



- ▶ DIRECT TAXES ..... 1 - 3
- ▶ INDIRECT TAXES ..... 4 - 5
- ▶ IMPORTANT DUE DATES... 5

Website : [www.snkca.com](http://www.snkca.com) Email: [newsletter@snkca.com](mailto:newsletter@snkca.com)

# SNK

## Newsletter

### DIRECT TAXES

#### Judicial pronouncements

#### Sec. 2(22)(e) – Deemed Dividend

**Manoj Murarka Vs. ACIT [TS-669-ITAT-2015(Kol), ITAT Kolkata bench, dtd. 20.11.2015, in favour of assessee]**

**ITAT excluded exempt capital gains for reckoning 'accumulated profit', deletes deemed dividend addition**

ITAT excludes exempt capital gain for reckoning 'accumulated profits' for the purpose of deemed dividend u/s 2(22)(e) for AY 2007-08; Rules that "exempted capital gains shall not enter the stream of the expression 'accumulated profits' and the company has got only negative accumulated profits after exclusion of exempted capital gains and hence the provisions of section 2(22)(e) of the Act cannot be invoked.

#### Sec. 28 – Profit and gains of business or profession

**New Mangalore Port Trust Vs. ACIT [TS-674-ITAT-2015 (Bang), ITAT Bangalore bench, dtd. 06.11.2015, in favour of revenue]**

**Premium for 30 years land-lease on BOT-basis taxable on 'receipt' basis, denies spreadover**

ITAT rules that upfront premium received by assessee (a local authority undertaking port trust activities) for leasing out port land to companies for 30 years on BOT basis taxable on receipt basis, denies assessee's spreadover claim; In terms of the BOT scheme, assessee entered into concession agreement with companies permitting them to develop facilities on land provided by assessee and use the same for 30 years period upon payment of upfront lump sum premium. Notes that there was no corresponding liability or obligation to be discharged by assessee after the receipt of upfront amount, further assessee's obligations stand discharged upon execution of agreement.



**Cachar Drug Distributors Vs. ITO [(2015) 53 taxmann.com 98, ITAT Guwahati Bench, dtd. 27.01.2015, in favour of assessee]**

**AO couldn't tax interest on accrual basis if recovery of principal amount of loan is doubtful**

Where assessee was in fact not receiving any interest on loan advanced and it had to write off said loan finally in subsequent year, no addition could be made on account of accrued interest just because assessee was following mercantile system of accounting.

#### Sec. 36 – Other deduction

**Hero Cycles (P) Ltd Vs. CIT [TS-670-SC-2015, The Supreme Court of India, dtd. 05.11.2015, in favour of assessee]**

**SC reverses HC order, allows interest deduction; Subsidiary loans satisfy 'commercial expediency' test**

SC sets aside HC order, allows deduction for interest paid on funds borrowed from bank u/s 36(1)(iii) for AY 1988-1989; HC had upheld Revenue's disallowance of interest expense deduction on two grounds namely, i) assessee had advanced interest free loan to its subsidiary company, and



ii) sum loaned to its director earned interest @ 10% whereas monies borrowed from banks carried higher interest rate of 18%; SC observes that loan advanced to subsidiary company was imperative as business expediency in view of undertaking given to the financial institutions for providing additional margin for subsidiary's working capital requirements; Notes that when assessee off-loaded its shareholding in its subsidiary company, the loan was re-funded alongwith interest which was offered to tax in the year of receipt, thus allows assessee's claim of deduction u/s 36(1)(iii) by relying on co-ordinate bench ruling in S.A. Builders Ltd. and Delhi HC ruling in Dalmia Cement (B.) Ltd.; As regards loans to directors, SC notes that advances were made out of assessee's surplus funds and hence, allows interest deduction on bank borrowings.

### **Sec. 37 – General**

**CIT Vs. Motor Industries Co. Ltd [TS-671-SC-2015, The Supreme Court of India, dtd. 20.11.2015, in favour of assessee]**

### **SC dismisses SLP; HC allowed deduction for share buy-back expense absent funds inflow**

SC dismisses Revenue's SLP against Karnataka HC judgement allowing deduction to assessee company for expenses incurred on buy-back of shares; HC had rejected Revenue's stand that the expenditure was capital in nature and hence not allowable in view of SC ruling in Brooke Bond India Ltd.; HC had accepted assessee's stand that Brooke Bond India was not applicable as therein fresh shares were issued, while in present case there was shrinking of capital; HC had clarified that expenditure directly related to expansion of company's capital base would retain the character of a capital expenditure as it would incidentally help in busi-

ness; As buy-back of shares results in reducing the capital-base, HC had concluded that "It is not of an enduring effect...Where there is no flow of funds or increase in the capital employed, the expenditure incurred would be revenue expenditure."

