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SNK Newsletter

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DIRECT TAXES

Judicial pronouncements

Section 2 – Definitions

CIT Vs. Air Cargo Agents Association of India [ITA No. 2455 of 2013, Bombay High Court, dtd. 31.03.2016, in favour of assessee]

HC Applied mutuality doctrine to exempt members' contribution despite surplus invested in MF

Bombay HC dismisses Revenue's appeal, holds that contributions received by assessee (an association of air cargo agents) cannot be chargeable to tax merely because assessee invested surplus amount in mutual funds for AY 2007 -08; Rejects Revenue's contention that investment in mutual funds not being assessee's object, the concept of mutuality was inapplicable and thus, contribution received from members was exigible to tax even though it was used to achieve assessee's objectives; Relies on coordinate bench ruling in Common Effluent Treatment Plant (Thane-Belapur) Association and distinguishes Revenue's reliance on SC ruling in Bangalore Club; Observes that in Bangalore Club case, even when SC held that complete identity between contributors and participants was ruptured as soon as the excess fund were invested in bank fixed deposit, what was brought to tax was interest on fixed deposit and not the entire contribution from members; Noting that in assessee's case income from mutual fund investment was already offered to tax, HC observes that the assessee-association in fact followed SC ruling in Bangalore Club

Siemens Nixdorf Informationssysteme GmbH Vs. Dy. Director of Income Tax [ITA No. 3833/Mum/2011, ITAT Mumbai bench, dtd. 31.03.2016, in favour of assessee]

ITAT Allowed STCL on assignment of loan; Advance to subsidiary "capital asset" u/s2(14)

Mumbai ITAT reverses CIT(A) order, allows assessee's (a non-resident Company) claim of short term capital loss on

assignment of loan advanced to its Indian subsidiary for AY 2002-03; Relies on Bombay HC ruling in Vidur V Patel wherein deposit under the Compulsory Deposit Scheme Act, 1963 was regarded as a "property", remarks that "When such are the views of Hon'ble jurisdictional High Court, there is no reason for us to exclude an advance from the scope of 'capital asset'"; Rejecting Revenue's contention that assessee's right to recover the sum advanced was not a capital asset u/s 2(14), holds that "An advance given by the assessee is a property in the sense it is an interest which a person can hold and enjoy, and since it is a property and it is not covered by the exclusion clauses set out in Section 2(14), it is required to be treated as a 'capital asset'", also takes note of Gujarat HC ruling in Minor Bababhai; Referring to provision of Sec. 9(1)(i) (which provides that any income "through the capital asset situated in India" is deemed to accrue/ arise in India), opines that "As a corollary to this taxability of income, the loss through the capital asset situated in India is also required to be taken into account"; Lastly dismissing Revenue's allegation about tax evasion motive, holds that "The authorities below were in error in fighting shy of the tax corollaries of a legally valid commercial transaction, without bringing on record any material to disprove its bonafides or to show that it's a sham transaction".

Nitul B. Shah Vs. ITO [(2016) 68 taxmann.com 90, ITAT Mumbai bench, dtd. 05.11.2015, in favour of revenue]

Period of holding of property received under family arrangement is computed from date of such arrangement

Where assessee received immovable property belonging to his grandmother who died intestate by way of family settlement, in order to determine nature of capital gain arising from sale of said property, period of holding would commence from date when he became owner of property in question by virtue of family arrangement and not from date when his grandmother expired.

Section 4 – Charge of Income Tax

Shrimati Roma Sengupta Vs. CIT [(2016) 68 taxmann.com 177, Calcutta High Court, dtd. 11.03.2016, in favour of assessee]

No tax on alimony received from ex-husband

Amount realised by assessee from sale of a property received as alimony from her husband in terms of decree of divorce, was to be regarded as capital receipt not liable to tax.

CIT Vs. Nagarbail Salt-owners Co-operative Society Ltd. [(2016) 68 taxmann.com 149, Karnataka High Court, dtd. 26.02.2016, in favour of revenue]

Society running a business enterprise in its own name can't escape tax liability by diverting funds to members

Assessee-society, which ran a business enterprise in its own name was duty bound to offer its profits to tax before diverting any funds to Distributable Pool Fund Account for distribution to its members.

Section 10 – Income not included in total income

Japan International Cooperation Agency Vs. Deputy Director of Income Tax [(2016) 68 taxmann.com 98, ITAT Delhi bench, dtd. 29.01.2016, in favour of assessee]

Pass-through entities can pass on income as well as corresponding expenditure to its investors

Company with which venture capital fund (VCF) had been invested, had already paid additional income-tax under section 115U, again at time of distribution of said income as dividend, VCF was not required to pay additional tax.

Venture capital company and venture capital fund (VCF) is given status of pass through vehicle for purpose of treatment of income received on account of investment made in venture capital undertaking; therefore, assessee, which invested in a VCF, would be entitled to book expenditure incurred by VCF as if same had been incurred by assessee directly in VCF.

