At a Glance

June,2018

(Brief Updates from the world of Tax and Finance)

I. Income Tax

a) CBDT notifies Cost Inflation Index for F.Y. 2018-19

The Central Board for Direct Taxes (CBDT) has notified the Cost Inflation Index for the F.Y. 2018-19 for the purpose of computing the indexed cost for computation of capital gain. The notified Cost Inflation Index for the F.Y. 2018-19 is '280'.

[Notification No. 26 of 2018 dated June 13, 2018]

b) No TDS on interest received on Capital Gain Bonds of Power Finance Corporation Ltd. and Indian Railway Finance Corporation Ltd.

Section 193 of Income Tax Act, 1961 deals with the tax deduction at source in respect of interest received on securities. Second Proviso to clause (iib) of Section 193 empowers the CBDT to notify certain securities where requirement of tax deduction is not applicable. In exercise of this power,CBDT has notified "Power Finance Corporation Limited 54EC Capital Gains Bonds" and "Indian Railway Finance Corporation Limited 54EC Capital Gains Bonds"and therefore, no tax is required to be deducted on the payment of interest on these securities.

[Notification No. 27 and 28 of 2018 dated June 18, 2018]

c) Reassessment order could not be termed as void even if requisite Supreme Court directions given in the case of GKN Driveshafts are not complied with

In this case, the assessee challenged the reassessment order on the ground that by not passing a specific order after receiving objections, AO has violated the law declared by Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO, whereby it has been held that the AO should pass a speaking order taking into account the objections for reopening the assessment under section 147. The High Court, however, held that the non-compliance of this procedure indicated by the Apex Court would not make the order void or non-est and such a violation was a mere procedural irregularity which could be cured by remitting the matter to the AO. The SLP against this order of the High Court has been dismissed by the Supreme Court.

[Home Finders Housing Ltd. v. ITO – Supreme Court]

d) Supreme Court holds purchases duly supported by vouchers and bank transactions cannot not be termed as bogus

In this case, the AO had disallowed some expenditure treating the purchases as bogus. The High Court noted that purchases made by the assessee were duly supported by bills, and the payment was made by account payee cheques. High Court further observed that the seller confirmed the transaction and there was no evidence to show that the amount was recycled back to the assessee. Considering these facts and findings, the SLP filed against the order of the High Court was dismissed by the Supreme Court

[Pr. CIT v. TejuaRohitkumar Kapadia – Supreme Court] (94 taxmann.com 325)

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e) A running current account does not assume the character of loan or advance and cannot be treated as deemed dividend.

In this case, the argument of the Revenue was that mere inflow of funds from the company to the assessee by itself attracted the deeming provisions of section 2(22)(e) of the Act.The High Court took note of the fact that the Tribunal had given categorical findings to the fact that mutual transactions were carried out between the assessee and the company throughout the year, and at some points the company was the beneficiary of the sums given by the assessee while at another point it was vice-versa.Thus, the Court concluded that the transactions were only of the nature of a running or current account which created independent obligations and were not the transactions of loan or advance.

[CIT v. Gayatri Chakraborty – High Court of Calcutta] (102 CCH 0053)

f) Interest under Section 234B and 234C cannot be charged when tax is paid under MAT provisions

In this case, the only question was whether the Tribunal was justified in upholding the levy of interest under section 234B and 234C, while computing the MAT under the deeming provisions. The High Court observed that no interest could be levied under Section 234B and 234C of the Act as the book profits can be determined only after the end of the relevant financial year. The High Court was of the opinion that the provisions of advance tax cannot be made applicable in such case and accordingly, interest under Section 234B and 234C also cannot be charged.

[Tamilnadu Magnesite Ltd. v. DCIT – High Court of Madras] (94 taxmann.com 245)

g) In the absence of any independent enquiry from the concerned AOs of shareholder companies, addition made under section 68 on account of bogus share capital deserves to be knocked off

In this case, all relevant and necessary documents required to establish the transaction of share capital received were brought on record before AO and CIT(A) were totally uncontroverted. The Tribunal was of the view that if the AO has remained silent with folded hands and has not made any independent inquiry from the concerned AOs of shareholder companies, and has also not controverted the evidences produced by the assessee, that itself is sufficient to knock off the addition made. The Tribunal further concluded that the fact that there was no personal appearance from Director of said shareholder companies does not mean that an adverse inference under section 68 could be drawn by the AO without the AO discharging the secondary burden lying upon him.

