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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
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CBDT extends deadline for e-filing income tax returns till October 31

CBDT abandoned its Adamant Stand of not extending the due date via a press release on 01-10-2015 finally extending the due date to 31-10-2015 for those assessees who are covered for Tax Audit u/s 44AB. The Income Tax department in June notified the new set of ITR forms, including a three-page simplified one, for taxpayers to file their returns for assessment year 2015-16. The utilities for furnishing the audit report were further made available only in August which attracted criticism from the general public for such delay.

Source: CBDT Press Release dated 01-10-2015

OECD presents outputs of OECD/G20 BEPS Project for discussion at G20 Finance Ministers meeting

The OECD presented the final package of measures for a comprehensive, coherent and coordinated reform of the international tax rules to be discussed by G20 Finance Ministers at their meeting on 8 October, in Lima, Peru. The OECD/G20 Base Erosion and Profit Shifting (BEPS) Project provides governments with solutions for closing the gaps in existing international rules that allow corporate profits to disappear or be artificially shifted to low/no tax environments, where little or no economic activity takes place.

The final package of BEPS measures includes new minimum standards on: country-by-country reporting, which for the first time will give tax administrations a global picture of the operations of multinational enterprises; treaty shopping, to put an end to the use of conduit companies to channel investments; curbing harmful tax practices, in particular in the area of intellectual property and through automatic exchange of tax rulings; and effective mutual agreement procedures, to ensure that the fight against double non-taxation does not result in double taxation.

Nearly 90 countries are working together on the development of a multilateral instrument capable of incorporating the tax treaty-related BEPS measures into the existing network of bilateral treaties. The instrument will be open for signature by all interested countries in 2016.

Source: http://www.oecd.org/

US Treasury Department adds India to its FATCA list

The US Treasury Department has issued a list of 34 countries which includes India with whom it would share information under FATCA (foreign account tax compliance act) regulations. The pact aims to cover automatic sharing of information on bank accounts and other instruments like mutual funds, insurance and equities with each other. This is aimed at fighting the black money or unaccounted money. The announcement comes days after the Narendra Modi in US signed an agreement with the US authorities recently. The anti-offshore tax evasion and black money detention pact was signed between India and the US. The act became operational from September 30th. The new list includes 16 new countries which were added to the original list of countries with which the US already has the arrangement.

Source: The Economic Times issue dated 02-10-2015

Sec 153A/ 153C: High Court explains law on the scope of additions that can be made in a pending assessment and in a completed assessment pursuant to a search u/s 132

Additions on account of deemed dividend u/s 2(22)(e) made to the returned income were contested by the assessee on grounds that no evidence had been unearthed during the search to warrant such additions. The High Court, deciding the case in favor of the assessee observed that as assessments already stood completed and since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed. Citing various case laws, the Court threw light on the legal position governing section 153A(1) of the Income Tax Act, 1961 as under:

- Once a search takes place under Section 132 of the Act, notice under Section 153 (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year.
- Assessments and reassessments pending on the date of the search shall abate. The income for such AYs will be computed by the AOs as a fresh exercise.
- The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".
- Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with seized material. Obviously an assessment has to be made only on the basis of seized material."
- In absence of any incriminating material, the completed assessment can be reiterated and abated assessment or reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e. pending on the date of search) and the word 'reassess' to completed assessment proceedings.
- Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on basis of the findings of the search and any other material existing or brought on the record of the AO.
- Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered which were not produced or not already disclosed or made known in the course of original assessment.

Source: Commissioner Of Income Tax (Central) vs Kabul Chawla

High Court of Delhi ITA 707/2014

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S. 271(1)(c): A mere change in the head of income is a case of bona fide mistake which does not attract penalty

Facts of the case

The assessee offered interest on maturity on Bonds as "long-term capital gains" after taking benefit of indexation on the same. The AO made additions to the returned income on grounds that income was to be disclosed as "income from other sources" denying the benefit of indexation. Penalty proceedings u/s 271(1)(c) were also initiated. Further, the interest of all the three years was offered to tax in the year of maturity and not year-wise.

Ruling of the Tribunal

The tribunal held that the disclosure of interest under income from other sources instead of capital gains was only change in the head of income under which the income is offered to tax. The explanation filed by the assessee was bona fide. This was a case of a bona fide mistake on part of the assessee.

All the information had been duly disclosed in the income tax return filed by the assessee and nothing was deliberately concealed by the assessee.

