

DIRECT TAX**News****SC directions may disarm CBDT concession to start-ups**

Even though the Central Board of Direct Taxes (CBDT) wants to relax its regime for start-ups to accept Rs.25-crore investment from “angel investors”, the Supreme Court has advised “careful scrutiny” in the practice of conversion of un-accounted money particularly so in the case of private placement of shares. The CBDT allowed start-ups to avail full angel tax concession on investments worth up to Rs.25 crore from an earlier set threshold of Rs.10 crore.

[Source: The Hindu Business Line]

Assessing Officer Can suomoto extend time period for special audit retrospectively: SC

The Supreme Court has held that the Assessing Officer can suomoto extend the time period for a special audit retrospectively, even before the amendment in the Finance Act of 2008. The judgment, which lays to rest a long controversy, relates to Section 142 (2C) of the Income Tax Act, which deals with special audit and empowers the AO to direct the assessee to get the accounts audited by an accountant in some cases due to complexity and to protect the department's interests.

[Source: The Hindu Business Line]

The Income Tax (I-T) Department will issue tax refunds automatically to Bank A/c linked with PAN from March 1, 2019 of only those who have linked their respective bank account number with the PAN card

To get the income tax refunds via either of these facilities, the taxpayers have to submit the correct communication bank account number and MICR code of bank branch if they want to receive the through RTGS/NECS. In case, the bank account is not linked with the PAN then assessee can validate the bank account with PAN through electronic verification code and net banking channels if the bank is integrated with the income tax e-filing portal. The bank account can either be a savings account, current account, cash account or an overdraft account.

[Source: ET]

Case Laws**PCIT vs. Aditya Birla Telecom Ltd (Bombay High Court)****S. 68 Bogus Share Capital**

Merely because the investment was considerably large and several corporate structures were either created or came into play in routing the

investment in the assessee through a Mauritius entity would not be sufficient to brand the transaction as colourable device. *The assessee cannot be asked to prove the source of source (PCIT Vs. NRA Iron & Steel 103 TM.com 48 (SC) referred) As is well known in the context of Section 68 of the Act, the basic duty would be on the assessee to establish the genuineness of the transaction, credit worthiness of the investor and the source of funds. Equally well settled principle through series of judgments is that the Department cannot insist on the assessee establishing source of the source

YUM! RESTAURANTS MARKETING PVT. LTD. VERSUS ITO, WARD-18 (4) , NEW DELHI**Penalty u/s 271(1)(c) Taxability of excess contribution received by the assessee 2019 (4) TMI 98 - ITAT DELHI**

Taxable or not on the principles of mutuality, During the course of assessment, proceedings the assessee made the complete disclosure explaining that why the above amount assessee claims to be tainted with mutuality and therefore is not chargeable to tax u/s 4 of the income tax act. Evidences and arguments placed before us shows that assessee has made a claim disclosing the complete facts about the same in its return of income putting notes in the computation of total income, corroborating it with its balance sheet, supporting it with judicial precedents of the honourable Supreme Courts. This show that assessee has completely disclosed the facts about its claim along with all the arguments.

It is also the fate of the claim of the assessee that it has been concurrently rejected by all the appellate forums. However, mere rejection of the claim of the assessee cannot be invited with the penalty. Further, more on this issue of the excess contribution received the learned AO has recorded his satisfaction that assessee has furnished inaccurate particulars of income in the assessment order. However, at the time of levy of the penalty order he levied penalty for concealment of income. This fact itself renders the penalty on this issue not sustainable. - Decided in favour of assessee.

[Source: TMI]

M/S. Abhijeet Enterprise Ltd. Versus Income-Tax Officer, Wd-2 (2) , Kolkata**Unexplained cash credit u/s. 68 2019 (3) TMI 1543 - ITAT Kolkata**

Credit represented liability to be paid on account of outstanding dues towards purchase of investments- transaction in question was between group companies i.e. the holding company and the subsidiary company i.e. the assessee company

There is no receipt of money rather there is a liability on the assessee company to pay outstanding purchase amount to M/s. APL. From the material on record that there was no cash involved in any stage of the transaction and that in the subsequent assessment year itself the transaction has been squared up by the assessee company by issue of debentures.

