Brahmayya Bulletin

December 2015

Editorial

As we come to the close of an eventful year, we look back into challenges faced and the Government's initiative to curb the challenge. The stakeholders cause have always been well heard by the Government and the concerned departments. This year witnessed changes in various laws and the difficulties in implementation has been well attended to. Companies Act, 2013 and the implementation committee has heard the grievances of stakeholders and one year has successfully passed since its application.

Income Tax Department has worked tirelessly to ensure the Government's vision of a corruption free economy. The Black Money Law is a great step towards a developmental economy couples with multiple arrangements with other nations to combat offshore tax evasion. Middle of 2015 witnessed one of the largest falls in the stock exchange resulting in huge wealth erosion to stakeholders, however, Indian economic fundamentals are strong and RBI has ensured that the country could withstand heavier damage.

Financial reporting is moving towards convergence to International Reporting Standards. With Ind AS (hopefully!) being made mandatory to Indian reporting entities from 2016, corporates have indeed geared up. SEBI has also issued various circulars indicating readiness to change.

While we continue to help all our readers "Experience Excellence", we wish the readers a very happy and prosperous 2016!

Ministry of Corporate Affairs (MCA)

GSR 971(E) - Dated 14th December 2015

In addition to the amendment of allowing companies to undertake Related Party Transactions through an ordinary resolution, this Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015 amends Section 177 whereby a new proviso to Section 177 (4) has been inserted under which Audit Committee may make omnibus approval for related party transactions proposed, based on the criteria approved, to be entered into by the company, subject to such conditions as may be prescribed. Thus, for ease in doing business, now the Audit Committee will be empowered to give omnibus approvals for related party transactions to be entered into by the company. However,

- Omnibus approval shall be valid for a period not exceeding one financial year.
- Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.
- Omnibus approval may be or may not applicable based on other conditions as the Audit Committee may deem fit.
- Insights on Omnibus approval mechanism has been dealt with as a separate article as part of "Our News" section in our Website.

GSR 972(E) - Dated 14th December 2015.

Stringent measures are being put in place to curb misdoings by Management, as Auditors are now required to report any suspected corporate fraud amounting Rs. 1 crore or more to the Central Government vide Companies (Audit and auditors) Amendment Rules, 2015. The following procedure shall be followed

- The auditor shall report the matter to the Board or the Audit Committee, within two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
- On receipt of such reply, the auditor shall forward his report and the reply along with his comments to the Central Government within 15 days from the date of receipt of such reply.
- In case the Auditor fails to get reply within stipulated time, he shall forward the observation and report to Central Government.

The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.

Details of each of the fraud reported to the Audit Committee or the Board during the year shall be disclosed in the Board's Report:

- Nature of Fraud with description;
- Approximate Amount involved;
- Parties involved, if remedial action not taken; and
- Remedial actions taken.

General Circular No. 16/2015 - Dated 30th December, 2015

MCA, after receiving request from various stakeholders keeping in view flood and heavy rains in the state of Tamil Nadu and Puducherry, relaxations of additional fees and extension of last date of in filling of Forms MGT-7 and AOC - 4, AOC - 4 XBRL, AOC – (CFS) is provided upto to 30th January 2016, wherever additional fee is payable.

Central Board of Direct Taxes (CBDT)

Notification No. 3/2015 - Dated 1st December 2015

Section 200 of the Income Tax Act, 1961 provides for filing of TDS statements. The manner of filing such statements and the particulars have been laid down in Rule 31A of the Income-tax Rules, 1962. In exercise of the powers delegated by the CBDT under Explanation to sub-rule (5) of rule 31A of the Income-tax Rules 1962, the Principal Director General of Income-tax (Systems) has laid down the authentication mechanism for filing of correction statements & download of TDS certificates, Consolidated files etc. by Banks and Corporate deductors.

Notification No. 4/2015 - Dated 1st December 2015

Section 197A of the Income Tax Act, 1961 provides for no deduction in certain case by submitting a declaration using Form 15G/15H as laid down in Rule 29C of the Income tax Rules. The manner of filing such declaration and the particulars have been laid down in Rule 29C of the Income tax Rules. The person responsible for paying any income of the nature referred to in sub Section (1) or sub Section (1A) or sub Section (1C) of Section 197A (hereinafter called "payer") shall enable the payee to furnish the declaration in electronic form after due verification through an electronic process. The declarant shall mandatorily quote his/her PAN in the declaration form 15G/H in accordance with the provisions of Section 206AA(2). A unique identification number shall be

allotted to declaration (paper/electronic). The payer shall digitise the paper declaration and upload all declarations (including electronic declaration and digitized declaration) received during a particular quarter at departmental site, i.e., www.incometaxindiaefiling.gov.in on quarterly basis.
Further, clause 5 of rule 29C provides that the payer shall also furnish transactions covered under 15G/15H declarations in quarterly TDS statement in accordance with the provisions of clause (vii) of sub rule (4) of rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

Principal Director General of Income Tax (Systems) shall specify the procedure, formats and standards in this regard to:

- Furnishing and verification of electronic declaration
- Allotment of UIN (Unique Identification Number)
- Furnishing or making available the declaration to the Income Tax Authority.
- Reconciliation Mechanism

Notification No. 88/2015 - Dated 1st December 2015

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government has directed that all the provisions of the agreement and protocol between the Government of the Republic of India and the Government of the Kingdom of Thailand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which was signed in Thailand on 29th June 2015, and came into force on 13th October, 2015, shall have effect in India in respect of income derived in any fiscal year beginning on or after 1st April 2016.

