

Orange Special : 2018 - A Look Back

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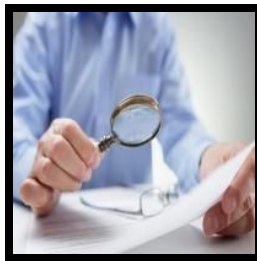
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Most searched issues of the year with important rulings on the subject



We present the most searched issues during the year 2018 as listed below along with some useful, relevant rulings on the subject ; -

- A. Bogus capital gain from penny stock
- B. Sec. 50C on transfer of leasehold rights
- C. Sec.80P Interest income on bank deposit with co-operative society
- D. Accommodation entries through shell companies
- E. Effect of retrospective amendment



A. Bogus capital gain from penny stock

1) [\[TS-9007-ITAT-2018\(BANGALORE\)-O\]](#) - ITAT rejects taxpayer's LTCG exemption claim citing dubious trading in 'penny stocks' - Bangalore ITAT rejects assessee-individual's claim of 'exempt' long term capital gains ('LTCG') of Rs. 42 lakh arising on sale of 'penny stocks' during AY 2015-16, upholds AO's stand that the LTCG booked by assessee were bogus and the gains were assessable as 'business income'; Rejects assessee's stand that the genuineness of LTCG claim cannot be doubted since the contract notes were placed on record and the payment were made through cheques identifying the company whose shares were transacted; Upon examining the financials of the company, ITAT observes that the financial worth of the company was very meager and not worth to be invested in, remarks that *"With such financials, we are unable to understand how there can be manifold increase in the shares."*;

2) [\[TS-7679-ITAT-2018\(KOLKATA\)-O\]](#) - ITAT deletes Sec. 68 addition on share-sale; Assessee's involvement in bogus LTCG scam not established - Kolkata ITAT deletes Sec 68 addition for consideration on sale of shares, allows assessee-individual's LTCG exemption claim; AO had made addition based on information from Investigation Wing that relevant scrip on which LTCG was earned was involved in bogus LTCG scam and assessee's PAN was listed in beneficiaries identified by Investigation Wing; Noting that Investigation Wing report suggested more than 60,000 beneficiaries of the scam, ITAT holds that *"An alleged scam might have*

taken place on LTCG etc. But it has to be established in each case, by the party alleging so, that this assessee in question was part of this scam", further states that "just the modus operandi, generalisation, preponderance of human probabilities cannot be the only basis for rejecting the claim of the assessee";

3) [\[TS-6724-ITAT-2018\(DELHI\)-O\]](#) - ITAT upholds assessee's 'business income' plea on 'one-off' penny-stock sale, rejects STCG taxation - Delhi ITAT holds the profit arising on sale of shares (i.e. penny stock in present case) taxable as business income for AY 2011-12, and not short term capital gains ('STCG') in hands of assessee-individual; Rejects Revenue's stand that gains should be assessable as STCG and that assessee had entered into the one-off share transaction just to claim weighted deduction u/s. 35 for donation made towards scientific research, against such gains; Observes that Revenue had not disbelieved share purchase-sale transaction or the donation, accepts assessee's plea that a single transaction of purchase and sale of shares outside the assessee's line of business may constitute an 'adventure in nature of trade'...

4) [\[TS-9080-ITAT-2018\(CHENNAI\)-O\]](#) - Exemption u/s. 10(38) cannot be denied merely on the ground that share prices rose substantially without establishing that the transactions of purchase and sale of shares made by the assessee are dubious - ITAT deletes addition u/s. 68, grants deduction U/s.10(38) by treating gains arising out of impugned sale of shares as Long Term Capital Gain; States that though such high quantum of raise and fall in the price of shares is not normally possible, it is essential to bring out some evidence to establish that there is some illegality in the transaction, explains that "stock prices may raise due to certain hidden factors which may be not known to the public at large even with respect to blue chip companies...even if share prices are manipulated some evidence has to be gathered as to whether assessee's unaccounted money is brought in or public money is swapped"; Notes that the the entire transactions were through recognized stock exchange and all the financial transactions were made through banking channels, that no criminal case or investigations were pending by ED or CBI or SEBI as on date with respect to the assessee or the company whose shares were being traded....

