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This booklet summarises the important proposals included in the budget speech made by the Honourable Finance Minister on 01st February, 2018. Whilst every care has been taken in the preparation of this document it may contain inadvertent errors for which we shall not be held responsible. It must be stressed that the Finance Bill may contain proposals which have not been referred to in the budget speech and additionally, the detailed proposals are liable to amendment during the passage of the Finance Bill through Parliament. The information given in this document provides a bird's-eye view on the changes proposed and should not be relied for the purpose of economic or financial decision. Each such decision would call for specific reference of the relevant statutes and consultation of an expert.

Contents

FOREWORD.... 2

BACKDROP TO THE BUDGET AND RECENT DEVELOPMENTS 4

KEY BUDGET PROPOSALS 123

INCOME TAX RATES 123

FOREIGN POLICY ANNOUNCEMENTS 131

DOMESTIC TAXATION 132

INDIRECT TAXES 174

GOODS AND SERVICE TAX 174

CUSTOMS 185

INDUSTRY SPECIFIC ANALYSIS 195

FOREWORD....

Mr. Arun Jaitley, the Honourable Finance Minister presented the Indian Budget 2018 before the Parliament on Thursday 01st February 2018. Mr. Jaitley had a tough balancing act amid supporting economic growth, creating employment opportunities addressing rural distress and maintaining fiscal discipline.

The Union Budget 2018 is significant for several reasons. First, this is the first post - GST era Budget, the most far-reaching tax reform independent India has seen; second, it is the present government's fourth and last full-fledged budget presentation ahead of the impending 2019 General Elections. While the 2017 Budget was hailed as a reformist Budget, the 2018 Budget was speculated to be a populist one.

Farmers, Rural India and Healthcare are the main focus of Budget 2018. The farmers have been assured a Minimum Support Price (MSP) 1.5 times the cost of production. "Operation Greens" was launched to address price fluctuations for benefit of farmers and consumers.

Honourable Finance Minister announced the world's largest government funded healthcare programme. The ambitious flagship programme – the National Health Protection Scheme –will cover 100 million poor and vulnerable families or 40% of India's population. This is targeted to reaching approximately 500 million beneficiaries. Under this programme, each family can claim medical reimbursements up to Rs 5 lakh every year for secondary and tertiary care hospitalization. The Finance Minister said that the programme would be a step towards offering Universal Health Coverage and would take healthcare protection to a new aspirational level.

Technology will be the biggest driver in improving the quality of education in India. The Government proposes to increase the digital intensity in education and move gradually from ''black board'' to ''digital board''. Technology will also be used to upgrade the skills of teachers through the recently launched digital portal ''DIKSHA''.

The Revised Fiscal Deficit estimates for 2017-18 were put at Rs. 5.95 lakh crore at 3.5% of GDP. Continuing Governments path of fiscal reduction and consolidation, the Finance Minister projected a Fiscal Deficit of 3.3% of GDP for the year 2018-19 and accepted Budget Deficit as an important parameter for judging performance.

The middle-class expectation for Income Tax relief did not bear fruits. However, standard deduction for salaried employees has been reintroduced at Rs 40,000/- in lieu of the medical and transport allowance currently available. Reintroduction of long term capital gains tax on listed securities at 10% was quiet on expected lines. A serious effort has been made in this Budget to tax incomes earned by foreign entities having significant economic presence in India by use of technology. The corporate tax rate has been reduced from 30% to 25% for all domestic companies with turnover less than INR 2.5 Billion. The offset on which was 3% of cess has been proposed to be increased to 4%.

Customs Duty on certain products, such as mobile phones and televisions has been increased, to provide a boost to 'Make in India'. The Finance Minister has proposed to abolish the Education Cess and Secondary and Higher Education Cess on imported goods, and in its place impose a Social

Welfare Surcharge, at the rate of 10% of the aggregate duties of Customs, on imported goods, to provide for social welfare schemes of the Government. Goods which were hitherto exempt from Education Cess on imported goods will, however, be exempt from this Surcharge. Further the Finance Minister also proposed to make certain changes to the Customs Act, 1962, to improve the ease of doing business in cross border trade, and to align certain provisions with the commitments under the Trade Facilitation Agreement.

While from Personal taxation perspective the Budget seems to be a missed opportunity, on a macro level the Finance Minister has made a commendable effort to achieve the Modi Government's target of an "Inclusive Growth".

Thursday, February 01, 2018
Mumbai
INDIA

BACKDROP TO THE BUDGET AND RECENT DEVELOPMENTS

INCOME TAX

Domestic Taxation

Circulars/ Notifications/Press Release

SHIFTING BASE YEAR FROM 1981 TO 2001 FOR COMPUTATION OF CAPITAL GAINS

- The existing provisions of section 55 provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 01.04.1981, the assessee has been allowed an option of either to take the fair market value of the asset as on 01.04.1981 or the actual cost of the asset as cost of acquisition. The assessee is also allowed to claim deduction for cost of improvement incurred after 01.04.1981, if any.
- As the base year for computation of capital gains has become more than three decades old, assessees are facing genuine difficulties in computing the capital gains in respect of a capital asset, especially immovable property acquired before 01.04.1981 due to non-availability of relevant information for computation of fair market value of such asset as on 01.04.1981. In order to revise the base year for computation of capital gains, it is proposed to amend section 55 of the Act so as to provide that the cost of acquisition of an asset acquired before 01.04.2001 shall be allowed to be taken as fair market value as on 1st April, 2001 and the cost of improvement shall include only those capital expenses which are incurred after 01.04.2001.
- Consequential amendment is also proposed in section 48 so as to align the provisions relating to cost inflation index to the proposed base year. These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

  (Press Release, dated, 13th February 2017)

NO NOTIONAL INCOME FOR HOUSE PROPERTY HELD AS STOCK-IN-TRADE

- Section 23 of the Act provides for the manner of determination of annual value of house property considering the business exigencies in case of real estate developers, it is proposed to amend the said section so as to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period upto one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil

- This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.

(Press Release, dated 01st February 2017)

CLARIFICATION FOR DETERMINATION OF PLACE OF EFFECTIVE MANAGEMENT (POEM) OF A COMPANY, OTHER THAN AN INDIAN COMPANY

- The concept of POEM for deciding the residential status of a company, other than an Indian company, was introduced by the Finance Act, 2015. The existing provision of clause (ii) of sub section (3) of section 6 of the Income-tax Act, 1961 shall come into effect from 1st April, 2017 and accordingly, applies to Assessment Year 2017-18 and subsequent years. Guiding Principles for determining POEM of a company were issued by Circular No. 6 of 2017 on 24th January, 2017. Press Release on POEM guidelines dated 24th January, 2017 has, inter alia, stated that the POEM guidelines shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year. In view of above, it is clarified that existing provision of clause (ii) of sub section (3) of section 6 of the Act, shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year.

(Circular No.08/2017 dated 23rd February 2017)

CLARIFICATIONS ON THE TAXATION AND INVESTMENT REGIME FOR PRADHAN MANTRI GARIB KALYAN YOJANA, 2016

- The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (hereinafter 'the Scheme') has commenced on 17.12.2016 and is open for declarations upto 31.03.2017. Vide CBDT Circular No. 2 of 2017 dated 17th January 2017, certain clarifications were issued on the Scheme
- Subsequent to issuance of the said circular, representations have been received from various stakeholders seeking clarifications as to whether deposits made in bank account or cash in hand which are eligible for being declared under the Scheme should exist on the date of filling of declaration under the Scheme.
- In this context, it is clarified that where the undisclosed income is represented in the form of deposits in an account maintained with a specify entity, it is not necessary that the said deposits should exist on the date of making payments under the Scheme or furnishing a declaration under the Scheme, However, where the undisclosed income is represented in the form of cash, it is clarified that such cash should exist on the date of making payment of tax, surcharge and penalty under the Scheme or on the date of making deposit under the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016, whichever is earlier.

(Circular No. 9/2017 dated 14th March, 2017)

SECTION 139 OF THE INCOME-TAX ACT, 1961 – RETURN OF INCOME – GENERAL – MANDATORY QUOTING FOR PAN APPLICATION & FILING RETURN OF INCOME

- Section 139AA of the Income-tax Act, 1961 as introduced by the Finance Act, 2017 provides for mandatory quoting of Aadhaar/ Enrolment ID of Aadhaar application form, for filing of return of income and for making an application for allotment of Permanent Account Number

with effect from 1st July, 2017. It is clarified that such mandatory quoting of Aadhaar or Enrolment ID shall apply only to a person who is eligible to obtain Aadhaar number.

- As per the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, only a resident individual is entitled to obtain Aadhaar. Resident as per the said Act means an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment. Accordingly, the requirement to quote Aadhaar as per section 139AA of the Income-tax Act shall not apply to an individual who is not a resident as per the Aadhaar Act, 2016.

(Press Release, Dated 5th April, 2017)

PRADHAN MANTRI GARIB KALYAN DEPOSIT SCHEME (PMGKDS), 2016 – AMENDED

- The Government of India, in consultation with the Reserve Bank of India, had notified Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS), 2016 vide notification no. S.O. 4061 (E) dated December 16, 2016. The deposit under this scheme shall be made by any person who declared undisclosed income under Pradhan Mantri Garib Kalyan Yojana, 2016. It has now been decided by the Government of India, in case of persons who had filed the declaration by depositing tax, surcharge and penalty under PMGKDS on or before 31.03.2017, to allow extension of time till 30.04.2017 for banks to upload details into RBI's E-Kuber system and for depositors to make commensurate deposits, if not already done.
- The date of deposit and uploading would not be extended beyond 30th April, 2017. It may also be noted that, the effective date of opening of the Bond Ledger Account shall be the date of receipt of deposits by the Reserve Bank of India from the authorized banks. Paragraph 5 of the original notification No. S.O. 4061 (E) dated December 16, 2016, stands amended to this effect.

(Press Release, Dated 17th April, 2017)

SECTION 139A OF THE INCOME-TAX ACT, 1961 - PERMANENT ACCOUNT NUMBER (PAN) - INCOME TAX DEPARTMENT SIMPLIFIES LINKING PAN WITH AADHAAR

- The Income Tax Department has made it easy for taxpayers to link their PAN with Aadhaar. Responding to grievances of taxpayers regarding difficulties in linking PAN with Aadhaar their names did not match in both systems (E.g. Names with initials in one and expanded initials in another); the Department has come out with a simple solution now.
- Taxpayers can go to www.incometaxindiaefiling.gov.in and click on the link on the left pane-> Link Aadhaar, provide PAN, Aadhaar no. and ENTER NAME EXACTLY AS GIVEN IN AADHAAR CARD (avoid spelling mistakes) and submit. After verification from UIDAI, the linking will be confirmed.
- In case of any minor mismatch in Aadhaar name provided by taxpayer when compared to the actual data in Aadhaar, One Time Password (Aadhaar OTP) will be sent to the mobile registered with Aadhaar. Taxpayers should ensure that the date of birth and gender in PAN and Aadhaar are exactly same. In a rare case where Aadhaar name is completely different from name in PAN, then the linking will fail and taxpayer will be prompted to change the name in either Aadhaar or in PAN database.

- There is no need to login or be registered on E-filing website. This facility can be used by anyone to link their Aadhaar with PAN.
- This facility is also available after login on the e-filing website under Profile settings and chooses Aadhaar linking. The details as per PAN will be pre-populated. Enter Aadhaar no. and ENTER NAME EXACTLY AS GIVEN IN AADHAAR CARD (avoid spelling mistakes) and submit.
- Taxpayers are requested to use the simplified process to complete the linking of Aadhaar with PAN immediately. This will be useful for E-Verification of Income Tax returns using OTP sent to their mobile registered with Aadhaar.

(Press Release, dated 11th May 2017)

SECTION 285BA OF THE INCOME-TAX ACT, 1961 - STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT, OBLIGATION TO FURNISH - CLARIFICATION ON FURNISHING OF STATEMENT OF FINANCIAL TRANSACTION (SFT) & SFT PRELIMINARY RESPONSE

- Section 285BA of the Income-tax Act, 1961 requires furnishing of a statement of financial transaction (SFT) for transactions prescribed under Rule 114E of the Income-tax Rules, 1962. The due date for filing such SFT in Form 61A is 31st May 2017.
- In case there are reportable transactions for the year, the reporting person/entity is required to register with the Income Tax Department and generate Income Tax Department Reporting Entity Identification Number (ITDREIN) The same can be generated by logging-in to the e-filing website (https://incometaxindiaefiling.gov.in/) with the log in ID used for the purpose of filing the Income Tax Return of the reporting person / entity.
- Entity having PAN can take only PAN based ITDREIN. Entity having TAN can generate an ITDREIN only when such TAN's Organizational PAN is not available. The registration of reporting person (ITDREIN registration) is mandatory only when at least one of the Transaction Type is reportable. A functionality "SFT Preliminary Response" has been provided on the e- Filing portal for the reporting persons to indicate that a specified transaction type is not reportable for the year.
- Detailed procedure of ITDREIN registration and upload of Form 61A is available under the "Help" section and Form 61A utility and Schema are available under the download section of http://www.incometaxindiaefiling.gov.in and https://www.cleanmoney.gov.in. Online filing of form 61A requires a valid class 2 or 3 digital signature certificate of person responsible for filing the same. Please refer "DSC Management Utility" manual under help section on how to generate the signature file, attaching the XML with signature and uploading of XML with signature file in e Filing portal.

(Press Release, dated 26th May 2017)

CBDT NOTIFIES THE TRANSACTIONS OF LISTED EQUITY SHARES NOT ELIGIBLE FOR LONG TERM CAPITAL GAINS EXEMPTION

- CBDT recently issued a notification1 under Section 10(38) of the Act, providing a list of transactions of listed equity shares not eligible for Long Term capital gains exemption. Section 10(38) of the Act provides that any capital gains arising from transfer of listed equity shares held for a period of more than 12 months is not taxable if the sale is subject to

Securities Transaction Tax (STT). It was observed that benefit of exemption was misused for routing of unaccounted money through the medium of capital gains exemption. In order to deal with the menace of routing unaccounted income, Finance Act 2017 amended Section 10(38) of the Act which seeks to curtail benefit of capital gains exemption.

- Pursuant to the amendment, the exemption for the purpose of computation of capital gains will not be available if the shares are acquired on or after 1 October 2004 and such acquisition was not chargeable to STT. In order to protect the capital gains exemption for genuine acquisitions, CBDT Notification provides the negative list of transactions in respect of which the benefit of capital gains exemption will not be available, as under:
  - **Acquisition of existing listed equity shares which are not frequently traded on a Recognized Stock Exchange ('RSE') by way of preferential issue**
    - Approved by Supreme Court, High Court, National Company Law Tribunal (NCLT), Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI)
    - By non-resident in accordance with foreign direct investment (FDI) guidelines issued by the CG
    - By SEBI registered Investment Fund
    - By specified Venture Capital Fund qualified under the ITL
    - By a Qualified Institutional Buyer
    - Where preferential issue is not governed by Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
  - **Acquisition of existing listed equity shares otherwise than through a RSE**
    - By a company other than the preferential issue covered by Para (a) of the notification
    - By scheduled banks, reconstruction companies or securitization companies or public financial institutions during the ordinary course of business
    - Approved by Supreme Court, High Court, NCLT, SEBI and RBI
    - Under employee stock option scheme or employee stock purchase scheme framed under SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999
    - By non-resident in accordance with FDI guidelines issued by the CG
    - Under SEBI (Substantial acquisitions of shares and Take over) Regulations, 2011
    - From Government
    - By SEBI registered Investment Fund
    - By Venture Capital Fund qualified under the ITL
    - By a Qualified Institutional Buyer
    - By a mode of transfer which are not regarded as transfer for capital gains taxation purpose under the ITL, provided that the transferor was eligible for the capital gains exemption under the Section if such shares were sold by the transferor
    - By way of slump purchase of business, provided that, the transferor was eligible for exemption under the Section if such shares were sold by transferor
  - **Acquisition of unlisted equity shares during the period between the delisting and the day immediately preceding the re-listing of such shares on the RSE.**

- There are no carve out provided for clause (c). The delisting could be either voluntary or compulsory.

(Notification No 43/2017, dated 5th June, 2017)

NON-APPLICABILITY OF THE PROVISIONS OF SECTION 194-I OF THE I.T. ACT, 1961 ON REMITTANCE OF PASSENGER SERVICE FEES (PSF) BY AN AIRLINE TO AN AIRPORT OPERATOR - REG.

- Under the existing provisions contained in section 194-I of the Income Tax Act, 1961 ('the Act'), tax is required to be deducted at source on payment of rent. The term "rent" is defined in the Explanation to the said section to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any (a) land; or (b) building (including factory building); or (c) land appurtenant to a building (including factory building); or (d) machinery; or (e) plant; or (f) equipment; or (g) furniture; or (h) fittings, whether or not any or all of the above are owned by the payee.
- A dispute arose on applicability of the provisions of section 194-I of the Act, on payment of Passenger Service Fees (PSF) by an Airline to an Airport Operator. The Hon'ble High Court of Bombay in CIT vs. Jet Airways (India) Ltd. 1 declined to admit the ground relating to applicability of provisions of section 194-I of the Act on PSF charges holding that no substantial question of law arises. While doing so it relied on the judgement of the Hon'ble Supreme Court dated 4.8.2015 in the case of Japan Airlines and Singapore Airlines where the Apex Court held that in view of Explanation to section 194-I of the Act, though, the normal meaning of the word 'rent' stood expanded, however, the primary requirement is that the payment must be for the use of land and building and mere incidental/minor /insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I of the Act.

(Circular No. 21/2017, dated 12th June 2017)

SECTION 10(46) OF THE INCOME TAX ACT, 1961 EXEMPTIONS STATUTORY BODY/AUTHORITY/BOARD/COMMISSION NOTIFIED BODY OR AUTHORITY

- In exercise of the powers conferred by clause (46) of section 10 of the Income tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes for the said clause, the Punjab State Electricity Regulatory Commission, constituted by the Government of Punjab, in respect of the following specified income arising to that Commission, namely:—
- Amount received in the form of processing fee for determination of tariff; Amount received in the form of license fee; Amount received in the form of petition fee; and Amount of interest income earned on bank deposits. This notification shall be effective subject to the conditions that Punjab State Electricity Regulatory Commission,—shall not engage in any commercial activity; activities and the nature of the specified income remain unchanged throughout the financial years; and shall file returns of income in accordance with the provision of clause (g) of subsection (4C) section 139 of the Income tax Act; 1961.This notification shall be applicable for the financial years 2016-17 to 2020-21.

(Notification No. So 2276(E) [No.65/2017], dated 20th July, 2017)

ISSUES ARISING FROM THE IMPLEMENTATION OF MINIMUM ALTERNATE TAX (MAT) PROVISIONS RELATING TO INDIAN ACCOUNTING STANDARDS (IND AS) COMPLIANT COMPANIES.

- Finance Act, 2017 amended the provisions of section 115JB of the Income-tax Act,1961('the Act') so as to provide the framework for computation of book profit for the purposes of levying Minimum Alternate Tax (MAT) in case of Indian Accounting Standards (Ind AS) compliant companies in the year of adoption and thereafter. This framework was specified on the basis of the recommendations of the MAT-Ind AS Committee (the committee) constituted for this purpose. Subsequently, representations have been received from various stakeholders regarding certain issues arising from the implementation of provisions of amended section 115JB of the act. These representations were forwarded to the Committee for examination. After detailed examination of implementation issues raised by the stakeholders, the Committee vide report dated 17th June, 2017 has recommended certain amendment to the provisions of section 115JB of the Act with effect from 1st April, 2017 (i.e. A.Y.2017-18) which is the date of coming into effect of the amendments made in section 115JB of the Act by the Finance Act, 2017.
- The recommendations of the Committee regarding issuance of circular in the form of FAQs have been accepted by the Government and circular in the form of FAQs has been issued vide No 24/2017 dated 25.07.2017.Further, in order to have wider consultation in response of Committee's recommendations regarding amendment to the provisions of section 115JB of the Act w.e.f. 1st April, 2017.

(Press Release, Dated 25th July, 2017)

TDS ON INTEREST ON DEPOSITS MADE UNDER THE CAPITAL GAINS ACCOUNTS SCHEME, 1988 WHERE THE DEPOSITOR HAS DECEASED-REG-.

- It has been brought to the notice of CBDT that in cases of deceased depositor who has made deposits under the Capital Gains Accounts Scheme, 1988; the banks are deducting TDS on the interest earned on such deposits in the hand of the deceased depositor and issuing TDS certificates in the name of the deceased depositor, which is not in accordance with the law. Ideally in such type of situations, the TDS certificate on the interest income for and upto the period of death of the depositor is required to be issued on the PAN of the deceased depositor and for the period after death of the depositor is required to be issued on the PAN of the legal heir.
- Under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner 50 specified.
- In exercise of the powers delegated by the Central Board of Direct Taxes (Board) under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Principal Director General of Income-tax (System`s) hereby specifies that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:
- TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and

- TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed under sub-rule(2) of Rule 37BA of the Income-tax Rules, 1962 to that effect. This issue with approval of the Principal Director General of Income-tax (Systems).

(Notification No 08/2017, dated 13th September, 2017)

VOLUNTARY REPORTING OF ESTIMATED CURRENT INCOME AND ADVANCE TAX LIABILITY

- A taxpayer who is liable to discharge part of its tax liability by way of advance tax has to bear additional burden of interest for default of advance tax, in case total advance tax paid for the year falls short of the assessed tax by ten percent or more. This interest is levied as per the provisions of section 234B of the Income-tax Act, 1961 ("the Act"). Such taxpayers are further liable to pay interest for deferment of advance tax, in case any quarterly instalment of advance tax paid falls short of the prescribed percentage of total advance tax paid. This interest is levied in accordance with the provisions of section 234C of the Act.
- It is of utmost importance for such taxpayers to arrive at a reasonably accurate estimate of their current income and advance tax liability, so that the additional burden on account of interest for default/deferment of advance tax can be avoided.
- Needless to say, a continuous flow of tax revenues throughout the year is critical for the Government so as to meet various budgetary allocations such as welfare schemes, infrastructure development, defence expenditure etc. A reliable and advance estimate of tax revenues for the year would also provide much needed perspective for planning and prioritizing the Government expenditure.
- In order to address these concerns, it is proposed to create a mechanism for self-reporting of estimates of current income, tax payments and advance tax liability by certain taxpayers (companies and tax audit cases) on voluntary compliance basis. The proposed reporting mechanism is sought to be created by way of inserting a new Rule 39A and Form No. 28AA in the Income-tax Rules, 1962. The proposed draft notification has been placed in public domain on the website of Income Tax Department (www.incometaxindia.gov.in) for inviting comments from stakeholders and general public. The comments and suggestions on the draft Rule and Form may be sent electronically at the email address dirtpl4@nic.in by 29th September, 2017.

(Press Release, Dated 19th September, 2017)

CBDT EXTENDS DUE DATE FOR FILING INCOME TAX RETURNS AND TAX AUDIT REPORTS

On consideration of representations from various stakeholders for further extension of due date', being 30th September 2017 for those liable to file returns by 30.09.2017 and to facilitate ease of compliance by the taxpayers, CBDT has further extended the due-date for filing Income Tax Returns and various reports of audit prescribed under the Income-tax Act, 1961 pertaining to AY 2017-18 from 31st October, 2017 to 7th November, 2017 for all such taxpayers.

(Press Release dated 31st October, 2017)

DRAFT NOTIFICATION OF AMENDMENT OF RULE 17A AND FORM 10A OF THE INCOME-TAX RULES, 1962 – COMMENTS AND SUGGESTIONS THEREOF.

- Vide Finance Act, 2017, a new clause (ab) was inserted in sub-section (1) of section 12A of the Income-tax Act, 1961 ('the Act') w.e.f. 01.04.2018 to the effect that where a trust or an institution, which has been granted registration under sections 12A or 12AA of the Act has subsequently adopted or undertaken modification of the objects and such modification does not conform to the conditions of such registration, then such trust or institution shall be required to obtain registration again by making an application within a period of thirty days from the date of such adoption or modification of the objects. As per the Memorandum related to Delegated Legislation laid on the floor of the Parliament along with the Finance Bill, 2017, the form and manner in which an application of registration u/s 12(1)(ab) shall be made to the Principal Commissioner or Commissioner for registration of the trust or institution subsequent to modification of its objects, is required to be prescribed. The rules for making an application for registration of charitable or religious trusts under section 12A of the Act are laid down under Rule 17A of the Income-tax Rules, 1962 ('the Rules'). As per the Rules, the application, for registration of charitable or religious trusts under section 12A of the Act, is to be made in Form 10A. Accordingly, subsequent to the aforesaid amendment to the Act, Rule 17A and Form 10A are proposed to be amended. In this regard, draft notification providing for the amendment of Rule 17A and Form 10A has been framed and uploaded on the website of the Income Tax Department www.incometaxindia.gov.in for comments from stakeholders and general public. The comments and suggestions on the draft Rules may be sent by 27th October, 2017 electronically at the email address, dirtpl1@nic.in.

(Press Release dated 18th October, 2017)

CLARIFICATION ON CASH SALE OF AGRICULTURAL PRODUCE BY CULTIVATORS/ AGRICULTURISTS

- The Central Board of Direct Taxes (CBDT) has received representations from the stakeholders regarding applicability of provisions of Income-tax Act, 1961 ('the Act') to cash sale of agricultural produce by the cultivators/agriculturists. The issue has been examined and vide Circular No. 27/2017 dated 3rd November, 2017, CBDT has clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount less than Rs 2 lakh will not:-
  - Result in any disallowance of expenditure under section 40A (3) of the Act in the case of trader;
  - Attract prohibition under section 269ST of the Act in the case of the cultivator; and
  - Require the cultivator to quote his PAN/ or furnish Form No.60.

(Press Release, Dated 03rd November, 2017)

CONSTITUTION OF TASK FORCE FOR DRAFTING A NEW DIRECT TAX LEGISLATION

During Rajaswa Gyan Sangam held on 1st and 2nd September, 2017, Hon'ble Prime Minister had observed that the Income-tax Act, 1961 (the Act) was drafted more than 50 years ago and it needs to be redrafted. Accordingly, in order to review the Act and to draft a new direct tax law in consonance

with economic needs of the country, the Government has constituted a Task Force with the following Members:

- Shri Arbind Modi, Member (Legislation), CBDT - Convener
- Shri Girish Ahuja, practicing Chartered Accountant and non-official Director State Bank of India;
- Shri Rajiv Memani, Chairman & Regional Managing Partner of E&Y;
- Shri Mukesh Patel, Practicing Tax Advocate, Ahmedabad;
- Ms. Mansi Kedia, Consultant, ICRIER, New Delhi;
- Shri G.C. Srivastava, Retd. IRS (1971 Batch) and Advocate.

Shri Arvind Subramanian, Chief Economic Adviser- will be a permanent special invitee in the Task Force.

The Terms of Reference of the Task Force is to draft an appropriate direct tax legislation keeping in view:

- The direct tax system prevalent in various countries,
- The international best practices.
- The economic needs of the country and
- Any other matter connected thereto.

The Task Force shall set its own procedures for regulating its work and shall submit its report to the Government within six months.

(Press Release, Dated 22nd November, 2017)

THE CENTRAL GOVERNMENT NOTIFIES FOR THE PURPOSES OF THE CLAUSE (46) OF SECTION 10 OF THE INCOME-TAX ACT, 1961 THE SEEPZ SPECIAL ECONOMIC ZONE IN RESPECT OF SPECIFIED INCOME ARISING TO THAT AUTHORITY.

S.O.4010 (E).:— In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the SEEPZ Special Economic Zone Authority, an authority constituted under the Special Economic Zone Act, 2005 by the Government of India, in respect of the following specified income arising to that authority, namely:—

- Lease rentals/Service charges from various units operating in the SEZ at rates prescribed by the SEZ Authority;
- Income by way of Gate Pass Entry Fees, Fine & Penalties from various units and other misc. income (Sale of garbage); and
- Interest on Bank Deposits and Investments.

This notification shall be effective subject to the conditions that SEEPZ Special Economic Zone Authority:

- Shall not engage in any commercial activity;

- its activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- It files return of income in accordance with the provision of clause (g) of sub section (4C) of section 139 of the Income-tax Act, 1961. 3. This notification shall be deemed to have been applied for the financial Years 2015 2016, 2016-2017 and shall apply with respect to the financial Years 2017-2018, 2018-2019 & 2019-2020.

  ([Notification No. 99/2017/, dated 22nd December, 2017)

RELEASE OF INCOME TAX RETURN STATISTICS FOR AY 2015-16.

- Central Board of Direct Taxes (CBDT) has been proactively releasing Time-series Data relating to Direct Tax collections, number of taxpayers, cost of collection etc., as also data of number of PAN allotted and data relating to distribution of income and tax payable in the returns filed for different Assessment Years. In this series, analysis of income declared and tax payable for Assessment Years 2012-13, 2013-14 and 2014-15 has already been released by CBDT last year and the updated Time-series Data has already been released earlier this year.
- In continuation of its efforts to place more and more information in public domain, CBDT has further released data relating to distribution of income and tax payable in respect of returns filed for Assessment Year 2015-16. With this release, detailed income-tax data for four recent assessment years (apart from Time-series Data from FY 2000-01 to FY 2016-17) have become available in public domain enabling researchers, scholars, policy makers, students and all other stakeholders to make a better analysis of the trends in incomes and tax payments.

  (Press Release, Dated 20th December, 2017)

RELAXATION IN THE PROVISIONS RELATING TO LEVY OF MINIMUM ALTERNATE TAX (MAT) IN CASE OF COMPANIES AGAINST WHOM AN APPLICATION FOR CORPORATE INSOLVENCY RESOLUTION PROCESS HAS BEEN ADMITTED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

- The existing provisions of section 115JB of the Income-tax Act, 1961 ('the Act'), inter alia, provide, that, for the purposes of levy of Minimum Alternate Tax (MAT) in case of a company, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account shall be reduced from the book profit.
- In this regard, representations have been received from various stakeholders that the companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 ('the IBC'), are facing hardship due to restriction in allowance of brought forward loss for computation of book profit under section 115JB of the Act.
- With a view to minimize the genuine hardship faced by such companies, it has been decided, that, with effect from Assessment Year 2018-19 (i.e. Financial Year 2017-18), in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the IBC, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed

to be reduced from the book profit for the purposes of levy of MAT under section 115JB of the Act.

- Appropriate legislative amendment in this regard will be made in due course.

(Press Release, Dated 6th January, 2017)

INCOME TAX

DOMESTIC TAXATION

SUPREME COURT DECISION

CIT VS. HINDUSTAN PETROLEUM CORPORATION LTD. [CIVIL APPEAL NO. 9295 OF 2017, DATED 3RD AUGUST, 2017]

Facts:

- The Supreme Court had to consider whether bottling of LPG, as undertaken by the assessee, is a process which amounts to 'production' or 'manufacture' for the purposes of Sections 80HH, 80-I and 80-IA of the Act?; and if so, whether the assessees are entitled to claim the benefit of deduction under the aforesaid provisions while computing their taxable income

Issue:

- S.80-IA: Difference between 'manufacturing' and 'production' explained. The word 'production' has a wider connotation in comparison to 'manufacture'. Any activity which brings a commercially new product into existence constitutes production. The process of bottling of LPG renders incapable of being marketed as a domestic kitchen fuel and, thereby make it a viable commercial product.

Held:

- At the outset, it needs to be emphasized that the aforesaid provisions of the Act use both the expressions, namely, 'manufacture' as well as 'production'. It also becomes clear after reading these provisions that an assessee whose process amounts to either 'manufacture' or 'production' (i.e. one of these two and not both) would become entitled to the benefits enshrined therein. It is held by this Court in Arihant Tiles and Marbles P. Ltd. (2010) 320 ITR 79 (SC) that the word 'production' is wider than the word 'manufacture'.
- The two expressions, thus, have different connotation. Significantly, Arihant Tiles judgment decides that cutting of marble blocks into marble slabs does not amount to manufacture. At the same time, it clarifies that it would be relevant for the purpose of the Central Excise Act. When it comes to interpreting section 80-IA of the Act (which was involved in the said case), the Court was categorical in pointing out that the aforesaid interpretation of 'manufacture' in the context of Central Excise Act would not apply while interpreting Section 80-IA of the Act as this provision not only covers those assessees which are involved in the process of manufacture but also those who are undertaking 'production' of the goods. Taking note of the judgment in Commissioner of Income Tax, Goa vs. Sesa Goa Ltd. (2004) 271 ITR 331 (SC) which was rendered in the context of section 32A of the Act and which provision also applies in respect of 'production', the Court reiterated the ratio in Sesa Goa Ltd. to hold that the word 'production' was wider than the word 'manufacture'.
- On that basis, finding arrived at by the Court was that though cutting of marble blocks into marble slabs did not amount to 'manufacture', if there are various stages through which marble blocks are subjected to before they become polished slabs and tiles, such activity would certainly be treated as 'production' for the purpose of section 80-IA of the Act.

- Keeping the aforesaid distinction in mind, let us take note of the process of LPG bottling that is undertaken by the assessees herein and about which there is no dispute. It has come on record that specific activities at assessees' plant include receiving bulk LPG vapour from the oil refinery, unloading the LPG vapour, compression of the LPG vapour, loading of the LPG in liquefied form into bullets, followed by cylinder filling operations.
- Thus, after the bottling activities at the assessees' plants, LPG is stored in cylinders in liquefied form under pressure. When the cylinder valve is opened and the gas is withdrawn from the cylinder, the pressure falls and the liquid boils to return to gaseous state. This is how LPG is made suitable for domestic use by customers who will not be able to use LPG in its vapour form as produced in the oil refinery. It, therefore, becomes apparent that the LPG obtained from the refinery undergoes a complex technical process in the assessees' plants and is clearly distinguishable from the LPG bottled in cylinders and cleared from these plants for domestic use by customers.
- We may, at this juncture, refer to the judgment of this Court in Commissioner of Income tax, Madras v. Vinbros and Company [(2015) 14 SCC 483] where bottling and blending of alcohol is held to be 'manufacture or production' for the purpose of section 80-IB of the Act.

GODREJ & BOYCE MANUFACTURING COMPANY LTD. V. DEPUTY COMMISSIONER OF INCOME-TAX

Facts:

- During relevant year, the assessee earned tax free dividend income in respect of shares held in group companies. The assessee's case was that since the companies distributing dividend had paid tax thereon, no disallowance could be made in hands of assessee by invoking provisions of section 14A.

- The Assessing Officer as well as the Tribunal rejected the assessee's explanation and proceeded to make disallowance as mandated in provisions of section 14A.

- The High Court held section 14A that had to be construed on a plain grammatical construction thereof and the said provision was attracted in respect of dividend income referred to in section 115-O as such income was not includible in the total income of the shareholder.

- It was further held that the tax paid under section 115-O was an additional tax on that component of the profits of the dividend distributing company which was distributed by way of dividends and that the same was not a tax on dividend income of the assessee. Accordingly, impugned disallowance was confirmed.

Issue:

- Section 14A, read with section 115-O of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Dividend) - Assessment year 2002-03 - Whether section 14A would apply to dividend income on which tax is payable under section 115-O

Held:

- The object behind the introduction of section 14A by the Finance Act of 2001 is clear and unambiguous. The legislature intended to check the claim of allowance of expenditure incurred towards earning exempted income in a situation where an assessee has both exempted and non-exempted income or includible or non-includible income. While there can be no scintilla of doubt that if the income in question is taxable and, therefore, includible in the total income, the deduction of expenses incurred in relation to such an income must be allowed, such deduction would not be permissible merely on the ground that the tax on the dividend received by the assessee has been paid by the dividend paying company and not by the recipient assessee, when under section 10(33) of the Act such income by way of dividend is not a part of the total income of the recipient assessee. A plain reading of section 14A would go to show that the income must not be includible in the total income of the assessee. Once the said condition is satisfied, the expenditure incurred in earning the said income cannot be allowed to be deducted. The section does not contemplate a situation where even though the income is taxable in the hands of the dividend paying company the same to be treated as not includible in the total income of the recipient assessee, yet, the expenditure incurred to earn that income must be allowed on the basis that no tax on such income has been paid by the assessee. Such a meaning, if ascribed to section 14A, would be plainly beyond what the language of section 14A can be understood to reasonably convey.

- While it is correct that section 10(33) exempts only dividend income under section 115-O and there are other species of dividend income on which tax is levied under the Act, one cannot see how the said position in law would assist the assessee in understanding the provisions of section 14A in the manner indicated. What is required to be construed is the provisions of section 10(33) read in the light of section 115-O of the Act. So far as the species of dividend income on which tax is payable under section 115-O of the Act is concerned, the earning of the said dividend is tax free in the hands of the assessee and not includible in the total income of the said assessee. If that is so, operation of section 14A of the Act to such dividend income cannot be foreclosed. The fact that section 10(33) and section 115-O of the Act were brought in together; deleted and reintroduced later in a composite manner, also, does not assist the assessee. Rather, the aforesaid facts would countenance a situation that so long as the dividend income is taxable in the hands of the dividend paying company, the same is not includible in the total income of the recipient assessee. At such point of time when the said position was reversed (by the Finance Act of 2002; reintroduced again by the Finance Act, 2003), it was the assessee who was liable to pay tax on such dividend income. In such a situation the assessee was entitled under section 57 of the Act to claim the benefit of exemption of expenditure incurred to earn such income. Once section 10(33) and 115-O was reintroduced the position was reversed. The above, actually fortifies the situation that section 14A of the Act would operate to disallow deduction of all expenditure incurred in earning the dividend income under section 115-O which is not includible in the total income of the assessee.

- So far as the provisions of section 115-O of the Act are concerned, even if it is assumed that the additional income tax under the aforesaid provision is on the dividend and not on the distributed profits of the dividend paying company, no material difference to the applicability of section 14A would arise. Sub-sections (4) and (5) of section 115-O of the Act make it very

clear that the further benefit of such payments cannot be claimed either by the dividend paying company or by the recipient assessee. The provisions of sections 194, 195, 196C and 199 would further fortify the fact that the dividend income under section 115-O of the Act is a special category of income which has been treated differently by the Act making the same non-includible in the total income of the recipient assessee as tax thereon had already been paid by the dividend distributing company. The other species of dividend income which attracts levy of income tax at the hands of the recipient assessee has been treated differently and made liable to tax under the aforesaid provisions of the Act. In fact, if the argument is that tax paid by the dividend paying company under section 115-O is to be understood to be on behalf of the recipient assessee, the provisions of section 57 should enable the assessee to claim deduction of expenditure incurred to earn the income on which such tax is paid. Such a position in law would be wholly incongruous in view of section 10(33) of the Act.

- For the aforesaid reasons, it is held that section 14A would apply to dividend income on which tax is payable under section 115-O of the Act.

PR. CIT VS. U.K. PAINTS INDIA (P) LTD. [2017] 153 DTR 201 (DEL.)

Facts:

- The assessee, a private limited company, declared exempt income of Rs. 25 crores. It disallowed a sum of Rs. 7.5 Lakhs under section 14A towards the exempt income. The A.O. did not accept the voluntary disallowance made by the assessee and re-computed the disallowance under section 14A r.w.r. 8D at Rs. 2,55,02,142/-

Issue:

- Business expenditure – Disallowance under section 14A r.w.r. 8D – Rule 8D is not merely procedural but substantive – A.O. can resort to procedures of Rule 8D only after expressing an opinion rejecting the assessee's voluntary disallowance under section 14A r.w.r. 8D. A.Y. 2006-07.

Held:

- The CIT (A) upheld the action of the A.O. The Appellate Tribunal allowed the appeal of the assessee relying on the decision of Hon'ble Delhi High Court in the case of CIT vs. Taikisha Engineering India Ltd. [2015] 370 ITR 338 (Delhi) to the effect that the AO can proceed to make an independent determination of the disallowance under Rule 8D read with Section 14(2) after recording his satisfaction about the amount and the reasons thereof proffered by the assessee voluntarily under Section 14A.

- The department preferred an appeal before the Hon'ble Delhi High Court. The High Court observed that section 14A is in a sense a taxing exception to the stream of income which is otherwise exempt, i.e. tax exempt income. The principle of disallowance is stated in Section 14A (1). Section 14A (2) prescribes the mode or methodology for the disallowance and the steps for its calculation. Unlike the other part of the statute which decree or enjoin the actual methodology and are substantive, Parliament deemed it appropriate to leave it to the rule making authority to prescribe the methodology, i.e. computation.

- For instance, what are taxable and in what proportion and the principles applicable are embedded in the statute in certain provisions, such as Sections 28 to 43 and Sections 80A to 80HHC when it comes to deductions. Instead of adopting that mode, the Parliament thought it appropriate to leave the mode to the rule making authority. In that sense, the rules are not merely procedural but are substantive and can be said to be engrafted in the statute, as is evident from the mandate of the first part of Section 14A(2).

- That apart, significantly, the question of applying the statutorily prescribed method would arise only and only if the AO expresses an opinion rejecting the assessee's methodology and the figure offered at the time of assessment. This is material because the jurisdiction to go into the method prescribed in the Rules arises only if the amount the assessee offers does not have any realistic correlation with the tax exempt income.

- The opinion of the Assessing Officer in the latter part of Section 14A (2) is to be based upon an appraisal of objective material relating to the assessee's voluntary disallowance of amount/amounts. Not only that, if in the course of assessment, the AO enquires from the assessee about the amounts spent, which are to be disallowed, and the assessee in fact discloses a larger amount (than the one given in the return), it is still incumbent upon the AO to enquire into such larger amounts and determine whether it has nexus with expenditure relatable to exempt income to attract Section 14A (1). Sans this procedure, Section 14A would be reduced to a mere formality which it appears to have become in the circumstances of the case.

- Thus Hon'ble court dismissed the departmental appeal by observing that A.O. cannot re-compute disallowance under section 14A by invoking rule 8D without elucidating and explaining why assessee's voluntary disallowance is unreasonable and unsatisfactory.

<u>**CIT vs. Rajasthan and Gujarati Charitable Foundation Poona**</u>

Section 11(1)(a) vs. Section 32: Even if the entire expenditure incurred for acquisition of a capital asset is treated as application of income for charitable purposes u/s 11(1)(a) of the Act, the assessee is also entitled to depreciation u/s 32. The argument that the grant of depreciation amounts to giving double benefit to the assessee is not acceptable. Section 11(6) which bars depreciation on expenditure applied for charitable purposes are prospective and applies only from AY 2015-16

<u>**Held*:***</u>

- Income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable.

- However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust

CIT vs. Chaphalkar Brothers Pune

Taxability of subsidies: A subsidy granted by the Government to achieve the objects of acceleration of industrial development and generation of employment is capital in nature and not revenue. The fact that the incentives are not available unless and until commercial production has started, and that the incentives are not given to the assessee expressly for the purpose of purchasing capital assets or for the purpose of purchasing machinery is irrelevant. The object has to be seen and not the form in which it is granted

Held:

- The object of the grant of the subsidy was in order in the assessee's case and that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers.
- This being the case, it is for the larger object which must be kept in mind in that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold

Bhushan Steel vs. CIT

Taxability of subsidies: Supreme Court stays judgement of the Delhi High Court in CIT vs. Bhushan Steels and Strips which held that if the recipient has the flexibility of using it for any purpose and is not confined to using it for capital purposes, the subsidy is revenue in nature and is taxable as profits

- The Apex Court stayed judgement of the Delhi High Court in CIT vs. Bhushan Steels And Strips Ltd which held that if the recipient has the flexibility of using subsidy for any purpose and is not confined to using it for capital purposes, the subsidy is revenue in nature and is taxable as profits

DCIT vs. Ace Multi Axes Systems Ltd

Section 80-IB: The incentive meant for small scale industrial undertakings cannot be availed by undertakings which do not continue as small scale industrial undertakings during the relevant period. Each assessment year is a different assessment year. The fact that the object of legislature is to encourage industrial expansion does not mean that the incentive should remain applicable even where on account of industrial expansion, the small scale industrial undertakings ceases to be small scale industrial undertakings. The fact that in the initial year eligibility was satisfied is irrelevant

Held:

- The object of legislature is to encourage industrial expansion which implies that incentive should remain applicable even where on account of industrial expansion small scale industrial undertakings ceases to be small scale industrial undertakings.

- Incentive is given to a particular category of industry for a specified purpose. An incentive meant for small scale industrial undertaking cannot be availed by an assessee which is not a small scale industry

CIT vs. Modipon Limited

Section 43B: Advance deposit of central excise duty in the Personal Ledger Account (PLA) constitutes actual payment of duty within the meaning of Section 43B and the assessee is entitled to the benefit of deduction of the said amount

Held*:*

- The purpose of introduction of Section 43B of the Central Excise Act was to plug a loophole in the statute which permitted deductions on an accrual basis without the requisite obligation to deposit the tax with the State. On the basis of mere book entries an assessee was entitled to claim deduction without actually paying the tax to the State.

- Having regard to the object behind the enactment of Section 43B and the preceding discussions, it would be consistent to hold that the legislative intent would be achieved by giving benefit of deduction to an assessee upon advance deposit of central excise duty notwithstanding the fact that adjustments from such deposit are made on subsequent 14 clearances/removal effected from time to time

SRD Nutrients Private Limited vs. CCE

It is trite that when two views are possible, one which favours the assessees has to be adopted. Circulars are binding on the Department. The Government itself has taken the position that where whole of excise duty or service tax is exempted, even the Education Cess as well as Secondary and Higher Education Cess would not be payable. This is the rational view

Held*:*

- From the reading of the circulars it is clear that the Government itself has taken the position that where whole of excise duty or service tax is exempted, even the Education Cess as well as Secondary and Higher Education Cess would not be payable.

- These circulars are binding on the Department. It is also trite that when two views are possible, one which favors' the assessee's has to be adopted

CIT vs. Madhur Housing and Development Co

Section 2(22)(e): Any payment by a closely-held company by way of advance or loan to a concern in which a substantial shareholder is a member holding a substantial interest is deemed to be "dividend" on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance. However, the legal fiction in Section 2(22) (e) does not extend to, or broaden the concept of the loan or advance. However, the legal fiction in Section 2(22) (e) does not extend to, or broaden the concept of a "shareholder"

Held:

- U/s 2(22) (e), any payment by a closely-held company by way of advance or loan to a concern in which a substantial shareholder is a member holding a substantial interest is deemed to be "dividend" on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance.

- The legal fiction in Section 2(22) (e) enlarges the definition of dividend but does not extend to, or broaden the concept of a "shareholder".

- As the assessee was not a shareholder of the paying company, the "dividend" was not assessable in its hands

Bimal Kishore Paliwal vs. CWT

Entire law on the valuation of immovable properties under the 'rent capitalisation' method versus the 'land and building' method explained in the context of Section 7(2) of the Wealth-tax Act, 1957. Also, law on taking the view in favour of the assessee if two reasonable constructions of a statute are possible explained

Held:

- It is true that subsection (2) of Section 7 begins with non obstante clause which enables the Wealth Tax Officer to determine the net value of the assets of the business as a whole instead of determining separately the value of each asset held by the assessee in such business.

- The language of subsection (2) which provides overriding power to the Wealth Tax Officer to adopt and determining the net value of the business having regard to the balance sheet of such business. The enabling power has been given to Wealth Tax Officer to override the normal rule of valuation of the properties that is the value which it may fetch in open market, Wealth Tax Officer can adopt in a case where he may think it fit to adopt such methodology.

- The appellants' submission is that the provision of Section 7(2) (a) is a standalone provision and is to be applied in all cases where assessee is carrying on a business. We do not agree with the above submission

Plastiblends India Limited vs. ACIT

Section 80-IA contains substantive and procedural provisions for computation of special deduction. Any device adopted to reduce or inflate the profits of eligible business has to be rejected. The claim for 100% deduction, without taking into consideration depreciation, is anathema to the scheme u/s 80-IA of the Act which is linked to profits. If the contention of the assessees is accepted, it would allow them to inflate the profits linked incentives provided u/s 80-IA of the Act which cannot be permitted

Held:

- Section 80-IA is a code by itself; it contains the provision for special deduction which is linked to profits.

- In contrast, Chapter IV of the Act, which allows depreciation under Section 32 of the Act, is linked to investment. This Court has made it clear that Section 80-IA of the Act not only contains substantive but procedural provisions for computation of special deduction. Thus, any device adopted to reduce or inflate the profits of eligible business has to be rejected.

- The assessees/appellants want 100% deduction, without taking into consideration depreciation which they want to utilize in the subsequent years. This would be anathema to the scheme under Section 80-IA of the Act which is linked to profits and if the contention of the assessees is accepted, it would allow them to inflate the profits linked incentives provided under Section 80-IA of the Act which cannot be permitted

Dayawanti vs. CIT

Section 153A search assessment:

Supreme Court stays operation of the judgement of the Delhi High Court in Dayawanti Gupta vs. CIT 390 ITR 496 (Delhi). The High Court dealt with the issue whether an assessment u/s 153A can be made even if no incriminating material has been found during Section 132 search proceedings

- In Dayawanti Gupta vs. CIT 390 ITR 496 (Delhi), the assessee argued before the Delhi High Court that since no incriminating material was found during or pursuant to the search, additions, made on the basis of block assessment, were unsustainable inasmuch as they revisited finally settled assessments.

- It was submitted that for completing a block assessment, founded on search proceedings and notice under Section 153A, the assessing officer has to base the order on fresh materials found during the search, in the form of books of accounts, articles seized, or other similar materials.

- In this case, the Department could not substantiate its plea that the assesses had concealed their income, because nothing suspect which could result in an addition to the income assessed during the previous years was in fact seized or taken into custody.

- The Apex Court set aside the four assessments for the block period in question.

CIT vs. Balbir Singh Maini

Section 2(47)/ 45: Entire law on whether a joint development agreement entered into by an owner of land with a developer constitutes a "transfer" u/s 2(47) and whether the same gives rise to capital gains chargeable to tax u/s 45 and 48 of the Income-tax Act (Act) explained in the context of the provisions of the Transfer of Property Act, Registration Act and real income theory

Held*:*

- If an agreement, is not registered, then it shall have no effect in law for the purposes of Section 53A. There is no agreement in the eyes of law which can be enforced under Section 53A of the Transfer of Property Act. In order to qualify as a “transfer” of a capital asset under

Section 2(47) (v) of the Act, there must be a “contract” which can be enforced in law under Section 53A of the Transfer of Property Act.

- It is only where the contract contains all the six features mentioned in Shrimant Shamrao Suryavanshi (supra) that the Section applies, and this is what is meant by the expression “of the nature referred to in Section 53A”.

- As has been stated above, there is no contract in the eye of law in force under Section 53A after 2001 unless they said contract is registered. This being the case, and it being clear that the said JDA was never registered, since the Joint Development Agreement has no efficacy in the eye of law, obviously no “transfer” can be said to have taken place under the aforesaid document

CIT vs. Chet Ram (HUF)

Section 45(5): Enhanced compensation and interest thereon under an interim order passed by the High Court in pending appeals relating to land acquisition matter are liable to be assessed for income tax in the year in which it has been received

Held*:*

- Section 45(5) read as a whole (including 3 clause (c)) not only deals with reworking as urged on behalf of the assessee but also with the change in the full value of the consideration (computation) and since the enhanced compensation/consideration (including interest under Section 28 of the 1894 Act) becomes payable/paid under the 1894 Act at different stages, the receipt of such enhanced compensation/consideration is to be taxed in the year of receipt subject to adjustment, if any, under Section 155 (16) of the 1961 Act, later on.

- The year in which enhanced compensation is received is the year of taxability. Consequently, even in cases where pending appeal, the Court/tribunal/authority before which appeal is pending, permits the claimant to withdraw against security or otherwise the enhanced compensation (which is in dispute) the same is liable to be taxed under Section 45(5) of the 1961 Act. This is the scheme of Section 45(5) and Section 155 (16) of the 1961 Act.

- The Apex Court clarifies that even before the insertion of Section 45(5)(c) and Section 155(16) w.e.f. 1/4/2004, the receipt of enhanced compensation under Section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of clause (c) because the right to receive payment under the 1894 Act is not in doubt

M/s N. K. Jewellers vs. CIT

Section 132: The plea that the search proceedings initiated u/s 132 are invalid and that the block assessment proceedings are without jurisdiction cannot be entertained because Section 132A provides that the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal as recorded by Income Tax Authority u/s 132 or 132A

Held:

- ☐ In view of the amendment made in Section 132A of the Income Tax Act, 1961 by Finance Act of 2017, the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal as recorded by Income Tax Authority under Section 132 or Section 132A.

