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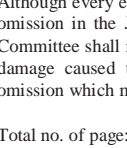
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DISCLAIMER

Views expressed in the articles of this Journal are contributor's personal views. DTPA and its Journal Sub-Committee do not accept any responsibility in this regard. Although every effort has been made to avoid any error or omission in the Journal, the DTPA and its Journal Sub-Committee shall not be responsible for any kind of loss or damage caused to anyone on account of any error or omission which might have occurred.

Total no. of page: 88

... From the Desk of Editors



Respected seniors and my dear friends,

At the onset, I along with my co-chairman extend our sincere gratitude to the President, DTPA and the Executive Committee for the year 2023-24 for reposing faith and entrusted once again this year to serve for the DTPA e-Journal. At the same time overwhelmed to receive support and motivation as always from Past Presidents at DTPA to present before you the DTPA e-Journal.

With enormous pleasure and excitement we present you with the first issue of DTPA e-Journal for this term 2023-24 which covers wide area of updates on various statutes which we are hopeful that the readers will find useful.

The last few months were very demanding for we professionals in terms of deadlines for statutory audit, tax audit, GST Compliances and departmental audit under GST and related assignments. The current month is similarly filled up with timelines for Forms for Trust Assessee, Income Tax Returns, ROC Return, Forms and similar works amidst festive season. We must plan accordingly and keep a fine work life balance.

With the stock markets touching all-time high in the month of September, and the economy getting boost due to large sums of FDI, growth of 23.51% in Net Direct Tax collections as on 16.09.23 in Financial Year 2023-24 (*comparing to corresponding period of the preceding Financial Year*), we as professionals should be ready with full energy and zeal to accept new opportunities, new avenues and new clients.

The Journal Committee warmly invite accomplished fellow professionals to embrace opportunity to devote their valuable time to craft enlightening articles, enrich the discourse within our esteemed profession and pen down wonderful articles in their areas of expertise.

"I think it's very important to have a feedback loop, where you're constantly thinking about what you've done and how you could be doing it better." – Elon Musk

We are eager to enhance the experience of our readers therefore, request your feedback once again to help us achieve greater heights in knowledge sharing and to ensure that the flag of DTPA continues to soar high.

Lots of good wishes for the festive season ahead.

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 dtpejournal@gmail.com from you will guide us to move further and motivate in touching new heights in professional excellence.

....From the desk of President



Dear Members,
Festive Greetings !

As I assume the role as the President of our Esteemed Association for the year 2023-24, I wish to thank all the members for reposing faith in me and bestowing upon me this honour. It is indeed a great privilege to head such an august institution, more so because of the caliber and talent of the people I am about to represent. I express my heartfelt gratitude all my predecessors, to my family and friends who have supported and guided me throughout my journey at DTPA to reach this position.

DTPA has evolved over the years as an Association committed to its motto “ज्ञानं एक्यं च न्यायार्थम्” which means “Knowledge and togetherness for justice”. Our Association is now into 5th decade of its glorious existence and with more than 1800 members. It is recognised as a premier institution of the Eastern Region not only by the Government Authorities but also by Industry bodies and other associations all over the country. With each passing year, DTPA is scaling new heights and I am sure, this year too and in the years to come, DTPA will set new trends of professional excellence and recognition. We would be able to achieve this mission with the organised efforts and co-operation of all stakeholders of the Association. I wish to take this opportunity to thank the Immediate Past President-CA D.S. Agarwala for the hard work he has undertaken over the past year as our President.

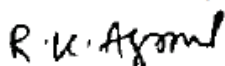
With all the opportunities and challenges that come with my acceptance to serve you as the President, I am of the firm belief that this journey will become a smooth one with a great team that I have this year. I congratulate my office-bearers, executive committee members and special invitees who, I am sure, will deliver their hundred percent and add to the vibrancy and vigour to the activities of our Association.

With humility and great sense of responsibility and expectation, I promise to do my very best to discharge my duties and fulfil the trust reposed in me and to take our legacy forward.

Action Plan : The focus of team DTPA this year will be to organise quality programmes with relevant topics of professional interest. A greater effort will be on organising regular group discussions, workshops, training programmes and full day seminars. Last year, an effort was made to organise a comprehensive training programme for the students. We will continue it further so that our articles and audit staff remain updated with required skill set which will ultimately help us in our profession. DTPA will continue to publish e-journals with content of professional interest from eminent writers. Apart from this, we will also organise networking and fellowship activities at regular intervals and this will include both domestic and international tours. It will be our endeavor to continue the practice of sending the representations and raising the grievances and issues of the members along with suggestions at the appropriate forum. Besides all these our initiative will be to involve more and more members in the activities, so that the number of active members increase.

Thank you again for the faith you have placed in me and for the privilege to serve you as your President. I would like to continue hearing your ideas, getting your feedback and finding out more ways in which new team DTPA can serve you better. Request you all to provide your suggestions from time to time and share your grievances, if any, to president@dtpa.org.

With best wishes,



CA Rajesh Agrawal
President

1st October, 2023



40th Annual General Meeting



1st Executive Committee Meeting



**Felicitation of Shri Prawin Kumar,
Director General of Income Tax (Investigation) WB, Sikkim and N.E.R.**



**Felicitation of Shri Navneet Goel
Pr. Chief Commissioner, CGST & CX, Kolkata Zone**



Seminar on 'Choice Between Various Remedies Against Orders Passed Under Income Tax Law' by Adv Kapil Goel

**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

Chairman
CA Ramesh Kr Chokhani
9748747044

Advisor
CA Pawan Agarwal
9830038817

Co-Chairman
CA Barkha Agarwal
9831184871

Gen. Secretary
CA Mahendra K Agarwal
9830096405

**GAMES &
GIFTS**

LUCKY DRAW

**SUMPTUOUS
FOOD**

**ENTERTAINMENT
PROGRAMME**



DIRECT TAXES PROFESSIONALS' ASSOCIATION

Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89
Income Tax Building, 3, Govt. Place (West)
Ground Floor, Kolkata - 700 001
Ph No :- 033 2242-0638 Email :- dtpakolkata@gmail.com

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



DTPA CA CPE Study Circle of EIRC of ICAI

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

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STUDY CIRCLE MEETING



CA. Vikash Banka

Topic:

**Deep Dive into
issues of GSTR
9 and 9C**



CA Adv Arup Dasgupta

Topic:

**Do's and Dont's
for 3B of Sept
and Oct, 23**

13th Oct, 2023, Friday

Venue : DTPA Conference Hall

Time : 3 PM to 6 PM

“3 CPE Hours”

Participation Charges - Rs. 200/-

CA D S Agarwala
Convenor

CA Manjulata Shukla
Deputy Convenor

Compliance Calendar for October, 2023

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th October,2023	Sep-23	TDS Payment for Sep 2023	
	15th October,2023	April to June 2023	Issue of TCS Certificates in Form 27D for April to June 2023	
	15th October,2023	July to September 2023	TCS Return in Form 27EQ for Jul-Sep 2023	
	30th October,2023	Sep-23	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Sep 2023	
	30th October,2023	Sep-23	Issue of TCS Certificates in Form 27D for July to Sep 2023	
	31stOctober,2023	July to September 2023	TDS Returns in Form 24Q, 26Q, 27Q for July to Sep 2023	
	31stOctober,2023 (As Extended)	Audit Report AY 23-24	Audit report under section 44AB for the assessment year 2023-24 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E	
	31stOctober,2023 (As Extended)	Audit Report (10B/10BB) AY 23-24	The statutory due date for furnishing audit reports in Form 10B/Form 10BB for the AY 2023-24	
	31stOctober,2023	ITR AY 2023-24	The statutory due date for filing of income tax return for the assessment year 2022-23 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A apply	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th October,2023	Sep-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 October,2023	Sep-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 October,2023	Sep-23	GSTR-1	Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return
	13th October,2023	July to September 2023	GSTR-1 (QRMP)	GST return for the taxpayers who opted for the QRMP scheme (Optional)
	18th October,2023	July to September 2023	CMP-08	CMP 08 Composition Scheme Tax Payers.
	20th October,2023	Sep-23	GSTR-3B	The due date for GSTR-3B having an Annual Turnover of more than 5 Crores
	22ndOctober,2023	Sep-23	GSTR-3B	The due date for GSTR-3B having an Annual Turnover of less than 5 Crores (Note: Due date may vary according to the states)
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	10th October,2023	Sep-23	Professional Tax (PT) on Salaries for Sep 2023	
	15th October 2023	Sep-23	Provident Fund (PF) & ESI Returns and Payment for September, 2023	
Statute	Due dates	Compliance Period	Details	
Company Annual Filing & LLP Annual Filing	14th October,2023	ADT -1 (FY 2023-24)	Appointment of an Auditor in AGM within 15 days from the date of the AGM.	
	29th October,2023	AOC-4 (FY 2022-23)	AOC 4 filing by Companies within 30 days from the date of the AGM.	
	29th October,2023	CSR -2	Corporate Social Responsibility Reporting, if any (for other than OPC)	
	30th October,2023	LLP Form 8 (FY 2022-23)	Form 8 Filing for LLP's 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
- GST & Indirect Taxes
- Corporate & Allied Laws
- Information Technology
- International Taxation
- Accountancy and Audit
- Insolvency and Bankruptcy
- Emerging areas of Practice

The articles sent for publication in the 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

1. STATUTORY UPDATES

- 1.1. Govt. keeps interest rates of small savings schemes unchanged for 3rd quarter of FY 2023-24 - **Office memorandum F.No.1/4/2019-NS, Dated 29-09-2023**

Editorial Note : The Govt. has notified the interest rates on various Small Savings Schemes for the third quarter of the financial year 2023-24, starting from 1st October 2023 and ending on 31st December 2023. The interest rate remains unchanged for the 3rd quarter, except for the 5-year recurring deposit, which has been raised from 6.5% to 6.7%.

- 1.2. CBDT notifies Form 6D for furnishing of 'Inventory Valuation Report' u/s 142(2A) - **Notification No. 82/2023, Dated 27-09-2023**

Editorial Note: The Finance Act 2023 substituted Section 142(2A) to empower the AO to appoint a cost accountant for the valuation of inventory. AO can issue the direction for the valuation of inventory if he believes it is necessary in the interest of the revenue to do so. Now, the CBDT has amended Income-tax Rules to provide that the inventory valuation report of an assessee, which is required to be furnished under section 142(2A), shall be in Form No. 6D.

- 1.3. CBDT notifies procedure for filing Form 13 for lower/nil TDS certificate when payer details are unavailable - **Notification No. 02/2023, Dated 27-09-2023**

Editorial Note : CBDT has notified procedure, format and standards for filling an application for grant of certificate under proviso of Rule 28AA(4) of Income Tax Rules, 1962, for deduction of tax at any lower rate or no deduction of tax.

- 1.4. **CBDT** amends Rule 11UA incorporating new valuation methods; includes norms for valuing "CC preference shares" - **Notification No. 81 /2023, Dated 25-09-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has released final notification amending Rule 11UA of the Income-tax Rules. Earlier, the board requested the stakeholders and the general public to provide suggestions/ comments on the draft Rule 11UA that proposed five new valuation methods.

- 1.5. CBDT notifies NBFCs classified into Top, Upper and middle layers for the **purpose** of Sec. 43B and Sec. 43D - **Notification Nos. S.O. 4193(E) and S.O. 4192(E) , Dated 22-09-2023**

Editorial Note : To give effect to the amendment made by the Finance Act 2023, the Central Government has notified all NBFCs classified in the Top Layer, Upper Layer and Middle Layers for the purpose of section 43B and section 43D.

- 1.6. CBDT notifies 'Uttar Pradesh Expressways Industrial Development Authority' for Sec. 10(46) exemption - **Notification No. S.O. 4118(E), Dated 19-09-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Uttar Pradesh Expressways Industrial Development Authority' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961

- 1.7. CBDT gears up for Special Campaign 3.0 to dispose of pending matters - **Press Release, Dated 11-09-2023**

Editorial Note : The CBDT is gearing up for Special Campaign 3.0, which shall commence on October 02 2023. The Government undertook Special Campaign 2.0 for Swachhata in Government offices and disposal of pending matters from October 02 2022 to October 31, 2022. To carry forward the spirit of Special Campaign 2.0, CBDT resolved to continue the positive steps taken to resolve public grievances during the campaign.

- 1.8. CBDT notifies Form 71 to allow TDS credit in respect of income disclosed **in** ITR filed in earlier years - **Notification No. G.S.R. 637(E), Dated 30-08-2023**

Editorial Note : The FA 2023 inserted sub-section (20) to Section 155 with effect from 01-10-2023. This new sub-section shall apply when an income has been reported in an income tax return for a specific assessment year and tax was withheld in a later financial year. The CBDT has inserted a new Rule 134 to the Income-tax Rules to operationalise the amendment. Said rule mandates the filing of Form 71 to claim TDS credit.

- 1.9. CBDT notifies **three** more entities for Section 10(46) exemption - **Notification Nos. S.O. 3865(E), S.O. 3864(E), & S.O. 3863(E), Dated 01-09-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Rajasthan State Dental Council', 'E-Governance Society-Himachal Pradesh and 'Real Estate Regulatory Authorities' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961.

- 1.10. CBDT extends due date for filing of ITR and audit reports by charitable institutions by one month - **Circular No. 16/2023, Dated 18-09-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has extended the due date for furnishing audit reports under section 10(23C)/12A in Form 10B/10BB by charitable institutions from Sep. 30, 2023, to Oct. 31, 2023. The date for furnishing of ITR is also extended from Oct. 31, 2023, to Nov. 30, 2023.

- 1.11. Net Direct Tax **collections** for Financial Year 2023-24 register a growth of 23.51%: FinMin- **Press Release, Dated 18-09-2023**

Editorial Note : The Ministry of Finance has released the provisional figures of the direct tax collections for the Financial Year 2023-24. As of 16.09.2023, the net tax collections are at Rs. 8,65,117 crore, compared to Rs. 7,00,416 crore in the

Corresponding period of the preceding Financial Year (i.e. FY 2022-23), representing an increase of 23.51%.

- 1.12. CBDT notifies 'Multi Commodity Exchange Investor (Client) Protection Fund Trust' for Sec. 10(23EC) exemption - **Notification No. S.O. 3984(E), Dated 12-09-2023**

Editorial Note : Section 10(23EC) provides that any income of notified Investors Protection Fund by way of contribution received from commodity exchange and the member thereof shall be exempt from tax. The Central Government has notified the Multi Commodity Exchange Investor (Client) Protection Fund Trust set up by Multi Commodity Exchange of India Limited, Mumbai, for the purpose of exemption for the assessment year 2014-15.

- 1.13. CBDT notifies 'units of investment trust & EFTs of IFSC' for Sec. 47(viiab) exemption - **Notification No. S.O. 3981(E), Dated 12-09-2023**

Editorial Note : The CBDT has enhanced the scope of section 47(viiab) exemption by amending Notification no. 16/2020, dated 05-03-2020. The board has included the units of investment trust and exchange Traded Fund launched under IFSC under the scope of the exemption. The exemption is also extended to the unit of scheme framed under International Financial Services Centres Authority (Fund Management) Regulations, 2022

- 1.14. CBDT lists down reasons for delayed processing of Income Tax Returns - **Press Release, Dated 05-09-2023**

Editorial Note : The CBDT has released a press release stating that it is committed to processing the Income Tax Returns (ITRs) quickly and efficiently. However, due to the assessee's failure to verify the returns, processing of Returns is getting delayed. About 14 lakh ITRs have been filed but are yet to be verified by the taxpayers.

- 1.15. Inflation-linked valuation of rent-free accommodation covers house taken on **lease/rent**: CBDT - **Notification No. G.S.R. 636(E), Dated 29-08-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has issued a corrigendum to amend Notification 65/2023, dated 18-08-2023. Said Notification modifies norms for computing the value of rent-free accommodations provided to employees. The corrigendum is issued to provide that in case of inflation-linked valuation of rent-free accommodation, the accommodation shall include the house taken on lease or rent.

2. SUPREME COURT

SECTION 2(14) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - CAPITAL ASSETS

- 2.1. **Agricultural land** : SLP dismissed against order of High Court that where assessee converted their agricultural lands for non-agricultural purpose but assessee continued agricultural operations and as per Notification issued by Central Government, lands did not fall within 8 kms from municipality, finding of Tribunal that lands sold by assessee were agricultural land as defined under section 2(14)(iii) being based on evidence on record, did not call for any interference - **Commissioner of Income-tax v. M. R. Prabhavathy - [2023] 154 taxmann.com 143 (SC)**
- 2.2. **Agricultural land** : SLP dismissed against order of High Court that mere inclusion of land in Special Zone without any infrastructure development does not convert land into non-agricultural land - **Commissioner of Income-tax v. M. R. Prabhavathy - [2023] 154 taxmann.com 143 (SC)**
- 2.3. **Object of general public utility** : Where assessee society was engaged in providing barcode technology to its customers, since said services were capable of being used by other sectors in welfare or public interest fields, however there was no figures showing contribution of assessee's revenues from segments of welfare or public interest and material on record only showed that assessee's services were being used for commercial or business purposes, claim for exemption could not succeed having regard to amended section 2(15) - **Commissioner of Income-tax v. GSI India - [2023] 153 taxmann.com 388 (SC)**

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

- 2.4. **Loans or advances to shareholders** : SLP dismissed against impugned order of High Court that when there was no information before Assessing Officer regarding shareholding pattern of PGIPL or its accumulated profits, it could not be said that assessee disclosed all necessary materials for assessment in this regard, therefore, reopening of assessment to consider assessee's liability under section 2(22)(e), could not be said to be a case of change of opinion - **Aswani Enterprises v. Assistant Commissioner of Income-tax - [2023] 153 taxmann.com 378 (SC)**
- 2.5. **Loans or advances to shareholders** : SLP dismissed against impugned order of High Court that where no part of advance given by lending company had been treated as deemed dividend in hands of assessee before relevant assessment year, amount received by assessee during relevant year would be deemed dividend income of assessee and no adjustment was to be made from accumulated profit of lending company on account of advance given by it in earlier years - **Aswani Enterprises v. Assistant Commissioner of Income-tax - [2023] 153 taxmann.com 378 (SC)**

**SECTION 4 OF THE INCOME-TAX ACT, 1961 -
INCOME - CHARGEABLE AS**

- 2.6. **Commission** : Review petition dismissed against Supreme Court's ruling that where assessee-company registered under Registration of companies (Sikkim) Act, 1961 claimed that it would be governed by Sikkim State Income-tax Manual, 1948 and income earned by way of commission on sale of cardamom within Sikkim would not be liable to be taxed under Income-tax Act, 1961, in absence of any material on record that commission was earned only in Gangtok, assessee could not be permitted to say that it was liable to pay tax under Sikkim State Income-tax Manual, 1948 and not under Act, 1961 and impugned claim made by assessee was a clear attempt on part of assessee to wriggle out of clutches of Act, 1961 - **Mansarovar Commercial (P.) Ltd. v. Commissioner of Income tax - [2023] 153 taxmann.com 645 (SC)**

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

- 2.7. **Control and management** : Review petition dismissed against Supreme Court's ruling that where assessee-company was registered under Registration of Companies (Sikkim) Act, 1961 but its management and control was wholly with a Delhi based CA firm, High Court had rightly held that Assessing Officer at New Delhi was having jurisdiction to issue notice under Income-tax Act, 1961 - **Mansarovar Commercial (P.) Ltd. v. Commissioner of Income tax - [2023] 153 taxmann.com 645 (SC)**

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

- 2.8. **Permanent Establishment - Fixed PE, Place of business** : Where assessee, US based company, provided online airline booking services and had PE in India and Tribunal held that only 15 per cent of income was to be attributed to assessee's Indian operations, since Tribunal arrived at said quantum of revenue on basis of FAR analysis and held that no further income was taxable in India as commission paid to Indian distributors was more than amount attributed to operations carried out in India, order of Tribunal did not call for interference - **Travelport L.P. USA v. Commissioner of Income-tax (International Taxation) - [2023] 154 taxmann.com 96 (SC)**
- 2.9. **Elimination of Double Taxation - Eligibility of relief** : Where assessee, cooperative society registered in India, received dividend income from its JV which was registered as company under Omani laws, since assessee established a branch office which was treated as PE to invest in JV, assessee was aiding to promote economic development within Oman and achieve object of Article 8 (bis) and thus, Article 8(bis) exempts dividend tax received by assessee from its PE in Oman and by virtue of Article 25, assessee would be entitled to same tax treatment in India as it received in Oman - **Principal**

Commissioner of Income-tax-10 v. Krishak Bharti Cooperative Ltd. - [2023] 154 taxmann.com 318 (SC)

