VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
JULY 2017

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High Court Rulings of the month

If delay in filing of return is due to revenue due to non-furnishing of copies of documents, interest has to waived

The assessee filed appeal u/s 260A of the ITAct, 1961, before the High Court on the issue that "was the Tribunal justified in law in confirming charging of interest for the period of delay attributable to the revenue in supplying copies of accounts and relevant records and statement".

Honorable High Court contended that the final issue is that is it open under the provisions of Section 158-BFA(1) of the Act to the Assessing Officer to waive interest imposable thereunder even in the absence of any discretion provided to waive interest under Section 158-BFA(1) of the Act. There can be no dispute that bare reading of the section 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. 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. This particularly so, as to 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.

Source: HC in Mahavir Manakchand Bhanshali Vs CIT,

Income Tax Appeal no. 42 of 2007, date of publication July 06, 2017

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Concealment penalty could be levied only on amount of tax excluding interest

The tax return of the assessee was processed under section 143(1) against which a demand of Rs. 1.64 crores was raised. AO imposed penalty of Rs 1.19 crores under section 221(1) due to default in payment of demand.

Commissioner (Appeals) deleted penalty imposed by the AO on ground that interest component was to be excluded while levying penalty under section 221(1) and since penalty exceeded tax component the order was set aside. On appeal, revenue uphled the order of CIT(A) and remitted matter back to the AO.

High Court held that the definition of 'tax' under section 2(43) read in its entirety suggests that 'tax' means income-tax, supertax and/or the fringe benefit tax, as the case may be chargeable under the provisions of the Act. **The definition of tax does not take within its fold the interest component**. Reading 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 SubSection 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 SubSection 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 SubSection 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

Source: HC in CIT Vs Oryx Finance & Investment(P.) ltd, Income Tax Appeal no. 01 of 2015, date of publication July 24, 2017

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Dept. can't deny PAN correction in TDS return for more than 4 characters

The assessee, an advertising agent, made payments to various parties. The assessee while filing TDS return made a mistake in reporting one of the PAN of the deductee. Department proceeded on the footing that the assessee who was required to deduct tax at the rate of 20 per cent had deducted the same at the rate of 2 per cent and after adjusting such tax deducted, raised demand of remaining tax.

Upon being served with said communication, the assessee realised the error leading to such high demand and tried to correct its PAN declaration. However, the on-line system of the department would not permit the correction because the system is programmed to permit correction only in case four digits/characters are to be changed and no more.

HC notes that revenue justified its stand of such restriction on correction of PAN in Income-tax Department's online computerized system on 2 grounds – (1) it is unlikely that a typographical error would travel beyond such characters and (2) considering millions of statements and entries being filed by assessees across country, it would open flood gates, if corrections are permitted without any limit; Further notes that even though Sec. 200(3) (providing for filing of TDS statement) does not refer to mechanism for correction of TDS statement, Sec. 200A (about processing of TDS statement) as well as Centralized Processing of statement of TDS scheme, 2013 make reference to "correction statement"; Thus, **observes that "once the department recognises the possibility of errors and also makes provisions for making corrections, it would be wholly illogical to limit such corrections on arithmetical working out of only two alphabets or two numerics being found incorrect requiring change**", states that no conscious decision supporting this policy placed before it; Though expresses sympathy about Department's concerns, remarks that "If the legislature therefore, had laid down that no corrections would be permitted or the department had provided that no correction would be permitted beyond a particular period, we could have examined the issue in different light" and further observes that if Revenue's concern relates to interest claim by deductors in case of delay in processing refunds, "provisions could easily have been made in law either through statute or through delegated legislation, imposing restriction on time upto which corrections can be made or even allowing conditional corrections"; Thus, directs Department not to raise higher demand u/s206AA subject to verification of assessee's claim about TDS deposit and PAN sought to be verified belong to concerned deductee

Source: HC in Purnima Advertising Agency (P.) Ltd Vs DCIT (TDS), Special Civil Application no. 18631 of 2014, date of publication July 15, 2017

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Circulars of the month

Clarification in respect of section 26ST

A new section 269ST has been inserted in the Income Tax Act, 1961 vide Finance Act, 2017 which prohibits receipt of an amount of two lakh rupees or more by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

Subsequently, representations have been received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST of the Act shall apply to one instalment of loan repayment or the whole amount of such repayment.

