

HARBINGERTM

Updates on regulatory changes affecting your business

July 2018



B D Jokhakar & Co.

Chartered Accountants

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INCOME TAX



CBDT amends Place of Effective management (POEM) rules w.e.f 1.4.2017

1. The said notification is applicable to a foreign company which is said to be resident in India in any financial year on account of its POEM being in India and where such foreign company was not resident in India in any of the financial years preceding the said financial year,
2. The notification proposes exception, modification and adaptation subject to which, provisions of the Act relating to computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply to such foreign company.
3. If the foreign company is assessed to tax in the foreign jurisdiction as per the tax record in the foreign country:
 - a. The WDV of the depreciable asset as on 1st day of Financial Year shall be adopted.
 - b. The brought forward loss or unabsorbed depreciation shall be determined year wise as on 1st day of Financial Year in which it is said to be resident in India.
4. If the foreign company is not assessed to tax in the jurisdiction where it is based, then the following values shall be adopted as per the books maintained in accordance with the laws of that foreign jurisdiction:
 - a. The WDV of the depreciable asset
 - b. The brought forward loss or unabsorbed depreciation as on the 1st day of the financial year in which it is said to be resident in India.
5. In a case where the accounting year does not end on March 31, the foreign company shall be required to prepare profit and loss account and balance sheet:
 - a. for the period starting from the date on which

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the accounting year immediately following the said accounting year begins, to March 31 of the year immediately preceding the period beginning with April 1 and ending on March 31 during which the foreign company has turned resident, and

- b. for succeeding periods of twelve months, beginning from April 1 to March 31, till the year the said foreign company remains resident in India on account of its POEM.

(Notification no.29/2018 dated 22 June 2018)

GOODS AND SERVICE TAX

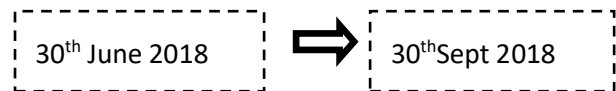


Reverse charge mechanism u/s 5(4) of IGST act suspended till 30.9.2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services

Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 32/2017-Integrated Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1263 (E), dated the 13th October, 2017, and last amended vide notification No. 11/2018-Integrated Tax (Rate), dated the 23rd March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 270 (E), dated the 23rd March, 2018, namely:-

In the said notification, in paragraph 2, for the figures, letters and words "30th day of June, 2018", the figures, letters and words "30th day of September, 2018" shall be substituted.



Similar notification is also published for CGST and UTGST in Notification no.12/2018- Central Tax (Rate) and no.12/2018- Union territory tax rate.

(Notification No. 13/2018- Integrated Tax, dated 23th March,, 2018)

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RESERVE BANK OF INDIA



Investments in the units of InvIT by sponsor CIC-NDSI.

In order to enable Systemically Important Core Investment Companies (CIC-NDSI) to act as a sponsor of InvITs, it has been decided to permit CIC-NDSIs to hold InvIT units only as a sponsor. Exposure of such CICs towards InvITs shall be limited to their holdings as sponsors and shall not, at any point in time, exceed the minimum holding of units and tenor prescribed in this regard by SEBI (Infrastructure Investment Trusts) Regulations, 2014.

The above holdings of InvIT units shall be reckoned as investments in equity shares in group companies, for the purpose of compliance with the norms prescribed at paragraphs 2(1) (i) & (ii) of the Master Direction - Core Investment Companies (Reserve Bank) Directions,

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2016 as updated from time to time.

The aforesaid Master Direction has been updated accordingly.

(RBI/2017-18/189 DNBR (PD)
CC.No.093/03.10.001/2017-18 dated 7th June
2018)

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS



Exchange rates w.e.f 22nd July 2018

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Central Board of Indirect Taxes and Customs No.49/2018-CUSTOMS (N.T.), dated 7th June, 2018 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of

conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 22nd June, 2018, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

Notification no.55/2018- Customs (N.T)

ECONOMICS

FDI growth hits 5-year low in 2017-18

1. Foreign direct investment (FDI) in India seems to be petering out with the inflows growth rate recording a five-year low of 3 per cent at USD 44.85 billion in 2017-18.

2. According to the latest data of the Department of Industrial Policy and Promotion (DIPP), FDI in 2017-18 grew by only 3 per cent to USD 44.85 billion.

