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RESERVE BANK OF INDIA

Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS), 2016

The Government of India has announced the "Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS)".

This Scheme shall be applicable to every declarant under the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

The terms and conditions of the scheme are as under:

Eligibility for Deposits: The deposits under this scheme shall be made from 17th December 2016 to 31st March, 2017 by any person who has declared undisclosed income under the Pradhan Mantri Garib Kalyan Yojana, 2016.

Form of deposits: The deposits shall be held at the credit of the declarant in Bonds Ledger Account maintained with Reserve Bank of India. A certificate of holding shall be issued to the declarant in Form I.

Authorised banks: Application for the deposit in the form of Bonds Ledger Account shall be received by any banking company to which the Banking Regulation Act, 1949 applies.

Subscription and Mode of investment:

1. The deposits shall be accepted at all the authorised banks.
2. The deposits shall be made in multiples of rupees one hundred.
3. The deposit shall not be less than 25% of the undisclosed income under the Pradhan Mantri Garib Kalyan Yojana, 2016.
4. The entire deposit shall be made in a single payment before filing declaration.
5. The deposit shall be made in the form of cash or draft or cheque drawn in favour of the authorised bank

Effective date of deposit: The effective date of opening of the Bonds Ledger Account shall be the date of tender of cash or the date of realisation of draft or cheque or transfer through electronic transfer.

Application: An application for the deposit under this Scheme shall be made in Form II.

Nomination: The holder may nominate in Form III, one or more persons who shall be entitled to the Bonds Ledger Account and the payment thereon in the event of his death.

Interest: The deposits shall not bear any interest.

Tradability: The Bonds Ledger Account shall not be tradable.

Repayment: The Bond Ledger Account shall be repayable on the expiration of four years from the date of deposit and redemption of such Bond Ledger Account before its maturity date shall not be allowed.

Notification no RBI/2016-17/187 dated December 16, 2016

Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS), 2016 - Operational Guidelines

The Reserve Bank of India has notified the operational guidelines with regards to the Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS), 2016 as notified by it on 16th December, 2016.

Notification no RBI/2016-17/188 dated December 16, 2016

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COMPANY LAW

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

The Central Government has made rules which shall be called as the "Companies (Compromises, Arrangements and Amalgamations) Rules, 2016". These shall come into force from 15th December, 2016.

Notification no 1134E dated December 14, 2016

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SERVICE TAX

Amendment to the Mega Exemption Notification with respect to services provided by an acquiring bank in relation to settlement of amount through credit card, debit card, charge card or other payment card service

The Central Government has made further amendments to the Mega Exemption notification by inserting an additional entry so as to exclude the services provided by an acquiring bank to any person in relation to settlement of amount upto rupees two thousand in a single transaction transacted through credit card, debit card, charge card or other payment card service.

For the purpose of this entry "acquiring bank" means any banking company, financial institution including NBFC or any other person, who makes the

payment to any person who accepts such card.

Notification no 52/2016-Service Tax dated December 8, 2016

Service Tax (Fifth Amendment) Rules, 2016

The Central Government has made further amendments to the Service Tax Rules, 1994 by inserting a proviso to sub rule (1) of rule 4C (Authentication by digital signature).

With this amendment, now a person located in non-taxable territory providing online information and database access or retrieval services to a non-assessee online recipient located in taxable territory may issue online invoices not authenticated by means of digital signature for a period upto 31st January, 2017.

These rules may be called the Service Tax (Fifth Amendment) Rules, 2016 and shall come into force on the date of their publication in the official gazette.

Notification no 53/2016-Service Tax dated December 19, 2016

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INCOME TAX

Reduction of the existing rate of deemed profits under section 44AD of the Income Tax Act, 1961

Under the existing provisions of section 44AD of the Income-tax Act, in case of certain assesses (i.e. an individual, HUF or a partnership firm other than LLP) carrying on any business (other than transportation, agency, brokerage and commission) and having a turnover of Rupees Two Crore or less, the profit is deemed to be 8% of the total turnover.

In order to encourage the Government's mission of cash less economy and to incentivise small traders/ businesses to proactively accept payments by digital means it has been decided to reduce the existing rate of deemed profit of 8% to 6% in respect of the amount of turnover or gross receipts received through banking channel or digital means.

However the existing rate of deemed profit of 8% shall continue to apply in respect of total turnover or gross receipts received in cash.

With this amendment a person can make a total tax savings of almost 46% by migrating to banking mode.

