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SNK Newsletter

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DIRECT TAXES

Judicial pronouncements

Section 10 – Incomes not included in total income

SBI Vs. ACIT [(2017) 81 taxmann.com 192, ITAT Jaipur bench, dtd. 28.03.2017, in favour of revenue]

Leave travel concession is exempt only if an employee undertakes journey to any place in India

As per provisions of section 10(5), only that reimbursement of travel concession or assistance to an employee is exempted which was incurred for travel of the individual employee or his family members to any place in India. Section 10(5), read with rule 2B no way provides that assessee is at liberty to claim exemption out of his total ticket package spent on his overseas travel and part of journey within India. Therefore, LTC paid by assessee to employees involving foreign travel as well would not qualify for exemption under section 10(5) and, accordingly, assessee was liable to deduct TDS on such payment of LTC

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

Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT [(2017) 81 taxmann.com 111, The Supreme Court of India, dtd. 08.05.2017, in favour of revenue]

Dividend income to attract Sec. 14A disallowance even if DDT is paid on it, rules Apex Court

The phrase "income which does not form part of total income under this Act" appearing in Section 14A includes within its scope dividend income on shares in respect of which tax is payable under Section 115-O of the Act and income on units of mutual funds on which tax is payable under Section 115-R

A plain reading of Section 14A would go to show that the income must not be includible in the total income of the assessee.

Once the said condition is satisfied, the expenditure incurred in earning the said income cannot be allowed to be deducted.

The section does not contemplate a situation where even though the income is taxable in the hands of the dividend paying company the same to be treated as not includible in the total income of the recipient assessee, yet, the expenditure incurred to earn that income must be allowed on the basis that no tax on such income has been paid by the assessee. Such a meaning, if ascribed to Section 14A, would be plainly beyond what the language of Section 14A can be understood to reasonably convey.

CIT Vs. Chettinad Logistics (P.) Ltd. [(2017) 80 taxmann.com 221, Madras High Court, dtd. 13.03.2017, in favour of assessee]

No disallowance under sec. 14A if no exempt income was earned during the year

Section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year.

DCIT Vs. Morgan Stanley India Securities Pvt. Ltd. [ITA No. 114/Mum/2013, ITAT Mumbai bench, dtd. 05.01.2017, in favour of assessee]

No Sec. 14A disallowance on strategic investment absent exempt income earned during year

Mumbai ITAT upholds deletion of Sec 14A disallowance in case of assessee (a Morgan Stanley group company engaged in providing investment research advisory support, consultancy services to group companies) for AYs 2008-09 & 2009-10; Notes that during relevant AYs assessee made strategic investments in group companies and no exempt income was earned on such investment; Further investments were made out of owned funds and there was no borrowing by assessee; ITAT holds that as the assessee did not earn any tax free income, Sec. 14A will not be applicable, relies on plethora of rulings including P&H HC ruling in Winsome Textiles Industries Ltd., Delhi HC ruling in Cheminvest Ltd., co-ordinate bench ruling in Lafarge India Holding Pvt. Ltd.; Further, ITAT notes that no administrative expenses were claimed as deduction in computation of total income and moreover the administrative and support expenses incurred on behalf of the group companies were recovered from them at cost.

Vineet Maini Vs. ITO [ITA No. 5240/Del/2016, ITAT Delhi bench, dtd. 28.03.2017, in favour of revenue]

ITAT upholds interest dis-allowance for partner proportionate to exempt profit share from firm

Delhi ITAT confirms disallowance of interest on borrowed funds in the hands of assessee-partner (an individual) for AY 2010-11 in view of interest-free advances made to the firm, interest is disallowed to the extent relatable to share of profit derived from firm [which is exempt u/s 10(2A)]; AO disallowed part of interest since assessee failed to establish business expediency for making interest free advance to partnership firm (whose income enjoyed tax holiday u/s 80-IC); Notes that share of profit from firm is exempt u/s 10(2A), however remuneration and interest from firm is taxable as business income in the hands of assessee even though profit of firm is not taxable u/s 80IC; Thus, directs AO to recompute disallowance to the extent relatable to share of profit from firm which is exempt u/s 10(2A), clarifies that "The nature of profits in the hands of firm cannot be the decisive factor for considering the nature of profits in the hands of assessee"