Income had also been offered to tax, though under the incorrect hear under the 'capital gain'. Penalty levied u/s 271(1)(c) could not be levied in such a case and penalty imposed was cancelled on the aforesaid grounds.

Source: Simran Singh Gambhir vs DDIT

ITAT Delhi I.T.A. No.1423 /Del/2013

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S. 271(1)(c): Failure to apply s. 50C and offer capital gains as per the stamp value does not constitute concealment/ furnishing of inaccurate particulars of income for levy of penalty u/s 271(1)(c)

Facts of the case

Income of the assessee included short term capital gain from sale of immovable property for which the sale consideration as per the sale deed was offered to tax. For the purpose of stamp duty, the registering authority of the State Government had made a higher valuation of the property. The AO accordingly invoked provisions of section 50C and made additions to the returned income. Penalty levied u/s 271(1)(c) was rebutted by the assessee.

Ruling of the Tribunal

- The ITAT upheld the appeal of the assessee stating that application of section 50C of the Act for the purpose of computation of capital gain itself will not lead to the conclusion that assessee either has furnished inaccurate particulars of income or concealed the particulars of income.
- From the language of section 50C it is a deeming provision. In a case where the A.O finds that the value determined by the stamp duty authority for the purpose of stamp duty is more than the consideration claimed to have been received by the party, then the value adopted by the SRO shall be deemed to be the consideration received by the assessee for the purpose of computation of capital gain.

- As far as imposition of penalty is concerned, there must be positive evidence before the A.O. to conclude that assessee has received the amount as valued by SRO for stamp duty purpose.
- Further, the assessee in the course of assessment proceeding has furnished all necessary and relevant documents relating to the transaction of the property in question including registered sale deed. The assessee has not suppressed any material fact from the notice of the A.O. Accordingly, penalty levied u/s 271(1)(c) was deleted by the ITAT.

Source: Bhavya Anant Udeshi vs ITO

ITAT Hyderabad ITA.No.565/Hyd/2015 dated 04-09-2015

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Sec 2(14)(iii)(b): Distance to be measured for identification of agricultural land is to be in terms of the approach road and not by the straight line distance on horizontal plane or as per crow's flight

Facts of the case

Profit from sale of land was not offered to tax as according to the assessee, land was agricultural land the Assessee, not falling within a distance of 8 km from the outer limit of the Gurgaon Municipality. The AO, however, rejected the stand of the assessee stating that distance is to be measured from the point beginning with outer limit of the Municipality to the land by adopting the straight line method, but not a zig-zag or circuitous method or even the distance by road.

Ruling of the High Court

Citing decisions of the Bombay and Madras High Courts, the Court ruled that distance between municipal limits and assessed property was to be measured with regard to the shortest road distance and not as per the straight line distance as canvassed by the Revenue. The distance had to be measured from the agricultural land in question to the outer limit of the municipality by road and not by the straight line or the aerial route.

However, the assessment year under consideration before the court was AY 2006-2007, and the decision will not apply for later assessment years post the amendment brought by the Finance Act, 2013 modyfying the definition of agricultural land wherein it is specifically stated that distance has to be measured aerially only.

Source: CIT vs Sri Vijay Singh Kadan

High Court of Delhi ITA.No. 714/2015 dated 14-09-2015

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CBDT's Guidance Notes on Implementation of FATCA Reporting Requirements under Rules 114F to 114H of Income-tax Rules

The Central Board of Direct Taxes (CBDT) has issued guidance notes dated 31.08.2015 on implementation of reporting requirements for the US law called "Foreign Account Tax Compliance Act" (FATCA).

Under FATCA, foreign financial institutions that fail to give information about their American clients to US authorities would face 30 per cent withholding tax on US source payments made to foreign financial institutions (FIs) unless they enter into agreement with Internal Revenue Service (IRS) to provide information about accounts held with them by USA persons or entities controlled by USA persons.

The Inter-Governmental Agreement (IGA) between India and US, signed as part of FATCA implementation, requires the Indian FIs to provide necessary information to Indian tax authorities, which will then be transmitted to the US automatically.

To combat offshore tax evasion and avoidance and stashing of unaccounted money abroad requiring cooperation amongst tax authorities, the G20 and OECD countries have developed a Common Reporting Standard (CRS) on Automatic Exchange of Information (AEOI). The CBDT's guidance notes are also for CRS.