3. Foreign inflows in the country grew by 8.67 per cent in 2016-17, 29 per cent in 2015-16, 27 per cent in 2014-15, and 8 per cent in 2013-14. However, FDI inflows recorded a negative growth of 38 per cent in 2012-13

4. According to experts, it is critical to revive domestic investments and further ease of doing business in the country to attract foreign investors.

5. The main sectors that received maximum foreign inflows in the last fiscal include services (USD 6.7 billion), computer software and hardware (USD 6.15 billion), telecommunications (USD 6.21 billion), trading (USD 4.34 billion), construction (USD 2.73 billion) automobile (USD 2 billion) and power (USD 1.62 billion)

6. Mauritius has emerged as the largest source of FDI in India with USD 15.94 billion in 2017-18 followed by Singapore (USD 12.18 billion), Netherlands (USD 2.8 billion), the US (USD 2.1 billion) and Japan (USD 1.61 billion).

7. Further, the data showed that the FDI equity inflow of USD 44.8 billion in 2017-18 is the highest ever for any financial year.

FDI is important as India would require huge investments in the coming years to overhaul its infrastructure sector to boost growth. Decline in foreign inflows could put pressure on the country's balance of payments and may also impact the value of the rupee.

(The Economic Times dated 1st July 2018)

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SUMMARY OF IMPORTANT TAX JUDGEMENTS

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

Sr. No	Tribunal/Court	Section/ Area	Nature	Case Law
1	ITAT Delhi	Sec 68	S. 68- Bogus share capital: If the AO has remained silent with folded hands and has not made any independent inquiry from the concerned AO of share holder company and has not controverted the evidence produced by the assessee, that itself is sufficient to knock off the addition made. The fact that there is no personal appearance from director of said cash creditor (share holder) does not mean that an adverse inference u/s 68 can be drawn by the AO without the AO discharging the secondary burden lying upon him (All imp judgments referred)	Moti Adhesives Pvt .Ltd vs ITO
2	Supreme court	Sec 69	S. 69 Bogus Purchases: Purchases cannot be treated as Bogus if (a) they are duly supported by bills, (b) all payments are made by account payee cheques, (c) the supplier has confirmed the transactions, (d) there is no evidence to show that the purchase consideration has come back to the assessee in cash, (e) the sales out of purchases have been accepted & (f) the supplier has accounted for the purchases made by the assessee and paid taxes thereon	PCIT vs. Tejua Rohitkumar Kapadia (Supreme court)

3	ITAT Mumbai	Sec 139(5), 143(3) , 54	S. 139(5): There is no bar / restriction that an assessee cannot file a revised return of income after issuance of notice u/s 143(2). A revised return of income can be filed even in the course of the assessment proceedings provided the time limit prescribed u/s 139(5) is available. The Departmental Authorities are not expected to deny assessee's legitimate claim by raising technical objection	Mahesh H Hinduja vs. ITO
4	Bombay high court	Sec 271(1)(c)	S. 271(1)(c) Penalty: Merely using the words that there is concealment of income and / or furnishing inaccurate particulars of income is not sufficient. The same should be particularized by the AO with a finding as to what particulars of income have been concealed or what particulars of income are inaccurate. The words 'concealment' or giving 'inaccurate particulars of income' have to be read strictly before penalty provisions u/s 271(1)(c) of the Act can be invoked. Zoom Communication 371 ITR 570 (Del) distinguished	CIT vs. L&T Finance Ltd

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Discussion on Judgments - Income Tax



- 1. S. 68 Bogus share capital: If the AO has remained silent with folded hands and has not made any independent inquiry from the concerned AO of share holder company and has not controverted the evidence produced by the assessee, that itself is sufficient to knock off the addition made. The fact that there is no personal appearance from director of said cash creditor (share holder) does not mean that an adverse inference u/s 68 can be drawn by the AO without the AO discharging the secondary burden lying upon him (All imp judgements referred)**

Facts of the Case:

- The facts of the case are that a search operation was carried out in the case of Surendra Kumar Jain group of cases wherein after intensive and extensive enquiry and examination of documents seized during the course of search it has been noticed that the said group is involved in providing accommodation entries which were not named in the report. The Assessing Officer (AO) observed that Rs. 25 lacs has been found credited in the books of accounts of the assessee, the immediate source of which was found to be received from one of
- The Tribunal after referring to a number of decisions by the Adjudicating Authorities of India held that "mere non production of Director of said share holder company cannot justify adverse inference u/s 68 of the Act. Even if there was any doubt if any regarding the creditworthiness of the share applicants was still subsisting, then AO should have made enquiries from the AO of the share subscribers which has not been done, so no adverse view could have been drawn. In this case on hand, the assessee had

the entities controlled by Jain Bros. The AO hence added the amount to the income of the assessee u/s 68.

