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SNK Newsletter

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DIRECT TAXES

Judicial pronouncements

Sec. 4 – Charge of income tax

Hatkesh Co. Op. Hsg. Society Ltd. Vs. ACIT [(2016) 75 taxmann.com 39, Bombay High Court, dtd. 22.08.2016, in favour of assessee]

Transfer fee received by Housing Society from its members wasn't taxable due to principle of mutuality

In respect of transfer fees and TDR premium received by co-operative Housing Society from its members, principle of mutuality would apply

Sec. 10A – Special provision in respect of newly established undertaking in free trade zone, etc.

Informed Technologies India Ltd. Vs. DCIT [(2016) 75 taxmann,com 128, ITAT Mumbai bench, dtd. 28.10.2016, in favour of assessee]

Profits increased due to Sec. 14A disallowance would be eligible for Sec. 10A relief

Where any part of expenditure claimed by assessee was disallowed under section 14A, then as a consequence thereto profits of assessee eligible for deduction under section 10A would witness a corresponding increase, leading to a consequent increase in claim of deduction of assessee under 10A

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

Bharath Beedi Works (P.) Ltd. Vs. ACIT [(2016) 74 taxmann.com 95, Karnataka High Court, dtd. 24.08.2016, in favour of revenue]

Burden is on assessee to prove that interest-free funds exceeded value of investment to escape sec. 14A disallowance

Where assessee had not proved that available interest free fund exceeded value of investment made and could not justify quantification towards disallowance made by it for exempted income, Assessing Officer was justified in applying Rule 8D

Sec. 32 - Depreciation

United Breweries Ltd. Vs. Addl. Commissoner of Income Tax [ITA no. 722/Bang/2014,Bangalore ITAT bench, dtd. 30.09.2016, in favour of revenue]

Bangalore bench restricted depreciation claim on goodwill arising on amalgamation applying 5th proviso to Sec 32

Bangalore ITAT restricts assessee's (amalgamated / successor company) claim of depreciation on goodwill arising on amalgamation applying 5th proviso to Sec 32(1) for AY 2008-09, holds that assessee cannot claim depreciation on assets acquired under amalgamation more than the depreciation allowable to amalgamating company; During relevant AY, assessee claimed depreciation on Rs. 62 cr worth of goodwill recorded in books at the difference between the fair market value ('FMV') of assets taken over and consideration paid; Noting that value of goodwill in the books of amalgamating company/predecessor was only at Rs. 7 cr, ITAT upholds application of 5th proviso; ITAT rejects assessee's stand that Revenue cannot reject valuation of goodwill done

by assessee, upholds Revenue's power to invoke Expl.3 to Sec 43(1) which empowers AO to determine goodwill where he is of the opinion that assessee has deflated the valuation of assets taken over to claim higher depreciation on goodwill; However, ITAT clarifies that "once the claim of depreciation is restricted under the 5th proviso to section 32(1)(ii) then the valuation issue become irrelevant.", further, ITAT distinguishes assessee's reliance on SC ruling in Smif Securities, clarifies that the said decision only ruled on allowability of depreciation on goodwill.

G. Shoes Exports Vs. ACIT [(2016) 75 taxmann.com 133, ITAT Mumbai bench, dtd. 24.10.2016, in favour of revenue]

Asset not allowed to be included in block of assets due to its non-usage

Clear language of section 32(1) shows that only assets – tangible or intangible, owned and used, would stand to form part of any particular block of assets

Sec. 45 – Capital Gain

ACIT Vs. Jawaharlal L. Agicha [ITA no. 1844/Mum/2012, ITAT Mumbai bench, dtd. 28.09.2016, in favour of assessee]

Mumbai ITAT rejected capital-gains taxation under development agreement absent intendment to "transfer"

