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INDEX

EDITORIAL TEAM

Income Tax

1. Expeditious Issue of Refunds is a High Priority for the Central Board of Direct Taxes

The Centralised Processing Centre (CPC) of the Income Tax Department (ITD) has already processed over 4.19 crore Income Tax Returns (ITRs) and issued over 1.62 crore refunds during the current financial year up to 10th February, 2017. The amount of refunds issued at Rs.1.42 Lakh Crore is 41.5% higher than the corresponding period last year. As a result of emphasis on expeditious issue of refunds, 92% of all Income Tax returns were processed within 60 days demonstrating CBDT's commitment to faster and more efficient taxpayer service. Of the refunds issued, 92% are below Rs.50,000 due to the high priority given to expeditious issue of refunds to small taxpayers. Only 2% of refunds less than Rs. 50,000 are remaining to be issued. Majority of these cases relate to recently filed ITRs or where the taxpayer's response to the Department is awaited. Taxpayers reposed faith in CBDT's e-governance initiatives by filing electronically a whopping 4.01 Cr ITRs till 10th February 2017 representing an increase of 20% over the previous year. Also, more than 60 lakh other online forms were filed with an increase of nearly 41% compared to the previous year. Taxpayers are advised to verify and update their email address and mobile number on the e-filing website to receive electronic communication. CBDT is committed to ensuring best possible taxpayer services through its e-governance programs and increasing the coverage and scope of electronic filing and processing of various forms and applications.

2. Income Tax Department's Operation Clean Money gets Overwhelming Response

The Income Tax Department (ITD) had initiated 'Operation Clean Money' on 31st January, 2017 for the e-verification of large cash deposits made during 9th November to 30th December, 2016. Email and SMS were sent to 18 lakh taxpayers for submitting online response on the e-filing portal. The operation has seen an overwhelming response and till 12th February, 2017 more than 5.27 Lakh taxpayers have already submitted their response. Out of the 7.41 Lakh accounts confirmed by the 5.27 Lakh taxpayers, the cash deposit amount has been confirmed in more than 99.5% accounts. The Department is encouraged to note that taxpayers have increased the cash deposit amount in nearly 90,000 accounts and provided details of additional 25,000 bank accounts in which cash was deposited. The explanation of cash deposit submitted by the taxpayer is being analysed in the context of nature of business and business profile in the earlier returns of the taxpayer. This exercise has identified around 4.84 lakh taxpayers not yet registered with the efiling portal. SMS has been sent on the mobile number of these unregistered persons. Income Tax Department is keeping a vigil on the PAN holders who have still not registered on the e-filing portal or who have not yet submitted their online response. Such taxpayers are advised to register themselves at the e-filing portal https://incometaxindiaefiling.gov.in. and submit online explanation. In order to facilitate online responses, the last date for their submission has been extended up to 15th February, 2017 and a detailed Frequently Asked Question (FAQs) has also been issued to assist

the taxpayers in submitting their response. The taxpayers should submit their response within this further extended period with a view to avoid enforcement actions under the Income-tax Act and other applicable laws.

Case Laws

Supreme Court

1. S. 234B & 234C Advance Tax

Facts: The appellant – Assessee along with three others had promoted a Company, namely, 'Log in Systems Innovations Private Limited' (the Acquiree Company) in the year 1990. The said Company was acquired by one Synergy Credit Corporation Limited (the Acquirer Company) and a Non-Compete Agreement was signed between the appellant – Assessee and the Acquirer Company imposing a restriction on the appellant from carrying on any business of Computer Software development and marketing for a period of five years for which the appellant – Assessee was paid a sum of Rs.21,00,000/-.

The question that arose in the proceedings commencing with the Assessment Order is whether the aforesaid amount of Rs.21 lakhs is on account of 'salary' or the same is a 'capital receipt'

Held: The non-compete fees received by assessee was held to taxed as salary income and accordingly it was also held that In case of receipt by way of salary, question of payment of advance tax does not arise and, consequently, provisions of sections 234B and 234C also have no application in such a case. No question of payment of advance tax can arise in cases of receipt by way of 'salary'

IAN Peter Morris vs. ACIT [2016]