If a part of amount distributed by VCF among its beneficiaries is out of its capital, said amount could not be taxed under section 115U in hand of beneficiaries.

Section 12A – Conditions for applicability of Sec. 11 and 12

SNDP Yogam Vs. Asst. Director of Income Tax (Exemption) [(2016) 68 taxmann.com 152, ITAT Cochin bench, dtd. 01.03.2016, in favour of assessee]

No denial of sec. 11 relief to a trust if it had obtained registration during pendency of appeal before CIT(A)

Insertion of proviso to section 12A(2) with effect from 1-10-2014 is retrospective in operation; No denial of sec. 11 relief to a trust if it had obtained registration during pendency of appeal before CIT(A)

Section 28 – Profits and gains of business or profession

CIT Vs. Ramaniyam Homes (P.) Ltd. [(2016) 68 taxmann.com 289, Madras High Court, dtd. 22.04.2016, in favour of revenue]

Waiver of loan tantamount to benefit or perquisite, chargeable to tax under Sec. 28(iv)

A monetary transaction, in the true sense of the term, can also have a value. Any number of instances where a monetary transaction confers a benefit or perquisite that would have a value, can be conceived of. There may be cases where an incentive is granted by the supplier, waiving a portion of the sale price or granting a rebate or discount of a portion of the price to be paid, when the payments scheduled over a period of time, are made promptly. It is needless to point out that in such cases, the prompt payment of money itself brings forth a benefit in the form of an incentive or a rebate or a discount in the price of the product. it should also happen in the case of waiver of a part of the loan. the waiver of a portion of the loan would certainly tantamount to the value of a benefit. This benefit may not arise from "the business" of the assessee. But, it certainly arises from "business".

Commissioner of Income Tax Vs. Subhash Kabini Power [ITA No. 169/2015, Karnataka High Court, dtd. 29.03.2016, in favour of assessee]

Karnataka HC follows AP-HC ratio; Carbon credits sale not taxable

Karnataka HC dismisses Revenue's appeal for AY 2009-10 and approves Bangalore ITAT ruling, holds that entitlements earned on sale of carbon-credit is a capital receipt and not taxable; Observes that "carbon credit is not

the business of the assessee nor the same is generated as a by product on account of business activity of power generation, but is earned on account of concern for environment, carbon credit is generated on account of employment of good and viable practices by assessee"; Rejects Revenue's contention that carbon credits earned from assessee's power generation business amounts to benefit/perquisite which shall be taxable as business income u/s 28; Relies on Andhra Pradesh HC ruling in My Home Power Ltd.; HC takes note of SC rulings in Maheshwari Devi Jute Mills Ltd. and Empire Jute Co. Ltd., also distinguishes Revenue's reliance on SC rulings in Oberoi Hotel (P) Ltd. and Kettlewell Bullen & Co. Ltd on facts.

Heritage Hospitality Ltd. Vs. DCIT [(2016) 68 taxmann.com 150, ITAT Hyderabad bench, dtd. 22.01.2016, in favour of assessee]

Rental income from guest houses is taxable under the head business income and not as house property

Where in terms of memorandum of association, main object of assessee-company was to carry on business of hotels, resorts, boarding, lodges, guest houses, etc., and it earned only rentals for occupation of premises on daily basis, said income would be taxed as business income and not as income from house property.

Alpha Plus Technologies (P.) Ltd. Vs. ITO [(2016) 68 taxmann.com 162, ITAT Mumbai bench, dtd. 29.01.2016, in favour of revenue]

Exp. incurred on renovation of leased premise to be treated as capital expenditure

Where assessee acquired leased premises in a semi-finished state which could not be used for its purposes, i.e., development of software, expenditure incurred by assessee for first time for installing work stations, electric cables, proper flooring, furniture and fixture, computers, etc. in said premises to achieve its functional utility would be regarded as part of set-up cost and as capital expenditure.

Section 41 – Profits chargeable to tax

CIT Vs. Alvares & Thomas [ITA No. 653/2015, Karnataka High Court, dtd. 24.03.2016, in favour of assessee]

Untraceable creditor doesn't amount to cessation of liability, deletes Sec 41(1) addition

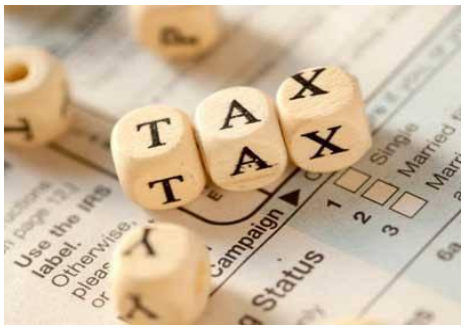
Karnataka HC upholds ITAT order deleting addition u/s 41(1) (relating to cessation of liability) on account of unconfirmed outstanding creditors' balances for AY 2010-11; Rejects Revenue's stand that since party could not be traced and debts could not be verified, addition u/s 41(1) should be sustained; HC rules that "In legal parlance, merely because the creditor could not be traced on the date when the verification was made, same is not a ground to conclude that there was cessation of the liability"; Clarifies that "Cessation of the liability has to be cessation in law, ….the debt is recoverable even if the creditor has expired, by the legal heirs of the deceased creditor.".

