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NEWSLETTER

December, 2023 ▶ Price ₹ 20

Dear Esteemed Members,

I hope this message finds you in good health and high spirits. As we approach the end of another eventful year, I am pleased to share some important updates and reflections on our journey together.

The month of December holds significance for us, not only because it marks the conclusion of the calendar year but also due to the approaching deadline for the GST annual return filing. This critical task demands our attention, diligence, and commitment to compliance. As members of the esteemed Institute of Chartered Accountants of India (ICAI), it is our shared responsibility to uphold the highest standards of professionalism and contribute to the smooth functioning of the financial ecosystem.

The last date for filing the GST annual return is fast approaching, and I urge each one of you to ensure that you and your clients complete this process accurately and in a timely manner. Timely compliance not only avoids penalties but also reflects our commitment to ethical practices and adherence to regulatory requirements. Let us continue to be the torchbearers of financial integrity and guardians of the public trust.

In addition to the GST annual return, I encourage all members to stay updated on the latest developments in the field of taxation, accounting, and auditing. Our profession is dynamic, and continuous learning is essential to stay ahead. The ICAI continues to provide a wealth of resources, including seminars, webinars, and publications, to support your professional growth.

As we bid farewell to the challenges and triumphs of the past year, let us look forward to a new year filled with opportunities for learning, collaboration, and success. Together, we can contribute to the growth and prosperity of our nation and strengthen the pillars of our noble profession.

Wishing you a joyous festive season and a prosperous New Year!



Yours truly,
CA Mausam Rathi
Chairman-Indore Branch of ICAI

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Section 269SS, read with section 271D with respect to deposit of cash for sale of immovable asset

ITAT, VISAKHAPATNAM BENCH in the case of Smt. Vijapurapu Sudha Rao v. Income Tax Officer, Ward-3(1) (IT APPEAL NO. 111 (VIZ.) OF 2023) [ASSESSMENT YEAR : 2017-18] DATED NOVEMBER 29, 2023

FACTS

■ During relevant year, the assessee sold an immovable property for a total consideration of Rs. 34,65,000/- out of which the assessee received an advance of Rs. 5 lakhs through cheque and the remaining amount by cash.

■ The AO-NFAC observed that since the assessee received payment in cash, it resulted in violation of the provisions of section 269SS and, therefore, initiated the penalty proceedings U/s. 271D and issued a notice U/s. 274 r.w.s 271D and served on the assessee.

■ In response the assessee filed his reply .the assessee's sale of property was a distress sale and under these circumstances, the assessee sold the property at a lower price and he accepted the consideration as paid by the buyer.

■ The AO-NFAC did not consider the submissions of the assessee by holding that the assessee had failed to explain the reasonable cause for receipt of cash in contravention of the provisions of section 269SS . Accordingly, the AO-NFAC imposed penalty and passed order U/s. 271D.

■ The CIT(A)-NFAC dismissed the appeal of the assessee and

■ upheld the penalty.

■ On appeal :HELD

■ From the plain reading of section 269SS, it is noted that any person is barred from receiving from any

amount otherwise

■ by cheque or through banking channels in relation to transfer of the immovable property. Section 269SS prohibits receipt of any amount by way of cash in relation to the transfer of any immovable property. [Para 5]

■ The objective of the amendment proposed in 269SS is to curb generation of black money. In the instant case the fact is that cash received by the assessee has been deposited by the assessee into the bank account, hence does not attract the provisions of section 269SS since there is no suppression of cash receipts by the assessee. The assessee has also offered the capital gains to tax. Further, the explanation given by the assessee for receipt of sale consideration of Rs. 29,65,000/- constitutes a "reasonable cause" as contemplated in section 273B and the assessee has accepted the cash under inevitably unavoidable circumstances as explained by the assessee in his arguments and immediately on receipt of the cash, the assessee deposited the same in the bank account which contemplates the genuineness of the transaction and moreover the assessee has paid the capital gain tax thereon. Under these circumstances, penalty levied by the AO-NFAC U/s. 271D and confirmed by. CIT(A)-NFAC is unsustainable in law and accordingly the orders of the Ld. AO-NFAC and Ld. CIT(A)-NFAC are set aside and thereby the penalty is deleted [Para 7]

Understanding Table 14 and 15:

A New Chapter in GSTR 1 Reporting

The Goods and Services Tax Network (GSTN) ushered in a significant update to the GSTR-1 return, introducing two pivotal tables – Table 14 and Table 15. While these may seem like innocuous additions, their impact on e-commerce transactions and overall GST compliance is substantial. Let's delve into the purpose and implications of these new entities in the GSTR-1 landscape.

