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## DIRECT TAXES

### Judicial pronouncements

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

**Asha Lalit Kanodia Vs. Addl. Commissioner of Income Tax [(2016) 71 taxmann.com 84, ITAT Mumbai bench, dtd. 17.02.2016, in favour of revenue]**

#### **Onus is on assessee to prove that no exp. incurred on exempt income under sec. 14A**

Where assessee claimed that no expenditure was incurred to earn exempt dividend income, onus was on assessee to substantiate her claim with her accounts and on failure to do so disallowance is to be made under section 14A, read with rule 8D.

**Ms. Amita Verma Vs. ACIT [(2016) 71 taxmann.com 91, ITAT Delhi bench, dtd. 27.04.2016, in favour of assessee]**

#### **No sec. 14A disallowance when there is no exempt income during the year**

Where assessee contended that during year it had no exempt income and, therefore, no disallowance under section 14A could be made and Assessing Officer rejected assessee's contention, in view of decision of Delhi High Court in case of Cheminvest Ltd. v. CIT, no disallowance under section 14A can be made, where there is no exempt income.

**Deputy Comm. Of Income Tax Vs. Teenlok Advisory Services (P.) Ltd. [(2016) 71 taxmann.com 269, ITAT Kolkata bench, dtd. 08.06.2016, in favour of assessee]**

#### **Sec. 14A disallowance to be computed by considering only those shares which yielded dividend income during the year**

Provisions of section 14A read with rule 8D could be invoked to make a disallowance on account of expenditure incurred in relation to exempt income in form of dividend received by assessee on shares held as stock-in-trade



Disallowance under rule 8D with respect to income not includible in total income has to be computed by taking into consideration only those shares, which has yielded dividend income in year under consideration

Where interest income earned by assessee was attributable to and incidental to business carried on by assessee it would be assessable as business income

**Peepul Tree Properties (P.) Ltd. Vs. Asst. Commissioner of Income Tax [(2016) 71 taxmann.com 332, ITAT Mumbai bench, dtd. 20.05.2016, in favour of assessee]**

#### **Prepayment charges on home loans are deductible as 'interest' under Sec. 24(b)**

Prepayment charges and processing fee made for purpose of availing loan at lower interest cost are allowable under section 24(b).

#### Sec. 23 – Annual value how determined

**Vikas Keshav Garud Vs. ITO [(2016) 71 taxmann.com 214, ITAT Pune bench, dtd. 31.03.2016, in favour of assessee]**

#### **ALV of property is nil if assessee intends to let it out but it remains vacant**



# DIRECT TAXES

## Judicial pronouncements

ALV of property remaining vacant for whole year has to be computed with reference to section 23(1)(c) and, therefore, where assessee intended to let property and took appropriate efforts in letting property but ultimately failed to let the same, in terms of section 23(1)(c), its ALV had to be regarded as Nil.

### Sec. 32 – Depreciation

**Anushakti Chemical & Drugs Ltd. Vs. Addl. Commissioner of Income Tax [(2016) 71 taxmann.com 320, ITAT Mumbai bench, dtd. 18.05.2016, in favour of assessee]**

**Effluent Treatment Plant eligible for 100% depreciation as it is 'Water Pollution Control Equipment'**

Effluent Treatment Plant is a water pollution control equipment, eligible for 100 per cent depreciation

**Cyber Park Development & Construction Ltd. Vs. Deputy Comm. Of Income Tax [(2016) 71 taxmann.com 210, ITAT Bangalore bench, dtd. 30.06.2016, in favour of revenue]**

**Leasehold rights in land not eligible for allowance of depreciation**

Leasehold rights on land do not fall in category of intangible asset as defined under section 32(1)(ii), hence do not qualify for allowance of depreciation.

