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...From the Desk of Editors



Respected seniors and my dear friends,

I hope post year end and bank audit assignments many of our professionals brothers and sisters have already enjoyed their due vacation break and some have vacation plans in hand in this sky-high summer. Though in current times professionals are always having some or other deadline in one or other statute, work pressure is manageable however, the next few months the professional will be busy once again, in Audit Assignment, Income Tax Returns, GST Audits, MCA filings and so on.

I would like to mention that that the Hon'ble Supreme Court has passed another important judgement in the case of **Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)**. The Supreme Court has ruled that no additions can be made by the Assessing Officer (AO) under Section 153A of the Income Tax Act, 1961 in the absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132 A, in respect of completed /unabated assessments. In case of completed/ unabated assessment, if no incriminating material is found during the search, the only remedy available to the revenue department would be to initiate the reassessment proceedings under Sections 147/148, subject to fulfilment of the specified conditions. That many long drawn tax litigation on this point throughout the county will come to rest with this judgment of the Apex Court.

The Journal Committee is thankful to the professionals who spared their valuable time, expressed their thoughts in the form of Article in the interest of the profession. We at the same time expecting more such professional brothers and sisters to come forward and write Articles on your subject of interest to be published in the DTPA Journal.

Jai Hind !! Jai DTPA !!

With Best Regards

Yours truly,
Giridhar Dhelia
Chairman
Journal Sub-
Committee, DTPA

Sujit Sultania
Co-Chairman
DTPA Journal Sub-
Committee, DTPA

Feedback and suggestions are Invited:

We are hopeful that you will like the approach and appreciate the efforts of the DTPA Journal Committee. A one liner feedback at dtpaejournal@gmail.com from you will guide us to move further and motivate in touching new heights in professional excellence.

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Solution to Technical Difficulties

Many of us may be facing **technical difficulties** on different matters say in filling up returns, other forms, uploading submissions and/or any other technical difficulties in Direct Taxes or GST and Indirect Taxes. Request you to share the following details at dpakolkata@gmail.com.

1. Name
2. Phone no.
3. Email id
4. Whether Member of DTPA
5. Issue in brief
6. Screenshot of the issue (if available)
7. Subject (Direct Tax / Indirect Tax)

The respective sub-committee at DTPA will take all efforts, be it consulting with other professionals who has already found some solution on the same issue or reach to the appropriate officer in the respective department to solve the difficulty so faced in the interest of profession.



....From the desk of President

Dear Colleagues,

In this month of May summer is with remarkable heat of 40 degree and more. Many professionals are currently busy with TDS Returns, Statement of donation received by Trust, Re-assessment proceedings under Income Tax Act, Assessments by GST Department and notice related to the same under ASMT-10 etc.

The Central Board of Direct Taxes (CBDT) as well as Central Board of Indirect Taxes and Customs (CBIC) are taking strong measures at all fronts to curb the revenue escapements at different fronts. In this series.

- CBIC has rolled out a module for automated scrutiny of GST returns for AY 2019-20.
- GST e-invoicing must for businesses with turnover of Rs 5 crore or more with effect from August 1.
- CBIC will undertake a two-month-long special drive to detect fake GST registrations and take action to identify the masterminds/beneficiaries as it aims to weed out fake ITC claims.

However, I understand proper procedures and SOPs should be in place to ensure the least inconvenience by genuine tax payers.

It is the result of the high vigilance by the revenue departments **GST collection for the month of April, 2023 touched at Rs. 187 lakh crore, which is the highest ever since introduction of GST in July, 2017.**

At the same time detection of evasion nearly doubles to Rs 1.01 lakh cr in the just concluded 2022-23 fiscal, Of which, recovery of Rs 21,000 crore have been made.

The settlement of disputes (SOD) scheme 2023 announced by Govt. of West Bengal in relation to assessed dues prior to GST regime for which notice, order or intimation was received on or before 10th February 23, is ending on 31st May. Hence a complete review of all past litigations relating to VAT, CST or Entry tax can be made to take benefit of the settlement scheme.

The Government has through recent amendment in Prevention of Money Laundering Act and covered in its ambit CA, CS, CMA as Reporting Entities in relation to specific transaction taken up by them on behalf of their clients. Though a large number of checks and balances were already being followed by professionals, the professionals should take appropriate precautions while dealing in the client matters and use all kind of diligence in discharging their professional duties by having strong KYC procedures and also having clearly outlined engagement letters for each engagement.

The Vice- President, ICAI and our own member Shri Ranjeet Kumar Agarwal visited DTPA recently for an interactive session with the members organized by DTPA CA CPE Study Circle of EIRC of ICAI. He has presented before the members various statistics about the working of the Institute and outlined various measures which ICAI is planning in the near future. He assured the members that the Institute will make timely representation before the Government on all matters of professional interest and also take adequate measures to enhance the image of our country on the global map.

I congratulate DTPA CA CPE Study Circle of EIRC of ICAI for successfully organizing 3 Days Seminar on Emerging Opportunities and Latest Technologies wherein renowned experts and thought leaders on the subject from across the county and abroad have deliberated on different topics of professional interest.

Friends, I am happy to inform you that in the Chartered Accountants Cricket League (CACL), 2023 held at Space Circle on 22nd & 23rd April, 2023 DTPA stood 2nd and were the Gold Final Runners Up. Congratulations to Captain Shyam Agarwal and the team for this remarkable achievement.

DTPA in keeping with its commitment of sharing of knowledge will keep on organizing seminars, workshops, training programmes etc. on contemporary issues with subject matter experts on the respective topics.

Friends, Articles and office staff are our back bone and it is very important that proper training is provided to them. Keeping in mind the problem faced by SME firms in organizing training programmes, DTPA has decided to conduct Training Programmes for Articles and Office Staff. The first such programme in this category is a 9 days Comprehensive GST Training Programme which will start from 22nd May. The details of this and other forthcoming programs are mentioned in details inside. I personally request each one of you to avail this opportunity and register your article and office staff for the programme to add value to your service delivery.

With best regards

CA D. S. Agarwala
President, DTPA

14th May, 2023



Workshop on Emerging Opportunities and Latest Technologies Day 1



Workshop on Emerging Opportunities and Latest Technologies Day 2



Workshop on Emerging Opportunities and Latest Technologies Day 3



Felicitation of Shri Sridhar Pamarthi, Regional Director (ER), Ministry of Corporate Affairs on 25.04.23 at Nizam Palace, Kolkata.



DTPA team at CACL, 2023

Prizes received in the following categories:

- 1) Best Batsman - Devansh Bhotika
- 2) Best Bowler - Suraj Agarwal
- 3) Best fielder - Devansh Bhotika

Man of the match

- 1) Devansh Bhotika
- 2) Suraj Agarwal
- 3) Sumit Mittal

Forthcoming Programs of Direct Taxes Professionals' Association



Direct Taxes Professionals' Association
Ph No :- 033 2242-0638/4003-5451
Email :- dtpakolkata@gmail.com

INTERACTIVE SESSION ON:

POST SEARCH AND SURVEY ACTION AND PROCEEDINGS TILL ASSESSMENT - PRACTICAL ASPECTS (PART II)



Tuesday,
May 16th, 2023
04.00 - 06.00 PM



DTPA Conference
Hall



Speaker
ADV. PARAS KOCHAR

**PARTICIPATION
CHARGES:**
"NIL"

CA D. S. Agarwala
President

CA Sanjay Bajoria
Chairman,
Direct Taxes Committee

CS Rites Goel
Co-Chairman,
Direct Taxes Committee

CA Manjulata Shukla
Gen. Secretary



Direct Taxes Professionals' Association
Ph No :- 033 2242-0638/4003-5451
Email :- dtpakolkata@gmail.com

9 DAYS COMPREHENSIVE GST TRAINING PROGRAM FOR ARTICLES AND OFFICE STAFF

DTPA IS INTRODUCING AN "IN PERSON" GST TRAINING PROGRAM FOR ARTICLES AND OFFICE STAFF CONDUCTED BY EMINENT GST FACULTIES FROM KOLKATA

Date - 22nd May, 23 - 1st Jun, 23, Weekdays Only
Timing - 8:00 AM - 11:00 AM (Morning)

 **DTPA Conference Hall**
3, Government Place, B.B.D. Bagh, Kolkata

PARTICIPATION CHARGES:
RS. 3,000/- + GST PER PARTICIPANT
**(FIRMS/ ORGANISATIONS REGISTERING 5 OR MORE PARTICIPANTS-
RS. 2,500/- + GST PER PARTICIPANT)**

Discussion on each Topic will be accompanied by practical examples and case studies

Prizes and Trophies for the Quiz Winners - for physical participants only

Professionals can also join virtually on Zoom platform

Program Coordinators- CA Arup Dasgupta (9831503290)
CA Anshuma Rustagi (9830391245)

CA D. S. Agarwala
President

CA Ankit Kanodia
Chairman,
GST & Indirect
Taxes Committee

CA Abhishek Agarwal
Co-Chairman,
GST & Indirect
Taxes Committee

CA Manjulata Shukla
Gen. Secretary

DETAILED PROGRAMME SCHEDULE		
22nd May, 2023 Monday	GST Registration	<ul style="list-style-type: none"> Sec 22 - Persons Liable for Registration Sec 24 - Compulsory Registration Sec 10 - Registration under Composition Scheme Sec 29 - Cancellation Sec 30 - Revocation
23rd May, 2023 Tuesday	Supply	<ul style="list-style-type: none"> Sec 7 - Scope of Supply Sec 8 - Tax Liability on Composite and Mixed Supplies Sec 9 - Levy & Collection Sec 11 - Power to Grant Exemption from Tax B2B, B2C, Exempt, Nil and Non-GST Supply
24th May, 2023 Wednesday	Time of Supply and Valuation	<ul style="list-style-type: none"> Sec 12 - Time of Supply of Goods Sec 13 - Time of Supply of Services Sec 15 - Value of Taxable Supply
25th May, 2023 Thursday	Place of Supply	<ul style="list-style-type: none"> Sec 12 - Place of Supply for Goods Sec 13 - Place of Supply for Service Sec 5 - Levy & Collection of IGST
26th May, 2023 Friday	Invoicing under GST	<ul style="list-style-type: none"> Sec 31 - Tax Invoice Sec 34 - Credit and Debit Notes E Invoicing
29th May, 2023 Monday	Input Tax Credit	<ul style="list-style-type: none"> Sec 16 - Eligibility & Conditions for Taking Input Tax Credit Sec 17 - Blocked Credit - Where ITC cannot be Claimed Sec 18 - Availability of Credit in Special Circumstances
30th May, 2023 Tuesday	GST Return	<ul style="list-style-type: none"> GSTR 1 GSTR 3B ITC Comparison with GSTR 2B
31st May, 2023 Wednesday	Refund under GST	<ul style="list-style-type: none"> Sec 54 - Types of Refunds Sec 54 - Eligibility Process/ Steps
01st June, 2023 Thursday	Closing Session and Quiz	



Forthcoming Programs of
DTPA CA CPE Study Circle of EIRC of ICAI



DTPA CA CPE Study Circle of EIRC of ICAI

Ph No :- 033 2242-0638/4003-5451

Email :- dtpacasc@gmail.com

STUDY CIRCLE MEETING ON:
CHARITABLE INSTITUTIONS



CA SURESH KEJRIWAL

- Impact of recent SC judgement on Charitable institutions
- Amendments by Finance Act, 2023



Friday,
19 May, 2023



04:00 PM –
07:00 PM

3 CPE HOURS

PARTICIPATION CHARGES:

RS. 200/-



DTPA CONFERENCE HALL

CA D S Agarwala
Convenor



CA Manjulata Shukla
Deputy Convenor

Compliance Calendar for May, 2023

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th May,2023	Apr-23	Depositing TDS/TCS for the month of April 2023.	
	15th May,2023	Mar-23	Issue TDS Certificate for Tax deducted u/s : i)194-IA (TDS on Immovable Property), ii)194-IB (TDS on certain Rent payment), iii)194-M (TDS on payment to resident contractor or resident professional), iv) 194-S (TDS on transfer of Virtual Digital Asset) in the month of Mar, 2023	
	15th May,2023	Apr-23	Furnishing Form 24G by Government Office where TDS/TCS has been paid without the production of a challan.	
	15th May,2023	Jan-Mar 23	Quarterly return file for TCS deposited for the 4th Quarter	
	30th May,2023	2022-2023	Submission of statement by Non Resident having a liaison office in India for the FY 2022-2023 in Form 49C under Section 285 of Income Tax Act, 1961	
	30th May, 2023	Apr-23	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) & 26QE (Virtual Digital Asset) for April 2023	
	30th May, 2023	Jan-Mar 23	Issue of TCS Certificate for the 4th Quarter of FY 2022-23 through Form 27D	
	31st May, 2023	Jan-Mar 23	Quarterly Return file for TDS deposited for 4th Quarter Form24Q, 26Q & 27Q	
	31st May, 2023	2022-2023	Due Date for furnishing of statement of financial transaction(SFT) as required to be filed by Form61A	
	31st May, 2023	Jan-Dec22	Due Date for filing annual statement of reportable account(SRA) as required to be furnished by reporting financial institutions through Form61B	
	31st May, 2023	2022-2023	Trust/Society (Exemption u/s 80G & 35(1A)) is required to file "Donor Details" in form on or before 31st May, immediately following the financial year in which donation is received through Form10BD	
	31st May, 2023	Jan-Mar 23	Quarterly statement of tax deposited in relation to transfer of virtual digital asset u/s 194-S to be furnished by an exchange through Form 26QF	
	31st May, 2023	2022-2023	Application for exercising the option available to apply income of previous year in the next year or in future through Form9A	
	31st May, 2023	2022-2023	Statement to be furnished to accumulate income for future application under section 10(21) or section 11(1).	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th May 2023	Apr-23	GSTR-7	to be filed by Taxpayer who deducts tax at source or TDS under the Goods and Services Tax (GST)
	10th May 2023	Apr-23	GSTR-8	to be filed by e-commerce operators registered under the GST
	11th May 2023	Apr-23	GSTR-1	Above 5 Cr & For Taxpayers who has not opted for QRMP Scheme having Turnover up to 5 crores.
	13th May 2023	Apr-23	GSTR-1/IFF	For Taxpayers who have opted for QRMP Scheme.
	13th May 2023	Apr-23	GSTR-6	Input Service Distributor
	13th May 2023	Apr-23	GSTR-5	Non-Resident Foreign Taxpayers
	20th May 2023	Apr-23	GSTR-5A	Non-Resident OIDAR Service Provider
	20th May 2023	Apr-23	GSTR-3B	Turnover Above 5 Cr / Taxpayer not opting for QRMP and having turnover upto 5cr.
	22th May 2023	Apr-23	GSTR-3B (Quarterly)	Taxpayer opting for QRMP and having turnover upto 5cr-Category-I
	24th May 2023	Apr-23	GSTR-3B (Quarterly)	Taxpayer opting for QRMP and having turnover upto 5cr-Category-II
	25th May 2023	Apr-23	GST PMT 06	D/d for GST payment for taxpayer with T.O. upto Rs.5Cr or opted QRMP)
	28th May 2023	Apr-23	GSTR11	Return filed by UIN holders to get refund under GST for inward supply received by them.
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	21st May 2023	Apr-23	Prof. Tax Payment (West Bengal)	
	15th May 2023	Apr-23	PF Payment	
	15th May 2023	Apr-23	ESIC Payment	
Companies Act				
	30th May, 2023		Oct-22 to Mar-23	Form PAS-6 for "Reconciliation of Share Capital Audit Report" file by Unlisted public Companies.
	30th May, 2023		2022-2023	Annual Return for LLP through LLP FORM 11
	30th May, 2023		2022-2023	Annual Return for foreign company through FC-4



Speaking Opportunity at DTPA Platform

Dear Members, At the outset, I wish you all year 2023 full of hope, happiness, good health and prosperity.

As apart of our commitment in the last AGM, DTPA will provide its members an opportunity to speak at the DTPA platform on any topics of professional interest. The opportunity may be through group discussions, webinars, workshops, Student Training Programme and soon.

If you stay outside Kolkata, you may do it through webinars.

So, if you are looking for such an opportunity, then please fill up the attached google form to help us find your interest area and take the things forward:

<https://forms.gle/hcCsjYcsY9U63Mf3A>

Regards,

CA D.S. Agarwala

President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

Direct Taxes Professionals' Association, popularly known as 'DTPA', established in the year 1982 is a Kolkata based Association consisting of Chartered Accountants, Advocates, Company Secretaries, Cost Accountants and Tax Practitioners.

We invite you to contribute articles **for the Journal on the given below topics which will be considered for publication in the upcoming edition of the E-Journal, subject to approval by the Editorial Board.**

Topics:

- Direct Taxes
- GST & Indirect Taxes
- Corporate & Allied Laws
- Information Technology
- International Taxation
- Accountancy and Audit
- Insolvency and Bankruptcy
- Emerging areas of Practice

The articles sent for publication in the news letter should conform to the following parameters:

- The article should be original and contents are owned by Author himself.
- The article should help in development of the profession and highlight matters of current interests /challenges to the professionals/emerging professional areas of relevance.
- The length of the article should be 2000-2500 words and should preferably be accompanied with an executive summary of around 100 words.
- The tables and graphs should be properly numbered with headlines and referred with their numbers in the text.
- The authors must provide the list of references at the end of article.
- A brief profile of the author, e-mail ID, postal address and contact number along with his passport size photograph and declaration confirming the originality of the article as mentioned above should be enclosed along with the article.
- **The article can be sent by e-mail at dtpaejournal@gmail.com**

Please note that Journal Committee has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal.

For further details, please contact us at: dtpaejournal@gmail.com and at Mob: 9830255500/9831016678

Thanks and Regards,

CA. D S Agarwala

President-DTPA

Ph.9433097972

Email: agards@gmail.com

CA. Giridhar Dhelia

Chairman

DTPA-JournalSub-Committee

Ph.9830255500

Email: gdhelia@gmail.com

CA. Sujit Sultania

Co- Chairman

DTPA-JournalSub-Committee

Ph.9831016678

Email: sultaniasujit@gmail.com

Direct Taxes

1. STATUTORY UPDATES

- 1.1. Personal income tax to GDP Ratio rises to 2.94 in FY 2021-22: **FinMin - Press Release, Dated 25-04-2023**

Editorial Note: The Finance Minister, Smt. Nirmala Sitharaman chaired a periodic review meeting with the Central Board of Direct Taxes (CBDT). During the review meeting, the FM was apprised about the impact of various initiatives. Introducing new data sources in SFT has led to an 1118% increase in reported information. Further, FM was also apprised of the fact that the Personal Income Tax to GDP ratio has been steadily increasing from 2.11 in F.Y. 2014-15 to 2.94 in F.Y. 2021-22.

- 1.2. CBDT releases direct tax statistics updated upto FY 2021-22 - **Press Release, Dated 13-04-2023**

Editorial Note: The CBDT has been releasing key statistics relating to Direct Tax collections and administration in the public domain from time to time. In continuation of its efforts to place more and more information in the public domain, the CBDT has further released Time-Series data as updated up to F.Y. 2021-22.

- 1.3. Tax Dept. conducts searches on cooperative banks involved in routing funds of customers to abet them to evade taxes - **Press Release, Dated 11-04-2023**

Editorial Note: The Income-tax Department conducted a Search & Seizure operation in the case of some Cooperative Banks, in the State of Karnataka. These cooperative Banks have been found to be engaged in routing funds of various business entities of their customers in a manner, to abet them to evade their tax liabilities.

- 1.4. Govt. increases interest rates for various small saving schemes for 1st quarter of FY 2023-24 - **Notification F.No. 1/4/2019-NS, Dated 31-03-2023**

Editorial Note: The Govt. has notified interest rates on various Small Saving Schemes for the first quarter of the Financial Year 2023-24. The Govt. has increased interest rates for various schemes, i.e., 1, 2, 3 & 5 year time deposits, Senior Citizen Savings Scheme, Monthly Income Account Scheme, KisanVikas Patra and SSAS.

- 1.5. CBDT allows NR not having PAN to manually file Form 10F till 30-09-2023 - **Notification F. No. DGIT(S)-ADG(S)-3/e-Filing Notification/Forms/2023/13420, dated 28-03-2023**

Editorial Note : The CBDT had allowed the manual filing of Form 10F till 31-03-2023 in case of non-residents who are not having PAN and are also not required to obtain PAN under the Income-tax Act. In view of continued practical challenges, the CBDT has decided to extend this relaxation further till 30-09-2023.

- 1.6. Govt. notifies 'Mahila Samman Savings Certificate, 2023'; offers 7.5% p.a. interest on 2 years deposit - **Notification No. G.S.R.237(E), Dated 31-03-2023**

Editorial Note: The Ministry of Finance has notified Mahila Samman Savings Certificate, 2023 that offers 7.5% per annum interest rate on deposit made under the scheme. Deposit can be made by a girl or woman for a maximum limit of Rs. 2 lakhs for a period of 2 years.

- 1.7. Govt. increases maximum amount that can be deposited in National Savings (Monthly Income Account) Scheme - **Notification No. G.S.R.239(E), Dated 31-03-2023**

Editorial Note: The National Savings (Monthly Income Account) Scheme's account holders are now allowed to deposit higher sums of money, as the Government has raised the maximum amount limit. For single accounts, the limit has been increased from Rs. 4.5 lakh to Rs. 9 lakh, while for joint accounts; it has been raised from Rs. 9 lakh to 15 lakh.

- 1.8. Govt. modifies requirement of furnishing PAN/Aadhaar while opening Saving Account - **Notification No. G.S.R.238(E), Dated 31-03-2023**

Editorial Note: The Govt. has notified the Government Savings Promotion General (Amendment) Rules, 2023 amending the requirement to furnish PAN and Aadhaar while opening new saving account in accordance with the Government Savings Promotion General Rules, 2018.

- 1.9. Govt. doubles maximum deposit amount in a/c opened under Senior Citizens Savings Scheme 2019 - **Notification No. G.S.R.240(E), Dated 31-03-2023**

Editorial Note: The Govt. has doubled the limit of maximum amount that can be deposited in the account opened under the Senior Citizens Savings Scheme 2019. The limit has been increased from existing Rs. 15 lakhs to Rs. 30 lakhs.

- 1.10. CBDT notifies procedure for filing of application in Form 15C/15D for grant of nil TDS certificate u/s 195 - **Notification No. 1/2023, Dated 29-03-2023**

Editorial Note: As per Rule 29B, a Banking Co./Insurer and any other person who carries on business or profession in India through a branch can apply for nil TDS certificate in Form 15C/15D. Now, the CBDT has specified the procedure, format and standard for filing of such form. Form 15C and Form 15D

is to be filed electronically through TRACES with effect from 01-04-2023.

- 1.11.** The Finance Act 2023 received assent of the President Droupadi Murmu

Editorial Note: The Finance Bill, 2023 received the assent of the President, Droupadi Murmu, on 31st March, 2023. The Finance Act, 2023 (No. 8 of 2023) contains 174 Sections impacting more than 10 Acts. This Act shall enforce various amendments made to the Income-tax Act with effect from 01-04-2023.

- 1.12.** CBDT signs 95 Advance Pricing Agreements in FY 2022-23; highest ever APA signing since launch - **Press Release, Dated 31-03-2023**

Editorial Note: The CBDT entered a record 95 Advance Pricing Agreements (APAs) in FY 2022-23 with Indian taxpayers. This is the highest-ever APA signings in any financial year since the board's launch of the APA programme. APA Scheme endeavours to provide taxpayers with transfer pricing certainty by specifying the pricing methods and determining the ALP of international transactions in advance for a maximum of future years.

- 1.13.** Provisional Net Direct Collections for Financial Year 2022-23 marks growth of 17.63%: FinMin - **Press Release, Dated 03-04-2023**

Editorial Note: The Ministry of Finance has released the provisional figures of Direct Tax collections for the Financial Year (FY) 2022-23. The data shows that Net collections are at Rs. 16.61 lakh crore, compared to Rs. 14.12 lakh crore in the preceding Financial Year i.e. FY 2021-22, representing an increase of 17.63%.

- 1.14.** Definition of 'Sikkimese' amended by Finance Act 2023 is applicable only for purpose of Income-tax Act: CBDT - **Press Release, Dated 04-04-2023**

Editorial Note: The Central Board of Direct Taxes (CBDT) has issued a clarification with regard to the recent amendment made to definition of "Sikkimese" under section 10(26AAA) by the Finance Act, 2023. The board has clarified that the term "Sikkimese" defined for the purposes of the said section, is only for the purposes of the Income-tax Act, 1961, and not for any other purpose.

- 1.15.** Employer to deduct tax as per new tax regime if employee didn't intimate about opting of old regime: CBDT - **Circular No. 4 of 2023, Dated 05-04-2023**

Editorial Note: The Central Board of Direct Taxes (CBDT) has issued clarification on the deduction of tax at source (TDS) by employers on the salaried income of the employee w.e.f AY 2024-25. The employer shall seek information from each employee regarding their intended tax regime. If the employee

makes no intimation, the employer will deduct the tax following the new tax regime under section 115BAC.

- 1.16.** CBDT notifies jurisdictions of investment entities that won't be treated as passive non-financial entity for SFT reporting - **Notification F. No. 500/05/2018-FT&TR-III, Dated 06-04-2023**

Editorial Note: Rule 114F defines the meaning of passive non-financial entity for the purpose of SFT reporting. As per said rule, a passive non-financial entity means an investment entity described in sub-clause (B) of clause (c) of the Explanation to Rule 114F(3), which is not located in any of the jurisdictions specified by the CBDT. The Board has notified such jurisdiction substituting jurisdictions that were previously notified vide Notification No. 78/2018 dated 5-11-2018.

- 1.17.** CBDT notifies '348' as Cost Inflation Index (provisional) for Financial Year 2023-24 - **Notification S.O. 1692 (E) [NO. 21/2023/F.NO. 370142/5/2023-TPL], Dated 10-04-2023**

Editorial Note: The CBDT vide Notification No. 21/2023, dated 10-04-2023, has notified '348' as the Cost Inflation Index (provisional) for the Financial Year 2023-24. If a long-term capital asset is transferred, the capital gains are computed after deducting the indexed cost of acquisition instead of just the cost of acquisition. Such indexation of the cost of acquisition is determined based on the Cost Inflation Index.

- 1.18.** CBDT notifies 'CBSE' and 'GNIDA' for exemption under Sec. 10(46) - **Notification No. 18/2023, Notification No. 19/2023 and Notification No. 20/2023, Dated 10-04-2023**

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified 'Central Board of Secondary Education' and 'Greater Noida Industrial Development Authority' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961.

2. SUPREME COURT

SECTION 2(15) OF THE INCOME-TAX ACT, 1961 - CHARITABLE PURPOSE

- 2.1. Objects of general public utility :** SLP dismissed against impugned order of High Court wherein it was held that assessee-urban development authority executing works in connection with supply of water, disposal of sewerage and provision of other services and amenities, could be said to be providing general public utility services within meaning of section 2(15) and hence eligible for benefit of section 11 - **Commissioner of Income-tax (Exemptions) v. Gandhinagar Urban Development Authority - [2023] 148 taxmann.com 339 (SC)**

SECTION 6 OF THE INCOME TAX ACT, 1961 - RESIDENTIAL STATUS

- 2.2. Test of residence of company u/s 6(3) is where the sole right to manage and control of the company lies, not its Domicile or place of registration - **Mansarovar Commercial (P.) Ltd. v. Commissioner of Income Tax - [2023] 149 taxmann.com 178 (SC)**

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

- 2.3. Supreme Court held that the question of what proportion of profits arose or accrued in India is a matter of fact - **Director of Income-tax v. Travelport Inc. - [2023] 149 taxmann.com 470 (SC)**

SECTION 37(1) OF THE INCOME TAX ACT, 1961 - BUSINESS EXPENDITURE - ALLOWABILITY OF

- 2.4. Term "any expenditure" in Section 37 includes losses incurred in the course of business and incidental to it. Any loss incurred by an assessee for an unlawful purpose or prohibited by law cannot be deducted as an expenditure under Explanation 1 to
- 2.5. Section 37. If an expenditure/loss is incurred for an illegal purpose, it is not deemed to have been incurred for the purpose of business/profession, and no deduction can be made. Losses resulting from penalties or confiscation cannot be claimed as a deduction as they are not incidental to any business - **Commissioner of Income-tax v. Prakash Chand Lunia (D) Thr. Lrs. - [2023] 149 taxmann.com 416 (SC)**

SECTION 40(a)(i) OF THE INCOME TAX ACT, 1961 - BUSINESS DISALLOWANCE - INTEREST, ETC., PAID TO A NON-RESIDENT WITHOUT DEDUCTION OF TAX AT SOURCE

- 2.6. Where assessee is held not liable to deduct TDS, assessee cannot be treated as assessee in default if payee foreign co. is held liable to tax in reassessment - **Van Oord Acz India (P.) Ltd. v. Commissioner of Income-tax-VI, New Delhi - [2023] 149 taxmann.com 38 (SC)**

SECTION 50 OF THE INCOME TAX ACT, 1961 - CAPITAL GAINS - COMPUTATION IN CASE OF DEPRECIABLE ASSETS

- 2.7. CIT rightly held AO's order as erroneous & prejudicial to revenue u/s 263 as it allowed payment by co. to shareholders under arbitral award as COI in computing capital gains - **Commissioner of Income-tax v. Paville Projects (P.) Ltd. - [2023] 149 taxmann.com 115 (SC)**

SECTION 68 OF THE INCOME-TAX ACT, 1961 - CASH CREDIT

- 2.8. **Sales** : SLP dismissed against impugned order of High Court that where assessee-company had failed to establish genuineness of unaccounted income found in garb of cash

sales in its accounts during scrutiny assessment and there was sufficient material on record to show that cash sales were fabricated, Tribunal could not have deleted additions and penalty levied under section 271(1)(c) on mere ground that sales tax authorities had accepted books of account and VAT was paid on such cash sales - **J.M.J. Essential Oil Company v. Commissioner of Income-tax - [2023] 148 taxmann.com 448 (SC)**

SECTION 80HHC OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - EXPORTERS

- 2.9. **Amendment** : Income earned from sale of shares should be treated as 'income from business' for purpose of computation of deduction under clause (b) to section 80-HHC(3) - **Magnum International Trading Company (P.) Ltd. v. Commissioner of Income Tax - [2023] 149 taxmann.com 329 (SC)**

- 2.10. **Interest income** : Interest income earned by assessee by depositing surplus funds in a bank or otherwise was not taxable under head 'income from business' but under head 'income from other sources' and, accordingly, same would be excluded for purpose of computation of deduction in terms of clause (b) to section 80-HHC(3) - **Magnum International Trading Company (P.) Ltd. v. Commissioner of Income Tax - [2023] 149 taxmann.com 329 (SC)**

SECTION 80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS

- 2.11. **Computation of deduction** : SLP dismissed against impugned order of High Court that where by virtue of section 79 business loss of assessee prior to assessment year 2001-02 had already lapsed, same could not be notionally carried forward and set off against profit and gains of assessee's business for assessment year 2005-06 under consideration in computing quantum of deduction under section 80-IA(1) - **Assistant Commissioner of Income-tax, Circle-8 v. Vodafone Essar Gujrat Ltd. - [2023] 149 taxmann.com 1 (SC)**

SECTION 80-IB OF THE INCOME TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS

- 2.12. No deduction is admissible u/s 80-IB on the profit earned from DEPB/Duty Drawback Schemes - **Saraf Exports v. Commissioner of Income-tax - [2023] 149 taxmann.com 145 (SC)**

SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

- 2.13. Determination of the arm's length price by the Tribunal can be subject to scrutiny by the High Court in an appeal under

Section 260A of the IT Act. The High Court can examine whether the relevant guidelines under the Act and the Rules have been taken into consideration, whether the comparability of two companies or selection of filters has been done judiciously, and whether the comparable transactions have been considered properly. Therefore, the view taken by the Karnataka High Court in the case of Softbrands India (P.) Ltd. [2018] 94 taxmann.com 426 (Karnataka)/[2018] 406 ITR 513 (Karnataka) that the determination of the arm's length price by the Tribunal is final and cannot be subject to scrutiny under Section 260A of the IT Act may not be acceptable - **Sap Labs India (P.) Ltd. v. Income Tax Officer, Circle 6 - [2023] 149 taxmann.com 327 (SC)**

SECTION 153A OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - ASSESSMENT IN CASE OF

- 2.14. If a search or requisition is conducted, the AO assumes jurisdiction for block assessment under Section 153A of the Act. All pending assessments/reassessments will stand abated, meaning they will no longer be valid. If any incriminating material is found during the search, the AO can assess or reassess the total income, taking into consideration the incriminating material and other material available with the AO, including the income declared in the returns - **Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. - [2023] 149 taxmann.com 399 (SC)**

