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DIRECT TAXES

Judicial pronouncements

Sec. 10B – Special provision in respect of newly established hundred per cent export oriented undertaking

Riviera Home Furnishing Vs. ACIT [(2016) 65 taxmann.com 287, Delhi high Court, dtd. 19.11.2015, in favour of assessee]

Interest on FD is deductible under sec. 10B if FD is made to facilitate letter of credit and bank guarantee

Interest on FDRs which were under lien with Bank for facilitating letter of credit and bank guarantee facilities would qualify for deduction under section 10B.

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

CIT Vs. Karnataka State Industrial & Infrastructure Development Corpn. Ltd. [(2016) 65 taxmann.com 295, Karnataka high Court, dtd. 20.11.2015, in favour of assessee]

No sec. 14A disallowance if tax free investment wasn't made out of interest bearing funds

Disallowance made under section 14A, read with rule 8D, towards interest expenditure would not be tenable where Assessing Officer failed to establish a nexus between interest bearing funds and investment made.

Pr. CIT Vs. Bharti Overseas Pvt. Ltd. [TS-725-HC-2015, Delhi High Court, dtd. 17.12.2015, in favour of assessee]

HC upholds ITAT's Rule 8D interpretation on 'common' interest expenses, acknowledges incongruity in formula

HC upholds ITAT order, no Sec 14A disallowance for interest expenditure under Rule 8D(2)(ii) (which provides methodology for allocating interest expenditure, not directly attributable to any particular income) absent common interest expenditure; Upholds ITAT's interpretation of Rule 8D(2)(ii), ITAT had relied on Kolkata ITAT ruling in Champion Com-

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mercial which brought out incongruity in variable A of formula prescribed under Rule 8D(2)(ii) to the extent it doesn't exclude interest relatable to taxable income; Acknowledges that since intention of Rule 8D(2)(ii) is to allocate 'common interest expenses', not only interest directly attributable to tax exempt income, but also interest directly relatable to taxable income, to be excluded from variable 'A' in formula; Rejects Revenue's stand that ITAT cannot read down Rule 8D(2)(ii) on its own, clarifies that "What the ITAT has done in the present case instead is to follow its earlier decision in Champion Commercial (supra) ...ITAT did not on its own read down rule 8D (2) (ii)."; As entire interest expenditure was incurred for earning either taxable income or exempt income, HC concurs with ITAT that "no portion of interest really survives for allocation under Rule 8D(2)(ii)".

DCIT Vs. K. H. Arind (P.) Ltd. [(2015) 64 taxmann.com 409, Chennai ITAT bench, dtd. 26.06.2015, in favour of revenue]

CIT(A) can't make sec. 14A disallowance on ad-hoc basis without following method prescribed under rule 8D

When assessee itself admitted that a disallowance had to be made with regard to expenditure for earning of income which was exempted from taxation under Act, such expendi-

-ture had to be computed not on ad hoc basis by estimating same but as per method prescribed under rule 8D(2).

Sec. 24 – Deductions from income from house property

CIT Vs. Haryana Television Ltd. [(2016) 65 taxmann.com 72, Punjab & Haryana High Court, dtd. 08.09.2015, in favour of assessee]

Interest on loan is deductible under sec. 24 if loan is obtained to release a mortgaged house property

Where assessee undertook to pay loan of financial institutions as a condition for acquiring its mortgaged property, interest paid on such loan would be deductible under section 24(1)(vi) against rental income from said property

Sec. 37 - General

ACIT Vs. Dupen Laboratories Pvt. Ltd. [TS-730-ITAT-2015, Mumbai ITAT bench, dtd. 18.12.2015, in favour of assessee]

ITAT allows pharma company's expense on free medicine samples distributed to physicians

ITAT allows deduction u/s 37 for expenditure incurred by assessee (a pharmaceutical company) on distribution of free samples of medicines to physicians for AY 2010-11; Revenue had denied deduction relying on CBDT Circular No. 5/2012 (which disallows deduction for expenditure incurred in violation of Indian Medical Council Regulations); Accepting assessee's stand that expenditure was solely incurred for business purpose, ITAT explains that object of distributing free samples is to inform physicians about curative value of medicines and to create confidence amongst medical practitioners; Moreover notes that the real person who can create market for medicines are medi-

cal practitioners; Observes that "distribution of samples of medicines to the physicians free of cost cannot be parted with the business conducted by the assessee"

