

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

February 2019



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## INCOME TAX



### Highlights of Interim Budget 2019

Finance minister Piyush Goyal presented the much awaited Interim Budget for FY 2019-20 in Lok Sabha on 1<sup>st</sup> February, 2019,

Here is a look at the main points of the Interim Budget presented by Piyush Goyal : (With special focus on Individual taxation)

- a. Individual taxpayers with annual income up to Rs. 5 lakhs to get full tax rebate.
- b. Tax slabs remain unchanged.
- c. Standard deduction for salaried persons raised from Rs. 40,000 to Rs. 50,000.
- d. TDS threshold on rental income raised from Rs. 1.8 lakhs to Rs. 2.4 lakhs.
- e. Gratuity limit increased from 10 lakh to Rs. 30 lakhs.

- f. TDS not to be deducted on interest income from deposit in banks and post-offices up to Rs. 40,000 as against Rs. 10,000 earlier.
- g. Benefit of rollover of capital gains tax to be increased from investment in one residential house to that in **two residential houses**, for a taxpayer having capital gains upto Rs. 2 Crores. This benefit can be used only once in a lifetime.

### CBDT's clarification regarding issue of Prosecution Show Cause Notices to companies defaulting TDS

In a Press Release dated 21st January, 2019 the Central Board of Direct Taxes (CBDT) clarified that:

- a. Certain news items that appeared in a section of media regarding mass issue of notices to small companies for TDS default are completely misleading. The Mumbai Income TDS department has issued prosecution show cause only in a limited number of big cases where more than Rs. 5 lakhs of tax was collected as TDS from employees and yet the same wasn't deposited with the department . in time.
- b. Having deducted tax from employees and other taxpayers

and not depositing the same in time in the Government Treasury is an offence punishable under the law. It also affects the interest of the employees from whose salary the tax has been deducted & not deposited the same in time in the Government Treasury.

## GOODS & SERVICE TAX



### **CBIC extends the Due date for filing Form GSTR-7 for authorities deducting TDS to 28<sup>th</sup> February, 2019**

The Central Board of Indirect Taxes & Customs (CBIC) issued a Notification No. 07/2019-Central Tax dated 31<sup>st</sup> January, 2019 specifying that:-

The time limit for furnishing Form GST-7 for the months of October 2018 to December 2018 is extended till 28<sup>th</sup> February, 2019.

The original due date for filing GSTR-7 for that period was 10<sup>th</sup> January, 2019. This date was extended to 31<sup>st</sup> January, 2019 vide Notification No. 66/2018-Central Tax dated 29<sup>th</sup> November, 2018.

A registered person required to deduct tax at source (TDS) as per section 51 of the CGST Act, 2017 is required to furnish Form GSTR-7 as per CGST Rules, 2017.

## RESERVE BANK OF INDIA



investment liabilities, largely due to the increase in trade credit," the RBI said.

- c. The census showed that Mauritius continued to be the largest source of FDI in India (19.7 per cent) followed by the US, the UK, Singapore and Japan.

## **FDI Grew 18% to Rs.28.25 Lakh Crores in FY18: RBI Data**

Foreign direct investment (FDI) during the previous fiscal grew 18% to Rs. 28.25 lakh crores. ,

- a. FDI increased by Rs. 4,33,300 crore, including revaluation of past investments, during 2017-18 to reach Rs. 28,24,600 crores in March 2018 at market value, according to RBI data on 'Census on Foreign Liabilities and Assets of Indian Direct Investment Companies, 2017-18'.
- b. The RBI release said that as many as 23,065 companies responded to the latest round of the census, of which, 20,732 firms had FDI or ODI in their balance sheet in March 2018. Overseas direct investment (ODI) by Indian companies increased by 5% to Rs. 5.28 lakh crore. "FDI companies witnessed a substantial increase in other

## ECONOMICS



Stating that fiscal health remains a "Key Risk", Crisil said the fiscal deficit is likely to be 3.3 per cent of the gross domestic product (GDP) in the next fiscal. The deficit is budgeted at 3.3 per cent in the current fiscal.

### India's GDP growth may improve to 7.3% in FY20: Crisil

India's growth rate is likely to inch up to 7.3 per cent in 2019-20, provided that there are normal rains and a stable political outcome of the general elections, Crisil Ratings said India is expected to clock a growth rate of 7.2 per cent in the current financial year, up from 6.7 per cent in 2017-18.