2. S. 200A(1) & 234E Penalty

Facts: In the instant case, the petitioners, a lower primary school in Kerala had made salary payments to the teaching and non-teaching staff of the school after deducting Tax at Source (TDS) and the amount so collected is credited to the Income Tax Department. As per 200(3) of the Income Tax Act, quarterly statement of TDS has to be filed in Form 24Q in respect of the salary for the corresponding quarter ending in June, September, December, March of every year. The IT Department imposed fine on the petitioners in terms with the impugned section by finding that the petitioners failed to pay the same quarterly statement in Form 24Q in respect of the 2nd and 3rd quarter. The petitioners challenged the levy by filing a writ petition before the High court that in terms of Section 273B, if the assessee was able to prove that there is reasonable and sufficient cause for the default or delay in filing TDS statement, penalty was not imposed.However, Section 234E provides for mandatory imposition of fine which is according to them is "arbitrary, unreasonable and in violation of Articles 14 & 19 (1)(g) of the Constitution of India. As there can be a genuine difficulty in uploading the TDS statement within the prescribed time and therefore imposing fee for delayed filing without being heard clearly amount to arbitrariness.

Held: Delay in filing of TDS statements causes substantial inconvenience to deductees as department would not be in a position to finalize their tax returns in time and to refund, if any, to be made to such deductees. Section 234E was incorporated as a deterrence to deductors delaying in furnishing

TDS returns which causes additional work burden upon the revenue due to such deductor's fault and the fee levied as quid pro quo for such levy. Also, appellate remedy is already provided against an order passed under section 200A(1).Therefore, section 234E fee cannot be said to be unreasonable and arbitrary –(**Sree Narayana Guru Smaraka Sangam Upper Primary School vs. UOI** 2017)

ITAT

3. S.40(a)(i) Expenses Disallowed

Facts: The assessee, Xansa India Limited, a subsidiary of Xansa Plc (UK based Company). The parent company had rendered management, business advisory services, provided assistance in engagement of overseas consultants to explore the possibilities of acquisition of businesses to the assessee. The assessee did not deduct tax at source under section 195 of the IT Act while making such payment, as payment for consideration for services of managerial, technical or consultancy nature would be regarded as 'Fees for technical/included services' only if technical know-how, skill or process is "made available" to the payer. In absence thereof, the consideration cannot be termed as "Fee for technical services". The assessee had also made payments for reimbursement of subsistence allowance paid by Xansa Plc. to its employeespositioned overseas. But the AO noted that since 75% of the expenses are supported by the evidence of the actual expenditure it is allowed by the Learned. Assessing Officer andto the extent of 25% of the amount merely declaration has been furnished and hence disallowed the expense for not deducting TDS on the payments made. The

Assessing Office disallowed such payment u/s. 40a(i) of the Act for non-deduction of tax at source. The assessee aggrieved with the order of the Assessing Officer preferred an appeal before the CIT. The CIT ruled in favour of assessee and said that the AO was wrong invoking the provisions of section 40(a)(i). The AO appealed to the Delhi ITAT.

Held: ITAT holds that the expenditure is not taxable as it is pertaining to the payment made to UK Company for provision of the management services in relation to advice and guidance on key management decisions to explore the possibilities of the acquisition of the businesses which does not satisfy the make available clause. ITAT also held that the subsistence allowance is supported by the evidence of the actual expenditure incurred for official purposes to the extent of 75% and for the balance 25%, employees have submitted a declaration of having spent in the said amount in the course of travel abroad. Reimbursement of expenses to the employees by employer on the basis of self-declaration for small amounts, for which it is difficult and sometimes cumbersome to obtain, supporting by employees, is common prevalent practice and it is not a disallowable expenditure. Therefore, also we reject the contention of revenue that balance 25 % expenditure is without any basis and evidence. Hence the ITAT deletes the disallowance under Section 40(a)(i).

Xansa India Ltd. vs. DCIT [2016]

Value Added Tax

1. Last date for Disabling Provisional Id of non-compliant Phase 1 & Phase 2 dealers

All those active dealers from Phase 1 & Phase 2 who wish to enroll but have not collected provisional id from MSTD or who have collected the provisional id but not activated their account on GST portal have been requested to collect the provisional id from MSTD account and activate the same on GST portal on or before 6th March 2017.

In case the activation is not done before 6th March 2017, it will be assumed that, the dealer is not willing to enroll for GST for any reason and his provisional id and access token presently available with MSTD as well as in GSTN will be disabled/deleted permanently. If in the future, such dealers, wants registration under GST Act, they may apply for the same after the implementation of GST Act, but needless to say, such dealers will not be eligible for the benefits of transitional provisions under the GST Act.

