



# RAIPUR BRANCH OF CIRC OF ICAI

E-NEWSLETTER • JULY 2021



## BLOG IS ONLINE !

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As one of the steps for better digitization of our ICAI Raipur E-Newsletter, now the Articles and Write-ups published in the newsletter will also be published as Blogs in our ICAI Raipur website, in the link given above.

This will lead to ease of access and improved sharing capabilities, as well as comfortable reading via mobile devices. Do visit and send us your feedback.

More new features coming soon !

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# THE CHAIRMAN'S MESSAGE

CA SURESH KUMAR AGRAWAL

Introduction of MDP is welcome step by allowing cost accountant, company secretary, architect and others to be partner with CA firm. It will benefit all the CA firms and the clients will be benefited by getting all the services under one roof. This is really a welcome step which will prove a milestone for development of our profession.

This year due to covid-19 pandemic many of us might have lost their beloved and suffered emotionally, physically, financially. Looking to the scenario, Raipur branch had formed the Covid Task Force under the guidance of regional council to provide help to our fellow members. Regarding vaccination our branch has also done 12 to 15 camps for the vaccination of the members, their family, relatives, and even to the public at large. In the month of July, we have also done Gau sewa, food distribution, celebration of CA day and honoured our members who have completed their 25 years of service by shrifal & shawl.

Nothing is permanent we have to accept the changes and challenges of life and God has given us that capacity to handle the situation fearlessly and with courage. The quote of Mahatma Gandhi is very much needed to be adopted in our life that is -

**"LIVE AS IF YOU WERE TO DIE TOMORROW, AND LEARN AS IF YOU WERE TO LIVE FOREVER"**

We are planning to name one square in Raipur as CA square. For this we met the Nagar Nigam minister honourable Shiv Dahariya and he assured us for this.

Regarding our branch building, we are continuously in follow up and we hope that it will be done very soon.

# ANALYSIS OF THE TAXATION LAWS (AMENDMENT) BILL, 2021

BY CA GAURAV AGRAWAL (M.NO.- 450326)



## **1. Introduction**

Section 9 enumerates various categories of income under clauses (i) to (viii). Income falling under each of the clauses shall be deemed to accrue or arise in India. As per Section 9(1)(i), whether directly or indirectly, the following incomes are deemed to accrue or arise in India:

- a. Through or from any business connection in India;
- b. Through or from any property in India;
- c. Through or from any asset or source of Income in India;
- d. Through the transfer of capital assets situated in India.

The issue of taxability of income, arising on indirect transfer of assets located in India due to the transfer of the shares of a foreign company, was a subject matter of prolonged litigation. This issue first time arose in the case of Vodafone International Holdings. In 2006, Vodafone International Holding (Vodafone) and Hutchison Telecommunication International Limited (HTIL) entered into a transaction by which HTIL transferred the share capital of its Cayman Islands based subsidiary company to Vodafone. By this transaction, Vodafone indirectly acquired a controlling interest of 67 percent in Hutchison Essar Limited (HEL), an Indian Joint venture company.

The Income-tax Department in 2007 served a notice to Vodafone for its alleged failure to deduct withholding tax from the consideration paid to HTIL. The controversy finally settled in favour of Vodafone by the Supreme Court. The Supreme Court had ruled in favour of Vodafone that it was not liable to deduct tax as gains arising to HTIL from indirect transfer of Indian assets was not chargeable to tax in India.

## **2. Amendment by the Finance Act, 2012**

The Govt. amended the provisions of Section 9 by the Finance Act, 2012 with retrospective effect. The Finance Act, 2012 inserted Explanation 4 and Explanation 5 to Section 9(1)(i) with retrospective effect from 01-04-1962. The amendment has clarified that gains arising from the sale of shares of a foreign company are taxable in India if such shares, directly or indirectly, derive their value substantially from the assets located in India. The Govt. had termed the amendments as clarificatory in nature.