Where no expenditure had been incurred by assessee for purpose of earning dividend income from mutual funds, question of disallowance under section 14A did not arise

### Sec. 36 – Other deduction

**CIT Vs. Shri Siddeshwar Co-Operative Bank Ltd. [(2016) 71 taxmann.com 126, Karnataka High Court, dtd. 22.06.2016, in favour of assessee]**

**Interest accrued to bank on NPA couldn't be brought to tax on notional basis**

Amendment made to section 194A(3)(v) has prospective effect from 1-6-2015

Where assessee-bank not only made a provision but also made actual payment towards gratuity fund, its claim for deduction in respect of same was to be allowed

Interest accrued to assessee-bank on non-performing assets could not be brought to tax on notional basis even if assessee had adopted mercantile system of accounting

### Sec. 37 – General

**Principle Comm. Of Income Tax Vs. Sami Labs Ltd. [(2016) 71 taxmann.com 298, Karnataka High Court, dtd. 16.06.2016, in favour of assessee]**

**No disallowance of cultivation exp. just because it didn't generate desired results to assessee**

Where an EOU, engaged in manufacture and export of standardized herbal extracts and fine chemicals, spent money in supplying seedlings and fertilizers to farmers and also incurred other cultivation expenses, said cultivation expenses was to be allowed as revenue expenditure

**ITO Vs. PKS Holdings [(2016) 71 taxmann.com 345, ITAT Kolkata bench, dtd. 01.06.2016, in favour of revenue]**

**TDS on commission doesn't prove its genuineness; assessee has to prove that services were rendered by recipient**

Where assessee, a dealer in both shares and property, incurred loss on derivatives being future option loss on transactions entered on NSE, he would be entitled to set off same against profit on sale of property.

Where share transactions were entered into by assessee electronically (screen based) in recognised stock exchanges

viz. BSE, NSE, and said transactions were intra day and no delivery of shares had taken place, loss therefrom would be speculative in nature but could not be termed as sham and, thus, said loss deserved setting off.

For an assessee to claim expenditure on account of commission, assessee has to prove that services were in fact rendered by recipient of commission from assessee.

**H. Gouthamchand Jain Vs. ITO [(2016) 71 taxmann.com 98, ITAT Chennai bench, dtd. 29.04.2016, in favour of revenue]**

**Exp. claimed after survey was disallowed as it was made to offset additional income offered in survey**

Where assessee declared additional income during survey but to offset revenue effect of said additional income, claimed bogus commission expenditure subsequent to survey, said expenditure could not be allowed.

**Prithvi Associates Vs. Asst. Com. Of Income Tax [(2016) 71 taxmann.com 163, Gujarat High Court, dtd. 14.06.2016, in favour of assessee]**

**Stamp duty paid in relation to contract couldn't be amortized over period of contract; HC allows full deduction**

Stamp duty being a compulsory statutory levy not restricting profits of future years, should be allowed in its entirety in year it is incurred

### Sec. 40 – Amount not deductible

**ITO Vs. Haryana State Counseling Society [(2016) 71 taxmann.com 274, ITAT Chandigarh bench, dtd. 09.05.2016, in favour of assessee]**

**Charitable trust registered under sec. 10(23C)(iv) won't be hit by sec. 40(a)(ia) disallowance**

# DIRECT TAXES

## Judicial pronouncements

Where income was not computed under head of business income, provision of section 40(a)(ia) could not be invoked.

### Sec. 43B – Certain deductions to be only on actual payments

**Bihar State Warehousing Corporation Ltd. Vs. CIT [(2016) 71 taxmann.com 247, Patna High Court, dtd. 19.07.2016, in favour of assessee]**

### **Both employees and employer's contribution covered under Sec. 43B**

Although technical reading of section 43B and the provisions of sub-section (2) of section 24 (x) read with section 36 (1) (va) creates the impression that the employees' contribution would continue to be treated differently under a different head of deduction, as the head of deduction is separate under section 43B and section 36 but on a broader reading of the amendments made to section 43B repeatedly and the intention of Parliament, there appears to be sufficient justification for taking the view that the employees' and the employer's contribution ought to be treated in the same manner

### Sec. 44AD – Special provision for computing profits and gains of business on presumptive basis

**Nand Lal Popli Vs. Deputy Comm. Of Income Tax [(2016) 71 taxmann.com 246, ITAT Chandigarh bench, dtd. 14.06.2016, in favour of assessee]**

### **No Sec. 69C additions when assessee is covered by presumptive taxation Scheme of Sec. 44AD**

Where profit declared by assessee as per scheme of presumptive taxation under section 44AD was accepted, Assessing Officer could not make separate addition under section 69C.

