

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

**December 2016**



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*Chartered Accountants*

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## **COMPANY LAW**

### **Amendment to Schedule II to Companies Act, 2013**

For the purpose of complying with the provisions of Schedule II of the Companies Act, 2013, in case of intangible assets the relevant Indian Accounting standards (Ind AS) shall apply to the company.

Where a company is not required to comply with Indian Accounting standards (Ind AS), it shall comply with the relevant Accounting standards under Companies (Accounting Standards) Rules, 2006.

This shall be applicable for the accounting period commencing on or after 1<sup>st</sup> of April 2016.

*Notification dated November 17, 2016*

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### **The Companies (Registration Offices and Fees) Second Amendment Rules, 2016**

The Ministry of Corporate Affairs has amended the Companies (Registration Offices and Fees) Rules, 2014.

Following are the amendments made:

- Earlier under Rule 8(12) (b) (iv), a Chartered Accountant in whole-time practice was required to certify Form AOC-4. But with

this amendment, the Rules now require a Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant in whole time practice to certify Form AOC-4.

- The fees chargeable for allotment of Director Identification Number (DIN) for OPC, small companies and other companies shall be Rs. 500.
- The fees chargeable for surrender of Director Identification Number under the Companies (Appointment and Qualification of Directors) Rules, 2014 for OPC, small companies and other companies shall be Rs. 1000.

These rules shall be applicable from the date of their publication in the Official Gazette.

*Notification dated November 7, 2016*

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## **SERVICE TAX**

### **Amendment to the Mega Exemption Notification with respect to Online information and database access or retrieval services**

Online information and database access or retrieval services received from provider of service located in a non-taxable territory by

Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession, shall not be exempt from levy of Service tax.

Online information and database access or retrieval services shall have the same meaning as assigned to it in rule 2(1) (ccd) of Service Tax Rules, 1994.

This shall come into force from the 1st day of December, 2016

*Notification no 47/2016-Service Tax dated November 9, 2016*

## **Service Tax (Fourth Amendment) Rules, 2016**

The Central Government has made necessary amendments to the Service Tax Rules, 1994 so as to prescribe the person liable to pay service tax in relation to services provided or agreed to be provided by way of online information and database access or retrieving services, by any person located in a non-taxable territory and received by non-assessee online recipient.

“Non-assessee online recipient” means Government, a local authority, a governmental authority or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce,

industry or any other business or profession, located in taxable territory.

These shall come into force on the 1st day of December, 2016

*Notification no 48/2016-Service Tax dated November 9, 2016*

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## **INCOME TAX**

### **Income Tax (30th Amendment) Rules, 2016**

The Central Board of Direct Taxes (CBDT) has made following amendments:

- (A) In accordance with rule 114B of the Income Tax Rules, 1962, every person shall quote his PAN in all documents pertaining to the below transactions:

Transaction	Value of transaction
Deposit with : <ul style="list-style-type: none"><li>a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and</li></ul>	Cash deposits- <ul style="list-style-type: none"><li>Exceeding Rs. 50,000/- during any one day or</li><li>Aggregating to more than Rs. 2,50,000/- during the period 09<sup>th</sup></li></ul>

<ul style="list-style-type: none"> <li>• Post Office</li> </ul>	November ,2016 to 30 <sup>th</sup> December 2016
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(B) In accordance with provisions of Rule 114E of the Income Tax Rules, 1962, the statement of financial transaction is required to be furnished by person mentioned in column 2 of the table in respect of all the transactions mentioned in column 1 of the table:

Nature & Value of transaction (1)	Class of Person (2)
Cash deposits during the period 09 <sup>th</sup> November,2016 to 30 <sup>th</sup> December, 2016 aggregating to- <ul style="list-style-type: none"> <li>• Rs.12,50,000/- or more in one or more current account of a person or</li> <li>• Rs. 2,50,000/- or more in one or more accounts other than current accounts of a person</li> </ul>	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and  (ii) Post Master General as referred to in section 2(j) of Indian Post office Act, 1898

The statement of financial transaction shall be furnished on or

before 31st January, 2017.

These rules shall come into force from the date of their publication in Official Gazette.

*Notification no 104/2016 dated November 15, 2016*

**Admissibility of expenditure incurred by a Firm on Keyman Insurance Policy in case of a Partner**

The Central Board of Direct Taxes (CBDT) had issued a circular no. 762/1998 dated 18.02.1998 stating that the premium paid on the Keyman Insurance Policy is allowable business expenditure.

