

HARBINGERTM

Updates on regulatory changes affecting your business

September/October 2019



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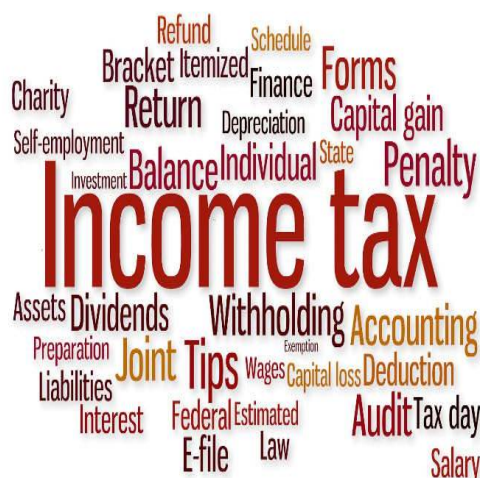


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INCOME TAX

Department focus on litigation involving complex legal issues and high tax effect”.



CBDT enhances monetary limits for filing of departmental appeal

The Central Board of Direct Taxes vide Circular No. 17/2019 dated 8th August, 2019 has enhanced monetary limits for filing of the appeals by the Income Tax Department at various forums. Revised Limits are as under:-

Tribunal/ Court	Revised Limit	Previous Limit
Income Tax Appellate Tribunal	Rs. 50 Lakhs	Rs. 20 Lakhs
High Courts	Rs. 1 Crore	Rs. 50 Lakhs
Supreme Court	Rs. 2 Crores	Rs. 1 Crore

CBDT has further clarified that the said limits have been increased to “effectively reduce taxpayer grievances/litigation and help the

GOODS & SERVICE TAX



between GSTR-9 and the audited annual financial statement, while GSTR-9A is the annual return to be filed by those who have opted for the Composition Scheme under GST.

Last date to file GST annual returns extended till 30th November, 2019

The Central Board of Indirect Taxes & Customs (CBIC) on 26th August, 2019 said the last date for filing annual GST returns for FY 2017-18 has been extended by three months to 30th November, 2019.

Earlier, GST taxpayers were to file required returns by 31st August, 2019.

GSTR 9 is an annual return to be filed yearly by taxpayers registered under the Goods and Services Tax (GST). It consists of details regarding the outward and inward supplies made or received under different tax heads.

GSTR-9C is filed by those whose annual turnover exceeds Rs 2 crore. It is a statement of reconciliation

ECONOMY



CPI inflation steady at 3.2% in August 2019

The all-India general CPI (Consumer Price Index) inflation was nearly steady at 3.21% in August 2019 (new base 2012=100), compared with 3.15% in June 2019.

The corresponding provisional inflation rate for rural area was 2.18% and urban area 4.49% in August 2019 as against 2.19% and 4.22% in June 2019.

The core CPI inflation eased to 4.20% in August 2019 compared with 4.25% in June 2019.

The cumulative CPI inflation has declined to 3.11% in April-August 2020 compared with 4.44% in April-August 2019.

SUMMARY OF IMPORTANT TAX JUDGEMENTS

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

Sr No.	Tribunal/Court	Section/Code	Nature	Case Law
1	ITAT Delhi	Section 10(38)	Bogus Capital Gains from Penny Stocks (282x gain in 12 months): The meticulous paper work of routing the transaction through banking channel is futile because the results are altogether beyond human probabilities. Neither in the past nor in the subsequent years, assessee has indulged into any such investment having huge windfall. Had the assessee been so intelligent qua the intricacies of the share market, he would have definitely undertaken such risk taking activities in the past or future by making such investment in unknown stock. It is a sham transaction to convert undisclosed income into disclosed by evading tax under the garb of LTCG in connivance with entry providers.	Sanat Kumar Vs. ACIT
2	ITAT Kolkata	Section 50C & 10(38)	Though the 3rd Proviso to s. 50C, which provides a safe harbour of 5%, applies w.e.f. 01.04.2019, it must be interpreted to apply since the insertion of Sec 50C (01.04.2003) because it is curative and removes an incongruity and avoids undue hardship to assessees.	Chandra Prakash Jhunjhunwala Vs. DCIT
3	ITAT Bengaluru	Section 68	Bogus Share Capital Premium: The test of human probabilities cannot be applied to business transactions. Share premium is collected as per the understanding between the parties. The AO cannot treat the share premium as unexplained cash credit only because the same is not commensurate with the income and financial strength of the assessee.	Janani Infrastructure Pvt. Ltd. Vs. ACIT