Sec. 41 – Profit chargeable to tax

ITO Vs. Sanghvi Fincap Ltd. [(2016) 65 taxmann.com 220, ITAT Ahmedabad bench, dtd. 14.05.2015, in favour of assessee]

Disputed liability not settled for long period couldn't be said to be ceased as per sec. 41(1)

Where assessee, engaged in trading of shares, purchased certain shares but same could not be transferred in its name due to some dispute and accordingly payment towards said shares was also not made, in spite of lapse of 12-13 years, there being nothing to suggest that there was remission or cessation of said liability during previous year, no addition could be made under section 41(1) on account of cessation of said liability.

Where Assessing Officer noticing shortage of closing stock of shares by 500 shares, added amount of said shares as unaccounted sales, in view of fact that such shortage was on account of transaction of purchase of certain shares in last month of year out of which there was short delivery of 500 shares at year end, addition was not justified.

Sec. 56 – Income from Other Sources

Pr. CIT Vs. Facor Power Ltd. [TS-3-HC-2016, Delhi High Court, dtd. 07.01.2016, in favour of assessee]

Pre Commencement interest inextricably linked with business set up and hence capital receipt

HC confirms ITAT order, holds interest on FDRs earned during pre-commencement period, a capital receipt being inextricably linked with setting up of power project.

Sec. 64 – Income of individual to include income of spouse, minor child, etc.

Rajendra Pathak Vs. ADIT [TS-764-ITAT-2015, Jaipur ITAT bench, dtd. 08.04.2015, in favour of assessee]

Clubbing provisions u/s 64 inapplicable on non-resident's capital gains from share transfer outside India

ITAT deletes income addition u/s 64 (clubbing provisions) in case of non-resident individual assessee, holds that capital gains arising from sale of shares registered in name of resident-wife cannot be clubbed in hands of assessee u/s 64; Assessee was allotted shares by his employer (a foreign company) under long term incentive plan which were registered in wife's name, AO sought to tax share-sale income in wife's hand (being Indian resident) and club the same in assessee's hand u/s 64; ITAT rules that Sec 64 not applicable on the transaction as assessee was a non-resident, and "even if it is presumed that these shares were transferred without any consideration to the wife.... same cannot be clubbed in the hands of the assessee as capital asset/capital gain arises/accrued outside India"; Moreover, holds that assessee, and not his wife, was real owner of shares since shares were allotted to assessee and on request were registered in wife's name, further conditions prescribed for vesting of shares were fulfilled by assessee; As shares (of a foreign company) were transferred outside India, ITAT concludes that no income accrued to non-resident assessee in India



Sec. 68 – Cash Credits

ITO Vs. Superline Construction Pvt. Ltd. [ITA No. 3645/Mum/2014, ITAT Mumbai bench, dtd. 30.11.2015, in favour of assessee]

In case of receipt of share application money from the alleged bogus shareholders, addition can only be made in the hands of the alleged bogus shareholders and not in the income of the company recipient

The Tribunal noted that on similar issue of receipt of share application money, the Supreme Court had in the case relied on by the assessee, held that such receipt cannot be regarded as the undisclosed income of the assessee company and in case the department has information about the alleged bogus shareholders, then the department should proceed to reopen the individual assessments of the investors. Further, taking into account the facts and circumstances of the case and other decision of the tribunals on a similar issue, the Tribunal upheld the order of the CIT (A) and the appeal filed by the Revenue dismissed.