SECTION 153C OF THE INCOME TAX ACT, 1961 - ASSESSMENT OF INCOME OF ANY OTHER PERSON

- 2.15. Amendment to sec 153C by FA 2015 w.e.f. 1-6-2015 (w.r.t. incriminating material pertaining to third party) shall apply to searches conducted before 1-6-2015 - **Income Tax Officer v. Vikram Sujit kumar Bhatia - [2023] 149 taxmann.com 123 (SC)**

SECTION 271C OF THE INCOME TAX ACT, 1961 - PENALTY - FOR FAILURE TO DEDUCT TAX AT SOURCE

- 2.16. Penalty u/s 271C(1)(a) can be imposed only for non-deduction of TDS, not for belated payment or non-payment of deducted TDS - **US Technologies International (P.) Ltd. v. Commissioner of Income-tax - [2023] 149 taxmann.com 144 (SC)**

3. HIGH COURT

SECTION 2(9) OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 - BENAMI TRANSACTION

- 3.1. **Applicability of** : Criminal prosecution could not be initiated for transaction entered into prior to coming into force of Benami Transactions (Prohibition) Amendment Act, 2016 as sections 3 and 5 of **unamended** Act which dealt with criminal prosecution were unconstitutional from their inception; 2016 Act could only be applied prospectively - **Golla Jagadishwar Narender v.**

Union of India - [2023] 148 taxmann.com 263 (Telangana) SECTION 2(22) OF THE INCOME-TAX ACT, 1961 - DEEMED DIVIDEND

- 3.2. **Advance**: Where company paid advance to assessee-director and others to purchase a property and AO treated said advance as deemed dividend, since assessee entered into agreement with company for sale of ground floor portion of building, entire sum paid as advance could not be treated as deemed dividend and, thus, matter was to be remanded for reconsideration - **Smt. Rinku Chakraborty v. Deputy Commissioner of Income-tax - [2023] 149 taxmann.com 31 (Karnataka)**

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

- 3.3. **Business profit - Payroll services** :Where assessee-company entered into agreement with P&G India to render payroll services but services to be rendered by assessee to P&G India was outsourced to IBM Philippines, payroll service not being technical service, **business** profit of IBM Philippines would not be taxable in India, since there was no PE of IBM Philippines in India in terms of article 7 - **Director of Income-tax International Taxation v. IBM India (P.) Ltd. - [2023] 149 taxmann.com 185 (Karnataka)**

SECTION 10(38) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - INCOME ARISING FROM TRANSFER OF LONG-TERM SECURITIES

- 3.4. **Burden of proof** : Where assessee provided all details of purchase and sales of shares to AO along with contract notes for purchase and sale, demat account and bank statement and, furthermore no incriminating material were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) merely by relying on statements of accommodation entry providers which were recorded much before date of survey - **Principal Commissioner of Income-tax v. Dipansu Mohapatra - [2023] 149 taxmann.com 99 (Orissa)**

SECTION 11 OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - EXEMPTION OF INCOME FROM PROPERTY HELD UNDER

- 3.5. **Accumulation of income** : There is nothing in either section 11(2) or rule 17(2) that mandates furnishing of resolution of assessee-trust in order for statement with respect to income being accumulated/set apart for carrying out activities of trust in Form No. 10 to be acted upon by AO and, consequently, revenue cannot insist on a copy of resolution being furnished - **Commissioner of Income-tax/Principal Commissioner of Income-tax v. Paradeep Port Trust - [2023] 149 taxmann.com 19 (Orissa)**

SECTION 14A OF THE INCOME-TAX ACT, 1961 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT

INCLUDIBLE IN TOTAL INCOME

3.6. Scope of provision : Where assessee earned exempt income and submitted computation of inadmissible expenditure under section 14A, since Assessing Officer had not recorded any satisfaction that working of inadmissible expenditure under section 14A by assessee was incorrect, interest expenditure could not be disallowed - **Principal Commissioner of Income-tax v. Godrej & Boyce Mfg. Co. Ltd. - [2023] 149 taxmann.com 222 (Bombay)**

3.7. Where Assessing Officer had failed to record any satisfaction while rejecting computation of suomotu disallowance under section 14A done by assessee before invoking rule 8D, impugned addition made by Assessing Officer in this regard was to be deleted - **Principal Commissioner of Income-tax v. West Bengal Infrastructure Development Finance Corporation Ltd - [2023] 149 taxmann.com 181 (Calcutta)**

SECTION 28(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS LOSS/DEDUCTION - ALLOWABLE AS

3.8. Interest on NPA : Where assessee-bank, in preceding year declared interest on NPAs as income on accrual basis, in subsequent year assessee could not reverse such interest amount and deduct from taxable income on basis that interest on NPAs was not recognizable as income in accordance with guidelines of RBI - **State Bank of Hyderabad v. Joint Commissioner of Income-tax - [2023] 149 taxmann.com 245 (Telangana)**

SECTION 32 OF THE INCOME-TAX ACT, 1961 - DEPRECIATION - ALLOWANCE/RATE OF

3.9. Reassessment : Where Assessing Officer while passing assessment order under section 143(3) had gone into assessee's claim of depreciation on written down value of assets by making all necessary enquiries and he did not make any disallowance as regards said claim, in absence of any new tangible material, said assessment could not be reopened

under section 147 - **Solvay Specialities India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 149 taxmann.com 228 (Bombay)**

SECTION 37(1) OF THE INCOME-TAX ACT, 1961 - BUSINESS EXPENDITURE - ALIENABILITY OF

3.10. Prior period expenses : Where revenue was not able to place any material to disprove explanation furnished by assessee before authorities in support of its claim that liability to pay expenses charged under head 'prior period' crystallized during financial year 2011-2012, entire prior period expenses had rightly been allowed, therefore, no substantial question of law arose for consideration under head prior period expenses - **Principal Commissioner of Income-tax-2 v. Balmer Lawrie & Co. Ltd. - [2023] 149 taxmann.com 286 (Calcutta)**

SECTION 44AD OF THE INCOME-TAX ACT, 1961 - PRESUMPTIVE TAXATION

3.11. Illustrations : Where assessee, a civil contractor, who worked for State Government departments furnished income at 3 per cent turnover based on estimates and contended that volume of work was higher and there was heavy competition which resulted in his inability to get more profits, Tribunal was justified in upholding order of Commissioner (Appeals) in adopting net profit at 4 per cent from civil contracts in view of order passed in previous assessment years - **Commissioner of Income-tax v. Srinivasan Devendran - [2023] 149 taxmann.com 25 (Madras)**

SECTION 45 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - YEAR IN WHICH ASSESSABLE

3.12. Reassessment : Where Assessing Officer had formed opinion that reassessment was necessary, as income had escaped assessment and valuation of escaped assessment was more than Rs. 50 lakhs based on sale deed evidencing sale of land by assessee which had not been disclosed in return of income and he had also recorded reasons, it was for assessee to establish that view taken by Assessing Officer was contrary to material on record or it was perverse - **Sahjeevan Co-operative Housing Society Ltd. v. Principal Commissioner of Income-tax - [2023] 149 taxmann.com 244 (Bombay)**

3.13. Illustrations : Where assessee under an agreement agreed to sell their shares and received substantial part of consideration between 18-6-2007 to 16-10-2007 as advance sale consideration towards sale of shares, since share certificates were not delivered to transferees during previous year relevant to assessment year 2008-09, assessee could not be subjected to capital gains tax in assessment year 2008-09 - **Principal Commissioner of Income-tax v. Smt. Poornima Shailendra Babu - [2023] 149 taxmann.com 50 (Karnataka)**

3.14. Cost of asset : Where detachable warrant had an existence on its own along with debenture purchased by assessee, a part of cost was attributable to warrant and realisation thereof would be a sale consideration arising out of transfer of capital asset and as such, liable to capital gain - **Deepak Nitrite Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 450 (Gujarat)**

SECTION 48 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - COMPUTATION OF

3.15. Deductions : Where assessee had engaged services of an advisory company and a law firm for sale of shares held by it, since these firms had identified investor, negotiated value and structured transaction of transfer of shares by assessee, expenditure incurred towards professional services provided by these firm had a direct connection with transfer of shares by assessee and, thus, same would be deductible under section 48(i) while computing LTCG on sale of shares - **Chincholi**

Gururajachar Venkatesh v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 90 (Karnataka)

SECTION 68 OF THE INCOME-TAX ACT, 1961 - CASH CREDIT

3.16. Revision : Where Principal Commissioner invoked revision jurisdiction under section 263 in case of assessee on basis of an information received from Dy. Director (Investigation) regarding huge amount of unaccounted funds received in bank account of assessee, since a reassessment proceeding was already invoked and completed on basis of same information, impugned revision was unjustified - **Principal Commissioner of Income tax v. Usha Polychem India (P.) Ltd. - [2023] 149 taxmann.com 240 (Calcutta)**

3.17. Reassessment :Where assessee-company challenged impugned reopening proceedings initiated against it on ground that department had committed an error in wrongly recording cash deposits as Rs. 169921 lacs instead of Rs. 1699.21 lacs, since matter was at a premature stage, no interference was required qua impugned notice - **V.S. Dhandapani & Son v. Income tax Officer - [2023] 148 taxmann.com 483 (Madras)**

3.18. Share application money : Where a reopening notice was issued on ground that assessee-company had received share application money from several parties who lacked creditworthiness and their whereabouts were also not found, since assessee had produced relevant material in nature of accounting entries, names of allottees and their addresses and PAN numbers during original scrutiny assessment which had satisfied Assessing Officer at relevant time about genuineness of allottees and share transactions, impugned reopening of assessment after four years was unjustified - **Gujarat Natural Resources Ltd. v. Assistant Commissioner of Income-tax - [2023] 148 taxmann.com 476 (Gujarat)**

3.19. Share application money : Where Assessing Officer solely based on statement of assessee's director recorded during search operation treated share application money received by assessee-company as undisclosed income and made additions under section 68, since said statement was retracted during search operation and there was no cash trail or any other corroborative evidence or investigation brought on record by AO, impugned additions were to be deleted - **Principal Commissioner of Income-tax v. Golden Goenka Fincorp Ltd. - [2023] 148 taxmann.com 313 (Calcutta)**

3.20. Unsecured loan : Where assessee received loan for purchase of land for construction of an educational campus, in view of fact that though initial burden of proof was not discharged at level of Assessing Officer but assessee produced relevant documents to prove identity and creditworthiness of creditor and genuineness of transaction before Commissioner (Appeals) and, further, transaction was made through proper banking channel, impugned addition made under section 68 on account of said loan amount received by assessee was unjustified - **Principal Commissioner of Income-tax**

(Central), Surat v. Neotech Education Foundation - [2023] 148 taxmann.com 372 (Gujarat)

SECTION 69 OF THE INCOME-TAX ACT, 1961 - UNEXPLAINED INVESTMENTS

3.21. Reassessment : Where Assessing Officer sought to reopen assessment of assessee after period of four years on ground that assessee had transacted funds with certain company which had been conclusively proven to be a shell company, since Assessing Officer had reopened assessment solely on basis of 'reason to believe' and not on grounds of failure to disclose material facts fully and truly, and moreover, AO failed to highlight in reasons recorded as to what was that material fact, which was not disclosed by assessee in its return, impugned reopening notice and consequent order were to be quashed - **Punia Capital (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 53 (Bombay)**

3.22. Immovable property : Where reasons for reopening assessment were founded on non-existent transaction of purchase of property by assessee reassessment proceedings deservd to be quashed - **Rajhans Processors v. Union of India - [2023] 149 taxmann.com 29 (Rajasthan)**

SECTION 69A OF THE INCOME-TAX ACT, 1961 - UNEXPLAINED MONEYS

3.23. Bogus sales : Where Assessing Officer issued a reopening notice on ground that an information was received that assessee was beneficiary of accommodation entries by way of bogus sales from a shell entity, since there was no material or basis for Assessing Officer to hold that transaction between assessee and said entity was not a genuine transaction of sale and further, Assessing Officer had not independently applied his mind to said information received to come conclusion that transaction in question was only a paper transaction, impugned reopening notice was to be quashed - **B.U. Bhandari Autolines (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 219 (Bombay)**

3.24. Unaccounted investments : Where notice under section 148/148A was issued to assessee indicating that information was flagged on 'Insight Portal' in accordance with Risk Management Strategy formulated by CBDT that assessee had made unaccounted transactions of investment which were not found genuine on basis of corroborative evidence and admission of a party, however, assessee had not been furnished all requisite details including name of party with whom was said to have transacted, there being violation of principles of natural justice, notice so issued was to be set aside - **Prakash Chandra Chhotalal Shah v. Income-tax Officer - [2023] 149 taxmann.com 100 (Gujarat)**

3.25. Purchase : Where assessee-firm could not produce any evidence or material before lower authorities in regards to transactions of payments made by assessee to different

parties towards purchase of unaccounted goods found in survey operation and merely stated that these transactions were not related to its business, impugned addition made in hands of assessee by treating amount so paid as undisclosed income was justified - **Samaddar Brothers v. Commissioner of Income-tax - [2023] 148 taxmann.com 453 (Calcutta)**

SECTION 69B OF THE INCOME-TAX ACT, 1961 - UNDISCLOSED INVESTMENTS

3.26. Opportunity of hearing : Where pursuant to a search conducted at premises of assessee department proceeded to pass assessment orders under section 143(3), read with section 153A by making multiple references to different authorities located abroad, department was directed to provide and supply to assessee complete details, documents, annexures/information etc. of all those foreign references/requisitions sent to foreign countries/foreign tax authorities so that assessee would have an opportunity to make a submission, as to relevance of those documents for purposes of appeal - **Deepak Talwar v. Deputy Commissioner of Income-tax - [2023] 149 taxmann.com 97 (Delhi)**

3.27. Stock : Where during survey conducted under section 133A at business premises of assessee-firm stock inventorized was found to be in excess as to what was disclosed in books of account and assessee claimed that excess stock belonged to other firms since assessee had failed to show any separate trade license, sale memo, purchase memo, books of account, etc. to explain excess physical stock so found, impugned addition made by estimating profit on alleged difference of stock was justified - **Samaddar Brothers v. Commissioner of Income-tax - [2023] 148 taxmann.com 453 (Calcutta)**

SECTION 69C OF THE INCOME-TAX ACT, 1961 - UNDISCLOSED EXPENDITURE

3.28. Purchases : Where assessee-firm failed to discharge burden casted upon it to explain alleged undisclosed purchases found during survey operation conducted upon it under section 133A, impugned addition made by Assessing Officer by estimating profit at rate of 8.65 per cent on amount of alleged purchases was to be sustained - **Samaddar Brothers v. Commissioner of Income-tax - [2023] 148 taxmann.com 453 (Calcutta)**

3.29. Reassessment : Where Assessing Officer reopened assessment in case of assessee-company on basis of report received from DDIT that assessee had made unaccounted purchases of gold bullions, since reasons for reopening merely repeated language of said DDIT report without any independent application of mind and there was no other vital documents on record based on which reasons to believe were formed, impugned reopening order and consequential demand notices issued were bad in law and, thus, liable to be set aside - **Sri Laxmi Narayan Agency v. Income-tax Officer - [2023] 148 taxmann.com 373 (Orissa)**

SECTION 80C OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - LIFE INSURANCE PREMIA, CONTRIBUTION TO PROVIDENT FUND, ETC.

3.30. Illustrations : Where Assessing Officer disallowed assessee's claim for deduction under sections 80C and 80TTA as assessee had failed to respond to several notices issued under sections 142(1) and 143(2), assessee could not challenge such assessment on basis that he was not afforded personal hearing by Assessing Officer - **Suyambulingam Suresh v. Income-tax Officer - [2023] 149 taxmann.com 218 (Madras)**

SECTION 80P OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - INCOME OF CO-OPERATIVE SOCIETIES

3.31. Reassessment : Where issue with regard to claim of deduction under section 80P had been specifically gone into by Assessing Officer leading to passing of assessment order under section 143(3) and consequent thereto, there had been neither any change in law nor any new material had been shown to have come to knowledge of Assessing Officer, reopening of assessment on ground that claim of deduction under section 80P(2)(d) was not in conformity with provisions of said section being a mere change of opinion was not justified - **Mumbai Postal Employees Co-operative Credit Society Ltd. v. Income-tax Officer - [2023] 149 taxmann.com 94 (Bombay)**

SECTION 119 OF THE INCOME-TAX ACT, 1961 - CENTRAL BOARD OF DIRECT TAXES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES

3.32. Sub-section 2(b) : Where assessee-NRI sought for condonation of delay in filing return of income on ground that being a foreign citizen, he could not reasonably be expected to be aware about due date of filing ITR, especially when he had no taxable income in India since financial year 2010-11, however, fact that he had duly filed his return of income for another assessment year within time limit, proved that he was well aware of process of filing ITR, thus, impugned order rejecting application for condonation of delay was justified - **Puneet Rastogi v. Principal Chief Commissioner of Income-tax, (International Taxation) - [2023] 148 taxmann.com 362 (Delhi)**

SECTION 132B OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - RETAINED ASSETS, APPLICATION OF

3.33. Period of limitation : Where assessee filed application under section 132B for release of gold ornaments being stock-in-trade of his business seized during search, retaining said assets even after expiry of 120 days from date of last authorization was impermissible under section 132B - **Yogeshbhai Chandrakant Pala v. Income-tax Officer - [2023] 149 taxmann.com 49 (Gujarat)**

SECTION 144B OF THE INCOME-TAX ACT, 1961 - FACELESS ASSESSMENT

3.34. Opportunity of hearing : Where AO passed final reassessment order without dealing with objections of assessee on ground that assessee failed to respond to notice issued under section 142(1), since due to technical glitch of software in web portal, notice issued under section 142 was not available on web portal, assessment order was passed in breach of principle of opportunity of hearing to assessee was to be set aside - **SP Developers v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer - [2023] 149 taxmann.com 158 (Gujarat)**

3.35. Opportunity of hearing : Where AO issued show cause notice-cum-draft assessment order directing assessee to comply with same within time of 12 hours and later, passed assessment order making additions, there was gross violation of principles of natural justice and thus, final assessment order was to be quashed - **Dipak Natwarlal Dholakiya v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 151 (Gujarat)**

SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - REJECTION OF ACCOUNTS

3.36. Opportunity of hearing : Where department made faceless assessment in case of assessee by rejecting his books of account and making additions 50 times more to income proposed in show cause notice, since assessee was not given opportunity of personal hearing through video conferencing despite repeated request, assessment order so passed violated principles of natural justice and it was also contrary to scheme of Act because additions were made beyond scope and issues in show cause notice resulting in actual income assessed at 50 times then proposed to be assessed - **Margita Infra v. National E-Assessment- Centre Delhi - [2023] 149 taxmann.com 51 (Gujarat)**

3.37. Net profit : Where Assessing Officer estimated net profit (NP) at 7 per cent of assessee-company engaged in manufacturing of iron and steel, since Assessing Officer had not given any internal or external comparative figures of sector of assessee's business while arriving at GP/NP ratio of 7 per cent and as most of trading concerns had been operating at gross profit ratio of 0.5 per cent to 1 per cent, Tribunal was justified in estimating net profit at 0.5 per cent of assessee-company - **Principal Commissioner of Income-tax v. Kandla Steel (P.) Ltd. - [2023] 149 taxmann.com 224 (Gujarat)**

SECTION 147 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - GENERAL

3.38. Writ jurisdiction : Where assessee filed a writ petition challenging reassessment order passed against it on ground of not following mandatory requirement of disposing of objections raised by assessee against notice issued under section 148, since assessee had already availed an alternative remedy by way of filling an appeal against said order, writ petition could not be entertained as assessee could not ride on two horses

simultaneously - **Indo Colchem Ltd. v. Deputy Commissioner of Income-tax - [2023] 149 taxmann.com 30 (Gujarat)**

SECTION 148 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - ISSUE OF NOTICE FOR

3.39. Scope of provision : Limitation of six years from end of relevant assessment year operated as timeline in old regime for issuance of notice under section 148 beyond which period, it was not competent for Assessing Officer to issue notice for reassessment and this embargo was made to continue in new regime also and thus, all original notices under section 148 referable to old regime and issued between 1-4-2021 to 30-6-2021 would stand beyond prescribed permissible timeline of six years from end of assessment year 2013-14 and assessment year 2014-15 - **Bhagchand Jain HUF v. Income Tax Officer, Ward 2(3)(6) - [2023] 149 taxmann.com 365 (Gujarat)**

3.40. Scope of provision : All original notices under section 148 when they would relate to assessment year 2013-14 or assessment year 2014-15 would be time barred as per provisions of Act applicable in old regime prior to 1-4-2021 and these notices could not be issued as per amended provision of Act, hence, impugned notices issued under section 148 and order under section 148A(d) passed by Assessing Officer seeking to reopen assessment for assessment years 2013-14 and 2014-15 were to be set aside - **Maul Kantilla Patel v. Income Tax Officer, Word 2(B)(1) - [2023] 149 taxmann.com 321 (Gujarat)**

SECTION 148A OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - CONDUCTING ENQUIRY, PROVIDING OPPORTUNITY BEFORE ISSUE OF NOTICE

3.41. Service of notice : Where Assessing Officer while serving notice under section 148A(b) did not check change of address as updated by assessee in her return but chose to send notice under section 148A(b) to her old address due to which assessee did not get opportunity to file a response to said notice and was deprived of a hearing as contemplated under section 148A(b), notice under section 148A(b) deserved to be set aside on account of jurisdictional error i.e. for want of service - **Mrs. ChitraSupekar v. Income tax Officer - [2023] 149 taxmann.com 26 (Bombay)**

3.42. Scope of provision : Where in notice initially issued under section 148A(b) department had not disclosed fact of assessee having suppressed 14 Lakh rupees transaction and this had also escaped assessment of revenue, in absence of same being reflected in notice, assessment yet being made of said amount would be prima facie bad in law - **U.S. Associates v. Principal Commissioner of Income-tax - [2023] 149 taxmann.com 230 (Chhattisgarh)**

SECTION 151 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - SANCTION FOR ISSUE OF NOTICE

3.43. Illustrations : Where Assessing Officer passed order under section 148A(d) after expiry of three years from end of relevant assessment year without taking approval of PCCIT as contemplated by section 151(ii) same would invalidate reassessment proceedings - *Mrs. ChitraSupekar v. Income tax Officer* - [2023] 149 taxmann.com 26 (Bombay)

SECTION 194I OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - RENT

3.44. EDC Charges : Where Assessing Officer held that external development charges (EDC) paid by assessee-company to HUDA under its agreement with State Government of Haryana was in nature of rent and therefore subject to TDS under section 194I, revenue admitted that Assessing Officer had erroneously mentioned that TDS was to be deducted under section 194I instead of Section 194C, since it was not open for revenue to now contend that EDC charges were payment made to a contractor under a contract and not rent under an arrangement to use land, impugned order being fundamentally flawed was liable to be set-aside - *DLF Homes Panchkula (P.) Ltd. v. Joint Commissioner of Income-tax (OSD)* - [2023] 149 taxmann.com 176 (Delhi)

SECTION 194J OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

3.45. Provision for legal and professional charges : Where assessee made year end provision for payments towards legal and professional charges, since said provisions made at end of accounting year were reversed in beginning of next year and neither payees nor exact amount payable were identifiable during year and, further, assessee had deducted tax at source in subsequent year on said payments in accordance with section 194J and also remitted same, no TDS was to be deducted on such payments by assessee during relevant year - *Subex Ltd. v. Deputy Commissioner of Income-tax* - [2023] 148 taxmann.com 271 (Karnataka)

SECTION 205 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - BAR AGAINST DIRECT DEMAND ON ASSESSEE

3.46. Illustrations : Where employer deducted tax at source from assessee's salary but had not deposited amount with Central Govt. Assessing Officer would not deny benefit of tax deducted at source by employer to assessee - *Milan Arvindbhai Patel v. Assistant Commissioner of Income tax* - [2023] 149 taxmann.com 190 (Gujarat)

SECTION 220 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED-IN-DEFAULT

3.47. Stay of demand : Where stay application was denied merely on ground that assessee was not covered by Instruction No. 1914, dated 2-2-1993 impugned order was to be set aside and matter was to be remitted back to AO for reconsideration - *Shiva Prasad Singh v. Assistant Commissioner of Income-tax* - [2023] 148 taxmann.com 264 (Madras)

3.48. Stay of demand :Where stay application was rejected merely on ground that assessee was not covered by Instruction No. 1914, dated 2-12-1993 impugned order was to be set aside and matter was to be remitted back to Assessing Officer for reconsideration - *Hemant Shantill Jain v. Assistant Commissioner of Income-tax* - [2023] 148 taxmann.com 367 (Madras)

SECTION 254 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - POWERS OF

3.49. Limitation - Position prior to 1-6-2016 :Where assessee filed miscellaneous application for rectification much prior to amendment made in section 254(2) and same was submitted within a period of four years from date of actual receipt of judgment and order passed by Tribunal, said application could not be rejected on grounds of limitation - *Kamal Nayan Singh v. Deputy Commissioner of Income-tax* - [2023] 149 taxmann.com 193 (Jharkhand)

3.50. Ex parte order : Where assessee claimed that there was delay in filing miscellaneous application to recall ex parte order of Tribunal on account of concerned persons in department being temporarily transferred and some persons retiring during relevant period, Tribunal could not have dismissed such miscellaneous application on ground of limitation and thus, appeal was to be heard on merits - *Cement Corporation of India Ltd. v. Assistant Commissioner of Income-tax* - [2023] 149 taxmann.com 192 (Delhi)

SECTION 263 OF THE INCOME-TAX ACT, 1961 - REVISION - OF ORDERS PREJUDICIAL TO INTEREST OF REVENUE

3.51. Explanation 2(a) : Where assessee's case was selected for limited scrutiny and Principal Commissioner invoked revisionary proceedings on issues beyond scope of limited scrutiny, since Commissioner had supervisory jurisdiction not only on proceedings dropped or filed by AO but legality of proceedings resulting in an assessment, discretion exercised by Commissioner under section 263 could not be restricted vis-a-vis limited scrutiny under CASS - *Sahyadri Agencies Ltd. v. Principal Commissioner of Income-tax* - [2023] 149 taxmann.com 202 (Kerala)

SECTION 270AA OF THE INCOME-TAX ACT, 1961 - PENALTY - IMMUNITY FROM IMPOSITION OF

3.52. Opportunity of hearing : Where assessee's application for immunity under section 270AA was rejected on ground that same was filed beyond stipulated period available for filing said application, however, no opportunity of being heard was granted to assessee, matter was to be remanded to concerned officer to consider assessee's application under section 270AA afresh - *Rohit Kapur v. Principal Commissioner of Income-tax* - [2023] 148 taxmann.com 397 (Delhi)

SECTION 271(1)(c) OF THE INCOME-TAX ACT, 1961 - PENALTY - FOR CONCEALMENT OF INCOME

3.53. Opportunity of hearing : Where Assessing Officer issued on assessee a notice under section 271(1)(c) on 28-11-2022 at 2:40 PM asking to appear in person on 29-11-2022, since notice provided less than 24 hours to assessee to appear, this shorter period could be termed as a breach of principles of natural justice - *Checkmate Services (P.) Ltd. v. Assistant Commissioner of Income-tax* - [2023] 149 taxmann.com 220 (Gujarat)

SECTION 277A OF THE INCOME-TAX ACT, 1961 - OFFENCES AND PROSECUTION - FALSIFICATION OF BOOKS OF ACCOUNT OR DOCUMENTS ETC.

3.54. Where Principal Director of Income-tax (Inv.) filed a complaint against assessee for offences under sections 277A and 278B, there was no requirement of compliance of section 202 of Code of Criminal Procedure in this case - *Karan Kothari Jewellers (P.) Ltd. v. State of West Bengal* - [2023] 148 taxmann.com 368 (Calcutta)

SECTION 282 OF THE INCOME-TAX ACT, 1961 - SERVICE OF NOTICE - GENERAL

3.55. Primary email id : Where Assessing Officer issued a notice under section 148 to assessee on secondary email address when there was a primary email address available, there was nothing wrong with assessee's refusal to participate in proceeding vitiated by valid service of notice - *Lok Developers Registered Partnership Firm v. Deputy Commissioner of Income-tax* - [2023] 149 taxmann.com 93 (Bombay)

3.56. Illustrations : Where PCIT failed to provide bare minimum requirement of serving notice on assessee, who was in judicial custody, through Superintendent of jail and rather treated appearance of his staff as sufficient service in terms of section 292BB, such service of notice could not be assumed to be valid and, thus, impugned order passed under section 263 was liable to be quashed - *Principal Commissioner of Income-tax (Central) v. Narayan Kumar Khaitan* - [2023] 149 taxmann.com 243 (Orissa)

SECTION 292B OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME NOT TO BE INVALID ON CERTAIN GROUNDS

3.57. Issue of order manually without DIN : Where AO passed final assessment order without DIN and there were no

exceptional circumstances as mentioned in 2019 Circular which would sustain communication of impugned order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and impugned final order could not be sustained - *Commissioner of Income-tax (IT)-1 v. Brandix Mauritius Holdings Ltd.* - [2023] 149 taxmann.com 238 (Delhi)

4. TRIBUNAL

SECTION 2(15) OF THE INCOME-TAX ACT, 1961 - CHARITABLE PURPOSE

4.1. Objects of general public utility : Where assessee society was pursuing charitable activities by running Suvidha Centre for general public and claimed exemption under section 11 in respect of its income and Assessing Officer considering activities of assessee first determined violation of section 2(15) and rejected claim of deduction under section 11 read with section 13(8), in view of submissions of assessee that it had taken minimum charges from civilians for community work, but entire issue was charitable in nature, matter was to be remanded back for adjudication afresh - *Sub Division Sannjh (Community Policing) Society v. Income Tax Officer, (Exemption Ward)* - [2023] 149 taxmann.com 135 (Amritsar - Trib.)

SECTION 2(28A) OF THE INCOME-TAX ACT, 1961 - INTEREST - MEANING OF

4.2. Late payment charges : Where assessee paid certain sum towards late payment charges for delayed payment to broker for share trading activity, since there was no contractual obligation or other terms and conditions applicable to borrowing, sum paid was not 'interest' within meaning of section 2(28A) and, consequently, provisions of sections 194A and 40(a)(ia) would not apply on same - *Mushin Sivathanu v. Income-tax Officer* - [2023] 148 taxmann.com 369 (Chennai - Trib.)

SECTION 2(29AA)/(29B) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - LONG-TERM CAPITAL GAINS/ASSETS

4.3. Scope of provision : Where assessee had been issued provisional allotment of office space in year 1998 and subsequently it made several payments though final allotment letter was issued on 29-7-2010, date of acquisition of office premises was to be reckoned from date of allotment i.e., in year 1998-99, and thus sale of said office premises on 19-5-2012 would result in long term capital gains - *Sumit Export v. ACIT* - [2023] 148 taxmann.com 475 (Mumbai - Trib.)

SECTION 4 OF THE INCOME-TAX ACT, 1961 - INCOME - CAPITAL OR REVENUE RECEIPTS

4.4. Where assessee-metro rail corporation received refund of sale tax from State Government and had not offered same for

taxation, if amount had been granted to assessee towards capital cost incurred by assessee, same would be considered as capital receipt and if it was granted to assessee towards refund of sale tax as incentives, same would be brought to tax as a revenue receipt and therefore, matter would be remitted back to Assessing Officer for examining these facts and consider claim accordingly - **Bangalore Metro Rail Corporation Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1)(2)** - [2023] 149 taxmann.com 207 (Bangalore - Trib.)

4.5. Where assessee claimed that interest amount received during year was not taxable and was erroneously offered to tax, since in relevant assessment year, business of assessee had already commenced and it was in expansion stage therefore, interest earned from surplus funds after commencement could not be considered as not taxable and, accordingly, claim of assessee was to be rejected - **Bangalore Metro Rail Corporation Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1)(2)** - [2023] 149 taxmann.com 207 (Bangalore - Trib.)

4.6. Where assessee did not offer interest on term deposits to tax, since income generated through above impugned interest should be converted into state's equity towards project and if assessee fails to do same it would be considered as income of assessee - **Bangalore Metro Rail Corporation Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1)(2)** - [2023] 149 taxmann.com 207 (Bangalore - Trib.)

4.7. **Revision** : Where Principal Commissioner invoked revisionary proceedings on ground that assessee claimed TDS on interest income, however no such income was offered for tax, since interest was earned on fixed deposits made for obtaining bank guarantee against EPCG licenses which were availed to import machinery required for construction of assessee's hotel, said interest was directly linked with activity of setting up hotel and was to be viewed as a capital receipt going to reduce cost of construction and thus, revisionary order was to be quashed - **Apna Punjab Resorts Ltd. v. Principal Commissioner of Income-tax** - [2023] 149 taxmann.com 20 (Chandigarh - Trib.)

