कनक टैक्स समाचार

इनकम टैक्स एवं जी एस टी की पाक्षिक पत्रिका

माह दिसम्बर , 21 (द्वितीय)

इंडेक्स

NOTIFICATION NO. 138/2021

DATED : 27.12.2021

G.S.R. 883(E).— In exercise of the powers conferred by clause (23FF) of section 10 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:─

1. Short title and commencement.- (1) These rules may be called the Income-tax (34th Amendment) Rules, 2021.

(2) They shall come into force from the date of publication in the Official Gazette.

2. In the Income-tax Rules, 1962 (hereafter referred to as the principal rules), after rule 2DC, the following rule shall be inserted, namely:—

"2DD. Computation of exempt income of specified fund for the purposes of clause (23FF) of section 10.-(1) For the purpose of clause (23FF) of section 10, income of the nature of capital gains, arising or received by a specified fund, which is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) in such specified fund shall be computed as under:-

(i) where the specified fund files Form No. 10-II in accordance with sub-rule (2), the Income exempt under clause (23FF) of section 10= [A*B/C], where,-

A = income of the nature of capital gains, arising or received by a specified fund, which is on account of transfer of shares of a company resident in India, by the specified fund and where such shares were received by the specified fund, being resultant fund, in relocation from the original fund, or from its wholly owned special purpose vehicle, and where such capital gains would not be chargeable to tax if the relocation had not taken place;

B = aggregate of daily „assets under management‟ of the specified fund which are held by non-resident unit holders (not being the permanent establishment of a non-resident in India), from the date of acquisition of the share of a company resident in India by the specified fund to the date of transfer of such share.

C = aggregate of daily total ‟assets under management„ of the specified fund, from the date of acquisition of the share of a company resident in India by the specified fund to the date of transfer of such share.

(ii) where no Form No.10-II is filed by the specified fund, the exempt income shall be NIL.

(2) The specified fund shall furnish an annual statement of exempt income in Form No.10-II electronically under digital signature on or before the due date, which is duly verified in the manner indicated therein.

(3) It shall get the annual statement, referred to in sub-rule (2), certified by an accountant before the specified date and such accountant shall furnish by that date the certificate in Form No. 10-IJ electronically under digital signature, which is duly verified in the manner indicated therein.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems), as the case may be, shall specify the procedure for filing of the Form Nos. 10-II and 10-IJ and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements so furnished under this rule.

Explanation:- For the purposes of this rule, the expressions,-

(a) “assets under management” means the closing balance of the value of assets or investments of the specified fund as on a particular date;

(b) “due date” shall have the meaning assigned to it in the Explanation 2 below sub-section (1) of section 139;

(c) “original fund” , “relocation” and "resultant fund" shall have the meanings respectively assigned to them in the Explanation to clause (viiac) and clause (viiad) of section 47;

(d) “permanent establishment” shall have the meaning assigned to it in clause (iiia) of section 92F;

(e) "securities" shall have the meaning assigned to it in clause (bb) of the

Explanation to clause (4D) of section 10;

(f) “specified date” in relation to the certification of the annual statement in Form 10-II, means the date one month prior to the due date;

(g) "specified fund" shall have the meaning assigned to it in sub-clause (i) of clause (c) of the Explanation to clause (4D) of section 10; and

(h) “unit” shall have the meaning assigned to it clause (f) of the Explanation to clause (4D) of section 10.”.

3. In the principal rules, in Appendix II, after Form 10-IH, the following Forms shall be inserted, namely:-

NOTIFICATION NO. 139/2021

DATED : 28.12.2021

S.O. 5429(E).— In exercise of the powers conferred by **sub-sections (6B) and (6C) of section 250** of the Income-tax Act, 1961 (43 of 1961), and in supersession of the Faceless Appeal Scheme, 2020 of the Government of India in the Ministry of Finance published in the Official Gazette vide number S.O. 3296(E) dated 25th September 2020 and S.O. 3297(E) dated 25th September 2020, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement.—(1) This Scheme may be called the **Faceless Appeal Scheme, 2021.**

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions.— (1) In this Scheme, unless the context otherwise requires, —

(i) "Act" means the Income-tax Act, 1961 (43 of 1961);

(ii) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(iii) "appeal" means appeal filed by a person under **sub-section (1) of section 246A** or section 248 of the Act;

(iv) "appellant" means the person who files appeal under **section 246A** or **section 248** of the Act;

(v) "authorised representative" shall have the same meaning as assigned to it in **sub-section (2) of section 288** of the Act;

(vi) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;

(vii) "computer resource" shall have the same meaning as assigned to it in clause (k) of subsection (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(viii) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(ix) "computer resource of appellant" shall include the registered account in the designated portal of the Income-tax Department, or the Mobile App linked to the registered mobile number, or the registered e-mail address, of the appellant;

(x) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(xi) "designated portal" means the web portal designated as such by the Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, in charge of the National Faceless Appeal Centre;

(xii) "e-appeal" means the appellate proceedings conducted electronically in 'e-appeal' facility through the registered account of the appellant in designated portal;

(xiii) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(xiv) "email" or "electronic mail" and "electronic mail message" means a

message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(xv) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);

(xvi) "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the appellant;

(xvii) "National Faceless Assessment Centre" shall mean the National Faceless Assessment Centre set up and notified under section 144B of the Act;

(xviii) "real time alert" means any communication sent to the appellant, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;

(xix) "registered account" of the appellant means the electronic filing account registered by the appellant in the designated portal;

(xx) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including-

(a) the email address available in the electronic filing account of the addressee registered in designated portal; or

(b) the e-mail address available in the last income-tax return furnished by the addressee; or

(c) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(d) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(e) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

(f) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;

(xxi) "registered mobile number" means the mobile number of the appellant, or his authorised representative, appearing in the user profile of the electronic filing account registered by the appellant in the designated portal;

(xxii) "Rules" means the Income-tax Rules, 1962;

(xxiii) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

(2) Words and expressions used herein and not defined but defined in the Act shall have the same meaning as assigned to them in the Act.

3. Scope of the Scheme.— The appeal under this Scheme shall be disposed of in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.

4. Faceless Appeal Centres.– (1) For the purposes of this Scheme, the Board may set up-

(i) a National Faceless Appeal Centre to facilitate the conduct of e-appeal proceedings in a centralised manner; and

(ii) Appeal units, as it may deem necessary to facilitate the conduct of e-appeal proceedings by the Commissioner (Appeals).

(2) All communication between the Commissioner (Appeals) and the appellant or any other person or the Assessing Officer with respect to the information or documents or evidence or any other details, as may be necessary under this Scheme shall be through the National Faceless Appeal Centre.

(3) The appeal unit referred to in clause (ii) of sub-paragraph (1) shall have the following authorities, namely:–

(a) one Commissioner (Appeals);

(b) such other income-tax authority, ministerial staff, executive or consultant to assist the Commissioner (Appeals) as considered necessary by the Board.

5. Procedure in appeal.— (1) The appeal referred to in paragraph 3 shall be

disposed of under this Scheme as per the following procedure, namely:-

(i) the National Faceless Appeal Centre shall assign the appeal for disposal to a Commissioner (Appeals) of a specific appeal unit through an automated allocation system;

(ii) On assignment of an appeal, the Commissioner (Appeals),—

(a) may condone the delay in filing appeal if the appeal is filed beyond the time permitted under section 249 of the Act and record the reasons for such condonation or otherwise in the appeal order passed under clause (x);

(b) shall through the National Faceless Appeal Centre give notice to the appellant asking him to file his submission within the date and time specified in such notice and also send a copy of such notice to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be;

(c) may through the National Faceless Appeal Centre obtain such further information, document or evidence from the appellant or any other person, as the case may be;

(d) may through the National Faceless Appeal Centre obtain a report of the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, on grounds of appeal or information, document or evidence furnished by the appellant;

(e) may, through the National Faceless Appeal Centre, request the Assessing Officer directly or through the National Faceless Assessment Centre, as the case may be, for making further inquiry under **sub-section (4) of section 250** of the Act and submit a report thereof;

(f) shall, through the National Faceless Appeal Centre serve a notice upon the appellant or any other person, as the case may be, or the Assessing Officer directly or through the National Faceless Assessment Centre, as the case may be, to submit such information, document or evidence or report, as the case may be, as may be specified by the Commissioner (Appeals) or relevant to the appellate proceedings, on a specified date and time;

(iii) the appellant or any other person, as the case may be, shall furnish a response to the notice referred to in sub-clauses (b), (c) or (f) of clause (ii), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the

Commissioner (Appeals) through the National Faceless Appeal Centre;

(iv) the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, shall furnish a report in response to the notice referred to in sub-clauses (d), (e) or (f) of clause (ii), within the date and time specified therein or such extended date and time as may be allowed on the basis of an application made in this behalf, to the Commissioner (Appeals) through the National Faceless Appeal Centre;

(v) the appellant may file additional grounds of appeal to the Commissioner (Appeals) through the National Faceless Appeal Centre, in such form, as may be specified by the National Faceless Appeal Centre, specifying therein the reason for omission of such ground in the appeal filed by him;

(vi) where the additional ground of appeal is filed-

(a) the Commissioner (Appeals) shall, through the National Faceless Appeal Centre, send the additional ground of appeal to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, for providing comments, if any;

(b) the Assessing Officer, either directly or through the National Faceless Assessment Centre, as the case may be, shall furnish their comments, within the date and time specified or such extended date and time as may be allowed on the basis of an application made in this behalf, to the Commissioner (Appeals) through the National Faceless Appeal Centre;

(c) the National Faceless Appeal Centre, on receipt of comments from the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, shall send such comments to the Commissioner (Appeals), and where no such comments are furnished, inform the Commissioner (Appeals) accordingly;

(d) the Commissioner (Appeals) shall, after taking into consideration the comments, if any, received from the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be,—

(A) if is satisfied that the omission of additional ground from the form of appeal was not wilful or not unreasonable, admit such ground; or

(B) in any other case, not admit the additional ground, for reasons to be recorded in writing in the appeal order passed under clause (x);

(vii) the appellant may furnish additional evidence, other than the evidence produced by him during the course of proceedings before the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, to the Commissioner (Appeals), through the National Faceless Appeal Centre, in such form, as may be specified by the National Faceless Appeal Centre, specifying therein as to how his case is covered by the exceptional circumstances specified in **sub-rule (1) of rule 46A** of the Rules;

(viii) where the additional evidence is furnished,—

(a) the Commissioner (Appeals) through the National Faceless Appeal Centre shall send the additional evidence to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, for furnishing a report on the admissibility of additional evidence in accordance with **rule 46A** of the Rules;

(b) the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, shall furnish the report, as referred to in sub-clause (a), within such date and time as specified or such extended date and time as may be allowed on the basis of an application made in this behalf, to the Commissioner (Appeals) through the National Faceless Appeal Centre;

(c) the National Faceless Appeal Centre, on receipt of the report from the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, shall send such report to the Commissioner (Appeals), and where no such report is furnished, inform the Commissioner (Appeals);

(d) the Commissioner (Appeals) may, after considering the additional evidence and the report, if any, furnished by the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, admit or reject the additional evidence, for reasons to be recorded in writing, and the same shall form a part of the appeal order passed under clause (x);

(e) the Commissioner (Appeals) shall, if he admits such evidence, before taking such evidence into account in the appellate proceedings, prepare a notice to provide an opportunity through the National Faceless Appeal Centre to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, to examine such evidence or to cross-examine such witness, as may be produced by the appellant, or to produce any evidence or document, or any witness in rebuttal of the evidence or witness produced by the appellant, and furnish a report thereof and send such notice, through the National Faceless Appeal Centre, to the Assessing Officer either directly or

through the National Faceless Assessment Centre, as the case may be;