2.10. **Royalties/Fee for technical services - Advertisement service** : Notice issued in SLP against High Court's order that payments received by assessee, US company, from its Indian customers on account of centralized services viz. sales and marketing, loyalty programs, reservation service, technological service, operational services and training programs/human resources being incidental to main service did not constitute 'Fee for Technical Services' as defined under section 9(1)(vii) or 'Fee for included services' as defined under articles 12(4)(a) of Indo-US DTAA - **Commissioner of Income-tax v. Westin Hotel Management LP - [2023] 153 taxmann.com 404 (SC)**

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

- 2.11. **Oil wells** : SLP dismissed against order of High Court that oil wells constitute 'Plant' for purpose of section 32 and same would be eligible for depreciation as plant & machinery - **Commissioner of Income-tax (International Taxation) v. Joshi Technologies International Inc. - [2023] 153 taxmann.com 711 (SC)**

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

- 2.12. **Inspection and survey expenses** : SLP dismissed against order of High Court that where assessee, an insurance company, claimed inspection and survey charges, however, there was evidence only with respect to part of claim in relation to inspection charges, restriction of disallowance of inspection and survey charges to 25 per cent was justified - **Principal Commissioner of Income-tax v. Bajaj Alliance General Insurance Co. Ltd. - [2023] 153 taxmann.com 679 (SC)**
- 2.13. **Security deposit** : SLP dismissed against impugned order of High Court that where assessee paid security deposit as per lease agreement for a property and later agreed to not claim refund of said deposit to resolve dispute with lessor, since character of security deposit was capital in nature, same could not be treated as revenue expenditure merely because it was paid in course of dispute - **MahleAnand Filter Systems (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 153 taxmann.com 140 (SC)**

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

- 2.14. **Accommodation entries** : SLP dismissed against impugned order of High Court that where Show Cause Notice under section 148A(b) and impugned order under section 148 were passed on ground that assessee failed to establish genuineness of purchase of shares from one MS which was involved in providing accommodation entries, contention of assessee that proceedings were initiated on wrong assumption that assessee had claimed LTCG on sale of said shares being disputed questions of facts, could not be adjudicated by a writ Court exercising jurisdiction under article 226 of Constitution - **Seema Gupta v. Income-tax Officer - [2023] 153**

taxmann.com 583 (SC)

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

2.15. Reassessment : SLP dismissed against order of High Court that where AO issued reopening notice upon assessee on ground that assessee had failed to satisfactorily explain source of cash deposit of Rs. 12.50 lakhs made by it in its 'PN' bank account, since said cash deposit was not adjudicated upon during original scrutiny proceedings and moreover in tax returns assessee had not mentioned detail of said cash deposited, impugned reopening notice was justified - *Sunil Jain v. Income-tax Department* - [2023] 154 *taxmann.com 14 (SC)*

2.16. Share dealings : SLP dismissed against order of High Court that where AO disallowed exemption claimed by assessee under section 10(38) and made additions, alleging involvement in penny stock which were being misused for providing bogus accommodation of LTCG, however, there was lack of adverse comments from stock exchange and officials of company involved in these transactions and no material relating to assessee was found in investigation wing report, additions made by AO had rightly been deleted - *Principal Commissioner of Income-tax v. Renu Aggarwal* - [2023] 153 *taxmann.com 579 (SC)*

2.17. Additions to income : SLP dismissed against order of High Court that where TDS certificates and 26AS statements all taken together revealed that three companies had made payments to assessee during financial year 2010-11 and assessee did not produce any contrary evidence to that despite notice to him by Assessing Officer, Commissioner rightly concluded that there was no apparent reason to doubt payments made to assessee and dismissed revision petition - *Amresh Kumar v. Principal Commissioner of Income-tax* - [2023] 154 *taxmann.com 222 (SC)*

SECTION 69C OF THE INCOME-TAX ACT, 1961 - REVISION - OF ORDERS PREJUDICIAL TO INTERESTS OF REVENUE

2.18. SLP dismissed against impugned order of High Court that where AO made addition of 2 per cent to gross profit over and above rate of gross profit of 4.63 per cent and passed assessment order, since assessee produced all necessary details of purchase, sales, audited books of accounts, quantity details and no discrepancy was found between purchase shown by assessee and sales declined, Tribunal was right in holding that AO had taken one possible view out of two assumption and assumption of jurisdiction by Principal Commissioner under section 263 was erroneous - *Principal Commissioner of Income-tax v. Pramod Kumar Tekriwal* - [2023] 154 *taxmann.com 142 (SC)*

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

2.19. Deduction u/s 80P can't be denied u/s 80P(4) unless co-op. society is a co-op. bank within the meaning of sections 5(b) and 56 of BR Act, 1949 - *Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer* - [2023] 154 *taxmann.com 305 (SC)*

2.20. Illustrations: Notice issued in SLP against High Court's order that assessee-Rural Development Bank, established under Regional Rural Banks Act, 1976, was entitled for exemption under section 80P(2)(a)(i) - *Principal Commissioner of Income-tax v. Baroda Uttar Pradesh Gramin Bank* - [2023] 153 *taxmann.com 375 (SC)*

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

2.21. Scope of provision : Determination of ALP by Tribunal can be subjected to scrutiny by High Court in an appeal under section 260A - *Principal Commissioner of Income-tax v. Warburg Pincus India (P.) Ltd.* - [2023] 153 *taxmann.com 575 (SC)*

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

2.22. Omission of sub-section (9) : Where matter had been remitted to AO in order to give an opportunity to assessee of being heard, SLP touching upon constitutional validity of section 144-B(9) as well as exercise of jurisdiction under Section 143(2) was to be dismissed against impugned order of High Court wherein it was held that section 144B being a procedural statute, no right much less substantive right can be said to have been conferred by sub-section (9) of section 144B upon taxpayer which provided for proceeding of assessment being non-est if not made in accordance with procedure laid down under section 144B and, thus, challenge to amendment brought by Finance Act, 2022 in omission of sub-section (9) of section 144B cannot be sustained - *Sapna Flour Mills Ltd. v. Union of India* - [2023] 154 *taxmann.com 275 (SC)*

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

2.23. Period of limitation : SLP dismissed against impugned order of High Court that where impugned reassessment notice under section 148 had been issued beyond period of limitation after expiry of relevant assessment year, impugned notice and consequential notices were to be quashed and set aside - *Income-tax Officer v. Tapan Kumar Ghadei* - [2023] 153 *taxmann.com 577 (SC)*

SECTION 183 OF THE FINANCE ACT, 2016 - INCOME DECLARATION SCHEME, 2016

2.24. Advance tax payment : Notice issued in SLP filed against order of High Court that where assessee (declarant) filed a declaration under Income Declaration Scheme, 2016 declaring certain undisclosed income relating to assessment years 2011-12 to 2014-15, advance tax payment made by assessee during said assessment years would retain character of tax and same could be adjusted against liability under Scheme and assessee would be entitled to and given credit for advance tax already paid - *Principal Commissioner of Income-tax v.*

KamlaChandrasinghKabali - [2023] 154 taxmann.com 362 (SC)

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

2.25. Statutory levy : Review petition dismissed against Supreme Court's ruling that interest under section 234A for default in furnishing return of income is statutory interest leviable and payable and is mandatory and automatic - **Mansarovar Commercial (P.) Ltd. v. Commissioner of Income tax - [2023] 153 taxmann.com 645 (SC)**

SECTION 245C OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - APPLICATION FOR SETTLEMENT OF CASES

2.26. General : SLP dismissed against order of High Court that Settlement Commission is empowered to declare an application as invalid on ground of failure to make true and full disclosure; where Settlement Commission, after perusing report of Principal Commissioner submitted under sub-section (2B) of section 245D had recorded reasons to come to conclusion that there was no true and full disclosure as required under section 245C (1), there could be no scope for any interference under article 226 of Constitution - **MaaMahamaya Industries Ltd. v. Income Tax Settlement Commission - [2023] 153 taxmann.com 296 (SC)**

2.27. There is no bar on declaring income discovered by AO in settlement application made to Settlement Commission - **Kotak Mahindra Bank Ltd. v. Commissioner of Income-tax - [2023] 154 taxmann.com 545 (SC)**

SECTION 260A OF THE INCOME-TAX ACT, 1961 - HIGH COURT – APPEALS TO

2.28. Condonation of delay : Where revenue did not delay in filing appeals before High Court but it delayed in refiling, in such circumstances, High Court ought to have condoned said delay in refiling and heard appeals on merits rather than dismissing same - **Commissioner of Income-tax (Central) v. Surya Vinayaka Industries Ltd. - [2023] 153 taxmann.com 677 (SC)**

2.29. Substantial question of law : Where High Court did not formulate any substantial question of law at time of admitting appeal, rather appeal was heard on merits and in absence of formulating substantial question of law appeal was reserved for judgment, procedure adopted by High Court was not in consonance with what is contemplated under section 260A and hence, impugned judgment was to be set aside - **Bikram Singh v. Principal Commissioner of Income-tax - [2023] 154 taxmann.com 80 (SC)**

2.30. Limitation period : Where there was a delay of 1110 days in refiling of appeals, if substantial questions of law were of significance High Court ought to have condoned delay and considered appeals on merits - **Director of Income-tax (International Taxation) v. Western Union**

Financial Services Inc. - [2023] 153 taxmann.com 704 (SC)

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

2.31. Legitimate claim, rejection of : Notice issued in SLP against High Court's order that where assessee-Rural Development Bank made a legitimate claim for exemption under section 80P(2)(a)(i) which was purely legal in nature, rejection of such a claim, would not warrant penalty under section 271(1)(c) - **Principal Commissioner of Income-tax v. Baroda Uttar Pradesh Gramin Bank - [2023] 153 taxmann.com 375 (SC)**

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

2.32. Reasonable cause : No penalty under section 271D for dealing in cash deposits as assessee-mutual benefit company dealt with rural dweller and there was difficulty in mobilising deposits - **Commissioner of Income-tax v. Sahara India Mutual Benefit Co. Ltd. - [2023] 153 taxmann.com 405 (SC)**

3. HIGH COURT

SECTION 3 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 - AMOUNT PAYABLE BY DECLARANT

- 3.1. **Time and manner of payment** : Where assessee opted for Vivad se Vishwas Scheme and was directed to pay Rs. 1 Crore by 30-9-2021, since bank account of assessee was attached by Income tax department and revenue appropriated Rs. 93 lakhs by encashing cheques, there would be no justification in recovering amount in excess of balance amount which was to be paid by assessee on or before 30-09-2021 - **Ramesh Pejathaya v. Central Board of Direct Taxes Department of Revenue - [2023] 154 taxmann.com 69 (Madras)**

SECTION 4 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 - FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED

- 3.2. **Revision** : Where upon perusal of appeal memo, it was evident that matter in issue before Commissioner(Appeals) which was sought to be brought to rest by opting for benefit of Direct Tax Vivad se Vishwas Scheme was in context of same issue which revenue sought to invoke by issuing notice under section 263, notice so issued was to be quashed and set aside - **Amitkumar Chandulal Rajani v. Principal Commissioner of Income-tax - [2023] 154 taxmann.com 240 (Gujarat)**

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

- 3.3. **Permanent establishment - Others** : Where AWS India made payments a reseller fee to AWS USA for purchase of web services and for purpose of reselling same to its customers a reseller fee and claimed that reseller fees paid by it was not chargeable to tax as AWS USA did not have any permanent establishment in India but Assessing Officer concluded that AWS USA had significant infrastructural assets (data centres) in India, which constituted its PE and accordingly directed AWS India to withhold 16 per cent of remittance on account of reseller fee paid to AWS USA, since Assessing Officer had decided AWS India's application based on information in public domain and on basis of certain assumptions which were ex-facie erroneous, it would be apt that AWS India would withhold 8 per cent of payments to AWS USA, for period in question and deposit same with revenue authorities - **Amazon Web Services India (P.) Ltd. v. Income-tax Officer - [2023] 154 taxmann.com 230 (Delhi)**
- 3.4. **Royalty/FTS - Telecom Service** : Where assessee, UK based company, provided telephone connectivity services to its Indian customers and received payment in respect of same, since assessee did not provide any

technical knowledge, skill etc. to its customers and neither by rendering connectivity services it enabled its Indian customers to apply technology used by it and moreover, there was no human intervention in rendering said service, said payments could not be characterised as fees for technical services as per provisions of section 9 and article 13 of India-United Kingdom DTAA - **Commissioner of Income-tax v. Interoute Communications Ltd. - [2023] 153 taxmann.com 392 (Bombay)**

- 3.5. **Permanent establishment - General** : Where assessee, Singapore based company, entered into an agreement with an Indian company for providing Jack up drilling Unit and platform Well operations, period when rig had entered Indian waters and it was undergoing fabrication, upgradation and positioning for drilling activity to be included to compute period of 183 days to determine PE in India and since number of days of deployment of rig was more than 183 days, it could be said that PE was there in connection with exploration, exploitation or extraction of mineral oils - **Deep Drilling 1 Pte. Ltd. v. Deputy Commissioner of Income-tax (International Taxation) - [2023] 153 taxmann.com 377 (Bombay)**

SECTION 10(26) OF THE INCOME-TAX ACT, 1961 - SCHEDULE TRIBES

- 3.6. **Illustrations** : Where assessee who were close relatives and running a partnership firms had claimed exemption from income tax under section 10(26), in view of decision of CIT v. Mahari & Sons [1993] 67 Taxman 449/[1992] 195 ITR 630 (Gau), since Tribunal in a cavalier manner concluded that law enunciated in Mahari & Sons (supra) was no longer valid without covering entire gamut of discussion possible on issue despite recognition of wide ambit of what could be called family business in Mahari & Sons, matter would be remanded back to Tribunal for fresh decision - **RiKynjai Serenity v. Principal Commissioner of Income-tax - [2023] 153 taxmann.com 397 (Meghalaya)**

SECTION 10(46) OF THE INCOME-TAX ACT, 1961 - BODY, AUTHORITY, BOARD, ETC., CONSTITUTED FOR BENEFIT OF GENERAL PUBLIC

- 3.7. **General** : Where assessee filed an application claiming that benefit of provisions of section 10(46) issued to it for assessment years 2014-15 to 2018-19 be extended to assessment years 2019-20 to 2023-24 also, concerned authority was to be directed to dispose of said application bearing in mind Notification No. S.O. 4684 (E) dated 24-12-2020, which was issued qua assessee, with regard to assessment years 2014-15 to 2018-19 - **Yamuna Expressway Industrial Development Authority v. Union of India - [2023] 154 taxmann.com 287 (Delhi)**

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

- 3.8. **Illustrations** : Where Assessing Officer denied exemption under section 11 to assessee, an educational charitable trust, for assessment years 2020-21 and 2021-22 on account

of delay in filing of returns of income as well as audit report in Form No. 10B, since during relevant period, when country was under first and second wave of Covid-19 pandemic, managing trustee was admitted in hospital and later died, delay in filing returns was not wilful and thus, matter was to be remitted back to pass a fresh order - **PonnaiyahRamajayam Institute of Science and Technology Trust v. Assistant Commissioner of Income-tax (Exemptions)** - [2023] 154 taxmann.com 179 (Madras)

SECTION 12AA OF THE INCOME-TAX ACT, 1961 - APPLICATION FOR REGISTRATION OF CHARITABLE TRUST

3.9. **Future event** : Where assessee-association was formed with an object to promote game of tennis and other sporting activities, its application for registration under section 12AA could not be rejected on ground that as assessee was looking to raise funds from sponsors and donors, huge amount of commercial consideration would take effect by way of advertisement, ticket selling, having broadcasting right over game, etc. - **Commissioner of Income-tax v. Cuttack District Tennis Association** - [2023] 153 taxmann.com 395 (Orissa)

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

3.10. Where AO made disallowance of expenditure under section 14A by invoking rule 8D, since AO did not examine even a shred of accounts of assessee before making such disallowance, impugned disallowance made ignoring version of assessee that being a cash rich company, it did not have to deploy any person by way of any special effort which could be treated as expenditure to earn exempted income was unjustified - **Principal Commissioner of Income-tax - 7 v. Security Printing and Mining Corporation of India Ltd.** - [2023] 154 taxmann.com 554 (Delhi)

3.11. **Scope of provision** : Where assessee offered suo moto disallowance under section 14A at Rs. 20.13 lacs and Assessing Officer determined same at Rs. 33.42 lacs, since no satisfaction for not accepting suo moto disallowance was recorded by Assessing Officer, Tribunal was justified in accepting suo moto disallowance as offered by assessee - **Principal Commissioner of Income-tax v. Nestle India Ltd.** - [2023] 153 taxmann.com 150 (Delhi)

SECTION 22 OF THE INCOME-TAX ACT, 1961 - INCOME FROM HOUSE PROPERTY - CHARGEABLE AS

3.12. **Principle of mutuality** : Where assessee a recreational club received certain sum as rent from a corporate member of club, for occupation of a portion of club premises, since subject transaction pointed towards applicability of principle of mutuality which was not taken into

consideration by lower authorities, matter would be remanded back to Tribunal for fresh decision by taking into account all disclosures of facts made before adjudicating authorities - **Saturday Club Ltd. v. Principal Commissioner of Income-tax** - [2023] 153 taxmann.com 370 (Calcutta)

SECTION 24 OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 - ATTACHMENT OF PROPERTY - NOTICE FOR

3.13. **Writ remedy** : Where revenue issued show-cause notice to petitioner under section 24 of Prohibition of Benami Property Transactions Act, 1988 and petitioners without replying to said notice filed writ petition challenging show-cause notice, said notice could not be interfered at this stage, however time to file objection/response to aforesaid impugned show-cause notice was extended by a period of two weeks - **Aachman Marketing (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 153 taxmann.com 299 (Calcutta)

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

3.14. **Reassessment** : Where a reopening notice was issued on ground that assessee had filed return as sole proprietor, however, mentioned PAN of erstwhile partnership firm in which it was partner and whose business was taken over by assessee as sole proprietor, since assessee had filed an additional affidavit supported with plethora of documents to show that it was a bona fide mistake and it was not a case of deliberate concealment of facts, impugned notice under section 148A(b) and further order under section 148A(d) and notice under section 148 issued upon assessee were to be set aside - **RajinderNath Kapoor v. Income-tax Officer** - [2023] 153 taxmann.com 499 (Delhi)

3.15. **Illustrations** : Where assessee was engaged in job work on flat sheets/pattes and Assessing Officer having found that assessee had been receiving rolling charges and amount shown in seized document was not recorded in account books calculated rolling charges at certain amount and made addition, since assessee could not produce any material to prove that expenses which were shown to be incurred in respect of job work charges and received from various parties as per entries made in seized documents were recorded in account books, assessee was not entitled to deduction of such expenses - **Kanahaya Metal Works v. Commissioner of Income-tax (Appeals)** - [2023] 153 taxmann.com 747 (Punjab & Haryana)

3.16. **Illustrations** : Where assessee was engaged in job work on flat sheets/pattes and Assessing Officer on basis of a document seized during search from assessee made addition on account of rolling charges received outside account books, since no material was brought on record by assessee to explain that expenditure shown to have been incurred by it as per entries made in seized document was recorded in account books, no deduction on account of such expenses to be allowed - **Kanahaya Metal Works v. Commissioner of Income-tax (Appeals)** - [2023] 153 taxmann.com 747 (Punjab & Haryana)

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

3.17. Brand names : Assessee's claim of depreciation on brand names used for its paper manufacturing business would be allowable as brand names certainly invest in owner commercial rights, and therefore, will fall within scope of intangible assets, which are amenable to depreciation under section 32(1)(ii) - **Principal Commissioner of Income-tax v. Kuantum Papers Ltd.** - [2023] 154 taxmann.com 255 (Delhi)

3.18. Scope of provision : Where assessee claimed depreciation on energy saving and pollution control devices, since said assets were purchased by assessee and were installed, assessee was entitled to depreciation - **Principal Commissioner of Income-tax v. Nestle India Ltd.** - [2023] 153 taxmann.com 150 (Delhi)

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

3.19. Reassessment : Where assessee had advanced loan to its sister concern as a measure of commercial expediency by using borrowed funds, interest on such borrowed funds was to be allowed as deduction under section 36(1)(iii), hence, reopening of assessment on ground that interest claimed on borrowed capital was not allowable under section 36(1)(iii) was not justified - **Vaman Prestressing Co. (P.) Ltd. v. Additional Commissioner of Income-tax, Range 2(3), Mumbai** - [2023] 154 taxmann.com 325 (Bombay)

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

3.20. Subscription fee : Where assessee incurred expenses towards subscription of Microsoft licenses, since software license fee was paid annually and once payment was for a fixed period, same would be allowed as revenue expenditure - **CGI Information Systems and Management Consultants (P.) Ltd. v. Income-tax Officer** - [2023] 153 taxmann.com 527 (Karnataka)

3.21. Salary provisions : Where provision made by assessee in respect of payment to be made to employees being ascertained liabilities as on date of closure of books of account i.e., on 31st March, same was an allowable expenditure - **CGI Information Systems and Management Consultants (P.) Ltd. v. Income-tax Officer** - [2023] 153 taxmann.com 527 (Karnataka)

