TAX CONNECT

FIFTEENTH ISSUE FEBRUARY 2015

Friends

We have successfully completed our 2nd Batch of Indirect Taxes Certificate Course. The response of Corporates for the 1st & 2nd batches makes us consider starting our 3rd batch very soon. Infact, before Corporates get into the GST implementation mode, it is imperative that they have an in depth understanding of all indirect taxes like Service Tax, Excise, Customs, VAT, CST, Entry Tax, Professional Tax, etc. These would always remain the mother of GST.

The WB VAT dept has again provided a proposed extension of date for filing the commercial taxes return. In a lighter mode, we can take the liberty to feel that extension of return due date has now become our right than a relief. Further, since www.wbcomtax.gov.in shall be down in the first week of February it is imperative to plan our work accordingly.

In **Service Tax**, due to restructuring, the erstwhile Service Tax Commissionerate, Kolkata has been reorganized and divided into 3 Commissionerates. The Commissionerates have been divided into Divisions based on the location of service provider which is decided on the basis of the Municipal Ward. These Divisions have been subdivided into Range offices, which have been created on the basis of the initial letter of the name of the assessee. **It is advised that the assessees take the print of the Form ST-2 having the new code and use it for all future communications.** Also some assesses have received an e-mail from the department asking for their Trade License. **In such case they are required to provide their Trade License with ward number to the Service Tax Department for determining their new Division and Range on the basis of their Municipal Ward Number.**

Lastly, **in Income Tax**, in its endeavor of women empowerment, The Central Govt. has specified the **'Sukanya Samriddhi Account'** for the purposes of Section 80C deduction under the Income-tax Act, 1961. However this scheme has 9.1% interest which is not exempt. We can expect a budget announcement regarding this.

Before signing off, may we reiterate that we shall be available 24x7 on our mail id or over a telecon.

DUE DATE	COMPLIANCES
06-Feb-15	**Online Payment** of Service Tax and Central Excise for the month of Jan.,2015 (Mandatory as per Finance Budget, 2014)
07-Feb-15	Payment of TDS/TCS
07-Feb-15	Submission of Form No. 15G, 15H and 27C received in Jan. to IT Commissioner
10-Feb-15	West Bengal Sales Tax TDS Payment for the month of Jan.,2015
10-Feb-15	ER1, ER2, ER6 Return for Jan.,2015
15-Feb-15	Issue of QuarterlyTDS/TCS certificate for Dec quarter for govt. deductors
15-Feb-15	Provident Fund e-Payment forJan.,2015
21-Feb-15	West Bengal VAT/CST/ Entry Tax/ Professional Tax Payment for the month of Jan, 2015
21-Feb-15	Payment of ESI for the month of Jan.,2015
25-Feb-15	West Bengal Sales Tax TDS Certificate Issue for the month of Jan.,2015
28-Feb-15	EXTENDED DUE DATE FOR FILING WEST BENGAL VAT/CST/ ENTRY TAX RETURN FOR THE QUARTER ENDING DEC, 2014

An important communication to be made to all concerned with the West Bengal Taxes:

The e-services provided by the Directorate through www.wbcomtax.gov.in shall remain suspended from 02.02.2015 till 08.02.2015. However, during this period of suspension, e-payment can be through GRIPS link provided in the website

Truly Yours

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CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

SUPREME COURT DECISIONS

REVENUE IS NOT CORRECT TO TREAT THE CHIT FUND BUSINESS TO FALL WITHIN THE AMBIT OF ASSET MANAGEMENT

In the case of **Union Of India v/s Andhra Pradesh Federation Of Chit Funds**, the **Hon'ble Supreme Court** decided that there is a fine difference between **"banking and financial services"** as defined under the Act, and the services of the chit transactions. It was held that the Finance Act is not properly amended to bring within its fold chit transactions. Further revenue cannot levy a tax for the first time on a totally new arena by issuance of a circular.

MAINTENANCE OR REPAIRS TO ANY PART OF THE MOTOR VEHICLE IS ENTITLED TO GET THE BENEFIT OF EXCLUSION, AS PROVIDED UNDER SECTION 65(64) OF THE FINANCE ACT

In the case of **Commissioner Of Central Excise, Customs & Service Tax Kerala v/s M/s. Kuttukaran Trading Ventures, the Hon'ble Supreme Court** held that the assessee was rightly entitled to exclusion of the service from service tax, as the assessee had themselves dismounted the engine and repaired it and then refitted it to the motor vehicle. Therefore, if any service centre or maintenance centre or workshop does maintenance or repairs to any part of the motor vehicle, it is also entitled to get the benefit of exclusion, as provided under Section 65(64) of the Finance Act, 1994.