- ☐ We find that the explanation given by the appellant regarding the amount of cash seized by the authorities has been disbelieved and has been treated as income not recorded in the Books of Account maintained by it

The Citizens Cooperative Society Ltd vs. ACIT

Section 80P Test of Mutuality: An assessee cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members if it has carved out a category called 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in the real sense. Most of the business of the assessee was with this category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society

Held:

- ☐ It is pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members and another category of 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense.

- ☐ Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilized to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quiet distinct.

- ☐ Such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies.

- ☐ With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act

Raj Dadarkar & Associates vs. ACIT

Law on tests to be applied to determine whether income from property is chargeable as "Income from house property" or as "Profits and gains of business" explained. The objects clause is not determinative. Income earned from a shopping centre is required to be taxed under the head "Income from House Property" (Chennai Properties 373 ITR 673 (SC) and Rayala Corporation distinguished)

Held:

- ☐ Wherever there is an income from leasing out of premises and collecting rent, normally such an income is to be treated as income from house property, in case provisions of Section 22 of the Act are satisfied with primary ingredient that the assessee is the owner of the said building or lands appurtenant thereto.
- ☐ Section 22 of the Act makes 'annual value' of such a property as income chargeable to tax under this head. How annual value is to be determined is provided in Section 23 of the Act. 'Owner of the house property' is defined in Section 27 of the Act which includes certain situations where a person not actually the owner shall be treated as deemed owner of a building or part thereof. In the present case, the appellant is held to be "deemed owner" of the property in question by virtue of Section 27(iiib) of the Act.
- ☐ On the other hand, under certain circumstances, where the income may have been derived from letting out of the premises, it can still be treated as business income if letting out of the premises itself is the business of the assessee

Palam Gas Service vs. CIT

Section 40(a) (IA): Section 194C read with Section 200 are mandatory provisions. The disallowance stipulated in Section 40(a) (IA) for failure to deduct TDS u/s 194C is one of the consequences for the default. Accordingly, though there is a difference between "paid" and "payable", Section 40(a)(ia) covers not only those cases where the amount is payable but also when it is paid. The contrary interpretation that Section 40(a) (IA) applies only to cases where amounts are "payable" will result in defaulters going scot free

Held:

- ☐ It is clear that Section 40(a) (IA) deals with the nature of default and the consequences thereof. Default is relatable to Chapter XVIIB (in the instant case Sections 194C and 200, which provisions are in the aforesaid Chapter).
- ☐ When the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word 'payable' occurring in Section 40(a) (ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid.

CIT vs. Equinox Solution Pvt. Ltd

Section 45/ 50(2): If an undertaking is sold as a running business with all assets and liabilities for a slump price, no part of the consideration can be attributed to depreciable assets and assessed as a short-term capital gain u/s 50(2). If the undertaking is held for more than three years, it constitutes a "long-term capital asset" and the gains are assessable as a long-term capital gain

Held:

- The case of the respondent (assessee) does not fall within the four corners of Section 50 (2) of the Act. Section 50 (2) applies to a case where any block of assets are transferred by the assessee but where the entire running business with assets and liabilities is sold by the assessee in one go, such sale, in our view, cannot be considered as "short-term capital assets".

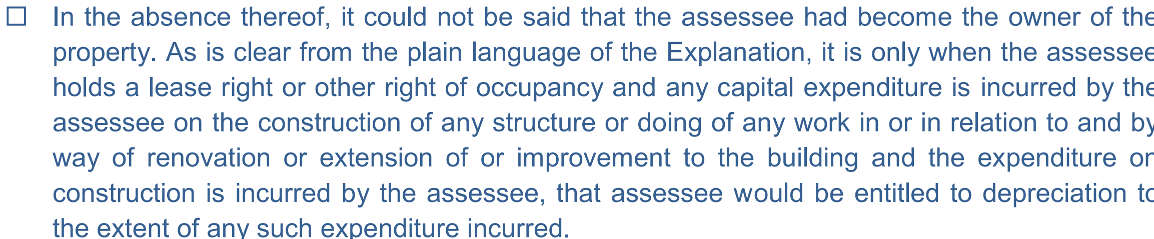
- The provisions of Section 50 (2) of the Act would apply to a case where the assessee transfers one or more block of assets, which he was using in running of his business. Such is not the case here because in this case, the assessee sold the entire business as a running concern

Mother Hospital Pvt. Ltd vs. CIT

Section 32: Title to immovable property cannot pass when its value is more than Rs.100/- unless it is executed on a proper stamp paper and is also duly registered with the sub-Registrar. Accordingly, a lessee cannot be said to be the "owner" for purposes of claiming depreciation. Under Explanation 1 to Section 32, the lessee is entitled to depreciation on the cost of construction incurred by him but not on the cost incurred by the owner and reimbursed by the lessee

Held:

- Building which was constructed by the firm belonged to the firm. It is an immovable property. The title in the said immovable property cannot pass when its value is more than Rs.100/- unless it is executed on a proper stamp paper and is also duly registered with the sub-Registrar.



- In the absence thereof, it could not be said that the assessee had become the owner of the property. As is clear from the plain language of the Explanation, it is only when the assessee holds a lease right or other right of occupancy and any capital expenditure is incurred by the assessee on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of or improvement to the building and the expenditure on construction is incurred by the assessee, that assessee would be entitled to depreciation to the extent of any such expenditure incurred.

- Records show that the construction was made by the firm. It is a different thing that the assessee had reimbursed the amount. The construction was not carried out by the assessee himself. Therefore, the explanation also would not come to the aid of the assessee

HIGH COURT DECISIONS

JRD STOCK BROKERS (P.) LTD. VS. COMMISSIONER OF INCOME TAX-II, NEW DELHI HIGH COURT

Facts:

- The income offered in the block return was claimed as has been derived from the share business. However, in the course of the search the assessee had admitted that the said amount included accommodation entries.
- Estimation of income directed by the Tribunal was accepted by the assessee. Penalty u/s. 158BFA (2) was imposed.
- The case of the assessee was that levy of penalty cannot be based on an estimation or a voluntary act of the assessee such as surrender.

Issue:

- SLP dismissed against High Court's ruling that where assessee claimed a sum to have been derived from share business but in course of search proceedings admitted under Section 132(4) that it included accommodation entries, levy of penalty under section 158BFA was justified.

Held:

- Confirming the penalty, the Delhi High Court held that since determination of additional income in the course of block assessment order was based upon a material discovered, i.e., the statement made by the assessee u/s. 132(4) that radically changed the character of income originally declared and therefore, levy of penalty was justified. The SLP filed by the assessee company was dismissed without assigning any reason.

SMT. FATHIMA HARRIS [TS-390-HC-2017 (MAD.)]

Facts:

- The assessee engaged in the export of garments, made payment of commission on exports to an agent of Hong Kong Company situated in India and claimed deduction of the expenditure without deducting TDS contending that as the services were rendered outside India by the non-resident, the same was not taxable in India.
- The AO disallowed the expenditure u/s. 40(a) (i) on the ground that the assessee ought to have deducted tax on the commission payment since the payment was made in India.
- The CIT (A) observing that the assessee's export sales had been effected through the Indian concern and the commission payment was made in India, confirmed the disallowance made by the AO u/s. 40(a) (i). The Tribunal upheld the order of the AO.
- Aggrieved, the assessee appealed before the High Court.

Issue:

- The Court confirmed Tribunal's Order holding that the commission payments made to Indian agent of non-resident in India was taxable in India and non-deduction of tax on such payment would lead to disallowance of expenditure u/s. 40(a)(i).

Held:

- The Court observing that the commission payment was actually received in India, confirmed the disallowance u/s. 40(a)(i) and held that the commission payments received by the Indian agent of non-resident in India were taxable in India.
- It rejected assessee's reliance on CBDT Circular No. 786 dated 7-2-2000 (which provided that no tax was deductible u/s. 195 on export commission and other related charges payable to a non resident for services rendered outside India) by holding that the same was applicable only for foreign agents of Indian exporters while in the present case commission was received in India by an agent of the foreign entity.

HAIER APPLIANCES (INDIA) P. LTD. [TS-684-HC-2017(DEL.)-TP]

Facts:

- The assessee, manufacturer of consumer products had entered into an agreement with its AE viz., Haier Electrical Appliances Corp. Ltd., China, whereby the assessee had used and promoted the trademark and brand name owned by Haier China and had incurred Advertisement, marketing and promotional (AMP) expenditure.
- The TPO noting that AMP/sales ratio of the assessee was 16.04% as compared to 3.87% of the comparables, held that the advertisement expenses over and above the normal AMP expenses incurred by the comparables was towards brand building and accordingly, he made TP adjustment.
- The DRP confirmed the action of TPO.
- Relying on the decision of Delhi High Court in the case of Sony Ericsson Mobile Communications vs. CIT (2015) 374 ITR 118 (Del.), the Tribunal remanded the matter to the AO/TPO with the direction to examine all the functions carried out by comparables as per the guidelines laid down by the High Court.
- Aggrieved, the assessee appealed before the High Court contending that at the time the Tribunal passed the order, it did not have the benefit of order subsequently passed by Delhi High Court in the case of Sony Ericsson Mobile Communications vs. CIT (order dated 28th January 2016 in ITA 638 of 2015) and Daikin Air conditioning India Pvt Ltd. (order dated 27th July 2016 in ITA 269/2016) wherein it was held that prior to commencing TP exercise, the existence of an international transaction involving the assessee and its AE had to be first established and the Court had accordingly remanded the matter to the Tribunal.

Issue:

- The Court quashed Tribunal's Order remanding the AMP issue to the TPO and directed the Tribunal to decide itself whether in the first place there existed international transaction involving the assessee and its AE

Held:

- ☐ The Court observed that since the Tribunal had not examined whether there existed international transaction involving the assessee and its AE in the first place the matter was to be restored to the file of the Tribunal in the light of its subsequent decision in Sony Ericsson (supra).

ACIT VS. EPSON INDIA PVT. LTD

Stay of demand: Pr CIT & ACIT directed to pay personal costs for filing frivolous writ petition to challenge Tribunal stay order. Raising unsustainable, illegal and high pitched demands and enforcing coercive recovery and challenging stay orders shows utterly irresponsible and unfair behaviour. Thereafter, seeking adjournments by the Revenue of the hearing in the Tribunal adds insult to the injury. Irresponsible and uncoordinated manner of the Revenue strongly deprecated

Held:

- ☐ The efforts of the Revenue to prove their point that they had a good case on merits before the Constitutional Courts rather than respecting the orders passed by the statutorily created Tribunals not only shows lack of judicial discipline and hierarchical discipline which they should maintain, but treating the constitutional remedies as a vested right with them.
- ☐ First raising unsustainable, illegal and high pitched demands and then seeking to coercively recover the same even showing scant regard to the orders passed by highest Tribunal under the Act and for that invoking the writ jurisdiction to seek support to their such effort is an irresponsible and unfair behaviour.

CIT VS. HERCULES HOISTS LTD

Section 80-IA(5): Only losses of the years beginning from the initial assessment year are to be brought forward for set-off against profits of the eligible unit. Losses of earlier years which are already set off against income cannot be brought forward notionally for set-off. The fiction in Section 80-IA(5) is created only for a limited purpose and cannot be extended

Held:

- ☐ The eligible business were the only source of income, during the previous year relevant to the initial assessment year and every subsequent assessment years. When the assessee exercises the option, the only losses of the years beginning from initial assessment year alone are to be brought forward and no losses of earlier years which were already set off against the income of the assessee. Looking forward to a period of ten years from the initial assessment is contemplated.
- ☐ It does not allow the Revenue to look backward and find out if there is any loss of earlier years and bring forward notionally even though the same were set off against other income of the assessee and the set off against the current income of the eligible business. Once the set off is taken place in earlier year against the other income of the assessee, the Revenue

cannot rework the set off amount and bring it notionally. The fiction is created only for the limited purpose and the same cannot be extended beyond the purpose for which it is created

KALPANA SHANTILAL HARIA VS. ACIT

Section 147/ 292B: Sanction for issuing a reopening notice cannot be mechanical but has to be on due application of mind. Sanction accorded despite mention of non-existent section in the notice is prima facie evidence of non application of mind on the part of the sanctioning authority. Section 292B cannot cure such defect

Held*:*

- There can be no dispute with regard to the application of Section 292B of the Act to sustain a notice from being declared invalid merely on the ground of mistake in the notice. The issue is whether there was due application of mind by the Joint Commissioner of Income Tax while giving the necessary sanction for issuing the impugned notice.
- It is a settled principle of law that sanction granted by the higher Authority for issuing of a reopening notice has to be on due application of mind. It cannot be mechanical approval without examining the proposal sent by the Assessing Officer.

MAHARAJ GARAGE & COMPANY VS. CIT

Section 271(1)(c) Penalty: The requirement to obtain previous approval of the IAC is mandatory as it is to safeguard the interests of the assessee against arbitrary exercise of power by the Assessing Officer. Non-compliance may vitiate the penalty order. However, the requirement in Section 274 that the assessee must be given a reasonable opportunity of being heard cannot be stretched to the extent of framing a specific charge or asking the assessee an explanation in respect of the quantum of penalty proposed to be imposed

Held*:*

- The provision of Section 271(1)(c)(iii) of the Income Tax does not attract the rule of presumption of mens rea and it cannot be equated with the provision in the Criminal Statute. The penalty is for default in complying with the provision, i.e. of furnishing true and correct particulars of the income in the return. The penalty is imposable for breach of the civil obligation.
- It is only the reasonable opportunity of being heard in the matter, which is required to be provided to the assessee. The enquiry seems to be of summary in nature, which does not even call for issuance of show cause notice in respect of the quantum of penalty proposed to be imposed. While exercising the discretion in respect of the quantum of penalty, the explanation furnished by the assessee to mitigate the rigour of penalty has to be considered, having regard to the intention of the assessee, if any, to evade the tax, as one of the factor

AMBIENCE HOSPITALITY PVT. LTD VS. DCIT

Section 276C/277 Prosecution: Submission that claim of depreciation on land was a "mere clerical mistake" is not acceptable if the assessee did not file a revised return to correct the

alleged mistake. A claim in a return which is scrutinized by the auditors and the directors cannot be considered as a mere accounting mistake

Held*:*

- It is a manifest procedure that before filing of the Income Tax return by the petitioner, the same is scrutinized, firstly, by the auditors of the company. Secondly, by the directors of the company before endorsing their signatures on the final Balance Sheet. Therefore, it cannot be considered as a mere accounting mistake

PR CIT VS. PARADISE INLAND SHIPPING PVT. LTD

Section 68 Bogus share capital: Companies which invest share capital cannot be treated as bogus if they are registered and have been assessed. Once the assessee has produced documentary evidence to establish the existence of such companies, the burden shifts to the Revenue to establish their case. Reliance on statements of third parties who have not been subjected to cross examination is not permissible. Voluminous documents produced by the assessee cannot be discarded merely on the basis of statements of individuals contrary to such public documents

Held*:*

- Once the Assessee has produced documentary evidence to establish the existence of such Companies, the burden would shift on the Revenue-Appellants herein to establish their case. The Appellants were seeking to rely upon the statements recorded of two persons who have admittedly not been subjected to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons, would not at all be justified.
- The Assessing Officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents

PARADIGM GEOPHYSICAL PTY LTD VS. DCIT

Section 264 Revision: Powers and duties of the CIT while dealing with a revision application filed by an assessee explained

Held*:*

- Commissioner cannot refuse to entertain a revision petition filed by the assessee under Section 264 of the Act if it is maintainable on the ground that a similar issue has arisen for consideration in another year and is pending adjudication in appeal or another forum. Negative stipulations are clearly not attracted.
- When a statutory right is conferred on an assessee, the same imposes an obligation on the authority. New and extraneous conditions, not mandated and stipulated, expressly or by implication, cannot be imposed to deny recourse to a remedy and right of the assessee to have his claim examined on merits

THE CHAMBER OF TAX CONSULTANTS VS. UOI

Section 145(2) ICDS: Section 145 (2) has to be read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act. If Section 145 (2) is not so read down it would be ultra vires the Act and Article 141 read with Article 144 and 265 of the Constitution. The ICDS which overrule the provisions of the Act, the Rules there under and the judicial precedents applicable thereto, are struck down as ultra vires the Act. To that extent, Notification Nos. 87 and 88 dated 29.09.2016 and Circular No. 10 of 2017 issued by the CBDT are also held to be ultra vires the Act and struck down as such

Held:

- ☐ Section 145 (2), as amended, has to be read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act. The power to enact a validation law is an essential legislative power that can be exercised, in the context of the Act, only by the Parliament and not by the executive. If Section 145 (2) of the Act as amended is not so read down it would be ultra vires the Act and Article 141 read with Article 144 and 265 of the Constitution.
- ☐ The ICDS is not meant to overrule the provisions of the Act, the Rules there under and the judicial precedents applicable thereto as they stand. ICDS I which does away with the concept of 'prudence' is contrary to the Act and binding judicial precedents and is therefore unsustainable in law.

BSES RAJDHANI POWER LTD VS. PR CIT

Section 263 Revision: The failure to issue notice on any particular issue does not vitiate the exercise of power u/s 263, as long as the assessee is heard and given opportunity. The lack of opportunity at the revisional stage does not vitiate the entire order, or the proceedings. It is a curable defect. The CIT has power to consider all aspects which were the subject matter of the AO's order, if in his opinion, they are erroneous, despite the assessee's appeal on that or some other aspect

Held:

- ☐ This Court has repeatedly held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee.
- ☐ Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed

CIT VS. HEWLETT PACKARD GLOBAL SOFT LTD

Section 10A/ 10B: Entire law on the concept of "derived from" the undertaking and "purposive interpretation" of statutes explained. The incidental activity of parking surplus funds with banks or advancing of staff loans by assessees covered u/s 10-A or 10-B is an integral part of

their export business activity and a business decision taken in view of the commercial expediency. Such incidental income cannot be delinked from the profits and gains derived by the undertaking engaged from the export of specified goods and cannot be taxed separately u/s 56 of the Act

Held:

- ☐ Sections 10-A and 10-B of the Act are special provisions and complete code in themselves and deal with profits and gains derived by the assessee of a special nature and character like 100% Export Oriented Units (EOUs.) situated in Special Economic Zones (SEZs), STPI, etc., where the entire profits and gains of the entire Undertaking making 100% exports of articles including software as is the fact in the present case, the assessee is given 100% deduction of profit and gains of such export business and therefore incidental income of such undertaking by way of interest on the temporarily parked funds in Banks or even interest on staff loans would constitute part of profits and gains of such special Undertakings
- ☐ These cases cannot be compared with deductions under Sections 80-HH or 80-IB in Chapter VI-A of the Act where an assessee dealing with several activities or commodities may inter alia earn profits and gains from the specified activity and therefore in those cases, the Honourable Supreme Court has held that the interest income would not be the income "derived from" such Undertakings doing such special business activity

VIJAY VISHIN MEGHANI VS. DCIT

Strictures by ITAT against ICAI deprecated: It is very unfortunate that the Tribunal, out of sheer desperation and frustration and agitated by the fact that the Revenue is not opposing the request for condonation of delay blamed the assessee's Chartered Accountant and the ICAI on how they should conduct themselves. The Tribunal completely misdirected itself by taking irrelevant factors into account. Delay of 2984 days in filing the appeal caused by wrong advice of a professional is capable of condonation. However, even if the assessee has acted bona fide, he can be held liable for payment of costs to balance rights and equities

Held:

- ☐ The Tribunal, out of sheer desperation and frustration and agitated by the fact that the Department is not opposing the request for condonation of delay, turned its attention towards the assessee's Chartered Accountant.
- ☐ The Tribunal has, apart from seeking to advice professionals, blamed not only individual Chartered Accountants but equally the Institute of Chartered Accountants of India. It is unfortunate that Courts of law or Tribunals, which are the last fact finding authorities in this case, adopted this course

PR CIT VS. RELIANCE CAPITAL ASSET MANAGEMENT LTD

Section 14A/ Rule 8D: The Assessing Officer (AO) is not entitled to make any disallowance under Rule 8D if he does not specifically record that he is not satisfied with the correctness of the assessee's claim. The fact that the Commissioner of Income Tax (Appeals) and Tribunal

were not satisfied with the assessee's disallowance and enhanced it does not mean that Rule 8D becomes applicable and the disallowance should be computed as per the prescribed formula

Held:

- The Assessing Officer did not specifically record that he is not satisfied with the correctness of the claim of the assessee in respect of the expenditure in relation to the income which does not form part of the total income under the Act. However, he felt obliged and going by the presence of Rule 8D that once Section 14A is attracted, the disallowance is to be made as per Rule 8D only which has been prescribed by the Legislature. The Assessing Officer has not adverted to the plain language of subsection (2) of Section 14A

THYROCARE TECHNOLOGIES LIMITED VS. ITO (TDS)

Bombay High Court states that it is "most unhappy" with the manner in which the Tribunal has decided the appeal. The Tribunal remanded the matter to the AO without any discussion as to why the order of the Commissioner of Income Tax (Appeals) (CIT(A)) is perverse or is contrary to law. It also did not pint out infirmities or errors of fact and law in the order of the CIT(A). The Tribunal failed to perform its duty of rendering a complete decision. It is obliged in law to examine the matter and reappraise and re-appreciate all the factual materials

- There is no discussion by Tribunal of the law and why the coordinate Bench decision rendered at Delhi is either distinguishable on facts or inapplicable. There is no discussion, much less any finding and conclusion that the order of the First Appellate Authority is perverse or is contrary to law. There are no infirmities, much less serious errors of fact and law noted by the Tribunal in the order of the Commissioner, which the Tribunal is obliged to and which order is therefore interfered by the Tribunal.
- It should be indicated clearly why the Tribunal feels it is its duty and obligation to interfere with the order of the First Appellate Authority. There was no reference to any communication or to any document which would indicate that the six queries raised by the Tribunal on the assessee have not been answered, much less satisfactorily. The Tribunal should have, independent of the statements, referred to such of the materials on record which would disclose that the assessee has entered into such arrangements so as to avoid the obligation to deduct the tax at source.
- If the arrangements are sham, bogus or dubious, then such a finding should have been rendered.
- Bombay High Court set aside order stating that Tribunal has failed to perform its duty. It has also not rendered a complete decision. Once the Tribunal was obliged in law to examine the matter and reappraise and re-appreciate all the factual materials, then it should have performed that duty satisfactorily and in terms of the powers conferred by law

CIT VS. M/S GOLANI BROTHERS

Section 69C "On Money": If the unaccounted expenditure incurred is from the 'on money' received by the assessee, then, the question of making any addition u/s 69C does not arise because the source of the expenditure is duly explained. It is only the 'on money' which can be considered for the purpose of taxation. Once the 'on money' is considered as a revenue

receipt, then any expenditure out of such money cannot be treated as unexplained expenditure, for that would amount to double addition in respect of the same amount

Held:

- If the unaccounted expenditure is determined, then, necessarily the question which would arise for consideration before the Tribunal is whether the Assessing Officer was justified in making addition under Section 69C for the years under consideration.
- The Tribunal found that the explanation as derived from the records and placed by both can be traced to the 'on money' received at the time of booking/sale of shops. The statement of the senior partner is referred. The senior partner admitted that the sums have been received as 'on money' and at the stage aforesaid. Therefore, both the amounts, namely the 'on money' as well as the unexplained expenditure cannot be brought to tax, according to the Tribunal.
- If the unaccounted expenditure so incurred was from the 'on money' received by the assessee, then, the question of making any addition under Section 69C does not arise because the source of the expenditure is duly explained. It is only the 'on money' which can be considered for the purpose of taxation.
- The Tribunal therefore concluded and once the 'on money' is considered as revenue receipt, then any expenditure out of such money cannot be treated as unexplained expenditure, for that would amount to double addition in respect of the same amount

CIT VS. SHREEDHAR SEWA TRUST

Section 12AA: At the time of registration of a charitable institution u/s 12AA, the CIT is not required to look into the activities, where such activities have not or are in the process of its initiation. The registration cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. At this stage, only the genuineness of the objects has to be tested and not the activities, unless such activities have commenced

Held:

- At the time of registration under section 12AA of the Income-tax Act, which is necessary for claiming exemption under sections 11 and 12 of the Act, the Commissioner of Income-tax is not required to look into the activities, where such activities have not or are in the process of its initiation.
- Where a trust, set up to achieve its objects of establishing educational institution, is in the process of establishing such institutions, and receives donations, the registration under section 12AA cannot be refused, on the ground that the trust has not yet commenced the charitable or religious activity.
- Only the genuineness of the objects has to be tested and not the activities, which have not commenced. The trust or society cannot claim exemption, unless it is registered under section 12AA of the Act and thus at that such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused

ARUNKUMAR J. MUCHHALA VS. CIT

Section 68: Argument that the assessee did not maintain "books of account" and so Section 68 will not apply is not acceptable. It is incumbent on every assessee doing business to maintain proper books of account. It may be in any form. If the assessee has not done so, he cannot be allowed to take advantage of his own wrong. Burden lies on the assessee to show from where he has received the amount and what is its nature

Held:

- ☐ Appellant said that he has not maintained books of accounts and therefore, those amounts cannot be considered. When Appellant is doing business, then it was incumbent on him to maintain proper books and/ or books of account. It may be in any form.
- ☐ If he had not maintained it, then he cannot be allowed to take advantage of his own wrong. Burden lies on him to show from where he has received the amount and what is its nature.
- ☐ Unless this fact is explained he cannot claim or have deduction of the said amount from the income tax. Section 68 of Income Tax Act,1961 provides that where the assessee offers no explanation about the nature and source of the credits in the books of account, all the amounts so credited or where the explanation offered by the assessee is not satisfactory in relation to the same then such credits may be charged to tax as income of the assessee for that particular previous year

PR CIT VS. BIKRAM SINGH

Section 68: The use of deceptive loan entries to bring unaccounted money into banking channels plagues the legitimate economy of our country. The mere fact that the identity of the lenders is established & payments are made by cheques does not mean they are genuine. If the lenders do not have the financial strength to lend such huge sums and if there is no explanation as to their relationship with the assessee, no collateral security and no agreement, the transactions have to be treated as bogus unexplained credits

Held:

- ☐ The transactions in the present appeal are yet another example of the constant use of the deception of loan entries to bring unaccounted money into banking channels. This device of loan entries continues to plague the legitimate economy of our country.
- ☐ The transactions herein clearly do not inspire confidence as being genuine, why the so-called creditors would lend such huge unsecured, interest free loans without any agreement.
- ☐ In the absence of the same, the creditors fail the test of creditworthiness and the transactions fail the test of genuineness

H. T. MEDIA LIMITED VS. PR CIT

Section 14A/ Rule 8D: Entire law explained on what constitutes proper recording of satisfaction by the Assessing Officer (AO), scope of disallowance of interest expenses under Rule 8D(2)(i), admin expenses under Rule 8D(2)(iii), need for nexus between borrowed funds and tax-free investments and power of the ITAT to remand to the AO

Held:

- In order to disallow this expense the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the Assessee's claim being the administrative expenses. This was mandatorily necessitated by Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules.
- Consequently on the aspect of administrative expenses being disallowed, since there was a failure by the AO to comply with the mandatory requirement of Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules and record his satisfaction as required there under, the question of applying Rule 8D (2) (iii) of the Rules did not arise

SYSTRA SA PROJECT OFFICE VS. DRP

Section 144C DRP: Action of the DRP in granting time to the assessee till 24th July 2017 to submit documents but in still passing the order on the same day itself and that too without taking on record the documents produced by the assessee is clearly unreasonable and in violation of the principles of natural justice

Held:

- The Respondent acted in violation of the principles of natural justice, since despite the time being granted to the Petitioner till 24th July 2017 to submit documents sought by the DRP, the DRP passed the order on 24th July, 2017 itself and that too without taking on record the documents produced by the Petitioner.
- The time given for the Petitioner to do so was just four days. This was clearly unreasonable, particularly, since there was an intervening weekend between 20th and 24th July, 2017

PR CIT VS. EMIRATES TECHNOLOGIES PVT LTD

Section 271AAA: No penalty u/s 271AAA can be levied in respect of undisclosed income found during a search u/s 132 if the AO did not put a specific query to the assessee by drawing his attention to Section 271 AAA and asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived

Held:

- The Commissioner of Income Tax (Appeals) CIT(A) noted that no specific query had been put to the Assessee by drawing his attention to Section 271 AAA of the Act asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived.
- The CIT (A), therefore, relying on the decisions of this Court held that the jurisdictional requirement of Section 271AAA was not met. The above view has been concurred with by the ITAT. In the facts and circumstances of the case, the Court is of the view that the concurrent decision of the CIT(A) and the ITAT represent a plausible view which cannot be said to be perverse

CIT VS. VODAFONE ESSAR GUJARAT LTD

Section 115JA/ JB Book Profits: Clause (i) to the Explanation was inserted to supersede HCL Comnet 305 ITR 409 (SC). Accordingly, a mere provision for bad debts has to be added back for computation of book profit u/s 115JA/JB. However, in terms of Vijaya Bank 323 ITR 166 (SC), if there is a simultaneous reduction from the loans and advances on the asset side of the balance sheet, the provision amounts to a write-off of the debt which is not hit by clause (i) of the Explanation to section 115JB

Held:

- ☐ With insertion of clause (i) to the explanation with retrospective effect, any amount or amounts set aside for provision for diminution in the value of the asset made by the assessee, would be added back for computation of book profit under section 115JB of the Act.
- ☐ However, if this was not a mere provision made by the assessee by merely debiting the Profit and Loss Account and crediting the provision for bad and doubtful debt, but by simultaneously obliterating such provision from its accounts by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year showing the loans and advances on the asset aside of the balance sheet as net of the provision for bad debt, it would amount to a write off and such actual write off would not be hit by clause (i) of the explanation to section 115JB

PR CIT VS. BEST INFRASTRUCTURE (INDIA) PVT LTD

Section 68: Statements recorded u/s 132 (4) do not by themselves constitute incriminating material. A copy of the statement together with the opportunity to cross-examine the deponent has to provided to the assessee. If the statement is retracted and/or if cross-examination is not provided, the statement has to be discarded. The onus of ensuring the presence of the deponent cannot be shifted to the assessees. The onus is on the Revenue to ensure his presence

Held:

- ☐ A copy of the statement of Mr. Tarun Goyal, recorded under Section 132 (4) of the Act, was not provided to the Assessees. Mr. Tarun Goyal was also not offered for the cross-examination. The remand report of the Assessing Officer (AO) before the Commissioner of Income Tax(Appeals) (CIT(A)) unmistakably showed that the attempts by the AO, in ensuring the presence of Mr. Tarun Goyal for cross-examination by the Assessees, did not succeed.
- ☐ The onus of ensuring the presence of Mr. Tarun Goyal, whom the Assessees clearly stated that they did not know, could not have been shifted to the Assessees. The onus was on the Revenue to ensure his presence. Apart from the fact that Mr. Tarun Goyal has retracted his statement, the fact that he was not produced for cross-examination is sufficient to discard his statement.
- ☐ Statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material

PREMLATA PURSHOTTAM PALDIWAL VS. CIT

Interest on interim compensation received pending final disposal by the High Court is income if there is no direction given by the Court. The source of funds to earn income cannot determine the taxability of the income. The fact that the assessee may have to return the compensation and interest on the principle of restitution as provided under Section 144 of the Civil Procedure Code is not relevant because restitution is not a certainty. Paragon Construction 274 ITR 413 (Del) distinguished

Held:

- The source of funds to earn income cannot determine the taxability of the income earned on the capital amount which has been invested. This in the absence of any statutory mandate otherwise. The income earned would be chargeable to tax irrespective of the source of the funds from which the income has been earned.
- In the mercantile system of accounting, income accrues when the right to receive the same arises, even though the actual receipt could be at a later date.
- In the present case it is an accepted position that the right to receive the interest from the fixed deposits already accrued to the assessee. In such circumstances, the interest on the fixed deposit would be chargeable to tax, as sought to be done by the Assessing Officer under the head income from other sources

MAHAVIR MANAKCHAND BHANSALI VS. CIT

Section 158BFA(1): If the delay in filing the return is completely attributable to the revenue for non-furnishing of copies of the documents and not giving inspection of the documents seized within a reasonable time after making the demand, the interest has to waived. Though Section 158BFA(1) does not (pre 2002) confer the power to waive interest, it has to be read in on equitable construction because the subject cannot be made to pay for the negligence of the Officers of the State (J. H. Gotla 4 SCC 343 followed)

Held:

- There can be no dispute that bare reading of section 158BFA(1) does not provide for any discretion to waive and/or reduce the interest imposable on account of the late filing of the return of income.
- It is a settled position in law that a fiscal statute has to be strictly interpreted, particularly when there is no ambiguity in the statute. The normal rule of interpreting a fiscal statute is the literal rule of interpretation. However, when the Parliament makes a law, it proceeds on the basis that the Executive i.e. the State will act fairly and not cause unjustified burden upon the subject.
- The provisions of Section 158BFA(1) of the Act proceeds on the above premise and it was expected of the State to grant copies of the documents seized and/or inspection of the record as expeditiously as possible, so as to enable the appellant to file his return of income as delay in filing of return, leads to levy of interest.
- This not having been done, as was expected under the Statute, the subject cannot be made to pay for the negligence of the Officers of the State. Therefore, in a case like this where strict construction may result in injustice, an equitable construction may be preferred

CIT VS. ORYX FINANCE AND INVESTMENT PVT. LTD

Section 221: A reading of Section 221 conjointly with the definition of “tax” in Section 2(43) leads to the irresistible conclusion that the phraseology “tax in arrears” in Section 221 would not take within its realm the interest component. The Assessing Officer can impose penalty for default in making the payment of tax, but the same shall not exceed the amount of tax in arrears. Tax in arrears would not include the interest payable u/s 220(2) of the Act

Held:

- ☐ Section 221 in its entirety, it is abundantly clear that the aspect of default in payment of tax and the amount of interest payable are treated as distinct and separate components. The section categorically and specifically states that when an Assessee is in default or is deemed to be in default in making payment of tax, he shall in addition to the amount of arrears and the amount of interest payable under Sub section 2 of Section 220, be liable, to pay penalty, however the amount of penalty does not exceed the amount of tax in arrears.
- ☐ The terminology “default in making a payment of tax and amount of interest payable” are considered to be separate for imposition of penalty and penalty is to be levied on account of default in making a payment of tax.
- ☐ However, the total amount of penalty shall not exceed the amount of tax in arrears. The said penalty for non payment of the tax is in addition to the levy of interest under Sub Section 2 of Section 220.
- ☐ Under no principle of interpretation, the arrears of tax as laid down in the said Section would include the amount of interest payable under Sub Section 2 of Section 220. The amount of penalty will have to be restricted on the arrears of tax, which would not include the interest component charged under Section 220(2) of the Act

CIT VS. ORCHID INDUSTRIES PVT. LTD

Section 68 Bogus share capital: Mere fact that parties to whom the share certificates were issued and who had paid the share capital money were not traceable and did not appear before the Assessing Officer in response to summons does not mean that the transaction can be treated as bogus if the documentation shows the genuineness of the transaction

Held:

- ☐ The Assessing Officer added Rs.95 Lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account

CIT VS. LAVANYA LAND PVT. LTD

Section 69C/ 153C: An admission of the assessee which is retracted cannot be the basis of addition. The allegations made by the authorities have to be supported by actual cash passing hands. The addition cannot be sustained in the absence of material which would conclusively show that huge amounts revealed from the seized documents are transferred from one side to

another and if the Revenue did not bring on record a single statement of the vendors of the land in different villages and if none of the sellers has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands

Held:

- Dilip Dherai has retracted his statement so the Tribunal arrived at the conclusion that merely on the strength of the alleged admission in the statement of Dilip Dherai, the additions could not have been made.
- The concurrent findings of fact would demonstrate that the essential ingredients of Section 69C of the Income Tax Act enabling the additions were not satisfied. This is not a case of 'no explanation'. Rather, the Tribunal concluded that the allegations made by the authorities are not supported by actual cash passing hands.
- The entire decision is based on the seized documents and no material has been referred which would conclusively show that huge amounts revealed from the seized documents are transferred from one side to another.
- In that regard, the Tribunal found that the Revenue did not bring on record a single statement of the vendors of the land in different villages. None of the sellers has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands

DIT VS. ROLLS ROYCE INDUSTRIAL POWER INDIA LTD

Section 147/148 reassessment has to be based on "fresh material". A reopening based on reappraisal of existing material is invalid. The assessee's duty is only to disclose facts and not to make inferences. Consolidated Photo 281 ITR 394 (Del) is not good law

Held:

- The reopening was not based on any fresh material. By revisiting the same materials the successor Assessing Officer (AO) now concluded that the payments received by the Assessee pursuant to the O&M Agreements should be treated as Fees for Technical Services.
- The view taken by a successor AO on the same material was indeed nothing but a mere change of opinion.
- It is a well-settled legal proposition, as explained in Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191(SC) that once an Assessee has discharged the burden of not only producing the account books and other documents, but also the specific material relevant to the assessment, "it is for the Income-tax Officer to draw the proper inferences of fact and law therefrom and the Assessee cannot further be called upon to do so for him."
- In Indian Oil Corporation v. ITO [1986] 159 ITR 956 the Court pertinently observed "it is for the taxing authority to draw inference. It is not necessary for the Assessee to draw inference."

CIT VS. PASHUPATI NATH AGRO FOOD PRODUCTS PVT. LTD

Section 145: If the Assessing Officer has not rejected the books of account, it means that the assessee has maintained the books of accounts in accordance with the prescribed standards as per s. 145 of the Act. If so, the AO is not entitled to make any addition on account of sale of goods out of books or for investment in stock out of undisclosed sources

Held:

- ☐ The assessee has maintained the books of accounts in accordance with the prescribed standard as per Section 145 of 'the Act'. The account books have not been rejected by the assessing officer.
- ☐ In view of the above, the Tribunal formed an opinion where once the account books are expected to be maintained in the prescribed accounting standard, the assessing officer could not have made any additions towards the sale of rice treating it to be outside the books of accounts or towards investing in stock of rice and wheat outside the books of accounts

VIKRAM SINGH VS. UOI

Section 279: As there is no time limit prescribed for filing an application for compounding of an offense, the CBDT is not entitled to reject an application on the ground of 'inordinate delay'. The CBDT has no jurisdiction to demand that the assessee pay a 'pre-deposit' as a pre-condition to considering the compounding application. The larger question as whether in the garb of a Circular the CBDT can prescribe the compounding fee in the absence of such fee being provided for either in the statute or prescribed under the rules is left open

Held:

- ☐ The Court finds nothing in Section 279 of the Act or the Explanation there under to permit the CBDT to prescribe such an onerous and irrational procedure which runs contrary to the very object of Section 279 of the Act.
- ☐ The CBDT cannot arrogate to itself, on the strength of Section 279 of the Act or the Explanation there under, the power to insist on a 'pre-deposit' of sorts of the compounding fee even without considering the application for compounding.
- ☐ The Court clarifies that the Department cannot on the strength of Para 11(v) of the Circular dated 23rd December 2014 of the CBDT reject an application for compounding either on the ground of limitation or on the ground that such application was not accompanied by the compounding fee or that the compounding fee was not paid prior to the application being considered on merits

ULTRATECH CEMENT LTD VS. ACIT

An additional ground (relating to claim u/s 80-IA) cannot be permitted to be raised if the necessary evidence that the assessee is entitled to the claim is not on record. The fact that claim has been allowed by the AO in a subsequent year and that there is no reason why the claim should not be allowed in the present year is irrelevant. Also, the assessee must satisfy the appellate authority that the ground now raised was bona fide and the same could not have been raised earlier for good reasons

Held:

- ☐ For the subject assessment year, the appellant assessee had not claimed benefit of Section 80IA of the Act in respect of its Jetty / Port either before the Assessing Officer or before the CIT(A).

- ☐ A claim for benefit under Section 80IA of the Act can only be made if the infrastructure facility such as Jetty / Port is, among other things, being run on the basis of an agreement for either developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility.
- ☐ The sine qua non provided in Sub Section (7) of Section 80IA of the Act is the furnishing along with its Return of Income, a report of audited accounts in Form 10CCB as required under Rule 18BBB(3) of the Act.
- ☐ It is only on examination of those details as submitted by the auditor in Form 10CCB that the claim of deduction can be considered.
- ☐ For the subject assessment year, no Form 10CCB has been filed by the appellant assessee. Therefore, there is no evidence on record for subject assessment year to allow the claim. The submission of the appellant that primary evidence in the form of jetty is on record is not acceptable.
- ☐ Mere ownership or existence of jetty is not evidence of eligibility to the benefit of Section 80IA of the Act, which is admittedly conditional upon satisfaction of certain requirements as provided therein

RASIKLAL M. PARIKH VS. ACIT

(i) Additional Evidence: Ordinarily an application seeking admission of additional evidence under Rules 18 and 29 of ITAT Rules requires an order to be passed. If the ITAT rejects the application, reasons thereof have to be stated.

(ii) Section 54F: The allotment letter issued by the developer does not confer title until the agreement for sale under the provisions of the MOFA is registered. Failure to deposit the amount of consideration not utilized towards the purchase of new flat in the specified bank account before the due date of filing return of Income u/s 139(1) is fatal to the claim for exemption. Humayun Suleman Merchant vs. CCIT is not per incuriam

Held*:*

- ☐ The appellant has to obtain the allotment letter from the developer under the provision of Maharashtra Ownership of Flats Act, 1963 (MOFA) and not from the co-operative society.
- ☐ The allotment letter issued by the developer does not confer title until the agreement for sale under the provisions of the MOFA is registered. In the present case, the agreement for sale was entered into only on 24th November, 2008 beyond the period of three years from the date of surrender of tenancy which was 13th September, 2005.
- ☐ Moreover, the developer had no approval for construction of the 9th floor of Wing ‘C’, wherein the assessee had booked three flats and such approval was received by the builders only on 7th September, 2010. Thus, there is no question of assessee establishing the title over the property which was not been approved for construction at the material time

SAMSON MARITIME LTD VS. CIT

Section 271(1)(c): A disclosure of income, or withdrawal of claim for deduction, by the assessee after a specific Section 142(1)/ 143(2) notice is issued cannot be said to be a "voluntary disclosure" so as to avoid the levy of penalty. The argument that the earlier non-

disclosure of income/ wrong claim for expenditure was due to "mistake" is not an acceptable defence (Mak Data 358 ITR 593 (SC) followed, Price Waterhouse Coopers 348 ITR 306 (SC) distinguished)

Held:

- So called mistake as claimed by the assessee, was only after notices dated 14th January, 2009 were issued under Sections 142 and 143 of the Act.
- It was only an attempt to pre-empt the Department finding out the assessee had furnished inaccurate particulars. Therefore, it cannot be said that it was voluntary disclosure.

FLIPKART INDIA PRIVATE LIMITED VS. ACIT

Section 220(6) stay of demand: CBDT Circular dated 29.2.2016 does not supersede Instruction No.1914 but modifies it. Both have to be read together. The Assessing Officer (AO) and Commissioner of Income Tax (CIT) cannot straightaway demand payment of 15% of the dues but have to grant complete stay if the assessment is “unreasonably high pitched” or the demand for depositing 15% of the disputed demand leads to "genuine hardship" to the assessee”

Held:

- Instruction No.4 (B)(b) of the Circular dated 29.2.2016, gives two instances where less than 15% can be asked to be deposited. The factors, which were directed to be kept in mind both by the Assessing Officer, and by the higher superior authority, contained in Instruction No.2-B(iii) of Circular No.1914, still continue to exist. The said part of Circular No.1914 has been left untouched by the Circular dated 29.2.2016.
- While dealing with an application filed by an assessee, both the Assessing Officer, and the Prl. CIT, are required to see if the assessee’s case would fall under Instruction No.2-B(iii) of Circular No.1914, or not
- Both the Assessing Officer, and the Prl. CIT, are required to examine whether the assessment is “unreasonably high pitched”, or whether the demand for depositing 15% of the disputed demand amount “would lead to a genuine hardship being caused to the assessee” or not

PR. CIT VS. NEERAJ JINDAL

Section 271(1)(c): Entire law explained on whether levy of penalty is automatic if return filed by the assessee u/s 153A discloses higher income than in the return filed u/s 139(1) in the context of the law as it stood prior to, and after, the insertion of Explanation 5 to Section 271(1)(c). Also, the law on levy of penalty on revised returns explained

Held:

- When the Assessing Officer has accepted the revised return filed by the assessee under Section 153A, no occasion arises to refer to the previous return filed under Section 139 of the Act.

- For the purpose of levying penalty under Section 271(1)(c) of the Act, the return that has to be looked at is the one filed under Section 153A. In fact, the second proviso to Section 153A(1) provides that "assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate."
- Section 153A is in the nature of a second chance given to the assessee, which incidentally gives him an opportunity to make good omission, if any, in the original return. Once the A.O. accepts the revised return filed under Section 153A, the original return under Section 139 abates and becomes non-est. Now, it is trite to say that the "concealment" has to be seen with reference to the return that it is filed by the assessee.
- Thus, for the purpose of levying penalty under Section 271(1)(c), what has to be seen is whether there is any concealment in the return filed by the assessee under Section 153A, and not vis-a vis the original return under Section 139

RAJESH PROJECTS (INDIA) PVT. LTD VS. CIT

Section 194-I: Section 105 of the Transfer of Property Act distinguishes between 'premium' for acquiring the lease and 'rent' for enjoying user of the property. Payment towards 'premium' for the lease (even if paid annually) is a capital payment and is not subject to Section 194-I TDS. CBDT Circular No. 35/2016 dated 13.10.2016 referred

Held:

- Clause 1 of the lease deeds entered into in each of the cases, clearly points to the fact that a small percentage of the agreed amounts were paid as part of the lease premium and were towards acquisition of the asset; they fell, consequently in the capital stream and were not "rents".
- The balance of such premium payments were spread over a period of 8 to 10 years, in specified annual or bi-annual instalments. Here, distinction between a single payment made at the time of the settlement of the demised property and recurring payments made during the period of its enjoyment by the lessee is to be made. This distinction is clearly recognized in Section 105 of the Transfer of Property Act, which defines both premium and rent. Such payments were held to constitute capital and not "rent" or advance rent,

CIT VS. ABACUS DISTRIBUTION SYSTEMS (INDIA) PVT. LTD

Section 143(2)/ 292BB: The issue of a notice u/s 143(2) bearing the wrong (old) address of the assessee does not amount to a valid service of the notice u/s 282 r.w.s. 27 of the General Clauses Act. The non-service of a notice u/s 143(2) before the expiry of 12 months from the end of the month in which the return was filed renders the assessment void. As the assessee objected to the same before completion of proceedings, the assessment order is not saved by Section 292BB

Held:

- The notice under Section 143(2) of the Act which was handed over to the post office on 30th November, 2007 was incorrectly addressed i.e. it was addressed to the assessee's old office

- In terms of Section 282 of the Act as existing in 2007 a notice may be served on the person named therein either by post or as if it were a summons issued by the Court under the Code of Civil Procedure. Section 27 of the General Clauses Act provides that where any Central Act requires a document to be served by post where the expression “serve” or “given” or “sent” shall be deemed to have been effected by properly addressing, prepaying and posting. In such cases, unless the contrary is proved which would be deemed to have been served at the time when the letter would be delivered in the ordinary course of post to the addressee.
- In this case, the envelope containing the notice was wrongly addressed. Thus the presumption under Section 27 of the General Clauses Act cannot be invoked

MALAY N. SANGHVI VS. ITO

Section 80-IB(10): The profits of an undertaking eligible for deduction cannot be treated as "inflated" in the absence of material on record to show that there is an arrangement between the eligible unit and the non-eligible unit to generate more than ordinary profits for the eligible unit. The mere fact that there are common customers of both the units does not by itself indicate transfer of profits to the eligible unit

Held:

- The CIT (A) has rendered a finding that there is nothing on record to indicate that there is any arrangement between the Appellant’s Jammu unit and his wife’s unit at Valsad to generate more than ordinary profits or any transfer of goods and/or services inter se, below the market price, resulting in inflated profits to the Appellant’s Jammu unit.
- Nothing has been shown by the Revenue that there is any business transacted between Appellant’s unit at Jammu and his wife’s unit at Valsad which resulted in inflating the profits being earned by the Appellant or that there is any transaction between them.
- The Tribunal has without considering the validity of the above finding of CIT (A), adopted the test of common customers of both the Appellant’s Jammu unit and his wife’s unit at Valsad, to conclude that profits of the Appellants are inflated.
- Common customers by itself in the absence of some arrangement between the parties does not indicate transfer of profits to Appellant’s Jammu unit

CIT VS. AXIS PVT. EQUITY LTD

Section 28/29: There is a distinction between "setting up of business" and "commencement of business". All expenditure after "setting up" is deductible business expenditure even if the business has not commenced. A business is "set up" when steps are taken to recruit employees and take premises etc

Held:

- A similar issue viz. distinction between setting up of business and commencement of business had come up for consideration before this Court in Western India Vegetable Products Ltd. vs. Commissioner of Income Tax 1954 Vol. 26 ITR Page 151.
- This Court had held that business is said to have been set up when it is established and ready to be commence. However, there may be an interval between a business which is set up and a business which is commenced. However, all expenses incurred during the

interregnum between setting up of business and commencement of business would be permissible deductions

TRIBUNAL DECISIONS

ITO (TDS) VS. KUWAIT AIRWAYS CORPORATION [2017] (MUMBAI – TRIB.)

Facts:

- A survey operation under section 133A was carried out at the business premises of the assessee on 25-2-2010. During the survey proceedings, it was noticed that the assessee had paid an amount of Rs. 78.50 Lakhs without deducting any tax to five of its ex employees during the year under consideration.
- The A.O. issued a show cause notice to the assessee asking it as to why it should not be treated as an assessee in default, as per the provisions of sections 201(1) and 201(1A) of the Act. After considering the explanation of the assessee, the A.O. held that the payments made to five of its ex employees were their legitimate dues and that same had to be treated as profit in view of salary.
- The A.O., therefore, passed the order dated 2-7-2010 holding the assessee an 'Assessee in default' under the provisions of section 201 and section 201(1A) of the Act. On appeal the First Appellate Authority allowed the appeal of the assessee and quashed the order passed by A.O.

Issue:

- Assessee in default for not deducting TDS – sections 201 & 201(1A) of the Income-tax Act, 1961 – Amount paid to ex-employees under settlement – Not a profit in lieu of salary under section 17(3)(i) of the Act – No TDS is required to be deduction on such payment by the assessee

Held:

- The department being aggrieved by the order passed by learned CIT (A) preferred an appeal before the Hon'ble Appellate Tribunal, Mumbai. The Appellate Tribunal was pleased to dismiss the appeal of the department by observing that under clause (i) of section 17(3) of the Act, in order to characterise a particular payment received from the employer, on termination of the employment, as "profits in lieu of salary", it has necessarily to be shown that this amount is due or received as "compensation".
- The word "compensation" is not defined under the Act. Therefore, one has to take into consideration the ordinary connotation of this expression in common parlance. It has to be in the nature of something awarded to compensate for loss, suffering or injury.
- When translated in the context of employment, it would imply a monetary and non-monetary amount to be given to the employee in return for some services rendered by him. Inherent in this would be the obligation of the employer to pay some amount to the employee to "compensate" him.
- It would also mean that the employee gets a vested right to get such an amount. In the case under consideration there the ex-employee did not get vested right to receive the amounts in question. A settlement was arrived at to avoid litigation – there was no obligation on part of the employer to pay some amount to the employees to compensate them.
- Hence, the assessee could not be held as 'assessee in default' for non-deduction of TDS on such payment

CHANDRASEKHAR MARUTI MUSALE VS. ACIT [2017] 146 DTR (MUMBAI) (TRIB.) 198

Facts:

- The assessee before the Appellate Tribunal is an individual deriving income from salary, house property and other sources. The assessee was having major shareholding in 3 companies.
- All the three companies were carrying on inter se transactions and were having running accounts, the amounts were paid and returned and that no part of the said amount was attributed to the shareholders. The nature of business of the three companies connected with each other and they were depending upon each other for their business and there are mutual transactions which these companies use to do for the financial help of each other for the purpose of business expediency.
- The A.O. during the course of assessment proceedings observed that as per the provisions of section 2(22) (e) of the Act, any loan deposit given by a company.

