

HARBINGERTM

Updates on regulatory changes affecting your business

November 2019



B D Jokhakar & Co.

Chartered Accountants
www.bdjokhakar.com

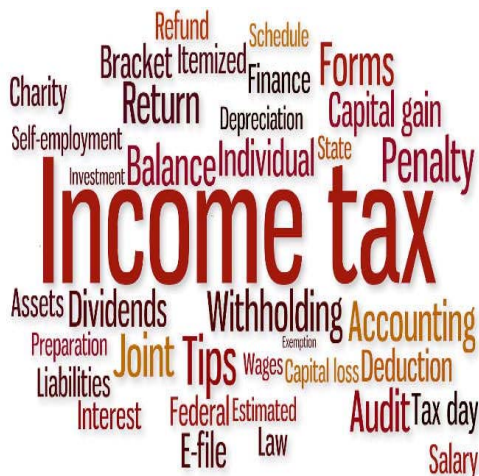
Follow us on:



INDEX

Sr No.	Topics Covered	Page No.
1.	<u>Income Tax</u>	3
2.	<u>Goods & Service tax</u>	4
3.	<u>Ministry of Corporate Affairs</u>	4
4.	<u>Summary of Judgements-Income Tax</u>	5
5.	<u>Discussion on Judgement-Income Tax</u>	7
6.	<u>Due date chart for the month of November, 2019</u>	10

INCOME TAX



CBDT has specified that any communication issued manually under exceptional circumstances would have to be uploaded and regularised on the system's portal within 15 days of its issuance.

The DIN system would ensure greater accountability & transparency in tax administration & would also result in better services to taxpayers.

CBDT launches Document Identification Number (DIN) System

Central Board of Direct Taxes (CBDT) vide press release dated 1st October, 2019 launched Document Identification Number (DIN) system.

Any communication from Income Tax Department without a computer generated DIN, be it a notice, letter, order, summons or any other correspondence, would be treated as invalid & shall be non-existent in law or deemed to be as if it has never been issued.

All such communications with DIN would be verifiable on the e-filing portal & no communication would be issued manually without DIN, except only if it is in the specified exceptional circumstances.

Due date of Filing ITR and Tax Audit Report extended for assesseees in Jammu and Kashmir and Ladakh

- CBDT extends the due date for filing of ITR and Tax Audit Report to 30th November, 2019 for assesseees in UTs of Jammu and Kashmir and Ladakh who were required to file ITR and Tax Audit Report within the due date as specified under section 139(1) which was 30th September, 2019.
- This Due date was earlier extended to 31st October, 2019.

GOODS & SERVICE TAX



Amendment in GST rules regarding Input Tax Credit (ITC)

The Central Board of Indirect Taxes & Customs (CBIC) vide Notification No. 49/2019 dated 9th October, 2019 amended the CGST Rules, 2017

Now, Input Tax Credit by a registered person in respect of invoices OR debit notes, which have not been uploaded by the suppliers, **shall not exceed 20% of the eligible credit available in respect of invoices or debit notes which have been uploaded.**

MINISTRY OF CORPORATE AFFAIRS



MCA extends due date for filing Annual ROC Returns

The Ministry of Corporate Affairs (MCA) vide General Circular No. 13/2019 dated 29th October, 2019 has extended the last date for filing of forms AOC-4 (Financial Statement) & MGT-7 (Annual Return) under the Companies Act, 2013. The additional fees are accordingly relaxed.

The due date for filing of e-forms AOC-4, AOC (CFS), AOC-4 XBRL is extended up to 30th November, 2019.

The due date for filing of e-form MGT-7 is extended to 31st December, 2019.

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	Gujarat High Court	Section 2(15) & 11	The fact that the carrying on of charitable activities results in a surplus does not mean that assessee exists for profit. "Profit" means that owners have a right to withdraw the surplus for any purpose including personal purpose. However, if the surplus is ploughed back into the same charitable activities, the assessee cannot be said to be carrying out commercial activities in the nature of trade, commerce or business. The fact that the assessee has dealings with, & share of profits from, BCCI (a commercial entity) does not affect its charitable status.	DIT(E) Vs. Gujarat Cricket Association
2	Supreme Court	Section 25 of Companies Act, 2013	Doctrine of mutuality: A club registered as a 'company' u/s 25 of Companies Act is not like other companies as it has no shareholders, no dividends declared, and no distribution of profits takes place. Such clubs cannot be treated as separate in law from their members. The ratio decided in Bacha F. Guzdar 27 ITR 1 does not apply to such clubs. When a club supplies goods to its members, there is no "sale" and sales-tax cannot be levied (Bangalore Club 350 ITR 509 (SC), Venkatesh Premises Coop Soc 402 ITR 670 (SC) & other imp judgements referred).	State of West Bengal Vs. Calcutta Club of India
3	Supreme Court	Section 68 & 69	Disallowance cannot be made solely on third party information without subjecting it to further scrutiny. The assessee has prima facie discharged the initial burden of substantiating the purchases	CIT Vs. Odeon Builders Pvt. Ltd.

