

At a Glance

(Brief Updates from the world of Tax and Finance)

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December 2018

Income Tax

Father's name not mandatory in PAN application form; CBDT issues notification

The CBDT has issued final notification proposing amendments in Rule 14 of Income Tax Rules, 1962 and in PAN application forms, i.e. Form 49A and 49AA. As per this notification, father's name shall not be mandatory in PAN application forms where mother is a single parent.

It has also been notified that in case of non-individual resident persons entering into financial transactions of Rs.2.50 lakhs or more in a financial year, 31st May of next financial year shall be the last day to apply for PAN.

[Notification No. 82 of 2018 dated November 19, 2018]

Tax Force for drafting new Direct Tax Law shall submit its report by 28.02.2019

In order to review the Income Tax Act, 1961 and to draft a new Direct Tax Law in consonance with the economic needs of the country, a Task Force was constituted by the Government of India on November 2017. The Government has notified the date of February 28, 2019 as the date by which the Task Force shall submit its report to the Government.

[Press Release dated November 26, 2018]

CBDT allows taxman to widen certain 'limited scrutiny' cases

The CBDT has issued a fresh directive on 'limited scrutiny' assessment allowing the tax officials to widen the scope of such probes if they receive information of tax evasion by the assessee. It was made clear that such an enquiry will be specific to the allegation of tax theft that was flagged to the taxman by any other probe agency, in order to ensure that the assessing officer does not undertake

a fishing or roving exercise, resulting in harassment of the taxpayer.

[CBDT Directive dated November 29, 2018]

Trading at Indian Commodity Exchange not to be considered as speculative transaction as per Section 43(5) of the Act

Indian Commodity Exchange Limited has been notified as recognized association wherein trading of commodity derivatives will not be considered as speculative transactions in terms of provisions of clause (e) of sub-section 43(5) of the Act with effect from 1st November, 2018.

[Notification No. 76 of 2018]

No Section 68 addition if assessee had discharged initial burden cast upon it

A search in premises of 'B' Group led to survey in premises of assessee. Assessing Officer (AO) completed assessment wherein addition was made to assessee's income under Section 68 of the Act. CIT(A) as well as Tribunal deleted said addition holding that relevant enquiry based upon materials furnished by assessee had not been made by the AO. High Court also found that assessee had discharged onus initially cast upon it by providing basic details which were not suitably enquired into by the AO. Accordingly, High Court upheld the order passed by Tribunal. Considering these facts, Special Leave Petition filed against order of High Court was dismissed by the Apex Court.

[Pr. CIT v. Adamine Construction Pvt. Ltd. – Supreme Court] (99 taxmann.com 45)

Section 14A disallowance is to be restricted to the amount of exempt income only

In course of assessment, AO made addition on account of apportionment of expenses against exempted income under Section 14A. CIT passed a revisional order directing AO to enhance amount

of addition under Section 14A. Tribunal set aside revisional order as well as consequent assessment order passed by AO enhancing addition made under Section 14A. High Court upheld the order of Tribunal holding that amount of disallowance under Section 14A has to be restricted to the amount of exempt income only and not a higher figure. SLP filed by Revenue against the above decision of High Court was dismissed by the Supreme Court.

[Pr. CIT v. State Bank of Patiala – Supreme Court] (99 taxmann.com 286)

Assessment order passed without considering material on record was unjustified

Assessee filed his return declaring certain taxable income. Assessee's return was selected for scrutiny and a notice was issued under Section 143(2). Assessee's case was that he had brought on record various documents in support of income declared in return. However, AO, without even taking into consideration those documents, passed the assessment order making various additions. Assessee thus filed a writ petition before High Court contending that assessment order was liable to be set aside on ground of violation of principles of natural justice. High Court accepted the contention raised by assessee. Considering the background, SLP filed by Revenue against order passed by High Court was dismissed by the Apex Court.

[ACIT v. Balmiki Prasad Singh – Supreme Court] (99 taxmann.com 204)

SLP dismissed against High Court's ruling deleting adhoc disallowance of expenditure claimed by assessee

Assessee claimed deduction of expenses towards bricks, machinery repair, cartage, labour expenses etc. AO disallowed 10% of said expenses on ground that insufficient evidence was adduced. Tribunal set aside said ad hoc disallowance on two grounds:

- a. assessee's books of accounts were not rejected by the AO
- b. similar expenses were allowed to assessee consistently in the past years in scrutiny assessments

High Court upheld the order passed by Tribunal. Considering the above findings, SLP filed by Revenue

against view taken by High Court was dismissed by the Apex Court.

