Tax News

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INCOME TAX

Reminder for July 2012

Action Due	Due Date
TDS for June 2012	07-07-12
PF for June 2012	13-07-12
ESI for June 2012	20-07-12
TDS Return for the first qtr ended 30.06.12	15-07-12 *(*)*
TDS certificate for the first quarter ended 30.06.12.	30-07-12
Filing of IT return	31-07-12

(*) Since 15th is on Sunday, so for filing TDS return, the last date can be considered as 16th July.

SERVICE TAX

Action Due	Due Date
Service Tax for Jun.2012 in case of company	05-07-2012
Service Tax for Jun.2012 in case of a company for which e-payment is mandatory.	06-07-2012
Service tax for Quarter ending 30th June 2012 in case of assessee other than company that makes payment electronically.	06-07-2012
Service tax for Quarter ending 30th June 2012 in case of assessee other than company that does not make payment electronically.	05-07-2012

INCOME TAX

IMPORTANT CIRCULARS / NOTIFICATION	
Double taxation avoidance agreement with Nepal on Nov 27, 2011:	• The Central Government notified that all the provisions of the said Agreement shall come into effect from the 1st day of April, 2013. *Notification no. 20/2012, dated 12-6-2012.*
Double taxation avoidance agreement with Norway on Feb 2, 2011:	• The Central Government notified that all the provisions of the said Agreement shall come into effect from the 1st day of April, 2012. *Notification no. 24/2012, dated 19-6-2012.*
Official Amendments to the Finance Bill, 2012:	• Certain amendments were introduced to the Direct Taxes bill, as reflected in the Finance Act, 2012 (Act No. 23 of 2012) enacted on 28-5-2012. The gist of these amendments is given in the Circular No. 3/2012 dated 12-6-2012. The amendments include provisions related to: ➢ Prasar Bharati, ➢ Venture Capital Funds, ➢ External Commercial Borrowings, ➢ Long Term Capital Gain for non-residents, ➢ General Anti-Avoidance Rules (GAAR): The applicability of GAAR has been deferred by one year so that they would now apply to income chargeable to tax in

	respect of assessment year 2014-15 and subsequent years. ➢ Share premium in excess of fair market value ➢ New deduction in respect of investment in equity shares ➢ Recognition to provident funds ➢ Tax Collection at Source (TCS) on cash sale of bullion and jewellery ➢ TCS on sale of certain minerals ➢ Minimum Alternate Tax (MAT) ➢ Rationalisation of TDS Provisions ➢ Compulsory filing of income tax returns by residents in relation to assets located outside India ➢ Securities Transaction Tax (STT) on unlisted equity ➢ Further clarifications to the Finance Bill, 2012 *Circular No. 3/2012 dated 12-6-2012*
Exemption to Press Trust of India:	The Central Government specified "The Press Trust of India Limited, New Delhi" as a news agency set up in India solely for collection and distribution of news, for the purpose of exemption u/s 10(22B) of the IT Act, for two assessment years 2012-2013 to 2013-2014. The notification is subject to the condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members. *Notification no. 23/2012, dated 15-6-2012.*
Extension of due date for filing Form 49C for FY 2011-12:	Specified categories of assessees having a Liaison Office in India shall electronically file Form 49C, within 60 days from the end of financial year. The due date for filing Form 49C for the financial year 2011-12 was prescribed as 30th May, 2012. It has been extended upto 30th September 2012. Also, for the financial year 2011-12, Form 49C can