Mumbai ITAT confirms deletion of capital gains for AY 2008-09, holds that receipt of Rs. 10 cr. under the development agreement of land does not result into transfer u/s 2(47)(v); During relevant AY, assessee-land owner entered into an agreement with a developer for making all procedural/substantive compliances in respect of its land declared as 'slum area' and was entitled to receive 130,000 sq. ft. FSI for which cost of construction (Rs. 26 Cr) was to be incurred by the developer or money was to be provided to assessee for construction, assessee has received Rs. 10 Cr in pursuant to such arrangement; Notes that in terms of the agreement, the possession of the land was to be given to developer only upon fulfillment of certain conditions i.e. sanctioning of scheme by Slum Rehabilitation Authority and obtaining the 'letter of intent' and other requisite permissions from the Competent Authorities; Thus, holds that important condition of transfer u/s 2(47)(v) was not fulfilled since possession was not parted which was still with the slum dwellers, further notes that in view of P&H HC ruling in C. S. Atwal, transaction would not fall u/s 2(47)(v) absent registration of the agreement.

Sec. 48 – Mode of Computation

ITO Vs. Sudip Roy [ITA No. 2864/kol/2013, ITAT Kolkata bench, dtd. 19.10.2016, in favour of assessee]

ITAT allowed indexation benefit from 1981 despite property inherited in 2002; Construes Sec 48 harmoniously

Kolkata ITAT rules in favour of assessee-individual, directs adoption of cost inflation index ('CII') for year 1981 while computing capital gains on sale during AY 2007-08 of 'inherited' property ; Rejects Revenue's stand that since Sec 48 (which defines indexed cost of acquisition) uses the expression 'the year in which the assessee first held the capital assets', CII for FY 2002-03 was relevant as the property was inherited in 2002 and assessee first held the property only in 2002; ITAT refers to Sections 2(42A), 47(iii), 49(1)(ii)(iii) and 55(2)(b)(ii) (which provides that capital gain on sale of inherited property, shall be computed with reference to the period of holding and cost of acquisition incurred by previous owner), opines that on conjoint reading of these provisions, "it appears that in law no " transfer " of a " capital asset " is considered to take place on inheritance and succession."; ITAT remarks that "If for applying other provisions relating to computation of capital gains, period of holding and cost incurred by the previous owner is considered, then it will be improper to apply only the cost inflation index, applicable to the year of inheritance", holds that if literal meaning of Sec 48 leads to an absurdity then it should be 'harmoniously' interpreted

Sec. 50C – Special provision for full value of consideration in certain cases

Dharamshibhai Sonani Vs. Asst. Commissioner of Income Tax [ITA No. 1237/Ahd/2013, ITAT Ahmedabad bench. Dtd. 30.09.2016, in favour of assessee]

Sec. 50C amendment removing hardship by implementing Easwar committee recommendations, held retrospective

Ahmedabad ITAT deletes addition u/s 50C (relating to substitution of sale consideration with stamp duty valuation) while computing capital gains on transfer of land by assessee-individual during AY 2008-09; Assessee had entered into 'agreement to sell' for land in June, 2005, but the sale deed could be executed only in April, 2007, AO adopted the stamp duty valuation as on April 24, 2007 and made addition u/s 50C; ITAT accepts assessee's stand that amendment to Sec 50C should be treated as retrospective in nature and accordingly, stamp duty valuation as on 'agreement to sell' date and not sale deed execution date should be considered; Observes that the fundamental purpose of introduction of Sec 50C was to counter suppression of sale consideration on

sale of immovable properties; Explains that while sale consideration is fixed at the time when agreement to sell is entered into, adoption of stamp duty valuation as on actual execution date as per Sec 50C will be devoid of any rational basis especially when there is considerable gap between agreement to sell and actual execution; Takes note of Finance Act, 2016 amendment inserting proviso to Sec 50C based on Easwar Committee Report recognising such genuine and intended hardship; Though proviso is introduced only with effect from 1st April 2017, ITAT holds that "Once it is not in dispute that a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity," such an amendment has to be treated as curative and hence retrospective in nature.