[Pr. CIT v. R. G. Buildwell Engineers Ltd. – Supreme Court] (99 taxmann.com 284)

Failure to claim deduction in Income Tax Return (ITR) was not mistake apparent from record; rectification under Section 154 could not be invoked

The Court was of the view that where assessee itself failed to make a claim for deduction under Section 80-I in its return, same was not a mistake which was apparent from record. The High Court in this case has held that power under Section 154 is exercisable only when the mistake is manifest and could be identified by a mere look, which does not need a long drawn out process of reasoning. The Court, thus, concluded that there was no scope for invoking provisions of Section 154 so as to grant deduction under Section 80-I to the assessee.

[Lakshmi Card Clothing Mfg. Co. Pvt. Ltd. v. DCIT – Madras High Court] (98 taxmann.com 445)

Expenditure to be allowed if necessary steps have been taken to commence business after incorporation

Tribunal in this case has held that there is a distinction between setting up of business and commencement of business and what is relevant under the Act is setting up of business and not commencement of business. Tribunal observed that assessee upon its incorporation had taken various steps for commencing its business, such as hiring of people, application to SEBI, organizing for space, etc. and the same amounted to setting up of business. It was, therefore, concluded that expenditure incurred by assessee relating to electricity charges, repairs and maintenance, etc. could not be disallowed on ground that assessee had not started any business activity.

[Pinebridge India Pvt. Ltd. v. ACIT – ITAT Mumbai] (ITA No. 2470/Mum/2011)

Sum received by Sushmita Sen towards damages for being sexually harassed not taxable

Assessee received a total amount of Rs.145 lakhs in lieu of settlement for breach of terms of celebrity

engagement contract. However, only an amount of Rs.50 lakhs was due to assessee under the contractual terms. The balance amount of Rs.95 lakhs was received towards damages arising out of her being sexually harassed by an employee of Coca Cola India Ltd. (CCIL), for having disparaged her professional reputation by false allegations and for the repudiatory breach of contract by CCIL. Tribunal, thus, has held that such compensation could not be termed as any benefit or perquisite arising to assessee out of exercise of profession and hence, it cannot be construed to be assessee's income under Section 2(24) or Section 28 of the Act.

[Sushmita Sen v. ACIT – ITAT Mumbai] (99 taxmann.com 252)

No Section 263 revision if AO had allowed expenditure after making reasonable enquiry

Assessee-company, engaged in manufacture, purchase, sale and export of sports goods, claimed expenditure towards payments made to cricket players under the head 'advertisement and publicity'. AO, after making enquiries and considering explanation furnished by assessee allowed said expenditure. Subsequently, CIT, exercising power under Section 263, disallowed expenditure claimed by assessee on ground that AO had failed to make an inquiry in this regard. ITAT took note of the fact that it was not department's case that no information regarding payments made to cricketers was called for by the AO. Tribunal was of the view that no inference could be drawn that AO had not examined the issue, although he had not expressed it in as many terms as might be considered appropriate by CIT. ITAT held that Section 263 does not visualize a case of substitution of judgment of CIT for that of AO, unless decision is held to be erroneous. Tribunal, thus, concluded that once impugned issue was considered and examined by AO, CIT could not set aside order without recording a contrary finding and therefore, impugned action of CIT under Section 263 was patently illegal and was liable to be quashed.

[Sanspareils Greenlands Pvt. Ltd. v. CIT – ITAT Delhi] (99 taxmann.com 222)

II. International Taxation

Draft assessment order under Section 144C is required even in case of remand proceedings

High Court in impugned order held that once there is a clear order of setting aside of an assessment order with requirement of Assessing Officer/Transfer Pricing Officer to undertake a fresh exercise for determining the Arm's Length Price (ALP), failure to pass a draft assessment order, would violate Section 144C(1). High Court further held that this is not a curable defect in terms of Section 292B of the Act. Considering the above order of High Court, SLP filed by Revenue against said decision was dismissed by the Apex Court.