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

4.8. **Royalties/Fee for technical services - Others** : Where in respect of onshore services and maintenance contracts granted to joint venture, Assessing Officer had given clear factual finding that Indian partner had offered certain amount to tax and had excluded said amount from being taxed at hands of assessee, a Chinese company, however DRP had directed Assessing Officer to apportion 50 per cent of said amount to assessee and which should be attributed to PE of assessee, since DRP had completely misconceived facts, and accordingly, decided objections of assessee with improper application of mind to facts and materials on record, matter was to be restored back to AO to decide issue afresh - **Jiangsu Zhongtian Technology Company v. ACIT**,

International Taxation - [2023] 149 taxmann.com 164 (Delhi - Trib.)

4.9. **Royalty/fees for technical services - Advisory, consultancy and professional services** : Where assessee's head office which was a company incorporated in Spain, TPF Spain, was jointly awarded contract by NHA1 with Indian service providers and incurred certain expenses for entire contract which were to be reimbursed by Indian service providers, professional fees paid by assessee to TPF Spain was only receipt from Indian service providers which were received by assessee after deduction of tax and remitted to TPF Spain, said amount would not be in nature of FTS taxable in India - **TPF Getinsa Euroestudios S.L. v. Assistant Commissioner of Income-tax, International Taxation** - [2023] 149 taxmann.com 359 (Delhi - Trib.)

4.10. **Royalties/fees for technical services - Secondment of employees** : Where assessee made payments to TPF Spain with respect to employees sent by TPF Spain for executing engineering contract awarded to assessee, since assessee had only reimbursed actual cost of such employees and no markup was charged by TPF Spain, in view of fact that there was no profit element in said costs, reimbursement could not be treated as income taxable in India - **TPF Getinsa Euroestudios S.L. v. Assistant Commissioner of Income-tax, International Taxation** - [2023] 149 taxmann.com 359 (Delhi - Trib.)

4.11. **Royalties or fees for technical services - Management services** : Where some employees of parent company were assigned to assessee since assigned employees were under complete control and supervision of assessee during tenure of assignment agreement and reimbursement of expenses made by assessee to its parent company for salary paid to expatriate employees was in nature of salary cost and was subjected to TDS under section 192, such reimbursement could not be treated as FTS under section 9(1)(vii) and article 12 of India Japan DTAA - **Yamazen Machinery and Tools India (P.) Ltd. v. ACIT** - [2023] 149 taxmann.com 96 (Delhi - Trib.)

4.12. **Business profits - Others** : Interest paid by Indian branch/PE of assessee, a French bank, to its head office (a foreign company) would not be taxable in India under Income-tax Act being payment made to self - **BNP Paribas v. Assistant Commissioner of Income-tax, International Taxation** - [2023] 149 taxmann.com 56 (Mumbai - Trib.)

4.13. **Royalties/Fee for technical services - Data processing charges**: Where Indian branches of assessee, a French bank, paid data processing charges to its Singapore branch office, said payment could not be taxed as fees for technical services either under Income-tax Act and India-Singapore DTAA, being payment made to self - **BNP Paribas v. Assistant Commissioner of Income-tax, International Taxation** - [2023] 149 taxmann.com 56 (Mumbai - Trib.)

4.14. **Permanent Establishment - Agency PE** : Where assessee

had entered into 'first contract', in its independent capacity, there was no force in finding of Assessing Officer that AE of assessee in India was actively involved in soliciting business for assessee, thus, it could not be said that it constituted dependent agent PE of assessee, further, since revenues of assessee were outcome of offshore supplies and services rendered off shore and assessee was not engaged in any construction project in India, thus, there was no question of constitution of construction PE as per Article 5(2) of the DTAA - **UK Grid Solution Ltd. v. Deputy Commissioner of Income-tax, Circle-3(1)(1)(IT) - [2023] 149 taxmann.com 209 (Delhi - Trib.)**

4.15. Permanent Establishment - Agency PE : Where wholly owned subsidiary of assessee, a German company, in India was engaged in marketing of products of assessee in India, since said entity was only undertaking marketing of contracts which were finalized by assessee itself outside India, same could not be said to be habitually concluding order on behalf of assessee and, thus, said entity could not be construed as dependent agent PE of assessee in India - **Crones Aktiengesellschaft v. Deputy Commissioner of Income-tax, (International Taxation) - [2023] 148 taxmann.com 451 (Delhi - Trib.)**

4.16. Sale of its global sports broadcasting business can't be taxed in India where assessee-co. is tax resident of Mauritius and has no fixed place PE/DAPE in India - Taj TV Ltd. v. Deputy Commissioner of Income-tax (IT)-4(1)(2) - [2023] 149 taxmann.com 112 (Mumbai - Trib.)

4.17. Permanent Establishment - DAPE : Where assessee entered into an agreement with its AE, GIL for marketing and distribution of Ad Word programs for distributing online advertisement space to advertisers in India and distribution agreement between assessee and GIL as well as Standard Contract entered into by assessee with advertisers in India did not contain any clauses that could lead to conclusion that assessee had any authority to bind GIL, assessee could not be treated as dependent agent PE of GIL and thus, distribution fees paid to GIL was not liable for TDS under section 195, and no disallowance under section 40(a)(i) was warranted - **Google India (P.) Ltd. v. Additional Commissioner of Income-tax, Range 11 - [2023] 149 taxmann.com 7 (Bangalore - Trib.)**

4.18. Permanent establishment - DAPE : Where assessee, a Malaysian company, entered into a market service agreement with its Indian AE which constituted its dependant agent permanent establishment (DAPE) and Assessing Officer accepted computation of profits attributable to Indian operations at 24 per cent of gross profit, such assessment order could not be said to be prejudicial to interest of revenue for non-levy or short levy of taxes on hypothetical profits of DAPE - **MFE Formwork Technology SDN BHD v. Commissioner of Income-tax, International Taxation - [2023] 149 taxmann.com 188 (Mumbai - Trib.)**

4.19. Royalties/fees for technical services - reimbursement of expenses : Where assessee, a non-resident company, had entered into charter hire agreements with PDMCC and LT for vessels to be used in seismic support duties and transport of coated pipes in India, respectively, since these activities were covered under section 44B, payments received from L&T and PDMCC against same could not be treated as royalty under section 9(1)(vi) irrespective of fact that assessee did not have a PE in India - **Pacific Crest Pte. Ltd. v. Deputy Commissioner of Income Tax, (IT), Circle-2(2)(2) - [2023] 149 taxmann.com 85 (Delhi - Trib.)**

4.20. Business Profits - Right to tax : Where final assessment order came to be passed making additions to income of assessee on ground that assessee was not providing 'mere access' to a static data base but was providing full fledged services and solutions for legal professionals, in absence of any material available on record to prove that assessee was providing full fledged service and solutions for legal professions, Assessing Officer had committed an error in making addition - **RELX Inc. v. Assistant Commissioner of Income-tax (IT), Circle 3(1)(1) - [2023] 149 taxmann.com 78 (Delhi - Trib.)**

4.21. Permanent establishment : Where assessee, a China based company, engaged in sales of telecom equipments, supplied equipment and handsets to its Indian subsidiary, since assessee was conducting its business in India with active involvement of employees of its Indian subsidiary and employees of Indian subsidiary along with employees of assessee had jointly prepared bidding documents for contract, negotiated and concluded contract on behalf of assessee with its Indian customers, said Indian subsidiary constituted fixed place PE, installation PE, service PE and dependent agent PE of assessee - **Huawei Technologies Co. Ltd. v. Assistant Commissioner of Income-tax, Circle-International Taxation - [2023] 149 taxmann.com 77 (Delhi - Trib.)**

4.22. Royalty/Fees for technical services - Computer software : Revenue earned by assessee, a China based company, from sale of software from its Indian subsidiary was not royalty as per Indo-China DTAA - **Huawei Technologies Co. Ltd. v. Assistant Commissioner of Income-tax, Circle-International Taxation - [2023] 149 taxmann.com 77 (Delhi - Trib.)**

4.23. Business profits - Race promotion fee : Where assessee, a UK resident company, entered into race promotion contract (RPC) with JAL granting right to host Indian Grand Prix and assessee earned RPC fee and RPC fee received by assessee was held taxable in India and JAL was obliged to deduct TDS, since TDS credit claimed by assessee being not part of income offered to tax in returns of income and TDS credit was over and above actual RPC fee paid to assessee by JAL, then said TDS credit had to be taxed in same way as RPC was taxed in India - **Formula One World Championship Ltd. v. Deputy Commissioner of Income-tax, International Taxation, Noida - [2023] 149 taxmann.com 191 (Delhi - Trib.)**

4.24. Royalty/FTS - Others : Where assessee made payment to BAE Systems, USA for site testing charges and claimed that supply of equipment and installation thereof were forming part and parcel of single purchase order placed by assessee testing and on-site training in India was coupled with purchase of equipment and could not be provided on its own, these services did not fall within purview of "Fee for incidental services" and payment therefor should not be chargeable in India as per article 12 of Indo-US DTAA - **Electronics Corporation of India Ltd. v. Commissioner of Income-tax - [2023] 148 taxmann.com 480 (Hyderabad - Trib.)**

SECTION 10(23C) OF THE INCOME-TAX ACT, 1961 - EDUCATIONAL INSTITUTIONS

4.25. Illustrations : Where assessee-AOP running an educational institution claimed exemption under section 10(23C)(vi), since it had created assets for education out of funds generated by AOP through its members and had utilized surplus only for educational purposes and there was no evidences to show that income earned by assessee had been spent for non-educational purposes, assessee-AOP would be eligible for exemption under section 10(23C) - **Sharda Mandir High School v. Commissioner of Income-tax (Exemption) - [2023] 149 taxmann.com 103 (Mumbai - Trib.)**

4.26. Scope of provision: Where assessee-trust was engaged solely for running school in which no fee was being charged from students and it had accumulated surplus for purpose of future application to set up school, provisions of section 10(23C) (iiiad) were applicable to assessee and its income was exempt - **Shri Venkateshwara Educational Institute v. Income-tax Officer (Exemption) - [2023] 149 taxmann.com 229 (Kolkata - Trib.)**

SECTION 10AA OF THE INCOME-TAX ACT, 1961 - SPECIAL ECONOMIC ZONES

4.27. Condition precedent : Assessee-partnership firm filed revised return and claimed deduction under section 10AA, since there was no specific provision under section 10AA to file return of income within provisions of section 139(1), assessee could not be deprived of claim on grounds that claim was not filed under original return within specified time limit as per section 139(1) - **Assistant Commissioner of Income-tax, Circle-3(2) v. Vishnu Export - [2023] 149 taxmann.com 65 (Ahmedabad - ITAT)**

SECTION 11 OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - EXEMPTION OF INCOME FROM PROPERTY HELD UNDER

4.28. Revision : Where assessee-trust had claimed to have spent certain amount out of accumulated income from preceding year for purpose of trust and duly reported same in his return of income and assessment was completed accordingly, since Assessing Officer had conducted enquiries regarding utilization of such accumulated income for purpose of trust and applied

his mind and accepted same which was a plausible view, invocation of revision by Commissioner for reason that there was no enquiry in case was unjustified - **Impact Foundation (India) v. Commissioner of Income-tax, (Exemptions) - [2023] 149 taxmann.com 189 (Mumbai - Trib.)**

4.29. Rental income :Where assessee-trust leased its two properties on rent and Assessing Officer applied prevailing market rate for ascertaining rent while assessing said properties, as per CBDT Circular no. 005P(LXX-6) dated 19-6-1968 assessee could not be assessed on notional rental income but only on actual rental income - **TVS Charities v. Income-tax Officer - [2023] 148 taxmann.com 316 (Chennai - Trib.)**

SECTION 12A OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - REGISTRATION OF

4.30. Objects and activities of trust : Where Commissioner (Exemption) rejected application for registration under section 12AA filed by assessee charitable and religious trust on ground that trust operated only for Christian community which violated provisions of section 13(1)(b), in view of fact that object clause of assessee specifically mentioned that trust was charitable in nature and charity would be done without prejudice to any caste and creed, there was no violation of section 13(1)(b) and, thus, impugned order of refusal of registration was to be set aside and revenue was to be directed to issue registration to assessee - **Amritsar Diocese of Believers Eastern Church v. Commissioner of Income-tax (Exemptions) - [2023] 149 taxmann.com 182 (Amritsar - Trib.)**

4.31. Cancellation of registration : Where Principal Commissioner cancelled registration of assessee - trust running educational institute for reasons that it had been indulging in collection of capitation fees and such fees was siphoned off by trustees for their personal benefits, since reasons were based on material found during course of search conducted upon assessee, registration was rightly cancelled - **Sinhgad Technical Education Society v. Principal Commissioner of Income-tax - [2023] 149 taxmann.com 227 (Pune - Trib.)**

SECTION 12AA OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - REGISTRATION OF

4.32. Opportunity of hearing: Where applications for registration under sections 12AA and 80G filed by assessee-trust were rejected without providing an opportunity of being heard to assessee, as there was violation of principles of natural justice, matter was to be remanded back to Commissioner (Exemption) for deciding matter afresh after giving opportunity of hearing to assessee - **Braingyan Foundation v. Commissioner of Income-tax (Exemptions) - [2023] 149 taxmann.com 184 (Mumbai - Trib.)**

SECTION 12AB OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - PROCEDURE FOR FRESH REGISTRATION

4.33. Illustrations : Where assessee, a company registered under section 8 of Companies Act, 2013, applied for registration under section 12AB, since assessee replied all issues raised by Commissioner and activities undertaken by it were interconnected with objects mentioned in memorandum of association which were not of profit motive, Commissioner was not justified in denying registration to assessee – **Keeday Makeday Foundation v. Commissioner of Income-tax, (Exemption) - [2023] 148 taxmann.com 481 (Jaipur - Trib.)**

SECTION 13 OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - DENIAL OF EXEMPTION

4.34. Specified persons : Where assessee-trust claimed exemption under section 11 on income earned from lease rent, since lessee companies were part of same group where trustees of assessee-trust and their relatives held more than 50 per cent of shares, tenants of rented property were specified persons under section 13(3) and as provisions of section 13(1)(c) read with section 13(1)(b) were violated, assessee was not entitled to claim exemption under section 11 - **TVS Charities v. Income-tax Officer - [2023] 148 taxmann.com 316 (Chennai - Trib.)**

SECTION 17 OF THE INCOME-TAX ACT, 1961 - SALARIES - PROFIT IN LIEU OF SALARY

4.35. Ex-gratia: Where assessee had received Rs. 47.21 lakhs from his erstwhile company as ex-gratia and a letter had been issued by employer which clearly stated that payment of amount had been made voluntarily to assessee and was not compensation, without establishing letter as non-genuine or without examining sanctity of payment, simply invoking provisions of section 17(3) (iii) for making addition was not justified - **Mahadev Vasant Dhangekar v. Assistant Commissioner of Income-tax.NFAC - [2023] 149 taxmann.com 170 (Pune - Trib.)**

SECTION 24 OF THE INCOME-TAX ACT, 1961 - INCOME FROM HOUSE PROPERTY - DEDUCTIONS

4.36. Interest on loan: Where assessee-company issued OCDs to repay outstanding loan pertaining to construction expenses incurred for mall construction, interest paid on said OCDs would be allowed as deduction under section 24(b) - **Deputy Commissioner of Income-tax v. Aryan Arcade (P.) Ltd. - [2023] 149 taxmann.com 88 (Rajkot - Trib.)**

SECTION 28(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME - CHARGEABLE AS

4.37. Where assessee-metro rail corporation was incorporated under Companies Act to meet urban transport needs of Bangalore and it carried on activity of transporting passengers through rail in and around Bangalore by charging tickets for same, it could be said that it was a business activity of assessee-company with profit motive and fact that it was being regulated by State

Government would not make it an agency of state and, therefore, income derived from Corporation from business activities could not be said to be income of State Government under Article 289 - **Bangalore Metro Rail Corporation Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1)(2) - [2023] 149 taxmann.com 207 (Bangalore - Trib.)**

4.38. Prior period income: When assessee was a large organization and it had shown not only prior period expenses but also prior period income, then both were required to be considered for purposes of computing income of assessee as this kind of inadvertent pitfall expenses was bound to occur on account of size and spread of assessee - **Electronics Corporation of India Ltd. v. Commissioner of Income-tax - [2023] 148 taxmann.com 480 (Hyderabad - Trib.)**

SECTION 28(iv) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME - VALUE OF ANY BENEFIT OR PERQUISITE, ARISING FROM EXERCISE OF BUSINESS OR PROFESSION

4.39. Merger/Demerger : Where transfer of Passive Infrastructure Assets (PIA) by assessee to ICTIL and subsequent amalgamation into Indus Towers, and demerger of telecom undertaking of ABTL into assessee, was as per schemes duly approved by High Courts and made as per government policy, there was no colorable device involved and provisions of section 28(iv) would not be applicable to assessee, Assessing Officer had incorrectly assumed jurisdiction for reopening assessment - **Vodafone Idea Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 169 (Mumbai - Tribunal.)**

SECTION 37(1) OF THE INCOME-TAX ACT, 1961 - BUSINESS EXPENDITURE - ALIENABILITY OF

4.40. ESOP Expenses : Where assessee-employer claimed cost incurred on ESOP and Commissioner (Appeals) failed to consider various contentions raised by assessee to effect that ESOP expenditure is a revenue expenditure allowable in hands of assessee-employer and invoked provisions of section 17(2)(vi)(c) without giving any reasons, matter was to be remanded to Commissioner (Appeals) for reconsideration - **Nuvama Wealth and Investment Ltd. v. Assistant Commissioner of Income-tax, Circle-17(1) - [2023] 149 taxmann.com 258 (Hyderabad - Trib.)**

4.41. Capital asset : Where assessee, ITES provider, had made payment to its Indian counterpart for acquiring part of its business relating to debt collection service since assessee was not in debt collection service business before acquiring said business, expenditure incurred for acquiring completely new business set up was income generation tool and, hence, capital in nature - **Genpact Services LLC. v. Deputy Commissioner of Income-tax (International Taxations) - [2023] 149 taxmann.com 22 (Delhi - Trib.)**

4.42. Marketing expenses : Where assessee adopted revenue recognition policy wherein all costs with respect to real estate development were accumulated and charged when control of completed unit was transferred to client, marketing and sales expenditure with respect to development of real estate project would be allowed in year in which performance obligation would be satisfied - **Bengal Peerless Housing Development Company Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 265 (Kolkata - Trib.)**

4.43. Job work charges :Where lower authorities disallowed job work charges paid by assessee to job work contractors on ground that notices issued under section 133(6) and thereafter summons served under section 131 to contractors had remained uncomplained with by contractors, since assessee had filed formidable evidences to identify contractors as well as factum of incurring job work expenses, said expenses deserved to be allowed - **United Foods (P.) Ltd. v. ACIT - [2023] 148 taxmann.com 452 (Delhi - Trib.)**

4.44. Where assessee claimed certain expenses under head other administrative expense in its profit and loss account and pursuant to issue of show cause notice produced only few ledgers and certain invoices, since invoices were self made and not signed by recipient, there was personal element involved and disallowance was to be sustained at 10 per cent of total expenses claimed - **Robotix Learning Solutions (P.) Ltd. v. Income Tax Officer, Corporate Ward 5(3) - [2023] 149 taxmann.com 137 (Chennai - Trib.)**

4.45. Illustration: Where assessee providing telecommunication services incurred expenditure towards interconnect charges, employee cost, etc. since expenses had been incurred in relation to service provided to existing customers, same being incurred wholly and exclusively for purpose of business deserved to be allowed as revenue expenditure - **Assistant Commissioner of Income-tax. v. Reliance Jio Infocomm Ltd. - [2023] 149 taxmann.com 197 (Mumbai - Trib.)**

SECTION 40(a)(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - INTEREST, ETC. PAID TO A NON-RESIDENT WITHOUT DEDUCTION OF TAX AT SOURCE

4.46. Others : Where Commissioner (Appeals) after considering details submitted before him had recorded that assessee had deducted tax at source and paid same to credit of Central Government in respect of payments made to 'G', South Africa, but despite that upheld disallowance made by Assessing Officer on ground that assessee had not deducted tax at source, matter was to be remanded back to file of Assessing Officer for verification and grant relief if assessee had deducted tax at source and deposited same with Central Government - **Electronics Corporation of India Ltd. v. Commissioner of Income-tax - [2023] 148 taxmann.com 480 (Hyderabad - Trib.)**

SECTION 40(a)(ia) OF THE INCOME-TAX ACT, 1961 -

BUSINESS DISALLOWANCE - INTEREST, ETC. PAID TO A RESIDENT WITHOUT DEDUCTION OF TAX AT SOURCE

4.47. Finance charges : Where assessee-company paid certain amount of finance charges to finance companies and furnished CA certificates as per provision of section 201 to effect that payee companies had indeed discharged their tax liability, since said mandate of CA certificate under section 40(a)(ia) came into force by Finance Act, 2012 w.e.f. 1-4-2013, which was later than considering year, impugned assessment order passed by AO accepting said certificates and allowing finance charges as deduction without due application of mind was rightly set aside by Pr.CIT under section 263 - **M.K.S. Engineering Company (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 148 taxmann.com 317 (Jabalpur - Trib.)**

4.48. Wages : Where assessee-company, engaged in construction business paid wages to its employees without deducting TDS and EPF on ground that such wages were paid to casual labours, who were not in regular employment, since Assessing Officer allowed deduction of said wages without verifying claim of assessee, matter was to be remanded back for proper verification - **M.K.S. Engineering Company (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 148 taxmann.com 317 (Jabalpur - Trib.)**

SECTION 43(5) OF THE INCOME-TAX ACT, 1961 - SPECULATIVE TRANSACTIONS

4.49. Illustrations : Where assessee had not furnished any details asked for by Assessing Officer to verify assessee's claim that transactions of purchase and sale of shares were outside ambit of speculative transactions (i.e., in nature of derivatives) and AO treated loss derived from share trading activity as speculative in nature on basis of ITR information due to non-availability of information to verify claim of assessee, matter was to be remanded back to Assessing Officer for verification to ascertain nature of transactions entered into by assessee - **Muthian Sivathanu v. Income-tax Officer - [2023] 148 taxmann.com 369 (Chennai - Trib.)**

SECTION 43A OF THE INCOME-TAX ACT, 1961 - FOREIGN CURRENCY, RATE OF EXCHANGE, CHANGE IN

4.50. Where assessee claimed expenditure towards forward contract premium and held that same constituted capital expenditure, if amount in foreign currency is utilised or intended to be utilised in course of business or for a trading purpose or for effecting a transaction on revenue account, loss arising from depreciation in its value on account of alteration in rate of exchange would be a trading loss, but if amount is held as a capital asset, loss arising from depreciation would be a capital loss, in view of said position matter would be remitted back to file of Assessing Officer for deciding afresh - **Bangalore Metro Rail Corporation Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1)(2) - [2023] 149 taxmann.com 207 (Bangalore - Tribunal)**

SECTION 44BB OF THE INCOME-TAX ACT, 1961 - NON-RESIDENT -BUSINESS- FOR PROSPECTING/EXPLORATION, MINERAL OIL ETC.

4.51. Business profits: Where assessee, a non-resident, had entered into a contract with an Indian company for supply/lease/hire of rigs to be used for drilling and exploration of mineral oils, amount received by assessee was fully covered under provisions of section 44BB and taxable on gross basis at rate of 10 per cent - *UMW Sher (L) Ltd. v. Assessing Officer, International Taxation - [2023] 148 taxmann.com 269 (Delhi - Trib.)*

SECTION 48 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - COMPUTATION OF

4.52. General : Where residential flat was allotted to assessee vide allotment letter in year 2005 and beginning from financial year 2005-06 till financial year 2014-15 assessee had made payments towards purchase of flat and sold said property in year 2019-20, since date of acquisition of residential flat has to be reckoned from date of allotment letter, benefit of indexed cost of acquisition should be available to assessee based on payments made beginning from financial year 2005-06 - *Ms. RenuKhurana v. ACIT, International Taxation - [2023] 149 taxmann.com 160 (Delhi - Trib.)*

SECTION 49 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION

4.53. Inheritance: Where assessee acquired three fourth share in property in question from his sisters after paying consideration, since same was not acquired through any modes specified in section 49, benefit of indexation for said three fourth share was to be allowed from year in which sisters executed release deed in favour of assessee - *R. Mohan v. Income-tax Officer - [2023] 149 taxmann.com 54 (Chennai - Trib.)*

SECTION 54 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - EXEMPTION OF, IN CASE OF INVESTMENT IN A RESIDENTIAL HOUSE

4.54. Conditions precedent : Building permission plan submitted by assessee could not be basis to assume that construction of house property was completed on or before expiry of three years from date of sale of original asset and, benefit of section 54 could not be allowed on basis of said plan - *R. Mohan v. Income-tax Officer - [2023] 149 taxmann.com 54 (Chennai - Trib.)*

SECTION 54F OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - EXEMPTION OF, IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE

4.55. Conditions precedent : Where assessee purchased land using advance received with respect to sale of property under unregistered sale agreement, since said purchase was made

within one year from receipt of full sale consideration as well as handing over of possession of sold property, deduction with respect to purchase of property could not be denied to assessee merely because sale deed was subsequently executed - *Mrs. D. Vijayalakshmi v. Income-tax Officer - [2023] 148 taxmann.com 370 (Chennai - Trib.)*

SECTION 56 OF THE INCOME-TAX ACT, 1961 - INCOME FROM OTHER SOURCES - CHARGEABLE AS

4.56. Share premium : Where assessee-company had received share premium for allotment of equities and got it valued through an independent valuer as per provisions of rule 11UA by adopting discounted cash flow method (DCF), Assessing Officer was not justified in rejecting DCF method followed by assessee only on basis of difference in projected financials and actual performance of company for two financial years - *Brio Bliss Life Science (P.) Ltd. v. Income-tax Officer - [2023] 149 taxmann.com 89 (Chennai - Trib.)*

4.57. Share premium : Where assessee-company issued cumulative preference shares at premium, since assessee had produced valuation report before Commissioner (Appeals) in compliance with relevant provisions justifying amount of premium charged by it on issue of shares, addition made under section 56(2)(viib) by Assessing Officer on account of difference between FMV and share premium received by assessee was to be deleted - *Assistant Commissioner of Income-tax v. Rodic Sikkim Project (P.) Ltd. - [2023] 148 taxmann.com 484 (Kolkata - Trib.)*

4.58. Share premium : Where assessee-company determined value of shares issued at premium on basis of DCF method, valuation method opted by assessee could not be changed in view of statutory mandate of rule 11UA(2) and Principal Commissioner could not invoke revisionary proceedings by adopting NAV method as same would be in direct contravention to provisions of Explanation (a)(i) to section 56(2)(viib) read with rule 11UA - *Apna Punjab Resorts Ltd. v. Principal Commissioner of Income-tax - [2023] 149 taxmann.com 20 (Chandigarh - Trib.)*

4.59. Share premium : Where assessee company issued shares to two companies in consideration of 60,000 shares received from two companies and submitted valuation report for said shares as per rule 11UA, since certificate of auditors was based on statement and documents furnished by company which was neither audited nor certified by auditors, said valuation report was rightly rejected by Assessing Officer and, thus, computation of fair market value of shares by Assessing Officer on basis of audited balance sheet drawn up as on date immediately preceding valuation date could not be faulted with - *Sagitaris Securities (P.) Ltd. v. Income-tax Officer - [2023] 148 taxmann.com 335 (Delhi - Trib.)*

SECTION 68 OF THE INCOME-TAX ACT, 1961 - CASH CREDIT

4.60. Others : When an income is taxed/addition is made to taxable income in an earlier year, assessee may claim that income arising in subsequent year/subsequent period is sourced out of income taxed earlier - *Smt. Ganigara Rekha Venugopal v. ACIT - [2023] 149 taxmann.com 186 (Bangalore - Trib.)*

4.61. Scope of provision :Where assessee, a private limited company, received share capital and share premium from existing directors in assessment year 2013-14, as per proviso to section 68 inserted with effect from 1-4-2013 assessee was required to prove source of source of share application money/share premium received by it - *Deputy Commissioner of Income-tax v. R.K.Shah Projects (P.) Ltd. - [2023] 149 taxmann.com 101 (Surat-Trib.)*

4.62. Scope of provision: Where assessee, a private limited company, received unsecured loan from various persons, since bank statements of lenders indicated repetitive pattern of two or three credit entries followed by debits of an equivalent amount and source of said loan was not properly explained by assessee, matter was to be remanded to AO to adjudicate matter afresh - *Deputy Commissioner of Income-tax v. R.K.Shah Projects (P.) Ltd. - [2023] 149 taxmann.com 101 (Surat-Trib.)*

4.63. Share dealing : Where assessee purchased shares of a penny stock company at price higher than market price and as an off-market transaction and sold them after short span of two years at much higher price resulting to huge amount of LTCG since purchase of shares as bogus, Assessing Officer was justified in denying exemption under section 10(38) on such LTCG and treating same as bogus and making addition on account of same under section 68 - *Atmiben Alipit kumar Doshi v. Income-tax officer - [2023] 149 taxmann.com 104 (Ahmedabad - ITAT)*

4.64. Share capital : Where assessee-company had issued fresh share capital during year and received certain sum from three companies and had successfully produced all evidences for proving identity and creditworthiness of investors and genuineness of transaction by filing complete details of share subscriber companies including their bank statement, audited financial statements etc., mere non-appearance of directors could not be a basis for treating share application money as unexplained or non-genuine - *Dharmvir Merchandise (P.) Ltd. v. Income-tax Officer - [2023] 149 taxmann.com 221 (Kolkata - Trib.)*

SECTION 69A OF THE INCOME-TAX ACT, 1961 - UNEXPLAINED MONEYS

4.65. Cash deposit: Where assessee deposited cash received from traders during demonetization period through specified bank note (SBN) and submitted evidence in form of confirmation of

4.66. traders, and their bank account as proof of deposited amount only during course of hearing before Tribunal and not before any of lower authorities, matter was to be remitted back to

Assessing Officer for necessary verification - *Jagjit Singh v. Income-tax Officer - [2023] 149 taxmann.com 48 (Amritsar - Trib.)*

SECTION 80G OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - DONATION TO CERTAIN FUNDS, CHARITABLE INSTITUTIONS

4.67. Where assessee made donation to Red Cross Society and Japan Relief Fund, and had given gifts to foreign dignitaries, since it nowhere contributed to business of assessee and it was just like a donation or in nature of gift, it could not be allowed under section 37, however, if assessee produces necessary details to claim exemption under section 80G, same would be examined and exemption under section 80G would be granted after verifying relevant details from receipt issued by respective party - *Bangalore Metro Rail Corporation Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1)(2) - [2023] 149 taxmann.com 207 (Bangalore - Trib.)*

SECTION 80P OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - INCOME OF CO-OPERATIVE SOCIETIES

4.68. Claim raised in belated return: Where assessee filed its return belatedly under section 139(4), claim of deduction under section 80P could not be denied to assessee only on basis that assessee did not file its return of income within due date under section 139(1) - *Lunidhar Seva Sahkari Mandali Ltd. v. Assessing Officer (CPC) - [2023] 149 taxmann.com 28 (Rajkot - Trib.)*

SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION RELIEF - WHERE AGREEMENT EXISTS

4.69. Non-discrimination clause : Higher rate of tax prescribed for foreign company is not to be regarded as violation of non-discriminatory clause, i.e., article 26 of DTAA between India - France - *BNP Paribas v. Assistant Commissioner of Income-tax, International Taxation - [2023] 149 taxmann.com 56 (Mumbai - Trib.)*

SECTION 92B OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - INTERNATIONAL TRANSACTION, MEANING OF

4.70. AMP expenses :Where assessee-company was engaged in manufacturing of confectionary product under brands owned by AE and TPO made adjustment on account of AMP expenses incurred by assessee, since there was no understanding or arrangement with AE which could lead to inference that AMP expenditure was incurred by assessee, at instance of AE, there was no international transaction of incurring any AMP expenditure - *Perfetti Van Melle India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 149 taxmann.com 27 (Delhi - Trib.)*

SECTION 92C OF THE INCOME-TAX ACT, 1961 -

TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

4.71. Adjustments - Marketing fees : Where DRP and TPO had failed to consider and/or appreciate relevant material on record in respect of intra-groups services availed by assessee matter was to be remanded back to Assessing Officer/TPO to determine ALP of intra-group services afresh after taking into consideration all documents/details including additional evidence filed by assessee before TPO/DRP to meet requirements of need/rendition/benefit of intra-group service under consideration - **Hafele India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 159 (Mumbai - Trib.)**

4.72. Adjustments - Reimbursement of expenses : Where all expenses made by assessee on behalf of AE involved no services to be rendered by assessee but was merely meeting expenses of statutory dues of AE, and such expenses were made out of advances given by AE to assessee, no adjustment to ALP of international transactions of reimbursement of expenses should be made on account of profit element - **Deputy Commissioner of Income-tax v. Aatash Nar control Ltd. - [2023] 149 taxmann.com 157 (Ahmedabad - Trib.)**

4.73. Comparables, functional similarity - General: Matter was remanded back where TPO selected new comparables and made TP adjustment without providing any opportunity of hearing to assessee to rebut comparables - **Quantum Clothing India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 156 (Visakhapatnam - Trib.)**

4.74. Adjustments - Interest : Working capital adjustment takes into account impact of outstanding receivables and no further adjustment is required if margin of assessee is higher than working capital adjusted margin of comparable - **Alcatel Lucent India Ltd. v. ACIT - [2023] 149 taxmann.com 150 (Delhi - Trib.)**

4.75. Adjustments - Working capital adjustments: Working capital adjustment cannot be denied to service industry and in order to neutralize differences on account of carrying high or low inventory, trade payables and trade receivables, as case may be, it becomes eminent to allow working capital adjustment so as to bring case of assessee at par with other functionally comparable entities - **Deputy Commissioner of Income-tax v. OSRAM India (P.) Ltd. - [2023] 149 taxmann.com 95 (Delhi - Trib.)**

4.76. Adjustments - Commission : Where assessee-company, based in Switzerland was engaged in providing marketing and sales related services world over through its network of sub-agents and marketing agreement clearly indicated that associated enterprise was not doing any liaison work and did more than marketing by hiring sub-agents in different territories, TPO was not justified in adopting principle from Swiss Administration guidelines for determining the ALP and,

thus, TPO was to be directed to adopt TNM method - **Raymond Ltd. v. Additional Commissioner of Income-tax - [2023] 149 taxmann.com 102 (Mumbai - Trib.)**

4.77. Adjustments - Benefit from transaction/allowability of expenditure : Where assessee-company received Global Information Service (GIS) from its AE, since documentation submitted by assessee clearly showed description of categories of services provided, resultant benefit arising therefrom, rational for provision of such services, reasonable description of benefits from services, reasonableness of adoption of allocation keys etc., ALP of such intra group services between assessee and its AE could not be considered at Nil - **Lintas India (P.) Ltd. v. ACIT - [2023] 148 taxmann.com 482 (Mumbai - Trib.)**

4.78. Methods for determination of - CUP method: Where assessee entered into international transaction of import of parts and components from its AEs and third parties for purpose of manufacturing personal computers, CUP method was most appropriate method for benchmarking said international transaction - **Lenovo (India) (P.) Ltd. v. Income-tax Officer - [2023] 148 taxmann.com 477 (Bangalore - Trib.)**

4.79. Adjustments - AMP expenses: If margins of assessee as regards its trading segment were accepted to be at arm's length by TPO, then incurring of AMP expenses could not be treated as international transaction - **Lenovo (India) (P.) Ltd. v. Income-tax Officer - [2023] 148 taxmann.com 477 (Bangalore - Trib.)**

4.80. Adjustments - Support services fee: Where assessee-company obtained IT support services from its AE for operational performance of assessee, 5 per cent markup should be allowed on such support service rendered by AE - **BMW India Financial Services (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 149 taxmann.com 198 (Delhi - Trib.)**

4.81. Adjustments - Management fee: Where assessee-company had paid an amount towards management services to its AE, since DRP had acknowledged that voluminous documentary evidences were filed before TPO as well as before panel including invoices to demonstrate that assessee indeed had received management services from its AE, TPO could not make adjustment by determine ALP of such services at NIL by adopting benefit test - **CEVA Logistics India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 266 (Delhi - Trib.)**

4.82. Methods for determination of - TNM method: Where TPO relying upon orders for earlier years, rejected TNMM applied by assessee and applied CUP Method, since Tribunal in earlier years on similar facts held that TNMM would be most appropriate method for purpose of benchmarking transactions of intra-group services between AEs, TNMM was to be applied - **BG Exploration & Production India Ltd. v. DCIT,**

DDIT/ADIT (International Taxation) - [2023] 148 taxmann.com 272 (Delhi - Trib.)