(f) the Assessing Officer shall either directly or through the National Faceless Assessment Centre, as the case may be, furnish the report within the date and time specified or such extended date and time as may be allowed on the basis of an application made in this behalf, to the Commissioner (Appeals) through the National Faceless Appeal Centre;

(g) the National Faceless Appeal Centre shall send the report furnished by the Assessing Officer, either directly or through the National Faceless Assessment Centre, as the case may be, to the Commissioner (Appeals) or where no such report is furnished, inform the Commissioner (Appeals);

(h) the Assessing Officer, either directly or through the National Faceless Assessment Centre, as the case may be, may request the Commissioner (Appeals) through the National Faceless Appeal Centre to direct the production of any document or evidence by the appellant, or the examination of any witness, as may be relevant to the appellate proceedings;

(i) the Commissioner (Appeals) for the purpose of making enquiries in the appeal proceedings as referred to in sub-clause (e) of clause (ii) or where the request referred to in sub-clause (h) is received, may, if it deems fit, prepare a notice –

(A) directing the appellant to produce such document or evidence, as it may specify; or

(B) for examination of any other person, being a witness; and send such notice to the National Faceless Appeal Centre;

(j) the National Faceless Appeal Centre shall serve the notice referred to in sub-clause (i) upon the appellant or any other person, being a witness, as the case may be;

(k) the appellant or any other person, as the case may be, shall furnish his response to the notice referred to in sub-clause (j), within the date and time specified in the notice or such extended date and time as may be allowed on the basis of application made in this behalf, to the Commissioner (Appeals) through the National Faceless Appeal Centre;

(l) the National Faceless Appeal Centre, on receipt of response from the appellant or any other person, as the case may be, shall send such response to the Commissioner (Appeals) or where no such response is furnished, inform the

Commissioner (Appeals) accordingly;

(ix) where the Commissioner (Appeals) intends to enhance an assessment or a penalty or reduce the amount of refund, -

(a) the Commissioner (Appeals) shall prepare a show-cause notice containing the reasons for such enhancement or reduction, as the case may be, and send such notice through the National Faceless Appeal Centre;

(b) the National Faceless Appeal Centre shall serve the notice, as referred to in sub-clause (a), upon the appellant;

(c) the appellant shall, within the date and time specified in the notice or such extended date and time as may be allowed on the basis of application made in this behalf, furnish his response to the National Faceless Appeal Centre;

(d) where a response is furnished by the appellant, the National Faceless Appeal Centre shall send such response to the Commissioner (Appeals), or where no such response is furnished, inform the Commissioner (Appeals) accordingly.

(x) The Commissioner (Appeals) shall, thereafter:-

(a) prepare in writing, an appeal order in accordance with the provisions of **section 251** of the Act stating the points for determination, the decision thereon and the reason for decision; and

(b) send such order after signing the same digitally to the National Faceless Appeal Centre along with the details of the penalty proceedings, if any, to be initiated therein;

(xi) the National Faceless Appeal Centre shall upon receipt of the order, as referred to in sub-clause (b) of clause (x), —

(a) communicate such order to the appellant;

(b) communicate such order to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per **sub-section (7) of section 250** of the Act;

(c) communicate such order to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, for such action as may be required under the Act;

(d) where initiation of penalty has been recommended in the order, serve a notice on the appellant calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act;

(2) Notwithstanding anything contained in sub-paragraph (1), the appeal, may be transferred at any stage of the appellate proceedings, if considered necessary, by an order in accordance with **section 120** of the Act, to such Commissioner (Appeals) as may be specified in the order.

6. Penalty proceedings– (1) Commissioner (Appeals) may, in the course of appeal proceedings, for noncompliance of any notice, direction or order issued under this Scheme on the part of the appellant or any other person, as the case may be, send a notice to the appellant through the National Faceless Appeal Centre for initiation of any penalty proceedings calling upon the appellant to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act.

(2) The National Faceless Appeal Centre shall, upon receipt of notice under sub-paragraph (1), serve the same on the appellant or any other person, as the case may be.

(3) The appellant or any other person, as the case may be, shall furnish a response to the show-cause notice referred to in sub-paragraph (2) or in sub-clause (d) of clause (xi) of sub-paragraph (1) of paragraph 5, within the date and time specified in such notice or such extended date and time as may be allowed on the basis of application made in this behalf, to the Commissioner (Appeals) through the National Faceless Appeal Centre.

(4) The National Faceless Appeal Centre shall send the response furnished by the appellant or any other person, as the case may be, to the Commissioner (Appeals) or where no such report is furnished, inform the Commissioner (Appeals) accordingly.

(5) The Commissioner (Appeals) shall, after taking into account all the relevant material available on the record, including the response furnished, if any, by the appellant or any other person, as the case may be, —

(a) prepare a penalty order and send a copy of such order after digitally signing the same to the National Faceless Appeal Centre; or

(b) drop the penalty after recording reasons, under intimation to the National Faceless Appeal Centre

(6) In a case where the Commissioner (Appeals) has dropped the penalty, the National Faceless Appeal Centre shall send an intimation thereof, or where the Commissioner (Appeals) sends the order for imposition of penalty, the National Faceless Appeal Centre shall communicate such order, to, —

(a) the appellant or any other person, as the case may be; and

(b) the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, for such action as may be required under the Act.

7. Rectification Proceedings. – (1) With a view to rectifying any mistake apparent from the record the Commissioner (Appeals) may amend any order passed by it in accordance with the provisions of the Act, by an order to be passed in writing.

(2) Subject to the other provisions of this Scheme, an application for rectification of mistake referred to in sub-paragraph (1) may be filed with the National Faceless Appeal Centre by:-

(a) the appellant or any other person, as the case may be; or

(b) the Commissioner (Appeals) who has passed the appeal order; or

(c) the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be.

(3) Where any application referred to in sub-paragraph (2) is received by the National Faceless Appeal Centre, it shall assign such application to a Commissioner (Appeals) through an automated allocation system.

(4) The Commissioner (Appeals) shall examine the application and send the notice to the National Faceless Appeal Centre for granting an opportunity–

(a) to the appellant or any other person, as the case may be, where the application has been filed by the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be; or

(b) to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, where the application has been filed by the appellant or any other person, as the case may be; or

(c) to the appellant or any other person, as the case may be, and the Assessing

Officer either directly or through the National Faceless Assessment Centre, as the case may be, where the application has been filed by the Commissioner (Appeals) referred to in clause (b) of sub-paragraph (2).

(5) The National Faceless Appeal Centre shall serve the notice referred to in sub-paragraph (4) upon the appellant or any other person, as the case may be, or the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, calling upon him to show cause as to why rectification of mistake should not be carried out under the relevant provisions of the Act.

(6) The appellant or any other person, as the case may be, or the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, shall furnish a response to the notice, as referred to in sub-paragraph (5), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre.

(7) Where a response, as referred to in sub-paragraph (6), is furnished by the appellant or any other person, as the case may be, or the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, the National Faceless Appeal Centre shall send such response to the Commissioner (Appeals), or where no such response is furnished, inform the Commissioner (Appeals) accordingly.

(8) The Commissioner (Appeals) shall, after taking into consideration the application and response, if any, furnished by the appellant or any other person, as the case may be, or the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, by an order in writing, —

(a) rectify the mistakes; or

(b) reject the application for rectification, citing reasons thereof, and send the order after digitally signing it to the National Faceless Appeal Centre.

(9) The National Faceless Appeal Centre shall upon receipt of rectification order, as referred to in subparagraph (8), communicate such order,–

(a) to the appellant or any other person, as the case may be; and

(b) to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, for such action as may be required

under the Act.

8. Appellate Proceedings.–(1) An appeal against an order passed by the Commissioner (Appeals) under this Scheme shall lie before the Income Tax Appellate Tribunal having jurisdiction over the jurisdictional Assessing Officer of the appellant assessee.

(2) Subject to the provisions of paragraph 3 of the scheme, where any order passed by the Commissioner (Appeals) is set-aside and remanded back to the Commissioner (Appeals) by the Income Tax Appellate Tribunal or High Court or Supreme Court, the National Faceless Appeal Centre shall assign the order to a Commissioner (Appeals) for further action in accordance with the provisions of this Scheme.

9. Exchange of communication exclusively by electronic mode.—For the purposes of this Scheme,—

(a) all communications between the National Faceless Appeal Centre and the appellant, or his authorised representative, shall be exchanged exclusively by electronic mode; and

(b) all internal communications between the National Faceless Appeal Centre, the National Faceless Assessment Centre, the Assessing Officer and the appeal unit shall be exchanged exclusively by electronic mode.

10. Authentication of electronic record.— For the purposes of this Scheme, an electronic record shall be authenticated by—

(i) the Commissioner of Income-tax (Appeals), in case of order passed under clause (x) of sub-paragraph (1) of paragraph 5 or under sub-paragraph (5) of paragraph(6 or under sub-paragraph (8) of paragraph 7, by affixing his digital signature;

(ii) the National Faceless Appeal Centre by affixing digital signature of the authorised signatory on its behalf, for all communication made on behalf of Commissioner (Appeals), other than the orders referred to in clause (i);

(iii) the appellant or any other person, by affixing his digital signature or under electronic verification code or by logging into his registered account in the designated portal;

Explanation. – For the purpose of this paragraph, "electronic verification code" shall have the same meaning as referred to in **rule 12** of the Rules.

11. Delivery of electronic record.— (1) Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being the appellant, by way of-

(a) placing an authenticated copy thereof in the appellant's registered account; or

(b) sending an authenticated copy thereof to the registered email address of the appellant or his authorised representative; or

(c) uploading an authenticated copy on the Mobile App of the appellant followed by a real time alert.

(2) Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert.

(3) The appellant shall furnish his response to any notice or order or any other electronic communication, under this Scheme, through his registered account, and once an acknowledgement is sent by the National Faceless Appeal Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.

(4) The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000).

12. No personal appearance in the Centres or Units.— (1) A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the income-tax authority at the National Faceless Appeal Centre or appeal unit set up under this Scheme.

(2) The appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the Commissioner (Appeals), through the National Faceless Appeal Centre, under this Scheme.

(3) The concerned Commissioner (Appeals) shall allow the request for personal hearing and communicate the date and time of hearing to the appellant through the National Faceless Appeal Centre.

(4) Such hearing shall be conducted through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

(5) Any examination or recording of the statement of the appellant or any other person shall be conducted by Commissioner (Appeals) under this Scheme, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

(6) The Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the appellant, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such appellant or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end.

13. Power to specify format, mode, procedure and processes.—The Principal Chief Commissioner of Income-tax or the Principal Director General of Income-tax, in charge of the National Faceless Appeal Centre shall, with the prior approval of Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Appeal Centre and the appeal unit set-up under this Scheme, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:-

(i) service of the notice, order or any other communication;

(ii) receipt of any information or documents from the person in response to the notice, order or any other communication;

(iii) issue of acknowledgment of the response furnished by the person;

(iv) provision of "e-appeal" facility including login account facility, tracking status of appeal, display of relevant details, and facility of download;

(v) accessing, verification and authentication of information and response including documents submitted during the appellate proceedings;

(vi) receipt, storage and retrieval of information or documents in a centralised manner;

(vii) general administration and grievance redressal mechanism in the respective Centres and units;

(viii) filing of additional ground of appeal;

(ix) filing of additional evidence.

14. Application of provisions of the Act.- Save as otherwise provided in this Scheme, the provisions of **clause (16A) of section 2**, **section 120**, **section 129**, **section 131**, **section 133**, **section 134**, **section 136**, **section 140**, **section 154**, **section 155**, **section 282**, **section 282A**, **section 283**, **section 284**, Chapter XX and Chapter XXI, and other provisions of the Act, shall apply to the procedure in disposal of appeal by Commissioner (Appeals).

