



**INCOME TAX UPDATES****SUPREME COURT JUDGEMENTS****a. Sec.48**

For the purposes of Section 48 of the Act, one must keep in mind an important principle, namely, that chargeability and computation has to go hand in hand. In other words, computation is an integral part of chargeability under the Act. It is for this reason that we have opined that the right to subscribe for additional offer of shares/debentures comes into existence only when the Company decides to come out with the Rights Offer. It is only when that event takes place that diminution in the value of the original shares held by the assessee takes place. One has to give weightage to the diminution in the value of the original shares which takes place when the Company decides to come out with the Rights Offer. For determining whether the gains/loss of renunciation of right to subscribe is a short-term or long-term gains/loss, the crucial date is the date on which such right to subscribe for additional shares/debentures comes into existence and the date of renunciation [transfer] of such right.

Navin Jindal Vs. Assistant Commissioner of Income Tax, AIT-2010-14-SC

**b. Sec.80IA**

The process by which a blank Compact Disc (CD) is transformed into software loaded disc- constitutes "manufacture or processing of goods" in terms of Section 80IA(1) read with Section 80IA(12) (b), as it stood then, of the Income Tax Act, 1961. Marketed copies are goods and if they are goods then the process by which they become goods would certainly fall within the ambit of Section 80IA(12)(b) read with Section 33B because an industrial undertaking has been defined in Section 33B to cover manufacture or processing of goods.

Oracle Software India Ltd. Vs. CIT, New Delhi, AIT-2010-20-SC

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**HIGH COURT JUDGEMENTS**

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**c. Sec.194J**

Whether, while making payments to hospitals TPAs are required to deduct tax at source under the provisions of Section 194J - The relief that has been sought in these proceedings is (i) A declaration that the provisions of Section 194J are not applicable to payments made by the Petitioners to hospitals under the cashless hospitalization scheme; (ii) Setting aside of a circular dated 24 November 2009 (circular 8/ 2009) issued by the Central Board of Direct Taxes; (iii) A mandamus directing the Respondents to drop all proceedings initiated for non deduction of tax at source under Section 194J on payments made to hospitals under the cashless hospitalization scheme, and relief ancillary thereto.

Dedicated Health Care Services TPA (India) Pvt. Ltd. and others Vs. ACIT and others, AIT-2010-171-HC

**d. Sec.244**

Whether section 244(1)(b) read with explanation thereto excludes payment of interest on refund of self assessment tax - Where an assessee out of abundant caution pays self-assessment whilst staking a claim in the return, which claim is accepted, resulting in refund of self-assessment tax, the assessee should be equally entitled to interest thereon.

Sutlej Industries Ltd. Vs. CIT, New Delhi, AIT-2010-96-HC

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**INCOMETAX TRIBUNAL JUDGEMENTS**

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**a. Sec. 195 – tax deduction on software purchase**

- Chennai Special Bench ruling:

If the Payer is of the bona fide belief that no part of the payment is chargeable to tax, he need not undergo the procedure of section 195 at all. The Tribunal has chosen not to follow the Karnataka High Court's judgement in the case of Samsung Electronics.

ITO v. Prasad Production Ltd. (ITA No. 663/Mds/2003)

- Mumbai Tribunal

Mumbai bench in the case of Alcatel USA International Marketing Inc (taxpayer) has held that the transfer of licensed software cannot be

considered as 'royalty' within the meaning of article 12(3) of the India-US tax treaty in view of the decision of the Special Bench of the Delhi Tribunal in the case of Motorola Inc., Ericsson Radio Systems AB and Nokia Corporation Inc.

**b. Sec.10A**

The expenditure incurred in foreign currency towards telecommunication travel, project related expenses, computer software written off, other expenses attributable to the delivery of software outside India., etc., is excludible from both export turnover and total turnover for the purposes of computation of deduction under Sec. 10A of the Act.

Sanyo LSI Technology India Pvt. Ltd. Vs. DCIT, Bangalore, AIT-2010-32-ITAT

**c. Transfer pricing**

Interest free loan extended to the associated concerns as at arm's length lending or borrowing money between two associated enterprises comes within the ambit of international transaction and whether the same is at arms length price has to be considered. The question of rate of interest on the borrowing loan is an integral part of arms length price determination in this context. RBI's approval does not put a seal of approval on the true character of the transaction from the perspective of transfer pricing regulation as the substance of the transaction has to be judged as to whether the transaction is at arms length or not

Perot System TSI (India) Ltd. Vs. DCIT, New Delhi, AIT-2010-37-ITAT

**d. Capital gains and non-residents**

The Assessee is an individual. He is a resident of UAE. During the previous year he earned short term capital gain of RS.5,04,89,379/-. He claimed that the short term capital gain cannot be brought to tax in India in view of Article 13(3) of the Indo-UAE DTAA. Since the Assessee was a Resident of UAE, it is only UAE which has a right to tax capital gain and not India.

Shri Rameshkumar Goenka Vs. ITO (International Taxation), Mumbai, AIT-2010-178-ITAT

**RECENT DEVELOPMENTS****❖ New TDS provisions applicable from 1.4.2010**

CBDT has clarified vide Press Release dated 20<sup>th</sup> Jan 2010 that new provision relating to tax deduction at source (TDS) will become applicable with effect from 1st April 2010. Tax at higher of the prescribed rate or 20% will be deducted on all transactions liable to TDS, where the Permanent Account Number (PAN) of the deductee is not available. The law *will also apply to all non-residents* in respect of payments / remittances liable to TDS. As per the new provisions, certificate for deduction at lower rate or no deduction shall not be given by the assessing officer under section 197, or declaration by deductee under section 197A for non-deduction of TDS on payments shall not be valid, unless the application bears PAN of the applicant / deductee.