Authorization of AOs in certain cases to rectify/reconcile disputed arrear demand:	be filed in 'paper mode' instead of filing it electronically with digital signatures. *Order [F. No. 225/124/2012/ITA.II], dated 20-6-2012.* The Board has been apprised that in certain cases the assessees have disputed the figures of arrear demands shown as outstanding against them in the records of the Assessing Officer. The Assessing Officers have expressed their inability to correct/reconcile such disputed arrear demand on the ground that the period of limitation of four years as provided under sub-section (7) of section 154 of the Act has expired. The Board, in consideration of genuine hardship faced by the abovementioned class of cases, in exercise of powers vested under section 119(2)(*b*) of the Act, have authorized the Assessing Officers to make appropriate corrections in the figures of such disputed arrear demands after due verification/reconciliation and after examining the same on merits, whether by way of rectification or otherwise, irrespective of the fact that the period of limitation of four years as provided under section 154(7) of the Act has elapsed. *Circular No. 4 of 2012, dated 20-6-2012.*
SC/HC JUDGMENTS **Income of a Trust:**	The assessee was a trust registered u/s 12A. For AY 1998-99, it filed a nil return of income. The AO noted that the assessee had filed a declaration under the Voluntary Disclosure of Income Scheme, 1997 (VDIS) and had paid taxes on income for several years up to and including the AY 1997-98. The payment of the taxes was claimed by the assessee to represent application of the income of the trust for purposes of Section 11(1)(a) of the Act. Also, the assessee had incurred expenditure on events (trade fair) held by the assessee outside India (Hanover, Germany). The expenditure was also incurred outside India. The AO took the view that the expenditure could not be considered as application of income in India for charitable purposes. He accordingly considered the aggregate of these two amounts as income not applied for charitable purposes in India and computed the surplus of the assessee-trust. The CIT (Appeals) upheld the view taken by the AO. The Tribunal held that the payment of taxes under the VDIS should be treated as

Indexation benefit on long term capital gains/loss non-cumulative preference shares:	application of income of the trust. With regard to the expenditure incurred in Germany, the Tribunal accepted the contention of the assessee that the ultimate purpose of this expenditure was charitable activity in India, and so this too was application of income of the trust. On appeal, the High Court held that: ➢ Taxes paid under the VDIS were to be deducted before arriving at the commercial income of the assessee that was available for application to charitable purposes. This was in line with the view taken by the Tribunal on this point. ➢ Section 11(1)(a) of the Act required that the income of the trust should be applied not only to charitable purposes, but also applied in India to such purposes. *2012-TIOL-388-HC-DEL-IT*. The assessee had subscribed to 4 lakh preference shares of Enam Finance Consultants Pvt. Ltd in 1992 that carried a dividend of 4% pa and were to be redeemable after the expiry of ten years from the date of allotment. During AY 2001-02, the assessee redeemed three lakh shares at par and claimed a long term loss of Rs. 2.73 crores after availing of the benefit of indexation. The AO disallowed the claim of set off of long term capital loss that arose on redemption against long term capital gain on the sale of other shares on the ground that (i) Both the assessee and the Company in which the assessee held the preference shares, were managed by the same group of persons; and (ii) There was no transfer and that the assessee was not entitled to indexation on the redemption of noncumulative redeemable preference shares. The CIT(A) allowed the benefit claimed by the assessee. The Tribunal affirmed the view of the CIT(A) holding that the genuineness and credibility of the capital transaction was not disputed for the previous ten years. Both the Companies were juridical entities. The fact that the Companies were under common management would not indicate that the transfer was sham. Finally, the Tribunal had held that the noncumulative redeemable preference shares could not be equated with debentures or bonds, and so the assessee could not be deprived of the benefit of

	indexation under Sec 48 of the IT Act. On appeal, the High Court held that: ➢ the entire basis on which the AO denied the benefit of cost indexation was flawed. ➢ Section 48 denied the benefit of indexation to bonds and debentures other than capital indexed bonds issued by the Government. The four percent noncumulative redeemable preference shares were not bonds or debentures within the meaning of that expression. In these circumstances, the Tribunal was correct in its decision to give benefit to the assessee. *2012-TIOL-380-HC-MUM-IT.*
Expenditure incurred on conveyance:	In this case, the High Court held that, conveyance allowance and additional conveyance allowance received by the Development Officers of LIC was permissible deduction u/s 10(14) of the Act. *2012-TIOL-336-HC-ALL-IT.*
To "make available" technical knowledge, mere provision of service is not enough:	The High Court held that to be said to "make available", the service should be aimed at and result in transmitting technical knowledge etc so that the payer of the service could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider. In other words, to fit into terminology "making available", the technical knowledge, skills etc must remain with the person receiving the service even after the particular contract comes to an end. In the present case, while the Dutch company performed the surveys using substantial technical skills, it did not make available the technical expertise in respect of such collection or processing of data to the assessees, which the assessee could apply independently and without assistance. Consequently, the consideration is not assessable as "fees for technical services". *CIT vs. De Beers India Minerals Pvt Ltd (Karnataka High Court)*, May 11th, 2012.
Amount received for dilution of partnership share in favour of new partner is not	Where new partners were admitted to the firm and they introduced a substantial amount as their capital contribution, which was withdrawn as drawings, equally by

