

December 2022

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Income-tax Act, 1961 ('ITA')

CIT v. Mansukh Dyeing and Printing Mills (145 taxmann.com 151)

Whether credit of amounts to partners' capital accounts on revaluation of assets is a taxable transfer and therefore subject to capital gains tax?

Brief facts of the case:

Mansukh Dyeing and Printing Mills ('MDPM') was a partnership firm with 8 partners as of 31.03.1993; 4 new partners were admitted in FY 1992-93. There appear to be no partners who had retired during in the said FY. On 01.01.1993, the firm revalued its assets and credited a cumulative sum of approx. Rs.17.34 crores to the partners' capital accounts in their profit-sharing ratios. Even the 4 partners who had been newly admitted in FY 1992-93 with relatively minimal contribution were also given a share in the revalued assets. MDPM filed its return of income which was accepted in the summary assessment. The Assessing Officer ('AO') initiated 'income escaping assessment' proceedings and held that the revaluation of assets and its credit to partners' capital accounts constitutes a taxable transfer under section 45(4) (as existed before the Finance Act, 2021) and liable to capital gains. The first appellate authority concurred with the AO's order. The Income-tax Appellate Tribunal (Tribunal) set aside the AO's order and deleted the addition; this was affirmed by the High Court (HC).

Ruling

The Supreme Court (SC) reversed the findings of the Tribunal and the HC. It held that the revaluation of assets and credit of the amounts to the partners' capital accounts constitutes a taxable transfer. The SC rejected MDPM's contentions that the credit is only a book entry, that there is no dissolution of the firm, and mere revaluation should not result in a taxable event.

In so holding, the SC noted that transfer of capital asset by way of distribution of capital assets in the following situations would be a taxable event.

- a. *On account of dissolution of a firm;*
- b. *Or other association of persons;*
- c. *Or body of individuals;*
- d. *Or otherwise;*

The SC relied on another ruling of the High Court in the context of partnership firms where assets were to be divided in partition as well as some partners were also retiring to hold that the phrase 'otherwise' expands the scope of the phrase 'transfer of capital asset' rather than 'distribution of capital assets'.

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Income Tax

- + **Condonation of delay in filing Form No. 10A:** The Finance Act of 2021, introduced provisions mandating certain trusts, educational institutions, universities, hospitals etc. which were approved under various sections of the Act for availing beneficial tax treatments to request for fresh approval by filing form 10A on or before 30.06.2021. The CBDT had extended the due dates to 31.03.2022. The CBDT further received representations stating that Form No. 10A could not be filed even by 31.03.2022 and with a request to condone delays in filing the said form. Considering these representations, the CBDT has condoned the delay in filing the said form up to 25.11.2022.

Circular No 22 of 2022 dated 01.11.2022

Goods and Services Tax (GST)

- + **Clarification on refund related to “Inverted duty structure”:**
 - **Date of effective application of the modified formula w.r.t. refunds related to Inverted Duty Structure:** The refund formula w.r.t refunds under Inverted Duty Structure had been amended vide Notification No. 14/2022-Central Tax dated 05.07.2022 to ensure that the reduction of output tax on inverted rated supplies is done in the same ratio in which ITC has been availed on input and input services during the relevant period. It has now been clarified that the amended formula shall apply prospectively w.e.f. 05.07.2022 i.e., for all refund applications filed on or after 05.07.2022, irrespective of the period to which the refund relates. However, w.r.t. refund application filed before 05.07.2022 the same will be dealt with as per the formula as existed prior to the amendment.
 - **Date of effective application of the restriction placed on filing of refunds related to Inverted Duty Structure for specified goods:** The CBIC has clarified that the restriction placed on refund of unutilized ITC on account of Inverted Duty Structure in case of a supply of specified goods falling under Chapter 15 and 27 would apply prospectively on all refund applications filed on or after 18.07.2022 and such restriction would not apply to the refund applications filed before 18.07.2022.

Circular No. 181/13/2022-GST dated 10.11.2022

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- + **Guidelines for verifying the transitional credit claims filed through Form GST TRAN-1 / TRAN-2 prescribed:** The Hon'ble Apex Court's vide its order dated 22.07.2022 and 02.09.2022 (*in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. – SLP(C) No. 32709-32710/2018*) had directed that the GST common portal be opened from 01.10.2022 to 30.11.2022 for filing / revising of Form GST TRAN-1 / TRAN-2 for availing transitional credit by an aggrieved registered assessee. To ensure uniformity in the implementation of the directions of the Hon'ble Supreme Court, detailed guidelines have been prescribed for verification of the same by the proper officer, including the modalities of coordination between central tax authorities and state tax authorities.
- The said guidelines issued may be accessed on this [link](#).

Circular No. 182/14/2022-GST dated 10.11.2022

- + **Competition Commission of India empowered to handle anti-profiteering cases w.e.f. 01.12.2022:** Effective 01.12.2022, the CBIC has empowered the *Competition Commission of India* (CCI) to examine whether any input tax credit availed by any registered person or reduction in the tax rate have resulted in the commensurate reduction in the price of the goods or services or both supplied (anti-profiteering). Hitherto, the "National Anti-profiteering Authority" (NAA) was governing the anti-profiteering issues.

