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...spearheading information dissemination

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Income Tax

Angel tax – the what and why:

Simply put, the angel tax is a 30.9 % tax levied on investments made by external investors in startups or companies. To clarify, the entire investment is not taxed – only the amount that is considered above "fair value" valuations of the startup, classified as 'income from other sources' in the Income Tax Act of India. The problem arises because startups are often valued subjectively on the basis of discounted cash flows, without taking into account intangibles like goodwill. This can cause differing interpretations of "fair value" and leave startups vulnerable to unduly high taxes because the taxman feels the investment is too high over their valuation.

Taxman shows up at startup valuers' doors: Source: Economic Times

Even as the Centre seeks to pacify India's startup ecosystem on the so-called angel tax, chartered accountants and industry experts have come under the taxman's lens for the methodology used in computing the valuation premiums for businesses that often weren't making any money.

The tax department has started issuing show-cause notices to valuation experts, questioning the premiums several startups fetched during their investments rounds. High valuations — based on the certificates provided by these experts form the basis of the angel tax in businesses that had either failed to make money or show revenue growth in kilter with the projections.

The revenue department is asking startups to pay 30% tax on capital raised by them against the issue of shares in excess of the 'fair market value'.

Valuation experts, however, say that they merely projected and calculated future growth, using the facts and figures provided by the startups. "Valuations of startups conducted by experts or chartered accountants were based on assumptions and future growth projections provided by the founders, which were achieved or not achieved in actuality," said Jeenendra Bhandari, partner, MGB, a chartered accountancy firm. "The tax department has started issuing notices on these valuations to the experts or chartered accountants now, and sought explanations on these assumptions and projections, which happen to be the controversy around angel tax."

As per notice issued, the tax department sought clarity on the assumptions based on which future cash flows were derived in the valuation report

The notices come at a time when the government has claimed that it is dealing with the ghost of angel tax. The tax department has started noting down the statements of valuation experts, and these could be used to strengthen the angel tax demand.

Concept of 'Protective Assessments' and 'Substantive Assessments' under Income Tax Law.

During the course of assessment proceedings and related investigation, an Assessing Officer may find that an income apparently accrues in the hands of two persons. It is received by one person, but its usufruct is enjoyed by other person; or beneficial owner is a different person; or income is received apparently in two hands, though they are not in association to earn that income; or there are two claimants of the same income, though legally only one person can have ownership; or source of income flows from one person, and income is received by another person. Under these circumstances where legal ownership of the income is under suspicion, the AO resorts to addition in two hands-in one hand on protective basis and in other hand on substantive basis. However, the AO is not at complete liberty to pick any income or receipt or pick any person for making addition in two hands. There are also restrictions placed on his power in this regard.

Protective assessment is a precautionary assessment. Where an income has arisen, but AO is not sure who will pay tax on that income, he resorts to precautionary or protective assessment. The concept of 'protective assessment', was explained by the ***Hon'ble Apex Court in the case of Lalji Haridas v. ITO [1961] 43 ITR 387.***

There is no specific provision in the Act for the purpose of making a protective assessment. However, now it is well-settled by judicial precedent that in order to protect the interest of the revenue, protective assessment can be made. However, no recovery can be made on the basis of the protective assessment. ***[refer- Parasmal Dangi v. Asstt. CIT [2007] 17 SOT 19 (URO) (Chennai)].*** A protective assessment comes to an end when the substantive assessment is made in the case of a different person.

The protective assessment of an income can be made when, in the opinion of the Assessing Officer, an income has definitely arisen in a particular assessment year but there is some doubt about the entity in whose hands income is to be brought to tax. It has been held in ***Ketan B Thakkar HUF (supra)*** that, the question of income being brought to tax in the hands of an assessee, whether on protective basis or on substantive basis, can only arise when the fact of income having arisen is established or is beyond dispute. Even though judicial precedents permit the AO to make additions of same income in two hands on protective and substantive basis, yet such income must accrue or arise and either of the two assessees must have right to receive the income. An income in respect of which right to receive accrues or arises must fall in Chapter IV only. ***Deemed income falling under Chapter VI cannot be called to have accrued or arisen***. No right to receive in respect of deemed income is created in favour of any assessee. Therefore, addition of same amount as deemed income cannot be made in two hands. Accordingly, addition of deemed income on protective basis is not sustainable in law. Where investor is taxed on his investment in share application money or the investment is surrendered, and tax is paid, no protective addition u/s 68 in the hands of recipient-company will be justified.

