

DIRECT TAX

News

Bonanza for government employees, centre increases dearness allowance by 3%

The union cabinet today approved an additional dearness allowance (DA) of 3 per cent over the existing rate of 9 per cent for government employees and pensioners which will be effective from January 1, 2019. This will cost the government around Rs 9,200 crore per year. The move is expected to benefit more than one crore central government employees and pensioners

[Source: The Economics Times]

Breather for startups: Govt raises investment cap for angel tax concession

Giving a major relief to startups, the government has decided to relax angel tax norms for startups, including increasing the investment limit to Rs 25 crore for availing income tax concessions by startups, an official said Tuesday. Currently, startups avail tax concession only if total investment, including funding from angel investors, does not exceed Rs 10 crore. A notification regarding simplifying the process for startups to get exemptions on investments under section 56(2)(viib) of Income Tax Act, 1961, will be issued shortly, the official said.

[Source: Business Standard]

Notifications

Notification No. 275/192/2018 dt. 08/02/2019

Senior citizens claiming deduction under section 80TTB shall not be eligible for deduction under section 80TTA".

[Source: CBDT]

Notification No. 12/2019 dt 27/02/2019

Central Government hereby specifies Nodal Officer, PM-KISAN of all State Governments and Union Territories with sharing of information regarding income tax assessees for identifying the eligible beneficiaries under PMKISAN Yojana.

[Source: CBDT]

Case Laws

PR CIT Central Vs. NRA Iron and Steel P Ltd. (Supreme Court)

Landmark Decision of the Hon'ble Supreme Court on bogus share application money and premium and bogus capital gain.

SC held practice of conversion of unaccounted money through the cloak of share capital/premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal know of the assessee. The assessee is under a legal obligation

to prove receipt of share capital/premium to the satisfaction of AO, failure of which, would justify addition.

Sayarmull Surana vs. ITO (Madras High Court) No need for initiating speedy Prosecution in case of pendency of a case before ITAT.

S. 276C Prosecution: Prosecution should not be launched hurriedly by the Dept during the pendency of case before the ITAT. The law of limitation u/s 468 Cr.P.C. for criminal prosecution has been excluded by the Economic Offences (Inapplicability of Limitation) Act, 1974 & so there is no need for hasty action.



Aamby Valley Ltd vs. ACIT (ITAT Delhi) 2019 (2) TMI 1535

S. 56(2) (viia) is an anti-abuse provision which applies only to cases of bogus capital building and money laundering. It does not apply to an amalgamation where shares are allotted at alleged undervaluation. Increase in general reserves due to recording of assets of amalgamating company at FMV not give rise to any real income to the assessee. It is capital in nature.

PCIT vs. Aegis Limited (Bombay High Court)

S. 92C Transfer Pricing: The TPO cannot re-characterize a transaction of subscription to redeemable preferential shares as being equivalent to interest free loans advanced by the assessee to the Associated Enterprise & charge notional interest thereon. The TPO cannot disregard the apparent transaction and substitute the same without any material or exceptional circumstances pointing out that the assessee had tried to conceal the real transaction or that the transaction in question was sham. The TPO cannot question the commercial expediency of the assessee entered into such transaction.

PCIT vs. PMP Auto Components Pvt. Ltd (Bombay High Court) 2019 (2) TMI 1516

Taxability under Transfer Pricing provisions of shares purchased at value in excess of FMV:

As the transaction of purchase of equity shares is a capital transaction and does not give rise to any income, the transfer pricing provisions do not apply. It can only be invoked to bring to tax any income arising from an international transaction. It is necessary for the revenue to show that income does arise from the international transaction.



Balaji Health Care Pvt. Ltd. vs. ITO (ITAT Jaipur) 2019 (3) TMI 273

The AO cannot reopen without establishing prima facie that assessee's own money has been routed back in form of share capital. While he can rely on the report of the Investigation Wing, he has to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment. In absence thereof, the assumption of jurisdiction u/s 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside.

