

# HARBINGER™

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**June 2017**



## **B D Jokhakar & Co.**

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## **GOODS AND SERVICE TAX (GST)**

### **Declaration of Rates and Cess by GST Council**

The GST Council has broadly approved the GST rates for goods at nil rate, 5%, 12%, 18% and 28% to be levied on certain goods. The information is being uploaded immediately after the GST Council's decision and it will be subject to further vetting during which the list may undergo some changes

GST rates for certain goods like textile, footwear, biris, precious metals, etc. are yet to be decided by the GST Council.

*GST Council Meeting held on 18th May, 2017*

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### **Government starts Twitter handle to answer queries on GST**

The Union government started a new Twitter handle to answer industry queries related to the GST proposed to be implemented from July 1.

The Department of Revenue has opened a new Twitter Handle @askGST\_GoI to invite queries from all taxpayers on GST. All taxpayers and other stakeholders are welcome to

direct their queries related to GST on the said twitter handle for early resolution and clarification.

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## **SERVICE TAX**

### **Exemption from Service Tax - Life Insurance services under 'Pradhan Mantri Vaya Vandana Yojana'.**

The Central Government has made further amendments to Notification no 25/2012- Service Tax (Mega Exemption Notification) by inserting entry 26A so as to exempt Life Insurance services under Pradhan Mantri Vaya Vandana Yojana from Service Tax.

*Notification no 17/2017 dated May 4, 2017*

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## **ECONOMICS**

### **Economy class air travel set to become cheaper from 1<sup>st</sup> July**

Economy class air travel will become cheaper with tax rate fixed at 5% against the existing 6%, under the upcoming goods and services tax (GST) regime from 1 July, 2017.

However, for those travelling in business class, tickets will become dearer as the tax will go up from 9% to 12%.

A major reason for keeping GST on passenger travel low is because airlines cannot claim credit on aviation turbine fuel under the GST regime.

Currently, airlines can claim the Cenvat Credit on the central excise duty for fuel. They will now lose it as, petroleum products including aviation turbine fuel (ATF) are now outside the purview of GST.

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## India retains world's highest FDI recipient crown

India retained its top rank of being the world's premier green field FDI investment destination for the second consecutive year, attracting \$62.3 billion in 2016, says a report.

India has remained ahead of China and the US as far as FDI inflows were concerned in the last year, said the "FDI Report 2017", compiled by FDI intelligence, a division of the Financial Times. FDI by capital investment saw an increase of 2% to \$62.3 billion in 809 projects during 2016 in India.

China has overtaken the US to become the second-biggest country for FDI by capital investment, recording \$59 billion of announced FDI, compared with \$48 billion-worth in the US.

*www.livemint.com dated 25th May, 2017*

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## **INCOME TAX**

### Quoting of Aadhaar not mandatory for Non-residents and Super Senior Citizen

The Central Government has notified that the provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is:

- residing in the States of Assam, Jammu and Kashmir and Meghalaya;
- a non-resident as per the Income-tax Act, 1961;
- of the age of eighty years or more at any time during the previous year;
- not a citizen of India.

This shall come into force with effect from 1<sup>st</sup> of July, 2017.

Notification no.37/2017 dated 11<sup>th</sup> May, 2017

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## Tax relief to the non-resident seafarers working on the foreign-going ships

In the recent past, the income-tax tribunals had ruled that the income of Non-resident seafarers, which is directly received into their NRE account maintained in India shall be taxable.

The Central Board of Direct Taxes has clarified that the salary accrued to a Non-resident seafarer for the services rendered outside India on a foreign-going ship (with Indian or Foreign flag) shall not be included in the total income merely because the said salary has been credited in the Non-Resident External (NRE) account maintained with an Indian bank by the seafarer."

Hence now the Non-resident seafarers working on foreign going ships (Indian or Foreign flags) can receive their wages/salary directly into their NRE account maintained in India without the same being subjected to Income Tax.

Circular no 17/2017 dated 26<sup>th</sup> April, 2017

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## The Income Tax Department identified over 400 Benami transactions and attached Rupees 600 Crore properties

The Income Tax Department today said it has identified over 400 benami transactions and attached properties worth Rs 600 crore in about 240 cases.

The department started initiating actions under the new Benami Transactions (Prohibition) Amendment Act, 2016 from November 1 last year. The law provides for a maximum punishment of seven years in jail and a fine.

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## Lease rent from letting out buildings/ developed space along with other amenities in an Industrial Park/SEZ is to be treated as Business Income

It was observed that there were several litigations as to whether the income arising from letting out premises/ developed space along with other amenities in an Industrial Park/SEZ is to be charged to 'Profits or Gains of Business' or 'Income from House Property'.

