

# Direct Tax Vista

Your weekly Direct Tax recap

**Edn. 23 – 13th September 2022**

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## **1. Indian growth story continues - GST numbers also reflect on Income Tax numbers**

The Indian growth juggernaut rolls forward and the growth in GST revenues have had a corresponding impact on the Income Tax revenues also. The provisional figures of Net Direct Tax collections up to 8th September 2022 have registered a growth of 30% YoY and stand at Rs.5.29 Trillion. It seems that there is no stopping the Indian growth story and India is slowly becoming the 'go to' destination for the world now.

## **2. OECD releases a practical guide to assist tax administrations in designing and carrying out tax capacity building programmes for developing countries**

Tax administrations across the world are at varying stages of development and capability and all have things to learn from each other. Leading international stakeholders are increasingly drawing attention to the overarching importance of domestic revenue mobilisation as a critical pathway towards forging self-reliance, good governance, growth and stability in partner jurisdictions. OECDs FTA Capacity Building Network supports tax administrations to develop their capacity building programmes through peer to peer learning between tax administrations which has a tangible impact, allowing them to benefit from those with direct experience of tax matters. The 'practical guide to assist tax administrations..' is a practical document that is intended to support tax administrations at any stage of their capacity building programme, and with differing resource levels.

### **This guide focusses on the following –**

1. It Sets out considerations that administrations may wish to take into account around establishing a tax capacity building strategy, in particular in

relation to mission statement and capacity building principles, strategic objectives, priority partners, and resourcing and governance;

2. It Highlights the importance of understanding the wider capacity building landscape within a partner jurisdiction, including obtaining an understanding of the work done by other development partners, and conducting a diagnostic overview to better understand a partner jurisdiction's level of maturity and to identify needs;

3. It Sets out a number of elements that partner jurisdictions may wish to consider when preparing capacity building missions; and

4. It Considers the use of monitoring, evaluation and learning methods to support the successful delivery of capacity building projects and to maximise the impact and value for money of capacity building interventions.

With the new Global Minimum Tax on the anvil, this document seems a step forward in integration and co-operation of member OECD Countries in Tax Administration.

### **3. Puja Donation is business expenditure**

Its Durga Puja Time in West Bengal and an appropriate judgement of The ITAT Kolkata at the appropriate time! Durga Puja in Kolkata has been included in UNESCO's Intangible Cultural Heritage of Humanity. In keeping up with the upbeat mood, The Hon'ble ITAT has held that Puja Donations was Business Expenditure allowable u/s 37(1) of The Income Tax Act. The grounds were that such expenses are incurred to run the business in smooth, seamless and cordial atmosphere which may not be possible otherwise. These puja pandals/sports association and other local organizations have significant local influence and hence it is important to keep good relation in the vicinity of business.

The said argument finds support in a judgement w.r.t. The erstwhile Income Tax Act 1922 wherein the Apex Court in the case of Sasson J. David & Co. Ltd. Vs CIT 118 ITR 261(SC) ruled that it is for the assessee to decide whether any expenditure

should be incurred in the course of business. Such expenditure may not be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits the assessee can claim the deductions u/s 10(2)(xv) of the Income Tax Act 1922 (now section 37(1) of Act 1961) even though there was no compelling necessity to incur the expenses. The fact that somebody other than the assessee is also benefitted by the expenditure should not come in the way of an expenditure being allowed by way of deduction under the Act if it satisfies otherwise the tests laid down by law.

The case also finds support in the decision of The Hon'ble Calcutta High Court in the case of CIT Vs. Bata India Ltd wherein it has been held that contributions / subscriptions towards community celebrations to keep youth in the neighborhood of the shop happy to ensure smooth conduct of the business, the expenditure can be said to be expenditure required to maintain the business as the same is incurred to keep good relation with the population in the close neighborhood and not to as sales promotion or to solicit new customers.

Following these judgements, The ITAT Kolkata ruled in the case of KAIZEN HOTELS & RESORTS LTD. Vs ACIT [2022-VIL-1133-ITAT-KOL]

#### **4. Group Companies may work as 'commissionaires' of Holding Company which would remain the 'service providing party'**

In certain international transactions, the question many a times is that incase the payment for a service received is made to the holding company, whereas the group companies render the service together, can the service at all be considered to be rendered? In these cases, it is important that the terms of the agreement are drafted well. It is important to see the definition of the 'providing party'. Incase it is defined that the 'Providing parties' means "all or some of the group Companies, which provide services" and it can be considered that the holding company represents all the legal units working as "Commissionaires", meaning that the operations are conducted on behalf of the holding company and any profits or losses are included in the accounts of the holding company & other legal units providing management services – then the dispute should be put to rest. The same was decided in the case

of THE PR. COMMISSIONER OF INCOME TAX – PUNE Vs SANDVIK ASIA PVT LTD [2022-VIL-209-BOM-DT].

