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SNK Newsletter

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DIRECT TAXES

Judicial pronouncements

Sec. 11 – Income from property held for charitable or religious purposes

Hiranandani Foundation Vs. Asst. Director of Income Tax [(2016) 70 taxmann.com 321, ITAT Mumbai bench, dtd. 27.05.2016, in fovour of assessee]

Profits earned by Pharmacy shop in hospital are also exempt under sec. 11

Where assessee was a registered charitable hospital and its pharmacy shop was specially used for its internal use, assessee was not hit by sub-section (4A).

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

Allahabad Bank Vs. DCIT [ITA No. 1199/Kol/2012, ITAT Kolkata bench, dtd. 01.06.2016, in fovour of assessee]

Rule 8D not automatic upon rejecting assessee's working, AO may adopt 'reasonable' parameter

Kolkata ITAT accepts assessee's Sec 14A disallowance working for AY 2008-09, as AO failed to provide reasons for rejecting assessee's claim; Overturns CIT(A)'s conclusion that Rule 8D has to be mandatorily applied in cases relating to AY 2008-09 and subsequent years, clarifies that it is not mandatory for AO to apply Rule 8D the moment he rejects assessee's basis of disallowance, opines that AO is free to make the disallowance on any reasonable basis; Rules that "it is only when no reasonable and proper parameters for making disallowance can be arrived at, that resort to Rule 8D (2) can be had by the AO. .. Rule 8D is not automatic and can be resorted to by the AO only as a measure of last resort.."; With respect to interest disallowance under Rule 8D (2)(ii), ITAT notes that assessee had sufficient 'own' funds, hence ITAT deletes disallowance relying on Bombay HC ruling in Reliance Utilities and Power Ltd. and UTI Bank, Gujarat HC ruling in Gujarat Power Corporation; Also, ITAT deletes disallowance under Rule 8D(2)(iii) as Revenue did not dispute the correctness of amount of disallowance as computed by assessee, relies on Calcutta HC rulings in Ashish Jhunjhunwala in G.A and R.E.I.Agro Ltd.

Sec. 37 – General

S. R. Thorat Milk Products (P.) Ltd. Vs. ACIT [(2016) 70 taxmann.com 261, ITAT Pune bench, dtd. 20.05.2016, in favour of assessee]

Interest paid on share application money is revenue expenditure

Share application money cannot be equated with share capital as obligation to return money is always implicit in event of non-allotment of shares; hence, interest paid on share application money pending allotment of shares would be allowable as revenue expenditure.

Sec. 45 – Capital Gain

Ashok Gordhandas Kirpalani Vs. ITO [ITA No. 1646/PN/2014, ITAT Pune bench, dtd. 27.05.2016, in favour of assessee]

Land contribution to AOP under JV-agreement not taxable u/s 45(3) absent transfer

Pune ITAT allows assessee's appeal (individual land-owner) for AY 2009-10, deletes addition on account of capital gains on receipt of security deposit pursuant to a joint venture agreement ('JVA'); Revenue assessed value of security deposit as capital gains on the ground that assessee's contribution of land to the AOP (formed for development of land) amounted to transfer of capital asset; On perusal of the JVA, ITAT notes that assessee had not transferred land to the AOP but it was a case of joint pooling of resources by three different parties wherein assessee contributed land (on which development was to be carried out) whereas other members contributed TDR rights, finance, etc.; Also notes that security deposit was subsequently refunded by the assessee to the developer, further the transaction as such was accepted by the Revenue in the hands of one of co-owners of land; With regards to CIT(A)'s action of invoking Sec.45(3) (which provides for taxability of gains arising on transfer of asset by a member to the AOP by way of capital contribution) rules that "where the asset held by the assessee has not been transferred to the AOP, there is no question of charging any income from capital gains in the hands of assessee in this regard under section 45(3) of the Act."