This matter was considered by the Board where it considered the fact that, Income from Industrial Parks/SEZ established under various schemes framed and notified under section 80IA(4)(iii) of the Income Tax Act, 1961 is liable to be treated as 'Income from Business' provided the conditions prescribed under the scheme are met.

In a Judgment of High Court in the case of CIT V Information Technology Park Ltd. dated 30.04.2014, it was held that since the assessee company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee

from letting out buildings along with other amenities in a software technology park would be chargeable to Tax under the head 'Income from Business' and not under the head 'Income from House Property'

This Judgment is accepted by the Board and hence now it is a settled position of law that in case of an undertaking which develops and operates or maintains and operates an Industrial Park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/ developed space along with other facilities in an Industrial Park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

Thus henceforth, appeals may not be filed on the above settled issue and those already filed may be withdrawn.

*Circular no.16/2017 dated 25<sup>th</sup> April, 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.	Mumbai Tribunal	Section 54F	U/s 161, a trust which is for the sole benefit of an individual, has to be assessed as an "individual" and not as an "AOP". Consequently, a trust is eligible for s. 54F deduction	Balgopal Trust vs. ACIT
2.	Rajasthan High Court	Section 69C	In view of the Supreme Court's order in Vijay Proteins Ltd vs. CIT whereby the verdicts of the Gujarat High Court in Sanjay Oilcake Industries vs. CIT 316 ITR 274 (Guj) and N.K. Industries Ltd vs. Dy. CIT were confirmed, the AO has to accept the law and verify whether the transaction is genuine or not on the basis of the aforesaid three judgments	CIT vs. M/s Carpet Mahal
3.	Mumbai Tribunal	Section 271(1)(c) and Section 274	'Furnishing of inaccurate particulars of income' and 'concealment of particulars of income' have different connotations. The failure by the AO to specify in the s. 274 notice which of the two charges is applicable reflects non-application of mind and is in breach of natural justice as it deprives the assessee of an opportunity to contest. The penalty proceedings have to be quashed	Jehangir HC Jehangir vs. ACIT
4.	Mumbai Tribunal	Section 69C	(i) The AO is not entitled to treat the purchases as bogus merely on the basis of information from the sales-tax dept. He has to make independent inquiry, (ii) Fact that the vendors did not respond to Section 133(6) notices & the assessee did not produce them is not sufficient if the documentation is in order and payments are through banking channels	Geolife Organics vs. ACIT
5.	Delhi High Court	Section 68	Fact that the investigation wing's report alleged that the assessee was beneficiary to bogus transactions and that the identity of shareholders, genuineness etc was suspect is not sufficient. The AO is bound to conduct	CIT vs. Laxman Industrial Resources

			scrutiny of documents produced by the assessee and cannot rest content by placing reliance on the report of the investigation wing	Pvt.Ltd
6.	Mumbai Tribunal	Section 56(2)(vi)	An HUF is a "group of relatives". Consequently, a gift received from a HUF by a member of the HUF is exempt from tax as provided in the Explanation to s. 56(2)(vi)	DCIT vs. Ateev V. Gala

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## Discussion on Judgments – Income Tax



### **1. U/s 161, a trust which is for the sole benefit of an individual, has to be assessed as an “individual” and not as an “AOP”. Consequently, a trust is eligible for s. 54F deduction**

The assessee trust was for the sole benefit of the individual. The question was whether this trust would be eligible for Section 54F benefit when its status is that of A.O.P since as per section 54F the benefits of this section were available only to individual or Hindu Undivided Family (HUF).

The High Court in the case of Mrs. Amy F. Cama vs. CIT had elaborately considered the same issue where the Jurisdictional High Court was dealing with assessee trust’s claim for deduction for purchase price of the flat from capital gain as per Section 54 of the Act. The Hon’ble jurisdictional High Court has held that the assessee trust was entitled for the same.

The Hon’ble Court had expounded that Section 161 of the I.T Act, 1961, makes a representative assessee subject to the same duties, responsibilities and liabilities as if the income was received by him beneficially. The fiction is created as it was never the object or intention of the Act to charge tax upon persons other than the beneficial owner of the income. Whatever benefits the beneficiary will get in the said assessment must be made available to the trustee while assessing him under section 161.

This decision of the Hon’ble high Court also applies in the present case. As per the decision of the High Court, the IT Act doesn’t intend to charge tax upon persons other than the beneficial owner of the income. Whatever benefits the beneficiary will get in a particular assessment must be made available to the trustee while assessing him u/s. 161.

### **The Tribunal held that:**

- In the present case the issue is benefit of investment made in purchase of flat for deduction u/s. 54F of the Act by the trustees and the sole beneficiary of the trust is the individual Ms. Vidushi Somani. Hence the ratio emanating from the above jurisdictional High court decision

is squarely applicable on the facts of the case.

