

Latest Changes

Section 44AD

The existing rate of deemed profit of 8% under section 44AD of the Act has been reduced to 6% in respect of the amount of total turnover or gross receipts received through banking channel/digital means i.e., by an A/c payee cheque/bank draft or use of ECS through a bank A/c during the previous year or before the due specified in section 139(1) in respect of that previous year.

However, the existing rate of deemed profit of 8% referred to in section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in cash.

Section 32(1)(ia)

CBDT has clarified that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(ia).

Section 37

CBDT has clarified that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

Section 115BA Domestic Company opting to pay tax @25%

CBDT has, vide this notification, with effect from A.Y 2017-18 inserted a proviso in Rule 5(1) to provide that in case of a domestic company which has exercised option under section 115BA, the deduction under section 32(1)(ii) in respect of normal depreciation of any block of assets entitled to more than 40% would be restricted to 40% on the written down value of such block of the assets.

Section 147

The CBDT, has vide this circular clarified that reopening of cases under section 147 is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect.

Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, Assessing Officers have been advised not to reopen past assessments in cases merely on the ground that the current year's turnover has increased.

Amendments made by the Taxation Laws (Second Amendment) Act, 2016

Consequent to demonetisation of high value currency, declaring specified bank notes as not legal tender, the Taxation Laws (Second Amendment) Bill, 2016 was introduced in Lok Sabha on November 28, 2016. This Bill was passed by the Lok Sabha on November, 29, 2016. It seeks to amend the Income-tax Act, 1961 and Finance Act, 2016. The Taxation Laws (Second Amendment) Bill, 2016 received the assent of the President on December 15, 2016.

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The Taxation Laws (Second Amendment) Act, 2016 has introduced a special scheme namely, the "Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016". Under the scheme, taxpayers may declare undisclosed income possessed in the form of cash or deposited in banks, post offices or Reserve Bank of India before a notified date. Tax @30% of the undisclosed income, surcharge @33% of tax and penalty @10% of such income is payable besides mandatory deposit of 25% of the undisclosed income in Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The deposits are interest free and have a lock-in period of four years.

This Act, thus, gives yet another opportunity for people to pay taxes with penalty so that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but the remaining part of the declared income legitimately comes into the formal economy. The income declared under the Scheme shall not be included in the total income of the declarant under the Income-tax Act for any assessment year. The declarations of undisclosed income made under the Yojana will not be used as evidence under provisions of any other law (viz. Central Excise Act, 1944, Companies Act, 2013 etc.).

However, no immunity would be available under Criminal laws mentioned in section 119-O of the Scheme, which includes (i) the Prohibition of Benami Property Transactions Act, 1988, (ii) the Prevention of Money Laundering Act, 2002, (iii) the Unlawful Activities (Prevention) Act, 1967, (iv) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, (v) the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

Non-declaration of undisclosed cash or deposit in accounts under this Scheme will render such undisclosed income liable to tax, surcharge and cess totalling to 77.25% of such income, if declared in the return of income. In case the same is not shown in the return of income, a further penalty @10% of tax shall also be levied followed by prosecution.

The following significant amendments have been made in the Income-tax Act, 1961 and the Finance Act, 2016 to give effect to the above changes:

Section 115BBE/271AAB/271AAC

Levy of higher tax under section 115BBE and penalty under section 271AAC on unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D not declared under the special scheme Upto A.Y.2016-17, section 115BBE provided for levy of tax @30%, plus surcharge, if applicable, plus cess@3% on unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

This section has been amended with effect from A.Y.2017-18 to provide for levy of tax@60% plus surcharge@25% of tax on income referred to in sections 68, 69 and 69A to 69D and reflected in the return of income furnished under section 139 or determined by the Assessing Officer. Thus, the effective rate of tax (including surcharge@25% of

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tax and cess@3% of tax and surcharge) is 77.25%. The existing restrictions regarding non-allowability of basic exemption or allowance or expenditure against such income and non-permissibility of set-off of losses against such income would continue.

New section 271AAC has been inserted with effect from 1st April, 2017 in the Income-tax Act, 1961 to provide for levy of penalty@10% of tax payable under section 115BBE, in a case where income determined includes any income referred to in sections 68, 69, 69A to 69D for any previous year.

However, no such penalty would be levied on such income to the extent the same has been included by the assessee in return of income furnished under section 139 and tax in accordance with section 115BBE has been paid on or before the end of the relevant previous year.

The provisions of section 271AAC are notwithstanding anything contained in the Income-tax Act, 1961, other than the provisions for levy of penalty under section 271AAB on undisclosed income detected in search cases.

No penalty under section 270A for under reporting of income is leviable in respect of income on which tax is leviable under this section.