Mrs. Anjali Bharat Kabra Vs. ITO [(2016) 75 taxmann.com 5, ITAT Pune bench, dtd. 26.08.2016, in favour of assessee]

Valuation to be referred to DVO if assessee pleaded that FMV fell below Stamp Value due to dispute in title

Where assessee claimed that market value of property was lesser than value adopted by Stamp Valuation Authority due to legal dispute, AO should have referred issue to DVO. Where value as determined by DVO as on 1-4-1981 was lesser than value as declared by assessee as on 1-4-1981, reference to DVO under section 55A was not warranted.

Voltas Ltd. Vs. ITO [(2016) 74 taxmann.com 99, ITAT Mumbai bench, dtd. 16.09.2016, in favour of assessee]

Sec. 50C can't be triggered on sale of development rights of land

The provisions of section 50C are deeming provisions. It is settled law and well accepted rule of interpretation that deeming provisions are to be construed strictly. Thus, while interpreting deeming provisions neither any words can be added nor deleted from language used expressly. Under the given facts and circumstances, assessee has rightly contended that the impugned capital asset transferred by the assessee upon which long-term capital gain has been computed by the Assessing Officer is on account of transfer of development rights in the land of the assessee but the land itself has not been transferred by the assessee. Thus, provisions of section 50C have been wrongly applied upon the impugned transaction. Thus, the action of lower authorities in applying the provisions of section 50C and in substituting any value other than the amount of actual sales consideration received by the assessee is reversed.

Sec. 54 – Profit on sale of property used for residence

DCIT Vs. Dr. Chalasani Mallikarjuna Rao [ITA No. 206/Vizag/2013, ITAT Visakhapatnam Bench, dtd. 14.09.2016, partly in favour of assessee]

Investment of actual sale-proceeds, not deemed consideration u/s 50C, relevant for exemption u/s 54

Visakhapatnam ITAT allows exemption u/s 54 to assessee-doctor for investing net sale-consideration on sale of residential property during AY 2007-08 in construction of new residential house property; Assessee has computed capital gains by adopting sale consideration of 60 lakhs received by him, whereas AO applied Sec 50C and computed gains adopting stamp duty valuation of Rs. 82 lakhs; Though ITAT approves application of deeming fiction u/s 50C for the purposes of computing capital gains, it clarifies that assessee needs to invest the sale proceeds and not the full value consideration u/s 50C in the new property for claiming Sec 54 exemption, states that "once the net sale consideration has been fully applied under the provisions of section 54 of the Act, then the deeming consideration as defined u/s 50C of the Act cannot be brought into the provisions of section 54F of the Act."; However, rejects assessee's stand that Sec 50C was not applicable as the property was transferred by un-possessory sale-cum-GPA, remarks that it is illogical on part of assessee to say that transfer has taken place for the purpose of computation of capital gain, but Sec 50C has no application; Similarly, rejects Revenue's stand that assessee was not eligible to claim exemption u/s 54 as construction in new residential house commenced before the date of transfer, clarifies that Sec 54 does not prescribe any condition as to date of commencement of construction, it is only the date of completion of construction that is relevant.

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

CIT Vs. Gregory Mathias [(2016) 74 taxmann.com 198, Karnataka High Court, dtd. 07.09.2016, in favour of assessee]

Flat held as stock-in-trade won't be deemed as second residential house; No denial of sec. 54F relief

Where assessee constructed several flats, used them as stock-in-trade of business and showed income from these flats under head 'Income from house property', deduction under section 54F could not be denied.

Sec. 68 – Cash Credits

DCIT Vs. Bansal Credits Ltd. [(2016) 74 taxmann.com 224, ITAT Delhi bench, dtd. 19.09.2016, in favour of assessee]

No addition only on basis of surrender made during survey without any corroborative evidence

Where assessee-company furnished all evidences for genuineness of debentures and fixed deposits, Assessing Officer could not made addition only on basis of surrender made during course of survey

Sec. 80P – Deduction in respect of income of co-operative societies

Madai Coop Rural Bank Ltd. Vs. ITO [(2016) 75 taxmann.com 51, ITAT Cochin bench, dtd. 09.09.2016, in favour of assessee]

Belated filing of return won't disentitle assessee from claiming benefit of sec. 80P

Where assessee was a primary agricultural credit society registered under Kerala Co-operative Societies Act, 1969, mere belated filing of return of income would not disentitle assessee from benefit of deduction under section 80P

A primary agricultural credit society would be entitled to benefit of exemption from TDS obligation under section 194A(3)(viiia); and interest credited or paid in respect of deposits with it would not be required for tax deduction at source.

