# HARBINGER™

*Updates on regulatory changes affecting your business*

**September 2015**


## B D Jokhakar & Co.

*Chartered Accountants*

www.bdjokhakar.com

Follow us on:

Twitter LinkedIn Facebook

# INDEX


| Sr. No | Topics covered | Page No. |
|---|---|---|
| 1 | Reserve Bank of India | 3 |
| 2 | Economics | 3 |
| 3 | International Tax | 4 |
| 4 | MVAT | 4 |
| 5 | Income Tax | 5 |
| 6 | Summary of Judgments - Income Tax | 7 |
| 7 | Discussion on Judgments - Income Tax | 9 |
| 8 | Due date chart for the month of September, 2015 | 14 |

## RESERVE BANK OF INDIA


### Auction of Government of India Dated Securities

The Government of India is planning to sell four dated securities for an amount of Rs. 14,000 crores.

The following securities will be sold:

a) 7.68% GS 2023
b) 7.72% GS 2025
c) 8.24% GS 2033
d) 8.13% GS 2045

The stocks will be issued for a minimum amount of Rs. 10,000 and in multiples of Rs. 10,000 thereafter.

*RBI/2015-16/158 dated 24 August, 2015.*

---

### Reporting under Foreign Direct Investment (FDI) on the e-Biz platform

With a view to increasing ease of transactions under FDI, the Reserve Bank of India (RBI), along with e-Biz project of the Government of India (GOI) has enabled online filing of the Foreign Currency Transfer of Shares (FCTRS) returns for reporting transfer of shares, convertible debentures, partly paid shares and warrants from a person resident in India to a resident outside India or vice versa.

The platform enables the customer to login into the eBiz portal, download the FCTRS and upload the same using digitally signed certificates. The FCTRS services of RBI will be made operational on the e-Biz platform from August 24, 2015.

*RBI/2015-16/157 dated 21 August, 2015.*

---

## ECONOMICS

### Crashing Yuan dilutes Apple

China's stock market has been crashing which is a sign of potential economic problems in the country. These problems have led to a reduction in the value of China's currency. The instability has not only affected financial markets but Apple – America's largest company. Apple has lost 18% of its value over the past six months.

Apple relies mainly on Chinese suppliers and assembly facilities. Most of Apple's key contracts are denominated in dollars. The suppliers may themselves benefit from lower costs but Apple will not. Apple is paying Chinese companies dollars to assemble phones but they are sold to Chinese consumers for Yuan.

Apple is paying Chinese companies in dollars to assemble phones that are then sold to Chinese consumers in Yuan. When the value of Yuan goes down as

compared to the dollar, Apple's profits will be significantly affected.

*Vox.com*

## INTERNATIONAL TAX

### US Tax Developments & India signing MCAA

On August 12, 2015, the US Internal Revenue Service (IRS) finalized two revenue procedures related to requesting assistance from the US competent authority under US tax treaties and requesting advance pricing agreement (APA).

This provides guidance on the process of requesting and obtaining assistance under US treaties from the competent US authority.

India also joined Multilateral Competent Authority which will enable automatic exchange of information about accounts of Indians from foreign countries.

### India seeks to settle international tax disputes

India will soon settle international tax disputes with approximately 120 American companies as well as entities from Japan and other countries. According to the Government, 35 disputes have been resolved and another 100 are likely to be resolved in the next three months. The government also said that a number of unilateral and bilateral advance pricing agreements (APAs) with the UK and Japan are in negotiation.

*Taxnews*

## MVAT

### Change in procedure MVAT Registration

The process obtaining new registration under the MVAT Act, 2002, the CST Act, 1956 and PT Act has been modified. The new process provides for uploading of necessary documents with the application of registration and thereby has removed the necessity of the taxpayer to visit the sales tax office for personal verification and submission of the requisite documents.

*Circular No. 13T dated 14 August, 2015.*

### Computerised Desk Audit for the period 2012-2013

The department has generated Computerized Desk Audit (CDA) reports for the period 2012-2013. The CDA has resulted into findings of likely tax liability in respect of some dealers. The CDA findings are available on the website www.mahavat.gov.in and dealers can submit compliance electronically. The dealer will not be required to visit the sales tax office if he agrees with the findings of the CDA and pays tax as per CDA along with interest.

*Circular No. 12T dated 6 August, 2015.*

## INCOME TAX

### Cost Inflation Index for FY 2015-2016

Cost of Inflation Index used to calculate long term capital gains, for the financial year 2015-2016 is 1081.

