HARBINGER™

Updates on regulatory changes affecting your business

September 2018

B D Jokhakar & Co.

Chartered Accountants
www.bdjokhakar.com

Follow us on:
Twitter LinkedIn Facebook

INDEX

INCOME TAX

1. Reporting of GST & GAAR details in tax audit report for AY 2018-19 deferred up to 31st March, 2019

Form 3CD as appearing in the Appendix II to the Income Tax Rules, 1962 was amended to provide for certain additional details, with effect from 20th August, 2018 vide Notification No. GSR 666(E) (No. 33/2018) dated 20.07.2018.

CBDT issued a Circular no. 6/2018 on 17th August, 2018 clarifying that:-

1. The requirement of Clause 30C which pertained to disclosure of impermissible avoidance arrangement, as referred to in section 96 of Income Tax Act, 1961 [General Anti-tax Avoidance Rules (GAAR)] is deferred up to 31st March, 2019.

2. The requirement of Clause 44 which pertained to disclosure of break-up of total expenditure of entities whether registered or not under the GST, is deferred up to 31st March, 2019.

2. CBDT Notifies Rules for Computing Fair Market Value of Inventories converted to Capital Asset

The Central Board of Direct Taxes (CBDT) has notified the rules relating to the determination of Fair Market Value of inventories converted into capital assets under the Income Tax Act, 2018.

The Finance Act, 2018 had inserted clause (via) to Section 28 of the act so as to provide that any profit and gains from the conversion of inventory into the capital asset or its treatment as capital asset shall be charged to tax as business income. It has also been provided that for this purpose the fair market value of inventory on the date of conversion or treatment determined in prescribed manner shall be deemed to be the full value of consideration.

Accordingly, rules were framed for providing the manner in which fair market value of the inventory shall be determined which are specified in the Notification No. 42/2018/F. No. 370142/05/2018 dated 30th August, 2018.

GOODS & SERVICE TAX

1. President Assent On GST Act (Amendment), 2018

The President has given assent to the Central GST (Amendment) Act, 2018, Integrated GST (Amendment) Act, 2018, Union Territory GST (Amendment) Act, 2018 and GST (Compensation to States) Amendment Act, 2018 on 29th August, 2018

The amendment acts were notified with effect from 30th August, 2018.

Some of the important amendments are herewith specified below:-

a. RCM shall be applicable only on notified registered persons for supplies made by unregistered persons.

As per existing provisions of Section 9(4) of the CGST Act, a registered person was liable to pay GST under reverse charge on goods or services received from unregistered suppliers. However, this provision had been deferred till 30th September, 2019.

Now the provisions of reverse charge shall be applicable only in case of notified registered persons in respect of specified goods or services.

b. Threshold limit for Composition Scheme increased to Rs. 1.50 crores

As per existing provisions of Section 10 of the CGST Act, the composition scheme can only be opted for by those registered persons whose aggregate turnover in the preceding financial year does not exceed Rs. 1 crore. The threshold limit for Composition Scheme has now been extended to Rs. 1.5 crore in the preceding financial year.

c. Composition Scheme is available if small portion of service is also provided by trader or manufacturer

Currently, the registered persons engaged in the supply of services (other than restaurant services) are not eligible for the composition scheme. The manufacturers or traders, who are engaged in supply of goods, cannot take the benefit of composition scheme if they are also engaged in supply of service, even if its share is insignificant in total turnover.

The Amendments allows the manufacturers or traders to opt for the composition scheme if proportion of service during the previous financial year is not more than 10% of total revenue or Rs. 5 lakhs, whichever is higher.

d. Registration can be temporarily suspended during the tenure of cancellation proceedings

Even after applying for cancellation of GST registration, a taxpayer is required to file the GST returns till registration is actually cancelled.

After the amendments, when a registered person has applied for cancellation of GST registration, the proper officer should temporarily suspend registration in such cases till the procedural formalities for cancellation are completed.

e. Consolidated credit or debit notes can be issued for multiple invoices

As per Section 34 of the CGST Act, a credit or debit note is required to be issued invoice-wise.

The amendments now allow the registered person to issue consolidated credit or debit note in respect of multiple invoices issued in a financial year without linking the same with individual invoices.

RESERVE BANK OF INDIA

1. Annual Report of Reserve Bank of India for FY 2017-18

The Reserve Bank of India on 29th August, 2018 released its annual report for the financial year 2017-18.

