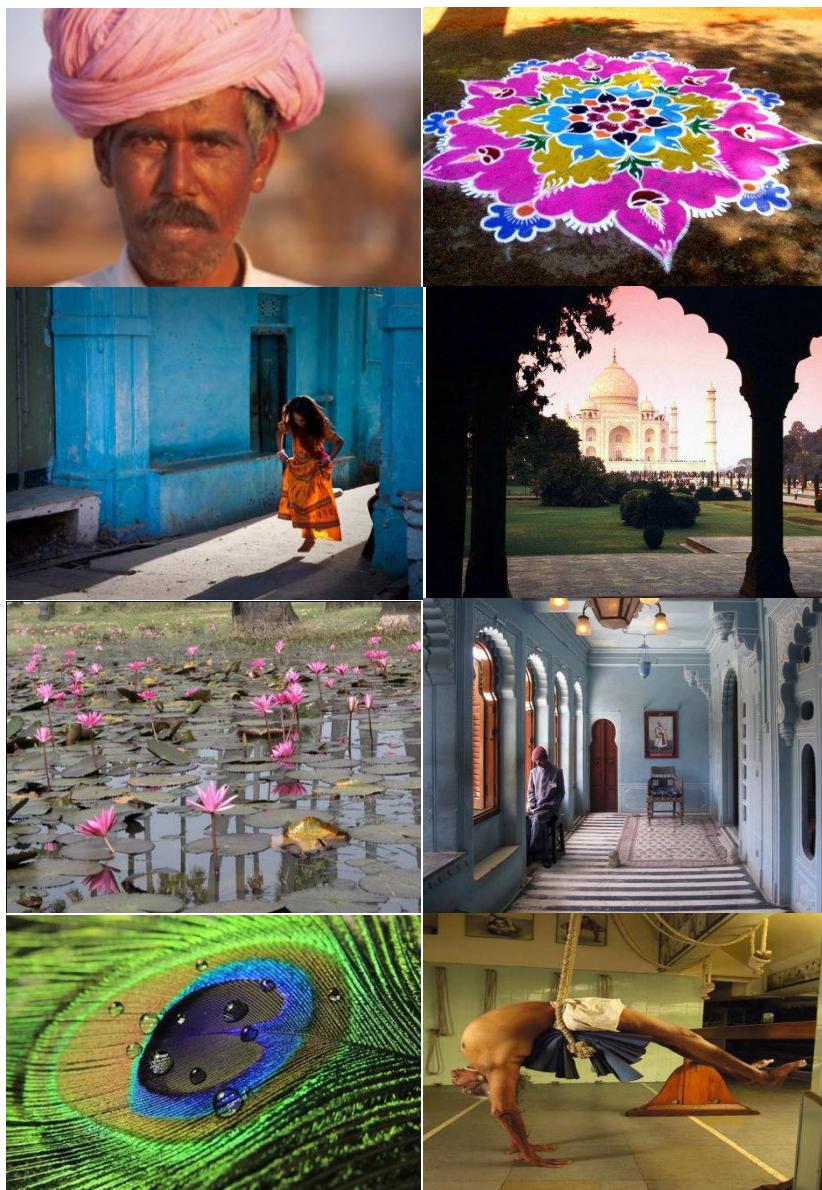


HARBINGERTM

Updates on regulatory changes affecting your business in India

October 2015



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Chartered Accountants

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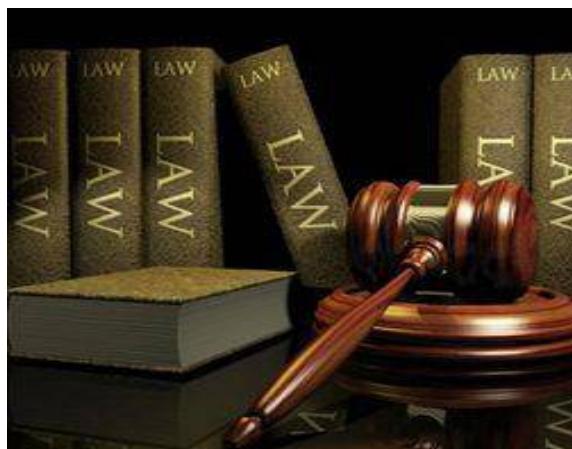
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INDEX

Sr. No	Topics covered	Page No.
1	<u>Company Law</u>	3
2	<u>Reserve Bank of India</u>	4
3	<u>Income Tax</u>	5
4	<u>Economics</u>	6
5	<u>Summary of Judgments - Income Tax</u>	8
6	<u>Discussion on Judgments - Income Tax</u>	11
7	<u>Due date chart for the month of October, 2015</u>	17

COMPANY LAW



Extension of time for filing of cost audit report to the Central Government for the Financial Year 2014-2015

The last date for filing of Form CRA-4 without any penalty/late fee is extended up to 30th September, 2015.