In Vodafone's case the Supreme Court observed that the word 'through' in section 9 does not mean 'in consequence of'. Explanation 4 was inserted to neutralize these observations by clarifying that the expression 'through' in section 9(1)(i) shall mean and include and shall be deemed to have always meant and included 'by means of', 'in consequence of' or 'by reason of'.

The Supreme Court held that Section 9(1)(i) does not cover indirect transfers of capital assets/property situated in India. Explanation 5 was inserted to clarify that an asset or a capital asset (being any share or interest in a company or entity registered or incorporated outside India) shall be deemed to be and shall always be deemed to have been situated in India if they derive, directly or indirectly, their value substantially from the assets located in India.

#### **4. Amendment Proposed by Taxation Laws (Amendment) Bill, 2021**

The Taxation Laws (Amendment) Bill, 2021 (hereinafter referred to as TLA, 2021) proposes to insert three provisos (Fourth, Fifth, and Sixth Proviso) in Explanation 5 to Section 9(1)(i) to give relief to certain eligible entities impacted by the above retrospective amendment. These amendments propose that the provisions of indirect transfer of assets in India shall not apply to the assets transferred before 28-05-2012 (i.e., the date on which the Finance Bill, 2012 received the assent of the President). Accordingly, all pending assessments shall be deemed to have been concluded without additions for such income. It is further proposed that the demand raised in concluded assessments or rectification orders for indirect transfer of Indian assets made before 28-05-2012 shall be nullified on the fulfillment of specified conditions. The impact of these Provisos has been discussed below.

##### **4.1 Impact on pending assessments**

The Fourth Proviso to Explanation 5 to Section 9(1)(i) provides that the provisions of Explanation 5 (hereinafter referred to as 'indirect transfer of Indian assets') shall not apply, in respect of income accruing or arising through or from the indirect transfer of Indian asset made before 28-05-2012, to:

- a. an assessment or reassessment to be made under Section 143, Section 144, Section 147 or Section 153A or Section 153C,
- b. an order to be passed enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154; or
- c. an order to be passed deeming a person to be an assessee in default under Section 201(1).

In other words, the retrospective impact of Explanation 5 to Section 9(1)(i) shall be ignored if assets situated in India are indirectly transferred before 28-05-2012. Thus, the income accruing or arising through or from such indirect transfer of Indian assets or capital assets shall not be taxable in India. Therefore, all assessments or rectification applications pending before the authorities, to the extent it relates to the computation of income from indirect transfer of assets, shall be deemed to be concluded without any additions.

##### **4.2 Impact on concluded assessments**

The Fifth Proviso to Explanation 5 to Section 9(1)(i) provides that the provisions of Explanation 5 shall not apply, in respect of income accruing or arising through or from the indirect transfer of Indian asset made before 28-05-2012, to:

- a. an assessment or reassessment made under Section 143, Section 144, Section 147 or Section 153A or Section 153C;
- b. an order passed enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154;

- c. an order passed deeming a person to be an assessee in default under Section 201(1); or
- d. an order passed imposing a penalty under Chapter XXI or under Section 221.

In other words, the retrospective impact of Explanation 5 to Section 9(1)(i) shall be ignored if assets situated in India are indirectly transferred before 28-05-2012. Thus, the income accruing or arising through or from such indirect transfer of Indian assets or capital assets shall not be taxable in India. Therefore, all assessments or rectification applications concluded by the authorities, to the extent it relates to the computation of income from indirect transfer of assets, shall be deemed to never have been passed or made.

The Sixth Proviso provides that where any amount becomes refundable to such person, then such amount shall be refunded to him, but no interest under section 244A shall be paid on that amount.

