



Supreme Court quashes re-assessment notice issued beyond 4 years on the basis that taxpayer had fully and truly disclosed all material facts

The recent judgement of the Supreme Court in New Delhi Television Limited (“NDTV” , “the assessee”) vs. Deputy Commissioner of Income Tax (“DCIT”) has laid down important principles of law relating to the reopening of assessments under sections 147 and 148 of the Income-tax Act 1961 (“the Act”). The Supreme Court quashes re-assessment notice issued **after a period of limitation of four years** under section 147 of the Act on the basis that there was no failure on part of the taxpayer to fully and truly disclose all material facts necessary for the assessment.

Brief Background:

- A) NDTV is an Indian company engaged in running television channels of various kinds. It has various foreign subsidiaries, one of which is NDTV Network Plc. UK (“NNPLC”) incorporated in United Kingdom.
- B) In the AY 2008-09, in July, 2007, NNPLC issued step-up coupon bonds of US\$ 100 million through the Bank of New York for a period of 5 years. NDTV, being the holding company of NNPLC, furnished a corporate guarantee for this transaction. These bonds were subscribed to by various entities and were to be redeemed at a premium of 7.5% after the expiry of 5 years. However, these bonds were redeemed at a discounted price of US \$74.2 million in November, 2009 (i.e., bonds were redeemed after 2 years 4 months after issue).
- C) NDTV filed its return of income for the Assessment Year (“AY”) 2008-09 declaring a loss. The return of income for AY 2008-09 of NDTV was selected for scrutiny and, subsequently, notices under Section 142(1) and 143(2) was issued to NDTV. The Assessing Officer (“AO”) dealt with issuance of step-up coupon bonds by NNPLC for which the taxpayer had agreed to furnish corporate guarantee. The above facts were disclosed before AO during the original assessment proceedings by NDTV. Though the taxpayer had never actually issued such guarantee, the AO was of the view that the subsidiary of the taxpayer could not have raised such a huge amount without having this assurance from the taxpayer. AO did not doubt the validity of the transaction, but treated the said transaction as a business transaction and imposed a guarantee fee at the rate of 4.68% and added INR 18.72 crores to the income of NDTV.

D) Subsequently, a notice dated March 31, 2015 (*after elapse of four years from the end of the relevant assessment year*), was served to NDTV under section 148 of the Act. The Revenue stated that it has *reasons to believe* that net income chargeable to tax for AY 2008-09 had escaped assessment within the meaning of Section 148 of the Act.

The *reasons to believe* given by the AO for re-opening the assessment were as following:

- i. Order of the Dispute Resolution Panel (“DRP”) issued in AY 2009-10 which concluded that the assessee was involved in round tripping of undisclosed income through sham and bogus transactions with subsidiary companies in the Netherlands and the UK worth INR 642 Crore.
- ii. NNPLC had a capital of only INR 40 lakhs and it did not have any business activities in the UK except a postal address. So, it was peculiar for anyone to invest a huge amount of US\$ 100 million in a virtually non-functioning company and thereafter get back only 72% of their original investment.
- iii. Complaints received from a minority shareholder who alleged that the money raised by NNPLC was shifted to a subsidiary of the assessee in Mauritius from where it was taken to an Indian subsidiary of the assessee in Mumbai and finally to the assessee. Further, NNPLC was itself liquidated in March 28, 2011.
- iv. The escapement is due to failure on the part of the assessee to disclose fully and truly all facts material for assessment.

Therefore, the AO was of the opinion that there were reasons to believe that the funds received by NNPLC were the funds of NDTV under a sham transaction and that the amount of Rs.405.09 crores introduced into the books of NNPLC through the transaction involving the step-up coupon convertible bonds pertains to NDTV.

E) NDTV had filed the objections against the reasons received by it and stated that:

- i. The notice issued under Section 148 of the Act was issued beyond the period of 4 years, and, therefore, the first proviso to Section 147 of the Act would apply in favour of NDTV and, there had been no failure on the part of NDTV to disclose fully and truly all material facts necessary to make an assessment.
- ii. The proceedings had been initiated on a mere change of opinion and there was no valid reason to believe.
- iii. The AO had accepted the genuineness of the transaction wherein NNPLC had issued convertible bonds which had been subscribed by many entities. Only guarantee fees was levied and the same was added back to the income of NDTV.

F) AO rejected the objections raised by NDTV while holding that:

- i. There was non-disclosure of material facts by NDTV during the assessment.
- ii. The notice under Section 148 would be within limitation (i.e., within 16 years) since NNPLC was a foreign entity and admittedly a subsidiary of NDTV and the income was being derived through this foreign entity. Hence, the case of the assessee would fall within the second proviso

of Section 147 of the Act and the extended period of 16 years would be applicable as per Section 149 of the act.