If any dealer is willing to enroll for GST, but due to any technical difficulties, it is not possible for him to either collect Provisional Id from MSTD or activate their activate their account on GST portal, then such dealer should submit his willingness in writing to the office of Nodal Joint Commissioner of Sales Tax before 6th March, 2017 and the concerned Joint Commissioner of Sales Tax will ensure that locational helpdesk of his office will assist the dealer for completing GST Enrollment process on or before 6th March,2017.

For further details regarding the registration process refer the link below:

http://www.mahavat.gov.in/Mahavat/MyFold/KNOWLEDGE%20CENTER/TRADE%20CIRCULARS/DateWise/KNOW_TRADEC_DW_MVAT/KNOW_TRADEC_DW_MVAT_02_28_17_0_11_26PM.pdf

Service Tax

Case Laws

1. **Costs of parts or other material, if any, sold to the customer while providing maintenance or repair service is specifically excluded.**

   FACTS:- Revenue raised a demand for levy of tax on the gross value of the service rendered including the cost of materials used and transferred by the assessee. The CESTAT members took divergent views. The Technical member took a view that gross value of the service rendered would be taxable. Aggrieved, assessee filed petition before the Hon'ble SC.

   HELD:- SC used Notification No.12/2003-ST dated 20/06/2003 and CBEC circular dated 07/04/2004 which provided exemption in respect of input material consumed/sold by the service provider to the service recipient while providing the taxable service subject to conditions that adequate and satisfactory proof in this regard is forthcoming from the assessee. SC observed that eligibility of the component of the gross turnover of the assessee to service tax, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as amended, which deals with the valuation of taxable services for charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service.

As per SC, the CESTAT erred in holding that it is the entire of the gross value of the service rendered that is liable to service tax. SC held that the assessee is liable to pay tax only on the service component which under the State Act has been quantified at 30%. SC used a show cause notice and observed that in the notice, the details of the value of the goods, raw materials, parts, etc. and the value of the services rendered have been mentioned and service tax has been sought to be levied on the differential amount. Ruling in favour of the assessee, SC thus set aside the majority order of CESTAT and directed the Revenue to refund the amount deposited by assessee without any interest and also discharged the bank guarantee furnished for penalty amount.

[Safety Retreading Company Pvt. Ltd.vs.Commissioner of Customs and Central Excise]

2. **Penalty cannot be imposed if before passing the adjudication order the assessee cease to exist.**

FACTS:- The assessee, a proprietor, declared undisclosed receipts on rendering of taxable service but allegedly did not include certain amount which was claimed to be discharged tax liability during the declaration period. This claim was not found acceptable leading to confirmation of tax, interest and penalty under Section 78 of the Finance Act, 1994. The notice was issued on 1st October 2014 but before the matter could be adjudicated, the declarant proprietor, expired on 11th November 2014.

The matter was subsequently handled by the legal heirs of the deceased and the fact of the demise of the declarant was noted in the order.

HELD:- The Tribunal observed that the declarant was informed of short-declaration in letter dated 21.01.2014 calling for challans evidencing tax payment and that the shortfall was remitted by challan dated 8.01.2014. Accordingly, the Tribunal held that, declarant paid the entire amount that was computed by the adjudicating authority. As regard imposition of penalty u/s 78, the Tribunal held that, like all other penalties in tax statutes, is personal to the alleged offender. It is well settled that penalties cannot be visited upon a person who has ceased to exist. The declarant had expired when the adjudicating authority decided the matter and penalty was not liable to be imposed at that stage. Consequently imposition of penalty u/s 78 was set aside.

[G. R. Kulkarni & Co. vs. Commissioner of Central Excise, CESTAT–Mumbai]

3. Tribunal considered earning of income as criteria for deciding allowance of CENVAT credit.

FACTS:- The appellant is registered with the department as a service provider under the classification "Renting of immovable property service". Show cause notice was issued proposing disallowance of CENVAT credit among others for professional charges paid to one

property consultants in respect of Market Intelligence Report for Gurgaon, on the ground that services have not been used at Noida. Besides, CENVAT credit in respect of certain payments made to a real estate agent, as performance Bonus towards striking deal with Lessee towards performance forwhole year was also disallowed. Aggrieved by the same appellant filed appeal.

