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Total no. of page: 114

.... From the Desk of Editors



Respected Seniors and my Dear Friends,

With great enthusiasm and excitement we present before you the second issue of DTPA e-Journal for this term 2023-24 which covers diversified area of updates covering various statutes which we are hopeful that the readers will find useful.

The Central Board of Direct Taxes (CBDT) has released data showing significant improvement in tax compliance by the taxpayers. The data indicates a steady rise in ITR filings. Individual taxpayer returns surged from 3.36 crore in AY 2013-14 to 6.37 crore in AY 2021-22, marking a 90% increase. The Government's taxpayer-friendly policies have enabled growth.

One of the important relief for the domestic companies in relation to exercising the option under section 115BAA wherein finally CBDT, to avoid genuine hardship has decided to condone delay in filing Form No. 10-IC for the Assessment Year 2021-22. Clarifications and relaxation been announced in Trust and other matters which are discussed in details inside this journal.

We understand this ongoing real time exercises in the interest of assesseees by the department is leading to growth the tax collections, this time net direct tax collections exceed 9.57 lakh crore, marking a 21.82% increase compared to the previous year

On the GST side gross GST revenue collected in the month of September, 2023 is Rs. 1,62,712 crores. The revenue for the month of September, 2023 is 10% higher than the GST revenues in the same month last year. The hot discussion under the GST Law is levy of GST on corporate guarantee and gaming industry. The details in relation to the same are discussed inside the journal.

In this issue of journal we have covered the specialized matters apart from updates and case laws dealing on almost all subjects of practice you will find this time article on PMLA in simple words, international taxation and at the same time Automobile industry in relation to GST law.

That most of the annual professional work such as Statutory Audits, Tax Audit, Income Tax Filings and ROC filing etc are completed by now and it's time to reenergize oneself and focus on the future plans as well as spent some time on fellowship and leisure. We welcome each one of your to join us in fellowship cum study programs of DTPA of which details are inside this journal.

Wish you all heartiest Greetings for Deepawali, Kali Puja and Chath Puja. Jai Hind!! Jai DTPA!!

With Best Regards

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

Sujit Sultania
Co-Chairman
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 dpaejournal@gmail.com from you will guide us to move further and motivate in touching new heights in professional excellence.





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....From the desk of President



Dear Members of DTPA,

Subho Bijaya and Happy Diwali!

At the outset I would like to extend my warm festive greetings to all of you and I am sure each one of us enjoyed the Durga Puja and Navratri celebrations in high spirits along with our family and friends.

After the hectic professional schedules of July to September, the month of October also kept all of us busy with numerous compliances and deadlines. So now as we approach the Diwali and other celebrations, I am sure we all can get adequate rest to rejuvenate and get ready to welcome 2024 with new vision and determination.

In the month of October, we had two important seminars-one by CA Adv. Kapil Goel on choice between various remedies against Orders passes under Income Tax Law and the other one on Do's and Don'ts for filing of GSTR 3B by CA Adv. Arup Dasgupta and on critical analysis of GSTR 9 and 9C by CA Vikas Banka. It is my pleasure to inform that both the above initiatives were highly appreciated by the members and they have been a source of huge value addition for all the attendees. Carrying the above momentum forward we have planned case studies on GST and income tax during the month of November.

In order to have a work life balance we believe that we also need to spend time with our family and friends. Therefore, we have planned our **Bijoya-Diwali get-together on 17th November, Friday evening**, for which we have received a huge response from all our members. As it is a huge opportunity for fellowship and bonding, I would request all the members not to miss this wonderful opportunity.

While on this, you will also be happy to note that DTPA has been successfully holding residential conclave for the past few years wherein members join in large numbers to seek knowledge on direct tax, Indirect Tax and other allied laws through creative case studies and insightful discussions by paper writers. Apart from knowledge sharing fellowship and cultural events play a pivotal role in building up bonds between existing members and new members and also between the families of the members. Our next **residential conclave has been planned in the holy city of Puri from January 12th to January 14th, 2024**, where we are planning to have the interactive discussions in a new format. I would request all the members to kindly block their calendars so that we all can spend one more memorable residential conclave together.

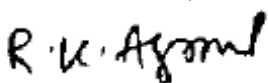
DTPA is poised to engage with different stake holders who play a key role in decision making which impacts business environment in general and also the economic environment of the country. I would therefore urge all our members to come forward and share their suggestions which we can take forward and place before the statutory authorities for making them aware about the challenges being faced by the trade. We had recently met the principal chief commissioner of CGST and Central Excise and apprised him of several challenges faced by the trade. We would similarly like to meet the concerned officials of other government departments based on suggestions or inputs received from all our esteemed members.

“The way to achieve your own success is to be willing to get somebody else get it first”-Iyanla Vanzant.

Going by the above quote it only shows as to how when we light the lantern for others our own path gets filled with light. Therefore let us all give a helping hand to our fellow professionals by introducing them to DTPA which is working on the frontiers of dissemination of knowledge and building a camaraderie of network of professionals from diverse backgrounds handling different sectors. I am sure that all new members will be hugely benefited by being associated with all our esteemed members of DTPA. Let us try to create a membership revolution by trying to reach out as many professionals as we can, during November and December so that they can be a part of our next residential conclave.

I would like to conclude here with my best wishes for the Diwali, Kali Puja and Chhath Puja.

With best wishes,



President

10th November, 2023



Study Circle Meeting on 'Deep dive into issues of GSTR 9 and 9C and Do's and Don'ts for 3B during Sept and Oct, 23





Forthcoming Programs of Direct Taxes Professionals' Association

bijoya diwali

GET TOGETHER

**All members of the Association
with Friends & Family are cordially invited**

on
Friday, 17th November, 2023
6:30 p.m. onwards

At
**4A, Short Street, Kolkata
(Rajesh Ganpati)**

President
CA Rajesh Kr Agrawal
9007217679

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CA Ramesh Kr Chokhani
9748747044

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9830038817

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ज्ञानं एक्यं च न्यायार्थम्
Estd. 1982

DIRECT TAXES PROFESSIONALS' ASSOCIATION

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



DTPA CA CPE Study Circle of EIRC of ICAI

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STUDY CIRCLE MEETING



CA S. S. GUPTA

SPEAKER

Topic:

**Higher TDS for non
ITR filers - Procedure
and implications**



CA VIVEK JALAN

SPEAKER

Topic:

**Recent Changes in
GST - Detailed
Review**



**20 Nov, 2023,
Monday
03:00 PM -
06:00 PM**

" 3 CPE HOURS "



**DTPA Conference
Hall**

PARTICIPATION

CHARGES:

RS. 200/-

**CA D S Agarwala
Convenor**

**CA Manjulata Shukla
Deputy Convenor**



Compliance Calendar for November, 2023

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th November, 2023	Oct-23	TDS/TCS Payment for October 2023	
	14th November, 2023	Sep-23	Due date for issue of TDS Certificate for tax deducted under section 194IA/194IB/194M/194S in the month of September, 2023	
	15th November, 2023	July to Sep 2023	Issue of TDS Certificates in Form 16A for July to Sep 2023	
	30th November, 2023	FY 2022-23	Return of income for the assessment year 2023-24 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)	
	30th November, 2023	FY 2022-23	The due date of furnishing of Return of Income in Form ITR-7 for the Assessment Year 2023-24 in the case of assessee referred to in clause (a) of Explanation 2 to section 139(1). Note: The due date has been extended from October 31, 2023 to November 30, 2023 vide Circular no. 16/2023, dated 18-09-2023.	
	30th November, 2023	Oct-23	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Oct 2023	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th November, 2023	Oct-23	GSTR-7	GSTR 7 is a return to be filed by the persons who is required to deduct TDS (Tax deducted at source) under GST
	10th November, 2023	Oct-23	GSTR-8	GSTR-8 is a return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST
	11th November, 2023	Oct-23	GSTR-1	Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return
	13th November, 2023	Oct-23	GSTR-1 (QRMP)	GST return for the taxpayers who opted for QRMP scheme (Optional)
	13th November, 2023	Oct-23	GSTR-6	Input Service Distributors
	20th November, 2023	Oct-23	GSTR-3B	The due date for GSTR-3B having an Annual Turnover of more than 5 Crores
	25th November, 2023	Oct-23		GST Challan Payment if no sufficient ITC for Oct 2023 (for all Quarterly Filers)
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	10th November, 2023	Sep-23	Professional Tax (PT) on Salaries for Oct 2023	
	15th November, 2023	Sep-23	Provident Fund (PF) & ESI Returns and Payment for October, 2023	
Statute	Due dates	Compliance Period	Details	
Company Annual Filing	28th November, 2023	MGT-7/7A (FY 2022-23)	MGT 7/7A Filing for Companies & OPC for FY 2022-23	



Speaking Opportunity at DTPA Platform

As a part 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 Program and so on.

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

So, if you are looking for such an opportunity, then please keep in touch at the office of DTPA to help us find your interest area and take the things forward.

Regards,

CA Rajesh Kr. Agrawal
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 | ● International Taxation |
| ● GST & Indirect Taxes | ● Accountancy and Audit |
| ● Corporate & Allied Laws | ● Insolvency and Bankruptcy |
| ● Information Technology | ● Emerging areas of Practice |

The articles sent for publication in the newsletter should confirm 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 dtpejournal@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: dtpejournal@gmail.com and at Mob: 9830255500/9831016678

Thanks and Regards,

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Direct Taxes Professionals' Association

Congratulates

MR. JUSTICE CHANDRAKANT VASANT BHADANG

on his appointment as

President

of

Income Tax Appellate Tribunal



Direct Taxes

1. STATUTORY UPDATES

- 1.1 Tax Dept. conducts Search and Seizure Operation in Jammu and Kashmir - **Press Release, Dated 11-10-2023**

Editorial Note : The Income-tax Department conducted a search and seizure operation in the Kashmir Valley on a prominent business group, engaged in various sectors namely, Cement, Steel, Glass, Plywood, Real Estate, Tourism, Textiles and Healthcare, etc. The key person of the group has admitted the above modus-operandi being followed for generation of undisclosed income.

- 1.2 Form 60 can't be submitted by a Co. or Firm that is involved in a transaction specified under Rule 114B: CBDT - **Notification No. G.S.R. 728(E), Dated 10-10-2023**

Editorial Note :The CBDT has amended Rule 114B to provide that a company or a firm not having PAN cannot submit Form 60 if it enters into any transaction specified in Rule 114B. Further, a proviso is inserted in Rule 114B to allow the submission of Form 60 by the foreign Company to open the bank account or term deposit if such Company has no PE and income chargeable to tax in India.

- 1.3 Net direct tax collections exceed 9.57 lakh crore, marking a 21.82% increase compared to the previous year: CBDT - **Press Release, Dated 10-10-2023**

Editorial Note : The CBDT has released data of direct tax collections. As of October 9, 2023, provisional Direct Tax collections continue to grow steadily. Gross collections stand at Rs. 11.07 lakh crore, a 17.95% increase from the same period last year. Net collections, after refunds, are at Rs. 9.57 lakh crore, showing a 21.82% rise from last year

- 1.4 More than 30 lakh Audit Reports filed till September 30, 2023: CBDT - **Press Release, Dated 02-10-2023**

Editorial Note : The Income-tax Department appreciates taxpayers and tax professionals for making compliance on time with respect to the filing of Tax Audit Reports (TARs) and other audit reports in Form No. 29B, 29C, 10CCB, etc. More than 30.75 lakh audit reports, including about 29.5 lakh Tax Audit Reports, have been filed for AY 2023-24 on the e-filing portal till the end of the due date.

- 1.5 Tax Dept. conducts Search and Seizure operations in Karnataka and AP&TS region - **Press Release, Dated 16-10-2023**

Editorial Note : The Income-tax Department conducted a search and seizure operation in the case of some Government Contractors, Real estate developers and their Associates in Karnataka, Andhra Pradesh, Telangana and New Delhi. A large number of incriminating evidence were found confirming bogus purchases, non-genuine claims of expenses with sub-

contractors and ineligible expenses. Unaccounted cash and jewellery of Rs. 102 crores were seized.

- 1.6 CBDT exempts IFSC units from Form 15CA for non-taxable remittances and introduces Form 15CD for quarterly reporting - **Notification No. G.S.R. 740(E), Dated 16-10-2023**

Editorial Note : The CBDT has amended Rule 37BB to provide that IFSC units are no longer obligated to furnish Part D of Form 15CA if the remittance made by them is not chargeable to tax. However, IFSC units are now required to submit a quarterly statement in Form 15CD detailing all remittances made to non-residents or foreign companies.

- 1.7 Time limit for processing of all validly filed returns up to AY 2017-18 with refund claims extended to 31-01-2024

Editorial Note :By virtue of Order F. No. 225/98/2020-ITA-II, dated 30-09-2021, the CBDT directed that all validly filed returns up to Assessment Year 2017-18 bearing refund claims could be processed until 30-11-2021. In view of pending taxpayer grievances related to the issue of refund, the CBDT has decided to extend this time frame further. As a result, such ITRs can now be processed until 31-01-2024.

- 1.8 CBDT condones delay in filing of Form 10-IC for AY 2021-22 if ITR was filed within due date - **Circular No. 19/2023, Dated 23-10-2023**

Editorial Note : To avoid genuine hardship to the domestic companies in exercising the option under section 115BAA, the CBDT has decided to condone delay in filing Form No. 10-IC for the Assessment Year 2021-22. However, this is subject to the condition that ITR is filed within the due date and the assessee opted for Sec. 115BAA while filing ITR.

- 1.9 CBDT notifies 'District Mineral Foundation Trust' for Sec. 10(46) exemption - **Notification No. S.O. 4342(E), Dated 29-09-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'District Mineral Foundation Trust' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be applicable for assessment years 2023-2024 to 2027-28

- 1.10 CBDT notifies 'Telangana Building and Other Construction Workers Welfare Board' for Sec. 10(46) exemption - **Notification No. S.O. 4700(E), Dated 26-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Telangana Building and Other Construction Workers Welfare Board' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be applicable for assessment years 2023-24

- 1.11 CBDT notifies 'West Bengal Pollution Control Board' for Sec. 10(46) exemption - **Notification No. S.O. 4703(E), Dated 26-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified West Bengal Pollution Control Board' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be applicable for assessment years 2021-22 to 2023-24.



- 1.12 CBDT releases data showing improved compliance by taxpayers - **Press Release, Dated 26-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has released data showing significant improvement in tax compliance by the taxpayers. The data indicates a steady rise in ITR filings. Individual taxpayer returns surged from 3.36 crore in AY 2013-14 to 6.37 crore in AY 2021-22, marking a 90% increase. The Government's taxpayer-friendly policies have enabled growth.

- 1.13 Justice Chandrakant Vasant Bhadang appointed as President of ITAT - **Notification No. A-12023(1)/15/2016, Dated 26-10-2023**

Editorial Note : Mr. Justice Chandrakant Vasant Bhadang, Retired Judge, High Court of Bombay, has been appointed as President of the Income Tax Appellate Tribunal. He would be getting the salary of Rs. 2,50,000 per month. The appointment is effect from the forenoon of 23-10-2023 for a period of 04 (Four) Years, or till attaining the age of 70 years, whichever is earlier.

- 1.14 Tax Department carries out search on groups running operating educational institutions for professional courses - **Press Release, Dated 18-10-2023**

Editorial Note : On October 5, 2023, the Income Tax Department conducted a search and seizure operation in two groups, primarily operating educational institutions for professional courses. Significant evidence of unrecorded fee receipts and false scholarship disbursements has been discovered. Preliminary findings reveal unaccounted fee receipts exceeding Rs. 400 crore and erroneous scholarship disbursements amounting to Rs. 25 crore.

- 1.15 CBDT notifies Form No. 56F to be furnished by assessee claiming deduction u/s 10AA - **Notification No. G.S.R. 786(E), Dated 19-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has inserted a new Rule 16D to the Income-tax Rules 1962 vide the Income-tax (26th Amendment) Rules, 2023. Said rule provides that the report of an accountant, which is required to be furnished by the assessee under section 10AA(8) read with section 10A(5), shall be furnished in Form No. 56F.

- 1.16 CBDT notifies 'Punjab Dental Council, Mohali' for Sec. 10(46) exemption - **Notification No. S.O. 4577(E), Dated 19-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Punjab Dental Council, Mohali' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be applicable for assessment years 2022-2023 & 2023-24

- 1.17 CBDT notifies 'Punjab Nurses Registration Council' for Sec. 10(46) exemption - **Notification No. S.O. 4265(E), Dated 29-09-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Punjab Nurses Registration Council' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be applicable for assessment years 2022-2023 and 2023-2024.

- 1.18 CBDT notifies 'National Farmers Welfare Program Implementation Society' for Sec. 10(46) exemption - **Notification No. S.O. 4282(E), Dated 29-09-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'National Farmers Welfare Program Implementation Society' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be applicable for assessment years 2022-2023 to 2026-2027.

- 1.19 CBDT notifies Form 10-IFA for opting for tax regime u/s 115BAE by co-operative society - **Notification No. 83/2023, Dated 30-09-2023**

Editorial Note : The FA 2023 introduced a new tax regime under section 115BAE for the resident co-operative societies engaged in manufacturing or producing an article or thing. The CBDT has notified Form 10-IFA for exercising the option of section 115BAE. The option in Form No. 10-IFA shall be furnished electronically on or before the due date for furnishing ITR.

- 1.20 CBDT notifies 'Dental Council of India, New Delhi' for Sec. 10(46) exemption - **Notification No. S.O. 4374(E), Dated 06-10-2023**

Editorial Note : The CBDT has notified 'Dental Council of India, New Delhi', a body constituted by the Central Government for exemption under section 10(46). This exemption is available with respect to fees and subscriptions, Income from royalty and publications, grant and subsidies from the Government, and interest income from banks. This notification is applicable for the Assessment Year 2023-24.

- 1.21 CBDT issues clarification on reporting of Substantial Contributors in Form 10B/10BB - **Circular No. 17/2023, Dated 09-10-2023**

Editorial Note : The CBDT has clarified that only those substantial contributors whose contributions during the relevant previous year exceed Rs. 50,000 need to be reported in Form 10B/10BB. The details of relatives of such contributors and concerns in which these contributors hold substantial interests should also be reported, if available.

- 1.22 CBDT issues clarification regarding assessment of Startup companies subsequent to FA 2023 amendments - **Notification F.NO. 173/149/2019-ITA-1, Dated 10-10-2023**

Editorial Note : The Finance Act, 2023 amended Section 56(2)(viib) and omitted the words 'being a resident' thereby the provision was extended to the consideration received from any person, including non-residents. Subsequent to such amendment various Startup companies were selected for scrutiny under CASS on the basis of applicability of this section. Now, the CBDT has issued a clarification stating the assessment procedure to be followed in such cases.

- 1.23 CBDT notifies 'Stichting Pensioenfonds ABP' for Section 10(23FE) exemption - **Notification No. S.O. 4501(E), Dated 13-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified pension fund, Stichting Pensioenfonds ABP, for the purpose of exemption under section 10(23FE). The notified funds shall be eligible to claim exemption in respect of eligible investment made in India on or before 31-03-2024 subject to prescribed conditions.



- 1.24 CBDT amends order assigning role of Pr. CCIT (NaFAC) under Faceless Assessment Scheme 2019 - **Notification F.No.1S7/3/2020-ITA-I, Dated 25-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has modified the order issued under section 119 vide F. No. 1 87/3/2020-ITA-I dated 31-03-2021, assigning the role of PR. CCIT (NaFAC) under Faceless Assessment Scheme 2019.

- 1.25 CBDT extends due date for filing of Form 56F for AY 2023-24 to December 31, 2023 - **Circular No. 18 of 2023, Dated 20-10-2023**

Editorial Note : The CBDT vide Notification No. 91 /2023, dated 19-10-2023, notified Form No. 56F that is required to be furnished by assessee claiming deduction under section 10AA. To avoid genuine hardship **regarding** filing the form on time for AY 2023-24, the Board has decided to extend the due date for filing the form to December 31, 2023.

- 1.26 DTAA is effective only upon notification; No MFN benefit if country joins OECD post signing of first treaty: SC

Editorial Note : In the instant case, the Supreme Court has provided clarity on the date of applicability of Double Taxation Avoidance Agreements (DTAA) and its relevance on the Most Favoured Nation (MFN) clause contained in the Protocol. The Supreme Court held **that** a notification under Section 90(1) is a mandatory condition for any court, authority, or tribunal to give effect to a DTAA or any protocol that changes the terms and conditions, which in turn modifies the existing provision.

2. SUPREME COURT

SECTION 2(22) OF THE INCOME-TAX ACT, 1961 - DEEMED DIVIDEND

- 2.1. **Loans and advances to shareholders** : SLP dismissed against order of High Court that section 2(22)(e) would not be applicable where assessee availed unsecured loan from its group company which was paid back with interest in same year - **Principal Commissioner of Income-tax, Central v. Suprabha Industries Ltd. - [2023] 154 taxmann.com 536 (SC)**

SECTION 2(24) OF THE INCOME-TAX ACT, 1961 - INCOME - DEFINITION OF

- 2.2. **Interest received in MACT award** : SLP granted against order of High Court that term 'income' as defined in section 2(24) does not include 'interest' referred to in section 56(2)(viii) or interest received in MACT award - **Oriental Insurance Co. Ltd. v. Chief Commissioner of Income-tax (TDS) - [2023] 154 taxmann.com 465 (SC)**

SECTION 35ABB OF THE INCOME-TAX ACT, 1961 - TELECOMMUNICATION LICENSE

- 2.3. Payment of entry fee as well as variable annual license fee paid by **respondents**-assesseees, engaged in business of telecommunication services, to Department of Telecommunications (DoT) under New Telecom Policy, 1999 are capital in nature and may be amortised in accordance with section 35ABB - **Commissioner of Income-tax v. Bharti Hexacom Ltd. - [2023] 155 taxmann.com 322 (SC)**

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

- 2.4. **Firm/partners, in case of** : SLP dismissed against order of High Court that **where** assessee-firm paid certain amount to a retired partner on basis of provisions made in partnership deed, said payment would amount to a diversion of income at source by overriding title, and, therefore, same should be treated as deductible expenditures for income tax purposes - **Principal Commissioner of Income-tax v. Wadia Ghandy & Co. - [2023] 155 taxmann.com 229 (SC)**

- 2.5. **Reassessment** : SLP dismissed against impugned order of High Court that where AO reopened assessment on ground that deduction for notional loss exchange rate was to be disallowed as funds were utilized for non-business purpose, since issue of foreign **exchange** loss was a subject matter of consideration of AO during original assessment, reopening of assessment was based on merely change of opinion and thus not sustainable - **Assistant Commissioner of Income-tax v. Meer Gems - [2023] 154 taxmann.com 647 (SC)**

SECTION 40A(2) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - EXCESSIVE OR UNREASONABLE

- 2.6. **Revision** : SLP dismissed against order of High Court that where issue of payments made to persons specified under



section 40A(2)(b) **was** never raised by Commissioner in notices served upon assessee, said ground could not form basis for revision of assessment order under section 263 - **Principal Commissioner of Income-tax v. Universal Music India (P.) Ltd.** - [2023] 155 taxmann.com 231 (SC)

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

2.7. **Scope of provision** : SLP dismissed against High Court's ruling that in case of assessee availing external commercial borrowing from international financiers to produce capital assets, adjustment on account of foreign exchange rate fluctuation is required to be made to actual cost at end of every year after amendment to section 43A with effect from 1-4-2003 and gain arising on account of exchange fluctuation is not liable to tax as it is on capital account - **Principal Commissioner of Income-tax v. Bangalore International Airport Ltd.** - [2023] 154 taxmann.com 395 (SC)

SECTION 54B OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSFER OF LAND USED FOR AGRICULTURAL PURPOSE

2.8. **Purchaser** : SLP dismissed against order of High Court that **purchase** of agricultural land in name of wife would not allow section 54B relief to assessee - **Bahadur Singh v. Commissioner of Income-tax (Appeals)** - [2023] 154 taxmann.com 457 (SC)

2.9. **Purchaser** : SLP dismissed against order of High Court that purchase of agricultural land in name of wife would not allow section 54B relief to assessee - **Bahadur Singh v. Commissioner of Income-tax (Appeals)** - [2023] 154 taxmann.com 457 (SC)

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

2.10. **Interest on MACT award** : SLP granted against order of High Court that neither clause (b) of section 145A, as it stood at relevant time, nor clause (viii) of sub-section (2) of section 56 make interest awarded in motor accident claim chargeable to tax - **Oriental Insurance Co. Ltd. v. Chief Commissioner of Income-tax (TDS)** - [2023] 154 taxmann.com 465 (SC)

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

2.11. **Share application** : Where no incriminating material had been found during search and brought on record by Assessing Officer and investor companies had ample funds to make investment in share capital of assessee, addition made under section 68 on account of share application money was to be deleted - **Principal Commissioner of Income-tax v. Jay Ace Technologies Ltd.** - [2023] 154 taxmann.com 45 (SC)

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

2.12. **Additions to income** : Notice issued in SLP against order of High Court that where assessment against yard owners was completed under section 153C and Assessing Officer had assessed income with addition of income in hands of yard owners and at same time, same material was used against assessee firm, though prior to it he was satisfied that material found from search belonged to yard owners, addition of income in hands of assessee-firm was not justified - **Assistant Commissioner of Income-tax v. SRS Mining** - [2023] 154 taxmann.com 346 (SC)

2.13. **Illustrations** : SLP dismissed against impugned order of High Court that where AO made additions in hands of assessee on basis of seized loose papers which revealed money transaction between assessee and others relating to a property, since transaction of **payment** with respect to relevant assessment year was confirmed by lower authorities by recording concurrent findings, impugned additions were justified - **C. Ramakrishna v. Deputy Commissioner of Income-tax.** - [2023] 154 taxmann.com 41 (SC)

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

2.14. **Housing Project** : SLP dismissed against order of High Court that where assessee developed a residential project and claimed deduction under section 80-IB(10) since as per approved plan of Municipal **Authority** all flats of building were having built up area of less than 1000 square feet and moreover a completion certificate was issued by competent authority, which could be issued only if construction was in accordance with sanctioned plans; benefit of deduction could not be denied - **Principal Commissioner of Income-tax-17 v. Vardhan Builders** - [2023] 155 taxmann.com 391 (SC)

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

2.15. **Adjustment - Interest** : SLP dismissed against order of High Court that where debtor days given to non-AEs were more than debtor days given to AEs and assessee had net monthly balance payable to AEs as opposed to monthly balance receivable from AEs, assessee was justified in not charging interest on delayed payments by **AEs** and in not levying any interest on delayed payments made by non-AEs - **Principal Commissioner of Income-tax v. Avery Dennison (I) (P.) Ltd.** - [2023] 154 taxmann.com 455 (SC)

2.16. **Adjustment - Interest** : Where assessee had provided interest free loans and advances to its AE without charging any interest, since assessee got huge business from its associated enterprises, and as such transaction of interest free loans/advances viz.-a-viz. benefit received by assessee were intrinsically linked and moreover interest cost appeared to be negligible, no adjustment under transfer pricing provisions was required to be made - **Rubamim Ltd. v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com 542



(Ahmedabad - Trib.)

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

- 2.17. **Computation of Book Profit** : SLP dismissed against High Court's ruling that amount of loss brought forward or **unabsorbed** depreciation whichever is less as per books of account must be permitted to be set off - **Principal Commissioner of Income-tax v. Bangalore International Airport Ltd.** - [2023] 154 taxmann.com 395 (SC)

SECTION 132 OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE

- 2.18. Authorizations for search : Notice issued in SLP against order of High Court that authorization for search should be of competent authority and it is on satisfaction of authority that search warrant can be issued and it can be only of Competent Officer - **Assistant Commissioner of Income-tax v. SRS Mining** - [2023] 154 taxmann.com 346 (SC)

SECTION 142(2A) OF THE INCOME-TAX ACT, 1961 - ENQUIRY BEFORE ASSESSMENT - SPECIAL AUDIT

- 2.19. **Illustrations** : SLP was to be dismissed against order of High Court that where reassessment proceedings were pending against assessee and audit report submitted by assessee was also on record, impugned notice issued by revenue under section 142(2A) directing assessee to get its accounts audited again, deserved to be set aside - **Deputy Commissioner of Income-tax v. Multi Commodity Exchange of India Ltd.** - [2023] 154 taxmann.com 467 (SC)

- 2.20. **General** : Notice issued in SLP against order of High Court that though special audit report issued by CA under section 142(2A) to (2D) is not binding on revenue, however, reasons for discarding it have to be recorded by Assessing Authority after proper discussion and same cannot be discarded summarily - **Assistant Commissioner of Income-tax v. SRS Mining** - [2023] 154 taxmann.com 346 (SC)

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

- 2.21. **Validity of search** : Notice issued in SLP against order of High Court that material collected pursuant to search jointly conducted against three persons and firm would not be required to be dealt with under section 153C, but would be under section 153A; however, if material collected in search against such person was used against other person, then proceedings could be taken under section 153C and not under section 153A - **Assistant Commissioner of Income-tax v. SRS Mining** - [2023] 154 taxmann.com 346 (SC)

- 2.22. **General principle** : Application of proviso to section 153C(1) would not be confined to question of

abatement, but also with regard to date from which six year period was to be reckoned in respect of which returns were to be filed by third party, thus, period for which other persons i.e. assessee were required to file returns, would commence only from date when materials were forwarded to their jurisdictional Assessing Officers - **Commissioner of Income-tax-14 v. Jasjit Singh** - [2023] 155 taxmann.com 155 (SC)

- 2.23. **Writ remedy** : SLP dismissed against order of High Court that where assessee by way of writ petition challenged notice issued under section 153C by arguing that he was not part of any search under section 132, since present petition came to be filed after one year from date of issue of notice and there was no plausible explanation as to delay, it was not a fit case for interference in exercise of extraordinary jurisdiction under article 226 of Constitution - **Rajendra Kumar Sharma v. Income-tax Officer** - [2023] 155 taxmann.com 233 (SC)

SECTION 179 OF THE INCOME-TAX ACT, 1961 - COMPANY IN LIQUIDATION - LIABILITIES OF DIRECTORS

- 2.24. **Conditions precedent** : SLP dismissed against order of High Court that failure to disclose steps taken by revenue to recover tax dues from delinquent company and non-recording of satisfaction of **Assessing Officer** as required by section 179 would render notices issued under section 179 unsustainable in law - **Income-tax Officer v. Jagesh Savjani** - [2023] 154 taxmann.com 43 (SC)

SECTION 194A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES

- 2.25. **Interest on MACT award** : SLP granted against order of High Court that interest on compensation not being taxable at all, there is no question of deducting tax on same under section 194A - **Oriental Insurance Co. Ltd. v. Chief Commissioner of Income-tax (TDS)** - [2023] 154 taxmann.com 465 (SC)

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

- 2.26. **Stay of demand** : Where issue relating to adjustment of entire amount of refund against demand in case of assessee was not yet disposed of and revenue submitted that it would be satisfied if imposition of exorbitant cost of Rs. 50,000 was set aside, matter was not inclined to be interfered on merits, but cost of Rs. 50,000 imposed by High Court was to be set aside - **Assistant Commissioner of Income-tax v. Rajendra Kumar** - [2023] 154 taxmann.com 534 (SC)

- 2.27. **Stay** : SLP dismissed against order of High Court that according to CBDT Circular dated 31-7-2017 amount of 20 per cent of demand had to be deposited for stay application to be heard on merits, hence, where 20 per cent of amount demanded had neither been deposited nor any request to grant time to deposit same was made, hearing on stay application could not have been expedited - **Allahabad Development Authority v. Commissioner of Income-tax (Exemption)** - [2023] 155 taxmann.com 610 (SC)



SECTION 241A OF THE INCOME-TAX ACT, 1961 – REFUND- POWER TO WITHHOLD, IN CERTAIN CASES

2.28. Conditions precedent : Assessment order under section 143(3) having been passed, SLP was to be dismissed as infructuous against order passed by High Court that mere issuance of notice under section 143(2) claiming extended period for processing refund under section 143(1), would not be sufficient to withhold refund - **Deputy Commissioner of Income-tax v. Corrttech International (P.) Ltd.** - [2023] 155 taxmann.com 600 (SC)

SECTION 279 OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - PROSECUTION TO BE AT INSTANCE OF CHIEF COMMISSIONER/COMMISSIONER

2.29. Compounding of offences : SLP dismissed against order of High Court that where assessee company had voluntarily deposited TDS due to be **credited** to Central Government along with penal interest liability, though beyond time stipulated, but before any demand or show cause notice issued upon it, impugned order of Chief Commissioner (TDS) rejecting assessee's application for compounding of offence charged under section 276B, read with section 287B on ground that same was filed beyond twelve months was contrary to provision of section 279(2) and thus liable to be set aside - **Income-tax Officer. v. Footcandles Film (P.) Ltd.** - [2023] 154 taxmann.com 501 (SC)

3. HIGH COURT

SECTION 2(47) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSFER

3.1. Land : Where assessee-company entered into an agreement with a developer for development of a residential complex on a land, which was converted into stock-in-trade, since Assessing Officer took a possible view that no tax liability would arise on revaluation of cost of land and also upon entering into development agreement in respect of stock-in-trade, said assessment could not be revised by Commissioner by invoking jurisdiction under section 263 - **Principal Commissioner of Income-tax v. American Spring & Pressing Works (P.) Ltd.** - [2023] 154 taxmann.com 538 (Bombay)

3.2. Reassessment : Where assessee had only granted a licence to Developer to enter into assessee's land for purpose of **development**, same did not amount to 'allowing possession of land' as contemplated under section 53A of Transfer of Property Act, 1882 and, therefore, section 2(47)(v) would not apply - **Darshana Anand Damle v. Deputy Commissioner of Income-tax** - [2023] 155 taxmann.com 202 (Bombay)

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

3.3. Carbon Credits : Where assessee earned income from trading of carbon credits same would be in nature of capital receipts and therefore, would not invite tax - **Principal Commissioner of Income-tax v. Gujarat Flurochemicals Ltd.** - [2023] 155 taxmann.com 135 (Gujarat)

SECTION 10A OF THE INCOME-TAX ACT, 1961 - FREE TRADE ZONE

3.4. Deductions : Where notice under section 154 was issued to deny deduction under section 10A, however, it was time-barred and involved a debatable legal issue, it was not a valid ground for rectification, **therefore**, impugned notices issued under section 154 were to be quashed and set aside - **Mastek Ltd. v. Assistant Commissioner of Income-tax, Circle-2(1)(2)** - [2023] 155 taxmann.com 40 (Gujarat)

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

3.5. Reassessment :Where assessment was sought to be reopened in case of assessee on ground that assessee company was not eligible for **exemption** under section 10AA and it had wrongly claimed this exemption, since same tax authority had accepted assessee's claim and passed assessment order, impugned notice and order disposing of objections were to be quashed and set aside - **Amneal Pharmaceuticals (P.) Ltd. v. Asstt. Commissioner of Income-tax** - [2023] 155 taxmann.com 15 (Gujarat)

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

3.6. Wholly or substantially financed by Government : Interest earned on grants should be considered while quantifying



amount of grant-in-aid received by trust; therefore, where if interest on grants was included, grant-in-aid provided to assessee-trust was more than 50 per cent of total receipts, assessee was eligible to claim exemption under section 10(23C) (iiia) - **Commissioner of Income-tax (Exemptions) v. Institute of Liver & Biliary Sciences** - [2023] 154 taxmann.com 401 (Delhi)

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

3.7. Where Department issued notice under section 148A for reopening assessment of assessee by alleging that assessee was involved in trading penny stocks in concert with 'N' and, accordingly, passed **assessment** order under section 68 read with section 115BBE asserting that shares sold by assessee were penny stocks from 'M' Ltd, since assessee had purchased shares from 'M' Ltd as early as 30.03.2011 and impugned assessment order bore no discussion as to how benefit of section 10(38) could be denied to assessee, matter would be remanded to ITO for fresh consideration. - **Saloni Prakash Kumar v. Income Tax Officer** - [2023] 155 taxmann.com 432 (Madras)

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

3.8. **General** : Where there was nothing substantive or serious to doubt nature of trust **being** charitable, Commissioner was not justified in rejecting application for registration on basis that assessee had not shown reason for not filing application for registration within one year from prescribed date - **Commissioner of Income-tax v. President Seth Malukchand Hirachand Digambar Jain Goth Bees Panthi Mandir Dharmik Avam Paramarthik Trust, Barnagar (Madhya Pradesh)** - [2023] 154 taxmann.com 537 (Madhya Pradesh)

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

3.9. **Quantum of disallowance** : Where Assessing Officer made additions amounting to Rs.23.27 lakhs under section 14A read with rule 8D, however, Commissioner (Appeals) restricted disallowance to Rs.13.46 lakhs, since Assessing Officer had wrongly taken into account investments other than investments made to earn exempt income and Commissioner (Appeals) had correctly applied **formula** prescribed under rule 8D(2)(iii), disallowance as determined by Commissioner (Appeals) was justified - **Principal Commissioner of Income-tax-7 v. Optimal Media Solutions Ltd.** - [2023] 155 taxmann.com 606 (Delhi)

3.10. **Recording of Satisfaction** : Condition precedent of recording requisite satisfaction which is a safeguard provided in section 14A should not be overlooked before

going to rule 8 and therefore, submission canvassed on **behalf** of revenue that once there were mixed funds, Rule 8 would be attracted automatically was not correct - **Principal Commissioner of Income-tax v. Gujarat Fluorochemicals Ltd.** - [2023] 155 taxmann.com 135 (Gujarat)

3.11. **Illustrations** : Disallowance made under section 14A read with rule 8D could not exceed exempt income - **Principal Commissioner of Income-tax v. Gujarat Fluorochemicals Ltd.** - [2023] 155 taxmann.com 135 (Gujarat)

SECTION 24 OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 - NOTICE AND ATTACHMENT OF PROPERTY INVOLVED IN BENAMI TRANSACTION

3.12. **Applicability of** : Where attachment of property of petitioners under Prohibition of Benami Property Transactions Act was only provisional to secure property which might be subject to confiscation and petitioners had all opportunities to approach **Adjudicating** Officer and explain why provisional order of attachment was bad, therefore, provisional attachment made by initiating officer could not be termed as bad in law - **M. Kumudhavalli v. Initiating Officer Joint Commissioner of Income-tax (OSD)** - [2023] 154 taxmann.com 344 (Madras)

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

3.13. **Reassessment** : Where loss on sale of asset was disclosed in P&L account and in ITR-6 form and Assessing Officer had called for details of other expenses which contained loss on sale of asset as well and after perusing details filed, made an assessment under section 143(3), there being no failure to disclose material facts necessary for assessment, impugned reopening notice was to be set aside - **Astec LifeSciences Ltd. v. Assistant Commissioner of Income-tax** - [2023] 155 taxmann.com 284 (Bombay)

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

3.14. **Waiver of loan** : Where term loans and working capital loans borrowed by assessee stood waived off, since benefit upon loan waiver was in form of a cash receipt and not in form of 'other than in shape of money', nature of loan would be of no relevance and waiver of loan in instant case would not satisfy test of section 28(iv) - **I.G. Petrochemicals Ltd. v. Income-tax Appellate Tribunal, "C" Bench** - [2023] 155 taxmann.com 45 (Karnataka)

SECTION 28(va) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME - NON-COMPETE FEES

3.15. **Compensation on termination of contract** : Where assessee paid certain amount to a company as compensation for termination of agreement, since by paying such compensation, assessee not only saved expense that it would have had to incur in relevant previous year towards expenditure under agreement but also for few more years to come, said amount paid on account of termination of agreement was to be allowed as revenue expenditure - **Principal Commissioner of Income-**



tax v. Music Broadcast (P.) Ltd. - [2023] 155 taxmann.com 277 (Bombay)

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

3.16. Non-compete fee : Where assessee paid non-compete fees to a company on termination of agreement, since by paying said fees, assessee acquired rights which not only gave it enduring benefit but also protected assessee's business against competition, impugned non-compete fees paid by assessee would be capital in nature, however, it would be an intangible asset on which assessee was entitled to claim depreciation - **Principal Commissioner of Income-tax v. Music Broadcast (P.) Ltd. - [2023] 155 taxmann.com 277 (Bombay)**

SECTION 35 OF THE INCOME-TAX ACT, 1961 - SCIENTIFIC RESEARCH EXPENDITURE

3.17. Reassessment : Where reopening notice was issued for reason that claim of deduction under section 35(2AB) made by assessee was not supported by Form no. 3CL, since in computation of income, there was a specific claim made under section 35(2AB) along with all details and claim of deduction was examined by raising a specific query by Assessing Officer during original assessment, impugned reopening after four years was unjustified - **Astec LifeSciences Ltd. v. Assistant Commissioner of Income-tax - [2023] 155 taxmann.com 284 (Bombay)**

SECTION 36(1)(vii)/(1)(viii)/(2) OF THE INCOME-TAX ACT, 1961 - BAD DEBTS

3.18. Reassessment : Where reopening notice was issued for reason that provision for bad and doubtful debts of certain amount accounted as 'other expenses' in audited accounts by assessee was to be added back to income of assessee, since assessee in accounts disclosed provision for bad and doubtful debts along with complete details and Assessing Officer discussed details with assessee, there was no failure on part of assessee to disclose any material facts necessary for assessment and, thus, impugned reopening notice was to be set aside - **Astec LifeSciences Ltd. v. Assistant Commissioner of Income-tax - [2023] 155 taxmann.com 284 (Bombay)**

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

3.19. Replacement of spares: Expenses incurred by assessee-company towards replacement of spares in machineries would be allowable as revenue expenditure and would not be treated as capital expenditure - **Principal Commissioner of Income-tax v. Gujarat Industries Power Co. Ltd. - [2023] 154 taxmann.com 583 (Gujarat)**

3.20. Software : Where assessee incurred expenses on upgradation of software, since expenditure was incurred

only for facilitating trading operation leaving fixes untouched, said expenditure was to be allowed as revenue in nature - **Principal Commissioner of Income-tax v. Gujarat Industries Power Co. Ltd. - [2023] 154 taxmann.com 583 (Gujarat)**

3.21. Periphery development expenses : Where assessee-company, engaged in iron ore mining, incurred periphery development expenses for territorial welfare as well as welfare of local people in area in which mines were operating as per direction of local administration, impugned CSR expenditure incurred by assessee prior to assessment year 2015-16 were allowable as business expenditure as same were wholly and exclusively incurred for purpose of business - **Principal Commissioner of Income-tax v. Ramesh Prasad Sao - [2023] 155 taxmann.com 256 (Calcutta)**

3.22. Provision of warranty : Deduction under section 37(1) could not be disallowed in respect of provision for warranty made for sophisticated goods where defects existed in some of sophisticated goods manufactured in past and sold - **Principal Commissioner of Income-tax v. Heavy Engineering Corporation Ltd. - [2023] 154 taxmann.com 438 (Jharkhand)**

3.23. Provision of liquidated damages : Where liquidated damages provided in accounts were based on actual deduction allowed by assessee to its customers as a part of contract which was being followed by assessee consistently, assessee-company had not committed any error in making provision of liquidated damages - **Principal Commissioner of Income-tax v. Heavy Engineering Corporation Ltd. - [2023] 154 taxmann.com 438 (Jharkhand)**

3.24. Miscellaneous provisions : Where accounting policy of assessee was to charge losses of non-moving inventories to profit & loss account, assessee had not committed any error in charging said losses under head 'Miscellaneous provisions' - **Principal Commissioner of Income-tax v. Heavy Engineering Corporation Ltd. - [2023] 154 taxmann.com 438 (Jharkhand)**

3.25. Sales promotion expenses : Where sales promotion expense include expenditure on account of after sales service, assessee had not committed any error in charging same under head sales promotion - **Principal Commissioner of Income-tax v. Heavy Engineering Corporation Ltd. - [2023] 154 taxmann.com 438 (Jharkhand)**

SECTION 40A(2) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - EXCESSIVE OR UNREASONABLE PAYMENTS

3.26. Salaries : Where Assessing Officer simply rejected claim of assessee under section 40A(2)(a) without seeking relevant evidence, assessee was to be granted opportunity to adduce appropriate evidence documentary or otherwise before Assessing Officer in order to establish its claim regarding educational qualification, experience, work profile and in particular, duties discharged by concerned persons to justify claim of assessee qua payment of salary to persons concerned - **Mehra Jewel Palace (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 270 (Delhi)**



SECTION 43B OF INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CERTAIN DEDUCTIONS TO BE ALLOWED ONLY ON ACTUAL PAYMENT

- 3.27. Leave travel concession :** Provisions of section 43B(f) would not apply where LTA was not in nature of sum payable by employer in lieu of any leave at credit of his employee - *Principal Commissioner of Income-tax v. Heavy Engineering Corporation Ltd.* - [2023] 154 taxmann.com 438 (Jharkhand)

SECTION 50 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 - PUNISHMENT FOR FAILURE TO FURNISH IN RETURN OF INCOME, ANY INFORMATION ABOUT AN ASSET (INCLUDING FINANCIAL INTEREST IN ANY ENTITY) LOCATED OUTSIDE INDIA

- 3.28. Dispensation from personal hearing :** Where complaint was registered and process was issued against assessee and others under section 50 of BMI and assessee sought exemption from personal appearance in court citing her role as a housewife managing household affairs, personal appearance of assessee may be dispensed with subject to condition that she will appear as and when required by Court and shall not leave country without prior permission of Trial Court - *Prerna Chopra v. Union of India* - [2023] 155 taxmann.com 430 (Calcutta)

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

- 3.29. Reassessment :** Where first assessment order passed in case of assessee was based upon information and details provided by assessee including material relating to his immovable property and, deductions under section 54F had been computed on basis of material provided by assessee, reopening of assessment on issue of deduction under section 54F, being based on mere change of opinion was not justified - *Ashraf Chitalwala v. Deputy Commissioner of Income-tax* - [2023] 155 taxmann.com 137 (Bombay)

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

- 3.30. Share application money :** Where assessee-company received certain sum towards share application from certain companies, since all companies had filed replies including copies of bank statement, income tax returns along with audited balance sheets, audited reports etc., identity of creditors and source of money received by assessee were well established, and therefore, impugned addition made on account of said share application money was to be deleted - *Principal Commissioner of Income-tax, Mysore v. Khyathi Steel Industries (P.) Ltd.* - [2023] 154 taxmann.com 593 (Karnataka)

- 3.31. Accommodation entries :** Where AO issued notice

under section 148A(b) to assessee on ground that directors of searched companies in affidavits stated name of assessee as beneficiary of accommodation entries, since AO failed to furnish copy of affidavits filed by directors to assessee, impugned order and notice were to be set aside - *Bhagwan Sahai Sharma v. Deputy Commissioner of Income-tax* - [2023] 154 taxmann.com 430 (Delhi)

- 3.32. Unsecured loans :** Where assessee received unsecured loans and produced confirmation of lenders and other relevant documents such as copy of PAN, ledger account, bank statement and audited books so as to establish creditworthiness, genuineness and identities of lenders in transactions, impugned addition made under section 68 on account of said unsecured loan by AO without considering such documents/details produced by assessee was unjustified - *Principal Commissioner of Income-tax v. Hareshkumar Manilal Somaiya* - [2023] 154 taxmann.com 432 (Gujarat)

- 3.33. Illustrations :** Where revenue had misinterpreted gross receipt of sale consideration of 16 scooters as income chargeable to tax and assessee had clearly explained that amount was total sale consideration and not income chargeable to tax; reassessment proceedings against assessee on ground that amount received by assessee on sale of 16 scooters had escaped assessment were to be quashed and set aside - *Nitin Nema v. Principal Chief Commissioner of Income-tax* - [2023] 155 taxmann.com 276 (Madhya Pradesh)