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

Principal Commissioner of Income Tax Vs. APCO Motor (India) (P) Ltd. [(2016) 65 taxmann.com 12, Gujarat High Court, dtd. 12.10.2015, in favour of assessee]

High value shown in stock statement sent to banks couldn't be held as unexplained investment

Where revenue failed to establish that there was any difference in quantity of stock and Assessing Officer didn't make any enquiry in respect of explanation of assessee that stock belonging to another entity was included in stock statement submitted to bank, addition for unaccounted stock was liable to be deleted



Sec. 79 – Carry forward and set off of losses in the case of certain companies

Yum Restaurants (India) P. Ltd. Vs. ITO [ITA No. 388/2015, Delhi High Court, dtd. 13.01.2016, in favour of revenue]

Intra group share transfer triggers Sec. 79, Ultimate holding company not beneficial owner

HC upholds ITAT order, denies set off and carry forward of business losses u/s 79 owing to 100% change in shareholding of assessee-company during AY 2009-2010; Dismisses assessee's contention that despite change in shareholding, the ultimate holding company remained unchanged and hence loss set-off denial u/s 79 was not warranted; Notes that there was change in beneficial ownership of shares as predecessor and successor companies were distinct entities; Holds that although predecessor and successor companies were associate enterprises of ultimate holding company "there is nothing to show that there was any agreement or arrangement that the beneficial owner of such shares would be the holding company"

Sec. 80IA – Deduction in respect of profit and gains from industrial undertaking or enterprises engaged in infrastructure development, etc.

M.K. Auto Clutch Industries Vs ACIT [TS-754-ITAT-2015, Chandigarh bench, dtd. 21.12.2015, in favour of revenue]

Non-charging of partners' expenses results in extra-ordinary profits u/s 80IA(10), restricts tax holiday

ITAT dismisses assessee's appeal, upholds invoking of Sec 80IA(10) [which empowers AO to recompute reasonable profits & restrict the tax holiday] with respect to profits declared by assessee (a partnership firm) while claiming Sec 80IC deduction; Observes that assessee did not debit expenses for goodwill / technical know-how or partner's remuneration in P&L account; Takes note of Revenue's stand that by not paying salary to partners, assessee used knowledge of related concerns for technical know-how free of cost resulting in higher profits to assessee; ITAT rejects assessee's plea that in view of supplementary deed, it was mutually agreed that no remuneration shall be paid to partners for technical know-how, holds that assessee failed to provide any authentic documents in this regard; Accordingly, ITAT upholds Revenue's stand that "there was agreement / arrangement between the sister concerns to arrange their business in such a way that the assessee firm could get maximum profit and claim the same as deduction u/s 80IC of the Act ..."

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

CIT Vs. Karnataka Soaps & Detergents Ltd. [(2015) 64 taxmann.com 378, The Supreme Court of India, dtd. 16.11.2015, in favour of assessee]

No disallowance of actual exp. for computing MAT just because it was shown as deferred revenue exp. for shareholders

SLP dismissed against High Court's ruling that no disallowance of actual expenditure for computing MAT just because it was shown as deferred revenue expenditure for shareholders.



DIRECT TAXES

Judicial pronouncements (International Taxation)

Sec. 145 – Method of accounting

Pr. Commissioner of income Tax Vs. Bhawani Silicate Ind. [(2016) 65 taxmann.com 106, Rajasthan High Court, dtd. 30.07.2015, in favour of assessee]

No rejection of books of accounts just because qualitative records of stock was not maintained

Books of account could not be rejected merely because qualitative records was not maintained

Sec. 147 – Income escaping assessment

Gaurav Contract Co. Vs. DCIT [(2015) 64 taxmann.com 333, Gujarat High Court, dtd. 30.04.2015, in favour of assessee]

No reassessment could be made merely on basis of audit objections

Where while sending proposal for approval of reassessment, Assessing Officer maintained that audit objection raised by audit party that assessee being contractor, depreciation on dumper, lorries, etc. could not be allowed at rate of 30 per cent but at 15 per cent, was not acceptable, but he recorded said objection as reason to believe, reassessment was not valid

Sec. 234E – Fees for default in furnishing statements

Dundlod Shikshan Sansthan & anr Vs. UOI [TS-765-HC-2015, Rajasthan High Court, dtd. 28.07.2015, in favour of revenue]

