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## Income Tax

### **CBDT creates an online portal to get all the information about Automatic Exchange of Information (AEOI)**

The CBDT has created an Exchange of information portal for dissemination of information to all the stakeholders. This portal will consolidate all the information related to Automatic Exchange of Information (AEOI) at one place. The portal can be accessed by the financial Institutions, departmental officers as well as public at large. It would be a repository of policy and technical circulars/guidance/notifications issued by the CBDT.

It will also provide links to relevant circulars/guidance issued by the regulatory authorities in India and other international bodies. It will also help the foreign tax authorities and financial institutions to get information about the Indian laws, rules and procedures related to AEOI under Common Reporting Standard (CRS).

### **Government is examining Direct Taxes Code: FM Nirmala Sitharaman**

Finance Minister Nirmala Sitharaman said that the proposed new Direct Taxes Code (DTC) to replace the existing income tax law (enacted in 1961) was "under examination" of the Finance Ministry.

"We are looking into the report of the Task Force and is under examination of the Ministry," Sitharaman said during her reply to the discussion on the Taxation Laws (amendment) Bill in the Rajya Sabha.

The Finance Minister's latest remarks is a clear pointer towards the government's plan to have a modern income tax law is still on the table and not off its radar, said economy watchers.

The upper house later returned the Bill to the Lok Sabha, paving the way for the replacement of the September 20 ordinance that among other things introduced a new 15 per cent corporate tax rate regime for new companies in the manufacturing sector.

It may be recalled that a government-appointed Task Force, where CBDT member Akhilesh Ranjan was its convenor, had submitted its report in mid August this year. This report is now under the consideration of the Finance Ministry.

The Finance Minister asserted that the government's move to cut corporate taxes — which could lead to revenue foregone of ₹1.45 lakh crore — was not just intended for creating "good atmospherics or good headlines or good PR", but for "good reforms".

“This government is committed to reforms and you will see more reforms (in the coming days). “This government has been sensitive and responsive to the emerging situations and not waited for things to develop,” she said.

## **Key highlights of “The Taxation Laws (Amendment) Bill, 2019”**

### ***Changes in Section 115BAB***

1. It has been proposed that the scope of new provisions of Section 115BAB shall be restricted to the income derived from or incidental to manufacturing activities. Thus, income from such activities shall be chargeable to tax at reduced rate of 15%;
2. The concessional tax rate shall not be available for the short-term capital gains arising from non-depreciable assets, which shall be charged to tax at the rate of 22%. Where short-term capital gains is arising from transfer of depreciable asset, it would be taxed at the rate of 15%;
3. Income which is neither derived from nor incidental to manufacturing or production of an article or thing shall be taxable at the rate of 22%;
4. Following businesses have been proposed to be excluded from the scope of new provisions of section 115BAB:
  - a) Development of computer software in any form or in any media;
  - b) Mining;
  - c) Conversion of marble blocks or similar items into slabs;
  - d) Bottling of gas into cylinder;
  - e) Printing of books or production of cinematograph film; or
  - f) Any other business as may be notified by the Central Govt.
5. Amalgamated company can opt for Section 115BAB if the scheme of amalgamation is not falling within the purview of ‘Splitting or reconstruction of existing business’;
6. In case of amalgamation or demerger, the successor co. shall not be allowed to set-off any loss or depreciation if such loss or depreciation is attributable to prohibited deduction or allowances as specified in Section 115BAB;
7. Where Assessing officer finds that the eligible company earns more than ordinary profits due to close connection with the related parties then the excess profit shall be taxed at the rate of 30%.

### ***a. Changes in Section 115BAA***

1. If a company, after opting for section 115BAA, does not compute its total income for the relevant previous year as per the relevant provisions of section 115BAA, then the option to pay tax at concessional rate shall become invalid for that year and for all subsequent assessment years;
2. If a company has opted for concessional tax regime of Section 115BAB but it subsequently violated the conditions of that provisions, then it may opt for regime of section 115BAA;
3. A company opting for section 115BAA shall not be allowed to set-off the losses attributable to additional deduction allowable under section 32AD in respect of investment in new plant and machinery;
4. In case of amalgamation or demerger, the successor co. shall not be allowed to set-off any loss or depreciation if such loss or depreciation is attributable to prohibited deduction or allowances as specified in Section 115BAA;
5. Units located in IFSCs have been allowed to claim deduction under Section 80LA even after opting for Section 115BAA;
6. As companies opting for section 115BAA are not eligible to set-off the unabsorbed depreciation attributable to additional depreciation, it has been clarified that corresponding adjustment shall be made to WDV of the block of assets in prescribed manner.

