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By

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CONTENTS

Dear Readers,

Greetings for the season!

In this edition, we bring you to quite a few interesting articles.

The article on “cancellation of registration under Section 12AA of Young Indian” critically analyses the important decision delivered by Honourable ITAT Mumbai which re-emphasised the power of cancellation of registration with retrospective effect.

The article on “GST implications on development of plots” deals with liability of developer in the case of development of plots in development agreement entered with land owner, definitely would be an interesting read.

I hope that you will have good time reading this edition and please do share your feedback. I will also urge clients to mail us topics or issues on which you want us to deliberate in our future editions, so that we can contribute to the same.

Thanking You,

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DIRECT TAXATION

STORY OF YOUNG INDIAN - CANCELLATION OF SECTION 12AA REGISTRATION

Contributed by CA Suresh Babu S & CA Sri Harsha

The Honourable Delhi ITAT[1] in the matter of Young Indian v CIT (Exemption)[2] has confirmed the rejection of registration under Section 12AA of Income Tax Act, 1961 (Act) with retrospective effect is valid in law. In this article, we discuss the story of Young Indian (YI), the acquisition of Associated Journals Limited (AJL), the non-carrying of any activities of YI and the cancellation of registration of YI with retrospective effect.

YI was incorporated as a company under Section 25 of Companies Act, 1956. Memorandum of Association was subscribed by two directors, namely Mr Suman Dubey and Mr Satyam Gangaram Pitroda with 550 equity shares each. Post incorporation, both the shareholders transferred their shares to Mr Oscar Fernandes and Mrs Sonia Gandhi (SG). Subsequent to such transfer, Mr Suman Dubey and Mr Satyam Gangaram Pitroda were appointed as directors of a company, M/s Associated Journals Limited (AJL). Later, Mr Rahul Gandhi (RG) was appointed as director of YI and also acquired 3600 shares of YI. Simultaneously, SG has further acquired shares totalling to 3600 shares of YI and also become a director of YI.

As on 31.03.2010, AJL owes an amount of Rs 88.86 Crores to All India Congress Committee (AICC). AJL has further taken a loan from AICC totalling the outstanding to Rs 90 Crores. The share capital of AJL was Rs 1 Crore. AICC has transferred the outstanding loan of Rs 90 Crores from AJL for a consideration of Rs 50 lakhs to YI. Later, the share capital of AJL was increased to Rs 10 Crores and the additional shares were allotted to YI (99.99%) giving the maximum control of AJL to YI. The balance shares were subscribed by SG, RG and Mrs Priyanka Gandhi (PG).

[1] Income Tax Appellate Tribunal
[2] ITA No 7751/Del/2017

The dates of the events detailed in this article is tabulated as under for easy comprehension:

Date	Event	Remarks
14.10.2010	Application for Incorporation of YI	Initial subscribers (IS) as Mr Dubey and Mr Pitroda
23.11.2010	Incorporation of YI	-
-	Transfer of Shares by IS	Transfer to Mr Oscar Fernandes & Mrs Sonia Gandhi
13.12.2010	Appointment of RG as director of YI	RG acquired 3600 shares of YI and also became director
16.12.2010	Transfer of OL to YI	AICC transferred OL due from AJL to YI for Rs 50 lakhs
21.12.2010	Appointment of IS as directors of AJL	Mr Dubey and Mr Pitroda appointed as directors of AJL
31.03.2010	Outstanding Loans (OL) in AJL	Rs 88.86 Crores from AICC as outstanding loans
22.01.2011	Appointment of SG as director of YI	SG further acquired shares and became director of YI
01.03.2011	Availment of Loan by YI – Rs 1 Crore	Loan from M/s Dotex Merchandise Private Limited
01.03.2011	Payment of Rs 50 lakhs to AICC	YI has paid said amount for purchase of OL due from AJL
31.03.2011	Application of YI under 12AA	For registration as charitable institution
06.05.2011	Grant of registration - Section 12A	YI has obtained registration with effective from AY 11-12
21.03.2016	Suo moto surrender of 12AA by YI	In absence of foreseeable surpluses, YI surrendered