[Moti Adhesives Pvt. Ltd. v. ITO – ITAT Delhi Bench]

II. International Taxation

a) CBDT has notified the final Notification for taxation of Foreign Companies held as resident in India as per Place of Effective Management (POEM)

Clause (ii) of sub-section (3) of Section 6 of the Act states that a company is said to be a resident in India in the previous year if its place of effective management in that year is in India. The CBDT has now clarified the

applicability of the provisions of the Act relating to computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax in the case of the foreign company if its place of effective management is considered to be in India, subject to certain exceptions, modifications and adaptations specified in the Notification. The said Notification will come into force with effect from 01st April, 2017.

[Notification No. 29 of 2018 dated June 22, 2018]

b) Issue of Transfer Pricing adjustments based on comparables can be taken upto ITAT level only

In this case, the High Court held that where Tribunal had given cogent reasons and detailed findings on application of filters and selection of comparables, such findings of Tribunal could not have been perverse in any manner so as to require interference by the High Court. The Court further held that the entire exercise of making transfer pricing adjustments on the basis of comparables is nothing but a matter of estimate and guesswork of Authorities based on relevant material brought before them and thus, the exercise of fact finding or Arm's Length Price determination or Transfer Pricing Adjustments should be allowed to become final at the hands of the Tribunal only.

[Pr. CIT v. Softbrands India (P.) Ltd. – High Court of Karnataka] (94 taxmann.com 426)

c) Pre-operative expenses are to be excluded from operating cost while computing the Arm's Length Price under Transactional Net Margin Method

In this case,assessee claimed certain pre-operative expenditure and treated it as deferred revenue expenditure to be written off over a period of five years. The TPO, however, in the process of making and adjustment, took into consideration the deferred revenue expenditure as operating expenditure. The Court took note of the fact that the pre-operative expenditure was incurred uptill December, 2001 and the commercial production commenced from January, 2002. Therefore, the Court concurred with the view taken by the Tribunal that expenditure in nature was pre-operative and was to be excluded from the computation of operating cost in order to calculate the ALP as per the TNMM method.

[Pr. CIT v. Sabic Research & Technology (P.) Ltd. – High Court of Gujarat] (94 taxmann.com 338)

d) Failure to submit a Tax Residency Certificate (TRC) as required under Section 90(4) is not a bar to the grant of benefits under DTAA

In a judgement which is surely going to be controversial, the Tribunal has held that an assessee cannot be declined the treaty protection under Section 90(2) on the ground that the said assessee has not been able to furnish a TRC in the prescribed form. The Tribunal observed that the superiority of the Treaty cannot be overridden by the domestic law and the domestic law cannot deny the benefits of the treaty where the assessee is eligible to the benefit under the treaty. Thus, the Tribunal concluded that if the assessee produces reasonable evidence of entitlement of the foreign entity to benefits under the DTAA, the assessee will be duly eligible for such benefits.

[Skaps industries India Pvt. Ltd. v. ITO – ITAT Ahmedabad Bench]

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e) Presence of an Indian subsidiary of a foreign company by itself does not give rise to the latter's Permanent Establishment (PE) in India

In this case, ITAT in addition to examining the existence of a dependent agent PE also consideredit appropriate to examine as to whether the Indian subsidiary gave rise to a fixed place PE of the foreign company in India.ITAT noted that the Indian subsidiary did not place anyoffice premises at the disposal of the parent company's employees, and hence, the 'disposal test' wasnot satisfied. Also, there was no evidence to the effect that such employees used the office of Indiansubsidiary for the purpose of the business of foreign parent company. In view of above, ITAT concluded that the Indian subsidiary did not give rise to the foreign company's fixed place PE inIndia in accordance with Article 5(1) of India-Finland tax treaty.ITAT further observed that there was no evidence to recommend that theIndian subsidiary had negotiated or concluded the offshore supply contracts on behalf of the foreign company. ITAT also found that the Indian subsidiary neither had any authority toconclude these offshore supply contracts, nor had booked any orders on behalf of the foreign parentcompany. Thus, it was concluded that the Indian subsidiary company was an independent entity carrying out activities ofinstallation, technical support services, etc. on principal to principal basis.In view of above, the ITAT concluded that mere presence of a subsidiary in India will not constitute a PE of the foreign company in India, if the necessary ingredients to constitute a PE are not fulfilled.
[Nokia Networks OY v. JCIT – ITAT Delhi Special Bench]

III. Goods & Services Tax (GST)

a) RCM on unregistered suppliers deferred

Following the press release earlier this week, the CBIC has issued the notification deferring the applicability of Reverse Charge Mechanism (RCM) on payments to unregistered suppliers under Section 9(4) of the CGST Act, 2017. RCM on such payments has been deferred till September 30, 2017.