### ***b. Forfeiture of MAT Credit***

1. The companies opting for new taxation regimes of Section 115BAA or 115BAB have been given immunity from the provisions of MAT. However, the Ordinance did not make any consequential amendments in the provisions of Section 115JAA;
2. To fix the error, the CBDT subsequently issued a Circular No. 29/2019, dated 02-10-2019 to clarify that the MAT credit shall be not available if a company opts for new regimes;
3. As a circular, on this matter, was not sufficient to justify the forfeiture of MAT Credit, the Bill proposes an amendment to Section 115JAA that this provision shall not be applicable to a company opting for new tax regimes of Section 115BAA or 115BAB;
4. Thus, the MAT credit available with a company shall lapse on opting the new regimes.

#### **Some Issues on Section 115BBE**

Section 68 basically applies to unexplained 'cash credit' like loans, deposits, advances, share capital, etc. The point to be considered is whether it will also apply to 'income' which is already offered to tax as normal income. If an Assessing Officer rejects taxpayer's explanation surrounding the head of taxation (say, House Property v. Business Income or Income from other source, Business Income v. Capital Gains), being not to his satisfaction, whether Section 115BBE of the Act can still be triggered, empowering the Assessing Officer to *inter alia* deny all *bona fide* expenses / allowances as per Income Tax Act?

In such a case, it may be argued that Section 115BBE of the Act is a machinery provision to levy tax on income and it should not enlarge the ambit of Section 68 of the Act to create a deeming fiction to tax any sum already credited / offered as income. Such recourse is unwarranted, keeping in view the objective of introducing Section 115BBE of the Act, which was only to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit.

So far tax laws are concerned, it is difficult to predict the precise stand of the department, but one can take adequate measures to safeguard himself from the possible complications or hindrances that may arise. Such safeguards may be an endeavour to demonstrate substance over form; maintain proper documentation evidencing the nature and source of income, Ensuring that transactions are routed through normal banking channel, which will lend due credence and it will help in proving nature and source of amount and to prove that the transaction is *bona fide*.

#### **Commentary on Section 68, 69A, 69B, 69C and 69D**

Sections 68 and 69A apply where an assessee maintains books of accounts. Sections 69, 69B and 69C apply to those assessees who either do not maintain books of accounts or even if they maintain accounts, the items covered by these sections are not recorded in such books. Section 69D applies to all assessees, i.e. those who maintain and those who do not maintain books of accounts. As observed earlier, there are no legal precedents/guidelines as to when an assessee can be said to have discharged satisfactorily his onus of proving the source of such investments, money, bullion, jewellery, other valuable articles, etc., as are found in his possession, and/or the source of expenses incurred.

Apart from credits on account of borrowings, loans, sundry creditors, capital, deposits, etc., such assessee credit their income from sales (both cash and credit) and other operating activities also in their books of accounts. Such other credits also attract the provisions of section 68. The provisions of section 68 are attracted when any sum is found credited in the books of an assessee.

The words "any sum" are wide enough to cover the transactions of "Cash Sales" appearing in the books of an assessee and, therefore, if the assessee offers no explanation about the nature and source of "cash sales" or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, cash sales may be deemed as unexplained incomes chargeable to tax under section 68 of the Act.

Although in cases of cash sales, an assessee is not required to prove the "source of source", yet then it would be a Herculean task for him to prove the nature and source of "cash sales".

A trader can explain his cash sales if he has reliable records of purchases and stocks, but in case of a professional, it is not possible to establish one to one nexus between the expenses incurred and the fees earned.

It may be noted that section 69 empowers to treat the unexplained investments as income of the assessee. Likewise section 69A deals with Unexplained money etc. and the A.O. may consider it as the income of the assessee. In case amount of investment is not fully disclosed in books of account, the excess amount may be deemed to be income of the assessee u/s 69B.

It is advisable for taxpayers as well as tax professionals to consider the CBDT Instruction No. 3 dated 21.2.2017 as well as guidelines annexed thereto and take a proper decision in the matters of cash deposited.