NO SERVICE TAX CAN BE DEMANDED WITHOUT ISSUANCE OF SHOW CAUSE NOTICE (SCN)

In the case of **Commissioner Of Customs, Central Excise And Service Tax, Guntur v/s M/S Narayana coaching Centre, Nellore, the Hon'ble Supreme Court** held that where no show cause notice was issued to the assessee with respect to the demand of service tax, no proceedings in connection therewith could have been done.

SERVICE PROVIDED BY NON-RESIDENT SERVICE PROVIDERS FOR LIVE TELECAST THE COVERAGE OF THE CRICKET MATCHES ARE COVERED WITHIN THE PURVIEW OF "PROGRAMME PRODUCER'S SERVICE"

In the case of **Board of Control For Cricket In India v/s Commissioner Of Service Tax, Mumbai-I**, **the Hon'ble Supreme Court** held that the service provided by Non-resident service providers with respect to telecasting of the coverage of the cricket matches conducted by BCCI for the viewers of the cricket match all over the world come within the purview of **"programme producer's service" as defined in sections 65 (86a), 65 (86b) read with 65 (105) (zzu) of the Finance Act, 1994** and the service was taxable on reverse charge basis. Thus, the appellant was liable to pay service tax along with interest.

HIGH COURT DECISIONS

WHERE SERVICE IS NOT TAXABLE AND SERVICE TAX HAS ALREADY BEEN PAID, THEN ASSESSEE IS LIABLE TO REFUND AT THE EARLIEST

In the case of **The Kalladikkode Service Co-Operative Bank Limited v/s Union Of India Represented By The Secretary To Government And Others, the Hon'ble Kerala High Court** held that in the course of adjudication exercise, if the authority arrives at a finding that the petitioners are not liable to service tax, then the amount of service tax already paid by the petitioners shall be refunded at the earliest.

ONCE THE INGREDIENTS OF SECTION 78 IS ESTABLISHED, PENALTY EQUAL TO TAX (INCLUDING CESS) HAS TO BE IMPOSED ON THE PARTY

In the case **Dhandayuthapani Canteen v/s Customs, Excise and Service Tax Appellate Tribunal**, **the Hon'ble Madras High Court** held that the assessee had wilfully suppressed and concealed the value of taxable service provided by them. Hence penalty u/s 78 is rightly imposed on the assessee by the revisional authority and section 870 cannot be exercised in such cases.

BILLING ACTIVITY CALCULATION UNDERTAKEN AT THE BEHEST OF CHARTERED ACCOUNTANT DOES NOT AMOUNT TO PRACTISING OF REGISTERED CHARTERED ACCOUNTANCY

In the case of Commr. of Cus., C. EX. & Service Tax, Tirupati V/S Magham Pullaiah**., the Hon'ble Andhra Pradesh High**

Court held that the billing activity, which is undertaken on behalf of a Chartered Accountant, is not the job of Chartered Accountant professionals. The Chartered Accountant starts his functioning the moment accounts are complete. If the accounts are not complete, the Chartered Accountants ordinarily advise their clients to prepare proper accounts, and in support of these accounts vouchers and bills are required to be prepared and this is not the job of the Chartered Accountants. Hence, such services are liable to service tax.

CESTAT DECISIONS

AGGREGATE TURNOVER OF PREVIOUS YEAR SHOULD NOT BE MORE THAN 10 LAKHS TO BE ELIGIBLE FOR SSI BENEFIT

In the case of **Shri PA. Panduranga v/s Commissioner Of Service Tax, Bangalore, the Hon'ble CESTAT Bangalore** held that the SSI Exemption limit had been increased from 8 lakhs to 10 lakhs with respect to Notification No. 8/2008 dated 1.3.2008. Therefore, the appellant was eligible for the benefit of SSI exemption during the year 2007-08 and was not liable to pay any amount of service tax or interest.

GENERAL INSURANCE SERVICES PROVIDED TO ELIGIBLE EMPLOYEES FALLING UNDER ESI SCHEME ARE NOT LEVIABLE TO SERVICE TAX

In the case of **M/S Employees State Insurance Corpn V/S Commissioner Of Service Tax, Kolkata, the Hon'ble CESTAT, Kolkata** held that Appellant had provided General Insurance Service to eligible employees, falling under Employees State Insurance Scheme (ESI Scheme) by way of providing medical and other related insurance service in exchange of premium, which were exempted from the purview of Service Tax for the relevant period by virtue of Section 100 of the Finance Act, 1994(No.2). Hence the services were not leviable to service tax.

CREDIT IS AVAILABLE ON THE BASIS OF PAYMENT OF SERVICE TAX

In the case of **Sarda Energy & Minerals Ltd. v/s. CCE, Raipur-I, the Hon'ble CESTAT, Delhi** held that where appellant had paid service tax , he was entitled to take credit of the same as per the CENVAT Credit Rules, irrespective of whether service tax is payable or not. The assessee cannot be denied CENVAT Credit on the facts that the liability to pay service tax as a service receiver arose only after the date on which service tax was actually paid it.

