

the **R E C K O N E R**
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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/Press Release

Extension of date for filing of Income Tax Returns

The due date for filing of Income Tax Returns for Assessment Year 2018- 19 is 31.07.2018 for certain categories of taxpayers. Upon consideration of the matter, the Central Board of Direct Taxes (CBDT) extends the 'due date' for filing of Income Tax Returns from 31st July, 2018 to 31st August, 2018 in respect of the said categories of taxpayers.

(Press Release Dated :, 26th July, 2018, New Delhi)

Indian Advance Pricing Agreement regime moves forward with signing of three UAPAs by CBDT in May and June, 2018

1. The Central Board of Direct Taxes (CBDT) has entered into three Unilateral Advance Pricing Agreements (UAPA) during the past couple of months. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 223, which inter alia include 20 Bilateral APAs.
2. The UAPAs entered into during the past couple of months pertain to consumer industry, automobile and precious stones & metals sectors of the economy. The international transactions covered in the agreements pertain to provision of corporate guarantee, purchase of brand, availing of grading services, availing of management services and payment of royalty.
3. 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-New Delhi, 4th July, 2018)

Special drive for expeditious clearance of pending appeal effect and rectification matters and issue of refunds

1. The Income Tax Department observed a dedicated fortnight from 1st to 15th June, 2018 to expeditiously clear pending matters of appeal effect and rectification. More than 20,000 such matters were disposed of and refunds were issued to the taxpayers, wherever due. Seeing the success of this initiative, the special drive was extended in certain regions up to 30th June, 2018.
2. Further, large amounts of refunds have also been issued consequent to processing of income-tax returns. More than 99% of all refund claims pending for processing as on 30.06.2018 have already been processed and the refunds due have been issued to the taxpayers. In all, refunds in 45.07 lakh cases have been issued during April-June, 2018, which is 9.0 lakh more than the refunds issued during the same period last year. More than 3 lakh refunds of Assessment Year 2018-19, for which returns have been filed only in last few weeks, have also been issued.
3. More than Rs.70,000 crore of refunds have been issued to the taxpayers as a result of the special drive and expeditious processing of returns involving claim of refunds. Central Board of Direct Taxes is committed to constantly reducing the service delivery timelines, expeditiously resolving the grievances of the taxpayers and improving the overall level of taxpayer service.

(Press Release Dated :New Delhi, 4th July, 2018)

Case laws

M/s. Amratlal Ashokkumar & Co. vs. ACIT, Circle (18) 1, Mumbai (ITA6689/Mum/2016)[Assessment Year: 2013-14] order dated 31.05.2018

Facts

- The assessee is a Partnership Firm. It filed its return of income on 19.03.2013 declaring the total income at ` 37,14,050/-.
- During the year under consideration, the assessee sold an existing asset and thereafter purchased another asset pertaining to the same block'. In the earlier year i.e. A.Y. 2012-13, the assessee classified the asset sold during the year under the block entitled for depreciation at the rate of 10%.
- However, inadvertently for all the earlier assessment years prior to the Assessment Year 2012-13, the asset was included in the block of asset entitled at the rate of 5% and consistently the depreciation was charged at the rate of 5% on the asset sold by the Assessee for the year under consideration
- During the course of assessment proceedings, the A.O. denied the existence of the said asset in the block of asset pertaining to depreciation at the rate of 10% and brought it back to the block of asset entitled for depreciation at the rate of 5%.
- Since there was no other asset in the 5% block, the AO made a computation u/s 50 of the Act. Aggrieved by the action of the AO, the Assessee preferred an appeal before the CIT (A) who confirmed the action of the AO The assessee, thereafter filed an appeal before ITAT.
- After considering the arguments of the both parties and perusing the material on record.

Issue

Sec 50 : Capital Gains on Depreciable assets — no addition can be made under the head Short Term Capital Gains when the block of assets does not cease to exist.

Held

- The Appellate Tribunal observed that once the classification of the Asset was accepted by the Revenue and the depreciation was allowed at the rate of 10%

for the immediately preceding assessment year, it was not open for the revenue to take a different stand in the subsequent assessment year when the part of the block was sold.