Issue:

- Deemed dividend – Section 2(22) (e) of the Income-tax Act, 1961 – Inter corporate advances given to the companies in which assessee has more than 50 per cent holding – Advances were given for business expediency on running accounts and the assessee did not derive any benefit out of the same – The advances cannot be brought to tax in the hands of the assessee as deemed dividend. A.Y. 2009-10.

Held:

- The assessee being aggrieved by the order passed by learned CIT (A) preferred an appeal before the Hon'ble Appellate Tribunal, Mumbai.
- The Appellate Tribunal was pleased to allow the appeal of the assessee by observing that inter corporate advances made by three companies in which assessee had more than 50 per cent shares could not be treated as deemed dividend in the hands of assessee since the advances were for business expediency on running accounts, were not gratuitous and assessee did not derive any benefit out of the same.

CHINTELS INDIA LTD. VS. ACIT (2017) 49 CCH 0134 (DEL.) (TRIB.)

Facts:

- The assessee is a company engaged in business of horticulture, agriculture and real estate.
- The assessee's business and residential premises were subjected to search action under Section 132 of the Act. During the enquiry after the search and seizure operation it was found that the assessee had purchased software of Rs. 42,424,550/- from M/s. Macro Infotech Ltd.
- The A.O. observed that M/s. Macro Infotech Ltd. is formed by one Shri Tarun Goyal, who has confirmed in his statement given under Section 132(4) during the search and seizure action

that the said company was engaged in issuing bogus bills and which did not have any expertise in software business.

Issue:

- Bogus software purchases addition was made on the basis of post search enquiries Penalty levied as the addition was confirmed by the Appellate Authorities Penalty proceedings are independent of assessment proceedings and mere confirmation of addition cannot be sole ground to levy penalty of assessment. A.Ys. 2008-09 to 2010-11

Held:

- The A.O., therefore, held that the assessee had taken the bogus bills to inflate their expenditure. Thus, the A.O. disallowed the claim of depreciation on the software purchased from M/s. Macro Infotech Ltd. The disallowance made by the A.O. was upheld by the Appellate Tribunal.
- The A.O. also passed order under Section 271(1)(c) of the Act levying penalty on the additions confirmed by the Appellate Authorities.
- On appeal the First Appellate Authority upheld the action of the A.O. The assessee being aggrieved by the order passed by learned CIT(A) preferred an appeal before the Hon'ble Appellate Tribunal, Delhi.
- The Appellate Tribunal deleted the penalty levied by the A.O. by observing that settled position of law that penalty proceedings are independent of assessment proceedings and that mere confirmation of addition cannot be sole ground to levy penalty.
- In penalty orders, the AO has himself observed that entire proceedings of assessments were based on a) post search enquiries b) statement of Shri Tarun Goyal, which have been key factors to impose penalty u/s. 271(1) (c).
- In present appeals, it undisputed that no incriminating material was unearthed during assessee's search u/s. 132, that no independent enquiry and examination took place during assessment proceedings qua Shri Tarun Goyal and Micro Infotech Ltd. that only post search enquiries were made on the basis of the entire assessment and penalty proceedings.
- Scales are different in penalty and quantum proceedings and penalty cannot be automatic to confirmation of addition in quantum proceedings.

CH. HANUMANTHA RAO VS. ITO [2017] 81 TAXMANN. COM 421 (VISAKHAPATNAM - TRIB.)

Facts:

- The assessee was engaged in the business of development of sites and flats. During the impugned assessment year assessee acquired land as an agriculturist for investment and converted the same as stock-in-trade for his business. The assessee made cash payment of Rs. 52,97,925/- towards purchase of said land.
- The learned A.O. disallowed cash payments made by the assessee invoking section 40A(3) on the ground that impugned lands were not agricultural land and no agricultural operations were carried on since the said land was immediately converted into flats and sold to customers.
- On appeal, the Ld. CIT (A) confirmed the action of the learned A.O. The assessee being aggrieved by the appellate order preferred the appeal before the Hon'ble Appellate Tribunal.

Issue:

- Business expenditure – Disallowance – Section 40A(3) of the Income-tax Act, 1961 – assessee acquired land as an agriculturist and converted same into stock-in-trade for business – Cash payment made by the assessee are genuine and no disallowance is warranted under section 40A(3) of the Act

Held:

- The Hon'ble Tribunal allowed the appeal of assessee by observing that the provisions of section 40A (3) of the Act, does not apply to a case where the payment is made for acquisition of capital assets or investments for business.
- It is undisputed fact that the assessee has purchased the impugned lands as investment and subsequently converted into stock-in-trade for business purposes. In present case there exist business expediency and other relevant factors. Further, the payments made by the assessee are also genuine.
- The Act provides for immunity from disallowance of expenditure, if the assessee proves to the satisfaction of the learned A.O. that there is business expediency in making the cash payments. In this case, the assessee has filed necessary evidences to prove that the impugned land has been acquired as an investment and subsequently converted into stock-in-trade of his business.
- Thus, disallowance made invoking provisions of section 40A (3) of the Act is unjustified and hence, the A.O. is directed to delete the additions made towards cash payments under section 40A (3) of the Act.

ACIT VS. MOHINDER KUMAR JAIN [2017] 84 TAXMANN.COM 141 (DELHI - TRIB.) (ASSESSMENT YEAR: 2011-12)

Facts:

- The assessee is an individual. During the year, the Assessee sold 5 house properties and invested the sale consideration in construction of house at 9, Mehandi Farms, Bhatti Mines, New Delhi.
- The assessee in his return of income claimed deduction under section 54F of the Income-tax Act, 1961 ('Act') for investment in residential house against the capital gains on sale of house properties.
- The Assessing Officer ('AO') denied the claim of exemption under section 54F of the Act by observing that on the date of transfer of the original asset, the assessee owned more than one residential house and therefore it was not eligible for deduction under section 54F of the Act. On appeal, the Commissioner of Income-tax (Appeals) ('CIT (A)') gave partial relief and allowed deduction of Rs. 1, 59, 77,680/- under section 54F of the Act. The Department, being aggrieved by the appellate order preferred the appeal before the Hon'ble Income tax Appellate Tribunal ('Tribunal').

Issue:

- Exemption – Section 54F – Assessee owned only one residential house – The deduction under section 54F is allowable for investment in construction of house property against capital gains on sale of house properties.

Held:

- The Hon'ble Tribunal held that the appellant had one house at D-3/8 Vasant Vihar, New Delhi, the same was let out during the year, which is also evident from the computation of income for the relevant assessment year, wherein the rental income from the same house has been declared as income from house property.
- This indicated that the Appellant was not using that house as his residence during the relevant assessment year. At the same time, the construction of residential house at 9, Mehendi Farms, Bhatti Mines, Chhatarpur New Delhi was also not complete.
- The appellant was residing during the relevant period in a residential property in the name of Hindu undivided family at E-222, Naraina Vihar, New Delhi.
- Thus, the assessee was entitled for deduction under section 54F of the Act because house property at 9, Mehendi Farms was under construction during the year and it could not be said that another residential house was owned by the assessee.
- As the assessee owned only one residential house at D-3/8 Vasant Vihar, New Delhi, he was entitled for deduction under section 54F Act for investment in construction of the house property at 9, Mehendi Farms. Accordingly, the appeal of the Revenue was dismissed.

ACIT VS SANJAY BAIRATHI GEMS LTD. [2017] 84 TAXMANN.COM 138 (JAIPUR - TRIB.) (ASSESSMENT YEAR: 2013-14)

Facts:

- The assessee company was engaged in the business of export, import and manufacture of precious & semi-precious stones and jewellery
- A survey under section 133A of the Act was conducted on 31st October, 2012 at its business premises, which was converted into search. During the course of survey, assessee admitted the excess stock of Rs. 2, 43, 77,004/-.
- Thereafter, on verification, it was explained that the correct excess stock found in survey works out to Rs. 231.41 Lakhs as against the amount of Rs. 243.77 Lakhs worked out at the time of survey.
- This was due to the valuation of the stock at market price instead of the purchase price. In the return of income, assessee declared an income of Rs. 1, 44, 61,040/- after reducing business loss.
- The AO accepted the value of excess stock surrendered in search.
- However, he assessed the income on account of excess stock under section 69B of the Act without allowing the set-off of business loss as per the provisions of section 115BBE.
- On appeal, the CIT(A) held that in the amendment to the proviso of Section 115BBE the word "or set off of any loss" is introduced by Finance Act, 2016 w.e.f. 1st April, 2017
- Thus, the set off of business loss was to be allowed against the excess stock found in the search for the year under consideration. The Department being aggrieved by the appellate order preferred the appeal before Hon'ble Tribunal

Issue:

- ☐ Set-off of business loss – Section 69B r.w.s 115BBE – Business loss is to be set off against undisclosed investment prior to the A.Y. 2017-18.

Held:

- ☐ The Hon'ble Tribunal observed that the AO had brought to tax the undisclosed investment in excess stock of stones, gold and jewellery, without allowing set-off of business loss of Rs. 86, 96,733 against the said income of Rs. 2, 31, and 41,217 which was brought to tax under section 69B r.w.r 115BBE of the Act.
- ☐ The AO, however, allowed the carry forward of said business loss to be set-off in the subsequent assessment years. Thus, the fact that business loss had been incurred during the year was disputed
- ☐ Further, the amendment brought in by the Finance Act, 2016 whereby set off of losses against income referred to in section 69B was not allowed, is stated clearly to be effective from 1st April 2017 and would accordingly, apply to assessment year 2017- 18 onwards
- ☐ Accordingly, for the year under consideration, there was no restriction to set off of business losses against income brought to tax under section 69B of the Act.
- ☐ Thus, the Hon'ble Tribunal allowed set-off of business losses against income brought to tax under section 69B of the Act.

ACIT VS. SHAHRUKH KHAN [ITA 8555/MUM/2011 & 80/MUM/2012]), [2017]84 TAXMANN.COM 209 (MUMBAI)(ASSESSMENT YEAR: 2008- 09)

Facts:

- ☐ The Assessee was a film actor by profession. During the relevant year, the Assessee received a gift of signature villa from Dubai based company namely Nakheel PJSC. The said flat was gifted by Nakheel PJSC on account of natural love and affection of the friend of the Assessee, who is executive director of the said company.
- ☐ The AO observed that Nakheel PJSC was using Assessee's brand image for endorsing its project since 2004 on its official website and other electronic media.
- ☐ The AO, therefore, assessed the said gift as professional receipts under section 28(iv) of the Act. On appeal, the CIT(A) confirmed the action of the A.O. The Assessee being aggrieved by the appellate order preferred an appeal before the Appellate Tribunal.

Issue:

- ☐ Income from business and profession – Section 28(iv) of the Act – Assessee received a villa as gift from Dubai based company – No addition under section 28(iv) is warranted merely because Assessee attended annual day celebrations of the company.

Held:

- ☐ The Appellate Tribunal observed that the material relied by the revenue was news items concerning Assessee and few photographs at donors annual day in year 2007, which was placed on website of the company, to reach a conclusion that the Assessee undertook brand

endorsement for the donor in exchange of gift. However, the photographs in the assessment order revealed that Assessee figures in event gallery.

- The same did not suggest stage performance by the Assessee in any manner. The Assessee merely addressed the employees of the company at the said gathering.
- The said conclusion was supported by the fact that the gift was offered to the Assessee in 2004, whereas the annual day took place in the year 2007. So far as the taxability of gift in kind was concerned, the gift of immovable property on or after 1-10-2009 was brought to tax by the Finance Act, 2009 vide amendment to section 56(2)(vii) (b) of the Act.
- Since the case pertained to A.Y. 2008-09, the said amendment did not apply to the case of the Assessee. In view of the above facts, the Tribunal held that the villa was received in gift by the Assessee and not out of exercise of profession and therefore, the same was not taxable in Assessee's hands.

MEDAPATI VENKAYAMMA VS. ITO [ITA 252/VIZG/2013],[2017] 85 TAXMANN.COM 51(VISAKHAPATNAM) (ASSESSMENT YEAR: 2008-09)

Facts:

- The Assessee is an individual, had not filed return of income for the year under consideration. The AO issued a notice dated 29-1-2010 under section 142(1) of the Act. No return of income was filed in response to the said notice before due date mentioned in the notice.
- Thereafter, the AO issued a notice under section 148 of the Act. The Assessee filed a return of income in response to the said notice declaring income of Nil. The AO, further, issued the notice under section 143(2) and completed assessment under section 143(3) of the Act determining income at higher amount.
- On appeal, the CIT(A) confirmed the action of the AO. The Assessee being aggrieved by the appellate order preferred an appeal before the Appellate Tribunal.

Issue:

- Reopening – Section 147 r.w.s. 143(3) of the Act – Assessment proceeding initiated under section 142(1) of the Act – No notice under section 148 of the Act can be issued before completion of assessment proceeding.

Held:

- The Tribunal held that the AO had issued a notice under section 142(1) of the Act within time limit allowed for filing return of income under section 139 of the Act. Since the Assessee failed to respond to the notice under section 142(1) of the Act, the AO should have invoked the provisions of section 144 of the Act on or before 31-3-2011.
- Since the assessment was already initiated, during the pendency of assessment proceedings, there was no case for invoking the provisions of reassessment under section 148 of the Act.
- Once the AO Initiated assessment proceedings, he could not resort to reassessment unless the assessment proceedings were concluded. In the impugned case the assessment proceedings under sections 143(3)/144 of the Act should have been completed within period of limitation allowed to AO i.e. 31-3-2011.
- However, the AO passed the assessment order under section 143(3) of the Act on 29-12-2011. Thus, the assessment order passed under section 143(3) of the Act on 29-12-2011 was

barred by limitation and the same was annulled. Further, the AO issued a notice under section 148 of the Act for reassessment, during the pendency of assessment proceedings which was bad in law and could not be sustained. Accordingly the notice issued under section 148 was quashed.

HIRANANDANI AKRUTI JV VS. DEPUTY COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE-5 (1), MUMBAI ([2017] 88 TAXMANN.COM 209 (MUMBAI - TRIB.)

Facts:

- During relevant year, assessee incurred certain expenses towards defending the legal rights with respect to the business activities carried out by it.
- The Assessing Officer as well as the Commissioner (Appeals) rejected assessee's claim for deduction of said expenses holding that no business activity was carried out by the assessee during the relevant period.

Issue:

- Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Carrying on of business) - Assessment year 2012-13 - During relevant year assessee incurred certain expenses towards defending legal rights with respect to business activities carried out by it - Assessing Officer as well as Commissioner (Appeals) rejected assessee's claim for deduction of said expenses holding that no business activity was carried out by assessee during relevant period - It was noted there was opening and closing inventory and revenue was also generated during earlier year relevant to year under appeal which was offered for taxation - Whether since assessee carried out business activity during relevant year, legal expenses incurred by it wholly and exclusively to safeguard its business interest, were to be allowed a deduction - Held, yes [In favour of assessee]

Held:

- It is found from records that expenses disallowed were broadly with respect to legal and professional fees relating to legal proceedings/appeals and the same were incurred towards defending the legal rights with respect to the business activities carried out by the assessee. From records, it is found that the assessee generated revenue from the business operation to the tune of Rs. 1,96,99,410/- and other income to the tune of Rs. 9,800/- as on 31-03-2011, which was not possible without doing any business activity. Further, there was opening inventory and the assessee was having stock and revenue was also generated during earlier year relevant to year under appeal which was offered for taxation. The disallowances made by the Assessing Officer cannot be said to be inflated and are legal/professional expenses incurred to safeguard the interest of the business of the assessee, being legal and professional fees.
- Even otherwise, section 37(1) of the Act speaks about 'any expenditure' (not being expenditure in the sections 30 to 36) and not being in the nature of capital expenditure or personal expenses of the assessee but laid out or expanded wholly and exclusively for the purpose of business of the assessee.

- Now, question arises, whether the payment of legal fee is an allowable deduction? The obvious reply is 'yes'. Section 57 speaks about income chargeable under the head 'Income from Other Sources', which shall be computed after making the deductions mentioned therein.
- If the provision of the Act, which is corresponding to the section 12(2) of 1922 Act, used in this context, the expression 'incurred solely for the purposes of making or earning such income', the use of expression 'laid out or expanded wholly and exclusively' in section 57(iii) is to secure uniformity with the language of section37(1). At the same time, the expression, 'for the purposes of business or profession' has a wider implication then the expression "for the purposes of making or earning income" used in section 57(iii) of the Act. The purpose contemplated by section 57(iii) is more specific in character. So far as, reasonableness of the expenditure envisaged by section 57(iii) depends upon the facts of particular case.
- The Court in CIT v. New Savan Sugar & Gur Refining Co. Ltd. [1990] 185 ITR 564/[1991] 55 Taxman 189 (Cal.) held that it is for the Tribunal to decide whether the expenditure is wholly incurred for the purpose of keeping the assessee company in operation and earning income in as much as the concept 'wholly' pertains to quantum of the money expended. Even if a particular expenditure is un-remunerative, such expenditure is nonetheless a proper deduction, if such expenditure is made wholly and exclusively for the purposes of earning such income
- If the issue is analyzed in the light of section 37(1) of the Act, broadly speaking, where litigation expenses are incurred for purposes of creating, curing or completing the assessee's title to the capital, then such expenses are in the nature of capital expenditure. On the other hand, if the litigation expenses are incurred to protect the business of the assessee, it must be considered as revenue 1/15/2018 3/14 expenditure. To be more precise, the type of litigation, object or purpose of the litigation has to be ascertained from the facts of each case. If the object or purpose is to defend or maintain existing title to the capital asset of the business of the assessee, the expenditure would be of revenue in nature.
- So far as, issue of quantum of the expenditure to be incurred is concerned, it is for the assessee to decide how best to protect his own interest. It is not open to the department to prescribe what expenditure an assessee should incur and in what circumstances he should incur that expenditure.
- In the instant case, it is found that the assessee did business activity, therefore, in the absence of any contrary material, this ground is allowed as the legal expenses/fees were incurred by the assessee wholly and exclusively to safeguard its business interest.
- In the result, the appeal of the assessee is allowed.

ACIT VS. LAFARGE AGGREGATES & CONCRETE PVT. LTD. (ITA NO. 2783/MUM/2015 DATED NOVEMBER 15, 2017)

Facts:

- The Assessee Company was engaged in the business of manufacturing and supply of ready mix concrete and aggregates. In its return of income, it had claimed depreciation on goodwill on purchase of a business of Larsen & Tubro. The RMC business of Larsen & Tubro was purchased on a slump sale basis, pursuant to which the entire plans across India along with batching plants and all current assets were acquired by the Assessee. The allocation of purchase price in the books of account was based on valuation report obtained from independent valuers and the intangible assets were recorded in the books as Trademark

and Non- Compete Agreement. During the course of assessment, the Assessee made an additional claim of depreciation on various intangible assets, including Customer Contracts and Customer Relationships, Assembled Workforce, and Leasehold benefits, based on the decision of the Hon'ble Supreme Court in the case of Smifs Securities Pvt. Ltd. The AO did not allow the claim on the basis that a fresh claim can be made only by way of a revised return and not at the time of assessment. The CIT (A) allowed the claim of the Assessee and the aggrieved Department, filed an appeal before the Tribunal.

Issue:

- Depreciation allowable on Customer Contracts and Customer Relationships, Assembled Workforce, and Leasehold benefits based on the principle laid down by the Hon'ble Supreme Court in Smifs Securities Pvt. Ltd.

Held:

- The Tribunal held that the CIT(A) had correctly allowed the claim of the Assessee at the time of appellate proceedings, as held by the decision of Bombay High Court in the case of Pruthvi Brokers and Shareholders Pvt. Ltd. Regarding depreciation on Customer Contracts and Customer Relationships, Assembled Workforce, and Leasehold benefits, the ITAT held that following the principle laid down by the Hon'ble Apex Court in the case of Smifs Securities Pvt. Ltd., the claim of the Assessee was correctly allowed by the CIT(A).
- On another ground, the ITAT had upheld the deletion of ad hoc disallowance of miscellaneous expenditure, in the nature of security expenses, meeting and conference expenses, postage and courier expenses, etc., since the AO had made the disallowance without any basis on how they were capital in nature. The ITAT observed that they were routine expenses incurred for running the business of the Assessee and cannot be held to be capital in nature.
- The AO had also disallowed IT support expenses reimbursed by the Assessee to its holding company. The ITAT upheld the deletion of disallowance since the reimbursements were on a cost-to-cost basis and did not have any element of income.

LALITHA JEWELLERY MART PVT. LTD. VS. DCIT [2017] 399 ITR 425 (MAD.)

Facts:

- The assessee a private limited company engaged in the business of manufacturing and trading in gold/jewellery. It raised share capital to the tune of Rs. 21.96 crore. During the course of assessment proceedings, the assessee submitted proof and identity of the investors and the fact that the payment was received through banking channel. The A.O., however, finalized the assessment by adding the said amount under section 68

Issue:

- Cash credits – Section 68 of the Income-tax Act, 1961 – Share application money – identity of investors disclosed – Amount received through banking channel – Initial burden discharged – Addition cannot be sustained. A.Y. 2007-08

Held:

- The Assessing Officer has held that though monies were routed through banking channels, the explanation offered by the assessee-company was not acceptable, as the said explanation was not convincing and satisfactory. The Assessing Officer noticed that one Sri Shahul Hameed initially purchased gold through one of his firms and later on, sold the gold again to the assessee-company and thereafter, the sale proceeds were paid over for acquiring the shares. The AO alleged that this sort of cycling and re-cycling of funds does not carry any conviction and hence, the share capital was treated as "income" in the hands of the assessee.
- The CIT(A) partly allowed the appeal. The Tribunal reversed the decision of the Learned CIT(A) by observing that by resorting to such cyclical method the assessee had entered into "make believe management practices" rather than genuine transactions. On further appeal the High Court observed that the main theme, upon which, the Assessing Officer as well as the Tribunal proceeded to discredit the investors of the assessee is completely erroneous.
- They were both looking for proof beyond doubt. They were proceeding on an element of suspicion that the amounts of investments are really those of the assessee, which have been ploughed back by the assessee, whereas the settled principle of law is that any amount of suspicion, however strong it might be as well, is no substitute for proof. Suspicion is not sufficient enough to lead to a conclusion that the investments received by the assessee-company are all manipulated receipts and on that basis, recorded a finding that the explanation of the assessee is not satisfactory.
- So long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee company would still be the money available and belonging to the investors. The consistent principle followed is that the investors' sources and creditworthiness cannot be explained by the assessee. If the Department has a doubt about the genuineness of the investors' capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures that the assessee has, in fact, ploughed back the money.
- The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject. Further, they are finding fault with the assessee for the alleged failure of its investors in proving beyond doubt that they have the capacity to invest at the moment they did in the assessee-company. That is clearly a perverse view, as the Assessee is not expected to perform a near impossibility. The assessee cannot call upon its investors to disclose all such business transactions they carried on in the immediate past and as to how much they made from their respective business enterprises. The assessee cannot also call upon its investors to prove their good business sense in investing in the assessee-company, as such investors cannot gain any controlling stake. Addition made was thus deleted.

VIDYADAYANI SHIKSHA SAMITI VS. CIT

Section 12A: Commissioner of Income Tax (CIT) is not justified in rejecting registration on the ground that the non-production of books and vouchers means that the genuineness of the

charitable activities cannot be verified. The CIT is entitled only to examine the objects of the trust at the stage of registration and not the books of account

Held:

- ☐ While dealing with the application for registration the CIT has to examine whether the application is made in accordance with Section 12A read with Rule 17A and whether Form No.10A has been properly filled up. He may also examine whether objects of the trust are charitable or not. As per Section 12AA CIT, while considering the application for registration is not required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit.
- ☐ The language of the legislature in Section 12AA requires that activities of the trust or institution must be genuine which should be in consonance with the object of the trust.

JEETMAL CHORARIA VS. ACIT

Section 271(1)(c) Penalty: Conflict in law laid down by Bombay, Patna & Karnataka High Courts in Kaushalya 216 ITR 660 (Bom), Maharaj Garage (Bombay), Samson Perinchery (Bombay), Mithila Motors 149 ITR 751 (Patna) & Manjunatha Cotton & Ginning 359 ITR 565 (Karnataka) on whether the issuance of a Section 274 notice is merely an administrative device for informing the assessee about the proposal to levy penalty and mere mistake in the language used or mere non-striking of the inaccurate portion invalidates the notice or not explained. Impact of the conflicting law of the High Courts on Benches of the Tribunal in jurisdictional and non-jurisdictional States also explained

Held:

- ☐ In view of Hon'ble Bombay High Court and the Hon'ble Patna High Court the issuance of notice is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done. Mere mistake in the language used or mere non-striking of the inaccurate portion cannot by invalidate the notice. The Tribunal Benches at Mumbai and Patna being subordinate to the Hon'ble Bombay High Court and Patna High Court are bound to follow this view.
- ☐ The Tribunal Benches at Bangalore have to follow the decision of the Hon'ble Karnataka High Court. As far as benches of Tribunal in other jurisdictions are concerned, there are two views on the issue, one in favour of the Assessee rendered by the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning (supra) and other of the Hon'ble Bombay High Court in the case of Smt. Kaushalya. It is settled legal position that where two views are available on an issue, the view favourable to the Assessee has to be followed

SUBODH GUPTA (HUF) VS. PR CIT

Section 56(2)(vii): Taxability of gifts as income: Meaning of the term "relative" in the context of a Hindu Undivided Family (HUF), and whether if the donor is the mother of the Karta of the HUF, a gift by the mother to the HUF is a gift from a "relative" so as to avoid attracting tax liability.

Held:

- ☐ As per explanation (d) to Section 56(2)(vii), in the definition of “property”, several types of assets are listed including shares and securities. The assessee is an HUF and it has received from mother of the Kaka of the assessee HUF a gift of 75,000 shares of a private limited company. Hence, the apparently, provisions of section 56 (2) applies. However, proviso to the section provides that the above clause shall not apply to any sum of money or any property received from any “relative”.
- ☐ Therefore, if such sum or property is received from a “relative” it will not be chargeable to tax under that section. The explanation (e) defines “relatives” in case of a Hindu undivided family as any member thereof. Therefore, if the above assessee, HUF, receives any sum from any member of the HUF then such sum or property received by the HUF assessee will not be chargeable to tax. Therefore, the simple issue that arises to be examined that whether mother is a member of the assessee HUF. If she is, then the gift of share is not chargeable to tax in the hands of assessee as income

ACIT VS. TRN ENERGY PVT. LTD

Section 68: Bogus share capital: Share application money cannot be treated as unexplained credit if the Assessing Officer does not make any investigation on the documentary evidences filed by the assessee or ask for the production of the investors for examination u/s 131 or if adverse material is found during search to prove that share application money is bogus or an arranged affair of the assessee

Held:

- ☐ The Assessing Officer (AO) did not make any further enquiry on the documents filed by the assessee-company. The AO thus, failed to conduct any enquiry and scrutiny of the documents at assessment stage and merely suspected the transaction between the Investor Company and assessee-company because the Investor Company was from Kolkata. The AO thus, did not perform his duties at the assessment stage so as to make addition against the assessee-company. No cash was found deposited in the account of the Investor.
- ☐ Therefore, the facts and circumstances clearly prove that assessee-company discharged initial onus to prove identity of the Investor Company, its creditworthiness and genuineness of the transaction in the matter

DCIT VS. YOGEN D. SANGHVI (ITAT MUMBAI)

Section 23 House Property Income: Common Area Maintenance Charges and non-occupancy charges paid by the assessee to the Society are deductible from the rent while computing the 'Annual Letting Value' u/s 22

Held:

- ☐ Section 22 attempts to assess the annual value of the property consisting of any building or land appurtenant thereto, of which the appellant is the owner and which has not been put to use for the purposes of its business or profession by it.
- ☐ The expenditure on the aforesaid items, i.e., the salary (including bonus) to the maintenance staff of the facilities as electric motors, lift, caning, etc., as well as that on the electricity

consumed in respect of any common area and the electric motors, is not attributable directly to the house property as such, but to its enjoyment by the tenants/users thereof

MUSTANSIR I TEHSILDAR VS. ITO

Section 54: Acquisition of new flat in an apartment under construction should be considered as a case of "Construction" and not "Purchase". The date of commencement of construction is not relevant for purpose of Section 54. The fact that the construction may have commenced prior to the date of transfer of the old asset is irrelevant. If the construction is completed within 3 years from the date of transfer, the exemption is available

Held*:*

- For the purpose of Section 54 of the Act, it is to be considered whether the assessee has completed the construction within three years from the date of transfer of old asset. In the instant case, the assessee took possession of the new flat within three years from the date of sale of old residential flat. Accordingly, the assessee has complied with the time limit prescribed u/s 54 of the Act.
- Since the amount invested in the new flat prior to the due date for furnishing return of income was more than the amount of capital gain, the requirements of depositing any money under capital gains account scheme does not arise in the instant case. Further, the Hon'ble High Court has held in the case of ITO Vs. K.C.Gopalan (2000)(162 CTR 0566) that there is no requirement that the sale proceeds realised on sale of old residential house alone should be utilised

NILESH JANARDAN THAKUR VS. ITO

Taxability of Gifts u/s 56(2)(vi): A receipt cannot be taxed u/s 56(2)(vi) merely on conjecture or surmises. The Assessing Officer (AO) has to prove beyond doubt that a particular receipt is taxable as income. Merely because the person who paid the amount does not initiate any action for recovery of money is not sufficient for making addition

Held*:*

- The AO has observed in his assessment order that no action for recovery of the amount was taken, even after lapse of three years from the date of payment. The AO further observed that though the assessee has procured various immovable properties in his personal name, the company has failed to initiate necessary proceedings to get the land procured in their name or return the money given to the assessee. No interest has been charged on money paid to the assessee.

- All these facts goes to prove undisputed fact that the transactions are not genuine, therefore, the AO opined that impugned amount is taxable under the provisions of section 56(2)(vi) of the Act.

- Mumbai Tribunal held that merely because the person, who paid the amount does not initiate any action for recovery of money should not be not a reason for making addition towards amount received as assessee's income. The AO has to prove beyond doubt a particular receipt is taxable in the given circumstances within the meaning of the said provision

LATE SHRI GORDHANDAS S. GARODIA VS. DCIT

Section 45/ 48: The scheme of the Act is to assess real income and not hypothetical income. The word "accrue" in "full value of consideration received or accruing" in Section 45 means that the assessee has a legally enforceable right to receive the sum. An amount which is payable only on fulfilment of conditions does not create an enforceable right and has to be excluded while computing capital gains

Held:

- The expression “full value of consideration received or accruing” would mean the amount actually received by the assessee or consideration which has accrued to the assessee. The expression “accrue” means a right acquired by the assessee to receive income.
- Unless, a debt due by somebody has been created in favour of assessee, it cannot be said that he has acquired a right to receive the income or that income has accrued to him. An amount can accrue to assessee if he acquires a legally enforceable right to receive it from the debtor. The entire purpose of the Income Tax Act, 1961 is to assess the real income of the assessee. Therefore, the Departmental Authorities cannot assess any hypothetical or notional income to tax

ACIT VS. KATRINA (KAIF) ROSEMARY TURCOTTE

Section 68: In the absence of any direct evidence demonstrating that the assessee received cash payment, no addition can be made merely on presumption and surmises and on estimate basis. For making the addition on account of cash component, it is the duty of the AO to bring on record corroborative evidence to establish the fact that the entries made in the seized document were correct

Held:

- The Assessing Officer has not brought on record any clinching evidence on the basis of any enquiry made by him to demonstrate that the assessee has actually received any cash as per the evaluation sheet from Matrix. Therefore, in the absence of any direct evidence demonstrating that the assessee had received cash payment from Matrix, as shown in the evaluation sheet, no addition can be made merely on presumption and surmises and on estimate basis.
- For making the addition on account of cash component, it was the duty of the Assessing Officer to bring on record corroborative evidence to establish the fact that the entries made in the evaluation sheet were correct

CLARIS LIFE SCIENCES LIMITED VS. DCIT

Section 140A/ 221(1): Law explained on whether an assessee who defaults on paying self assessment tax u/s 140A while filing the return of income is liable for penalty u/s 221(1) if he files a revised return of income and pays the tax thereon at the time of filing the revised return of income

Held:

- The lapses punishable under section 221(1) are the lapses in respect of "default in making a payment of tax". The default triggering the penal liability under section 221(1) is the default in making payment of tax, and that the default in payment is tax is with reference to the filing of the income tax return.
- Default is committed at the point of time when a return of income is filed without making payment of the admitted tax liability. The assessee committed a default in not paying the admitted tax liability when it filed the original income tax return, without payment of admitted tax liability. To this extent, there is no dispute or ambiguity at all.
- The question then arises as to what is the impact of filing a revised income tax return

HARISH NARINDER SALVE VS. ACIT

Section 271(1)(c) penalty: The quantum of returned income and tax paid vis-a-vis the addition/ disallowance indicates whether there was a mala fide intention to conceal. Deferral of depreciation allowance does not result in concealment of income or furnishing of furnishing of any inaccurate particulars. No penalty can be levied for a sheer accounting error of debiting loss incurred on sale of a fixed asset to the P&L A/c instead of reducing the sale consideration from the WDV of the block

Held:

- The claim for depreciation only gets deferred to subsequent Years by claiming it for half year. In our view the deferral of depreciation allowance does not result into any concealment of income or furnishing of furnishing of any inaccurate particulars.
- It was accounting error in debiting loss incurred on sale of a fixed asset to profit and loss account instead of reducing the sale consideration from WDV of the block under block concept of depreciation. There was a separate line item indicated loss on fixed asset in the Income & Expenditure Account which was omitted to be added back in the computation. The error went unnoticed by the tax auditor as well as the same was overlooked while certifying the Income & Expenditure Account and by the tax consultant while preparing the computation of income. Hence, there was no intention to avoid payment of taxes

M/S. FANCY WEAR VS. ITO

Section 69C Bogus purchases: If the Assessing Officer (AO) has not rejected the books of accounts and has only doubted the genuineness of the suppliers but not the genuineness of the purchases and if the payments are made by account payee cheques, Section 69C is not attracted. Section 69C cannot be applied where all purchase and sales transactions are part of regular books of accounts. The basic precondition for invoking Section 69C is that the expenditure incurred by the assessee should be out of books of accounts

Held:

- The AO or the FAA have not rejected the books of accounts of the assessee nor have doubted the purchases made by it. The recognised principles of accountancy and tax jurisprudence hold that no sales can take place without purchases. Thus, the case under

appeal is not about non genuineness of purchases itself, but it is about non genuineness of suppliers.

- Whether provisions of section 69C of the Act can be applied in the matters where all the purchase and sales transactions part of regular books of accounts. Basic precondition for invoking the section 69C is that the expenditure incurred by the assessee should be out of books of accounts.
- Here, the payments to the suppliers, as stated earlier, have been made by cheques. So, it cannot be held that expenses were incurred by the assessee outside the books of accounts.

ACIT VS. STEEL LINE (INDIA)

Bogus Purchases: If the Assessing Officer (AO) has not disputed the genuineness of sales and the quantitative details and the day to day stock register maintained by the assessee, a trader, he cannot make an addition in respect of peak balance of the bogus purchases. He can only determine the element of profit embedded in the bogus purchases. On facts, the addition is restricted to 2% of the bogus purchase

Held*:*

- AO has not disputed the quantitative details and also day to day stock register maintained by the assessee. Assessee company being a trader of goods, AO not having doubted the genuineness of sales, could not have gone ahead and made addition in respect of peak balance on such purchases.
- Accordingly, CIT(A) concluded that issue boil down to find out the element of profit embedded in bogus purchases which the assessee would have made.
- When the corresponding sales have not been doubted and the quantitative details of purchases and sales vis-a-vis stock was available, we deem it appropriate considering the entirety of facts and circumstances of the case to restrict the addition to the extent of 2% of such bogus purchase.
- Accordingly, the Tribunal modified order of both the lower authorities and AO was directed to restrict the addition to the extent of 2% on such purchases.

SPECTRUM COAL & POWER LTD VS. ACIT

Section 43(1) Explanation 10: The law laid down in PJ Chemicals 210 ITR 830 (SC) that only a subsidy or grant given to offset the cost of an asset can be reduced from the "actual cost" of the asset and not a general subsidy continues to hold good even after the insertion of Explanation 10 to Section 43(1). A subsidy/ grant from a foreign sovereign Country does not fall within Explanation 10 because the foreign Country is not a "person" as defined in Section 2(31)

Held*:*

- Section 43(1) defines the actual cost to mean the actual cost of the assets of the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by other person or authority. In the impugned case, ICICI has financed by way of conditional grant to the assessee which is the amount received from USA under the project grant agreement for the Program for Acceleration of Commercial Energy Research.

- The question before us is whether USA can be regarded to be a person or authority. This provision cannot be read without Explanation 10. From the reading of the said explanation, it is explicitly clear that if a portion of a cost of an asset acquired by the assessee has been met directly or indirectly by Central Government or State Government or any authority established under any law or by any other person in the form of a subsidy or a grant or reimbursement, said subsidy grant or reimbursement as is relatable to the asset shall be reduced out of the actual cost of the assessee to the assessee.
- USA is a sovereign and cannot be Central Government or State Government or any authority established by any law in India. Hence, does not fall within Explanation 10 because the foreign Country is not a "person" as defined in Section 2(31)

ITO VS. ADITYA NARAIN VERMA (HUF)

Section 50C: Failure by the Assessing Officer (AO) to refer the valuation of the capital asset to a valuation officer instead of adopting the value taken by the stamp duty authorities is a fatal error and the assessment order has to be annulled. The matter cannot be set aside to the AO for a second chance. The power of the ITAT to set aside cannot be exercised so as to allow the AO to cover up the deficiencies in his case

Held*:*

- When the assessee in the present case had claimed before Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by the state authority for the purpose of stamp duty.
- The very purpose of the Legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and is certainly in a better position than the Assessing Officer to determine the valuation. Thus, non-compliance of the provisions laid down under sub section (2) by the Assessing Officer cannot be held valid and justified

DDIT VS. METAPATH SOFTWARE INTERNATIONAL LTD

Section 271(1)(c) penalty cannot be levied unless there is "evidence beyond doubt" that there was concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee. The fact that the assessee did not voluntarily furnish the return of income, and that the merits were decided against it, does not per se justify levy of penalty. The bonafides of the explanation of the assessee for not complying with the law have to be seen

Held*:*

- The provisions of section 271(1)(c) of the Act are invoked only when there is evidence beyond doubt that there was concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee towards the tax alleged to be evaded.
- That is the reason behind that assessment proceeding and penalty proceedings are independent proceedings. In making and sustaining an addition against the assessee will not be always resulted into levy of penalty

ARGUS GOLDEN TRADES INDIA LTD VS. JCIT

Penalty u/s 272A(2)(c) for delay in filing TDS returns cannot be levied if the delay was caused due to requirement to collect PAN of payees. The non-availability of the PAN of the payees is a reasonable cause. The delay is unintentional and it causes no loss to the revenue as the TDS has been deducted and deposited in the treasury. Wrong levy of penalty u/s 272A(2)(k) (failure to deliver TDS certificate) instead of u/s 272A(2)(c) (delay in filing TDS returns) shows that AO is not clear of the charge and vitiates the penalty proceedings

Held:

- The assessee has submitted that since there were large numbers of deductees scattered throughout the country, it took them some time to collect the PANs of these deductees and thereafter, it was able to upload the e-TDS returns in the IT system maintained by the Revenue.
- Further, the taxes have deducted and deposited at the prescribed rate with delay of few days. Hence, there is no loss to the Revenue which is caused due to the delay in filing of the e-TDS returns which is totally unintentional.
- Further, our attention was drawn to the decision of the Coordinate Benches in case Collector Land Acquisition v. ACIT (2012) taxmann.com 22(Chd.), CIT Branch Manager (TDS), UCO Bank vs. ACIT [2013] 35 taxmann.com 45 (Cuttack – Trib) and Branch Manager, State Bank of India v. ACIT [2014] 41 taxmann.com 268 (Cuttack – Trib) wherein non availability of PAN was held to be a reasonable cause for delay in filing of the e-TDS return.
- Given the peculiarity of the facts in the present case where there was a change effected in the Income Tax system for mandatory requirement of PANs of all deductees before the returns can be validated and uploaded, the fact that there were large number of deductees spread throughout the country and efforts were made by the assessee to obtain their PANs numbers, the fact that taxes have been deducted and deposited, hence no loss to the Revenue, we find that assessee has a reasonable cause for delayed filing of its e-TDS returns in terms of section 273B and the penalty under section 272(A)(K) is hereby deleted

DCIT VS. ATEEV V. GALA

Section 56(2)(vi): A HUF is a "group of relatives". Consequently, a gift received from a HUF by a member of the HUF is exempt from tax as provided in the Explanation to s. 56(2)(vi)

Held:

- On understanding the intention of the legislature from the section, a gift received from “relative”, irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax under the provisions of section 56(2)(vi) of the Act as a group of relatives also falls within the Explanation to section 56(2)(vi) of the Act.
- It is not expressly defined in the Explanation that the word “relative” represents a single person. And it is not always necessary that singular remains singular. Sometimes a singular can mean more than one, as in the case before us.
- The assessee received gift from his HUF. The word “Hindu Undivided Family”, though sounds singular unit in its form and assessed as such for income-tax purposes, finally at the end a “Hindu Undivided Family” is made up of ‘a group of relatives”

MIG CRICKET CLUB VS. DIT (E)

Section 2(15)/12AA: The activities of Banquet Hall Hiring, Hospitality (Restaurants) and Permit Room (Bar) are prima facie in the nature of carrying on trade, commerce, or business for consideration and are hit by the proviso to Section 2(15). If the receipts from these activities are in excess of the minimum prescribed threshold limit, the DIT is required to conduct detailed enquiry and examination as to the nexus between the activities and trade, commerce or business

Held:

- The activities of the assessee of Banquet Hall Hiring, Hospitality (Restaurants) and Permit Room (Bar) are in the nature of carrying on trade, commerce, or business for consideration, which are hit by proviso to Section 2(15) of 1961 Act.
- The receipts from these activities, during the previous year relevant to the impugned assessment year 2009-10, are far in excess of minimum prescribed threshold limit. This requires detailed enquiry and examination by the Ld. DIT(Exemption) as to the various activities undertaken by the assessee over a period of time and its nexus with activity of rendering of trade commerce or business as contemplated and mandated by amended Section 2(15) of 1961 Act.
- Thus, enquiry and examination by learned DIT(E) is further required to arrive at a conclusion whether activities of the assessee are genuine or not in context of Section 11 of the Act read with amended Section 2(15) of the Act and breach of threshold limit over a period of time

ACIT VS. VIREET INVESTMENT PVT LTD

Section 14A/ Rule 8D: The computation under clause (f) of Explanation 1 to section 115JB(2) and investments to be considered for computing the average value of investment

Held:

- The computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income tax Rules 1962.
- Only those investments are to be considered for computing the average value of investment which yielded exempt income during the year.

KALYANI BARTER (P) LTD VS. ITO

A disallowance u/s 14A & Rule 8D has to be made even in respect of securities that are held as stock-in-trade by the assessee. However, the disallowance has to be computed by taking into consideration only those shares which have yielded dividend income in the year under consideration

Held:

- ☐ The object of Section 14A is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total income.
- ☐ The income of the assessee from its business is from dividend which is exempt from tax whereas the assessee was unable to produce any material before the authorities below showing the source from which shares were acquired.
- ☐ The mere fact that those shares were old ones and not acquired recently is immaterial. It is for the assessee to show the source of acquisition of those shares by production of materials that those were acquired from the funds available in the hands of the assessee at the relevant point of time without taking benefit of any loan.
- ☐ If those shares were purchased from the amount taken in loan, even for instance, five or ten years ago, it is for the assessee to show by the production of documentary evidence that such loaned amount had already been paid back and for the relevant assessment year, no interest is payable by the assessee for acquiring those old shares

RATNAGIRI STAINLESS PVT. LTD VS. ITO

Bogus Purchases: If the assessee has not discharged the onus of producing the documentation and the suppliers, the Assessing Officer is entitled to estimate the gross profit. The Gross Profit (GP) estimate should be fair, honest and rational and cannot be arbitrarily applied at the discretion of the AO. Industry comparisons or other rational comparability vis-à Vis preceding years GP ratio should be brought on record. The books should be rejected. On facts, GP ratio of 12.5% as applied in Simit P Sheth 356 ITR 451(Guj) is fair, reasonable and rational after giving credit for the GP already declared

Held:

- ☐ The authorities did not make any industry comparisons to arrive at fair, honest and rational estimation of GP ratio, rather applied GP ratio of 12.5% on alleged bogus purchases which estimation was in addition to the normal GP ratio declared by the assessee in return of income filed with the Department.
- ☐ The Department made aforesaid additions relying on the presumption that the material was in-fact purchased from grey market at a lower rate and to cover deficiencies in record, the invoices were procured from these entry operators to reduce the profit. It was also considered that there will be savings on account of taxes while procuring material from grey market.
- ☐ The authorities relied upon decision of Hon'ble Gujarat High Court in the case of Simit P Sheth (2013) 356 ITR 451(Guj HC), which has estimated disallowance @12.5% of the disputed bogus purchases to meet the end of justice.
- ☐ The authorities have not brought on record industry comparables nor any rational comparability vis-à Vis preceding years GP ratio are brought on record. There is no allegation brought on record by learned Departmental Representative that similar additions were also made in the immediately preceding year.

JSW Steel Ltd vs. ACIT

Section 41(1)/ 115JB: Entire law explained whether remission of a loan can be assessed as income u/s 41(1) and if not whether the same can be added to "book profit" for purposes of MAT tax u/s 115JB

Held:

- Waiver of loan taken for acquisition of a capital asset and on capital account cannot be taxed u/s 41(1), as it is neither on revenue account nor a remission of a trading liability so as to attract tax in the year of remission.
- A capital surplus thus, in respect of waiver of loan amount cannot be regarded as being amount available for distribution through the profit & loss account. This follows from the very definition of expression ‘capital reserve’ that it must be accounted directly to the credit of the capital reserve account instead of being credited to the profit & loss account so as to ensure that it is not left for being distributed through the profit & loss account

Wadhwa Estate & Developers India Pvt. Ltd vs. ACIT

Section 271(1)(c): Penalty cannot be levied if the omission to offer income, and the wrong claim of deduction, was by oversight and the auditors did not point it out. Also, the failure of the AO to specify the limb under which penalty u/s 271(1)(c) is imposed is a fatal error

Held:

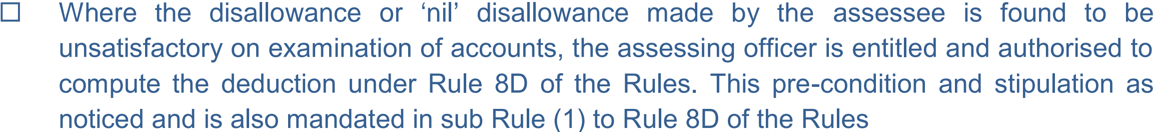
- In the return of income assessee has failed to offer interest on fixed deposit amounting to Rs. 5,92,186 and loss claimed on account of fixed asset written–off amounting to Rs 1,82,242. It is also a fact on record that in the course of assessment proceedings, the assessee accepted the taxability of these items of income and offered them to tax. The assessee has explained that non–disclosure of aforesaid two items of income is due to oversight and due to the fact that neither in the tax audit nor in the statutory audit such omission was pointed out. We find merit in the aforesaid explanation of the assessee

Shapoorji Pallonji & Co. Ltd vs. DCIT

Section 14A & Rule 8D: Disallowance under Rule 8D is not compulsory or mandatory. Section 14A(2) & Rule 8D cannot be invoked unless the Assessing Officer examines the accounts and records the finding why the assessee's claim/ computation is not proper

Held:

- Rule 8D is not attracted and applicable to assessee who have exempt income and it is not compulsory and necessary that an assessee must voluntarily compute disallowance as per Rule 8D of the Rules.



- Where the disallowance or ‘nil’ disallowance made by the assessee is found to be unsatisfactory on examination of accounts, the assessing officer is entitled and authorised to compute the deduction under Rule 8D of the Rules. This pre-condition and stipulation as noticed and is also mandated in sub Rule (1) to Rule 8D of the Rules

<u>Nagarjuna Fertilizers and Chemicals Limited vs. ACIT</u>

Section 206AA does not have an overriding effect over the other provisions of the Act. By virtue of Section 90(2), the provisions of the Treaty override Section 206AA to the extent they are beneficial to the assessee. Consequently, the payer cannot be held liable to deduct tax at higher of the rates prescribed in Section 206AA in case of payments made to non-resident persons in spite of their failure to furnish the PAN

Held:

- ☐ In view of the above discussion, we are of the view that the provisions of section 206AA of the Act will not have a overriding effect for all other provisions of the Act and the provisions of the Treaty to the extent they are beneficial to the assessee will override sect ion 206AA by virtue of section 90(2).
- ☐ In our opinion, the assessee therefore cannot be held liable to deduct tax at higher of the rates prescribed in section 206AA in case of payments made to non-resident persons having taxable income in India in spite of their failure to furnish the Permanent Account Numbers

<u>Kumari Kumar Advani vs. ACIT</u>

Section 234C: Though levy of interest for deferment of advance-tax is mandatory and cause & justification for the deferment are irrelevant, the same is not leviable if the income was not predictable and the assessee could not have anticipated its receipt e.g. the receipt of a gift

Held:

- ☐ The liability to pay advance tax enshrined under the Act is based on the principle of 'pay as you earn', as has been aptly noted by the Delhi High Court in the case of Bill and Peggy Marketing India Pvt. Ltd. vs. ACIT, 350 ITR 465 (Del).
- ☐ Section 234C of the Act prescribes that the advance tax is payable in instalments on the dates falling within financial year itself. Any failure or shortfall in payment of such instalments attracts interest under section 234C of the Act.
- ☐ In the present case, the assessee has been charged interest under section 234C of the Act primarily on the ground that the requisite instalments were not paid on the specified dates of 15/9/2011 and 15/12/2011. The assessee resists the levy on the ground that the income which has prompted the Revenue to levy interest was not received by the assessee on such specified dates, but it was received on 17/12/2011.
- ☐ The income in question is by way of gifts received, which has been received by the assessee after the date of instalments due on 15/9/2011 and 15/12/2011. The assessee could not have anticipated the receipt or accrual of such income before the event, and such event has taken place after the due dates of instalments

INCOME TAX

International Taxation

Circulars/ Notifications/Press Release

SINGAPORE BUDGET 2017 PROPOSES BEPS-COMPLIANT IP REGIME AND R&D SAFE – HARBOUR

Singapore Budget 2017 presented today introduces new IP Regime called the 'IP Development Incentive' (IDI), which incorporates the BEPS compliant modified nexus approach.

It also proposes enhancement and extension of corporate income tax rebate as well as extension of the qualifying period for claiming exemption from withholding tax on payments made to non-resident non-individuals for structured products till March 31, 2017.

With a view to ease compliance, safe harbour rule has been introduced for payments under cost sharing agreements ('CSA') for R&D projects, wherein taxpayers may opt for claiming deduction towards 75% of the payments made under a CSA incurred for qualifying R&D projects.

Encouraging the digital economy, Singapore budget recommends extension of withholding tax exemption on payments for international telecommunications submarine cable capacity to December 2023. On personal income tax front, it proposes tax rebate of 20% (capped at 500 dollars per taxpayer) to resident individual taxpayers.

(Press Release, Dated 24thFebruary 2017)

THE BRAZILIAN GOVERNMENT RELEASED PROVISIONAL MEASURE NO. 766/2017 (MP 766/2017), INTRODUCING THE TAX REGULARISATION PROGRAM

Brazil issued MP 766/2017 on January 5, 2017, to allow individuals and legal entities to settle both tax and non-tax indebtedness administered by the Brazilian Revenue Service (RFB) and National Treasury's Attorney General's Office (PGFN), and due by November 30, 2016.

Enrolment in the program should occur within 120 days of the enactment of the regulation to be issued by the RFB and PGFN. Taxpayers may settle their debts through one of the different settlement schemes provided by MP 766/2017. Taxpayers would also forfeit any lawsuit or administrative procedure initiated to challenge the debts.

Under certain installment payment schemes, a taxpayer may use either (i) its own net operating losses (NOLs), or (ii) NOLs from other companies in the same economic group (local companies) to pay off their debts, provided that the NOLs are both accrued by December 31, 2015 and declared by June 30, 2016. Further, taxpayers may also use federal tax credits to settle their debts.

