

HARBINGERTM

Updates on regulatory changes affecting your business

February 2016



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COMPANY LAW



Clarifications on Corporate Social Responsibility (CSR)

The Ministry of Corporate Affairs (MCA) had been receiving several queries seeking clarification on various issues relating to CSR. A circular is issued clarifying frequently asked questions.

General Circular No. 01/2016 dated January 12, 2016

Whether Hindu Undivided Family (HUF)/Karta can become a partner/designated partner (DP) in a Limited Liability Partnership (LLP)

As per Section 5 of the LLP Act, 2008 only an individual or a body corporate can be a partner in a Limited Liability Partnership. An HUF cannot be treated as a body corporate for the purpose of the LLP Act, 2008. Therefore, an HUF or its Karta cannot become a partner or designated partner in an LLP.

General Circular No. 02/2016 dated January 15, 2016

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RESERVE BANK OF INDIA



Fraud Reporting and Monitoring

The Governor has introduced a Central Fraud Registry (CFR) which is being implemented from January 20, 2016. Instructions for its use have been issued to the banks.

A review of the fraud reporting mechanism to the Regional Offices/Central Fraud Monitoring Cell (CFMC) of the RBI was undertaken and some changes have been made –

1. Frauds of Rs. 10 lakh and above but below Rs. 50 lakh will be monitored by the respective Regional Offices under whose jurisdiction the bank falls. Frauds of 5 crore and above will be monitored by CFMC, Bengaluru

Notification No. 295 dated January 21, 2016

Plan for implementation of Indian Accounting Standards (IndAS) along with International Financial Reporting Standards (IFRS) for Scheduled Banks, Insurance Companies and Non-Banking Financial Companies (NBFCs)

The Union Finance Minister Arun Jaitley, along with the RBI, Insurance Regulatory and Development Authority (IRDA) and Pension Fund Regulatory and Development Authority (PFRDA) has created a plan for implementation of IndAS and IFRS.

For complete details please visit - <http://pib.nic.in/newsite/PrintRelease.aspx?relid=134578>

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INCOME TAX

Central Board of Direct Taxes (CBDT) initiatives for reducing litigation

The key focus area for the Income Tax Department has been to reduce litigation with the tax payers. Several initiatives have been taken by the CBDT.

Allowability of employer's contribution to funds for welfare of employees or TDS u/s 194A on interest on fixed deposit are areas which the CBDT has issued Circulars for withdrawing or not pressing appeals.

For details please visit - <http://pib.nic.in/newsite/PrintRelease.aspx?relid=134508>

Draft Report on simplification of provisions of the Income Tax Act

The ten member committee was constituted on October 27, 2015 to give recommendations for amendments in the Income Tax Act for "simplification of the Income Tax Act" and "promoting ease of doing business."

Following are some of the recommendations to simplify the provisions of the Income Tax Act -

1. In case shares are shown as capital assets and held for less than one year the assessing officer will not characterise the surplus as business income if it is less than Rs. 5 lakhs. In case it is held for a period of more than one year and shown as a capital asset the surplus will be taxed as long term capital gains
2. Enhancement of monetary limit for SMC cases before the tribunal to Rs. 1 crore or more from Rs. 15 lakhs
3. Reduce time limit for rectification of orders of the Tribunal from 4 years to 120 days
4. Avoiding undesirable delay in issue of refunds if selected for scrutiny

Following are the recommendations to promote ease of doing business and simplify procedures -

1. Presumptive scheme for professionals
2. Rectification in section 234C (interest on advance tax) where a new business is started during the financial year

3. Grant of refund with interest and payment of higher rate of interest in case of delayed refund
4. Release of property attached by giving bank guarantee

Itatonline.org dated January 23, 2016

Central Board of Direct Taxes (CBDT) makes electronic filing of appeal to CIT mandatory

The CBDT in its press release dated December 30, 2015 has stated that it has taken the initiative to digitise various functions of the Department. It is now mandatory to electronically file an appeal before the CIT for those who are required to file return of income electronically. However amendment in the rules is still awaited. Our sources show that presently appeal is accepted physically too.

