You Were Born To Win, But To Be A Winner You Must Plan

To Win, Prepare To Win And Expect To Win.

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EDITORIAL TEAM

INCOME TAX

1. **Clarifications on the Direct Tax Dispute Resolution Scheme, 2016**.

Question No.1:

There are cases where the Assessing Officer (AO) has made addition on account of provisions under section 9 of the Incometax Act, 1961 (the Act), which was later retrospectively amended, especially with regard to royalty and fees for Technical Services. What would be the position of the case of an assessee vis-à-vis the Scheme, where an addition has been made by AO before such retrospective amendment? Whether the case would be treated as one being in consequence of retrospective amendment and accordingly whether the assessee would be eligible to avail the benefit of the Scheme?

Answer:

As per clause (g) of sub-section (1) of section 201 of the Finance Act, 2016, 'specified tax' includes a tax which is validated by an amendment made to the Income-tax Act with retrospective effect. Hence, a case where an addition has been made by AO before such retrospective amendment and the addition has got validated by such amendment, is eligible to avail the Scheme provided a dispute in respect of such addition/tax is pending as on 29.02.2016.

Question No. 2:

Can the tax payments under the Scheme be allowed to be made in instalments, as granted under IDS, 2016?

Answer:

Since, the date of making payment under the Scheme is provided in Section 204 of the Finance Act, 2016 itself, the tax payments under the Scheme cannot be allowed to be made in instalments.

Question No.3:

Whether a penalty order under section 271C or 271CA of the Income-tax Act for which an appeal is pending with CIT(Appeals) is covered under the Scheme?

Answer:

As per the Scheme, 'tax arrear' in case of penalty is linked to the total income finally determined. Since, penalty order under section 271C or 271CA is not linked to the assessment proceedings, such orders are not covered under the Scheme.

2. Provisions Of The Taxation And Investment Regime For Pradhan Mantri Garib Kalyan Yojana, 2016.

Scope of Scheme:

A declaration under the aforesaid Scheme may be made in respect of any income in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of

April, 2017. No deduction in respect of any expenditure or allowance 2 or set-off of any loss shall be allowed against the income in respect of which a valid declaration is made under the Scheme.

Tax, surcharge, penalty & deposit under the Scheme:

The person making a declaration under the Scheme would be liable to pay tax at the rate of thirty per cent. of the undisclosed income as increased by surcharge to be called the Pradhan Mantri Garib Kalyan Cess calculated at the rate of thirty-three per cent. of such tax. In addition, penalty at the rate of ten per cent. of the undisclosed income shall be payable.

Time limits for declaration and making payment:

A declaration under the Scheme can be made anytime on or after 17th December, 2016 but on or before 31st March, 2017. The tax, surcharge and penalty payable under the Scheme and deposit to be made in the Deposit Scheme, shall be paid/made before filing of declaration under the Scheme. The declaration shall be accompanied with proof of payment made in respect of tax, surcharge and penalty payable under the Scheme and proof of deposit made in the PMGKY Deposit Scheme.

Effect of valid declaration:

(a) The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;

(b) A declarant under this Scheme shall not be entitled, in respect of undisclosed income or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act

or the Wealth-tax Act, 1957, or to claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

Case laws:

High Court

1. S. 119 Condonation of delay on filing of return of Income

Facts: The Assessee company filed its return of income sometime immediately past midnight of 15/10/2010 that was treated as belated filing beyond the permissible time. For the AY under dispute the Ministry of Finance-Government of India vide notification in No.402/92/2006-MC (42 of 2010) dated 29.09.2010 had extended the last date for filing of income tax returns from 30.09.2010 to 15.10.2010 on account of disturbance caused by floods. Assessee's claim of carry forward loss was not granted by department.Assessee approached CBDT and sought for condonation of delay in filing of return and explained that due to last hour rush on last day of filing of return, there were technical snags in website of department and, thus, return could not be uploaded; it could only be uploaded in midnight and, hence, date of filing had been reckoned by department as next day .CBDT rejected petitioner's contention - Whether since petitioner had not gained anything from delay and had satisfactorily explained reason for delay in filing return, CBDT should have condoned delay of one day in filing return by assessee; mere delay should not defeat claim of assessee