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			The AO cannot reach this conclusion without further investigation and bringing material on record (All imp judgements referred).	
4	Supreme Court	Section 143(2) & 292BB	The failure to issue a notice u/s 143(2) renders the assessment order void even if the assessee has participated in the proceedings. S. 292BB does not save complete absence of notice. For S. 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself	CIT Vs. Laxman Das Khandelwal

DISCUSSION ON JUDGMENTS – INCOME TAX



1. Sanat Kumar Vs. ACIT

Bogus Capital Gains from Penny Stocks (282x gain in 12 months): The meticulous paper work of routing the transaction through banking channel is futile because the results are altogether beyond human probabilities. Neither in the past nor in the subsequent years, assessee has indulged into any such investment having huge windfall. Had the assessee been so intelligent qua the intricacies of the share market, he would have definitely undertaken such risk taking activities in the past or future by making such investment in unknown stock. It is a sham transaction to convert undisclosed income into disclosed by evading tax under the garb of LTCG in connivance with entry providers.

Facts:-

The contention of the assessee that he has purchased the shares

through banking channel and as such, when the purchase is genuine then sale cannot be questioned, is not tenable because the entire transaction of sale and purchase is to be seen in entirety in the light of the attending circumstances particularly when share of Rs.10 is sold after a period of one year at 282 times which is otherwise improbable in the ordinary course of business.

Hence the appeal filed by the assessee is hereby dismissed.

2. Chandra Prakash Jhunjhunwala Vs. DCIT

Bogus Penny Stocks Capital Gains:

Though the 3rd Proviso to s. 50C, which provides a safe harbour of 5%, applies w.e.f. 01.04.2019, it must be interpreted to apply since the insertion of 50C (01.04.2003) because it is curative and removes an incongruity and avoids undue hardship to assessees.

Facts:-

The insertion of third proviso (noted above) to Section 50C of the Act is declaratory and curative in nature. That is, the third proviso to Section 50C of the Act relates to computation of value of property as explained by us above, hence it is not a substantive amendment, it is only a procedural amendment

therefore the Coordinate Benches of the ITAT used to ignore the variation up to 10%, therefore, the said amendment should be retrospective. Quite clearly therefore, even when the statute does not specifically state so, such amendments, in the light of the detailed discussions above, can only be treated as retrospective and effective from the date related statutory provisions was introduced. Viewed thus, the third proviso to Section 50C should be treated as curative in nature and with retrospective effect from 1st April 2003, i.e. the date effective from which Section 50C was introduced.

3. Janani Infrastructure Pvt. Ltd. Vs. ACIT

Bogus Share Capital Premium: The test of human probabilities cannot be applied to business transactions. Share premium is collected as per the understanding between the parties. The AO cannot treat the share premium as unexplained cash credit only because the same is not commensurate with the income and financial strength of the assessee. The AO cannot reach this conclusion without further investigation and bringing material on record (All imp judgements referred)

Facts:-

The share premium has been collected as per the

understanding reached between both the parties. We notice that the AO has not mentioned in the assessment order that the assessee has failed to satisfy the three main ingredients in the context of sec.68 of the Act. His only case was that the assessee did not substantiate the quantum of share premium collected. We have noticed that the assessee has furnished a valuation report in order to justify the share premium, even though the same has been rejected by the AO. However, the important point is that the doubt of the assessing officer on the quantum of share premium cannot be a ground for making addition u/s 68 of the Act.

4. CIT Vs. Laxman Das Khandelwal

The failure to issue a notice u/s 143(2) renders the assessment order void even if the assessee has participated in the proceedings. S. 292BB does not save complete absence of notice. For S. 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.

Facts:-

According to Section 292BB of the Act, if the assessee had

participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.

Note: The judgments should not be followed without studying the complete facts relevant to the judgment.

DATE CHART FOR THE MONTH OF OCTOBER, 2019

October 2019

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
		1	2	3	4	5
6	7 Monthly TDS Payment	8	9	10	11 GSTR-1 (T/O>1.5 Crores)	12
13	14 1) Provident Fund Payment. 2) ESIC Payment 3) Advance Tax (Quarter 2 of AY 2020-21)	15	16	17	18	19
20 GSTR-3B	21	22	23	24	25	26
27	28	29	30	31 i) Form 3CA-3CD (Tax Audit Report for Companies) ii) Form 3CB-3CD (Tax Audit Report for assesses other than companies) iii) Income Tax Returns for assesses required to submit Tax Audit Report other than assesses covered under Transfer pricing.		

This communication is intended to provide general information, guidance on various professional subject matters and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.