- 3.34.** Where assessee was accused of involvement in accommodation entries by 'A' of Rishabh Trading Company, and assessee contested allegations, since there was lack of evidence linking assessee in 'A's statement and absence of required documentation for reassessment, notice issued by Assessing Officer under section 148 was to be set aside - *Gudwala & Sons v. Assistant Commissioner of Income-tax* - [2023] 155 taxmann.com 400 (Delhi)

- 3.35. Share transactions :** Matter remanded as Tribunal misdirected itself and made addition on presumptive income earned by assessee on account of trading in equity and commodities, without considering loss in trading in equity and commodities - *Dinesh Dahiya v. Principal Commissioner of Income-tax* - [2023] 155 taxmann.com 398 (Delhi)

- 3.36. Share transactions :** Where during scrutiny assessment, Assessing Officer had sought information with regard to share transactions and assessee's share broker which was furnished by assessee, reopening of assessment based on a statement made by a director of assessee's share broker company, without giving opportunity to assessee to cross-examine him was not justified - *Principal Commissioner of Income-tax v. Prabhu Dayal Aggarwal* - [2023] 154 taxmann.com 506 (Delhi)

- 3.37. General :** Where notice under section 148 was issued on ground that assessee had deposited cash in her accounts which was more than Rs. 50 lakhs which had escaped assessment, since entries in bank account indicated that assessee had not only received Rs. 31 lakhs in cheque but also additionally a sum of Rs. 21 lakhs in account, there was no case made out for



interfering with impugned notice - **Saraswathi v. Income Tax Officer - [2023] 154 taxmann.com 618 (Madras)**

3.38. Bogus loss : Where AO disallowed loss claimed by assessee on sale of shares on ground that assessee traded in shares of penny stock and claimed bogus loss, since shares were purchased online and payments were made through banking channel and AO had no evidence to show that there was an agreement between assessee and any other party to convert unaccounted money by taking fictitious loss, impugned addition made on account of bogus loss was to be deleted - **Principal Commissioner of Income-tax v. Champalal Gopiram Agarwal - [2023] 155 taxmann.com 66 (Gujarat)**

3.39. Share dealing : Where Tribunal confirmed additions made to income of assessee under section 68 on ground that assessee had failed to prove identity and creditworthiness of investors as well as genuineness of transaction, however, it was found that though assessee did not appear in person before Commissioner (Appeals), they had filed written submissions electronically and Commissioner (Appeals) had ultimately dismissed appeal after considering all documents and submissions so made, matter was to be remanded back to Tribunal for fresh consideration - **DV Re-Rolling Mills (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 428 (Calcutta)**

3.40. Where Department issued a notice under section 148A(b) to reopen assessment for assessment year 2018-19 after a search at 'N' and his associates' premises, and assessee contested reopening, arguing that it should have been initiated under section 153C instead, and all related proceedings under sections 148 and 148A should be abated, since section 153C being an enabling provision and does not preclude reopening under Section 148A(b) argument of assessee that notice was defective was to be rejected - **Saloni Prakash Kumar v. Income Tax Officer - [2023] 155 taxmann.com 432 (Madras)**

3.41. Writ remedy : Where AO passed order under section 147 read with section 144B on failure of assessee to furnish any response with respect to deposits made in wake of demonetization, since assessee had not properly explained facts surrounding said deposit, there was no merit to challenge impugned order in writ petition; assessee should avail alternate remedy before Commissioner (Appeals) - **Junaitha Begum v. Assessing Officer of the Assessment Unit, Income-tax Department - [2023] 155 taxmann.com 80 (Madras)**

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

3.42. Share : Where Assessing Officer reopened assessment based on alleged SEBI report linking certain company to involved in providing bogus LTCG

and assessee as a beneficiary, since assessee was a family member of promoter group and there was no SEBI investigation against said company, in said circumstances, assessee was justified in seeking a copy of SEBI report on which reliance had been placed and therefore, matter would be remanded back to Jurisdictional Assessing Officer (JAO) with a direction to make available to assessee a copy of report of SEBI - **Ankur V. Bankda v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 428 (Bombay)**

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

3.43. Scope of provision : Where Income-tax department intercepted assessee at Delhi Airport and seized Rs. 16 lakhs from him and Tribunal accepted explanation of assessee that source of amount was his professional income and deleted addition made under section 69A, Competent Authority was to be directed to return said amount to assessee - **Ramchandra K. Mendadkar v. Union of India - [2023] 154 taxmann.com 440 (Bombay)**

3.44. Illustrations : Where assessee sold an agricultural land and deposited Rs. 19 lacs in his bank account and stated that land was sold for Rs. 20.80 lacs, since evidence on record proved that total amount of consideration out of sale of land was only Rs. 6.75 lacs, AO rightly treated difference to income of assessee - **Satyaveer Singh v. Commissioner of Income tax (Appeals) - [2023] 154 taxmann.com 619 (Rajasthan)**

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

3.45. Bogus purchases : Where assessee made purchases from suspicious dealers, however fact that assessee had purchased goods and used these goods had not been disputed, entire purchase consideration could not be brought to tax, only profit attributable on total purchase consideration could be subject to income-tax - **Principal Commissioner of Income-tax v. Bharat Copy Centre (P.) Ltd. - [2023] 155 taxmann.com 211 (Bombay)**

3.46. Bogus purchases : Where AO, on basis of an information received from State Sales Tax Authority relating to bogus purchases made by assessee from a hawala biller, made an addition under section 68 towards entire bogus purchases, since AO made addition only on basis of said information without carrying out any further inquiry as to genuineness of purchases made by assessee, additions on account of alleged bogus purchases was rightly restricted to 5 per cent - **Principal Commissioner of Income-tax v. Jigisha Satishkumar Mehta - [2023] 155 taxmann.com 279 (Gujarat)**

3.47. Undisclosed income: Where pursuant to search in case of assessee company, additions were made to assessee's income and Tribunal reduced addition related to household expenses but deleted addition concerning other unaccounted expenses, citing lack of evidence, Tribunal having considered grounds raised as well as submissions made on behalf of assessee and recorded detailed reasons for its conclusion, there was no reason to interfere with order passed by Tribunal - **A. Narsinga Rao v. Assistant Commissioner of Income-tax - [2023] 155**



taxmann.com 509 (TELANGANA)

3.48. Commission expenses : Where assessee in response to inquiries made by Assessing Officer about purchases and commission paid to parties had furnished bank statement, tax invoices and ledger accounts of contra parties and Principal Commissioner had not disputed existence of parties and purchases made or commission paid and no contrary evidence was placed on record to substantiate that purchases made or commission paid was bogus, assessment order could not have been set aside under section 263 - **Principal Commissioner of Income-tax-1 v. Ramchandra Dahyabhai Narrow Fab (P.) Ltd. - [2023] 155 taxmann.com 431 (Gujarat)**

3.49. Bogus purchases : Where AO issued show cause notice under section 148A(b) on ground that assessee made purchases from shell companies and attempted to evade tax, however while passing order under section 148A(d) made reference to certain transactions done by two companies which were not referred to in show cause notice, there was violation of principles of natural justice and thus matter was to be remanded back to AO for a fresh decision - **Rajesh Kumar Agarwal v. Union of India - [2023] 154 taxmann.com 404 (Calcutta)**

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

3.50. Computation of deduction : Where assessee had a CPP Unit generating electricity, which was being supplied to general unit as well as other consumers also, assessee would be allowed deduction under section 80-IA(4), at rate on which Electricity Board supplied power to its consumers - **Principal Commissioner of Income-tax v. Gujarat Flurochemicals Ltd. - [2023] 155 taxmann.com 135 (Gujarat)**

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

3.51. Adjustments - Interest : When entire assessment proceedings including final assessment order under section 143(3) and section 92CA(3) and section 144C(5), were done/completed by authorities at Hyderabad, tax case appeal could not be maintainable before High Court of Madras - **Cognizant Technology Solutions India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 155 taxmann.com 83 (Madras)**

3.52. Methods for determination of - Most appropriate method, determination of : Where Tribunal gave detailed reasons for arriving at a conclusion that internal TNMM and not CUP method would be most appropriate method for benchmarking of freight transactions entered into with AE and reasoning of Tribunal in impugned order was robust and without any flaw, Tribunal was legally justified in directing both, assessee and

Assessing Officer to use internal TNMM under section 92C even when same was not used by assessee in its transfer pricing report - **Principal Commissioner of Income-tax v. Hellmann Worldwide Logistics India (P.) Ltd.-4 - [2023] 155 taxmann.com 44 (Delhi)**

3.53. Methods of accounting - Cost plus method : Where TPO adopted CUP method to benchmark two separate international transactions undertaken by assessee by way of export of steel item to AE and receipt of commission from AE as against CPM method and IRR method adopted by assessee for respective transactions, since TPO had adopted same methodology of benchmarking transactions in subsequent years as done by assessee in instant assessment year, TP adjustment/additions made by TPO on account of export sales and commission by adopting a different method during relevant year was unjustified - **Principal Commissioner of Income-tax v. Thyssen Krupp Electrical Steel India (P.) Ltd. - [2023] 154 taxmann.com 441 (Bombay)**

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

3.54. Limitation : Where Tribunal, while allowing appeal of assessee in part and remanding matter to Assessing Officer, had passed an order on 27-6-2014 for fresh adjudication, consequential order pursuant to remand by Tribunal being passed by Assessing Officer on 20-4-2018 was barred by limitation as per provisions of section 153(2A) and, thus was to be quashed - **TNS India (P.) Ltd. v. Union of India - [2023] 155 taxmann.com 537 (Telangana)**

SECTION 115BAA OF THE INCOME-TAX ACT, 1961 - CERTAIN DOMESTIC COMPANIES, TAX ON

3.55. Filing of FORM 10-IC : Where assessee-company failed to file Form 10-IC, which was a mandatory condition stipulated under section 115BAA which led to imposition of higher rate of tax, was to be directed to move an appropriate application before CBDT for granting leave to file Form 10-IC, pursuant to powers conferred on it by section 119(2)(b) - **Jasper Associates (P.) Ltd. v. Centralized Processing Centre, Income-tax Department - [2023] 155 taxmann.com 333 (Delhi)**

SECTION 115BBC OF THE INCOME-TAX ACT, 1961 - ANONYMOUS DONATIONS

3.56. Conditions precedent : Where assessee-trust received corpus donation and during assessment it had furnished detailed list of donors along with their complete address and amounts of donations given by them which was verified by Assessing Officer, this fact would be sufficient for compliance of requirement under section 115BBC(3) in claiming exemption of donations from being chargeable to income tax and therefore, Commissioner was not justified in reviewing said assessment order by treating donations as anonymous - **Peoples Forum v. Commissioner of Income-tax - [2023] 154 taxmann.com 505 (Orissa)**

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

3.57. Reassessment : Where assessee paid tax on basis of book



profits under section 115JA and ITO issued notice under section 148 alleging that assessee had over stated cost of acquisition of shares and there had been excessive loss claimed by assessee which had escaped income chargeable to tax; even if assessee had offered said quantum of long term capital loss, that would still have no impact because assessee would be still liable to pay tax on basis of book profits, impugned notice was to be quashed and set-aside - ***Pacific Energy (P.) Ltd. v. Income Tax Officer, Ward 8(2)(4) - [2023] 155 taxmann.com 375 (Bombay)***

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

3.58. Computation of book profit: Assessing Officer has a limited power of making increase and reduction as provided for in explanation to section 115JB and thus Assessing Officer does not have jurisdiction to go behind net profit shown in profit and loss account except to extent provided in explanation - ***Principal Commissioner of Income-tax v. Varun Corporation Ltd. - [2023] 154 taxmann.com 548 (Bombay)***

3.59. Section 14A disallowance : No addition in book profit could be made on basis of calculations worked out under section 14A - ***Principal Commissioner of Income-tax v. Gujarat Fluorochemicals Ltd. - [2023] 155 taxmann.com 135 (Gujarat)***

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

3.60. Scope of : Where Pr Commissioner had gone into merits of claim for refund when application under section 119(2) was filed for condonation of delay in preferring said refund claim, since a decision on merits on delay condonation application had not been taken by Pr Commissioner, matter was remitted to said authority for fresh consideration - ***Daisy v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 393 (Kerala)***

SECTION 139(5) OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - REVISED RETURN

3.61. Manual return :Where assessee, involved in a demerger scheme with Hind Lamps Limited, filed delayed manual revised returns due to COVID-19 and Assistant Commissioner rejected said return by relying on Circular No. 9 of 2015 since, Supreme Court precedent in *Dalmia Power Ltd. v. Asstt. CIT* [2019] 112 taxmann.com 252/[2020] 269 Taxman 352/420 ITR 339 clarified that section 139(5) isn't applicable when filing is delayed due to NCLT's sanction time, in such circumstances, impugned order was to be set aside, allowing processing of manual revised returns for A.Ys. 2014-15 to 2021-22 - ***Bajaj Electricals Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 468 (Bombay)***

SECTION 142 OF THE INCOME-TAX ACT, 1961 -

ASSESSMENT - INQUIRY BEFORE ASSESSMENT

3.62. Principles of natural justice : Where notice under section 142(1) had been issued on 10-3-2022, with a date for response as 14-3-2022, which was below 7 days as mandated and notice under section 142(1) had not been sent to updated email ID of assessee, notice under section 142(1) was to be set aside on sole ground of violation of principles of natural justice - ***Doreswamaiah Sureshbabu v. National Faceless Assessment Centre, Addl./Jt./Dy./Asstt. CIT/ITO - [2023] 155 taxmann.com 13 (Karnataka)***

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL

3.63. DIN : Where Assessing Officer passed assessment order manually and it did not contain document identification number and Assessing Officer did not explain why endorsement as per format provided in Circular No. 19 of 2019, dated 14-8-2019 was not made in assessment order, such assessment order was to be set aside - ***Royal India Corporation Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 435 (Bombay)***

3.64. Scrutiny assessment :Where AO decided issue which was not part of limited scrutiny for which assessment was directed to be scrutinised, since AO did not abide by Instruction No. 5/2016, dated 14-07-2016, AO exceeded his jurisdiction and assessment order was bad in law - ***Principal Commissioner of Income-tax-5 v. Weilburger Coatings (India) (P.) Ltd. - [2023] 155 taxmann.com 580 (Calcutta)***

3.65. Service of notice : Where AO did not have any records to prove that show cause notice and draft assessment order generated in e-proceedings was indeed delivered upon assessee, principle in section 4 of Contract Act, 1872 could be invoked and it was to be construed that there was no service of notice and order to assessee and, accordingly, impugned final assessment order passed pursuant to said draft assessment order was to be set aside - ***Kothandaraman Praesh v. Additional /Joint/Deputy/ Assistant Commissioner of Income-tax, Income-tax Officer, National e-Assessment Centre, Delhi - [2023] 154 taxmann.com 425 (Madras)***

3.66. Change of address :Where pursuant to a scheme of amalgamation, registered office of assessee was shifted to new address, however, an assessment order was passed on an old address, since other wings of department were aware of shifting of address of assessee from old to new address, impugned assessment order for relevant year was to be quashed and case was to be remanded back to Assessing Officer with a direction to pass a speaking order - ***Vinplex India (P.) Ltd. v. Additional/Joint/Deputy/ Assistant Commissioner of Income-tax, National Faceless Assessment Centre Delhi - [2023] 155 taxmann.com 116 (Madras)***

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

3.67. Show cause notice : As per section 144B(1)(xvi), in case any variation is made which is prejudicial to interest of assessee, National Faceless Assessment Centre is required to serve a



notice calling upon assessee to show cause as to why proposed variation should not be made - **Take Solutions Ltd. v. Income-tax Officer, National e-Assessment Centre, Income Tax Department, Ministry of Finance, Delhi - [2023] 155 taxmann.com 204 (Madras)**

3.68. Opportunity of hearing : Where assessee-agricultural society was formed for lending loans to members who were farmers and AO initiated e-proceedings under Faceless Assessment scheme directing assessee to submit name and address along with PAN numbers of members, since assessee contended that there was voluminous documents as it had 3000 members, assessee ought to be granted opportunity to produce register and other particulars sought for by AO even though it was a faceless assessment - '**SP. SP1.41, Sammanthapuram Primary Agricultural Cooperative Society Ltd. v. Assessment Unit, Income-tax Department, National Faceless Assessment Centre, Delhi - [2023] 155 taxmann.com 64 (Madras)**

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

3.69. Scope of provision : Omission to pass a draft assessment order is not merely a procedural oversight, but a substantive lapse, which renders subsequent order devoid of jurisdiction, hence, where Assessing Officer in pursuance to revisionary proceedings, passed impugned assessment order making additions to income of assessee, however, no draft assessment order, as envisioned by section 144C(1), was made available to assessee, it had resulted in invalidation of final assessment order, hence, impugned order, demand notice and penalty notice were to be quashed - **Sinogas Management Pte Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 379 (Delhi)**

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

3.70. Speaking order : Where assessee had specifically requested for a personal hearing in response to notice issued under section 148 and had also asked for a reason to reopen assessment which was not furnished earlier, however, it was furnished only after disposing of assessee's objection for reopening assessment, after order was passed, impugned order was to be set aside and case was to be remitted back to revenue to pass a speaking order within time specified - **Konganapuram Venkatesan Nachiappan v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 652 (Madras)**

3.71. Scope of provision : Where Assessing Officer passed order under section 148A(d) on assessee and subsequently assessee received a notice under section 148 which was in name of a different entity and in

meantime Assessing Officer intimated assessee that aforesaid notice had been issued to it and passed reassessment order, since impugned notice issued under section 148 did not concern assessee, said notice and consequent reassessment order deserved to be quashed - **AVS Infrabuild (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 429 (Delhi)**

3.72. Dead person : Reopening notice under section 148 issued upon deceased assessee was a nullity, therefore, consequential proceedings and orders passed thereon were to be quashed and set aside - **Pravinchandra A Shah v. Union of India - [2023] 154 taxmann.com 616 (Gujarat)**

3.73. Scope of provision : Where reassessment proceedings were triggered against petitioner/assessee via impugned notice issued under section 148, however, allegations based on which reassessment proceedings had commenced were subject matters of earlier assessment order passed under section 147 read with sections 144 and 144B, reassessment proceedings being mere change of opinion were to be set aside - **Basic Clothing (P.) Ltd. v. Income Tax Officer, Ward 4(1) - [2023] 155 taxmann.com 507 (Delhi)**

3.74. Withdrawal of notice : Where no action was taken by Assessing Officer pursuant to first reopening notice issued by him upon assessee and Assessing Officer had neither withdrawn first notice nor completed proceedings before expiry of time, second reopening notice was unsustainable in law - **Principal Commissioner of Income-tax (Exemptions) v. Archdiocesan Board of Education - [2023] 155 taxmann.com 82 (Karnataka)**

SECTION 149 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - TIME LIMIT FOR ISSUE OF NOTICE

3.75. Illustrations : Where department issued notice upon assessee under section 148 for assessment year 2012-13 on 31-3-2019, since period of six years as contemplated under section 149(1)(b) had expired on 31-3-2019 i.e. date on which notice was issued, impugned notice could not be treated as time barred - **Dwarika Prasad Tiwari v. Union of India - [2023] 155 taxmann.com 134 (Madhya Pradesh)**

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

3.76. Illustrations : Where Principal Commissioner granted sanction under section 151 on basis of form submitted by revenue wherein it was stated that time limit for current proceedings was covered under section 149(1)(b) and quantum of income escaped assessment was four lakhs, since notice under section 148A(b) was issued within three years time limit, current proceedings should be covered under section 149(1)(a), furthermore under section 149(1)(b) no notice could be issued for amount less than Rs. 50 lakhs and approval could only be granted by Principal Chief Commissioner, thus grant of approval was made mechanically without application of mind - **Bhavesh Maganlal Dharod v. Income Tax Officer, Ward 16(2)(1) - [2023] 155 taxmann.com 335 (Bombay)**



SECTION 154 OF THE INCOME-TAX ACT, 1961 - RECTIFICATION OF MISTAKE - APPARENT FROM RECORDS

3.77. Scope of provisions : Where Assessing Officer had accepted contention of assessee regarding cash found in search proceeding while framing regular assessment, there was no mistake apparent on record and accordingly addition made in respect of said cash in rectification proceeding deserved to be deleted - **Principal Commissioner of Income-tax v. Pravinbhai Jayantibhai Kapasi - [2023] 155 taxmann.com 57 (Gujarat)**

SECTION 170A OF THE INCOME-TAX ACT, 1961 - EFFECT OF ORDER OF TRIBUNAL OR COURT IN RESPECT OF BUSINESS REORGANISATION

3.78. Scope of provisions : Where assessee, involved in a demerger scheme with a company, filed delayed manual revised returns for assessment years 2014-15 to 2021-22 and Assistant **Commissioner** rejected manual processing, citing Circular No. 9 of 2015 and section 170A, since new provision of section 170A was applicable only from assessment year 2022-23 onwards, while assessee's case pertained to assessment years 2014-15 to 2021-22 hence, reliance on new provision and circular would not be applicable in case of assessee - **Bajaj Electricals Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 468 (Bombay)**

SECTION 194C OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - CONTACTORS/SUB-CONTRACTORS, PAYMENTS TO

3.79. Reassessment : Where Assessing Officer issued reopening notice merely on basis of audit objection alleging that assessee-firm had not deducted TDS under section 194C on entire amount of hire charges paid by it, since Assessing Officer had already scrutinized expenses towards hire charges claimed by assessee during **original** scrutiny assessment, impugned reopening of assessment without any new material would tantamount to a change of opinion and, thus, same was not permissible - **Principal Commissioner of Income-tax v. Raja Transports - [2023] 154 taxmann.com 589 (Madras)**

SECTION 194H OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - COMMISSION, BROKERAGE, ETC.

3.80. Deduction by agencies : Where assessee sold ad space, offering a 15 per cent discount to agencies without a formal agreement and Assessing Officer regarded deduction by agencies as commission, leading to belief that assessee was obligated to deduct Tax at Source (TAS) under section 194H, however, relationship between assessee and agencies was found to be on a **principal**-to-principal basis, thus, amount retained by agencies could only be construed as trade

discount and not commission, therefore, there was no obligation on part of assessee to deduct TAS under section 194H - **Principal commissioner of Income-tax-7 v. Optimal Media Solutions Ltd. - [2023] 155 taxmann.com 606 (Delhi)**

SECTION 194N OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PAYMENT OF CERTAIN AMOUNTS IN CASH

3.81. Illustrations : Where **Primary** Agricultural Co-operative Credit Societies filed writ petitions challenging a circular dated 29-3-2021 issued by District Central Co-operative Bank which referred to statutory mandate of section 194N, CBDT was to be directed to consider representation of said societies for exemption under provisions of section 194N - **S.161 Podaturpet Venkateswara Primary Agricultural Co-operative Credit Society Ltd. v. Income-tax Officer - [2023] 154 taxmann.com 49 (Madras)**

SECTION 195 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PAYMENT TO NON- RESIDENT

3.82. Reassessment : Where assessee had submitted during assessment proceedings that no tax was deducted on payment made to Insignia and submission so made during assessment proceedings had been accepted by Assessing Officer, reopening of assessment alleging that income chargeable to tax had escaped assessment due to non-deduction of TDS on payments made to Insignia, being mere change of opinion did not constitute justification to believe that income chargeable to tax had escaped assessment - **Knight Riders Sports (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle - [2023] 155 taxmann.com 11 (Bombay)**

SECTION 201 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - CONSEQUENCE OF FAILURE TO DEDUCT OR PAY

3.83. Limitation : Where survey operation was carried out upon assessee on 30-12-2015 and show cause notice was issued upon it on 20-1-2016 on grounds of non deduction of TDS on remittances paid by assessee to two foreign companies for purchase of certain trademarks and ultimately, order under section 201(1) came to be passed on 14-12-2018 i.e., within three years, impugned order passed under section 201(1) was within a reasonable time and not beyond limitation - **Dr. Reddys Laboratories Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 97 (Telangana)**

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

3.84. Where assessee provided services to Clutch Auto Ltd. (CAL), claimed that CAL did not deposit deducted tax at source with revenue department and consequently, a demand was raised by revenue and assessee sought a refund which was denied by revenue on ground that Form 16A was not produced as evidence of tax deduction since, assessee showed reliable material other than Form 16A and prima facie established deduction of tax at source, then assessee couldnot be denied benefit of provisions of section 205 - **Incredible Unique**



Buildcon (P.) Ltd. v. Income Tax Officer, Ward (12)(1) - [2023] 155 taxmann.com 603 (Delhi)

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

3.85. Stay : Where Appellate Authority directed assessee to pre-deposit 20 per cent of tax demanded and granted a stay for remaining amount, in view of fact that assessee was engaged in manufacturer of Handloom Sarees, impugned order passed by Appellate Authority requiring assessee to pay 20 per cent of tax demand was on higher side, therefore, assessee was to be directed to deposit Rs.10 lakhs instead of 20 per cent of impugned demand ordered by Appellate Authority - ***Ramasamy Rajkumar v. Principle Commissioner of Income-tax-1 - [2023] 155 taxmann.com 579 (Madras)***

3.86. Stay of demand : Where Assessing Officer passed assessment order holding that seller from whom assessee made purchases had not filed its return of income and raised demand notice to pay 25 per cent of assessed tax, since assessee was not liable to submit any evidence to prove seller's return, demand notice deserved to be stayed - ***A. Rangasamy Engineers (P.) Ltd. v. Assistant Commissioner - [2023] 154 taxmann.com 343 (Madras)***

3.87. Stay : Where assessee had filed an application under section 154 for rectification of assessment order for assessment year 2015-16 which raised certain demand, though said order was modified but assessee was still required to deposit 20 per cent of disputed tax under section 220(6), since said rectification application was followed by a writ petition whereby assessee got interim protection from this Court, in said circumstances, there would be a direction to revenue to maintain status quo as far as pre deposit of amount pursuant to assessment order or in terms of rectification order - ***Sukumar Dhanapal v. Income-tax Officer - [2023] 154 taxmann.com 402 (Madras)***

3.88. Stay : Where assessee faced scrutiny leading to a demand and challenged demand before Appellate Authority and sought a stay under section 220(6), considering status of assessee, which was a charitable establishment with a charitable object and purpose, Assessing Authority should have allowed application under section 220(6) - ***Chaitanya Memorial Educational Society v. Commissioner of Income-tax (Exemption) - [2023] 155 taxmann.com 378 (Telangana)***

SECTION 237 OF THE INCOME-TAX ACT, 1961 - REFUND - GENERAL

3.89. Others : Where revenue claimed that system under control of CPC had some technical issues and therefore, refund amount could not be released to assessee, since interest was payable in law until **date** of

refund which would be a waste and burden on exchequer, revenue was directed either by itself or through CPC to ensure that amount was credited to assessee's account on or before 4-11-2023 with interest upto date of payment in accordance with law - ***Matrix Publicities and Media India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 588 (Bombay)***

SECTION 239 OF THE INCOME-TAX ACT, 1961 - REFUND - LIMITATION

3.90. Illustrations : Where assessee filed application under section 119(2)(b) for condonation of delay in filing application for refund and Commissioner considered claim for refund on merit and rejected claim without touching on merit of application for condonation of delay, in view of Circular No. 9/2015, dated 9-6-2015 Commissioner was legally correct in his action - ***Daisy v. Principal Commissioner of Income-tax - [2023] 154 taxmann.com 431 (Kerala)***

SECTION 245 OF THE INCOME-TAX ACT, 1961 - REFUND - SETTING OFF AGAINST TAX DUE

3.91. Illustrations : Where revenue made adjustment of income tax refund payable to assessee against outstanding demands from previous assessment years, since tax authorities actions were hasty and contrary to law and adjustment, which exceeded 20 per cent of disputed demand, was not in compliance with Office Memorandum's guidelines, especially when an appeal was pending, tax authorities were directed to release excess amount, beyond 20 per cent of disputed demand, along with applicable interest - ***Jindal Stainless Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 649 (Delhi)***

3.92. Illustrations : Where assessee filed statement under section 200 of tax deducted at source and Assessing Officer did not send intimation under section 200A to assessee and informed it of outstanding demand, Assessing Officer was to be directed to either enable filing of Form No. 26B or in alternative permit assessee to make a claim for refund in physical mode and after refund being processed and permitted, amounts being refunded be set off from demand raised - ***Alkem Laboratories Ltd. v. Commissioner of Income-tax (TDS) - [2023] 155 taxmann.com 61 (Patna)***

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

3.93. Ex parte orders : Where assessee was unrepresented before Tribunal due to unwellness of his Chartered Accountant who had undergone a surgery and was advised complete rest, since very strong observations were made against assessee in an ex parte order passed against him by Tribunal which was ordered to be complete within 90 days, these directions could not be passed because this was filed by assessee and not revenue, thus, impugned ex parte order was to be set aside and matter was to be remanded for de novo consideration - ***Naresh Manakchand Jain v. Registrar, Income-tax Appellate Tribunal - [2023] 155 taxmann.com 514 (Bombay)***

SECTION 260A OF THE INCOME-TAX ACT, 1961 READ WITH SECTION 5 OF THE LIMITATION ACT, 1963 - HIGH

**COURT - APPEAL TO**

3.94. Condonation of delay : Where revenue filed application for condonation of delay of 498 days in filing appeal under section 260A, since application under consideration appeared to be a cyclostyled proforma in which number of days of delay had been subsequently filled, which amply reflected total lack of seriousness with which issue of limitation had been taken up by appellant/revenue, application for condonation of delay of 498 days was to be dismissed - **Principal Commissioner of Income-tax v. National Fertilizers Ltd.** - [2023] 154 taxmann.com 426 (Delhi)

SECTION 263 OF THE INCOME-TAX ACT, 1961 - REVISION - OF ORDERS PERJUDICIAL TO INTERESTS OF REVENUE

3.95. Scope of provision : Once section 263 proceedings were set aside by Tribunal, consequent assessment order giving effect to revision order was void ab initio - **Principal Commissioner of Income-tax v. Elecon EPC Projects Ltd.** - [2023] 154 taxmann.com 654 (Gujarat)

3.96. Opportunity of hearing : Where Commissioner issued a notice under section 263 to assessee, however no opportunity was given to assessee for defending or presenting its case, and moreover, revenue recorded a contrary findings in respect of reply submitted by assessee, impugned order passed under section 263 could not be sustained - **M.L. Chains v. Principal Commissioner of Income-tax** - [2023] 154 taxmann.com 508 (Allahabad)

SECTION 264 OF THE INCOME-TAX ACT, 1961 - REVISION - OF OTHER ORDERS

3.97. Rectification of mistakes : Where assessee in his return of income for assessment year 2013-14, had mistakenly filled income details for assessment year 2014-15 and, assessee's application for revision under section 264, as also application to rectify this order was rejected and it was rather obvious that it was not a deliberate mistake or an attempt to gain some unfair advantage or to evade any tax, matter was to be remanded for de novo consideration - **Diwaker Tripathi v. Principal Commissioner of Income-tax-17** - [2023] 154 taxmann.com 634 (Bombay)

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

3.98. Recording of satisfaction : Where Assessing Officer was not sure while issuing show cause notice under section 271(1)(c) whether he had proceeded on basis that assessee had concealed his income or he had furnished inaccurate particulars of such income, such show cause notice would indicate non-application of mind and thus penalty order was liable to be set aside - **Principal Commissioner of Income-tax v. Jehangir H. C. Jehangir** - [2023] 155 taxmann.com 209 (Bombay)

SECTION 271AAB OF THE INCOME-TAX ACT, 1961 - PENALTY - WHERE SEARCH HAD BEEN INITIATED

3.99. Question of fact : Where assessee during course of physical verification of inventory found excess stock of Rs. 6.04 crore and same had been accounted for in books and Assessing Officer held that value of stock difference represented undisclosed income as it was not recorded in books on or before date of search conducted upon group companies and imposed penalty under section 271AAB, since difference in stocks of Rs. 6.4 crore had been identified by internal team of assessee itself much prior to commencement of search, impugned order of penalty was rightly set aside by Appellate Authority - **Principal Commissioner of Income-tax - 2 v. Industrial Safety Products (P.) Ltd.** - [2023] 154 taxmann.com 433 (Calcutta)

SECTION 274 OF THE INCOME-TAX ACT, 1961 - PENALTY - PROCEDURE FOR IMPOSITION OF

3.100. Scope of provision : Where Assessing Officer initiated penalty proceedings against assessee by issuance of notice under section 274 read with section 271, since impugned notice did not furnish any particulars, it was bad in law - **Principal Commissioner of Income-tax - 2 v. Industrial Safety Products (P.) Ltd.** - [2023] 154 taxmann.com 433 (Calcutta)

SECTION 276B OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - FAILURE TO PAY TAX DEDUCTED AT SOURCE

3.101. Condition precedent : Where complaint was filed against assessee company for delay in depositing TDS amount, however, pending BIFR proceedings and industrial sickness against company constituted a reasonable cause for delay in deposit of TDS amount within stipulated, section 278 AA will apply and impugned order as well as entire criminal proceeding were to be quashed against assessee company - **Fusion Engineering Products (P.) Ltd. v. Union of India** - [2023] 155 taxmann.com 577 (Jharkhand)

SECTION 276CC OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - FAILURE TO FURNISH RETURN OF INCOME

3.102. Burden of proof : Where Assessing Officer initiated prosecution under sections 276CC and 276C against assessee for not filing return of income within due time, issue as to whether there was wilfulness in not filing returns on time and not paying tax on time, was only a matter of fact, which could be ascertained only through appreciation of evidence; Court, exercising its jurisdiction under section 482 of Code, could not presume innocence or absence of wilfulness on the part of assessee - **D.M. Kathir Anand v. N.S. Phanidharan, Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 52 (Madras)

3.103. Conditions precedent : Where Assessing Officer initiated prosecution under sections 276CC against assessee for not filing return of income within due time, however, there was no penalty or assessment against assessee in view of subsequent orders passed by competent authority, entire criminal proceedings against assessee were to be quashed - **Gunwant**



Singh Saluja v. State of Jharkhand - [2023] 155 taxmann.com 429 (Jharkhand)

SECTION 285BA OF THE INCOME-TAX ACT, 1961 - FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT, OBLIGATION TO FURNISH

3.104. Penalty : Reason stated by petitioner, Sub-Registrar, that he was under a bona fide impression that annual information return (AIR) under section 285BA(1)(b) was already filed by his predecessor was not a reasonable cause to excuse delay of 525 days in submitting AIR and, therefore, penalty under section 271FA was rightly imposed upon petitioner - *Sub-Registrar, Sri. V.G. Cleetus v. Director of Income-tax (Intelligence)* - [2023] 154 taxmann.com 546 (Kerala)

4. TRIBUNAL

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

4.1. Object of general public utility : Where assessee-society was created to bring on record congregation of various civil servants and use their individual skill sets by better co-operation and co-ordination and no profit motive was involved in carrying out of these objects, objects carried out by assessee would fall within definition of charitable purpose as per section 2(15) i.e. advancement of any other object of general utility, thus, Commissioner (Exemption) was to be directed to grant registration under section 12AA to assessee-society - *Civil Services Institute v. Commissioner of Income-tax (Exemption)* - [2023] 155 taxmann.com 575 (Dehradun - Trib.)

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

4.2. Subsidy : Provisions of clause(xviii) to section 2(24) inserted with effect from 1-4-2016 providing that even subsidy granted for setting up a new industry or expansion of an existing industry would be chargeable to tax as 'income' is prospective in nature; therefore, subsidy received by assessee for investment in expansion of its industrial unit in a backward area under Package Incentive Scheme, 2001 during relevant assessment year 2010-11 would be 'capital' receipt not chargeable to tax - *Chaitanya Steelshape (P.) Ltd. v. Income-tax Officer* - [2023] 154 taxmann.com 663 (Pune - Trib.)

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

4.3. Royalties or Fee for technical services - Computer software : Where assessee, company incorporated in Netherlands, earned revenues from provision of off shelf standard software to certain Indian entities, since payment made by India entities for use of computer software through distribution agreement was not payment for use of copy right in computer software, same would not amount to income taxable in India - *Shell Global Solutions International BV v. Deputy Commissioner of Income-tax* - [2023] 155 taxmann.com 242 (Ahmedabad - Trib.)

4.4. Royalties or Fee for technical services - Make available : Where assessee, company incorporated in Netherlands, earned consideration from its AEs for providing Computational Fluid Dynamics (in short "CFD") modelling of temperature effects on Hazira Sea Water outflow into port and also provided marine biological advice on its implications, since on perusal of analysis report submitted to service recipient there was nothing to suggest that technology for providing services had been imparted to recipient in a way that services of assessee would not be required in future and recipient had been enabled to perform such services on its own without any recourse or assistance of assessee in future, services would not qualify as FTS as "make available" was not satisfied - *Shell Global Solutions International BV v. Deputy Commissioner of Income-tax* - [2023] 155 taxmann.com 242 (Ahmedabad - Trib.)



4.5. Royalties or Fee for technical services - Installation services : Where assessee, company incorporated in Netherlands, provided engineering services related to manufacturing of coal gasification equipment to L&T, since L&T utilised said services in respect of its plant set up in Vietnam and China for its foreign clients, said case would fall in exception case of (b) of section 9(1)(vii) and income would not be taxable in India - **Shell Global Solutions International BV v. Deputy Commissioner of Income-tax** - [2023] 155 taxmann.com 242 (Ahmedabad - Trib.)

4.6. Royalties/Fees for technical services - Make available : Where assessee, a Singapore based company, entered into a contract/work order with RCITP, to provide interior design consultants and associate design consultancy for Twin Tower Project of RCITP and assessee was making available to RCITP all reports, analysis, tests, tables, plans, drawings or other documents for use of RCITP for its business purposes, since it satisfied conditions of article 12(4), payment received by assessee from RCITP fell under purview of fees for technical services - **Gensler Singapore Private Limited v. Joint Commissioner of Income-tax** - [2023] 155 taxmann.com 207 (Delhi - Trib.)

4.7. Royalty or fees for technical services - Reimbursement of expenses : Where assessee-company had paid certain amount being reimbursement of salaries paid to employees seconded to it by parent company, since employees were working under exclusive control, direction, and supervision of assessee in India and there was employee-employer relationship between assessee and such employees, payments made by assessee to said employees as salary was chargeable to tax as salaries under section 192 in hands of aforesaid employees and not as FTS under section 9(1)(vii) - **Serco India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com 56 (Delhi - Trib.)

4.8. Royalties/Fees for technical services - Software : Where TPO made certain adjustments to operating profit by excluding certain items of income, i.e., liabilities written back and doubtful debts written back from scope of operating profit of assessee, since liabilities written back belonged to earlier years and were directly relatable to regular business operations of assessee and doubtful debts written back were inextricably linked with business operations of assessee, said liabilities would form part of operating income of assessee - **Deputy Commissioner of Income-tax v. Adobe Systems Software Ireland Ltd.** - [2023] 155 taxmann.com 101 (Delhi - Trib.)

4.9. Royalties/Fees for technical services - Education services : Where assessee, an education Institution of USA, had received fees from industrial liaison program ('ILP') membership, as assessee was merely introducing corporates to its faculty, showcasing research projects undertaken by them which would enable corporates to

see if any of this research could be leveraged by them in their own strategic plan and assessee was neither rendering any technical services to corporates nor making available any technical knowledge or experience or skill, receipts under head 'ILP' could not be reckoned as FIS in nature within meaning of article 12 of India-US DTAA - **Massachusetts Institute of Technology v. Deputy Commissioner of Income-tax, (International Taxation)** - [2023] 155 taxmann.com 140 (Mumbai - Trib.)

4.10. Royalties/Fees for technical services - Education services : Where during year, assessee, an education Institution of USA, had received fees from sponsorship assignment for research, since assessee undertook specific research for corporate and technology and knowledge from research was provided to corporate in form of research report, who would apply same and derive an enduring benefit, it was clearly making available of technical designs and know-how and accordingly, Assessing Officer and DRP had rightly concluded that receipts under this programme fell under article 12(4) of India-US DTAA - **Massachusetts Institute of Technology v. Deputy Commissioner of Income-tax, (International Taxation)** - [2023] 155 taxmann.com 140 (Mumbai - Trib.)

4.11. Dividend - General : Where dividend was declared, distributed or paid by assessee, a domestic company to a non-resident shareholder(s) who was a tax resident of Netherlands, since there was no specific clause in DTAA that suggests that domestic companies were allowed to enter arena of DTAA, assessee's claim of refund of DDT was to be rejected - **Van Oord India (P.) Ltd. v. Deputy Commissioner of Income-tax, Range 5(3)** - [2023] 155 taxmann.com 462 (Mumbai - Trib.)

4.12. Royalties/fees for technical services - Make available : Where, SPI India had sub-contracted a part of its e-publishing work in nature of editorial services to assessee, a foreign company, since e-publishing work was in nature of editorial services which involved technical expertise, however, such expertise was not transferred by assessee which could be independently applied by SPI India in future on its own without recourse to assessee, make available condition as envisaged in article 12 of India US DTAA was not satisfied and, hence, said sum was not chargeable to tax as FIS - **Spi Global US, Inc v. ACIT, International Taxation** - [2023] 154 taxmann.com 365 (Delhi - Trib.)

4.13. Royalties/Fees for technical services - Make available : Where assessee, a tax resident of Singapore had rendered project specific architectural design services to its customers in India, since said service had not 'made available' any technical knowledge and skill etc. to its Indian clients, it fell within exception clause embedded in article 12(4)(c) and, thus, impugned payments received by it could not be taxed as FTS - **Deputy Commissioner of Income-tax (International Taxation) v. Aedas Pte. Ltd.** - [2023] 154 taxmann.com 659 (Delhi - Trib.)

4.14. Royalties/Fees for technical services - Make available : Where assessee, a tax resident of Singapore, provided project specific architectural design services to Indian customers, since assessee did not retain designs and ownership of design got



transferred to client and that contracts entered by assessee with clients were for development/conceptualisation of designs and not for transfer of mere right to use of an existing design, payments made to assessee in consideration of architectural design services could not be classified a royalty under article 12(3) - **Deputy Commissioner of Income-tax (International Taxation) v. Aedas Pte. Ltd.** - [2023] 154 taxmann.com 659 (Delhi - Trib.)

4.15. Business profits - Others : Where assessee claimed that payments made to overseas group companies were not subject to withholding tax as beneficiaries had no permanent establishment in India and filed additional evidences before Commissioner (Appeals) in form of 'no PE certificate' from certain entities and 'Tax Residency Certificate' (TRC) etc., Commissioner could not have refused to admit said additional evidence on ground that no formal application had been moved under rule 46A explaining reasons why such evidences were not submitted in course of assessment proceedings - **Control Risks India (P.) Ltd. v. ACIT** - [2023] 155 taxmann.com 201 (Delhi - Trib.)

4.16. Business profit - Profit attributable to PE, Apportionment of Income : When transaction between assessee, a foreign company and its Indian PE is found to be at arm's length, no further attribution of profit can be made to fixed place PE in India - **Adobe Systems Software Ireland Ltd. v. Assistant Commissioner of Income-tax, Circle-1(1)(1)(IT)** - [2023] 155 taxmann.com 397 (Delhi - Trib.)

4.17. Interest : Interest on tax refund earned by assessee, a tax resident of Ireland, was **taxable** at rate of 10 per cent as per provisions of article 11 of India-Ireland DTAA - **Adobe Systems Software Ireland Ltd. v. Assistant Commissioner of Income-tax, Circle-1(1)(1)(IT)** - [2023] 155 taxmann.com 397 (Delhi - Trib.)

4.18. Business profits - Commission : Payment of commission made by assessee to non-resident agents for rendering services of procuring sales order etc. was not FTS but business profit and in absence of PE of such agents in India, such commission payment was not taxable in India - **ACIT v. Manoj Raizada** - [2023] 154 taxmann.com 54 (Delhi - Trib.)

4.19. Royalties/Fees for technical services - Reimbursement of expenses : Where assessee had set up a subsidiary in USA and reimbursed professional charges incurred by it to sell apparel of assessee in USA and Assessing Officer held said payment to be technical in nature but Commissioner (Appeals) deleted addition on ground that make available clause was not satisfied, since considering nature of services make available clause might not even be applicable, matter was to be remanded back to Commissioner (Appeals) for passing a speaking order - **Income-tax Officer v. Eshakti.com (P.) Ltd.** - [2023] 154 taxmann.com 458 (Chennai - Trib.)

4.20. Royalties/Fees for technical services - Others : Where assessee, a tax resident of Spain, received amounts towards interconnectivity utility charges (IUC) from Indian telecom operators for providing seamless services of carrying/delivering outbound and inbound calls, since there was no transfer of any intellectual property **rights** or any exclusive rights that had been granted by assessee to service recipients for using such intellectual property, payment received by assessee towards interconnectivity utility charges (IUC) from Indian customers/end users could not be considered as royalty/FTS under section 9(1)(vi)/(vii) and also as per DTAA - **Telefonica Depreciation Espana SA v. ACIT (IT)/Deputy Commissioner of Income-tax (IT)** - [2023] 154 taxmann.com 436 (Bangalore - Trib.)

4.21. Capital gain - Shares/Units, transfer as : Where various allegations of Assessing Officer regarding residential status of assessee, lack of **commercial** substance, etc., where in nature of vague allegations without backed by substantive evidence, assessee being a resident of Mauritius with valid TRC and a beneficial owner of income derived from sale of shares, was entitled to treaty benefits, and, thus, capital gain, being exempt under treaty provisions could not be brought to tax in India - **Saif Il-Se Investments Mauritius Ltd. v. Assistant Commissioner of Income-tax (International Taxation)** - [2023] 154 taxmann.com 617 (Delhi - Trib.)

4.22. Royalties/Fee for technical services - Others : In view of MFN clause of Protocol to India-France DTAA, engineering package fee received by assessee in connection with installation/erection plants and machinery used for extraction or exploitation of aluminium could not be treated as FTS under article 12(4) of India-Portugal DTAA - **Aluminium Pechiney v. Deputy Commissioner of Income-tax, Circle - 1(1)(1)(IT)** - [2023] 155 taxmann.com 512 (Delhi - Trib.)

4.23. Royalties/Fee for technical services - Make available : Where assessee, a tax resident of France, received certain amount of consideration for providing drawings, designs etc. to HIL, since there was no evidence brought on record by revenue to establish that drawings, designs etc. provided by assessee had enabled recipients to apply technology contained therein independently, amount received by assessee would not qualify as FTS under article 12(4)(b) of India-Portugal DTAA - **Aluminium Pechiney v. Deputy Commissioner of Income-tax, Circle - 1(1)(1)(IT)** - [2023] 155 taxmann.com 512 (Delhi - Trib.)

4.24. Capital gain - Shares/Units, Transfer of : Where assessee, a tax resident of Mauritius, transferred/sold unlisted equity shares of a company and short-term capital gain (STCG) and long-term capital gain (LTCG) were claimed as exempt under article 13 since shares were acquired prior to 1-4-2017, neither article 13(3A) nor article 13(3B) would apply and thus, assessee was entitled to treaty benefits - **Leapfrog Financial Inclusion India (II) Ltd. v. ACIT** - [2023] 155 taxmann.com 166 (Delhi - Trib.)

