

HARBINGER™

Updates on regulatory changes affecting your business

August 2017



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GOODS AND SERVICE TAX (GST)

Conditions and safeguard for the registered person who intends to supply goods or services for export without payment of integrated tax, for furnishing a Letter of Undertaking in place of a Bond.

The following registered person shall be eligible for submission of Letter of Undertaking in place of a bond:-

- A status holder as specified in Foreign Trade Policy 2015-2020; or
- Who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year.

and he has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 or under any of the existing laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees

The Letter of Undertaking shall be furnished in duplicate for a financial year in the annexure to FORM GST

RFD - 11 and it shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorized by such working partner or Board of Directors of such company or proprietor on the letter head of the registered person.

Notification No. 16/2017 - Central Tax, dated 7th July, 2017.

IGST exemption to SEZ on import of services by Unit/ Developer in SEZ.

The Central Government, on being satisfied that it is necessary in the public interest so to do and on the recommendations of the Council, hereby exempts services imported by a unit or a developer in the Special Economic Zone for authorized operations, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Service Tax Act, 2017.

Notification No. 18/2017 -Integrated Tax (Rate), dated 5th July, 2017

Extension of time limit for filing intimation for composition levy upto 16th August 2017.

The Central Goods and Services Tax Act, 2017, the Board extends the period for filing an intimation for Composition Levy in FORM GST CMP-01 under sub-rule (1) of rule 3 of the Central Goods and Services Tax Rules, 2017 upto 16th August, 2017.

Order No. 01/2017-GST, dated 21st July, 2017

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SERVICE TAX

The return for the first Quarter shall be submitted by 15th August 2017.

The return for the period from 1st of April 2017 till 30th of June 2017 under Rule 7 shall be submitted by the 15th day of August 2017 in Form 'ST-3' or 'ST-3C', as the case maybe.

Provided that the revised return for the period starting for 1st of April 2017 till 30th of June 2017, shall be submitted within a period of 45days from the date of submission of the return under Rule 7.

Notification No. 18/2017- Service Tax dated 22nd June 2017.

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INCOME TAX

Optional reporting of details of one foreign bank account by the non-residents in refund cases.

Refund generated on processing of return of income is currently, credited directly to the bank accounts of the tax-payers. Availability of the details of bank account in which the refund is to be credited is a precondition for direct credit of refund in the bank accounts.

A facility has been provided in return utility for reporting of details of bank account by non-residents, who do not have bank account in India and who are claiming income-tax refund. Therefore, the non-residents who are not claiming refund or non-residents who are claiming refund but having a bank account in India are not required to furnish details of their foreign bank account in the return of income.

However, the non-residents, who are claiming income-tax refund and not

having bank account in India may, at their option, furnish the details of one foreign bank account in the return of income for issuance of refund.

Press Release by Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes, dated 24th July, 2017.

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ECONOMICS

Stock price quotes still not updating in India's NSE said traders.

Price quotations for individual stocks were still not updating on India's National Stock Exchange, multiple traders said, after the country's largest stock exchange re-started trading following an earlier disruption. Trading in indexes as well and futures and options was normal, however, the traders added.

The NSE re-opened markets at 1230 p.m. India time (0700 GMT), about three hours after the usual trading start time, after earlier attempts to resume trading failed.

Business Standards June 23 2017

Accounting Relief for Indian Accounting Standard Companies.

Companies going for Indian accounting standards (IndAS) need not do second round of adjustment for mark-to-market losses on financial instruments in its book profits for the purpose of tax computation.

This is so because these are already adjusted to book profits under minimum alternate tax (MAT), the Central Board of Direct Taxes (CBDT) said.

The CBDT has issued frequently asked questions (FAQs) on the issue after receiving the recommendations of an expert committee.

Business Standards July 26 2017

Textile sector finds little succour in ministry sops

The new indirect tax regime was rolled out on July 1 the textile sector has been demanding that the rates and rules be eased for it. In its latest notification, the textile ministry has not only eased the norms for job workers but has also warned of action against master weavers who insist small job units must themselves register for the GST.

“There are a large number of small job workers with an annual turnover of less

than Rs 20 lakh, whom the power loom industry, especially master weavers, has to engage. With the exemption from GST registration, master weavers would end up with the reserve charge mechanism," said Ashish Gujarati, president of Pandesara Weavers' Association, in Surat.

