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Updates on regulatory changes affecting your business

March 2016

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RESERVE BANK OF INDIA

RBI to infuse Rs. 12,000 crore liquidity through Open Market Operations (OMO)

The Reserve Bank of India will purchase government bonds through OMO on March 31, 2016 to infuse Rs. 12,000 crore into the system.

RBI said the open market operations of government securities are being conducted based on the current assessment of prevailing and evolving market liquidity conditions.

businesstoday.in dated 26 February, 2016

Increase in threshold for reporting of fraud by Non Banking Financial Companies (NBFC)

The threshold for reporting of fraud and submission of quarterly progress reports on frauds by NBFCs to Central Fraud Monitoring Cell, RBI and Department of Banking Supervision has been increased from Rs. 25 lacs to Rs. 1 crore from immediate effect.

In case the threshold does not exceed, the reporting and submission shall be done to the Regional Office of RBI and Department of Non-Banking Supervision under whose jurisdiction the Registered Office of the NBFC falls.

Notification No. RBI/2015-16/327 dated February 18, 2016
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INCOME TAX

Provident Fund interest rates revised from 8.8% to 8.75%

There is a global slowdown and interest rates in India are decreasing. The government has decided to revise it to 8.8%

Economictimes.com dated February 16, 2016

Initiative taken by Income Tax Department for protecting taxpayers from fraudulent mails

The Income Tax Department has been taking many steps to implement technology. The Department communicates with taxpayers through email and SMS. The department is aware of attempts made by fraudsters to imitate the Department and send emails to taxpayers in order to divulge private information such as passwords or credit card numbers.

The Department does not seek any confidential or financial information of the taxpayer over email. Taxpayers are advised to properly check any email received from the Department.

Press Release dated February 5, 2016

Clarification of the term "initial assessment year" as per Section 80IA(5) of the Income Tax Act

As per Section 80IA(5) of the Income Tax Act, a deduction of 100% of the profits and gains derived by an undertaking carrying on the business of developing, operating and maintaining any infrastructure facility which is registered in India and has entered into an agreement with the Central Government or State Government.

The deduction can be claimed by the taxpayer for any 10 consecutive assessment years out of 15 years, beginning from the year in which the undertaking commences operations, begins development or starts providing services. The Act states that profits and gains of an eligible business will be computed as if the business was the only source of income of the taxpayer during the previous year relevant to the initial assessment year.

The Central Board of Direct Taxes (CBDT) has issued a circular clarifying the term "initial assessment year."

The following clarification has been issued –

Some Assessing Officers (AO) are interpreting the term "initial assessment year" as the year in which the eligible business/manufacturing activity has commenced and was considering such first year of commencement as the year of granting deduction. The AOs are ignoring the Section which specifically allows the taxpayer a choice of deciding the year from which it wants to claim deduction out of the 15 years.

It is clarified that once such initial assessment year has been opted for by the assessee he will be entitled to claim a deduction under Section 80IA(5) for ten consecutive years beginning from the year in which he has exercised such option. The term "initial assessment year" means the first year opted by the assessee for claiming deduction.

Circular No. 1/2016 dated February 15, 2016

Following prescribed time limit in passing order for rectification under Section 154

Where an application for amendment is made by the assessee/deductor/collector to rectify any mistake apparent from record, the income tax authority will pass the order within 6 months from the end of the month in which such application is received. It has been noticed that the time limit of six months has not been followed in some applications.

The time limit of six months is to be strictly followed by the Assessing Officer. Action may be taken where non-compliance is noticed.

Instruction No. 01/2016 dated February 15, 2016

Passing rectification order under Section 154

It has been noticed that rectification order is being passed by the Assessing Officer (AO) without giving copy of the order to the taxpayer. This is causing difficulty to the taxpayer as they remain unaware and are unable to follow up on the matter.

The Section states that the rectification order must be passed in writing by the Income Tax Authorities. The Board directs that all rectification applications must be disposed after passing an order in writing and not making rectification in the system.