However, in case of such expenditure incurred on a partner of a firm, the general approach of the assessing officers was to treat the expenditure as not incurred for the purpose of business and disallow the same.

The High court of Punjab, in its judgement dated 2.2.2016 held that the said policy when obtained to safeguard the life of a partner to safeguard the firm against a disruption of business is equally for the benefit of a partnership business which may be effected as a result of premature death of the partner.

The above view has been accepted by CBDT. Hence in case of a firm, premium paid by the firm on Keyman insurance policy of a

partner is an admissible deduction under section 37 of the Act.

*Circular No.38/2016 dated 22 November, 2016*

## **Taxation (Second Amendment) Bill, 2016**

The Government has introduced the Taxation Laws (Second Amendment) Bill, 2016 in Lok Sabha which proposes to make certain changes in the existing provisions of the law so as to prevent misuse of the existing provisions. This will ensure that the defaulters are subjected to tax at a higher rate along with penalties.

The following are the features of the Amendment Bill, 2016 passed by the Lok Sabha:

### **1) Tax payer opted for Pradhan Mantri Garib Kalyan Yojana, 2016**

Under this scheme the tax payers may declare their undisclosed income possessed in the form of cash, held in banks, post offices or RBI before a notified date. Under this scheme tax shall be levied @ 30% on undisclosed income, and Cess @ 33% on the tax levied. Penalty shall be levied @ 10% on undisclosed income . ( Aggregate 49.9 % )

The cess will be known as the "Pradhan Mantri Garib Kalyan Cess", and will be used for the welfare of economically weaker sections of the society.

Further the tax payer shall deposit

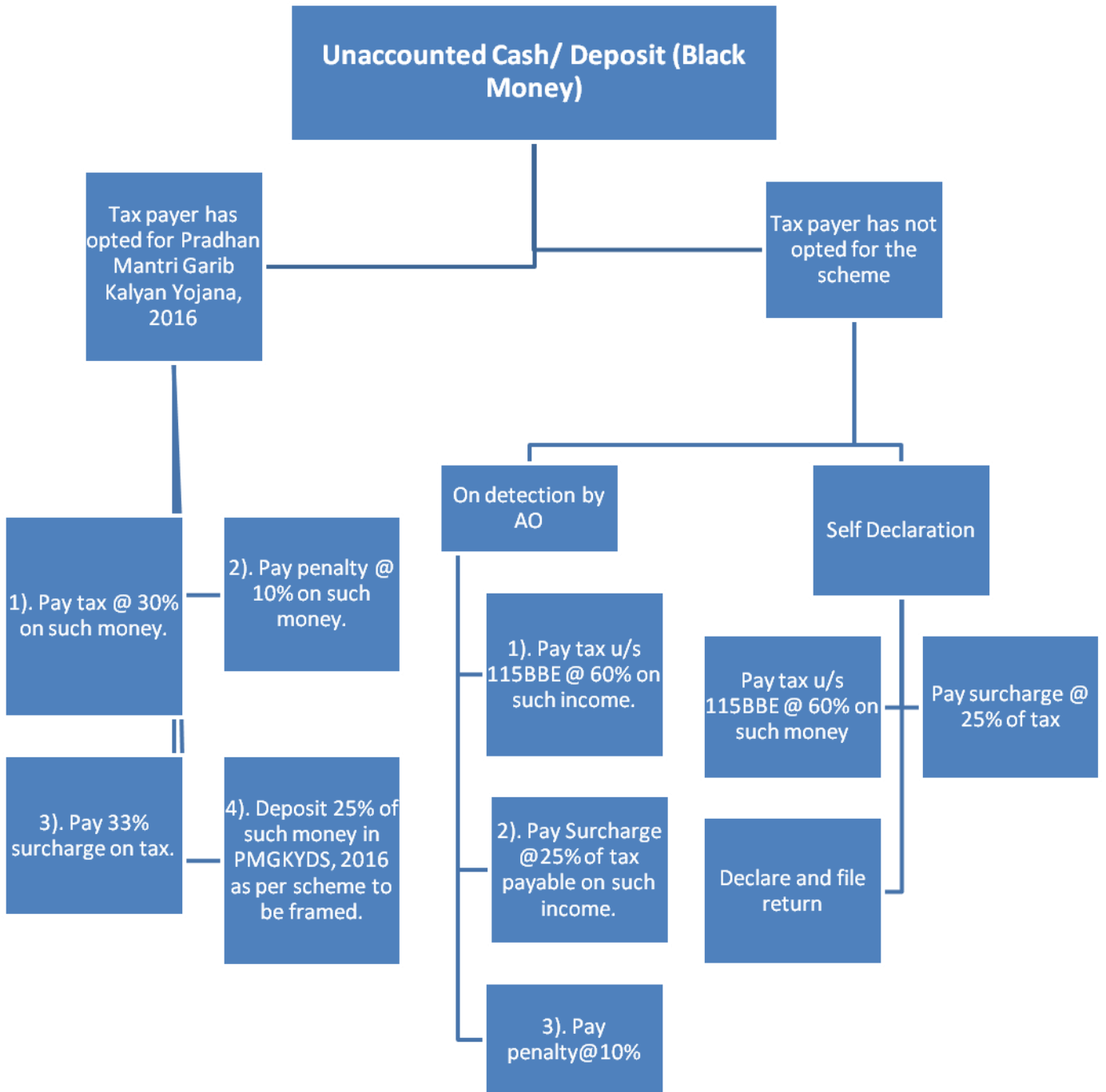
25% of the undisclosed income into the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 for a lock in period of 4 years. The said deposit will not carry any interest.