The press release has also mentioned the deferment of Tax Deduction at Source and Tax Collection at Source under GST. However, no notifications have been issued yet in this regard.

[Notification no. 12/2018 – Central tax (Rate) dated 29th June, 2018]

b) Unique Common Enrolment number for transporters for the purpose of E-way Bill

A transporter who is registered in more than one State or Union Territory having the same PAN, may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his GSTINs. Where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the GSTINs for the purposes of E-way Bill. This will enable transporters to quote a single number instead of using multiple GSTIN and help in easing their compliance burden.
[Amendment to Rule 58 of CGST Rules videNotification No. 28/2018 – Central Tax dated 19th June, 2018]

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c) Exception to reversal of credit for non-payment of consideration within 180 days

A new proviso has been inserted in Rule 37 regarding the reversal of input tax credit in the case of non-payment of consideration, to provide that any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be deemed to have been paid, and no reversal of input tax credit on such amount is required to be made in case the recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice.

[Amendment to Rule 37 vide Notification No. 26/2018 – Central Tax dated 13th June, 2018]

d) Important clarifications by Government vide Circular No. 47/21/2018-GST dated 8th June, 2018 and Circular No. 48/22/2018-GST dated 14th June, 2018

- Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.
- In case of transportation of goods byrailways, the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery.
- Whether e-way bill is required in following cases:
  1- If the goods transit through a second State while moving from one place in a State to another place in the same State – **YES**
  2- Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State – **NO** (if the same has been exempted under Rule 138(14)(d) of the CGST Rules)

e) E-way Bill Updates

- E-way Bill system for intra-state movement of goods are now compulsory in every state.
- West Bengal & Delhi Governmentshave enhanced intra-state e-way bill threshold to Rs.1,00,000/- with effect from June 6, 2018 and June 16, 2018 respectively (without passing through any other state).
- Delhi Government vide Notification No. – 3/2018 dated 15.06.2008 held that no e-way bill is required for sale to unregistered end consumers but the movement should be accompanied by Invoice.
- In Delhi, tax invoice, bill of supply, vouchers, delivery challan or bill of entry are required to be carried even in case of consignments exempted from intra-state e-way bills.

f) Power granted to Commissioner to allow delay in submission of final report of inspection of goods in transit

A proper officer is required to submit a summary report of every inspection of goods in transit online in Part A of Form GST EWB-03 within 24 hours of inspection and the final report in Part B of Form GST EWB-03 within 3 days of such inspection. Now, the Commissioner or any authorized officer, on sufficient cause, can extend the time limit for recording the final report in Part B of Form GST EWB-03 for further period not exceeding 3 days. Further, the period of 24

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hours and 3 days as the case may be shall be counted from midnight of the date on which the vehicle was intercepted.
[Amendment to Rule 138C via Notification No. 28/2018 Central Tax dated 19th June, 2018]

IV. Corporate Laws

a) Reporting of Foreign Investment in India in Single Master Form

Reserve Bank of India (RBI) with the objective of integrating the existing reporting structures of various types of foreign investments in India, will introduce a Single Master Form (SMF) and would also provide a facility for reporting total foreign investment in an Indian entity.Prior to the implementation of the SMF, RBI has provided an interface to the Indian entities, to input the data on total foreign investment in Entity Master Form from June 28, 2018 to July 12, 2018 on the link - **https://firms.rbi.org.in**.Indian entities not complying with this pre-requisite will not be able to receive foreign investment and will be considered as non-compliant with Foreign Exchange Management Act, 1999.
[A.P (DIR Series) Circular No.30 dated 07.06.2018]

b) Submission of declaration of significant beneficial ownership in shares

An individual who holds ultimate beneficial interest of not less than ten percent, whether directly or indirectly, but whose name is not entered in the Register of Members of a company as the holder ofsuch shares, then such person is required to file a declaration to the Company within a period of 90 days from the Commencement of Companies (Significant Beneficial Owners) Rules, 2018andwithin a period of 30 days ofacquiring such significant beneficial ownership after the commencement of said rules. Companies which will receive the declarations from the beneficial owners is required to file a return with the registrar within a period of 30 days of receipt of such declarations.
[Companies (Significant Beneficial Owners) Rules, 2018 dated 13.06.2018]

c) Removal of name of the Company from the Register of Companies

Registrar of Companies of different states have issued the list of Companies which have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of a dormant company.The name of such Companies will be removed within a period of thirty days from the date of issuance of this list.