PCIT vs. Aarham Softronics (Supreme Court) 2019 (2) TMI 1285

S. 80-IC: An assessee availing exemption of 100% tax on setting up of a new industry, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assessee's started availing exemption, they carried out substantial expansion of its industry, from that year the assessee's become entitled to claim exemption @ 100% again

Turner General Entertainment Networks India Pvt. Ltd vs. ITO (Delhi High Court)

S. 220(6) Stay of demand: The AO cannot impose the per se condition that pending consideration of the application for stay of demand, certain minimum amount (15%/ 20%) has to be deposited by the assessee as prescribed by the CBDT. He has to apply his mind and decide the application for stay of demand.

Mukta Gupta vs. ITO (ITAT Delhi)

S. 10(38) Bogus LTCG from Penny Stocks:

Capital gains cannot be treated as bogus solely on the basis that the price of the shares has risen manifold and the reason for astronomical rise is not related to any fundamentals of market. If the transactions are duly proved by trading from stock exchange and the documentation is proper, the gains cannot be assessed as unexplained credit or as unexplained money

Cenveo Publisher Services India Ltd vs. UOI (Bombay High Court) 2019 (2) TMI 725

S. 147 Reopening: If the assessee delays filing objections to the reasons and leaves the AO with little time to dispose of the objections and pass the assessment order before it gets time barred, it destroys the formula provided in Asian Paints 296 ITR 90 (Bom) that the AO should not pass the assessment order for 4 weeks. A writ petition to challenge the reopening will not be entertained.

PCIT vs. Hardik Bharat Patel (Bombay High Court)

Capital Gains vs. Business Profits: As per CBDT Circular No. 6 of 2016 dated 29.2.2016 gains on shares held for more than 12 months are treated as long-term capital gains and not as business profits. The fact that the amounts invested in

shares were out of borrowed funds and there were frequent and voluminous transactions is irrelevant.

GOODS AND SERVICE TAX (GST)

GST Rates for Real Estate Sector to be effective from 1st April, 2019

33rd GST Council Meeting Recommendation

- Effective GST rate of 5% without ITC on residential properties outside affordable segment;
- Effective GST of 1% without ITC on affordable housing properties.

Affordable housing Means A residential house/flat of carpet area of up to 90 sqm in nonmetropolitan cities/towns and 60 sqm in metropolitan cities having value up to Rs. 45 lacs (both metropolitan and nonmetropolitan cities).

Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).



[Source: Clear Tax]

Tax authorities to levy interest on cash, ITC component of GST paid after due date

Tax authorities have made it clear that interest will be levied on both cash and input tax credit (ITC) component of GST paid after the prescribed due date. Although the standing order has been issued by the Principal Commissioner of Hyderabad GST Commissionerate, experts say the same will be applicable for all the regions as it draws inference from C-GST (Central Goods & Services Tax)/S-GST (State Goods & Services Tax) Act. The order also made it clear that recovery of such interest will be recoverable arrears.

[Source: Business Line]

GST: Ice cream, tobacco, pan masala to be excluded from higher threshold limit

Entities engaged in businesses of ice cream, pan masala and tobacco will not be eligible for the proposed higher threshold limit for mandatory registration and new composition scheme for services under the Goods and Services Tax (GST). The new proposals will come into effect from April 1. Under the new mechanism, threshold for goods suppliers in 20 States and the one Union Territory (with Assembly), i.e. Delhi, for mandatory registration will be Rs.40 lakh, against the present Rs.20 lakh.

[Source: Business Line]

GST exemption on TDR/ JDA, long term lease (premium), FSI:

Recommendation

Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable.

Details of the scheme shall be worked out by an officers committee and shall be approved by the

GST Council in a meeting to be called specifically for this purpose. [Source: Tax Guru]

Merger of firm as going-concern will not attract GST, rules AAR

An Advanced Authority Ruling (AAR) has upheld that merger of a proprietorship firm as a going-concern with a company is not a supply and hence it does not involve payment of Goods and Services Tax (GST) on the fixed or current assets. Also, unutilised ITC (Input Tax Credit) balance of the firm can be transferred to the company which is taking over, the ruling said. The applicant is BM Industries, a proprietorship firm based in Yamunanagar, Haryana, engaged in manufacture and sales of aluminium profiles.

