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July 2017

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GOODS AND SERVICE TAX (GST)

Outcomes of 17Th GST Council held on 18Th June 2017

a) The roll out date is 1st July 2017. There is no relaxation for the same.

b) Hotel tariffs between Rs. 2000/- to Rs 7,500/- will attract 18% GST, whereas 28% GST rate will apply to hotel tariff above Rs. 7,500/

c) Returns filing due date for July & August deferred to August 20 & September 20 respectively.

d) Form GSTR-3B is introduced which is to be filed on self-declaration basis for July and August, reflecting supplies and output tax liability – a summary of inward and outward supplies to be submitted before 20th of the succeeding month.

e) Facility for uploading of outward supplies from July 2017 will be available from July 15.

f) No late fees and penalty would be levied for the interim period.

g) State run lotteries will be taxed at 12% of the face value and state authorized lotteries at 28%.

Mandatory registration of Indirect Tax Payers in the new Regime.

The Union Government on 20th June 2017 notified 18 sections related to registration of current indirect Tax payers with the GST-Network (GSTN) as well as transitional provision

Every business carrying out a taxable supply of goods and services with a turnover exceeding threshold limit of Rs.20Lakh will be required to get register.

The CBEC has also notified www.gst.gov.in as the common 'Goods and Service Tax Electronic portal'. All these businesses will be assigned A unique Goods and Service Tax Identification number.

Notification No. 1/2017 – Integrated Tax

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Reserve Bank of India (RBI)

Payment of agency commission for government receipts

The agency commission on government receipts is paid by Reserve Bank on per transaction basis, with reference to the implementation of Goods and Service Tax (GST) regime, it is advised that GST

payment process, may be treated as a single transaction, even if multiple major head/sub major head/minor head of accounts are credited.

This means that CGST, SGST, IGST and Cess etc. paid through a single challan would constitute a single transaction. Thus, all such records clubbed under a single challan i.e., Common Portal Identification Number (CPIN) have to be treated as a single transaction for the purpose of claiming agency commission. This will come into effect from July 1, 2017.

Similarly, in case of transactions not covered under GST, it is emphasized that a single challan (electronic or physical) should be treated as single transaction only and not multiple transactions, even if the challan contains multiple major head/sub major head/minor head of accounts that will get credited.

RBI/2016-17/327

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ECONOMICS

The State Bank of India (SBI) and ICICI Bank, have approved

Rupees 86,000 crore stake sale of Essar Oil to Rosneft and Trafigura-UCP consortium in a meeting

The Joint Lenders Forum, led by State Bank of India (SBI) and ICICI Bank, have approved Rs 86,000 crore stake sale of Essar Oil to Rosneft and Trafigura-UCP consortium in a meeting. The transaction would be the largest Foreign Direct Investment (FDI) in India.

Twenty-three banks, led by SBI and ICICI, have permitted and authorized the release of shares of Essar Oil Limited (EOL) to facilitate closure of EOL's stake sale to Rosneft and the investment consortium led by Trafigura and UCP.

Business Standards June 23 2017

RBI denies restricting exchange of Qatari Riyals

The Reserve Bank of India has not issued any instructions restricting the exchange of Qatari Riyals in the country.

The central bank came up with the clarification amid reports that certain authorized dealers/persons are not

undertaking the sale or purchase of the Qatari currency.

"It is clarified that the Reserve Bank has not issued any instructions restricting the exchange of Qatari Riyals in India," RBI said in a notification.

Under the Foreign Exchange Management Act, Reserve Bank authorizes persons to deal in foreign exchange as authorized dealers.

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INCOME TAX

TDS on Rent payment @10% for individuals and HUF not covered under Tax Audit.

Tax is Deductible at Source at the rate 5% of the rent paid or payable by Individual and HUF who are not required to get their accounts audited under section 44AB, if such payment of Rent to a resident exceeds Rs. 50,000 per month or part of the month.