*Notification No.60/2015/F.No.142/10/2015-TPL dated 24th July, 2015.*

---

### Computation of period of stay in India in certain cases

In case of an individual, being a citizen of India and a member of a crew ship, the period of stay in India will not include the period beginning on the date entered into the Continuous Discharge Certificate (CDC) with respect to the voyage and ending on the date entered into the CDC upon completion of such voyage.

*Circular No. 14/2015 dated 17 August, 2015.*

---

### Clarification on certain issues related to grant of approval and claim of exemption for educational institutions.

Income of any university or other educational institutions existing solely for educational purposes and not for profit shall be exempt from tax if such entities are approved by prescribed authorities. Such approval isn't required if the university/educational institution is wholly or substantially financed by the Government or if their aggregate annual receipts do not exceed Rs. 1 crore. Representations have been received seeking clarification on certain issues and the following clarifications are made –

Collection of amounts under different heads of from students: Collection of small amounts of fees such as examination fee, subscription fee, library fees, etc. Are being treated by some assessing officers as profit making activities thus resulting in exemption u/s 10(23C) (vi). Collection of such small amounts does not violate any central or state regulation does not result into profit making activities. Hence, there is no reason to treat such amounts as profit making unless the amount is in the nature of "capitation fee" is charged directly or indirectly.

Generation of surplus out of gross receipts: There has been confusion whether generation of surplus out of gross receipts would breach the condition that educational institutions should exist solely for educational purposes and not profit. Provisions clearly state that generation of surplus cannot be a basis for rejection of application u/s 10(23C) (vi) on the ground that it results into profit making. The clause states that accumulation of income is permitted and such accumulation is to be used exclusively for objects for which the trust is established. Hence, it is clarified that generation of surplus is not a reason for rejection under the relevant section if it is used for educational purposes.

*Circular No. 14/2015 dated 17 August, 2015.*

---

## Black Money Window Closure

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules 2015 have been notified on 2nd July, 2015 vide Notification no. 58/2015.

The Rules inter-alia specify the form and manner in which declaration of undisclosed foreign asset is to be made. Rules also provide the method of determination of fair market value of different types of assets e.g., bullion, jewellery, artistic work, shares and securities, immovable property, bank account etc.

Central Government has, vide Notification No. 57/2015, notified 30th of September, 2015 as the date on or before which a person may make a declaration in respect of an undisclosed asset located outside India and the 31st of December, 2015 as the date on or before which a person shall pay the tax and penalty in respect of the undisclosed asset so declared. A declaration may be made to the designated tax authority in Form 6 which may also be filed on-line.

*Press Information Bureau dated 31st July 2015.*

## 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 | Bombay High Court | Sec 36 | The principal part of the Inter-corporate Debt (ICD) can be claimed as a bad debt if the interest thereon has been offered to tax in some year. | *CIT vs. Pudumjee Pulp & Paper Mills Ltd.* |
| 2 | Delhi High Court | Sec 40(b)(v) | Provision in partnership deed for payment of salary at percentage share of profits multiplied by "allocable profits" is valid and entitles claim for deduction. | *CIT vs. Vaish Associates* |
| 3 | ITAT Bangalore | Sec 41 & 68 | Old unclaimed liabilities which are not written back by the assessee can neither be assessed as "cash credits" u/s 68 nor assessed u/s 41(1) as "remission or cessation of liability" | *ACIT vs. Glen Williams* |
| 4 | ITAT Chennai | Sec 43 | Loss suffered on account of forex derivative contracts (Exotic Cross Currency option Contracts) cannot be treated as speculative loss to the extent that the derivative transactions are not more than the total export turnover of the assessee. If the derivative transaction is in excess of export turnover, the loss in respect of that portion of excess transactions has to be considered as speculative loss because the excess derivative transaction has no proximity with export turnover. | *JCIT vs. M/s Majestic Exports* |
| 5 | Bombay High Court | Sec 115JB | Dept's grievance that if amount is not credited to P&L A/c, accounts are not correctly prepared as per Schedule VI to the Companies Act, 1956 and adjustment to book profits | *CIT vs. Forever Diamonds Pvt. Ltd* |