AO erred in understanding the nuances of the Notes forming part of the audited accounts and proceeded on an altogether wrong footing holding that the outstanding sum reflected to be payable to M/s APL in relation to the investments purchased from was required to satisfy the rigors of Section 68 - the impugned addition made u/s 68 was wholly untenable on the given facts and in law. Bench set aside the impugned addition back to the AO with a limited direction to verify and ascertain the fact as to whether the assessee had actually received any money/cash pursuant to this transaction from its holding company during AY 2013-14. If it is found that there the assessee company has not received money/cash from the holding company in the relevant AY 2013-14, then this is a considered view Section 68 cannot be applied and hence the impugned addition shall stand deleted. [Source: TMI]

ACIT-25 (2) , Mumbai Versus Shri Keyur Hemant Shah

Date of acquisition for computation of LTCG

2019 (4) TMI 288 - ITAT MUMBAI

The said allotment is not a conditional allotment and do not envisages cancellation of the allotted property, in any manner. Therefore, the assessee has acquired right in a specific property which is clearly earmarked in the layout plan. The full payment of the same has been made by the assessee by 24/07/2008 which is evident from assessee's letter containing payment details as placed on page no. 4 of the paper-book. Subsequently, agreement of sale has been executed by the builder in assessee's favor on 25/03/2010 which was nothing but mere improvement in assessee's existing rights to acquire a specific property and part & parcel of the same transaction.

Eligibility to claim deduction u/s 54F - nature of certain capital gains earned by the assessee - HELD THAT:- Assessee has made the payment within stipulated time as envisaged by Section 54F and the allotment in a specific property has been obtained by the assessee on 14/04/2012 which is evident from allotment letter. Therefore, since all the conditions of Section 54F was fulfilled by the assessee, there could be no occasion to deny the benefit of deduction to the assessee. Therefore, no infirmity could be found in the impugned order. - Decided against revenue. [Source: TMI]

**M/S. Vigneswar Tex Versus The Income Tax Officer, Ward I (3) , Tirupur
Reassessment u/s 147**

2019 (4) TMI 292 - Madras High Court

No challenge of reassessment in first round- Assessee having not raised the said question in clear terms before the authorities below cannot be permitted to raise the said question now as an after-thought. The said contention of the Assessee is liable to be rejected and the same is accordingly rejected. Thus, the question framed for consideration on 27.10.2009 is answered as against the Assessee and in favour of the Revenue.

[Source: TMI]

Shri Ragbirsingh Maliksingh Rajpal Versus The Dy. Commissioner Of Income Tax, Circle-2, Pune

Reopening of assessment

2019 (4) TMI 418 - ITAT Pune

Validity of reasons to believe - assessee showed license fee of unsold flats as 'Income from house property' AO has failed to refer to any tangible material coming to his knowledge, which was relied upon for reopening the assessment, **there is no merit in re-assessment proceedings initiated in the hands of assessee.** It may also be pointed out that re-assessment proceedings were initiated on the ground that declaration of income from unsold flats by the assessee as 'Income from house property' was not correct and the Assessing Officer was of the view that income should be assessed as 'Income from other sources'. No finding any merit in the jurisdiction exercised by Assessing Officer.

[Source: TMI]

Principal Commissioner Of Income Tax-2 Versus Sopan Industrial Infrastructure Park

Addition on account of unexplained cash payment

2019 (4) TMI 569 - Gujarat High Court

Based on on loose sheets - seized from the premises of a third person and not written by the assessee - as per CIT-A and ITAT document in question does not contain any signature and date, and the word "cash" is nowhere mentioned on the seized document : Having regard to the facts as emerging from the record as well as the contents of the seized documents, there is nothing to connect the assessee with the contents thereof. The relied upon documents have not been seized from the assessee and on the basis of some noting made by a third party, no conclusion could be drawn that the same pertain to the assessee, more so, when the seized documents nowhere refer to the assessee. Having regard to the material on record, this court does not find any infirmity in the concurrent findings of fact recorded by the Tribunal after appreciating the material on record - No substantial question of law warranting interference. - Decided against revenue.