- G) Aggrieved by the AO's action, the taxpayer filed a writ petition before the Delhi High Court, which was dismissed by the High Court.
- H) Thereafter, taxpayer filed an appeal before the Supreme Court which framed three legal questions and adjudicated on the matter. The same are discussed below.

Question 1: Whether in the facts and circumstances of the case, it can be said that the revenue had a valid reason to believe that the undisclosed income had escaped assessment?

Revenue's Contentions:

- a) Revenue has to only establish tentative and prima-facie view of escapement of income at the time of issue of show cause notice.
- b) Revenue had discovered fresh tangible material subsequent to the assessment order (i.e. order of the DRP, complaints and tax evasion petitions filed by the minority shareholders and failure on the part of the assessee to disclose fully and truly all facts material for assessment).

NDTV'S Contentions:

- a) A very detailed scrutiny was performed during the original assessment proceedings. The AO had accepted the transaction of issue of step-up coupon bonds. Once the transaction was accepted to be correct, the revenue cannot re-open the same and doubt on the genuineness of the transaction. Re-opening of the assessment by the Revenue on the same ground would amount to mere change of opinion.
- b) An attempt by the revenue to deliberately mix-up the transactions relating to the Netherlands subsidiary with the UK subsidiary. DRP held that the Netherland's transaction is a sham transaction, and UK entity's transaction of issuance of step-up coupon bonds was not questioned before the DRP. Hence, AO had no fresh material at hand to have reason to believe that the undisclosed income of the assessee had escaped assessment.

Ruling of Supreme Court:

- a) Any subsequent information which comes to the knowledge of the AO during proceedings for subsequent assessment years can definitely form tangible material to invoke powers vested with the AO under section 147 of the Act [relied upon earlier decisions of Claggett Brachi Co. Ltd., London vs. Commissioner of Income Tax, Andhra Pradesh 1989 Supp(2) SCC 182; M/s Phool Chand Bajrang Lal and Another vs. Income Tax Officer and Another (1993) 4 SCC 77; Ess Kay Engineering Co.(P) Ltd. vs. Commissioner of Income Tax, Amritsar (2001) 10 SCC 189].
- b) At the stage of issuance of notice, the AO is only required to form a prima facie view of escapement of income. The material disclosed in assessment proceedings for subsequent years as well as the material placed on record by the minority shareholders was sufficient to form such a view.

Accordingly, the facts which came to the knowledge of the AO subsequent to completion of the original assessment proceedings can be taken into account to form valid reasons to believe that undisclosed income had escaped assessment and such facts can be taken into account to decide whether the assessment proceedings should be re-opened or not.

Question 2: Whether NDTV did not disclose fully and truly all material facts during the course of original assessment which led to undisclosed income escaping detection?

Revenue's Contentions:

- a) NDTV did not disclose details of the subsidiaries in its final accounts, balance sheets, and profit and loss account for the relevant period as was mandatory under the provisions of the Companies Act, 1956 to avoid detection of the actual source of funds of its subsidiaries.
- b) NDTV did not disclose the amount subscribed by each of the entities and furthermore their management structure.

NDTV'S Contentions:

- a) NDTV had disclosed all information as was required by the AO during the course of assessment proceedings.
- b) All the relevant and necessary fact with regards to bondholders were duly within the knowledge of the AO.
- c) The transaction of issue of Step-up bond was accepted by the AO and it was held that the guarantee fees shall be added as the income of NDTV.

Ruling of Supreme Court:

- a) NDTV had disclosed all material facts necessary for assessment such as:
 - i) NDTV having agreed to stand guarantee for the transaction by NNPCCL.
 - ii) The Fact of the issuance of convertible bonds and their redemption

The AO was aware about the entities who had subscribed to convertible bonds. In the proceedings relating to the other subsidiaries, the same AO had knowledge of addresses and the consideration paid by each of the bondholders. The Supreme Court upheld that the AO was aware of all the facts at the time of assessment. If the AO wanted to investigate the matter further at that stage, it could have easily directed NDTV to furnish more facts. As the transaction of issue of Step-up bond was accepted by the AO, it cannot be said that NDTV had withheld any material information from the revenue. Therefore, the Revenue could not show that there was a failure on the part of NDTV to fully and truly disclose all material facts before the AO, taking a benefit of the extended period of limitation of 6 years for initiating proceedings under the first proviso Section 147 of the Act does not arise.

- b) As the assessee had obtained an exemption from the competent authority under the Companies Act, 1956 from providing details of its subsidiaries in its final accounts, balance sheets, etc the assessee was not bound to disclose these details to the AO since, AO had never asked about such details to the assessee before finalizing the original assessment.

- c) The Supreme Court relying on the landmark judgment in the case of Calcutta Discount Co. Ltd. vs. Income Tax Officer (1961) 41 ITR 191 upheld that it is the duty of the assessee to disclose full and truly all material and “primary facts” and disclosure of “secondary facts” is not necessary. However, the Supreme Court has clarified that NDTV has disclosed all primary facts before the AO. It was for the AO at this stage to decide what inference should be drawn from the facts of the case.

