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Income Tax

➤ **CBDT hauls up officers & Staff for leaving early, Coming Late & Harassing Taxpayers**

The CBDT has issued a stern Office Memorandum dated 07.08.2015 stating that officers/staff of the income Tax Department are leaving their stations/headquarters early on Fridays, during weekend and holidays and joining their duties late on next working day. It is further stated that many a times no permission is being taken from the superior controlling authorities before leaving location/headquarters as required under the rules. It is stated that apart from disturbing decorum and office discipline, this practice of leaving stations/headquarters by the officers /staff without prior permission and not observing the office timings, is causing inconvenience to the taxpayers and members of public who visit income tax offices in connection with their tax matters either by prior appointment or otherwise.

This has been viewed adversely by the Chairperson, CBDT. The CBDT has warned that failure to obtain permission of competent authority before leaving station/headquarters is to be viewed seriously and may entail disciplinary action. It is also stated that Article 56 of the Civil Service Regulations also provides that no officer is entitled to pay and allowance for any time he may spend beyond the limits of his charge without authority.

➤ **Old unclaimed liabilities which are not written back by the assessee can neither be assessed as "cash credits" u/s 68 nor assessed u/s 41(1) as "remission or cessation of liability"**

ITAT Bangalore in the case of Glen Williams vs. ACIT (ITAT Bangalore) has held that the amounts lying in credits pertaining to earlier years, if not paid for 4 years (in this case) would not automatically attract provisions of section 41(1) unless there is writing off of liabilities. The words "remission" and "cessation" are legal terms and have to be interpreted accordingly. In the present case, there is nothing on record to show that there was either remission or cessation of liability of the assessee.

Further as the amounts shown as creditors do not arise out of any transactions during the previous year relevant to assessment year in question, provision of section 68 are not attracted. The provisions of sec. 68 are clear inasmuch as they refer to "sum found credited in the books of account of an assessee maintained for any previous year"

[Glen Williams vs. ACIT (ITAT Bangalore) - ITA No.1078/Bang/2014 – AY 2009-10]

➤ **No extension of date for filing of returns due by 30th September**

Income-tax returns for Assessment Year 2015-16 for certain categories of assessee viz companies, and firms, individuals engaged in proprietary business/profession etc whose accounts are required to be audited, are to be filed by 30th September, 2015. The audit report is also required to be filed by the said date.

The Government has received representations from various stakeholders seeking extension of date for filing of returns and tax audit reports beyond 30th September 2015. The reasons cited are delay in notifying the returns and related delay in availability of forms on the e-filing website.

The matter has been considered. Income-tax returns forms 3,4,5,6 and 7 which are used by the above mentioned categories of assesseees were notified for Assessment Year 2015-16 on 29.07.2015. The forms were e-enabled and were available on the e-filing website of the Department from 7th August 2015 giving enough time for compliance. The changes made to these forms are not extensive as compared to the earlier years. Further taxpayers entering into either international transactions or specified domestic transactions are required to file their returns by 30th November 2015 only.

After consideration of all facts, it has been decided that the last date for filing of returns due by 30th September 2015 will not be extended. Taxpayers are advised to file their returns well in time to avoid last minute rush.

(https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/Press-Release-No-extension-of-date-09.09.2015.pdf)

➤ **Personal income tax returns filed online grew 26.12 per cent by September 7, the last day to file returns.**

As many as 20.6 million returns were filed against 16.3 million in the previous year, an official statement said on Thursday. The peak filing rate touched 3,475 returns per minute as compared to 2,901 returns per minute last year.

The Central Processing Centre as on September 7 has processed 4.5 million returns and issued refunds to 2.2 million payers relating to assessment year 2015-16. The income-tax department through its portal has electronically verified over 3.29 million e-returns. The new e-filing system, enabled last month, allows online verification of a person's income tax returns by using Aadhaar number or internet banking, ATM or email, ending the practice of sending paper acknowledgement to its office in Bangalore.

Service Tax

➤ Important Judgments:

➤ Service tax liability cannot be transferred

The assessee, a service provider, can by way of a contract transfer the service tax burden on a third party but he cannot ask the Revenue to recover the tax dues from such third party or wait for discharge of the liability till he has recovered the tax amount from such third party.

[Delhi Transport Corporation vs. CST (2015) 38 STR 673 (Del.)]

