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DIRECT TAXES

Judicial pronouncements

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

Raniganj Co. Op. Bank Ltd. Vs. DCIT [(2016) 73 taxmann.com 90, ITAT Kolkata bench, dtd. 02.09.2016, in favour of assessee]

No disallowance under sec. 14A when no tax free income earned during the year

There could be no disallowance of expenses under section 14A where assessee had not earned any tax free income during relevant year

Sec. 22 – Income from House Property

Bombay Plaza (P.) Ltd. Vs. ACIT [(2016) 73 taxmann.com 91, ITAT Kolkata bench, dtd. 02.09.2016, in favour of assessee]

Receipt from sub-licensing of shopping center space is business income and not income from house property

Where assessee was only a licensee of premises in question, provisions of section 22, r/w section 27(iii) were not attracted

Sec 28 – Profit and gains of business or profession

D. Srinivas Vyas Vs. ITO [(2016) 73 taxmann.com 4, Madras High Court, dtd. 08.03.2016, in favour of revenue]

Bogus payment taxable in hands of payee even if it was added back to income of payer in settlement proceedings

Where in application before Settlement Commission, payer of commission had admitted that unsubstantiated commission payments was its own income and Settlement Commission had accepted such disclosure and recomputed payer's income, independent of proceeding before Settle-



ment Commission, commission received by assessee would be separately assessable in hands of assessee payee.

Sec. 36 – Other Deductions

CIT Vs. Alapatt Brothers [(2016) 73 taxmann.com 43, Kerala High Court, dtd. 06.06.2016, in favour of assessee]

Interest would be deductible when interest free loan was given as a measure of commercial expediency

Test for extending benefit of section 36(1)(iii) is as to whether interest free loan is given as a measure of commercial expediency; where this test was not applied to facts of cases, matter was to be reconsidered

Appeals involving a substantial question of law deserved to be considered on merits and, thus, to be admitted by High Court even if tax effect was less than Rs. 20 lakh

Sec. 37 – General

Bell Ceramics Ltd. Vs. Deputy Comm. Of Income Tax [(2016) 73 taxmann.com 81, Gujarat High Court, dtd. 13.07.2016, in favour of assessee]



Exp. incurred to expand existing manufacturing facilities was to be treated as revenue exp.

Trial run expenditure incurred for expansion of existing manufacturing facilities was to be allowed as revenue expenditure

Satyam Venture Engineering Services Private Limited Vs. Deputy Commissioner of Income Tax [ITA No. 1590/Hyd/010, ITAT Hyderabad bench, dtd. 26.08.2016, in favour of assessee]

ITAT deleted Sec 37 disallowance/TP-adjustment on commission to one JV-promoter

Hyderabad ITAT deletes disallowance u/s 37 and TP-adjustment in respect of commission paid by assessee (a joint venture company between Venture, USA and Satyam India) to one of its promoter companies (Venture USA) on domestic sales made to Satyam for AY 2004-05 to 2008-09 ; For AY 2004-05 CIT(A) had disallowed commission payment u/s 37(1) while TPO had determined ALP of commission at Nil for all the relevant AY on the ground that there was no need to pay commission to Venture on sales made by Satyam (it being one of the promoter companies); ITAT notes that Satyam was not an affiliate of Venture and they were competing with each other before formation of assessee as a joint venture company, observes that "there is fundamental flaw in analysis of the TPO in considering Satyam as affiliate of Venture"; Holds that TPO should have determined ALP using one the prescribed methods and CUP method could not be invoked without identifying uncontrolled comparable transaction, notes that Delhi HC in EKL Appliances case has held that TPO cannot disallow the amounts u/s. 37(1) invoking transfer pricing provisions; Deletes TP adjustment on export of IT engineering services considering that the

difference between transaction price and ALP was less than 5%, also regarding reduction of TP-adjustments from export turnover for computation of Sec. 10A benefit, ITAT observes that "As there is no legal base to exclude the amount from export turnover, we direct the TPO not to exclude the above amounts from either export turnover or total turnover, as the profit enhanced cannot become turnover".

