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Chir Amrit Legal LLP
Jaipur | Mumbai | Delhi
www.chiramritlaw.com

THE NEWSLETTER

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New Disclosure Scheme to Curb Black Money

As a step forward to curb black money, the Government of India adopted demonetisation policy on 08.11.2016 whereby Rs.500/- and Rs.1,000/- bank notes ("**Specified Bank Notes**") ceased to be a legal tender with effect from the 09.11.2016 *via* notification no. F.No.10/03/2016-Cy.I. Concerns have been raised that some of the existing penalty provisions of the Income-tax Act, 1961 ("**Act**") will be ineffective for levying penalty on the person who deposits unaccounted cash in bank accounts. Therefore, the Government of India has proposed an amendment with respect to the Act and the Finance Act, 2016 by presenting Taxation Laws (Second Amendment) Bill, 2016 ("**Amendment Bill**") in order to plug the said loophole so that no one can be benefitted due to the lacuna present in provisions of the Act. In the wake of declaring Specified Bank Notes as illegal tender, there have been representations and suggestions from experts that instead of allowing people to find illegal ways of converting their black money into white money, the Government should give them an opportunity to pay taxes with heavy penalty and allow them to come clean so that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but also the remaining part of the declared income legitimately becomes a part of the formal economy. Therefore, an alternative scheme namely, the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 ("**Scheme**") has been proposed. As per the provisions of the Scheme and Amendment Bill, following are the proposed changes:-

1. Under the Scheme, option has been given to declare undisclosed income which is in the form of cash and deposit in an account maintained with specified entity, by depositing tax at the rate of 30% of undisclosed income, surcharge at the rate of 33% of such tax and penalty at the rate of 10% of the undisclosed income declared. Therefore, aggregate amount of tax, surcharge and penalty will come around 49.90% of the amount of income disclosed in the scheme. The person making above declaration shall have to deposit at least 25% of undisclosed income in the Scheme. The deposit will not generate any interest. Amount deposited under the Scheme can be withdrawn only after four (4) years from the date of deposit.
2. In case income is disclosed by the assessee while filing return of income or determined by the assessing officer in the form of money, jewellery, bullion, valuables, undisclosed investments, unexplained cash credit etc. .tax at the rate of 60% shall be levied. In addition to it, surcharge at the rate of 25% of tax and cess at the rate of 3% of tax and surcharge amount shall be levied. Penalty will be levied equivalent to 10% of the tax amount. The aggregate amount of tax, penalty, cess and surcharge would come around 83.25% of unexplained/undisclosed income. However, penalty shall not be levied if the assessee pays advance tax during the previous year and submits return of income under Section 139 of the Act after including the aforesaid incomes.

In that case, aggregate amount of tax, surcharge and cess shall be 77.25% of the income disclosed.

3. If during the search initiated after the date on which Amendment Bill receives the assent of the President, undisclosed income is unearthed, tax rate chargeable shall be 60% of the undisclosed income. Surcharge at the rate of 25% of tax and cess at the rate of 3% of tax and surcharge shall also be levied. In addition to it, penalty at the rate of 30% of the undisclosed income shall be chargeable if assessee admits the undisclosed income, specify and substantiates the manner in which undisclosed income was derived, pays up all taxes (with interest if any) and disclose income in the return of income filed after the date of search. In other cases, penalty shall be chargeable at the rate of 60% of the undisclosed income.