Further, for making substantive or protective addition satisfaction of the same AO is necessary, as protective addition on borrowed satisfaction or on dictate of other AO making substantive addition will violate the principles of natural justice.

Recent Case Laws: Income Tax

1. Section 68: Where Tribunal, without considering material placed on record by assessee, upheld additions under section 68 made to income of assessee in respect of bogus creditors and further such additions resulted in huge gross profit ratio which could not arise in type of business of assessee, impugned additions were unjustified and matter was to be reconsidered afresh by Tribunal ***[2018] 100 taxmann.com 266 (Karnataka) Smt. Madhu Solanki v. Income Tax Officer, Ward-1(3), Bangalore***

IT: Where Tribunal's findings were based on independent analysis and appreciation of evidence on record, same being findings of fact and did not indicate any unreasonableness or infirmity calling for interference

2. Section 28(i), read with section 260A and rule 46A - Business loss/deduction - Allowable as (Trading losses) - Whether where Tribunal's findings that transactions of purchase and sale carried on by assessee trader, through a commission agent which resulted in loss of lakhs of rupees were not genuine, were based on its independent analysis and appreciation of evidence on record and not entirely based on consideration of fresh evidence under rule 46A, same being findings of fact and did not indicate any unreasonableness or infirmity calling for interference - Held, yes [Paras 19, 20 and 22] *[In favour of revenue]* **[2018] 100 taxmann.com 91 (Delhi) Mathur Marketing (P.) Ltd. v. Commissioner of Income-tax, Delhi**.

3. Section 143(3): Where during pendency of appeal against assessment order passed under section 143(3), assessee filed a petition challenging constitutional validity of proviso to rule 9A, since assessee's appeal was pending before Commissioner (Appeals) on merits, interest of justice would be served by not examining presently issue of constitutional validity and legality of proviso to rule 9A ***[2018] 100 taxmann.com 40 (Bombay) Satish Yashwant Kulkarni v. Union of India***

4. Section 37(1): Addition without rejecting Books: Allowability of (Onus to prove) - In course of assessment, assessee claimed deduction of expenses towards bricks, machinery repair, cartage, labour expenses etc. - Assessing Officer disallowed 10 per cent of said expenses on ground that insufficient evidence was adduced - Tribunal set aside said ad hoc disallowance on two grounds, firstly, assessee's books of account were not rejected and secondly, such expenses were allowed consistently in post in scrutiny assessments - High Court upheld order passed by Tribunal - Whether SLP filed against view taken by High Court was to be dismissed - Held, yes [Para 2] [In favour of assessee] ***[2018] 99 taxmann.com 284 (SC) Principal Commissioner of Income Tax v. R.G. Buildwell Engineers Ltd.***

5. Section 9 Income - Deemed to Accrue or Arise In India

Royalty : Where payment was made for CMG's membership by ONGC for non-exclusive and non-transferable licence to use technology only for internal business purpose, since there was neither sale nor licence of copyright in any kind of software or technology, such payment could not be held to be reckoned as royalty - ***ONGC v. Deputy Director of Income Tax, International Taxation, Dehradun - [2018] 100 taxmann.com 265 (Delhi - Trib.)***

6. Section 50C Capital Gains: The valuation of the stamp authority cannot be adopted for the purpose of collecting capital gain tax in the hands of the assessee if there is a long gap between the date of execution of the MOU and the execution of a formal development agreement

The assessee can be taxed only on the gain which is oozing out from the sale consideration, thus, no adverse inference can be drawn while invoking the provision of section 50C of the Act. No evidence has been produced by the Revenue at any stage that the assessee actually received the value which was adopted by the stamp valuation authority **PCIT vs. The Executor of Estate of Late Smt. Manjula A. Shah (Bombay High Court)**

7. Special Audit u/s 142(2A) – Communication or dispatch of Assessing Officer order for directing special audit, contention of department that order u/s 142(2A) was served on the assessee on the last day of limitation viz. 31st March 2013, before Supreme Court, document produced to the effect that very proposal for approval of the audit u/s 142(2A) was moved on 31st March 2013, which date was manipulated to 30th March, in the circumstances, notices in SLP against order of High Court dismissing writ petition against special audit u/s 142(2A) issued and directions of special audit stayed. (Favour of Assessee)

Nokia India (P) Ltd. Vs. Additional Commissioner of Income Tax & Anr. (Supreme Court)