Section 45 – Capital Gains

Sujaysingh P. Bobade (HUF) Vs. ITO [(2016) 68 taxmann.com 161, ITAT Mumbai bench, dtd. 24.02.2016, in favour of assessee]

Upfront premium received for grant of perpetual tenancy rights in a property is taxable as capital gain

Receipt of one time premium on allotment of tenancy rights perpetually to tenants is chargeable to tax as capital gain under section 45 and not as income from house property



Section 145 – Method of accounting

Edenred (India) (P.) Ltd. Vs. ACIT [(2016) 68 taxmann.com 183, ITAT Mumbai bench, dtd. 24.02.2016, in favour of assessee]

Revenue could not disturb consistently followed accounting system

Where assessee-company was dealing in prepaid meal and complimentary coupons which were issued to corporate clients, on calendar year basis and as per accounting policy consistently followed by it and accepted by revenue, it recognised revenue for unutilised coupons after two years of expiry of meal coupons and one year in case of compliment vouchers, revenue could not disturb such method of accounting in relevant assessment year and could not treat all amount of expired coupons in year end as income of relevant year.

Section 145A – Method of accounting in certain cases

Pr. Commissioner of Income Tax Vs. STCL Ltd. [(2016) 68 taxmann.com 224, Karnataka High Court, dtd. 08.03.2016, in favour of assessee]

Fall in value of stock allowed to be deducted, though it was in transit and lying at port

When assessee had made payment for purchase of a particular quantity of material and goods were lying in custody of assessee, though at various ports, same could validly be termed as stock in trade and loss due to fall in value of stocks represented by those purchases had to be allowed.

Section 148 – Issue of notice where income has escaped assessment

Khubchandani Healthparks (P.) Ltd. Vs. ITO [(2016) 68 taxmann.com 91, Bombay High Court, dtd. 10.02.2016, in favour of assessee]

Reasons to believe for reassessment has to be furnished even when assessment is completed under sec. 143(1)

Notice issued under section 148 would be without jurisdiction for absence of reason to believe that income had escaped assessment even in case where assessment has been completed earlier by intimation under section 143(1).

BBC Worldwide Ltd. Vs. Asst. Director of Income Tax [(2016) 68 taxmann.com 219, Delhi High Court, dtd. 21.03.2016, in favour of assessee]

No reassessment if income was computed on estimated basis during original assessment

Where loss attributable to Indian operations of assessee, a UK based company, operating BBC World Channel had been accepted after examining relevant vouchers and statement of loss provided by assessee, reassessment could not be made merely because while assessing income in respect of business in question for other assessment years, Assessing Officer had not relied on accounts produced by assessee and had estimated assessee's income on a presumptive basis

Section 153A – Assessment in case of search or requisition

Principal Commissioner of Income Tax Vs. Lata Jain [ITA No. 274/2016, Delhi High Court, dtd. 29.04.2016, in favour of assessee]

Proceedings u/s153A invalid absent incriminating material in "each of the years" during block-assessment

Delhi HC upholds ITAT order, proceedings u/s 153A not valid as no incriminating material was found qua the assessee in "each of the years" during block assessment; Assessee's (individual) gold and silver utensils were held not to be its personal effects by the Revenue for AYs 1998-99 and 1999-00; ITAT had rejected Revenue's argument that existence of incriminating material in all years wasn't necessary and it was sufficient if incriminating material is found for any of the years by opining that "every year is a separate year and existence of incriminating material in one year cannot be applied to another year"; Relies on coordinate bench ruling in Kabul Chawla; Concurring with ITAT's view, rules that "the impugned order of the ITAT suffers from no legal infirmity and no substantial question of law arises for determination".

Section 192 – TDS on Salary

ITC Limited Vs. Commissioner of IT (TDS) [Civil Appeal No. 4435-37 of 2016, The Supreme Court of India, dtd. 26.04.2016, in favour of assessee]

Hotel tips not salary absent reference to employment contract, TDS inapplicable

SC reverses Delhi HC order, holds that TDS u/s 192 on salaries is not applicable on payment of tips by assessee hotel to its staff/waiters; Observes that tips are voluntary payment which may or may not be paid by the customers for services rendered and therefore, does not qualify as salary u/s 15(b), holds that "Section 15(b) necessarily has reference to the contract of employment between employer and employee, and salary paid or allowed must therefore have reference to such contract of employment"; Holds that tips are received by employer in his fiduciary capacity as trustee for payments received from customers which are then disbursed to employees, rejects Revenue's argument that there is indirect reference of such tips to employment contract as but for such contract, tips would not have been paid at all; Points out that if this argument of the Revenue is accepted, "even the position accepted by the revenue and consequently the High Court that tips given in cash, which admittedly are not covered by Section 192, would also then be covered inasmuch as such tips also would not have been given but for the contract of employment between employer and employee" ; Also rejects Revenue's contention that tips would qualify as payment in lieu of salary u/s 17(3)(ii) since tips does not arise from contract of employment, observes that Sec. 17(3)(ii) uses the expression 'employer" in the same sense as Sec. 15 as it states "for the purpose of Sec 15" salary includes profit in lieu of salary.