Held: High court observed that the petitioner has satisfactorily explained the delay in filing the return on 16.10.2010 instead of 15.10.2010 and obviously the reason given by assessee that there was technical snag in the website of IT department was valid enough to prevent assessee to file return on due

date Further, it is not the case of the respondents that the petitioner is not entitled to claim the carry forward loss under section 139(3). When the petitioner is entitled to claim the carry forward loss under section 139(3), it cannot be stated that the delay in filing the return had occurred deliberately or on account of culpable negligence or on account of mala fides. Further, the petitioner did not stand to benefit by resorting to delay. Moreover, when the petitioner had satisfactorily explained the delay in filing the said return, the approach of CBDT should be justice oriented so as to advance the cause of justice Therefore, the petitioner delay should be condoned and should be allowed to carry forward loss. In result the writ petition was allowed [in favour of assessee]

[CBDT vs. Regen Infrastructure & Services (P.) Ltd. [2016]]

2. S. 148 r.w.s. 142(2) Reassessment proceedings invalid in case notice u/s. 143(2) not issued

Facts: The Assessee-company was having a diagnostics laboratory. It filed return declaring certain taxable income. Subsequently, a survey was carried out in course of which certain documents were unearthed pointing out that the assessee had suppressed the receipts for taking MRI Scan and CT Scan. The Assessing Officer thus issued a notice under section 148 in response to which assessee filed a reply that the return earlier filed by it could be taken as a return in response to said notice. The Assessing Officer completed assessment under section 143(3) read with section 147 making certain addition to assessee's income. The Commissioner (Appeals) deleted a part of said addition. The assessee raised a jurisdictional ground before the Tribunal

that since the assessment was completed by the assessing authority under section 143(3) read with section 147, a notice under section 143(2) had to be issued within the period of limitation. The assessee contended that no such notice under section 143(2) had ever been issued and that in such circumstances, the entire assessment failed.

Held: The Tribunal held that since the assessee had participated in the re-assessment proceedings under section 147 and in the assessment proceedings under section 143, absence of issuance of notice under section 143(2) would have no bearing and would stand condoned in view of section 292BB of the Act . [In favour of assessee]

[Travancore Diagnostics (P.) Ltd. vs. ACIT [2016]]

3. S. 245C Case is said to be pending till the date of passage of order by Assessing Officer

Facts: The assessee was a partnership firm engaged in the business of development and construction of residential complexes. On 7-1-2014, the assessee was subjected to search operations. Notice under section 153A came to be issued on 2-7-2014. The assessee filed the return of income in response to such notice on 27-11-2014. The Assessing Officer passed the assessment orders for five assessment years in question on 15-3-2016 and the orders were also sought to be served on the assessee through hand delivery on 15-3-2016. The partners of the assessee firm however, refused to accept such orders, upon which, the Inspector who had visited the office of the assessee personally, placed before the Deputy Commissioner *i.e.* the Assessing Officer his report on 16-3-2016. On 16-3-2016, the assessee filed application for

settlement before the Settlement Commission. Before the settlement bare facts were that the order of assessment dated 15-3-2016 was served on the assessee on 21-3-2016. Thus, according to the assessee, the application for settlement having already been filed on 16-3-2016 even before the orders of assessment were passed, such application before the Settlement Commission would be maintainable. Even if such orders were passed on 15-3-2016, as contended by the department, since the same were not served on the assessee, the assessment proceedings would be deemed to be pending and, therefore, application for settlement would be maintainable. However, according to the department, as soon as the orders of assessment were passed. Irrespective of dispatch of the orders of assessment or service thereof on the assessee, application for settlement would not be maintainable.

Held: For the purpose of application under section 245C(1) of the Act, a case would be pending only as long as the order of assessment is not passed. Once the assessment is made by the Assessing Officer by passing the order of assessment, the case can no longer be stated to be pending. Application for settlement would be maintainable only if filed before the said date. Date of dispatch of service of the order on the assessee would not be material for such purpose [in favour of revenue]

[Shalibhadra Developers vs. Secretary [2016]]

SERVICE TAX

Notifications

1. **Notification No. 52/2016-Service Tax dated 8TH December, 2016**

   Central Government vide this notification has amended Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 so as to exempt services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service. This has been done with a view to promote cashless transactions and encourage card payments as a popular mode of transactions.

