TAX NEWS

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HEMANT ARORA & CO.
Chartered Accountants

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- Directions of the Hon'ble Supreme Court -Taking opinion of technical experts and bringing on record technical evidence in cases involving complex issues of technical nature and substantial revenue.
- CBDT instructions on issuance of TDS certificates in Form No. 16A and option to authenticate same by way of digital signatures.
- Circular on processing of statement of tax deducted at source and procedure for regulating refund of excess amount of TDS deducted and/or paid.
- Notification on amendment in Rule 12 and substitution of ITR Forms in Appendix-II.
- Identity of share applicants would be established where assessee had furnished copies of their applications for allotment of share PAN details and company details downloaded from MCA site.
- If by virtue of S. 80-IC, no income-tax is payable by an assessee, being a company, it would be liable to pay income-tax to the extent as mentioned in S.115JB and that was and still is the very object of inserting S. 115JB in the Act.
- Where assessee, a leading cricketer, claimed deduction under section 80RR in respect of income from modeling and advertising, it was held that said income was derived by assessee from profession of 'an artist' and, thus, entitled to be claimed as a deduction.
- Deliberately wrong and fictitious entries, cannot be enforced against the assessee simply because by such alleged wrong entry, assessee had shown higher amount of income.
- S. 260A read with S. 208A of the Act High Court appeal.
- S.45 read with S. 29 of the Act -Capital Gain would be chargeable on shares merely if they are purchased from borrowed funds obtained on high rates the nature of transaction would not be changed from investment to nature of trade.

- Vehicle hire charges falls within the scope of S. 194C instead of S.194I of the Act.
- Short term capital gain arising from the transfer of depreciable assets held for more than 36 months u.s. 50 A (2) of the Act can be set off against brought forward loss from other long term capital assets.
- Merely because assessee was eligible to claim benefit of S. 80-IB but did not claim same in first year would not mean that he would be deprived from claiming that benefit in subsequent assessment year.
- Where requirements of proviso to S.147 are not satisfied, no notice u.s 148 can be issued beyond a period of 4 years even if amount of tax escaping assessment is more than or likely to be more than 1 lakh rupees.
- Tribunal has power to stay beyond a period of 365 days in cases where the delay is not attributable to the assessee.

Service Tax

- Notification - Abatement of 70% for AC restaurants and 50% for short term hotel accommodation to be available w.e.f. 1st May, 2011.
- Notification on hotel accommodation with tariff less than Rs.1, 000/- per day exempt from service tax w.e.f. 1st May, 2011.
- Notification on representational services provided by Practicing Chartered Accountants, Cost Accountants and Companies Secretaries liable to Service Tax w.e.f. 1st May, 2011.
- Notification on Exemption to transport of goods by the government railways extended till June, 2011
- Notification on amendment in Export and Import Rules.
- Notification on composition rate in relation to purchase or sale of foreign currency changed.
- Scope of exemption granted vide notification no 19/2009 ST dated 07.07.2009 expanded.

Snippets

Statutory compliance calendar

International Tax & Transfer Pricing.

Revised DRP Constitution with effect from 23.05.2011

Order No. 4/FT&TR/2011 dated 23.05.2011.

In partial modification of Order No. 3/FT & TR 2011 dated 31.03.2011, the Central Board of Direct Taxes vide its order no. 4/FT&TR/2011 dated 23.05 2011 has revised the constitution of the Dispute Resolution Panels w.e.f. the said date. Accordingly, the revised constitution for panels at New Delhi is as follows:

Panel	Name of the member
DRP-I	Smt. Promilla Bharadwaj, DIT(Intl. Taxn.) – I, Delhi Smt. Rashmi Saxena, DIT(Transfer Pricing) – II, Delhi Shri Gopal Mukherjee, CIT-V, Delhi
DRP-II	Shri Dinesh Verma, DIT(Intl. Taxn.) – II, Delhi Shri D.K. Gupta, DIT (Transfer Pricing) – II, Delhi Shri S. G. Joshi, CIT-III, Delhi

TIEA's entered into with the Governments of the Isle of Man and the Commonwealth of Bahamas.

Notification Nos. 26/2011 and 25/2011 dated 13.05.2011.

The Government of India vide notification nos. *26/2011 and 25/2011 of 13/05/2011* has entered into agreement with the Government of Isle of Man and the Government of the Commonwealth of Bahamas, for exchange of information with respect to taxes.

Where the AO follows the precedents in assessee's own case and completes assessment accordingly, he is said to have made due application of mind and the assessment order could not be regarded as erroneous for invoking jurisdiction u.s 263 of the Act.

Hyundai Heavy Industries Co. Ltd. Vs. DIT, International Taxation – II, New Delhi. (ITAT- Delhi)

In a recent decision pronounced by the Delhi Bench of ITAT it has been held that where the AO while framing assessment order duly applied his mind and placed reliance on the precedents in assessee's own case in making an estimate of income, the action of the DIT in invoking jurisdiction under section 263 of the Act could not be held to be justified.

The Bench further held that where the assessing officer took a possible view, revisionary powers under section 263 could not be invoked by the Commissioner to replace his view with that of the Assessing Officer.

Hemant Arora & Co. is the consultant to the assessee in this case and Mr. Jeetan Nagpal, Partner was a member of the legal team which represented the assessee before the Tribunal.

Transfer Pricing principles on use of multi-year data, adjustment to operating profits & +/- 5% adjustment.

Harworth (India) Pvt. Ltd. vs DCIT (ITAT- Delhi)

Where the assessee adopted TNMM method for determination of ALP and claimed that (i) as its operations were for a part of the year, an adjustment to the margins on account of 'capacity utilization' should be made, (ii) the pre-operative expenditure should be excluded, (iii) multi-year data should be used to determine comparables, (iv) if only one comparable is left, the entire exercise should be carried out afresh and (v) even if there was only one comparable, the +/- 5% adjustment should be made, the Delhi Bench of ITAT, laid down the following principles:

(i) Under Rule 10B(4), only the current year's financial data is relevant for determination of ALP except where it is shown that the data of the earlier two years reveals facts which could have an influence on the determination of the transfer price;

(ii) A selected comparable should be functionally comparable. A company which is majorly dealing in other segments cannot be accepted as functionally comparable;

(iii) There is no principle of law that if only one comparable remains, the entire exercise would fail;

(iv) Under Rule 10B (1) (e) (i) operational expenses is that which is incurred to earn that income. Expenses with nexus with revenue have to be considered as operational expenses and cannot be excluded only on the ground that the date of occurrence of the revenue is later and expenses have been incurred prior to that;

(v) Under the TNMM, the net profit margin actually realized has to be considered and there is no room for any assumption for taking the profit margin. It is not permissible to deviate from the book results on the ground of capacity utilization. Under Rule 10B(3)(ii), there cannot be any deviation in the net profit shown in the books of account and the adjustment, if any, can be made to the same to eliminate the material affects to such differences to the extent of these adjustments are reasonably accurate.;

(vi) The Proviso to S. 92C which gives the assessee the option to adjust the ALP by +/- 5% is applicable only where more than one price is determined by the most appropriate method. In a case where only one price is determined by the most appropriate method, the benefit of +/- 5% is not available to the assessee.