The provisions of section 274 requiring reasonable opportunity of being heard to be given to the assessee and obtaining prior approval of Joint Commissioner in cases where penalty exceeds the specified amounts, would also apply in relation to penalty under section 271AAC. Likewise, the provisions relating to bar of limitation for imposing penalties would apply in relation to penalty under section 271AAC.

Tax on undisclosed income detected during the course of search [Section 271AAB]:

Section 271AAB(1) provides for levy of penalty on undisclosed income found during the course of a search, which has been initiated on or after 1st July, 2012, which relates to specified previous year, i.e., the previous year which has ended before the date of search, but the due date of filing return of income for the same has not expired before the date of search and the return has not yet been furnished; the previous year in which search is conducted.

Further, section 271AAB(1) provides for differential rate of penalty, namely, 10%, 20% and 60%, depending on the point of time the assessee admits the undisclosed income and pays tax together with interest.

New sub-section (1A) has now been inserted in section 271AAB to provide for higher rates of penalty in cases where search has been initiated on or after 15th December, 2016, being the date on which the Taxation Laws (Second Amendment) Act, 2016 received the assent of the President.

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Accordingly, under section 271AAB, the following would be the rate of penalty on undisclosed income in each of the following circumstances:

	Circumstance	Rate of penalty	
		For searches initiated between 1.7.2012 and 14.12.2016	For searches initiated on or after 15.12.2016
(1)	(2)	(3)	(4)
(1)	If undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and furnishes the return of income for the specified previous year declaring such undisclosed income, on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 153A expires, as the case may be).	10%	30%
(2)	If undisclosed income relating to the specified previous year is not admitted during the course of search in the statement furnished under section 132(4) but the same is disclosed in the return of income filed after the date of search and the tax along with the interest, if any, is paid on or before the specified date	20%	60%
(3)	In all other cases	60%	60%

Section 285BA

Section 285BA requires furnishing of a statement of financial transaction by specified persons in respect of specified financial transactions which are registered or recorded by them and which are relevant and required for the purposes of the Act to the prescribed income-tax authority or such other prescribed authority or agency.

Accordingly, Rule 114E requires the statement of financial transaction to be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1st April, 2016.

The CBDT has, vide this notification, amended Rule 114E to include the transaction of cash deposits made during the period of demonetisation i.e., 9th November, 2016 to 30th December, 2016 as serial no. 12 & 13 in the table below:

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S. No.	Nature and value of transaction	Class of person (reporting person)
1.	Cash deposits during the period 09th November, 2016 to 30th December, 2016 aggregating to (i) twelve lakh fifty thousand rupees or more, in one or more current account of a person; or (ii) two lakh fifty thousand rupees or more, in one or more accounts (other than a current account) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in section 2(j) of the Indian Post Office Act, 1898.
2.	Cash deposits during the period 1st April, 2016 to 9th November, 2016 in respect of accounts that are reportable under S.No.1.	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); Post Master General as referred to in the Indian Post Office Act, 1898.

MIRACLE MASTERS

Latest Judgment

1 Society for the Promotion of Education (2016) 382 ITR 6 (SC)

In a case where the charitable trust is deemed to be registered under section 12A due to non-disposal of application within the period of 6 months, as stipulated under section 12AA(2), from when would such deemed registration take effect?

Supreme Court's Decision: The Apex Court clarified that deemed registration would commence only after 6 months from the date of application. Therefore, the registration of the application under section 12AA of the Income-tax Act, in the case of the assessee trust shall take effect from August 24, 2003.

2 St. Peter's Educational Society (2016) 385 ITR 66 (SC)

Word imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an "educational purpose" for grant of exemption under section 10(23C)(vi)?

Supreme Court's Decision: Applying the rationale of the Supreme Court ruling in Queen's Educational Society's case, the Apex Court, in this case, held that the institution is established for the sole purpose of imparting education in a specialized field. The Supreme Court, thus, allowed the petition and set aside the order of the Chief Commissioner of Income-tax refusing exemption under section 10(23C)(vi).

3 Rayala Corporation (P) Ltd. v. Asstt. CIT (2016) 386 ITR 500 (SC)

Would rental income from the business of leasing out properties be taxable under the head "Income from house property" or "Profits and gains from business or profession"?

Supreme Court's decision: The Apex Court, thus, held that since the business of the company is to lease out its property and earn rent therefrom, the rental income earned by the company is chargeable to tax as its business income and not income from house property.

4 Shasun Chemicals & Drugs Ltd v. CIT (2016) 388 ITR 1 (SC)

In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?

Supreme Court's decision: The Apex Court held that section 36(1) contains various kinds of expenses which are allowable as deduction while computing the business income. The amount paid by way of bonus is one such expenditure which is allowable as deduction under section 36(1)(ii). It also held that the embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus was ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction, as there is no dispute that the amount was paid by the assessee to its employees before the due date by which such payment is supposed to be made in order to claim deduction under section 36(1)(ii).