Directions by Apex Court on Usage and Playing of the National Anthem

The Hon'ble Supreme Court ("**Court**") in the case of ***Shyam Narayan Chouksey* v. *Union of India*** [Writ Petition(s) (Civil) No(s). 855/2016] has passed an interim order dated 30.11.2016 by which the Court has asserted that it is the duty of every person to show respect when the National Anthem is played or recited or sung. The Court further enunciated certain directions pertaining to the National Anthem. As per the said directions, the Court has: (i) banned utilization of the National Anthem for any kind of commercial benefit or any other benefit; (ii) banned dramatized exhibition of the National Anthem; (iii) banned printing and/or displaying of the National Anthem on any object or at any place which tantamount disrespect to the National Anthem and indirectly to the national identity, national integrity and constitutional patriotism; (iv) directed all the cinema halls in India to play the National Anthem before the feature film starts and all present in the said hall shall stand up to show respect to the National Anthem; (v) directed that prior to playing or singing of the National Anthem in the cinema hall, all the doors (both entry and exit) of the said cinema hall shall be closed so that no disturbance is created while the National Anthem is played; (vi) directed that while playing the National Anthem in the cinema hall, the National Flag shall be displayed on the screen of the said cinema hall; and (vii) banned playing or displaying of abridged version of the National Anthem. The Court further held that the citizens of India must realize that they live in a nation and are duty bound to show respect to the National Anthem which is the symbol of constitutional patriotism and inherent national quality.

USA and India Conclude their First Bilateral Advance Pricing Agreement

The Central Board of Direct Taxes ("**CBDT**") announced in a press release on 17.11.2016 that the first bilateral Advance Pricing Agreement ("**APA**") has been agreed between India and United States of America ("**USA**") during the meeting held in Washington DC, USA in last week of October, 2016.

India had started its bilateral APA process with USA in year 2012 & 2013 and had begun accepting applications from Indian taxpayers whereas, USA started its bilateral process with India in February, 2016 by way of accepting applications from USA taxpayers. In this unprecedented span of eight (8) months, an agreement has been reached upon in the form of the first bilateral APA involving India and USA. During the meeting, 66 Mutual Agreement Procedure ("**MAP**") cases relating to transfer pricing issues and 42 MAP cases relating to treaty interpretation issues were agreed to be resolved successfully. The total amount locked-up in disputes in these cases is approximately Rs.50,000,000,000/- and were pertaining to assessment year 1999-2000 to 2011-2012. The resolved cases pertain to various issues like transfer pricing adjustments made to the international transactions in the nature of payment of royalty, payment of management fees, etc. and treaty interpretative issues in the nature of presence of Permanent Establishment ("**PE**") in India and profit attribution to such PEs, disputes pertaining to royalty income *versus* business income of foreign companies, etc. The speedy resolution of cases and agreement on bilateral APA due to effective mechanism of development of mutual trust and cooperation between the competent authorities of two countries would certainly be a positive factor in creating a conducive atmosphere for investments and business by USA .

NCLT Allows Petition by Depositors for Recovering Deposit Made Prior to 1st April, 2014

The National Company Law Tribunal ("**Tribunal**") in ***Bimla Kothari* v. *Unitech Ltd. Co*** (Application No. 41/ 2016 CO. Petition no. 124/ 2016) held that the intention of the legislature is not to differentiate between the deposits accepted prior to or after 01.04.2014, which is the effective date on which Section 73 of the Companies Act, 2013 ("**Act**") relating to acceptance of deposits was notified. The Tribunal further held that the term 'every deposit' would mean and include all previous deposits accepted by a company. Further, it was held that, in case, a company fails to repay its deposits made prior to 01.04.2014 then the petition filed by the depositors for the recovery of their deposits would be maintainable. Therefore, the remedies can neither be different nor can they be categorized into two separate groups i.e. different set of remedies for deposits accepted prior to 01.04.2014 and different set of remedies for deposits accepted after 01.04.2014.

Moreover, Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014 further clarifies the applicability of provisions of Section 73 and Section 74 of the Act are applicable to the deposits which were accepted by the companies prior to or after Section 73 of the Act came into force.

In view of the above, all the petitions filed against the company for the default in repayment of deposits, made prior to 01.04.2014, shall be allowed under Section 73(4) of the Act which states that in an instance where a company fails to repay the deposit accepted or any interest due thereon, the depositor may apply to the Tribunal for an order directing the company to pay the sum due towards the depositor or interest, if any, together with any loss or damage incurred by such depositor due to such non-payment. The Tribunal, further, held that each depositor would be entitled to recover their dues in execution proceeding together with the cost and interest which they were entitled to on their deposits till recovery thereof.