General Circular No. 12/2015 dated September 1st, 2015

Alterations to Schedule III of the Companies Act, 2013

The Central Government makes the following alterations in Schedule III of the Companies Act, 2013 –

In the Schedule, in Part I – Balance Sheet

–

(i) Under the heading Equity and Liabilities for trade payables the following should be written henceforth

–

(b) Trade Payables

- (A) Total outstanding dues of micro and small enterprises; and
- (B) Total outstanding dues of creditors other than micro enterprises and small enterprises

(ii) Under the heading “Notes: General Instructions for preparation of Balance Sheet” the following should be inserted

–

The following details relating to Micro, Small and Medium Enterprises should be disclosed in the notes:

- a) The principal amount and the interest due thereon remaining unpaid to any supplier at the end of each accounting year;
- b) The amount of interest paid by the buyer along with the amount of the payment made to the supplier beyond the appointed day during each accounting year
- c) The amount of interest due and payable for the period of delay in making the payment but without adding the interest specified under the Micro, Small Enterprises Development Act, 2006
- d) The amount of interest accrued and remaining unpaid at the end of each accounting year; and
- e) The amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise.

Notification dated September 4th, 2015

MCA releases Form AOC-4 and Form AOC-4 CFS for filing financial statements including Consolidated Financial Statements

The Central Government introduced the following rules to amend the Companies (Accounts) Rules, 2014 -

The financial statements should be in the format specified in Schedule III to the Companies Act and comply with Accounting Standards as applicable.

Every company shall file the financial statements with the Registrar with Form AOC-4 and the consolidated financial statements, if any, with Form AOC-4 CFS. The Form must be certified by practicing professionals including Company Secretary in whole-time practice.

These rules will come into effect from the date of their publication in the Official Gazette.

Notification dated September 4, 2015

RESERVE BANK OF INDIA



Changes in RTGS time window

As banks will have a holiday on second and fourth Saturdays from September 1, accordingly RTGS facility will not be available on second and fourth Saturdays. Instead, RTGS will operate for full day on working Saturdays.

The RTGS timings with effect from September 1, 2015 will be as under -

S No.	Time Event	Regular days including Saturdays, except 2 nd and 4 th Saturdays
1	Open for business	08:00
2	Initial Cut-off (customer transactions)	16:30
3	Final Cut-off (inter-bank transactions)	19:45
4	IDL Reversal	19:45 - 20:00
5	End of Day	20:00

RBI/2015-16/168 dated September 1, 2015

Banknotes with new numbering pattern and special features for the visually impaired

Reserve Bank of India is issuing Banknotes in Mahatma Gandhi Series 2005 with a new numbering pattern and special features for the visually impaired in Rs. 100, 500 and 1000 denominations.

RBI/2015-16/188 dated September 24, 2015

Liquidity adjustment facility (LAF) - repo and reverse repo rates

Consequent to the change in the repo rate, the Reverse Repo Rate under the LAF will be adjusted to 5.75% with immediate effect.

RBI/2015-16/190 dated September 29, 2015

Marginal Standing Facility

Consequent to the change in the repo rate, the Marginal Standing Facility rate will be adjusted to 7.75% with immediate effect.

RBI/2015-16/191 dated September 29, 2015

Standing liquidity facility for primary dealers

Consequent to the change in the liquidity adjustment facility, the Standing liquidity facility from the Reserve Bank would be available at 6.75% with effect from September 29, 2015.

RBI/2015-16/192 dated September 29, 2015

Change in Bank Rate

The bank rate has changed by 50 basis points from 8.25% to 7.75% with effect from September 29, 2015.

