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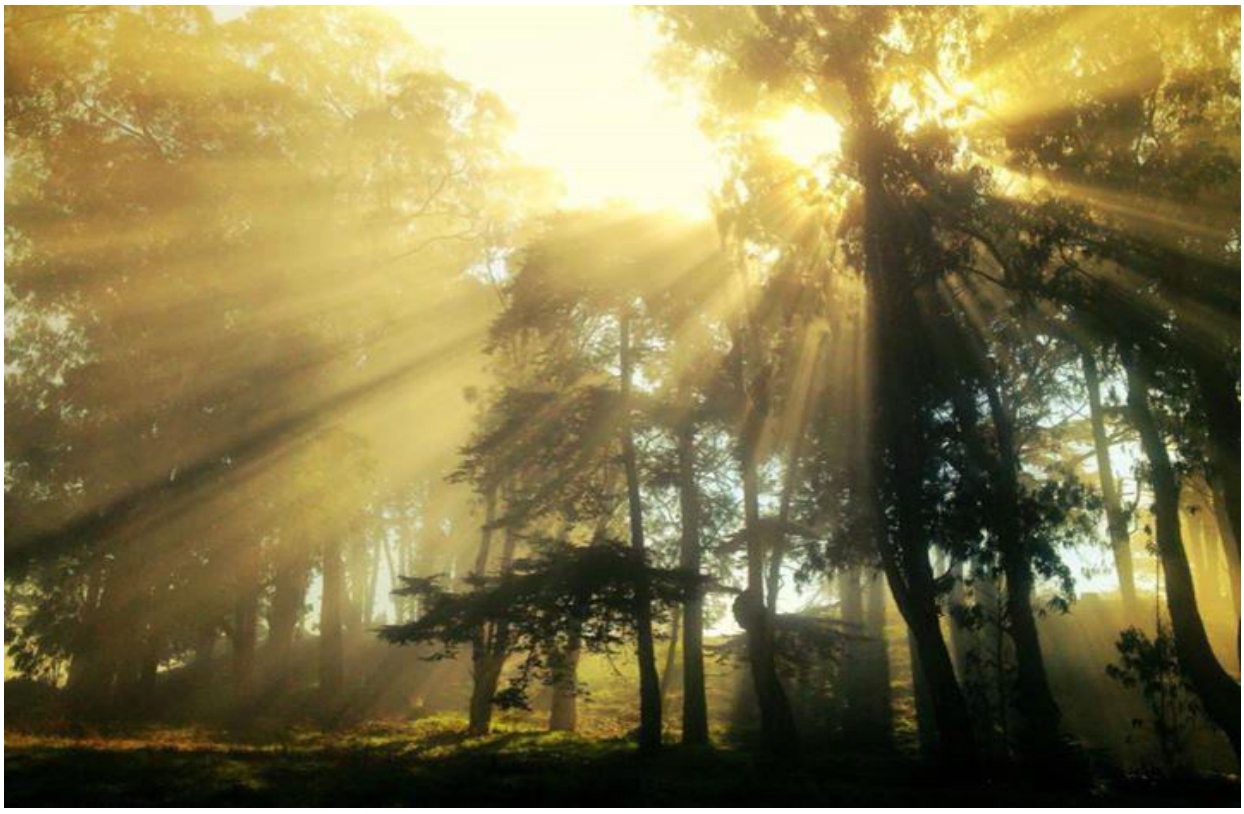

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RESERVE BANK OF INDIA

Prohibition on Indian Party from making direct investment in countries identified by the Financial Action Task Force (FATF) as Non Co-operative countries and territories

At present, there is no restriction on an Indian Party with regard to the countries, where it can undertake Overseas Direct Investment.

In order to align, the instructions with the objectives of FATF, on a review, it has been decided to prohibit an Indian Party from making direct investment in an overseas entity located in the countries identified by the FATF as "non co-operative countries and territories" as per list available on FATF website or as notified by RBI from time to time.

Notification no RBI/2016-17/216 dated 25 January, 2017

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SERVICE TAX

Service Tax (Second amendment) Rules, 2017

The Ministry of Finance has made following amendment to the Service Tax Rules 1994.

In case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assessee online recipient, the service tax payable for the month of December, 2016 and January, 2017, shall be paid to the credit of the Central Government by 6th March, 2017.

These rules shall be called Service Tax (Second amendment) Rules, 2017. They shall come into force from the date of publication in the official gazette.