Table 14: Lifting the Veil on E-commerce Supplies

Previously, reporting supplies facilitated through e-commerce platforms in GSTR-1 was a murky territory. Table 14 rectifies this by providing a dedicated space for suppliers to disclose details of such transactions. This includes information like order ID, invoice number, e-commerce operator GSTIN, type of supply (B2B or B2C), taxable value, applicable GST rate, and tax amount.

The benefits of Table 14 are multifaceted. Firstly, it fosters transparency and accuracy in reporting e-commerce transactions. Secondly, it facilitates seamless reconciliation with the data reported by e-commerce operators, eliminating reconciliation headaches. Finally, it paves the way for accurate auto-population of Table 3.1.1 in GSTR-3B, streamlining compliance for both suppliers and the e-commerce platforms.

Table 15: A Spotlight on Section 9(5) Supplies

Section 9(5) of the CGST Act mandates the e-commerce operator to act as the tax collector for certain B2C supplies made through their platform. Table 15 serves as the reporting arena for these transactions. Suppliers can furnish details like invoice number, GSTIN of the e-commerce operator, type of supply, taxable value, applicable GST rate, and tax amount borne by the e-commerce

operator.

Similar to Table 14, this table enhances transparency and simplifies compliance. It ensures accuracy in reporting Section 9(5) supplies and avoids potential discrepancies between supplier and e-commerce operator data. This, in turn, streamlines tax administration and minimizes disputes.

Navigating the Tables: Tips for Seamless Reporting
Filling Tables 14 and 15 accurately requires diligent attention to detail. Here are some helpful tips: 1.

- **Maintain accurate records:** Ensure your sales records capture all e-commerce transactions and Section 9(5) supplies with appropriate documentation.
- **Understand invoice requirements:** Invoices for e-commerce and Section 9(5) supplies must comply with specific GST regulations. Consult a tax advisor for specific guidelines.
- **Leverage e-commerce platform tools:** Most e-commerce platforms offer tools to export transaction data in formats compatible with GSTR-1 filing. Utilize these to minimize manual data entry.
- **Seek professional guidance:** If you're unsure about any aspect of reporting e-commerce or Section 9(5) supplies, consult a tax professional for expert advice.

The Final Word: A Step Towards Efficient Compliance

The introduction of Tables 14 and 15 in GSTR-1 marks a significant step towards simplifying and streamlining e-commerce and Section 9(5) supply reporting. These tables are not just data receptacles; they represent a commitment to enhanced transparency, improved compliance, and a more efficient tax ecosystem for both businesses and e-commerce platforms. As with any new change,

adapting to these tables might require initial effort. However, the long-term benefits of accurate and hassle-free reporting outweigh the initial learning curve. So, embrace the change, delve into the intricacies of Tables 14 and 15, and navigate the evolving world of GST compliance with confidence.

RELEVANT EXTRACT FROM GST PORTAL RELATED TO NEW TABLES IN GSTR-1 FROM 01ST JANUARY 2024

Table 14 – Supplies Made Through E-Commerce Operators (In this table, you can add details of taxable outward supplies made through e-commerce operator.)

Table 15 – Supplies under Section 9(5) of the CGST Act (In this table, you can add details of taxable outward supplies on which the e-commerce operator is liable to pay tax under Section 9(5) of the CGST Act.)

1. In GSTR – 3B, Table 3.1.1 addresses supplies notified under Section 9(5) of the CGST Act, 2017. This table requires suppliers and e-commerce operators (ECOs) to separately report supplies on which the e-commerce operator is liable to pay tax.

2. Previously, GSTR-1 did not have specific tables for reporting these transactions separately. As a result, Table 3.1.1 in GSTR-3B was not auto-filled due to the absence of corresponding reporting sections.

3. Starting from January 2024, GSTR-1 has introduced Tables 14 and 15 specifically designed for reporting supplies on which e-commerce operators are liable to pay tax. This modification ensures accurate auto-filling of Table 3.1.1 in GSTR-3B for both suppliers and e-commerce operators.

