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SNK

Newsletter

RECENT ECONOMIC DEVELOPMENT

- ◆ The Federal Open Market Committee kept the overnight funds rate unchanged at 1.75% to 2.0% at the conclusion of its two-day policy meeting. The Federal Reserve stuck to its customary narrative of "gradual" rate hikes but acknowledged that inflation was nearing its 2% target, which further cemented investor expectations for a rate hike at the Fed's next meeting in June.
- ◆ India's industrial output grew 4.4 percent in March from a year earlier, the slowest expansion in five months, government data showed.
- ◆ India retained its position as the world's fastest growing major economy in the January-March quarter, well ahead of China. India's GDP or gross domestic product growth accelerated to 7.7 per cent in the March quarter - the fastest pace of growth in seven quarters. Strong growth in agriculture (4.5 per cent), manufacturing (9.1 per cent) and construction sectors (11.5 per cent) contributed to the overall growth. Growth for Asia's third-largest economy, reported by the Ministry of Statistics, trumped forecasts in a Reuters poll for annual growth of 7.3 per cent. GDP had grown at a revised 7 per cent in October-December quarter.
- ◆ The Philippine economy grew more than 6 percent last quarter on rising private consumption and government spending.
- ◆ China's producer price index rose 3.4 percent in April from a year earlier, in line with the estimate in a Bloomberg survey and up from 3.1 percent in March. The consumer price index climbed 1.8 percent, the statistics bureau said, versus a forecast 1.9 percent gain and prior reading of 2.1 percent.
- ◆ India's annual retail inflation accelerated in April to 4.58 percent, after easing for three straight months,



government data showed, mainly driven by faster increases in fuel prices.

- ◆ India's trade deficit slightly widened to \$13.72 billion in April from \$13.25 billion a year ago, government data showed.
- ◆ The UK's rate of consumer-price growth fell to 2.4 percent from 2.5 percent in March, the Office for National Statistics said. Economists had expected no change in the rate. Core inflation eased to 2.1 percent. The pound fell to the lowest level this year after the data.
- ◆ The Indian economy is expected to grow between 7.3 to 7.5 percent in the March quarter, Economic Affairs Secretary Subhash Chandra Garg told CNBC-TV 18 news channel.
- ◆ UK retail sales rose 1.6% in April, the Office for National Statistics said. This was compared to a 1.1% decline in the previous month which was revised up from an initial 1.2% decrease.
- ◆ Market research group Markit said that its Flash German Composite Output Index, which measures the combined output of both the manufacturing and service sectors registered a reading of 53.1 this month, a 20-month low and down from 54.6 in April.

(Source: Business news papers and Magazines)

Judicial pronouncements

- ◆ The Commerce Department (USA) said new home sales dropped 1.5 percent to a seasonally adjusted annual rate of 662,000 units last month. March's sales pace was revised down to 672,000 units from the previously reported 694,000 units.
- ◆ Japan's jobless rate held steady in April and the availability of jobs also remained unchanged, government data showed. The seasonally adjusted unemployment rate stood at 2.5 percent, the Internal Affairs ministry said.
- ◆ Profits earned by Chinese industrial firms in April rose at their fastest pace in six months, data from the National Bureau of Statistics (NBS) showed, as factories benefited from higher prices and strong demand. Profits in April rose 21.9 percent year-on-year to 576 billion yuan (\$90.14 billion), the quickest since October, bringing gains for the first four months of 2018 to 15 percent.
- ◆ Japan's exports accelerated in April on increased shipments of cars and machines used to make semiconductors, with rising volumes suggesting healthy overseas demand could help the economy recover quickly from a dip in the first quarter. Exports grew 7.8 percent in April from the same period a year ago. In March, exports grew an annual 2.1 percent.