RBI/2015-16/194 dated September 29, 2015

INCOME TAX

Extension of due date for filing of income tax returns and tax audit reports to 31st October, 2015

The Government has decided that across the country all returns of income and audit reports u/s 44AB which were due for e-filing by 30th September may now be filed by 31st October, 2015.

Press Release dated October 1, 2015

Revised procedure for filing of Form 15G/15H

As per Section 197A(1A), no deduction of tax will be made in case a person submits to the person responsible for paying any interest, a declaration stating that tax on his total income of the previous year in which such income is to included will be nil.

As per Section 197A (1C), no deduction of tax will be made in case of a resident individual who is 65 years old or more at any time during the previous year if such individual submits a declaration to the person responsible for paying any interest stating that tax on his total income of the previous year in which

such income is to be included will be nil.

This declaration may be submitted in the following manner –

1. in paper form
2. electronically after verifying through an electronic process in accordance with the required formats and procedures
3. the person responsible for paying any interest will allot a unique identification number for each declaration received by him in Form 15G and Form 15H respectively during every quarter of the financial year

Notification dated September 29, 2015

ECONOMICS

India bright spot amid slowdown

International Monetary Fund Chief has said that India is one of the few bright spots in the global economy. Among emerging economies, if there is any growth, that is in India. Reserve Bank of India's head Raghuram Rajan said that they are surrounded by economic India has disapproved of recent devaluations in currency followed by depreciation in a large number of emerging markets which raises the risk of competitive devaluations. Currency devaluation when the global demand is slow is a threat to the global economy.

Tribune India September 6, 2015

NACAS asks government to delay IND AS 115 implementation

Accounting advisory panel NACAS has asked the government to postpone implementation of a significant revenue recognition standard as its applicability is unsure globally.

IND AS 115 would be applicable for reporting information about the nature, amount, timing and uncertainty of revenue and cash flows in financial statements.

The recommendation has been made to the Corporate Affairs Ministry which would take a final decision on the matter.

Economic Times – September 6, 2015

India plans to amend RBI Act by February to set up monetary panel

The government plans to change the Reserve Bank of India Act before the end of the fiscal year so that it can set up a new committee to direct the country's monetary policy. The committee would comprise of appointees from the government, the RBI and members appointed by the government. Any changes will have to be approved by the government. RBI Governor Raghuram Rajan has said the central bank and government have reached a consensus of the panel.

Reuters: August 31, 2015

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	Other Laws	The client is not bound by a statement or admission which he or his lawyer was not authorised to make. The Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed	<i>Himalayan Co operative Group Housing Society vs. Balwan Singh</i>
2	ITAT Amritsar	Sec 10(10)D	Even a "United Linked Endowment Assurance Plan" with the main object of guaranteed returns rather than life insurance is a "Keyman Insurance" as defined in s. 10(10D). The fact that policy was not termed as a "Keyman insurance" and the fact that the IRDA Guidelines disapproved the issue of such policies is irrelevant	<i>ACIT vs. Suri Sons</i>
3	Delhi High Court	Sec 14A	No disallowance u/s 14A can be made in a year in which no exempt income has been earned or received by the assessee.	<i>CIT vs. Cheminvest Ltd.</i>

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Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
4	ITAT Mumbai	Sec 29/37	Loss on account of forward contract entered into by the assessee to hedge against the loss arising on account of fluctuations in foreign exchange is an allowable deduction.	<i>ACIT vs. M/s. Venus Jewel</i>
5	Delhi High Court	Sec 40a	No section 40(a) (ia) disallowance for failure to deduct TDS on payment if payee has offered amount to tax. Second Proviso to section 40(a) (ia) inserted by Finance Act 2013 w.e.f 01.04.2013 should be treated as curative and to have retrospective effect from 01.04.2005	<i>CIT vs. Ansal Landmark Township Pvt. Ltd.</i>
6	Bombay High Court	Sec 54EC	If REC Bonds are not available during the prescribed period, time for investment has to be extended. Fact that NHAI Bonds were available is irrelevant. Amount paid to sisters as per family arrangement for permitting transfer of property is deductible u/s 49(1)	<i>ACIT vs. Kamlakar Moghe</i>
7	ITAT Mumbai	Sec 153	Approval to the assessment order granted by the Addl. CIT in a casual and mechanical manner and without application of mind renders the assessment order void	<i>DCIT vs. Shreelekha Damani</i>
8	ITAT Delhi	Sec 271	Offering interest on maturity on Bonds as "long-term capital	<i>ITAT Delhi vs. Simran Singh Gambhir</i>

