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*Updates on regulatory changes affecting your business*

July/August 2019

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# INDEX

## INCOME TAX


### Due Date to file income tax return for FY2018-19 extended to 31st August, 2019

The finance ministry has extended the deadline for filing income tax return (ITR) for FY2018-19 by individuals and others liable to file returns on July 31,2019 to August 31, 2019.

July 31 was the deadline for filing income tax returns for most individuals and HUFs and others who are not mandatorily required to get their accounts audited for tax purposes.

This year, the CBDT (Central Board of Direct Taxes) had extended the deadline for employers to file their TDS returns, i.e, Form 24Q, from May 31, 2019 to June 30, 2019 and consequently deadline of issuing Form 16 by the employer was also extended from June 15, 2019 to July 10, 2019. Consequently, employees waiting to get their Form 16s to file their ITRs were left with only 21 days to file their tax return by the earlier deadline of July 31.

If the ITR is not filed by an individual before the expiry of the deadline, which is usually July 31, then the individual would have to pay a late filing fee of Rs 5,000, if filed by December 31. If the ITR is filed between January 1 and March 31, then late filing fees of Rs 10,000 will be levied. However, small taxpayers whose income does not exceed Rs 5 lakh would pay late filing fee of Rs 1,000 if ITR is filed after the deadline.

## MINISTRY OF CORPORATE AFFAIRS

### SPICe Form now made applicable for Incorporation of section 8 Company.

MCA has notified Form INC-32 (SPICe Form) for application of license for incorporation of Non- Profit Organizations u/s 8 of The Companies Act, 2013.

Similarly MCA has revised Form INC-12 for grant of license to existing Non-Profit Organizations effective August 15, 2019.

MCA has further streamlined procedural matters for incorporation of such companies.

### Cabinet approves amendments to Insolvency & Bankruptcy Code

The Ministry of Corporate Affairs vide press release dated 17th July, 2019 informed that, the Union Cabinet has approved the proposal to introduce a Bill in the Parliament to carry out 8 amendments to the Insolvency and Bankruptcy Code, 2016.

The amendments aim to fill critical gaps in the corporate insolvency resolution framework as enshrined in the Code, while simultaneously maximizing value from the Corporate Insolvency Resolution Process (CIRP).The Government intends to ensure maximizing the value of a corporate debtor as a going concern while simultaneously adhering to strict timelines.

The changes are expected to lead to timely admission of applications and timely completion of the Corporate Insolvency Resolution Process, greater clarity on permissibility of corporate restructuring schemes, manner of distribution of amounts amongst financial and operational creditors, clarity on rights and duties of authorized representatives of voters and applicability of the resolution plan on all statutory authorities.

## RESERVE BANK OF INDIA


### Reserve Bank of India cuts repo rate by 35 basis points

The Reserve Bank of India (RBI) has reduced the repo rate by 35 basis points thereby reducing the same to 5.40 from 5.75 per cent.

The monetary policy committee of the RBI took the decision in its attempt to boost the sluggish economy. This is the fourth consecutive time that the RBI has reduced repo rate. In the earlier three policies, it has reduced repo rate by 25 basis points each.

The RBI maintained its accommodative stance but said further rate reductions would depend on the level of inflation.

While the repo rate was cut to 5.40 per cent, the reverse repo rate was reduced to 5.15 per cent.

RBI has also trimmed the GDP growth forecast for the current fiscal to 6.9 per cent from 7 per cent.

## 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(14), 45 & 48 | Damages received for breach of development agreement are capital in nature & not chargeable to tax. The only right that accrues to the assessee who complains of breach is right to file a suit for recovery of damages from the defaulting party. A breach of contract does not give rise to any debt. A right to recover damages is not assignable because it is not a chose-in-action. Such a mere 'right to sue' is neither a capital asset u/s 2(14) nor is it capable of being transferred & is therefore not chargeable under u/s 45 of the Act. | Chheda Housing Development Corporation Vs. ACIT |
| | | | | |
| 2 | Supreme Court | Section 4 | The primary liability and onus is on the Dept to prove that a certain receipt is liable to be taxed. Deposits collected by a finance company are capital receipts and not revenue receipts. The fact that the deposits are credited to the profit and loss account is irrelevant. The true nature of the receipts have to be seen and not the entry in the books of account. | The Peerless General Finance and Investment Co. Ltd. Vs. CIT |
| | | | | |
| 3 | Bombay High Court | Section 143(1), 147 & 148 | Even in a case where the return is accepted u/s 143(1) without scrutiny, the fundamental requirement of income chargeable to tax having escaped assessment must be satisfied. Mere non-disclosure of receipt would not automatically imply escapement of income chargeable to tax from assessment. There has to be something beyond an unintentional oversight or error on the part of the | The Swastic Safe Depost and Investments Ltd. Vs. ACIT |

