HARBINGER™

Updates on regulatory changes affecting your business

JANUARY 2018

WISH YOU A HAPPY NEW YEAR

B D Jokhakar & Co.

Chartered Accountants

www.bdjokhakar.com

Follow us on:

Twitter LinkedIn Facebook

INDEX

Income Tax

Extensions of deadline for linking PAN with Aadhar.

Under the provisions of recently introduced section 139AA of the Income Tax Act, 1961, with effect from 01.07.2016, all taxpayers having Aadhar Number or Enrollment Number are required to link it with PAN number for filing the tax return.

Central Board of Direct Taxes on further consideration and in exercise of power conferred under section 199 of the Act extends the time for linking Aadhar with PAN till **31.03.2018.**

Order by CBDT, dated 8th December 2017

Mere 1.7% Indians Paid Income Tax In Assessment Year 2015-16.

Just over 2 crore Indians, or 1.7 per cent of the total population, paid income tax in the assessment year (AY) 2015-16, according to data released by the I-T department. The number of income-tax return filers increased to 4.07 crore in assessment year 2015-16 (FY 2014-2015) from 3.65 crore in the previous year but only 2.06 crore actually paid tax as the others claimed income below taxable limits.

Economic Times dated 25th December, 2017.

Reserve Bank of India (RBI)

Submission of Financial Information to Information Utilities

According to Section 215 of Insolvency and Bankruptcy Code (IBC), 2016, a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, to an information utility (IU) in such form and manner as specified by regulations.

Chapter V of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, which has come into force with effect from April 1, 2017, has specified the form and manner in which financial creditors are required to submit this information to IUs. Further, as per Section 238 of the IBC, 2016 the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The Insolvency and Bankruptcy Board of India (IBBI) has registered National E-Governance Services Limited (NeSL) as the first IU under the IBBI (IUs) Regulations, 2017 on September 25, 2017.

Notification No-RBI/2017-18/110, Dated 19th, December 2017

ECONOMICS

SEBI says bitcoins cannot be ignored.

Observing that virtual currencies have not posed any systemic risk to the economy, Ajay Tyagi, Chairman of SEBI stated that a government panel is currently looking into the much-debated topic of crypto currency regulation.

"On the issue of bitcoins, government is looking into it in consultation with the RBI and SEBI. The panel, also consisting of finance and information technology ministries, is looking into what to do about it," Tyagi said at the financial markets summit organized by the industry lobby CII.

However, he said there should not be any regulatory oversights on block chain technology saying this is a useful technology which should be encouraged.

"Block chain technology that everyone uses and is useful, should not have regulatory oversight and that's something which needs to be encouraged and we are also encouraging it," he said.

Times of India dated 20th December 2017.

GST Collections Dip For Second Month In November To Rs. 80,808 Crores.

India's goods and services tax (GST) collections fell to the lowest since the tax regime was put in place in what could further queer the pitch for the Centre to keep up with the budgeted fiscal maths for FY18.The decline is partly because of sharp cuts in the tax on close to 200 items from November 15th. Total collections in November added up to Rs 80,808 crore, down from a provisional Rs 83,346 crore in October and a peak of over Rs 94,000 crore in July, data released by the government on Tuesday showed.

Economic Times dated 27th December, 2017

India to Surpass China as the Biggest Importer of LPG

India is set to surpass China as the biggest importer of liquefied petroleum gas (LPG) this month as a drive to replace wood and animal dung fires for cooking boosts consumption Shipping data in Thomson Reuters Eikon shows LPG shipments to India will reach 2.4 million tonnes in December, pushing it ahead of top importer China, on 2.3 million tonnes, for the first time. India's LPG purchases have surged from

just 1 million tonnes a month in early 2015 on the back of a government programme to bring energy to millions of poor households relying on open fires.

Business standard dated 27th December, 2017.

