HARBINGER

Updates on regulatory changes affecting your business

April 2015

B D Jokhakar & Co.

Chartered Accountants

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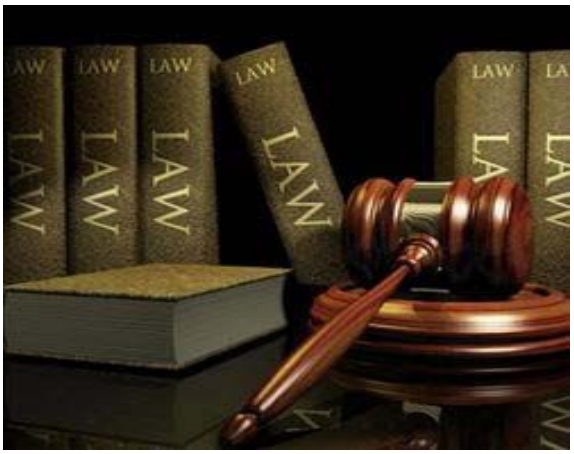
COMPANY LAW



Clarification relating to filing of e-form DIR-11 & DIR-12 under the Companies Act, 2013

Ministry has received several representations about the difficulties faced by stakeholders due to deactivation of Digital signature certificate (DSC) following all together resignation of all the directors of a company before appointment of new directors in their places. The difficulty arises because of automatic deactivation of DSC on filing of DIR-11 (Notice of resignation of a director to the Registrar) by the resigned/resigning Director (s), and none of the new Director's details having been filed. As a result, form DIR-12 (Particulars of appointment of directors and the key managerial personnel and the changes among them) cannot be filed by a company due to lack of an authorized signatory Director.

In order to enable the filing of such e-forms and till an alternative mechanism is put in place in MCA21 system, it is clarified that the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders, and after due examination, to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act, 2013.

Circular no. 3 dated 3rd March 2015

Clarification with regard to section 185 and 186 of the Companies Act, 2013 - loans and advances to employees [Circular No.4] dated 10/03/2015

Ministry has received a number of references seeking clarification on the applicability of provisions of section 186 of the Companies Act, 2013 relating to grant of loans and advances by Companies to their employees. The issue has been examined and it is hereby clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013. This clarification will, however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

Amounts received by private companies from their members, director or their relatives before 1st April, 2014 – Clarification regarding applicability of Companies (Acceptance of Deposits) Rules 2014

It is clarified that amounts received by private companies prior to 1st April, 2014 from their members, director or their relatives shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.
Any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 20 13 and rules made there under.

RESERVE BANK OF INDIA

Guidelines for relief measures by banks in areas affected by Natural Calamities.

Guidelines contained in Master Circular RPCD.No.PLFS.BC.6/05.04.02/2013-14 dated July 1, 2013 have been revisited taking into account, inter alia, the provisions of National Disaster Management Framework, National Crop Insurance Programme and different practices being followed by State Governments in declaration of natural calamities. The views of NABARD and Indian Banks' Association have also been obtained.
Based on the above inputs the guidelines have been revised.

RBI/2014-15/512
FIDD.No.FSD.BC.52/05.10.001/2014-15

Revision in Bank Rate.

As announced in the Monetary Policy Statement dated March 4, 2015, the Bank Rate stands adjusted by 25 basis points from 8.75 per cent to 8.5 per cent with effect from March 4, 2015.

All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised and the interest rate on refinance for SSI under Section 17(2) (bb) read with Section 17(4) (c) of the Reserve Bank of India Act, 1934, also stands revised to 8.5 per cent with effect from March 4, 2015.

RBI/2014-15/489
DCBR.BPD.
(PCB/RCB).Cir.No.19/16.11.00/2014-15

Trade Creditors for Imports into India-Review of all-in-cost ceiling

On a review it has been decided that the all-in-cost ceiling as specified under paragraph 4 of A.P. (DIR Series) Circular No.28 dated September 11, 2012 will continue to be applicable till March 31, 2015 and is subject to review thereafter.
All in cost is Total cost which includes all explicit or implied, and paid or incurred costs.
RBI/2014-15/512
FIDD.No.FSD.BC.52/05.10.001/2014-15

Liquidity Adjustment Facility - Repo and Reverse Repo Rates.