4.83. Adjustments - Interest: Where decision of assessee to shift from floating rate to fixed rate of interest was based on commercial consideration and for protection of business operation from any adverse movement in floating interest rates, adjustment made by TPO with respect to interest on loan facility was to be deleted - **BG Exploration & Production India Ltd. v. DCIT, DDIT/ADIT (International Taxation) - [2023] 148 taxmann.com 272 (Delhi - Trib.)**

4.84. Methods for determination of - TNM Method: Internal TNMM would be most appropriate method to compute arm's length price for international transactions of purchase of raw material and components from associated enterprises - **Eaton Fluid Power Ltd. v. ACIT - [2023] 148 taxmann.com 331 (Pune - Trib.)**

4.85. Adjustments - Reimbursement of expenses: Where assessee was unable to prove actual rendering of services/expenditure in respect of its business by its foreign AE by way of producing necessary agreement in respect of rendering of services, TPO would be justified in determining ALP of 'reimbursement of expenses' by assessee to its AE at NIL - **Yanfeng India Automotive Interior Systems (P.) Ltd. v. Joint Commissioner of Income-tax (OSD) - [2023] 148 taxmann.com 332 (Ahmedabad - Trib.)**

4.86. Adjustments - purchase/imports: Where assessee had imported fixed assets from its AE and TPO had asked assessee to produce invoices/bills, date of purchase by AE and utilization of machineries, but assessee had not filed any details, TPO had rightly computed ALP of old machineries at NIL - **Flextronics Technologies (India) (P.) Ltd. v. Assistant Commissioner of Income-tax (OSD) - [2023] 148 taxmann.com 334 (Chennai - Trib.)**

4.87. Adjustments - Foreign exchange gain/loss: Where assessee-company imported ignition coils from its parent company in Japan, and sold it primarily to Indian company (MSIL) and price for purchase and sale of ignition coils was fixed in terms with agreements between assessee and its AE on one hand and assessee and MSIL on other, and assessee was put to foreign exchange fluctuation risk as value of rupee depreciated compared to Yen, assessee should be allowed adjustment for foreign exchange fluctuation - **DE Diamond Electric India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 365 (Delhi - Trib.)**

4.88. Adjustments - Depreciation: Where there is difference in rates of depreciation charged by comparables viz-a-viz assessee, then suitable adjustment on account of depreciation has to be made to profits of comparables - **DE Diamond Electric India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 365 (Delhi - Trib.)**

4.89. Adjustments - Interest: Where payments were due to

assessee-company beyond credit period of 60 days, same being international transaction, same was required to be benchmarked by considering short-term deposit interest rate - **Apache Footwear India (P.) Ltd. v. ACIT - [2023] 148 taxmann.com 371 (Hyderabad - Trib.)**

4.90. Adjustments - Entity level v. transaction level: Where assessee had filed net operating margin analysis of AE and non-AE segment in its documentation maintained under section 92D, but TPO had computed margins of assessee at entity level and not considered segment margin analysis given by assessee in TP documentation, TPO should consider margin analysis as provided by assessee relating to AE segment alone - **Adecco India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 374 (Bangalore - Trib.)**

4.91. Adjustments - Aggregation of transactions: Where assessee paid technical support services fee to its AE, since there was an increase in turnover of 33 per cent and assessee had submitted Technical Services Agreement before TPO, TPO was not justified in disallowing said fee on basis that assessee did not provide any documentary evidence to prove said service - **Teejay India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 196 (Visakhapatnam - Trib.)**

4.92. Adjustments - Aggregation of transactions: Where sale and purchase operations were closely linked transactions for purpose of payment of technical support service fee and aggregation had resulted in increase in productivity during impugned assessment year, composite agreement between assessee and its AE could not be split up for purpose of holding that some services were at arm's length and some were not - **Teejay India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 196 (Visakhapatnam - Trib.)**

4.93. Adjustments - Working capital adjustments: No upward adjustment on outstanding receivables was required, when there was no impact of working capital adjustment on profits of assessee vis-à-vis its comparables - **Teejay India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 149 taxmann.com 196 (Visakhapatnam - Trib.)**

4.94. Adjustments - Interest: Once impact of receivable on working capital is evaluated and consequent profitability/pricing is compared vis-a-vis draft comparables, there is no requirement of any further adjustment only on basis of outstanding receivables - **Kronos Solutions India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 149 taxmann.com 194 (Delhi - Trib.)**

4.95. Comparability factors - Others: Where loan granted by assessee to AE was held to be an international transaction by revenue authorities in one assessment year and said order was not challenged further by assessee, then assessee could not contend that said transaction was not an international

transaction in another assessment year - **Tata Consultancy Services Ltd. v. Deputy Commissioner of Income-tax, Large Tax Unit - [2023] 148 taxmann.com 474 (Mumbai - Trib.)**

SECTION 92CA OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - REFERENCE TO TPO

4.96. Period of limitation : Where TP order passed under section 92CA(3) was invalid and unsustainable in law since same was passed on 31-1-2021 which was beyond time limit available for completion of proceedings under section 153, read with section 92CA(3A), i.e., 29-1-2021, consequent draft assessment order passed by Assessing Officer was without jurisdiction - **DSV Air & Sea (P.) Ltd. v. Addl/JT/ACIT/ITO/ NFAC Delhi - [2023] 149 taxmann.com 153 (Mumbai - Trib.)**

4.97. Period of limitation : Where TPO had passed transfer pricing order, beyond time limit available under section 92CA (3A), assessee did not remain an eligible assessee in terms of provisions of section 144C (15) (b) and extended time limit in terms of provisions of section 153 (4) of 12 months would also not be available, thus, assessment order passed under section 143 (3) being barred by limitation was to be quashed and set aside - **Colgate-Palmolive (India) Ltd. v. Assistant Commissioner of Income-tax, Circle 15(1)(2) - [2023] 149 taxmann.com 177 (Mumbai - Trib.)**

SECTION 112 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TAX ON LONG TERM CAPITAL GAINS

4.98. Computation of : Section 112(1)(c)(iii) is a special provision for computation of capital gains in case of a non-resident, arising from transfer of unlisted shares and securities, hence, for taxation of non-resident assessee on sale of unlisted shares, capital gains had to be computed only by reference to provisions of section 112(1)(c)(iii), without giving effect to first and second provisos to section 48 - **Legatum Ventures Ltd. v. Assistant Commissioner of Income-tax (IT), Circle-3(1)(2) - [2023] 149 taxmann.com 436 (Mumbai - Trib.)**

SECTION 115JB OF THE INCOME-TAX ACT, 1961 - MINIMUM ALTERNATE TAX

4.99. Computation of book profit: Where upward adjustment in book profits was with respect to amount withdrawn from reserve/provision which stood credited in profit and loss account for year and was reduced while computing book profit, since it had already been offered to tax in earlier years, adjustment was to be deleted - **Bengal Peerless Housing Development Company Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 265 (Kolkata - Trib.)**

4.100. No transition amount adjustments u/s 115JB(2C) in case of Ind AS Co. if OFCDs were purely in the nature of equity with no embedded financial liability - **Reliance Industrial Investment and Holdings Ltd. v. Deputy Commissioner of Income-tax, Circle-3(3)(1) - [2023] 149 taxmann.com 113**

(Mumbai - Trib.)

SECTION 127 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - POWER TO TRANSFER CASES

4.101. General: Where notice under section 148 was issued by Asstt. Commissioner, Moradabad to assessee but case of assessee was transferred by Asstt. Commissioner, Moradabad to Dy. Director/Asstt. Director (Intl. Taxn.), Lucknow, considering NRI status of assessee but no notice under section 127 was served on assessee before transferring jurisdiction, final assessment order passed by Dy. Director/Asstt. Director (Intl. Taxn.), Lucknow was without jurisdiction, non-est, illegal and bad in law - **Shyam Sunder Bhartia v. Deputy Commissioner of Income-tax (International Taxation) - [2023] 149 taxmann.com 162 (Lucknow - Trib.)**

SECTION 144C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - DISPUTE RESOLUTION PANEL

4.102. Eligible assessee :Where no variation prejudicial to assessee's interest, at hands of Assessing Officer, had arisen as a consequence of order passed by TPO under section 92CA(2), nor was assessee a foreign company, neither of conditions prescribed by section 144C(15)(b) being fulfilled, assessee was not an 'eligible assessee' within meaning of section 144C(15) - **Shyam Sunder Bhartia v. Deputy Commissioner of Income-tax (International Taxation) - [2023] 149 taxmann.com 162 (Lucknow - Trib.)**

4.103. Section 144C v. Section 153: Where assessee was not an 'eligible assessee', no draft order was to be forwarded to him, and requirement of section 144C(12) could not have been complied with, and thus, limitation to pass assessment order would be one provided under section 153(2) - **Shyam Sunder Bhartia v. Deputy Commissioner of Income-tax (International Taxation) - [2023] 149 taxmann.com 162 (Lucknow - Trib.)**

SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - ADDITIONS TO INCOME

4.104. Discrepancies in stock : Where during survey at business premises of assessee-jeweller, Assessing Officer found some discrepancies in stock as per books of account and stock as per register maintained through a software application to which assessee explained that gold received from customers under gold deposits scheme or for making ornaments was shown as part of stock of assessee in software but not in books of account, without verifying assessee's explanation, Assessing Officer could not make any addition based on conjectures and assumptions - **ACIT v. Govind Jaikrishna Dande & Sons - [2023] 148 taxmann.com 478 (Pune - Trib.)**

SECTION 172 OF THE INCOME-TAX ACT, 1961 - NON-RESIDENT - SHIPPING BUSINESS OF

4.105. Shipping, Inland water ways Transport and Air Transport

:Mere mode of filing appeal, electronically or in physical mode, alone should not take away assessee's right to appeal, being just a technical/procedural aspect that too not mandated by statute but by CBDT notification which has no persuasive value and is binding only on its revenue officers - **LRs Management v. Deputy Commissioner of Income-tax (International Taxation), Gujarat - [2023] 149 taxmann.com 32 (Rajkot - Trib.)**

**SECTION 263 OF THE INCOME-TAX ACT, 1961 - REVISION
- OF ORDERS PREJUDICIAL TO INTEREST OF REVENUE**

4.106. Order without DIN :Where revenue passed manual revisionary order, and later claimed that said order was duly issued to assessee through system vide DIN and same was communicated through intimation letter, DIN intimation letter along with manual revisionary order would not fulfil requirements mandated by CBDT circular and thus, order passed under section 263 would be invalid and deemed to have never been issued - **Commissioner of Income-tax (Exemptions) v. Tata Medical Centre Trust. - [2023] 149 taxmann.com 287 (Kolkata - Trib.)**

**SECTION 269SS OF THE INCOME-TAX ACT, 1961 -
DEPOSITS - MODE OF TAKING/ACCEPTING**

4.107. Land dealings : Where assessee received sale proceeds of her flat in cash on five different dates, in view of explanation of assessee that she accepted payment in cash as she was in dire need of funds for marriage of her daughter and she could not rely upon purchaser to make payments by cheques which might or might not be honoured and that getting amount deposited by way of RTGS/Cheque in her bank account and then travelling with cash withdrawn at Jagraon to Delhi to make purchases was considered to be unsafe/impractical, impugned penalty levied under section 271D was liable to be quashed - **Sonia Verma v. Income tax Officer - [2023] 149 taxmann.com 21 (Chandigarh - Trib.)**

**SECTION 271(1)(c) OF THE INCOME-TAX ACT, 1961 -
PENALTY - FOR CONCEALMENT OF INCOME**

4.108. Voyage return : Where quantum addition made by AO was deleted by Tribunal, there remained no basis for levy of penalty under section 271(1)(c) - **LRs Management v. Deputy Commissioner of Income-tax (International Taxation), Gujarat - [2023] 149 taxmann.com 32 (Rajkot - Trib.)**

Fair, Share and Square?

Mr. Piyush Baid

{B.Com(Hons), FCCA, MCSI, ACI Arb, CertBV(Paris), FCTPr}

"Elections should be held on April 16th- the day after we pay our income taxes. That is one of the few things that might discourage politicians from being big spenders." – Thomas Sowell (American economist, social theorist and senior fellow at Stanford University's Hoover Institution)

As hilarious as it seems, the entire history of tax is riddled with greed, deceit, wars, infamy, perjury and its ilk. Or as the author would most wittingly put it "It's all about the money, honey" (Adapted from the title by the same name by Victoria Woods). The author below tries in his own view to produce the villainy, rascally, roguish, deceit that's gone behind the history of tax and its application. And of course the somewhat astonishing consequences.

Impost has gradually evolved over millennia to become the sophisticated tool (that we know today) the **sovereign's legal rascal** and the **poor man's war**, unpretentiously called "tax", or in other words so as to say an unrequited payment to the general government. The author hereby attempts a satirical but at the same breath his riveting take on impost through known annals of history.

Is it but colloquial then to note that this ascension of human capital (one does need capital to make income for taxes!) has had a deep interconnected link between taxes and the prosperity of the civilisation. History is filled up with anecdotes of impost and prosperity of civilisations, but Hey! It is well one of the most closely guarded secrets. Before coming to the present day, it would be interesting to have a nostalgically interesting excursion of imposturous and oedipal attachment of prosperity of a civilization with its impost, which strangely enough have been (if on purpose) kept hidden from view of the general populace.

It won't be incorrect to say that an unassuming glance at the history of tax leads to a much wider connotation than we are all aware of. Like for example: The infamous "salt tax" imposed by the British Sovereign and the famous non-cooperation launched in 1929, which again led to the volte face by the Indian diaspora heads on to the British. Already depleted by the vagaries of World War -1 (which wouldn't have been won lest the heroics of Dalpat Singh Shekhawat), and the World War – 2 the British finally decided to leave India in 1947 after extracting their share of tax of the Indian populace, and yes, India was a poor nation in 1947. (India was Britain's Rascal, and India was at war).

Numerous accounts have been rendered by history on the vagaries of "tax". Being a tax practitioner and thus more biased towards tax, some of the incidents narrated might seem a bit far-fetched, but they are true. The importance of tax as a tool of suppressing rebellions, creating uprisings, creating nations, changing boundaries, resisting feminism (yes you read it right!), deciphering unknown languages and lost civilisations(and once again you read it right!), inciting crime and the lore cannot be denied.

Egyptian hieroglyphics would have been perpetually lost had they not painfully made efforts for recording tax issues. Egyptians and their hieroglyphics were lost in the sands of time, till some of the very colourful Napoleon's La Grande Armée discovered the Rosetta Stone. The stone had inscribing in a language unknown. The call for inquisition though : What could be so important to a civilisation that it had to be inscribed in stone so that it would be public knowledge. You guessed it right: Taxation!! The Rosetta stones are a record of **reinstatement of tax exemptions** given to Egyptian priests. Heavens forbid, if it were something of lesser significance, it might not have been worth inscribing in stone. Indeed, there are also records of Sumerians keeping impost records in about 2500 BC (University of Pennsylvania: Taxes in the Ancient World (2002)). Even the bible (as above), comically, is a witness to tax.

But the most suppressed, heart wrenching record for collection of impost occurred not in America **but in Bengal** and by implication in India. The famous avenues of London do owe their prosperity to India to a large extent. A cursory look at our own recent history will bear testament to a blood curling account of exploitation in the name of "tax". Magna Carta ("**No scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom.....**") to all its created glory could at best qualify for pitted prunes as compared to very best saffron of Diwani obtained in India. Which in turn could explain why the British were content with the loss of America, but waged war literally for their dominion of India. For one could argue the much "nobler" aspects of the Magna Carta, the author has a very compelling logic for it to be behind impost totally. But let that story be for another day. For now let's return to the House of Hanover, for if, the author could indulge the time of the reader a short account of "tax" and its impact on colonial India and by implication the never setting sun.

While we are all accolades about the Boston Tea Party (as if it were a noble deed), a closer look **to Bengal from Boston** reveals the symbiotic relationship between two colonial sisters. The Boston Tea Party incident carried out famously by the Patriots of Liberty which hilariously was not due to a tax increase, but slashing of taxes. Contemporarily on the other side of the Globe the fables of Bengal Diwani post the battle of Palashi (or more infamously Plassey) was scripting the history of the world. The backstory being a complex incest of desperate policy makers and powerful lobbying groups, both sides being adept at spinning a weave around something of a noble cause but

height of the “no vote no tax” movement in Britain in the early 1900’s. Elizabeth Wilks, was a founder member of the Women’s Tax Resistance League which was a group who objected particularly to women paying tax to a government over which they had no electoral control. Wilks became the treasurer of the organisation whose motto was “No Vote No Tax!”. According to contemporary law, married women were not required to pay taxes on their income, their husbands were liable to the House of Saxe-Coburg and Gotha (The original name of the House of Windsor!). Also they were not under any obligation to inform their husbands what they earned. The authorities were estimating the income of Elizabeth Wilks to be in the vicinity of GBP 600. Poor fellow bereft of the knowledge refused to pay tax on the same, and had to spend a week at Brixton Jail.

The infamy of the Mulakkaram tax is a well-known fact today, the travesty owing to which the oppression of females in Travancore was held to be a legal one. However, this very tax led to suicides of a couple in Travancore. The author diverges to not go into the depth of this case. However, a good Google search would provide a detailed background.

The importance of tax as a weapon of the last resort for law and order by the state cannot be underestimated. Al Capone was a notorious gangster style figure, extremely popular owing to his Robin Hood image due to his association with various charities in Chicago. However, after the St Valentine Day’s massacre he fell off the books with the several public influential figures who began demanding action against the gangster. Despite best efforts of authorities, no charge was standing legal ground on Capone.

Assistant Attorney General Mabel Walker Willebrandt saw light that Capone was leading a flashy, lavish lifestyle without having paid any taxes at all. All this without having to file even a measly tax return.

The Supreme Court of the United States in 1927 ruled in the case of United States v. Sullivan ruled that even in the absence of hard evidence, escapement of tax even on illegal income was a crime fit enough to be prosecuted. Thus the ingenuity of tax as an avenue to prosecute even in the absence of hard evidence led to putting behind bars of a hardcore criminal like Al Capone.

That tax involves no equity is an established fact. Also that tax laws have to follow the written word. No fable on the nuances of punctuation and wording of taxes would be complete without the comic twist of fate of the most expensive typo in history. Politicians have strange ways. In this case in 1872, one misplaced comma (Ek comma ki keemat tum kya jaano, Ulysses Grant!!) in a tariff law cost American taxpayers more than \$2 million, or \$38,350,000 in today’s dollars. It so happened that America was reeling under the effects of the Union Civil War and in 1872 decided to pass the Thirteenth Tariff Act under Ulysses Grant. The first to come post-Civil War -- which sought to reduce rates on many manufactured goods in order to get the economy back. Instead, one miniscule typo ended up costing the government and Civil War taxpayers nearly \$2 million. The tariff act had a list of exempt items and also a list of taxable items on imports. Now, tax professionals and importers are generally a vicarious lot as far as pecuniary matters are concerned, in order to weasel their dimes. “Fruit plants, tropical and semi-tropical for the purpose of propagation or cultivation” were exempt from paying the import tariff. While plants and seeds used to “cultivate” fruit were exempt, fruit itself was not: Two years prior, the Tariff Act of 1870 had established a duty of 20% on oranges, lemons, pineapples, and grapes, and a duty of 10% on limes, bananas, mangoes, coconuts, and essentially every other fruit that was being imported to the US at the time. In the 1872 revision, a comma was, for some inexplicable reason, inserted between the words “fruit” and “plants,” giving fruit importers the means of evasion they’d been looking for. The comma, intended to read “fruit-plants” (with a hyphen, not a comma) but instead read “fruit, plants”, had devastating consequences for the establishment. Initially, the Secretary of the Treasury rejected these claims on the grounds that the grammatical error was “clearly intended to read otherwise.” Importers, unwilling to accept this, ignited a series of trials on the matter, and it soon became clear that the Secretary’s excuse wouldn’t hold up in the courtroom. In December 1874, two years after the typo, the US government declared that, under the phrasing of the act, fruits were free. Duties were subsequently refunded -- to the tune of \$2 million. (<https://www.businessinsider.in/stock-market/this-typo-cost-americaabout-40-million/articleshow/45826484.cms>)

As my fellow practitioners can sympathise with me (particularly from March 2021) on quoting Brinsley Sheridan (Author of The School of Scandal) “*First there comes the act imposing the tax; next comes an act to amend the act for imposing the tax; then comes an act to explain the act that amended the act, and next an act to remedy the defects of the act for explaining the act that amended the act.*

A tax bill is like a ship... which put to sea on the first voyage before it was discovered that they had forgotten the rudder. After every voyage, it revealed some new defect.... It had to be caulked, then to be new-planked, then to be new rigged, then to be careened, and after all these expensive alterations, the vessel was obliged to be broken up and rebuilt” (This above is satire and has no intentional link to the Finance Act Amendment Bill introduced on March 22, 2021 or any of the proposals for re-assessment , any resemblance or link or inspiration to any tax proposal is purely co-incident).

GST & Indirect Taxes

1. STATUTORY UPDATES

1.1. GSTN introduces new facility to verify document Reference Number on offline communications of State GST authorities

Editorial Note: The GSTN has issued a new facility to verify document Reference Number (RFN) mentioned on offline communications issued by State GST authorities. To verify a Reference Number mentioned on the offline communications sent by State GST officers that are being sent to you, taxpayers can navigate to Services > User Services > Verify RFN option and provide the RFN which need to be verified.

1.2. GSTN Advisory on Bank Account Validation

Editorial Note: The GSTN has issued an advisory to inform that the functionality for bank account validation is now integrated with the GST System. This feature is introduced to ensure that the bank accounts provided by the taxpayer is correct.

1.3. Gold and Silver rates as on March 31, 2023

Editorial Note : The Gold and Silver rates as on March 31, 2023 are out. The rate of gold (995 standard 24 carats) is Rs. 59,512 per 10 grams and gold (999 standard 24 carats) is Rs. 59,751 per 10 grams and rate of Silver (999) is Rs. 71,582 per 1 Kg.

1.4. Updated Advisory by GSTN on time limit for reporting invoices on the IRP Portal

Editorial Note : The GSTN has issued updated advisory to inform that a time limit is imposed on reporting documents on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores. To ensure timely compliance, the taxpayers in this category will not be allowed to report documents older than 7 days on the date of reporting. Please note that this restriction will apply to the all document types for which IRN is to be generated.

1.5. Model All India GST Audit Manual, 2023

Editorial Note : The Model All India GST Audit Manual, 2023 is released which is prepared by Committee of Officers on GST Audits. The guidelines provided in the manual are intended to enable audit officers to carry out effective audits in a uniform, efficient and comprehensive manner adopting the best practices of the States and the Centre, as well as international practices.

1.6. GSTN issues advisory on time limit for reporting invoices on the IRP Portal

Editorial Note : The GSTN has issued advisory to inform that a time limit is imposed on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores. To ensure timely compliance, the taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting.

1.7. Copy of Foreign Trade Policy 2023

Editorial Note : The Government has notified Foreign Trade Policy (FTP) 2023. This policy shall be effective from April 1st, 2023. The subsequent revision(s) in the FTP shall be done as and when required and shall not be linked to any date.

1.8. Key Highlights of New Foreign Trade Policy 2023

Editorial Note : The Foreign Trade Policy 2023 is being announced to provide the policy continuity and a responsive framework. The DGFT has issued key highlights of New Foreign Trade Policy, 2023.

1.9. CBIC prescribes procedure/timelines for Aadhaar authentication & submission of registration application - **Notification No. 04/2023 – Central Tax, Dated 31-03-2023**

Editorial Note : The CBIC has issued notification to provide that if applicant opts for authentication of Aadhaar number then he must undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application whichever is earlier.

1.10. CBIC notifies new rate of Compensation Cess on pan masala, tobacco etc. - **Notification No. 2/ 2023-Compensation Cess (Rate), Dated 31-03-2023**

Editorial Note : The Government has notified new GST Compensation Cess rates for the products like Pan Masala, Tobacco and manufactured tobacco substitutes, etc. and now the levy of cess is changed from ad valorem to specific tax based levy on the retail sale price .

1.11. Specific Tax based levy of GST compensation cess w.e.f 01.04.2023 on commodities like pan masala, tobacco, etc. - **Notification No. 01/2023-Compensation Cess , Dated 31-03-2023**

Editorial Note : The Government appoints April 1st, 2023 as date on which the provisions of section 163 of the Finance Act 2023 shall come into force which provide to change the levy of

GST compensation cess from ad valorem to specific tax based levy on the retail sale price for the products like Pan Masala, Tobacco and manufactured tobacco substitutes, etc.

- 1.12.** Govt. extends time limit for issuing order under Section 73 for FY 17-18 to FY 19-20 - **Notification No. 09/2023-CENTRAL TAX, Dated 31-03-2023**

Editorial Note : The CBIC has issued notification to extend the time limit for issuing orders under Section 73(10). The time limit for the financial year 2017-18 is extended up to 31st December, 2023; for the financial year 2018-19 is extended up to the 31st March, 2024 and for the financial year 2019-20 is extended up to 30th June, 2024.

- 1.13.** CBIC provides extension for filing of revocation of cancellation of registration till 30.06.2023 - **Notification No. 03/2023-CENTRAL TAX, Dated 31-03-2023**

Editorial Note : The CBIC has issued notification to prescribe special procedure in respect of revocation of cancellation of registration which are cancelled on or before 31st December, 2022 and the taxpayer has failed to file revocation with time prescribed. The taxpayer can apply for revocation of cancellation of such registration upto 30th June, 2023 but only after furnishing the returns due upto the effective date of cancellation of registration and payment of taxes with interest, penalty & late fees.

- 1.14.** CBIC reduces late fees for Annual Returns from FY 2022-23 onwards - **Notification No. 07/2023-CENTRAL TAX, Dated 31-03-2023**

Editorial Note: The CBIC has issued notification to reduce late fees for filing of annual return for taxpayers having turnover of upto Rs. 20 Crores. The late fees shall be Rs. 50 per day (i.e. Rs 25 CGST and Rs 25 SGST) subject to a maximum of 0.04% (i.e. 0.02% CGST and 0.02% SGST) of the turnover and Rs. 100 per day (i.e. Rs 50 CGST and Rs 50 SGST) subject to a maximum of 0.04% (i.e. 0.02% CGST and 0.02% SGST) of the turnover for taxpayers having turnover up to 5 crores and upto 20 crores respectively.

- 1.15.** CBIC issues amnesty scheme for filing of Final Return in Form GSTR-10 - **Notification No. 08/2023-CENTRAL TAX, Dated 31-03-2023**

Editorial Note : The CBIC has notified amnesty scheme for filing of Final Return in Form GSTR-10 and it is provided that the late fee which is in excess of Rs. 1000 (Rs. 500 CGST & Rs. 500 SGST) shall be waived for the registered persons who fail to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between the period from 1st April, 2023 to 30th June, 2023.

- 1.16.** CBIC provides waiver in late fees for the registered persons who fail to furnish the return in FORM GSTR-4 - **Notification No. 02/2023-CENTRAL TAX, Dated 31-03-2023**

Editorial Note : The CBIC has issued notification to provide waiver for the registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22. The late fees shall stand waived which is in excess of Rs. 250 and shall stand fully waived where the total amount of central tax payable in the said return is nil subject to the condition that return shall be filed 1st April, 2023 to 30th June, 2023.

- 1.17.** New Amnesty Scheme for deemed withdrawal of best judgment assessment order - **Notification No. 06/2023-CENTRAL TAX, dated 31-03-2023**

Editorial Note : The CBIC has introduced an amnesty scheme for conditional deemed withdrawal of best judgement assessment orders in past cases. This scheme shall be applicable if the concerned return could not be filed within 30 days of the assessment order but it shall be filed along with due interest and late fee up to 30th June 2023.

- 1.18.** Rs. 1,60,122 crores gross GST revenue collected in month of March 2023: Press Release

Editorial Note : The gross GST revenue collected in the month of March 2023 is Rs.1,60,122 crores. The revenues for the month of March 2023 are 13% higher than the GST revenues in the same month last year.

- 1.19.** Copy of Handbook of Procedures of Foreign Trade Policy, 2023

Editorial Note : The Director General of Foreign Trade has notified the Handbook of Procedures, 2023. This shall come into force with effect from April 1st, 2023.

