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# LEY BOLETÍN

## 'MY'-way or The 'HIGH'-way

The Hon'ble Supreme Court, on 31st March, 2017, refused to revisit its order banning liquor vends within 500 metres of National Highways (NH) and State Highways (SH) from April 1, 2017 and ruled that this would also bar hotels and restaurants on highways from serving liquor to guests.

In the landmark case of State of Tamil Nadu v. K.Balu, Supreme Court passed an order on December 15, 2016 keeping in mind the large number of deaths on highways due to drunken driving and the easy availability of alcohol, the SC had ordered that no liquor vend could operate within 500 metres of NH's and SH's. It had also said these vends could not be visible from highways and nor could hoardings be put up advertising their proximity to the highways.

The only relaxation given by the SC was in terms of the distance and that too for small municipal areas that have come up on both sides of NH's and SH's. The small hill states of Sikkim and Meghalaya, which had pleaded that 500 metres on both sides of NH's and SH's were not available because of topography, with hill on one side and gorge on the other, were exempted from the distance rule.

Such order from SC has directly affected the revenue generated by the vendors.

### Losses predicted:

The Maharashtra Government has predicted loss of Rs. 7000 crore due such closure. The Government of Tamil-Nadu has predicted loss in between of Rs. 4500 to 10,000 crore. The wine industry in Nashik is likely to take hit on its annual wine sale amounting to Rs. 120 crore.

### For 'Dry'ways:

In dry Gujarat, liquor is only sold to those who have health permit or the visitor's permit. If the government compels the vendors to shut the shops, it would be an unjust step and

restricting their right to trade and commerce. Hence the ruling of SC is totally irrelevant and unjust to the state where the prohibition law is already in force. Bihar is another example of a state where prohibition law is applicable.

An RTI activist from Chandigarh whose PIL lead to nationwide liquor ban on booze sales along highways never wanted to the watering holes within the city limits to shut down. As Chandigarh is comparatively a small city a large pubs and bars fall within the 500 metres rule, forcing numerous bars, pubs, hotels and restaurants to shut down and stop selling liquor.

### Finding a HIGH'way'-out:

Such step by SC has created a lot of agitation as a result massive protests have been made by the vendors. As a result of the agitation and to maintain harmony, many states have started de-notifying the highways, considering it to be one of the tactical steps against the decision. In Maharashtra, four Municipal corporations passed resolutions for taking over the state Highways passing through those cities. Around 300 bars and liquor shops along Western & Eastern highways are back in business a day after the government handed over these roads to Mumbai Metropolitan Region Development Authority (MMRDA) from the PWD. The MMRDA has in principle taken over the three highways following the state government directives, which cited the ongoing and proposed Metro construction along these roads, to de-notify them. Similarly, Himachal Pradesh re-notified 16 SH's as Major District Roads (MDR).

The PWD in Jaipur came up with an entire new plan of bringing one-time notification allowing existing and proposed sections of state highways passing through populated areas to become urban roads if a by-pass connects to it. Instead of de-notifying each road, old portion of state highways by default will become part of local bodies once highways is aligned through a by-pass.

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After SC's order, the liquor vendors are forced to move towards the residential area which tends to disrupt the entire social cycle as general public have a strong disagreement with the same. The cities like Chandigarh and Gurgaon have grown around the highways and as a result of planned cities most hotels, bars and restaurants are concentrated along these highways. Needless to say such closures will lead to enormous losses to business and tourism which shall ultimately lead to socio-economic catastrophe. It shall also give a birth to the entire new branch of illegal and illicit sale or trade of liquor along the highways. Several bar and restaurant owners have changed entry gate to increase distance from highways.

### Poles Apart:

Recently the Ministry of Road Transport and Highways (MORTH) and National Crime Records Bureau (NCRB) came up with their reports for the current year on drunk driving which showed entirely different figures as the deaths recorded by NCRB is 2988 whereas by MORTH is 6755. So the question

persists on what criteria SC has decided the ban and why the cap has been kept to only 500 metres?

