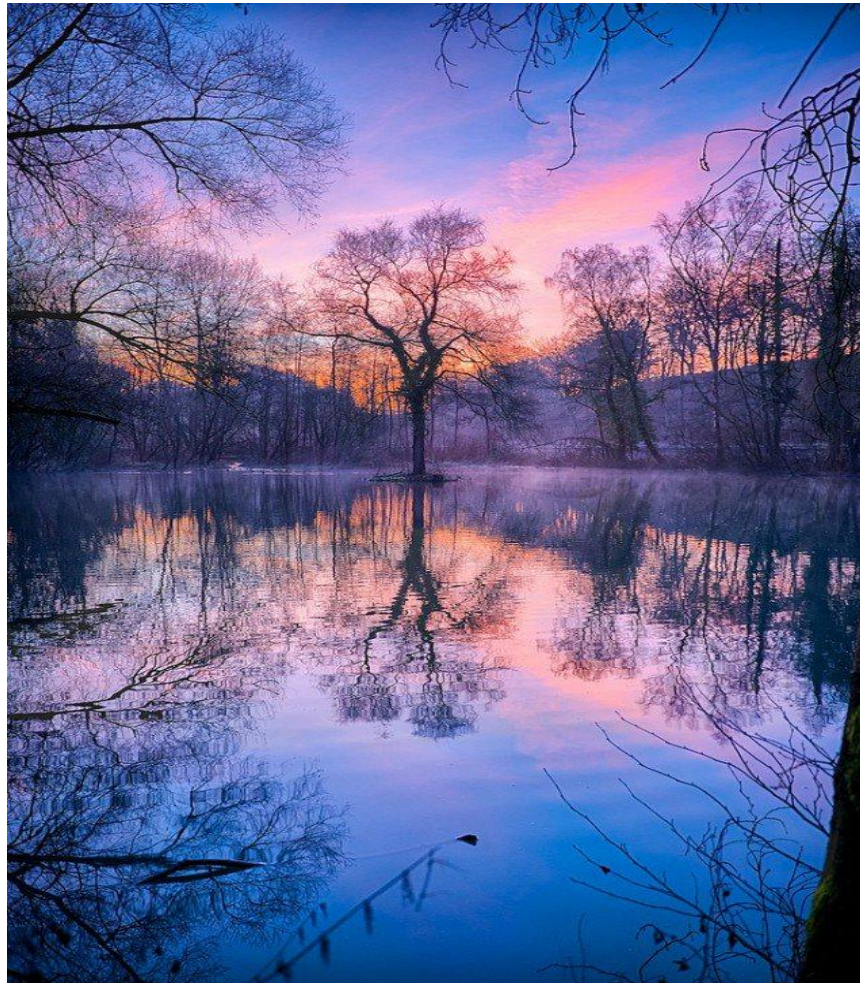


HARBINGERTM

Updates on regulatory changes affecting your business

December 2018



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INCOME TAX



Non-individuals conducting transaction over Rs 2.5 lakh must apply for PAN by May 31st of next financial year.

The Central Board of Direct Taxes (CBDT) issued Notification no. 82/2018 on 19th November, 2018 specifying that:-

Non-individual entities who do not have Permanent Account Number (PAN) but entered into a transaction of Rs 2.5 lakh or more in a single financial year, will now mandatorily have to get a PAN before May 31st of the following financial year.

An amendment has been made in Rule 114 of the Income Tax Rules with this regard.

This amendment will come into effect from 5th December, 2018.

GOODS & SERVICE TAX



CBIC extends the Due date for filing Form GSTR-7 for authorities deducting TDS to January 31, 2019

The Central Board of Indirect Taxes & Customs (CBIC) issued a Notification No. 66/2018-Central Tax dated 29th November, 2018 specifying that:-

The time limit for furnishing Form GST-7 for the months of October 2018 to December 2018 is extended till 31st January, 2019.

The original due date for filing GSTR-7 for that period was 10th January, 2019.

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



RBI eases guidelines for NBFCs on securitization transactions

The Reserve Bank of India (RBI) vide a circular RBI/2018-19/82 dated 29th November, 2018 has allowed non-banking finance companies with loans of over five year maturities to sell their loan pools or securitise them on easier terms for the next six months.

It has brought down the Minimum Holding Period (MHP) for loans to be eligible for securitisation to six months from one year, which has been a demand for quite some time.

While RBI eased the minimum holding period rule, it told the lenders to retain 20% of the fresh eligible loan portfolio instead of the regular norm of 10%.

ECONOMICS



GDP growth for Q2 slows to 7.1%

India's economy grew at a slower-than-expected pace in the September quarter Gross domestic product (GDP) expanded 7.1% in the second quarter of the fiscal year, down from 8.2% in the April-June period, data released by the statistics office showed. Slower manufacturing growth and 2.4% contraction in mining contributed to decline in growth.