Company, partnership firm, AOP, BOI and Individuals and HUF which are not covered are required to deduct TDS under section 194I i.e 10%.

If the person receiving rent does not furnish PAN then TDS would be deductible @20%.The deductor does not need the TAN.

Notification no. 48/2017 dated 08/06/2017

Long Term Capital Gain will continue to be exempt even if SST is not paid.

As per amendment of Finance Act, 2017, the exemption of Long Term Capital Gain would not be available if Security Transaction Tax (STT) is not paid at the time of acquisition of shares.

CBDT has now issued final notification u/s 10(38) providing for exceptions to long term capital gains exemption where STT is not paid.

The final notification provides that the condition of chargeability to STT shall not apply to all transactions of acquisitions of equity shares entered into on or after the first day of October, 2004 other than the 'specified' transactions'

This notification shall come into force with effect from April 1, 2018 and shall accordingly apply to AY 2018-19 onwards.

[F. No. 43/2017/F. No. 370142/09/2017-TPL]

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Linking of PAN and Aadhar at the time of filing Income Tax Return

Finance Act 2017 provides for mandatory quoting of Aadhar or enrolment ID of Aadhar application Form for filing Return of Income and for making application for allotment of PAN.

Every person who has been allotted PAN as on 1st July 2017 and who is eligible to obtain Aadhar, shall intimate his Aadhar on or before the date to be notified by Central Government.

PAN as on 1st July 2017 and who is eligible to obtain Aadhar, shall intimate his Aadhar on or before the date to be notified by Central Government.

In case of non-intimation of Aadhar, the PAN allotted to the person shall be deemed to be invalid.

Press Release by CBDT on Aadhar-PAN Linking

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.	Delhi High Court	Section 2(22)(e)	Trade Advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' for the applicability of section 2(22)(e)-Deemed Dividend.	CIT vs. Creative Dyeing & Printing Pvt. Ltd, Delhi High Court
2.	Supreme Court	Section 37(1)	Expenditure incurred under a Technical Collaboration Agreement for setting up of new plant for the first time to manufacture cars constitutes capital or revenue expenditure.	Honda Siel Cars India Ltd vs. CIT
3.	ITAT Delhi	Section 45, 48, 50C	Failure by the AO to refer the valuation of the capital asset to a valuation officer instead of adopting the value taken by the stamp duty authorities is a fatal error and the assessment order has to be annulled.	ITO vs. Aditya Narain Verma (HUF) (ITAT Delhi)
4.	ITAT Mumbai	Section 69	It is not sufficient to draw an adverse inference when the documentary evidence in the form of contract notes, bank statements, STT payments etc prove genuine purchase and sale of the penny stock.	Kamla Devi S. Doshi vs. ITO (ITAT Mumbai)
5.	High Court	Section 132B explanation 2	Adjustment of seized assets/requisitioned assets against the amount of any existing liability under the Income Tax Act, 1961, the Wealth-tax Act, 1957, the Expenditure-tax Act, 1987, the Gift-tax Act, 1958 and the Interest-tax Act, 1974, and the amount of the liability	Punjab and Haryana High Court Vs. Cosmos Builders and Promoters

			determined on completion of the assessment	Ltd.
6.	Supreme Court	Section 139(1) Section 139AA	Quoting of Aadhaar number with the PAN is constitutionally valid which deems the PAN void ab initio if the Aadhaar number is not quoted.	Binoy Visam vs. UOI
7.	Bombay High Court	Section 194-I	Non-Applicability of the provisions of section 194-I: TDS on Rent on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator	CIT vs. Jet Airways (India) Ltd

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Discussion on Judgments – Income Tax

1. The CBDT has issued Circular No. 19/2017 dated 12th June 2017 in which it has considered trade advances, which are in the nature of commercial transactions to fall within the ambit of the word 'advance' and be assessable as "deemed dividends". Some exceptional transactions held to be not covered under section 2(22)(e) of the Act.

