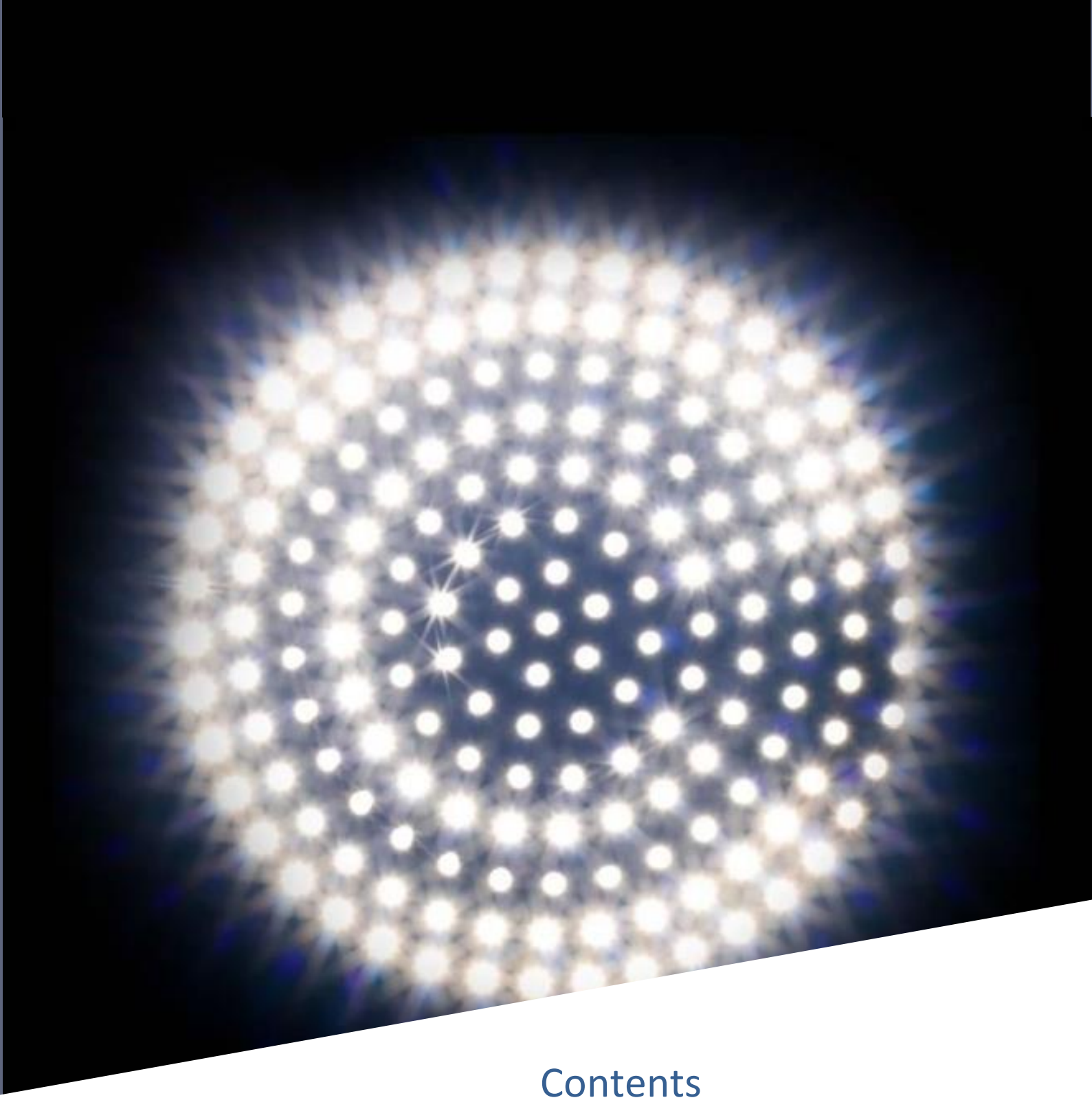
UJA®
Audit • Tax • Legal • Advisory

TAXATION TIMES

September 2020

Taxation Times is a monthly newsletter published by UJA specifically with an intent and object to simplify and provide clarity on certain provisions of the Income Tax Act, discuss the implications of various amendments and circulars notified time and again, understand the judicial precedents as decided by various courts and interpret these.