5) [\[TS-9018-ITAT-2018\(JAIPUR\)-O\]](#) - Absent evidence to show that assessee has paid over and above the purchase consideration or paid in cash, it cannot be held that the assessee has introduced his own unaccounted money by way of bogus long term capital gain - Jaipur ITAT allows assessee's appeals, sets aside CIT(A)'s order and directs the AO to not treat the LTCG as bogus and delete the consequential addition; Holds that when shares were allotted directly by the company to the assessee at par on face value then the same cannot be considered as a penny stock transactions; States that "...once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares then, in the absence of any contrary material brought on record the same cannot be held as bogus transaction merely on the basis of statement of one Shri Anil Agrawal recorded by the Investigation Wing"; Notes that the transaction is established from the evidence and record which cannot be manipulated as all the entries are part of the bank account and D-mat account which is also an independent material and evidence....



B. Sec. 50C on transfer of leasehold rights

1. [\[TS-7981-ITAT-2017\(MUMBAI\)-O\]](#) - Deeming fiction u/s. 50C not applicable to transfer of leasehold rights in land - Mumbai ITAT rules that leasehold rights in land doesn't come under the ambit of 'land or building' as occurring in Sec. 50C (which deems stamp duty valuation as full value consideration in certain cases of transfer of 'land or building or both') for AY 2008-09; Observes that a deeming provision should be construed strictly and be interpreted in a restricted manner, concludes that Sec. 50C was not applicable in present case; Relies on Bombay HC case of Greenfield Hotels & Estates; Separately, ITAT holds that "Formal execution of lease deed is not relevant for deciding the date of acquisition of plots" and rules that period of holding should be computed from the date of allotment of the property.
2. [\[TS-7817-ITAT-2017\(MUMBAI\)-O\]](#) - ITAT grants Sec. 54G exemption despite investing gains after 9 years of shifting undertaking -Mumbai ITAT allows assessee-company's claim of exemption u/s 54G for AY 2004-05 with respect to capital gains arising on sale of land, rejects Revenue's denial on the ground that investment was made in plant and machinery after 9 years of shifting of industrial undertaking; Notes that during AY 1995-96, assessee had entered in to an agreement for selling rights in an industrial plot in Mumbai and simultaneously shifted its industrial undertaking to Nasik (in a non-urban area), however, such agreement could not materialize and land was finally sold in 2004 to a new developer....
3. [\[TS-6469-ITAT-2015\(PUNE\)-O\]](#) - 99 yrs lease-hold right, capital asset, but Sec.50C valuation inapplicable ITAT rules that transfer of 99 yrs leasehold right in land, does not attract Sec 50C (which deems stamp-valuation as full value consideration); While leasehold rights in land is a capital asset; ITAT holds every kind of a 'capital asset' not covered within the scope of Sec 50C; Noting the Sec 50C heading, "Special provision for full value of consideration in certain cases", ITAT opines "only capital asset being land or building or both are covered within the scope of section 50C"....
4. [\[TS-898-ITAT-2012\(MUM\)-O\]](#) - Doesn't rule out Sec 50C if substantial rights available on 'leasehold property' -Mumbai Bench of ITAT, agreed with assessee, that transfer of leasehold rights is not covered by the provisions of Sec 50C. However, based on the facts of the case, ITAT held that assessee had more than "leasehold rights" on the plot of land. ITAT

noted that that prima facie, substantial rights were transferred to assessee including the right to construct building. ITAT observed that MIDC had only limited powers whereas assessee had absolute powers over the property. ITAT also observed that substantial rights were transferred to the assessee including the right to construct building on the land. ITAT observed that "we cannot completely come to a conclusion whether assessee had complete rights over the land and to what extent the valuation has to be determined u/s 50C, in the absence of complete details"

