Direct Taxation

Extension of time limit for filing ITR-V Forms for A.Y. 2010-11 and 2011-12 [Notification No. 1/2012 under CPR Scheme, dated 23-10-2012]

The Director General of Income Tax (System) hereby extends time limit for filing ITR-V Forms filed electronically (without DSC) for A.Y. 2010-11 (filed during F.Y. 2011-12) & A.Y. 2011-12 (filed on or after 1st April, 2011). The forms can now be filed upto 31-10-2012 or within 120 days from the date of uploading of electronic return data, whichever is later.

National Institute of Ocean Technology, Chennai approved by CG for the purpose of section 35(1)(ii) [Notification No. 45/2012, dated 29-09-2012]

Amendments carried out in Capital Gains Account Scheme, 1988 – Section 54GB included within the ambit of the said scheme [Notification No. 44/2012, dated 25-10-2012]

Rule 112 F inserted in Income Tax Rules, 1962 prescribing cases in which the Assessing Officer shall not be required to issue notice for assessment or reassessment of the total income for six assessment years immediately preceding the assessment year [Notification No. 42/2012, dated 04-10-2012]

TDS on payment of Gas Transportation Charges by the purchaser of Natural Gas to the seller of gas [Circular No. 9/2012, dated 17-10-2012]

It is clarified that in case the Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership to the purchaser is simultaneously transferred, the manner of raising the bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the nature of contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in section 194C. In such circumstances, provisions of Chapter XVII-B of the Act are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas.

Rates of TDS on Salary under Section 192 for the FY 2010-13 prescribed along with explanation of certain related provision [Circular No. 8/2012, dated 05-10-2012]

The Assessing Officer's recorded opinion on the need for special audit under section 142(2A) cannot be changed overnight. [DLF Comercial Projects Corporation v. Assistant Commissioner of Income Tax (2012) 26 Taxmann 236 (New Delhi High Court) dated 15-10-2012]

Once the AO forms & records an opinion on the need for special audit under section 142(2A), one way or the other, it binds the AO. Having formed and recorded an opinion in his report to CIT that special audit was not necessary, AO cannot change his mind (that too overnight) unless new facts or a new legal position emerges which compels such a change of mind. Even when such compelling circumstances are there to change his mind, AO has to allow the assessee a reasonable opportunity of being heard before directing special audit.

The expression "tax due" used in section 179 means tax as defined in section 2(43); "tax due" will not comprehend within its ambit penalty and interest. [Sanjay Ghai v. Assistant Commissioner of Income tax (2012) 26 Taxmann 203 (Delhi HC) dated 11-10-2012]

The petitioner in the said case was entitled to two refunds as well he was liable to pay tax. When a petition was filed for recovery, the revenue, acting on the order of the High Court, increased the amount of tax due. When the matter was contested, it was held that the petitioner could not be held liable for any amount calculated as "tax due" outside the definition provided by section 2(43). The Hon'ble Delhi High Court held that the expression "tax due" will not include levy of penalties and interest in its ambit.

Where there is sufficient material to show that the claim of the assessee is not genuine or could be a sham, the Tribunal should order a deeper investigation and if required, remit the matter to Income Tax authorities [CIT v. J.B.Roy (2012) 26 Taxmann 265 (High Court of New Delhi) dated 11-10-2012]

Details disclosed in income tax returns are exempt from disclosure under RTI Act unless disclosure justified in larger public interest. [Girish Ramchandra Deshpande v. Cheif Information Commissioner (2012) 25 Taxmann 525 (Supreme Court) dated 03-10-2012]

The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under section 8(1)(j) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies disclosure of such information.