taxable:	the existing partners whose shares were reduced as a result of admission of new partners, the amount so received by existing partners is not taxable in the hands of the existing partners. The HC held that it is not correct to say that the existing partners relinquished any share in the landed property of the firm in favour of new partners since the Act treats a firm and its partners as separate entities. There is no question of existing partners relinquishing any share therein to the new partners, because one can relinquish only what belongs to him and also, the existing partners did not retire from the firm on admission of new partners, but continued as partners though with reduced shares. *CIT v. Sh P.N. Panjwani [2012] 21 taxmann.com 458 (Karnataka).*
Redemption of preference shares between companies under same management:	The High Court held that, where both the assessee and the company, of which the assessee held redeemable preference shares, were separate legal entities, the fact that both were under common management would not necessarily indicate that the transaction of redemption was not genuine. The redemption cannot be held as sham transfer as held by the Assessing Officer, merely because both companies are under same management. Therefore, the redemption is a valid transfer and liable to capital gain tax with indexation under Section 48. *CIT v. Enam Securities (P.) LTD. [2012] 21 taxmann.com 267 (Bombay).*
Whether netting of inter corporate loan accounts violates sec.269T:	Assessee, a member of the National Stock Exchange and a Merchant Banker, had accepted loan/inter-corporate deposit from 'ITI'. Assessee transferred some shares of 'R' held by it to 'ITI' for a consideration. Instead of repaying the loan / inter-corporate deposit to 'ITI' and receiving the sale price of the shares from 'ITI', both the parties agreed that the amount payable / receivable be setoff in the respective books of account by making journal entries and pay the balance by account payee cheque. Accordingly, after setting off of the mutual claim through journal entries, the balance amount was paid by the assessee.

	The High Court held that: ➢ The cause shown by the assessee is that it would have been an empty formality to repay the loan / deposit amount by account payee cheque / draft and receive back almost the same amount towards the sale price of the shares. ➢ Neither the genuineness of the receipt of loan / deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. ➢ It is not in dispute that settling the claims by making journal entries in the respective books is also one of the recognized modes of repaying loan / deposit. Therefore, in the facts of the present case, though the assessee has violated the provisions of Section 269T, the assessee has shown reasonable cause and, therefore, the decision of the Tribunal to delete the penalty imposed under Section 271E of the Act is accepted. *2012-TIOL-452-HC-MUM-IT*.
TDS u/s 194H on Trade discount offered to advertising agency by a News Paper:	The High Court held that: ➢ For treating the amount as commission, the person receiving payment should be acting on behalf of another person i.e. he must be agent of the principal and secondly payment should be for the services rendered by the agent. ➢ As per Rules of INS, advertising agency is free from control or interference from any business or person who owns or controls newspaper, the newspaper agency cannot be treated to be principal and advertising agency as agent. ➢ The accredited advertising agency shall be entitled to receive from the members of the Society the maximum and minimum Trade Discount of 15% in respect of advertisement business placed by it with such members. Rules prohibit the members of the society from appointing advertising agency as their representatives. ➢ In publication of advertisement submitted by advertising agency, the responsibility to make payment of bills of the newspaper is on the advertising agency and there is no responsibility of advertiser to make payment to the