5. [\[TS-6198-ITAT-2014\(LUCKNOW\)-O\]](#) - 99 year lease-hold rights in land, a capital asset transfer, attracts Sec 50C - Lease-hold rights for 99 years in land a capital asset; Provisions of Sec 50C (dealing with applying higher stamp duty valuation in computing capital gains) apply to such transfer; ITAT reverses CIT(A)'s decision and restores AO's order

6. [\[TS-6112-HC-2016\(Bombay\)-O\]](#) - Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings Bombay HC dismisses Revenue's appeal, notes ITAT's observation relying on its decision in Atul G. Puranik that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings; Considering that Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul Puranik, HC holds that "the salutary principle that where the Revenue has accepted the decision of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged"



C. Sec.80P Interest income on bank deposit with co-operative society

1. [\[TS-9184-ITAT-2018\(PUNE\)-O\]](#) - ITAT : Co-operative Credit Society's interest income on FDRs with non co-operative banks eligible for deduction u/s 80P(2)(a)(i), however, the interest on saving account not entitled to the deduction.

2. [\[TS-7269-ITAT-2018\(MUMBAI\)-O\]](#) - ITAT allows Sec. 80P deduction on co-operative society's interest income from investments with co-operative bank -Mumbai ITAT refers to Sec. 80P(2)(d) which provides that income by way of interest income derived by an assessee cooperative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee; Clarifies that "though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under

any other law for the time being enforced in any state for the registration of cooperative societies..”

3. [\[TS-8001-ITAT-2017\(PUNE\)-O\]](#) - Interest on credit co-operative society's 'statutory deposits' eligible for Sec 80P deduction; Distinguishes SC ruling - Pune ITAT allows deduction u/s 80P(2)(a)(i) to an employee credit co-operative society (engaged in providing credit facilities to employees of a nationalized bank) on interest income earned from fixed deposits during AYs 2007-08, 2008-09 & 2010-11, rejects Revenue's stand that interest should be assessable as income from 'other sources'; ITAT refers to the provisions of Maharashtra Co-operative Societies Act, 1960, holds that assessee was statutorily required to deposit 25% of its profits in reserve funds, which in turn, were kept in fixed deposits with the approved 'Scheduled Bank' as per the regulations; Distinguishes Revenue's reliance on SC ruling in Totagar's Co-operative Society

4. [\[TS-6418-ITAT-2018\(BANGALORE\)-O\]](#) - ITAT allows co-operative society's Sec. 80P claim on interest income; Distinguishes Totgars ruling - Bengaluru ITAT allows Sec. 80P benefit to assessee-society (engaged in providing credit facilities to the members) with respect to interest earned on deposits made in cooperative societies / banks during AYs 2011-12 and 2012-13; Accepts assessee's stand that interest income earned by it by making the deposits in cooperative society / banks would be an activity relatable to its business and would therefore be eligible for Sec. 80P deduction; Distinguishes Revenue's reliance on recent jurisdictional HC ruling in Totgars Cooperative Sale Society Ltd....



D. Accommodation entries through shell companies

1. [\[TS-8882-ITAT-2017\(DELHI\)-O\]](#) - ITAT treats income disguised as sales as 'undisclosed'; Terms assessee a 'conduit/ shell' - Delhi ITAT holds that assessee-company (allegedly engaged in the business of purchase and sale of fabric) introduced undisclosed income under the garb of purchases/sales of fabric for AY 2009-10, terms the activities of the assessee as that of a "shell company"; Noting that assessee transacted purchases of Rs.35cr which were subsequently converted as loans and advances, ITAT opines that "whole transaction has been carried out by the assessee company as a conduit for the companies who have shown the loans and advances from the assessee and also got deduction of the purchase cost", relies on HC rulings in Ambuja Exports and La Medica;...Also rejects CIT(A)'s view that since accounts were audited no addition could be made, holds "CIT (A) has not looked into the facts of the case that the purchases have never been paid, the sales have never been realized, there is no bank