HC upholds fees u/s. 234E pre 2015 amendment; levy not ultra vires

Rajasthan HC dismisses assessee's writ, upholds constitutional validity of Sec 234E (which levies fee for delay in filing TDS returns) even for period prior to Finance Act, 2015 amendments (amending Sections 200A, 246A and 272A w.e.f June 1, 2015); Dismisses

assessee's contention that in the absence of machinery provision for computation and appeal prior to Finance Act, 2015 amendments, Sec 234E levy was unjustified; Relies on Bombay HC ruling in Rashmikan Kundalia upholding constitutional validity of Sec 234E, holds that "simply because there was no remedy of filing appeal, the provisions of Section 234E cannot be said to be onerous"; Opines that "constitutional validity of the statutory provision is not amenable to challenge on the ground that the performance insisted upon by the statutory provision is too onerous or that the statute does not leave sufficient time or does not allow reasonable cause to be considered for violation of the provision", refers to SC ruling in Jindal Stainless Ltd. in this regard; HC concludes that "The absence of any provision for condonation of delay and the appeal prior to amendments also did not make the imposition of late fees by Section 234E to be ultra vires":



Sibia Health Care (P.) Ltd. Vs. DCIT [(2016) 65 taxmann.com 105, ITAT Amritsar bench, dtd. 09.06.2015, in favour of assessee]

Amendment made in sec. 200A allowing computation of fee u/s 234E while processing of TDS return is prospective

Prior to 1-6-2015, there was no enabling provision in section 200A for raising demand in respect of levy of fees under section 234E in respect of default in furnishing TDS statements

INTERNATIONAL TAXATION

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

Dow Agro Sciences Agricultural Products Ltd., In re [(2015) 65 taxmann.com 245, Authority for advance ruling, New Delhi, dtd. 11.01.2016, in favour of assessee]

No MAT on foreign Co. as it doesn't have PE in India; AAR follows Government's stand

Where a Mauritian Company a 100 per cent subsidiary of parent company proposed to transfer shares held by it in Indian company in favour of a company proposed to be incorporated in Singapore with an object of group reorganization, the transaction having begun almost 20 years back, it could not be said that it was for tax avoidance and, therefore profit arising from such transaction won't be subjected to tax in India in terms of Article 13 of DTAA between India and Mauritius. Further, applicant would not be liable to pay minimum alternate tax under provisions of section 115JB in absence of a PE in India. It was also held by the AAR that there will be no question of the applicability of section 92 to 92F, there will be no question of applicability of section 195 and since, proposed transfer of shares was not taxable in India, applicant was not required to file any return of income under section 139

Chapter X – Special provision relating to avoidance of tax

Deputy Director of Income Tax Vs. BOC Group Ltd. [(2015) 64 taxmann.com 386, ITAT Kolkata bench, dtd. 30.11.2015, in favour of assessee]

Edu. Cess and surcharge aren't leviable on tax rates provided in DTTAs

Surcharge and education cess is not leviable when tax rate is prescribed under DTAA.



Rain Commodities Ltd. Vs. ACIT [(2016) 65 taxmann.com 240, ITAT Hyderabad bench, dtd. 04.12.2015, in favour of assessee]

Domestic prime lending rate couldn't be used to benchmark transaction of loan given to foreign AE

Domestic prime lending rate would have no applicability and it is LIBOR rate which has to be considered while determining arm's length interest rate in respect of an International transaction

It would be appropriate to charge corporate guarantee fee at 0.50 per cent where assessee, through a common facilities agreement in connection with overseas acquisition of subsidiary companies, had provided corporate guarantee in favour of its AE

Circulars/Notifications / Instructions

Penalty u/s. 271(1)(c) is not attracted wherein addition / disallowances made under normal provision of the Income Tax Act, 1961 but tax levied under MAT provision u/s. 115JB/115JC for cases prior to A.Y. 2016-17 - Circular No. 25/2015 dtd. 31.12.2015

INDIRECT TAXES

Judicial pronouncements

CENTRAL EXCISE

Rajaram Steel Industries (P.) Ltd. Vs. Commissioner of Central Excise [(2016) 65 taxmann.com CESTAT Mumbai bench, dtd. 13.08.2015, in favour of assessee]

Excise dues couldn't be recovered from buyer if he hadn't purchased a property from tax defaulter

Excise dues couldn't be recovered from buyer if he hadn't purchased a property from tax defaulter.

CENVAT

Gujarat State Fertilizers & Chemicals Ltd. (Fiber Unit) Vs. Comm. of Central Excise, Custom and Service tax [(2016) 65 taxmann.com 283, Gujarat High Court, dtd. 06.01.2016, in favour of revenue]

No ST on sub-brokers if stock broker already paid tax on total brokerage amount

Where principally agreement is to appoint agent/stockist for storing and selling goods of assessee, such stockist would be 'commission agent' and not 'sales promotion agent'; hence, commission so paid to him is ineligible for credit.