   Further "Acquiring Bank" has been defined to mean any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

2. **Notification No. 53/2016-Service Tax dated 19TH December, 2016**

   Central Government, vide this notification has inserted proviso to Rule 4C(1) whereby a person located in non-taxable territory providing online information and database access or retrieval services to a non-assessee online recipient located in taxable territory may issue online invoices not authenticated by means of a digital signature for a period up to 31st January, 2017.

Case Laws

1. **Where entire demand along with interest is paid in the course of inquiry or audit, in the absence of any material on record to prove that there was a suppression and concealment, show cause notice cannot be issued and penalty cannot be imposed.**

   FACTS:- The appellant manufacturer had availed the services of foreign company for maintenance and repair of capital goods installed in his factory in India but no payment of service tax was made under reverse charge mechanism. After visit at appellant's factory, the department issued letter to the appellant for making payment of service tax, which amount was paid by it. The appellant availed CENVAT credit of the said amount which was not disputed by the department. However, subsequently, a show cause notice was issued to the appellant for levy of penalty u/s 76, 77 and 78 of the Finance Act. All the penalties were confirmed in order in original and order in appeal before Commissioner (Appeals). Appellant disputed the same relying upon provisions of Section 73(3).

   HELD:- Provisions of Section 73(3) are very clear as it says that if tax is paid along with interest before issuance of the show cause notice, then in that case, show cause notice shall not be issued. The Tribunal held that the appellant was under bona-fide belief that he is not liable to pay service tax but during the audit, when the audit party informed him that he is liable to pay service tax, he immediately paid the entire service

tax along with interest. Further, except mere allegation of suppression, the Department did not bring any material on record to prove that there was suppression and concealment of facts to evade payment of tax. Accordingly, penalty u/s 78 was held as unjustifiable and penalty order was set aside.

[M/s Bhoruka Aluminium Ltd. vs. CCE&ST Bangalore CESTAT]

2. **Where owner of the hotel collecting service charges under 'hotel operating agreement' has also collected from the operator, separately and on actual basis, reimbursement of salary paid by him to its employees deputed at the hotel for looking into day-to-day affairs of the hotel, such reimbursement shall not form part of value.**

FACTS:- The appellant is in the business of operating hotels under its various brands. Any entrepreneur interested in running a hotel under Fortune banner signs an "Operating Agreement" with the appellant. Appellant charges 'operating fees' under the aforesaid operating agreement. Besides, the appellant sends its senior manager on 'secondment' (deputation) to such hotels, who are involved in the actual operation and running of the hotel. Such employees are not employed by the hotel and they continue to be in the employment of the Appellant. Though, they continue to be on the rolls of the Appellant company, but in fact they work for the hotel in the actual day-to-day operation and running of the hotel. The 'salaries' and 'expenses' of such officers are continued to be paid by the Appellant but the same are

reimbursed by the hotel on actual basis (without any markup). There is no dispute in the present case with regard to the

operating fee paid under operating and running the hotel. The dispute is only confined to the salary and expenses of such officers reimbursed by the hotel to the Appellant.

HELD:- The the salary of the employees sent by the appellant to their hotels is paid by the appellant directly to the employee and the same is being reimbursed by the hotel without any markup; in terms of the law declared by the Delhi High Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. vs. UOI 2013 (29) STR 9 (Delhi); such reimbursable expenses collected by the service provider from the service recipient cannot be held to be a part of the value of the services being provided by the appellant. The Tribunal also held that the issue involved is a bonafide issue of interpretation of legal points which were the subject matter of various decisions. As such it cannot be said that there was any suppression or misstatement with any malafide intention to evade duty on the part of the appellant, thus justifying invocation of longer period of limitation.