Notification no 06/2017-Service Tax dated 30 January, 2017

Amendment to the Mega Exemption Notification

The Ministry of Finance has amended entry 9 to the mega exemption notification so as to exempt from Service tax the service provided by business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch.

Notification no 01/2017-Service Tax dated 12 January, 2017

Withdrawal of exemption from service tax on services by way of transportation of goods by a vessel

The Ministry of Finance has added a proviso to entry 34 in the mega exemption notification with regard to the Services received from a provider of service located in a non- taxable territory.

Pursuant to such an amendment now this exemption shall not apply to services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

This shall be effective from 22nd of January, 2017

Notification no 01/2017-Service Tax dated 12 January, 2017

Withdrawal of exemption from service tax on online information and database access or retrieval services provided by a person located in a non-taxable territory to person specified in clause (a) and clause (b) of entry 34

Entry 34 exempts from Service Tax the services provided by a person in a non-taxable territory and received by a specified person.

Pursuant to this amendment now online information and database access or retrieval services provided by a person located in a non- taxable territory to:

- 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 and
- an entity registered under section 12AA of the Income tax Act, 1961 for the purposes of providing charitable activities,

shall be taxable.

This is effective from 22nd of January, 2017

Notification no 01/2017-Service Tax dated 12 January, 2017 and 05/2017-Service Tax dated 30 January, 2017

Amendment to the definition of Aggregator under Service Tax Rules, 1994

The Ministry of Finance has added a proviso to the definition of Aggregator under Service Tax Rules, 1994.

With this proviso now an aggregator shall not include a person who enables a

potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.

This is subject to the following conditions:

- The person providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes should have a service tax registration under Service Tax Rules and
- Whole of the consideration for services provided by such service provider is received directly by such service provider and no amount, which forms part of the consideration of services provided is received by the aggregator directly from either recipient of the service or his representative.

This is effective from 22nd of January, 2017

Notification no 02/2017-Service Tax dated 12 January, 2017

Person liable for paying Service Tax on services by way of transportation of goods by a vessel outside India upto customs station of clearance in India

The Ministry of Finance has inserted an item EEC after item EEB under clause d of the Service Tax Rules,1994 so as to specify the person liable to pay Service Tax in respect of Service by way of transportation of goods by a vessel outside India upto customs station of clearance in India.

Pursuant to such an amendment now the person in India who complies with the section 29 (Arrival of vessels and aircrafts in India), 30 (Delivery of import manifest or import report) and 38 (Power to require production of documents and ask questions) read with Section 148 (Liability of agent appointed by the person in charge of a conveyance) of the Customs Act, 1962 shall be the person liable to pay Service Tax.

This is effective from 22nd of January, 2017

Notification no 02/2017-Service Tax dated 12 January, 2017

Rationalization of Abatement in case of services provided by tour operators

Earlier tour operators were given two types of abatements under Service Tax Laws. The rate of abatement was 90% if the tour operator was providing services solely of arranging or booking accommodation for any person in relation to a tour and 70% in other cases.

However now all types of services provided by a tour operator shall be liable to an abatement rate of 40% subject to the following conditions:

- CENVAT credit on inputs and capital goods used for providing the taxable service has not been taken under the CENVAT Credit Rules, 2004 and
- The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation.
- This is effective from 22nd of January, 2017

Notification no 04/2017-Service Tax dated 12 January, 2017

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INCOME TAX

Clarification on General Anti-Avoidance Rule (GAAR)

The Central Board of Direct Taxes has issued clarifications on the General Anti-Avoidance Rules (GAAR)
The Provisions of Chapter X-A of the Income Tax Act, 1961 relating to GAAR shall be effective from 1st April, 2017

Circular No 7 of 2017 dated 27th January, 2017

Manner of deduction of Tax from Salaries under section 192

The Central Board of Direct Taxes has issued a Circular in which it has explained in a comprehensive manner the obligation of the taxpayers with regards to deduction of tax at source from salaries under section 192 of the Income Tax Act, 1961 for the financial year 2016-17

Circular no 01/2017 dated 2nd January, 2017

Guiding principles for the determination of Place of Effective Management (POEM) of a company

Prior to Finance Act 2015, a company was said to be a resident in India in any previous year if is an Indian Company or if during that year the control and management of its affairs is situated wholly in India.

