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APRIL 2018

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Goods and Service Tax (GST)

Due dates for filing FORM GSTR-3B for the months of April to June, 2018

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) the Commissioner, on the recommendations of the Council, specifies that the return in FORM GSTR-3B for the month shall be furnished electronically through the common portal, on or before the last date as follows:

Sr. No.	Month	Last date for filing of Return in GSTR-3B
1	April, 2018	20th May, 2018
2	May, 2018	20th June, 2018
3	June, 2018	20th July, 2018

Every registered person furnishing the return in FORM GSTR-3B shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the due date.

Notification No. 16 /2018 – Central Tax, dated 23rd March, 2018

CBDT notifies the date when E-Way Bill Rules shall come into force.

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017the Central Government hereby appoints the 1st day of April, 2018, as the date from which the E-way bill Rules shall come into force.

Notification No. 15 /2018 – Central Tax, dated 23rd March, 2018

ECONOMICS

Cabinet approves Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion between India and Iran

The Union Cabinet, chaired by Prime Minister Shri Narendra Modi has approved an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income between India and Iran.

The Agreement will stimulate flow of investment, technology and personnel from India to Iran & vice versa, and will prevent double taxation. The Agreement will provide for exchange of information between the two Contracting Parties as per latest international standards. It will thus improve transparency in tax matters and

will help curb tax evasion and tax avoidance.

Press Information Bureau, dated 14th March 2018

Insolvency and Bankruptcy Board of India signs a Memorandum of Understanding with the Reserve Bank of India

The Insolvency and Bankruptcy Board of India (IBBI) signed a Memorandum of Understanding (MoU) with the Reserve Bank of India (RBI). Both RBI and IBBI are interested in the effective implementation of the Code and its allied rules and regulations, through a quick and efficient resolution process. Therefore, they have agreed under the MoU to assist and co-operate with each other for the effective implementation of the Code, subject to limitations imposed by the applicable laws.

The MoU provides for:

- sharing of information between the two parties, subject to the limitations imposed by the applicable laws;
- sharing of resources available with each other to the extent feasible and legally permissible;
- Periodic meetings to discuss matters of mutual interest, including regulatory requirements that impact each party's responsibilities.

Press Information Bureau, dated 12th March 2018

SUMMARY OF IMPORTANT TAX JUDGEMENTS

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

Sr. No	Tribunal/Court	Section/ Area	Nature	Case Law
1.	Supreme Court	Section 4	Receipts by housing co-operative societies such as non-occupancy charges, transfer charges, common amenity fund charges and certain other charges from their members are exempt from income-tax based on the doctrine of mutuality. The fact that the receipts are in excess of the limits prescribed by the State Government does not mean that the Societies have rendered services for profit attracting an element of commerciality and thus was taxable.	ITO Vs. Venkatesh Premises Co-operative Society Ltd.
2	Supreme Court	Section 14A	Applicability to shares held for controlling interest or as stock-in-trade: The argument that S. 14A & Rule 8D will not apply if the "dominant intention" of the assessee was not to earn dividends but to gain control of the company or to hold as stock-in-trade is not acceptable. S. 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade. However, where the shares are held as stock-in-trade, the expenditure incurred for earning business profits will have to be apportioned and allowed as a deduction. Only that expenditure which is "in relation to" earning dividends can be	Maxopp Investment Ltd vs. CIT