It is important to emphasis that MP 766/2017 does not provide any reduction or relief in potential interest and penalties included in the outstanding balances.

THIRD PROTOCOL AMENDING INDIA-SINGAPORE DTAA COMES INTO FORCE

The Third Protocol amending India-Singapore Double Taxation Avoidance Agreement (DTAA) which was signed on 30th December, 2016 has entered into force on 27th February 2017. The same has been notified in the Official Gazette today. The India Singapore DTAA at present provides for residence based taxation of capital gains of shares in a company.

The Third Protocol amends the DTAA with effect from 01st April, 2017 to provide for source based taxation of capital gains arising on sale of shares in a company. This will curb revenue loss, prevent double non-taxation and streamline the flow of investments. In order to provide certainty to investors, investments in shares made before 01st April 2017 have been grandfathered, subject to fulfillment of conditions in Limitation of Benefits clause as per 2005 protocol.

Further, a two-year transition period from 1st April, 2017 to 31st March, 2019 has been provided during which capital gains on shares will be taxed in source country at half of normal tax rate, subject to fulfillment of conditions in Limitation of Benefits clause. The Third Protocol also inserts Article 9(2) in the DTAA which would facilitate relieving of economic double taxation in transfer pricing cases. This is a taxpayer friendly measure and is in line with India's commitments under Base Erosion and Profit Shifting (BEPS) Action Plan to meet the minimum standard of providing Mutual Agreement Procedure (MAP) access in transfer pricing cases. The Third Protocol also enables application of domestic law and measures concerning prevention of tax avoidance or tax evasion.

(Press Release, Dated 23rd March 2017)

INDIA AND BELGIUM SIGN PROTOCOL AMENDING THE INDIA-BELGIUM DOUBLE TAXATION AVOIDANCE AGREEMENT AND PROTOCOL

India and Belgium have signed a Protocol amending the existing Agreement and Protocol between the two countries for Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income today in New Delhi. The Protocol was signed by Shri Sushil Chandra, Chairman CBDT on behalf of India and Mr. Jan Luykx, Ambassador of Belgium to India, on behalf of Belgium.

The Protocol will broaden the scope of the existing framework of exchange of tax related information which will help curb tax evasion and tax avoidance between the two countries and will also enable mutual assistance in collection of taxes. Fighting the menace of Black Money stashed in offshore accounts has been a key priority area for the Government.

To further this goal, international agreements / declarations/ conventions for the Avoidance of Double Taxation & Prevention of Fiscal Evasion with respect to Taxes on Income and for Exchange of Information and have been signed / amended by India with Switzerland, Mauritius, Cyprus, Japan, Republic of Korea, Kazakhstan, Singapore and Austria during the financial year 2016-17.

(Press Release, Dated 09th March 2017)

SECTION 5 OF THE INCOME-TAX ACT, 1961 - INCOME - ACCRUAL OF - CLARIFICATION REGARDING LIABILITY TO INCOME-TAX IN INDIA FOR A NON-RESIDENT SEAFARER RECEIVING REMUNERATION IN NRE (NON-RESIDENT EXTERNAL) ACCOUNT MAINTAINED WITH AN INDIAN BANK

Representations have been received in the Board that income by way of salary, received by non-resident seafarers, for services rendered outside India on-board foreign ships, are being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer.

The matter has been examined in the Board Section 5(2)(a) of the Income-tax Act provides that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India. It is hereby clarified that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

SECTION 92CC OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - ADVANCE PRICING AGREEMENT (APA) - SIGNING OF TWO MORE UNILATERAL APAS BY CBDT

The Central Board of Direct Taxes (CBDT) entered into two Unilateral Advance Pricing Agreements (APAs) on 27th April, 2017, with Indian taxpayers. Both the agreements also have a "Rollback" provision in them.

The APA Scheme was introduced in the Income-tax Act in 2012 and the Rollback provisions were introduced in 2014. The scheme endeavors to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the arm's length price of international transactions in advance for the maximum of five future years. Further, the taxpayer has the option to rollback the APA for four preceding years. Since its inception, the APA scheme has attracted tremendous interest among Multi National Enterprises (MNEs) and that has resulted in more than 800 applications (both unilateral and bilateral) having been filed in just five years.

The 2 APAs signed yesterday pertain to Information Technology and Banking & Finance sectors of the economy. The international transactions covered in these agreements include Software Development services; IT enabled services and KPO services.

With these, the total number of APAs entered into by the CBDT has reached 154. This includes 11 bilateral APAs and 143 unilateral APAs. The CBDT expects more APAs to be concluded and signed in the near future.

The progress of the APA Scheme strengthens the Government's commitment to foster a non-adversarial tax regime. The approach and functioning of the officers in the APA teams have been appreciated and acknowledged by the industry in India and abroad.

INCOME-TAX (NINTH AMENDMENT) RULES, 2017 - INSERTION OF RULE 21AD AND FORM NO.10-IB

In exercise of the powers conferred by section 295 read with section 115BA of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

- ☐ These rules may be called the Income-tax (9th Amendment) Rules, 2017.They shall come into force on the date of their publication in the Official Gazette.
- ☐ In the Income-tax Rules, 1962 (hereafter referred to as the principal rules), after rule 21AC, the following rule shall be inserted, namely:—
- ☐ "21AD. Exercise of option under sub-section (4) of section 115BA.— (1) The option to be exercised in accordance with the provisions of sub-section (4) of section 115BA by a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall be in Form No.10-IB.
- ☐ The option in Form No. 10-IB referred to in sub-rule (1) shall be furnished electronically either under digital signature or electronic verification code.
- ☐ The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—
- ☐ specify the procedure for filing of Form referred to in sub-rule (2);
- ☐ specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(2), for purpose of verification of the person furnishing the form referred to in the said sub- rule; and
- ☐ Be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Form so furnished."

CBDT NOTIFIES RULE 10CB FOR SECONDARY ADJUSTMENTS UNDER SECTION 92CE OF I T ACT, 1961.

The Finance Act, 2017 inserted section 92CE in the Income-tax Act, 1961 with effect from 1st April, 2018 to provide for secondary adjustment by attributing income to the excess money lying in the hands of the associated enterprise, in order to make the actual allocation of funds consistent with that of the primary transfer pricing adjustment. The provision shall apply to primary adjustments exceeding Rupees One Crore made in respect of Assessment Year 2017-18 onwards. Rule 10CB for operationalising the provisions of secondary adjustment was notified by the Central Board of Direct Taxes on 15th June, 2017. It prescribes the time limit for repatriation of excess money and the rate of interest to be applied for computing the income in case of failure to repatriate the excess money within the prescribed time limit. Separate rates of interest have been provided for international transactions denominated in Indian currency and in foreign currency. The rates of interest are applicable on an annual basis. The time limit of 90 days for repatriation of excess money shall begin only when the primary adjustments exceeding Rupees One Crore made in respect of Assessment Year 2017-18 or later, attains finality. Where the transfer pricing order is appealed against by the taxpayer, the time limit for repatriation shall commence only after the appeal is finalised by the appellate authority.

(Press Release, Dated 19th June, 2017)

INDIA'S ADVANCE PRICING AGREEMENT REGIME MOVES FORWARD WITH SIGNING OF MORE APAS BY CBDT

The Central Board of Direct Taxes (CBDT) entered into Five Unilateral Advance Pricing Agreement with Indian taxpayers during June, 2017. A Bilateral Advance Pricing Agreement (involving United Kingdom) was also signed during the month. The APA Scheme endeavors to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the arm's length price of international transactions in advance for the maximum of five future years. Further, the taxpayer has the option to rollback the APA for four preceding years, as a result of which, tax certainty for a total period of nine years is provided. Since its inception, the APA scheme has attracted tremendous interest among Multi National Enterprises (MNEs). The APAs signed in June, 2017 pertain to healthcare, information technology and gaming/animation (media) sectors of the economy. The number of Unilateral APAs signed in the current financial year is now nine and the number of Bilateral APAs signed in the current financial year is one. With this, the total number of APAs signed since the commencement of the program till date stands at 162 (Unilateral-150 and Bilateral-12). The CBDT expects more APAs to be signed in the near future. The progress of the APA Scheme strengthens the Government's commitment to foster a non-adversarial tax regime.

(Press Release, Dated 28th June, 2017)

OPTIONAL REPORTING OF DETAILS OF ONE FOREIGN BANK ACCOUNT BY THE NON RESIDENTS IN REFUND CASES

Refund generated on processing of return of income is currently, credited directly to the bank accounts of the tax-payers. Availability of the detail of bank accounts in which the refund is to be credited is a precondition for direct credit of refund in the bank accounts Income-tax Return Forms for the Assessment Year 2017-18 were notified on 30th March, 2017. A number of representations were received from the non-residents that they are facing difficulties in getting refund as they do not have bank account in India and there is no column in the notified form of return of income for reporting details of foreign bank account by the non-residents for this purpose.

In view of this, a facility has been provided in return utility for reporting of details of bank account by non-residents, who do not have bank account in India and who are claiming income-tax refund. Therefore, the non-residents who are not claiming refund or non-residents who are claiming refund but having a bank account in India are not required to furnish details of their foreign bank account in the return of income. However, the non-residents, who are claiming income-tax refund and not having bank account in India may, at their option, furnish the details of one foreign bank account in the return of income for issuance of refund.

(Press Release, dated 24th July, 2017)

INDIAN ADVANCE PRICING AGREEMENT REGIME MOVES FORWARD WITH SIGNING OF NINE APAS BY CBDT IN JULY, 2017

The Central Board of Direct Taxes (CBDT) entered into nine Unilateral Advance Pricing Agreements (UAPAs) with Indian taxpayers in the month of July, 2017. Some of the UAPAs signed had rollback provisions also. The APA Scheme endeavors to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the Arm's Length Price of

international transactions in advance for a maximum period of five future years. Further, the taxpayer has the option to rollback the APA for four preceding years, as a result of which, a total of nine years of tax certainty is provided. Since its inception, the APA scheme has attracted tremendous interest among Multi National Enterprises (MNEs).

The nine APAs signed in the month of July, 2017 pertain to diverse sectors of the economy. CBDT has signed its first APA with a taxpayer engaged in supplying rigs used in Oil & Gas exploration. Other than the Oil & Gas Sector, the APAs pertain to Education, Banking, Pharmaceutical, and Manufacturing and Information Technology sectors of the economy. The international transactions covered in these nine APAs include provision of software development services; provision of IT enabled services, provision of engineering design services, distribution, contract manufacturing, etc.

The number of UAPAs signed in the current financial year is 18 and the number of BAPAs signed in the current financial year is one. With this, the total number of APAs signed till date stands at 171 (Unilateral-159 and Bilateral-12). The CBDT expects more APAs to be signed in the near future.

The progress of the APA Scheme strengthens the Government's commitment to foster a non-adversarial tax regime.

(Press Release, dated 31st July, 2017)

CBDT NOTIFIES PROCEDURE TO CLAIM FOREIGN TAX CREDIT

Recently the Central board of direct tax (CBDT) has issued a notification prescribing for filing a statement of income from a country or specified territory outside India and FTC. The procedure has been prescribed as follows:

Online Filing of Form 67

- The taxpayer who are required to file return of income electronically under section 139(1) of the Income Tax Act, 1961 (the Act) Read with Rule 12(3) of the Rules are required to prepare and submit Form 67 online along with the return of income if credit for the amount of any foreign tax paid by the taxpayer in a country or specified territory outside India, has been claimed by way of deduction or otherwise, in the year in which the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

Preparation of Form 67

- Form 67 shall be available to all the taxpayers' logins. The taxpayer is required to login into the e-filing portal using their valid credentials. A link for filing the form has been provided under 'e-File —Prepare and submit online forms (Other than ITR)'.
- Select Form 67 and assessment year from the drop down. Instructions to fill the form are enclosed along with Form 67. The completed Form 67 can be submitted by clicking 'submit' button. Digital signature certificate or electronic verification code is mandatory to submit Form 67.
- Submission of Form 67 shall precede the filing of return of income.

(Notification No. 9/2017 dated 19th September, 2017)

CBDT NOTIFIES RULES IN RESPECT OF COUNTRY-BY-COUNTRY REPORTING AND FURNISHING OF MASTER FILE

In keeping with India's commitment to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country Reporting", identified under the OECD Base Erosion and Profit Shifting (BEPS) Project, section 286 of the Income-tax Act, 1961 ('the Act') was inserted vide Finance Act, 2016, providing for furnishing of a Country-by-Country report in respect of an international group by its constituent or parent entity. Section 92D of the Act was also amended vide Finance Act, 2016 to provide for keeping and maintaining of Master File by every constituent entity of an international group, which was to be furnished as per rules prescribed in this regard.

Subsequent to the aforesaid amendments to the Act, comments and suggestions were invited on the proposal to insert rules 10DA, 10DB and form nos. 3CEBA to 3CEBE in the Income tax Rules, 1962 ('the Rules'), laying down the guidelines.

After examining the recommendations of the Committee set up in this regard, and comments and suggestions received from stakeholders and general public, the Central Board of Direct Taxes has notified the rules for maintaining and furnishing of transfer pricing documentation in the Master File and Country-by-Country report.

Since it is the first reporting year for furnishing of the Country-by-Country report, the due date for filing the Country-by-Country report for reportable accounting year 2016-17 has already been extended to 31st of March, 2018 vide Circular No. 26/2017 dated 25.10.2017. Similarly, the date of compliance for furnishing the Master File for FY 2016-17 has been extended to 31st of March, 2018 as a one-time relief measure.

The salient features of the Country-By-Country Report and Master File rules are as under:

- The threshold for the Country-By-Country Report is total consolidated group revenue of Rs. 5,500 crore or more.
- The threshold for the Master File is consolidated group revenue exceeding Rs. 500 crore and either the aggregate value of international transactions as per the books of accounts exceeding Rs. 50 crore or aggregate value of international transactions in respect of intangible property exceeding Rs. 10 crore.
- Report of Master File has to be submitted in Form 3CEAA and the Country-by-Country Report in Form 3CEAD.
- An international group having multiple Indian constituent entities may designate one constituent entity to file the Master File.
- Part A of Form 3CEAA is to be filled by every constituent entity of an international group regardless of whether it qualifies under the threshold for furnishing Master File. However, to reduce the compliance burden, such international group having multiple Indian constituent entities can designate one constituent entity to file Part A on its behalf.
- Form 3CEAD for furnishing Country-by-Country Report follows OECD template.

(Press Release, dated 01st November, 2017)

INDIAN ADVANCE PRICING AGREEMENT REGIME MOVES FORWARD WITH SIGNING OF SEVEN APAS BY CBDT IN OCTOBER, 2017

The Central Board of Direct Taxes (CBDT) has entered into 7 more Advance Pricing Agreements (APAs) during the month of October, 2017. All these Agreements are Unilateral.

With the signing of these seven Agreements, the total number of APAs entered into by the CBDT has gone up to 184. This includes 171 Unilateral APAs and 13 Bilateral APAs. In the current financial year, a total of 32 APAs (2 Bilateral and 30 Unilateral) have been signed till date. The 7 APAs entered into during October, 2017 pertain to various sectors of the economy like FMCG, Semi-conductor, Information Technology, Travel & Leisure, Office furniture and Engineering. The international transactions covered in these agreements include Provision of IT Enabled Services, Provision of Software Development Services, Provision of Marketing Support Services, Provision of Engineering Design Services, Payment of Interest, Trading, Import of Components, etc. The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner.

(Press Release, dated 02nd November, 2017)

INDIAN ADVANCE PRICING AGREEMENT REGIME MOVES FORWARD WITH SIGNING OF THREE APAS BY CBDT IN DECEMBER, 2017

- ☐ The Central Board of Direct Taxes (CBDT) has entered into three more Advance Pricing Agreements (APAs) during the month of December, 2017. While two of the Agreements are Unilateral, one is a Bilateral with the United Kingdom. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 189. This includes 173 Unilateral APAs and 16 Bilateral APAs.
- ☐ These three APAs pertain to the Electronics, Coal and Insurance sectors of the economy. The international transactions covered in these agreements include Provision of Software Development Services; Provision of IT enabled Services, Trading, etc.
- ☐ The APA provisions were introduced in the Income-tax Act in 2012 and the "Rollback" provisions were introduced in 2014. The APA scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance.
- ☐ The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner. It has contributed significantly towards improving the ease of doing business in India.

(Press Release, dated 29th December, 2017)

FRAMING OF RULES IN RESPECT OF COUNTRY-BY-COUNTRY REPORTING AND FURNISHING OF MASTER FILE – COMMENTS AND SUGGESTIONS THEREOF

In keeping with India's commitment to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country Reporting", identified under

the OECD Base Erosion and Profit Shifting (BEPS) Project, Section 286 of the Income-tax Act, 1961 ('the Act') was inserted vide Finance Act, 2016, providing for furnishing of a Country-by-Country report in respect of an international group by its constituent or parent entity. Section 92D of the Act was also amended vide Finance Act, 2016 to provide for keeping and maintaining of Master File by every constituent entity of an international group, which was to be furnished as per rules prescribed in this regard.

Accordingly, subsequent to the aforesaid amendments to the Act, it is proposed to insert rules 10DA, 10DB and form nos. 3CEBA to 3CEBE in the Income-tax Rules, 1962 ('the Rules'), laying down the guidelines for maintaining and furnishing of transfer pricing documentation in the Master File and Country-by-Country report.

(Press Release dated 6th October, 2017)

INDIAN ADVANCE PRICING AGREEMENT REGIME MOVES FORWARD WITH SIGNING OF TWO APAS BY CBDT IN SEPTEMBER, 2017

- ☐ The Central Board of Direct Taxes (CBDT) has entered into 2 Unilateral Advance Pricing Agreements (UAPAs) with Indian Taxpayers during September, 2017.
- ☐ With the signing of these 2 Agreements, the total number of APAs entered into by CBDT till date has reached 177. This includes 164 Unilateral APAs and 13 Bilateral APAs. In the current financial year, a total of 25 APAs (2 Bilateral and 23 Unilateral) have been signed till date.
- ☐ The 2 APAs signed during September, 2017 pertain to Automobile and Healthcare Consulting Sectors of the economy. The international transactions covered in these two APAs include Provision of IT Enabled Services, Provision of Software Development Services and Provision of Engineering Design Services.
- ☐ The APA scheme endeavors to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the arm's length price of international transactions in advance for a maximum period of 5 future years. Further, the taxpayer has the option to rollback the APA for 4 preceding years, as a result of which, total of 9 years of tax certainty is provided.
- ☐ Since its inception, the APA scheme has attracted tremendous interest among Multi National Enterprises (MNEs). The progress of the APA scheme strengthens the Government's commitment of fostering a non-adversarial tax regime.

(Press Release, dated 6th October, 2017)

International Taxation

Case Laws

SUPREME COURT DECISION

MITSUI PRIME ADVANCED COMPOSITES INDIA PVT. LTD. [TS-599-SC-2017-TP]

Facts:

- The assessee entered into international transactions of availing specified business and consultancy services, engineering support services and management support services with three different AEs and adopted TNMM as the most appropriate method.
- The TPO contended that the assessee had failed to give any evidence as to the benefit accruing to it by the receipt of these services and accordingly, adopting CUP as the most appropriate method, he determined ALP of these transactions at NIL and made a TP adjustment. The assessee did not challenge the TP additions since the returned loss was marginally reduced after TP additions. Thereafter, the AO imposed penalty u/s. 271(1)(c) for concealment of income/furnishing of inaccurate particulars.
- The CIT(A) upheld the penalty imposed by the AO.
- The Tribunal observed that the assessee had applied TNMM as per the provisions of section 92C which was rejected by TPO applying CUP method without any justification. Further, it observed that the assessee pursuant to the business consultancy agreement had undertaken manufacturing activity, had availed engineering services for installing plant and machinery and had availed management services for market development in India. Accordingly, it rejected the contention of the AO that the ALP of the services was Nil since the assessee had not availed any services and held that the assessee had demonstrated availing of the services. Accordingly, it held that the penalty imposed by the AO by invoking Explanation 7 to section 271(1)(c) was not justified since the assessee had proved that the price paid by it under such transactions was computed in accordance with the provisions of section 92C and in the manner prescribed under the TNMM in good faith and with due diligence. Accordingly, it held that there was no concealment of income or furnishing of inaccurate particulars for attracting penalty u/s. 271(1)(c).
- The High Court upheld the Tribunal's order and rejected the revenue contention that assessee's failure to substantiate benefit derived from services resulted not only in rejection of TNMM but also reduction in losses which warranted application of Explanation 7 to Section 271(1)(c).
- Aggrieved, the revenue filed SLP before Apex Court.

Issue:

- The Apex Court dismissed revenue's SLP against High Court's order deleting penalty levied u/s. 271(1) (c) where the assessee had computed ALP as per the provisions of section 92C in good faith and with due diligence.

Held:

- ☐ The Apex Court dismissed the Revenue's SLP – thereby affirming the High Court's judgment deleting concealment penalty levied u/s. 271(1)(c).

DCIT VS. MAGNETTI MARELLI POWERTRAIN INDIA PVT LTD. – TS-860-SC-2017 – TP - SLP NO. 15244 / 2017

Facts:

- ☐ The assessee, a Joint Venture Company (JV) of Magnetti Marelli Powertrain SPA Italy,Maruti Suzuki India Ltd. and Suzuki Motor Corporation, Japan was incorporated in India to manufacture and sell Engine Control Units (ECUs). During the impugned year, it reported six international transactions viz., import of raw materials, sub-assemblies and components, payment of technical assistance fees, payment of royalty, payment of software and purchase of fixed assets, which it aggregated under one 'Manufacturing of automotive components' and benchmarked the same under TNMM.
- ☐ Without disturbing the ALP of the other transactions, the TPO rejected the assessee's 'entity level approach' and applied the CUP method to determine ALP of technical service fee at Nil and made adjustment of Rs. 38.58 crore.
- ☐ Aggrieved, the assessee filed an appeal before the Tribunal wherein the Tribunal rejected the assessee's entity level approach stating that combining of all international transactions for benchmarking was not as per law and that the mere fact that the overall profit earned by the assessee was more, would not ipso facto lead to the interference then all the international transactions were at ALP. Accordingly, it restored the matter of ALP determination back to the TPO.
- ☐ On further appeal to the Hon'ble High Court, the Court upheld the Tribunal's remand to the TPO noting that assessee had been unable to substantiate the need for payment of technical assistance fees to its foreign AE. It held that the TPO rightly rejected the assessee's contentions that since its profit margin exceeded that of the comparables, the payment of technical fee was justified. However, it accepted the assessee's argument that TNMM had to be applied by the TPO/AO in respect of the technical fee payment, noting that the TPO had accepted the TNMM as the most appropriate method for all the other transactions. It held that it was not open to TPO to subject only one element, i.e., payment of technical assistance fee, to an entirely different (CUP) method and that the approach of the TPO could result in adoption of two or even five methods within one ALP determination for a year, which would spell chaos and be detrimental to the interests of both the assessee and the revenue. Accordingly, it upheld the remand directing the TPO to benchmark the transaction under TNMM.
- ☐ Consequently, the Revenue filed an SLP before the Hon'ble Supreme Court.

Issue:

- ☐ The Apex Court dismissed the SLP filed by the Revenue against order of the High Court wherein it was held that where TNMM has been accepted as the most appropriate method to benchmark the assessee's transactions barring payment of technical fee, the adoption of a

different method viz., CUP would lead to chaos in benchmarking as it could lead to adoption of 2 or more methods for determination of ALP within a single year

Held:

- The Hon’ble Supreme Court dismissed the SLP filed by the Revenue.

HIGH COURT DECISIONS

DCIT VS. RAK CERAMICS INDIA PRIVATE LIMITED [TS-1091-HC-2016(AP)-TP]

Facts:

- The assessee, a wholly owned subsidiary of RAK Ceramics PSC, UAE was engaged in the activity of manufacturing vitrified tiles and sanitary ware products in India for sale in domestic & international markets.
- The assessee had entered into a Royalty agreement with its AE as per which, the assessee was to pay to the AE, royalty equivalent to 3% of the net ex-factory sale price of the products on both domestic and export sales.
- The assessee, in its ROI, claimed deduction in respect of royalty amount paid to its AE and adopted TNMM to benchmark the royalty payments.
- The TPO held that the assessee did not fulfil the 'benefit test' as there was no change in the sale or profit which could be attributed to the receipt of technical know-how so as to justify payment of royalty at 3% and restricted the deduction to 2% of the net ex-factory sale price. Further, it attributed the increased revenue and profits to substantial advertisement and marketing expenditure incurred by the assessee.
- The TPO also rejected the alternate study undertaken by the assessee applying the CUP method on the ground that the database used by the assessee was in relation to US based companies and copies of their agreements had not been furnished.
- The addition made by the TPO was also confirmed by the DRP.
- The Tribunal observed that no analysis had been taken by the TPO in fixing ALP of the royalty payment and that it had not adopted any of the methods prescribed u/s. 92CA and accordingly, rejected the reduction of the rate of royalty from 3% to 2%.
- The Revenue filed appeal before the High Court.

Issue:

- Action of TPO of arbitrarily upholding Royalty rate of 2% (as against 3% paid by the assessee) – Not Justified

Held:

- The Court dismissed the Revenue's appeal and held that the TPO having rejected the comparables used by the assessee under CUP method, should have come up with other comparables so as to justify reduction of royalty payment and that the TPO's reasoning of any legal basis.
- It held that once it is admitted by the Revenue that the assessee entered into a royalty agreement and claimed benefit from such agreement in the form of quantum increase in sales with no apparent increase in production, minimal product recalls and low after sales maintenance cost, and consequently paid royalty in terms thereof, then it was not for the TPO to look for the other reasons (i.e. increase in the marketing expenditure) for increase in the assessee's sales and profit.
- It further held that the adoption of the royalty rate of 2% (instead of 3%) by the TPO was arbitrary and an unbridled exercise of power as he had not examined the alternate comparables so as to justify the rate and accordingly, upheld the order of Tribunal.

JOHNSON & JOHNSON LTD. [TS-171-HC-2017(BOM.)-TP]

Facts:

- The assessee made payment of royalty to its AE for the use of brand and trademark at 1% of net sales (net of taxes) and for use of technical/marketing know-how provided at 2% (net of taxes) on sale of manufactured and traded finished goods, It had also borne the taxes arising out of payment of brand royalty and royalty on technical/marketing know-how.
- The assessee's brand usage royalty agreement covered the period from 1st July, 2001 to 31st March, 2002. The assessee had submitted draft agreement to the RBI on 10th August, 2001 for which approval was granted on November, 2001 and thereafter, the final agreement was executed on 14th March, 2002 which provided for payment of royalty w.e.f. 1st July, 2001. Further, the know-how agreement was also approved by the RBI.
- With regards to payment of royalty for the use of brand and trademark, the TPO accepted the same to be at ALP and for technical know-how royalty paid on manufactured goods; the TPO restricted it to 1% instead of 2%. As regards technical know-how royalty on sale of traded goods, the TPO observed that royalty was not required to be paid on traded products and that the same was covered in brand royalty. Accordingly, he disallowed the same. As regards, taxes borne by the assessee on the royalty payment for brand usage and technical know-how, the TPO observed that as per the agreements the assessee was not required to bear the tax liability. Accordingly, he disallowed the tax paid on the brand royalty as well as royalty for technical know-how.
- With regard to technical know-how royalty paid on manufactured goods, CIT(A) held that restricting the royalty paid to 1% by the TPO was arbitrary and ad hoc as the TPO did not determine the ALP of the technical know-how by adopting any of the methods prescribed u/s. 92C of the Act. In respect of royalty paid on sale of traded goods, CIT(A) deleted the disallowance since the payment was an integral part of the know-how agreement. In respect of royalty payment on brand usage for the period 1st July, 2001 to 14th March, 2002, the CIT(A) disallowed the royalty paid as the assessee had failed to produce minutes of its board meeting recording the decision to make the payment of brand usage royalty at 1% w.e.f. 1st July, 2001. In respect of the tax on brand royalty, CIT(A) confirmed the disallowance made by the TPO. However, he deleted the disallowance of tax on royalty paid for technical know-how.
- The Tribunal confirmed the order of CIT(A) deleting the TP addition in respect of technical know-how royalty on manufactured goods made by the TPO by restricting royalty from 2% to 1%. In respect of royalty on traded goods, the Tribunal confirmed the order of CIT(A) allowing the same since the same was paid as per the know-how agreement approved by RBI. However, in respect of royalty on brand usage, it reversed CIT(A)'s disallowance of royalty payment since CIT(A) had ignored the fact that approval of RBI was obtained and thereafter the final agreement was executed. Relying on the decision in CIT vs. Associated Electrical Agencies 266 ITR 63 (Mad HC), it held that even if there was no agreement to support the payment, yet where the payment was made on account of commercial expediency, the same ought to be allowed. With regards to tax paid on brand royalty and technical knowhow, the Tribunal observed that the respective agreements specifically mentioned that the royalty was to be remitted net of taxes and for which requisite RBI approval was obtained. Accordingly, with respect to taxes on brand and technical know-how royalty, the Tribunal deleted the disallowance since the assessee had entered into commercial agreement with its AE to bear

the taxes which was also approved by the RBI. Accordingly, it held that the same could not be questioned while calculating ALP.

- Aggrieved, the Revenue filed appeal before the High Court.

Issue:

- The Court upheld Tribunal's order deleting TP addition on account of royalty payment for technical knowhow and usage of brand made by assessee since the restriction of royalty payment was arbitrary and ad hoc.

Held:

- In respect of royalty paid on technical know-how, the Court upheld the order of Tribunal and held that the TPO is mandated by law to determine the ALP by following one of the methods prescribed u/s. 92C of the Act and since this exercise had not been carried out by TPO, determination of ALP by the TPO was adhoc and arbitrary.
- As regards royalty on usage of brand, the Court upheld the view taken by the Tribunal since there was an understanding between the parties that the royalty payment would be made w.e.f. 1st July, 2001 and RBI approval had also been obtained.
- The Court further, admitted the Revenue's appeal against Tribunal's deletion of tax on trademark/brand name royalty since as per the clause in the agreement, there was no condition for royalty being net of taxes and approval taken from RBI could not have be taken to be augmenting the terms of agreement.
- It also admitted the Revenue's appeal against Tribunal's deletion of the disallowance made for royalty on traded goods.

PIONEER OVERSEAS CORPORATION USA (INDIA BRANCH) V. COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION)-2, DELHI

Facts:

- The petitioner-assessee was the branch office of US company ('POC US'). It was engaged in Contract Research Activities and cultivation of parent seeds. Since the assessment year 1993 94, it had been claiming exemption by treating its entire income as agricultural income.
- The Assessing Officer treated the entire income of the assessee as 'business income' and attributed the deemed income from research activity holding the petitioner to be a Permanent Establishment ('PE') of POC US carrying on research activity in India.
- The petitioner filed an application before the Commissioner under section 220(2A) for waiver of interest levied under section 220(2).
- The Commissioner dismissed the application on the ground that no genuine hardship had been caused to the petitioner.

Issue:

- Section 220 of the Income-tax Act, 1961 - Collection and recovery of tax - When tax payable and when assessee deemed in default (Waiver of interest) - Assessment year 1997-98 - Petitioner assessee branch office of US company ('POC US'), was engaged in contract

research activities and cultivation of parent seeds - From year 1993-94 it had been claiming exemption by treating its entire income as agricultural income - Assessing Officer treated entire income of assessee as 'business income' and attributed deemed income from research activity holding petitioner to be a Permanent Establishment ('PE') of POC US - Assessment was finalized and taxes along with interest were paid by petitioner under section 220 - Therefore, petitioner filed an application before Commissioner under section 220(2A) for waiver of interest levied under section 220(2) - Commissioner dismissed application on ground that no genuine hardship had been caused to petitioner - Whether since in comparison to profitability of petitioner over years, amount paid by it towards interest under section 220(2) was very low, conclusion arrived at by Commissioner that no 'genuine hardship' had been caused to petitioner could not be said to be erroneous.

Held:

- Having considered the respective submissions, the Court is not persuaded to hold that any error was committed by the Commissioner in rejecting the petitioner's request for waiver of interest under section 220(2). Under section 220(2A), the three conditions that are required to be satisfied are (i) payment of the amount towards interest under section 220(2A) should cause the assessee 'genuine hardship' (ii) default in the payment of the amount should be due to circumstances beyond the control of the assessee; and (iii) the assessee should have cooperated in the proceedings for recovery of the amount.
- What was urged before the Commissioner was that interest under section 220(2) paid besides incurring costs on maintaining a bank guarantee was more than 1.5 times of the tax amount. As rightly noted by the Commissioner, the mere fact that the interest was 1.5 times the tax by itself does not have any relevance for determining whether the assessee was suffering from any 'genuine hardship'.
- The fact that the assessee is a part of 'DuPont', a global conglomerate which had in 2011 earned $ 37.96 billion in net sales and $ 6.253 billion as operating profit, cannot be said to be an irrelevant factor in considering whether any 'genuine hardship' was undergone by the petitioner. Further, in comparison to the profitability of the petitioner over the years, the amount paid by it towards interest under section 220(2) was merely $ 0.004 billion (approx). In the circumstances, the conclusion arrived at by the Commissioner that no 'genuine hardship' can be said to have been caused to the petitioner cannot be said to be an erroneous exercise of discretion by the Commissioner. It was a plausible view to take and does not call for interference by this Court in exercise of its extraordinary jurisdiction under article 226 of the Constitution.

Jaya Chheda L/H Late Hitesh S. Bhagat vs. ACIT – (ITXA Nos. 325 and 326 of 2015, Bombay High Court)

Facts:

- For A.Y. 2007-08 the assessee had claimed income of Rs. 3.44 crore from transactions in shares as Capital Gains. The AO treated the entire gains as Business Income on the ground that the assessee had transacted in 41 scrips and out of the total 86 transactions carried out by him in 42 transactions the holding period of shares ranged from 0 days to 42 days apart from making adverse observations on volume and frequency and repetitive transactions in same scrips.

- Interestingly for A.Y. 2008-09, the same AO who framed the assessment for A.Y. 2007-08, held in the assessment order for A.Y. 2008-09 that an amount of 25,88,046/represents the profit on purchase and sale of shares within a span of 30 days. Therefore, he held that the said income will have to be treated as business income of the assessee.
- However, as the claim of the assessee as regards STGC in the Assessment Year 2007-08 was not accepted, even the balance amount of Rs. 1,08,74,670/- was ordered to be treated as business income. Against these orders the assessee filed an appeal before the CIT(A). The CIT(A) reversed the order of the AO for A.Y. 2007-08 holding the said gains as Capital Gains. For AY 2008-09 he held that the gains for a period of more than 30 days amounting to Rs. 1.08 crore be treated as capital gains and the balance arising from holding shares for less than 30 days be treated as Business Income. On a further appeal before the Tribunal by the Department for A.Y. 2007-08, the order of CIT (A) got reversed. For A.Y. 2008-09 the Tribunal dismissed the Appeal filed by the assessee.

Issue:

- Income from share transactions – Capital Gains or business income – Duty of the Tribunal to look into entire facts.

Held:

- The Hon'ble High Court held that the Appellate Tribunal has rejected the claim that it was STCG, by referring to only 42 transactions out of 86, in respect of rest of the 44 transactions, without any examination of details and factual aspects. There was no reason to treat other 44 a transaction on par with 42 transactions in respect of which holding was only for 7 days. Since the entire data of each transaction was before the Appellate Tribunal nothing prevented it from looking into all the transactions and recording findings of fact. But the Appellate Tribunal has not done its duty and therefore, the finding recorded by the Appellate Tribunal in relation to the Assessment Year 2007-08 will have to be held as perverse.
- As far as the assessee's appeal for A.Y. 2008-09, substantial part of claim of STCG was accepted by the CIT(A). The Appellate Tribunal held that 30 days holding period could not have been taken as fixed criteria for determining the nature of transaction and further observed that the nature of transaction has to be determined after taking into consideration various factors.
- The Appellate Tribunal held that the holding period is one of the several factors which is required to be taken into consideration. Thus even after finding that the formula adopted by the CIT(A) based on holding period of 30 days was erroneous, the Appellate Tribunal has not gone into the details of all the transactions.
- The Hon'ble High Court held that, after accepting that the formula of 30 days adopted by the CIT(A) was erroneous, the Appellate Tribunal ought to have considered the appeal on merits. It was further held that that the entire approach of the Appellate Tribunal while dealing with the cases for both the years was completely erroneous. The Appellate Tribunal had failed to perform its duty and therefore, the impugned judgment and order of the Appellate Tribunal cannot be sustained at all. The case was remanded to the Appellate Tribunal for deciding afresh in accordance with law.

CIT VS. M/S. GLENMARK PHARMACEUTICALS LTD. [TS- 61-HC-2017(BOM.)-TP]

Facts:

- The assessee, engaged in the business of manufacturing and marketing pharmaceutical products and related R&D activities, extended guarantee in respect of Bank Loan and L/C obtained by its AEs.
- The assessee charged guarantee fee @ 0.53% in respect of guarantee for bank loan and @1.47% in respect of guarantee for L/C facility.
- The TPO took guarantee fee rate of 3% as ALP on the basis of bank guarantee and made an adjustment, which was also confirmed by CIT(A).
- The Tribunal observed that in Bank Guarantee, the customer could recover the default amount from bank and bank in turn could recover the same from customer. As against this, in a corporate guarantee, failure to honour the guarantee may attract corporate laws but it was not as fool proof as bank guarantee.
- Accordingly, the Tribunal rejected the bank guarantee rates for benchmarking corporate guarantee and relying on Everest Kento Cylinder Ltd (ITA No. 542/Mum/2012-A.Y. 2007- 08) held that guarantee commission rates charged by assessee were reasonable and deleted the TP addition.
- Aggrieved, the Revenue filed appeal before the High Court.

Issue:

- Corporate guarantee fee cannot be benchmarked on the basis of Bank Guarantee rates.

Held:

- The Court observed that Tribunal had relied on a co-ordinate Bench decision in the case of Everest Kento Cylinders Ltd. which had been upheld by jurisdictional Court and as no distinction in facts and/or law had been brought on record warranting a different view from what was held in the case of Everest Kento Cylinders Ltd., the Court held that no substantial question of law arose and accordingly, dismissed the Revenue's appeal.

CIT VS. AURIONPRO SOLUTIONS LTD. [TS-474-HC- 2017(BOM)-TP]

Facts:

- The assessee had given interest free working capital advances to its wholly owned subsidiary. The assessee adopted cost plus method as the most appropriate method and bench marked its loan transaction at cost plus zero mark-up contending that since it was getting business from AEs, there was commercial consideration between the assessee and the AE and accordingly, no interest was charged.
- The TPO adopted CUP as the most appropriate method and contended that in a comparable situation; a third party would have charged interest on advances/loans given. Accordingly, he adopted LIBOR + 3% for benchmarking the assessee's loan transaction. The assessee contended before the TPO that since no cost was incurred by the assessee in providing the advances, no interest was charged on the loan. It further contended that since it had full control over its AEs, the loans were in the nature of quasi equity and accordingly, no interest

was charged and TP adjustment was not warranted. Rejecting assessee's contention, the TPO made TP addition.

- The DRP held that LIBOR was applicable for benchmarking inbound loans i.e. ECBs, whereas the interest rate prevalent in India was to be adopted for benchmarking outbound loans as in the assessee's case. Accordingly, it rejected TPO's adoption of LIBOR + 3% and adopted 14% rate of interest on unrated unsecured corporate bonds as the comparable. Accordingly, it enhanced the TP adjustment.
- The Tribunal rejected assessee's contention that there was a commercial consideration between the assessee and the AE which did not warrant TP adjustment and held that there was no requirement of existence of commercial consideration for the TP provisions to apply and the transaction of advancing of loans to AEs fell specifically within the ambit of international transaction u/s. 92B. Accordingly, it held that the ALP of the loan transaction was required to be determined. It accepted TPO's adoption of CUP method as the most appropriate method for benchmarking the advances given and agreed with DRP's view that for benchmarking outbound loans, the interest rate prevalent in India was required to be adopted. However, it held that the Co-ordinate Bench in various cases had adopted LIBOR plus for benchmarking interest on interest free loans and for the purpose of consistency, it adopted LIBOR + 2% on the monthly closing balance of advances during the financial year for benchmarking the loan transaction as comparable.
- Aggrieved, the Revenue appealed before the Court and contended that since the advances were given by the Indian entity, the rate prevalent in India on the loans was to be adopted

Issue:

- The Court held that LIBOR plus was to be adopted for benchmarking the loan given to the AEs outside India

Held:

- The Court observed that in the case of DCIT vs. Tech Mahindra Ltd. [2011] 12 taxmann. com 132 (Mum. Trib.), the Tribunal had held that interest rate in respect of currency in which transaction had taken place was to be adopted and accordingly, accepted LIBOR for benchmarking the foreign currency loan rather than the rate of interest on domestic borrowings. It further observed that the reasoning of the Tribunal was approved by the Court in the case of CIT vs. Tata Autocomp Systems Ltd [2015] 56 taxmann.com 206 (Bombay) wherein the Court upholding the decision of the Tribunal held that in the case of loans to AE, ALP would be determined on the basis of rate of interest being charged in the country where the loan was received/consumed.
- Accordingly, relying on the above judgments, the Court held that LIBOR was to be considered to determine Arm's Length interest and it accepted Tribunal's adoption of LIBOR + 2% instead of LIBOR + 3% applied by the TPO

CIT VS. METTLER TOLEDO INDIA PVT. LTD. [TSS-478-HC- 2017(BOM.)-TP]

Facts:

- The assessee, engaged in the business of manufacturing, marketing, sales and services of weighing equipments, purchased goods from its AEs worth Rs. 5.10 crores. It selected Avery

India Ltd. as a comparable to benchmark its international transaction by applying TNMM as the most appropriate method. Adopting net profit/sales as PLI, it computed its operating margin at 11.29% whereas the operating margin of comparable was 5.45% and accordingly, claimed that its international transaction of purchase of goods was at ALP.

- The TPO adopted operating profit/sale as the PLI and noted that the assessee's margin was 6.18%. Further, he contended that one comparable was not sufficient and accordingly, he added two more comparables viz., Flex Engineering Ltd., and Manugraph India Ltd. He computed the average of the PLI of 3 comparables at 9.6% and compared it with the assessee's PLI of 6.18% and determined the ALP at Rs. 4.42 crores. Accordingly, he held that the transaction was not at ALP and made the TP addition.
- The CIT(A) rejected the two comparables selected by the TPO and accepted assessee's comparable. He observed that the PLI (operating profit/sale) of Avery India was 7.7% while that of the assessee was 6.18% and accordingly, reduced the TP addition.
- Aggrieved, the Revenue appealed before Tribunal against CIT(A)'s rejection of the two comparables. The Tribunal, without adjudicating upon the CIT(A)'s rejection of 2 comparables, observed that the TPO had computed assessee's operating margin at 6.18% as compared to average of the operating margin of comparables at 9.6%. Accordingly, it held that even if the ALP determined by the TPO was accepted no adjustment was warranted since the assessee's price of the international transaction was within the tolerance range of 5% as per the second proviso to section 92C(2).
- Aggrieved, the Revenue filed appeal before the High Court contending that the value of purchases from AEs was Rs. 5.10 crore and the tolerance limit after adding/deducting 5% would be between Rs. 5.36 crore to Rs. 4.85 crore and the ALP of the purchases worked out by the TPO was Rs. 4.42 crore which clearly fell outside the range of 5% and accordingly, the Tribunal erred in applying the second proviso to section 92C(2). Further, it contended that the Tribunal did not adjudicate on Revenue's specific ground of appeal that CIT(A) had rejected the two comparables adopted by the TPO.

Issue:

- The Court upheld Tribunal's deletion of TP addition as the transaction price was within the tolerance range of (+/-) 5% of the ALP determined by the TPO as per the second proviso to Section 92C(2)

Held:

- operating margin as computed by TPO was 6.18% as compared to the average of the operating margin of comparables of 9.6% and that the same was at arm's length as it fell within the range of (+)/(-) 5% as per section proviso to 92C(2). Accordingly, it held that this aspect was properly considered by the CIT(A) and the Tribunal.
- It further held that since the Revenue did not raise before the Tribunal the contention of the transaction price of the assessee not being within the tolerance range of (+)/(-) 5% of the ALP determined by the TPO, the same could not now have been taken up by the Court and accordingly, it dismissed the Revenue's appeal.

THE GREAT EASTERN SHIPPING CO. LTD. [TS-534-HC-2017 (BOM)-TP]

Facts:

- The assessee had provided foreign currency term loan of USD 4 million to its subsidiary towards working capital requirement and a foreign currency term loan of USD 17 million to another subsidiary for a new building rig contract. The assessee had charged interest @ 5% p.a. on loan of USD 4 million which was based on the two years USD fixed IRS rate + 100 BPS and 7.3% p.a. on second loan of USD 17 million. The assessee had also obtained a USD loan from Export Import Bank of Korea (KEXIM) @ 4.79% p.a. Adopting the CUP method, it compared the rate of interest charged by it on the loans given to its AE with the rate of interest charged by the KEXIM and claimed the transactions to be at ALP.
- The TPO considered the interest rate prevalent in India @ 14% p.a. for benchmarking loan transactions and made the TP adjustment.
- The CIT(A) held that the TPO's adoption of 14% rate was without any basis and that LIBOR should have been adopted for benchmarking for foreign currency loans. Further, it rejected the assessee's contention of adopting 2-year USD IRS rate plus 100 BPS or ceiling rate prescribed by the RBI for export credit on the ground that 2-year USD IRS rate was for conversion of floating rate of interest to the fixed rate of interest and export credit rates were in respect of export consignments and not for the purpose of working capital. Relying on the RBI's Master Circular No. 07/2006-07 dated July 1, 2006 on ECB, for loan of USD 4 million, it adopted 6 months LIBOR + 200 BPS (for loans with maturity period of 3 – 5 years) and for loan of USD 17 million, it adopted 6 months LIBOR + 350 BPS (applicable to loans with maturity period more than 5 years).
- In respect of loan of USD 4 million, the Tribunal observed that the CIT(A) completely ignored the fact that the loan was given by the assessee to its AE in the earlier years and the benchmarking was done by the assessee by applying rate of interest of 5% as per the prevailing rate in that earlier year and no TP adjustment was done in that year. It held that this year the assessee had charged interest only on the loan brought forward from the earlier year and the fixed rate of interest could not be changed with the subsequent change in LIBOR. It further observed that for loan of USD 17 million although the loan was given for long term but it was repaid within the year itself. Accordingly, it held that the CIT(A) erred in applying rate for more than 5 years at 6 months LIBOR plus 350 basis points. It deleted the TP addition holding that the benchmarking done by the assessee was based on the interest paid by it on its own borrowings of loan in foreign currency from KEXIM bank and accordingly, the interest charged by the assessee on the loan given by it to its AE was at ALP.
- Aggrieved Revenue appealed before the High Court.

Issue:

- Where the assessee had benchmarked interest received on foreign currency loan given to its AE with the interest paid by it on its own borrowings of loan in foreign currency, the Court held that the transaction was at arm's length not warranting TP adjustment

Held:

- The Court relied on the Bombay High Court's decision in CIT vs. Tata Autocomp [TS- 45-HC-2015(Bom)-TP] wherein it was held that ALP in the case of loans advanced to AEs was to be

determined on the basis of rate of interest being charged in the country where the loan was received / consumed.

- It observed that the Revenue had not brought on record any evidence to prove that the rate of interest charged by the assessee was different than the interest rate in the country where the loan was received by AE. It held that the period of loan was to be considered and not the period of repayment. However, considering that the assessee had obtained loan at 4.79% and had advanced loan to its AE at 7.3%, it held that the Tribunal had correctly dealt with the same. Accordingly, it upheld the order of Tribunal deleting the TP adjustment.

VALVOLINE CUMMINS PRIVATE LTD. [TS-610-HC-2017(DEL.)-TP]

Facts:

- The assessee, engaged in the manufacturing and marketing of automotive lubricants had incurred certain advertisement, marketing and brand promotion ('AMP') expenses.
- The TPO applying the 'Bright Line Test', compared the proportion of AMP expenses to total turnover of the assessee with that of the comparables and since the AMP expenses as a percentage of the total turnover of the assessee was 4.20% as opposed to 0.51% of the comparables, he made an addition.
- The DRP upheld the order of the AO.
- On appeal to the Hon'ble Tribunal, the assessee contended that the BLT had no validity in light of the decision of the Hon'ble Delhi High Court in the case of Sony Ericsson India Pvt. Ltd. vs. CIT (2015) 374 ITR 118 (Del) and therefore that the TPO erred in considering the excess expenditure beyond the Bright Line as an international transaction.
- Accordingly, the Tribunal remitted the matter to the TPO and directed him to follow the judgment of Delhi High Court in the case of Sony Ericsson (supra).
- Aggrieved, the assessee appealed before High Court contending that in light of decision of this Court in the case of Maruti Suzuki Ltd. vs. CIT (2016) 381 ITR 117 (Del.), the Tribunal was not justified in remanding the matter to the TPO for determining the ALP of AMP transaction as there was sufficient material on record before the Tribunal to arrive at a conclusion as to whether or not there was an international transaction involving the assessee and its AE with regard to the AMP expenses.

Issue:

- Where the Revenue had not determined as to whether the AMP was an international transaction, the Tribunal was not justified in remanding the issue to TPO.

Held:

- The Court distinguished the Revenue's reliance on the decision of this Court in the case of Le Passage to India Tour & Travels (P) Ltd. vs. The Deputy Commissioner of Income Tax (2017) 391 ITR 207 (wherein the Court remitted the matter to TPO for determining whether AMP constituted international transaction) on the ground that in that case there was no determination by the TPO regarding existence of an international transaction whereas in the present case the TPO had applied his mind and concluded AMP expenditure incurred by assessee was in excess of that incurred by the comparables and the TPO had arrived at that conclusion based on BLT.

- The Court observed that in the case of Sony Ericsson India Pvt. Ltd. (supra) setting aside the decision of the Full Bench of the Tribunal in L.G. Electronics India Pvt. Ltd. vs. ACIT (2013) 22 ITR (Trib.) it was observed that the BLT was not an appropriate yardstick for determining the existence of an international transaction.
- It further held that the mere fact that the assessee was permitted to use the brand name 'Valvoline' would not automatically lead to an inference that any expense that the assessee incurred towards AMP was only to enhance the brand 'Valvoline' and that the onus was on the Revenue to show the existence of any arrangement or agreement on the basis of which it could be inferred that the AMP expense incurred by the assessee was not for its own benefit but for the benefit of its AE and it was an international transaction. It observed that the TPO had found no basis other than by applying the BLT, to discern the existence of international transaction and accordingly, it concluded that no purpose would be served if the matter was remanded to the TPO, or the Tribunal, for this purpose.
- Accordingly, it held that the Tribunal was not justified in remanding the matter to the AO/TPO for determining the ALP of the alleged international transaction involving AMP expenses, when in fact; the Revenue was unable to show that there existed an international transaction between the assessee and its AE in the first place. Accordingly, it allowed the assessee's appeal and deleted the addition made by the TPO.

CIT (INTERNATIONAL TAXATION) VS. UT STARCOM INC (INDIA BRANCH)-TS-758-HC-2017(DEL)-TP

Facts:

- The assessee was engaged in the business of providing software development services (SDS) and marketing support and IT Enabled customer support services (ITES) to its AEs. It benchmarked its international transactions by adopting TNMM as the most appropriate method and claimed that its international transactions were at arm's length. The TPO rejected the comparables adopted by the assessee and adopted a set of 11 new comparables in the SDS segment and a set of 9 new comparables in the ITES segment. The Tribunal held that the following companies selected by the TPO could not be considered as comparable to the SDS segment of assessee:
  - Infosys Technologies Limited on the ground that it was a giant risk-taking company having significant intangibles turnover.
  - KALS Information Systems Limited on the ground that it derived income from software products and it was also engaged in executing end to end project through the entire value chain of software development life cycle and there was no segmental data available.
  - Tata Elxsi Limited on the ground that it had three sub-segments, namely, Embedded product design services (Design & development of hardware and software), Industrial design and engineering (Mechanical design with a focus on Industrial design) and Animation and Visual effects (Animation and special effects) which were highly complex in nature.
- Further, the Tribunal held that the following companies selected by the TPO could not be considered as comparable to the ITES segment of assessee:
  - Vishal Information Technologies Limited on the ground that it outsourced most of its work to other vendors/service providers.

