Significant Amendments/ Case Laws introduced by RTP for May 2017

Case Laws

Sr. No.	Citation	Gist
1.	CIT vs. Society for the Promotion of Education (2016) 382 ITR 6 (SC)	In a case where the registration u/s. 12AA is deemed to be granted (for not passing the order in 6 months), from which date registration shall be effective? In present case, assessee applied for registration on 24th Feb. 2003. Since, the registration was not granted/ denied in 6 months, it was deemed to be granted. It was held that the registration shall be effective from end of 6 months i.e. from 24th August 2003. *[It may be noted that the judgment is prior to amendment brought prior to Finance Act, 2007. May not apply after amendment by Finance Act, 2007. After Finance Act, 2007, the registration shall be effective from the 1st day of F.Y in which application is filed for registration]*
2.	CIT vs. St. Peter's Education society (2016) 385 ITR 66 (SC)	Assessee provided education in the field of communication including advertising and its related subjects. It was registered u/s. 12AA. It applied for registration u/s. 10(23C)(vi) as educational institution. CIT refused registration u/s. 10(23C)(vi) holding that :- (i) Society was not having education as the sole purpose; (ii) It is engaged in conducting coaching/training course formed on behalf of industry, trade and commercial organizations; (iii) It is engaged in various social activities of general public utility ; and (iv) It was not conducting educational courses as charitable activity but for the purpose of making profit. The Supreme Court relying on the judgement of *Queen's Education society's* case held that (i) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit; (ii) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive; (iii) A distinction must be drawn between making of a surplus and the institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit; (iv) If after meeting the expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes; (v) The ultimate test is whether on an overall view of the matter in the concerned A.Y., the object is to make profit as opposed to educating persons. Thus the registration shall be granted.
3.	Royala Corporation Pvt. Ltd. (2016) 386 ITR 500 (SC)	Relying on the judgment of *Chennai properties and investments Ltd. (SC)*, it was held that since the business of the assessee is leasing out, its properties and earn rent therefrom, the rental income earned by the company is chargeable to tax as its business income and not house property.
4.	Shasun Chemical & Drugs Ltd. (2016) 388 ITR (SC)	Assessee company and its employee union had a dispute as regards the quantum of bonus which led to labour unrest. Due to this reason, the workers refused to accept the bonus offered to them. However, in order to comply with the requirement of section 43B (i.e. deduction allowed on actual payment basis), the assessee made payment to trust. The dispute with workers was settled and amount was paid by trust

		before due date of filing of return. AO held that payment was made by trust and not by assessee directly deduction was not allowable. Held by Supreme Court, since the bonus was ultimately paid to the employees before due date of filing of return, the claim of bonus was allowed.
5.	CIT vs. V.S. Dempo Company Ltd. (2016) 387 ITR 354 (SC)	*Ace Builders (Bom.)* confirmed. Whether assessee who has a depreciable asset which was held for more than 36 months and is not transferred; resulting in short-term capital gains, u/s. 50; invest in section 54EC bonds? Yes, although the capital gains is short-term, but the fiction of section 50, treating the same as short-term capital gains cannot be extended to section 54EC. Hence, assessee can invest in section 54EC bonds, as the asset is still long-term for the purposes of section 54EC.
6.	CIT vs. Meghalaya Steels Ltd. (2016) 383 ITR 217 (SC)	*Meghalaya Steels (Gau.)* confirmed Transport subsidy – "derived from"
7.	CIT vs. Trans Asian Shipping P. Ltd. (2016) 385 ITR 637 (SC)	The assessee was engaged in the business of operation of ships. Assessee company was engaged in ***"slot charter"*** arrangement. No certificate in respect of such ship indicating its net tonnage was in force. AO held that since no valid certificate was existing, the assessee was not eligible for Tonnage Taxation. It was held that in case of slot charter the tonnage capacity was deemed and hence no valid certificate was required. Assessee was eligible for tonnage taxation.
8.	CIT vs. Subrata Roy (2016) 385 ITR 570 (SC)	On date of hearing, junior counsel prayed for adjournment so that senior counsel may appear. However High Court did not grant adjournment and the matter was heard. It was not an *ex-parte* order. Assessee applied for recall of order. High Court recalled the order relying on section 260A(7) read with Civil Produce Code. On appeal to Supreme Court, it was also held that High Court can recall its order, but only in terms of conditions of Civil Procedure Code. Order of High Court was not *ex-parte*. Recall was not valid.
9.	CIT vs. Amitabh Bachchan (2016) 384 ITR 200 (SC)	Revision u/s. 263 – Assessee filed revised return claiming 30% of gross professional receipts amounting to Rs. 3.17 crores as expenditure towards his personal security. During assessment, AO asked for details of expenditure assessee answered that the expenses were for security for personal safety and payments were made out of cash balance. Thereafter assessee informed AO that claim was made on belief that claim is allowable, however same was withdrawn. AO had proposed to treat the expenditure as unexplained expenditure u/s. 69C but after considering the assessee's reply, did not pursue the matter. CIT initiated proceedings u/s. 263 as the order was erroneous as the ld AO did not conduct enquiry in the matter. Assessee contended that the order was not erroneous and secondly CIT had made observations on points not covered in show-cause notice. Held that (a) Since AO had not conducted inquiry in respect of section 69C the order was erroneous. (b) Further, if any point on which show-cause was not given, but revision u/s. 263 was done, would not make the revision order invalid, but only against natural justice.
10.	ITC Ltd. (2016) 384 ITR 14 (SC)	The earlier judgment of High Court in ITC Ltd. was overruled. Tip paid to the waiters had no proximity to employment. Tips were not liable to TDS.

