

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

The Policy updates and Verdicts of various High Courts are enclosed in this newsletter.

Attention of readers is invited to the Waiver of Charges on NEFT and RTGS Transactions by RBI, Extension of due date for Filling of TDS returns in state of Odisha, Notification of RBI on appointment of Chief Risk Officer for NBFCs.

Regards

For Raju and Prasad

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Contents

Contents	1
Policy Watch	1
Indirect Taxes	2
Amendment for Para 6 in Guidelines for launching of Prosecution in relation to offences punishable under the Customs Act, 1962-reg	2
SEBI	2
Press Release on MoU between SEBI &MCA for Data Exchange	2
Clarification on Transfer of Securities held in Physical form	3
RBI Updates	3
Appointment of Chief Risk Officer (CRO) for NBFCs	3
Waiver of Charges on National Electronic Fund Transfer (NEFT) and Real Time Gross Settlement (RTGS) Systems	3
Direct Tax	4
Extension of Due date for filing TDS Returns in the State of Odisha	4
Extension of Due Date for filing of TDS statement in Form 24Q	4
Verdicts	5
Direct Tax	5

Policy Watch



Indirect Taxes

Amendment for Para 6 in Guidelines for launching of Prosecution in relation to offences punishable under the Customs Act, 1962-reg

Customs vide circular No. 12/2019- Customs dated 24-05-2019 amends para 6 of Circular no. 27/2015 which consists launching Prosecution immediately on completion of adjudication proceedings. But for some cases involving offences relating to items i.e. FCIN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may be preferably launched immediately after Issuance of Show Cause Notice (SCN).

This Circular Includes that in case of involvement of Foreign National(s), Prosecution may be launched at the earliest, even before issuance of the Show Cause Notice.

This Circular also includes Gold and foreign Currency in the List of Items



mentioned in the para 6 of the previous circular No. 27/2015.

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2019/Circular-12-2019-Customs.pdf;jsessionid=59AADF3AD705E22007BEF2A1D0CCBE9F>

SEBI



Press Release on MoU between SEBI & MCA for Data Exchange

SEBI vide Press Release No. 15/2019 dated June 07, 2019 prMou was signed between SEBI and Ministry of Corporate Affairs (MCA) on June 7, 2019 for data exchange.

- MoU facilitate sharing of data and information on Automatic and regular basis which helps in

Monitoring the happening corporate frauds.

- MoU enables sharing of specific information like details of suspended companies, delisted companies, shareholding pattern from SEBI and Financial Statements filed with ROC, Return of Allotment of Shares and Audit Reports relating to corporates from MCA. MoU comes into force from the date it was signed and A Data Exchange Steering group has also been constituted for periodical review of data exchange and for effective data sharing mechanism.

https://www.sebi.gov.in/media/press-releases/jun-2019/sebi-signs-mou-with-mca_43223.html

Clarification on Transfer of Securities held in Physical form

SEBI vide Press Release No. 12/2019 declares that Transfer of shares held in physical form from April 01, 2019 shall be in Dematerialized form with a Depository.

Investor can still hold shares in physical form even after April 01, 2019. The Regulation is only on transfer of Share.

<https://www.sebi.gov.in/media/press-releases/mar-2019/transfer-of-securities->

[held-in-physical-mode-clarification_42503.html](#)



RBI Updates

Appointment of Chief Risk Officer (CRO) for NBFCs

RBI vide Notification No. RBI/2018-19/184 dated 16th May, 2019 has decided that NBFCs with Asset Size of more than Rs.50 Billion shall appoint a CRO with clearly specified Roles and Responsibilities with adequate Independence to ensure high levels of Risk Management.

Instructions for NBFCs in appointing a CRO and Roles of CRO are detailed in the circular.

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT18493A8BC3E04424A89A29ED4D18C0B67FC.PDF>

Waiver of Charges on National Electronic Fund Transfer (NEFT) and Real Time Gross Settlement (RTGS) Systems

RBI vide Notification No. RBI/2018-2019/2018 dated June 11, 2019, RBI has decide that with effect from 1st July, 2019 processing charges and Time Varying charges levied by RBI on banks

for NEFT and RTGS transactions will be waived.

Banks are advised to pass on the benefits to their customers for NEFT and RTGS transactions with effect from 1st July, 2019.

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT2081AAF195DF07B44E1A103FF512204578D.PDF>



Direct Tax

Extension of Due date for filing TDS Returns in the State of Odisha

CBDT vide Order under section 119 of Income-Tax Act, 1961, CBDT extended,

- Due date for depositing Tax Deducted at Source (TDS) for the month of April, 2019 from 7th May, 2019 to 20th May, 2019.
- Due date for Filing of Quarterly statement of TDS for the Last Quarter of FY 2018-19 from 31st May, 2019 to 30th June, 2019, and
- Due date for Issue of TDS Certificates in form 16 and 16A from 15th of June, 2019 to 15th of July, 2019.

https://www.incometaxindia.gov.in/news/odisha_extension_due_date_tds_misccomm_24_5_19.pdf

Extension of Due Date for filing of TDS statement in Form 24Q

CBDT Vide Order under Section 119 of Income Tax Act, 1961, CBDT Extended due date for filing of

- TDS statement in Form 24Q for FY 2018-19 from 31st May, 2019 to 30th June, 2019 and
- TDS Certificate in Form 16 for FY 2018-19 from 15th June, 2019 to 10th of July, 2019.

