COMPANY LAW

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE IN FILING OF VARIOUS FORMS WITH MCA

The time limit for filing and relaxation of additional fee on forms has been extended from 28-02-2013 to 15-4-2013 and as such additional fees will be applicable from 16-04-2013.

It has been clarified that fee payable for forms on/till 16-1-2013 will remain payable along with additional fee and relaxation of any additional fee will be considered for forms on or after 17-1-2013.

[General Circular no.08/2013 dated 10-04-2013]

SERVICE TAX

DUE DATE FOR SUBMISSION OF ST-3 FOR F.Y. 2012-13, 2nd HALF

CBEC extends the date of submission of form Service Tax Return (ST-3) for the period from 1st October 2012 to 31st March 2013, from 25th April, 2013 to 31st August, 2013.

The Form is expected to be available for e-filing on ACES around 31st of July, 2013.

FORMS FOR FILING APPEAL IN THE CESTAT AMENDED

The amended Service Tax Rules, 2013 come into force on and from the 1st day of June, 2013.

Revised Forms S.T.-5, S.T.-6 and S.T.-7 used for filing appeal to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) have been notified.

DIRECT TAX

ARM'S LENGTH PRICE

For the A.Y. 2013-2014, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price in the following cases:

Where the arm's length price determined under Section 92C does not exceed the price at which the transaction has actually been undertaken:

- By 1% for wholesale traders and
- By 3% in all other cases

[Notification No. 30/2013, Dated: 15/04/2013

AMENDMENTS TO FINANCE BILL 2013 PASSED BY THE LOK SABHA

Amendments to the Finance Bill 2013 have been passed by the Lok Sabha on 30th April, 2013 to correct certain anomalies. Issues considered of importance to our clients and associates are summarized below:

- A new provision has been added to the list of transactions which are not deemed to be 'speculative transactions'. This provision declares that **trading in commodity derivatives** carried out in a recognized association shall also not be treated as speculative in nature. (*Thus these derivatives are now brought on par with derivatives in Shares and Securities traded on BSE and NSE i.e. Futures and Options which were not deemed speculative transactions w.e.f 25-01-2006)*

- A **Tax Residency Certificate (TRC)** is required to avail benefits of the DTAA by non-residents. The Finance Bill 2013 had declared that a TRC would be a necessary but not a sufficient condition, which caused apprehension that the Officers could disregard the proof and view the transaction independently. Thus, the clause has been removed and now along with the TRC, other documents as prescribed for claiming DTAA benefits will have to be submitted by the assessee.

- Assessments have to be completed within a specified time-limit and if **reference is made to the Transfer Pricing Officer (TPO), the time-limit** gets extended by 3 months w.e.f 1st July 2012. The finance bill now clarifies that this revised time limit will be applicable regardless of the fact whether:
  - Reference to TPO is made before, on or after 1st July 2012 **OR**
  - The order of TPO is passed before, on or after 1st July 2012.

ISSUANCE OF CERTIFICATE FOR TDS IN FORM 16

It is now mandatory for the employers to generate Part A of Form No. 16 (Salary TDS) from the TDS Reconciliation Analysis and Correction Enabling System (TRACES) Portal on or after 01/04/2012 after the amendments in the format of Format 16, splitting it into Part A and Part B.

- Part A of Form 16 shall have a unique TDS Certificate Number.

- The employer shall authenticate the correctness of Part A of Form

16 and verify the same either by using manual signatures or by using digital signatures.

- Part B of Form 16 shall be prepared by the employer manually and issued to the employee after authentication and verification.

- It is advisable to merge both parts and issue one form 16 to employee to avoid confusion at employee level (Clarification awaited)

[Circular Number 04/2013 dated 17th April, 2013]

SUMMARY OF IMPORTANT JUDGEMENTS:

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

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
1	ITAT Chennai	Charitable Trusts: *Sections 2(15) and 12AA*	Soul and substance of 'charity' is missing in IPL matches; Registration of TN Cricket Association revoked	Tamil Nadu Cricket Association v. DIT (Exemptions)
2	ITAT Mumbai	TDS on Professional Fees: *Section 194J*	No TDS on payments made to film actors for modeling as it isn't connected with acting in film	Kodak India (P.) Ltd. v. DY.CIT
3	ITAT Delhi	Transfer Pricing: *Section 92C*	ALP of loan transaction has to be determined as per CUP & LIBOR	Cotton Naturals (I) Pvt. Ltd vs. DCIT
4	ITAT Mumbai	Transfer Pricing: *Section 92C*	No notional interest addition for delayed payments by AE	Evonik Degussa India P. Ltd vs. ACIT
5	ITAT Delhi	Capital Gains: *Section 48*	RBI guidelines are for FEMA purposes; it can't be used for share valuation for computing cap gains	Zeppelin Mobile System GmbH v. ADIT
6	ITAT Hyderabad	Capital Gains exemption: *Sections 54 and 54F*	Assessee can claim exemption under both sections for investment in same house	Venkata Ramana Umareddy V. DY.CIT
7	ITAT Mumbai	Deemed Dividend: *Section 2(22)(e)*	Share application money is not "loan or advance"	DCIT vs. Vikas Oberoi