Section 22 – Income from house property

Raj Dadarkar & Associates Vs. ACIT [(2017) 81 taxmann.com 193, The Supreme Court of India, dtd. 09.05.2017, in favour of revenue]

Income from sub-letting by deemed owner is taxable under the head house property

Where assessee-firm acquires leasehold rights in premises for more than 12 years, he shall be deemed owner u/s 27(iiib) of the Act and income from sub-licensing the premises shall be ordinarily treated as income from house property. Such income can be treated as "Profits and Gains from business or profession" only if assessee-firm establishes that it was engaged in any systematic or organized activity of providing service to the occupiers of the shops/stalls so as to constitute the receipts from them as business income. A clause in the partnership deed of the assessee-firm showing that the business of the assessee-firm is to take the premises on rent and sub-let the same shall not be determinative of whether income should be taxed as "Profits and Gains from business or profession" or as "income from house property".

Section 32 – Depreciation

Sundaram Fasteners Ltd. Vs. ACIT [ITA No. 590/Mds/2012, ITAT Chennai bench, dtd. 26.04.2017, in favour of revenue]

ITAT Confirms penalty, depreciation claim 'false' absent use; Trial-run at supplier's place irrelevant

Chennai ITAT upholds levy of penalty u/s 271(1)(c) on false depreciation claim made by assessee company on the furnace for AY 2004-05; Assessee had argued that the machinery (i.e furnace) was subject to trial run (i.e., at the supplier's premises) in the presence of assessee's engineers and hence it was put-to-use; Firstly, ITAT clarifies that the test running at supplier's premises "is only to confirm if the plant being delivered, being from a foreign land, is in a OK state, and cannot in any manner be regarded as commissioning of it's plant by the assessee"; Moreover, ITAT states that "even assuming constructive delivery at the sellers' premises, so that the plant stands acquired, it is only upon being put to use that it shall enter the block of assets.", ITAT notes that assessee could not prove that the furnace was delivered / installed at its premises before March 31 of the relevant AY, rules that "Where the assessee is unable to furnish any explanation, duly supported, it cannot be said to be saved by clause (A) or clause (B) of Explanation 1 to s. 271(1)(c)…"

Section 37 – General

CIT Vs. Shri Rama Multi Tech Ltd. [(2017) 80 taxmann.com 375, The Supreme Court of India, dtd. 06.04.2017, in favour of assessee]

Payment of interest on loans taken for setting up industry could be claimed as revenue expenditure

Expenditure towards payment of interest on loans taken for setting up industry by assessee and, financial charges, upfront fee, professional expenses, etc., were allowable as revenue expenditure.

Zee Entertainment Enterprises Ltd. Vs. ACIT [ITA No. 3406/Mum/2014, ITAT Mumbai bench, dtd. 05.05.2017, in favour of assessee]

Forfeited media rights advance not capital loss; ITAT grants deduction to Zee Entertainment

Mumbai ITAT allows deduction u/s. 37 to Zee Entertainment ('assessee') with respect to write off of advance given to BCCI, rejects Revenue's stand that it represents a capital loss as it is in relation to acquisition of media rights (which is a capital asset); Assessee acquired media rights from BCCI on payment of US $ 17.5 million, out of which US$ 10 million was adjusted against two matches played and the balance was kept as deposit (to be adjusted against last series), however, owing to dispute, the contract was terminated and the deposit was forfeited by BCCI during relevant AY 2008-09; ITAT holds that the agreement with BCCI for acquiring the media rights was pursuant to assessee's normal business activity (of broadcasting and distribution of TV programmes) and US$ 10 million which was adjusted in earlier year was offered to tax by assessee; Further rejects Revenue's stand that since the assessee filed a legal case for recovery and also initiated arbitration proceedings, it could not be said that the loss had actually crystallized during relevant AY, similarly, rejects Revenue's submission that write-off was premature as assessee did not fully explore the possibility of its recovery; ITAT remarks that "it is the judgement of the assessee as a businessman.", notes that despite arbitration proceedings, as assessee did not visualize any sign of recovery, it wrote-off the forfeited amount and claimed deduction

Section 40 – Amount not deductible

Palam Gas Service Vs. CIT [(2017) 81 taxmann.com 43, The Supreme Court of India, dtd. 03.05.2017, in favour of revenue]

TDS disallowance to be made even if no sum payable at year-end; SC reverses ratio of Vector Shipping

Supreme Court upholds section 40(a)(ia) disallowance for TDS default on freight payment. The plea of the assessee company that no disallowance can be made under section 40 (a)(ia) as word payable occuring in section 40 (a)(ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is atually paid is not acceptable as section 40(a)(ia) covers not only those cases where the amount is payable but also when it is paid. Decision of Allahabd High Courts in CIT v. Vector Shipping Services (P.) Ltd. [2013] 38 taxmann.com 77 overruled.

