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CHARTERED ACCOUNTANTS

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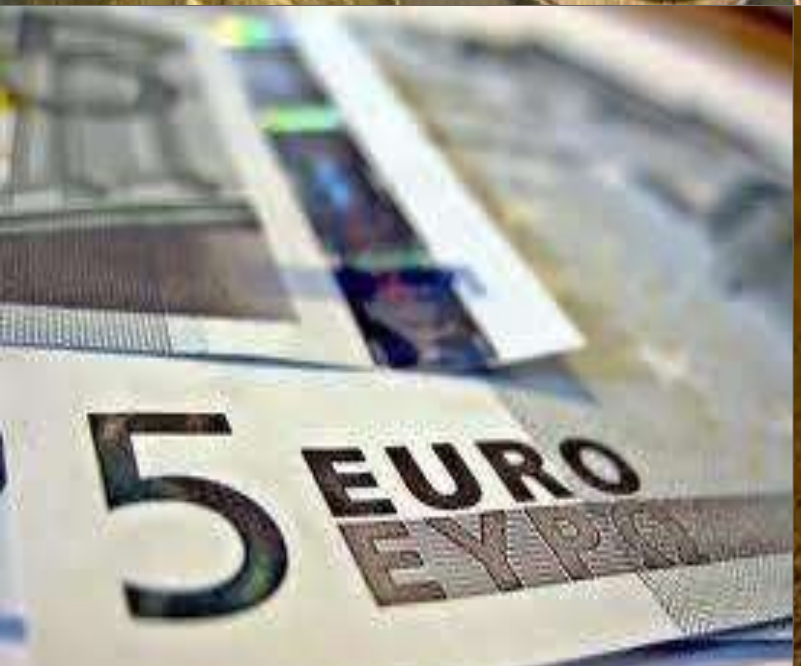
DIRECT TAX REVIEW
MARCH 2016



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CBDT notifies new ITR forms for AY 2016-2017

Central Board of Direct Taxes hereby notifies Forms Sahaj (ITR-1), ITR-2, ITR-2A, ITR-3, Sugam (ITR-4S), ITR-4, ITR-5, ITR-6, ITR-7 and ITR-V for assessment Year 2016-17. CBDT extends applicability of Form Sugam ITR-4S to a firm, other than a limited liability partnership firm w.e.f. April 1, 2016; Form SUGAM (ITR-4S) was earlier applicable only to an individual/HUF deriving business income and such income which is computed in accordance with presumptive tax provisions u/s 44AD/ 44AE; CBDT also extends applicability of Form ITR-7 for every investment fund referred to in Sec 115UB w.e.f. April 1, 2016.

Source: CBDT NOTIFICATION NO. SO 1262(E) [NO.24/2016 (F.NO.370142/2/2016-TPL)], DATED 30-3-2016

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CBDT identifies taxpayers against whom prosecution proceeding could be initiated for non-filing of return

As per Central Action Plan 2015-16, Systems Directorate was directed to identify the potential cases for prosecution under section 276CC (prosecution for non-filing of return of income). Earlier, non-filers for AY 2013-14 were identified by Systems Directorate for NMS Cycle-3. The last date for filing the return of income for the AY 2013-14 was 31-3-2015, and therefore the taxpayers identified under NMS Cycle-3 that have neither filed the return of

income nor have submitted the response have been identified as potential prosecution cases under section 276CC.

These cases have been pushed into a functionality named "Actionable Information Monitoring System (AIMS) (Path: ITD-> EFS->CIB->AIMS). The functionality provides an option to view ITS information and to mark the case as "Proposed for prosecution" and "Not proposed for prosecution". The EFS Instructions are available on i-taxnet (Path: Resources-> Downloads -> Systems ->ITD Instructions ->Instruction -EFS/CIB).

The Assessing Officers may be instructed to view the information and take necessary action under section 276CC if the conditions prescribed under section 276CC are fulfilled.

Soucre: EFS Instruction No. 55 [F.No.JDIT(S)-2(4)/Systems Directorate/CBDT/011/2014-15]Dated: 22-3-2016

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Govt. notifies two entities for purpose of exemption under section 10(46)

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the State Load Despatch Centre Unscheduled Interchange Fund–West Bengal State Electricity Transmission Company Limited (PAN AAIAS0980J), a trust constituted under the Electricity Act, 2003 (36 of

2003) in respect of the following specified income arising to that trust, namely: —

(a) residual money in the unscheduled interchange pool balance account;

(b) interest on fixed deposits and auto-sweep accounts; and

(c) income incidental to or related to unscheduled interchange.

2. The notification shall be subject to the following conditions, namely that the State Load Despatch Centre Unscheduled Interchange Fund – West Bengal State Electricity Transmission Company Limited, —

(a) shall not engage in any commercial activity;

(b) shall not change its activities and the nature of the specified income shall remain unchanged throughout the financial years; and

(c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the said Act.

