Contents

Income Tax

ITAT lauds CBDT for 'taxpayer friendly' measure and disposes off 1000's of low tax effect dept appeals on war footing.

The ITAT has complimented the CBDT for issuing Circular and stating therein that all pending appeals of the department with a monetary limit not exceeding Rs. 10,00,000 shall be withdrawn/ not pressed.

The ITAT has acted with remarkable alacrity to give effect to the said Circular of the CBDT. Over the weekend and past few days, the Hon'ble Members, Registrar and Bench Clerks have been involved in sorting through thousands of appeals and identifying the ones that qualify for dismissal pursuant to the said Circular.

The Ahmedabad and Rajkot Benches (through video-conferencing) will collectively dispose off around 1,500 low-tax effect appeals of the department in this week. A similar exercise is underway in the other Benches of the ITAT. The Hon'ble President of the ITAT has also requested members of the Bar to furnish a list of such appeals.

(Circular No. 21/ 2015 dated 10th December 2015)

CBDT enhances monetary limits for filing appeals by the department & gives it retrospective effect.

The CBDT has, as a measure for reducing litigation, issued Circular increasing the monetary limits for filing of appeals by the department before the ITAT and High Courts and SLP before the Supreme Court. The notable aspect is that the CBDT has directed that the said instruction shall apply retrospectively to pending appeals and that all appeals below the specified tax limits should be withdrawn/ not pressed. However, appeals before the Supreme Court are to be governed by the limits operative at the time that the appeal was filed.

(Circular No. 21/ 2015 dated 10th December 2015)

Even undisclosed income surrendered by assessee is eligible for section 10A exemption if department does not show that the assessee has any other source

ITAT Delhi held that "The surrender was related to the regular business of the assessee and it is not brought on record that the assessee earned the said income from any other source. Therefore, the deduction u/s 10A of the Act was allowable to the assessee being 100% Export Oriented Unit established in SEZ on this income also. In view of the above we uphold the addition made by the AO and sustained by the CIT (A), however, the AO is directed to allow the deduction u/s 10A of the Act."

(Bridal Jewellery Mfg. Co vs. ITO)

CBDT frowns on hardship to taxpayers and wastage of time by issue of vague section. 143(2) scrutiny notices by assessing officers:

The CBDT has issued Instruction No. 19/2015 dated 29.12.2015 stating that instances have come to the notice of the Board that in cases selected under scrutiny, while issuing the first notice, Assessing Officers do not convey the specific compliance requirements like

production of accounts, furnishing of documents, information, evidences, submission of other requisite particulars etc.

Since the taxpayers or their authorized representatives are required to comply with the statutory notice issued by the Assessing Officer, they remain clueless about the information required to be submitted and their appearance before the Assessing Officer does not serve any fruitful purpose except recording of their presence.

This causes undue hardship to the taxpayers and unnecessary wastage of their time. The CBDT has directed that Assessing Officers should first go through the returns of income which have been selected for scrutiny and identify the issues which require examination. The initial notice issued under section 143(2) of the Income-tax Act, 1961 should itself be accompanied with the questionnaire containing details of specific documents/information/evidences etc. that are required to be furnished by the taxpayer in connection with scrutiny assessment proceeding in their respective case.
(Instruction No. 19/2015 dated 29.12.2015)

CBDT clarifies important issues on scope of scrutiny in CASS assessments
The CBDT has issued Instruction No. 20/2015 dated 29.12.2015 in which it has issued clarifications on several issues in order to facilitate the conduct of scrutiny assessments in cases selected through Computer Aided Scrutiny Selection ('CASS'). The CBDT has also stated that as far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year – one is 'Limited Scrutiny' and other is Complete Scrutiny'.

The assessees concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases has been explained in detail by the CBDT.
(Instruction No. 20/2015 dated 29.12.2015)

CBDT clarification on section 271(1) © penalty where section 115JB Book Profits are more than normal income
CBDT has issued clarification no. 25/2015 dated 31st December 2015 which clarifies the issue of levy of penalty in cases prior to 01.04.2016.

In view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under 271(1)(c) of the Act, is not attracted with reference to additions /disallowances made under normal provisions. It is further clarified that in cases prior to 1.4.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment. The above settled position is to be followed in respect of section 115JC of the Act also

Accordingly, CBDT has directed that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.