The Taxation Times is an initiative to keep you abreast with the latest development in the realm of the Direct Taxes in India.



Contents

TAXATION TIMES

A lot has been spoken about the pandemic since the last few months. Infact, the only discussions around the globe in professional & personal circles revolve around COVID – 19, the effects of the lockdown and post lockdown global economic meltdown.

However, every cloud has a silver lining and the pandemic had it's own silver lining too. Multiple avenues and opportunities have opened up for India. Campaigns like 'Make in India' and 'Vocal for Local' have brought India into the limelight. India has abundant resources in terms of manpower and favorable natural resources, however, these need to be channelized in the right direction considering the current scenario and opportunities.

Various incentives are policies are being introduced by different States to attract foreign investors into India. Of-course, immediate or short term benefits from this cannot be expected and we need to have a horizon of atleast a year to see how things will shape up.

We now come back to this months Taxation Times :

1. On 13th August 2020, Hon'ble Shri Narendra Modi addressed the nation and launched 'Transparent Taxation – Honoring the Honest'. How would this scheme affect the assessments in India? Take a look.

2. Recent Decision by Tribunals and High Courts.

3. Circulars, Notifications, Press releases for August 2020 and upcoming compliances for September 2020.

We hope that your find this edition of the Taxation Times useful.

Do you have any inputs to make the forthcoming issues of the Taxation Times more useful & relevant? Please share your feedback on info@uja.in.

We look forward to hearing from you!

Best Regards,
UJA Tax Team

The Future of Tax Assessments in India

The Income Tax Department in 2017 introduced an e-assessment function. The e-assessment was initiated to bring about simplification, greater transparency and create an overall taxpayer – friendly ecosystem. Infact, India was one of the first countries to adopt this such a function.

The Budget 2019 went a step further and introduced "faceless" and "jurisdiction less" assessments. The Finance Minister Nirmala Sitharaman while presenting this scheme before the parliament said that the aim of the faceless assessment is to cut down the interaction between the taxpayer and income tax officer. Under the faceless assessment scheme, the assessing officer will not know the identity of the taxpayer and would use technology to scrutinize the details of the taxpayer. The anonymous nature of the process will discourage high – pitched assessments and lead to objective, fair & just assessment orders which could be finalized in a very short time.

Subsequently, on 7th October 2019, the faceless assessment was inaugurated by the Finance Minister.

On 13th August 2020, Prime Minister Modi launched 'Transparent Taxation – Honoring the Honest' which is an extension of the scheme launched in in 2019. The objective and intent of this platform was to achieve Faceless Assessment, Faceless Appeal & the Taxpayers Charter. The Faceless Appeal & Taxpayers Charter has been implement with immediate effect whereas the Faceless Appeal becomes effective 25th September 2020.

> "Every taxpayer should think of contribution. Those who are still not in the tax net must ask their conscience and see if they must pay taxes too. The way we have paved for paying taxes is a lucrative one."
>
> – PM Modi.

Under the said scheme, the National E-assessment Centre (NeAC) which is headquartered in Delhi is the gateway of communication between the taxpayers and the tax authorities. Vide Notification No. 66/2020 dtd. 13th August 2020, has notified Regional e-Assessment Centre (ReAC) across different states in India.

As per the provisions of the scheme, the taxpayers shall not be attached to any specific jurisdiction for their assessments, thus eliminating all human interfaces. The computer shall randomly decide who gets to handle the cases & will completely eliminate the need to build relations with tax offices.

