

**Just 5 Minutes**

TAXCON<sup>TM</sup> INDIA PRIVATE LIMITED

# INCOME TAX

1. Taxpayers from France, Swiss companies cannot claim low tax benefit by citing tax treaties with other OECD members

Indian arms of companies from France, Netherlands would now not be eligible for low tax rate of 5% while remitting dividends to their overseas parents. India's apex direct taxes body clarified that taxpayers from these countries cannot apply the benefits available under tax treaties entered into by India with Columbia, Slovenia making use of the most favoured nation clause. Countries including France, Switzerland, Netherlands, recently, affirmed that withholding tax in India should not exceed the rate prescribed under the treaties with Columbia, Slovenia etc., which is at lower rate of 5%, against the regular tax rate of 15%. The Central Board of Direct Taxes, in a circular, said that Lithuania and Columbia became members of OECD after signing the tax treaty with India and therefore these treaties could not be applied to all countries.

# INCOME TAX

## 2. Extension of Last Date for Updating UDINs at e-filing Portal till April 30, 2022

The Central Board of Direct Taxes (CBDT) has again extended the last date of updating the Unique Document Identification Number (UDIN) for all the IT forms at the e-filing web portal of the Income Tax Department from 31st January 2022 to 30th April 2022.

# COMPANIES/ LLP ACT

1. MCA is launching a new way of e-filing for LLPs on MCA21 portal

MCA is launching a new way of e-filing for LLP on MCA21 portal. All LLP filings going forward will be web based, w.e.f. March 06, 2022. To facilitate this implementation:

- LLP e-Filings on MCA21 portal will be disabled from 12 a.m. on Feb 25, 2022. Please ensure that there are no SRNs in pending payment status.
- Offline payments for LLP using Bank Challan and Pay later option would be stopped from 12 a.m. on Feb 19, 2022.
- DSC association and new user registration on MCA21 portal will be stopped from 12 a.m. on Feb 25, 2022. These services will resume in new application with LLP launch.
- There will not be any interruption in filling of Company forms.

# CASE LAWS - INCOME TAX

1. *Adma Solution P Ltd, New Delhi Vs ACIT, Bangalore*

In the matter, ITAT Delhi order dated 21/01/2022 where delayed deposit of Employees contribution to PF and ESI was allowed. Presently in the intimation received from CPC, Bangalore, delayed deposit of PF and ESI was disallowed. However, the Tribunal is allowing the appeal in favour of the Assessee, on the ground that 'Amendment by Finance Act,2021 'is applicable Prospectively w.e.f 1st April,2021. (F.Y.2020-21).

## CASE LAWS - INCOME TAX

2. *Federation of Trade Association of Pune Vs. CIT (Exemption)*  
*(ITAT – Pune)*

It has been held that where an assessee trust having been set up to promote, develop and protect the interests of trade and commerce and also to foster the feeling of unity and co-operation among the persons engaged in trade and commerce its objects are to promote and protect the interests of trade and commerce and, therefore, the same are in the nature of advancement of an object of general public utility and therefore, assessee-trust is entitled for registration u/s 12AA.

## CASE LAWS - INCOME TAX

3. *Vishwa Kalyan Society Vs DCIT (ITAT Ahmedabad)*

The ITAT has held that Charitable Trust are eligible for 30% Standard deduction against House Property under Income Tax Act.

4. *Hapur Pilkhuwa Development Authority Vs ACIT (ITAT Delhi)*

It has been held that Trust entitled for benefit of excess utilization of earlier years.

# CASE LAWS - INCOME TAX

## 5. Lumino Industries Ltd. & ORS. Vs. ACIT

In the matter of expenditure on foreign education of director's son, it was held by ITAT that since there is nexus between the expenses incurred on the higher education of the son of the director of the assessee company and the business of the company as he has later joined the services of the assessee-company and is discharging the duties as CEO. The expenditure incurred is to be allowed as deduction.

## CASE LAWS – INDIRECT TAX

1. AAR, Madhya Pradesh in Dadaji Hospitals (P.) Ltd.,

The Authority for Advance Ruling observed that for the in-patients, all the medicines, etc. were issued through the in-patient billing series and strictly under the prescription of the doctors aimed at curing, restoring or maintaining the health of a patient, which would be incidental to the health care services rendered in the hospital. Therefore, if a composite amount would be charged from the patient admitted in the hospital for treatment surgery or diagnosis including for medicines and other goods and services supplied in the course of treatment of the patient and if the amount of such medicines and other goods and services would not be segregable from the composite amount charged from the patient, then it would be a composite supply under GST in which health care service would be principal supply and thereby exempt from GST.

# CASE LAWS – INDIRECT TAX

## 2. *Suresh Trading Corporation v. Assistant Commissioner (Circle) of SGST*

The High Court of Madras observed that SCN was not issued in prescribed template, i.e., Form GST REG-17. Moreover, the SCN didn't mention the date and time of personal hearing. Therefore, the order for cancellation of GST Registration would be liable to be set aside solely on the ground that SCN which preceded the same had not been issued in the prescribed template.

## CASE LAWS – INDIRECT TAX

3. *Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. v. Commissioner of Central Goods and Services Tax, Customs and Central Excise, Jodhpur*

The CESTAT observed that notice period and compensation are incorporated in employment contract but they are not the purpose of contract. A notice period on both sides is provided for so that the other party can make arrangements. Compensation is a fall back option if one of the parties frustrates the contract but compensation paid for failure to fulfill conditions under a contract is not consideration for service under the contract. In the instant case, notice pay did not give rise to rendition of service either by employer or employee. It was held that service tax not eligible on amount received by employer from employee for not serving notice period.

## CASE LAWS – INDIRECT TAX

### 4. AAR, West Bengal in Prodip Nandi

The Authority for Advance Ruling observed that the applicant raised periodical invoices on its client indicating salary/wages payable against manpower services supplied by it and also indicated service charges payable to it at agreed rates in invoices in a separate manner. However, as per the agreement, the applicant was a person who was alone liable to pay salary/wages to workmen employed and not making these payments on behalf of service recipient. Therefore, it was held that the applicant would not be treated a pure agent for its clients merely by showing wages and salaries separately in invoices issued to clients.

## CASE LAWS – CORPORATE LAW

1. *Income tax cannot raise fresh claims after resolution plan approved under IBC:*

The Bombay High Court has ruled that the tax department cannot raise fresh claims after a resolution plan is approved by Insolvency and Bankruptcy Code (IBC). The tax department had issued fresh notices to the corporate debtor after a resolution plan was approved. There is still ambiguity over what would happen to pending tax demand for the company under IBC. And what would happen if the company were to get a refund from the tax department after the new buyers take over, say industry trackers. “Though the recent ruling deals with the demands raised by the income-tax authorities from the assessments for the financial years prior to the IBC order, an open issue arises in the case where the corporate debtor gets such assessments in their favour and there is a claim of refund or loss carry forward.

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