APPELLANT IS ENTITLED TO REFUND OF THE SERVICE TAX PAID WHERE SERVICES PROVIDED BY IT WAS NOT TAXABLE

In the case of **Commissioner Of Central Excise, Pune-I v/s. Ms Barclays Technology Centre (I) Pvt Ltd, the Hon'ble CESTAT, Mumbai** held that where services are consumed entirely within the SEZ, there is no necessity to discharge the service tax liability ab-initio. However, that does not mean in any way that the appellant is not eligible or not entitled for refund of the service tax paid where service tax liability has been discharged.

SERVICE TAX CANNOT BE DEMANDED WHERE SERVICES ARE RENDERED TO SEZs

In the case of **Deloitte Haskins & Sells v/s Commissioner Of Service Tax, the Hon'ble CESTAT, Chennai** held that no service tax can be demanded in respect of services that have been rendered to SEZs. Also, benefit of Amended Rule 6 (6A) of CCR 2004 cannot be denied to the appellant as the same is effective retrospectively.

APPELLANT SHOULD ALSO PROVIDE THE SECURITY OF THE GOODS TO COME UNDER THE PURVIEW OF STORAGE AND WAREHOUSING SERVICES

In the case of **Inox Air Products Ltd. v/s Commissioner Of Central Excise, Raigad, Hon'ble CESTAT Mumbai** held that the onus of the security of the goods is not on the appellant since the storage tanks are installed at the place of the buyer and the appellant did not have control over the goods. As per Section 65(105) of the Finance Act, 1994, to come under the purview of Storage and Warehousing Services, the appellant should also provide the security of the goods. Hence, the appellant is not covered under the definition of Storage and Warehousing Services as defined u/s 65(102) of the Finance Act, 1994 and no service tax is payable.

ANY SERVICE AVAILED IN THE COURSE OF THE BUSINESS OF OUTPUT SERVICE IS ENTITLED TO INPUT CREDIT

In the case of **Seabird Marine Services Pvt Ltd. v/s Commissioner of Central Excise, Raigad, the Hon'ble CESTAT Mumbai** held that transportation of empty containers to yard is an integral part of the service provided by the appellant, and it is entitled for input service credit on transportation charges of empty containers to the yard. Hence, if any input service provider avails any service in the course of the business of output service, it is entitled to input credit.

ACES UPDATE

"An email with new location code is being sent to assessees, who are getting migrated to new locations. Please update your email ID, if needed, to ensure receipt of the mail. An assessee can also check the location code through ACES website by clicking "Know Status of Assessee" tab and filling the registration number."

CENTRAL EXCISE

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

FURTHER AMENDMENTS IN THE NOTIFICATION NO.12/2012-CENTRAL EXCISE, DATED THE 17TH MARCH, 2012

The **Ministry Of Finance** vide **Notification No. 03/2015-Central Excise dated 16th January, 2015** further amends **Notification No.12/2012-Central Excise, dated the 17th March, 2012** as already amended from time to time:

i) in serial number 70 "**Motor spirit commonly known as petrol**"-
   (a) against item (i) of column (3), for the entry in column (4), the entry "6.95 per litre" has been increased to "8.95 per litre"
   (b) against item (ii) of column (3), for the entry in column (4), the entry "8.10 per litre" has been increased to "10.10 per litre";

ii) in serial number 71 "**High speed diesel(HSD)**"-
   (a) against item (i) of column (3), for the entry in column (4), the entry "5.96" shall be increased to "7.96 per litre";
   (b) against item (ii) of column (3), for the entry in column (4), the entry "8.25 per litre" has been increased to "10.25 per litre"

ISSUE OF SUMMONS TO THE TOP SENIOR OFFICIALS OF THE COMPANY

The **Central Board of Excise and Customs vide Order-Instruction - F. No. 207/07/2014-CX-6 dated 20th January, 2015** has clearly instructed that the summons should only be issued when it is utmost necessary. The initial practice of issuing summons to the senior managers of the company for a mere purpose of producing evidences /documents or for recovery of the dues could easily be done with issuing a simple letters or verbal communication. The summons may only be issued when there are detailed evidences after investigation.

The detailed guidelines to be followed in relation to the issue of summons, in case of both Central Excise and Service Tax matters, are provided in the instructions.

The CBEC has opined that where a simple letter, politely worded, can serve the purpose of securing documents relevant to investigation, there is no need to issue such summons. The summons may be used only as a last resort when it is absolutely necessary.