[Source: Business Line]

Notifications

Notification 2/2019-Integrated Tax (Rate) dated 04.02.2019

Rescinds Sl. No. 10D of Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017 in relation to exemption of IGST on supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

[Source: CBIC]

REAL ESTATE REGULATION & DEVELOPMENT ACT

UP RERA has decided to deregister six builders in Noida area

After issuing warning to developers whose projects have been delayed, the Uttar Pradesh Real Estate Regulatory Authority has decided to deregister six builders for failing to meet their commitments. The developers include Primrose Infratech for Primrose Ryne Project, PSA Impex for Sampada Livia, MSA Developer for Circuit Heights, Greenbay Infrastructure for Greenbay Golf Homes, Intellicity Business Park for Intellicity Project and Mist Direct Sales for Festival City.

[Source: ET]

Case Laws

Shrikant Pandit, Sudha Pandit V. HDIL

Builders are also entitled to interest for late payment

MahaRERA has held that builders are also entitled to interest for delayed payments in proceedings filed by buyers seeking interest for delay in possession.

The bench presided by B D Kapadnis while deciding the case of Shrikant Pandit and Sudha Pandit V. HDIL decided that as the builders were liable to give possession only on full payment and the payments were pending on buyer's part, hence they are liable to pay the interest on the outstanding amount due on their part.

[Source: MahaRERA]

Gareeb Das V. M/s Paras Greens

Dispute relating to Forged Benami Transaction does not come under the jurisdiction of RERA

The UP RERA Bench presided by Shree Rajiv Kumar (Chairman UP RERA) and Smt. Kalpana Mishra (Member UP RERA) while deciding the case of Gareeb Das V. M/s Paras Greens held that the RERA is not the proper authority to decide such

cases and it does not fall under the ambit of Real Estate (Regulation and Development) Act, 2016.

[Source: UP RERA]

STARTUP FUNDING

Swiggy makes first acqui-hire of the year with AI startup Kintio

Bengaluru-based online food delivery platform Swiggy has announced that it has acquired Kint.io, a Bengaluru-based AI startup. This is the first acqui-hire by the unicorn this year. Last December, the platform had raised \$1 billion in Series H funding led by Naspers and other existing investors. It is the first single largest fund raise by a foodtech company in India. Kint.io is the first technology-led acqui-hire for Swiggy, as it makes large investments in its long-term strategy of building AI-first platforms that enable convenience to consumers, said a release. Belong.co acted as the consulting partner for this acqui-hire.

[Source: Business Line]

US-based investors put Rs 112 crore in Ola

Domestic ride-hailing firm Ola has raised an additional Rs 112 crore from a bunch of US-based investors including Raymond S Cahnman, Chairman of Transmarket Group, philanthropist Tina & Steven Price, J3T Ventures and Lyon Assets, regulatory filings show. The investment comes as part of its ongoing Series-J round which values the company at \$5.7 billion. Last month, the company had received Rs 150 crore from Sachin Bansal and Rs 520 crore from Steadview Capital as part of the same round.

[Source: ET Rise]

Chennai-based FourKites raises \$50 million to fuel growth

Chennai-based supply chain software start-up FourKites announced \$50 million in new funding to fuel growth of its real-time visibility network for shippers and carriers. The Series-C round includes follow-on financing from existing investors August Capital, Bain Capital Ventures, CEAS Investments and Hyde Park Angels. With this, the total capital raised by FourKites stood at \$101.5 million. FourKites, which had been founded five years ago, enables shippers to improve on-time delivery and optimise their supply chain based on actionable data and predictive intelligence. Its network includes more than 200 of the world's top shippers, including AB InBev, Conagra Brands, Kraft Heinz, Nestlé, Perdue Foods, Smithfield Foods, Unilever and Walmart Canada, among others.

[Source: Financial Express]

Zomato raises Rs 284.42 crore from Glade Brook Capital

As fund raising in the online food delivery space intensifies, Zomato has raised Rs 284.42 crore in fresh funding from US-based Glade Brook Capital, according to documents sourced from business signals platform paper vc. The investor has been allotted 13,000 class 1 compulsory convertible cumulative preference shares (CCPS) by Gurgaon-based Zomato. The investment is part of its series-1 financing round. Glade Brook Capital has made



some marquee investments in global tech companies like Alibaba, Uber, Airbnb, among others. [Source: Financial Express]

Pickyourtrail bags \$3m from Freshwork co-founder, others.