YI having the main objective to inculcate in the minds of Indian Youths commitment to the ideal of a democratic and secular society in conformity with the ideals of Mahatma Gandhiji and Pt. Jawahar Lal Nehru, has applied for registration under Section 12AA before DIT (E)[3] . A show cause notice was served asking YI to furnish certain information along with the note on activities to be performed. YI has replied to the said notice and stated that the proposed activities are charitable in nature as defined under Section 2(15) and accordingly prayed for grant of registration. The address mentioned in the application filed by YI is the same address where AJL is located and the Chairman of AJL has given no-objection certificate to YI to carry on their activities from their premises. The Learned DIT (E) has granted the registration certificate under Section 12A read with Section 12AA subjected to certain conditions, where one of such condition is that the registration shall be liable to be cancelled if it is found that the said registration is obtained fraudulently by misrepresentation or suppression of facts.

[3]Director of Income Tax (Exemption)

YI in its 5th year has written to DIT (E) stating that they hold shares of AJL and such investment was never intended for gain and since there were no available significant surpluses in foreseeable future, they intend to suo moto surrender the registration under Section 12A read with Section 12AA.

In 2017, the CIT (E)[4] has issued show cause notice to YI asking them to explain whether there were any change in the aim and objectives of YI during AY 11-12 to 16-17 and since the only activity done by YI was to acquire 99.99% shares of AJL, which is engaged in real estate business and whether earning of income from real estate business is within the main objectives and aims of YI and whether such activities are in conformity with the terms and conditions subject to which registration under Section 12A is granted to YI. YI has replied to the said notice stating that just because investment was made in AJL, it cannot be said that YI is engaged in business of real estate and the surrendering of the registration does not mean that YI is not engaged in commercial activities and the reason for surrender is that they do not foresee any significant surplus and nothing else.

CIT(E) on a perusal of the reply filed by the YI and examining the annual accounts filed for the period 11-12 to 14-15 has observed that YI has not incurred any expenditure for meeting their objectives except for creating provision for interest payments for the loan taken by YI to purchase the shares of AJL.CIT (E) for the period ended 31.03.2011 has observed that YI has incurred an amount of Rs 50 lakhs for the pursuit of its objectives. The notes to account states that YI has acquired loan owed of Rs 90 Crores by AJL from AICC for a consideration of Rs 50 lakhs and as a part of restructuring exercise of AJL, the said loan was converted into ordinary shares and allotted to YI. The notes further states that since said acquisition is treated as application on the objects of YI, the same has not been reflected as an investment in shares. Further, CIT (E) has examined the activities carried out by AJL and noted that said company was engaged in publishing newspapers and ceased such activity with effective from 02.04.2008. After such cessation of publication, the income of AJL was engaged in purchase, construction, sale and renting out of properties and has prominent properties in major cities in India.

Accordingly, CIT (E) has stated that the since the substantial shares of AJL was held by YI, it can be stated that YI is engaged in business of real estate business through its subsidiary. The acquisition of shares of AJL cannot be said to be in pursuit of the objectives of YI, the said expenditure cannot be treated as applied for the purposes for which YI was incorporated. He further held that the voluntary registration was a consequence of mounting pressure from the tax department qua investigation and re-opening of assessment of YI. Accordingly, the CIT (E) held that activities of YI were not genuine and not carried out in accordance with the objects and cancelled the registration with effective from AY 11-12 denying the expenditure incurred amounting to Rs 50 lakhs and also claim of exemption of Rs 2 Crores which is collected as annual fee.

YI and tax authorities have made extensive arguments before the Honourable ITAT and framed the question for discussion as to whether CIT (E) is justified in law and facts in cancelling the registration granted under Section 12 and Section 12AA with effective from AY 11-12, which amounts to retroactive cancellation. The only challenge from YI is that the act of cancellation of registration under Section 12A read with Section 12AA with effective from AY 11-12 is bad and accordingly prayed before the Honourable ITAT to set aside the order of CIT (E).

[4]Commissioner of Income Tax (Exemption)

The Honourable ITAT after pursuing the order, other documents and hearings from both the sides, stated that the YI at the time of application of registration under Section 12A read with Section 12AA has not brought out the fact that the YI has purchased outstanding loan of AJL due to AICC for a nominal consideration of Rs 50 lakhs, that YI has taken a loan of Rs 1 Crore and no assets or liabilities were shown in the balance sheet of YI and the allotment of shares by AJL to YI. Since all the material facts were concealed the DIT (E) has granted the registration. If at all YI has brought all the material facts without suppressing them, the DIT (E) may have not granted the registration in first place. Since the registration granted is subjected to certain conditions, where one of such condition is that the registration would be subjected for cancellation, if it is later discovered that the registration is obtained basis of suppression of material facts.