The relief in cases of concluded assessments shall be given to only those assessees who satisfy the following conditions:

- a. where the assessee has filed an appeal before an appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of said income, he shall either withdraw or submit an undertaking to withdraw such appeal or writ petition, in such form and manner as may be prescribed;
- b. where the said person has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India, whether for protection of investment or otherwise, he shall either withdraw or shall submit an undertaking to withdraw the claim, if any, in such proceedings or notice, in such form and manner as may be prescribed
- c. the said person shall furnish an undertaking, in such form and manner as may be prescribed, waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the said income which may otherwise be available to him under any law for the time being in force, in equity, under any statute or under any agreement entered into by India with any country or territory outside India, whether for protection of investment or otherwise; and
- d. such other conditions as may be prescribed.

#### **4.3 Consequential amendment to Section 119 of the Finance Act, 2012**

Section 119 of the Finance Act, 2012 had inserted a validation clause to validate all demands raised/notices sent in connection with the indirect transfer of assets. It also provides that any decision of any Court, Tribunal, etc., including the decision of the Supreme Court in Vodafone's case which has held such indirect transfer as not falling within the scope of section 9(1)(i) will be disregarded.

The TLA, 2021 proposes a consequential amendment to the above provision by inserting a proviso to Section 119 of the Finance Act, 2012. It provides that this Section shall cease to apply to the person who fulfills certain conditions, such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc.

## **5. Conclusion**

The clarificatory amendments by the Finance Act, 2012 invited criticism from stakeholders mainly with respect to the retrospective effect given to the amendments. It was argued that such retrospective amendments militate against the principle of tax certainty and damage India's reputation as an attractive investment destination.

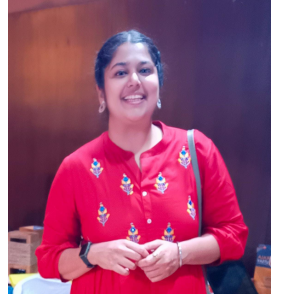
Even after the retrospective amendments, the pending demand could not be recovered by the Dept. The Income-tax Dept. raised demand in 17 cases. Out of these 17 cases, arbitration under Bilateral Investment Protection Treaty with the United Kingdom and the Netherlands had been invoked in four cases. In two cases, the Arbitration Tribunal ruled in favour of the taxpayer and against the Income Tax Department.

These clarificatory retrospective amendments and consequent demand continue to be a sore point with the potential investors. Thus, the Govt. has introduced the Taxation Laws (Amendment) Bill, 2021 in the parliament to propose revocation of the amendments made in Section 9. Today, the country stands at a juncture when quick recovery of the economy after the COVID-19 pandemic is the need of the hour and foreign investment has an essential role in promoting faster economic growth and employment.



# दर्द और अंधेरा

BY CAINDERPREET KAUR (M.NO.- 429523)



जब दिल दुखता है,  
दर्द ज्यादा होता है,  
और हर तरफ सिर्फ अंधेरा होता है,  
तब मैं इंतज़ार करती हूँ,

इंतज़ार दर्द खत्म होने का, अंधेरा मिटने का या उजाला होने का नहीं,

पर दर्द और गहरा होने का,  
ख्वाहिशों के अधूरे होने का,  
ज़िन्दगी में कुछ कम सा होने का  
सपने टूटे चुभने का,  
अरमान सारे बिखरने का,  
चोट का गहरा होने का,  
यह एहसास मेरा होने का,  
आलम कुछ अकेले होने का,

क्योंकि यह दर्द ही मुझे सुकून के पास ले जाएगा,  
ख्वाहिशें पूरा करना सिखायेगा,  
ज़िन्दगी को कम से ही बड़ा बनाएगा,  
सपने नए दिखायेगा,  
अरमानों की डोर जोड़ जाएगा,  
हर चोट से लड़ना सिखाएगा,  
जब हर वो एहसास मेरा हो जाएगा,  
अकेले मैं काफी हूँ यह बताएगा।।

# ITAT QUASHES REASSESSMENT PROCEEDINGS AS REASONS SUPPLIED TO THE ASSESSEE WERE DIFFERENT FROM REASONS RECORDED

SOURCE: TAXSCAN.IN

The Income Tax Appellate Tribunal (ITAT), Delhi Bench quashed the reassessment proceedings as reasons supplied to the assessee were different from reasons recorded.