4.25. Permanent Establishment - Fixed PE, place of business : Where assessee, a US based company, had a subsidiary in India named 'CIS', since employees of assessee frequently visited premises of CIS to provide supervision, direction and control over operations of CIS and such employees had a fixed



place of business at their disposal, there was a fixed place PE of assessee in India and thus, profit attribution had to be made in hands of assessee due to such fixed place PE - **Concentrix CVG Customer Management Group Inc. v. ACIT (International Taxation) - [2023] 155 taxmann.com 69 (Delhi - Trib.)**

4.26. Permanent Establishment - Agency PE : Where assessee, a US based company, had a subsidiary in India named CIS, since CIS was not an **agent** of assessee and it did not have any authority to conclude contracts or secure orders on behalf of assessee, it was not a Dependent Agent PE of assessee in India - **Concentrix CVG Customer Management Group Inc. v. ACIT (International Taxation) - [2023] 155 taxmann.com 69 (Delhi - Trib.)**

4.27. Business profit - Reimbursement of expenses : Where assessee, a US based company, had received an amount on account of IPLC cost from its subsidiary, CIS and Assessing Officer held that this consideration was taxable as equipment royalty at rate of 10 per cent, since there was no transfer of right to use, either to assessee or its subsidiary (CIS) and no part of equipment was leased out to CIS, said payment did not constitute royalty under provisions of article 12 of India-USA DTAA - **Concentrix CVG Customer Management Group Inc. v. ACIT (International Taxation) - [2023] 155 taxmann.com 69 (Delhi - Trib.)**

4.28. Permanent Establishment - Agency PE : Where assessee-company, a tax resident of Spain, developed a computer information system (CRS) which facilitated reservations, communications, ticketing and related functions on a world wide basis to airlines and travel agencies, since computer, electronic hardware/software and connectivity was provided by assessee through third party nodes located in India, same would constitute PE of assessee and income arising to assessee from airlines and travel agents was attributable to activities of PE in India - **Amadeus IT Group SA Vaish Associates v. Assistant Commissioner of Income-tax, Circle 1(1)(1) - [2023] 155 taxmann.com 427 (Delhi - Trib.)**

4.29. Permanent Establishment - Agency PE : Where computers, electronic hardware provided to travel agents constituted PE of assessee in India and income derived from such PE was taxable in India, however, considering nature and extent of activities in India and abroad and assets employed and risk assumed, profit attributable to bookings from India attributable to assessee's PE in India was to be determined at 15 per cent instead of 75 per cent as determined by AO and since assessee paid 33 per cent of booking fees to distributors, no income was attributable to tax in India - **Amadeus IT Group SA Vaish Associates v. Assistant Commissioner of Income-tax, Circle 1(1)(1) - [2023] 155 taxmann.com 427 (Delhi - Trib.)**

4.30. Royalties/Fees for technical services - Others : Where booking fee was received by assessee-spanish

company from British Airways in relation to use of Altea Reservation System (ARS), keeping in view fact that software was not available outside Indian airport or to any of agents of assessee since agents were booking tickets only through CRS and ARS was installed at airport which could be accessed only by airlines, payments made in relation to ARS could not be characterised as royalty either under section 9 or under India-Spain DTAA - - **Amadeus IT Group SA Vaish Associates v. Assistant Commissioner of Income-tax, Circle 1(1)(1) - [2023] 155 taxmann.com 427 (Delhi - Trib.)**

4.31. Royalties/Fees for technical services - Others : Assessee-company, a tax resident of Spain, developed a computer reservation system (CRS) received booking fee from its AE -and Assessing Officer taxed said receipts as royalty under section 9 as well as article 13 since High Court in assessee's own case in earlier years held that booking fee received by assessee was taxable as business income not as royalty, booking fee was not taxable as royalty - **Amadeus IT Group SA Vaish Associates v. Assistant Commissioner of Income-tax, Circle 1(1)(1) - [2023] 155 taxmann.com 427 (Delhi - Trib.)**

4.32. Royalties/Fees for technical services - Subscription fee : Where assessee, association/ Verein established in Switzerland, charged subscription fee from its members which were Chartered Accountant firms situated across globe, since perusal of articles of assessee showed that all member firms contributed to a common fund for achieving assessee's common objectives i.e. non-commercial objectives and sole objective of assessee was to benefit its members in lieu of subscription to evolve better professional practices and articles did not reflect any element of commerciality, receipts of assessee from its members would not be in nature of fees for technical services and same would be exempt from tax having regard to principle of mutuality - **Commissioner of Income-tax, (IT)-1 v. Deloitte Touche Tohmastu - [2023] 155 taxmann.com 383 (Delhi)**

4.33. Royalties/Fee for technical services - Computer software : Where assessee, US company, had entered into agreements with Indian telecommunication companies for supply of basic telecom infrastructure equipment software and assisting them to set up telecommunication network, since agreement between parties made it clear that ownership rights over software remained with assessee, amount received by assessee from Indian Company was not taxable as royalty income as assessee had not transferred use or right to use, a copyright of a literary, artistic or scientific work so as to fall within definition of royalty under article 12 of India-USA DTAA - **UT Starcom Inc v. ACIT - [2023] 155 taxmann.com 117 (Delhi - Trib.)**

SECTION 10(23B) OF THE INCOME-TAX ACT, 1961 - KHADI AND VILLAGE INDUSTRIES, INSTITUTION FOR DEVELOPMENT OF

4.34. Where assessee-society, registered with Khadi and Village Industries Commission, claimed exemption under section 10(23B) and Commissioner (Appeals) denied said exemption on ground that approval/ renewal of approval was granted to assessee for 5 consecutive years and assessee was hit by violation of second proviso to section 10 (23B), since period for which certificate was to be granted was not within control of



assessee, it was only a technical violation for which assessee could not be penalized by denying exemption - **Vivekananda Resham Khadi Gramodyog Sangha v. Assistant Commissioner of Income-tax, CPC - [2023] 155 taxmann.com 538 (Kolkata - Trib.)**

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

4.35. Conditions precedent : Assessee-trust having multiple objectives along with educational object could not be said to be existing solely for educational purpose and, therefore, could not be allowed exemption under section 10(23C)(vi) - **Parul Arogya Seva Mandal Trust v. Commissioner of Income-tax (Exemption) - [2023] 154 taxmann.com 349 (Ahmedabad - ITAT)**

4.36. Clause (b)(ii) of 15th proviso : Where cancellation of registration in case of assessee trust had been erected on statement of trustee recorded during course of survey, however, there was no evidence to demonstrate that assessee spent income on any object other than for which it was established and thus, assessee did not commit any specified violation, impugned order, cancelling registration, was to be set aside - **St. Xavier's Education Trust v. Principal Commissioner of Income-tax (Central) - [2023] 154 taxmann.com 363 (Pune - Trib.)**

SECTION 10(37) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - INCOME ARISING FROM TRANSFER OF AGRICULTURAL LAND

4.37. Land acquisition : Where lands of assessee-company were acquired under NHA Act, 1956, an enactment falling under 'Fourth Schedule' of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act), as per section 96 read with section 105(1) of RFCTLARR Act, 2013 read with OM dated 6-6-2019 of CBDT, compensation received by assessee-company on acquiring of such lands did not qualify for exemption under RFCTLARR Act, 2013 - **Heritage Buildcon (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 68 (Raipur - Trib.)**

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

4.38. Scope of provision : Once eligibility of deduction under section 10AA has been accepted in initial assessment year, then it cannot be withdrawn in subsequent years for a breach of certain conditions which are required to be seen or examined in first year of claim **Assistant Commissioner of Income-tax, 24 (1) v. H.K. Designs (India) LLP - [2023] 155 taxmann.com 374 (Mumbai - Trib.)**

4.39. Computation of deduction : Interest income earned by assessee from fixed deposits held for purpose of margin money is eligible for deduction under section 10AA - **Assistant Commissioner of Income-tax, 24 (1) v. H.K. Designs (India) LLP - [2023] 155 taxmann.com 374**

(Mumbai - Trib.)

4.40. Computation of deduction : Income from sale of gold dust being part of profits from business of assessee is eligible for deduction under section 10AA - **Assistant Commissioner of Income-tax, 24 (1) v. H.K. Designs (India) LLP - [2023] 155 taxmann.com 374 (Mumbai - Trib.)**

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

4.41. Illustrations : Where assessee's claim for exemption under sections 11 and 12 was declined, Assessing Officer was obligated to have considered its claim for deduction of expenses raised in income and expenditure account while deducting its taxable income - **Saroj Gopal Educational Society v. Income-tax Officer (Exemption) - [2023] 154 taxmann.com 621 (Raipur - Trib.)**

4.42. Illustrations : Where assessee a registered society, promoting spiritual teachings, sought exemption under section 11, since addition on account of embezzled funds claimed as deduction was deleted and there was much more application of income by assessee-society, Assessing Officer was unjustified in denying exemption under section 11 - **Gurudwara Godri Sahib Baba Farid Society v. Deputy Commissioner of Income-tax (Exemption) - [2023] 154 taxmann.com 503 (Chandigarh - Trib.)**

4.43. Accumulation of funds : Where accumulated funds were used by assessee-trust for purchasing land for extending college building, aligning with educational objective, it was incorrect to assert that condition of Section 11(2) had not been satisfied solely because Form-10 mentioned "development work" in a general annex - **Gurudwara Godri Sahib Baba Farid Society v. Deputy Commissioner of Income-tax (Exemption) - [2023] 154 taxmann.com 503 (Chandigarh - Trib.)**

4.44. Illustrations : Where assessee, a charitable trust, filed audit report in Form No. 10B during assessment proceedings, Assessing Officer could not have denied exemption under section 11 on ground that audit report was not e-filed along with return - **Joint Commissioner of Income-tax (OSD) v. Gujarat Energy Development Agency - [2023] 154 taxmann.com 348 (Ahmedabad - Trib.)**

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

4.45. Denial of registration : Where Commissioner (Exemptions) denied registration under section 12AA to assessee-trust without considering objects and genuineness of activities of assessee, matter was to be remanded to Commissioner (Exemption) directing him to give finding on charitable objects and genuineness of charitable activities of assessee, as claimed by assessee and, accordingly, pass de novo order - **Hari Krishna Trust v. Commissioner of Income-tax (Exemptions) - [2023] 154 taxmann.com 656 (Lucknow - Trib.)**



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

4.46. *Mismatch in name of assessee in documents* :

Where CIT(E) rejected application under section 12AB filed by assessee-trust for reason that there was mismatch in name of assessee vis-a-vis name shown in PAN, application under Form no. 10AB and trust deed, since assessee had filed all necessary details along with application and, **further**, assessee was not given opportunity either to explain mismatch or to get such mismatch corrected, assessee was to be given one more opportunity to correct its name, wherever required and thus, matter was to be remanded back to CIT(E) to reconsider application of assessee - **Unn Masjid Madresa Dargah Trust v. Commissioner of Income-tax (Exemptions)** - [2023] 154 taxmann.com 620 (Surat-Trib.)

4.47. Exemption : Where Commissioner (Exemption) rejected application of assessee filed in Form No. 10AB for registration under section 12AB, however, Commissioner (Exemption) had not communicated exact deficiency in documents submitted by assessee and exact nature of clarification/explanation required from assessee, matter was to be restored to file of Commissioner(Exemption) with a direction upon him to provide further opportunity of being heard to assessee and to dispose of application for grant of registration of Trust under section 12AB with a speaking order - **Shree Valinath Gujrati Rabari Dharmashala Trust Tarabh v. Commissioner of Income-tax (Exemption)** - [2023] 155 taxmann.com 67 (Ahmedabad - ITAT)

4.48. Dispute regarding name of assessee : Where CIT(E) rejected application under section 12AB filed by assessee, charitable trust, for reason that there was mismatch in name of assessee vis-à-vis name shown in PAN, application under Form no. 10AB and trust deed, since assessee had filed all necessary details along with said application, and further, assessee was not given opportunity either to explain such mismatch or to get such mismatch correct, assessee was to be given one more opportunity to correct its name, wherever required and thus, matter was to be remanded to CIT € - **Shri Balkrishna Shudhhadwait Sthanik Mahasabha v. Commissioner of Income-tax, (Exemptions)** - [2023] 154 taxmann.com 586 (Surat-Trib.)

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

4.49. Dividend : Disallowance under section 14A cannot exceed exempt income earned by assessee; thus where assessee had suo motu disallowed total exempt income under section 14A, no further disallowance could be made by invoking section 14A - **ABCI Infrastructure (P.) Ltd. v. ACIT** - [2023] 154 taxmann.com 397 (Guwahati - Trib.)

4.50. Disallowance : Where issue regarding disallowance under section 14A had been examined by Assessing Officer in course of original assessment proceedings and no disallowance under section 14A had been made, Principal Commissioner could not have set aside order passed by Assessing Officer on ground that it was erroneous in so far as it was prejudicial to interest of revenue as said order had been passed by Assessing Officer without verifying amount of disallowance under section 14A - **Manglam Arts v. Principal Commissioner of Income-tax.** - [2023] 155 taxmann.com 373 (Jaipur - Trib.)

4.51. Conditions precedent: No disallowance could be made under section 14A when assessee did not have any exempt income during relevant assessment year - **ACIT v. Mitsui & Co. India (P.) Ltd.** - [2023] 155 taxmann.com 19 (Delhi - Trib.)

SECTION 23 OF THE INCOME-TAX ACT, 1961 - INCOME FROM HOUSE PROPERTY - ANNUAL VALUE

4.52. Deemed rent : Where assessee, real estate developer, showed unsold stock of flat/shop as stock-in-trade in its balance sheet, deemed rent from such unsold flat/shop was to be assessed as income from house property and notional rent was to be computed by **ascertaining** municipal rentable value - **Dimple Enterprises v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com 653 (Mumbai - Trib.)

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

4.53. Revision: Where assessee, engaged in business of construction and leasing of property, claimed interest expenditure under section 24(b) on capital borrowed for purpose of acquisition or construction of property, since in such combined business of construction and leasing it was normal to borrow capital for overall business and apportion same based on head of income, and further, **assessee** had submitted all relevant information before Assessing Officer, said interest expenditure was to be allowed under section 24(b), and thus, impugned revision was unjustified - **Manjri Stud Farm (P.) Ltd. v. ACIT** - [2023] 155 taxmann.com 142 (Mumbai - Trib.)

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

4.54. Abandoned project : Where assessee, engaged in hospital and trading of pharmaceuticals business, found that expansion of business by setting up a clinic was economically not viable and in order to save its future loss assessee dropped said project and assets deployed on expansion were put to sale resulting in loss, said loss was to be allowed - **Ambuja Neotia Healthcare Venture Ltd. v. Deputy Commissioner of Income-tax** - [2023] 155 taxmann.com 65 (Kolkata - Trib.)

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

4.55. In case of merger : Where assessee-company acquired edible oil brand from a company on merger for a consideration of certain amount and claimed depreciation on said edible oil brand, since book value of edible oil brand in books of transferor company on date of merger was NIL, any subsequent change in its value had to be ignored, and therefore, claim of depreciation



was not justified - *Deputy Commissioner of Income-tax v. Amrit Banaspati Company Ltd.* - [2023] 155 taxmann.com 206 (Delhi - Trib.)

4.56. Motor Vehicle : Where Assessing Officer disallowed excess depreciation applying 15 per cent rate on block of plant and machinery, which mostly consisted of motor vehicles, as against 30 per cent claimed by assessee, since issue of excess depreciation was squarely covered against revenue by decision of Co-ordinate bench of Tribunal in assessee's own case, CIT(A) was justified in deleting disallowance - *ABCI Infrastructure (P.) Ltd. v. ACIT* - [2023] 154 taxmann.com 397 (Guwahati - Trib.)

4.57. General : Where assessee claimed additional depreciation in terms of section 32(1)(iia) on plant & machinery, since assessee had not brought on record any relevant details pertaining to additions in plant and machinery and with respect to use of impugned plant and machinery for year under consideration, matter was to be remanded back to Assessing Officer to adjudicate issue afresh - *Alok Ferro Alloys Ltd. v. Deputy Commissioner of Income-tax* - [2023] 155 taxmann.com 138 (Raipur - Trib.)

SECTION 35 OF THE INCOME-TAX ACT, 1961 - SCIENTIFIC RESEARCH EXPENDITURE

4.58. Approval of expenses by DSIR : Prior to amendment in rule 6(7A)(b) with effect from 1-7-2016, once facility is approved by DSIR, assessee is entitled to weighted deduction under section 35(2AB) and there is no requirement that **expenses** also need to be approved by DSIR in Form No. 3CL - *Marksans Pharma Ltd. v. Deputy Commissioner of Income-tax* - [2023] 155 taxmann.com 59 (Mumbai - Trib.)

SECTION 35AD OF THE INCOME-TAX ACT, 1961 - SPECIFIED BUSINESS, DEDUCTION IN RESPECT OF EXPENDITURE ON

4.59. Hospital business : Capital expenditure incurred by assessee for **purpose** of specified business i.e. constructing and running business of hospital was to be allowed as deduction under section 35AD and there would be no condition of any date or year of commencement of specified business - *Ambuja Neotia Healthcare Venture Ltd. v. Deputy Commissioner of Income-tax* - [2023] 155 taxmann.com 65 (Kolkata - Trib.)

SECTION 36(1)(iii) OF THE INCOME-TAX ACT, 1961 - INTEREST ON BORROWED CAPITAL

4.60. Disallowance : Where assessee had borrowed amounts from Banks and Public Financial institutions and paid interest thereon and borrowed amounts were used for business purposes and interest paid was for current period and revenue in nature, therefore, interest paid would be allowable as deduction as per provisions of section 36(1)(iii) read with provisions of section 43B in year in which payment was made irrespective of its treatment in books of account - *Deputy Commissioner*

of Income-tax v. BPTP Ltd. - [2023] 155 taxmann.com 583 (Delhi - Trib.)

SECTION 36(1)(va) OF THE INCOME-TAX ACT, 1961 - EMPLOYEES' CONTRIBUTION

4.61. General : If contribution towards PF and ESI was paid within grace period provided under PF and ESI Act, same should be allowed as deduction under section 36(1)(va) - *UT Starcom Inc v. ACIT* - [2023] 155 taxmann.com 117 (Delhi - Trib.)

4.62. General : When assessee had initially deposited employees contribution towards PF before prescribed due dates **but** due to glitches on online portal at end of respective authorities, amounts were reversed by bank, then assessee could not be penalized with addition on account of delayed deposits - *FIL India Business & Research Services (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 154 taxmann.com 251 (Delhi - Trib.)

4.63. PF/ESI : Where AO made additions with respect to delayed deposits made by assessee of employee's share contribution towards labour welfare funds and Tribunal vacated said disallowance, since Tribunal's order was not in conformity with subsequent decision of Supreme Court in Checkmate Services (P.) Ltd. v. CIT [2022] 143 taxmann.com 178/[2023] 290 Taxman 19/[2022] 448 ITR 518, said order suffered from mistake apparent from record and was to be rectified - *Deputy Commissioner of Income-tax v. N.R. Wires (P.) Ltd.* - [2023] 154 taxmann.com 434 (Raipur - Trib.)

4.64. PF/ESI : Deposit of employees' contribution to PF/ESIC should be qua due date prescribed under relevant legislations and regulations, hence, where assessee challenged disallowance of employees' contribution to PF/ESIC under section 36(1)(va) read with section 43B, matter was to be restored back to Assessing Officer for purposes of ascertaining whether there was any delay in deposit of such contributions qua due date - *Sai Computers Ltd. v. Assistant Director of Income-tax, CPC* - [2023] 155 taxmann.com 607 (Delhi - Trib.)

4.65. EPF/ESI : Assessee-employer is liable to deposit employee's contribution towards PF/ESI on or before due date as a condition for deduction under section 36(1)(va) - *D.V. Properties (P.) Ltd. v. Principal Commissioner of Income-tax* - [2023] 155 taxmann.com 119 (Surat-Trib.)

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

4.66. Vehicle running expenses and repair and maintenance : In order to observe any particular expense as exaggerated expense, it would be relevant to firstly adduce some material which could point out as to what is a normal/reasonable expense and secondly, to compare normal/reasonable expense with actual expense and then arrive at conclusion; in absence of relevant enquiries and comparisons, no part of expenses claimed by assessee on account of vehicle running expenses and machinery repair and maintenance expenses could be treated as 'exaggerated expenses' or 'not reasonable expenses' - *ABCI Infrastructure (P.) Ltd. v. ACIT* - [2023] 154 taxmann.com 397 (Guwahati - Trib.)



4.67. Revision : Bogus expenditure could be disallowed only under section 37(1) and not under section 69C, where Pr. CIT invoked revision on ground that addition on account of bogus salary and wages expenses was to be made under section 69C and was ought to be subjected to tax at higher rate as prescribed under section 115BBE as opposed to Assessing Officer having subjected same to tax on normal rate, same was not correct and impugned revision was to be set aside - **Vijubha Jitubha Jadeja v. Principal Commissioner of Income-tax - [2023] 154 taxmann.com 615 (Rajkot - Trib.)**

4.68. Renovation, refurbishment and repairs : Expenses incurred by assessee hotel on renovation, refurbishment and repairs, partly capitalized in books of account of are in nature of revenue expenditure, admissible under section 37(1) - **Asian Hotels Ltd. v. Commissioner of Income-tax - [2023] 155 taxmann.com 180 (Delhi)**

4.69. Embezzlement of funds : Where embezzlement of funds by employees had occurred during course of day-to-day carrying out of charitable activities by assessee-trust and moreover, no doubt had been cast on embezzlement of funds, it could be said that loss was a revenue loss and same deserved to be allowed - **Gurudwara Godri Sahib Baba Farid Society v. Deputy Commissioner of Income-tax (Exemption) - [2023] 154 taxmann.com 503 (Chandigarh - Trib.)**

4.70. Staff welfare expenses : If expenditure is not incurred for business purpose, there has to be a specific finding in this regard unless expenditure for personal use and business purpose are mixed and cannot be segregated, where this was not case, expenditure could not be disallowed on adhoc basis - **ACIT v. Mitsui & Co. India (P.) Ltd. - [2023] 155 taxmann.com 19 (Delhi - Trib.)**

4.71. Service fee : Where Assessing Officer disallowed service fee paid by assessee to its AE holding same to be non-business nature, in view of fact that in earlier year, DRP had deleted entire addition of service fee paid to same parties to whom this fee was paid, addition made in relevant assessment year was to be deleted - **ACIT v. Mitsui & Co. India (P.) Ltd. - [2023] 155 taxmann.com 19 (Delhi - Trib.)**

4.72. Pooja and festival expenses : Expenditure incurred towards pooja and festival by assessee company could not be treated as expenditure incurred wholly and exclusively for purposes of business or profession of a company and thus, assessee could not be allowed any deduction under section 37(1) towards such expenditure - **Alok Ferro Alloys Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 138 (Raipur - Trib.)**

4.73. Late payment of TDS : TDS is not a payment of income tax, said expenditure incurred by assessee is wholly and exclusively for purpose of business and delay in making payment of TDS is not like a penalty, and it does not amount to payment for breach of law or illegal

act or prohibited act, thus interest on late payment of TDS is allowable - **D.V. Properties (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 119 (Surat-Trib.)**

4.74. Diesel & petrol expenses : Where Assessing Officer disallowed expenditure under head 'diesel & petrol expenses' claimed by assessee, since no finding was recorded by Assessing Officer that assessee had claimed any bogus diesel expenditure or expenditure had not been incurred for purposes of assessee's business, impugned disallowance was to be deleted - **Pawan Aggarwal v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 366 (Chandigarh - Trib.)**

SECTION 41(1) OF THE INCOME-TAX ACT, 1961 - REMISSION OR CESSATION OF TRADING LIABILITY

4.75. Scope of provision : Where AO failed to conclusively prove that liabilities in question had ceased nor any cogent reason was given to assess same in hands of assessee in relevant assessment year, addition made under section 41(1) was to be deleted - **A.C Strips (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 155 taxmann.com 85 (Raipur - Trib.)**

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

4.76. Scope of provision : Where assessee, an exporter, entered into forward contracts with banks to safeguard against foreign exchange fluctuations on its revenue receipts from foreign parties and it suffered loss on account of cancellation of forward contracts on realizing export proceeds, subject loss on forward contracts was business loss of assessee and Assessing Officer was wrong in treating same as speculative in nature - **ACIT v. Gimpex (P.) Ltd. - [2023] 154 taxmann.com 398 (Chennai - Trib.)**

SECTION 43B OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CERTAIN DEDUCTIONS TO BE ALLOWED ON ACTUAL PAYMENT

4.77. Service tax expense : Where assessee had paid service tax under reverse charge mechanism and, 0.5 per cent of Swachh Bharat Cess and 0.5 per cent of Krishi Kalyan Cess out of total service tax was claimed as expenditure and remaining portion of service tax at rate of 14 per cent was set-off against amount payable, Assessing Officer had rightly allowed claim of Service Tax Expense - **D.V. Properties (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 119 (Surat-Trib.)**

SECTION 43CA OF THE INCOME-TAX ACT, 1961 - FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSETS IN CERTAIN CASES

4.78. Scope of Provisions of section 43CA would not apply where agreement to sale of property was executed prior to introduction of section 43CA on 1-4-2014 - **Reegal Construction v. Income-tax Officer - [2023] 154 taxmann.com 350 (Kolkata - Trib.)**



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

4.79. Shares : Where assessee-NBFC entered into an agreement with one ECI for transfer of voting rights in shares of company which was a JV of assessee and ECI and Assessing Officer treated said right to purchase as sale of shares itself and taxed said amount as short-term capital gains, since transfer of shares took place in assessment year 2021-22 and amount was offered for taxation when transfer was complete, additions made by Assessing Officer were to be deleted - **SREI Infrastructure Finance Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 650 (Kolkata - Trib.)**

4.80. Immovable property : Where due to seller's inability to transfer land to assessee, a compromise was reached and assessee gave up registration rights in exchange for Rs. 28 lakhs, amount so received by assessee was towards relinquishment of his rights to get property registered in his name acquired originally in terms of agreement to sell and same would qualify as property of any kind and thus, a capital asset and thus taxable under head 'capital gains' - **Sukhwant Singh v. Income-tax Officer - [2023] 154 taxmann.com 369 (Chandigarh - Trib.)**

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

4.81. Cost of construction : Where Assessing Officer disallowed cost of construction while computing LTCG on sale of property for reason that assessee failed to produce bills/voucher of construction activities, since admittedly there were withdrawals from assessee's account for construction of property and assessee had also submitted valuation report in support of his claim of cost of construction which would be germane and relevant to determine appropriate cost of construction, however, same was not considered matter was to be remanded to examine such valuation report and decide matter afresh - **Pawan Aggarwal v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 366 (Chandigarh - Trib.)**

4.82. Cost of improvement : Where assessee, against sale of a land, claimed cost of improvement by way of interest paid on amount borrowed to purchase said land, since assessee filed all relevant documentary evidences to prove that loan taken was utilised for purchasing land during proceedings before Tribunal and revenue had not got opportunity to verify veracity of these additional evidences, issue was to be restored to Assessing Officer for de novo adjudication in light of such additional evidences furnished by assessee - **Nareshbhai Ishwardas Patel v. Income-tax Officer - [2023] 155 taxmann.com 141 (Ahmedabad - Trib.)**

4.83. Cost of improvement : Where assessee against sale of land claimed cost of improvement by way of

compensation paid to a party for waiving off its absolute right from land, since identical claim of cost of improvement on account of compensation made by co-owner i.e. brother of assessee had been accepted by revenue in assessment framed under section 143(3), claim of cost of improvement on account of compensation made by assessee was also to be allowed - **Nareshbhai Ishwardas Patel v. Income-tax Officer - [2023] 155 taxmann.com 141 (Ahmedabad - Trib.)**

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

4.84. Addition to block of asset : Where information regarding addition to multiplex account was available in Schedule of Fixed assets and depreciation was a part of Statutory Audit Report and assessee had disclosed details in Form No. 3CD attached with return of income and assessment order was finalised after perusal of said return, assessment order passed by Assessing Officer allowing deduction claimed by assessee from short-term capital gain on Multiplex sold during year under consideration was neither erroneous nor prejudicial to interest of revenue - **D.V. Properties (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 119 (Surat-Trib.)**

SECTION 50C OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS

4.85. Where assessee, a partner in a firm, transferred a land to partnership firm by way of capital contribution, since said transfer of land by assessee to firm as capital contribution was a specific transaction between partnership firm and partner, same would be taxed as capital gain and consideration for same would be **taken** as per provision of section 45(3) and not as per provisions of section 50C - **Nareshbhai Ishwardas Patel v. Income-tax Officer - [2023] 155 taxmann.com 141 (Ahmedabad - Trib.)**

SECTION 54B OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSFER OF LAND USED FOR AGRICULTURAL PURPOSE

4.86. Reassessment : Where Assessing Officer reopened assessment on ground that he had reasons to believe that income of assessee from capital gains chargeable to tax had escaped assessment stating that he had information that land sold by assessee was co-owned with R and during course of revision proceedings under section 263 in case of R claim of exemption against capital gains returned from sale of land was incorrectly allowed under section 54B; since **there** was no live link between information in possession of Assessing Officer and formation of belief of escapement of income, reasons recorded were insufficient for assuming a valid jurisdiction to frame assessment under section 147 - **Datta Radheshyam Trivedi v. Deputy Commissioner of Income-tax, Circle-15 - [2023] 155 taxmann.com 576 (Ahmedabad - Trib.)**

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

4.87. Conditions precedent : Where assessee had sold inherited property and entered into an agreement to purchase new flats



from a builder and an amount was paid before date of agreement and balance amount was deposited in capital gains account scheme, however, assessee was not able to utilize funds deposited in capital gains account scheme due to fact that builder halted construction, since funds were still in bank account, unutilized and case was also pending before High Court, assessee could not be compelled to treat unutilized portion of funds kept under Capital gains account Scheme as taxable - **Dhananjay Madhukar Naik v. Income-tax Officer** - [2023] 154 *taxmann.com* 540 (Mumbai - Trib.)

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

4.88. Security deposit, forfeiture of : Where assessee leased out property to a lessee and received advance of Rs. 700 lacs and subsequently lease deed was cancelled and assessee refunded advance of Rs. 150 lacs and after adjusting lease rent forfeited balance of Rs. 514.94 lacs, since amount of Rs. 700 lacs was received as security deposit and right to rent was not transferred by assessee to anyone and neither this right had been extinguished in any manner, aforesaid retained amount could not be assessed as capital gain but as income from other sources - **ACIT v. Gimpex (P.) Ltd.** - [2023] 154 *taxmann.com* 398 (Chennai - Trib.)

4.89. Computation of FMV for shares :Where assessee opted market value of shares by following Discounted Cash Flow method prescribed under clause (b) of rule 11UA(2) and Assessing Officer did not point out any defect or infirmity in aforesaid method, action of Assessing Officer in determining FMV of shares by following method under clause (a) was not justified - **Deep Jyoti Wax Traders (P.) Ltd. v. Income-tax Officer** - [2023] 154 *taxmann.com* 367 (Kolkata - Trib.)

4.90. Share premium : As per section 56(2)(viib) read with rule 11UA, assessee has an option to do determine valuation of shares either on DCF Method or NAV method and once assessee has exercised an option, Assessing Officer is bound to follow same - **Deputy Commissioner of Income-tax, Circle-11(1) v. Hometrail Buildtech (P.) Ltd.** - [2023] 155 *taxmann.com* 578 (Delhi - Trib.)

4.91. Premium on issue of shares : Where assessee-company had allotted equity shares at a premium and valued same on basis of DCF method supported with valuation report prepared by CA, since method adopted by assessee was in accordance with Rules contained in Explanation (a)(i) to section 56(2)(vii)(b), Commissioner (Appeals) had rightly deleted addition made by Assessing Office under section 56(2)(viib) - **A. Commissioner of Income-tax v. Lifestyle Probuild (P.) Ltd.** - [2023] 155 *taxmann.com* 338 (Delhi - Trib.)

4.92. Share Premium : Where assessee issued shares at Rs.400 each, however, valuation report established fair market value of shares at Rs.341 per share, since there

was no material available on record that assessee had disputed valuation of shares at Rs.341 per share vide valuation report, therefore, there was no infirmity in impugned order directing disallowance of Rs. 59.15 lakhs being excess consideration received by assessee over and above fair market value of shares - **Osianama Learning Experience (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-3(2)(2)** - [2023] 155 *taxmann.com* 533 (Mumbai - Trib.)

SECTION 57 OF THE INCOME-TAX ACT, 1961 - INCOME FROM OTHER SOURCES - DEDUCTIONS

4.93. Interest : Where, even though income earned by assessee by way of interest was not equal to percentage of interest in terms of interest expenditure incurred, same could not be a reason to disqualify certain expenditure within provision of section 57(iii), therefore, expenditure incurred by assessee, genuineness of which was not disputed by Assessing Officer would be allowable expenditure in terms of provisions of section 57(iii) - **Sunil Bardia v. Income-tax Officer** - [2023] 155 *taxmann.com* 539 (Raipur - Trib.)

4.94. Opportunity of hearing : Where AO disallowed deductions claimed under section 57 and under Chapter VIA for non-compliance with notice issued to assessee and Commissioner (Appeals) dismissed appeal as same remained unrepresented, since assessee had shown reasonable and plausible explanation for non-compliance before lower authorities, she deserved one more opportunity to explain her case and thus, issue relating to addition made was to be restored back to Assessing Officer to pass a speaking order - **Gauri Dhirenkumar Shah v. Income-tax Officer** - [2023] 155 *taxmann.com* 198 (Surat-Trib.)

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

4.95. Condition precedent : Where Assessing Officer, on basis of search conducted at premises of assessee and its group, made addition on account of unrecorded sales receipts of flats, since document relied on by AO pertained to quotation for purchase of lifts and no incriminating material in relation to undisclosed income was found during search, entire action of AO was based on presumption and thus addition was to be deleted - **Deputy Commissioner of Income-tax, Central v. Heaven Associates** - [2023] 154 *taxmann.com* 595 (Ahmedabad - Trib.)

4.96. Loan : Where AO made addition on account of unexplained deposits/unsecured loans on ground that sale receipts of flats was routed back into group companies by way of accommodation entries of unsecured loans from sham entities, since issue of unaccounted sales had no merits and no incriminating material was found with respect to unsecured loans during search at premises of assessee, impugned addition to be deleted - **Deputy Commissioner of Income-tax, Central v. Heaven Associates** - [2023] 154 *taxmann.com* 595 (Ahmedabad - Trib.)

4.97. Sale transaction : Where assessee- HUF earned sale consideration of Rs. 7.61 crores and accordingly computed LTCG, however AO recomputed LTCG on ground that registered sale deed only showed consideration at Rs. 2.50



crores and made additions of balance amount under income from unexplained sources, since sale deed was equivalent to guideline value of property fixed by SDV as on date of sale and assessee did not carry out any business activity nor generated any other income from other sources, circumstantial evidences including location of property and FMV as on date of sale clearly indicated that claim of assessee that balance amount was received in cash was acceptable and additions were to be deleted - **Deputy Commissioner of Income-tax, Non-Corporate Circle-2 v. A. P Sridhar (HUF) - [2023] 155 taxmann.com 508 (Chennai - Trib.)**

4.98. Cash deposit in bank : Addition under section 68 on account of cash deposits could not be made simply on reason that during demonetization period, cash deposits vis-a-vis cash sales ratio was higher when it had been established that cash sales representing outflow of stocks was duly accounted in books of account - **ACIT v. Ramlal Jewellers (P.) Ltd. - [2023] 154 taxmann.com 584 (Mumbai - Trib.)**

4.99. Bank deposits : Where Assessing Officer made an addition under section 68 treating trade advances received by assessee as unexplained cash credits, since books, bills and vouchers, etc., were produced before Assessing Officer and were test checked, as noted in assessment order itself and Assessing Officer had also admitted that goods were supplied to customers, against which, advances were received, and there was only a small amount of advances which remained outstanding and adjusted at end of year, impugned addition was to be deleted - **Girish Kumar & Sons v. Income-tax Officer - [2023] 155 taxmann.com 208 (Chandigarh - Trib.)**

4.100. Where pursuant to a search conducted at premises of assessee, Assessing Officer found that assessee had made bogus purchase from two parties, since confirmations of both parties were placed on record and purchases made from these parties have entered in stock register and corresponding sales had not been disputed by revenue authorities and payments for such purchases had been carried out through banking channel, Assessing Officer was not justified in treating said purchase as bogus and making addition - **Gudwala & Sons v. Assistant Commissioner of Income-tax, Central Circle-4 - [2023] 155 taxmann.com 532 (Delhi - Trib.)**

4.101. Revision : Where Assessing Officer made addition under section 68 on account of unexplained sundry creditors, taxing such addition at rate prescribed under section 155BBE was a natural corollary, and therefore, non-invocation of section 115BBE on said addition made on account of unexplained sundry creditors under section 68 was an error in order of Assessing Officer causing prejudice to revenue - **Vijubha Jitubha Jadeja v. Principal Commissioner of Income-tax - [2023] 154 taxmann.com 615 (Rajkot - Trib.)**

4.102. Scope of provision : Where assessee filed original

return declaring income at Rs. 1.52 lacs and subsequently he filed revised return declaring income at Rs. 4.91 lacs, since assessee had submitted account books, etc. and Assessing Officer did not reject them, addition made under section on account of difference in original return and revised return was not according to provision of law - **Dhanpat Raj Khatri v. Income-tax Officer - [2023] 154 taxmann.com 58 (Jodhpur - Trib.)**

4.103. Scope of provision : Where assessee in account books had shown unsecured loans of Rs. 7.63 lacs taken from four closed persons and lower authorities treated amount of Rs. 6.63 lacs as undisclosed cash deposited and added same to assessee's income under section 68, since it was apparent from affidavit of assessee's father that he sold ancestral gold for Rs. 5.60 lacs and handed over money to assessee and other amount of Rs. 1,03,000 was taken by assessee from small savings of his minor children, addition made under section 68 was not justified - **Dhanpat Raj Khatri v. Income-tax Officer - [2023] 154 taxmann.com 58 (Jodhpur - Trib.)**

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

4.104. Applicability of provision : Mere fact that survey/search proceedings have been initiated at business premises of assessee doesn't mandate Assessing officer to automatically invoke deeming provisions of sections 69 and 69A; said provisions can be invoked only where explanation offered by assessee is not found satisfactory; where from explanation offered by assessee it clearly emerged that source of income offered during survey was from his business operations, such income could not be taxed under sections 69 and 69A - **Parmod Singla v. ACIT - [2023] 154 taxmann.com 347 (Chandigarh - Trib.)**

4.105. General : Where assessee purchased a property from Unitech availing loan from a company named ACE and Assessing Officer noted that there was mismatch of dates in customer ledger account of assessee in books of Unitech and confirmation of a party and made addition u/s. 69, since assessee sufficiently established that loan transaction by RTGS was same as per loan confirmation, copy of assessee's account in books as well as copy of bank statement of Ace vis-a-vis customer ledger account of assessee in books of Unitech, there was no justification to draw an adverse inference for addition under section 69 - **Shalini Gupta v. ACIT (International Taxation) - [2023] 154 taxmann.com 622 (Delhi - Trib.)**

4.106. Unaccounted sale : Sale consideration of flat sold by land owner as per development agreement and not by assessee-developer could not be considered in hands of assessee - **Reegal Construction v. Income-tax Officer - [2023] 154 taxmann.com 350 (Kolkata - Trib.)**

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

4.107. Draft assessment order : Where AO passed draft assessment order under section 144C on ground that assessee-NRI failed to prove nexus **between** amount withdrawn and amount deposited, "and" used by Parliament in section



144C(15)(i) was to be read as "or", as two part of sub-section (15) of section 144C were disjunctive as it prescribed two distinct categories of assessee as 'eligible assessee', and thus, order under section 92CA(3) would not be a prerequisite condition in case of non-resident assessee for AO to exercise jurisdiction under section 144C - **Abrar Fakirmohammad Shaikh v. Income Tax Officer (IT)** - [2023] 155 taxmann.com 505 (Pune - Trib.)

4.108. Reassessment : Where AO made additions under section 69A with respect to deposits made in co-operative bank account on ground that assessee-NRI failed to prove nexus between amount withdrawn and amount deposited, since interval between withdrawal and deposit was only two days, merely because assessee failed to explain reasons for withdrawal from one bank account and deposited to another bank account, same could not lead to conclusion that cash withdrawn earlier was not available for subsequent deposit in bank account - **Abrar Fakirmohammad Shaikh v. Income Tax Officer (IT)** - [2023] 155 taxmann.com 505 (Pune - Trib.)

4.109. Where pursuant to a search conducted at assessee-firm's branch office, unaccounted cash of Rs. 3 crore was found and Assessing Officer taxed it as unexplained based on partner's statements, since assessee clarified that its main office maintained proper books of account, and moreover, partners' statements were taken under dubious circumstances and retracted later, assessee could not be blamed for towering failure of search team to keep main office out of purview of search action and, therefore, addition on account of unexplained cash was to be deleted - **Gudwala & Sons v. Assistant Commissioner of Income-tax, Central Circle-4** - [2023] 155 taxmann.com 532 (Delhi - Trib.)

4.110. Where Commissioner (Appeals) attempted to increase assessed income of assessee based on unaccounted bullion stock found during a search, primarily relying on a discredited statement from a partner, since stock found in search matched entries in stock register, and partner's statement lacked credibility due to irregularities in its recording, retraction, and absence of cross-examination, therefore, Commissioner (Appeals) enhancement was considered unjustified - **Gudwala & Sons v. Assistant Commissioner of Income-tax, Central Circle-4** - [2023] 155 taxmann.com 532 (Delhi - Trib.)

SECTION 69C OF INCOME-TAX ACT, 1961 - UNEXPLAINED EXPENDITURE

4.111. Bogus purchases : Where AO treated entire purchase bogus based on findings of Investigation Wings and levied penalty under section 271(1)(c) on account of additions made by applying GP rate on alleged bogus purchases, since source of payment of purchases had been made through account payee cheques and there was corresponding sales, adhoc GP rate applied on alleged bogus purchases to factor in suppression of alleged gross profit couldnot be basis of levying penalty

for furnishing of inaccurate particulars of income or concealing particulars - **Mun Gems v. Assistant Commissioner of Income-tax-19(2)** - [2023] 155 taxmann.com 1 (Mumbai - Trib.)

SECTION 74 OF THE INCOME-TAX ACT, 1961 - LOSSES UNDER HEAD CAPITAL GAIN

4.112. Revision v. Rectification : Where revisionary proceedings were invoked on ground that assessee wrongly adjusted LTCL twice once with LTCG and then again with STCG, since same was a case of bona fide mistake committed by assessee purely based on verifiable facts which had no bearing on income-tax liability for year under consideration and effect was on availability of MAT credit in subsequent year for which assessee submitted to make course correction, revisionary proceedings under section 263 would not be justifiable - **Bijni Dooars Tea Co. Ltd. v. Principal Commissioner of Income-tax** - [2023] 155 taxmann.com 584 (Kolkata - Trib.)

4.113. Where assessee, a tax resident of Mauritius, had earned gains/incurred losses on alienation of shares of Indian companies and claimed STCG as exempt from tax in India as per provisions of DTAA and sought to carry forward LTCL under section 74(1), since in case of multiple sources of income an assessee would be entitled to adopt provisions of Act for one source of Income while applying provisions of DTAA for other source, therefore, assessee's claim to carry forward LTCL as per section 74 was to be allowed - **Indium IV (Mauritius) Holdings Ltd. v. Deputy Commissioner of Income-tax (IT)-2(2)(1)** - [2023] 155 taxmann.com 336 (Mumbai - Trib.)

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

4.114. CSR :Where assessee-company satisfied conditions of section 80G, assessee was entitled to claim deduction under section 80G in respect of such donations which formed part of spend towards CSR - **Optum Global Solutions (India) (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com 651 (Hyderabad - Trib.)

4.115. Where assessee, a charitable company registered under Companies Act, sought approval under section 80G for its activities but CIT denied same due to insufficient evidence of share transactions and charitable work, since records revealed that assessee had provided substantial documentation proving its genuine charitable efforts, including scholarships, donations, and shares received as contributions, approval under section 80G would be granted to assessee - **Olive Development Foundation v. Commissioner of Income-tax (Exemptions)** - [2023] 155 taxmann.com 605 (Mumbai - Trib.)

