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# SNK

## Newsletter

### DIRECT TAXES

#### Judicial pronouncements

#### Section 2 – Definitions

**Prn. CIT Vs. Dr. Amrik Singh Basra [(2017) 82 taxmann.com 186, Punjab & Haryana High Court, in favour of assessee]**

**No transfer could take place under an unregistered joint development agreement; verdict of 'CS Atwal' followed**

Unregistered JDA do not fall under section 53A of Transfer of Property Act; do not amount to transfer.

**ACIT Vs. Siddharth Gupta [(2017) 82 taxmann.com 291, ITAT Delhi bench, dtd. 30.05.2017, in favour of assessee]**

**No deemed dividend on transfer of property from a Co. to another Co. if common shareholder didn't derived any benefit**

Where there was transaction of sale of commercial property for money between two companies and assessee held interest in both companies, but less than 10 per cent interest in transferor company as on date of transaction, transaction of transfer was not sham or colourable, and did not amount to payment for benefit of assessee, and, thus, provisions of section 2(22)(e) were not applicable and no addition could be made to income of assessee on account of 'Deemed Dividend' under section 2(22)(e)

**ITO Vs. Shri Shafiq Mohammed Shah [ITA No. 1331/Mds/2016, ITAT Chennai bench, dtd. 11.05.2017, in favour of revenue]**

**JDA results in land-transfer; Sec. 2(47)(v) doesn't contemplate 'exclusive' possession of developer**

Chennai ITAT rules that land-transfer shall be taxable in the year of entering into the Joint Development Agreement ('JDA') and not in relevant AY 2011-12 (when constructed area was transferred), relies on Bombay HC ruling in Chaturbhuj Dwarkadas Kapadia; In 2006, assessee (land-



owner) had entered into a JDA for construction of residential-cum-commercial complex, pursuant to which assessee received constructed area in lieu of transfer of land in favour of developer, Revenue assessed capital gains on sale of both (land and constructed area) in relevant AY upon sale of constructed area; Firstly, ITAT clarifies that land is one capital asset transferred by the assessee and constructed area allotted to assessee constitute a different capital asset, with respect to land-transfer ITAT observes that conditions of 'transfer' as contemplated u/s 2(47)(v) (i.e. parting with land possession under JDA in part performance of contract) are satisfied in present case; Rules that possession as contemplated therein need not necessarily be sole and exclusive possession, states that as long as the transferee (i.e. developer) is enabled to exercise general control over the property to make use of it for intended purpose, there is no warrant to postpone operation of clause 2(47)(v) to that point of time when concurrent possession would become exclusive possession of the developer, mere fact that the ownership is continued with assessee to oversee the development work doesn't affect applicability of Sec. 2(47)(v); ITAT however, rejects assessee's stand that commencing from the date of transferring the land to the developer and ending on the date when the assessee sold his share of constructed area constitute a

single transaction, remarks that “this contention easily defeat very charging provision of Sec.45 by postponing the sale of new asset indefinitely.”

### **Section 14A – Expenditure incurred in relation to income not includible in total income**

**Nahar Spinning Mills Ltd. Vs. CIT [(2017) 82 taxmann.com 154, Punjab & Haryana High Court, dtd. 17.04.2017, in fav our of revenue]**

### **HC upheld proportionate disallowance of administrative exp. made u/s 14A for earning dividend income**

Disallowance of proportionate administrative expenditure made for earning exempted dividend income computed on reasonable basis would be just.

Donations of clothes to Prime Minister Relief Fund for earthquake victims being in kind, and not in cash, cheque or draft, was not eligible deduction under Section 80G

**G. E. India Exports Pvt. Ltd. Vs. Dy. Com. of Income Tax [IT(TP) No. 840/Bang/2013, ITAT Bangalore bench, dtd. 28.04.2017, in fav our of revenue]**

### **ITAT upholds Sec.14A disallowance; No specific format prescribed for recording AO's satisfaction**

Bangalore ITAT upholds expense disallowance u/s. 14A, however, directs that business income increased by the amount of disallowance, should be considered for computing deduction u/s. 10A in case of assessee (a software development company) for AY 2008-09; Rejects assessee's stand that AO should mention 'proximate' cause for disallowance u/s 14A and mere mentioning that he is not satisfied with assessee's explanation is not enough; ITAT notes that as per Rule 8D, AO is duty bound to record satisfaction for rejecting assessee's explanation of not incurring any expenditure for earning

exempt income, but remarks that “No specific format is provided under the Act for recording the satisfaction.”; Moreover, notes that assessee failed to discharge his primary onus of proving nexus of interest free funds that yielded interest free income, opines that “in the absence of discharge of initial onus the burden is not shifted to AO to establish nexus between the interest bearing funds and the investment made by assessee”; ITAT rules that after recording dissatisfaction, “AO is left with no other option but to adopt the methodology provided in Rule 8D r.w.s. 14A(2) of the Act.”