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| | | | assessee in not disclosing such receipt in the return of income. In other words, even after non-disclosure, if the documents on record conclusively establish that the receipt did not give rise to any taxable income, it would not be open for the AO to reopen the assessment referring only to the non disclosure of the receipt in the return of income. The attempt of further verification would amount to rowing inquiry | |
| | | | | |
| 4 | ITAT Pune | Section 143(2) & Rule 127 | There is a difference between "issue" of notice and "service" of notice. Service of notice is a pre-condition for assuming jurisdiction to frame the assessment. Under Rule 127, service at the PAN address is valid even if it is different from the address in the Return. If a notice is issued but is returned unserved by the postal authorities and thereafter no effort is made to serve another notice before the deadline, it shall be deemed to be a case of "non-service" and the assessment order will have to be quashed. | Anil Kisanlal Marda<br>Vs.<br>ITO |
| | | | | |
| 5 | Chief Metropolitan Magistrate | Section 192, 201 & 276B | A complaint by the Dept regarding 12 month delay in paying TDS to the Govt is maintainable. Deposit of TDS with interest does not absolve criminal liability. Plea that delay was caused due to financial hardship has to be proved. However, as there is no allegation by the Dept that accused is irregular in paying taxes other than the case in hand, the minimum punishment of 3 months rigorous imprisonment and fine will have to be awarded. The Court has no discretion to reduce the sentence | ITO<br>Vs.<br>Ichibaan Automobiles Pvt. Ltd. |
| | | | | |
| 6 | Bombay High Court | Section 220(6) | The decision of the authorities to demand payment of 20% of the disputed demand is in consonance with the department's circulars. There are no extra ordinary reasons for imposing condition lighter than one imposed by the authorities. The contention of the assessee that he received no consideration and no tax could have been demanded | Kalpana Ashwin Shah<br>Vs.<br>ACIT |

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|---|---|---|---|---|
| | | | from him is subject matter of the Appeal proceedings and cannot be a ground for lifting the rigor of the requirement of deposit of 20% of the disputed tax pending appeal . | |
| | | | | |

## DISCUSSION ON JUDGMENTS – INCOME TAX

### 1. Chheda Housing Development Corporation Vs. ACIT

**Damages received for breach of development agreement are capital in nature & not chargeable to tax. The only right that accrues to the assessee who complains of breach is right to file a suit for recovery of damages from the defaulting party. A breach of contract does not give rise to any debt. A right to recover damages is not assignable because it is not a chose-in-action. Such a mere 'right to sue' is neither a capital asset u/s 2(14) nor is it capable of being transferred & is therefore not chargeable under u/s 45 of the Act.**

**Facts:-**

Despite the definition of the expression capital asset in the widest possible terms in section 2(14), a right to a capital asset must fall within the expression 'property of any kind' and must not fall within the exceptions. Section 6 of the Transfer of Property Act which uses the expression 'property of any kind' in the context of transferability makes an exception in the case of mere right to sue. The decisions there under make it abundantly clear that the right to sue for damages is not an actionable claim. It cannot be assigned and its transfer is opposed to public policy. As such it will not be quite correct to say that such a right constituted capital asset which in turn has to be an interest in 'property of any kind.'

### 2. The Peerless General Finance and Investment Co. Ltd. Vs. CIT

**The primary liability and onus is on the Dept to prove that a certain receipt is liable to be taxed. Deposits collected by a finance company are capital receipts and not revenue receipts. The fact that the deposits are credited to the profit and loss account is irrelevant. The true nature of the receipts have to be seen and not the entry in the books of account.**

**Facts:-**

It is the true nature and quality of the receipt and not the head under which it is entered in the account books that would prove decisive. If a receipt is a trading receipt, the fact that it is not so shown in the

account books of the assessee would not prevent the assessing authority from treating it as trading receipt. It has been held by the Supreme court that the primary liability and onus is on the Department to prove that a certain receipt is liable to be taxed.