Accordingly, the Supreme Court held that NDTV had truly and fully disclosed all material facts during the course of original assessment and thereby, quashed the re- assessment notice.

Question 3: Whether the notice under section 147 of the act along with reasons communicated to the assessee could be termed to be a notice invoking the provisions of the second proviso to Section 147 of the Act (i.e. extending period of limitation to 16 years)?

Revenue’s Contentions:

- a) As per the second proviso to Section 147 of the Act read with Section 149(1) (c) of the Act, the limitation period would be 16 years since NDTV has derived income from a foreign entity.
- b) Mere non-mentioning of the second proviso in the notice under section 148 does not help NDTV in contending that second proviso cannot be invoked. Even if the source of power to issue notice has been wrongly mentioned, but all relevant facts were mentioned, then the notice can be said to be a notice under the provision which empowers the Revenue to issue such notice.

NDTV’S Contentions:

- a) No income was derived from the foreign entity. A loan cannot be termed to be an asset or an income.
- b) Notice issued by the Revenue cannot be said to have been issued under the second proviso to section 147 of the Act.

Ruling of Supreme Court:

- a) There is no case set up in relation to the second proviso of section 147 either in the notice or even in the reasons supplied with regard to the notice. It is only while rejecting the objections of NDTV that reference has been made to the second proviso of section 147 of the Act.
- b) The uncontroverted fact is that in the notice under Section 148 of the Act there is no mention of any foreign entity. There is only mention of the Section 148. There is nothing in the reasons to indicate that the Revenue was intending to apply the extended period of 16 years.
- c) On principles of the natural justice, the assessee must be put to notice of all the provisions on which the Revenue relies upon. NDTV did not get a proper and adequate opportunity to reply to the allegations which are now being relied upon by the Revenue. If the Revenue is to rely upon the second proviso u/s 147 of the Act and wanted to urge that the limitation of 16 years u/s 149 of the Act would apply, then in the notice or at least in the reasons in support of the notice, it should have been put that the Revenue relies upon the second proviso.

Accordingly, the Supreme Court answered the third question by holding that the notice issued to the assessee and the supporting reasons did not invoke provisions of the second proviso of Section 147 of the Act and therefore at this stage the revenue cannot be permitted to take benefit of the second proviso. However, Supreme Court clarified that the Revenue may issue fresh notice taking benefit of the second proviso of Section 147 of the Act if otherwise permissible under the law.

M&R Comments:

- a) The Supreme court re-affirmed the principle that information that comes to the notice of the Assessing Officer during proceedings for the subsequent assessment years, can definitely be taken into consideration as tangible material to invoke the powers vested with the Assessing officer under section 147 of the Act.
- b) The decision emphasis the fact that it is the onus of the assessee to disclose all material facts during the course of original assessment proceedings. Mere filing of the books of accounts and financial statements would not tantamount to disclosure of all material facts by the assessee, unless specific entries or documents are brought to the notice of the Assessing officer. The decision can prove to be an important precedent in cases where assessee has furnished all relevant material on record at the time of original assessment proceedings. In such cases, based on the facts of the case, the reassessment proceedings can be contended to be invalid if the same are initiated beyond 4 years.

Other Direct Tax Updates:

- A. To mitigate the genuine hardship caused to individuals on account of outbreak of pandemic Covid - 19, the CBDT had issued a clarification on April 3, 2020 which states that the validity of Form 15G and 15H (forms required to be filed by individuals to banks or other institutions for non-deduction of tax at source, subject to satisfaction of certain conditions) filed for FY 2019-20 shall be extended till June 2020.
- B. The Ministry of Finance vide press release April 8, 2020 has decided the following:
 - i. All the pending income-tax refunds up to INR 5 Lakhs would be issued to all the business entities and individuals immediately. This would benefit around 14 lakh taxpayers.
 - ii. All pending GST and Custom refunds to the business entities to be released immediately. This would provide benefit to around 1 lakh business entities, including MSME.

The total refunds which would be released is approximated to INR 18,000 crore.

INDIRECT Taxes



INDIRECT TAX UPDATES

GST Notifications:

A. Notification no. 30/2020-Central Tax dated April 03, 2020:

- i. Amended CGST Rules (Fourth Amendment) in order to allow opting Composition Scheme for FY 2020-21 till June 30, 2020; and
- ii. To allow cumulative application of condition in rule 36(4) (i.e. restriction for availment of Input Tax Credit unless Invoices uploaded by supplier) for the period February 2020 – August 2020 while filing GSTR 3B for the month of September 2020.

B. Notification no. 31/2020 & 32/2020 – Central Tax dated April 03, 2020:

Relief by conditional lowering of interest rate and conditional waiver of late fee for delay in furnishing returns of FORM GSTR – 3B, for tax periods of February 2020 to April 2020 respectively.