Government Set to Breach Fiscal Deficit target for FY 18

The central government is set to borrow an additional amount from the markets, over and above the budget estimate of Rs 5.80 lakh crore for fiscal year 2017-18. This means it will now breach its fiscal deficit target for the year of 3.2 per cent of gross domestic product. A top government official confirmed that the Centre was set to borrow more, in the light of lower than expected revenue proceeds from the goods and service tax (GST) and non-tax revenue items like dividends from state-owned companies. The official, however, did not confirm the amount of additional borrowing.

The bond markets are said to have factored in additional g-sec (government security) issuances of at least Rs 30,000 crore. That amount alone takes the fiscal deficit target to around 3.4 per cent of GDP. Any slippage this year means that the expected target for the next year, of 3 per cent of GDP, will not be adhered to, either •

Business standard dated 27th December, 2017.

India to save $1 mn in UN Contributions after US pushes Budget Cuts

India is likely to save about $1 million from its mandatory contribution to the world body next year as a result of the five per cent budget cut pushed by the US.

India's assessed share of the regular UN budget in 2017 was $20.46 million and a five per cent cut would amount to $1.023 million.

The UN General Assembly approved a two-year regular budget of $5.397 billion for 2018 and 2019 on Christmas Eve during an unusual Sunday sitting.

Using a complex formula that includes per capita income and gross domestic product, each country's assessment for the regular budget is fixed periodically as a percentage of the total budget rather than an amount.

India's share is now 0.737 per cent but it may go up in future as the economy improves.

Business standard dated 27th December, 2017.

SUMMARY OF IMPORTATNT 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.	Madras High Court	Section 10(1)	Where claim of assessee of exemption under section 10(1) on proceeds from sale of coffee subjected to only pulping and drying was accepted for several years and there were hundreds of coffee growers whose income were also exempted, reopening notice issued only against assessee during relevant assessment year was unjustified.	Karti P. Chidambaram vs. ACIT,
2.	Bombay High Court	Section 10(38)	The assessee has not tendered cogent evidence to explain how the shares in an unknown company worth Rs.5 had jumped to Rs.485 in no time. The fantastic sale price was not at all possible as there was no economic or financial basis to justify the price rise. The assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. The gain has accordingly to be assessed as undisclosed credit u/s 68	Sanjay Bimalchand Jain vs. Pr CIT
3.	Supreme Court	Section 11(1)(a) Section 32	Even if the entire expenditure incurred for acquisition of a capital asset is treated as application of income for charitable purposes u/s 11(1)(a) of the Act, the assessee is also entitled to depreciation u/s 32. The argument that the grant of depreciation amounts to giving double benefit to the assessee is not acceptable. S. 11(6) which bars	CIT vs. Rajasthan and Gujarati Charitable Foundation Poona

			depreciation on expenditure applied for charitable purposes is prospective and applies only from AY 2015-16	
4.	ITAT Mumbai	Section 45(4)	Revaluation surplus paid to retiring partners isn't distribution of capital asset and the firm is not liable to tax.	Mahul Construction Corporation vs. ITO
5.	ITAT Mumbai	Section 54	Acquisition of new flat in an apartment under construction should be considered as a case of "Construction" and not "Purchase". The date of commencement of construction is not relevant for purpose of s. 54. The fact that the construction may have commenced prior to the date of transfer of the old asset is irrelevant. If the construction is completed within 3 years from the date of transfer, the exemption is available.	Mustansir I Tehsildar vs. ITO
6.	ITAT Delhi	Section 90	Where assessee, a UK based company, provided guarantee to various bankers for extending loan facilities to its Indian subsidiaries, guarantee fee charged by it from those subsidiaries would not fall within expression of 'interest' and in view of clause 3 of Article 23 of India-UK DTAA, in absence of any specific provision dealing with corporate/bank guarantee recharge, same had to be taxed in India as 'other income' as per provisions of Act.	Johnson Matthey Public Ltd. Company vs. DCIT (International Taxation)

Index

Discussion on Judgments – Income Tax

1. Where claim of assessee of exemption under section 10(1) on proceeds from sale of coffee subjected to only pulping and drying was accepted for several years and there were hundreds of coffee growers whose income were also exempted, reopening notice issued only against assessee during relevant assessment year was unjustified.