Commissioner of Central Excise Vs. M. R. F. Ltd. [(2016) 65 taxmann.com 286, CESTAT Chennai bench, dtd. 26.03.2015, in favour of assessee]

No Cenvat reversal if packing material was cleared under bond for packing export goods

Where assessee had cleared cenvated packing materials under bond under CT-2 certificates to Export Processing Godown (EPG) for packing of export goods, no credit reversal was warranted thereon under rule 3 or rule 6.

Commissioner of Central Excise Vs. Grasim Ind. Ltd. [(2016) 65 taxmann.com 257, CESTAT Chennai bench, dtd. 09.07.2015, in favour of assessee]

Services received for planting trees to decrease pollution level in factory area is eligible input service

When assessee-manufacturer of cement was required to plant trees to prevent pollution in its factory area and paid service tax for such maintenance, it was entitled to input service credit.

Comm. of Central Excise Vs. P. K. Khandelwal & Co. [(2016) 65 tax-

mann.com 122, CESTAT Allahabad bench, dtd. 18.09.2015, in favour of assessee]

No ST on sub-brokers if stock broker already paid tax on total brokerage amount

Where service tax had been paid on total brokerages by main broker under 'stock-broker services', no tax could be demanded from sub-broker under same category

Department's attempt to classify sub-brokers under Business Auxiliary Services was rejected, when show-cause notice had proposed classification only under stock-broker services.

Kalpataru Power Transmission Ltd. Vs. Comm. of Central Excise & Ser. Tax [(2016) 65 taxmann.com 201, CESTAT Ahmedabad bench, dtd. 30.10.2015, in favour of assessee]

Time-limit to file refund claim won't apply on refund of service-tax which was deposited mistakenly

Double payment of service tax is a mere deposit and does not amount to payment of 'tax'; hence, time-limit of section 11B and principle of unjust enrichment would not apply to refund thereof

Comm. of Central Excise Vs. Nova Petrochemicals Ltd. [(2016) 65 taxmann.com 128, CESTAT Ahmedabad bench, dtd. 06.11.2015, in favour of assessee]

Manufacturer cum service provider can take credit of ST directly in ER-1 instead of routing it through ST-3

In case of an assessee being manufacturer cum service provider, credit of input services may be taken directly in ER-1 returns instead of taking it first in ST-3 and then, transferring to ER-3 return.

Garden Silk Mills Ltd. Vs. Comm. of Central Excise & Service Tax [(2016) 65 taxmann.com 101, CESTAT Ahmedabad bench, dtd. 08.12.2015, in favour of revenue]

Assessee couldn't suo-moto take credit of duty if it was paid during pending adjudication

Where assessee has paid duty pending adjudication using credit balance, said payment is payment of 'duty' and not mere 'deposit'; therefore, said payment cannot be taken as suo motu credit, same has to be claimed as refund under section 11B.

Principal Commissioner Vs. Essar Oil Ltd. [(2016) 65 taxmann.com 5, Gujarat High Court, dtd. 09.12.2015, In favour of assessee]

Services used for transportation of employees in connection with business are eligible input services

Services by way of hiring of vehicles to be used by employees: (a) for their movement within refinery premises or (b) for outward travelling in connection with business, is eligible for input service credit

Inox Leisure Ltd. Vs. Comm. of Central Excise & Ser. Tax [(2015) 64 taxmann.com, CESTAT Ahmedabad bench, dtd. 27.07.2015, in favour of assessee]

Assessee can exercise option under rule 6(3) of CCR even for prior periods

There is no bar for making as per prescribed percentage payment on value of exempted services for prior period where it may not be feasible to segregate quantum of input services pertaining to dutiable & exempted services

Comm. of Central Excise & Ser. Tax Vs. Miranda Tools [(2016) 65 taxmann.com 88, CESTAT Ahmedabad bench, dtd. 18.12.2015, in favour of

assessee]

Mobile phone and courier services used for business purposes are eligible for credit

Mobile phone services availed for mobile phones allotted to senior executives for assessee-company work are eligible for input service credit, where connections and bills are in name of assessee-company.