Legislative amendment in this regard shall be carried out through finance bill

2017.

Press release dated 19th December, 2016 and 20th December, 2016

Clarifications on Indirect Transfer provisions under the Income Tax Act, 1961

The Central Board of Direct Taxes has issued clarifications on the queries that were received by the Board about the scope of the indirect transfer provisions.

Press release dated 19th December, 2016 and 20th December, 2016

Clarifications on the Direct Tax Dispute Resolution Scheme, 2016

The Direct Tax Dispute Resolution Scheme, 2016 incorporated as Chapter X of the Finance Act, 2016 provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The provisions of the scheme were earlier clarified vide circular dated 12.09.2016.

Upon receipt of further queries and questions in this regard the Central Board of Direct Taxes has issued further clarifications in the form of question and answers.

Circular No. 42/2016 dated 23rd December, 2016

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ECONOMICS

Amendment to Employees' State Insurance (Central) Rules, 1950

The Ministry of Labour and Employment has amended the applicability of Employees' State Insurance (Central) Rules, 1950.

According to the amendment, the minimum wage limit for the applicability of the Employees' State Insurance Act, 1948 ('Act'), has been increased to Rupees 21,000 from the existing limit of Rupees 15,000. Thus now employees earning wages up to Rupees 21,000 will be covered under the definition of an "Employee" under the Act.

With this amendment, factories and establishments with 10 or more employees will now be required to make monthly ESIC contribution for employees earning wages up to Rupees 21,000.

Thus now the employee's net pay per month will get reduced to the extent of the ESIC contribution.

Depending upon the company's policy, the cost of the company is likely to increase on account of the additional contribution due to this increase in threshold limit and the companies may have to incur the additional salary cost so that the employee's net pay per month remains same.

This shall come into force from 1st January, 2017

Notification dated 22 December, 2016

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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.	Bombay High Court	Section 37(1)	No disallowance of service tax just because it is paid by service provider out of its own pocket	CIT V Prime Broking Co (I) Ltd.
2.	Bombay High Court	Section 40(a)(ii)	After the insertion of the Explanation to sec 40(a)(ii) by the FA 2006, foreign taxes are not deductible only to the extent they are eligible for relief u/s 90 & 91.	Reliance Infrastructure Limited V CIT
3.	Mumbai Tribunal	Section 147	If the AO takes the view that the income referred to in the reasons has not escaped assessment, he loses jurisdiction to assess other escaped income that comes to his notice during reassessment	Torm Shipping India Private limited V ITO
4.	Supreme Court	Section 192, 234B and 234C	Where the receipt is by way of Salary, TDS has to be deducted u/s 192 of the Act. No question of payment of advance tax can arise in cases of receipt by way of salary.	Ian Peter Morris V ACIT
5.	Punjab & Haryana High Court	Section 271(1)(c)	Penalty cannot be levied in a case where the assessee has relied on legal opinion of a professional and there is no tax impact i.e. the loss disallowed in year one is allowed set-off in a later year	Pr CIT V Atotech India limited
6.	Supreme Court	Revenue receipt and capital receipt	Law laid down in Sahney Steel and Ponny Sugars regarding the taxability of subsidies as a revenue receipt does not apply to voluntary subsidies paid by a holding company to its loss making subsidiary.	Siemens Public Communications Network Limited V CIT

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DISCUSSION ON JUDGEMENTS – INCOME TAX

1. No disallowance of service tax just because it is paid by service provider out of its own pocket

The assessee was engaged in the business of broking in Government and other securities. As the clients of the assessee did not pay the service tax to it as required in terms of the invoice raised for onward payment to the Government, the assessee paid the service tax out of its own resources and claimed deduction of the same under section 37(1).

The AO disallowed the claim for deduction holding that the obligation to pay the service tax was on the customer/ client and the same cannot be shifted to the assessee.

The Commissioner (Appeals) held that in terms of section 68 of the Finance Act, 1994, the obligation to pay the service tax was of the service provider, i.e., the assessee. The failure of its client/customer to pay service tax to the assessee would not absolve the obligation of the assessee to pay the same to the Government. Therefore, the service tax paid by the assessee was a business expenditure incurred on account of commercial expediency and deductible under section 37(1).

The Tribunal upheld the order of the Commissioner (Appeals) holding that the assessee was obliged under the law to pay service tax to the Government, even when such payment was not forthcoming from the client/customer. Therefore, it would be deductible business expenditure under section 37(1).