3.22. CSR expenditure : Where a reopening notice was issued for A.Y 2013-14 on ground that entire expenditure claimed by assessee during year was CSR expenditure and disallowed it by placing reliance on Explanation 2 to section 37(1), since there was no failure on part of assessee to disclose fully and truly all relevant details, and further, provision of Explanation 2 to section 37(1) inserted with effect from 1st April 2015 operates prospectively

from assessment year 2015-16, impugned reopening notice was unjustified - **Maharashtra State Power Generation Co. Ltd. v. Assistant Commissioner of Income-tax Mum** - [2023] 153 taxmann.com 505 (Bombay)

3.23. Warehouse rent expenses : Where assessee claimed deduction towards warehouse rent expenditure and in support of such expenditure filed relevant bills and invoices along with cheques, and further, recipient party had already paid due tax thereon, disallowance of said expenditure was unjustified - **Principal Commissioner of Income-tax v. Arvind V. Joshi and Co.** - [2023] 153 taxmann.com 394 (Gujarat)

3.24. Repair and maintenance expenses : Where assessee claimed expenses towards repair and maintenance, since there was no credible or positive evidence available with Assessing Officer to raise any doubt about genuineness of transactions and corresponding payment made in relation to repairs and maintenance expenses, and further assessee had duly explained requirement of such repairs and maintenance, impugned disallowance of such expenses was to be deleted - **Principal Commissioner of Income-tax v. Arvind V. Joshi and Co.** - [2023] 153 taxmann.com 394 (Gujarat)

3.25. Reassessment : Where assessee claimed expenses of software consumables and submitted a detailed break-up of said expenses during course of assessment proceedings and AO after considering said submissions passed assessment order, AO would not have any power to review his own assessment order and reopening of assessment on ground that software consumables were capital expenditure which would not be allowable under section 37(1) was a mere change of opinion - **Siemens Financial Services (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com 159 (Bombay)

3.26. License fee : License fee is allowable as a deduction - **Principal Commissioner of Income-tax v. Nestle India Ltd.** - [2023] 153 taxmann.com 150 (Delhi)

3.27. Line/bay charges : Amount paid by assessee-company to State Electricity Board towards line/bay charges was to be allowed as revenue expenditure - **Commissioner of Income-tax v. Verdhman Textiles Ltd.** - [2023] 153 taxmann.com 141 (Punjab & Haryana)

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

3.28. Commercial expediency : Where assessee had received services from a company TACL in respect of which payment had been made as per documentary evidence on record and moreover said payment was adjudged on principle of commercial expediency, no disallowance could be made in respect of such payment under section 40A(2) - **Principal Commissioner of Income-tax v. Nippon Leakless Talbros (P.) Ltd.** - [2023] 153 taxmann.com 279 (Punjab & Haryana)

**SECTION 44AB OF THE INCOME-TAX ACT, 1961 -
AUDIT COMPULSORY**

3.29. UDIN in tax audit reports : Tax Audit Reports are mandatorily required to have Unique Document Identification Number (UDIN); Where tax audit report submitted by assessee in connection with a tender did not have UDIN, rejection of technical bids was completely justified - **Patelpurta Agro Farm v. State of Uttarakhand** - [2023] 153 taxmann.com 153 (Uttarakhand)

SECTION 50C OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SPECIAL PROVISION FOR COMPUTATION OF FULL VALUE CONSIDERATION

3.30. Reassessment : Where capital gains were calculated by assessee by taking circle rate into account, provisions of section 50C were not applicable - **Manujendra Shah v. Commissioner of Income-tax** - [2023] 154 taxmann.com 182 (Delhi)

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

3.31. Gifts : Section 56(2)(vii)(c) cannot be invoked in respect of additional shares received by assessee on account of renunciation of rights issue by assessee's wife and father in favour of assessee, since wife/father fall within definition of 'relatives', which are excluded from purview of operation of section 56(2)(vii)(c) - **Principal Commissioner of Income-tax-1, Ahmedabad v. Jigar Jashwantlal Shah** - [2023] 154 taxmann.com 568 (Gujarat)

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

3.32. Share capital and share premium : Where assessment was sought to be reopened in case of assessee on ground that information from investigation wing revealed that assessee had entered into bogus transactions in form of receipt of share premium, however, upon a bare perusal of balance sheet it was found that there was no transaction which would show a live link or nexus with alleged transaction of receipt of share premium as alleged by Assessing Officer, reopening of assessment being a clear case of change of opinion was not justified - **Welcome Plywood (P.) Ltd. v. Income-tax Officer** - [2023] 153 taxmann.com 285 (Bombay)

3.33. Loans : Where assessment was sought to be reopened in case of assessee on ground that AO had received information from investigation wing that assessee had raised a loan from KG Group, through TTPL and POCPL, which were dubious entities, however, there was no reference to how Assessing Officer had, at that juncture, formed a view that they were dubious entities, Tribunal rightly held that AO had proceeded in a mechanical

manner, without independent application of mind - **Commissioner of Income-tax v. Spirit Global Construction**

(P.) Ltd. - [2023] 153 taxmann.com 641 (Delhi)

3.34. Stay of demand : Where assessee against addition made under section 68 preferred appeal and also applied for stay and Assessing Officer by a letter directed assessee to pay 20 per cent of outstanding demand since stay application was not considered for order being made under sub-section (6) of section 220, Assessing Officer was to be directed to consider stay application and pass order under provision in sub-section (6) of section 220 - **Legend Steel (P.) Ltd. v. Union of India** - [2023] 153 taxmann.com 502 (Orissa)

3.35. Reassessment : Where a company was amalgamated with assessee company and fact of amalgamation was intimated to authority, impugned reopening notice issued in name of erstwhile company was unjustified and same was to be set aside - **Roquette India (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 153 taxmann.com 347 (Gujarat)

3.36. Share application money : Where assessee were part of 'P' group of companies, which was subject to search operations, during which director of flagship company admitted that group of companies earned unaccounted income which was routed as bogus share capital, however, fact that undisclosed income had already been surrendered to tax by flagship company and settled by order of Income-tax Settlement Commission, it could not again be subjected to tax in hands of assessee companies in form of application of said income as their share capital - **Principal Commissioner of Income-tax, Central-1 v. Surya Agrotech Infrastructure Ltd.** - [2023] 154 taxmann.com 156 (Delhi)

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

3.37. Opportunity of hearing : Where Assessing Officer issued a notice under section 148A(b) to assessee for reason that a sum of Rs. 1.80 crores had escaped assessment on account of transaction in property and in order passed under section 148A(d) he had added new reasons and assessee had not been given opportunity to explain same, impugned order passed under section 148A(d) deserved to be set aside - **Packirisamy Senthilkumar v. Government of India.** - [2023] 153 taxmann.com 640 (Madras)

3.38. Reassessment : Where a reopening notice under section 148A(b) was issued upon assessee on ground that assessee had taken an accommodation entry of certain amount through an entry provider in respect of shares of two companies, since there was misalignment in allegation made in reopening notice and case related information details (CRID) furnished to assessee, impugned notice issued and further order passed under section 148A(d) along with notice under section 148 were to be set aside - **Rachna Gupta v. Income-tax Officer** - [2023] 153 taxmann.com 464 (Delhi)

3.39. Closing stock : Where quantum of closing stock shown by assessee in its books of account was higher than amount of closing stock worked out by AO, such closing stock could not be said to be unexplained investment of assessee, and hence, addition under section 69 on

account of excess stock could not be **sustained** - **Pavan Kumar Agarwal v. Deputy Commissioner of Income-tax** - [2023] 153 taxmann.com 531 (Telangana)

- 3.40. Construction of house property** : Where assessee had submitted source of investment in construction of house property and total figure explained as source of said investment was much higher than alleged unexplained investment in house property, impugned addition under section 69 made on account of such investment was to be set aside - **Pavan Kumar Agarwal v. Deputy Commissioner of Income-tax** - [2023] 153 taxmann.com 531 (Telangana)

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

- 3.41. Writ remedy** : Where notice issued to assessee under section 148A(b) was based upon report of Investigation Wing that dividend claimed to have received by assessee was a sham transaction and copy of said report had been provided to assessee, impugned order passed under section 148A holding that it was a fit case for issue of notice under section 148 did not suffer from vice of total non-application of mind or violation of principles of natural justice requiring interference in writ jurisdiction - **Anju Singh v. Chief Commissioner of Income-tax** - [2023] 154 taxmann.com 191 (Patna)
- 3.42. Illustrations** : Where there was no material which could lead to conclusion that assessee was in practice of charging on-money for sale of flats/units, addition made on account of on-money was to be deleted - **Principal Commissioner of Income-tax v. Shri Pushkar Construction Co.** - [2023] 154 taxmann.com 22 (Gujarat)
- 3.43. Reassessment** : Where Assessing Officer issued notice under section 148A(b) for assessment year 2019-20 on 23-5-2022, same could not be declared as being untenable in law, since limitation qua assessment year 2019-20 would have expired only on 31-3-2023, however, Assessing Officer was required to consider fact that proceedings on very same aspects had been dropped in for past assessment years - **Hydrocarbons Education and Research Society v. Assistant Commissioner of Income-tax** - [2023] 153 taxmann.com 690 (Delhi)

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

- 3.44. Land** : Where Assessing Officer based on signed "SaudaChithhi" found in search of assessee's premises made addition in respect of unaccounted transactions of land carried out by assessee, since land in question was not transferred to any person, Tribunal rightly treated said document as a dumb document and deleted addition - **Principal Commissioner of Income-tax (Central) v. PrabodhchandraJayantilal Patel** - [2023] 153 taxmann.com 302 (Gujarat)

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

- 3.45. Bogus purchases** : Where assessee-firm was engaged in business of importing oil in bulk, packing same in different packs and selling these packs and AO made additions on basis of statement of partner in assessee-firm wherein he admitted to bogus purchases of packing materials, since Commissioner (Appeals) in his order stated that there was no question of any purchase made by assessee to be termed as bogus as AO himself verified consumption of packing material with sales, there was no reason for Commissioner (Appeals) to conclude that 7 per cent of total purchase was to be disallowed - **Principal Commissioner of Income-tax v. Yog Oil Traders** - [2023] 153 taxmann.com 386 (Bombay)
- 3.46. Reassessment** : Where a notice under section 148 was issued to assessee on ground that assessee claimed certain expenses which were not allowable, since such expenses were not incorporated in show cause notice and moreover assessee had no occasion to file reply on that effect, notice issued under section 148 deserved to be quashed - **Shashank Garg v. Income-tax Officer** - [2023] 153 taxmann.com 371 (Punjab & Haryana)
- 3.47. Bogus purchases** : Where assessment was ought to be reopened in case of assessee on ground that a search conducted at DSC Group of Companies revealed bogus purchases made by assessee through unexplained sources, since reasons recorded by AO did not make specific allegations of failure to disclose all material facts by assessee, jurisdictional ingredients for reopening assessment provided in first proviso to section 147 were absent, both in form and substance and, thus, proceedings were bad in law - **Principal Commissioner of Income-tax, Central-11 v. DSC Ltd.** - [2023] 153 taxmann.com 535 (Delhi)
- 3.48. Bogus purchases** : Where Assessing Officer added entire amount of purchases to income of assessee on ground that same were bogus purchases, since it was not disputed that purchases were actually made and payments for same were made through account payee cheque and further, assessee had already declared 7.5 per cent as gross profit, Tribunal was justified in restricting addition to 8 per cent of gross profit on impugned purchase transactions - **Principal Commissioner of Income-tax v. Hiren C. Parekh** - [2023] 153 taxmann.com 470 (Bombay)
- 3.49. Illustrations** : Where Assessing Officer on basis of a document seized during search from assessee made addition on account of purchases shown by assessee by invoking provisions of section 69C, since explanation offered by assessee that addition did not pertain to year under scrutiny and some of amount shown in seized document related to purchases made by its sister concern had not been found to be satisfactory by lower authorities, under provisions of section 69C such amount will be deemed to be income of assessee for relevant assessment year - **Kanahaya Metal Works v. Commissioner of Income-tax (Appeals)** - [2023] 153 taxmann.com 747 (Punjab & Haryana)

3.50. Bogus purchases : Where Assessing Officer treated purchases made by assessee as bogus and made addition in respect of same, since assessee had maintained inventory of stock and payments for such purchases were made by account payee cheques and tax invoices were obtained, such purchases could not be rejected and addition to be restricted to extent of profit element - **Principal Commissioner of Income-tax v. Tirupati Earth Neerprima JV - [2023] 154 taxmann.com 197 (Bombay)**

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

3.51. Conditions precedent : Where Assessing Officer disallowed claim of deduction under section 80-IA(4)(iii), primarily on basis of letter from Under Secretary, Ministry of Commerce and Industry stating that assessee was not eligible for said deduction, however, assessee had applied for a review of rejection to Empowered Committee and Empowered Committee had reconsidered its earlier rejection and granted approval, Commissioner (Appeals) and Tribunal had rightly allowed claim of deduction made by assessee under section 80-IA(4)(iii) - **Principal Commissioner of Income-tax (Central) v. PunitChettiar alias PunitBalan - [2023] 153 taxmann.com 500 (Bombay)**

SECTION 80-IC OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - SPECIAL PROVISION IN RESPECT OF CERTAIN UNDERTAKINGS OR ENTERPRISES IN CERTAIN SPECIAL CATEGORY STATES

3.52. Computation of deduction : Where assessee filed its return of income claiming deduction under section 80-IC for its Unit IV, which was 7th year of such a claim and 2nd year after substantial expansion, as long as benefit granted under section 80-IC for first year of substantial expansion remained unaltered, Assessing Officer would have no jurisdiction to revisit same issue in subsequent assessment years - **C and E Ltd. v. Principal Commissioner of Income-tax - [2023] 154 taxmann.com 226 (Calcutta)**

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

3.53. Method of elimination of double taxation - Tax credit : Where assessee had paid taxes in USA and Canada notwithstanding section 10A deduction, assessee would be entitled for tax credit - **CGI Information Systems and Management Consultants (P.) Ltd. v. Income-tax Officer - [2023] 153 taxmann.com 527 (Karnataka)**

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

3.54. Adjustments - Consultancy fee : Where assessee entered into international transaction with its AE and made payment to its AE in respect of management consultancy fee, since TPO for assessment years 2008-09, 2009-10 and 2011-12 had accepted transaction of payment of said management fees and same having been made entirely for business consideration, in view of principle of consistency and rule of finality, no addition could be made for assessment year 2010-11 - **Principal Commissioner of Income-tax v. Nippon LeaklessTalbro's (P.) Ltd. - [2023] 153 taxmann.com 279 (Punjab & Haryana)**

3.55. Adjustments - Risk adjustment : Where Tribunal remitted matter to Assessing Officer to allow risk adjustment margin and revenue argued before Court that granting adjustment for risk difference was not permissible under rule 10B(e)(iii), since said issue was not raised before Tribunal appeal filed by revenue was to be dismissed - **Principal Commissioner of Income-tax v. Mahle Behr India Ltd. - [2023] 154 taxmann.com 224 (Bombay)**

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

3.56. Reassessment: When no assessment proceedings were pending in relation to relevant assessment year, Assessing Officer was precluded from making a reference to TPO under section 92CA(1) for purpose of computing arms length price in relation to international transaction - **Principal Commissioner of Income-tax v. Kimberly Clark Lever (P.) Ltd. - [2023] 154 taxmann.com 134 (Bombay)**

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

3.57. Limitation : Where assessment order under section 143(3) was passed on 27-2-2004 and subsequently Assessing Officer passed an order under section 154 on 29-3-2014 by redetermining book profit at higher amount, since order passed in 2004 could not be rectified after a period of 4 years, impugned order passed under section 154 dated 29-3-2014 was barred by limitation - **Principal Commissioner of Income-tax v. Godrej Industries Ltd. - [2023] 153 taxmann.com 529 (Bombay)**

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

3.58. Condonation of delay : Where reasons given by assessee for delay, namely, health problems of Senior Accountant, computer system having got corrupted and heads of accounts being on verge of retirement and heavy rainfall in month of July disrupting routine were genuine and assessee had explained in detail all above reasons for delay in filing return, application filed by assessee under section 119(2)(b) for condonation of delay was to be allowed - **ChintanNavnitlal Parikh (HUF) v. Deputy Secretary (OT and WT) Central Board of Direct Taxes - [2023] 154 taxmann.com 544 (Gujarat)**

3.59. Condonation of delay : Where assessee sought refund of a large amount, refusing to condone delay could result

in a meritorious matter being thrown out at very threshold and cause of justice being defeated and therefore Board was directed to consider prayer for condonation of delay in proper perspective - **R.K. Madhani Prakash Engineers J V v. Union of India** - [2023] 154 taxmann.com 16 (Bombay)

SECTION 142 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - INQUIRY BEFORE ASSESSMENT

3.60. Time limit : Where AO issued notice under section 142(1), requiring assessee to file relevant documents/information for six assessment years within two days, since two days time, was not a practical timeframe, impugned assessment orders passed without granting additional time to assessee as requested were to be set aside - **Pratyaksh Apparels (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 153 taxmann.com 154 (Delhi)

3.61. Service of notice : Where department did not issue notice under section 142(1) on registered Email ID of assessee, all consequential proceedings pursuant to said notice were to be set aside and matter was to be remitted back to revenue and same would be resumed from stage of reply to section 142 (1) notice - **Sterling Urban Ventures P. Ltd. v. Assessment Unit, Income-tax Department, National Faceless Assessment Centre, Delhi** - [2023] 153 taxmann.com 149 (Karnataka)

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - ISSUE OF NOTICE

3.62. Block assessment, in case of : Assessment completed under section 158BC without a notice under section 143(2) cannot be sustained - **Chand Bihari Agrawal v. Commissioner of Income-tax.** - [2023] 154 taxmann.com 245 (Patna)

SECTION 144 OF THE INCOME-TAX ACT, 1961 - BEST JUDGMENT ASSESSMENT

3.63. Bad debts : Where lower authorities passed an order under section 153C read with section 144 observing that no return was available on ITBA portal in response to notice under 153C, since a return of income pursuant to notice issued under section 153C(1) had been filed and an acknowledgment showing an e-filing acknowledgment number was on record, section 144(1)(a) could not apply and no best judgment assessment under section 144 could have been passed - **Ashok Commercial Enterprises v. Assistant Commissioner of Income Taxation, Central Circle-2(4)** - [2023] 154 taxmann.com 144 (Bombay)

3.64. Scope of provision : Where Assessing Officer issued statutory show cause notices to assessee at e-mail address which was not in use, impugned best judgment

assessment order deserved to be set aside - **Bengal & Assam Company Ltd. v. National Faceless Assessment Centre** -

[2023] 154 taxmann.com 130 (Delhi)

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

3.65. Opportunity of hearing : Where department did not accept computation of income filed by assessee for assessment year 2021-22 and issued show cause notice under section 144B read with section 143(2), since assessee e-mailed an adjournment request on Income-tax Department's Portal and sought extension of time but department shutdown window and neither accepted request of assessee nor rejected it, department would be directed to open window portal to enable assessee to submit it's explanation along with documents forthwith - **Shri Venkatesh Refineries Ltd. v. Deputy Commissioner of Income-tax.** - [2023] 153 taxmann.com 289 (Bombay)

3.66. Personal hearing : Where best judgment assessment order was passed in case of petitioner, since petitioner had disclosed series of health issues which he was undergoing, impugned assessment order was to be set aside and revenue was to be directed to re-do assessment after giving opportunity to petitioner - **D.S. Xavier Rajasekaran v. Income-tax Officer** - [2023] 154 taxmann.com 246 (Madras)

3.67. Opportunity of hearing : Where Assessing Officer issued show cause notice-cum-draft assessment order directing assessee to comply with same within next day and assessee filed a response to show-cause notice taking various contentions, however, without considering these objections, revenue on very next day completed assessment proceedings exparte under section 144 read with section 263, therefore, assessment proceedings were to be quashed and set aside and matter was to be remitted to Assessing Officer so as to enable assessee to be heard in light of detailed submissions made by assessee - **Shree Ganesh Intermediary (P.) Ltd. v. National Faceless Assessment Centre** - [2023] 154 taxmann.com 87 (Gujarat)

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

3.68. Eligible assessee : Where objections to draft order had been filed before DRP and directions passed, though at a later point of time, Assessing Officer ought not to have proceeded to pass assessment order and he ought to have waited till directions were passed by DRP - **Open Silicon Research (P.) Ltd. v. Assessment Unit, National Faceless Assessment Centre, Income-tax Department, New Delhi** - [2023] 154 taxmann.com 11 (Karnataka)