4.116. Grant of approval : Where assessee society accumulated substantial funds for building construction, even though funding was supposed to come from Member of Parliament local area development scheme and construction was to be carried out by government of Haryana and thus, assessee's true intention was primarily to construct a building with no clear alignment with its charitable objectives, there was no error or infirmity in order of Commissioner (Exemption) in rejecting application for approval



under section 80G – *Gurjar Kalyan Parishad v. Commissioner of Income-tax (Exemption) - [2023] 155 taxmann.com 170 (Delhi - Trib.)*

SECTION 80JJAA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - IN RESPECT OF EMPLOYMENT OF NEW WORKMEN

4.117. Audit Report : Where assessee duly made claim of deduction under section 80JJA in original return of income, however same was not reported in Tax Audit Report and on realizing mistake, Tax Audit Report was revised and also Form 10DA required for claiming such deduction was also filed albeit after filing of original return of income but before date of intimation, denial of deduction under section 80JJAA was not justified - *Sai Computers Ltd. v. Assistant Director of Income-tax, CPC - [2023] 155 taxmann.com 607 (Delhi - Trib.)*

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

4.118. Revision : Where Assessing Officer allowed deduction under section 80P(2)(d) to assessee co-operative society on interest income earned by it on deposits and saving bank account with co-operative banks, since there was a specific finding and reference of deduction claimed by assessee in assessment order, Assessing Officer had taken a plausible view and he had applied his mind while allowing claim of deduction and, thus, said assessment order could not be subjected to proceeding under section 263 - *Shri Keshoraipatan Sahkari Sugar Mills Ltd. v. Principal Commissioner of Income-tax - [2023] 153 taxmann.com 290 (Jaipur - Trib.)*

SECTION 92A OF THE INCOME-TAX ACT, 1961 - ASSOCIATED ENTERPRISES, MEANING OF

4.119. General : Where assessee paid interest on non-convertible debentures to DB Asia, a foreign bank, which had advanced certain sum to assessee and TPO made upward transfer adjustment by determining ALP of interest on NCDs paid to DB Asia but assessee submitted that DB Asia and assessee were not AEs, since DB Asia invested amount as an advance/loan in form of equity which was more than 51% of total book value of assets of assessee company, there was no error in application of transfer pricing regulations to subject transaction - *Neovantage Innovation Park (P.) Ltd. v. Income Tax Officer, Ward-16(3) - [2023] 155 taxmann.com 46 (Hyderabad - Trib.)*

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

4.120. AMP expenses : Where no agreement, formal or informal, existed between assessee-company and its foreign AE to share/reimburse AMP expenses incurred by assessee in India, transaction between assessee and its AE could not be treated as an international transaction

- *Mondelez India Foods (P.)Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 657 (Mumbai - Trib.)*

4.121. AMP expenses : Where in TP proceeding, TPO made adjustment on account of AMP expenses being of view that assessee's AMP expenses had promoted brand value of its AE but no material had been brought on record to show existence of any agreement between parties for incurring of such AMP expenses, adjustment made by TPO was to be deleted - *Acer India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 155 taxmann.com 205 (Bangalore - Trib.)*

SECTION 92BA OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - DOMESTIC TRANSACTION

4.122. Section 80-IA deduction : Where assessee company had set-up a captive power plant (CP) to meet power requirements of paper manufacturing unit and to benchmark said transaction, applied CUP as MAM and said unit was taken as 'tested party' as it was procuring power both from CPP as well as State Electricity Board, transfer price of power supplied by CPP to be benchmarked at annual average of landed cost at which power was being purchased by said unit from State Electricity Board - *Star Paper Mills Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 543 (Kolkata - Trib.)*

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

4.123. Comparability factors - Turnover filter : Where assessee providing software development services had a turnover of Rs. 48.8 crores, companies whose turnover in current year was more than Rs. 200 crores should be excluded from list of comparable companies - *Radisys India Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 459 (Bangalore - Trib.)*

4.124. Comparables, functional similarity - Software consultancy/development services : Where assessee was engaged in providing software development services, a company engaged in cloud computing, analytics, collaboration and mobility which had also established an IP led business by acquiring end of life and non-strategic products, could not be accepted as comparable being functionally different - *Radisys India Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 459 (Bangalore - Trib.)*

4.125. Comparability factors - Size of companies : Where assessee was engaged in providing software development services, a multinational company engaged in providing in a varied line of business such as telecom services, BPO services, consultancy services, infrastructure outsourcing and information technology including ITES and technical services in areas of mobility, network, cloud security etc., could not be accepted as comparable with that of assessee, a captive service provider - *Radisys India Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 459 (Bangalore - Trib.)*

4.126. Comparables, functional similarity - Software consultancy/development services : Where assessee was



engaged in providing marketing support services with minimum risk associated with it, companies engaged in providing financial services to banking sector and risk management in respect of sales and marketing sector were to be excluded from list of comparables - **Radisys India Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 459 (Bangalore - Trib.)**

4.127. Adjustments - Bad debts : In view of Safe Harbour Rules issued by CBDT under section 92CB read with rule 10TA(j) provision for doubtful debts, commission, foreign exchange gain or loss and other expenses was to be considered as non-operating in nature - **Radisys India Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 459 (Bangalore - Trib.)**

4.128. Adjustments - Working capital : If working capital adjustment cannot be allowed to profit margins, then comparable uncontrolled transactions chosen for purpose of comparison would be treated as not **comparable** in terms of rule 10B(3) and, therefore, working capital adjustment as claimed by assessee should be allowed - **Radisys India Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 459 (Bangalore - Trib.)**

4.129. Adjustment - Interest : In event working capital adjustment subsumes outstanding receivables, no separate adjustment should be made on account of outstanding receivables - **Radisys India Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 459 (Bangalore - Trib.)**

4.130. Comparables, functional similarity - Software consultancy/development services :Where assessee was a software development service provider, a company engaged in business of computer software development and product manufacturing process and having huge intangible assets was to be excluded from list of comparables - **Dell International Services India (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 154 taxmann.com 462 (Bangalore - Trib.)**

4.131. Comparability factors - Intangible assets :Where assessee was a software development service provider, a company having huge intangible assets and brand value as compared to assessee was to be excluded from list of comparables - **Dell International Services India (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 154 taxmann.com 462 (Bangalore - Trib.)**

4.132. Comparables, functional similarity - Software consultancy/development services : Where assessee was a software development service provider, a company engaged in product development and product design services was to be excluded from final list of comparables being functionally different - **Dell International Services India (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 154 taxmann.com 462 (Bangalore - Trib.)**

4.133. Adjustment - Working capital adjustment : No

negative working capital adjustment to be carried out, where assessee was a captive service provider - **Dell International Services India (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 154 taxmann.com 462 (Bangalore - Trib.)**

4.134. Comparability factors - Others :Merely because certain comparables did not appear in search process of TPO, these companies could not be excluded if assessee was able to file annual **reports** which were verifiable - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.135. Comparables, functional similarity - Traders :Where assessee was a licensed distributor/sales entity, a company engaged in business of trading of footwear and apparels etc. should be included - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.136. Comparables, functional similarity - Traders : Where assessee was a licensed distributor/sales entity and TPO rejected a comparable selected by assessee without looking into annual reports, matter was to be remanded to TPO for reconsideration - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.137. Comparability factors - Revenue filter :Where a company failed trade filter of more than 75 per cent, this company could not be compared with assessee-company and should be excluded from list of comparables - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.138. Comparables, functional similarity - Traders : Where assessee sought exclusion of a comparable selected by TPO on ground that it was not functionally similar as rental expenditure of this company was much lower than that of assessee, TPO was to be directed to consider this comparable by excluding rental expenditure for purpose of computing margins to determine comparability - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.139. Comparability factors - Revenue filter : A company deriving major part of its revenue from retail business could not be compared with assessee-company which was engaged in wholesale trading business - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.140. Adjustments - Working capital :Net profit margin arising in comparable uncontrolled transactions has to be adjusted to take into account differences, if any, between international transaction and comparable uncontrolled transactions, which could materially affect amount of net profit margin in open market and reasonable adjustment is to be made so as to bring both comparable and tested party on same footing and, therefore, working capital adjustment has to be allowed - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**



4.141. Transaction with AE alone are covered : Transfer pricing adjustment should be restricted to AE related transaction of assessee - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.142. Adjustments - Aggregation of transaction : International transaction of payment made towards R&D and sourcing support services to an AE could not be aggregated with assessee's trading activity - **PUMA Sports India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 502 (Bangalore - Trib.)**

4.143. Adjustment - Technical service fee : Where TPO compared amount of technical service fee paid with royalty percentage of 8 per cent as allowed to be repatriated by Press Note of RBI prescribed under automatic route of remittance, resulting in TP adjustments, since in view of Press Note No. 8, dated 16-12-2009, there was no cap for such payment, Assessing Officer was not correct in referring to press notes to determine arm's length price - **Menzies Bobba Ground Handling Services (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 461 (Hyderabad - Trib.)**

4.144. Adjustments - Interest : Where assessee had given loan to its subsidiary for participation in bid, since AE could not utilise said loan for any other purpose other than for purpose of participation in bid, same was to be treated as separate and distinct from loan simpliciter and therefore, TP adjustment made in respect of special purpose loan was to be deleted - **Tata Chemicals Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 288 (Mumbai - Trib.)**

4.145. Methods for determination of - TNM method: Where there were various dissimilarities in transaction between AE and non-AE, CUP method could not be applied for making adjustments to commission income of assessee; TNMM was to be adopted using berry ratio for ALP computation - **Sumitomo Corporation India (P.) Ltd. v. Assessing Officer, Deputy Commissioner of Income-tax, Circle 21(2) - [2023] 155 taxmann.com 511 (Delhi - Trib.)**

4.146. Methods for determination of - CUP method : ALP had to be determined in hands of assessee irrespective of acceptance of ALP in hands of AEs of assessee - **Shell Global Solutions International BV v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 242 (Ahmedabad - Trib.)**

4.147. Adjustment - Commission : Where assessee had been charging lower rate of commission from related parties as compared to other airlines, since assessee charged lower commission rates to sister concern/related party on account of it being a sole selling agent as well as client giving more than 98 per cent of its total turnover, it was purely a business decision and not

colourable

device; Transfer Pricing provision was not applicable - **Deputy Commissioner of Income-tax v. Jetair (P.) Ltd. - [2023] 154 taxmann.com 345 (Mumbai - Trib.)**

4.148. Adjustments - Royalty : Where TPO made adjustment disallowing technology know-how royalty paid by assessee to 'CA' being of view that 'CA' was not authorized to sub-license technical know-how, since, as per agreement it was clear that assessee had availed technical know-how from 'CA', impugned adjustment was to be deleted - **Mondelez India Foods (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 657 (Mumbai - Trib.)**

4.149. Adjustments - Royalty : Where assessee paid technical royalty and trademark royalty to an entity as per two separate agreement, TPO was not justified in making TP adjustment being of view that said entity was authorized to sub-license rights of trademark only and there was no reference to presume that same included right to sub-license technology and know-how related to products - **Mondelez India Foods (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 657 (Mumbai - Trib.)**

4.150. Methods for determination of - Most appropriate method, determination of : Where assessee availed certain services such as business strategy, financial planning etc. from its AE and TPO computed ALP adjustment based on an ad hoc estimation of salary and number of man hours, since TPO cannot adopt any other method except methods prescribed in section 92C(1) while determining ALP of international transactions entered into by assessee, impugned adjustment was to be deleted - **Mondelez India Foods (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 657 (Mumbai - Trib.)**

4.151. Adjustments - General : Once a transfer pricing analysis has been undertaken in respect of Indian AE, i.e., PE of foreign company, nothing further would be left to be attributed to it and that, accordingly, would automatically extinguish need for attribution of any additional profits to PE - **Deputy Commissioner of Income-tax v. Adobe Systems Software Ireland Ltd. - [2023] 155 taxmann.com 101 (Delhi - Trib.)**

4.152. Adjustments - Corporate guarantee : Corporate guarantee fee charged at rate of 0.5 per cent would be considered at arm's length price - **Deputy Commissioner of Income-tax v. Mcleod Russel India Ltd. - [2023] 154 taxmann.com 396 (Kolkata - Trib.)**

4.153. Adjustments - Inter-unit transfers : Where assessee-company was engaged in manufacturing and sale of tea, for computing value of inter-unit transfers of tea leaves by non-eligible units to units eligible for deduction under section 80-IE, average annual price method was more reliable and appropriate in comparison to monthly average price method - **Deputy Commissioner of Income-tax v. Mcleod Russel India Ltd. - [2023] 154 taxmann.com 396 (Kolkata - Trib.)**

4.154. Adjustments - Interest : For computing ALP interest on loan given to AE, **simple** interest rate is to be applied to daily balance basis or at least monthly balance basis and not on peak



balance of year - **Deputy Commissioner of Income-tax v. Mcleod Russel India Ltd. - [2023] 154 taxmann.com 396 (Kolkata - Trib.)**

4.155. Adjustments - Interest : Outstanding receivables is an international transaction, any extra credit in excess of 30 days requires a separate benchmarking and notional interest at 6% is a fair and reasonable one - **Corteva Agriscience Services India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 601 (Hyderabad - Trib.)**

4.156. Comparability factors - Related Party Transaction : Where assessee filed review petition contending that assessee had pleaded before Tribunal that applicability of RPT filter could be 15 per cent as against 25 per cent of sales applied by TPO and same had not been accepted by Tribunal, in view of fact that assessee had not challenged finding recorded by Tribunal, no question arose for consideration and, thus, same was to be dismissed - **Principal Commissioner of Income-tax-4 v. Mphasis Ltd. - [2023] 155 taxmann.com 604 (Karnataka)**

4.157. Adjustment - Operating profit/cost : ESOP expenditure is non-operating expense for computing operating margin - **Amazon Development Centre (India) (P.) Ltd. v. Commissioner of Income-tax (TP) - [2023] 155 taxmann.com 597 (Bangalore - Trib.)**

4.158. Adjustments- foreign exchange fluctuation loss/gain : Where CIT revised assessment order on ground that TPO did not consider foreign exchange fluctuation loss as operating in nature, but he himself in his order had observed that said loss was prima facie not operating in nature, he could not direct TPO for fresh examination of same issue **Amazon Development Centre (India) (P.) Ltd. v. Commissioner of Income-tax (TP) - [2023] 155 taxmann.com 597 (Bangalore - Trib.)**

4.159. Adjustment - Royalty : Where TPO proposed transfer pricing adjustment with Nil ALP of international transaction of 'Payment of royalty' on ground that no such payment was warranted and AO in his final assessment order had taken ALP at Nil on basis of recommendation of TPO without carrying out any independent investigation in terms of deductibility or otherwise of such payment in terms of section 37(1), this issue was to be set aside to file of AO - **Contitech India (P.) Ltd. v. ACIT - [2023] 155 taxmann.com 238 (Delhi - Trib.)**

4.160. Methods for determination of - Resale price method : Where assessee did not make any value addition to products imported by it from its AE and imported products were sold as it was, Resale Price Method was most appropriate method to benchmark said transaction - **Acer India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 155 taxmann.com 205 (Bangalore - Trib.)**

4.161. Adjustments - Others : Where assessee had

entered into SDT with its AEs with respect to sale of electricity from its Power Plant unit to its manufacturing unit, since per unit electricity sold to non-eligible unit at Rs. 6.90 per unit was market value, assessee was justified in adopting ALP of electricity supply to its AEs at rate charged by Gujarat Electricity Board (GEB) - **Tata Chemicals Ltd. v. Deputy Commissioner of Income-tax, 2(3)(1) - [2023] 155 taxmann.com 461 (Mumbai - Trib.)**

4.162. Methods for determination of - CUP Method : Where assessee adopted 'other method' as per rule 10AB as MAM to benchmark its SDT with respect to sale and purchase of coal with its AEs, however, TPO adopted CUP method as MAM using TIPS database to benchmark transaction, since no evidence was produced that there was any infirmity in database used by TPO, adjustment made by TPO on account of ALP of said SDT was to be confirmed - **Malco Energy Ltd. v. Assistant Commissioner of Income-tax, Circle 10(2)(2) - [2023] 155 taxmann.com 332 (Mumbai - Trib.)**

4.163. Adjustments - Interest : Where advances were given by assessee to its overseas AEs and no interest was charged on these advances contending that they were not loans but were quasi capital in nature, since assessee was unable to substantiate same with evidence, advances were in nature of loans and TP adjustment made by charging interest applying LIBOR was justified - **Kalpataru Power Transmission Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 337 (Ahmedabad - Trib.)**

4.164. Adjustments - Liaison fee : Where assessee-company engaged in business of establishing transmission network, paid liaison service fee to its USA based AE and TPO proceeded to apply 2 per cent liaison fee, since comparable selected by TPO was functionally different from assessee, being a pharmaceutical company, addition made by TPO was not justified - **Kalpataru Power Transmission Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 337 (Ahmedabad - Trib.)**

4.165. Methods for determination of - Resale price method : Where assessee-company imported men's wear from its AE for its resale in domestic market and did not carry out any value addition, RPM was MAM for determining ALP of said transaction - **Celio Future Fashion (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 155 taxmann.com 60 (Mumbai - Trib.)**

4.166. Adjustments - Interest : Where had made investment in preference shares issued by its UAE based subsidiary company and transaction of subscribing to preference shares of AE was not found to be bogus or sham, adjustment made by TPO imputing interest thereon by treating same as loan was to be deleted - **Deputy Commissioner of Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)**

4.167. Adjustments - Interest : Where ALP adopted by assessee at LIBOR plus 200 basis points was accepted by Tribunal in earlier years, since no distinguishing feature was pointed out by revenue, Commissioner (Appeals) was justified in adopting same in impugned year as well - **Deputy Commissioner of**



Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)

4.168. Comparables, functional similarity - Business support services : Where assessee provided provided management consultancy services (MCS), technical services and business support services (BSS) to its AE, a company engaged in business of manufacture of electrical equipments was to be excluded from list of comparables being functionally different - **Deputy Commissioner of Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)**

4.169. Comparables, functional similarity - Business support services :Where assessee provided MCS, technical services and BSS to its AE, a company engaged in business of providing psychological assistance and counselling to employees in areas of prevention sexual harassment, lifestyle management for shift employees, healthy maternity program etc. was incomparable to assessee - **Deputy Commissioner of Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)**

4.170. Comparables, functional similarity - Business support services : Where assessee provided MCS, technical services and BSS to its AE, a company engaged in business of development of specialized software was functionally incomparable to assessee - **Deputy Commissioner of Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)**

4.171. Comparability factors - Turnover filter : Where assessee's turnover was Rs.13.99 crores, a company having turnover of Rs.1.34 crores only was to be excluded from list of comparables failing turnover filter of 10 per cent - **Deputy Commissioner of Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)**

4.172. Comparables, functional similarity - Business support services : Where assessee provided MCS, technical services and BSS to its AE, a company providing market research and surveys, updating of data bases and admin support services was functionally comparable to assessee - **Deputy Commissioner of Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)**

4.173. Comparables, functional similarity - Business support services : Where assessee provided MCS, technical services and BSS to its AE, a company providing lifecycle management and human resources support services, data verification, processing of orders, **telemarketing**, monitoring quality of calls and call centers, payroll processing etc. was functionally comparable to assessee-company - **Deputy Commissioner of Income-tax-3(4) v. Reliance**

Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)

4.174. Adjustment - Guarantee commission : Where assessee had given corporate guarantee to its AEs for availing loans from financial institutions, in view of Tribunal's decision in assessee's own case for earlier assessment years guarantee commissioner charged accepting yield spread approach and also splitting of interest differential in ratio of 50:50 as done by assessee, same was to be upheld in impugned year as well - **Deputy Commissioner of Income-tax-3(4) v. Reliance Industries Ltd. - [2023] 155 taxmann.com 535 (Mumbai - Trib.)**

4.175. Adjustments - Interest :Where assessee was a debt free company, adjustment on account of notional interest on delayed receivable was to be deleted - **Avaya India (P.) Ltd. v. National Faceless Assessment Centre, ACIT, Circle : 1 (1), New Delhi. - [2023] 155 taxmann.com 540 (Delhi - Trib.)**

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

4.176. Limitation period :Where transfer pricing order under section 92CA(3) was **passed** for assessment year 2009-10 beyond period of limitation, it was barred by limitation - **Tata AIG General Insurance Co. Ltd. v. ACIT - [2023] 154 taxmann.com 48 (Mumbai - Trib.)**

4.177. Scope of provision : Where TPO passed order under section 92CA(3) not in accordance with show cause notice issued to assessee, **entire** issue was remitted to file of TPO - **Subex Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 250 (Bangalore - Trib.)**

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

4.178. NBFCs, in case of : Where amount was credited by assessee-NBFC to statutory reserve pursuant to section 45-IC of Reserve Bank of India Act, 1934, since profits transferred to reserve funds belonged to assessee which were reserved for utilization in certain eventualities for safety and benefit, it could not be said that such **transfer** would not fall within definition of income of assessee and thus, amount was to be added during computation of book profit under section 115JB - **SREI Infrastructure Finance Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 650 (Kolkata - Trib.)**

4.179. Book profit computation of :Clause (J) in Explanation 1 to section 115JB(2), would be applicable from assessment year 2013-14 onwards only and thus, Assessing Officer was not correct in invoking clause (J) of Explanation 1 and making adjustments in book profits on account of revaluation of lands in profit and loss account for assessment years 2011-12 and 2012-13 - **Deputy Commissioner of Income-tax v. Takshashila Gruh Nirman (P.) Ltd. - [2023] 154 taxmann.com 594 (Ahmedabad - Trib.)**

SECTION 115-O OF THE INCOME-TAX ACT, 1961 - TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

4.180. Revision : Revision of an order under section 263 pre-supposes existence of an order, since levy of interest under section 115P and any liability of DDT under section 115-O gets



fastened on assessee by provisions contained under Chapter XIID and did not form part of assessment order under section

143(3), Principal Commissioner could not have invoked revisionary proceedings to direct AO to impose DDT liability in reference to assessment order passed under section 143(3) - *Bijni Doors Tea Co. Ltd. v. Principal Commissioner of Income-tax* - [2023] 155 taxmann.com 584 (Kolkata - Trib.)

SECTION 115QA OF THE INCOME-TAX ACT, 1961 - TAX ON DISTRIBUTED INCOME TO SHAREHOLDERS

4.181. General :Where assessee had deposited BBT amount but credit for same had not been granted to assessee and consequently interest on such BBT had also been charged to assessee, since assessee had placed on record copy of challan to demonstrate deposit being made and Assessee had made an application under section 115QA, Assessing Officer should process aforesaid application and decide issue in accordance with law - *FIL India Business & Research Services (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 154 taxmann.com 251 (Delhi - Trib.)

SECTION 140A OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - SELF ASSESSMENT

4.182. Credit :Where assessee had paid self assessment tax but its credit had not been granted while computing tax payable and for which assessee had also made necessary application before Assessing Officer which was yet to be disposed of, Assessing Officer should expeditiously process request of rectification application filed by assessee - *FIL India Business & Research Services (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 154 taxmann.com 251 (Delhi - Trib.)

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - ADDITIONS TO INCOME

4.183. Order without DIN : Where Assessing Officer passed assessment order manually without generating any DIN number, impugned assessment order being passed without complying with binding CBDT Circular No. 19 of 2019 dated 14-8-2019 was non-est in eyes of law - *Ankit Jain v. Deputy Commissioner of Income-tax, Central Circle-7* - [2023] 155 taxmann.com 321 (Delhi - Trib.)

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

4.184. Passing assessment order : Where Assessing Officer passed a draft assessment order along with notice of demand under section 156, same was contrary to procedure laid down under section 144C and, thus, final assessment order passed pursuant to said draft assessment order was null and void - *Brightstar Infrastructure (P.) Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer, National Faceless Assessment Center, Delhi* - [2023] 154 taxmann.com 588 (Mumbai - Trib.)

4.185. Jurisdiction and powers of DRP : If DRP was satisfied that assessee had provided all relevant material before Assessing Officer or before it and remand report of Assessing Officer was also before it in regard to that material, then conclusive findings should have been given by DRP instead of a direction of re-verification by Assessing Officer - *Mannu Bhatia v. ACIT (International Tax)* - [2023] 155 taxmann.com 81 (Delhi - Trib.)

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

4.186. Net profit : Where no infirmity was found in books of account of assessee, there was no reason to reject book results and estimate net profit rate - *Deputy Commissioner of Income-tax, Central v. Heaven Associates* - [2023] 154 taxmann.com 595 (Ahmedabad - Trib.)

4.187. Addition to income : Where no specific discrepancy was pointed out in audited books of account of assessee engaged in civil construction business and books of account were not rejected, disallowance of some portion of cost of material consumed expenses on basis of conjectures and surmises was not justified - *ABCI Infrastructure (P.) Ltd. v. ACIT* - [2023] 154 taxmann.com 397 (Guwahati - Trib.)

4.188. Illustrations : Where Assessing Officer rejected books of account of assessee, on ground that assessee had undervalued closing stock, since complete details of valuation of closing stock were furnished by assessee and Assessing Officer had rejected books of account on basis of allegations made by Special Auditor, impugned rejection of books of account of assessee was unjustified - *Deputy Commissioner of Income-tax v. Amrit Banaspati Company Ltd.* - [2023] 155 taxmann.com 206 (Delhi - Trib.)

4.189. Undervaluation of stock : Where assessee had separately debited freight expenses to P&L account but not included in valuation of closing stock, since any adjustment in closing stock would require simultaneous adjustment in subsequent opening stock and entire exercise would become tax neutral, addition made by Assessing Officer computing undervaluation of stock was to be deleted - *Amrit Banaspati Company Ltd. v. Deputy Commissioner of Income-tax, Central Circle* - [2023] 155 taxmann.com 574 (Delhi - Trib.)

4.190. Subsidy : Capital subsidy received by assessee for larger public interest of industrial development of State and not for meeting cost of any asset was not liable to be reduced form cost of assets in terms of provisions of section 43(1) - *Amrit Banaspati Company Ltd. v. Deputy Commissioner of Income-tax, Central Circle* - [2023] 155 taxmann.com 574 (Delhi - Trib.)

4.191. Percentage completion method : Where assessee was involved in marketing, promotion and sale of its AE's subscription which provided support services to clients in relation to open source software system, since subscription package involved support services which could not be pre-determined and various queries could be raised by clients during duration of subscription agreement, in such case, advances received which were unearned revenue was required



to be recognised on straight line basis over specified period - **Deputy Commissioner of Income-tax v. Red Hat India (P.) Ltd.** - [2023] 155 taxmann.com 167 (Mumbai - Trib.)

4.192. Percentage completion method :Where assessee-firm engaged in business of real estate development sought reduction of disputed area for computing its profit, since assessee had been restrained from selling disputed area for time being due to injunction by High Court but that area still remained with assessee, it could not be reduced from overall saleable area available with assessee - **Sandhu Builders v. Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 361 (Mumbai - Trib.)

4.193. Market value : Where Commissioner (Appeals) considered valuation of unsold flats at market value in applying percentage completion method for purpose of computing profit of housing project of assessee, since valuation of closing stock (taken at cost or market value) had no role to play under percentage completion method, Commissioner (Appeals) was not justified in considering valuation of unsold flats at market value - **Sandhu Builders v. Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 361 (Mumbai - Trib.)

4.194. Illustrations : Where due to various litigation and injunctions of High Court, cost of housing project of assessee had further escalated, estimated cost of project was to be revised - **Sandhu Builders v. Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 361 (Mumbai - Trib.)

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

4.195. Deductions under section 80-IA : Return of income filed in response to notice under section 153A is to be considered as return filed under section 139 and provisions of Act which would otherwise be applicable in case of a return filed in regular course under section 139(1) (including deductions under Chapter VI-A) would continue to apply in case of return filed under section 153A even though same may not have been claimed by assessee in its original return of income under section 139(1) - **ABCI Infrastructure (P.) Ltd. v. ACIT** - [2023] 154 taxmann.com 397 (Guwahati - Trib.)

SECTION 199 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - CREDIT FOR TAX DEDUCTED

4.196. Year of allowability :In terms of rule 37BA(3)(i) benefit of credit of TDS is to be given in assessment year for which corresponding income is assessable; therefore, where income, on which TDS was deducted was patently assessable in year under consideration, benefit of credit of TDS should also be allowed in same year i.e. year under consideration - **Ignitive Digitech (P.) Ltd. v. Deputy Commissioner of Income-tax-CPC** - [2023] 154 taxmann.com 664 (Mumbai - Trib.)

SECTION 201 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - CONSEQUENCE OF FAILURE TO DEDUCT OR PAY

4.197. Period of limitation :Where AO passed an order under section 201(1) and 201(1A) fastening tax liability and interest beyond a period of seven years, same was barred by limitation - **Deputy Commissioner of Income-tax v. Emaar Hills Township (P.) Ltd.** - [2023] 154 taxmann.com 585 (Hyderabad - Trib.)

4.198. Illustrations : Interest under section 201(1A) is payable only when there is an obligation to deduct tax - **Bank of India v. Deputy Commissioner of Income-tax (TDS)** - [2023] 154 taxmann.com 662 (Nagpur - Trib.)

4.199. Time limit : Where statement in Form No. 26Q was filed by bank branch, same had to be treated as case falling under section 201(3)(i) and no order under section 201(1)/(1A) could be made after expiry of two years from end of relevant financial year in which statement was filed - **Bank of India v. Deputy Commissioner of Income-tax (TDS)** - [2023] 155 taxmann.com 86 (Nagpur - Trib.)

SECTION 234B OF THE INCOME-TAX ACT, 1961 - INTEREST - CHARGEABLE AS

4.200. General : No interest under section 234B can be charged as assessee, being a non-resident company was not liable to pay advance tax and **payer** is under an obligation to withhold tax under section 195 while making payment to assessee - **UT Starcom Inc v. ACIT** - [2023] 155 taxmann.com 117 (Delhi - Trib.)

4.201. General : Where tax is deductible at source on income of assessee held liable to tax in India, levy of interest under section 234B is not warranted - **Amadeus IT Group SA Vaish Associates v. Assistant Commissioner of Income-tax, Circle 1(1)(1)** - [2023] 155 taxmann.com 427 (Delhi - Trib.)

SECTION 244A OF THE INCOME-TAX ACT, 1961 - REFUND - INTEREST ON

4.202. Taxation of : Interest on refund of income-tax offered in year under consideration on accrual basis be not considered as income when same income had been offered to tax in subsequent year and had also been received by assessee in that year and taxed in that year - **FIL India Business & Research Services (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com 251 (Delhi - Trib.)

SECTION 251 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER

4.203. Appeals :Where assessee-bank branches against orders passed under section 201(1)/201(1A) filed appeals before Commissioner (Appeals) with a delay of 988 days and Commissioner (Appeals) did not condone delay, since delay in presenting appeals was caused by genuine difficulty and inability to act promptly at branch level, delay deserved to be condoned - **Bank of India v. Deputy Commissioner of Income-tax (TDS)** - [2023] 155 taxmann.com 86 (Nagpur - Trib.)



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

4.204. Power to grant stay : Where demands against assessee were stayed by co-ordinate **bench** on condition that assessee shall not seek adjournment without there being bonafide reason and assessee had sought adjournment claiming that outcome of a similar case involving its holding company, NSEIL, was pending and outcome of said appeals will have bearing on assessee's appeals, however, assessee failed to provide any evidence to support this claim, despite multiple requests from Tribunal, stay granted in case of assessee was to be revoked - **NSE clearing Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1)(1)** - [2023] 155 taxmann.com 396 (Mumbai - Trib.)

SECTION 260A OF THE INCOME-TAX ACT, 1961 READ WITH SECTION 5 OF THE LIMITATION ACT, 1963 - HIGH COURT - APPEAL TO

4.205. Condonation of delay : Where revenue filed application for condonation of delay of 498 days in filing appeal under section 260A, since application under consideration appeared to be a cyclostyled proforma in which number of days of delay had been subsequently filled, which amply reflected total lack of seriousness with which issue of limitation had been taken up by appellant/revenue, application for condonation of delay of 498 days was to be dismissed - **Principal Commissioner of Income-tax v. National Fertilizers Ltd.** - [2023] 154 taxmann.com 426 (Delhi)

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

4.206. General : Where Assessing Officer adopted one of courses permissible in law and it had resulted in loss to revenue, or where two views were **possible** and Assessing Officer had taken one view with which Principal Commissioner did not agree, it could not be treated as an erroneous order prejudicial to interest of revenue, unless view taken by Assessing Officer was unsustainable in law - **D.V. Properties (P.) Ltd. v. Principal Commissioner of Income-tax** - [2023] 155 taxmann.com 119 (Surat-Trib.)

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

4.207. Reasonable cause : Where assessee could not explain as to why loans and advances **received** in cash from Managing Director, penalty levied under section 271D was justified - **Sri Sai Balaji Gas Cylinder (P.) Ltd. v. Assistant Commissioner of Income tax (OSD), Corporate Circle-6** - [2023] 155 taxmann.com 319 (Chennai - Trib.)

4.208. Penalty : Where assessee-company had taken loan from its Director in cash for purpose of purchase of lands in name of company, since said transactions between assessee-company and Director was in nature of current

account transactions, which did not come under purview of loan and deposit as per section 269SS, penalty levied under section 271D was to be deleted - **Thamira Green Farm (P.) Ltd. v. Additional Commissioner of Income-tax, Corporate Range-3** - [2023] 155 taxmann.com 320 (Chennai - Trib.)

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

4.209. Mere filing incorrect claim which was not allowed by Assessing Officer, that by itself would not attract penalty under section 271(1)(c) - **Purshottam Farmers Co. Op Cotton Ginning & Pressing Society Ltd. v. Deputy Commissioner of Income-tax** - [2023] 155 taxmann.com 191 (Surat-Trib.)

4.210. Illustrations : Where issue relating to addition made in quantum assessment had been restored back to Assessing Officer to pass a speaking order, penalty levied under section 271(1)(c) would not survive - **Gauri Dhirenkumar Shah v. Income-tax Officer** - [2023] 155 taxmann.com 198 (Surat-Trib.)

SECTION 271B OF THE INCOME-TAX ACT, 1961 - PENALTY FOR FAILURE TO GET ACCOUNTS AUDITED

4.211. Scope of provision : When assessee had been penalized under section 271A for not maintaining his books of account, he could not be saddled with penalty under section 271B for failure of getting such books of account, which were not maintained, audited - **Santosh jain v. Income-tax Officer** - [2023] 155 taxmann.com 58 (Raipur - Trib.)

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

4.212. Bona fide mistake : Where assessee purchased two immovable properties but did not deduct TDS under section 194-IA on payment made towards same, since assessee had furnished relevant documents in support of fact that recipients/payees had duly reflected sale consideration in their respective returns of income and had also paid taxes thereon, impugned penalty under section 271C levied upon assessee was to be deleted - **Arrone Ceramic v. Joint Commissioner of Income-tax, TDS** - [2023] 155 taxmann.com 16 (Rajkot - Trib.)

SECTION 271D OF THE INCOME-TAX ACT, 1961 - PENALTY - FOR FAILURE TO COMPLY WITH SECTION 269SS

4.213. Conditions precedent : Where Assessing Officer had rejected assessee's explanation that investment in properties was sourced out of cash loan raised by him from his relative and held that same was sourced out of his undisclosed income, then Addl. CIT could not have taken a contrary view and saddled assessee with penalty under section 271D for having carried out cash loan transaction and, therefore, impugned penalty imposed upon assessee was to be vacated - **Anil Manhare v. Income-tax Office** - [2023] 155 taxmann.com 237 (Raipur - Trib.)


**SECTION 275 OF THE INCOME-TAX ACT, 1961 - PENALTY -
BAR OF LIMITATION FOR IMPOSITION OF**

4.214. General : Action for imposition of penalty proceedings

4.215. is initiated, when Assessing Officer imposing penalty issues notice under section 274 read with sections 271D and 271E and not when Assessing Officer sends a proposal to Joint/Additional Commissioner for imposition of penalty - **Sri Sai Balaji Gas Cylinder (P.) Ltd. v. Assistant Commissioner of Income tax (OSD), Corporate Circle-6 - [2023] 155 taxmann.com 319 (Chennai - Trib.)**

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.



Arrest and Bail for Offences under Prevention of Money Laundering



CA Rachit Agarwal

Scheme of the PMLA 2002 Act is not limited to provide for prosecution of person involved in the offence of money-laundering, but mainly intended to prevent money-laundering activity and confiscate the proceeds of crime involved in money-laundering

Before we proceed to deal with applicability of the provisions it would be apposite to look into the constitutional safeguards as provided in the Constitution of India

Article.21. Protection of life and personal liberty.-

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article.22. Protection against arrest and detention in certain cases.-

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

3) Nothing in clauses (1) and (2) shall apply-

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention

1. Who are the persons will be covered under the PMLA

1.1. those who directly or indirectly attempt to indulge; or

1.2. those who knowingly assists; or

1.3. those who are knowingly a party; or



1.4. those who are actually involved.

in a process or activity connected with proceeds of the crime

2. Process or Activities under the PMLA

- ✚ Concealment of proceeds of crime;
- ✚ Possession of proceeds of crime;
- ✚ Acquisition proceeds of crime;
- ✚ Use of proceeds of crime;
- ✚ projecting or claiming as untainted property being out of proceeds of crime,

3. What is the meaning of Proceeds of Crime

3.1. (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

4. What is Scheduled Offence?

4.1. List of the Schedule of the Offence is given under the Schedule annexed to PMLA, 2002.

4.2. Some common crimes as follows

- ✚ Section 120B of Indian Penal Code- Criminal Conspiracy
- ✚ Offences related to Government Stamp
- ✚ Murder, Attempt to Murder, Kidnapping for ransom, Forgery of Security Bill, counterfeiting of Bank Notes
- ✚ Public Servant taking gratification by illegal means
- ✚ Procuring, inducing or taking person for the sake of prostitution
- ✚ To acquire, have in possession or carry any prohibited arms or prohibited ammunition

5. Punishment for Offence under Money Laundering?

5.1. As per Section 4, Person committing offence shall be punishable with imprisonment not less than 3 years and may extend upto 7 years

6. Power to Arrest during the course of Investigations?

6.1. Provisions relating to arrest are contained in Section 19 of PMLA

6.2. There must be reasons to be believe that person is guilty of offence punishable under PMLA and such reasons are required to be recorded in writing



- 6.3. Reasons to believe has been formed on the basis of material in his possession.
- 6.4. Officer executing the power of arrest must have authorization either from Director or Deputy Director or Assistant Director.
- 6.5. Such person “**may**” be arrested. The use of word “may” confirms that it is not always that person being guilty of the offence to be arrested during the investigations. Therefore, despite satisfying the aforesaid three grounds, discretion is vested in the Authorized Officer to effect arrest or not. So arrest is not compulsory. The existence of the power to arrest is one thing and the justification for the exercise of it is quite another. Personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. The other considerations for the arrest
- ✚ The accused will not be available to serve the sentence if not arrested
 - ✚ The accused is likely to abscond and evade the processes of law.
 - ✚ The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
 - ✚ The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.
- 6.6. Soon after the arrest, the grounds of the arrest to be informed to the arrestee. It is worthy to note that it is not incumbent to provide the copy of ECIR (Enforcement Case Information Report) to the arrestee. ECIR is an internal document.

7. Issue of Summons is not for admission of guilt but to gather the information, truth and evidences

The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. However it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an ‘evasive reply’.

Apex Court in case of Santosh S/o Dwarkadas Fafat vs. State of Maharashtra (2017) 9 SCC 714 noted that custodial interrogation is not for the purpose of ‘confession’ as the right against self-incrimination is provided by Article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation.

8. Jurisprudence on Arrest

- 8.1. Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19 **[Hon’ble Supreme Court in case of Pankaj Bansal Versus Union Of India & Ors]**
- 8.2. There is no need to file a formal complaint u/s 154 of Cr. PC 1973 before exercising the power to arrest. There are sufficient safeguards in the statute itself so that power of arrest



cannot be exercised in a arbitrary manner [**Hon'ble Supreme Court in case of Vijay Madanlal Choudhary & Ors. Versus Union of India & Ors**]

8.3. Section 41A of the CrPC, 1973 has got no application to an arrest made under the PMLA 2002

8.4. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would ensure to the benefit of the person arrested [**Supreme Court in case of V. Senthil Balaji Versus The State Represented By Deputy Director and Ors**]

8.5. No writ of Habeus Corpus would lie when an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002. Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial

9. Jurisdiction to try the Offence under PMLA

9.1. The Special Courts established under Section 43 of the 2002 Act are empowered to try the offences under the PMLA Act, 2002. The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification

9.2. An offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court

9.3. Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973

10. Bail to a person arrested under PMLA

10.1. Twin conditions in section 45 of the PMLA will have to be satisfied for grant of Bail

- + the Public Prosecutor has been given a opportunity to oppose the application for such release
- + where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail

10.2. The conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C.. Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them

10.3. Other considerations before allowing the Bail Petition are as follows

- + nature of accusation,
- + the nature of the evidence in support thereof,



- + the severity of the punishment which conviction will entail,
- + the character of the accused,
- + the circumstances which are peculiar to the accused,
- + his role and involvement in the offence,
- + his involvement in other cases and
- + reasonable apprehension of the witnesses being tampered with

10.4. There is no straight fit jacket formulae for either granting or denying the bail. It is the subjective satisfaction based on the grounds. Grant or denial of bail is regulated to a large extent by the facts and circumstances of each case. The Courts have maintained the delicate balance between the judgment of acquittal and conviction and order granting bail before commencement of trial.

10.5. All offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974),

10.6. Anticipatory Bail- Though section 71 of the PMLA contains a non-obstante clause, there is nothing in the PMLA which restricts the court from granting relief under section 438 Cr.P.C. in an appropriate case [**Hon'ble Delhi High Court in case of Ashish Mittal Versus Directorate of Enforcement & nr in W.P.(CRL) 2416/2023 dated 19.10.2023**]

10.7. If the grant of the anticipatory bail results in hampering of the investigation, the exercise of the anticipatory bail to be declined. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed [**Hon'ble Supreme Court in case of P. Chidambaram Versus Directorate Of Enforcement dated 05.09.2019**]

10.8. If the arrestee has undergone under the custody and served sentence for more than half the period, the arrestee is entitled to relief of Bail u/s 436A of Cr. Pc, 1973 [**Hon'ble Supreme Court in case of Manoj Kumar Pattanaik Versus D.V.S. Kishore [2023 (384) E.L.T. 354 (SC)]**]

11. Conclusion

11.1. Enforcement Authority before exercising the power of arrest must be satisfied with offence being committed and such offence are punishable u/s 4

11.2. Upon Arrest, the accused has to be strictly satisfy conditions as laid down u/s 45 that offence is not punishable u/s 4 to the Court along with other conditions



Mastering the Master File Documentation



Author: CA Chaitanya Maheshwari

Post the due date of one of the major Transfer Pricing (TP) compliance of filing Form 3CEB and related compliances, now let us gear up for another TP compliance i.e. Master File Documentation (MFD) having due date as 30th November 2023 in cases where Form 3CEB is applicable (as due date of this compliance is the due date of filing of ITR of the respective person). Being one of the recent amendments having various intricate issues and nuances.

What is MFD and CbCR?

MFD and Country-by-Country Reporting (CbCR) is a global TP compliance requirement under the transfer pricing laws of countries around the world. It is one of the major amendments in relation to the Indian TP documentation and Global TP compliance pertaining to the Multi National Enterprises (MNEs) Group. This amendment is the consequence of Government of India's commitment for implementation of the BEPS (Base Erosion and Profit Shifting) Action Plan (AP) 13 aligning with the Indian TP Legislation. However, the rules and requirements in India are aligned with BEPS AP 13 with certain modifications w.r.t. guidance issued by OECD in form of "Guidance on the implementation of CbC Reporting" and "Guidance on the appropriate use of information contained in CbC Reports". **Both these compliances of MFD and CbCR are to be done from point of view of the MNE group as a whole in the respective jurisdiction.**

Following three-tiered standardized structure has been mandated to enable the tax authorities to have sufficient information to assess risk:

S. No.	Name of Document	Description
(i)	Master File	Containing comprehensive information relevant for all MNE group members (it is an overview of the MNE group's business, including the nature of its global business operations, its overall TP policies, and its global allocation of income and economic activity) refer Annex II of Chapter V of the Transfer Pricing Guidelines issued by OECD.
(ii)	Local File	Which is entity-specific information with reference to the related party transactions of the local taxpayer entity of the MNE (this is mainly the normal TP Study report as per Rule 10D of the Rules); refer Annex I of Chapter V of the Transfer Pricing Guidelines issued by OECD
(iii)	Country-By-Country Report	Consists of certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of economic activity like revenue, taxes paid, capital employed, head count etc. of each entity within the MNE group. Following is the format of such reporting as per OECD User Guide known as "Template for the Country-by-Country Report".



What are the objectives of MFD and CbCR?

The major objectives of the BEPS AP 13 i.e. MFD and CbCR are as follows:

- Aid tax authorities to perform a **TP risk assessment**;
- Ensure taxpayers give **appropriate consideration to setting prices** consistent with the arm's-length principle;
- Provide information needed for **tax authority audit**.

What are the key provisions relating to MFD and CbCR under the Income-tax Act, 1961 ("the Act")?

The MFD and CbCR are applicable as per the following provisions of the Act:

- Section 92D(1)(ii)**: Casts responsibility of preparation and maintenance of MFD on CE of an IG.
- Section 92D(4)**: Casts responsibility of filing of MFD on constituent entity (CE) of an international group (IG) in the prescribed form (Forms 3CEAA and 3CEAB as per the Rule 10DA of Income-tax Rules, 1962 or "the Rules").
- Section 286**: Preparation, maintenance and filing of CbCR as per the prescribed forms by the resident holding company or alternate reporting entity and the CE of an IG (Forms 3CEAC, 3CEAD and 3CEAE as per Rule 10DB of the Rules).

Note:Section 286(9) of the Act contains definitions of various terms being used in MFD and CbCR regimes.

What are the conditions for the applicability of various forms under MFD regime?

The following table highlights conditions for applicability of various forms:

S. No.	Form No.	Conditions for Applicability
1	3CEAA Part A	– Any CE of an IG [Rule 10DA(3) of the Rules]
2	3CEAA Part B	– CE, if following conditions are satisfied [Rule 10DA(1) of the Rules]:
	Scenario 1	<div style="display: flex; align-items: center; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 40%;"> If consolidated Group revenue of International Group > INR 500.00 crores for the accounting year </div> <div style="border: 1px solid black; padding: 5px; width: 10%; text-align: center;">AND</div> <div style="border: 1px solid black; padding: 5px; width: 40%;"> If International Transaction during accounting year > INR 50 crores as per the books of A/c </div> </div>
	OR	OR
	Scenario 2	<div style="display: flex; align-items: center; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 40%;"> If consolidated Group revenue of International Group > INR 500.00 crores for the accounting year </div> <div style="border: 1px solid black; padding: 5px; width: 10%; text-align: center;">AND</div> <div style="border: 1px solid black; padding: 5px; width: 40%;"> If International Transaction in respect of intangible property during accounting year > INR 10 crores </div> </div>
3	3CEAB	If more than one CE of IG required to file Form 3CEAA, then such compliance can be done by one of the CEs which has to



be designated by the IG for this purpose and such information to be intimated by the designated CE to the Department by filing Form 3CEAB.

Note: The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year. The “telegraphic transfer buying rate” shall have the same meaning as assigned in the Explanation to Rule 26 of the Rules.

What is meant by CE?

At first, on analyzing section 286(9)(d) of the Act, CE means:

- a. any separate entity of IG that is included in the CFS (Consolidated financial statements) of the said group for financial reporting purposes **(that means every entity of the group which is included in the CFS of the ultimate parent entity including that ultimate parent entity itself);**
- b. any separate entity that may be so included for in CFS, if the equity share of any entity of the IG were to be listed on a stock exchange **(here the legislature is drafted in such a way to include hypothetical situation where consolidation not required as per accounting standards prevailing in the jurisdiction of parent entity, but if it would have been listed, so whether the listing agreement of the respective stock exchange prescribes the preparation of CFS);**
- c. any such entity that is excluded from the CFS of the international group solely on the basis of size or materiality **(any entity which has not been included in CFS like in which no operations undertaken during the year etc.);** or
- d. any permanent establishment (PE) of any separate business entity of the IG included in points a, b or c, if such business unit prepares a separate financial statement for such PE for financial reporting, regulatory, tax reporting or internal management control purposes **(so if any overseas branch or PE is there, that entity will also be considered as CE).**

For identifying a CE we also need to understand meaning of the term “entity” or “enterprise”, which is a broader term so it has to be read to include all types of business units or enterprises as follows [as interpreted from the definition of “enterprise” u/s 92F(iii) of the Act]:

- a. Company,
- b. Proprietorship Firm or Individual (an individual is also to be considered as entity),
- c. LLPs and partnership firms,
- d. Any other form of businesses irrelevant of its constitution like AOP, BOI etc.

What is meant by “International Group” (or IG)?

Before knowing the meaning of the term IG, we need to go through the definition of the term “group” which has been defined u/s 286(9)(e) of the Act as: “group” includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a CFS for financial reporting purposes,—

- (i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident **(requirement of consolidation as per accounting standards prevailing in the country of ultimate parent entity);** or
- (ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which



the parent entity is resident (if there is no requirement of consolidation as per accounting standards prevailing in the country of ultimate parent entity then hypothetical situation to be considered that if it would have been listed, so whether the listing agreement of the respective stock exchange in that country prescribes the preparation of CFS).

Now, as per Section 286(9)(g) of the Act, "international group" means any group that includes,

- (i) **two or more** enterprises which are resident of **different countries** or territories;
- or
- (ii) an **enterprise**, being a **resident of one country** or territory, which carries on any business through a **permanent establishment in other countries** or territories;

From the above definitions we following are some illustrations to identify IG:

- a. An entity resident in India say X Ltd. having subsidiary in USA say Y Inc., then they both collectively would constitute an international group. X Ltd. Is required to prepare consolidated financial statements as per Accounting Standards prevailing in India.
- b. Now, in example in point (a) suppose X Inc. is resident of USA and having a branch Y in India. Then as Y becomes Permanent Establishment (PE) of X Inc., both of them collectively would constitute an international group. As per laws applicable in India the branch Y of X Inc. is required to prepare separate financial statements for operations undertaken by it in India and X Inc. consolidates the same within its financial statements.
- c. There is a proprietorship firm resident in India having a branch in UAE.

In all the above illustrations, as there are two enterprises which are resident in two different countries, hence they would collectively constitute as a Group u/s 286(9)(e) and further as an IG u/s 286(9)(g) since there are 2 entities resident of different countries.

Therefore, most importantly, Part A of Form 3CEAA also to be filed as per Rule 10DA(3) of the Rules irrespective of the fact whether the threshold prescribed under Rule 10DA(1) has been breached or not which triggers applicability of Part B of Form 3CEAA.

Whether any penalty on non-compliance of Form 3CEAA?

Non-compliance of the same will attract severe monetary penalty under the provisions of the Act as follows:

S. No.	Penalty Section	Description of the Penalty Provision	Quantum of Penalty (INR)
1	271AA(2)	Failure to furnish MFD prescribed u/s 92D(4)	5,00,000

This means that even if only Part A of Form 3CEAA (which is normally of one page) is not filed, if applicable, then such non-compliance would empower the tax authorities to apply penalty of Rs. 5 lakhs u/s 271AA(2) of the Act straightaway.