Transfer Pricing: Low Turnover and Operation companies are not comparable. Only operational profits to be considered for comparison. Loss-making & super-profit companies are not comparable

DHL Express (India) Private Limited Vs. ACIT (ITAT-Mumbai)

The assessee, a courier company, made payments to its parent company towards net work fees, reimbursement of expenses, purchase of marketing material etc. In evaluating the arms length price, the TPO took the view that (i) comparables whose turnover was less than 20% of the assessee's turnover could not be considered even though they were accepted as comparable in the preceding year, (ii) Because other direct comparables were available, the segmental results of the courier activity of a company (TCI) engaged in diverse activities can be ignored and (iii) in comparing the results of the comparables, non-operating income had to be considered. This was upheld by the DRP. On appeal by the assessee to the Tribunal, HELD:

(i) The assessee's argument that comparables with a turnover less than 20% of the assessee's turnover should be considered is not acceptable because it is a universal fact that there are lot of differences between large businesses and small businesses operating in the same field. In the case of small business, economies of scale are not available and they are generally less profitable. The fact that such companies were considered comparable in an earlier year is not conclusive for want of facts of that year and also because there is no res judicata;

(ii) The argument that segmental results of a company engaged in diverse activities should be considered is also not acceptable because it is a common experience that in many such results certain expenditures, particularly relating to interest and head office, are generally not allocated. When direct comparables are available, there is no need to consider segmented results;

(iii) In principle, only the operating profit of the comparables should be considered. Items like interest income, rent, dividend, and penalty collected, rent deposits returned back, foreign exchange fluctuations and profit on sale of assets do not form part of the operational income because these items have nothing to do with the main operations of the assessee. Insurance charges would depend on the nature of insurance charges. If the insurance charges were on account of loss of some parcel or courier against which courier has made a payment of compensation then such charges would constitute operational income.

Sapient Corporation Pvt. Ltd. Vs. DCIT (ITAT-Delhi)

The assessee claimed that its international transactions of software development was at arms length under TNMM on the basis that its average operating profit ratio (OP/TC) was higher than that of 10 comparable companies. The TPO & DRP rejected a few comparables on the ground that they were loss-making and recomputed the OP/OC of the other comparables at a higher rate. Before the Tribunal, the assessee claimed that if loss making companies were excluded, a super profit earning

company should also be removed from the comparables. HELD upholding the plea:

When loss making companies have been taken out from the list of comparables by the TPO, Zenith Infotech Ltd. which showed super profits should also be excluded. The fact that assessee has himself included in the list of comparables, initially cannot act of estoppel particularly in light of the fact that the AO had only chosen the companies which are showing profits and had rejected the other companies which showed loss

Transfer Pricing: Merely because transaction is with an AE can't be a ground to reject it as comparable when transaction is at arm's length.

ACIT Vs. NGC Network (India) (P.) Limited (ITAT-Mumbai)

The assessee is a company engaged in the business of marketing and distribution of satellite television channels. The assessee applied TNMM method for determining ALP and for this purpose had conducted due diligence to find out comparables. In the absence of any suitable comparables, the AO compared the assessee's own payment to its associated enterprises in the immediate preceding year on the ground that in that year the said payment was found to be at arm's length as no adjustments were made held since the same set of comparables and the same method of computation of arm's length price, as adopted by the Taxpayer for assessment year 2003-04, had already been accepted by the TPO for the subsequent assessment year 2004-05, such comparables and methodology have to be adopted for the purpose of computation of transfer pricing adjustments for assessment year 2003-04 as well. However, in order to demonstrate the arm's length nature of an assessee's intra-group transactions for a particular assessment year, it is most appropriate to compare such transactions with data available for the same year in respect of comparables that have already been accepted by the Department.

Also, where prior year data is being used for the purpose of a transfer pricing analysis and the nature of the business has remained the same, an assessee's international transactions with associated enterprises during such prior years, can be used as internal comparables for application of the CUP method, provided such prior year's transactions have already been accepted by the Department to be at arm's length.

Payment made by an Indian company to a Singapore company for providing data processing services is not royalty

Standard Chartered Bank Vs. DDIT (ITAT- Mumbai)

The assessee, a UK bank carrying on business in India, entered into an agreement with Sema Group, Singapore, for the provision of data processing support to the assessee for its business in India. Sema had a Data Centre at Singapore which it agreed to make available for "exclusive use" by the assessee for a specified period. Broadly, the service rendered was that the raw data relating to branch transactions of the assessee was transmitted to Sema's mainframe computer in Singapore for processing. The raw data was processed by Sema's staff as per the requirements of the assessee using the application software owned by the assessee. The processed data, i.e., the output data was transmitted electronically to the assessee in India using the software provided by the assessee, which was not designed by Sema. The AO & CIT (A) held the payments made by the assessee to Sema to be "royalty" u.s 9(1) (vi) & Article 12 of the DTAA on the ground that (i) the provision of the computer facility to process the data was consideration for use of a "process" and (ii) the consideration was for "the use or right to use, any industrial, commercial or scientific equipment". On appeal by the assessee to the Tribunal, HELD allowing the appeal:

(i) The argument of the revenue that the 'data processing' by Sema is consideration for "use of a process" is not correct. The activity of transmitting raw data to Sema, processing of the data by Sema using software belonging to the assessee and the transmission of the proceessed data to the assessee did not, at any stage, involve the "use of any process" by the assessee so as to constitute "royalty" under Article 12(3)(a). The consideration received by Sema was for using the computer hardware which does not involve use or right to use a process;

(ii) The argument of the revenue that the consideration paid was for the "use of equipment" is also not correct because in order to constitute user of equipment, the customer should

actually have domain or control over the equipment, or in other words, the equipment should be at its disposal. The customer should be in a position to use the equipment in its business activities. If a customer is given the mere access to some infrastructural facilities of the service provider and where the service provider has all the control, disposition and possession of such infrastructure and also the service provider operates such infrastructure on its own, then the customer cannot be said to have been assigned a right to use the equipment in the form of the infrastructure. In that case, the transaction partakes of the character of provision of services or facilities by the owner of the infrastructure in favour of the customer, as against giving the infrastructure to the customer itself for being used in the manner desired by the customer;

(iii) On facts, though the Data Centre was made available for the assessee's "exclusive use", the assessee had no right to access the computer hardware except for transmitting raw data for further processing. The assessee had no control over the computer hardware or physical access to it. The assessee could not come face to face with the equipment, operate it or control its functions in any manner. The assessee had no possessory rights in relation to the computer mainframe. The assessee merely took advantage of a facility of use of sophisticated equipment installed and provided by another. Accordingly, the payment was not royalty under Article 12(3) (b) of the DTAA.

Indo Canada DTAA – Term 'transfer' as used in article 12(4) (b) does not refer to absolute transfer of right of ownership.

DIT Vs. SNC Lavalin International Inc (High Court- Delhi)

The assessee, a tax resident of Canada, was engaged in providing consultancy services for infrastructure projects. Taxpayer entered into contract with National Highway Authority of India (NHAI) for providing technical drawings and reports. The scope of the service included investigation of the availability and viability of various modern technologies to ensure the most economical cost estimate, preparation of the detailed project report covering the entire design for rehabilitation and strengthening of existing carriage ways and study of environmental resettlement under the guidelines of the Government of India. The taxpayer treated the fee received from NHAI as Fees for Included Services as per Article 12(4) of tax treaty on which tax is to be deducted at 15 percent. The AO held that the income received by the taxpayer would not qualify as Fees for Included Service as per Article 12 of tax treaty. Accordingly, the AO treated the income of the taxpayer as Fees for Technical Services u.s 9(1) (vii) of the Income-tax Act, 1961 (the Act) and taxed it at 20 percent as per S. 115A of the Act.