From analysis of section 44AD, it has already been held that assessee had

not incurred the expenses to the extent of 92% of gross receipts. Therefore, in the instant case provisions of section 69C couldn't be applied. Asking the assessee to prove to the satisfaction of AO, the expenditure to the extent of 92% of gross receipts would also defeat the purposes of presumptive taxation.

The scheme of presumptive taxation under section 44AD has been formed in order to avoid the long drawn process of assessment in cases of small traders or in cases of those businesses where the incomes are almost of static quantum of all the businesses. Thus, the Assessing Officer can make the addition under section 69C, once he has carved out the case out of the glitches of the provisions of section 44AD.

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

**G. Ramesh Vs. ITO [(2016) 71 taxmann.com 165, ITAT Chennai bench, dtd. 22.06.2016, in favour of assessee]**

### **Assessee can claim sec. 54F relief by filing belated return under sec. 139(4)**

Due date for assessee to invest amount of capital gains in purchase/construction of new residential asset or investment in capital gains scheme under section 54F refers to 'extended due date' under section 139(4).

### Sec. 68 – Cash Credits

**Shree Sidhnath Enterprise Vs. ACIT [(2016) 71 taxmann.com 55, Gujarat High Court, dtd. 28.03.2016, in favour of assessee]**

### **Shroff couldn't be said to have undisclosed income just because huge amount was deposited in his bank account**

Where business of assessee was to receive cash and issue cheques in lieu of commission, in absence of any material to show that cash travelled back to assessee, cash amount would not be undisclosed income of assessee; resultantly, Assessing Officer could not have formed belief that income chargeable to tax had escaped assessment

### Sec. 80G – Deduction in respect of donations to certain funds, charitable institutions, etc.

**Hemdha Medi Resources (P.) Ltd. Vs. Comm. Of Income Tax (Exemption) [(2016) 71 taxmann.com 205, ITAT Jaipur Bench, dtd. 26.04.2016, in favour of assessee]**

### **No denial of sec. 80G approval once sec. 12AA registration granted unless taxpayer violates conditions of approval**

Once registration under section 12AA has been granted to a company incorporated under section 25 of Companies Act, 1956, it cannot be denied approval under section 80G(5)(vi) unless there is non-fulfilment of conditions specified in section 80G(5)

### Sec. 80IB – Deduction in respect of profits and gains from certain industrial undertaking other than infrastructure development undertakings

**Banpal Oil Chem (P.) Ltd. Vs. Asst. Comm. Of Income Tax [(2016) 71 taxmann.com 342, Gujarat High Court, dtd. 07.07.2016, in favour of revenue]**

### **No sec. 80-IB relief on income from DEPB**

Assessee having eligible industry and availing deduction under section 80-IB, will not be entitled for same in respect of income from DEPB and DEPB Premium



# DIRECT TAXES

## Judicial pronouncements (International Taxation)

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

**SBI DFHI Ltd. Vs. Asst. Comm. Of Income Tax [(2016) 71 taxmann.com 178, ITAT Mumbai bench, dtd. 30.06.2016, in favour of revenue]**

### **Penalty levied for excess claim of unabsorbed depreciation u/s 115JB; ITAT denies theory of carry backward of losses**

Where assessee claimed excessive unabsorbed depreciation in terms of Explanation to section 115JB while computing book profits under section 115JB, levy of penalty under section 271(1)(c) had to be upheld.

For MAT purposes, assessee adjusted brought-forward depreciation reported in assessment year 2005-06, even though it was fully set off against reserves (i.e. accumulated profits) and argued that reference to amount of loss/depreciation for MAT computation be as referred in P&L account of assessment year 2005-06 in preference over balance sheet as on March 31, 2005 (which had no carried forward losses on account of set off against accumulated profit from earlier year).

