of the financial system in the long run.

FDI Inflows grow 62% during first four months of current Financial Year over corresponding period last year (September 22, 2021)

Measures taken by the Government on the fronts of FDI policy reforms, investment facilitation and ease of doing business have resulted in increased FDI inflows into the country. FDI equity inflow grew by 112% in

the first four months of F.Y. 2021-22 (US$ 20.42 billion) compared to the year ago period (US$ 9.61 billion).

CASE LAW: -

Navinchandra Steels Private Limited (Appellant) vs. SREI Equipment Finance Limited & Ors. (Respondents)

Insolvency Proceedings are maintainable even if Winding-Up petition is pending against the Corporate Debtor.

Fact of the case:

- The Appellant is an operational creditor of Respondent No.2 herein – M/s. Shree Ram Urban Infrastructure Limited ["SRUIL"], the company under winding up.
- In this petition, the Appellant contended that post admission of a winding-up petition, no petition under Section 7 of the IBC can be filed.
- The argument was on the fact that in accordance with Section 446 of the Companies Act, 1956 (which is equivalent to Section 279 of the Companies Act, 2013) no suit or other legal proceeding can be initiated once there is admission of a winding up petition.
- Another contention raised was that the SREI has suppressed the winding up proceeding in its application under Section 7 of the IBC before the NCLT and has resorted to Section 7 of the IBC only as a subterfuge to avoid moving a transfer application before the High Court in the pending winding up proceeding.

Judgment:

- The Supreme Court observed that the IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail vis-àvis the Companies Act, which is a general statute dealing with companies, including companies that are in the red.
- The IBC is not only a special statute which must prevail in the event of conflict, but has a non-obstante clause contained in Section 238, which makes it even clearer that in case of conflict, the provisions of the IBC will prevail.
- A petition either under Section-7 or Section-9 of the IBC is an independent proceeding which is unaffected by winding up proceedings that may be filed qua the same company. It is, thus, not possible to accede to the argument of the Appellant that given Section 446 of the Companies Act, 1956 / Section 279 of the Companies Act, 2013, once a winding up petition is admitted, the winding up petition should trump any subsequent attempt at revival of the company through Section 7 or Section 9 petition filed under the IBC. For all these reasons, therefore, the present appeal is dismissed.

Ozone Projects Pvt. Ltd. (Noticee) -Adjudication Officer, SEBI [March 30th, 2021]

Timely disclosure of financial results is essential for investors to be adequately informed regarding the status of investments in terms of performance of the company, its repayment capability, credit rating, timely payment of interest etc. Delay in such disclosures is detrimental to the interest of investors and debenture holders and vitiates confidence in the securities market.

Fact of the case:

- The case pertains to the non-filing of financial results by Noticee for year ended March 31, 2019 within the time prescribed under Regulation 52 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) i.e., within a period of 45 days from the end of the half year and thus Noticee violated the provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations.
- The Noticee submitted that the non-submission of the aforesaid financial results was not intentional, and the Noticee had been unable to file its financial results for year ended March 31, 2019 as prescribed under Regulation 52 of the LODR Regulations due to factors which were beyond the control of the Noticee.

- The Noticee had been unable to submit its financial results due to unforeseen and extenuating circumstances.

SEBI Order :

SEBI imposed a penalty of Rs. 2 lakh on the Noticee viz. Ozone Projects Pvt. Ltd. for not filing the financial results with the stock exchange and delay in finalizing the results. The allegation of violation of provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations was established against the Noticee as per SEBI's order.

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