Itatonline.org dated December 31, 2015

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PAYMENT OF BONUS ACT

Bonus Payouts to Employees Doubled

The latest amendment to the Payment of Bonus Act has now come into effect through the Payment of Bonus (Amendment) Act, 2015. An employee will now receive Rs. 16,800 per annum as bonus compared to the previous Rs. 8,400.

The key amendments of the bill are –

1. Eligibility for Bonus

Under the current Act, every employee who has worked for at least 30 days and has a salary of Rs. 10,000 is eligible for bonus. The Bonus Bill increases eligibility limit to a salary threshold of Rs. 21,000.

2. As per the Act, if an employee's salary is more than Rs. 3,500 per month, for the purpose of calculation of bonus, the salary will be limited to Rs. 3,500 per month. The new Bill raises the wage ceiling to Rs. 7,000 per month or the minimum wage as per the Minimum Wages Act, whichever is higher. (This comparison with minimum wages act will pose practical difficulties in implementation besides different limits in the same company having multi unit locations)

3. Retrospective Effect
The Amendments will be effective from April 1, 2014.

The Kerala High Court has stayed operation of above mentioned amendment for Financial Year 2014-15. The amendment shall be implemented only after disposal of the petition. Preliminary reports indicate that the order is applicable only to petitioners.

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MVAT

Maharashtra Value Added Tax (Third Amendment) Rules, 2015

These rules will be known as the Maharashtra Value Added Tax (Third Amendment) Rules, 2015.

They will come into force on January 1, 2016.

The following shall be added -

Set off in respect of certain goods covered under Schedule D

If the dealer has purchased aerated and carbonated non-alcoholic beverages and cigar and cigarettes under Schedule D of the Act then he shall be entitled to claim set off of the goods only to the extent of aggregate of -

- a. Taxes paid or payable under the Central Sales Tax Act, 1956 on the inter-state resale of the goods and
- b. Taxes paid on the purchase of the goods if resold locally

The set off can be claimed only in the month in which sale of goods is made by the dealer.

This rule will not apply to goods sold as exports.

Notification dated December 30, 2015

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ECONOMICS

Indian Economy to outshine China for second consecutive year:

India is expected to grow at a rate of 7.7% in 2016, beating China for the second consecutive year.

As per PwC, India is the only country expected to grow faster than its long-term average growth rate.

Among seven emerging economies (China, India, Brazil, Mexico, Russia, Indonesia and Turkey) India will be the top performer.

The Chinese GDP growth will be around 6.5% this year and will continue to slow.

India will benefit tremendously from its recent reforms. The cut in policy rate by RBI from 8% to 6.75% will help support consumption and investment.

Economictimes.com dated January 10, 2016

India's unemployment might be getting worse

In a small Uttar Pradesh town Amroha approximately 19,000 people applied for 114 posts as sweepers.

Many of the applications are from graduates in arts, science, post-graduates even engineers and MBAs.

India's unemployment problem may become worse in the upcoming years.

Many employees are being asked to leave because businesses are being shut

down or because of lack of performance or over-staffing.

Decreased participation of women in India is a problem. A report states that women's equality can add 12 trillion dollars to the global economy.

The number of people seeking jobs will increase from 17.6 million people in 2017 from 17.5 million in both 2015 and 2016. The global economy is not generating enough jobs.

Indiatimes.com dated January 24, 2016

Coca Cola to enter dairy drinks segment in India

Coca Cola has announced dairy drinks segment for the Indian market with Vio brand which will debut across the country next month. The company has a tie up with Reliance Retail and will launch the product across 500 stores.

Businesstoday.in

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NOTE: The web links referred are as on the date of this publication.

SUMMARY OF IMPORTANT TAX JUDGMENTS:

Unless otherwise stated, the sections mentioned here under relate to the Income Tax Act, 1961.