[M/s Fortune Park Hotels Ltd.vs.CST, Delhi Tribunal Delhi]

FEMA

1. Notification No.FEMA.381/2016-RB Dated December 07, 2016.

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the **Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000.**

Amendment to Schedule 1

S.No	Sector/Activity	Foreign Investment Cap (%)	Entry Route
1.	**Agriculture & Animal Husbandry**	100%	Automatic
2.	**Manufacturing**	100%	Automatic
3.	**Defence**	100%	Upto 49%: Automatic Above 49%: Government route, wherever it is likely to result in access to modern technology or

			for other reasons to be recorded.
4.	**Broadcasting Carriage Services**	100%	Automatic
5.	**Single Brand Retail trading (SBRT)**	100%	Upto 49%: Automatic Above 49%: Government route
6.	**Pharmaceuticals**		
	a. Greenfield	100%	Automatic
	b. Brownfield	100%	Upto 74%: Automatic Above 74%: Government route

1. RBI/2016-17/197

   A.P. (DIR Series) Circular No.23 Dated December 27th, 2016.

   Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India

   As per Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (the Principal Regulations) notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which, eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (FPIs) and long term investors registered with SEBI, may purchase securities indicated in Schedule 5 on repatriation basis and subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time to time.

   With a view to providing flexibility in regard to the manner in which non-convertible debentures/bonds issued by Indian companies can be acquired by FPIs, it has now been decided to allow them to transact in such instruments either directly or in any manner as per the prevalent/approved market practice.

   AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.

The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

2. RBI/2016-17/187
IDMD.CDD.No.1453/14.04.050/2016-17 Dated December 16, 2016

Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS), 2016

The Government of India has vide the notification no. S.O. 4061 (E) dated December 16, 2016 announced the "Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS)". This Scheme shall be applicable to every declarant under the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

Eligibility for Deposits.— The deposits under this Scheme shall be made from the 17th day of December, 2016 till 31st day of March, 2017, by any person who declared undisclosed income under sub-section (1) of section 199C of the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016

Form of the deposits.— The deposits shall be held at the credit of the declarant in Bonds Ledger Account maintained with Reserve Bank of India. A certificate of holding shall be issued to declarant in Form I. The Reserve Bank of India shall transfer the deposit received under

this Scheme into the designated Reserve Fund in the Public account of the Government of India.

Subscription and Mode of investment in the Bonds Ledger Account.— (a) The deposits shall be accepted at all the Authorised Banks.

(b) The deposits shall be made in multiples of rupees one hundred.

(c) The deposit by a declarant shall not be less than twenty-five per cent of the undisclosed income declared under sub-section (1) of section 199C of the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

(d) The entire deposit shall be made, in a single payment, before filing declaration under sub-section (1) of section 199C ibid.

(e) The deposit shall be made in the form of cash or draft or cheque drawn in favour of the authorised bank accepting such deposit or by electronic transfer.

The transferability of the Bonds Ledger Account shall be limited to nominee or to the legal heir of an individual holder, in the event of his death.

The deposits shall not bear any interest.

The Bonds Ledger Account shall not be tradable.

The Bond Ledger Account shall be repayable on the expiration of four years from the date of deposit and redemption of such Bond Ledger Account before its maturity date shall not be allowed.

3. RBI/2016-17/199
FMRD.DIRD.12/14.01.011/2016-17 Dated December 29, 2016.

Introduction of Interest Rate Options in India

As announced in the fourth bi-monthly Monetary Policy Statement 2016-17, it has been decided to introduce Interest Rate Options in India.

The Reserve Bank of India has accordingly issued a Notification No. FMRD.DIRD. 11/2016 dated December 28, 2016 giving details of the directions for the introduction of Interest Rate Option. Eligible market participants are permitted to take positions in Interest Rate Options for their own balance sheet management and for market making purposes. Participants, who are eligible as market makers are, however, advised to ensure that appropriate infrastructure and risk management systems are in place.

These directions have been issued under Section 45 W of Chapter III D of the Reserve Bank of India Act, 1934.

The directions shall be effective from January 31, 2017.