The entire belief of people should not drink and drive should be promoted through persuasive social campaigns rather than through draconian legislations and such bans.

No one can argue that drunken driving on highways is a menace and steps have to be taken to tackle it. Is anyone thinking about the number of deaths that happen due to over-speeding on roads? What about people tanking up at home or at joints within cities before taking a drive on the highway? The first and obvious step is better enforcement. This is totally lax. The second is to control access to alcohol.

The measures to ramp up governance will work better than such radical decrees. Policing should improve and agencies should be provided with better equipments to detect and tackle drunk driving. Only constant checks on drivers and punishment for offenders can deter those drink and drive. Such blanket bans from judiciary can only worsen the problem.

## Key changes in ITR forms for AY 2017-18

The Central Board of Direct Taxes has amended the Income-tax Rules and introduced new Income tax return forms applicable for the financial year (FY) 2016-17 [Assessment Year (AY) 2017-18]

ITR-1 (also known as Sahaj) has been simplified by making it one pager return form. However, individuals having a total income exceeding Rs. 50,00,000/- will no longer be eligible to use ITR-1. The existing ITR-2A and ITR-3 forms have been combined with ITR-2 and therefore, individuals who are not eligible to use ITR-1 will have to use the new ITR-2 form provided they do not have income from business or profession. As a result of above changes, the existing ITR-4 and ITR-4S (also known as Sugam) have been renumbered as ITR-3 and ITR-4 (Sugam) respectively. New ITR-3 can be used in cases where the individual has income from business or profession and similarly new ITR-4 can be used in cases where the individual has income from business and profession and opts for presumptive taxation.

The option of filing tax return in a paper form which is only available in ITR-1 (Sahaj) and ITR-4 (Sugam) has been allowed to:

- Super Senior Citizens (i.e. an individual of an age of 80 years or more during relevant financial year) OR
- An Individual/ Hindu Undivided Family whose income does not exceed Rs. 5,00,000/- and there is no claim of refund.

### Key Changes:

- One pager Form for Salaried Tax payer [ITR 1 Sahaj]:  
As promised, the Government has come out with simple, one pager ITR-1 Sahaj Form which can be filled by Taxpayers who have income from salary/pension, one house property and income from other sources like interest income. However to fill this Form the total income should be less than Rs 50,00,000/-.
- Disclosure of Aadhaar Number [ITR 1, 2, 3, 4]:  
Assessee has to mention Aadhaar number or the Aadhaar enrolment number (in case applied for) in the return form compulsorily.

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- Mentioning PAN of the buyer of immovable property introduced [ITR 2 & 3]:  
Taxpayer is required to deduct tax at source when purchasing immovable property in excess of Rs. 50,00,000/-. Now the seller is required to quote PAN of buyer in his return form.
- Scope of reporting assets and liabilities held as on 31 March, 2017 in India has been enlarged [ITR 2 & 4]:  
Taxpayers are also required to include details of financial assets, description and address of immovable property and interest in Firm/ Association of Person (“AOP”) as a Partner or as a Member respectively.
- Disclosure of Cash Deposited during Demonetization Period (i.e. between November 9, 2016 and December 30, 2016) [ITR 1, 2, 3, 4]:  
Reporting is required if the aggregate Cash deposits during the demonetisation period is Rs. 2,00,000/- or more. As per the instructions any Cash deposited in any Account other than Current and Saving Accounts (viz. loan accounts) also needs to be reported.
- Fields for Income Taxable at special rates [ITR 2, 3, 4, 5, 6, 7]:  
Some Incomes are taxed at special rates. The ITR forms have introduced columns to declare such incomes.  
  
