

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

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

Attention of readers is invited to the Filing of Form GSTR - 10, Streamlining of process of issue of equity shares by SEBI, Relaxation of additional fees and extension of last date of filing of forms MGT-7 and AOC-4 and the decision of Honorable High Court of Karnataka in Dr. Vijay Mallya v. State Bank of India.

Regards

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Policy Watch

Indirect Taxes



Filing of Form GSTR 10 – Final Return

The Central Board of Indirect Taxes and Customs Vide Notification No 58/2018 – Central Tax dated 26th October 2018 has notified that the persons whose GST registration has been cancelled on the recommendation of the GST council by the proper officer on or before 30th September 2018 are required to file final return in Form GSTR 10 on or before 31st December 2018.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-58-central-tax-english-2018.pdf;jsessionid=9F370905AB5904138E6CF6AADB241520>

Provisions relating to TDS not applicable to supply from PSU to PSU

The Central Board of Indirect Taxes and Customs Vide Notification No 61/2018 – Central Tax dated 5th November 2018 has notified seeks to exempt a supply from one PSU to



another from the provisions of TDS under GST.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-61-central-tax-english-2018.pdf;jsessionid=F7CDBFE56BBEEE1F69C5F3BEC0999AF4>

Circular clarifying collection of tax at source by Tea Board of India

The Central Board of Indirect Taxes and Customs Vide Circular No 74/48/2018 –GST dated 5th November 2018 has clarified that TCS at the notified rate, shall be collected by Tea Board respectively from the –

- (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
- (ii) auctioneers on the net value of supply of services (i.e. brokerage).

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-74.pdf;jsessionid=7521F478BB2304FADE2AA199206844F2>

SEBI



Streamlining the Process of Public Issue of Equity Shares and convertibles

The Securities Exchange Board of India (SEBI) vide its Circular No SEBI/HO/CFD/DIL2/CIR/P/2018/138 dated 1st November 2018 has decided to introduce the use of Unified Payments Interface (UPI) as a payment mechanism with Application Supported by Block Amount (ASBA) for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants). The proposed process would increase efficiency, eliminate the need for manual intervention at various stages, and will reduce the time duration from issue closure to listing by upto 3 working days.

https://www.sebi.gov.in/legal/circulars/nov-2018/streamlining-the-process-of-public-issue-of-equity-shares-and-convertibles_40923.html

Direct Tax



Online application for grant of lower deduction of TDS certificate

The Central Board of Direct Taxes vide Notification No. 74/2018 dated 25th October, 2018 has notified that the application for grant of lower deduction of TDS certificate can now be furnished online and The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be

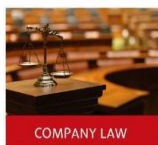
- shall lay down procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents and
- shall be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the furnishing of Form No.13.

Further, the certificate for deduction of tax at any lower rates or no deduction of tax, shall be issued directly to the person responsible for deducting tax under advice to the

person who made an application for issue of certificate.

https://www.incometaxindia.gov.in/communications/notification/notification74_2018.pdf

Company Law



Relaxation of additional fees and extension of last date of filing of forms MGT-7 and AOC-4

Keeping in view of the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended 31.03.2018, The Ministry Of Corporate Affairs vide Circular No. 10/2018 dated 29th October, 2018 has extended the due date for filing of MGT-7(Annual Report) and AOC-4(Financial Statements) till 31st December 2018 and also waived the additional fees payable by the companies on e-forms AOC-4, AOC (CFS), AOC-4 XBRL and e- Form MGT-7 upto 31st December 2018.

http://www.mca.gov.in/Ministry/pdf/NoticeAndCircularGC_30102018.pdf



RBI Updates

Payments Bank and Small Finance Banks – access to Call /Notice/Term Money Market

Reserve Bank Of India vide its Circular No. RBI/2018-19/68 has clarified that Payments Banks and Small Finance Banks are eligible to participate in the Call/Notice/Term money market both as borrowers and lenders. Such eligibility is valid even prior to the completion of the process to get themselves included in the Second Schedule of Reserve Bank of India Act, 1934.

The prudential limits and other guidelines on Call money market for Payments Banks and Small Finance Banks will be the same as those applicable to Scheduled Commercial Banks in terms of the Master Direction referred above.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?id=11405&Mode=0>

Verdicts

Direct Tax

Direct Tax

The encashed bank guarantee and the amount paid as penalty on account of assessee's failure to perform its part of the agreement are allowable as a deduction under Section 37(1)

- Decision of High Court of Delhi in Principal Commissioner of Income Tax-4 v. Green Delhi BQS Ltd.

Facts of the case:

1. The assessee was engaged in the business of developing, maintaining and operating of Bus-Q-Shelters (BQS), metro stations etc. It entered into an agreement with the Delhi Transport Corporation (DTC) for setting up bus shelters on build, operate and transfer basis.
2. The assessee had also furnished bank guarantee of Rs. 2 crores to DTC as performance security. On DTC invoking bank guarantee, the assessee had approached the High Court and a stay order against encashment was passed.



However, later the stay order was vacated and the DTC was permitted and allowed to encash the bank guarantee. As the assessee had obtained stay, they were directed to pay interest at the rate of 9% p.a till the date of payment.

3. The assessee has claimed as expenditure, the amount paid on encashment of bank guarantee and interest on late payment as deduction under section 37(1). The revenue authorities rejected assessee's claim holding that it was capital expenditure.
4. The Tribunal reversed the findings and held that the addition was not justified as it was revenue expenditure.