This allowed tax avoidance opportunities for companies to artificially escape the residential status under these provisions by shifting insignificant or isolated events related with control and management outside India.

To address these concerns, the existing provisions of section 6(3) of the Act were amended vide Finance Act, 2015, with effect from 1st April, 2016.

It provided that a company is said to be resident in India in any previous year, if it is an Indian company or its place of effective management in that year is in India.

The Central Board of Direct Taxes now has issued guiding principles for determination of POEM of a Company.

Circular no 06/2017 dated 24th January, 2017

Income Tax Department launches Operation Clean Money

Income Tax Department (ITD) has initiated Operation Clean Money. Initial phase of the operation involves e-verification of large cash deposits made during 9th November, 2016 to 30th December, 2016.

Data analytics has been used for comparing the demonetisation data with information in ITD databases. In the first batch, around 18 lakh persons have been identified in whose case, cash transactions do not appear to be in line with the tax payer's profile.

ITD has enabled online verification of these transactions to reduce compliance cost for the taxpayers while optimising its resources. The information in respect of these cases is being made available in the e-filing window of the PAN holder (after log in) at the Income tax portal The PAN holder can view the information using the link "Cash Transactions 2016" under "Compliance" section of the portal. The taxpayer will be able to submit online explanation

without any need to visit Income Tax office.

Email and SMS will also be sent to the tax payers for submitting online response on the e-filing portal. Taxpayers who are not yet registered should register by clicking on the Register Yourself Link. Registered taxpayers should verify and update their email addresses and mobile numbers on the e-filing portal to receive electronic communication.

In case explanation of source of cash is found justified, the verification will be closed without any need to visit Income Tax Office. The verification will also be closed if the cash deposit is declared under Pradhan Mantri Garib Kalyan Yojna (PMGKY).

The taxpayers covered in this phase should submit their response on the portal within 10 days in order to avoid any notice and enforcement actions from the Department.

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ECONOMICS

Scheme for Promoting Registration of Employers and Employees

In order to extend social security to the entire workforce in the country, the ESI Corporation has launched a special drive titled as "SPREE"- **S**cheme for **P**romoting **R**egistration of **E**mployers and **E**mployees. It will remain Open from 20th December,2016 to 31st March, 2017 to encourage registration of all establishments/ Factories and employees coverable under the ESI Act.

The Features of **SPREE** are:

- The employers registering during the period will be treated as covered from the date of registration or as declared by them.
- The newly registered employees shall be treated as covered from the date of their registration.
- SPREE will not have any bearing on actions taken/ required under ESI Act, if any, prior to 20th December, 2016.

Employees Enrollment Campaign 2017

The Central Government has introduced a special provision in respect of Employees' Enrolment

Campaign, 2017 vide notification dated 30th December, 2016 to be called as Employees' Provident Funds (Seventh Amendment) Scheme, 2016.

This shall be effective from 1st January, 2017 to 31st March, 2017. It is an opportunity for the employers to voluntarily come forward and declare all such employees who were entitled for PF membership during the period 1st April, 2009 to 31st December, 2016 but could not be enrolled for any reason.

The employer shall within 15 days of declaration remit the employers as well as employees contribution deducted from wages of these employees along with interest and damages. Employer is not liable to pay anything if he had not deducted any contribution in respect of such employees.

Under the campaign only such an employee can be declared for membership:

- Who is alive,
- Who furnishes form 11 to the employer and
- Who was required to become member of EPF on or after 1st April, 2009 and before 1st January, 2017.

The incentives available to the employer are:

- The employees' share of contribution if declared by the employer as not deducted shall stand waived.
- The damages to be paid by the employer in respect of the employees for whom declaration has been made shall be @ Rs.1 per annum and interest shall be @ 12% per annum
- No administration charges shall be collected from the employer in respect of contribution made under the declaration.