| Sr. No | Tribunal / Court | Area/ Section covered | Nature | Case Law |
|---|---|---|---|---|
| | | | can be made is not acceptable if auditors and ROC have not found fault with A/cs. | |
| 6 | ITAT Mumbai | Sec 115JB | (i) Even if an amount is credited to the P&L A/c, the assessee can seek exclusion of that amount for purposes of "book profits" if a note to that effect is inserted in the A/cs (ii) The exemption conferred by S. 115JB to sums exempt u/s 10 should be extended to all sums which are not chargeable to tax. | *DCIT vs. Shivalik Venture Pvt. Ltd.* |
| 7 | ITAT Chennai | Sec 194 | No obligation to deduct TDS at stage of making provision for expenditure if payee cannot be identified. No obligation to deduct TDS if services (roaming charges) are rendered without human intervention and are not "technical services" | *DCIT vs. Dishnet Wireless Ltd.* |
| 8 | Supreme Court | Sec 234B | Interest is automatic if conditions are met. Form I.T.N.S. 150 is a part of the assessment order and it is sufficient if the levy of interest is stated there. | *CIT vs. Bhagat Construction Co. Pvt. Ltd.* |

## DISCUSSION ON JUDGEMENTS – INCOME TAX

**1. The principal part of the Inter-corporate Debt (ICD) can be claimed as a bad debt if the interest thereon has been offered to tax in some year.**

*CIT vs. Pudumjee Pulp & Paper Mills Ltd. (Bombay High Court)*

The assessee had made an inter corporate deposit worth Rs. 1 crore with M/s. GSB Capital Markets Ltd. Thereafter, the assessee received interest amounting to Rs. 42.65 lakhs which was offered for tax. From A.Y. 1998-1999 onwards the interest as well as the principal of Rs. 49.82 lakhs was treated as doubtful debts. Later on, a settlement was arrived at between M/s. GSB Capital Markets Ltd. and the assessee, wherein Rs. 15 lakhs were paid to the assessee and the balance amount of Rs. 34.82 lakhs was treated as bad debts and claimed as a business loss by the assessee. The AO did not accept the contention and disallowed the claim for bad debts on the ground that the condition of Sections 36(1) (vii) read with Section 36(2) (i) of the Act were not satisfied. The claim was allowed by the Tribunal. On appeal by the department to the High Court HELD:

The Assessing Officer's contention that amount of Rs.34.82 lakhs was not offered to tax earlier and, therefore, deduction under Section 36(2) (i) of the Act is not available, is no longer res integra. Even if a part of debt is offered to tax, Section 36(2) (i) of the Act stands satisfied. The test under the first part of Section 36(2) (i) of the Act is that where the debt or a part thereof has been taken into account for computing the profits for earlier Assessment Year, it would satisfy a claim to deduction under Section 36(1) (vii) read with Section 36(2) (i) of the Act.

---

**2. Provision in partnership deed for payment of salary at percentage share of profits multiplied by "allocable profits" is valid and entitles claim for deduction.**

*CIT vs. Vaish Associates (Delhi High Court)*

The assessee's partnership deed had a clause stated that each partner shall be entitled to an annual salary equivalent to his share of profits multiplied by "Allocable Profits". It was stated that "Allocable Profits shall be calculated as per the provision of section 40(b) (v) (i) of the Income Tax Act, 1961". The AO held that since the partnership deed "neither specified the amount of salary to be paid to each of the working partners nor has laid down a specific method of computation thereof" and has only mentioned "allocable profit" which has not been defined in the partnership deed, Section 40(b) (v) of the Act would not apply and the remuneration to the partners, not being in terms of Section 40(b) (v) of the Act, was disallowed. This was upheld by the CIT (A) but reversed by the ITAT. The ITAT, therefore, concluded that a plain reading of the clause leads us

to a conclusion that the term 'allocable profits' was used to mean 'book profits' as used in Section 40(b) (v) of the Act or otherwise the reference to the section in the Clause has no meaning. On appeal by the department to the High Court HELD by dismissing the appeal:

The clause clearly indicates the methodology and the manner of computing the remuneration of partners. The remuneration of partners have been computed thereof.

---

**3. Old unclaimed liabilities which are not written back by the assessee can neither be assessed as "cash credits" u/s 68 nor assessed u/s 41(1) as "remission or cessation of liability".**

*ACIT vs. Glen Williams (ITAT Bangalore)*

The assessee claimed that addition u/s. 68 of the Act could not be made because the credits in question did not relate to the previous year relevant to AY 2009-10 and therefore the provisions of section 68 will not be attracted. On the question of cessation of liability, it was assessee submitted that there is no evidence brought on record to show that liability of the assessee vis-□-vis creditors has ceased to exist. HELD by the Tribunal:

(i) The provisions of sec. 68 are clear inasmuch as they refer to "sum found credited in the books of account of an assessee maintained for any previous year". Since the credit entries in question do not relate to previous year relevant to AY 2009-10, the same cannot be brought to tax u/s. 68 of the Act.