"In fiscal 2020, Crisil expects GDP to grow 7.3 per cent on assumptions-normal rains, oil prices lower than 2018, stable political outcome," the rating agency said in its 'India Outlook FY20'.

It said with the government likely to stick to a fiscal consolidation path, the pick-up in growth is expected to be only gradual.

"A change in the growth mix is on cards, with private sector likely to take over the baton from the government," Crisil said.



**SUMMARY OF IMPORTANT TAX JUDGEMENTS**

**Unless otherwise stated, the sections mentioned hereunder relate to the Income Tax Act, 1961**

Sr No.	Tribunal/Court	Section/Code	Nature	Case Law
1	ITAT Ahmedabad	Section 9, 40(a)(i), 14A	Where assessee had paid commission to non-resident foreign agents who were carrying out activities outside India and non-resident agents did not have any permanent establishment in India, said payment was neither taxable, nor could be treated as FTS. Where appellant had not claimed any exempt income, no disallowance of expenditure was required to be made.	DCIT Vs. Mc Fills Enterprises (P.) Ltd.
2	Delhi High Court	Section 10(34), 115BBDA	Constitutional validity of section 10(34) and section 115BBDA is challenged on ground that section 115BBDA does not have any 'base', and it makes hostile discrimination between a resident assessee and a non-resident assessee, as provision only applies to a resident assessee.	Rajan Bhatia Vs. Central Board of Direct Taxes
3	ITAT Delhi	Section 23(1)(c)	Where assessee intended to let out property and took appropriate efforts in letting property, however, due to fall in property prices failed to let out same year after year because of which property remained vacant, assessee was entitled to claim benefit under section 23(1)(c).	Priyananki Singh Sood Vs. ACIT
4	ITAT Visakhapatnam	Section 56(2)(vii)(c)	Share allotment under 'rights issue' not taxable u/s. 56(2)(vii)(c) if shareholders were relatives.	Kumar Pappu Singh Vs. DCIT
5	High Court Karnataka	Section 80G	Where assessee's application for renewal of recognition under sec. 80G(5)(vi) was rejected on ground that its income was not being used for charitable purpose, since question of	D.R. Ranka Charitable Trust. Vs. Director of Income

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			applicability of income of assessee can be gone into by assessing authority only at time of assessing income of assessee, impugned order deserved to be set aside.	Tax (Exemptions)
6	ITAT Delhi	Section 194 IA	Where assessee purchased an immovable property along with three other members of family for Rs. 1.50 crores, in view of fact that share of each co-owner came to Rs. 37.50 lakhs which was under threshold limit prescribed by section 194-IA, assessee was not required to deduct tax at source while making payment in question.	Vinod Soni Vs. ITO



## DISCUSSION ON JUDGMENTS - INCOME TAX



### 1. DCIT Vs. Mc Fills Enterprise (P.) Ltd.

- a. In the instant case, the assessee received orders from the overseas parties through non-resident foreign agents. During the year, the assessee paid a sum of Rs. 43.58 lakhs to the non-resident agents without withholding the tax, which was disallowed by the tax officer. The Assessing officer disallowed the entire amount on the pretext that the assessee was in obligation to deduct tax under section 195 from payments made to non-residents towards services rendered by them. On appeal made to Commissioner (Appeals), such addition made by the assessing officer was deleted.

#### **Held:-**

- a. The commission was paid with respect to the activities performed outside India, hence it can't be said to have arisen in India.
- b. Since non-resident agents don't have any Permanent Establishment in India, no part of income of such

agents can be said to have accrued in India.

- c. Therefore, revenue's ground for appeal to disallow the payment made to non-resident foreign agents without deduction of TDS is to be dismissed.

### 2. Rajan Bhatia Vs. Central Board of Direct Taxes

- a. Petitioner had filed the writ petition seeking direction for quashing the proviso to Section 10(34), read with the provisions of Section 115BBDA of the Income-tax Act, 1961.
- b. It was submitted that the provisions under challenge are arbitrary, ultra vires and violative of Article 14 of the Constitution of India.
- c. Constitutional validity was challenged on ground that section 115BBDA is ambiguous and vague, as the provision lacks certainty and does not specify whether tax at the rate of 10% would be applicable on the entire dividend income, if it exceeds Rs. 10 lacs or would be applicable only to the dividend over and above Rs. 10 lacs.
- d. It also makes hostile discrimination between a resident assessee and a non-resident assessee as it only applies to a resident assessee. Further, the companies have been excluded from taxation.