- It further observed that the AO was not correct to reclassify the asset in the block entitled for the depreciation at the rate of 5% in the facts under consideration. It held that since the Assessee purchased another asset pertaining to the block out of which one asset was sold, nothing could be taxed u/s. 50 of the Act as the block continued to exist.
- Further, Hon'ble ITAT distinguished the decision relied upon by the DR in the case of "CIT vs. M/s. T.S. Mishan & Co. Ltd." (ITA No. 1270 of 2011 dated 16.09.2014) on the observation that it has no applicability in the light of the fact that the revenue had already accepted in the immediate preceding assessment year that the asset sold during the year under consideration pertained to the block entitled for depreciation at the rate of 10% .
- On the aforesaid observations, Hon'ble ITAT held in favour of the Assessee and against the Revenue

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

Section 92CA of the Income-Tax act, 1961 - transfer pricing - advance pricing agreement (APA) - APA regime moves forward with signing of three more unilateral APA's by CBDT in may and june, 2018

- The Central Board of Direct Taxes (CBDT) has entered into three Unilateral Advance Pricing Agreements (UAPA) during the past couple of months. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 223, which inter alia include 20 Bilateral APAs.
- The UAPAs entered into during the past couple of months pertain to consumer industry, automobile and precious stones & metals sectors of the economy. The international transactions covered in the agreements pertain to provision of corporate guarantee, purchase of brand, availing of grading services, availing of management services and payment of royalty.
- 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.

(CBDT press release, dated 4th July,2018)

EXIM Bank's Government of India supported line of credit of USD 45.27 Million to Government of Sri Lanka

- Export-Import Bank of India (Exim Bank) has entered into an agreement dated January 10, 2018 with the Government of the Democratic Socialist Republic of Sri Lanka for making available to the latter, a Government of India supported Line of Credit (LoC) of USD 45.27 million (USD Forty five million and two hundred seventy thousand only) for financing rehabilitation of Kankesanthurai Harbour in Sri Lanka.
- Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed, subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this

agreement. Out of the total credit by Exim Bank under this agreement, goods and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

- The Agreement under the Loc is effective from June 12, 2018. Under the Loc, the terminal utilization period is 60 months from the scheduled completion date of the respective contract. Shipments under the Loc shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.
- No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category- I (AD Category- I) banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.
- AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain full details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website www.eximbankindia.in. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to the permissions/approvals, if any, required under any other law.

A.P. (DIR SERIES 2018-19) CIRCULAR NO.1, DATED 12-7-2018

Case Laws

Alden Prepress Services Private Limited vs. DCIT - Writ Petition No.13815 of 2011 and WMP. Nos.7943 and 7944 of 2017 (Mad.)

Facts

- The Assessing Officer issued notice under Section 148 of the Act to reopen the assessment for AY 2008-09, in response to which the assessee sought the reasons for reopening.
- The reasons for reopening stated that from the Transfer Pricing Report filed by the assessee as per Section 92E of the Act under Form 3CEB, it was seen that the ALP of the services rendered by the assessee to its parent company located in UK was more than the amount recorded for the same in the books of account and no adjustment was made by the assessee in this regard.
- On receipt of the reasons for reopening, the assessee submitted its objections dated 26-4-2010 and while the objections were pending for disposal before the AO, the TPO issued notice dated 23-3-2011 under section 92CA(2) of the Act (requiring assessee to produce evidence on which it relied for computation of the ALP for the said international transaction).
- The assessee filed the present Writ Petition against the notice issued by the TPO contending that the AO was bound to dispose of the objections raised by it vide letter dated 26-4-2010 and before the objections were disposed of, the TPO had no jurisdiction to issue the impugned notice.

Issue

In case of reopening of assessment proceedings, AO can make a reference to the TPO only after rejecting the assessee's objections filed against the reopening by passing a speaking order

Held

- It held that the AO had missed out the very important aspect with regard to powers exercisable by the AO and the powers exercisable by the TPO. The AO could refer the matter to the TPO only after disposing off the objections filed by the assessee by passing a speaking order in accordance with the

decision in the case of GKN Driveshaft (India) Ltd. vs. ITO (2003) 259 ITR 19 (SC).

- Thus, the Court disposed of the Writ Petition directing the TPO to keep the impugned notice in abeyance and further directing the AO to dispose off the assessee's objection by passing a speaking order and proceed in accordance with law.