EXEMPTION TO SEZ FOR THE PROCEDURE OF SERVICE TAX REFUND

The Ministry of Finance vide **Order-Instruction-Central Excise F. No. B1/6/2013-TRU dated 25th November 2014** hereby amends the procedure prescribed under Notification No. 12/2013 for proper accounting and monitoring of benefit availed by SEZ Unit and developer. It also provides that SEZ units and developer may, if they so desire, route their application for issuance of authorization by department through the specified officer of SEZ instead of submitting directly to the department.

COURT DECISIONS

SUPREME COURT DECISIONS

PENALTY FOR CONCEALMENT OF EXCISABLE GOODS

In the case of **Sanjay Vimalbhai Deora v/s CESTAT, the Hon'ble Supreme Court** held that since the assessee had contravened the statutory provision and the rules, he is guilty of concealment of excisable goods. Therefore penalty order earlier passed by CESTAT Gujarat was confirmed by the Supreme Court.

WHERE INPUTS ARE USED IN THE MANUFACTURE OF EXEMPTED AS WELL AS DUTIABLE FINAL PRODUCTS THEN CREDIT OF DUTY PAID ON DUTIABLE FINAL PRODUCTS IS ALLOWABLE

In the case of **Union Of India & ANR V/S Sharp Menthol India Ltd, the Hon'ble Supreme Court** held that though **Rule 6(1) of CCR 2004** disallows duty paid on inputs used in the manufacture of exempted final products, but Rule 6**(2) of CCR 2004** provides that where the inputs are used in the manufacture of exempted as well as dutiable final products then credit of duty paid on inputs used in the manufacture of dutiable final products is allowable, provided separate accounts regarding the receipt, consumption and inventory of the input used in the manufacture of dutiable final product are maintained.

INCLUSION OF VALUE IN CAPTIVE CONSUMPTION

In the case of **Ariya Flexi Labels v/s Commissioner, the Hon'ble Supreme Court** decided that value of plastic film and plastic laminated film captively consumed had not been taken into account while calculating the aggregate value of clearances. Thus, the appeal of the appellant was dismissed and the value of the clearances had to be calculated accordingly.

HIGH COURT DECISIONS

SAME COURT SHOULD BE APPROACHED WHERE ANY GROUND HAS BEEN OMITTED FOR CONSIDFERATION

In the case of **Shamli Paper Mills Ltd**. **v/s Commissioner, the Hon'ble Allahabad High Court** held that where it is a case of any grounds being omitted for consideration then the remedy is to approach the same Court for consideration in accordance with law.

CESTAT DECISIONS

WHERE EXPENSES INCURRED ARE FOR THE PURPOSE OF MANUFACTURE OF ITS END PRODUCT, THEN THEY ARE ELIGIBLE INPUT SERVICES FOR SUCH MANUFACTURE

In the case of **Commissioner Of Central Excise, Nagpur v/s M/S Ambuja Cement Ltd,** the **Hon'ble CESTAT Mumbai** held that services of Fly Ash Plant set up by the assessee has been used by it in procuring its raw material for the purpose of manufacture of its end product being cement. Thus, the expenses incurred at the Handling Plant are in the nature of expenditure for the purpose of manufacture of its end product and in such circumstances, the services availed by the respondent assessee at the fly ash handling plant are inputs services eligible within the meaning of Rule 2(l) of Cenvat Credit Rules, 2004 for the purpose of manufacture of its final product.

VALUATION OF GOODS MANUFACTURED BY THE APPELLANTS

In the case of **M/S. DD Industries Ltd. & Others v/s CCE, Delhi, the Hon'ble CESTAT New Delhi** held that assessee has not cleared the goods clandestinely. Since, the appellants had contended that they had given all the evidence relating to the turnover discount and cash discount and same being not properly taken into account at the time of deciding the issue, the matter had been remanded back.

MINOR CALCULATION ERRORS DO NOT ATTRACT PROVISIONS OF SECTION 11A OF THE CENTRAL EXCISE ACT

In the case of **M/s. Essar Steel India Limited V/S Commissioner Of Central Excise & ST., Vadodara, the Hon'ble CESTAT Ahmedabad** held that where the appellant themselves have detected a short payment and paid the amounts along with interest and intimated the department, there is no default of Rule 8(3A) and the error being a minor calculation error cannot be categorised as defiance of law. Hence, for such minor calculation errors the provisions of Section 11A of the Central Excise Act, 1944 are attracted as per circulars issued by CBEC.

TRANSACTIONS BETWEEN THE APPELLANT AND THE JOB WORKER ARE ON PRINCIPAL TO PRINCIPAL BASIS

In the case of **Raymond Ltd. v/s Commissioner Of Central Excise, Bhopal, the Hon'ble CESTAT New Delhi** held that when the transactions between the appellant and the job worker are on principal to principal basis then the job worker cannot be said to be a hired labour working under the control of the Appellant. In this case, it is the job worker who has to be treated as manufacturer and not the appellant. Therefore there would not be any duty liability on the appellant.

