

HARBINGERTM

Updates on regulatory changes affecting your business

October 2018



B D Jokhakar & Co.

Chartered Accountants
www.bdjokhakar.com

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INCOME TAX



1. **Due date for filing Income Tax Returns with Tax Audit Reports extended to 15th October, 2018**

The Central Board of Direct Taxes (CBDT) vide order dated 24th September, 2018 has extended last date for filing of Income Tax Returns for those taxpayers who are required to file their returns along with Tax Audit Reports under Explanation 2 of Section 139(1)(a), from 30th September, 2018 up to 15th October, 2018. The said date is further extended to 31st October, 2018.

But the liability to pay interest under Section 234A of Income Tax Act, 1961 will remain, which means that that if an assessed has any unpaid tax liability then interest u/s 234A may be levied.

2. **CBDT notifies 'Ex-Servicemen Contributory Health Scheme' for the purpose of Section. 80D relief**

The Central Board of Direct Taxes (CBDT) vide Notification No. 55/2018 dated 26th September, 2018 notified **“Ex-Servicemen Contributory Health Scheme”** of the Department of Ex-Servicemen Welfare, Ministry of Defence, for the purpose of Section 80D from AY 2018-19.

GOODS & SERVICE TAX



1. Government extends due date for filing Form GSTR-1

- a. The Ministry of Finance vide notification no. 43/2018 dated 10th September, 2018 extended the last date for filing final sales return GSTR-1 for period of July 2017 to September 2018 till 31st October, 2018.

- b. It further said that those taxpayers who will be migrating to GST, the last date for furnishing the details of outward supplies of goods, services or both in GSTR-1 and for filing the return in GSTR-3B for the months of July 2017 to November 2018 has been extended till 31st December, 2018.

RESERVE BANK OF INDIA



1. RBI liberalizes External Commercial Borrowings Policy

The Reserve Bank of India vide circular dated 19th September, 2018 liberalized the External Commercial Borrowing (ECB) Policy.

a. **ECBs by companies in manufacturing sector:**

As per the extant norms, ECB up to USD 50 million or its equivalent could be raised by eligible borrowers with minimum average maturity period of 3 years. It has been now decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year.

b. **Underwriting and market making by Indian banks for Rupee Denominated Bonds (RDB) issued overseas:**

Presently, Indian banks, subject to applicable prudential norms, can act as arranger and underwriter for RDBs issued overseas and in case of underwriting an issue, their holding cannot be more than 5 % of the issue size after 6 months of issue. It has now been decided to permit Indian banks to participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable prudential norms.

c. All other provisions of the ECB policy shall remain unchanged.



1. **Commerce Ministry focusing on 9 sectors to boost exports**

The Commerce Ministry is focusing on nine sectors to boost exports in the current fiscal, an official said. It is targeting a minimum growth rate of 16 % in exports this fiscal.

Commerce and Industry Minister Mr. Suresh Prabhu, on Monday held inter-ministerial consultations with different departments to work on ways to promote the exports from these segments.

Sectors under focus are Gems and jewellery, textiles, leather, engineering, electronics, defence, pharmaceuticals, agriculture and marine products.

To push exports, the ministry has suggested several steps including demanding priority sector lending to exporters.

During the meeting, the Defence Ministry sought cooperation of the Commerce Ministry to boost defence exports from Rs 5,000 crore

to Rs 35,000 crore in the coming years.

All other departments and ministries suggested steps to boost overseas shipments.

Ministry of Electronics and IT suggested formulating a strategy to attract companies that are shifting their manufacturing bases from China due to high wages.

The Department of Chemicals stated that they are looking at new countries for exports and raised delay in environmental clearance for agro-chemical sector.

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	Madras High Court	Section 68	If no cash is involved in the transaction of allotment of shares and it is a case of book adjustment, provisions of s. 68 treating it as unexplained cash credit are not attracted. Even if it were to be assumed that the subscribers to the increased share capital are not genuine, the amount of share capital would in no circumstances be regard as undisclosed income of the company.	V. R. Global Energy Pvt. Ltd vs. ITO
2	ITAT Delhi	Section 68, 56(2)(viib) & Rule 11UA(2)(a)	Law on whether share capital/ share premium received by a Company from investors can be assessed as 'unexplained cash credit' explained in the light of judgements of the Courts and Tribunal (All imp judgements referred).	Priyatam Plaschem Pvt. Ltd vs. ITO
3	Bombay High Court	Section 147, 148 & 50C	The assessment cannot be reopened (within 4 years) on the ground that the AO lost sight of a statutory provision like 50C. This amounts to a review. A.L.A. Firm 55 TM 497 (SC) distinguished on the basis that the reopening in that case was because the AO was unaware of a binding High Court judgement. Here it is not the case of the Revenue that the AO was not aware of s. 50C at the time of passing the S. 143(3) assessment order.	PCIT vs. Inarco Limited
4	Madras High Court	Section 148, 159 & 292B	There is no obligation on the part of the legal representatives of a deceased assessee to intimate the death of the assessee or take steps to cancel the PAN registration. A notice issued in the name of a dead person is unenforceable in law. The fact that the Revenue had no knowledge about the death of the assessee does not change the law. The defect is fatal and is not curable u/s 292B. The legal representatives are liable u/s 159 only if proceedings have already been initiated when the assessee was alive and are continued against the legal heirs.	Alamelu Veerappan vs. ITO
5	ITAT Chandigarh	Section 220(2) & 220(6)	Arrest for recovery of arrears: It is a question of confinement of a person in jail due to non-payment of tax dues. Since the recovery of outstanding dues has been stayed except deposit of specified amount, the TRO is ordered to arrange for release of	Devinder Singh Gill vs. DCIT

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			the assessee immediately on deposit of said amount. Income Tax Authorities are directed to promptly do the necessary formalities including issue of release warrant to the Jail officials on compliance of the directions of the Tribunal.	