Economists had pegged their estimates at 7.2 to 7.9%. The economy expanded 6.3% in the September quarter last year. The high growth in first quarter was seen as an aberration because of the pronounced base effect of low growth in the year earlier. Full-year growth is, however, broadly expected to be on target, economists said. The Reserve Bank of India has forecast 7.4% growth in FY 2018-19.

Despite the slight easing, India is still the fastest-growing major economy ahead of China, which reported a 6.5% rise in the July-September quarter.

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 37(1)	Where assessee engaged in business of manufacture, marketing and distribution of ice cream and dairy based frozen products, made payment of non-compete fee to two of its directors, since advantage of restraining individuals from engaging in competition was in field of facilitating assessee's own business and rendering it more profitable and there was no increase in fixed capital, payment in question was to be allowed as revenue expenditure.	Hatsun Agro Products Ltd. Vs. Joint Commissioner of Income-tax
2	ITAT Ahmedabad	Section 54F, 50	Exemption under section 54F is available even on short-term capital gains calculated as per section 50 on sale of depreciable assets held for more than 36 months. Where assessee had purchased new residential house within due date specified under section 139(4) from date of transfer of original asset, requirement to deposit net consideration received by assessee in capital gain account scheme as per section 54F(4) would not be attracted and assessee would be eligible to benefit of exemption under section 54F.	Shrawankumar G. Jain Vs. ITO
3	ITAT Ahmedabad	Section 68	An assessee can have one set of accounts for himself, as an individual, and other set of accounts for his sole proprietorship concern.	Ajay Jaysukhlal Mehta Vs. ACIT
4	ITAT Bangalore	Section 68	Where assessee was not able to bring on record any material evidence to prove creditworthiness and capacity of his father to advance huge amount of cash gift from any known source of income, impugned addition made under sec. 68 by authorities below was to be confirmed.	Sunil Ramakrishna Vs. DCIT

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5	ITAT Mumbai	Section 133A	Bogus expenditure: A statement recorded u/s 133A under fear/ coercion cannot be relied upon by the AO if it is not corroborated by documentary evidence. The assessee is entitled to retract such statement. The AO is bound to give the assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance. A failure in providing the same can result in the order being a nullity	Concept Communication Ltd. Vs. DCIT
6	Jammu & Kashmir High Court	Section 143	Where no return was filed in compliance of notice issued under section 148, issuing of notice under section 143(2) was not required for making assessment.	PCIT Vs. Broadway Shoe co.
7	Delhi High Court	Section 276CC	If the deductor has deducted TDS and issued Form 16A, the deductee has to be given credit even if the deductor has defaulted in his obligation to deposit the TDS with the Government revenue.	Karan Luthra Vs. ITO

Discussion on Judgments – Income Tax



1. Where assessee engaged in business of manufacture, marketing and distribution of ice cream and dairy based frozen products, made payment of non-compete fees to two of its directors, since advantage of restraining individuals from engaging in competition was in field of facilitating assessee's own business and rendering it more profitable and there was no increase in fixed capital, payment in question was to be allowed as revenue expenditure.

[Hatsun Agro Products Ltd. Vs. Joint Commissioner of Income-tax]

Facts:-

Business expenditure - Allowability of (Non-Compete fee) - Assessee-company, engaged in business of manufacture, marketing and distribution of ice cream and dairy based frozen products, made payment of non-compete fee to two of its directors - Assessee's claim for deduction of said expenditure was rejected by Assessing Officer on ground that it was in nature of

capital expenditure - Tribunal upheld order passed by Assessing Officer - Whether since advantage of restraining individuals from engaging in competition was in field of facilitating assessee's own business and rendering it more profitable and there was no increase in fixed capital, payment in question was to be allowed as revenue expenditure.

2. Exemption under section 54F is available even on short-term capital gains calculated as per section 50 on sale of depreciable assets held for more than 36 months.

Where assessee had purchased new residential house within due date specified under section 139(4) from date of transfer of original asset, requirement to deposit net consideration received by assessee in capital gain account scheme as per section 54F(4) would not be attracted and assessee would be eligible to benefit of exemption under section 54F.

[Shrawankumar G. Jain Vs. ITO]

Facts:-

Capital gains - Exemption of, in case of investment in a residential house - Assessment year 2011-12 - Assessee sold his factory shed and invested entire amount of sale consideration in residential property - Assessee had claimed depreciation on such factory shed - Accordingly, income earned from sale of such depreciable asset was shown as short-term capital gain

under section 50 - Assessing Officer disallowed assessee's claim of exemption under section 54F on ground that exemption under said section is available only on sale of long-term capital assets - It was noted that period of holding of factory shed was exceeding more than 36 months - Whether there is nothing mentioned under provisions of section 54F for depreciable assets; therefore, even if sale of factory shed is subject to short-term capital gain on basis of deeming provision as specified under section 50, inherently factory shed being long-term capital asset was eligible for deduction under section 54F.