➤ Valuation (cum-tax benefit)

In absence of any documentary evidence to show that amount received by the appellant from the service recipient was inclusive of service tax, cum tax benefit cannot be granted

[CCE vs. Rudra Galaxy Channel Ltd. (2015) 38 STR 445 (Tri.-Mum.) relying on Amrit Agro Industries Ltd vs. Cmmr (2007) 210 ELT 183 (SC)].

- Demand

The Tribunal, following the ratio of the High Court decision in CCE & ST vs. Janta Travels Pvt.(2009) 13 STR 488 (P&H), set aside the demand holding that there is no 'service' rendered when commission received by the appellant is returned by him due to the fact that service could not be fully completed.

[Agarwal Motors vs. CCE (2015) 38 STR 775 (Tri.-Del.)]

- Penalty

In the instant case the Tribunal held there was a reasonable cause for waiver of penalty u/s. 78 since –

- The non-payment of service tax was detected from the books of account of the assessee hence there appeared to be no intention to evade payment of service tax
- The assessee had paid the entire tax before issuance of the SCN
- The unit was declared as a sick company under Sick Industrial Companies Act, 1985.

The adjudicating authority had dropped the penalty u/s. 76 on the grounds of reasonable cause.

[Garodia Special Steels Ltd vs. CCE (2015) 38 STR 527 (Tri.-Mum.)]

➤ Pre-deposit

Where there is tax demand and penalty, only pre-deposit of tax can be ordered. Only where appeal is against penalty predeposit of penalty can be ordered

[Share Microfin Ltd. CCCE&ST (2015) 38 STR 457 (A.P.)]

FEMA

➤ Reporting of Transfer of Securities under Foreign Direct Investment (FDI) Scheme on the e-Biz platform

With a view to promoting the ease of reporting of transactions under foreign direct investment, the Reserve Bank of India (RBI), under the aegis of the e-Biz project of the Government of India has enabled online filing of the Foreign Currency Transfer of Shares (FCTRS) returns for reporting transfer of shares, convertible debentures, partly paid shares and warrants from a person resident in India to a person resident outside India or vice versa. This is in furtherance to RBI's earlier initiative of enabling online filing of Form FC-GPR and Form ARF (Advance Remittance Form).

The design of the reporting platform enables the customer to login into the e-Biz portal, download the reporting form (FCTRS), complete and then upload the same onto the portal using their digitally signed certificates. The Authorised Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents and if necessary, call for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN). The FCTRS services of RBI have been made operational on the e-Biz platform from August 24, 2015.

It may be noted that for the present, the online reporting on the e-Biz platform is an additional facility to the Indian residents to undertake their FCTRS reporting and the manual system of reporting would continue till further notice.

The ADs will be required to access the e-Biz portal [which is hosted on the National Informatics Centre (NIC) servers] using a Virtual Private Network (VPN) Account obtained from NIC. They are advised to extend due cooperation/assistance to their constituents for uploading the abovementioned forms on the e-Biz platform.

(RBI/2015-16/157 A. P. (DIR Series) Circular No. 9 dated August 21, 2015)

INTERNATIONAL TAX

- **Interest on tax refund is taxable as business income under the India-U.K. tax treaty since it is effectively connected with a PE in India.**

Based on the facts and in the circumstances of the case, recently, the Uttarakhand High Court (High Court) in the case of B.J. Services Company Middle East Limited held that the interest earned on income tax refund is taxable as business income under the India-U.K. tax treaty since the debt claim in respect of which interest is paid, is effectively connected with a Permanent Establishment in India.

The High Court also held that Section 44BB of the Income-tax Act, 1961 is not applicable to interest on income tax refund since the amount of such interest is not on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire in the prospecting for, or extraction or production of mineral oils.

(B. J. Services Company Middle East Limited v. ACIT (Income Tax Appeal No. 01 of 2010) –Taxesutra.com)

- **A fraction of a day stayed in India cannot be counted as one complete day while determining of residential status in India.**

Based on the facts and in the circumstances of the case, recently, the Lucknow Bench of the Income-tax Appellate Tribunal in the case of Sharad Mishra held that while determining the residential status of an individual under Section 6(1)(a) of the Income-tax Act, 1961, a small fraction of a day stayed in India cannot be counted as one complete day of stay.

This ruling by the Lucknow Tribunal can provide relief to taxpayers whose residential status and taxation of incomes in India may get impacted due to their stay in India just for a part of the day.