Instruction No. 02/2016 dated February 15, 2016
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MVAT

Guidelines to grant refunds claimed in form e-501 and assessment on priority

In order to rectify the issues relating to refunds under MVAT, following guidelines are issued so that the refund can be granted within stipulated time.

Refund claims of the dealers shall be processed and granted -

a) within 45 days from the due date of filling the audit report in cases where the dealer is eligible to file audit report and refund application is filed before due date of filing audit report,

b) within 45 days from the due date of filling the audit report in cases where the dealer is not eligible to file audit report,

c) within 45 days from the due date of filing the refund application in form e-501 in cases where the dealer is eligible to file audit report and refund application is filed after due date of filing audit report .

These instructions would be applicable to:

- Dealers eligible to file audit report,
- Dealers not eligible to file audit report and
- PSI cases

Assessment of dealers whose claim of refund in a year is 1 crore or less and who has filed refund application in e-form 501 shall be completed on or before 31st December of next financial year.

Trade Circular No. 5T of 2016 dated 06/02/2016

Correction of mistakes made by the dealers or miscellaneous refunds of excess payments of taxes

Where the dealer has made excess payment of taxes then he shall make an application in annexure A for refund of such amount, containing the period for which the payment was made twice.

An application shall be made to the Joint Commissioner of Sales Tax in

Mumbai and Pune after the due date of filing of return.

This application will be treated as miscellaneous refund application and will be taken up for disposal on priority.

Trade circular No. 6T of 2016 dated February 23, 2016

Bank Guarantee from Private Sector Banks

The Government of Maharashtra has passed a notification, listing 17 Private-sector banks from whom Bank Guarantee shall be obtained, for the purpose of submitting to the respective Joint Commissioner in relation to MVAT refunds.

Notification No. VAT. 1514/CR-22/TAXATION-1 dated February 12, 2016

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SERVICE TAX

Exemption from service tax for the services provided by Government or local authority

The Central Government has made a further amendment to Notification no 26/2012 Service Tax, Dated 20th June 2012 by inserting the Following entry:

- Services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakhs in the preceding financial year, shall be exempt from service tax
- The amendment shall come into effect on 1st April, 2016.

Notification No. 07/2016-Service Tax dated February 18, 2016

Refund of Swacch Bharat Cess paid on specified services used in Special Economic Zones (SEZ)

The SEZ unit or development will now be allowed to:

- Refund of Swachh Bharat Cess (SBC) on specified services on which exemption was permitted but not claimed and
- Refund=

$$\frac{\text{Total Service tax X Effective rate of SBC}}{\text{Rate of Service Tax}}$$

Notification No: 02/2016-ST dated February 3, 2016

Refund of service tax on services used by an exporter beyond the factory or any other place or premises of production or manufacture and increase in refund rate

Service Tax paid by exporter for export of excisable goods will now be entitled to rebate by way of refund of service tax paid on services that have been used

beyond factory or any other place or premises of production or manufacture of the said goods.

Also the rate at which the rebate shall be claimed has been changed –

Earlier rate (before notification)	**Changed rate**
0.04	0.06
0.06	0.07
0.08	0.09
0.12	0.14
0.18	0.21
0.20	0.23

Notification No. 01/2016-ST dated February 3, 2016

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ECONOMICS

Indian Economy taking great steps in removing entry barriers for firms

The Indian economy has made great efforts in removing barriers to entry for firms, but less progress has been made in relation to exit.

The Economic Survey 2015-16 states that India seems to have a very large share of inefficient firms with very low productivity and little exit options.

Delay in exit has fiscal, economic and political costs.

indiainfoline.com dated February 26, 2016

No Surcharge or Service Tax or convenience fees on card payments

In order to remove the threat of black money, the Cabinet has approved certain steps for the promotion of payments through cards and digital means.

The features of this proposal include steps for withdrawal of surcharge, Service Tax or the convenience fees charged on cards or digital payments.