5 V.S. Dempo Company Ltd (2016) 387 ITR 354 (SC)

In a case where a depreciable asset held for more than 36 months is transferred, can benefit of exemption under section 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?

Supreme Court's Decision: The Apex Court, concurred with the view of the High Court holding that since the depreciable asset is held for more than 36 months and the capital gains are re-invested in long-term specified assets within the specified period, exemption under section 54EC cannot be denied.

6 Meghalaya Steels Ltd (2016) 383 ITR 217 (SC)

Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits "derived from" business or undertaking to qualify for deduction under section 80-IB?

Supreme Court's Decision: The Supreme Court, accordingly, held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction under section 80-IB.

7 Trans Asian Shipping Services (P) Ltd (2016) 385 ITR 637 (SC)

Can income derived by an Indian shipping company from slot charter arrangement in other ships be computed applying the special provisions under Chapter XII-G of the Income-tax Act, 1961, relating to Tonnage Tax Scheme, inspite of non- fulfillment of the condition of holding a valid certificate in respect of such ships indicating its net tonnage in force?

Supreme Court's Decision: The Apex Court, accordingly, held that the requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter etc. It held that the contention of the assessee is valid and the legal fiction created by section 115VG(4) is to be given proper meaning. Accordingly, income from slot charter arrangement in other ships can be computed applying the special provisions under Chapter XII-G.

8 Subrata Roy (2016) 385 ITR 570 (SC)

Can High Court exercise its inherent power to recall its order by exercising jurisdiction under section 260A(7) read with the relevant Rule of the Code of Civil Procedure, 1908 even if that order is not an ex-parte order?

Supreme Court's Observations and Decision: The Apex Court noted that the assessee had participated in the hearing of the appeals before High Court which is apparent from the various parts of the order dated 27.08.2013.

The Apex Court held that the order passed by the High Court is not an *ex-parte* order for invoking the provisions of the Code of Civil Procedure, 1908, since the order of the High Court contains the submissions of the counsel of the assessee (though not that of the senior counsel for whose presence a short adjournment was prayed). Therefore, the High Court did not have the jurisdiction to recall the order passed by it previously. The inherent power under the Code of Civil Procedure, 1908 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power thereunder cannot be exercised. Accordingly, the Supreme Court set aside the order dated 21.2.2014 of the High Court.

9 Amitabh Bachchan (2016) 384 ITR 200 (SC)

Can revision under section 263 be made on the ground that the order is passed without making inquiries or verification which should have been made?

Supreme Court's Decision: The Apex Court, accordingly, held that the order of the Tribunal setting aside the revisionary order on the ground that it went beyond the show cause notice was not sustainable. It further held that the High Court having failed to fully deal with the matter, its order was not tenable.

10 ITC Ltd v. CIT (2016) 384 ITR 14 (SC)

Whether "tips" received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of "Salaries" to attract tax deduction at source under section 192?

Supreme Court's Decision: The Supreme Court observed that contract of employment is not the proximate cause for the receipt of tips by the employee from a customer hence, it would be outside the dragnet of sections 15 and 17 of the Act. Therefore, it held that, in such a case, no liability to deduct tax at source under section 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.

MIRACLE MANTRA

-An Initiative by CA VIJAY GAURAV

CA-FINAL: (REGULAR COURSES) MAY 18

Subject	Mode	Start	End	Timings	Fees
Paper 6: International Taxation: 100 Marks)	Face to Face	15.11.17	15.12.17	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 15,000/-
Paper 7: Direct Tax Laws: 70 Marks & International Taxation: 30 Marks (earlier Direct Tax Laws: 100 Marks)	Face to Face	03.10.17	21.11.17	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 15,000/-
Paper 8: Indirect Tax Laws (GST: 75 Marks, Custom & FTP: 25 Marks)	Face to Face	18.12.17	31.01.18	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 15,000/-

!! Join any 2 Batches & Get a Flat Discount of Rs.2,000/- or All Batches & Get a Flat Discount of Rs.5,000/- !!

CA-FINAL: (CRASH COURSES) MAY 18

Subject	Mode	Start	End	Timings	Fees
Paper 7: Direct Tax Laws: 70 Marks & International Taxation: 30 Marks (earlier Direct Tax Laws: 100 Marks)	Face to Face	01.02.18	23.02.18	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 8,000/-
Paper 8: Indirect Tax Laws (GST: 75 Marks, Custom & FTP: 25 Marks)	Face to Face	01.03.18	23.03.18	05:00 PM to 09:00 PM (Mon to Sat)	Rs. 8,000/-

!!Join Both Batches & Get a Flat Discount of Rs.1,000/- !!

CA-IPC: (REGULAR CUM CRASH COURSE) MAY 18

Subject	Mode	Start	End	Timings	Fees
Paper 4: Taxation: 100 Marks	Face to Face	26.02.18	31.03.18	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 10,000/-

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