Section 41 – Profits chargeable to tax

Mcdowell & Company Ltd. Vs. CIT [Civil Appeal No. 3893 of 2006, The Supreme Court of India, dtd. 09.03.2017, in favour of revenue]

SC rejects taxpayer's double-benefit claim; Amalgamating company's liability waiver taxable u/s 41(1)

SC upholds Karnataka HC judgment in Revenue's favour, holds that waiver of liability due by amalgamating company after amalgamation is taxable in the hands of the amalgamated company u/s 41(1); Notes that assessee took over the sick company - HPL ('amalgamating company') through the scheme of amalgamation, however, while arriving at the benefit accruing to assessee u/s 72A on account of carry forward and set-off of amalgamating company's losses, HPL's waiver income u/s. 41(1) was not adjusted; Rejects assessee's stand that as per Sec 41(1), the income has to be treated at the hands of 'first mentioned person' which is HPL (which ceased to exist) and therefore the waiver income u/s. 41 (1) cannot be assessed in assessee's hands; Rules that "When the assessee is allowed the benefit of the accumulated losses, while computing those loses, the income which accrued to it had to be adjusted and only thereafter net losses could have been allowed to be set off by the assessee company."; Distinguishes assessee's reliance on co-ordinate bench ruling in Saraswathi Industrial Syndicate Ltd., observes that co-ordinate bench dealt with Sec. 41(1) per se and Sec. 72A was not the subject matter therein.

Section 50B – Special provision for computation of capital gains in case of slump sale

Vatsala Shenoy Vs. JCIT [(2017) 80 taxmann.com 351, The Supreme Court of India, dtd. 09.02.2017, in favour of revenue]

Sale of business after assigning specific value to assets and liabilities couldn't be treated as slum sale

Where assets of partnership firm were sold on a going concern basis and assets were put to sale after their valuation and there was a specific and separate valuation for individual assets and even liabilities were taken care of when amount of sale was apportioned among outgoing partners, said transaction could not be treated as slump sale.

Section 54 – Profit on sale of property used for residence

Jitendra V Faria Vs. ITO [(2017) 81 taxmann.com 16, ITAT Mumbai bench, dtd. 27.04.2017, in favour of assessee]

ITAT allows Sec. 54 relief for property purchased jointly with brother

Assessee was owner of flat jointly with his wife. He sold said flat and invested his share in another property. It was held that assessee having made entire investment for purchase of new residential house, along with stamp duty and registration charges, he will be entitled to full exemption under section 54 even though property was purchased in joint names of assessee and his brother.

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

R. Jayabharathi Vs. ITO [(2017) 81 taxmann.com 6, ITAT Chennai bench, dtd. 31.03.2017, in favour of assessee]

No denial of sec. 54F relief if capital gains were duly invested in new property before filing of return of income

Where assessee had invested entire sale consideration in her business, but with help of loan amount had completed construction of new house within three years period of date of transfer, i.e., by date of filing return exemption under section 54F could not be denied to her

Section 68 – Cash Credits

Principal Com. Of IT Vs. Raga Finvest Ltd. [(2017) 80 taxmann.com 78, Madhya Pradesh High Court, dtd. 20.02.2017, in favour of assessee]

No sec. 68 additions if assessee proved genuineness of creditors by submitting their PAN and ITR copy

Where assessee engaged in accepting cash from customers and providing services by remitting amount through banking channels after charging its commission, proved genuineness of said transactions by bringing on record PAN, return of income etc. of creditors, impugned addition made under section 68 was to be deleted.