The assessee was owner of coffee estates. The assessee grew coffee and after pulping and drying, sells the coffee as raw coffee. The assessee claimed that the process of pulping and drying was completely different from curing and mere pulping and drying the coffee seeds did not result in cured coffee. Thus, Proceeds of sale of raw coffee was an agricultural income exempted under section 10(1). In case of sale of cured coffee, 25 per cent of the income was subjected to tax as business income. The assessee had been assessed under the Act for several years including the subject assessment year, wherein the claim for exemption of income from sale of coffee subjected to only pulping and drying was accepted under section 10(1). There were several hundreds of coffee growers whose income had been exempted. However, the Assistant Commissioner chose to issue notice under section 148 against assessee for the subject assessment year on the ground that the assessee sold the cured coffee and hence 25 per cent of the total receipts from sale of coffee eligible to tax.

The High Court Held That:

- Two conditions are required to be satisfied before the respondent could issue notice under section 148, namely,
- He must have reason to believe that income chargeable to tax has escaped assessment and
- Such income has escaped assessment by reason of omission or failure on the part of the assessee to disclose fully and truly material facts necessary for assessment for the year.
- In the instant case, all primary facts were available with the AO during the scrutiny assessment. He had failed to examine and deliberate upon the correctness of the income reported under the head agricultural income during original assessment. The obligation on the part of the assessee does not extend beyond fully and truly disclosing all primary facts. It is for the Assessing Officer to take an inference on facts and law based on such disclosure. If according to the respondent, his predecessor did not come to a proper inference on the facts disclosed, it is no ground to reopen the assessment, as if permitted and it would amount to a clear case of change of opinion.
- The second issue is whether the respondent has complied with the directives in the case of GKN Driveshafts (India) Ltd.vs. ITO. The Supreme Court pointed out that if the assessee desires and seeks for reasons for reopening, the Assessing Officer is bound to furnish reasons within a reasonable time and on receipt of the reasons, the assessee was entitled to file objections for issuance of notice and the Assessing Officer was bound to dispose of the same by passing a speaking

order. The reasons were furnished to the petitioner. The petitioner through their authorized representative submitted objections. The petitioner also sought for an opportunity of personal hearing in case the officer is not satisfied with the explanation. The next step that the respondent should have undertaken is to pass a speaking order on the objections. Unfortunately, the respondent did not do so, but sent a communication to the petitioner terming it as a rebuttal for objections for reopening the assessment

- The third issue is whether there has been discrimination. The petitioner in the affidavit filed in support of the writ petition in more than one place has indicated that the petitioner had been singled out where several hundreds of coffee growers who were only doing pulping and drying of coffee seeds and not engaged in curing coffee seeds and not in a single case for the assessment year 2009-10, reopening has been done. The above facts would clearly establish that the reopening proceedings are clearly discriminatory. Accordingly this issue is answered in favour of the petitioner and against the revenue.

For all the above reasons the High Court held that, the impugned proceedings, namely, the notice for reopening and the consequential assessment orders are held to be illegal, unsustainable and a clear case of change of opinion.

---

2. **The assessee has not tendered cogent evidence to explain how the shares in an unknown company worth Rs.5 had jumped to Rs.485 in no time. The fantastic sale price was not at all possible as there was no economic or financial basis to justify the price rise. The assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. The gain has accordingly to be assessed as undisclosed credit u/s 68.**