Pr. CIT vs. S B & T International Ltd. – ITA No. 66 of 2016 (Bom.)

Facts

- The assessee-company claimed that the interest on the loan provided by it to its AEs at Mauritius had to be benchmarked at US LIBOR (London Interbank Offered Rate) interest plus 2%.
- The Tribunal accepted the assessee's above claim on the basis that the cost of funds for the AE's to whom the loan had been advanced by the assessee was to be measured by the rate of interest in Mauritius.
- In this regard, the Tribunal followed the decision of its Co-Ordinate Bench in the case of Aurionpro Solutions Ltd. vs. Addl. CIT (ITA No. 7872/Mum/2011) wherein it was held that since for the purpose of determination of ALP, the tested party is always assessee and not AE, for benchmarking loans given by Indian company to its foreign AEs, LIBOR is acceptable instead of interest rates prevailing in India.

Issue

For benchmarking interest received by the Indian company on loans given to its foreign AEs, LIBOR rate is acceptable.

Held

- It was noted that when the appeal was by Revenue against the Tribunal's decision in the case of Aurionpro Solutions Ltd. vs. Addl. CIT (ITA No.7872/Mum/2011), the Court had rejected the appeal as it did not give rise to any substantial question of law.
- Further, noting that there was no distinguishing feature pointed out as against the case of Aurionpro Solutions Ltd., relying on its order passed in the said

case, the Court held that the question proposed did not give rise to any substantial question of law and, thus, it dismissed the present appeal also.

Skaps Industries India Pvt. Ltd. vs. ITO [TS-330- ITAT-2018(Ahd)] – Assessment years: 2013-14 and 2014-15

Facts

- The assessee made certain payments to a company resident of USA (US Co.) for installation and commissioning of an equipment in India.
- No taxes were withheld on such payments by the assessee on the premise that the payments were not chargeable to tax in India as per the beneficial provision of the tax treaty
- The Income-tax officer (ITO) held that the services rendered by the US Co. were taxable as per the provisions of section 9(1)(vii) of the Income-tax Act, 1961 (the Act) and Article 12 of the India-USA tax treaty.
- Since no taxes were withheld by the assessee, the payments made by the assessee was disallowed by the ITO in the assessment order of the assessee
- Aggrieved by the ITO's order, the assessee appealed before the Commissioner of Income tax (Appeals) [CIT(A)]. The CIT(A) upheld the disallowance made by the ITO as it observed that the US Co. had not furnished a valid TRC. Further, the CIT(A) held that the US Co. was not entitled to the beneficial provisions of the tax treaty.

Issue

Tax Residency Certificate – Section 90(4) r/w Sec. 90(2) of the Act – Whether the requirement of obtaining Tax Residency Certificate is mandatory to grant the benefits of the India-USA tax treaty to the non-resident assesses: held No. In favour of the assessee

Held

- The Tribunal also observed that the provisions of section 90(4) do not start with a non-obstante clause vis-à-vis section 90(2) of the Act. In the absence of such non-obstante clause, the Tribunal has held that section 90(4) cannot be construed as a limitation to the tax treaty superiority as stipulated in section 90(2) of the Act. Thereby the Tribunal has held that in the absence of a valid

TRC, provisions of section 90(4) could not be invoked to deny tax treaty benefits.

- This decision affirms the position that the tax treaty benefits cannot be denied merely on the basis of non availability of TRC. Further it also affirms that when a non-resident assessee has substantiated its residential status by way of sufficient and reasonable documentary evidence, the requirement of furnishing TRC would be persuasive and not mandatory.