(Clarification No. 25/2015 dated 31/12/2015)

Amendment of rules regarding quoting of pan for specified transactions

The CBDT vide Press Release dated 31.12.2015 has announced that Rule 114B of the Income Tax relating to quoting of PAN for specified transactions, has been amended with effect from 1st January 2016.

Under the amended Rule, various transactions have been covered where quoting of PAN is made compulsory:

A chart highlighting the key changes to Rule 114B of the Income-tax Act is:

Sr.	Nature of Transaction	Mandatory quoting of pan (rule 114b)	
		Existing requirement	New requirement
1.	Immovable property	Sale/ purchase valued at Rs.5 lakh or more	i. Sale/ purchase exceeding Rs.10 lakh ii. Properties valued by Stamp Valuation authority at amount exceeding Rs.10 lakh will also need PAN.
2.	Motor vehicle (other than two wheeler)	All sales/purchases	No change
3.	Time deposit	Time deposit exceeding Rs.50,000/- with a banking company	i. Deposits with Co-op banks, Post Office, Nidhi, NBFC companies will also need PAN; ii. Deposits aggregating to more than Rs.5 lakh during the year will also need PAN
4.	Deposit with Post Office Savings Bank	Exceeding Rs.50,000/-	Exceeding Rs.50,000/- Discontinued
5.	Sale or purchase of securities	Contract for sale/purchase of a value exceeding Rs.1 lakh	No change
6.	Opening an account (other than time deposit) with a banking company.	All new accounts.	i. Basic Savings Bank Deposit Account excluded (no PAN requirement for opening these accounts); ii. Co-operative banks also to comply
7.	Installation of telephone/ cell phone connections	All instances	Discontinued

8.	Hotel/restaurant bill(s)	Exceeding Rs.25,000/- at any one time (by any mode of payment)	Cash payment exceeding Rs.50,000/-.
9.	Cash purchase of bank drafts/ pay orders/ banker's cheques	Amount aggregating to Rs.50,000/- or more during any one day	Exceeding Rs.50,000/- on any one day.
10.	Cash deposit with banking company	Cash aggregating to Rs.50,000/- or more during any one day	Cash deposit exceeding Rs.50,000/- in a day.
11.	Foreign travel	Cash payment in connection with foreign travel of an amount exceeding Rs.25,000/- at any one time (including fare, payment to travel agent, purchase of forex)	Cash payment in connection with Foreign travel or purchase of foreign currency of an amount exceeding Rs.50,000/- at any one time (including fare, payment to travel agent)
12.	Credit card	Application to banking company/ any other company/institution for credit card	No change. Co-operative banks also to comply.
13.	Mutual fund units	Payment of Rs.50,000/- or more for purchase	Payment exceeding Rs.50,000/- for purchase
14.	Shares of company	Payment of Rs.50,000/- or more to a company for acquiring its shares	i. Opening a demat account; ii. Purchase or sale of shares of an unlisted company for an amount exceeding Rs.1 lakh per transaction.
15.	Debentures/ bonds	Payment of Rs.50,000/- or more to a company/ institution for acquiring its debentures/ bonds	Payment exceeding Rs.50,000/-.
16.	RBI bonds	Payment of Rs.50,000/-or more to RBI for acquiring its bonds	Payment exceeding Rs.50,000/-.
17.	Life insurance premium	Payment of Rs.50,000/- or more in a year as premium to an insurer	Payment exceeding Rs.50,000/-.in a year
18.	Purchase of jewellery/bullion	Payment of Rs.5 lakh or more at any one time or against a bill	Deleted and merged with next item in this table
19.	Purchases or sales of goods or services	No requirement	Purchase/ sale of any goods or services

			exceeding Rs.2 lakh per transaction.
20.	Cash cards/ prepaid instruments issued under Payment & Settlement Act	No requirement	Cash payment aggregating to more than Rs.50,000 in a year.

(CBDT press release dated 01/01/2016)

Service Tax

Important Judgments:

Service Tax under Reverse Charge Mechanism

The appellants, a pharmaceutical company, sold products to distributors abroad who in turn sold it in their respective countries. The appellant did not give any discount on the list price of the products to the distributors but reimbursed certain marketing costs (registration, staff related expenses, promotional costs, etc.) to the distributors. It was held that the reimbursement of the marketing costs was not in the nature of discount since it was also for the benefit of the appellant. Further it was held that the sales promotion expenses were for services consumed by the appellant in India and service tax would be payable on such expenses by the appellant as a recipient of services.

