

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

**FEBRUARY 2018**



## **B D Jokhakar & Co.**

*Chartered Accountants*

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**INDEX**

<b>Sr. No</b>	<b>Topics covered</b>	<b>Page No.</b>
1.	<a href="#">Income Tax</a>	3
2.	<a href="#">Reserve Bank of India (RBI)</a>	4
3.	<a href="#">Economics</a>	5
4.	<a href="#">Summary of Judgments- Income Tax</a>	8
5.	<a href="#">Discussion on Judgments - Income Tax</a>	9
6	<a href="#">Due date chart for the month of February, 2018</a>	13

## **Income Tax**



**Relaxation in the provisions relating to levy of Minimum Alternate Tax (MAT) in case of companies against whom an application for corporate insolvency resolution process has been admitted under the Insolvency and Bankruptcy Code, 2016.**

The existing provisions of section 115JB of the Income-tax Act, 1961 ('the Act'), inter alia, provide, that, for the purposes of levy of Minimum Alternate Tax (MAT) in case of a company, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account shall be reduced from the book profit.

In this regard, representations have been received from various stakeholders that the companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 ('the IBC'), are facing hardship due to restriction in allowance of brought forward loss for computation of book profit under section 115JB of the Act.

With a view to minimize the genuine hardship faced by such companies, it has been decided, that, with effect from Assessment Year 2018-19 (i.e. Financial Year 2017-18), in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the IBC, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB of the Act. Appropriate legislative amendment in this regard will be made in due course.

*Press Release by CBDT, dated 6th January 2018*

**Bitcoin investors in India served income tax notices as trading hits \$3.5 billion.**

India has sent tax notices to tens of thousands of people dealing in cryptocurrency after a nationwide survey showed more than \$3.5 billion worth of transactions have been conducted over a 17-month period, the income tax department said.

Governments around the world are grappling with how to regulate cryptocurrency trading, and policymakers are expected to discuss the matter at a G20 summit in Argentina in March.

The tax department has asked people dealing in bitcoin and other virtual

currencies such as ethereum and ripple to pay tax on capital gains. They have also asked for details about their total holdings and the source of funds in the tax notice seen by Reuters. "We found that investors were not reflecting it on their tax returns and in many cases, the investment was not accounted for," Balakrishnan, director general of investigations at the income tax department in Karnataka said.

*Livemint dated 19th January, 2018.*

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### **31<sup>st</sup> March, 2018: Last day to file 2016-17 tax returns.**

The last date to file tax returns is usually 31 July of each AY. Assessment year is the year in which we assess income, pay taxes and file tax return for the previous year or the financial year. So, for financial year 2016-17, the AY is 2017-18. The last date to file the tax return for financial year 2016-17 was 31 July 2017, which was later extended to 5 August 2017. A tax return filed after the due date of that year is considered belated return. Starting AY 2017-18, belated returns can be filed before the end of the relevant AY, that is, by 31 March 2018 (this year) or before completion of assessment, if any.

*Livemint dated 29th January, 2018.*

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### **Reserve Bank of India (RBI)**



### **Refinancing of External Commercial Borrowings.**

As per Master Direction No.5 dated January 1, 2016 on "External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorized Dealers and Persons other than Authorized Dealers", as amended from time to time, Indian corporates are permitted to refinance their existing External Commercial Borrowings (ECBs) at a lower all-in-cost. The overseas branches/subsidiaries of Indian banks are however, not permitted to extend such refinance.

In order to provide a level playing field, it has been decided, in consultation with the Government of India, to permit the overseas branches/subsidiaries of Indian banks to refinance ECBs of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs, provided the outstanding maturity of the original borrowing is not reduced and all-in cost of fresh ECB is

lower than the existing ECB. Partial refinance of existing ECBs will also be permitted subject to same conditions.

RBI/2017-18/116 A.P.(DIR Series) Circular No. 15

## Government may extend deadline for banks to switch to Ind AS.

The Reserve Bank of India (RBI) could give banks more time to implement new accounting standards because the process contains legislative changes and additional capital, according to a Mint report.

Banks and financial companies are expected to implement Indian Accounting Standards (IndAS) from April 1, 2018. At present, they follow Indian Generally Accepted Accounting Principles (GAAP) standards.

The RBI has so far not issued any guidelines for public sector banks because it requires amendments to the Banking Regulations Act. Private sector banks are covered under the Companies Act. Corporate entities have been following IndAS from April 2016.