The Board has observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22) (e) of the such views have attained finality. Following commercial transactions held not to be covered u/s 2(22) (e)

- Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions **do not to fall** within the definition of deemed dividend under section 2(22)(e) *(CIT vs. Creative Dyeing & Printing Pvt. Ltd, Delhi High Court).*

- Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was **not covered** by section 2(22)(e). *(CIT vs Amrik Singh, P&H High Court)*

- Security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22) (e)*(CIT, Agra vs Atul Engineering Udyog, Allahabad High Court)*

In view of the above it is a settled position that trade advances, which are in the nature of commercial transactions

would not fall within the ambit of the word 'advance'.

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2. Expenditure incurred under a Technical Collaboration Agreement for setting up of new plant for the first time to manufacture cars constitutes capital or revenue expenditure.

M/s. Honda Motors Company Limited, Japan (HMCL, Japan) entered into joint venture with the M/s. SEIL Ltd.after getting necessary approval from the Government of India. They entered into an agreement known as 'Technical Collaboration Agreement' (TCA). The TCA stipulated different kinds of technical know-how and technical information which were to be provided by HMCL, Japan to M/s. SEIL Ltd. For providing the aforesaid facilities, it was agreed that a consideration/lump sum fee of 30.5 million US Dollar would be paid by the assessee to the HMCL, Japan in five continuous equal installments.

The dispute arose is as to whether the said technical fee of 30.5 million US Dollar payable in five equal installments on yearly basis is to be treated as revenue expenditure or capital expenditure.

The High Court Held That:

- There was no existing business and, thus, question of improvising the existing technical know-how by borrowing the technical know-how of the HMCL, Japan did not arise.
- A new business was set up with the technical know-how provided by HMCL, Japan and lump sum royalty, though in five installments, was paid
- Expenditure incurred was of capital nature, appears to be unblemished.

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3. Failure by the AO to refer the valuation of the capital asset to a valuation officer instead of adopting the value taken by the stamp duty authorities is a fatal error and the assessment order has to be annulled.

The assessee in the present case had claimed before Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by

the state authority for the purpose of stamp duty.

Non-compliance of the provisions by the Assessing Officer cannot be held valid and justified. As per the judgment given by High Court of Allahabad in the case of Shashi Kant Garg 285 ITR 158 (All) has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner.

The similar decision is delivered in the present matter.

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4. It is not sufficient to draw an adverse inference when the documentary evidence in the form of contract notes, bank statements, STT payments etc prove genuine purchase and sale of the penny stock.

The assessee had filed her return of income on 29.07.2007, declaring total income at Rs.1,25,903/-. That pursuant to search and seizure action conducted under Section 132 of the Income Tax Act in the case of M/s Mahasagar Securities Pvt. Ltd., Mumbai (MSPL) on 25.11.2009 and subsequent dates, it emerged that MSPL and its related group of 34 odd companies all run by Shri Mukesh Chokshi and his associates were engaged in fraudulent billing activities and the business of providing accomodation entries for speculation profit/loss, short term/long term capital gain/loss, share application money, commodities profit/loss on commodities trading (through MCX) since the past many years.

As per the A.O, from the information gathered pursuant to the search proceedings conducted on MSPL group, it emerged that the assessee was one of such beneficiaries who had obtained bogus entries towards purchase and sale of shares and securities.

The Court Held That,

- Substantial documentary evidence placed on record by the assessee, which as a matter of fact supported the entire chain of events of purchase and sale of shares.
- A.O could not produce any concrete and irrefutable evidence which could go to inescapably disprove the genuineness of the said documents which were brought on record by the assessee.

Court does not approve the reliance placed by the A.O on the stand alone statement of Sh. Mukesh Choksi for

drawing of adverse inferences in respect of the share transactions carried out by the assessee.