PAN not mandatory if income is below taxable limit:	newspaper agency. Had the advertising agency being agent of newspaper agency, the advertiser was to be liable for payment to the newspaper agency. ➢ Thus advertising agency is for the object of providing better service to the advertiser and it is not engaged as agent of the newspaper agency and advertising agency, in fact, it acts on behalf of its client i.e. advertiser. ➢ Thus, the payment made by the Assessee to the advertising agency cannot be classified as commission. *2012-TIOL-426-HC-ALL-IT.* As per Sec. 206AA every person who wishes to have a transaction in bank/FIs including small investors/depositors (i.e. investors/depositors with income below taxable limit) has to furnish its PAN. This is in conflict with section 139A, according to which persons with total income below taxable limit, need not have a PAN. The High Court held that: ➢ Sec. 206AA hinders and discourages small investors from coming forward to invest their money for secured reasons and their secured future, which is not desirable for country's economy. ➢ Sec. 206AA is unreasonable as it invalidates Form 15G which does not mention PAN. ➢ Sec. 206AA which overrides section 139A is discriminatory against small investors. ➢ Considering the above, the High Court made section 206AA inapplicable to persons having incomes below taxable limits. It was further held that Banks and FIs should not insist on PAN for opening of accounts of below taxable limit income-earners. *Smt A. Kowsalya Bai v. nuion of India [2012] 22 Taxmann.com 157 (Karnataka).*
TRIBUNAL JUDGMENTS **Electric energy is 'article' or 'good' eligible for additional depreciation**:	The assessee was engaged in the activity of generation of power. Section 32(1)(iia) of the Act provides an additional depreciation to those undertakings which are engaged in the business of manufacture or production of any article or thing. According to the Commissioner, generation of power could not be equated with the production of article or thing because power was not something tangible. According to the Commissioner, an article or thing was associated with the concept of weight,

	mass and volume, while power or electricity did not have any of these attributes. The Commissioner held that additional depreciation was not admissible to the assessee. The Tribunal held that: ➢ the Supreme Court has considered the definition of goods as given in Article 366(12) of the Constitution of India. It has observed that goods means, all kind of moveable properties. ➢ Merely because electric energy is not tangible or cannot be moved or touched, it cannot cease to be moveable property. If there can be sales and purchase of electric energy like any moveable object then it can be held that electric energy was covered by the definition of goods. ➢ Thus, additional depreciation cannot be denied to the assessee merely on the ground that electricity is not an article or thing. *2012-TIOL-258-ITAT-DEL.*
Commission paid to Director:	The assessee company paid commission to its Director, who held 1% equity in the company, for services rendered. The AO and the CIT(A) were of the opinion that such sum paid by the assessee was in lieu of dividend, and so it was a means of minimizing overall tax. In appeal before the Tribunal, the assessee submitted that the complete package of remuneration payable to the Director included commission also. Since the commission was paid in accordance with the terms of employment so it was part of salary, and not a dividend. Revenue's contention was that the Director did not have sufficient qualifications which could justify her alleged services to the company and so the commission paid could not have been for services rendered. The Tribunal held that**:** ➢ The objective of Section 36(1)(ii) is, inter-alia, to prevent private companies from avoiding tax by distributing their profits to their members (showing them to be their employees) by way of commission and not by way of dividend. For successfully claiming an allowance under this clause, the sum paid to the employee as commission should not have been payable to him as profits or dividend.

	➢ In the present case, the dividend would have been much less than the commission actually paid to the Director. Thus, the amount paid would not have been paid as profits or dividend if it had not been paid as commission. Hence, the assesee deserves to succeed. *2012-TIOL-243-ITAT-DEL.*
Sale of development rights:	Assessee held certain property in the capacity of co-owner and entered into an agreement with a builder for development of the property and received certain amount in lieu of the sale of the development rights. Revenue was of the view that provisions of section 50C would be applicable and hence the value adopted by the Stamp Valuation officer was applicable. The Tribunal held that: ➢ For attracting tax under the head capital gain, one of the conditions is that it should be possible to determine the cost of acquisition of the capital asset as well as cost of improvement, if any, to the capital asset. ➢ In the present case, it was not possible to compute capital gain by giving any value for the cost of improvement to the capital asset held by the Assessee, because the owner's right to load TDR on a plot of land is a right which cannot be acquired by just paying money. Therefore, there can be no cost of improvement, and hence no capital gain tax. *2012-TIOL-219-ITAT-MUM*
Taxability of PE under DTAA with Oman:	The assessee, an Indian PSU company, earned profit from foreign projects in Oman. The assessee claimed that it had a "permanent establishment" (PE) in those countries and that in accordance with the DTAA, only the source country was entitled to tax the profits and India was not authorized to tax the foreign PE profits. The Tribunal held that: Article 7 of the DTAA provides that the profits of an enterprise of a Contracting State shall be taxable only in that state of residence unless the enterprise carries on business in other contracting state through a PE situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise "may be taxed" in the other Contracting State but only so much of them as is attributable directly or indirectly to the PE. *TCIL vs ACIT, May 16, 2012.*