Capital gains - Exemption of, in case of investment in a residential house (Capital Gains Account Scheme) - Assessment year 2011-12 - Assessee sold his factory shed and invested entire amount of sale consideration in residential property within time specified under section 139(4) - Assessing Officer disallowed assessee's claim of exemption under section 54F on ground that assessee had failed to deposit net consideration received by him in capital gain account scheme as required under section 54F(4) - Whether since assessee had purchased new residential house within due date as specified under section 139(4) from date of transfer of original asset, he was eligible for benefit of exemption under section 54F even though he failed to deposit net consideration in capital gain account scheme.

From the combined reading of the sections 50 and 54F, it was noted that all the provisions of the section as discussed above are mutually exclusive.

There was no mention under section 50 referring to the provision of section 54F and vice versa. Therefore, the provision of one section does not exclude the provision of other section.

Therefore, both the provisions should be applied in the instant case independently. The assessee had claimed deduction under section 54F because of the fact that the factory shed was long-term capital asset and there was nothing mentioned under the provision of section 54F for depreciable assets.

Thus, the sale of factory shed was subject to short-term capital gain on the basis of deeming provision as specified under section 50. Thus, inherently the factory shed, being long-term capital asset was eligible for deduction under section 54F.

- 3. An assessee can have one set of accounts for himself, as an individual, and other set of accounts for his sole proprietorship concern.**

[Ajay Jaysukhlal Mehta Vs. ACIT]

Facts:-

During the course of scrutiny assessment, Assessing Officer noted that assessee was sole proprietor of his proprietorship concern (Jay Jewellers) and his capital account showed credit of Rs. 1,85,64,955 but capital account

of assessee, in his personal accounts, reflected closing balance of only Rs. 43,16,557 - Credit entry of Rs. 1,85,64,955 was, thus, treated as unexplained, and added to income of assessee under section 68. It was found that assessee had one set of accounts for himself, as an individual, and other set of accounts for his sole proprietorship concern - Maintenance of such separate books of account is allowable and an assessee may have his own capital of 'x' amount, and yet his capital contribution in capital account of a proprietorship concern can be more than 'x' amount because funding of capital could be not only out of own capital but out of other available funds as well - Whether, thus, capital introduction stood explained in books of Jay Jewellers and addition made under section 68 was to be deleted.

The assessee has one set of accounts for himself, as an individual, and the other set of accounts for his sole proprietorship concern, Jay Jewellers. Viewed from the accounting perspective, the maintenance of such separate books of account is perfectly in order. In such a situation, the capital account of the assessee in his accounts, and capital account of Jay Jewellers, in the name of assessee, cannot be mirror image of each other - as the Assessing Officer erroneously expected these accounts to be. This comparison was incorrect. In a situation in which assessee and its proprietorship concern are maintaining separate books of

account - as in the present case, an assessee may have his own capital of 'x' amount, and yet his capital contribution in capital account of a proprietorship concern can be more than 'x' amount because such funding of capital can be not only out of own capital but out of other available funds as well. The Assessing Officer should have compared the capital account of the Jay Jewellers, with the account of Jay Jewellers in the hands of the assessee, its proprietor. These two accounts are actually mirror images of each other. In these circumstances, the capital introduction of Rs. 1,85,65,955 stands explained in the books of Jay Jewellers.

Thus, the addition is to be deleted.

4. **Where assessee was not able to bring on record any material evidence to prove creditworthiness and capacity of his father to advance huge amount of cash gift from any known source of income, impugned addition made under sec. 68 by authorities below was to be confirmed.**

[Sunil Ramakrishna Vs. DCIT]

Facts:-

Assessee, an individual engaged in business, filed his return of income declaring certain taxable income - In the course of assessment, Assessing Officer opined that assessee was not able to establish creditworthiness and capacity of his father to give cash gift of Rs. 10.50 lakhs - He thus brought said

amount of unexplained gift to tax in assessee's hands - Whether since assessee was not able to bring on record any material evidence to prove creditworthiness and capacity of his father to advance such a huge cash gift from any known or established sources of income and, moreover, he did not even operate even a regular bank account, impugned addition was to be confirmed.

In appellate proceedings the assessee was not able to bring on record any material evidence to prove, either the genuineness of the transaction of the aforesaid gift transaction by establishing the creditworthiness and capacity of his father to make the gift from any proved source of income to controvert the findings of the authorities below. The assessee has failed to establish the creditworthiness and capacity of his father to advance such a huge cash gift from any known or established source of income. This factual view draws support from the fact that the assessee's father was never an income tax assessee and did not apparently have or operate any regular bank account.