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

Bihar State Warehousing Corporation Ltd. Vs. CIT [Misc. Appeal No. 302 of 2008, Patna High Court, dtd. 19.07.2016, in favour of assessee]

HC reverses ITAT, allows belated employees' PF-contribution deduction applying Sec 43B; Follows Bombay, P&H HC

Patna HC reverses ITAT order for AY 2003-04, allows deduction to assessee (a PSU) in respect of employees' contribution to PF deposited after PF Act due-date but before return filing due-date applying provisions of Sec 43B; Cites SC ruling in Alom Extrusions which held that Finance Act 2003 amendment to Sec 43B extending deduction availability to PF contributions deposited before return-filing due-date as retrospective in application; Opines that although technical reading of Sec 43B and Sec 2(24) (x) read with Sec 36(1)(va) of the Act creates impression that employees' contribution would continue to be treated differently under a different head of deduction, "... 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."; Further opines that SC in Alom Extrusions "has not made any distinction between the two as similar

problem of implementation would arise in both the cases, although specific issue was not raised therein"; Relies on Bombay HC ruling in Ghatge Patil Transports and Punjab and Haryana HC ruling in Hemla Embroidery Mills wherein it was held that both employees' and employer's contributions are covered by Sec 43B amendment

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

Humayun Suleman Merchant Vs. Chief Comm. Of Income tax [(2016) 73 taxmann.com 2, Bombay High Court, dtd. 18.08.2016, in favour of revenue]

HC restricts Sec. 54F relief as entire consideration wasn't invested before filing of belated return

Where assessee had filed return of income and entire amount which was subject to capital gain tax had not been utilized for purpose of construction of new house nor were unutilized amounts deposited in the notified Bank Accounts before filing return of income, Assessing Officer rightly restricted exemption under section 54F proportionately to amount invested.

Amounts subject to capital gain on sale of the capital asset for purpose of exemption, has to be utilized before the date of filing of return of income. Thus, where assessee had filed return of income and the entire amount which was subject to capital gain tax had not been utilized for the purpose of construction of new house nor were the unutilized amounts deposited in the notified Bank Accounts in terms of section 54F(4) before filing the return of income, Assessing Officer had rightly computed the deduction under section 54F, restricting the exemption under section 54F proportionately to the amount invested.

Sec. 68 – Cash Credit

Smt. Manasi Mahendra Pitkar Vs. ITO [(2016) 73 taxmann.com 68, ITAT Mumbai bench, dtd. 12.08.2016, in favour of assessee]

Sum credited in pass book couldn't be held as unexplained if assessee wasn't maintaining books of account

Where Assessing Officer examined bank Pass Book of assessee and treated cash deposits in bank account as unexplained cash credit within meaning of section 68, since assessee was not maintaining any account books and bank Pass Book could not be construed to be a book maintained by assessee for any previous year, section 68 was not applicable to instant case.

Sec. 69B – Amount of investments, etc. not fully disclosed in books of accounts

CIT Vs. Bahubali Neminath Muttin [(2016) 73 taxmann.com 100, Karnataka High Court, dtd. 13.07.2016, in favour of assessee]

No addition on basis of books of account which were already rejected by AO

Where books of account of assessee had been rejected by assessing authority, same books of account could not be relied upon in an addition on account of trade creditors and also for arriving at closing stock.

Sec. 69C – Unexplained expenditures, etc.

DCIT Vs. Narendra Garg & Ashok Garg (AOP) [(2016) 72 taxmann.com 365, Gujarat High Court, dtd. 28.07.2016, in favour of assessee]

No addition on basis of statement made during search without any evidence of undisclosed income

Where assessee retracted from disclo-

sure made in statement under section 132(4) which was not accepted by revenue, and if no undisclosed income was found during search, revenue could not make addition on bare suspicion and presumption.

Sec. 145A – Method of accounting in certain cases

CIT Vs. Knight Frank (India) Pvt. Ltd. [ITA No. 247 & 255 of 2014, Bombay High Court, dtd. 16.08.2016, in favour of assessee]

HC rejected service-tax addition u/s 145A; Provision applicable to taxes on goods, not services

Bombay HC upholds assessee's claim that provision of Sec. 145A are not applicable to service tax billed on services rendered by assessee, Rejects Revenue's contention that service tax was similar to excise duty, sales tax and other taxes, which have to be collected to be paid over to the Government ; Revenue added service tax amount as trading receipt by invoking provisions of Sec. 145A(a)(ii) and further sought to disallow the deduction invoking provisions of Sec. 43B to the extent service tax was not paid to the Government before due date of filing return; HC notes that Sec. 145A specifically refers to any tax, cess, duty or fee paid or incurred to bring goods to the place of location and condition as on the date of valuation of inventory, thus observes that “.. the service tax billed has no relation to any goods nor does it have anything to do with bringing the goods to a particular location.”