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Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
			"gains" instead of as "income from other sources" is a mere change in the head of income and a case of bona fide mistake which does not attract penalty	

DISCUSSION ON JUDGEMENTS -
INCOME TAX



1. The client is not bound by a statement or admission which he or his lawyer was not authorised to make. The Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed

Himalayan Co operative Group Housing Society vs. Balwan Singh (Supreme Court)

The Supreme Court had to inter alia consider the following issues:

(a) Whether the counsel appearing for an appellant-Society could make concession for or on behalf of the appellant-Society without any express instructions/ authorisation in that regard by the Society?

(b) Whether such a concession would bind the appellant-Society and its members?

HELD by the Supreme Court:

(i) Lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client – lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject matter of the retainer.

(ii) A lawyer by virtue of retention has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyers conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

(iii) The BCI Rules make it necessary that despite the specific legal stream of practice, seniority at the Bar or designation of an advocate as a senior advocate, the ethical duty and the professional standards in so far as making concessions before the Court remain the same. It is expected of the lawyers to obtain necessary instructions from the clients or the authorized agent before making any concession/ statement before the Court for and on behalf of the client.

We hasten to add that neither the client nor the Court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus,

according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.

2. Even a "United Linked Endowment Assurance Plan" with the main object of guaranteed returns rather than life insurance is a "Keyman insurance" as defined in s. 10(10D). The fact that policy was not termed as "Keyman insurance" and the fact that the IRDA Guidelines disapproved the issue of such policies is irrelevant

ACIT vs. Suri Sons. (ITAT Amritsar)

The assessee claimed a deduction of Rs 1,49,99,222 towards Keyman insurance policy on its partner Shri Sanjeev Suri. The Assessing Officer noted that the assessee had taken "united linked endowment assurance plan" and that out of total premium paid by the assessee, only Rs 3,26,293 is towards "risk premium on life" and the balance premium is invested by the insurance company in buying units. The main objective of the insurance policy, thus, was guaranteed returns on the insurance premium amounts, rather than life insurance, and this main objective was to be achieved by investing in units. The Assessing Officer

was of the view that a unit linked endowment plan, under Kotak Safe Investment Plan, "cannot be Keyman insurance policy as per definition of Keyman insurance given in the Income Tax Act". The AO observed that "Even as per the IRDA, only term insurance policies can be issued as Keyman insurance cover". The Assessing Officer disallowed Rs 1,49,99,222. This was confirmed by the CIT (A). On appeal by the assessee to the Tribunal HELD allowing the appeal:

All that is required for an insurance policy to meet the requirements of Section 10(10D), therefore, has to be -
(a) it should be a life insurance policy;
(b) it should be taken by the assessee on the life of another person who is, or was, an employee of the assessee or is related to the business of the assessee in any manner. As long as a policy is an insurance policy, whether it involves a capital appreciation or is under any other investment scheme, it meets the tests laid down under section 10(10D). Even if such an inference is desirable, as long as it does not emerge from the plain words of the statute, it cannot be open to supply the same. The concepts of term policy, pure life policy and the IRDA guidelines find no mention in the statutory provisions. But even if these concepts ought to be incorporated in this statutory provision of the Income Tax Act to make it more meaningful and workable, it cannot be open to any judicial forum to supply these omissions.

3. No disallowance u/s 14A can be made in a year in which no exempt income has been earned or received by the assessee.

CIT vs. Cheminvest Ltd. (Delhi High Court)

The High Court had to consider the following substantial question of law:

"Whether disallowance under Section 14A of the Act can be made in a year in which no exempt income has been earned or received by the Assessee?" HELD by the High Court:

(i) The expression "does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

4. Loss on account of forward contract entered into by the assessee to hedge against the loss arising on account of fluctuations in foreign exchange is an allowable deduction.