Karnataka HC suggests min ₹ 1000/- tax on govt. servants and male graduates who are not IT assesses; Male candidates contesting elections should be IT assessees [CIT v. B.Sumangaldevi (2012) 26 Taxmann 26 (Karnataka HC) dated 03-10-2012]

As far as determining quantum of deduction is concerned, section 80-IA(5) overrides all other provisions of the Act. However, quantum of deduction is one thing & allowability of deduction is another thing. Sections 80A(2) and 80AB deal with allowability & not quantum. Section 80-IA does not override the latter sections. Besides, the emphatic language of section 80A(2) which uses the words "shall not, in any case" indicate its mandatory nature [Hotel and Allied Trades v. Deputy Commissioner of Income Tax circle - 1(1) 26 Taxmann 328 (Cochin Tribunal-ITAT) dated 25-10-2012]

Where assessee could prove genuineness of obtaining cash loan involving Rs. 20,000 or more and no involvement of unaccounted or black money was traceable, penalty under section 271D could not be levied for violation of section 269SS [Chief Commissioner of Income Tax – Circle (5) v. Akhilesh Kumar Yadav [2012] 26 Taxmann 264 (Agra Tribunal-ITAT) dated 23-10-2012].

The assessee had taken a cash loan from a political party to convert his lease on a land into freehold property. Since neither the assessee nor AO denied the genuineness of the transaction & no unaccountable/black money was proved to have been brought in, the case is ruled in favour of assessee.

Cancellation of sales of immovable property held as stock in trade entitles assessee to revise return under section 139(5) [Lok Housing and Construction Ltd. v. Assistant Coomissioner of Income Tax - 8(3) (OSD) 27 Taxmann 15 (Mumbai Tribunal) dated 23-10-2012].

The present system of e-filing is totally dependent upon the usage of software and there are possibilities of entering incorrect data without having expert knowledge of preparing an XML file. Non-inclusion of STCG under section 111A can be rectified via rectification application [Shrikant Real Estate (P) Ltd. v. Income Tax Officer (2012) 26 Taxmann 265 (ITAT - Mum) dated 19-10-2012]

Once the assessee discloses fully and truly all the material facts necessary at the time of original assessment under section 143(3) and a period of four years has expired from the relevant assessment year, initiation of reassessment proceedings under section 147 is not valid. Further, by applying the principle of mutuality, no deduction can be allowed in respect of payments made by an Indian branch to its head office but the provisions of DTAA override the said principle. [Sumitomo Mitsui Banking Corporation v. DCIT-International Taxation, Range 2(1) (2012) 26 Taxmann 111 (Mumbai Tribunal-ITAT) dated 12-10-2012]

A company can validly transfer shares by way of gift provided the Articles of Association of the company permit the same; such gift being capital receipt is not taxable unless it falls under section 56(2) [DP World (P) Ltd. v. DCIT -2(1) (2012) 26 Taxmann 163 (Mumbai Tribunal-ITAT) dated 12-10-2012]

The prominent question in the said case was whether the company being an artificial entity was allowed to gift shares legally. A detailed reading of the law suggested that the company was able to do so, provided there were no restrictions in AoA regarding the same.

Assessment of search case made under Chapter-XIV-B cannot be reopened under section 147 [Assistant Commissioner of Income Tax-6, Jhansi v. Vidit Kumar Agarwal (2012) 26 Taxmann 185 (Agra Tribunal-ITAT) dated 12-10-2012]

Admission of partner, revaluation and withdrawal of capital account balances by the retiring partners, doesn't give rise to taxable capital gains in firm's hands. [ITO-25(3)(4) v. Fine Developers (2012) 26 Taxmann 202 (Mumbai Tribunal-ITAT) dated 12-10-2012]

Accepting corpus donation of equity shares by a trust and utilizing sale proceeds thereof for making donations is not a colourable device so as to disentitle the trust to exemption under section 11(1) (d) so long as trust complies with 13(1)(iii)(d) [Sera Foundation v. Income Tax Officer(Exemption), Trust Ward-I (2012) 26 Taxmann 126 (Delhi Tribunal-ITAT) dated 12-10-2012]

International Taxation

Royalty and FTS income received by a foreign company is taxable on receipt basis under India-Germany taxation treaty [DIT v. Siemens Aktiengesellschaft (ITA No. 124 of 2010) (Bom)]

Bombay High Court upheld the decision of the ITAT where the ITAT relying on Article 12 of the India-Germany DTAA held that the assessment of royalty or fees for technical services should be made on cash basis i.e. in the year in which the amounts are received and not otherwise irrespective of the system of accounting.