NOTIFICATION NO. 140/2021

DATED : 29.12.2021

G.S.R. 903(E).— In exercise of the powers conferred by sub-section (5) of section 10A read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:─

1. Short title and commencement. — (1) These rules may be called the Income-tax (35th Amendment) Rules, 2021.

(2) They shall be deemed to have come into force from the 29th day of July, 2021.

2. In the Income-tax Rules, 1962 (hereinafter referred to as principal rules), after rule 16D, the following rule shall be inserted, namely:—

"**16DD. Form of particulars to be furnished along with return of income for claiming deduction under clause (b) of sub-section (1B) of section 10A**.–The particulars, which are required to be furnished by the assessee along with the return of income under clause (b) of sub-section (1B) of section 10A shall be in Form No. 56FF."

3. In the principal rules, in rule 130,–

(a) in sub-rule (1), the figures and letters "16DD" shall be omitted;

(b) in sub-rule (2), the figures and letters "56FF" shall be omitted.

4. In the principal rules, in Appendix II, after Form No. 56F, the following Form shall be inserted, namely:–

NOTIFICATION NO.141/2021

DATED : 29.12.2021

S.O. 5449(E).—In exercise of powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Act) and in supersession of the notification No. 81 of 2020 of Government of India in the Ministry of Finance, Department of Revenue, number S.O. 3309(E) dated the 25th September, 2020 under the Faceless Appeal Scheme 2020, (except as respects things done or omitted to be done before such supersession) and to give effect to the Faceless Appeal Scheme, 2021 (hereinafter referred to as the Scheme) made under sub-section (6B) and 6(C) of section 250 of the Act and published vide Notification No. 139/2021 of Government of India in the Ministry of Finance, Department of Revenue, number S.O. 5429(E), dated the 28th December, 2021 in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), the Central Board of Direct Taxes (hereinafter referred to as the Board) hereby directs that the following Income-tax authorities as specified in column (2) of the Schedule below, having their headquarters at the places mentioned in column (3) of the said Schedule, shall exercise the powers and perform functions, in order to facilitate the conduct of e-appeal Proceedings, in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases as specified by the Board in paragraph 3 of the Scheme, with respect to appeals filed under section 246A or 248 of the Act, pending or instituted on or after 29th December, 2021, namely :-

SCHEDULE

S. No	Income-tax Authority	Headquarters
(1)	(2)	(3)
1.	Commissioner of	Delhi

	Income-tax (Appeals) Unit-1, Delhi	
2.	Commissioner of Income-tax (Appeals) Unit-2, Delhi	Delhi
3.	Commissioner of Income-tax (Appeals) Unit-3, Delhi	Delhi
4.	Commissioner of Income-tax (Appeals) Unit-4, Delhi	Delhi
5.	Commissioner of Income-tax (Appeals) Unit-5, Delhi	Delhi

NOTIFICATION NO. 142/2021

DATED : 31.12.2021

S.O. 1(E).— In exercise of the powers conferred by **clause (46) of section 10** of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the Bureau of Indian Standards (BIS)(PAN:AAATB0431G), set up by the Bureau of Indian Standards Act, 1986 (63 of 1986) in respect of the following specified income arising to that Bureau, namely:-

(i) Certification fee;

(ii) Sale of standards, provided there is no profit involved; and

(iii) Income from interest;

2. This notification shall be effective subject to the following conditions, namely:-

(a) the Bureau of Indian Standards (BIS) does not engage in any commercial activity;

(b) the activities and the nature of the specified income of the Bureau of Indian

Standards (BIS) remain unchanged throughout the financial years; and

(c) the Bureau of Indian Standards (BIS) files return of income in accordance with the provision of **clause (g) of sub-section (4C) of section 139** of the Income-tax Act, 1961.

3. This notification shall be applicable for the Assessment Years 2021-22, 2022-23, 2023-24, 2024-25 and 2025-26.

CIRCULAR NO. 21/2021

DATED : 28.12.2021

Subject: One-time relaxation for verification of all income tax-returns e-filed for the Assessment Year 2020-21 which are pending for verification and processing of such returns - reg.

1. In respect of an Income-tax Return (ITR) which is filed electronically without a digital signature, the taxpayer is required to verify it using anyone of the following modes within the tirne lirnit of 120 days from date of uploading the ITR: -

i. Through Aadhaar OTP

ii. By logging into e-filing account through net banking

iii. EVC through Bank Account Number

iv. EVC through Demat Account Number

v. EVC through Bank ATM

vi. By sending a duly signed physical copy of ITR-V through post to the CPC, Bengaluru

2. In this regard, it has been brought to the notice of Central Board of Direct Taxes ('Board') that large number of electronically filed ITRs for the Assessment Year 2020-21 still remain pending with the Income-tax Departrment for want of receipt of a valid ITR-V Form at CPC, Bengaluru or pending e-Verification from the taxpayers concerned. In law, consequences of

failure to verify the ITR within the time allowed is significant as such an ITR is/can be declared non-est. Thereafter, the consequences for non-filing an ITR, as specified in the Income-tax Act,1961 ('the Act') follow.

3. In this context, it has been decided by the Board to provide one-time relaxation for submission of ITR-V/e-Verification for resolving the grievances of the taxpayers associated with non-verification of ITRs for the Assessrnent Year 2020-21 and to regularize such ITRs which have either become non-est or have remained pending with Income-tax Department for want of receipt of respective ITR-V Form or pending e-Verification. Therefore, in respect of all ITRs for Assessment Year 2020-21 which were uploaded electronically by the taxpayers within the time allowed under **section 139** of the Act and which have remained incomplete due to non-submission of ITR-V Form/pending e-Verification, the Board, in exercise of its powers under **section 119(2)(a)** of the Act, hereby permits verification of such returns either by sending a duly signed physical copy of ITR-V to CPC, Bengaluru through speed post or through EVC/OTP modes as listed in para 1 above. Such verification process must be completed by 28.02.2022.

4. This relaxation shall not apply in those cases, where during the intervening period, Income-tax Department has already taken recourse to any other measure as specified in the Act for ensuring filing of tax return by the taxpayer concerned after declaring the return as non-est.

5. Further, Board also relaxes the time-frame for issuing the intimation as provided in second proviso to **sub-section (1) of Section 143** of the Act and directs that such returns shall be processed by 30.06.2022 and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provision of **section 244A (2)** of the Act would apply. It is clarified that this relaxation would be applicable to all such returns which are verified during the extended period.

6. In case the taxpayer concerned does not get her/his return regularized by furnishing a valid verification (either ITR-V or EVC/OTP) by 28.02.2022, necessary consequences as provided in law for non-filing the return may follow.

INDIRECT TAX

NOTIFICATION NO. 38/2021 – CENTRAL TAX

DATED : 21.12.2021

G.S.R.....(E).— In pursuance of **sub-rule (2) of rule 1** of the Central Goods and Services Tax (Eighth Amendment) Rules, 2021, **No. 35/2021** – Central Tax, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 659(E), dated the 24th September, 2021, the Central Government, hereby notifies the 1st day of January, 2022, as the date from which the provisions of sub-rule (2), sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the said rules, shall come into force.

NOTIFICATION NO. 39/2021 – CENTRAL TAX

DATED : 21.12.2021

S.O. .....(E).— In exercise of the powers conferred by **clause (b) of sub-section (2) of section 1** of the Finance Act, 2021 (13 of 2021), the Central Government hereby appoints the 1st day of January, 2022, as the date on which the provisions of sections 108, 109 and 113 to 122 of the said Act shall come into force.

NOTIFICATION NO. 40/2021 – CENTRAL TAX

DATED : 29.12.2021

G.S.R…(E).- In exercise of the powers conferred by **section 164** of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Tenth Amendment) Rules, 2021.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, —

(i) in **rule 36**, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

"(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under **sub-section (1) of section 37** unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and

(b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under **sub-rule (7) of rule 60**.";

(ii) in **rule 80**,–

(a) after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-

eighth day of February, 2022.";

(b) after sub-rule (3), the following sub-rule shall be inserted, namely:-

"(3A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022.";

(iii) in **rule 95**, in sub-rule (3), after clause (c), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:-

"Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.";

(iv) in **rule 142**, with effect from the 1st day of January, 2022,–

(a) in sub-rule (3), for the words and letters, "fourteen days of detention or seizure of the goods and conveyance", the words, brackets and figures, "seven days of the notice issued under **sub-section (3) of Section 129** but before the issuance of order under the said sub-section (3)" shall be substituted;

(b) in sub-rule (5), for the words, "tax, interest and penalty payable by the person chargeable with tax", the words, "tax, interest and penalty, as the case may be, payable by the person concerned" shall be substituted;

(v) after **rule 144**, the following rule shall be inserted with effect from the 1st day of January, 2022, namely:-

"Recovery of penalty by sale of goods or conveyance detained or seized in transit.- 144A. (1) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under **sub-section (1) of section 129** within fifteen days from the date of receipt of the copy of the order passed

under sub-section (3) of the said **section 129**, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC-10** clearly indicating the goods or conveyance to be sold and the purpose of sale:

Provided that where the person transporting said goods or the owner of such goods pays the amount of penalty under **sub-section (1) of section 129**, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the proper officer shall cancel the process of auction and release such goods or conveyance.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(6) On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in **FORM GST DRC-12**.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

(8) Where an appeal has been filed by the person under the provisions of **sub-section (1) read with sub-section (6) of section 107**, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed:

Provided that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature. ";

(vi) for **rule 154**, the following rule shall be substituted with effect from the 1st day of January, 2022, namely:–

"Disposal of proceeds of sale of goods or conveyance and movable or immovable property.–

154. (1) The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under **sub-section (3) of section 129** shall,-

(a) first, be appropriated against the administrative cost of the recovery process;

(b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under **sub-section (3) of section 129**, as the case may be;

(c) next, be appropriated against any other amount due from the defaulter under

the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and

(d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund;

(vii) in **rule 159**, with effect from the 1st day of January, 2022,–

(a) in sub-rule (2)-

(A) after the words "copy of the order of attachment", the words, letters and figures "in **FORM GST DRC-22**" shall be inserted;

(B) after the words "Commissioner to that effect.", the words and figures, "and a copy of such order shall also be sent to the person whose property is being attached under **section 83**" shall be inserted;

(b) in sub-rule (3)-

(A) for the words "and if the taxable person", the word "and if the person, whose property has been attached," shall be substituted;

(B) for the words "by the taxable person", the words, "by such person" shall be substituted;

(c) in sub-rule (4), for the words "the taxable person" occurring at both the places, the words "such person" shall be substituted;

(d) in sub-rule (5), for the words brackets and figure ", within seven days of the attachment under sub-rule (1), file an objection", the words, letters and figures "file an objection in FORM GST DRC-22A" shall be substituted;

(viii) for "**FORM GST DRC-10**", the following form shall be substituted, with effect from the 1st day of January, 2022, namely:–

NOTIFICATION NO. 18/2021-CENTRAL TAX (RATE)

DATED : 28.12.2021

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification, -

a. in **Schedule I – 2.5%,** -

(i) against S. No. 2, for the entry in column (2), the entry "0303, 0304, 0305, 0306, 0307, 0308, 0309" shall be substituted;

(ii) against S. No. 9, for the entry in column (3), the entry "Yoghurt; Cream, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavored or containing added fruit, nuts or cocoa" shall be substituted;

(iii) against S. No. 14, for the entry in column (3), the entry "Insects and other edible products of animal origin, not elsewhere specified or included" shall be

substituted;

(iv) against S. No. 87, for the entry in column (3), the entry “Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.” shall be substituted;

(v) against S. No. 107, for the entry in column (3), the entry “Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable or microbial fats or oils, other than those of heading 2304 or 2305 other than cottonseed oil cake” shall be substituted;

