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Newsletter

DIRECT TAXES

Judicial pronouncements

Sec. 2 – Definition

State Bank of Patiala Vs. CIT [Civil Appeal No. 5212-5220 of 2007, The Supreme Court of India, dtd. 18.11.2015, in favour of a ssessee]

Interest on discounted Bills of Exchange is not “interest”

Right to charge overdue interest on discounted Bills of Exchange is not “interest” as it does not arise on account of delay in repayment of any loan or advance. The right arises on account of default in the payment of amounts due under a discounted bill of exchange.

Sec. 14A – Expenditure incurred in relation to income not includible in total income

DCM Ltd. Vs. DCIT [ITA no. 4467/Del/2012, ITAT Delhi bench, dtd. 01.09.2015, in favour of assessee]

AO cannot invoke the provision of rule 8D mechanically

The AO must give reasons before rejecting the assessee's claim. He must establish nexus between the expenditure & the exempt income. The disallowance cannot exceed the exempt income.

Sec. 28 – Profit and gains of business or profession

Satya Sheel Kholisa Vs. ITO [(2015) 63 taxmann.com 293, ITAT Delhi bench, dtd. 10.11.2015, in favour of assessee]

Clause (va) of section 28 of the Act taxes a sum received for a restrictive covenant in relation to a business, but not a profession.

Compensation attributable to a negative/restrictive covenant is a capital receipt and as the same does not fall within the ambit of section 28(va), it is not taxable

Sec. 36 – Other deduction

Hero Cycles (P.) Ltd. Vs. Commissioner of Income Tax



(Central) [(2015) 63 taxmann.com 308, The Supreme Court of India, dtd. 05.11.2015, in favour of assessee]

The revenue cannot justifiably claim to put itself in the arm-chair of the businessman and judge how much reasonable expenditure is having regard to the circumstances of the case

Once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and to decide how much is reasonable expenditure having regard to the circumstances of the case.

CIT Vs. Ramesh Chandra Bhati [(2015) 63 taxmann.com 305, Rajasthan High Court, dtd. 14.07.2015, in favour of revenue]

Interest on interest having an element of default isn't permissible deduction under sec. 36(1)(iii)

When principal amount borrowed stood repaid while interest remained payable, interest on interest, having an element of default, is not a permissible deduction as it cannot be said to be a benefit extended in carrying on business

Sec. 37 – Other

DCIT Vs. Ashok Weaving Works [(2015) 63 taxmann.com 370, ITAT Ahmedabad bench, dtd. 13.08.2015, in favour of assessee]

No disallowance of late payment interest just because assessee kept cash balance in hand

Merely because there was some cash balance in hands of assessee, Assessing Officer could not disallow interest on belated payment of purchases made by assessee. Merely because there was some cash balance in hands of assessee, Assessing Officer could not disallow interest on belated payment of purchases made by assessee.

Sec. 54F – Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house

Ashok Kapasiawala Vs. ITO [(2015) 63 taxmann.com 284, ITAT Ahmedabad bench, dtd. 10.09.2015, in favour of assessee]

No need to deposit in Cap Gain Scheme if house is purchased within time limit of sec. 54F

Where assessee had purchased new asset within two years from date of transfer of original asset section 54F(4) requiring assessee to deposit amount within prescribed time would not be attracted and assessee would be entitled to benefit under section 54F

Sec. 56 – Income from other sources

Maheshkumar R. Patel Vs. ITO [TS-684-ITAT-2015, Ahmedabad ITAT Bench, dtd. 26.11.2015, in favour of revenue]

ITAT upholds taxation of receipts as confirming party to sale-deed as IOS u/s 56(2)(vii)

ITAT upholds CIT(A) order treating amount received by assessee for confirming sale deed as taxable under 'income from other sources'; Assessee's father transferred land to a certain person by way of 'Will', who got the land registered in his name by executing a sale deed which was signed by assessee (legal heir) for Rs. 7.13 lakhs; Subsequently, the land was sold to a third party and assessee was requested to sign as confirming party in order to avoid dispute, for which he was paid Rs. 5 lakhs; Rejects assessee's contention that amount is not taxable as it was a casual capital receipt, holds that after losing his right, title or interest in the property by receiving the consideration of Rs. 7.13 lakhs, assessee agreed to be a confirming party with a motive of receiving Rs.5 lakhs; Accordingly, concludes that "sum of Rs.5 lacs has been received by the assessee from a person who is not a relative under section 56(2)(vii) without any consideration and this sum of money is exceeding Rs.50,000/- and, therefore, the sum of Rs.5,00,000/- received by assessee was rightly treated as income from other sources by the Assessing Officer".

Sec. 68 - Cash Credit

ITO Vs. Superline Construction P. Ltd. [(ITA No. 3645/Mum/2014, ITAT Mumbai bench, dtd. 30.11.2015, in favour of assessee]

Despite statement admitting bogus share capital, addition cannot be made in assessee-company's hands

If the share application money is received by the assessee company from alleged bogus share holders whose name are given to the AO then the department is free to proceed to reopen their individual assessments in accordance with law but it cannot be re-

garded as undisclosed income of assessee company.