[Source: TMI]

Natabar Nath, Gandhi Nagar, Po/Dist: Koraput. Versus Ito, Jeypore Ward, Jeypore

Penalty u/s 271(1)(c) Non recording of satisfaction

2019 (4) TMI 567 - ITAT Cuttack

Jurisdictional defect - addition of bogus sundry creditors and agricultural income as income from other sources and on addition of accrued interest on FD's, as noticed from the assessment order, no such satisfaction as contemplated u/s.271(1)(c) have been recorded by the AO while completing the assessment that in which limbs, the issue is following. AO has simply mentioned that "penalty proceedings u/s.271(1)(c) are initiated separately". Decided in favour of assessee. [Source: TMI]

PCIT vs. Chain House International (P) Ltd (Supreme Court)

S. 68 Bogus Share Premium

No reason to interfere. SLP dismissed. High Court held there is no limitation on the amount of premium that can be charged. The AO cannot question the transaction merely because he thinks the investor could have managed by paying a lesser amount as share premium. It is the prerogative of the Board of Directors to decide the premium and it is the wisdom of the shareholder whether they want to subscribe to shares at such a premium or not. S. 68 does not apply as the funds were received through banking channels and the identity, creditworthiness and genuineness of the investors was established. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned. Once the genuineness, creditworthiness and identity are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case

Baba Bhootnath Trade & Commerce Ltd vs. ITO (ITAT Kolkata)

S. 68 Bogus Share Capital

The assessee has discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants by producing the PAN details, bank account statements, audited financial statements and Income Tax acknowledgments and the investors have shown the source of source & personally appeared before the AO in response to s. 131 summons, the Id AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent which is not the case before us. Certain investor companies did not produce their bank statements proving the source for making investments in assessee company, the entire details of source of source

were duly furnished by all the respective share subscribing companies before the Id AO in response to summons u/s 131 of the Act by complying with the personal appearance of directors

PCIT vs. Nokia India Pvt. Ltd (Supreme Court)

S. 147 Reopening

High Court should decide (i) validity of s. 148 notice where assessment is made u/s 143(1) & not u/s 143(3), (ii) whether notice can be said to be based on change of opinion if there is no foundation to form any such opinion, (iii) Whether requirements of s. 148 are satisfied, namely, that it contains the facts constituting the "reasons to believe" and furnishes the necessary details for assessing the escaped income and (iv) whether finding recorded by ITAT on merits is legally sustainable

The objections raised by the respondent (assessee) to the notice contending inter alia that since the impugned notice was based on "change of the opinion" and hence bad in law was upheld by the ITAT resulting in allowing the respondent's appeal and further by dismissing the Revenue's appeal by the High Court. The Revenue has felt aggrieved by the order of the High Court dismissing their appeal in limine and has filed the present appeal by way of special leave in this Court

Notifications

Notification No. 13/2019

Exemption to startup companies from angel tax w.e.f. 19.02.2019

Notification No. 16/2019 [S.O. 1213(E)]

Gratuity exemption u/s Section 10(10)(iii) raised to ₹ 20 lakhs

Notification No. 20/2019

CBDT delegates further powers to PDGIT (Systems), Delhi

Notification No. 22/2019

CBDT exempts income of Prayagraj Mela Pradhikaran u/s 10(46)

Notification No. 23/2019

CBDT amends Income Tax Notification No. 17/2012/S.O. 1647(E)

Notification No. 27/2019

CBDT notifies SEBI (Mutual Funds) Regulations, 1996 U/s. 9A(9)(e)

Notification No. 31/2019 [S.O. 1495(E)]

Aadhaar Mandatory for income tax return filing w.e.f. 01.04.2019

GOODS AND SERVICE TAX (GST)

News

Threshold limit for registration

Threshold limit for registration (For those engaged in exclusive supply of goods-Enhanced to Rs. 40 lacs from Rs. 20 lacs w.e.f. 1st April 2019

[Source: CBIC]

Realty firms can opt for old or new rates for ongoing residential projects

Real estate developers have the option to adopt a lower rate of Goods and Services Tax (GST) without input tax credit (ITC), or go for the existing rate

with ITC (last date for date of adoption will be 10th May, 2019). This applies to ongoing projects (buildings where construction and actual booking have both started before April 1, 2019, but which will not be completed by March 31, 2019). Projects beginning on or after April 1 will fall into the lower GST rate regime automatically.