Service Tax to be Levied on Cross Border B2C OIDAR Services

As per notifications no. 46/2016-ST, 47 /2016-ST, 48/2016-ST and 49/2016-ST and circular no. 202/12/2016-ST issued by Central Board of Excise and Customs ("CBEC") on 09.11.2016, exemption to Online Information and Database Access or Retrieval ("OIDAR") services provided from non-taxable territory and received in taxable territory of India by the Government, local authority, or an individual in relation to any purpose other than commerce, industry or any other business or profession [cross border B2C (business to consumer) services], provided online/electronically, stands withdrawn from 01.12.2016. On the other hand, OIDAR services received by other persons in taxable territory from non-taxable territory [cross border B2B (business to business) services] will become taxable under reverse charge i.e. service recipient in taxable territory is liable to pay tax. OIDAR services are essentially delivered over the internet or electronic network and consist of services such as web based services providing trade statistics, advertising on the internet, providing cloud services, job portals, matrimonial services, social networking sites, subscription of online newspapers and online gaming. Further, suitable amendments are made in the Service Tax Rules, 1994, Place of Provision of Services Rules, 2012, Notification No. 25/2012 (Exemption Notification) and Notification No. 30/2012 (Reverse Charge Notification) to change the scheme of taxability of OIDAR services. CBEC is identifying the service providers located in non-taxable territory providing cross border B2C OIDAR services in taxable territory by taking help of advertisements of such service providers appearing in newspapers, internet websites, social networking platforms etc. and such service providers will be contacted through email and informed about the service tax liability and compliance mechanism. The service providers who are located abroad and providing cross border B2C OIDAR services are bound to take registration under the Finance Act, 1994.

Transfer of Software by Indian Branch to Head Office is Eligible for Exemption u/s 10A of the Income Tax Act

As per Section 10A of the Income Tax Act, 1961 ("**Act**"), income of the entities situated in the Software Technology Park arising from export of computer software is exempt from the income tax.

In a recent ruling of the Hon'ble Delhi High Court ("**Court**") in the matter of ***Deputy Director of Income Tax* v. *Virage Logic International*** (ITA 1108/2007, 1249/2009 and 173/2006), the Court held that income arising from transfer of computer software by the Indian branch situated in Software Technology Park to its head office will also be eligible for exemption under Section 10A of the Act. In the present case, the assessee had developed computer software for its head office and received a consideration for all direct and indirect cost with the mark up of 15% of such process. The contention of the Income Tax Department ("**Department**") was that assessee is not eligible for exemption under Section 10A of the Act, as the assessee and its head office are part of the same entity and under Section 80HHC of the Act it is specified that transfer of goods by a unit to a branch office/head office situated outside India will be treated as deemed export. The absence of similar provisions in Section 10A of the Act indicates the intention of legislature to exclude such transaction from the exemption. The Court accepted assessee's contention that mere omission of a provision akin to Section 80HHC of the Act does not rule out the possibility of treatment of transfer of software from the branch office to its head office as an export. A plain reading of Section10A(7) and Section 80(IA)(8) of the Act shows that transfer of any goods or services from eligible units to any other unit are covered. The only condition insisted was that the face value of such transactions should be at arm's length price and if not, then the assessing officer could determine the market value for such transactions or sales and therefore, the Court decided the matter in favour of the assessee.