(Shri Sharad Mishra v. ITO (AY 2009-10) (ITA No. 599 of 2012)

- **Management and procurement services do not make available any technical knowledge, skills, etc. and, therefore, are not taxable as fees for technical services under the India-UK tax treaty**

Based on the facts and in the circumstances of the case, recently, the Authority for Advance Rulings in the case of Measurement Technology Ltd. held that services rendered by a group director to its group company in India are 'managerial services'. Such management services and procurement services rendered by the UK procurement team do not make available any technical knowledge, skills, etc. Therefore, such services are not taxable as Fees for Technical Services under the India-UK tax treaty (the tax treaty). Further, these services are general and routine in nature and do not create any intellectual property and therefore, it will not qualify as royalty under the tax treaty.

(Measurement Technology Ltd. (AAR No 966 of 2010) – Taxesutra.com)

- **A KPO Service provider cannot be considered as a comparable for benchmarking international transactions entered into by an entity rendering voice call services**

Based on the facts and in the circumstances of the case, recently, the Delhi High Court (High Court) in the case of Rampgreen Solutions Private Limited (the taxpayer) rejected eClerx Services Limited and Vishal Information Technology Limited which were upheld as comparables by the Income-tax Appellate Tribunal (the Tribunal), on grounds of functional similarity and interpretation of Rule 10B(2) of the Income Tax Rules 1962. The High Court asserts that the Knowledge Process Outsourcing services, which involve advance skills representing higher-end of IT Enabled Services (ITeS), cannot be compared with a functional profile that includes voice call services entailing lower-end of ITeS such as customer support, processing of routine data, etc.

(Rampgreen Solutions Pvt. Ltd. v. CIT (ITAT No. 102/2015 (AY 2008-09)(Del) – Taxsutra.com)

COMPANY LAW

➤ **Amendment to Schedule III of Companies Act 2013 – preparation of Financial Statements**

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further alterations in Schedule III (herein after referred to as said Schedule) to the said Act, namely:

In the said Schedule, in Part I- Balance Sheet,-

- **Under the heading "Equity and Liabilities", in para (4), for, '(b) Trade payables, the following shall be substituted, namely:-**

"(b) Trade Payables:-

(A) Total outstanding dues of micro enterprises and small enterprises; and

(B) Total outstanding dues of creditors other than micro enterprises and small enterprises"

- **Under the heading "Notes: General Instructions for preparation of Balance Sheet", in para 6, after sub-para F the following shall be inserted, namely:-**

"FA. Trade Payables

The following details relating to Micro, Small and Medium Enterprises shall be disclosed in the notes:-

(a) The principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year:

(b) The amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(c) The amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;

(d) The amount of interest accrued and remaining unpaid at the end of each accounting year; and

(e) The amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

(MCA Notification dated 04/09/2015)

- **Filing of Financial Statements in XBRL format**

Ministry of Corporate Affairs has notified "Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2015". As per these rules, companies falling in the following categories will have to file their Financial Statements under section 137 of the Companies Act, 2013

using the Extensible Business Reporting Language (XBRL) taxonomy for financial year commencing on or after 1st April, 2014:-

- all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- all companies having paid up capital of Rupees five crore and above; or a
- all companies having turnover of Rupees one hundred crore and above; or
- all companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:

However, companies in Banking, Insurance, Power Sector and Non-Banking Financial Companies are exempted from XBRL filing.

(MCA notification dated 09/09/2015)

➤ **Loan from relatives of directors are allowed**

Ministry of Corporate Affairs has issued notification, to amend the Companies (Acceptance of Deposit) Rules, 2014 (the Rule) as follows:

In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as said rules), in rule 2, in sub-rule (1), in clause (c), for sub-clause

(viii), the following shall be substituted, namely:- "(viii) Any amount received from a Person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company:

Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;"

In the said rules, in rule 3, -

(a) For the words "paid-up share capital and free reserves", wherever they occur, the words "Paid-up share capital, free reserves and securities premium account" shall be substituted;

(MCA notification dated 15/09/2015)

➤ **Extension of time for filing of cost audit report to the Central Government for the Financial Year 2014-2015 in form CRA-4**

In continuation to General Circular No.08/2015 dated 12.06.2015, the last date of filing of Form CRA-4 without any penalty/late fee is further extended up to 30th September, 2015.

(General Circular 12/2015 dated 01/09/2015)