1) Soul and substance of 'charity' is missing in IPL matches; Registration of TN Cricket Association revoked

[Tamil Nadu Cricket Association v. DIT (Exemptions) Chennai – Tribunal]

IPL is commercial venture to maximize revenues from cricket.

In the instant case, the following issues came for consideration of Chennai ITAT:

a) Whether IPL matches come within conceptual definition of charity vis-a-vis activity of general public utility under Section 2(15) of Income Tax Act, 1961?

b) Whether registration of Tamil Nadu Cricket Association conducting IPL matches could be cancelled under Section 12AA?

The Tribunal held in favour of revenue as under:

a) The phrase "Advancement of an object of general public utility" used in the inclusive definition of 'charitable purpose' under section 2(15) cannot be divorced from the inherent concept of 'charitable purpose';

b) The soul and substance of 'charity' is activity carried on by kind and sympathetic people for the help of those in need. None of the activities of an assessee can be considered as charitable purpose if it is devoid of soul and substance of charity;

c) IPL matches are commercial ventures. Nothing 'charitable' is there in conducting IPL matches as the soul and substance of charity is missing. Cost of tickets is very high, laymen cannot buy them;

d) Cricket associations are oriented towards maximizing revenue from high ticket prices and advertisements. Free tickets aren't provided to so-called slum dogs and other poor people to watch IPL. Instead these are issued to VIPs and dignitaries;

e) IPL teams are owned by different sponsors including industrial houses and film stars. They select players on auction basis and quote highest price for the best players. Capital invested by owners of teams is redeemed by advertisement revenue;

f) By no stretch of imagination IPL matches can be called as activities of public utility carried on by assessee. IPL cricket matches, celebrity cricket matches (involving film stars) do not have any element of public utility. They are either after fame or money;

g) IPL matches are further garnished by cheer girls and fanfare. These

are marketing strategies by which cricket associations are trying to sell the game of cricket at the highest amount that could be collected;

Thus, registration of Tamil Nadu Cricket Association was cancelled as IPL matches do not come within the ambit of inclusive definition of charitable purpose under section 2(15) of the Act.

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2) No TDS on payments made to film actors for modeling as it isn't connected with acting in film

[Kodak India (P) Ltd. v. DY.CIT Mumbai – Trib]

Payments for modeling services made to a film actor are not connected with production of cinematograph film.

In the instant case, the following issue came for consideration of Mumbai ITAT:

Whether payments made to actor-model for rendering modeling services are outside the scope of section 194J of the Act?

The Tribunal held in favour of assessee as under:

a) Professional services include profession notified under section 44AA, which defines film artist, to mean, inter alia, any person engaged in his professional capacity in the production of cinematograph film as an actor;

b) Total earning of a film actor for services rendered by him isn't liable to tax deduction under sec. 194J. The payments attracting TDS under 194J are services specific and not person specific;

c) Modeling is display of merchandise. Acting on the other hand, means, to act in play or film i.e. to portray a role authored by a story-writer with different purposes and objects and not to display merchandise to boost sales of a manufacturer/trader of products or services; and

Therefore, as modeling payments have nothing to do with acting in a cinematograph film, no TDS liability attracts under section 194J on payments made to a film actor for modeling services.

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3) ALP of loan transaction has to be determined as per CUP & LIBOR

[Cotton Naturals (I) Pvt. Ltd vs. DCIT (ITAT Delhi)]

The assessee, an Indian company, gave a loan of $ 10,50,000 to its USA

based Associated Enterprise (AE) at 4% rate of interest. The TPO adopted the Indian company as the tested party and held that the comparable rates for benchmarking the interest had to be selected from the Indian domain and the rate that the assessee would have earned by giving loans in the Indian market had to be taken as the ALP. It was also held that an addition to the interest rate had to be made for the risk factor. The interest rate was determined at 17.25%. On objection by the assessee, the DRP held that the ALP had to be taken at the PLR (Prime Lending Rate) of RBI being 13.25%.