The assessee, Jansampark Advertising & Marketing Vs. P. Ltd. filed the return of income declaring an income of Rs.3,180/-; that claiming to have received specific information from investigation wing of the Department, learned Assessing Officer recorded reasons that the assessee company had indulged in receiving accommodation entries and the total amount of payment received by the assessee company amounting to Rs. 51 Lakhs is bogus and represents the undisclosed income or income from other sources of the assessee company which was not offered to tax by the assessee and therefore, stating that the income of Rs. 51 Lacs chargeable to tax had escaped assessment, learned Assessing Officer issued notice under section 148. Assessee filed the copy of return that was already filed. After hearing the assessee, an addition of Rs. 71 lakh was made on account of unexplained credit under section 68 of the Income Tax Act, 1961 and a sum of Rs. 1.42 lakhs on account of commission at 2% in respect of the accommodation entry.

Mr. Kapil Goel, the Counsel on behalf of the assessee argued that it was brought to the notice of the CIT(A) that the reasons recorded were different from the reasons supplied to the assessee, the reasons supplied to the assessee do not contain any details as to the transaction, how Rs. 51 Lakhs was treated as accommodation entry in the hands of the assessee that could be discernible, there are no clues as to the nature of the transaction, there is no mention of any return filed earlier, there is no Annexures/statements/report enclosed with the reasons, break up of figure of Rs. 51 Lakhs is not to be found, there is no tangible material much less the Livelink between the reasons and the addition so on and so forth. He further submitted that the CIT(A) looked into this aspect, advert to the reasons supplied to the assessee by letter and also the reasons to be found in the assessment record, but recorded a finding that the reasons were properly recorded, the communication of reasons was made to the assessee at the reassessment proceedings, even in the subsequent appellate proceedings, raising any objection to the reasons recorded are to the sufficiency of material, based on which the reopening was done. He, therefore, argued that, inasmuch as the reasons recorded were not supplied to the assessee, the assessment that followed basing on such lapse is vitiated.



On the other hand, the Revenue urged that there is no change in the reasons recorded and the reasons supplied to the assessee but in the reasons supplied to the assessee are only concise or a bridge ones and no prejudice was caused to the assessee, as rightly observed by the CIT(A) and therefore it is not a ground to vitiate the assessment proceedings.

The two-member bench of Judicial Member K. Narshima Chary and Accountant Member N.K.Billaiya held that the that the requirement of recording the reasons, communicating the same to the assessee, enabling the assessee to file objections and the requirement of passing a speaking order are all designed to ensure that the Assessing Officer does not reopen assessments which have been finalized on his mere whim or fancy and that he does so only on the basis of lawful reasons, and since these steps are also designed to ensure complete transparency and adherence to the principles of natural justice, any deviation from these directions would entail the nullifying of the proceedings.

# TAXATION OF CRYPTOCURRENCY - INDIA



BY NARAYAN AGARWALA

As per Income Tax Act, you need to pay taxes on your Income. Union Minister of State (MoS) Sri Anurag Thakur said \*the gains arising from the transfer of cryptocurrencies/ assets is liable to tax under a head of income. ft The Income Tax Act is designed such a way that the income from crypto is still taxable. Let's Analyse:

Type/Purpose	Taxable under	Tax Rate
Frequent buying and selling to earn profits/Trading	Profits and Gains from business or profession	Slab Rate i.e. Up to 2.5 L - Nil
Staking, Farming, Airdrop (if whole time into these activities)		
Staking, Farming, Airdrop (if nominal and no other income)	Income From other sources	2.5 to 5 L - 5 %
Income from Crypto mining		5L to 10L - 20%
Investment for less than 36 months	Capital Gain	10 L above - 30%
Investment for More than 36 months	Capital Gain	Flat 20 percent

## Profits and Gains from business or profession:

If value of transaction don't cross Audit Threshold (1crore usually) limit then you may opt for Presumptive scheme (6% of turnover deemed profit) or you may consult local CA for Audit. If the total INR Value of transaction in crypto crosses the specific audit limit, then contact local CA and ask them to do Audit. They will assist you.

