

HARBINGERTM

Updates on regulatory changes affecting your business

June 2019



B D Jokhakar & Co.

Chartered Accountants
www.bdjokhakar.com

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INDEX

| Sr No. | Topics Covered | Page No. |
|--------|--|----------|
| 1. | Income Tax | 3 |
| 2. | Ministry of Corporate Affairs | 4 |
| 4. | Summary of Judgements-Income Tax | 5 |
| 5. | Discussion on Judgement-Income Tax | 6 |
| 6. | Due date chart for the month of June, 2019 | 10 |

INCOME TAX



Agreement for exchange of information with Marshall Islands notified by CBDT

Central Board of Direct Taxes (CBDT) notifies Agreement for exchange of information between Government of the Republic of India and the Government of Republic of the Marshall Islands vide Notification No. 40/2019 Dated 21st May, 2019.

CBDT notifies clarification regarding Form 15H

The Central Board of Direct Taxes (CBDT) has issued a notification dated 22nd May, 2019 amending Form 15H to give effect to the budget announcement of 2019.

Senior Citizens with taxable income upto Rs. 5,00,000 can now submit Form 15H with Bank and Post Office to claim exemption from TDS on interest on deposits, according to this notification.

Earlier, the limit for this form was Rs. 2,50,000.

Senior citizens, above 60 years of age, have to submit Form 15H to banks at the beginning of a financial year to ensure that no tax is deducted at source on interest income.

This agreement (India - Marshall Islands TIEA) was signed on 18th March, 2016 at Majuro, the Republic of the Marshall Islands.

The Agreement enables exchange of information, including banking and ownership information, between the two countries for tax purposes. It is based on international standards of tax transparency and exchange of information and enables sharing of information on request. The Agreement also provides for representatives of one country to undertake tax examinations in the other country.

MINISTRY OF CORPORATE AFFAIRS



Unlisted Public Companies need to file E-Form PAS-6

The Ministry of Corporate Affairs (MCA) vide a Notification no. 1/21/2013 CL-V, dated 22nd May, 2019 requires every Unlisted Public Company to submit Form PAS-6 to the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year.

This will need to be duly certified by a Company Secretary in practice or Chartered Accountant in practice.

The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialized form.

Clarification for form ADT-I filed through GNL-2 under the Companies Act, 2013

The Ministry of Corporate Affairs (MCA) has issued General Circular No. 06/2019 dated 13th May, 2019 for appointment of auditor through E-Form ADT-1 for the companies who had filed Form GNL-2 from 01.04.2014 to 20.10.2014 for audit period up to 31.03.2019.

Above companies are now required to file ADT-1 up to June 15, 2019 who had filed GNL-2 for appointment of auditor; without any fees. Thereafter fees and additional fees shall be applicable as per Companies (Registration of Office and Fees) Rules, 2014.

SUMMARY OF IMPORTANT TAX JUDGEMENTS

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

| Sr No. | Tribunal/Court | Section/Code | Nature | Case Law |
|--------|-------------------|-----------------|---|--|
| 1 | Bombay High Court | Section 50C | The assessee cannot avoid the impact of Section 50C by claiming that his Section 54EC investment is large enough to cover the deemed consideration based on stamp duty valuation. Such interpretation renders Section 50C redundant. | Jagdish C. Dhabalia Vs. ITO |
| 2 | ITAT Kolkata | Section 68 | The judgement in PCIT vs. NRA Iron & Steel 103 TM.com 48 (SC) is distinguishable on facts & does not apply to a case where the assessee has discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants by producing the PAN details, bank account statements, audited financial statements and Income Tax acknowledgments and the investors have shown the source of source & personally appeared before the AO in response to s. 131 summons. | Baba Bhootnath Trade & Commerce Ltd. Vs. ITO |
| 3 | Bombay High Court | Section 68 & 69 | Even if the purchases are bogus, the entire purchase amount cannot be added. As the department had not disputed the assessee's sales & there was no discrepancy between the purchases and the sales, the purchases cannot be rejected without disturbing the sales in case of a trader. The addition has to be restricted to the extent of the G.P. rate on purchases at the same rate of other genuine purchases (N.K .Industries 292 CTR 354 (Guj), N. K. Proteins 250 TM 22 (SC) distinguished). | PCIT Vs. Mohammad Haji Adam |

