

NEWSLETTER

March 3, 2019; Volume 1/2019

"When you doubt your power, you give power to your doubt."

NEWSLETTER COVERAGE

1. Important Circulars & Notifications
2. Article
3. Legal Updates

From Editors Desk

Dear Readers,

It gives me immense pleasure to bring the new and upgraded version of our Newsletter for all my professional colleagues. It is because of your benevolent and responsive feedbacks our newsletter has won million hearts within such small span of time. We hope similar and continuous commitment of yours in near future.

As always this newsletter highlights the latest notifications and circulars issued in the fields of Direct and Indirect Taxation, updation related to ROC related matters, latest important Legal updates along with relevant Due dates.

CIRCULARS/NOTIFICATIONS

DIRECT TAXATION

Notification of the new scheme called the Centralized Verification Scheme, 2019 substituting the Centralized Communication Scheme, 2018-Notification No.5/2019, dated 30-01-2019

In exercise of powers conferred by Section 133C(3), the CBDT has vide this notification, notified a new scheme called 'the Centralized Verification Scheme, 2019' by substituting 'the Centralized Communication Scheme, 2018' notified vide Notification No.12/2018, dated 22.02.2018 w.e.f. date of publication of this notification in Official Gazette. In brief, this Scheme provides details regarding its applicability; manner of issuance and service of notice; response to notice; processing of information and documents; personal appearance and power to specify procedures and processes.

CBDT prohibits Cash Transactions above Limits

Accordingly No person shall:

1. Accept cash of Rs. 200,000 or more in aggregate from a single person in a day or for one or more transactions relating to one event or occasion.
2. Receive or repay Rs. 20,000 or more in cash for transfer of Immovable property.
3. Pay more than Rs. 10,000 in cash relating to expenditure of business/profession.
4. Donate in excess of Rs. 20,000 in cash to registered trust/ political party.

DATES UPDATES

Aadhaar-PAN linking is mandatory now which has to be completed till 31.3.2019 by the PAN Holders requiring filing Of Income Tax Return.

Income Tax Department will Issue Only e-refunds from 01.03.2019. Refunds will be given only to bank accounts (savings/current/cash/OD) which are linked With PAN.

Amendment to Notification No. 24/2018, dated 24.05.2018-Notification No.9/2019, dated 31-01-2019

Notification no. 24/2018 dated 24.05.2018, notified that the provisions of Section 56(2)(vii)(b) shall not apply to consideration received by a company, being an eligible start-up for the purposes of deduction under section 80- IAC, for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter Ministerial Board of Certification under clause(i) of sub-para (3) of para 4 of the notification number G.S.R.364(E), dated 11th April, 2018 issued by the Department of Industrial Policy and Promotion. However, vide this notification, Notification no 24/2018 has been amended to now provide that consideration received by a company from an investor for issue of shares that exceeds the face value of such shares, if such issue of shares is approved by the CBDT under para 4 of notification number G.S.R.364(E) dated 11.04.2018 issued by Department of Industrial Policy and Promotion as modified by notification number 34(E) dated 16.01.2019.

INDIRECT TAXATION

CUSTOMS

Allowance of Manufacturing or other operations undertaken in bonded warehouses [Circular no. 3/2019-Customs dated 31st Jan. 2019]

The Central Government vide Circular no.3/2019-Customs dated 31st Jan , 2019 has clarified that certain operations to fulfill statutory obligations such as labeling/affixing RSP etc. to fulfill statutory compliance requirements are allowed in all custom bonded warehouse (whether public warehouse or private) without the requirement of taking permission under section 65 of the Customs Act.

ARTICLE

(By CA DEEPALI MISHRA)

MCA unveils new ACTIVE form to track down shell companies

In the year 2018, the Govt. of India had identified over 16,500 shell companies and blacklisted more than 30,000 directors in order to cleanse the corporate sector. As of now, various methods, strategies and schemes have been implemented to crack down on the shell companies but the Govt. is still grappling with the problem to unearth the shell companies. Therefore, the MCA has come up with new **e-form 'Active'** to unravel such companies. This write up aims to provide the nitty- gritties of the new form.

What is e-form ACTIVE?

The Ministry of Corporate Affairs has amended the incorporation rules wherein new e-form INA-22A has been introduced, named, e-form Active Company Tagging Identities and Verification (ACTIVE).

This e-form seeks information related to details of auditor, Cost Auditor, Directors, Company Secretary, KMP and SRN details for financial statements filed in AOC-4 and MGT-7 for F.Y.2018-19. Apart from this one of the most important things mandated in the e-form is attachment of the photograph of registered office showing external building and inside office with atleast one director, KMP who is authorized to affix his/her digital signature.

Who needs to file e-Form ACTIVE?

This new e-form Active is required to be filled on or before 25.04.2019 by all the companies which are incorporated on or before 31.12.2017 except struck off Companies under process of winding up, striking off, liquidation and dissolved companies.

What is the due date of filing the form?

It must be filed with the MCA till April 25, 2019 with Zero fee, otherwise company will have to face INR 10,000 penalty for belated filing the form.

What are the consequences of non-filing of e-form ACTIVE?