DIRECT TAXES

Judicial pronouncements

Commissioner Vs Mahindra And Mahindra Ltd (Supreme Court)

Facts: The assessee entered into an agreement with KJC based in America wherein KJC agreed to sell the dies, welding equipments and die models to the assessee. For the procurement of the said toolings and other equipments, the KJC agreed to provide a loan to the assessee at the rate of 6 per cent interest repayable after 10 years in installments. Subsequently, AMC took over the KJC and also agreed to waive the principal amount of loan advanced by the KJC to the assessee. Assessee in its return of income showed waiver of loan as cessation of liability. The Assessing Officer, however, held that the credit represented income taxable under section 28.

Held: Waiver of loan for acquiring capital assets cannot be taxed as perquisite under section 28(iv) as receipt in hands of debtor/assessee are in form of cash/money and it also cannot be taxed as a remission of liability under section 41(1) as waiver of loan does not amount to cessation of trading liability.

CIT vs. Container Corporation of India Ltd (Supreme Court)

Facts: The assessee was a government Company and was engaged in the business of handling and transportation of containerized cargo and was under the direct administrative control of Ministry of Railways. Its operating activities were mainly carried out at its Inland Container Depots (ICDs), Container Freight Stations (CFSS) and Port Side Container Terminals (PSCTs) spread all over the country. The as-

sessee filed its returns for relevant years and claimed deduction under various heads including deduction under section 80-IA. The AO rejected the claim for deduction on the profits earned from the ICDs and further the deduction on account of rolling stocks.

Held: Inland Container Depots (ICDs) are Inland Ports and incomes earned out of these Depots are eligible for deduction. However, the actual computation is to be made in accordance with the different Notifications issued by the Customs department with regard to different ICDs located at different places.

CIT vs. Calcutta Export Company (Supreme Court)

Facts: The assessee firm was a manufacturer and exporter of casting materials. It filed return declaring certain taxable income. In course of assessment, the Assessing Officer disallowed export commission paid by assessee on ground that tax deducted at source on said charges had not been deposited with the Government before the end of relevant financial year.

Held: The amendment to s. 40(a)(ia) by the Finance Act, 2010 w.e.f 01.04.2010 to provide that all TDS made during the previous year can be deposited with the Government by the due date of filing the return of income should be interpreted liberally and equitably and applied retrospectively from the date when s. 40(a)(ia) was inserted i.e., with effect from the AY 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. The amendment is curative in nature and should be given retrospective operation as if the amended provision existed even at the time of its insertion.





CIT vs. S. Ajit Kumar (Supreme Court)

Facts: The office and residential premises of the assessee searched and certain evidence were found which showed that the assessee had indulged in understatement of his real income relating to the block period from 1-4-1996 to 17-7-2002. Consequently, a notice under section 158BC was issued to the assessee and he was asked to file block assessment. On the same date, there was a survey in the premises of the builder and interior decorator who constructed and decorated the house of the assessee. From the survey in the builder's (ECIL) premises, the fact of the assessee having paid a certain sum in cash to ECIL was revealed which was not accounted for. The Assessing Officer completed the block assessment and held that the said amount was liable to tax as undisclosed income of the block period.

Held: While it is a cardinal principle of law that in order to add any income in the block assessment, evidence of such income must be found in the course of the search u/s 132, any material or evidence found/collected in a survey u/s 133A which has been simultaneously made at the premises of a connected person can also be utilized while making the Block Assessment. The same would fall under the words "and such other materials or information as are available with the Assessing Officer and relatable to such evidence" occurring in s. 158 BB.

In Re Hiten Ramanlal Mahimtura (ITAT Mumbai)

Facts: Appeal is barred by limitation by 21 days. The Registrar has heard this preliminary issue of condoning the delay and passed order condoning the delay.

Held: The Registrar of the Tribunal has no jurisdiction to consider and decide on applications for condonation of delay. Only the Court/ Tribunal have the power. The order passed by the Registrar is ultra vires his power and non est in law. He should desist from passing such orders.

DCIT vs. Ozoneland Agro Pvt. Ltd (ITAT Mumbai)

Facts: Assessee had charged share premium based on the valuation report of Chartered Accountant who had adopted Discounted Cash Flow (DCF) for valuing the shares. AO during the course of assessment proceeding rejected the valuation method adopted by the assessee and adopted NAV method for valuation.

