HARBINGER™

Updates on regulatory changes affecting your business

November 2015

HAPPY DIWALI!

B D Jokhakar & Co.

Chartered Accountants

www.bdjokhakar.com

Follow us on:

INDEX

Sr. No	Topics covered	Page No.
1	Company Law	3
2	Reserve Bank of India	3
3	Economics	4
4	Service Tax	4
5	Income Tax	5
6	Summary of Judgments - Income Tax	7
7	Discussion on Judgments - Income Tax	9
8	Due date chart for the month of November 2015	13

COMPANY LAW

Amendments in Limited Liability Partnership Act, 2009

The Central Government has made the following rules to amend the Limited Liability Partnership Rules, 2009 –

1. These rules came into force from 19th October, 2015.
2. Where a firm is converted into a limited liability partnership (LLP), an intimation of such conversion will be given to the Registrar of Firms in Form 14 within 15 days of the date of the registration of the LLP.

Notification dated October 15, 2015

MCA extends due date of Annual Filing Forms under Companies Act, 2013 till 30th November, 2015

The Ministry of Corporate Affairs has issued circular no. 14/2015 to extend the due date of filing of Forms AOC-4, AOC-4 XBRL and MGT-7 and relax the additional fees for the forms filed till 30th November, 2015.

RESERVE BANK OF INDIA

Government Places proposal to restrict RBI governor's powers

The government has proposed a draft note that restricts the exclusive powers of the Reserve Bank of India governor in setting the monetary policy. The proposal states that a seven-member committee should draft the policy instead.

The note also suggests –

1. The committee should consist of four members from the government and three from the Central Bank with the governor holding no veto power but a casting vote.
2. Apart from the RBI governor, the central bank can nominate two members – one deputy RBI

governor and an officer – and one non-voting member from the government.
3. The decision of the monetary policy committee will be binding on the RBI and decisions will be taken based on majority votes. In case of a tie, the governor will have a casting vote.
4. The note proposes that the committee will publish a medium-term inflation expectation document every six months with an inflation target for 6 to 18 months.

NDTV – October 20, 2015

ECONOMICS

Indian IT firms to step up acquisitions to boost growth

Indian IT Companies are likely to step up acquisitions to strengthen their competitive position and boost growth.

Access to new technology, entry into new markets and greater diversification through acquisitions can strengthen the position of Indian IT companies.

However, their limited track record in making large acquisitions exposes them to risks in integrating employees and businesses.

Economic Times – October 20, 2015

Indian aviation market continues double digit growth

The Indian aviation market continues its double digit growth with Indian airlines together flying 14.56% more passengers in September this year as compared to September 2014.

IndiGo remained the leader in the domestic sector, carrying 36.5% of the total passengers flown during September 2015. Jet Airways follows IndiGo by flying 22% of total passengers. Air India came third with 15.9%.

Economic Times – October 20, 2015

Reliance Capital Asset Management acquires Goldman Sachs India business for Rs. 243 crore

Reliance Capital Asset Management (RCAM), a part of Anil Ambani's Reliance Capital signed an agreement to acquire Goldman Sachs Asset Management's (GSAM) asset management business in India.

Reliance will pay Rs. 243 crore ($37.5 million) in cash to acquire all mutual fund schemes.

The boards of both the companies – Reliance Capital Asset Management and Goldman Sachs Asset Management – have already approved the transaction which will be completed by the end of this financial year subject to regulatory approval.
Economic Times – October 21, 2015

SERVICE TAX

Service tax levy on services provided by a Goods Transport Agency (GTA)

There have been many difficulties faced by the Goods Transport Agencies in respect of service tax levy on services of GTA.

Goods Transport Agency means any person who provides service to another in relation to transport of goods by road and issues consignment note. The service is a composite service which includes loading/unloading, packing/unpacking, temporary storage, etc.

A single composite service need not be broken down into its components and considered as separate services. If ancillary services are provided in the course of transportation of goods by road and the charges for the same are included in the invoice issued by the GTA and not by any other person such services would form a part of GTA service and the abatement of 70% will be applicable to it.

Circular No.186/5/2015-STdated October 5, 2015

INCOME TAX

Validation of tax returns through Electronic verification code (EVC)

CBDT has permitted validation of returns through EVC pertaining to assessment years 2013-2014 and 2014-2015. To facilitate the process of validation of tax returns the CBDT has directed that returns of income which are filed on or after 01/04/2015 electronically (without digital signature) pertaining to assessment year 2014-2015 or returns filed in response to various notices or consequence of delay can also be validated through EVC.