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

Diamond Investment & Properties Vs. ITO [(2017) 81 taxmann.com 40, The Supreme Court of India, dtd. 24.08.2015, in favour of assessee]

No addition for selling similar flats at different prices if it wasn't a case of tax evasion

Where both parties to which flats in same building had been sold by assessee had made payment in advance and Tribunal made addition for suppression of sale value of flat on ground that selection of only one party for deal at lower rate not been explained by assessee, High Court should have to frame question as to whether assessee had taken recourse to any kind of colourable device to evade tax

Section 72A – Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

CIT Vs. Sadashiva Sugars Ltd. [(2017) 80 taxmann.com 352, Karnataka High Court, dtd. 23.02.2017, in favour of assessee]

Section 72A doesn't prohibit amalgamation of two companies suffering from losses

Section 72A does not prohibit amalgamation of two companies suffering from losses.

Section 80A – Deduction to be made in computing total income

Nath Brothers Exim International Ltd. Vs. UOI & Anr [W.P. (C) 12073/2015, Delhi High Court, dtd. 21.04.2017, in favour of revenue]

Mandatory return-filing before due-date to claim tax-holiday not 'discriminatory'; Upholds Constitutional validity

Delhi HC dismisses assessee's (100% EOU) writ for AY 2007-08, upholds constitutional validity of Sec. 80A(5) as well as fourth proviso to Sec. 10B(1) (the sections mandate filing of return of income within prescribed due-date u/s 139(1) in order to claim tax holiday u/s. 10A/10B); Assessee submitted that the provisions discriminate between two sets of assessees – one, who file return u/s. 139(1) but claim the deduction subsequently by way of revised return u/s. 139(5), and another set of taxpayers, who could not file return within due date but claim the deduction in the original return filed belatedly u/s. 139(4) and therefore violative of Article 14 of the Constitution; HC observes that the provisions did not curtail any vested rights of taxpayer but it only imposed an obligation to claim deductions in a timely manner and in the return so filed; HC also refers to SC ruling in Nallamilli Ramli Reddi to hold that Article 14 permits reasonable classification if it is based on intelligible differentia and it has reasonable connection with the object sought to be achieved; Noting

that the objective behind insertion of the two provisions was to defeat multiple claims of deductions and to ensure better tax compliance, HC rules that 'it is open to legislate and prescribe different conditions in respect of those who claim benefits, just as the substantive provisions which stipulate the conditions (kind of accounts to be maintained, eligibility criteria, etc.).''; Also relies on SC rulings in Kedarnath Jute Manufacturing Co. Ltd. and Sanjay Kumar Jain to uphold the validity of fourth proviso, being merely a qualifying proviso, which seeks to limit the general provision in Sec. 10B(1) with a further stipulation or condition

Section 147 – Income escaping assessment

Rajendra Goud Chepur Vs. ITO [(2017) 80 taxmann,com 387, Andhra Pradesh and Telangana High Court, dtd. 13.02.2017, in favour of assessee]

No reassessment just because persons engaged in same line of business declared higher profit than that of assessee

Reopening cannot be ordered by Assessing Officer merely on presumption that returned income is extremely lower than total gross receipts.

Section 153A – Assessments in case of search or requisition

Shyam Sunder Jindal Vs. ACIT [ITA No. 5448/Del/2016, ITAT Delhi bench, dtd. 16.02.2017, in favour of assessee]

Non-original, unauthentic Swiss bank documents give temporary reprieve to assessee

Delhi ITAT sets aside assessment u/s 153A on assessee (chairman of Jindal Group of companies) for AY 2006-07 making addition of Rs. 69.07 lakhs representing undisclosed bank account balance; Notes that AO has claimed to have received the bank statement as information under DTAA through FT & TR, however the statement was a 'copy' , which did not have any signature of bank official or name of the bank or the place or the country where the branch was situated; Observing that nothing has been brought on record to substantiate that any letter was issued by Competent Authority of the relevant country from which the documents were obtained, holds that "it is not possible to come to a just conclusion relating to the authenticity of the document relied by the AO or to the facts as to whether these documents pertained to the assessee"; Also takes cognizance of contradictory observation in the assessment order to the effect that the requisite information from Swiss Banking Authority had not been received and specific denial of assessee about existence of such account in the statement recorded u/s 132(4) pursuant to search and during assessment proceedings; Thus, in the absence of clear facts on record, ITAT sets-aside the issue to AO's file for fresh adjudication

Section 201 – Consequences of failure to deduct or pay

Radeus Advertising (P.) Ltd. Vs. ACIT(TDS) [(2017) 80 taxmann.com 353, ITAT Mumbai bench, dtd. 08.03.2017, in favour of assessee]

Payer couldn't be treated as an assessee-in-default if tax was paid by payee; proviso to sec. 201(1) has retro-effect

Where assessee made certain payments towards market research activities without deducting tax at source, since payee had offered receipt as income and paid tax thereon, assessee could not be treated as an assessee in default

Where assessee made payments of media monitoring charges without deducting tax at source on plea that payee had offered amount in question as its income and paid tax thereon, matter was to be remanded back for disposal afresh after verification of aforesaid plea.

