CASE STUDY 15

CA Arvind Kapoor, the founder of Kapoor & Co., is a member of the Institute of Chartered Accountants of India who initially set up his practice in Delhi. Kapoor & Co. has rich experience of more than 35 years in almost every field and served a diverse clientele from individual taxpayers to conglomerates. Their audit approach is pragmatic, relying on a risk-based audit methodology, built on extensive planning and client input, and is fully supported by the latest technology and tools. As a result, the firm's audit practice has grown continuously and has earned specialization in core areas like direct taxation, indirect taxation, internal audit etc.

CA Arvind Kapoor, CA Rajesh Dhamija, CA Piyush Makkar and CA Gaurav Satija are four partners of the firm. They all are specialized in their own niche. They all met at a common event and decided to start their own firm. With their combined efforts and dedication, firm has accumulated an enormous amount of knowledge capital that has been built with passing of every year. This has resulted in association of various valuable clients with the firm.

One of such valuable clients is Vallabh Cotton Limited which is a listed company. Vallabh Cotton Limited is leading manufacturer of cotton. There are some issues going on in the company in respect of appointment of small shareholders' director. The Company gets its all the finance related work done from CA Gaurav Satija. When management discussed this matter with CA Gaurav Satija, he praised work of his partner CA Rajesh Dhamija who is an expert in company law matters & has been practising in this area since 15 years. Hence, management of Vallabh Cotton Limited approached CA Rajesh Dhamija for seeking advice on appointment of small shareholders' director and appointment of woman director in the company. Company has 10,00,000 equity shares of ₹ 10 each. Company has 500 small shareholders. Majority (400) of the small shareholders want to appoint Mr. Brijesh as a director as their representative on the Board of directors of the said company. Mr. Brijesh already holds 10,000 equity shares in the said company.

One sister concern of Vallabh Cotton Limited is Aggarsain Spinners Private Ltd. Earlier Aggarsain Spinners Private Ltd. was in business of trading of yarns. Now, gradually the Company wants to go forward in the area of manufacturing as well. Last year, the company had made capital investment in construction of building. This year, the company purchased machinery on 1st April 2023 for ₹ 10 crore. The Company had paid from their own funds 30% and balance 70% by availing loan facility from Synditop bank @ 12% per annum. The machine was required for extension of business of company and was put to use into effective production

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on 1st February, 2024. The accountant of Company wants to take advice from CA Arvind Kapoor who is specialised in direct taxation regarding amount of depreciation that can be claimed by the company under the Income-tax Act.

The management of company also wants to discuss with CA Arvind Kapoor regarding applicability of TDS provisions under Income Tax Act on the following payments made for job work (excluding material cost) to Khushi Ltd for the financial year 2023-24 towards work done under different contracts.

Contract no.	Date of payment	Amount (₹)
1	15.05.2023	22,000
2	04.06.2023	15,000
3	08.07.2023	23,000
4	09.09.2023	25,000
5	26.01.2024	18,000

Company claims that it is not liable to deduction of tax at source. The company is seeking advice from CA Arvind Kapoor on implications of TDS.

The partners and staff of Kapoor & Co usually meet on every Saturday over coffee and discuss topics requiring deliberations. Such exercise makes their staff updated as well. In one such meeting, they discussed issues related to blocked input tax credit and credit admissible under GST Law. In this meeting, they also discussed about remedy that would be available if incorrect input tax credit is taken. All of a sudden, CA Piyush Makkar, expressed his willingness to handle a renowned client, IGT Private Limited, having good volume of turnover. .

IGT Private Limited is in business of manufacturing of textile products. The accounts team of the Company is not much aware about GST Law. Earlier, GST work of company was being taken care by some other professional, Ryan & Co., till Jan 2024. In Feb, 2024, the proprietor of Ryan & Co. had shifted abroad. Hence, the management approached Kapoor & Co. for their GST work for which CA Piyush Makkar came forward to support. The accountant of Company has correctly taken all other input tax credit related to Company's purchases, but he was confused in respect of availing of input tax credit on following inputs purchased and input services availed in the month of February, 2024:-

Particulars	Input Tax paid (₹)
Goods purchased without invoice	40,000
Purchase of goods not to be used for business purpose	20,000