Notification dated 6th October, 2015

Amendments in Section 80DDB – deduction in respect of medical treatment

The prescription in respect of the diseases mentioned in the section will be issued by the following specialists –

1. For neurological diseases where the disability level has been certified to be 40% and above – a neurologist having a Doctorate of Medicine in Neurology or any equivalent degree which is recognised by the Medical Council of India
2. For malignant cancers – an Oncologist having a Doctorate of Medicine in Oncology or equivalent degree which is recognised by the Medical Council of India

3. For AIDS, any specialist having a post-graduate degree in General or Internal Medicine, or any equivalent degree which is recognised by the Medical Council of India
4. For Chronic Renal Failure – a Nephrologist having a Doctorate of Medicine in Nephrology or a Urologist having a Master of Chirurgiae degree in Urology or any equivalent degree recognised by the Medical Council of India
5. For Hematological disorders – a specialist having a Doctorate of Medicine in Hematology or any equivalent degree which is recognised by the Medical Council of India
6. If the patient is receiving treatment in a government hospital for any of the above mentioned diseases and ailments the prescription may be issued by an specialist working full time in that hospital and having a post graduate degree in General or Internal Medicine or any equivalent degree which is recognised by the Medical Council of India
7. The prescription should contain the name and age of the patient, name of the disease or ailment along with the name, address, registration number and qualification of the specialist issuing the prescription. If the patient is receiving treatment in a Government Hospital the prescription should also contain the name and address of the Government Hospital.

CBDT Office Order Regarding Creation of Additional Benches of DRP to Handle Large Pendency of Cases

The CBDT has issued Office Order No. 198 of 2015 dated 13.10.2015 stating that in order to address the large pendency before DRPs at Mumbai and Bengaluru, the CBDT has decided to create additional Benches i.e. DRP-3 at Mumbai DRP-2 at Bengaluru until further orders.

CBDT Instruction on Revised and Updated Guidance for Implementation of Transfer Pricing Provisions

The CBDT has issued Instruction No. 15/2015 dated 16.10.2015 in which it has set out revised and updated guidance for implementation of transfer pricing provisions. The Instruction sets out the circumstances in which a reference can be made to the TPO by the AO, the role of the TPO when such a reference is made, the role of the AO after determination of the ALP by the TPO, etc. The Instruction is of crucial importance to all taxpayers and professionals engaged in the practice of transfer pricing law.

The provisions relating to transfer pricing are contained in Sections 92 to 92F of the Income-tax Act

In terms of the provisions, any income arising from an international transaction or specified domestic transaction

Between two or more associated enterprises shall be computed having regard to the Arm's Length Price.

Instruction No. 3 was issued on 20th May, 2003 to provide guidance to the Transfer Pricing Officers and the Assessing Officers to operationalise the transfer pricing provisions and to have procedural uniformity. Due to a number of legislative, procedural and structural changes carried out over the last few years, Instruction No. 3 of 2003 is being replaced with this Instruction to provide updated and adequate guidance on the transfer pricing provisions pertaining to international transactions.

The power to determine the Arm's Length Price (ALP) in an international transaction is contained in sub-section (3) of Section 92C of the Act. However, Section 92CA of the Act, inter-alia, provides that where the Assessing Officer (AO) considers it necessary or expedient so to do, he may refer the computation of ALP in relation to an international transaction to the Transfer Pricing Officer (TPO).

In order to make a reference to the TPO, the AO has to first satisfy himself that the taxpayer has entered into an international transaction with an associated enterprise. One of the sources from which the factual information regarding international transaction can be gathered is Form No. 3CEB filed by the taxpayer, which is in the nature of an accountant's report containing basic details of an international transaction entered into by the taxpayer during the year and the associated enterprise with which such transaction is entered into, the nature of documents maintained and the method followed. The AO can arrive at a prima facie belief on the basis of these details whether a reference to the TPO is necessary. No detailed enquiries are needed at this stage and the AO should not embark upon scrutinising the correctness or otherwise of the price of the international transaction at this stage.

Before making a reference to the TPO, the AO has to seek the approval of the Principal Commissioner or Commissioner as provided in the Act. The provisions of Section 92CA of the Act, inter-alia, refer to the international transaction. Hence, all international transactions, in relation to which a reference to the TPO is considered necessary, have to be explicitly mentioned in the letter through which the reference is being made.