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

3.69. Illustrations : Where Assessing Officer on basis of a document seized from partners of assessee-firm assessed gross profit at rate of 8 per cent on sales shown in seized document and made addition and Commissioner (Appeals) assessed gross profit at rate of

2 per cent, since Commissioner (Appeals) had not given any reason for reduction of gross profit rate, Tribunal rightly restored gross profit rate applied by Assessing Officer - **Kanahaya Metal Works v. Commissioner of Income-tax (Appeals)** - [2023] 153 taxmann.com 747 (Punjab & Haryana)

3.70. Non-maintenance of stock : Where assessee did not maintain quality wise stock of rice which resulted in difficulty to ascertain quantity of different qualities of rice, authorities were justified in making addition in absence of such qualitative details - **Mahavir Rice Mills v. Commissioner of Income-tax.** - [2023] 153 taxmann.com 686 (Punjab & Haryana)

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

3.71. Writ remedy : Where assessee filed writ petition challenging notice issued under section 148 on ground of non-existence of reason to believe, since jurisdiction of ITO of initiating proceedings itself was under challenge, writ petition would be maintainable - **Modern Living Solutions (P.) Ltd. v. Income-tax Officer** - [2023] 153 taxmann.com 306 (Bombay)

3.72. Service of notice : Where assessee challenged issuance of notice under section 148 on ground that notice under section 148 had not been issued/served in a manner as contemplated under Act, since records revealed that notice under section 148, had been issued on 30-3-2019 and there was an entry in postal register in support of same confirming completion of service of notice, there was no infirmity in impugned order of assessment both in regard to procedure followed by officer or as far as service of notice was concerned - **Praveen Kumar v. Income-tax Officer** - [2023] 153 taxmann.com 463 (Madras)

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

3.73. Non-existent entity : Where a company was amalgamated with assessee company vide order of NCLT and said fact was duly informed to revenue authorities, issuance of section 148A notice in name of non-existent entity was without jurisdiction; mere activation of PAN in name of amalgamating company may not give right to revenue to issue notice to a non-existent entity - **Delta Electronics India (P.) Ltd. v. Principal Commissioner of Income-tax** - [2023] 154 taxmann.com 603 (Uttarakhand)

3.74. Objections to issuance of notice : Where show-cause notice under section 148A(b) was accompanied by reasons and information which persuaded Assessing Officer to form tentative opinion that income had escaped assessment for relevant year and assessee had also filed a detailed reply

to said notice; it was to be held that impugned order under section 148A(d) and consequential notice under section 148 had been issued/passed after following due process of law - **Amrit Homes (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com 289 (Madhya Pradesh)

3.75. Illustrations : Where Assessing Officer issued on assessee two notices under section 148A(b) for assessment years 2015-16 and 2016-17 and thereafter Assessing Officer on basis of reply submitted by assessee dropped proceedings pertaining to assessment year 2016-17, while vide order dated 31-7-2022 rejected case set up by assessee for assessment year 2015-16, since order dated 31-7-2022 suffered two infirmities, namely, same proceeded on a view inconsistent with earlier order despite facts and circumstances being similar and Assessing Officer did not support subsequent divergent view with reasoning, impugned order and notice under section 148 deserved to be set aside - **Prem Kumar Chopra v. Assistant Commissioner of Income-tax** - [2023] 153 taxmann.com 746 (Delhi)

3.76. Jurisdiction to issue notice : Where case of assessee was transferred from jurisdiction of Income-tax Officer, Chandigarh to Income-tax Officer at New Delhi on 15-3-2022 and said fact was brought to notice of department, impugned notice issued under section 148A(b) on 22-3-2022 by Income-tax Officer, Shimla were unjustified - **Ashok Kumar Sharma v. Principal Commissioner of Income-tax** - [2023] 153 taxmann.com 379 (Himachal Pradesh)

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

3.77. Illustrations : Where revenue issued notice dated 30-6-2021 under section 148A(b) to assessee for assessment year 2014-15 although said notice was dated 30-6-2021, it was dispatched on 16-7-2021 and therefore, it was time-barred, as limitation period expired on 30-6-2021 - **HimanshuInfratech (P.) Ltd. v. Income-tax Officer** - [2023] 153 taxmann.com 522 (Delhi)

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

3.78. Illustrations : Where Assistant Commissioner while issuing notice under section 148 had obtained sanction from specified authority (i.e. PCIT) but specified authority while granting approval under section 151 had selected wrong section 149(1)(b), it could be said that neither issuing authority, i.e. Assistant Commissioner, nor sanctioning authority, i.e., PCIT had applied their mind but have simply issued notice mechanically and thus, notice issued under section 148 was to be quashed - **KartikSureshchandra Gandhi v. Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 193 (Bombay)

3.79. Illustration : TOLA provided for a relaxation of certain provisions of Income-tax Act, 1961, where any time limit for completion or compliance of an action such as

completion of any proceedings or passing of any order or issuance of any notice fell between period 20-3-2020 to 31-12-2020, time limit for completion of such action stood extended to 31-3-2021, thus, TOLA would not affect scope of section 151 and sanction of specified authority would be obtained in accordance with law existing when sanction was obtained which in instant case would be as per amended section 151(ii) - **Siemens Financial Services (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 159 (Bombay)**

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

- 3.80. Condition precedent** : Where an order under section 179 was passed upon deceased assessee raising tax demand from him due against company in which he was a director, since there was nothing to indicate what steps were taken to trace assets of company and no case was made out as required under section 179(1) that tax dues from company could not be recovered, impugned order passed under section 179 upon deceased assessee without giving an opportunity to establish that non-recovery could not be attributable to any of three factors on his part, i.e., gross neglect or misfeasance or breach of duty, was unjustified - **Manjula D. Rita v. Principal Commissioner of Income-tax - [2023] 153 taxmann.com 468 (Bombay)**

SECTION 1194A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES

- 3.81. Payment to statutory corporation** : Jammu Development Authority (JDA) being a corporation established by a State Act is outside purview of section 194A and thus, assessee-bank was not obliged to deduct tax at source under section 194A on payment of interest by it on FDs/deposits made by JDA - **Principal Commissioner of Income-tax v. J&K Bank Ltd. - [2023] 153 taxmann.com 573 (Jammu & Kashmir and Ladakh)**

SECTION 194LA OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - COMPENSATION FOR ACQUISITION OF IMMOVABLE PROPERTY

- 3.82. Non-agricultural land** : In view of second proviso to section 194LA read with section 96 of 2013 Act, no distinction can be made between agricultural land and non-agricultural land and, hence, compensation payable even on account of non-agricultural land would not attract TDS when such compensation is already exempt from income-tax - **Sharanappa v. Deputy Commissioner, Raichur - [2023] 153 taxmann.com 685 (Karnataka)**

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

- 3.83.** Where assessee entered into a foreign technical collaboration agreement with one DAVY, a foreign company, as per which assessee was to receive services in relation to projects outside India and revenue held that income of DAVY was taxable in India and agreed to issue NOC to assessee only if 30 per cent of amount to be remitted was deposited, since later it was confirmed that amount paid to DAVY was not chargeable to tax in India and DAVY's successor addressed its 'no objection' conveying that amount could be refunded to assessee, insistence on assessee to pay that amount was not in accordance with law and amount so paid over must be refunded to assessee - **Grasim Industries Ltd. v. Assistant Commissioner of Income-tax, 6(3) - [2023] 154 taxmann.com 164 (Bombay)**

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

- 3.84. Protective assessment** : Where firm in which assessee was a partner sold a property and protective assessment was made in hands of assessee on account of STCG, since substantive assessment was framed in hands of firm no recovery could be effected on basis of protective assessment and thus impugned demand notice and recovery certificate issued upon assessee to recover amount assessed protectively from assessee were not sustainable in law - **Amarjit Singh Sekhon v. Tax Recovery Officer - [2023] 154 taxmann.com 288 (Punjab & Haryana)**
- 3.85. Stay** : Where assessee filed appeal against assessment orders before Commissioner (Appeals) which was pending, since assessments were high-pitched assessments, recovery proceeding would remain stayed till disposal of appeal by first appellate authority - **Jankalyan Vinimay (P.) Ltd. v. Deputy Commissioner of Income-tax. - [2023] 153 taxmann.com 712 (Calcutta)**

SECTION 240 OF THE INCOME-TAX ACT, 1961 - REFUND - ON APPEAL, ETC.

- 3.86. Effect of order passed on appeal** : Where assessee had paid interest on outstanding amount of penalty and on deletion of penalty, became entitled to refund of amount of penalty paid by assessee as well as interest thereon paid under section 220(2), assessee would be entitled to interest on said amount under provisions of section 244(1A) - **J. K. Industries v. Krishna Sahal Commissioner of Income-tax - [2023] 153 taxmann.com 523 (Bombay)**

SECTION 244 OF THE INCOME-TAX ACT, 1961 - REFUNDS - INTEREST WHERE NO CLAIM IS NEEDED

- 3.87. Relevant year** : Where refunds were due in respect of any assessment year up to 31-3-1989, i.e., assessment year 1988-89, section 244 will apply and from assessment year 1989-90 section 244A will apply - **J. K. Industries v. Krishna Sahal Commissioner of Income-tax - [2023] 153 taxmann.com 523 (Bombay)**

SECTION 244A OF THE INCOME-TAX ACT, 1961 -

REFUNDS - INTEREST ON

- 3.88. Illustrations** : Where it was only in giving effect to Commissioner (Appeal)'s order by Assessing Officer which resulted in refund therefore it could not be stated that proceedings resulting in refund were delayed for reasons attributable to assessee wholly or in part for denying assessee interest under section 244A - **Principal Commissioner of Income-tax v. Bank of Baroda** - [2023] 153 taxmann.com 393 (Bombay)

SECTION 245C OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - APPLICATION FOR SETTLEMENT OF CASES

- 3.89. General** : Where assessee surrendered Rs. 8.00 crores during search but before Settlement Commission she had disclosed an amount of Rs. 1.93 crores, which was substantially less than disclosure made during search and she filed rectification application wherein she further revealed undisclosed receipts amounting to Rs. 1.20 crores for first time, application before Settlement Commission deserved to be rejected as assessee had not made true and full disclosure of her undisclosed income - **Principal Commissioner of Income-tax (Central) v. Union of India** - [2023] 153 taxmann.com 369 (Allahabad)

SECTION 245D OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - PROCEDURE ON APPLICATION UNDER SECTION 245C

- 3.90. Erroneous application** : Where assessee filed applications for settlement of cases under section 245C and complied with provisions of section 245D(2D) by paying additional tax and interest on disclosed income as required, order declaring abatement of assessee's applications was erroneous and contrary to provisions of section 245D(2D) - **Mahesh Gupta v. Income Tax Settlement Commission** - [2023] 153 taxmann.com 646 (Bombay)
- 3.91. General** : Scheme of Chapter XIX-A does not contemplate revision of income so disclosed in settlement application and assessee cannot be permitted to resile from his stand at any stage of proceedings - **Principal Commissioner of Income-tax (Central) v. Union of India** - [2023] 153 taxmann.com 369 (Allahabad)
- 3.92. Rectification of Order** : Where rectification application was filed beyond period of six months stipulated in section 245D(6B), Commission was right in rejecting said application as barred by limitation - **Principal Commissioner of Income-tax v. Goldsukh Developers (P.) Ltd.** - [2023] 153 taxmann.com 462 (Bombay)

SECTION 250 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER

- 3.93. Appeals** : Where appeal filed by assessee before

Commissioner (Appeals) against assessment order was pending and in meanwhile, notice under section 226(3) was issued by Assessing Officer to Branch Manager of bank for attachment of bank account of assessee, Commissioner(Appeals) was to be directed to take on board appeal filed by assessee and dispose of same expeditiously - **Venkat Rao Paleti v. Commissioner of Income-tax. (Appeals)** - [2023] 153 taxmann.com 284 (TELANGANA)

SECTION 260A OF THE INCOME-TAX ACT, 1961 - HIGH COURT, APPEALS TO

- 3.94. Power of review** : Where mistakes pointed out by assessee were based upon drawing inferences upon facts which were not in dispute and failed to point out any mistakes apparent on record, High court under guise of review could not again decide questions of law already answered in impugned judgment and order which had achieved finality - **Manojbhai Bhupatrai Vadodaria v. Commissioner of Income-tax** - [2023] 154 taxmann.com 241 (Gujarat)

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

- 3.95. Order without DIN** : Where revenue could not answer a specific query as to how a DIN intimation letter along with manual order fulfilled categorical requirement of incorporating DIN mandated by CBDT Circular and therefore, Tribunal came to conclusion that order passed under section 263 did not satisfy requirement mandated by CBDT Circular, appeal of revenue was to be dismissed as devoid of substantial question of law - **Principal Commissioner of Income-tax v. Tata Medical Centre Trust** - [2023] 154 taxmann.com 600 (Calcutta)

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

- 3.96. Scope of provision** : Where Assessing Officer had triggered penalty proceedings under section 271(1) against assessee, it was necessary for him to indicate broadly as to limb under which penalty proceedings were triggered - **Principal Commissioner of Income-tax v. Unitech Reliable Projects (P.) Ltd.** - [2023] 153 taxmann.com 495 (Delhi)
- 3.97. Conditions precedent** : Where notice issued under section 271(1)(c) by Assessing Officer did not specify under which limb of said section, penalty proceedings had been initiated, i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income, said notice would be bad in law - **Principal Commissioner of Income-tax v. Gopal Kumar Goyal** - [2023] 153 taxmann.com 534 (Delhi)
- 3.98. Inaccurate particulars** : Where before passing penalty order under section 271(1)(c) revenue authorities had not considered important pleas and contentions raised by assessee and personal hearing had also not been accorded, there was violation of principles of natural justice and therefore, penalty orders were to be set aside - **Divine Chemtec Ltd. v. Income-tax Department, National**

Faceless Assessment Centre, Delhi - [2023] 153 taxmann.com 528 (Andhra Pradesh)

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

- 3.99. **Compounding of Offences** : There is no limitation provided under sub-section (2) of section 279 for submission or consideration of compounding application and, hence, compounding application could not be rejected on ground of delay in filing application - *Sofitel Realty LLP v. Income-tax Officer (TDS) - [2023] 153 taxmann.com 496 (Bombay)*

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

- 3.100. **Mistake** : A mistake, which can be corrected under section 292B, should be such that if excised it does not change tenor and scope of documents/proceedings referred to therein - *Commissioner of Income-tax v. Spirit Global Construction (P.) Ltd. - [2023] 153 taxmann.com 641 (Delhi)*

SECTION 292BB OF THE INCOME-TAX ACT, 1961 - NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES

- 3.101. **Absence of notice** : Section 292BB only speaks of a notice being deemed to be valid in certain circumstances, when assessee has appeared in any proceeding and cooperated in any enquiry relating to assessment or re-assessment; a complete absence of notice does not stand cured under section 292BB - *Chand Bihari Agrawal v. Commissioner of Income-tax. - [2023] 154 taxmann.com 245 (Patna)*

4. TRIBUNAL

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

- 4.1. **Objects of general public utility** : In view of amended section 2(15) trust in course of achieving object of general public utility can carry on trade, commerce or business related to such objects provided receipts therefrom does not exceed 20 per cent of total receipts in previous year; Principal Commissioner to adjudicate matter of approval of section 80G(5) in light of amended provisions of section 2(15) - *Alnoor Charitable Educational Trust v. Commissioner of Income-tax (Exemptions) - [2023] 153 taxmann.com 606 (Amritsar - Trib.)*

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

- 4.2. **Sub clause (a) and (d) of section 2(22)** : Consideration paid by assessee company for purchase of its own shares from its non-resident shareholders in accordance with scheme sanctioned by High Court as per provisions of sections 391-393 of Companies Act, 1956 was liable to tax as deemed dividend under section 2(22), and consequently, assessee was liable for payment of Dividend Distribution Tax under section 115-O - *Cognizant Technology Solutions India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 309 (Chennai - Trib.)*

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

- 4.3. **Illustrations** : Where assessee along with other co-owners entered into a development agreement dated 18-1-2008 with a builder in respect of a plot of land for consideration and transferred development rights in land to developer and also handed over possession of land and thereafter an agreement for sale was entered amongst parties on 30-3-2010, even though agreement for sale was executed on 30-3-2010, land was already transferred on 18-1-2008 at time of execution of development agreement and, therefore, capital gain, if any, could not be taxed in assessment year 2010-11 - *GajananParshuramKhismatrao v. Income-tax Officer - [2023] 154 taxmann.com 21 (Mumbai - Trib.)*

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

- 4.4. **SFIS benefit** : Where assessee had recorded SFIS benefit as other income and included duty portion in gross value of capital assets, Assessing Officer was to be directed to allow subsidy or SFIS benefit to assessee as capital receipt - *Chennai Container Terminal (P.) Ltd. v. Deputy Commissioner of Income-tax-2(1) - [2023] 154 taxmann.com 68 (Mumbai - Trib.)*
- 4.5. **Grants** : Where assessee, engaged in building infrastructure projects, was mere nodal agency to implement certain schemes of State Government and unspent amount of grant

given to assessee for carrying on infrastructure projects remained property of Government and had to be returned to Government as and when demanded, there was no question of treating such grant as income of assessee - **ACIT v. Gujarat State Road Development Corporation Ltd. - [2023] 153 taxmann.com 744 (Ahmedabad - Trib.)**

- 4.6. **Interest** : Interest earned on deposits of surplus Government grants received by assessee to carry on its business activity of development of infrastructure projects was to be treated as part of grants and same could not be treated as income of assessee - **ACIT v. Gujarat State Road Development Corporation Ltd. - [2023] 153 taxmann.com 744 (Ahmedabad - Trib.)**

SECTION 5 OF THE INCOME-TAX ACT, 1961 - INCOME - ACCRUAL OF

- 4.7. **Foreign allowance** : Where assessee, employees of Indian company rendered services outside India and during relevant year his residential status was non-resident, foreign assignment allowance received by him outside India, was not liable to tax in India - **TadimarriPrasanth Reddy v. Income-tax Officer (International Taxation) - [2023] 153 taxmann.com 281 (Hyderabad - Trib.)**

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

- 4.8. **Royalties or fee for technical services - SAP services** : Where assessee, non-resident company, provided IT support and SAP services to Indian subsidiary, since SAP support service agreement were completely different in nature and had no connection with services rendered under technical collaboration agreement, services rendered under IT and SAP services agreement could not be ancillary and subsidiary to services rendered under technical collaboration agreement and thus such receipt on account of SAP support service could not be treated as FTS - **Netafim Ltd. v. Deputy Commissioner of Income-tax, International Taxation - [2023] 153 taxmann.com 286 (Delhi - Trib.)**
- 4.9. **Permanent Establishment** : Where assessee, a tax resident of Hong Kong, received certain consideration from an Indian company for rendition of engineering and project management consultancy services, since Assessing Officer had failed to establish through corroborative evidence that assessee carried on business in India wholly or partly through a fixed place of business, provisions of section 44DA would not be applicable and thus said income offered by assessee under section 115A, read with section 9(1)(vii) to be accepted - **MTR Corporation Ltd. v. Deputy Commissioner of Income-tax (International Taxation) - [2023] 153 taxmann.com 152 (Delhi - Trib.)**

- 4.10. **Capital gain - General** : Where assessee, tax resident of Singapore, sold shares of Indian company and

claimed short term capital gain earned on sale as exempt as per article 13 of DTAA between India and Singapore, but AO denied treaty benefits for lack of commercial substance in Singapore, since assessee had produced relevant documents to prove that entire affairs were controlled from Singapore, short term capital gains were exempt from tax - **Golden State Capital (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle - [2023] 154 taxmann.com 70 (Delhi - Trib.)**

- 4.11. **Royalties/Fee for technical services** : Where assessee, a foreign company, entered into contract with Indian company to provide support services, since for rendering of these services, there was no element of imparting any 'know-how' or transfer of any knowledge, skill or experience, none of services provided by assessee fell within scope and ambit of 'royalty' as defined in article 12(4) of India-Netherlands DTAA - **Van Oord Dredging and Marine Contractors BV v. Assistant Commissioner of Income-tax (International Taxation) - [2023] 153 taxmann.com 494 (Mumbai - Trib.)**

- 4.12. **Royalties or Fee for technical services - Computer software** : Where assessee, a Netherland based company, sold networking equipments and rendered support services in relation to Juniper Network Equipments sold to support service specialists (SSS) which in turn provided service offerings to its customers in India, since software embedded in equipments which was allowed to be used by SSS was governed by End User License Agreement (EULA) wherein it was stated that nothing in agreement would constitute a sale or transfer or conveyance of any right, title or interest in software and assessee retained exclusive ownership of all right, title, and interest of all intellectual property and all other legal rights in software, service fees received by assessee from SSS would not constitute royalty - **Assistant Commissioner of Income-tax (International Taxation) v. Juniper Networks International B.V. - [2023] 154 taxmann.com 563 (Mumbai - Trib.)**

- 4.13. **Royalties or Fee for technical services - Computer software** : Where assessee, a Netherland based company, sold networking equipments and rendered support services in relation to Juniper Network Equipments sold to support service specialists (SSS) which in turn provided service offerings to its customers in India, since there was no transfer of legal title in copyrighted article and all rights, title and interest in online support for troubleshooting/licensed software were exclusive property of assessee, grant of license to use software could not be construed as granting a right to utilize copyright embedded in software and payments received by assessee from SSS would not constitute royalty - **Assistant Commissioner of Income-tax (International Taxation) v. Juniper Networks International B.V. - [2023] 154 taxmann.com 563 (Mumbai - Trib.)**

- 4.14. **Royalties or Fee for technical services - Computer software** : Where assessee, a Netherland based company, sold networking equipments and rendered support services in relation to Juniper Network Equipments sold to support service specialists (SSS) which in turn provided service offerings to its customers in India, since computer software was not a literary work and had been recognized as a separate item not only in

second proviso to clause (vi) of section 9 but also in Explanation 4 to section 9 and had been included in definition and within scope of words 'right', 'property' or 'information', payments received by assessee from SSS would not constitute royalty - **Assistant Commissioner of Income-tax (International Taxation) v. Juniper Networks International B.V.** - [2023] 154 taxmann.com 563 (Mumbai - Trib.)