(vi) against S. No. 127, for the entry in column (3), the entry "Dolomite, whether or not calcined or sintered, including dolomite roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape; 2518 10 dolomite, Not calcined or sintered", shall be substituted;

(vii) for S. No. 186A and the corresponding entries relating thereto, the following S. Nos. and the corresponding entries shall be substituted, namely: -

“186 A	3816	Dolomite ramming mix
186B	3826	Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel”;

(viii) against S. No. 232, for the entry in column (2), the entry “8419 12” shall be substituted;

(ix) For S. No. 244 and the corresponding entries relating thereto, the following Sl. No. and entries shall be substituted, namely: -

“244	8802 or 8806	Other aircraft (for example, helicopters, aeroplanes) except the items covered in Sl. No. 383 in Schedule III, other than for personal use”;

(x) against S. No. 245, for the entry in column (2), the entry “8807”, and for the entry in column (3), the entry “Parts of goods of heading 8802 or 8806 (except parts of items covered in Sl. No. 383 in Schedule III)”, shall be substituted;

(xi) against S. No. 258, for the entry in column (2), the entry "9405", shall be substituted;

b. in **Schedule II – 6%,** -

(i) against S. No. 15, for the entry in column (3), the entry "Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (Corylus spp.), Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.), Pine nuts [other than dried areca nuts]" shall be substituted;

(ii) against S. No. 25, for the entry in column (3), the entry "Animal or microbial fats and animal or microbial oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared." shall be substituted;

(iii) against S. No. 26, for the entry in column (3), the entry "Edible mixtures or preparations of animal fats or microbial fats or animal oils or microbial oils or of fractions of different animal fats or microbial fats or animal oils or microbial oils of this Chapter, other than edible fats or oils or their fractions of heading 1516" shall be substituted;

(iv) against S. No. 27, for the entry in column (3), the entry "Animal or microbial fats and animal or microbial oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal, vegetable or microbial fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified of included" shall be substituted;

(v) against S. No. 28, for the entry in column (3), the entry "Sausages and similar products, of meat, meat offal, blood or insects; food preparations based on these products" shall be substituted;

(vi) against S. No. 29, for the entry in column (3), the entry "Other prepared or preserved meat, meat offal, blood or insects" shall be substituted;

(vii) against S. No. 41, for the entry in column (3), the entry "Fruit or nut juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter." shall be substituted;

(viii) after S. No. 41 and entries relating thereto, the following S. No. and

entries shall be inserted, namely: -

"41A	2009 8 9 90	Tender coconut water put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE]";

(ix) S. No. 49 and the entries relating thereto shall be omitted;

(x) against S. No. 144, for the entry in column (3), the entry "Carpets and other textile floor coverings (including Turf), tufted, whether or not made up" shall be substituted;

(xi) against S. No. 185A, for the entry in column (2), the entry "7419 80 30" shall be substituted;

(xii) against S. No. 225, for the entry in column (2), the entry "9405" shall be substituted;

(xiii) against S. No. 236, for the entry in column (3), the entry "Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages, mosaics and similar decorative plaques" shall be substituted;

c. in **Schedule III – 9%,** -

(i) for S. Nos. 26A to 26L and the corresponding entries relating thereto, the following S. Nos. and the corresponding entries shall be substituted, namely: -

"26A	2404 12 00	Products containing nicotine and intended for inhalation without combustion
26B	2404 91 00, 2404 92 00, 2404 99 00	Products for oral application or transdermal application or for application otherwise than orally or transdermally, containing nicotine and intended to assist tobacco use cessation
26C	2515 12 20, 2515 12 90	Marble and travertine, other than blocks
26D	2516 12 00	Granite, other than blocks

26E	2601	Iron ores and concentrates, including roasted iron pyrites
26F	2602	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.
26G	2603	Copper ores and concentrates
26H	2604	Nickel ores and concentrates
26I	2605	Cobalt ores and concentrates
26J	2606	Aluminium ores and concentrates
26K	2607	Lead ores and concentrates
26L	2608	Zinc ores and concentrates
26M	2609	Tin ores and concentrates
26N	2610	Chromium ores and concentrates”;

(ii) S. No. 41 and the entries relating thereto shall be omitted;

(iii) against S. No. 72, for the entry in column (3), the entry “Safety Fuses; Detonating Cords; Percussion or Detonating Caps; Igniters; Electric Detonators”, shall be substituted;

(iv) after S. No. 98 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“98A	3827	Mixtures containing halogenated derivatives of Methane, Ethane or Propane, not elsewhere specified or included”;

(v) against S. No. 190A, for the entry in column (3), the entry “Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps and light sources, cathode ray tube or the like”, shall be substituted;

(vi) against S. No. 195, for the entry in column (3), the entry “Glass fibres (including glass wool) and articles thereof (for example, yarn, rovings, woven fabrics)”, shall be substituted;

(vii) against S. No. 317B, for the entry in column (3), the entry “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; Gas-tight biological safety cabinets, whether or not fitted with filters [other than bicycle pumps, other hand

pumps and parts of air or vacuum pumps and compressors of bicycle pumps]", shall be substituted;

(viii) against S. No. 320, for the entry in column (2), the entry "8419 [other than 8419 12]", shall be substituted;

(ix) against S. No. 330, for the entry in column (3), the entry "Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable or microbial fats or oils", shall be substituted;

(x) against S. No. 352, for the entry in column (3), the entry "Machine-Tools (Including Presses) For Working Metal by Forging, Hammering or Die Forging (Excluding Rolling Mills); Machine-Tools (Including Presses, Slitting Lines and Cut-To-Length Lines) For Working Metal by Bending, Folding, Straightening, Flattening, Shearing, Punching, Notching or Nibbling (Excluding Draw-Benches); Presses for Working Metal or Metal Carbides, Not Specified Above", shall be substituted;

(xi) after S. No. 369B and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"369C	8485	Machines for Additive Manufacturing";

(xii) after S. No. 382 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"382A	8524	Flat Panel Display Modules, Whether or Not Incorporating Touch-Sensitive Screens";

(xiii) For S. No. 383 and the corresponding entries relating thereto, the following Sl. No. and entries shall be substituted, namely: -

"383	8525 or 8806	Closed-circuit television (CCTV), transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders including goods in the form of unmanned aircraft falling under 8806 [other than two-way radio (Walkie talkie) used by defence,

		police and paramilitary forces, etc.]”;

(xiv) against S. No. 390, for the entry in column (3), the entry “Electrical Filament or discharge lamps including sealed beam lamp units and ultra-violet or infrared lamps; arc lamps [other than Light-Emitting Diode (LED) Light Sources]”, shall be substituted;

(xv) against S. No. 392, for the entry in column (3), the entry “Semiconductor Devices (for example, Diodes, Transistors, Semiconductor Based Transducers); Photosensitive Semiconductor devices; Light-Emitting Diodes (LED), whether or not assembled with other Light-Emitting Diodes (LED); Mounted Piezo-Electric crystals”, shall be substituted;

(xvi) against S. No. 398, for the entry in column (2), the entry “8548 or 8549”, shall be substituted;

(xvii) against S. No. 411H, for the entry in column (3), the entry "Lasers, other than Laser Diodes; other Optical Appliances and Instruments, not specified or included elsewhere in this Chapter", shall be substituted;

(xviii) against S. No. 413A, for the entry in column (3), the entry "Apparatus based on the use of X-rays or of alpha, beta, gamma or other ionizing radiations [other than those for medical, surgical, dental or veterinary uses], including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, 28 examinations or treatment tables, chairs and the like", shall be substituted;

(xix) against S. No. 438A, for the entry in column (3), the entry "Luminaires and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included [other than kerosene pressure lantern and parts thereof including gas mantles; hurricane lanterns, kerosene lamp, petromax, glass chimney, and parts thereof; LED lights or fixtures including LED lamps; LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit

Board)]", shall be substituted;

(xx) against S. No. 441A, for the entry in column (3), the entry "Travelling Circuses and Travelling Menageries; Amusement Park Rides and Water Part Amusements; Fairground Amusements, including Shooting Galleries; Travelling Theatres", shall be substituted;

(xxi) against S. No. 449B, for the entry in column (3), the entry "Vacuum flasks and other vacuum vessels, Complete; parts thereof other than glass inners", shall be substituted;

d. in **Schedule IV – 14%,** -

(i) after S. No. 15 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

"15A	2404 11 00	Products containing tobacco or reconstituted tobacco and intended for inhalation without combustion
15B	2404 19 00	Products containing tobacco or nicotine substitutes and intended for inhalation without combustion";

(ii) against S. No. 176, for the entry in column (2), the entry "8802 or 8806" shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

NOTIFICATION NO. 19/2021-CENTRAL TAX (RATE)

DATED : 28.12.2021

G.S.R. (E).- In exercise of the powers conferred by sub-sections (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 2/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674(E), dated the 28th June, 2017, namely :-

In the said notification, in the Schedule, -

(i) against S. No. 22, for the entry in column (2), the entry "0303, 0304, 0305, 0306, 0307, 0308, 0309" shall be substituted;

(ii) against S. No. 43B, in column (3), for the entry, the entry "Vegetables provisionally preserved, but unsuitable in that state for immediate consumption" shall be substituted;

(iii) against S. No. 49, in column (3), for the entry, the entry "Other nuts, fresh such as Almonds, Hazelnuts or filberts (Corylus spp.), walnuts, Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.), Areca nuts, Pine nuts, fresh, whether or not shelled or peeled" shall be substituted;

(iv) after S. No. 97 and entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"97A	2009 89 90	Tender coconut water other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any such actionable claim or enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the ANNEXURE I]";

(v) S. No. 101 and the entries relating thereto shall be omitted

(vi) against S. No. 141, for the entry in column (2), the entry "8807" shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

NOTIFICATION NO. 20/2021-CENTRAL TAX (RATE)

DATED : 28.12.2021

G.S.R. (E).- In exercise of the powers conferred by **sub-sections (1) of section 11** of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), **No. 21/2018-Central Tax (Rate)**, dated the 26th July, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 695(E), dated the 26th July, 2018, namely :-

In the said notification, in the TABLE, -

(i) against S. No. 4, for the entry in column (2), the entry "4414" shall be substituted;

(ii) against S. No. 29, for the entry in column (2), the entry "7419 80" shall be substituted;

2. This notification shall come into force on the 1st day of January, 2022.

NOTIFICATION NO.21/2021-CENTRAL TAX (RATE)

DATED : 31.12.2021

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), No.14/2021-Central Tax (Rate), dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 816(E), dated the 18th November, 2021, hereby makes the following further

amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.01/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification, -

a. in Schedule I – 2.5%, serial number 225 and the entries relating thereto shall be omitted;

b. in Schedule II – 6%, after serial number 171 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

"171A1	64	Footwear of sale value not exceeding Rs.1000 per pair."

2. This notification shall come into force on the 1st day of January, 2022.

NOTIFICATION NO. 22/2021-CENTRAL TAX (RATE)

DATED : 31.12.2021

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of **section 9**, **sub-section (1) of section 11**, **sub-section (5) of section 15**, **sub-section (1) of section 16** and **section 148** of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), **No.15/2021–Central Tax(Rate)**, dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 807(E), dated the 18th November, 2021, hereby makes

the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) **No.11/2017-Central Tax (Rate)**, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, against serial number 3,-

1) in column (3),in the heading "Description of Service", in items (iii),(vi),(ix) and (x), for the words "Union territory, a local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" shall be substituted;

2) in column (3), in the heading "Description of Service", in item (vii), for the words "Union territory, local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" shall be substituted;

3) in column (5), in the heading "Condition", the entries against items (iii),(vi),(vii),(ix) and (x), shall be omitted

2. This notification shall come into force with effect from the 1st day of January, 2022.

CIRCULAR NO. 167/23/2021 - GST

DATED : 17.12.2021

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioner of Central Tax (All)/The Principal Director Generals/Director Generals (All)

Madam/Sir

Sub: GST on service supplied by restaurants through e-commerce operators – reg.