Sl. No. (1)	Class of Registered persons (2)	Rate of Interest (3)	Late Fee (4)	Tax Period (5)	Condition (6)
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial Year	Nil for first 15 days from the due date (i.e., 20 th of succeeding month for the relevant tax period), and 9 percent thereafter	NIL	February 2020, March 2020 and April 2020	If return in FORM GSTR3B is furnished on or before the 24 th June 2020.
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in	NIL	NIL	February 2020 and March 2020	If return in FORM GSTR3B is furnished on or before the 29 th June 2020.

Sl. No. (1)	Class of Registered persons (2)	Rate of Interest (3)	Late Fee (4)	Tax Period (5)	Condition (6)
	the preceding financial year			April 2020	If return in FORM GSTR3B is furnished on or before the 30 th June 2020.
3	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	NIL	NIL	February 2020	If return in FORM GSTR3B is furnished on or before the 30 th June 2020
				March 2020	If return in FORM GSTR3B is furnished on or before the 3 rd July 2020.
				April 2020	If return in FORM GSTR3B is furnished on or before the 6 th July 2020.

C. Notification no. 33/2020-Central Tax dated April 03, 2020:

Relief by conditional waiver of late fee for delay in furnishing returns of FORM GSTR-1 for tax periods of February, 2020 to April, 2020, but furnishes the FORM GSTR-1, on or before the 30th day of June, 2020.

D. Notification no. 34/2020-Central Tax dated April 03, 2020:

Extended due date of furnishing FORM GST CMP-08 for the quarter ending March 2020 till July 07, 2020 and filing FORM GSTR-4 for FY 2020-21 till July 15, 2020.

E. Notification no. 35/2020-Central Tax dated April 03, 2020:

Extended time limit for completion or compliance of any action, by any authority or by any person has been specified in, or prescribed or notified under the CGST Act, which falls during the period from "March 20, 2020 to June 29, 2020" till June 30, 2020.

Such extension of time is not applicable for the compliances of the provisions of the CGST Act.

- i. Chapter IV – Time & Value of Supply.
- ii. Section 10(3) & 25 – Procedure for Registration.
- iii. Section 27 – Special provisions relating to casual taxable person & Non-resident taxable person.
- iv. Section 31 – Tax Invoice.

- v. Section 37 – Furnishing of details of outward supplies.
- vi. Section 47 – Levy of late fee.
- vii. Section 50 – Interest on delayed payment of tax.
- viii. Section 69 – Power to arrest.
- ix. Section 90 – Liability of partners of firm to pay tax.
- x. Section 122 – Penalty for certain offences.
- xi. Section 129 – Detention, seizure and release of goods and conveyances in transit.
- xii. Section 39 except sub-section (3), (4) & (5) – Furnishing of returns.
- xiii. Section 68 – Inspection of goods in movement, in so far as e-way bill is concerned.
- xiv. Rules made under the provisions specified above.

And to extend validity of e-way bills whose validity period expires during “March 20, 2020 to April 15, 2020” till April 30, 2020.

F. Notification no. 36/2020-Central Tax dated April 03, 2020:

Extended due date for furnishing FORM GSTR-3B for the month of May 2020:

Sl. No.	Taxpayers with aggregate turn over	Taxpayers having principal place of business in state/UT	Due Date for filing of Form GSTR 3B for May 2020
1	More than Rs. 5 Crore	All States and UTs	27 th June 2020
2	Up to Rs. 5 Crore	State of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	12 th July 2020
3	Up to Rs. 5 Crore	State of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	14 th July 2020

G. Circular No. 136/06/2020-GST dated April 03, 2020:

Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19) for the above-mentioned notifications.

Sl. No.	Issue	Clarification
1.	What are the measures that have been specifically taken for taxpayers who have opted to pay tax under composition under section 10 the CGST Act or those	1. The said class of taxpayers, as per the notification No. 34/2020- Central Tax, dated 03.04.2020, have been allowed, to,- (i) furnish the statement of details of payment of self-assessed tax in FORM GST CMP-08 for the quarter January to March, 2020 by 07.07.2020; and (ii) furnish the return in