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Filing of resolution with the Registrar of Companies

1. Companies hold the meetings of the board of directors / shareholders / creditors of the company and pass resolutions. At the board meeting, the resolutions are passed by the board of directors while in the general meetings the resolutions are passed by the shareholders of the company which could be either ordinary resolution which are passed by simple majority or special resolutions which are passed with two third of majority. A company is required to file with the concerned Registrar of Companies certain resolutions and agreements. These are to be filed after being passed at the meeting of the board / shareholders / creditors of the company. The particulars of such resolutions or / and agreement are to be filed through e-form MGT-14. The provisions of section 117 of the Companies Act 2013 and the rules made thereunder, are applicable regarding registration of certain resolutions and agreements which are to be filed with the Registrar of Companies. The e-form MGT-14 is required to be filed with the Registrar of Companies within 30 days of passing of the resolution or of the making of the agreement. However, the private companies are exempted from filing board resolutions and the private companies are required to file the specified resolutions passed at the general meeting.

Relevant provisions of the Companies Act

2. The following are the relevant provisions under the Companies Act 2013 relating to filing of the resolutions through e-form MGT-14.

Section 117(1) of the Companies Act, 2013

3. A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under

Consequences of not filing the resolution in MGT-14

section if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed

Rule 24 of the Companies (Management and

Administrations) Rules, 2014 provides that "A copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any' shall be filed with the Registrar in Form No. MGT.14 along with the fee".

Penal provisions for default / non-compliance

4. Section 117(2) of the Companies Act, 2013 prior to Companies (Amendment) Act, 2020 vide notification dated 28th September, 2020 amendment effective from 21st December 2020

If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein' such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

4.1 Section 117(2) of the Companies Act, 2013 got amended with effect from 21st December 2020 which now reads as follows :—

If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of

the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of fifty thousand rupees.

Consequences of default / violation - action from the Regulator

5. To understand the consequences of any default in complying with section 117(1) of the Companies Act 2013 relating to filing of the special resolution passed by the company in MGT-14 form let us go through one of the decided case law on this matter very recently - during the month of September 2022 - by the Registrar of Companies of Ahmedabad.

The relevant case law on this matter

6. We shall go through a case relating an adjudication order passed by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli on 30th September 2022, in the matter of M/s. ERIS Healthcare Private Limited - Adjudication order No. ROC/GJ/ADJ-order/section 454/STA(V)/2022-23/4971-76 on adjudication of penalty under section of the Companies Act 2013 read with rule 3 of the companies (adjudication of penalties) Rules, 2014 for violation of section 117 read with section of the Companies Act, 2013 and rules made thereunder.

Details of the company

7. M/s. ERIS Healthcare Private Limited is a holding company of M/s Eris Pharmaceuticals Private Limited and a subsidiary company of M/s Eris Lifesciences Limited, incorporated on 17th June 2016 having its registered office situated at 40 7-404,4th Floor,

Shivarth Ambit Plot No 142/2, Ramdas Road, Off SBR Nr. Swati Bungalows, Bodakdev, Ahmedabad in the state of Gujarat. The company falls under the jurisdiction of Registrar of Companies is of Gujarat and the Registrar of Company is situated at Ahmedabad. The company's main business is that of majorly in manufacturing metals & chemicals, and products thereof. The company is having three directors on its board.

Fact about of the case

8. The following are the events which took place in this case.

(i) The company held its extraordinary general meeting for the financial year 2020-21 on 11th June 2020.

(ii) At this meeting, the members have passed a special resolution pursuant to section 185 of the Companies Act 2013, for advancement of loan to the subsidiary company in which directors were interested.

(iii) The company was required to file the special resolution passed at the annual general meeting under section 117(1) of the Companies Act 2013 within 30 days of passing the resolution i.e. on or before 10th July 2020.

(iv) The company did not file the special resolution through e-form MGT 14 with the Registrar of Companies as required.

(v) Thereafter the company submitted the annual return for the financial year 2020-21 along with the certificate issued by the practicing company secretary in form MGT-8 dated 11th April 2022.