Section 194J – TDS on Fees for professional or technical services

Commissioner of Income Tax – TDS Vs. Delhi Transco Ltd. [(2016) 68 taxmann.com 231, The Supreme Court of India, dtd. 08.01.2016, in favour of assessee]

Wheeling charges paid to Power Grid Corporation couldn't be treated as 'FTS'

SLP dismissed against High Court's ruling that wheeling charges paid to Power Grid Corporation could not be characterized as fee for technical service and therefore, was not liable for TDS under section 194J.

Section 195 – TDS on other sums

Accurate Engineering Co. Pvt. Ltd. Vs. Dy. Com. of income Tax [ITA No. 620/PN/2014, ITAT Pune bench, dtd. 14.03.2016, in favour of assessee]

TDS inapplicable on foreign agent's commission despite orders secured from Indian Co

Pune ITAT deletes Sec 40(a)(i) disallowance, holds commission payment by assessee (an Indian company) to foreign agent (based in Italy) for obtaining purchase order from Indian subsidiary of an Italian company, not liable to Sec 195 TDS; During AY 2010-11, assessee paid commission to foreign agent to follow up with Italian company and secure orders from its Indian subsidiary for supply of measuring instruments; Rejects Revenue's stand that since order was procured by assessee from an Indian entity, the services were provided in India and the citus of foreign agent was in India, hence Sec 195 TDS was applicable; ITAT notes that the Italian company must be having control on decision making precision of its Indian subsidiary and foreign agent was involved in liaisoning/follow up with the Italian company, hence the services were rendered in Italy; Relies on CBDT circular no. 786 dated August 7, 2000, Madras HC ruling in Faizan Shoes and SC ruling in GE India Technology Centre, distinguishes Revenue's reliance on Delhi HC ruling in Havells India Ltd..

Section 220 – When tax payable and when assessee deemed in default

Khandelwal Laboratories (P.) Ltd. Vs. DCIT [(2016) 68 taxmann.com 171, Bombay high Court, dtd. 17.03.2016, in favour of assessee]

AO couldn't withdraw amount from attached bank accounts without disposing of stay application of assessee

Where Assessing Officer attached bank accounts of assessee and withdrew amount therefrom without disposing of stay application filed by assessee, action of Assessing Officer was not justified

Section 234A/B/C – Interest for default in filing return, payment of advance tax and deferment of advance tax

CIT Vs. Sunil Chandra Gupta [Special leave petition No. 2934/2016, The Supreme Court of India, dtd. 29.04.2016, in favour of assessee]

SC uphold Sec.234A/B/C interest deletion, given Revenue's failure to adjust seized cash against tax-liability

SC dismisses Revenue's SLP appeal against Allahabad HC order; HC had deleted interest levied u/s 234A/B/C for AY 2010-11, as Revenue had failed to adjust seized cash (available before return filing due-date, in its public deposit a/c consequent to search/seizure) against assessee's tax liability; HC had observed that "assessee made a number of request from time to time for the adjustment of the cash seized against the liability of the advance tax, but the department neither replied nor adjusted the said amount"; HC had thus ruled that assessee was entitled to adjustment of seized cash against advance tax liability and therefore, no interest could be charged u/s 234A/B/C; Upholding HC order, SC rules that "We find no reason to entertain this Special Leave Petition, which is, accordingly, dismissed"

Section 245 – Set off refunds against tax remaining payable

Vijay Singh Kadan Vs. Chief Commissioner of Income Tax [W.P.(C) 683/2016, Delhi Hihg Court, dtd. 25.04.2016, in favour of assessee]

Giving hearing opportunity to assessee before adjusting refund 'mandatory' u/s 245, quashes adjustment

Delhi HC allows assessee's (an individual) writ, quashes Revenue's adjustment u/s 245 of demand pertaining to AY 2008-09 against refund due for subject AY 2006-07, without affording an opportunity of being heard to assessee; HC notes that "although the refund voucher uses the word 'adjustment to be made' …, the refund issued was after the adjustment was made."; Rejects Revenue's stand that it was merely 'withholding' and not 'adjusting' part of refund for subject AY, pending 'verification' of demand for AY 2008-09, holds that Department was fully aware that demand for AY 2008-09 was under challenge; Further relies on co-ordinate bench rulings in The Oriental Insurance Company Limited and Glaxo Smith Kline Asia (P) Ltd. to hold that prior to invoking the discretionary power u/s 245 of adjusting demand against refund due, a show cause notice must be issued to assessee; HC holds that by issuing notice u/s 245 two months after the notice was issued by this HC in present petition, "Revenue cannot seek to correct the fatal error arising from the clear violation of the mandatory requirement u/s 245 of the Act.", directs Revenue to forthwith issue the balance refund to assessee which was unlawfully withheld.