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

Jagdish Gandabhai Shah Vs. Principle Com. of IT [Special Civil Application No. 5679 of 2017,Gujarat High Court, dtd. 28.03.2017, in favour of assessee]

15% demand payment not pre-condition for stay application, AO misread CBDT's 2016 instruction

Gujarat HC allows assessee-individual's writ, sets-aside AO's as well as Pr. CIT's orders rejecting assessee's stay of demand petition; AO rejected assessee's stay application on the ground assessee was required to make a pre-deposit of 15% of the disputed demand for considering his stay application on merits in view of CBDT instruction dated February 29, 2016, even Pr. CIT rejected the stay application mainly considering AO's order; Rejecting Revenue's action, HC remarks that Revenue's interpretation "is made absolutely on misconception and/or misreading of the modified instructions dated 29th February 2016."; Clarifies that clause-4 of the modified instruction only provides that the AO may/shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless assessee's case falls in the category mentioned in para 4 [B] therein which covers both the situations ie. required payment (for grant of stay) is either less than 15% or more than 15%; Accordingly, directs AO to consider assessee's stay petition on merits and in accordance with law considering modified instruction dated February 29,

2016, even Pr. CIT rejected the stay application mainly considering AO's order; Rejecting Revenue's action, HC remarks that Revenue's interpretation "is made absolutely on misconception and/or misreading of the modified instructions dated 29th February 2016."; Clarifies that clause-4 of the modified instruction only provides that the AO may/shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless assessee's case falls in the category mentioned in para 4 [B] therein which covers both the situations ie. required payment (for grant of stay) is either less than 15% or more than 15%; Accordingly, directs AO to consider assessee's stay petition on merits and in accordance with law considering modified instruction dated Feburary 29, 2016 within 6 weeks from the date of HC's order.

Section 271 – Failure to furnish returns, comply with notices, concealment of income, etc.

CIT Vs. Shree Chowatia Tubes (India) (P.) Ltd. [(2017) 80 taxmann.com 388, The Supreme Court of India, dtd. 06.04.2017, in favour of revenue]

Apex court upheld levy of penalty even if returned income and assessed income showed loss

Penalty order under section 271(1)(c) could not be cancelled on mere ground that returned income and assessed income was a loss.

Income disclosure Scheme

Nandu Atmaram Wajekar Vs. UOI [Writ Petition No. 3578 of 2017, in favour of revenue]

HC rejects demonetisation alibi for missing IDS installment deadline

Nandu Atmaram Wajekar ('assessee') filed a declaration under the Income Declaration Scheme, 2016 (part of the Finance Act, 2016) ('Scheme') on September 30, 2016 declaring undisclosed income of Rs.11.59 crores for AYs 2014 and 2015. However, as per Notification issued u/s 183 of Scheme, the assessee was required to pay 25% of the tax payable on or before November 30, 2016, further amounts payable on or before March 31 , 2017 and September 30, 2017. The petitioner had failed to pay the tax which he was obliged to pay before 30th November, 2016 claiming that he couldn't do so under the scheme of demonetization of Rs.500 and Rs.1000 currency notes on November 8, 2016. Thus assessee requested Revenue to now accept Rs.1.19 crores which he was unable to deposit on or before November 30, 2016.

INTERNATIONAL TAXATION

Chapter X – Special provisions relating to avoidance of tax

DCIT Vs. Hanil Tube India (P.) Ltd. [(2017) 81 taxmann.com 69, Chennai ITAT bench, dtd. 22.02.2017, in favour of assessee]

No idle capacity utilization adjustment if assessee failed to offer reason for non-utilization of installed capacity

Company in manufacturing of automotive components could not be held to be incomparable to another company manufacturing automotive products merely because it returned loss due to start up costs of new product

While computing operating income for purpose of PLI, both foreign exchange loss or gain should be excluded from operating income

No capacity utilization adjustment where assessee had claimed for idle capacity utilization adjustment but had not furnished details of installed capacity and capacity utilized and reasons for non-utilization of installed capacity and resources available and utilized by assessee.