**SERVICE TAX UPDATES****a. Business auxiliary service**

If the CBU undertakes complete process of manufacture of alcoholic beverage under the "contract bottling arrangement" then such activity would not fall under the taxable service, namely the BAS. However, in case the activity undertaken by the CBU falls short of the definition of manufacture (such as activity of "packing" or "labeling" alone) then such activity would fall within its ambit and would be charged to service tax."

Rubicon Formulations Pvt. Ltd. v. CCCE & ST, AIT-2010-13-CESTAT

**b. Turnkey contracts**

Turnkey contracts can be vivisected and discernible service elements involved therein can be segregated and classifiable as well as valued for levy of service tax under Finance Act, 1994 provided such services are taxable services as defined by that Act and depending on the facts and circumstance of each case, services by way of advice, consultancy or technical assistance in the case of turnkey contract shall attract service tax liability.

BSBK Pvt. Ltd. v. Commissioner of Central Excise, AIT-2010-172-CESTAT

**c. Transport service**

Merely because the Motor Vehicles Act provides for granting of tourist permit, it would not automatically mean that section 65 also contemplates only a tourist permit and not otherwise. As stated above, if the vehicle is used for providing transport service (as in the present case), then it will amount to providing taxable service under the Act and the respondent-firm was liable to pay service tax.

Kuldeep Singh Gill v. CCE, Chandigarh, AIT-2010-168-HC

**d. Commissioning, installation of machinery and equipment**

Laying the pipe in wall/roof/floor for crossing of wires, fix the junction box etc. would not amount to installation of plant, commissioning, machinery and equipment, therefore, service tax was not leviable in this regard. The activities like laying the pipe in wall/roof/floor for crossing of wires, fixing the junction box, MS box, Wooden Box, fixing the cables trays to lay the cables, digging the earth to lay the cables and digging the earth pits for earthing of equipments would not amount to commissioning, installation of plant, machinery and equipment.

Rajeev Electrical Works v. CCEC, Chandigarh, AIT-2010-176-HC

**e. CENVAT Input credit**

- The assessee had got certain inputs processed by a job worker and paid duty on the final products manufactured out of the job-worked goods. The job worker paid service tax on the job charges and CENVAT credit thereof was availed by the assessee. The assessee's appeal for CENVAT credit of the service tax paid by their job worker on the service rendered by the latter requires to be allowed

Multi Organics Pvt. Ltd. v. CCE, Nagpur, AIT-2010-151-CESTAT

- The term "capital goods" has been defined in the Cenvat Credit Rules, which in turn have been framed under the rule making powers conferred under Section 37(2) of the Act. The said Section refers to credit of duty paid on goods used in, or in relation to the manufacture of excisable goods. Hence, 'capital goods' defined in the Cenvat Credit Rules in the context of providing credit of duty paid, have to be excisable goods. Whether a particular plant or structure embedded to earth can be considered as excisable goods or not has to be

determined in the light of the decisions of the Hon'ble Supreme Court on the issue, which is no longer res integra.

Goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated either as inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the Cenvat Credit Rules for the impugned period.

Vandana Global Ltd. v. CCE, Raipur, AIT-2010-167-CESTAT

- The appellant is entitled to Cenvat Credit availed on the garden maintenance service which are used in or in relation to the manufacture of final products or used in relation to the business activity and in this case the services used by the appellants are in relation to the business activity, he is entitled for Cenvat Credit.

ISMT Ltd. v. CCE & C, Mumbai, AIT-2010-06-CESTAT

- The Tribunal was justified in holding that the service tax paid on outdoor catering services by the canteen located in the respondent's manufacturing premises has to be considered as an input service relating to business and that CENVAT credit is admissible in respect of the same.

Ferromatik Milacron India Ltd. v. Commissioner of Central Excise, Ahmedabad, AIT-2010-121-HC

- The clearances made by one 100% EOU to another 100% EOU which are "deemed exports" are to be treated as physical exports for the purpose of entitling refund of unutilized Cenvat credit contemplated under the provisions of Rule 5 of the Cenvat Credit Rule, 2004.

Shilpa Copper Wire Industries v. CCE, Ahmedabad, AIT-2010-145-HC

**OTHER NEWS****❖ ECONOMIC INDICATORS****a. Major indices & bullion**

Particulars	Opening 1.4.2010	Closing 30.4.2010
SENSEX	17692.62	17558.71
NIFTY	5290.50	5278.00
Gold Rates 24K (1 gm.)	1531	1590

**b. Forex**

Particulars	Opening 1.4.2010	Closing 30.4.2010
USD v INR	45.14	44.44
Euro v INR	60.56	58.94
Pound St v INR	68.03	68.31

**❖ COMPLIANCE CALENDAR**

Particulars	For the period	Due Date
Deposit of TDS and TCS collection	April 2010	07.5.2010
Deposit of TDS for expenditure booked on	31.3.2010	31.5.2010
Service Tax by Companies (e-payment)	April 2010	6.5.2010