**Acumen Capital Marketing (I) Ltd. Vs. ITO [(2017) 81 taxmann.com 334, ITAT Cochin bench, dtd. 24.03.2017, in fav our of assessee]**

### **Bank guarantee commission couldn't be treated as interest for sec. 14A disallowance**

Bank guarantee commission is not in nature of interest expenditure; hence, does not warrant disallowance under section 14A.

Income from investments in foreign Joint Venture being not exempt from tax, said investment was not needed to be considered for disallowance under section 14A, read with rule 8D.

### **Section 22 – Income from house property**

**Raj Dadarkar & Associates Vs. ACIT [Civil Appeal No. 6455-6460 of 2017, The Supreme Court of India, dtd. 09.05.2017, in fav our of revenue]**

### **SC distinguishes Chennai Properties; Sub-letting not principal business activity to constitute 'business income'**

SC upholds Bombay HC ruling and dismisses taxpayer's appeal, rental income arising to assessee-firm from sub-licensing of shopping centre, taxable

as 'house property' income and not business income for AY 2000-01; Notes that assessee was allotted a plot of land by BMC on monthly license basis under auction whereby assessee constructed the market area (i.e. Shopping Centre) thereupon and gave the same to various persons on sub-licensing basis; Taking note of circumstances under which BMC auctioned the market area to assessee, permitting assessee to carry out additions and alterations and allowing sub-letting of the shops and stalls, HC had held assessee as 'deemed owner' of the premises in terms of Sec 27(iiib) read with Sec. 269UA(f) of the Act and accordingly assessed income as house property income; Distinguishes assessee's reliance on co-ordinate bench rulings in Chennai Properties and Rayala Corporation to argue that lease rentals were assessable as business income, observes that in those rulings assesseees were in the business of letting out of properties and derived entire income from letting out of properties; Notes that in present case, assessee could not substantiate that its entire income or substantial income was from letting out of the property which was its principal business activity, clarifies that mere entry in the object clause that assessee is engaged in sub-letting of properties would not be the conclusive factor.

### **Section 37 – General**

**Bechtel India Pvt. Ltd Vs. ACIT [ITA No. 1224/Del/2017, ITAT Delhi bench, dtd. 29.05.2017, in fav our of revenue]**

### **ITAT disallows MTM loss on forex forward contract cover, distinguishes Woodward Governor ruling**

Delhi ITAT disallows assessee's claim for deduction on account of marked to market (MTM) losses on foreign exchange forward contract for hedging export receivables from related entity, distinguishes SC ruling in Woodward



Governor case; Notes that assessee could have measured its export receivables at exchange rate as on balance sheet date and claimed the loss applying ratio of SC ruling in Woodward Governor, but by entering into forward contract for foreign exchange assessee immuned itself from fluctuation in foreign exchange rates; Noting that assessee measured pending forward contracts at foreign exchange rate on balance sheet date, ITAT observes that assessee is neither dealing in forward contracts nor they are part of its stock in trade so as to give rise to trading liability; Further holds that assessee was not required to buy foreign exchange from market to settle these contracts as the contracts were to be settled using export receivables and thus, no additional liability can arise at the time of maturity of contract or on balance sheet date; Thus, ITAT concludes that MTM loss on hedging forward contract of foreign currency cannot be allowed as deduction in absence of additional outgo for settlement beyond contractual terms