			disallowed u/s 14A & Rule 8D. The AO has to record proper satisfaction on why the claim of the assessee as to the quantum of suo moto disallowance is not correct	
3	ITAT Delhi	Section 25 Section 28 Section 48	If the purchase of shares has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding them, the transaction is an "adventure in the nature of trade" and the gains are assessable as "business profits" and not as "short-term capital gains"	Prem Jain Vs. ITO
4.	ITAT Kolkata	Section 45, Section 47, Section 48,	The term 'subsidiary company' is not defined under the Income-tax Act and so will have to be given the meaning in s. 4(1)(c) of the Companies Act. A subsidiary of a subsidiary (step-down subsidiary) is also a subsidiary of the parent. Consequently, transfers between the holding company and the step-down subsidiary are not "transfers" which can give rise to capital gains or loss	Imami Infrastructure Ltd. Vs. ITAT Kolkta
5.	ITAT Mumbai	Section 68	The fact that a private limited company issued shares at an exorbitant premium is irrelevant if the assessee has proved the genuineness of the transaction. If the assessee has furnished necessary evidence to prove the identity of the share applicants and their PAN details, the department is free to proceed to reopen the individual assessments of the share applicants but it	DCIT vs. Alcon Biosciences Pvt. Ltd.

			cannot be regarded as undisclosed income of the assessee	
6.	ITAT Mumbai	Section 69C	Bogus Purchases: The fact that s. 133(6) notices could not be served upon the alleged vendors and they were not physically available at the given addresses does not falsify the claim of the assessee that the purchases are genuine if the assessee has produced other evidence and made payments through banking channels	Prabhat Gupta Vs ITO
7.	ITAT Delhi	Section 143 (2)	The issue of a s. 143(2) notice by an AO not having jurisdiction over the assessee is irrelevant. If jurisdictional AO does not issue the notice within the time limit, the assessment is null and void. The argument that the non-jurisdictional AO issued the s. 143(2) notice as per PAN or computerized system or internal procedure is not relevant as it violates the law.	ITO Vs. NVS Builders Pvt.Ltd.
8.	ITAT Delhi	Section 271(1) (c)	The primary burden of proof is on the Revenue to show that the assessee is guilty of concealment/ furnishing inaccurate particulars. Making an incorrect claim does not tantamount to furnishing inaccurate particulars by any stretch of imagination. Wrong claim of depreciation by crediting capital subsidy to reserves instead of reducing from actual cost/ WDV does not attract s. 271(1)(c) penalty	Prafful Industries private Limited vs. DCIT

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Discussion on Judgments – Income Tax

1) **Receipts by housing co-operative societies such as non-occupancy charges, transfer charges, common amenity fund charges and certain other charges from their members are exempt from income-tax based on the doctrine of mutuality. The fact that the receipts are in excess of the limits prescribed by the State Government does not mean that the Societies have rendered services for profit attracting an element of commerciality and thus was taxable.**

The Supreme Court had to consider whether receipts by cooperative societies such as i.e. non-occupancy charges, transfer charges, common amenity fund charges and certain other charges from its members are exempt from income tax based **on the doctrine of mutuality.**

The Supreme Court held that:

- The receipt of transfer fee before induction to membership under some of the byelaws shall not be liable to tax as the money was returned in the event that the person was not admitted to membership.
- Non occupancy charges were levied for the purpose of general maintenance of the premises of the Society and provision of other facilities and general amenities to the members. Even if any amount was left over as surplus at the end of the financial year after meeting maintenance and other common charges, that would constitute surplus fund of the society to be used for the common benefit of members and to meet heavy repairs and other contingencies and will not partake the character of profit or commerciality so as to be eligible to tax.
- The doctrine of mutuality, based on common law principles, is premised on the theory that a person cannot make a profit from himself. An amount received from oneself, therefore, cannot be regarded as income and taxable.

(*ITO Vs. Venkatesh Premises Co-operative Society Ltd.)*

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2) **Applicability to shares held for controlling interest or as stock-in-trade: The argument that S. 14A & Rule 8D will not apply if the "dominant intention" of the assessee was not to earn dividends but to gain control of the company or to hold as stock-in-trade is not acceptable. S. 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade. However, where the shares are held as stock-in-trade, the expenditure incurred for earning business profits will have to be apportioned and allowed as a deduction. Only that expenditure which is "in relation to" earning dividends can be disallowed u/s 14A & Rule 8D. The AO has to record proper satisfaction on why the claim**

of the assessee as to the quantum of suo moto disallowance is not correct.