ACIT vs. M/s. Venus Jewel. (ITAT Mumbai)

The assessee was engaged in the export of diamonds and the forward contract was entered into in respect of foreign exchange to be received as a result of export and the same was done to avoid the risk of loss due to foreign exchange fluctuations. The claim has to be

allowed after taking note of the claim of forward contracts and the accounting policies, i.e. AS-11 (revised) and applying the ratio laid down by the Apex Court in the case of CIT vs. Woodward Governor India Pvt. Ltd. 294 ITR 451 (SC). The issue i.e. loss on account of forward contract entered into by the assessee to hedge against the loss arising on account of fluctuations in foreign exchange arose before the Tribunal in a series of cases and the claim has been allowed. The learned D.R. for the Revenue had placed reliance on M/s. Vinod Kumar Diamonds Pvt. Ltd ITA No. 506/Mum/2013 dated 03.05.2013. The said decision is contrary to the view taken in Badridas Gauridu P. Ltd. 261 ITR 256 (Bom). We find no merit in the said reliance.

5. No section 40(a) (ia) disallowance for failure to deduct TDS on payment if payee has offered amount to tax. Second Proviso to section 40(a) (ia) inserted by Finance Act 2013 w.e.f 01.04.2013 should be treated as curative and to have retrospective effect from 01.04.2005.

CIT vs. Ansal Landmark Township Pvt. Ltd. (Delhi High Court)

The Assessee made payment to Ansal Properties and Infrastructure Ltd. which payment, according to the Revenue, ought to have been made only after deducting tax at source under Section 194J of the Act. Before the ITAT, it was urged by the Assessee that in view of the insertion of the second proviso to Section 40(a) (ia) of the Act,

the payment made could not have been disallowed. Reliance was placed on the decision of the Agra Bench of ITAT in ITA No. 337/Agra/2013 (Rajiv Kumar Agarwal v. ACIT) in which it was held that the second proviso to Section 40 (a) (ia) of the Act is declaratory and curative in nature and should be given retrospective effect from 1st April 2005. The Tribunal accepted the assessee's plea. On appeal by the department to the High Court HELD dismissing the appeal:

(i) The second proviso to Section 40(a) (ia) was inserted by the Finance Act 2012 with effect from 1st April 2013. The effect of the said proviso is to introduce a legal fiction where an Assessee fails to deduct tax in accordance with the provisions of Chapter XVII B. Where such Assessee is deemed not to be an assessee in default in terms of the first proviso to sub-Section (1) of Section 201 of the Act, then, in such event, "*it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso*".

(ii) The common point in both the provisos to Section 40 (a) (ia) and Section 210 (1) of the Act is that the as long as the payee/resident (which in this case is ALIP) has filed its return of income disclosing the payment received by and in which the income earned by it is embedded and has also paid tax on such income, the Assessee would not be treated as a person in default.

(iii) The scheme of Section 40(a)(ia), as we see it, is aimed at ensuring that an

expenditure should not be allowed as deduction in the hands of an assessee in a situation in which income embedded in such expenditure has remained untaxed due to tax withholding lapses by the assessee. It is not, in our considered view, a penalty for tax withholding lapse but it is a sort of compensatory deduction restriction for an income going untaxed due to tax withholding lapse. The penalty for tax withholding lapse per se is separately provided for in Section 271 C, and, section 40(a) (ia) does not add to the same. Accordingly, we hold that the insertion of second proviso to Section 40(a) (ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.

6. If REC Bonds are not available during the prescribed period, time for investment has to be extended. Fact that NHAI Bonds were available is irrelevant. Amount paid to sisters as per family arrangement for permitting transfer of property is deductible u/s 49(1)

ACIT vs. Kamlakar Moghe (Bombay High Court)

(i) In view of the Will of late mother Smt. Moghe and thereafter Will of P.M. Moghe, three sisters had a right in property and without extinguishing it or without providing for its adjustment, the assessee could not have sold property. As such, the amount of Rs.45 lakh paid to three sisters is correctly

found to be an expenditure incurred in connection with transfer of property. The arrangement worked out by three sisters and brothers as also three daughters of the deceased Shri P.M. Moghe, is bonafide one. It is, therefore, obvious that in the absence of such family settlement and payment, the sale of property on 07.07.2006 by the assessee could not have materialized. The sisters had a title in property and without their cooperation there could not have been any sale.