HELD:- Before the Tribunal, Appellant contended that, the definition of "input service" as given in Rule 2(l) includes "market research" and that such search may be with respect to the existing output service or with respect to prospect of future output service. As regards, performance bonus paid to real estate agent, the appellant argued that, the service pertains to Real Estate Agency Services and the invoices relates to brokerage expenses for finding tenant. Appellant also provided details of tenants. Department contended that the market research report could not be utilised by the appellant service provider for providing taxable output service.

As regards market research services, the Tribunal held that, as the appellant has no rental income the appellant from Gurgaon and that he has not made any investment either prior to obtaining the report or after the obtaining of report for earning rental income from the tenants, the said expenditure is not in respect of earning of rental income from the tenants and hence the same is inadmissible as credit.

As regards real estate agent services, the Tribunal remanded the matter to adjudicating authority for verification of the rent agreement with the tenants and if the appellant has earned the income from them.

[M/s Emirates Technologies Pvt. Ltd. vs. CCE & ST, CESTAT - Allahabad]

RBI & FEMA

1) RBI/2016-17/221

A.P. (DIR Series) Circular No. 30 Dated February 2nd, 2017

Risk Management and Inter-bank Dealings: Permitting Non Resident Indians (NRIs) access to Exchange Traded Currency Derivatives (ETCD) market

Currently NRIs are permitted to hedge their Rupee currency risk through OTC transactions with AD banks. With a view to enable additional hedging products for NRIs to hedge their investments in India, it has been decided to allow them access to the exchange traded currency derivatives market to hedge the currency risk arising out of their investments in India under FEMA, 1999.

NRIs may access the ETCD market as per the following terms and conditions:

i. NRIs shall designate an AD Cat-I bank for the purpose of monitoring and reporting their combined positions in the OTC and ETCD segments.
ii. NRIs may take positions in the currency futures / exchange traded options market to hedge the currency risk on the market value of their permissible (under FEMA, 1999) Rupee investments in debt and equity and dividend due and balances held in NRE accounts.

iii. The exchange/ clearing corporation will provide details of all transactions of the NRI to the designated bank.

iv. The designated bank will consolidate the positions of the NRI on the exchanges as well as the OTC derivative contracts booked with them and with other AD banks. The designated bank shall monitor the aggregate positions and ensure the existence of underlying Rupee currency risk and bring transgressions, if any, to the notice of RBI / SEBI.

v. The onus of ensuring the existence of the underlying exposure shall rest with the NRI concerned. If the magnitude of exposure through the hedge transactions exceeds the magnitude of underlying exposure, the concerned NRI shall be liable to such penal action as may be taken by Reserve Bank of India under the Foreign Exchange Management Act (FEMA), 1999.

2) RBI/2016-17/220

A.P. (DIR Series) Circular No. 29

Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999

In partial modification thereof, it has been decided that the powers to compound the contraventions Delay in filing the Annual Return on

Foreign Liabilities and Assets (FLA return), by all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year have been delegated to all Regional Offices (except Kochi and Panaji) without any limit on the amount of contravention.

Corporate Law

1. Notification

Companies (Transfer of pending Proceedings) Amendment Rules, 2017

G.S.R. (E)—In exercise of the powers conferred by sub-sections (1) & (2) of section 434 of the Companies Act, 2013 (18 of 2013), read with sub section (1) of section 239 of the Insolvency & Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as code), the Central Government hereby makes the following rules further to amend the Companies (Transfer of pending Proceedings) Rules, 2016, namely:—

1. These rules may be called the Companies (Transfer of pending Proceedings) Amendment Rules, 2017.

2. They shall come into force on the date of their publication in the official Gazette.

3. In the Companies (Transfer of pending Proceedings) Rules, 2016 in rule 5, in sub-rule (1) in the proviso for the words "sixty days" the words "six months" shall be substituted.

http://www.mca.gov.in/Ministry/pdf/CoTransferofProcedingsAmdtRules_01032017.pdf

2. Rule

Section 391(2) closure of place of business by a Foreign Company.

1. Clarification with regard to scope of application of Section 391(2) for closure of the place of business of foreign company in India as if it were company incorporated in India.

http://www.mca.gov.in/Ministry/pdf/GeneralCircular1_2017_23022017.pdf

Allow us to tell you more!

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