

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

March 2019



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## INCOME TAX



### **Aadhar linkage with PAN mandatory for IT Returns: Supreme Court**

It is now mandatory to link Permanent Account Number (PAN) with Aadhar for the purpose of filing Income Tax returns, the Supreme Court has restated in its recent order which was passed on February 4, 2019.

The Supreme Court has decided to uphold the vires of section 139AA (Quoting of Aadhar Number) of Income Tax Act. In view thereof, linkage of PAN with Aadhar is mandatory.

## GOODS & SERVICE TAX



### **GST Council cuts GST Rates to 5% and 1%**

The 33<sup>rd</sup> meeting of the GST Council, held on 24<sup>th</sup> February, 2019 approved a sharp reduction in the levy on homes under construction and raised the threshold for affordable housing.

Starting April 1, homes under construction will be levied 5% GST, against 12%. For affordable homes, GST will drop to 1% from 8%.

Homes up to Rs 45 lakh and with a carpet area of up to 60 sq meters in metro cities (Mumbai, Bengaluru, Chennai, Hyderabad and Kolkata apart from the National Capital Region – Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon and Faridabad) and 90 sq meters in non-metro cities will be counted in the affordable segment, according to the new definition cleared by the council.

The earlier limit was a uniform carpet area of up to 60 sq meters for a house in an approved affordable housing scheme. There will be no input tax credit for GST paid on materials such as cement and steel for the sector at these lower GST rates.

## MINISTRY OF CORPORATE AFFAIRS



### **MCA rolls out new e-Form ACTIVE**

The Ministry of Corporate Affairs (MCA) vide a notification dated 21<sup>st</sup> February, 2019, has rolled out a new e-Form ACTIVE that is required to be filed by certain companies incorporated on or before 31<sup>st</sup> December, 2017.

Companies which have been struck off or are under process of striking off, under liquidation, amalgamated or dissolved, as recorded in the register, shall not be required to file e-Form ACTIVE.

This form is to be submitted on or before 25<sup>th</sup> April, 2019.

Submissions after 25<sup>th</sup> April, 2019 will result in the companies being marked as "ACTIVE Compliant" ONLY after a payment of Rs 10,000.

## **MCA extends last date of filing initial return in MSME Form I**

Ministry of Corporate Affairs (MCA) vide notification dated 22<sup>nd</sup> January, 2019 had mandated certain companies to file initial return in MSME Form I within 30 days of the said notification i.e. on or before 21<sup>st</sup> February, 2019.

The MSME Form I has not been deployed on MCA 21 portal.

In order to avoid inconvenience to stakeholders, the MCA has clarified vide notification dated 21<sup>st</sup> February, 2019 that period of thirty days for filing initial return in MSME Form I shall be calculated from the date the said form is deployed on MCA 21 Portal.

## 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 Kolkata	Section 10(38)	Bogus long-term capital gains from penny stocks: If the assessee has filed evidences for (a) purchase of shares, (b) payment by account payee cheque, (c) balance sheet disclosing investments, (d) demat statement (e) evidence of sale of shares through stock exchange, (f) bank statement reflecting sale receipts, (g) brokers ledger, (h) Contract Notes etc, the gains cannot be treated as bogus on human probabilities, suspicion, conjectures and surmises.	Mahavir Jhanwar Vs. ITO
2	ITAT Delhi	Section 10(38)	Bogus LTCG from Penny Stocks: Capital gains cannot be treated as bogus solely on the basis that the price of the shares has risen manifold and the reason for astronomical rise is not related to any fundamentals of market. If the transactions are duly proved by trading from stock exchange and the documentation is proper, the gains cannot be assessed as unexplained credit or as unexplained money.	Mukta Gupta Vs. ITO
3	Bombay High Court	Section 37(1)	Law on concept of "expenditure incurred for any purpose which is an offence or which is prohibited by law" explained in the context of customs redemption fine. Ratio laid down in Hazi Aziz 41 ITR 350 (SC) continues to hold the field even post decisions in the case of Prakah Cotton Mills 201 ITR 684 (SC) and	PCIT Vs. Sushil Gupta Legal Representative of Late Mahabir Prasad Gupta

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			Ahmedabad Cotton Mfg Co 205 ITR 163 (SC). In neither of these two decisions, the ratio laid down in Hazi Aziz, which was a decision of Bench of three Judges, has been diluted (Pannalal Narottamdas 67 ITR 667 (Bom) distinguished).	
4	Calcutta High Court	Section 68	Bogus transactions: The AO cannot treat losses from off market commodity transactions as bogus and inadmissible in the eyes of the law if the transactions through the broker are duly recorded in the books of the assessee. The broker has also declared in its books of accounts and offered for taxation. To hold a transaction as bogus, there has to be some concrete evidence where the transactions cannot be proved with the supportive evidence. The fact that the broker was expelled from the commodity exchange cannot be the criteria to hold the transaction as bogus.	PCIT Vs. BLB Cables & Conductors Pvt. Ltd.
5	Supreme Court	Section 80IC	An assessee availing exemption of 100% tax on setting up of a new industry, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assesseees started availing exemption, they carried out substantial expansion of its industry, from that year the assesseees become entitled to claim exemption @ 100% again (Classic Binding Industries 407 ITR 429 held not good law and reversed).	PCIT. Vs. Aarham Softronics
6	Delhi High Court	Section 220(6)	Stay of demand: The AO cannot impose the per se condition that pending consideration of the application for stay of demand, certain minimum amount (15%/20%) has to be deposited by the assessee as prescribed by the CBDT. He has apply his mind and decide the application for stay of demand	Turner General Entertainment Networks India Pvt. Ltd. Vs. ITO

## DISCUSSION ON JUDGMENTS - INCOME TAX



### 1. Mahavir Jhanwar Vs. ITO

Bogus long-term capital gains from penny stocks: If the assessee has filed evidences for

- a) purchase of shares,
- b) payment by account payee cheque,
- c) balance sheet disclosing investments,
- d) demat statement
- e) evidence of sale of shares through stock exchange,
- f) bank statement reflecting sale receipts,
- g) brokers ledger,
- h) Contract Notes etc,

these gains cannot be treated as bogus on human probabilities, suspicion, conjectures and surmises.