(ii) Insofar as investment under Section 54EC of the Act is concerned, the assessee had received sale consideration on 07.07.2006 and period of six months available for such investment, therefore, expired on 06.01.2007. From that date onwards till 24.01.2007, REC Bonds were not available. Vide Cheque issued on 24.01.2007 REC Bonds were purchased on 27.01.2007. The availability of the bonds only for a limited period during this period cannot prejudice the assessee's right to exercise the same up to last date. The bonds were admittedly not available during the said period. The fact that the Bonds issued by the National Highway Authority of India were available and hence the assessee ought to have invested in those bonds within the stipulated period of six months is not acceptable. Section 54EC gives assessee an option to invest either in bonds of National Highway Authority of India or in bonds of Rural Electrification Corporation Limited. The said provision does not stipulate that the investment has to be in any bond whichever is available. Both bonds carry different benefits and hence

deliberately the Parliament has given option to the assessee to invest in any one out of two as per his/her choice.

7. Approval to the assessment order granted by the Addl. CIT in a casual and mechanical manner and without application of mind renders the assessment order void

DCIT vs. Shreelekha Damani (ITAT Mumbai)

The Addl CIT granted approval u/s. 153D to the draft order u/s. 143(3) r.w.s. 153A by stating that "*Since there is no much time left to analyse the issues of draft order on merit. Therefore, the draft order is being approved as it is submitted. Approval to the above said draft order is granted u/s. 153D of the I.T. Act, 1961.*" The assessee claimed that the said approval was not valid and vitiated the assessment order. HELD by the Tribunal accepting the claim:

The Addl. Commissioner has showed his inability to analyze the issues of draft order on merit clearly stating that no much time is left, inasmuch as the draft order was placed before him on 31.12.2010 and the approval was granted on the very same day. Considering the factual matrix of the approval letter, we have no hesitation to hold that the approval granted by the Addl. Commissioner is devoid of any application of mind, is mechanical and without considering the materials on record. Therefore, we have no hesitation to hold that the assessment order made u/s. 143(3) of the Act r.w.s. Sec. 153A of

the Act is bad in law and deserves to be annulled.

8. Offering interest on maturity on Bonds as "long-term capital gains" instead of as "income from other sources" is a mere change in the head of income and a case of bona fide mistake which does not attract penalty

ITAT Delhi vs. Simran Singh Gambhir

The assessee offered to tax, the income from the sale / maturity of National Housing Bond under the head long term capital gain. The A.O. chooses to tax the same under the head 'income from other sources'. The interest of all the three years was offered to tax in the year of maturity and not year-wise. This is just change in the head of income under which the income is offered to tax. The taxation of the receipt is changed to the head of income 'other sources' from the head of income 'capital gain'. The explanation filed by the assessee is bona fide. This is a case of a bona fide mistake on part of the assessee. All the information has been disclosed in the income tax return filed by the assessee. Income had been offered under the head 'capital gain'. Under these circumstances, we cancel

the penalty levied u/s 271(1)(c) of the Act.

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

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

Date	Particulars
5 th	Service Tax payment for the month of September (6 th if paid electronically) for all assessees
6 th	Payment of Excise Duty for all assesses for the previous month for all assessees (including SSI units)
7 th	TDS remittance for the month of September
10 th	Monthly Excise return by all assesses (except SSI Units) coming under CEA in Form ER-1
10 th	Quarterly Excise Return by SSI Units availing small scale exemption in Form ER-3.
10 th	Quarterly Excise Return by units paying 2% duty in Form ER-8
10 th	Monthly Excise return by 100% EOU assesses in Form ER-2
10 th	Monthly Excise return by specified class of assesses regarding principal inputs coming under CEA in Form ER-6.
15 th	Filing Quarterly Excise Return (ANN. 13B) by the Registered dealers
15 th	Filing of TDS/ TCS Quarterly Statements (other than Government deductor) – July to September
20 th	Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace)
20 th	Quarterly Excise Return (Annexure 75) by units availing area based exemptions
21 st	Payment of contribution under Employees State Insurance Act, 1948
21 st	Payment of Monthly and Quarterly MVAT upto September under MVAT Act, 2002*
25 th	Service Tax Return for April to September for all assessees
30 th	Issue of Income Tax TDS Certificate (Form 16A) by Non- Government deductor for Q2
31 st	Payment of Profession Tax for the employees
31 st	Filing of Return of Income and Tax Audit Report under section 44AB for assessees which were required to e-file by 30 th September. (Date extended for A.Y. 2015-16)

----- XXXXX -----

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.