Foreign income-tax is deductible u/s 37(1):	The assessee paid income tax in Belgium and claimed that as deduction u/s 37(1). The AO rejected the claim by relying on sec 40(a)(ii) which provides that any sum paid on account of tax levied on profits or gains of business shall not be allowable as a deduction, though the CIT (A) allowed the claim on the ground that the bar in s. 40(a)(ii) did not apply to foreign taxes. On appeal by the department, ITAT held that: ➢ Taxes levied in foreign countries whether on profits or gains, or otherwise, are deductible u/s 37(1) not hit by s. 40(a)(ii). *DCIT vs. Mastek Limited (ITAT Ahmedabad), May 16th, 2012.*
Investment within 6 months, eligible under sec 54EC:	The Tribunal held that though s. 54EC requires the investment to be made within 6 months of the date of transfer, a technical interpretation cannot be adopted but it has to be interpreted having regard to the purpose and spirit of the section. In Circular No 791 dated 2.6.2000, the CBDT held in the context of capital gains arising u/s 45(2), that though the transfer arises in the year of conversion of a capital asset into stock-in-trade, the period of 6 months for investment u/s 54E has to be reckoned from the date of sale of the stock-in-trade. The CBDT appreciated the impossibility of the assessee being able to invest the amount in specified assets within six months from the date of transfer. This interpretation of the CBDT supports the assessee's claim that where the consideration is received much after the date of transfer and it is not possible to invest the same within 6 months of the date of transfer, the period of 6 months must be reckoned from the date of receipt of consideration. *Mahesh Nemichandra Ganeshwade vs. ITO (ITAT Pune), May 14th, 2012.*
Taxability of lease payments when the asset is to be used for the entire life span of an asset:	The issue was, whether when assessee enters into a financial lease agreement to virtually use entire productive life span of an asset, and pays lease charges to cover full cost with interest, it amounts to disguised purchase of the asset. The assessee, had taken certain vehicles on financial lease for its use, which were registered in its name. The insurance policy was also in the name of the assessee. The assessee had entered into a lease agreement with a finance company for a lease period of 48 months, under which it had made the principal payment under the financial lease besides making payments on account of interest. In its books of account, the assessee had capitalized these assets, as required under Accounting

	Standard 19 on leases, and had not claimed depreciation under section 32. The assessee had claimed deduction on the principal amount paid under the lease agreement. The Tribunal held that: ➢ This lease arrangement was a disguised way of purchasing the asset with the help of a loan. An operating lease was any other type of lease where the asset was not wholly amortised during the non-cancellable period of the lease and where the lessor did not rely for his profit on the rentals in the non-cancellable period. ➢ The assessee was not entitled to deduction of payment of principal amount under the financing arrangement. The assessee could also not claim any relief by way of any deduction, allowance or grant available to the lessor as the owner of the vehicle. *2012-TIOL-365-ITAT-DEL.*
'Non-compete fee' as a substitute for 'goodwill' is not acceptable:	The assessee-company had transferred its technology division to its sister concern for a consideration. No amount was shown towards goodwill, in its place, it was shown as non-compete fees, sale of brand name, sale of IPR etc. The AO calculated goodwill based on average profit of preceding three years. The Tribunal held: ➢ The sister concern has stated a prominent portion of consideration towards goodwill in its books of accounts, which itself is a documentary evidence to show that the payment includes goodwill component. ➢ The group concerns were not competitors, hence, no de-facto situation arises which demanded payment of non-compete fee by the sister concern to the assessee. ➢ Therefore, amount determined by AO as goodwill should be taxed as Capital gains, however the gain can't be treated as STCG as the assessee is running business since 5 years and goodwill was self-generated along with commencement of business. *Pentamedia Graphics Ltd v. DCIT [2012] 22 taxmann.com 216 (Chennai - Trib.).*
House owned by spouse not to be considered for disallowance under Sec. 54F:	Deduction under section 54F is not available to assessees who own more than one residential house, other than the new asset, on the date of transfer of the original asset. However, Sec. 54F doesn't define type of ownership with assessee so as to deny the