	<p>availing the option to pay tax under the notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019?</p>	<p>FORM GSTR-4 for the financial year 2019-20 by 15.07.2020.</p> <p>2. In addition to the above, taxpayers opting for the composition scheme for the financial year 2020-21, have been allowed, as per the notification No. 30/2020- Central Tax, dated 03.04.2020, to,- (i) file an intimation in FORM GST CMP-02 by 30.06.2020; and (ii) furnish the statement in FORM GST ITC-03 till 31.07.2020.</p>
<p>2.</p>	<p>Whether due date of furnishing FORM GSTR-3B for the months of February, March and April, 2020 has been extended?</p>	<p>1. The due dates for furnishing FORM GSTR-3B for the months of February, March and April, 2020 has not been extended through any of the notifications referred in para 2 above.</p> <p>2. However, as per notification No. 31/2020- Central Tax, dated 03.04.2020, NIL rate of interest for first 15 days after the due date of filing return in FORM GSTR-3B and reduced rate of interest @ 9% thereafter has been notified for those registered persons whose aggregate turnover in the preceding financial year is above Rs. 5 Crore. For those registered persons having turnover up to Rs. 5 Crore in the preceding financial year, NIL rate of interest has also been notified.</p> <p>3. Further, vide notification as per the notification No. 32/2020- Central Tax, dated 03.04.2020, Government has waived the late fees for delay in furnishing the return in FORM GSTR-3B for the months of February, March and April, 2020.</p> <p>4. The lower rate of interest and waiver of late fee would be available only if due tax is paid by filing return in FORM GSTR-3B by the date(s) as specified in the Notification.</p>
<p>3.</p>	<p>What are the conditions attached for availing the reduced rate of interest for the months of February, March and April, 2020, for a registered person whose aggregate turnover in the preceding financial year is above INR 5 Crore?</p>	<p>1. As clarified at sl.no. (2) above, the due date for furnishing the return remains unchanged; i.e. 20th day of the month succeeding such month. The rate of interest has been notified as Nil for first 15 days from the due date, and 9 per cent per annum thereafter, for the said months.</p> <p>2. The reduced rate of interest is subject to the condition that the registered person must furnish the returns in FORM GSTR-3B on or before 24th day of June, 2020.</p> <p>3. In case the returns in FORM GSTR-3B for the said months are not furnished on or before 24th day of June, 2020 then interest at 18% per annum shall be payable from the due date of return, till the date on which the return is filed. In addition, regular late fee shall also be leviable for such delay along with liability for penalty</p>

4.	How to calculate the interest for late payment of tax for the months of February, March and April, 2020 for a registered person whose aggregate turnover in preceding financial year is above Rs. 5 Crore?	1. As explained above, the rate of interest has been notified as Nil for first 15 days from the due date, and 9 per cent per annum thereafter, for the said months
5.	What are the conditions attached for availing the NIL rate of interest for the months of February, March and April, 2020, for a registered person whose aggregate turnover in preceding financial year is up to INR 5 Crore?	<p>1. As clarified at sl.no. (2) above, the due date for furnishing the return remains unchanged. The rate of interest has been notified as Nil for the said months.</p> <p>2. The conditions for availing the NIL rate of interest is that the registered person must furnish the returns in FORM GSTR-3B on or before the date as mentioned in the notification No. 31/2020- Central Tax, dated 03.04.2020.</p> <p>3. In case the return for the said months are not furnished on or before the date mentioned in the notification then interest at 18% per annum shall be charged from the due date of return, till the date on which the return is filed.</p>
6.	Whether the due date of furnishing the statement of outward supplies in FORM GSTR-1 under section 37 has been extended for the months of February, March and April 2020?	Under the provisions of section 128 of the CGST Act, in terms of notification No. 33/2020- Central Tax, dated 03.04.2020, late fee leviable under section 47 has been waived for delay in furnishing the statement of outward supplies in FORM GSTR-1 under Section 37, for the tax periods March, 2020, April 2020, May, 2020 and quarter ending 31st March 2020 if the same are furnished on or before the 30th day of June, 2020.
7.	Whether restriction under rule 36(4) of the CGST Rules would apply during the lockdown period	Vide notification No. 30/2020- Central Tax, dated 03.04.2020, a proviso has been inserted in CGST Rules 2017 to provide that the said condition shall not apply to input tax credit availed by the registered persons in the returns in FORM GSTR-3B for the months of February, March, April, May, June, July and August, 2020, but that the said condition shall apply cumulatively for the said period and that the return in FORM GSTR-3B for the tax period of September, 2020 shall be furnished with cumulative adjustment of input tax credit for the said months in accordance with the condition under rule 36(4).
8.	What will be the status of e-way bills which have expired during the lockdown period?	In terms of notification No. 35/2020- Central Tax, dated 03.04.2020, Issued under the provisions of 168A of the CGST Act, where the validity of an e-way bill generated under rule 138 of the CGST Rules expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill has been extended till the 30th day of April, 2020.

9.	What are the measures that have been specifically taken for taxpayers who are required to deduct tax at source under section 51, Input Service Distributors and Non-resident Taxable persons?	Under the provisions of section 168A of the CGST Act, in terms of notification No. 35/2020- Central Tax, dated 03.04.2020, the said class of taxpayers have been allowed to furnish the respective returns specified in sub-sections (3), (4) and (5) of section 39 of the said Act, for the months of March, 2020 to May, 2020 on or before the 30th day of June, 2020
10.	What are the measures that have been specifically taken for taxpayers who are required to collect tax at source under section 52?	Under the provisions of section 168A of the CGST Act, in terms of notification No. 35/2020- Central Tax, dated 03.04.2020, the said class of taxpayers have been allowed to furnish the statement specified in section 52, for the months of March, 2020 to May, 2020 on or before the 30th day of June, 2020.
11.	The time limit for compliance of some of the provisions of the CGST Act is falling during the lock-down period announced by the Government. What should the taxpayer do?	Vide notification No. 35/2020- Central Tax, dated 03.04.2020, issued under the provisions of 168A of the CGST Act, except for few provisions covered in exclusion clause, any time limit for completion or compliance of any action which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, has been extended to 30th day of June, 2020.