**Eli Lilly & Co. (India) Pvt. Ltd. Vs. ACIT [TS-680-ITAT-2015, Delhi ITAT bench, dtd. 24.11.2015, in favour of assessee]**

### **Free medical samples to doctors 'on request', not gift, allows expenditure deduction u/s 37**

ITAT allows deduction u/s 37(1) to a pharma company ('assessee') for expenditure incurred on free samples given to doctors/medical practitioners for AY 2010-11; Rejects Revenue's stand that in view of CBDT Circular 5/2012 and Indian Medical Council Regulations, 2002, free samples of medicines given to doctors constitute gifts/freebies and deduction was not allowable; Takes note of assessee's contention that free samples were distributed to doctors/medical practitioners in pursuance to their specific requests, thus it cannot be treated as 'gifts' so as to trigger the hazards of CBDT circular; Moreover, relying on previous year DRP order, ITAT allows deduction

### **Sec. 45 – Capital gain**

**CIT Vs. Smt. Datta Mahendra Shah [(2015) 62 taxmann.com 325, Bombay High Court, dtd. 09.09.2015, in favour of assessee]**

### **Income from share dealings taxable as capital gain if 75% of profit came from shares held for more than 9 months**

Where assessee earned profits on sale of shares, in view of fact that number of share transactions entered into during relevant year was not high and more-over 75 per cent of profits came up from shares held for more than nine

months, amount in question was to be taxed as short-term capital gain

**S. Narendrakumar & Co. Vs. Deputy Com. Of Income Tax [(2015) 63 taxmann.com 184, ITAT Mumbai bench, dtd. 06.11.2015, in favour of assessee]**

### **Booking rights of fictional property not to be deemed as transferable capital assets**

Rights in a property couldn't be deemed as transferable capital assets when such property was neither in existence nor its building plan or specifications were approved from the Municipal Corporation and neither any construction activity nor commencement of the project had started.

### **Sec. 54 – Profit on sale of property use for residence**

**ITO Vs. R. Sinivas [(2015) 63 taxmann.com 101, ITAT Bangalore Bench, dtd. 04.03.2015, in favour of assessee]**

### **Sec. 54(4) contemplates investment in house before due date of filing of belated return**

When sale consideration/capital gains has been utilized for purchase or construction of new asset before due date for furnishing return of income under section 139(4), assessee is entitled to claim deduction in respect of amount so utilized under section 54F.

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

**Smt. Rathan B Shetty vs. ACIT [TS-656-ITAT-2015, ITAT Mumbai bench, dtd. 28.10.2015, in favour of assessee]**

### **Booking-date, not agreement-date, relevant for investment in new property; Allows Sec 54F exemption**

ITAT allows Sec 54F exemption benefit to assessee for investing capital gains in new residential property for AY 2006-07; Rejects Revenue's stand that since the agreement date for new property was beyond two years from transfer of original property, the investment in new property cannot be said to have been made within the prescribed period; However notes that assessee made advance payment to the builder for booking the property within such stipulated period of two years from transfer of original asset; Holds investment in new property to be construed from the date of making advance payment, remarks that "the agreement... will relate back to ...date of advance as far as investment in property is concerned."; Separately, holds consideration received for transfer of rights in land jointly acquired by way of adverse possession, not subject to capital gains u/s 45 as cost cannot be computed.

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

**DCIT Vs. Subex Technology Ltd.** [(2015) 63 taxmann.com 124, Bangalore ITAT Bench, dtd. 01.10.2015, in favour of assessee]

### Foreign tax credit should be given on tax liability computed under MAT provisions

There is no provision in Income-Tax Act, debarring granting of credit for tax paid abroad in case income is computed under Section 115JB.

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

**CIT Vs. Amin Chand Payarelal** [(2015) 63 taxmann.com 40, Calcutta High Court, dtd. 11.08.2015, in favour of assessee]

### No penalty when additional income was declared in revised return after seized books were returned by dept.

Admission of income by assessee in revised return cannot give jurisdiction to Assessing Officer to levy penalty under section 271(1)(c)



## INTERNATIONAL TAXATION

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

**IHI Corporation Vs. ADIT (International Taxation)** [(2015) 63 taxmann.com 100, Mumbai ITAT bench, dtd. 17.04.2015, in favour of assessee]

### Income from offshore services isn't taxable if it is provided outside India without any connection with PE in India

Where Japanese company executed Engineering, Procurement, Construction and Commissioning contracts in India through Indian project office, income from offshore services, though chargeable under section 9(1)(vii) was exempt under DTAA and, hence, could not be charged to tax in light of section 90(2).

