

DIRECT TAX

News

CBDT sets June 30 deadline to dispose of demonetisation cases

Tax authorities have set a deadline of June 30 to clear up all demonetisation-related cases. In its interim action plan for the first quarter of 2019-20, the Central Board of Direct Tax (CBDT) has instructed its officials to “dispose of all cases related to demonetisation where assessment is required to be framed”. [Source: ET]

Income Tax Department attaches Rs 208 crore Benami bungalow of a former UP Government Engineer

The Benami Prohibition Unit of income tax department has provisionally attached a 6,796 sqf eet bungalow of worth Rs 208 crore on 27 March, 2019 of A K Mishra, former chief engineer of UP State Industrial Development Corporation purchased in 2007 in name of Kolkata-based Ajanta Merchants Pvt Ltd for a declared consideration of Rs 21.50 crore.



CBDT invites stakeholder comments on report pertaining to Profit Attribution to Permanent Establishment (PE) in India.

The business income of a non-resident can be taxed in India if it satisfies the requisite thresholds provided under the Act as well as the threshold provided in the applicable tax treaty, by a concept of Permanent Establishment (PE), which is defined in Article 5 of Model Tax Conventions and tax treaties. A Committee was formed to examine the existing scheme of profit attribution to PE under Article 7 of DTAA's and recommend changes in Rule 10 of the Income-tax Rules, 1962 and it has been decided to seek suggestions/comments of the stakeholders and the general public.

[Source: CBDT]

Notifications

Notification No. 32/2019 dated 9th April, 2019 has notified Mysore Palace Board, Kochi for certain incomes to be exempt for the assessment year commencing from 2019 till 2024

Notification No. 33/2019 dated 9th April, 2019 has notified Mysore Palace Board, Kochi for certain incomes to be exempt for the assessment year commencing from 2019 till 2024.

Notification No. 34/2019 dated 9th April, 2019 has notified Telangana State Electricity Regulatory Commission, Kochi for certain incomes to be

exempt for the assessment year commencing from 2020 till 2025.

Notification No. 35/2019 dated 9th April, 2019 has notified Kerala Head load Workers Welfare Board, Kochi for certain incomes to be exempt for the assessment year commencing from 2020 till 2025.

Notification No. 36/2019 dated 12th April, 2019 has amended Form 16 and Form 24Q which come into effect from 12th May, 2019. The new ITR Forms requires that the salary income reported in ITR must be matched with TDS certificate issued by employer in Form 16. To ensure that the Form 16 is in conformity with new ITR Forms, the CBDT has amended the Form 16 and Form 24Q, which will have a standardized format to fill the relevant exempted allowances and deductions against the specified earmarked field. [Source: CBDT]

Case Laws

No Reassessment on the basis of mere audit objection-

Supreme Court in the case of ACIT v. FIS Global Business Solutions India Pvt. Ltd. in SLP(C) Diary No. 4174 of 2019 [2019] 104 taxmann.com 169

High Court in its order observed that AO issued reassessment notice on basis of audit objection that assessee-company had wrongly claimed and was allowed deduction on account of Forex Gain on interest income which was not an allowable expense. High Court was of the view that audit objection is merely information and therefore, reassessment notice could not be sustained. SLP filed against order of High Court was dismissed by the Apex Court.

AO made addition on the basis of statement of third party. Cross objections not provided to assessee – Assessment void.

Bhatia Diamonds Pvt. Ltd. versus Ito, Ward 4 (4), New Delhi

2019 (4) TMI 1112 - ITAT Delhi

Accommodations entries in the nature of bogus sales and unsecured loans - addition was made on the statement of Sh. Vikrant Kayan without providing any opportunity to the assessee to cross examine the same.

Assessee has considerable cogency that addition was made on the basis of statement of Sh. Rajendra Jain, but the assessee was not granted the opportunity to cross examine Sh. Rajendra Jain which ground was also raised before the CIT(A), who did not adjudicate the same, which is against the settled law.

Since the impugned addition was made on the statement of Sh. Vikrant Kayan without providing any opportunity to the assessee to cross examine the same, which is in violation of principle of natural justice and against the law laid down by the Hon'ble Supreme Court of India in the case of Andaman Timber vs. CIT [2015 (10) TMI 442 - SUPREME COURT] the addition in dispute is deleted and the appeal of the assessee is allowed.