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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.	Supreme Court	Section 2(22)	Loan to HUF is deemed dividend when shareholder-Karta has substantial interest in HUF	Gopal And Sons (HUF) V Commissioner of Income Tax
2.	Kolkata Tribunal	Section 9(1)(vii) and Section 195	Fees paid with respect to a 'contract of work' does not constitute "fees for technical services" and consequently the assessee is not liable to deduct TDS u/s 195	ITO vs. Emami Paper Mills Ltd
3.	Karnataka Tribunal	Section 10(38)	MAT Co. entitled to indexation benefit for computing exempted capital gains under Sec. 10(38)	Karnataka State Industrial Infrastructure Development Corporation Ltd. V DCIT Bengaluru
4.	Kolkata Tribunal	Section 10(38), Section 68	Long-term capital gains claimed exempt u/s 10(38) cannot be treated as bogus unexplained income if the paper work is in order.	Surya Prakash Toshniwal HUF V Income Tax Officer
5.	Bangalore Tribunal	Section 23(1)(c)	Benefit of vacancy allowance would be available even when house is under renovation	S.M. Chandrashekar V. Income-tax Officer
6.	Karnataka High Court	Section 194J read with section 40(a)(ia)	Sec. 194J not applicable in case of transmission of electricity	Assistant Commissioner of Income-tax V Gulbarga Electricity Supply Co. Ltd
7.	Delhi Tribunal	Section 251 read with	Tax collection isn't valid if made from 'tax illiterate person' due to ignorance	Padam Lal Dua V Income Tax

		rule 46A	of law	Officer

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DISCUSSION ON JUDGEMENTS – INCOME TAX

1. Loan to HUF is deemed dividend when shareholder-Karta has substantial interest in HUF

The assessee-HUF had received certain advances from a company in which the assessee had a total shareholding of 37.12 percent of the total shareholding of the company.

The assessing officer concluded that the assessee was both the registered shareholder of the company and also the beneficial owner of the shares as it was holding more than 10 per cent of the voting power. On this basis the amount of advance was included in the income of the HUF as "deemed dividend".

On appeal the assessee contended that being a HUF it could neither be the beneficial shareholder nor the registered shareholder of the company. Also the company had issued shares in the name of the Karta of the HF and not the HUF and hence the provisions of section 2(22) (e) could not be attracted.

On appeal to the Supreme Court it held that:

- In the instant case the payment in question is made to the assessee which is a HUF. Shares in the company are held by Karta of HUF who is undoubtedly the member of HUF. He also has substantial interest in the HUF, being its Karta. It was not disputed that he was entitled to not less than 20 per cent of the income of HUF. In view of the aforesaid position, provisions of section 2(22)(e) get attracted and it is not even necessary to determine as to whether HUF can, in law, be beneficial shareholder or registered shareholder in a company.
- It is also found as a fact, from the audited annual return of the company filed with ROC that the money towards shareholding was given by the HUF. Though, the share certificates were issued in the name of the Karta, Gopal

Kumar Sanei, but in the annual returns, it is the HUF which was shown as registered and beneficial shareholder. In any case, it cannot be doubted that it is the beneficial shareholder.

- Even if it is presumed that the HUF is not the registered shareholder, as per the provisions of section 2(22) (e), once the payment is received by the HUF and shareholder Karta is the member of the HUF and he has a substantial interest in the HUF, the payment made to the HUF shall constitute deemed dividend within the meaning section 2(22) (e).

Hence in view of above the Supreme Court held in favour of the revenue.

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2. Fees paid with respect to a 'contract of work' does not constitute "fees for technical services" and consequently the assessee is not liable to deduct TDS u/s 195

The assessee company had entered into a contract with a company namely POL-INOWEX SA of Poland for dismantling and sea-worthy packing of paper mill machinery, and stuffing of all items into containers and loading the containers on trucks which was acquired by the assessee company from HolmensBruk AB, a company from Sweden.

The assessee remitted some amount to a non-resident company of Poland without deducting taxes. A show cause notice u/s 201 of the Income Tax Act, 1961 was issued to the assessee company/deductor. In response, the deductor company submitted written explanations and copies of different documents in support of its claim.

The Assessing Officer held that the payments made to the non-residents for dismantling and sea worthy packing of paper mill machinery are payments made in the nature of "fees for technical services" and is taxable under the Income Tax Act 1961, in view of the specific provisions of section 5(2) (b) read with section 9(1) (vii) (c) of the Income Tax Act 1961, as well as the provisions laid down under Article 13-14 of the DTAA between India and Poland.

On appeal to CIT (Appeals) it reversed the addition made by the AO.

On appeal to the Tribunal it held that:

- The assessee had an agreement for dismantling plant and machinery which do not require any technical knowledge and

specific skill. The agreement is a part and parcel of purchase of plant and machinery.

- Explanation 2 of Section 9(1) (vii) of the Act provides that "fees for technical services" does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries". The term 'like project' includes dismantling. He has also pointed out that the assembly means dismantling also.