It has been decided to reduce the Repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points from 7.75 per cent to 7.50 per cent with immediate effect.
Consequent to the change in the Repo rate, the Reverse Repo rate under the LAF will stand adjusted to 6.50 per cent with immediate effect.

RBI/2014-15/487
FMOD.MAOG.No.106/01.01.001/2014-15

Priority Sector Lending-Persons with disabilities (PWD)-Inclusion under weaker sections.

Please refer to Paragraph 5 of our Master Circular UBD.CO.BPD. (PCB) MC.No.7/09.09.001/2014-15 dated July 1, 2014 on Priority Sector Lending-Targets and Classification.
It has been decided that priority sector loans to Persons with Disabilities will be eligible for classification under Weaker Sections category.

RBI/2014-15/506
DCBR.BPD (PCB)
Cir.No.7/14.01.062/2014-15

Acquisition/transfer of immovable property-Prohibition on citizens of certain countries.

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years as per notified vide Notification No. FEMA 21/2000-RB dated 3rd May, 2000.
It has been decided, in consultation with the Government of India, that citizens of Macau and Hong Kong will also be included in the list of countries which are prohibited to

acquire/transfer immovable property in India.

RBI/2014-15/495
A.P. (DIR Series) Circular No.83

ECONOMICS

Divestment programme for 2015-16

The government could launch the disinvestment programme for 2015-16; the country's biggest so far, as early as the second week of April, provided market conditions remain favourable.

It is likely to choose between a power sector and heavy industry firm for the first issue, a senior government official said. The Modi government's first full Budget in February announced at Rs 69,500-crore plan to sell stakes in government companies. Of this, the government has budgeted Rs 41,000 crore through stake sales in public sector units and Rs 28,500-crore via strategic disinvestment. The disinvestment department intends to launch at least one issue every month to meet this target. In the fiscal year 2014-15, the government has raised around Rs 24,200 crore through stake sales in Coal India Ltd and Steel Authority of India Ltd (SAIL).

(Source: The Economic Times dated 30th March, 2015)

India to Re-engage with European Union (EU) on Free Trade Deal

India's Commerce and Industry Minister, Nirmala Sitharaman, has said that India is ready to revisit talks towards a free trade agreement with the European Union, despite an earlier impasse on several issues that led to the talks being shelved.

In February 2013, the European Commission had reported that "the contours of a deal" were emerging, but "both sides need to go the final mile to put the package together." By then fifteen rounds of negotiations had been held since the launch of negotiations in 2007, and concerns were being raised that "painfully slow" progress was being made. Thereafter, it was agreed in May that certain issues could not be resolved, including negotiations on tariff reductions; data security standards, and in particular IT market access for India; and the free movement of persons.

Disclosing that India and the EU will revisit the talks, Sitharaman told reporters on 23rd March, 2015: "I have assured the EU ambassador and ambassadors of individual EU countries that we are ready to talk with the European community. They have been our traditional trading partners."

(Source: The Tax News dated 24th March, 2015)

INTERNATIONAL TAX

The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015

The Finance Minister, in his budget speech, while acknowledging the limitations under the existing law, had conveyed the considered decision of the Government to enact a comprehensive new law to specifically deal with black money stashed away abroad. He also promised to introduce the new Bill in the current Session of the Parliament.

In fulfilment of that commitment, the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 has been introduced in the Parliament on 20th March, 2015. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act, 1961 but under the stringent provisions of the proposed new legislation.

The salient features of the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 are as under:-

Scope The Bill will apply to all persons resident in India. Provisions of the Bill will apply to both undisclosed foreign income and assets (including financial interest in any entity). The Bill proposed to be effective from financial year 2015-16.