Notification No. 89/2015 - Dated 2nd December 2015

Section 282 provides for the different modes of service of notice or summon or requisition or order or any other communication under the Income-tax Act, 1961 to the assessees.

The address (including email ids) to which such communication may be delivered is currently clarified through this notification.

For communications to be delivered or transmitted through post/courier and/or as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons, the following addresses may be referred:

I. the address available in the PAN database of the addressee; or
II. the address available in the income-tax return to which the communication relates; or
III. the address available in the last income-tax return furnished by the addressee; or
IV. in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs.

However, the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication.

For communications to be delivered or transmitted electronically, the following addresses may be referred:

I. e-mail address available in the income-tax return furnished by the addressee to which the communication relates; or
II. the email address available in the last income tax return furnished by the addressee; or
III. in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or
IV. any email address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.

The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.

Notification No. 95/2015 - Dated 30th December 2015

The Government is committed to curbing the circulation of black money and widening of tax base. To collect information of certain types of transactions from third parties in a non-intrusive manner, it is mandatory under Rule 114B of the Income Tax Rules to quote PAN where the transactions exceed a specified limit. In case of transactions of sale or purchase of goods and service PAN will be required to be quoted, irrespective of the mode of payment if the transaction exceeds Rs. 2 Lakhs. To bring a balance between burden of compliance on legitimate transactions and the need

to capture information relating to transactions of higher value, the Government has amended Rule 114B to enhance the monetary limits of certain transactions which require quoting of PAN. These changes will take effect from 1st January, 2016.

Circular No. 21/2015 - Dated 10th December 2015

The CBDT has, through this Circular revised the monetary limits for filing of appeals by the

Department with the objective of reducing litigation as a part of its initiatives to reduce grievances of the taxpayers. The monetary limits for filing of appeals by the Department before respective forums has been revised as follows:

Forum	Original Tax Effect	Revised Tax Effect
ITAT	Rs. 4 Lakhs	Rs. 10 Lakhs
High Court	Rs. 10 Lakhs	Rs. 20 Lakhs
Supreme Court	Rs. 25 Lakhs	Rs. 25 Lakhs

The revised limits have been made applicable retrospectively to pending appeals also. Directions have been issued that pending appeals which are below the revised monetary limits may be withdrawn or not pressed.

Circular No.22/2015 - Dated 17th December 2015

As per Section 43B of the Act certain deductions are admissible only on payment basis. It is observed by the Board that some field officers disallow employer's contributions to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, by invoking the provisions of Section 43B of the Act, if it has been paid after the 'due dates', as per the relevant Acts.

The CBDT has examined the matter in light of the judicial decisions on this issue.

In the case of Commissioner vs. Alom Extrusions Ltd, [2009] 185 TAXMAN 416 (SC), the Apex Court held that the amendments made in Section 43B of the Act i.e. deletion of second proviso and amendment in the first proviso, being curative in nature are retrospectively applicable from 1st April 1988. It further held that by deleting the second proviso to Section 43B of the Act and amending the first proviso, the contribution to welfare funds have been brought at par with the other duty, cess, fee, etc. Thus, the proviso is equally applicable to the welfare funds also. Therefore the deduction is allowable to the employer assessee if he deposits the contributions to welfare funds on or before the 'due date' of filing of return of income. Accordingly, w.e.f. 1st April 1988, the settled position is that if the assessee deposits any sum payable by it by way of tax, duty, cess or fee by whatever name called under any law for the time being in force, or any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, on or before the 'due date' applicable in his case for furnishing the return of income under Section 139(1) of the Act, no disallowance can be made under Section 43B of the Act.

In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the CBDT has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/ not pressed upon.
It is further clarified that this Circular does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by Section 36(1)(va) of the Income Tax Act, 1961.

Circular No.25/2015 - Dated 31st December 2015

Section 115JB of the Act is a special provision for levy of Minimum Alternate Tax on Companies, inserted by Finance Act, 2000 with effect from 1st April 2001.

Under Section 271(1)(iii) of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is determined based on the "amount of tax sought to be evaded" which has been defined inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income or income in respect of which inaccurate particulars had been filed. In this context, the Hon'ble Delhi High Court in its judgment dated 26th August 2010 in ITA No.1420 of 2009 in the case of Nalwa Sons Investment Ltd. (available in NJRS as 2010-LL-0826-2), held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of Section 115JB of the Act, then penalty under Section 271(1)(c) of the Act could not be imposed with reference to additions/ disallowances made under normal provisions. The judgment has attained finality. Subsequently, the provisions of

Explanation 4 to Section 271(1) have been substituted by Finance Act, 2015, which provide for the method of calculating the amount of tax sought to be evaded for situations even where the income determined under the general provisions is less than the income declared for the purpose of MAT under section 115JB of the Act. The substituted Explanation 4 is applicable prospectively w.e.f. 1st April 2016.