Discussion on Judgments - Income Tax



1. **If no cash is involved in the transaction of allotment of shares and it is a case of book adjustment, provisions of s. 68 treating it as unexplained cash credit are not attracted. Even if it were to be assumed that the subscribers to the increased share capital are not genuine, the amount of share capital would in no circumstances be regard as undisclosed income of the company**

[V. R. Global Energy Pvt. Ltd vs. ITO]

Facts:-

Counsel argued, and rightly, that when there was no cash involved in the transaction of allotment of shares, provisions of Section 68 of the said Act treating it as unexplained cash credit are not attracted

2. **Law on whether share capital/ share premium received by a Company from investors can be**

assessed as 'unexplained cash credit' explained in the light of judgements of the Courts and Tribunal (All imp judgements referred).

[Priyatam Plaschem Pvt. Ltd vs. ITO]

Facts:-

The A.O. failed to conduct scrutiny of the documents at assessment stage and merely suspected the transactions in question on the irrelevant reasons. The A.O. did not make any enquiry from the Banker of the Investor and Income Tax record of the Investor Company. The valuation report filed by the assessee supports explanation of assessee that shares were issued at premium which were below the fair market value per share of Rs.1221. The assessee, thus, proved the identity of the Investor, its creditworthiness and genuineness of the transaction in the matter. No material has been produced before us to rebut the explanation of assessee. We, therefore, did not find any justification to sustain the addition.

3. **The assessment cannot be reopened (within 4 years) on the ground that the AO lost sight of a statutory provision like 50C. This amounts to a review. A.L.A. Firm 55 TM 497 (SC) distinguished on the basis that the reopening in that case was because the AO was unaware of a binding High Court judgement.**

Here it is not the case of the Revenue that the AO was not aware of s. 50C at the time of passing the S. 143(3) assessment order.

[PCIT vs. Inarco Limited]

Facts:-

The basis of reopening the assessment in A.L.A. Firm (Supra) was the decision in the case of G.R.Ramachari & Co. (Supra) coming to the knowledge of the Assessing Officer subsequent to the completion of assessment proceedings. In this case it is not the case of the Revenue that the Assessing Officer was not aware of Section 50C of the Act at the time of passing the Assessment Order dated 26.12.2007 under Section 143 of the Act. In this case the trigger to reopen assessment proceedings as recorded in the reasons is no furnishing of copy of the sale deed by the Respondent. This has been found factually to be incorrect. Therefore, once the sale deed was before Assessing Officer and enquiries were made during the assessment proceedings regarding the quantum of capital gains, it must follow that the Assessing Officer had while passing the order dated 26.12.2007 under Section 143(3) of the Act had taken view on facts and in law as in force at the relevant time. Thus, this is a case of change of opinion.

- 4. There is no obligation on the part of the legal representatives of a**

deceased assessee to intimate the death of the assessee or take steps to cancel the PAN registration. A notice issued in the name of a dead person is unenforceable in law. The fact that the Revenue had no knowledge about the death of the assessee does not change the law. The defect is fatal and is not curable u/s 292B. The legal representatives are liable u/s 159 only if proceedings have already been initiated when the assessee was alive and are continued against the legal heirs.

[Alamelu Veerappan vs. ITO]

Facts:-

Nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration. In such circumstances, the question would be as to whether Section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under Section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs.

5. Arrest for recovery of arrears: It is a question of confinement of a person in jail due to non-payment of tax dues. Since the recovery of outstanding dues has been stayed except deposit of specified amount, the TRO is ordered to arrange for release of the assessee immediately on deposit of said amount. Income Tax Authorities are directed to promptly do the necessary formalities including issue of release warrant to the Jail officials on compliance of the directions of the Tribunal.

days as on today. Whereas by our above directions not only the Department will get recovery of Rs. 20 lacs out of the outstanding dues against the assessee but also the interest of justice will be served so far as the grievance of the assessee is concerned.

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

[Devinder Singh Gill vs. DCIT]

Facts:-

The sole motive of the Department for aforesaid action of putting the assessee in jail is to recover outstanding tax dues which are otherwise impugned before us, however, the Department has failed to recover any amount from the assessee despite putting the assessee behind the bars for 12

DATE CHART FOR THE MONTH OF OCTOBER, 2018

October 2018

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 i) Provident fund Payment ii) Form 3CA-3CD (Tax Audit Report for Companies) iii) Form 3CB-3CD (Tax Audit Report for assesses other than companies) iv) Income Tax Returns for assesses required to submit Tax Audit Report other than assesses covered under Transfer pricing.	16	17	18 GSTR-4 s	19	20 i) GSTR-3B ii) GSTR-5A iii) GSTR-5	21 ESIC Payment
22	23	24	25	26	27	28
29	30					

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.