### Sec. 115VG – Computation of tonnage income

**CIT Vs. Trans Asian Shipping Services (P.) Ltd. [(2016) 71 taxmann.com 74, The Supreme Court of India, dtd. 05.07.2016, in favour of assessee]**

### **Shipping Co. earning income from slot charter is also entitled to benefits of 'Tonnage Tax Scheme'**

Income derived from slot charter operations of a Tonnage Tax Company being deemed tonnage tax is liable to be included while determining Tonnage Income under tonnage tax scheme even if such operations are carried on in ships which are not qualifying ships in terms of provisions of Chapter XIIG

without valid certificate



### Sec. 148 – Issue of notice where income has escaped assessment

**Principal Comm. Of Income Tax Vs. Gokul Ceramics [(2016) 71 taxmann.com 341, Gujarat High Court, dtd. 29.06.2016, in favour of revenue]**

### **Reassessment on basis of SCN of Excise dept. won't become invalid due to pending proceedings under Excise**

On basis of detailed investigation report of Excise Department consisting of corroborative evidence, Assessing Officer could form belief of suppression of sale for evading excise duty, and issue, notice for re-opening of assessment, not with starting pendency of excise proceedings.

**ITO Vs. Amit K. Shah [(2016) 71 taxmann.com 256, ITAT Ahmedabad bench, dtd. 20.05.2016, in favour of assessee]**

### **AO couldn't make reassessment on mere suspicion due to huge cash withdrawal by assessee from bank**

Unless escapement of income was indicated, mere fact that assessee had made huge cash withdrawal from bank for purchase which was very much doubtful, could not be a ground for re-opening assessment.

**Jayesh Govindbhai Balar Vs. ITO [(2016) 71 taxmann.com 221, Gujarat High Court, dtd. 13.06.2016, in favour of assessee]**

**No reassessment by AO on vague reason that sizable income should be disclosed when sale consideration was huge.**

Income cannot be said to have escaped assessment merely on presumption that sizable income must be disclosed when both sale and purchase transactions of huge amount are made in respect of properties.

**Hightension Switchgears (P.) Ltd. Vs. CIT [(2016) 71 taxmann.com 207, Calcutta High Court, dtd. 24.06.2016, in favour of assessee]**

### **No TDS on transportation charges reimbursed by buyer if seller is liable to pay such charges to GTA**

Where seller sold goods to assessee (buyer) and under contract of sale it was bound to send goods to buyer and to pay transportation charges to goods transport agency and assessee reimbursed freight component to seller and claimed deduction of same, assessee was not liable to deduct tax at source under section 194C in respect of freight component

### Sec. 226 – Other modes of recovery

**Kaneria Granito Ltd. Vs. Asst. Commissioner of Income Tax [(2016) 71 taxmann.com 276, Gujarat High Court, dtd. 27.06.2016, in favour of assessee]**

### **Cash Credit Account couldn't be attached for recovery of unpaid taxes**

Cash-credit account or term loan account cannot be attached for recovery of unpaid tax

## INTERNATIONAL TAXATION

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

**Abott Medical Optics (P.) Ltd. Vs. Deputy Comm. Of Income Tax [(2016) 71 taxmann.com 338, ITAT Bangalore bench, dtd. 30.06.2016, in favour of revenue]**



## DIRECT TAXES

### Judicial pronouncements (International Taxation)

#### **RPM could be rejected if assessee had incurred huge sales promotion exp. more than that of comparable.**

Where assessee had incurred huge expenditure on account of selling and distribution as well as promotion for trading of imported goods in India and applied RPM, TPO was justified in rejecting resale price method as business model of assessee was not comparable with that of comparable companies since they were not incurring such expenditure on selling and distribution and sales promotion.