Sec. 48 – Mode of Computation

Captain B L Lingaraju Vs. ACIT [ITA No. 906/Bang/2014, ITAT Bangalore bench, dtd. 27.04.2016, in favour of revenue]

Bangalore ITAT rejected home-loan interest double-dip; Interest not 'cost' in computing capital gains

Bangalore ITAT denies deduction u/s 48 for home-loan interest while computing short term capital gains on transfer of house-property during AY 2009-10; Notes that the property in question was self occupied house property and interest expenditure was allowed as deduction u/s. 24(b) in earlier years; Rules that "interest on housing loan is definitely allowable while computing income under the head 'house property' and therefore, even if the same is not actually claimed or allowed, it cannot result into allowing addition in the cost of acquisition."; Relies on jurisdictional HC ruling in Maithreyi Pai

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

Mrs. V. R. Usha Vs. ITO [(2016) 70 taxmann.com 340, ITAT Chennai bench, dtd. 12.05.2016, in favour of assessee]

No denial of sec. 54F relief due to two houses if taxpayer had partial interest in one of the houses

Where ownership of assessee over property was subject to life interest retained by her mother in said property, it could not be said that assessee owned said property fully and it could not be a reason to deny exemption under section 54F claimed by assessee on sale of her another property

Sec. 56 – Income from Other Sources

Deputy Commissioner of Income Tax Vs. Dr. Rajan Pai [ITA No. 1290/Bang/2015, ITAT Bangalore bench, dtd. 29.04.2016, in favour of assessee]

Receipt of bonus-shares, though without consideration, not taxable u/s 56(2)

Bangalore ITAT dismisses Revenue's appeal, bonus shares received by assessee during AY 2012-13 does not result in 'receipt of property without consideration' as envisaged u/s 56(2)(vii)(c); Revenue had considered Fair Market value of bonus shares received by assessee and made addition u/s 56(2)(vii)(c) applying Rule 11 UA(B); Accepts assessee's stand that issue of bonus shares did not result in any increase or decrease in the wealth because as a shareholder, assessee's percentage in total equity shares of the company remained constant, cites Mumbai ITAT ruling in Sudhir Menon HUF; Further notes that clauses (v) to (vii) were introduced in Sec 56(2) subsequent to repeal of Gift-tax Act for redressing the vacuum created on account of such repeal, holds that the legislative intention was not to include any item therein not falling within the ambit of Gift-tax Act; Keeping in mind the legislative history, ITAT holds that Sec 56(2)(vii) cannot be applied to bonus shares, also clarifies that "Valuation of unquoted shares set out in Rule 11 UA (B) will have applicability only on receipt of shares as gift or for inadequate consideration."

Sec. 68 – Cash Credit

ITO Vs. M/s. Indravadan Jain HUF [ITA No. 4861/Mum/2014, ITAT Mumbai bench, dtd. 27.05.2016, in favour of assessee]

Long-term capital gains arising from transfer of penny stocks cannot be treated as bogus merely because SEBI has initiating an inquiry with regard to the Company & the broker if the shares are purchased from the exchange, payment is by cheque and delivery of shares is taken & given

ITAT Mumbai held that since the appellant has purchased shares from the exchange, payment is by account payee cheque, delivery of shares is taken, contract of sale was also complete as per Contract Act and nowhere the AO has alleged that the transaction by the assessee with these particular broker or share was bogus, merely

because the investigation was done by SEBI against broker or his activity, assessee cannot be said to have entered into ingenuine transaction, insofar as assessee is not concerned with the activity of the broker and have no control over the same.