The proposal aims at reducing the cash transactions and tax avoidance by encouraging payments through cards and digital means.

economictimes.indiatimes.com dated February 25, 2016

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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	Supreme Court	Section 12AA	Non disposal of an application for registration of a trust before the expiry of six months results in deemed grant of registration	CIT vs. Society for the Promotion of Education, Adventure Sport & Conservation of Environment
2	ITAT Mumbai	Section 23	Brokerage paid to earn lease rent is not deductible while computing income from house property	Radiant Premises Pvt. Ltd. vs. ACIT
3	ITAT Mumbai	Section 37(1)	Although doctors are prohibited from receiving gifts, gifts given by Pharmaceutical companies bearing the company logo are advertising expenses	DCIT vs. Syncom Formulations
4	Bombay High Court	Section 37 (1)	If a project does not materialize and a capital asset does not come into existence, such expenditure is revenue expenditure	CIT vs. Manganese Ore India Limited
5	P&H High Court	Section 69A	Liability of large gifts received from abroad from donors who are total strangers and not related explained	CIT vs. Jawahar Lal Oswal
6	Delhi High Court	Section 147, 148	Reopening of assessment is not valid if the reasons recorded vague and do not indicate basis for reopening	Sabharwal Properties Industries Pvt. Ltd. vs. ITO
7	ITAT Rajkot	Section 154	Assessing Officer refuses to rectify a mistake on grounds that assessee is responsible.	ACIT vs. Rupam Impex
8	Karnataka High Court	Section 271	If notice is issued by striking out the relevant part in the notice, the penalty proceedings are invalid	Safina Hotels Pvt. Ltd. vs. CIT

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DISCUSSION ON JUDGEMENTS – INCOME TAX

1. Non disposal of application within six months will result in deemed registration of trust

CIT vs. Society for the Promotion of Education, Adventure Sport & Conservation of Environment (ITAT Mumbai)

The Allahabad High Court held that non disposal of an application for registration before the expiry of six months will result in deemed grant of registration of the trust. The Full Bench of Allahabad High Court reversed this order.

The Supreme Court disposed the appeal – The High Court took the view that once an application for registration of trust is made under the provisions and it is not responded within six months, it would be assumed that the trust is registered under the relevant provisions.

The date of application was February 24, 2003. The registration of the trust would be with effect from August 24, 2003.

The Supreme Court disposed of the appeal.

2. Brokerage to earn lease rent is not deductible under income from house property

The assessee rented its premises on leave and license basis to another company. For giving the property on rent, it used the services of a broker agent for obtaining a license. The assessee paid two month's rent and 2% of security deposit as brokerage. The assessee claimed that brokerage was deductible from rental income while computing income from house property.

It was held that –
As per Section 23(1)(b) for the purpose of determining annual letting value of the property, for a let out property, then the actual rent received will be taken as rental income. Actual rent received is net of deductions.

If there is a charge directly related to rental income without which the rights in the property cannot be enjoyed by tenant then such charges can be allowed from rent received. The brokerage paid to the third party has nothing to do with the rental income paid by the tenant for enjoying the property to the owner and as such brokerage was not deductible while calculating Income from House Property .

3. Receiving gifts by doctors is prohibited the giving of such gifts by Pharmaceutical companies is not prohibited

DCIT vs. Syncom Formulations (ITAT Mumbai)

Receiving of gifts by doctors is prohibited. However, a manufacturer is not prohibited under any law. Giving gifts bearing company logo to doctors does not amount to giving gifts to doctors. It is considered as advertising expense. Pharmaceutical companies sponsor practicing doctors to attend conferences so they gather knowledge about certain diseases/illness. The Assessing Officer relied on CBDT circular dated 01 August, 2012. However, the circular is not applicable as it was effective from 01 August, 2012 whereas the relevant assessment year is 2010-11. The disallowance made by the Assessing Officer is incorrect.