Rate of tax Undisclosed foreign income or assets shall be taxed at the flat rate of 30 percent. No exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income-tax Act, 1961, shall be allowed.

Violation of the provisions of the proposed new legislation will entail stringent penalties and prosecution

(http://www.tax-news.com/features/January_Global_TaxNews_Update__)

Mauritius promises India full-cooperation on tax treaty (DTAA) issues

Mauritius has promised full cooperation with India to address outstanding issues relating to their bilateral tax treaty, days after Prime Minister Narendra Modi's visit to the island nation. Both the countries have agreed to move forward with negotiations to update the Indo-Mauritius DTAA treaty. The provisions of Indo-Mauritius DTAA treaty are being misused to evade taxes. There is persistent information that Mauritius is also being used for round-tripping of funds into India even though the island nation has always maintained that there have been no concrete evidence of any such misuse. Mauritius has been one of the largest sources for foreign direct investment in India and inflows touched USD 7.66 billion in the April 2014-January 2015 period.

Reflecting the importance that Mauritius attaches to India, the reference about the bilateral tax agreement was made by its Finance

Minister Seetanah Lutchmeenaraidoo in his Budget speech dated 23rd March, 2015.

(Source: The Economic Times dated 24th March, 2015)

Extension for APA rollback application

The income tax department on Tuesday, 31st March decided to extend the deadline for filing of rollback applications for transfer pricing agreements till June 30. This comes as a relief to the multinational companies that were willing to file applications for advance pricing agreements (APAs), as they would get an additional window of three months.

An APA is an agreement between a taxpayer and the tax department detailing the transfer-pricing procedure for a particular set of transactions, arm's length pricing and details of the transaction under review.

Under the rollback provision, an APA entered into for future transactions might also be applied to international transactions undertaken in previous four years. The APA roll back scheme was announced by Finance Minister Arun Jaitley in his maiden Budget but the final rules were notified earlier this month, which has set the deadline for application to March 31.

(Source: Business Standard dated 31st March, 2015)

INCOME TAX

Clarification regarding Explanation 5 to clause (i) of sub-section (1) of section 9 of Income-tax Act, 1961.

Section 9 of the Income-tax Act provides for incomes which are deemed to accrue or arise in India. Clause (i) of sub-section (1) of the said section reads as under: - "9. (1) The following incomes shall be deemed to accrue or arise in India: - (i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.

The Finance Act, 2012 inserted Explanation 5 to clause (i) of sub-section (1) of section 9. The said explanation reads as under: - " Explanation 5.-For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

A number of representations have been received by the board stating that the purpose of Explanation 5 is to clarify the taxation of income accruing or arising through the transfer of capital asset situated in India. It has been

pointed out that such extended application of the provisions of explanation may result in taxation of dividend income from foreign companies outside India.

The board has examined the case and through the explanatory memorandum (CIRCULAR No.4 /2015) has clarified that declaration of dividend by such a foreign company outside India does not have the effect of transfer of any underlying assets located in India. It is therefore, clarified that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India by virtue of the provisions of Explanation 5 to section 9 (I) (i) of the Act.

The Income-tax (Third Amendment), Rules, 2015

In exercise of the powers conferred by sub-sections (9) and (9A) of section 92CC read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

(1) These rules may be called the Income-tax (Third Amendment) Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

In Rule 10F definition of applicant and roll back year are added. After Rule 10M, Rule 10MA is inserted - Roll Back of the Agreement. After Rule 10R, Rule 10RA is inserted -Procedure for giving effect to rollback provision of an agreement.