Clarity with respect to Appellate Jurisdiction of DRT

The Hon'ble Supreme Court of India ("**Court**") in ***State Bank of Patiala* v. *Mukesh Jain & Anr*.** (Civil Appeal No. 210 of 2007) has held that the Debt Recovery Tribunal ("**DRT**") has jurisdiction to entertain an appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**Act**") even if the amount involved is less than Rs.10,00,000/-. In the instant matter, appellant had given a term loan of amount Rs.8,00,000/- to the respondent no.1. Consequently, appellant served a notice under Section 13(2) of the Act to the respondent for default in repayment of loan and initiated proceedings under the Act. The respondent no.1 filed suit in the trial court challenging the said proceedings. In the said suit, the appellant filed an application under Order VII Rule 1 of CPC contending that the trial court has no jurisdiction to entertain the said suit as per the provisions of Section 34 of the Act read with Section 13(2) of the Act and the said matter shall be heard by DRT. The application of the appellant was rejected on the ground that the amount which was sought to be recovered by the appellant from the respondent no.1 was less than Rs.10,00,000/- and therefore, as per Section 1(4) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("**DRT Act**"), provisions of DRT Act would not apply.

Aggrieved by the decision of the trial court, the appellant filed an appeal before the High Court of Delhi which confirmed the ruling of the trial court. Therefore, the matter was appealed in the Court. The Court observed that DRT exercises appellate jurisdiction when action is initiated under Section 13 of the Act is challenged before DRT. The Court, further observed that the appellate jurisdiction of DRT shall not be misunderstood with its original jurisdiction of DRT as both are different. Section 17 of the Act can be interpreted to be dealing with the appellate jurisdiction of the DRT. Therefore, in the present case, the respondent no.1 has a right under Section 17 of the Act to challenge the validity of action initiated under Section 13 of the Act before DRT invoking appellate jurisdiction of DRT. The Court said that as Section 1(4) of DRT confers original jurisdiction on DRT and comes into picture only when amount claimed is above 10,00,000/- but as in the present case, the appellant jurisdiction of DRT shall be invoked therefore, the Court held that even if the amount claimed under Section 13 of the Act is less than Rs.10,00,000/-, the suit is maintainable before DRT and the trial court is barred to entertain any suit with respect to the same as per Section 34 of the Act.

The District Forum Within Whose Limits Most Payments are Made has Rightful Jurisdiction to Entertain a Consumer Compliant

The Hon’ble National Consumer Dispute Redressal Commission (“**NCDRC**”) in the case of ***Managing Director, Club 7 Holidays Ltd* v. *Prabir Kumar Maitra*** [Revision Petition No. 1941/ 2016] had the occasion to adjudicate on the interpretation of territorial jurisdiction of a District Consumer Forum under the Consumer Protection Act, 1986 (“**Act**”). In the instant case, the complainant had booked a foreign tour to Europe for himself and his wife through the website of the petitioner and made the payment of Rs.3,57,970/- for the same. The complainant alleged that there was severe deficiency in the services provided by the petitioner and that the petitioner was also indulged in unfair trade practice as the petitioner failed to follow the promised itinerary. The complainant also sent a notice to the petitioner through International Consumer Rights Protection Council on 05.11.2014 and filed a complaint before the District Forum, Nadia (“**District Forum**”) alleging deficiency in service caused by the petitioner in respect of holiday package. The petitioner challenged the maintainability of the complaint before the District Forum on the ground that complainant had booked his itinerary by making cash payment in the office of the petitioner at Kolkata and therefore, the complaint should have been filed in district forum of Kolkata and not of Nadia as the cause of action arose in Kolkata. The District Forum dismissed the application of the petitioner. The petitioner preferred revision petition before the State Commission, West Bengal (“**State Commission**”) which was also dismissed. Aggrieved by the impugned order of the State Commission, the petitioner filed a revision petition before the NCDRC. NCDRC observed that as per section 11 of the Act, complaint shall be instituted in the District Forum within the local limits of whose jurisdiction the cause of action either wholly or in part arises. Therefore, in view of Section 11(2)(c) of the Act, District Forum at Nadia has jurisdiction to entertain the said complaint.