Sec. 143 – Assessment

Indus Towers Ltd. Vs. UIO [W.P. (C) 3665/2015, Delhi High Court, dtd. 06.10.2016, in favour of assessee]

Delhi high Court directed refund processing despite Sec 143(2) notice issuance, rejects Revenue's 'discretionary' interpretation of Tata Tele case

Delhi HC allows assessees' writ petitions, directs Revenue to examine refund claims and pass appropriate orders despite scrutiny notices issued u/s 143(2); Assessees' were aggrieved by the notices issued u/s 143(2)/142(1) which according to them were issued in light of CBDT Instruction No. 1/2015 read with Sec 143(1D) with the sole purpose of preventing them from payment of refund claims pending before concerned AOs for various AYs on account of excess withholding of taxes; HC rejects Revenue's stand that the result of co-ordinate bench ruling in Tata Teleservices Ltd. was that the AO has the discretion to either process refund claim or await the final decision pursuant to the notice issued u/s 143 (2)/142(1), clarifies that"As far as the submission with respect to the manner in which discretion is to be exercised is concerned, there is nothing in the judgment in Tata Teleservices Ltd. to indicate to the contrary."; Further rejects Revenue's stand that in view of Sec 237, the right to claim refund in the circumstances where assessments are completed or pending is the one conferred by the statute and that such right can be conditioned or curtailed by other provisions like Sec 143(1D) does, clarifies that "Section 237 in one sense locates the restitutionary principle which is part of the larger right of every citizen.... if such provision does not exist then the assessee would still have a right to claim excess amount in law unrestricted in any manner with respect to procedural formalities dictated by the Act.";HC concludes stating that "there is no need to examine the challenge to the validity of Section 143(1D)", accordingly directs AOs to examine refund claims

Sec. 147 – Income escaping assessment

Kisan Proteins (P.) Ltd. Vs. ACIT [(2016) 74 taxmann.com 219, Gujarat High Court, dtd. 19.09.2016, in favour of assessee]

No reassessment on basis of DVO's report if assessee had shown all bills for construction cost at assessment stage

Where at time of making assessment under section 143(3), all relevant bills for construction of factory building were produced, Assessing Officer could not initiate reassessment proceedings on basis of report of DVO by taking a view that assessee had underestimated cost of construction of factory building.

Sec. 153A – Assessment in case of search or requisition

M/s. Ujjain Transport Agency Vs. CIT [ITA(SS) no. 58/Kol/2013, ITAT Kolkata bench, dtd. 19.10.2016, in favour of assessee]

Additions u/s 153A absent backing of incriminating material unsustainable

Kolkata ITAT allows assessee's (partnership firm) appeal for AY 2007-08, holds that the issue of additional depreciation could not be examined by the AO in assessment proceedings u/s 153A as it stood concluded with assessee's return being accepted u/s 143 (1) prior to search operations and in absence of notice u/s 143(2); CIT in exercise of his powers u/s 263 was of the view that AO's action in allowing additional depreciation was erroneous and prejudicial to the interest of the Revenue; Notes that no incriminating material found at the time of search with respect to additions made u/s 153A, further notes that AO while concluding the assessment u/s 153A had dealt with additional depreciation's

claim; Thus rules that "making of an addition in an assessment under section 153A of the Act, without the backing of incriminating material, is unsustainable even in a case where the original assessment on the date of search stood completed under section 143(1) of the Act, thereby resulting in non-abatement of such assessment in terms of the Second Proviso to section 153A(1) of the Act"

Sec. 234E – Fee for default in furnishing statements

Gajanan Construction Vs.DCIT [ITA No. 1292 & 1293/Pn/2015, ITAT Pune bench, dtd. 23.09.2016, in favour of assessee]