(ii) Explanation 1 to section 41(1) inserted w.e.f 01.04.1997 is not attracted to the present case since there is no writing off of the liability to pay the sundry creditors in the assessee's accounts. The words "remission" and "cessation" are legal terms and have to be interpreted accordingly. In the present case, there is nothing on record to show that there was either remission or cessation of liability of the assessee. Therefore, the provisions of section 41(1) cannot be invoked.

---

**4. Loss suffered on account of forex derivative contracts (Exotic Cross Currency option Contracts) cannot be treated as speculative loss to the extent that the derivative transactions are not more than the total export turnover of the assessee. If the derivative transaction is in excess of export ` has to be considered as speculative loss because the excess derivative transaction has no proximity with export turnover.**

*JCIT vs. M/s Majestic Exports (ITAT Chennai)*

The assessee was engaged in the business of manufacturing and export of hosiery garments. During the course of export, the assessee entered into derivative contract. The assessee incurred loss in this transaction. The assessee claimed it as business loss. According to the Assessing Officer this loss was not business loss and it is a speculative loss and this transaction is speculative in nature as such the loss incurred on this transaction cannot be set off against business income of the assessee. On appeal by the assessee HELD:

That both trading of shares and derivative transactions are not coming under the purview of Section 43(5) of the Act which provides definition of "speculative transaction" exclusively for purposes of section 28 to 41 of the Act. Again, the fact that both delivery based transaction in shares and derivative transactions are non-speculative as far as section 43(5) is concerned goes to confirm that both will have same treatment as regards application of the Explanation to Section 73 is concerned, which creates a deeming fiction. However, it is made clear that total transaction considered for determining this business loss from derivative transactions cannot be more than the total export turnover of the assessee for the assessment year under consideration and if the derivative transaction is in excess of export turnover, then that loss suffered in respect of that portion of excess transactions to be considered as speculative loss only as that excess derivative transaction has no proximity with export turnover and the Assessing Officer is directed to compute accordingly.

---

**5. Dept's grievance that if amount is not credited to P&L A/c, accounts are not correctly prepared as per Schedule VI to the Companies Act, 1956 and adjustment to book profits can be made is not acceptable if auditors and ROC have not found fault with A/cs.**

*CIT vs. Forever Diamonds Pvt. Ltd. (Bombay High Court)*

The assessee earned gross profit from sale of its rights in immovable property. This amount was not shown in Profit and Loss A/c and was directly taken to the Balance Sheet. The AO held that it is mandatory for the company to show profit/loss on sale of investment in profit and loss a/c and that the profit and loss a/c had not been prepared in accordance with Part II and Part III of Schedule VI of Companies Act and made an adjustment to the "book profits" u/s 115JB. However the Tribunal deleted the addition. On appeal by the department to the High Court HELD dismissing the appeal:

The Assessing Officer does not have power to embark upon the fresh enquiry with regard to the entries made in the books of accounts of the company when the accounts of the company is prepared in terms of Part II of Schedule VI of the Companies Act, scrutinized and certified by the statutory auditors, approved by the company in general meeting and thereafter filed before the Registrar of companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. If the grievance of the revenue is to be accepted, then the conclusiveness of accounts prepared and audited in terms of Section 115JB of the Companies Act would be set at naught.

---

**6. (i) Even if an amount is credited to the P&L A/c, the assessee can seek exclusion of that amount for purposes of "book profits" if a note to that effect is inserted in the A/cs.**

**(ii) The exemption conferred by S. 115JB to sums exempt u/s 10 should be extended to all sums which are not chargeable to tax.**

*DCIT vs. Shivalik Venture Pvt Ltd. (ITAT Mumbai)*

The assessee owned a plot of land as a capital asset. The said land was attached with development rights/FSI. The assessee transferred a part of the development rights to its wholly owned Indian subsidiary which resulted in Long Term Capital Gain. The said LTCG was not chargeable to tax u/s 47(iv) of the Act as it arose from the transfer of a capital asset by a company to its wholly owned Indian subsidiary. For purposes of computation of book profits u/s 115JB, the assessee inserted a note in the accounts stating that the said amount credited to the P&L A/c did not have the character of "income" and was not chargeable as "book profits". The AO & CIT relied on the judgement of the Special Bench in case of Rain Commodities Ltd. vs. DCIT where it was held that though an amount not chargeable to capital gains u/s 47(iv), is credited to the P&L A/c, the same cannot be excluded from the book profits u/s 115JB. On appeal by the assessee to the Tribunal HELD allowing the appeal:

The profit and loss account prepared in accordance with the provisions of Part II to Schedule VI of the Companies Act should be read along with the 'Notes forming part of accounts'. Hence the net profit shown in the Profit and loss account shall be first adjusted to take care of the qualifications given in the Notes for computing book profits u/s 115JB of the Income Tax Act, 1961.