(vi) The practicing company secretary stated in his MGT-8 certificate under column XI B that the company during the financial year 2020-21 has advanced loan to the subsidiary company in which directors of the company were interested and in this matter the company has passed necessary special resolution pursuant to section 185 of the Companies Act, 2013 in the general meeting of shareholders of the company. However the company has not filed Form MGT-14 with ROC and to that extent company

has not complied with the provisions of the ActRoutine procedural scrutiny by the Regulator

9. The Registrar of Companies while carrying out the routine procedural scrutiny of the annual return submitted by the company for the financial year 2020-21, observed that that the company has violated the compliance of section 117 read with section 185 of the Companies Act 2013, by not filing the resolution passed by the members of the company in the form MGT-14 as required. The Registrar also has taken note that the same fact has been admitted by the company in the annual return filed and it is also confirmed by the practicing company secretary who issued the required certificate in form MGT-8

The Registrar of Companies therefore came to the conclusion that the company has not and has not complied with the provisions of section 117(1) of the Companies Act 2013, by not filing the special resolution in MGT-14 form and violated the provisions of the Act with a result the company and its officers are in default and liable to be penalized under section 117(2) of the Companies Act, 2013.

Action taken by the Regulator

10. The Registrar of Companies intimated the scrutiny report about the non-compliance of section 117(1) by Eris Healthcare Private Limited to the Regional Director of Northern Region. The Regional Director instructed the Registrar of Companies to take appropriate action in accordance with the Companies Act 2013 and submit action taken report to the Directorate vide his letter dated 22nd June 2022.

Issue of show cause notice by Regulator and reply by the company

11. Under the compliance of instructions of the Regional Director vide his letter dated 22nd June 2022, an adjudication notice was issued to the company and its directors on 22nd August 2022 under section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2014 for

violation of section 117 (1) read with section 185 of the Companies Act, 2013

The Company has furnished its reply on 31st August 2022 and requested to provide an opportunity to be heard in the matter. Thereafter, a written notice was issued by the Registrar of Companies on 20th September 2022 to the company and its directors as per sub-section 4 of 454 of the Companies Act, 2013 read with rule 3 of Companies (Adjudication of Penalties) Rules, 2014 and a personal hearing was fixed for 28 the September 2022.

On the day of personal hearing

12. Representation made by the company authorised representative on behalf of company and its directors. The company authorized a practicing company secretary to represent the company and its directors on this matter. Accordingly the authorized learned practicing company secretary attended the personal hearing on 28th September 2013. The learned practicing company secretary submitted that(a) On receipt of the MGT-8 form, from the practicing company secretary, the company and its directors became aware that due to oversight, the filing of e-form MGT-14 was left out for filing of special resolution passed on 11th June 2020.(b) Subsequently, the company tried to file the said e-form MGT-14 along with additional fees.(c) However, the system did not allow them to file the e-form MGT-14 due to delay of more than 300 days in accordance with section of the Companies Act, 2013.(d) The learned practicing company secretary further submitted that till the date of personal hearing, the company was unable to file the said e-form MGT-14 and he explained that the e-form MCT-14 could not be filed because the quantum of delay was more than 300 days and the pre-scrutiny error showed that INC-28 needs to be filed for condonation of delay.(e) The e-form, MGT-14 could be filed only thereafter for the special resolution passed by the company.Presenting Officer response to the company's representation

13. The Presenting Officer responded that(i) The company has passed the special resolution on 11th June 2020 during the financial year 2020-21 for advancement of loan to the subsidiary company in which directors were interested pursuant to section of the Companies Act, 2013.(ii) The company was required to file e-form MGT-14 pursuant to section 117(1) of the Companies Act 2013, on or before 10th July 2020.(iii) However, the company did not file MGT-

14 intimating the resolution passed as required under section 117(1) of the Companies Act, 2013 till date.(iv) The reason given by the company is that the company tries to file the e-form after the lapse of 300 days which is not permitted unless condonation of delay obtained and INC-28 form is filed.(v) He concluded that the company and its directors were liable for penalty as per section 117(2) of the Companies Act, 2013 for non-filing of the required e-form MGT-14.The Presenting Office further submitted that the object of filing such information under the MCA-21 portal which is in the public domain is in the interest of public, to enable the investors, public and whosoever interested in the company could access the information pertaining of the Company. He concluded in stating that, under the law non-filing of documents under the under the MCA portal would result in denial of information to public /stake holders and this type of activity should be avoided.

Conclusion reached by the Adjudicating Officer

14. From the above facts, and keeping in mind, the ease of doing business in India and oral submission made by learned practicing company secretary as well in compliance to instructions dated 22nd June 2022 received from the directorate, the Adjudicating Officer considered penalty provided under the Companies (Amendment) Act, 2020 vide notification dated 28th September, 2020 effective from 21st December 2020 for default relating to the filing of e-form MGT-14 on 10th July 2020 committed prior to 21st December 2020.