Assets of Deceased Husband shall be Utilized for Satisfying a Maintenance Decree

The Hon'ble Chhattisgarh High Court ("**Court**") in ***Arial I Kumar* v. *Shrimati Shikha Kumar*** [FAM No. 103 of 2015] while considering the appeal against the order passed by the family Court, Raipur ("**Family Court**"), reiterated that the decree for maintenance or alimony does not get extinguished with the death of the husband/judgment debtor. In the instant matter, the respondent was granted a decree for permanent alimony of Rs.2,000/- per month. But due to sudden death of the respondent's husband, the said decree was not executed. The respondent moved an application for execution of the said decree and thus, the Family Court directed the legal heirs (appellants) of the deceased to pay maintenance to the respondent. Later, the respondent challenged the said direction of the Family Court and contended before the Court that recovery of the permanent alimony shall be made from the assets belonging to the deceased which are presently in possession of the legal heirs (appellants) of the deceased and that the respondent is entitled to all properties left by the her deceased husband including the immovable properties and the amount under various insurance policies in the name of her deceased husband. The Court held that a decree of maintenance does not extinguish or become unenforceable with the death of the husband rather, the assets left behind by the deceased husband in the hands of his legal heirs are liable to be proceeded against for satisfaction of the decree of maintenance. Thus, the Court remitted the said matter to the Family Court and directed the Family Court to order recovery of the amount of permanent alimony from the movable and immovable assets belonging to the deceased husband.

Composition Scheme under Model GST Law -2016

- *by* CA. Mukesh Soni

Whether benefit of composition scheme available to a taxable person receiving supplies of goods and/or services?

A. Introduction:

The New Model GST Law[1] has incorporated the provisions relating to composition levy instead of levy u/s 7 of the Model GST Law. Under the proposed model law, the taxable event is intra-state supply of goods and services, though small taxable person has option to seek permission u/s 8 for paying composition levy instead of CGST/SGST.

B. Composition Levy- An Analysis

The provisions relating to composition levy has been incorporated in section 8 of the model GST Law. In brief, the salient features of the said levy are:

(a) An alternate levy for small businesses, whose aggregate turnover in a financial year does not exceed Rs. 50 Lakh.

(b) Registration as taxable person is compulsory to opt for the scheme.

(c) The facility of composition levy is not available to a taxable person who effects any inter-State supplies of goods and/or services.

1. The Article is based on Model GST Law, 2016 placed on public domain in June 2016. However, recently revised draft of Model GST Law is also placed on public domain. Views expressed are based on the Model GST Law, 2016 placed on public domain in June 2016.

(d) Further composition levy facility is to be used on all India PAN basis.
(e) Composition fees in lieu of tax is to be paid at a rate not less than 1% of the turnover during the year.
(f) Taxable person opting for this scheme, not entitled to collect any tax from the recipient.
This article is an attempt to analyze as to whether a taxable person receiving inter-state supply of goods and/or services is covered under the composition levy u/s 8 of the proposed draft model GST law, 2016 or not? In the context, it is imperative to analyze the first proviso to sub-section 1 of proposed section 8, which reads as under:
Provided that no such permission shall be granted to a taxable person who effects any inter-State supplies of goods and/or services.

A bare perusal of the aforesaid proviso, states that permission for composition levy is not available to a taxable person ***who effects*** **any inter-State supplies of goods and/or services**. Therefore, it would be necessary to understand as to whether the term any inter-state supplies of goods and/or services cover: Inward supply or Outward supply or Both?

The term inward supply and outward supply has been defined in definition clause in section 2 as under:

*(61) "**inward supply**" in relation to a person, shall mean receipt of goods and/or services whether by purchase, acquisition or any other means and whether or not for any consideration;*

*(73) "**outward supply**" in relation to a person, shall mean supply of goods and/or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made by such person in the course or furtherance of business except in case of such supplies where the tax is payable on reverse charge basis;*

These terms have been used in the model law under chapter VIII requiring filing of returns of outward supplies and inwards supplies and matching thereof. However, these terms have not been specifically used in the charging section 7 of the Model GST Law as the charging section uses term *áll intra-state supplies of goods and/or services.* Further, for section 7, the scope of supply is to be interpreted from section 3 of the Act, which also does not specifically use these terms (inward supply or outward supply).