### Section 50C – Special provision for full value of consideration in certain cases

**ITO Vs. Aditya Narain Verma (HUF)** [ITA no. 4166/Del/2013, ITAT Delhi bench, dtd. 07.06.2017, in favour of assessee]

### **ITAT annuls assessment; AO's failure to make reference to valuation officer u/s. 50C(2), fatal**

Delhi ITAT upholds CIT(A)'s order annulling assessment, quashes invocation of Sec. 50C(1) (relating to substitution of sale consideration with stamp duty valuation) while computing capital gains on sale of land by assessee-HUF during AY 2009-10; Notes that assessee had disputed adoption of stamp valuation owing to several distressing circumstances (i. e the land being in fer-

tile, property subject to litigation), and accordingly requested for a reference to valuation officer u/s 50C(2) which was rejected by AO; ITAT holds that "The very purpose of the Legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and is certainly in a better position than the Assessing Officer to determine the valuation."; Remarks that non-compliance of the provisions prescribed u/s 50C(2) can't be held valid and justified; Also rejects Revenue's request to set aside the matter to the file of AO for referring the case to the Valuation Officer, accepts assessee's stand that setting aside cannot be exercised so as to allow AO to cover up the deficiency in his case.



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

**DCIT Vs. Kalyanaraman Nataraja** [(2017) 82 taxmann.com 93, ITAT Chennai bench, dtd. 01.05.2017, in favour of assessee]

### **Land appurtenant to building was entitled to sec. 54F relief even if no construction was done on it**

Where land was purchased along with a residential building constructed thereon, part of land which was appurtenant to residential building and on which no construction was made could not be denied exemption under section 54F

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

**Shri Syed Aleemullah Vs. DCIT** [ITA No. 389/Bang/2016, ITAT Bangalore bench, dtd. 04.04.2017, in favour of revenue]

### **ITAT denies Sec 80-IB(10) deduction for allotting more than one unit to single buyer**

Bangalore ITAT denies Sec. 80IB(10) deduction to assessee-builder for AY 2011-12 on account of violation of condition under clause (f) i.e. allotment of more than one residential unit to same individuals/family members; Noting that clause (f) was inserted vide Finance (No.2) Act, 2009, ITAT rules that "Since the Finance (No.2) Act, 2009 became law w.e.f. 19/08/2009, restrictions regarding allotment of residential units contained in clause (f) shall not apply in respect of allotments made before 20/08/2009"; Distinguishes assessee's reliance on plethora of judicial precedents since in those cases, allotment in respect of same family members was made before insertion of clause (f), whereas in present case, assessee could not prove that allotments were made prior to the insertion; Explains rationale for insertion of clause (f), states that the object behind the tax benefit for housing project is to build affordable housing for low middle income groups, however, area limit condition under clause (c) of 1000/1500 sq. ft. is circumvented by some developers by entering into agreements to sell multiple adjacent units to single buyers; ITAT also holds that assessee violated clause (c) condition by deviating from the sanctioned plan and constructing duplex flats exceeding prescribed limit of 1500 sq.ft..



### Section 132 – Search and seizure

**Strategic Credit Capital Pvt. Ltd. & Ors Vs. Ratnakar Bank Ltd. [W.P.(C) 1180/2017 & C.M. No. 5358/2017 (Stay), Delhi High Court, dtd. 29.05.2017, in fav our of revenue]**

### **Expansively interprets Sec. 132(1), allows third-party bank a/c attachment; Fumes over false affidavit**

Delhi HC upholds IT Department's action u/s 132(1) of the Income Tax Act directing the bank to attach the bank accounts of petitioners, pursuant to the search carried on in respect of the 'third person'; Delhi HC observes that "a person could be in possession of undisclosed income not only in his or her own account but in someone else's account"; Based on the facts, HC observes that prima facie there is a strong case made by the Department that the money in Petitioners' bank accounts is an undisclosed income of the 'third person' in respect of whom 'search' was carried out; HC places a broad interpretation on Sec 132(1) and holds that "The legislature has deliberately prefaced the words 'safe', 'locker', 'place', 'books of account' etc. with the word 'any' and not 'his' or 'her' or 'its'; HC therefore rejects Petitioners' claim that absent search warrant in their respective names and without finalised tax demand, IT Dept did not have a power u/s 132 read with Sec 132B to freeze their bank accounts based on third person's search; HC further holds that scope of Sec 132(1) is not restricted to 'cash' only but also covers 'bank account' ; HC also rejects petitioners' reliance on Sec 281B and upholds provisional attachment of bank account to protect Revenue's interest; While dismissing the petitions, HC imposes cost of Rs 1 lakh on each of the nine petitioners; HC concludes that "The Court is satisfied that both sets of Petitioners i.e., the 8 Petitioners in

W.P. (C) 1180 of 2017 as well as their AR, Mr. Praveen Pandey and Ms. Veena Singh, the Petitioner in W.P. (C) 2375 of 2017 have made deliberate false statements on oath and have also suppressed material facts in the pleadings before this Court with a dear attempt to mislead the Court; HC authorizes initiation of proceedings u/s 340 read with Sec 197 of Code of Criminal Procedure.