The arguments of the assessee were as follows:

- The holding of investment in group companies representing controlling interest, amounts to carrying on business, as held in the various cases.

- Notwithstanding that dividend income is assessable under the head "income from other sources", in view of the mandatory prescription in Section 56 of the Income Tax Act; the nature of dividend income has to be ascertained on the facts of the case. Where dividend is earned on shares held as stock-in-trade/shares purchased for acquiring/retaining controlling interest, dividend income is in the nature of business income.

- Interest paid on loans borrowed for acquiring shares representing controlling interest in the investee company is allowable business expenditure in terms of Section 36(1)(iii) of the Act, since acquiring controlling interest in companies and managing, administering, financing and rehabilitating such companies are for business and/or professional purposes and not for earned dividend.
- Conversely, interest paid on funds borrowed for investment in shares representing controlling interest does not represent expenditure incurred for earning dividend income and is not allowable under Section 57(iii) of the Act (prior to introduction of Section 14A)

Supreme Court held that:

- If an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A. When an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply.

- Where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits there from. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'

- Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, it is clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.

(Maxopp Investment Ltd vs. CIT)

3) **If the purchase of shares has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding them, the transaction is an "adventure in the nature of trade" and the gains are assessable as "business profits" and not as "short-term capital gains"**

Facts of the case:

- The assessee purchased 6,00,000 shares of M/s J.T. Agro Good Pvt. Ltd. at the rate of 0.50 paise per share from M/s Banwari Exim P. Ltd. and M/s Prabhash Motor Finance P. Ltd.. The assessee subsequently sold these shares for Rs.60,00,000/- to Shri Raj Kumar Gupta and Shri Ram Lal Gupta for Rs.30,00,000/- each totalling to Rs.60,00,000/-.
- The Assessing Officer on the basis of the various documents filed and the statement recorded did not doubt the genuineness of the transactions. However, in absence of such business income declared on account of sale of shares in the preceding year and in absence of any opening or closing stock of shares, the Assessing Officer treated the profit from sale of shares as short term capital gain as against business income declared by the assessee. According to the Assessing Officer, the so-called purchase of shares are manipulated only to claim the deduction u/s 35 of the I.T. Act out of the donation made of Rs.31,00,000/- and evade the tax.
- The CIT(A) upheld the action of the Assessing Officer in considering the profit from sale of shares as short term capital gain. He, however, allowed the alternate claim of the assessee regarding the deduction u/s 80GGA of the I.T. Act and allowed such deduction at Rs.31, 00,000/- for which the Revenue is not in appeal.

The action taken by the Court:

The court directed the Assessing Officer to allow the claim of business income on account of profit on sale of such shares. Since the assessee succeeds on this issue, the claim of the assessee regarding the deduction u/s 35 of the I.T. Act is also allowed subject to verification of other conditions if any by the Assessing Officer.

(Prem Jain Vs. ITO)

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4) **The term 'subsidiary company' is not defined under the Income-tax Act and so will have to be given the meaning in s. 4(1)(c) of the Companies Act. A subsidiary of a subsidiary (step-down subsidiary) is also a subsidiary of the parent. Consequently, transfers between the holding company and the step-down subsidiary are not "transfers" which can give rise to capital gains or loss.**

Facts of the case:

The assessee sold equity shares of M/s. Zandu Realty to M/s. Emami Rainbow Niketan Pvt. Ltd, based on the price of the shares determined by SSKM Corporate Advisory P.Ltd. M/s. Emami Rainbow Niketan is a 100% subsidiary of M/s. Emami Realty Ltd. M/s. Emami Realt Ltd is a 100% subsidiary of M/s. Emami Infrastructure Ltd, the assessee herein.