Reassessment proceeding initiated without proper sanction – Void in Law

Non issuance if notice u/s 143(2) after return filed by assessee in response to notice u/s 148 –Reassessment void –Grave error not rectifiable u/s 292BB as well

I.T.O., Ward 3 (1), Jaipur versus Shri Hans Raj Sharma and (Vice-Versa)

2019 (4) TMI 825 - ITAT Jaipur

Specific query was raised by the Bench on 16/10/2017, 19/09/2018 and 15/11/2018 giving time to the department for producing the case record to substantiate proper sanction by the JCIT of the Range U/s 151(2) of the Act. However, even after expiry of more than seventeen months when the case was again fixed on 25/3/2019, the department could not produce the evidence of sanction having been issued U/s 151(2) of the Act. Accordingly, considering the judicial pronouncements referred above and applying to the facts of the case, Tribunal do not find any merit in the notice issued U/s 148 of the Act without obtaining sanction by the JCIT of the Range U/s 151(2) of the Act.

Further Non issuance of Notice u/s 143(2). The assessee filed its return of income in response to the notice u/s 148 of the Act on 13.03.2015. The AO had concluded the assessment without issuing notice under section 143(2) of the Act after the return was filed by the assessee in response to notice under section 148 of the Act. The AO after receiving the return of the appellant filed in pursuance to notice u/s 148 of the Income Tax Act, 1961 did not issue notice u/s 143(2) of the Act which is sine qua non for assuming jurisdiction to assess the case. This is a grave error which is even not rectifiable u/s 292BB of the Act and hence order so passed lacks proper authority with the AO and hence the order so passed deserves to be declared void ab initio.

Surrender of exempt income claimed in return, during assessment proceeding – penalty not leviable u/s 271(1)(1)

Shashank Gupta versus ITO Ward 2 (3) Muzaffarnagar.

2019 (4) TMI 832 - ITAT Delhi

Addition on account of surrender of exempt income. As find that during the course of scrutiny assessment proceedings. AO has proceeded by the assumption that the shares purchased and sold by the assessee comes into the category of penny stock companies. AO has drawn support from

outside information. The surrender of exemption by the assessee on repetitive queries would not amount to furnishing of inaccurate particulars of income. The assessee has claimed exemption as per the provisions of law, though surrendered during the course of assessment proceedings. No penalty is leviable u/s 271(1)(c) - Decided in favour of assessee.

Issues settled before settlement commission cannot be challenged again by AO in subsequent search assessment u/s 153A

M/S Radico Khaitan Ltd versus D.C.I.T Central Circle - New Delhi

2019 (4) TMI 1165 - ITAT Delhi

Jurisdiction of AO to assess the assessee for the year under consideration on the basis of subsequent search - issues attained finality by the order of the Settlement Commission for assessment year covered in first search - DR contended that disclosure before the Settlement Commission was not true and correct and, therefore, the AO was well within his power to frame the assessment u/s 153A, the assessment order framed u/s 153A of the Act is without jurisdiction and deserves to be quashed.

Difference in valuation of land as on 01/04/1981 – addition on basis of estimates – Penalty u/s 271(1)(1) not leviable

Pr. Commissioner of Income Tax-29, Mumbai versus G.M. Finance & Trading Co

2019 (4) TMI 1133 - Bombay High Court

Difference in estimation of the value of the land as on 1.4.1981 for capital gain computation - quantum of income determined is certainly not beyond the shadow of doubts - tribunal deleted the addition, Assessing Officer having imposed the penalty, the CIT(A) and the Tribunal both concurrently held that mere difference in estimation of the value of the land as on 1.4.1981 would not give rise to penalty. The Tribunal recorded that there was neither any concealment of income or particulars thereof. The CIT(A) also highlighted the point of diversion between two sides why there was wide gap between two valuations; one presented by the assessee backed by the Government approved valuer and another obtained by the Assessing Officer during the course of assessment. No error in view of the Tribunal. No question of law arises.