2. SUPREME COURT

SECTION 17 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - INPUT TAX CREDIT - CREDIT AND BLOCKED CREDITS, APPORTIONMENT OF

- 2.1.** SLP granted against impugned order of High court Safari Retreats Pvt. Ltd. v. Chief Commissioner of GST [2019] 105 taxmann.com 324 (Orissa) reading down the Section 17(5)(d) to give benefit of ITC to appellant on goods and services consumed in construction of shopping mall for paying CGST and Odisha GST payable on rentals received from tenants in shopping mall - **Chief Commissioner of Central Goods and Service Tax v. Safari Retreats (P.) Ltd. - [2023] 149 taxmann.com 319 (SC)**

SECTION 65(12) OF THE FINANCE ACT, 1994 - BANKING AND OTHER FINANCIAL SERVICES

- 2.2.** Corporate guarantee given for subsidiary company without consideration is not liable to service tax under Banking and other Financial Services - **Commissioner of CGST and**

Central Excise v. Edelweiss Financial Services Ltd. - [2023] 149 taxmann.com 76 (SC)

SECTION 65(36b) OF THE FINANCE ACT, 1994 - DESIGN SERVICES

- 2.3. Engineering Design & Drawings of various models imported from sister companies were to be used exclusively for manufacturing of Wind Turbine Generator (WTG) in territory of India and designs were tailor-made for use of assessee, liable to pay service tax as "design services" - **Commissioner of Customs, Central Excise and Service Tax v. Suzlon Energy Ltd. - [2023] 149 taxmann.com 212 (SC)**
- 2.4. Same activity can be taxed as 'goods' and 'services' provided contract was indivisible and on aspect of services there may be levy of service tax; Intention of contracting parties was relevant - **Commissioner of Customs, Central Excise and Service Tax v. Suzlon Energy Ltd. - [2023] 149 taxmann.com 212 (SC)**

SECTION 68 OF THE FINANCE ACT, 1994 - PAYMENT OF SERVICE TAX

- 2.5. Issue whether Service tax was liable to be paid in respect of Maintenance charges collected by GIDC from industrial plot owners, to be considered by Tribunal in light of law laid down by Apex Court in case of **Krishu Upaj Mandi Samiti v. CCE & ST [2022] 135 taxmann.com 354 (SC)** - **Commissioner of Central Excise and Service Tax v. Gujarat Industrial Development Corporation - [2023] 149 taxmann.com 260 (SC)**

SECTION 132 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - OFFENCES - PUNISHMENTS FOR CERTAIN OFFENCES

- 2.6. Anticipatory bail was to be granted to accused of claiming ITC fraudulently - **BalMukund Vaishnav v. State of Maharashtra - [2023] 149 taxmann.com 397 (SC)**
- 2.7. Condition of furnishing Bank Guarantee as a pre-condition for grant of bail was to be quashed by Supreme Court - **Makhijani Pushpak Harish v. State of Gujarat - [2023] 149 taxmann.com 445 (SC)**

3. HIGH COURT

SECTION 2(3) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADDRESS ON RECORD

- 3.1. Since in a CIF contract, Indian importer is liable to pay IGST on 'composite supply' comprising of supply of goods and supply of services of transportation, insurance, etc. a separate levy on Indian importer for 'supply of services' by shipping line would be in violation of section 8 of CGST Act - **LCL Logistix India (P.) Ltd. v. Union of India - [2023] 149**

taxmann.com 313 (Calcutta)

SECTION 2(13) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - INTERMEDIARY

- 3.2. Professional services provided to overseas entity do not amount to intermediary services as assessee was directly providing such services and not facilitating or arranging such services between overseas entity and third party - **Ernst & Young Ltd. v. Additional Commissioner, Central Goods and Services Tax Appeals-IT - [2023] 148 taxmann.com 461 (Delhi)**

SECTION 9 OF THE CENTRAL SALES TAX ACT, 1956 - LEVY AND COLLECTION OF TAX AND PENALTIES

- 3.3. Petitioner Bank being a secured creditor had priority over claim of Sales Tax Authority over secured asset and was not liable to pay any taxes or other liabilities out of sale proceeds of secured asset to Sales Tax Authority - **Punjab National Bank v. Assistant Commissioner of State Tax - [2023] 149 taxmann.com 328 (Bombay)**
- 3.4. Provisions of SARFAESI Act, 2002 would prevail over provisions of MVAT Act, 2002 in case of any inconsistency between two - **Punjab National Bank v. Assistant Commissioner of State Tax - [2023] 149 taxmann.com 328 (Bombay)**
- 3.5. Petitioner Bank having filed instant writ petition to lift attachment of Sales Tax Department, could lawfully waive their right to forfeit earnest money deposit and to accept balance consideration amount subsequently, depending upon outcome of instant petition filed by Petitioner Bank - **Punjab National Bank v. Assistant Commissioner of State Tax - [2023] 149 taxmann.com 328 (Bombay)**
- 3.6. Royalty paid by mining lease holders to Government on Mining Lease services provided by it to them, is liable to GST under Reverse Charge Mechanism - **Shree Basant Bhandar Int Udyog Chak v. Union of India - [2023] 148 taxmann.com 466 (Rajasthan)**

SECTION 11 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - LEVY AND COLLECTION OF TAX - EXEMPTION - POWER TO GRANT

- 3.7. Notifications withdrawing exemption to service of transportation by auto rickshaw and non-AC stage carriage provided through-commerce operators (ECOs) were not in violation of Articles 14, 19(1)(g) and 21 of Constitution of India - **Uber India Systems (P.) Ltd. v. Union of India - [2023] 149 taxmann.com 265 (Delhi)**
- 3.8. Auto-rickshaw drivers / bus-operators supplying transportation of passenger service through ECOs were not on par with individual auto-rickshaw drivers / individual bus operators and form a distinct category under GST - **Uber India Systems**

(P.) Ltd. v. Union of India - [2023] 149 taxmann.com 265 (Delhi)

3.9. Central Government can by way of notification withdraw exemption that was earlier available to a distinct class - **Uber India Systems (P.) Ltd. v. Union of India - [2023] 149 taxmann.com 265 (Delhi)**

SECTION 13 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - PLACE OF SUPPLY - SERVICES WHERE LOCATION OF SUPPLIER/RECIPIENT IS OUTSIDE INDIA

3.10. Bombay High Court has ruled that Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid, and constitutional. However, the court has also held that these provisions can only be applied to the IGST Act and cannot be used to levy tax on intermediary services under the Central GST (CGST) and State GST/Maharashtra GST (MGST) Acts - **Dharmendra M. Jani v. Union of India - [2023] 149 taxmann.com 317 (Bombay)**

SECTION 16 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - INPUT TAX CREDIT - ELIGIBILITY AND CONDITIONS FOR TAKING CREDIT

3.11. Recipients of supply were not entitled to ITC in respect of supplies made to them in terms of Section 16(2)(c) of CGST Act, 2017 when supplier who charged tax from them on such supplies failed to deposit same with Department - **Pinstar Automotive India (P.) Ltd. v. Additional Commissioner - [2023] 149 taxmann.com 13 (Madras)**

SECTION 29 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - CANCELLATION OF

3.12. Where GST registration was cancelled without mentioning any reasons for cancellation, matter was to be remanded - **Nidamarti Raj Tarun v. Superintendent of Central Tax - [2023] 149 taxmann.com 322 (Telangana)**

3.13. Registration cancelled due to non-filing of returns was to be restored in accordance with directions and conditions imposed in Tvl. Suguna Cutpiece Center v. Appellate Deputy Commissioner (ST) (GST) [2022] 135 taxmann.com 234 (Madras) judgment - **R.A. Enterprises v. Deputy Commissioner (ST) - [2023] 149 taxmann.com 268 (Madras)**

3.14. Order rejecting application seeking cancellation of registration was not sustainable when it was passed without application of mind; High Court notes SCN was also cryptic while allowing petition seeking cancellation of registration - **Parshant Timber v. Commissioner of Delhi Goods and Services Tax - [2023] 149 taxmann.com 217 (Delhi)**

3.15. Assessee could not file his returns nor appear before concerned authority due to ill-health, for which his registration was cancelled; High Court directs authority to restore

registration giving liberty to assessee to seek waiver of penalty for late filing of returns - **TS Events and Management v. Commissioner of CGST Delhi - [2023] 149 taxmann.com 172 (Delhi)**

3.16. Where registration of petitioner was cancelled on ground that in survey held, business firm of petitioner was not found existence in business place, order of cancellation of registration was to be set aside as it was a reckless exercise of power which led to denial of the rights of freedom and business guaranteed under Article 19 - **Viraj Polymers (P.) Ltd. v. State of U.P. - [2023] 148 taxmann.com 465 (Allahabad)**

3.17. Where appellate authority had not taken into account Apex Court's order regarding cognizance for extension of limitation and had accordingly failed to pass appropriate orders in appeal that sought revocation of cancellation of GST registration, matter was to be reconsidered - **Amesh Basumatary v. Union of India - [2023] 149 taxmann.com 420 (Gauhati)**

3.18. Where material on record indicates that petitioner was carrying on its business from its principle place of business in Delhi and had shifted it to Haryana and there was no allegation that petitioner had obtained its registration by means of fraud, wilful misstatement, order cancelling petitioner's registration was to be set aside - **Ajay Kumar Jindal v. Superintendent, Ward 71 Central Goods and Services Tax - [2023] 149 taxmann.com 140 (Delhi)**

3.19. Where non-submission of reply to show cause could not be a ground for cancellation of registration as per Technosum India Pvt. Ltd. Lucknow v. Union of India and others, therefore following aforesaid judgment, order of cancellation of registration and appellate order were set aside and petitioner-assessee was permitted to appear before respondent-department along with reply to show cause notice - **Agarwal Construction Company v. Commissioner of State Tax - [2023] 149 taxmann.com 42 (Allahabad)**

3.20. Date from which registration was required to be cancelled was mentioned wrongly in application of cancellation of registration and consequent order cancelling registration from such date was allowed to be rectified - **Bansal Steels v. Commissioner, Central Goods & Service Tax - [2023] 149 taxmann.com 118 (Delhi)**

3.21. Application for revocation of cancellation of registration was although not filed within time limit provided under section 30, matter is remanded back to respondent to consider grievance expressed by petitioner against cancellation of GST registration as cancellation of GST registration may adversely affect petitioner - **Balatripurasundari Anjali Saridevs v. Additional Commissioner (Appeals-I) Central Tax - [2023] 149 taxmann.com 129 (Telangana)**

3.22. Order of cancellation of GST registration was to be set aside

as sufficient opportunity was not granted to assessee and proceedings were restored to first respondent-Authority for reconsideration - **Ummer Farooq v. Superintendent of Central Tax** - [2023] 149 taxmann.com 443 (Karnataka)

SECTION 39 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RETURNS - FURNISHING OF

3.23. Rectification was to be permitted when errors committed while furnishing returns were clearly inadvertent - **Deepa Traders v. Principal Chief Commissioner of GST & Central Excise** - [2023] 149 taxmann.com 45 (Madras)

SECTION 54 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REFUND - TAX, REFUND OF

3.24. Tax paid under protest during investigation being collected without authority of law was liable to be refunded - **DiwakarEnterprises (P.) Ltd. v. Commissioner of CGST** - [2023] 149 taxmann.com 419 (Punjab & Haryana)

3.25. Where assessee was not given an opportunity of having his case when authorities held that it was not entitled to refund as it was an intermediary, impugned order passed in violation of principles of natural justice was to be read judicated - **DL Support Services India (P.) Ltd. v. Additional Commissioner CGST Appeals II** - [2023] 149 taxmann.com 324 (Delhi)

3.26. Rejection of refund without granting hearing opportunity and on grounds not mentioned in show cause notice was not sustainable; High Court directs authority to pass fresh order - **VaridhiCotspin (P.) Ltd. v. State of Gujarat** - [2023] 149 taxmann.com 141 (Gujarat)

3.27. Petitioner's claim of refund of ITC could be denied solely on ground that petitioner had failed to file return for transfer of stock and capital goods when he shifted its principle place of business, therefore order rejecting refund of ITC was to be set aside - **Ajay Kumar Jindal v. Superintendent, Ward 71 Central Goods and Services Tax** - [2023] 149 taxmann.com 140 (Delhi)

3.28. Refund of unutilized ITC could not be denied when petitioner established that goods had been exported; invoices in respect of which ITC was claimed had been raised by registered dealer; and petitioner had paid invoices, which include taxes - **Balaji Exim v. Commissioner, CGST** - [2023] 149 taxmann.com 44 (Delhi)

3.29. Rule 89 (4C) as amended vide Notification No.16/2020-Central Tax(F.No.CBEC-20/06/04/2020-GST) dated 23-3-2020 is declared ultra vires - **Tonbo Imaging India (P.) Ltd. v. Union of India** - [2023] 148 taxmann.com 487 (Karnataka)

3.30. Supply of services are considered as export of services when overseas entity/recipient was located outside India,

consideration was received in foreign exchange and services were not covered under intermediary services - **Ernst & Young Ltd. v. Additional Commissioner, Central Goods and Services Tax Appeals-IT** - [2023] 148 taxmann.com 461 (Delhi)

3.31. Order in original rejecting refund application on grounds which were never part of original show cause notice and petitioner's reply to show cause notice was not considered at all; further neither proper show cause notice was issued nor any opportunity of hearing was given to petitioner, therefore, principles of natural justice were violated; show cause notice and order in original were to be quashed - **C J DARCL Logistics Ltd. v. Union of India** - [2023] 148 taxmann.com 462 (Jharkhand)

SECTION 67 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SEARCH, SEIZURE ETC. - POWER OF INSPECTION, SEARCH AND SEIZURE

3.32. Assessee having not complied with requirement of release of seized goods i.e. perishable goods, was not entitled to any direction for release of such seized goods - **Adarsh Tobacco Co. v. State of U.P.** - [2023] 149 taxmann.com 266 (Allahabad)

SECTION 69 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SEARCH, SEIZURE, ETC. - POWER TO ARREST

3.33. Civil writ petition was filed before High Court but it was a subject matter of criminal proceeding; High Court extends bail period to enable assessee to approach competent Court - **Krishna Murari Singh v. Union of India** - [2023] 149 taxmann.com 214 (Bombay)

3.34. High Court rejects plea for anticipatory bail where applicant was found to be not cooperating with investigation by not attending to summons - **Kamlesh Majithia v. Assistant Commissioner of Sale Tax** - [2023] 149 taxmann.com 205 (Bombay)

SECTION 73 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - TAX OR INPUT TAX CREDIT DUE NOT INVOLVING FRAUD MISSTATEMENT OR SUPPRESSION

3.35. Petitioners prayer for extension of protective measures were allowed and interim order was to be continued - **Akshay Chhabra v. Union of India** - [2023] 149 taxmann.com 175 (Bombay)

3.36. When writ petition was filed only after lapse of more than thirteen months, petitioner was directed to deposit 50 per cent of amount demanded under impugned assessment order even if principles of natural justice was violated by respondent and impugned assessment order is non-speaking order with regard to petitioner's contention; on deposit of aforesaid

amount by petitioner, within stipulated time, impugned assessment order stands quashed and was remanded back to respondent for fresh consideration on merits - **A. Palanisamy v. Deputy State Tax Officer (Circle) - [2023] 149 taxmann.com 14 (Madras)**

3.37. High Court directs submission of reply to show cause notice as same was not filed before passing of assessment order - **Kamrul Nahar v. Union of India - [2023] 149 taxmann.com 433 (TRIPURA)**

3.38. Since reply to show cause notice demanding GST on road restoration charges recovered by municipality was not filed and such notice was issued by wing other than investigation wing, interim stay was not liable to be granted - **Torrent Power Ltd. v. Union of India - [2023] 149 taxmann.com 69 (Gujarat)**

3.39. Since communication dated 22-2-2023 be considered as a notice for engaging in consultation prior to issuance of show cause notice, therefore, petitioner-assessee would be afforded opportunity of hearing on question whether any interest or late payment charges as mentioned in communication dated 22-2-2023 were payable by it; matter remanded - **R. K. Goyal Steels (P.) Ltd. v. Principal Commissioner Central Tax - [2023] 149 taxmann.com 131 (Delhi)**

3.40. Ex parte order was passed without affording sufficient opportunity of hearing and time to represent case was not sustainable; High Court directs assessing authority to consider matter afresh - **Himanshu Traders v. Union of India - [2023] 149 taxmann.com 267 (Patna)**

SECTION 74 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - TAX OR INPUT TAX CREDIT INVOLVING FRAUD OR MISSTATEMENT OR SUPPRESSION

3.41. Writ petition filed against show cause notice without filing reply was pre-mature and was not maintainable; High Court directs petitioner to reply to SCN relating to classification of goods used by railways - **Coimbatore Compressor Engineering Company (P.) Ltd. v. Assistant/Deputy Commissioner of GST and Central Excise - [2023] 149 taxmann.com 215 (Madras)**

3.42. Where ex-parte adjudication/assessment order under section 74(5) of Central Goods and Services Tax Act, 2017 and summary thereof in Form GST DRC-07 were passed without uploading summary of show cause notice in Form GST DRC-01 on Department's website, such orders were quashed and adjudicating authority was directed to pass fresh orders after uploading show cause notice on website in terms of Rule 142(1) CGST Rules, 2017 and affording opportunity of hearing to assessee - **New Hanumat Marbles v. State of Punjab - [2023] 149 taxmann.com 82 (Punjab & Haryana)**

3.43. Since petitioner-assessee could not avail said opportunity in

view of her old age as she being aged 75 years and also due to her ill health, therefore, without going into merits of assessee's case, respondent-department were directed to afford a personal hearing to assessee and pass assessment order afresh in accordance with law on suitable terms - **Reddy Enterprises v. State of Andhra Pradesh - [2023] 149 taxmann.com 132 (Andhra Pradesh)**

3.44. Adjudication order quantifying amount of tax and penalty on basis of guidelines issued by Income-tax authorities and appellate order disapproving method of quantification adopted in adjudication order without providing valid reasons were liable to be set aside - **Diamond Steel v. State of Up - [2023] 149 taxmann.com 366 (Allahabad)**

3.45. Since no appeal was filed against order dated 21-5-2022 passed under section 74 of Uttar Pradesh Goods and Services Tax Act, 2017, further, period for preferring appeal had expired much prior to filing of this petition, therefore, petitioner was declined request by court to exercise extraordinary discretionary jurisdiction under Article 226 of Constitution of India and writ petition was dismissed - **Jagjit Enterprises (P.) Ltd. v. State of U.P. - [2023] 149 taxmann.com 432 (Allahabad)**

SECTION 75 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - GENERAL

3.46. Rejection of claim of concessional rate of tax without granting opportunity of personal hearing was in violation of Section 75(4) of CGST Act and principles of natural justice and therefore, such order was not sustainable - **SKS Builders and Promoters v. Assistant Commissioner (ST) - [2023] 149 taxmann.com 81 (Madras)**

3.47. Principles of natural justice were violated when no reasons were given by revenue for rejecting assessee's objections raised in replies and personal hearing was afforded to assessee even before replies were received by revenue; impugned assessment orders were to be quashed - **Shree Shyam Granites and Marbles v. Assistant Commissioner (ST) (FAC), Hosur (South) III Circle - [2023] 148 taxmann.com 463 (Madras)**

SECTION 79 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - MODES OF RECOVERY

3.48. Where bank account of assessee was attached at behest of Department without any notice to them and no specific representation was made by them to Department for lifting such attachment, they were directed to make a fresh representation to concerned Departmental Authority who would consider same on merits as per law - **Lucas TVS Ltd. v. Superintendent of GST and Central Excise - [2023] 149 taxmann.com 43 (Madras)**

SECTION 83 OF THE CENTRAL GOODS AND SERVICES

TAX ACT, 2017 - DEMANDS AND RECOVERY - PROVISIONAL ATTACHMENT

- 3.49.** Where Auditor had already reviewed petitioner's case and directed refund, therefore, Respondent Commissioner was to be directed to reconsider petitioner's request for lifting of block placed on petitioner's bank account and continue same only if it was satisfied that conditions as specified in section 83 of CGST Act, 2017 continued to exist - ***Eunike General Trading v. Commissioner of Goods & Service Tax*** - [2023] 149 *taxmann.com* 334 (Delhi)
- 3.50.** Remedy, as made available by rule 159(5) of CGST Rules, 2017 is to be availed in case of provisional attachment of property before approaching High Court, examination and determination of facts being required - ***Eagle Fibres Ltd. v. State of Gujarat*** - [2023] 149 *taxmann.com* 259 (Gujarat)
- 3.51.** Provisional attachment of all other bank accounts of petitioner was to be withdrawn subject to condition that petitioners should make deposit of entire refund sanction amount in nationalised bank by way of fixed deposit and handover fixed deposit receipt (FDR) to Departmental officer, thereafter - ***Divyasree NSL Infrastructure (P.) Ltd. v. Union of India*** - [2023] 149 *taxmann.com* 314 (Telangana)
- 3.52.** Proper officer under section 70(1) cannot direct customer of assessee to stop further payments to assessee - ***Sri Sai Balaji Associates v. State of Andhra Pradesh*** - [2023] 149 *taxmann.com* 66 (Andhra Pradesh)

SECTION 107 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - APPELLATE AUTHORITY - APPEALS TO

- 3.53.** Statutory benefit of stay under section 112(9) was not to be denied to petitioner due to non-constitution of GST Tribunal by authorities themselves - ***Kumar Ram Ranjan Singh v. State of Bihar*** - [2023] 149 *taxmann.com* 418 (Patna)
- 3.54.** Statutory benefit of stay under section 112(9) of CGST/ Bihar GST Act, 2017 was not to be denied to petitioner due to non-constitution of GST Tribunal by Authorities themselves - Bablu ***Kumar v. Union of India*** - [2023] 149 *taxmann.com* 362 (Patna)
- 3.55.** Where appeal against cancellation of registration, not filed within time limit was rejected by appellate authority but petitioner was adversely affected and was left without any remedy as GST Tribunal had not been constituted, matter was to be remanded for fresh decision - ***Joy Innovation v. Additional Commissioner*** - [2023] 149 *taxmann.com* 315 (Telangana)
- 3.56.** Statutory benefit of stay under section 112(9) was not to be denied to petitioner due to non-constitution of GST Tribunal by authorities themselves - ***Energy Construction (P.) Ltd. v. State of Bihar*** - [2023] 149 *taxmann.com* 367 (Patna)
- 3.57.** Where statutory appeal was filed electronically on time, non

submission of certified copy of order within time was to be treated as mere technical defect and to be accepted - ***PKV Agencies v. Appellate Deputy Commissioner (GST) (Appeals)*** - [2023] 149 *taxmann.com* 15 (Madras)

- 3.58.** Principles of natural justice were not in violation when assessee had no bona fide intention to produce documents but only sought to buy time by way of seeking adjournment - ***Deabrata Das v. Additional Commissioner, Central Goods & Service Tax and Central Excise*** - [2023] 149 *taxmann.com* 133 (Calcutta)

SECTION 112 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - APPELLATE TRIBUNAL - APPEALS TO

- 3.59.** Since order was passed by respondent-department due to non-constitution of tribunal, petitioner-assessee would be required to present/file his appeal under Section 112 of Bihar Goods and Services Tax Act, 2017, once tribunal would be constituted and made functional - ***Angel Engicon (P.) Ltd. v. State of Bihar*** - [2023] 149 *taxmann.com* 71 (Patna)

SECTION 129 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

- 3.60.** Travelling without a proper e-way bill attracts penalty and intention of parties committing such violation was wholly irrelevant - ***Pushpa Devi Jain v. Assistant Commissioner of Revenue, Bureau of Investigation*** - [2023] 149 *taxmann.com* 206 (Calcutta)
- 3.61.** Onus was on GST authority to prove that e-way bill was being reused and when same was not proved, tax and penalty could not be imposed; High Court sets aside order of seizure and penalty - ***BI Agro Oils Ltd. v. State of U.P.*** - [2023] 149 *taxmann.com* 434 (Allahabad)
- 3.62.** Goods being intercepted during transit and documents accompanying goods being not in compliance with provisions of GST Act, authorities were within their power to detain goods and demand payment of tax and 100 per cent penalty thereunder - ***Sterile India (P.) Ltd. v. Union of India*** - [2023] 149 *taxmann.com* 5 (Punjab & Haryana)
- 3.63.** Since vehicle carrying excavator and excavator itself could not remain under detention as it would deteriorate value of both vehicles and it would be counter - productive, therefore, appellant-assessee was directed to file an appeal before appellate authority and upon payment of requisite pre-deposit, both vehicles in question, i.e. excavator and vehicle which was carrying excavator, should be released - ***Deepika Mandal Maiti v. Assistant Commissioner of State Tax, Bureau of Investigation*** - [2023] 149 *taxmann.com* 68 (Calcutta)
- 3.64.** Assessee was required to generate fresh e-way bill when goods are transported in different vehicle due to breakdown of

original vehicle; Authorities were not required to ascertain reasons for transporting goods in different vehicle - **Asian Switchgear (P.) Ltd. v. State Tax Officer - [2023] 149 taxmann.com 120 (Calcutta)**

3.65. Valuation of goods must be established before appellate authority under GST enactments after deposition of 25 per cent of amount determined by State Tax Officer, and it could not be determined in writ proceedings based on submissions of assessee - **[2023] 149 taxmann.com 117 (Madras)**

3.66. High Court in exercise of its writ jurisdiction cannot be concerned with disputed questions of fact and it cannot interfere with penalty imposed by State Tax Officer - **T.V.H. Express v. State Tax Officer - [2023] 149 taxmann.com 117 (Madras)**

3.67. Where goods were detained in transit on account of expiry of E-Way Bill and ex-parte adjudication order demanding tax and penalty was passed on very same day on which show cause notice was issued under section 129(3), matter was remanded for fresh decision after giving opportunity to assessee to explain their case - **Nirmal Kumar Mahaveer Kumar v. Commissioner of Central Goods & Services Tax - [2023] 149 taxmann.com 128 (Delhi)**

SECTION 130 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY

3.68. Where assessee was called by authority to remain present on 15-10-2019 and on same date order under section 130 was passed, it resulted into denial of reasonable opportunity to assessee to defend in proceedings and hence order passed in violation of principles of natural justice and was to be set aside - **Ashok Singh v. State of Gujarat - [2023] 149 taxmann.com 398 (Gujarat)**

3.69. Confiscation order of vehicle was subject to outcome of enquiry by Assistant Commissioner of Commercial Taxes on question of connivance by petitioner, who was registered owner of subject vehicle with transporter in tax evasion - **Jupiter Express Carrier (P.) Ltd. v. Union of India - [2023] 149 taxmann.com 323 (Karnataka)**

SECTION 132 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - OFFENCES - PUNISHMENTS FOR CERTAIN OFFENCES

3.70. Bail rejected considering amount of tax evasion and fact that there was prima facie material that applicant was involved in financial fraud by way of availing, utilizing and passing on inadmissible ITC based on fake invoices without any actual supply - **Chhatar Singh @ Niku Singh v. State of Odisha - [2023] 149 taxmann.com 288 (Orissa)**

3.71. It is not necessary to keep assessee in custody when

investigation has been completed; High Court grants bail in subject to conditions and furnishing of bail/surety bond - **Durga Madhab Panda v. Commissioner of CGST - [2023] 149 taxmann.com 67 (Punjab & Haryana)**

3.72. Where petitioner-assessee was in jail from last 8 months for offence of tax evasion having maximum punishment of 5 years, without expressing opinion on merits of case, assessee was to be granted bail with condition to deposit Rs. 5 crore before revenue 'under protest' - **Mohammed Ali Akram Khan v. Union of India - [2023] 149 taxmann.com 442 (Rajasthan)**

SECTION 142 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TRANSITIONAL PROVISIONS - MISCELLANEOUS

3.73. Benefits as provided under Scheme of budgetary support under GST regime dated 5-10-2017 are available to units who had utilized their CENVAT credit for purpose of payment of taxes with reference to exemption notification dated 25-4-2007, but stage to pay taxes by cash after exhausting CENVAT credit was yet to come - **Sai Enterprises v. Union of India - [2023] 149 taxmann.com 203 (Gauhati)**

3.74. Writ Jurisdiction was not invocable against an order against which statutory appellate remedy was available - **Gail (India) Ltd. v. Union of India - [2023] 149 taxmann.com 174 (Gujarat)**

SECTION 161 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RECORDS - RECTIFICATION OF MISTAKES

3.75. Order passed on ROM application without hearing assessee, being in violation of principles of natural justice and provisions of third proviso to Section 161 of CGST Act, 2017, was not sustainable - **Pinstar Automotive India (P.) Ltd. v. Additional Commissioner - [2023] 149 taxmann.com 13 (Madras)**

4. AAAR

CLASSIFICATION OF GOODS

4.1. Air Conditioning Machines - Roof Mounted Air Conditioner :Roof Mounted Air-Conditioning unit manufactured by appellant-assessee are classifiable under HSN Heading 8415 and charged with GST at 28% - **EssEss Kay Engineering Co. (P.) Ltd., In re - [2023] 149 taxmann.com 70 (AAAR - Punjab)**

SECTION 2(30) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - COMPOSITE SUPPLY

- 4.2. Water connection charges, electric meter installation and deposit for meter, development charges and legal fees being inextricably linked with construction service are liable to same rate of GST as that of construction service; Other services like club house maintenance, advance maintenance, share of municipal taxes, formation and registration of organisation, share money, infrastructure are independent supplies subject to 18% GST - *Puranik Builders Ltd., In re - [2023] 149 taxmann.com 79 (AAAR-MAHARASHTRA)*

SECTION 2(84) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PERSON

- 4.3. GST is payable on payment received from outgoing members of the housing society as the amount collected is for future repairs - *Monalisa Co-Operative Housing Society Ltd., In re - [2023] 149 taxmann.com 40 (AAAR-MAHARASHTRA)*

SECTION 9 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - LEVY & COLLECTION OF TAX

- 4.4. Since appellant-assessee is not engaged directly as a contractor or as a sub-contractor of main contractor by State Government of Gujarat for supply of works contract pertaining to irrigation department, therefore, appellant merits entry at Heading No. 9954 and it is liable for GST rate at 18 per cent under Entry No. 3(ii) of Notification No. 11/2017-Central Tax(Rate), dated 28-6-2017 - *Shreeji Earth Movers, In re - [2023] 149 taxmann.com 361 (AAAR-GUJARAT)*
- 4.5. Even if part of consideration has been received prior to 1-7-2017, assessee is liable to pay GST on services supplied under GST regime with effect from 1-7-2017 - *NBCC (India) Ltd., In re - [2023] 149 taxmann.com 84 (AAAR-Delhi)*

SECTION 11 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - LEVY AND COLLECTION OF TAX - EXEMPTION - POWER TO GRANT

- 4.6. A Government enterprise's sale of commercial built-up space to buyers who will use it for commercial gain cannot be treated as function of Municipality as envisaged under Article 243W of Constitution of India, 1950, and it is not entitled to exemption Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 - *NBCC (India) Ltd., In re - [2023] 149 taxmann.com 84 (AAAR-Delhi)*

5. AAR

CLASSIFICATION OF GOODS

- 5.1. *Sugarcane Juice - Fruit juices (including grape must) and vegetable juices* : Sugarcane juice merits classification under Chapter 20 and Heading No.20098990 which falls under Sl. No. 41 of Notification No. 1/2017 Central Tax (Rate), dated 28-6-2017 and taxable at a rate of 6 per cent CGST and 6 per cent SGST or 12 per cent IGST - *Gobind*

Sugar Mills Ltd., In re - [2023] 149 taxmann.com 262 (AAR- UTTAR PRADESH)

- 5.2. *PVC cushion mats* : Since PVC cushion mats are made from PVC only and same would fall under Chapter 39 which covers PVC made products, therefore, supply of said goods i.e. PVC cushion mats fall under Chapter 39 of GST tariff rates and applicable rate of GST is 18 per cent - *Oswal Poly Rubbers, In re - [2023] 149 taxmann.com 261 (AAR - HARYANA)*
- 5.3. *PVC Floor Mats* : PVC floor mats which are manufactured by applicant-assessee is classifiable under CTH 8708 and applicable rate of GST would be 28% - *Manishaben Vipulbhai Sorathiya, In re - [2023] 149 taxmann.com 18 (AAR - GUJARAT)*