Thus, a clarity is required to conclude as to who is the taxable person effecting the intra-state supplies, whether it is a taxable person making the supplies (outward supply) or whether it is a taxable person receiving the supplies (inward supply).

To analyze, it is imperative to note the meaning of term *effects*. *The dictionary meaning of the term effects is to cause (something to happen); bring about.* Applying this meaning, it can be said that a taxable person who has caused any inter-state supplies or brought about any inter-state supplies would not be eligible under the Scheme. However, the moot point is whether a taxable person receiving any inter-state supplies can be said to be taxable person who effects *(bring about or cause to happen)* any inter-state supplies for the purpose of first proviso to section 8(1) of Model Law?

Before giving any view, it is also imperative to understand term *aggregate turnover* as defined in the model law, the definition reads as under:

*(6) "**aggregate turnover**" means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;*
Explanation.- Aggregate turnover does not include the value of supplies on which tax is levied on reverse charge basis and the value of inward supplies.

If we analyze the aforesaid definition, the term aggregate turnover is aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services and excludes taxes charged under Model Law. Further an explanation appended to definition clearly states that value of supplies on reverse charge basis and the value of inward supplies are not included in the aggregate turnover.

It is to be noted that to compute the aggregate turnover inward supplies are not be included. In other words, they do not form part of the aggregate turnover, meaning thereby that taxable and non-taxable supplies do not include inward supplies. In other words, the law does not require inward supplies to be first included and then be reduced to compute the aggregate turnover, which is evident from the bare reading of the definition itself, as explanation appended clarifies the intention of the law. Thus, it can be safely concluded that inward supplies not to be taken into consideration for first proviso to section 8(1) also.

It is well established accounting principle that turnover does not include the purchases, it is the outward supplies/sales, which is considered as turnover for the purpose of various laws existing at present. The above view finds support from the levy under section 7 of the model law, which applies practically to outward supplies and not to inward supplies. Section 7 cannot be interpreted in a manner that on inward supplies also tax shall be paid by taxable person. Further, if the levy under section 7 is also interpreted to cover inward supplies also, it would give unintended results besides being incorrect interpretation of the law.

C. Conclusion

From the above, it can be safely concluded that composition levy under the model GST law is available to person receiving inter-state inward supplies but not making inter-state outward supply.

The aforesaid view is also supported because proposed law is based on consumption/destination principle and further in the proposed law the charge is on the all intra-state supply and not on intra-state inward supply and intra-state outward supply separately as explained above. Further, the terms inward supply and outward supply as per the draft of the present model law are relevant for filing of returns, claiming of input tax credit etc. under chapter VIII of Model GST Law and for computing aggregate turnover under the law and not for section 7 and 8, unless specifically provided. Therefore, more clarity in the draft of the Model GST laws is required in view of the present state laws, which does not allow composition scheme to dealers receiving inter-state purchases from outside state, as they are based on origin base of taxation, whereas the Model GST law is based on destination base of taxation.

Chir Amrit Legal LLP

Jaipur | Mumbai | Delhi

www.chiramritlaw.com

We are on the web

www.chiramritlaw.com

For any queries regarding 'The Newsletter', please get in touch with us at:
newsletter@chiramritlaw.com

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Jaipur- 6th Floor, 'Unique Destination', Opp. Times of India, Tonk Road, Jaipur - 302 015
Off: +91-141-4044500

Mumbai– 16-17E, 2nd Floor, Apeejay Business Centre, Apeejay House, 3, Dinshaw Vachha Road, Churchgate, Mumbai-20.
Off: +91-022-66364439

Delhi NCR- B-2/15, DLF Phase 1st, Near Qutub Plaza, Gurgaon-122001
Off: 0124-4016062

Surat– 202, 2nd Floor, SNS Square, Opp. Reliance Market, Vesu Main Road, Vesu, Surat—395007