- Also Hon'ble Gujarat High court in the case of Niti Trust and Ors vs CIT. has similarly granted benefit of assessment of a trust in the capacity of a individual.
- From the above cases it is clear that by virtue of Section 161 of the I.T. Act, the representative assessee is subject to same duties, responsibilities and liabilities as if the income was received by him as beneficiary. Whatever benefits the beneficiary will get in the said assessment will flow to the trustee while assessing him u/s 161.
- Also it is clear that only by the virtue of section 161 that the trust has been assessed for income that is for benefit of sole beneficiary.

Thus in view of above the Tribunal held that the assessee was entitled to deduction u/s 54F and it cannot be said that since it is an AOP and not an individual or HUF the said exemption should be denied.

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**2. In view of the Supreme Court's order in Vijay Proteins Ltd vs. CIT whereby the verdicts of the Gujarat High Court in Sanjay Oilcake Industries vs. CIT 316 ITR 274 (Guj) and N.K. Industries Ltd vs. Dy. CIT were confirmed, the AO has to accept the law and verify whether the transaction is genuine or not on the basis of the aforesaid three judgments**

The Tribunal had deleted the addition made by the Assessing Officer with regard to Bogus Purchases allegedly made by the assessee.

The revenue filed an appeal before the High Court.

**The High Court held that:**

- Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal decided on 6<sup>th</sup> April, 2015 whereby the Supreme Court has dismissed the SLP and confirmed the order dated 9<sup>th</sup> December, 2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003

decided on 20<sup>th</sup> June, 2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.

Thus in view of above the case was remitted back to the Assessing Officer for deciding afresh on the factual matrix. The authority will accept the law but the transaction whether it is genuine or not shall be verified by the Assessing Officer on the basis of aforesaid three judgments.

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**3. 'Furnishing of inaccurate particulars of income' and 'concealment of particulars of income' have different connotations. The failure by the AO to specify in the s. 274 notice which of the two charges is applicable reflects non-application of mind and is in breach of natural justice as it deprives the assessee of an opportunity to contest. The penalty proceedings have to be quashed**

A perusal of the quantum assessment orders revealed that penalty had been initiated for furnishing of inaccurate particulars of income and concealment of particulars of income which as per the legal propositions, are different connotations and carry different meanings.

The same also becomes clear from the language of show-cause notice which states that the assessee has concealed the particulars of income or furnished inaccurate particulars of income. Finally, the penalty has been levied for filing of inaccurate particulars of income and hence concealed particulars of income which shows inconsistent thinking on the part of AO. Undisputedly, the AO was required to specify the exact charge for which the assessee was being penalized which he has failed to do and the same had resulted into taking away assessee's valuable right of contesting the same and thereby violated the principles of natural justice.

The SLP (Special Leave Petition) filed by the revenue in CIT Vs. SSA's Emerald Meadows had been dismissed by the Apex Court, being devoid of any merits. Even in the case of CIT vs. Smt. Kaushalya, the Hon'ble jurisdictional High Court observed that the notice issued under Section 274 must reveal application of mind by the Assessing Officer and the assessee must be aware of the exact charge on which he had to file his explanation. It was further observed that vagueness and ambiguity in the notice deprives the assessee of reasonable opportunity to contest the same.

Thus in view of the principles laid down in the judicial precedents discussed above it was concluded that the penalty proceedings stood vitiated for want of principles of natural justice and hence liable to be quashed.

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**4. (i) The AO is not entitled to treat the purchases as bogus merely on the basis of information from the sales-tax dept. He has to make independent inquiry (ii) Fact that the vendors did not respond to s. 133(6) notices & the assessee did not produce them is not sufficient if the documentation is in order and payments are through banking channels**

The Assessing Officer had issued notice u/s 133(6) on the basis of information obtained from the Sales Tax Department. On the assessee being failed to produce the concerned parties, the assessing officer, primarily relying on the information obtained from the Sales Tax Department held the purchases to be bogus and added 12.5% profit in addition to the declared profit.

**On an appeal being made to the Tribunal, it held that:**

- During assessment proceedings the assessee had produced confirmed ledger copies of

concerned parties, bank account statement, purchase bills, delivery challans, etc., to prove the genuineness of the purchases. It is also a fact on record that the Assessing Officer has not doubted the sales effected by the assessee.

- Thus, it is logical to conclude that without corresponding purchases being effected the assessee could not have made the sales. Moreover, the Assessing Officer has not brought any material on record to conclusively establish the fact that purchases are bogus. Merely relying upon the information from the Sales Tax Department or the fact that parties were not produced the AO could not have treated the purchases as bogus and made addition.
- If the AO had any doubt with regards to purchase it was on his part to make further investigations and enquiries to ascertain the genuineness of the transactions. The assessee had brought on record documentary evidence to prove genuineness of the purchases made which are not found to be fabricated or non-genuine.