### Section 139AA – Quoting of Aadhaar number

**Binoy Viswam Vs. UOI & Ors. [Writ Petition (Civil) No. 247 of 2017, The Supreme Court of India, dtd. 09.06.2017, in fav our of revenue]**

### **Sec. 139AA survives constitutional-ity test, but retrospective operation impermissible; Non-Aadhaar holders get interim relief**

Black money menace & corruption weighs heavily on Apex Court's mind as a division bench upholds constitutional validity of Sec. 139AA of Income tax Act, that mandates compulsory quoting of Aadhar no. as a prerequisite for filing I-T returns; SC acknowledges at the very outset that the instant case falls in the basket of "hard cases", makes it dear that a law made by Parliament/Legislature can be struck down on only two grounds, namely i) The Parliament/Legislature lacks legislative competence to enact such a law ii) It violates fundamental rights enshrined under the Constitution, Apex Court observes " Merely because a section of persons opposes the law, would not mean that it has become a separate class by itself. What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. All income tax assesseees constitute one class and they are treated alike by the impugned provision." ; Accepts in toto Attorney General Mukul Rohatgi's submission that to

crack down on over 10 lakh duplicate PANs, Parliament embarked on the "de-duplication" exercise by legislating Sec. 139AA with the objective of ensuring "One PAN to one person" ; Also observes that the menace of black money and corruption has reached "alarming" proportions, quotes from SIT Report on Black Money as also a CBDT Committee which suggested that one singular proof of identity of a person for entering into business transactions may help in curbing this menace; Therefore SC upholds constitutional validity of Sec. 139AA vis-a-vis Article 14 & Article 19(1)(g), subject however to the outcome of Constitution bench case where the more stringent tests of whether Aadhaar violates the Right to Privacy and Right to Dignity, shall be decided; SC enforces Sec. 139AA for those assesseees who possess an Aadhaar card but grants partial relief to non-Aadhaar holders by staying the operation of the provision for them; Also reads down proviso to Sec. 139AA by making its operation prospective, holds that the proviso, that seeks to make PAN void ab initio ( as if the person had never applied for a PAN ) in case of failure to intimate Aadhar, would have " rippling effect of unsettling the settled rights of the parties.... It has the effect of undoing all the acts by a person on the basis of such a PAN.

### Section 145–Method of accounting

**Prn. CIT Vs. Purshottam B. Pitroda [(2017) 82 taxmann.com 18, Gujarat High Court, dtd. 03.05.2017, in fav our of assessee]**

### **AO wasn't justified in hiking GP ratio merely due to increase in turnover without considering other relevant facts**

Where in year under consideration, turnover of assessee had increased, Gross Profit Ratio would be lesser than

that of earlier year.

Merely because contractee agreed to pay diesel expenses to extent of 30 per cent, excess expenses above 30 per cent borne by assessee could not be disallowed.

**CIT Vs. M. I. Builders (P.) Ltd. [(2017) 81 taxmann.com 320, Allahabad High Court, dtd. 08.03.2017, in favour of assessee]**

### Enhancing value of stock-in-trade by crediting revaluation reserve isn't sham transaction to avoid tax

Where assessee transferred a plot from current asset to fixed asset account and valued same at market rate, there would be no receipt or accrual of income to assessee

### Section 148 – Issue of notice where income has escaped assessment

**Munir Ismail Voraji Vs. ITO [(2017) 82 taxmann.com 92, Gujarat High Court, dtd. 25.04.2017, in favour of assessee]**

### Reassessment solely on basis of DVO's report without conducting any enquiry to find out FMV was unjustified

Where DVO determined fair market value of land sold by assessee mechanically on basis of rate in case of other properties situated in same town planning scheme, reassessment solely on basis of such report and without any further inquiry was unjustified

### Section 194C – Payments to contractors

**DCIT Vs. Aroma De France [(2017) 82 taxmann.com 183, ITAT Ahmedabad bench, dtd. 08.05.2017, in favour of assessee]**

### Purchase of goods as per given specification isn't a works contract without supply of material to seller

Where assessee purchased printed packing material from a supplier for purpose of packing of its finished products and provided only specification for such supply and no raw material was supplied by it to supplier, transaction was in pursuance of a contract for 'sale' and not a contract for 'work' as alleged and thus, provisions of section 194C did not get triggered