Composition schemes for Services

If First supplies of goods or services or both up to an aggregate turnover of fifty lakh rupees made on or after the 1st day of April in any financial year, by a registered person shall be liable to pay central tax at the rate of three percent on all outward supplies (Total 6%) [Source: CBIC]

GST authority finds Haryana realtor guilty of profiteering

The National Anti-profiteering Authority (NAA) has found a Haryana-based real estate developer guilty of profiteering over ₹1.5 crore as it failed to reduce the prices of houses commensurate with the benefit of input tax credit (ITC) accruing to the developer. This is the second NAA order against a real estate company. In an earlier order passed in September last year, the anti-profiteering watchdog had held another Haryana-based developer guilty of profiteering ₹8.3 crore. However, the Delhi High Court in November stayed the order which was challenged on the grounds of constitutional validity of the mechanism for determining quantum of profiteering.

[Source: Financial Express]

Govt. extends IGST, compensation cess exemption under various export promotion plans

Giving relief to exporters, the government has extended IGST (Integrated Goods and Service Tax) and compensation cess exemptions for goods procurement under certain export promotion schemes till March 2020. These exemptions have been extended for exporters buying inputs domestically or importing for export purposes under export oriented unit (EOU) scheme, Export Promotion Capital Goods (EPCG) scheme and advance authorisation.

CENVAT lapses on Refund Rejection: Proviso to Section 142(3), CESTAT Hyderabad

The relevant observation of the Tribunal was "The proviso to Section 142(3) of CGST Act, 2017 deals with the cases of rejection of credit of CENVAT Credit. It specifically indicates that such amounts shall lapse.

It is true, that with better planning, the appellants could have taken back the credit of CENVAT of refund which was rejected. Such credit would have seamlessly got transferred as ITC under GST into their new account post introduction of GST Acts, but they have not done so".

CENVAT
CREDIT

REAL ESTATE REGULATION & DEVELOPMENT ACT

Uttar Pradesh Real Estate Regulatory Authority (General) Regulations, 2019

- The Certificates, issued by the Project Architect, Project Engineer, and Chartered Accountant and submitted to the banks for getting release of money from the designated separate account of the project shall be in **Forms REG-1, REG-2 and REG-3 respectively.**
- The certificate issued by the project architect on completion of each of the building/wing of the real estate project shall be in **Form REG-4.**
- The promoter shall also be required to upload annual report on statement of accounts in the **Form REG-5** duly certified and signed by the chartered accountant who is the statutory auditor of the promoter's enterprise.
- The promoter shall also make available sanctioned plans, layout plans, along with specifications, approved by the Competent Authority at the project land site.
- The regulation also explains procedures for general functioning of the Authority, its office hours and sittings, the language in which the proceedings of the Authority shall be conducted, and the powers of the members and secretary of the Authority.
- A person who is a party to any proceedings before the Authority may either appear in person or authorize any other person to present his case before the Authority. Provided that, the person appearing on behalf of any person in any proceeding before the Authority shall file a Memorandum of Authorization, in **Form REG-6** as issued by Authority.

Case Laws

RERA applies only if work is on-going

In the case of Sultana Dalal V Miracle Mall, the MAHARERA bench presided by Shri Gautam Chatterjee has held that not having an occupation certificate does not mean that the building has to be registered with Maharashtra Real Estate Regulatory Authority. All projects that are undergoing and not completed and where the developer is selling homes to home buyers needs to be registered with MahaRERA.