Business Standards July 27, 2017

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SUMMARY OF IMPORTANT TAX JUDGEMENTS

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

| Sr. No | Tribunal/Court | Section/Area | Nature | Case Law |
|--------|--------------------|---------------------------------------|--|--|
| 1. | Gujarat High Court | Section 4 Section 28 Section 56 | “Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law and on facts in holding that interest on non performing assets is not taxable on accrual basis looking to the guidelines of the Reserve Bank of India?” | Pr CIT vs. Shri Mahila Sewa Sahakar. |
| 2. | ITAT Mumbai | Section 50C | The AO is not entitled to make an addition to the sale consideration declared by the assessee if the difference between the valuation adopted by the Stamp Valuation Authority and that declared by the assessee is less than 10% | DCIT vs. John Fowler (India) Pvt. Ltd. |
| 3. | Bombay High Court | Section 68 | Mere fact that parties to whom the share certificates were issued and who had paid the share capital money were not traceable and did not appear before the AO in response to summons does not mean that the transaction can be treated as bogus if the documentation shows the genuineness of the transaction | CIT Vs. Orchid Industries Pvt. Ltd. |
| 4. | ITAT Delhi | Section 115JB | Controversial issue whether the disallowance u/s 14A and Rule 8D is required to be adjusted while computing the book profits u/s 115JB | ACIT vs. Vireet Investment Pvt. Ltd. |

| | | | | |
|----|-------------------|----------------------------|---|---|
| | | | | |
| 5. | Bombay High Court | Section 147 Section 148 | Whether on the facts and circumstances of the case and in law, the Tribunal was justified in restoring the issue to the Assessing Officer after having quashed/ set aside the order passed by the Assessing Officer without having disposed of the objections filed by the appellant to the reasons recorded in support of the reopening Notice?" | ACIT Vs. KSS Petron Pvt. Ltd. |
| 6. | Bombay High Court | Section 221(1) | The phrase "Tax in arrears" in section 221 would not take within its realm the interest component. The AO can impose penalty for default in making the payment of tax, but the same shall not exceed the amount of tax in arrears. Tax in arrears would not include the interest payable u/s 220(2) of the Act | CIT vs. Oryx Finance and Investment Pvt. Ltd. |

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Discussion on Judgments - Income Tax



- 1 **“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law and on facts in holding that interest on non performing assets is not taxable on accrual basis looking to the guidelines of the Reserve Bank of India?”**

While determining the tax liability of an assessee, two factors come into play, namely, (i) the recognition of income in terms of the recognised accounting principles and (ii) the computation thereof in terms of the provisions of the Income-tax Act, 1961

The High Court had to consider the following question of law at the instance of the department.

“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law and on facts in holding that interest on non performing assets is not taxable on accrual basis looking to the guidelines of the Reserve Bank of India?”

Held by the High Court dismissing the appeal:

- Insofar as the computation of taxability is concerned, the same is solely governed by the provisions of the Income Tax Act and the accounting principles have no role to play.
- However, recognition of income stands on a different footing. Insofar as income recognition is concerned, it would be the RBI Directions which would prevail in view of the provisions of section 45Q of the RBI Act and section 145 would have no role to play. Hence, the Assessing Officer has to follow the RBI Directions.

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2. **The AO is not entitled to make an addition to the sale consideration declared by the assessee if the difference between the valuation adopted by the Stamp Valuation Authority and that declared by the assessee is less than 10%.**

The sale consideration from the plots sold on the same day though be separated agreements, is more than the stamp duty valuation by Rs. 3,00,00,000. Even assuming for a movement that the sale consideration in respect of Plot in surveys are less than the stamp valuation it is Rs. 33,48,284/- which is less than 10% of the stamp duty valuation of the said plot. Therefore, in view of the ratio of the decisions relied on by the assessee, the assessee should succeeded in its appeal.

When the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AD cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is bound to occur, the AO in the instant case is not justified in substituting the sale consideration.

3. Mere fact that parties to whom the share certificates were issued and who had paid the share capital money were not traceable and did not appear before the AO in response to summons does not mean that the transaction can be treated as bogus if the documentation shows the genuineness of the transaction.

As per section 68, any sum found credited in the books of a taxpayer, for which he offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, may be charged to income-tax as the income of the taxpayer of that year.