Source:
http://www.incometaxindia.gov.in/communications/notification/notification23_2015.pdf

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SUMMARY OF IMPORTANT TAX JUDGMENTS:

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

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
1	ITAT-Mumbai	Section 2(47)(v)/(vi) and 53A of TOP Act	Land ceases to be a capital asset on date of application for conversion into Non Agricultural land. Pursuant to amendment to section 53A of Transfer of Property Act (TOP), non-registered development agreement does not result in transfer u/s 2(47) (v). Law in Chaturbhuj Kapadia 260 ITR 491 (Bom) does not apply after amendment to s. 53A after 2001.	*Fardeen Khan vs. ACIT*
2	Supreme Court	Section 10(23C)(v) & (vi)	Mere surplus does not mean institution is existing for making profit. The predominant object test must be applied. The AO must verify the activities of the institution from year to year.	*Queens Educational Society vs. CIT*
3	High Court Delhi	Section 14A & Rule 8D	S. 14A + Rule 8D: No disallowance can be made if AO does not record satisfaction with reference to accounts that assessee's claim is improper. However, if Rule 8D applies, assessee's claim that interest is not disallowable on ground of "own funds" is not acceptable	*CIT vs. Taikisha Engineering India Ltd*
4	High Court Delhi	Section 14A & Rule 8D	S. 14A & Rule 8D cannot be interpreted to mean that the entire tax exempt income can be disallowed.	*Joint Investments Pvt. Ltd vs. CIT*
5	ITAT-Pune	Section 40(a)(ia)	S. 40(a)(ia): Merilyn Shipping 136 ITD 23 (SB) cannot be followed but Question whether the second proviso to s. 40(a)(ia) is retrospective or not requires to be considered by the AO	*ACIT vs. Bhavook Chandraprakash Tripathi*

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
6	High Court-Bombay	Section 80-0, Chapter VI-A	Chapter VI-A deductions are not limited to the business profits but are available to the extent of the Gross Total Income	*CIT vs. J. B. Boda & Co.P. Ltd*
7	ITAT-Mumbai	Section 271(1)(c)	Disclosing income but classifying it under a wrong head amounts to furnishing inaccurate particulars and attracts penalty	*Shubhmangal Portfolio Pvt. Ltd vs. CIT*

DISCUSSION ON JUDGEMENTS – INCOME TAX

1. S. 2(47)(v)/(vi): Land ceases to be a capital asset on date of application for conversion into N. A. land. Pursuant to amendment to s. 53A of TOP Act, non-registered development agreement does not result in transfer u/s 2(47)(v). Law in Chaturbhuj Kapadia 260 ITR 491 (Bom) does not apply after amendment to s. 53A

Fardeen Khan vs. ACIT (ITAT Mumbai)

(i) The land ceased to be a capital asset from the date when assessee filed application before the Bangalore Development Authority (BDA) for conversion of land from "agriculture" to non-agriculture. The intent of the assessee to hold the land as "stock in trade" is further established by the fact that in the records of Revenue Department land was registered as "N.A. Land" without which no residential project could be carried thereon. The approval of plans to construct residential villas by BDA further proves the intention of the appellants to treat the land as commercial asset. Thus various steps taken by the assessee are very much part of business activities involved in real estate development.

(ii) Amendment made in section 53A in 2001 is also relevant wherein an additional condition for registration of the written agreement was introduced as a result of which if the agreement between transferor and transferee is not registered, the transferor can dispossess the transferee from the property. Simultaneously, a consequential amendment was also been made in The Registration Act, 1908 to provide that unless the documents containing contracts to transfer any immoveable property for the purpose of section 53A of the TOP Act is registered, it shall not have effect for the purposes of section 53A of the TOP Act. A perusal of the Section reveals that registration of document is a sine qua non for applicability of section 53A of TOP Act which entitles the transferee to remain in possession of the property.

(iii) In the instant case, Development Agreement was executed on stamp paper of Rs. 100/- and the same was not registered, hence, provisions of section 2(47)(v) of the Act are not applicable since the conditions stipulated in section 53A of TOPA are fulfilled.

(iv) With respect to the decision of the Bombay High Court in the case of Chaturbhuj Kapadia 260 ITR 491, we found that the said decision is not applicable because the said decision was in the context of transfer of capital asset. Although the said decision was rendered in February 2003 the assessment year under its consideration was A.Y.1996-97.