Held, that fees received by the taxpayer for providing technical drawings and reports in relation to infrastructure projects would qualify as Fees for Included Services under India-Canada tax treaty. Accordingly, tax was to be deducted at 15 percent on payments made to the taxpayer. Further, the High Court observed that the term transfer as used in Article 12(4) of the treaty does not refer to absolute transfer of ownership; but refers to transfer of technical drawings or designs for the use or the benefit of other party.

Withholding tax need not be deducted on payments made for services like transcription and data processing

R.R. Donnelley India Outsource Private Limited (New Delhi-ARR)

The applicant is an Indian company which providing solutions in commercial printing, direct mail, financial printing, call centers, logistics and digital photograph. It entered into a data processing agreement with RR Donnelley Global Document Solutions Group Limited, UK for efficient discharge of its services to its customers. The applicant sought advance ruling on the following questions:

Whether, the amount received or receivable by RRD, UK is taxable as FTS

If not, then would the said amount at all be taxable in India having regard to the fact that RRD, UK does not have a PE in India.?

In case the amount is not taxable in India, would the applicant be required to withhold taxes thereon?

Allowing the appeal**,** the AAR held, since, there is no transfer of technical skill or know-how while rendering the service by

RRD UK to RRD India, the case of the applicant would not fall under Article 13 of the Indo-UK agreement. RRD UK is not rendering any managerial or technical services to RRD India and therefore the payment received is not eligible to tax.
It further said that Further, in the absence of a PE, the receipts in the hands of RRD, UK cannot be taxed as business profits.
Moreover, since the amount received by the RRD UK is not taxable, the question of withholding tax by RRD India "does not arise", it added.

If S. 195(2) certificate not withdrawn, assessee not in S. 201 TDS default

CIT vs. Swaraj Mazda Limited (High Court-Punjab and Haryana)

The assessee made payment of "daily allowance" to a Japanese company on account of the stay of Japanese engineers without deduction of tax at source. The AO held that the payment was assessable to tax as "fees for technical services" and that the assessee was liable u.s 201 for failure to deduct tax at source. Apart from the merits that the payment was not taxable as FTS, the assessee argued that it was not liable to deduct tax at source as the AO had issued a 'No Objection Certificate" u.s 195(2). The Tribunal accepted the assessee's plea. On appeal by the department to the High Court, HELD dismissing the appeal:

The AO had issued a certificate u.s 195(2) authorizing the remittance without deduction of tax at source. As this certificate was not cancelled u.s 195(4), the assessee was not required to deduct tax at source and could not be treated as assessee in default. The issue whether the payments were taxable or not need not be gone into.

Despite view taken in s. 195(2)/197 order, s. 147 reopening valid

Areva T&D vs. ADIT (High Court- Delhi))

The assessee was awarded contracts for on-shore supply, on-shore services and off-shore supply by Power Grid Corporation of India Ltd (PGCIL). PGCIL filed an application u.s 195(2) and obtained an order from the AO that tax had to be deducted at 10% on certain payments and at Nil rate on other payments. The assessee obtained s. 197 certificates to the same effect. Subsequently, the AO revised the s. 197 order and directed that tax be deducted at a higher rate even in respect of payments received in earlier assessment years for which Nil rate had been prescribed. This was challenged by the assessee and it was held by the High Court that the revision in TDS rates would apply prospectively. Subsequently, the AO issued a S.148 notice alleging that income had escaped assessment. This was challenged by the assessee on the ground that as the S. 195/197 orders had been passed after full application of mind, the reopening was based on a "change of opinion". HELD dismissing the Petition:

(i) It is well settled that orders passed u.s 195(2) and 197 are provisional and tentative. These orders do not bind the AO in regular assessment proceedings. and do not preempt the Department from passing appropriate orders of assessment. The fact that a determination u.s 195 & 197 is an "order" subject to challenge u.s 264 does not make any difference (Dodsal 260 ITR 507 (Bom) & Elbee Services 247 ITR 109 (Bom) followed);

(ii) Under Explanation 2 (a) to S. 147, a case where no return is filed is deemed to be a case where income has escaped assessment. On a conjoint reading of S.195 and 197, if any opinion is expressed at the time of grant of certificate it is tentative or provisional or interim in nature and does not debar the AO from initiating proceeding u.s 147 on the ground that there has been a change of opinion

Corporate Veil can be lifted to tax sale of Foreign Co shares by one Non-Resident to another Non-Resident if Foreign Co holds shares in Indian Co

Ritcher Holding Limited vs. ADIT (High Court- Karnataka)

Following the Bombay High Court's judgment, in the case of Vodafone International Holdings, B.V. vs. UOI, the Karnataka High Court in its recent judgment held, that the corporate veil can be lifted to tax sale of foreign company shares by one non-resident to another non-resident, if foreign company holds shares in Indian Company. The assessee, a company based in Cyprus, bought shares (100% together with another company) of a UK company called Finsider International, from another UK company. Finsider, UK, held 51% shares of Sesa Goa Ltd,

India. The AO took the view that the 51% shares in Sesa Goa held by Finsider, UK, constituted a capital asset u.s 2(14) and that the transfer of the shares of Finsider amounted to a transfer of the said 51% shares of Sesa Goa and that the assessee was liable to deduct tax at source u.s 195 when it bought the shares of Finsider, UK. He accordingly issued a show-cause notice u.s 201 seeking to treat the assessee as a defaulter. The assessee filed a Writ Petition to challenge the notice on the ground that as one non-resident had sold shares of a foreign company to another non-resident, there was no liability under Indian law. HELD not accepting the assessee's contention:

What is under challenge is only the show-cause notice issued u.s 195 it may be necessary for the fact finding authority to lift the corporate veil to look into the real nature of transaction to ascertain virtual facts. It is also to be ascertained whether the assessee, as a majority shareholder, enjoys the power by way of interest and capital gains in the assets of Sesa Goa and whether transfer of shares in the case on hand includes indirect transfer of assets and interest in Sesa Goa.

Capital gains earned by a Dutch company on transfer of shares held in an Indian company to a foreign company is taxable only in Netherlands

VNU International B.V. (AAR- New Delhi)

Assessee, a company incorporated in Netherlands, held hundred per cent shares of an Indian company. It executed a share purchase agreement whereby it sold shares of said Indian company to a Switzerland company. The contention of the assesseee was that transfer of shares in question would be governed by article 13(5) of the Tax Treaty and any capital gain earned by it would be taxable only in Netherlands and as the said transfer of shares is not liable to tax in India, the transfer pricing provisions would not apply.