4.15. Royalties or Fee for technical services - Make available : Where assessee, a Netherland based company, sold networking equipments and rendered support services in relation to Juniper Network Equipments sold to support service specialists (SSS) which in turn provided service offerings to its customers in India, since services provided by assessee to SSS were renewed upon expiry of its tenure similar to any maintenance contract, services rendered by assessee to SSS did not make available any technical knowledge that would enable SSS to resolve technical issues independently in future and thus, would not fall with definition of FTS under India Netherlands DTAA - **Assistant Commissioner of Income-tax (International Taxation) v. Juniper Networks International B.V.** - [2023] 154 taxmann.com 563 (Mumbai - Trib.)

4.16. Shipping, Inland waterways transport and air transport - International traffic : A vessel operating within Indian Ports as part of larger international voyage would get benefit of article 8 of India-Singapore DTAA - **Magnum Shipping Services v. Income-tax Officer (International Taxation)** - [2023] 154 taxmann.com 244 (Rajkot - Trib.)

4.17. Income from employment - Others : Where assessee rendered services outside India and during relevant year, his residential status was non-resident, foreign assignment allowance received by assessee abroad was not taxable in India - **Durga Prasad Sana v. Income-tax Officer (International Taxation)** - [2023] 154 taxmann.com 532 (Hyderabad - Trib.)

4.18. Royalties/Fees for technical services - Others : Where assessee, a seafarer received through telegraphic transfers a certain sum in non-resident (external) NRE account from a resident company which was an agent of foreign shipping company and claimed that it was not taxable under act as salary of all seafarers was exempt under section 10(6)(viii), since burden to establish that its income was exempt under section 10(6)(viii), remained to be discharged, matter was to be remanded to Assessing Officer to consider issue in light of section 5(2)(a) read with section 9(1)(vii)(b) and section 10(6)(viii) - **Suresh George v. Assistant Director of Income-tax, International Taxation** - [2023] 154 taxmann.com 225 (Cochin - Trib.)

4.19. Business Profit - Commission : Commission paid to foreign agents for procurement of orders do not fall under Technical, Managerial or consultancy services so as to attract provisions of section 9(1)(vii) read with

section

195 - **ACIT v. Alnoor Exports** - [2023] 154 taxmann.com 190 (Delhi - Trib.)

4.20. Business profits - Composite contract : Where assessee, a tax resident of UK, received certain amount of consideration towards supervision services and rental charges for container from BCPL and did not offer to tax supervision fees and AO had passed assessment order accepting return filed by assessee without examining that it was a composite contract and fee under head supervisory services could not be segregated, Commissioner had rightly set aside assessment order of AO by exercising powers under section 263 - **Ineos Commercial Services UK Ltd. v. Commissioner of Income-tax (IT & TP)** - [2023] 154 taxmann.com 199 (Kolkata - Trib.)

4.21. Royalties/fees for technical services - Telecom or transmission services : Where Vodafone(VIL), India entered into an agreement with assessee, a UK based telecommunication company, to provide roaming services to its customers while travelling to UK, since process employed for rendering roaming services was not at all exclusively held by assessee or VIL and it was a standard process employed by all telecom operators around world including VIL in India and arrangement with assessee was entered into as VIL could not provide services to its customers who travelled to UK as it did not have any facility or infrastructure in UK, roaming charges paid to assessee would not fall within scope and meaning of royalty under section 9(1)(vi) - **Telefonica UK Ltd. v. Deputy Commissioner of Income-tax, (IT)-4(1)(2)** - [2023] 154 taxmann.com 475 (Mumbai - Trib.)

4.22. Royalties/Fees for technical services - Make available : Where designs, drawings, lay-outs etc. provided by assessee, US company to AOP (Indian company) were project specific which were specifically made for construction of 'Statue of Liberty' and while providing such services neither any technical knowledge, skill, etc., was made available to AOP for utilizing them in future independently nor any developed drawing or design had been provided by assessee which could be applied by AOP independently, conditions of article 12(4) of DTAA between India and USA were not fulfilled and thus, said fee would not fall within purview of FIS - **Michael Graves Design Group Inc v. Deputy Commissioner of Income-tax (International Taxation)** - [2023] 154 taxmann.com 177 (Delhi - Trib.)

4.23. Royalties/Fee for technical services - Design, Drawing and documentation : Where assessee, a tax resident of Switzerland, had entered into separate contracts for supply of plant and equipment and supply of drawings and designs, since both contracts were inextricably linked and income from supply of plant and equipment was held to be not taxable in India as sale transaction was completed outside India, amount received by assessee from supply of drawings and designs was not also taxable in India as FTS - **SMS Concast AG v. Deputy Director of Income-tax, International Taxation** - [2023] 153 taxmann.com 718 (Delhi - Trib.)

4.24. Royalties/Fees for Technical Services - Supervisory Services : Where assessee, a tax resident of Switzerland, had

entered into a contract for providing supervision of erection and commissioning of plant and equipment, since assessee had deputed qualified technical personnel who had imparted technical services, amount received by assessee was taxable as FTS under article 12(4) of DTAA as well as domestic law - **SMS Concast AG v. Deputy Director of Income-tax, International Taxation** - [2023] 153 taxmann.com 718 (Delhi - Trib.)

4.25. Business profits - Offshore supplies : Where assessee, a tax resident of Germany and BTIL (an Indian company), had formed a consortium to provide rolling stock to DMRC, wherein scope of work of assessee pertained to designing, planning, offshore manufacture and supply, offshore training etc., since scope of work to be performed by each of consortium partner had been well defined and demarcated and transfer of title over goods had taken place outside India, receipts from offshore supply of rolling stock by assessee would not be taxable in India - **Bombardier Transportation GmbH v. Deputy Commissioner of Income-tax (International Taxation)** - [2023] 154 taxmann.com 18 (Delhi - Trib.)

4.26. Permanent establishment - Project office/Branch office : Where assessee insurance company paid re-insurance premium to non-resident reinsurance company which did not have PE, reinsurance premium paid to NRRs could not be disallowed under section 40(a)(i) for failure to deduct TDS under section 195 - **Deputy Commissioner of Income-tax, LTU v. Royal Sundaram Alliance Insurance Co. Ltd.** - [2023] 154 taxmann.com 19 (Chennai - Trib.)

4.27. Independent personal services - Stay in India : Where assessee-NRI stayed more than 182 days outside India, and had provided services as an employee outside India and moreover salary for period working outside India at Morocco had been subjected to tax as per income tax laws of Morocco, assessee was eligible for DTAA benefit as per article 15(1) of India-Morocco DTAA - **Gautam Arora v. Deputy Commissioner of Income-tax (International Taxation)** - [2023] 153 taxmann.com 692 (Kolkata - Trib.)

4.28. Royalties/fees for technical services - Others : Royalty received by American company from OEMs located outside India is not taxable in India - **Qualcomm Incorporated USA v. Deputy Commissioner of Income-tax** - [2023] 153 taxmann.com 146 (Delhi - Trib.)

4.29. Royalties/fee for technical services - Repair and maintenance services : Fee received by assessee, a US company, from Indian franchise hotels towards centralized services could not be treated as fees for technical services (FTS)/fees for included services (FIS) under article 12(4)(a) of India-USA DTAA - **Radisson Hotels International Incorporated v. ACIT (International Taxation)** - [2023] 153 taxmann.com 147 (Delhi - Trib.)

4.30. Other income - Scope of provision : Where unexplained investments in property were made out of income generated in Muscat by assessee - NRI, it could not be taxed in India as per article 24 of DTAA between India and Oman - **Vijaykumar Kanaiyalal Matta v. Income-tax Officer** - [2023] 153 taxmann.com 148 (Mumbai - Trib.)

4.31. Royalty/Fee for technical services - Make available : Where assessee, a Finland based company, provided IT services to Indian customers and earned income from said services in pursuance to a service agreement with its Indian AE, since said services were specific services for entities of assessee only, fees paid by users in India was to be taxed in India, furthermore as there was no make available clause in India-Finland DTAA, without making it available, if technology was used then also receipts would be taxable in India - **Metso Outotec OYJ, (Earlier Known as "OutotecOyj") v. Deputy Commissioner of Income-tax (IT), Circle-1(2)** - [2023] 153 taxmann.com 723 (Kolkata - Trib.)

4.32. Other income - Others : Where assessee, Finland based company, raised invoices on account of fee for providing corporate guarantee to its Indian AE, since assessee had not given bank guarantee to anybody else except its subsidiary, it couldnot be established that assessee was engaged in business of providing Bank guarantee and thus, commission income earned on providing such guarantee was taxable under head "income from other sources" as per Article 21 of India-Finland DTAA - **Metso Outotec OYJ, (Earlier Known as "OutotecOyj") v. Deputy Commissioner of Income-tax (IT), Circle-1(2)** - [2023] 153 taxmann.com 723 (Kolkata - Trib.)

4.33. Royalties/Fee for technical services - Make available : Where assessee-Singapore company provided business support services to its subsidiary and Assessing Officer had failed to prove that while rendering such services assessee had made available any technical knowledge, know-how, skill etc. enabling recipient of service to apply them independently, amount received by assessee could not be treated as FTS under article 12(4)(b) - **Cameron (Singapore) Pte. Ltd. v. Deputy Commissioner of Income-tax, International Taxation** - [2023] 153 taxmann.com 301 (Delhi - Trib.)

4.34. Royalties/fees for technical services - Reimbursement of expenses : An amount on which assessee had paid service tax on reverse charge mechanism was actually expenditure incurred by assessee itself on its own behalf and not in nature of reimbursement and, thus, Assessing Officer was not justified in treating said amount as FTS - **Cameron (Singapore) Pte. Ltd. v. Deputy Commissioner of Income-tax, International Taxation** - [2023] 153 taxmann.com 301 (Delhi - Trib.)

4.35. Royalties/fees for technical services - Reimbursement of expenses : Where assessee, a tax resident of Singapore, was expecting to enter into new contracts with Cairn India but Cairn India awarded contract to Cameron India and assessee claimed to have incurred expenses in relation to ongoing work which were cross charged to Cameron India without any mark-up on pure cost-to-cost basis, since assessee did not furnish agreement between Cairn and Cameron and complete set of invoices relating to reimbursement of expenses, issue was to

be restored to Assessing Officer to examine assessee's claim afresh - **Cameron (Singapore) Pte. Ltd. v. Deputy Commissioner of Income-tax, International Taxation - [2023] 153 taxmann.com 301 (Delhi - Trib.)**

4.36. Business Profit - Transactions with Head Office : Where assessee-bank paid interest to Head Office in Germany, it had no obligation to deduct tax at source under section 195 on interest paid to Head Office as interest income earned by Head Office as from assessee was not liable to tax in India - **Deputy Director of Income-tax (International Taxation) v. Commerzbank A. G. - [2023] 153 taxmann.com 460 (Mumbai - Trib.)**

4.37. Royalties/Fees for technical services - Information Technology Support services : Where assessee, a Singapore based company, provided IT support services laced with technical know-how, but did not provide any technical knowledge, experience or skill etc. to recipients for their own application in future without assistance of assessee, amount received by assessee on account of IT support services was not taxable as FTS under article 12(4)(b) - **BMC Software Asia Pacific Pte. Ltd. v. ACIT (International Tax) - [2023] 153 taxmann.com 643 (Pune - Trib.)**

4.38. Royalties/Fees for technical services - General : In case of a non-resident assessee, income arising to him by way of royalty or fees for technical services (FTS) in India, is taxable in India only in year of receipt as per provisions of DTAA - **ABB Switzerland Ltd. v. Deputy Commissioner of Income-tax, (International Taxation) - [2023] 154 taxmann.com 132 (Bangalore - Trib.)**

SECTION 10(10B) OF THE INCOME-TAX ACT, 1961 - RETRENCHMENT COMPENSATION

4.39. Compensation v. VRS : Where pursuant to a decision taken by Government of India to rehabilitate employees and meet their financial obligations, monetary benefit would accrue to employees of HMT, which was in nature of a compensation, it undoubtedly would qualify parameters laid down under section 10(10B), therefore, whole of amount of voluntary retirement compensation would be exempted from income tax in terms of second proviso to section 10(10B) - **Suresh Pal Chauhan v. Income Tax Officer, Ward-4 - [2023] 154 taxmann.com 529 (Chandigarh - Trib.)**

SECTION 10(23C) OF THE INCOME-TAX ACT, 1961 - HOSPITALS, ETC.

4.40. For sub-sections (iiia), (iiiae) and (via) : Where assessee-co-operative hospital formed to provide medical facilities at reasonable charges, was denied continuation of registration under section 10(23C)(via) by Commissioner, citing absence of reserved beds for poor and low charges for economically weaker patients, since High Court directed Commissioner to look into entire record for ascertaining income received by assessee from beds/rooms provided in hospital and other relevant aspects, but Commissioner did not comply with said

directions, order of Commissioner was to be set aside for fresh consideration - **Shushrusha Citizens' Co-operative Hospital Ltd. v. Commissioner of Income-tax (Exemp.) - [2023] 153 taxmann.com 717 (Mumbai - Trib.)**

4.41. Profit motive : Where assessee, an educational institution, had filed application for seeking exemption under section 10(23C)(vi), since all objects were not aimed at or related to imparting education or in relation to educational activities and assessee had modified its way of functioning by earning royalty from publishing houses, instead of self-publishing, assessee could not be said to be existing solely for purpose of education and thus denial of exemption was justified - **Indian Institute of Banking & Finance v. Commissioner of Income-tax (Exemptions) - [2023] 153 taxmann.com 304 (Mumbai - Trib.)**

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

4.42. Cancellation of registration : Where Commissioner (Exemption) withdrew registration granted to assessee-society under section 10(23C)(vi) on ground that assessee had sub-leased leasehold nazul land to a builder without showing rental income from it, contrary to conditions of use for educational purposes, since sub-leasing was permissible under lease deed and was in line with its objectives and alleged non-accounting of rental and interest income was unintentional, order of Commissioner (Exemption) was to be set aside - **Rajkumar College Society v. Commissioner of Income-tax (Exemption) - [2023] 153 taxmann.com 498 (Raipur - Trib.)**

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

4.43. Capital gains : Where Assessing Officer added capital gains from property and vehicle sales to income of assessee-society, registered under section 12AA claiming duplication of deductions, since assets were purchased before 1-4-2015 and formed part of a block, impugned addition was to be deleted - **Assistant Commissioner of Income-tax v. Takshila Educational Society - [2023] 154 taxmann.com 180 (Kolkata - Trib.)**

4.44. Scope of provision : Where assessee-trust filed return after time allowed under section 139(4A) but before last day of filing of belated return under section 139(5), same should be treated as due compliance with clause (ba) in sub-section (1) of section 12A and thus, assessee was entitled for exemption under section 11 - **Income-tax Officer (Exemption) v. Debendra and Rohini Memorial Trust - [2023] 153 taxmann.com 687 (Kolkata - Trib.)**

4.45. Delay in filing Form 10B : Where assessee, a charitable trust, registered under section 12A, filed its return of income within time prescribed, however, filed audit report in Form 10B at a later stage during assessment proceedings, benefit of exemption under section 11 could not be denied merely on account of delay in furnishing audit report - **Deputy Commissioner of Income-tax (Exemption) v. State Institute of Health & Family Welfare 1 - [2023] 153 taxmann.com 740**

(Jaipur - Trib.)

4.46. Purpose of accumulation of funds : Lack of declaration in Form No. 10 regarding specific purpose for which funds were being accumulated by assessee-trust, would not be fatal to exemption **claimed** under section 11(2) - **Deputy Commissioner of Income-tax (Exemption) v. State Institute of Health & Family Welfare 1 - [2023] 153 taxmann.com 740 (Jaipur - Trib.)**

4.47. Revision : Where assessee charitable society, registered under **section** 12AA, received corpus donation of Rs. 1 crore from an entity which was itself registered as charitable trust under section 12AA, since assessee furnished all details relating to such corpus donation along with supporting evidence to prove identity and creditworthiness of donors and fact of receipt of donation by assessee was clearly reflected in bank statement of donor, impugned revision under section 263 on ground that said amount of Rs. 1 crore was actually a loan amount received by assessee and not donation was unjustified - **Reliable Educational Alliance Society v. Commissioner of Income-tax (Exemption) - [2023] 153 taxmann.com 341 (Delhi - Trib.)**

4.48. Sub-section (4A) : Where assessee-trust operated a Hospital along with a Pharmacy store within its premises and provided medical relief by selling medicines to in-house patients, outpatients and outsiders, since running of pharmacy store was ancillary to dominant object of assessee to run a hospital and assessee was maintaining separate books of account for pharmacy store, action of Assessing Officer in treating pharmacy store of assessee as separate business entity and profits therein as taxable income was not justified - **Deputy Commissioner of Income-tax (Exemption) v. Shri Kutchi Visa Oswal Jain ManavSeva Kendra - [2023] 153 taxmann.com 497 (Mumbai - Trib.)**

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

4.49. Illustrations : Where Assessing Officer rejected assessee's application for registration under section 12AB on ground that there was mismatch in name of assessee vis-a-vis name shown in PAN, Form No. 10AB and translated copy of trust deed, since mismatch was not intentional but might be due to inadvertence, issue was to be restored back to reconsider registration of assessee afresh - **Qamar Free Library v. Commissioner of Income-tax (Exemptions) - [2023] 154 taxmann.com 140 (Surat-Trib.)**

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

4.50. Capital expenditure : Acquisition of property is not inherently **disallowed** to a Charitable Institution because it is in domain of Charitable Institution to acquire property for furtherance of its charitable activity - **Assistant**

Commissioner of Income-tax v. Takshila Educational Society - [2023] 154 taxmann.com 180 (Kolkata - Trib.)

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

4.51. Purchase of property : Where advances made by assessee for purchase of property, were fully covered by non-interest bearing funds available with assessee and it was also found that interest-bearing funds had been entirely utilized for stock and sundry debtors, interest disallowance had rightly been deleted - **ACIT v. Alnoor Exports - [2023] 154 taxmann.com 190 (Delhi - Trib.)**

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

4.52. Rental income : Where assessee-firm was engaged in business of **letting** out of properties and income earned by assessee-firm from letting out of properties was offered for tax under head 'income from business and profession' which was accepted by Assessing Officer on basis of exhaustive enquiries and detailed submissions filed by assessee-firm, since, stand adopted by Assessing Officer was one which was plausible view supported by CBDT Circular No. 16/2017 dated 25-4-2017, assessment could not be said to be erroneous and prejudicial to interest of revenue in terms of provisions of section 263 - **AgraniBuildestate v. Principal Commissioner of Income-tax - [2023] 153 taxmann.com 300 (Jaipur - Trib.)**

4.53. Reassessment : Where assessee-partnership firm was dissolved with effect from 1-4-2005 and AO reopened assessment for relevant assessment year on ground that erstwhile assessee-partnership firm received professional fees for which no return was filed, since Assessing Officer was informed regarding dissolution of partnership firm, impugned reopening order was to be set aside and matter was to be restored to Assessing Officer to frame fresh assessment - **MathurUgam and Associates v. Income-tax Officer - [2023] 153 taxmann.com 504 (Delhi - Trib.)**

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

4.54. Waiver of loan : Where loan amount taken by assessee was never claimed **as** expenditure nor as trading liability in any previous year, waiver of such loan would not attract provisions of section 41(1) or section 28(iv) - **Deputy Commissioner of Income-tax v. Ramani Exports - [2023] 153 taxmann.com 465 (Mumbai - Trib.)**

SECTION 32 OF THE INCOME-TAX ACT, 1961 - DEPRECIATION - ADDITIONAL DEPRECIATION

4.55. Illustrations : Where plant and machinery eligible for additional **depreciation** of 10 per cent were put to use for less than 180 days in relevant financial year, only 50 per cent of additional depreciation could be claimed in that year and thus, balance 50 per cent of additional depreciation could be availed

in subsequent year - *Deputy Commissioner of Income-tax v. GMR Warora Energy Ltd.* - [2023] 153 taxmann.com 745 (Mumbai - Trib.)