CIT Vs. Five Vision Promoters Pvt. Ltd. [ITA no. 234/2015, Delhi high Court, dtd. 27.11.2015, in favour of assessee]

Despite Common address and subsequent sell of shares at reduce rate, addition cannot be made u/s. 68

(i) It is a fallacy to assume that a company which has not commenced business has unaccounted money, (ii) Fact that investors have a common address is not relevant, (iii) Fact that shares were subsequently sold at reduced rate is not relevant.



Sec. 69 – Unexplained Investments

Gaurav Sharma Vs. ACIT [(2015) 63 taxmann.com 278, ITAT Indore bench, dtd. 20.11.2015, in favour of assessee]

No addition in block assessment if no incriminating material was found regarding year in which gift was received

Where gifts received by assessee were duly shown by assessee by crediting to his capital account, as no incriminating material had been found during search regarding year in which assessee had received gifts, no addition on account of gifts could be sustained.



Where assessee claimed that he purchased foreign currency with sale proceeds of agricultural land but no bills proving such contention was given, addition was to be made in hands of assessee.

Sec. 115JB – Special provision for payment of tax by certain companies

DCIT Vs. Viraj Profiles Ltd. [(2015) 64 taxmann.com 52, ITAT Mumbai bench, dtd. 21.10.2015, in favour of revenue]

Disallowance made under sec. 14A has to be added back to book profit to compute MAT

In terms of clause (f) to Explanation 1 to section 115JB(2), disallowance made by Assessing Officer under section 14A, read with rule 8D of Income-tax Rules 1962, has to be added back for purpose of arriving at figure of book profit

Sec. 143(1) – Assessment

DCIT Vs. Zuari Estate Development & Investment Co. Ltd. [Civil Appeal No. 6758 of 2004, The Supreme Court of India, dtd. 17.04.2015, in favour of revenue]

Sec. 143(1) intimation is not an assessment

As s. 143(1) intimation is not an assessment, there is no question of "change of opinion" by the AO.

Sec. 153C – Assessment of income of any other person

CIT Vs. RRJ Securities Ltd. [(2015) 62 taxmann.com 391, Delhi High Court, dtd. 30.10.2015, in favour of assessee]

Delhi HC lays down principles to avoid vexatious proceedings u/s 153C against person other than person searched

If AO of the searched person and the other person is one and the same, date on which satisfaction is recorded by the AO that assets/documents belong to the other person is the relevant date for application of section 153A. Hard disk seized from CA with data pertaining to ITR filing of client doesn't "belong to" client for invoking sec 153C. If it is apparent that assets seized from another person do not pertain to assessee, AO can't commence enquiry u/s 153C.

Sec. 194J – TDS on profession fees

Commissioner of Income Tax (TDS) Vs. Ivy Health Life Sciences (P.) Ltd. [(2015) 63 taxmann.com 362, Punjab & Haryana High Court, dtd. 26.08.2015, in favour of revenue]

Payment made by hospital to doctors would not attract sec. 192 in absence of employer-employee relationship

Where assessee, running a hospital, availed services of some doctors, since there did not exist employer-employee relationship between parties, assessee was justified in deducting tax at source under section 194J while making payments of professional fee to doctors

Sec. 271 – Failure to furnish returns, comply with notices, concealment of income, etc.

Suvaprasanna Bhattacharya Vs. ACIT [ITA No. 1303/Kol/2010, ITAT Kolkata bench, dtd. 06.11.2015, in favour of assessee]

A penalty notice u/s 274 which does not strike out the irrelevant portion & which does not specify whether the penalty is for "concealment" or for "furnishing inaccurate particulars" renders the penalty order void

The AO will have to arrive at a prima facie satisfaction during the course of proceedings with regard to the assessee having concealed particulars of

income or furnished inaccurate particulars, before he initiates penalty proceedings 'prima facie' satisfaction of the AO that the case may deserve the imposition of penalty should be discernible from the order passed during the course of the proceedings. Notice u/s. 274 of the Act should specifically state as to whether penalty is being proposed to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income.

INTERNATIONAL TAXATION

Sec. 9 – Income deemed to accrue or arise in India

Ansaldo Energia SPA Vs. DDIT [TS-686-ITAT-2015, Chennai ITAT bench, dtd. 17.07.2015, in favour of revenue]

Interest on tax refund taxable under India - Italy DTAA, Upholds TDS u/s 195

ITAT upholds CIT(A) order imposing TDS u/s 195 on interest on income tax refund u/s 244A; Rejects assessee's contention that interest on refund of tax was exempt from tax under India Italy DTAA; Opines that such interest is not covered by definition of 'interest' under Article 12(4) of India-Italy DTAA, therefore Article 12(1) would come into play and "Being so, the lower authorities are justified in imposing TDS".