Held,

- The capital gains earned by the assessee on transfer of shares would be covered by article 13(5) of the Tax Treaty and shall be taxable only in the Netherlands, the State of which the transferor is a resident.
- The transfer pricing provisions from S. 92 to 92F would not be attracted as the sale and purchase of shares is between two non-resident companies.
- Since there is no income chargeable to tax, there would be no liability to deduct tax u.s 195.
- The compliance to machinery provisions u.s 139(1) assumes importance especially when the non-resident applicant raises questions on the basis of a single transaction. The argument that it would be burdensome to comply with the formalities of filing the return is not a valid excuse.
- It is clear from a reading of S.139 (1) that the obligation to file return of income has been casted on every company, irrespective of the fact whether its income is profit or loss. The applicant, being a foreign company, is covered within the definition of a company u.s 2(17).
- Therefore, even if capital gain is not taxable in India applicant is required to file return of income u.s 139.

Employee not liable to pay s. 234B interest for failure to pay advance tax on salary

DIT Vs. Maersk Co. Limited as agent of Mr. Henning Skov (Uttaranchal High Court – Full Bench)

The assessee, a foreign company, entered into a contract with ONGC pursuant to which it supplied technicians. The AO treated the assessee as an agent of the technician – employees and assessed their income under the head "salaries". Interest u.s 234B was levied on the ground that the employees had not paid advance tax. The CIT (A) & Tribunal upheld the claim of the assessee that the employees were not liable to pay advance tax as the tax was "deductible" at source u.s 192. On appeal by the department, the issue was referred to a Full Bench. HELD by the Full Bench:

U.s 208, an employee is not liable to pay advance tax on salary because u.s 192 there is an obligation on the employer to deduct tax at source. The employee cannot foresee that the tax deductible under a statutory duty imposed upon the employer would not be so deducted. The employee proceeds on the assumption that the deduction of tax at source has statutorily been made or would be made and a certificate to that effect would be issued to him. If the employer fails to deduct tax at source, the employee becomes liable to pay the tax directly.

However, the liability to pay interest remains upon the person responsible to deduct tax at source. The department is entitled to proceed against the employer u.s 201(1A).

Interest on Tax refund not "effectively connected" with PE

ACIT vs. Clough Engineering Limited (ITAT Delhi – Special Bench)

The assessee, an Australian company, had a PE in India from which it carried on business in India. The assessee received interest on income-tax refund of TDS. While the assessee claimed that the interest was taxable on gross basis at 15% under Article XI(2) of the DTAA, the AO & CIT(A) claimed that the interest was "directly connected with the PE" and so assessable under Article VII. On appeal, the issue was referred to the Special Bench. HELD by the Special Bench, deciding in favour of the assessee:

Under Article 11(4) of the DTAA, interest from indebtedness "effectively connected" with a PE of the recipient is taxable under Article 7 and not under Article 11. Though the interest was connected with the PE in the sense that it has arisen on account of TDS from the receipts of the PE, it was not "effectively connected" with the PE either on the basis of asset-test or activity-test. The payment of tax was the responsibility of the foreign company and the fact that it was discharged by way of TDS did not establish effective connection of the indebtedness with the PE. In order to be "effectively connected", it is not necessary that the interest income has to be necessarily business income in nature. Even interest assessable under "other sources" can qualify.

S. 9 – Mere relation between business of non-resident and activity in India, facilitating or assisting in conduct of business, sufficient to form 'business connection'

WSA Shipping (Bombay) Private Limited vs. ADIT (ITAT-Mumbai)

In this case, the Mumbai Bench of ITAT, dealt with the scope of the expression 'business connection' as used in S. 163 r.w.s. 9 of the Act.

The assessee, a company engaged in the business of cargo consolidation, received cargo from various shippers/consignors at Mumbai Port Station for shipments to various destinations worldwide. In the process of cargo consolidation, the container obtained from the agents of shipping lines or shipping lines could not be stuffed fully for a particular destination. As the delivery schedule of the cargo had to be strictly adhere to, the assessee stuffed the cargo of various destinations on a particular route in one container and would load the container with the shipping line. The business of the non-resident was trans-shipment of cargo and the assessee engaged their services for shipment of cargo from India to a destination which the assessee could not reach without the assistance of the trans-shipment through the non-resident.

Held, the term 'business connection' is broad in scope. Where there was an element of continuity between the business of the non-resident and the activity in the taxable territory, a mere relation between the business of the non resident and the activity in India which facilitates or assists the carrying on of the business of the non-resident would result in a business connection. The assessee could not segregate the business activity of shipment of cargo as one upto the port of transhipment and the other from the port of transshipment to the port of final destination. Both these activities were integrated activities. The absence of privity of contract between the customer in India and the non-resident would not be a ground to hold that the non-resident did not have business connection in India. The transaction as between the person in India and the customer in India would not be complete unless the cargo reached the final port of destination. All these facts were sufficient to justify the conclusion that there was a business connection within the meaning of S.163 (1) (b) as well as S.9 (1) (i) of the Act.

Disallowance u.s 40(a) (iii) cannot be made in respect of salary paid to non-residents for services rendered abroad

DCIT vs. Mother Dairy Fruits and Veg.(P.) Ltd. (ITAT- Delhi)

Following the ratio laid down by the Delhi Hugh Court in the case of Van Oord ACZ India (P.) Limited, the Delhi bench of ITAT has re-affirmed that the liability to deduct tax at source arises only when the sum paid to non-resident is chargeable to tax in India.

In the instant case, the salaries had been paid to residents of Netherland for the services rendered in Netherland. Salary payments were neither received in India nor services earned in India as the same were rendered in Netherland. Hence, the provisions of Explanation to S. 9(1)(ii) were not applicable in these case.

In this background it was held, that since salary payments were not chargeable to tax in India, no tax at source was deductible within the meaning of S. 192 of the Act. Accordingly, provisions of S. 40(a) (iii) would not be applicable and disallowance u.s 40(a) (iii) could not be made in respect of salary paid to non-residents for the services rendered abroad.

Domestic tax

Instructions regarding income limits for assigning cases to DCIT/ ACIT /ITO.

Instruction No. 6/2011, dated 8.4.2011.

Reference has been made to board's instruction No. 1/11, dated 31.01.2011 which lays down revised monetary limit of cases to be assessed by DCIT/ACIT in metro cities and mofussil areas w.e.f. 1.4.2011. Some CCIT have expressed the view that the limits fixed in the aforesaid instruction, if strictly enforced would lead to unequal distribution of workload between the ACITs and the ITOs in some of the charges.

In view of the above, the Instruction No. 1, dated 31.01.2011 has been reconsidered by the Board and it has been decided that if the application of above limits in any CIT charge leads to a substantially uneven distribution of workload between DCIT/ACIT and ITOs, the CCIT/DGIT may adjust the above limits by an amount of upto Rs. 5 lakhs to ensure that the workload is equitably distributed amongst the AO after recording reasons in this regard. It is further clarified that the mofussil areas referred to in the Instruction No. 1/2011 means all stations other than the metro cities of Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Ahmedabad, Pune and Bangalore.

Directions of the Hon'ble Supreme Court - Taking opinion of technical experts and bringing on record technical evidence in cases involving complex issues of technical nature and substantial revenue.

Instruction No. 5/2011, dated 30.3.2011 in reference to CIT-Delhi Vs. Bharti Cellular Ltd.2010 dated 12.08.2010.