Courier services meant for dispatch of documents/bills/correspondences as well as for dispatch of goods/samples are eligible for input service credit.

Comm. Vs. Reliance Ports & Terminals [(2015) 63 taxmann.com 135, Gujarat High Court, in favour of assessee]

Show Cause Notice is the foundation in the matter of levy and recovery of duty, penalty and interest

Show Cause Notice is the foundation in the matter of levy and recovery of duty, penalty and interest and therefore demand cannot be confirmed on the grounds which are not raised in the Show Cause Notice..

Vodafone India Ltd. Vs. CCE, Mumbai -II [(2015) 40 STR 422, Bombay High Court]

Statutory interpretation by one Bench of High Court is binding on Co-ordinate bench of that very High Court

Statutory interpretation by one Bench of High Court is binding on Co-ordinate bench of that very High Court and subsequent Bench cannot hold that particular provision was misinterpreted and re-interpret it again. The only recourse in such case is to refer the matter to Larger Bench. The way forward for appellant/respondent is to appeal before a Superior Court.

SERVICE TAX

JSW Steel Ltd. Vs. Commissioner of Service Tax [(2016) 65 taxmann.com 203, CESTAT Chennai bench, dtd. 09.11.2015, in favour of revenue]

Processing fees paid to foreign bank for arranging borrowings is liable to service-tax under reverse charge

Processing fee paid to foreign banks for arranging External Commercial Borrowings, is liable to service tax under reverse charge under Banking and other Financial Services.

Mastermind Classes (P.) Ltd. Vs. Comm. of Central Excise [(2016) 65 taxmann.com 112, CESTAT New Delhi bench, dtd. 19.11.2015, in favour of assessee]

Coaching institute not liable to service-tax on book sold to students if same is separately invoiced

Where sale of study materials was shown separately in invoice, assessee was eligible for benefit of exemption in respect of said sale under Notification No. 12/2003-ST; hence, value of study material would not form part of value of coaching services

ITL Tours & travels (P.) Ltd. Vs. Comm. of Ser. Tax [(2016) 65 taxmann.com 25, CESTAT Mumbai bench, dtd. 20.10.2015, in favour of revenue]

Penalty levied on co. as its directors tried to evade service tax with help of internal auditors

Where internal auditor of company perpetrated fraud by booking 'service tax due' as 'income'/commission' in books of account and it was found that directors of company were aware thereof, company was liable to evasion penalty for consequent non-payment of service tax



Emerald Leisures Ltd. Vs. Commissioner of Ser. Tax [(2015) 64 taxmann.com 398, Authority of Advance Ruling, New Delhi, dtd. 11.09.2015, partly in favour of assessee]

Refundable deposits collected by Club from its members isn't liable to service-tax

Provision of a facility by club to its members is an 'activity' for consideration and since clubs and members are deemed to be separate persons under Explanation 3(a) to section 65B(44), Membership fee/Entrance fee for provi-

sion of such facilities is liable to service tax

Refundable deposits taken as 'security' is not consideration for services and further, there is no provision for taxing notional interest thereon; hence, said deposits and notional interest thereon cannot be charged to service tax.

Principal Commissioner of Ser. Tax Vs. Tops Securty Ltd. [(2015) 64 taxmann.com 376, Delhi high Court, dtd. 05.12.2015, in favour of revenue]

Reduced penalty under service tax laws must be paid within 30 days of

'adjudication order' and not 'appellate order'

Adjudicating authority imposing penalty under section 78 need not spell out option to pay reduced penalty in adjudication order itself and adjudication order cannot be regarded as invalid.

To avail benefit of reduced penalty, payments must be made within 30 days from 'adjudication order' and not within 30 days from 'appellate order'; therefore, appellate authority cannot extend benefit of reduced penalty at appellate stage.

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

5 th February	Payment of Service Tax & Excise duty for the month of January
6 th February	Payment of Service Tax & Excise duty paid electronically through internet banking for the month of January
7 th February	TDS/TCS Payment for the month of January
10 th February	Excise Return ER1/ER2/ER6
15 th February	PF Contribution for the month of January
21 st February	ESIC payment of for the month of January

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