	deduction. On the above issue, the Chennai Tribunal has taken a lenient view and held that in case house property is owned by assessee's spouse then it should not be treated as a house property owned by the assessee for disallowing the exemption under section 54F. It is further held that it is immaterial that income from such property is clubbed in assessee's hands under section 22, read with sections 27 and 64. Therefore, it can be reasonably interpreted that deemed ownership under section 27(i) is for the purposes of sections 22 to 26 and cannot be extended to section 54F. *S. Krishna Kumar v. ACIT [2012] 22 taxmann.com 200 (Chennai - Trib.)*
Depreciable assets are also subject to stamp duty valuation as per section 50C:	The Tribunal held that section 50C is applicable even in a case in which section 50 applies, since section 50C does not differentiate between depreciable asset and non-depreciable asset. The Tribunal laid down its finding mainly on the following grounds: ➢ Sec 50 modifies provisions of sec 48 only to the extent of modifying the term 'cost of acquisition'. ➢ No distinction is made between a depreciable asset and a non-depreciable asset in the provisions of sec 50C; therefore, it cannot be said that said provision is not applicable in a case of transferable asset which is covered by provisions of sec 50. *ACIT v. ETC Industries Ltd. [2012] 21 taxmann.com 457 (Indore - Trib.)*
Nursing Home - a business or a profession:	It was held that even if a doctor carries out his activities on a large scale by hiring other doctors in his nursing home, his activity will be a 'profession' and not a 'business' unless he becomes a passive entrepreneur in relation to the services. The fact that physicians/doctors have been hired is not relevant. What is relevant and crucial is the nature of the services rendered by them (hired doctors), whether facilitative or substantially so, or on independent, standalone basis, or substantially so. It is only in the latter case that the nursing home acquires the character of a business enterprise - *SUNIL CHANDAK v. ITO [2012] 21 taxmann.com 76 (Jodhpur - ITAT).*
ADVANCE RULINGS **A composite contract for installation &**	The Applicant entered into a contract with ONGC for services for supply, installation

commissioning cannot be split so as to exempt the profits from offshore supply of goods:	and commissioning of manometer gauges. The applicant claimed that the contract, though composite, had to be split into various components and that the income attributable to the supply of manometer gauges was not taxable in India because the title to the goods had passed outside India & the payment was received outside India. The AAR held that: ➢ In view of the verdict in Vodafone International Holdings, where it was held that a transaction had to be "looked at and not looked through" and seen as a whole and not by adopting a "dissecting approach" the contract, in this case, is for erection and commissioning of manometer gauges and not one for sale of equipment or erection of the equipment. ➢ It is a composite & indivisible contract for supply and erection at sites within the territory of India and cannot be split. The income accrued in India and is assessable u/s 44BB. *Roxar Maximum Reservoir Performance WLL (AAR) May 9th, 2012.*

SERVICE TAX

IMPORTANT NOTIFICATIONS / CIRCULARS **Notification regarding change in rate of Service Tax:**	1. The rate of service tax has been restored to 12% w.e.f. 1st April 2012. There was lack of clarity on the rate of tax applicable wherein invoices were raised before 1st April 2012 and the payments happened after 1st April 2012. It has now been clarified that the rate of service tax prevalent on the date when the point of taxation occurs is rate of service tax applicable on any taxable service. If the payment is received or made, as the case maybe, on or after 1st April 2012, the service tax needs to be paid @12%. 2. The invoices issued before 1st April 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules 2004. **Circular No. 158/9/ 2012 – ST**
Settlement of Service Tax Cases:	The Central Government has issued a notification specifying the form and procedure to be used for applications pertaining to settlement of cases regarding Service Tax, including provisions related to attachment of property. The details are in *Notification No. 16/2012-Service Tax dated 29-May-2012.*
Compounding of Offences pertaining to Service Tax:	The Central Government has issued a notification specifying the form and procedure to be used for applications pertaining to compounding of offences regarding Service Tax, including the guidelines for fixing the compounding amount. The details are in *Notification No. 17/2012- Service Tax dated 29-May-2012.*