8. Income From Undisclosed Source - Assessing Officer having treated the difference between the value of land and building as per report of DVO and That shown in the assessee books of accounts as unexplained investment and made addition without rejecting the construction account maintained by the assessee and giving proper opportunity of being heard to the assessee and explain its case, Tribunal was justified in deleting the addition. (Favour Assessee)

Commissioner of Income Tax vs. Megha Jewells (P) Ltd., (Hich Court Rajasthan, Jaipur)

9. *Section 43B, Business Disallowance - Certain Deductions to be allowed on Actual Payment - Employers Contribution*

Though an amendment has been introduced to section 43B, whereby actual date of payment is enough for considering deduction, if such date falls before date for filing return but in absence of any amendment made to section 36(1)(va), both contributions, viz., 'employees' and 'employers' cannot be brought under same scope and ambit of section 43B to claim deduction - ***Unifac Management Services (India) (P.) Ltd. v. Deputy Commissioner of Income-tax, Corporate Circle 3(2), Chennai - [2018] 100 taxmann.com 244 (Madras)***

10. Section 68 - Cash Credit

Bogus sales : Where assessee had sold a new product launched by it on test market basis over and above its counter sale but failed to explain as to how and why such cash sales of huge amount effected only in one month of a year, Assessing Officer was justified in making additions in respect of such unexplained sales under section 68 - J.M.J. Essential Oil Company v. Commissioner of Income-tax, Shimla - [2018] 100 taxmann.com 181 (Himachal Pradesh)

11. Income From Undisclosed Source - Any premium received by the company on the sale of shares, in excess of its face value, if the company is not one in which the public has substantial interest, would be treated as income from other sources u/s 56(2)(viib); Section 56(2)(viib) is not controlled by the provision of section 68; if section 68 is applicable, and the proviso is not satisfied, then the entire amounts credited in the books would be treated as income.(Favour of Revenue)

Sunrise Academy of Medical Specialities (India) (P) Ltd. vs. Income Tax Officer, (High Court – Kerala)

12. Reassessment - Assessment can be reopened on the basis of reports of investigation but does not obviate the need to show that there is tangible material relevant to the assessment year in question that warrants reopening of the assessment for that particular assessment year. Reason to believe could not be based on the alleged report of ITO (Inv.). (Favour of Assessee) ***Sky View Counsultants (P) Ltd. vs. Income Tax Officer & Anr. (High Court of Delhi)***

13. Business Income from dealing in Shares: Whether profit earned out of investment in shares can be treated as 'business income', when the investor's primary activity is not share trading at all - NO: HC - Revenue's appeal dismissed: ***Bombay High Court PR CIT Vs Rajesh D Nandu.***

14. Departmental Appeal: Whether the Tribunal is obliged to hear the Revenue's appeal against a decision of the CIT(A) favoring the assessee, where the Revenue omits to enclose with the appeal, the complete findings given by the CIT(A) - NO: ITAT - Revenue's appeal dismissed: **ITO Vs Samarth Fincap Services Pvt. Ltd**

15. Section 9 Royalty : Where assessee having procured software from AEs in Russia and Isreal and bundled those softwares with its own software which was ultimately sold to end customer as a bundled product in view of fact tax withholding liability in respect of royalty had been discharged by assessee as and when activation of key by end consumer had taken place, impugned disallowance made by TPO was to be set aside - ***Sophos Technologies (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 4(1)(1), Ahmedabad - [2018] 100 taxmann.com 374 (Ahmedabad - Trib.)***

16. Section 12AA: Assessee-trust did not carry and any charitable activity during relevant period, could not be a ground to cancel registration granted earlier under section 12AA: ***[2018] 100 taxmann.com 371 (Karnataka) Director of Income Tax, Exemption v. D.R. Ranka Charitable Trust***

17. Conversion of CCPSs into equity shares couldn't be considered as transfer within meaning of sec. 2(47): ITAT

The ITAT held in favour of assessee as under:

1) The CBDT vide Circular F. No. 12/1/84-IT(AI) dated 12-5-196 has clarified the position that where one type of share is converted into another type of share, there is no transfer of capital asset within the meaning of section 2(47).

2) The present case wasn't a case where one form of share had been exchanged, bartered, swapped for other form of share. In the instant case, one type of share had been converted into other type and the earlier type of share had ceased to exist.

3) Thus, there was no exchange of any share as the pre-conversion security had ceased to exist. Hence, it was evident that mere conversion of one type of share to other type of share would not be a transfer of a capital asset within the meaning of section 2(47).