[Torrent Pharmaceuticals Ltd. vs. CST (2015) 39 STR 97 (Tri.-Ahmd.)].

Interest on delayed payment of service tax – not payable if there is balance in cenvat credit

Where the appellant paid part of service tax on quarterly basis instead of monthly basis through cenvat credit account, it was held that interest on service tax u/s. 75 is not payable since sufficient balance was available in the Cenvat Credit Account on monthly basis.

[Oil and Natural Gas Corporation Ltd. vs. CCE&ST (2015) 38 STR 867 (Tri.-Ahmd.)].

Interest on delayed payment of service tax – not payable if there is balance in cenvat credit

A service transaction in case of export of service would be complete when services have been provided to offshore client and payment for such services is recovered in convertible foreign exchange. Accordingly, the relevant date for filing of refund claim would be from the date on which payment is received in convertible foreign exchange.

[Alan Infrastructures Pvt. Ltd. vs. CCE (2015) 38 STR 1087 (Tri.-Del.)].

Where the assessee filed refund claim within the time limit but before a wrong authority and later filed the same with the correct authority after the period of limitation, the Tribunal held that the date of filing refund claim before the wrong authority could be taken as the date of filing for the purpose of determining limitation. Accordingly it was held that the refund claim was not barred by limitation.

[CCE&ST vs. Gimpex Ltd. (2015) 39 STR 143 (Tri.-Bang).].

Cenvat Credit

Cenvat credit cannot be denied on the ground that the invoices raised by the service provider did not give full details viz. description of the services, especially when there is no dispute of the fact of payment of service tax by the service provider and the fact of availment of service by the service recipient.

[U. G. Sugar & Industries Ltd. vs. CCE (2015) 38 STR 852 (TRI.-Del)].

Where the assessee has paid tax on exempted services it cannot be said that the assessee has provided any exempted services and hence restriction on availment of credit under Rule 6(2) was not applicable in its case. Assessee cannot be forced to avail the benefit of exemption notification.

[Deloitte Haskins & Sells vs. CCE (2015) 38 STR 1220 (Tri.-Mumbai)].

Cenvat Credit on maintenance of photocopying machine used in the office was admissible being activity related to business.

[Nirma Ltd. vs. CCE (2015) 39 STR 145 (Tri.-Ahmd.)].

Cenvat credit on following services is admissible–

Renting of furniture for use by new recruits

Housekeeping services used for up-keep of the premises

Annual maintenance contract for maintenance of UPSs and computer networks

Food coupons for provision food to office staff during office hours

[C-Cubed Solutions Pvt. Ltd. vs. CCE, C&ST (2015) 38 STR 853 (Tri.-Bang.).

VAT AND PROFESSION TAX MAHARASHTRA

Restructuring of Maharashtra Sales Tax Department:

Past:

Adoption of functional organizational structure for VAT administration.

This led to creation of various functional divisions to look after a particular aspect in respect of a dealer.

Various compliances related issues were handled by different functional officers from functional divisions like Return, Audit, Refund, Recovery, etc.

A single dealer had to deal with multiple officers.

Present:

Providing a single window system to the dealers.

This restructuring entails changing the present functional system into a single desk multi-functional system.

The functional divisions will be renamed as NODAL Divisions headed by the Joint Commissioners

The dealers will be allocated particular officers called NODEL Officers based on the PIN codes of the dealers.

The basis of allocation of dealers to the NODAL officers is mentioned in the attachment.

However, there will not be any change in the Appellate Authority for Demand Notices.
(Trade Circular no. 20Tof 2015, dated 31st December, 2015)

Downloading of Digitally Signed Registration Certificate;
A dealer seeking registration under MVAT Act, 2002 have to apply online by uploading various required documents online. Once the Registration officer is satisfied with all the documents, he generates TIN to the dealer by informing the dealer through their registered e-mail address and sends a printed copy of the Registration Certificate through post at their registered office address.

Delay was observed in delivery of the Certificate and hence, in order to ensure immediate availability of the Certificate to the dealer, a facility has been made available to download the digitally signed Registration Certificate from the website of Maharashtra Sales Tax Department
(Trade Circular no. 19T of 2015, Dated 21st December, 2015)

FEMA

Guidelines on trading of Currency Futures and Exchange Traded Currency Options in Recognized Stock Exchanges – Introduction of Cross-Currency Futures and Exchange Traded Option Contracts
In terms of the existing RBI guidelines, persons resident in India and persons resident outside India viz., foreign portfolio investors (FPIs) are permitted to participate in the currency futures and exchange traded currency options market in India subject to the terms and conditions and guidelines.