(Source: MahaRERA)

Disclose Plans against RTI plea by Developer

The Hon'ble bench of Supreme Court presided by Justice Kurian Joseph and Justice Sanjay Kishan Kaul in the Civil Appeal Nos. 9064-9065 of 2018 in the matter of Ferani Hotel Pvt. Ltd. Versus The State Information Commissioner Greater Mumbai & Ors. has closed all arguments against giving information under an RTI which was submitted by a developer to the public authority. The Hon'ble Supreme Court, while dismissing the appeal filed by Ferani Hotels Pvt. Ltd. has upheld the order passed by Maharashtra State Information Commission; the order had directed that such information be provided to Nusli Wadia, chairman of the Wadia Group, who had sought the same through an RTI.

[Source: Supreme Court]

STARTUP FUNDING

Bigbasket turns Unicorn with \$150 Mn Series F round from Alibaba and others

Bigbasket has finally entered the league of Unicorn startups with latest \$160 million Series F round from Alibaba, UK Government-owned CDC Group and South Korea's Mirae Asset Global investment. The financing round valued e-grocer over a little over \$1.2 billion.



Online manufacturing marketplace Zetwerk raises \$9M from Accel, Sequoia

Online marketplace for manufacturing services Zetwerk has raised Rs 64 crore (\$9 million) in Series A funding co-led by Accel Partners and Sequoia Capital India, along with participation from existing investor Kae Capital. The startup wants to connect mid-to-large original equipment manufacturers (OEMs) and manufacturing SMEs and said it will utilise the fresh funds to expand its supply base across India

CORPORATE LAWS & OTHER COMMERCIAL POLICIES

The Central Government has approved the establishment of two new benches of National Company Law Tribunal (NCLT)

Centre has approved additional benches of National Company Law Tribunal in view of the increasing caseload, especially under the Insolvency & Bankruptcy Code 2016. The jurisdiction of the Bench at Amaravati will be the State of Andhra Pradesh, and that of Indore will be the State of Madhya Pradesh. Currently, Andhra Pradesh comes under the jurisdiction of the NCLT Bench at Hyderabad and Madhya Pradesh comes under the jurisdiction of the NCLT Bench at Ahmedabad.

The MCA has notified the Companies (Incorporation) Second Amendment Rules, 2019 which shall come into force from the date of notification i.e. 06-03-2019

Through this amendment a much sought relief has been granted to the companies looking for the shifting of Registered Office from one State to another. Presently, for shifting of registered office from one state to another, a notice is required to be given in 2 newspapers i.e One in English daily having WIDEST circulation in district where registered office is situated and another in regional language. MCA has made amendment in Rule 30 of Company (Incorporation) Rules wherein the word 'Widest Circulation' is replaced with '**Wide Circulation**'. Another amendment is to extent the benefit of zero registration fee for companies having capital upto of Rs. 15 lakh, instead of Rs. 10 Lakh for all SPICe form to be filed on or after 18th March, 2019 for incorporation of new companies.

SEBI

The SEBI has issued a clarification on request for transfer of securities not held in dematerialized form.

It is decided that except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in dematerialized form with a depository. This measure shall come into effect from April 01, 2019. The SEBI has clarified that the this decision does not prohibit the investor from holding the shares in physical form; investor has the option of holding shares in physical form even after April 01, 2019 and shall only apply, if any, investor who is desirous of transferring shares (which are held in physical form) after April 01, 2019 and can only be transferred is the shares are in dematerialized form. The above decision is not applicable for demat of shares, transmission (i.e. transfer of title of shares by way of inheritance/ succession) and transposition (i.e. re-arrangement / interchanging of the order of name of shareholders) cases.

SEBI has modified its earlier circular dt. December 7, 2018 on Disclosure of Significant Beneficial Ownership in the shareholding pattern to sync it with the Companies (Significant Beneficial Owners) Amendment Rules, 2019 as notified by the MCA

Accordingly, the circular shall be applicable to those listed entities that are reporting companies as per Companies (Significant Beneficial Owners) Rules, 2018 and the submissions under this circular shall be in line with the requirements specified under Companies (Significant Beneficial Owners) Rules, 2018.

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