



June 2017

IMPORTANT DUE DATES

Sr. No.	Particulars	Due Date
1	Issue of TDS certificate for tax deducted u/s 194IA for Apr17	14.06.2017
2	TDS certificates (other than salary) for Q4 FY 2016-17 and Form 16	15.06.2017
3	First instalment of Advance Tax payment for AY 2018-19	15.06.2017
4	Submission for application of GST enrollment	15.06.2017
5	ESIC payment	20.06.2017
6	PF payment	21.06.2017
7	VAT/CST Return and payment for May17	21.06.2017
8	Furnishing of challan-cum-statement for tax deducted u/s 194IA for May17	30.06.2017
9	Payment of PTEC	30.06.2017
10	Filing of Statement of Financial Transactions Preliminary Response (Form 61A)	30.06.2017

❑ **Section 50B r.w.s 147 - ALPS Technologies (P.) Ltd. vs DCIT
[2017] 81 taxmann.com 225 (Guj HC)**

Reopening of assessment beyond 4 years was invalid so as to **reconsider profit arising on sale and service division**, as a sale of goodwill/trademark instead of actual slump sale, **which was duly accepted during assessment proceedings** after considering relevant materials on record and disclosure of true and correct facts

❑ **Section 50B - Ambo Agro Products Ltd.
[2017] 81 taxmann.com 305 (Kol Trib)**

Where assessee sold its manufacturing unit of edible oil as a going concern on slump sale basis, mere fact that buyer was already in same line of business and thus was **not keen to buy intangible assets** such as trade name/logos/trademarks/product name etc. belonging to assessee, it would not take case out of purview of section 50B



❑ **Sec 50C - Rekha Agarwal vs ITO**
[2017] 79 taxmann.com 290 (Jaipur Trib)

Where assessee transferred 'right of allotment' in flat to a purchaser and not actual flat itself, deeming provision of section 50C would not be applicable. Sec 50C is applicable to a case where there is transfer of land, buildings or both

❑ **Section 54F r.w.s. 161 – Balgopal Trust vs ACIT**
[2017] 81 taxmann.com 367 (Mum Trib)

Assessee, private non-discretionary trust, created for sole beneficiary, was entitled to deduction u/s 54F in respect of sale of flat and said deduction could not be denied merely on ground that assessee was not an individual or HUF

This decision relied on provisions of Sec. 161 which states that representative assessee is subject to same duties, responsibilities and liabilities as if income was received by his beneficiary, and whatever benefits beneficiary will get in said assessment must be made available to trustee while assessing him u/s 161

❑ **Section 22 r.w.s. 27(iib) – Raj Dadarkar & Associates vs ACIT [2017] 81 taxmann.com 193 (SC)**

Where assessee having obtained a property on lease, constructed various shops and stalls on it and gave same to various persons on sub-licensing basis, since **assessee was not engaged in systematic or organized activity** of providing service to occupiers of shops/stalls, income from sub-licensing was to be **taxed as income from house property** and not as business income

Furthermore since assessee had acquired leasehold right in land for more than 12 years, it was to be regarded as **'deemed owner'** of premises by virtue of **Sec 27(iib)** and also mere fact that object clause of partnership deed mentioned that business of assessee was to take premises on rent and to sub-let the same **is not sufficient proof**



❑ **Sec 10(13A) - Meena Vaswani vs ACIT**
[2017] 80 taxmann.com 2 (Mum Trib)

Rent paid to mother **without appropriate** documents such as Leave and license agreement, society NOC letter, bank payments for rent, water & electricity bills and **any other cogent evidences** - could not be **entitled for HRA exemption** u/s 10(13A) whereas on the other side, **deduction u/s 80C was** claimed for repayment of housing loan jointly hold by her husband and shown as **SOP** in returned of Income



❑ **Sec 32(1) - Mother Hospital (P.) Ltd Vs CIT**
[2017] 79 taxmann.com 375 (SC)

- In terms of Explanation 1 to section 32(1), it is only when assessee **holds a lease right or other right** of occupancy and any capital expenditure is **actually incurred by it** on construction or renovation or extension or improvement of building, assessee would be entitled to depreciation to **extent of such expenditure incurred**
- However where construction is carried out by owner-lessor and capital expenditure is **only reimbursed** by assessee-lessee, Explanation 1 to section 32(1) would not come to the aid of assessee and hence assessee **is not eligible for claim of depreciation**



❑ **Section 11 r.w.s. 2(15) – DCIT vs Chennai Kammavar Trust
[2017] 81 taxmann.com 365 (Chen Trib)**

Carrying on business for and on behalf of charitable trust and applying profits of same for object of trust does not entitle said trust for exemption u/s 11(4) **unless business is incidental to attainment of objects of trust**

In present case, since there was **no connection between activities** relating to running of community hall with attainment of objects of assessee-trust of imparting education in school, claim of exemption u/s 11 was rightly denied



❑ **Sec 41(1) r.w.s. 115JB-JSW Steel Ltd vs. ACIT (Mum Trib)**
ITA No.923/Bang/2009