Sec 200A intimation levying Sec 234E fee appealable; Sec. 234E not applicable prior to 01.06.2015

Pune ITAT while adjudicating a bunch of appeals upholds assessee's grievance, deletes fee levied u/s 234E absent enabling provision u/s 200A prior to June 1, 2015; Observes that the power to charge/collect fees u/s 234E was vested with the Revenue only on substitution of clause (c) to Sec. 200A vide Finance Act, 2015 w.e.f. June 1, 2015, thus holds that "Once the power has been given, under which any levy has to be imposed upon tax payer, then such power comes into effect from the date of substitution and cannot be applied retrospectively"; Distinguishes Revenue's reliance on Bombay HC ruling in Rashmikant Kundalia and notes that although the constitutional validity of Sec. 234E was upheld therein it wasn't "abreast" on applicability of Sec. 234E "while processing TDS statement filed by the deductor prior to 01.06.2015"; With regards to maintainability of appeal against intimation issued u/s 200A for charging fees u/s 234E ITAT rules that such intimation is appealable u/s 246A as fees levied u/s 234E is deemed to be demand raised u/s 156, relies on Mumbai ITAT ruling in Kash Realtors Pvt. Ltd. in this regard; Relies on plethora of rulings including the recent pronouncement by Karnataka HC in Sri Fatheraj Singhvi & Ors, also distinguishes Revenue's reliance on SC ruling in Govinddas, Delhi HC ruling in Naresh Kumar and Chennai ITAT ruling in G. Indirani on facts

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

Shri Dhananjay Rajaram Gupte Vs. ITO [ITA No. 1311/Pn/2015, ITAT Pune bench, dtd. 26.08.2016, in favour of assessee]

Pune ITAT deleted concealment penalty on subsequently offered income, details available in Form 26AS

Pune ITAT allows assessee's (NRI, individual) appeal challenging concealment penalty levied u/s 271(1)(c) for AY 2010-11; AO levied penalty u/s 271(1)(c) as assessee had failed to declare income from capital gains and other sources on which TDS was withheld (as reflected in Form 26AS) in his return of income, such income was offered only by way of a revised computation of income filed during the assessment proceeding when the time for filing of revised return had expired; ITAT notes that the amount declared by the assessee in the revised computation of income was subject to TDS and the details of transactions was available with the Revenue in Form 26AS; Further notes that even after inclusion of the alleged concealed income in assessee's hands refund was allowed after verifying the details in Form 26AS; Accordingly holds that "where complete details were available in the public domain, merely because the assessee by an error had not included the same in computation of income, it cannot be held that the assessee had furnished inaccurate particulars of income, making the assessee liable for levy of penalty under section 271(1)(c) of the Act"

Director of Income Tax Vs. Koninklijke-DSM-NV [(2016) 75 taxmann.com 55, Bombay High Court, dtd. 07.09.2016, in favour of assessee]

No penalty for non-disclosure of 'FTS' if its taxability was determined by AO after interpreting DTAA

Where payments received from Indian affiliated companies for providing C-ICT and corporate services was not taxed in India in earlier years and TDS amount was refunded, Assessing Officer could not impose penalty even if he held in current year that, receipt from affiliated companies were FTS liable to tax.

DCIT Vs. Kodak Graphic Communication (I) (P.) Ltd. [(2016) 74 taxmann.com 156, ITAT Mumbai bench, dtd. 26.08.2016, in favour of assessee]

No penalty just because value of transaction was taken at Nil if TPO hadn't disputed TNMM adopted by assessee

Where neither TPO nor DRP had given any analysis as to why T.P. adjustment was required to be made when TNMM had been applied and when overall profit margin and method had not been disturbed and no penalty under section 271G was levied for non-furnishing of information and documents, prima facie no case could be made for levy of penalty under section 271(1)(c).