### Chapter X – Special provisions relating to avoidance of tax

**Knorr – Bremse India (P.) Ltd. Vs. ACIT** [(2015) 63 taxmann.com 186, Punjab & Haryana High Court, dtd.

06.11.2015]

### Profitability in transaction doesn't indicate that it is at Arm's length price

The answer to the issue whether a transaction is at an arm's length price or not is not dependent on whether the transaction results in an increase in the assessee's profit.

Further, even if profit is established, it does not necessarily follow that the transaction was at an arm's length price.

**DCIT Vs. Kirby Building Systems India Ltd.** [(2015) 63 taxmann.com 55, ITAT Hyderabad Bench, dtd. 07.08.2015, in favour of assessee]

### ALP of royalty couldn't be determined at Nil if royalty payments were periodically approved by RBI

Where assessee, engaged in business of manufacturing pre-engineered building system products, made certain royalty payments to its AE, since said payments were periodically approved by RBI, TPO was not justified in determining ALP of same at nil.

**DCIT Vs. Geodesic Ltd.** [(2015) 62 taxmann.com 383, ITAT Mumbai bench, dtd. 12.08.2015, in favour of assessee]

### LIBOR is best benchmark under transfer pricing for interest-free loan granted to AE

Where assessee advanced interest-free loan to its AE, LIBOR is best basis for benchmarking interest rate and since there was no independent CUP rate available to benchmark said international transaction, as per RBI guidelines, Assessing Officer should adopt 6 months LIBOR + 150 basis points for three years and LIBOR + 250 basis points for five years.





### CENTRAL EXCISE

**Commissioner of Central Excise Vs. Parle Agro (P.) Ltd. [(2015) 63 taxmann.com 204, Gujarat High Court, dtd. 07.10.2015, in favour of assessee]**

**Matters arising within Dadar and Nagar Haveli are appealable in Bombay HC and not in Gujarat HC**

In case of matters arising within Union Territory of Dadra and Nagar Haveli, appeals would lie to Bombay High Court and not Gujarat High Court, even if adjudicating and appellate authorities are located in Gujarat.

**Commissioner of Custom Vs. B V Star [(2015) 63 taxmann.com 187, The Supreme Court of India, dtd. 24.09.2015, partly in favour of revenue]**

**Tribunal can't recall its earlier order in garb of rectification**

Where assessee had sought rectification only on issue of redemption fine owing to mistake apparent from record, Tribunal could not have recalled entire order and passed a new order dealing with levy of duty, penalty, fine and confiscation.

**Anjani Technoplast Ltd. Vs. Commissioner of Customs [(2015) 63 taxmann.com 267, Delhi High Court, dtd. 20.10.2015, in favour of assessee]**

**New pre-deposit requirement applies to all appeals filed on or after Aug. 6, 2014**

As per second proviso to customs section 129E (excise section 35F), mandatory 7.5 per cent 10 per cent pre-deposit would not apply to appeals/applications pending on 6-8-2014; therefore, in other words, mandatory

7.5 per cent 10 per cent pre-deposit would apply to appeals filed on or after 6-8-2014.

**Commissioner of Central Excise Vs. Sangko Pharmaceuticals [(2015) 63 taxmann.com 108, The Supreme Court of India, dtd. 04.09.2015, in favour of assessee]**

**No extended period due to issuance of subsequent notices if dept. was aware of all facts while issuing initial notice**

When department was aware of all facts while issuing initial three notices and said three notices had been dropped on merits subsequently, fourth notice cannot invoke extended period to raise demand

**Spentex Ind. Ltd. Vs. Commissioner of Central Excise [(2015) 62 taxmann.com 101, The Supreme Court of India, dtd. 09.10.2015, in favour of assessee]**

**Rebate on exported goods under Excise Rule 18 is available for inputs as well as finished goods**

Word 'or' in rule 18 of the Central Excise Rules, 2002, to be interpreted as 'and' and therefore, the exporters are entitled to both rebates under rule 18 (viz. input-stage rebate as well as output stage rebate on finished goods) and not one kind of rebate.

### CENVAT CREDIT

**Shapoorji Pallonji & Co. Ltd. Vs. Commissioner of Central Excise [(2015) 63 taxmann.com 210, CESTAT Mumbai bench, dtd. 13.08.2015, in favour of assessee]**

**If notification was modified to deny credit from March 1, 2006, already accrued credit could be taken even afterwards**

Where input service credit under abatement scheme was denied only from 1-3-2006, already accrued credit pertaining to input services received upto 28-2-2006 can be taken even on or after 1-3-2006.