As a result, the assessee's appeal was dismissed.

- 5. Bogus expenditure: A statement recorded u/s 133A under fear/coercion cannot be relied upon by the AO if it is not corroborated by documentary evidence. The assessee is entitled to retract such statement. The AO is bound to give**

the assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance. A failure in providing the same can result in the order being a nullity

[Concept Communication Ltd vs. DCIT]

Facts/Conclusion:-

Retraction being on affidavit was legal and valid and was not belated. Further retraction was supported by explanation of impounded documents to the Survey team. The impounded document did not contain any information which was not recorded in the books of accounts. Hence, in view of retraction and such retraction based on concrete evidence, no addition can be made on the basis of statement taken during survey without bringing on record some corroborative materials.

- 6. Where no return was filed in compliance of notice issued under section 148, issuing of notice under section 143(2) was not required for making assessment.**

[PCIT Vs. Broadway Shoe Co.]

Facts:-

Assessment - Issue of notice - Assessment year 2003-04 - Whether for issuing notice under section 143(2) return should have been filed under section 139 or in response to a notice issued under

section 142(1) - Held, yes - Whether where no return was filed in pursuance of notice issued under section 148, issue of notice under section 143(2) was not required for making assessment.

Section 148 permits issuance of notice in certain circumstances when it is discovered that income has escaped assessment and sub-section (1) thereof mandates a return to be filed upon assessee being served a notice under such provisions, whereupon the provisions of this Act shall, so far as it may be, apply accordingly as if such return were a return required to be furnished under section 139. Section 143 pertains to an assessment and its opening words referred to a return being made under section 139 or in response to a notice under section 142(1). Thus plain reading of section 143(2) which talks about issuance of notice where return has been furnished and section 148(1) which talks about return filed in response to notice being treated as return under section 139, makes it clear that the procedure prescribed in section 143(2) becomes applicable only when a return has been furnished.

In view of the preceding analysis, the substantial question of law framed by this court is answered in the negative and in favour of the revenue.

7. Where prosecution under section 276CC was launched against assessee on account of his failure

to furnish return of income in response to notice issued under section 142(1), since offence under section 276CC, prima facie, stood constituted upon failure on part of assessee to furnish return of income for assessment year in question within period prescribed in law, mere fact that he had subsequently furnished return of income for assessment year in question and no amount of tax was due, would not exempt him from liability to be prosecuted.

[Karan Luthra Vs. ITO]

Facts:-

Offence and prosecution - Failure to furnish return of income (Applicability of) - Assessment year 2003-04 - For relevant year, assessee did not furnish return of income within the time prescribed under section 139(1) - A notice under section 142(1) was issued which was also not complied with - Accordingly, prosecutions were launched against assessee by filing of criminal complaints, each alleging offence punishable under sections 276CC - Assessee challenged validity of said proceedings by filing instant petition raising two objections firstly, assessee had subsequently furnished return of income on 24-10-2007 and secondly, notice under section 142(1) had been followed by a fresh notice and since said notice had not indicated any date by which compliance was to be made, assessee could not be found to be in breach of provisions of section 276CC - Whether offence

under section 276CC, prima facie, stood constituted upon failure on part of the assessee to furnish return of income for assessment year in question within period prescribed in law and, thus, mere fact that he had subsequently furnished return of income for assessment year in question would not exempt him from liability to be prosecuted - Held, yes - Whether so far as other objection was concerned, subsequent notice could not prima facie be read so as to supersede previous notice particularly to have effect of giving to assessee indefinite period for compliance because that could never be intention of law or of process issued there under - Held, yes - Whether in view of aforesaid, objections raised by assessee deserved to be rejected.

Section 276 CC makes "failure to furnish returns of income", inter alia, in compliance of section 139 (1) or section 142 (1) or section 148 punishable. Though, by virtue of the proviso to the said clause, in relation to the assessment years commencing on or after 1-4-1975, stipulating that a person shall not be proceeded against for such failure to furnish if the return had been furnished by him before the expiry of the assessment year or if the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any paid, and any tax deducted at source, does not exceed Rs. 3,000/-.

The revisional court took the correct view in the case of

complaints relating to assessment years 2004-05 and 2005-06, but fell into error in the context of complaint relating to assessment year 2003-04. There was no case made out for discharge of assessee in the latter case. Criminal revision petitions of assessee are dismissed whereas criminal revision petition filed by revenue is allowed.

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

DATE CHART FOR THE MONTH OF DECEMBER, 2018

(Compliances are for the previous month unless otherwise stated)

December 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 1) Provident Fund Payment. 2) ESIC Payment. 3) Third 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					

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.