4) Therefore, conversion of CCPS into equity shares couldn't be treated as 'transfer' within the meaning of section 2(47) and, hence, the addition was to be deleted*.* ***- [2018] 100 taxmann.com 263 (Mumbai – Tri)***

18. Section 68 - Cash Credit

Where certain credit entries were reflecting cash deposit in bank account of assessee, but assessee failed to substantiate her claim for source of such cash deposit and, therefore, same was treated as undisclosed income, bank statement not being considered as books of account, any sum found credited in bank passbook cannot be treated as an unexplained cash credit - ***Smt. Ramilaben B. Patel v. Income Tax Officer - [2018] 100 taxmann.com 325 (Ahmedabad - Trib.)***

19. Section 142 - Enquiry Before Assessment

Special audit : Where reassessment proceedings were pending against assessee and audit report submitted by assessee was also on record, impugned notice issued by revenue under section 142(2A) directing assessee to get its accounts audited again, deserved to be set aside **- Multi Commodity Exchange**

of India Ltd. v. Deputy Commissioner of Income Tax, Mumbai - [2018] 100 taxmann.com 180 (Bombay)

20. Section 4: Hindu undivided family, Where assessee's succession to estate of Ruler was not governed by principle of primogeniture, general law of succession i.e. rules applicable to HUF, would apply and, thus, after his death, assessment was to be completed by taking status of deceased assessee as that of HUF: **[2018] 99 taxmann.com 338 (Delhi) Commissioner of Income-tax v. Bhawani Singh ji**

21. Section 264 - Revision - of Other Orders

Where assessee filed revision petition challenging additions made in reassessment proceedings on ground that notice of reassessment and opportunity of hearing was not granted to it, in view of fact that in revision petition assessee clearly admitted that not only were notices received, even reassessment order was received but assessee did not care to appeal against it; and later on revision petition was filed after expiry of period of limitation, Commissioner was justified in dismissing said petition - Jindal Metal Co. v. Principal Commissioner of Income Tax, Delhi - [2018] 100 taxmann.com 183 (Delhi)

Goods and Services Tax: Recent updates

31st council meeting: 10 Major Changes under GST.

1. Security services (supply of security personnel) provided to a registered person shall be put under RCM except where service provided to:

-Government Departments which have taken registration for TDS and

-Entities registered under composition scheme.

2. To clarify that GST is exempt on supply of food and drinks by an educational institution when provided by the institution itself to its students, faculty and staff and is leviable to GST of 5% when provided by any other person based on a contractual arrangement with such institutions.

3. The due date for furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the Financial Year 2017 – 2018 shall be further extended till 30.06.2019.

4. Amendment of headings in the forms to specify that the return in FORM GSTR-9 &FORM GSTR-9A would be in respect of supplies etc. 'made during the year' and not 'as declared in returns filed during the year'

5. HSN code may be declared only for those inward supplies whose value independently accounts for 10% or more of the total value of inward supplies.

6. All invoices pertaining to previous FY (irrespective of month in which such invoice is reported in FORM GSTR-1) would be auto-populated in Table 8A of FORM GSTR-9;

7. All invoices pertaining to previous FY (irrespective of month in which such invoice is reported in FORM GSTR-1) would be auto-populated in Table 8A of FORM GSTR-9;

8. Joint responsibility of auditor with Registered Personal to be enabled in GSTR 9C.

9. Creation of a Centralised Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.

10. All the supporting documents/invoices in relation to a claim for refund in FORM GST RFD-01A shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby obviating the need for a taxpayer to physically visit a tax office for submission of a refund application. GSTN will enable this functionality on the common portal shortly.

Other Miscellaneous updates under GST.

1. No GST on reimbursement of salary on behalf of foreign entity: AAR

The applicant, a Crew Recruitment and Placement Agency, is involved in selecting and recruiting shipping personnel on behalf of Foreign Ship Owner (Principal). They are charging administration fees and paying GST on such fees. The principal would transfer the sum of total salary to applicant who, in turn, will disburse the salary to crew members through banking channels into their respective accounts. The applicant filed an application for advance ruling whether the remitted amount towards disbursal of salary would not be taxable under GST in view of provisions of Rule 33 of the CGST Rules, 2017?