CUSTOMS

NOTIFICATIONS & CIRCULARS

IMPORT AND EXPORT OF CURRENCY

The **CBEC** vide **Circular No. 03/2015-Customs dated 16th January, 2015** has provided that the **RBI vide A.P. (DIR series) No. 146, dated 19.06.2014** has notified the amount of **export and import of currency**. That:

a) any person resident in India:
   i) may take outside India (other than to Nepal and Bhutan) currency notes of GoI and RBI notes up to an amount not exceeding 25,000 (Rupees twenty five thousand only); and
   ii) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of GoI and RBI notes up to an amount not exceeding 25,000 (Rupees twenty five thousand only).

b) any person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveler coming from and going to Pakistan and Bangladesh, and visiting India:
   i) may take outside India currency notes of GoI and RBI notes up to an amount not exceeding 25,000 (Rupees twenty five thousand only) while exiting only through an airport.

   may bring into India currency notes of GoI and RBI notes up to an amount not exceeding 25,000 (Rupees twenty five thousand only) while entering only through an airport.

The passengers can now carry the amount as per the specified limits in the said denominations. The officers are also requested to ensure that the aforementioned guidelines are scrupulously followed and that the passengers are not harassed unnecessarily.

SIMPLIFICATION OF CUSTOMS PROCEDURES FOR SHIPPING

The **CBEC** vide **Circular No. 02/2015-Customs dated 15th January, 2015** has simplified customs procedures for timely

& economical shipping to make Indian ports international transshipment hubs.
The avoidable delays on account of non-uniform Customs procedures adopted at some ports/Customs stations not only increase transaction cost and time of clearance but also becomes major obstacle in making Indian ports international transhipment hubs. Therefore the procedures have been simplified so as to reduce the compliance procedures relating to documentation which leads to unnecessary escalation of compliance cost. Intimation from the carrier to the jurisdictional Commissioner of Customs will serve the case of change of mode of transhipment and no separate permission is required.

MANDATORY PRE-DEPOSIT WOULD BE PAYABLE IN CASES OF DEMAND OF DRAWBACK

The Central Board of Excise and Customs vide **Circular No. 993/17/2014-CX dated 5th January, 2015** clarifies that mandatory pre-deposit would be payable in cases of demand of drawback as the new Section 129E would apply to all cases where appeal has been filed on or after 6th August, 2014. The ambit of the Section 129E of the Customs Act, 1962 in the legislation does not extend to appeals under section 129DD before the Joint Secretary (Revision Application). Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner(Appeals), no pre-deposit would be payable in such cases while filing appeal before the JS(RA).

COURT DECISIONS

HIGH COURT DECISIONS

WHERE THERE IS A FAILURE TO DISCHARGE FUNCTIONS ON THE PART OF THE CUSTOM HOUSE AGENT, PENALTIES ARE TO BE PROVIDED AS PER THE CUSTOMS HOUSE AGENTS LICENSING REGULATIONS.

In the case of **Commissioner Of Customs (Exports) v/s I. Sahaya Edin Prabhu Patriot Freight Logistics Systems, the Hon'ble Madras High Court** held that there was a failure to discharge functions on the part of the Custom House Agent and thus the penalties are to be provided as per the Customs House Agents Licensing Regulations. Therefore, imposition of penalty under Section 114(i) of the Customs Act is unwarranted.

WHERE REVENUE CANNOT DISPROVE THE FACTS BROUGHT ON RECORD BY THE PETITIONER, PENALTY CANNOT BE ORDERED

In the case of **Rajesh Pawar v/s Union Of India, the Hon'ble Calcutta High Court** held that there was no dispute that the petitioner was carrying on the business of jewellers. When the situation is that importation of gold was free, a higher onus was on the Revenue to prove that the gold bars were illegally imported. The appellant was able to show some evidences regarding the legal source of the goods under Section 123 of the Customs Act, 1961 under which the petitioner had the burden of proof. Since the Revenue could not disprove the facts brought on record by the petitioner, the High Court set aside the order by exercising powers under Article 226 of the Constitution of India.

WHERE CASING OF THE MOBILER PHONES HAS BEEN CHANGED, IT DOES NOT MEAN THAT THERE HAS BEEN A TAMPERING WITH THE IMEI NUMBERS

In the case of **The Commissioner Of Customs (I&G)** v/s **Navshiv Retails Pvt. Ltd.**, **the Hon'ble Delhi High Court** held that mobile handsets did have IMEI numbers. The mobile handsets were still the same, only the casing had been changed and therefore there hasn't been any tampering with the IMEI Numbers. Therefore there is no chance of misuse and accordingly no threat to national security and appeal of the Revenue was dismissed.

