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**INCOME TAX UPDATES****HIGH COURT JUDGEMENTS**

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**a. Sec.54F**

Whether to claim benefit of Sec.54F, residential house which is purchased or constructed has to be of same assessee whose capital asset was sold. – Held Yes.

Vipin Malik (HUF) v. CIT 183 Taxman 296 (Delhi)

**b. Sec.11 & 10(23C)**

Assessee was a society registered under Sec.12A. It mistakenly filed return claiming exemption under 10(23C) instead of Sec.11. Therefore it filed a revised return claiming exemption under Sec.11 and enclosed audit report therewith. Assessing Officer (AO) did not take cognizance of the audit report. Since Sec.11 benefit was not claimed in the original return and the assessee was not eligible for 10(23C), he treated the revised return as non est.

Whether AO was wrong in treating revised return as non est when he himself passed order under 143(3) on basis of original return where assessee was legally entitled to exemption under Sec.11, if not under 10(23C) – Held Yes. Whether department should take advantage of ignorance of assessee and hence, it was the duty of the AO to ask information from assessee before denying exemption – Held Yes.

CIT v. Lucknow Educational Society 183 Taxman 62 (All.)

**c. Sec.57**

Assessee had paid interest as well as finance charges on loan borrowed for making investment in shares and claimed deduction of the same under Sec.57(iii). AO disallowed the claim on the ground that said expenditure was not incurred for purpose of earning income inasmuch as activity of assessee was earning profits by selling shares in stock market and dividend income accrued as by-product. On appeal CIT (Appeals) allowed deduction on the premise that even an indirect connection could prove nexus between expenditure incurred and income earned. On Revenue's appeal, Tribunal upheld the CIT (Appeal) view.

CIT v. Smt Sushila Devi Khadaria 183 Taxman 275 (Bombay)

**d. Minimum Alternate Tax – Sec. 115J**

Asst year 1989-90 - Whether only requirement of provisions of 115JA(1A) is that accounts, more particularly P&L for relevant previous year, have been prepared in accordance with Parts II and III of Schedule VI to the Companies Act, 1956 and accounts so prepared have to be certified by chartered accountant –Held Yes. Whether AO can discard accounts prepared in accordance with the requirements of Parts II and III of Schedule VI and certified by chartered accountant, on ground that same has not been approved at AGM of company – Held No.

Dy.CIT v. Arvind Mills Ltd. 183 Taxman 189 (Gujarat)

**ADVANCE RULINGS**

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**a. Deemed to accrue or arise in India**

Applicant is a company based in USA. It is engaged in business of manufacture process control instruments, engineering and research and technology-based services. It has entered into an agreement with its Indian group company 'I' for providing certain centralized assistance to it. Applicant raises invoices on 'I' for amounts worked out on basis of formula as per agreement. On an analysis of nature of functions enumerated in agreement, it is clear that services provided are managerial in nature and even if they are technical, they do not make available technical knowledge, etc., within the meaning of Article 12.4(b) of DTAA. Applicant has no PE in India. Whether on fact, payments made by recipient company 'I' to applicant towards costs allocated by applicant are liable to be taxed in India – Held No.

Invensys Systems Inc (AAR New Delhi) 183 Taxman 81

**SERVICE TAX UPDATES****a. ISO certification under 'technical inspection and certification' service**

Assisting client in obtaining ISO certification is not covered by 'technical inspection and certification' service (TIC). The definition of TIC would relate only to physical and chemical processes and it could not be transported to province of management relating to human beings and, therefore, activities carried out by assessee in assisting it client for certification of quality management system, eg. ISO certifications would not come within the purview of TIC.

American Quality Assessors India (P) Ltd v. ACIT (ST) [2009] 16 CPT 297 (Bang CESTAT)

**b. Authorised service station**

After sales service provided during warranty period of vehicles sold will not be liable to service tax.

Stan Auto (P) Ltd v. CCE [2009] 16 CPT 298 (New Delhi CESTAT)

**c. Commission agent**

Where assessee was appointed to promote sale of principal's products and to book orders and it got commission only when sale materialized and payments were received from customers, assessee was to be treated as a 'commission agent' and its claim for benefit of exemption under Notfn. No.13 dated 20.6.2003 was to be allowed

CCE v. MA Menon & Co. [2009] 21 STT 409 (Ahd. CESTAT)

**d. Business support service**

Where assessee identified Indian vendors for procurement and supply of garments to foreign companies, provided operational assistance to vendors to ensure supply of goods to foreign companies, ensured payments by foreign companies to vendors and co-coordinated with vendors for production, logistics and shipments of goods ordered, such services rendered to vendors and foreign companies came under the definition of 'Business support services' and not 'Business auxiliary services'.

Fifth Avenue v. CST [2009] 21 STT 485 (Chennai CESTAT)

<b>RECENT DEVELOPMENTS</b>
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**❖ Tax on Perks**

Consequent to abolition of FBT from 1.4.2009, it is expected that the Finance Ministry proposes to notify a system to tax employee perquisites shortly. The list of taxable perks will be similar to the one specified under Rule 3 of the Income Tax Rules – source Financial Express, New Delhi, 25.9.2009

**❖ With holding tax on software from global vendors – Karnataka High Court**

The Karnataka HC has ruled that technology firms are subject to with holding tax deduction at source on purchase of software from global vendors such as Microsoft. This would push technology firms into a corner as they will be required to withhold 10-20% of their software purchase payment in future – source Economic Time, New Delhi, 25.9.2009

**ECONOMIC INDICATORS**

- Market indices & gold prices**

Particulars	Opening 1.9.2009	Closing 30.9.2009
SENSEX	15922.34	17126.84
NIFTY	4732.35	5083.95
Gold 24k (1gm.)	1516	1569.50
Gold 22k (1gm.)	1405	1454

- Forex rates**

Particulars	Opening 1.9.2009	Closing 30.9.2009
USD v INR	48.78	48.20
Euro v INR	70.10	70.25
Pound St v INR	79.79	77.10

**COMPLIANCE CALENDAR**

Particulars	For the month	Due date
Payment of TDS	Sept 2009	7.10.2009
ETDS return filing	2 <sup>nd</sup> Quarter of 2009-10	15.10.2009
Service Tax payments by corporates	Sept 2009	5.10.2009 6.10.2009 in case of e-payment