DCIT Vs. M/s. KPMG [ITA No. 2493/Mum/2012, ITAT Mumbai bench, dtd. 07.04.2017, in favour of assessee]

KPMG's payment to KPMG-International under membership agreement, not taxable applying 'mutuality' principle

Mumbai ITAT rules that payment made by KPMG India ('assessee') to KPMG International ('KPMGI', registered in Switzerland) under the Membership agreement, not taxable on the grounds of 'mutuality' for AY 2001-02, Sec. 195 TDS not applicable; Rejects Revenue's stand that payment was royalty under Article 12(2) of India-Swiss DTAA, as assessee acquired goodwill associated with the name of 'KPMG' and payment was made for use of brand name; Notes that assessee is an Indian member firm of KPMGI, which is a mutual association, further notes that amount remitted by assessee was in the nature of reimbursement of cost to KPMGI to enable it in discharging its function within the terms of Membership Agreement signed by assessee; Relies on plethora of rulings including SC rulings in Bankipur Club Ltd. and Royal Western India Turf Club Ltd., Delhi HC rulings in Yum! Restaurants (Marketing) P. Ltd. and Standing Conference of Public Enterprise and takes note of essential elements of a mutual organization; Referring to the relevant clauses of the membership agreement, ITAT observes that there is a complete identity between the contributors and participators, the actions of the participators and contributors are in furtherance of the mandate of the association and there seems no element of profit by the contributors from a fund made by them, which could only be expended or returned to themselves.

Saira Asia Interiors Pvt. Ltd. Vs. ITO [ITA No. 673/Ahd/2014, ITAT Ahmedabad bench, dtd. 28.03.2017, in favour of assessee]

'Actual payment' of royalty, not book -entry triggers Sec. 195 TDS, cites treaty provisions

Ahmedabad ITAT holds that assessee (an Indian company) not liable to deduct TDS u/s 195 at the time of crediting royalty amount to the account of its Italy based group company in the books during AY 2011-12; Holds that liability to deduct TDS u/s 195 shall apply only when actual royalty payment is made in the subsequent year; Observes that as per Artide 13 of India-Italy DTAA, royalty is taxable in the hands of the NR recipient only at the time of actual payment by assessee and not at the time of credit; ITAT states that TDS liability u/s. 195 "is a vicarious liability in the sense that it's survival in the hands of tax-deductor is wholly dependent on existence of tax liability in the hands of recipient of income."; Holds that "When the royalty so credited by the assessee is not taxable at the time of credit of such amount to the account of payee, in the light of law laid down by Hon'ble Supreme Court in the case of GE Information Technology (supra), it does not give rise to any tax withholding obligations under section 195 (1)either."; However, despite triggering taxability on 'receipt' basis as per DTAA, ITAT applies lower withholding rate of 10% u/s 115A of the Act (as against 20% rate under Artide 13(2) of the DTAA), holds that beneficial provisions to apply as per Sec. 90 of the Act

Circulars/Notifications / Instructions

Circular No. 15/2017, dtd. 21.04.2017

Vide the above circular, it has been clarified that notification no. 83/2013 which notified Cyprus as a "notified jurisdictional area" has been rescinded with effect from the date of issue of the said notification i.e. 01.11.2013.

Circular No. 16/2017, dtd. 25.04.2017

Vide the above circular, it has been clarified that in case of an undertaking which develop, develops and operates an industrial park / SEZ notified in accordance with the scheme, the income from letting out of premises / developed space along with other facilities in an industrial park /SEZ is to be charged to tax under the head 'Profit and gains from Business'.

Notification No. 37/2017, dtd. 11.05.2017

Vide the above notification, CBDT exempted few classes of assessees from the requirement of compulsorily quoting the Aadhaar number while applying for a Permanent Account Number (PAN) or while filing tax returns. The relief is available to non-residents, those who are not citizens of India, those who are 80 years of age and over and to the people living in Assam, Jammu & Kashmir and Meghalaya.