- Triton Corporation Limited and Maple e-Solutions Limited as it had an extraordinary event i.e., Maple e-Solutions Limited was acquired by Triton Corporation and its IT and ITES operations continued to be suspended due to ongoing global crises and unfavourable market conditions. Further, the directors of both the companies had committed financial irregularities and criminal proceedings were initiated against them.

- Aggrieved, Revenue appealed before the Hon'ble High Court against Tribunal's exclusion of Infosys Technologies and KALS Information Systems in the software development segment and Vishal Information Technology in ITeS Segment.

Issue:

- The Court dismissed Revenue's appeal against Tribunal's exclusion of comparables in the absence of substantial question of law.

Held:

- The Court dismissed the appeal of the Revenue and held that the Tribunal had assigned clear reasons for exclusion of comparables. Accordingly, it held that no substantial question of law arose.

PR. CIT VS PAXAR INDIA PRIVATE LIMITED-TS-780-HC- 2017-TP

Facts:

- The assessee entered into an international transaction and paid commission @ 10% to its AE in respect of services received (services as selling agent).
- It benchmarked the above transaction applying CUP method as similar payment was made by the AE of the assessee company to unconnected parties in USA @ 8% who acted as selling agents. It further contended that since the difference was within +/- 5% range, no adjustment was required.
- The TPO / DRP contended that since the uncontrolled comparables cited by the assessee were from USA i.e. a market different from India, the rate of commission paid in those cases could not be compared in the present case.
- The Tribunal rejected the objection of the TPO and held that, the commission paid by the assessee to AEs was also for services rendered in respect of sales in USA. Further, the scope of services rendered by the AEs was much more than the scope of services being rendered in such cases of the uncontrolled comparables cited by the assessee. Accordingly, it held that rate of commission paid in the present case at 10% was at arm's length and deleted the TP adjustment.

Issue:

- Where the assessee benchmarked the payments made to its US based AE for selling agent services received by it under CUP method adopting the payments by the AE to independent third parties in the USA as comparable, the Tribunal held that since the commission paid by the assessee to AEs was also for services rendered in respect of sales in USA and the scope

of services rendered by the AEs was much more than the scope of services being rendered in such cases of uncontrolled comparable cited by the assessee, no adjustment could be made.

Held:

- The Court held that the Tribunal had provided detailed reasons for deleting the TP adjustment and accordingly, it held that no substantial question of law arose. Therefore, it dismissed the appeal of the Revenue

TRIBUNAL DECISIONS

SUZLON ENERGY LTD. V. ASSISTANT COMMISSIONER OF INCOME-TAX (OSD), CIRCLE - 8, AHMEDABAD (TRIBUNAL)

Facts:

- The assessee-company had extended a corporate guarantee in respect of loan taken by its subsidiary for the purpose of construction of a guest house in Europe for the use by, the employees of assessee. The stand of the assessee was that these guarantees were given in the stewardship capacity and, hence, need not be benchmarked.
- The Assessing Officer held that providing corporate guarantee was not a service. A loan advanced to an AE could not be treated as quasi-equity as there were modes of investing in a company. The assessee had submitted that it had internal CUP in the form of guarantee fee charged by ICICI Bank at 0.70 per cent. The CUP advanced by the assessee was not found acceptable on account of clear non-comparability of the transaction. Hence, it could not form the basis for computation of guarantee margin in the case of the loans taken by the associated enterprises.
- The Assessing Officer accordingly made TP adjustment.
- The Commissioner (Appeals) partly deleted said adjustment.

Issue:

- Section 92B of the Income-tax Act, 1961 - Transfer pricing - International transaction - Meaning of (Corporate Guarantee) - Assessment year 2008-09 - Whether where assessee extended corporate guarantee in respect of loan taken by its foreign subsidiary for the purpose of construction of a guest house in Europe for use by employees of assessee in course of its stewardship activities, it would not constitute an international transaction; and, as such, no ALP adjustment can be made in respect of same.

Held:

- The assessee extending corporate guarantees to its AEs, in the course of its stewardship activities for its subsidiaries did not constitute an international transaction, and, as such, no ALP adjustment can be made in respect of the same. Accordingly, entire ALP adjustment stands deleted. As for the quantum of this adjustment, which is mainly the subject matter of grievance raised in revenue's appeal, once the entire ALP adjustment stands deleted, that aspect of the matter is wholly academic and does not call for any adjudication.

BNT GLOBAL (P.) LTD. V. INCOME-TAX OFFICER-9 (1) (2), MUMBAI

Facts:

- The assessee company filed its return which was taken up for scrutiny. While completing the assessment, the Assessing Officer noted that since the assessee had entered into an international transaction receiving foreign inward remittance from its Director as well as beneficial shareholder who was an NRI, on account of share capital and share premium, it

was required to file Audit Report in Form No. 3CEB in respect of the said international transaction.

- In view of assessee's failure to file the audit report in Form 3CEB, the Assessing Officer passed a penalty order under section 271BA.
- The Commissioner (Appeals) confirmed said penalty order on second appeal:

Issue:

- Transfer pricing - International transaction, meaning of - Assessment year 2011-12 - Whether where assessee-company received foreign inward remittance from its NRI director on account of share capital and share premium, it would fall within parameters of international transaction within meaning of section 92B - Held, yes - Whether, therefore, in such a case, assessee was required to file an audit report in Form 3CEB within period prescribed under section 92E - Held, yes - Whether since assessee failed to do so, impugned penalty order passed under section 271BA was to be upheld - Held, yes [In favour of revenue]

Held:

- In the case of international transactions as laid out in section 92B it is mandatory for a person entering into international transaction/transactions to furnish a report from an accountant setting forth the particulars of such international transaction(s). Section 92E mandates that every person who has entered into an international transaction/ transactions during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed Performa duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed. As per the provisions of section 271BA, if any personal fails to furnish a report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay, by way of penalty a sum of Rs. one Lakh
- As per the facts on record, and the relevant sections of the Act, by not filing the Audit Report in Form 3CEB, the assessee has failed to comply with the requirement of the provisions of section 92E of the Act. In the light of the provisions of sections 92B and 92E, the assessee's contention that it was not required to file Audit Report in Form 3CEB, since the provisions of section 92E were not applicable as it had only received payments from aboard for share capital and share premium from its NRI Director for allotment of shares and no other international transaction; would not hold good.
- Since the assessee entered into international transaction in the year under consideration, failure on its part to file the Audit Report from an accountant in Form 3CEB, as required under section 92E within the time prescribed, renders it liable to the levy of penalty under section 271BA.
- In the case of IL&FS Maritime Infrastructure Co. Ltd. v. Asstt. CIT [2013] 37 taxmann.com 297/144 ITD 559, the Coordinate Bench of the Tribunal held that share investment transactions fall within the purview of section 92E and the assessee is required to file audit report in Form 3CEB for such transactions, by the prescribed date, before the authorities concerned and that failure to do so would attract levy of penalty under section 271BA.[Para 3.2.2]
- No plausible reason is put forth by the assessee to establish how it was prevented by reasonable and sufficient cause from getting the Audit Report in Form 3CEB prepared by accountant in the prescribed Performa and filing the same before the concerned authority

within the time specified, as stipulated under section 92E. Transactions of share investment, as entered into by the assessee in the case on hand, clearly fall within the ambit of the provisions of section 92E since the international transaction of investment in share capital of the assessee by the NRI Director of the assessee company falls within the ambit of section 92E. As laid out therein, it is mandatory for the person entering into an international transaction to file the Audit Report in Form 3CEB, duly prepared by an accountant, setting out the particulars of such international transactions before the concerned authority within the time prescribed. The failure on the part of the assessee to furnish the Audit Report in Form 3CEB from an accountant in the prescribed Performa within the prescribed period, without reasonable cause, is a clear violation of the provisions of section 92E and the levy of penalty under section 271BA is upheld as it is clearly warranted in the factual and legal matrix of the case on hand.

- In the result, the assessee's appeal is dismissed.

PERFETTI VAN MELLE INDIA (P.) LTD. V. DEPUTY COMMISSIONER OF INCOME-TAX, CIRCLE-3, GURGAON

Facts:

- The assessee-company was engaged in manufacturing of confectionary product under the brands owned by the associated enterprises (AE) of the assessee.
- Considering the agreement between assessee and its AE, the TPO noticed that assessee provided extensive support in marketing activity through its specialized teams. He held that the assessee incurred AMP expenses for promoting the brand/trade name which was owned by its AE and, hence, the same constituted an international transaction. Applying the bright line test, the TPO determined the amount of routine advertising, marketing and promotional expenses and proposed transfer pricing adjustment.
- The DRP directed to carry out AMP intensity adjustment to the financials of the comparables for determining the overall application of the TNMM.
- The TPO, giving effect to the directions issued by the DRP, worked out transfer pricing adjustment on protective basis, by applying the bright line test and opined that no adjustment was required by using AMP intensity as directed by the DRP in view of the fact that the operating margin earned by the assessee was higher than the average margin of comparables, after using AMP intensity.

Issue:

- Section 92B of the Income-tax Act, 1961 - Transfer pricing - International transaction (AMP expenses) - Assessment year 2012-13 - Assessee provided extensive support in marketing activity of brands owned by its AE through its specialized teams - T.P.O. came to hold that assessee incurred AMP expenses for promoting brand/trade name which was owned by its AE and, hence, same constituted an international transaction - Applying bright line test, TPO determined amount of routine advertising, marketing and promotional expenses and proposed transfer pricing adjustment - Though TPO had referred to certain rulings of High Court on point in coming to conclusion that there was a separate international transaction, yet, there were certain other important judgments of High Court, delivered after passing of order by TPO, which could not be considered and, consequently, matter should be re adjudicated afresh

Held:

- ☐ When the TPO held AMP expenses to be an international transaction, he had the benefit of only some of judgments of the High Court. Now, several other judgments on the issue, including those which have been delivered after the passing of the order by the TPO, are available for consideration. As the entirety of the judicial position as laid down by the High Court is now required to be applied to the factual position prevailing in this case, a fresh determination of the ALP of AMP expense be done at the end of the TPO/AO.
- ☐ It has been brought to notice that similar issue came up for consideration before the Tribunal in assessee's own case and the Tribunal has restored such matter to the file of TPO/Assessing Officer for a fresh consideration.
- ☐ Despite the above consistent position settled by the Tribunal in assessee's own case for the immediately preceding three assessment years restoring the matter to the TPO/AO for a fresh determination, the assessee argued that the matter be decided by the Tribunal itself as, in his opinion, there were certain distinguishing features prevalent for this year vis-a-vis the preceding years.
- ☐ The first such issue is the view canvassed by the DRP on AMP intensity adjustment. The assessee argued that in none of the earlier years, the DRP directed to carry out AMP intensity adjustment to the financials of the comparables for determining the overall application of the TNMM.
- ☐ It is true that the issue of AMP intensity adjustment has been considered by the DRP, as an alternate, for the first time in the proceedings for the instant year which was not there in earlier years. However, the pertinent fact to be noted is that the TPO, while giving effect to the DRP's direction, came to hold that even after applying AMP intensity adjustment as directed by DRP, the operating profit margin earned by the assessee during the year is higher than the average margin of comparable companies, and, thus, no adjustment on account of AMP intensity is called for. In this view of the matter, it becomes obvious that no addition by applying AMP intensity adjustment has been eventually made in the impugned order. Without going into the merits of the decision of the DRP on this issue, the same has no impact in the proceedings for the year under consideration. This contention of the assessee, ergo, fails.
- ☐ It is seen that though the TPO has referred to certain rulings of the High Court on the point in coming to the conclusion that there was a separate international transaction, yet, there are certain other important judgments of the Hon'ble High Court, delivered after the passing of the order by the TPO, which could not be considered, as those were not in existence at that point of time. The contention of the assessee, claiming departure from the earlier years on this score, is not tenable.
- ☐ In the light of the non-sustainability of the objections taken by the assessee and following the consistent view taken by the Tribunal in the preceding three years of the assessee, the impugned order is set aside and the matter remitted to the file of TPO/Assessing Officer for a fresh determination of the question as to whether there exists an international transaction of AMP expenses.

TECHBOOKS ELECTRONICS SERVICES PVT. LTD. VS. PR. CIT [TS-442-HC-2017(DEL)-TP]

Facts:

- ☐ The assessee, a 100% subsidiary of Tech Books, US was engaged in providing IT enabled data conversion services and marketing, business development/product selling services etc.

to its associated enterprises ('AEs'). It applied TNMM as the most appropriate method to benchmark its transaction relating to software development and customized electronic data'.

- The TPO held that M/s. Datamatics Ltd, selected as comparable by the assessee was not comparable as the financial yearend of Datamatics Ltd. (i.e., the calendar year was the financial year) was different from that adopted by the assessee (March ending was the financial year). Accordingly, he rejected the comparable and made the consequent TP adjustment.
- The CIT(A) observed that the assessee had suitably adjusted financial results of Datamatics Limited by adopting the figures of quarterly data from Annual Reports and thus, accepted assessee's contention for inclusion of Datamatics Ltd. with OP/TC of 1.76%. Accordingly, it directed the inclusion of Datamatics Ltd. since the financial results of Datamatics Ltd. could have been calibrated by the TPO so as to coincide with the financial year of the assessee. He rejected the contention of the TPO that the data of Datamatics Limited was not contemporaneous and held that contemporaneous data as referred to in Rule 10D(4), did not necessarily mean data pertaining exactly to the same financial year and covering the same period as the international transaction under consideration and it simply meant relating to the same period of time.
- The Tribunal remitted comparability of Datamatics Ltd. holding that a valid comparison could be made only if the comparable company had also the same financial year. It disagreed with the CIT(A)'s and it further held that for making a valid comparison, it was sine qua non that the data of the comparables must be for the same period as that of the assessee company and if such a data was not readily available, then, the company albeit functionally comparable, disqualified for inclusion in the list of comparables. It clarified that only if the assessee provided the relevant data of this company for the concerned financial year on the basis of the information available from Annual the TPO could include this company and if the amounts were not directly available without any apportionment or truncation, then the company could not be considered as comparable.
- Aggrieved, the assessee filed further appeal before the High Court.

Issue:

- The Court upheld the assessee's inclusion of comparable having different financial year than that of the assessee as per the first proviso to Rule 10B(4).

Held:

- The Court held that the Tribunal had overlooked the first proviso to Rule 10B(4) which provides that data relating to a period not more than two years prior to such financial year may also be considered for comparability if such data could have an influence on the determination of transfer prices in relation to the transactions being compared. Accordingly, it held that the Tribunal could not have placed a restriction on the assessee to place before the AO/TPO only the relevant data of the said company for the concerned financial year on the basis of the information available from their annual reports, without making any own calculations as such a restriction was contrary to the proviso to Rule 10B(4).
- Accordingly, it directed the AO/TPO to consider the relevant data consistent with Rule 10 B(4) read with the first proviso, while checking the veracity of the OP/TC of Datamatics Ltd. as a comparable and allowed the appeal of the assessee.

DR. RAJIV I. MODI VS. DCIT 2017 (11) TMI 207 - ITAT AHMADABAD (ITA NO. 1285 [AHD.] 2014, DATED 21ST SEPTEMBER 2017)

Facts:

- The taxpayer was a director in a pharmaceutical company and had received a salary of INR6.21 million from a US based entity, during the relevant tax year 2009-10, which was doubly taxed both in India and the USA.
- On such taxable income, the taxpayer had inter alia claimed a credit of state taxes paid in the USA amounting to INR 0.53 million while filing his income tax return in India.
- The Assessing Officer (AO) rejected the claim on the ground that Article 2 of the India- USA tax treaty (the tax treaty) covers only federal income tax in the USA.
- On appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] observed that there was a Mumbai Tribunal decision in the case of Tata Sons Ltd. vs. DCIT (ITA No 3461 of 2009, dated 28 January 2011) on the same issue, in favour of the taxpayer, but declined to follow the said decision on the ground that it had been challenged before the High Court, and thereby upholding the order of the AO. Aggrieved by the order passed by the CIT(A).

Issue:

- India-USA DTAA – Sections 90 and 91 of the Income-tax Act, 1961- Whether State taxes paid in the United States of America (USA) eligible for foreign tax credit in India – Held: Yes, in favour of the assessee.

Held:

- The Tribunal relied extensively on the Mumbai Tribunal decision which was disregarded by the CIT(A).
- The Mumbai Tribunal decision had upheld foreign tax credit in respect of State income taxes paid in the USA, on the following basis:
  - Section 90 of the Act deals with relief of taxes paid in a country with which India has entered into an agreement, and Section 91 of the Act deals with relief of taxes paid in any country with which there is no agreement under Section 90 of the Act;
  - Section 90(2) of the Act provides that the provisions of the Act shall apply only to the extent they are more beneficial to that taxpayer;
  - Circular 621 dated 19th December 1991 issued by the Central Board of Direct Taxes (CBDT) specifically clarifies that any beneficial provision in the law would not be denied merely because a corresponding provision in the tax treaty is less beneficial;
  - In view of the above, it is possible to treat Section 91 as having general application, even in a case where Section 90 would typically apply;
  - In the instant case, the tax treaty provides that tax credits are admissible only in respect of Federal taxes and not state taxes. Conversely, provisions of Section 91 of the Act permits credit for all income taxes paid abroad – whether state or Federal;
  - Therefore, even in a case covered by the tax treaty, the provisions of Section 91 of the Act would be applicable to the extent it is more beneficial to the taxpayer;
  - As Section 91 does not discriminate between State and Federal taxes and in effect, provides for both these income taxes to be taken into account for the purpose of tax credit in India, the taxpayer would be entitled in principle, to such tax credits in India.

- Relying on the above, the Ahmadabad Tribunal held that the taxpayer is entitled to credits on both Federal (under Section 90 of the Act) and State taxes (under Section 91 of the Act) paid in the USA. However, tax credit would need to be restricted to actual income tax liability in India, in respect of such doubly taxed income.

ITO VS. MARTRADE GULF LOGISTICS FZCO-UAE [2017] 88 TAXMANN.COM 102 (RAJKOT – TRIB.) ASSESSMENT YEAR: 2008-09

Facts:

- The Assessee Company was registered in UAE. Its directors were of different nationalities, other than from UAE, being Indian, German and Portuguese. The AO sought to deny the benefit of the India-UAE DTAA since as per Article 29, an entity which was a resident of a Contracting State shall not be entitled to the benefits of India-UAE Tax Treaty if the main purpose or one of the main purposes of the creation of such entity was to obtain the benefits of India-UAE Tax Treaty which would not have been otherwise available to it and that the company should be considered as a resident of the country in which its place of effective management is situated, though its employees were situated in UAE.
- The AO also disregarded the tax residency certificate submitted by the assessee. On appeal, the Commissioner of Income-tax (Appeals) ('CIT(A)') ruled in favour of the Assessee after taking into consideration the tax residency certificate, trading licence, incorporation certificate and other documents. The Revenue filed an appeal before the ITAT.

Issue:

- Article 29 – Benefit of India-UAE DTAA will be available if a company is incorporated in UAE, though its shareholders are German companies.

Held:

- The ITAT held that since the company was incorporated in UAE, it was a resident of UAE and was hence eligible to take benefit of the India-UAE DTAA. The Tribunal held that conditions of Article 29 of the India- UAE DTAA were not satisfied to revoke the benefits of the said treaty.
- It also observed that whether the company was to be formed in UAE or in Germany, it would not have any material difference so far as non-taxability of said income in India was concerned. As corollary to this legal position, merely because the company was set up in UAE and not in the country to which the capital belonged to i.e., Germany, the assessee did not get any benefits of the India-UAE DTAA, which would have been otherwise available. The Tribunal also upheld the order of the CIT(A), which had held that the place of effective management of the assessee was UAE.

DABUR INDIA LTD VS. PR.CIT – TS- 979-HC- 2017(DEL)-TP- ITA NO. 1142/ 2017 & CM NO. 45221/ 2017

Facts:

- The assessee provided its UAE based AE viz., Redrock with expertise and also permitted it to use its brand name 'Dabur' in consideration of a royalty fee of 1% of sales (in accordance with an agreement between the two parties). Subsequently, the assessee acquired 100%

shareholding in Redrock and changed its name to Dabur International Ltd., pursuant to which the AE ceased to pay royalty to the assessee.

- During the assessment proceedings, the TPO observing the agreement prevalent between the assessee and its AE in the earlier years, computed royalty chargeable from Dabur International Ltd. at 4% (@ 3% on alleged technical support/know-how provided by the assessee to the AE for the manufacture of items and 1% for products manufactured without the aid and support of the assessee). Accordingly, it made an adjustment of Rs. 544.69 Lakhs.
- On appeal, the CIT(A) upheld the TPO's findings and dismissed the contention of the assessee that in the absence of the agreement in the current year no addition could be made and held that it was undisputed that the AE was permitted to use the brand name Dabur and therefore as per TP Regulations, the transaction required benchmarking irrespective of existence/ non-existence of an agreement. However, noting that most of the products manufactured by the AE were without the support of the assessee, the CIT(A) reduced the ALP royalty rate to 2% taking the average of the two categories of transactions.
- Aggrieved, the assessee preferred an appeal before the Tribunal. The Tribunal noted that in the current year, the products manufactured by the AE were different from the Indian products manufactured by the assessee in terms of raw material and medium of manufacture. It however observed that the AE was still using the brand name of the assessee. Accordingly, it held that the addition made by the CIT(A) of 2% was excessive and opined that a royalty rate of 0.75% would be reasonable. It noted that during the year under consideration, the assessee had incurred significant expenses on marketing and brand building itself and considering in the preceding year the assessee had charged a royalty of 1 per cent for goods produced without the assistance of the assessee, it held that 0.75% was an appropriate rate for the year under consideration.
- Aggrieved, the assessee filed an appeal before the High Court.

Issue:

- Where the assessee was receiving royalty from its AE in prior years for the provision of expertise and brand name, a mere change of ownership structure of the AE would not justify the contention that no royalty was charged in the current year.

Held:

- The High Court rejected assessee's contention that mere absence of consideration for use of the Dabur brand per se could not amount to an international transaction. It held that if the assessee's contention was to be accepted any omission by a party to indicate an initial income, which was concededly being shown in the past as an international transaction, could not be scrutinized at all, which would lead to absurd results and therefore could not be accepted.
- It held that since in the prior years, royalty was charged by the assessee to its AE and that a mere change of ownership pattern would not justify the non-charging of royalty. Accordingly, it held that there was no infirmity with the Tribunal's order and held that no substantial question of law arose.

HERBALIFE INTERNATIONAL INDIA (P.) LTD. V. ASSISTANT COMMISSIONER OF INCOME-TAX, CIRCLE 11(4), BENGALURU (TRIBUNAL)

Facts:

- The assessee, a subsidiary of HLI Inc., USA was engaged in the business of dealing in weight management, food and dietary supplements and personal care products. It adopted profit before income tax to sales as a profit level indicator. Its profit margin was computed at 5 per cent. For the purpose of transfer pricing study, the assessee company had chosen comparables whose profit margin was computed at 5 per cent. Thus, it was claimed that the payments of management fees and royalty was at arm's length.

- The TPO treated ALP of the payment of administrative service fee at Nil on the ground that the assessee had failed to establish that the administrative services were actually received by the assessee company and the assessee had failed to establish the benefits accrued as a result of management services and also the necessity of such expenditure. Similarly the same reasons were given by him for treating the payment of royalty of Nil.

- The DRP upheld the order of the TPO.

Issue:

- Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables and adjustments/Adjustment - General) - Assessment year 2006-07 - Whether where assessee had only described nature of technical know-how and administrative services received but did not conclusively prove that it actually received same, Assessing Officer was justified in adopting ALP in respect of payment of administrative services and royalty at Nil - Held, yes [Paras 10 and 11] [In favour of revenue]

Held:

- The ALP in respect of any transaction cannot be determined at Nil by holding that there was no benefit accrued on account of incurring such expenditure nor there was any necessity of incurring such expenditure. But the matter does not end there. The onus lies on the assessee to prove that the actual services for which the administrative services fees were paid are actually rendered or the use of technical know-how at the rate of 5 per cent of the domestic sales. It may be mentioned that the question of the bench marking of transaction would arise only if the assessee proves that there was actual transfer of technical know-how to the appellant and the technical know-how was actually used by the assessee in the manufacturing activity of the appellant. It is a matter of fact that before the lower authorities, the assessee company had only described the nature of technical know-how and nature of administrative services received. It does not conclusively prove that the assessee company actually received the administrative services as well as the technical know-how used in the manufacturing activity of the appellant.

- The appellant had not filed any additional evidences to prove that the administrative services/technical know-how are actually received by the appellant and, thus, the assessee-

company had failed to discharge this onus of proving this aspect. Therefore, even as per the provisions of Indian Evidence Act, the presumption can be drawn that the assessee has no evidence to prove this aspect. Therefore, the Assessing Officer/TPO was justified in adopting the ALP in respect of payment of administrative services and royalty at Nil.

KMG INFOTECH LTD. V. DEPUTY COMMISSIONER OF INCOME-TAX, CIRCLE 4(1)(1), BENGALURU (TRIBUNAL)

Facts:

- The assessee-company was engaged in the business of rendering software development services to its Associated Enterprises (AEs) KMG, USA and non-AEs.
- The assessee-company sought to justify the consideration received for international transactions entered into with its AEs to be at arm's length and applied CUP method.
- The TPO rejected TP study report submitted by the assessee-company and also rejected the CUP method adopted by the assessee-company. The TPO computed ALP by adopting TNMM as the most appropriate method and proceeded with different set of comparables. Applying the above filters, TPO passed order under section 92CA.
- The assessee challenged rejection of CUP method by TPO and rejection of internal comparables. The assessee-company also sought for the adjustment on account of under-capacity utilization.
- The DRP held that 6 companies were not comparable with the assessee-company on the application of upper turnover limit of Rs. 200 crores and confirmed the findings of the TPO.

Issue:

- Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm’s length price (Comparables and adjustments/Methods - CUP method) - Assessment year 2011-12 - Assessee-company rendered software development services to its AE – To benchmark said transaction, assessee-company applied CUP method - TPO rejected CUP method and applied TNMM and computed ALP by applying new comparables - DRP confirmed said order - Assessee contended that TPO as well as DRP had not assigned any reason as to why CUP method was not most appropriate method and TPO had not considered alternative submission of assessee-company that in case TNMM was adopted as most appropriate method, same should be applied based on internal comparables rather than external comparables and prayed for re adjudication - Department had no objection to same - Whether on facts, matter should be reconsidered afresh - Held, yes [Para 8] [Matter remanded]

Held:

- The assessee contended that the TPO as well as DRP had not assigned any reason as to why CUP method was not most appropriate method in the nature of transactions assessee-company had with its AE and that TPO had not considered the alternative submissions of the assessee-company that in case TNMM was adopted as the most appropriate method, same should be applied based on internal comparables rather than external comparables. Now, law is quite settled that internal comparables are more preferable to external comparables.

Finally, the assessee submitted that the TPO had not considered the submissions of the assessee-company for adjustment towards unutilized capacity. The Assessing Officer also not followed directions of the DRP while passing final assessment order. In the circumstances, it was prayed that the matter may be restored back to the file of the Assessing Officer for de novo consideration.

On the other hand, department had no serious objections for restoring the matter back to the file of the Assessing Officer/TPO for fresh analysis of TP study. In the circumstances, the matter is remitted back to the Assessing Officer to consider the above submissions de novo after affording due opportunity of being heard to the assessee-company.

DEPUTY COMMISSIONER OF INCOME-TAX, CIRCLE-12, KOLKATA V. J.J. EXPORTERS LTD

Facts:

- The assessee was in the business of manufacture and export of silk fabrics. It entered into international transaction with US company. The assessee chose Transaction Net Margin Method (TNMM) as the Most Appropriate Method (MAM) and had chosen nine comparable companies.

- The TPO rejected all the comparables chosen by the assessee except one and arrived at the operating profit to operating cost of the assessee at 17.26 per cent as against the claim of the assessee that its operating profit to operating cost was 39.25 per cent. The TPO took the sales of the assessee at entity level. The TPO applied 20.91 per cent being the profit margin of the comparable company chosen by him on the operating cost. The TPO, therefore, arrived at a shortfall in ALP and added a sum to the total income of the assessee as upward revision of ALP of international transaction.

- The Commissioner (Appeals) without prejudice and without in any way accepting the validity of upward adjustment was of the view that the TPO had applied the PLI of the comparable without appreciating the fact that only the controlled 'international transaction' has to be compared with uncontrolled transaction and adjustment has to be made only to the controlled international transaction and not otherwise.

Issue:

- Section 92C of the Income-tax Act, 1961, read with rule 10B of the Income-tax Rules, 1962 - Transfer pricing - Computation of arm's length price (Comparables and adjustments/Adjustments - General) - Assessment year 2007-08 - Whether it is only international transaction that has to be compared with uncontrolled transaction and not transaction undertaken by entity as a whole - Held, yes - Assessee was in business of manufacture and export of silk fabrics - It entered into international transaction with US company - To benchmark said transaction, TPO took sales of assessee at entity level and made T.P. adjustment - Commissioner (Appeals) opined that only controlled 'international transaction' had to be compared with uncontrolled transaction and adjustment had to be made only to 'controlled international transaction' and not otherwise and, consequently deleted adjustment - Whether, on facts, order passed by Commissioner (Appeals) did not call for any interference

Held:

- ☐ The order of Commissioner (Appeals) does not call for any interference. Section 92F(ii) lays down that 'arm's length price' means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

- ☐ It is clear from the statutory provisions especially rule 10B(e)(i) to (iii) that it is only the international transaction that has to be compared with uncontrolled transaction and not the transaction undertaken by the entity as a whole.

- ☐ It is not disputed by the TPO that the net profit margin earned by the assessee from the controlled international transaction was 39.25 per cent in comparison to the average net profit margin earned by the comparables chosen by the assessee at 27.072 per cent. If one were to proceed on the basis of the comparables selected by the TPO and apply its profit margin of 20.91 per cent, the assessee's profit margin of 39.25 per cent is higher. Hence, the comparison of the net profit margin of the international transaction of the assessee in comparison to the net profit margin of the comparables is much better and the addition so made by the TPO and Assessing Officer is wholly wrong and incorrect and was rightly deleted by the Commissioner (Appeals).

SCHNEIDER ELECTRIC INDIA PRIVATE LIMITED. VS. DCIT (ITA NO. 209/AHD/2015) (TS-433-ITAT- 2017(AHD)-TP) ASSESSMENT YEAR: 2009-10

Facts:

- ☐ The assessee had paid management fees to its Associated Enterprise ('AE') under a cost contribution agreement. As per the said agreement, cost incurred for the services would be allocated to the group entities.

- ☐ For the purpose of benchmarking its international transactions, the assessee applied Transactional Net Margin Method ('TNMM') on an entity level basis and held that all its international transactions were at arm's length.
- ☐ Though the Transfer Pricing Officer ('TPO') accepted the entity-level TNMM, he alleged that the ALP for payment for management fee was NIL; since the assessee did not prove whether it required such services, whether it had actually received any services and that the payment was commensurate to the benefit received by it. Further, the TPO also alleged that since the expenditure was incurred for the entire group, nothing had to be allocated to individual entities, especially when the benefits were common to all group entities. The TPO also observed that services in the nature of stewardship activities or shareholder activities need not be charged to the assessee. An adjustment was proposed by the TPO u/s. 92CA of the Act, which was followed by the A.O. while passing the order u/s. 143(3) of the Act.
- ☐ The assessee filed an appeal before the CIT(A), who upheld the order of the A.O. / TPO. Aggrieved, the assessee filed an appeal before the Hon'ble ITAT.

Issue:

- Head office expenditure – Section 44C – Payment for Management Fee is held to be at arm's length based on detailed documentation produced, thereby satisfying the rendition and benefit test. The TPO could not reject a method applied, without applying one of the prescribed methods himself.

Held:

- The Hon'ble ITAT held that the case was similar to Merck Limited vs. DCIT [2016] 139 DTR 1 (Mum), to which one of the members was a party.
- The Hon'ble ITAT deleted the TP adjustment and held that the TPO had not applied any method while determining that the ALP of the payment for management fee was NIL. It further observed that merely because the services were worthless according to the Revenue, the ALP of these services could not be held to be NIL.
- Relying on the cost contribution agreement and detailed documentation submitted by the assessee, the Hon'ble ITAT held that services were in fact received by it. It also observed that consideration was not required for shareholder activities, but certain other stewardship activities must be compensated.
- Further, the Hon'ble ITAT also held that the TPO could not question the business expediency of the payment. Lastly, it also observed that the Revenue had accepted the said payment to be at ALP in earlier years, and could not change stands in the impugned year. Accordingly, the Hon'ble ITAT allowed the assessee's appeal and deleted the transfer pricing adjustment.

JRK AUTO PART (P) LTD. VS. ACIT (ITA NO. 3458/DEL./2014) (TS-434-ITAT-2017(DEL.)-TP) ASSESSMENT YEAR: 2007-08

Facts:

- The TPO, vide his order u/s. 92CA of the Act, proposed two adjustments, namely, on import of raw material and on purchase of capital goods.
- However, the A.O. in his order u/s 143(3) of the Act, inter alia, only made an adjustment in respect of purchase of capital goods and did not make any adjustment in respect of import/purchase of raw materials by the assessee. The A.O. also disallowed, inter alia, fees paid to Registrar of Companies for increase of authorised capital and considered the same as capital expenditure.
- Penalty u/s. 271(1)(c) of the Act was also initiated and levied on the additions made by the A.O.
- The assessee did not prefer any appeal before the CIT(A) against the order u/s. 143(3) of the Act. However, an appeal was filed before the CIT(A) against the order levying penalty.
- The CIT(A), while affirming the levy of penalty, enhanced the penalty to also include the adjustment u/s 92CA of the Act in respect of the import of raw material.

Issue:

- Penalty – Section 271(1)(c) – No penalty – On additions, which were not made in the final assessment order

Held:

- The Hon'ble ITAT deleted the enhanced penalty and held that once the assessment order had attained finality, penalty could be levied only on those additions made in the said order and not on those additions not made in the said order.
- It observed that the order u/s .143(3) of the Act had attained finality and it was neither rectified / revised u/s. 263 or u/s 154 nor reopened u/s. 147 of the Act. It observed that the CIT(A) had vast powers u/s. 251 of the Act, but could not transgress his jurisdiction and exercise power beyond the mandate of law. Accordingly, the Hon'ble ITAT allowed the appeal of the assessee and deleted the levy of penalty.

ASST. CIT VS. MAX NEW YORK LIFE INSURANCE COMPANY LTD. [2017] 86 TAXMANN.COM 239 (DELHI – TRIB.) ASSESSMENT YEAR: 2002-03

Facts:

- The assessee, Max New York Life Insurance Company Ltd., was engaged in the business of life insurance. Amongst others, it had entered into an international transaction with its associated enterprise ('AE') for short-term consultancy and assistance, which entailed developing new insurance products, sales strategy, reinsurance model, underwriting personnel and services. The Transfer Pricing Officer ('TPO') proposed to make an adjustment to the income of the assessee.
- The assessee contested the order before the CIT(A), both on the ground that transfer pricing provisions were not applicable to it as well as on the merits of the case.
- The CIT(A) allowed the appeal of the assessee on merits of the case and deleted the adjustment. The Revenue filed an appeal before the Hon'ble Tribunal.

Issue:

- Section 92, Section 44 – Transfer Pricing provisions are applicable to insurance companies, though their income is computed under section 44 read with First Schedule

Held:

- Relying on the provisions of Rule 27 of the Income-tax Appellate Tribunal Rules, 1963, the assessee contended before the Hon'ble Tribunal that transfer pricing provisions were not applicable to it since its income was computed as per the provisions of section 44 read with the First Schedule to the Act. The Hon'ble Tribunal dismissed the contention of the assessee and held that computation provision contained in section 92 was applicable to international transactions falling under any of the heads of income given in section 14 and it was in addition to and distinct from the regular computational provisions contained in the respective parts of Chapter IV.
- The Hon'ble ITAT observed that the AO, in his draft order, would first compute the income under the individual heads of income as per the normal provisions of the Act, and then later on make an addition of the transfer pricing adjustment under section 92. Section 44 replaced the normal provisions of the Act with the mechanism provided in the First Schedule, but section 92 was in addition to the normal provisions and was hence not replaced by section 44.
- It was also observed that if there was a specific intention of the legislature to the contrary, then it would have been specifically mentioned in section 44.

AVL INDIA PRIVATE LIMITED VS. DCIT (ITA NO. 4529/ DEL/2014 & 4275/DEL/2016 DATED NOVEMBER 7, 2017)

Facts:

- The Assessee was engaged in manufacturing, trading, marketing and also providing after sales service for vehicles pollution monitoring equipments, instruction and test systems for engines/vehicles etc.
- The Transfer Pricing Officer ('TPO') held that receivable due from associated enterprises beyond a period of 30 days was an international transaction. Since interest was not charged by the Assessee, the TPO applied Comparable Uncontrolled Price ('CUP') method, and considered Prime Lending Rate of RBI plus 500 basis points as the arm's length price ('ALP').
- For AY 2010-11, the TPO had considered interest rate on BB Grade Corporate Bonds for 5 years or more, as the ALP. On appeal before the Commissioner of Income-tax (Appeals) ('CIT(A)'), it was held that credit period of 180 days should be allowed to compute the adjustment, and the benefit of netting off receivables against the payables was to be allowed only for transactions with the same party.
- The Assessee filed an appeal before the Income-tax Appellate Tribunal ('ITAT' / 'Tribunal')

Issue:

- Trade receivables and payables were closely linked to each other, and hence, they should be benchmarked together, after setting off the closing balances. Corporate Bond rates cannot be used to benchmark the net trade balance.

Held:

- Relying on Explanation to section 92B of the Income-tax Act, 1961 ('Act'), which was inserted retrospectively w.e.f. April 1, 2002, the Tribunal held that receivables due from an AE was an international transaction.
- Further, considering section 92C(1) of the Act as well as Rule 10A(d) of the Income-tax Rules, 1962, the Tribunal held that international transactions of the same nature or the same class were to be aggregated for the purpose of determining their ALP as a single transaction and such 'closely linked transactions' could not be benchmarked independent of each other. On perusal of the facts of the case, the ITAT held that trade receivables and payables were all closely linked to each other and hence, they had to be aggregated for the purpose of benchmarking. If the trade payables and receivables were benchmarked, the ITAT observed that the Assessee would have been liable to pay a higher amount of interest to its AEs.
- However, the ITAT disregarded the use of Corporate Bonds to determine the ALP for AY 2010- 11. The ITAT held that for applying CUP, one had to compare the international transaction with similar uncontrolled transactions and consequently, the international transactions in the nature of 'interest on trade receivables' could be compared only with interest on trade receivables in uncontrolled transactions.
- Comparing the same with corporate bonds, would result in re-characterisation of interest on trade receivables as a transaction of interest on bonds, which was not permissible as per the

provisions of the Act. It was held that for the application of CUP suitable comparable transactions were to be selected, and hence, internal comparable transactions of trade receivables from unrelated parties, would be more suitable than external comparable transaction. The matter was set aside to the TPO to determine the ALP after considering the internal uncontrolled comparable transactions.

- On another note, the ITAT also deleted the addition u/s. 14A of the Act, since the Assessee had not received any exempt income during the year.

Inbound Investment and Outbound Investment

Recent Changes in FDI Sector wise Cap

A. FOREIGN DIRECT INVESTMENT (FDI)

I. Changes in Sectoral caps and sector specific conditions as amended in FDI Policy 2017:

In following sectors/activities, changes have been made in sectoral caps or sector specific conditions:

Sector/Activity	FDI Policy 2016 % of equity cap/FDI cap	FDI Policy 2016 Entry route	FDI Policy 2017 % of equity cap/FDI cap	FDI Policy 2017 Entry route
I) **Broadcasting**				
• Broadcasting carriage services	100%	Automatic route-49% Government route beyond 49%	100%	Automatic
• Cable Networks	100%	Automatic route-49% Government route beyond 49%	100%	Automatic
II) **Civil Aviation**				
• Airports (Existing projects)	100%	Automatic route-74% Government route beyond 74%	100%	Automatic
III) **Trading**				
• Market place model of e-commerce ('Market place model of e-commerce' means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller)			100%	Automatic **Conditions:** Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis. E-commerce marketplace may provide support services to sellers in respect of

				warehousing, logistics, order fulfillment, call centre, payment collection and other services. E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory based model. An e-commerce entity will not permit more than 25 percent of the sales value on financial year basis effected through its marketplace from one vendor or their group companies. Goods/ services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller. Any warranty/ guarantee of goods and services sold will be the responsibility of the seller. E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or

				services and shall maintain level playing field. **Foreign investment is not permitted in inventory based model of e-commerce.**
• Single Brand Product Retail Trading	100%	Automatic route-49% Government route beyond 49%	100%	Automatic
IV) Financial Services				
• Asset Reconstruction Companies	100%	Automatic route-49% Government route beyond 49%	100%	Automatic
• **NBFC** (Investing company registered as NBFC with the RBI, being overall regulated)	100%	Government	100%	Automatic

B. External Commercial Borrowings:

1. Refinancing of existing ECB

It has been decided, to permit the overseas branches/subsidiaries of Indian banks to refinance ECBs of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs, provided the outstanding maturity of the original borrowing is not reduced and all-in-cost of fresh ECB is lower than the existing ECB. Partial refinance of existing ECBs will also be permitted subject to same conditions.

(A.P. (DIR Series) Circular No.15 dated January 4, 2018)

2. Masala Bonds(i.e. rupee denominated bonds) now treated as ECB

It has been decided that any proposal of borrowing by eligible Indian entities for issuance of these bonds will be examined at the Foreign Exchange Department, Central Office, Mumbai in accordance with ECB Regulations.
Further, it has also been decided to revise the provisions in respect of maturity period, all-in-cost ceiling and recognized lenders (investors) of Masala Bonds as under:

Maturity period: Minimum original maturity period for Masala Bonds raised upto USD 50 million or equivalent in INR per financial year should be 3 years and for bonds raised above USD 50 million equivalent in INR per financial year should be 5 years.

All-in-cost ceiling: The all-in-cost ceiling for such bonds will be 300 basis points over the prevailing yield of the Government of India securities of corresponding maturity.
Recognized investors: Entities permitted as investors under the provisions of paragraph 3.3.3 of the Master Direction but should not be related party within the meaning as given in Ind-AS 24.

(A.P. (DIR Series) Circular No.47 dated June 7, 2017)

C. Abolition of Foreign investment Promotion Board (FIPB)

Government has approved the proposal to abolish FIPB. Subsequent to abolition, the work of granting government approval for foreign investment under extant FDI policy and FEMA regulations shall be entrusted to the concerned administrative ministers/department.

(F.No.01/01/FC/2017-FIPB dated 5th June 2017)

D. Overseas Direct Investment (ODI)

Annual Performance Report ("APR")

Where the law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS, the statutory Auditor is required to certify that "the law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS and the figures in the APR are as per the un-audited accounts of the overseas JV / WOS" this is in place of earlier requirement of certifying that "the unaudited annual accounts of the JV /WOS reflects the true and fair picture of the affairs of the JV/ WOS"

It is also been provided that the above exemption from filing the APR based on unaudited balance sheet will not be available in respect of JV/WOS in a country / jurisdiction which is either under the observation of the Financial Action Task Force (FATF) or in respect of which enhanced due diligence is recommended by FATF or the any other country / jurisdiction as prescribed by Reserve Bank of India."

(Notification No.FEMA.369/2017-RB dated November 14, 2017)

E. Foreign Direct Investment (FDI)

1. **Master Direction on FDI Regulation**
   The RBI has for the first time released Master Directions on FDI regulation on January 4, 2018.

2. **Condition for audit of FDI companies**
   It has been provided that wherever the foreign investor wishes to specify a particular audit/ audit firm having international network for the Indian investee company, then audit of such

investee companies should be carried out as joint audit wherein one of the auditor should not be part of the same network. This will apply from 28th August, 2017 onwards.

3. **Transfer of shares by NRI & OCI**

Earlier the transfer of shares by NRI & OCI to NR (other than NRI or OCI) was not permitted. Now, the transfer of shares to NR (other than NRI or OCI) by way of sale or gift is permitted.

Further it has been provided that non-repatriable shares, convertible debentures, etc held by a NRI /OCI under Schedule 4 may be transferred (by way of sale only) to a person resident outside India subject to compliance with sectoral caps, pricing, etc. However, gift of such investments by NRI/OCI to NR continues to require RBI approval.

4. **Reporting Requirements**

Now it has been clarified that, transfer of capital instruments i.e. shares, convertible debentures ,etc between the person resident outside India having investment on non-repatriable basis to a person resident in India is not required to be reported by filing Form FC-TRS.

5. **FPI Investment in India in securities other than shares or convertible debentures (Schedule 5)**

With effect from October 3, 2017, Masala bonds no longer form a part of the limit for FPI investments in corporate bonds. They will form a part of the ECBs and will be monitored accordingly. Eligible Indian entities proposing to issue Masala Bonds may approach Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai as required in terms of A. P. (DIR Series) Circular No.47 dated June 7, 2017.A.P. (DIR Series) Circular No.47 dated June 7, 2017 has been amended for the revised provisions for Masala Bonds, refer to Amendments of ECB Regulations given above.

(A.P. (DIR Series) Circular No. 05 dated September 22, 2017)

6. **Other clarifications on FDI limits or conditions:**

- It has been clarified that, aggregate Foreign Portfolio Investment up to 49 percent will not require Government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India. Other investments by a person resident outside India will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in these regulations.

- For undertaking activities which are under automatic route and without FDI linked performance conditions, an Indian company which does not have any operations and also has not made any downstream investment, may receive investment in its capital instruments from persons resident outside India under automatic route. However, approval of the Government will be required for such companies for undertaking activities which are under Government route. As and when such a company commences business or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

- ☐ In sectors/ activities not in the list of FDI or not prohibited under Regulation 15 (i.e. lottery, gambling, etc) of FDI regulation, foreign investment is permitted up to 100 percent on the automatic route, subject to applicable laws/ regulations, security and other conditions.

- ☐ A Core Investment Company (CIC) and other investing companies engaged in the activity of investing in the capital of other India companies/LLP, is permitted under government route. CICs will have to additionally follow the Reserve Bank's regulatory framework for CICs.

- ☐ It has been clarified that real state broking service does not amount to real estate business and 100% foreign investment is allowed in the activity under automatic route.

7. **The following definitions have been amended in the FDI Regulations:**

The definition of **"Capital"** has been substituted by **"Capital Instrument"**. Accordingly, now FDI regulation uses the word "Capital Instrument" everywhere in the regulation instead of "shares or convertible debentures or warrants"

The definition of Capital instrument now specifically includes share warrants.
Also, it has been provided in the definition-

- That partly paid shares that have been issued to a person resident outside India shall be fully called-up within twelve months of such issue and twenty five percent of the total consideration amount (including share premium, if any), shall be received upfront. In case of share warrants at least twenty five percent of the consideration shall be received upfront and the balance amount within eighteen months of issuance of share warrants.
- that Non-convertible/ optionally convertible/ partially convertible preference shares issued after April 30, 2007 shall be treated as debt and shall conform to External Commercial Borrowings guideline.
- That Capital instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.

8. **The following definitions have been inserted in the FDI Regulations:**

Definition of **"Foreign Direct Investment (FDI)"** has been inserted as under:

"Foreign Direct Investment (FDI) means investment through capital instruments by a person resident outside India in an unlisted Indian company; or in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis (means the total number of shares that would be outstanding if all possible sources of conversion are exercised) of a listed Indian company."
Note: In case an existing investment by a person resident outside India in capital instruments of a listed Indian company falls to a level below 10 percent of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI.

Definition of **"Foreign Investments"** has been inserted as under:
"Foreign Investment' means any investment made by a person resident outside India on a repatriation basis in capital instruments of an Indian company or to the capital of an LLP."

It clarifies that if a declaration is made by persons as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment

It also clarifies that a person resident outside India may hold foreign investment either as Foreign Direct Investment or as Foreign Portfolio Investment in any particular Indian company

Definition of **"Foreign Portfolio Investment'** has been inserted as under:

"Foreign Portfolio Investment' means any investment made by a person resident outside India through capital instruments where such investment is less than 10 percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than 10 percent of the paid up value of each series of capital instruments of a listed Indian company."

Explanation: The 10 percent limit for foreign portfolio investors shall be applicable to each foreign portfolio investor or an investor group as referred in Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014

Definition of **"Foreign Portfolio Investor (FPI)"** has been inserted as under:

"Foreign Portfolio Investor (FPI) means a person registered in accordance with the provisions of Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014."

Explanation: Any Foreign Institutional Investor (FII) or a sub account registered under the Securities Exchange Board of India (Foreign Institutional Investors) Regulations, 1995 and holding a valid certificate of registration from Securities and Exchange Board of India shall be deemed to be a FPI till the expiry of the block of three years from the enactment of the Securities Exchange Board of India (FPI) Regulations, 2014.

Definition of "Indian Entity" has been inserted as under:

"Indian entity" shall mean an Indian company or an LLP.

Definition of "Investing Company" has been inserted as under:

"Investing company' means an Indian company holding only investments in other Indian company/ies directly or indirectly, other than for trading of such holdings/ securities."

Definition of "Investment" has been inserted as under:

"Investment means to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India"

Explanation:

a. This will include to acquire, hold or transfer depository receipts issued outside India, the underlying of which is a security issued by a person resident in India.
b. For the purpose of LLP, investment shall mean capital contribution or acquisition/ transfer of profit shares.

OVERVIEW OF ECONOMIC SURVEY

- Major reforms were undertaken over the past year. The transformational Goods and Services Tax (GST) was launched at the stroke of midnight on July 1, 2017.

- Twin Balance Sheet (TBS) problem was decisively addressed by sending the major stressed companies for resolution under the new Indian Bankruptcy Code and implementing a major recapitalization package to strengthen the public sector banks.

- As a result of these measures, the dissipating effects of earlier policy actions, and the export uplift from the global recovery, the economy began to accelerate in the second half of the year. This should allow real GDP growth to reach 6¾ percent for the year as a whole, rising to 7-7½ percent in 2018-19, thereby re-instating India as the world's fastest growing major economy.

- Against emerging macroeconomic concerns, policy vigilance will be necessary in the coming year, especially if high international oil prices persist or elevated stock prices correct sharply, provoking a "sudden stall" in capital flows.

- The agenda for the next year consequently remains full: stabilizing the GST, completing the TBS actions, privatizing Air India, and staving off threats to macro-economic stability. The TBS actions, noteworthy for cracking the long-standing "exit" problem, need complementary reforms to shrink unviable banks and allow greater private sector participation.

- The GST Council offers a model "technology" of cooperative federalism to apply to many other policy reforms. Over the medium term, three areas of policy focus stand out:
  - Employment: finding good jobs for the young and burgeoning workforce, especially for women.
  - Education: creating an educated and healthy labour force.
  - Agriculture: raising farm productivity while strengthening agricultural resilience.

  Above all, India must continue improving the climate for rapid economic growth on the strength of the only two truly sustainable engines—private investment and exports.

- Various programs launched by Government:
  - Sanitation ("Swachh Bharat")
  - Jan Dhan Accounts
  - Aadhaar-Seeded Jan Dhan Accounts
  - Housing – Pradhan Mantri Awas Yojana-Gramin
  - Gas connections: Ujjwala Connections Issued (Cumulative, millions)
  - Ujjwala Refills

- The Increase in Taxpayers Post-Demonetization One of the aims of demonetization and the Goods and Services Tax (GST) was to increase the formalization of the economy and bring more Indians into the income tax net, which includes only about 59.3 million individual taxpayers (filers and those whose tax is deducted at source in 2015-16), equivalent to 24.7 percent of the estimated non-agricultural workforce.

- Taking seasonality into account it is found that there is a 0.8 percent monthly trend increase in new tax filers (annual growth of 10 percent). The level of tax filers by November 2017 was 31 percent greater than what this trend would suggest, a statistically significant difference. This translates roughly into about 1.8 million additional tax payers due to demonetization-cum-GST, representing 3 percent of existing taxpayers. Further analysis suggests that new filers reported an average income, in many cases, close to the income tax threshold of Rs. 2.5 Lakhs, limiting the early revenue impact. As income growth over time pushes many of the new tax filers over the threshold, the revenue dividends should increase robustly.