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Purchase of goods from Sethi Lal & Sons (Invoice of Sethi Lal & Sons received in the month of February, 2024 but goods were received in the month of March, 2024)	28,000
Pollution control Equipment used in the factory capitalized in the books	1,50,000
Motor Lorries used for transportation of goods capitalized in the books	2,50,000
Electrical Transformers used in the factory capitalized in the books	2,25,000
Capital goods to be used as parts, purchased from supplier paying tax under the composition scheme and such composite tax has not been collected from IGT Private Limited by the supplier.	25,000
Moulds and dies used in the factory	65,000
The company buys cement, tiles and avail the services of an architect for the construction of its office building	1,68,000
Total	**9,71,000**

I. Multiple Choice Questions

1. With reference to information given in the Table regarding payments on account of job work to Khushi Ltd., which one of the below option is correct in respect of the amount on which TDS is required to be deducted under the provisions of Income-tax Act, 1961:

   (a) TDS is not required to be deducted as each contract amount does not exceed the threshold limit

   (b) TDS is only required to be deducted on Contract 5 i.e. ₹ 18,000

   (c) TDS is required to be deducted on the whole amount i.e. ₹ 1,03,000

   (d) TDS is required to be deducted only on ₹ 3,000.

2. Credit of tax paid on almost every input and input service used for supply of taxable goods and/or services is allowed under GST except a list of items provided under CGST Act. Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services & capital goods and are used in the course or furtherance of business. Considering the relevant GST Law, which of the following ITC is admissible under GST:

   (a) Goods lost, stolen, destroyed, written-off or disposed-off by way of gift or free samples.

   (b) Service of general insurance of motor vehicles for transportation of persons having approved seating capacity of 7 persons (including driver).

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(c) Confectionery items for consumption provided to employees working in the factory under statutory obligation.

(d) Food and beverages procured from Mohan Caterers for being used in Dealer's meet.

3. According to provisions of the Companies Act, 2013, a listed Company may have one Director elected by small shareholders. The provision enables the small shareholders to place their representative on the Board of Directors of a listed company so that their voice is also listened effectively. The small shareholders are entitled to give a notice to the company requiring the company to make appointment of a small shareholders' director. Whether 400 small shareholders of Vallabh Cotton Limited are in position to propose appointment of Mr. Brijesh as small shareholders' director.

(a) Yes, the notice may be given by at least 1,000 small shareholders or 1/10th of the total number of small shareholders whichever is lower.

(b) No, the notice may be given by at least 1,000 small shareholders or 1/10th of the total number of small shareholders whichever is higher.

(c) No, the notice may be given by at least 1,000 small shareholders.

(d) Yes, the notice may be given by at least $9/10^{th}$ of the total number of small shareholders.

4. Compute interest on machinery that is allowed as deduction under Income-tax Act to Aggarsain Spinners Pvt. Ltd.

(a) ₹ 70,00,000

(b) ₹ 84,00,000

(c) 0

(d) ₹ 14,00,000

5. As management of Vallabh Cotton Limited approached CA Rajesh Dhamija for seeking advice on appointment of woman director in the company, which one of the following, he should have suggested regarding the same as per law relating to companies?

(a) That all companies need to appoint a woman director.

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(b) That every listed company or every other public company having paid up share capital equal to or more than ₹ 100 crores or turnover equal to or more than ₹ 300 crores.

(c) That every listed company or every other public company having paid up share capital equal to or more than ₹ 10 crores or turnover equal to or more than ₹ 100 crores.

(d) That the requirement of a woman director is applicable only for private companies.

II. Descriptive Questions

6. Describe in the light of provisions contained in the Companies Act, 2013, whether the proposal to appoint Mr. Brijesh as a small shareholders' director can be adopted by the company and also brief the law relating to appointment of small shareholders' director. What would be your answer if Mr. Brijesh is already holding a position of Small Shareholders' Director in two companies?

7. Advise Aggarsain Spinners Private Ltd. on treatment of interest payment made on loan and depreciation allowable for the Assessment Year 2024-25. Assume that this machine is the only machine in the related block of assets. Aggarsain Spinners Private Ltd. is not opting for the concessional rate of tax u/s 115BAA.