In view of the directions of the Supreme Court, the CBDT has issued instructions directing that in all cases which are taken up for scrutiny, the AO / TPO should frame assessment orders only after bringing on record appropriate technical evidence that may be required in a case. The Officer concerned shall

bring such cases to the notice of the CCIT/DGIT concerned, who will look into the complexities of the technical issues and monitor the progress of the case and if required assist in obtaining the opinion of the technical experts in the relevant field of /expertise and endeavor to arrange for the opinion of the concerned technical expert well within time. Further, the evidence so gathered shall be made available to the assessee and reasonable opportunity provided before the assessment order is passed.

CBDT'S Instructions on issuance of TDS certificates in Form No. 16A and option to authenticate same by way of digital signatures.

Circular No. 3/2011 dated 13.5.2011.

A common link has now been created between the TDS certificate in Form No.16A and Form No.26AS through a facility in the Tax Information Network website which will enable a deductor to download TDS certificate in Form No.16A from the TIN Website based on the figures reported in e-TDS statement filed by him. As both Form No.16A and Form No.26AS will be generated on the basis of figures reported by the deductor in the e-TDS statement filed, the likelihood of mismatch between Form No.16A and Form No.26AS will be completely eliminated.

Processing of statement of tax deducted at source and procedure for regulating refund of excess amount of TDS deducted and/or paid.

Circular No. 2/2011, Dated 27-4-2011.

In supersession of the circular No. 285, dated 21-10-1980, the Board prescribes the following procedure for regulating refund of amount paid in excess of tax deducted and/or deductible in respect of TDS on residents covered u.s 192 to 194LA of the Act. This circular will not be applicable to TDS on non-residents falling u.s 192, 194E and 195 which are covered by circular No. 7/2007 issued by the Board. The excess payment to be refunded would be the difference between:

(i) the actual payment made by the deductor to the credit of the Central Government; and

(ii) the tax deductible at source.

In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year. In case, the detection of such excess amount is made beyond the financial year concerned, such claim can be made to the AO (TDS) concerned. However no claim of refund can be made after two years from the end of financial year in which tax was deductible at source. However, to avoid double claim of TDS by the deductor as well as by the deductee, the following safeguards must be exercised by the AO concerned:

The applicant deductor shall establish before the AO that:

(i) it is a case of genuine error and that the error had occurred inadvertently;

(ii) that the TDS certificate for the refund amount requested has not been issued to the deductee and

(iii) that the credit for the excess amount has not been claimed by the deductee(s) in the return of income or the deductee(s) undertakes not to claim such credit.

Prior administrative approval of the ACIT/CIT (TDS) concerned shall be obtained, depending upon the quantum of refund claimed.

Amendment in Rule 12 and substitution of Income Tax Return Forms in Appendix-II.

Notification No. 18/2011 , dated 5-4-2011

The CBDT has, through this Notification No. 18 /2011 dated 5th April 2011, notified Income tax (3rd Amendments) Rule, 2011 which has come into effect from 1st April 2011.Through this notification, the CBDT has notified the new return forms for the assessment year 2011-12. Further, Rule 12 of the Income tax Rules 1962 has also been amended in respect of the following-

a. Reference to return of fringe benefits has been deleted.
b. Form Saral – II has been substituted by the form " SAHAJ"

c. The return of income in case of a person being an individual and HUF deriving business income and such income is computed on presumptive basis u .s 44AD and S. 44AE to be in form SUGAM (ITR-4S) and be verified in the manner indicated therein.

The CBDT also issued the list of specification for printing of the SAHAJ and SUGAM Forms.

Identity of share applicants would be established where assessee had furnished copies of their applications for allotment of share PAN details and company details downloaded from MCA site.

Commissioner of Income-tax Vs.Winstral Petrochemicals (P.) Ltd. (Delhi High Court)

In a recent judgment, the High Court of Delhi held, that where the assessee furnished copies of the applications made by applicant companies for allotment of shares, confirmation of payments, copies of their certificate of incorporation, print outs of their PAN details, copies of their PAN cards as well as company details and the same, in response to notices issued under section 133(6) of the Act, were confirmed by the applicants who also supplied copies of their accounts, the AO was not justified in holding that the identity of the applicants was not verifiable and therefore the additions made by the AO deserved to be deleted.

The High Court observed, that merely because some of the applicants had a common address and the ITO making field inquiries did not find five applicants functioning at the addresses provided to him it could not be said that the identity of applicants is not verifiable. There is no legal bar to more than one companies being registered at the same address. Since the applicant companies were duly incorporated, were in possession of valid PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they cannot be said to be non-existent, even if, after submitting the share application they had changed their address or had stopped functioning.

The High court further observed that if the AO entertained any doubts about the documents furnished by the assessee then the onus to verify the genuineness of the same lied on the AO.

If by virtue of S. 80-IC, no income-tax is payable by an assessee, being a company, it would be liable to pay income-tax to the extent as mentioned in S.115JB and that was and still is the very object of inserting S. 115JB in the Act.

Sidcul Industrial Association Vs. *State of Uttarakhand (High Court - Uttarakhand)*

In the instant case, writ petitions were filed on behalf of various companies, contending that in relation to the companies covered by section 80-IC, provisions envisaged in section 115JB were not applicable.

In this respect the High Court of Uttarakhand observed that, the Legislature, while enacting section 80-IC, made it a part of Chapter VI-A of the Act, where provisions have been made for deductions to be made in computing total income. If the assessee is a company and comes within the purview of S.80-IC, it is entitled to deductions, to the extent specified therein, to be made in computing its total income. S. 80-IC does not exempt an assessee covered by the said section from paying income-tax.

The High Court further observed that as a result of deduction under section 80IC, if a company has only such profits and gains as mentioned in the section, that company would not be liable to pay any income-tax. But by virtue of section 115JB, if the same is made applicable to the company, it will be liable to pay such tax as is mentioned in section 115JB. Section 80-IC deals with a matter totally alien to section 115JB and, accordingly, there cannot be any question that both cannot be read harmoniously. Section 80-IC allows deduction whereas section 115JB says that if after allowing such deduction, income-tax payable is less than what has been mentioned in S.115JB, the assessee, if it is a company, will be liable to pay income-tax to be ascertained in the manner and to the extent prescribed in S.115JB.

In this reference the High Court held that,

Since these two sections deal with two different situations, they play their role in two different situations and, accordingly, should be read to ascertain the purpose thereof as depicted by the clear words mentioned therein. Whereas section 80-IC grants deduction to all assessees and, accordingly, a company is also entitled to such deduction, section 115JB applies only to a company and comes into play only when, after such deduction, income-tax payable by it is less than what has been mentioned therein and thereupon fastens a totally new income-tax liability to the extent mentioned therein.

Where assessee, a leading cricketer, claimed deduction under section 80RR in respect of income from modeling and advertising, it was held that said income was derived by assessee from profession of 'an artist' and, thus, entitled to be claimed as a deduction.

Sachin R. Tendulkar Vs. Assistant Commissioner of Income-tax (ITAT- Mumbai)

The assessee, a leading cricketer, received certain amount from sports sponsorship and advertisements which included an amount of Rs. 5,92,31,211 received in convertible foreign exchange from different companies. In respect of the amount received in convertible foreign exchange, the assessee claimed deduction under section 80RR, on the ground that said income had been received from the exercise of his profession as an 'actor'. The assessee's claim was rejected by the AO on the ground that the assessee being a cricketer by profession could not derive professional income from modeling and advertising. The AO's contention was, that by endorsing any products in advertisements the assessee did not become a person whose profession was acting. On appeal, the CIT (A) confirmed the assessment order. The CIT(A) observed that, the activity of appearing in advertisement or commercials, etc. could not be equated with that of an actor or artist and this activity was subsidiary activity of the assessee and was also not directly related to his profession of playing cricket. Therefore, any subsidiary activity which was not directly related to the specific profession could not be allowed under S.80RR.