Therefore, two issues arise for our adjudication. These are:-

- The first issue is, whether there is a transfer of share in view of provisions of section 47(iv) of the Act.
- The second issue is, if we come to conclusion that the transaction in question is not covered u/s. 47(iv) of the Act, then whether the computation of capital gains as made by the AO and confirmed by the ld. CIT(A) is correct or not and whether the AO can substitute the sale consideration of the shares sold with the F.M.V as determined by him?

The ITAT Kolkata held that:

- The transaction of sale of shares of M/s. Zandu Realty by the assessee to M/s. Emami Rainbow Niketan Ltd is not regarded as a transfer in view of Sec.47 (iv) of the Act. Hence, the question of computing either capital loss or capital gain does not arise. Also, the assessee is not entitled to carry forward the capital loss.

(Imami Infrastructure Ltd. Vs. ITAT Kolkta)

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5) **The fact that a private limited company issued shares at an exorbitant premium is irrelevant if the assessee has proved the genuineness of the transaction. If the assessee has furnished necessary evidence to prove the identity of the share applicants and their PAN details, the department is free to proceed to reopen the individual assessments of the share applicants but it cannot be regarded as undisclosed income of the assessee.**

Facts of the case:

- The AO made additions towards share application money u/s 68 of the Act on the ground that the assessee has failed to discharge identity, genuineness of transaction and creditworthiness of the parties which is evident from the fact that the AO has brought out certain facts with regard to the share applicants by issuing notice u/s 133(6) of the Income-tax Act, 1961.
- According to the AO, the assessee has raised share application money from three companies and all the three companies are having bank accounts in Bank of Baroda where a single person has operated the accounts of all the companies.
- The AO further observed that the share applicants have received money from certain individuals before the date of transfer of money to the assessee company and those individuals have deposited cash on the same day or a day before the date on which the money has been transferred to share applicants' bank account.
- The AO opined that the assessee has obtained accommodation entries from so-called share applicants to convert its own undisclosed income in the guise of share application money. Accordingly treated share application money received from all the three parties as unexplained credit and brought to tax u/s 68 of the Act.
- The assessee has filed various details including share application forms, incorporation certificate of the share applicants and their bank statement.

- The assessee also furnished copy of income-tax return acknowledgment. On verification of details filed by the assessee, the share applicants have paid share application money to the assessee through bank accounts and also disclosed investments in their financial statements for the relevant financial year. Though two share applicants have not filed their income-tax returns, they have furnished copy of PAN and their bank statements.
- Once the assessee has discharged its initial burden cast u/s 68 by filing documents to prove identity, genuineness of transactions and creditworthiness of the parties, then the burden shifts to the revenue to prove otherwise. In this case, the AO does not have any evidence which could rebut the documents produced by the assessee.

Held by the Supreme Court

The assessee has proved identity, genuineness of transaction and creditworthiness of the parties. The CIT (A), after considering relevant facts has rightly deleted addition made by the AO. There is no error in the order of the CIT(A)

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(DCIT vs. Alcon Biosciences Pvt. Ltd.)

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6) **Bogus Purchases: The fact that s. 133(6) notices could not be served upon the alleged vendors and they were not physically available at the given addresses does not falsify the claim of the assessee that the purchases are genuine if the assessee has produced other evidence and made payments through banking channels**

Facts of the case:

The assessee filed his return of income for the A.Y. 2009-10 declaring total income to the tune of Rs.6,07,580/-. The return was processed u/s 143(1) of the I.T. Act. Thereafter, information was received from DGIT(Inv.), Mumbai which was forwarded to assessee in which it was conveyed that the assessee has taken the accommodation entries from various parties without any actual dealing, the assessee received the accommodation entries from the 20 parties.

The assessee has furnished the detail of transportation by mentioning the name of transporter, bill number, cheque number on the basis of which the fair was paid

The assessee made the payment to the said parties through banking channel. The assessee filed the bank statement highlighting the payment made to the alleged hawala parties

The assessee also submitted the tax audit report. All these documents were furnished by assessee before the AO as well as CIT(A)

The Assessing Officer also deputed the tax inspector to verify the genuineness of the claim and to know about the existence of said 20 parties but the 17 parties were not available at the given address. However, notices served upon 3 of those parties, nowhere submitted the required information. Sufficient evidence has been submitted by the assessee before the AO.

