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Updates on regulatory changes affecting your business

December 2015



HAPPY NEW YEAR!

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INDEX

| Sr. No | Topics covered | Page No. |
|---------------|--|-----------------|
| 1 | Company Law | 3 |
| 2 | Income Tax | 3 |
| 3 | Service Tax | 4 |
| 4 | Economics | 4 |
| 5 | Summary of Judgments - Income Tax | 7 |
| 6 | Discussion on Judgments - Income Tax | 8 |
| 7 | Due date chart for the month of December, 2015 | 11 |

COMPANY LAW

New Form MGT □7 introduced

In the Companies (Management and Administration) Rules, 2014, Form MGT □7 will be replaced by a new form.

Notification dated November 16, 2015

Companies (Share Capital and Debentures) Third Amendment Rules, 2015

The Central Government makes the following rules to amend the Companies (Share Capital and Debentures) Rules, 2014 □

1. These rules will be called as the Companies (Share Capital and Debentures) Rules, 2015.

2. They will come into force from the date of their publication in the Official Gazette.

3. In the Companies (Share Capital and Debentures) Rules, 2014 in rule 18 the following will be substituted □

- Infrastructure Debt Fund Non-Banking Financial Companies as defined in Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011

Companies permitted by a Ministry or Department of the Central Government or by the RBI or National Housing Bank or any other statutory authority to issue debentures for a period exceeding ten years.

Notification dated November 6, 2015

Relaxation of additional fees and extension of last date in filing ROC Forms

Keeping in view requests received from various stakeholders, it has been decided to relax fees payable on e-forms AOC-4, AOC(FS), AOC-4 XBRL, and e-form MGT-7 upto December 30, 2015.

General Circular No. 15/2015 dated November 30, 2015

INCOME TAX

Prime Minister promises to make Assessing Officers Accountable for Bogus Demands

Assessing officers have the tendency to make huge additions and disallowances on unreasonable grounds and raise huge tax demands. Coercive measures are adopted to recover the said demands. This causes hardship to honest taxpayers. There are two reasons for this □ the CBDT has a policy of rewarding officers with promotions based on tax collected by them and

second is that some officers get an excuse to demand bribes from taxpayers.

Courts have passed repeated orders to discourage the tendency to pass such assessment orders. However, the assessing officers remain unaffected.

In his latest speech, the Prime Minister has promised that Assessing Officers will be held accountable for the orders they pass.

SERVICE TAX

Introduction of Swachh Bharat Cess

The Central Government exempts all taxable services from payment of the Swachh Bharat Cess which is in excess of Swachh Bharat Cess calculated at the rate of .5 percent of the value of taxable services.

This cess will not be leviable on services which are exempt from service tax.

It has come into force from November 15, 2015.

Notification No. 22/2015 dated November 6, 2015

Amendment in Service Tax Rules, 1994

The following persons liable to pay service tax □ books tickets for travel by

air by an air travel agent, an insurer carrying on life insurance business, person who purchases or sells foreign currency and a distributor or selling agent who promotes, organizes or assists in organizing a lottery □ shall have the option to pay such amount as determined by multiplying total service tax liability calculated by .5 and dividing the product by 14 during any month or quarter (as the case may be) towards discharging their liability for Swachh Bharat Cess instead of paying at the specified rate. Once the option under this rule is exercised it will apply uniformly and cannot be changed during a financial year under any circumstances.

(Total service tax liability * .5)/14

Notification No. 25/2015 dated November 12, 2015

Revision in monetary limits for arrest in Central Excise and Service Tax

Revised monetary limits have been prescribed for prosecution. Prosecution can now be launched where evasion of Central Excise duty or Service Tax or misuse of Cenvat credit in relation to offences is Rs. 1 crore or more.

Consequently, the limit for arrests in Central Excise and Service Tax has been revised. Henceforth, arrest of a person in relation to offences in case of evasion of Central Excise or Service Tax or misuse of Cenvat Credit should be equal to or more than Rs. 1 crore.

Circular No. 1010/17/2015 dated October 23, 2015

ECONOMICS

Increase in Provisional Indirect Tax Revenue collections during October 2015 as compared with collections made in October 2014

In October 2015, indirect tax revenue collections increased by 36.8% compared with collections made in October 2014. This increase could be due to increase in additional measures taken by the Government – increase in excise on diesel and petrol, increase in clean energy cess, withdrawal of exemption from motor vehicles, capital goods and durables and increase in service tax rate.

However, even if all these measures were removed, indirect tax collections increased by 11.6% during April – October 2015 as compared to the April – October 2014.

Pib.nic.in

Relaxation in Foreign Direct Investment (FDI) Norms

FDI norms in 15 sectors including defence, broadcasting, mining, banking, construction and civil aviation are eased.