**DLF Hotel Holdings Ltd. Vs. Deputy Comm. Of Income Tax [(2016) 71 taxmann.com 300, ITAT Delhi bench, dtd. 30.06.2016, in favour of assessee]**

#### **The transaction couldn't be deemed as international transaction due to its inadvertently disclosure in Form 3CEB**

Where assessee-company gave certain advance to its AE for expansion of its business abroad which was converted into equity within three months, it could not be regarded as international transaction of interest free loan merely on ground that same was reflected in that way by assessee inadvertently in Form 3CEB.

**CUB Pty Ltd. Vs. UOI [(2016) 71 taxmann.com 315, Delhi High Court, dtd. 25.07.2016, in favour of assessee]**

#### **No tax on transfer of IPR in 'Foster' brand as its owner was located in Australia**

Income accruing to assessee, an Australian company, from transfer of its right, title or interest in trademarks was not taxable in India under provisions of Act.

The situs of the owner of an intangible asset would be the closest approximation of the situs of an intangible asset. This is an internationally accepted rule, unless it is altered by local legislation.

Since there is no such alteration in the Indian context, the submission made by assessee that the situs of the trademarks and intellectual property rights would not be in India, has to be accepted. This is so because the owner thereof i.e., assessee was not located in India at the time of the transaction.

In view of the above, it is held that the income accruing to the assessee from the transfer of its right, title or interest in trademarks would not be taxable in India under provisions of Act.

**ACIT Vs. Timex Watches Ltd. [(2016) 71 taxmann.com 177, Delhi ITAT bench, dtd. 21.06.2016, in favour of assessee]**

#### **Loss on exchange fluctuation in respect of purchases from AE is deductible to determine ALP**

Loss incurred by assessee on account of exchange rate fluctuation in respect of transactions relating to purchase of raw material from AE was to be allowed as deduction while determining ALP

In case of assessee-company engaged in manufacturing and export of watches to AE, while computing margin of manufacturing segment, adjustment in respect of unabsorbed overheads and extra depreciation on account of unutilised machines transactions had to be in proportion which international transaction had to total turnover.

**Instrumentarium Corporation Ltd. Vs. Asst. Director of Income Tax, International Taxation [(2016) 71 taxmann.com 193, ITAT Kolkata Special Bench, dtd. 15.07.2016, in favour of revenue]**

#### **Commercial expediency of loan to AE not relevant for computing ALP of interest**

The commercial expediency of a loan to subsidiary is wholly irrelevant in ascertaining arm's length interest on such a loan. There is indeed no bar on anyone advancing an interest free loans to

anyone but when such transactions are covered by the international transactions between the associated enterprises, Section 92 of the Act mandates that the income from such transactions is to be computed on the basis of arm's length price.

**Arun Mammen Kandathil M. Mammen Vs. UOI [(2016) 71 taxmann.com 160, Madras High Court, dtd. 21.06.2016, in favour of assessee]**

#### **Foreign income can be declared before SetCom if tax notice issued before enforcement of Black Money Act**

Black Money (Undisclosed Foreign Income Tax and Assets) and Imposition of Tax Act, 2015 comes into effect from 1-7-2015 and thus where assessee filed his return of income on 21-5-2015 and notice was issued under section 148 by Assessing Officer on 29-5-2015 which was before coming into effect of provisions of Black Money Act, 2015, application submitted by assessee offering undisclosed foreign income and assets before settlement Commission was maintainable.

**GKN Sinter Metals (P.) Ltd. Vs. Asst. Commissioner of Income Tax [(2016) 71 taxmann.com 297, ITAT Pune bench, dtd. 06.05.2016, in favour of assessee]**

#### **Valuation report accepted by Customs authorities couldn't be rejected by TPO for making TP adjustment**

Where TPO had made upward adjustment on account of international transactions in respect of valuation of capital asset purchased by assessee from its AEs without making reference to DVO and rejecting valuation report from an independent Chartered Engineer furnished by assessee, since valuation report was accepted by Customs Authorities for purpose of levy of import duty, action of TPO for making such T.P. adjustment was not justified

### Circulars/Notifications / Instructions

#### Circular No. 27/2016, dtd. 14.07.2016

Vide the above circular CBDT has clarified certain doubts and concerns of stakeholders. For detail please visit –

[http://www.incometaxindia.gov.in/communications/circular/circular27\\_14072016.pdf](http://www.incometaxindia.gov.in/communications/circular/circular27_14072016.pdf)

#### Notification No. 56/2016, dtd. 06.07.2016

Vide the above notification, CBDT has directed that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under 'the Income Declaration Scheme, 2016'.