REGULATION GOVERNING INVESTMENTS FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Amendments in Liberalised Remittance Scheme

- Permanent Account Number (PAN card) is now mandatory for individuals to make any remittance under LRS whereas earlier PAN was mandatory only for remittances above USD 25,000
- LRS permits remittances towards maintenance of non-resident close relatives and Indian rupee loan to non-resident close relatives. In this regards, the definition of relative has been aligned with the Companies Act, 2013.
 - i. As per Companies Act 2013, a relative is defined as under:
 - a) Members of the Hindu Undivided Family
 - b) Husband or wife
 - c) Father including step father
 - d) Mother including step mother
 - e) Son including step son
 - f) Son's wife
 - g) Daughter
 - h) Daughter's Husband
 - i) Brother including step brother
 - j) Sister including step sister
 - ii. Comparison to definition under Companies Act 1956:
 - Relatives excluded from the definition (unless they are members of the Hindu Undivided Family):
Step daughter, Father's father, Father's mother, Mother's mother, Mother's father, Sons' daughter's husband, Daughter's son, Daughter's son's wife, Daughter's daughter, Daughter's daughter's husband, Brother's wife, Sister's husband, Son's son, Son's son's wife, Son's daughter.
 - Relatives included in the definition:
Step father

Amendment in Form ECB 2

The Form ECB 2 has been amended whereby the hedging details to be reported in the form has been simplified. Now, the form requires the bifurcation of the hedge between financial hedge and natural hedge. Further, additional information about annual earnings before interest and depreciation of the last three years is to be reported.

FDI Policy Clarification on Food Product Retailing

At present, 100% FDI under Government approval route is allowed in Food Product Retail Trading (FPRT) for retail trading as well as ecommerce in respect of food products manufactured and/ or processed in India. The Department of Industrial Policy & Promotion has clarified that:

- FPRT business to be kept in a separate and distinct manner from other businesses, by way of separate books of accounts, bank accounts etc.
- FPRT inventory at warehouse or retail shops should be kept, stored and/or displayed, separately from inventory of other businesses of such investee company

COMPANY LAW

MCA to update KYC of directors annually

MCA as part of updating its registry, would be conducting KYC of all Directors of all companies annually through a new e form viz. DIR-3 KYC. Accordingly, every director who has been allotted DIN on or before 31st March 2018, and whose DIN is in “Approved status”, would be mandatorily required to file form DIR-3 KYC on or before 31st August, 2018. Filing of DIR 3 KYC would be mandatory for disqualified directors also.

Deactivation of DIN of individual in case non-submission of KYC

In case individual who does not intimate his particular in E-Form DIR 3 KYC within stipulated time, DIN of that individual would be deactivated by Central Government or Regional Director. Such deactivated DIN shall be re-activated only after E-Form DIR-3 KYC is filed along with prescribed fees.

Clarification/ simplification prescribed for incorporation of company

Following clarification/ simplification prescribed by MCA in relation to incorporation of company:

- In case of incorporation of One Person Company, “Resident of India” is defined as person who has stayed in India for a period of not less than 182 days in immediately preceding financial year
- For the purpose of counting of number of days for stay of director in India for FY 2018-19, any period of stay between 01.01.2018 till the date of notification shall be counted.
- Declaration required for incorporation of company shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No. INC-9.
- In Form INC-9, instead of “Affidavit”, now “Declaration” to be submitted and In Form No. INC-32 SPICe, instead of “Affidavit and declaration by first subscribers and directors” now “Declaration by first subscribers and directors” to be given.

ACCOUNTS & AUDIT

Exposure draft of new Accounting Standard (AS) 19

Accounting Standards Board of ICAI has issued exposure draft on accounting standard 19 – Employee Benefits. Proposed standard is in line with Ind AS 19 – Employee Benefits. The requirements of proposed AS 19 and Ind AS 19 are similar except certain relaxation to small & medium-sized entities and certain disclosure requirements of Ind AS 19 are not included in AS 19.

Exposure draft on auditing standards

Auditing and Assurance Standards Board of ICAI has issued exposure draft on following 3 auditing standards in place existing auditing standards. The key points are as under:

Auditing Standard	Key points
SA 800 (Revised), Special Considerations – Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks	Deals with special considerations in the application of those SAs to an audit of financial statements prepared in accordance with a special purpose framework.
SA 805 (Revised), Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement	Deals with special considerations in the application of those SAs to an audit of a single financial statement or of a specific element, account or item of a financial statement.
SA 810 (Revised), Engagements to Report on Summary Financial Statements	Deals with the auditor's responsibilities when undertaking an engagement to report on summarised financial statements derived from financial statements audited in accordance with SAs by that same auditor.