INTERNATIONAL TAXATION

Golkonda Aluminium Extrusion Ltd. Vs. ITO [(2016) 74 taxmann.com 264, ITAT Hyderabad bench, dtd. 30.09.2016, in favour of assessee]

CUP method is appropriate to benchmark transaction of purchase of raw material and CPM for sale of export

CUP method is most appropriate method for international transaction of purchase of raw material and CPM is most appropriate method for sale of exports.

Grindwell Norton Ltd. Vs. Addl. Commissioner of Income tax [(2016) 74 taxmann.com 249, ITAT Mumbai bench, dtd. 30.09.2016, in favour of assessee]

Bank guarantee given for foreign AE couldn't be benchmarked on basis of bonds to be raised in Indian market

Where assessee provided corporate guarantee to foreign bank in connection with borrowing by AE, and had charged fee @ 1% but ALP of such transaction was determined at 3.35% on basis of respective abilities of assessee and AE in Indian domestic market, exercise carried out by TPO suffered from an inherent misconception as benchmarking had been done between two incomparable situations.

Aithent Technologies (P.) Ltd. Vs. DCIT [(2016) 74 taxmann.com 214, ITAT Delhi bench, dtd. 21.09.2016, in favour of assessee]

TP provisions aren't applicable on transactions between Indian head office and foreign branch

Transfer pricing provisions would not be applicable in respect of transactions between assessee having head office in India and branch office in Canada as branch office was not a separate enterprise.

Transport Corporation of India Ltd. Vs. ACIT [(2016) 74 taxmann.com 190, ITAT Hyderabad bench, dtd. 21.09.2016, in favour of assessee]

Loan to foreign AE to be benchmarked at LIBOR even if it originated in INR and recorded as such in books

Where, actual utilisation of funds advanced by assessee in rupees to its subsidiaries was outside India, ALP of this kind of transaction is to be determined applying international market condition and thus TPO should arrive at ALP of these transactions by applying LIBOR + 200 points.

DCIT Vs. Friends Shoe Company [(2016) 74 taxmann.com 100, ITAT Visakhapatnam bench, dtd. 22.09.2016, in favour of assessee]

No addition if interest-free advances given to AE were in nature of trade advances

Where Assessing Officer made addition of notional interest in respect of interest free advances given by assessee-firm to its sister concern, since said advance was given in normal course of its business and, thus, it was in nature of trade advance, impugned addition was to be set aside.

Where assessee in normal course of business, gave advance to suppliers for purchase of raw materials, in view of fact that suppliers neither supplied raw materials nor returned money, amount paid to them was to be allowed as bad debt.

Circulars/Notifications / Instructions

Notification No. 102/2016, dtd. 28.10.2016

Vide the above notification, protocol amending the Convention between India and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income has been notified having effect from 29.10.2016

Notification No. 99/2016, dtd. 25.10.2016

Vide the above notification, Prohibition of Benami Property transaction Rules 2016 has been notified having effect from 01.11.2016.

Circular No. 37/2016, dtd. 02.11.2016

Vide the above circular, Board has accepted the settled position that the disallowance made under section 32, 40 (a)(ia), 40A(3), 43B, etc. of the act and other specific disallowance, related to the business activity against which the chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under chapter VI-A is admissible on the profits so enhanced by the disallowance.

INDIRECT TAXES

Judicial pronouncements

CENTRAL EXCISE

Commissioner of Excise & Customs Vs. Saraogi Paper Mills (P) Ltd. [(2016) 74 taxmann.com 160, The Supreme Court of India, dtd. 01.04.2016, in favour of assessee]

No penalty due to shortage in physical input if dept. failed to show where shortage was used

In case of shortage in stock-taking of inputs, if shortage is not explained by assessee, then : (a) for raising duty-demand, it may be presumed that inputs were probably used elsewhere, (b) but, if adjudication order does not show where said inputs were used, benefit of doubt must go to assessee and penalty must be set aside

Commissioner of Central Excise & Customs Vs. Vandana Art Prints (P.) Ltd. [(2016) 74 taxmann.com 158, The Supreme Court of India, dtd. 05.09.2016, in favour of revenue]

Tribunal can't reduce excise penalty below the statutory minimum limit

Tribunal cannot reduce penalty under section 11AC for an amount lesser than amount of duty which has been upheld