- There is a difference between 'contract of work' and 'contract of service'. In the instant case the agreement is for 'contract of work' which does not require any technical knowledge and specific skill. Also if the assessee hires a person outside India does not mean that he is paying fee for technical services.

Considering the factual position and precedents the Tribunal was of the view that the present case does not fall in the ambit of fees for technical services and the assessee company was not required to deduct TDS. Hence it dismissed the appeal of the Department.

3. MAT Co. entitled to indexation benefit for computing exempted capital gains under Sec. 10(38)

The assessee was a State Government undertaking incorporated under the provisions of the Companies Act, 1956. It was engaged in the business of rendering financial assistance to set up industries in the State. The assessee-company filed its return declaring income of Rs. 34.49 Crores under the provisions of section 115JB.

In the course of assessment the Assessing Officer denied the claim of the assessee-company for deduction of the indexed cost of acquisition while computing capital gain exempt under the provisions section 10(38).

The Commissioner of Appeals (CIT) upheld the action of the assessing Officer.

On appeal to the Tribunal it held that:

- Section 10(38) provides that any income arising from transfer of a long-term capital asset (LTCG), being equity share in a company or a unit of an equity oriented fund shall be exempt. Therefore, the issue revolves around interpretation of the term 'any income' as used in section 10(38)

from the transfer of long term capital asset.

- Provisions of section 48 provide for method of computation of income chargeable under long-term capital gains. It was provided that LTCG shall be computed by deducting from full value of consideration received as a result of long term capital asset, expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset and the cost of any improvement thereto.

- It is further provided that in case of LTCG arising from transfer of long-term capital asset, cost of acquisition shall be substituted by indexed cost of acquisition.

- Therefore, the term 'any income', used in section 10(38) refers to only the amount of LTCG computed under the provisions of section 48 which means that the benefit of indexation of cost of acquisition was to be given to the assessee while computing long term capital gain for the purpose of section 115JB.

Hence in view of above the Tribunal held in favour of the assessee.

4. Long-term capital gains claimed exempt u/s 10(38) cannot be treated as bogus unexplained income if the paper work is in order.

The assessee had purchased 5000 shares of M/s Rohon Financial and Securities Ltd. (RFSL) for Rupees 50,250/- on 26.12.2003. These were sold to M/s Ahilya Commercial Pvt. Ltd. (ACPL) for Rupees 14.97 lakhs on 14.01.2005 resulting in a capital gain of Rupees 14.46 lakhs.

The AO on verification of the transactions from the online portal of SEBI revealed that ACPL was directed by SEBI not to buy, sale or deal in any securities in any manner. Also ACPL had not filed financial statements before SEBI for the year ended 31.03.2005.

Thus AO held the transaction as Bogus and accordingly treated the same as income of assessee from undisclosed source.

On appeal to CIT (Appeals) it disregarded the claim of assessee and upheld the order of AO.

On appeal to the Tribunal it held that:

- Admittedly the shares were sold by the assessee after paying the Security Transaction Tax (STT). Similarly the purchase price of the shares and the sale price of

the shares were reflecting on the Calcutta stock exchange. It is also not in dispute that the purchase and sale of the shares were routed through account payee cheques. The assessee in support of his claim had also produced the contract notes for the purchase and sale of the shares.

- On detailed analysis of the facts we find that the lower authorities have not brought on record any concrete evidence for disallowing the long term capital gain of the assessee.

- The AO should have issued notices and summons to M/s RFSL and ACPL under section 133(6) and 131 of the Act for the production of the necessary financial information before rejecting the claim of the assessee. In case ACPL has not filed the financial statements with the stock exchange then the assessee for the fault of ACPL cannot be held guilty under the income tax proceedings. The assessee had made the transactions for the sale and purchase of the shares through a valid stock broker who was in existence at the relevant time with the stock exchange and this fact has not been doubted by the lower authorities.

Hence in view of above Tribunal held in favour of the assessee stating that the lower authorities had not brought on records sufficient reasons for disallowance of the claim.

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5. Benefit of vacancy allowance would be available even when house is under renovation

The Assessing Officer proposed to assess the annual letting value of the flat. The assessee has submitted that flats were vacant and therefore even if Annual Letting Value (ALV) has to be assessed, the vacancy allowance should be allowed. The Assessing Officer did not accept the contention of the assessee and assessed the ALP.