It is worth noting that India is one of the early adopters of the new global standards in the form of CRS and has committed to exchange information automatically by 2017.

Source: CBDT Guidance Notes dated 31-08-2015

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CBDT's Clarifications (FAQs) On Tax Compliance for Undisclosed Foreign Income and Assets (Black Money Act)

The CBDT has issued Circular No. 15 of 2015 dated 3rd September 2015 providing clarifications to various queries raised by the general public in relation to The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Post circular No. 13 of 2015 dated 6th July, 2015 in which the Board provided clarifications to 32 queries, this circular has provided clarifcations to 27 subsequent queries received regarding tax compliance provisions under Chapter VI of the Act.

Source: Circular No. 15 of 2015 dated 03-09-2015

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Applicability of Section 115JB of the Income Tax Act, 1961 in respect of foreign company which does not have any Permanent Establishment (PE) in India.

Ruling of the Supreme Court

The basic issue, which was raised pertained to the applicability of Section 115JB of the Income Tax Act, 1961 in respect of foreign company which does not have any Permanent Establishment (PE) in India.

A circular dated 02-09-2015 issued by the CBDT was taken into consideration by the Court which states that MAT provisions will not be available to FIIs and FPIs not having the business/Permanent Establishment in India for the period prior to 01.04.2015. Another Press Release dated 24.09.2015 contains two alternatives when provisions of Section 115JB of the Act shall not be applicable to a foreign company under certain circumstances, stating that with effect from 01.04.2001 the provisions of section 115JB shall not be applicable to a foreign company if:

- The foreign company is a resident of a country having DTAA with India and such foreign company does not have a permanent establishment within the definition of the term in the relevant DTAA, or
- The foreign company is a resident of a country which does not have a DTAA with India and such foreign company is not required to seek registration under section 592 of the Companies Act 1956 or section 380 of the Companies Act 2013.

Source: Castleton Investment Ltd. vs DIT (International Taxation-I)

Supreme Court of India Civil Appeal No. 4559 Of 2013 dated 30-09-2015

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Transfer Pricing: Companies that are functionally different, or that are having many extraordinary events in year under consideration including amalgamation, cannot be included in list of comparables.

Facts of the case

Assessee was registered under Software Technology Parks of India Scheme. The assessee benchmarked these transactions using TNMM as the most appropriate method and operating profit to total cost was taken as the appropriate Profit Level Indicator (PLI). The TPO noticed that search process of Assessee did not capture many market players close to functions of company and benchmarks did not reflect actual scenario prevailing. The TPO undertook fresh search, listed 21 comparables rejecting the comparables of the assessee. Companies with extraordinary events were also selected, which was rebutted by the assessee.

Ruling of the Tribunal

Allowing the appeal filed by the assessee, the tribunal held that extraordinary events occurred in the companies chosen by the TPO for comparison with the assessee which make the said company incomparable. A mount to extraordinary events carried on my first comparable made first company non-comparable. The scheme of arrangement involving that amalgamation had been made between second comparable definitely amounted to an extraordinary event which made second company uncomparable and to be excluded from final list of comparables on similar lines. The Tribunal thus allowed the appeal filed by the assessee.

Source: Goldman Sachs Services (P) Ltd. vs ITO

Bombay Tribunal I.T.A. No.6969/Mum/2012

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Form 15G & Form 15H : New format & submission procedure

Tax payers seeking non deduction of tax from certain incomes are required to file a self declaration in Form No. 15G or Form No.15H as per the provisions of Section 197A of the Income-tax Act, 1961. In order to reduce the cost of compliance and ease the compliance burden for both, the tax payer and the tax deductor, the Central Board of Direct Taxes(CBDT) has simplified the procedure for self-declaration by introducing Form 15G and Form 15H in a new format. The procedure for submission of the Forms by the deductor has also been simplified. Under the simplified procedure, a payee can submit the self-declaration either in paper form or electronically.

The deductor will not deduct tax and will allot a Unique Identification Number (UIN) to all self-declarations in accordance with a well laid down procedure to be specified separately. The particulars of self declarations will have to be furnished by the deductor along with UIN in the quarterly TDS statements. The requirement of submitting physical copy of Form 15G and 15H by the deductor to the income tax authorities has been dispensed with. The deductor will, however be required to retain Form No.15G and 15H for seven years. The revised procedure shall be effective from the 1st day of October, 2015.

Source: Notification # S.O. No.2663(E) dated 29-09-2015

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