## Income From other sources:

Include the earning of crypto with all other income and pay taxes as per slab rate.

Capital Gain: Taxes will be paid depending upon the period of holding as stated in above table.

RAIPUR BRANCH OF CIRC OF ICAI						
Reports of Activities carried out by RAIPUR BRANCH						
IN THE MONTH OF JULY 2021						
SR.NO	DATE	PROGRAMME	TOPICS	GUEST/FACULTIES	Structured CPE	Attendance
1	02.07.2021	Full body stretch and relaxation session		CA Mrunal Ved.		
2	03.07.2021	VCM jointly with Bilaspur Branch and Bhilai Branch	Msme funding:Role of capital market, Benefits and process of listing and MSME Funding:opportunities for professional in capital Market,IPO process and different form of equity funding to msme.	Chief Guest :- CA Pramod Kumar Boob,CCM,ICAI, Speaker 1 : Mr. Dipan Mitra, Senior Manager, NSE,Speaker 2 : Ms. Prachi Ghia, AVP, Hem Securities (A SEBI Registered Category 1 Merchant Banker)	2	
3	05.07.2021	VCM jointly with Bilaspur Branch and Bhilai Branch	1-Topic :Determination of validity period and quantification of compensation in RERA 2-Topic : *Role of CA in Rera in current scenario.	Chief Guest :- CA Nilesh Gupta-CIRC ChairmanProgram Moderator:-CA Dipak Batra- Raipur and Speaker 1 : CA Vishnu Agrawal,Indore Speaker 2 : Mr.Vivek Dhand, Chairman - RERA Chhattisgarh	2	
4	07.07.2021	VCM ON RECEIVING SUGGESTIONS ON RESEARCH PROPOSAL ON "RESEARCH ON PUBLIC PROCUREMENT- Professional Opportunities for CA's	Research on Public procurement- Professional opportunities for CA's .	Speaker-CA Sanjay Khare,Opening Remarks - CA Anuj Goyal Chairman (Research Committee).Program Moderator - Dr Amit Kumar Agrawal, Secretary (Research Committee)	2	
5	08.07.2021	115th OTC				39
6	08.07.2021, 09.07.2021, 17.07.2021, 24.07.2021, 31.07.2021	COVID Vaccination Camp				
7	22.07.2021	Meet with Principle Secretary Shri B.B Mohapatra				
8	26.07.2027	Meet with Chief Commissioner of Income Tax :Shri S.K Singhji				
9	30.07.2021	VCM jointly with Bilaspur Branch and Bhilai Branch	Insight of "Faceless Assessment / Appeal / ITAT"	Speaker :Adv. (CA)Rajeev Ahuja - DelhiChief Guest:- Shri S.K. Singh - Chief Commissioner of Income Tax-Raipur Session Chairman:- CA Anuj Goel-CCM ICAI,Guest of Honor:- CA Devendra Domani- Past Chairman CIRC	2	157

# THANK YOU



## INVITATION FOR CONTRIBUTING ARTICLES AND OTHER CONTENT

Articles are invited for inclusion in the E-Newsletter for the month of August 2021.

Other writings such as Poems/ short stories/ any other professional or non-professional writeup also invited.

If you want to share your artwork, you can send us a good quality Pic of it and we will share with our CA community!

**Email** – [Raipur@icai.org](mailto:Raipur@icai.org), [prakhrajain2244@gmail.com](mailto:prakhrajain2244@gmail.com)

Kindly send along with a Passport size photo, Name and Membership number