The assessee challenged the action of the Assessing Officer before the CIT (Appeals). The CIT (Appeals) confirmed the addition made by the Assessing Officer. The aggrieved-assessee filed the instant appeal.

On appeal to the Tribunal it held that:

- The assessee has explained that the house was under renovation and therefore, it could not be let out during the year under

consideration. Further it was not intentionally kept vacant by the assessee. Thus, vacancy of the house was beyond the control of the assessee and, therefore, the benefit of vacancy is available to the assessee as per the provisions of section 23(1) (c).

- The process of letting out may take some time in searching the suitable tenant and for settling the terms and conditions of the letting out. Therefore, even if it is presumed that the house is ready for occupation if it is not intentionally kept vacant by the assessee then it cannot be presumed that the assessee has deliberately not let out the house during the year under consideration.

Hence in view of above the Tribunal held in favour of the assessee and deleted the addition made by the Assessing Officer.

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6. Sec. 194J not applicable in case of transmission of electricity

The assessee-company was engaged in the business of buying and selling of electricity. The power from the generation point to the customers was transmitted through the transmission network of KPTCL.

The Revenue found that there were instances where assessee had made payment of transmission charges to KPTCL and ('SLDC'), an arm of KPTCL, without any TDS thereon.

The revenue held that payment for using the transmission lines for transmission of power generated was a payment for technical services. The assessment was completed wherein the income of the assessee was determined at Rs. 69.76 crore and made disallowances under section 40(a) (ia).

On an appeal made to CIT (Appeals) it set aside the disallowances. On further appeal the Tribunal confirmed the order of the CIT (Appeals).

On appeal to the High Court it held that:

- Under an agreement, KPTCL had agreed with the assessee to provide its transmission network for the purpose of carrying electricity to its users. Assessee has agreed to pay transmission charges on a monthly basis in terms of Article 8 of the agreement. Both parties have agreed to comply with the provisions of the State Grid Code

and Regulations and Rules issued by KERC from time to time.

- There is no mention of any offer with regard to any technical services by the KPTCL. Plain and simple intention of the parties to the agreement is that the assessee was desirous of using the transmission network belonging to the KPTCL.
- Admittedly, KPTCL is a State owned Company and the only power transmitting agency. It has installed and developed its own infrastructure. Assessee is also a State owned electricity distribution company. The only service which the assessee has availed from the KPTCL is "transmission of power" on payment of charges fixed by KERC.
- No material was placed by the Revenue to substantiate its contention that assessee had availed of any technical services. There was neither transfer of any technology nor any service attributable to a technical service offered by the KPTCL.

Hence in view of above the High Court dismissed the appeal of revenue stating that the transmission charges would not attract TDS under Section 194J.

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7. Tax collection isn't valid if made from 'tax illiterate person' due to ignorance of law

The assessee had filed a return which was picked up for scrutiny and was required to explain the cash deposited in its saving account maintained with ING Vyasa Bank Ltd. Since no explanation to this was afforded, addition of the said deposits was made by the Assessing Officer in the hands of the assessee.

On appeal, the assessee relied upon the written submissions and the evidences filed. However, since no application seeking admission of fresh evidences under rule 46A was filed by the assessee, the evidences were considered as not admissible by the Commissioner (Appeals) and the additions were sustained.

On appeal, the assessee submitted that he remained unrepresented before the Assessing Officer as well as the Commissioner (Appeals) due to his wife's illness.

On appeal to the Tribunal it held that:

- The prayer that the evidences could not be placed before the Assessing Officer because of pre-occupation of the assessee with illness of his spouse is a consistent fact on record.
- A marginal taxpayer battling with unforeseen and unfortunate circumstances of the illness of a life partner and further disadvantaged by lack of proper legal advice, should have been assisted instead of being trampled heartlessly in the name of technicalities.
- Since in the present case due to his wife's illness the assessee was prevented by sufficient cause from producing the evidences in support of its claim, it would be appropriate and in the interests of justice that the impugned order is set aside and the issue is restored back to the Commissioner (Appeals) with a direction to permit the assessee to produce the evidences in support of its claim.
- The Commissioner (Appeals) after confronting the same to the Assessing Officer and directing the Assessing Officer to file a remand report shall confront the same to the assessee and thereafter pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

Hence in view of above the Tribunal held in favour of the assessee.

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 FEBRUARY 2017 (VARIOUS ACTS):

February 2017

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 Due date for submission of VAT Audit report	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 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 Profession Tax Payment,				

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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