SC/HC JUDGMENT **Principal can deduct Service Tax from Bills of contractor:**	In this case, the Supreme Court observed that the liability to pay the service tax is on the person who avails the service as the assessee. The appellant could not be faulted for deducting the service tax from the bills of the respondent. *2012-TIOL-37-SC-ST.*
CESTAT JUDGMENTS **Rent a Cab Service:**	The appellant was engaged in providing medium and mini type buses to Pimpri Chinchwad Municipal Transport (PCMT). The Maharashtra Government had given approval for hire of buses on lease from contractors for operation on the routes falling in the PCMT on stage carriage basis. Accordingly, PCMT had entered into lease agreements with the appellant for plying of buses. A show-cause notice was issued to the appellant demanding service tax on the services rendered by the appellant by classifying the same in the category of "rent-a-cab service". The appellant submitted that it had supplied the buses along with driver and was receiving consideration on a kilometer basis from PCMT, so it was in control of the vehicle, and therefore, it could not be said that the appellant had rented the buses to PCMT. The CESTAT observed – ➢ Under the agreement, PCMT collected the fare charges and the appellant did not have any right over the cash collection. The appellant had to provide along with the bus, a medically fit driver, possessing valid driving licence, and PCMT, in consideration for this service, paid hire charges for the actual distance plied. ➢ From the above agreement, it was clear that the appellant was renting or hiring buses to PCMT who undertook to transport passengers, on stage carriage basis. Therefore, the activity undertaken by the appellant fell within the definition of 'rent-a-cab service'. The CESTAT ordered the appellant to make a pre-deposit of 50% of the adjudged service tax. *2012-TIOL-560-CESTAT-MUM.*
Service Tax on discounts received by advertising agency from media:	The appellant was an advertising agency and discharged service tax on the commission received by it from its client, the advertiser. The transaction involved three parties, the advertiser, the advertising agency and the media. Print media is exempted from service tax while the broadcasting media is not. The appellant discharged service tax under the broadcasting services on the consideration received. The Revenue was of the view that

	the volume discount received by the advertising agency was for the services rendered by the agency to the media, for promotion of the business of the latter, which falls under the category of "business auxiliary service" and the advertising agency was liable to pay service tax on this amount received. Upon appeal, the CESTAT held that it was the client, the advertiser, who finally decided the choice of the media for advertisement and the duration of the advertisement. In other words, the appellant advertising agency, did not have a free hand to decide the choice of media or duration of advertisement. In that case, the appellant could not be a business auxiliary service agent of the media who could promote the business of the media. Secondly, the incentive was received by way of discount which was reduction in the price given to the receiver of the goods/service. Tribunal came to the conclusion that service tax was not leviable on the discounts/incentives received by the advertising agency from the media. *2012-TIOL-804-CESTAT-MUM.*
Services provided by Bank in relation to payment of Pension, RBI Bonds and EPF are not taxable services:	The Revenue held that services provided by Canara Bank like payment of pension, public deposit, RBI Bonds, EPF, special deposit scheme, senior citizens saving scheme, compulsory deposit scheme are to be treated as taxable service. Also, the treasury service where the Canara Bank maintains currency chests on behalf of Reserve Bank of India (RBI) was to be treated as taxable service. CESTAT held that these services were not covered by the definition of service tax at all. Since the agent was eligible for the exemption which was available to the principal, not because of exemption granted specifically to the agent or principal, the appellant was eligible for exemption. If RBI were to undertake the activity there would have been no question of levy of service tax. Same functions being carried out by RBI were exempted. Therefore, the benefit of exemption available to RBI would be available to the agent i.e. Canara Bank. *2012-TIOL-790-CESTAT-AHM.*
Management Consultancy Service:	Lokhandwala Hotels Pvt. Ltd. (LHL) was running a hotel in Mumbai. It contended that it was engaged in the activity of running and managing the Hotel and was not engaged in any Consultancy to LHL, and hence the activity was not covered under the category 'Management Consultancy Service'. It was held by CESTAT that "Management Consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization, and include any person who renders any advice, consultancy or technical assistance, to any organization. The advisory service of consultant was necessary for taxability. In this case the