INDIRECT TAXES

Judicial pronouncements

SERVICE TAX

SMV Beverages (P.) Ltd. Vs. Com. of Central Excise [(2017) 80 taxmann.com 292, CESTAT Mumbai bench, dtd. 17.03.2017, in favour of assessee]

Sharing of marketing expense with manufacturer by distributor won't fall under Business Auxiliary Services

Where assessee after purchasing concentrate from PFL converted it into aerated water, were fact that in order to enhance its sales assessee incurred marketing and advertisement expenses which were shared by PFL, amount received from PFL could not be taxed as 'business auxiliary service'.

Monnet International Ltd. Vs. Com of Central Excise [(2017) 80 taxmann.com 380, new Delhi bench, dtd. 08.03.2017, in favour of assessee]

Refund claim of service tax paid by mistake couldn't be rejected on ground of expiry of time period

Where assessee claimed refund of Service Tax paid by mistake, in view of fact that assessee was not liable to make said payment, its claim was to be allowed and same could not be said to be hit by limitation prescribed under section 11B of 1944 Act, read with section 83 of Finance Act, 1994

Navdurga Ispat (P.) Ltd. Vs. Com. of Central Excise & Service Tax [(2017) 80 taxmann.com 369, CESTAT New Delhi bench, dtd. 18.01.2017, in favour of revenue]

Penalty couldn't be set aside if assessee failed to pay interest levied on availment of excess credit

Where assessee, a service receiver, had taken excess credit of service paid by service provider and AA disallowed excess credit availed by assessee and confirmed recovery of same alongwith interest and also imposed penalty, since assessee had not paid interest so far, penalty could not be set aside.

CENVAT CREDIT

Cari Bechem Lubricants India (P.) Ltd. Vs. Com. of Central Excise [(2017) 81 taxmann.com 55, CESTAT Bangalore bench, dtd. 29.12.2016, in favour of revenue]

Credit of service tax paid on marketing consultancy services isn't available for trading of imported goods

Where assessee exported goods manufactured by itself and also exported goods imported by it and availed credit of service tax paid on marketing consultancy services on manufactured goods and traded goods under reverse charge mechanism under section 66A, it was not eligible to avail cenvat of service tax paid on marketing consultancy services for trading of imported goods.

Com. of ST Vs. Atrenta India (P.) ltd. [(2017) 80 taxmann.com 382, Allahabad High Court, dtd. 30.08.2016, in favour assessee]

Cenvat credit couldn't be rejected on ground that assessee was not registered during said period of claim

There is no statutory requirement of registration of assessee as a condition precedent or eligibility condition for claiming refund; refund claim of cenvat credit paid on input services could not be rejected on ground of non-registration of assessee.

Kohinoor Biscuit Products Vs. Com. of Central Excise [(2017) 80 taxmann.com 381, CESTAT Allahabad bench, dtd. 16.03.2017, in favour of assessee]

Outward Transportation of manufactured items by job worker to principal manufacturer amounts to 'input service'

Where job worker made outward transportation of manufactured biscuits to premises of principal manufacturer, such premises being place of removal and job worker's premises not being place of removal, activity of transportation would fall within definition of 'input service' under rule 2(l)(ii); it could avail credit of service tax paid.

EXCISE

Ramesh Vasantbhai Bhojani Vs. UOI [(2017) 81 taxmann.com 37, Gujarat High Court, dtd. 17.03.2017, in favour of assessee]

Commissioner (Appeals) cannot insist upon pre-deposit requirement as a condition for filing an appeal

In terms of section 128, once there is a delay of more than ninety days in filing appeal, Commissioner (Appeals) has no power or authority to permit appeal to be presented beyond such period.

In view of provisions of section 129E, while Commissioner (Appeals) cannot entertain an appeal, namely, hear and decide it unless pre-deposit is made, he cannot insist upon payment of pre-deposit as a condition precedent for filing an appeal.

In view of conjoint reading of sub-section (2) of section 122A and proviso thereto, if sufficient cause is made out, proceeding may be adjourned for a maximum of three occasions, however, proviso cannot be read to mean that it mandates grant of three adjournments.

Due Dates of key compliances pertaining to the month of May 2017:

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*
15th May	*PF Contribution for the month of April*
21st May	*ESIC payment of for the month of April*
31st May	*TDS / TCS return for the quarter ended on 31st March, 2017*

OUR OFFICES:

- **MUMBAI**
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