The Honourable ITAT further stated that YI never in its replies filed before the CIT (E) has substantiated that the objectives of AJL were in alignment with the objectives of YI and has never claimed that it does not have any ownership interest, whatsoever, in the properties owned by AJL, which makes it abundantly clear that the YI had other intentions. The ITAT has also brushed away YI's contention that acquisition of AJL was to spread democratic and secular values to youths of India through the medium of newspapers published by AJL, since the majority of the publication of AJL has started after the surrender of registration of YI. Hence, the ITAT has held that was an afterthought and did not give weightage to the additional evidences filed by YI.

The Honourable ITAT further held that the CIT (E) has rightly observed that YI has failed to show at least one activity which was done during the period 11-12 to 15-16 in pursuit of its objectives except purchasing AJL. Hence, it is inferable that entire move is for acquiring AJL, which has stopped publishing activities and was holding large number of properties worth hundred of crores with huge rental income was for acquiring control and interest in such properties for mere sum of Rs 50 lakhs and asked whether prudence justify such acquisition was for furtherance of charity or for furtherance of the objects of YI? The ITAT has further stated that if the intention of YI in acquiring AJL was in pursuit of YI's objectives, then what was the reason to hide such transaction and purchase of AJL loan for Rs 50 lakhs also does not look like a genuine transaction.

The Honourable ITAT then proceeded to examine the judgments put forth by the tax authorities. One of them was the judgment of Honourable Single Judge of Delhi High Court which has upheld the eviction notice issued by Land Development Officer on AJL on the premise that there was no printing activity which is being continued by AJL in such property. AJL has preferred appeal against the judgment of Honourable Single Judgeand the Honourable Delhi High Court speaking through its Chief Justice has upheld the judgment of Honourable Single Judge and made an important observation holding that there is no hesitation in holding that the purpose for which the doctrine of lifting the veil is applied is nothing but a principle followed to ensure that a corporate character or personality is misused as a device to conduct something which is improper and not permissible in law, fraudulent in nature and goes against public interest and is employed to evade obligations imposed in law. Seen in above context, the High Court held that the take over of loan due to AICC for Rs 50 lakhs and thereafter replacing the original shareholders of YI by four new entities including Sh. Moti Lal Vohra, Chairman of AJL and YI after acquiring 99% shares in AJL, became the main shareholder with four of its shareholders acquiring the administrative right to administer property of more than Rs 400 Crores and thereby held that entire transaction of transferring shares of AJL to YI was nothing but, a clandestine and surreptitious transfer of lucrative interest in the premises to YI.

Basis the judgement of Honourable Delhi High Court, the ITAT has held that conduct of YI from the incorporation till the application for registration under Section 12AA, was not to carry out any charitable activity, but to acquire huge assets of hundreds of crores for a negligible amount. Seeking a status of charitable institution and obtaining registration under Section 12AA, with such kind of conduct clearly indicates that it is a misuse of law and some kind of colourable device. The ITAT further held that there is another angle which requires consideration, is that why YI was pressing for registration under Section 12AA only for the said five years and why they have voluntarily surrendered the registration in 2016.

The ITAT further held that the plea of YI that CIT (E) does not have power to cancel the registration with retrospective effect does not hold good, because the provisions of Section 12AA (3), wherein it provides that the Commissioner has statutory powers to cancel the registration under Section 12A/12AA, if he finds reasons to believe that the activities are not in line with the objects or activities carried out are not genuine in nature. The ITAT has placed reliance on the judgment of Honourable High Court in the matter of Prathyusha Educational Trust vs Principal Commissioner of Income Tax, Central -2, Chennai [5], wherein it was held as under:

19.The next contention of Mr.Anirudh Krishnan is that the cancellation of the exemption under Section 10(23C)(vi) of the Act and cancellation of the registration under Section 12AA of the Act with retrospective effect is illegal.