INTERNATIONAL TAXATION

Section 9 – Income deemed to accrue or arise in India

Trans Global PLC Vs, Director of Income Tax (International Taxation) [(2016) 68 taxmann.com 146, ITAT Kolkata bench, dtd. 16.03.2016, in favour of assessee]

Non-compete fee being a business income won't be taxable in India unless recipient has PE in India

Where UK-based non-resident company was not having permanent establishment in India and received non-compete fee, same would not be taxed in India

Datamine International Ltd. Vs. Addl. Director of Income Tax [(2016) 68 taxmann.com 97, ITAT Delhi bench, dtd. 14.03.2016, in favour of assessee]

Sum received for providing training to end-users of software sold by assessee is business receipt and not 'FTS'

Revenue earned from 'software sale' by assessee an India branch of a UK company to Indian customers was in nature of business receipts and not royalty as same was consideration for sale of a copyrighted product and not for use of any copyright

Receipts from annual maintenance contract having same character as that of original software shall be covered under business profits under article 7, as receipts from sale of software had also been held to be in nature of business receipts under article 7

Where training to employees of end users of software sold by assessee for which consideration had been received was ancillary and subsidiary to sale of software; it was to be treated as business receipts under article 7 of DTAA between India and U.K.

BNP Paribas SA Vs. Asst. Commissioner of Income Tax [ITA No. 3422/Mum/2009, ITAT Mumbai bench, dtd. 31.03.2016, in favour of assessee]

'Hypothetical independence of PE' fiction restrictive; Foreign bank's India branch interest non-taxable

Mumbai ITAT rules that interest paid by Indian branches of BNP Paribas SA (assessee, a foreign bank) to its head office and foreign branches, not taxable as 'interest income' in hands of assessee for AY 2004-05; Rejects Revenue's stand that when an Indian PE is allowed deduction in respect of any payment made to it's GE (i.e head office and other foreign branches) while computing profits attributable to PE in terms of Article 7(3) of India-France DTAA (by treating HO and PE as separate entities), corresponding income addition in the hands of foreign bank should be made; Remarks that "The approach so adopted by the revenue authorities, on the first principles, is contrary to the scheme of the tax treaties."; Opines that "The fiction of hypothetical independence of a PE vis-a-vis it's GE and other PEs outside the source jurisdiction is confined to the computation of profits attributable to the permanent establishment and, in our considered view, it does not go beyond that, such as for the purpose of computing profits of the GE."; Distinguishes Revenue's reliance on coordinate bench rulings in case of Dresdner Bank and British Bank of Middle East wherein the principles of computing separate profits for PE and GE treating them as distinct entities were laid down; Firstly ITAT notes that Dresdner case dealt with the taxability of interest received by a PE (Indian Branch) from its GE, whereas present case is concerned with reverse situation, holds that "These two situations, … are materially different situations and are governed by different principles of determining taxable profits."; Further holds that views expressed by co-ordinate bench in Dresdner Bank and reiterated by SC in case of Hyundai Industries Co. Ltd. do not apply to treaty situations, notes that in terms of Sec 90 of the Act, present case is governed by beneficial provisions of India-France DTAA ; Remarks that "What we have before us is a peculiar situation in which interest received from the GE…is not treated as taxable on the basis that interest credit in this regard is to be taxed on the basis of logic flowing from judicial precedents in the cases of CIT Vs Sir Kikabhai Premchand [(1953) 24 ITR 506 (SC)] and Betts Hartley Huett & Co Ltd Vs CIT [(1979) 116 ITR 425 (Cal)]… while interest paid to GE is held to be deductible in the light of the provisions of article 7(3)(b) being applied on the interest debit, which are preferred over the provisions of the domestic law in view of the provisions of section 90 of the Act."; Lastly, ITAT relies on Mumbai ITAT Special Bench ruling in case of Sumitomo Mitsui Banking Corp to uphold assessee's grievance

Section 172 – Shipping business of non residents

K Cargo Global Agencies Vs. ITO [ITA NO. 306/Ahd/2016, ITAT Ahmedabad bench, in favour of assessee]

Ownership/ charter of vessel by assessee not a pre-condition for availing Art. 8 benefit