- Exports of readymade garments (RMG) made of man-made fibres (MMFs) increased

- On demonetization specifically, the cash to GDP ratio has stabilized, suggesting a return to equilibrium

- Average CPI inflation for the first nine months has averaged 3.2 percent and is projected to reach 3.7 percent for the year as a whole. This implies average CPI inflation in the last quarter of 5 percent, in line with the RBI's forecast

- The current account deficit has also widened in 2017-18 and is expected to average about 1.5-2 percent of GDP for the year as a whole. The current account deficit can be split into a manufacturing trade deficit, an oil and gold deficit, a services deficit, and a remittances deficit. In the first half of 2017-18, the oil and gold balance has improved (smaller deficit of USD 47 billion) but this has been offset by a higher trade deficit (USD 18 billion) and a reduced services surplus (USD 37 billion), the latter two reflecting a deterioration in the economy's competitiveness

- The Indian stock market surge is different from that in advanced economies in three ways: growth momentum, level and share of profits, and critically the level of real interest rates.

KEY BUDGET PROPOSALS

INCOME TAX RATES

TDS

TDS RATES FOR ASSESSMENT YEAR 2019-20 (FINANCIAL YEAR 2018-19)

A. **On payments to Residents (subject to notes below)**

Sr. No.	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partner-ship Firm	Individual, HUF, AOP, BOI
				Rate (%)		
1	Pre-mature withdrawals from Employee Provident Fund Scheme (Note 1)	Payment in excess of Rs. 50,000	192A	-	-	10
2	Interest on Securities (Note 2)	No Threshold Limit	193	10	10	10
3	Interest on Bank Deposits, Co-operative society carrying on banking business and Deposits with Post **Office for Senior citizen** (Note 3)	Payment in excess of Rs. 50,000/- per financial year **(For Senior Citizens)**	194A	10	10	10
	Interest on Bank Deposits, Co-operative society carrying on banking business and Deposits with Post Office (Note 3) **(For Others)**	Payment in excess of Rs. 10,000/- per financial year **(For Others)**	194A	10	10	10
	Other Interest	Payment in excess of Rs. 5,000 per financial year	194A	10	10	10
4	Winning From Lotteries crossword puzzles, card games and other games of any sort	Payment in excess of Rs. 10,000	194B	30	30	30

Sr. No.	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partner-ship Firm	Individual, HUF, AOP, BOI
				Rate (%)		
5	Winning From Horse Race	Payment in excess of Rs. 10,000	194BB	30	30	30
7	Insurance Commission (Note 5)	Payment in excess of Rs. 15,000 per financial year	194D	5	5	5
6	Payment to contractors (Note 4)	Payment in excess of Rs. 30,000 per transaction or Rs. 1,00,000 per financial year	194C	2	2	1
8	Sum received for Life Insurance Policy including bonus [except exempt under section 10(10D)]	Payment in excess of Rs. 100,000 per financial year	194DA	1	1	1
9	Commission on Sale of Lottery Tickets	Payment in excess of Rs. 15,000	194G	5	5	5
10	Other Commission / Brokerage	Payment in excess of Rs. 15,000 per financial year	194H	5	5	5
11	Rent for Land or Building/ Furniture and Fixture	Payment in excess of Rs. 1,80,000 p.a.	194I(b)	10	10	10
	Rent for Plant & machinery, Equipments		194I(a)	2	2	2
	Income by way of Rent from SPV distributed by REITs (Note 6)	No Threshold Limit	194-I	-	-	-
12	Consideration for transfer of Immovable Property (other than agricultural land)	Sale Consideration must exceeds Rs. 50,00,000	194IA	1	1	1
13	Income by way of Rent (Note 5&6)	Rent exceeds Rs. 50,000 p.m. or part thereof	194-IB	5	5	5
14	Monetary Payment in respect of Joint Development Agreement (Note 8)	No Threshold Limit	194-IC	10	10	10
15	Professional Fees / Royalties / FTS	Payment in excess of Rs. 30,000 p.a.	194J	10	10	10

Sr. No.	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partner-ship Firm	Individual, HUF, AOP, BOI
				Rate (%)		
	(Note 9)					
16	Professional Fees (for certain payees) (Note 10)	Payment in excess of Rs. 30,000 p.a.	194J	2	2	2
17	Consideration for compulsory acquisition of Immovable Property (other than agricultural land)	Payment in excess of Rs. 2,50,000 p.a.	194LA	10	10	10
18	Income by way of Interest from SPV distributed by Business Trusts i.e. REITs & INVITs	No Threshold Limit	194LBA	10	10	10
19	Income other than business income distributed by an Alternate Investment Fund (Category I & II)	No Threshold Limit	194LBB	10	10	10
20	Income in respect of Investment in Securitization Trust	No Threshold Limit	194LBC	30	30	30
21	Payments in respect of deposits under National Savings Scheme, etc Central Govt Schemes	Payment in excess of Rs. 2,500 p.a.	194EE	10	10	10

Notes:

1. TDS to be deducted at maximum marginal rate in case PAN is not furnished by the deductee.
2. In case payment of interest on listed debentures to individuals TDS is required to be deducted on payments in excess of Rs. 5,000/-
3. For interest on Bank Deposits and Deposits with Post Office, the threshold limit is Rs 50,000/- for senior citizens and Rs. 10,000/- for others.
    - Also applicable on payment of Interest on time deposits by co-operative banks to its members and payment of interest on Recurring Deposit
    - Computation of interest income shall be made taking into account income credited or paid by the bank (including all branches) who has adopted core banking solutions.

4. No TDS on payment made to contractor who owns ten or less goods carriage at any time during the year and furnishes PAN.
   No TDS is required to be deducted on remittance of Passenger Service Fees by an Airline to Airline Operator (Circular No. 21/2017)
5. Provisions of Section 194-IB are applicable in cases where the deductor is individuals or HUFs other than those covered by Tax Audit u/s 44AB in immediately preceding financial year, subject to the threshold and other conditions.
6. Deduction u/s 206AA shall not exceed Amount of Rent payable for last month of previous year (March) or last month of tenancy, as the case maybe.
7. TDS is to be deducted u/s 194J @ 2% where the payee is only engaged in the business of operation of call centre.
   Any payments to a director of a company other than those which are "salaries" are specifically covered u/s 194J.
8. With effect from 1st April, 2010, the rate of TDS will be 20% in all cases other than Sec 192A, if PAN is not quoted by the deductee.
9. **TDS is required to be deducted for interest on 7.75% Savings (Taxable) Bonds, 2018 exceeding Rs. 10,000/- during the financial year.**

**TDS shall be deducted u/s 206AA @ 20% or the higher rate as provided under the Act, if PAN is not furnished by the deductee.

**No TDS is required to be deducted in case where the payee is an entity whose income is exempt u/s 10 and is not required to file returns as per Section 139. (Circular No. 18/2017)

**Certificate for deduction at lower rate can be applied for Sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC.

**Certificate for nil rate of tax deduction can be applied for Sections 194, 194EE, 192A, 193, 194A, 194DA, 194K, 194-I.

**No TDS where the deductee furnishes a self- declaration in Form 15G/ 15H for deduction of tax under Sections 194, 194EE, 192A, 193, 194A, 194D, 194DA, 194-I and 194K.

B. On payments to Non-Residents (subject to notes below)

Sr No	Payments to Non-Resident Payee	Criteria / Conditions for Deduction	Section	Rate (%)
1	Tax on Short Term Capital Gains	On sale of shares or units of mutual funds where STT is paid	111A	15
		On sale of shares or units of mutual funds where STT is not paid	45	40
		(a) In case of companies		
		(b) In case of persons other than companies		30
2	Tax on Long Term Capital Gains	Not being long term capital gains referred to section 10(33), 10(36) and 10(38) i.e. on listed shares, units of an equity oriented fund, or units of business trust i.e. REITs & Invits (Except for transactions covered under section 112(1)(c)(iii)	112	20
		on income by way of long-term capital gains from unlisted securities under section 112(1)(c)(iii)	112	10
3	Tax on Long Term Capital Gains on Transfer of Equity Share in company or a unit of equity oriented mutual fund or a unit of Business Trust (Note 9)	(i) STT is applicable on acquisition/ transfer (except Transfer on a recognised stock exchange located in any International Financial Services Centre and consideration is received in foreign currency), (ii) Tax on Long Term Capital Gains exceeding Rs. 1,00,000/-	112A	10
4	Winning From Lotteries crossword puzzles, card games and other games of any sort	Payment in excess of Rs. 10,000	194B	30
5	Winning From Horse Race	Payment in excess of Rs. 10,000	194BB	30
6	Tax on royalty on copyrights or on fees for technical services matters included in industrial policy or under approved agreements by an Indian concern or by Government of India	Agreements made / entered after 31st March, 1976	115A(1)(b)	10
7	Tax on Interest	On borrowings in foreign currency:-		
		(a) by an Indian concern or by Government of India other than interest referred in (b) or (c) below	115A(1)(a)	20
		(b) On notified infrastructure debt fund	194LB	5
		(c) By Specified Companies or Business Trusts (REITs & Invits) under a loan agreement or any long term bond	194LC	5
8	Income by way of interest from SPV distributed by Business Trusts (REITS &	No Threshold Limit	194LBA	5

Sr No	Payments to Non-Resident Payee	Criteria / Conditions for Deduction	Section	Rate (%)
	Invits)			
9	Income by way of Rent from SPV distributed by REITs	No Threshold Limit	195	-
10	Income other than business income distributed by an Alternate Investment Fund (Category I & II)	No Threshold Limit	194LBB	Rate in force
10	Income in respect of Investment in Securitization Trust	No Threshold Limit	194LBC	Rate in force
11	Income by way of interest to FII or QFI	On Rupee denominated Bonds of Indian Company and Government Securities.	194LD	5
12	Payments to Non-Resident Sportsmen/Entertainer/Sports Association	Other than to a non-resident being an Indian citizen	194E	20
13	Other income	(a) In case of non-resident companies	-	40
		(b) In case of non-residents other than non-resident companies	-	30
14	Equalization Levy	(Refer Note No.6 below)		

Notes:

1. Cess @ 4% shall be levied additionally.
2. Treaty rates will differ from Country to Country. Treaty rates will apply only if Tax Residency Certificate is produced.
3. NRI's opting to be taxed under chapter XII-A, tax shall be deductible at the rate of ten percent on long term capital gains referred to in section 115E and twenty percent on investment income
4. W.e.f. 1st April, 2010, the rate of TDS will be deducted under section 206AA at 20 percent in all cases, if PAN is not quoted by the deductee. However, this condition is not applicable

   - in respect of Royalties, FTS, Interest and Capital Gains on compliance of conditions in Rule 37BC
   - in respect of Interest covered under section 194LC
5. TDS is to be deducted at "Rate in Force". The term "Rate in force" means rate as per Income Tax Act, 1961 or Relevant DTAA rate which is beneficial.

6. Equalisation Levy has been introduced for online advertisement / digital advertising space services provided by a non-resident to a resident or a permanent establishment of non-resident in India. The rate for such levy shall be six percent of the consideration
7. TDS rate on Interest Payments under section 194LC shall now be available in respect of borrowings made before 1st July, 2020.

8. TDS rate on Interest Payments under section 194LD shall now be available in respect of borrowings made before 1st July, 2020.

9. **The Long Term Capital Gains shall be computed without giving effect to 1st and 2nd proviso to Section 48.**
10. **No tax at source is required to be deducted under Section 195 by National Technical Research Organisation ('NTRO') on payment of royalty or fees for technical services paid to non-resident or foreign company.**

* Certificate for deduction at lower rate can be applied for Section 195.
* Surcharge Applicable:-

Payee Status	Deduction Threshold	Rate (%)
Non-Resident Individual, HUF, AOP, BOI or Artificial Judicial Person	Exceeding Rs. 1 crore	15%
Co-Operative Society	Exceeding Rs. 1 crore	12%
Foreign Company	Exceeding Rs. 1 crore upto Rs. 10 crores	2%
Foreign Company	Exceeding Rs. 10 crores	5%

TCS

TCS RATES FOR ASSESSMENT YEAR 2019-20 (FINANCIAL YEAR 2018-19)

Sr No	Nature of Goods/Contract/License /Lease	Criteria for Collection	Percentage*
1	Alcoholic Liquor for Human Consumption	No Threshold Limit	1
2	Tendu Leaves	No Threshold Limit	5
3	Timber obtained under a Forest Lease	No Threshold Limit	2.5
4	Timber obtained by any mode other than under a Forest Lease	No Threshold Limit	2.5
5	Any other Forest produce	No Threshold Limit	2.5
6	Scrap	No Threshold Limit	1
7	Minerals, being Coal or Lignite or iron ore	No Threshold Limit	1
8	Motor Vehicle(Note 1)	Payment in excess of Rs. 10,00,000/-	1
9	Cash Sale of Bullion	Payment in excess of Rs. 2,00,000/-	1
11	Cash Sale of any other goods (other than bullion and jewellery) or Providing any service for Cash	Payment in excess of Rs. 2,00,000/-	1
12	Transfer of right or interest in any Parking Lot or Toll Plaza or Mining and Quarrying (other than of mineral oil) under any contract, license and lease	No Threshold Limit	2

Note 1 No TCS shall be deducted where the buyer is the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; local authority as defined in explanation to clause (20) of Section 10;a public sector company which is engaged in the business of carrying passengers.

*TCS shall be deducted u/s 206CC @ twice the rate applicable or 5%, whichever is higher, if PAN is not furnished by the collectee.
*Surcharge Applicable:-

Payee Status	Deduction Threshold	Rate (%)
Individual, HUF, AOP, BOI or Artificial Judicial Person	Exceeding Rs. 1 crore	15%
Co-Operative Society	Exceeding Rs. 1 crore	12%
Foreign Company	Exceeding Rs. 1 crore upto Rs. 10 crores	2%
Foreign Company	Exceeding Rs. 10 crores	5%

FOREIGN POLICY ANNOUNCEMENTS

1. Foreign Exchange Regulations

☐ Venture Capital Funds and the angel investors

- Number of policy measures including launching ‘‘Start-Up India’’ program, building very robust alternative investment regime in the country and rolling out a taxation regime designed for the special nature of the VCFs and the angel investors.
- Measures to strengthen the environment for their growth and successful operation of alternative investment funds in India are being planned.

☐ Separate policy for the hybrid instruments

- Budget recognises that Hybrid instruments are suitable for attracting foreign investments in several niche areas, especially for the start-ups and venture capital firms.
- The Government will evolve a separate policy for the hybrid instruments.

☐ Liberalizing foreign direct investment

- The Government has opened up private investment in defence production including liberalizing foreign direct investment. Measures will be taken to develop two defence industrial production corridors in the country. The Government will also bring out an industry friendly Defence Production Policy 2018 to promote domestic production by public sector, private sector and MSMEs

DIRECT TAX PROPOSALS

DOMESTIC TAXATION

1. Personal Tax

(i) For individuals, HUFs, Association of Persons, Body of Individuals [Not covered in (ii) below]

Income	Existing Rates (%)			Proposed Rates (%)		
	Tax	Cess (3%)	Total	Tax	Cess (4%)	Total
Rs. NIL to Rs. 2,50,000	-	-	-	-	-	-
Rs2,50,001 to Rs. 5,00,000	5.00	0.15	5.15	5.00	0.20	5.20
Rs. 5,00,001 to Rs. 10,00,000	20.00	0.60	20.60	20.00	0.80	20.80
Rs. 10,00,001 and above	30.00	0.90	30.90	30.00	1.20	31.20

(ii) For resident senior individuals (attained age of 60 years but less than 80 years)

Income	Existing Rates (%)			Proposed Rates (%)		
	Tax	Cess (3%)	Total	Tax	Cess (4%)	Total
Rs. NIL to Rs. 3,00,000	-	-	-	-	-	-
Rs. 3,00,001 to Rs. 5,00,000	5.00	0.15	5.15	5.00	0.20	5.20
Rs. 5,00,001 to Rs. 10,00,000	20.00	0.60	20.60	20.00	0.80	20.80
Rs. 10,00,001 and above	30.00	0.90	30.90	30.00	1.20	31.20

(iii) For resident super senior individual (attained age of 80 years or above)

Income	Existing Rates (%)			Proposed Rates (%)		
	Tax	Cess (3%)	Total	Tax	Cess (4%)	Total
Rs. NIL to Rs. 5,00,000	-	-	-	-	-	-
Rs. 5,00,001 to Rs. 10,00,000	20.00	0.60	20.60	20.00	0.80	20.80
Rs. 10,00,001 and above	30.00	0.90	30.90	30.00	1.20	31.20

2. Surcharge (for Individuals):

- Surcharge is levied @ 10% on income exceeding Rs. 50 lacs but not exceeding Rs. 1 crore. In case of income exceeding Rs. 1 crore, the surcharge shall be @ 15%.
- Marginal Relief shall be available for the said surcharge.

3. Rebate

- The rebate u/s 87A is available upto Rs. 2,500/- for income not exceeding Rs. 3,50,000/-.

Corporate Tax

- Finance Act, 2017 introduced a reduced rate of tax of 25% for domestic companies with turnover or gross receipts less than Rs. 50 crore. This reduced rate is proposed to be substituted for companies whose turnover or gross receipts does not exceed Rs. 250 crore during financial year 2016-17. For other domestic companies, the rate of 30% shall continue to apply.
- The rates of tax payable by Foreign Companies have not been changed and remains at 40%.
- Surcharge remains unchanged at 7 % of tax where total income exceeds Rs. 1 crore and 12% of tax where total income exceeds Rs. 10 crore for domestic companies and 2% of tax where total income exceeds Rs. 1 crore and 5% of tax where total income exceeds Rs. 10 crore for foreign companies.

Cess (for all assessees):

- The Secondary Education Cess of 2% and Higher Secondary Education Cess of 1% (aggregate 3%) applicable on tax and surcharge to every tax payer are proposed to be replaced by a single Health & Education Cess of 4%.

International Taxation

Non-residents

- **Section 9 – Amendment to the meaning of "business connection"**

  As per the existing clause (a) of Explanation 2 to section 9(1)(i), the term "business connection" includes business activities carried on by non-resident through any person who is habitually authorised to conclude contracts on behalf of the non-resident unless his activities are limited to the purchase of goods for the non-resident.

  With a view to align the scope of "business connection" under the domestic law with the modified term of "Permanent Establishment" as per Multilateral Convention to Implement Tax Treaty Related Measures ('MLI'), clause (a) of Explanation 2 to section 9(1)(i) is proposed to be amended to provide that "business connection" shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes

contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident. Further, such contracts should be:

- in the name of the non-resident; or
- for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use; or
- For the provision of services by that non-resident.

☐ "Business connection" to include "significant economic presence"

With a view to widen the scope of "business connection" and to include emerging business models such as digitized businesses, that do not require any physical presence of itself or any agent in India, a new Explanation 2A has been proposed to be inserted to section 9(1)(i) to clarify that significant economic presence in India shall constitute "business connection" in India. For this purpose "significant economic presence", shall mean -

i. any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or
ii. Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

It is provided that the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India. It is further provided that only so much of the income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.

These amendments will take effect from 1st April, 2019 (i.e. AY 2019-20).

☐ Section 245-O: Authority for Advance Rulings and Section 245-Q: Application for Advance Ruling

Section 245-O has been proposed to be amended to provide that Authority for Advance Rulings shall cease to act as an Authority for Advance Rulings upon the date of appointment of proposed Customs Authority for Advance Ruling under section 28EA of the Customs Act. Further a new sub-section has been proposed to be inserted to provide that on and from the date of appointment, the Authority for Advance Rulings shall act as an Appellate Authority for the purpose of Chapter V of the Customs Act, 1962. Further, such Authority shall not admit any appeal against any ruling or order passed earlier by it in the capacity of Authority for Advance ruling in relation to any matter under Chapter V of the Customs Act, 1962 after the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act,1962.

This amendment will take effect from 1st April,2018 (i.e. AY 2018-19).

Residents

☐ Section 271FA: Penalty for failure to furnish statement of financial transaction or reportable account

Section 271FA has been amended to provide for an increase in penalty, where a person who is required to furnish the statement of financial transaction or reportable account, fails to furnish such statement within the prescribed time as per following:

Section No.	Particulars	Existing Penalty	Proposed Penalty
285BA(1)	Person who is required to furnish the statement of financial transaction or reportable account under sub-section (1) of section 285BA, fails to furnish such statement within the prescribed time.	Rs. 100/- per day of failure	Rs. 500/- per day of failure
285BA(5)	Person fails to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under sub-section (5) of section 285BA.	Rs. 500/- per day of failure	Rs. 1,000/- per day of failure

This amendment will take effect from 1st of April, 2018(i.e. AY 2018-19).

- **Section 286: Rationalisation of provisions relating to Country-by-Country Reporting ('CbCR')**

Finance Act, 2016 introduced Country-by-Country Reporting ('CbCR') in alignment with the Base Erosion Action Plan (BEPS) Action Plan 13. Section 286 contains provisions relating to Country by Country Reporting ('CbCR') in respect of an international group. It is proposed to amend section 286 to give effect to certain clarificatory amendments, applicable retrospectively from 1st April 2017, in order to make the reporting more effective and reduce the compliance burden.

a. Section 286(4) is amended to provide furnishing of CbCR by constituent entity resident in India, having a non-resident parent if the parent entity outside India has no obligation to file the CbCR in the latter's country or territory
b. Time allowed for furnishing CbCR in case of parent entity or Alternate Reporting Entity (ARE), resident in India, is extended to 12 months from the end of reporting accounting year as against on/before return filing due date specified earlier.
c. Time allowed for furnishing the CbCR, in the case of constituent entity resident in India, having a non-resident parent, shall be 12 months from the end of reporting accounting year

d. Section 286(5) is amended to state that due date for furnishing of CbCR by the Alternate Reporting Entity of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory as against on/ before return filing due date specified earlier
e. Definition of 'Agreement' is amended to include agreement for exchange of the report referred to in sub-section (2) [Filing by parent entity/ ARE resident in India] and sub- section (4) [Filing by constituent entity of international group resident in India under specified circumstances] as may be notified by the Central Government in addition to agreement referred to in Sec 90(1) or Sec 90A(1)
f. Definition of "reporting accounting year" is amended to mean the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-section (2) [Filing by parent entity/ARE resident in India] as well as report referred to in sub-section (4) [Filing by constituent entity of international group resident in India under specified circumstances]

Provisions Affecting Individuals

- **Section 10: Exemption on closure of opting out of NPS extended to non-employees**

  The exemption available to an employee contributing to the National Pension Scheme in respect of 40% of the total amount payable to him on closure or on his opting out is extended to non-employee subscribers as well.
  This amendment will apply for A.Y. 2019-20 and onwards.

- **Section 16: Standard Deduction from Salary**

  In computing the Salary for an individual, a deduction of Rs. 40,000/- or the amount of salary, whichever, is less shall be allowed.
  Consequently, the existing exemption in respect of Transport Allowance of Rs. 1,600/- per month and Re-imbursement of actual Medical Expenditure (maximum of Rs. 15,000/-) is proposed to be abolished.
  This amendment will apply for A.Y. 2019-20 and onwards.

- **Section 44AE: Presumptive Income in case of business of plying, hiring or leasing of goods carriages**

  The provisions of Section 44AE provide for a presumptive amount of income in case of an assessee engaged in the business of plying, hiring or leasing of goods carriages. The amount of income presumed is as follows is the higher of the amount claimed or the following amount:

Existing Provision	Proposed Amendment
Rs. 7,500/- for every month for or part of a month for each goods carriage	For a heavy goods vehicle: Rs. 1,000/- per ton of gross vehicle weight or un laden weight for every month for or part of a month for each goods carriage.

	For Others: Rs. 7,500/- for every month for or part of a month for each goods carriage.

This amendment will apply for A.Y. 2019-20 and onwards.

- **Section 56(2)(xi): Taxability of compensation received in connection to termination or modification in employment**

  Any compensation or other payments received (capital or revenue) in connection with the termination of employment or the modification of the terms or condition relating to employment shall be now specifically chargeable under the head "Income from Other Sources" under the proposed Section 56(2)(xi).
  This amendment will apply for A.Y. 2019-20 and onwards.

- **Section 80D: Deductions available to senior citizens in respect of health insurance premium and medical treatment**

  The monetary limit of deduction in respect of medical expenses of a very senior citizen, or payment towards annual premium on health insurance policy, or preventive health check -up of senior citizens has been increased to Rs.50,000/- from the existing limit of Rs.30,000/-.
  Further the limitation of certain deduction restricted only to very senior citizen has been liberalized to senior citizens (i.e. Age of 60 years or more).
  In case, a single amount is paid as premium for health insurance policy for more than one year, the deduction shall be allowed on proportionate basis for the number of years for which health insurance premium is paid, subject to the specified monetary limit.
  This amendment will apply for A.Y. 2019-20 and onwards.

- **80DDB: Enhanced deduction to senior citizens for medical treatment of specified diseases**
  The monetary limit of deduction for the amount paid towards medical treatment of specified diseases has been raised to Rs. 1,00,000/- for both senior citizens and very senior citizens from the existing limit of Rs. 60,000/- and Rs. 80,000/- respectively.
  However, the limit in the case of assessee other than above remain unchanged i.e. deduction of Rs. 40,000/-.
  This amendment will apply for A.Y. 2019-20 and onwards.

- **80TTA & 80TTB- Deduction in respect of interest income to senior citizen**
  Currently, an Individual (including senior citizen) and HUF gets a deduction upto Rs. 10,000/- in respect of the interest income earned on saving account u/s 80TTA.
  It is proposed to insert Section 80TTB providing for deduction upto Rs. 50,000/- for interest on savings account for senior citizens. However, such senior citizen shall be excluded under the ambit of Section 80TTA.
  This amendment will apply for A.Y. 2019-20 and onwards.

Provisions Affecting Corporates

- **Section 28(ii) - Expansion of scope of non-compete fees**

  It is proposed to amend section 28(ii) to expand the scope of business income to include any compensation received or receivable, whether revenue or capital, in connection with the termination or modification of the terms and conditions of any contract.
  This amendment will take effect from 1st April 2019 (i.e. AY 2019-20).

- **Section 115JB –Rationalisation of MAT regime for companies undergoing insolvency proceedings**

  Section 115JB prescribes that while calculating book profits for determining the Minimum Alternate Tax ('MAT'), the lower amount of the loss brought forward or unabsorbed depreciation can be deducted. Consequently, where either brought forward loss or unabsorbed depreciation is Nil, no deduction is allowed.
  It is now proposed to amend section 115JB is to allow both, unabsorbed depreciation and loss brought forward (excluding unabsorbed depreciation) to be reduced from the book profit, if a company's application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.
  This amendment will take effect from 1st April 2018 and accordingly, will apply for AY 2018-19.

- **Section 79 –Carry forward and set off of losses in case of companies undergoing insolvency proceedings**

  Section 79 prescribes a condition of continuation of at least 51% of shareholding for enabling carry forward and set off of losses. In cases where changes in shareholding are mandated under the insolvency resolution proceedings (under the Insolvency and Bankruptcy Code, 2016) the company is restricted from carrying forward and setting off previous losses.
  It is now proposed to insert a new proviso in section 79 to relax the shareholding requirement in case of companies whose resolution plan has been approved under the Insolvency and Bankruptcy Code, 2016 after giving a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
  This amendment will take effect from 1st April 2018 and accordingly will apply to return of income filed on or after the said date.

- **Section 115JB – MAT not applicable to a foreign company**

  It is proposed to insert a new Explanation in section 115JB to clarify that MAT shall not be and shall be deemed never to have been applicable to a foreign company, if its total income comprises solely of profits and gains from business referred to in section 44B, 44BB, 44BBA or 44BBB of the Act and such income has been offered to tax at the rates specified in the said sections.
  This amendment will take effect retrospectively from assessment year 2001-02.

- **Section 2(22) - Expansion of scope of accumulated profits**

  It is proposed to insert a new Explanation 2A to section 2(22) to widen the scope of the term 'accumulated profits' for the purpose of section 2(22). In case of amalgamation, it is now

proposed to include profits of amalgamating company, whether capitalised or not, in the profits of amalgamated company.
This amendment will take effect from 1st April 2019 (i.e. AY 2019-20)

- **Section 115-O - Application of dividend distribution tax to deemed dividend**
  Dividend Distribution Tax ("DDT") is not applicable to "deemed dividend" as defined in section 2(22)(e)of the Act which are instead only taxed in the hands of the recipient. It is proposed to amend section 115-O with effect from 1st April 2018 to also levy DDT on deemed dividends in addition to the same being taxed in the hands of the recipient at a rate of 30% on net amount of dividend.
  This amendment will take effect from 1st April 2018and shall apply to transactions undertaken on or after 1st April 2018.

- **Section 115R – DDT on dividend payout to unit holders of equity-oriented fund**
  It is proposed to amend section 115R to provide that Equity Oriented Mutual Fund shall be liable to pay additional income tax at the rate of 10% on income distributed by it to the unit holders.

  This amendment will take effect from 1st April 2018.

- **Section 115BA: Clarification of applicability of beneficial rate of tax for domestic companies engaged in certain manufacturing business**
  Section 115BA provides a beneficial rate of 25% for newly set up domestic company engaged in business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it subject to specified conditions. The beneficial rate of 25% was applicable on total income (excluding income subject to provision of section 111A and section 112).
  It is now proposed to amend the section 115BA to clarify that the beneficial rate of 25% is available only to the income from the business referred to in section 115BA, and other incomes will continue to be taxed as per the respective provisions of Chapter XII.
  This amendment will apply retrospectively with effect from 1st April 2017 (i.e. AY 2017-18).

- **Section 80AC – No deduction under section 80AC is admissible if return of income is not filed within due date**
  It is proposed to provide that deductions under any provisions of Chapter VIA under the heading "C.—Deductions in respect of certain incomes" shall be admissible only if the return is filed within the due date specified under sub-section (1) of section 139.
  This amendment will take effect from 1stApril 2018 (i.e. AY 2018-19 and onwards)

Incentives

- **Section 10 - Tax exemption on payment of royalty and fees for technical services paid to a non-resident by Non-Technical Research Organisation (NTRO)**
  It is proposed to insert a new clause 6D in section 10, providing tax exemption in respect of any income arising to a non-resident, not being a company, or a foreign company, by way of

royalty from, or fees for technical services rendered in or outside India to, the National Technical Research Organisation.
This amendment will take effect from 1st of April, 2018 (i.e. AY 2018-19).

- **Section 10(48B): Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement**

Clause 48B of section 10is proposed to be amended to include the benefit of tax exemption in respect of income from sale of left over stock even if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.
This amendment will take effect from 1st of April, 2019(i.e. AY 2019-20).

- **Section 43: Tax treatment of transaction in respect of trading in agricultural commodity derivatives**

An amendment has been proposed to be made by inserting a second proviso to clause 5 of section 43 to provide that trading in agricultural commodity derivatives carried out on a recognised stock exchange shall be considered as a non-speculative transaction even if the transaction is not chargeable to commodity transaction tax. This amendment is made to encourage participation in trading of agriculture commodity derivatives.
This amendment will take effect from 1st April 2019 (i.e. AY 2019-20).

- **Section 47-Transfer by Non-Resident on recognised stock exchange in International Financial Services Centre (IFSC) not regarded as transfer liable for capital gains tax**

Section 47 is proposed to be amended by inserting a new clause (viiab) which provides that any transfer of the following capital assets by a non-resident in recognised stock exchange located in any IFSC shall not be regarded as a transfer-

i. bond or Global Depository Receipt referred to in section 115AC(1);or
ii. rupee denominated bond of an Indian company; or
iii. derivative

Further, section 115JC has been proposed to be amended to reduce alternate maximum tax rate from 18.5% to 9% of adjusted total income in case of units located in IFSC.
This amendment will take effect from 1st April 2019 (i.e. AY 2019-20).

- **Section 80-IAC -Special provision in respect of eligible start-ups**

The definition of “eligible business” for start-ups is now proposed to be widened to mean a business engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.
Further, it is proposed to extend the benefit to eligible start-ups incorporated up to 1st April 2021as against earlier date of 1st April 2019. Further, the condition of total turnover of the business not exceeding a sum of Rs. 25 crores in any of the previous years beginning from 1st April, 2016 and ending on 31st March, 2021 is now proposed to be substituted to any of the seven previous years commencing from the year in which it is incorporated.
The amendment will take effect from 1st April, 2018 (i.e. AY 2018-19).

- **Section 80-JJAA– Deduction in respect of new employees**

  It is proposed to extend the benefit of section 80-JJAA which provides for additional deduction of 30% of additional cost of new employees to footwear and leather industry with special relaxation of minimum employment period of 150 days.

  Further, in certain cases when new employees were employed towards the end of the year, although they were new employees, they did not meet the definition of new employee owing to their employment being less than 240/150 days as the case may be. To rationalize this, a proviso is proposed to be inserted that if an employee is employed for a period of less than 240/150 days in a previous year but is employed for a period of 240/150 days in immediately succeeding year, he shall be deemed to be employed in the succeeding year and deduction would be available in immediately succeeding year.

  This amendment will take effect from 1st April 2019 (i.e. AY 2019-20).

- **Section 80PA: Deduction in respect of Farm Producer Company**

  It is proposed to insert a new section 80PA to extend the benefit to farm Producer Company having a total turnover upto Rs 100 crores whereby a deduction of 100% of the profits and gains derived from the eligible business shall be allowed in computing the total income of the assessee from the assessment year 2019-20 but before the assessment year 2024-25.Eligible business has been defined to mean:

  i. the marketing of agricultural produce grown by the members; or
  ii. the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or
  iii. the processing of the agricultural produce of the members;

  Further, if an assessee is entitled to any deduction under any other provision of chapter VI-A with respect to income referred to in this section included in the gross total income, the deduction under this section shall be reduced by the deductions availed under such other provision of Chapter VI-A.

  This amendment will take effect from 1st April 2019 (i.e. AY 2019-20).

CAPITAL GAINS

- **Section 112A – New regime for taxation of long term capital gains on sale of equity shares, units of equity-oriented fund or a unit of a business trust**

  A new section 112A is proposed to be inserted to provide that long-term capital gains arising from transfer of a long-term capital asset being equity share in a company or a unit of equity-oriented fund or a unit of a business trust shall be taxed at 10% of such capital gains exceeding Rs. 1,00,000.

  The concessional tax rate of 10% will be applicable if long term capital asset is in nature of an equity share in a company, unit of equity-oriented fund or unit of business trust and securities transaction tax has been paid on both acquisition and transfer of such capital asset. Sub-section 4 empowers central government to specify by notification the nature of acquisition in respect of which the requirement of payment of securities transaction tax shall not apply.

  It has also been provided that capital gains arising from a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is received or receivable in foreign currency shall be eligible under this section without payment of securities transaction tax.

It is proposed that the long-term capital gains covered under section 112A will be computed without giving effect to the first and second provisos to section 48 i.e. without taking benefit of inflation indexation in respect of cost of acquisitions and cost of improvement, if any, and the benefit of computation of capital gains in foreign currency in the case of a non-resident, will not be allowed.

Grandfathering provisions for existing long-term capital assets

It is proposed that the cost of acquisition in respect of the long-term capital asset acquired by the assessee before the 1stday of February 2018, shall be deemed to be the higher of –

a. the actual cost of acquisition of such asset; and
b. the lower of the fair market value of such asset or the full value of consideration received or accruing as a result of the transfer of the capital asset.

For this purpose, the term "fair market value" has been defined to mean –

i. in case of capital asset being equity shares listed on any recognized stock exchange - the highest price of the capital asset quoted on such exchange on the 31st day of January2018. Where there is no trading in such asset on such exchange on the 31st day of January 2018, the highest price of such asset on such exchange on a date immediately preceding the 31st day of January 2018 when such asset was traded on such exchange shall be the fair market value; and
ii. in case of capital asset, being unit which is not listed on recognized stock exchange, the net asset value of such asset as on 31st day of January, 2018.

The term "equity-oriented fund" has been defined to mean a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and also includes funds which invests in units of other funds and fulfils following conditions:

a. In a case where the fund invests in the units of another fund which is traded on a recognized stock exchange - if minimum of 90 per cent of the total proceeds of such fund is invested in the units of such other fund; and such other fund also invests a minimum of 90 per cent of its total proceeds in the equity shares of domestic companies listed on recognized stock exchange;
b. In any other case, a minimum of 65 per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on recognized stock exchange.

It is also proposed that deduction under chapter VIA shall be allowed from the gross total income as reduced by such long-term capital gains. It is also proposed that rebate under section 87A shall be allowed from the income tax on the total income as reduced by tax payable on such long-term capital gains.

This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent years.

- **Section 115AD – Taxation of long term capital gains in the case of Foreign Institutional Investor**

Consequent to withdrawal of exemption under section 10(38) and insertion of new section 112A, it is proposed to amend section 115AD to provide that the Foreign Institutional Investors (including Foreign Portfolio Investors) will also be liable to tax on long term capital gains in respect of gains exceeding Rs. 1,00,000.

This amendment will take effect from 1stApril 2019 i.e. from assessment year 2019-2020.

- **Section 43CA (business income), Section 50C (capital gains) and Section 56 (other sources):Determination of full value of consideration in respect of transfer of Immovable Properties**

  Under the current provisions of section 43CA, section 50C and section 56 while taxing income arising out of transaction in immovable property, the sale consideration or stamp duty value, whichever being higher was adopted.

  It is proposed to provide that no adjustments shall be made in the hands of seller as well as in the hands of purchaser in a case where the variation between stamp duty value and sale consideration is not more than five percent of the sale consideration.

  These amendments will take effect from 1st April, 2019.

- **Section 28: Provisions relating to conversion of Stock-in-Trade into Capital Asset**

  It is proposed to insert sub-section (via) to section 28 to provide that any profit / gains arising from conversion of stock-in-trade into capital asset shall be chargeable to tax as business income on the date of such conversion and the fair market value of the stock-in-trade on the date of conversion would be treated as full value of consideration for determining business income.

  Correspondingly, it is proposed to amend section 49 so as to provide that where the capital gain arises from the transfer of such capital asset (i.e. converted from stock-in-trade), the cost of acquisition of such capital asset shall be deemed to be the fair market value of the stock-in-trade on the date of conversion. It has also been provided that the period of holding of such capital asset shall be reckoned from the date of such conversion.

  These amendments will take effect from 1st April, 2019.

- **Section 54EC: Capital Gain not to be charged on investment in certain bonds**

  Section 54EC provides that capital gain arising from the transfer of a long-term capital asset, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, and shall not be charged to tax subject to certain conditions specified in the said section.

  It is proposed to amend the section 54EC to restrict the benefit of the section to the capital gain arising from the transfer of a long-term capital asset, being land or building or both if such gains are invested in the long-term specified asset at any time within a period of six months after the date of such transfer.

  It is also proposed to amend the definition of 'long term specified asset' for making investment after 1st April 2018 to mean any bond which are redeemable after five years and are issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government.

  These amendments will take effect from 1st April, 2019

Procedural

- **Section 139A - Application for allotment of Permanent Account Number (PAN) in certain situations**

  It is proposed to insert a new clause (v) in sub section 1 of section 139A which provides that every person not being an individual which enters into a financial transaction of an amount

aggregating to two lakh fifty thousand rupees or more in a financial year shall be apply to the assessing officer for the allotment of PAN.

It is further proposed to insert a new clause (vi) to provide that the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of such non-individual, or any person competent to act on behalf of such non-individual, shall also apply to the Assessing Officer for the allotment of permanent account number.

This amendment will take effect from 1stApril, 2018 (i.e. A.Y. 2018-19).

- **Section 143 - New scheme for scrutiny assessment**

  Currently sub-clause (vi) of the clause (a) of sub section 1 of section 143 provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return. It is now proposed to insert a new proviso to the said clause which provides that no adjustment under sub-clause (vi) of the said clause shall be made in respect of any return furnished for the assessment year commencing on or after the 1stApril, 2018.

  It is further proposed to insert sub-sections (3A), (3B) and (3C) in the section 143 to, inter alia, provide for a scheme, by notification in the Official Gazette laid before each house of parliament for the purpose of making assessment of total income or loss of the assessee under sub-section (3).

  This amendment will take effect from 1stApril, 2018 (i.e. A.Y. 2018-19).

- **Section 253 - Appeals to the Appellate Tribunal**

  Clause (a) of sub section (1) of Section 253 is proposed to be amended to provide that an assessee aggrieved by an order passed by a Commissioner (Appeals) under section 271J (which is penalty order for furnishing incorrect information in reports or certificates) may appeal to the Appellate Tribunal against such order.

  This amendment will take effect from 1stApril,2018 (i.e. A.Y. 2018-19).

- **Section 276CC - Rationalisation to Section 276CC relating to prosecution for failure to furnish returns**

  Section 276CC provides for prosecution proceedings against an assessee that wilfully fails to furnish returns of income. However, clause (ii)(b) of the proviso to section 276CC provided that no proceeding would be initiated where the amount of tax not paid (after accounting for advance tax and TDS) did not exceed Rs. 3,000.

  With an aim to prevent abuse of this proviso by shell companies and companies that hold “Benami” properties, the Bill proposes to exclude companies from the benefit of this proviso. Therefore, in cases where a company fails to furnish return of income, prosecution proceedings would be initiated even if the tax not paid does not exceed Rs. 3,000.

  This amendment will take effect from 1stApril,2018 (i.e. A.Y. 2018-19).

Rationalization Measures

- **Rationalisation of provisions related to Commodity Transaction Tax**

  Section 116(7) of the Finance Act is proposed to be amended to include a transaction involving “options on commodity futures” within the definition of a “taxable commodities transaction”. Further, sections 117 (which prescribes the rate of CTT and who will pay the tax) and 118 (which prescribes manner of determining value of the transaction) are accordingly

proposed to be substituted to incorporate the transactions involving "options on commodity futures". The seller of an "option on commodity futures" would have to pay CTT of 0.05% on the option premium, while the purchaser will pay a CTT of 0.0001% on the settlement price when an "option on commodity futures" is exercised.
This amendment will take effect from 1st April 2018 (i.e. AY 2018-19)

- **Rationalisation of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("Black Money Act")**
  Section 46 of the Black Money Act is proposed to be amended to formally provide the power to Joint Directors to approve an order for imposing penalty and to further include references to Assistant or Deputy Directors.
  Similarly, section 55of the Black Money Act is proposed to be amended to empower the Principal Director General or the Director General to issue directions or instructions to the tax authorities under the said section for institution of proceedings.
  These amendments will take effect from 1stApril, 2018 (i.e. AY 2018-19).

- **Section 115BBE: Tax on income referred to in section 68 or section 69 or section 69A or section 69B or 69C or 69D**
  It is proposed to amend this section to provide that no deduction in respect of expenditure or allowance or set-off of any loss shall be allowed in computing income referred to in section 68 (cash credit) or section 69 (unexplained investment) or section 69A (unexplained money etc.) or section 69B (Amount of investment etc. not fully disclosed in books of account) or 69C (unexplained expenditure) or 69D (Amount borrowed or repaid on hundi) which is determined by assessing officer.
  This amendment will take effect retrospectively from 1st April, 2017 (i.e. AY 2017-18).

Amendments relating to Income Computation and Disclosure Standards (ICDS)

- **Section 36(1)(xviii): Deduction for marked to market loss or expected loss computed in accordance with Income Computation and Disclosure Standards**
  It is proposed to insert a new clause (xviii) to provide that deduction in respect of any marked to market loss or other expected loss shall be allowed, if computed in accordance with the ICDS.
  This amendment will take effect retrospectively from 1st April, 2017

- **Section 40A(13): Disallowance for deduction for marked to market loss or expected loss computed other than computation in accordance with Income Computation and Disclosure Standards**
  It is proposed to insert a new sub-section (13) to provide that no deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss except as allowable under the section 36(1)(xviii).
  This amendment will take effect retrospectively from 1st April, 2017

☐ Section 43AA: Taxation of foreign exchange fluctuation

It is proposed to insert section 43AA to provide that subject to the provisions of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be. It is also provided that such gain or loss shall be computed in accordance with the ICDS.

It is further proposed to provide that gain or loss arising on account of the change in foreign exchange rates shall be in respect of all foreign currency transactions including those relating to monetary items and non-monetary items or translation of financial statements of foreign operations or forward exchange contracts or foreign currency translation reserves.

This amendment will take effect retrospectively from 1st April, 2017

☐ Section 43CB: Computation of income from construction and service contracts

It is proposed to insert section 43CB to provide that profits and gains of a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards.

It is further proposed to provide that in the case of a contract for providing services with duration less than ninety days, the profits and gains shall be determined on the basis of project completion method. It is also proposed to provide that in the case of a contract for provision of services involving indeterminate number of acts over a specific period of time, the profits and gains arising from such contract shall be determined on the basis of a straight-line method.

It is also proposed to provide that for this section the contract revenue shall include retention money and the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

This amendment will take effect retrospectively from 1st April, 2017.

☐ Section 145A: Method of accounting in certain cases

It is proposed to amend section 145A to provide that, for the purpose of determining the income chargeable under the head “Profits and gains of business or profession, —

a. The valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS.
b. the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.
c. Inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in ICDS.
d. Inventory being listed securities, shall be valued at lower of actual cost or net realizable value in the manner provided in ICDS and for this section the comparison of actual cost and net realizable value shall be done category-wise.

This amendment will take effect retrospectively from 1st April, 2017.

☐ Section 145B: Taxability of certain income

It is proposed to insert section 145B to provide the following:

- Interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.

- The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realization is achieved.
- income referred to in section 2(24)(xviii) i.e. assistance in the form of a subsidy or cash incentive or duty drawback etc. received from Central Government or State Government or any authority in cash or kind shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

This amendment will take effect retrospectively from 1st April, 2017.

☐ **Section 10(48B) - Exemption of income of foreign company from sale of leftover stock of crude oil on termination of agreement or arrangement**

Section 10(48B)provided for exemption to a foreign company in respect of any income accruing or arising on account of storage of crude oil in a facility in India and sale of crude oil there from if storage and sale is pursuant to an agreement or an arrangement entered into or approved, by the Central Government duly notified by the Central Government.

It is proposed to amend section 10(48B) to cover within its scope even income from left over stock if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.

This amendment will take effect from 1st April 2019 (i.e. AY 2019-20)

☐ **Section 10(23C) & Section 11- Tax deduction at source and manner of payment in respect of certain exempt entities**

It is proposed to insert a new Explanation to clause 23C of section 10 and 11 to provide that for the purposes of determining the application of income of such exempt entities, the provisions of section 40(a)/(ia) dealing with provisions of disallowance in case of non-deduction of TDS shall apply. Similarly, the provisions of sub-section (3) and (3A) of section 40A dealing with disallowance in case of payment made to a person in a day through cash when the amount so paid exceeds ten thousand rupees, would also be applicable to the above-mentioned exempt entities.

In other words, if any payment is made by such exempt entities to a resident person without deducting the TDS then 30% of such amount would be disallowed while computing the application of income. Further, if any payment above ten thousand rupees in a day is made to a person through cash then such payment would be disallowed while computing the application of income for above mentioned exempt entities.

This amendment will take effect from 1st April 2019 (i.e. AY 2019-20)

☐ **Section 56: Exclusion of tax neutral transfers from scope of section 56(2)(x)**

It is proposed to amend section 56(2)(x) to exclude income arising on transfer of capital asset between holding company and its wholly owned Indian subsidiary company, and between subsidiary company and its Indian holding company, which are not regarded as transfer under section 47, from the scope of income under the head “other sources”.

This amendment will take effect from 1st April 2018 (i.e. AY 2018-19)

Miscellaneous

- **Section 10(48B) - Exemption of income of foreign company from sale of leftover stock of crude oil on termination of agreement or arrangement**

  Section 10(48B) provided for exemption to a foreign company in respect of any income accruing or arising on account of storage of crude oil in a facility in India and sale of crude oil therefrom if storage and sale is pursuant to an agreement or an arrangement entered into or approved, by the Central Government duly notified by the Central Government.

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  This amendment will take effect from 1st April 2018 (i.e. AY 2018-19)

Accounting and Auditing Update

A. Standards on Auditing

On 15 January 2017, the International Auditing and Assurance Standards Board (IAASB) issued new and revised auditor reporting standards and related conforming amendments (International Auditing Standards (ISAs)). These became effective for audits of financial statements for periods ending on or after 15 December 2016.

In line with international requirements, the Institute of Chartered Accountants of India (ICAI) revised its Standards on Auditing (SAs) relating to auditor reporting on 17 May 2016. The new requirements aim at enhancing the informational value of the auditor's report. These standards were to become applicable for audits of financial statements for periods beginning on or after 1 April 2018.

Following table provides the suite of SAs that are new /revised:

New and revised SAs	Description of changes and scope
SA 700 (Revised), Forming an Opinion and Reporting on Financial Statements	Revisions to establish new required reporting elements, and to illustrate these new elements through an example in the auditor's report.
SA 701, Communicating Key Audit Matters in the Independent Auditor's Report	New standard to establish requirements and guidance for the auditor's determination and communication of Key Audit Matters (KAMs). The KAMs which are selected from matters communicated to those charged with governance, are required to be communicated in the auditor's reports for audits of financial statements of listed entities.
SA 705 (Revised), Modifications to the Opinion in the Independent Auditor's Report	Clarification of how the new reporting elements are affected when expressing a modified opinion.
SA 706 (Revised), Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report	Clarification of the relationship between the emphasis of matter and other matter paragraphs and KAM section of the auditor's report.

B. Exposure drafts issued by ICAI for Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance:

The exposure draft proposes amendments to the following heads:

- ☐ Accounting for non-monetary government grants
- ☐ Presentation of grants related to assets:
- ☐ Repayment of government grants
- ☐ Transitional provisions.

The amendments focus on closing the gap with reference to IFRS. This ED aligns Ind AS 20 to IAS 20. Effective date: The amendments to Ind AS 20 have been proposed to be made effective for annual periods beginning on or after 1 April 2018 subject to notification by MCA

C. Uncertainty over income tax treatments to Ind AS 12, Income Taxes:

The Accounting Standards Board (ASB) of ICAI issued an exposure draft to Appendix C, Uncertainty over Income Tax Treatments of Ind AS 12 which seeks to bring clarity to the

accounting for income tax treatments that have yet to be accepted by tax authorities. The requirements of proposed Appendix C to Ind AS 12 are in line with the requirements of IFRIC 23, Uncertainty over Income Tax Treatments issued by the Interpretations Committee of the International Accounting Standards Board (IASB). Effective date: The appendix is proposed to be applicable for annual periods beginning on or after 1 April 2019. Early application is permitted.

(*Source: Exposure draft on Ind AS 20 ED/Ind AS/2018/01 dated 5 January 2018 and Exposure draft on* Ind *AS 12 ED/ Ind AS/2018/02 dated 29 January 2018 issued by ICAI)*

Recent Developments Companies Act

1. HIGHLIGHTS OF THE COMPANIES (AMENDMENT) ACT, 2017

The Companies (Amendment) Act, 2017 which was passed by the Lok Sabha on July 27, 2017 and by the Rajya Sabha on December 19, 2017, has received the assent of the President of India on January 3, 2018 and subsequently published in the Gazette of India.
The amendment Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act.

The said Amendment Act is placed at the link:
http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf

The amendments under the Companies (Amendment) Act, 2017, are broadly aimed at:

i. addressing difficulties in implementation owing to stringent compliance requirements;
ii. facilitating ease of doing business in order to promote growth with employment;
iii. harmonisation with the Accounting Standards, the Securities and Exchange Board of India Act, 1992 and the regulations made there under, and the Reserve Bank of India Act, 1934 and the regulations made there under;
iv. Rectifying omissions and inconsistencies in the Act.

- **Highlights of the Companies (Amendment) Act, 2017 are given hereunder:**

Section	Heading	Brief of amendment
2 (6)	Associate company	To determine significant influence control at least 20% of total voting power shall be considered instead of total share capital.
2(30)	Debenture	Instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;

2(41)	Application for adopting different financial years	An associate foreign company of the company along with a holding and/or a subsidiary company will now be allowed to apply for exemption for following different Financial Year;
2 (46)	Holding Company	Expression "company" in the definition of holding company will include body corporate.
2 (51)	Key Managerial Personnel	Officer, not more than one level below the directors who is in whole- time employment may be designated as key managerial personnel by the Board.
2 (57)	Net-worth	While calculating net worth debit and credit balance in the profit and loss account shall be considered
2(72)	Public Financial Institution	Financial institutions which are established under the Act, 2013 or any other previous company law which are not government companies as per clause (B), shall be excluded from the definition of PFI.
2(76)	Related Party	An investing company or a venturer shall also become a related party as per the new list. Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.
2(85)	Small Company	Limit upto which maximum paid up share capital and turnover of a small company can be prescribed has been increased from INR 5 crore and INR 20 crore to INR 10 crore and INR 100 crore. Further, it is clarified that for the purpose of computing turnover, profit and loss account of immediately preceding financial year shall be considered.
2(87)	Subsidiary	Previously, the company on which another company exercises or controls more than one-half of the total share capital either at its ownortogetherwithoneormoreofitssubsidiarycompaniesshallbeconsideredasholding.However,now the term total share capital has been substituted with words "total voting rights" in order to consider only equity share capital for the same. However, one need to consider section 47 too, wherein the preference shareholders get right of voting in every resolution in case of non payment of dividend for two years.