Currently market participants, i.e., residents and eligible non-resident market participants are permitted to trade in US Dollar (USD) - Indian Rupee (INR), Euro (EUR)-INR, Pound Sterling (GBP)-INR and Japanese Yen (JPY)-INR currency futures contracts and USD-INR currency option contract in recognized stock exchanges. In order to enable direct hedging of exposures in foreign currencies and facilitate execution of cross-currency strategies by market participants, it has been decided by the RBI, as announced in the Fourth Bi-monthly Monetary Policy Statement 2015-16 (Para 38), to permit the recognized stock exchanges to offer cross-currency futures contracts and exchange traded option contracts in the currency pairs of EUR-USD, GBP-USD and USD-JPY. Recognized stock exchanges are also permitted to offer exchange traded currency option contracts in EUR-INR, GBP-INR and JPY-INR in addition to the existing USD-INR option contract, with immediate effect.

Market Participants, i.e., residents and FPIs, are allowed to take positions in the cross-currency futures and exchange traded cross-currency option contracts without having to establish underlying exposure subject to the position limits as prescribed by the exchanges.

The existing position limits of USD 15 million for USD-INR contracts and USD 5 million for non USD-INR contracts, all put together, per exchange, for residents and FPIs, without

having to establish underlying exposure, shall remain unchanged. The hedging procedure for residents shall also remain unchanged.

AD Category-I banks may undertake trading in all permitted exchange traded currency derivatives within their Net Open Position Limit (NOPL) subject to limits stipulated by the exchanges (for the purpose of risk management and preserving market integrity) provided that any synthetic USD-INR position created using a combination of exchange traded FCY-INR and cross-currency contracts shall have to be within the position limit prescribed by the exchange for the USD-INR contract.

(RBI/2015-16/267 A.P. (DIR Series) Circular No. 35 dated December 10, 2015)

International Tax

Issue of corporate guarantee is in nature of 'shareholder activities'/'quasi capital' and, thus, could not be included within the ambit of 'provision for services' under the definition of 'international transaction' u/s 92B of the Act

Based on the facts and in the circumstances of the case, recently the Ahmedabad Income-tax Appellate Tribunal in the case of Micro Ink Limited held that issuance of corporate guarantee by parent company to subsidiary was not in the nature of 'provision for service' and was not to be included in the definition of 'international transaction' under Section 92B of the Income-tax Act, 1961

The decision specifically brings out distinguishing features between 'corporate guarantee' and 'bank guarantee', as well as 'provision of guarantee services' and 'shareholder activity' / 'quasi capital' which shall give significant clarity in examining similar transactions.

(Micro Ink Ltd. v. ACIT (ITA No. 2873/Ahd/10))

Payment of a penalty to the U.S. government/Court does not attract the withholding tax provisions under Section 195 of the Income-tax Act

Based on the facts and in the circumstances of the case, recently, the Authority for Advance Ruling (the AAR) in the case of Satyam Computer Services Ltd. held that the applicant would not be required to deduct tax at source under the provisions of the Income-tax Act, 1961 (the Act) on an amount of penalty paid to the U.S. government/Court. The AAR observed that a penalty levied for violating the provisions of the U.S. Securities Exchange Act would not attract tax under the Act, and thus, the payment made would not be subject to deduction of tax at source under Section 195 of the Act.

(Satyam Computer Services Limited (AAR No. 1066 of 2011, dated 1 Dec 2011) - Taxsutra.com)

The Delhi High Court held that AMP expenses incurred by Maruti Suzuki India does not constitute an international transaction

Based on the facts and in the circumstances of the case, recently, the Delhi High Court (High Court) in the case of Maruti Suzuki India Limited (the taxpayer) held that the Advertisement, Marketing and Sales Promotion (AMP) expenditure incurred by the taxpayer cannot be treated and categorized as an international transaction under Section 92B of the Income-tax Act, 1961 (the Act). Based thereon, the High Court concludes that the Transfer Pricing Officer cannot make a transfer pricing adjustment on account of the AMP expenditure in this case.