- When the payment to the concerned parties are through proper banking channel and there is no evidence before the Assessing Officer that the payments made were again routed back to the assessee, the addition made by estimating further profit of 12.5% earned by the assessee is not sustainable in law and facts.

Thus keeping in view the totality of the facts and circumstances of the case, the tribunal restricted the addition to 2% of such purchases.

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**5. Fact that the investigation wing's report alleged that the assessee was beneficiary to bogus transactions and that the identity of shareholders' genuineness etc was suspect is not sufficient. The AO is bound to conduct scrutiny of documents produced by the assessee and cannot rest content by placing reliance on the report of the investigation wing**

The revenue argued that the ITAT should have taken steps and remitted the matter, not merely confirming the CIT(A)'s opinion since the Investigation Wing's report confirmed leaving no doubt that the assessee was beneficiary to bogus transactions whereby the

genuineness and identity of the share applicants and the genuineness of transactions was suspect.

**The Court noticed that:**

- The assessee had provided several documents that could have showed whether the transactions were genuine. It was not a case where the share applicants had merely provided confirmation letters. They had provided their particulars, PAN details, assessment particulars, mode of payment for share application money, i.e. through banks, bank statements, cheque numbers in question, copies of minutes of resolutions authorizing the applications, copies of balance sheets, profit and loss accounts for the year under consideration and even bank statements showing the source of payments made by the companies to the assessee as well as their master debt with ROC particulars.
- The AO failed to conduct any scrutiny of documents and rested content by placing reliance merely on a report of the Investigation Wing.

- This reveals spectacular disregard to an AO's duties in the remand proceedings which the Revenue seeks to inflict upon the assessee in this case.

Thus in view of above the Court held that question of law does not arise in this case.

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**6. An HUF is a "group of relatives". Consequently, a gift received from a HUF by a member of the HUF is exempt from tax as provided in the Explanation to s. 56(2) (vi)**

Hindu Undivided Family is a person within the meaning of section 2(31) of the Income-tax Act and is a distinctively assessable unit under the Act. The Income-tax Act does not define expression 'Hindu Undivided Family'. It is well defined area under the Hindu Law which has received recognition throughout. Therefore, the expression 'Hindu Undivided Family' must be construed in the sense in which it is understood under the Hindu Law as has been in the case of Surjit Lal Chhabra vs CIT.

A 'Hindu Undivided Family' constitutes all persons lineally descended from a common ancestor and includes their mothers, wives or

widows and unmarried daughters. All these persons fall in the definition of "relative" as provided in Explanation to clause (vi) of section 56(2) of the Act. The observation of the CIT (A) that HUF is as good as 'a body of individuals' and cannot be termed as "relative" is not acceptable. Rather, an HUF is 'a group of relatives'.

Now the question was whether only the gift given by the individual relative from the HUF be exempt from taxation and would, if a gift collectively given by the 'group of relatives' from the HUF not exempt from taxation.

**The Tribunal held that:**

- A plain reading of section 56(2)(vi) along with the Explanation to that section and on understanding the intention of the legislature from the section, we find that a gift received from "relative", irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax under the provisions of section 56(2)(vi) of the Act as a group of relatives also falls within the Explanation to section 56(2)(vi) of the Act.
- It is not expressly defined in the Explanation that the word

“relative” represents a single person. And it is not always necessary that singular remains singular. Sometimes a singular can mean more than one, as in the case before us. In the case before us the assessee received gift from his HUF. The word “Hindu Undivided Family”, though sounds singular unit in its form and assessed as such for income-tax purposes, finally at the end a “Hindu Undivided Family” is made up of ‘a group of relatives’. Thus, in our opinion, a singular words / words could be read as plural also, according to the circumstance / situation.

- Though for taxation purpose, an HUF is considered as a single unit, rather, an HUF is “a group of relatives” as it is formed by the relatives.

Thus in view of above the Tribunal held that the “relative” explained in Explanation to section 56(2) (vi) of the Act includes “relatives” and as the assessee received gift from his “HUF”, which is “a group of relatives”, the gift received by the assessee from the HUF should be interpreted to mean that the gift was received from the “relatives”

therefore the same is not taxable under section 56(2) (vi) of the Act.

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**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 JUNE 2017 (VARIOUS ACTS):

<b>June 2017</b>						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5 Service Tax payment by Companies	6 Service Tax payment by Company(if paid electronically), Excise duty payment	7 Monthly TDS payment	8	9	10
11	12	13	14	15 Provide 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,	

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