account of the company, there are no expenditure incurred by the assessee for the purchases and sales entered into”; Thus, ITAT concludes that “This company has been used as a layer of money to save the real beneficiaries. It is a revelation that company without having any substances has got the outstanding credit of Rs. 35 crores for purchases... we cannot close our eyes to the startling facts revealed before us”

2. [\[TS-7572-ITAT-2018\(DELHI\)-O\]](#) - ITAT confirms share premium addition u/s. 68 for routing accommodation entries through shell companies -Delhi ITAT upholds unexplained share premium addition u/s. 68 with respect to shares (of face value Rs. 10/-) issued by assessee (a private limited company engaged in trading of plots and development work) at a premium of Rs. 90 per share during AY 2006-07;Rejects assessee’s stand that it was not required to prove ‘source of the source’, remarks that “the whole exercise carried out by the assessee is simply a devise to introduce unaccounted money through various shell companies in the form of share capital at a premium.”; Further upholds penalty levy u/s. 271(1)(c), upholds CIT(A)’s order that assessee had furnished inaccurate particulars of its income with a view to conceal income.

3. [\[TS-8037-ITAT-2018\(DELHI\)-O\]](#) - ITAT rejects facade of documentation created by conduit;Confirms share capital addition u/s 68 pre-2012 - Delhi ITAT confirms Rs. 80 lakh bogus share capital subscription addition u/s 68 in case of assessee (a private limited company) for AY 2005-06, also confirms unaccounted expenditure addition in respect of commission @ 2.5% for arranging the accommodation entries, upholds re-assessment;Accepts Revenue’s stand that that the bank statements show lack of bonafides in as much as there were deposits shortly before each major payment, holds it a typical “situation in which the bank accounts are used as a conduit to launder the ill gotten money”; ITAT remarks that “These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils....It would, therefore, not really be appropriate for us to be swayed by the documents.”;.....

4. [\[TS-7956-ITAT-2018\(DELHI\)-O\]](#) - Assessee’s share premium not bogus merely because subscriber held accommodation entry provider - Delhi ITAT sets aside order u/s 263 and deletes addition u/s 68 on account of share premium received by assessee-company during AY 2014-15 from a Kolkata based company ('subscriber company'); During the regular assessment proceedings for relevant AY, assessee had proved genuineness and creditworthiness of the share capital and share premium transaction by providing various details, however PCIT u/s 263 conducted enquiry and inferred that since Kolkata based company was shell company the share capital / share premium received by assessee-company must not only be non-genuine but also in the nature of accommodation entry ; Remarks that " Simply because there is an adverse inquiry report in the case of M/s. Prosperity Mercantile Pvt. Ltd. (i.e subscriber co.) that it is some kind of shell company managed by some entry providers through their companies, that by itself will not implicate assessee, unless the assessee is found to have taken some kind of accommodation entry from this company.”;



E. Effect of Retrospective amendment

1. [\[TS-5549-HC-2017\(GUJARAT\)-O\]](#) - Retrospective amendment by way of insertion of Explanation 6 to Sec. 43B : Interest u/s. 234B not leviable for shortfall of advance tax arising by virtue of a retrospective amendment
 - HC deletes addition of interest u/s. 234B for AY 2008-09 owing to shortfall of payment of advance tax on account of subsequent retrospective amendment by way of insertion of Explanation 6 to Sec. 43B by Finance Act 2008 with retrospective effect from 01.04.2003; Holds that “No interest can be charged on the ground that by virtue of subsequent amendment with retrospective effect the tax liability arose, the law does not expect the person to perform the impossible”; Relies on Kolkata HC decision in case of Emami Ltd. wherein HC referred to SC decision in Star India which laid down that the liability to pay interest would arise only on default and is really in the nature of quasi- punishment and thus, although the liability to pay tax arose due to retrospective effect of law, the same should not entail the punishment of payment of interest