Circulars, Notifications etc

Sr. No.	Circular/Notification	Relevant Provision	Remarks
1.	Notification No. 42/2016 dt. 02.06.2016	Section 48	Cost inflation index for F.Y. 2016-17 is 1125.
2.	Notification No. 43/2016 dt. 02.06.2016	Section 14A r/w Rule 8D	New Rule 8D for disallowance of expenditure in relating to earning exempt income u/s. 14A: (a) *Direct Expenses*: - Entire Expenditure for earning exempt income shall be disallowed (b) *Indirect Expenses*: - 1% of average investment in exempt assets. Average shall be annual average of monthly averages of opening and closing balance of investments.
3.	Notification No. 46/2016 dt.17.06.2016	Section 197	Since the income of Securitization Trust is exempt u/s. 10 (23DA), no TDS shall be made on payments covered u/s. 10(23DA)
4.	Notification No. 47/2016 dt.17.06.2016	Section 197	No TDS on specified payments to bank etc. (a) Bank guarantee commission (b) Cash management service charges (c) Depository charges on maintenance of DEMAT accounts (d) Charges for warehousing services for commodities (e) Underwriting service charges (f) Clearing charges (MICR charges) (g) Credit card or debit card commission for transaction between the merchant establishment and acquirer bank. Earlier Circular repeated.
5.	Notification No. 53/2016 dt. 24.06.2016	Section 206AA	Section 206AA shall not apply to a non-resident , not having PAN, in respect of payment of interest/R/FTS/Payment on transfer of any capital asset, if deductee furnishes following details and documents (a) Name, email id, contact No. (b) Address (foreign) (c) TRC in of such foreign country (d) Tax Identification number of such foreign country.
6.	Notification No. 66/2016 dt. 09.08.2016	Section 200	Now a firm of CS and Cost Accounts can also become e-return intermediary if it has been allotted PAN.
7.	Notification No. 75/2016 dt. 19.08.2016	Section 206C	TCS on cash transaction (other than bullion or jewellery) – No TCS shall be collected if buyer :- (a) Govt. (b) Embassies, Consulates, High Commission, legation or commission and trade representation of a foreign state (c) Institutions notified under united Nations (Privileges and Immunities) Act, 1947
8.	Notification No. 85/2016 dated 28/09/2016	Section 32	Backward area – 32(1) (iia) & 32AD notified
9.	Notification No. 89/2016 dated 04/10/2016	Section 35ABA	“Payment has actually been made” shall mean (a) If assessee is allowed to make full upfront payment by Deptt. Of Telecommunications: - actual payment made, irrespective of accrual of expenditure.