8. Compute the Input Tax credit admissible under GST law to IGT Private Ltd. in respect to various inputs purchased/ input services availed during month of February, 2024.

ANSWERS TO THE CASE STUDY 15

I. Answers to the Multiple Choice Questions

1. (c) TDS is required to be deducted on the whole amount i.e. ₹ 1,03,000

Reason: As per Section 194C(5) of the Income-tax Act, 1961, tax has to be deducted at source where amount credited or paid or likely to be credited or paid to contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in aggregate during the financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount exceeds ₹ 1,00,000. Hence, tax is required to be deducted at source on the whole amount ₹ 1,03,000 from the last

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payment of ₹ 18000 on account of which the aggregate amount exceeded ₹ 1,00,000.

2. (c) Confectionery items for consumption of employees working in the factory under statutory obligation.

Reason: As per Section 17(5)(b) of CGST Act, ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. Hence the input tax credit is available on Confectionery items for consumption of employees working in the factory, since same is provided under statutory obligation. Sec 17(5) also restricts the input tax credit on motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including driver). Goods lost, stolen, destroyed, written off or given off by way of gift or free samples also covered under Sec 17(5) (h).

3. (a) Yes, the notice may be given by at least 1,000 small shareholders or 1/10th of the total number of small shareholders whichever is lower.

Reason: As per Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the small shareholders are entitled to give a notice to the company requiring the company to make appointment of a Small Shareholders' Director. The notice shall be given by at least –

1000 small shareholders; or

1/10th of the total number of small shareholders,

whichever is lower.

4. (d) ₹ 14,00,000

Reason: As per proviso to section 36(1)(iii), interest paid in respect of capital borrowed for acquisition of an asset for the period beginning from the date of borrowing of loan for acquiring the asset till the date on which such asset is first put to use is not allowable as deduction. Therefore, interest @ 12% p.a. for a period of 2 months from 1st February, 2024 to 31st March, 2024 on ₹ 7crores is allowable as deduction under Income-tax Act.

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5. **(b)** That every listed company or every other public company having paid up share capital equal to or more than ₹ 100 crores or turnover equal to or more than ₹ 300 crores.

Reason: Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides the following classes of companies shall appoint at least one woman director:

1) every listed company,

2) every other public company having-

a. paid up share capital of ₹ 100 crores rupees or more or

b. turnover of ₹ 300 crore rupees or more.

II. Answers to the Descriptive Questions

6. **Small Shareholders' Director:** The provisions relating to appointment of directors by small shareholders are contained in section 151 of the Companies Act, 2013 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

The legal position

1. The provisions contained in section 151 read with Rule 7 are applicable to listed companies only.

2. The small shareholders are entitled to give a notice to the company requiring the company to make appointment of a Small Shareholders' Director. The notice shall be given by at least –

   i. 1000 small shareholders; or

   ii. 1/10th of the total number of small shareholders,

   whichever is lower.

3. The notice shall be given at least fourteen days before the meeting and should be signed by all the small shareholders proposing the appointment of small shareholders' director.

4. A person shall not hold the position of small shareholders' director in more than 2 companies at the same time.

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Facts of the case and analysis

In the given case, Vallabh Cotton Limited is a listed company. Some small shareholders have given a notice to the company requiring the company to appoint a Small Shareholders' Director.

The small shareholders eligible to give notice for appointment of Small Shareholders' Director shall be –

a) 1,000 small shareholders ; or

b) 1/10th of 500, i.e. 50 small shareholders,

whichever is lower.

Since lower of 1,000 and 50 is 50, the notice for appointment of Small Shareholders' Director has to be given by at least 50 small shareholders.

Conclusions

As in the given case, 400 of the small shareholders are interested in appointing small shareholders' director, the company shall adopt the procedure given in Rule 7 for appointment.

Neither section 151 nor Rule 7 state any eligibility criteria for appointment of a person as a small shareholders' director to be a small shareholder himself or not. Thus, Mr. Brijesh may be appointed as a Small Shareholders' Director i.e. even he has 10,000 equity shares in the company, it does not affect his appointment.

If Mr. Brijesh already holds position of Small Shareholders' Director in 2 companies, then, he cannot be appointed as a small shareholders' director in Vallabh Cotton Limited.