d) Updation of KYC of Directors

As part of updating its registry, Ministry of Corporate Affairs would be conducting KYC of all the Directors of all companies annually through a new e-form viz. DIR-3KYC, to be notified and deployed shortly. Accordingly, every Director who has been allotted a DIN on or before 31stMarch, 2018 and whose DIN is in 'Approved' status, would be mandatorily required to file Form DIR-3 KYCon or before 31st August,2018. While filing the form,the Unique Personal Mobile Number and Personal e-mail ID would have to be mandatorily indicated and would be duly verified by a One Time Password(OTP).The form should be

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filed by every Director using his own DSC and should be duly certified by a practicing professional (CA/CS/CMA).

e) Appointment as a designated Partner of an existing Limited Liability Partnership (LLP)

An individual, who intends to be appointed as a designated Partner of an existing LLP, may make an application electronically in Form DIR-3 for obtaining DPIN under the Limited Liability Partnership Act,2008.

[Limited Liability Partnership (Amendment) Rules, 2018 dated 12.06.2018]

V. Prevention of Money Laundering (PMLA)

a) Property owned by minor child could not be attached for the violation of Money Laundering Act by the father

In this case, appellant was a minor and property owned by him by way of registered gift deed was attached, as his father was indulged in criminal act of money laundering. The Tribunal observed the fact that the appellant was minor at the time of attachment of property. The Tribunal further observed that the property was gifted by the grandfather in favour of the appellant vide Registered Gift Deed, and the property was originally purchased by the great grandmother of the appellant. Therefore, the attachment order of appellant's property was held to be not sustainable and the same was set aside.

[Master Pavitra Agarwal v. Jt. Director, Directorate of Enforcement – Appellate Tribunal, PMLA, New Delhi] (94 taxmann.com 53)

b) Property of third party who is not involved in scheduled offence cannot be attached without issuing any notice to him

In this case, the appellant was not an accused in scheduled offence or in prosecution complaint filed.The Jt. Director of Enforcement Directorate, based on charge sheet filed by Karnataka Lokayuktha Police Wing, passed a provisional order of attachment attaching properties of appellant on ground that son of the appellant had used a part of proceeds of crime on renovation of a property belonging to the appellant. The Tribunal took note of the fact that the appellant and his son had specifically denied that it was proceeds of crime. Thus, the Tribunal concluded that since, in instant case, property of the appellant was attached without issuing any notice and without recording his statement, the impugned order being contrary to the provisions of sections 5 and 8 of the Act, was not sustainable in law.

[S.K.V. Chalapathy v. Jt. Director, Directorate of Enforcement – Appellate Tribunal, PMLA, New Delhi] (94 taxmann.com 130)

VI. Compliance Dates

Compliance Particulars		Due Date
1. Income Tax		
Deposit of Tax Deducted/ Collected for the month of June, 2018		7th July, 2018
Due date for deposit of TDS for the period April 2018 to June 2018 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H		7th July, 2018
Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of May, 2018		15th July, 2018
Quarterly statement of TCS deposited for the quarter ending June 30, 2018		15th July, 2018
Quarterly TCS certificate in respect of tax collected for the quarter ending June 30, 2018		30th July, 2018
Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of June, 2018		30th July, 2018
Quarterly statement of TDS deposited for the quarter ending June 30, 2018		31st July, 2018
Due date for filing Income Tax Return (ITR) for assessees not liable for tax audit as per Income Tax Act, 1961		31st July, 2018
2. Goods & Services Tax (GST)		
GSTR-1 for Outward Supplies for the month of June, 2018 (Turnover>1.5 Cr.)		10th July, 2018
GSTR-1 for the quarter April, 2018 to June, 2018 (Turnover≤1.5 Cr.)		31stJuly, 2018
GSTR-3B for the month of June, 2018		20th July, 2018
GSTR-4 for the quarter April, 2018 to June, 2018		18th July, 2018
GSTR-6 for the period July, 2017 to June, 2018		31st July, 2018
3. Corporate Laws		
Due date for reporting of existing foreign investment in an Indian entity in the Entity Master Form		12th July, 2018

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