Clause (ii) of Explanation 1 to sec.115JB specifically provides that the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof) is to be reduced from the Net profit, if they are credited to the Profit and Loss account. The logic of these provisions, is that an item of receipt which falls under the definition of "income", are excluded for the purpose of computing "Book Profit", since the said receipts are exempted u/s 10 of the Act while computing total income. If the said logic is extended further, an item of receipt which does not fall under the definition of "income" at all and hence falls outside the purview of the computation provisions of Income tax Act, cannot also be included in "book profit" u/s 115JB of the Act.

---

**7. No obligation to deduct TDS at stage of making provision for expenditure if payee cannot be identified. No obligation to deduct TDS if services (roaming charges) are rendered without human intervention and are not "technical services".**

*DCIT vs. Dishnet Wireless Ltd. (ITAT Chennai)*

The assessee, a telecom operator, made provision for site restoration expenses; however, provision for TDS was not made. The assessee made a provision as per AS 29 as it had an obligation to incur an expenditure after termination of the lease period. The Revenue contended that due to misconception and ignorance of law and with an intention to circumvent the statutory provisions, the assessee made the provision. The fact remains that the payment was not made to anyone and it is not credited to the account of any party or individual. The contractor who is supposed to be engaged for dismantling

the tower and restore the site in its original position is not identified. In this case, the contractor would be identified after the expiry lease period. Therefore, the assessee cannot issue Form 16A prescribed under Income Tax Rules, 1962 as the assessee does not have the details relating to the name of the deductee, PAN of the deductee or the address of the deductee or the amount credited.

As regards roaming charges, the Supreme Court held in CIT v. Bharti Cellular Limited (330 ITR 239) that whenever there was a human intervention, it has to be considered as technical service. Human intervention is required for establishing the physical connectivity between two operators for doing necessary system configurations. After necessary configuration for providing roaming services, human intervention is not required. Once human intervention is not required, as found by the Apex Court, the service provided by the other service provider cannot be considered to be a technical service. Therefore, TDS is not required to be deducted in respect of roaming charges paid to the other service providers.

---

**8. Interest is automatic if conditions are met. Form I.T.N.S. 150 is a part of the assessment order and it is sufficient if the levy of interest is stated there.**

*CIT vs. Bhagat Construction Co. Pvt. Ltd. (Supreme Court)*

The assessment order didn't contain any direction for the payment of interest. The ITAT and the Delhi High Court held that since no direction had actually been given in the assessment order for payment of interest, the case was covered by the decision of the Supreme Court in 'Commissioner of Income Tax & Ors. v. Ranchi Club Ltd' [(2001) 247 ITR 209]. The Department claimed before the Supreme Court that in view of the decision in 'Kalyankumar Ray v. Commissioner of Income Tax, West Bengal-IV, Calcutta [1992 Supp (2) SCC 424] interest under Section 234B is part of Form I.T.N.S. 150 which is not only signed by the assessing officer but it is really part of the assessment order itself. HELD by the Supreme Court allowing the appeal:

The levy of such interest is automatic when the conditions of Section 234B are met. The Form must be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of Section 143, which is referred to in Explanation 1 to Section 234B.

---

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

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

| Date | Particulars |
|---|---|
| 5th | Service Tax Payment by Companies for August |
| 6th | Payment of Excise Duty for the previous month (other than SSI units) |
| 7th | Income Tax – TDS payment for August |
| 10th | Monthly Excise return by all assessees (except SSIs & EOUs) coming under CEA in Form ER-1 |
| 10th | Monthly Excise Return by specified class of assessees regarding principal units in Form ER-6 |
| 15th | Advance Income Tax payment for all assessees as per Income Tax Act, 1961. |
| 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 and filing of Monthly MVAT return under MVAT Act, 2002 for dealers liable to pay tax monthly. |
| 30th | Payment of Profession Tax for the employees |
| 30th | Income Tax Return and Wealth Tax Return for Companies or non companies whose accounts are required to be audited under IT Act or any other law and Working Partner of a firm whose accounts are required to be audited under IT Act or any other law , but other than covered under Transfer Pricing regulations |

**------- XXXXX------**