The Modi Government is allowing 100% FDI in direct-to-home (DTH), cable network and plantation crops. The

government eased investment norms in sectors like defence and retail.

It raised the foreign investment promotion board's (FIPB) monetary limit to Rs. 5,000 crore from Rs. 3,000 crore for approving FDI proposals. Opening up key sectors like defence, retail, banking and civil aviation a day before Modi's visit to the UK will send a positive signal to global investors. Opening up key sectors like defence, retail, banking and civil aviation a day before Modi's visit to the UK will send a positive signal to global investors.

Dnaindia.com

Supreme Court asks Vodafone to pay Rs. 2,000 crore for merger

The Supreme Court on Monday directed the Department of Telecom (DoT) to approve the merger of four firms with Vodafone Mobile Services upon the company paying Rs. 2,000 crore to the government.

The government's demand against Vodafone Mobile is Rs. 6,678 under five heads of income. However, Vodafone has disputed such amounts and has agreed to pay Rs. 1,773 crore. The Supreme Court has made it a round figure of Rs. 2,000 crore. The order also states that in case Vodafone succeeded in its petition before the tribunal, the government would refund the amount to the company along with interest determined by the tribunal. The government argued that according to DoT guidelines, all liabilities should be

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clear before any merger takes place.
The company got stay orders.

SUMMARY OF IMPORTANT TAX JUDGMENTS:

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

| Sr. No | Tribunal / Court | Area/ Section covered | Nature | Case Law |
|--------|----------------------|-----------------------|---|---|
| 1 | Karnataka High Court | Sec 147, 148 | Not giving reasons for reopening to assessee concludes reassessment as void. | <i>M/s Kothari Metals vs. ITO</i> |
| 2 | ITAT Mumbai | Sec 37 (1) | A business is "set up" the moment employees are recruited. All expenditure incurred thereafter is allowable as a deduction even if the business has not commenced. | <i>Reliance Gems & Jewels Ltd. vs. DCIT</i> |
| 3 | ITAT Delhi | Sec 271B, 44AB | If the Tax Audit Report is obtained "on" the specified date it is not a default. | <i>Chopra Properties vs. ACIT</i> |
| 4 | Delhi High Court | Sec 68 | If the identity and other details of the share applicants are available, the share application money cannot be treated as undisclosed income in the hands of the company. | <i>CIT vs. Vrindavan Farms (P) Ltd.</i> |
| 5 | ITAT Bangalore | Sec 115JB | A non-taxable capital receipt credited to the P&L cannot be excluded while computing book profits even though the accounts state the receipt is on capital account. | <i>B&B Infotech Ltd. Vs. ITO</i> |
| 6 | P&H High Court | Sec 36(1)(iii) | Where advances for non-business purposes are made from mixed funds, neither the assessing officer nor the assessee can claim that funds have come from a specific source and so the disallowance should be worked out on the basis of average interest rate | <i>CIT vs. M/s Kadu Industries</i> |
| 7 | Supreme Court | | Failure to give the assessee the right to examine witnesses whose statements are relied upon results in breach of principles of natural justice | <i>Andaman Timber Industries vs. CCE</i> |

DISCUSSION ON JUDGEMENTS □
INCOME TAX



1. Non-furnishing of reasons for reopening to assesses considers reassessment as void

M/s Kothari Metals vs. ITO (Karnataka High Court)

The assessee was not given reasons for reopening of assessment. Such reasons were not provided, even upon request of the assessee. The Karnataka High Court is of the opinion that proceedings for the reassessment could not have been taken further.

2. Expenditure is allowable as a deduction on 'set up' of a business. It is allowable even if business has not commenced.

Reliance Gems & Jewels Ltd. vs. DCIT (ITAT Mumbai)

The assessee has recruited employees for the purpose of business. The assessee is in the business of merchandising diamond/gold jewellery. This type of business requires those individuals who have expertise in understanding the carats of business and other jewellery. Without

such employees it would be pointless to commence the business. After recruitment the expenditure incurred for the business is allowed as a deduction even though the business has not commenced.

3. The Tax Audit Report must be obtained before the specified date should be interpreted as 'on or before' the specified date.

Chopra Properties vs. ACIT (ITAT Delhi)

The assessee, a partnership firm, filed its return of income on 30 March, 2009. The Tax Audit Report was signed on 30 September, 2008. The assessing officer (AO) contended that the tax audit report should have been obtained before the specified date i.e. 30 September. Because the assessee had obtained the report on 30 September, and not before such date, the AO levied a penalty of Rs. 1,00,000/- . The assessee filed an appeal and it was held that the assessee had committed a default by not getting its accounts audited before the due date. On further appeal it was concluded that 'the term 'before' specified date in the Act means 'on or before' the specified date. Therefore, although the audit report is signed on 30 September, and the law is to be interpreted as the tax audit report is to be obtained on or before 30 September. Hence, the assessee has obtained the tax audit report in time and there is no default.