INCOME TAX

NEW DRAFT OF TWELVE INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS)

Section 145 of the Indian Tax Laws (ITL) gave the power, effective from tax year 1996-97, to the Central Government (CG) to notify Income Computation and Disclosure Standards (ICDS) to be followed by any class of taxpayers or in respect of any class of income.
After examining suggestions received from stake holders, the Central Board of Direct Taxes (CBDT) has released revised drafts of 12 ICDS. These are mentioned below:

1	Significant Accounting Policies
2	Valuation of Inventories
3	Construction Contracts
4	Revenue Recognition
5	Tangible Fixed Assets
6	The effects of Changes in Foreign Exchange Rates
7	Government Grants
8	Securities held as stock in trade
9	Borrowing Costs
10	Leases
11	Intangible Assets
12	Provisions, Contingent Liabilities and Contingent Assets

The Comments from stakeholders and general public on these draft ICDSs are to be submitted by 08.02.2015. It is imperative for all stakeholders to make representations on possible adverse impacts and/or for making improvements to address unintended consequences. This could probably be the last opportunity to make such representations which stakeholders should not miss.

The ICDSs are to be made effective from the financial year commencing from 01.04.2015.

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

RELIANCE RETIREMENT FUND REGISTERED UNDER SEBI IS A PENSION FUND FOR SECTION 80C(2)(xiv)

The CBDT vide **Notification No. 90/2014 dated 23rd December, 2014** hereby specifies the Reliance Retirement Fund set up by the Reliance Mutual Fund registered under the Securities and Exchange of Board of India (Mutual Fund Regulations, 1993) having registration No. MF/022/95/1, dated the 30th June, 1995 as a pension fund for the purposes of clause (xiv) of sub- section (2) of section 80C of the Income-tax Act, 1961 (43 of 1961), for the assessment year 2015-16 and subsequent assessment years.

DIRECTION TO OFFICERS/CITs REGARDING REQUESTS ON EXCHANGE OF INFORMATION IN TIME BARRING ASSESSMENTS

The **CBDT vide Circular F.NO.500/56/2014-FT&TR-IV dated 06-01-2015** has directed all the concerned Officers/CITs to send all requests for exchange of information getting time barred on 31.03.2015 to FT&TR Division latest by 15th of February 2015 & references beyond this date may be sent only in unavoidable circumstances.

Since there are a large number of requests, it becomes difficult for Exchange of Information (EOI) in time barring assessments/matters. It also becomes difficult to process and forward such requests after due scrutiny to the Foreign Competent Authority in time. Thus, the CBDT has come up with the circular to ensure free flow of exchange of information.

SUKANYA SAMRIDDHI ACCOUNT

The **CBDT vide Notification No. 06/2015 dated 21st January 2015** hereby provides that the Central Govt. has specified the **'Sukanya Samriddhi Account'** for the purposes of clause (viii) of sub-section (2) of section 80C of the Income-tax Act, 1961.

ATTENTION TOWARDS PROVISIONS OF SECTION-138 & SECTION-280 OF INCOME TAX ACT

The **CBDT** vide **Circular F. No. DIR.(HQRS.)/CH.(DT)/29/2014 dated 01-01-2015** has notified all the officers and officials of the Department for strict compliance of the provisions of section 138 of the Income Tax Act, 1961 read with notifications issued under that section, which obligates that no public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his or her possession during the discharge of official duties unless specifically authorized to do so in accordance with the **notifications issued under section 138**. It is also notified that the provisions contained in section 280 of the Income Tax Act, 1961 provides that if a public servant furnishes any information or produces any record in contravention of the provisions of **section 138(2) of the Income Tax Act, 1961**, he or she will be **punishable** with imprisonment which may **extend up to six months and shall also be liable to fine.**

FURNISHING OF STATEMENT OF INCOME BY A BUSINESS TRUST

The **CBDT** vide **Notification No. 03/2015 dated 19th January 2015** hereby amends the Income tax Rules, 1962. As per the **newly inserted Statement under sub-section (4) of section 115UA after rule 12C**, every business trust shall furnish the statement of *income distributed to its unit holder*

- in **form 64A**, duly verified by an accountant, to the Principal Commissioner or the Commissioner of Income-tax under whose jurisdiction the principal office of the business trust is situated, by the **30th November** ;
- in **form 64B**, duly verified by the person distributing the income on behalf of the business trust, to the unit holder by the **30th June;**

of the financial year following the previous year during which the income is distributed.

The DGIT (Systems) shall specify the procedure for filing of Form No 64A and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements so furnished. Please refer the notification for the relevant forms.

NOTIFICATION NO. 06/2015, NOTIFICATION NO. 07/2015 & NOTIFICATION NO. 08/2015.