Moneycontrol dated 22<sup>nd</sup> January, 2018

## ECONOMICS



## Banks suspend accounts of major bitcoin exchanges in India

In India, where Bitcoin is largely unregulated and has not been recognized as a legal tender yet; the Narendra Modi government has some bad news for Indians who are dreaming of making a quick buck through the crypto currency.

In the latest development, the top banks of the country including State Bank of India (SBI), HDFC Bank, Axis Bank, ICICI Bank and YES Bank have suspended some accounts of major Bitcoin exchanges in India on suspicion of dubious transactions.

The legal action has been initiated against top ten cryptocurrency exchanges in the country, including - Zebpay, Unocoin, CoinSecure and BtcxIndia, reported The Economic Times.

Business standard dated 20th January, 2018.

## India's GDP to grow at 7.4% in 2018: IMF.

India is projected to grow at 7.4 per cent in 2018 as against China's 6.8 per cent, the IMF said on Monday, making it the fastest growing country among emerging economies. The acceleration in India's growth rate ahead comes after the slowdown last year due to demonetization and the implementation of GST.

In its latest World Economic Outlook (WEO) update released on Monday in Davos, Switzerland on the sidelines of the World Economic Forum, the International Monetary Fund has projected a 7.8 per cent growth rate for India in 2019.



*Business today dated 23rd January, 2018*

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## **FDI changes in single brand retail, Air India: What it means for consumers, airline.**

In a major move to attract more FDI into the country, the government on Wednesday permitted foreign airlines to invest up to 49 per cent in disinvestment-bound Air India and liberalized rules for foreign investment in single brand retail, construction and power exchanges.

The move to allow foreign investment in Air India comes at a time when the government is working on the modalities for strategic disinvestment of the loss-making Air India and is expected to attract more bidders for the airline.

While foreign airlines were allowed to invest up to 49 per cent in the paid-up capital of Indian private airlines under the government approval route, this provision was not applicable to Air India.

It has now been decided to do away with this restriction and allow foreign airlines to invest up to 49 per cent under the automatic approval route in Air India as well, the government said in a statement. This brings Air India, which previously had to be fully locally owned, in line with the country's other local airlines in which foreign investment are allowed.

*Business today dated 11th January, 2018.*

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## **Banks may need Rs 89,000 crores provisioning under Ind AS : Report**

Banking sector may require up to Rs 89,000 crores of capital towards incremental provisioning for advances while transiting to the new accounting system Ind-AS, says a report

The provisioning required for migration to Ind-AS along with asset quality overhang and Basel III transition would surge capital consumption by banks especially PSBs.

"Of the Rs 89,000 crores, public sector banks would need Rs 63,100 crores, which is equivalent to an equity write-down of 1.10 per cent of the banks' risk weighted assets and 11.5 per cent of net worth at end-March 2017," India Ratings and Research said in a note today.

*Economic Times dated 24th January, 2018.*

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**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.	ITAT Ahmedabad	Section 10(10B)	Ex gratia payment received by assessee from his employer for settlement of dispute at point of time of leaving employment is nothing but an arrangement for termination of employment on payment of compensation, hence, retrenchment compensation eligible for exemption under section 10(10B).	Vishnu Mohan T Nair Vs Income Tax Officer
2.	ITAT Mumbai	Section 37(1)	Where assessee-company entered into an agreement with BCCI in terms of which it paid certain annual franchise fee for owning IPL team, in view of fact that payment of said fee facilitated participation in league and operating team which was restricted only to year to which payment pertained, it could safely be concluded that by making such payment there was neither a creation of an asset or generation of a benefit of an enduring nature in hands of assessee and, thus, assessee's claim for deduction of same as revenue expenditure under section 37(1) was to be allowed.	Knight Riders Sports (P.) Ltd Vs ACIT
3.	Allahabad High Court	Section 55	While determining cost of acquisition of property approved valuer's report itself is a piece of evidence and Act does not require that opinion of approved valuer should be supported with further evidence in shape of circle rate or exemplar sale deeds etc.	Principal CIT Vs Smt. Vidhi Agarwal

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4.	Gujarat High Court	Section 206	Where assessee having imported garments, cut them into smaller pieces and sold to different parties, in view of fact that waste generated in said process such as rags, wipers were used by buyers in manufacturing other items like blankets, pillows etc., waste so manufactured would not fall within ambit of expression 'scrap' as envisaged in clause (b) of Explanation to section 206C.	Principal CIT vs. Safari Fine Clothing (P.) Ltd.
5.	Kerala High Court	Section 222	Where assessee challenged sale of confiscated property on ground that it took place after prescribed period of three years as per Rule 68B, in view of fact that sale was conducted within three years from date when order of DRT became final after expiry of period prescribed for filing an appeal, objection raised by assessee was to be set aside.	K.Kutaguptan Vs Canara Bank