H. GST Refunds Clarification: Instruction No.2/1/2020-GST dated April 09, 2020:

With a view to provide immediate relief to the tax payers it has been decided that all pending GST refunds including IGST refunds shall be expeditiously processed, even though the GST Law provides 15 days for issuing acknowledgment or deficiency memo and total 60 days for disposing off refund claims without any liability to pay interest, all pending refund applications must be taken up for processing immediately. Due diligence, however, may be done before granting the refunds on merits, considering all the relevant legal provisions and circulars.

I. Advance Rulings:

Advance Ruling No.	RAJ/AAR/2019-20/33 dated February 02, 2020
Issued in case of	Clay Craft India Pvt Ltd.

It is ruled by the Advance ruling authority, that the Consideration paid to the directors against the services provided by the to the company are not covered under clause (1) of the Schedule III to the CGST Act, 2017 activities not considered as supply “Service by an employee to the employer in the course of or in relation to his employment”. It is interpreted that directors are not the employee of the company and attract GST under reverse charge mechanism as it is covered under entry no. 6 of Notification no. 13/2017 Central Tax (Rate) dated June 28, 2017 issued under section 9(3) of the CGST Act, 2017.

The above view was also taken by the Authority of Advance Ruling in state of Karnataka in case of Alcon Consulting Engineering (I) Pvt Ltd. **Advance Ruling No. KAR/AAR/83/2019-20 dated September 25, 2019.**

M&R View:

- a) The above said rulings is applicable to the particular applicants who have sought the opinion from the advance ruling authorities and not binding on all the dealers.
- b) Directors (other than Non-executive and Independent Directors) are employees of the company and if the terms of engagement with the directors is that of employee and employer relationship, then GST under RCM will not be applicable.

Custom Notifications:

- A. Amended notification No. 8/2020-Customs dated 02.02.2020 to make changes consequential to enactment of Finance Act, 2020. (19/2020-Cus dt. 09-04-2020).
- B. Exempted customs duty on ventilators, personal protection equipment's, covid-19 testing kits and inputs for these goods. (Notification No. 20/2020-Cus dt. 09-04-2020).



UPDATES IN THE COMPANIES ACT, 2013

The Ministry of corporate affairs (“MCA”) in view of difficulties faced by the stakeholders on account of the threat posed by COVID-19 has considered the overall situation at present and issued a *General Circular No.14/2020 dated April 08, 2020* allowing companies to pass ordinary and special resolutions of urgent nature through video conferencing (VC) or through other audio visual means (OAVM) . The highlights of circular are as below:

- A. The Companies Act, 2013 (“CA-13”) does not provide any specific provision for allowing conduct of member’s meetings through VC or OAVM. It has been noted that Sec 108 of the CA-13 and rules made thereunder provide for relevant companies to allow E-VOTING (including remote e-voting) in case of general meetings convened by them.
- B. Section 110 of the CA-13 allows companies to pass resolution (except items of ordinary business and items where any person has a right to be heard) through POSTAL BALLOT (including electronic ballot).
- C. Given the circumstances prevailing in the country, companies are requested to take all decisions of urgent nature requiring the approval of members , other than the items of ordinary business or business where any person has a right to be heard , through the mechanism of E-VOTING or POSTAL BALLOT in accordance with provisions of CA-13 and the rules made there under.
- D. Where a company considers it unavoidable to hold an Extraordinary General Meeting(“EGM”), the following procedure needs to be adopted for conducting such meeting on or before June 30, 2020:
 - I. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility:
 - i. The recorded transcript of the meeting shall be maintained safe custody. In case of a public company the recorded transcript be made available on website of company as soon as possible.