2(91)	Turnover	Gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year; Previous definition provided for aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered.
3A	Reduction in number of members	All the members shall be severally liable in case the company carries on business for more than 6 months while the number of members is reduced below 7 or 2, in case of a public company or a private company, respectively.
4	Name reservation in case of new company	The Registrar will reserve the name for 20 days only. In case of change of company by an existing company, there is no impact as the timelines are same.
7	Furnishing of declaration by the subscribers to the memorandum and first directors.	The requirement of furnishing an affidavit has been substituted with declaration.
12	Timeline for having a registered office by a new company and reporting of shifting of registered office to the Registrar.	Timeline increased from 15 days to 30 days.
21	Authentication of Documents	Documents and contracts can be authenticated by KMP or an officer or employee of the company duly authorized by Board.
26	Contents of prospectus	Specific details which were specified in Section 26 have been deleted as those are covered under SEBI ICDR Regulations, 2009.

35	Civil-liability for misstatements in prospectus	Shield is provided to the person from civil-liability for misstatement in prospectus if he proves the following: ● every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; ● he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it; the said person had given the consent required by sub-section ● (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment there under.
42	Process of private placement:	Whole section has been substituted. Major amendments are: ● The group of persons whom the offer is to be made is to be identified by the Board. ● Private Placement offer and application shall not carry right of renunciation. ● Requirement to file Form GNL-2 gets discontinued; ● Companies cannot use funds till return of allotment has been filed with ROC within 15 days from the date of allotment. Separate penalty provided for default in filing of return of allotment. ● Companies can simultaneously take up more than one issue of securities. ● Rules are yet to be amended to give effect to the aforesaid amendment i.e. non filing with Registrar and SEBI.
53	Issue of shares at discount	Company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.
54	Issue of sweat equity shares	Removal of the restriction to issue sweats equity shares before expiry of 1 year from the commencement of business.
62	Mode of delivery of offer letter for right issue	Addition to the mode of delivery of offer letter under section 62(1)(a)(i) being any other mode having proof of delivery.
62	Valuation under section62(1)(c)	Report of registered valuer under section 62(1)(c) shall now be subject to compliance of Chapter III of the Act and any other conditions as may be prescribed.

73	Acceptance of deposits	• Changes in the provision of creating deposit repayment reserve account i.e. company accepting deposit is required to deposit, on or before the 30th day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account; • Removal of provision of deposit insurance; The company, if defaulted in repayment of deposit or payment of interest thereon, will also be allowed to raise deposits, subject to the condition that it has repaid all the money & 5 years have elapsed since the date of making good the default.
74	Changes in repayment schedule of deposits	Deposits shall be repaid within 3 years instead of 1 year from the date of commencement of the Act or before the date provided for maturity of deposits, whichever is earlier. Renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made there under.
77	Registration of charges	The Central Government in consultation with RBI may exempt charges to which section 77 shall not apply.
82	Changes in reporting about payment or satisfaction of charge by the company	The company shall file Form CHG -4 within 30 days. In case of delay, the company can file Form CHG-4 within 300 days from the date of payment/satisfaction, with payment of additional fees, as against requirement of condonation of delay.
89	Declaration in Respect of beneficial interest	Definition of beneficial interest provided which is likely to include cases of pledge with voting rights, transfer of dividend rights etc. within its ambit.
90	Register of significant beneficial owners in a company	• Requirement of a declaration to the company by a significant beneficial owner i.e. every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five percent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section2.

92	Annual Return	• Removal of requirement to include the company's indebtedness in the Annual Return; • Removal of the requirement to indicate detailed particulars about foreign institutional investors; • Central Government may prescribe abridged form of Annual Return for One Person Company, small company and such other class or classes of companies as may be prescribed; • Removal of requirement to annex extract of Annual Return to the Board's Report; • Requirement to upload Annual Return on the website of the company, link of which to be provided in the Board's Report; • Reference to Section 403 for time limits removed.
93	Return of change in stake ("MGT-10")	Omission of the requirement of filing return in Form MGT-10 with the Registrar in case of change of stake of the promoters and top ten shareholders of the company.
94	Place of keeping and Inspection of registers, returns, etc	Omission of the requirement of filing of a copy with the Registrar of the proposed special resolution in advance for keeping registers u/s 88 and copies of the annual return u/s 92 at a place in which more than 1/10th of members entered in the register of members reside other than at the registered office of the company. • For the purposes of confidentiality, certain documents as may be prescribed shall not be open for inspection or availing copy thereof.
96	Place for convening AGM of unlisted company	Annual general meeting of an unlisted company may be held at any place in India subject to prior consent of all the members of the company in writing or by electronic mode.
100	Place of convening EGM	Extra-ordinary general meeting ("EGM") of the company shall be held at any place in India provided, EGM of wholly owned subsidiary incorporated outside India may be held outside India.
101	Minimum consents required for calling general meeting	General meetings may be called at shorter notice subject to below mentioned consents in writing or by electronic mode: • Annual General Meeting: Consent of at least not less than 95% of members entitled to vote at the meeting. • Extra-ordinary General Meeting: i) Company having share capital: Majority of members entitled to vote who represents not less than 95% of the paid up share capital of the company. ii) Company not having share capital: not less than 95% of the total voting power exercisable at the meeting. If any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, such member shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.

110	Mandatory requirement to pass resolution by postal ballot	In case of matters required to be mandatorily conducted through postal ballot, the same may be transacted at a general meeting by the company which is required to provide electronic voting facility under section108.
123	Payment of dividend	• Amount representing unrealized gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded while calculating profits for dividend payout; • Provision has been made for declaration of interim dividend for any financial year or at any time during the period from closure of financial year till holding of the annual general meeting.
129	Consolidation of Accounts	Financials of associate company shall also be consolidated with the financials of the Company.
132	Constitution of National Financial Reporting Authority.	The appeals against the order of NFRA shall be examined by NCLAT.
134	Board's Report	• Omission of the requirement of the CEO to be a director in order to sign therepart. • Omission of the requirement of the extract of the annual return in Form MGT-9 to be included in the board's report, instead web address of the annual return shall be provided in this regard. • Salient points of the CSR Policy, Remuneration Policy may be included in the Board's report and link where these policies are posted on website shall be provided. Changes in the policies should be specifically highlighted in the salient points. • Reference in board report with respect to information required to be disclosed therein is already disclosed in financial statements shall be sufficient. • The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company.
135	Corporate Social Responsibility	• For determining applicability or requirement to constitute CSR Committee, net worth, turnover or net profit of immediately preceding financial year shall be considered. • If company is not required to appoint Independent Director then the CSR Committee shall be constituted of 2 or more directors.

136	Copies of audited financial statements	• Copies of financial statements including consolidated financials, auditor's report and every other documents under this section can be sent in less than 21 days before the date of the annual general meeting provided consent as mentioned below is received: i. Company having share capital: Majority in number entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting. ii. Company not having share capital: not less than 95% of the total voting power exercisable at the meeting. • Only listed companies are required to place separate audited financials of their subsidiary(ies) on its website. • Listed company having subsidiary outside India shall place financials of subsidiaries as follows: i. Where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, such consolidated financials shall be displayed. ii. Where such foreign subsidiary is not required to get its financials audited: the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website. Copy of separate financials of the subsidiary(ies) shall be provided to the member of the company who asks for it.
137	Filing of financial statements with ROC	• Where the company has a foreign subsidiary, it can attach unaudited financial statements of such subsidiary, if getting results audited is not mandated under the law of foreign subsidiary, along with a declaration to this effect, together to be filed with ROC; • Where such financial statements of subsidiary are in language other than English, translated copy shall also be attached.
139	Ratification of Appointment of statutory auditor	Requirement to ratify the appointment of auditor at every AGM is done away with.
143	Right of auditor	Auditor of holding company has a right to access the records of associate companies as well.

149	Companies to have Board of Directors	• Person who has stayed in India for a minimum period of 182 days in previous financial year shall be considered as resident. Further, for newly incorporated companies, the requirement of 182 days shall apply proportionately at the end of financial year in which the company is incorporated. • Change in eligibility criteria for independent directors. a. Person withdrawing remuneration in the capacity of Independent director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed, shall not be construed to have pecuniary relationship with company. b. none of whose relatives— i. Is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year. However, relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed; ii. is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; iii. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or iv. Has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);
152	Requirement of DIN	Person to be appointed as a director should have a DIN or such other number as prescribed under section 153.
153	Identification number	Central Government may prescribe such number that shall be treated as DIN for the purpose of this Act, and in any case any individual holds or acquires such identification number, the requirement to apply for DIN shall not apply or shall apply in the prescribed manner.

160	Requirement to deposit amount along with letter of candidature to be appointed as director	In case of company appointing Independent director or director recommended by NRC or board (in case the company does not have NRC), requirement to deposit amount shall not apply.
161	Appointment of additional director, alternate director and nominee director	• No person holding directorship in the company in any capacity can stand for alternate directorship in the same company. • Further, the change relates to extending the appointment of director in casual vacancy to private companies. Director appointed by the Board in case of casual vacancy shall subsequently be approved by the members in the general meeting.
164	Disqualifications for appointment of director	New director appointed in the defaulted company shall not be held disqualified for 6 months from the date of his appointment.
165	Maximum directorship	For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.
168	Form DIR-11	Director is not necessarily required to file a copy of resignation with Roc.
167	Vacation of office of director	• The change deal with Section 167(1)(a) vacation of office of a director, if he incurs any of the disqualifications referred to under section 164. Director who has attracted disqualification under Section 164(2) shall vacate the office of director in all the companies where he is a director accept in company which is in default. • Further, office of director shall not be vacated for below period under section 167(1)(e) and(f): • for thirty days from the date of conviction or order of disqualification; • where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or • Where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
173	Participation in Board meeting through electronic mode	Directors may attend the meeting by audio/video conferencing for all the items subject to presence of quorum in person for such matters for which electronic participation is restricted by Central Government.

177	Audit Committee	• Related party transactions, other than those covered under section 188, if the audit committee does not approve a transaction it shall make the recommendation to the Board. • Flexibility is allowed to audit committees to ratify related party transactions entered into by director/officer of the company within 3 months from the date on which the transaction was entered into, subject to the amount not exceeding one crore rupees. • In case such transaction is not approved it shall be voidable at the option of the audit committee, and if such transaction is with a related party to any director or is authorised by any director, the director shall indemnify the company against the loss. • The requirement of obtaining audit committee approval for related party transactions, shall not apply to a transaction (other than a transaction referred to under section 188) between a holding company and its wholly owned subsidiary.
178	Nomination and Remuneration Committee	• NRC shall specify the manner for effective evaluation of performance of the Board, its committee and individual directors and review its implementation and compliance. Evaluation shall be carried out either by the Board, NRC or by independent external agency. • Salient features of NRC policy and changes therein, if any shall be disclosed in the board's report along with the link to the website where policy is posted.
180	Restrictions on Board Power	While calculating the threshold to borrow money without obtaining approval of shareholder's under section 180(1)(c) amount of security premium shall also be considered along with paid up share capital and free reserves..
184	Applicability of section184	The change includes body corporate within the purview of section 184(5)(b) to align it with the provisions of section 184(2).
185	Loan to directors	• Giving of loan, providing guarantee or security is prohibited only where the same is given to any director of company, or of a company which is its holding company or any partner or relative of any such director; or any firm in which any such director or relative is a partner. • Loan may be provided, guarantee or security may be given in case of other entities where the director is interested by seeking sanction of shareholders by way of special resolution and the loans shall be utilized by the borrowing company for its principal business activities.

186	Amendment is section186	- Term „persons„ for the purpose of section 186(2) excludes employees so that loans given as a part of the condition of service or pursuant to a scheme approved by all employees of the company are not covered in this Section. - Relaxation is provided from the requirement of passing special resolution in this section, where loan/guarantee/security is provided by a company to its wholly owned subsidiary or a joint venture company or acquisition by subscription or otherwise shares company by the holding of its wholly owned subsidiary provided the same shall be disclosed in financials in accordance with section186(4). - Provisions of section 186, except sub-section (1), shall not apply— a. to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; b. to any investment— i. made by an investment company; ii. made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities;
188	Related Party Transaction	The requirement of related party to abstain from voting will not apply to a company in which ninety percent or more members, in number, are relatives of promoters or are related parties.
196	Appointment of person of and above 70 years of age	Company may appoint or continue the appointment of a person as a managing director; whole time director or manager who has attained the age of seventy years in case no special resolution has been passed subject to approval of shareholders by ordinary resolution and the Central Government being satisfied on an application that such appointment is beneficial to the company.

197	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.	• The changes replace the requirement of Central Government's approval under section 197 with approval by shareholders. • Approval of shareholders by special resolution shall be obtained for giving remuneration in excess of limits provided in second proviso to section197(1). • Approval of banks/public financial institutions/non-convertible debenture holders/secured creditors is required to be obtained in case of default before obtaining the approval of members in the general meeting. • If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company. • Further, other changes are clarificatory in nature, in light of the approval of the Central Government being done away with and disclosures required to be given by auditor in its report.
198	Calculation of profits	• For calculating net profit under this section the following shall not be deducted: i. Profits, by way of premium on shares or debentures of the company, which are issued or sold by the company unless the company is an investment company as referred to in clause (a) of the Explanation to section 186. ii. any amount representing unrealised gains, notional gains or revaluation of assets Further any brought forward losses of the years prior to the commencement of the Act, 2013 shall be deducted while calculating net profit u/s198.
223	Inspector's report	A copy of report submitted by inspector under chapter XIV of the Act, 2013 may be availed by members and creditors of the company or by any other person whose interest is likely to be affected.
247	Valuation by registered valuer	Any person who has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him shall not be appointed as valuer.
366	Companies capable of being registered	Pursuant to section 366 of the Act, 2013 any partnership firm, LLP, cooperative society or any other business entity ("the Converting Company") may be converted into company limited by shares, guarantee or unlimited company under the Act, 2013. Previously the Converting Company were required to have minimum 7 members for conversion under section 366 however, the same has been substituted with 2 or more members as the private company can be incorporated with 2 or more members.

379	Application of Act to foreign companies	• It is clarified that Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies. • Further, Central Government may exempt any class of foreign companies, specified in the Order, from any of the provisions the aforementioned sections. • A copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament.
384	Applicability of section 135 to foreign companies	Provisions of section 135 shall also apply to foreign companies, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, as they apply to a company incorporated in India.
391	Application of sections 34 to 36 and Chapter XX	Provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed, subject to the provisions of section376.
403	Fee for filing Etc.	• Annual filing forms if filed beyond the period specified in those sections, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as maybe prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies. Higher additional fee will be imposed in case of default on two or more occasions. • Forms, other than annual filing forms, if filed beyond the period specified in those sections, it may be submitted, filed, registered or recorded, as thecae may be, after expiry of the period so provided in those sections, on payment of fees as may be prescribed. • It has been abundantly clarified that payment of additional fees will not condone the delay and that company and officers shall be liable for penalty or punishment for such failure or default.
406	Nidhi Companies	Central Government to declare a company as 'Nidhi„ or 'Mutual Benefit Society'.
441	Compounding of certain offences	Tribunal should have the power to compound offences punishable with fine as well as offences punishable with imprisonment or fine or both.
446B	Lesser penalties for One Person Companies or Small companies	New insertion with respect to an application of fines in case of non- compliance with certain provisions of the Act, 2013 specified therein by an OPC or small company.

- ☐ **Clarificatory Amendments**

Section	Headings	Amendments
2(28)	**Cost Accountant**	Cost accountant shall be as defined in clause (b) of sub- section (1) of Section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.
2(49)	**Interested Director**	The definition of the term „interested director„ has been omitted, since the same is used in section 174(3) of the Act, 2013, explanation to which made reference to a director within the meaning of section 184(2).
47	**Voting Rights**	Second proviso to section 188(1) of the Act, 2013 restricts such member of the company to vote of any resolution placed before the members to which he is a related party under section 188. The change pertains to incorporating the restriction under section 188 for the party to the contract to abstain from voting.
78	**Application for registration of charge**	The change clarifies that in case the company fails to register a charge within a period of 30 days from the date of creation, the person in whose favor charge is created may apply to RoC for registration of the same.
117	**Requirement to file MGT-14**	The change removes the requirement to file resolution

		passed by shareholders under section 180(1) (a) and (c). However, the same being special resolutions, company is still required to file the same under section 117(3)(a) of the Act, 2013.
130	**Re-opening of accounts on court's or Tribunal's orders**	• In line with section 128(5), it is clarified that pursuant to section 130 of the Act, 2013, NCLT shall not order to re-open any books of account for financial year preceding 8 financial year unless any amendment has been made to section 128(5) whereby, the company is required to maintain the same for such longer period. • Further, NCLT may give notice and take into consideration the representations, if any of any other person other than statutory bodies as prescribed under section130.
141	**Eligibility to be appointed as statutory auditor**	Change clarifies that a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company shall not be appointed as statutory auditor. Further, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section144.

148	**Cost Audit**	Term cost accountant in practice has been substituted by cost accountant as the same has been defined. Further Institute of Cost and Works Accountants of India has been changed with Institute of Cost Accountants of India,
194	**Forward dealing in securities of company by directors or KMP**	The change relates to omission of the provisions relating to prohibition on forward dealings in securities of the company by director or key manager personnel, as these are covered under SEBI Regulations.
195	**Prohibition on insider trading of securities**	The change relates to omission of provisions relating to insider trading already covered under the SEBI Regulations.
200	**Company to fix the limit with regard to remuneration**	In line with the changes made under section 197 of the Act, 2013 whereby requirement to obtain central government has been done away with, section 200 is not applicable on Central Government.
201	**Forms of, and procedure in relation to, certain applications**	In line with the amendments made under section 197 of the Act, 2013, term "this chapter' has been substituted with section 196, as the requirement to obtain central government's approval under section 197 has been removed.
236	**Acquisition of minority shareholding**	The change clarifies that the term transferor company means a company whose shares are being transferred.

374	**Obligations of companies registering under chapter XXI**	Change clarifies that upon conversion into company under Act, 2013, LLP registered under LLP Act, 2008 shall be deemed as dissolved.

Amendments in penalties/ fine

Section	To be imposed on	To be imposed for	Under Act, 2013	Amendment Act, 2017
42	Company, promoters and directors	Contravention of section 42	Fine upto an amount involved under private placement or INR 2 crore, whichever is higher.	Amount involved under private placement or INR 2 crore, whichever is lower.
76A	Company	Contravention of Provisions or timelines section 73 or 76 or rule there under	In addition of payment of amount of deposit, fine not less than INR 1 crore which may be extended upto INR 10crore	In addition of payment of amount of deposit, fine not less than INR 1 crore or twice the amount of deposit accepted by the company, whichever is lower.
76A	Officer in default	Contravention of Provisions or timelines section 73 or 76 or rule there under	• Imprisonment upto 7years • Fine not less than INR25lak	Imprisonment upto 7 years and fine which shall not be less than INR 25 Lakhs.

Section	To be imposed on	To be imposed for	Under Act, 2013	Amendment Act, 2017
			hs which may extend upto INR 2crore • Both	
117	Company	Failureto file resolution or agreements under section117(1)	Fine not less than INR 5 Lakhs which may extend upto INR 25 Lakh	Fine not less than INR 1 Lakhs which may extend upto INR 25 Lakh
117	Officer in default (including liquidator)	Failureto file resolution or agreements under section117(1)	Fine not less than INR 1 Lakhs but which may extend upto INR 5Lakhs.	Fine not less than INR 50,000 but which may extend upto INR 5Lakhs
140	Statutory Auditor	Not complying with section 140(2) while resigning.	Fine of INR 50,000 but which may extend upto INR 5 Lakhs.	Fine of INR 50,000 or the remuneration of the auditor, whichever is less.
147	Auditor	Contravention of provisions of section 139, 143, 144 and 145	Fine not less than INR 25,000 but which may extend upto INR 5Lakhs	Fine not less than INR 25,000 but which may extend upto INR 5Lakhs or 4 time the remuneration of auditor, whichever is less.
147	Auditor	Contravention is with the intention to	Imprisonmen t which may	Imprisonment which may extend to 1 year

Section	To be imposed on	To be imposed for	Under Act, 2013	Amendment Act, 2017
		deceive the company or its shareholders or creditors or tax authorities	extend to 1 year and fine which shall not be less than INR 1 Lakh but which may extend upto INR 25 Lakh.	and fine which shall not be less than INR 50,000 but which may extend upto INR 25 Lakh or 8 times the remuneration of auditor, whichever is less.
147	Auditor	In case of criminal liability of an audit firm	New insertion	In respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.
184	Director	Contravention of 184(1) or(2)	• Imprisonment upto 1year • Fine of INR 5,000 which may extend upto INR 1lakh • Both	• Imprisonment upto 1year • Fine upto INR 1lakh • both

Section	To be imposed on	To be imposed for	Under Act, 2013	Amendment Act, 2017
447	Any person guilty of such fraud	Punishment of fraud which involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest	• Imprisonment for a term which shall not be less than six months but which may extend to ten years • Fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud	• Imprisonment for a term which may extend to five years • Fine which may extend to twenty lakh rupees Or both.

Section	To be imposed on	To be imposed for	Under Act, 2013	Amendment Act, 2017
		In other cases		• Imprisonment for a term which shall not be less than six months but which may extend to ten years • Fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
Note: Reference to section 403 has been removed from sections 157, 121, 117, 89, 92, 121 and 137 in line with the amendment carried out under section 403.				

☐ Amendments with respect to statutory bodies

Section	Heading	Amendments
216	Investigation of ownership of company	Inspector appointed by central government under section 216 shall also report about the person(s) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.
409	Qualification of President and Members of NCLT	Changes are made in eligibility criteria for appointment of a person as member or President of NCLT.
410	Appeal against the order of NFRA	The change provides that appeal against the orders of National Financial Reporting Authority ("NFRA") shall also be heard by the NCLAT.
411	Qualification of	Changes are made in eligibility criteria for

Section	Heading	Amendments
	President and Members of NCLAT	appointment of a person as member or Chairperson of NCLAT.
412	Selection of members of the Tribunal and Appellate Tribunal	The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of members as prescribed under section 412(2)
435	Establishment of special courts	Change in the constitution of special court.
438	Application of Code to proceedings before Special Court.	The change is clarificatory in nature, in light of the amendments made in section 435.
439	Offences to be non-cognizable	The change provides for complaints to be filed by a person who is a member of a company without any share capital.
440	Transitional provisions.	The change is clarificatory in nature, in light of the amendments made in section 435.
446A	Factors for determining level of punishment	Factors which shall be considered by court or the Special Court, while deciding the fine or imprisonment under the Act has been laid down.

2. MCA issued Condonation of Delay Scheme, 2018

☐ Background

Section 137 of the Companies Act, 2013 (2013 Act) requires every company to file a copy of financial statements to the Registrar of Companies (ROC) within 30 days of the date of annual general meeting in the prescribed manner. Further, Section 92 of the 2013 Act requires every company to file a copy of the annual return to ROC, within 60 days from the date of annual general meeting.

In case the company fails to file its financial statements and annual return within the stipulated time, then such a company in default would be punishable with fine and imprisonment as specified in the 2013 Act.

Further, Section 164 of the 2013 Act provides for disqualification of a director on account of default by a company in filing an annual return or a financial statement for a continuous period of three years.

- **New development**

The MCA, through its circular dated 29 December 2017 has introduced Condonation of Delay Scheme 2018 (the scheme). The scheme aims to give an opportunity to companies in default to rectify the defaults. The scheme is applicable to companies in default that have not filed their financial statements or annual returns as required under the Companies Act, 1956 (1956 Act) or 2013 Act, as the case may be, and the Rules made there under for a continuous period of three years (other than the companies which have been struck off/ whose names have been removed from the register of companies under Section 248(5) of the 2013 Act).

At the conclusion of the scheme, ROC will take all necessary actions under the 1956 Act/2013 Act against the companies who have not availed of this scheme and continue to be in default in filing the overdue documents.

The scheme came into force with effect from 1 January 2018 and will remain in force upto 31 March 2018.

(Source: MCA circular no. 16/2017 dated 29 December 2017)

3. MCA revised forms AOC-4 and AOC-4 XBRL

The Ministry of Corporate Affairs (MCA), through its notifications dated 7 November 2017 and 6 November 2017, has issued following amendments:

- The Companies (Accounts) Amendment Rules, 2017 and
- The Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017.

The amended rules modify form AOC- 4 (i.e. Form for filling annual return by company) and AOC-4 XBRL (i.e. Form for filing XBRL document in respect of financial statements and other documents with the Registrar).

(Source: MCA notification G.S.R. 1371(E). dated 7 November 2017 and MCA notification G.S.R. 1372(E). dated 6 November 2017)

INDIRECT TAXES

GOODS AND SERVICE TAX

An Overview of Goods and Services Tax (GST)

The introduction of Goods and Services Tax on 1st of July 2017 was a very significant step in the field of indirect tax reforms in India. GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level. By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.

Benefits of GST:

- ☐ Will help to create a unified common national market for India, giving a boost to Foreign investment and "Make in India" campaign; this will create India as a "Manufacturing hub".
- ☐ It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth.

Salient features of GST:

The salient features of GST are as under:

- ☐ The GST would be applicable on the supply of goods or services as against the present concept of tax on the manufacture or sale of goods or provision of services. It would be a destination based consumption tax.
- ☐ It would be a dual GST with the Centre and States simultaneously levying tax on a common tax base.
- ☐ The GST would apply to all goods other than alcoholic liquor for human consumption and five petroleum products, viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel.

Threshold Exemption:

The threshold exemption limit would be Rs. 20 lakhs. For special category States (except J&K) enumerated in article 279A of the Constitution, threshold exemption limit has been fixed at Rs. 10 lakhs.

Composition Threshold:

Composition threshold shall be Rs. 1 crore. As decided in the 23rd meeting of the GSTC, this limit shall be raised to Rs. 1.5 crore after necessary amendments in the Act. Composition scheme shall not be available to inter-State suppliers, service providers (except restaurant service) and specified category of manufacturers. For special category States (except J&K and Uttarakhand) enumerated in article 279A of the Constitution, threshold exemption limit has been fixed at Rs. 75 lakhs.

Use of Input Tax Credit:

Taxpayers shall be allowed to take credit of taxes paid on inputs (input tax credit) and utilize the same for payment of output tax.

HSN (Harmonised System of Nomenclature) code:

The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and the States as well as across States as far as possible.

Exports and supplies to SEZ:

All Exports and supplies to SEZs and SEZ units would be zero-rated.

Import of goods and services

Would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties. The IGST paid shall be available as ITC for further transactions.

GST Council:

The GST Council has recommended the rules for National Anti-Profiteering Authority. The National Anti-Profiteering Authority has been constituted having Chairman and four technical Members.

Minimal Interface:

The physical interface between the taxpayer and the tax authorities would be minimal under GST.

In order to ensure single interface, all administrative control over 90% of taxpayers having turnover below Rs. 1.5 crore would vest with State tax administration and over 10% with the Central tax administration. Further all administrative control over taxpayers having turnover above Rs. 1.5 crore shall be divided equally in the ratio of 50% each for the Central and State tax administration.

Input tax credit:

Input Tax Credit (ITC) to be broad based by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business.

Refund:

Refund of tax to be sought by taxpayer or by any other person who has borne the incidence of tax within two years from the relevant date.

Demands:

A new concept of sunset clause for tax disputes has been introduced.

An anti-profiteering clause has been provided in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers.

Alternate Dispute Resolution mechanism - Advance Rulings:

Eighteen rules on composition, registration, input tax credit, invoice, determination of value of supply, accounts and records, returns, payment, refund, assessment and audit, advance ruling, appeals and revision, transitional provisions, anti-profiteering, E-way Bill, inspection, search and seizure, demands and recovery and offences and penalties have been recommended and notified.

Other provisions of GST:

- ☐ Goods and Services Tax Appellate Tribunal would be constituted by the Central Government for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. States would adopt the provisions relating to Tribunal in respective SGST Act.
- ☐ Elaborate transitional provisions have been provided for smooth transition of existing taxpayers to GST regime.
- ☐ Registration and operationalisation of TDS/TCS provisions has been postponed till 31.03.2018.

IT preparedness:

- ☐ A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST. All interaction to be through the common GSTN portal- so less public interface between the taxpayer and the tax administration;
- ☐ GSTN would provide three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for 28 States who have opted for the same.
- ☐ www.gst.gov.in, managed by GSTN, shall be the Common Goods and Services Tax Electronic Portal.

Implementing a nationwide e-Way Bill system and its impact

The Goods and Services Tax (GST) Council in its 24th meeting has decided to implement a nationwide e-Way Bill system for inter-state movement of goods from 1 February 2018. It has been decided to roll out the nationwide e-Way Bill system in two phases:

Inter-state movement

- ☐ On a trial basis latest by 16 January 2018, wherein, traders and transporters can use the system on a voluntary basis.
- ☐ Compulsorily from 1 February 2018 which is further postponed and new date of implementation is March 1, 2018 in case of Maharashtra.

Intra-state movement

- ☐ The date of implementation of e-Way Bills for intra-state movement of goods has been left to the discretion of the respective states.
- ☐ However, all states will have to implement it latest by 1 June 2018.

Implementing e-Way Bill in its present form

- ☐ E-Way Bill needs to be generated for every consignment exceeding INR 50,000 in value, subject to certain exemptions.
- ☐ A certain class of transporters may be required to embed a unique Radio Frequency Identification Device (RFID) on their conveyance and map the e-Way Bill to the RFID.
- ☐ E-Way Bill once generated will be valid for one day where the goods are to be transported for a distance of up to 100 kms. The validity period will increase by one additional day for every additional 100 kms or part thereof.

- ☐ The e-Way Bill rules empower the Commissioner to authorise interception of any conveyance to verify the e-Way Bill.
- ☐ All accepted e-Way Bills will be reconciled automatically in GSTR-1 during return filing.

The effective rate of GST for dealers opting for composition scheme revised

The effective rate of GST for manufacturers and traders who have opted for composition scheme under Section 10 of the CGST Act, 2017 has been revised vide Notification No. 1/2018- Central Tax with effect from1 January 2018. The revised rates are:

Dealers	Revised provisions	Earlier provisions
Manufacturers	1% (0.5% CGST and 0.5% SGST) of the turnover	2% (1% CGST and 1% SGST) of the turnover
Traders	1% (0.5% CGST and 0.5% SGST) of the turnover of taxable supplies of goods	1% (0.5% CGST and 0.5% SGST) of the turnover

Export of Services to Nepal and Bhutan Export of Services to Nepal and Bhutan

Export of services to Nepal and Bhutan was exempted vide notification no 42/2017-Integrated Tax (Rate) dated 27 October 2017, even if the payment is received in Indian currency. Since the services were exempted and not nil rated, no ITC was allowed on such supply. The government has extended the benefit of claiming ITC in respect of goods and services used for making such exempt supply of services to Nepal and Bhutan and bringing such services at par with other exports.

1. No tax on advances received

- ☐ The CBEC vide Notification No. 40/2017 - Central Tax dated 13 October 2017 had extended the facility of no payment of tax on advances for outward supplies of goods for dealers having an annual turnover of INR 15 million and those who have not opted for composition scheme.
- ☐ The CBEC vide Notification No. 66/2017 - Central Tax dated 15 November 2017 has extended the above facility of no payment of tax on advances for outward supplies of goods to all dealers who have not opted for composition scheme irrespective of their turnover limit.

2. Updated FAQs released by Central Board of Excise and Customs (CBEC)

Manual refund claims: By Circular No.17/17/2017-GST dated 15 November 2017 the refund claims on account of zero-rated supplies should be filed and processed manually until further orders.

Shipping bill deemed as an application for refund of IGST: In respect to export of goods on payment of IGST, the shipping bill filed by an exporter should be deemed to be an application for refund of integrated tax paid on the goods exported out of India and there is no need to file a separate refund claim.

Disclosure of advances received in GSTR-1: Where against an advance the invoice is issued in the same tax period, the advance need not be shown separately in Form GSTR-1 but the

specified details of invoice itself can be directly uploaded on the system. Details of all advances against which the invoices have not been issued until the end of the tax period should be reported on a consolidated basis in table 11 of Form GSTR-1. It may be noted that regarding notification 66/2017-Central Tax dated 15.11.2017, there is no liability to pay tax at the time of receipt of advance in case of supply of goods.

Valuation in case of supply of construction service: In case of supply of construction service (works contract), involving transfer of property in land or undivided share of land, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land. Further, the value of land or undivided share of land, in such supply shall be deemed to be one-third of the total amount charged for such supply. 'Total amount' means the sum total of:

a. Consideration charged for aforesaid service; and
b. The amount charged for transfer of land or undivided share of land, as the case may be.

Time limit for issuing invoice: A registered person supplying services is required to issue an invoice before or after the provision of service but within a period of 30 days from the date of supply of service. For banking and insurance companies, this period is 45 days.

3. Key Notifications issued for recommendations made in 25th GST Council meeting

The Union Finance Minister Shri Arun Jaitley Chaired the 25 Meeting of the GST Council in New Delhi on 18 January 2018. The Council has recommended many relief measures regarding GST rates on goods and services covering many sectors and commodities. The Council has also recommended issuance of certain clarifications on issues relating to GST rates and taxability of certain goods and services:

Major recommendations of the Council are summarised below:

SR NO.	LIST OF GOODS ON WHICH GST RATE RECOMMENDED FOR	CHAPTER/HEADING/SUBHEADING/TARIFF ITEM	DESCRIPTION
1	REDUCTION FROM 28% TO 18%	87	Old and used motor vehicles [medium and large cars and SUVs] on the margin of the supplier, subject to the condition that no input tax credit of central excise duty/value added tax or GST paid on such vehicles has been availed by him.
		8702	Buses, for use in public transport, which exclusively run on bio-fuels.
2	REDUCTION FROM 28% TO 12%	87	All types of old and used motors vehicles [other than medium and large cars and SUVs] on the margin of the supplier of subject to the conditions that no input tax credit of central excise duty /value added tax or GST

SR NO.	LIST OF GOODS ON WHICH GST RATE RECOMMENDED FOR	CHAPTER/HEADING/SUBHEADING/TARIFF ITEM	DESCRIPTION
			Paid on such vehicles has been availed by him.
3	REDUCTION FROM 18% TO 12%	1704	Sugar boiled confectionary
		2201	Drinking water packed in 20 litters bottles
		2809	Fertilizer grade Phosphoric acid
		29 or 38	Bio-diesel
4	REDUCTION FROM 18% TO 5%	88 or any other chapter	Scientific and technical instruments, apparatus, equipment, accessories, parts, components, spares, tools, mock ups and modules, raw material and consumables required for launch vehicles and satellites and payloads
5	REDUCTION FROM 12% TO 5%	4601, 4602	Articles of straw, of esparto or of other plaiting materials; basketware and wickerwork
6	INCREASE FROM 12% TO 18%	5601 22 00	Cigarette filter rods
7	REDUCTION FROM 12% TO 5% WITH NO REFUND OF UNUTILISED INPUT TAX CREDIT	5801 37 20	Velvet fabric
8	REDUCTION FROM 3% TO 0.25%	7102	Diamonds and precious stones

Rationalization of certain exemption entries:

- To provide in CGST rules that value of exempt supply under sub-section (2) of section 17, shall not include the value of deposits, loans or advances on which interest or discount is earned.
- To defer the liability to pay GST in case of TDR against consideration in the form of construction service and on construction service against consideration in the form of TDR

to the time when the possession or right in the property is transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter).

- To tax renting of immovable property by government or local authority to a registered person under reverse Charge while renting of immovable property by government or local authority to un-registered person shall continue under forward charge
- To define insurance agent in the reverse charge notification to have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938, so that corporate agents get excluded from reverse charge.
- To insert a provision in GST Rules under section 15 of GST Act that the value of lottery shall be100/112 or 100/128 of the price of lottery ticket notified in the Gazette (the same is currently notified in the rate notification).
- To add, in the GST rate schedule for goods at 28%, actionable claim in the form of chance to win in betting and gambling including horse racing.

Clarifications:

- Exemption of Rs.1000/- per day or equivalent is available in respect of accommodation service in hostels.
- Fee paid by litigants in the Consumer Disputes Commissions and any penalty imposed by these Commissions, will not attract GST.
- Elephant/ camel joy rides are not classified as transportation services and attract GST @ 18% with threshold exemption to small services providers.
- Leasing or rental service, with or without operator, of goods, attracts same GST as supply of like goods involving transfer of title in the said goods. GST rate therefore is 28%.
- Hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.
- services given by race-course by way of total is at or (if given through some other person or charged separately as fees for using total is at or for purpose of betting, are taxable at 28%. Services given by race-course by way of license to bookmaker which is not a service by way of betting and gambling, is taxable at 18%.

Deemed exports

Categories of supplies that would qualify as deemed exports under Section 147 of Central Goods and Services Tax Act, 2017 has been provided vide Notification no. 48/2017-Central Tax dated 18 October 2017. Supplies have been categorized as follows:

Supply of	Supplied By	Supplied To	Scheme
Goods	Registered person	Any person	Advance Authorization
Capital goods	Registered person	Any person	Export Promotion Capital Goods (EPCG)
Goods	Registered person	Export Oriented Unit (EOU)	Not Applicable
Gold	Bank or Public Sector Unit (PSU)	Any person	Advance Authorization

Relief to merchant exporters

The government has provided for a concessional GST rate of 0.1% on supply of taxable goods to merchant exporters. The concessional rate would apply on fulfillment of certain prescribed conditions. Some key conditions are:

1. The goods would be required to be transported directly from the premises of a merchant exporter to a port, inland container depot, registered warehouse, airport or land customs station from where the goods are to be exported.
2. The exporter should be registered with an Export Promotion Council (EPC) or a commodity board recognized by the Department of Commerce.
3. The exporter should place an order with the supplier for a concessional GST rate and a copy of the same should be provided to the jurisdictional tax officer of the registered supplier.
4. The goods should be exported within a period of 90 days from the date of issue of the tax invoice by the supplier.

Issuance of consolidated invoices approved

Rule 54 of the Central Goods and Services Tax (CGST) Rules, 2017 has been amended on 18 October 2017 to allow the following suppliers to issue a consolidated tax invoice for the supply of services made at the end of the month:

1. Insurers
2. Banking companies
3. Financial institutions, including non-banking financial institutions

IGST exemption on supply of services to Nepal & Bhutan

- Earlier, supply of services made to Nepal and Bhutan against payments received in Indian currency was not considered as exports and IGST was applicable to such supply.
- The CBEC has issued Notification no. 42/2017- Integrated Tax (Rate) dated 27 October 2017 to exempt the supply of services made to Nepal and Bhutan where payment is received in Indian currency.
- Since the service is exempt and not zero-rated, ITC reversal should be considered.

GST on cut pieces of fabrics

- Earlier, there was ambiguity regarding GST rate applicable on cut pieces
- The CBEC has clarified that cut pieces would be classified as fabrics and the GST rate of 5% with no refund on input tax credit would be applicable.

Exempt IGST and compensation tax on imports

The government, vide Notification no. 78/2017- Customs and 79/2017- Customs dated 13 October 2017, has exempted IGST and compensation cess on imports till 31 March 2018 for the following categories -

- Imports under Advance Authorization (AA) scheme;
- Imports under Export Promotion Capital Goods (EPCG) scheme; and
- Imports by Export Oriented Units (EOU).

Anti-profiteering provisions enabled

- ☐ The Central Board of Excise and Customs (CBEC) has released Form APAF-1 for consumers to complain about profiteering under the GST regime. This form is to be filed before the Standing Committee or State level screening committee regarding rule 128 of CGST Rules, 2017.
- ☐ Consumers would be able to complain against cases of inadequate commensurate reduction of prices of goods or/and services even after a cut in GST rate or availment of the benefit of input tax credit by companies or service providers.

Addressing difficulties faced by exporters in Maharashtra

Exporters undertaking exports without payment of integrated tax under Section 16(3) of the IGST Act, 2017, are required to submit a bond/letter of undertaking in respect of such exports.

- The State Government of Maharashtra has issued a Trade Circular which has clarified that the bond/letter of the undertaking shall be accepted by the jurisdictional Central Tax officers.
- This shall be applicable to all exporters in the state, irrespective of the fact that a provisional ID for GST has been issued by the state GST department.

Clarifications issued by the Ministry of Finance *vide* various press releases/notifications

☐ **Reverse charge on sale of old jewellery**

- It has been clarified that Section 9(4) of the Central Goods and Services Tax Act, 2017 dealing with the provisions of reverse charge mechanism shall be read in conjunction with Section 2(105) and Section 7 of the said Act. While Section 2(105) defines supplier as a person supplying the goods or services, Section 7 provides that a supply is a transaction for a consideration by a person in the course or furtherance of business.
- Thus, as sale of old jewellery by an individual cannot be said to be in the course or furtherance of his business, it will not be a supply for the purpose of the CGST Act, and consequently, the jeweller will not be liable to pay tax under reverse charge mechanism on such purchases.
- The reverse charge mechanism will apply only if an unregistered supplier of gold ornaments sells it to a registered supplier.

☐ **Reverse charge on lawyer's fees**

- Vide Notification No. 13/2017-Central Tax (Rate) dated 28 June 2017, it has been clarified that legal services provided by individual advocates, including senior advocates is covered under the ambit of reverse charge mechanism in the GST regime.
- In this context, it has been further clarified that legal service means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

☐ GST on gifts to employees

- As per the CGST Act, gifts to employees of value more than INR 50,000 in a year made without consideration are subject to GST, when made in the course of furtherance of business.
- It has been clarified that the word 'gift' shall derive its meaning from common parlance, i.e. it should be:
    1. Made without consideration
    2. Voluntary in nature
    3. Made occasionally
    4. Cannot be demanded as a matter of right by the employee
    5. Employee cannot move a court of law for obtaining a gift.

- The applicability of GST on transactions between employer and employee can be encapsulated as under:

Service provider	Service recipient	Taxability	Remarks
Employee	Employer	Outside the scope of GST	Such service should be in the course of or in relation to his employment.
Employer	Employee	Outside the scope of GST	Such service should be in terms of contractual agreement for employment.

Furthermore, if services like membership of a club or a health and fitness centre, on which ITC is not allowed have been supplied free of charge by the employer to all the employees, then the same will not be subject to GST, provided appropriate GST was paid when the service was procured by the employer. This will also apply to free housing provided to employees when the same is provided in terms of the contract between the employer and the employee and is a part and parcel of the cost-to-company.

☐ GST on hotels

It has been clarified that accommodation in any hotel, including 5-star hotels, having a declared tariff of a unit of accommodation of less than INR 7,500 per unit per day, will attract GST at the rate of 18%. Star rating of hotels is, therefore, irrelevant for determining the applicable rate of GST.

It should be noted that declared tariff includes "charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit." Accordingly, even if the accommodation is booked for an effective price below INR 7,500 after discount where the original tariff was INR 7,500 or more, a higher rate of 28% rate could be applicable.

- 46/2017-Central Tax(Rate): Seeks to amend notification No. 11/2017-CT(R) so as to specify rate @ 2.5% for standalone restaurants and @9% for other restaurants.
- 48/2017-Integrated Tax(Rate): Seeks to amend notification No. 8/2017-IT(R) so as to specify rate @5% for standalone restaurants and @18% for other restaurants.
- 46/2017-Union Territory Tax(Rate): Seeks to amend notification No. 11/2017-UTT(R) so as to specify rate @ 2.5% for standalone restaurants and @9% for other restaurants.

CUSTOMS

AMENDMENTS IN THE CUSTOMS ACT, 1962:

- ☐ The scope of the Customs Act is expanded so as to any offence or contravention committed there under outside India by any person.
- ☐ Reference to import manifest and export manifest, wherever they occur in the Customs Act, to include Arrival Manifest and Departure Manifest respectively.
- ☐ Section 28-I(6) is being amended to reduce the time from six months to three months within which the authority shall pronounce its advance ruling.
- ☐ Section 30 is being amended so as to include export goods in addition to imported goods as part of the information provided in the manifest;
- ☐ Section 83 and 84 is being amended so as to include reference to goods imported or exported by courier through the authorized courier and to empower the Board to make regulations in this regard. The extant provisions in the section relate to goods imported or exported by post only.
- ☐ Section 153 is being substituted so as to align it with the provisions of the section 169 of the CGST Act to include Speed Post, Courier, and registered email as valid modes of delivery and in case of non-service by such means, to also provide for affixing it at some conspicuous place at the last known place of business or residence in addition to affixing it on the notice board of the Customs House etc.

Change in Definitions-

- ☐ Section 2 is being amended so as to:
  - Substitute the definition of assessment in sub-section (2);
  - to extend the limit of 'Indian Customs Waters' into the sea from the existing 'Contiguous zone of India' to the 'Exclusive Economic Zone (EEZ)' of India in sub-section (28)
  - Provide that 'notification' would mean a 'notification published in the Official Gazette' and the word 'notify' would be construed accordingly (new sub-section 30AA refers).

Insertion of new sections in Customs Act 1962

- ☐ A new section 25A is being inserted, so as to empower the Central Government to exempt goods imported for repair, further processing or manufacture ['Inward Processing of Goods'] from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions.
- ☐ A new section 25B is being inserted so as to empower Central Government to exempt goods re-imported after export for repair, further processing or manufacture ['Outward Processing of Goods'] from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions.
- ☐ A new section 28EA relating to 'Customs Authority for Advance Rulings' is being inserted, which empowers the Board to appoint officers of the rank of Principal Commissioner of Customs or Commissioner of Customs as Customs Authority for Advance Rulings by way of notification. Till such appointment by the Board, existing Authority shall continue to pronounce Advance Rulings.
- ☐ Section 50 is being amended so as to:
  - (a) amend sub-section (1) to insert a reference to Customs Automated System and the manner of presentation of shipping bill or bill of export;
  - (b) amend the proviso to sub-section (1) to insert a reference to Customs Automated System; and

(c) Insert a new sub-section (2A) so as to provide for observance of the accuracy, authenticity, validity of the declarations made by the exporter under this section and compliance to the prohibitions or restrictions under this act or any other law for the time being in force.

- A new Chapter XIIA and section 99A there under, is being inserted relating to Audit. The manner of conducting audit shall be provided in regulations.
- A new section 109A relating to 'Controlled Delivery' is being inserted, which seeks to authorize the proper officer or any other officer authorized by him to undertake Controlled Delivery of any consignment of goods to any destination in India or a foreign country. The section also provides, through an explanation, definition of controlled delivery. It also seeks to provide that controlled delivery shall be applicable on such consignment of goods and in such manner as may be prescribed in the regulations.
- A new section 143AA is being inserted to empower the Board to prescribe through regulations trade facilitation measures or separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods for:
  - maintenance of transparency in import and export documentation and procedure; or
  - expeditious clearance or release of goods entered for import or export; or
  - reduction in the transaction cost of clearance of importing or exporting goods; or
  - Maintenance of balance between customs control and facilitation of legitimate trade;
- A new section 151B on reciprocal arrangement for exchange of information is being inserted so as to:

i. authorize the Central Government to enter into an agreement or any other arrangement with the Government of any country or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of Customs Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country;

ii. authorize the Central Government to provide by a notification that the application of this section in relation to a contracting state with which reciprocal agreement or arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.;

iii. utilize the information received under sub-section (1) as evidence in investigations and proceedings under this Act subject to provisions of sub-section (2).;

iv. where the Central Government has entered into a multilateral agreement for exchange of information or documents for purposes of verification of compliance in identified cases, the Board shall specify the procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.;

v. insert a deeming provision that any agreement entered into or any other arrangement made by the Central Government prior to the date on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this Section.;

vi. Insert a definition of "contracting state" and "corresponding law" referred to in this section;

- Section 28 is being amended so as to:

i. Insert a proviso in clause (a) of sub-section (1) to provide pre-notice consultation in cases not involving collusion, willful misstatement, suppression before issue of demand notice. The manner of pre-notice consultation shall be provided in the regulations;

ii. insert a new sub-section (7A) to provide for issuance of supplementary show cause notice in circumstances and in such manner as may be prescribed through regulations within the existing time period;

iii. amend the existing sub-section (9) to:
   - Provide a definite time frame of six months and one year for adjudication of demand notices depending upon whether charges of collusion, willful misstatement, suppression have been invoked. These time periods shall be extendable by the officer senior to adjudicating authority for a further period of six months and one year respectively.
   - Provide that if the demand notice is not adjudicated even within the extended [61] period, it would be deemed as if no demand had been issued.

iv. insert a new sub-section (9A) to provide certain grounds on account of which the time limit of six months or one year shall remain suspended and that the proper officer shall inform the person concerned the reasons for non-determination of duty or interest under sub-section (8) and in such cases the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reasons cease to exist.

v. insert a new sub-section (10A) to provide that where an order for refund is modified in appeal and the amount of refund so determined is less than the amount refunded, the excess amount so refunded shall be recovered along with interest thereon at the applicable rate, from the date of refund up to the date of recovery, as a sum due to the Government.

vi. insert a new sub-section (10B) to provide a safeguard whereby if a demand notice issued under sub-section (4) is held not sustainable in any proceeding, including at any stage of appeal for the reason that the charges of collusion, willful misstatement etc. have not been established against the person to whom the demand notice has been issued, then the said notice shall be deemed to have been issued under sub- section (1).

vii. insert an explanation that a notice issued for non-levy, non-payment, short-levy or short payment of duty or erroneous refund after 14th May, 2015 but before the date on which the Finance Bill, 2018 receives the assent of the President, shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.;

AMENDMENTS IN THE CUSTOMS TARIFF ACT, 1975

Section 3 is being amended so as to:

i. amend sub-section (7) to include reference to sub-section (8A);

ii. insert a new sub-section (8A) to provide for value of goods when they are sold within the warehousing period for calculation of integrated tax;

iii. amend the sub-section (9) to include reference to sub-section (10A);

iv. insert a new sub-section (10A) to provide for value of goods when they are sold within the warehousing period for calculation of goods and services tax compensation cess

Change in Tariff rates

v. AMENDMENTS IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975

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Sr. No	Commodity	Rate of Duty From	Rate of Duty To
	Food Processing		
1	Fruit juices and vegetable juices including cranberry juice	30%	50%
	Perfumes and toiletry preparations		
2	Perfumes and toilet waters	10%	20%
3	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations	10%	20%
4	Preparations for use on the hair	10%	20%
5	Preparations for oral or dental hygiene, including denture fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages	10%	20%
6	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included, prepared room deodorizers, whether or not perfumed or having disinfectant properties	10%	20%
	Automobile parts		
7	Truck and Bus radial tyres	10%	15%
8	Specified parts/accessories of motor vehicles, motor cars, motorcycles	7.5%/10%	15%
	Footwear		
9	Footwear	10%	20%
10	Parts of footwear	10%	15%
	Jewellery		
11	Imitation Jewellery	15%	20%
	Electronics / Hardware		
12	Cellular mobile phones	15%	20%
13	Specified parts and accessories including lithium ion battery of	7.5%/10%	15%
	cellular mobile phones		
14	Smart watches / wearable devices	10%	20%

Sr. No	Commodity	Rate of Duty From	Rate of Duty To
15	LCD/LED/OLED panels and other parts of LCD/LED/OLED TVs	7.5%/10%	15%
	Furniture		
16	Seats and parts of seats [other than aircraft seats and their parts]	10%	20%
17	Other furniture and parts	10%	20%
18	Mattresses supports; articles of bedding and similar furnishing	10%	20%
19	Lamps and lighting fitting, illuminated signs, illuminated name plates	10%	20%
	and the like [except solar lanterns or solar lamps]		
	Watches and Clocks		
20	Wrist watches, pocket watches and other watches, including stop	10%	20%
	watches		
21	Clocks with watch movements	10%	20%
22	Other clocks, including alarm clocks	10%	20%
	Toys and Games		
23	Tricycles, scooters, pedal cars and similar wheeled toys; dolls'	10%	20%
	carriages; dolls; other toys; puzzles of all kinds		
24	Video game consoles and machines, articles for funfair, table or	10%	20%
	parlor games and automatic bowling alley equipment		
25	Festive, carnival or other entertainment articles	10%	20%
26	Articles and equipment for sports or outdoor games, swimming	10%	20%
	pools and paddling pools [other than articles and equipment for		
	general physical exercise, gymnastics or athletics]		
27	Fishing rods, fishing-hooks and other line fishing tackle; fish landing	10%	20%
	nets, butter fly nets and similar nets; decoy birds and similar hunting		
	or shooting requisites		
28	Roundabouts, swings, shooting galleries and other fairground	10%	20%
	amusements; travelling circuses, traveling menageries and travelling		
	theatres		
	Miscellaneous items		
29	Candles, tapers and the like	10%	25%
30	Kites	10%	20%
31	Sunglasses	10%	20%
20%	Date, sealing or numbering stamps, and the like	10%	
33	Cigarette lighters and other lighters, whether or not mechanical or	10%	20%
	electrical, and parts thereof other than flints and wicks.		