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify, Restaurant Service' under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through ecommerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021 dated 18.11.2021 has been issued.

2. Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

Sl. No.	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of **section 9(5)**. On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to

		pay TCS in terms of section52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO

		shall account such services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of

		the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same

		manner as is being done at present. ECO will deposit TCS on such supplies.
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9(5) of the

		CGST Act, 2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

3. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

CIRCULAR NO. 168/24/2021 - GST

DATED : 30.12.2021

To,

The Pr. Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All) The Principal Directors General/Directors General (All)

Madam/Sir,

Subject: Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli.

New GSTINs with UT Code 26 were created for the taxpayers of erstwhile UT of Daman and Diu w.e.f 1st August, 2020 on merger of the UT of Dadra & Nagar Haveli and UT of Daman & Diu. During the transition, the taxpayers have transferred their ITC balance from their electronic credit ledger of the old GSTIN (by reversing the balance amount available in electronic credit ledger through the last return in **FORM GSTR 3B** filed for the old GSTIN prior to merger) to the new GSTIN (by availing the ITC for the said amount in the first return in **FORM GSTR 3B** filed for the new GSTIN) as per procedure specified under **Notification No. 10/2020-CT** dated 21.03.2020.

2 Representations have now been received from the field formations and trade/industry that due to transfer of ITC from old GSTIN to new GSTIN, the taxpayers are unable to apply for refund on account of zero-rated supplies and inverted rated structure for the period prior to merger in respect of old GSTIN as they have no ITC available in the electronic credit ledger of the old GSTIN for debiting the amount from electronic credit ledger for claiming refund of unutilised ITC. Such taxpayers are also unable to apply for such refund claim from the new GSTIN because all the invoices bear the old GSTIN and the

system has certain validations which do not allow the refund application to be filed from the new GSTIN for the period prior to the merger.

3 The matter has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by **section 168 (1)** of the Central Goods and Services Tax Act, 2017, hereby prescribes the following procedure in respect of the taxpayers, registered in the erstwhile UT of Daman & Diu and who are unable to file refund claim, due to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu, to enable such taxpayers to file refund claim for the period prior to merger:

i. The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilised ITC on account of export of goods/services, in remarks column, he shall enter 'Refund of unutilised ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.

ii. At this stage, the applicant is not required to make any debit from the electronic credit ledger.

iii. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per law. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.

iv. For the categories of refund where debit of ITC is not required, the applicant may apply for refund under the category "Any other" mentioning the reasons in

the Remarks column. Such application shall also be accompanied by all the supporting documents which are otherwise required to be submitted along with the refund claim.

4. No refund claim, requiring debit from the electronic credit ledger or where the refund would result in re-credit of the amount sanctioned in the electronic credit ledger, shall be filed using old GSTIN.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

मुख्य डेट्स

DATE	DESCRIPTION	FORM NO.
07.01.2022	DEPOSIT OF TAX DEDUCTED/COLLECTED FOR THE MONTH OF DECEMBER, 2021	ITNS 280
10.01.2022	RETURN FILLED BY THE PERSON REQUIRES TO DEDUCT T D S IN GST FOR THE MONTH OF DECEMBER 2021	GSTR-7
10.01.2022	RETURN FILLED BY E-COMM OPERATOR REQUIRE TO DEDUCT TDS IN GST FOR THE MONTH OF DECEMBER 2021	GSTR-8
11.01.2022	MONTHLY STATEMENT OF OUTWARD SUPPLY FOR THE MONTH OF DECEMBER , 2021 (OPTED FOR MONTHLY FILLING)	GSTR-1
13.01.2022	MONTHLY STATEMENT OF OUTWARD SUPPLY FOR THE MONTH OF DECEMBER , 2021 (OPTED FOR QUARTERLY FILLING)	GSTR-1
13.01.2022	RETURN FILLED BY INPUT SERVICE DISTRIBUTOR FOR THE MONTH OF DECEMBER 2021	GSTR-6
15.01.2022	DEPOSIT CONTRIBUTION TOWARDS PF/ESI FOR THE MONTH OF DECEMBER, 2021	ECR/ESI CHALLAN

कृषि भूमि की बिक्री पर पूंजीगत लाभ पर कोई कर नहीं यदि वो पूंजीगत संपत्ति नहीं है

हम पाते हैं कि निर्धारिक ने सफलतापूर्वक यह दर्शा दिया है कि अदालज में स्थित भूमि, 'नगर पालिका' या नगर निगम के क्षेत्र में नहीं आते हैं और इसलिए अधिनियम की धारा 2 (14) (iii) में उप-खंड (ए) में प्रदान किए गए अपवाद के अंतर्गत आते हैं।

जैसा कि निर्धारिती की ओर से कहा गया है, विकास प्राधिकरण यानी GUDA क़ानून द्वारा निर्मित एक संस्था है । । वित्त अधिनियम, 2013 के संशोधन के बाद दूरी के मापन के संबंध में प्रावधान संभावित रूप से लागू होते हैं।हम निर्धारिती की ओर से 8 किलोमीटर की दूरी की महत्वपूर्ण दलील पर भी सकारात्मक ध्यान देते हैं ।

इसलिए, न्यायिक घोषणाओं द्वारा प्रतिपादित तथ्यों और कानून के विश्लेषण पर, हम पाते हैं कि आरोपित भूमि अधिनियम की धारा 2 (14) में प्रदान की गई पूंजीगत परिसंपत्ति की परिभाषा के दायरे से बाहर आती है । नतीजतन, कृषि भूमि की बिक्री पर उत्पन्न होने वाले पूंजीगत लाभ जो कि पूंजीगत संपत्ति नहीं है, को अधिनियम के धारा 45 के तहत चार्ज नहीं किया जा सकता है।

पूरा निर्णय निम्न प्रकार है

ITAT AHMEDABAD

SHRI DASHRATBHAI, GOPALBHAI PATEL V/S THE INCOME TAX OFFICER

SHRI PRADIP KUMAR KEDIA, A M & SMT. MADHUMITA ROY, J M

I.T.A. NO. 1356/AHD/2017 (A Y : 2012-13)

31.08.2021

ORDER

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-10, Ahmedabad ('CIT(A)' in short), dated 29.03.2017 arising in the assessment order dated 23.03.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

The grounds of appeal raised by assessee read as under:

"1.0 The learned Commissioner of Income-tax (Appeals) erred in law and on facts in dismissing the appeal of the appellant.

2.0 The learned Commissioner of Income-tax (Appeals) erred in law and on facts in treating the agriculture land bearing Survey No. 361/1, 362, Block No.4 74 in village Adalaj District Gandhinagar as a capital asset u/s 2(14)(iii) (a) as well as u/s 2(14)(iii) (b) of the Income Tax Act, 1961.

3.0 The learned Commissioner of Income-tax (Appeals) further erred in law and on facts in confirming the addition of Rs.1,33,25,071/- made by the ld. A.O. as long term capital gain.

4.0 The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the action of ld. A.O. whereby the exemption claimed u/s 54B has been restricted to Rs.20,00,000/-instead of Rs.2,11,00,000/-."

3. Briefly stated, the assessee in its return of income for A.Y. 2012-13 inter alia declared long term capital gains of Rs.1,33,25,071/-on sale of certain land parcels at Adalaj, Gujarat. The assessee claimed deduction under s.54B of the Act to the extent of aforesaid long term capital gain by way of purchase of another land at Khoraj for a consideration of Rs.2,11,00,000/-. Consequently, the taxable capital gain was shown at Nil in the return of income. While framing the assessment under s.143(3) of the Act, the AO held that the capital gains on sale of agricultural land arising to the assessee falls within the definition of capital asset under s.2(14)(iii) of the Act for the reason that the land parcel giving rise to capital gains is situated in an area which is comprised within the Municipality and such agricultural land falls within the distance not being more 8 kilometers from the local limits of Municipality/Contentment Boards. The AO accordingly held that capital gains arising on sale of agricultural land situated within the Municipal limits are not excluded from the definition of 'capital asset' and is thus chargeable to tax. Further, the exemption claimed by the assessee under s.54B of the Act to the tune of Rs.2,11,00,000/- was restricted to Rs.20 Lakhs on the basis of actual payments made by the assessee against the agreed consideration.

4. Aggrieved, the assessee preferred appeal before the CIT(A).

5. The CIT(A), however, did not find merit in the plea raised on behalf of the assessee for exclusion of the agricultural land from the definition of 'capital asset'. The CIT(A) also endorsed the action of the AO in restricting the exemption to the extent of Rs.20 Lakhs stated to be invested by the assessee for purchase of another agricultural land.

6. Further aggrieved, the assessee preferred appeal before the Tribunal.

7. In the course of hearing, the learned counsel for the assessee made extensive arguments to support its plea that the agricultural land parcel situated at Adalaj did not fall within 8 kilometers of the Municipal limits in the peculiar fact situation and consequently the land in question was claimed to be outside the scope and ambit of Section 2(14) of the Act. It was thus argued that the land not being a 'capital asset' is not chargeable to capital gain arising on sale thereof. We shall deal with various plea at appropriate place in succeeding paragraphs.

8. The learned DR for the Revenue mainly relied upon the order of the CIT(A).

9. We have carefully considered the rival submissions and perused the orders of authorities below as well as the material referred to in terms of Rule 18(6) of the ITAT Rules, 1963 and also case laws cited. The principle question that arises in the instant case is whether the agricultural land parcel in question situated at Village Adalaj, Gujarat falls within the definition of 'capital asset' under s.2(14) of the Act for the purposes of chargeability of capital gains on sale thereof or not. The other question relates to quantification of capital gains under s.54B of the Act in the event of the capital gain arising on sale of Adalaj land is found chargeable to tax.

10. The key points raised on behalf of the assessee to defend the stance of the assessee that the agricultural land sold giving rise to capital gains does not fall within the purview of definition of 'capital asset' and consequently not chargeable capital gain tax are listed hereunder:

(a) It is admitted fact that the impugned land at Survey No.361/lm 362 Block No.474, Village Adalaj (sold on 17.06.2011) was an 'agriculture land' because the above fact is neither disputed by the Id. A.O, nor by the ld. CIT(A). It is also admitted that Adalaj is a village administered by the/Gram Panchayat and not by any 'municipality' etc.

(b) The final figures of Census 2011 were not published before 1st April, 2011. In view of the above, the population of village Adalaj as per data last published as per the Census of 2001 were less than 10,000. Moreover, Adalaj is a village not having 'municipality' or 'municipal corporation' and therefore the sub-clause (a) of Section 2(14)(iii) would not be applicable in view of the decisions in the following cases:-

(a) CIT v/s P.J. Thomas (1995) 211 ITR 897

(b) Srichand Dembla v/s DCIT 39 com 180 (Jodh-Trib.)

(c) ITO v/s Uppala Bhktavatsala Rao 12 Taxmann 40 (Hvd-Trib.)