### Chapter XIX-A Settlement of cases

**Rajiv Yashwant Bhale Vs. The Prn. Com. of IT [Writ Petition No. 3366 of 2017, Bombay High Court, dtd. 05.06.2017, in favour of revenue]**

### HC upholds property attachment, rejects immunity under Settlement Commission order sans conditions fulfilment

Bombay HC dismisses assessee-individual's (engaged in business of developing properties) writ, upholds attachment and sale of residential bungalow, allows special civil application by the intervener (auction-purchaser, who participated in the public auction and purchased assessee's property and accordingly has vital interest in the writ petition); Settlement Commission, vide order passed in December, 2011, had granted immunity to assessee qua penalty subject to meeting the tax demand within the stipulated time, however, as assessee defaulted in making installment payment as per the direc-

tions of Settlement Commission, Department attached assessee's properties; Rejects assessee's stand that since the order of settlement commission u/s. 245-I is termed as 'final and conclusive', Revenue was debarred from taking any action of attachment / prosecution, holds that such conditional order cannot be termed as conclusive; Further rejects assessee's stand that since the sale of attached property was effected in 2016 (i.e after the expiry of 3 years from the end of financial year 2011-12 during which the Settlement Commission order was passed), sale of immovable property was barred by limitation in view of Rule 68B of Schedule II of the IT Act; HC notes that while assessee himself pleaded extension of time to comply with the Settlement Commission's order, he is "now complaining that the sale of the attached property violates Rule 68B", remarks that "The petitioner..cannot blow hot and cold."

### Section 263–Revision of orders prejudicial to revenue

**MOIL Ltd. Vs. CIT [(2017) 81 taxmann.com 420, Bombay High Court, dtd. 26.04.2017, in favour of assessee]**

### No sec. 263 revision on ground that AO allowed CSR exp. without mentioning about it in assessment order

Where Assessing Officer allowed corporate social responsibility expenditure along with some other claims without specifically mentioning about corporate social responsibility expenditure in assessment order, Commissioner could not invoke revisional jurisdiction holding that order was passed without making any enquiry in respect of allowability of claim of corporate social responsibility.



## INTERNATIONAL TAXATION

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

**DCIT Vs. M. K. Shah Exports Ltd. [(2017) 81 taxmann.com 477, ITAT Kolkata bench, dtd. 12.05.2017, in favour of assessee]**

### **Libor to be used as benchmark rate for fixing ALP of loan transaction in foreign currency between AE's**

LIBOR rate has to be considered while determining arm's length rate of interest in respect of transactions of loan in foreign currency between associated enterprises and, in such a case, domestic prime lending rate would have no applicability.

**New Holland Fiat (I) (P.) Ltd. Vs. DCIT [(2017) 81 taxmann.com 337, ITAT Mumbai bench, dtd. 03.05.2017, in favour of assessee]**

### **TP adjustment to be made only in respect of international transaction with AE and not at entity level**

TP adjustments have to be made only in respect of international transactions entered into by an assessee with its AE and not at entity level.

**Akzo Nobel India Ltd. Vs. DCIT [(217) 81 taxmann.com 366, ITAT Kolkata bench, dtd. 03.05.2017, in favour of assessee]**

### **Services by AE couldn't be considered as stewardship services when it derived economic and commercial benefits.**

Where assessee established that services were received from AE in order to meet specific need to assessee and to derive economic and commercial benefits and as same were received on a continuous basis, it was erroneous to classify services as stewardship services; charges paid by assessee were

held to be at arm's length.

Where TPO determined payment made towards SAP by assessee to AE at nil without considering plethora of facts and details presented by assessee, construing services as stewardship services, TPO's approach was erroneous and said payment wasn't to be determined at nil.