The **CBDT vide Notification No. 06/2015 dated 20th January 2015** hereby provides that the Central Govt. has notified for the purposes of clause (46) of section 10 of the Income-tax

Act, 1961 (43 of 1961) 'Gujarat State Council for Blood Transfusion', a trust constituted by the Government of Gujarat in respect of the following specified income arising to the said trust, namely :-

a) grants from Government of Gujarat and the Government of India;
b) donations; and
c) income arising or by way of interest.

This notification shall be applicable for the financial years 2013-14 to 2017-18.

The **CBDT vide Notification No. 07/2015 dated 20th January 2015** hereby provides that the Central Govt. has also notified **'Karnataka Livestock Development Agency'**, a body constituted by the Government of Karnataka, for section 10(46) in respect of the following specified income arising to the said body, as follows:-

a) amount received in the form of grants-in-aid from Government of India; and
b) income arising out or derived from interest on grants-in-aid.

This notification shall be applicable for the financial years 2012-13 to 2016-17.

The **CBDT vide Notification No. 08/2015 dated 20th January 2015** hereby provides that the Central Govt. has also notified **"National Council of Science Museums"** an autonomous body under the Ministry of Culture, Government of India for section 10(46) in respect of the following specified income arising to the said body, as follows:-

a) amount received in the form of grants-in-aid and subsidies from Government of India;
b) fees or subscription by sale of tickets;
c) charges for maintenance recovered for use of auditorium and other public facilities for scientific and educational purposes; and
d) income arising or derived by way of interest received from investment.

This notification shall be applicable for the financial years 2012-13 to 2016-17.

However, all of them should file their return of income in accordance with the provision of 139 (4C) (g) of the Income Tax Act, and the activities and the nature of the specified income derived shall remain unchanged throughout the financial years.

Section 80C(2)(viii) deals with subscription to any such security of the Central Government or any such deposit scheme as that Government may, by notification in the Official Gazette specify. The same qualifies for deduction from while calculating the taxable income of any Individual or HUF assessee.

ACCEPTANCE OF THE ORDER OF THE HON'BLE HIGH COURT OF BOMBAY IN THE CASE OF VODAFONE INDIA SERVICES PVT. LTD.

The **CBDT vide Instruction No. 2 / 2015 dated 29th January 2015** draws attention to the decision of the High Court of Bombay in the case of **Vodafone India Services Pvt. Ltd. for AY 2009-10** wherein the Court has held that the **premium on share issue was on account of a capital account transaction and does not give rise to income** and, hence, not liable to transfer pricing adjustment.

It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that all field officers must adhere to this judgement in all cases where this issue is involved.

COURT DECISIONS

SUPREME COURT DECISION

DEPRECIATION, PREMIUM ON REDEMPTION OF DEBENTURES AND DEDUCTION ON RESTRUCTURING OF THE TERM LOAN ARE ELIGIBLE DEDUCTIONS U/S 36(1)(iii).

In the case of **Assistant Commissioner Of Income v/s Creative Processing Ltd, the Hon'ble Supreme Court**held that the decision made in favour of the assessee by the Hon'ble High Court of Gujarat was correct and that the depreciation, premium on redemption of debentures and deduction on restructuring of the term loan qualified as eligible deductions u/s 36(1)(iii).

HIGH COURT DECISIONS

WHERE NO NOTICE HAS BEEN SERVED WITHIN THE STIPULATED PERIOD THE ASSESSMENT PROCEEDING COMES TO AN END

In the case of **Commissioner Of Income Tax v/s Smt. Meenakshi Devi** the **Hon'ble Allahabad High Court** held that in the absence of the notice being served within the stipulated period under section 143(2) of the Act, the assessment proceeding comes to an end and is deemed to have become final. Since the assessment order was void ab initio, further dealing with the question of law as framed against the assessee was invalid.

FLOOR SPACE INDEX IS A CAPITAL ASSET BECAUSE IT IS ATTACHED WITH THE PROPERTY AND NOT WITH THE BUSINESS

In the case of **Income Tax Officer v/s Devi Exhibitors,** the **Hon'ble Gujarat High Court** held that assessee has earned income by exhibiting films as well as rental income from some of the shops in the theatre building. The assessee's ratio decidendi to show capital gain in its return is that Floor

Space Index is a capital asset and it is attached with the property and not with the business.

OBJECT OF THE TRUST IS TO BE EXAMINED AT THE TIME OF GRANTING APPROVAL U/S 80G

In the case of **Commissioner Of Income Tax Rajkot III v/s Vipassana Trust, the Hon'ble Gujarat High Court** held that at the time of granting approval u/s 80G of the Act, what is to be examined is the object of the trust and so far as the aspect of income is concerned, same can be very well examined by the AO at the time of framing assessment. Thus it was decided that the extent of activities are not required to be examined at the stage of registration u/s 12AA of the Act. The same is required to be examined only at the time of assessment proceedings.