HARBINGER™

Updates on regulatory changes affecting your business

			through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. The AO has also not provided a copy of the statements to the assessee, thus denying it opportunity of cross examination.	
4	ITAT Delhi	Section 147 & 154	The AO cannot, after conclusion of proceedings u/s 147, take aid of Explanation 3 to S. 147 to make any addition u/s 154. If the Dept's argument is accepted that u/s 154 the AO is empowered to deal with escapement of income even after the s. 147 assessment is completed, it would empower the AO to go on making one addition after the other by taking shelter of Explanation 3 to S. 147 endlessly. Such a course is not permissible	JDC Traders Pvt. Ltd. Vs. DCIT

DISCUSSION ON JUDGMENTS - INCOME TAX



1. **DIT(E) Vs. Gujarat Cricket Association**

The fact that the carrying on of charitable activities results in a surplus does not mean that assessee exists for profit. "Profit" means that owners have a right to withdraw the surplus for any purpose including personal purpose. However, if the surplus is ploughed back into the same charitable activities, the assessee cannot be said to be carrying out commercial activities in the nature of trade, commerce or business. The fact that the assessee has dealings with, & share of profits from, BCCI (a commercial entity) does not affect its charitable status.

Facts:-

It is not in dispute that the three Associations have not distributed any profits outside the organization. The profits, if any, are ploughed back into the very activities of promotion and development of the sport of cricket and, therefore, the assessee cannot be termed to be

carrying out commercial activities in the nature of trade, commerce or business. It is not correct to say that as the assessee received share of income from the BCCI, their activities could be said to be the activities of the BCCI. Undoubtedly, the activities of the BCCI are commercial in nature. The activities of the BCCI is in the form of exhibition of sports and earn profit out of it. However, if the Associations host any international match once in a year or two at the behest of the BCCI, then the income of the Associations from the sale of tickets etc., in such circumstances, would not portray the character of commercial nature. Thus the substantial questions of law, formulated in all the tax appeals, are answered in favour of the assessee and against the Revenue.

2. **State of West Bengal Vs. Calcutta Club of India**

Doctrine of mutuality: A club registered as a 'company' u/s 25 of Companies Act is not like other companies as it has no shareholders, no dividends declared, and no distribution of profits takes place. Such clubs cannot be treated as separate in law from their members. The ratio decided in *Bacha F. Guzdar* 27 ITR 1 does not apply to such clubs. When a club supplies goods to its members, there is no "sale" and sales-tax cannot be levied (*Bangalore Club* 350 ITR 509 (SC),

Venkatesh Premises Coop Soc 402 ITR 670 (SC) & other imp judgements referred).

Facts:-

If person carries on a certain activity in such a way that there is a commonality between contributors of funds and participators in the activity, a complete identity between the two is then established. This identity is not snapped because the surplus that arises from the common fund is not distributed among the members – it is enough that there is a right of disposal over the surplus, and in exercise of that right they may agree that on winding up, the surplus will be transferred to a club or association with similar activities. Most importantly, the surplus that is made does not come back to the members of the club as shareholders of a company in the form of dividends upon their shares. Since the members perform the activities of the club for themselves, the fact that they incorporate a legal entity to do it for them makes no difference. Thus the appeals of the Revenue are, therefore dismissed.

3. CIT Vs. Odeon Builders Pvt. Ltd.

Disallowance cannot be made solely on third party information without subjecting it to further scrutiny. The assessee has prima

facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. The AO has also not provided a copy of the statements to the assessee, thus denying it an opportunity of cross examination.

Facts:-

The entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant,

thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. The ITAT by its judgment dated 16th May, 2014 relied on the self-same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.

If we accept the argument of the learned DR that u/s 154 of the Act, Id. AO is empowered to deal with the escapement of income in respect of which the reasons were not recorded even after the assessment reopened under section 147 of the Act is completed, it would empower the Id. AO to go on making one addition after the other by taking shelter of Explanation 3 to Section 147 endlessly. Such a course is not permissible. Power that is available to the Id. AO under Explanation 3 to Section 147 of the Act, in our considered opinion, is not available to him u/s 154 of the Act, which obviously came to be exercised by the Id. AO after the conclusion of the proceedings u/s 147 of the Act. With this view of the matter, the tribunal accepted the contentions of the assessee and directed the learned AO to delete the addition.

4. JDC Traders Pvt. Ltd. Vs. DCIT

The AO cannot, after conclusion of proceedings u/s 147, take aid of Explanation 3 to S. 147 to make any addition u/s 154. If the Dept's argument is accepted that u/s 154 the AO is empowered to deal with escapement of income even after the section 147 assessment is completed, it would empower the AO to go on making one addition after the other by taking shelter of Explanation 3 to S. 147 endlessly. Such a course is not permissible.

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

Facts:-

DATE CHART FOR THE MONTH OF NOVEMBER, 2019

November 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 1) Provident Fund Payment. 2) ESIC Payment	15	16
17	18	19	20 GSTR-3B	21	22	23
24	25	26	27	28	29	30
31						
<p>1) Form 3CA-3CD (Tax Audit Report for companies applicable to Transfer Pricing).</p> <p>2) Form 3CEB & Form 3CEAA (Reports furnished U/s 92E of Income Tax Act-Transfer Pricing).</p> <p>3) Income Tax Returns of Companies liable to Transfer Pricing.</p>						

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.