Held by the ITAT-Mumbai

No doubt if the bogus purchase established then in the said circumstances the profit embedded to the bogus purchase is liable to be considered to the income of the assessee.

Sale has not been disputed and the books of account have not been rejected In the instant case, when the assessee has adduced the sufficient evidence on record which has been

discussed about therefore, in the said circumstances, there is no addition is required to be made on account of bogus purchase.

Conclusion

Non service of notice is not a ground to raise the addition of bogus purchase to the income of the assessee.

(Prabhat Gupta Vs ITO)

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7) **The issue of a s. 143(2) notice by an AO not having jurisdiction over the assessee is irrelevant. If the proper AO does not issue the notice within the time limit, the assessment is null and void. The argument that the non-jurisdictional AO issued the s. 143(2) notice as per PAN or computerized system or internal procedure is not relevant as it violates the law.**

Facts of the case:

Return of income in this case was filed by the assessee-company on 20.11.2006 declaring income at Rs.-NIL-. Thereafter, the case of the assessee was selected for scrutiny and notice under section 143(2) was issued on 23rd October, 2007. Assessment was completed under section 143(3) at an income of Rs 63 lakhs by ITO, Ward-13(1), New Delhi, on 30th December, 2008, wherein addition of Rs.63 lakhs was made under section 68 of the I.T. Act, on account of amount received by assessee from one Shri Jagmohan Sharma which was considered by the A.O. as unexplained. The assessee filed appeal before the Ld. CIT(A) which were dismissed. Thereafter, assessee filed appeal before ITAT and the Tribunal restored the matter to the file of Ld. CIT(A).

In view of these facts, the matter was taken-up for hearing. The assessee challenged the addition of Rs.63 lakhs as well as service of notice under section 143(2) beyond the period of limitation and claimed that entire assessment order is null and void.

In this case, the first notice under section 143(2) dated 23rd October, 2007 was issued by ITO, Ward-1(1), Faridabad, who was not the A.O. of the assessee-company and had no jurisdiction over the case of the assessee. Copy of the said notice was filed. The assessee on receipt of this notice from ITO, Ward-1-(1), Faridabad, informed him that Assessee Company filed return of income at Delhi. Then the ITO, Ward 1(1), Faridabad, transferred the file to ITO, Ward-10(1), New Delhi, who was having jurisdiction over the case of the assessee. The impugned assessment order has been passed by ITO, Ward 13(1), New Delhi, who issued the notice under section 143(2) on 28th July, 2008, which was beyond the statutory period. Therefore, he did not get any valid jurisdiction to frame the assessment against the assessee because it was issued after more than 19 months after the expiry of the statutory period. The assessee relied upon several decisions in support of its contention that when notice under section 143(2) have not been issued by the jurisdictional A.O. within the statutory period, the assessment order would be null and void. In this case, notice under section 143(2) had been issued by jurisdictional A.O.

It was held by the Court:

The entire assessment proceedings are vitiated because of non-service of jurisdictional notice under section 143(2) within the period of limitation by the A.O. having jurisdiction over the case of the assessee. No infirmity have been pointed out in the order of the Ld. CIT(A) in holding the assessment order to be null and void. Since the entire assessment order is declared as null and void, there is no need to

decide the issue on merit which is left with academic discussion only.

(ITO Vs. NVS Builders Pvt.Ltd.)