**Held:-**

- a. The contention that the provision lacks 'base' was founded on a misrepresentation and misreading of clause (a) of the sub-section (1) of Section 115BBDA.
- b. There is no doubt that tax at the rate of 10% would only be payable in case the specified assessee has earned dividend income exceeding Rs. 10 lacs. Further, tax at the rate of 10% would be payable **only on the dividend income beyond Rs. 10 lacs.**
- c. Plea of hostile discrimination was without merit and was predicated on the wrong notion that in tax legislation in order to tax one group the legislation must tax all. In a taxation legislation, the Legislature and Executive have the right to identify the persons who have to be taxed.
- d. The legislature decides how and in what manner non-residents should be taxed. Non-residents can be treated differently for the reason that they are residents of foreign States and not residents of India. Taxation regime applicable to non-residents need not be identical to that applicable to residents.
- e. Contention of the petitioner that the companies have been left out, would be an argument predicated on under-classification, i.e., certain classes which could have been included, have been excluded from taxation. This argument does not carry weight, since under-

classification per se is not sufficient ground and justification to strike down a provision.

### 3. Priyananki Singh Sood Vs. ACIT

- a. Assessing Officer (AO) observed that assessee in a statement of affairs had mentioned owning of property. It was further observed that no income from this house property was offered for year under consideration.
- b. Assessee submitted that the property under question was a commercial flat which was purchased way back in 1980 and was let out. The property was continuously let out till assessment year 2001-02 but from assessment year 2002-03, a suitable tenant could not be found and the flat remained vacant. Thus, the property had to be considered as per provisions of section 23(1)(c).
- c. AO made an addition under section 23(1)(a) considering the annual letting value of property to be the sum for which the property might reasonably be expected to be let out year to year.
- d. On appeal, the Commissioner (Appeals) upheld the order passed by AO. Aggrieved-assessee filed the instant appeal before the ITAT.

**Held:-**

- a. In order to attract section 23(1)(c), the following requirements must be fulfilled; (i) the property must be

let out; and (ii) it should have been vacant during the whole or any part of the previous year; and (iii) owing to such vacancy the actual rent received or receivable by the owner in respect thereof should be less than the sum referred to in clause.

- b. Only if these three conditions are satisfied clause (c) of section 23(1) would apply, in which event amount received or receivable, in terms of clause (c) of section 23(1), shall be deemed to be the annual value of the property.
- c. In instant case, admittedly, property in dispute had remained vacant post assessment year 2002-03 till date. It was not the case of revenue that the property after being vacant, remained under self occupation of assessee. It was also not disputed by the revenue that prior to assessment year 2002-03 the property was not let out.
- d. Assessee always had the intention of letting out the property. He took appropriate efforts in letting out property but failed to let out the same year after year due to fall in property prices, he was entitled to claim benefit under section 23(1)(c).

#### 4. Kumar Pappu Singh Vs. DCIT

- a. Assessee was shareholder in company, JMPP. There were total seven shareholders in company and all of them were close relatives of assessee-Company that issued shares at rate of Rs. 100 per share under rights issue.

- b. Assessee alone had applied for rights issue and company had allotted shares to assessee. Fair market value of shares was Rs. 416.38 per share.
- c. Principal Commissioner invoked revision under section 263 for reason that assessee had received shares for value lesser than book value; therefore, provisions of section 56(2)(vii)(c) would be attracted and differential amount between book value and price paid by assessee for shares required to be brought to tax under head 'income from other sources'.
- d. Aggrieved-assessee filed the instant appeal before the ITAT.

#### Held:-

- a. Provision of section 56(2)(vii)(c) was brought as an anti-abuse measure, seeks to tax the understatement in consideration as the income in the hands of the recipient as against the donor in the case of Gift Tax Act.
- b. The transactions between the close relatives are outside the scope of application of section 56(2)(vii)(c). The legislature in its wisdom excluded the transaction of close relatives for the purpose of taxation under the income from other sources.
- c. Even the gifts received from the close relatives under section 56(2)(v) are outside the scope of section 56(2). Though the shares

were allotted to the assessee, the entire shareholding of the company was retained by the family and no share was allotted to the outsiders.