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

4.56. Bogus donation : Where assessee had given donation to certain research foundation and claimed deduction under section 35(1)(ii), since assessee could not demonstrate that they had given donations in past or subsequent **periods** to some Institution of national importance, and it was revealed that benefit of claim under section 35(1)(ii) was outcome of an organized fraud with help of certain manipulators, it could be said that assessee was beneficiary of bogus donation and would not be entitled for deduction under section 35(1)(ii) - *Tarasafe International (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 153 taxmann.com 282 (Kolkata - Trib.)

4.57. Reassessment : Where Assessing Officer found that assessee was **beneficiary** of bogus donation and was able to lay its hand on a large number of material and had recorded statements of founder and director of said institution as well as other persons, who have deposed during survey and post-survey inquiries regarding bogus loan given by assessee to said institution, sufficient material was available with Assessing Officer for forming an opinion that income had escaped assessment - *Tarasafe International (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 153 taxmann.com 282 (Kolkata - Trib.)

SECTION 36(1)(va) OF THE INCOME-TAX ACT, 1961 - EMPLOYEE'S CONTRIBUTIONS

4.58. PF/ESI : Where assessee made belated deposits of employees' contribution to PF/ESIC in breach of section 36(1)(va), same was rightly disallowed by revenue authorities - *Sentinel Consultants (P.) Ltd. v. ACIT* - [2023] 153 taxmann.com 151 (Delhi - Trib.)

4.59. Scope of provisions : Where revenue made certain disallowance under section 36(1)(va) for delayed deposit of employees **contribution** to PF and ESIC, since issue relating to accrual of liability towards payment of salary without actual disbursement had not been examined by revenue authorities, matter needed fresh consideration - *Sentinel Consultants (P.) Ltd. v. ACIT* - [2023] 153 taxmann.com 151 (Delhi - Trib.)

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

4.60. Club expenses : Club membership fee could be business **expenditure** only in case of 'corporate membership', hence one-time entry fee paid by individual assessee for club membership could not be allowed as business expenditure - *Balrajsingh Jagjitsingh Kharbanda v. ADIT, CPC* - [2023] 153 taxmann.com 642 (Mumbai - Trib.)

4.61. PF/ESI : Deduction towards deposit of employees contribution to PF and ESIC is covered under section 36(1)(va) and thus said expenditure incurred towards employees' contribution cannot be alternatively, allowed as deduction under section 37(1) - *Sentinel Consultants (P.) Ltd. v. ACIT* - [2023] 153 taxmann.com 151 (Delhi - Trib.)

4.62. Conditions precedent : Where assessee claimed expenditures towards road and bridge construction which were main business activities of assessee, since undisputedly said expenses were **incurred** wholly and exclusively for purpose of business of assessee and satisfied test of commercial expediency as per provisions contained in section 37(1), absence of any income against such expenditures incurred, would not invalidate claim of expenditure made by assessee and same was to be allowed - *ACIT v. Gujarat State Road Development Corporation Ltd.* - [2023] 153 taxmann.com 744 (Ahmedabad - Trib.)

4.63. Community development expenses : Where assessee-company engaged, in development and implementation of coal-based thermal power project, claimed community development expenses and environment health and safety expenses for development **of** in and around surrounding villages of plant area which needed to be developed for purpose of development of power generation business of assessee, these expenses would be considered to be incurred wholly and exclusively for purpose of business of assessee and were to be allowed under section 37(1) - *Deputy Commissioner of Income-tax v. GMR Warora Energy Ltd.* - [2023] 153 taxmann.com 745 (Mumbai - Trib.)

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

4.64. Preservation charges : Where decision of assessee to avail **additional** cold storage facilities for preservation of meat was a business decision, it did not call for Assessing Officer to sit in judgment over this and since need for more storage space was also justified with increase in processing, Commissioner (Appeals) rightly deleted preservation charges disallowed by Assessing Officer - *ACIT v. Alnoor Exports* - [2023] 154 taxmann.com 190 (Delhi - Trib.)

SECTION 40A(3) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CASH PAYMENT EXCEEDING PRESCRIBED LIMITS

4.65. Business expediency : Where Assessing Officer disallowed expenses incurred by assessee on purchases of liquor etc. as **payments** were found to be made in cash in breach of prescribed limit under section 40A(3) since, assessee being a new entrant in business of liquor was perforce required to make cash payments on certain occasions to obtain immediate supplies and moreover, suppliers and recipients of cash were identified parties and well regulated, assessee was to be exonerated from clutches of section 40A(3) - *Shakti Singh Gulia v. Income-tax Officer* - [2023] 153 taxmann.com 287 (Delhi - Trib.)

4.66. Payment to Government : Where assessee had made payment towards purchase of liquor to a State Government undertaking in mode otherwise than prescribed in section 40A(3) and assessee claimed that such payment fell within

exception of rule 6DD(b), CPC Bengaluru would have either accepted said explanation or rejected after giving cogent reasons - **Harshdeep Singh Juneja v. Deputy Commissioner of Income-tax** - [2023] 153 *taxmann.com* 303 (Raipur - Trib.)

SECTION 43 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 - OFFENCE AND PROSECUTION

4.67. Where assessee did not disclose foreign asset in ITR Schedule FA, Commissioner (Appeals) order confirming levy of penalty under section 43 of the Black Money Act was justified - **Ms. Shobha Harish Thawani v. Joint Commissioner of Income-tax** - [2023] 154 *taxmann.com* 564 (Mumbai - Trib.)

SECTION 44 OF THE INCOME-TAX ACT, 1961 - INSURANCE BUSINESS

4.68. Computation of total income : Profit on sale of investment by insurance company is not taxable in India - **Deputy Commissioner of Income-tax, LTU v. Royal Sundaram Alliance Insurance Co. Ltd.** - [2023] 154 *taxmann.com* 19 (Chennai - Trib.)

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

4.69. Business profits : Where assessee, a tax resident of Singapore, had entered into a contract with an Indian company in connection with **activity** of prospecting, extraction, or production of mineral oils and had also supplied tools/equipments on lease/hire basis to said Indian company, amount received by assessee was taxable as business profits under provisions of section 44BB and not FTS - **Cameron (Singapore) Pte. Ltd. v. Deputy Commissioner of Income-tax, International Taxation** - [2023] 153 *taxmann.com* 301 (Delhi - Trib.)

4.70. Business profits : Where receipts from repair work was inextricably connected with prospecting, extraction or production of mineral oil, such receipt should be taxed under section 44BB - **Cameron (Singapore) Pte. Ltd. v. Deputy Commissioner of Income-tax, International Taxation** - [2023] 153 *taxmann.com* 301 (Delhi - Trib.)

SECTION 45 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - CHARGEABLE AS

4.71. Capital gain v. business income-Land dealing : Where **assessee** had purchased properties as an investor, and intention of assessee to remain an investor was evident from various factors, such as consideration of sale price determined by Stamp Valuation Authority and purchase of property jointly with her daughter-in-law, gains from property sales were to be treated as capital

gains and not business income and thus, assessee would be eligible for deduction under section 54F in respect of reinvestment of capital gains made in house property - **Smt. Saroj Bansal v. Income-tax Officer** - [2023] 153 *taxmann.com* 278 (Dehradun - Trib.)

4.72. Illustrations : Where Assessing Officer on basis of information available in AIR **that** assessee along with other co-owners had sold a plot of land to a builder and he had not filed return for relevant assessment year initiated proceedings under section 147 against assessee, there was no infirmity in initiation of reassessment proceedings - **GajananParshuramKhismatrao v. Income-tax Officer** - [2023] 154 *taxmann.com* 21 (Mumbai - Trib.)

SECTION 50C OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SPECIAL PROVISION FOR COMPUTATION OF FULL VALUE OF CONSIDERATION

4.73. Scope of provision : Amendment in provisions of section 50C by Finance Act, 2016 with effect from 1-4-2017 by way of insertion of a proviso to section 50C(1) is clarificatory in nature and can be applied on pending matters - **ACIT v. Thomson Press (India) Ltd.** - [2023] 153 *taxmann.com* 143 (Delhi - Trib.)

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

4.74. Illustrations : Where assessee sold agricultural land and inadvertently offered profit for taxation as long-term capital gain and Assessing Officer accepted income as offered by assessee, **Commissioner** (Appeals) could not have dismissed assessee's appeal challenging levy of tax on said agricultural land since article 265 of Constitution of India prohibits tax to be collected without authority of law - **MadanlalMohanlalSakhala v. Additional Commissioner of Income-tax** - [2023] 154 *taxmann.com* 178 (Mumbai - Trib.)

4.75. Scope of provision : Where Assessing Officer denied deduction under **section** 54B on ground that assessee was unable to furnish purchase deed for so called new agriculture land, since registration of purchased land was pending because two of co-sellers were minor at time of purchase of land and at present both became major and they had executed a notarized declaration of accepting transaction, Assessing Officer was to be directed to allow deduction - **Kristina NathabhaiKrichchan v. Deputy Commissioner of Income-tax** - [2023] 154 *taxmann.com* 102 (Surat-Trib.)

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

4.76. Fixed deposit : Pith and substance of interest income on fixed deposit could not be changed whether it was routed through profit and loss account or taken directly to reserve and surplus in **balance** sheet and, thus, PCIT could not revise assessment order on ground that assessee had not routed interest income through profit and loss account and same was directly shown in balance sheet as Capital Fund, under head Reserve and Surplus - **Sachin Notified Area v. Principal Commissioner of Income-tax** - [2023] 153 *taxmann.com* 689 (Surat-Trib.)

4.77. Valuation of shares : Where value of shares had been

determined by adopting any of two methods, i.e. NAV or DCF, then such value shall be deemed to be FMV and Assessing Officer could not have questioned valuation per se - **Caddie Hotels (P.) Ltd. v. Principal Commissioner of Income-tax/Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 524 (Delhi - Trib.)**

taxmann.com 524 (Delhi - Trib.)

4.78. Sub-section (2)(x) : Where assessee-firm purchased a property from certain Co-operative Bank after duly participating in e-tender and being highest/successful bidder, consideration paid by assessee would be treated as fair market value of property for purposes of stamp duty - **Income-tax Officer v. Mahavir Enterprises - [2023] 153 taxmann.com 396 (Mumbai - Trib.)**

4.79. Scope of provision : Where assessee issued certain shares at premium and followed DCF method for valuation of share premium, Commissioner (Appeals) could not have rejected valuation of **shares** made by assessee without bringing any defect in methodology of valuation of shares - **Balgopal Cold Storages (P.) Ltd. v. Income-tax Officer - [2023] 153 taxmann.com 526 (Delhi - Trib.)**

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

4.80. Where Assessing Officer made an addition under section 68 to income of assessee for reason that assessee had received payment of certain **amount** as interest on which TDS under section 194A was deducted by payee, however, payee did not respond to notice under section 133(6) and it was received back unserved, since copy of return of income and computation clearly revealed that neither assessee had shown any interest income nor assessee had claimed any TDS thereon as picked up by Assessing Officer for making addition in hands of assessee, impugned addition was to be deleted - **BalajiTirupatiBuildcon Ltd. v. Income Tax Officer, Ward 4(2) - [2023] 154 taxmann.com 499 (Delhi - Trib.)**

4.81. Capital : Where Assessing Officer made addition to income of assessee on account of capital introduced by proprietor concern, since Commissioner (Appeals) found that withdrawal made from bank could be utilized for household expenses and onus towards availability of cash was not discharged by assessee, there was no reason to interfere with approach of Commissioner (Appeals) - **Shakti Singh Gulia v. Income-tax Officer - [2023] 153 taxmann.com 287 (Delhi - Trib.)**

4.82. Share capital : Where assessee had sufficiently demonstrated that there was no relevant material to make wide ranging allegations towards accommodation entry in form of share capital and earning fictitious profits and so called 'belief' formed by Assessing Officer towards escapement of chargeable income was without availability of relevant or tangible material and merely following opinion expressed by investigation wing, reassessment was bad in law and hence liable to be

quashed - **Bhajee Commodities (P.) Ltd. v. ACIT - [2023] 154 taxmann.com 292 (Delhi - Trib.)**

4.83. Scope of provision : Where Assessing Officer made addition of entire **share** application money of Rs. 94 lacs to assessee's income under section 68 and

Commissioner (Appeals) confirmed addition to extent of Rs. 9 lacs, since there were no enquiries made nor any evidence to reject documents filed by assessee, impugned addition was not called for - **Balgopal Cold Storages (P.) Ltd. v. Income-tax Officer - [2023] 153 taxmann.com 526 (Delhi - Trib.)**

4.84. Pre-conditions : Where assessment of assessee was reopened by issuing notice under section 148, read with section 147 for reason that assessee had obtained share application money from companies which **were** operated by alleged accommodation entry providers, however, there was no proof of service of reasons recorded being supplied to assessee, reassessment order passed by Assessing Officer was to be quashed as bad in law - **Deputy Commissioner of Income-tax, CC-7(3), Mumbai v. Bhawna Computers (P.) Ltd. - [2023] 154 taxmann.com 326 (Mumbai - Trib.)**

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

4.85. Purchases : Where assessee, engaged in export of diamonds, made purchases of diamonds from certain parties and in support of such purchases furnished details like ledger accounts of transactions with purchase parties and bank statements showing payment made to parties and had also shown mapping of corresponding purchases, and sales, Assessing Officer was not justified in treating purchases of diamonds in question as bogus - **Deputy Commissioner of Income-tax v. Asian Star Co. Ltd. - [2023] 154 taxmann.com 13 (Mumbai - Trib.)**

4.86. Illustrations : Where assessee deposited Rs. 58.74 lacs in his bank account and claimed that amount was deposited out of agricultural income earned and assessee claimed that Rs. 34 lacs was from sale of crop of potato, since assessee in joint ownership with family members owned 40.5 acres of agricultural land including 4.5 acres in his individual ownership but Commissioner (Appeals) had failed to disprove cash flow statement filed by assessee, impugned addition deserved to be deleted - **Ramandeep Singh Sidhu v. Income-tax Officer - [2023] 153 taxmann.com 612 (Amritsar - Trib.)**

4.87. Reopening of assessment : Where reassessment was initiated in case of assessee as per information received that assessee had paid on money for purchase of flat in Silver Arch project, and, same was examined by Assessing Officer and thereafter he proceeded to reopen assessment, reassessment was justified - **VijaykumarKanaiyalal Matta v. Income-tax Officer - [2023] 153 taxmann.com 148 (Mumbai - Trib.)**

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

4.88. Demonetization : Where assessee claimed that sum deposited during demonetization period were gifts of Rs. 1

crore received in connection with his marriage celebrated on 7-12-2015 but had not furnished any material evidence to substantiate said gift, since assessee was an NRI and to prove gifts received on occasion of marriage etc., was nearly impossible, relief of Rs. 50,00,000 out of Rs. 1,00,00,000 to be granted to assessee - **Karthick Natarajan v. Deputy**

Commissioner of Income-tax, International Taxation - [2023] 154 taxmann.com 136 (Chennai - Trib.)

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

4.89. Commission : Where assessee had paid commission to four entities on export of diamond and had furnished all relevant details in respect of said commission alongwith details of service tax collected thereon, there was no reason to treat commission expenditure as non-genuine and bogus - **Deputy Commissioner of Income-tax v. Asian Star Co. Ltd. - [2023] 154 taxmann.com 13 (Mumbai - Trib.)**

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

4.90. Late filing of return : Amendment introduced in section 143(1)(a)(v) with effect from 1-4-2021 providing that claim of deduction under section 80P could be denied to assessee, in case assessee did not file its return of income within time prescribed under section 139(1), would not apply to assessment year 2019-20, and therefore, claim of deduction under section 80P during relevant assessment year could not be denied to assessee only on basis of late filing of return - **ChakargadhSevaSahakariMandali Ltd. v. Deputy Commissioner of Income-tax (CPC) - [2023] 154 taxmann.com 228 (Rajkot - Trib.)**

4.91. Sub-section (4) : Where assessee-co-operative housing society registered under Maharashtra Co-operative Societies Act, 1960, earned interest income from investments made in various Co-operative Banks, it would be entitled to deduction under section 80P(2)(d) and **Assessing** Officer could not deny same by invoking provisions of section 80P(4) - **PatharePrabhu Co-operative Housing Society Ltd. v. Income-tax Officer - [2023] 153 taxmann.com 714 (Mumbai - Trib.)**

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

4.92. Elimination of double taxation - Foreign tax credit : Assessee, a law firm, would be entitled to foreign tax credit (FTC) in respect of taxes deducted on income for legal services rendered in Japan - **Deputy Commissioner of Income-tax v. Cyril AmarchandMangaldas - [2023] 154 taxmann.com 99 (Mumbai - Trib.)**

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

4.93. Corporate guarantee : Where issuance of corporate guarantee by assessee on behalf of its subsidiary was in nature of quasi-capital or **shareholder** activity and was not in nature of provision of services, it did not constitute international transactions and, thus, no TP adjustment was liable to be made - **Deputy Commissioner of Income-tax v. Suzlon Energy Ltd. - [2023] 153 taxmann.com 582 (Ahmedabad - Trib.)**

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

4.94. Methods for determination of - Discounted cash flow method : Where assessee, a company incorporated under Singapore Laws entered into **international** transactions involving purchase of equity shares from its AE wherein value of shares was determined by an independent valuer by following Discounted Cash Flow Method, TPO could not have substituted actual figures for projected figures in DCF valuation for purpose of determining value of shares - **TPG Growth II Markets Pte. Ltd. v. Deputy Commissioner of Income-tax, International Taxation - [2023] 153 taxmann.com 368 (Mumbai - Trib.)**

4.95. Methods for determination of - Other method : Where assessee had acquired shares from promoter by triggering call option in terms of Shareholders Agreement and there was nothing on record to show that exercise of call option had no impact on determination of sale price, 'Other Method' was to be adopted as most **appropriate** method for computation of ALP of transaction of sale of shares - **TPG Growth II Markets Pte. Ltd. v. Deputy Commissioner of Income-tax, International Taxation - [2023] 153 taxmann.com 368 (Mumbai - Trib.)**

4.96. Adjustments - Capacity utilization : Where TPO did not allow extraordinary costs in respect of repairs and maintenance and store and power and electricity expenses incurred by assessee due to shut down of plant while computing NCP mark up earned by assessee, since assessee in its calculation had not provided a bifurcation of power expenses into fixed and variable costs for earlier year as well as year under consideration, TPO had not erred in facts in not granting adjustment towards repairs and maintenance and excess power, electricity and store expenses - **Huntsman International (India) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 210 (Ahmedabad - Trib.)**

4.97. Comparability factors - Profit margin/profit level indicator : Where toll manufacturing charges were paid as extraordinary cost, such expenditure to be excluded from operating costs - **Huntsman International (India) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 210 (Ahmedabad - Trib.)**

4.98. Adjustments - International transactions with AEs : Transfer pricing addition should be restricted only qua international transaction and not entity level transactions - **Huntsman International (India) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com**

210 (Ahmedabad - Trib.)