Whether for the purposes of evaluating limits under Rule 10DA(1), can the accounting year be different than previous year?

As per Section 286(9)(a) of the Act, "Accounting Year" has been defined as:



- a. In case parent entity or alternate reporting entity is resident in India, the previous year;
- b. In case the parent entity of the international group is resident of territory other than India, the accounting year w.r.t. which it prepares its financial statements as per the applicable laws or accounting standards in the country or territory in which it is resident.

From the above definition we can very well interpret that, in case the parent entity of the IG is not resident in India and if the accounting year as per the applicable laws or accounting standards in the country or territory where the parent entity is resident is different from the previous year in India, then there would be different accounting year than the previous year. For example, if Parent Entity say X Inc. resident in USA and follows calendar year as accounting year then it will be different from the previous year followed by its subsidiary Z India Pvt. Ltd. resident in India.

What are the major reporting requirements of the MFD i.e Part B of Form 3CEAA?

Major reporting requirements of the MFD (i.e. Part B of Form 3CEAA) can be categorized as follows:

A. Organisational Structure

1. List of all entities of the IG along with their addresses
2. Chart depicting the legal status of the CEs and ownership structure of the entire IG

B. Business Description

1. Nature of all the businesses in which the IG deals
2. Important drivers of profits of all such businesses
3. Description of the supply chain for the 5 largest products or services of the IG in terms of revenue and any other products including services amounting to more than 5% of consolidated group revenue;
4. List and brief description of important service arrangements made among members of the IG, other than those for research and development services
5. Description of the capabilities of the main service providers within the IG
6. Details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services
7. List and description of the major geographical markets (country wise) for the products and services offered by the IG
8. Description of the functions performed, assets employed and risks assumed by the CEs of the IG that contribute at least 10% of the:
 - revenues **or**
 - assets **or**
 - profits of such group**(this limit has to be evaluated with utmost caution as the conditions use “or”)**
9. Description of the important business restructuring transactions, acquisitions and divestments

C. Intangibles

1. Description of the overall strategy of the IG for the development, ownership and exploitation of intangible property, including location of principal R&D facilities and their management
2. List of all entities of the IG engaged in development and management of intangible property along with their addresses
3. List of all the important intangible property or groups of intangible property owned by the IG along with the names and addresses of the group entities that legally own such intangible property



4. List and brief description of important agreements among members of the IG related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements
5. Detailed description of the TP policies of the IG related to R&D and intangible property
6. Description of important transfers of interest in intangible property, if any, among entities of the IG, including the name and address of the selling and buying entities and the compensation paid for such transfers

D. Financial Activities

1. Detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders
2. List of group entities that provide central financing functions, including their place (addresses) of operation and of effective management (i.e. POEM)
3. Detailed description of the TP policies of the IG related to financing arrangements among group entities

E. Financial and Tax Position

1. Copy of the annual CFS of the IG
2. List and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the IG for allocation of income among countries.

Note: The Master File shall be kept and maintained for a period of 8 years from the end of relevant assessment year (the year following the tax year) as per Rule 10DA(6) of the Rules.

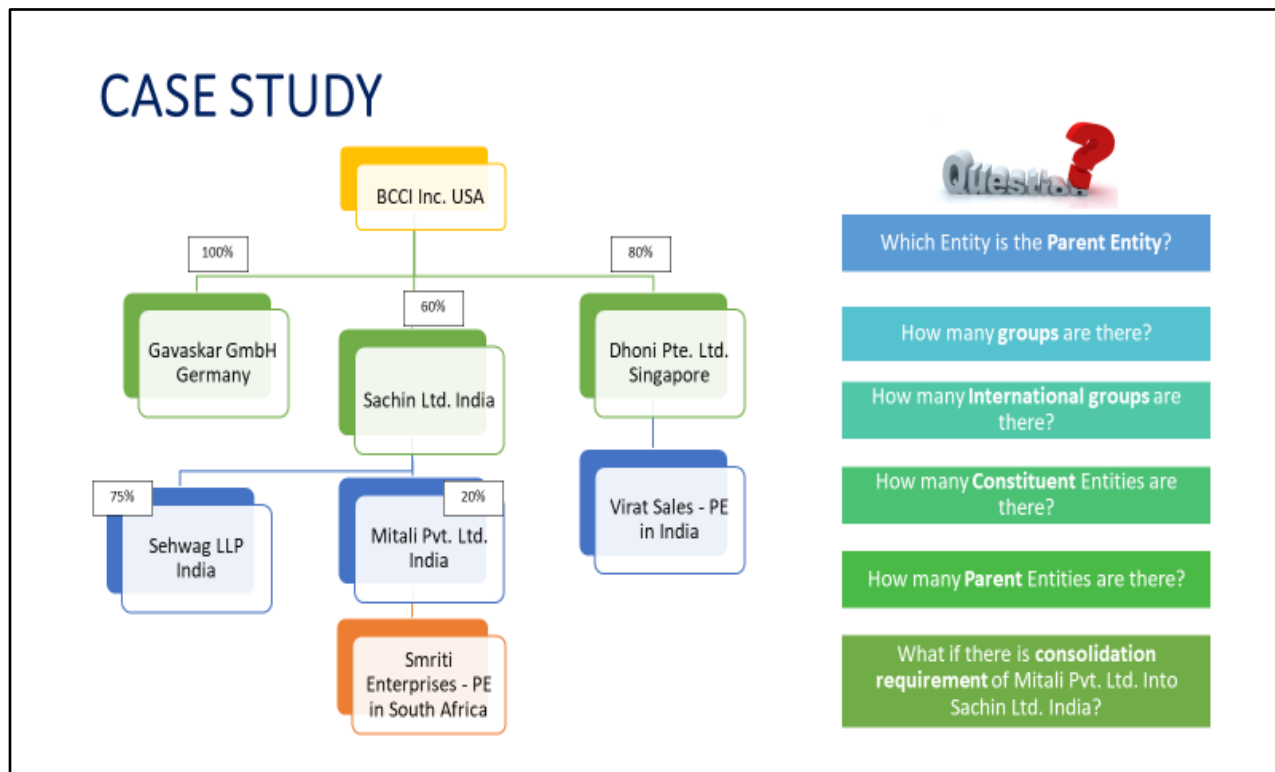
What are the major challenges in compliance of MFD and CbCR?

The major challenges ahead:

- Identifying the Parent Entity and CE of IG;
- Collection of data from entities across the globe is a time-consuming activity;
- Authenticity of data provided by CEs, especially those not included in CFS – the data furnished may be unaudited;
- The data may be highly confidential and prone to cyber theft;
- Aligning of the enormous data in a particular format;
- Interpretation of statutory provisions;
- Risk assessment exercise of the data to be submitted;
- System challenges in e-filing of various forms;
- Increase in litigations in absence of clarity of law; etc.



Sharing Case Study with some questions for understanding various terminologies under the MFD and CbCR regime to be answered from point of view of Tax Laws as well as Accounting Standards applicable in India [answers to be shared by the readers first]



In addition to above questions in this case study, also determine the applicability and due dates of filing the Form 3CEAA and 3CEAB for AY 2023-24 in following scenarios:

- a. If Form 3CEB is applicable to all Indian entities;
- b. If Form 3CEB is not applicable to all Indian entities;
- c. If Mitali Pvt. Ltd., India would be M/s Mitali Enterprises (Partnership Firm) and to which Form 3CEB as well as Tax Audit Report (Form 3CB-3CD) are not applicable;
- d. Whether the answer would change if in scenario (c) above, M/s Mitali Enterprises would be proprietorship firm.

(Request Readers to send the reply to dtpaejournal@gmail.com within 7 days from the date of publication)

Wish you all a Happy and Prosperous Deepawali.

Disclaimer:

1. The above article has been authored focusing more on MFD rather than CbCR compliance as the cases of MFD are more than those of CbCR due to the prescribed threshold limits.
2. The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation. While due care has been taken in preparing this document, the existence of mistakes and omissions herein is not ruled out. Neither the author nor DTPA, Kolkata and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any inaccurate or incomplete information in this document nor for any actions taken in reliance thereon. No part of this document should be distributed or copied (except for personal, non-commercial use) without express written permission of the author and DTPA, Kolkata.



GST & Indirect Taxes

1. STATUTORY UPDATES

- 1.1 Rs. 1,62,712 crores gross GST revenue collected during September 2023: Press Release

Editorial Note : The gross GST revenue collected in the month of September, 2023 is Rs. 1,62,712 crores. The revenue for the month of September, 2023 is 10% higher than the GST revenues in the same month last year.

- 1.2 Functionality to issue intimation under Form DRC-01C has been implemented on the GSTN portal

Editorial Note : The Government inserted Rule 88D in CGST Rule, 2017 dealing with difference in input tax credit available in GSTR-2B and ITC availed in GSTR-3B by issuing of intimation in Form DRC-01C. The GSTN issued advisory to announce that the functionality has now started operating on the GST portal.

- 1.3 GSTN issued an advisory related to changes in GSTR-5A

Editorial Note : The GSTN has issued an advisory to inform that Table 5B which is introduced to report supplies made to registered GSTINs (B2B supplies) would be implemented shortly at GSTN Portal and till such time, OIDARs are advised to file the return in the existing GSTR 5A itself.

- 1.4 Clarification regarding admissibility of export remittances received in Special INR Vostro account - **Circular No. 202/14/2023-GST, Dated 27-10-2023**

Editorial Note : The CBIC has clarified that when the Indian exporters are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be admissible for treating as exports under GST.

- 1.5 CBIC issues clarification regarding determination of POS for services of transportation of goods - **Circular No. 203/15/2023-GST, Dated 27-10-2023**

Editorial Note : The CBIC has clarified that the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2).

- 1.6 CBIC clarifies on issues pertaining to taxability of personal guarantee and corporate guarantee in GST - **Circular No. 204/16/2023-GST, Dated 27-10-2023**

Editorial Note : The CBIC has clarified that the activity of providing corporate guarantee or personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.

- 1.7 E-Invoice bulk download functionality is now live on the GST e-Invoice Portal: GSTN Update

Editorial Note : The GSTN has issued an advisory to inform that e-Invoice JSON download functionality is now live on the GST e-Invoice Portal. Additionally, this functionality allows to download all e-invoices reported across all six IRPs (Invoice Registration Portals), i.e. complete data.

- 1.8 GSTN issued advisory on registration & returns for persons supplying Online Money Gaming or OIDAR services

Editorial Note : GSTN has issued an advisory to inform that it is in the process of developing the functionality of new registration for persons making supplies of online money gaming or OIDAR to a person in India. In the meantime, an alternative functionality is made available on the portal.

- 1.9 CBIC issues notification to allow supplies made to SEZ units/developers on payment of IGST - **Notification No. 05/2023 – Integrated Tax, Dated 26-10-2023**

Editorial Note : The CBIC has issued a notification to provide that now suppliers can make supply on payment of IGST to SEZ units/developers as well.

- 1.10 CBIC **prescribes** valuation of inter-corporate guarantee provided to banking company or financial institution - **Notification No. 52/2023 – Central Tax, Dated 26-10-2023**

Editorial Note : The CBIC has notified Central Goods and Services Tax (Fourth Amendment) Rules, 2023 to provide valuation of corporate guarantee provided to any banking company or financial institution, widen of Scope of GST practitioners etc.

- 1.11 CBIC notifies Central Goods and Services Tax (Third Amendment) Rules, 2023 w.e.f October 1st, 2023 - **Notification No. 51/2023 – Central Tax, Dated 29-09-2023**

Editorial Note : The CBIC has notified Central Goods and Services Tax (Third Amendment) Rules, 2023 in supersession of earlier Central Goods and Services Tax Rules (Third Amendment) Rules, 2023. These rules provide value of supply of specified actionable claims, form and manner of submission of returns by the supplier of online money gaming from outside India, etc.

- 1.12 Time of supply for online gaming etc. would be earlier of date of invoice or date of payment - **Notification No. 50/2023 – Central Tax, Dated 29-09-2023**

Editorial Note : The CBIC has issued notification to provide that the time of supply for specified actionable claims such as online money gaming would be earlier of date of issue of invoice or date on which supplier receives payment.



- 1.13** Provisions of Integrated Goods and Services Tax (Amendment) Act, 2023 shall be effective from October 1st, 2023 - **Notification No. 02/2023- Integrated Tax, Dated 29-09-2023**

Editorial Note : The Government has issued notification to provide that the provisions of Integrated Goods and Services Tax (Amendment) Act, 2023 shall be effective from 1st October, 2023.

- 1.14** 28% GST shall be levied on online gaming and Casinos w.e.f 1.10.2023 - **Notification No. 11/2023 Central Tax (Rate), Dated 29-09-2023**

Editorial Note : The CBIC has issued notification to provide that 28% GST shall be levied on supply of specified actionable claims such as online gaming, betting, gambling, casinos etc.

- 1.15** Govt. notifies October 1st, 2023 as effective date of applicability of CGST (Amendment) Act, 2023 - **Notification No. 48/2023- Central Tax, Dated 29-09-2023**

Editorial Note : The Government has issued notification to provide that the provisions of Central Goods and Services Tax (Amendment) Act, 2023 shall be effective from 1st October, 2023.

- 1.16** Govt. restricts ITC on inward supply of passenger transport services by motor vehicle to 5% - **Notification No. 12/2023- Central Tax (Rate), Dated 19-10-2023**

Editorial Note : The CBIC has issued notification to provide that in case of services of transport of passengers by any motor vehicle, where the supplier of input service in the same line of business charges 12% GST, then credit of only 5% shall be available.

- 1.17** Refund of accumulated ITC to be allowed on construction of civil structures, bridges, roads, etc. not intended for sale to a buyer - **Notification No. 15/2023- Central Tax (Rate), Dated 19-10-2023**

Editorial Note : The CBIC has issued notification to provide that refund of accumulated ITC shall be allowed on construction of civil structures, like bridges, roads, etc., which are not intended for sale to a buyer.

- 1.18** Supply of services by Indian Railways to be taxable under Forward Charge Mechanism - **Notification No. 14/2023- Central Tax (Rate), Dated 19-10-2023**

Editorial Note : The CBIC has issued notification to provide that services supplied by the Indian Railways to be taxed under Forward Charge Mechanism so as to enable them to avail the ITC.

- 1.19** CBIC restricts refund on metallised polyester film/plastic film under inverted duty structure - **Notification No. 20/2023-Central Tax (Rate), Dated 19-10-2023**

Editorial Note : The CBIC has issued notification to

provide that no refund to be allowed on polyester film (metallised)/ plastic film on account of inversion i.e. under inverted duty structure.

- 1.20** 5% GST shall be levied on Molasses and branded millet flour in powder form - **Notification No. 17/2023-Central Tax (Rate), Dated 19-10-2023**

Editorial Note : The CBIC has issued notification to reduce GST rate on molasses from 28% to 5%. It is also provided that 5% GST rate shall apply on millet flour in powder form when sold in pre-packaged and labelled form.

- 1.21** No GST on services provided to a Governmental Authority by way of water supply, public health etc. - **Notification No. 13/2023- Central Tax (Rate), Dated 19-10-2023**

Editorial Note : The CBIC has issued notification to provide that bus operators who are supplying services through E-Commerce Operators (ECOs) and who are organized as a company would not be covered under the scope of Section 9(5), and hence, such companies will be liable to pay tax on their supplies.

- 1.22** Bus-operator Companies providing services through ECOs shall pay tax under FCM - **Notification No. 16/2023-Central Tax (Rate), Dated 19-10-2023**

Editorial Note : The CBIC has issued notification to provide that bus operators who are supplying services through E-Commerce Operators (ECOs) and who are organized as a company would not be covered under the scope of Section 9(5), and hence, such companies will be liable to pay tax on their supplies.

- 1.23** Recommendations of 52nd GST Council Meeting: Press Release

Editorial Note : The 52nd GST Council met under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in New Delhi today. In this press release, all recommendations relating to changes in GST tax rates, measures for facilitation of trade and measures for streamlining compliances made by the GST Council are provided.

- 1.24** GSTN provided facility of enrolment for supply of goods through e-commerce operators by un-registered suppliers

Editorial Note : The GSTN has developed the necessary functionality for enrolment of unregistered persons and the same is available on the portal. Accordingly, unregistered persons who are desirous of enrolling on the GST portal for making supplies of goods through ECOs in any one State/UT can enroll on the portal.

- 1.25** Govt. notifies GST Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 - **Notification No. G.S.R. 793(E), Dated 25-10-2023**



Editorial Note : The Ministry of Finance has issued notification to notify Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023. These rules shall apply to the President, Judicial Member, Technical Member (Centre) and Technical Member (State) of the Principal Bench and State Bench of Goods and Services Tax Appellate Tribunal.

2. SUPREME COURT

SECTION 1 OF THE TELANGANA VALUE ADDED TAX (SECOND AMENDMENT) ACT, 2017 - SHORT TITLE AND COMMENCEMENT

- 2.1 Telangana Value Added Tax (Second Amendment) Act, 2017, Gujarat Value Added Tax (Amendment) Act, 2018 as also amendment made to Maharashtra Value Added Tax Act, 2002 are void - **State of Telangana v. Tirumala Constructions - [2023] 155 taxmann.com 470 (SC)**

SECTION 61 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - SCRUTINY OF RETURNS

- 2.2 When High Court, at outset, stated that petitioner had an alternative statutory remedy against scrutiny assessment done by Deputy Commissioner, it ought not to have proceeded to make observations on merits of case and thereafter, state that petitioner would not be precluded from pursuing alternative remedies - **Dhan Prakash Gupta v. Central Goods and Service Tax Department - [2023] 155 taxmann.com 227 (SC)**

SECTION 66B OF FINANCE ACT, 1994 - CHARGE OF SERVICE TAX ON AND AFTER FINANCE ACT, 2012

- 2.3 Educational institutions such as IIT and NIT are covered by definition of 'governmental authority' in Mega Exemption Notification No. 25/2012 as amended by Notification No. 2/2014-ST inter alia exempting various services from tax network rendered to government, governmental, or local authorities - **Commissioner, Customs Central Excise and Service Tax, Patna v. Shapoorji Pallonji & Company (P.) Ltd. - [2023] 155 taxmann.com 303 (SC)**



3. HIGH COURT

SECTION 2(24) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMMISSIONER

- 3.1 Department failed to provide duly endorsed copies of documents seized vide panchnama as per directions of Division Bench but Commissioner having initiated steps for tracing file, there was no wilful disobedience by Commissioner of directions issued by Division Bench - **Blue Star International (P.) Ltd. v. Commissioner, Central Excise & Central GST Commissionerate** - [2023] 155 taxmann.com 47 (Delhi)
- 3.2 When High Court specifically directed Commissioner of Central Tax and Customs to consider representation of assessee Assistant Commissioner ought not to have entertained representations and passed orders - **Bhumana Ramachandra Reddy v. Union of India** - [2023] 155 taxmann.com 339 (Telangana)

SECTION 5 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - LEVY AND COLLECTION

- 3.3 Exemption from IGST for imports under EPCG Scheme available for the period from 1-7-2017 to 12-10-2017 also under Notification issued on 13-10-2017; High Court orders refund of IGST paid - **Ktex Non-Woven (P.) Ltd. v. Union of India** - [2023] 155 taxmann.com 2 (Gujarat)

SECTION 6 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - GST AUTHORITIES AND ADMINISTRATION - STATE/UNION TERRITORY TAX OFFICERS, AUTHORIZATION OF

- 3.4 Where CGST Act proceedings were initiated against petitioner for period from 1-7-2017 to 31-3-2021 regarding fraudulent ITC, while investigation resorted under MGST Act was for period from 1-4-2021 to 4-10-2023 regarding illegal refund; section 6(2)(b) of MGST Act would not apply to bar MGST proceedings - **Yash Alloys India v. Union of India** - [2023] 155 taxmann.com 594 (Bombay)

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

- 3.5 Guarantee/security to bank provided by Managing Director by providing personal properties as security and personal guarantee, is liable to GST on reverse charge basis - **BST Steels (P.) Ltd. v. Superintendent of Central Tax** - [2023] 155 taxmann.com 143 (TELANGANA)
- 3.6 Where a contract was allotted to assessee in pre GST regime, but said contract was executed and payment was received in post GST regime, since impugned order is well reasoned and categorically records that entire payment for the said contract was received in post GST regime, assessee was obliged to pay GST on such payment and

therefore, there is no illegality nor perversity nor error of law in impugned order and accordingly, petition was dismissed - **Dipak Sarkar v. State of West Bengal** - [2023] 155 taxmann.com 570 (Calcutta)

- 3.7 Where petitioner seeks relief from government to cover additional tax liability resulting from absence of GST inclusion in pre-GST and post-GST government contracts, petitioner was granted opportunity to submit a representation to the Finance department, halting any coercive actions in the meantime - **Hriday Kumar Das v. State of West Bengal** - [2023] 155 taxmann.com 156 (Calcutta)
- 3.8 Municipal Corporation directed to consider representation to bear incidence of interest on delayed payment of tax and dispose matter on merits - **Subaya Constructions Company Ltd. v. Commissioner** - [2023] 155 taxmann.com 35 (Madras)

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

- 3.9 By Notification No. 12/2017-CT (Rate) as amended by Notification No. 32/2017, Central Government granted specific exemption to upfront amounts when paid with respect to service of grant of long term lease of 30 years or more of industrial plots by Development Corporations/Undertakings etc.; letter/communication issued by industrial development corporation 'YEIDA' requiring petitioner-lessee to deposit GST at rate of 18 per cent on premium was illegal - **Ram Kamal Healthcare (P.) Ltd. v. Union of India** - [2023] 155 taxmann.com 158 (Allahabad)

SECTION 15 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - TAXABLE SUPPLY, VALUE OF

- 3.10 Where petitioners had challenged, rule 31A of CGST Rules, 2017 as ultra vires Constitution of India and also challenged show cause notice issued against them as also Rate Notification dated 28-6-2017, Circular dated 4-1-2018 and FAQ clarification dated 6-9-2017, notice was to be issued to concerned authorities; matter was to be listed and status quo would be maintained by respondent-authorities - **Delta Corp Ltd. v. Union of India** - [2023] 155 taxmann.com 541 (SIKKIM)

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

- 3.11 Where revenue denied claim of ITC on ground that petitioner did not provide any evidence in support of claim, nor did petitioner appear in pursuance of show cause notice for hearing on date fixed, since petitioner had himself given up right to prove ITC claim, writ petition filed was to be rejected - **Ansil Ibrahim v. Assistant Commissioner** - [2023] 155 taxmann.com 186 (Kerala)



3.12 In matter of ITC claim, reliance placed wholly by revenue authorities on Circular letter no. 113 dated 11-11-2019 was plainly misplaced because a Circular remains an administrative instruction issued to give effect to statutory law; once petitioner was permitted to claim a "cumulative adjustment" for prior period while filing return for later period, clearly it is date of filing a return for a later period on which cumulative effect would arise and be given effect to - **Vivo**

Mobile India (P.) Ltd. v. Union of India - [2023] 155 taxmann.com 324 (Allahabad)

3.13 Refund of ITC could not be denied on ground that one of suppliers had erroneously mentioned HSN in respect of goods supplied in its invoices, when in fact, all other suppliers had mentioned correct classification which department had accepted - **Simran Chandwani v. Principal Commissioner of CGST, Delhi - [2023] 155 taxmann.com 318 (Delhi)**

3.14 In view of The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited 2023 [2023] 148 taxmann.com 352 (SC), input Tax Credit could not be denied merely based on discrepancy between GSTR 2A and 3B - **Henna Medicals v. State Tax Officer - [2023] 155 taxmann.com 29 (Kerala)**

3.15 Input tax credit to a dealer cannot be denied merely on ground of non-remittance of tax by supplier/dealer on goods/services supplied to assessee as same tax is not reflected in Form GSTR-2A - **Goparaj Gopalakrishnan Pillai v. State Tax Officer-1 - [2023] 155 taxmann.com 325 (Kerala)**

3.16 Where petitioner had failed to prove and establish actual physical movement of goods and genuineness of transaction, benefit of ITC refund would not be available to assessee; as such proceedings under section 74 had rightly been initiated - **Malik Traders v. State of U.P. - [2023] 155 taxmann.com 517 (Allahabad)**

3.17 Where railway scrap located in Jharkhand was auctioned in Bihar to petitioner-firm having Bihar registration and invoice was issued imposing CGST and SGST, in absence of any proof that goods were moved to Bihar from Jharkhand, Railways could not be directed to issue revised invoice levying IGST to claim ITC particularly when for invoice issued in 2017-18, ITC was claimed beyond time in 2021 - **Vishwanath Iron Store v. Union of India - [2023] 155 taxmann.com 248 (Patna)**

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

3.18 State tax officer has jurisdiction to pass order blocking input tax credit on allegation of fraudulent availment

invoking rule 86A of Central GST Rules - **Ashapura Steel Metal v. Union of India - [2023] 155 taxmann.com 440 (Bombay)**

3.19 Sub-rule (2) of rule 86A certainly provides for a window or an opportunity to assessee to make out a case against action of department disallowing benefit of credit to assessee; roznama order passed by State Tax Officer in rejecting petitioner's objection could not be sustained - **Ashapura Steel Metal v. Union of India - [2023] 155 taxmann.com 440 (Bombay)**

SECTION 28 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - AMENDMENT OF

3.20 Where petitioner's GST registration was cancelled on ground that he was non-existent at his principal place of business, but was found to be existent upon physical verification on revisit, cancellation of registration is unsustainable - **kajod Mal v. Commissioner of GST - [2023] 155 taxmann.com 369 (Delhi)**

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

3.21 Show cause notice and order of cancellation of assessee's registration was to be set aside due to lack of specificity and failure to provide clear reasons for cancellation of registration and revenue was directed to immediately restore assessee's registration - **Bharti Enterprises v. Superintendent, Range 25 GST Division - [2023] 155 taxmann.com 147 (Delhi)**

3.22 Show cause notice and order canceling petitioner's registration was to be quashed and set aside as concerned officer issued show cause notice without setting reasons and further to make force of passing an order on such defective notice which was rendered illegal on face of record - **Nirakar Ramchandra Pradhan v. Union of India - [2023] 155 taxmann.com 148 (Bombay)**

3.23 Where reasons for cancellation of GST registration was not decipherable from Show Cause Notice, same violates principles of natural justice and thus, was to be quashed - **Suresh Industries v. Superintendent Range VI - [2023] 155 taxmann.com 221 (Gujarat)**

3.24 Where order of cancellation of registration was passed without assigning any reason and both revocation application and appeal filed there against was rejected/dismissed, without assigning any cogent reason matter was to be readjudicated - **Purna Trading Company v. State of U.P. - [2023] 155 taxmann.com 317 (Allahabad)**

3.25 Registration once granted could be cancelled only in terms of conditions prescribed under section 29(2) of Central Goods and Services Tax Act, 2017 and allegedly being a bogus firm was not a ground enumerated thereunder - **Shyam Sundar Sita Ram Traders v. State of U.P. - [2023] 155 taxmann.com 91 (Allahabad)**



- 3.26** Show cause notice bereft of any specific reasons proposing cancellation of registration was to be set aside; order suspending petitioner's GST registration was also quashed - **Fayiz Nangaparambil v. Union of India - [2023] 155 taxmann.com 90 (Delhi)**
- 3.27** Where cancellation of GST registration for failure to file returns continuously for period of six months is in accordance with GST Act, payment of taxes with interest does not nullify cancellation; appeal process should be resorted within statutory prescribed limits - **Sanscorp India (P.) Ltd. v. Assistant Commissioner, Kerala - [2023] 154 taxmann.com 644 (Kerala)**
- 3.28** Where petitioner's registration was cancelled without assigning any reason, order passed being without any application of mind, same did not satisfy test of Article 14 of Constitution and was thus to be set aside - **World Solution v. State of U.P - [2023] 155 taxmann.com 468 (Allahabad)**
- 3.29** Where assessee's GST registration was canceled retrospectively from 1-7-2017 without specifying reason for cancellation or mentioning offending invoices, same was to be set aside and assessee's GST registration was ordered to be canceled effective from April 2021 since business had closed due to pandemic - **Infinity Infomatic (P.) Ltd. v. Commissioner - [2023] 155 taxmann.com 464 (Delhi)**
- 3.30** Revocation of cancellation of registration allowed in view of Notification 03/2023-CT though cancellation was after the 31-12-2022 - **GMR Enterprises v. Commercial Tax Officer - [2023] 155 taxmann.com 53 (Madras)**
- 3.31** Cancellation of registration sought from date of closure of business cannot be given retrospective effect by department; High Court directs order of cancellation to be the date of closure of business - **Krishna Traders v. Commissioner of Central Goods and Service Tax - [2023] 155 taxmann.com 52 (Delhi)**
- 3.32** Show cause notice on cancellation of registration cannot be vague and cryptic and order without reasons is not sustainable; Authority to issue fresh SCN - **D. R. Cotton Co. v. State of Gujarat - [2023] 155 taxmann.com 34 (Gujarat)**
- 3.33** Where registration of assessee was cancelled and appeal for its revocation was rejected being filed beyond limitation period, benefit of Tvl. Suguna Cutpiece Center v. Appellate Deputy Commissioner (ST) (GST) [2022] 135 taxmann.com 234/91 GST 77/2022 (61) G.S.T.L. 515 (Mad.) was also to be extended to assessee - **Chelliah Meenambigai v. Commercial of CGST and Central Excise - [2023] 155 taxmann.com 38 (Madras)**
- 3.34** Where respondent-department irked in mentioning accurate observations in cancellation of registration order regarding date of reply filed by petitioner-assessee to show cause notice issued by respondent-department, further, there was no finding at any stage to show that GST Account books were not maintained by petitioner-assessee, hence, in absence of such finding, no violation of Section 29 read with Rule 21 could be made out against petitioner-assessee and, therefore, adjudication order and appellate order were set aside - **Vidya Coal Depot v. Additional Commissioner Grade (Appeal) - [2023] 155 taxmann.com 526 (Allahabad)**
- 3.35** Cancellation of registration based on vague show cause notice and without considering documents submitted by assessee was breach of principles of natural justice, thus such show cause notice and consequential orders were to be set aside - **Makersburry India (P.) Ltd. v. State of Maharashtra - [2023] 155 taxmann.com 542 (Bombay)**
- 3.36** Requirement of informing assessee and fixing date for personal hearing before cancellation of registration being mandatory, order cancelling provisional registration was to be set aside and matter was to be remanded to concerned Authority - **Bharat Pump House v. State of West Bengal - [2023] 155 taxmann.com 438 (Calcutta)**
- 3.37** Where assessee's GST registration was canceled due to non-filing of returns for consecutive period of six months, in view of legal precedents, registration was to be restored, with a deposit of Rs 6,00,000 by assessee within a week and remaining outstanding amount as intimated by revenue should be paid in six equal monthly installments after restoration - **Ennkay Timbers v. State of U.P. - [2023] 155 taxmann.com 501 (Allahabad)**
- 3.38** Where Show Cause notice was issued to petitioner alleging fraud, wilful misstatement, or suppression of facts, same was to be set aside as said notice lacked specificity and violated principles of natural justice and mere coexistence of registrations for petitioner and its parent company at same premises did not substantiate alleged wrongdoing - **Sakthi Steel Industries India (P.) Ltd. v. Appellate Additional Commissioner - [2023] 155 taxmann.com 504 (Andhra Pradesh)**
- 3.39** Where petitioner had a private dispute against respondent No.3 which is in respect of petitioner's premises as let out to respondent No.3 and approached GST authorities, seeking cancellation of respondent No.3 GST registration, such disputes could not be resolved in a writ petition therefore, petitioner was directed to make a detailed representation to concerned officer - **Arvind Brothers v. Additional Joint Commissioner - [2023] 155 taxmann.com 500 (Bombay)**
- 3.40** Where petitioner's GST registration was canceled by an order, without providing any specific reasons, violating principles of natural justice, therefore order canceling petitioner's GST registration was to be set aside and revenue directed to restore



petitioner's GST registration - **Tool Tech Enterprises v. Assistant Commissioner** - [2023] 155 taxmann.com 394 (Delhi)

SECTION 30 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - REVOCATION OF CANCELLATION OF

- 3.41 Revenue was directed to consider representation made by assessee which was required by for renewal of petitioner's GST registration - **Batlanki Krishnaveni v. Principal Chief Commissioner of GST and Central Excise** - [2023] 155 taxmann.com 268 (Madras)

SECTION 38 OF THE CENTRAL GOODS AND SERVICES TAX, 2017 - RETURNS - INWARD SUPPLIES, FURNISHING DETAILS OF

- 3.42 Where assessee inadvertently committed mistake in filling up GSTR-1 form and made two representations to authorities for redressal, authorities were directed to consider petitioner's representation for amending GSTR-1 form and pass a reasoned order - **Techno Waxchem (P.) Ltd. v. Goods and Services Tax Council** - [2023] 155 taxmann.com 269 (Calcutta)

SECTION 50 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PAYMENT OF TAX - INTEREST ON DELAYED PAYMENT

- 3.43 Where proviso to section 50 was incorporated by way of a substitution with retrospective effect from 1-7-2017 which takes in relevant assessment year of petitioner also, i.e. 2017-18, impugned order claiming interest for delayed filing of returns was set aside only for purpose of reconsideration by Assessing Officer - **SYV Motors v. State of Bihar** - [2023] 155 taxmann.com 106 (Patna)

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

- 3.44 Where export were affected by payment of IGST as per section 16(3)(b) of IGST Act and higher drawback was mistakenly availed but same was repaid with interest, petitioner was entitled to refund of IGST in respect of shipping bills - **ADF Foods Ltd. v. Union of India** - [2023] 154 taxmann.com 645 (Gujarat)
- 3.45 Where assessee's refund claim for ITC on account of inverted duty structure was rejected on ground that copies of GSTR-1, GSTR-3B and GSTR-2A were not submitted, in view of fact that petitioner was not asked to furnish said documents, it would be apposite to remand matter to appellate authority for consideration afresh - **Saurabh Aggarwal v. Commissioner, CGST** - [2023] 155 taxmann.com 218 (Delhi)
- 3.46 By virtue of amendment of rule 89(4)(C), definition of expression 'turnover of zero-rated supply of goods' was substituted w.e.f. 23-3-2020 and condition that 'export

turnover would mean value, which is 1.5 times value of similar goods domestically supplied by same, or similarly placed supplier', was added as a condition for computing turnover of zero-rated supplies; said amendment can be applied prospectively, and not retrospectively - **Indian Herbal Store (P.) Ltd. v. Union of India** - [2023] 155 taxmann.com 189 (Delhi)

- 3.47 Where petitioner's claim for refund was rejected by adjudicating authority, which was based on appellate authority's order of remand issued stating that order of appellate authority was not in accordance with the law, said defiance of senior authority orders, deeming it beyond norms of quasi judicial functions, thus order rejecting petitioner's refund was to be set aside and matter was remanded - **Keysight Technologies India (P.) Ltd. v. Assistant Commissioner, CGST, Range-V** - [2023] 155 taxmann.com 187 (Calcutta)

- 3.48 Refund of accumulated Input Tax Credit (ITC) owing to inverted tax structure could not be reduced merely because portal restricted such refund due to reversal of wrongly availed credit by taxpayer - **Pee Gee Fabrics (P.) Ltd. v. Union of India** - [2023] 155 taxmann.com 593 (Gujarat)

- 3.49 Where notwithstanding fact that Appellate Authority had sanctioned refund of Rs. 8.76 lakh, respondent Commissioner had not implemented said order, respondent was directed to disburse refund amount along with interest - **M S AKSMD Rechargeable Vehicles (P.) Ltd. v. Commissioner of Central Tax & GST** - [2023] 155 taxmann.com 585 (Delhi)

- 3.50 High Court directs filing of refund claims by authorized signatory of business of deceased taxpayer and sanction of the same - **Kanwaljit Singh Mujral v. Commissioner of CGST** - [2023] 155 taxmann.com 51 (Delhi)

- 3.51 Where refund of ITC had not been credited to petitioner's account despite sanction of refund due to system constraint, petitioner was directed to file GST Form DRC-03 under head "intimation for Voluntary Payment" for sanctioned refund amount within two weeks - **HLL Lifecare Ltd. v. Assistant Commissioner of Central GST & Central Excise** - [2023] 155 taxmann.com 330 (Kerala)

- 3.52 Where assessee has not given any reasonable explanation for delay in filing refund application, limitation for filing refund application could not be extended - **Aneja Constructions (India) Ltd. v. State of Bihar** - [2023] 155 taxmann.com 523 (Patna)

- 3.53 Where application for refund of unutilised Input tax credit was delayed due to reasons related to COVID-19 pandemic, Extension of time period granted by Supreme Court in Cognizance for Extension of Limitation, In re [2020] 117 taxmann.com 66 is applicable - **Mahalaxmi Exports v. Commissioner of Delhi Goods and Services Tax** - [2023] 155 taxmann.com 253 (Delhi)



3.54 Where petitioner mistakenly claimed a refund under CGST Act, 2017 which should have been claimed as a refund under Central Excise Act, 1944, since they had sufficient Input Tax Credit to cover their liabilities, interest deduction by revenue of Rs.9,25,366 was deemed unnecessary and unjustified, thus, revenue was directed to refund deducted sum to petitioner within eight weeks - **Infac India (P.) Ltd. v. Deputy Commissioner** - [2023] 155 taxmann.com 436 (Madras)

3.55 Where petitioner providing telecommunication services including services in nature of International Inbound Roaming Services (IIR) and International Long Distance Services (ILD) to inbound subscribers of Foreign Telecom Operators (FTOs), refund of IGST could not be denied on ground that service provided was not export of service - **Vodafone Idea Ltd. v. Union of India** - [2023] 155 taxmann.com 422 (Delhi)

RULE 61 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - FORM AND MANNER OF FURNISHING OF RETURN

3.56 High Court directs refund of amount recovered from petitioner directly from bank account when tax has paid though after delay - **P. Athimoolam Contractor v. Appellant Authority/Deputy Commissioner of Commercial Taxes** - [2023] 155 taxmann.com 367 (Madras)

SECTION 62 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - NON - FILERS OF RETURNS

3.57 If petitioner had furnished a valid return within 30 days of service of assessment orders under sub-section (1) of section 62, said assessment orders would have been deemed to have been withdrawn under sub-section (2) of section 62 but liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 would continue - **M.K.N.Coconut Industries v. State Tax Officer (Intelligence)** - [2023] 155 taxmann.com 433 (Madras)

SECTION 64 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - SUMMARY ASSESSMENT

3.58 Under section 68, only a power vests with respondent authorities to inspect goods in movement; where entire foundation for passing order was that truck transporting goods was not carrying TDS-01 Form, impugned order imposing tax and penalty by invoking section 129(1) was not sustainable - **Sahib Furniture v. State of U.P.** - [2023] 155 taxmann.com 316 (Allahabad)

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

3.59 High Court orders taxpayer to place amount in fixed deposit and hand over such deposit to department consequent to agreement with department whereby goods were released by department and certain goods handed over by taxpayer to department - **Prima Pradeep Mhatre v. Commissioner of Service tax** - [2023] 154 taxmann.com 638 (Gujarat)

3.60 GST authorities did not have power to seize cash that was not considered 'stock-in-trade' - **T. H. Fazil v. State Tax Officer** - [2023] 155 taxmann.com 93 (Kerala)

SECTION 68 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SEARCH, SEIZURE, ETC. - GOODS IN MOVEMENT, INSPECTION OF

3.61 Section 129 of CGST Act on detention and seizure of goods and conveyance is not invocable for imposing penalty and demanding tax in cases of not mentioning vehicle number in e-way bill - **Novateur Electrical and Digital Systems (P.) Ltd. v. Additional Commissioner of State Tax** - [2023] 154 taxmann.com 637 (Punjab & Haryana)

SECTION 70 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SEARCH, SEIZURE, ETC. - POWER TO SUMMON FOR EVIDENCE AND DOCUMENTS

3.62 Petitioner should comply with summons issued under section 70 and get statement recorded before concerned authority within three weeks as said summons had been issued as a part of ongoing investigation - **Naman Goyal v. Directorate General of GST Intelligence** - [2023] 155 taxmann.com 109 (Allahabad)

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

3.63 Where petitioner, a legal heir of deceased individual formed a partnership firm with deceased's wife and son for providing Works Contract Services, order of demand initiated against deceased were to be set aside and revenue was directed a fresh proceeding to be initiated regarding liability of Proprietorship Firm operated after deceased individual - **Manoj Mohaarana v. Commissioner of C.T. & GST** - [2023] 155 taxmann.com 267 (Orissa)

3.64 Where office of Superintendent initiating recovery as per first appellate order, sought information as to whether Tribunal had granted stay of impugned order, in view of fact that Tribunal had not started to function, information sought was contradictory to fact; order initiating recovery was to be stayed - **Rajkalp Mudranalya (P.) Ltd. v. Superintendent** - [2023] 155 taxmann.com 608 (Gujarat)

3.65 Where no reply to SCN was ever submitted by assessee and even date of personal hearing was fixed four times, but assessee did not respond to same, contention of assessee that principle of natural justice had not been complied with without any basis - **Rajeev Kumar v. Principal Commissioner of**


Central Goods and Services Tax, Ranchi - [2023] 155 taxmann.com 54 (Jharkhand)

- 3.66 High Court directs fresh consideration and order taking into account reason of medical condition for not filing reply and not attending hearing - **Urmila Automobiles v. Commissioner of (Central Tax & Goods and Services Tax) - [2023] 155 taxmann.com 32 (Orissa)**
- 3.67 Show cause notice which did not disclose any reason for blocking petitioner's ITC was to be set aside - **Poonawalla Fincorp Ltd.v.Union of India - [2023] 155 taxmann.com 529 (Delhi)**
- 3.68 Where notice was not sent to assessee's email id but to some other email id which did not belong to assessee and petitioner could not availed any personal hearing, order based on such notice was to be set aside - **R. Soundararajan & Co. v. Deputy Tax Officer - [2023] 155 taxmann.com 385 (Madras)**
- 3.69 Where petitioner faced discrepancies in their GST returns, which led to issuance of Form GST ASMT 10 and subsequently Form GST DRC-01A, petitioner failed to respond, resulting in disallowed input tax credit claims and penalties, however, due to challenges during early GST implementation phase and evidence supporting their claims, orders disallowing input tax credit were to be set aside - **Anaz Abdul Rahiman Kutty v. State Tax Officer - [2023] 155 taxmann.com 388 (Kerala)**
- 3.70 Where assessment order issued to petitioner was one-line order and did not address any grounds and was illegal, arbitrary and violated principles of natural justice, same was to be quashed and matter was remitted back to revenue for fresh consideration - **C.Siva Anand v. Superintendent of GST and Central Excise - [2023] 155 taxmann.com 439 (Madras)**
- 3.71 Where impugned Notice in Form GST DRC-01 seemed to indicate that respondent had asked petitioner to pay amount directly instead of calling upon petitioner to show cause as to how amounts specified therein should not be demanded from petitioner, there was a minor mistake, respondent should issue a corrigendum to impugned Notice in calling upon petitioner to show cause as to how amounts should not be demanded - **Sansar Auto and Retail (P.) Ltd. v. State Tax Officer - [2023] 155 taxmann.com 157 (Madras)**

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

- 3.72 Where show-cause notice is issued, assessee is required to participate in proceedings and may file objections, and revenue must pass appropriate orders after providing personal hearing and following due process of law –

Parvez Alam v. State of U.P. - [2023] 155 taxmann.com 368 (Allahabad)

- 3.73 Summary in electronic form is required to be furnished along with Show Cause Notice - **Shubham Gupta v. Additional Commissioner/ Joint Commissioner CGST - [2023] 155 taxmann.com 4 (Delhi)**

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

- 3.74 Where petitioner had not challenged assessment order by filing statutory appeals, but approached High Court by filing writ petition after almost four years, such writ petition was not maintainable - **Krishna Steel Rolling Mills v. Deputy Commissioner of State Tax - [2023] 155 taxmann.com 144 (Kerala)**
- 3.75 Where in notice issued under section 74 of GST Act, date by which reply was to be submitted was mentioned, but date, time and venue of personal hearing were not indicated and simply word 'NA' was transcribed and even in reminder notice, in column of date, time and venue of personal hearing, 'NA' was transcribed, consequent order passed would be violative of principle of natural justice - **Sumit Enterprises v. State of U.P. - [2023] 155 taxmann.com 190 (Allahabad)**

- 3.76 Where in show cause notice Assessing Authority had itself chosen to not give any opportunity of hearing to petitioner by mentioning 'NA' against column description 'Date of personal hearing' and similar endorsements were made against columns for 'Time of personal hearing' and 'Venue where personal hearing will be held', since assessment order creating heavy civil liability was passed without observing such minimal opportunity of hearing, same was to be set aside - **Brijesh Kumar Singh v. State of U.P. - [2023] 155 taxmann.com 188 (Allahabad)**

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

- 3.77 Where respondent authorities had not issued any notice to assessee to submit his reply/explanation to demand notice for delayed payments and had straightaway issued garnishee proceedings under section 79, by which petitioner's bankers were directed to debit alleged tax dues, action of respondent authorities were in clear violation of principles of natural justice - **Kesoram Industries Ltd. v. Commissioner of Central Tax - [2023] 155 taxmann.com 107 (TELANGANA)**

SECTION 80 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - RECOVERY IN INSTALLMENTS

- 3.78 Power is vested with Commissioner to grant upto 12 instalments for payment of arrears of tax; if petitioner wanted to deposit tax in instalments, petitioner might approach Commissioner and Commissioner should decide application –



Krishna Steel Rolling Mills v. Deputy Commissioner of State Tax - [2023] 155 taxmann.com 144 (Kerala)

RULE 86A OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - CONDITIONS OF USE OF AMOUNT AVAILABLE IN ELECTRONIC CREDIT LEDGER

- 3.79** Blocking of Electronic Credit Ledger could be done by Commissioner or an officer authorized by him in this behalf, not below rank of Assistant Commissioner thus, blocking of Electronic Credit Ledger of petitioner-assessee by an Officer of rank below that of Assistant Commissioner could not be sustained and same was set aside - **Guru Storage Batteries v. State of Maharashtra - [2023] 155 taxmann.com 571 (Bombay)**

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

- 3.80** Where petitioner failed to respond to show cause notice for cancellation of its registration and order passed cancelling registration, application was filed under section 30 of CGST Act for revocation of cancellation of registration, petitioner again failed to reply to show-cause notice, application was also rejected, appeal filed against order with delay of 39 days, time taken in filing said application was liable to be excluded for limitation period - **Sakthi Fashions v. Appellate Authority/Additional Commissioner of GST (Appeals-II) - [2023] 155 taxmann.com 314 (Madras)**

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

- 3.81** Endorsement rejecting petitioner's appeal against assessment order was to be set aside as requirements for filing appeal were duly compiled by petitioner - **Kotla Kanakeswara Rao v. Additional Commissioner - [2023] 154 taxmann.com 640 (Andhra Pradesh)**
- 3.82** Writ jurisdiction is not invocable when alternative remedy of appeal is available; Contention on absence of liability to pay pre-deposit directed to be taken before appellate authority - **Rauhitaang Steels v. State of Punjab - [2023] 154 taxmann.com 639 (Punjab & Haryana)**
- 3.83** Where petitioner's GST registration was cancelled for not filing returns and paying taxes and petitioner filed return belatedly after notice was issued, petitioner was to be allowed to pursue appellate remedy on condition of pre-depositing a sum of Rs.15,000 - **Rakeshkumar v. Assistant Commissioner (CT) - [2023] 155 taxmann.com 527 (Madras)**
- 3.84** Assessee contended that, though impugned order was made available on portal as provided under section 169, but same did not amount to communication of order as stipulated in section 107 as an order can be said to be

communicated only when person concerned comes to know about same; matter listed for consideration - **Baghel Trading Co. v. State of U.P. - [2023] 155 taxmann.com 95 (Allahabad)**