2. [\[TS-3-SC-2011-O\]](#) - Interest u/s 234B and 234C shall be payable on failure to pay advance tax in respect of tax payable under MAT provisions - SC rules in favour of Revenue; Holds that there is no exclusion of section 115J/115JA in section 234B as the expression 'assessed tax' is defined to mean tax on total income determined u/s.143(1) or u/s.143(3) as reduced by the amount of tax deducted or collected at source; The pre-requisite condition for applicability of s.234B is that the assessee is liable to pay tax u/s.208; Approves decision of Karnataka HC in Jindal Thermal Power Co. Ltd. wherein it was held that s.115JB is a self-contained code pertaining to MAT, which imposed liability for payment of advance tax on MAT companies and, therefore, where such companies defaulted in payment of advance tax in respect of tax payable u/s 115JB, they were liable to pay interest u/ss.234B and 234C.

3. [\[TS-7131-HC-2018\(GUJARAT\)-O\]](#) - No interest u/s. 234B leviable on liability that arose on account of subsequent amendment brought into statute with retrospective effect - HC confirms ITAT ruling for AY 2003-04 which deleted Sec. 234B interest on shortfall of advance tax paid owing to addition to book profit u/s. 115JB by adding back provision for diminution in value of investment as a result of amendment in sec. 115JB by Finance Act, 2 of 2009 with retrospective effect from 01.04.2001; Notes that decision of SC in case of Rolta India Ltd. [TS-3-SC-2011-O] that interest u/s. 234B would be payable on failure to pay income tax in respect of the tax payable under section 115JA of the Act (which was a predecessor provision to section 115JB) and hence distinguishable;...

4. [\[TS-5053-HC-2017\(BOMBAY\)-O\]](#) - Assessee's ground for non-payment of advance-tax non-existent - Bombay HC confirms interest levied u/s 215(1) towards short / non-payment of advance tax for AY 1976-77, rejects assessee's plea that liability to pay advance tax did not arise on account of retrospective amendment to Sec. 80J in view of Calcutta HC ruling in Century Enka; Observes that SC in Lohia Machines Ltd. not only upheld the validity of the amendment but also overruled the decision in Century Enka while adding that "Sec. 80J even dehors the amendment would have to be read in the same manner in which the amendment is understood", thus holds that "the basic reason for not paying the advance tax on the part of the applicant never existed"; ...

5. [\[TS-26-HC-2007\(MAD\)-O\]](#) - No interest leviable u/s. 234B & 234C on additional liability arising from introduction of Sec. 35DDA restricting deduction of VRS payments HC upholds ITAT order deleting interest u/s. 234B & 234C for AY 2001-02 arising on account of shortfall in payment of advance tax owing to introduction of Sec. 35DDA by Finance Act 2001, w.e.f. 1.4.2001; Notes ITAT's observation that "till the introduction of new provisions under s. 35DDA, the assessee could have estimated the income legitimately after reducing the expenditure incurred on VRS.....The simple meaning of this dictum is that 'law cannot compel you to do the impossible'. ... the assessee could not have done anything other than to estimate the liability to pay advance tax on the basis of existing provisions."

Most read articles of 2018

1. [What Forensic Auditors Should Look For in Shell Companies](#)



Shell companies have been in the news for quite some time, and are often used to obfuscate the audit trail of transactions through the banking system. Companies with no significant assets or no active business operations/ transactions can also be considered as shell companies, but are generally not of interest to tax authorities. Shell companies that are set up to provide accommodation entries (to channelize black money from those who have it to those needing it) and/ or for layering of transactions to hide source/ destination of funds, are of interest to forensic investigators and tax authorities.