- 5.4. *Automatic Data Processing Machine - Interactive Flat Panels* : Interactive Flat Panels having LCD panels (75 inches) with an LED backlight, CPU, GPU, virtual keyboard, 4GB RAM with internal storage capacity of 32 GB, inbuilt Mobile Operating System as well as OPS slot which supports Windows, would be classifiable as ADP Machine under Tariff Item No. 8471 41 90 of Customs Tariff Act, 1975 and liable to 18 per cent GST under Sl. No. 360 of Schedule III to Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 only when they are not classified elsewhere in Tariff and functionality, stipulations as mentioned in Rules for Interpretation, Section Note 4 to Section XVI and Chapter Notes to Chapter 84 are complied with - *Savex technologies (P.) Ltd., In re - [2023] 149 taxmann.com 2 (AAR - CHHATTISGARH)*

CLASSIFICATION OF SERVICES

- 5.5. *Construction services - Dredging Service* : Where supply of service for dredging of foreshore of Prakasam Barrage by applicant-assessee to Water Resource Department of Government of Andhra Pradesh qualifies as a supply of service to State Government, therefore, instant supply is a composite supply of works contract involving predominantly earth work and would be taxable vide entry No. 3 (vii) of the Notification No. 39/2017- Integrated Tax (Rate) dated 13-10-2017 - *Reach Dredging Ltd., In re - [2023] 149 taxmann.com 3 (AAR-WEST BENGAL)*

SECTION 2(22) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - CESS

- 5.6. Supply of coal rejects arising during washing of coal by coal washery is entitled to nil rate of Compensation Cess in terms of Sl. No. 41A of Notification No. 1/2017-C.C. (Rate), dated 28-6-2017 as amended if Compensation Cess on supply of washed coal and such coal rejects, sum total of which is equal to entire quantity of raw coal, has already been paid and Input Tax Credit of Compensation Cess so paid has not been availed by any person - *Parsakente Collieries Limited, In re - [2023] 149 taxmann.com 41 (AAR - CHHATTISGARH)*

SECTION 2(30) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - COMPOSITE SUPPLY

- 5.7. Where work of dredging of parakasam barrage carried out by applicant-assessee to Water Resource Department of Government of Andhra Pradesh aims at improving immovable property and includes both supply of services and supply of goods, therefore, Instant supply qualifies as composite supply of "works contract" which predominantly involves earth work - **Reach Dredging Ltd., In re - [2023] 149 taxmann.com 3 (AAR-WEST BENGAL)**
- 5.8. Work being undertaken by applicant as sub-contractor for conversion of short welded rails (SWR) to long welded rails (LWR) by flash butt welding process on railway tracks along with supply of labour services are 'composite supply of services' falling under Heading No. 995429 and shall be taxable at rate of 18 per cent vide Sl.No. 3(xii) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, as amended - **Purple Distributors (P.) Ltd., In re - [2023] 149 taxmann.com 116 (AAR-WEST BENGAL)**

SECTION 2(48) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - EXISTING LAW

- 5.9. As per Notification No. 4/2017-Central Tax (Rate) dated 28-6-2017, GST is to be paid under reverse charge mechanism by recipient in case of intrastate supply of tobacco leaves falling under Heading No. 2401 by an agriculturist to a registered person, since, applicant-assessee is purchasing tobacco leaves/bhukko from agriculturist, therefore, applicant-assessee is liable to pay GST on reverse charge mechanism basis at 5 per cent - **JCP Agro Process (P.) Ltd., In re - [2023] 149 taxmann.com 285 (AAR - GUJARAT)**
- 5.10. Applicant-assessee is liable for payment of GST at rate of 12 per cent (6 per cent CGST and 6 per cent SGST) in terms of Notification No. 20/2019- Central Tax (Rate), dated 30-9-2019 on job work process of coating done in respect of tobacco leaves supplied by other registered persons - **JCP Agro Process (P.) Ltd., In re - [2023] 149 taxmann.com 285 (AAR - GUJARAT)**
- 5.11. Conversion of short welded rails (SWR) to long welded rails (LWR) by flash butt welding process cannot be treated as 'job work' - **Purple Distributors (P.) Ltd., In re - [2023] 149 taxmann.com 116 (AAR-WEST BENGAL)**

SECTION 2(119) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - WORKS CONTRACT

- 5.12. Conversion of short welded rails (SWR) to long welded rails (LWR) by flash butt welding process cannot be treated as works contract - **Purple Distributors (P.) Ltd., In re - [2023] 149 taxmann.com 116 (AAR-WEST BENGAL)**

SECTION 7 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - SCOPE OF

- 5.13. Since transportation service is not a supply for applicant-assessee as it is not made in course of business or furtherance of business and applicant is receiver of services and not supplier of same, therefore, recoveries made by applicant from their employees for transportation service do not fall under definition of supply under section 7 and hence, GST is not applicable - **Brandix Apparel India (P.) Ltd., In re - [2023] 149 taxmann.com 396 (AAR - ANDHRA PRADESH)**
- 5.14. Activity of building and fabricating of Tipper Body and mounting same by applicant-assessee and collecting fabrication charges including inputs required for such fabrication work, if chassis is owned and supplied by customer, it will result in supply of services under SAC 9988 and shall be attracting GST at 18% - **Raj Agro Aids, In re - [2023] 149 taxmann.com 17 (AAR-PUNJAB)**
- 5.15. Liquidated damages paid by defaulting party to non-defaulting party for tolerating act of non performance or breach of contract have to be treated as consideration for tolerating an act or a situation under an agreement, thus, liquidated damages collected by applicant from Chettinad logistics private limited for non-performing of job assigned constitutes as supply as per section 7 and are exigible to tax at 18 % - **AP Power Development Co. Ltd., In re - [2023] 149 taxmann.com 142 (AAR - ANDHRA PRADESH)**
- 5.16. Since sale of land developed by respondent-assessee is covered within scope of term 'sale of land' as mentioned in Entry No. 5 of Schedule III, therefore, as per Circular No. 177/09/2022 dated 3-8-2022, sale of developed land by assessee is neither supply of goods nor services and it does not attract GST - **Ms. Rabia Khanum, In re - [2023] 149 taxmann.com 138 (AAR-KARNATAKA)**

SECTION 9 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - LEVY & COLLECTION OF TAX

- 5.17. Applicable rate of tax on supply made by applicant is to be determined in accordance with Sl.No. 17(vi) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended and compensation cess is also to be determined in accordance with Notification No. 1/2017-Compensation Cess (Rate), dated 28-6-2017 - **Dream Road Technologies (P.) Ltd., In re - [2023] 149 taxmann.com 269 (AAR - HARYANA)**
- 5.18. Since applicant-assessee is engaged in construction services and undertook work contract tendered by Rajasthan Housing Board on 25-1-2021 under scheme of Chief Minister Jan Awas Yojna 2015 programme, therefore, as per Notification No. 3/2022-Central Tax (Rate), dated 13-7-2022 services provided by assessee will attract a rate of 18 per cent GST -

Bhori Lal Mohan Lal, In re - [2023] 149 taxmann.com 171 (AAR- RAJASTHAN)

- 5.19.** Where residential dwelling is rented to a registered person under GST, tenant has to discharge GST liability under Reverse Charge Mechanism irrespective of its purpose of renting premises as per Notification No. 05/2022 Central Tax (Rate) dated 13-7-2022, therefore, GST is liable to be paid by applicant-assessee under reverse charge mechanism for availing guest house services by way of taking residential premises on rent for use for his company employees - **Indian Metals & Ferro Alloys Ltd., In re - [2023] 149 taxmann.com 80 (AAR-ODISHA)**
- 5.20.** A Government enterprise redeveloping Government colonies and selling commercial property on behalf of Ministry of Housing and Urban Affairs (MoHUA), is agent of MoHUA, liable to be registered and discharge GST liability as per statutory provisions - **NBCC (India) Ltd., In re - [2023] 149 taxmann.com 84 (AAR-Delhi)**
- 5.21.** Since canteen service is not a supply for applicant-assessee as it is not made in course of its business or furtherance of its business and applicant is receiver of services not supplier of same, therefore, recoveries made by applicant from their employees for canteen service do not fall under definition of supply under section 7 and they are not liable for imposition of GST - **Brandix Apparel India (P.) Ltd., In re - [2023] 149 taxmann.com 396 (AAR - ANDHRA PRADESH)**
- 5.22.** Since, merely adding some substance does not result in emergence of a new product, therefore, supply of unmanufactured tobacco leaf consequent to coating same with natural edible gum is liable to pay GST at 28 per cent, further, supply of said coated tobacco to customers in gunny bag with their name being printed/mentioned on gunny bags so as to identify with product sold, then applicant-assessee would be liable to pay GST at 28 per cent along with 71 per cent compensation cess - **JCP Agro Process (P.) Ltd., In re - [2023] 149 taxmann.com 285 (AAR - GUJARAT)**
- 5.23.** Sale of independent running staffing business division with all assets and liabilities, on going concern basis, and consideration received in multiple stages, is supply of financial service, covered under SAC 997119 liable to 18 per cent GST rate; benefit of Sl. No. 2 of Notification No. 12/2017-Central Tax (Rate), is available subject to furnishing auditor's certificate that business is going concern - **Pico2femto Semiconductor Services (P.) Ltd., In re - [2023] 149 taxmann.com 121 (AAR - KARNATAKA)**
- 5.24.** Where 1kg packing red gram dal and secondary packing in 50 kg bag is supplied specific buyer i.e., to State Civil Supplies Corporation by applicant-assessee as per design and label given by corporation with a prior agreement first and foremost condition of taxability is not satisfied and therefore same does not attract GST - **Seetharamjaneya Dal and Fried Gram**

Mill, In re - [2023] 149 taxmann.com 335 (AAR - ANDHRA PRADESH)

- 5.25.** Services, including services of common employees of company, provided by its branch office in one State to its head office in another State and vice versa, each having separate GST registration, will attract GST liability under respective GST Acts - **Profisolutions (P.) Ltd., In re - [2023] 149 taxmann.com 337 (AAR - TAMILNADU)**
- 5.26.** Applicant-assessee engaged in construction of commercial complex will be liable to pay GST at 18 per cent in light of Notification No. 11/2017 Central Tax(Rate) dated 28-6-2017 amended with Notification No. 03/2022- Central Tax (Rate) dated 13-7-2022 - **Om Prakash Agarwal, In re - [2023] 149 taxmann.com 333 (AAR- RAJASTHAN)**
- 5.27.** Wooden ice cream sticks and wooden ice cream spoons merit classification under Heading No. 4419 90 90 and thus taxable at GST 12 per cent, in terms of Sl. No. 99B of Schedule II to Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, as amended - **Ragu Packaging, In re - [2023] 149 taxmann.com 446 (AAR - KARNATAKA)**

SECTION 11 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - LEVY AND COLLECTION OF TAX - EXEMPTION - POWER TO GRANT

- 5.28.** Exemption to healthcare service is available only when clinical establishment itself provides services and same is not available when supply is made by a third party using outsourced infrastructure of another hospital - **ARPK Healthcare (P.) Ltd., In re - [2023] 149 taxmann.com 216 (AAR - HARYANA)**
- 5.29.** Since applicant-assessee is not satisfying any of three mandatory conditions specified in Sl. No. 3/3A of exemption Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended for exemption, therefore, services provided by applicant in relation to maintenance of various colonies developed by Chhattisgarh Housing Board (CGHB) and not handed over to local authority by CGHB, is found not eligible for benefit of Nil rate of GST provided under said notification - **Call Me Services, In re - [2023] 149 taxmann.com 139 (AAR - CHHATTISGARH)**

SECTION 95 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - DEFINITIONS

- 5.30.** Question about recipient's entitlement of input tax credit, and not related to supply of applicant, is beyond jurisdiction of Advance Ruling Authority - **Pico2femto Semiconductor Services (P.) Ltd., In re - [2023] 149 taxmann.com 121 (AAR - KARNATAKA)**

Judicial Pronouncements

CA Ashit Shah

1. Services provided by Branch office to Head office:

Facts of the matter:

The Applicant registered under the Companies Act 2013 in the State of Karnataka, have branch office at Chennai and the branch office is registered in the State of Tamil Nadu under GST Act for providing engineering services for industrial and manufacturing projects. The branch office of the applicant is providing support services like engineering services, design services, accounting services, etc. are provided by the common employees of the applicant company in Tamil Nadu to the Head Office at Bangalore. Applicant seeking ruling on whether services provided by common employees of branch to the Head Office would be considered as "supply" and will attract GST liability?

Observations by the Appellate Authority:

It is seen from the submissions and documents that the applicant from branch office has supplied, apart from accounting services, various technical services to head office in other State where the factory is located to fulfill the product design requirement of the customers. The applicant states that employees are appointed and working for company as whole and not employed for head office or branch specifically, while recognizing the legal position that head office and branch office are distinct person under GST. It is obvious that service of an employee working in a branch flows only through the branch to the head office or customer. As long as the employee is deployed in a branch of an entity, his services that is rendered directly to head office will be in his representative capacity as an employee of the branch.

From comprehensive reading of the statutory provisions of relevant Acts viz. S. 7 (1) (c), S. 25 (4), Explanation to S. 15 of CGST Act, S. 5 (1) of IGST Act, Schedule I (2), any supply of service between two registrations of the same person in the same State or in different States attract the provisions of Section 25 (4) and Section 7 read with Schedule I (2) and Section 15. Even the services of employees deployed in a registered place of business to another registered premises of the same person will attract the above provisions as the employees are treated as related person in terms of explanation to Section 15 and treated as supply by virtue of Schedule I (2) to CGST Act, 2017.

Similar Judicial Pronouncements:

1. Cummins India Ltd. – GST AAAR Maharashtra – Order No. MAH/AAAR/AM-RM/01 of 2021-22, dated 21-12-2021
2. B. G. Shirke Construction Technology (P) Ltd. – GST AAR Maharashtra – Order No. GST-ARA-42/2019-2020/21-22/B-56, dated 09-09-2021
3. Sutherland Mortgage Services – GST AAR Kerala – Order No. KER/32/2019, dated 24-05-2019
4. Chep India (P) Ltd. – GST AAR Maharashtra – Order No. GST-ARA-82/2020-21/B-111, dated 01-12-2022
5. Sanghvi Movers Ltd. – GST AAR Maharashtra – Order No. GST-ARA-43/2017-18/B-50, dated 15-06-2018

Ruling:

Services, including the services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability under respective Acts,

[Profisolutions Private Limited – GST AAR Tamil Nadu – Order No. 07/ARA/2023, dated 31-03-2023]

2. Composite supply of services:

Fact of the matter:

The applicant is engaged in the business of construction and sale of residential apartments, wherein the appellant discharges GST in respect of supply of construction of residential apartments sold prior to receipt of the Occupancy / Completion Certificate. The terms of sale of an under construction residential apartments by the Appellant are governed by an "Agreement for Sale" entered

between the Appellant and the customers, which upon completion of construction is supplemented by a sale deed. As a part of terms of Agreement for Sale between appellant and customers, the Appellant is to provide **certain other services** viz. (i) Electric Meter installation and Deposits; (ii) Water connection charges; (iii) Share of Municipal Taxes; (iv) Advance Maintenance; (v) Club House Maintenance; (vi) Development Charges; (vii) Infrastructure Charges; (viii) Legal Fees etc. The consideration towards the other services is provided for in the sale agreement which is collected under the respective heads. They are distinctly identified in the sale agreement. Presently the appellant has been collecting and discharging GST at the rate of 18% on the Other Charges collected from its customers in respect of the sale of residential apartments.

Contention of the applicant:

The Appellant has stressed that it is a composite supply with construction of residential apartment as the principle supply and other services provided are incidental to the main supply and relied on the Apex Court observations in respect of "dominant intention test" as pronounced in the matter of BSNL Vs. UOI (2006) 145 STC 91 (SC).

Observations by AAR:

It was upheld that "other charges" will not be treated as a consideration for construction services and will be treated as consideration received against supply of independent services of the respective heads. The AAR rejected the contention of the appellant on following grounds.

- i. The contract entered into vide impugned agreement is for supply of construction services.
- ii. For payment of stamp duty consideration towards construction services is only taken into account. The appellant cannot take different and conflicting stand about considerations for the same activity before the two independent authorities.
- iii. The agreement was intended to transfer the ownership right in flats only and not of the adjoining area and other amenities for which charges are collected.
- iv. The charges for construction of residential unit and other services are shown separately.
- v. These facilities/ amenities provided by the applicant to its customers for the limited period because, for these facilities created the customers haven't been given perpetual rights as per the said agreement. Therefore, it is held that the impugned transactions are not part of a composite supply.
- vi. Therefore, these other services do not part of original construction service.

Observations by AAAR:

The perception of the consumer or the services receiver is an important factor in determining whether the services provided are bundled or not. In the construction of residential apartment sector, services in relation to water supply connection charges, electricity meter installation and security deposit for meter, development charges paid to Government authority/local authority, legal fees for transaction of sale of residential apartments can reasonably be expected to be supplied by the builder/ developer/ promoter of a residential project. They are inextricably linked to a residential apartment or dwelling. Without these aspects, the property may not be used. However certain other charges like advance maintenance, club house maintenance, infrastructure charges, share money application and entrance fee of the organization are not expected by every customer. These are not inextricably linked to the construction services in respect of residential projects. The dominant intention test and principles for determination of naturally bundled services point out the independent nature of some of the services. Therefore, following services are clearly identifiable as bundled services:

- (i) Water connection charges;
- (ii) Electric meter installation and deposit for meter;
- (iii) Development charges;
- (iv) Legal fees.

These aforesaid services are considered as naturally bundled services and taxable as per the rate of construction services.

On the other hand, services of:

- (i) Club House Maintenance;
- (ii) Advance Maintenance;
- (iii) Share of Municipal Taxes (pertaining to period after occupancy)
- (iv) Formation and registration of the organization and legal charges in connection there with;
- (v) Share money, Application & entrance fee of the organization;
- (vi) Infrastructure charges are determinable as independent supplies.

The rate of tax thereon would be as per the respective service codes as mentioned in rate notification. The rate of tax on the inextricably linked services would be 12%

Ruling:

We, hereby, partly set aside the MAAR Order No. GST-ARA-68/2019-20/B-52 dated 27.08.2021 by holding that, in the facts and circumstances of the case, the other charges which are inextricably linked to services by way of construction of residential apartment /dwelling are part of a bundled service with principle service of construction of residential apartment /dwelling. The rate of tax applicable on such services would be 12% as applicable to the construction service. The other charges that don't pass the muster of indicators of a bundled service are held as supply of independent services. They are to be taxed as per the respective SAC codes and rate of tax thereon. As per the submission of the appellant, he has collected 18% of GST on the supply of such services. In respect of services which are allowed as bundled services, the present decision implies an excess collection of tax. It is hereby directed that the Appellant to refund the excess tax collected to the customers. Thus, the appeal filed by the Appellant is, hereby, partly allowed.

Similar Judicial Pronouncements:

1. Bengal Peerless Housing Development Company Ltd. – High Court Calcutta - Writ Petition No. 24200 of 2019, dated 13-12-2022
2. Eden Real Estate (P) Ltd. – GST AAR West Bengal – Order No. 19/WBAAR/2022-23, dated 22-02-2022

[Puranik Builders Limited – GST AAR Maharashtra – Order No. MAH/AAAR/DS-RM/19/2022-2023, dated 30-03-2023]

2. Voluntary Gratuitous payment from outgoing member in Co. Op. Housing Society:

Facts of the matter:

Applicant is a co-operative housing society registered under the Maharashtra Co-operative Housing Society Act (MCHS Act) having 48 Flats which provides services to its members and charges GST on maintenance charges recovered from its Members. Applicant has submitted that when there is a transfer of a flat, the outgoing member makes a gratuitous & voluntary payment to the society. The same does not have any implications on outgoing formalities to be completed as per MCHS Act. The Appellant stated that the above contribution made is entirely voluntary and is not at all a consideration received in lieu of services provided by the Appellant. Applicant seeks ruling on whether voluntary contribution received will be liable for GST?

Contention of the applicant:

A gratuitous payment by an outgoing member cannot be regarded as a consideration but rather in substance is a gift to the society as the member is paying on his own volition. The appellant further submitted that such payment cannot be treated as consideration as there is no business transacted and the person acts on his own volition in its entirety. Applicant had relied on the Apex Court pronouncement in the matter of Calcutta Club Ltd.; Ranchi Club Ltd.; Sports Club Ltd., etc., wherein it was upheld that maintenance charges collected by the society are in the form of reimbursement collected for upkeep of the premises, where no benefit goes to the society & each & every expense is incurred from the maintenance charges collected by the society is to maintain the society premises. Similarly, the expenses incurred by the society are already subject to GST and charging tax on maintenance fees would amount to double taxation.

Observation by authority:

The MAAR, vide Order No. GST- ARA-30/2020-21/B-71 dated 31.05.2022, held that pursuant to Bye Laws No. 38 (ix), no additional amount towards donation or contribution to any other funds or under any other pretext shall be recovered from transferor or transferee by the housing society. Further Model Bye law No. 7 of the Cooperative Housing Societies, pertaining to 'raising of Funds' by a housing society, states the various ways how funds can be raised by a Housing Society and clause (e) specifically states that funds can be raised by voluntary donations but not from Transferor or Transferee.

Therefore, MAAR found that the society cannot at all accept voluntary donations from a Transferor or Transferee in transgression of the Model Bye Laws of Cooperative Housing Societies in Maharashtra and therefore the amounts received by the society from the Transferor cannot be considered as voluntary donations. Moreover, from whatever can be seen in the said Affidavit, MAAR observed that the amount of Rs. 17,70,000/- has been given to the society by the outgoing member towards Building Betterment Fund of the Society and it is clearly stated that the amount is inclusive of GST. MAAR note that the appellant has produced unclear incomplete copy of affidavit and avoided to produce the original of said affidavit before the MAAR.

Observation by AAAR:

In the instant case, outgoing member of the society, Mr. Sanjay Prakash Sahjwani, has made payment of Rs 17,70,000/- to the society which appellant claims to be voluntary contribution on his own will and volition. On bare perusal of the affidavit submitted by the appellant in respect of an outgoing member by the name Mr. Sanjay Prakash Sahjwani mentions that the amount of Rs 17,70,000/- is being given towards 'Building Betterment Fund'. It is clearly stated in the affidavit that the said amount is inclusive of GST. Further, the appellant has also submitted a copy of the Affidavit of Shri Chandresh Thakker, Treasurer of the Appellants Society, before the MAAR. On bare perusal of the affidavit submitted by the Treasurer, it is clear that the amount given by the outgoing member Mr. Sanjay Prakash Sahjwani (towards 'Building Betterment Fund') has been transferred by the Appellant Society towards 'Major Repair Fund'. Appellant accounted the said transaction of Rs 17,70,000/- in its books of accounts on 7-3-2020 under the accounting head "Major Repair Fund" and has reported Net amount of Rs 15,00,000, CGST 9% of Rs 1,35,000/- and SGST 9% of Rs 1,35,000/-. Appellant has also received transfer premium of Rs 29,500/- [25,000 Net+2250 CGST+2250 SGST] from the outgoing member Mr. Sanjay Sahjwani which Appellant has accounted in its books of account on 7-3-2020. 13. MAAR has observed that considering the Model Bye Laws No. 7 (e) & 38 (e) (ix) of the Cooperative Housing Societies, appellant cannot recover additional amount towards donation or contribution to any other funds or under any other pretext from transferor or transferee by the housing society. Society cannot collect amounts as voluntary donations from Transferor or Transferee in excess of premium i.e. Rs. 25,000/- fixed by the society for transfer of flats. We concur with the views of MAAR that the society cannot at all accept voluntary donations from a Transferor or Transferee in transgression of the Model Bye Laws of Cooperative Housing Societies in Maharashtra.

Therefore, we concur with the observations of MAAR that the said contribution by the outgoing member is nothing but Advance amounts paid to the society for services carried out or to be carried out for the members of the Society and is therefore taxable as per the GST Laws.

Ruling:

Voluntary contribution / Major Repair Fund received from outgoing members of the society would liable for GST.

[Monalisa Co. Operative Housing Society Ltd. – GST AAAR Maharashtra – Order No. MAH/MAAAR/DS-RM/18/2022-23, dated 23-03-2023]

Company and SEBI Laws Update

1. STATUTORY UPDATES

- 1.1. SEBI directs AMCs to file all final offer documents in digital format - **Circular No. SEBI/HO/IMD/IMD-RAC-2/P/CIR/2023/60, Dated 25-04-2023**

Editorial Note : SEBI has directed all Asset Management Companies (AMCs) to file their final offer documents in digital form only by emailing the same to a dedicated email address i.e. mailto:imdsidfiling@sebi.gov.in. Further, there will be no need to file physical copies of the same with SEBI. Also, all new fund offers (NFOs) must remain open for subscription for at least three working days. The provisions of this circular shall be applicable from 01.05.2023.

- 1.2. SEBI bars Stock Brokers/Clearing Members from creating bank guarantees on clients' funds - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/061, Dated 25-04-2023**

Editorial Note : The SEBI has barred Stock Brokers and Clearing Members from pledging their clients' funds with banks. Presently, stock brokers and clearing members pledge their clients' funds with banks, which in turn issue bank guarantees to clearing corporations for higher amounts. Now, from May 01, 2023, no new bank guarantees shall be created out of clients' funds by stock brokers. Also, existing BGs created out of clients' funds must be wound down by September 30, 2023.

- 1.3. ICSI floats the revised format of Annual Secretarial Compliance Report (ASCR)

Editorial Note : The ICSI has revised the format of the Annual Secretarial Compliance Report (ASCR) to make it easier for Practising Company Secretaries to issue the ASCR. Regulation 24A in SEBI (LODR) Regulations, 2015 requires a listed entity and its material unlisted Indian subsidiaries to annex an ASCR by the PCS in its annual report. In this regard, the ICSI has floated the revised format.

- 1.4. ICSI floats the revised format of Annual Secretarial Compliance Report (ASCR)

Editorial Note : The ICSI has revised the format of the Annual Secretarial Compliance Report for the ease of Practising Company Secretaries issuing the ASCR. Regulation 24A of SEBI (LODR) Regulations, 2015 requires a listed entity and its material unlisted Indian subsidiaries to annex an ASCR by the PCS in its annual report. Further, the Stock Exchanges prescribed a few additional information by PCS that needs to be provided while submitting ASCR. In this regard the ICSI has floated the revised format.

- 1.5. Form STK-2 will be transited to V3 portal with effect from May 01, 2023

1.6. **Editorial Note**: The MCA is planning to launch Form STK-2 along with C-PACE functionality on May 01, 2023 at 12:00 AM. Form STK-2 on the V2 portal will be disabled from 28th April 11:59 PM to 30th April 11:59 pm. Further, the V3 portal will not be available for filing of all Company/LLP forms due to the STK-2 form roll-out from 30th April (03:00 PM) to 01st May 2023 (12:00 AM). Also, Stakeholders are advised to ensure that there are no SRNs in pending payment and resubmission status

- 1.7. SEBI prescribes procedure for obtaining prior approval for change in control of 'Vault Managers' - **Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/59, Dated 21-04-2023**

Editorial Note: SEBI has prescribed the procedure for obtaining prior approval for a change in control of Vault Managers. As per the procedure, Vault Managers must submit an application to SEBI for obtaining prior approval through the SEBI Intermediary Portal. The prior approval granted by SEBI shall be valid for a period of six months from the date of such approval. The circular shall be effective immediately for all applications seeking approval for change in control of Vault Manager.

- 1.8. Disclosure of 'o/s borrowings' by large entities includes long-term borrowing excluding ECBs and inter-corporate loans: SEBI

Editorial Note: A company sought informal guidance from SEBI on whether the term "outstanding borrowing" as prescribed in the Operational Circular for issuers of NCS referred only to o/s borrowings that are simultaneously long-term, unsupported and attracting credit rating requirements. In response to query, the SEBI clarified that o/s long-term borrowings shall mean any o/s borrowing with an original maturity of more than one year, except ECB and inter-corporate loans.

- 1.9. SEBI issues Master Circular for 'Market Infrastructure Institutions' - **Circular No. SEBI/HO/MRD/POD 3/CIR/P/2023/58, Dated 20-04-2023**

Editorial Note: The SEBI had issued multiple circulars, directions, and operating instructions for Market Infrastructure Institutions (MIIs) on a regular basis for necessary compliance. In order to ensure that all market participants find all provisions at one place, Master Circular for MIIs has been prepared. A Master Circular is a compilation of all the existing circulars, and directions issued and applicable as on March 31 of every year, segregated subject-wise.

- 1.10.** SEBI releases dispute resolution mechanism for 'Limited Purpose Clearing Corporation' - **Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/57, Dated 17-04-2023**

Editorial Note: SEBI has put in place a dispute resolution mechanism for the Limited Purpose Clearing Corporation (LPCC). The aim of this mechanism is to address claims and disputes arising from transactions cleared by the LPCC. This mechanism will be used to settle disputes between clearing members inter se, disputes between clearing members and their clients, disputes between the LPCC and its vendors, and disputes between clearing members/clients and the LPCC. The circular shall be effective immediately.

- 1.11.** Strike-off application shall now be made to 'Centre for Processing Accelerated Corporate Exit': MCA

Editorial Note: The MCA has notified Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023. As per amended norms, now an application for removal of a company's name must be made to the 'Centre for Processing Accelerated Corporate Exit (CPACE) in Form STK-2 along with the prescribed fees. Earlier, application was required to be made to the regional ROC. Also, changes were also made in forms STK-2, STK-6 and STK-7. The notification shall be effective from 01.05.2023.

- 1.12.** Stock Exchanges to collect 0.5% of debt securities' issuance value and keep it in an escrow a/c before allotment: SEBI - **Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/CIR/P/2023/56, Dated 03-04-2023**

Editorial Note: SEBI has mandated the stock exchanges to collect an amount of 0.5 % of issuance value of debt securities p.a. based on its maturity & placed it in an escrow a/c before allotment of debt securities in case of public issue or private placement. Earlier, such amount had to be collected upfront prior to listing of debt securities. The circular shall be effective for offer documents filed on or after 01.05.2023 for private placement/public issues of debt securities.

- 1.13.** SEBI unveils its new logo on the 35th Foundation Day - **Press Release No. 8/2023, Dated 12-04-2023**

Editorial Note: SEBI has unveiled its new logo on the occasion of 35th Foundation Day. The new logo was unveiled at a function held at SEBI Head Office, Mumbai in the presence of former Chairmen, and former and present Whole Time Members of SEBI. The new logo of SEBI reflects the continuing commitment of SEBI to being a facilitator in the growth of the economy through capital formation and retaining its rich tradition of a consultative approach in policy making while adopting the power of data and technology.

- 1.14.** SEBI directs stock exchanges to determine a Common Equilibrium Price for share trading on IPO listing date - **Circular No. SEBI/HO/MRD-TPD1/CIR/P/2023/55, Dated 11-04-2023**

Editorial Note: SEBI has issued a new framework for fixing the price band for trading in the share market on the first day of listing after an IPO. As per new framework, Call Auction session will continue to be conducted separately on individual exchanges and orders will be matched by respective SEs after computation of equilibrium price. Also, exchanges shall set the Common Equilibrium Price in their trading systems and apply uniform price bands based on it. The circular shall be effective from 10-06-2023.

- 1.15.** SEBI directs stock exchanges and registered intermediaries to comply with 'Weapons of Mass Destruction Act, 2005' - **Circular No. SEBI/HO/MIRSD/MIRSD-SEC-5/P/CIR/2023/062, Dated 26-04-2023**

Editorial Note: SEBI has directed stock exchanges (SEs) and registered intermediaries (RIs) to comply with 'Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. This Act aims to prevent financing related to weapons of mass destruction and their delivery systems. Accordingly, SEs and RIs must maintain a list of designated individuals or entities and ensure that they do not engage in financial transactions with them.

- 1.16.** SEBI modifies the time limit for disclosure of the Net Asset Value of mutual fund schemes investing overseas - **Circular No. SEBI/HO/IMD/IMD-I POD2/P/CIR/2023/48, Dated 29-03-2023**

Editorial Note: Earlier, SEBI mandated Mutual Fund schemes to disclose the Net Asset Value (NAVs) of all schemes within a specific time limit. Now, in order to address the difficulties being faced in its calculation for schemes investing overseas due to differences in time zones and market hours, SEBI has made partial modifications with regard to timelines for the declaration of NAV depending on investment objective and asset allocation of schemes. The new timeline shall be effective from 01.07.2023.

- 1.17.** SEBI issues 'Cyber Security and Cyber Resilience framework' for Portfolio Managers - **Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/046, Dated 29-03-2023**

Editorial Note: SEBI has introduced a cybersecurity and Cyber Resilience framework for all portfolio managers having an asset worth of at least Rs 3,000 crore. As per the new norms, portfolio managers are required to report any instances of cyber-attacks or breaches encountered by them within 6 hrs of detecting such incidents. Also, Portfolio managers must have a Recovery Time Objective and a Recovery Point Objective of not more than 4 hrs and 30 min. The new guidelines shall be effective from 01.10.2023.