(c) The Gandhinagar Urban Development Authority (GUDA) was created on

12.03.1996 under "The Gujarat Town Planning & Urban Development Act, 1976" with a view to carry out sustained planned development of the area falling outside the periphery of Gandhinagar Notified Area. A Municipality or Municipal Corporation is Constitutional body, while a Development Authority is a creation of statute. The role of Municipality or Municipal Corporation is all-together different from Development Authority. GUDA does not have elected representatives but only nominated representatives by the Government further it does not provide civic amenities etc. Moreover, it does not have power to levy taxes. Later, on 16.03.2010 consequent to the judgment delivered by the Hon'ble Gujarat High Court in 2009, an elected body administrating Gandhinagar was set up as "Gandhinagar Municipal Corporation". Similarly, Ahmedabad Urban Development Authority (AUDA) is also not termed as 'municipality' or 'municipality corporation'. It is held by Hon'ble Kerala High Court in the case of CIT v/s Murali Lodge 194 ITR 125 (Ker) that only those local authorities, township, etc. can be treated as municipality within meaning of section 2(14)(iii)(a) which satisfy the requirements of a municipality within the meaning of relevant Municipal Act. It is held in following judgements that a Development Authority is not a Municipality: –

(a) T. Urmila v/s ITO (2012) 34 CCH 0477 HvdTrib &

(b) ITO v/s Shri Adela Krishna Reddy [ITA No.l838/Hvd/2013]

(d) The provision regarding measurement of distance 'aerially' has been introduced for the first time by the Finance Act, 2013 w.e.f, 01.04.20l5 only. Thus, in this case the distance between the impugned land 'municipality' or 'municipal corporation' must be measured via the shortest road distance. Reliance is placed in the case of CIT(A) v/s Nitish Rameshchandra Chordia (2015) 374 ITR 531 (Bom) & ITO v/s Akash Deep Farms P. Ltd. 2016 (9) TMI 918-ITAT AHMEDABAD.

(e) For the purpose of sub-clause (b) of Section 2(14)(iii), the distance of 8 Kms. from the 'municipality' or 'municipal corporation' has to be seen as on the date of Notification No. [SO 9447] [FileNo.l64/3/87-ITA.l] dated 06.01.1994 i.e. 06.01.1994 as per Explanation (2) to the above Notification. Moreover, the following decisions also support the above view:-

(a) Pr CIT v/s Khetilal Sharma (HUF) 2017 (11) TMI 1651 -Raj HC

(b) ITO v/s Akash Deep Farms P. Ltd 2016 (9) TMI 918-ITAT AHD

(f) In view of the above propositions, it is evident that the impugned land is not a 'capital asset' being not a land which falls in either sub-clause (a) or (b) of section 2(14)(iii) of the Income Tax Act, 1961.

(g) Moreover, in the case of one of the co-owners Shri Gabhaji Somaji Thakur (l/3rd share), the ld. CIT(A), Gandhinagar vide his order dated 18.01.2019 has held that the impugned land is not a 'capital asset' within meaning of section 2(14) of the Act.

11. We straightway notice that the CIT(A), Gandhinagar in the case of other co-owner Shri Gabhaji Somaji Thakur (l/3rd share), has given a reasoned order and held that impugned land is not a capital asset within the meaning of Section 2(14) of the Act and consequently, not susceptible to capital gain tax. The relevant para of the CIT(A) in the case of Shri Gabhaji Somaji Thakur (supra) is reproduced hereunder:

"5.2 I have carefully considered the assessment order and submission filed by Appellant. The brief facts of present case are that Appellant alongwith co-owners had sold land at Adalaj, Dist. Gandhinagar for Rs.4,12,50,000/- and claimed that such land is agricultural land situated beyond 4 kms from Gandhinagar Municipal Corporation (CMC). The AO has taxed gain arising on sale of above land as income from long term capital gain and agricultural land exigible to capital gains tax mainly on the reason that land sold was transferred from category of 'new condition' to 'only agriculture purpose and eligible for premium' and also gathered that the population of village Adalaj was 11,957 people as was gathered from Taiati-Cum-Mantri, u/s 133(6) of the Act. On this basis, the AO concluded that land sold by Appellant is not a capital asset Thus, the AO has taxed income from long term capital gain of Rs. 1,33,33,645/-. On the other hand, the Appellant has referred to provisions of Section 2(14)(iii) of the Act and stated that CBDT has issued Notification No. 9447 dated 6th January, 1994 specifying the limit of 4 kms of Gandhinagar Municipal Corporation. The case of the Appellant is squarely covered by the decision of Hyderabad Tribunal in case of Adela Krishna Reddy vide ITA No:

1838/Hyd/2013 dated 29/06/2016 as under:

Capital Asset—Agricultural Land—Assessee filed his return of income admitting total income of Rs.5,05,620—AO completed assessment by determining taxable income of assesses at Rs.76,12,500—Assessing officer considered HADA as Govt. Notified Local Authority and concluded that it was Municipality within meaning of section 2(14)(iii)(a)—AO held that land sold by Assessee was not in nature of agricultural land and Assesses fell within capital asset as defined u/s 2(14)(iii)—CIT(A) held that land sold by assesses did not fall within such distance of not bang more than 8 km from local limit of any municipality or cantonment board as referred to in sub-clause(b) of section 2(14)(iii) as lands covered under HADA were more than 21 Kms from Municipal areas—CIT (A) allowed relief to assessee declaring said land as agricultural land and that they did not fall within capital asset as defined u/s 2(14)(iii)—Held, it was in record that land sold by assessee also did not fall within such distance of not being more than 8 kms from local limit of any municipality or cantonment rather lands covered under HADA were more than 21 Kms from municipal areas i, e. GHMC of Hyderabad—In case of T. Urmila, in similar issue Tribunal held that HADA was not local body and lands within HADA was not capital asset u/s 2(14)(iii)—In assessee's case, land sold by assessee was within HADA and therefore, character of land was agricultural land—ITAT did not see any reason to interfere with order of CIT (A)—Revenue's Appeal dismissed.

It is observed that the Notification No So: 9447 dated 06/01/1994 issued by the Central Government specifically provides for measuring the distance of particular land from Municipal Corporation Limit and accordingly it is held that the reliance of AO on the certificate of AUDA is justified.

Further, it is also observed that distance of particular land is to be 'measured from the date of Notification No: 9447 dated 06/01/1994 and even considering such fact that distance between Gandhinagar Municipal Corporation to Adalaj is beyond 4 kms and accordingly the Appellant has correctly claimed capital gammon sale of land as exempt u/s 2(14)(iii) of the Act. The case of the Appellant is squarely covered by the decision of Hon'ble Ahmedabad Tribunal in case of Akash Deep Farm Pvt Ltd vide ITA No: 2138/Ahd/2012 dated 11/08/2015 as under:

10. Next objection of the AO was that the State Government has enhanced the municipal limit in 2006 and the distance is to be measured from new boundary of the Ahmedabad Municipal Corporation Limit, AMC limit was extended upto Sarkhej since 2006. The ld.CIT(A) has examined this aspect, and has observed that perusal of sub-clause (b) of section 2(13)(iii) would indicate that the municipal limit is to be taken from the area which has been notified by the Central Government in its gazette notification. Central Government has notified the area on 6.1.1993, and from that notification, the agriculture land of the ITA No.2564 and 2138/Ahd/2012 assessee was situated beyond a distance of 8KMs. This aspect has been lucidly considered by the ld. CIT(A) in the finding extracted supra. We do not see any reason to interfere in this finding. In view of the above discussion, we do not find any merit in the appeal of the Revenue. It is dismissed.

The AO has contended that the land was situated within 100 mtrs from Zundal Circle of AMC limit and from Zundal Circle to Adalaj is 5.66 kms. 8 kms from Municipal limit of Ahmedabad and therefore gain is taxable as Long Term Capital Gain. On the other hand, appellant has referred to Notification No 9447 dated 06/11/1994 wherein distance of area falling outside local limit of Gandhinagar Municipality hence argued that land is beyond the prescribed Municipal limit and not liable for capital gain.

On careful consideration of entire facts along with circular referred by the appellant, it is observed that for the purpose of section 2(14), distance of land from Gandhinagar Municipality is more than 5 kms and falling in the Gandhinagar district and not Ahmedabad district as held by the AO in the assessment order. The appellant has also submitted a certificate from the office of the District Inspector, Land Records Gandhinagar, wherein it is stated that above land is situated at 5017 meters from Municipal Limit of Gandhinagar which supports the contention of the appellant that the land is beyond 4 kms from the limits of Gandhinagar Municipal Corporation. From the above, it can be concluded that the land in question is situated 5.017 kms from the Gandhinagar Municipality limit and population of Adalaj is 9776 people as per last census conducted in 2001, hence, gain on sale of land is not liable for taxation u/s 2(14) of the Act.

Therefore, it is held that the AO is not justified in treating the gain on sale of land as taxable long term capital gain. The land is agriculture land within the definition of section 2(14) of the Act and therefore, the addition made by the AO of Rs.1,33,33,645/- is directed to be deleted."

Needless to say, the stance of the revenue has to be consistent in the same lis. The order of the CIT(A) in the case of other co-owner of the impugned land Shri Gabhaji Somaji Thakur in not under challenge. Therefore, the view taken in the case of other co-owner has attained finality and ought to have been followed as a matter of judicial discipline. The Revenue cannot be permitted to take different stand in two different cases emanating from same set of facts. The case of the assessee for exclusion of agricultural land from the definition of 'capital asset' placed in identical factual matrix thus requires to be upheld on this ground alone.

12. Moving further on merits, we find that the assessee has successfully demonstrated that the land parcels situated as Adalaj does not fall within the meaning of expression 'Municipality' or 'Municipal Corporation' and therefore falls in exception provided in sub-clause (a) to Section 2(14)(iii) of the Act. As stated on behalf of assessee, the development authority i.e. GUDA is a creation of statute. It cannot be equated with Municipal Corporation in the light of the ratio of decisions of Hon'ble Kerala High Court in the case of Murali Ldge (supra) and T. Urmila (supra) as rightly pointed out on behalf of the assessee. The provisions regarding aerial measurement of distance is applicable prospectively after the amendment by way of Finance Act, 2013. We also take affirmative note of the significant plea on behalf of the assessee that distance of 8 kms. from the Municipality has to be seen from the date of notification dated 06.11.1994 in the light of judicial pronouncements quoted above.

13. Hence, on objective analysis of the facts and law enunciated by the judicial pronouncements, we find that impugned land falls outside the ambit of definition of capital asset provided in Section 2(14) of the Act. Consequently, the capital gains arising on sale of agricultural land which is not a capital asset cannot be brought to charge under s.45 of the Act. We thus find merit in the plea of the assessee for exemption of capital receipt from ambit of taxation.

14. Once, it is found that the capital gains arising from sale of agricultural land

itself is not susceptible to chargeability, the claim of deduction under s.54B becomes infructuous and therefore not adjudicated upon.

15. As a consequence, appeal of the assessee is allowable both on merits as well as on the grounds of doctrine of consistency. The order of the CIT(A) is accordingly set aside and additions made by the AO on this score is quashed.

16. In the result, the captioned appeal of the assessee is allowed.

IMPORTANT GST AMENDMENT APPLICABLE FROM 1ST JANUARY 2022

A. SECTION 16(2)(aa)

NO INPUT TAX CREDIT (ITC) UNLESS REFLECTED IN GSTR 2B

Now the purchaser will not be able to avail the benefit of Input Tax Credit (ITC) unless details of invoices are uploaded by supplier in Form GSTR-1. It is only after the invoice is uploaded in GSTR 1 that the buyer would be able to view it in 2B and get the credit of ITC thereafter. Any error on the part of the supplier in uploading would result in the denial of the credit to the buyer. Further, now IFF would be mandatory for the person who has opted for Quarterly Return Monthly Payment (QRMP) scheme as the buyer would not be able to get the ITC till it is reflected in their GSTR-2A.

S. 16. ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT

(*2*) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.

B. SECTION 75(12)

DIFFERENCE BETWEEN GSTR -1 & GSTR-3B: DIRECT RECOVERY:

Section 75(12) is amended so as to provide that tax declared under GSTR-1 but not included in GSTR-3B, will be considered as “Self Assessed Tax” and hence direct recovery of such tax under Section 79 will be possible even without issuing any Show Cause Notice (SCN). Now, one has to be extra careful while filing GSTR-1 as well as GSTR-3B as any human error in filing the returns

would have adverse effects on such taxpayers. The concept of “principle of Natural Justice” has been done away by removing the requirements of issuing SCN.