Here are the main highlights of the report:-

a. The RBI said its balance sheet size increased by 9.49 % for the year ended 30th June, 2018, which helped to shape the monetary and financial conditions during the year. The fiscal year ended with an overall surplus of Rs 50,000 crore as against Rs 30,659 crore in the previous year.

b. Around Rs 15.31-lakh crore of the total Rs 15.41-lakh crore of demonetised currency notes have been returned, which means Rs 10,720 crore of banned notes did not return to the system. This puts question mark over the government's claim on black money and the entire purpose behind demonetisation.

c. In 2017-18, the currency in circulation surpassed its pre-demonetisation level while credit growth revived to double digits. GST was an important milestone towards an efficient indirect tax structure. The after effects of demonetisation were huge with most economists agreeing on the hit the GDP figures took. However, the situation improved in FY18, which also gave a boost to the credit growth.

d. The Indian economy is set to step up its growth trajectory. "Infrastructure holds the key to unleashing the impulses of faster growth. In the road sector, the key targets are awarding works for around 20,000 km length of national highways; and developing ring roads around 28 major cities under the Bharatmala project," says RBI.

e. Through its Payment and Settlement System Vision-2018, RBI has been playing a crucial role in permeation of FinTech into the economy. The RBI has worked towards building up a robust and resilient technology infrastructure to ensure smooth functioning of the payment and settlement systems in the country.

f. The monetary policy will continue to be guided by the objective of achieving the medium-term target for CPI (Consumer Price Index) inflation of 4% within a band of +/-2%. Inflation eased on a year-on-year basis but has remained higher than RBI's 4% target since November 2017, but it is well within the upper band of 6%.

g. A large-scale adoption of digital modes of payments was done in 2017-18. It worked towards building up a robust and resilient technology infrastructure to ensure a smooth functioning payment and settlement systems. It launched Unified Payments Interface in April 2016 to provide a single interface to power multiple bank accounts into a single mobile application (of any participating bank).

MINISTRY OF CORPORATE AFFAIRS

1. Extension of due date for filing Form DIR-3 KYC

The Ministry of Corporate Affairs (MCA) vide notification dated 21st August, 2018 extended the due date for filing of Form DIR-3 KYC.

Form DIR-3 KYC is mandatory for all directors holding a valid DIN and whose DIN is in 'approved' status.

The due date for filing the form is extended to 15th September, 2018.

The late fees of Rs. 5,000 shall be applicable & payable on all the forms filed on or after 16th September, 2018.

ECONOMICS

1. Indian Economy records 8.2% growth in first quarter of 2018-19

According to government data released on Friday 31st August, 2018, the Indian economy grew at a rate of 8.2% in the April-June quarter of current financial year. This growth was the highest of last 15 quarters.

The growth cemented India's position as the fastest growing major economy, clocking higher expansion rate than China's 6.7% in the same quarter.

A Central Statistics Office statement said, the Gross Domestic Product (GDP) at constant (2011-12) prices in the first quarter of 2018-19 is estimated at Rs. 33.74 lakh crore, against Rs. 31.18 lakh crore in Q1 of 2017-18, showing a growth rate of 8.2%.

The quarterly GVA (Gross Value Added) at basic price at constant (2011-2012) prices for Q1 of 2018-19 is estimated at Rs. 31.63 lakh crore, against Rs. 29.29 lakh crore in Q1 of 2017-18, showing a growth rate of 8% over the year-ago period.

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	ITAT Mumbai	Section 2(42A) & 45	The law laid down in Suraj Lamps & Industries 340 ITR 1 (SC) that transfer of immovable property is effective only on registration of conveyance deed is not applicable for computing the holding period of property. Holding period should be computed from the date of issue of the allotment letter and not from the date of the conveyance deed .	Sanjaykumar Footermal Jain vs. ITO
2	Bombay High Court	Section 14A & Rule 10D	The expression “does not form part of the total income” in Section 14A envisages that there should be an actual receipt of the income, which is not includible in the total income. If no exempt income is received or receivable during the relevant previous year, no disallowance u/s 14A can be made.	PCIT vs. Ballarpur Industries Limited
3	Bombay High Court	Section 28, 45 & 48	**Gains from sale of shares whether capital gains or business profits**: Short period of holding shows that intention of assessee is to earn profit at earliest possible occasion. Assessee is moving as per stock market trend and selling shares at first available opportunity. This type of activity of sale and purchase is rightly termed, not as an investment, but as trading.	Ramilaben D. Jain vs. ACIT
4	Calcutta High Court	Sec 37(1)	Law on whether payment of a one-time fee to continue the business of mining constitutes capital expenditure or revenue expenditure explained	PCIT vs. Rungta Mines Ltd
5	Andhra Pradesh High Court	Section 37(1) & 145(2)	Entire law on accrual of liability under mercantile system of accounting explained in the context of Accounting Standard 4 (AS-4) (contingencies and events occurring after the balance sheet date) issued by the ICAI and s. 211 of the Companies Act, 1956, after referring to all important judgements of the Supreme Court and High Courts.	CIT vs. The KCP Limited

Discussion on Judgments – Income Tax

1. **The law laid down in Suraj Lamps & Industries 340 ITR 1 (SC) that transfer of immovable property is effective only on registration of conveyance deed is not applicable for computing the holding period of property. Holding period should be computed from the date of issue of the allotment letter and not from the date of the conveyance deed (Rasiklal M. Parikh vs. ACIT 393 ITR 536 (Bom) distinguished).**