[Addl. CIT v. Nokia India Pvt. Ltd. – Supreme Court] (98 taxmann.com 374)

SLP dismissed against ruling that adjustment is to be made at average LIBOR rate if assessee extended loan to associated enterprise (AE)

Assessee had delayed in realizing sale proceeds from AEs and had also extended corporate guarantee and interest free advances to its AEs. These AEs were foreign subsidiaries of assessee. High Court held that where interest free loan was advanced to own foreign subsidiaries and (LIBOR + 2%) was adjusted, assessee would be entitled for benefit of average LIBOR rate existing at that time, i.e., 0.79% and addition of ad hoc 2% was not proper and in that view of the matter, addition of 2% interest in income was required to be quashed and set aside. Special Leave Petition filed by Revenue against said order of High Court was dismissed by the Apex Court.

[CIT v. Vaibhav Gems Ltd. – Supreme Court] (99 taxmann.com 2)

III. Goods & Services Tax (GST)

Supply between Public Sector Undertakings (PSUs) exempted from TDS

CBIC has exempted the supply between PSUs from applicability of provisions relating to TDS. The N. No. 50/2018 – CGST dated 13th September, 2018 stated the provisions for deduction of TDS on supply of goods or services or both, which shall not be applicable for supply from a public sector undertaking to another public sector undertaking, whether or not a distinct person.

[Notification No. 61/2018 – CGST dated November 05, 2018]

Circular with regard to provisions of TCS for tea producers

CBIC has issued a circular with respect to provisions of TCS under section 52 of CGST Act for the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both. It has been clarified that for the purpose of uniformity in the implementation of the Act, as stated under section 168(1), the TCS at the notified rate shall be collected by Tea Board from the sellers (i.e. tea producers) on the net value of supply of goods, i.e. tea; and (ii) auctioneers on the net value of supply of service.

[Notification No. 74/48/2018 – CGST dated November 05, 2018]

Extension of due date for filing Form GSTR – 7

The due date for filing of Form GSTR-7 for the months of October 2018 to December 2018 has been extended till 31st January, 2019. The said monthly return is to be filed by a person who is required to deduct tax at source.

[Notification No. 66/2018 – CGST dated November 29, 2018]

Government proposed enhancements in E-way bill generation with effect from November 16, 2018

National Informatics Centre (NIC) proposed improvements in e-way bill generation being effective from November 16, 2018. The proposed enhancements include the following:

- (i) Checking of duplicate generation of e-way bills based on same invoice number,
- (ii) CKD/SKD/Lots for movement of Export/ Import consignment,
- (iii) Shipping address in case of export and import supply type,
- (iv) Dispatching address in case of import supply type,
- (v) 'Bill To – Ship To' transactions and
- (vi) Changes in Bulk Generation Tool.

Right-to-use minerals including exploration and evaluation is taxable at 5% under reverse charge

Haryana AAR held that services for right to use minerals including its exploration and evaluation is being taxable at 5%. AAR stated that royalty/dead rent paid is consideration against transfer of such rights as per lease granted by Govt. to applicant, engaged in business of mining of boulders and extraction of minor minerals. Also, such services of right to use minerals will attract the same rate of tax as on supply of like goods involving transfer of title in goods. Haryana AAR concluded that recipient of service is liable to discharge tax liability under reverse charge basis as per entry no. 5 of Notification No. 13/ 2017 – Central Tax (Rate) and corresponding Notification under Haryana GST Act.

[Pioneer Partners – Haryana AAR] (97 taxmann.com 511)

AAR refuses to consider civil structure as plant & machinery structural support; denies input tax credit

Andhra Pradesh AAR held that GST input tax credit for civil structures in respect of plant and machinery shall not be allowed. AAR states that the civil structures providing structural support to plant and machinery does not fall under the ambit of explanation to proviso to Sec 17(5) of CGST/APGST Act, 2017.

[Maruti Ispat & Energy Pvt. Ltd. – Andhra Pradesh AAR] (99 taxmann.com 103)

AAR disallows credits on vehicles used as mobile cotton labs for testing cotton quality

Andhra Pradesh AAR held that the applicant is ineligible to claim ITC on purchase of vehicles used as mobile cotton labs for purpose of testing quality of cotton. The contention of the applicant was rejected that business is of testing nature and lab (launched on vehicles) is the prime business components, without which there cannot be any supply of service, hence, ITC shall be eligible. Andhra Pradesh AAR clarified that with reference to Section 17(5), the said goods do not fall under the exceptions referred therein, accordingly, the applicant is not entitled to claim of ITC.