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
1	ITAT Chennai	Sec. 14A	Disallowance for income not included in gross total income cannot be made without following method prescribed in Rule 8D	Deputy Commissioner of Income Tax vs. K.H. Arind Pvt. Ltd.
2	High Court of Punjab and Haryana	Sec. 24	Assessee took a loan as a condition for acquiring property, interest on such loan can be deducted against rental income from such property	CIT vs. Haryana Television Ltd.
3	High Court of Rajasthan	Sec. 40A(3)	Refund of fees in cash exceeding the prescribed limit	CIT Kota vs. Ram Kishan Verma
4	ITAT Delhi	Sec. 50C	Substitution of full value of consideration received with stamp value in terms of Section 50C is applicable only to seller of property	ACIT New Delhi vs. Rakesh Narang
5	High Court of Bombay	Sec. 54EC	Bonds in which assessee wanted to invest were not available and as soon as such bonds were available assessee made the investment, exemption was allowed to the assessee	ACIT Nagpur vs. Kamlakar Moghe
6	ITAT Lucknow	Sec. 56	Assessee engaged in construction activities deposits surplus money into fixed deposits - interest earned to be taxed as income from other sources	ACIT Kanpur vs. Z Square Shopping Mall Pvt. Ltd.
7	ITAT Mumbai	Sec. 143(3)	Bogus sales/purchases - the highest level of suspicion cannot take the place of evidence	Hiralal Chunilal Jain vs. ITO

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DISCUSSION ON JUDGEMENTS - INCOME TAX



1. Disallowance of expenses in relation to income not included in total income cannot be made on random basis

Deputy Commissioner of Income Tax vs. K.H. Arind Pvt. Ltd. (ITAT Chennai)

The assessee had earned income from a partnership firm which is exempt from tax. He disallowed 10% of the income as expenditure in relation to said income.

The Assessing Officer held that disallowance of expenditure in relation to earning exempt income should be computed as per Rule 8D and 10% was not sufficient.

The Commissioner held that since the assessee himself had disallowed 10% of income there was no need for further disallowance.

The Revenue held that - Section 14A specifically states that the AO shall determine the amount of expenditure in relation to income which does not form a part of total income in accordance with Rule 8D. The Officer does not have any

option except to determine the expenditure disallowable as per Rule 8D. The estimation of 10% by the assessee may not be as per the provisions of the Act.

The Commissioner is not right in disallowing expenditure on an estimated basis of 10%.

2. Assessee took a loan as a condition for acquiring property, interest on such loan can be deducted against rental income from such property.

CIT Faridabad vs. Haryana Television Ltd. (Punjab and Haryana High Court)

The assessee has rental income and claimed deduction of interest from such income u/s 24. The Assessing Officer disallowed the deduction on the grounds that the assessee did not purchase/construct building from the funds on which interest was paid. The Commissioner agreed with the disallowance. The Tribunal allowed the deduction stating that the loan was taken by the assessee for acquiring the property.

The High Court held that - Section 24 at the relevant time stated that the property had been acquired, constructed, repaired, renewed or re-constructed with borrowed capital and the amount of interest payable was permitted as a deduction from house property. The condition for payment of loan was for acquiring the property of the company. The liability undertaken was for acquiring the property and so interest can be allowed as a deduction u/s 24.

3. Refund of fees in cash exceeding the prescribed limit of Rs. 20,000

CIT Kota vs. Ram Kishan Verma (High Court of Rajasthan)

The assessee was running a coaching centre for IIT entrance exams. The Assessing Officers found that the assessee had refunded certain fees to the students in cash and added certain amounts to his income. 497 students had opted for refund of fees out of which 175 were paid in cash amounting to Rs. 21,51,100. The AO made enquiries on his own from 7 students/parents and the notices were returned by post offices due to lack of complete address or the persons were not available in the stated address. In addition to the seven, four students denied non-receipt of refund and the AO disallowed the entire repayment.

The assessee produced additional evidence before the Commissioner. After analysing all the evidence, the Commissioner stated that it was not necessary to disallow the entire amount.

4. Substitution of full value of consideration received with stamp value in terms of Section 50C is applicable only to seller of property

ACIT New Delhi vs. Rakesh Narang (ITAT Delhi)

The assessee purchased the property for Rs. 34 lakhs. The Assessing Officer claimed that the purchase price was far less than its fair market value. The District Valuation Officer was called upon to determine the fair market value of the said

property. The value was determined to be Rs. 83.15 lakhs. Rs. 49.15 lakhs were included as investments not fully disclosed in books of accounts u/s 69B of the Act.

The Commissioner deleted the claim of the Officer.