3. This notification shall be deemed to be applicable for the financial years 2012-2013, 2013-2014, 2014- 2015 and applicable for the financial years 2015-2016 and 2016-2017.

Source: NOTIFICATION NO. SO 639(E) [NO.12/2016 (F.NO.196/51/2012-ITA.I)], DATED 2-3-2016

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CBDT sets-up new a structure for timely delivery and monitoring of taxpayer services

Grievance redressal is a major aspect of citizen centric governance and is an important feature of the activities of the Income Tax Department. The Income-tax Department is addressing grievances through a multi-layered grievance redressal machinery including Centralized Public Grievance Redress and Monitoring System (CPGRAMS), Aayakar Seva Kendras (ASK), online grievance redressal through Central Processing Centre (CPC), etc.

Taking another step in this direction, the Central Board of Direct Taxes has issued an Order setting up a dedicated structure for delivery and monitoring of tax payer services in the Income Tax Department. Member (Revenue and Tax Payer Services) will oversee the delivery and monitoring of taxpayer services in CBDT. Two separate Directorates, called Directorate of Tax Payer Services I and Directorate of Tax Payer Services II have been set up. Together, these Directorates will be responsible for delivery and monitoring of taxpayers services in the field offices and e-services deliverable through various electronic platforms of the Department. They will oversee and co-ordinate all matters relating to grievances of taxpayers and ensure their timely redressal. These Directorates will report to the Member (R and TPS), CBDT through the Principal Director General of Income Tax (Administration).

The responsibility for delivery of tax payer services has also been specifically assigned at every level in the field offices. This will ensure accountability of officials in redressing grievances in a time bound manner.

With this initiative the CBDT expects a noteworthy reduction in taxpayer grievances and enhanced taxpayer satisfaction.

Source: CBDT press release dated 07-03-2016

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Monetary limit for filing an appeal before ITAT would equally apply for filing cross objection

The monetary limits for filing appeals before the Income Tax Appellate Tribunals and High Courts were raised to Rs. 10 lakhs and Rs. 20 lakhs respectively by Circular 21 of 2015 dated 10.12.2015. Queries have been received regarding the applicability of Circular 21 of 2015 to cross objections filed by the Department before the ITAT under section 253(4) of the Income-tax Act and to references to the High Court under sections 256(1) and 256(2) of the Act.

The matter was examined in the CBDT and it is clarified that the monetary limit of Rs. 10 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act. Cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/not pressed. Filing of cross objections below the monetary limit may not be considered henceforth.

Similarly, references to High Courts below the monetary limit of Rs. 20 lakhs should be pursued for dismissal as withdrawn/not pressed. References below this limit may not be considered henceforth.

Source: LETTER F.NO.279/MISC./M-142/2007-ITJ (PART), DATED 8-3-2016

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No recovery from assessee where tax has been deducted but not deposited by deductor, CBDT reaffirms

Vide letter of even number dated 1-6-2015, the Board had issued directions to the field officers that in case of an assessee whose tax has been deducted at source but not deposited to the Government's account by the deductor, the deductee assessee shall not be called upon to pay the demand to the extent tax has been deducted from his income. It was further specified that section 205 of the Income-tax Act, 1961 puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch in such situations cannot be enforced coercively.

However, instances have come to the notice of the Board that these directions are not being strictly followed by the field officers. In view of the above, the Board hereby reiterates the instructions contained in its letter dated 1-6-2015

and directs the assessing officers not to enforce demands created on account of mismatch of credit due to non-payment of TDS

amount to the credit of the Government by the deductor.

Source: OFFICE MEMORANDUM F.NO.275/29/2014-IT(B), DATED 11-3-2016

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CBDT advises taxpayers to show interest income in return even if Form 15G/15H was filed

Information regarding interest earned by individuals and business entities on term deposit is filed with the Income Tax Department by banks including co-operative banks and other financial institutions and state treasuries, etc. Form 26AS reflects only those payments on which tax has been deducted and it can be viewed by the individual tax payer by logging in to www.incometaxindiaefiling.gov.in The information about interest payments without deduction of tax is also filed by the payer with the Department.

Central Board of Direct Taxes would like to inform the persons earning interest income that interest credited/received on deposits is taxable unless exempt under section 10 of the Income-tax Act. Such interest income should be shown in the return of income even in cases where Form 15G/15H has been filed if the earning is not exempt under section 10 of the Income-tax Act and the total income of the person exceeds the maximum amount not chargeable to tax.

Tax payers are advised to collect correct details of interest received or credited and

- file their return of income for assessment year 2014-15 (if not filed already) on or before 31.03.2016 in case their total income exceeds the maximum amount not chargeable to tax.
- revise their return of income for assessment year 2014-15/2015-16 if the return already filed does not include taxable interest income.
- file return of income for assessment year 2015-16, if not filed so far by including taxable interest income if any, on or before 31.03.2016 and avoid penalty u/s 271F.