The author, **Mr. Smarak Swain (IRS)**, explains in simple words the key features of such shell companies, including phony directors and addresses, being incorporated in bunches on single or few dates, unclear beneficial or *benami* ownership, curious back-to-back entries in bank account, etc. The author also explains in a simple manner the *modus operandi* of accommodation entry operators, who earn a small percentage of transaction value as commission from both clients. This article could prove invaluable to Forensic Auditors.

2. Proposed Amendment to Sections 50C, 43CA & 56 - Unsettling the Settled Principle!

At present, while taxing income from capital gains (Sec 50C), business profits (Sec 43CA) and other sources (Sec 56) arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted. The difference is taxed as income in the hands of both, the purchaser and the seller. The author, **CA Sagar S**



Tilak (Partner, S S Tilak & Company) in this article explains the amendments brought about in this area right from inception to proposed amendment by Budget, 2018. He explains with the help of an illustration the impact of the proposed amendment. He considers various judgments rendered by various courts accepting a variation of 10% in actual sale consideration from the stamp duty or valuation by approved valuer due to factors like age of the property, locational advantage/ disadvantage, exact location etc. for such lower valuation. He concludes that *“Now such lenient approach of accepting 10% variation on the basis of facts of specific case may not hold good in light of the proposed amendment accepting the variation of 5%. The proposed amendment on one hand appears to be in favour of the assessee but in light of the judicial precedents, it may unsettle the settled principle of accepting 10% variation based on the facts of the case.”*

3. Insertion of Explanation 2A in Section 2(22) - Widening of Scope of ‘Accumulated Profits’ for Dividend Purpose



Explanation 2 to Sec. 2(22) defines ‘accumulated profits’. With a view to prevent abusive arrangements wherein companies with large accumulated profits adopt the amalgamation route to reduce capital, and circumvent Sec. 2(22)(d), it is proposed to insert a new Explanation 2A in Sec. 2(22) to widen the scope of the term ‘accumulated profits’ so as to provide that in the case of an amalgamated company, accumulated profits, whether capitalised or not, shall be increased by the accumulated profits of the amalgamating company, whether capitalized or not, on the date of amalgamation. The author, **CA Manan Agarwal (Partner, KrayMan Consultants LLP)** observes that this amendment has the objective of overruling decision of Ahmedabad Tribunal in the case of ACIT vs. Gautam Sarabhai Trust [\[TS-5102-ITAT-2001\(AHMEDABAD\)-O\]](#). He concludes that *“By bringing profits of the amalgamating company within the scope of ‘dividend’ to be distributed by amalgamated company, any attempt to surpass payment of dividend distribution tax, whether immediately or after certain time interval, by the amalgamated company out of reserves of the amalgamating company, has been done away with. Perhaps the only breather given by*

the Government in this space, is that the amendment is not retrospective in operation!”

4. Budget 2018: PMLA – Government’s Magic Wand Against Launderers of Illegal Money

In this year's budget, the Government has proposed major amendments to the Prevention of Money-laundering Act, 2002 ('PMLA') in order to make it an effective tool to curb menace of black money. In his article, **Sudarshan Rangan (Advocate)**, provides a crisp yet extensive account of the major amendment proposals made under the PMLA by Union Budget 2018. The author compares the existing provisions of PMLA with the proposed amendments and remarks that “*PMLA legislation is indeed a magic wand for the Government to use against the launderers/perpetrators of illegal money.*” The author extensively deals with the amendments related to (i) the definition of the proceeds of crime, (ii) scheduled offence – inclusion of offence under Companies Act, (iii) leniency of bail provision to less serious PMLA cases, (iv) leniency for restoration of property attached during trial and (v) administration measures for attachment of property. The author opines that “the current budget proposals do give significant impetus for the nodal agency the Financial Intelligence Unit to proceed against the accused launderers” while adding that it would be interesting to watch as to how these proposals disseminate the information to relevant intelligence/law enforcement agencies in a time bound manner to take effective measures against the money launderers. While signing off, the author hopes that “.. the PMLA legislation completely launders the endemic illegal money menace.”