### **2) Tax payer not opted for Pradhan Mantri Garib Kalyan Yojana, 2016**

The Bill proposes to increase the current tax rate u/s 115BBE and levy a penalty on the unexplained income. A tax @ 60% shall be levied (instead of current rate of 30%) on the unexplained income together with a surcharge @ 25% on the tax payable.

The Income tax assessment authorities may initiate a search of assets of the tax payer on the suspicion of possessing undisclosed income. In this case in addition to the tax and surcharge payable, an additional penalty will be levied @ 10% of the undisclosed income.

The above provisions of the Bill are summarized below:



*Taxmann.com dated 29 November 2016*

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### **ECONOMICS**

#### **Government may prosecute people depositing third party black money in their bank accounts**

As announced by the Government earlier small deposits made in the banks would not be questioned by the Income Tax Department. But according to some reports some people are using other persons' bank accounts to convert their black money in new denomination notes.

In order to avoid tax evasion, it has been clarified by the Government that such an activity may be subject to tax and a penalty shall be levied if it is established that the amount deposited in the account was not of account holder but of somebody else.

Also the person allowing such a misuse of his account can be prosecuted for abetment under the Act.

*Taxmann.com dated 18 November 2016*

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#### **Relief in respect of limit for withdrawal of money from ATM's and banks in specified cases**

After demonetization of old notes the Government has imposed restrictions on withdrawal from ATM's and banks which created

genuine hardships to farmers, vegetable traders etc. Government has lent the following relief:

- **Wedding-** Families having wedding celebrations can now withdraw upto Rs. 2,50,000 from bank account. Such withdrawal can be made by either of the parents or the person getting married. A self declaration will be required.
- **Vegetable Traders-** Traders in wholesale markets or mandis can withdraw upto Rs. 50,000/- per week.
- **Farmers-** The farmers who receive payment through RTGS /cheque shall withdraw upto Rs. 25,000/- per week in cash.
- **Government employees-** The government employees shall have an option to draw their salary in advance from their bank account. Such withdrawal shall be adjusted against their salary of November 2016.

*Taxmann.com dated 11 November, 2016*

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#### **Government launches GST Portal and issues a state wise enrollment schedule**

The Government has launched GST Portal for the enrolment of existing taxpayers of VAT, Service Tax and Excise for smooth transition to GST.



Existing dealers have to collect provisional ID from the tax officer, update their profile information and upload the required documents on the GST Portal.

The enrolment schedule for each of the states has also been provided. The enrolment window shall be open till the 31st January, 2017 for the dealers who missed the chance to enrol themselves as per the given schedule.

*Taxmann.com dated 8 November, 2016*

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## **Taxes to be paid on the black money deposited in the Bank Account**

Where a person deposits some cash amount in his bank account and it is established that such deposit is unaccounted money (black money), the entire deposit shall be charged to tax without providing the benefit of slab rates.

In this case penalty shall also be levied at the rate of 200% of the tax payable.

*Taxmann.com dated 17 November, 2016*

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## **Government allows 49% foreign investment under automatic route in pension sector**

As per the extant norms, upto 26% FDI is permissible in pension sector through automatic route. However

FDI upto 49% is permissible in pension sector if Government approval is obtained

However now to attract more foreign investment in India, the Government has allowed upto 49% FDI in Pension sector under automatic route. However, it is subject to the condition that foreign investment should be brought in the form of equity shares or preference shares or convertible debentures or warrants of the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.