Marketing, turnkey, e-publishing and quality assurance services provided by a foreign company did not 'make available' technical knowledge, skills, etc. and therefore, charges paid for such services cannot be treated as FTS under the India-USA tax treaty [ACIT v. TexTech International Private Limited (I.T.A. No. 1866/Mds/2011)]

Chennai ITAT held that marketing, turnkey, e-publishing and quality assurance services provided by a foreign company did not 'make available' technical knowledge, skills, etc, and therefore, charges paid for such services cannot be treated as Fees for Technical Services under the India-USA tax treaty (tax treaty).

Previously, various courts have held that the services shall be treated as made available only if the technical knowledge or skills of the provider were imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without recourse to the provider.

If duration of each contract is less than 9 months, Mauritius Company does not have Construction PE in India under DTAA between India & Mauritius [DCIT v. J.Ray McDerrmott Eastern Hemisphere Limited (ITA No.2089/Mum/2011)]

Irrespective of whether the contract awarded to a non-resident is categorized as 'turnkey project' or is 'divisible into various revenue components', only so much of profits as are attributable to PE in India is liable to Indian taxation [National Petroleum Construction Company v. Additional DIT (2012) 26 Taxmann 50 (DELHI - Trib.) dated 05-10-2012]

Transfer Pricing

Capping of TP adjustments to combined group profits not possible as such cap not provided for in the Act or in the rules [Interra Information Technologies (India) (P.) Ltd. v. DCIT (2012) 27 taxmann.com 1 (Delhi - Trib.) dated 31-10-2012]

The Tribunal held that the proposition canvassed by the assessee cannot be accepted as it would be against the law as it is neither stated in the Act or the rules that the transfer pricing adjustment should be restricted to the combined profits earned by the entire group minus the profits already offered to tax in different jurisdictions nor the rules provide for capping of transfer pricing adjustments

Mandate of section 92(1) does not suggest that the AO must demonstrate the avoidance of tax before invoking transfer pricing provisions in relation to international transactions and Role of TPO is restricted to the transaction referred to him, however, the AO is empowered to determine an international transaction which comes to his knowledge on basis of TPO's finding on the transaction not referred to him [Atul Ltd. v. ACIT (2012) 26 Taxmann 300 (Ahmedabad - Trib.) dated 29-10-2012]

The ITAT held that as per the mandate of Sec. 92(1), income from International transaction between AEs has to be computed having regard to ALP. Thus, there is nothing in the statutory language to suggest that the AO must demonstrate the avoidance of tax before invoking these provisions. Rather, the logic is to make certain that the transactions between the AEs should not be arranged in such a way that the ultimate tax payable in India is artificially reduced. Thus there was no force in the assessee's argument of establishing a tax avoidance motive by the Revenue and hence, the same was to be dismissed.

Where international transactions of the assessee were found to be distinguishable and separate transactions and could not be closely linked with each other, CUP method for determining ALP was the most appropriate [Knorr-Bremse India (P.) Ltd. V. ACIT (2012) 27 Taxmann 16 (Delhi - Trib.) dated 31-10-2012]

Indirect Tax

Service Tax

CBEC has extended the date of submission of the Service Tax return for the period 1st April 2012 to 30th June 2012, from 25th October, 2012 to 25th November, 2012. [Order No. 3/2012 dated 15-10-2012]

The Service Tax Return for the Quarter April'12 to June' 12 is available in offline utility only with view and print facility in online mode. The return is available in **'DOWNLOADS'** section in offline version & not online version. To download the new ST 3, kindly go to the following link: http://aces.gov.in/download.jsp

CENVAT Credit allowed on Insurance Policies of power plant located at some distance from the main unit of the appellant. [Hindalco Industries Limited v. CCE, Allahabad (2012) 10 TMI 922 (Tri - Delhi)]

It was alleged by the Department that Renusagar Power Plant was located at different premises; hence, it is a separate entity and cannot be termed as captive power plant for the purpose of availment of credit. It was held that the Power Plant is a captive power plant of the Appellant's manufacturing unit, the two have to be treated as one integrated unit and therefore, the CENVAT credit of service tax paid on insurance policy for the power plant would be admissible.