4. If the identity and other details of the share applicants are available, the share application money cannot be treated as undisclosed income in the hands of the Company. If the credit worthiness cannot

be proved the addition should be in the hands of the shareholders.

CIT vs. Vrindavan Farms (P) Ltd. (Delhi High Court)

The entire details of the share applicants were made available to the assessing officer (AO) by the assessee. The details include PAN number, confirmation, bank statements, balance sheet and profit and loss account and certificate of incorporation, etc. The AO had not undertaken investigation to confirm the accuracy of the documents submitted. The officer completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the shareholders.

The assessee produced sufficient documents and discharged its liability of showing the creditworthiness of the share applicants. It was the responsibility of the AO to have undertaken inquiry before concluding on the credit worthiness of the applicant.

5. A non-taxable capital receipt credited to the P&L account cannot be excluded while computing book profits. Although notes to accounts state that such receipt is on capital account is irrelevant.

B&B Infotech Ltd. vs ITO (ITAT Bangalore)

The assessee had received an amount of Rs. 43 lakhs which was remission of a liability of ING Vysya Bank Ltd. The assessee stated before the assessing officer that the remission of liability was due to principal amount of loan and hence it is not income which is to be considered as

part of book profits. The AO rejected such plea and added such amount to computation of book profits. The CIT did not accept the contention of the assessee. The assessee submitted his plea before the Tribunal and submitted that when the assessee has disclosed a capital receipt in notes to accounts, such amount should be excluded from the P&L for the purpose of book profits. It was held by the Tribunal □

The disclosure in the P&L is as per the requirement of Schedule VI of the Companies Act and Accounting Standard 5. Any disclosures in the notes to accounts would not require a change in the P&L. If an item of income and expenditure which is required to be disclosed in the P&L is disclosed in the notes to accounts then such item will be treated as a part of P&L for the purpose of computing book profits. Once the P&L is prepared as per Schedule VI, the AO does not have the power to edit it nor the assessee is permitted to claim inclusion or exclusion for the purpose of computing book profits. Therefore, once the amount of Rs. 43 lakhs has been disclosed in the P&L it cannot be excluded for the purpose of computing book profits.

6. Advances made for non-business purposes out of mixed funds cannot be claimed that such funds come from a particular source, the disallowance should be computed on an average interest rate

CIT vs. M/s Kudu Industries

The assessing officer held that in respect of advances for non-business purposes, interest is to be disallowed on a proportionate basis since all the funds are

mixed and it is not possible to separate the borrowed funds from the assessee's own funds. The officer computed interest @ 11.5% and added back the same to the income of the assessee. In this case the Tribunal set aside the order of the CIT. Further, the high court held that □

Money lying in a common pool has no identity. The advances obtained by the assessee get merged. There is no justification for the assessee or the department to take into consideration the rate of interest in respect of a particular advance. Hence, the only logical approach is to take the average interest rate at which the assessee has availed such advances.

7. Failure to give assessee the right to examine witnesses whose statement are relied upon results in breach of principles of justice.

Andaman Timber Industries vs. CCE (Supreme Court)

The assessee raised a plea that it was not allowed to examine the dealers whose statements were relied upon in passing the order. The Tribunal rejected the plea. Further, the Supreme Court held that □

Not allowing the assessee to cross-examine the witnesses by the Authority although the statements of those witnesses were the basis of the order is a flaw which makes the order a nullity as it amounts to violation of principles of natural justice because of which the assessee was affected. Even when the assessee disputed correctness of the statements and wanted

to cross verify, the Adjudicating Authority did not allow.

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

Due Dates Chart for the Month December 2015 (Various Acts):

December 2015

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|--|---|--|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 Service Tax Payments by Companies |
| 6 Service Tax Payments by Companies (if paid electronically)Excise Duty Payment | 7 TDS / TCS Payment for November | 8 | 9 | 10 Monthly Excise Return (ER-1)/ ER-2 monthly return by 100% EOU | 11 Monthly Excise Return (ER-6) | 12 |
| 13 | 14 | 15 P.F Payment for month of November, Advance Tax Payment for Corporates and Non- Corporates | 16 | 17 | 18 | 19 |
| 20 EPF Payment (including 5 days of grace), Payment & returns of Monthly MVAT under MVAT Act, 2002 | 21 ESIC Payment/ MVAT(WCT)- TDS Payment for November | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 Profession Tax Payment/ Due date for filing of ROC Forms | 31 *PT return if tax > 50000 PA | | |

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.