Judgement : On revenue's appeal, The Honorable High Court of Delhi has held that no interference was required in the order passed by the Tribunal.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000184514&isxml=Y&search=&tophead=true&tophead=true>

Where in order to determine admissibility of assessee's claim under section 10B, date of commencement of manufacture could be ascertained from certificate of registration by competent authority, mere wrong mentioning of said date in Form No. 56G filed in support of claim of deduction, could not be a ground to reopen assessment

- Decision of High Court of Madras in MBI Kits International v. Income Tax Officer, Non-Corporate Ward-1(3), Chennai

Facts of the case:

1. The assessee was formed with an object to carry on the business of manufacturing and testing



chemicals. The Madras Export Processing Zone and The Government of India, Ministry of Commerce granted permission to it to carry on the business of manufacturing of test kits used for checking iodized salt.

2. Later, the assessee filed its return of income for assessment year 2010-11, claiming deduction under section 10B.
3. An order of assessment under section 143(3) was passed on accepting the claim of deduction under section 10B.
4. Subsequently, the Assessing Officer noticed that in Column No. 7 to Form No. 56G, filed in support of claim of deduction under section 10B, date of commencement of manufacture was mentioned as 28-3-2000.
5. According to the Assessing Officer if the date of commencement of manufacture or production referred

to in the Column No. 7 in Form No. 56G as 28-3-2000 was taken as true, the deduction claimed was at the eleventh year and not at the tenth year which was not permissible. He thus initiated reassessment proceedings.

6. The assessee raised an objection that actual date of commencement of manufacturing was on 25-5-2000 and, thus, deduction was claimed in tenth year itself. The Assessing Officer set aside the assessee's objection.
7. The assessee approached the Honorable High Court of Madras by filing a writ petition.

Judgement : The Honorable High Court of Madras has held that mere change of opinion on the existing material cannot be a ground for reopening the assessment in the absence of any new material that had come to the possession of the Assessing Officer. Accordingly, writ petition was allowed and impugned proceedings of the respondent in reopening the assessment was set aside.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=10101000000184357&isxml=Y&search=&tophead=true&tophead=true>



Verdicts

Banking



Where DRAT's (Debt Recovery Appellate Tribunal) direction to make pre-deposit was not complied with despite petitioner having sufficient economic activities in foreign country and he did neither disclose foreign assets nor appeared before Court, his writ petitions against order of pre-deposit or for extension of time were to be dismissed

- Decision of High Court of Karnataka in Dr. Vijay Mallya v. State Bank of India

Facts of the case:

1. The respondent No. 13 - Kingfisher Airlines had availed Working Capital and Term Loan Facilities from the Consortium of banks in the year 2005. The said loans were later re-structured. In relation to aforesaid loans, the respondent No. 14- United Breweries (Holdings) Ltd. provided a Corporate Guarantee and the petitioner-Vijay Mallya furnished his personal guarantee.
2. The borrower 'Kingfisher' committed default in repayment of the loans, due to which the Loan Account was classified as NPA. The respondent No. 1- State Bank of India issued a Loan Recall Notice dated 2-4-2013 to the Kingfisher Airlines and to the Guarantors. The Personal Guarantee furnished by the petitioner was also invoked by calling upon him to make payment of a sum of Rs. 6,493.29 crore. By way of the reply dated 17-4-2013, the petitioner denied his liability by alleging that the Contract of Guarantee was vitiated by coercion/undue influence.
3. The respondent No. 1- State Bank of India instituted Original Application under section 19 in the DRT for recovery of the dues of Rs. 6,203 crores as on 31-5-2013 with interest at the rate of 15.20% p.a with monthly rests. This Original Application was opposed by the Borrower and Guarantors by filing the Written Statements.
4. The DRT vide order dated 19-1-2017 holding the respondents - Kingfisher Airlines, United Breweries Ltd., Kingfisher Finvest (India) Ltd., and the petitioner Vijay Mallya, jointly and severally liable for the recovery of sum of Rs. 6,203 crores with interest at the rate of 11.50% with yearly rests.
5. The petitioner - Vijay Mallya, aggrieved by the order of the DRT, preferred an appeal before the DRAT on 4-10-2017. After scrutiny, the registry of DRAT notified certain objections in the appeal memo filed by the petitioner. The appeal came to be dismissed by the order dated 2-1-2018 as the objections were not complied with.
6. On 5-3-2018, the petitioner filed an application seeking restoration of the appeal along with an application for condonation of delay. The petitioner claims that thereafter i.e., on 21-3-2018, he had complied with the

office objections raised in the main appeal.

7. Later, the DRAT, by its order dated 28-3-2018, directed him to deposit a sum of Rs. 3,101 crore, on or before 25-4-2018 as a condition precedent for entertaining the appeal and subject to the rider that the appeal would stand dismissed automatically without reference to the Bench.
8. The petitioner did not make any deposit thereafter and the appeal stood dismissed. Later, the petitioner filed an application seeking restoration of the dismissed appeal along with an application for condonation of delay. The DRAT, by its order dated 25-4-2018, dismissed both these applications.
9. The petitioner preferred the instant writ petitions challenging the order dated 28-3-2018 and also challenged the order dated 25-4-2018 contending that a considerable amount is already lying in deposit in the Registry of this Court in various proceedings arising out of the very same loan transaction.

Judgement: The High Court Of Karnataka has discredited petitioner's version that he did not have any money

to deposit and hence, his writ petitions to quash DRAT's order for pre-deposit and to extend time were also dismissed.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&multipage=false&id=10101000000184382&isxml=Y&search=&tophead=true&tophead=true>

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