The Maharashtra Authority for Advance Ruling held that the applicant will be acting as a pure agent of foreign ship owner. The amount from said receipt will not be used by applicant for his own interest. Therefore, the applicant will not be liable to pay GST on salary amount received from principal and disbursed to crew members. ***DRS Marine Services (P.) Ltd., In re- [2018] 100 taxmann.com 323 (AAR - Maharashtra)***

2. GST on common expenditure incurred by Head Office

GST regime has reduced various types of taxes but has brought up new issues for industry to be worried about. One such issue is GST implications on costs incurred at the head office of a business entity/organization which are related to or, in other words, incurred for the units of the business entity/organization located all over the country. It is a usual organizational structure that there are Centralized Procurements, Human Resource, Finance, Marketing, IT Department, etc., in a corporate structure. The human resources relating to said operations are located at HO, which takes strategic calls in the matters to be undertaken at all the units of the organization. Here, it is possible that HO is located in one State and other units are located in different States. In this article, the author has discussed on the GST implications of activities carried out at HO for other units. ***Prateek Sharma, Associate at Chir Amrit Legal LLP- [2018] 100 taxmann.com 109 (Article)***

3. Charitable Entities, Professionals exempted from GST

The 31st GST Council meeting has exempted the services of certain entities and professionals from the ambit of the Goods and Services Tax (GST). As per the decision of the Council, the services supplied by the rehabilitation professionals recognized under the Rehabilitation Council of India Act, 1992 at medical establishments, educational institutions, rehabilitation centers established by Central Government / State Government or Union Territories or entity registered under section 12AA of the Income Tax Act shall be exempted. Under the new tax regime, GST will be applicable to some of the services and goods supplied by a charitable trust or an NGO. To be exempted from taxation, a charitable trust or an NGO must be registered under Section 12AA of the Income Tax Act, and the services provided by the charitable trust or the NGO must be for a charitable cause. The exemption was also given to the services provided by Central or State Government or Union Territory Government to their undertakings or PSUs by way of guaranteeing loans taken by them from financial institutions as it is extended to guaranteeing of such loans taken from banks.

4. E-Way bill violations: Gujarat tops in number of cases, TN records highest tax evasion

Gujarat : Gujarat tops the list of States in number of violations of the e-Way bill system, introduced in April. The highest amount of tax evasion, meanwhile, took place in Tamil Nadu. The data, presented by the Ministry of Finance to the Lok Sabha recently, show that 191 cases of violations in respect of e-Way bills were registered in Gujarat, involving tax evasion of Rs.1.76 crore. West Bengal and Rajasthan recorded 134 and 124 cases each.

5. GST Council wants more services unbundled

You may soon get separate bills for taxable and non-taxable components in bills that include services exempt under the goods and services tax (GST) regime. The GST Council has decided to extend the unbundling of bills beyond healthcare for all categories of services currently exempt from the tax, such as education.

Education services, for instance, could come under the new norm. While core education services are exempt from GST, goods and services clubbed but not incidental to education are taxed.

Tax experts said the decision to split the bill would help prevent litigations and disputes.

"The principles governing composite supplies and mixed supplies have certain common elements, while the tax treatment is completely different," said M S Mani, partner at Deloitte India. "Hence, breaking down composite supplies, where feasible, into its constituent elements could be an option to avoid future litigation," he said.

Experts, however, said the move would require a change in definition of composite supply.

"Raising one consolidated bill or separate is a commercial decision between the parties involved and also based on the practice being followed in a particular industry," said Anita Rastogi, indirect tax partner at PwC. "If the government mandates separate billing, one would need to be mindful of the existing definition of composite supply which would still cover the bundled supply concept."

In other words, Rastogi said, mere splitting of invoices would not achieve the objective. Instead, an amendment in the definition would be required.

6. GSTN has started sharing data of mis-match in various returns with tax authorities

The GSTN has started sharing data of mis-match in various returns with tax authorities. The mis-match in figures reported in GSTR-1 & GSTR-3B, GSTR-3B & GSTR-2A and taxpayers who have generated e-way bill but not filed tax returns, have been shared. Further, GSTN will focus on the development of new return filing, further improving the user interface, and Business Intelligence and Analytics.

7. IT, ITeS cos may get to claim input tax credit for services delivered overseas

IT and ITeS companies would now be able to avail refunds on taxes paid on inputs used in servicing global contracts jointly with their foreign outfits.The Goods and Services Tax Council has agreed to allow input tax credit to service providers even if the contract is part delivered by group entity outside India, in a move seen to boost the business process outsourcing industry. "It has been decided that wherever RBI permits, the transaction input tax credit would be allowed.