- 3.85** Appellate Tribunal having not yet been constituted under provisions of APGST Act, 2017, delay in filing appeal was to be condoned and matter was to be remanded - **J.V.K. Industries v. Union of India - [2023] 155 taxmann.com 89 (Andhra Pradesh)**
- 3.86** Where petitioner failed to file appeal within condonable period, since petitioner had already paid disputed tax as confirmed vide impugned orders, liberty was to be given to petitioner to file a statutory appeal - **Gunasekaran Duraibabu v. Commercial Tax Officer - [2023] 155 taxmann.com 567 (Madras)**
- 3.87** Where assessee failed to appear before Assessing officer or file statutory appeal within limitation period due to COVID-19 pandemic, assessee was to be granted opportunity to file appeal before Appellate Authority by paying 7.5 per cent of assessed amount and Appellate Authority was to be directed to consider appeal without insisting on limitation - **Tvl. Ajacks Support Service v. Commissioner of CGST and Central Excise - [2023] 155 taxmann.com 568 (Madras)**
- 3.88** Writ petitions were to be dismissed on ground of availability of an alternative remedy of appeal and petitioners were directed to file appeal under section 107 with three weeks - **K.M. Foods Infrastructure (P.) Ltd. v. Joint Commissioner - [2023] 155 taxmann.com 255 (Allahabad)**
- 3.89** Where writ petitions were filed beyond statutory period of limitation prescribed under section 107 of GST Act for filing statutory appeal, writ petitions were liable to be dismissed - **M.K.N.Coconut Industries v. State Tax Officer (Intelligence) - [2023] 155 taxmann.com 433 (Madras)**
- 3.90** Where petitioner's appeal against assessment order was dismissed due to a 144-day delay, as appellate authority lacked power to condone delays beyond one month after initial three-month period, instant writ petition was to be dismissed - **Isha Holidays (P.) Ltd. v. Commissioner, SGST Department - [2023] 155 taxmann.com 437 (Kerala)**
- 3.91** High Court directs petitioner to file application for release of goods and vehicle before appellate authority along with submission of department that pre-deposit issue will also be considered afresh - **Mehta Enterprise v. State of Gujarat - [2023] 155 taxmann.com 371 (Gujarat)**
- 3.92** Where appeal was dismissed due to non-payment of 25 per cent of penalty amount as mandated under sub-section (6) of section 107, however, said penalty amount was deposited in electronic cash ledger by petitioner-assessee, respondent-department was directed to utilize penalty amount deposited in electronic cash ledger towards pre-deposit - **Batra Brothers**



(P.) Ltd. v. Union Territory of Ladakh - [2023] 155 taxmann.com 266 (Jammu & Kashmir and Ladakh)

3.93 Where alternative remedy under section 107 was available to assessee to challenge order which revealed discrepancy between amount declared in assessee's GSTR 1 return and amount declared in the GSTR 3B return for outward supply, therefore instant writ petition was to be disposed of while granting assessee liberty to challenge said order within thirty days - **Trans Car India (P.) Ltd. v. Additional Commissioner - [2023] 155 taxmann.com 467 (Madras)**

3.94 Where assessee received an Assessment Order in 2022, despite having closed their business in 2019, however, assessee was unaware of notices issued to it due to non-accessibility to official email and web portal, assessee was directed to file a statutory appeal within 30 days as case may involve disputed facts - **Palanisamy Krishnaraj v. Assistant Commissioner (ST) - [2023] 155 taxmann.com 465 (Madras)**

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

3.95 Where assessee was unable to file appeal due to absence of constituted Tribunal, assessee was eligible for statutory benefit of obtaining stay on their tax liabilities subject to condition that assessee deposits amount equal to 20 percent of remaining disputed tax amount - **Hindustan Construction Co. Ltd. v. Union of India - [2023] 155 taxmann.com 589 (Patna)**

3.96 Where petitioner had already deposited 10% of demanded tax amount before appellate authority, since appellate tribunal had not been constituted yet, as an interim measure petitioner was directed to deposit entire tax demand within fifteen days, with remaining demand stayed during writ petition's pendency - **J.B. Construction and Services v. Additional CT & GST Officer - [2023] 155 taxmann.com 251 (Orissa)**

3.97 Due to non constitution of appellate tribunal, petitioner was directed to deposit an additional 20% of disputed tax amount within ten days and no coercive measures would be taken to recover disputed tax demand - **Hriday Kumar Das v. State of West Bengal - [2023] 155 taxmann.com 156 (Calcutta)**

3.98 Limitation period for filing appeal before GST Appellate Tribunal will start only after constitution of Tribunal, till then statutory benefit of stay under sub-section (9) of section 112 of BGST Act could not be denied - **Gautam Kumar v. State of Bihar - [2023] 155 taxmann.com 586 (Patna)**

3.99 Where petitioner essentially was desirous of availing statutory remedy of appeal against impugned order before Tribunal but due to non-constitution of Tribunal, petitioner

was deprived of his statutory remedy, subject to deposit of stipulated amount, petitioner must be extended statutory benefit of stay on recovery - **Maa Durga Enterprise v. Union of India - [2023] 155 taxmann.com 105 (Patna)**

3.100 Where Appellate Tribunal had not yet been constituted, petitioner-assessee was entitled to an interim measure staying rest of demand, subject to petitioner depositing entire tax demand within period of fifteen days - **Ajay Kumar Mishra v. Commissioner of CT & GST - [2023] 155 taxmann.com 525 (Orissa)**

RULE 117 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - TAX OR DUTY CREDIT CARRIED FORWARD UNDER ANY EXISTING LAW OR ON GOODS HELD IN STOCK ON THE APPOINTED DAY

3.101 Where GST TRAN-1 order is passed but instead of uploading it on GST Portal of petitioner, another order of different party is wrongly uploaded, revenue was expected to correctly upload order on GST Portal of petitioner - **Nuova Shoes v. GST Council - [2023] 155 taxmann.com 331 (Allahabad)**

SECTION 122 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PENALTY - FOR CERTAIN OFFENCES

3.102 High Court remands matter for fresh consideration for taking into account precedent decision that penalty is not impossible for mere classification dispute - **Atlantic Care Chemicals (P.) Ltd. v. Superintendent Central Tax & Central Excise - [2023] 155 taxmann.com 3 (Kerala)**

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

3.103 Where cancellation of petitioner's GST registration was not properly communicated, as they were able to access portal and generate e-way bills with same GSTIN, additionally, since petitioner had obtained composition status and couldn't avail ITC, there was no tax evasion, therefore order demanding tax and penalty was to be quashed - **Meera Tent Cloth Supplies v. Additional Commissioner - [2023] 155 taxmann.com 225 (Allahabad)**

3.104 Where notice in Form GST MOV-07 was issued by authorities beyond statutory limitation period of seven days, same was to be quashed; issuance of notice within seven days has to be calculated from date on which seizure was to be effected and not from following date - **Tvl. V. V. Iron and Steels v. State Tax Officer - [2023] 155 taxmann.com 220 (Madras)**

3.105 For invoking proceeding under section 129(3) and section 130, intent to evade payment of tax is mandatory; once dealer had intimated attending and mediating circumstances under which e-way bill of purchasing dealer was cancelled, it was a minor breach and, hence, proceedings under section 129 could



not have been initiated - ***Shyam Sel and Power Ltd. v. State of U.P.*** - [2023] 155 taxmann.com 145 (Allahabad)

3.106 Show cause notice and order cancelling registration of assessee lacks specificity in stating reasons for canceling, thereby violating principles of natural justice and therefore same were to be set aside - ***Sachin Upadhyay v. Addl. Commissioner, Central Goods and Services Tax, Appeal-I*** - [2023] 155 taxmann.com 5 (Delhi)

3.107 Where time gap between expiry of E-way bill and interception of vehicle was less than a day and respondent-department could not make out any case against petitioner-assessee that there was any deliberate or willful intention of petitioner-assessee to avoid and evade tax, adjudication order passed imposing penalty was to be set aside - ***Ishaan Plastics (P.) Ltd. v. Deputy Commissioner of State Tax*** - [2023] 155 taxmann.com 463 (Calcutta)

3.108 Where goods in transit were intercepted by authorities and detention order was issued on ground that truck was not on route of its destination, since, there is no specific provision under GST Act requiring disclosure of route for transporting goods, said order was to be quashed - ***Prakash Kuldeep Kumar v. Additional Commissioner Grade-2*** - [2023] 155 taxmann.com 249 (Allahabad)

3.109 High Court orders release of confiscated vehicle on payment of penalty on the ground that similar matter involving interplay of sections 129 and 130 are pending - ***Shree Kateel Processing Unit v. State of Gujarat*** - [2023] 155 taxmann.com 387 (Gujarat)

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

3.110 Once purchaser was shown as functional/active and involved in business activity i.e. purchase and sale, goods in transit could not be seized and imposition of condition of security and penalty for its release was unjustified - ***Kumar Brothers v. Additional Commissioner, Grade-2 (Appeal)*** - [2023] 155 taxmann.com 96 (Allahabad)

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

3.111 Where petitioner was in custody, having been accused of fraudulent activities related to input tax credit, considering department's failure to establish need for continued custody, bail was to be granted - ***Mohmadhusein Ansari v. State of Gujarat*** - [2023] 155 taxmann.com 94 (Gujarat)

3.112 Where no allegations were made against applicant in FIR, was not named in FIR, nothing had been stated in

FIR which would involved him in offence, was in jail since 5-11-2022, investigation was over and charge-sheet had been filed, allegation regarding evasion of GST but no procedure was initiated under GST Act, co-accused had been released, discretion was to be exercised to enlarge applicant on regular bail - ***Anand Jayantibhai Parmar v. State of Gujarat*** - [2023] 155 taxmann.com 524 (Gujarat)

3.113 Where assessee was alleged of availing wrongful ITC as it pertains to a supplier whose registration was cancelled, since order of cancellation of registration pertaining to said supplier was quashed by court, allegation of wrongful availment in respect of a major component of Input Tax Credit become debatable, therefore, custodial interrogation was not warranted and order of interim bail was made absolute - ***Neha Agrawal v. Commissioner of CGST and Central Excise*** - [2023] 155 taxmann.com 591 (Bombay)

3.114 Where applicant-assessee had complied with conditions imposed for granting anticipatory bail and applicant had also cooperated with proceedings initiated by respondent-department, therefore, applicant-assessee's request for modification of bail condition of ban on traveling abroad was accepted and applicant-assessee was allowed to travel abroad after obtaining necessary permission from learned Chief Metropolitan Magistrate - ***Tarun Jain v. Directorate General of GST Intelligence (DGGI)*** - [2023] 155 taxmann.com 264 (Delhi)

3.115 Where assessee faced charges under section 132(1)(a) of IGST Act and section 120(B) of IPC, and had been in jail since March 2023, regular bail was granted on grounds that applicant had been in jail for extended period and chargesheet has been filed, maximum punishment for these offenses is five years and that trial might take considerable amount of time - ***Rakesh Chandulal Chokshi v. State of Gujarat*** - [2023] 155 taxmann.com 31 (Gujarat)

SECTION 140 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TRANSITIONAL PROVISIONS - INPUT TAX CREDIT - TRANSITIONAL ARRANGEMENT FOR

3.116 Where on account of technical glitches, credit could not be transitioned under section 140, but however later it was allowed to be transitioned after petitioner's Tran-1 application was accepted by revenue, since petitioner reversed proportionate amount of Input Tax Credit, which was wrongly availed and had not caused loss to revenue, imposition of penalty/interest either under section 73(9) or section 50(3) could not be countenanced - ***PMA Controls India Ltd. v. Joint Commissioner of Central Tax (Appeals-II)*** - [2023] 155 taxmann.com 502 (Madras)

3.117 Where assessee who migrated from TNVAT Act to TNGST Act carried forward excess tax to ECL as state tax in TRAN-1, while denying carry forward of Input Tax Credit that was allegedly wrongly transmitted, no clear discussion was there and also no provision had been referred while denying same, impugned order was to be set aside - ***Alutec Facades India***



(P.) Ltd. v. Assistant Commissioner (ST) - [2023] 155 taxmann.com 161 (Madras)

SECTION 155 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - BURDEN OF PROOF

3.118 Where petitioner's ITC claim was denied on ground that ITC to extent claimed was not reflected in Form GSTR-2A, assessing officer was required to give opportunity to assessee and if on examination of evidence submitted by petitioner, assessing officer got satisfied about bonafide and genuineness of claim, ITC claim was to be given, impugned order was thus to be set aside to extent of ITC claim - **Praveen Bhaskaran v. Union of India - [2023] 155 taxmann.com 466 (Kerala)**

SECTION 157 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PUBLIC SERVANT - PROTECTION OF ACTION TAKEN BY

3.119 Where department issued vogue show cause notice and cancelled registration without affording opportunity to assessee department was not required to be told by Court as to what would be position of law or correct approach officers must follow, however with hope that department would follow mandated approach to law, Court refrained from imposing cost on department - **Makersburry India (P.) Ltd. v. State of Maharashtra - [2023] 155 taxmann.com 542 (Bombay)**

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

3.120 Where assessee is substantially aggrieved by assessment order, which itself was a rectification order passed by revenue suo motu, it is open for petitioner to file rectification application, furthermore revenue obligated to review application, conduct a hearing, issue appropriate orders - **S.P.S. Lac World v. Assistant Commissioner (ST) - [2023] 155 taxmann.com 326 (Madras)**

SECTION 169 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - NOTICE, SERVICE IN CERTAIN CASES

3.121 Though petitioner was having three business verticals of same PAN, authority passed order without considering annual returns in GSTR-9 and Auditor's statement filed in GSTR-9C for said three business verticals, order was also passed without serving physical notice, as required under section 169(1)(b) of CGST Act, impugned order was to be set aside - **Tvl.Diamond Shipping Agencies (P.) Ltd. v. Assistant Commissioner (ST) - [2023] 155 taxmann.com 160 (Madras)**

SECTION 171 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ANTI - PROFITEERING MEASURE

3.122 Where petitioner was not provided with copies of reports submitted by DGAP, petitioner had no opportunity to address issues raised in said reports, impugned order was thus passed without following principles of natural justice and was to be set aside - **E-Homes Infrastructure (P.) Ltd. v. Competition Commission of India - [2023] 155 taxmann.com 162 (Delhi)**

4. AAR

CLASSIFICATION OF GOODS

- 4.1 Pre-packaged and labelled packages rice** : Supply of pre-packaged and labelled packages rice of quantity up to 25 kgs, for both domestic and for export supplies, will be liable for GST at rate 5 per cent as per Sl. No. 51 to Schedule 1 to Notification No. 01/2017-Central Tax (Rate) - **Seetharamjaneya Sortex, In re - [2023] 155 taxmann.com 329 (AAR - ANDHRA PRADESH)**
- 4.2 Effluent treated water** :Effluent treated water, to be obtained from plant setup to treat effluents from textile dyeing units, not subject to ionization process, containing chlorides, sulphates, bicarbonates, etc., suitable only for reuse by dyeing, cannot be construed as demineralised water; it is eligible for exemption as per Sl. No. 99 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 under Heading No. 2201 - **Mannarai Common Effluent Treatment (P.) Ltd., In re - [2023] 155 taxmann.com 110 (AAR - TAMILNADU)**
- 4.3 Manufactured Tobacco** : When tobacco dust undergoes process of mixing with scent (mixture of various perfumes and not jarda scent), it results in new irreversible product which is distinct in character; therefore, mixing of scent in raw unmanufactured dust after procuring same from various traders and ensuring packaging from third party would change character of unmanufactured tobacco to manufactured tobacco - **Pandey Traders, In re - [2023] 155 taxmann.com 254 (AAR- UTTAR PRADESH)**

SECTION 2(6) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - EXPORT OF SERVICES

4.4 Information technology enabled services to be provided by supplier incorporated in India to recipient incorporated in UK with directors of both establishment being different persons, and contract amount receivable in UK currency only, will be export of services fulfilling conditions under section 2(6) of IGST Act, 2017 and considered as zero rated supply under section 16(1)(a) thereof - **Luksha Consulting (P.) Ltd., In re - [2023] 155 taxmann.com 222 (AAR - TAMILNADU)**

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

4.5 Where agreement requires applicant-assessee to pack crushed stock of whole mealatta after milling and fortification into properly labelled poly-packs, impugned service is deemed



to be as composite supply - **Murshidabad Flour Mill (P.) Ltd., In re - [2023] 155 taxmann.com 312 (AAR-WEST BENGAL)**

- 4.6** Activity of conversion of wheat into fortified whole meal atta and its supply to Government public distribution system is in relation to any function entrusted to a Panchayat under article 243G of Constitution - **Murshidabad Flour Mill (P.) Ltd., In re - [2023] 155 taxmann.com 312 (AAR-WEST BENGAL)**

SECTION 2(31) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - CONSIDERATION

- 4.7** Subsidy provided by government to recipient for making payment to supplier does not affect price of supply and same cannot be excluded from value for arriving at GST liability - **Hitze Boilers (P.) Ltd., In re - [2023] 155 taxmann.com 389 (AAR - KARNATAKA)**

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

- 4.8** TWAD Board being a governmental authority, works contract services provided to it are liable to GST of 18% - **Indian Hume Pipe Company Ltd., In re - [2023] 155 taxmann.com 372 (AAR - TAMILNADU)**

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

- 4.9** Maintenance charges for usage of common infrastructure facilities are liable to GST of 18% - **State Industries Promotion Corporation of Tamil Nadu Ltd., In re - [2023] 155 taxmann.com 263 (AAR - TAMILNADU)**
- 4.10** Participatory Infrastructure Development Scheme (PIDP) charges for upgradation of roads, drains, street lights, etc., recovered from allottees are liable to be GST - **State Industries Promotion Corporation of Tamil Nadu Ltd., In re - [2023] 155 taxmann.com 263 (AAR - TAMILNADU)**
- 4.11** Interest for delayed payment of consideration in case of maintenance charges for usage of common facilities and PIDP charges are liable to be taxed - **State Industries Promotion Corporation of Tamil Nadu Ltd., In re - [2023] 155 taxmann.com 263 (AAR - TAMILNADU)**
- 4.12** Canteen services provided by employer to employees in factory premises does not amount to supply under section 7 - **Shriram Pistons & Rings Ltd., In re - [2023] 154 taxmann.com 643 (AAR- UTTAR PRADESH)**
- 4.13** Intended operation mode of common plant treating effluents from member textile dyeing units to purchase raw effluent, treat it on own account and sell resultant products, can be classified as **sale** of goods, if and only if, there is agreement between parties for transferring title to

goods, supported by money consideration, and as result of transaction, property in goods actually passes - **Mannarai Common Effluent Treatment (P.) Ltd., In re - [2023] 155 taxmann.com 110 (AAR - TAMILNADU)**

- 4.14** Member of housing society who contributes an amount which is more than Rs. 7,500, will not be eligible for exemption and entire contribution amount is liable to be taxed - **NCC Urban One Apartment Owners Mutually Aided Co-Op. Society Ltd., In re - [2023] 155 taxmann.com 590 (AAR-TELANGANA)**
- 4.15** Public charitable trust, registered under section 12AA of Income Tax Act, 1961, creating public awareness on COVID appropriate behavior, infection prevention and control, is covered under definition of 'Charitable Activities' in clause 2(r) in Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, and will be exempt from GST under Sl. No.1 thereof - **Polaris Foundation, In re - [2023] 155 taxmann.com 184 (AAR - TAMILNADU)**
- 4.16** Free Trade Warehousing Zone (FTWZ) is not a warehouse licensed under Customs Act, 1962 and paragraph 8(a) in Schedule III of Goods and Services Tax Act, 2017 is specific to warehoused goods lying in warehouses licensed under Customs Act, 1962, therefore, transfer of title of goods by applicant to its customers or multiple transfers within FTWZ will not be covered under Schedule III of CGST Act, 2017 - **Haworth India (P.) Ltd., In re - [2023] 155 taxmann.com 572 (AAR - TAMILNADU)**
- 4.17** Where Applicant is contemplating to operate import and re-sale transaction from a Free Trade Warehousing Zone for operational convenience involving less documentation and swift clearance process so as to expedite project execution, IGST Circular No. 3/1/2018, dated 25.05.2018 is not applicable - **Haworth India (P.) Ltd., In re - [2023] 155 taxmann.com 572 (AAR - TAMILNADU)**

SECTION 8 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMPOSITE AND MIXED SUPPLIERS, TAX LIABILITY ON

- 4.18** Supply of printing services of test papers/question papers, OMR sheets, Answer sheets, Marks cards etc. wherein applicant used his own paper and ink is classifiable under Heading 9989 and, is a composite supply of which printing service is principal supply - **Y S Hitech Secure Print (P.) Ltd., In re - [2023] 155 taxmann.com 150 (AAR- TELANGANA)**

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

- 4.19** GST is exempt on supply of printing examination items like OMR sheets, answer sheets, mark card, certificates, scanning and processing of results provided to educational institution - **V S Hi-Tech Security Forms (P.) Ltd., In re - [2023] 155 taxmann.com 265 (AAR- TELANGANA)**



4.20 Supply of raw water and its incidental charges are not liable to GST - **State Industries Promotion Corporation of Tamil Nadu Ltd., In re - [2023] 155 taxmann.com 263 (AAR - TAMILNADU)**

4.21 Penalty for delay in execution of project and delay on execution of lease deed are not liable to be taxed - **State Industries Promotion Corporation of Tamil Nadu Ltd., In re - [2023] 155 taxmann.com 263 (AAR - TAMILNADU)**

4.22 Interest collected towards delayed payment of upfront lease premium and differential lease premium are not liable to GST - **State Industries Promotion Corporation of Tamil Nadu Ltd., In re - [2023] 155 taxmann.com 263 (AAR - TAMILNADU)**

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

4.23 Composite supply of printing services like test papers, OMR sheets, Answer sheets, Marks cards etc. to educational institutions wherein applicant used his own paper and ink is classifiable under Heading 9989 and is exempt - **Y S Hitech Secure Print (P.) Ltd., In re - [2023] 155 taxmann.com 150 (AAR- TELANGANA)**

4.24 Supply of kerosene oil to ration card holders for consideration by fair price shop is not exempted from GST under Sl. No. 11A of Notification No. 12/2017-Central Tax(Rate) as the recipient of supply is ration card holders and not the Government - **Chanchal Saha, In re - [2023] 154 taxmann.com 642 (AAR-WEST BENGAL)**

4.25 Treated effluent water is eligible for exemption as per Notification No.2/2017-CT (R), as it contains impurities after treatment also, is not meant for human consumption and could be reused in industries - **Eastern Common Effluent Treatment Co. (P.) Ltd., In re - [2023] 155 taxmann.com 224 (AAR - TAMILNADU)**

4.26 Applicant, a common effluent treatment plant provides treated water to member units, suitable for dyeing and bleaching but not for other uses, due to impurities. It qualifies for exemption under Sl. No. 99 Notification 2/2017 - Central Tax (Rate) as it's set up for environmental compliance, conserving water through recovery and reuse, but does not manufacture water or chemical production - **Sirupooluvapatti Common Effluent Treatment Plant (P.) Ltd., In re - [2023] 155 taxmann.com 30 (AAR - TAMILNADU)**

SECTION 13 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - TIME OF SUPPLY OF SERVICES

4.27 Where applicant has received differential consideration on upward revision of rate for works executed prior to

enforcement of GST Act, time of supply is date on which such consideration is received; applicant shall receive a supplementary invoice or debit note, within thirty days of such price revision and such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under CGST/SGST Acts - **Jaiprakash Associates Ltd., In re - [2023] 155 taxmann.com 252 (AAR-TELANGANA)**

4.28 When RWA collects maintenance charges in advance from its members, time of supply of services is receipt of advance and accordingly, such advance should be reported in GSTR-1 / GSTR-3B for relevant tax period and liability needs to be discharged in GSTR-3B - **NCC Urban One Apartment Owners Mutually Aided Co-Op. Society Ltd., In re - [2023] 155 taxmann.com 590 (AAR- TELANGANA)**

SECTION 15 OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 - SUPPLY - TAXABLE SUPPLY, VALUE OF

4.29 Where RWA collects common area electricity charges from members on actual basis and there is no additional loading of any nature on actual charges, then in such case cost of electrical energy supplied by applicant to its members as a pure agent is not taxable at hands of assessee - **NCC Urban One Apartment Owners Mutually Aided Co-Op. Society Ltd., In re - [2023] 155 taxmann.com 590 (AAR-TELANGANA)**

4.30 Interest for delayed payment of consideration for the supply of raw water and its incidental charges are not liable to be taxed - **State Industries Promotion Corporation of Tamil Nadu Ltd., In re - [2023] 155 taxmann.com 263 (AAR - TAMILNADU)**

4.31 Commission charges, transportation charges, stationary charges, H & E loss collected from ration card holders are includible in value of supply of SKO in terms of section 15(2)(c) of CGST Act, 2017 - **Chanchal Saha, In re - [2023] 154 taxmann.com 642 (AAR-WEST BENGAL)**

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

4.32 ITC is not blocked on tax paid towards leasing/renting and hiring of motor vehicles for providing transportation facilities to women employees alone, who are arriving or leaving workplace between 8 pm to 6 am as per Notification 2/2019-Central Tax - **Access Healthcare Services (P.) Ltd., In re - [2023] 155 taxmann.com 48 (AAR - TAMILNADU)**

4.33 GST paid on works contract for carrying out repair of factory building shall be available for Input Tax Credit to extent to which said expense is not capitalized to said immovable property as per section 16(1) but subject to provision under section 17(5) - **J.K. Fenner (India) Ltd., In re - [2023] 155 taxmann.com 159 (AAR - TAMILNADU)**



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

- 4.34** Input tax credit (ITC) available on canteen service subject to the condition incidence / burden of GST has not been passed on to employees - *Shriram Pistons & Rings Ltd., In re - [2023] 154 taxmann.com 643 (AAR- UTTAR PRADESH)*
- 4.35** Where appellant, as per section 135 of Companies Act has been spending mandatory amount of corporate social responsibility, said activities are excluded from normal course of business of appellant and therefore not eligible for ITC - *Adama India (P.) Ltd., In re - [2023] 155 taxmann.com 377 (AAAR-GUJARAT)*
- 4.36** GST charged purchase and repairs including spare parts of earth moving machinery like JCB used in business movement of goods in assessee's place of business will be allowed as input tax credit - *Sri Kalaiselvan Sago Factory., In re - [2023] 155 taxmann.com 6 (AAR - TAMILNADU)*

SECTION 98 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - PROCEDURE ON RECEIPT OF APPLICATION

- 4.37** Where question of exemption, was already decided by jurisdictional authority in a prior proceeding while deciding refund claim holding that composite supply of milling, fortification of atta for public distribution system being not supplied to registered person was not exempted and liable to 18 per cent GST, no ruling could be passed by Authority for Advance Ruling as per section 98(2) - *Murshidabad Flour Mill (P.) Ltd., In re - [2023] 155 taxmann.com 312 (AAR-WEST BENGAL)*

5. CESTAT

SECTION 65(105) OF THE FINANCE ACT, 1994 - TAXABLE SERVICE

- 5.1** Where State Government was granted land on 99 years lease to appellant for township development and subsequently by executing "Deeds of Assignments" with 3 business entities (assignees) appellant (assignor) sub-leased a part of land and 'Title' of land which was assigned to appellant was transferred and mutated in names of said three assignees, transaction must be treated as 'sale of leasehold rights' and service tax would not be applicable on outright transfer of rights; one time payment viz. Salami/premium received by appellant could not be termed as rent to be subjected to Service Tax - *Luxmi Township Ltd. v. Commissioner of CGST & CX, Siliguri Commissionerate - [2023] 155 taxmann.com 401 (Kolkata - CESTAT)*

6. NAA

SECTION 171 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ANTI - PROFITEERING MEASURE

- 6.1** Where Director General of Anti-Profiteering (DGAP) concluded that assessee had neither benefited from additional ITC nor there was reduction in tax rate in post-GST period for impugned project, and complainant accepted DGAP's report and requested closure of complaint, there was no reason for National Anti-profiteering Authority to differ from DGAP report and invoke section 171 of CGST Act, 2017 - *Milan Pankaj Kothari v. Sri Dutt Constructions - [2023] 155 taxmann.com 50 (NAA)*

7. CCI

SECTION 171 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ANTI - PROFITEERING MEASURE

- 7.1** Where assessee passed on Rs. 17,26,772 to 56 home buyers, while only Rs. 1,03,143 needed to be passed on by way of commensurate reduction in prices after implementation of GST, regarding purchase of a flat in assessee's project "The Kull Nation", since assessee had passed on more amount than additional benefit available to assessee, provisions of section 171 were not contravened by assessee - *Pruthviraj Vijay Dhavale v. Ashdan Developers (P.) Ltd. - [2023] 155 taxmann.com 469 (CCI)*



- 7.2 Where respondent's project was launched and all recipients had booked their units, RERA registration of project was granted, application form of first buyer of project was submitted, 'Certificate of Commencement of Work' issued, all after introduction of GST, there was no pre-GST tax rate or ITC availability that could be compared with GST period tax rate and ITC availability, to determine whether there was any benefit that was required to be passed on by way of reduction in price - ***Sparsh Chowdhary v. Pearlite Real Properties (P.) Ltd.*** - [2023] 155 taxmann.com 49 (CCI)
- 7.3 Where DGAP re-investigated matter under Rule 133(4) of CGST Rules, stated that landowners had not received their share of flats, no GST has been collected from landowners, respondent was not liable to pass on ITC to landowners, section 171(1) of CGST Act, was not to be invoked against him and profiteering amount already paid was to be confirmed and regularized, inspite of six opportunities to file written submissions, applicant 1 replied that from her side issue stands resolved, matter was to be treated as closed - ***Mrs. Aruna Popat v. Shalwak Infrabulls*** - [2023] 155 taxmann.com 262 (CCI)



How to deal with GST Department in the matter of Penalty u/s 73(11)



Advocate Apurba Saha,

GIVEN the prevailing Covid situation, many suppliers/taxable persons are facing huge delays in realizing their dues from their customers including large corporates. In many cases, payments are not released for months together, resulting in consequent delays on payment of GST by the taxable persons. From the GST perspective, while interest under Section 50(1) would be unavoidable, the question would still remain on the leviability of penalty for such delays. Many fellow professionals and the Departmental Officers seem to have the view that any delay beyond 3 months from the due date of payment of GST, would automatically attract penalty under Section 122(1)(iii) of the CGST Act.

Let us take a look at this Section 122(1)(iii) which reads as under :

122. (1) Where a taxable person who--

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evadedwhichever is higher

A study of this Section makes it clear that penalty under this Section is attracted only in a case where the taxable person has not paid the tax 'collected' and not the tax that is due from him on the basis of the invoices raised by him. The word 'collected' would need to be strictly interpreted to mean the actual collection of tax by the taxable person and not the billing of tax, to the customer. Thus, while the taxable person would continue to be liable to discharge his tax liability on the basis of his billings, this penal provision would get attracted only in a case when the taxable person does not remit or pay the tax, so collected, to the Government, within a period of 3 months from the due date of payment of such tax "collected".

This penal provision seems to have been very loosely worded. As we know, the liability to pay tax is based on the supplies effected and the invoices raised by the taxable person and has nothing to do with the collection of the tax charged by the taxable person on his customer and as such, the time frame prescribed under the CGST law is with reference to the tax liability arising out of his billings and is not based on the tax actually collected by him.

Taking this discussion forward.... the penalty under Section 122(1)(iii) is fixed at the higher of Rs 10,000/- or the amount of tax evaded, whichever is higher. We must carefully notice that the words used are 'tax evaded' and not 'tax collected'. This would mean that, there should have been a



deliberate attempt on the part of the taxable person, not to have paid the tax collected by him, within the said period of 3 months.

There are several practical issues that could arise, vis-à-vis Section 122(1)(iii), especially under the current circumstances. The customer might delay effecting payments to the taxable person, for a fairly long period of time, say, 6 months. In these cases, can this Section be invoked to burden the taxable person with 100% penalty, even when he is liable to pay interest at the hefty rate of 18% per annum for the delay. My answer is a clear and loud NO, as the taxable person has not 'collected' the tax that he has charged to his customer.

Let's assume that the taxable person has collected the tax that he has charged to his customer but due to his financial problems he has delayed the payment of tax to the Government for a period of more than 3 months and has subsequently discharged his tax liability with the applicable interest. Even in this case, in my view, penalty provisions contained in Section 122(1)(iii) cannot be invoked, as there is no *mens rea* on the part of the taxable person, not to have paid the tax within 3 months.

There could be cases where the taxable person could have failed to consider some billings by oversight, while computing his output tax liability. Even in these cases, without the establishment of *mens rea* on the part of the taxable person, penalty under Section 122(1)(iii) cannot be invoked, even if the delay in discharge of the tax liability is more than 3 months.

It is a well settled legal principle that a penal statute should be strictly interpreted. It would do us good to go through Para 21 of the recent judgment of the Apex Court rendered in COMMISSIONER OF CUSTOMS (IMPORT) MUMBAI Vs M/s DILIP KUMAR AND COMPANY AND ORS reported in **2018-TIOL-302-SC-CUS-CB**, which reads as under:

Quote

21. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.

Unquote

Thus, unless there has been attempt on the part of the taxable person to evade tax, penalty under Section 122(1)(iii) cannot be levied. While talking of penal provisions related to non-payment of tax collected, by taxable persons, we should also bear in mind, the provisions contained in Section 73(11) of the CGST Act, which reads as under:

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

While clarifying the issue related to levy of penalty for late filing of the monthly returns in Form GSTR-3B, the Board has clarified vide its Circular No. **76/50/2018-GST** dated December 21, 2018, as under



Question: Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?

Answer:

1. As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.
2. It may be noted that a show cause notice (SCN) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.
3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM **GSTR-3B** because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law. A combined reading of Sections 122(1)(iii) and 73(11) seem to suggest that while penalty proceedings under the former Section can be invoked on an independent basis, penalty proceedings under the latter can be invoked only when there is an outstanding tax liability. Thus, the intention of the law seems to be clear that, when the taxable person has voluntarily paid the outstanding tax liability with interest in cases involving delay, proceedings under Section 122(1)(iii) cannot be initiated.

Before concluding...

The wordings used in Section 122(1)(iii) seem to clearly suggest that, this Section is to be applied on a transaction to transaction basis. However, since the taxable person's net tax liability under the GST law is to be computed after deducting input tax credit as a single line item, I would wonder as to how it is possible to have an invoice wise net tax liability. Thus, from a practical perspective, it would seem that it would be very difficult to implement this penal provision.



Automobile industry : *Glimpse of certain specific issues under GST*



CA Vikram Katariya CA Shilpi Jain

Every industry is unique and is faced with its own set of unique and peculiar challenges and issues. In addition to these, there could also be certain generic challenges and issues faced by every or most taxpayers. In this article we would focus on three issues which are very specific to this industry.

TOOLING

Product Tool (i.e., moulds and dies) is at the core of the production process of automobiles. Almost every major part/component of a vehicle requires a unique tool. These tools are either developed by

- a. The manufacturer or the OEM themselves, or
- b. The component manufacturer as per the standards prescribed by the OEM.

In either of the cases, the component manufacturer will recover the cost of the tool from the OEM at an agreed price. A tax invoice will have to be issued under GST for this since this transaction would qualify as supply u/s 7 of the CGST Act, as ownership of the tool is transferred (sale) for a consideration and in the course or furtherance of business.

There are 2 issues pertaining to this aspect of the industry, which are as below:

- a. Eligibility of credit to OEM, of the GST charged w.r.t. the tools developed by the component manufacturer located in another State, and
- b. Eligibility of credit to the component manufacturer, of IGST charged when he imports goods required for manufacture of tools, when these goods are given free of cost (**FOC**) to him by a foreign OEM.

Another issue which we would be examining in this article would be the treatment for extended warranty provided i.e. whether it is supply of goods or supply of services. This would not only affect classification but also the rate of GST charged for extended warranty.

Credit Eligibility to OEM for the tools

Where the tool is developed by the component manufacturer, either in-house or through a third party, the ownership of the tool would be transferred to the OEM and the cost incurred (including manpower efforts) would be collected from the OEM. This transaction between the OEM and the component manufacturer would qualify as supply as provided under section 7 of the CGST Act, since it is a supply of a tool for a consideration and in the course or furtherance of business.

However, if the tool is developed by a component manufacturer located in a State, say 'X', different from the State in which the OEM is located, say 'Y', then the nature of levy (i.e. whether intra-State or



inter-State) becomes a subject matter of discussion.

In order to determine whether the said transaction would amount to inter-State supply or intra-State supply, the place of supply has to be determined. Section 10(1) of the IGST Act, 2017 provides the place of supply of goods other than supply of goods imported or exported from India. The said provision provides as follows:

Section	Nature of Transaction	Place of Supply
S. 10(1)(a)	Where the supply involves movement of goods	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
S. 10(1)(b)	Where the goods are delivered on the direction of the third person	Deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.
S. 10(1)(c)	Where the supply does not involve movement of goods	Location of such goods at the time of the delivery to the recipient

As there is no movement of the tools at the time when the sale of the tool happens to the OEM, the place of supply would have to be determined in terms of section 10(1)(c) of the IGST Act, which would be the location of the tool at the time of sale i.e. premises of the component manufacturer. Accordingly, the component manufacturer would charge CGST and SGST of State X. This is because when the ownership of the tool is transferred to the OEM, the tool still remains with the component manufacturer, who would use it to manufacture the components required by the OEM.

When the place of supply and location of the supplier for this tool is the location of the component manufacturer, he will charge CGST and SGST of State X. The OEM will not be eligible to take credit of this GST charged by the component manufacturer since it is GST charged of another State i.e. State of the component manufacturer.

Two possible structuring options

- a. **Job work scenario:** The materials required by the component manufacturer for developing the tool can be invoiced to the Indian OEM, indicating that the goods required for developing the tool are provided by the OEM. Thus, when the component manufacturer is working on these goods to make the tool, it would be in the nature of job work services. For job work services, place of supply would be as per section 12(2)(a) of the IGST Act. Hence, the component manufacturer will charge IGST to the OEM for the tool development services.
- b. **Involving another party:** The order for developing the tool can be given to a person other than the component manufacturer. This 3rd person would invoice the tool to the OEM and ship the tool to the component manufacturer. In such a scenario, the place of supply for this transaction would be the location of the OEM as per section 10(1)(b) of the IGST Act whereby the 3rd party would charge IGST to the OEM. On comparative reading of both the provisions, the following inferences can be made in support of Section 10(1)(b):
 - The movement of goods is not a criterion for Section 10(1)(b). It provides that the goods are handed over before or during the movement of goods. In the case of a tool, constructive delivery takes place, and the ownership is transferred to the OEM.
 - Section 10(1)(b) specifically covers transactions that involve more than 2 parties. Section



10(1)(c) contemplates a transaction between two parties, which does not involve movement of goods.

Credit Eligibility to the component manufacturer for imported goods FOC

This is a scenario where the OEM is located outside India and the component manufacturer is in India. The material required for developing the tool is provided by the OEM from a place outside India. So, the component manufacturer is required to file a bill of entry (**BoE**) and clear these goods. Also, there would be no consideration paid by him to the OEM for the materials imported.

The question that then arises is, even though the BoE is in the name of the component manufacturer, whether he would be eligible for credit of the IGST charged in the BoE since he is neither the owner of the said material nor he has paid any consideration for it.

In this regard, it would be relevant to note that under GST, ownership is not a criterion for availing credit at least to the extent of goods imported. This is for the reason that, BoE is a valid document prescribed under GST to avail credit.

As per the Customs Act, 1962, a BoE can be filed either by the owner or the person holding himself out to be the owner of such goods. In the given scenario, component manufacturer is not the owner of the goods but since the foreign OEM cannot clear the goods in India, the component manufacturer holds himself out as an owner and files the BoE.

Further, the criteria of paying consideration to the vendor within 180 days of invoice as per 2nd proviso to section 16(2) of the CGST Act, applies to cases where invoice is issued by the supplier. In this case, there is no invoice issued by the foreign OEM since he is not selling any material to the component manufacturer.

Another dilemma which can arise to the component manufacturer is that the cost of the materials is not borne by him and thereby he would be unjustly enriched if he avails the input tax credit of a tax not paid by him (this is a scenario where the component manufacturer gets reimbursement from the OEM, the Customs Duty and the IGST charged on the BoE).

In this regard it would be relevant to note that the concept of unjust enrichment is applicable only for refunds and not in case of availing of input tax credit. Also, the credit of IGST availed by the component manufacturer as charged in the BoE, could be regarded as reduction in cost of manufacture of the tool by him and price being automatically adjusted by him while quoting to the OEM and thereby no unjust enrichment. Though this view of claiming credit w.r.t. to FOC material could be disputed by the department. Hence considering the quantum of credit and the risk appetite a suitable stand can be taken by the importers.

PRICE REVISIONS

In the automobile sector, at times the price negotiations/revisions between the OEM and the Component Manufacturers may take considerable time. Normally it is agreed to supply the goods at a standard rate and the rate difference, if any, be accordingly adjusted through issuance of debit note or credit note.

In this article we would be examining the scenario of increase in price of the supplies already made either due to subsequent negotiations or as per the escalation clause in the contract, to identify



whether interest needs to be charged on the tax paid subsequently through the debit note, for a supply already made.

As per section 2(31) of the CGST Act, the term 'consideration' in relation to the supply of goods or services or both includes **any payment made or to be made**.

Also, section 15 of the CGST Act provides that the value of a supply would be the transaction value, which is the **price actually paid or payable** for the said supply where the supplier and the recipient are not related and price is the sole consideration for the supply.

This point to analyse is even though the value on which GST is to be paid requires payment of tax on any amount which is paid or payable in future, whether one can consider that the said price escalation would form part of the valuation right from the date of the original supply (i.e., on the date of sale)?

The above question is relevant more so when such additional consideration was actually not known on the date of supply. If the answer to the said question is in the affirmative, then there could be a possible demand of interest under section 50 of the CGST Act, on account of delay in payment of tax to the extent of the tax mentioned on the debit note.

Two relevant decisions in this context which were rendered while interpreting the provisions of Section 11AB of the Excise Act is in the case of SKF India Ltd.¹ and International Auto Limited.² In both these cases, the Hon'ble Supreme Court had sustained the demand of interest on differential duty paid by the assessee.

However, after taking note of the aforesaid judgments, in the case of Steel Authority of India³ the Hon'ble Supreme Court in 2015 had doubted their correctness and hence had referred the matter Larger Bench of the Supreme Court.

The Larger Bench⁴ had held that interest would be applicable on subsequent price escalations and approved the rulings in the case of SKF India Ltd. and International Auto Limited.

The primary ground for upholding the levy of interest, in this case, appears to be based on the comparison made with the aspect of provisional assessment which was available under the Central Excise law. The analogy drawn by the Court was that when the interest is payable in case of a provisional assessment upon finalization of the price, how can the situation be different in case the assessee who opts for regular assessment in case the price is not final at the time of removal.

There are doubts raised on the correctness of the ruling of the Larger Bench in the case of Steel Authority of India, as it expects the taxpayer to predict the future price increase and pay the tax as per such prediction. The said ruling expects the taxpayer to do something which is an impossible act and that the settled principle provides that no law can compel a man to do, which he cannot do.

The Larger Bench had held that the ruling of the Constitution Bench of the Hon'ble Supreme Court in the case of **J.K. Synthetics Limited**⁵ would not be applicable. The Constitution Bench in the case of J.K. Synthetics Limited had held as under: *The word 'payable' is a descriptive word, which ordinarily means "that which must be paid or is due, or may be paid" but its correct meaning can only be*

¹ 2009 (239) E.L.T. 385 (SC).

² 2010 (250) E.L.T. 3 (SC).

³ 2015 (326) E.L.T. 450 (SC).

⁴ 2019 (366) E.L.T. 769 (SC).

⁵ 1994 SCC (4) 276.



determined if the context in which it is used is kept in view. It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible.”

The Bombay High Court in the case of **Indian Seamless Steel and Alloys Ltd.**⁶ had held that it is also a well-settled principle of law that the **law does not compel a man to do that which he cannot possibly do** and the said principle is well expressed in the legal maxim “lex non cogitadimpossibilia”. The unforeseen circumstances beyond the control of the petitioners if resulted in non-payment of excise duty, such circumstance cannot be construed to mean that it failed to pay the excise duty on the due date.

Though, important to note is that provisional assessment is a mechanism which is available under the GST law also, u/s 60 of the CGST Act. This provision also requires payment of interest from the first day after the due date of payment of tax in respect of the said supply till the date of actual payment after finalisation of the assessment.

However, a view can be taken that the decision of the Larger Bench in the case of **Steel Authority of India** *ibid*, would not be applicable in the context of GST for the following reasons:

- a. The liability of interest arises when there is a delay in payment of tax. The due date of payment of tax is intrinsically linked with the provisions relating to time of supply.
- b. The relevant provision in case of supply of goods is section 12 of the CGST Act.
- c. As per explanation 1 to this provision the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. Hence, a deeming fiction has been provided by the Legislature that the supply would be considered to have been made only to the extent of the amount charged in the invoice.
- d. Thus, when the invoice has been issued for a particular price, it is deemed that the supply has been made only to that extent and to that extent only the liability to pay GST is triggered.
- e. The value of the debit note to be issued in the future, is not part of the value of the invoice already issued and thereby the time of supply for the debit note has not arisen until it is actually issued. Therefore, any additional amount received (price escalation) by way of issuance of debit note should be considered as a fresh supply made on the date of the said debit note and the liability to pay GST thereon shall be determined accordingly.

Thereby, it is possible to take a stand that there should be no interest liability on the GST value covered by the debit note, by considering that the time to pay the GST liability in respect of such debit note is linked to the due date to pay the GST liability in the invoice originally issued.

The views expressed are strictly personal and cannot be regarded as an opinion. For any queries or feedback please write to vikram@hnaindia.com or shilpijain@hnaindia.com.

⁶ 2003 (156) E.L.T. 945 (Bom).



Company and SEBI Laws Update

1. STATUTORY UPDATES

- 1.1** SEBI extends timeline for investment advisers to comply with enhanced qualification and experience norms by 2 years - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/168, Dated 10-10-2023**

Editorial Note : SEBI has extended the timeline for investment advisers to comply with enhanced qualification and experience requirements under regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013 to September 30, 2025. Presently, an individual investment adviser or principal officer of a non-individual investment adviser and persons associated with investment advice are required to comply with enhanced qualification and experience requirements within a period of 3 years, i.e., by Sept. 30, 2023.

- 1.2** Any malpractice or irregularity by CRC or any professional can now be mailed at mailto:cvo-mca@gov.in: MCA

Editorial Note :The MCA has clarified that the processing of name reservation and incorporation forms at the Central Reservation Centre (CRC) is conducted in a faceless & randomised manner. The applications if sent for resubmission are normally not handled by the same official who initially processed them. Further, stakeholders are encouraged to report any instances of malpractice or irregularity on the part of CRC or any professional with supporting evidence to the Ministry at mailto:cvo-mca@gov.in for action.