Procedure for e-Assessment has been notified by the CBDT vide Notification No 60/2020 dtd. 13th August 2020. After the conclusion of the assessment, the NeAC shall transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

As per the provisions of the scheme, the Principal Chief Commissioner or Principal Director General in-charge of NeAC may at any time during any stage of the assessment if necessary transfer the case to the Jurisdictional Assessing Officer having jurisdiction over such case with the prior approval of the Board.

The ReAC may also request for a personal hearing if circumstances so require and such hearing shall be conducted exclusively through video conferencing.

The faceless tax assessment system is aimed at reducing any harassment to honest taxpayers & make the process more transparent and taxpayer friendly. The implementation of this system takes away the power from the Assessing Officers to conduct surveys in the premises of the taxpayers & this power shall exercised by the investigation or tax deducted at source wing only with the prior approval from a senior official of director general or principal commissioner rank. It is expected that this move will encourage voluntary compliance and also reduce delay in tax assessments & audits.

Tax Officers Grievances

As per an article published by Bloomberg Quint, tax officers have approached the CBDT expressing anguish over not being taken into confidence on the issue of faceless assessments. The representation which has been made by the Income Tax Employees Federation & the Income Tax Gazetted Officers Association states that –

- The tax officers have certain apprehensions despite the departments assurance on staff strength and work related aspects.
- Senior authorities in the department are ignoring suggestions made by tax officers association and this has led to disgruntlement among tax officers who fear 'massive dislocation' of the work force due to hurried implementation of the reforms.
- And lastly, the diversion of posts to the newly created charges has caused confusion among the officers at the local level.

The letter further states that the morale of the tax officers is 'very down' due to unprecedented delays in career progression since 2015 and that any further delay could likely to be detrimental to successful implementation of the faceless assessment scheme.

Conclusion

The government has been implementing various tax reforms in the direct & indirect taxes landscape since the last few years. The shift to faceless e-assessments is a paradigm shift. However, such assessments would bring about a drastic change in the mindset of the officers & will also involve extra efforts on their part since assessments will have to be concluded merely on the basis of reading of documents & submissions without any element of personal assistance or support.

This step is a major reform & also ensures continuity through digital platforms in the background of COVID – 19 pandemic. Since this would be the first year of the implementation of this function, it would certainly take time for both the taxpayers & tax officers to adopt to this system. Though, at the policy level, this function seems quite positive and leverages the use of technology, the hardships & loopholes which may arise as a consequence of a complete transformation would seek quick redressal.

With this milestone transformation, it would be interesting to see how this move will facilitate taxpayer confidence & trust in the system and also help the country to cope with the undesired practices as mentioned by the Finance Minister in her Budget 2019 speech.

Reference

https://www.bloombergquint.com

https://www.financialexpress.com


Recent Case Laws

> When payments were made to foreign scientists for rendering professional services being rendered, no tax was required to be deducted at source since there had no PE in India nor had they stayed in India for a period exceeding 183 days.

Case Walkthrough:

The taxpayer[1] is engaged in the business of manufacturing of master batches and engineering plastics of compounds. The taxpayer had made payments to foreign scientists for professional services rendered by them. The Ld. Assessing Officer ('AO') disallowed the payments under s. 40(a)(i) made to the foreign scientists since no TDS was deducted and paid on the payments made & hence not liable for tax at source under s. 195.

The taxpayer during the course of the assessment proceedings submitted reasons as to why disallowance under s. 40(a)(ia) should not be made.

However, the AO observing that a similar disallowance for previous years was made holding that the payments fall under the category of 'fees for technical services', disallowed payments made to foreign scientists under s. 40(a)(ia).

The Hon'ble CIT(A) confirmed the order of the AO.

In this regard, the taxpayer has preferred an appeal before the Hon'ble ITAT.

Issues for Consideration:

Are payments made to foreign scientists liable to deduction of TDS under s. 195 of the ITA?