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

M/s. Anand Food and Dairy Products Vs. ITO [Tax Appeal No. 174 to 176/2016, Gujarat High Court, dtd. 30.03.2016, in favour of revenue]

Guj. HC strictly interpreted "initial AY'; Adopts undertaking commencement year for Sec. 80IB(11) benefit

Gujarat HC dismisses assessee's appeal for AY 2007-08 to 2009-10, upholds Revenue's contention that assessee was entitled to deduction u/s 80IB(11A) only upto 25% of eligible profits; Notes that undertakings like assessee which derive income from business of processing, preservation and packaging of vegetables and fruits became entitled to deduction u/s 80IB (11A) w.e.f April 1, 2005 and such deduction was available at 100% of profits for the first 5 years from 'initial AY' and at 25% thereafter; Considering that the term 'initial AY' has been defined u/s 80IB(14)(c)(iv) to mean the AY relevant to the previous year in which eligible business is commenced, HC opines that "the fact that the units like the assessee came to be included for entitlement to the benefit of deduction section 80IB(11A) of the Act only with effect from 1st April, 2005 would not change the "initial assessment year"; Thus, rejects assessee's claim that AY 2005-06 which was the AY in which the relevant provision became effective ought to be considered as 'initial AY' and it should be granted deduction at 100% of eligible profits for 5 years commencing from that year; Explains that "in a taxing statute, the provisions have to be construed strictly and there is no room for equity therein" and since 5 years had already elapsed from initial AY, assessee was entitled to deduction at only 25% of eligible profits.

Sec. 115BBE – Tax on income referred to in sec. 68 or Sec. 69 or Sec. 69A or Sec. 69B or Sec. 69C or Sec. 69D

Sh. Satish Kumar Goyal Vs. JCIT [ITA No. 143/Ag/2014, ITAT Agra bench, dtd. 04.05.2016, in favour of assessee]

ITAT Agra bench allowed business loss set-off against deemed income u/s 68; Amended Sec 115BBE prospective

Agra ITAT upholds AO's action of taxing such income u/s 68, but observes that such income shall be assessable as income from other sources ('IFOS') relying on Gujarat HC ruling in Radhey Developers India Ltd.; Observes that all incomes are required to be classified under 5 headsas contemplated u/s 14 and since deemed income u/s 68 is not chargeable under the first four heads namely, salary, house property income, business income and capital gains, it is to be treated as IFOS; Further holds that Sec. 71 does not deny set-off of business losses against IFOS, notes that "specific denial of the set off was brought prospectively by the legislature in section 115BBE.."

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

Surat textiles Mills Ltd. Vs. Deputy Commissioner of Income Tax [(2016) 70 taxmann.com 158, ITAT Ahmedabad bench, dtd. 23.05.2016, in fovour of assessee]

Unabsorbed depreciation deductible from book profits even if it was adjusted under rehabilitation Scheme

Adjustment of unabsorbed depreciation under rehabilitation scheme approved by BIFR does not effect computation of book profits under section 115JB.

Owens Corning (India) P. Ltd. Vs. DCIT [ITA No. 8522/Mum/2011, ITAT Mumbai bench, dtd. 22.04.2016, in favour of assessee]

TP-addition to book profits impermissible; Sec 115JB self-contained code, separate from Chapter-X provisions

Mumbai ITAT rejects addition on account of TP adjustment of Rs. 1.30 crores to the amount of book profits under minimum alternate tax (MAT) provisions, holds that, "There is no such provision under the law that permits the AO to make adjustment on account of transfer pricing addition to the amount of profit shown by the assessee in its profit and loss account, for the purpose of computing book profit u/s 115JB"; Notes that Sec 115JB is self-contained code which prescribes certain adjustments permissible to book profit, whereas TP adjustments are governed by altogether different sets of provisions contained in Chapter X

Sec. 133 – Power to call for information

Pattambi Service Co. Op. Bank Ltd. Vs. Union of India [WA No. 524 of 2015, Kerala High Court, dtd. 24.05.2016, in favour of revenue]

Kerala High Court dismiss co-operative banks' challenge to Sec 133(6) amendment, rejects 'privacy' infringement plea