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4. Expenditure incurred for a project which did not materialize will be treated as revenue expenditure as no capital asset comes into existence

CIT vs. Manganese Ore India Ltd. (Bombay High Court)

The court found that the assessee could not claim capital expenditure as no capital asset was generated by incurring expenditure. The expenditure was rightly treated as revenue expenditure.

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5. Law on liability of large gifts received from abroad from donors who are total strangers to the assessee and not related explained

CIT vs. Jawahar Lal Oswal (P&H High Court)

The gifts were received on behalf of the assessee's daughter while in London. The Assessing Officer (AO) called upon the assessee to explain why the gifts were not treated as his income. The AO was right in issuing a notice and initiating investigation as these gifts would raise suspicion about their genuineness. The AO forgot he was dealing with a deeming provision and initiated inquisition instead of an inquiry.

A deeming provision requires the Assessing Officer to collect facts and then initiate proceedings against the assessee who is required to explain facts related to such gifts and if he fails it shall be considered as deemed income of the assessee.

The responsibility to probe and prove lies upon the revenue and not upon the assessee particularly where income is being dealt under deeming provisions. A person, who receives a gift, is not required to prove the source of the money.

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6. Reopening of assessment is not valid if reasons recorded are incoherent and don't indicate the basis for reopening

After reading the reasons for reopening it is observed that reasons are incoherent. Some lines seem to be missing as well as punctuation marks. Reasons stated make little sense. The records do not indicate the basis for reopening the assessment.

The reasons for reopening an assessment should state that the assessee did not disclose and state material facts and such reasons should be linked to the formation that income escaped assessment.

Reasons for reopening an assessment should be obvious. These reasons cannot be given subsequent to recording of such reasons in the form of an order.

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7. Assessing Officer refuses to rectify a mistake because the assessee is responsible.

ACIT vs. Rupam Impex (ITAT Rajkot)

The figures in the assessment order were incorrect. What was stated as profit as per profit and loss account is not the actual profit as per profit and loss account. The profit stated was different from that stated on the assessment record. The Officer did not apply his own mind. He merely copy and pasted the figures from statement of taxable income filed by the assessee. This situation is same for depreciation figure as well.

A lot of emphasis was given on the fact that the mistake was committed by the assessee due which an error occurred. Instead of being apologetic about the non application of mind the Assessing Officer blamed the assessee. As per Section 154 it is irrelevant whose mistake it was. A mistake which is clear must be rectified. This should be rectified. The Revenue authorities have no right to take advantage of mistakes committed by the assessee. The Assessing Officer cannot levy tax on income of an assessee at a Higher rate or amount because it was stated in computation of income. It is the duty of the officers to be fair to taxpayers.

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8. If the notice is issued by striking out relevant part in the notice the penalty proceedings will be invalid.

Safina Hotels Pvt. Ltd. vs. CIT (Karnataka High Court)

The assessee had filed return claiming deductions as revenue. The return was under scrutiny. The Assessing Officer (AO) held that the claim made by the assessee as revenue expenditure is capital in nature and allowed the deduction claimed. Proceedings were initiated to levy penalty for concealment of income and submitting inaccurate details of income. In the printed proforma issued by the AO the Officer deleted the paragraph relating to "have concealed the particulars of your income or furnished inaccurate particulars of income."

It was held that –
The notice issued for levying penalty indicates that there was no application of mind while issuing notice. The AO noticed that the assessee had declared revenue expenditure which was capital. This was based on the return of income filed. The AO did not have to come to a conclusion that assessee had concealed income. It was available in the return.

This indicates the Officer did not have a valid reason to pass the penalty without proper notice when particulars are disclosed in the return.

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

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Due Dates Chart for the Month March 2016 (Various Acts):

March 2016

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 February	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 February, Payment of Advance Tax	16	17	18	19
20 EPF Payment (including 5 days of grace), Payment & returns of Monthly MVAT	21 ESIC Payment for February	22	23	24	25	26
27	28 Profession Tax Payment/PT return if tax> 50000	29	30	31 Last Date for filing of ITR for AY 2014-15		

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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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