5. Assessment Proceedings –Turbulence in Store



The Central Government has been clear on the concept of using technology in every department and every facet of governance, and is also clear that ‘machine dependency’ (use of technology) will lead to reduced corruption. The amendments sought to be brought about by Finance Bill, 2018 is another of a series of steps in that direction. The author, **Uttamchand P. Jain (Partner, M/s. M. G. Bohara & Co., Chartered Accountants)** discusses various amendments such as insertion of Sections 143(3A), 143(3B) & 143(3C). The author fears that the language used in the proposal will give rise to more litigation. He concludes that “Strong turbulence is in store for everyone, if ... unrestricted power is bestowed upon any authority, ... relating to assessment procedures.”

6. Credits and Creditors in Focus: How to Effectively Resolve Tax Investigations?



Sec. 68 attracts much litigation owing to the purpose it helps serve, viz. unearthing of black money. In this context, the CBDT has recently issued a 'Standard Procedure for applying provisions of section 68' ("SOP") to its officers. The authors, **Sanjay Sanghvi (Tax Partner, Khaitan & Co.) and Surajkumar Shetty (Principal Associate, Tax Team)**, focus on handling tax disputes in the context of Sec. 68 related issues in this article. The authors emphasize the importance of in-depth tax counselling and effective legal strategy to mitigate or resolve tax disputes, and maintenance of proper documentation to support one's case. The authors conclude "All in all, bringing relevant documentary evidence on record at the very first opportunity and a vigilant and diligent approach is helpful in making right representation before the assessing officer and in all likelihood a proper assessment order based on facts and merits of the case".

7. Share Transfer to 'Step-Down' Subsidiary - Tracing Tax Impact



Mr Gaurav Bhauwala, (Director, Tax & Regulatory Services at EY India) in his detailed column analyses recent Kolkata ITAT ruling in Emami Infrastructure Ltd. [[TS-101-ITAT-2018\(Kol\)](#)] wherein capital gains exemption u/s 47(iv) was allowed to a company upon transfer of capital asset to its wholly-owned "step-down" subsidiary. The author highlights that the moot point before ITAT was absent definition of the word "subsidiary company", whether a step-down subsidiary is included in the definition of a "subsidiary company" u/s 47. The author states that " This ruling reiterates the principle that terms which are not specifically defined under the provisions of the Act, definitions given under other statutes (such as in the Companies Act) can also be imported into the Act." The author also ponders over two issues - i) computation of sale consideration for an off market transaction using the average share price on the stock exchange; and ii) Applicability of GAAR and Sec. 56(2)(x) to such transactions.

8. Flipkart on sale – Will Taxman 'cart' tax on Walmart Entry?



A historic announcement was made on 9th of May by Soft Bank Chief about one of the biggest e-commerce deals — the

“Flipkart-Walmart deal”. While presently most of the focus is on the size of the deal, its impact on the Indian market and consumers etc, the taxation element of the deal is drawing no less attention. **Samir Sanghvi (Senior Partner, Synthesis group)** in his article appraises the tax complexities that may surface out of the deal. Noting that substantial value of the shares being sold derives its value from Flipkart India business, the author states that Sec. 9(1)(i) will squarely apply to the foreign investors selling their stake. He points out certain challenges in computing the capital gains u/s. 9(1)(i) r.w. Rule 11UB such as computation of FMV of Indian assets in multi-layered structures with businesses in different countries; FMV of intangibles which is subjective and varies between countries and cultures etc. The author signs off with a note that *“Since the deal is very complex and stakes are high, chances of invoking litigation till the Supreme Court of India can’t be ruled out.”*