   [Sanjaykumar Futermal Jain vs ITO (ITAT Mumbai)]

   Facts:-

   The definition as contained in Section 2 (42A) of the Act, though uses the words, "a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer", for the purpose of holding an asset, it is not necessary that, he should be the owner of the asset, with a registered deed of conveyance conferring title on him. In the light of the expanded definition as contained in Section 2(47), even when a sale, exchange, or relinquishment or extinguishment of any right, under a transaction the assessee is put in possession of an immovable property or he retained the same in part performance of the contract under Section 53-A of the Transfer of Property Act, it amounts to transfer. **Thus holding period should be computed from the date of issue of the allotment letter and not from the date of the conveyance deed**

2. **The expression "does not form part of the total income" in Section 14A envisages that there should be an actual receipt of the income, which is not includible in the total income. If no exempt income is received or receivable during the relevant previous year, no disallowance u/s 14A can be made.**

   [PCIT vs Ballarpur Industries Ltd. (Bombay High Court)]

   Facts:-

   The expression "does not form part of the total income" in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year.

3. **Gains from sale of shares whether capital gains or business profits: Short period of holding shows that intention of assessee is to earn profit at earliest possible occasion. Assessee is moving as per stock market trend and selling shares at first available opportunity. This type of activity of sale and purchase is rightly termed, not as investment, but as trading.**

   [Ramilaben D Jain vs ACIT (Bombay High Court)]

   Facts:-

   In fact, trend is that majority transactions have feature in holding of shares from one day to seven days. Assessee sold shares within a period of one week from date of purchase in more than eighty per cent of cases. It is this trend which resulted in concurrent finding against the assessee. Intention of assessee in indulging in these transactions is to earn profit at earliest possible occasion and when there is a rise in price. Assessee is moving as per stock market trend. **This type of activity of sale and purchase is rightly termed, not as investment, but as trading.**

4. **Law on whether payment of a one-time fee to continue the business of mining constitutes capital expenditure or revenue expenditure explained with reference to R.B.Seth Moolchand Sugachand v CIT 86 ITR 647 (SC) and Bikaner Gypsums 187 ITR 39 (SC).**

   [PCIT vs Rungta Mines Ltd. (Calcutta High Court)]

   Facts:-

   The distinction between the judgment in R.B. Seth Moolchand Sugachand and the judgment in Bikanker Gypsums Ltd is that in Bikaner Gypsums Ltd there was a pre-existing right and the expenditure was incurred not to assert a new right but to exercise a pre-existing right. In the present case, it is the same as in Bikaner Gypsums Ltd. since the mining licence was previously issued in favour of the assessee and the payment of the NPV did not extend the area of the assessee's mining operations, it merely removed an impediment in the carrying on of the operations in terms of the original licence.

5. **Entire law on accrual of liability under mercantile system of accounting explained in the context of Accounting Standard 4 (AS-4) (contingencies and events occurring after the balance sheet date) issued by the ICAI and s. 211 of the Companies Act, 1956, after referring to all important judgements of the Supreme Court and High Courts.**

   [CIT vs KCP Ltd. (Andhra Pradesh High Court)]

   Facts:-

While the judgment in Challapalli Sugars Ltd is that of a two Judge bench of the Supreme Court, the judgment in Tutirorin Alkali Chemicals and Fertilizers Ltd is that of a three Judge bench of the Supreme Court. As the judgment in Challapalli Sugars Ltd was noticed by the Supreme Court, in its subsequent judgment in Tutirorin Alkali Chemicals and Fertilizers Ltd, the law declared in Challapalli Sugars Ltd, as explained in the subsequent judgment of the Supreme Court in Tutirorin Alkali Chemicals and Fertilizers Ltd, is binding on this Court. The law declared in Challapalli Sugars Ltd, as explained in Tutirorin Alkali Chemicals and Fertilizers Ltd, is that, in the absence of a provision in the Income-tax Act indicating the contrary, the rules of accountancy or the Accounting Standards framed by the Institute of Chartered Accountants of India can be adopted.

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

DATE CHART FOR THE MONTH OF September, 2018

September 2018

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 i)Provident fund Payment ii) Form DIR-3 KYC
16	17	18 GSTR-4	19	20 i) GSTR-3B ii) GSTR-5A iii) GSTR-5	21 ESIC Payment	22
23	24	25	26	27	28	29
30 i) GSTR-6 ii) GSTR-1 (T/O up to 1.5 Crore) iii) Form 3CA-3CD (Tax Audit Report for Companies) iv) Form 3CB-3CD (Tax Audit Report for assesses other than companies) v) Income Tax Returns for assesses required to submit Tax Audit Report other than assesses covered under Transfer pricing.						

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.