Decision of the Tribunal

1. Before the Tribunal, the Ld. AR at the outset the case of the taxpayer submitted that the issue involved is squarely covered in favour of the taxpayer for AY 2013 – 2014 and a copy of the order of the Tribunal was brought on record.

2. The Tribunal while deciding in favour of the taxpayer placed reliance on it's own decision –

   - During the said AY, the taxpayer had paid professional fees to a Swiss National. The Ld. AR for the taxpayer contended that payments on account of professional fees were covered under Article 14 of Indo – Swiss DTAA wherein the Revenue was of the opinion that the payments were covered under Article – 12 of the Indo – Swiss DTAA. According to Article 12(5)(b) meaning of the term fees for technical services specifically excludes income covered under Article 14 and Article 15 of the DTAA.

   - Reliance was invited to the decision in the case of Graphite India (2003)[2] wherein an identical issue with respect to the DTAA was in question. Here, it was held that when an amount is paid to an individual or for that purpose a firm of individuals, resident in the United States of America, is covered and found to be within the scope of the expression 'independent personal services' within the meaning of Article 15 of the Indo US DTAA, it is immaterial whether or not the same is defined within the scope of 'fees for included services' which in common parlance is known as 'fees for technical services', under Article 12(4) of the Indo US DTAA. In that eventuality, in view of the

[1] Poddar Pigments Ltd. V/s ACIT (ITAT Bench – Delhi 'F')
[2] Graphite India (2003) 127 Taxman 90 (Kolkata)(MAG)/[2003] 86 ITD 384 (Kolkata)/[2003] 78 TTJ 418 (Kolkata)

provisions of Article 12(5), if at all exigible to tax in India, it can only be taxable under Article 15 of Indo US DTAA. To that extent, provisions of Article 12(4) and Article 15 are non – competing & mutually exclusive.

- There are similar conditions in the Indo – Swiss DTAA in Article 12(5)(b) excluding professional services under Article 14 and Article 15 of that DTAA. Therefore, it is apparent that the services are covered under Article 14 of the DTAA & not Article 15 of the DTAA. Further, it is not the case of the Revenue that services provided by the Swiss national and not professional services within the meaning of Article 14(2) of the DTAA. Also, it is not the case that such services are provided from a fixed base in India or he has stayed in India for a period of 183 days or more. Thus, these services are independent, personal services in the nature of independent scientific services which shall be taxable only in the Swiss confederation.

3. Based on the aforesaid findings in the case of the taxpayer, the Tribunal concluded that the taxpayer has no fixed PE in India and the scientists have not stayed in India for a perio exceeding 183 days or more. Hence, as such no tax is required to be deducted at source & hence the disallowance be deleted.

> "Recently the Madras High Court upheld that the condition of filing Form No.62 is only directory and not mandatory. Non-filing of the same does not disentitle the assessee from claiming losses under section 72A, it was also upheld that the unabsorbed depreciation relating to assessment years prior to 2001-02 can also be set off without any limit as per the amended provision of section 32[2] of the Income-tax Act."

Case Walkthrough:

The taxpayer[3] has recently gone through a business reconstruction of amalgamation. During AY 2006-07 the taxpayer filed it's income tax return claiming the unabsorbed depreciation of the amalgamating company for AY 1999 – 2000 and 2000 – 2001 . The AO disallowed the taxpayers claim for depreciation. Aggreived, the taxpayer carried the matter to the CIT(A) who allowed the claim of the taxpayer. The Revenue preferred an appeal before the Hon'ble Income Tax Appellate Tribunal wherein the claim of the taxpayer was accepted.

The Revenue is in appeal before the Hon'ble High Court against the order of the Hon'ble Income Tax Appellate Tribunal where the taxpayer (amalgamated company) was allowed to carry forward losses under s. 72(A) of the Income Tax Act (hereinafter referred to as 'ITA') even though Form No.62 was not filed by the taxpayer in the said year. These losses were pertaining to the amalgamating company.