Held: Rule 11UA allows the assessee the right to adopt the method of his choice for valuing shares (DCF, NAV etc). The AO has no jurisdiction to insist that the assessee should adopt only a particular method for determining the value of the shares. AOs should not deviate from earlier years' decisions without assigning any concrete and justifiable reasons. Tax determination cannot be left to whims and fancies of a person. It is a serious task and has to be accomplished in a disciplined manner. If an assessee has been allowed a certain concession in earlier year(s) it cannot be withdrawn in subsequent years without plausible reasons.

Bhinmal Contractors Property and Land Developers (P.) Ltd. Vs ACIT (Mumbai ITAT)

Facts: Assessee is in the business of construction/development of infrastructure facilities. It undertakes project of roads from State and Central Government and also provides necessary and crucial components of the railway system. The assessee being a developer within the meaning of section 80-1A(4) of the Act, claimed deduction under said provision of the Act. However, the Assessing Officer disallowed the claim by stating that the assessee is not a developer but a contractor.

Held: In view of provisions of section 80-1A(4), term 'contractor' is not essentially contradictory to term 'developer and, thus by entering into a lawful agreement and thereby becoming a contractor should, in no way, be a bar to one being a developer. Accordingly, the Assessing Officer is directed to allow the claim under section 80-1A(4) in all the years under consideration.

Soman Sun Citi vs. JCIT (ITAT Mumbai)

Facts: Assessee is in the business of construction. During the course of assessment proceeding notice issued u/s 133(6) returned unserved from three suppliers of assessee. Further, two parties were reflecting in the hawala trader list of Sales Tax Department. The assessee also could not prove delivery of material to the assessee site as no delivery challans nor lorry receipt/octroi receipts were produced.

Held: The right of cross-examination is not absolute. No prejudice is caused to the assessee by non granting of cross examination if the assessee has not discharged the primary onus. The fact that purchase bills are produced and payment is made through banking channels is not sufficient if the other evidence is lacking. Accordingly, 100% disallowance confirmed.





International Taxation

Mehsana District Co-operative vs. DCIT (Gujarat High Court)

Facts: The assessee was a District level Cooperative Milk Producers Union and was engaged in collection and processing of milk from the member societies who in turn would be co-operative milk societies. The assessee filed return of income. Since the assessee had entered into certain specified domestic transactions and was desirous of opting for safe harbour, the assessee applied for such purpose in a prescribed format duly certified by the Chartered Accountant along with the return itself. The assessee wrote to the Assessing Officer and preempted any attempt on his part of making reference to the TPO contending that the case of the assessee did not fall in any other criteria for making reference. However, the Assessing Officer made reference to the TPO of the assessee specified domestic transactions to ascertain the arm's length price.

Held: If the assessee has exercised the safe harbour option under Rule 10THD (1) & the AO has not passed any order under rule 10THD(4) declaring the exercising of option to be invalid, the option is treated as valid. Thereafter, the Transfer Pricing regime does not apply & the AO has no authority to make any reference to the TPO to ascertain the arm's length price of the assessee's specified domestic transactions. CBDT's circular dated 10.3.2006 could not have and does not lay down any-

thing to the contrary.

Google India (P.) Ltd. Vs JCIT (Bangalore ITAT)

Facts: Assessee-Google India made payments to Google Ireland in relation to purchase of advertisement space for resale to the advertisers in India under the Google AdWords Reseller Agreement. Under AdWord Distributor Agreement and the Service Agreement Google India was licenced to use the trade marks, IPRs, brand features, derivative works and other intangibles etc, owned by Google Ireland though it may not be transferred in favour of Google India.

Held: The consideration paid by Google India is on account of usage of all these intangibles in order to provide better services to Google Ireland or to the advertisers and is certainly in the nature of payment of royalty and is chargeable to tax under section 9(1)(vi) and under article 12 of the DTAA between India and Ireland. Since Google India has not deducted the tax at source as per provisions of section 195, Google India was rightly held to be in default under section 201(1).