In this context, it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269STof the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

Source: Circular No. 22/2017 dated July 03, 2017

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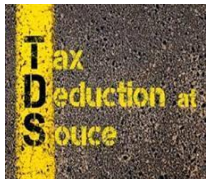
No TDS on GST paid or payable on services when GST is separately shown in invoice



CBDT has clarified that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, and further clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

Source: Circular No. 23/2017 dated July 19, 2017

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Press release/Notifications/Instructions of the month

Due date of filing extended till 5th August, allow linking of PAN with Aadhaar by August 30, 2017

There are some complaints that the taxpayers are not being able to log on to the e-filing website of Income Tax Department or not being able to link Aadhaar with PAN because of different names reflected in PAN and Aadhaar database. Government has taken the following steps to ease out the panic situations:

a) For the purpose of e-filing return, it would be sufficient as of now to quote Aadhaar or acknowledgement No. for having

applied for Aadhaar in e-filing website. The actual linking of PAN with Aadhaar can be done subsequently, but any time before 31st August, 2017. However, the returns will not be processed until the linkage of Aadhaar with PAN is done.

b) The due date of filing of return has been extended till 5th August, 2017.

Source: Press Release dated July 31, 2017

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NR to furnish details of foreign bank account in ITR for income tax refund purposes

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.

Source: Press Release dated July 24, 2017

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CBDT identified 5.56 lakh new cases of high cash deposit in second phase of 'Operation Clean Money'

The Income Tax Department (ITD) has used information received under the Statement of Financial Transactions (SFT) to identify 5.56 lakh new persons in the second phase of "Operation Clean Money" (OCM). These are persons whose tax profiles were found to be inconsistent with the cash deposits made by them during the demonetization period. Another 1.04 lakh persons who did not disclose all bank accounts during e-verification in the first phase of OCM have also been identified. In the first phase, 17.92 Lakh persons had been identified for e-verification of large cash deposits, of which 9.72 Lakh people had submitted online response.

The following information has been communicated to promote voluntary compliance:

a) Details of cash deposited in bank accounts aggregating to 2 lakh or more is required to be given in the Income Tax Return (ITR). This information will be matched with the information in possession of the Income tax Department

b) The taxpayer should ensure that ITR is compliant with amount deposited in bank accounts during the period of

demonetization and while computing income, the amounts so deposited are considered/ taken into account while paying taxes

c) Cash deposits made in the above period may thus be fully and truly disclosed in the ITR.

Source: Press Release dated July 14, 2017

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CBDT lays down criteria on compulsory manual selection of scrutiny cases for FY 2017-18

In supersession of earlier Instructions on the above subject, the Board hereby lays down the following procedure and criteria for compulsory manual selection of returns/cases requiring scrutiny during the financial-year 2017-2018:

a) Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact of following amounts
   - in excess of Rs. 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune, while at other charges, quantum of such addition should exceed Rs. 10 lakhs.
   - for transfer pricing cases, quantum of such addition should exceed Rs. 10 crore and where
     - such an addition in assessment has become final as no further appeal was/has been filed or
     - such an addition has been confirmed at any stage of appellate process in favour of revenue and assessee has not filed further appeal or
     - such an addition has been confirmed at 1st appeal stage in favour of revenue or subsequently and further appeal of assessee is pending.

b) All assessments pertaining to Survey under section 133A of the Income-tax Act, 1961 ('Act') excluding those cases where books of account, documents etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year. However, where the assessee retracts from disclosure made during the Survey, such cases will not be covered by this exclusion.

c) Assessments in search and seizure cases to be made under section(s) 158B, 158BC, 158BD, 153A & 153C read with section 143(3) of the Act and also for the returns filed for the assessment year relevant to the previous year in which authorization for search and seizure was executed u/s 132 or 132A of the Act.

d) Return filed in response to notice u/s 148 of the Act.

e) Cases where registration/approval under various sections of the Act such as 12A, 35(1)(ii)/(iii), 10(23C) etc. of the Act have not been granted or have been cancelled/withdrawn by the competent authority, yet the assessee has been claiming tax-exemption/deduction in the return. However, where such order of withdrawal of registration/approval has been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.

f) Cases in respect of which specific and verifiable information pointing out tax-evasion is given by any Government Department/Authority. However, before selecting a case for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from the concerned jurisdictional Pr. CIT/Pr.DIT/CIT/DIT.

Computer Aided Scrutiny Selection (CASS): Cases are also being selected under CASS-2017 on the basis of broad based selection filters and in a non-discretionary manner in two categories viz. Limited Scrutiny & Complete Scrutiny. List of such cases is being separately intimated by Pr.DGIT(Systems) to the concerned jurisdictional authorities for further action in these cases.

Source: Instruction No. 5/2017, [F.NO.225/180/2017/ITA.II], dated July 07, 2017

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CBDT notifies lists of persons exempt from Sec. 269ST for receiving cash payments

Central Government hereby specifies that the provision of section 269ST shall not apply to the following, namely:

a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India
b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorization issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007).
c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorization issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007).
d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards.
e) receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.

Source: NOTIFICATION NO. SO 2065(E) [NO.57/2017 (F.NO.370142/10/2017-TPL)], dated July 03,2017.

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