It was held that - the pre-requisite condition for making an addition u/s 69B is there should be positive evidence with the Assessing Officer that the assessee has in fact invested more than recorded in books of accounts. In this case the only evidence which the AO has is a report of the Valuation Officer. A valuer's report is nothing but an estimated cost of construction. There is nothing to show that the assessee invested more than declared. For such cases Section 50C - special provision for full value of consideration in certain cases - was introduced. Section 50C is a deeming provision. The substitution of full value of consideration received with stamp value is applicable only to the seller of the property who has to compute capital gains after transfer of a capital asset. The view of the Commissioner to dismiss the appeal was upheld.

5. REC bonds in which the assessee wanted to invest were not available on date on which the period of six months expired for making such investment. The assessee made the investment as soon as they were available and such exemption was allowed to the assessee

ACIT Nagpur vs. Kamlakar Moghe (Bombay High Court)

The assessee sold a property and invested a certain sum in REC Bonds and claimed for deduction u/s 54EC. However, the Assessing Officer did not accept the deduction as investment had not been made within six months.

On appeal the assessee claimed that the period of six months expired on January 1, 2007. However, such bonds were not available until January 24 – the date which he purchased. Thus causing delay for investment.

The Commissioner and Tribunal allowed the assessee's claim.

On appeal to the High Court it was held that – Section 54EC states that investment should be made within a period of six months from sale of such asset. The investment can be made in either NHAI or REC bonds. The revenue argued that NHAI bonds were available and the assessee could have invested in those within the given six months. However, the assessee is given an option to invest in either of the two. The option lies with the assessee who can best judge his own needs. He cannot be forced to invest in whichever bond is available only because the stipulated time is about to expire. The investment was made by the assessee in the earliest possible time. Hence the Tribunal was justified in allowing the deduction.

6. Construction company depositing surplus money into fixed deposits – interest on such amount to be considered as income from other sources

ACIT Kanpur vs. Z Square Shopping Mall Pvt. Ltd. (ITAT Delhi)

The assessee company was incorporated for construction of shopping malls. The assessee purchased land and started construction. The company had applied for a loan from a bank and it was sanctioned. The loan was kept in the form of fixed deposits and the company earned interest thereon.

The Assessing Officer considered the interest income as income from other sources as the construction was not completed in the relevant assessment year and expenses were capitalized as pre-operative expenses.

The High Court held that – the main issue was whether to treat interest on borrowed funds kept in fixed deposits as a revenue receipt or capital receipt. Since the funds were not required as of now they were kept in the bank. The interest earned on the funds is not directly related with the construction of the shopping mall and cannot be capitalized and hence should be treated as revenue.

7. High Level of suspicion cannot take the place of evidence

Hiralal Chunilal Jain vs. ITO (ITAT Mumbai)

The assessing officer received information from the Sales Tax Department of Maharashtra that one of the suppliers of the assessee admitted to have bogus bills. The assessee had also asked for cross examination with the supplier but it was not considered. The Assessing Officer had

not supplied the copy of the statements of the supplier to the assessee.

The purchases and sales were recorded and payments were made through the assessee's bank account. However, the Officer has considered the entire purchases as unexplained investments u/s 69 of the Act. The First Appellate Authority (FAA) reduced the taxability to 20%.

The Assessing Officer did not reject the sales of the assessee and the assessee was maintaining quantitative details of stock and a stock register. Once sales are accepted to be genuine the AO cannot reject the purchases.

In this case the AO concluded based on information received from the sales tax department. However, he did not conduct an independent inquiry. The principles of natural justice were not followed. Although the taxability was reduced, no justification was given. The order of the FAA was reversed.

NOTE: The Judgments should not be followed without studying the complete facts of the case law.

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Due Dates Chart for the Month February 2016(Various Acts):

February 2016							I
Sun	Mon	Tue	Wed	Thu	Fri	Sat	n
	1	2	3	4	5	6	d e x Service Tax Payments by Companies Service Tax Payments by Companies (if paid electronically), Excise Duty Payment
7 TDS / TCS Payment for January	8	9	10 Monthly Excise Return (ER-1)/ ER-2 monthly return by 100% EOU	11 Monthly Excise Return (ER-6)	12	13	
14	15 P.F Payment for month of January	16	17	18	19	20 EPF Payment (including 5 days of grace), Payment & returns of Monthly MVAT	
21 ESIC Payment for January	22	23	24	25	26	27	
28 Profession Tax Payment/PT return if tax > 50000 PA	29						

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.

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