However, the Mumbai Bench of ITAT held that, the assessee, while appearing in advertisements and commercials, had to face the lights and camera. As a model, the assessee brought to his work a degree of imagination, creativity and skill to arrange elements in a manner that would affect human senses and emotions and to have an aesthetic value. No doubt, being a successful cricketer, it had added to his brand value as a model. But the fact remained that the assessee had to use his own skills, imagination and creativity. Every person or for that matter every sportsman does not possess that degree of talent or skill or creativity and face the lights and camera etc. Thus it was held that the income received by the assessee from modelling and appearing in T.V.commercials and similar activities could be termed as income derived from the profession of 'an artist'.

Deliberately wrong and fictitious entries, cannot be enforced against the assessee simply because by such alleged wrong entry, assessee had shown higher amount of income.

Modern Malleables Ltd. Vs. CIT (High Court- Kolkata)

The assessee-company imported aluminum ingots/rods of certain value from two Swiss companies. Those imported goods were sold to an Indian company, J.J.H. Upon payment to the Swiss suppliers, their respective accounts were debited and upon a sale to J.J.H. the account of J.J.H. was debited with corresponding credit to the revenue account.

Had proper entries been passed, the account of Swiss suppliers to which debits had been made upon payment for the imported goods should have been closed by transferring the same to the purchase account. But in fact, the account of Swiss suppliers was closed by transfer to the account of J.J.H. under the head "Advances". Resultantly, in respect of the sale of the imported materials to J.J.H., the income stood accounted for but there was no debit to the purchase account by way of expenditure. Instead, J.J.H.'s account stood debited twice, once at the time of sale and again upon the closure of the Swiss suppliers' accounts.

In the year under consideration, the assessee did not claim any deduction in respect of the said amount. The assessee

accordingly filed revised return for the relevant assessment year wherein the amount not debited to the purchase account was reduced from the taxable income. In the assessment proceedings, the AO did not dispute the facts stated by the assessee but disallowed the claim on the ground that the mistake was not bona fide or inadvertent but deliberate. On appeal, the CIT (A) and the ITAT upheld the order of AO. All the authorities below refused to go into the question of rectification of the said mistake on the sole ground that it was not a bona fide mistake but a deliberate and fictitious entry and, thus, should not be rectified.

In this background the High Court of Kolkata observed that, the nature of the original entry in the accounts, on the face of it, was not in conformity with the law of accountancy. In such a case, it was the duty of the revenue to call for explanation from the assessee and to come to a definite conclusion as regards the real nature of the transaction and to assess the tax and to force the person really responsible for payment of the tax. It was therefore held that, by merely describing the entry as a deliberate wrong entry, the Assessing Authority could not enforce the apparent wrong entry against the assessee simply because by such alleged wrong entry, the assessee had shown higher amount of income.

S. 260A read with S. 208A of the Act - High Court appeal.

CIT Vs. Delfi Race Club Ltd. (High Court- Delhi)

As per the recent guidelines of the CBDT, appeal in those cases where the tax effect is less than Rs 10 lacs, are not to be entertained and such circular would also apply to pending cases.

CIT Vs. Varindera Construction Co. Baghapurana - (P&H) (FB)

Circular Laying down monetary limit controls the filing of the appeals and not their hearing. Appeals filed as per applicable limit at the time of hearing cannot be governed by circular applicable at the time of hearing. The object of circular under section 268A is only to govern monetary limit for filing of the appeals. There is no scope for reading the circular as being applicable to pending appeals.

Accordingly, monetary limit laid down vide circular dated 15.05.2008 will apply only to filing of appeals. Appeals already filed and pending prior thereto will be governed by monetary limit laid down at the time of filing.

S.45 read with S. 29 of the Act – merely because shares were acquired out of borrowed funds, the nature of transaction would not be changed from investment to nature of trade.

CIT Vs. Niraj Amidhar Surti (High court- Gujarat)

The assessee, a Chartered Accountant in its return of income offered both professional income as well as income from purchase and sale of shares. Most of the shares were disposed by the assessee within a period of two years. The shares were recorded in the books as investment and not stock in trade. After the shares in question were sold, the assessee made investment under the provision of section 54BC in the Bonds of NABARD.

For the purpose of purchasing the shares in question, the assessee obtained loan from an investment company at an interest rate of 30 per cent. On this ground alone the AO held that the transaction in question was an “adventure in the nature of trade” and not an investment.

On appeal before the Gujarat High Court it was held that, where the relevant factors and circumstances determined the character of transaction to be that of capital nature, the mere fact that shares had been purchased from borrowed funds obtained on high rate of interest, would not change the nature of transaction from investment to one in the nature of an “adventure in the nature of trade”.

Vehicle hire charges fall within the scope of S. 194C instead of S.194I of the Act.

Ahmedabad Urban Development Authority Vs. ACIT (ITAT - Ahmedabad).

In the instant case, the assessee, a local authority engaged in development of areas hired cars on fixed rental basis. The assessee treated the same as contractual payments and deducted tax at source @ 2% under section 194C of the Act.

While framing order under section 201 of the Act, the AO held that since the cars are a type of machinery and rent is paid on fixed monthly basis, the applicable TDS rate would be that prescribed under section 194I of the Act (i.e. hire of plant and machinery). On appeal before the CIT(A), the said order of the AO was upheld.

On further appeal before the ITAT, it was observed that, payments were made towards the works contract for plying of employees from one place to another and not towards hiring of vehicles. The vehicles were owned and maintained by the contractor himself while the assessee made fixed payments for the services rendered under a contract. All other expenses of diesel, repair and insurance etc. were borne by the contractor. It was therefore held, that under facts of the case the action of the AO in applying the provisions of section 194I of the Act, in which vehicle hire charges have not been mentioned, is not justified.

Earlier also the ITAT Ahmedabad "B" Bench in the case of M/s. Mukesh Travels Co. Vs ITO on identical facts, considering the explanation (iii) to S. 194C of the Act held that the payments of similar nature clearly fall within the scope of S. 194C of the Act.

Short term capital gain arising from the transfer of depreciable assets held for more than 36 months u.s 50A(2) of the Act can be set off against brought forward loss from other long term capital assets.

Manali Investments Vs. ACIT – {ITAT – Delhi}

Relying on the judgment pronounced by the ***Bombay High Court in the case of Ace Builders***, the Mumbai Bench of ITAT in the above mentioned case held that section 50 of the Act is a deeming provision and the same has to be restricted only to the computation of capital gain of depreciable assets. Once the computation part is over, the operation of section 50 of the Act comes to an end and the capital gains so determined shall be dealt with as per the other provisions of the Act. Therefore the short term capital gains arising from the transfer of depreciable assets held for more than 36 months under section 50(2) of the Act can be set-off against the brought forward long term capital losses under section 74 of the Act.