## Recent Case Laws

### 1. Section 201 Consequence of Failure To Deduct or Pay

Mere ritualistic giving of hearing and reproducing submissions made without understanding party's case would not satisfy test of natural justice and will amount to breach of natural justice - ***TLG India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2019] 111 taxmann.com 376 (Bombay)***

### 2. Section 194C

Sub-section (7) : Where TDS related documents are not submitted at time of filing return of TDS, fine can be imposed for late submission, but assessee will be entitled to claim deduction under Section 194C(7) - ***Dilip Kumar v. Assistant Commissioner of Income-tax, Non-Corporate Circle-II, Chennai - [2019] 111 taxmann.com 52 (Madras)***

### 3. Section 44AB Audit Compulsory

Where assessee made available relevant audit report at time of assessment, it was clearly evident that audit had taken place before date of filing of return of income and same was within provisions of section 44AB, thus, no penalty under section 271B was to be levied upon assessee - ***ASR Engg. & Projects Ltd. v. Deputy Commissioner of Income-tax, Central Circle-1(3), Hyderabad - [2019] 111 taxmann.com 49 (Hyderabad - Trib.)***

### 4. Section 133A - Survey

Statement on oath made by an assessee to income-tax authority during survey proceedings under section 133A is not conclusive; assessee can explain or withdraw admission, if any, made by him in such statement and assessment of tax cannot be made solely on basis of such sworn statement made by assessee under section 133A(3)(iii) and such statement can be used to corroborate other materials before assessing authority, including contents of any document - ***C.K. Abdul Azeez v. Commissioner of Income Tax, Central Circle, Calicut - [2019] 111 taxmann.com 74 (Kerala)***

### 5. AO can't withhold refund u/s 241A without processing assessee's return: Bombay HC

The assessee filed its return of income seeking refund of Rs. 92.83 crores. The Assessing Officer (AO) issued notice proposing to withhold the refund in view of section 241A without processing the return under section 143(1),

The assessee filed a petition contending that section 241A could be invoked only after the refund due was determined under section 143(1).

Later on the assessee revised its return of income and sought a refund of Rs. 72.16 crore. Such revision was on account of the retrospective amendment to the section 43AA and certain other items. The AO didn't process the revised return also.

On appeal, the Bombay High Court held that section 241A empowers the AO to withhold the refund only after the refund is determined under section 143(1). It was undisputed that neither the original return nor revised return had been processed by the AO under section 143(1) till date. Consequently,

the question to withhold any refund under section 241A didn't arise. Therefore, notice proposing to withhold refund was to be quashed and set aside. **Tata Communications Ltd. v. DCIT - [2019] 111 taxmann.com 63 (Bombay)**

**6. HC quashes non-speaking orders passed by AO without considering assessee's submissions**

Petitioner, an advertising agency, had enabled its clients to place/display their advertisements on various media. It had deducted tax at source under section 194C while making payment to the media owners.

However, the petitioner was declared as an assessee-in-default under section 201(1) and 201(1A) for failure to deduct tax on payments made to media owners for the services the media owners provided to the petitioner under section 194J. It filed writ petition on the ground of breach of principles of natural justice, viz: non-speaking order.

The Bombay High Court held that the impugned orders were non-speaking orders since admittedly it had not considered the petitioner's submissions which went to the root of the matter. The object of natural justice is to ensure that party's views/objections are taken on board and considered before they are rejected.

Mere ritualistic giving of hearing and reproducing the submissions made without understanding the party's case would not satisfy the test of natural justice. It is not open to the Authority to ignore the evidences/submissions made by the party. The object of quasi-judicial authority is to find the correct facts and after that apply the law to those facts and make a decision in terms thereof. **TLG India (P.) Ltd. v. DCIT - [2019] 111 taxmann.com 376 (Bombay).**

**7. Issue of notice u/s 143(2) :** Where no notice under section 143(2) was issued, assessment could not be framed under section 143(3), read with section 147 - **Gulab Badgujar (HUF) v. Income-tax Officer, Central-1, Nashik - [2019] 111 taxmann.com 90 (Pune - Trib.)**