Further an entity should obtain necessary registration from the PFRDA and comply with other requirements, rules and regulations framed thereunder.

*Taxmann.com dated 7 November, 2016*

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## **New Model GST laws released by GST Council Secretariat**

The Centre on 26th November, 2016 unveiled three drafts which includes the model GST law, the IGST (Integrated Goods and Services Tax) Law and the compensation law which will be discussed by the GST Council in its two day meeting starting from December 2. The following are the proposals made in the New Model GST law:

**Securities out of the GST gambit-** Securities had been included as goods in the first draft of the model GST law. The new draft puts an end to the issue

by excluding securities from the definition of goods.

### Anti-profiteering measures-

The previous draft did not have the anti-profiteering clause. However the government has proposed an anti-profiteering clause in the revised draft to ensure that the businesses pass on any benefit of reduction in tax rates to the consumers.

### Proposal for capping the CGST and the SGST rates:

The political demand for the rate cap has been addressed in the draft law by prescribing a cap of 28%.

*timesofindia.indiatimes.com* dated 27 November, 2016

### GST Four Tier Tax Structure

The GST Council on its meeting held on 3rd November, 2016 and 4th November, 2016, has reached a consensus on a four-tier rate structure as under:

Rate	Goods covered
0%	Essential goods such a food grains
5%	Items of mass consumption
12% and 18%	Standard rates applicable to Goods and Services
28%	Demerit rate- White goods like luxury cars, aerated drinks etc.

Gold and precious metal to be taxed at a separate rate. The centre has proposed a rate of 4% for such items.

An additional cess may be levied on luxury cars, aerated drinks, tobacco and PAN masala. This Cess is proposed to be used to compensate states for the loss of revenue during the first five years of implementation of GST.

As far as Services are concerned, they would be taxed at two standard rates i.e. 12% and 18%.

The issue regarding governing control over the tax payers has not reached any consensus. In the first meeting held on 24<sup>th</sup> September, 2016, it was however initially agreed that between the council members that the States would have exclusive jurisdiction over tax payers dealing in goods for turnover upto 15 million. In case of turnover more than 15 million the Centre and the State would have dual control. For Service providers, it was discussed that Centre should have exclusive control. This was however opposed by the States in the subsequently held meeting.

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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.	Mumbai Tribunal	Section 9, Section 195 read with DTAA between India and UK	Legal charges paid to UK firm for setting up of bank branch outside India was not royalty or FTS	Kotak Mahindra Bank Ltd. Vs Income-Tax Officer (International Taxation) TDS
2.	Bombay High Court	Section 10A and 10B	After the change in scheme from "exemption" to "deduction", brought forward unabsorbed loss and depreciation of other 10B units are not liable for set off against the current year's profit of the 10B unit.	CIT vs Techno Trap and Polymers Pvt. Ltd.
3.	Mumbai Tribunal	Section 41(1)	Amounts shown as liabilities in the Balance Sheet cannot be deemed to be cases of "cessation of liability" only because the liabilities are outstanding for several years.	ITO vs. Vikram A. Pradhan
4.	Mumbai Tribunal	Section 56(2)(vii)(b) and Section 68	Amendment to section 68 casting onus on assessee and requiring it to explain source of share subscription	Royal Rich Developers Pvt. Ltd. Vs DCIT
5.	Delhi High Court	Section 132	Department's recalcitrance to release the assessee's seized jewellery, even though it is so small as to constitute "stridhan" and even though no addition was sustained in the assessee's hands, is not "mere inaction" but is one of "deliberate harassment"	Sushila Devi vs CIT
6.	Mumbai	Section 153C and	An order u/s 153C passed without obtaining the approval of the JCIT u/s	Hiklass Moving Picture Pvt. Ltd. vs

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	Tribunal	Section 153D	153D is without jurisdiction and void	ACIT
7.	Madras High Court	Section 279	The fact that the assessee has been convicted of an offense does not mean that the application for compounding of the offense is not maintainable.	V.A. Haseeb and Co. (Firm) vs CCIT

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## DISCUSSION ON JUDGEMENTS - INCOME TAX



### **1. Legal charges paid to UK firm for setting up of bank branch outside India was not royalty or FTS**

The assessee was engaged in banking business and paid certain legal fees to one legal firm situated in UK. It had deducted and deposited 20% withholding taxes on such payment as per the agreement.