Since the case will be selected for scrutiny before making the reference to the TPO, the AO may proceed to examine other aspects of the case during the pendency of assessment proceedings but must wait for the report/order of the TPO on the value of international transactions before making final assessment.

Amendment to Transfer Pricing Rules to Incorporate "Range Concept" and "Use of Multi-Year Data"

The CBDT has issued a press release stating that the Rules for determining

ALP have been amended to allow for introduction of a "range concept" for determination of ALP and "use of multiple year data" for undertaking comparability analysis in transfer pricing cases. The amended regime will be applicable for computation of ALP of international transactions and specified domestic transactions undertaken on or after **1/04/2014.**

The amended rules allow for introduction of a "range concept" for determination of ALP and "use of multiple year data" for undertaking comparability analysis in transfer pricing cases. The use of range concept, being a statistical tool, enhances the reliability of analysis undertaken for computation of ALP. The range concept will be applicable in certain cases for determining the price and will begin with the 35th percentile and end with the 65th percentile of the comparable prices. Transaction price shown by the taxpayers falling within the range will be accepted and no adjustment will be made. The use of multiple year data allows for yearly variations to be averaged out and would therefore add value to transfer pricing analysis.

The amended rules would therefore provide clarity in determination of price in transfer pricing cases and reduce disputes on transfer pricing issues. It is a part of the Government's continuing initiative of providing a stable and certain direct tax regime.

Press Release - New Delhi, 20th October, 2015

SUMMARY OF IMPORTANT TAX JUDGMENTS:

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 Kolkata	Sec 14A	S. 14A Rule 8D does not apply to shares held as stock-in-trade. AO cannot apply Rule 8D to make a disallowance without showing how the assessee's disallowance is wrong.	*DCIT vs. G. K. K. Capital Markets (P) Ltd.*
2	Delhi High Court	Sec 17(3)(iii)	Amount received by prospective employee for loss of employment offer is a capital receipt and is neither taxable as "salary" or as "other sources"	*CIT vs. Pritam Das Narang*
3	Delhi High Court	Sec 44BB	Service tax & Customs duty collected by assessee from clients is not includible in gross receipt while computing income u/s 44BB	*DIT vs. Mitchell Drilling International Pvt Ltd*
4	ITAT Delhi	Sec 48	In computing "capital gains" the AO is not entitled to substitute the "market value" for the actual "consideration" received by the assessee. He also cannot disregard the valuation report without cogent material.	*Venus Financial Services Ltd vs. ACIT*
5	(ITAT Mumbai)	Sec 54EC	Correctness of law laid down by Bombay High Court in Ace Builder 281 ITR 210 that deduction u/s 54EC is available to short-term capital gains computed u/s 50 doubted by Tribunal	*ITO vs. Legal Heir of Shri Durgaprasad Agnihotri*
6	Karnataka High Court	Sec 54F	S. 54F is a beneficial provision & must be interpreted liberally. It does not require that the construction of the new residential house has to be	*CIT vs. B. S. Shantakumari*

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
			completed, and the house be habitable, within 3 years of the transfer of the old asset. It is sufficient if the funds are invested in the new house property within the time limit	
7	ITAT Mumbai	Sec 143	Extrapolation: Fact that assessee admitted undisclosed income for one year does not mean that AO can assume that similar undisclosed income is earned in earlier years as well.	*Uday C Tamhankar vs. DCIT*

DISCUSSION ON JUDGEMENTS – INCOME TAX

1. S. 14A Rule 8D does not apply to shares held as stock-in-trade. AO cannot apply Rule 8D to make a disallowance without showing how the assessee's disallowance is wrong

DCIT vs. G. K. K. Capital Markets (P) Ltd. (ITAT Kolkata)

(i) The AO has not examined the accounts of the assessee and there is no satisfaction recorded by the AO about the correctness of the claim of the assessee and without the same he invoked Rule 8D of the Rules. While rejecting the claim of the assessee with regard to expenditure or no expenditure, as the case may be, in relation to exempted income, the AO has to indicate strong reasons for the same. From the facts of the present case it is noticed that the AO has not considered the claim of the assessee and straight away embarked upon computing disallowance under Rule 8D of the Rules on presuming the average value of investment at ½% of the total value. Even otherwise, on merits also the assessee had made disallowance itself for an amount of Rs.37, 28,966/- and filed computation of disallowance as per rule 8D of the Rules. The AO could not find any fault in the computation of disallowance made by assessee.