New publications related to Ind AS issued by ICAI

- Education material on Ind AS 27 – Separate Financial Statement and Ind AS 28 – Investment in Associates and Joint Ventures. This publication provide guidance on how an entity accounts for the investment in its subsidiaries, associates and joint venture. This publication also provides accounting and disclosure requirements for these investments in separate financial statement
- Indian Accounting Standard (Ind AS): An overview (Revised 2018). This is third edition of earlier issued publication and contains an overview of various aspects related to Indian Accounting Standards.

Changes in rules for acceptance of deposits

- Format of Form DPT-1 [Circular for advertisement inviting deposits] to be filed by company has been amended.
- Now Form DPT-1 shall also include a certificate from statutory auditor of the company stating that company has not made any default in repayment of deposits or in payment of interest on deposit before or after commencement of the Act.
- In case any default committed before or after commencement of the Act, statutory auditor's certificate should state that company has made good the default and period of five years has been lapsed since the date of making such default.
- Requirement to provide a deposit insurance in respect of the amount of deposits accepted by the company has been removed. Also, in register of deposits maintained, requirement to enter details of deposit insurance including extent of deposit insurance has been omitted.
- Every company accepting deposit from its members is required to deposit not less than twenty percent of the amount of its deposit maturing during the following financial year. Now it is clarified that amount of deposit shall not at any time fall below twenty percent of the amount of deposits maturing during the financial year.

Additional information to be furnished in Board of Directors report

- Following additional disclosure required to be made in the board report of every company (except one person company or small company):

-
- Whether maintenance of cost records specified by the Central Government is required by the company and whether such accounts are maintained; and
 - A statement that company has complied with provisions relating to the constitution of 'internal complaints committee' under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
 - A new sub-rule has been added specifying the matters to be included in the Board's report of One Person Company and small company.

GOODS AND SERVICE TAX

Goods and Service Tax ('GST')

GST is introduced with effect from 1st July 2017. In the revised Form 3CD breakup of total expenditure in respect of entities registered under GST and not registered under GST is sought to be furnished in following format:

Expenditure in respect of entities registered under GST

- Relating to goods and services exempt from GST
- Relating to entities falling under composition scheme
- Relating to other registered entities
- Total payment to registered entities

Expenditure relating to entities not registered under GST

The above reporting is identical to the reporting requirement in 'Schedule GST' in ITR-6. Further, this reporting in Schedule GST of ITR Form is applicable only to those assesseees who are not liable to tax audit u/s 44AB of the Act.

GST Council in its 27th meeting held on 4th May, 2018 had approved the basic principles of GST return design. Now in its 28th meeting held on 21st July, 2018, GST Council approved the key features and new format of the GST returns. This brief note lists the salient features of the new return format and business process for the information of trade and industry and other stakeholders

Key features of Quarterly Returns:

Quarterly filing and monthly payments:

It is proposed to provide facility for filing of quarterly return to small taxpayers, who had a turnover upto Rs. 5 Cr. in the last financial year. The turnover shall be calculated in the manner explained in para 1 of Part A above. However, they would still need to pay their taxes on monthly basis and avail input tax credit on self-declaration basis to pay the monthly taxes

Quarterly or monthly return:

Option for filing monthly or quarterly return shall be taken from these small taxpayers at the beginning of the year and generally thereafter they would continue to file the return during the year as per the option selected. During the course of the year option to change from monthly to quarterly or vice-versa shall be allowed only once and at the beginning of any quarter. This is necessary to avoid confusion for the taxpayer and also to avoid complex validations in the IT system.

Quarterly Return:

Option to create profile in the quarterly return shall also be available. Sahaj and Sugam are predetermined profiles of the quarterly return.

Uploading of invoices:

The recipients from these small taxpayers would need uploaded invoice for availing input tax credit and therefore the small taxpayers would be given facility to continuously upload invoices in the normal course. The invoices uploaded by 10th of the following month would be available as input tax credit to the recipient in the next month as is the case in case of purchases from large taxpayers.

Pending and missing invoices:

Small businesses have only a few supplies to receive and therefore they track their purchases well and may not need credit on missing invoices. As the inventory size of these businesses is small they also do not need to keep invoices pending and generally avail credit forthwith. Therefore quarterly return shall not have the compliance requirement of missing and pending invoices as small businesses do not use these procedures in their inventory management.

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