- Waiver of loan taken for acquisition of a capital asset and on capital account cannot be taxed u/s 41(1), as it is neither on **revenue account** nor a **remission of a trading liability** so as to **attract tax** in the year of remission
- A capital surplus thus, in respect of waiver of loan amount cannot be regarded as being amount available for distribution through P&L account
- The provisions of section 115JB **cannot** be so interpreted so as to require accounting of what in **substance is capital in nature** to the credit of P&L account and get **indirectly taxed** under book profit
- It was never the **intention of the legislature** that **any receipts** which is not taxable per se within the **income tax provision** or not reckoned as part of net profit as per the P&L account as per **Companies Act** can be brought to tax as a book profit

❑ **Section 56 - Thermal Powertech Corporation India Ltd. vs DCIT
[2017] 81 taxmann.com 168 (Hyd Trib)**

Where assessee-company formed to build, own and operate power plant, deposited unutilised borrowed funds in short term fixed deposits during construction of power plant, interest earned on those deposits was to be taxed as **income from other sources** and cannot be adjusted against capital work-in-progress

In the present case, since interest earned on parking of unutilized borrowed funds **was not inextricably linked** with setting up of the capital structure and also borrowing **was not made for the purpose** of earning interest income, hence claim of adjusting interest income against CWIP was denied



❑ **Section 234C & 207 - Kumari Kumar Advani vs ACIT**
ITA No. 7661 /MUM/2013 (Mum Trib)

Though levy of interest for deferment of advance tax is **mandatory and cause & justification** for the deferment are **irrelevant**, however the same is not leviable if the income was **not predictable** and the assessee could not have **anticipated** its receipt eg. the receipt of a gift



❑ **Sec 140A - Life Time Realty (P.) Ltd vs DCIT**
[2017] 79 taxmann.com 230 (Mum Trib)

Where assessee failed to pay **self assessment tax** within prescribed time period due to **severe financial crunch**, having regard to proviso to section 221(1), penalty order passed against it deserved to be **set aside**

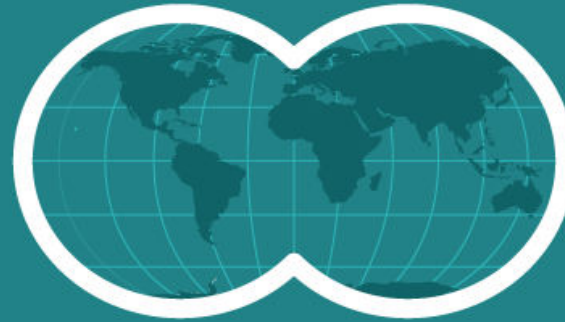
❑ **Section 194C r.w.s. 40(a)(ia) – Tapas Paul vs ACIT
[2017] 81 taxmann.com 332 (Kol Trib)**

Payments made to individual labourers, **under direct supervision of assessee**, were not liable for TDS u/s 194C as there existed employer-employee relationship

Further whether an organization is **registered under PF and ESIC** cannot alter the character of relationship of employer and employee

❑ **Sec 80(IA) - Ram Infrastructure Ltd vs. JCIT
ITA No. 746/PN/2013 (ITAT Pune)**

Where assessee is eligible to claim **deduction u/s 80(IA)**, any disallowance made thereby **enhancing the profits of the undertaking** then **corresponding deduction** is to be **available to the assessee** on such enhanced profits by virtue of Sec 80(IA) which provides **100% deduction of the profit from eligible undertakings**



INTERNATIONAL TAXATION

❑ **Section 9 – CIT vs. Hero Motocorp Ltd.**
[2017] 81 taxmann.com 162 (Del HC)

Where assessee entered into export agreement (EA) with its AE, terms of which it was granted approval to sell motor vehicles manufactured using technology licensed by AE abroad. Revenue taxed it under Royalty and FTS service however court accepted the argument that since separate export agreement was executed which does not rendered any managerial, technical or consultancy services, payment of export commission could not be terms as royalty or FTS taxable in India

❑ **Section 9 – Shipnet Software Solutions India (P.) Ltd. vs. DCIT**
[2017] 81 taxmann.com 301 (Chen Trib)

In TNMM merely because of high turnover, comparables cannot be excluded unless assessee demonstrates that turnover has materially impacted margins in relevant assessment year since as per Rule 10B, criteria for selection of comparable are Functions, Assets and Risks involved (FAR) and not merely turnover and brand value

Turnover - Company	Rs. 22 crores
Turnover of Comparable Co. – AO/TPO	> Rs. 800 crores
<u>Outcome</u> – Comparable accepted based on FAR	

Notifications / Circulars



Order [F.NO.278/MISC./M-63/2017-ITJ] dated 31.05.2017

Due date for furnishing Statement of Financial Transactions has been extended from 31.05.2017 to 30.06.2017

Notification No. 6/2017 dated 30.05.2017

Clarifications provided - Only one declaration in Form 15G/H needs to be furnished to deductor/payer for each financial year before the first payment becomes due. However revised declaration form shall be provided in case of any changes

Notification No. 38/2017 dated 15.05.2017

The Central Government has approved M/s National Institute of Hydrology (PAN: AAATN1385M) for the purpose of Sec. 35(1)(ii) in the category of 'Scientific Research Association' from AY 2017-18 onwards

Notifications No. 36/2017 – dated 02.05.2017

Form 10-IB has now been prescribed for making an application for exercise of option u/s 115BA(4) of IT Act which needs to be filed before filing ROI u/s 139(1) from AY 2017-18 onwards

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Thank you

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