Ahmedabad ITAT allows assessee's (resident of Indonesia) appeal challenging assessment u/s 172(which deals taxation of non-resident shipping companies) for AY 2012-13, holds that income earned from slot chartering in certain vessels sailing from Port of Mundra not taxable in India under Article 8 of India-Indonesia DTAA; Revenue denied exemption under Article 8 of India-Indonesia DTAA on the ground that vessels in which the containers were transported were not owned/ chartered by the assessee and thus taxed income from slot chartering u/s 172; ITAT notes that as per Article 8(1) source jurisdiction (India in this case) has no rights to tax income from operations of ships in international traffic or even any activity directly connected with such operations, whether carried on by the assessee on his own/ in collaboration with others; Further points out that there is no reference to

ownership and charter of vessels in Article 8 whereas it is Sec. 172 which refers to ownership/ charter of vessels, observes that "If it is the case of the Assessing Officer that the assessee is not an owner or charterer of the vessel, section 172, under which the impugned assessment is framed, does not come into play at all, and the very foundation of the impugned assessment ceases to have any legally sustainable basis. Revenue does not, therefore, has anything to gain from this hyper-technical plea"; Relies on Bombay HC ruling in Balaji Shipping UK Ltd. to wherein it was held that "slot hire facility is an integral part of the contract of carriage of goods by sea" and thus is eligible for treaty protection against source taxation of such income.

Circulars/Notifications / Instructions

Notification No. 6,7,8/2016 dtd. 04.05.2016

CBDT lays down procedure for online submission of e-TDS/TCS statements u/s 200(3)/206C(3) through e-filing portal, however allows deductors/collectors to continue filing e-TDS/TCS returns at TIN Facilitation Centres; Specifies 3-step procedure for filing e-TDS/TCS statements online through e-filing portal viz. 1) Registration with e-filing website 2) Downloading Return Preparation Utility ('RPU') for preparing the TDS/ TCS statements and File Validation Utility ('FVU') for validating statements from tin.nsdl website and 3) Uploading and submitting statements under Digital Signature using e-filing website login; Similarly, CBDT also lays down procedure for - verification of declarations in Forms 15G/15H (submitted by persons claiming receipt of incomes without TDS), allotment of Unique Identification Number ('UIN') to declarants and making available the declarations to income -tax authority by person responsible for paying income; With respect to foreign remittances, CBDT specifies procedure for submission of Form 15CC (which is a Quarterly statement to be furnished by an authorised dealer in respect of remittances made u/s 195(6) for the quarter)

Notification No. 30/2016, dtd. 29.04.2016

CBDT extends time limit for depositing TDS deducted u/s 194-IA (relating to transfer of immovable property) from 7 days to 30 days from the end of the month in which TDS is withheld, further due date for filing quarterly TDS returns in Form 24Q, 26Q and 27Q extended by 15 days, due dates aligned for Government and non-Government deductors; CBDT inserts new Rule 26C and Form 12BB requiring employees to furnish to the employer, evidence/ particulars in relation to (i) house rent allowance ('HRA') (ii) leave travel concession (iii) deduction of interest under the head "income from house property" and (iv) deduction under Chapter VI-A; Details required to be furnished include - (i) name, address and PAN of landlord (s) where the aggregate rent paid exceeds Rs. 1 lakh for HRA claim (ii) name, address and PAN for lender in respect of claim for deduction of interest on loan for house property (iii) evidence for expenditure for leave travel concession and (iv) evidence for investment /expenditure for Chapter VIA claims; Lastly Form No. 24G (for TDS deducted by Govt. office and paid without production of a challan) to be now furnished electronically on or before April 30 (in case where the statement pertains to March) and on or before 15 days from the end of relevant month (in any other case), earlier the statement was to be filed within 10 days from the end of the month; Amended Rules applicable from June 1 , 2016

Clarification No. F. No. 225/12/2016/ ITA.II dtd. 02.05.2016

CBDT clarifies that income arising from transfer of unlisted shares would be considered under the head 'Capital Gains', irrespective of period of holding; CBDT quotes February 2016 clarification on income characterization for listed shares wherein 12-months threshold has been specified to treat income as capital gains and not business income and states that "similarly, for determining the tax-treatment of income arising from transfer of unlisted shares for which no formal market exists for trading, a need has been felt to have a consistent view in assessments pertaining to such income"; However, CBDT carves out three exceptions wherein this clarification shall not apply, namely, (i.) genuineness of transactions in unlisted shares itself is questionable, (ii) transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil and (iii) transfer of unlisted shares is made alongwith the control and management of underlying business, directs AO to take appropriate view in such situations; Clarification on unlisted shares issued with a view to avoid disputes/litigation and to maintain a uniform approach

Circular No. 9 & 11, dtd. 26.04.2016

CBDT clarifies that if a resident deductor is entitled for refund of excess TDS deposited u/s 195, then he shall be allowed interest on refund u/s 244A from the date of payment of such tax; Relies on SC ruling ratio in Tata Chemicals Ltd. allowing tax deductor's Sec 244A interest claim ; CBDT also issues departmental view on commencement of limitation for penalty proceedings u/s 271D/E [for violating provisions of Sec 269SS/T by accepting/repaying loans/ advances otherwise than by account payee cheques/drafts], CBDT to follow decision of Kerala HC in Grihalaxmi