### Facts:-

The proposition of law laid down in these case laws by the Jurisdictional High Court as well as by the ITAT Kolkata on these issues are in favour of the assessee. These are squarely applicable to the facts of the case. The Id. Departmental Representative, though not leaving his ground, could not controvert the claim of the Id. Counsel for the assessee that the issue in question is covered by the above cited decisions of the Hon'ble Jurisdictional Calcutta High Court and the ITAT.

### 2. Mukta Gupta Vs. ITO

Bogus LTCG from Penny Stocks: Capital gains cannot be treated as bogus solely on the basis that the price of the shares has risen manifold and the reason for astronomical rise is not related to any fundamentals of market. If the transactions are duly proved by trading from stock exchange and the documentation is proper, the gains cannot be assessed as unexplained credit or as unexplained money.



**Facts:-**

Nowhere has it been found that assessee was in any manner found to be beneficiary of any accommodation entry under any inquiry or investigation. Once all these transactions are duly proved by trading from stock exchange, then to hold the sale of shares as unexplained credit or as unexplained money cannot be upheld.

**3. PCIT Vs. Sushil Gupta Legal Representative of Late Mahabir Prasad Gupta**

Law on concept of "expenditure incurred for any purpose which is an offence or which is prohibited by law" explained in the context of customs redemption fine. Ratio laid down in Hazi Aziz 41 ITR 350 (SC) continues to hold the field even post decisions in the case of Prakah Cotton Mills 201 ITR 684 (SC) and Ahmedabad Cotton Mfg Co 205 ITR 163 (SC). In neither of these two decisions, the ratio laid down in Hazi Aziz, which was a decision of Bench of three Judges, has been diluted (Pannalal Narottamdas 67 ITR 667 (Bom) distinguished).

**Facts:-**

The Tribunal without advertng to the relevant facts and materials on record granted benefit to the assessee on the lines followed by this Court in the case of Pannalal (supra). The Tribunal without

discussing the relevant materials compared the case of the assessee with the facts arising in the judgment of the Supreme Court in the case of Ahmedabad Cotton Mfg Co Ltd (supra) in which it was recorded that the fault or defect in the REP licence was not attributable to the assessee and therefore, the assessee was not to be blamed for indulging in any offence or having incurred any expenditure for the purpose which was prohibited by the law.

**4. PCIT Vs. BLB Cables & Conductors Pvt. Ltd.**

Bogus transactions: The AO cannot treat losses from off market commodity transactions as bogus and inadmissible in the eyes of the law if the transactions through the broker are duly recorded in the books of the assessee. The broker has also declared in its books of accounts and offered for taxation. To hold a transaction as bogus, there has to be some concrete evidence where the transactions cannot be proved with the supportive evidence. The fact that the broker was expelled from the commodity exchange cannot be the criteria to hold the transaction as bogus

**Facts:-**

To hold a transaction as bogus, there has to be some concrete evidence where the transactions cannot be proved with the supportive evidence. Here in the case the transactions of the

commodity exchanged have not only been explained but also substantiated from the confirmation of the party. Both the parties are confirming the transactions which have been duly supported with the books of accounts and bank transactions. The Id. AR has also submitted the board resolution for the trading of commodity transaction. The broker was expelled from the commodity exchange cannot be the criteria to hold the transaction as bogus.

## 5. PCIT Vs. Aarham Softronics

An assessee availing exemption of 100% tax on setting up of a new industry, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assessee started availing exemption, they carried out substantial expansion of its industry, from that year the assessee become entitled to claim exemption @ 100% again (Classic Binding Industries 407 ITR 429 held not good law and reversed)

### Facts:-

We have no hesitation to accept this mistake which occurred in Commissioner of Income Tax vs. M/s. Classic Binding Industries 407 ITR 429. The Court specifically dealt with 'initial assessment year' and came into conclusion that there cannot be two initial assessment years within a span of 10 years which is the maximum period for

allowing deduction as per sub-section (6) of Section 80-IC. As the issue directly concerned with initial assessment year, its definition contained in that very Section was missed out. To that extent, there is an error in the judgment dated 20th August, 2018 in Classic Binding Industries case.

## 6. Turner General Entertainment Networks India Vs. ITO

Stay of demand: The AO cannot impose the per se condition that pending consideration of the application for stay of demand, certain minimum amount (15%/20%) has to be deposited by the assessee as prescribed by the CBDT. He has to apply his mind and decide the application for stay of demand.

### Facts:-

It is evident that the concerned authorities and tax officials have to apply their mind to decide an application for stay of demand. This does not, however, mean that any particular AO in a given case has to impose a per se condition that pending consideration of the application for stay of demand, certain minimum amount has to be deposited

**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 MARCH, 2019

(Compliances are for the previous month unless otherwise stated)

### March 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. 3) Fourth Instalment of Advance Tax for AY 2019-20	16
17	18	19	20 GSTR-3B	21	22	23
24	25	26	27	28	29	30
31 Last date for linkage of PAN & Aadhar Number						

*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.*