Delay condoned in filing appeal before Commissioner (appeals) on the premise that the Petitioner has entrusted the order with their accountant & it was on account of his default that the appeal happened to be not filed. [M/S Meher Fabricators v. Additional CCE, Allahabad (2012) 10 TMI 912 (Kerala HC)]

Demand of service tax alleged that appellant has rendered the services of 'clearing & forwarding agents'. The Appellant submitted that they

have provided only financial assistance in arranging supply of goods from Coal India Ltd. to their clients. They have not acted as the agents of the coal and have never physically dealt with principal goods. It was held that the assessee was registered under the 'business auxiliary service' w.e.f. 1-9-2004. Revenue cannot contend that prior to said registration, they were providing clearing & forwarding agent services [R. K. Paliwal v. CCE, Kanpur (2012) 10 TMI 911 (Tri- Delhi)]

Excise Duty

Provision of Section 28 AAA of the Customs Act, 1962 made applicable to the like matters of Central Excise. [Notification No. 29/12 dated 10-10-12]

Section 28AAA states that where an instrument has been obtained by a person by means of collusion, suppression of facts, or willful misstatement by such person and such instrument is utilized, by a person other than the person to whom the instrument was issued, the duty relatable to such utilization of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued.

Once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity does not amount to manufacture [IVP Limited v. CCE, Thane (2012) 10 TMI 914 (Tri)]

Floor sweepings, processed defective cakes etc. are not excisable goods [Delta Foods (P) Limited v. CCE, (2012) 10 TMI 909 (Tri - Del)]

It was held that defective cakes and floor sweepings which are sold in the market is nothing but waste and scrap and merely because they were being cleared as floor sweepings will not make them excisable goods. The same are not being manufactured by the appellant but emerges during the manufacturing of final products. Further, there is no tariff heading covering such items.

When capital goods are removed after being put to use, it cannot be considered that the goods are removed 'as such' and therefore, the provisions of Rule 3(5) of Cenvat Credit Rules, 2004 would not apply to such clearance and there is no need for reversing any CENVAT

credit because they had actually used the capital goods in the manufacture of excisable goods [JNM Fibres (P) Limited v. CCE, Jaipur – II (2012) 10 TMI 908 (Tri - Del)]

CENVAT credit on capital goods availed before registration but utilized only after obtaining registration. It was held that such availment of CENVAT Credit is admissible [CCE, Nagpur v. Sushil Packaging (2012) 10 TMI 907 (Tri - Mum)]

Transfer of CENVAT Credit by LTU to the three units disallowed on the premise that the original consent form did not mention the three units that came up after March 2006 and hence, all such transfers of CENVAT credit are without authority of law and should be paid back. It was held that in all the returns filed and different correspondence with the Commissioner (LTU), they were disclosing the existence of the new units and in fact sought permissions for transfer of such credit. It was held that the procedural flaw involved is a curable defect and credit cannot be denied adopting a hyper technical approach adopted by Revenue. [Sharda Motor Industries Limited v. CCE, Delhi (2012) 10 TMI 905 (Tri - Del)]

Customs Duty

CBEC notifies the rate of exchange of conversion of the foreign currency into Indian Currency or vice versa with effect from 02-11-2012 [Notification No. 97/2012-Customs (N.T.) dated 01-11-12]

Instances have come to notice of the Board that clearance of some containers were allowed without filing of Bill of Entry and payment of Customs duty by using forged signatures of Customs officials on manual Out of Charge orders (gate passes) leading to substantial loss of revenue to the Government exchequer. It has been decided to develop a proper Gate Management system to avoid any cases of misuse in future [F.No.450/24/2012-Cus.IV dated 29-10-2012]