Statement recorded during the course of search and accepting additional evidences – Assessee explaining the same did not offer for taxation- No addition can be made by AO without contradicting facts on records

Principal Commissioner of Income Tax (Central - 4) Versus M/S. Harsh Deep Construction

2019 (4) TMI 1180 - Bombay High Court

Questions of validity of search authorization against the assessee - statement was recorded at the far end of the search when assessee was

exhausted - compulsion to admit additional income - statement taken was not a statement as per the provisions of sec. 132(4) It was of the opinion that even though revenue may have an arguable case in relation to the tribunal's first conclusion of invalidity of assessment u/s 153A, in view of the tribunal's ultimate conclusions, these Appeals are not required to be entertained. The tribunal in the impugned judgment while deleting additions on merits has come to the conclusion that the revenue authorities did not contradict the submissions of the assessee regarding impermissibility of reliance on certain documents and the statements recorded in search. The tribunal also noted that the analysis carried out by the Assessing Officer suffered from multiple infirmities. Assessing Officer had not carried out the qualitative analysis and had carried out on certain arithmetical calculations based on loose papers. In the result the entire issue is based on appreciation of materials on record. No question of law arises - Appeals are dismissed.

GOODS AND SERVICE TAX (GST)

Realtors have time till May 20, 2019 to opt for old GST rates

Real estate firms have time till May 20, 2019, to communicate to their respective jurisdictional officers whether they want to continue with the old GST rates with input tax credit, failing which they will be deemed to have migrated to new tax rates. The GST Council had given the option to real estate companies to either opt for old rates of 12 per cent (for residential) and 8 per cent (affordable housing) with input tax credit (ITC) benefits or the new tax rates of 5 per cent for residential units and 1 per cent for affordable housing without the benefit of adjusting the credit on inputs used during construction. [Source: Clear Tax]

Businesses with turnover over Rs 2 crore can now start filing GST audit reports for FY18

Businesses with an annual turnover of over Rs 2 crore can now start filing GST audit reports for fiscal 2017-18 as GST Network (GSTN) has made its format available on its portal. The audit report for 2017-18, the first year of the goods and services NSE -1.26 % tax (GST) implementation, is to be filed by June 30. The ministry on December 31, 2018, notified the annual returns forms GSTR-9, GSTR-9A and GSTR-9C. The GST Council in December extended the last date for filing these forms by three months to June 30.

[Source: Business Line]

CBIC asks GST officers to be cautious while processing fresh registration

Cracking down on tax evaders, the CBIC has asked tax officers to be cautious while processing application for fresh GST registration by those businesses whose earlier registration has been cancelled due to non-compliance. The Central Board of Indirect Taxes and Customs (CBIC) also directed tax officers to analyse the information by an applicant in the fresh registration form regarding details of proprietor, director/members

of managing committee of associations/board of trustees etc. vis-a-vis any cancelled registration having same details.

Non-filers of GST returns for 2 months to be barred from generating e-way bills from June 21.

If any taxable person not filled GST returns for 2 straight months or in composition scheme for 2 consecutive filing that is 6 months as the case may be then will be barred from generating e way bills from June 21. [Source: Business Line]



No input tax credit if GST returns not filed (Telangana HC)

A case involving Megha Engineering & Infrastructure and GST authorities in which company had delayed GST returns from July 17 to May 18. Their total tax liability 1014 crore and had ITC of 968 crore. So now company paid interest on shortfall of 45 crore. But as per GST authorities they demand interest on entire amount. In this court gives decision in favour of authority and demand interest on full liability without adjustment of ITC. [Source: Tax Guru]

Notifications

Notification No.17/2019-Central Tax dated 10th April, 2019

Seeks to extend the due date for furnishing FORM GSTR-1 for taxpayers having aggregate turnover more than Rs. 1.5 crores for the month of March, 2019 from 11.04.2019 to 13.04.2019.

Notification No.18/2019-Central Tax dated 10th April, 2019

Seeks to extend the due date for furnishing FORM GSTR-7 for the month of March, 2019 from 10.04.2019 to 12.04.2019. • GSTR 7 is to be filed by a registered person required to deduct tax at source under the provisions of section 51 of CGST Act, 2017.

Notification No.19/2019-Central Tax dated 22nd April, 2019

Time period for filing GSTR-3B for the month of March 2019 extended from 20.04.2019 to 23.04.2019.