Travel portal Pickyourtrail raised \$3 million in a Series A funding round, the company said on Monday. Kumar Vembu, co-founder, Go Frugal; ShyamSekhar, founder of iThought; Freshdesk's co-founder GirishMathrubootham; and others participated in the funding round. After getting more than 10,000 travellers on board, the Chennai-based start-up will use "a major chunk of this fund" for brand building. While most of the bookings come from New Delhi, Mumbai and Bengaluru, Tier 2 cities, including Kochi and Salem, also pull in lone travellers.

[Source: Deal Street Asia]

CORPORATE LAWS & OTHER COMMERCIAL POLICIES

Significant beneficial owners to be penalised for wrong disclosures

Significant beneficial owners in Indian corporates might face strict action for inadequate or wrong disclosures of their ownership, and companies too can seek action against entities in case they fail to provide satisfactory responses, according to rules. With the Corporate Affairs Ministry amending the rules for significant beneficial owners under the Companies Act 2013, corporates are required to take necessary steps to identify such owners and obtain a declaration from them.

[Source: Business Line]

Oyo launches operations in Japan through joint venture with Yahoo

Softbank-backed Oyo announced the commencement of its operations in Japan through a joint venture with Yahoo Japan Corporation to form Oyo Technology and Hospitality Company. Japanese entrepreneur and former Japan market leader for Handy and Booking.com, HiroKatsuse, has been appointed as the CEO of the new entity. Through this entity, Oyo will bring its housing rental product from India, Oyo Living, re-christened as Oyo Life to Japan beginning March

[Source: Money Control]

SEBI

Sebi comes out with rules to review performance of public interest directors

Markets regulator Sebi came out with a strict framework for public interest directors serving at stock exchanges, clearing corporations and depositories. Under the framework, public interest directors (PIDs) will be nominated for three years, extendable by another term of three years. However As Per SEBI this will be subject to a performance review, the Securities and Exchange Board of India (Sebi) said in a circular.

[Source: ET Markets]

SEBI, stock exchanges step up surveillance of intra-day trading; manipulators to face strict action

Capital markets watchdog Sebi and stock exchanges have stepped up their live surveillance

of intra-day trading in select stocks in the wake of increased volatility seen in these scrips; and any manipulator would face strict regulatory action. Sources said that the the Securities and Exchange Board of India (Sebi) has asked the exchanges to beef up their vigil for any possible manipulation in stocks that are witnessing huge volatility and to report any irregularity urgently to the regulator for further action, a source said.

[Source: Money Control]

SEBI comes out with format for annual secretarial audit of listed entities

Markets regulator SEBI came out with the format for listed entities for preparing their annual secretarial audit and compliance reports. This would also be applicable for the "material unlisted subsidiaries" of the listed entities, the regulator said in a circular. Coming out with the circular regarding format for "annual secretarial audit report and annual secretarial compliance report for listed entities and their material subsidiaries," SEBI said the compliance report should be submitted to the exchanges within 60 days of the end of a financial year.

[Source: ET]

INSOLVENCY & BANKRUPTCY CODE

RBI allows cheaper funds for corporate bidders under IBC

The Reserve Bank of India (RBI) has made a special provision for companies bidding for stressed firms under the insolvency and bankruptcy code (IBC) with a view to make funds cheaper for such companies. RBI said bidding companies can now raise foreign currency funds through foreign banks abroad and use these proceeds to repay the bank debt for stressed companies which they are looking to buy.

[Source: Economic Times]

IBC reigns supreme over other civil laws, says Delhi High Court

The Delhi High Court upheld the supremacy of Insolvency and



Insurance Regulatory and Development Authority India

Bankruptcy Code (IBC) over other civil laws such as those of contracts and guarantees and said that only the National Company Law Tribunal (NCLT) or similar adjudicating authorities should deal with the cases falling under the code. If civil courts were to pass any orders in matters pertaining to IBC.