- 1.3** SEBI extends timeline for mandatory verification of market rumours by specified listed entities -**Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/162, Dated 30-09-2023**

Editorial Note : SEBI has extended timeline for mandatory verification of market rumours by listed entities. As per proviso to Regulation 30(11) of SEBI (LODR) Regulations, 2015, the top 100 listed entities by market capitalization must verify, confirm, deny or clarify market rumours from 01.10.2023. This has now been extended to 01.02.2024. Similarly, top 250 listed entities were required to mandatorily verify, confirm, deny or clarify market rumours w.e.f 01.04.2024 which now stands extended to 01.08.2024.

- 1.4** MCA amends LLP norms; mandates declaration of beneficial interest and keeping of register for partners - **Notification No. G.S.R. 803(E), Dated 27-10-2023**

Editorial Note : The Govt. has notified LLP (Third Amendment) Rules, 2023. As per the amended rules, a person whose name is entered in register of partners of LLP but doesn't hold any beneficial interest in contribution must file a declaration to that effect in Form

4B within 30 days from the date on which his name is entered in the register. Further, every LLP must maintain a register of its partners in Form 4A from the date of its incorporation. The register must be kept at the registered office of LLP.

- 1.5** MCA mandates Private Cos. except Small Cos. to issue securities only in De-mat form within 18 months from Mar 31, 2023 - **Notification No. G.S.R 802(E), Dated 27-10-2023**

Editorial Note : The Govt. has notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023. As per the amended norms, every private co. except small co. must issue the securities only in dematerialised form within 18 months from the closure of the FY i.e. March 31, 2023. Further, the company must facilitate the dematerialisation of all its securities in accordance with the provisions of the Depositories Act. These provisions shall not apply to Government Companies.

- 1.6** SEBI extends the suspension of derivatives trade in 7 agro commodities by one more year i.e. till Dec 20, 2024 - **PR No. 25/2023, Dated 27-10-2023**

Editorial Note : Earlier, SEBI issued directions to stock exchanges having commodity derivatives segment in respect of suspension of trading in derivative contracts in 7 agro commodities for a period of one year. Thereafter, suspension was extended beyond December 20, 2022 i.e. till Dec 20, 2023. Now, SEBI has further extended the suspension of trading in these contracts for one more year i.e. till December 20, 2024.

- 1.7** Every Co. must designate a person for furnishing information to ROC w.r.t beneficial interest in shares of company: MCA - **Notification No. G.S.R 801(E), Dated 27-10-2023**

Editorial Note : The Govt. has notified the Companies (Management and Administration) Second Amendment Rules, 2023. As per the amended norms, every company must designate a person who shall be responsible for furnishing information, and extending cooperation in providing information to the Registrar or any other authorised officer regarding beneficial interest in shares of the company. Further, a company may designate a company secretary (CS), a KMP or every director, if there is no CS or KMP.

- 1.8** SEBI introduces a centralized mechanism for reporting the demise of investors through KRAs - **Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/000000163, Dated 03-10-2023**

Editorial Note : SEBI has introduced a centralized mechanism for reporting and verifying the demise of an investor through KYC Registration Agency (KRAs) to smoothen transmission process in the securities market. Further, upon receipt of intimation about the demise of an investor, the concerned intermediary must obtain a death certificate along with the PAN from the notifier. Also, after verification, intermediary must submit a KYC modification request to KRA. The circular shall be effective from 01.01.2024.



- 1.9** Shri Biranchi Narayan Sahoo takes charge as an Executive Director of SEBI - **Press Release No. 23/2023; Dated 03-10-2023**

Editorial Note : Shri Biranchi Narayan Sahoo has taken charge as an executive director of the SEBI. He will handle the Corporation Finance Investigation Department (CFID). Prior to his promotion as Executive Director, Shri Sahoo was the Chief General Manager in SEBI, handling several assignments since joining in 1996. Further, Shri Sahoo has served in various Departments including Investigations Department (IVD), Investment Management Department (IMD), Human Resources Department (HRD) etc.

- 1.10** MCA takes away RD's power to levy additional costs to order confirming the shifting of RO from one state to another - **Notification No. G.S.R. 790(E), Dated 20-10-2023**

Editorial Note : The MCA has notified an amendment to Rule 30 of the Companies (Incorporation) Rules, 2014. As per the amended norms, no additional costs can be included in the Central Government's order confirming the alteration of registered office from one state to another. Further, a new proviso has been inserted to Rule 30(9), which states that shifting of the registered office may be allowed where the resolution plan u/s 31 has been approved and no appeal against the resolution plan is pending.

- 1.11** Unclaimed amounts transferred to IEPF under LODR shall not bear any interest: SEBI - **Notification No. SEBI/LAD-NRO/GN/2023/158, Dated 20-10-2023**

Editorial Note : SEBI has notified amendments to Regulation 61A of LODR Regulations which prescribe provisions for dealing with unclaimed non-convertible securities and benefits accrued thereon. A new proviso has been inserted which states that the amount transferred to the IEPF shall not bear any interest. Further, the unclaimed amount of a person that has been transferred to IEPF can be claimed in the manner specified by the Board.

- 1.12** SEBI amends InvIT & REIT Regulations, 2014; Now, unclaimed amounts transferred to IEPF shall not bear any interest - **Notification No. SEBI/LAD-NRO/GN/2023/159, Dated 20-10-2023**

Editorial Note : SEBI has notified amendment to Regulation 18 of InvIT & REIT Regulations, 2014 which prescribe provisions for Investment conditions, dividend policy and distribution policy. A new proviso has been inserted which states that the amount transferred to the IEPF shall not bear any interest. Further, the unclaimed or unpaid amount of a person that has been transferred to IEPF can be claimed in the manner specified by the Board.

- 1.13** ICAI issues advisory to its members to ensure due compliance with Significant Beneficial Ownership (SBO) norms

Editorial Note: ICAI has issued an important announcement addressing the sensitization of companies to comply with provisions related to

Significant Beneficial Ownership (SBO) u/s 90 of the Companies Act, 2013 read with Rules. This announcement is in reference to the initiative of the MCA to create awareness among companies regarding their obligations related to SBO.

- 1.14** Listed Cos. must disclose arbitration matters under Sch. III of LODR to the extent permissible under Arbitration Act

Editorial Note : A company sought informal guidance from SEBI regarding disclosure of details related to pending arbitration matters or arbitral awards under Schedule III of LODR Regulations. The SEBI clarified that such disclosures can be made to the extent it is legally permissible under the Arbitration and Conciliation Act, 1996. This would include disclosing initiation of arbitration proceedings, amount of claim involved in proceedings, fact of passing of arbitral award and its effect on listed entity etc.

- 1.15** SEBI seeks suggestions to simplify, ease, and reduce the cost of compliance w.r.t SEBI Regulations - **Press Release No. 24/2023; Dated 04-10-2023**

Editorial Note : SEBI has constituted 16 Working Groups to make recommendations on simplification of various SEBI Regulations. These Working Groups will also look into the compliance requirements to enhance the ease and reduce the cost of compliance. This move follows an announcement made in the Union Budget for FY 2023-24. Further, suggestions are invited from public and regulated entities till November 6, 2023 towards simplifying, easing and reducing the cost of compliance of various regulations.

- 1.16** MCA notifies October 26, 2023 as effective date for enforcement of Section 45 of Competition (Amendment) Act, 2023 - **Notification No. S.O. 4672(E), dated 26-10-2023**

Editorial Note : The Govt. has notified October 26, 2023 as the effective date for enforcement of section 45 of the Competition (Amendment) Act, 2023. Section 45 of the Competition (Amendment) Act deals with provisions relating to process of issuing regulations and guidelines by CCI. The CCI must ensure transparency by publishing draft regulations & publish guidelines on provisions of the Act or rules either on a request made by a person or on its own motion. These provisions are effective from 26.10.2023.

- 1.17** SEBI redefines 'Large Corporates' (LCs); relaxes borrowing norms for LCs through issuance of debt securities - **Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/172, Dated 19-10-2023**

Editorial Note : SEBI has relaxed borrowing norms for large corporates (LCs) through issuance of debt securities. Now, an entity with outstanding long-term borrowings of Rs 1000 crore or above would be classified as LC. Also, SEBI has introduced incentives for LCs in case of surplus in requisite borrowings and moderated disincentives if they fail to meet at least 25% of their incremental borrowings. Earlier, LCs were defined as those with outstanding long-term borrowings of at least Rs 100 crore or above.

- 1.18** Top 250 listed Cos. must promptly address media rumours on specific material events w.e.f. the date specified by SEBI - **Notification No. SEBI/LAD-NRO/GN/2023/155, Dated 09-10-2023**

Editorial Note : SEBI has notified an amendment in the proviso



to Reg 30(11) of LODR Regulations, 2015. As per the amended norms, the top 250 listed entities must confirm, deny or clarify any market rumours w.e.f the date specified by SEBI. Earlier, the top 250 listed entities were required to confirm the rumours w.e.f. 01.04.2024. The same has been omitted.

- 1.19** SEBI requires brokers functioning in the EOP segment to maintain Rs. 10 lakhs with exchanges as a 'BMC' deposit - **Circular No. SEBI/HO/MRD/POD-III/CIR/2023/165, Dated 06-10-2023**

Editorial Note : Earlier, the MCA vide Circular dated Sep 25, 2023, extended the relaxation from dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) up to Sep 30, 2024. Therefore, SEBI in order to bring it in line with MCA, has decided to extend relaxation to listed entities also. Listed entities are relaxed from sending a hard copy of annual report to Non-Convertible Securities holders up to 30.09.2024.

- 1.20** SEBI relaxes listed entities from dispatching hard copies of annual report till 30.09.2024 pursuant to MCA extension - **Circular No. SEBI/HO/DDHS/P/CIR/2023/0164; Dated 06-10-2023**

Editorial Note : Earlier, the MCA vide Circular dated Sep 25, 2023, extended the relaxation from dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) up to Sep 30, 2024. Therefore, SEBI in order to bring it in line with MCA, has decided to extend relaxation to listed entities also. Listed entities are relaxed from sending a hard copy of annual report to Non-Convertible Securities holders up to 30.09.2024.

- 1.21** SEBI extends the relaxation from sending proxy forms for general meetings held via e-mode till 30.09.2024 - **Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2023/167, Dated 07-10-2023**

Editorial Note : Earlier, SEBI vide circular dated 11.07.2023, relaxed the listed entities from complying with reg36(1)(b) of LODR i.e., sending hard copies of annual reports, and reg 44(4) i.e., sending of proxy forms to holders of securities, for the general meetings (conducted in electronic mode) till 30.09.2023. Now, the SEBI has extended these relaxations till 30.09.2024.

- 1.22** Contra-trade restrictions may apply to trades made by individual promoters under PIT norms: SEBI

Editorial Note : A company sought informal guidance from SEBI on whether the provision of contra-trade applies to trades made by an individual promoter or whether the entire category of promoter & promoter group is considered for the same. SEBI clarified that the provision of contra-trade restrictions may apply to trades made by the promoter individually as per regulation 9 read with Schedule B of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

- 1.23** No open offer obligation arises for promoters if warrant conversion doesn't breach individual shareholding limit: SEBI

Editorial Note : A BSE-listed NBFC approved issuance of share warrants on a preferential basis. Partial conversions of the warrants took place on 28.03.2023 resulting in individual shareholdings of the promoters being 14.28% and 4.99%. Now, the company sought informal guidance on whether the proposed transaction to convert pending warrants will trigger an open offer obligation. SEBI clarified that if an individual's shareholding is below 25%, they are not obligated to make an open offer under SAST norms.

- 1.24** Now incorporation of companies and LLPs can also be done through NSWS portal

Editorial Note : The system of MCA has been integrated with the National Single Window System (NSWS) for the incorporation of companies and LLPs. NSWS allows securing government approvals without having to go to individual ministries or to states. This portal hosts applications for approvals from 31 Central Government Departments and 22 State Governments. Now, the incorporation service can be availed from both the NSWS portal and the MCA21 portal.

- 1.25** SEBI requires qualified RTAs to put in place a 'Business Continuity Plan' and 'Disaster Recovery Site' - **Circular No. SEBI/HO/IMD/IMD-TPD-1/P/CIR/2023/173, Dated 20-10-2023**

Editorial Note : SEBI has issued guidelines to strengthen the governance of qualified Registrars and Transfer Agents (QRTAs) for handling disruption and improving preparedness by conducting periodic drills. In this regard, SEBI requires QRTAs to put in place a Business Continuity Plan (BCP) and Disaster Recovery Site (DRS) in a bid to ensure continuity of operations and maintain data and transaction integrity. Further, in addition to the DRS, all QRTAs must also have a Near Site (NS) to ensure zero data loss.



2. SUPREME COURT

SECTION 3 OF THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992 - APPOINTMENT AND FUNCTIONS OF CUSTODIAN

- 2.1 Where CBI issued freeze orders against appellant company during an investigation into an alleged crime committed by 'D' however, appellant company was in no way connected to concerned investigation, freeze orders made against appellant company's properties were redundant qua investigation and condition imposed to furnish bank guarantee in furtherance of said orders was to be set aside - *Jermyn Capital LLC v. Central Bureau of Investigation* - [2023] 154 taxmann.com 356 (SC)

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT

- 2.2 Lease Rental Discounting Arrangement virtually ringfences lender from the bankruptcy or insolvency of borrower - *Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd.* - [2023] 155 taxmann.com 414 (SC)

3. HIGH COURT

SECTION 11C OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - INVESTIGATION

- 3.1 Where very basis of SEBI undertaking investigation on complaints as made by petitioners of BNL violating rules, regulations and norms as prescribed by SEBI, being violated by BNL and same forming subject matter of investigation by SEBI and resultant show cause notice were foundational facts, petitioners would be entitled in law to receive documents in this regard, unless furnishing of these documents would stand prohibited in law - *Ashok Dayabhai Shah v. Securities and Exchange Board of India* - [2023] 155 taxmann.com 596 (Bombay)

SECTION 18 OF THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 - REFERENCE TO MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL

- 3.2 Discretion given to Facilitation Council under section 18(3) in respect of selection of forum of arbitration between parties is absolute and has overriding effect to any other law; therefore, in event of conciliation proceedings being carried out by Council and on its failure Council itself can proceed to arbitrate dispute between parties and prohibition contained in section 80 of Arbitration and Conciliation Act, 1996 will have no application in exercise of said discretion by Council - *Bata India Ltd. v. U.P. State Micro and Small Enterprise Facilitation Council* - [2023] 154 taxmann.com 351 (Allahabad)

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

- 3.3 Where an FIR was registered by RFL-a subsidiary of REL against petitioner-managing director of REL alleging that petitioner was involved in conspiracy causing 'RFL' to give unsecured loans without proper documentation to shell companies, in view of fact that investigation was complete, chargesheet was filed before Trial Court and all material documents were already in custody of prosecution, application filed by petitioner for regular bail was to be allowed - *Sunil Naraindas Godhwani v. State (NCT of Delhi)* - [2023] 154 taxmann.com 62 (Delhi)

SECTION 252 OF THE COMPANIES ACT, 2013 - REMOVAL OF NAME FROM REGISTER - APPEAL TO TRIBUNAL

- 3.4 There is nothing in provisions of Companies Act 2013, which empowers ROC to enquire into antecedents and activities of a dissolved company; SEBI and MCA are appropriate authorities to enquire fraudulent share transactions and transactions of shares by struck off companies - *Cressanda Solutions Ltd. v. Union of India* - [2023] 155 taxmann.com 174 (Calcutta)

SECTION 434 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - TRANSFER OF CERTAIN PENDING PROCEEDINGS

- 3.5 Company Court has discretion to transfer proceedings relating to winding up to NCLT depending upon stage of proceeding and if it appears to Company Court that die is cast and



corporate death of company is inevitable, there is no requirement to transfer such proceeding - ***Abhijeet Projects Ltd. v. Yogesh Khanna*** - [2023] 155 *taxmann.com* 240 (Calcutta)

SECTION 447 OF THE COMPANIES ACT, 2013 - PUNISHMENT - FOR FRAUD

3.6 Applicant-CA, associated with company, which was accused by SFIO for alleged fraud with respect to public money by fraudulent availing of loan and credit facilities from banks on basis of false documents, was granted bail in view of facts that none of co-accused named applicant; that most of co-accused persons were on bail or were not arrested, and nothing had been brought on record by respondent to show that applicant was capable of tampering with evidence or was a flight risk - ***Arun Kumar Aggarwal v. Serious Fraud Investigation Office*** - [2023] 154 *taxmann.com* 549 (Delhi)

4. NCLAT

SECTION 59 OF THE COMPANIES ACT, 2013 - REGISTER OF - RECTIFICATION OF

4.1 Where appellants filed petition under sections 59 and 241 seeking rectification of register of member and reliefs against alleged oppression and mismanagement in affairs of respondent company alleging inter alia that they had purchased 94.80 per cent shares of respondent company but respondents by manipulating records of company erased names of appellants from register of members and also filed fabricated annual returns with ROC, since appellants could not establish their entitlement to receive 'transfer shares', from respondents, they could not be treated as shareholders of respondent company and, therefore, they had no Locus to file application under section 241 - ***Chalasan Udaya Shankar v. Lexus Technologies (P.) Ltd.*** - [2023] 154 *taxmann.com* 512 (NCLAT - Chennai)

SECTION 105 OF THE COMPANIES ACT, 2013 - MEETINGS - PROXIES

4.2 Where companies i.e. transferor companies and transferee company had jointly filed application for approval of scheme of amalgamation and NCLT directed to convene meeting of secured and unsecured creditors and allowed voting on proposed scheme by voting in person but voting through proxy was not allowed, voting through proxy being permissible in terms of section 230(4) and rules 9, 10 and 13 of Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, order passed by NCLT was to be set aside - ***TCR Trading (P.) Ltd. v. Tridev Advisory Services (P.) Ltd.*** - [2023] 154 *taxmann.com* 296 (NCLAT- New Delhi)

SECTION 232 OF THE COMPANIES ACT, 2013 - AMALGAMATION

4.3 Where in application for sanction of scheme of arrangement between appellant-parent company and its wholly owned subsidiary company, NCLT directed to obtain consent affidavits of 90 per cent of secured creditors and equity shareholders, since no issuance of new shares or reorganization of shareholding structure were proposed, rights of shareholders would not be affected after implementation of such scheme and, therefore, order passed by NCLT was to be set aside - ***Reliance Industries Ltd. v. Registrar of Companies*** - [2023] 155 *taxmann.com* 212 (NCLAT- New Delhi)

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

4.4 Where NCLT declared transfer of shares via gift deed as null and void, since a gift deed was valid or not required elaborate evidence and determination of validity of legal documents, NCLT had no jurisdiction to make such order, more so when fraud and coercion was alleged by a party - ***Satori Global Ltd. v. Ms. Shailja Krishna*** - [2023] 154 *taxmann.com* 510 (NCLAT- New Delhi)


**SECTION 250 OF THE COMPANIES ACT, 2013 -
REMOVAL OF NAME OF COMPANY**

- 4.5 After striking off name, a company ceases to remain as a company and accordingly petition filed by it earlier in capacity of company incorporated under Act will not be maintainable and is to be dismissed - ***Panthera Developers (P.) Ltd. v. Sankalp Buildwell (P.) Ltd.*** - [2023] 154 taxmann.com 514 (NCLAT- New Delhi)

**SECTION 252 OF THE COMPANIES ACT, 2013 -
REMOVAL OF NAME FROM REGISTER**

- 4.6 Where company was neither operational and nor doing any business and also there was admission of appellant - director before NCLT that management of company was deadlock due to litigation and disputes amongst directors, NCLT had committed no error in rejecting appeal filed by company against striking off and for its restoration of its name in Register of Companies - ***Anjali Bhardwaj v. Office of Registrar of Companies*** - [2023] 155 taxmann.com 128 (NCLAT- New Delhi)

**SECTION 421 OF THE COMPANIES ACT, 2013 -
TRIBUNAL AND APPELLATE TRIBUNAL - APPEAL
FROM ORDERS OF**

- 4.7 Where an appeal filed against order passed by NCLT directing appellant i.e. director of a company to deposit an amount with RoC was dismissed and rectification application filed by appellant was also rejected by NCLT, in view of fact that appellant had suppressed/concealed fact regarding rejection of initial appeal, instant appeal filed by appellant against order of NCLT rejecting rectification application was to be dismissed - ***Hemendra Aran v. Aranca (Mumbai) (P.) Ltd.*** - [2023] 155 taxmann.com 26 (NCLAT- New Delhi)

5. SAT
**REGULATION 3 OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA (PROHIBITION OF INSIDER TRADING)
REGULATIONS, 1992 - PROHIBITION ON DEALING,
COMMUNICATING OR COUNSELLING ON MATTERS
RELATING TO INSIDER TRADING**

- 5.1 Information related to proposed reorganization of NDTV, which includes de-merger/ split of NDTV into News related businesses and investments in 'Beyond News' businesses which are currently held through its subsidiary NDTV Networks Plc is not a price sensitive information, and thus, when trades executed by promoters of NDTV's i.e. Prannoy Roy and Radhika Roy while in possession of said information is not a insider trading - ***Dr. Prannoy Roy v. Securities & Exchange Board India*** - [2023] 155 taxmann.com 88 (SAT - Mumbai)

**REGULATION 3 OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF
SHARES AND TAKEOVERS) REGULATIONS, 2011 -
SUBSTANTIAL ACQUISITION OF SHARES OR VOTING
RIGHTS**

- 5.2 Where appellants acted in concert with each other as a group for acquisition of shares of target company and, their shareholding changed by more than 2 per cent but appellants failed to make disclosure to stock exchange, appellant violated regulation 29 of SAST Regulations and, thus, impugned order passed by WTM of SEBI restraining appellants from accessing securities market for a period of five years and also imposition of penalties on appellants was justified - ***Omprakash Kovuri v. Securities & Exchange Board of India*** - [2023] 155 taxmann.com 121 (SAT - Mumbai)

**REGULATION 3 OF THE SEBI (PROHIBITION OF
FRAUDULENT AND UNFAIR TRADE PRACTICE RELATING
TO SECURITIES MARKET) REGULATION, 2003 -
PROHIBITION OF CERTAIN DEALINGS IN SECURITIES**

- 5.3 Where company SIEL had issued GDRs which were fully subscribed by single entity Vintage and Vintage took a loan from foreign bank for which appellant company provided security in form of Pledge Agreement, thus, issue of GDRs was vitiated by fraud, in view of fact that appellant was Chairman of Audit Committee and was not involved in day to day affairs of Company and there was nothing on record to indicate that matter relating to GDR issue was placed by company before Audit Committee, appellant could not be held responsible for alleged violation and thus, impugned order by SEBI imposing penalty and restraining appellant from accessing securities market could not be sustained - ***V. Manikandan v. Adjudicating Officer, Securities and Exchange Board of India*** - [2023] 155 taxmann.com 506 (SAT - Mumbai)
- 5.4 Where appellant company had issued GDRs which were subscribed by single entity Clifford and Clifford took a loan from foreign bank for which appellant company provided security in form of Pledge Agreement, in view of fact that corporate announcement made by appellant did not disclose fact that subsisting pledge agreement facilitated subscribers to subscribe to GDR issue and thus, it was misleading and



presented a distorted version to investors and created a false version inducing investors to deal in securities, impugned order by SEBI imposing penalty of Rs.25 lakh on appellant was justified - ***Kaashyap Technologies Ltd. v. Securities and Exchange Board of India - [2023] 155 taxmann.com 513 (SAT - Mumbai)***

- 5.5 A Regulator has to be consistent with its stand and, if, one authority gives a finding on an issue same is binding on Regulator and other authorities of Regulator and it is not open to a subordinate authority to disagree with findings of superior authority or give a finding which is contrary to finding given by superior authority - ***Santosh Kumar Agarwal v. Securities and Exchange Board of India - [2023] 155 taxmann.com 172 (SAT - Mumbai)***

REGULATION 4 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICE RELATING TO SECURITIES MARKET) REGULATIONS, 2003 - PROHIBITION OF MANIPULATIVE, FRAUDULENT AND UNFAIR TRADE PRACTICES

- 5.6 Where appellant company planned a buyback of equity shares as approved by shareholders but fell short of fulfilling buyback requirements and penalties had been imposed for violation of regulations 3 and 4 of PFUTP Regulations and regulation 19(1)(a) of Buyback Regulations, however, it could not be conclusively proved that Company showed no intent to successfully complete buyback and there by acted fraudulently, aforesaid violations were not proved against Company and were to be set aside - ***Vedanta Ltd. v. Securities and Exchange Board of India - [2023] 155 taxmann.com 100 (SAT - Mumbai)***
- 5.7 Real estate operational data of a company is a price sensitive information and upon announcement it had a material impact in as much as price of scrip increased and thus, where appellant being Chairman and Managing Director of company while in possession of this UPSI had traded in scrip of company in violation to Regulation 4 of PIT Regulation, thus, penalty of Rs.10 lakh imposed by SEBI on appellant was justified - ***Jagdish Chandra Sharmav. Securities and Exchange Board of India - [2023] 155 taxmann.com 460 (SAT - Mumbai)***
- 5.8 Where one 'HS' was circulating SMS and videos with strong buy recommendations to mislead unsuspecting investors to acquire securities in a company at inflated rate, thereby making illegal gain, and appellant-broker had professional connection 'HS', in view of fact that charges were serious warranting immediate action to prevent appellant from further infiltrating market, interim order passed by SEBI against appellant for impounding alleged unlawful gains, freezing of bank accounts of appellant and further restraining them from accessing securities market during pendency of proceedings was justified - ***Econo Broking (P.) Ltd. v. Securities and Exchange Board of India - [2023] 155 taxmann.com 175 (SAT - Mumbai)***

RULE 8 OF THE SECURITIES CONTRACTS

(REGULATION) RULES, 1957- QUALIFICATIONS FOR MEMBERSHIP OF A RECOGNIZED STOCK EXCHANGE

- 5.9 Where CORE Committee of NSE had rejected claim of appellant as inadmissible under Investor Protection Fund (IPF) on ground that her husband, who had trading account with defaulting broker, had died in 2012 and terminal of broker was disabled in 2017 and, therefore, last trade executed by 'N' before disablement was before more than substantial period of 24 months, in view of fact that trading activity had not specified to mean that trading activity was to be executed only by 'N' and that trades were executed even after death of 'N' till 2017, period of 24 months did not expire and, therefore, appellant was entitled to claim under IPF - ***Prem Latav. Securities and Exchange Board of India - [2023] 155 taxmann.com 124 (SAT - Mumbai)***

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

- 5.10 There is no provision in SEBI Act to continue proceedings against a dead person or against legal representatives/heirs of deceased, a legal representative shall only be liable to pay when penalty has been imposed before death of accused person - ***Y. N. Saxena v. Securities and Exchange Board of India - [2023] 154 taxmann.com 596 (SAT - Mumbai)***
- 5.11 Where pursuant to investigation WTM of SEBI, by ad-interim exparte order restrained appellant company and its directors from dealing in securities market until further orders, in view of fact that said order was passed to prevent continuing misrepresentation of financials and no forthcoming replies or clarification was made by appellant, appeal against impugned ad-interim order was to be disposed of directing appellants to file reply/objection along with a stay vacation application to ad interim ex parte order - ***Eros International Media Ltd. v. Securities and Exchange Board of India - [2023] 155 taxmann.com 173 (SAT - Mumbai)***

SECTION 12A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

- 5.12 Where WTM of SEBI passed an interim order holding that certain entities to be involved in a scheme/device for manipulating price of shares of a company and selling same for illegal gains, since there was no evidence to indicate that entities had spread any false and misleading information or had induced buy recommendations, such order being bereft of any evidence, was to be set aside - ***Jatin Manubhai Shah v. Securities and Exchange Board of India - [2023] 155 taxmann.com 441 (SAT - Mumbai)***

REGULATION 15 OF THE SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013- GENERAL RESPONSIBILITY

- 5.13 Where appellant had not informed to SEBI appointment of a new director, was not risk profiling clients properly, was charging fees to clients in a manner which was not fair and transparent, was charging fees for services to be rendered in



future, did not resolve investor grievances as per prescribed timelines and thus, had violated various regulations of IA regulations and code of conduct read with regulation 15(9) of IA regulations, and therefore, impugned order by SEBI imposing penalty of Rs.13 lakh on appellants was to be affirmed - ***Pinnacle Market Investment Advisory (P.) Ltd.v.Securities and Exchange Board of India - [2023] 155 taxmann.com 531 (SAT - Mumbai)***

SECTION 15J OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - FACTORS TO BE TAKEN INTO ACCOUNT WHILE ADJUDGING QUANTUM OF PENALTY

- 5.14 Where for alleged violations of LODR Regulations and PFUTP Regulations, AO of SEBI had initially imposed penalty of Rs.22 lakh on appellant which was enhanced to Rs.34 lakh and considering gravity of situation had now been reduced to Rs.10 lakh, order of AO did not suffer from any error of law - ***MPF Systems Ltd.v.Securities and Exchange Board of India - [2023] 155 taxmann.com 471 (SAT - Mumbai)***

SECTION 15T OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - SECURITIES APPELLATE TRIBUNAL

- 5.15 Where appellants filed a complaint as stock broker VSL failed to redeem money and same was dismissed by SEBI on ground that their money was invested with sub-broker 'A' who was giving them assured return, however, SAT remitted matter to SEBI to investigate as to whether monies given to 'A' eventually went into accounts of 'VSL', but, SEBI disposed of case without carrying investigation purely based on available info, SEBI was directed to register complaints of appellants and conduct a detailed investigation after giving an opportunity of hearing to appellants - ***Cynthia Pinto De Andrade v. Securities and Exchange Board of India - [2023] 154 taxmann.com 61 (SAT - Mumbai)***

REGULATION 31 OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 - HOLDING OF SPECIFIED SECURITIES AND SHAREHOLDING PATTERN

- 5.16 SEBI is required to address investors' grievance on SCORES platform and merely seeking a reply from company and passing it on to investors and thereby closing complaint is not sufficient compliance of redressal of investors grievance - ***K. L. A. Padmanabhasav.Securities & Exchange Board of India - [2023] 154 taxmann.com 298 (SAT - Mumbai)***

REGULATION 59 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 - POST-LISTING EXIT OPPORTUNITY FOR DISSENTING SHAREHOLDERS

- 5.17 Where appellant company had made preferential allotment of equity shares to 100 persons without

complying public issue norms in violation to provisions of Companies Act as well as ICDR regulations, in view of fact that, appellant also came out with an IPO and listing of shares allowed shareholders an option to exit and, thus, investors in deemed public issue had not been substantially prejudiced due to such non-compliance, direction of SEBI to appellant to refund money collected through allotment could not be sustained, however, direction debarring appellant from accessing securities market etc. was to be affirmed - ***Channel Nine Entertainment Ltd. v. Securities and Exchange Board of India - [2023] 154 taxmann.com 297 (SAT - Mumbai)***

6. NFRA

SECTION 132 OF THE COMPANIES ACT, 2013 - NATIONAL FINANCIAL REPORTING AUTHORITY - CONSTITUTION OF

- 6.1 'Indoor management' will not rescue a CA who fails to verify validity of appointment as statutory auditor of co. before accepting the audit - ***Mangesh V Kekre & Associates, In re - [2023] 155 taxmann.com 10 (NFRA)***

7. SEBI

REGULATION 10 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 - GENERAL EXEMPTIONS

- 7.1 Where appellant, who had acquired shares of target company in excess of threshold limit had claimed that on date of transfer of shares, he had completed 3 years as promoter of target company, and thus, said acquisition was exempted from requirement of making an open offer under provisions of regulation 10(1)(a), however, he was shown as promoter in shareholding pattern of target company for less than three years, thus, appellant did not qualify for exemption under regulation 10(1)(a) and therefore, he was liable for monetary penalty for alleged violation of regulation 3 - ***Metkore Alloys and Industries Ltd., In re - [2023] 155 taxmann.com 530 (SEBI)***

REGULATION 24 OF THE SEBI (MUTUAL FUNDS) REGULATIONS, 1996 - RESTRICTIONS ON BUSINESS ACTIVITIES OF THE ASSET MANAGEMENT COMPANY

- 7.2 Where SEBI issued show cause notice against foreign portfolio investor i.e. IDOF alleging that it had invested in liquid and money market instruments, which were not permissible instruments for FPIs, and same was in violation of provisions of SEBI circular dated 3.2.15 read with regulation 23(1) of FPI regulations, in view of fact that what was sought to be prohibited was investment in liquid and money market mutual fund scheme and not liquid and money market instruments per se and Domestic scheme was not investing exclusively in money market instruments and accordingly, same could not be categorized as a liquid and money market mutual fund scheme and thus, SCN against IDOF was to be disposed off without any direction - ***India Debt Opportunities Fund Ltd., In re - [2023] 155 taxmann.com 581 (SEBI)***



COMPETITION LAW

1. STATUTORY UPDATES

- 1.1 MCA notifies Competition (Form of Publication of Guidelines) Rules, 2023 for issuance of guidelines by CCI - **Notification No. G.S.R. 795(E), Dated 26-10-2023**

Editorial Note : The Govt. has notified the Competition (Form of Publication of Guidelines) Rules, 2023. As per notified rules, the CCI must issue guidelines u/s 64B of the Competition Act through publication on its official website. The guidelines must specify the title and the effective date. Further, one paragraph must contain one subject matter of policy and one paragraph must contain only one sentence and one aspect of guidelines. Also, the language of the guidelines must be English.

2. HIGH COURT

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

- 2.1 HC declines to stay CCI 's inquiry into cartelisation in tendering by OCW cement manufacturers in tenders floated by ONGC - **Dalmia Cement (Bharat) Ltd. v. Union of India - [2023] 155 taxmann.com 598 (Gauhati)**

3. CCI

SECTION 3 OF THE COMPETITION ACT, 2002 - PROHIBITION OF AGREEMENTS - ANTI- COMPETITIVE AGREEMENTS

- 3.1 **Prescription by Government** to its department for following/observing some standards having direct relevance to quality of products/services procured can not be presumed to be in contravention of section 3 - **Prem Prakash v. National Accreditation Board for Testing and Calibration Laboratories (NABL) - [2023] 155 taxmann.com 73 (CCI)**

SECTION 4 OF THE COMPETITION ACT, 2002 - PROHIBITION OF ABUSE OF DOMINANT POSITION

- 3.2 **Mandate** by NABL to laboratories availing its accreditation to use NABL logo in all reports/certificates/documents was aimed to apprise consumers about accreditation status of laboratory and to avoid misuse of NABL symbol and not to mislead customers about accreditation status and, thus, it did not raise any competition concern - **Prem Prakash v. National Accreditation Board for Testing and**

Calibration Laboratories (NABL) - [2023] 155 taxmann.com 73 (CCI)

- 3.3 Where apart from OP, there were multiple financial institutions, that competed among themselves for extending loan against property to eligible borrowers, Opposite Party (OP) was not dominant in relevant market for provision for loan against property in India and in **absence** of dominance, no prima facie case of contravention of section 4 was made out against OP - **Synco Industries Ltd. v. Hero FinCorp Ltd. - [2023] 154 taxmann.com 598 (CCI)**
- 3.4 Where informant was providing study resources to potential candidates pursuing certification for a Certified Fraud Examiners (CFE) course conducted by OP using OPs logo and identical terminology, which were registered trademarks of OP, cease and desist notices **issued** by OP to informant for using its study material for CFE examination in unauthorized manner by infringing copyrights and trademarks of OP was not in violation to provisions of Act - **Mrs. Kanwaljeet Kaur Soni v. Association of Certified Fraud Examiners Inc. - [2023] 154 taxmann.com 300 (CCI)**
- 3.5 Where OP, being only vendor approved by Ministry of Defence for supply of winch for military vehicles had entered into a sub-contracting agreement (SCM) with informant No. 1 and one of conditions of SCM was that agreement between OP and informant No. 1 would be coterminous with employment of informant No. 2 as MD of OP, which according to informants was an unfair imposition in contravention of provisions of section 4, in view of fact that nature of issues between parties appeared to be emanating purely from contractual terms agreed upon between parties and no competition concern appeared to have arisen, no case of contravention of provisions of Act was made out against OP - **Transvahan Technologies India (P.) Ltd. v. Sepson AB - [2023] 155 taxmann.com 176 (CCI)**
- 3.6 Where OP was engaged in business of offering subscription or membership services under name cult-pass to individuals who were already members of established gyms and apart from OP there were other entities apparently providing similar services and there was no material on record to indicate that there existed any barrier for market participants in providing or accessing online fitness services, OP was not dominant in relevant market and, therefore, examination of abuse of dominance by OP did not arise - **Creed Gym v. Curefit Services (P.) Ltd. - [2023] 154 taxmann.com 624 (CCI)**

SECTION 5 OF THE COMPETITION ACT, 2002 - COMBINATIONS

- 3.7 A notice under section 6(2) can be submitted by notifying parties for Green Channel approval facility only if there is no overlap between parties to combination, their respective group entities and/or any entity in which they, directly or indirectly, hold shares and/or control - **Platinum Jasmine A 2018 Trust., In re - [2023] 155 taxmann.com 241 (CCI)**

**SECTION 6 OF THE COMPETITION ACT, 2002 -
REGULATION OF COMBINATIONS**

- 3.8** Where combination between Cummins who was supplier of power from related components and 'M' who was supplier of component of commercial vehicles was consummated without giving notice to CCI in terms of section 6(2), Cummins was liable for penalty under section 43A - ***Proceeding against Cummins Inc., In re - [2023] 155 taxmann.com 120 (CCI)***

**SECTION 43A OF THE COMPETITION ACT, 2002 - POWER
TO IMPOSE PENALTY FOR NON-FURNISHING OF
INFORMATION ON COMBINATIONS**

- 3.9** Where NTPC had acquired 35.47 per cent of Share Capital of 'RGPPL' and NTPC by consummating concerned transaction without filing a notice with CCI in terms of section 6(2) prior to acquisition had contravened provisions of section 6(2) read with section 6(2A), NTPC was liable to a penalty under section 43A - ***NTPC Ltd., In re - [2023] 155 taxmann.com 71 (CCI)***



FEMA Banking and Insurance Laws

1. STATUTORY UPDATES

- 1.1 RBI extends Prompt Corrective Action (PCA) framework to government NBFCs from October 1, 2024 - **Circular No. RBI/2023-24/67 Ref. No.DoS.CO.PPG/SEC.05/11.01.005/2023-24, Dated 10-10-2023**

Editorial Note : Earlier, RBI vide circular dated Dec 14, 2021 introduced a Prompt Corrective Action (PCA) framework for NBFCs. The objective of framework is to enable supervisory intervention at an appropriate time and require supervised entity to initiate and implement remedial measures in a timely manner. Now, the RBI has decided to extend the framework to government NBFCs (except those in Base Layer) w.e.f 01.10.2024, based on the audited financials of NBFCs as on 31.03.2024 or thereafter

- 1.2 Reverse Repo transactions with non-banks for all tenors shall be reported under Loans, cash credits under Bank Credit: RBI - **Circular No. RBI/2023-24/68 DoR.RET.REC.43/12.01.001/2023-24, Dated 16-10-2023**

Editorial Note : RBI has now clarified that Reverse Repo transactions for original tenors up to and inclusive of 14 days, shall be reported under Item III(b) of Form A (i.e., Money at call and short notice) whereas original tenors of more than 14 days, shall be reported under Item III(c) of Form A (i.e., Advances to banks). Also, reverse repo transactions with non-banks for all tenors should be reported under Loans, cash credits and overdrafts under Bank Credit in India excluding inter-bank advances.

- 1.3 Govt. requires REs to immediately obtain 'client due diligence' records from third parties under PMLA norms - **Notification No. G.S.R 745(E), Dated 17-10-2023**

Editorial Note : The Government has notified the Prevention of Money-laundering (Maintenance of Records) Third Amendment Rules, 2023. As per the amended norms, the reporting entities must immediately obtain client due diligence records from third parties or from the Central KYC Records Registry. Earlier, the reporting entities were required to obtain client due diligence records from third parties or the Central KYC Records Registry within 2 days.

- 1.4 RBI adds 30 banks to UDGM making 90% unclaimed deposits in 'Depositor Education & Awareness Fund' accessible - **Press Release: 2023-2024/1048, Dated 05-10-2023**

Editorial Note : Earlier, the RBI launched a Centralised Web Portal UDGM (Unclaimed Deposits Gateway to access information). This portal has been developed for use by public, making it easier to search for unclaimed deposits across multiple banks at one place. The search facility was initially made available for seven banks on the portal. Now, the search facility for 30 banks has been made available on the portal, covering around 90% of

unclaimed deposits in the Depositor Education and

Awareness Fund.

- 1.5 RBI keeps the policy repo rate unchanged at 6.50% - **Press Release: 2023-2024/1051 & 1052, Dated 06-10-2023**

Editorial Note : On the basis of an assessment of the current and evolving macroeconomic situation, the Monetary Policy Committee (MPC) of RBI at its meeting on October 6, 2023, has decided to keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50%. Further, the standing deposit facility (SDF) rate remains unchanged at 6.25% and the marginal standing facility (MSF) rate and the Bank Rate at 6.75%.

- 1.6 RBI proposes to introduce 'Card-on-File token' creation facilities directly at the issuer bank level - **Press Release: 2023-2024/1053, Dated 06-10-2023**

Editorial Note :The RBI has released a statement setting out various developmental and regulatory policy measures relating to (i) Regulation; (ii) Payments System and (iii) Consumer Protection. Some of key highlights include (a) a framework for income recognition, asset classification and provisioning pertaining to advances, (b) Introduction of 'Card on File token' creation facilities directly at issuer bank-level, (c) Extending Payments Infrastructure Development Fund Scheme by a further period of 2 years.

- 1.7 IFSCA amends IFSCA (Investment by International Financial Services Centre Insurance Office) Regulations, 2022 - Notification **No. IFSCA/2023-24/GN/REG042, Dated 25-10-2023**

Editorial Note : IFSCA has notified the IFSCA (Investment by International Financial Services Centre Insurance Office) (Amendment) Regulations, 2023. As per the amended norms, an IIO may invest its assets in India through the regulatory framework specified by the RBI or the SEBI. Further, nothing contained in regulations 10, 11, 12 and 13 shall apply to an IIO investing its retained premium in DTA, if an investment is done to comply with conditions specified under Re-insurance Regulations.

- 1.8 'e-Kuber' portal to remain functional on 31.03.2024 (Sunday) for processing of Govt. transactions: RBI - **Circular No. RBI/2023-24/65 CO.DGBA.GBD.No.S646/42-01-029/2023-2024, Dated 03-10-2023**

Editorial Note : The 'e-Kuber' which is Core Banking Solution platform of RBI for govt. and other payments does not process any govt. transactions on global holidays (i.e., 26th Jan, 15th Aug, 2nd Oct, all 2nd & 4th Saturdays and on all Sundays). The RBI observed that 31.03.2024 is Sunday. Hence, it has been decided that 31.03.2024 be marked as a working day for the Govt. transactions. This step ensures that all transactions integrated with e-Kuber are processed on 31.03.2024 and accounted for in FY 2023-24.

- 1.9 RBI amends Master Directions on Know Your Customer (KYC) norms - **Circular No. RBI/2023-24/69 DOR.AML.REC.44/14.01.001/2023-24, Dated 17-10-2023**



Editorial Note : Earlier, the RBI issued Master Directions on KYC, which requires Regulated Entities to undertake Customer Due Diligence (CDD) for their customers. In this regard, RBI has decided to amend master directions to update certain instructions in accordance with amendments to PML Rules, 2005, FATF recommendations, and add a new section 55A on FCRA in the master directions. The amended norms are attached to the circular itself and shall be effective immediately.

1.10 RBI directs CICs to send SMS/email alerts to customers when their credit information report is accessed by CIs - **Circular No. RBI/2023-24/73 DoR.FIN.REC.49/20.16.003/2023-24, Dated 26-10-2023**

Editorial Note : RBI has directed credit information companies (CICs) to send SMS or email alerts to customers when their credit information report (CIR) is accessed by credit institutions (CIs), wherever mobile number or email ID details of the customers are available. The alerts must be sent by CICs only when the CIR enquiry reflects in the CIR of the customer. Further, CIs must have a dedicated nodal point/ official of contact for CICs for redress of customer grievances.

1.11 RBI enhances "Bulk Deposit" limit for Regional Rural Banks from Rs 15 lakh to Rs 1 crore - **Circular No. RBI/2023-24/75 DoR.SPE.REC.50/13.03.00/2023-2024, Dated 26-10-2023**

Editorial Note : As per RBI (Interest Rate on Deposits) Directions, 2016, the "Bulk Deposit" means (i) a single Rupee term deposit of Rs 2 crore and above for SCBs (excluding Regional Rural Banks) and Small Finance Banks. (ii) Single Rupee term deposits of Rs 15 lakhs and above for Regional Rural Banks (RRBs). Now, RBI has decided to enhance the bulk deposit limit for RRBs. Accordingly, "Bulk Deposit" for RRBs would now mean Single Rupee term deposits of Rs 1 crore and above.

1.12 RBI replaces 'Pension Fund' with 'Central Recordkeeping Agency' as the financial information provider - **Circular No. RBI/2023-24/76 DoR.FIN.REC.52/03.10.123/2023-24, Dated 26-10-2023**

Editorial Note : As per National Pension System (NPS) architecture, Central Recordkeeping Agency (CRA), registered u/s 27 of the Pension Fund Regulatory and Development Authority Act, 2013, acts as an interface between the different intermediaries in the NPS system. The CRAs hold information pertaining to the subscribers including the balances under NPS. Now, RBI has decided to replace 'Pension Fund' with 'Central Record keeping Agency' as the financial information provider.

1.13 RBI issues Master Direction on Interest Rate on Deposits - **Master Direction. RBI/2023-24/74 DOR.SPE. REC. No 51/13.03.000/2023-24, Dated 26-10-2023**

Editorial Note : RBI has issued Master Directions on 'interest rate on deposits' whereby it has been decided that (i) the minimum amount for offering non-callable TDs may be increased from Rs. 15 lakh to Rs. 1 crore i.e., all domestic term deposits accepted from individuals for amount of Rs. 1 crore and below shall have premature-withdrawal-facility and (ii) these instructions shall also be applicable for Non-Resident (External) Rupee (NRE)

Deposit / Ordinary Non-Resident (NRO) Deposits.

1.14 REs of Bank joining Account Aggregator ecosystem as 'FI-U' shall necessarily join as 'FIP': RBI - **Circular No. RBI/2023-24/77 DoR.FIN.REC.53/03.10.123/2023-24, Dated 26-10-2023**

Editorial Note : The RBI observed that certain entities eligible to join Account Aggregator (AA) ecosystem as Financial Information Provider (FIP), have onboarded as Financial Information User (FI-U) only. Consequently, such entities are accessing financial information from other FIPs but aren't providing financial info. held by them. To ensure efficient and optimum utilisation of AA ecosystem, it has decided that regulated entities of Bank joining AA ecosystem as FI-U shall necessarily join as FIP also.

1.15 RBI mandates CIs/CICs to compensate complainants with Rs 100 per day if complaints remain unresolved beyond 30 days - **Circular No. RBI/2023-24/72 DoR.FIN.REC.48/20.16.003/2023-24, Dated 26-10-2023**

Editorial Note : Earlier, the RBI vide Statement on Developmental and Regulatory Policies announced that a compensation mechanism will be put in place for delayed updation /rectification of credit information by the credit institutions (CIs) and credit information companies (CICs). Now, the framework for the same has been released. The complainants shall be entitled to a compensation of Rs 100 per calendar day in case their complaint is not resolved within a period of 30 calendar days.