Merely because assessee was eligible to claim benefit of S. 80-IB but did not claim same in first year would not mean that he would be deprived from claiming that benefit in subsequent assessment year

Praveen Soni Vs. *Commissioner of Income-tax (High Court-Delhi)*

The assessee, a proprietorship concern engaged in the business of manufacturing and exports of readymade garments commenced its operations from 1-7-1997 and therefore became entitled to avail the benefit of section 80-IB for assessment years 1998-99 to 2007-08, being ten years from the year of commencement of operations. However, the assessee did not claim any deduction under the said provision in the assessment year 1998-99. The claim for benefit under the aforesaid provision was made for the first time by the assessee in the assessment year 2004-05 and the assessee pleaded that even if he had not claimed that benefit for the past years, it should be allowed to him from 2004-05 till the remaining period of 10 years, *i.e.*, up to 2007-08.

The request of the assessee was denied by the AO on the ground that the assessee had not availed the same in the first year of production, *i.e.*, assessment year 1998-99. He also opined that since the assessee was not registered as small scale industrial undertaking under the provision of Industries (Development and Regulations) Act, 1951 ('IDR Act',) he was not entitled to claim the benefit under S. 80-IB. Appeals filed by the assessee before the CIT (A) as well as the ITAT were dismissed.

On appeal to the High Court it was held that;

If the assessee fulfilled the requirement of small scale industrial undertaking, he would have qualified for that

deduction from the assessment year 1998-99. Had the assessee claimed that benefit in that year, he would have been allowed that benefit for 10 consecutive years, i.e., till assessment year 2007-08. However, merely because of the reason that though the assessee was eligible to claim that benefit, but did not claim in that year would not mean that he would be deprived from claiming that benefit till the assessment year 2007-08, which was the period for which his entitlement would accrue. The provisions contained in section 80-IB nowhere stipulate any condition that such a claim has to be made in the first year failing which there would be forfeiture of such claim in the remaining years. Thus there was no reason for the AO to deny the assessee's claim for deduction, if the conditions stipulated under section 80-IB were fulfilled. Also, it was not incumbent upon the assessee to be registered under the IDR Act for claiming the benefit u.s 80-IB(3) or otherwise.

Where requirements of proviso to S.147 are not satisfied, no notice u.s 148 can be issued beyond a period of 4 years even if amount of tax escaping assessment is more than or likely to be more than 1 lakh rupees.

Sayaji Hotels Ltd. Vs. Income-tax Officer-Ward 4(3), (High Court- Gujarat)

The assessee, a company carrying business in the hospitality industry was assessed u.s 143 (3) of the Act for the assessment year 2003-2004. The tax was calculated as per the book profits u.s 115JB of the Act. Subsequently it came to the Department's notice that book profits under section 115JB were wrongly computed and therefore a notice under section 148 of the Act was issued.

The assessee filed a writ application contending that there was no failure on its part to disclose fully and truly all material facts necessary for assessment and thus the said notice being served after four years from the end of the relevant assessment year i.e., 31.03.2004, was barred by limitation and was required to be set aside and quashed.

However, the revenue contended that under section 149 of the Act, where the income chargeable to tax which had escaped assessment was more than one lakh rupees, reassessment beyond a period of four years and upto the period of six years would be valid.

The High Court held, that the provisions of said section 149 does not in any manner override the proviso to section 147 which lays down that no action shall be taken under section 147, after the expiry of four years from the end of the relevant assessment year unless the conditions stipulated under proviso to section 147 are satisfied.

Tribunal has power to stay beyond a period of 365 days in cases where the delay is not attributable to the assessee.

Tata communications Limited Vs. Assistant Commissioner of Income Tax (ITAT, Mumbai – SB)

In the above mentioned case, the Special Bench of Mumbai ITAT held, that despite insertion of third proviso to section 254(2A) of the Act, w.e.f. 1.10.2008, the Tribunal has the power to extend stay beyond the prescribed period of 365 days, provided the delay in disposal of relevant appeals is not attributable to the assessee.

Service tax

Abatement of 70% for AC restaurants and 50% for short term hotel accommodation to be available w.e.f. 1st May, 2011.

Notification No. 34/2011 ST dated 25.04.2011

Notification No. 1/2006 ST dated 01.03.2006 has been amended to grant abatements of the gross amount charged in respect of certain services in the following manner:

(i) 70% in case of services provided by a restaurant, having the facility of air conditioning in any part of the establishment, at any time during the financial year, which has license to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;

(ii) 50% in case of services provided by a hotel, inn, guest house , club or campsite in relation to providing of accommodation for a continuous period of less than three months.

The abatement would be available with effect from 01.05.2011

Hotel accommodation with tariff less than Rs.1, 000/- per day exempt from service tax w.e.f. 1st May, 2011.

Notification No. 31/2011 ST dated 25.04.2011

With effect from 01.05.2011, short-term accommodation provided by hotel, inn etc. u.s 65(105) (zzzw) of the Finance Act, 1994 with the declared tariff of less than Rs.1000 per day would be exempted from the whole of the service tax.

Here, 'declared tariff' includes charges for all amenities provided in the unit of accommodation like furniture, air conditioner, refrigerator etc, but does not include any discount offered on the published charges of such unit.

Representational Services provided by Chartered Accountants, Cost Accountants and Companies Secretaries liable to Service Tax w.e.f. 1st May, 2011.

Notification No. 32/2011 ST dated 25.04.2011

With effect from 01.05.2011, Notification 25/2006 ST dated 13.07.2006 exempting the representational services provided by the Practicing Chartered Accountants, Cost Accountants and Companies Secretaries to a client in the professional capacity has been rescinded vide Notification No. 32/2011 ST dated 25.04.2011. Thus, the services in respect of representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice which were hitherto exempted would be liable to service tax with effect from 01.05.2011. Services provided prior to 01.05.2011 would continue to be exempted under the old notification.

It may be advisable to ascertain the services already provided and ensure the billing is completed to avoid disputes at a later point of time. The inclusion of representational services within the scope of the legal consultancy services vides Budget 2011-12 may have prompted such withdrawal of the exemption enjoyed by other professionals who are providing similar services. This may also lead to a situation where all services provided would probably be liable to service tax and eligible credits could be availed without any restrictions.

Exemption to transport of goods by the government railways extended till June, 2011.

Short term capital gain arising from the transfer of depreciable assets held for more than 36 months u.s 50 A (2) of the Act can be set off against brought forward loss from other long term capital assets.

Notification No 19-21/2011 ST dated 30.03.2011

Service Tax levy on transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be applicable from July 1, 2011 instead of April 1, 2011. Consequently, exemption for transport of notified goods like defense military equipments , railway equipment/ materials, postal mail bags by rail etc. and abatement of 70% of the gross amount charged for transport of goods by the government railways and transport of goods by rail otherwise than in containers would also be effective from July 1,2011.

Amendment in Export and Import Rules.

Notification No. 22-23/2011 ST dated 31.03.2011

Second proviso to rule 3(1)(ii) of the Export of Services Rules, 2005 lays down that where management, maintenance or repair service, technical testing and analysis agency's service and technical inspection and certification services provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means , then such

taxable services , whether or not performed outside India, would be treated as taxable service performed outside India.