At the first blush, the Court assumed that the argument of Mr.Anirudhkrishnan is to the effect that the cancellation/withdrawal was with effect from the date of grant of exemption/registration. ***However, on a perusal of the order dated 18.11.2014 withdrawing the approval granted under Section 10(23C)(vi) of the Act, it is seen that it has been given effect to from the assessment year 2010- 2011. Likewise the order cancelling the assessee's registration under Section 12AA of the Act is from the assessment year 2010-2011. Can it be said that these orders of cancellation are with retrospective effect. The definite answer for this question is an emphatic 'No'. Admittedly, the business premises of the assessee was subjected to search during the assessment year 2010-2011. The Assessing Officer while completing the assessment found large scale diversion of funds and several improper actions on the part of the assessee in direct conflict to the terms of the Deed of Trust and conditions of registration/exemption. Therefore, it was recommended to the competent authority to initiate proceedings for cancellation of the exemption/registration. The matter was decided after due opportunity to the assessee and speaking orders have been passed and obviously these orders will take effect from the assessment year 2010-2011 and it is a mis-nomer to state that the orders are retrospective or retroactive. The lis which was the subject matter is for the assessment year 2010-2011 and though the orders of cancellation of the exemption/registration was passed on 18.11.2014 and 07.12.2016 they would take effect from the assessment year 2010-2011 during which year the cause of action arose…***

(emphasis supplied by us)

Since YI has not done any activity in pursuit of its objects, the ITAT has held that Commissioner is empowered to cancel the registration from such date and accordingly held that the act of Learned CIT (E) in cancelling the registration with effect from past date is in accordance with the law.

[5] 2019 (7) TMI 302- Madras High Court

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GST

GST IMPLICATIONS ON DEVELOPMENT OF PLOTS

Contributed by CA Sri Harsha & CA Manindar

Introduction:

Development agreements are popular not only with respect to the construction of residential or commercial complexes but also with respect to laying and development of plots. The real estate companies enter into agreements with landowners for the purpose of laying of plots and undertaking various development works viz. compound wall, approach roads, parks, plantation, street lighting, drainage/sewerage facilities etc. In consideration for undertaking these activities, the developer is generally entitled to a portion of the developed plots. The landowner is entitled to sell the remaining portion of the developed plots .Let us understand the GST[1] implications in connection with these arrangements. Typically, every joint development agreement gives raise to four transactions for which the tax impact has to be understood:

Transaction I - Transfer of Development Rights (TDR) by landowner to developer
Transaction II - Construction Services provided by developer to landowner
Transaction III - Sale of Plots allotted to his share by developer
Transaction IV - Sale of Plots allotted to his shared by landowner

In this article, transactions between the developer and landowner are analyzed. In the upcoming journal, the transactions between the developer and his customers and landowner and his customers along with concluding remarks shall be discussed.

Further, even though all these transactions arise by a virtue of a single agreement, the same cannot be called as composite supply, since the aspect of composite supply comes into play when there are multiple taxable supplies provided to a single recipient. Since, in the instant case, the supplier and recipient for each supply vary, the tax treatment qua each transaction has to be examined.

Transfer of Development Rights by landowner to developer:
(Transaction – I)

The supply of TDR to developer for allowing the latter to enter and develop the land would amount to supply of service. Entry 41A of Notification No 12/2017 – CT (R) provides exemption for services by way of TDR on or after 1st April 2019 ***for construction of residential apartments*** subject to certain conditions. The phrase 'residential apartment' is defined vide Explanation to Notification No 11/17 – CT (R) at entry (xxix) to mean apartment intended for residential use as declared to RERA[2] or competent authority. Further, the word 'apartment' is defined vide Explanation 3(v) to Notification No 12/2017 – CT (R) by making a reference to section 2(e) of RERA laws[3], which does not include plot in its ambit.

[1] Goods and Services Tax
[2] Real Estate Regulatory Authority – A body constituted under Real Estate (Regulation & Development) Act, 2016
[3] Real Estate (Regulation & Development) Act, 2016

Hence, on a reading of the exemption entry and definition of 'apartment' it is evident that the TDR for development of plots is not covered under the exemption entry and accordingly taxable. Even assuming that plots are covered under the ambit of 'residential apartment', on a reasoning that the plots will be ultimately used for residential apartment, it would be hard to satisfy the exemption entry since the exemption is carved out for ***construction*** of residential apartments and not for services which eventually result in construction of residential apartments. Hence, it would be hard to claim exemption for transfer of development rights for the layout and development plots. However, it is important to look at the judicial development in the matter of Nirman Estate Developers Private Limited[4] before Bombay High Court, where taxation of TDR is currently under challenge before taking a final call to pay tax or not by the landowners. The plea of tax payer in that matter was that TDR is a benefit arising from land, the same shall be treated as immovable property and accordingly no tax is required to be paid when such immovable property is transferred to developer for layout of plots.