On appeal by the assessee to the Tribunal, HELD reversing the TPO & DRP:

a) CUP (Comparable Uncontrolled Price) is the most appropriate method for ascertaining the arms length price of an international transaction of lending money. Where the transaction is of lending money in foreign currency to its foreign subsidiaries, the comparable transactions have to be of foreign currency lent by unrelated parties. The financial position and credit rating of the subsidiaries will be broadly the same as the holding company. In such a situation, domestic prime lending rate would have no applicability and the international rate fixed being LIBOR (London Interbank Offered Rate) should be taken as the benchmark rate for international transactions. On facts, the assessee had an arrangement for loan with Citi Bank for less than 4% and on the loan provided to its AE's it had charged 4% interest. Hence, the adjustment made by the TPO was not warranted.

b) Further, the assessee's profits are exempt u/s 10B and so there was not a case where the assessee would benefit by shifting profits outside India

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4) No notional interest addition for delayed payments by AE

[Evonik Degussa India P. Ltd vs. ACIT (ITAT Mumbai)]

The assessee raised invoices on its Associated Enterprise (AE) and gave 30 days credit for payment. As there was delay by the AE in making payment beyond the stipulated credit period, the TPO held that the assessee ought to have charged interest at the rate of 1% per month. A notional addition towards the said interest was made. This was upheld by the DRP (Dispute Resolution Panel).

On appeal by the assessee to the Tribunal, HELD reversing the AO & DRP:

a) The assessee has no borrowings and so there is no interest liability. Even if the payments have been made by the AE beyond the normal credit period, there is no interest cost to the assessee.

b) There is no such agreement whereby interest is to be charged on such a delayed payment. The assessee does the billing on a quarterly basis and accordingly, the payment is being received. Therefore, the delay is not wholly on account of late payment by the AEs only.

c) Moreover, the T.P. adjustment cannot be made on hypothetical and notional basis until and unless there is some material on record that there has been under charging of real income.

Consequently, an addition an account of notional interest relating to alleged delayed payment in collection of receivables from the A.Es is uncalled for.

Hopefully same rule is extended to domestic transfer pricing provisions.

5) RBI guidelines are for FEMA purposes; it can't be used for share valuation for computing cap gains

[Zeppelin Mobile System GmbH v. ADIT Delhi Tribunal]

In the instant case, the assessee, a tax resident of Germany has an Indian subsidiary, which was a closely held unlisted company. During the relevant year, the assessee had sold part of the shares held by it in its Indian subsidiary to M/s Sintex Industries Ltd and returned capital gains from such sale on basis of sale price of Rs.390 per share. AO contended that as per RBI's guidelines, valuation should be Rs.400 per share. DRP made additions @ Rs.10 per share accordingly.

On appeal, the Tribunal held in favour of assessee as under:

a) Undoubtedly, the RBI Guidelines was Guidelines for the banks, issued for FEMA purposes. Since the Guidelines have been issued for FEMA purposes, it was for the FEMA authorities to take appropriate action against the assessee on breach of the Guidelines;

b) No objection whatsoever has been raised by the RBI to the rate of 390/- per share, as maintained by the assessee and the RBI has accorded its approval;

c) Had the alleged difference between the rates existed, thereby constituting a violation of the RBI Guidelines by the assessee, such violation would obviously have been taken care of and the approval would not have been accorded;

d) Sintex Industries Ltd., to whom the shares were sold by the assessee, has not denied such rate of Rs 390/- per share. Rather, such rate stands admitted in the Memorandum of Understanding between the assessee and Sintex Industries Ltd. Nothing adverse or detrimental to the assessee's case has been brought on record. Thus, the assessee's appeal was allowed.

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6) Section 54 and section 54F are independent provisions and assessee can claim exemption under both sections for investment in same house

[Venkata Ramana Umareddy V. DY.CIT (Hyderabad - Trib)]

In the instant case, during the relevant financial year, the assessee had earned long-term capital gain ('LTCG') out of transfer of two distinct and separate assets - one being a plot of land and the other a house property. He claimed that the entire LTCG arising from the sale of the two assets was invested in purchase of the new residential house and, hence, he was entitled to avail of exemption under sections 54 and 54F. The AO rejected such claim by holding that for claiming exemption under sections 54 and 54F the assessee had to invest in two houses. Further, the CIT (A) upheld the order of AO. Aggrieved assessee filed the instant appeal.

