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**INCOME TAX UPDATES****SUPREME COURT JUDGEMENTS**

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**a. Bad debts**

It is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee.

TRF Ltd vs. CIT Ranchi, AIT-2010-69-SC

**b. Sec.271(1)(c)**

Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not attract the penalty under Section 271(1) (c).

Reliance Petroproducts Pvt. Ltd. vs. CIT, Ahmedabad, AIT-2010-105-SC

**HIGH COURT JUDGEMENTS**

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**a. Secs.9 and 195**

The Tribunal was not correct in holding that the assessee is not liable to deduct TDS in respect of payments made for purchase of software as the same cannot be treated as income liable to tax in India as Royalty or Scientific Work under section 9 of the Act read with Double Taxation Avoidance Agreements and treaties.

Sonata Information Technology Ltd. vs. CIT (International Taxation) – Bangalore, AIT-2010-210-HC

**b. Set off of loss**

The claim of the assessee and the Tribunal were justified in allowing brought forward speculation loss to be set off against delivery based profits earned by the assessee company from sale and purchase of shares.

Lokmat Newspapers Pvt. Ltd. vs. CIT, Mumbai, AIT-2010-80-HC

**c. Secs.80A and 80AB**

Tribunal was not justified in holding that full deduction under subsection 80-I, 80-IA, 80-HH and 80HHD were admissible out of the current year's income from eligible unit even though gross total income is negated within the meaning of Section 80-AB read with Section 80B(5) of the Income Tax Act. The provisions of Section 80A of the Act will have a overriding effect, over, all other section in the chapter VI-A and the Act as per the intention of the legislature. Thus, section 80HH or any other section up to section 80U in chapter VI-A would be governed by section 80A of the Act as section 80AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. As such, if the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration

Arif Industries Ltd. vs. CIT, Ahmedabad, AIT-2010-97-HC

**d. Sec.147**

The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The power is not akin to a review. The existence of tangible material is necessary to ensure against an arbitrary exercise of power.

Aventis Pharma Ltd. vs. ACIT, Mumbai, AIT-2010-111-HC

(Similar to judgment of Supreme Court in CIT vs. Kelvinator of India Ltd).

**e. Interest on deposits vis-à-vis Sec.80HHC**

The Tribunal was not justified in coming to the conclusion that the net interest on fixed deposits in the Bank received by the assessee should be considered for the purposes of working out the deduction under Section 80HHC and not the gross interest.

Asian Star Co. Ltd. vs. CIT, Mumbai, AIT-2010-120-HC

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**INCOMETAX TRIBUNAL JUDGEMENTS**

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**a. Sec.271(1)(c)**

Making of wrong claim is not at par with concealment or giving of inaccurate information, which may call for levy of penalty u/s. 271(1)(c) of the Act.

Sanghvi Swiss Refills Pvt. Ltd. vs. Asst. Commissioner of Income tax, Mumbai, AIT-2010-209-ITAT

**b. Sec.9(1)(i)**

Whether or not, on the facts and in the circumstances of the case the Commissioner (Appeals) was justified in upholding the addition of Rs. 111.16 crores on account of short term capital gain, on sale of rig. – Held, the gains on sale of rig is also deemed to accrue or arise in India because this rig was “an asset in India” as also “a source of income in India”. This rig was owned by the assessee and was used for the purposes of business of the assessee in India, as evident from the fact depreciation was claimed and, therefore, conditions of Section 32(1) were satisfied. The rig was a source of income in India, and there cannot be any dispute about this factual aspect either. The gains on sale of rig are, therefore, also covered by the fiction of income deemed to have accrued or arisen under Section 9(1)(i) in India. None of the exclusion clauses are applicable on the facts of the present case. In view of these discussions, in our considered view, the profits or gains on sale of assets of the Indian PE, or even the Indian PE itself, are taxable in India under the provisions of the Indian Income Tax Act.

Cartier Shipping Co. Ltd. vs. DDIT (Intl. Taxation), Mumbai, AIT-2010-224-ITAT

**c. Sec.41(1)**

The amount of Rs. 2,05,42,468/- written off by the banks in cash-credit accounts constitute the income of the assessee. - Coming to the issue of taxability of interest waived by the banks and financial institutions, there is a clear finding by the learned CIT(Appeals) that these amounts were not claimed in the past by the assessee by way of deduction. Therefore, the requirement of section 41(1) to the effect that “where a deduction has been made in the assessment of any year in respect of expenditure incurred by the assessee”, has not been satisfied. The amount was otherwise debited to profit and loss account earlier and has been credited to profit and loss account now. Thus, there is no benefit to the assessee as the debits and the credit get netted to a zero sum. Therefore, the provision contained in section 28(iv) is also not applicable.