Vision wherein HC ruled that statement in assessment order that proceedings u/s 271E/D are initiated is inconsequential and proceedings shall commence only upon issuance of notice by Joint Commissioner to assessee; Accordingly, CBDT advises AOs (below the rank of Joint Commissioner) to make reference to Range Head regarding violation of Sec 269SS/T and directs that AOs shall not issue any notices in this regard; However, CBDT clarifies that where any HC decides contrary to the 'departmental view', the 'departmental view' thereon shall not be operative in the area falling in the jurisdiction of the relevant HC

INDIRECT TAXES

Judicial pronouncements

CENTRAL EXCISE

Comm. Of Central Excise Vs. Customs, Excise & Service tax Tribunal [(2016) 68 taxmann.com 193, Madras High Court, dtd. 18.03.2016, in favour of assessee]

No interest on short payment of excise duty if excess amount was available with department in PLA account

When there is a huge excess amount available with department in Cenvat/ PLA account of assessee, then, for any short-payment by assessee, department cannot demand interest

CENVAT CREDIT

R. R. Paints (P.) Ltd. Vs. Comm. of Central Excise [(2016) 68 taxmann.com 361, CESTAT Mumbai bench, dtd. 11.03.2016, in favour of assessee]

Department can't allege suppression if details of credit are mentioned in the statutory records

Where assessee has mentioned factum of availment of credit in all statutory records, viz., RG23A (Part II), TR-6 challan and ER-1 returns, then, there is no suppression of facts and extended period of limitation cannot be invoked.

Commissioner of Service Tax Vs. Kyocera Wireless (India) (P.) Ltd. [(2016) 68 taxmann.com 164, Karnataka High Court, dtd. 08.03.2016, in favour of assessee]

Cenvat credit and refund thereof can't be denied merely on ground of non-registration

Registration is not a pre-condition to claim credit; hence, Cenvat credit and refund thereof cannot be denied on ground of non-registration.

S. L. Lumax Ltd. Vs. Comm. Of Central Excise [(2016) 68 taxmann.com 156, Madras High Court, dtd. 05.02.2016, in favour of assessee]

Credit on capital goods can't be denied if depreciation under Income-tax Act is reversed by filing revised return

Where assessee has wrongly claimed both Cenvat Credit as well as income-tax depreciation on same duty amount, but, has filed revised returns under income-tax deleting depreciation claim, benefit of Cenvat Credit cannot be denied

SERVICE TAX

Comm. Of Service Tax Vs. Balaji Telefilms Ltd. [(2016) 68 taxmann.com 301, CESTAT Mumbai bench, dtd. 09.09.2015, in favour of assessee]

Export benefits can't be denied if sum is received in foreign currency though contract is denominated in rupees

Even if contract is designated in Indian currency to avoid loss due to currency fluctuations and to assure receipt of contracted amount and minimize risk of budgetary overrun, but, if consideration is actually received in convertible foreign exchange, benefit of export of service cannot be denied.

Mittal Construction Co. Vs. Comm. Of Central Excise [(2016) 68 taxmann.com 251, Punjab & Haryana High Court, dtd. 24.02.2016, in favour of assessee]

HC sets aside ex-parte order of tribunal as assessee didn't receive notice for hearing

Where assessee-respondent did not receive notice for hearing, Tribunal's ex parte order, disposing of revenue's appeal on merits in favour of revenue, was set aside and matter was remanded back to Tribunal.

Picasso Overseas Vs. Customs, Excise & Service Tax Appellate Tribunal [(2016) 68 taxmann.com 217, Madras High Court, dtd. 04.03.2016, in favour of revenue]

The only consequence of non-complying with final pre-deposit order is dismissal of the appeal

If conditional interim/stay order has become final, having not been challenged further, and assessee fails to comply with said condition, then, only consequence is dismissal of appeal.

Gondwana Club Vs. Comm. Of Customs and Central Excise [(2016) 68 taxmann.com 240, CESTAT Mumbai bench, dtd. 08.09.2015, in favour of assessee]

No service tax on rent recovered from employees for providing accommodation at concessional rate

Contractual privileges of an employer-employee relationship are outside purview of service tax; hence, concessional rent recovered from employees for perquisite by way of 'concessional accommodation' is not liable to service tax.

If services of a club are contingent upon payments to be made separately for each transaction, then : (a) contribution to corpus by way of 'entrance fee', and (b) contribution to common expenditure by way of 'subscription' cannot be regarded as consideration for any service and cannot be charged to service tax.