Sec. 147 – Income escaping assessment

Yes Bank Ltd. Vs. DCIT [ITA No. 1991/Mum/2015, ITAT Mumbai bench, dtd. 24.08.2016, in favour of assessee]

ITAT quashes reassessment based

on audit-objects; Audit-authorities cannot cross 'laxamn-rekha' by interpreting law

Mumbai ITAT quashes re-assessment in case of Yes Bank ('assessee') for AY 2008-09 initiated merely on the basis of audit objections, holds it a case of review or re-appraisal of facts which is not permissible u/s 147; Notes that assessee filed the necessary details about bad and doubtful debts which was considered by AO during regular assessment, subsequently an audit objection was raised whereby no arithmetical mistake or calculation error was pointed out by the audit party, but it interpreted Sec 36(viiiia) in a particular manner and held that income escaped assessment; ,Opines that “such an observation is beyond the power of any audit party and same cannot be termed information for the purposes of section 147 of the Act.”;Remarks that “Audit authorities,an outside agency,definitely has an important role to point out irregularities of assessment orders... But,a Laxamn-Rekha has to be there for audit party, it is not the job of an audit party to interpret the law with regard to facts of a case.”;Rejects Revenue's stand that in view of CBDT circular No. 9/2006 it was required to take remedial actions compulsorily and was accordingly forced to invoke Sec 147, clarifies that the instruction has done away with compulsory initiation of remedial action in case of an audit objection and has restored AO's legitimate powers.

Apeejay Education Society Vs. Asst. Comm. Of Income Tax [(2016) 73 taxmann.com 54, ITAT Amritsar bench, dtd. 26.02.2016, in favour of assessee]

No reassessment on pretext of bogus purchases if assessee had disclosed all material facts at assessment stage



DIRECT TAXES

Judicial pronouncements (International Taxation)

Where Assessing Officer completed assessment in case of assessee under section 143(3), in absence of any failure on part of assessee to disclose all material facts necessary for assessment, reassessment proceedings could not be initiated after expiry of four years from end of relevant assessment year merely on basis of allegation that assessee had obtained accommodation entries from another company regarding bogus purchase of software.



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

DCIT Vs. Aggarwal Entertainment (P.) Ltd. [(2016) 72 taxmann.com 340, ITAT Delhi bench, dtd. 29.06.2016, in favour of assessee]

Assessment can't be said to be pending for purposes of sec. 153A when return is processed under sec. 143(1)

Assessment in respect of which return has been processed under section 143 (1), cannot be regarded as pending for purpose of section 153A as Assessing Officer is not required to do anything further about such a return and, thus, said assessment cannot be reopened in exercise of power of section 153A

Sec. 194I – TDS on rent

Apeejay Surrendra Park Hotels Ltd. Vs. Union of India [(2016) 67 taxmann.com 291, Delhi High Court, dtd. 23.03.2016, in favour of revenue]

Room charges would fall within ambit of 'rent' under Sec. 194-I even if it includes host of facilities and amenities

ties

Even though room charges paid to a hotel is not only confined to use of space but also to a host of facilities and amenities, such payment would still fall within ambit of 'rent' under section 194-I

INTERNATIONAL TAXATION

Chapter X – Special provisions relating to avoidance of tax

Agnity India Technologies (P.) Ltd. Vs. Deputy Comm. Of Income tax [(2016) 73 taxmann.com 102, ITAT Delhi bench, dtd. 19.07.2016, in favour of assessee]

Exercise for selection of comparable has to be made out for every year without blindly following precedent

Whether a particular company is a comparable or not is an exercise which has to be carried out every year in case of an assessee considering facts of that specific year and not blindly following precedent which has been laid down in earlier or subsequent year

Tally Solutions (P.) Ltd. Vs. ACIT [(2016) 73 taxmann.com 70, ITAT Bangalore bench, dtd. 19.08.2016, in favour of revenue]

Extension of credit period of sales to AE deemed as international transaction under transfer pricing

Where transaction was otherwise capable of generating income but because related parties decided not to charge or pay to each other, basic character and nature of transaction would not change, thus, transaction of extending credit period to AE was to be regarded as an international transaction even if it did not give rise to any income