On appeal to the High court it held that:

- It is undisputed that the obligation under the Finance Act, 1994 to pay the service tax is on the assessee being the service provider. This obligation has to be fulfilled by the service provider whether or not it receives the service tax from its clients/customers. Non-payment of such service tax into the treasury would normally result in demand and penalty

proceedings under the Finance Act, 1994.

- Therefore, the payment is on account of expediency, exclusively and wholly incurred for the purposes of business, therefore, deductible under section 37(1).

Thus in view of above the High Court dismissed the appeal of the department.

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2. After the insertion of the Explanation to sec 40(a)(ii) by the FA 2006, foreign taxes are not deductible only to the extent they are eligible for relief u/s 90 & 91

The Bombay High Court in this case held as under:

- To the extent tax is paid abroad, the Explanation to section 40(a)(ii) of the Act provides or clarifies that whenever an assessee is otherwise entitled to the benefit of double income tax relief under sections 90 or 91 of the Act, then the tax paid abroad would be governed by Section 40(a)(ii) of the Act.
- The occasion to insert the explanation to sec 40(a) (ii) arose as assessee was claiming to be entitled to obtain necessary credit to the extent of the tax paid abroad u/s 90 and 91 of the Act and also claim the benefit of tax paid abroad as expenditure on account of not being covered by section 40(a) (ii) of the Act.
- It is not disputed that some part of the income on which the tax has been paid abroad is on the income accrued or arisen in India. Therefore, to the extent, the tax is paid abroad on income which has accrued and/or arisen in India, the benefit of Section 91 of the Act is not available. In such a case, an Assessee is entitled to a deduction under Section 40(a) (ii) of the Act. Therefore, to the extent the payment of tax abroad on income which has arisen / accrued in India has to be considered in the nature of expenditure incurred or arisen to earn income and not hit by the provisions of Section 40(a) (ii) of the Act.

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3. If the AO takes the view that the income referred to in the reasons has not escaped assessment, he loses jurisdiction to assess other escaped income that comes to his notice during reassessment

The Tribunal held as under:

- The Assessing officer had no bases to allege that the impugned income was not included by the Assessee in its income offered to tax.

- Reopening of an assessment is not allowed merely on the basis of some notions or presumptions. Nor it is allowed merely for making verification of some basic facts. There must be existence of some tangible material indicating escapement of income. Then only, an AO is permitted to resort to provisions of reopening contained in sections 147 to 151 of the Act. Because, once an assessment is reopened on valid basis, entire Pandora's Box is open before the AO.

- AO may then bring to tax not only income escaped from tax which was mentioned in the reasons recorded, but also any other escaped income that may come to his notice during the course of reassessment proceedings.

- If in the course of proceedings under section 147 of the Income tax Act, 1961, the Assessing Officer comes to the conclusion that any income chargeable to tax which, according to his "reason to believe" had escaped assessment for any assessment year, did not escape assessment, then the mere fact that the Assessing Officer entertained a reason to believe, if it is even a genuine reason to believe, would not continue to vest him with the jurisdiction to subject to tax any other income chargeable to tax which the Assessing Officer may find to have escaped assessment and which may come to his notice subsequently in the course of proceedings under section 147 .

Thus in view of the above legal discussions and facts the Tribunal found that the AO's action of continuing with the reassessment proceedings and framing of the impugned reassessment order is contrary to law and facts and, therefore liable to be quashed.

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4. Where the receipt is by way of Salary, TDS has to be deducted u/s 192 of the Act. No question of payment of advance tax can arise in cases of receipt by way of salary.

The appellant assessee along with three others had promoted a company (Acquiree Company) in the year 1990. The said company was acquired by other company (Acquirer Company).

The appellant was offered the position of executive director in the acquirer company for a gross compensation of rupees 1, 77,200 pa on 8th October, 1993.

On 15th October, 1993, an Acquisition Agreement was executed between the Acquirer Company and the Acquiree Company on a going concern basis. On the same date a Non-Compete Agreement was signed between the appellant – Assessee and the Acquirer Company imposing a restriction on the appellant from carrying on any business of Computer Software development and marketing for a period of five years for which the appellant – Assessee was paid a sum of Rs.21,00,000/

The question that aroused in the proceedings commencing with the assessment order is whether the sum of Rs.21, 00,000/- is on account of salary or a capital receipt.