**8. Percentage completion method :** Where assessee, engaged in business of real estate development, offered income in respect of sale of flats to flat owners with whom agreement to sell had been entered into, AO was to be directed to bring said income to tax on basis of percentage completion method having regard to principles of **AS-9 - Shankala Realtors (P.) Ltd. v. Income-tax Officer, 8(2)(1), Mumbai - [2019] 111 taxmann.com 96 (Mumbai - Trib.)**

**9. Unexplained Investment**

Where AO made addition to assessee's income under section 69 in respect of purchase of property, even though assessee stated that he had taken loan from one 'R' through banking channels to purchase said property, yet in view of failure of assessee to satisfactorily explain source of investment in said property at any stage, impugned order passed by authorities below did not require any interference - **Sajid Khan v. Principal Commissioner of Income-tax - [2019] 111 taxmann.com 240 (Allahabad)**

**10. Section 148 Notice :** Where a notice under section 148 is issued by an incompetent officer, i.e., one who has no jurisdiction, and subsequently, on objection of assessee with regard to jurisdiction, matter is transferred to Assessing Officer having jurisdiction, a valid assessment cannot be made by him without issuing a fresh notice under section 148 - **Ramesh Mishra v. Deputy Commissioner of Income-tax, Range-6, Lucknow - [2019] 111 taxmann.com 268 (Lucknow - Trib.)**

**11. Section 36(1)(iii) for purpose of business :** Interest incurred on loans taken for acquiring controlling interest in company of same line, would be allowable expenditure under section 36(1)(iii) - **Principal**

- 12. Levy of penalty u/s 271(1)(c)** is not valid if (i) there is no record of satisfaction by the AO that there was any concealment of income or that any inaccurate particulars were furnished by the assessee or (ii) If the notice is issued in the printed form and the inapplicable portions are not struck off (Samson Perinchery 392 ITR 4 (Bom) & New Era Sova Mine (2019) SCC OnLine Bom 1032] followed, Mak Data 358 ITR 593 (SC) distinguished)

The notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded **PCIT vs. Goa Coastal Resorts & Recreation Pvt. Ltd (Bombay High Court)**

- 13. Disposing of appeal by merely holding that AO's order was self-speaking which required no interference was unjustified**

Assessee filed an appeal to CIT(Appeals) against order of scrutiny assessment done by Assessing Officer. CIT(Appeals) disposed of appeal holding that Assessing Officer's order was a self-speaking order and did not require interference.

The Madras High court held that the CIT(Appeals) is a fact finding authority and, therefore, has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment could be sustained or not. **Ajji Basha v. CIT - [2019] 111 taxmann.com 348 (Madras)**

**14. Case laws on Section 9 - Royalties/Fees for Technical Services**

- i. Computer software :** Where assessee made payment towards annual license fee for renewal of Microsoft software, since consideration for use or right to use computer software in any form including mere granting of license was considered as income from royalty in hands of recipient as per section 9(1)(vi) - **Deputy Commissioner of Income-tax, Circle-4 v. iGate Global Solutions Ltd. - [2019] 111 taxmann.com 192 (Pune - Trib.)**
- ii. Telecom service/transmission services :** Payment received by assessee, a USA based company, on account of data access/link charges from its Indian subsidiary was neither for scientific work nor any patent, trademark, design, plan or secret formula or process, thus, it could not be held to be 'Royalty' under Article 12 of India-US Tax Treaty - **NetCracker Technology Solutions Inc. v. Assistant Director of Income-tax, Circle-1(1), Mumbai - [2019] 111 taxmann.com 193 (Mumbai - Trib.)**
- iii. Computer software :** Payment received by assessee for sale of a copyrighted/shrink-wrapped software, which could not be treated as consideration for transfer of any copyright, thus, could not be treated as Royalty under Article 12 of India-US Tax Treaty and **Advisory, consultancy and professional service:** Where professional and consultancy services provided by assessee, a USA based company to an Indian company, did not 'make available' any technical knowledge, experience, skill, know-how or process or consist of any development and transfer of any design, receipt on account of said services was not taxable as fee for included services under Article 12 of India-US Tax Treaty - **NetCracker Technology Solutions Inc. v. Assistant Director of Income-tax, Circle-1(1), Mumbai - [2019] 111 taxmann.com 193 (Mumbai - Trib.)**

## **Goods and Services Tax**

### **1. Development of land for residential dwellings with amenities as per JDA with land-owners is a service, liable to GST**

***MAARQ Spaces (P.) Ltd., In re - [2019] 111 taxmann.com 368 (AAR - KARNATAKA)***

The applicant is engaged in property development. It has entered into Joint Development Agreement (JDA) with landowners for development of land into residential layout with specifications and amenities. The revenue accruing from the sale of plots is shared as per agreement. It has sought an advance ruling to determine whether such development of and sale of land attracts GST?