Insolvency And Bankruptcy Code:

1. Only debtor and creditor have right to intervene in proceeding initiated under Insolvency and Bankruptcy Code

In given case, the Financial creditor filed application under section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process (CIRP) against corporate debtor. In course of proceedings, applicant, being an investor of corporate debtor filed an application for impleading it as party on ground that opportunity was to be given to it to raise all issues necessary for effective adjudication. In Axis Bank v. Lotus Three Development Ltd. [2018] 97 taxmann.com 96. The NCLT held that third party (being an entity other than financial creditor/corporate debtor) was not offered right to be heard and to intervene in a proceeding initiated under section 7 of the IBC Code. Therefore, following case, instant intervention application filed by investor of corporate debtor was to be rejected.

KKR Jupiter Investors (P.) Ltd. v. JBF Petrochemicals Ltd. [2018] 100 taxmann.com 341 (NCLT - Ahd.)

2. Corporate Insolvency Resolution plea admitted when book distributor confirmed supply and outstanding dues: NCLT

Operational Creditor, a publishing house, supplied books ordered by Debtor distributor and raised valid invoice for same. Corporate Debtor acknowledged balance outstanding dues, only when demand Notice was issued, Corporate Debtor replied after expiry of 10 days, raising disputes that supplies of goods were not confirming to order placed by authorised persons and Corporate Debtor was not liable to pay for order placed by individuals other than authorised persons. The NCLT held that defence taken by Corporate Debtor was not covered in pre-existing dispute. Thus, Corporate Resolution Process deserved to be admitted. ***Taxmann Publications (P.) Ltd. v. International Book House (P.) Ltd. [2018] 100 taxmann.com 446 (NCLT - Mum.)***

Corporate News updates

1. Directors' Disqualification: Gujarat HC quashes list published by MCA

The Gujarat High Court has quashed a list of disqualified directors published by Ministry of Corporate Affairs (MCA). Justice Bela M. Trivedi held that Section 164(2) of the Companies Act is prospective in nature and will take effect only from its date of notification, viz, April 1, 2014. The MCA had published a list of nearly three lakh disqualified directors. While quashing the list, the Gujarat High Court observed that "Section 164(2) of the Companies Act of 2013, which had come into force from 1.1.2014 would have prospective and not retrospective effect". The Court also said that "The defaults contemplated under Section 164(2)(a) with regard to non-filing of financial statements or annual returns for any continuous period of three financial years would be the defaults to be counted from the financial year 2014-15 only and not 2013-14". "The respondents could not have treated the Directors as disqualified/ineligible for a period of five years from 1.11.2016 to 1.11.2021, while publishing the impugned list under Section 248 of the Act of 2013. Even if the Registrar removes the name of a company from the register of companies, and even if such company would stand dissolved under Section 248, the statutory liabilities/obligations of such struck of company and its Directors would still remain to be discharged, in view of Section 250 of the said Act of 2013", the bench also said.

2. Attachment order was to be set aside when mortgaged properties were not proceeds of crime

Bank of India v. Deputy Director, Directorate of Enforcement, Mum. - [2018] 100 taxmann.com 232 ((PMLA-AT), NEW DELHI)

Borrower - company had availed of loan from appellant - bank for setting -up a hotel - cum - retail space (hotel property) and had created an equitable mortgage on hotel property in favour of consortium of public sector banks led by appellant - bank. In view of defaults in payment, account of borrower was classified as NPA and bank had taken possession of that property. Later on, a provisional attachment order under section 5 was passed and mortgaged properties of company were attached. Since properties in question had been mortgaged with appellant - bank prior to date of alleged offence which showed that no 'proceeds of crime' were involved in acquiring of those properties and, hence, same could not be attached.

Indian Economy

Expectations from the Government in the Election Year 2019

1. Universal basic income

UBI is not a new idea. It got full play in the Economic Survey 2016-17. Based on a survey on misallocation of resources for the six largest central-sector and centrally sponsored sub-schemes (except PDS and fertilizer subsidy) across districts, the Economic Survey pointed out that the districts where the needs were greatest were precisely the ones where state capacity was the weakest. This suggested that a more efficient way to help the poor would be to provide them resources directly, through a UBI. Then chief economic advisor Arvind Subramanian, the author of the survey, even calculated the UBI for 2016-17—Rs. 7,620. IMF’s estimate is UBI of Rs 2,600 in 2011-12 prices. This is equivalent to about 20% of median per capita consumption in that year.

UBI is being seen as BJP's best chance to win 2019 mandate. Instead of a universal loan waiver, UBI is seen as a more efficient means to help a large number of people, including small farmers, out of financial distress. Since declining rural real wages are a big factor in farm distress, UBI will be a more effective means than a one-time universal loan waiver.