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5. Section 132B of the Income Tax Act 1961, provides for adjustment of seized assets/requisitioned assets against the amount of any existing liability under the Income Tax Act, 1961), the Wealth-tax Act, 1957, the Expenditure-tax Act, 1987, the Gift-tax Act, 1958 and the Interest-tax Act, 1974, and the amount of the liability determined on completion of the assessment.

Dispute arose between the Department and the assessees with regard to adjustment of such seized/requisitioned cash against advance tax liability. Several Courts held that on an application made by the assessee, the seized money is to be adjusted against the advance tax liability of the assessee. Subsequently, Explanation 2 to Section 132B of the Act was inserted by the Finance Act, 2013 clarifies that "existing liability" does not include advance tax payable. However, the dispute continued on the issue as to whether the amendment was clarificatory in nature having retrospective applicability or it has only prospective applicability.

Several Courts have held that the insertion of Explanation 2 to section 132B of the Act, is prospective in nature and not applicable to cases prior to 06.2013.

Subsequently, the CBDT has also accepted the judgment of the Honourable Punjab & Haryana High Court wherein it was held that the Explanation 2 to Section 132B of the Act is prospective in nature.

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6. Quoting of Aadhaar number with the PAN is constitutionally valid which deems the PAN void ab initio if the Aadhaar number is not quoted.

Writ Petitions were filed to challenge the constitutional validity of Section 139AA, which is inserted by the Finance Act 2017 which mandates quoting of Aadhaar number in the application form for allotment of PAN as well as in Income Tax Return The challenge is to this compulsive nature of provision inasmuch as with the introduction of the aforesaid provision, no discretion is left with the income-tax assessees insofar as enrolment under the Aadhaar Act 2016 is concerned.

According to the petitioners, though Aadhaar Act prescribes that enrolment under the said Act is voluntary and gives choice to a person to enroll or not to enroll himself and obtain Aadhaar card, this compulsive element thrusted in Section 139AA of the Act makes the said provision unconstitutional.

The Supreme Court held that:

- There is no conflict between the provisions of Aadhaar Act and Section 139AA of the Income Tax Act inasmuch as when interpreted harmoniously, they operate in distinct fields.
- Those who are not PAN holders, while applying for PAN, they are required to give Aadhaar number.
- If failure to intimate the Aadhaar number renders PAN void ab initio with the deeming provision that the PAN allotted would be invalid as if the person had not applied for allotment of PAN would have rippling effect of unsettling settled rights of the parties.

7. Non-Applicability of the provisions of section 194-I: TDS on Rent on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator

Under the existing provisions contained in section 194-I of the Income Tax Act, 1961 tax is required to be deducted at source on payment of Rent. The term "rent" is defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any (a) land; or (b) building (including factory building); or (c) land appurtenant to a building (including factory building); or (d) machinery; or (e) plant; or (f) equipment; or (g) furniture; or (h) fittings, whether or not any or all of the above are owned by the payee.

A dispute arose on applicability of the provisions of section 194-I of the Act, on payment of Passenger Service Fees (PSF) by an Airline to an Airport Operator.

The High Court of Bombay in CIT vs. Jet Airways (India) Ltd declined to admit the ground relating to applicability of provisions of section 194-I of the Act on PSF charges holding that no substantial question of law arises.

Also, the judgement given by Supreme court in case of Japan Airlines and Singapore Airlines the Apex Court held that in view of Explanation to section 194-I of the Act, though, the normal meaning of the word 'rent' stood expanded, however, the primary requirement is that the payment must be for the use of land and building and mere incidental /minor /insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I of the Act.

The Board has accepted the above view of the High Court of Accordingly, it is now a settled position that section 194-1 of the Act, will not apply on Passenger Service Fees.

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 JULY 2017 (VARIOUS ACTS):

July 2017

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5 Service Tax payment by Companies	6 1Service Tax payment by Company (if paid electronically), 3Excise duty payment	7 Monthly TDS payment	8	9	10
11	12	13	14	15 Provident fund payment	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, Filing of TDS return for Q1, Filing of return of income by non-audited assesses

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