Unexplained Income: As per Section 115BB, any unexplained income or investment attracts special tax of 60% (plus surcharge and cess, as applicable) irrespective of the tax slab. This can now be shown in the newly inserted column under ‘Schedule OS’.
- Dividend Income above Rs. 10,00,000/-: As per Section 115BBDA dividend income of more than Rs. 10,00,000/- from domestic companies are taxable at the rate of 10%. The same can be reported in newly inserted column under ‘Schedule OS’. If tax payer has dividend income above Rs. 10,00,000/- (as explained above) he/she cannot fill ITR 1.
- Income from patent: As per Section 115BBF, royalty received for patent developed and registered in India is taxed at 10%. The same can be reported in newly inserted column under ‘Schedule OS’.
- Deduction under section 80EE of the Act [ITR 2, 3, 4]:  
Section 80EE allows deduction on home loan interest for first time home buyers to the extent of Rs. 50,000/-. This deduction is over and above the Rs. 200,000/- limit currently permitted for house property covered under section 24(b) (i.e. house property). A new field has been provided in the new ITR forms under Schedule VI-A deduction to claim home loan interest under Section 80EE of the Act
- Additional details pertaining to assets and liabilities by Individuals/ HUFs earning above Rs. 50,00,000/- [ITR 2, 3, 4]:  
Last year the Government had introduced a new schedule requiring individuals/ HUFs to declare the value of assets and liabilities if their total income exceeds Rs. 50,00,000/-. Taxpayers were required to mention the cost of immovable property, jewellery, bullion, vehicles, shares, bank and cash balance, etc.  
Taxpayers are now required to disclose description and address of the immovable property and movable assets in new ITR forms. Further, new fields have been introduced in ITR forms for disclosure of ‘Interest held in the assets of a firm or AOP as a partner or member’. Such members/ partners are also required to disclose the name, address, PAN of the firm or AOP.
- Details of CA firm conducting Audit [ITR 3 & 5]:  
Taxpayers are now required to disclose name and membership number of CA signing audit report along with name, registration number and PAN of audit firm in the new ITR forms.
- Digital Receipts Vs Cash payments for presumptive taxation scheme [ITR 4]:  
As per the Presumptive Taxation Scheme provided under Section 44AD of the Act, 8% of Gross Receipts or Turnover is to be deemed as Income of the Taxpayer. However, Finance Act 2017 reduced this to 6% for digital receipts of the Taxpayer. New columns have been inserted in ITR 4 to disclose turnover received through digital mode. Consequently, columns have been inserted to disclose presumptive income at 6% and 8%.

## CONTACT INFORMATION

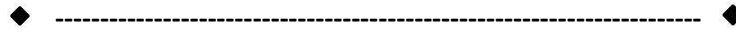
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- Presumptive Taxation Scheme for Professionals [ITR 4]:  
Budget 2016 had introduced Presumptive Taxation Scheme for Professionals such as Doctors, Chartered Accountants, Lawyers, etc who can declare minimum 50% of Gross Receipts as Income. ITR 4 has introduced new fields accordingly.



## LEX REVISERS

### Real Estate (Regulation and Development) Act, 2016 - [RERA]:

The much awaited and widely acclaimed Real Estate Regulation and Development Act, 2016 comes into force from May 1, 2017.

The Act seeks to regulate transactions between buyers and promoters of residential/commercial real estate projects to ensure: (a) Consumer protection and (b) Standardization of business practices in the sector. It does so through establishment of Real Estate Regulatory Authority for regulation and promotion of the real estate sector.

The entire aim & objective of the Act is to protect the interest of the consumers in the Real Estate Sector by creating transparent and efficient forum and to establish an adjudicating mechanism for speedy disputer redressal.

#### Key Points Addressed:

- The Act makes registration of Real Estate projects and real estate agents with the authority mandatory.
- It mandates that 70% of the amount collected from the buyers of the project be used only for the construction of that project. The provision seeks to address the practice of builders using money from an existing project for other project, resulting in delays in completion.
- Promoters are barred from changing plans and design without consent of consumers.
- The promoter shall not accept more than 10% of the total cost of the property as an advance payment without entering into a written agreement.
- The Act also ensures that the promoter will have to pay up to 10% of the project cost as penalty if he does not register his property.
- Establish fast track dispute resolution mechanisms for settlement of disputes through adjudicating officers and Appellate Tribunal. The bill bars civil courts from taking up matters defined in it.