- ii. Convenience of different persons positioned in different time zones shall be considered before scheduling such meeting.
- iii. The meetings shall:
 - Allow for a two-way teleconferencing or webex for the ease of participation of the members.
 - The participants should be allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company.
 - The facility shall allow at least 1000 members of the company to participate on first-come-first-served basis.
 - Large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, the chairpersons of the audit committee, nomination and remuneration committee and stakeholders relationship committee, auditors, etc. may be allowed to attend the meeting without any restriction on account of first-come-first served principal.
- iv. The facility to join the meeting shall be kept open at least 15 minutes before the scheduled time to start such meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.
- v. The remote e-voting facility shall be provided to members in accordance with the CA-13 and the rules before the actual date of the EGM. Attendance of the members through VC/OAVM shall be counted for the purpose of reckoning the quorum under Sec 103 of the CA-13.
- vi. Only those members, who are present in the meeting through VC or OAVM facility and have not cast their vote on resolutions through remote e-voting and are otherwise not barred from doing so, shall be allowed to vote through e-voting system or by a show of hands in the meeting.
- vii. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner:
 - Where there are less than 50 members present in the meeting – Chairman shall be appointed as per section 104 “Chairman of Meetings” of the CA-13.
 - In all other cases, the Chairman shall be appointed by a poll conducted through the e-voting system during the meeting.
- viii. The Chairman present at the meeting shall ensure the facility of e-voting is available for the purpose of conducting a poll during the meeting held through VC/OAVM. Depending on the number of members present the voting shall be conducted in the following manner:

- If members present at the meeting are less than 50, the voting can be conducted either through e-voting system or show of Hand (unless a demand for poll is made in accordance with section 109 of CA-13).
 - In all other cases, the voting shall be conducted through e-voting.
- ix. The facility of appointment of proxies by members will not be available for such meetings. However, members may appoint representatives in pursuance of section 112 and 113 of the CA-13 for purpose of voting through e-voting or participation & voting in the meeting held through VC or OACM.
- x. At least one independent director (where the company is required to appoint one), and the auditor or his authorized representative, who is qualified to be the auditor shall attend such meeting through VC or OAVM.
- xi. Where institutional investors are members of the company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.
- xii. The notice of the general meeting shall disclose the following:
- Framework provided in the circular for use of members with clear instructions on how to access and participate in meeting.
 - The company shall also provide a helpline number through the registrar & transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting.

A copy of meeting notice shall be displayed on the website of company and due intimation shall be made to exchanges in case of a listed company.

- xiii. If the company has served the notice prior to the date of this circular i.e. before April 08, 2020, company may adopt the proposed framework as per this circular if the members consent is obtained as per section 101 “Notice of Meeting” and consequently issue a shorter duration fresh notice with due disclosure.
- xiv. All resolutions passed in accordance with this mechanism shall be filed with the registrar of companies within 60 days of the meeting, clearly indicating therein that the mechanism provided herein along with other provisions of the CA-13 and rules made there under were duly complied during such meeting.

- II. For companies which are not required to provide the facility of e-voting under the Act:
- i. The recorded transcript of the meeting shall be maintained safe custody. In case of a public company the recorded transcript be made available on website of company as soon as possible.
 - ii. Convenience of different persons positioned in different time zones shall be considered before scheduling such meeting.
 - iii. The meetings shall:
 - Allow for a two-way teleconferencing or webex for the ease of participation of the members.
 - The participants should be allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company.
 - The facility shall allow at least 1000 members of the company to participate on first-come-first-served basis.
 - Large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, the chairpersons of the audit committee, nomination and remuneration committee and stakeholders relationship committee, auditors, etc. may be allowed to attend the meeting without any restriction on account of first-come-first served principal.
 - iv. The facility to join the meeting shall be kept open at least 15 minutes before the scheduled time to start such meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.
 - v. Attendance of the members through VC/OAVM shall be counted t purpose of reckoning the quorum under Sec 103 of the CA-13.
 - vi. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner:
 - Where there are less than 50 members present in the meeting – Chairman shall be appointed as per section 104 “Chairman of Meetings” of the CA-13.
 - In all other cases, the Chairman shall be appointed by a poll conducted through the e-voting system during the meeting.
 - vii. At least one independent director (where the company is required to appoint one), and the auditor or his authorized representative, who is qualified to be the auditor shall attend such meeting through VC or OAVM.

- viii. The facility of appointment of proxies by members will not be available for such meetings. However, members may appoint representatives in pursuance of section 112 and 113 of the CA-13 for purpose of voting through e-voting or participation & voting in the meeting held through VC or OACM.
- ix. Where institutional investors are members of the company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.
- x. The company shall provide designated email address to all the members at the time of sending the notice of the meeting so that members can convey their vote, when a poll is required to be taken during the meeting on any resolution, at such designated email address. The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly be maintained by the company.
- xi. Where a poll is required on any item, the members shall cast their vote on the resolution only by sending emails through their email addresses registered with the company. Such emails shall only be sent to designated email address circulated by the company in advance.
- xii. Where less than 50 members are present in a meeting, the Chairman may decide to conduct vote by show of hands ,unless a demand for poll is made by any member in accordance with Sec 109 of the CA-13.Once such demand is made, the procedure provided in the preceding paragraphs shall be followed.
- xiii. In case of counting of votes requires time, the said meeting may be adjourned and called later to declare the result.
- xiv. The notice of the general meeting shall disclose the following:
- Framework provided in the circular for use of members with clear instructions on how to access and participate in meeting.
 - The company shall also provide a helpline number through the registrar & transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting.