Further for the purpose of assessment of capital gains in the said case, all the conditions specified in Section 53A of the TOP Act were satisfied. Hence, the judgment was delivered qua the law prevailing in the year of the transaction. Accordingly, the Hon'ble Bombay High Court has discussed all the conditions required to be complied under Section 53A of the TOP Act, other than the condition of registration, since the law provided only five conditions at the time. Thus the case of Chaturbhuj Kapadia (supra) is of no help to Revenue to bring the transaction within the purview of section 53A of TOPA. As provisions of section 53A was amended in 2001 by which additional condition of registration of the written agreement was introduced and since in the instant case the agreement was not registered, the decision rendered by Hon'ble Bombay High Court in the case of Chaturbhuj Kapadia 260 ITR 491 with respect to relevant provisions of section 53A applicable in A.Y. 1996-97 will not be applicable to the facts of instant case. We can therefore safely conclude that the conditions stipulated in section 53A of TOPA are not satisfied in the case of assessee as discussed above, there is no transfer as per the provisions of section 2(47) of the Act.

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2. S. 10(23C)(v) & (vi): Mere surplus does not mean institution is existing for making profit. The predominant object test must be applied. The AO must verify the activities of the institution from year to year

Queens Educational Society vs. CIT (Supreme Court)

The Supreme Court had to consider appeals arising from the judgements of the Uttarakhand High Court in Queens Educational Society 319 ITR 160 and the Punjab and Haryana High Court in Pine Grove International Charitable Trust v. Union of India (2010) 327 ITR 273 concerning the interpretation of s.10(23C) (iii ad) and (vi) of the Income-tax Act. HELD by the Supreme Court reversing Queens Educational Society and affirming Pine Grove International Charitable Trust v. Union of India:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied the purpose of education should not be submerged by a profit making motive. A distinction must be drawn between the making of a surplus and an institution being carried on for profit. No inference arises that merely because imparting education results in making a profit; it becomes an activity for profit.

(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is

to make profit as opposed to educating persons.

(6) The correct tests which have been culled out in the three Supreme Court judgments, namely, Surat Art Silk Cloth 121 ITR 1 (SC), Aditanar 224 ITR 310 (SC), and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit.

(7) In addition, we add that the 13th proviso to Section 10(23C) is of great importance, wherein it is stated that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act.

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3. S. 14A and Rule 8D: No disallowance can be made if AO does not record satisfaction with reference to accounts that assessee's claim is improper. However, if Rule 8D applies, assessee's claim that interest is not disallowable on ground of "own funds" is not acceptable

CIT vs. Taikisha Engineering India Ltd (Delhi High Court)

(i) Under sub Section (2) to Section 14A of the Act, the Assessing Officer is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, the Assessing Officer can determine the amount of expenditure which should be disallowed in accordance with such method as prescribed, i.e. Rule 8D of the Rules. Therefore, the Assessing Officer at the first instance must examine the disallowance made by the assessee or the claim of the assessee that no expenditure was incurred to earn the exempt income. If and only if the Assessing Officer is not satisfied on this account after making reference to the accounts, that he is entitled to adopt the method as prescribed i.e. Rule 8D of the Rules. Thus, Rule 8D is not attracted and applicable to all assessee who have exempt income and it is not compulsory and necessary that an assessee must voluntarily compute disallowance as per Rule 8D of the Rules. Where the disallowance or □nil□ disallowance made by the assessee is found to be unsatisfactory on examination of accounts, the assessing officer is entitled and authorised to compute the deduction under Rule 8D of the Rules.

(ii) Section 14A (2) of the Act and Rule 8D(1) in unison and affirmatively record that the computation or disallowance made by the assessee or claim that no

expenditure was incurred to earn exempt income must be examined with reference to the accounts, and only and when the explanation/claim of the assessee is not satisfactory, computation under sub Rule (2) to Rule 8D of the Rules is to be made.

(iii) We need not, therefore, go on to sub Rule (2) to Rule 8D of the Rules until and unless the Assessing Officer has first recorded the satisfaction, which is mandated by sub Section (2) to Section 14A of the Act and sub Rule (1) to Rule 8D of the Rules.