- d. In this case, though the assessee had received the excess shares, yet renouncement was from the close relatives and the assessee was at liberty to transfer the shares to other relatives or shareholders at any point of time without attracting the tax under section 56(2)(vii)(c). Therefore, surrender of the rights of the close relatives in favour of the another close relative was covered for exemption under section 56(2)(vii)(c).

## 5. D.R. Ranka Charitable Trust Vs. Director of Income Tax

- a. The assessee was a charitable trust. It was granted registration under section 12A. It was also granted recognition under section 80G (5)(vi).
- b. During relevant year, the assessee filed an application in Form 80G seeking renewal of the recognition. The Director (Exemptions) rejected said application on ground that income of assessee was not being used for charitable purpose.
- c. The Tribunal confirmed order passed by the Director (Exemptions). Aggrieved-assessee filed the instant appeal before the High Court.

### Held:-

- a. The only condition that requires to be fulfilled for the purposes of seeking renewal is as specified under section 80G (5)(ii) and the clauses narrated therein. None of the clauses in section 80G (5)(ii) would be said to be applicable herein.
- b. It only postulates that any income derived from the charitable trust may be used for charitable purpose. Therefore, the rejection of the application was inappropriate.
- c. However, this consideration could only be made during the assessment proceedings. The question whether renewal was justified or not, was not necessary to be considered at this stage.
- d. The applicability of the income of the assessee whether it was for charitable purposes or not was a question of fact and necessarily could be gone into by the assessing authority at the time of assessing the income of the assessee.
- e. Therefore, it was needless to state that the assessing authority shall look into all the material placed on record in order to ensure that the income was used for a charitable purpose in accordance with law.
- f. Under these circumstances, the Tribunal was not right, in law, in holding that the assessee was not eligible for renewal for approval under section 80 G. Consequently,

the order of the Tribunal was set aside.

## 6. Vinod Soni Vs. ITO

- a. The assessee along with three other members of family purchased an immovable property for Rs. 1.50 crores. Share of every co-owner came to Rs. 37,50,000/- which was under the threshold limit as provided by section 194-IA and, thus, assessee didn't deduct tax at source.
- b. Assessing Officer (AO) opined that consideration for the transfer of an immovable property was more than Rs. 50 lakhs and the same was executed through a single sale deed. Hence, provisions of section 194-IA were very much applicable in this case.
- c. Commissioner (Appeals) confirmed the order passed by AO. Aggrieved assessee filed the instant appeal before the ITAT.

### Held:-

- a. Section 194-IA provides deduction of tax at source @1% on transfer of immovable property (other than agricultural land) if consideration for transfer of such property is Rs. 50 lakhs or more.
- b. Section 194-IA was introduced by the Finance Act, 2013 effective from

1-6-2013. It was noted from the Memorandum explaining that the provision was brought in order to reduce the compliance burden on the small taxpayers.

- c. In the instant case, there were 4 separate transferees, the sale consideration with respect to each transferee was less than Rs. 50,00,000 each and each transferee was a separate income-tax entity. Therefore, the law had to be applied with reference to each transferee as an individual transferee/person.
- d. The law couldn't be interpreted and applied differently for the same transaction if it was carried out in different ways. It couldn't be said that section 194-IA was not applicable in case where there were four separate purchase deeds for four persons separately and section 194-IA would be applicable in case of a single purchase deed for four persons.
- e. Therefore, impugned order passed by AO was liable to be set aside.

**Note: The judgments should not be followed without studying the complete facts relevant to the judgment.**

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## DATE CHART FOR THE MONTH OF FEBRUARY, 2019

(Compliances are for the previous month unless otherwise stated)

### February 2019

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
					1	2
3	4	5	6	7 Monthly TDS Payment	8	9
10	11 GSTR-1 (T/O>1.5 Crores)	12	13	14	15 1) Provident Fund Payment.  2) ESIC Payment.	16
17	18	19	20 GSTR-3B	21	22	23
24	25	26	27	28		

*This communication is intended to provide general information, guidance on various professional subject matters and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.*