Notification No. 20/2019 – Central Tax dated 23rd April, 2019

Rule 23(1) of CGST Rules, 2017: Revocation of cancellation of registration- Two provisos inserted • For cancellation without retrospective effect - All returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed

For cancellation with retrospective effect:-

• The common portal does not allow furnishing of returns after the effective date of cancellation.

Notification No.21 /2019 – Central Tax dated 23rd April, 2019

Seeks to notify procedure for quarterly tax payment and annual filing of return for taxpayers

availing the benefit of Notification No. 02/2019–Central Tax (Rate), dated the 7th March, 2019. Annual Return in GSTR-4 by 30th April following the end of such financial year

Notification No.22 /2019 – Central Tax dated 23rd April, 2019

Seeks to notify the provisions of rule 138E of the CGST Rules w.e.f 21st June, 2019. Any person who has not furnished the returns for a consecutive period of two months (Two tax periods for composition taxpayers), shall not be allowed to furnish Part A of GST EWB-01.

REAL ESTATE REGULATION & DEVELOPMENT ACT

Maharashtra RERA orders refund to Bollywood Actor for delay in possession

Recently, the Maharashtra Real Estate Regulatory Authority (MahaRERA) passed orders in favor of a homebuyer Vrajesh Hirjee who is a Bollywood actor and has starred in several movies. The actor like several other home buyers, had brought his grievances before the RERA. The actor had prayed before the Authority under section 18 of RERA to order refund of the amount paid by him as the project of the builder was delayed. [Source: ET]

RAJ-RERA

Order No. 4(1)RJ/RERA/2017/D-2353 dated 9th April, 2019

RAJ RERA specifies penalty for registration of Ongoing Projects not registered till date.

The Ongoing projects whose due date of Registration was 31.07.2017, can still be registered with the payment of registration fees and small penalty.

Penalty in addition to Registration fees shall be as under:

If application for registration of Ongoing Project is filed **before 31.07.2019** - Penalty equal to **4 Times of registration Fees** shall be levied.

If application for registration of Ongoing Project is filed between **01.08.2019 to 31.12.2019** - Penalty equal to **10 Times of Registration Fees** shall be levied.

If application for registration of Ongoing Project is filed **on or after 01.01.2020** - Penalty may be levied at discretion of Authority which may extend **upto 10% of the Project Cost.**

Order no. F.1(5)RJ/RERA/2018/D-2356 dated 10th April, 2019

Order states that delay processing charges in case of Real Estate Agent shall be **Rs. 100/- per day** (Maximum 5% of Registration Fees Payable at the time of Application for Registration). The order comes into force w.e.f. 10.04.2019. Pending matters in which charges have already been deposited/recovered will not be reopened.

Clarification regarding Procedure to Grant Extension

The Rajasthan Real Estate Regulatory Authority has clarified the Procedure to grant Extension of

Real Estate Project by its Orders dt 18.04.2019 by Submitting the **Form – E**. The Promoter Seeking Extension has to apply with 50% Fees of Registration to RERA authority with Form –E and following documents.

1. Proof of payment of fees.
2. Authenticated Plan of the project showing stage wise development work undertaken till date
3. Explanatory note regarding development work undertaken and reason for delay in completion of work within the period declared at the time of registration.
4. Authenticated copy of permission received from competent authority, valid for period the period for which extension sought for.
5. Original Registration Certificate. As per provision of the Real Estate (Regulation and Development) Act, 2016 read with Rajasthan Rules related to Extension of Estimated Finished Date of Projects the maximum period of Extension of the Project granted will be One year.

Notification No.F.1 (5) RJ/RERA/2017/Pt. Dated 1st May, 2019

RAJ RERA notifies Rajasthan Real Estate Regulatory Authority (Amendment) Regulations, 2019

In the Amendment Regulations RAJ RERA has specified the definition of Registrar and the Procedure for changing the RERA Designated Bank Account.

Definition of Registrar shall now include other officers of Authority who may be authorized by Chairperson to carry out any function, who shall report directly to Chairperson.

RERA Designated Bank Account

Bank Account details may be changed only with the prior written permission of Authority.