Balaji Pressure Vessels Ltd. Vs. Comm. Of Central Excise [(2016) 68 taxmann.com 315, CESTAT Hyderabad bench, dtd. 29.01.2016, in favour of assessee]

Principal of unjust enrichment couldn't be applied to deny refund even if tax amount was written off in P&L account

Merely because amount of tax paid is shown as expenditure, it cannot be concluded that incidence of duty was passed onto buyers; hence, doctrine of unjust enrichment would not apply to deny refunds merely because tax amount was written off in Profit & Loss Account

Circulars/Notifications / Instructions

Notification No. 23/2016-CE (N.T.) dtd. 01.04.2016

Central Govt. notifies CENVAT Credit (Fourth Amendment) Rules, 2016; Amends Rule 6(3)(i) to provide for payment of amount equal to 6% of value of exempted goods and 7% of value of exempted services subject to maximum of sum total of opening balance of input and input services credit available at the beginning of period to which payment relates and credit of input and input services taken during that period; Amends Rule 7B to permit receipt of purchased inputs under the cover of documents specified under Rule 9, by a warehouse of manufacturer, before distribution of credit thereof

Circular No. 1023/11/2016-CX dtd. 08.04.2016

CBEC revises guidelines for issuance and adjudication of show cause notices on the basis of Central Excise Revenue Audit (CERA) and Customs Revenue Audit (CRA); Prescribes timelines for submission of replies by Dept. at various stages, viz. Half Margin / Audit Memo, Local Audit Report (LAR), Statement of Facts (SoF), Draft Audit Para (DAP) and Audit Paragraphs; Where Dept. agrees on merits with audit objections at LAR and SoF stage, show cause notices shall be issued immediately, without being transferred to the Call-Book and should be adjudicated forthwith; If a contested audit objection has become DAP and on examination by CBEC, it is found that objection should have been admitted, necessary directions may be given to field to issue show cause notice and adjudicate case on remits; SoFs / LARs not converted into DAP may be adjudicated after ensuring that reply given by Commissionerate is available on record, and similarly, DAPs should be undertaken after ensuring that CEBC reply is on record; Where an issue under audit objection has been settled either judicially by SC judgement or through CBEC Circular, further correspondence on audit objections, even if they have become DAPs, is not necessary and such cases may be adjudicated on merits taking into consideration latest judgements and Circulars; Also lays down the modus operandi for pending cases, i.e. all audit objections relating to Central Excise & Service Tax issued prior to March 1, 2014 as well as for those raised thereafter

Notification No. 22/2016-ST and 24/2016-ST dtd. 13.04.2016

Finance Ministry issues detailed clarification on taxability of services provided by Govt. or local authority w.e.f. April 1, 2016; Services provided to another Govt. or local authority, and those to an individual who may be carrying out a profession or business - (a) by way of issuance of passport, visa, driving license, birth or death certificate, and (b) services upto taxable value of Rs. 5000/-, have been exempted; In case of continuous service, exemption shall be applicable where taxable value does not exceed Rs. 5000/- in a financial year, however, services of transportation of goods / passengers, in relation to aircraft / vessel, and by Dept. of Posts shall continue to be taxable in terms of Sec. 66D(a)(i), (ii) & (iii) of Finance Act; No service tax shall apply on taxes, cesses or duties as same are not consideration for any particular service, and similarly, fines and penalty chargeable for violation of a statute, bye-laws, rules or regulations would also not be leviable to service tax; Fines and liquidated damages payable for non-performance of contract entered into with Govt. or local authority have been exempted; Clarifies that services provided in lieu of fee, including payment for any permission or license granted by Govt. or local authority, irrespective of whether under statutory or mandatory requirement, shall be taxable, however, services by way of (i) registration required under the law, (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law are exempt under Notification No. 25/2012-ST; Assignment of right to use any natural resource before April 1, 2016 is exempt, but same shall apply only to one-time charge (payable in full upfront or in installments), and not to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee i.r.o. spectrum, or monthly payments w.r.t. coal extracted from mine or royalty payable on

extracted coal which shall be taxable; Nevertheless, services by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the FY 2015-16 on payment of license fee or spectrum user charges, as the case may be, have been exempted; Notification No. 24/2016-ST has been issued to amend Rule 7 of Point of Taxation Rules, where services by Govt. to business entity shall be taxed at the earlier of the dates on which - (a) any payment (part or full) i.r.o. such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Govt. or local authority demanding such payment; or (b) such payment is made; Accordingly, where rights to use natural resources are assigned after April 1, 2016, in case assignee / allottee opts for full upfront payment, then tax would be payable on full value upfront, but in case of deferred payment, as and when payments are due or made, whichever is earlier; Also clarifies on when and how allottee of right to use natural resources shall be entitled to take CENVAT credit of service tax paid for such assignment of right.

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

6th May	***Payment of Service Tax & Excise duty paid electronically through internet banking for the month of April***
7th May	***TDS/TCS Payment for the month of April***
10th May	***Excise Return ER1/ER2/ER6***
15th May	***TDS return for the quarter ended on 31st March, 2016.***
15th May	***PF Contribution for the month of April***
21st May	***ESIC payment of for the month of April***
30th May	***Due date for issuing TDS certificate for the quarter ended on 31st March, 2016***

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