Kerala HC Division bench upholds Single Judge order dismissing co-operative banks' (petitioners') challenge to the constitutional validity of amendment by Finance Act, 1995 to Sec 133(6) whereby words "inquiry" were added to expand power to call information even in cases where no proceedings were

pending. HC observes that " When a legislation, especially one in the fiscal realm is being examined by courts to check whether it infringes the right of individuals to privacy in own affairs, it has to be borne in mind that the larger public and economic interest of nation is to be balanced against such right to privacy"; HC further holds that "All decisions which have espoused the right to privacy have been cautious in pointing out that suchrights would not extend to militate against right of the State to gather information under its fiscal administration". HC notes Single Judge's observation that right to privacy cannot be pleaded as a ground to invalidate a provision of the Income Tax Act, especially where the avowed object of the provision was to get details of financial transactions which could be associated with black money.

Sec. 194A – TDS on Interest other than "Interest on securities"

Neo Sports Broadcast (P.) Ltd. Vs. Commissioner of Income Tax (TDS) [(2016) 69 taxmann.com 422, ITAT Mumbai bench, dtd. 19.02.2016, in favour of assessee]

No TDS under sec. 194A on reimbursement of bank commission to holding co. against bank guarantee

Where a holding company provided bank guarantees for benefit of assessee, its reimbursement by assessee would not come under purview of interest so as to make assessee liable to TDS under section 194A.

Sec. 194J – TDS on Fees for professional or technical services

Red Chillies Entertainment Pvt. Ltd. Vs. Asst. Commissioner of Income Tax [ITA No. 5271/Mum/2013, ITAT Mumbai bench, dtd. 31.05.2016, in favour of assessee]

Sec 194J TDS inapplicable on payments in "kind"

Mumbai ITAT deletes expense disallowance u/s 40(a)(ia) in case of Red Chillies Entertainment Pvt. Ltd. for AY 2010-11, holds no Sec 194J TDS for payments made in "kind" to actors; Notes that assessee (a production house) gifted certain items to two actors for working in its film "Billu Barber" instead of making payment in money terms; Rejects Revenue's stand that Sec 194J TDS would be applicable on such gifts which were in the nature of 'professional fees' payment; Relies on SC ruling in Shri H.H. Sri Rama Verma and Karnataka HC rulings in Bruhat Bangalore Mahanagar Palika and Hindustan Lever Ltd to hold that the expression "any sum" used in Sec 194J would only relate to payment made in money terms; Rules that "since the payment made by the assessee is in kind, the provisions of section 194J are not applicable".

Sec. 271 – Penalty for failure to furnish returns, comply with notices, concealment of income, etc.

N. G. Technologies (In Liquidation) Vs. Commissioner of Income tax [(2016) 70 taxmann.com 37, The Supreme Court of India, dtd. 18.04.2016, in favour of revenue]

Penalty was to be imposed on taxpayer as he had shown capital loss in ITR under Profit and Loss Account

SLP dismissed against High Court's ruling that where against basic principle of accountancy, assessee claimed capital loss on sale of fixed assets in profit and loss account and had not revised return voluntarily, penalty for concealment of income was justified.

INTERNATIONAL TAXATION

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

Ansaldo Energia SPA Vs. CIT [TA No. 19 to 21 of 2016, Madras high Court, dtd. 20.04.16, in favour of assessee]

Tax-refunds a 'debt claim', interest on such refund exempt under Indo-Italy DTAA

Madras HC reverses ITAT order, holds that interest on income-tax refund arising to assessee (an Italy-based company) u/s 244A is not taxable in India under Article 12(3)(a) of India-Italy DTAA (which exempts 'interest' from taxation where payer is Government); Rejects ITAT view that Sec 244A interest was not covered under definition of term 'interest'under Article 12(4) of DTAA and hence did not qualify for exemption under Article 12(3)(a); Holds that refund payable by Govt.qualifies as a debt claim and thus, interest on such refund would qualify as 'interest' in terms of definition under Article 12(4).