Distinguishing the Sony Ericsson High Court ruling as the one which looked at the AMP issue for assessees that were only distributors and not manufacturers themselves, the High Court rejected the Revenue's contention that after the aforesaid Sony Ericsson ruling, the existence of an international transaction in the case of the taxpayer cannot be questioned. Relying on the Sony Ericsson ruling, the High Court noted that the use of a Bright Line Test both for determining if there is an international transaction with respect to AMP expense, and for the determination of the Arm's Length Price is inappropriate
(Maruti Suzuki India Limited v. CIT (ITA 110/2014))

The Indian company constitutes dependent agent permanent establishment of the US television company Based on the facts and in the circumstances of the case, recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of NGC Network Asia LLC (the taxpayer) held that the Indian group company of a foreign company has been habitually exercising in India an authority to conclude contracts on behalf of the foreign company which are binding on the foreign company. Therefore, the Indian company has been treated as a dependent agent permanent establishment in India under Article 5(4)(a) of the India-USA tax treaty. The Tribunal also held that 'advertisement air time' does not fall under the category of 'goods'. The Tribunal observed that the right to procure advertisements for particular air time, though capable of being transferred, cannot be consumed / used by the buyer of the right, in the absence of any assistance from the taxpayer by way of telecasting the same in the television channels.
(NGC Network Asia LLC v. JDIT (ITA No. 7994/Mum/2011) – Taxsutra.com)

Company Law

Central Government has amended Rules for auditors for reporting of frauds:
The Central Government has made the following rules further to amend the Companies (Audit and Auditors) Rules, 2014. These rules may be called Companies (Audit and Auditors) Amendment Rules, 2015 and will be effective from the date of their publication in official gazette.

For rule 13, the following rule shall be substituted, namely:
"13. Reporting of frauds by auditor and other matters:
If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the matter to the Central Government as under:-

• the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;

• on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such

reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;

• in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

• the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

• the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and

• the report shall be in the form of a statement as specified in Form ADT-4. In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-

• Nature of Fraud with description;

• Approximate amount involved; and

• Parties involved.

The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:-

• Nature of Fraud with description;

• Approximate Amount involved;

• Parties involved, if remedial action not taken; and

• Remedial actions taken.

The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively."

(MCA notification dated 14/12/2015, F. No. 1/33/2013-CL-V)

Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- State of Tamil Nadu and UT of Puducherry.

In continuation of this Ministry's General Circular 15/2015 dated 30.11.2015, keeping in view the requests received from various stakeholders stating that due to heavy rains and floods in the State of Tamil Nadu and UT of Puducherry, the normal life/work was affected, it has been decided to relax the additional fees payable for the State of Tamil Nadu and UT of Puducherry on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e- Form tvtcT-7 upto 30.01.2016, wherever additional fee is applicable.
(General Circular 16/2015 dated 30/12/2015)

Central Government has amended Rules related to meeting of boards and its powers:
The Central Government has made the following rules further to amend the Companies (Meetings of board & its powers) Rules, 2014. These rules may be called Companies (Meetings of board & its powers) Amendment Rules, 2015 and will be effective from the date of their publication in official gazette.

In the Companies (Meetings of Board and its Powers) Rules, 2O14,-

After rule 6, the following rule shall be inserted, namely:-
"6A. Omnibus approval for related party transactions on annual basis – All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely:-

The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:

• maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
• the maximum value per transaction which can be allowed;

• extent and manner of disclosures to be made to the Audit the time of seeking omnibus approval;

• review, at such intervals as the Audit Committee may deem lit, transaction entered into by the company pursuant to each of approval made

• transactions which cannot be subject to the omnibus approval Audit Committee The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely:

• repetitiveness of the transactions (in past or in future);

• justification for the need of omnibus approval

The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company. The omnibus approval shall contain or indicate the following:

• Name of the related parties;

• Nature and duration of the transaction;

• Maximum amount of transaction that can be entered into;

• The indicative base price or current contracted price and the formula for variation in the price, if any, and

• Any other information relevant or important for the audit committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

Omnibus approval shall not be made for transactions disposing of the undertaking of the company.

Any other conditions as the audit committee may deem fit.

Rule 10 shall be omitted

In Rule 15, in sub-rule (3), for the words “special resolution”, wherever they occur, the word “resolution” shall be replaced.

(MCA notification dated 14/12/2015 - F. No. 1/32l2013-Cl,-v-Part)