Notification No. 23/2022-Central Tax dated 23.11.2022

- + **Manner of processing of IGST refunds which are withheld w.r.t. 'Risky Exporters', prescribed:** The CBIC has issued detailed guidelines with respect to processing and sanctioning of IGST refund applications made by exporters (of goods). The verification to be performed by the Directorate General of Analytics and Risk Management (DGARM) is summarized below:

- The system will withhold the IGST refunds of the exporter classified as 'risky exporter' by DGARM.
- Details of such exporter along with the risk parameters used and the auto-generated refund claim would be made available to the jurisdictional officer on the GSTN portal.
- The jurisdictional officer should immediately process them in a manner similar to other RFD-01 refunds claims filed.
- The officer to pass a detailed speaking order of the refund claim, following the timelines prescribed and upload the same with the refund sanction order in GST RFD-06.

The detailed guidelines may be accessed on this [link](#) .

Instruction No. 04/2022-GST dated 28.11.2022

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Customs

+ Due dates for mandatory remittances through Electronic Cash ledger extended:

Provisions of mandatory deposit of sums into electronic cash ledger, which is to be used for remittance of duties of customs (including IGST, GST Compensation Cess, other cesses, surcharge, interest, penalty, fees and any other sum payable under Customs Act or any other law being in force), has been postponed by the Board till 31.03.2023. Hitherto, the said provisions were to be applicable w.e.f. 01.06.2022, which was subsequently postponed upto 29.11.2022.

Board to avoid any further confusions, has issued a notification in terms of Section 51A(4) of Customs Act, 1962, to extend the exemption to all classes of persons and all categories of goods, from the applicability of above referred provisions till 31.03.2023.

Notification No. 98/2022 – Customs (NT) dated 29.11.2022 and Notification No. 99/2022 - Customs (NT) dated 29.11.2022.

Foreign Trade Policy (FTP)

+ Amendments in relation to realization of export proceeds under EPCG scheme: The DGFT has brought in amendment to para 5.11 of Handbook of Procedures of 2015-20 to permit realization of exports proceeds **in Indian Rupees** in addition to the existing freely convertible currency except for deemed exports supplies under Chapter 7 of FTP 2015-20. In other words, the invoicing, payment and settlement of exports and imports in INR for export proceeds under Export Promotion Capital Goods (EPCG) Scheme is being permitted from immediate effect.

Public notice no.35/2015-20 dated 09.11.2022

+ Relief in Average Export Obligation (EO) under EPCG Scheme: In the backdrop of decline in total exports in particular sector/product group by more than 5% in 2021-22 as compared to previous year, 2020-21, the DGFT has granted relief with respect to Annual Average Export obligation for the year. Such annual average export obligation for the year may be reduced proportionate to reduction in exports of that particular product/ sector group which has been detailed out in this trade notice. All Regional offices (RO) are being requested to refix the Annual average export obligation for EPCG scheme, considering the above. Further, the RO has to endorse such reduction in the EO, if any, in the licence file of the Office of RA as also in amendment sheet to be issued to the EPCG authorization holder.

Policy circular no.44/2015-20 dated 17.11.2022

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Securities Exchange Board of India (SEBI)

- + **Timelines for transfer of dividend and redemption proceeds to unitholders:** SEBI vide its circular dated 25.11.2022 has amended the Regulation 53 of SEBI (Mutual Fund) Regulations, 1996. The amendment requires the record date for transfer of dividend payments to be 2 working days from the issue of public notice. However, the payment to the unitholders shall be made within 7 working days from the record date. Further, transfer of redemption or repurchase proceeds to the unitholders has to be made within 3 working days from the date of redemption or repurchase, as the case may be. The above amendment will be effective from 15.01.2023.

Circular no. SEBI /HO/IMD/IMD-I DOF2/P/CIR/2022/1 dated 25.11.2022

- + **Amendments to SEBI LODR Regulations:** On 14 November 2022, SEBI issued certain amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) through SEBI LODR (Sixth Amendment) Regulations, 2022. The amendments include:

(a) Appointment and removal of Independent Directors: Under Regulation 25 of SEBI (Listing Obligations and Disclosure Requirements), re-appointment, removal or appointment of Independent Directors is to be made through a special resolution. Regulation 25 has been amended to include an alternate method for appointment and removal of Independent Directors. As per the alternate method, if special resolution fails, the following thresholds to be considered:

- The votes cast in favor of the resolution exceed the votes cast against the resolution; and
- The votes cast by the public shareholders in favor of the resolution exceed the votes cast against the resolution.

If the above two thresholds are met, then the Independent Director is deemed to be appointed. Further, the above threshold would also be applicable for removal of an Independent Director appointed under this alternate mechanism.

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(b) Submission of Financial Results and disclosure of ratios

- Every listed entity that has issued non-convertible securities is required to prepare and submit unaudited or audited quarterly and year to date standalone financial results on a quarterly basis in the format specified by SEBI within 45 days from the end of the quarter other than for the last quarter. The SEBI introduced a new proviso to clarify the timeline for the submission of the financial results for the last quarter and extended the timeline from 45 days to 60 days.
- Further, SEBI has mandated through its recent amendments to disclose certain ratios/ financial information in the quarterly and annual financial results.

(c) Timeline for submission of statement indicating the utilisation of the issue proceeds:

The amendments require a listed entity to submit a statement indicating the utilisation of the issue proceeds of non-convertible securities and statement disclosing material deviation(s) in the use of issue proceeds of non-convertible securities from the objects of the issue, in the format specified by SEBI within 45 days from the end of every quarter along with the quarterly financial results.

(d) Newspaper advertisement: SEBI has clarified that if a listed entity that has issued non-convertible instruments, and submitted both standalone and consolidated financial results, then it shall publish the consolidated financial results along with the ratios and financial information in the newspaper.

Circular no. SEBI/LAD-NRO/GN/2022/103 dated 14.11.2022

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