Chapter X – Special provisions relating to avoidance of tax

Transcend MT Services (P.) Ltd. Vs. ACIT [(2016) 70 taxmann.com 388, ITAT Delhi bench, dtd. 28.06.2016, in favour of revenue]

TP provisions can be invoked even for 100% EOU enjoying tax holiday under sec. 10A

Transfer pricing provisions can be invoked even in case of an assessee which is a 100 per cent export oriented unit under software technology park scheme and enjoys a tax holiday under section 10A.

Baba Global Ltd. Vs. Deputy Com. of Income Tax [(2016) 70 taxmann.com 338, ITAT Delhi bench, dtd. 05.05.2015, in favour of revenue]

Loan advanced in foreign currency to be benchmarked using LIBOR and not prime lending rate of SBI

Loan having been advanced by assessee to its AE in foreign currency, rate of interest had to be with reference to foreign currency in which loan had been advanced i.e., LIBOR; not prime lending rate of SBI.

Lason India (P.) Ltd. Vs. Joint Commissioner of Income Tax [(2016) 70 taxmann.com 259, ITAT Chennai bench, dtd. 27.05.2016, in favour of revenue]

Payment couldn't be treated as pass through cost for TP proceedings when payment wasn't made on behalf of AE

Where assessee having received data entry work from its AE, got it done through its subsidiaries, since assessee had made payments to them on its own account and not on behalf of AEs, said payments could not be treated as pass through cost and, thus, TPO was justified in including those payments to operating cost while computing PLI.

In case of assessee rendering data conversion services to its AE, a persistent loss making company and a company in whose case extraordinary event of amalgamation took place during relevant year, could not be accepted as comparables for determining ALP.

Joint Commissioner of Income Tax Vs. Suttati Enterprise (P.) Ltd. [(2016) 70 taxmann.com 17, ITAT Pune bench, dtd. 29.04.2016, in favour of assessee]

An entity couldn't be deemed as AE just because it was exclusively manufacturing goods for other enterprise

Where there is no connection by way of participation in management or control or capital by entities or its subsidiaries, either directly or indirectly between two enterprises, they can not be said to be associated enterprises and provision of Chapter X of Act cannot be applied

Circulars/Notifications / Instructions

Notification No. 53/2016, dtd. 24.06.2016

Vide the above notification rule 37BC has been incorporated for giving relaxation from deduction of tax at higher rate under Sec. 206AA in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset if the deductee furnished the following details-

- name, e-mail id, contact number
- address in the country or specified territory outside India of which the deductee is a resident
- a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate
- Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident

Notification No. 54/2016, dtd. 27.06.2016

Vide the above notification, CBDT has notified rule 128 for foreign tax credit and has also notified form No. 67 [Statement of income from a country or specified territory outside India and foreign tax credit.

Notification No. 55/2016, dtd. 28.06.2016

Vide the above notification CDBT has notified rules in respect of –

- Fair market value of assets for the purposes of clause (i) of sub-section (1) of section 9 (Rule 11UB)
- Determination of income attributable to assets in India (Rule 11UC)
- Information or documents to be furnished under Sec. 285A (Rule 114DB)

Further Form No. 3CT [Income attributable to assets located in India under Sec. 9 of the Income Tax Act, 1961] & form No. 49D [Information and documents to be furnished by an Indian concern under sec. 285A] has also been notified.

Press Release dtd. 06.07.2016

Income Computation and Disclosure Standards (ICDS) deferred for one year and would be applicable from 01.04.2016 i.e. previous year 2016-17.

Circular No. 24 & 25/2016, dtd. 27.06.2016 & 30.06.2016

CBDT issued FAQs on Income Declaration Scheme. For detail please visit –

http://www.incometaxindia.gov.in/communications/circular/circular242016.pdf

http://www.incometaxindia.gov.in/communications/circular/circular252016.pdf

CENTRAL EXCISE

Comm. of Central Excise Vs. Ganpati Rollings (P.) Ltd. [(2016) 70 taxmann.com 257, Delhi high Court, dtd. 31.05.2016, in favour of assessee]

Penalty not leviable under Rule 25 of Excise until intention to evade duty is proved

Since rule 25 of the Central Excise Rules, 2002 is 'subject to provisions of section 11AC', hence, penalty under rule 25(1)(b) for non-accountal of finished excisable goods, cannot be levied without finding that there was intent to evade duty warranting invocation of section 11AC.