Section 75

GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX

(*12*) Notwithstanding anything contained in **section 73** or **section 74**, where any amount of self-assessed tax in accordance with a return furnished under **section 39** remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of **section 79.**

Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

C. RULE 59(6)

NO GSTR-1 FILING PERMISSIBLE IF GSTR-3B NOT FURNISHED FOR PREVIOUS MONTH

Rule 59(6) of the CGST Rules to be amended with effect from 01.01.2022 to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in Form No. GSTR-3B for the preceding month.

RULES-59

FORM AND MANNER OF FURNISHING DETAILS OF OUTWARD SUPPLIES

(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under **section 37** in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B **for the preceding month;**

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of **section 39**, shall not be allowed to furnish the details of outward supplies of goods or services or both under **section 37** in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) [***]

D. SECTION 129

E-WAY BILL: 200% PENALTY TO RELEASE GOODS

Violation of the norms related to e-way bill has been made more stringent. At present, full tax and 100% penalty is required to be paid for releasing the goods which are seized for violation of E-way Bill related provisions and for non-carrying of other documents under Section 129. Now, it is provided that goods will be released on payment of a penalty equal to 200% of tax and tax will be recovered through separate proceedings.

Section 129

DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

(*1*) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is

less, where the owner of the goods comes forward for payment of such penalty:

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty]

(*c*) upon furnishing a security equivalent to the amount payable under clause (*a*) or clause (*b*) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

E. SECTION 83

SCOPE OF PROVISIONAL ATTACHMENT WIDENED:

Now, the power of Provisional attachment is made applicable in all cases of proceedings of Assessment, Inspection, Search, Seizure and Arrest or Demands and Recovery. Now, provisional attachment of property, like bank accounts, etc can be done not only in the case of Show Cause Notices and investigation but also for other proceedings like Scrutiny of Returns and tax collected but not paid.

Section 83

PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

(*2*) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section.

HC ने एओ को धारा 144B का पालन नहीं करने के लिए प्रधानमंत्री केयर को ₹25000 का भुगतान करने का निर्देश दिया

HC ने अपने आदेश में फेस लेस मूल्यांकन के प्रभावी कार्यान्वयन के लिए अस्सेस्सिंग ऑफिसर के बीच विवेकपूर्ण दृष्टिकोण लाने के लिए मूल्यांकन अधिकारी को निर्देश जारी किए जाने की आवश्यकता है ।

कर निर्धारण अधिकारी को अधिनियम की धारा 144बी की उप-धारा (9) के तहत दिए गए परिणाम के बारे में पता होना चाहिए था । जो धारा 144B में प्रदान की गई प्रक्रिया में पूरे मूल्यांकन को समाप्त करता है यदि इसका अनुपालन नहीं किया जाता है|

मूल्यांकन के आदेश को पारित करने में अनुचित जल्दबाजी फेस लेस मूल्यांकन योजना शुरू करने के पीछे के उद्देश्य के लिए घातक है जिसके परिणामस्वरूप अदालतों पर अधिक बोझ पड़ता है|

मूल्यांकन अधिकारी पर लागत लगाने को एक दंड के रूप में नहीं लगा सकते | फिर भी, यह अपने उद्देश्य और उद्देश्य को प्राप्त करने के लिए फेसलेस असेसमेंट योजना को लागू करने के लिए एक निवारक के रूप में काम करेगा ।

इसलिए, हम कर निर्धारण अधिकारी को निर्देश देते हैं कि वह पीएम केयर को दान के रूप में 25,000 रुपये (पच्चीस हजार रुपये) की राशि का भुगतान करे।

इस राशि का भुगतान संबंधित कर निर्धारण अधिकारी द्वारा उसके व्यक्तिगत खाते से पीएम केयर को किया जाएगा।

पूरा केस लॉ निचे पढ़े

HIGH COURT OF BOMBAY

PARAG KISHORCHANDRA SHAH V/S THE NATIONAL FACELESS ASSESSMENT CENTER & ORS.

K.R. SHRIRAM & AMIT B. BORKAR, JJ.

WRIT PETITION (L) NO. 11052 OF 2021

27.10.2021

JUDGMENT

1. At the outset Mr. Gandhi states that the dates given in prayer clause (a) to (d) where it is stated that 24th April, 2021, it should be corrected to read as 20th April, 2021. Mr. Gandhi expresses regret for the error.

2. Petitioner is impugning the Assessment Order dated 20th April, 2021 passed under Section 143 (3) read with Section 144 B of the Income Tax Act, 1961 (the Act) together with Notice of Demand under Section 156 of the Act and Show Cause Notice under Section 274 read with Section 270 A, 271 AAC of the Act both dated 20th April 2021. The ground primarily is that the order has been passed without following principles of natural justice in as much as reasonable time to file response to the Draft Assessment Order was not granted and even the response and documents filed earlier have not been considered in the Draft Assessment Order.

3. Petitioner has been filing response to various notices received under Section 142 (1) of the Act. Last such notice was dated 14th February, 2021 under Section 142 (1) of the Act and petitioner filed its reply to the said notice in three parts, the last of which is dated 24th February, 2021.

4. Thereafter, suddenly petitioner received on Saturday, 17th April, 2021 at about 4.30 p.m., (almost two months later) a notice dated 17th April, 2021 digitally singed at 14:43:37 IST on 17th April, 2021 calling upon petitioner to show cause as to why the assessment should not be completed as per the Draft

Assessment Order. This was the time when there was total lock-down in Maharashtra including Mumbai due to Covid pandemic. Petitioner, in effect having been granted only one working day time to respond, therefore filed a request on 19th April, 2021 (18th April, 2021 being Sunday) bringing to the notice of respondents, problem faced due to Covid 19 situation and sought a reasonable period of ten days to respond to the Show Cause Notice. According to us, respondents have been most unreasonable and unfair to an assessee in giving such a short time to respond, whatever could be their reason. We make this observation because the last response which petitioner had filed to the notice under Section 142 (1) of the Act was on 24th February, 2021 and respondents took almost two months to prepare a Draft Assessment Order and gave a very unreasonably short period of less than 24 working hours to respond to the Draft Assessment Order. Ignoring even this request for reasonable period of ten days, on 24th April, 2021 an Assessment Order digitally signed at 13:10:56 IST was passed followed with Notice of Demand under Section 156 of the Act and Notice of Penalty under Section 274 read with Section 271 A of the Act recomputing petitioner income by adding a sum of Rs.12,57,02,560/-both also dated 24th April, 2021.

5. In the Assessment Order respondent states as under :

"In this case show cause notice with draft assessment order was also sent to the assessee on17-04-201 whereby date of compliance was fixed on 19-04-2021, but till date no reply filed by the assessee".

6. Therefore, the Assessing Officer has not even bothered to even look at the adjournment request dated 19th April, 2021. Notwithstanding this, respondents have filed an affidavit in reply through one Mr. Manoj Kumar, Assistant Commissioner of Income Tax affirmed on 10th August, 2021 in which it is stated that the assessment was getting time barred on 30th April, 2021 and by seeking ten days adjournment on 19th April, 2021 petitioner had intended to put pressure of time on the Assessing Officer and when the Assessing Officer had allowed time upto 19th April, 2021 to respond to the Show Cause Notice dated 17th April, 2021, there is no legal infirmity in the action of the Assessing Officer for completing the assessment on 20th April, 2021. It is like adding insult to injury. Even for a moment we feel that there was hurry to pass the Assessment Order, because it was getting time barred on 30th April, 2021, still

when a request for adjournment was sought on 19th April, 2021, the Assessing Officer could have atleast given five days time to the assessee when he has taken almost two months to prepare a Draft Assessment Order. We are also shocked by the tenor of the affidavit in reply where petitioner is accused of bringing pressure on the Assessing Officer where petitioner has sought a reasonable time of ten days. In our view, this stand of respondents is most unfortunate and gives an impression of high handedness. We note our displeasure at this unacceptable stand of respondents and we only hope that respondents will be gracious in owning their mistakes and not take such unreasonable stand.

On this ground alone, petition has to be allowed.

7. Moreover, as rightly pointed out by Mr. Gandhi, respondent has not even considered the submissions made and the documents filed by petitioner in the Assessment Order. Mr. Gandhi pointed out, for e.g., with regard to sale of flat at Sahyadri, Neelkanth one of the items in the Assessment Order, the Assessing Officer has alleged that there was no evidence to prove that the property was acquired by petitioner from his father's HUF. According to Assessing Officer there is no evidence of court order or probate or Deed of Partition filed and in the absence of Deed of Partition or probate, title of petitioner in the property has not been established. Therefore, the consideration received on sale of the said property must be taxed as income from the other sources in the hands of petitioner. But the fact is petitioner has submitted ;

(a) Copy of the will and probate granted by the Bombay High Court alongwith its submission dated 17th February, 2021.

(b) Copy of Partition Deed alongwith submission dated 15th January, 2021.

(c) Purchase Deed of the said property alongwith submission dated 15th January, 2021.

In the Assessment Order it is also alleged, with regard to a commission of Rs.45 Lakhs, that petitioner had received this amount from M/s. Mascott Infra Projects LLP but the same has not been included in income, was not offered to tax with TDS deducted of Rs.15,99,075/- and payment of Rs.29,00,925/- and therefore

liable to be added being under the head other sources. Penalty under Section 271 of the Act for under reporting income has also been initiated. But the fact, as alleged in the petition, is that petitioner had received commission of Rs.45 Lakhs from one Man Infraconstruction Ltd. and not any M/s. Mascott Infra Projects LLP. According to petitioner, petitioner had received commission of Rs. 45 Lakhs from Man Infraconstruction Ltd., TDS of Rs.15,99,075/- was deducted and balance payment of Rs.29,00,925/- was received and that amount has already been offered to tax. Petitioner had also submitted Form No.16 from Man Infraconstruction Ltd., vide its submission dated 9th October, 2019, details of salary wherein it has been mentioned that petitioner had received a commission of Rs. 45 Lakhs from Man Infraconstruction Ltd., vide its letter dated 28th February, 2020 and vide submission dated 12th February, 2021, petitioner had also filed details about the receipt from Man Infraconstruction Ltd., and those details mentioned about the salary, commission and pay slips.

8. In the affidavit in reply it is not denied that these materials have been provided. In the affidavit in reply it is stated that these related to merits of the addition/dis-allowance made by the Assessing Officer and the remedy was to file an Appeal and not a Writ Petition before this court. Once again, we have to observe that this stand of respondents smacks of perversity and is totally unacceptable.

9. In the circumstances, we have no hesitation in setting aside the impugned Assessment Order, Notice of Demand as well as Show Cause Notice, all dated 20th April, 2021. Ordered accordingly.

10. For the reasons stated in paragraphs 4 and 6 of this Judgment, we are satisfied that this is a fit case where a direction needs to be issued to the Assessing Officer to pay costs to bring judicious approach amongst Assessing Officers for effective implementation of faceless assessment in its letter and spirit. The Assessing Officer should have been aware of the consequence provided under sub-Section (9) of Section 144B of the Act, which renders the entire assessment non-est in case procedure provided in Section 144B is not complied with. Undue haste in passing order of assessment runs counter to the purpose behind introduction of Faceless Assessment Scheme resulting in over-burdening of the Courts. The imposition of costs on the Assessing Officer may not act as a penalty. Still, it will serve as a deterrent for implementing the

Faceless Assessment Scheme to achieve its purpose and object. We, therefore, direct the Assessing Officer to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) as donation to PM Cares. This amount shall be paid by the concerned Assessing Officer from his/her personal account to PM Cares and the account details are as under :-

This amount shall be paid by the concerned

This shall be paid within two weeks from the day this order is uploaded and compliance affidavit annexing thereto proof of payment from his/her savings account shall be filed within a week thereafter.