Accordingly, in view of the Delhi High Court judgment, it is now a settled position that prior to 1-4-2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under Section 271(1)(c) of the Act, is not attracted with reference to additions/disallowances made under normal provisions. It is further clarified that in cases prior to 1st April 2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment.

The above settled position is to be followed in respect of Section 115JC of the Act also. Accordingly, the CBDT has directed that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.

Central Board of Excise and Customs (CBEC) – Central Excise

The CBEC has, through this Circular revised the monetary limits for filing of appeals by the Department with the objective of reducing litigation as a part of its initiatives to reduce grievances of the taxpayers. The monetary limits for filing of appeals by the Department before respective forums has been revised as follows:

Forum	Original Tax Effect	Revised Tax Effect
CESTAT	Rs. 1 Lakhs	Rs. 10 Lakhs
High Court	Rs. 2 Lakhs	Rs. 15 Lakhs
Supreme Court	Rs. 5 Lakhs	Rs. 25 Lakhs

The revised limits have been made applicable retrospectively to pending appeals also. Directions have been issued that pending appeals which are below the revised monetary limits may be withdrawn or not pressed.

Notification No. 27/2015 - CX (N.T) – Dated – 31st December, 2015

CBEC has amended Rule 9 of CENVAT Credit Rules, 2004 to provide that CENVAT credit can also be taken by the manufacturer or the provider of output service or input service distributor, on the basis of a certificate issued by an appraiser of customs in respect of goods imported through an Authorised Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport.

Central Board of Excise and Customs (CBEC) – Service Tax

Circular No. 190/9/2015-ST – Dated 15th December, 2015

Department and Traders have taken a different view with regard to service tax payable on services received by the apparel exporters from third party for job work. Department is of the view that the services received by apparel exporters are of manpower supply, which neither falls under the negative list nor is specifically exempt, hence would be liable to service tax.

However, traders are of the view that the services received by them are of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [Section 66D(f)] and hence would not attract service tax.

The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc.

Thus the exact nature of the service and applicability of service tax on the services received by apparel exporters in relation to fabrication of garments would be determined based on facts of each case which may vary. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided.

Reserve Bank of India (RBI)

DBR.No.BP.BC.65/21.04.141/2015-16 - Dated 10th December 2015

RBI has directed that it would progressively bring down the SLR by 0.25% every quarter till March 31, 2017 and concurrently reduce the ceiling on SLR holdings under HTM in alignment with the SL requirement. Certain relaxations have been given to the Banks to exceed the limit of 25 per cent of total investments under HTM category with certain conditions.

CHENNAI
48, Masilamani Road,
Balaji Nagar, Royapettah,
Chennai - 600014.
Phone: +91 - 044 - 28131128/38/48
Fax: +91 - 28131158

BENGALURU
Khivraj Mansions, 10/2 Kasturba Road,
Bangalore - 560001.
Phone: +91 - 080 - 22274551/52
Fax: +91 – 22212437

VISAKHAPATNAM
1-88-19, Plot No: 135/4,
Sector 4, MVP Colony,
Visakhapatnam 530 017
Phone: (0891) 2755821 & 2755848,
Fax: (0891) 2755848

GUNTUR
10-3-21, 3rd Lane,
Sambasivapet, Guntur - 522001.
Phone: +91 - 863 - 2220347/2224924
Fax: +91 – 2220347

TANUKU
22-29/5 Gubbalavari Street,
Society Road, Tanuku - 534211.
Phone: +91 - 8819 - 221234/224 911

HYDERABAD
No 403&404, Golden
Green Apartments,
Erra Manzil Colony,
Hyderabad - 500082.
Phone: +91 - 040 - 23370002/04
Fax: 23379988

GURGAON (New Delhi)
404, DLF City Court,
Sikandarpur, Mehrauli_Gurgaon Road
(MG Road), Gurgaon,
Haryana – 122002
Phone : +91 - 0124 - 4235522

VIJAYAWADA
No 33-25-33/3, Govinda
Rajulu Naidu Street,
Surya Rao Pet,
Vijayawada - 520010.
Phone: +91 - 866 - 2444592/93/94

KAKINADA
3-16C-40/1, 8th Road, Santhi Nagar,
Kakinada - 5330003.
Phone: +91 - 884 - 2374402/04
Fax: +91 - 2374402, 2363 656

ADONI
142/6, Sri Krishnadevaraya Colony,
Adoni - 518301.
Phone: +91 - 8512 - 253447/222 377
Fax: +91 - 253447

Brahmayya&co.

www.brahmayya.com