[Source: Business Standard]

INSURANCE REGULATORY & DEVELOPMENT AUTHORITY

IRDAI permits testing of products under regulatory sandbox approach

The insurance regulator granted permission to insurance companies and intermediaries to test their products under the regulatory sandbox approach for a period of six months (which can be extended up to 12 months) before launching it in the market. "However, if the proposal covers 5,000 persons or completes Rs 50 lakhs of premium or any other parameter which the authority specifies, the proposal will deem to have been completed," said IRDAI.

[Source: Business Standard]

BANKING

NPA relief for Indian banks: Bad loans stabilising; credit, deposit improving

In continuing signs of improvement in asset quality of banks in India, the NPA situation in the sector has been stabilising, with the growth in bank NPAs in fiscal third quarter drastically slowing down than that a year ago, a report said. There has been an improvement in growth of credit and deposits in the economy, CARE Ratings said in a recent report. However, banks' net profits continue to remain under pressure, said the report. It further noted an improvement in credit to industry as well as services on year-on-year basis for December 2018 compared to December 2017.

[Source: Financial Express]

MERGER & ACQUISITION

Merger of Vijaya Bank and Dena Bank with BoB to be effective from April 1

Bank of Baroda said the merger of Dena Bank and Vijaya Bank with itself would be effective from April 1 as per the scheme of amalgamation approved by the government. Besides, the board of the bank fixed March 11, 2019, as record date for issuing and allotting equity shares of the Bank of Baroda to the Shareholders of Vijaya Bank and Dena Bank. This scheme may be called the Amalgamation of Vijaya Bank and Dena Bank with Bank of Baroda Scheme, 2019, BoB said citing the government notification. [Source: Money Control]

UNREGULATED DEPOSIT ORDINANCE

Unregulated Deposit Ordinance bans only Ponzi schemes not regulated deposits

The Banning of Unregulated Deposit Ordinance puts a check only on illicit deposit schemes that dupes gullible investors but it does not prohibit those regulated by law like chit funds. To curb menace of Ponzi schemes, President Ram Nath Kovind last week promulgated the Banning of Unregulated Deposit Scheme Ordinance 2019 which seeks to make such unregulated deposit scheme punishable, among other things. [Source: Financial Express]



MISCELLANEOUS

President okays changes in Stamp Act, to help curb tax evasion

President Ram Nath Kovind gave assent to changes in the Indian Stamp Act, 1899, which will rationalise and harmonise stamp duty and help curb tax evasion. The Amendments to the Indian Stamp Act, 1899, were introduced as part of the Finance Act 2019, and was approved by Parliament. The amendments propose to create the legal and institutional mechanism to enable States to collect stamp duty on securities market instruments at one place by one agency (through the Stock Exchanges or Clearing Corporations authorised by the stock exchange or by the Depositories), the Finance Ministry said in his statement.

[Source: Business Line]

Aadhaar-PAN linking mandatory for filing income tax return - SC

The Supreme Court has said that linkage of PAN with Aadhaar is mandatory for filing of Income Tax returns. A bench comprising Justices A K Sikri and S Abdul Nazeer said the top court has already decided the matter and upheld the section 139AA of the Income Tax Act. The court's direction came on an appeal filed by the Centre against a Delhi High Court order allowing two persons, Shreya Sen and Jayshree Satpute, to file Income Tax returns for 2018-19 without linking their Aadhaar and PAN numbers. [Source: Business Standard]

Govt raises limit beyond which employees need to show stock, MF investments

The Centre has increased the monetary limit on disclosure of investment in shares and MF by employees to six months of their basic pay, according to an order issued by the Personnel Ministry. According to the earlier rules, Group 'A' and 'B' officers were to disclose such details if the total transaction in shares, securities, debentures or mutual fund schemes etc. exceeded Rs 50,000 during the calendar year.

[Source: Business Standard]

Govt. eases green clearance norms for captive power plants

The Centre has exempted industries like steel, cement and metal from mandatory prior environment clearance for setting up a new or expanding the existing captive power plant employing waste heat recovery boilers (WHRB) without using any auxiliary fuel. The exemption to industries having potential for heat recovery has been given to promote energy conservation and reduce greenhouse gas emissions, according to an order. This exemption was so far given to thermal power plants using waste heat boilers without any auxiliary fuel. [Source: Business Line]

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