Issues of Consideration:

1. According to the amendment in Section 32(2) which came about in the year 2001, unabsorbed depreciation can be carried forward for an indefinite period of time, prospectively (i.e. from AY 2002-03). However the Ld. ITAT has allowed the taxpayer benefit of the same for AY 1999 – 2000 and 2000 – 2001. Is this action of the Tribunal justified?
2. The taxpayer has not filed the prescribed Form No.62 in the third year after amalgamation and hence the taxpayers would not be allowed to carry forward the losses under section 72(A) which has been accepted by the Tribunal, is this action of the taxpayer justified?

Decision:

I. The taxpayer has claimed unabsorbed depreciation for AY 1999 – 2000 and AY 2000 – 2001 in the assessment year under consideration. In view of the provisions of s. 32(2) of the ITA w.e.f 1st April 2002, unabsorbed depreciation losses starting from AY 2002 – 03 will get carried forward to subsequent assessment year and becomes a part of subsequent years depreciation. Hence, the Ld. AO denied the unabsorbed depreciation loss for AY 1999 – 2000 and AY 2000 – 2001 against the total income of the taxpayer for the current year.

II. Relying on the decision of Best & Crompton Engineering Ltd[4], the Hon'ble CIT(A) had directed the Ld. AO to allow the unabsorbed depreciation for AY 1999 -2000 and AY 2000 –

[3] PCIT V/s Lotte India Corporation [2020] 118 taxmann.com (Madras)
[4] ACIT V/s M/s Best & Crompton Engineering Projects Pvt Ltd (I.T.A Nos. 1675 to 1678/Mds/2008)

2001. The said decision followed the decision of the General Motors India (P) Ltd.[5]

III. The Ld. Counsel for the taxpayer relied on the decision of Binny Limited V/s ACIT, the decision of which is squarely covers the case of the taxpayer. In the said decision, it was held as under : "s. 32(2) of the ITA was amended by The Finance Act No. 2 of 1996 w.e.f AY 1997 – 98 and the unabsorbed depreciation for AY 1997 – 98 was to be carried forward for a period of eight (8) assessment years. Subsequently, s. 32(2) was amended by Finance Act 2000 wherein to allow the carry forward of unabsorbed depreciation without any restriction.

The purpose of this amendment has been clarified by the CBDT in Circular no. 14 of 2001.

In the said circular, the CBDT clarified that the intent of the amendment is to enable the industry to conserve sufficient funds to replace plant & machinery and accordingly the amendment dispenses with the restriction of 8 years for carry forward & set off of unabsorbed depreciation. The amendment is applicable w.e.f AY 2002 – 2003 and subsequent years. Thus, unabsorbed depreciation available to the taxpayer as on 1st April 2002 will be dealt with in accordance with provisions of s. 32(2) as amended by Finance Act 2001 and not provisions of s. 32(2) as stood before amendment. Had the intention of the legislature be to allow unabsorbed depreciation worked out in AY 1997 – 98 only for 8 subsequent AY even after amendment to s. 32(2) by Finance Act 2001 it would have incorporated the said provision. However, it does not contain any such provision. Hence, keeping in mind the purpose of amendment of s. 32(2) of the Act, a purposive and harmonious interpretation has to be taken. Accordingly, unabsorbed depreciation available to the taxpayer as on 1st April 2002 shall be dealt with in accordance with amended provisions of s. 32(2) of the ITA."

Placing reliance on the findings above, the High Court allowed the claim of the taxpayer to set off depreciation of AY 1999 – 2000 and 2000 – 2001 against the income of the current year.

iv. s. 72(A) of the ITA , clearly state that post-merger, within 4 years the amalgamated company should achieve at least 50% of the installed capacity of production. In the said case the taxpayer has achieved more than 100% of the installed capacity in the 4th year after amalgamation.