INDIRECT TAXES

Judicial pronouncements

U.P. Kar Adhivakta Sangthan (Regd.) Vs State of U.P. (Allahabad High Court)

GST : Notification issued by State Government prescribing various documents liable to be carried along with goods in transit for a temporary phase till E-Way

bill system was developed and approved by council, did not violate any statutory provision and, thus, validity of same was to be upheld.

Maneesh Singh Vs State of U.P. (Allahabad High Court)

GST/UP GST: Where petitioner filed a writ petition stating that in view of section 173 of U.P. Goods and Services Tax Act, 2017, clause (b) of sub-section (2) of section 172 and sections 192 and 193 of U.P. Municipal Corporation Act, 1959 were omitted and, thus, tender notice dated 24-3-2018 issued by Nagar Nigam, Gorakhpur for realising advertisement tax was bad in law, since issue require scrutiny, auction in pursuance to impugned tender notice was stayed till next date of listing.

Tathagat Health Care Centre LLP, In re (AAR Karnataka)

GST: Service of rental or leasing involving own or leased non-residential property is classified under heading (SAC) 997212 and is taxable under GST, further, no specific exemption is available under any notification for time being in force for said services, also there is no provision available in Act which allows exemption on an input service if output service provided by taxable person is exempt and, thus, GST is leviable on rent paid/payable for premises, taken on lease by applicant - hospital, catering, life saving services.

Steel Craft Vs Commissioner of Central Excise, Jaipur (New Delhi-CESTAT)

Where assessee was involved in fixing of automatic sliding door, fixing of doors and windows with pre-laminated particle board/decorative lamination, fixing glazing in aluminum door, window, etc., said activities covered under category of 'commercial or industrial construction services'



- Govt. has notified that the supply of priority sector lending certificates by registered person would attract GST under reverse charge mechanism.
- Govt. notified the National Academy of Customs, Indirect Taxes and Narcotics (NACIN) as the authority to conduct the examination for GST Practitioners under rule 83 (3) of the CGST Rules, 2017.
- The Govt. is scheduled to start the second phase of 'Special drive re-

fund fortnight' from May 31, 2018 to June 14, 2018 for all pending GST refunds on or before April 30, 2018. This will include refunds of IGST paid on exports, refunds of unutilized ITC and all other GST refunds submitted in Form GST RFD-01A.

- The total revenue received under GST for the month of May, 2018 was Rs. 94,016 crores. Out of Rs. 94,016 crores, Rs. 15,866 crores have been collected as CGST, Rs. 21,691 crores has been collected as SGST, Rs. 49,120 crores has been collected as IGST and Rs. 7,339 crores has been collected as Compensation cess.
- Govt. has extended the due date for filing of return by Input Service Distributor in Form GSTR-6 for the months of July, 2017 to June, 2018

till July 31, 2018.

- The Govt. has issued a Circular No. 3/1/2018-IGST, dated May 25, 2018 to clarify that IGST would be levied and collected only when the goods are cleared for home consumption from the customs bonded warehouse, i.e., at the time of filing the ex-bond bill of entry. This Circular would be applicable from April 1, 2018 and certainly it shall provide a big relief to the importers.
- Govt. has clarified that the ambulance services provided by private service provider to govt. under National Health Mission would be exempted from service tax under Notification No. 25/2012- Service Tax, dated June 20, 2012..

Due Dates of key compliances pertaining to the month of June 2018:

7th June 2018	TDS/TCS Payment for the month of May
15th June 2018	ESIC / PF Payments for the month of May
15th June 2018	First installment of advance tax for the F.Y. 2018-19
20th June 2018	GSTR-3B Return for May

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The information contained in this newsletter is of a general nature and it is not intended to address specific facts, merits and circumstances of any individual or entity. We have tried to provide accurate and timely information in a condensed form however, no one should act upon the information presented herein, before seeking detailed professional advice and thorough examination of specific facts and merits of the case while formulating business decisions. This newsletter is prepared exclusively for the information of clients, staff, professional colleagues and friends of SNK.