- 1.18. SEBI takes major decisions in its Board meeting to protect the interests of investors - **Press Release No. 6/2023, Dated 29-03-2023**

Editorial Note: SEBI in its meeting has taken various decisions to safeguard the interests of investors and to effectively manage market disruptions. These decisions include making the ASBA facility for secondary markets optional for brokers and investors, and amending the mutual fund regulations to provide clarity on the roles and responsibilities of Trustees and Boards of asset management companies. Further, the decisions to amend stock Brokers regulations, LODR & ICDR regulations, etc. are also taken.

- 1.19. SEBI extends the compliance period of fund raising by Large Corporates by issuance of Debt Securities to 3 years. - **Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/049, Dated 31-03-2023**

Editorial Note: Earlier, the SEBI vide circular dated 10th Aug, 2021 mandates large corporates to raise minimum 25% of their incremental borrowings in a F.Y. through issuance of debt securities. This requirement has to be met over a contiguous block of 2 years from F.Y. 2021-22 onwards. SEBI has received various representations from market participants to extend the same. Therefore, it has been decided that the contiguous block of 2 years will be extended to 3 years to be reckoned from FY 2021-22 onwards.

- 1.20. SEBI issues Operational Circular for Debenture Trustees - **Circular No. SEBI/HO/DDHS/P/CIR/2023/50, Dated 31-03-2023**

Editorial Note: The SEBI had issued multiple circulars over the years, covering the operational and procedural aspects of Debenture Trustees (DTs). In order to enable the industry and other users to access all the applicable circulars at one place, Operational Circular for DTs has been prepared. An operational Circular is a compilation of the existing circulars. The Board of the DTs shall be responsible for ensuring compliance with these provisions. The circular shall be effective from 01-04-2023.

- 1.21. SEBI issues advertisement code for Investment Advisers and Research Analysts - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/51, Dated 05-04-2023**

Editorial Note: SEBI has issued an advertisement code for Investment Advisers (IAs) and Research Analysts (RAs) to strengthen their conduct while issuing any advertisement. An advertisement shall include all forms of communication including pamphlets, research reports, electronic messaging and social media platforms etc. that may influence investment decisions. Also, SEBI has prohibited IAs and RAs from using extensive technical or legal terms or promising guaranteed returns to investors in communications.

- 1.22. SEBI directs investment advisors and research analysts to display their information prominently in advertisements - **Circular No. SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/52, Dated 06-04-2023**

Editorial Note: SEBI has asked Investment Advisers (IAs) and Research Analysts (RAs) to prominently display information such as the name as registered with SEBI, its logo, its registration number etc. In addition, they are required to give the disclaimer that "registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM in no way guarantee performance of the intermediary or provide any assurance of returns to investors" in their advertisements.

- 1.23. SEBI issues guidelines w.r.t exclusion of investors from investing in schemes of AIFs - **Circular No. SEBI/HO/AFD-1/PoD/P/CIR/2023/053, Dated 10-04-2023**

Editorial Note: SEBI has issued guidelines regarding the excusing or excluding an investor from an investment in an AIF. As per the new norms, an AIF may exclude an investor from participating in a particular investment if the manager is satisfied that participation of such investor in investment opportunity would lead to the scheme of AIF being in violation of applicable law or regulation or would result in material adverse effect on scheme of AIF.

- 1.24. SEBI introduces a direct plan allowing investors to invest in AIFs without distribution fee - **Circular No. SEBI/HO/AFD/PoD/CIR/2023/054, Dated 10-04-2023**

Editorial Note: With a view to providing flexibility to investors for investing in AIFs, SEBI has introduced a Direct Plan for schemes of AIFs. Such a direct plan shall not entail any distribution fee/placement fee. Further, SEBI has prescribed the Trail model for the distribution of commission in AIFs. They shall disclose the distribution/placement fee, to the investors at the time of on-boarding. Also, Cat III AIFs shall charge distribution fee/placement fee to investors only on an equal trail basis.

2. SUPREME COURT

SECTION 11 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - APPOINTMENT OF ARBITRATORS

- 2.1. If an instrument liable to stamp duty is not/insufficiently stamped, arbitration agreement contained therein is non-existent in law till stamp duty is paid - **N. N. Global Mercantile (P.) Ltd. v. Indo Unique Flame Ltd. - [2023] 149 taxmann.com 435 (SC)**

SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - POWER TO ISSUE DIRECTIONS AND LEVY PENALTY

- 2.2. SC allows relief to depositors of Sahara Group of Co-operative Societies by releasing Rs. 5000 crores from Sahara-SEBI Refund Account - **Pinak Pani Mohanty v. Union of India - [2023] 148 taxmann.com 460 (SC)**

SECTION 15HB OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - PENALTY FOR CONTRAVENTION WHERE NO SEPARATE PENALTY HAS BEEN PROVIDED

- 2.3. Where Tribunal while upholding violation of section 15HB had reduced penalty from Rs. 3 lakh to Rs. 75 thousand, which was below minimum prescribed under section 15HB i.e. Rs. 1 lakh, order of Tribunal was to be modified and penalty of Rs. 75000 was to be substituted to Rs. 1 lakh - **Securities And Exchange Board of India v. Sandip Ray - [2023] 148 taxmann.com 378 (SC)**

SECTION 18 OF THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 - PREPARATION AND SANCTION OF SCHEMES

- 2.4. BIFR justified in not confirming the solitary bid as procedure adopted by operating agency for public auction of sick company's assets was defective - **Rajiv Kumar Jindal v. BCI Staff Colony Residential Welfare Association - [2023] 149 taxmann.com 441 (SC)**

SECTION 152 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - APPEAL TO SUPREME COURT

- 2.5. Supreme Court had upheld order of SAT whereby it dismissed appeal against order of SEBI on account of inordinate delay in approaching SAT - **Rohit Mansukhani v. Securities and Exchange Board of India - [2023] 149 taxmann.com 108 (SC)**

3. HIGH COURT

SECTION 2(57) OF THE COMPANIES ACT, 2013 - NET WORTH

- 3.1. Preference shares redeemable at instance of issuer without any fixed term or tenure attached to these shares would form part of paid up share capital which in turn was a component of net worth and cannot be treated as a liability - **Teq Green Power XIII (P.) Ltd. v. REMC Ltd. - [2023] 149 taxmann.com 211 (Delhi)**

SECTION 137 OF THE COMPANIES ACT, 2013 - FINANCIAL STATEMENT - COPY TO BE FILED WITH REGISTRAR

- 3.2. Where certain circulars were issued by Ministry of Corporate Affairs (MCA), i.e., General Circular No. 11/2020 and 12/2020 dated 24-3-2020 and 30-3-2020, respectively to enable defaulting companies to file financial statements (Form AOC-

4) belatedly but there was nothing on record to show that these forms were filled by petitioner company or that there was any attempt to upload said forms within deadlines fixed, instant petition seeking further extension for uploading said documents without any additional fees or penalty was to be dismissed - **Aurbindo Chaudhuri Memorial Great Indian Dream Foundation v. Union of India - [2023] 148 taxmann.com 337 (Delhi)**

SECTION 168 OF THE COMPANIES ACT, 2013 - DIRECTORS - RESIGNATION OF

- 3.3. For the purposes of prosecution, director's resignation intimated by him to RoC is effective even if company failed to intimate RoC - **Pranab Kumar Roy v. Securities and Exchange Board of India - [2023] 149 taxmann.com 12 (Calcutta)**

SECTION 212 OF THE COMPANIES ACT, 2013 - SERIOUS FRAUD INVESTIGATION OFFICE - INVESTIGATION BY

- 3.4. Where petitioner was taken into judicial custody alleging that he used to arrange documents and people in whose name fake entities and bank accounts were opened, which were subsequently used by director of accused company 'PPPL' to route funds of PPPL in guise of sale/purchase of plastic granules, in view of fact that co-accused had already been granted bail and there was no allegation that petitioner could either intimidate any witnesses or tamper with evidence, petitioner was to be released on bail - **Taranjeet Singh Bagga @Sonu Singh v. Serious Fraud Investigation Office - [2023] 149 taxmann.com 106 (Delhi)**

4. SAT

REGULATIONS 3 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 - PROHIBITION OF DEALING IN SECURITIES

- 4.1. Where SEBI imposed penalty of Rs. 10.30 crores on appellant company for violation of regulations 3 and 4 of 'PFUTP Regulations', in view of fact that against various other companies for similar/identical offences, SEBI had only awarded a penalty of Rs. 25 lakh, penalty imposed in instant case was excessive and, therefore, was to be reduced to Rs. 25 lakhs - **Jindal Cotex Ltd. v. Securities & Exchange Board India - [2023] 149 taxmann.com 231 (SAT - Mumbai)**

REGULATION 31A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 - CONDITIONS FOR RECLASSIFICATION OF ANY PERSON AS PROMOTER/PUBLIC



- 4.2. Where appellant was shown as a promoter of company and classification of appellant as a promoter was done in accordance with SAST Regulation, it was incumbent upon company to take requisite steps to comply with regulation 31A of LODR Regulations for reclassification of appellant in category of public shareholder and appellant could not be penalized merely because company was not following procedure provided under regulation 31A of LODR Regulations - ***Kashyap K. Mehta v. BSE Ltd.*** - [2023] 148 *taxmann.com* 375 (SAT - Mumbai)

REGULATION 73 OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009 -

DISCLOSURES

- 4.3. Where a show cause notice (SCN) was issued to statutory auditor of company 'PSTL' i.e. appellant alleging that certificate given by him regarding receipt of money from promoter of 'PSTL' towards subscription of warrants of 'PSTL' was false and after a period of ten years from issue of said SCN SEBI passed impugned order imposing a penalty of Rs. 1 lakh on appellant, impugned order passed by SEBI could not be sustained - ***R. Mugunthan v. Securities & Exchange Board India*** - [2023] 148 *taxmann.com* 336 (SAT - Mumbai)

COMPETITION LAW

1. STATUTORY UPDATES

1.1. Hon'ble President nods to the Competition (Amendment) Act, 2023

Editorial Note: The President has given assent to the Competition (Amendment) Act, 2023. The key amendments include a proposal to reduce the timeline for approving mergers from 210 to 150 days and the decriminalization of certain offences under the Act by changing the nature of punishment from the imposition of fines to civil penalties. Also, the Act provides a framework for settlement and commitment to faster resolution of investigations. The Amendment Act shall come into force from 11.04.2023.

1.2. Lok Sabha passes the Competition (Amendment) Bill, 2023

Editorial Note: The Competition (Amendment) Bill, 2023 has been passed by Lok Sabha. The key amendments include a proposal to reduce the timeline for approving mergers from 210 to 150 days, decriminalisation of certain offences under the Act by changing the nature of punishment from the imposition of fines to civil penalties. Also, the bill proposes to provide a framework for

Settlement and commitment to faster resolution of investigations of anti-competitive agreements and abuse of dominant position.

2. HIGH COURT

SECTION 15 OF THE COMPETITION ACT, 2002 - VACANCY, ETC., NOT TO INVALIDATE PROCEEDINGS OF COMMISSION

- 2.1. Section 15 acts as a saving clause in regard to a situation where a vacancy or a defect in constitution of CCI would arise and any such vacancy or defect in constitution would not invalidate any proceedings so far as adjudicatory powers of CCI are concerned - *Alliance of Digital India Foundation v. Competition Commission of India* - [2023] 149 taxmann.com 415 (Delhi)

SECTION 26 OF THE COMPETITION ACT, 2002 - PROCEDURE FOR INQUIRY UNDER SECTION 19

- 2.2. Gujarat HC declines to interfere with investigation order u/s 26(1) passed by CCI with regard to allegations of cartel amongst paper mills - *J.K. Paper Ltd. v. Competition Commissioner of India* - [2023] 149 taxmann.com 127 (Gujarat)

FEMA Banking and Insurance Laws

1. STATUTORY UPDATES

- 1.1. RBI revises norms for 'General Credit Card (GCC) Scheme' - **Circular No. RBI/2023-24/19 FIDD.MSME & NFS.BC.No.06/06.02.31/2023-24, Dated 25-04-2023**

Editorial Note: The RBI has revised the norms for 'General Credit Card (GCC) Scheme'. As per the revised norms, GCC Scheme shall be known as "General Credit Card (GCC) Facility". These instructions apply to all banks that are eligible to issue credit cards. Also, individuals or entities that are sanctioned working capital facilities for non-farm entrepreneurial activities eligible for classification under priority sector guidelines, may be issued GCC. These instructions shall be effective from 25.04.2023.

- 1.2. RBI harmonises provisioning norms for standard assets applicable to all categories of Urban Co-operative banks - **Circular No. RBI/2023-24/18 DOR.STR.REC.12/21.04.048/2023-24, Dated 24-04-2023**

Editorial Note :The RBI vide circular no. dated December 01, 2022 had categorised Urban Co-operative Banks (UCBs) into 4 Tiers namely Tier 1, Tier 2, Tier 3 and Tier 4 for regulatory purposes. Upon review, RBI has now decided to harmonise the provisioning norms for standard assets applicable to all categories of UCBs, irrespective of their Tier in the revised framework. Accordingly, the standard asset provisioning norms have been prescribed. These norms shall be applicable from 24.04.2023.

- 1.3. IFSCA prescribes reporting requirements for 'IFSC Insurance Offices' undertaking life insurance businesses - **Notification No. IFSCA/2022-23/GN/REG039., Dated 19-04-2023**

Editorial Note: IFSCA has notified the IFSCA (Assets, Liabilities, Solvency Margin and Abstract of Actuarial Report for Life Insurance Business) Regulations, 2023. The aim is to specify the requirements related to capital, solvency and submission of abstract of actuarial report by an IFSC Insurance Office (IIO) for undertaking Life Insurance Business. As per the new norms, an IIO shall prepare and submit a statement of admissible assets, liabilities, solvency margin etc. in the prescribed forms.

- 1.4. RBI releases minutes of the Monetary Policy Committee's 42nd Meeting - Press Release: 2023-2024/88, **Dated 20-04-2023**

Editorial Note: The RBI conducted its 42nd meeting of the Monetary Policy Committee (MPC), on April 3, 5 and 6, 2023. The Governor stated that since the last meeting of MPC in February 2023, the global economic environment has changed dramatically. Banking sector turmoil and geopolitical issues are adding uncertainty to the already slow pace of easing global inflation. During this meeting, RBI decided to keep the policy repo rate unchanged at 6.50%. The next meeting of MPC is

scheduled for June 6-8th, 2023.

- 1.5. EPFO extends timeline for linking of Aadhar with UAN of EPF members up to 31.03.2024 - **Notification No.BKG-27/5/2021-BKG/E-38791/, Dated 18-04-2023**

Editorial Note: The Employee Provident Fund Organisation (EPFO) has granted an extension for mandatory linking of Aadhaar with the Universal Account Number (UAN) of EPF members for filing of ECR (Electronic Challan cum Return) up to 31.03.2024. The extension applies to certain classes of establishments including Beedi making, Building and Construction and Plantation Industries and to the North Eastern Region comprising of States of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland & Tripura.

- 1.6. IFSCA directs 'IFSC Insurance Offices' to develop their re-insurance strategy programme for risk management - **Notification F. No. IFSCA/2022-23/GN/REG036., Dated 11-04-2023**

Editorial Note: IFSCA has notified IFSCA (Re-insurance) Regulations, 2023 with an objective to provide a framework for oversight and control of inward and outward arrangement of re-insurance business by IFSC Insurance Offices (IIOs). As per the new norms, every IIO shall develop and document its Re-insurance Strategy Programme, for overall underwriting strategy and risk management philosophy. Re-insurance means insurance of part of one insurer's risk by another insurer accepting the risk for a premium.

- 1.7. IFSCA specifies 'operating lease' as a financial product - **Notification No. IFSCA/2022-23/GN/037, Dated 11-04-2023**

Editorial Note: IFSCA has included 'operating lease' (including a hybrid of operating and financial lease, in respect of 'Aviation training simulation devices) under the definition of financial product as specified in the Act. The notification shall be effective from 11.04.2023. Currently, the definition of "financial product" u/s 3(d) of the IFSCA Act includes securities, contracts of insurance, deposits, credit arrangements, foreign currency contracts and any other instrument that may be notified by Govt.

- 1.8. IFSCA allows portfolio managers to park funds of clients in a separate bank account in India or abroad - **Notification No. IFSCA/2022-23/GN/REG034., Dated 11-04-2023**

Editorial Note: IFSCA has notified an amendment to IFSCA (Fund Management) Regulations, 2022. An amendment has been made to Regulation 77. Now, the funds of a client who avails of portfolio management services (other than those availing only advisory services) can be maintained in (a) a specific bank account of Fund Management Entity (FME) in a banking unit, (b) a specific bank account of the client in a banking unit, a bank in India or a foreign jurisdiction.

- 1.9. RBI's draft guidelines proposes to prohibit capitalization of penalties on loan defaults - **Press Release: 2023-2024/56, Dated 12-04-2023**

Editorial Note: Earlier, RBI announced the review of extant regulatory guidelines on levy of penal interest. Now, the RBI has released a draft circular on Fair Lending Practice - Penal Charges in Loan Accounts. As per the draft circular, penalties for default in repayment of loan must be treated as penal charges, rather than a penal rate of interest on the loan amount. Also, there shall be no capitalisation of penal charges, i.e., no further interest will be computed on such charges.

- 1.10. RBI extends the facility of online submission of Form A2 to AD category-II entities - **RBI/2023-24/16 A.P. (DIR Series) Circular No. 02, Dated 12-04-2023**

Editorial Note: The RBI has decided to extend the facility of online submission of Form A2 to AD Category-II entities. Earlier, the facility of online submission of Form A2 was allowed to AD banks offering Internet banking facilities to their customers. The AD Category-II entities include a) upgraded Full Fledged Money Changers (FFMCs), b) selected Regional Rural Banks (RRBs), d) Urban Cooperative Banks (UCBs) and other entities.

- 1.11. RBI releases framework for acceptance of Green Deposits by Regulated Entities - **Notification No. RBI/2023-24/14 DOR.SFG.REC.10/30.01.021/2023-24, Dated 11-04-2023**

Editorial Note: RBI has released a framework for acceptance of Green Deposits by Regulated Entities (REs). The objective is to encourage REs to offer green deposits to customers, protect interests of depositors etc. The framework allows REs to issue green deposits as cumulative or non-cumulative deposits. On maturity, the green deposits would be renewed or withdrawn at the option of the depositor. Also, the green deposits shall be denominated in INR only. The framework shall be effective from June 1, 2023.

- 1.12. Resident Individuals investing in IFSCs may keep funds idle in FC account without repatriating to domestic a/c: RBI - **Circular No. RBI/2023-24/21 A.P. (DIR Series) Circular No.03, Dated 26-04-2023**

Editorial Note: Earlier, the RBI permitted resident individuals to make remittances under LRS to IFSCs in India, subject to a condition that they may open a Foreign Currency Account (FCA) in IFSCs, for making permissible investments under LRS. Further, any funds lying idle in the account for a period up to 15 days from date of its receipt were required to be immediately repatriated to the domestic INR account. Now, the RBI has withdrawn the condition of repatriating idle funds with immediate effect.

- 1.13. Normal clearing timings as applicable to any working "Friday" shall be followed on 31.03.2023 for govt. transactions: RBI - **Notification No. RBI/2022-23/190 CO.DPSS.RPPD.No.S2185/03-01-002/2022-2023, Dated 29-03-2023**

Editorial Note: RBI has directed that normal clearing timings as applicable to any working "Friday" shall be followed on March 31, 2023. To facilitate accounting of Govt. transactions for the current financial year by 31.03.2023, RBI has decided to conduct Special Clearing exclusively for Government Cheques across the three CTS grids in New Delhi, Chennai and Mumbai. The presentation clearing will be done between 5:00 and 5:30 pm and the return clearing will be done between 7:00-7:30 pm.

- 1.14. Revised Regulatory Framework for UCBs – Net Worth and Capital Adequacy to come into effect from 31.03.2023: RBI - **Circular No. RBI/2022-23/189 DOR.CAP.REC. No.109/09.18.201/2022-23, Dated 28-03-2023**

Editorial Note: Earlier, RBI via circular no. dated December 01, 2022 issued the 'Revised Regulatory Framework for Urban Co-operative Banks (UCBs) – Net Worth and Capital Adequacy. As per the framework, Tier 1 UCBs operating in a single district shall have a minimum net worth of Rs. 2 crores whereas all other UCBs (of all tiers) shall have a minimum net worth of ₹5 crores. The applicability of the same was from April 1, 2023. Now, the RBI has decided that the instructions shall be effective from March 31, 2023.

- 1.15. RBI releases data on India's International Investment Position for the end of December 2022 - **Press Release No. 2022-2023/1948, Dated 31-03-2023**

Editorial Note: The RBI has released data on India's International Investment Position (IIP) for the end of December 2022. As per data released, net claims of non-residents in India declined by USD 12.0 billion during October-December 2022 and stood at USD 374.5 billion at end of December 2022. Further, trade credits & loans were primary contributors to rise in India's foreign liabilities. Also, India's international assets covered 70.0% of its international liabilities as compared with 72.5% a year earlier.

- 1.16. RBI releases data relating to the financial performance of FDI companies in India during F.Y. 2021-22 - **Press Release No. 2022-2023/1943, Dated 31-03-2023**

Editorial Note: The RBI has released data relating to financial performance of foreign direct investment (FDI) companies operating in India for year 2021-22. The data is based on audited annual accounts of 2,206 companies that reported their financials in Indian Accounting Standards (Ind-AS) format for three accounting years, from 2019-20 to 2021-22. As per data released, FDI companies witnessed a broad-based recovery in 2021-22 as the impact of COVID-19 pandemic diminished and economic activity rebounded.

- 1.17. RBI releases data on the financial performance of non-govt. non-financial Pvt. Ltd. companies during F.Y. 2021-22 - **Press Release No. 2022-2023/1944, Dated 31-03-2023**

Editorial Note: The RBI has released data relating to the financial performance of non-government non-financial (NGNF) private limited companies during 2021-22. The data is based on audited

annual accounts of 9,659 companies that reported their financials in the Indian Accounting Standards (Ind-AS) format for three accounting years, from 2019-20 to 2021-22. As per data released sales of NGNF private limited companies surged by 31.7% during 2021-22 after recording low growth of 3.6% in the previous year.

- 1.18. RBI issues a statement setting out various development and regulatory policy measures - **Press Release: 2023-2024/23, Dated 06-04-2023**

Editorial Note: The RBI has issued a statement setting out various developmental and regulatory policy measures relating to (i) Financial Markets; (ii) Regulation and Supervision; and (ii) Payment and Settlement systems. The key highlights include (a) Developing an Onshore Non-deliverable Derivatives Market, (b) Development of a Centralised Web portal for the public to search unclaimed deposits (c) Enhancing the efficiency of Regulatory Processes, (d) Operation of Pre-Sanctioned Credit Lines at banks.

- 1.19. RBI keeps repo rate unchanged at 6.5% - **Press Release No. 2023-2024/21 & 22, Dated 06-04-2023**

Editorial Note: On the basis of an assessment of the current and evolving macroeconomic situation, the Monetary Policy Committee (MPC) at its meeting today has decided to keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at its current level of 6.50%. Further, the RBI has kept the standing deposit facility rate unchanged at 6.25% and the marginal standing facility rate and the Bank Rate at 6.75%. Also, RBI Governor Shaktikanta Das stated that the decision was made unanimously.

- 1.20. Govt. cautions media platforms to refrain from displaying advertisements related to online betting - **Advisory No.DM/15/2022-DM, Dated 06-04-2023**

Editorial Note: Earlier, the Ministry of Information & Broadcasting advised private television channels and digital news publishers, to refrain from showing advertisements or promotional content of betting sites. Despite this, the Ministry has been informed of recent instances where news publishers have violated the statutes. Now, the Ministry has taken strong exception to such practices and urged all media platforms to immediately refrain from showing such advertisements and promotional content.

- 1.21. RBI launches online App for issuance and renewal of licenses for full-fledged money changers and non-bank AD category-II - **Circular No. RBI/2023-24/13 A.P. (DIR Series) Circular No.01, Dated 06-04-2023**

Editorial Note : The RBI has developed a software application, known as 'AP Connect' for processing applications related to licensing of Full-Fledged Money Changers (FFMCs), non-bank Authorised Dealers (AD) Category-II, authorisation as Money Transfer Service Scheme (MTSS) Agent, renewal of existing licences/authorisations, for seeking approval and submission of various statements/returns. In this regard, RBI has directed them

to register on the application within 3 months from the date of circular.

- 1.22. RBI simplifies the application process for the registration of Core Investment Companies - **Press Release No. 2023-2024/44, Dated 10-04-2023**

Editorial Note: Recently, RBI took a comprehensive review of the system for processing applications for registration as Core Investment Companies (CICs) to make the registration process smoother and hassle-free. Accordingly, RBI has simplified the application form to make it structured and aligned with the extant CIC regulations. Also, number of documents to be furnished along with the application form has been reduced to 18 from the existing set of 52 documents to make registration process user-friendly.

2. SUPREME COURT

SECTION 3 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCE OF MONEY LAUNDERING

- 2.1. Where there were serious allegations of money laundering alleged against petitioners in prosecution complaint alleging that petitioner and his companies had received defrauded funds from accounts of fictitious firms/and sufficient material particulars had been narrated in said complaint to substantiate said allegations, which prima facie showed direct involvement of petitioners in alleged offences of money laundering, High Court had rightly dismissed petitions filed by petitioners seeking prayer to quash prosecution complaint - **Anoop Bartaria v. Deputy Director Enforcement Directorate - [2023] 149 taxmann.com 412 (SC)**
- 2.2. Territorial jurisdiction of a PMLA Special Court is to be decided wrt the place/places where anyone of the activities/processes which constitute the offence u/s 3 took place - **KA Rauf Sherif v. Directorate of Enforcement - [2023] 149 taxmann.com 143 (SC)**
- 2.3. Where FIR was registered against appellant for predicate offence, pursuant to which appellant was accused of having committed offence of money-laundering by diverting funds through issuance of GDRs and arrested by ED, however, no final report had been filed in FIR for predicate offence, for past nine years, appellant was to be directed to be enlarged on bail, subject to such terms and conditions as may be imposed by Metropolitan Sessions Judge-cum-Special Court under PMLA - **Sanjay Raghunath Agarwal v. Directorate of Enforcement - [2023] 149 taxmann.com 336 (SC)**

SECTION 14 OF THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999 - DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

- 2.4. Jurisdiction of IRDA u/s 14(2) of IRDA Act,1999 is of wide amplitude & includes power to probe allegations of bribery by insurer to secure business - **Marsh India Insurance Brokers (P.)**

Ltd. v. Atkins Special Risks Ltd. - [2023] 149 taxmann.com 180 (SC)

SECTION 18 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - APPEAL TO APPELLATE TRIBUNAL

2.5. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court, hence, where an alternative remedy under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act was available, litigant could not have used constitutional remedy as an alternative - **South Indian Bank Ltd. v. Naveen Mathew Philip - [2023] 149 taxmann.com 330 (SC)**

SECTION 34 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - CIVIL COURT NOT TO HAVE JURISDICTION

2.6. Jurisdiction of civil court is barred in respect of matters which a DRT or an Appellate Tribunal is empowered to determine in respect of any action taken 'or to be taken in pursuance of any power conferred under SARFAESI Act' - Prohibition covers even matters which may be taken cognizance of by DRT though no measure in that direction has so far been taken under subsection (4) of Section 13 - Any matter in respect of which an action may be taken even later on, civil court shall have no jurisdiction to entertain any proceeding thereof - To a very limited extent jurisdiction of civil court can also be invoked, where for example, action of secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to extent the scope is permissible to bring an action in civil court in cases of English mortgages - **Punjab and Sind Bank v. Frontline Corporation Ltd. - [2023] 149 taxmann.com 363 (SC)**

SECTION 36 OF THE RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993 - POWER TO MAKE RULES

2.7. SC upholds mandatory e-filing of pleadings before DRTs/DRATs & directs phased replication of mandatory e-filing by other Tribunals/Courts - **M P High Court Bar Association v. Union of India - [2023] 149 taxmann.com 114 (SC)**

SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - DISHONOUR OF CHEQUE FOR INSUFFICIENCY ETC., OF FUNDS IN ACCOUNT

2.8. Where accused convicted for cheque bouncing had entered into a Memorandum of Understanding (MoU) with complainant to settle dispute and as per said MoU, complainant was bound to file a compromise petition before High Court, by not doing same complainant had withdrawn key information from High Court, which had led to High Court confirming conviction of appellants, and therefore, instant appeal against order passed by High Court was to be allowed and order of conviction was to be set aside -

B.V. Sessaiah v. State of Telangana - [2023] 149 taxmann.com 110 (SC)

3. HIGH COURT

SECTION 5 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - ATTACHMENT OF PROPERTY INVOLVED IN MONEY LAUNDERING

- 3.1. Where some of properties against which provisional attachment order had been passed by respondent, were charged to appellant and it was a case of appellant that being a secured creditor under SARFAESI Act, it had right over properties in priority over respondent, Director of Enforcement in view of fact that these issues required consideration but until
- 3.2. then if property, which had been attached under provisions of PMLA was not disposed, property might get wasted or encroached upon and value would also get eroded, subject properties were to be sold and sale proceeds was to be deposited with Registrar - **Aditya Birla Finance Ltd. v. Directorate of Enforcement, Government of India - [2023] 148 taxmann.com 399 (Bombay)**

SECTION 35 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - APPEAL TO HIGH COURT

- 3.3. Where petitioner had filed instant writ petition seeking in effect same relief that was sought in previous writ petition but it was clothed in representations, which was a masquerade, second writ petition for same cause of action was not maintainable - **Rohit Jawa v. Reserve Bank of India - [2023] 149 taxmann.com 58 (Allahabad)**

SECTION 45 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCES TO BE COGNIZABLE AND NON-BAILABLE

- 3.4. Where applicant was in custody in money laundering case and trial in instant case was going on with good pace and same was likely be concluded very soon, applicant's bail application was to be rejected - **Abdul Razak Peediyakkal v. Union of India - [2023] 149 taxmann.com 57 (Allahabad)**
- 3.5. Delhi HC denies bail to Delhi ex-Minister Satyendar Jain in money laundering case - **Satyendar Kumar Jain v. Directorate of Enforcement - [2023] 149 taxmann.com 213 (Delhi)**

SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - DISHONOUR OF CHEQUE FOR INSUFFICIENCY, ETC., OF FUNDS IN ACCOUNT

- 3.6. Where a complaint was filed against accused on ground that cheque issued by accused to discharge its liability had been dishonoured and no probable defence had been provided by accused nor accused had been able to dislodge or rebut prosecution evidence that cheque had been issued towards discharge of legally recoverable debt, Trial Court was not justified



in acquitting accused for offence punishable under section 138 -
***Indranil Mondal v. Birla Corporation Ltd. - [2023] 148
taxmann.com 338 (Calcutta)***

**SECTION 141 OF THE NEGOTIABLE INSTRUMENTS ACT,
1881 - OFFENCE BY COMPANIES**

3.7. Moratorium provision contained under section 14 (1) of IBC would apply only to a corporate debtor and natural persons i.e. directors of corporate debtor mentioned in section 141 of N.I. Act would continue to be statutorily liable under Chapter XVII of N.I. Act -
***PVS Memorial Hospital v. Dr. Satheeshlype - [2023] 149
taxmann.com 232 (Kerala)***

FTP Amnesty Scheme – Is it actually a reprieve?

Mr. Jigar Doshi and Ms. Nikita Maheshwari

After much ado, the Director General of Foreign Trade (DGFT) has finally released the new Foreign Trade Policy (FTP). The importer-exporter community was waiting with bated breath and finally a new policy has come with somethings to cheer and somethings to fear! While a lot has been discussed about the new features of the policy, we wish to hold a torch and throw some light on the amnesty scheme which has been announced for the Export Promotion Capital Goods (EPCG) Scheme and Advance Authorisation (AA) license holders.

This amnesty scheme is expected to benefit around 1000 exporters of the country who could not meet their Export Obligations (EO) and would have been liable for a hefty interest and a cumbersome penalty otherwise. Moreover, it shall also release stuck revenue for the Government. In FY 2022 alone, the Government had foregone a revenue of INR 11,700 crores and INR 2,862 crores in EPCG and AA schemes respectively.

In the last few years, due to the pandemic, the exporters have not been able to meet their Eos. There were some instances where the interest amount was also exceeding the customs duty payable. In view of the same the exporters had been representing before the Government to provide some relief from the interest and penalty provisions; taking this request into consideration, the Government has finally rolled out the much-welcomed amnesty scheme.