- 4.99. **Methods for determination of - TNM Method** : Where assessee applied **aggregation** approach under TNMM on entity level to justify ALP of all transactions including payment of Royalty/FTS along with transaction for purchase of raw material and other transactions, and TPO treated royalty and FTS transactions as separate 'International transaction', and applied CUP method, TPO should not subject only one segment to different CUP method, TNMM would apply - **Gruner India (P.) Ltd. v. ACIT - [2023] 154 taxmann.com 103 (Delhi - Trib.)**
- 4.100. **Adjustments - Royalty** : Where DRP had determined royalty payment at rate of 3 per cent instead of 8 per cent considered by assessee, taking into consideration royalty payment of other companies, since FAR of said companies was different, selection of royalty rate of 3 per cent by DRP was arbitrary - **Gruner India (P.) Ltd. v. ACIT - [2023] 154 taxmann.com 103 (Delhi - Trib.)**
- 4.101. **Comparability factors - Turnover filter** : Where turnover of selected companies was Rs. 239.14 crores and 363 crore respectively as against turnover of assessee company at Rs. 165.86 crores, **Assessing Officer/TPO** should exclude this company from list of comparables - **Concur Technologies India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 644 (Bangalore - Trib.)**
- 4.102. **Adjustments - Interest** : There are several factors which need to be considered before holding that every receivable is an international **transaction** and it requires an assessment on working capital of assessee and thus, TPO should study impact of receivables appearing in accounts of assessee looking into various factors as to reasons why same are shown as receivables and also as to whether said transactions can be characterized as international transaction - **Concur Technologies India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 644 (Bangalore - Trib.)**
- 4.103. **Adjustments - Royalty** : Where assessee paid royalty at rate of 4 per cent to its AE, since average rate of royalty paid by comparables was more than payment made by assessee, payment **towards** royalty was to be treated at arm's length - **Praxair India (P.) Ltd. v. Deputy Commissioner of Income-tax. - [2023] 153 taxmann.com 715 (Bangalore - Trib.)**
- 4.104. **Adjustments - Interest** : Compulsorily Convertible Debentures (CCDs) are nothing but debt till conversion and, thus, TPO could not re-characterize same as equity capital and make TP adjustment of interest paid on CCDs by determining ALP of interest paid - **Praxair India (P.) Ltd. v. Deputy Commissioner of Income-tax. - [2023] 153 taxmann.com 715 (Bangalore - Trib.)**
- 4.105. **Comparability factors - Related party transactions** : A company having RPT at 31.32 per cent should be excluded by application of RPT filter - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy Commissioner of**

Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)

- 4.106. **Comparability factors - Segmental Result** : Where there was no break-up of revenue with regard to software services and software product, this company should be excluded from list of comparable companies to assessee-company engaged in business of providing software development - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)**
- 4.107. **Comparability factors - Turnover filter** : A company could not be compared with assessee when turnover of this company was more than 10 times of turnover of assessee-company - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)**
- 4.108. **Comparability factors - Revenue filter** : A company having presence of onsite revenue over and above threshold limit of 25 per cent of total revenue has to be excluded from list of comparable companies - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)**
- 4.109. **Comparables, functional similarity - Software consultancy/development services** : Where assessee-company provided software development services to its AEs, a company engaged in providing advanced analytics, artificial intelligence, blockchain, business intelligence, data signs, cloud services etc. whose segmental **financials** were not available was to be excluded from list of comparables - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)**
- 4.110. **Comparables, functional similarity - Software consultancy/development services** : Where assessee-company was engaged in software development services, a company engaged in outsourced product development could not be considered as functionally comparable - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)**
- 4.111. **Comparability factors - Revenue filter** : Where assessee, a software development services provider, had selected certain companies as comparable and TPO **had** excluded same without verifying annual reports concluding that export revenue filter was not satisfied, these comparables were to be remanded to Assessing Officer/TPO to verify FAR analysis of these comparables with that of assessee and to consider its inclusion in case it satisfied all relevant filters - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)**
- 4.112. **Adjustments - Operating profit/cost, computation of** : Provision for bad and doubtful **debts** should be considered as operating in nature while computing PLI of comparable companies - **Carl Zeiss India (Bangalore) (P.) Ltd. v. Deputy**

Commissioner of Income-tax - [2023] 153 taxmann.com 519 (Bangalore - Trib.)

4.113. Adjustment - Guarantee commission : Where assessee-company had provided corporate guarantee to its Associated Enterprises for loan **taken** by them, Assessing Officer should restrict commission on corporate guarantee given by assessee at rate of 0.50 per cent of actual value of loan taken by Associated Enterprises - **Viraj Profiles Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 249 (Mumbai - Trib.)**

4.114. Comparables, functional similarity - Manufacturer : Where TPO had sought to compare valves which was a consumer product with industrial product of assessee, which would not give a true picture of profit, TPO was directed to conduct a fresh study comparing same or similar product, so that a fair picture of profit could be arrived in order to ascertain whether TP adjustment was required to be made or not - **Weatherford Drilling & Production Services (India) (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 154 taxmann.com 248 (Ahmedabad - Trib.)**

4.115. Comparability factors - Profit margin/Profit level indicator : Where assessee had reported net profit margin of 13.86 per cent, companies **earning** profit of more than 100 per cent of its cost could not be considered to be comparable with assessee-company - **Paramount Shipping and Management (P.) Ltd. v. ACIT - [2023] 153 taxmann.com 581 (Mumbai - Trib.)**

4.116. Adjustments - Capacity utilization : Where assessee entity was set up in June, 2012 and accordingly, assessment year 2015-16 was first year when operations took place for full year and capacity utilisation of assessee in year under consideration was at 34 per cent as compared to 73 per cent of industry (manufacturing and automotive), and **assessee** had adequately demonstrated from data and details about computation of adjustment arrived at towards capacity utilisation, assessee should be granted capacity utilisation adjustment - **Deputy Commissioner of Income-tax v. Kyocera CTC Precision Tools (P.) Ltd. - [2023] 153 taxmann.com 604 (Kolkata - Trib.)**

4.117. Methods for determination of - CUP method : Where assessee-company entered into business of software product and training services and paid royalty to its AE for software licence service and applied CUP method for transaction of payment of royalty and TNMM for other **transactions** but TPO rejected CUP method and applied TNMM to all transactions without giving any reason for rejecting CUP method, approach adopted by TPO was not sustainable, and matter was set aside to file of TPO for fresh adjudication - **SAS Institute (India) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 198 (Mumbai - Trib.)**

4.118. Methods for determination of - CUP method : Arithmetic mean of price of brokerage should be taken for

determining ALP under CUP method - **Morgan Stanley India Co. (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 154 taxmann.com 176 (Mumbai - Trib.)**

4.119. Adjustments - Commission : When CUP method was applied for determining ALP of international transaction of brokerage commission earned by assessee, then downward adjustment to extent of 40 **per** cent was to be granted to assessee - **Morgan Stanley India Co. (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 154 taxmann.com 176 (Mumbai - Trib.)**

4.120. Adjustments - Support services fee : Where assessee overseas support services charges to its AE, TPO cannot substantiate disallowance of ALP of said transaction at nil without asking assessee to demonstrate rendition of such services and whether there was any duplicative service - **Morgan Stanley India Co. (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] 154 taxmann.com 176 (Mumbai - Trib.)**

4.121. Methods for determination of - CUP Method : Where assessee-company had relied upon CUP Method to benchmark transaction of export of processed **Gherkins** and TPO adopted third parties sale transaction and in most of cases compared selling price of different grades of Gherkins sold to AEs with WASP of different grades sold to third parties, economic analysis be conducted afresh by taking into consideration 'like with like' and internal CUP was most appropriate method - **Global Green Co. Ltd. v. Deputy Commissioner of Income-tax - [2023] 154 taxmann.com 192 (Delhi - Trib.)**

4.122. Adjustments - Aggregation of transactions : International transactions pertaining to imports of 8K SIM cards by assessee from its AEs, purchases of E-Cards, Pay Phone Cards and POS Component could not be aggregated together as they were not inextricably linked, and were required to be benchmarked separately - **Assistant Commissioner of Income-tax v. Thales DIS India (P.) Ltd. - [2023] 153 taxmann.com 611 (Delhi - Trib.)**

4.123. Methods for determination of - Most appropriate method, determination of : Where Commissioner (Appeals) had incorrectly applied CUP method for benchmarking purchase of 8K SIM cards by assessee from its AEs, based on incomplete data, ignoring geographical differences and contrary to assessee's own TP Analysis and contrary to TP Auditor's Report, order passed by Commissioner (Appeals) was to **be** set aside - **Assistant Commissioner of Income-tax v. Thales DIS India (P.) Ltd. - [2023] 153 taxmann.com 611 (Delhi - Trib.)**

4.124. Adjustments - guarantee commission : ALP of international transaction of corporate guarantee to be computed by adopting most appropriate method under section 92CA (3) - **Graves Cotton Ltd. v. ACIT - [2023] 154 taxmann.com 100 (Mumbai - Trib.)**

4.125. Comparability factors - Turnover filter : A company engaged in diversified business activities and involved in

development of software products in addition to software services having huge turnover and intellectual properties, incurring significant R&D costs and onsite activity could not be accepted as comparable to assessee, a captive software development service provider - **Atos IT Services (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 20 (Bangalore - Trib.)

4.126. Adjustments - Working capital : Where TPO denied working capital **adjustment** to assessee due to absence of details for working out adjustments in comparable companies chosen, since revenue had not exercised its powers under section 133(6) to get information required, then it was no defense to say that assessee had not furnished required details to deny any adjustment on account of working capital differences - **Atos IT Services (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 20 (Bangalore - Trib.)

4.127. Adjustments - Interest : TP adjustment in respect of notional interest on outstanding receivables should be made after considering period of credit enjoyed by comparables and also applicable LIBOR rate in place of AEs for benchmarking rate of interest to arrive at ALP - **Atos IT Services (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 154 taxmann.com 20 (Bangalore - Trib.)

4.128. Adjustments - Interest : Where assessee-company had given loan to its AE and claimed that these loans were cash equity in nature and charged interest at rate of 5 per cent but TPO did not accept submission of assessee and treated it as international transaction and arrived at interest rate of 9.35 per cent and, accordingly, made TP adjustment, since primary contention of assessee that extending loan to AE was part of shareholder activity had not been properly addressed by TPO, issue should be remitted to TPO for de novo adjudication - **Tata Consultancy Services Ltd. v. Deputy Commissioner of Income-tax, LTU-1** - [2023] 154 taxmann.com 372 (Mumbai - Trib.)

4.129. 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 - **IG Infotech (India) (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 153 taxmann.com 684 (Bangalore - Trib.)

4.130. Adjustments - Working capital adjustments : In keeping with OECD guidelines, endeavour should be made to bring in comparable companies for purpose of broad comparison and, therefore, working capital adjustment should be allowed - **IG Infotech (India) (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 153 taxmann.com 684 (Bangalore - Trib.)

4.131. Adjustments - Interest : LIBOR plus 2 per cent is a reasonable margin to compute ALP of loan given to

subsidiaries - **Deputy Commissioner of Income-tax v. Arvind Ltd.** - [2023] 153 taxmann.com 608 (Ahmedabad - Trib.)

4.132. Adjustments - Administrative services : Where TPO originally proposed an adjustment in relation to intra-group services observing that assessee had not been able to demonstrate need, benefit and rendition of such services, since assessee had furnished enormous evidences which pointed out that intra-group services had in fact been received by assessee, adjustment made by TPO was to be deleted - **Avery Ennison (India) (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 153 taxmann.com 610 (Delhi - Trib.)

4.133. Adjustment - Guarantee commission : Bank guarantee rates cannot be **considered** for benchmarking corporate guarantee fee - **Crayon Group AS v. ACIT (IT)** - [2023] 153 taxmann.com 345 (Mumbai - Trib.)

4.134. Adjustments - Working capital adjustments : In order to increase comparability with tested party and comparables, **adjustment** of working capital is to be given - **Atmel R&D India (P.) Ltd. v. ACIT** - [2023] 154 taxmann.com 137 (Chennai - Trib.)

4.135. Comparables, functional similarly - Others : Where assessee was primarily engaged in business of providing contract development services and sales support services and assessee submitted that **selected** company was involved in procurement, installation, implementation, support and maintenance of ERP products & services and that it was functionally comparable, matter needed to be verified - **Atmel R&D India (P.) Ltd. v. ACIT** - [2023] 154 taxmann.com 137 (Chennai - Trib.)

4.136. Comparability factors - Accounting year : It does not make any difference **whether** a company is maintaining its books of account for December ending or March ending and only a suitable adjustment has to be made in view of different fiscals - **Atmel R&D India (P.) Ltd. v. ACIT** - [2023] 154 taxmann.com 137 (Chennai - Trib.)

4.137. Adjustments - Benefits from transaction/allowability of expenditure : For purposes of determination of ALP of intra-group services, assessee must demonstrate need test, benefit test and rendition test - **EOS Power India (P.) Ltd. v. Joint Commissioner of Income-tax** - [2023] 154 taxmann.com 131 (Mumbai - Trib.)

4.138. Adjustment - Interest : Where while calculating interest for receivable outstanding for more than 90 days, TPO had taken entire outstanding period but a period of less than 90 days while arriving at **adjustment** towards interest on delayed receivables, since there should be uniformity in approach of TPO, accordingly credit period of 90 days should be applied while arriving at interest on delayed receivable on sum outstanding for more than 90 days - **Parle Biscuits (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 153 taxmann.com 742 (Mumbai - Trib.)

4.139. Adjustment - Interest : Where assessee had given loans to

its AE and had been charging interest at rate of 5.5 per cent and Assessing Officer treated **interest** receivable as a separate international transaction and accordingly charged interest, since assessee had not shared any evidence or efforts made towards recovery of interest amount and, had not properly substantiated reasons for delay in interest receivables, TPO was right in treating interest receivable as a loan outstanding and charging interest on same - **Parle**

Biscuits (P.)Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 742 (Mumbai - Trib.)

4.140. Comparables, functional similarly - Others : Where assets employed by assessee-company in form of Plant & Machinery was Rs. 68,67,22,223/- whereas company selected by TPO to benchmark transaction of assessee employed assets in form of Plant & Machinery for Rs. 55,20,109/-, based on one of parameters of FAR analysis i.e., assets employed, said company could not be a good comparable with that of assessee - **Alliance One Industries India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 459 (Visakhapatnam - Trib.)**

4.141. Comparables, functional similarity - Others : Where assessee-company was engaged in business of export of unmanufactured tobacco but exports of selected company was insignificant and less than 50 per cent of total turnover of filter applied by assessee, it should be excluded from comparable list - **Alliance One Industries India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 459 (Visakhapatnam - Trib.)**

4.142. Adjustments - Operating profit/cost, computation of : Export incentives is operating in nature for purpose of calculating operating margins - **Alliance One Industries India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 459 (Visakhapatnam - Trib.)**

4.143. Adjustments - Interest : Where assessee had borrowed a certain sum from HO at interest rate of 4.51 per cent for a period of 353 days and assessee had determined arm's length interest rate based on data obtained from Reuters at 4.43 per cent and according to assessee difference of 0.18 per cent in arm's length price was within permitted range of +/-5 per cent as per proviso to section 92C(2), since Reuter/LIBOR rates represented arithmetical mean of rates of interest offered and accepted in transaction between unrelated parties, assessee was entitled to benefit of +/-5 per cent in terms of proviso to section 92C(2) - **Deputy Director of Income-tax (International Taxation) v. Commerzbank A. G. - [2023] 153 taxmann.com 460 (Mumbai - Trib.)**

4.144. Comparable, functional similarity - Others : Where assessee was providing correspondent banking services to its Head Office and Overseas Branches and selected company was Merchant Banker with SEBI, **activities** of this company was not comparable to assessee - **Deputy Director of Income-tax (International Taxation) v. Commerzbank A. G. - [2023] 153 taxmann.com 460 (Mumbai - Trib.)**

4.145. Adjustments - Operating profit/cost, computation of : Interest and other financial income and correspondingly interest and financial charges are includible in operating profit of company providing financial services - **Deputy Director of Income-tax (International Taxation) v. Commerzbank A. G. - [2023] 153 taxmann.com 460 (Mumbai - Trib.)**

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

4.146. Passing assessment order : Where a company was amalgamated with assessee as per orders of NCLT, and **assessee** had intimated fact of amalgamation to TPO however TPO passed TP order under section 92CA(3) in name of said non-existing entity, but final assessment order was passed in name of assessee, an existing entity, final assessment order being based on invalid TP order, could not be sustained - **Emerson Process Management (India) (P.) Ltd. v. ACIT - [2023] 154 taxmann.com 291 (Mumbai - Trib.)**

4.147. Period of limitation : Where due date for passing of order of TPO was 31-10-2019 but he had passed order under section 92CA(3) on 1-11-2019, order passed by TPO was beyond time limit prescribed under section 92CA(3A) and hence barred by limitation - **Mahindra and Mahindra Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer, National e-Assessment Centre, Delhi - [2023] 154 taxmann.com 194 (Mumbai - Trib.)**

SECTION 115BBE OF THE INCOME-TAX ACT, 1961 - TAX ON INCOME REFERRED TO IN SECTIONS 68 TO 69D

4.148. General : Provisions of section 115BBE as amended by Taxation Laws (Second Amendment) Act, 2016 will apply with effect from 1-4-2017 on enhanced rate of 60 per cent - **Karthick Natarajan v. Deputy Commissioner of Income-tax, International Taxation - [2023] 154 taxmann.com 136 (Chennai - Trib.)**

SECTION 143 OF INCOME-TAX ACT, 1961 - ASSESSMENT - ISSUE OF NOTICE

4.149. Jurisdiction : Where Assessing Officer issued notice under section 143(2) for scrutinizing return of assessee on basis of PAN data of assessee, there was no question of raising jurisdictional issue in such selection of cases for scrutiny - **Tarasafe International (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 153 taxmann.com 282 (Kolkata - Trib.)**

4.150. Order without DIN : Where final assessment order passed by Assessing Officer did not bear any Document Identification Number (DIN) and **revenue** failed to bring on record any exceptional circumstances as mentioned in Circular No. 19/2019, dated 14-8-2019 which would sustain communication of final assessment order manually without DIN, assessment order was to be treated as never been issued - **Prabhakar Amruta Shillak v. Income-tax Officer - [2023] 153 taxmann.com 211 (Pune - Trib.)**

SECTION 144C OF THE INCOME-TAX ACT, 1961 -

TRANSFER PRICING - DISPUTE RESOLUTION PANEL

4.151. Scope of provision : As per provisions of section 144C(10), Every direction **issued** by DRP shall be binding on AO and AO is not empowered to raise any new issue in giving effect proceedings and continue addition based on some other reasoning - **Golden State Capital (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle - [2023] 154 taxmann.com 70 (Delhi - Trib.)**

4.152. Passing assessment order without DIN : Object and purpose of issuance of Circular No. 19/2019, dated 14-8-2019 was to create an audit trail, therefore, **communication** relating to assessments, appeals, orders, etc., passed by any income-tax authority without DIN can have no standing in law - **Unisys India (P.) Ltd. v. ACIT - [2023] 154 taxmann.com 104 (Bangalore - Trib.)**

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

4.153. Apportionment of fee: Where infrastructure development project work taken by assessee-company could not be completed within year, services to be rendered by assessee would automatically spill over to succeeding years of project period, and accordingly, project development fee received was to be apportioned over period of project and entire fee could not be taxed during year specifically when fees apportioned to subsequent years was returned to tax by assessee in said years - **ACIT v. Gujarat State Road Development Corporation Ltd. - [2023] 153 taxmann.com 744 (Ahmedabad - Trib.)**

4.154. Net profit : Where AO noted huge reduction in percentage of gross profit of assessee between two consecutive years and computed net profit at 4 per cent of turnover and accordingly, made additions in **income** of assessee, since assessee provided detailed explanation behind fall in profit rate and provided quantitative details of opening stock, purchases, sales and closing stock, action of AO to estimate profit rate at 4 per cent without rejecting books of account was not in accordance with law - **Kunan Mal Kalu Ram Jain and Co. v. Income Tax Officer - [2023] 154 taxmann.com 553 (Jaipur - Trib.)**

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

4.155. Approval of draft assessment : Where assessee was covered under section 153C based on incriminating material and cash seized during search **conducted** at premises of one Unique group and due to complexity of transactions special audit under section 142(2A) was proposed to correlate contents of diaries and materials seized with business activities of each of associated concerns including assessee, since approval for passing draft assessment order was made by Additional Commissioner without any application of mind and

thereafter AO completed assessee's assessment based on special audit report making various high value addition, approval granted under section 153D was bad in law and assessment passed by Assessing Officer would also be bad in law - **Vrushali Sanjay Shinde v. Deputy Commissioner of Income-tax, Central Circle-1 - [2023] 154 taxmann.com 324 (Mumbai - Trib.)**

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

4.156. MMRDA : Payment made to Mumbai Metropolitan Region Development Authority (MMRDA), which had been established under Mumbai Metropolitan Region Development Authority Act, 1974, will fall under exclusion provided under sub-section (3) of section 194 and thus, assessee could not be treated as assessee - in-default for non-deduction of tax on payment of interest on delayed payment of additional premium to MMRDA - **Punjab National Bank v. Assistant Commissioner of Income-tax (TDS) - [2023] 153 taxmann.com 280 (Mumbai - Trib.)**

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

4.157. Lease premium : Issue of deduction of tax under section 194-I on additional lease premium paid by assessee to MMRDA was remanded to file of **Assessing Officer** for adjudication in light of Circular No. 35/2016, dated 13-10-2016 - **Punjab National Bank v. Assistant Commissioner of Income-tax (TDS) - [2023] 153 taxmann.com 280 (Mumbai - Trib.)**

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

4.158. Transfer of business, in case of : Where assessee transferred business of generation, transmission and distribution of electricity to another company AEML and on account of transfer of business AEML **transferred** income and TDS credit to assessee, said TDS credit to assessee, could not be denied merely because credit of TDS didn't reflect in Form 26AS of assessee - **Deputy Commissioner of Income-tax v. Reliance Infrastructure Ltd. - [2023] 153 taxmann.com 716 (Mumbai - Trib.)**

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

4.159. Condition precedent : Where assessee had not deducted TDS under section 194-IA on payment of consideration above Rs. 50 lakhs made for purchase of property and he had failed to file Form no. 26A alongwith certificate of Chartered Accountant, condition of section 201 was not fulfilled and thus interest under section 201(1)(1A) was to be levied upon assessee - **Bhikhabhai Parshottambhai Patel v. Income-tax Officer, TDS-1 - [2023] 154 taxmann.com 290 (Ahmedabad - Trib.)**

SECTION 253 OF THE INCOME-TAX ACT, 1961 -

APPELLATE TRIBUNAL - APPEALS TO

4.160. Condonation of delay : Where order passed by PCIT was uploaded on online *portal* and it was not sent on e-mail id, provided by assessee therefore assessee was not aware whether PCIT had passed order under section 263 or not, in such circumstances delay of 208 days in filing appeal was to be condoned - **Sachin Notified Area v. Principal Commissioner of Income-tax - [2023] 153 taxmann.com 689 (Surat-Trib.)**

4.161. Condonation of delay : Where assessee had acted diligently in safeguarding his legal rights and **availing** remedies available to him, and had acted on basis of advice and assistance from his legal counsels and since there was no culpable negligence or mala fide on assessee's part in delayed filing of appeal, delay of 220 days in filing appeal was condoned - **Mahaveer Prasad Jain v. Principal Commissioner of Income-tax - [2023] 153 taxmann.com 207 (Jaipur - Trib.)**

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

4.162. Illustrations : Where assessee had deposited demonetized currency and submitted all details to substantiate such deposit and Assessing Officer had also made enquiry and recorded his satisfaction after examining books of account, etc., Pr. Commissioner was not justified in invoking revisional jurisdiction under section 263 merely because Assessing Officer had not specifically written **that** he had verified cash of demonetized currency - **Mahaveer Prasad Jain v. Principal Commissioner of Income-tax - [2023] 153 taxmann.com 207 (Jaipur - 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 dtpakolkata@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.