11. Petition be listed for compliance on 15th December, 2021.

पीसीआईटी अपने संशोधन क्षेत्राधिकार (263) का उपयोग नहीं कर सकता है जब तक कि दोनों शर्तें संतुष्ट न हों

निर्धारिती एक व्यक्ति है और उसने 31/03/2017 को 78,19,090 रुपये की कुल आय घोषित करते हुए 2015-16 के लिए अपनी आय का रिटर्न दायर किया था ।

निर्धारिती मुंबई में पुरानी इमारतों के रियल एस्टेट विकास के कारोबार में लगी हुई है।

विचाराधीन वर्ष के दौरान, निर्धारिती ने ' व्यवसाय या पेशे से आय ' के शीर्षक के तहत आय दिखाई है|

मूल्यांकन कार्यवाही के दौरान निर्धारिती ने एओ के समक्ष उसके अग्रीमेंट की प्रतियों के साथ बेचे गए फ्लैटों का ब्यौरा प्रस्तुत किया । बिक्री समझौते के सत्यापन पर, एओ ने वास्तविक बेचे गए फ्लैटों के स्टांप ड्यूटी मूल्यांकन की तुलना की और अधिनियम के 43CA के प्रावधानों को लागू करके 22,78,740 रुपये का एडिशन लगा दिया जो की बुकिंग की तारीख और वास्तविक बिक्री दिनांक पर स्टांप ड्यूटी मूल्य के बीच अंतर होना|

निर्धारिती ने कमिशनर के समक्ष अपील फाइल की है जो की आयकर अपील आयुक्त (मुंबई) और वही लंबित है|इस बीच, आयकर आयुक्त ने अधिनियम की अपनी पुनरीक्षण शक्तियां धारा 263 का प्रयोग करते हुए AO द्वारा पारित आदेश को इस आधार पर राजस्व के हित के लिए गलत और प्रतिकूल मानते हुए संशोधित करने की मांग की कि एओ को फ्लैटों की बुकिंग की तारीख पर स्टांप तिथि मूल्य नहीं लिया जाना चाहिए था|

तदनुसार, आयुक्त ने अधिनियम की धारा 43सीए के प्रावधानों को लागू करके एओ को 1,13,43,600 रुपये की राशि में अंतर बिक्री जोड़ने का निर्देश दिया।

पूरा केस लॉ निचे पढ़े

ITAT MUMBAI

MR. AKIB ARIF PATEL V/S PRINCIPAL COMMISSIONER OF INCOME TAX

SHRI M.BALAGANESH, A M & SHRI AMARJIT SINGH, J M

ITA NO.545/MUM/2021 (A Y : 2015-16)

30.08.2021

ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.545/Mum/2021 for A.Y.2015-16 preferred by the order against the revision order of the ld. Principal Commissioner of Income Tax-20, Mumbai u/s.263 of the Act dated 11/03/2021 for the A.Y.2015-16.

2. The first issue to be decided in this appeal is as to whether the ld. Pr. Commissioner of Income Tax had validly assumed revision Jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case. The interconnected issue involved therein is on merits of the addition in the form of difference between stamp duty value on the date of registration of the property as against stamp duty valuation on the date of booking of the flats and the actual consideration and directed to be added by the Pr. CIT in the sum of Rs.1,13,43,600/- as against Rs.22,78,740/-.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual and had filed his return of income for the A.Y.2015-16 on 31/03/2017 declaring total income of Rs.78,19,090/-. The assessee is engaged in the business of real estate development and re-development of old buildings in Mumbai. During the year under consideration, the assessee has shown income under the head 'income from business or profession'. During the course of assessment proceedings, the assessee furnished details of flats sold along with copies of agreement thereof before the ld. AO. On verification of the sale agreement, the ld. AO compared the stamp duty valuation of those flats sold with the actual consideration and resorted to make addition of Rs.22,78,740/- by applying provisions of 43CA of the Act, being the difference between the stamp duty value on the date of booking and actual sale consideration. The assessee has preferred appeal before the ld. Commissioner of Income Tax Appeals (Mumbai) and the same is pending. Meanwhile, the ld. Pr. Commissioner of Income Tax by exercising his revisionary powers u/s. 263 of the Act, sought to revise the order passed by the ld.AO as erroneous and prejudicial to the interest of the revenue on

the ground that the ld. AO ought not to have been taken the stamp date value on the date of booking of the flats and instead he should have taken the stamp duty value on the date of actual registration of the flats. Accordingly, the ld. Pr. Commissioner of Income Tax directed the ld. AO to add the differential sale consideration in the sum of Rs.1,13,43,600/- by applying the provisions of Section 43CA of the Act.

According to the ld. PCIT, the ld. AO had incorrectly applying the provisions of law of Section 43CA of the Act while adjudicating the issue, even though relevant enquiries were indeed made by the ld.AO while framing the assessment.

3.1. The basis of framing of addition by the ld AO in the sum of Rs.22,78,740/- u/s.43CA of the Act is as under:-

S. N.	Carpet	Area	Booking Date	Agreement Value	Market value on booking	Date of 1st installment	Full considered received	Registration date	Market value on registration	Difference	Difference in%
				A	B				C		
1	201	450	14.12.2011	4000000	4812825	04.12.2013	05.12.2014	07.05.2014	7625500	812825	20.32%
2	202	450	14.12.2011	4000000	4812825	23.01.2014	06.02.2014	07.05.2014	7625500	812825	20.32%
3	503	360	08.03.2013	4000000	4315860	01.10.2013		02.07.2014	5272000	315860	7.90%
4	702	360	08.05.2013	4000000	4315860	25.06.2014	30.06.2014	19.07.2014	5272600	315860	7.90%
5	1102	360	10.05.2013	4500000	4521370	08.02.2014	24.02.2014	26.11.2014	5525000	21370	0.47 :/0
Total										22,78,740	

3.2. The basis of addition of Rs.1,13,43,600/- as directed by the ld. PCIT to the ld.AO is as under:-

S. No.	Office/Flat No.	Name of the Purchaser	Date of agreement	Consideration	Stamp duty valuation	Difference	Payment receiv During F.Y.
1	201 office	Moh. ImialQuereshi	07.05.2014	40,00,000	76,25,500	36,25,500	2013-14
2	202 Office	FarhadSattar	07.05.2014	40,00,000	76,25,500	36,25,500	2013-14
3	11 04 Flat	Ahiq Hussain	06.06.2014	50,00,000	55,23,000	5,23,000	2014-15

4	503 Flat	JubedaChavda	30.06.2014	40,00,000	52,72,000	12,72,000	2014-15
5	1102 Flat	Yusuf Therali	26.11.2014	45,00,000	55,25,000	10,25,000	2013-14
6	702 Flat	Inayat Hussain	19.07.2014	40,00,000	52,72,600	12.72,600	2014-15
		-				1,13,43,600	

3.3. The short point that arises for our consideration is that when there is a time lag between the date of booking of the flat and the final registration of the flat in favour of the prospective buyers by the assessee, then whether the stamp duty value on the date of booking of the flat or on the date of actual registration of the flat should be considered in terms of Section 43CA of the Act. We find that the provisions of Section 43CA of the Act has been introduced in the statute w.e.f. 01/04/2014 relevant to the A.Y.2014-15 and hence, the same is applicable for the year under consideration. From the aforesaid table, it could be seen that the prospective buyers had booked the flats from the assessee on 14/12/2011, 08/03/2013, 08/05/2011 & 10/05/2013 whereas the registration of those flats had effectively happened on 07/05/2014, 07/07/2014, 19/07/2014 and 26/11/2014, thereby clearly proving the time gap between the date of booking of flats and the date of registration of the flats in favour of the prospective buyers by the assessee. Hence, there arises a doubt as to what would be the relevant date for the applicability of stamp duty valuation. We find that this has been squarely addressed by the provisions of sub-section (3) of Section 43CA of the Act itself which reads as under:-

"(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement."

3.4. From the reading of the aforesaid provisions of 43CA(3) of the Act, it is very clear that stamp duty valuation on the date of booking is to be considered and the said stamp duty valuation shall have to be compared with actual sale consideration. This has been done by the ld. AO and hence, it could be safely concluded that the ld. AO had taken a plausible view in the matter by applying the provisions of the Act. We find that there is no incorrect application of law on the part of the ld. AO as alleged by the ld. PCIT. Having brought on record the time lag between the date of booking and the date of actual registration of the flats, the ld. PCIT ought not to have directed the ld. AO to take the stamp duty valuation on the date of registration of the flat which is completely in contradiction of provisions of Section 43CA(3) of the Act. Hence, it could be safely concluded that the ld. AO having taken a plausible view in the matter and the ld. PCIT is only trying to substitute his view in place of the view already taken by the ld. AO. This, in our considered opinion, cannot be done by the ld. PCIT by invoking his revision jurisdiction u/s.263 of the

Act. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd., reported in 203 ITR 108. Moreover, we find that the ld. AO had not committed any error in the order as he had apparently applied the provisions of Section 43CA(3) of the Act. Hence, the twin conditions that are required for invoking revision jurisdiction i.e. (i) order of the ld. AO should be erroneous and (ii) it should be prejudicial to the interest of the revenue are not cumulatively satisfied in the instant case. Hence on this count also, revision jurisdiction u/s.263 of the Act cannot be invoked by the ld. PCIT. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd., vs. CIT reported in 243 ITR 83. Accordingly, the ground raised by the assessee on invalid assumption of jurisdiction u/s.263 of the Act by the ld. PCIT is allowed. Since relief is granted on technical ground, we are not inclined to address the issue argued by the ld. AR on merits and the same are hereby left open. On merits of the addition, we are conscious of the fact that the issue is pending before the ld. CIT(A). Hence, we are not inclined to given any opinion on merits as it would jeopardize the decision making process of ld. CIT(A).

4. In the result, appeal of the assessee is allowed.

Order pronounced on 30/08/2021 by way of proper mentioning in the notice board.

INTRODUCTION OF AIS (ANNUAL INFORMATION STATEMENT) AND TIS (TAXPAYER INFORMATION SUMMARY) IN INCOME TAX

It is a new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer with a facility to capture online feedback. It is just like form 26AS but holds more detail.

The new AIS can be accessed by clicking on the link "Annual Information Statement (AIS)" under the "Services" tab on the new Income tax e-filing portal (https://www.incometax.gov.in). Taxpayers will be able to download AIS information in PDF, JSON, CSV formats.

The display of Form 26AS on TRACES portal will also continue in parallel till the new AIS is validated and completely operational.

The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc. The reported information has been processed to remove duplicate information. If the taxpayer feels that the information is incorrect, relates to another person/year, duplicate etc., a facility has been provided to submit online feedback. Feedback can also be furnished by submitting multiple information in bulk. An AIS Utility has also been provided for taxpayers to view AIS and upload feedback in offline manner. The reported value and value after feedback will be shown separately in the AIS. In case the information is modified/denied, the information source may be contacted for confirmation.

A simplified Taxpayer Information Summary (TIS) has also been generated for each taxpayer which shows aggregated value for the taxpayer for ease of filing return. TIS show the processed value (i.e. the value generated after duplication of information based on predefined rules) and derived value (i.e. the value derived after considering the taxpayer feedback and processed value). If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time. The derived information in TIS will be used for pre-filling of Return (pre-filling will be enabled in a phased manner).

In case there is a variation between the TDS/TCS information or the details of tax paid as displayed in Form26AS on TRACES portal and the TDS/TCS information or the information relating to tax payment as displayed in AIS on Compliance Portal, the taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of ITR and for other tax compliance purposes.