Who can apply for the scheme?

All AA and EPCG holders who were granted licenses prior to 31 March 2015 are eligible to apply for the amnesty scheme. Moreover, an additional eligibility condition which has been prescribed states that the EO period should be valid beyond 12 August 2013. This is due to the fact that the erstwhile amnesty scheme issued by DGFT for EPCG and AA holders was valid till 12 August 2013. Hence, an exporter whose license is dated prior to 31 March 2015 and at the same time the EO period should be post 12 August 2013 can apply for the amnesty scheme.

How does the scheme work?

The scheme specifies that all the EPCG and AA license holders who were unable to achieve the required EO whether partially or fully, can apply for amnesty scheme. As a part of this scheme, the exporter shall be required to pay the 100% customs duties which were saved at the time of import. Such customs duty shall include BCD, CVD, SAD, Additional Duties etc. Thus, no concession has been provided as far as the Customs duty is concerned.

On the interest front, though the Government has put a stop on the meter by fixing the interest rate to the maximum of duty component. This implies that in cases where interest was exceeding the Customs duty payable, then interest to the extent of the duty amount only needs to be paid by the assessee; the balance interest stands waived.

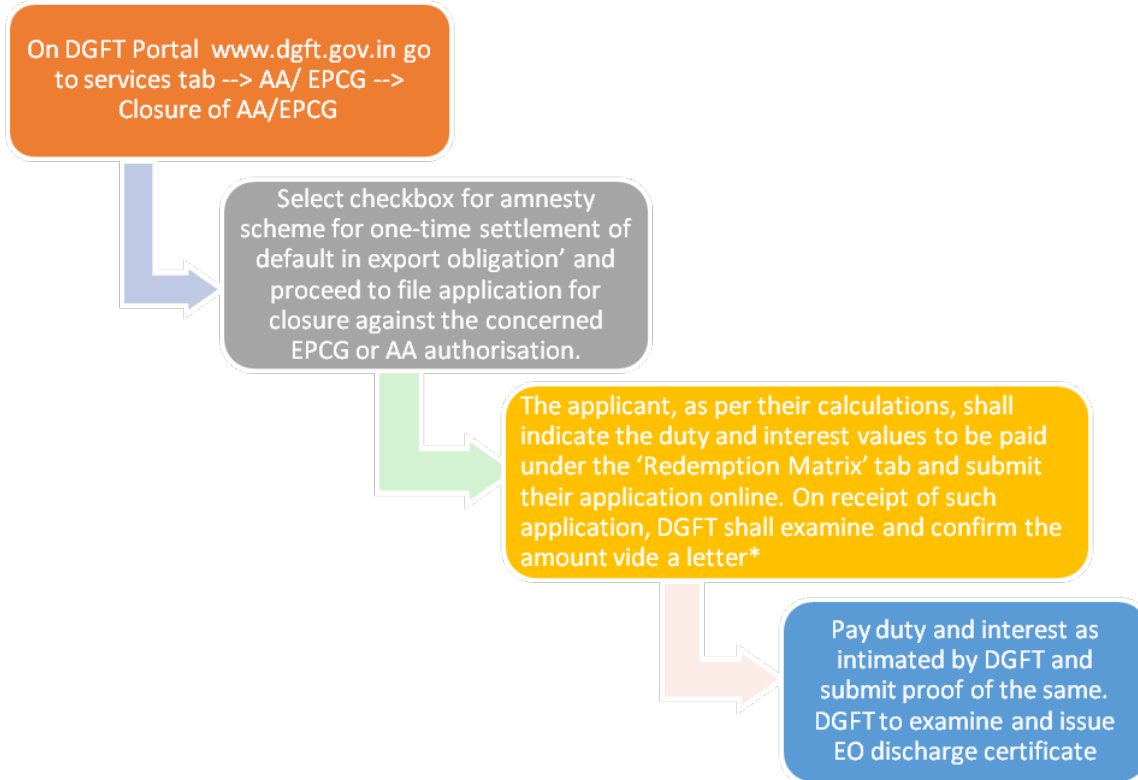
Further, the penalty stands waived completely if the assessee discharges tax and interest in full.

Therefore, in effect, exporters would be required to pay full Customs duty, interest (lower of actual interest computed and 100% of customs duty component).

How to apply for the scheme?

The DGFT has issued a policy circular no. 1/ 2023-24 dated 17 April 2023 to prescribed the procedure for applying for amnesty scheme for one time settlement of default in export obligation by Advance and EPCG authorisation holders.

**In case of full default (i.e., 100% EO pending), Make payment to jurisdictional Customs authority and submit proof to regional DGFT office. In case of partial default, apply for EO discharge certificate and submit details of EO achieved. While making application for*



amnesty, submit details of EO achieved. Regional DGFT to intimate amount of duty and interest payable under Amnesty

What else does one need to know?

- An eligible exporter can apply for the amnesty scheme anytime before 30 June 2023. So effectively, the Government has given a period of three months to the exporters for making an application.
- The DGFT has been directed to process amnesty applications within three working days.
- Further, the last date to make payment of duty and interest is 30 September 2023. The policy is silent on time limit in cases of partial default wherein the DGFT has to compute and communicate the duty payable.
- Furthermore, vide Public Notice No. 2/2023 dated 1 April 2023 the DGFT clarified the duties on which interest is payable. No interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty.
- For cases in adjudication, it has been stated that such cases will also be eligible for amnesty. Such cases would include where Show Cause Notice has been issued but order is not passed; where order is passed but appeal is not filed. In such cases, the exporter would have to obtain a closure letter from DGFT and submit the same to adjudicating authority or appellate authority depending on where the matter is pending.
- The amnesty scheme will not be applicable to cases that are being investigated or have been judged for fraudulent activities, misdeclaration, or unauthorized diversion of imported goods or capital goods.
- Further, such scheme shall also not be applicable to instances where duty along with full interest has already been deposited. Thus, if a license holder has already paid the full duty along with interest to prevent the accumulation of additional interest and has also filed an appeal or had the matter adjudicated, they will not be able to apply for relief from penalty under the



scheme.

- Furthermore, license holders will not be able to claim CENVAT credit on duty paid under the scheme or seek a refund of any amount paid under the scheme. They must provide an undertaking that they will not claim CENVAT credit or seek a refund of amounts paid under the scheme.

Author's comments

Undoubtedly, the amnesty scheme comes as a great relief for the struggling export community, which is still trying to recover from the pandemic-induced losses. The government has introduced the scheme at an opportune moment, providing a much-needed respite to exporters who have been hesitant to pay the accumulating interest. However, exporters who have already paid their dues before the launch of the scheme will not be able to benefit from it. This brings us to the ultimate debate – are amnesty schemes good for the country's tax ecosystem? While it may guarantee quick tax collections for the Government and bring defaulters in tax net at no cost of investigations, it also is demoralising for honest taxpayers who pay interest on tax demand proactively.

Amnesty schemes encourage taxpayers in any country to ignore compliances and wait for amnesties. Time and again, tax experts have termed amnesty schemes as morally corrosive. It gives the right to dodge the bullet to people who have faltered on paying taxes. Even in the current case, the fact that the option of availing amnesty schemes is not available to exporters who have already paid interest (maybe even more than 100% of duty) cannot claim refund of penalty paid or claim interest in excess of 100% of duty proves the same point.

However, this is a longstanding debate that may not be resolved anytime soon. Nevertheless, the government's objective is to assist the export community, and it is certain that a significant number of exporters who were unable to fulfil their export obligations will receive support through this scheme. Although, there are certain nuances which needs clarification, the exporters can for additional assistance, may either approach the concerned RA or utilize any of the following Helpdesk channels:-

- Raise a service request ticket through the DGFT Helpdesk service
- Send an email to DGFT Helpdesk at dgftedi@nic.in
- Call the Toll-free DGFT Helpdesk numbers

To conclude, we hope that maximum exporters can benefit from this scheme and timely resolutions can be provided.

[The authors are Mr. Jigar Doshi, Founding Partner, TMSL and Ms. Nikita Maheshwari, Senior Manager, TMSL. The views are personal]

Insolvency and Bankruptcy Code

1. SUPREME COURT

SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR

- 1.1. Where operational creditor claimed an amount to an extent of Rs. 1,81,45,943 whereas corporate debtor contended that only a sum of Rs. 22,56,833 was to be paid and NCLAT held that since sum due in any event was more than Rs. 1,00,000, section 9 application filed by NCLT was sustainable and accordingly remanded matter back to NCLT, since amount of Rs. 22,56,833 was undisputed and had already been deposited by corporate debtor before NCLT, matter was to be remitted back to NCLAT to undertake exercise to find out as to whether any amount more than Rs. 22,56,833 was due as claimed by the respondent - **Compack Enterprises India (P.) Ltd. v. Jitendra Impex (P.) Ltd.** - [2023] 149 taxmann.com 417 (SC)

SECTION 12A OF INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

- 1.2. Section 12A cannot be invoked in absence of requisite concurrence/consent of 90 per cent of creditors - **Hem Singh Bharana v. Pawan Doot Estate (P.) Ltd.** - [2023] 148 taxmann.com 400 (SC)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE TRIBUNAL

- 1.3. Where considerable litigation relating to matter was pending before NCLAT, which had not resulted in a favourable order for petitioner and petitioner had an independent appeal pending before NCLAT, no interference was to be made in instant proceedings filed by petitioner and it was for NCLAT to examine appeal of petitioner on its own merits - **Srei Equipment Finance Ltd. v. Kalpataru Properties (P.) Ltd.** - [2023] 149 taxmann.com 34 (SC)

SECTION 62 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - SUPREME COURT, APPEAL TO

- 1.4. Supreme Court upholds order of NCLAT holding that where operational creditor filed its claim before Resolution Professional when Committee of Creditors had already approved resolution plan and it had been placed before NCLT for further approval, Resolution

- 1.5. Professional had rightly rejected operational creditor's claim - **Innovative Buildstates (P.) Ltd. v. RG Buildstate (P.) Ltd.** - [2023] 149 taxmann.com 264 (SC)

2. HIGH COURT

SECTION 22 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - APPOINTMENT OF

- 2.1. Resolution Professional appointed under IBC is a 'public servant' for the purposes of PC Act u/s 2(c) of the PC Act - **Sanjay Kumar Agarwal v. Central Bureau of Investigation, Anti Corruption Bureau, Dhanbad** - [2023] 149 taxmann.com 146 (Jharkhand)

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSONS ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

- 2.2. Where NCLT vide impugned order directed state to grant permission of windmill operations to corporate debtor despite pending clearances by forest department, since state had exercised its jurisdiction in directing corporate debtor to submit forest clearances, instant issue was in realm of public law and completely beyond purview of code and tribunal had no jurisdiction to direct functioning of windmill without forest clearance - **Principal Chief Conservator of Forests v. Wind World (India) Ltd.** - [2023] 149 taxmann.com 289 (Karnataka)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

- 2.3. Having resorted to the alternative remedy of appeal to NCLAT against NCLT's order, petitioner cannot collaterally challenge the same order through a writ petition - **Reji Sivankutty v. State Bank of India** - [2023] 149 taxmann.com 39 (Kerala)

3. NCLAT

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- 3.1. Merely because there was a debt and default, it could not be construed that a section 7 application was required to be admitted; NCLT ought to have examined nature of financial transactions on basis of investigation reports of CBI and ED before admitting section 7 application against corporate debtor and, therefore, impugned order passed by NCLT admitting said

application was to be set aside - ***Ocean Deity Investment Holdings Ltd. v. Suraksha Asset Reconstruction Ltd.*** - [2023] 148 taxmann.com 406 (NCLAT- New Delhi)

- 3.2. Where corporate debtor had given a corporate guarantee for money borrowed by its directors from a financial creditor and, same was supported by a guarantee agreement and a mortgage agreement, which had been approved by company's board, NCLT had rightly directed Resolution Professional to admit financial creditor's claim as a financial debt under section 5(8) - ***AVJ Heights Apartment Owners Association v. India Infoline Finance Ltd.*** - [2023] 149 taxmann.com 62 (NCLAT- New Delhi)

SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR

- 3.3. Provisions of section 69(2) of Indian Partnership Act, 1932, applies to 'suits' and an application filed under section 9 of IBC cannot be treated as 'suit' and, therefore, NCLT had committed error in rejecting section 9 application filed by operational creditor on grounds that application was barred by section 69(2) of Partnership Act - ***Rourkela Steel Syndicate v. Metistech Fabricators (P.) Ltd.*** - [2023] 148 taxmann.com 376 (NCLAT- New Delhi)

SECTION 10A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - SUSPENSION OF INITIATION OF

- 3.4. Section 10A shall not apply to any default committed before 25-3-2020 and, therefore, application filed by appellant under section 10 was not barred by limitation under section 10A as default was committed by appellant much before 25-3-2020 - ***Wave Megacity Centre (P.) Ltd. v. Rakesh Taneja*** - [2023] 148 taxmann.com 402 (NCLAT- New Delhi)

SECTION 18 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL - DUTIES OF

- 3.5. Where appellant-development authority executed a lease deed in respect of a plot in favour of corporate debtor and all risks and rewards incidental to ownership of said plot were transferred to corporate debtor under said lease deed, leasehold rights being intangible assets falling within ambit of section 18(f)(iv), RP was empowered to take control and custody of same pursuant to initiation of CIRP against corporate debtor - ***New Okhla Industrial Development Authority v. Amit Agarwal Resolution Professional of Boulevard Projects (P.) Ltd.*** - [2023] 149 taxmann.com 33 (NCLAT- New Delhi)

SECTION 27 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - REPLACEMENT BY COMMITTEE OF CREDITORS

- 3.6. with 76.6 per cent of votes, NCLT was duty bound to abide by discipline of statutory provisions and order of NCLT rejecting application for replacement of RP was to be set aside - ***Venus India Asset-Finance (P.) Ltd. v. Suresh Kumar Jain, Resolution Professional of MK Overseas (P.) Ltd.*** - [2023] 149 taxmann.com 201 (NCLAT- New Delhi)

- 3.7. Where NCLT disallowed application filed by CoC to replace RP on ground that CoC had no decision making role once it had approved resolution plan and same was pending adjudication, NCLT not having invested upon with jurisdiction and authority to review decision exercised by CoC to replace RP rejection of application for replacement of RP was transgression of jurisdiction and, therefore, same deserved to be set aside - ***Venus India Asset-Finance (P.) Ltd. v. Suresh Kumar Jain, Resolution Professional of MK Overseas (P.) Ltd.*** - [2023] 149 taxmann.com 201 (NCLAT- New Delhi)

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 3.8. Where claim of appellant-operational creditor based on arbitration pending with corporate debtor prior to initiation CIRP, was rejected by RP and there was no provision for contingent liability in resolution plan approved by NCLT subject to result of arbitration proceeding, there was no illegality in order approving said resolution plan, however, liberty was to be given to appellant to pursue all contentions in pending arbitration proceedings and same was to be decided on its own merit - ***Shapporji Pallonji and Co. (P.) Ltd. v. Kobra West Power Company Ltd.*** - [2023] 149 taxmann.com 199 (NCLAT- New Delhi)

- 3.9. Where resolution plan was approved by CoC with 100 per cent voting share and same was further approved by NCLT, there being no material irregularities in resolution plan, impugned order of NCLT was free from any illegality and infirmity - ***Rahul Khilnani v. Atul Kumar Jain*** - [2023] 148 taxmann.com 404 (NCLAT- New Delhi)

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

- 3.10. Where statutory period to make payment had expired and NCLT directed Resolution Professional to complete CIRP afresh, appeal filed by appellant for further extension of time at instant stage would hamper entire process and perhaps might lead to liquidation - ***Earthin Projects Ltd. v. Anup Kumar Singh, Resolution Professional of Indu Projects Ltd.*** - [2023] 148 taxmann.com 277 (NCLAT - Chennai)

SECTION 34 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - APPOINTMENT, ETC.

3.11. Where lenders in its commercial decision and wisdom had opted for replacement of existing RP with another RP for appointment as liquidator, NCLT was justified in allowing same exercising its judicial discretion for smooth liquidation of corporate debtor - **Dr. K.V. Srinivas, Resolution Professional of Sainath Estates (P.) Ltd., In re - [2023] 149 taxmann.com 254 (NCLAT - Chennai)**

SECTION 53 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - ASSETS, DISTRIBUTION OF

3.12. Where appellants-employees/workmen of corporate debtor challenged a resolution plan approved by CoC which only admitted 35.13 per cent of their provident fund and gratuity claims having treated them as a secured creditor, there was violation of section 30(2) and appellants were entitled to full amount of provident fund and gratuity till date of commencement of insolvency - **Mrs. C.G. Vijyalakshmi v. Kumar Rajan, Resolution Professional - [2023] 149 taxmann.com 234 (NCLAT - Chennai)**

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSONS ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

3.13. Liquidator has no personal rights to continue in Liquidation and NCLT can order for replacement of Liquidator - **CA V. Venkata Sivakumar v. IDBI Bank Ltd. - [2023] 149 taxmann.com 60 (NCLAT - Chennai)**

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

3.14. Where resolution plan of appellant-successful resolution applicant, was approved by NCLT but appellant had failed to make payment within 90 days, NCLT had rightly dismissed

appellant's application for extension of timeline - **Earthin Projects Ltd. v. Anup Kumar Singh, Resolution Professional of Indu Projects Ltd. - [2023] 148 taxmann.com 277 (NCLAT - Chennai)**

SECTION 65 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR MALICIOUS PROCEEDINGS

3.15. Where financial creditor had accepted due amount with 6 per cent interest per annum but was now demanding interest at rate of 18 per cent, recovery proceedings of this nature did not fall within scope and ambit of words 'for any purpose other than resolution' as defined under section 65 and, therefore, impugned order of NCLT admitting CIRP application was to be set aside - **Anita Jindal v. Jindal Buildtech (P.) Ltd. - [2023] 148 taxmann.com 398 (NCLAT- New Delhi)**

3.16. Where appellant-corporate debtor had filed an application under section 10 with fraudulent and malicious intention for purpose other than resolution, impugned order passed by NCLT allowing application filed under section 65 and rejecting application filed under section 10 was without any error - **Wave Megacity Centre (P.) Ltd. v. Rakesh Taneja - [2023] 148 taxmann.com 402 (NCLAT- New Delhi)**

SECTION 208 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONALS - FUNCTIONS AND OBLIGATIONS OF

3.17. Where appellant was not holding a valid 'AFA' on date of acceptance of Assignment, appellant failed to meet legal bar and, thus, was rightly replaced by NCLT - **CA V. Venkata Sivakumar v. IDBI Bank Ltd. - [2023] 149 taxmann.com 60 (NCLAT - Chennai)**

Accounts and Audit Updates

1. ICSI floats Charter of Audit Committee highlighting good practices for discharging responsibilities & approving RPTs

Editorial Note : ICSI has floated Charter of Audit Committee highlighting legal, regulatory, & recommended practices, including guidelines for reviewing related party transactions. The aim is to promote good corporate governance practices. Audit Committee plays an important role in ensuring quality of governance by performing responsibilities independently. It oversees company's financial reporting process, internal control system and audit functions to ensure integrity of financial statements

2. Key Non-compliances observed by FRRB in relation to reporting under Auditor's Report

Editorial Note : The Financial Reporting Review Board (FRRB) of ICAI conducts review of financial statements and audit reports of various entities to determine compliance with GAAPs, reporting obligations, and regulatory disclosures to improve and strengthen reporting. It acts as a proactive mechanism to improve reporting practices. Auditor shall consider discussed non-compliance while drafting audit report. This story discusses certain observations made by Board related to non-compliance in audit report.

3. MCA notifies the Companies (Indian Accounting Standards) Amendment Rules, 2023

Editorial Note : The Ministry of Corporate Affairs (MCA) has notified the Companies (Indian Accounting Standards) Amendment Rules, 2023. As per the amended rules, a new para has been inserted in Ind AS 101, which states deferred tax related to assets and liabilities arising from a single transaction shall apply for annual reporting periods beginning on or after 01.04.23. Various other amendments have also been notified. These rules shall be applicable from the financial year beginning on or after 01.04.23.

4. Key Non-compliances observed by FRRB related to Ind AS 7, Statement of Cash Flows

Editorial Note : The Financial Reporting Review Board (FRRB) of ICAI conducts review of financial statements of various enterprises to determine compliance with GAAPs, reporting obligations, and regulatory disclosures to improve and strengthen reporting. It acts as a proactive mechanism to improve financial reporting practices. Management shall consider discussed non-compliances while drawing the statement of cash flows. This story discusses certain observations made by Board related to cash flows.

5. ICAI issues Technical Guide on Disclosure and Reporting of Key Performance Indicators (KPIs) in Offer Documents

Editorial Note : This guide will benefit members and practitioners to comply with SEBI ICDR Regulations, 2018 which mandates the disclosure of KPIs in the offer document by the issuer co. under heading 'Basis for Issue Price'. It also requires KPIs disclosed shall be approved by the Audit Committee and certified by statutory auditor(s) or CAs or firm of CAs. To provide guidance on above matters AASB of ICAI has released the Technical Guide on disclosure and reporting of KPIs in offer documents.

6. FAQs relating to the professional ethics for members of ICAI pertaining to Bank Assignments

Editorial Note : In order to guide its member, the Ethical Standard Board (ESB) of The Institute of Chartered Accountants of India, has issued "FAQs relating to professional ethics of members pertaining to Bank Assignments". This document has been drafted keeping in mind the professional and ethical requirements applicable to members of ICAI. This document answers various FAQs to avoid conflict with independence and interest between varied roles played by members of ICAI to bank assignments.



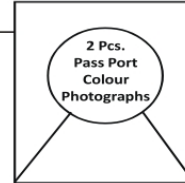
Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

Secretariat : 3, GOVT. PLACE (WEST), INCOME TAX BUILDING, KOLKATA - 700 001

Ph. +91 33 2242-0638, 4003-5451 • E-mail : dtpakolkata@gmail.com • Website : www.dtpa.org

APPLICATION FOR MEMBERSHIP



To
The Hony' Secretary,
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place, Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.
I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

1. Name in Full (Mr. / Mrs. / Miss) : _____
(BLOCK LETTERS)
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Quali fications _____
5. Professional Status (Pls. specify) : In Practice In Service In Business Others
6. Organisation : _____
8. Mem. No. of CA/CS/ICWAI/Bar Council : _____
9. Blood Group : _____ (Self) _____ (Spouse)
10. Name of Spouse : _____
11. Office Address : _____

12. Residence Address : _____

13. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
Mobile : _____ E-mail : _____
14. Address where Circular etc. should be sent : Office Residence
Enclosed herewith Rs. _____ (Rupees _____)
by Cash/Cheque No. _____ Dated _____ Drawn on _____
towards Life Membership General Membership.

Place : _____
Date : _____ Signature of the Applicant

- Would you like to contribute to the following activities of DTPA ? (Pls. specify)**
- Contributing articles for Journal Being part of the Core group which runs the functioning of DTPA
- Being faculty / Speaker at Conferences / Seminars / Workshops Others
- Area of Professional Interest (Pls. specify) :** Indian Income Tax International Tax
- FEMA Company Law Auditing Corporate Finance Indirect Tax General Management
- Information Technology Human Resource Banking & Financial Services Investment Consultancy Others
- I would like to receive News Letter / Notices / Circulars by** E-mail Courier Both

Proposed By : Name : _____
DTPA Membership No. : _____ Signature : _____

Seconded By : Name : _____
DTPA Membership No. : _____ Signature : _____

FOR OFFICE USE ONLY		
Date of Receipt _____	Membership Approved on _____	Membership No. Allotted _____
Chairman, Membership Sub-Committee	President	General Secretary

NOTES : 1. Fee for Life Membership (a) Individual Rs. 7,500/- (G.S.T. Extra @ 18%), (b) If application is made within a period of 5 years of attaining first professional qualification Rs. 5,000/- (G.S.T. Extra @ 18%), (c) Corporate Bodies Rs. 7,500/- (G.S.T. Extra @ 18%).
2. Cheques should be drawn in favour of "Direct Taxes Professionals' Association".

OFFICE BEARERS 2022-2023

President



Mr. D. S. Agarwala
9433097972
agards@gmail.com

I.P.P.



Mr. Kamal Kr. Jain
9830708341
kamalkrjain@yahoo.com

Sr. Vice-President



Mr. Rajesh Kr. Agrawal
9007217679
thinkvisor18@gmail.com

Vice-President



Mrs. Barkha Agarwal
9831184871
barkhaagarwal@hotmail.com

General Secretary



Ms. Manju Lata Shukla
9831491002
ml_shukla@rediffmail.com

Joint Secretary



Mr. Mahendra Kr. Agarwal
9830096405
mahendrasubhashandco@gmail.com

Treasurer



Mr. Shyam Agarwal
9903040775
Shyam_ag12@yahoo.co.in

EXECUTIVE COMMITTEE MEMBERS 2022-2023



Mr. Ajit Kr. Tulsian
9831131100
aaakdt@gmail.com



Mr. Ankit Kanodia
9831543580
ankitkanodia@gmail.com



Mr. Ashish Rustagi
9339768131
rustagico@rediffmail.com



Mr. Bharat D Sarawgee
9830022057
bharatsarawgee@gmail.com



Mr. Girdhar Dhelia
9830255500
gdhelia@gmail.com



Mr. Kedar Nath Gupta
9830648056
guptakn123@yahoo.co.in



Mr. Mahadev Lal Agarwal
9830056911
agarwalkejiwal@gmail.com



Mr. Sujit Sultania **
9831016678
sultaniasujit@gmail.com



Mr. Ranjeet Kr. Agarwal *
9830140211
ranjeet.airan@gmail.com.com



Mr. Rites Goel
9831029805
repyrites@gmail.com



Mr. Ritesh Vimal
9830574278
vimalrites@gmail.com



Ms. Ruby Bhalotia
9230570007
rubybhalotia@gmail.com



Mr. Sanjay Jhaharia
9831012743
s.jhaharia@hotmail.com



Mr. Sanjay Poddar
9830047033
poddar.sanjay@gmail.com



Mr. Sushil Jain Choraria
9830045315
Sushil_choraria@yahoo.com

* Resignation accepted w.e.f. 24.04.2023

** Co-opted on vacancy w.e.f. 24.04.2023

PAST PRESIDENTS



Mr. K. C. JAIN
9830073387
kcjain34@yahoo.co.in



Mr. N. P. Jain
9830951252
npjainadv@gmail.com



Mr. J. R. Bhadani
9830135150
jrvtaxation@yahoo.com



Mr. V. K. Singhania
9831003609/9831119952
vitrum@vsnl.net



Mr. Indu Chatrath
9831048516
ichatrath@yahoo.com



Mr. R. D. Kakra
9831052151
rdkakra@gmail.com



Mr. Pawan Agarwal
9830038817/9830262464
pawan@asac.co.in



Mr. Raja Ram Chowdhary
9830088796
rrchowdhary@hotmail.com



Mr. D. N. Agrawal
9433039556
dn.agrawal@dbcca.co.in



Mr. P. K. Agarwalla
9831220797
pkaco_ca@yahoo.co.in



Mr. S. D. Verma
9830026177
kdsanju@hotmail.com



Mr. M. C. Jagwayan
9831021650
nitjags81@rediffmail.com



Mr. B. L. Kheria
9831696921
bl_kheria@yahoo.com



Mr. R. N. Rustagi
9830030845
rustagico@rediffmail.com



Mr. A. K. Tibrewal
9831070922
anand@nkpc.co.in



Mr. Santosh Kulthia
9748731590
kkscaindia@gmail.com



Ms. Nilima Joshi
9830039990
canilimajoshi@gmail.com



Mr. P. R. Kothari
9830039990
pkramram@gmail.com



Mr. Arvind Agrawal
9831026660
gpakol.office@gmail.com



Mr. Sajjan Kr. Sultania
9830037498
sundeepsultania@gmail.com



Mr. Sanjay Bajoria
9831845005
sbaca2019@gmail.com



Mr. Subash Agarwal
9830052141
subash_sushma@yahoo.in



Mr. Aghor Kr. Dudhwela
9831039440
aghorassociates@yahoo.co.in



Mr. Bishnu Kr. Loharuka
9830260400
bkloharuka2003@yahoo.com



Mr. P. K. Himmat Singhka
9831024755
pkhkol@gmail.com



Mr. Paras Kochar
9831024563
paraskochar@hotmail.com



Mr. K. P. Khandelwal
9830030216
ca.kpkhandelwal@gmail.com



Mr. Sunil Surana
9831005533
thanmajji@hotmail.com



Mr. Kamal Bagrodia
9830043311
kamalbagrodia@gmail.com



Mr. Ramesh Kr. Chokhani
9748747044
rkchokhani@yahoo.com



Mr. Vikash Parakh
9830969234
vikashparakh.ca@gmail.com



Mr. N. K. Goyal
9831046053
ngc.narendra@hotmail.com

SUB COMMITTEES 2022-2023

Sub-committee	Chairman/Chairperson	Co-chairman/Chairperson	Advisor
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DIRECT TAXES-RESEARCH & PUBLICATION	Mr. P.R. Kothari	Mr. Ajit Tulsian	Mr. A.K. Tibrewal
DIRECT TAXES CO-ORDINATION	Mr. S.K.Sultania	Mr. Mahadev Lal Agarwal	Mr. M.C.Jagwayan
ITAT CO-ORDINATION	Mr. Arvind Agrawal	Mr. Sunil Surana	Mr. N.P. Jain
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GST & INDIRECT TAXES-RESEARCH & PUBLICATION	Mr. Vikash Parakh	Mr. Sahib Singh Choudhary	Mr. Sushil Kumar Goyal
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MEMBERSHIP DEVELOPMENT	Mr. Kamal Kumar Jain	Mr. Sushil Jain Choraria	Mr. R.D. Kakra

Note : President and Secretary will be Ex-Officio members of all Sub-Committees.

SPECIAL INVITEES 2022-2023



Mr. Sushil Kr. Goyal
9339679796
skgoyal@icai.org



Mr. Abhishek Agarwal
9831982004
abhishek@caasa.org



Mr. Sahib Singh Choudhary
9339328137
sahibschoudhary@gmail.com



Mr. Ravi Varma
9830699356
ravivarma@texmaco.in/ravivarma@gmail.com



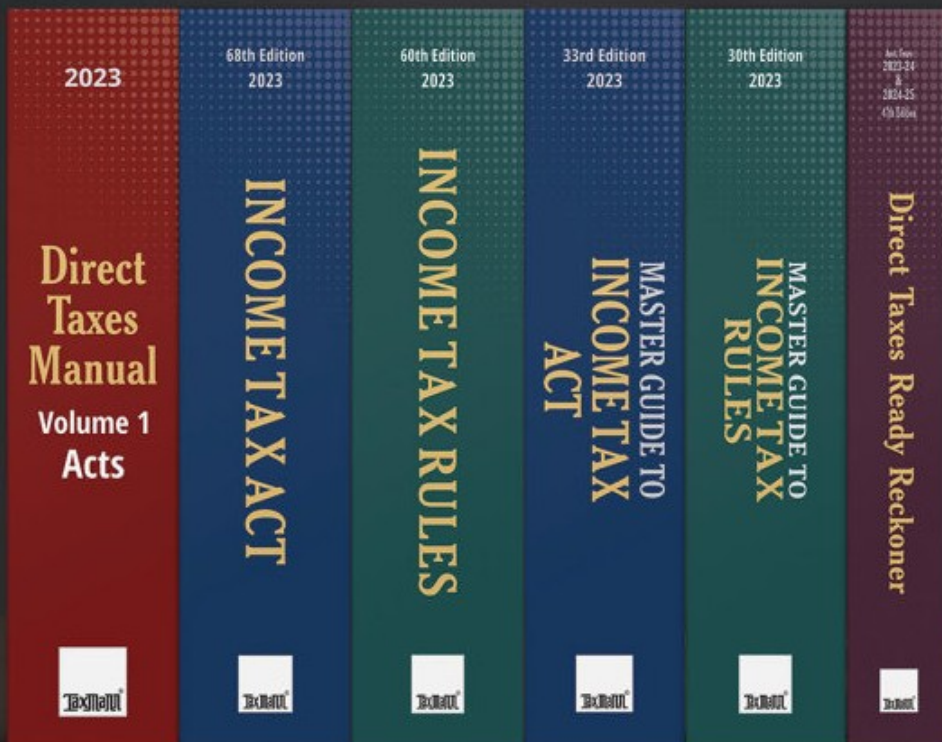
Mr. Sanjib Sanghi
9831434000
sanjib@cloudinfosolutions.com



Mr. Amit Singhania
8777692789
amitsinghania86@yahoo.co.in

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