Subsequently it filed an appeal before Commissioner (Appeals) and contended that the payment was not liable to be taxed in India. The CIT (Appeals) dismissed the contention on the ground that no new source of Income came into existence by obtaining these legal services. Hence the impugned payment constituted royalty/ FTS u/s 9(1) (vi) (vii).

#### **The ITAT held as under:**

- The impugned payments were made by the assessee for creating or earning a new source of income outside India by way of establishment of new bank branch or acquisition of bank.

- Section 9 provides that royalty or FTS is deemed to accrue or arise in India if it is payable by a person who is resident, except where it is paid for making or earning any income from any source outside India.
- In the instant case the assessee was contemplating to create a source of income outside India and hence it would fall under the exemptions of section 9(1) (vi) (vii).
- Also the source of Income has not come into existence. But there is nothing in section 9, to show that the source of income should have come into existence so as to be covered under the exception of section 9. There is nothing in section 9 to restrict the same only to an existing source of income.

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### **2. After the change in scheme from "exemption" to "deduction", brought forward unabsorbed loss and depreciation of other 10B units are not liable for set off against the current year's profit of the 10B unit.**

**The Bombay High Court held as under:**

Section 10B of the Act as existing prior to 1st April, 2001 provided for an exemption in respect of profits and gains derived from export by 100% Export Oriented Undertakings and now it provides for deduction of profits and gains derived from 100% Export Oriented Units.

After the change in scheme from "exemption" to "deduction" w.e.f. 01.04.2001, brought forward

unabsorbed loss & depreciation of other 10B units and non-10B units are not liable for set off against the current year's profit of the 10B unit.

The contrary law laid down in Himatasingike Seide Ltd. approved by the Supreme Court, deals with the law pre 01.04.2001 when Section 10A/10B provided for an "exemption" and not a "deduction".

Thus a decision has to be considered in the context of the law as arising for consideration and a change in law would render the decision under the old law inapplicable while considering the amended law.

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### **3. Amounts shown as liabilities in the Balance Sheet cannot be deemed to be cases of "cessation of liability" only because the liabilities are outstanding for several years.**

The AO observed that the assessee's balance sheet for the year under consideration reflected creditors. On being queried in the matter, the assessee submitted that the same are old creditors pertaining to the period when he carried out business in Indore and have been carried forward for the last 7-8 years and not paid so far due to certain dispute with the creditors. The AO however brushing aside the facts stated by the assessee considered the entire creditors balance outstanding as income of the assessee by invoking the provisions of section 41(1) of the Act as cessation of liability for the reasons that the said creditors are old from last 7-8 years and the same have remained unpaid for many years.

However on appeal to the CIT, the assessee reiterated that he was liable to make payment in respect of such

liability as and when the dispute was resolved and prayed that the entire addition to be deleted.

The CIT (Appeals) held that the AO was not justified in unilaterally deciding that the liabilities existing in the balance sheet of the assessee ceased to exist and directed that the entire addition in this account be deleted.

### **On appeal by the department to the tribunal, it held that:**

- The addition u/s 41(1) cannot be sustained since the balance of the creditors appears as outstanding in the assessee's Balance Sheet.
- The fact that the balances were not written back in the assessee's books, but rather stood reflected in the assessee's Balance Sheet clearly establishes that is no cessation of liability.
- The very fact that the assessee reflects these amounts as creditors in his books is an acknowledgement of his liability to these creditors and this automatically extends the period of limitation under section 18 of the Limitation Act.
- Also the AO has to establish with evidence that there has been a cessation of liability with regards to the creditors.

In view of the above the Tribunal was of the opinion that the AO had not brought on record any evidence to establish that there was a cessation of liability and hence dismissed the appeal of the Department

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#### **4. Amendment to section 68 casting onus on assessee and requiring it to explain source of share subscription**

A conjoint reading of proviso to section 68 (Cash credit) and section 56(2) (viib) divulges that where a closely held company receives inter alia, some amount of share premium whose genuineness is not proved by the assessee company or its source etc is not proved by the shareholder to the satisfaction of the AO, then the entire amount including the fair market value of the shares, is chargeable to tax u/s 68 of the Act.

If however, the genuineness of the amount is proved and the shareholder also proves his source, then the hurdle of section 68 stands crossed and the share premium, to the extent stipulated, is chargeable to tax u/s 56(2)(viib) of the Act.

Thus, only when the source of such share premium in the hands of the shareholder is explained to the satisfaction of the AO then only the provisions of section 56(2) (viib) gets triggered.