4. RBI/2016-17/198

   DBR.No.BP.BC.49/21.04.048/2016-17 Dated December 28, 2016

   Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

   On a review, it has been decided to:

   (i) Provide 30 days, in addition to the 60 days provided vide the abovementioned circular, in the following categories of loans:

   (a) Running working capital accounts (OD/CC)/crop loans, with any bank, the sanctioned limit whereof is □1 crore or less;

   (b) Term loans for business purposes, secured or otherwise, the original sanctioned amount whereof is □1 crore or less, on the books of any bank or any NBFC, including NBFC (MFI). This shall include agriculture loans.

   Note: The limits at (a) and (b) above are mutually exclusive limits applicable to respective category of loans.

   The above dispensation will apply to dues payable between November 1, 2016 and December 31, 2016.

   (ii) Permit all REs to defer the down grade of an account that was standard as on November 1, 2016, but would have become NPA for any reason during the period November 1, 2016 to December 31, 2016,

by 90 days from the date of such downgrade in the following categories of accounts:

(a) Running working capital accounts (OD/CC)/crop loans, with any bank, the sanctioned limit whereof is □1 crore or less;

(b) Term loans for business purposes, secured or otherwise, the original sanctioned amount whereof is □1 crore or less, on the books of any bank or any NBFC, including NBFC (MFI). This shall include agriculture loans.

Note: The limits at (a) and (b) above are mutually exclusive limits applicable to respective category of loans

3. The additional time given in para 2 shall only apply to defer the classification of an existing standard asset as substandard and not for delaying the migration of an account across sub-categories of NPA.

4. Dues payable after January 1, 2017 will be covered by the extant instructions for the respective REs.

MINISTRY OF CORPORATE AFFAIRS

1. RULE

Companies (incorporation) Fifth Amendment Rules, 2016

G.S.R. (E)—In exercise of the powers conferred by sub-sections (1) & (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Incorporation) Fifth Amendment Rules, 2016.

2. (2) They shall come into force on the 1st day of January, 2017.

http://www.mca.gov.in/Ministry/pdf/5th_Amendment_Rules_29122016.pdf

2. RULE

Removal of name of company from the Register

G.S.R. (E).—In exercise of the powers conferred by sub-section (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013), and in supersession of the Companies (Central Government) General Rules and Forms, 1956 except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

http://www.mca.gov.in/Ministry/pdf/Rules_28122016.pdf

3. NOTIFICATION

National Company Law Tribunal (Amendment) Rules, 2016

G.S.R. 1159(E).—In exercise of the powers conferred by sub-section (1) & (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the NCLT Rules, 2016

http://www.mca.gov.in/Ministry/pdf/NCLT(Amendment)Rules_21122016.pdf

4. NOTIFICATION

National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016

Form of application or petition for Reduction of share capital under section 66.—(1) An application to the tribunal to confirm a reduction of share capital of a company shall be in various Forms and fee shall be, as prescribed in the Schedule of fee to these rules.

http://www.mca.gov.in/Ministry/pdf/NCLTRules2016.pdf

5. NOTIFICATION

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

G.S.R. 1134(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with sections 230 to 233 and sections 235 to 240 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules

http://www.mca.gov.in/Ministry/pdf/compromisesrules2016_15122016.pdf

6. NOTIFICATION

(Transfer of Pending Proceedings) Rules, 2016

G.S.R. 1119(E).— In exercise of the powers conferred under sub-sections (1) and (2) of section 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of2016) (hereinafter referred to as the Code), the Central Government hereby makes the following rules

They shall come into force with effect from the 15th December, 2016, except rule 4, which shall come into force from 1st April, 2017.

http://www.mca.gov.in/Ministry/pdf/CompaniesTransferofPending_08122016.pdf

7. NOTIFICATION

S.O.____(E)

In exercise of the powers conferred by sub-section 3 of section 1 of the Companies Act, 2013 (18 of 2013) the Central Government hereby appoints the 26th December, 2016 as the date on which the provisions of section 248 to 252 of the said Act, shall come into force.

http://www.mca.gov.in/Ministry/pdf/Notificatiion_28122016.pdf

8. NOTIFICATION

S.O. 3677(E).—In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 15th day of December, 2016 as the date on which the following provisions of the said Act shall come into force,

http://www.mca.gov.in/Ministry/pdf/commencementnotif_08122016.pdf

Allow us to tell you more!

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