Construction Services provided by Developer: (Transaction – II)

Schedule III of the CT Act[5] provides for a list of transactions which are neither supply of goods nor supply of services. Transaction by way of sale of land is covered under entry 5 of schedule III of the CT Act which implies that the sale of land is excluded from the meaning and scope of supply. However, in case of development of plots, the developer is undertaking the obligation of laying of plots and development of various amenities. In consideration of this, the developer is entitled to a portion of the developed plots. Therefore, the transaction between developer and landowner towards laying of plots are concerned, does not fall under the ambit of sale of land in order to get covered under schedule III.

The issue, whether the development of plots to landowner amounts to supply or not has been examined recently in the ruling of M/s Maarq Spaces Private Limited[6] . The facts involved in this case are that the applicant has entered into an agreement for the development of land into the residential layout of plots along with amenities. The consideration was agreed by way of share of revenue received towards the sale of plots. It has been agreed to share the revenue in the ratio of 75% for the landowner and 25% for the developer.

In this context, the applicant pleaded that the activity of development work carried out in respect of the land is an activity incidental to the sale of land and are not liable to pay any tax. The AAR has considered the submissions of the applicant and rejected their plea. It was held that the activity of development of plots is not covered under schedule III, it amounts to supply of service and is subject to tax. The observations made by AAR are as under:

9.6 In Para 6 it is provided that the entire cost of development shall be borne by the applicant. This shows that the applicant is engaged in the activity of providing a certain service to the landowners and the landowners will compensate the applicant for the same in accordance with the terms of the agreement.

[4]2018 (12) TMI 1442 – Bombay High Court
[5]Central Goods & Services Tax Act, 2017
[6]2019 (11) TMI 994

9.7 The revenue sharing arrangement in Para 8 of the agreement indicates that the applicant gets an amount on the sale of each individual plot. This shows that there are no fixed earmarked plots to which the applicant can claim an entitlement. Further the amount received on the sale of the plots is credited to an escrow account and then only the same is divided. This further shows that the applicant is not the owner of the plots and consequently cannot claim sale of the plots as his supply.

9.10 On the basis of the aforementioned provisions of the agreement it would be in order to conclude that activities undertaken by the applicant are not qualified to be covered under entry number 5 of Schedule III of the said Act. Thus, the activities undertaken by the applicant amount to a supply of service and we answer the first question in the affirmative, i.e. the activities undertaken by the applicant, as envisaged in the agreement placed before the Authority, amount to a supply of service to the landowners and is liable to be taxed appropriately under the provisions of the CGST/KSGST Acts"

Hence, the services provided by the developer to the landowner would not be classified as Entry 5 of Schedule III and would be treated as supply of services.

Rate of Tax:

Particulars	Rate of Tax
Transaction 1	Since the transfer of development right to the developer for development of land into saleable plots would amount to supply of service, and no specific entry is available under Notification No 11/17 – CT (R), the tax rate shall be as per Entry 35 (residual entry) which is fixed at 18%.
Transaction 2	As development works amounts to the supply of service, let us now proceed to understand the rate of tax to be applied. Though plot development activities also come within the meaning of real estate projects under RERA laws [7], the rate of tax at 5%/1% was limited to real estate projects involving the construction of apartments. Therefore, the activity of plot development would come under the ambit of residuary entry i.e. Entry 3(xii) of Notification No 11/2017-CT(R) and is subject to tax at the rate of 18%.

Value of Supply:

The value of taxable supply shall be the transaction value, which is the price actually paid or payable for the services where the supplier and recipient of supply are not related, and the price is the sole consideration for the supply. However, in the instant case, the 'price' is never negotiated between the land owner and developer. The developer is entitled for the land which is embedded in the developed plot as consideration for the services and the landowner is entitled for developed plots as consideration. Since there is no 'price', the valuation based on transaction value gets failed and resort has to be made to arrive value as per rules.