[Index](#)



## Discussion on Judgments - Income Tax



**1. Ex gratia payment received by assessee from his employer for settlement of dispute at point of time of leaving employment is nothing but an arrangement for termination of employment on payment of compensation, hence, retrenchment compensation eligible for exemption under section 10(10B).**

### Facts:

- Assessee received certain amount as 'ex-gratia' as a result of 'out of court' settlement of dispute with his employer. His services were terminated after he received the said 'ex gratia' payment.
- This amount was treated as compensation at the time of retrenchment of the assessee. Assessing Officer (AO) declined the claim on the ground that the status of the employee was that of a resigned employee and not a retrenched employee
- CIT(A) upheld order of AO. Aggrieved-assessee filed the instant appeal before the Tribunal

The Tribunal held in favour of assessee as under:

- Section 10(10B) of the Income-tax Act 1961 defines the amount eligible for exemption under this provision as "any compensation received by a workman

under the Industrial Disputes Act, 1947 or under any other Act or Rules, orders or notifications issued there under, at the time of his retrenchment"

- The expression 'retrenchment' covers termination of service by the employer for any reason whatsoever, except (i) as a punishment inflicted by disciplinary action in accordance with the law, and (ii) covered by the negative list appended to the definition of 'retrenchment'.
- In the instant case, employee was transferred to Mumbai and the employee considered such a transfer as an alternation to the terms of employment. He fought this transfer order in the tribunal.
- To avoid litigations, employer made him an offer that in case the assessee was ready to leave the employment, in addition to all his normal terminal dues, he would get Rs 6,50,000 as ex gratia compensation.
- In simple words, it was an offer for termination of his employment by the employer with an additional payment. Resignation was a voluntary and unilateral act. There couldn't be a resignation by the employee on payment of compensation by the employer.
- Therefore, the payment in question couldn't be anything but retrenchment compensation. Hence, assessee was entitled to exemption under section 10(10B) in respect of above ex gratia amount that he received.

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**2. Where assessee-company entered into an agreement with BCCI in terms of which it paid certain annual franchise fee for owning IPL team, in view of fact that payment of said**

**fee facilitated participation in league and operating team which was restricted only to year to which payment pertained, it could safely be concluded that by making such payment there was neither a creation of an asset or generation of a benefit of an enduring nature in hands of assessee and, thus, assessee's claim for deduction of same as revenue expenditure under section 37(1) was to be allowed.**

Facts:

- The assessee-company had entered into an IPL Franchise Agreement with Board of Control of Cricket (BCCI) for Franchise rights of IPL team, named as Kolkata Knight Riders ('KKR').
- Assessing Officer (AO) observed that as per the agreement between the assessee and BCCI, the assessee was to pay for the period 2008-17 an annual Franchise fee of Rs.30,03,60,000.
- AO held that the Franchise fee was a part of the consideration which was paid by the assessee for owning the IPL team and not as a fee for playing the IPL matches, therefore, the same was a capital expenditure.
- CIT(A) upheld view taken by AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

The Mumbai tribunal held in favour of assessee as under:

- The payment of the Franchise fee by the assessee as per the terms contemplated in the franchise agreement enabled it to participate in the tournament for the subject years and earn revenue from the same.
- The payment was in the nature of recurring annual payment which was paid to facilitate participation in the IPL and operating the team only for the year for which the payment was made.
- Since payment of said fee was restricted only to year for which payment was

made, it could safely be concluded that by making such payment there was neither a creation of an asset or generation of a benefit of an enduring nature in hands of assessee.

- Therefore, assessee's claim for deduction of same as revenue expenditure under section 37(1) was to be allowed.

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**3. While determining cost of acquisition of property approved valuer's report itself is a piece of evidence and Act does not require that opinion of approved valuer should be supported with further evidence in shape of circle rate or exemplar sale deeds etc.**

Facts:

- Assessee's mother-in-law gifted a flat to assessee which she had purchased in year 1970. During relevant assessment year, assessee sold said flat.
- For purpose of computation of capital gains, assessee relied on provision of section 55(2)(b)(ii). She disclosed value of flat in question as on 1-4-1981 on the basis of valuation report submitted by approved valuer.
- Assessing Officer (AO) disbelieved aforesaid valuation report submitted by assessee in support of her claim as to cost of acquisition of flat on reasoning that assessee had not provided any evidence in support of valuation report, such as circle rate, etc.
- Tribunal set aside objection raised by Assessing Officer. Aggrieved-revenue filed the instant appeal before the High Court.