### **Circulars/Notifications / Instructions**

**Notification No. 43/2017, dtd. 05.06.2017**

Vide the above notification, CBDT has notified all transactions of acquisition of equity share entered into on or after the 1st day of October, 2004 which are not chargeable to securities transaction tax except certain transaction. For detail please visit –

[http://www.incometaxindia.gov.in/communications/notification/notification43\\_2017.pdf](http://www.incometaxindia.gov.in/communications/notification/notification43_2017.pdf)

**Notification No. 44/2017, dtd. 05.06.2017**

Vide the above notification, Cost inflation index has been notified applicable from 01.04.2018 onwards. For detail visit –

[http://www.incometaxindia.gov.in/communications/notification/notification44\\_2017.pdf](http://www.incometaxindia.gov.in/communications/notification/notification44_2017.pdf)

**Notification No. 47/2017, dtd. 08.06.2017**

Vide the above notification, any bond redeemable after three years and issued on or after the 15th day of June, 2017 by the Power Finance Corporation Limited is notified as 'long-term specified asset' for the purposes of the section 54EC.

**Notification No. 48/2017, dtd. 08.06.2017**

Vide the above notification, form 26QC (Challan cum statement of deduction of tax under section 194IB) and form 16C (Certificate of TDS deducted u/s. 194IB) has been notified.

**Notification No. 50/2017, dtd. 09.06.2017**

Vide the above notification, it has been notified that where the variation between the arm's length price determined under section 92C of the Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% 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 2017-18 and assessment year 2018-19.

**Notification No. 52/2017, dtd. 15.06.2017**

Vide the above notification, time limit for computation of interest income pursuant to secondary adjustment & computation of interest has been prescribed. For detail please visit –

[http://www.incometaxindia.gov.in/communications/notification/notification52\\_2017.pdf](http://www.incometaxindia.gov.in/communications/notification/notification52_2017.pdf)

**Circular No. 19/2017, dtd. 12.06.2017**

Vide the above circular it has clarified that trade advance which are in the nature of commercial transactions would not fall within the word 'Advance' in section 2(22)(e) of the act.



### SERVICE TAX

**Mahadev Logistics Vs. Customs and Central Excise Settlement Commission [(2017) 81 taxmann.com 409, Chhattisgarh High Court, dtd. 12.04.2017, in fav our of assessee]**

#### Guilty mind is prerequisite for imposing penalty under service tax

Presence of mens rea is a necessary constituent for imposing penalty under section 78.

**Todays Petrotech Ltd. Vs. Joint Com. [(2017) 82 taxmann.com 130, Gujarat High Court, dtd. 13.04.2017, in fav our of assessee]**

#### 3 months would be considered as 3 calendar months and not 90 days for filing of an appeal to Commissioner

Expression 'three months' under section 85(3) cannot be considered to be 'ninety days' and it must be construed as three calendar months.

**Ex Maharani Mahendra Kumari Vs. Com. Of Central Excise & Service Tax [(2017) 81 taxmann.com 228, CESTAT New Delhi bench, dtd. 25.04.2017, in fav our of assessee]**

#### Premises let-out for running hotel business wasn't taxable under 'renting of immovable property' for service tax

Where assessee allowed IHCL to use her premises for running hotel business, she was not liable to pay service tax under category of 'renting of immovable property services'.

**Bhimas Hotels (P.) Ltd. Vs. UIO [(2017) 81 taxmann.com 183, Andhra Pradesh High Court, dtd. 23.03.2017, in fav our of assessee]**

#### Supply of food to workers of hotel at a subsidized rate did not amount to service

Where assessee, a restaurant, supplied food to its workers at a subsidized rate in an area outside restaurant, supply of

food to workers would not come within meaning of expression 'service' as defined in section 65B(44)

### CENVAT CREDIT

**My Home Industries Ltd. Vs. Com. Of Central Excise, Customs & Service Tax [(2017) 82 taxmann.com 34, CESTAT Hyderabad bench, dtd. 08.03.2017, in fav our of assessee]**

#### Manufacturer was eligible to credit of service tax paid on gardening services for maintaining green belt

Manufacturer of cement is eligible to CENVAT Credit of service tax paid on gardening services received by it for maintaining green belt as per government requirement.

In view of exclusion of renting of motor vehicle from definition of 'input service' from 1-4-2001, assessee would not be eligible to avail cenvat credit of service tax paid on hiring of tractors, for watering gardens

### Due Dates of key compliances pertaining to the month of June 2017:

6 <sup>th</sup> June	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of May
7 <sup>th</sup> June	TDS/TCS Payment for the month of May
10 <sup>th</sup> June	Excise Return
15 <sup>th</sup> June	PF Contribution for the month of May
15 <sup>th</sup> June	ESIC payment of for the month of May
21 <sup>st</sup> June	ESIC payment of for the month of May

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