2. Relief for retailers

Retailers or small businesses have been the core of the present government’s mass base. They have been under stress due to demonetisation and later the problems during transition to the GST. Now they are being hit by big online retailers who can afford to offer deep discounts.

In the run-up to the 2019 Lok Sabha elections, the present government may soon announce a “special package” for the retailers and traders, which will allow them access to cheaper loans through an interest subvention scheme and insurance facilities.

3. Tax relief for the salaried

Finance Minister likely to opt for a vote-on-account instead of a full budget since the elections would be held just a few months later. Can a finance minister make a splash with a vote-on-account speech? In case of vote-on-account, the finance minister seeks an approval for the expenditure for up to three or four months. Any new schemes launched at this time for the following year cannot be voted on; ditto for any direct tax sops or increases.

But Jaitley can take a leaf out of the playbook of Manmohan Singh. While presenting the vote-on-account in 1996, Manmohan Singh went quite out of character and made a pitch for votes, for the "friendly hand", after outlining the work done by the Narasimha Rao government.

As an intention or promise, the FM can propose income tax relief for the salaried such as raising standard deduction from Rs 40,000 to Rs 75,000 or even raising the ceiling for exemption from income tax. He is even likely to review tax on mutual fund redemption. The will give consumption boost to the economy by ensuring more disposable income for the middle class.

Patel’s sudden decision to demit office is a severe blow to Indian economy: Sh. Manmohan Singh:

On RBI Governor Urjit Patel’s resignation, former PM Manmohan Singh said, it is a severe blow to the Indian economy. He also alleged that BJP is leading nation to the “wrong path”

Expressing sadness over RBI Governor Urjit Patel's resignation, former Prime Minister Manmohan Singh said Patel's sudden decision to demit office is a severe blow to the Indian economy.

In a statement, Singh described Patel as an "economist of high repute and also someone who cared deeply about India's financial institutions and economic policy" and wished him success for future endeavours.

"Dr Patel's sudden resignation, at a time when the Indian economy is faced with many headwinds is very unfortunate and is a severe blow to the nation's economy," the statement quoted him as saying.

Taking a hit at the NDA government, Singh -- a senior Congress leader -- said: "I also sincerely hope that this sudden resignation of the Governor is not a harbinger of the Modi government's attempts to destroy the institutional foundations of India's $3-trillion economy

Opec holds the key to Indian economy's fortunes in 2019

The decline in oil prices has made India an attractive investment destination yet again, but policymakers and investors would do well not to ignore the fundamental weaknesses in India's macroeconomic balance sheet.

The slowdown in the global macro-economy is likely to dampen oil prices but the big unknown is the response of the oil cartel, Organization of the Petroleum Exporting Countries (Opec).

Even as foreign institutional investors pull out money from the country, the rupee is witnessing a smart recovery over the past few trading sessions. The reason behind this paradox is simple: falling crude oil prices, which is hovering near the $50 per barrel mark for the first time in 16 months.

Oil has been the major bugbear of the Indian economy. A sharp rise in oil prices this year raised fresh concerns about India's outsized dependence on oil imports. The fears of widening current account and fiscal deficit had spooked investors and made the rupee the worst-performer among emerging markets currencies. The decline in oil prices seems to have reversed the rupee-dollar trade.

However, the fundamental weaknesses in India's macroeconomic balance sheet remain. Owing to populist pressures ahead of elections in 2019, the fisc is under strain, and sluggish export growth has left the current account vulnerable to shocks. A spike in oil prices, could therefore widen the twin deficits once again. The trajectory of oil prices will have as much bearing on the health of the economy in 2019 as it did in 2018.

What makes 2019 different though is the near-consensus on a decline in global growth, which is expected to temper oil prices, at least in the first half of the next calendar year. The growth slowdown in the largest economies of the world has already begun. According to provisional estimates of the Organization for Economic Cooperation and Development (OECD), real GDP growth of G20 countries eased to 0.8% in the third quarter of 2018, from 1% in the previous quarter.

Ten years after the global financial crisis of 2008, the world is yet to recover from its after-effects. The rising tide of protectionism in the post-crisis world has only served to dampen the recovery by slowing down trade and investment flows across the world. Trade buoyancy has been declining over the past few years, dragging down global growth.

Opec's influence on global crude oil prices has diminished as production outside the cartel, primarily by the US and Russia, has grown. Yet, with Opec members continuing to be the major producer of crude oil in 2019, they will wield significant influence on oil markets globally. Oil production cuts by Opec would therefore continue to add volatility to oil markets globally in the coming year.