The High Court held in favour of assessee as under:

- The Income-tax Act does not require that the opinion of the approved valuer should be supported with further evidence in the shape of circle rate or

exemplar sale deeds, etc. There was nothing on record to doubt the correctness of the report or its contents.

- The Tribunal had also contended that in absence of any evidence to doubt the correctness of the approved valuer's report the same should have been accepted by the department.
- Therefore, while determining cost of acquisition of property approved valuer's report itself was a piece of evidence and didn't require to be supported by any other evidence.

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**4. Where assessee having imported garments, cut them into smaller pieces and sold to different parties, in view of fact that waste generated in said process such as rags, wipers were used by buyers in manufacturing other items like blankets, pillows etc., waste so manufactured would not fall within ambit of expression 'scrap' as envisaged in clause (b) of Explanation to section 206C.**

Facts:

- The assessee used to import garments, cut them into smaller pieces and sell them in India. It was also found that the assessee also used to sell scrap like wastage of packing material, loose cartons, plastic bags, etc
- The assessee used to import garments, cut them into smaller pieces and sell them in India. It was also found that the assessee also used to sell scrap like wastage of packing material, loose cartons, plastic bags, etc
- CIT (Appeals) taking a view that articles manufactured by assessee did not fall within ambit of expression 'scrap' as envisaged in clause (b) of Explanation to section 206C, set aside assessment order.
- The Tribunal confirmed the order passed by CIT (Appeals). Aggrieved-

revenue filed the instant appeal before the High Court

The High Court held in favour of assessee as under:

- Clause (b) of the Explanation to section 206C defines 'scrap' to mean waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons
- The expression 'scrap' clearly provides that scrap means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such.
- In the instant case, items brought into existence by the assessee were used as raw materials for production of some other items and were definitely usable as such
- Scraps generated by assessee were used as such by the buyers for the purpose of manufacturing other items and weren't products which could not be used as such because of breakage, cutting up, wear and other reasons.
- Therefore, waste so manufactured by assessee would not fall within ambit of expression 'scrap' as envisaged in clause (b) of Explanation to section 206C.

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**5. Where assessee challenged sale of confiscated property on ground that it took place after prescribed period of three years as per Rule 68B, in view of fact that sale was conducted within three years from date when order of DRT became final after expiry of period prescribed for filing an appeal, objection raised by assessee was to be set aside.**

Facts:

- Assessee was absolute owner of a piece of land. Son-in-law of assessee had availed of a loan from Bank. Immovable property, i.e., land of assessee was furnished as security for loan transaction.
- Assessee's son-in-law committed default in repayment of loan amount and, thus, 1st respondent preferred application before Debts Recovery Tribunal.
- DRT allowed said application and Tribunal issued Recovery Certificate authorising Recovery Officer to recover amount due from defendants therein. Property was sold by Recovery Officer on 27-11-2007.
- Assessee filed a writ petition contending that as per rule 68B of Second Schedule which had been made applicable to proceedings under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 by section 29 thereof, sale had to be conducted within a period of 3 years.

from the date on which the copy of the order is received. Therefore, the order could become final only after expiry of the period prescribed for filing an appeal.

- The said period expired only on 13-4-2004. Since the financial year in which the order had become final, namely, 13-4-2004, had expired only on 31-3-2005, the three years period stipulated by rule 68B expired only on 31-3-2008.
- Admittedly, the sale was conducted on 27-11-2007. Therefore, the sale was conducted within the time stipulated by rule 68B of the Second Schedule to the Act.

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

The High Court held in favour of revenue as under:

- The period of 3 years stipulated therein is to commence 'from the end of the financial year' in which the order becomes conclusive or final.
- In the present case, though the application was allowed by the DRT on 27-2-2004, yet the order had not become final on the said date. The period stipulated for filing an appeal is 45 days

## DUE DATE CHART FOR THE MONTH OF FEBRUARY 2018

### February 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7 Monthly TDS payment	8	9	10 Due date for GSTR-1 for January having turnover more than 1.5 cr. Due date for GSTR-7 & GSTR-8
11	12	13 Due date for GSTR 6	14	15 Due date for ESIC payment  Payment of Provident Fund  Due date for GSTR- 1 for Oct to Dec having turnover upto 1.5 Cr.	16	17
18	19	20 Filing GSTR- 3B for the month of January	21	22	23	24
25	26	27	28 Profession Tax payment Quarterly return of TDS			

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[Back](#)