The high court took the view that the said amount was on account of salary and interest shall be leviable u/s 234B and 234C of the Act. Aggrieved with this the Appellant filed the appeal with the Supreme Court.

The Supreme Court, allowing the appeal held that:

- A perusal of the relevant provisions of Chapter VII of the Act would go to show that against salary a TDS has to be deducted by the employer failing which the employer is liable to pay simple interest thereon.
- The provisions relating to payment of advance tax is contained in Part 'C' and interest thereon in Part 'F' of Chapter VII of the Act. No question of payment of advance tax under Part 'C' of Chapter VII of the Act can arise in cases of receipt by way of salary.
- Hence Part 'F' of Chapter VII dealing with interest chargeable would have no application in the present situation in view of the finality that has to be attached to the decision that what was received by the assessee.

In view of the above the order of the High Court for the payment of interest under Section 234B and Section 234C of the Act is set aside.

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5. Penalty cannot be levied in a case where the assessee has relied on legal opinion of a professional and there is no tax impact i.e. the loss disallowed in year one is allowed set-off in a later year

For the A.Y. 2004-2005 the assessee in its return of income sought to set-off its

income against the brought forward business losses of the earlier years.

Proceedings u/s 143 were initiated in course of which the assessee by a letter dated 13.12.2006 claimed the above set-off against another head namely unabsorbed depreciation. The tax effect in either case was nil. Further it was admitted that even if the respondent was permitted to claim the set off against the unabsorbed depreciation, it would have no financial implication for the future.

The department made an appeal to the High Court.

The High Court dismissing the appeal held that:

- The decision of the Tribunal that the respondent ought not to be made liable for penalty cannot be said to be perverse or absurd.
- The Tribunal noted that the respondent had claimed the set off of its business income of Rs. 1.85 Crores against the brought forward business losses of earlier years on the basis of a legal opinion received from a leading firm of Chartered Accountants.
- The Tribunal found nothing clandestine in the manner in which the opinion was sought. Further, the loss was allowed to be carried forward in the assessment year, namely, assessment year 2002-2003. In these circumstances the Tribunal found as a matter of fact that the letter dated 13.12.2006 was voluntary and not merely because a notice had been issued under Section 143(2) of the Act. This is a perception on the basis of the facts of the case and warrants no interference.
- In these circumstances including in view of the fact that there is no financial implication on account of the change in the basis of the claim, no substantial question of law arises in this case.

Thus in view of above the High Court dismissed the appeal of the department.

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6. Law laid down in Sahney Steel and Ponny Sugars regarding the taxability of subsidies as a revenue receipt does not apply to voluntary subsidies paid by a holding company to its loss making subsidiary.

The assessee company had received a subsidy from its parent company in Germany as it was making losses. This was treated as a revenue receipt by the Assessing officer.

Though the Commissioner of Income Tax (Appeals) and the Tribunal had reversed the said finding, the High Court, by the orders under challenge, had restored the view taken by the Assessing officer.

Aggrieved the assessee filed an appeal before the Supreme Court.

The Supreme Court, allowing the appeal held as under:

- The High Court answered the question of law namely whether the subvention was revenue or a capital receipt in the present case by making reference to the two decisions in Sahney steel and press works limited and Ponni Sugars.
- The view expressed in these decisions that unless the grant-in-aid received is utilized for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt was held by the High Court to be a principle of law applicable to all situations.
- The aforesaid view tends to overlook the fact that in both the above cases the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent Company.
- Also the voluntary payments made by the parent Company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of the Assessee Company. If that is so, there is no hesitation to hold that the payments made to the Assessee Company by the parent Company for Assessment Years in question cannot be held to be revenue receipts.

Thus in view of above the order of the High Court was set aside.

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

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DUE DATES CHART FOR THE MONTH OF JANUARY 2017 (VARIOUS ACTS):

January 2017

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 Income Tax – TDS payment
8	9	10 Monthly Excise Return (ER-1)/ ER-2 monthly return by 100% EOU, Quarterly Excise Return by EOU, SSI Units and paying 2% in Form ER-8	11	12	13	14
15 Provident fund payment, Due date for submission of VAT Audit report	16	17	18	19	20	21 MVAT Payment, ESIC Payment, Payment and filing of quarterly/monthly MVAT Return
22	23	24	25	26	27	28
29	30	31 Profession Tax Payment, TDS return for Quarter 3				

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