Jyoti Structures Ltd. Vs. Comm. of Central Excise [(2016) 70 taxmann.com 192, CESTAT Mumbai bench, dtd. 09.10.2015, in favour of assessee]

Activity of erection of transmission line towers doesn't amount to manufacture

Where assessee was engaged in activity of erection of transmission line towers, process undertaken by it, viz., punching, welding, trimming, drilling of holes, level cutting of edges and galvanizing, did not amount to manufacture

CENVAT CREDIT

Commissioner of Central Excise Vs. Sandvik Asia Ltd. [(2016) 70 taxmann.com 316, CESTAT Mumbai bench, dtd. 06.10.2015, in favour of assessee]

No Cenvat reversal merely because of conversion of unit into EOU

Conversion of a unit into EOU does not amount to 'removal' of inputs in stock; hence, no Cenvat reversal is to be made on inputs lying in stock on date of conversion into EOU.

Comm. of Central Excise Vs. K. B. Chougula [(2016) 70 taxmann.com 279, CESTAT Mumbai bench, dtd. 31.03.2016, in favour of revenue]

Onus of establishing that inputs have been received is on person taking credit and not on revenue

As per rule 9(5), onus of establishing that inputs have been received is on person taking credit; hence Commissioner (Appeals) cannot place onus on revenue to establish that inputs have not been received.

Red Hat India (P.) Ltd. Vs. Principal Commissioner, Service Tax [(2016) 70 taxmann.com 132, CESTAT Mumbai bench, dtd. 09.05.2016, inn favour of assessee]

Works contract services used for maintenance of office equipment are eligible input services

Works Contract Services used for maintenance of office equipment and building is not excluded from definition of input service and hence, same is eligible for input service credit.

SERVICE TAX

Sanjay Automobile Engineers (P.) Ltd. Vs. Commissioner of Central Excise [(2016) 70 taxmann.com 59, CESTAT Mumbai bench, dtd. 13.04.2016, in favour of assessee]

Extended period can't be invoked where no objection is raised on impugned issue during course of audit

Once audit takes place and no objection is taken as to taxability of certain sums received by assessee, then, demand of service tax raised on said sums by invoking extended period is unsustainable

Rent Works India (P.) Ltd. Vs. Commissioner of Central Excise [(2016) 70 taxmann.com 38, CESTAT Mumbai bench, dtd. 15.04.2016, in favour of assessee]

Services rendered by director aren't liable to service-tax if his remuneration is taxed as salary

Where amount paid to director is considered as 'salary' for income-tax purposes, then, same cannot be considered as 'service' for service tax purposes and cannot, therefore, be charged to service tax.

N. Bala Baskar Vs. Union of India [(2016) 70 taxmann.com 151, Madras High Court, dtd. 07.04.2016, in favour of revenue]

Construction carried out by builder under joint development agreement amounts to construction services

Joint Development agreement where : (a) landowner hires builder to provide carry out construction; and (b) in return, landowner pays consideration by way of transfer of 35 per cent undivided share in its land, amounts to construction services.

Chhattisgarh State Co-operative Marketing Federation Ltd. Vs. Comm. of Central Excise & Service Tax [(2016) 70 taxmann.com 215, CESTAT New Delhi bench, dtd. 12.05.2016, in favour of assessee]

No interest under section 73B if service tax amount is paid before issuance of notice

If 'amounts collected in name of service tax' have been paid even prior to issuance of notice, then, there is no requirement of notice/adjudication under section 73A(3)/(4) and thus, there cannot be any levy of interest under section 73B.