If a company fails to file the e-form ACTIVE on or before April 25, 2019 then such company shall be marked as 'ACTIVE-non-compliant' Company. Such company shall not be able to file the following forms with Registrar of Companies unless e-form ACTIVE is filed:

1. SH-07(Change in Authorized Capital)
2. PAS-03(Change in Paid-up Capital)
3. DIR-12(Change in Director except cessation)
4. INC-22(Change in Registered Office)
5. INC-28(Amalgamation, de-merger)

Editorial Comment: *It will be a major crackdown on shell companies which have no authentic address and just existing on papers. Post- demonetization, the Govt. is serious about the shell companies and the Govt. is leaving no stone unturned to trace down shell companies that are working with fake registered addresses.*

LEGAL UPDATES

Additional claim of deduction under section 10A filed by way of revised computation to be allowed

Principal Commissioner of Income Tax Vs. M/s Oracle (OFSS) BPO Services Limited 17/01/ 2019

The assessee is engaged in the business of 'Providing Processing Outsourcing' Services and had claimed a deduction under section 10A of the Act. For AY 09-10, assessee claimed deduction of Rs. 17.87 crores under section 10A and thus filed a Nil return of income. During the assessment proceedings, the assessee filed revised computation making some suo-moto disallowance of Rs.2.14 crores and an allowance of Rs. 33.25 lakhs and recomputed deduction under section 10A. The Assessing Officer treated the disallowances made by the assessee as Income from Other Sources and levied tax thereon. ITAT ruled in favour of the assessee, aggrieved by which the Revenue filed an appeal before the Delhi High Court.

The Revenue contended that the revised computation should not have been accepted itself. High Court observed that the Revenue had not disputed the correctness of the revised computation made by the assessee. Suo-moto disallowance made would primarily result in enhanced business income which anyway would be exempt under section 10A. Therefore, even if the assessee had not filed the revised computation and an enhancement or disallowance had been made by the Assessing Officer in the course of the assessment proceedings, such disallowance was revenue neutral.

High Court distinguished reliance of Revenue in judgment in case of Goetze India [(2006) 284 ITR 323 (SC)]. High Court referred to ruling in case of E-Funds International [(2015) 379 ITR 292 (Delhi)] wherein it was held that Goetze (India) Ltd. Would not apply if the assessee had not made a "new claim" but had asked for re-computation of deduction. High Court also held that Section 80A(5) which states that 'no deduction shall be later allowed to the assessee if not claimed in return of income', was not applicable in the instant case since there was no "new claim" made by the assessee.

High Court observed that the language of Section 80A(5) does not state that the deduction once claimed under a particular section cannot be corrected and modified before the Assessing Officer and therefore the High Court would not read in the amended provision, a stipulation barring and restricting the assessee from revising the computation/claim for deduction made in accordance with Section 80A (5) of the Act.

High Court thus ruled in favour of the assessee.

Reopening based on incorrect facts quashed by High Court; Processing of return under section 143(1) does not give freedom to Assessing officer for initiating Re-assessment.

Ankita A.Choksey Vs. Income Tax Officer 19(1)(1) & Ors 10/01/2019

The assessee held 10% shares in one Samuel Dracup and Sons India Private Limited (Samuel Dracup). On 18/10/2010 the Samuel Dracup decided to voluntarily wind up and liquidates its business and also decided that the assets remaining after paying off the liabilities would be distributed between its shareholders in proportion to their shareholding. In December 2010, the company executed a sale deed, for Rs. 3.79 crore and transferred the immovable property being a flat in Mumbai in favour of the assessee and her mother to the extent of their shareholding i.e. 10% and 90% respectively. In June 2011, the Court ordered the dissolution of the Company and the assessee filed her return of income wherein the receipt of 10% interest in the said flat was disclosed. The return of income was processed under section 143(1).

On 27th March 2018, Assessing Officer issued notice under section 148 seeking to reopen the assessment on the ground that as per Revenue's database, assessee had received consideration to the tune of Rs.3.79 Cr. from the sale of immovable property of the Company and was not offered for tax and not reflected in the books of account. Since no assessment was made under section 143(3) and return was processed under section 143(1), provisions of clause (b) of explanation 2 of Section 147 were applicable. As per assessee all facts were disclosed in her return and flat was not further sold by her so reopening of assessment was invalid. A writ petition was filed before Bombay High Court by the assessee.

Revenue contended that since there was no assessment made under section 143(3), there was no occasion to examine the claim made by the assessee.

High Court stated that existence of 'reason to believe' was precondition for reopening whether the return was processed under section 143(1) or assessed under section 143(3). Further, the reasons to believe that income chargeable to tax has escaped assessment must be on correct facts. High Court clarified that if the reasons are not correct and assessee has raised objection on the same, then the order on objection must deal with it and establish that the facts stated by it in its reasons as recorded are correct. As per the High Court, mere fact that the return has been processed under section 143(1) of the Act, did not give a carte blanc to the Assessing Officer to issue a reopening notice.

High Court observed that that the reopening was on fundamentally wrong facts and also the order disposing-off the objections of assessee did not deal with factual position asserted by the assessee. High Court therefore quashed the impugned notice under section 148, and ruled in favour of the assessee.

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*Source for Legal Updates: Journal issued by
The Institute of Chartered Accountants of
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