In cases where consideration for a supply is wholly or partly in non-monetary form, then the value of supply shall be determined in terms of Rule 27 of the CT Rules. Thus, in terms of the referred rule, the value of supply shall be determined with reference to the open market value of such supply.

[7] Real Estate (Regulation & Development) Act, 2016

For this purpose, the term 'open market value' has been defined to mean the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

In the case where the value of supply cannot be determined with reference to open market value or money equivalent value of the consideration received in non-monetary form, then the value of supply shall be required to be determined with reference to the value of supply of like kind and quality.

The term 'value of supply of goods or services of like kind and quality' is defined to mean any other supply of goods or services made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.
In cases where it is not practicable to determine the value with reference to the above methods, then the value shall be determined by applying Rule 30 and Rule 31. In terms of Rule 30, the value shall be 110% of the cost of provision of such services.

Rule 31 provides that where the value of supply of goods or services cannot be determined under Rule 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter. It also provides that in case of supply of services, the supplier may ignore Rule 30 i.e. determination of value based on the cost of provision of service and opt for determination based on reasonable means under Rule 31.

Now, let us proceed to value the supplies namely Transaction 1 and Transaction 2 as under:

Particulars	Value of Supply
Transaction 1	In view of the above definition given for 'open market value', it is nothing but the value in money payable by the unrelated buyer to landowner to obtain such supply at the same time when the supply is being valued is made. This is not possible, since TDRs will never be sold for full value in money to any buyer. Hence, open market value fails and then resort has to be made to alternative method as stated above, which is 'value of supply of goods or services of like kind and quality'. Further, this method is not practicable for a transaction in the nature of TDR. In view of the above discussion, the value of TDR can be arrived by adopting the methodology prescribed in Rule 30 or Rule 31. Since, it is hard to obtain the cost of provision of services involved in supply of TDRs, it is safe to adopt valuation as per Rule 31, by taking the market value of land transferred to the developer as value of TDRs. Alternatively, the value of plot sold by developer to his unrelated buyer near to the development agreement can also be taken as value of TDRs, as suggested for the valuation of TDRs involved for construction of residential apartments.

Particulars	Value of Supply
Transaction 2	In view of the above definition given for 'open market value', it is nothing but the value in money payable by the unrelated buyer to developer to obtain such supply at the same time when the supply being valued is made. If the developer is selling his share of plots to unrelated buyer, the same shall be the open market value and accordingly value of services provided to land owners can be arrived at. If the developer is not selling any of his plots to unrelated buyer, then valuation based on open market value is not possible and hence another alternative as prescribed in Rule 27 shall be opted. It is very difficult to obtain a development work which is similar in commercial circumstances to that of the development work undertaken by a particular developer. Therefore, it is very difficult to identify a similar supply to determine the value of supply of like kind and quality and not practicable to determine the value of like kind of supply. In view of the above discussion, the value of development services undertaken by the developer shall be determined with reference to Rule 27 (open market value) or Rule 30 or Rule 31, whichever is available. As stated above, if the developer sells the plots to an unrelated buyer, then Rule 27 can be opted. If the developer is not selling, then he may choose 110% of cost of construction pertaining to the land owner's share shall be taken. If the developer is of the belief that the margin would not be to the tune of 10%, then he may choose to maintain books of accounts to indicate the appropriate margin to pay tax on such value as per Rule 31. The least litigative way would be Rule 27 or Rule 30.

Time of supply:

Coming to the aspect of time of supply, since the activity of plot development is a supply of service, relevant sections has to be seen and accordingly the time of supply shall be determined with reference to section 13 of the CT Act. Accordingly, the time of supply for services shall be determined to be earlier of the following:

- If invoice issued is by supplier within prescribed period - the date of issue of invoice or date of receipt of payment, whichever is earlier or
- If invoices is not issued by supplier within the prescribed period - the date of provision of serviceor the date of receipt of payment, whichever is earlier; or
- the date on which the recipient shows the receipt of services in his books of account, in a case where time of supply cannot be determined qua above provisions

The time by which an invoice has to be issued is dealt by Section 31. The registered person supplying taxable services, shall, before or after the provision of service but within a period of 30 days shall issue a tax invoice [8].