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| | | | | |
| 4 | Bombay High Court | Section 148 | As per settled law, notice for reopening of assessment against a dead person is invalid. The fact that the AO was not informed of the death before issue of notice is irrelevant. Consequently, the s. 148 notice is set aside and order of assessment stands annulled (Alamelu Veerappan 257 TM 72 (Mad) followed) | Rupa Shyamsundar Dhumatkar Vs. ACIT |
| | | | | |

DISCUSSION ON JUDGMENTS - INCOME TAX



1. Jagdish C. Dhabalia Vs. ITO

The assessee cannot avoid the impact of Section 50C by claiming that his Section 54EC investment is large enough to cover the deemed consideration based on stamp duty valuation. Such interpretation renders Section 50C redundant.

Facts:-

The deeming fiction under section 50C of the Act, must be given its full effect and the Court should not allow to boggle the mind while giving full effect to such fiction. We are not opposing the proposition canvassed by the Counsel of the assessee that deeming fiction must be applied in relation to the situation for which it is created. However, while giving full effect to the deeming fiction contained under section 50C of the Act for the purpose of computation of the capital gain under section 48, for

which section 50C is specifically enacted, the automatic fallout thereof would be that the computation of the assessee's capital gain and consequently the computation of exemption under section 54EC, shall have to be worked out on the basis of substituted deemed sale consideration of transfer of capital asset in terms of section 50C of the Act.

2. Baba Bhootnath Trade & Commerce Ltd. Vs. ITO

The judgement in PCIT vs. NRA Iron & Steel 103 TM.com 48 (SC) is distinguishable on facts & does not apply to a case where the assessee has discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants by producing the PAN details, bank account statements, audited financial statements and Income Tax acknowledgments and the investors have shown the source of source & personally appeared before the AO in response to s. 131 summons.

Facts:-

The Id DR placed reliance on the recent decision of the Hon'ble Apex Court in the case of Principal CIT vs. NRA Iron & Steel (P) Ltd reported in 103 taxmann.com 48 (SC) wherein the decision on addition made towards cash credit

was rendered in favour of the revenue. We have gone through the said judgement and we find in that case, the Id AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent which is not the case before us. Certain investor companies did not produce their bank statements proving the source for making investments in assessee company, which is not the case before us. Source of funds were never established by the investor companies in the case before the Honourable Apex Court, whereas in the instant case, the entire details of source of source were duly furnished by all the respective share subscribing companies before the Id AO in response to summons u/s 131 of the Act by complying with the personal appearance of directors.

3. PCIT Vs. Mohommad Haji Adam

Even if the purchases are bogus, the entire purchase amount cannot be added. As the department had not disputed the assessee's sales & there was no discrepancy between the purchases and the sales, the purchases cannot be rejected without disturbing the sales in case of a trader. The addition has to be restricted to the extent of the G.P. rate on purchases at the same rate of other genuine purchases (N.K .Industries 292 CTR 354

(Guj), N. K. Proteins 250 TM 22 (SC) distinguished)

Facts:-

In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases.

4. Rupa Shyamsundar Dhumatkar Vs. ACIT

As per settled law, notice for reopening of assessment against a dead person is invalid. The fact that the AO was not informed of the death before issue of notice is irrelevant. Consequently, the s. 148 notice is set aside and order of assessment stands annulled (Alamelu Veerappan 257 TM 72 (Mad) followed)

Facts:-

There are several judgments of different High Courts holding that the notice or reopening of assessment is invalid in law. It is not necessary to refer to all the judgments on the point. Suffice it to say, as per the settled law, notice for reopening of assessment against a dead person is invalid.

Note: The judgments should not be followed without studying the complete facts relevant to the judgment.

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DATE CHART FOR THE MONTH OF JUNE, 2019

June 2019

| Sun | Mon | Tues | Wed | Thurs | Fri | Sat |
|-----|-----|-------------------------------------|-----|---------------|-----------------------------|--|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 Monthly TDS Payment | 8 |
| 9 | 10 | 11 GSTR-1 (T/O>1.5 Crores) | 12 | 13 | 14 | 15 1) Provident Fund Payment. 2) ESIC Payment |
| 16 | 17 | 18 | 19 | 20 GSTR-3B | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | | | | | | |

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.