EXPENDITURE INCURRED TOWARDS REPAIRS AND REPLACEMENT OF OLD PARTS WOULD BE IN THE NATURE OF REVENUE EXPENDITURE AND NOT CAPITAL EXPENDITURE

In the case of **The Commissioner Of Income Tax And The Deputy Commissioner Of Income Tax, Bangalore v/s M/S. Mac Charles (India) Limited, the Hon'ble Karnataka High Court** held that neither any new asset is being constituted nor extra flooring space / extra room capacity is added on account of such repairs. It cannot be said that a new asset has come into existence. The expenditure is incurred to preserve and maintain the existing asset. Hence, expenditure incurred towards repairs and replacement of old parts would be in the nature of revenue expenditure and not capital expenditure.

EXPENSES INCURRED WHOLLY AND EXCLUSIVELY FOR THE PURPOSE OF THE BUSINESS AND CANNOT BE DISALLOWED.

In the case of **Commissioner Of Income Tax, Chennai. v/s M/S. Irbaz Shoe Company, the Hon'ble Madras High Court** held that as per the partnership deed, the wife of the assessee was one of the partners of the firm. On the basis of the partnership deed, the benefit of the expenses cannot be denied to the assessee. Hence the expenses incurred towards foreign travel of the wife of the partner along with other persons should be treated as expenditure incurred wholly and exclusively for the purpose of the business and cannot be disallowed.

WEST BENGAL TAXES

VAT

AMENDMENTS IN THE WEST BENGAL STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS RULES, 1979

The **Govt. of West Bengal vide Notification No 02-F.T.-dated 2nd January, 2015** hereby amends **Rule 12C (QUARTERLY RETURN)** and provides that where a registered employer, who is required to furnish return under sub-rule (1) electronically in Form III in respect of a return period referred to in column (2) of the Table appended and where the tax and interest, if any, payable according to that return are paid within the date specified, transmission of data electronically pertaining to that return period is completed within the date as referred and furnishing of Form III in paper form in respect of that period is made within the date mentioned shall, notwithstanding anything contained in sub-rule (1) and this sub-rule, be deemed to have been furnished within the prescribed date.

It also amends **Rule 12D (ANNUAL RETURN)** by adding that where a registered employer, who is required to furnish return under sub-rule (1) electronically in Form III in respect of a return period referred to in column (2) of the Table appended and where the tax and interest, if any, payable according to that return are paid within the date specified, transmission of data electronically pertaining to that return period is completed within the date as referred and furnishing of Form III in paper form in respect of that period is made within the date mentioned shall, notwithstanding anything contained in sub-rule (1) and this sub-rule, be deemed to have been furnished within the prescribed date. The table is appended to the said notification.

OFFICIAL LIQUIDATOR OF THE COMPANY IS A DEALER- A LANDMARK SUPREME CASE JUDGEMENT

The Official Liquidator of the company was involved in the sale of assets of the liquidating company through an auction. The appellant contended that the Liquidator is liable to pay tax as and when a sale of assets of the company in liquidation is affected by him. The Liquidator claims that the auction purchaser would be liable to pay tax on the purchase of goods as may be leviable by the Sales Tax Department.

In the above case, the Hon'ble Supreme Court held that the company in liquidation is a **"dealer"** with regard to the sale of its assets by way of an auction under a winding up order. Thus, the official liquidator in-charge of the business on behalf of the dealer would be eligible to sales tax in the same manner as it would have been leviable upon and recoverable from the dealer itself. Hence, it was concluded that the liability to pay sales tax would be on the Official Liquidator in the same manner as the dealer, i.e., the Company in liquidation.

QUERY & REPLY

QUERY-SERVICE TAX

If a property is let out for an annual rent of Rs.16,00,000 and there are 4 co-owners of the property, whether service tax will be charged. Whether for charging of service tax, individual share of each co-owner would be seen or the total rent received?

CA Niraj Kumar Agarwal
Asansol

REPLY

Please refer to the definition of person u/s 65B(37) of Finance Act 1994. Each co-owner is a separate person and has a legal personality and status recognized by virtue of natural persons' rights and liabilities. The benefit of exemption under notification No.33/2012 ST shall be available to each co-owner separately. However, it is emphasized that agreement has to be made so that the rent is received separately by each co-owner. You can refer to **2013(31) STR 239(Tri-Ahmd)** for the issue.

QUERY- GST & EXCISE

As Excise Duty will be subsumed in the proposed GST, will a dealer be able to pass cenvat benefit on a material even though he isn't registered with excise?

The question is for a situation after GST has been introduced.

Amita,
VSNL

REPLY

Excise will be subsumed under CGST. There shall not be a separate excise registration after GST. The chain of GST shall break when an unregistered dealer enters the chain just like the present system in excise, service tax or VAT. However, the option to avail of the SSI exemption under GST regime shall rest with the dealer.