- The assessee had on the advice of an income tax consultant purchased shares of two penny stock Kolkata based companies i.e., 8000 shares at the rate of Rs.5.50 per share on 08.08.2003 and 4000 shares at the rate of Rs.4/per share on 05.08.2003 from Syncom Marketing Pvt. Ltd. and of Skyzoom Distributors Pvt. Ltd. the payments were made by the assessee in cash for acquisition of shares of both the companies. The address of both the companies was interestingly, the same. The authorized signatory of both the companies was also the same person. The purchase of shares of both the companies was done by the assessee through Global Stock and Securities Ltd and the address of the said broker was incidentally the address of the two companies. Both the companies intimated the assessee on 07.04.2004 regarding the merger of the companies with another company, viz. Khoobsurat Limited, Kolkata and the assessee received the shares of the new company in the ratio of 1:4 of the number of shares of the previous two companies held by the assessee. The assessee sold 2200 shares at an exorbitant rate of Rs.486.55 per share on 07.06.2005 and 800 shares on 20.06.2005 at the rate of Rs.485.65. The shares were sold through another broker, viz. Ashish Stock Broking Private Limited.

- The assessing officer held that the aforesaid transactions of purchase of two penny stock shares for Rs.60,000/, the merger of the companies with a new company and the sale of the shares for Rs.11,58,930/fell within the ambit of adventure in the nature of trade and the assessee had profited by Rs.13,98,930/. The assessing officer, therefore, brought the aforesaid

amount to tax under the head 'business income'.

- It was held that the transaction of sale and purchase of shares of two penny stock companies, the merger of the two companies with another company, viz. Khoobsurat Limited did not qualify an investment and rather it was an adventure in the nature of trade. It was held by all the authorities that the motive of the investment made by the assessee was not to derive income but to earn profit.
- The authorities have recorded a clear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth Rs.5/had jumped to Rs.485/in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no economic or financial basis as to how a share worth Rs.5/of a little known company would jump from Rs.5/to Rs.485/-.

---

3. Even if the entire expenditure incurred for acquisition of a capital asset is treated as application of income for charitable purposes u/s 11(1)(a) of the Act, the assessee is also entitled to depreciation u/s 32. The argument that the grant of depreciation amounts to giving double benefit to the assessee is not acceptable. S. 11(6) which bars depreciation on expenditure applied for charitable purposes is prospective and applies only from AY 2015-16.

- There are petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit of depreciation on the assets acquired by the respondents-assessees. It is a matter of record that all the assessees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act').
- For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assessees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee.
- The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account.
- Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High

Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department.

---

4. Revaluation surplus paid to retiring partners isn't distribution of capital asset and the firm is not liable to tax.

The Court Held That:

- The assessee-firm or the continuing partners were not the beneficiaries as no new tangible income or asset had come to them rather the assessee firm and continuing partners had purchased the share of retiring partner by paying cash. Thus, it was the retiring partners who had been benefitted by receiving much more than actual capital contributed by them on account of revaluation and they had transferred their rights in the property to the continuing partners.
- In a case where surplus due to revaluation was credited to partner's capital account but none of the partners retire during that year, then it cannot be said that there is distribution of capital assets under section 45(4) by the firm because there is no transfer by distribution on account of notional or intangible profit on mere revaluation to continuing partners.
- If there was no transfer by way of distribution of asset, then mere fact that retiring partners had withdrawn sum lying to credit in their capital account will not bring assessee firm within sweep of section 45(4).
- It was not retirement alone which triggered provisions of section 45(4), rather it was transfer by way of distribution of capital asset by firm coupled with retirement or dissolution which triggered provisions of section 45(4).
- Since it was not a case of distributing of capital assets amongst partners at time of retirement and, therefore, provisions of section 45(4) were not applicable to firm.

---

5. Acquisition of new flat in an apartment under construction should be considered as a case of "Construction" and not "Purchase". The date of commencement of construction is not relevant for purpose of s. 54. The fact that the construction may have commenced prior to the date of transfer of the old asset is irrelevant. If the construction is completed within 3 years from the date of transfer, the exemption is available.