It's because of Revision of Form 24Q's format and Consequent updating of the File Validation Utility for its online filing.

https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/317/Order_extension_due_date_Form_24Q_MiscComm_4_6_19.pdf

“Today's Accomplishments were Yesterday's Impossibilities”

- Robert H. Schuller

Verdicts

Direct
Tax

Direct Tax

Belated Claim of Refund during the course of Assessment Proceedings which resulted into delay in granting of refund could not be a reason attributable to the assessee and couldn't dismiss the payment of interest for the amount of refund delayed

- Vide decision of High Court of Bombay in Commissioner of Income Tax V. Melstar Information Technologies Limited.

Facts of the Case:

1. The Assessee (Melstar) had not claimed certain expenditure before the assessing officer but eventually raised that claim before the Tribunal.
2. Where the Tribunal remanded back the proceedings to CIT(A) and the additional benefit claimed by the assessee was granted. This result



Refund and also question of payment of Interest on refund.

3. The interest on refunds would be payable under section 244A(1) of Income Tax Act, 1961 with the prescribed rates in it.
4. It also provides under section 244A(2) that if the proceedings resulting in delayed for reasons attributable to the assessee period of delay for reasons attributable could be excluded from the period for which interest is payable under section 244A(1).
5. The Tribunal in the present case came to conclusion that the delay cannot be attributable to the assessee and directed for payment of interest.

6. Here, the Revenue Challenges the judgment of the Income Tax Appellate Tribunal (ITAT), Mumbai.

Judgement:

The Honorable high Court of Bombay Dismissed the Appeal by considering the previous Cases similar to this case.

The Previous case laws Considered are

- *Ajanta Manufacturing Ltd. v. Deputy CIT* by the division bench of Gujarat High Court with a similar issue under which the court allows for the payment of Interest.
- *CIT v. South Indian Bank Limited* by Kerala High Court in which the Assessee claimed for the Refund which was granted by the commissioner and remanded back to the Assessing Officer (AO) and the AO rejected for payment of Interest for the delay in Refund and the court held that if the officer feels that there is any delay in refund attributable to the assessee the matter should be referred to Commissioner or Chief commissioner for the purpose of granting interest to the assessee and as if there is no decision the



Commissioner or Chief Commissioner the court ordered the officer for payment of Interest to the Assessee.

Appeal on Income Tax Appellate Tribunal (ITAT) on remanding back to Commissioner (Exemptions) regarding rejection of Application under section 80G (5)

- Vide Decision of High Court of Allahabad in *People Cause Foundation v. Income Tax Appellate Tribunal*.

Facts of the Case:

1. The Appellant is a company registered under section 8 of Companies Act, 2013 and had obtained a certificate under section 12A of Income Tax act,1961 (the Act, 1961).
2. It also applied for Certificate Under Section 80G of the Act, 1961. The

- Application was dismissed, against which the Appellant preferred an appeal before ITAT, Lucknow.
3. The ITAT redirected the matter back before the commissioner of income tax to be decided afresh after verifying the facts of the case with the details submitted by the assessee and specifically to determine the genuineness of the Documents and to come out with a speaking order.
 4. The Commissioner of Income Tax In his Order while rejecting the Application considered the fact that the applicant has deliberately not submitted any details regarding the identity of the donors and concluded that this is the malafide (Intent to deceive) attempt of the applicant.
 5. The Appellant contended before the ITAT that the registration under section 12A of the Act, 1961 had been accorded with submission of required information, details, vouchers and photographs as evidence before Commissioner of Tax. Further it was submitted that the Nature of activities can be examined at the stage of registration under section 80G(5) of the Act, 1961.
 6. Before the ITAT the appellant tried to show all the documents containing the expenses in the books and donations contains full details of Donors, and all the Evidences desired by the Commissioner of Income Tax.
 7. From the Perspective of the ITAT, Despite Numerous Documents and evidences submitted by the Applicant, registration has been rejected without examining the documents submitted and it remanded the matter to the Commissioner of Income tax (Exemptions) to take a fresh decision.
 8. The main contention of assessee by raising this appeal is, the facts and circumstances of the case could not have remanded back as the entire material was available for ITAT to come to subjective Satisfaction as to whether in the given circumstances the assessee was eligible for being granted a certificate under section 80G(5) of the Act, 1961, or not.

Judgment:

The Honorable High Court of Allahabad dismissed the appeal of the assessee saying that the ITAT rightly remanded the matter back to the commissioner of Income Tax (Exemptions) for fresh consideration and decision on the basis of the evidence available on record regarding genuineness of the documents and to pass a speaking order.

The commissioner of Income Tax can take the decision on the application expeditiously say within a period of one month from the date a certified copy is produced before him, in accordance with law, after affording opportunity of hearing to the assessee.

“Once you replace negative thoughts with positive ones, you’ll start having positive results”

- Robert H. Schuller

Disclaimer

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