	applicants had taken over the activities of managing/running the Hotel themselves. Therefore, prima facie, the applicants were not 'Management Consultant'. Therefore, the demand under the category of 'Management Consultancy Service' was not sustainable. *2012-TIOL-781-CESTAT-MUM.*
Cable Operators service:	The appellant was operating as Multi Service Operator (MSO) in TV cable operation business as a commission agent and distributor of M/s Win Cable & Datacom Pvt. Ltd., by retransmitting TV signals to various cable subscribers. For these services, it was earning commission from the signal supplier on which it was not paying the service tax. Since the activity fell under the category of 'Cable Operators Service', a show-cause notice was issued for recovery of service tax and also for commission received from its signal supplier under the category of 'Business Auxiliary Service'. There was also a proposal to demand service tax on 'Renting of Immovable Property Service' against the appellant. The appellant submitted that it was not aware of the fact that it was providing taxable service and, therefore, it did not discharge service tax liability. The Bench observed that if the appellants had paid the service tax, for obtaining signal from their service provider they were entitled for 'input service' credit. *2012-TIOL-759-CESTAT-MUM.*
Air freight can be considered as input service:	The appellant, a manufacturer, availed Cenvat Credit towards service tax paid on outward air freight. The department was of the view that there was no nexus between the services availed and the manufacture of the goods, and hence the appellant was not entitled for the cenvat credit. The lower appellant authority also held that the air freight from the factory gate did not qualify as input service as defined in Rule 2(1) of the Cenvat Credit Rules, 2004. In appeal before the CESTAT, the appellant submitted that in terms of CBEC circular No. 97/8/2007 dated 23/08/2007, three conditions have to be satisfied to avail the credit in respect of outward freight – (1) the ownership of the goods and the property in goods remained with the seller of the goods till the delivery of the goods to the purchaser at his doorstep; (2) the seller bore the risk of loss or damage to the goods during transit to the destination; and (3) the freight charges were an integral part of the price of the goods. Since it satisfied all the above conditions it was rightly entitled for the credit. Reliance was placed on the decision in *Ambuja Cements (2009-TIOL-110-HC-P&H-ST).* The Bench observed:

	➢ The transactions relate to exports and the air freight has been incurred for transportation from India to abroad. The element of air freight is included in the assessable value of the goods exported. ➢ As per section 1(2) of the Central Excise Act, 1944, the said Act extends to the whole of India. In that case, the place of removal for the purposes of levy of excise duty has to be in India and not anywhere else. Therefore, merely because as per the terms of export contract, the goods have to be delivered at the customer's premises abroad, it cannot be said that the place of removal is extended to a place outside India. ➢ Holding that the appellant had not made out a prima facie case for full waiver, they were directed to make a pre-deposit of 50% of the duty adjudged for obtaining stay. *2012-TIOL-719-CESTAT-MUM*.
Services provided for consumption within SEZ:	The appellant was engaged in rendering of services of Custom House Agent (CHA), Clearing and Forwarding Agent, Storage and Warehousing, Business Auxillary Service, Transport of goods by road and Business Support Service, etc. During the course of audit it was noticed that the assessee was wrongly availing exemption of service tax under Notfn. No.4/2004-ST dated 31/03/2004 for the CHA services rendered outside the unit situated at Special Economic Zone. It was further observed that the assessee had been rendering CHA service Air and Sea freight Agency service (business auxillary service) pertaining to the import of cargo to M/s. Nokia India Pvt. Ltd., a unit situated in the Special Economic Zone, and the assessee had not paid service tax on the above charges claiming the benefit under Notification No. 4/2004-ST dated 31/03/2004. The assessee contended that during the impugned period, the services provided to a SEZ developer or to a unit in the SEZ by any service provider was exempt under Notification No. 4/2004-ST dated 31/03/2004 and, therefore, it was eligible for the said exemption. The CESTAT observed – ➢ Exemption is available only in respect of services provided for consumption within the Special Economic Zone. In other words, the exemption will not be available if the services are consumed elsewhere than in the Special Economic Zone.

	➢ the provisions of Special Economic Zone Act, 2005 cannot be automatically be extended to other Acts such as Customs Act, and prima facie, in the absence of specific provision under Special Economic Zone Act to levy Customs duty, no liability to pay Customs duty on goods supplies from DTA to Special Economic Zone would rise. ➢ Notification No.4/2004-ST being a conditional exemption notification issued under Section 93 of the Finance Act, 1994, cannot be interpreted on the basis of the provisions of SEZ Act, 2005. ➢ Holding that the appellant had not made out any case for full waiver of the pre-deposit of adjudged dues, the Bench directed the appellant to make a pre-deposit. *2012-TIOL-705-CESTAT-MUM*.

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