The assessee had negative net worth. The borrowed funds of the assessee were roughly Rs. 11 crore; on which interest of Rs. 3.59 crore was debited in the profit and loss account. Further, the assessee had debited administrative expenses in its profit and loss account.

The High Court held that:

- The contentions of the assessee-appellant are that the CIT-A is not right to hold that reasons given in the proceedings are merely based on purported documents seized from premises of Mr. SK Jain and the same cannot be put against the assessee unless statement of Mr. Jain on those documents is brought on records and the same is duly followed by cross examination. Further, that sole reason for addition has been non production of director of companies which is held to be not the valid reasons for addition u/s 68.

discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee and in my view it cannot be brushed aside by the AO to draw the adverse view which here in present facts cannot be countenanced. Therefore addition of Rs. 25,45,000 made by AO and sustained by Ld CIT(A) is hereby deleted.

In the result, the assessee's appeal is dismissed.

(Moti Adhesives P Ltd vs ITO)

- 2. S. 69 Bogus Purchases: Purchases cannot be treated as Bogus if (a) they are duly supported by bills, (b) all payments are made by account payee cheques, (c) the supplier has confirmed the transactions, (d) there is no evidence to show that the purchase consideration has come back to the assessee in cash, (e) the sales out of purchases have been accepted & (f) the supplier has accounted for the purchases made by the assessee and paid taxes thereon**

The facts of the case:

Whether on the facts and circumstances of case and in Law the Appellate Tribunal was justified in treating the bogus purchase of Rs. 5,19,86,285 legitimate only on the basis that purchases are duly supported by bills and all the payments were made by account payee cheques by overlooking findings of the Investigation. Wing in the case of Shri Kulwant Singh Yadav, who was running shroff business

and he in his statement on oath stated that he issued acknowledgment to the beneficiary on receipt of cheque and delivered cash and the assessee was one of the beneficiaries.

The court held that:

The Assessing Officer had disallowed purchase expenditure of Rs. 5.19 crores making the additions treating the purchases as bogus. The assessee carried the matter in appeal. CIT (Appeals) allowed the appeal inter-alia on the ground that all payments were made by the assessee by Account Payee cheque. The assessee was in fact, a trader. All purchases made from M/s. Raj Impex were found to have been sold and sales were also accepted by the Assessing Officer. The Revenue carried the matter in appeal before the Tribunal. The Tribunal dismissed the appeal making following observations:

- We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the purchases made from M/s. Raj Impex were duly supported by bills and all the payments have been made by account payee cheques. There is also no dispute that M/s Raj Impex has confirmed all the transactions. There is no evidence to draw the conclusion that the entire purchase consideration which the assessee had paid to M/s. Raj Impex has come back to the assessee in cash.
- It is also true that no adverse inference has been drawn so far as the sales made by the assessee is concerned. We also find that the entire purchases made by the assessee from M/s. Raj

Impex have been accounted by Raj Impex and have paid the taxes accordingly. Considering the facts in totality well appreciated by the First Appellate Authority, we do not find any error or infirmity in the findings of the First Appellate Authority. Ground No.1 is accordingly dismissed.

Conclusion:

It can thus be seen that the appellate authority as well as the Tribunal came to concurrent conclusion that the purchases already made by the assessee from Raj Impex were duly supported by bills and payments were made by Account Payee cheque. Raj Impex also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee the trader had also shown sales out of purchases made from Raj Impex which were also accepted by the Revenue, no question of law arises.

- In the result, the Tax appeal is dismissed.

(PCIT vs. Tejua Rohitkumar Kapadia)

- 3. S. 139(5): There is no bar / restriction that an assessee cannot file a revised return of income after issuance of notice u/s 143(2). A revised return of income can be filed even in the course of the assessment proceedings provided the time limit prescribed u/s 139(5) is available. The Departmental Authorities are not expected to deny assessee's**

legitimate claim by raising technical objection.