7. (i) Interest on term loan for purchase of machinery

As per proviso to section 36(1)(iii), interest paid in respect of capital borrowed for acquisition of an asset for the period beginning from the date of borrowing of loan for acquiring the asset till the date on which such asset is first put to use is not allowable as deduction.

Interest for such period has to be capitalised, by adding the same to the cost of the asset. Therefore, interest @12% p.a. for a period of 10 months from 1st April, 2023 to 31st January, 2024 on ₹ 7 crores, being the amount of loan, has to be capitalised.

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Particulars	Amount (₹)
Cost of machinery	10,00,00,000
Add: Interest [12% x 10/12 x ₹ 7,00,00,000]	70,00,000
Actual Cost of machinery	**10,70,00,000**

Interest @ 12% for two months (February, 2024 & March, 2024) ₹ 14,00,000 after the asset put to use is allowable as deduction under section 36(1)(iii) [12% x 2/12 x ₹ 7,00,00,000]

(ii) Depreciation

Particulars	Amount (₹)
Since the machinery is put to use for less than 180 days in the previous year 2023-24, the depreciation would be restricted to 50% of the amount calculated at the prescribed percentage of 15%. Therefore, depreciation is 50% x [15% x ₹ 10,70,00,000]	80,25,000
Additional depreciation of 20%, for being engaged in the manufacturing of cotton and purchasing new machinery, would also be restricted to 50% of the amount calculated. Therefore, additional depreciation= 50% x [20% x 10,70,00,000]	1,07,00,000
Total Depreciation	**1,87,25,000**

However, balance additional depreciation of ₹ 1,07,00,000 shall be allowed under section 32(1)(iia) in the immediately succeeding previous year.

8. Computation of input tax credit admissible to IGT Private Ltd. in respect to various inputs purchased during the month of February, 2024

S. No.	Particulars	Input Tax Credit (₹)
1	Goods purchased without invoice (working note 1)	nil
2	Purchase of Goods not to be used for business purpose (working note 2)	nil
3	Purchase of Goods from Sethi Lal & Sons (Invoice of Sethi Lal & Sons received in the month of February, 2024 but goods were received in the month of March, 2024) (working note 3)	nil
4	Pollution control Equipment used in the factory (working note 4)	1,50,000

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5	Motor Lorries used for transportation of goods (working note 6)	2,50,000
6	Electrical Transformers used in the factory (working note 4)	2,25,000
7	Capital goods used as parts purchased from supplier who paid tax under the composition scheme and the tax has not been collected from IGT Private Limited (working note 5)	nil
8	Moulds and dies used in the factory (working note 4)	65,000
9	The company buys cement, tiles and avails the services of an architect for the construction of its office building (working note 7)	nil
	Eligible ITC	**6,90,000**

Working Notes-

1) No Input tax credit will be available since IGT Private Limited is not in possession of valid tax paying document.

2) A registered person shall be entitled to take the input tax credit on goods which are used or intended to be used in the course or furtherance of his business. Since the company has purchased the goods for non-business purpose, hence no credit will be available on such purchases.

3) Input tax credit is admissible only when registered person has received such goods. Hence, when goods received in the month of March, 2024 input tax credit cannot be taken in the month of February, 2024.

4) As per section 2(19), "Capital goods" means goods, the value of which is capitalized in the books of accounts of the person claiming input tax credit and which are used or intended to be used in the course or furtherance of business. Hence:

   a) Electrical Transformers

   b) Moulds and dies

   c) Pollution control Equipment

   which are used or intended to be used in the course or furtherance of business are eligible for ITC as capital goods.

   However, where tax element is added to the cost of plant and machinery and depreciation is claimed thereon, no input tax credit is available.

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5) As per Section 17(5)(e), input tax credit shall not be available in respect of goods or services or both on which tax has been paid under sec 10. Thus, no ITC shall be allowed of tax paid under composition scheme by the supplier.

6) In respect of motor vehicle used for the purpose of transportation of goods, the same is not covered under the ambit of blocked credit, hence ITC shall be admissible in respect of motor vehicles.

7) As per Section 17(5)(c), ITC is blocked on input or input service relating to construction activity like construction of office building, factory building etc.

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