Source: CBDT press release dated 23-03-2016

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CBDT requests taxpayers to avail facility of online rectification

Income-tax Act provides the taxpayer with an option to seek rectification of mistakes apparent from record under section 154 of the Act. The e-filing portal of the Income Tax Department provides the utility for online filing and tracking of rectification requests. Taxpayers who are not satisfied with the outcome of processing of their Income Tax Return by the Centralized Processing Centre, Bengaluru can avail of the facility of online filing and tracking of rectification requests available on https://incometaxindiaefiling.gov.in.

In case of any mistake in data entry of Tax payment or TDS details, taxpayer can select the "Rectification Request Type → Taxpayer is correcting data for Tax Credit mismatch only" and the use the option of pre-filling the correct details for the relevant Assessment Year while submitting the rectification request.

In case of data entry mistake in any other Schedule or omission of any details, taxpayer can select the option "Taxpayer is correcting Data in Rectification" and the reason for seeking rectification.

In any other case taxpayer can select the option "No further Data Correction Required, Reprocess the case" where the mistake in processing may have occurred due to non-reporting of TDS by deductor etc.

A detailed user manual for filing online rectification is available at: http://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/Rectifcation_Manual.pdf? 0.08833787460862363.With this utility a taxpayer can also the monitor the status of disposal of rectification request.

Source: CBDT press release dated 31-03-2016

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No addition could be made on estimated basis without rejecting books of account of assessee

Facts of the case

The assessee was a partnership firm carrying on the business as cotton merchants and commission agents. The assessee filed its return of income for the AY 2006-2007, declaring total income of INR NIL. On such return being selected for scrutiny assessment order came to be framed under section 143(3) after issuing notice and hearing the assessee. The AO noticed that the gross profit declared by the assessee for the earlier assessment years and the present assessment year were at variance and as such the gross profit was adopted at 4 per cent of the total turnover. On appeal, the Commissioner(Appeals) concluded that differential gross profit of Rs.5.99 lakhs was to be sustained as against gross profit of Rs. 32.44 lakhs made by the Assessing Officer. On further appeal, the Tribunal allowed the appeal of the assessee and deleted the addition made by the Commissioner (Appeals) on gross profit. On further, appeal to High Court.

Ruling of the High Court:

The tribunal has rightly held that when the books of account of the assessee had not been rejected and assessment having not been framed u/s 144, the A.O and the Commissioner(Appeals) were in error in resorting to an estimation of income and such exercise undertaken by them was not sustainable. Section 145(3) lays down that the Assessing Officer can proceed to make assessment to the best of his judgment under section 144 only in the event of not being satisfied with the correctness of the accounts produced by the assessee. In the instant case the Assessing Officer has not rejected the books of account of the assessee. To put it differently the Assessing Officer has not made out a case that conditions laid down in section 145(3) are satisfied for rejection of the books of account. Thus, when the books of account are maintained by the assessee in accordance with the system of accounting, in the regular course of his business, same would

form the basis for computation of income. In the instant case it is noticed that neither the Assessing Officer nor the Commissioner (Appeals) have rejected the books of account maintained by the assessee in the course of the business. As such tribunal has rightly rejected or set aside the partial addition made by Assessing Officer for arriving at gross profit and sustained by the Commissioner (Appeals) and rightly held that entire addition made by the Assessing Officer was liable to be deleted. The said finding is based on sound appreciation of facts and it does not give rise for framing substantial question of law.

Source: CIT Vs Anil Kumar & Co.

High Court of Karnataka, dated 30-03-2016

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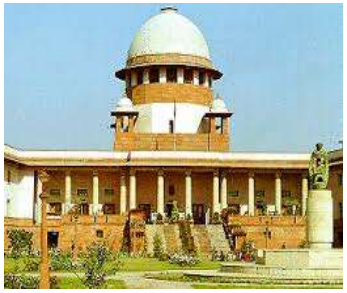
SC allowed registration to the trust as revenue didn't respond to registration application within 6 months: SC

Facts of the case



The assessee-society filed an application under section 12A for grant of registration on 24-2-2003 and same was not responded to within six months. In the order passed on 16th February 2016, the Supreme Court ruled in favour of the assessee by contending that once an application is made under the said provision and in the case the same is not responded to within six months, it would be taken that the application is registered under the provision.

Further, the Ld. Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of 24.02.2003, at the worst, the same would operate only after six months from the date of the application. In the same context, the Supreme Court held that "we see no *basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent shall take effect from 24.08.2003*"

Source: CIT Kanpur Vs Society for the promotion of Education , Adventure Sport and Conservation of Environment.