#### Notification No. 57/2016, dtd. 14.07.2016

It has been notified that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter in respect of wholesale trading and three percent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2016-2017.

#### Notification No. 62/2016, dtd. 21.07.2016

Vide the above notification, the Central Government notified the provisions of the Agreement signed between India and the Government of Saint Kitts and Nevis for the Exchange of Information relating to taxes. For detail please visit –

[http://www.incometaxindia.gov.in/communications/notification/notification62\\_2016.pdf](http://www.incometaxindia.gov.in/communications/notification/notification62_2016.pdf)

## INDIRECT TAXES

### CENTRAL EXCISE

**Hindustan Petroleum Corporation Ltd. Vs. Union of India [(2016) 71 taxmann.com 325, Karnataka High Court, dtd. 28.06.2016, in favour of assessee]**

#### Pre-deposit requirement waived off for officers of Co. as disputed issue was already pending before Tribunal

Where penalty is levied both on assessee-company and its manager for transactions pertaining to company, then, 7.5 per cent pre-deposit may be considered based on penalty imposed on company and pre-deposit on penalty imposed on manager can await final disposal of appeal before appellate authority.

**Cylin Valve Industries Vs. Commissioner of Central Excise [(2016) 71 taxmann.com 187, CESTAT Mumbai bench, dtd. 28.01.2016, in favour of assessee]**

#### Freight shown in commercial invoice without including it in Excise invoice is also deductible from excisable value

Purpose of showing freight separately is to ascertain its amount for deduction under rule 5 of Valuation Rules, 2000; hence, if freight is shown separately in commercial invoice, then, deduction thereof cannot be denied merely because same was not shown separately in excise invoice.

**Reaselack Polymers (P.) Ltd. Vs. Com. Of Customs and Central Excise [(2016) 71 taxmann.com 147, CESTAT Mumbai bench, dtd. 12.01.2016, in favour of revenue]**

#### Commission charged in commercial invoice in addition to excise invoice also liable to excise duty

Where assessee sold goods to one 'M' and consigned to customers of 'M' and further it raised excise invoices on 'M' and simultaneously raised commercial invoices on 'M', wherein 3 per cent commission was charged in addition to value shown in excise invoices, demand of excise duty on said 3 per cent service charge billed to 'M' was justified

### CENVAT CREDIT

**Mahindra & Mahindra Ltd. Vs. Commissioner of Central Excise [(2016) 71 taxmann.com 240, CESTAT Hyderabad bench, dtd. 25.05.2016, in favour of assessee]**

#### Work contract services availed for renovation of factory eligible for credit

Works contract services availed for Modernisation, Renovation or Repairs of Factory/Premises are eligible for credit; however, said services meant for construction of building or laying foundation for capital goods, are ineligible for credit.

**Prasad Corporation Ltd. Vs. Commissioner of Service Tax [(2016) 71 taxmann.com 251, CESTAT Chennai Bench, dtd. 31.05.2016, in favour of assessee]**

#### No denial of credit just because input service provider had quoted wrong address of assessee in invoice

If particulars relating to payment of tax on input services are genuine, then, credit cannot be denied merely because input service provider had quoted incorrect address of assessee in invoice.



# INDIRECT TAXES

## Judicial pronouncements

**Comm. Of Central Excise, Customs and Service tax Vs. Kin Weld Wires (P.) Ltd. [(2016) 71 taxmann.com 168, CESTAT Mumbai bench, dtd. 28.01.2016, in favour of assessee]**

### Rule 16 of Excise allows credit on purchases even if final process doesn't amount to manufacture

Even if process carried on by assessee is not manufacture, such as per rule 16 of Central Excise Rules, 2002, assessee may : (a) take credit on duty-paid purchases, and (b) pay amount on final product, which is not less than credit taken.