Extending credit period for realization of sales to AE was a closely linked transaction with transaction of providing services to AE and, therefore, could not be treated as an individual and separate

transaction of advance or loan for determination of ALP

Dell International Services India (P.) Ltd. Vs. DCIT [(2016) 73 taxmann.com 24, ITAT Bangalore bench, dtd. 22.07.2016, in favour of assessee]

Price fixed under MAP for AE transactions could be adopted for non-AE transactions if other factors were similar

Where after taking FAR analysis of non-US transactions, if it was found that factors influencing price were similar between US AEs and non-US AE transactions, same price fixed under MAP in respect of US AEs could be adopted for non-US AE transactions also.

Showa India (P.) Ltd. Vs. DCIT [(2016) 73 taxmann.com 6, ITAT Delhi bench, dtd. 30.06.2016, in favour of assessee]

When commercial expediency of payment was recognized, it could not be said that such payment wasn't at ALP

Where assessee had produced all invoices and proof of payments in respect of services rendered by employees of AE, and commercial expediency of said payment was recognised, it could not be held that technical service fees paid by assessee to AE was not at arm's length

CIT Vs. Hindustan Unilever Ltd. [(2016) 72 taxmann.com 325, Bombay High Court, dtd. 26.07.2016, in favour of assessee]

While determining ALP, benchmarking to be made for transactions of AE and not on entire turnover

While determining ALP, benchmarking has to be done only on AE transactions and not for entire turnover.



Mercer Consulting India (P.) Ltd. Vs. DCIT [(2016) 72 taxmann.com 323, ITAT delhi bench, dtd. 25.07.2016, in favour of assessee]

TP provisions aren't applicable when income on basis of ALP either decreases income or increases loss

When, as a result of computation of income on basis of arm's length price, income of assessee is lowered or loss is increased, provisions of computation of income on basis of arm's length price would not be applicable

Circulars/Notifications / Instructions

Notification No. 77/2016, dtd. 02.09.2016

Agreement for Avoidance of Double Taxation of Income Derived From International Air Transport between India and Maldives notified.

Notification No. 80/2016, dtd. 08.09.2016

Agreement for the Exchange of Information with respect to Taxes between India and Seychelles notified.



INDIRECT TAXES

SERVICE TAX

Express Tours & Travels (P.) Ltd. Vs. Comm. Of Central Excise & Customs [(2016) 72 taxmann.com 217, Gujarat High Court, dtd. 22.06.2016, in favour of revenue]

Hiring isn't different from renting; even hiring of cab is liable to service tax under rent-a-cab services

There is no difference between 'renting' and 'hiring' insofar as levy of service tax is concerned; hence, hiring of cabs is also liable to service tax under 'rent-a-cab' services.

Quippo Energy Ltd. Vs. UOI [(2016) 72 taxmann.com 219, Gujarat High Court, dtd. 13.07.2016, in favour of revenue]

Mere payment of VAT on lease charges doesn't mean that service tax can't be recovered

Mere payment of VAT does not mean that service tax, if otherwise payable, cannot be recovered; hence, even if VAT is already paid, service tax demand cannot be said to be without jurisdiction so as to be set aside in writ jurisdiction

CENVAT

S. Pal Enterprises (P.) Ltd. Vs. Comm. Of Central Excise & Service tax [(2016) 72 taxmann.com 172, CESTAT New delhi bench, dtd. 01.06.2016, in favour of assessee]

Credit can't be denied merely due to discrepancies in transport documents

If inter-state movement of inputs is recognized by sales-tax authorities at check-posts, then, merely due to discrepancies in transport documents/dates, department cannot deny credit alleging that inputs were never received.

Circulars/Notifications / Instructions

Notification No. 40/2016, dtd. 06.09.2016

Vide the above notification exemption on renting of precincts of a religious place meant for general public is been restricted to only charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the Income-tax.

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

5 th Sept	Payment of Service Tax & Excise duty for the month of August
6 th Sept	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of August
7 th Sept	TDS/TCS Payment for the month of August
10 th Sept	Excise Return ER1/ER2/ER6
15 th Sept	PF Contribution for the month of August
21 st Sept	ESIC payment of for the month of August
30 th Sept	Due date for filing income tax return of A.Y. 2016-17 of Corporate assessee not required to get accounts audited u/s.44AB of the I.T. Act

The information contained in this newsletter 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.