Assessee received Rs. 95 lakhs as share application money for the year under consideration. The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only

on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

The Tribunal Held that:

- Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money.
- The Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account.
- The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee

In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee.

4. Controversial issue whether the disallowance u/s 14A and Rule 8D is required to be adjusted while computing the book profits u/s 115JB and explained its nuances in the light of the judgement of the Bombay High Court in CIT vs. JSW Energy Ltd

ITAT Delhi (Special Bench) had to consider the following important question of law.

- Whether the expenditure incurred to earn exempt income computed u/s 14A could not be added while computing book profits u/s 115JB of the Act? and
- Whether investments which did not yield any exempt income should enter into the computation under Rule 8D while arriving at the average value of investment, income from which does not form part of the total income?.

HELD by the Special Bench deciding both issues in favour of the assessee:

We answer the question referred to us in favour of the assessee by holding that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income tax Rules 1962.

- Only those investments are to be considered for computing the average value of investment

which yielded exempt income during the year.

5. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in restoring the issue to the Assessing Officer after having quashed/ set aside the order passed by the Assessing Officer without having disposed of the objections filed by the appellant to the reasons recorded in support of the reopening Notice?"

Held by the High Court allowing the appeal:

- The Tribunal held that the Assessing Officer was not justified in finalizing the Assessment, without having first disposed of the objections of the appellant. In the aforesaid circumstances, the order of the CIT(A) and the Assessing Officer were quashed and set aside. However, after having set aside the orders, it restored the Assessment to the Assessing Officer to pass fresh order after disposing of the objections to reopening notice
- We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore

the issue to the Assessing Officer to pass a further/fresh order

- In fact, to ensure that reopening notices are disposed of, expeditiously the parliament itself has provided in Section 153(2) of the Act a period of limitation within which the Assessing Officer must pass an order on the notice of reopening i.e. within one year from the end of the financial year in which the notice was issued

6. The phrase “Tax in arrears” in section 221 would not take within its realm the interest component. The AO can impose penalty for default in making the payment of tax, but the same shall not exceed the amount of tax in arrears. Tax in arrears would not include the interest payable u/s 220(2) of the Act.

The High Court had to consider the following questions of law at the instance of the department:

- Whether on facts and in the circumstances of the case and in law, the ITAT is justified in holding the penalty u/s.221(1) is to be imposed in respect of only the tax excluding interest u/s.234A, 234B & 234C without appreciating that section 221(1) does not contain any such condition that the penalty imposed under the said section

should be a percentage of only the tax excluding the interest.

- Whether on facts and in the circumstances of the case and in law, the Assessing Officer is empowered to impose any amount of penalty ‘so, however that the total amount of penalty does not exceed the amount of tax in arrears and thus the term used is tax in arrears and not ‘tax’, as erroneously held by the Honourable Tribunal.
- Whether on facts and in the circumstances of the case and in law, the ITAT is justified in deleting the penalty levied u/s.221(1) in respect of arrears of interest u/s.234A, 234B & 234C.

HELD by the High Court dismissing the appeal:

- The definition of the “Tax” u/Sec.2(43) read in its entirety suggests that the “tax” means income tax, super tax and/or the fringe benefit tax, as the case may be chargeable under the provisions of the Act. The definition of tax does not take within its fold the interest component.
- The definition of “interest” is restricted to the interest payable in respect of any moneys borrowed or debt incurred.
- It is the elementary rule of interpretation that when the language of a statute is clear and unambiguous, the Courts are to interpret the same in its literal

sense and not to give a meaning that would cause violence to the provisions of the statute. Each word in the statute should be assigned the meaning as per the context.

- The provision imposing penalty will have to be strictly construed. The statute being fiscal and the provisions of Section 221 dealing with imposition of penalty naturally shall have to be strictly construed. Strict construction is a construction in which application of a provision used is limited by words used, so that anything which is not clearly included within the scope of the language is treated as excluded.

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 OF AUGUST 2017 (VARIOUS ACTS):

| August 2017 | | | | | | |
|-------------|-----|-----|-----------------------------------|--|-------------------------------------|-----|
| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 Monthly TDS payment | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 Provident fund payment. Service Tax return for 1 st Quarter. | 16 | 17 |
| 18 | 19 | 20 | 21 ESIC Payment, Payment | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 Professio n Tax Payment | 31 |

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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