(ii) The assessee does not have any investment and all the shares are held as stock in trade. Once, the assessee has kept the shares as stock in trade, the rule 8D of the Rules will not apply.

---

2. S. 17(3) (iii): Amount received by prospective employee for loss of employment offer is a capital receipt and is neither taxable as "salary" or as "other sources"

CIT vs. Pritam Das Narang (Delhi High Court)

The assessee entered into an Employment Agreement with ACEE Enterprises ('ACEE') pursuant to which he was to be employed as Chief Executive Officer ('CEO') and the employment was to commence from 1st July, 2007. In case the notice period was less than six months, then compensation equivalent to the shortfall of the notice period was payable by the party concerned. ACEE wrote a letter to the Assessee informing him that there was a "sudden change in business plan of the Company vis-a-vis foraying into new financial ventures" and that "the company is extremely disappointed to convey that it shall not be able to take you on board from 1st July, 2007 as per employment contract." ACEE promised to reconsider the Assessee's services "as and when its operation starts". The

second letter was dated 15th May 2007 which was the Assessee's response to ACEE that the news was a "big financial loss personally" since there were "many other opportunities available to me". The Assessee stated that since he had opted for ACEE he did not consider "other lucrative opportunities available to me". Since it was not clear when ACEE was going to start its new venture, the Assessee proposed that "your company must consider something for financial loss incurred by me not available other opportunities. I propose that you must give me at least one year compensation offered to me by your company to cover up the financial loss incurred by me". On 25th August 2007, ACEE informed the Assessee that "as a mark of goodwill/gesture" it was pleased to announce a payment of Rs.1, 95, 00,000 to the Assessee subject to income tax compliances as "a one-time payment to you for non-commencement of employment as proposed." The assessee claimed that the said sum was a **capital receipt.** However, the AO assessed it as salary under Section 17 (3) (iii) of the Act. This was reversed by the CIT (A) and the Tribunal. On appeal by the department to the High Court HELD dismissing the appeal:

(i) The Court is unable to accept the interpretation sought to be placed on the plain language of Section 17(3) (iii) of the Act by the Revenue. The words "from any person" occurring therein has to be read together with the following words in sub-clause (A): "before his joining any employment with that person". In other words, Section 17(3) (iii) (A) pre-supposes the existence of an employment, i.e., a relationship of employee and employer between the Assessee and the person who makes the payment of "any amount" in terms of Section 17(3) (iii) of the Act. Likewise, Section 17(3) (iii) (B) also pre-supposes the existence of the relationship of employer and employee between the person who makes the payment of the amount and the Assessee. It envisages the amount being received by the Assessee "after cessation of his employment". Therefore, the words in Section 17(3) (iii) cannot be read disjunctively to overlook the essential facet of the provision,
viz., the existence of 'employment' i.e. a relationship of employer and employee between the person who makes the payment of the amount and the Assessee. The Court accordingly concurs that this was a case where there was no commencement of the employment and that the offer by ACEE to the Assessee was withdrawn even prior to the commencement of such employment. The amount received by the Assessee was a capital receipt and could not be taxed under the head 'profits in lieu of salary'.

(ii) The other plea of the Revenue that the said amount should be taxed under some other head of income, including 'income from other sources' is also unsustainable. Where an amount was received by a prospective employee 'as compensation for denial of employment,' such amount was not in the nature of profits in lieu of salary. It was a capital receipt that could not be taxed as income under any other head.

3. S. 44BB: Service tax & Customs duty collected by assessee from clients is not includible in gross receipt while computing income u/s 44BB

DIT vs. Mitchell Drilling International Pvt Ltd (Delhi High Court)

Section 44BB begins with a non obstante clause that excludes the application of Sections 28 to 41 and Sections 43 and 43A to assessments under Section 44 BB. It introduces the concept of presumptive income and states that 10% credit of the amounts paid or payable or deemed to be received by the Assessee on account of "the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India" shall be deemed to be the profits and gains of the chargeable to tax. The purpose of this provision is to tax what can be legitimately considered as income of the Assessee earned from its business and profession.

The Court held that the reimbursement received by the Assessee of the customs duty paid on equipment imported by it for rendering services would not form part of the gross receipts for the purposes of Section 44 BB of the Act. The Court accordingly holds that for the purposes of computing the 'presumptive income' of the assessee for the purposes of Section 44 BB of the Act, the service tax collected by the Assessee on the amount paid by it for rendering services is not to be included in the gross receipts in terms of Section 44 BB (2) read with Section 44 BB (1). The service tax is not an amount paid or payable, or received or deemed to be received by the Assessee for the services rendered by it. The Assessee is only collecting the service tax for passing it on to the government.