### Cross Border Mergers: A Reality:

Notification of Section 234 of the Companies Act, 2013 and Rule 25A of Compromise, Arrangement and Amalgamations, Amendment Rules, 2017 as notified on 13.04.2017 has paved way for long awaited Cross Border Merger provisions to be a legally recognized in India. Pursuant to this, a Foreign Company based outside India can merge or amalgamate with an Indian Company. Further, this amendment shall also enable Indian Company to merge with Foreign Company subject to conditions specified in the said Notification. The Companies have to take prior approval from Reserve Bank of India and comply with all regulations as specified in Section 230 to 232 of the Companies Act 2013. The valuation of such schemes is required to be done by professional valuation bodies in the jurisdiction of the transfer Company and should be in accordance with International Accounting Standards. The Act also provides that the merging Company may make payments in Cash or Depository Receipts or partially in Cash and partially in Depository Receipts to the Shareholders of the merging Company.

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### Employees Compensation (Amendment) Act 2017:

The Employee Compensation Act, 1923 has been amended and notified as on 12.04.2017. Amending the following provisions:

Section 17: The Employer shall at the time of commencement of the employment inform the Employee of his rights to compensation under this Act in writing and through electronic means in English or Hindi or any other official language of the area of employment.

The penalty is increased from Rs. 5,000 and is extended to a definitive amount of Rs 50,000/- which may extend to Rs 1,00,000/-.

Section 30: The minimum amount for which an appeal can be filed before the Appropriate High Court has been increased from Rs. 300/- to Rs 3000/- or any such higher amount as the Central Government may notify.

Omission of Section 30 A: As per the erstwhile Section 30A If any Employee appeals before the Hon'ble High Court against the order of the Commissioner, the Commissioner had power to hold the payment of such Employee until the matter was disposed. However, by way of the Amendment this provision is removed giving much relief to Employees.

### Power Giants In Dismay As Supreme Court Order On Tariff Reversed:

Power giants, TATA and Adani group had approached the Regulators in the year 2010 when the Indonesian Coal prices increased, due to which the power giants were forced to produce electricity at the same rate as earlier which caused much inconvenience and heavy monetary losses to the Companies. In the year 2013 CERC passed order in favour of the Power Companies stating that the increase in the price of the Indonesian Coal is an event of Force Majeure and further allowed the said Companies to hike the power charges in order to compensate against the losses caused to them.

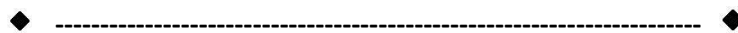
However, The Hon'ble Supreme Court while over-ruling the said CERC Order, stated that the Company would have been entitled to increase in tariff only if the Force Majeure event would have occurred in India, any event that took place outside India cannot be considered a Force Majeure.

### Sale of a Running Business with all Assets and Liabilities is a Slump Sale, would not attract Section 50(2) of Income Tax Act

In CIT v. Equinox Solution Pvt. Ltd, the two-judge bench of the Hon'ble Supreme Court held that the Sale of a running business with all its Assets And Liabilities would not be covered by Section 50(2) of the Income Tax Act since such transactions are Slump Sale of a "Long Term Capital Asset" within the ambit of Section 48(2) of the Income Tax Act.

The Assessee-Company sold its entire business as a running concern to another Company and filed return claiming deduction under Section 48 of the Income Tax Act stating that the Sale is in the nature of "Slump Sale" of the going concern being in the nature of Long Term Capital Gain in the hands of the Assessee. The Assessing Officer rejected the contention considering the said transaction as Short Term Capital Gain as specified in Section 50 (2) of the Act.

Assessee successfully appealed the impugned order before the First Appellate Authority. Dissatisfied by the orders of the Appellate Authorities and the Hon'ble High Court, the Revenue Department carried the matter before the Hon'ble Supreme Court. The Supreme Court held that the transaction was rightly treated as Slump Sale of the going concern being "Long Term Capital Asset" under Section 48 as the entire running business with all assets and liabilities having been sold in one go by the assessee-Company.



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