Facts of the case:

The assessee an individual filed his return of income for the impugned assessment year on 28th July 2011, declaring total income of 4,91,750. Subsequently, the assessee filed a revised return of income on 20th October 2012, declaring total income of 6,24,050. In the said revised return of income the assessee while offering long term capital gain of 49,96,681, claimed deduction of the said amount under section 54 of the Act towards investment of an amount of 1,15,00,000 in a new residential house. Thus, in effect, no capital gain was offered to tax. Alleging that the assessee filed the revised return of income after issuance of notice under section 143(2) of the Act, the Assessing Officer held that the said revised return of income filed by the assessee claiming deduction under section 54 of the Act being invalid is not acceptable and accordingly, completed the assessment rejecting assessee's claim of deduction under section 54 of the Act. Being aggrieved with the disallowance of deduction claimed under section 54 of the Act, assessee preferred appeal before the first appellate authority

The Court held that:

- As per sec 139(5) of the Act, if an assessee discovers any omission or wrong statement in the original return of income he can file a revised return of income at any time before the expiry of one year from the end of the relevant assessment year or before completion of the assessment whichever is earlier.
- There is no bar / restriction in the provisions of section 139(5) of the Act that the assessee cannot file a revised return of income after issuance of notice under section 143(2) of the Act.
- Thus, as could be seen, the Assessing Officer has not entirely rejected the revised return of income filed by the assessee. When it comes to the income offered in the revised return of income, he has accepted it, whereas, when it comes to deduction claimed under section 54 of the Act, the Assessing Officer conveniently rejects the revised return of income filed by the assessee. Thus, the Assessing Officer has adopted a very selective approach in respect of the revised return of income filed by the assessee.

Conclusion:

In the result, assessee's appeal is allowed for statistical purposes.

(Mahesh H Hinduja vs. ITO)

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4. S. 271(1)(c) Penalty: Merely using the words that there is concealment of income and / or furnishing inaccurate particulars of income is not sufficient. The same should be particularized by the AO with a finding as to what particulars of income has been concealed or what

particulars of income are inaccurate. The words 'concealment' or giving 'inaccurate particulars of income' have to be read strictly before penalty provisions u/s 271(1)(c) of the Act can be invoked. Zoom Communication 371 ITR 570 (Del) distinguished.

Facts of the case:

- The respondent assessee had claimed depreciation in respect of the assets acquired / purchased from the lessee and given back on lease basis popularly called "sale and lease back". In quantum proceedings, the Tribunal by order dated 30th April, 2014 has held the respondent assessee entitled to claim depreciation on the assets used on sale and lease back basis. Being aggrieved by the order dated 30th April, 2014 of the Tribunal in quantum proceedings; the Revenue had filed three appeals.

The court held that:

- It is a settled position in law that mere rejection of a claim made by the assessee would not *ipso facto* result in penalty under Section 271(1)(c) of the Act.
- In fact, in Commissioner of Income Tax Vs. Reliance Petroproducts Pvt. Ltd. 2010 (11) SCC 762, the Apex Court observed that "Merely because the assessee had claimed the expenditure, which claim was not accepted or not acceptable to the Revenue, that by itself would not in our opinion attract penalty under Section 271(1)(c)"
- Before penalty can be imposed under Section 271(1)(c) of the Act, the Revenue in terms thereof must be

satisfied that the assessee had concealed particulars of income or furnished inaccurate particulars of his income.

- In the present case, the assessee had made a complete disclosure of facts. Then it cannot be said to have concealed the particulars of income or furnished inaccurate particulars of income.

Conclusion:

- Mere using the words that there is concealment of income and / or furnishing inaccurate particulars of income would not in the absence of same being particularized, lead to imposition of penalty. It is only when the specified officer of the Revenue is satisfied that there has been concealment of particulars of income or furnishing inaccurate particulars of income that the occasion to explain the conduct in terms of Explanation I to Section 271(1)(c) of the Act would arise
- Tax Appeal is therefore dismissed.

(CIT vs. L&T Finance Ltd)

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Note: The judgments should not be followed without studying the complete facts of the case Law.

DUE DATE CHART FOR THE MONTH OF JULY 2018

JULY 2018						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7 Monthly TDS payment
8	9	10 GSTR 1 (T/O > 1.5 cr)	11	12	13	14
15 Provident fund payment.	16	17	18 GSTR 4	19	20 GSTR 3B GSTR 5A GSTR 5	21 ESIC Payment.
22	23	24	25	26	27	28
29	30	31 GSTR 6 GSTR 1 (T/O upto 1.5 cr)				

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.

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