Hence it has been concluded that the filing of Form No.62 is not considered as relevant because the criteria of 50% has been achieved. The filing of Form 62 in the third assessment year cannot be seen as a condition precedent or a mandatory condition to allow the Assessee to carry forward such losses under section 72A of the Act.

Accordingly, the contention of the taxpayer is accepted.

[5] Gujarat High Court in the case of General Motors India (P) Ltd. V/s DCIT 354 ITR 244

Due dates for Compliance under Income tax

- Due date for deposit of Tax deducted/collected for the month of August, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

- Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of July, 2020*
- Due date for issue of TDS Certificate for tax deducted under Section 194-IB in the month of July, 2020*
- Due date for issue of TDS Certificate for tax deducted under Section 194M in the month of July, 2020*

- Due date for filing of audit report under section 44AB for the assessment year 2020-21 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2020).

  The due date for filing of audit report has been extended from September 30, 2020 to October 31, 2020 vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 read with Notification No.35 /2020, dated 24-06-2020.

- Second installment of advance tax for the assessment year 2021-22

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of August, 2020*
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in the month of August, 2020*
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194M in the month of August, 2020*
- Return of income for the assessment year 2019-20 for all assessee

  The due date for filing of return of income under section 139 for the assessment year 2019-20 has been extended to September 30, 2020 vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 read with Notification No. 35 /2020, dated 24-06-2020 and Notification No. 56/2020, dated 29-07-2020.

Notifications & Circulars

Circulars :

1. The CBDT issued a circular regarding the imposition of charge on the prescribed electronic modes under section 269SU of the Income tax Act, 1961.

   https://www.incometaxindia.gov.in/communications/circular/circular-16-2020.pdf

Notification :

1. Amendments of Income Tax Rules, 1962. Rules for providing conditions and guidelines for Pension Funds u/s 10(23FE) of the Income Tax Act, 1961.

   https://www.incometaxindia.gov.in/communications/notification/notification_67_2020.pdf

2. Notification regarding the 'Faceless Assessments' was issued by the CBDT.

   https://www.incometaxindia.gov.in/communications/notification/notification_61_2020.pdf

3. Procedure of the 'Faceless Assessments' has been notified by CBDT.

   https://www.incometaxindia.gov.in/communications/notification/notification_60_2020.pdf

4. The Central Board of Direct Taxes hereby made some rules further to amend the Income-tax Rules, 1962.

   https://www.incometaxindia.gov.in/communications/notification/notification_58_2020.pdf

Corporate Office

PUNE
201, Tower S4, Phase II,
Cyber City, Magarpatta Township,
Hadapsar
Pune 411013 - India
912026898860|Tel
91 20 2689 9980 |Fax

Branch Offices

MUMBAI
203, 2ndFloor,
Mahinder Chambers
W T Patil Marg,
Opp Dukes factory, Chembur,
Mumbai 400071 - India
91 22 2520 0561 | Tel
91 22 2520 5992 | Fax

GURUGRAM
248, 2nd Floor, Tower – B,
Spazedge Commercial Complex
Sector 47, Sohna Road,
Gurugram 122001 - India
91 12 4407 8407 | Tel
91 12 4407 9407 | Fax

International Offices

JAPAN
Komiyama & Co.
3-6-9 Roppongi Minato-KU
Tokyo, 106-0032, Japan

ITALY
Studio Vienna
Via Hoepli 3 - 20121
Milano, Italy

GERMANY
btu - beraterpartner Group
Feldbergstraβe 27-29
D-61440, Oberursel, Germany

FRANCE
OCA - Organisation Conseil Audit
63, Avenue de Villiers
75017, Paris, France

UAE
TCA International FZE
Office No 214,
Business Center 2,
RAK Free Trade Zone,
RAS AL Khaimah, UAE

VIETNAM
BHG
#1B/176 - Doi Can Street,
Ba Dinh District, Hanoi, Vietnam

SPAIN
Trebeki
Juan de Ajuriaguerra
6, 1, IZQ
48009, Bilbao, Spain