Levy of Anti-dumping Duty on imports of Melamine, originating in or exported from the European

Union, Iran. Indonesia and Japan for a further period of 5 Years. [Notification No. 48/2012-Customs (ADD) dated 08-10-2012]

Levy of Anti-dumping Duty on new/unused pneumatic non radial bias tyres etc. in pursuance to sunset review investigation [Notification No. 47/2012-Customs (ADD) dated 08-10-2012]

Levy of Anti-dumping Duty on imports of Cold Rolled Flat products of Stainless Steel (400 series) having a width below 600mm [Notification No. 46/2012-Cus dated 04-10-2012]

All Industry Rates of Duty Drawback for 2012-13 notified [Notification No. 93/2012-Cus(NT) dated 09-10-2012]

Refund Claim of CENVAT Credit to 100% EOU rejected as time barred since the refund related to period from 01-04-2005 to 31-03-2007 and the claim having been received on 09-04-2008. It was held that the provision of claim of refund of credit relating to export to be made on a quarterly basis is more of an administrative convenience and this is to discourage the exporters to prefer too many claims leading to voluminous work at the divisional level. Rejection of Refund Claim is not sustainable. [Contour Apparels v. Commissioner of Customs, Bangalore (2012) 10 TMI 915 (Tri –Bang.)]

Export of 5,000 bales of Assam Comilla Cotton will be exempted from any export restrictions subject to registration with DGFT. RC for such exports will be valid for 30 days only. [Notification No. 18 (RE-2012)/09-14 dated 01-10-12]

Procedure and conditions for registration of contracts for export of cotton (Tariff Codes 5201 and 5203) w.ef 1st October 2012 have been notified. [Notification No. 17 (RE-2012)/2009-14 dated 01-10-12]

Company Law Matters

Cost Accountants in full-time employment can sign specified compliance reports relating to cost records [Press Release dated 3-11-2012]

All the cost auditors, who have defaulted in filing Form 23D, are

requested to file their required Form by 16-12-2012 positively. In case of any further default, names of such defaulting members shall be sent to the Institute on December 17, 2012 intimating the Institute to initiate Disciplinary Proceedings against them under the relevant provisions of Cost and Works Accountants Act, 1959. [General Circular No. 35/2012 [F. NO. 52/5/ CAB-2011], dated 5-11-2012]

Cash Reserve Ratio (CRR) of Scheduled Commercial Banks reduced by 25 basis points from 4.50% to 4.25% of their Net Demand & Time Liabilities (NDTL) w.e.f the fortnight beginning 03-11-2012 [Circular - DBOD.NO.RET.BC.52/12.01.001/2012-13, dated 30-10-2012]

Filing of Balance Sheet & Profit and Loss Account in Extensible Business Reporting Language (XBRL) Mode for the financial year commencing on or after 1-4-2011, without any additional fee/penalty, has been extended up to 15th December, 2012 or within 30 days from the date of Annual General Meeting of the company whichever is later. [General Circular No. 34/2012, dated 25-10-2012]

Concessions/credit relaxations to borrowers/customers in the State of Jammu & Kashmir, as laid down in Circular dated April 21, 2004, will continue to be operative up to March 31, 2014. [Circular –50/21.04.012/12-13, dated – 23-10-2012]

Amendment carried out in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011 [Notification (F.NO. 17/161/2012 - CL. V), dated 12-10-2012]

Following class of companies has to file their Balance Sheet. Profit & Loss Account with the Registrar using XBRL for the FY 2011-12 with e-Form No. 23AC-XBRL and 23ACA-XBRL:-

(i) Companies listed with any Stock Exchange(s) & their Indian subsidiaries; or

(ii) Companies having paid up capital > ₹ 5 Crore and above; or

(iii) Companies having turnover > ₹ 100 Crore and above; or

(iv) Companies covered under Rule 3;