**Swastik Wires Vs. Commissioner of Central Excise & Customs [(2016) 71 taxmann.com 92, CESTAT New Delhi bench, dtd. 08.06.2016, in favour of revenue]**

### Rule 6(3) of CCR doesn't apply on goods arising out of non-manufacturing activity

Where assessee was engaged in manufacture of HB wire, which emerged as a result of non manufacturing activity, and it availed cenvat credit of duty paid on inputs used in manufacture of HB wire and cleared said product on payment of 8 per cent of value of same in terms of provisions of rule 6 (3)(b), rule 6(3)(b) would not be applicable to instant case

**Knoah Solutions (P.) Ltd. Vs. Commissioner of Customs, Central Excise & Service tax [(2016) 71 taxmann.com 112, CESTAT Hyderabad bench, dtd. 26.04.2016, in favour of assessee]**

### Housekeeping services ensure hygienic environment in office; eligible for Cenvat credit

Cleaning/Housekeeping services availed for ensuring a hygienic premises where vast number of employees

work, cannot be regarded as meant for personal use or consumption of an employee; hence, same are eligible for credit.



**GE India Exports (P.) Ltd. Vs. Commissioner of Customs, Central Excise & Service tax [(2016) 71 taxmann.com 69, CESTAT Hyderabad bench, dtd. 06.04.2016, in favour of assessee]**

### Service recipient can take credit even if purchase bill contains an un-registered address

As per rule 4A of the Service Tax Rules, there is no requirement that address of service recipient mentioned in invoice has to be registered; therefore, credit cannot be denied to service recipient merely on ground that address mentioned in invoice is an unregistered address.

**Com. Of Central Excise Vs. Sanmar Speciality Chemicals Ltd. [(2016) 71 taxmann.com 10, Karnataka High Court, dtd. 07.06.2016, in favour of assessee]**

### Consultancy service availed to procure finance for business is eligible input service

Management Consultancy Services obtained for infusing finance in different units of Company can be said as connected with manufacturing activity because manufacturing cannot be done without obtaining finance; hence, said services are eligible for input service credit.

**Com. Of Central Excise & Service tax Vs. Cognizant Technology Solutions India (P.) Ltd. [(2016) 71 taxmann.com 13, CESTAT Chennai bench, dtd. 05.05.2016, in favour of assessee]**

### Minor mistakes in availing credit don't call for evasion penalty on taxpayer

Where assessee was a large and regular taxpayer, subject to various audits and scrutinies, minor mistakes in availing credit in 132 out of 9,400 entries (1.4 per cent) cannot amount to 'suppression'; hence, evasion penalties cannot be levied in respect of consequent demand.

**Liebherr Machine Tools India (P.) Ltd. Vs. Com. Of Central Excise, Service tax & Custom [(2016) 71 taxmann.com 12, CESTAT Bangalore bench, dtd. 12.02.2016, in favour of assessee]**

### Services received from agents for sales promotion are eligible input services

Services received from agents carrying out 'sales promotion' as well as 'sale' of products manufactured by assessee, are eligible for input service credit.

**Com. Of Service tax Vs. Kaycee Finance Services Ltd. [(2016) 71 taxmann.com 352, CESTAT Mumbai bench, dtd. 20.04.2016, in favour of assessee]**

### Destruction of invoices in fire incident won't lead to denial of credit when all invoices recorded in ledger

Even though purchase invoices have been destroyed in fire, but, if invoices have been recorded in ledger and books of account and payments have been made for them, Cenvat credit cannot be denied



## SERVICE TAX

**Qatar Airways Vs. Com. Of Service tax** [(2016) 71 taxmann.com 295, CESTAT Mumbai bench, dtd. 12.05.2016, in favour of assessee]

**Indian branch of foreign airlines not liable to pay service tax on CRS charges paid by its foreign head office**

Payment made by foreign Head Office of airlines towards Computer Reservation System (CRS) prepared by foreign companies, cannot be treated as 'receipt of service by Indian Branch of airlines' even if Indian agents access that CRS and hence, no service tax is payable by Indian branch under reverse charge.