8) **The primary burden of proof is on the Revenue to show that the assessee is guilty of concealment/ furnishing inaccurate particulars. Making an incorrect claim does not tantamount to furnishing inaccurate particulars by any stretch of imagination. Wrong claim of depreciation by crediting capital subsidy to reserves instead of reducing from actual cost/ WDV does not attract s. 271(1)(c) penalty**

Facts of the case:

Assessee is a private limited company in the business of doing job work of printing and dyeing of fabrics during the relevant year. In the assessment framed u/s 143(3) the following two additions amongst others were made by him:-

- A sum of Rs. 7,10,500/- was disallowed out of depreciation claimed by the company on its plant and machinery. The facts of the case are that during the relevant year the company had received capital subsidy from Ministry of Textiles to the tune of Rs. 40,60,000/-. The scheme of the Ministry in giving the subsidy to all eligible units was to encourage setting up of new units in the textiles sector in the state of Gujarat. Assessee had set up its unit in Surat, Gujarat. The subsidy was based on the cost of plant and machinery installed. However as stated earlier it was to encourage setting up of new plants and not as reimbursement of the cost of machinery installed by the assessee
- The assessee created a capital reserve of Rs. 40.60,000/- in the balance sheet based on the decision of M/s P J Chemicals Ltd. given by the Supreme Court. It did not reduce the cost of the asset and claimed depreciation on the entire cost of plant and machinery installed.
- The AO did not accept the version of the assessee company and allowed depreciation after reducing the subsidy received as per definition of Actual cost given in section 43(1) of the Act
- Thus the depreciation allowed by him was reduced by Rs. 14,21,000/- being 17.5% of the subsidy amount of Rs. 40,60,000/-.
- The two additions made above after CIT(A) order were also subject to penalty u/s 271(l)(c). In-spite of assessee's submissions, the AO passed the penalty order and levied a penalty of Rs. 2,22,241/- being 100% of the tax sought to be evaded.

The tribunal Held That:

- It is not in dispute that the assessee has declared the total value of fixed assets (Plants & Machinery) in its books of accounts. It is also not in dispute that the capital subsidy received by the assessee under TUFF scheme of Gujrat Government was also declared by the assessee before the AO in the assessment proceedings.
- The only lapse on the part of the assessee unearthed by the AO in the assessment proceedings was that instead of deducting the cost of fixed assets by the amount of capital subsidy received from the Govt., the assessee

had shown it as part of reserves in the balance sheet and for this lapse, the AO had already disallowed the excess depreciation claimed. These facts, however, nowhere go to suggest that the assessee had furnished the inaccurate particulars to attract penalty u/s. 271(1)(c) of the Act. Had the assessee not declared the capital subsidy received and claimed the depreciation on full value of capital assets, the matter would have been different.

- However, once all the information were given in the return of income accompanied by relevant books maintained by assessee, in our considered opinion, simple disallowance of depreciation will not amount to furnishing of inaccurate particulars

Conclusion

If an excess depreciation has been claimed by the assessee on the basis of the Companies Act does not mean that the assessee had hidden something, therefore, even if a wrong claim is made, automatically, does not tantamount to furnishing inaccurate particulars. Concealment refers to a deliberate act on the part of the assessee. The primary burden of proof is on the Revenue, before a penalty is imposed u/s 271(l)(c) because by no stretch of imagination, making an incorrect claim, does not tantamount to furnishing inaccurate particulars, therefore, no penalty is leviable especially when there is no finding that any details supplied by the assessee in its return are erroneous or incorrect, therefore, mere making an excess claim in itself does not invite imposition of penalty u/s 271(l)(c) because the same cannot amount to furnishing inaccurate particulars

(Prafful Industries private Limited vs. DCIT)

Note: The judgments should not be followed without studying the complete facts of the case Law

DUE DATE CHART FOR THE MONTH OF APRIL 2018

April 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7 Monthly TDS payment
8	9	10 Filing GSTR-1 for turnover more than 1.5Cr.	11	12	13	14
15 ESIC payment Provident fund	16	17	18	19	20 Filing GSTR-3B	21
22	23	24	25	26	27	30 Filing GSTR-1 for turnover less than 1.5Cr.

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