1.16 RBI issues master direction on NBFCs - **Master Direction No. RBI/DoR/2023-24/105, DoR.FIN.REC.No.45/03.10.119/2023-24 Dated, 19-10-2023**

Editorial Note : The RBI has issued the Master Direction- Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023. The directions are effective from Oct 19, 2023. The Master Direction aims to regulate Non-Banking Financial Companies (NBFCs) to safeguard the interests of investors and depositors and ensure that the operations of NBFCs do not harm the financial system or the interests of the NBFCs themselves.

1.17 RBI extends deadline to deposit/exchange Rs 2000 banknotes till October 7, 2023 - **Press Release: 2023-2024/1025, Dated 30-09-2023**

Editorial Note : The RBI has extended the current arrangement for depositing or exchanging of Rs 2000 banknotes till October 7, 2023. From Oct 8, 2023, the deposit/exchange will be stopped at bank branches. Further, individuals and entities can continue to exchange Rs 2000 banknotes at the 19 RBI Issue Offices up to a limit of Rs 20,000 at a time. Also, as per data received from banks, Rs 3.42 lakh crore has been received back leaving only Rs 0.14 lakh crore in circulation as on Sep 29, 2023.

1.18 RBI doubles monetary ceiling of gold loans under bullet repayment scheme for Urban Co-operative Banks to Rs 4 lakh - **Circular No. RBI/2023-24/66 DOR.CRE.REC.42/07.10.002/2023-24; Dated 06-10-2023**

Editorial Note : RBI mandates banks to maintain an additional average daily balance. It will be over and above the average daily balance required to be maintained u/s 42(1). Further, during the fortnight from Sept 09-22, 2023, a minimum of an additional average daily balance of 7.5% of the increase in net



demand and time liabilities between May 19, 2023, and July 28, 2023, is to be maintained. During the period from Sep 23, 2023 -Oct 06, 2023 an additional average daily balance of 5% is to be maintained.

1.19 Banks must maintain an extra daily average balance with the RBI in addition to the required daily balance: RBI - **Notification No. DOR.RET.REC.35/12.01.001/2023-24., Dated 08-09-2023**

Editorial Note : RBI mandates banks to maintain an additional average daily balance. It will be over and above the average daily balance required to be maintained u/s 42(1). Further, during the fortnight from Sept 09-22, 2023, a minimum of an additional average daily balance of 7.5% of the increase in net demand and time liabilities between May 19, 2023, and July 28, 2023, is to be maintained. During the period from Sep 23, 2023 -Oct 06, 2023 an additional average daily balance of 5% is to be maintained.

1.20 MoF designates Patna's District and Sessions Court & Addl. District and Sessions Court as a Special Court under PMLA - **Notification No. S.O. 4496(E), Dated 13-10-2023**

Editorial Note :The Central Govt. in consultation with the Chief Justice of the High Court of Judicature at Patna has notified Court of District and Sessions Judge, Patna as Special Court under PMLA for 17 Districts, which includes Patna, Bhojpur, Arwal, Aurangabad, Gaya, Nawada, Banka, Bhagalpur, etc. Whereas, the Court of Additional District and Sessions Judge-XVI, Patna to act as Special Court for other 21 districts, which includes Begusarai, Khagaria, Saran, Siwan, Gopalganj, East Champaran, etc.

1.21 Cooperative banks must present all unclaimed liabilities in financials under "Contingent Liabilities – Others": RBI - **Circular No. RBI/2023-24/71 DOR.ACC.47/21.04.018/2023-24, Dated 25-10-2023**

Editorial Note : Earlier, the RBI vide master directions, 2021 required commercial banks to present all unclaimed liabilities in their financial statements under 'Schedule 12-Contingent Liabilities', where the amount due had been transferred to the Depositor Education and Awareness (DEA) Fund. Now, the RBI has advised all co-operative banks to present all unclaimed liabilities under "Contingent Liabilities – Others". This aims to ensure consistency in the presentation of financial statements.

1.22 RBI mandates private banks to have 2 whole-time directors, including MD & CEO, on their Boards -**Circular No. RBI/2023-24/70 DOR.HGG.GOV.REC.46/29.67.001/2023-24, Dated 25-10-2023**

Editorial Note : RBI has directed private banks to ensure the presence of at least two whole-time directors, including MD & CEO on their Boards. The number of WTDs shall be decided by the Board of bank by taking into account factors such as the size of operations, business complexity, and other relevant aspects. Further, banks that currently do not meet the min. requirement are advised to submit their proposals for the appt. of WTD(s) within a period of 4 months from the date of issuance of

the circular.

1.23 RBI permits PROIs maintaining a rupee account to purchase/sell dated Government Securities/Treasury Bills - **Notification No. FEMA.396 (2)/2023-RB, Dated 16-10-2023**

Editorial Note : RBI has notified the FEM (Debt Instruments) (Second Amendment) Regulations, 2023. As per the amended norms, persons resident outside India (PROIs) maintaining a rupee account as per reg. 7 of FEM (Deposit) Regulations can purchase or sell dated Government securities/treasury bills. Further, the amount of consideration for purchase of such securities/bills must be paid out of funds held in rupee a/c. Also, the sale/maturity proceeds must be credited to the said rupee a/c.



2. SUPREME COURT

SECTION 17 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - APPLICATION AGAINST MEASURES TO RECOVER SECURED DEBTS

- 2.1 SC can't ignore or supplant any express statutory provisions while exercising its powers of wide amplitude under Article 142 - **Union Bank of India v. Rajat Infrastructure (P.) Ltd.** - [2023] 155 taxmann.com 78 (SC)
- 2.2 High Courts not to entertain writ petitions against orders of civil courts in other states especially when petitioner has statutory remedy of appeal. If High Courts start entertaining Article 226 petitions for challenging orders passed by Civil Courts in other states, it will lead to a chaotic situation - **Pankaj Kumar Tiwari v. Indian Overseas Bank Asset Recovery Management Branch** - [2023] 155 taxmann.com 423 (SC)

SECTION 19 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - POWER TO ARREST

- 2.3 Merely reading out grounds of arrest to arrestees does not comply with the mandate of section 19(1) of PMLA - **Pankaj Bansal v. Union of India** - [2023] 155 taxmann.com 39 (SC)

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

- 2.4 Where partner had not signed cheque issued by firm which was dishonoured, mere averment in complaint that partner was 'managing affairs of firm' is not sufficient to make him vicariously liable for dishonour of cheque issued by firm - **Siby Thomas v. Somany Ceramics Ltd.** - [2023] 155 taxmann.com 217 (SC)
- 2.5 Courts below should frame issue after careful thought and application of judicial mind to avoid litigation travelling all way up to Supreme Court - **Rajesh Jain v. Ajay Singh** - [2023] 155 taxmann.com 179 (SC)

3. HIGH COURT

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

- 3.1 Where top leaders of political party 'AAP' hatched a conspiracy to introduce a new excise policy to benefit liquor manufacturers who had given advance kickbacks to 'AAP' and petitioner was responsible for influencing policy formulation by sending doctored emails to Government authorities by showing fake approval towards policy, for recoupment of advance kickback paid to leader of 'AAP', petitioner was accused of violation of section 3 and, therefore, his bail application was to be dismissed - **Benoy Babu v. Directorate Of Enforcement** - [2023] 154 taxmann.com 299 (Delhi)
- 3.2 Where top leaders of political party 'AAP' hatched a conspiracy to introduce a new excise policy to benefit liquor manufacturers who had given advance kickbacks to 'AAP' and petitioner was significant conspirator in said scam and he had profited from illicit funds or advanced kickbacks, which constitute proceeds of crime derived from liquor policy scam, petitioner was accused of violation of section 3 and, therefore, his bail application was to be dismissed - **Sanjay Singh v. Union of India** - [2023] 155 taxmann.com 472 (Delhi)
- 3.3 Where petitioner was in custody in money laundering case and he was suffering from life-threatening disease warranting immediate medical attention and he had been granted interim bail on two occasions and there was nothing on record to show that liberty granted to him had been misused, petitioner was to be admitted to interim bail - **Sameer Mahandru v. Directorate of Enforcement** - [2023] 154 taxmann.com 59 (Delhi)
- 3.4 To prosecute under section 3, a person has to be actually involved in any process or activity connected with 'Proceeds of Crime' and it is not merely criminal activity relating to commission of a predicate offence but property has to be derived directly or indirectly as a result of such criminal activity to be tried and prosecuted under section 3; where outstanding arose on account of dollar-rupee fluctuation in terms of MoU, it could not be called as 'Proceeds of Crime' or as property as defined under section 2(1)(iv) and, therefore, proceedings initiated by ED under section 3 were to be quashed - **Sukesh Gupta v. Directorate of Enforcement, Hyderabad** - [2023] 154 taxmann.com 625 (Telangana)

SECTION 4 OF THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT, 2003 - CONSEQUENTIAL PROVISIONS

- 3.5 Even while provisions of SICA were in force, a person was not impeded from approaching civil court for specific performance of concluded contract for sale and purchase of property of sick company and, therefore, section 4(b) of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 cannot be held as unconstitutional on ground that petitioner whose bid



was accepted for purchase of property of company, was left remediless in respect of its right on abatement of proceedings before BIFR and AAIFR pursuant to Repeal Act - **Nehal T. Bhimjyaniv. Union of India - [2023] 155 taxmann.com 74 (Delhi)**

SECTION 15 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - POWER TO COMPOUND CONTRAVENTION

3.6 Where website of petitioner had 'ultimate teen patti' and 'call it right' games, however there was no element of reward, and also such games were introduced much later from date of non-compliance contraventions by petitioner, mere positioning of such games on website could not render activity of petitioner illegal and RBI was to be directed to consider application of petitioner for compounding of non-compliances - **Play Games 24x7 (P.) Ltd. v. Reserve Bank of India - [2023] 155 taxmann.com 72 (Bombay)**

SECTION 17 OF THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - APPLICATION AGAINST MEASURES TO RECOVER SECURED DEBTS

3.7 Where petitioner-borrowers were aggrieved by order passed by Chief Metropolitan Magistrate whereby, pursuant to application filed by respondent-NBFC under section 14, a receiver was appointed to take possession of secured asset, in view of fact that borrowers had statutory remedy under SARFAESI Act by taking recourse of section 17, instant writ against order passed by Chief Metropolitan Magistrate was not to be entertained - **Girish Bansal v. Yashpal Singla - [2023] 155 taxmann.com 122 (Delhi)**

SECTION 18(3) OF THE FOREIGN EXCHANGE REGULATIONS ACT, 1973 - PAYMENT FOR EXPORTED GOODS

3.8 Where appellant company exported materials but did not receive entirety of price of goods sold from importer and Enforcement Directorate issued a show cause notice (SCN) against appellant for their failure to take action to secure receipt for export of total invoice value, since execution of decree in foreign country where importer was situated was not cost effective and feasible, appellant's conduct in obtaining decree in India was plausible and steps taken by appellant to receive and recover payment of good exported were reasonable within meaning of section 18 - **Hooghly Mills Co. Ltd. v. Union of India - [2023] 154 taxmann.com 509 (Calcutta)**

SECTION 19 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - POWER TO ARREST

3.9 Petitioner cannot apply for quashing of ECIR merely based on issue of summons under section 50 of PMLA when he is not named as accused in ECIR or prosecution

complaint - **Ashish Mittal v. Directorate of Enforcement - [2023] 155 taxmann.com 382 (Delhi)**

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

3.10 Jurisdiction of DRT to decide all matters relating to sections 13 and 17 is exclusive and in all cases, where title to property, in respect of which a 'security interest', has been created in favour of Bank or Financial Institution, stands in name of borrower and/or guarantor, and borrower has availed financial assistance, it would be only DRT which would have exclusive jurisdiction to try such matters, to total exclusion of Civil Court - **Regional Manager v. Punya Coal Road Lines - [2023] 154 taxmann.com 599 (Bombay)**

SECTION 44 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCES TRIABLE BY SPECIAL COURTS

3.11 Where FIR was lodged by vigilance department against petitioners under P.C Act 1988, and IPC and also summons were issued to petitioners under section 50 of PMLA, since section 44 does not make it mandatory for committal of a case of scheduled offences to PMLA Court, petitioners could not demand such committal from file of Special Judge - **Pankajini Sahu v. Joint Director, Enforcement Directorate, Goi - [2023] 154 taxmann.com 60 (Orissa)**

4. SAFEMA

REGULATION 3 OF THE FOREIGN EXCHANGE MANAGEMENT (REALIZATION, REPATRIATION AND SURRENDER OF FOREIGN EXCHANGE) REGULATIONS, 2000 - DUTY OF PERSONS TO REALISE FOREIGN EXCHANGE DUES

4.1 Where appellants being residents in India acquired, held, owned and transferred Foreign Exchange outside India without having any permission from RBI, and had not made any efforts about repatriation of such **foreign** exchange at least till year 2015, however, they repatriated entire amount in year 2019 and paid income tax on same, penalties imposed on appellants was to be reduced from Rs. 1.5 crores to Rs. 37.5 lakhs for appellant No. 1 and from 3.5 crores to Rs. 35 lakhs for appellant No. 2 - **Shri Kumar Satur Nathani v. Special Director Directorate of Enforcement, Mumbai - [2023] 154 taxmann.com 626 (SAFEMA - New Delhi)**



Insolvency and Bankruptcy Code

1. STATUTORY UPDATES

- 1.1 IBBI releases a discussion paper for streamlining the Voluntary Liquidation Process

Editorial Note : The IBBI has released a discussion paper to streamline the voluntary liquidation process. The key proposals include the requirement for directors to disclose any pending proceedings or litigation before statutory authorities while making declaration for initiating the process. Further, if the liquidator fails to liquidate within the stipulated time, he must submit a status report to the Board stating the reasons behind the delay. The comments may be submitted electronically by 26.10.2023.

- 1.2 Govt. excludes Aircraft related transactions or arrangements under International conventions from moratorium norms - **Notification No. S.O. 4321(E), Dated 03-10-2023**

Editorial Note : An entity recognizes any resulting deferred tax assets or deferred tax liabilities as identifiable assets and liabilities at the acquisition date in accordance with provisions of Ind AS 103. These deferred tax assets and deferred tax liabilities affect the amount of goodwill or the bargain purchase gain the entity recognizes. This discussion involves a case study on treatment of deferred tax at the time of business purchase.

- 1.3 IBBI issues discussion paper on Strengthening the liquidation process

Editorial Note : To further strengthen the regulatory framework of the liquidation process in terms of accountability of the liquidator towards stakeholders, the IBBI has issued a discussion paper on "Strengthening the Liquidation Process". The key proposals include the mandatory holding of a meeting of the Stakeholders Constitution Committee (SCC), mandating the liquidator to place a reason for liquidation costs exceeding estimates of liquidation cost before SCC etc.

- 1.4 IBBI releases discussion paper on rationalization of regulatory framework to enhance effectiveness of IPEs in IRP

Editorial Note : IBBI has released a discussion paper on the rationalization of the regulatory framework to enhance the effectiveness of Insolvency Professional Entities (IPEs) in the IRP. The discussion paper covers issues such as monitoring of IPEs acting as IPs, defining related parties for IPEs acting as IPs, establishing the minimum fee structure for IPEs acting as IPs and imposing restrictions on the number of assignments undertaken by an IP.

2. SUPREME COURT

SECTION 3(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CLAIM

- 2.1 Where in approved resolution plan an respondent - operational creditor was with payment of zero amount against its claim and NCLAT allowed an appeal filed by respondent against said approval holding that respondent was to be paid maximum percentage of payment permissible to other operational creditors, since observation of NCLAT had not specified category of respondent, this aspect was to be considered by NCLT, thus, instant appeal filed against order of NCLAT was to be disposed and all pleas against resolution plan were to be left open - **Ashok Dattatray Atre v. Kanoria Chemicals & Industries Ltd. - [2023] 155 taxmann.com 566 (SC)**

SECTION 5(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- 2.2 Where application for initiating CIRP under section 9 was rejected by NCLT on ground that there was a pre-existing dispute between parties and NCLAT concurring with findings of NCLT passed impugned order dismissing appeal filed against order of NCLT, concurrent findings in impugned order indicated a pre-existing dispute and, thus, there was no error in impugned order - **Biswa Janani Services v. Shree Nokoda Ispat Ltd. - [2023] 154 taxmann.com 551 (SC)**

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

- 2.3 Allottee does not cease to be a 'home buyer' under section 5(8)(f)(Expln) of IBC merely because he got an order of refund from RERA in his favour - **Vishal Chelani v. Debashis Nanda - [2023] 155 taxmann.com 273 (SC)**

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

- 2.4 Supreme Court upheld NCLAT's order wherein it was held that appellant was not a financial creditor and agreement between parties was for use of premises by appellant and Lol contemplated execution of lease deed was on rent basis, an advance amount of Rs.1.2 Crore could not be held to be a financial debt and, thus, no error had been committed by NCLT in rejecting section 7 application - **Spicejet Ltd. v. Affordable Infrastructure and Housing Projects (P.) Ltd. - [2023] 155 taxmann.com 443 (SC)**

SECTION 5(26) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN



- 2.5 Where corporate debtor was declared a sick industrial unit and entered into a MoU with respondent, on basis of which, implementation of a rehabilitation scheme was approved, NCLAT rightly held that said rehabilitation scheme could not be treated as a resolution plan within meaning of IBC - **Pramod Kumar Pathak v. Arfat Petrochemicals (P.) Ltd.** - [2023] 154 taxmann.com 635 (SC)

SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY FINANCIAL CREDITOR

- 2.6 Financial creditor can file CIRP within 12 years from date of recovery certificate issued by DRT as it is a deemed decree under RDDB Act, 1993 - **Tottempudi Salalith v. State Bank of India** - [2023] 155 taxmann.com 380 (SC)

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 2.7 Where NCLT heard application for approval of resolution plan on as many as 35 days after which they were posted but final order had not been passed and in meantime one of members of bench had been transferred, in view of timelines specified in Code, NCLT should dispose of application for approval of resolution plan as expeditiously as possible and in any event within a period of two month from date of order - **Ebix Singapore Pte. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.** - [2023] 154 taxmann.com 352 (SC)

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

- 2.8 Where NCLAT affirmed order passed by NCLT dismissing section 9 petition and while passing said order, NCLAT had not entered any finding of fact on whether there was compliance of direction of NCLT for production of documents, thus, it would be appropriate to set aside impugned order of NCLAT and to restore appeal for disposal afresh - **A.K. C. Infrastructure (P.) Ltd. v. Amrit Cement Ltd.** - [2023] 154 taxmann.com 302 (SC)
- 2.9 Where NCLAT upheld NCLT's order rejecting appellant's application for stay of auction as appellants failed to submit scheme of compromise and arrangement within stipulated time, in view of fact that reasonable and sufficient opportunity was provided to appellants and bottom line to submit payment under scheme had not been brought as assured on last date, appeal filed by appellants was to be dismissed - **Bankey Bihari Infrahomes (P.) Ltd. v. Alok Kumar Kuchchal** - [2023] 154 taxmann.com 516 (SC)

SECTION 62 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S

ADJUDICATING AUTHORITIES - SUPREME COURT, APPEAL TO

- 2.10 Where against NCLT's order appointing liquidator in case of corporate debtor an appeal was carried out by erstwhile director of corporate debtor before NCLAT, in view of fact that NCLAT was on vacation and it would be reopened on 5-6-2023, liberty was granted to appellant to approach NCLAT on 5-6-2023 and seek such relief as available to him in law - **Arun Agarwal v. Ram Ratan Kanoongo** - [2023] 154 taxmann.com 358 (SC)

3. HIGH COURT

SECTION 3(31) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - SECURITY INTEREST

- 3.1 Unsecured creditor who lent money to real estate co. is not on par with home buyers under the waterfall mechanism in IBC - **Naresh Sundarlal Jain v. Udaipur Entertainment World (P.) Ltd.** - [2023] 155 taxmann.com 36 (Bombay)

4. NCLT

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

- 4.1 Where corporate debtor entered into an agreement with NHA for construction of a tollgate for which it availed credit facility from financial creditor and entered into escrow agreement with financial creditor, wherein, toll revenues collected by corporate debtor was to be deposited into escrow account, since corporate debtor in its written submissions admitted financial debt due to financial creditor, section 7 application filed by financial creditor against corporate debtor alleging non payment of dues in escrow account was to be admitted - **IDBI Bank Ltd. v. Trichy-Thanjavur Expressways Ltd.** - [2023] 155 taxmann.com 123 (NCLT - Hyd.)

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

- 4.2 'Date of Default' is a mandatory concept and mentioning Date of Default in Form No.1/Form No.5 filed with application is a statutory requirement - It determines limitation for filing of application under section 7 or 9 under IBC - Applicant cannot be allowed to change date of default, which is mentioned in CIRP application and accompanying Form No.1 which is a mandatory requirement - If such request is allowed, concept of limitation will become meaningless - **Asset Reconstruction Company (India) Ltd. v. Manyata Developers (P.) Ltd.** - [2023] 155 taxmann.com 529 (NCLT - Bang.) (SB)



5. NCLAT

SECTION 3(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - CLAIM

- 5.1 Where in CIRP of corporate debtor, an assignment deed was executed by a related party with ulterior motive to watch its interest, there was no infirmity in order of NCLT disallowing claim of assignee and holding that assignment was not in good faith and rather showed that arrangement was made with a view to get backdoor entry into CoC through assignee to have control over process of CIRP - **Citi Securities & Financial Services (P.) Ltd. v. Sudip Bhattacharya Resolution Professional of Reliance Naval & Engineering Ltd.** - [2023] 155 taxmann.com 171 (NCLAT- New Delhi)

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

- 5.2 Where institution of main petition and continuance of proceedings on behalf of financial creditor had been done by duly authorized persons at all points of time, NCLT did not commit any error in finding main petition filed under section 7 to be maintainable and valid - **Sanjeev Kumar Sharma v. SREI Equipment Finance Ltd.** - [2023] 155 taxmann.com 216 (NCLAT- New Delhi)
- 5.3 Where documentary evidence on record established that money was infused by appellant into corporate debtor as an investment to be converted into 'Equity' and, shares were transferred in name of partners of appellant, claim of appellant as an unsecured creditor was rightly rejected by RP and NCLT - **SMS Foundation & Investment LLP v. Harsha Exito Engineering (P.) Ltd.** - [2023] 154 taxmann.com 304 (NCLAT - Chennai)

- 5.4 Where appellant filed an application under section 7 against corporate debtor but had failed to establish that he had given any loan to corporate debtor directly and no material was placed on record by appellant, in which corporate debtor had unambiguously admitted debt, in absence of financial debt qua corporate debtor, appellant could not be a financial creditor under section 5(7) and, therefore, NCLT did not commit any error in rejecting section 7 application - **Gp. Capt Atul Jain v. Tripathi Hospital (P.) Ltd.** - [2023] 155 taxmann.com 24 (NCLAT- New Delhi)

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 5.5 Where appellant filed a petition under section 9 against corporate debtor and, date of default was committed on i.e., 1-8-2020, which barred a CIRP proceedings, from 25-3-2020 to 24-3-2021, and due to this suspension, no petition could be filed under sections 7, 9 and 10, as per

1st proviso to section 10A and, therefore, impugned order passed by NCLT dismissing section 9 petition was free from any material irregularity or patent illegality in eyes of Law - **Zhejiang Industrial Group Co. Ltd. v. Al Badr Seafoods (P.) Ltd.** - [2023] 155 taxmann.com 22 (NCLAT - Chennai)

- 5.6 Where corporate debtor in reply to e-mails sent by operational creditor had acknowledged operational debt, thereby fulfilling all requisite conditions necessary to trigger CIRP under section 9, NCLT had not committed error in admitting section 9 application filed by operational creditor - **Laxman Singh (Ex-Director) of Divinesair Logistics (P.) Ltd. v. Kerry Indev Logistics (P.) Ltd.** - [2023] 155 taxmann.com 130 (NCLAT- New Delhi)
- 5.7 Where corporate debtor had admitted outstanding liability to make payment to operational creditor and same had not been disputed by corporate debtor prior to issuance of demand notice, instant was a fit case for admission of CIRP against corporate debtor and, thus, NCLT erred in rejecting section 9 application filed by operational creditor - **Clicbrics Technologies (P.) Ltd. v. Ansal Housing Ltd.** - [2023] 155 taxmann.com 76 (NCLAT- New Delhi)

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

- 5.8 Where petition filed under section 7 was withdrawn on basis of consent terms executed between parties, however, despite consent term, corporate debtor failed to make repayment and revival application filed by financial creditor was rejected by NCLT, since there was undertaking on behalf of respondent that in case of default in consent terms petition could be revived, NCLT committed error in rejecting revival application - **IDBI Trusteeship Services Ltd. v. Nirmal Lifestyle Ltd.** - [2023] 155 taxmann.com 214 (NCLAT- New Delhi)
- 5.9 Where operational creditor/sole CoC member was restrained to file withdrawal of CIRP application due to excessive fees claimed by RP, since there was no complexity in CIRP proceedings which warranted any exceptional responsibility to be discharged by RP, RP was not entitled to claim fees beyond sum of Rs. 8 lakhs and corporate debtor was to be released from rigours of CIRP - **Laxman Singh (Ex-Director) of Divinesair Logistics (P.) Ltd. v. Kerry Indev Logistics (P.) Ltd.** - [2023] 155 taxmann.com 130 (NCLAT- New Delhi)
- 5.10 Where project-wise CIRP of corporate debtor was allowed by NCLT, however said order was never challenged, project-wise CIRP of corporate debtor attained finality and there was no merit in issue raised by promoter of corporate debtor regarding project-wise constitution of CoC after approval of resolution plan - **Arun Kumar v. Ms. Sripriya Kumar** - [2023] 154 taxmann.com 597 (NCLAT - Chennai)

SECTION 21 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - COMMITTEE OF CREDITORS



- 5.11 Where CoC's decision to not approve performance linked payment incentive fee (PRIF) claimed by RP was in accordance with their discretionary power under regulation 34B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, PRIF being part of Insolvency Resolution Cost, commercial decisions of CoC must be given due credence and same could not be interfered with by NCLT/NCLAT - **Ravindra Kumar Goyal, RP of Yashasvi Yarns Ltd. v. Committee of Creditors of Yashasvi Yarns Ltd.** - [2023] 154 *taxmann.com* 668 (NCLAT- New Delhi)

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

- 5.12 Where resolution applicants suffered disqualification, however, in challenge before High Court, directions were issued in favour of resolution applicants to restore their DIN and in meeting of CoC aspect of DIN being active was clearly noted, consortium of resolution applicants could not be stated to be disqualified under section 29A - **Arun Kumar v. Ms. Sripriya Kumar** - [2023] 154 *taxmann.com* 597 (NCLAT - Chennai)
- 5.13 Where resolution plan was rejected by CoC due to ineligibility of resolution applicant-appellant under section 29A and NCLT passed a liquidation order of corporate debtor as a going concern having been recommended by CoC in exercise of its commercial wisdom, instant appeals preferred by appellants against such order was to be dismissed - **Epitome Components (P.) Ltd. v. Divyesh Desai, Liquidator of Trend Electronics Ltd.** - [2023] 154 *taxmann.com* 64 (NCLAT- New Delhi)

SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- 5.14 Where penal interest charges were added in approved resolution plan over admitted claim of financial creditor, since section 14 does not specify any interest waiver during moratorium, right vested with financial creditor by virtue of loan agreement could not be interfered with - **Arun Kumar v. Ms. Sripriya Kumar** - [2023] 154 *taxmann.com* 597 (NCLAT - Chennai)
- 5.15 Where sufficient opportunities were given to appellant-promoter of corporate debtor, however he failed to deposit earnest money and CoC did not qualify appellant as prospective resolution applicant, since appellant did not challenge said decision of CoC, he could not now at belated stage after approval of resolution plan state that he was interested in offering a viable solution - **Arun Kumar v. Ms. Sripriya Kumar** - [2023] 154 *taxmann.com* 597 (NCLAT - Chennai)
- 5.16 Decision of CoC to approve a resolution plan which allocates a plan value for relinquishment of personal

guarantee was a commercial decision which could not be allowed to be impugned at instance of dissenting financial creditor and, hence, NCLT erred in rejecting such resolution plan, which did not contravene any provision of section 30 - **SVA Family Welfare Trust v. Ujaas Energy Ltd.** - [2023] 155 *taxmann.com* 20 (NCLAT- New Delhi)

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 5.17 Where CoC after considering viability and feasibility of a resolution plan had approved same with 100 per cent vote share, such decision of CoC was a commercial decision which could not be interfered with and, therefore, resolution plan was rightly approved by NCLT - **Anil Kumar, Suspended Director, SK Elite Industries India Ltd. v. Jayesh Sanghrajaka** - [2023] 154 *taxmann.com* 354 (NCLAT- New Delhi)
- 5.18 Where resolution plan was fully implemented as successful resolution applicant had made payments to all creditors of corporate debtor and there was no irregularity in provisions of said resolution plan, appeal challenging approval of such plan was to be dismissed - **Assistant Commissioner of Central Tax v. Sreenivasa Rao Ravinuthala** - [2023] 154 *taxmann.com* 628 (NCLAT - Chennai)

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

- 5.19 Where RP filed an application under section 66 against appellants, directors of corporate debtor, on basis of a forensic audit report, wherein appellants had drawn an excess remuneration to which they were not legally entitled to, impugned order passed by NCLT directing appellants to refund/pay jointly and severally excess amount to RP along with 12 per cent interest per annum was free from all legal errors - **Tenny Jose v. Prathap Pillai, Resolution Professional of Tenny Jose Ltd.** - [2023] 155 *taxmann.com* 178 (NCLAT - Chennai)

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

- 5.20 NCLT has jurisdiction to entertain/initiate, insolvency proceedings of personal guarantors, even when there is no CIRP proceedings pending against corporate debtor - **Mahendra Kumar Agarwal v. PTC India Financial Services Ltd.** - [2023] 154 *taxmann.com* 666 (NCLAT - Chennai)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 5.21 Where account of corporate debtor was declared a NPA on 11-6-2006 but last confirmation, was made on behalf of corporate debtor towards joint and several liabilities by Borrower/Sureties on 11-5-2017 and also multiple One Time Settlement reports had been made in years 2018 to 2022, application filed by financial creditor under section 7 for initiation of CIRP against corporate debtor on 19-3-2020 was well within limitation period and was rightly admitted by NCLT



Accounts and Audit Updates

1.1 ICAI issues Manual on Concurrent Audit of Banks

Editorial Note : In order to provide guidance to concurrent auditors regarding critical issues related to concurrent audit of banks, including redirecting the scope of concurrent audit to include risk-based audit approach to make it more meaningful & effective and to improve the quality of concurrent audit reports, the Manual on Concurrent Audit of Banks (2023 edition) has been issued by ICAI.

1.2 ICAI issues "Technical Guide on Internal Audit of Pharmaceutical Industry"

Editorial Note : In order to provide guidance to internal auditors in carrying out internal audit of companies operating in pharmaceutical industry a "Technical Guide on Internal Audit of Pharmaceutical Industry" has been issued by ICAI.

1.3 NFRA's Enforcement Actions against Branch Auditors of Non-Banking Financial Company

Editorial Note : The shield of indoor management is not available to a Chartered Accountant who is offered appointment as the statutory/ branch auditor of a company in view of the positive duty cast upon him to ascertain from the company whether his appointment is valid in terms of sections 139 and 140 of the Companies Act, 2013 before accepting the audit engagement.

1.4 ICAI issues Exposure Draft on Accounting Standards for Limited Liability Partnerships

Editorial Note : Section 34A of the Limited Liability Partnership Act, 2008 prescribes that Central Government may, in consultation with National Financial Reporting Authority, prescribe standards of accounting as recommended by Institute of Chartered Accountants of India (ICAI), for a class or classes of limited liability partnerships. In this regard, ICAI invites comments from the stakeholders on the Exposure Draft till 27.11.23. Comments can be submitted through email via <mailto:commentsasb@icai.org>

1.5 Fee Related Disclosure by CA Firms in Compliance with Revised Code of Ethics

Editorial Note : On September 29, 2022, ICAI issued an announcement, implementing the revised 'Fees-Relative Size' provisions with effect from October 1, 2022. These regulations require CA firms to notify the Institute if their gross annual professional fees from an audit client exceed the designated threshold percentage for two consecutive years. To facilitate this process, ICAI has introduced a dedicated disclosure form that CA firms must complete and sign before submitting it to the Ethical Standards Board via email.

1.6 NFRA orders bring clarity on the period of its jurisdiction

Editorial Note : By this order, NFRA clarifies that its jurisdiction will extend timelines before its formation. This order not only brings clarity but also highlights the professional misconduct of auditors and instances of non-reporting. In this story, we have discussed the key highlights of the NFRA order and the misconduct of the auditor in various instances.

1.7 Communicating KAM para in the auditor's report is not a substitute for expressing a modified opinion: NFRA

Editorial Note : Unilaterally writing back substantial amounts of its liabilities and treating them as Other Income requires the auditor to apply the audit procedure prescribed under SA 505. If management puts a limitation on the scope of the audit, the auditor is required to issue a modified opinion instead of putting a para in KAM. NFRA observed this shortcoming with others and ordered a monetary penalty and a debarment of 3 years on the auditor.

1.8 ICAI releases 'Technical Guide' on Reports of Audit under Sec. 12A/10(23C)

Editorial Note : The Direct Taxes Committee (DTC) of ICAI released the Technical Guide on Audit Reports under section 12A/10(23C) of the Income-tax Act, 1961. This Technical Guide has been precisely drafted to provide Chartered Accountants with a deep and insightful understanding of the taxation aspects of Charitable Trusts and Institutions.



Chartered Accountants as Professionals – In the World of MSMEs



CA Sanjib Sanghi

A **professional** is someone who has specific knowledge and has frequently gone through intensive academic preparation for their field (such as high school, college, or technical classes).



Professionals have several crucial skills, qualities relating to appearance, ethics, competence, and dependability telephone manners, conduct, written correspondence, and dependability.





MSME stands for **Micro, Small and Medium Enterprise** (MSME), introduced by Government of India in agreement with Micro, Small & Medium Enterprises Development (MSMED) Act, 2006, are entities engaged in the manufacture or production of goods, in any manner or engaged in providing or rendercompanying of any service or services.

Benefits for Professionals registering themselves as MSMEs

Here are some potential benefits of Chartered Accountants (CAs) registering themselves as MSMEs:

- i. **Access to Financial Assistance:** As MSMEs, Chartered Accountants (CAs) may become eligible for various financial assistance schemes and subsidies offered by the government. These can include low-interest loans, grants, and support for capacity building and skill development.
 
- ii. **Collateral-Free Loans:** Many governments provide collateral-free loans to MSMEs to help them overcome financial constraints. Registering as an MSME can make it easier for Chartered Accountants to access such loans without the need for substantial collateral.
- iii. **Credit Facilitation:** MSME registration can increase the credibility of Chartered Accountants in the eyes of financial institutions. It may lead to better credit terms, higher credit limits, and more favourable interest rates on loans and credit facilities.
 
- iv. **Tax Benefits:** Governments often provide tax incentives and benefits to MSMEs to promote their growth and sustainability. These may include tax exemptions, reduced tax rates, or tax holidays for a certain period.



- v. **Government Tenders and Contracts:** Many government tenders and contracts are set aside exclusively for MSMEs. By registering as an MSME, Chartered Accountants can gain access to these opportunities and expand the client base.
- vi. **Networking and Collaboration:** MSME registration opens up opportunities for networking and collaboration with other MSMEs. Chartered Accountants can leverage these connections to form strategic partnerships and expand their professional network. 
- vii. **Government Subsidies:** MSMEs may be eligible for subsidies on various expenses, such as technology adoption, research and development, and marketing initiatives. These subsidies can help Chartered Accountants improve their service offerings and stay competitive.
- viii. **Ease of Doing Business:** MSME registration often simplifies compliance requirements and regulatory procedures, reducing the administrative burden on Chartered Accountants allowing them to focus more on their core business activities and compliances of the clients.
- ix. **Market Recognition:** MSME registration can add a level of legitimacy and credibility to the Chartered Accountants (CAs) in practice. It signals to clients and stakeholders that the CAs operates a genuine and recognized business entity. 
- x. **Statutory Support:** Governments may introduce specific schemes and policies to support MSMEs during economic challenges or crises. As registered MSMEs, Chartered Accountants may be eligible for such support during difficult times.

It's important to note that, the benefits of registering as an MSME can vary depending on the state and its specific policies. Chartered Accountants interested in availing these benefits should check the eligibility criteria and available support in their respective jurisdictions. Additionally, they should consider the potential impact on their practice and assess whether the benefits outweigh any associated registration or compliance costs.

Opportunities for Professionals in MSMEs

Opportunities for Chartered Accountants in this flourishing sector include the following:

- i. Offering **one stop professional advisory services** to MSMEs in the areas such as **selection of product or organization structure**, getting **basic registration**, **application for PAN/TAN/GST**, **advising** on incentives and funding options available to MSMEs, labour laws aspects, corporate governance and other statutory & regulatory compliances;
- ii. **Guiding directors** and **advising management** for operating within law;
- iii. Facilitating smooth payment passage with **registration in TReDS platform**;
- iv. **Filing return in ROC** with respect to outstanding dues to MSME:





- v. Guiding in MSME **financing** with timely & adequate availability of finance at reasonable cost;
- vi. Helping with **Due Diligence** for smooth financing and further compliances;
- vii. Ensuring **Corporate Governance** and arranging/conducting secretarial audit;
- viii. **Coordinating** with banks for term loans and project financing;
- ix. Advising SMEs on listing and trading of its securities and acting as Compliance officer to ensure 100% compliances and smooth trading;
- x. **Day to Day Coordination** with statutory authorities and SME exchange for due approvals and expansion of business;
- xi. **Guiding** in export promotion scheme and custom development scheme;
- xii. Filing of direct and indirect **tax returns**;
- xiii. **Accounting and managing funds** with optimum utilization of resources;
- xiv. Guiding SMEs in **credit facilities** through SIDBI;
- xv. Coordinating with banks for timely flow of funds;
- xvi. Conducting or Co-ordinating in **Statutory audit and Tax audit**;
- xvii. **Planning Cost Structure** and conducting **Cost Audit**;
- xviii. Recruitment of best and efficient **resources**;
- xix. Planning for **sustainability** of resources;
- xx. **Arranging employee-oriented programmes and events**;
- xxi. Making **policies and plans** for expansion of business;
- xxii. Arranging **cost effective Marketing and Advertisements**;
- xxiii. Guiding in **Capital and Infrastructure Development**; and
- xxiv. Supporting in **Technology and Quality upgradation**





Role of Professionals in nurturing MSMEs

Chartered Accountants can offer a wide range of services to Micro, Small and Medium Enterprises to support their **Financial Management, Compliance, and overall business success**. Some Services Chartered Accountants(CAs) can provide to MSMEs are:

i. MSME Registration:

Professionals can assist MSMEs with registration by guiding them through the entire process, from determining eligibility and preparing necessary documents to submitting applications and liaising with authorities. CAs ensure accurate classification, timely compliance, and access to government schemes while simplifying complexities, allowing MSMEs to focus on their core business activities and benefit from the advantages of registration for growth and success.



ii. Tax Saving:

Professionals can assist MSMEs in tax saving by analysing their financial situation, identifying eligible deductions, credits, and incentives, and implementing effective tax planning strategies. They can help MSMEs optimize their business structure, use appropriate tax-saving investments, and leverage relevant government schemes to minimize tax liabilities while ensuring compliance with tax laws. By providing expert advice and timely guidance, CAs can help MSMEs make informed decisions that maximize tax benefits, leading to increased profitability and sustainable growth.



iii. Loans and Schemes:

Chartered Accountants can assist MSMEs in **accessing loans and government schemes** by providing **comprehensive financial advisory services**. CAs can also help MSMEs assess their **financial needs**, prepare **detailed business plans**, and **present their financial statements in a way that aligns with the requirements** of financial institutions. Additionally, CAs can **identify suitable loan options** and guide MSMEs through the application process, ensuring compliance with necessary documentation and assisting in the evaluation of loan terms. Furthermore, CAs can keep MSMEs informed about various government schemes, incentives, and subsidies available to them, providing guidance on eligibility criteria and supporting them in the application process to maximize their benefits.



CAs can also assist MSMEs in obtaining loans without the hassle of low-interest rates by preparing **well-structured loan applications**, **presenting accurate financial statements**, and **showcasing the SMEs creditworthiness and financial stability**. They can instill **confidence in lenders** and **negotiate favourable loan terms**. Additionally, CAs can guide MSMEs in accessing government-backed loan schemes or incentives that offer lower interest rates. Their expertise ensures compliance with lenders' requirements and boosts the likelihood of securing loans with attractive terms,



enabling MSMEs to access the necessary funding for their expansion and development endeavours.

iv. **Act as Advisor:**

Chartered Accountants can advise companies on **Compliance** of legal and procedural aspects, particularly under SEBI Act, Foreign Exchange Management Act, Depositories Act, Labour Laws, IPR Protection, Mergers and Amalgamations and Strategic Alliances & Foreign Collaborations and Joint Ventures. They can act as advisor to investors, depositors, mutual fund unit holders and stakeholders.

v. **Protect from Exploitation:**

Professionals can help protect MSMEs from **customer exploitation** and **delayed payments** by implementing robust financial and credit risk management strategies. They can establish clear payment terms and credit policies to mitigate the risk of delayed payments. By conducting creditworthiness assessments of customers, they can identify potential risks and set appropriate credit limits. They can also implement effective invoicing and debt collection processes to ensure timely payments. Furthermore, they can advise MSMEs on legal options to handle customer disputes or non-payment issues. By proactively managing credit risks and ensuring compliance with legal and contractual obligations, CAs safeguard MSMEs' financial health and reduce the likelihood of customer exploitation and payment delays.

vi. **Guide Them in Cost Efficient Automation:**

Chartered Accountants can play a crucial role in helping MSMEs with automation to streamline their financial processes and administrative tasks, enabling them to focus on business growth. By leveraging their expertise in financial systems and technology, CAs can identify opportunities for automation in areas like **accounting, bookkeeping, tax compliance, and reporting.**

Implementing automation tools and software can reduce manual work, improve accuracy, and save valuable time and resources for MSMEs. With the burden of routine tasks lifted, MSMEs can redirect their focus and efforts towards strategic decision-making, innovation, and expanding their business, ultimately leading to increased efficiency, productivity, and sustainable growth.



Payment Recovery Mechanism for MSME – A Saviour

Working Capital issues are a problem for MSME units especially for Firms of Chartered Accountants (CA Firms) because, on the one hand, they **struggle to obtain timely credit** through formal banking channels while paying a relatively high-interest rate, and, on the other hand, they must **offer their customers interest-free credit** while also experiencing **delayed recovery**, which ultimately leads to illness in the MSME sector.

The **MSME Development Act** (the Act) includes the required clauses to guarantee the fast and uninterrupted flow of money to MSMEs as well as precautions to guarantee timely payments to the



DEBT RECOVERY



MSME sector. According to the Act's requirements, the **buyer (client) has an obligation to release payment on or before the agreed-upon date or within 45 days** of that date, **earlier** of the two, starting from the day that MSME's supply of goods or services was accepted or deemed accepted. Additionally, the buyer is responsible for paying **compound interest with monthly interest**

at the rate of **three times the bank rate** as announced by the Reserve Bank of India **for the delayed period if the payment to MSMEs is delayed beyond the agreed upon period or forty-five days.**

If the buyer fails to make the payment within the stipulated deadline, registered MSMEs can take up the issue directly with the **Micro and Small Enterprises Facilitation Council** of the state (created by respective state government's) in which their unit is situated for recovery of dues along with interest on delayed payments.

The MSME Facilitation Council (MSMEFC) serves as a mediator or arbitrator and has a **90-day deadline for resolving disputes.** MSMEFC are gradually gaining prominence vis- a-vis recovery suits. Where the conciliation initiated is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any Institution or Centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to In sub-section (i) of section 7 of that Act. Every reference made under this section shall be decided within a period of **ninety days** from the date of making such reference.



DELAYED PAYMENT



An appeal (by any person other than the supplier) **against an award, decree, or other orders of MSMEFC or Centre or institution** referred by the MSMEFC can be entertained by any court **only after deposition of 75% of the amount in terms of the decree, award to other order.** Provided that **pending disposal** of the application to set aside the decree,

award, or order, **the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable** under the circumstances of the case subject to such conditions as it deems necessary to impose. This provision has been validated by higher courts including the Supreme Court.

In the years to come, MSMEFC constituted by States will gain momentum and will become a decisive factor.

It is a **great opportunity for Chartered Accountants in practice** as they can play a vital role in hand holding MSME sector to overcome their working capital issues and rendering professional services in helping them in **approaching** the MSME Facilitation Council for recovery of their over dues along with interest as specified in the Act. This will ultimately result in **growth of Clientele, MSME sector and Nation.**



Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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Ph. +91 33 2242-0638, 4003-5451 • E-mail : dtpakolkata@gmail.com • Website : www.dtpa.org

APPLICATION FOR MEMBERSHIP

2 Pcs.
Pass Port
Colour
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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 Qualifications : _____
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)

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 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

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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".


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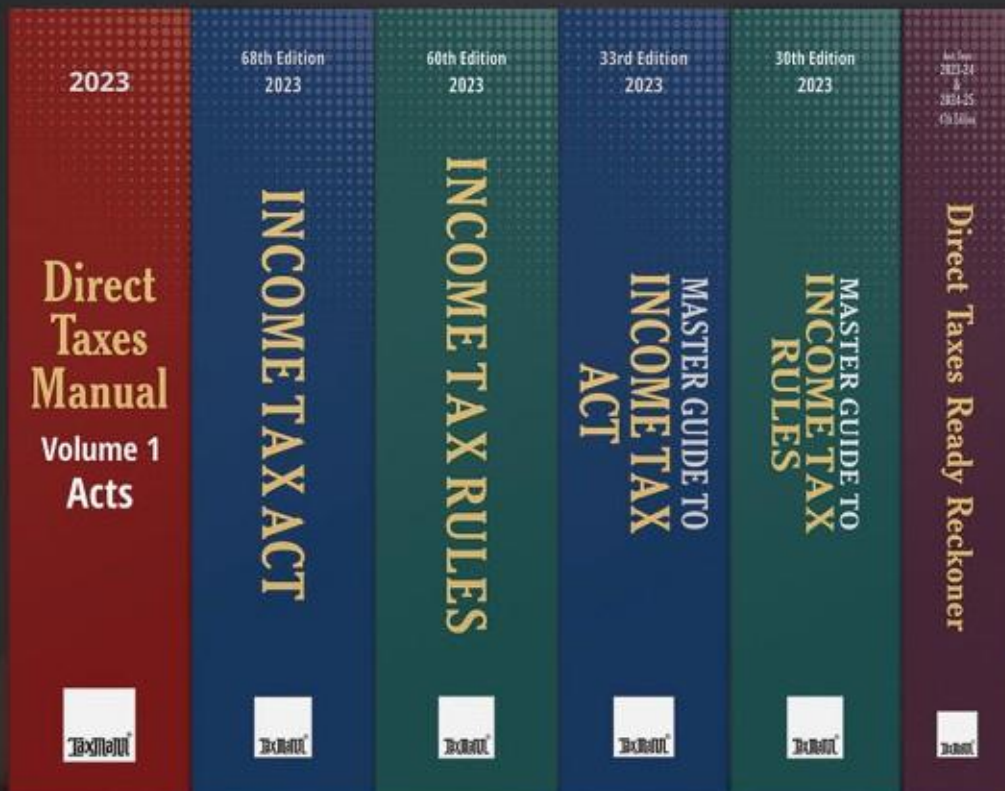
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