Rollatainers Limited vs. Addl. CIT, New Delhi, AIT-2010-227-ITAT

**RECENT DEVELOPMENTS**

❖ **New amendments to TDS Rules**

The Central Board of Direct Taxes (CBDT) have amended the Rules relating to TDS provisions vide Notification No. 41/2010; SO No. 1261(E) dated 31.05.2010. The highlights of the new amendments:

- The amended rules will apply only in respect of tax deducted on or after 1st day of April 2010.
- Forms for TDS certificate have been revised to include the receipt number of the TDS return filed by the deductor. Now the TAN of the deductor, PAN of the deductee, and Receipt number of TDS return filed by the deductor will form the unique identification for allowing tax credit claimed by the taxpayer in his income-tax return.
- Due date for furnishing TDS return for the last quarter of the financial year has been modified to 15th May (from earlier 15th June). The revised due dates for furnishing TDS return are -

<b>Date of end of quarter of the financial year</b>	<b>Due date</b>
30 <sup>th</sup> June	15 <sup>th</sup> July of the financial year
30 <sup>th</sup> September	15 <sup>th</sup> October of the financial year
31 <sup>st</sup> December	15 <sup>th</sup> January of the financial year
31 <sup>st</sup> March	15th May of the financial year immediately following the financial year in which deduction is made

- Due date for furnishing TDS certificate to the employee or deductee or payee is revised as under :

<b>Category</b>	<b>Periodicity of furnishing TDS certificate</b>	<b>Due date</b>
Salary (Form 16)	Annual	By 31 <sup>st</sup> day of May of the immediately succeeding financial year.
Non-Salary (Form 16A)	Quarterly	Within 15 days from the due date for furnishing the 'statement of TDS'

- Govt. authorities responsible for crediting tax deducted at source to the credit of the Central Government by book-entry are now required to electronically file a monthly statement in a new Form No 24G.

❖ **Service Tax – exemption in Commercial training & Coaching services**

Vide Notification No.23/2010-Service Tax, the Govt. has exempted the taxable service referred to Sec.65(105)(zzc) when provided in relation to Modular Employable Skill courses approved by the National Council of Vocational Training, by a Vocational Training Provider registered under the Skill Development Initiative Scheme with the Directorate General of Employment and Training, Ministry of Labour and Employment. The exemption is effective from 29.4.2010.

**SERVICE TAX UPDATES****a. Commercial or Industrial construction service**

A pipeline unless deployed primarily in commerce or industry or work intended for commerce or industry will not be considered to be the outcome of the activity taxable under the entry 65 (25b) viz., "Commercial or Industrial Construction Service". A water supply project is an infrastructure facility and a civic amenity the State provides in public interest and not an activity of commerce or industry. The impugned order also did not hold it to come under a service of commercial or industrial nature as submitted by the learned consultant for the Revenue. Therefore, the impugned order demanding duty on the activity of laying of pipeline interpreting it to be erection, commissioning and installation of a plant is totally misconceived and unacceptable.

Nagarjuna Construction Company Limited Vs. CCE, Hyderabad,  
AIT-2010-225-CESTAT

**b. CENVAT Input credit**

- Supplies to SEZ Developers cannot be treated as supply of exempted goods and, therefore, provisions of Cenvat Credit Rules 6(3)(b) may not be attracted, is acceptable.

Nu-Chem Ltd. Vs. CCE, Rohtak, AIT-2010-62-CESTAT

- 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. Vs. CCE, Nagpur, AIT-2010-151-CESTAT

- 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 &amp; bullion

Particulars	Opening 1.5.2010	Closing 31.5.2010
SENSEX	17558.71	16944.63
NIFTY	5278	5086.30
Gold Rates 24K (1 gm.)	1590	1850.5

## b. Forex

Particulars	Opening 1.5.2010	Closing 31.5.2010
USD v INR	44.44	46.48
Euro v INR	58.94	57.27
Pound St v INR	68.31	67.52

## ❖ COMPLIANCE CALENDAR

Particulars	For the period	Due Date
Deposit of TDS and TCS collection	May 2010	7.6.2010
Deposit of TDS for expenditure booked on	31 <sup>st</sup> March 2010	31.5.2010
Service Tax by Companies (e-payment)	May 2010	6.6.2010