### 3. The Swastic Safe Deposit and Investments Ltd. Vs. ACIT

**Even in a case where the return is accepted u/s 143(1) without scrutiny, the fundamental requirement of income chargeable to tax having escaped assessment must be satisfied. Mere non-disclosure of receipt would not automatically imply escapement of income chargeable to tax from assessment. There has to be something beyond an unintentional oversight or error on the part of the assessee in not disclosing such receipt in the return of income. In other words, even after non-disclosure, if the documents on record conclusively establish that the receipt did not give rise to any taxable income, it would not be open for the AO to reopen the assessment referring only to the non disclosure of the receipt in the return of income. The attempt of further verification would amount to rowing inquiry**

**Facts:-**

Despite such difference in the scheme between a return which is accepted under section 143(1) of the Act as compared to a return of which scrutiny assessment under section 143(3) of the Act is framed, the basic requirement of section 147 of the Act that the Assessing Officer has reason to believe that income chargeable tax has escaped assessment is not done away with. Section 147 of the Act permits the Assessing Officer to assess, reassess the income or recompute the loss or depreciation if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. This power to reopen assessment is available in either case, namely, while a return has been either accepted under section 143(1) of the Act or a scrutiny assessment has been framed under section 143(3) of the Act. A common requirement in both of cases is that the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment.

### 4. Anil Kisanlal Marda Vs. ITO

**There is a difference between "issue" of notice and "service" of notice. Service of notice is a pre-condition for assuming jurisdiction to frame the assessment. Under Rule 127, service at the PAN address is valid even if it is different from the address in the Return. If a notice is issued but is returned unserved by the postal authorities and thereafter no effort is made to serve another notice before the deadline, it shall be deemed to be a case of**

**"non-service" and the assessment order will have to be quashed.**

**Facts:-**

Statute provides that service by post shall be deemed to be effected by properly addressing, pre-paying and posting by registered post. It means that when a letter containing the document is properly addressed, pre-paid and posted by a registered post, it will be considered as a valid service. It is not the end of the provision. There is a specific mention of the words `unless the contrary is proved'. It means that the presumption of valid service on properly addressing, pre-paying and positing by registered post is not irrebuttable. It can be rebutted if the contrary is proved. Extantly, we are dealing with a situation in which the contrary has been proved inasmuch as the Department has itself accepted that the notice sent by the registered post was returned by the postal authorities. Under such circumstances, there can be no presumption of valid service of notice in terms of the above provisions.

## 5. ITO Vs. Ichibaan Automobiles Pvt. Ltd.

**A complaint by the Dept regarding 12 month delay in paying TDS to the Govt is maintainable. Deposit of TDS with interest does not absolve criminal liability. Plea that delay was caused due to financial hardship has to be proved. However, as there is no allegation by the Dept that accused is irregular in paying taxes other than the case in hand, the minimum punishment of 3 months rigorous imprisonment and fine will have to be awarded. The Court has no discretion to reduce the sentence.**

**Facts:-**

In view of aforesaid reasons arguments advanced on behalf of defence holds no ground. Defence utterly failed to prove the submissions by leading evidence as stated above. Considering the above referred authority and the present case, it appears that if the payment is made at belated stage then it will be treated as default and appropriate action can be taken under this Act. It also clear that deposit of TDS with delay does not absolve criminal liability. If it is considered that accused paid the amount after period of 12 months, in such circumstance, complaint is maintainable and it does not absolve criminal liability of the accused persons.

## 6. Kalpana Ashwin Shah Vs. ACIT

**The decision of the authorities to demand payment of 20% of the disputed demand is in consonance with the department's circulars. There are no extra ordinary reasons for imposing condition lighter than one imposed by the authorities.**

**The contention of the assessee that he received no consideration and no tax could have been demanded from him is subject matter of the Appeal proceedings and cannot be a ground for lifting the rigor of the requirement of deposit of 20% of the disputed tax pending appeal.**

**Facts:-**

The decision of the authorities is in consonance with the department's circulars. We do not find any extra ordinary reasons for imposing condition lighter than one which has been imposed by the said authorities. The contention of the Petitioner that he had received no consideration at the time of transfer of the tenancy of immovable commercial property of which he is the owner and that therefore no tax could have been demanded from him, would be subject matter of the Appeal proceedings. This is not a ground for lifting the rigor of the requirement of deposit of 20% of the disputed tax pending appeal.

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

## DATE CHART FOR THE MONTH OF AUGUST, 2019

# August 2019

| Sun | Mon | Tues | Wed | Thurs | Fri | Sat |
|---|---|---|---|---|---|---|
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7<br>**Monthly TDS Payment** | 8 | 9 | 10 |
| 11<br>**GSTR-1 (T/O>1.5 Crores)** | 12 | 13 | 14 | 15<br>**1) Provident Fund Payment.**<br><br>**2) ESIC Payment** | 16 | 17 |
| 18 | 19 | 20<br>**GSTR-3B** | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31<br>**1) GSTR 9**<br><br>**2) Income tax Returns for Non-Corporates (Not liable to Tax Audit)** |