Banking, Insurance, Power Sectors & NBFCs exempted for XBRL filing for the 2011-12

'X', an independent director of 'Y' company when traded in securities of 'target company' through his wife while possessing information as to that 'Y' company is about to make huge investments in 'target company', is guilty of 'insider trading along with his wife [V.K. Kaul v. AO, SEBI (2012) (26) Taxmann 319 (SAT- Trib) dated 08-10-2012]

Where appellant-broker failed to follow standard policy of obtaining written authorization for allowing a third person to trade on behalf of its client, appellant was guilty of violating code of conduct for stock brokers [India Infoline Securities Ltd. v. SEBI (2012) (26) Taxmann 222 (SAT-Trib) dated 01-10-2012]

FEMA & Other Regulations

Amendment carried out in the Companies (Issue of Indian Depository Receipts) Rules, 2004 empowering the holder of IDRs to (a) transfer the IDRs, (b) ask the domestic depository to redeem them & (c) reissue IDRs by conversion of underlying equity shares, subject to certain restrictions [Notification no. GSR 736(e) (F. No. 5/55/2011-CL-V), dated 1-10-2012]

Authorized Dealers allowed to sell foreign exchange to a unit in the DTA for making payment in foreign exchange to a unit in the SEZ for the services rendered by it (*i.e.* a unit in SEZ) to a DTA unit [A. P. (DIR Series 2012-13) Circular No. 46, dated 23-10-2012]

FIIs allowed to approach any AD Category I bank for hedging their currency risk on the market value of entire investment in equity and/or debt in India as on a particular date subject to the certain conditions. [A. P. (DIR Series 2012-13) Circular No. 45, dated 22-10-2012]

After issuance of notice under section 6(1) of SAFEMA [Smugglers and Foreign Exchange Manipulators Act] in respect of a flat, any transfer of subject flat was null & void under section 11 of SAFEMA [Winston Tan v. UOI (2012) (26) Taxmann 318 (SC) dated 04-10-2012]

Competition Act

The agreement between YRF and single screen theatre owners to screen 'Ek Tha Tiger' only if such theatres agree simultaneously to screen 'Jab Tak Hai Jaan' on the eve of Diwali is purely commercial in nature and cannot be construed as anti-competitive practice. In absence of evidence, Yash Raj Films can't be said to have dominance in film industry [Ajay Devgn Films v. Yash Raj Films (P.) Ltd. (2012) (26) Taxmann 350 (CCI) dated 05-11-2012]

The Ajay Devgn Films ("ADF") alleged that Yash Raj Films ("YRF") while distributing the rights to exhibit 'Ek Tha Tiger' put a condition on single screen theatre owners that they would have to simultaneously exhibit the other film 'Jab Tak Hai Jaan' to be released on the eve of Diwali. The grievance of the ADF arose because of its fear that it would not get enough theatres for the movie 'Son of Sardar' releasing on the same date as of 'Jab Tak Hai Jaan.

The Commission held that the viability and effect of the agreement entered into between the theatre owners and YRF had to be checked on the benchmarks provided under Section 19 to determine if it causes or is likely to cause an appreciable adverse effect on the competition, and it held that the impugned agreement would not be affecting the competition in the Indian market as such or would not create any barriers for new entrants or drive existing competitors out of the market.

The single screen theatre owners took competitive business decision in their interest to screen two films of YRF. Such agreement was purely commercial in nature between parties promoting their economic interests. The single screen theatre owners had liberty either to agree or not to agree, the agreement could not be said to be a restraint on the freedom of business of theater owners;

Further, the ADF didn't present any evidence to prove the dominant position of the YRF in the film industry. In the absence of evidence, it could not be construed that YRF had dominance in the market just because it had produced various blockbuster movies in past and it had big name in the industry.

Hence, the agreement between YRF and theatre owners to screen 'Ek Tha Tiger' only if such theatres agree simultaneously to screen 'Jab Tak Hai Jaan' is purely commercial in nature and cannot be construed as anti-competitive practice.

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