The said provision has been amended so as to exclude the technical testing and analysis agency's service from the purview of the said proviso. Similarly, the technical testing and analysis agency's service has also been removed from the purview of second proviso to rule 3(ii) of the taxation of Services (Provided from outside India and Received in India) Rules, 2006.

Composition rate in relation to purchase or sale of foreign currency changed.

Notification No. 26/2011 ST dated 31.03.2011

Service Tax Rules, 1994 have been amended as under:

(i) The obligation to issue invoice shall be within 14 days of completion of service and not provision of service.

(ii) If the amount of Invoice is renegotiated due to deficient provision or, in any other way is changed in terms of conditions of the contract (e.g. contingent on the happening or non happening of the future event), the tax will be payable on the revised amount provide the excess amount is either refunded or a suitable credit note is issue to the service receiver. However, concession is not available for bad debts.

(iii) The composition rate in relation to purchase or sale of foreign currency, including money changing, which was reduced from 0.25% to 0.10% vide Notification No. 03/2011-ST dated 01.03.2011, has been changed as follows:-

(a) 0.1% of the gross amount of currency exchanged for an amount up to Rs 100,000, subject to the minimum amount of Rs.25; and

(b) Rs.100 and 0.05% of the gross amount of currency exchanged for an amount exceeding Rs.100,000 and up to Rs. 10,00,000 ;and

(c) Rs.550 and 0.01% of the gross amount of currency exchanged for an amount exceeding Rs. 10, 00,000 subject to minimum amount of Rs.5000.

Scope of exemption granted vide Notification No 19/2009 ST dated 07.07.2009 expanded.

Notification No. 27/2011 ST dated 31.03.2011

Notification No. 19/2009 ST dated 07.07.2009 exempted the banking and financial services provided to a scheduled bank, by any other Scheduled bank, in relation to inter bank transactions of purchase and sale of foreign currency. Notification No. 27/2011 ST dated 31.03.2011 has amended the said notification so as to exempt such services provided to any bank, including a bank located outside India, or money changer , by any other bank or money changer.

Snippets

IT returns filing waiver to benefit 8.5 m taxpayers.

It is expected that about 8.5 million tax payers will benefit from the amendment introduced by the Finance Act, 2011 to exempt persons earning less than. Rs.500,000 a year from filing IT returns. The decision, which will come into effect from June 1, 2011, will reduce the compliance burden of tax payers. A detailed notification on the eligibility criteria for availing the benefit of this scheme is expected shortly.

I-T dept starts tracking visitors to tax havens.

The department has now begun to track all fliers and visitors who travel to tax havens like Switzerland, Virgin Islands and Bahamas for personal or business purposes secretly. The department has focused its intelligence and investigation scanner on all such travelers who have visited tax haven nations last year and have not disclosed the expenditure and instances of such tours in their IT returns. The drive by the IT department is intended to obtain information in it's drive to unearth black money which is suspected to be stashed away essentially in such nations with taxpayer friendly laws called tax havens. The Air Intelligence Unit (AIU) of the department has liaised with the civil aviation authorities to obtain the travel details of all such travelers from various airports of the country and other locations.

Individual Taxpayers need not declare High-value Transactions.

The CBDT has given a breather to individual tax payers from declaring high-value transactions with banks, mutual funds, credit cards, etc via the IT return forms. The newly notified IT forms for the Assessment Year 2011-12 including Sahaj, Sugam, ITR 2, and ITR 3 do not carry the Annual Information Return (AIR) blocks.

Religious Trusts, Non Profit Organizations to face greater scrutiny.

The government plans an umbrella law to tighten financial scrutiny and regulation of religious trusts and non-profit organizations (NPOs). It is also proposed to make public the names of NPOs which claim tax exemption. An inter-ministerial panel has drawn up the contours of the law that has proposed a centralised authority to deal with the non-profit sector The CBDT is planning to strengthen monitoring before granting tax exemptions to NPOs. It is suggested to keep a stricter tab on donors by introducing a mechanism of KYC procedures and a central repository of donors.

IT Department begins work on Real-Time Network.

The Department has embarked on a plan to create a national data centre to facilitate a management information systems based, real-time analysis of data for quick and effective decision making. There will be a single custodian of all data captured by the integrated system. The MIS advisory panel of the department has recommended that the Directorate of Organization and Management Services will be the nodal agency for all statistical data. In the new system, reports of the investigation wing associated with search and seizure activities would be filed within 24 hours. Daily collection reports would be generated through the system. The advisory group has suggested the new MIS format be implemented with immediate effect. The system will have safeguards to ensure security of all information assets and the database, through systemic implementation of periodic vulnerability testing, security and forensic audits to prevent fraud.

Status of foreign company without office in India.

In respect of compliances required to be made by foreign companies under the Indian Companies Act, the Bombay High Court has stated that according to S. 591 of the Companies Act a foreign company is one which has a “place of business” within in India. The mere fact that a company is doing business in India or that it is a party to a joint venture in India would not mean that it has established a place of business in India. The High Court stated this while delivering a judgment in the case of Wills Europe BV.

Prosecution for non disclosure of foreign bank accounts.

The CBDT has issued instructions to tax officers to initiate prosecution against those found to have undisclosed foreign bank accounts, even when the tax proceedings continue to be pending in such cases. The instructions are intended to put greater pressure on those having such undisclosed bank accounts to come clean since the prosecution proceedings shall have criminal liability instead of civil liability.

Statutory compliance calendar

- Deposit TDS from Salaries paid for May, 2011- ***June 07, 2011***
- Deposit TDS from Contractor's Bill, Payment of Commission or Brokerage, Rent, Professional/ Technical Services bills/ Royalty made in May, 2011 ***- June 07, 2011***
- Pay Service Tax in Form TR-6, collected during May 2011 by persons other than individuals, proprietors and partnership firms - ***June 5, 2011***
- Pay Central Excise duty on the goods removed from the factory or the warehouse during May, 2011 **– *June 5, 2011***
- Payment of Monthly Employees' Provident Fund (EPF) dues -***Within 15 days from close of every month***
- Payment of Monthly Employees' State Insurance (ESI) dues -***Within 21 days from close of every month***
- Monthly return of Provident Fund for the previous month (other than international workers) - ***Within 15 days from close of every month***
- Monthly return of Provident Fund for the previous month w.r.t. international workers - ***Within 15 days from close of every month***

Disclaimer

Editor - *Jeetan Nagpal, FCA*
Coordinator - *Nidhi Manocha, ACA*

With inputs from - *Sanjay Arora, FCA*
- *Kamal Nagpal, ACA*
- *Nidhi Manocha, ACA*
- *Aditi Bhasin, ACA*
- *Devina Gupta, ACA*

Our offices:

NEW DELHI
B102A Kalkaji, New Delhi 110019 India
T/F + 91 11 4058 7222

DEHRADUN
1, Tyagi Road, Dehradun 248001 India
T + 91 135 262 7795
F + 91 135 262 6795

ROORKEE
354B, 30 Civil Lines, Roorkee 247667 India
T + 91 1332 27 3343
F + 91 1332 27 7272

For further details, please contact:

Hemant K Arora
hemant.arora@hemantarora.in

Jeetan Nagpal
jeetan.nagpal@hemantarora.in

Sanjay Arora
sanjay.arora@hemantarora.in