Benzy Tours & travels (P.) ltd. Vs. Comm. of Service tax [(2016) 70 taxmann.com 167, CESTAT Mumbai bench, dtd. 11.03.2016, in favour of revenue]

Limitation period to claim refund is also applicable when assessee has paid tax mistakenly on non-taxable services

Since question of refund arises only after tax is collected without authority of law, hence, every refund (even on non-taxable service) is governed by section 11B and time-limit thereof.

Blossom Industries Ltd. Vs. Comm. of Central Excise, Custom and Service tax [(2016) 70 taxmann.com 193, CESTAT Ahmedabad bench, dtd. 01.09.2015, in favour of assessee]

Expenses reimbursed by job-worker and profit returned to principal are not includible in value of job work services

Where assessee was manufacturing Beer for one 'U' on job work basis, amount of surplus/profit returned to 'U' and other reimbursable expenses paid to assessee, covered under rule 5(1) of Service Tax (Determination of Value) Rules, could not be included in taxable value for payment of service tax

Sanjay Automobile Engineers (P.) Ltd. Vs. Commissioner of Central Excise [(2016) 70 taxmann.com 59, CESTAT Mumbai bench, dtd. 13.04.2016, in favour of assessee]

Extended period can't be invoked where no objection is raised on impugned issue during course of audit

Once audit takes place and no objection is taken as to taxability of certain sums received by assessee, then, demand of service tax raised on said sums by invoking extended period is unsustainable.

AKQA Media India (P.) Ltd., In re [(2016) 69 taxmann.com 390, The Authority of Advance Ruling (Central Excise, Customs and Service tax) , New Delhi, dtd. 22.04.2016, in favour of assessee]

Volume discounts earned by advertising agencies from media-owners are not liable to service tax

Incentives/volume discounts given by media owners to advertising agencies are 'gratuitous payments' and there is no 'activity'/'contractual relationship' between advertising agencies and media owners to warrant such incentives/ discounts; hence, such incentives/ discounts cannot be charged to service tax.

Giriraj Construction Vs. Comm. Of Central Excise & Customs, Service Tax [(2016) 70 taxmann.com 303, CESTAT Mumbai bench, dtd. 05.05.2016, in fovour of revenue]

Refund of tax paid on non-taxable services is also governed by time limit of section 11B

Only provision which deals with refund of any refundable amount is Excise section 11B, which is applicable to service tax vide section 83 of the Finance Act, 1994; hence, refund claim for sum wrongly paid as 'service tax' on non-taxable services would be governed by time-limit of section 11B

Circulars/Notifications / Instructions

Circular No. 1032/20/2016-CX, dtd. 28.06.2016

Vide the above circular, it has been clarified that assessee acting in dual capacity of importer and First Stage Dealer may have common registration.

Notification No. 35/2016-ST, dtd. 23.06.2016

No Krishi Kalyan Cess is applicable if invoice was issued before 01.06.2016 and service was also completed before that date.

Notification No. 36/2016-ST, dtd. 23.06.2016

No service-tax on transportation of goods by a vessel from abroad if invoice is issued before June 1, 2016 subject to the condition that the import manifest or import report required to be delivered under section 30 of the the Customs Act, 1962 (52 of 1962) has been delivered on or before the 31st May, 2016 and the service provider or recipient produces Customs certified copy of such import manifest or import report.

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

6th July	***Payment of Service Tax & Excise duty paid electronically through internet banking for the month of June***
7th July	***TDS/TCS Payment for the month of June***
10th July	***Excise Return ER1/ER2***
15th July	***Due date for filing TDS return for 1st quarter Ending on 30th June***
15th July	***PF Contribution for the month of June***
21st July	***ESIC payment of for the month of June***
30th July	***Due date for issue of TDS certificates in Form 16A in respect TDS on payments (except salaries) deducted during quarter ending 30th June***
31st July	***Due date for filing return of income for A.Y. 2016-17 for non corporate assessees whose accounts are not required to be audited***