**R. Gowrishankar Vs. Com. Of Service tax (Appeals)** [(2016) 71 taxmann.com 282, Madras High Court, dtd. 13.06.2016, in favour of revenue]

**Even High Court can't condone delay beyond condonation power of Commissioner (Appeal)**

If appeal is beyond condonation power of Commissioner (Appeals), then, even if High Court accepts appellant's explanation as 'sufficient cause' for delay, High Court cannot issue writ directing Commissioner (Appeals) to consider appeal on merits as it would amount to re-writing provisions of Act and extending period of limitation.

**Vinayak Industries Vs. Com. Of Central Excise & Service tax** [(2016) 71 taxmann.com 250, CESTAT New Delhi bench, dtd. 09.06.2016, in favour of assessee]

**Chilling of milk for Dairies held as manufacture; not liable to service tax**

Chilling of milk is a 'treatment' which renders milk 'marketable' to consumer;

hence, as per Note 6 to Chapter 4 of Central Excise Tariff, same amounts to manufacture and is, therefore, not liable to service tax.

**Commissioner Vs. Larsen And Toubro Ltd.** [(2016) 71 taxmann.com 241, Gujarat High Court, dtd. 01.07.2016, in favour of assessee]

**Services provided without any consideration by SEZ unit to DTA unit of same Co. not chargeable to service tax**

In view of SEZ Act and Rules, SEZ units and DTA units of same company are 'distinct entities'/'separate persons' for charge of service tax; however, if no consideration is charged for services provided by SEZ unit to DTA unit of same company, then, in absence of any value, no service tax can be charged.

**GRR Logistics (P.) Ltd. Vs. Commissioner of Service tax** [(2016) 71 taxmann.com 226, CESTAT Chennai bench, dtd. 31.05.2016, in favour of assessee]

**Mere detection of non-payment of tax during audit doesn't call for evasion penalty on taxpayer**

Evasion penalty cannot be levied merely because 'non-payment of tax came to notice of department during audit'; department must bring out ingredients leading to charge of evasion/suppression in notice issued to assessee.

**ICOMM Tele Ltd. Vs. Comm. Of Customs, Central Excise & Service tax** [(2016) 71 taxmann.com 95, CESTAT Hyderabad bench, dtd. 29.04.2016, in favour of assessee]

**Service-tax paid wrongly under reverse charge is refundable without bar of unjust enrichment**

Where service was wrongly paid under reverse charge, then, it cannot be said that burden thereof was passed onto another; hence, said amount is refundable to assessee without bar of unjust enrichment, even if said amount was shown as expenditure in annual accounts.

**Multi Engineering & Scientific Corporation Vs. Bihar State Electricity Board** [(2016) 71 taxmann.com 48, Patna High Court, dtd. 18.02.2015, in favour of service recipient]

**Tax paid by service provider couldn't be recovered from service recipient**

Where assessee provided services to one 'B' and paid service tax thereon and thereafter it filed writ petition seeking a direction upon 'B' to reimburse amount of service tax paid by it, there is no provision in Service Tax Act for recovery or reimbursement of any service tax by service provider from service recipient.

## Circulars/Notifications / Instructions

**Notification No. 32/2016-CX(N.T.), dtd. 11.07.2016**

The above notification seeks to further amend notification No. 35/2001-Central Excise (NT) dated 26.06.2001 so as to exempt mandatory physical verification of manufacturing premises in respect of manufacturers of readymade garments and made up articles of textiles.

**Due Dates of key compliances pertaining to the month of August 2016:**

6 <sup>th</sup> August	Excise Duty Payment / Service Tax Payment
7 <sup>th</sup> August	TDS/TCS Payment for the month of July
10 <sup>th</sup> August	Excise Return ER1/ER2
15 <sup>th</sup> August	PF Contribution for the month of July
21 <sup>st</sup> August	ESIC payment of for the month of July