The Authority for Advance Rulings, Karnataka observed that the applicant converts the piece of raw land into well-developed residential layout by undertaking activities such as survey of land, preparing detailed map of proposed layout, construction of roads, laying of sewage pipelines, creating common amenities, etc. As per the agreement the applicant can enter into sale agreements. The sale is entrusted to the applicant as it has invested huge amount in the development of land and to protect its financial exposure. However, the activity actually carried out is that of development of land and not sale of land.

Moreover, as per the agreement, the applicant has no right over the land and cannot be considered as sellers of property as owners. Hence, it cannot be involved in the sale of land. Therefore, the said activity for development of land is a supply of service, liable to GST.

The Authority for Advance Rulings, Karnataka held that activity provided in respect of development of land for residential layout along with specifications and amenities to land-owners is a service, taxable under GST.

### **2. Assessee allowed to rectify GSTR-1 manually: HC**

***Vadehra Builders (P.) Ltd. v. Union of India- [2019] 111 taxmann.com 330 (Delhi)***

Assessee filed writ petition before the High Court of Delhi so as to permit it to file manually amended return in Form GSTR-1 for the month of November, 2017. As per the submissions of the assessee, it inadvertently furnished the wrong particulars of GSTIN in Form GSTR-1.

The Honorable Court took the view considered by High Court of Andhra Pradesh in M/s Panduranga Stone Crushers v. Union of India, wherein the Court permitted the assessee to manually rectify the Form GSTR-3B subject to the outcome of writ petition.

In the present case, the revenue authorities did not file a reply in response to the request of the assessee. Hence, the Honorable Court through an interim relief and subject to final outcome of writ petition, permitted the assessee to manually rectify the return in Form GSTR-1 for the month of November, 2017.

### **3. Govt blocks GST e-way bill generation; move may impact 300,000 firms**

Businesses of roughly 300,000 firms paying goods and services tax (GST) were likely impacted, as the government had blocked e-way bill generation for non-compliant assesseees. These businesses had not filed their monthly GST Return (GSTR)-3B for two consecutive months. The government had notified the rule last month as an enforcement measure amid subdued revenue collection. The GST system has been grappling with low levels of compliance. Only 65-68 per cent of eligible GST filers file the GSTR-3B within the due date, the GST Network (GSTN) data shows. "This month, the taxpayer will be alerted with a cautionary message while generating e-way bills, in case GSTR-3B for the past two successive months of the consignor/consignee GST identification number (GSTIN) has not been filed.

### **4. CBIC issued clarification on fully electronic refund process through Form GST RFD-01**

**Circular No. 125/44/2019-Central Tax, dated November 18, 2019**

CBIC has clarified the procedure for electronic submission and processing of refund applications in Form GST RFD-01 the functionality of which has been deployed on the GST portal w.e.f. 26.09.2019. However, all refund applications filed on the common portal before 26.09.2019 shall continue to be processed manually prior to deployment of new system. The circular also provides clarifications on certain refund related issues.

#### **5. Developer guilty of profiteering for not passing on additional ITC benefit to buyers post-GST implementation.**

The National Anti-Profiteering Authority held that Respondent-builder has resorted to profiteering as it has not passed on the benefit of additional ITC to the home buyers by commensurate reduction in prices. Also, show cause notice has been issued to builder to explain why the penalty should not to be imposed upon it for indulging in profiteering. **Smt. Mamta Aggarwal v. GLS Infratech (P.) Ltd. - [2019] 112 taxmann.com 89 (NAA) and Abhishek v. Signature Global Developers (P.) Ltd. - [2019] 111 taxmann.com 394 (NAA)**

#### **6. 18% GST leviable on manufacturing services on goods belonging to unregistered persons**

CBIC vide Circular No. 126/45/2019-GST, dated November 22, 2019 has clarified that manufacturing services carried out on physical inputs (goods) which are owned by unregistered persons shall be taxable at rate of 18% GST.