The Tribunal held in favour of assessee as under:

a) Sections 54 and 54F are independent of each other and operate in respect of LTCG arising out of transfer of distinct and separate long-term capital assets. However, both the sections allow exemption only on purchase or construction of a new residential house;

b) The only reasoning on which the lower authorities had rejected assessee's claim of exemption

under section 54 was that the assessee couldn't claim exemption under both the sections towards investment in a single house. According to the lower authorities, for claiming exemption under sections 54 and 54F the assessee had to invest in two houses. Such an interpretation of the provisions was totally misconceived and misplaced;

c) There was also no specific bar either under section 54 or 54F of the Act prohibiting allowance of exemption under both the sections in case the conditions of the provisions were fulfilled;

d) Since long-term capital gain arose from sale of two distinct and separate assets, viz., residential house and plot of land and the assessee had invested the entire capital gain in purchase of a new residential house, he was entitled to claim exemption both under sections 54 and 54F

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7) Deemed Dividend: Share application money is not "loan or advance"

[DCIT vs. Vikas Oberoi (ITAT Mumbai)]

The assessee was a beneficial shareholder of two companies named Kingston Properties P Ltd. (KPPL), New Dimensions Consultants P Ltd (NDCPL) & R. S. Estate Developers P Ltd (RSEDPL). NDCPL & RESEDPL advanced various sums of money to KPPL towards "share application money". However, some of the advances were returned by KPPL while some were adjusted towards allotment of shares. The AO held that the transaction was a "*colourable device*" and a "*loan and advance*" which fell within the ambit of s. 2(22) (e). The said "*loan and advance*" was assessed as "*deemed dividend*" in the hands of the assessee.

On appeal by the department to the Tribunal HELD dismissing the appeal:

Share application money or share application advance is distinct from '*loan or advance*'. Although share application money is one kind of advance given with the intention to obtain the allotment of shares/equity/preference shares etc, such advances are innately different form the normal loan or advances specified both in section 269SS or 2(22) (e) of the Act. *Unless the mala fide is demonstrated by the AO* with evidence, the book entries or

resolution of the Board of the assessee become relevant and credible, which should not be dismissed without bringing any adverse material to demonstrate the contrary.

It is also evident that share application money when partly returned without any allotment of shares, such refunds should not be classified as '*loan or advance*' merely because share application advance is returned without allotment of share. In the instant case, the refund of the amount was done for commercial reasons and also in the best interest of the prospective share applicant.

Further, it is self explanatory that the assessee being a '*beneficial share holder*', derives no benefit whatsoever, when the impugned '*share application money/advance*' is finally returned without any allotment of shares for commercial reasons. In this kind of situations, the books entries become really relevant as they show the initial intentions of the parties into the transactions. It is undisputed that the books entries suggest clearly the '*share application*' nature of the advance and not the '*loan or advance*'. As such the revenue has merely suspected the transactions without containing any material to support the suspicion. Therefore, the share application money may be an advance but they are not advances which are referred to in section 2(22)(e) of the Act. Such advances, when returned without any allotment or part allotment of shares to the applicant/subscriber, will not take a nature of the loan merely because the same is repaid or returned or refunded in the same year or later years after keeping the money for some time with the company. So long as the original intention of payment of share application money is towards the allotment of shares of any kind, the same cannot be deemed as 'loan or advance' unless the mala fide intentions are exposed by the AO with evidence.

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

DUE DATES CHART FOR THE MONTH (Various Acts):

Date	Particulars
5th	Service Tax Payment by Companies for April
6th	Payment of Excise Duty for the previous month (other than SSI units)
7th	Income Tax – TDS payment for April
10th	Monthly Excise return by all assessees (except SSIs & EOUs) coming under CEA in Form ER-1
10th	Quarterly Excise return by EOU assessees coming under CEA in Form ER-2
10th	Monthly Excise Return by specified class of Assessees regarding principal units in Form ER-6
15th	Provident fund payment for April
15th	Income Tax – TDS/TCS quarterly statements (other than Government deductor) January to March
20th	MVAT: TDS payment of April
21st	Payment of contribution under Employees State Insurance Act, 1948
21st	Payment and filing of Monthly MVAT return under MVAT Act, 2002
30th	Issue of TDS certificate (Form 16A) by non-government deductor for Q4
31st	Payment of Profession Tax for the employees
31st	Income Tax: Issue of Form 16 by Employer

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This communication is intended to provide general information, guidance on various professional subjects and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.