**Diamond Power Infrastructure Ltd. Vs. Commissioner of Central Excise & Service Tax [(2015) 63 taxmann.com 132, CESTAT Ahmedabad bench, dtd. 22.07.2015, in favour of revenue]**

**Credit of EC can't be used to pay SHEC**

As per First Proviso to rule 3(7)(b) of the CENVAT Credit Rules, 2004, credit of EC on excisable goods and EC on taxable services can be used only for payment of EC on finished excisable goods or EC on taxable service; hence, credit of EC cannot be used for discharging SHEC.

**Shree Cement Ltd. Vs. Commissioner of Central Excise [(2015) 63 taxmann.com 151, CESTAT New Delhi bench, dtd. 29.06.2015, in favour of assessee]**

**No denial of Cenvat credit on input services availed prior to initiation of manufacturing activity**

A manufacturer of excisable goods could not be denied Cenvat Credit of duty paid on input services availed prior to start of manufacturing activity. Where issue of taking Cenvat credit of duty paid on input services availed prior to start of manufacturing activity involved interpretation of Acts/Rules, it could not be alleged assessee took credit by way of fraud, collusion, etc. with intent to evade payment of duty; extended period of limitation could not be invoked for imposing penalty.



### SERVICE TAX

**Automotive Manufacturers (P.) Ltd. Vs. Commissioner of Central Excise [(2015) 63 taxmann.com 236, CESTAT Mumbai bench, dtd. 16.01.2015, in favour of assessee]**

**No service-tax on handling charges if it was included in value of goods liable to VAT**

Where 'handling charges' incurred in connection with procurement of goods were included in value of goods sold and sales tax/VAT liability was discharged, service tax would not be levied.

**Tata Steel Ltd. Vs. Commissioner of Service tax [(2015) 63 taxmann.com 247, CESTAT Mumbai bench (TM), dtd. 04.11.2015, in favour of revenue]**

**Arrangement fees paid to foreign banks to finance international acquisition is liable to service-tax**

Arrangement/Agency fees paid to foreign banks/Mandated Lead Managers for providing finance (and/or coordinat-

ing in providing finance) for international acquisitions is liable to service tax under reverse charge in hands of Indian borrower under 'Banking and Other Financial Services'

**Hiranandani Construction (P.) Ltd. Vs. Commissioner of Central Excise [(2015) 63 taxmann.com 20, CESTAT Mumbai bench, dtd. 03.09.2015, in favour of assessee]**

**No service tax on maintenance charges collected from prospective buyers in compliance with state law**

Maintenance charges collected by builders from prospective buyers of flats for payment of local taxes and other charges in compliance with their obligation under State laws, are not liable to service tax under 'Management, Maintenance or Repair Services'.

**Commissioner of Central Excise Vs. Krupadeep Traders [(2015) 62 taxmann.com 369, CESTAT Mumbai bench, dtd. 20.07.2015, in favour of assessee]**

**Refund of wrongly paid ST under reverse charge not hit by principle of unjust enrichment**

Service tax wrongly paid by a sole-proprietorship under reverse charge on Goods Transport Agency's Services is refundable along with interest and bar of unjust enrichment would not apply thereto.

**Goel Nitron Construction Vs. Commissioner of Central Excise [(2015) 62 taxmann.com 333, CESTAT Mumbai bench, dtd. 07.07.2015, in favour of assessee]**

**Maintenance charges collected by builders from prospective buyers aren't liable to service-tax**

'One-time maintenance charges' collected by builders from prospective purchasers of flats for interim period till housing society is formed are not liable to service tax under Management, Maintenance or Repair Services

### Due Dates of key compliances pertaining to the month of December 2015:

5 <sup>th</sup> December	Payment of Service Tax & Excise duty for the month of November
6 <sup>th</sup> December	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of November
7 <sup>th</sup> December	TDS/TCS Payment for the month of November
10 <sup>th</sup> December	Excise Return ER1/ER2/ER6
15 <sup>th</sup> December	Due date for payment of 3rd installment for corporate and 2nd installment for non corporate assessee of advance Tax
15 <sup>th</sup> December	PF Contribution for the month of November
21 <sup>st</sup> December	ESIC payment of for the month of November

The information contained in this new sletter is of a general nature and it is not intended to address specific facts, merits and circumstances of any individual or entity. We have tried to provide accurate and timely information in a condensed form however, no one should act upon the information presented herein, before seeking detailed professional advice and thorough examination of specific facts and merits of the case while formulating business decisions. This newsletter is prepared exclusively for the information of clients, staff, professional colleagues and friends of SNK.