A copy of meeting notice shall be displayed on the website of company and due intimation shall be made to exchanges in case of a listed company.

- xv. If the company has served the notice prior to the date of this circular i.e. before April 8, 2020, company may adopt the proposed framework as per this circular if the members consent is obtained as per section 101 “Notice of Meeting” and consequently issue a shorter duration fresh notice with due disclosure.
- xvi. All resolutions passed in accordance with this mechanism shall be filed with the registrar of companies within 60 days of the meeting, clearly indicating therein that the mechanism

provided herein along with other provisions of the CA-13 and rules made there under were duly complied during such meeting.

The Companies referred to paragraph D(I) and D(II) above shall ensure that all other compliances associated with the provisions relating to general meeting i.e. making disclosures, inspection of related documents by members or authorization for voting by body corporates etc.as provided in the Act and the articles of association of the company are made through electronic mode.



RBI UPDATES

RBI Notifies Changes in Market Hours

The unprecedented situation created by the COVID-19 outbreak has necessitated lockdowns, social distancing, restrictions on movement of people and non-essential activities, work from home arrangements and business continuity plans. The resultant dislocations have adversely impacted the functioning of financial markets. Staff and IT resources have been severely affected, posing operational and logistic risks. The thinning out of activity is impacting market liquidity and increasing volatility of financial prices.

In order to minimise these risks and to ensure that market participants maintain adequate checks and supervisory controls while optimising thin resources and ensuring safety of personnel, it has been decided to revise trading hours for various markets as under:

Market	Existing Timings	Amended Timing
Call/notice/term money	9 AM to 5 PM	10 AM to 2 PM
Market repo in government securities	9 AM to 2:30 PM	10 AM to 2 PM
Tri-party repo in government securities	9 AM to 3 PM	10 AM to 2 PM
Commercial paper and Certificates of Deposit	9 AM to 5 PM	10 AM to 2 PM
Repo in Corporate Bonds	9 AM to 6 PM	10 AM to 2 PM
Government Securities (Central Government Securities, State Development Loans and Treasury Bills)	9 AM to 5 PM	10 AM to 2 PM
Foreign Currency (FCY)/Indian Rupee (INR) Trades including Forex Derivatives*	9 AM to 5 PM	10 AM to 2 PM
Rupee Interest Rate Derivatives*	9 AM to 5 PM	10 AM to 2 PM

*: other than those traded on recognised stock exchanges

These arrangements are effective from April 7, 2020 (Tuesday) and will continue up to April 17, 2020 (Friday) [Inclusive of April 17].

All regular banking services for customers, including RTGS, NEFT, e-kuber and other retail payments systems will continue to be available as per extant timings.

RBI permits greater space to State Governments/ Union Territories for availing overdraft facilities.

In order to provide greater flexibility to the State Governments to tide over their cashflow mismatches, RBI, on a review, has decided to:

- i. Increase the number of days for which a State/ UT can be in overdraft continuously to 21 working days from the current stipulation of 14 working days.
- ii. The number of days for which a State/ UT can be in overdraft in a quarter has been increased to 50 working days from the current stipulation of 36 working days.
- iii. All other stipulations remain unchanged.
- iv. This arrangement will remain valid till September 30, 2020.

Rupee Drawing Arrangement – Remittance to the Prime Minister’s Citizen Assistance and Relief in Emergency Situations (PM-CARES) Fund

Rupee Drawing Arrangement (RDA) is a channel to receive cross-border remittances from overseas jurisdictions. Under this arrangement, the Authorised Category I (AD Cat-I) banks enter into tie-ups with the non-resident Exchange Houses to open and maintain their Vostro Account.

In the wake of outbreak of the novel coronavirus (COVID-19) pandemic, Reserve Bank of India in consultation with the Government of India has decided to permit receipt of foreign inward remittances from non-residents through non-resident exchange houses in favour of the ‘Prime Minister’s Citizen Assistance and Relief in Emergency Situations (PM-CARES) Fund’, subject to the condition that AD Cat-I banks shall directly credit the remittances to the Fund and maintain the full details of the remitters.

www.manian-rao.com**Address:****Bangalore**

#361, First Floor, 7th Cross, 1st Block,
Jayanagar, Bangalore – 560011
Phone: +91 80 26569500 / 9501

Chennai

4, Easwaran Koil Street
Old Pallavaram,
Chennai – 60017
Phone: +91 44 22641404

Madurai

110, First Floor
Old No 85, 4th Street
Harvey Nagar, Arasaradi
Madurai – 625016
Phone: +91 452 2343630

Key Contacts**Paresh Daga**

Senior Partner
paresh@manian-rao.com

R Srikanth

Senior Partner
srikanth@manian-rao.com

Ravindra C

Partner
ravindra@manian-rao.com

Pallavi V Rao

Partner
pallavi@manian-rao.com

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