			(b) If assessee is allowed to make Deferred payment by Deptt. Of Telecommunications: - the amount which would have been payable by assessee, had he opted for full upfront payment , irrespective of the P.Y. in which the liability for expenditure was incurred, according to the method of accounting regularly employed. In such a case, if the spectrum is subsequently terminated, the Assessing Officer shall recompute the deduction for the year in which same has already been allowed, taking: - Spectrum fees actually paid as the amount allowable. - Spectrum fees was in force upto the date of termination.
10.	Notification No. 94/2016 dated 17/10/2016	Section 115QA- Buy-back Distribution Tax (BDT)	In case of buy-back, the difference of "redemption price" and "issue price" shall be liable for tax. The "issue price" shall be determined in the manner prescribed. The said rule prescribes the manner. See ***note 1*** below.
11.	Circular No. 12/2016 dated 30/05/2016	Section 36(1)(vii)	Bad Debt – U/s. 36(1)(vii) – Judgment of *TRF (SC)* shall be followed – No need to prove that the debt has become bad.
12.	Circular No. 15/2016 dated 19/05/2016	Section 32	Assessee engaged in printing & publishing is also eligible for additional depreciation, as same is manufacturing business.
13.	Circular No. 21/2016 dated 27/05/2016	Section 12AA	Merely because the receipts of the institution of charitable/religious object exceeds the limit given in proviso to section 2(15) [20% of gross receipts] registration u/s 12A need not be cancelled unless there is alteration of the very nature of activities of the trust requiring cancellation of registration.
14.	Circular No. 22 & 23/2016 dated 08.06.2016 and 24.06.2016	Section 206C	Some FAQs regarding section 206C. TCS on sale/ services above Rs. 2 lakhs in **CASH**. Already discussed in the main amendments batch.
15.	Circular No. 26/2016 dated 04/07.2016	Section 10(15)(viii)	Interest received from International Financial Services Center (IFSC) (Banks in SEZ) is exempt u/s. 10(15)(viii), which exempts interest paid by offshore Banking units on interest paid to NR/RNOR. Further, since interest is exempt. TDS shall not be done.
16.	Circular No. 28/2016 dated 27/07/2016	Tax Rates	It is clarified that a person who has birthday on 1st April, his age of 60/80 years will be completed on 31st March of the earlier P.Y. itself.
17.	Circular No. 35/2016 dated 13/10/2016	Section 194-I	Lump Sum lease premium/One time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or other property are not payments of rent covered u/s. 194-I.
18.	Circular No. 36/2016 dated 25/10/2016	Section 10(37)	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) which came into effect from 1st January, 2014, in section 96, *inter alia* provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from

			the levy of income-tax. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.
19.	Taxation laws (Amendment) Act, 2016	Section 2(19AA)	Demerger –would now also cover reconstruction/split up of a public sector company as a result of transfer of its shares by the Central Govt. into separate companies, if other conditions as may be notified by Govt. are fulfilled. Thus all incentives of demerger shall be available in such case also.
20.	Taxation laws (Amendment) Act 2016	Section 80JJAA	Generally, there is a requirement that employee shall be employed for a period of 240 days in the P.Y. However looking to the seasonal nature of manufacture of apparel, instead of 240 days, employer could qualify as additional employee if he is employed for 150 days in the P.Y.

Note 1: Determination of "Issue price" in case of Buy-back

Sr. No.	Circumstance	How the "issue price" is determined	Examples
1.	Subscription	Face value + premium charged – amount returned to shareholder prior to buy-back (except covered u/s. 115-O by way of DDT)	Face value Rs. 10 Premium Rs. 30 Issue price Rs. 40
2.	ESOP	Fair Market Value considered for perquisite valuation u/s. 17(2).	Sweat equity shares issued of Rs. 1500 for Rs. 1200. Issue price is Rs. 1500.
3.	Share issued by amalgamated company under amalgamation in lieu of shares of amalgamating company	Amount received by amalgamating company (old company)	Old company issued shares at Rs. 25. New company issued shares in lieu of shares of old company. Cost of shares of new company is cost of shares of old company Rs. 25.
4.	Shares issued by resulting company under demerger in lieu of shares of demerged company	Proportionate factor of amount received by demerged company (old company) in proportion to net book value of assets. Balance value shall be taken as "issue price" of demerged company.	A Ltd. issued shares at Rs. 30. Book value on demerger of A Ltd. transferred 60% to B Ltd. Issue of shares of A Ltd. now is Rs. 12 and of B Ltd. is Rs. 18.

5.	Shares issued as a consideration for acquisition of any asset/ settlement of any liability	Lower of the following: (a) Proportionate amount which bears to the FMV of the asset the same proportion as part consideration being issue of shares; or (b) Amount of consideration for acquisition of asset/ settlement of liability to be paid in shares, to the extent credited to share capital and share premium. As divided by number of shares issued.	For providing technical services worth Rs. 3 crores; 10 lakh shares issued. The value at which each share is recorded in books is Rs. 10 face value and Rs. 25 being premium. The value shall be - Rs. 30 per share [3 crores / 10 lakh shares] - Rs. 35 per share Whichever is less.
6.	Shares allotted on conversion of firm/ proprietary concern to company.	Net Book Value i.e. Assets Less External Liabilities As divided by number of shares issued.	At time of conversion of firm to company, the net book value of assets was Rs. 2 crores, in lieu of which 10 lakh shares were issued, the "issue price" per share would be Rs. 20.
7.	Bonus shares	NIL	-
8.	Shares issued pursuant to conversion of Debentures/ Preference shares into shares	The "issue price" of old instrument.	Debentures issued at Rs. 25. Converted into shares. Cost of shares would be taken at Rs. 25.
9.	Buy-back of shares which are in demat form and could not be distinctly identified	FIFO method shall be adopted for identifying "issue price".	

Just believe in** yourself**. Even if you don't, pretend that you do and, at some point, *you will* ***!!!***