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#### **5. Department's recalcitrance to release the assessee's seized jewellery, even though it is so small as to constitute "stridhan" and even though no addition was sustained in the assessee's hands, is not "mere inaction" but is one of "deliberate harassment"**

The search of petitioner's premises and property eventually led to the search of his bank locker also. This contained gold jewellery of 398 gms. The assessee relied on the circulars of 1994 and 1985

stating that when such small quantities of jewellery is recovered no follow up action is required and that in any case the jewellery was her "Stridhan".

The respondent counters by saying that though in the first round of litigation the assessee's contentions were accepted and that the AO's order was set aside, fresh de novo (new) proceedings led to addition of greater quantum. It further submitted that till the tax demands are satisfied, the property can be validly retained.

The de novo order did not result in any addition still the respondents cling to another ingenious argument that till the petitioner's husband's tax demand are satisfied, they can retain the jewellery.

#### **The High court held as under:**

- The respondent's rationale or justification is entirely insubstantial. The petitioner says that she was married in mid 1960's and her two daughters were born in 1967. The proceedings were started when she was 70 years old.
- In the circumstances, the further explanation that the jewellery belonged to her and represented accumulation of gifts and also acquired during the subsistence of her marriage is reasonable and logical.
- Thus the high court issued a direction to the respondents to release the jewellery relying upon the decision in case of *Ashok Chaddha v Income Tax Officer* which was as follows:

"We have to keep in mind that the assessee was married for

more than 25-30 years. The jewellery in question is not substantial. The learned counsel for the appellant/ assessee is correct in her submission that it is normal custom for woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of child etc."

In view of the above decision of division Bench of Delhi Court, the Delhi high court was of the view that the respondent's recalcitrance is not mere inaction but one of deliberate harassment.

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**6. An order u/s 153C passed without obtaining the approval of the JCIT u/s 153D is without jurisdiction and void**

The Honourable Supreme Court in the case of M/s Calcutta Knitwear judgement has laid down that for the purpose of section 158BD of the Act recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such person u/s 158BD.

Furthermore the CBDT vide circular no 24/15 has held that as the Supreme Court has held the provisions of section 153C and 158BD as substantially similar, the guidelines laid down with regards to a satisfaction note shall also apply to proceedings u/s 153C, for the purpose of assessment of Income of other than the searched person.

It is further clarified that even if the AO of the searched person and the "other person" is one and the same then also he is required to record the satisfaction

note as has been laid down by the court.

Accordingly, the board hereby directs that pending litigation with regard to recording of satisfaction note u/s 158BD/ 153C should be withdrawn/ not pressed if it does not meet the guidelines laid down by the Apex Court.

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**7. The fact that the assessee has been convicted of an offence does not mean that the application for compounding of the offence is not maintainable.**

The assessee firm consisting of 2 partners paid interest to its depositors without deducting TDS. For this failure complaints were filed against the assessee firm and its partners.

The trial court convicted the assessee firm and one of its partners. Criminal appeals were filed against the said conviction and sentence. The surviving partner of the firm was absconding and he did not appear before the Appellate court and for 15 years the criminal appeals were pending.

Subsequently the assessee filed an application for compounding of offense before the Chief Commissioner of TDS, without obtaining leave from the court. The principal session judge pointed out that offenses were compoundable and hence leave was granted to the Chief Commissioner.

However the said application was rejected by the Chief Commissioner on the ground that the conduct of the assessee as well as the conviction would dis-entitle the assessee for compounding the offence.

**The High Court held as under:**



- In the instant case, the matter has been pending since 1999, and there has been no progress. The Department stated that the Firm was an accused.
- It was held that the respondent can examine the matter afresh without being, in any manner, influenced merely because of the conviction passed against the petitioner in the criminal court.
- In the result the writ petition is allowed and the impugned order is set aside and the matter is remanded to the respondent for fresh consideration.

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

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**DUE DATES CHART FOR THE MONTH OF DECEMBER 2016 (VARIOUS ACTS):**

<b>December 2016</b>						
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 Income Tax - TDS payment	8	9	10 Monthly Excise Return (ER-1)/ ER-2 monthly return by 100% EOU, Quarterly Excise Return by EOU, SSI Units and paying 2% in Form ER-8
11	12	13	14	15 Payment of advance tax instalment for Quarter 3 and Provident fund payment	16	17
18	19	20	21 MVAT Payment, ESIC Payment, Payment and filing of quarterly/ monthly MVAT Return	22	23	24
25	26	27	28	29	30 Profession 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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