Supreme Court of India, dated 28-03-2016

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Transaction charge paid to BSE isn't 'FTS' as BSE isn't providing customized services to members

Facts of the case

By the impugned order dated 21st October, 2011 passed in the aforesaid appeal, the High Court of Bombay has held that the transaction charges paid by a member of the Bombay Stock Exchange to transact business of sale and purchase of shares amounts to payment of a fee for 'technical services' rendered by the Bombay Stock Exchange. Therefore, under the provisions of Section 194J of the Income Tax Act, 1961 (for short "the Act"), on such payments TDS was deductible at source. The said deductions not having been

made by the appellant - assessee, the entire amount paid to the Bombay Stock Exchange on account of transaction charges was not deducted in computing the income chargeable under the head "profits and gains of business or profession" of the appellant - assessee for the Assessment Year in question i.e. 2005-2006. This is on account of the provisions of Section 40(a)(ia) of the Act. Notwithstanding the above, the Bombay High Court held that in view of the apparent understanding of both the assessee and the Revenue with regard to the liability to deduct TDS on transaction charges paid to the Bombay Stock Exchange right from the year 1995 i.e. coming into effect of Section 194J till the Assessment Year in question, benefit, in the facts of the case, should be granted to the appellant - assessee and the disallowance made by the Assessing Officer under Section 40(a)(ia) of the Act must be held to be not correct.

Ruling of the Supreme Court:

The supreme Court ruled in favor of the assessee by contending that “we hold that the view taken by the Bombay High court that the transaction charges paid to the Bombay Stock Exchange by its members are for 'technical services' rendered is not an appropriate view. Such charges, really, are in the nature of payments made for facilities provided by the Stock Exchange. No TDS on such payments would, therefore, be deductible under Section 194J of the Act “.

Source: CIT, Mumbai Vs. Kotak Securities Ltd

Supreme Court of India, dated 29-03-2016

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Dept. directed to redeposit moneys collected illegally by attachment of assessee’s bank account during pendency of stay application. An order passed on a stay application must give reasons for the refusal to stay the demand

Facts of the case

The assessee Khandelwal Laboratories Private Limited filed an appeal against the assessment order received u/s 143(3) dated 27th March,2015 to the CIT(A). The assessee also filed rectification application u/s 154 as well as stay application for stay of demand u/s 220(6) dated 14th April 2015, before the AO. The AO by a letter dated 20th August 2015 disposed of the assessee application but the stay application filed was still pending for disposal before the AO. Later on March 2016, the AO attached the bank of the assessee for withdrawal of the pending demands. Aggrieved by the same, the assessee filed a writ petition before the High Court.

Ruling of the Court

The High Court ruled in favour of the assessee by contending that the action of the AO in attaching assessee bank u/s 226(3) of the act as well as the subsequent withdrawal of the attached amounts from the bank accounts is without jurisdiction and bad in law. The assessee has a staturory right to its stay application being heard and diposed of before the revenue can adopt any coercive proceedings on the basis of the notice of demand u/s 156 issued to him. In the above view, notice u/s 226(3) of the act issued by the AO to the assessee bank are quashed and set aside and directed the AO to re-deposit the amount withdrawan within a period of one week.

Source: Khanddelwal Laboratories Pvt. Ltd Vs DCIT

High Court of Bombay, dated 17-03-2016, writ petition no. 710 of 2016,

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Credit of TDS won't be denied to a contractor even if entire work has been sub-contracted to others

Facts of the case

The assessee was a joint-venture executing civil contract works. It was awarded contracts by the Irrigation Department of the State Government. The assessee gave said contracts subsequently on sub-contract basis to one of its constituents without any margin. The assessee filed its return claiming refund of tax deducted at source from bills paid by the State Government. The assessing authority contended that as no real work was carried on by the assessee, no income had accrued to it and therefore , credit for TDS was not allowable in the hands of the assessee in terms of Rule 37BA (2)(i) of the income tax rules,1962.

Ruling of the Court

The High Court ruled in favour of the assessee by contending that there are two distinct and independent contracts. There is no privity of contract between the government and the constituent of the assessee i.e. sub-contractor. The rights and obligations under the first contract are only that of the Government and the assessee; and those, in the second contract, are only that of the assessee and the sub-contractor. The contractual obligation, to execute the work for the Government, is that of the assessee joint venture alone, and not that of the constituent member of the JV i.e. the sub-contractor. It is evident, therefore, that the contractual receipts under the first contract is only that of the assessee; and the income, arising out of the said contract, is assessable only in their hands, and not in the hands of the sub-contractor. The High Court set aside the order passed by the AO and directed to determine the quantum of credit for TDS which the assessee is entitled to and refund the amount so computed to assessee in accordance with law

Source: High Cour of Andhra Pradesh vs ACIT, Circle-1

Writ petition no 31680 of 2015, dated 18-03-2016

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