#### **Artificial Intelligence (AI): Hospitality's big bet on technology**

With so many touchpoints, brands are innovating to design a delightful customer experience strategy. This translates into observing, collecting, and analysing data. Thereby, smart investments in monetising collected data, generating intelligible insights, and ultimately putting them into action is a part of strategic business decision making, embraced by brands globally. Such solutions are drawn mainly from customer feedback and tons of data. These new-age technologies are further enhancing efficiencies for hospitality brands, who are now creating personalised experiences via careful identification of issues, following regular customer insights like their orders, likes, dislikes, and gauging preferences to create targeted marketing plans for varied segments.

Another great innovation that has helped sophisticate the entire system is artificial intelligence (AI). It has enabled increased operational efficiency, faster, more informed decisions and innovating new products and services. According to PwC's Global Artificial Intelligence Study, 45% of total economic gains by 2030 will come from product enhancements and stimulating consumer demand as AI will drive greater product variety, with increased personalisation, attractiveness and affordability over time.

India is a diverse country, with hundreds of languages and cultural nuances. In the hospitality industry, it is crucial to bridge the gap between consumers and the product or service throughout the customer journey. A smart way to enhance communication is through a subset of AI that enables computers and systems to communicate with people in their preferred language, known as Natural Language Processing (NLP).

#### **Other Miscellaneous**

**Indian banks set to take a hit of Rs 36,000 crore from DHFL writeoff**

India's surprise seizure of a troubled Indian shadow bank won't end the woes of its lenders, faced with the risk of heavy writeoffs if Dewan Housing Finance Corp. is declared a fraudulent account. Only about Rs 5,500 crore of provisions would be required if the KPMG report absolves Dewan of irregular lending, Budhbhatti said. Only about Rs 5,500 crore of provisions would be required if the KPMG report absolves Dewan of irregular lending, Budhbhatti said. Lenders, headed by Union Bank of India, have formed a committee to discuss a debt resolution plan, which will have to be reviewed by a resolution professional once Dewan is admitted to the bankruptcy court. In February, they appointed KPMG to look into Dewan's books following allegations by Indian website Cobrapost that the company had diverted funds to shell companies.

### **Chart of the day: Loans or bonds, India's banks are going slow on all hues of lending**

Frauds, errant borrowers, stretched recovery processes and stubborn promoters have shaken Indian banks' confidence in lending to the commercial sector. No wonder bank loan growth has decelerated sharply over the past six months. What should also worry us is the drop in banks' non-SLR (statutory liquidity ratio) investments. Non-SLR investments are the commercial papers, bonds, debentures and shares that banks buy from companies. In the past, companies have found it cheaper to issue bonds and short-term commercial papers to banks instead of taking loans. This changed after the collapse of Infrastructure Leasing and Financial Services Ltd (IL&FS).

### **Government plans to scrap e-commerce 'gifts' to curb China imports**

The government is considering amending its rules to completely remove the provision under which citizens can receive duty-free 'gifts and samples' valued at under Rs 5,000 from overseas, after finding its rampant misuse by Chinese ecommerce vendors, senior officials ET spoke to said. The Central Board of Indirect Taxes and Customs (CBITC), which formulates policy concerning levy and collection of customs, was considering a cap on the number of gifts an individual can receive, but has decided against it given the complexity in its implementation. "There were multiple legal options we were looking at, one being limiting the number (of gifts) to four per individual. But to implement this practically would be difficult, so we're looking at a policy that prohibits the clearance of gifts altogether," said a senior government official, who spoke on the condition of anonymity.

### **CIRP plea to be admitted when corporate debtor acknowledged debt but defaulted in repayment of same**

In instant case, the applicant alleged that the respondent company failed to operate the account satisfactorily as per terms of the sanction and the account of the respondent-company was classified as non-performing asset. Despite reminders, the respondent failed to regularize cash credit account. The applicant issued notice but the respondent did not make any repayment; thus, the applicant filed the instant Corporate Insolvency Resolution Process (CIRP) petition.

The director of the respondent filed affidavit and admitted dues and stated that the respondent-company did not have any objection if the instant CIRP application filed under section 7 of the Insolvency and Bankruptcy Code, 2016.