ACIT Vs. D.E. Shaw India Software (P.) Ltd. [(2015) 64 taxmann.com 95, ITAT Hyderabad bench, dtd. 03.12.2015, in favour of assessee]

Commission paid to agent for services rendered outside India wasn't taxable if he didn't have any PE in India

Assessee was not liable to deduct tax at source when non-resident selling agents provided services outside India on payment of commission

Chapter X – Special provision relating to avoidance of tax

Micro Ink Ltd. Vs. Additional Commissioner of Income Tax [(2015) 63 taxmann.com 353, ITAT Ahmedabad bench, dtd. 27.11.2015, in favour of assessee]

The issuance of corporate guarantees by holding company on behalf of its subsidiary where it is in the nature of quasi capital or shareholder activity does not amount to a service in respect of which arm's length adjustment can be done

The issuance of corporate guarantees by holding company on behalf of its subsidiary where it is done to provide or compensate for lack of subsidiary's core strength to raise bank finances is in the nature of quasi capital or shareholder activity and does not amount to a service in respect of which arm's length adjustment can be done. This is a transaction which cannot happen in an arm's length situation. This is because no bank will ever issue a guarantee in favour of an entity which lacks creditworthiness to raise a loan. It is inherently impossible to decide arm's length price of a transaction which cannot take place in an arm's length situation.

Gemstone Glass (P.) Ltd. Vs. JCIT [(2015) 63 taxmann.com 1, ITAT Ahmedabad bench, dtd. 30.10.2015, in favour of assessee]

CPM is not a residuary method. Transactional net margin method can be termed as the method of last resort

CPM is not a residuary method in the sense that if every other method of ascertaining the arm's length price fails, CPM can be applied on the basis of imperfect data. If at all there is a residuary method, or what is termed as

the method of last resort, it is transactional net margin method. TNMM has almost become the 'default' method for taxpayers in recent years. The key advantage of the TNMM is that there is often available data in the public domain about the net profits that comparable independent businesses earn from their trading activities in comparable markets with other third parties. Where there is a difference between the product that the assessee is manufacturing vis-à-vis the products being manufactured by the comparables adopted, it is only broad similarity in the product and economic similarity in the conditions which is needed.



INDIRECT TAXES

Judicial pronouncements

CENTRAL EXCISE

Supermax Personal Care (P.) Ltd. Vs. Commissioner of Central Excise & service tax [(2015) 64 taxmann.com 7, CESTAT Mumbai bench, dtd. 23.09.2015, in favour of revenue]

Pre-deposit is to be made in cash if issue of utilization of Cenvat credit is challenged by dept.

Where department has challenged validity of utilization of credit balance for payment of duty, 7.5 per cent pre-deposit as a condition for filing appeal has to be made separately and 'disputed utilization' of credit cannot be regarded as sufficient pre-deposit for purpose of section 35F.

Commissioner of Central Excise Vs. Otto Bilz (India) (P.) Ltd. [(2015) 63 taxmann.com 317, The Supreme Court of India, dtd. 28.08.2015, in favour of assessee]

No denial of SSI exemption on exclusive usage of brand name of foreign Co. in India under assignment

Use of brand name of foreign company under assignment agreement for exclusive use in India, is use of brand name in assessee's own right and not use of 'other's brand'; therefore, SSI-exemption cannot be denied.

CENVAT CREDIT

Srinathji Ispat Ltd. Vs. Commissioner of Central Excise & Service Tax [(2015) 63 taxmann.com 360, CESTAT New Delhi bench, dtd. 07.09.2015, in favour of assessee]

Tribunal allows credit of inputs which was used to manufacture capital goods aiding in manufacturing of final product

Since CENVAT Scheme is a beneficial legislation, 'input' should be given widest meaning to cover 'anything put into stream of manufacture'; therefore, inputs used for manufacture of capital goods viz. 'moulds' are eligible for credit.

N. R. Wires (P.) Ltd. Vs. Commissioner of Central Excise [(2015) 63 taxmann.com 355, ITAT New Delhi bench, dtd. 19.08.2015, in favour of revenue]

No service-tax credit on sub-broker services if brokerage was paid at unrealistic rates

Where assessee-broker had passed-on brokerage to sub-brokers at rates higher than rate earned by itself and even goods involved were not tallied, sub-broker's services could not be regarded as 'input services'.



Due Dates of key compliances pertaining to the month of January 2016:

5 th January	Payment of Service Tax & Excise duty for the month of December
6 th January	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of December
7 th January	TDS/TCS Payment for the month of December
10 th January	Excise Return ER1/ER2/ER6
15 th January	Due date for filing TDS return for the quarter ending on 31st December
15 th January	PF Contribution for the month of December
21 st January	ESIC payment of for the month of December
30th January	Due date of issue of TDS certificate (Form 16A)

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