Hence, from the above, it is evident that, there is no specific provision which deals with time of supply when non-monetary consideration is received. Further, the residuary clause, which states that the date when the recipient shows receipt of services in his books of accounts would also not be of great help, since the land owner does not generally maintain books of accounts and even if assumed that the same are maintained, there will be no entry stating that the services are received from the developer. It would be only a change in assets from land to allotted plots to his share. Hence, the residuary clause would not be of great help to the services provided by the developer.

Further, Section 13(5) states that if the time of supply cannot be determined under the normal provisions of said section, then, time of supply shall:

- in a case where a periodical return has to be filed, the date on which such return is to be filed
- in any other case, be the date on which the tax is paid

By adopting the residuary provision, it can be argued that when the developer pays tax on construction services provided by him to land owner, then that would be the date, on which time of supply would arise. Ideally, the time of supply has to be identified for making payment of tax, whereas the residual entry would state that the date of payment of tax is the time of supply. Hence, reliance on the residuary clause is also not advisable.

The above problem of fixing of time of supply for services provided arises only in case of non-monetary consideration, since there is no specific section to deal with time of supply in the instances of non-monetary consideration. However, for the purposes of valuation, it is evident that non-monetary consideration has to be included. Hence, on a reading of the valuation provisions and in absence of any specific provision for time of supply in the instance of non-monetary consideration, it can be argued that the payment above should also include non-monetary consideration. The phrase 'date of receipt of payment' as available in section 13 as explanation can be only seen as dealing with monetary consideration and not for non-monetary consideration.

Hence, let us continue to examine the time of supply based on view that phrase 'payment' used in section 13(2) covers monetary and non-monetary and monetary alone.

[8]The provisions dealing with continuous supply of service does not apply here since there are no periodic payment obligations from the land owner so that the contract fits into the definition of 'continuous supply of service' as per section 2(33) of CT Act.

Particulars	Time of Supply
Transaction 1	If the phrase 'payment' is to be interpreted that the same covers non-monetary instances also, then the time of supply shall be the date of receipt of plots allotted to land owner by the developer, which would be ideally at the end of the completion of project. If the phrase 'payment' is to be interpreted that the same does not cover non-monetary instances, then the time of supply has to be arrived based on the rationale behind Notification No 4/2018 – CT (R), wherein the time of supply is fixed when developer transfers possession or right in constructed complex, building or civil structure to the land owner by entering into a conveyance deed or similar instrument (for example allotment letter). Even though the said notification does not deal with plots and is not applicable for joint development agreements entered post April 2019, the logic can be picked up, since the said notification deals with time of supply of similar services. Hence, the time of supply may be taken as when the developer enters into a conveyance deed or similar instrument to transfer possession in plots to the land owner, which may arise at the time of completion of the project. Hence, time of supply can be fixed at the time of completion of the project.

Transaction 2	Transaction 2 If the phrase 'payment' is to be interpreted that the same covers non-monetary instances also, then the time of supply shall be the date of receipt of land for development into plots, since the date of receipt is earlier than the date of issuance of invoice, irrespective of the fact that the invoice is issued within the prescribed period or not. As stated above, the essence of time of supply is to find out when the tax has to be paid. If the date of receipt of land for development is considered as payment for developing of plots for landowners, then the tax has to be paid by next month. However, as stated above, the valuation has to be based on open market value or cost of construction, which would not be available as on the date of receipt of land from landowner. Hence, it would not be possible to arrive the value on the date of receipt of land by developer. Hence, even assuming that the 'payment' includes non-monetary consideration, the valuation fails on such date. If the phrase 'payment' is to be interpreted that the same does not cover non-monetary instances, then the time of supply has to be arrived based on the rationale behind Notification No 4/2018 – CT (R), wherein the time of supply is fixed when developer transfers possession or right in constructed complex, building or civil structure to the land owner by entering into a conveyance deed or similar instrument (for example allotment letter). Even though the said notification does not deal with plots and is not applicable for joint development agreements entered post April 2019, the logic can be picked up, since the said notification deals with time of supply of similar services. Hence, the time of supply may be taken as when the developer enters into a conveyance deed or similar instrument to transfer possession in plots to the land owner, which may arise at the time of completion of the project. Hence, time of supply can be fixed at the time of completion of the project. This view also supports the valuation because, by the time the project gets completed, it is sure that any of the options namely open market value or cost of construction would be available to arrive at the tax liability.

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