The Adjudicating Officer concluded that the company

and its directors in default are liable for penalty under section 117(2) of the Companies Act, 2013 for non-filing of the special resolution in e-form MGT-14, which attracted noncompliance of the provisions of Section 117(1) of the Companies Act, 2013 and the Adjudicating Officer has reasonable cause to believe that the company and its director(s) have violated the provisions of section 117(1) of the Companies Act 2013 as noticed from the MGT-7 /annual return available under the MCA21 portal. In view the facts narrated above, the company and its directors /officers, in default are liable for penalty as per section 117(2) of the Companies Act.

Factors considered by the Adjudicating Officer while passing the order

15. While adjudging quantum of penalty under section of the Companies Act, 2013, the Adjudicating Officer has considered the following factors, namely:-

(a) The amount of disproportionate gain or unfair advantage, whenever quantifiable, made as a result of default.(b) The amount of loss caused to an investor or group of investors as a result of the default.(c) The repetitive nature of default.The Presenting Officer further submitted that with regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the company and its directors or loss caused to the investor as a result of the delay on the part of the notice to redress the investor grievance are not available on the record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the company and its directors or the loss caused to the investors in a default of this nature.

As regards to imposing lesser penalty

16. The Presenting Officer submitted that it is observed from the annual return for the Financial year 2020-21 of the company, that the paid-up capital of the company is Rs. 4,33,33,310.00 and Turnover is Rs. 75,04,96,985 21. Further the company is a holding

company of Eris Pharmaceuticals Private Limited and also it is subsidiary company of Eris Lifesciences Limited. Hence, as per the Ministry's Notification No. GSR 92(E0 dated 1st February 2021, with respect to the provisions of section of the Companies Act, 2013, the company does not fall under the ambit of "small company". Therefore, the provisions of imposing lesser penalty as per the provisions of section of the Companies Act, 2013 do not apply to the company.
Order passed the Registrar of Companies

17. The following order was passed by the Registrar of Companies, Gujarat, and Dadra & Nagar Haveli, who was the Adjudicating officer in this case.1. After having considered the facts and circumstances of the case and submissions made by the Presenting Officer and oral submissions made the practicing company secretary during the hearing on behalf of the company and also after taking into accounts the factors discussed above, the Registrar of Companies passed the order on this matter. The Adjudicating Officer imposed the following penalty on the company and its directors as prescribed under section 117(2) of the Companies Act 2013 for section of section 117(1) of the Companies Act 2013. Further, the Adjudicating Officer is of the opinion that penalty is commensurate with the aforesaid failure committed by the company and its directors.

Penalty on company and officers in default for the aforesaid default are as under :—

Name of company/ director	Penalty	Penalty for continuing failure	Maximum Penalty	Penalty Imposed
Company	10,000	810 days*100=81,000/-	2,00,000	91,000
Director -	110,000	810 days*100=81,000/-	50,000	50,000
Director-	210,000	810 days*100=81,000/-	50,000	50,000
Director-	3	10,000	810 days*100=81,000/-	50,000
Total	2,41,000			2.

The order further directed that the company and its directors shall pay the amount of penalty individually for the company and its officers from their personal

sources / income by way of e-payment available on Ministry website www.mca.gov.in under "Pay miscellaneous fees,, category in MCA fee and payment services under Rule 3(14) of company (Adjudication of penalties) Amendment Rules, 2019 and the challan / generated after payment of penalty through online mode intimation shall be filed in form INC-28.3. The order also spelled out that an appeal against this order may be filed in writing with the Regional Director, North Western Region, Ministry of Corporate Affairs, ROC Bhavan, Opp. Rupal Park NR. Ankur Bus, Narunpura, Ahmedabad (Gujarat) 380013 within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall be accompanied by the certified copy of this order.

[section 454(5) & 5 (5) of the Companies Act, 2013 read with the Companies (Adjudicating of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019.4. The order also invited the attention of the company and its directors to section 454(8)(i) and 454(8) (ii) of the companies Act, 2013, which state that in case of non-payment of penalty amount, the company shall be punishable with fine which shall not less than twenty five thousand rupees but which may extend to five lakhs rupees and officer in default shall be punishable with Imprisonment which may extend to six months or with fine which shall not be less than twenty five thousand rupees by which may extend to one lakhs rupees or with both.Finally the order ended with saying that the adjudication notice stands disposed of with this order.

GLIMPSES of SEMINARS





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