(iv) However, the decisions relied upon by the Tribunal in the case of Tin Box Co. 260 ITR 637 (Del), Reliance Utilities and Power Ltd. 313 ITR 340 (Bom.), Suzlon Energy Ltd. 354 ITR 630 (Guj) and East India Pharmaceutical Works Ltd. 224 ITR 624 (SC) could not be now applicable, if we apply and compute the disallowance under Rule 8D of the Rules. The said Rule in sub Rule (2) specifically prescribes the mode and method for computing the disallowance under Section 14A of the Act. Thus, the interpretation of clause (ii) to sub Rule (2) to Rule 8D of the Rules by the CIT(A) and the Tribunal is not sustainable. The said clause expressly states that where the assessee has incurred expenditure by way of interest in the previous year and the interest paid is not directly attributable to any particular income or receipt then the formula prescribed would apply. Under clause (ii) to Rule 8D(2) of the Rules, the Assessing Officer is required to examine whether the assessee has incurred expenditure by way of interest in the previous year and secondly whether the interest paid was directly attributable to particular income or receipt. In case the interest paid was directly attributable to any particular income or receipt, then the interest on loan amount to this extent or in entirety as the case may be, has to be excluded for making computation as per the formula prescribed. Pertinently, the amount to be disallowed as expenditure relatable to exempt income, under sub Rule (2) is the aggregate of the amount under clause (i), clause (ii) and clause (iii). Clause (i) relates to direct expenditure relating to income forming part of the total income and under clause (iii) an amount equal to 0.5% of the average amount of value of investment, appearing in the balance sheet on the first day and the last day of the assessee has to be disallowed.

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4. S. 14A & Rule 8D cannot be interpreted to mean that the entire tax exempt income can be disallowed

Joint Investments Pvt. Ltd vs. CIT (Delhi High Court)

The AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs. 2,97,440/- as a disallowance under Section 14A had to be rejected. Taikisha (Previous Case Law referred to above) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is that there appears to have been no scrutiny of the accounts by the AO – an aspect which is completely unnoticed by the

CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we can be mindful, is that whereas the entire tax exempt income is Rs. 48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e., Rs. 52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure incurred by the assessee in relation to the tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.

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5. S. 40(a)(ia): Merilyn Shipping 136 ITD 23 (SB) cannot be followed but Q whether the second proviso to s. 40(a)(ia) is retrospective or not requires to be considered by the AO

ACIT vs. Bhavook Chandraprakash Tripathi (ITAT Pune)

The issue as to whether disallowance u/s 40(a)(ia) can be made only in respect of amounts that are payable as at the end of the year or whether it can also be made for amounts paid during the year has to be decided against the assessee [as the Special bench verdict in Merilyn Shipping and Transport Ltd. 136 ITD 23 (SB) has not been approved by some High Courts].

In the meanwhile, the legal argument that the second proviso to section 40(a)(ia) of the Act [which was inserted by the Finance Act, 2012 w.e.f 01.04.2013 to provide that the disallowance u/s 40(a)(ia) of the Act would not be made if the assessee is not deemed to be an assessee in default under the first proviso to section 201(1) of the Act] is retrospective in nature, as it has been introduced to eliminate unintended consequences which may cause undue hardships to the tax payers, requires to be restored to the file of the Assessing Officer for consideration.

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6. Chapter VI-A deductions are not limited to the business profits but are available to the extent of the Gross Total Income

CIT vs. J. B. Boda & Co.P. Ltd (Bombay High Court)

The AO determined the deduction u/s 80-O at Rs. 1,29,41,830. However, though the gross total income was higher, he held that the deduction had to be confined to the extent of business income of Rs. 69,70,127. This was reversed by the Tribunal. On appeal by the department to the High Court HELD dismissing the appeal:

The only question sought to be canvassed is that out of these deductions the admissible deduction under section 80-O ought to be limited to the extent of Rs. 69,70,127 which represents business income. In other words, the income from interest and dividend shall not form part of the gross total income as defined under section 80B(5) of the Act. The submission is misconceived. If one turns to the definition of the gross total

income under section 80B(5), it reads as under:

"80B(5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter."