[Indian Cotton Solution.com Pvt. Ltd. – Andhra Pradesh AAR]

IV. Prohibition of Benami Property Transactions (PBPT)

Jurisdiction of New Delhi bench of Adjudicating Authority

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Prohibition of Benami Property Transactions (PBPT) Act, 1988 (45 of 1988), the Central Government has specified that the New Delhi Bench of the Adjudicating Authority appointed under section 7 of the said Act shall exercise jurisdiction under the said Act over the whole of India except the State of Jammu and Kashmir. This notification shall come into effect from the date of its publication in the Official Gazette.

[Notification No. S.O. 5676(E) dated November 12, 2018]

Establishment of Appellate Tribunal

In exercise of powers conferred by section 30 of the PBPT Act, 1988, the Central Government has established an Appellate Tribunal at New Delhi to hear appeals against the orders of the Adjudicating Authority under the said Act. This notification shall come into effect from the date of its publication in the Official Gazette.

[Notification No. S.O. 5677(E) dated November 12, 2018]

Appointment of Adjudicating Authority

In exercise of the powers conferred by section 7 of the PBPT Act, 1988, the Central Government has appointed an Adjudicating Authority at New Delhi to exercise jurisdiction, powers and authority conferred by or under the said Act. This notification shall come into effect from the date of its publication in the Official Gazette.

[Notification No. S.O. 5675(E) dated November 12, 2018]

V. Prevention of Money Laundering (PMLA)

Enforcement Directorate (ED) summons Robert Vadra in Bikaner land scam PMLA case

The ED has summoned Robert Vadra, brother-

in-law of Congress president Rahul Gandhi, in connection with its money laundering probe in a land scam case in Rajasthan's border city of Bikaner. The ED wants to grill Vadra about the operation of a firm, Skylight Hospitality Pvt. Ltd., allegedly linked to him, which had purchased land in the area.

Will appear if I am fit to travel: Mehul Choksi to PMLA Court

Mehul Choksi, accused of involvement in the over USD 2 billion fraud at Punjab National Bank has told a Special Court that he will appear before it if he is fit to travel. His lawyer made this submission before special PMLA judge during the hearing of ED's plea to declare Choksi a fugitive under the new Fugitive Economic Offenders Act. Choksi and his nephew Nirav Modi are wanted by the ED and the CBI for allegedly defrauding the PNB to the tune of Rs.13,400 crore in collusion with a few of its employees.

VI. Corporate Laws

Revision of eligibility criteria for registration as a Valuer

Ministry of Corporate Affairs (MCA) has revised the eligibility criteria for registration as a registered valuer under the provisions of Companies Act, 2013.

[G.S.R.1108(E) dated November 13, 2018]

Issuance of rules of National Financial Reporting Authority (NFRA)

MCA has issued the National Financial Reporting Authority Rules, 2018 which inter alia contain the provisions regarding the applicability of said rules and the functions and duties of the Authority in this regard.

[G.S.R. 1111(E) dated November 13, 2018]

Amendment of various provisions of Companies Act, 2013

Ministry of Law and Justice has issued the Companies (Amendment) Ordinance, 2018 wherein various provisions of the Companies Act, 2013 have been amended.

[The Companies (Amendment) Ordinance, 2018, No. 9 of 2018 dated November 02, 2018]

VII. Compliance Dates

Compliance Particulars	Due Date
1. Income Tax	
Deposit of Tax Deducted/ Collected for the month of November, 2018	7th December, 2018
Third instalment of advance tax for the assessment year 2019-20	15th December, 2018
Due date for issue of TDS Certificate for tax deducted under section 194-IA and 194-IB in the month of October, 2018	15th December, 2018
Deposit of ESI for the month of November, 2018	15th December, 2018
Deposit of Provident Fund for the month of November, 2018	15th December, 2018
Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and 194-IB in the month of November, 2018	30th December, 2018
Last date for completion of scrutiny assessment for A.Y. 2016-17 [except in cases involving transfer pricing issues, which are referred to Transfer Pricing Officer (TPO)]	31st December, 2018
Last date for completion of scrutiny assessment for A.Y. 2015-16, in cases involving transfer pricing issues, which were referred to TPO	31st December, 2018
2. Goods & Services Tax (GST)	
GSTR-1 for Outward Supplies for the month of November 2018	11th November, 2018
GSTR-3B for the month of November 2018	20th December, 2018
GSTR-9 and GSTR-9C	31st December, 2018
ITC-04 for the months of July 2017 to September 2018	31st December, 2018

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