Sr. No	Commodity	Rate of Duty From	Rate of Duty To
34	Scent sprays and similar toilet sprays, and mounts and heads there for; powder-puffs and pads for the application of cosmetic or toilet preparations.	10%	20%

AMENDMENT IN THE SECOND SCHEDULE TO THE CUSTOMS TARIFF ACT,1975

Sr.No.	Amendments not affecting rates of Export duty	Rate of Duty	
		From	To
1.	To insert a new Note to specify Nil rate of duty in respect of all other goods which are not covered under column (2) of the Schedule. [Clause 102 (a) of the Finance Bill, 2018]	--	--
2	Electrodes of a kind used for furnaces [Clause 102 (b) of the Finance Bill, 2018]*[Introduction of 20% Tariff rate of Export Duty on Electrodes of a kind used for furnaces(8545 11 00). The effective rate of Export duty on such electrodes will, however, remain Nil]	--	20%

Levy of Social Welfare Surcharge, as a duty of Customs on imported goods

Sr. No.	Description	From	To
1	Levy of Social Welfare Surcharge on imported goods to finance education, housing and social security [clause 108 of Finance Bill, 2018]	--	10% of aggregate duties of customs
2	Abolition of Education Cess and Secondary and Higher Education Cess on imported goods [clause 106 of Finance Bill, 2018]	3% of aggregate duties of customs [2% + 1%]	Nil
3	Motor spirit commonly known as petrol and high speed diesel oil	--	3% of aggregate duties of customs
4	Silver (including silver plated with gold or platinum),unwrought or in semi-manufactured form, or in powder form	--	3% of aggregate duties of

Sr. No.	Description	From	To
			customs
5	Gold (including gold plated with platinum), unwrought or in semi-manufactured form, or in powder form	--	3% of aggregate duties of customs
6	Specified goods hitherto exempt from Education Cess and Secondary and Higher Education Cess on imported goods	--	Nil

Levy of the Road and Infrastructure Cess [Clause 109 of the Finance Bill, 2018.

Sr.	Description	From	To
1	Levy of Road and Infrastructure Cess on imported motor spirit commonly known as petrol and high speed diesel oil [clause109 of Finance Bill, 2018]		Rs. 8 per liter
2	Exemption from additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975in lieu of the proposed Road and Infrastructure cess on domestically produced motor spirit commonly known as petrol and high speed diesel oil	--	Nil
3	Abolition of Additional Duty of Customs [Road Cess] on imported motor spirit commonly known as petrol and high speed diesel oil [Clause 106 of Finance Bill, 2018]	Rs.6 per liter	Nil
4.	Additional duty of customs under sections 3(1) of the Customs Tariff Act, 1975 in ☐ lieu of basic excise duty	Rs.6.48 per liter	Rs.4.48 per liter
	☐ High speed Diesel Oil	Rs. 8.33 per liter	Rs. 6.33 per liter

Amendment in notification No. 50/2017-Customs

Notification No. 65/2017-Customs dated 8th July 2017 amending notification No. 50/2017-Customs dated 30th June 2017 is proposed to be given retrospective effect so as to exempt integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 on aircrafts, aircraft engines and other aircraft parts imported under cross-border lease during the period from the 1st July, 2017 to the 7th July, 2017 subject to the payment of Integrated tax leviable under section 5(1) of the IGST Act, 2017 on the said supply.

REPEAL OF CERTAIN ENACTMENTS

1.	Additional duty of Customs on Motor Spirit commonly known as Petrol is being abolished by repealing section 103 of the Finance Act (No.2), 1998
2.	Additional duty of Excise on Motor Spirit commonly known as Petrol is being abolished by repealing section 111 of the Finance Act (No.2), 1998
3	Additional duty of Customs on High Speed Diesel oil is being abolished by repealing section 116 of the Finance Act, 1999
4	Additional duty of Excise on High Speed Diesel oil is being abolished by repealing section133 of the Finance Act, 1999
5	Education Cess on imported goods is being abolished by omitting Chapter VI of the Finance Act (No.2), 2004
6	Secondary and Higher Education Cess on imported goods is being abolished by omitting Chapter VI of the Finance Act, 2007

Customs Updates, Trade notices, Circulars & notifications

- **FTP 2015-20 mid-term review unveiled**
  Ministry of Commerce has, after a mid-term review, unveiled the revised Foreign Trade Policy and the Procedures, on 5th of December, 2017.
- **EPCG Scheme –Revisions**
  Capital goods installed at one unit have been permitted to be shifted to another unit as appearing in the IEC and RCMC of the EPCG holder, subject to production of fresh installation certificate.
- **EOU Scheme –Revisions**
  Value limit of 50% of FOB value of exports, on DTA sale of goods by an EOU has been removed. Consequently, restrictions on DTA sale of motor cars, alcoholic liquors, books and tea, at concessional rate of duty, have been removed. However, DTA sale of pepper & pepper products and marble is not permissible.
- **Exemptions -Norms for Bank guarantee, cash security and surety relaxed**
  CBEC has relaxed the norms for furnishing of bank guarantee, cash security and surety for the purpose of benefit under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Bank guarantee, cash security or surety is not required in case of AEOs, PSUs and Govt. departments. Manufacturers and service providers having a turnover of more than INR 1 crore and filing GST Returns would be required to give bank guarantee / cash security of not more than 5% of import duty foregone.
- **Chickpeas or Masoor (Lentils)**
  BCD increased – Chickpeas and Masoor are no longer exempted from Basic Customs Duty.
- **Exports -Refund of Countervailing duty as drawback**
  Countervailing duty (CVD) levied under Section 9 of Customs Tariff Act is eligible to be refunded as drawback, in case of exports. CBEC has clarified that drawback of countervailing duties, imposed on inputs which were actually used in exported goods, can be claimed under an application for brand rate.
- **IGST payable on goods transferred or sold while being in bonded warehouse**
  Transfer of goods deposited in a customs bonded warehouse, by importer to another person, would attract IGST at the value determined as per Section 20 of IGST Act read with Section 15 of CGST Act and the rules made there under.

- ☐ **IGST exemption to imports under lease**

  All goods, vessels, ships (other than motor vehicles) imported under lease, by the importer for use after import have been exempted from IGST payable at the time of import, subject to specified conditions.

- ☐ **Dumpers for coal mines eligible for Project Import benefit**

  CBEC has clarified that dumpers designed for mining activities and to be used in coal mines are eligible for Project Import benefits if same is certified by concerned sponsoring authority.

- ☐ **Pulses exports –Prohibition removed**

  All varieties of pulses, including organic pulses, have been made 'free' for export without any quantitative ceilings if exports are made through EDI ports.

Amendments to the Customs Valuation Rules, 2007

Definition of *"place of importation"* has been inserted in Rule 2 of the Customs Valuation Rules, 2007, to mean *"customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse".*

The following amendments have been made *vide* Notification No. 91/2017-Cus. read with Circular No. 39/2017-Cusrstwhile Rule 10(2)(b) which prescribed inclusion of loading, unloading and handling charges associated with the delivery of the imported goods **at the place of importation** has been deleted. Rule 10(2)(a) has been substituted to include cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods **to the place of importation**. **Effect of amendments**

- ☐ **Costs incurred** towards loading, unloading and handling charges **at the place of importation are not to be included** in the assessable value.

- ☐ The erstwhile practice of loading one per cent of the CIF value towards loading, unloading and handling charges has been removed.

- ☐ The new provision gives the basis for computation of transport costs, inclusive of loading, unloading and handling charges in cases where information relating to actual costs are not available.

- ☐ **Advance authorisation, EPCG and EOU schemes revised to allow exemption of IGST on imports –**

- Exemption from IGST and Compensation Cess levied under Sections 3(7) and 3(9) of Customs Tariff Act is now available in case of imports under Advance authorisation and EPCG scheme, subject to condition of physical exports.
- Similarly, IGST and Compensation Cess exemption is also available to imports by EOUs.
- These exemptions are available till 31-3-2018.

- ☐ **Duty credit scrips –Validity period increased**

- Validity period of duty credit scrips issued has been increased from 18 months to 24 months

- ☐ **EPCG Scheme –Re-export for repairs allowed**

- DGFT has amended to allow re-export of capital goods imported under EPCG scheme.
- Such re-export would be allowed with permission of Regional authority of the Customs authority, within 3 years of date of Customs clearance.

- ☐ **Gifts imported by post or air, exempted from BCD and IGST**

Bona fide gifts of CIF value less than Rs. 5000 imported by post or air have been exempted from BCD and IGST

- Such re-export would be allowed with permission of Regional authority of the Customs authority, within 3 years of date of Customs clearance.

☐ **Gifts imported by post or air, exempted from BCD and IGST**

Bona fide gifts of CIF value less than Rs. 5000 imported by post or air have been exempted from BCD and IGST

- CBEC has clarified that high sea sales of imported goods would not be chargeable to IGST twice., at the time of Customs clearance under Section 3(7) of Customs Tariff Act as well as separately under Section 5 of the IGST Act.
- Export of Gold jewellery over 22 carats not allowed– The DGFT has issued Notification No. 21/2015-20, dated 14-8-2017 whereby export of gold jewellery, plain or studded, and articles containing gold of 8 carats and above and a maximum of 22 Carats only is permitted from DTA and from EOU/EHTP/STP/BTP Units.

☐ **PAN of entity to be used for IEC**

- In order to keep the identity of an entity uniform across various departments of the government, DGFT Trade Notice dated 12-6-2017 stating that in respect of new applicants, with effect from a notified date, applicant's PAN would be authorized as IEC.

☐ **Reward scheme scrips (MEIS and SEIS) allowed to be utilised for EO default duty payment under previous FTPs**

- Duty Credit scrips issued under Chapter 3 of the Foreign Trade Policy can be utilized for payment of Customs duties in case of default of export obligation for authorizations issued under Chapter 4 and 5 of the earlier Foreign Trade Policies as well

☐ **EOU – No requirement of refund of deemed export benefit when goods procured indigenously returned back**

- CBEC has clarified that once applicable Customs duty is paid at the time of transfer/sale back into DTA in respect of goods procured indigenously, there is no requirement of refund of the deemed export benefits or for the production of a certificate from the Development Commissioner regarding refund or non-availment of deemed export benefits.

☐ **Exemption to specified medicines for supply under Patient Assistance Programmes**

- Complete exemption from BCD has been extended to specified drugs and medicines for supply under Patient Assistance Programmes run by the specified pharmaceutical companies, subject to conditions mentioned therein.

☐ **Exemption to goods imported by Navy, Air Force or CRPF**

- Complete exemption from BCD and CVD has been extended to all goods imported into India by or along with a unit of the Army, the Navy, the Air Force or the Central Paramilitary Forces on the occasion of its return to India after a tour of service abroad.

FINANCE SECTOR

Introduction

The financial services sector in India is steadily growing. Although the sector consists of commercial banks, development finance institutions, non-banking financial companies, insurance companies, co-operatives, mutual funds, and the new "payment banks," it is dominated by banks, which holds over 60 percent share.

Over past few years, government has taken many reformative steps to make financial sector even more robust. Financial sectors' contribution comes across even more strong when we look at sheer number of employment and tax revenue it generates. With improved availability of credit, the Indian economy during past two decades has managed to march towards higher economic growth.

However as per IMF, the financial sector is facing considerable challenges, and economic growth has recently slowed down. High non- performing assets (NPAs) and slow deleveraging and repair of corporate balance sheets are testing the resilience of the banking system, and holding back investment and growth. Stress tests show that while largest banks are sufficiently capitalised and profitable to withstand a deterioration in economic conditions, a group of public sector banks (PSBs) are highly vulnerable to further declines in asset quality and higher provisioning needs.

The performance of the banking sector, and in particular the Public Sector Banks, continued to be subdued in the current financial year. The gross non-performing advances (GNPA) ratio of Scheduled Commercial Banks increased from 9.6 per cent to 10.2 per cent between March 2017 and September 2017.

Recent Developments

- Remonetisation: After demonetisation in early November 2016, the Reserve Bank had scaled up its liquidity absorption operations using a mixed of both conventional and unconventional instruments. Liquidity conditions remained in surplus mode even as its magnitude moderated gradually with progressive remonetisation.

- GIFT – A Financial Global Hub: International Financial Service Centre (IFSC) at Gift City, which has become operational, needs a coherent and integrated regulatory framework to fully develop and to compete with other offshore financial centres. The Government will establish a unified authority for regulating all financial services in IFSCs in India.

- National Health Protection Scheme: This programme will cover over 10 crore poor and vulnerable families (approximately 50 crore beneficiaries) providing coverage upto 5 lakh rupees per family per year for secondary and tertiary care hospitalization. This will be the world's largest government funded health care programme.

- Jan Dhan Yojana: The Government will expand the coverage under Prime Minister Jan Dhan Yojana by bringing all sixty crore basic accounts within its fold and undertake measures to

provide services of micro insurance and unorganized sector pension schemes through these accounts.

Market Size

- On account of rise in investments in the Mutual Funds and other financial instruments, the revenues of the brokerage industry in India are forecasted to grow by 15-20 per cent to reach Rs 18,000-19,000 crore (US$ 2.80-2.96 billion) in FY2017-18, backed by healthy volumes and a rise in the share of the cash segment.
- The Mutual Fund (MF) industry in India has seen rapid growth in Assets under Management (AUM). Total AUM of the industry increased 40 per cent year-on-year to hit a record Rs 23 lakh crore (US$ 358.78 billion) at the end of November 2017.At the same time the number of Mutual fund (MF) equity portfolios reached a record high of 46.63 million, of which 7.6 million portfolios were added in 2017 till November.
- India's leading bourse Bombay Stock Exchange (BSE) will set up a joint venture with EbixInc to build a robust insurance distribution network in the country through a new distribution exchange platform.
- The market for Initial Public Offers (IPOs) has also witnessed rapid expansion. A total of 153 initial public offers (IPOs) were issued in the Indian stock markets in 2017, which raised a total of US$ 11.6 billion

Government Initiatives

- The Ministry of Finance has launched the Operation Clean Money Portal, in an attempt to create a tax compliant society as well as a transparent tax administration.
- The Securities and Exchange Board of India (SEBI) has allowed exchanges in India to operate in equity and commodity segments simultaneously, starting from October 2018.
- The Government of India has relaxed norms for small merchants with a turnover of up to Rs 2 crore (US$ 300,000), allowing them to pay 6 per cent of deemed profit in tax instead of 8 per cent of total turnover or gross receipts received through banking channels or digital means for FY 2016-17, in a bid to encourage cashless transactions in the country.
- Securities Exchange Board of India (SEBI) has permitted the security exchanges to launch options contracts in the commodity market, which would provide a new cost effective hedging tool to the farmers and others market participants.

Budget Proposal

- Facilities of Kisan Credit cards have been extended to fisheries and animal husbandry farmers to meet their working capital need.
- Setting up of Fisheries and Aquaculture Infrastructure Development Fund (FAIDF) for fisheries sector and an Animal Husbandry Infrastructure Development Fund (AHIDF) for financing infrastructure requirement of animal husbandry sector. Total Corpus of these two new Funds would be Rs.10,000 crore.

- ☐ The volume of institutional credit for agriculture sector is proposed to be increased to Rs.11 Lakh crore for the year 2018-19 from Rs. 10 Lakh crore
- ☐ NITI Aayog, in consultation with State Governments, will evolve a suitable mechanism to enable access of lessee cultivators to credit without compromising the rights of the land owners.
- ☐ Higher Education Financing Agency will be structured to fund 'Revitalising Infrastructure and Systems in Education (RISE) by 2022'' with a total investment of Rs.1,00,000 crore in next four years
- ☐ Online loan sanctioning facility for MSMEs will be revamped for prompt decision making by the banks.
- ☐ It is proposed to set a target of Rs.3 lakh crore for lending under MUDRA for 2018-19
- ☐ Leveraging of the India Infrastructure Finance Corporation Limited (IIFCL) to help finance major infrastructure projects, including investments in educational and health infrastructure, on strategic and larger societal benefit considerations.
- ☐ Reserve Bank of India has issued guidelines to nudge Corporates access bond market. SEBI will also consider mandating, beginning with large Corporates, to meet about one-fourth of their financing needs from the bond market.
- ☐ Necessary amendments to the Indian Stamp Act.
- ☐ The Government has approved listing of 14 CPSEs, including two insurance companies, on the stock exchanges. The Government has also initiated the process of strategic disinvestment in 24 CPSEs. This includes strategic privatization of Air India.
- ☐ Allowing strong Regional Rural Banks to raise capital from the market to enable them increase their credit to rural economy.
- ☐ National Housing Bank Act is being amended to transfer its equity from the Reserve Bank of India to the Government. Various Acts being SEBI, SCRA & depositories are being amended.
- ☐ Gold Monetization Scheme will be revamped to enable people to open a hassle-free Gold Deposit Account.
- ☐ Coherent and integrated Outward Direct Investment (ODI) policy is being brought.

Tax Proposal:

Direct Tax

- ☐ Amendment to section 80D to increase the limit of deduction from Rs. 30,000 to Rs. 50,000 in respect of amount paid towards health insurance premium, expenditure on preventive health check-up or medical expenditure for senior citizens which will benefit the insurance sector
- ☐ Increase in the limit of deduction to Rs. 50,000 on account of interest on deposits/ savings for senior citizens will increase the inflow of fixed deposits.
- ☐ Transfer by Non-Resident on recognised stock exchange in International Financial Services Centre (IFSC) not regarded as transfer liable for capital gains tax
- ☐ A new section 112A is proposed to be inserted to provide that long-term capital gains arising from transfer of a long term capital asset being equity share in a listed company or a unit of

equity-oriented fund or a unit of a business trust shall be taxed at 10% of such capital gains exceeding Rs. 1,00,000.FIIs and FPIs also covered

- Section 116(7) of the Finance Act is proposed to be amended to include a transaction involving “options on commodity futures” within the definition of a “taxable commodities transaction”.

Road Ahead

India is today one of the most vibrant global economies, on the back of robust banking and insurance sectors. The relaxation of foreign investment rules has received a positive response from the insurance sector, with many companies announcing plans to increase their stakes in joint ventures with Indian companies. Over the coming quarters there could be a series of joint venture deals between global insurance giants and local players.

However, the extent of development along all the segments of the financial market has not been uniform. While the equity market is quite developed, activities in the private debt market are predominantly confined to private placement form and continue to be limited to the blue-chip companies. The rising stock of NPAs, which amounts to over Rs 7 lakh crore, has been eroding banks’ profits and inhibiting their ability to provide credit.

Cyber Laws, Corporate governance in banks and financial institutions are some of the initiatives being taken to meet the challenges of the complex financial architecture.

INFORMATION TECHNOLOGY IN INDIA

INTRODUCTION

Innovations in science and technology are integral to the long-term growth and dynamism of any nation. The global sourcing market in India continues to grow at a higher pace compared to the IT-BPM industry. The global IT &ITeS market (excluding hardware) reached US$ 1.2 trillion in 2016-17, while the global sourcing market increased by 1.7 times to reach US$ 173-178 billion. India remained the world’s top sourcing destination in 2016-17 with a share of 55 per cent. Indian IT &ITeS companies have set up over 1,000 global delivery centres in over 200 cities around the world.

More importantly, the industry has led the economic transformation of the country and altered the perception of India in the global economy. India's cost competitiveness in providing IT services, which is approximately 3-4 times cheaper than the US, continues to be the mainstay of its Unique Selling Proposition (USP) in the global sourcing market.

The IT industry has also created significant demand in the Indian education sector, especially for engineering and computer science. The Indian IT and ITeS industry is divided into four major segments – IT services, Business Process Management (BPM), software products and engineering services, and hardware.

India has come out on top with the highest proportion of digital talent in the country at 76 per cent compared to the global average of 56 per cent.

MARKET SIZE

- The internet industry in India is likely to double to reach US$ 250 billion by 2020, growing to 7.5 per cent of gross domestic product (GDP). The number of internet users in India is expected to reach 730 million by 2020, supported by fast adoption of digital technology, according to a report by National Association of Software and Services Companies (NASSCOM).
- India ranks third among global start-up ecosystems with more than 4,200 start-ups which mainly include contribution from IT/ App based industry.
- Personal Computer (PC) shipments from India grew 20.5 per cent year over year to reach 3.03 million during July-September 2017. The growth was backed by strong consumer demand and special projects.
- The public cloud services market in India is slated to grow 35.9 per cent to reach US$ 1.3 billion according to IT consultancy, Gartner.
- The Indian Healthcare Information Technology (IT) market is valued at US$ 1 billion currently and is expected to grow 1.5 times by 2020.
- India's business to business (B2B) e-commerce market is expected to reach US$ 700 billion by 2020 whereas the business to consumer (B2C) e-commerce market is expected to reach US$ 102 billion by 2020.
- Cross-border online shopping by Indians is expected to increase 85 per cent in 2017, and total online spending is projected to rise 31 per cent to Rs 8.75 lakh crore (US$ 128 billion) by 2018.

BUDGET PROPOSALS 2018-19

Government is now taking initiatives to transform our Global economy to Digital economy. Initiatives such as Digital India, Start up India, Make in India would help India establish itself as a knowledge and digital society. Various areas which will be benefited by this years' budget are elaborated as under:

1. **Education:** Government has proposed to increase the digital intensity in education and move gradually from ''black board'' to ''digital board''. Technology will also be used to upgrade the skills of teachers through the recently launched digital portal ''DIKSHA''.
2. **Science & Technology**: Department of Science & Technology will launch a Mission on Cyber Physical Systems to support establishment of centres of excellence. I have doubled the allocation on Digital India programme is doubled to ` 3073 crore in 2018-19.
3. **Telecom Industry:**
   a. The Department of Telecom will support establishment of an indigenous 5GTest Bed at IIT, Chennai.
   b. The Government proposes to set up five lakh Wi-Fi hotspots to provide net connectivity to five crore rural citizens.
   c. All railway stations and trains will be progressively provided with Wi-Fi. The Finance Minister allocated Rs. 10000 crore in 2018-19 for creation and augmentation of Telecom infrastructure.
4. **Agriculture Industry**: Government has taken initiatives to provide farmers facility to make direct sale to consumers and bulk purchasers by electronically linking GRAMs (Gramin Agricultural Markets) to e-NAM (electronic- National Agriculture Market) and thereby reducing compliance with regulations of APMCs'.
5. **MSMEs:** It is proposed to on-board public sector banks and corporates on Trade Electronic Receivable Discounting System (TReDS) platform and link this with GSTN.

Online loan sanctioning facility for MSMEs will be revamped for prompt decision making by the banks.

6. **Corporate:** The Government will evolve a Scheme to assign every individual enterprise in India a unique ID.
7. **Assessments:** A new concept of E- Assessment has been introduced in the budget where the assessment will be done in electronic mode which will almost eliminate person to person contact leading to greater efficiency and transparency. Further provisions shall be introduced by the Central Government.
8. **Central Ministries and Departments:** The Government is transforming method of disposal of its business by introduction of e-office and other e-governance initiatives in central Ministries and Departments. The initiatives are:
    a. A web-based Government Integrated Financial Management Information System (GIFMIS), administered by Controller General of Accounts, for budgeting, accounting, expenditure and cash management for more effective fiscal management of Government
    b. A Non Tax Receipt Portal (NTRP) to provide one stop services for depositing fees, fines and other non-tax dues into Government account.
    c. Project 'e-Vidhan' to digitize and make the functioning of all State Legislatures paperless
    d. E-Courts, to bring about universal computerization of all Districts and Subordinate Courts, use of cloud computing and availability of e-services like e-filing and e-payments as well.

ROAD AHEAD:

- Indian technology companies expect India's digital economy to have the potential to reach US$ 4 trillion by 2022, as against the Government of India's estimate of US$ 1 trillion. Rise in mobile-phone penetration and decline in data costs will add 500 million new internet users in India over the next five years creating opportunities for new businesses.
- E commerce market in India is set to grow at 30 per cent annually to hit US$ 200 billion gross merchandise value by 2026.

INFRASTRUCTURE:

INTRODUCTION

Infrastructure is the growth driver of economy. In order to ensure high and sustainable growth, there has been a substantial step up of investment in infrastructure mostly on transportation, energy, communication, housing & sanitation and urban infrastructure sector. Enhanced investment on infrastructure sector will certainly help in creating jobs both directly and indirectly.

Promoting inclusive employment-intensive industry and building resilient infrastructure are vital factors for economic growth and development. As pointed out in Economic Survey, 2016-17 India is far ahead of many emerging economies in terms of providing qualitative transportation related infrastructure.

INVESTMENT IN INFRASTRUCTURE SECTOR

The Global Infrastructure Outlook reflects that rising income levels and economic prosperity is likely to further drive demand for infrastructure investment in India over the next 25 years. Around US$ 4.5 trillion worth of investments is required by India till 2040 to develop infrastructure to

improve economic growth and community wellbeing. The current trend shows that India can meet around US$ 3.9 trillion infrastructure investment out of US$ 4.5 trillion. The cumulative figure for India's infrastructure investment gap would be around US$ 526 Billion by 2040.

There was massive under-investment in infrastructure sector until the recent past. The reasons behind the shortfall in investment were: collapse of Public Private Partnership (PPP) especially in power and telecom projects; stressed balance sheet of private companies; issues related to land & forest clearances.

The need of the hour is to fill the infrastructure investment gap by financing from private investment, institutions dedicated for infrastructure financing like National Infrastructure Investment Bank (NIIB) and also global institutions like Asian Infrastructure Investment Bank (AIIB), New Development Bank (erstwhile BRICS Bank) which is focusing more on sustainable development projects and infrastructure projects.

Further, The Bharatmala Pariyojana is the second largest highway development project, since the National Highway Development Project (NHDP). It envisages an investment of Rs. 5.35 lakh crore over five years and the construction of 34,800 km of roads. Additionally, Rs. 1.57 lakh crore will be spent on existing projects, increasing total expenditure to Rs. 6.92 lakh crore

GOVERNMMENT INITIATIVES

The Road Transport & Highways Ministry has invested around Rs 3.17 trillion (US$ 47.7 billion), while the Shipping Ministry has invested around Rs 80,000 crores (US$ 12.0 billion) in the past two and a half years for building world class highways and shipping infrastructure in the country. Some of the steps taken in the recent past are being discussed hereafter.

1. During 2012-13, total credit advances to road sector was Rs. 1,27,430 crore, which increased to Rs. 1,80,277 crore as in September 2017-18.

2. A total of 6,604 km out of the 15,000 km of target set for national highways in 2016-17 has been constructed by the end of February 2017, according to the Minister of State for Road, Transport & Highways and Government of India.

3. The Government of India plans to raise Rs 10 trillion (US$ 156.53 billion) for infrastructure projects from retirees and provident fund beneficiaries in tranches of Rs 10,000 crore (US$ 1.57 billion) by selling 10-year bonds at a coupon rate of 7.25-7.75 per cent.

4. Airports Authority of India (AAI) is set to construct an Export Import Cargo Terminal (EICT) at Tulihal, Imphal airport, in the state of Manipur at an estimated cost of Rs 16.20 crore (US$ 2.54 million), which is expected to boost the export of handicrafts and perishable cargo from the state.

5. The Asian Infrastructure Investment Bank (AIIB) has approved a loan worth US$ 329 million, which will be utilised towards construction of road linkages for last-mile connectivity to schools and tribal areas in 33 districts of Gujarat.

6. Ministry of Housing and Urban Poverty Alleviation, Government of India, launched 352 affordable housing projects worth Rs 38,000 crore (US$ 5.9 billion) in 53 cities across 17 states for building over 200,000 houses costing Rs 18 lakh (US$ 27,948) per house on average.

7. The Cabinet Committee on Economic Affairs (CCEA), Government of India, has approved the project to widen the Handia-Varanasi section of National Highway-2 in Uttar Pradesh, which would require an investment of Rs 2,147 crore (US$ 333.36 million).

8. The Ministry Of Urban Development has approved investment of Rs 2,863 crore (US$ 433 million) in six states under the Atal Mission for Rejuvenation and Urban Transformation (AMRUT) scheme, for improving basic urban infrastructure over Fiscal Year 2017-20.

9. Airports Authority of India (AAI) plans to increase its capital expenditure for 2017-18 by 25 per cent to Rs 2,500 crore (US$ 0.37 billion), primarily to expand capacity at 12 airports to accommodate increase air traffic, as per the Chairman of AAI.

10. The Government of India and the Asian Development Bank (ADB) have signed US$ 375 million in loans and grants for developing 800 kilometre (km) Visakhapatnam-Chennai Industrial Corridor, which is the first phase of a planned 2,500 km East Coast Economic Corridor (ECEC).

11. A total of 187 projects have been sanctioned under the Namami Gange programme for infrastructure development, river surface cleaning, rural sanitation and other interventions at a cost of Rs.16,713 crore. 47 projects have been completed and remaining project share at various stages of execution. All 4465 Ganga Grams – villages on the bank of river - have been declared open defecation free.

12. Ambitious Bharatmala Pariyojana has been approved for providing seamless connectivity of interior and backward areas and borders of the country to develop about 35000 kms in Phase-I at an estimated cost of Rs.5,35,000 crore.

PROPOSALS IN UNION BUDGET 2018

The new budget will put impetus on developing rural infrastructure. In a bid to boost infrastructure and job creation, the upcoming Budget may focus on road, ports, power, information technology and telecom.

1. To secure India's defences, Government is developing connectivity infrastructure in border areas. Rohtang tunnel has been completed to provide all weather connectivity to the Ladakh region. Government now proposes to take up construction of tunnel under Sela Pass. For promoting tourism and emergency medical care, Government will make necessary framework for encouraging investment in sea plane activities.

2. Water supply contracts for 494 projects worth Rs.19,428 crore and sewerage work contract for 272 projects costing Rs.12,429 crore has been awarded.

3. Railways' Capex for the year 2018-19 has been pegged at Rs. 1,48,528 crore.

4. Redevelopment of 600 major railway stations is being taken up by Indian Railway Station Development Co. Ltd. All stations with more than 25000 footfalls will have escalators. All railway stations and trains will be progressively provided with Wi-Fi. CCTVs will be provided at all stations and on trains to enhance security of passengers.

5. Regional connectivity scheme of UDAN (UdeDeshkaAamNagrik) initiated by the Government last year shall connect 56 un-served airports and 31 un-served helipads across the country. Airport Authority of India (AAI) has 124 airports. Government has also

proposed to expand airport capacity more than five times to handle a billion trips a year under a new initiative – NABH NIRMAN

6. Mumbai's transport system is being expanded and augmented to add 90 Km of double line tracks at a cost of over Rs.11,000 crore. 150 Km of additional suburban network is being planned at a cost of over Rs.40,000 crore, including elevated corridors on some sections.

7. In order to encourage creation of new employment, Government has proposed to extend the relaxation under section 80JJAA to footwear and leather industry, where 30% deduction is allowed in addition 100% normal deduction in respect of emolument paid to eligible new employee who has been employed for a minimum period of 240 days. This minimum period of employment is relaxed to 150 days.

8. It is proposed to provide that in respect of heavy goods vehicles (more than 12 tonnes), the presumptive income under section 44AE of the Act shall be computed at the rate of Rs.1000 per tonne of gross vehicle weight or unladen weight, per month.

ROAD AHEAD

1. India's national highway network is expected to cover 50,000 kilometres by 2019, with around 20,000 km of works scheduled for completion in the next couple of years, according to the Ministry of Road Transport and Highways.

2. The Government of India is devising a plan to provide Wi-Fi facility to 550,000 villages by March 2019 for an estimated cost of Rs 3,700 crore (US$ 577.88 million), as per the Department of Telecommunications, Government of India.

3. Sweden is interested in smart cities development in India and has put forward a Common Plan of Action for developing sustainable and environment-friendly public transport solutions and solid waste management for the smart cities under development.

REAL ESTATE

INTRODUCTION

The real estate sector, being one of the most globally recognised sectors has evolved as a second largest employer after agriculture. The share of real estate sector which includes ownership of dwellings accounted for 7.7 per cent in India's overall GVA in 2015-16.The construction industry ranks third among the 14 major sectors in terms of direct, indirect and induced effects in all sectors of the economy.

Private equity investments in the real estate sector have increased from US$ 0.9 billion in 2013 to over US$ 5.9 billion in 2016, recording more than six fold jump during this period. The strength of the Indian economy and favourable demographics, coupled with the introduction of several growth oriented reforms are aiding the real estate sector to attract higher investments.

However, an analysis of the sales results of services sector firms in the last few quarters shows that the only sector which has been showing signs of stress is the Construction and Real Estate sector.FDI into construction development sector declined to US$ 107 million in 2016. Off late, there are signs of improvement in FDI into this sector due to host of factors including regulatory

environment, enhanced infrastructure, and amendments to Real Estate Investment Trusts (REITs).

RECENT DEVELOPMENTS

The government has sanctioned over 3.1 million houses for the affordable housing segment in urban regions till Nov, 2017 under Pradhan Mantri Awas Yojana (PMAY). PPP policy for affordable housing was also announced on 21 September 2017 for affordable housing segment to provide further impetus to the ambitious 'Housing for all by 2022' mission. Credit Linked Subsidy Scheme (CLSS) under PMAY was extended to the Middle Income Group (MIG) segment, which got included in the scheme from 01 January 2017.

Recovery from Demonetisation: The financial quarters post demonetisation has been inconvenient for the real estate industry. Demonetisation did leave many wiling homebuyers cash strapped for a while but only to infuse the system with greater transparency. Branded developer firms with credibility also managed to stick to their game. Banks too decided to go in for home loan rate cuts helping the buyer spend more and save more. This has been one of the high points for homebuyers in days that followed demonetisation.

Real Estate (Regulation and Development) Act (RERA): The implementation of RERA has brought in some element of regulation. Certain ambiguities have been clarified and the states have been proactive in implementing the Act. RERA has also brought in a sense of confidence for investors and homebuyers.

Goods and Services Tax (GST): GST brings transparency in the functioning of real estate sector; the overall increase in price for new residential properties could be lower than that for new commercial properties. With an aim to push demand, the government recently decided to lower the applicable GST rate for home purchases under the CLSS under PMAY to eight per cent. Otherwise, homebuyers have to pay 12 per cent GST on the purchase of under-construction projects, the rate fixed for work contracts.

GOVERNMENT INITIATIVES

The Government of India along with the governments of the respective states has taken several initiatives to encourage the development in the sector.

- A new public private partnerships (PPP) policy with eight PPP options has been unveiled by the Ministry of Housing and Urban Affairs, Government of India, to push for investments in the affordable housing segment.
- The Delhi Government has declared 89 out of 95 villages in Delhi as urban areas which will ease the operationalising of the land pooling policy, thereby giving a boost to affordable housing in Delhi.
- The Reserve Bank of India (RBI) has proposed to allow banks to invest in real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) which is expected to benefit both real estate and banking sector in diversifying investor base and investment avenues respectively.
- The Ministry of Housing and Urban Poverty Alleviation has sanctioned the construction of 84,460 more affordable houses for urban poor in five states, namely West Bengal, Jharkhand, Punjab, Kerala and Manipur under the Pradhan Mantri Awas Yojana (Urban) scheme with a total investment of Rs 3,073 crore (US$ 460 million).

BUDGET PROPOSALS

- Under Prime Minister Awas Scheme Rural, 51 Lakhs houses in year 2017-18 and 51 lakh houses during 2018-19 which is more than one crore houses will be constructed exclusively in rural areas. In urban areas the assistance has been sanctioned to construct 37 lakh houses.
- A dedicated Affordable Housing Fund (AHF) in National Housing Bank will be established, funded from priority sector lending shortfall and fully serviced bonds authorized by the Government of India.
- No adjustments shall be made in the hands of seller as well as in the hands of purchaser in a case where the variation between stamp duty value and sale consideration is not more than 5%.

ROAD AHEAD

With the regularised RERA and GST implementation, the real estate sector has undergone a revolutionary transformation both of which are significant game changers. However, this sector has been slowing down due to NPA problem of banks and defaulting developers. Thus, trapped between rising interest and other costs and faltering demand that affects prices, the real estate sector is experiencing a severe version of the crisis stemming from the inability of the system to sustain growth-driven by private debt-financed spending.

ENGINEERING

INTRODUCTION

The Indian Engineering sector has witnessed a remarkable growth over the last few years driven by increased investments in infrastructure and industrial production. The engineering sector, being closely associated with the manufacturing and infrastructure sectors, is of strategic importance to India's economy.

India on its quest to become a global superpower has made significant strides towards the development of its engineering sector. The Government of India has appointed the Engineering Export Promotion Council (EEPC) as the apex body in charge of promotion of engineering goods, products and services from India.

India exports transport equipment, capital goods, other machinery/equipment and light engineering products such as castings, forgings and fasteners to various countries of the world. The Indian semiconductor industry offers high growth potential areas as the industries which source semiconductors as inputs are themselves witnessing high demand.

INVESTMENT:

The engineering sector in India attracts immense interest from foreign players as it enjoys a comparative advantage in terms of manufacturing costs, technology and innovation. The above, coupled with favourable regulatory policies and growth in the manufacturing sector has enabled several foreign players to invest in India.

The foreign direct investment (FDI) inflows into India's miscellaneous mechanical and engineering industries during April 2000 to June 2017 stood at around US$ 3.34 billion, as per data released by the Department of Industries Policy and Promotion (DIPP).

In the recent past there have been many major investments and developments in the Indian engineering and design sector:

- With an aim to increase its presence in India, Denmark-based heating ventilation and air-conditioning (HVAC) giant, Danfoss, is planning to take its manufacturing localisation to 50 per cent as well as double its supplier base in India by 2020.

- Larsen and Toubro Ltd (L&T) has been awarded with projects worth Rs 2,170 crore (US$ 336.93 million), which includes an order worth Rs 1,169 crore (US$ 181.51 million) from Oman Electricity Transmission Company SAOC.

- Warburg Pincus is in advance talks with Tata Technologies to acquire up to 40 per cent minority stake for about Rs 2,300 crore (US$ 357.11 million).

- Hexagon Capability Centre India (HCCI) in collaboration with National Institute of Technology Karnataka (NITK), Surathkal, launched first-of-its-kind NextGen 3D Lab costing Rs 7.7 crore (US$ 1.15 million) at NITK Campus. The lab aims at making budding engineers industry-ready by the time they graduate.

- Engineering and construction major L&T entered into a joint venture with European defence major Matra BAE Dynamics Alenia (MBDA) Missile Systems for development of missiles in India. L&T will own 51 per cent stake in the JV named L&T MBDA Missile Systems and the rest 49 with the European partner.
- American plane maker Boeing Corporation has launched the Boeing India Engineering & Technology Centre in Bengaluru. The centre will employ hundreds of locals who will work to support Boeing, including its information technology & data analytics, engineering, research and technology, and tests.

- Reliance Defence and Engineering Ltd said it has signed an agreement with the US Navy for undertaking service, maintenance and repair of Seventh Fleet of US Navy at the Reliance Shipyard at Pipavav in Gujarat.

Increased FDI equity inflow in India has contributed to the rise in projects in Automotive, Offshore Activities, Oil and Gas sector, Shipbuilding and Heavy Machinery Industries. Many foreign automobile companies have set up their manufacturing units in India.

GOVERNMENT INITIATIVES

Some of the recent initiatives and developments undertaken by the government are listed below:

- The Government of India has succeeded in providing road connectivity to 85 per cent of the 178,184 eligible rural habitations in the country under its Pradhan Mantri Gram Sadak Yojana (PMGSY) since its launch in 2014.The Government of India will spend around Rs 1 lakh crore (US$ 15.62 billion) during FY 18-20 to build roads in the country under Pradhan Mantri Gram Sadak Yojana (PMGSY).
- A total of 15,183 villages have been electrified in India between April 2015-November 2017 and complete electrification of all villages is expected by May 2018, according to Mr Raj Kumar Singh, Minister of State (IC) for Power and New & Renewable Energy, Government of India.
- The Government of India has decided to invest Rs 2.11 trillion (US$ 32.9 billion) to recapitalise public sector banks over the next two years and Rs 7 trillion (US$ 109.31billion) for construction of new roads and highways over the next five years.
- The Government of India and the Government of Portugal have signed 11 bilateral agreements in areas of outer space, double taxation, and nano technology, among others, which will help in strengthening the economic ties between the two countries.

BUDGET PROPPOSALS 2018-19

1. The Indian engineering sector is of strategic importance to the economy owing to its intense integration with other industry segments. The sector has been de-licensed and enjoys 100 per cent FDI.
2. Indirect Tax Proposals: Custom Duty is proposed to be increase for:

    a Specified parts/accessories of motor vehicles, motor cars, motor cycles from 7.5%/ 10% to 15%
    b CKD imports of motor vehicle, motor cars, motor cycles from 10% to 15%
    c CBU imports of motor vehicles from 20% to 25%

3. Government of India will take necessary measures and encourage State Governments to put in place a mechanism that their surplus solar power is purchased by the distribution companies' orlicencees at reasonably remunerative rates.

ROAD AHEAD

India is also focusing on renewable sources to generate energy. It is planning to achieve 40 per cent of its energy from non-fossil sources by 2030 which is currently 30 per cent and also have plans to increase its renewable energy capacity from 57 GW to 175 GW by 2022.

1. The Welding industry in India worth INR 4,000 crore (US$ 588 mn.) out of which the Welding Consumables share is 71% and Welding Equipment is 29%.
    a Welding Consumables Market is expected to grow at a CAGR 10-11% over next five years from INR 2,800 cr (US$ 412 mn.) to INR 4,250 cr (US$ 625 mn.)
    b Welding Equipment Industry is expected to grow at a CAGR of 6-7% over the next five years from INR 1,150 cr (US$ 169 mn.) to INR 1,507 cr (US$ 221.5 mn.)
2. The Indian Auto Component industry is expected to grow by 8-10 per cent in FY 2017-18, based on higher localisation by Original Equipment Manufacturers (OEM), higher component content per vehicle, and rising exports from India, as per ICRA Limited.
3. Investments in India's oil and gas sector will likely touch Rs 2.5-3 trillion (US$ 37.28-44.73 billion) over the next few years, which will help raise the share of gas in the country's primary energy mix to 15 per cent by 2030, as per British multinational oil and gas company BP Group
4. The engineering sector is a growing market. Spending on engineering services is projected to increase to US$ 1.1 trillion by 2020. The government, in consultation with semiconductor industry, has increased focus on the ESDM sector in last few years. Some of the initiatives outlined in the National Electronics policy and the National Telecom policy are already in the process of implementation, such as Preferential Market Access (PMS), Electronics Manufacturing Clusters (EMC) and Modified Special Incentive Package Scheme (M-SIPS).
5. India's capital good sector is expected to triple in size to Rs 7.5 trillion (US$ 116 billion) and add 21 million jobs by 2025.
6. Corporate earnings in India are expected to grow by over 20 per cent in FY 2017-18 supported by normalisation of profits, especially in sectors like automobiles and banks.

AGRICULTURE

INTRODUCTION:

Agriculture plays a vital role in India's economy. The Indian food and grocery market is the world's sixth largest but the last few season have witnessed plenty of problems. Farm revenues declining

for a number of crops, despite increasing production and hence market prices have fallen below the Minimum Support Price (MSP).

The Indian food processing industry accounts for 32 per cent of the country's total food market, one of the largest industries in India and is ranked fifth in terms of production, consumption, export. Food Processing Sector is growing at an average rate of 8% per annum.

At the sectoral level, growth of agriculture and allied sectors improved significantly in 2016-17, following the normal monsoon in the current year which was preceded by below normal monsoon rainfall in 2014-15 and 2015-16. Contrary to this Indian agricultural productivity growth has been stagnant, averaging roughly 3 percent over the last 30 years.

Agriculture matters in India for economic reason because it still accounts for a substantial part of GDP (16 percent) and employment (49 percent).

MARKET SIZE:

This increase in production of food grains and other crops is mainly on account of very good rainfall during monsoon 2016-17 and various policy initiatives taken up by the Government.

The details of production and productivity are summarized as under:

- India has been the world's largest producer of milk for the last two decades and contributes 19 per cent of the world's total milk production
- India is emerging as the export hub of instant coffee which has led to exports of coffee reaching 177,805 tonnes valued at US$ 447 million between April-August 2017, as against 162,641 tonnes valued at US$ 363.1 million during the same period last year.
- The production of food grains in India reached a record 275.68 million tonnes (MT) during FY 2016-17, as per the Fourth Advance Estimates (AE) released by the Department of Agriculture, Cooperation and Farmers Welfare, Government of India.
- The production of fruits and vegetable in India reached a record 300 million tonnes (MT) during FY 2016-17,
- The total sown area for kharif crops was 68.53 million hectares as on July 2017, compared to 67.34 million hectares on July, 2016.
- India is the second largest fruit producer in the world. India's horticulture output, is estimated to be 287.3 million tonnes (MT) in 2016-17 after the first advance estimate
- The Production of rice is estimated at 110.2 MT during 2016-17 which is also a new record. India's exports of basmati rice may rise to Rs 22,000-22,500 crore (US$ 3.42-3.49 billion), with volume to around 4.09 MT in 2017-18,
- India's groundnut exports rose to 653,240 MT during April 2016-February 2017.India is the largest producer, consumer and exporter of spices and spice products. Spices exports from India grew by 9 per cent in volume and 5 per cent in value.
- The online food delivery industry grew at 150 per cent year-on-year with an estimated Gross Merchandise Value (GMV) of US$ 300 million in 2016.

GOVERNMENT INITIATIVES:

As per the first Advance Estimates (1st AE), released by Central Statistics Office (CSO), growth rate of Gross Value of Added (GVA) at constant basic prices is estimated at 6.1 per cent in 2017-18, as compared to 6.6 per cent in 2016-17. This is on account of lower growth in 'Agriculture& allied', and 'Industry' sector, which are expected to grow at 2.1 per cent and 4.4 percent, respectively. The Government is keen to double the income of the farmers by 2022, for which it has launched several new initiatives:

- Total allocation for rural, agricultural and allied sectors for FY 2017-18 has been increased by 24 per cent year-on-year to Rs 1,87,223 crore ($US 28.1 billion). A dedicated micro-irrigation fund has been set up by National Bank for Agriculture and Rural Development (NABARD) with a corpus of Rs 5,000 crore (US$ 750 million). The government plans to set up a dairy processing fund of Rs 8,000 crore (US$ 1.2 billion) over three years with initial corpus of Rs 2,000 crore (US$ 300 million).
- Short-term crop loans up to Rs 300,000 (US$ 4,500) at subsidised interest rate of 7 per cent per annum would be provided to the farmers. An additional incentive of 3 per cent is provided to farmers for prompt repayment of loans within due date, making an effective interest rate for them at 4 per cent.
- With an aim to boost innovation and entrepreneurship in agriculture, the Government of India is introducing a new AGRI-UDAAN programme to mentor start-ups and to enable them to connect with potential investors.
- The Government of India has launched the Pradhan Mantri Krishi Sinchai Yojana (PMKSY) with an investment of Rs 50,000 crore (US$ 7.7 billion) aimed at development of irrigation sources for providing a permanent solution from drought.
- The NITI Aayog has proposed various reforms in India's agriculture sector, including liberal contract farming, direct purchase from farmers by private players, direct sale by farmers to consumers, and single trader license, among other measures, in order to double rural income in the next five years. The Ministry of Agriculture, Government of India, has been conducting various consultations and seeking suggestions from numerous stakeholders in the agriculture sector, in order to devise a strategy to double the income of farmers by 2022.
- The Government has been undertaking market reforms with a view to ensuring that the farmers benefit from remunerative prices for their produce in the market. The electronic National Agriculture Market (e- NAM) that was launched by Government on April, 2016 aims at integrating the dispersed APMC's through an electronic platform and enable price discovery in a competitive manner, to the advantage of the farmer.
- The Government of India has allowed 100 per cent FDI in marketing of food products and in food product e-commerce under the automatic route.
- The Maharashtra State Agriculture Marketing Board (MSAMB) has operationalised 31 farmer-to-consumer markets in the state, and plans to open 100 more such markets in the future, which would facilitate better financial remunerations for the farmers by allowing them to directly sell their produce in open markets.

AGRICULTURE CREDIT:

Credit is an important input to improve agriculture output and productivity. To improve agricultural credit flow, the credit target for 2016-17 was fixed at Rs. 9 lakh crore against Rs. 8.5 lakh crore for 2015-16. As against the target, the achievement for 2016-17 (upto September 2016), was 84 percent of the target, higher than the corresponding figure of 59 percent upto September 2015.

A sum of Rs.20,339 crore has been approved by the Government of India in 2017-18 to meet various obligations arising from interest subvention being provided to the farmers on short term crop loans, as also loans on post-harvest storages meets an important input requirement of the farmers in the country especially small and marginal farmers who are the major borrowers.

CLIMATE CHANGE AND AGRICULTURE

Projected long-term weather patterns imply that climate change could reduce annual agricultural incomes in the range of 15 percent to 18 percent on average, and up to 20 percent to 25 percent for un-irrigated areas. Minimizing susceptibility to climate change requires drastically extending irrigation via efficient drip and sprinkler technologies (realizing "more crop for every drop"), and replacing untargeted subsidies in power and fertilizer by direct income support.

MITIGATING RISKS IN AGRICULTURE: CROP INSURANCE

Pradhan Mantri Fasal Bima Yojana (PMFBY), which is a yield index based crop insurance scheme launched in 2016, has made substantial progress with more ground coverage compared to erstwhile schemes. During Kharif 2016 season 23 States implemented PMFBY and during Rabi 2016-17, 25 States/Union Territories implemented PMFBY. As on December 2017, under PMFBY, total claims of Rs. 13,292 crores have been approved for 116 lakh farmers (applications) and Rs. 12,020 crores have been paid.

BUDGET 2018-19- The Road Ahead

- Government has decided to keep MSP (Minimum Support Price) for the all unannounced crops of kharif at least at one and half times of their production cost.
- An Agri-Market Infrastructure Fund with a corpus of Rs.2000 crore will be set up for developing and upgrading agricultural marketing infrastructure in the 22,000 Grameen Agricultural Markets (GrAMs) and 585 APMCs (Agriculture Produce Market Committee)
- Allocation to Ministry of Food Processing is being doubled from Rs.715 crore in RE 2017-18 to Rs.1400 crore in BE 2018-19. Government will promote establishment of specialized agro-processing financial institutions in this sector.
- Government proposes to launch an ''Operation Greens'' and allocate a sum of Rs.500 crore for this purpose. ''Operation Greens'' shall promote Farmer Producers Organizations (FPOs), agri-logistics, processing facilities and professional management.
- Bamboo is 'Green Gold'. Government proposes to remove bamboo grown outside forest areas from the definition of trees. Government also propose to launch a Re-structured National Bamboo Mission with an outlay of Rs.1290 crore to promote bamboo sector in a holistic manner.
- Our Government has been steadily increasing the volume of institutional credit for agriculture sector from year-to-year from Rs. 8.5 lakh crore in 2014-15 to Rs.10 Lakh crore in 2017-18. Government has now proposed to raise this limit to Rs. 11 lakh crore for the year 2018-19.
- Government has proposed to allow hundred per cent deduction to companies registered as Farmer Producer Companies and having annual turnover up to Rs.100 crore in respect of their profit derived from such activities.

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