- Section 54 of the Act provides the condition that the construction of new residential house should be completed within 3 years from the date of transfer of old residential house. According to Ld A.R, section 54 is silent about commencement of construction and hence commencement of construction can precede the date of sale of old asset.
- In the instant case, the assessee had booked the flat much prior to the date of old flat. We notice that the Hon'ble Karnataka High Court has held in the case of CIT Vs. J.R. Subramanya Bhat (1987, that commencement of construction is not relevant for the purpose of sec. 54 and it is only the

completion of construction. The above said ratio was followed in the case of Asst. CIT Vs. Subhash Sevaram Bhavnani (2012)

- Both these cases support the contentions of the assessee. Accordingly, for the purpose of sec. 54 of the Act, we have to see whether the assessee has completed the construction within three years from the date of transfer of old asset. In the instant case, there is no dispute that the assessee took possession of the new flat within three years from the date of sale of old residential flat. Accordingly, we are of the view that the assessee has complied with the time limit prescribed u/s 54 of the Act. Since the amount invested in the new flat prior to the due date for furnishing return of income was more than the amount of capital gain, the requirements of depositing any money under capital gains account scheme does not arise in the instant case.

- Further, the Hon'ble High Court has held in the case of ITO Vs. K.C.Gopalan (2000) that there is no requirement that the sale proceeds realised on sale of old residential house alone should be utilised

---

6. **Where assessee, a UK based company, provided guarantee to various bankers for extending loan facilities to its Indian subsidiaries, guarantee fee charged by it from those subsidiaries would not fall within expression of 'interest' and in view of clause 3 of Article 23 of India-UK DTAA, in absence of any specific provision dealing with corporate/bank guarantee recharge, same had to be taxed in India as 'other income' as per provisions of Act**

- Assessee was the ultimate parent company of both Johnson Matthey India Private Limited (JMIPL) and Johnson Matthey Chemicals India Private Limited (JMCIPL). It provided guarantees to support credit facilities extended to JMIPL and JMCIPL by banks in India.
- It treated the guarantee fees received from Indian subsidiaries in the nature of interest income taxable under Article 12 of India-UK DTAA and offered it to tax @ 15%.
- Assessing Officer (AO) treated alleged guarantee fee taxable as 'other income' under Article 23 of India-UK DTAA @40%
- The CIT (A) confirmed the view taken by AO. Aggrieved-assessee filed the instant appeal before the tribunal.

The Tribunal Held in Favour Of Revenue That:

- The word "interest" as found in Article 12(5) of the DTAA and section 2(28A) of the Income-tax Act, 1961 have to be understood contextually and with reference to the other words and phrases.
- The term interest, with its widest connotations, indicates the payments, whatever may be the name assigned to it, relates to the payments made by the receiver of amount, pursuant to a loan transaction
- Every periodical payment or remuneration for service in the context of a loan can't be treated as "interest".
- Payment or re-payment pursuant to any loan qualify as "interest", necessarily has to be within the context of loan and shall relate to the parties privity to contract.
- In the instant case, the assessee was a stranger to the privity to contract of

loan between the Indian entity and the banker. Hence, guarantee fee couldn't be categorized as interest for the purpose of taxation.

- Therefore, in absence of any specific provision dealing with corporate/bank guarantee fee, same had to be taxed in India as 'other income' in view of clause 3 of Article 23 of the India-UK DTAA.

Note: The judgments should not be followed without studying the complete facts of the case Law.

UE DATE CHART FOR THE MONTH OF JANUARY 2018

January 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7 Monthly TDS payment	8	9	10 Due date for GSTR-1 for Nov having turnover more than 1.5 cr. Due date for GSTR-1(July-September) for small businesses having turnover up to 1.5 cr (Extended due date)	11	12	13 Due date for GSTR 6
14	15 Due date for ESIC payment Payment of Provident Fund Due date to submit VAT audit report Form- 704 Due date for MLWF (July to December)	16	17	18 Due date for GSTR-4	19	20 Filing GSTR-3B for the month of December
21	22	23	24	25	26	27

28		**29**		**30**		**31** **Extended due date for GSTR 5 for the period July to December** **Due date for GST ITC-01** **Profession Tax payment** **GSTR 5A for the period July to December** **Quarterly return of TDS**					

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.

Back