### **5. Business expansion expenditure is Revenue in nature**

The test as to whether an expenditure is a capital expenditure or a revenue expenditure is laid down by The Apex Court in the case of Dy. CIT v. Core Health Care Ltd [2008] 298 ITR 194/167 Taxman 206(SC). In case there is an interconnection, interlacing and inter-dependence of the management, financial and administrative control of various units of the assessee, it would be considered as a continuation of the existing business and not a new business. Merely because a unit of the same assessee was coming at a distant point by itself would not mean that it was a new business. In case it is the case of expenditure on an entirely new project undertaken by the assessee, it would be considered as a capital expenditure.

### **6. Merely because the liability is barred by limitation, it does not cease to be a debt**

The argument that in case creditors' payments are outstanding for more than three years, the same were barred by the provisions of the Limitation Act, 1963 and, therefore, they will have to be treated as Assessee's income and to be added under section 41(1) of the Income-tax Act, would not be sustainable.

The decisions of the Supreme Court in the case of Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay AIR 1958 SC 328 and CIT v. Sugauli Sugar Works (P.) Ltd. [1999] 102 Taxman 713/236 ITR 518; Kohinoor Mills Co. Ltd. v. CIT [1963] 49 ITR 578 – favour the assessee.

### **7. Revised Return post 143(1) has to be accepted**

Many times in the past the question has been answered that an intimation u/s 143(1) is not an assessment. The Hon'ble Calcutta High Court in Tata Metaliks Ltd. vs. CIT (2014) 368 ITR 643 (Cal) considered the same question in which the AO refused to accept the revised return only on the ground that the first return was already accepted u/s 143(1) and hence, the assessee was prohibited from filing any revised return. The Hon'ble High Court held that the processing of return u/s 143(1)

could not be described as making of assessment. Though this judgment was for assessment year 1999-2000, however, the language of section 143(1) of the Act for the said assessment year is identical to the language of section 143(1) thereafter. Therefore The ITAT Pune held accordingly in the case of SAJ TEST PLANT PRIVATE LIMITED Vs DCIT [2022-VIL-1117-ITAT-PNE]

## **8. RBI assigns Risk Weights for Exposures guaranteed by Credit Guarantee Schemes (CGS)**

In terms of paragraph 5.2 of the Master Circular on Basel III Capital Regulations dated April 1, 2022, banks are permitted to apply zero percent risk weights in respect of claims on Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Credit Risk Guarantee Fund Trust for Low Income Housing (CRGFTLIH) and individual schemes under National Credit Guarantee Trustee Company Ltd (NCGTC). However it is now laid down that this would be subject to compliance with the requirements for credit risk mitigation in terms of paragraph 7.5 of the Master Circular on Basel III Capital Regulations dated April 1, 2022 which inter alia requires such guarantees to be direct, explicit, irrevocable and unconditional; Where the terms of the guarantee schemes restrict the maximum permissible claims through features like specified extent of guarantee coverage, clause on first loss absorption by member lending institutions (MLI), payout cap, etc., the zero percent risk weight shall be restricted to the maximum permissible claim and the residual exposure shall be subjected to risk weight as applicable to the counterparty in terms of extant regulations; In case of a portfolio-level guarantee, effective from April 1, 2023, the extent of exposure subjected to first loss absorption by the MLI, if any, shall be subjected to full capital deduction and the residual exposure shall be subjected to risk weight as applicable to the counterparty in terms of extant regulations, on a pro rata basis. The maximum capital charge shall be capped at a notional level arrived at by treating the entire exposure as unguaranteed.

Further, any future scheme launched under any of the said Trust Funds, in order to be eligible for zero percent risk weight, shall provide for settlement of the eligible guaranteed claims within thirty days from the date of lodgement, and the lodgement shall be permitted within sixty days from the date of default.

One should also go through the illustrative examples of risk weights applicable on claims guaranteed under specific existing schemes as given in the Annexure to the said notification vide RBI/2022-23/113 DOR.STR.REC.67/21.06.201/2022-23 dated 7th Sept 2022.

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