Considering the definition of the gross total income, it is difficult to hold that the interest income and the dividend income would not form part of the gross total income computed in accordance with the provisions of the Act. The view taken by the Tribunal, in our considered view, is in consonance with what is stated herein. No substantial question of law is involved. In the result, appeal is dismissed in limine with no order as to costs.

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7. S. 271(1)(c): Disclosing income but classifying it under a wrong head amounts to furnishing inaccurate particulars and attracts penalty

Shubhmangal Portfolio Pvt. Ltd vs. CIT (ITAT Mumbai)

The assessee's argument of the same being only a differential treatment of the very same, i.e., rental income, so that there has been neither any concealment nor furnishing of inaccurate particulars of income, though appealing, is misconceived. The reason is simple. Yes, the assessee has apparently stated the quantum and nature of the income correctly. However, penalty u/s 271(1)(c) is not only qua the misstatement of fact/s but also of law. When the law is clear and well settled, as in the facts of the present case, the so called "differential treatment", which the law does not admit of, i.e., qua the admitted nature of the income, is only admittedly a wrong claim in law. This is more so where the said claim has tax implication. Income has to be necessarily computed under separate, mutually exclusive heads of income, allowing deductions as per the computational provisions of the respective head of income, and toward which the Assessing Officer (A.O.) has relied on United Commercial Bank Ltd. vs. CIT [1957] 32 ITR 688 (SC) and CIT vs. Chugandas and Co. [1965] 55 ITR 17 (SC). In fact, the "differential treatment" would be rendered as of no consequence, so that no penalty could be levied, where it carries the same or a similar tax burden; the whole premise thereof being only a lesser tax liability, so that whole issue therefore boils down to whether it is the case of tax avoidance, which is legally permissible, or of tax evasion, which the law seeks to penalize, and which therefore has to be adjudged on the basis or edifice of the assessee's explanation for its adopted treatment.

The term "differential treatment", which is thus to be examined on the touchstone of the validity or plausibility, or otherwise, of the legal claim, carries no legal meaning in itself. How could, one may ask, the assessee justify its claim of the declared nature of the income as "rent", when it declares as it as "business income", claiming all expenses there-against? That is, could it be said that the assessee has furnished accurate particulars of income when it, de hors

settled law, claims all regular, business expenditure, including depreciation on building, there-against, so that the assessee's claim of having stated 'fact/s' correctly is also highly suspect.

NOTE: The Judgments should not be followed without studying the complete facts of the case law.

DUE DATES CHART FOR THE MONTH APRIL 2015 (Various Acts):

Date	Particulars
6th	Payment of Excise Duty for all assesses (including SSI Units) for the previous month
10th	Monthly Excise return by all assesses (except SSI Units) coming under CEA in Form ER1
10th	Monthly Excise return by specified class of assesses regarding principal inputs coming under CEA in Form ER 6
10th	Quarterly Excise return by EOU assesses coming under CEA in Form ER 2
10th	Quarterly Excise return by SSI units availing small scale exemption under CEA in Form ER 3
10th	Quarterly Excise return by units paying 2% duty under CEA in Form ER 8
15th	Filing quarterly return in Annexure 13B by the registered dealers under Central Excise
20th	Filing Quarterly Return (Annexure 75) by units availing area based exemptions
20th	MVAT- TDS Payment of March
20th	Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace)
21st	Payment of contribution under Employees State Insurance Act, 1948
21st	Payment of Monthly MVAT under MVAT Act, 2002
21st	MVAT Monthly Return for March/ MVAT Quarterly Return for January to March
25th	Service Tax Return for Oct to March All Assessees
30th	Profession Tax Payment for March
30th	TDS remittance for March
30th	Filing Annual Information on principal inputs (ER-5) by the specified Assessees
30th	Filing Annual Production Capacity Statement (ER-7) by the specified Assessees

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