---

4. S. 48: In computing "capital gains" the AO is not entitled to substitute the "market value" for the actual "consideration" received by the assessee. He also cannot disregard the valuation report without cogent material.

Venus Financial Services Ltd vs. ACIT (ITAT Delhi)

It is settled position of law that in the case of sale, the Assessing Officer has no power to replace the value of the consideration agreed between the parties.

As the expression "full value of consideration" in section 48 of the Income-tax Act, 1961 does not have any reference to market value; the Assessing Officer was having no power to replace the value of the consideration agreed between the parties with any fair market value or estimation. Only because the Pioneer Ltd. had shown the book value of shares at the rate of Rs.3.50 per share, the Assessing Officer was not justified to ignore the price agreed between the parties and to doubt the genuineness of the claimed loss, even ignoring the valuation report.

---

5. Correctness of law laid down by Bombay High Court in Ace Builder 281 ITR 210 that deduction u/s 54EC is available to short-term capital gains computed u/s 50 doubted by Tribunal

ITO vs. Legal Heir of Shri Durgaprasad Agnihotri (ITAT Mumbai)

The assessee sold a shop and earned long-term capital gains. The assessee invested Rs.25, 50,000 in capital gain bonds of National Highway Authority of India and claimed exemption under section 54EC of the Act against the aforesaid capital gain earned. The Assessing Officer denied the benefit of exemption under section 54EC on the ground that the shop was a depreciable asset and the resultant gain was a short term capital gain whereas the exemption under section 54EC was available only on long term capital gain (LTCG).

The CIT(A) allowed the appeal by relying on CIT v/s Ace Builder Pvt. Ltd., 281 ITR 210 where it was held that s. 54EC deduction is allowable for short term capital gain u/s 50 of the Act on depreciable assets. On appeal by the department to the Tribunal HELD

By virtue of the deeming provision of section 50, cost of a long-term capital asset (LTCA), i.e., as per section 2(29A), where depreciable, forming part of a block assets on which depreciation stands claimed, the capital gain on its transfer would have to be computed in terms thereof, i.e. by treating the WDV of the relevant block of assets (or, as the case may be, the relevant asset) as its cost of acquisition. The second deeming per the provision of section 50 is qua the nature of such capital gains, i.e., as capital gains arising from the transfer of a STCA. Section 54EC is available on capital gain arising on the transfer of a LTCA, i.e., which is not a STCA by definition. The same shall, therefore, not apply to capital gains computed u/s.50.

The depreciation allowed represents the depletion of an asset to that extent, i.e., over the holding period, so that it signifies its consumption to that extent. This would, in our view, also explain or bring forth the prescription of a separate computation mechanism for capital gain on transfer of capital assets that are depreciable (per s. 50), and also not extending thereto the indexation benefit, to adjust for the inflation factor, per s. 48, for such assets even where held for long-term. Why, the WDV of an asset, which u/s.50 substitutes for its' cost, is itself not determinable, i.e., where depreciable, forming part of a block of assets, even as held by the Hon'ble Courts. Section 50 is thus a self contained code for determining the nature and the quantum of the capital gain arising on the transfer of depreciated assets.

So, however, the Hon'ble jurisdictional High Court has in Ace Builders (P.) Ltd. (supra), clearly held deduction u/s.54EC to be available on the capital gains computed u/s.50 of the Act. We are bound by the said case law.

---

6. S. 54F is a beneficial provision & must be interpreted liberally. It does

not require that the construction of the new residential house has to be completed, and the house be habitable, within 3 years of the transfer of the old asset. It is sufficient if the funds are invested in the new house property within the time limit

CIT vs. B. S. Shantakumari (Karnataka High Court)

Immediately after sale of the property on 06.10.2008, the assessee purchased another residential plot on 13.10.2008 and on 02.06.2010 she obtained approval of the building plan from the local authority and commenced the construction. However, it was not completed within 3 years i.e., on or before 05.10.2011. The assessing officer rejected the claim of the assessee for deduction u/s 54F towards the benefit of Long Term capital gain only on the ground that the construction has not been completed. The assessee produced photographs of the residential building which was under construction to demonstrate and establish that the consideration received on transfer has been invested by her in purchasing the residential plot and it is under construction. On appeal by the department to the High Court HELD dismissing the appeal:

Section 54F of the Act is a beneficial provision which promotes for construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it is incorporated in the statute. The intention of the legislature, as could be discerned from the reading of the provision, would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in three (3) years and/or make it habitable. The essence of said provision is to ensure that assessee who received capital gains would invest same by constructing a residential house and once it is established that consideration so received on transfer of his Long Term capital asset was invested in constructing a residential house, it would satisfy the ingredients of Section 54F If the assessee is able to establish that he had invested the entire net consideration within the stipulated period, it would meet the requirement of Section 54F and as such, assessee would be entitled to get the benefit of Section 54F of the Act. Though such construction of building may not be complete in all respect "that by itself would not disentitle the assessee to the benefit flowing from Section 54F.

---

7. Extrapolation: Fact that assessee admitted undisclosed income for one year does not mean that AO can assume that similar undisclosed income is earned in earlier years as well.

Uday C Tamhankar vs. DCIT (ITAT Mumbai)

The assessing officer estimated the professional income of the assessee for assessment years 2002-03 to 2007-08.

The reasoning given by the AO is explained in brief.

The excess cash found at the time of search was declared by the assessee as his income for the AY 2008-09. Accordingly, the assessee included the same in the professional receipts. Accordingly the professional receipts for AY 2008-09 was shown at Rs.328.70 lakhs. The AO took the total number of working days for that year as 300 and accordingly worked out the average collection per day as Rs.1, 09,000/-. Then the AO presumed that the assessee would have earned professional collections in the same pattern in the earlier years also. Accordingly, he estimated the average daily collection at Rs.1,00,000/-, Rs.90,000/-, Rs.80,000/-, Rs.70,000/-, Rs.60,000/- and Rs.50,000/- respectively for assessment years 2007-08, 2006-07, 2005-06, 2004-05, 2003-04 and 2002-03. Accordingly the assessing officer worked out the gross receipts. Then the AO worked out the difference between the gross receipts declared by the assessee and that was worked out by him. Thereafter he applied the net profit rate declared by the assessee on the difference and accordingly worked out the additions. On appeal by the assessee the CIT (A) deleted the addition. On appeal by the department to the Tribunal HELD dismissing the appeal:

There is no dispute with regard to the fact that the revenue did not unearth any incriminating material, which could suggest that there was under billing or evasion of professional receipts. The revenue only stumbled with excess cash balance and the same was surrendered as income of the year in which the search took place. The assessee offered the same as his professional income. As observed by CIT (A), the unexplained cash is required to be assessed in the year in which it was found as per the deeming fiction of provisions of sec. 69A of the Act, which does not mean that the assessee would have earned the entire excess cash balance in one year. Hence, in our view also, the assessing officer misguided himself by presuming that the entire undisclosed cash balance represents his professional fee collected during the financial year relevant to the assessment year 2008-09. Hence, in our view, the CIT (A) has rightly concluded that the assessing officer did not bring any material on record to support his case of estimation of professional receipts of earlier years. We also notice that the assessing offer has assessed the net profit on the alleged suppressed professional receipts, meaning thereby, the assessing officer has presumed that the assessee would have suppressed corresponding expenses also. Again it is only a guess work only, unsupported by any material. Similarly, the average daily collection estimated by the AO was also mere guess work. In effect, there is no material available with the AO to show that the assessee has suppressed professional receipts as well as expenses in order to substantiate the estimation made by him. During the course of hearing, the Ld D.R placed reliance on the decision rendered by Hon'ble Punjab & Haryana High Court in the case of Ved Prakash Vs. CIT (265 ITR 642) to support the estimation made by the assessing officer. However, we

notice that the Hon'ble Punjab & Haryana High Court has considered a case, wherein materials were found during the course of search. However, in the instant case, no material relating to suppression of professional fee receipts was found.

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

NOVEMBER 2015 DUE DATES

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5 Service Tax Payments by Companies	6 Service Tax Payments by Companies (if paid electronically)Excise Duty Payment	7 TDS / TCS Payment for October
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 October.	16	17	18	19	20 EPF Payment (including 5 days of grace), Payment & returns of Monthly MVAT under MVAT Act, 2002	21 ESIC Payment/ MVAT(WCT)-TDS Payment for October
22	23	24	25	26	27	28
29	*30 Profession Tax Payment	*Filing of Annual Financial Information Statement in Form ER-4 by the specified assessees/	*Return of income tax wealth tax of all assesses covered under transfer pricing regulations			

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.

Best Wishes for a

Very Happy

Indian New Year