The NCLT held that the corporate debtor committed default in paying the financial debt to the applicant and the respondent-company had acknowledged the debt by way of affidavit. Therefore, CIRP was to be admitted. *Bank of India v. Khusbu Vinyl (P.) Ltd. - [2019] 111 taxmann.com 282 (NCLT - Ahd.)*

**Govt. employees who resign are not entitled to pensionary benefit due to forfeiture of past service:  
SC**

### ***BSES Yamuna Power Ltd. v. Ghanshyam Chand Sharma - [2019] 112 taxmann.com 128 (SC)***

Through this case, the Apex Court has clearly distinguished between the voluntary retirement and resignation from Govt. services by stating that voluntary retirement and resignation from jobs are entirely two different stories/cases and pension could not be given to the respondent in case of resignation.

In given case, the respondent was serving as peon and he tendered his resignation on 07.07.1990, which was accepted with effect from 10.07.1990. It has been noticed that by resigning, respondent submitted himself to legal consequences that flow from a resignation under provisions applicable to his service, i.e., rule 26 of the Central Civil Service Pension Rules 1972 (CCS Pension Rules) which state that upon resignation, an employee forfeits past service and, therefore, under rule 26 of CCS Pension Rules respondent's past service stood forfeited upon resignation and, therefore, he was not entitled to pensionary benefits as resignation was an not voluntary retirement.

### **Why in India, 6% Economic Growth Is Cause for Alarm: Source Washington Times**

For almost half a decade Indian Prime Minister Narendra Modi headed the fastest-growing major economy in the world. Now, the slowest expansion in more than six years has put India behind China, Indonesia and a few others in the region. Waning consumption at home, troubled banks and a gloomy global outlook are being blamed, prompting a flurry of measures from the government. At risk are efforts to reduce poverty in Asia's third-largest economy and the ability to generate jobs for the more than 10 million young people entering the workforce each year.

#### **1. How deep is the slowdown?**

Growth slowed to 4.5% in the July-September quarter from a year ago, the weakest since 2013. The economy is expanding well below the average 7%-8% quarterly pace seen in the past few years. Economists have been steadily downgrading their growth forecasts for the current fiscal year through March 2020, with the median estimate in a Bloomberg survey now at 5.6%, down from 6% in October. The central bank's most recent forecast is for growth of 6.1% this fiscal year.

#### **2. Is 5%-plus not good enough?**

Not really. If Mr. Modi, PM of India, wants to make his pledge to turn the country into a \$5 trillion economy by 2024, from \$2.7 trillion now, India needs its economy to expand at a 9%-10% pace for a sustained period of time. With growth slowing for the past six straight quarters, and little sign of a sharp rebound, that's a setback for efforts to fix the extreme income gap. In a country of 1.3 billion people, India's per capita income is about \$2,000 a year -- dwarfed by China's \$9,800 and the U.S.'s \$62,600. So while 5%-plus expansion might look good on paper, India needs faster growth just to catch up with other Asian countries such as Indonesia, where per capita income is at \$3,900, and South Korea's \$31,000.

#### **3. But isn't growth slowing in the rest of the world?**

Yes, the U.S.-China trade war is rippling across the globe, putting a brake on world growth and prompting fears of a U.S. recession. Economists have downgraded growth forecasts for China to below 6% for next year. The trade fallout is hurting India's exports as well, but the bigger problem is the slide in domestic consumption, which makes up nearly 60% of India's GDP.

#### **4. Why is consumer spending so weak?**

The economy has been shedding jobs, lenders and crisis-hit shadow banks have curbed loans and farmers' incomes have been subdued. The jobless rate jumped to a 45-year high of 6.1% in 2018 and anecdotal evidence suggests that there's more pain to come as the struggling auto sector -- which makes up almost half of India's manufacturing sector -- continues to cut jobs. The slide in consumer spending and plunge in auto sales mean overall manufacturing, which contributes about a fifth to the economy, is barely growing or even contracting, and businesses are curbing investment.

#### **5. What's the government doing?**

Besides the tax cuts, the government has taken a number of steps to bolster the economy. It plans to merge weak state-run banks with stronger ones, hoping that can spur lending. Foreign investment rules were eased, a special real-estate fund set up to salvage stalled residential projects, and will sell state assets in India's biggest privatization drive in more than a decade. The government got a windfall from the central bank in excess of \$24 billion to help finance its spending. Most of the measures announced recently are focused on increasing investment, rather than boosting domestic demand.

### ***Declaration***

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