Man Industries India Ltd. Vs. Commissioner of Central Excise [(2016) 75 taxmann.com 9, The Supreme Court of India, dtd. 27.01.2016, in favour of revenue]

Shifting goods to another division within the same factory couldn't be held as removal from factory

Value is determined and duty is paid at time and place of removal in condition in which goods are actually removed; hence, if pipes were actually removed from factory only after coating, then, manufacture was of 'coated pipes' and duty was payable on charges inclusive of coating

SERVICE TAX

Malwa Engineering Works Vs. Union of India [(2016) 75 taxmann.com 48, Punjab & Haryana High Court, dtd. 19.09.2016, in favour of assessee]

Service receiver need not pay service-tax if cum-tax tender price reduced due to service-tax exemption

Where tender price is inclusive of service tax and, subsequently, service tax is exempted, then, service tax component of tender price is not payable by service recipient to service provider

Ebiz.com (P.) Ltd. Vs. Union of India [(2016) 75 taxmann.com 62, Delhi High Court, dtd. 01.09.2016, in favour of assessee]

Service-tax collected during search without issuing notice should be refunded along with interest

If payment of alleged service tax arrears was made by assessee during search/arrest, without an adjudication much less a show-cause notice, then, such payment made involuntarily is required to be returned to them forthwith with interest

Before making arrests under service tax, department must adjudicate demand and also grant hearing to assessee as to materials collected; however, in case of habitual tax-evaders, arrests may be made straightaway, but, subject to review of past conduct and only after recording prima facie view as to how assessee is a habitual tax-evader, in case of arrests under service tax, assessee is eligible for all constitutional safeguards as are available in case of arrests by a police officer

CENVAT CREDIT

Vijay Logistics (P) Ltd. Vs. Commissioner of Central Excise [(2016) 74 taxmann.com 267, CESTAT Mumbai bench, dtd. 08.07.2016, in favour of assessee]

Cenvat credit allowed on construction services utilized for construction of rented properties

Construction services used for construction of rented properties are eligible for cenvat credit against service tax payable on renting of immovable property services

Circulars/Notifications / Instructions

Circular No. 1050/38/2016-CX, dtd. 08.11.2016

Vide the above circular it has been clarified that all the excise and service tax assessees are not required file the annual return due on 30.11.2016 for F.Y. 2015-16

Notification No. 49/2016-ST, dtd. 09.11.2016

Vide the above notification, amendment is seek in notification No. 30/2012 - ST, dated the 20th June, 2016 so as to put compliance liability of service tax payment and procedure on to the service provider located in the non-taxable territory with respect to online information and database access or retrieval services provided in the taxable territory to 'non-assesse online recipient'.

Notification No. 48/2016-ST, dtd. 09.11.2016

Vide the above notification, amendment is made in Service Tax Rules, 1994 so as to prescribe that the person located in non-taxable territory providing online information and database access or retrieval services to 'non-assesse online recipient', as defined therein, is liable to pay service tax and the procedure for payment of service tax.

Notification No. 47/2016-ST, dtd. 09.11.2016

Vide the above notification, amendment has been seek in notification No. 25/2012-ST dated 20th June, 2016 so as to withdraw exemption from service tax for services provided by a person in non-taxable territory to Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Notification No. 46/2016-ST, dtd. 09.11.2016

Vide the above noitification, amendment is seek to amend Place of Provision of Services Rules, 2012 so as to amend the place of provision of 'online information and database access or retrieval services' with effect from 01.12.1016.

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

5th Nov	*Payment of Excise duty for the month of October*
6th Nov	*Payment of Service Tax & Excise duty paid electronically through internet banking for the month of October*
7th Nov	*TDS/TCS Payment for the month of October*
10th Nov	*Excise Return ER1/ER2/ER6*
15th Nov	*PF Contribution for the month of October*
21st Nov	*ESIC payment of for the month of October*
30th Nov	*Due date for filing income tax return of A.Y. 2016-17 of assesses required to file form 3CEB.*

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