9. Delay in filing Objections before DRP - Consequences thereof



The Income Tax Act does not provide for powers to DRP to condone a delay by assessee in filing objections u/s. 144C before it unlike powers provided to CIT(A) and ITAT u/s. 249(3) and 253(5) respectively. **L.N.Pant (Senior Director, Deloitte Haskins & Sells LLP) & Darshana Deshmukh,(Deputy Manager)** in their article discuss the recent ruling by Chennai ITAT in the case of Aalaya Jewel Industry [[TS-243-ITAT-2018\(CHNY\)-TP](#)] which dealt with assessee’s appeal against DRP order rejecting its objections on ground of a 3 days delay in filing of the objections and validity of the final assessment order passed beyond the time limit of 30 days from the end of the time limit for filing objections before the DRP. On examination of the time barring provisions u/s. 144C, the ITAT held that DRP has no power to condone delay in filing of objections and delayed filing of objections gives rise to the same consequence as non-filing of the objections. Noting that filing within the time limit is of utmost importance as DRP does not have powers to condone a delay, the authors sign off with a suggestion that *“In a scenario wherein the assessee has failed to file an application with the DRP, filing an appeal with the CIT(A) could be considered as the CIT(A) has power to condone the delay in filing of appeal on the condition of establishment of a sufficient cause of such delay.”*

10. Does Black Money Act empower the IT Department to arrest without a warrant?



It is a general perception that offences related to tax evasion are civil offences and thus non-cognizable (i.e., power to arrest without a warrant is not bestowed upon tax officers). **Smarak Swain (IRS officer)**, in this article, addresses a fundamental question whether the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 empowers the IT Department to make arrests without a warrant. The author highlights that unlike the Income-tax Act, the Black Money Act (a special act administered and enforced by the Income Tax Department) does not explicitly mention whether offences under thereunder are cognizable or not, and therefore such offences have to be classified as per the CrPC (i.e. the Code of Criminal Procedure, 1973). On examination of classification of cognisable and non-cognizable offences under the CrPC, the author points out that an offence u/s. 51 of the Black Money Act, which provides for imprisonment of not less than 3 years, but upto 7 years for wilful attempt to evade tax, is cognizable, non-bailable offence. Supporting the enactment, the author signs off stating that *"It may become necessary, in national interest, to prevent a person from tampering evidence once detection of offence is made under the Black Money Act. No doubt, the legislature provides legitimate power to authorities to arrest without a warrant for offences under Section 51 of the Black Money Act."*



Most important Circulars/Notifications from CBDT of 2018

1. CBDT: Notifies 'Centralised Communication Scheme' for issuing e-notices; No personal appearance required - [Notification No. 12/2018](#)
2. CBDT: Issues fresh 'angel tax' exemption notification, applicable from April 11, 2018 - [Notification No. 23/2018](#); [Notification No. 24/2018](#)
3. CBDT: Notifies Cost Inflation Index for FY 2018-19 at 280 - [Notification No. 26/2018](#)
4. CBDT: Clarifies treatment of telecommunication, freight, etc. for Sec 10A purpose following HCL ruling- [Circular No. 4/2018](#)
5. CBDT clarifies on immunity provided u/s. 270AA from penalty / prosecution - [Circular No. 5/2018](#)
6. CBDT notifies 'Indian Commodity Exchange Limited' as a 'recognized association' u/s 43(5) - [Notification No. 76/2018](#)
7. CBDT- Specifies 87 jurisdictions for purpose of 'passive non-financial entity' definition under FATCA - [Notification No. 78/2018](#)



8. CBDT issues final notification amending Rule 114 and forms for PAN application - [Notification No. 82/2018](#)
9. IT Dept. - Clarifies no Sec. 194A TDS on Senior citizens' income not exceeding Rs. 50,000 - [Notification No.6/2018](#)
10. CBDT: Sec. 56(2)(vii) inapplicable to receipt of 'freshly issued shares' by closely held co. - [Circular No. 10/2018](#)

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