A written application in Form R-4A mentioning basic details of bank accounts and reason for change must be filed along with following documents-

- 1) Latest Account Statement/Copy of passbook of Existing RERA Account;
- 2) Latest Account Statement/Copy of passbook of proposed RERA Account;
- 3) Copy of receipt of fee deposited for such change.

After obtaining the permission from the Authority the balance must be transferred from Old to New RERA Account 15 days and following documents must be submitted after receiving confirmation from Authority-

- 1) Form R-4B “Confirmation letter of change in RERA Account”
- 2) Form R-4C Certificate from Bank “Having new RERA Account”
- 3) Form R-4D Certificate of Chartered Accountant
- 4) Proof of Old RERA Account Closure

UP RERA

Notification Dated 10th April, 2019

“U.P. RERA Notification regarding ongoing project registration, Extension of registered project and the facility of editing/ updating of the registered project.”

Registration of Ongoing

Project:- Penalty for Projects ongoing on 01.05.2017, whose registration is required under

RERA and no registration has been taken is “Rs 10 Lakhs or Registration Fees” whichever is lower.



Extension of Registration:-

- with the disability of offline submission, only online submission is being set up by Authority which will soon be available for use.
- All the documents required as per the Act and Rules are required to be submitted before Authority, on deficiency of which, the promoter shall be informed on his registered e-mail id to provide the documents within seven days from the above intimation.
- Extension shall be granted for 6 months only after proper submission of bank details, Annual Audited Report and QPR related to the project. The extension may even be granted for more than 6 months but maximum upto one year on reasonable causes provided the Authority must be satisfied.
- Penalty for non-submission of application for extension of end date shall be levied on the promoter as follows:

Delay (In months)	Penalty (Amount in Rs.)
Less than 3	10,000/-
3-6	20,000/-
More than 6	40,000/-

Editing related to registered Project:-

Project registered before 07.05.2018

- ♦ If editing fees is paid: The promoter can edit the details and upload the documents if not uploaded earlier. Documents uploaded/filled earlier cannot be deleted by the promoter.
- ♦ If no fee is paid: Editing fees of 25% of registration fee is required to be paid.

Project registered on or after 07.05.2018:

Editing fees = 5% of registration fees Quarterly Progress Report

- ♦ if any promoter has not filled QPR report from last 2 or more quarters then QPR can only be filled after payment of Rs 10,000/- per quarter.

CORPORATE LAWS & OTHER COMMERCIAL POLICIES

The Institute of Company Secretaries of India has come out with the Guidance Note on Related Party Transactions.

Transactions is formulated by the Secretarial Standards Board of ICSI and aims to explain the procedures, practices and compliances associated with transactions with related parties after considering the Companies Act, 2013 read with the Rules thereunder, Securities and Exchange

Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Companies (Auditor's Report) Order, 2016, Indian Accounting Standard (Ind AS) 24 – Related party disclosures, Accounting Standard(AS) 18 – Related party disclosures and Secretarial Standards.

[Source: Business Line]

MCA has clarified that Manufacturing & allied activities for LLP are no longer in the restrictive domain.

MCA has withdrawn their internal OM No. CRC/LLP/e-Forms dated 06.03.2019, invoking the restriction regarding Manufacturing activities for LLP.

[Source MCA]

INSOLVENCY & BANKRUPTCY CODE

Supreme Courts holds ultra vires RBI's Feb 12 circular mandating insolvency proceedings

The Supreme Court declared the Reserve Bank of India circular of February 12, which mandates insolvency proceedings for a debt servicing default beyond 180 days, to be ultra vires. A Bench of Justices Rohinton F. Nariman and Indu Malhotra pronounced the judgment meant to be a relief for stressed industries, including those in the power and sugar sectors.

[Source: ET]

MERGER & ACQUISITION

Housing.com parent firm acquires home rental platform Fast Fox for nearly Rs 100 Cr.

Elara Technologies, which owns three realty portals Housing.com, PropTiger and Makaan, said it has acquired home rental brokerage platform FastFox.com at a valuation of nearly Rs. 100 crore as part of its growth plans. With this acquisition, Singapore-based Elara, which is backed by News Corp and Softbank, has entered the online-to-offline home rentals space that has a market size of over Rs 20,000 crore.



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