For now, investors seem to be betting on subdued oil prices in the coming months, with speculators turning increasingly bearish over the past few months.

The decline in oil prices has made India a more attractive destination compared to earlier. But policymakers and investors would do well not to ignore the fundamental weaknesses in India's macroeconomic balance sheet which the oil price shock of 2018 brought to the fore.

In the run-up to the 2019 poll, the country needs not farm loan-waivers but pro-farmer policies.

Resurrect Indian Economy: The Pioneer

The Indian economy will be in a cyclical phase of loan-waivers now that the Congress has come back to power in three crucial States. It is the banks, who hold people's deposits, and not the Governments that are an easy prey. But nobody seems to be concerned about alleviating farmers' distress logically. Then there arises a problem of perception too. The present RBI Governor, Shaktikanta Das, said that besides being a stakeholder, the Government runs the economy and manages the financial institutions. Das is correct to the extent that the Government manages the institutions. This is the task bestowed upon the Government by the people but it has to be as per people's wishes and not as the Government decides. People are rarely even consulted.

The economy is run and managed usually by entrepreneurs and financial institutions. The Government is an institution that was formed by the people to take care of issues of daily management. Its role was that of a custodian and not the owner. Governments that adhered to it, possibly the Atal Bihari Vajpayee did and to some extent the United Front too, made the people happy. So, whichever party forms the Government, it has to adhere to the basics and should not gloat over the euphoria of numbers. People expect that as custodians of their money and managers of institutions, the Government must protect their wealth. Since 2014, seven States have unveiled loan-waivers, totalling to nearly Rs 182,802 crore.

Agriculture economist Ashok Gulati reckoned that in the run-up to the general election, farm loan-waivers may touch Rs 4 lakh crore as other States are expected to join the fray. Let the nation also not feel that sudden changes in the RBI will make the stock market buoyant. The same happened in March 1992 which later opened a can of worms — the Harshad Mehta stock scam. The present move may come as a boost but the stock market is not really an indicator of the economy. It is definitely not at present. The buoyancy is often the result of behind-the-scenes operations.

Despite occasional gains, the value of the rupee remains volatile. This needs to be taken with a pinch of salt as it results in an unstable economy, uncertain job markets, makes the investors wary and the stock movement unreal. For much of this year, the Urjit Patel-led RBI was seen resisting pressure as well as entreaties from the Government, industry and financial firms to ease lending and capital norms for stressed public sector banks (PSBs), particularly those under the prompt corrective action framework, to open a special liquidity window for non-banking financial companies with a precarious asset-liability position and to push the flow of credit to small enterprises. Das has not spoken on any of these specific issues that caused a strain in the relationship between the Government and the RBI. Poll manifestoes of the five States, too, were silent on these issues. Of course, voters do not understand intricate issues. So, populism marked the electoral campaigns in the states. Union Finance Minister Arun Jaitley was right in saying that populism does not help in the long-run. Political parties practise it to get the numbers to form a Government. Ignoring numbers of the finances causes the real problem. The industry, the biggest defaulter in loan repayment, is also known to have withdrawn the largest cash along with many other players before the elections. Why? Everyone knows the answer.

So except for a cosmetic treatment, not much can be realised and PSBs, who hold people's deposits, are in severe crisis due to NPAs. It is true that this Government did not proffer the bounties. Their predecessors did. But once again, people have the problem of a cyclical nature of politics. So, if this Government is finding it difficult, would the next Government not do it? Or would they again play with people's money to which no Government has the right to lay their hands on? The sufferings of the people, forget about mitigation, is mounting. The RBI was supposed to raise interest rates to help the poor depositors, senior citizens, women and the deprived Jan Dhan account holders. The rate rise is required not just to help the depositors but to protect the nation's wealth. People's money is not for the big corporates. The farmer and MSMEs also have a claim to it.

Loan waivers create an unwanted culture. As elections approached, farmers, who could repay loans, didn't. The industry willfully ignored its duty. Meanwhile, the Government is recapitalizing banks with the taxpayers' money. This is a vortex and the only solution is to raise farmer incomes with a proper farm policy in place. People need succour and protection. The year 2019 will belong to those who can ensure relief and safety of banks. Yes, the Government has been given the task to direct the economy but it can't run it. It has to fulfill its tasks without hurting the people, their deposits or threatening to play with their wealth in the banks. India needs pro-people, pro-farmer policies for livelihood creation.