GST & Indirect Taxes

1. STATUTORY UPDATES

1.1 GSTN Advisory: Temporary/Short period pause in e-Invoice auto population into GSTR-1

Editorial Note : The GSTN has informed that auto population of e-Invoice in GSTR-1 is temporarily halted due to essential system upgrades, which will involve the implementation of e-Invoice JSON download functionality. This will have a temporary impact on the e-Invoice data auto population in GSTR-1 which will not be available from 26th September 2023 to 29th September 2023 from all six IRP portals.

1.2 No more double taxation on ocean freight; CBIC amends IGST Rate Notifications

Editorial Note : The CBIC has amended IGST Rate notifications in order to provide that IGST will not be levied on importer under RCM on supply of ocean freight services by foreign shipping line to foreign exporter. Notably, these changes are incorporated to give effect to decision of Apex Court in case of Mohit Minerals since the Government has already amended place of supply provisions for services of transportation of goods by vessel.

1.3 Special procedure notified for manufacturers of Pan Masala & Tobacco products to be effective from Jan 1st, 2024 - **Notification No. 47/2023- Central Tax, Dated 25-09-2023**

Editorial Note : The CBIC has earlier notified special procedure which shall be followed by registered persons engaged in manufacturing of Pan Masala & Tobacco products. Now, it has been provided that this new procedure shall be effective from 01.01.2024.

1.4 State Benches of Goods and Services Tax Appellate Tribunal are notified - **Notification S.O. 4073(E), Dated 14-09-2023**

Editorial Note : The Central Government constitutes State Benches of the Goods and Services Tax Appellate Tribunal and this regard notification has been issued.

1.5 Geocoding Functionality for the Additional Place of Business is now available for all taxpayers: GSTN Update

Editorial Note : The GSTN has issued an update to inform that the geocoding functionality for the "Additional Place of Business" address is now active across all States and Union Territories. This builds upon the geocoding functionality earlier implemented for the principal place of business, operational since February 2023.

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

Editorial Note : The GSTN has issued an advisory to inform you that it has been decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals

for taxpayers with AATO greater than 100 crores and taxpayers in this category will not be allowed to report invoices

older than 30 days on the date of reporting.

1.7 CBIC notifies value of supply in case of online gaming including online money gaming - **Notification No. 45/2023 – Central Tax, Dated 06-09-2023**

Editorial Note : The CBIC has introduced new rule to provide that the value of supply of online gaming shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including VDAs, by or on behalf of the player.

1.8 Rules on appointment in tribunal regarding resignation from previous service and on pension etc - **Notification No. G.S.R.655(E), Dated 05-09-2023**

Editorial Note : The CBIC has issued a notification to provide that the person appointed as a Chairperson or member of the Tribunal is required to either resign or voluntarily retire from his parent service. Further, pension, provident fund, and gratuity would not be admissible for service rendered in the Tribunal.

1.9 Exchange rates of foreign currency into Indian rupee for import and export notified - **Notification No. 64/2023 – Customs (N.T.), Dated 06-09-2023**

Editorial Note : The CBIC has issued a notification to provide for the rate of exchange of foreign currency into Indian rupees separately for import and export of goods. The notified rates would be applicable with effect from 07-09-2023.

1.10 Valuation Rules notified for supply of online gaming and actionable claims in casino - **Notification No.45/2023-CGST, Dated 06-09-2023**

Editorial Note : The CBIC has issued notification to provide rules for valuation of supply in case of online gaming, and supply of actionable claims in casino. Supply of online gaming would include online money gaming. The valuation would be done on the total money deposited or the value of purchase of actionable claims but the winning amount used for further playing would not be included.

1.11 Route for the Land Customs Station of Nischintapur Railway Station provided - **Notification No.65/2023-Customs (N.T.), Dated 06-09-2023**

Editorial Note : The CBIC has issued notification to provide the route for the land custom station of Nischintapur Railway Station in West Tripura District, Tripura from Nischintapur (India) to Gangasagar (Bangladesh) Railway line.

1.12 Instructions for streamlining of processes for Customs Post Clearance Audit Work - Instruction No.27/2023- Customs, **Dated 06-09-2023**

Editorial Note : The CBIC has issued an instruction to streamline the process of Customs post-clearance audit work. This includes the relevant changes in scope and coverage under such audit, selection of premises, selection of themes etc.

1.13 CBIC disposes off 11,284 public grievances & 2,082 public grievance appeals between Nov. 2022 to August, 2023

Editorial Note : The CBIC has participated with great vigour in the Special Campaign on Disposal of Pending Matters from November, 2022 to August, 2023 and disposed off 11,284 public grievances & 2,082 public grievance appeals.

1.14 Clarification on e-Invoicing for Government Supplies: Press Release

Editorial Note : The Government has clarified that the tax payers, notified for generation of e-invoices and supplying goods or services to government departments / agencies, need to generate B2B e-Invoices with the GSTIN of the Government department/agency.

1.15 GSTN introduces Electronic Credit Reversal and Reclaimed Statement on GST portal

Editorial Note : In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement is being introduced on the GST portal.

1.16 Gross GST revenue of Rs.1,59,069 crores collected during the month of August 2023

Editorial Note : The gross GST revenue collected in the month of August, 2023 is Rs.1,59,069 crores. The revenues for the month of August, 2023 are 11% higher than the GST revenues in the same month last year.

2. SUPREME COURT

SECTION 2(17) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - BUSINESS

2.1 SC granted ad interim stay on HC ruling that Online/offline/physical/electronic/digital Rummy games and also other games, played with or without stakes on assessee's Mobile App being substantially and preponderantly games of skill and not of chance, are not covered within expression 'betting and gambling' appearing in Entry 6 of Schedule III to Central Goods and Services Tax Act, 2017; and, hence, same are not taxable - **Directorate General of Goods and Services Tax Intelligence (Hqs) v. Gameskraft Technologies (P.) Ltd.** - [2023] 154 taxmann.com 158 (SC)

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

2.2 Interim order restraining arrest of accused of ITC fraud made absolute on account of non-misuse of liberty granted - **Paresh Anubhai Mawani v. Superintendent (Central Tax)** - [2023] 153 taxmann.com 729 (SC)

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

2.3 Where FIR was registered in respect of tax evasion and appellant had joined investigation, custodial interrogation of appellant was not necessary; bail would be granted in case of arrest - **Depesh Tiwari v. State of M.P.** - [2023] 154 taxmann.com 36 (SC)

3. HIGH COURT

SECTION 2(6) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - EXPORT OF SERVICES

- 3.1 Where petitioner EOU registered with STPI was exporting information technology software services to its US holding company on principal-to-principal basis on its own count, refund of IGST could not be denied to petitioner - ***Xilinx India Technology Services (P.) Ltd. v. Special Commissioner Zone VIII - [2023] 154 taxmann.com 312 (Delhi)***

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

- 3.2 Where ownership of previous entities eligible for Budgetary Support Scheme were changed and as per section 22 of CGST Act, new GST registrations were taken, new entities could not claim exemption under Budgetary Support Scheme - ***Zyduz Wellness Products Ltd. v. Union of India - [2023] 154 taxmann.com 261 (SIKKIM)***

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

- 3.3 No IGST is payable on ocean freight under reverse charge mechanism on CIF contracts (costs, insurance and freight contracts); show cause notice for recovery alleging short payment of IGST on ocean freight on import under CIF contract, was to be set aside - ***Bhavani Industries v. Union of India - [2023] 154 taxmann.com 167 (Gujarat)***

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

- 3.4 Rate of GST on fruit pulp would be 12 per cent and not 18 per cent - ***Varsha Food Products India (P.) Ltd. v. Assistant Commissioner (ST) - [2023] 154 taxmann.com 413 (Andhra Pradesh)***

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

- 3.5 Since, for promoting industrial growth, reimbursement of 75 per cent of SGST was incorporated in state industrial policy but Notification dated 7-3-2019 issued by Department of Industries, Government of Jharkhand, introduced a fresh/new 'End User condition within State' having an effect of destroying acquired and/or vested right of petitioner, amendment so carried out would not be sustainable; where petitioner was maintaining separate books of account for its expanded unit, incentive towards reimbursement of SGST paid to petitioner should be calculated taking into consideration expanded unit only; and not considering entire unit i.e. original and expanded unit - ***Atibir Industries Company Ltd. v. State of Jharkhand - [2023] 154 taxmann.com 581 (Jharkhand)***

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

- 3.6 Where petitioner's claim for input tax credit of Rs. 44,51,943.08 for CGST and SGST was restricted to Rs. 1,04,376.05 each due to discrepancies in GSTR 2A, however, said denial based solely on GSTR 2A discrepancies was not justified and directed revenue to provide petitioner with an opportunity to prove genuineness of transaction and remittance of tax to seller; Input tax credit should not be denied without proof of collusion between assessee and seller - ***Diya Agencies v. State Tax Officer - [2023] 154 taxmann.com 421 (Kerala)***

- 3.7 Where demand was raised on ground of availing ITC wrongly without giving petitioner an opportunity of hearing although petitioner had filed reply to notice, matter was to be readjudicated - ***Tvl. P.G.Textiles v. Assistant Commissioner (ST) - [2023] 153 taxmann.com 732 (Madras)***

- 3.8 Where petitioner was engaged in business of providing book keeping, payroll, and accounting services through use of cloud technology to its affiliated entity incorporated in United Kingdom, revenue is directed to process assessee's claim for refund of unutilized input tax credit in respect of zero rated supplies by assessee because assessee acted as a principal service provider and not as agent or intermediary as per agreement within parties - ***Boks Business Services (P.) Ltd. v. Commissioner Of Central Goods And Services Tax - [2023] 154 taxmann.com 72 (Delhi)***

- 3.9 Where supplier had wrongly reported supply as B2C instead of B2B in Form GSTR-1 due to which relevant supply was not get reflected or also there was declaration of wrong GSTIN of recipient in Form GSTR-1, these issues ought to have been dealt with in terms of Circular No. 183/15/2022-GST, dated 27-12-2022 - ***Makhan Lal Sarkar v. Assistant Commissioner of Revenue, State Tax - [2023] 154 taxmann.com 580 (Calcutta)***

- 3.10 Sub-section (4) of section 16 of CGST/BGST Act is constitutionally valid and not violative of Articles 19(1)(g) and Article 300-A of Constitution of India - ***Gobinda Construction v. Union of India - [2023] 154 taxmann.com 311 (Patna)***

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

- 3.11 ITC blocked for petitioners (SL. No. 2 to Sl. No. 8) for more than one year must be unblocked as per rule 86A(3) of CGST Rules, 2017 allowing respondent to issue notices under section 73 of CGST Act, 2017 and petitioner (Sl. No. 1) with remaining blocked ITC, could file an appeal by depositing 10 per cent of assessed amount within statutory period with ITC unblocked upon compliance - ***Tvl. New Royal Traders v. Assistant Commissioner RAL - [2023] 154 taxmann.com 558 (Madras)***

- 3.12 Where petitioner appeared to have availed ITC on strength of invoices of a trader/supplier who was not having any

business and was reportedly engaged in passing on ineligible input tax credit to various/numerous tax payers including petitioner, order blocking ITC was justified - **Sri Rameswar Metal House v. Assistant Commissioner (ST)** - [2023] 154 taxmann.com 5 (Madras)

SECTION 18 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - INPUT TAX CREDIT - CREDIT IN SPECIAL CIRCUMSTANCES, AVAILABILITY OF

3.13 Where petitioner converted registration type from composition scheme to normal scheme, but failed to avail eligible ITC in respect of stock of inputs in form of semi finished/finished goods and capital goods as it could not file ITC-01 FORM due to technical glitches on GST portal, petitioner was to be permitted to upload Form ITC-01 so as to enable it to claim ITC - **Anupam Electricals and Electronics v. State of U.P.** - [2023] 154 taxmann.com 236 (Allahabad)

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

3.14 Where in response to show cause notice, intending to cancel registration, assessee submitted reply but after remaining silent for over four and half months, revenue authorities cancelled registration, show cause notice and impugned order were to be quashed and set aside solely on ground of violation of principles of natural justice - **Hardik Kaushikbhai Joshi v. Union of India** - [2023] 154 taxmann.com 517 (Gujarat)

3.15 Where order canceling registration of petitioner was in breach of principles of natural justice, said order was to be set aside and registration was to be restored - **C. P. Pandey & Co. v. Commissioner of State Tax** - [2023] 154 taxmann.com 8 (Bombay)

3.16 DGGI of concerned zonal unit can't take decision for cancelling GST registration; Superintendent of Central Tax of concerned Range should take an independent decision - **Muhammad SalmanulFaris k v. Superintendent, CGST & Central Excise** - [2023] 154 taxmann.com 414 (Kerala)

3.17 Where on basis of vehicle details in E-way bill, department doubted that petitioner was involved in paper transaction without actual movement of goods, as petitioner appeared in office of proper officer with all required documents, but without examining same, GST registration was cancelled, matter was to be read judicated - **Quality Traders v. Yogesh Kumar** - [2023] 154 taxmann.com 235 (Delhi)

3.18 Where on closure of business on 31-12-2019, assessee filed application for cancellation of registration from date of closure, department could not after a year cancel registration with retrospective effect from 1-7-2017, (i.e., date on which GST Act came into effect) merely on ground that assessee had not filed returns for last 6 months - **Geetanjali Trade Fincap (P.) Ltd. v. Commissioner of Delhi Goods & Services Tax** - [2023] 154 taxmann.com 234 (Delhi)

3.19 Where petitioner could not file returns as it's registration was cancelled, assessment order passed during interregnum and recovery notice issued, after which impugned order was downloaded, dispute had arisen only on account of difference between turnover disclosed in GSTR-01 and ITC claimed in GSTR-3B, petitioner was willing to deposit a token amount, impugned order and recovery notice were to be quashed - **S.S.Traders v. Assistant Commissioner (ST)** - [2023] 154 taxmann.com 477 (Madras)

3.20 Where show cause notice issued to petitioner had not specified person to whom reply had to be made by petitioner, same was to be quashed as it was bad in law - **SP Metal Industries v. Superintendent of Goods and Services Tax & Central Excise, Hosur** - [2023] 154 taxmann.com 283 (Madras)

3.21 Where in show cause notice issued for cancelling registration, no specific contraventions of GST Act/Rules had been alleged, and registration was cancelled though petitioner submitted all relevant documents, matter was to be readjudicated after issuing fresh show cause notice specifying violations - **M. B. Trading v. State of Tripura** - [2023] 154 taxmann.com 377 (TRIPURA)

3.22 After having come to a conclusion that appeal was not filed in time and was not maintainable, Appellate Authority was not justified in recording findings on merits to reject registration; only if appeal was not time barred, appeal would then be required to be effectively adjudicated on merits on basis of elaborate findings - **Tribest Fine Yarns Ltd. v. Union of India** - [2023] 154 taxmann.com 264 (Bombay)

3.23 Where assessee's registration was cancelled on non-payment of tax and interest and its bank account was attached for recovery, on payment of entire tax amount, bank account would be defreezed; case was posted - **N.S. Rathinam and Sons (P.) Ltd. v. Commissioner of GST and Central Excise** - [2023] 154 taxmann.com 216 (Madras)

3.24 Where Show Cause Notice did not disclose proper ground for proposed cancellation of GST Registration and GST Registration was cancelled after inspecting old premises though change of business premises was duly informed to department, impugned order was to be set aside - **Frequent Logistics Services (P.) Ltd. v. Commissioner Goods & Services Tax Department** - [2023] 154 taxmann.com 336 (Delhi)

3.25 Order cancelling petitioner's registration was incapable of eliciting any meaningful response as it did not indicate as to what was fraud allegedly perpetuated by petitioner, therefore same was to be set aside - **Green Polymers v. Union of India** - [2023] 154 taxmann.com 330 (Delhi)

3.26 Where from SCN issued for cancelling registration assessee had no clue as to why its GST registration was sought to be cancelled and assessee's request for providing further specific grounds was not acceded to and no further

information was provided, registration cancellation order was to be set aside; cost to be paid to assessee - **Rahul Kumar Jain v. Union of India** - [2023] 154 taxmann.com 450 (Delhi)

3.27 Since show cause notice issued for cancellation of registration did not provide any clue as to which provisions of GST Act or GST Rules were allegedly violated by assessee, order for cancellation of assessee's registration based on such show cause notice was to be set aside - **Singla Exports v. Central Board Of Indirect Taxes and Customs** - [2023] 154 taxmann.com 73 (Delhi)

SECTION 30 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - REVOCATION OF CANCELLATION OF

3.28 For restoration of canceled registration an Amnesty Scheme was introduced vide Notification No. 3/2023-CT, dated 31-3-2023 which had been extended to 31-8-2023 vide Notification No. 23/2023-CT, dated 17-7-2023; benefit of Scheme should ensure to persons like petitioner also whose registrations was canceled after cut-off date of 31-12-2022 - **Active Pest Control v. Deputy Commissioner, Commercial Taxes Department, Circle-XI** - [2023] 154 taxmann.com 2 (Madras)

3.29 Where assessee submitted that during relevant period he was devoting time for treatment of his ailing son who died later and he could not run business or respond to registration cancellation order, assessee would be allowed to file application seeking revocation of cancellation of its GST registration and same should be considered by proper officer on merits - **Shree Balaji Traders v. Commissioner of Goods & Service Tax** - [2023] 154 taxmann.com 277 (Delhi)

3.30 Where assessee failed to file returns in time or to file appeal or application for reviving cancelled registration, on filing of returns for entire period as also application for fresh registration, subject to deposit of cash, either fresh registration was to be issued or old registration was to be revived - **Gopal Selvam v. Assistant Commissioner (ST)** - [2023] 154 taxmann.com 337 (Madras)

RULE 42 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - MANNER OF DETERMINATION OF INPUT TAX CREDIT IN RESPECT OF INPUTS OR INPUT SERVICES AND REVERSAL THEREOF

3.31 Writ petition challenging constitutional validity of Rule 42 was allowed - **Geeta Ganesh Promoters (P.) Ltd. v. Union of India** - [2023] 154 taxmann.com 116 (Calcutta)

SECTION 50 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PAYMENT OF TAX - INTEREST ON DELAYED PAYMENT

3.32 Where in assessment order, interest and penalty was levied for excess credit claim of ITC, without considering reply of assessee, matter was to be readjudicated - **Rainbow Motors v. Assistant Commissioner (ST)** - [2023] 154 taxmann.com 310 (Madras)

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

3.33 Where adjudicating authority and appellate authority failed to consider invoices and material produced by petitioner-assessee to be relevant for establishing that input supplies in respect of which refund was claimed were directly co-related to export of sugar, matter was to be restored for reconsideration on merits - **KS Commodities (P.) Ltd. v. Assistant Commissioner** - [2023] 154 taxmann.com 447 (Delhi)

3.34 Where refund amount was erroneously calculated by authorities, ignoring DIC's audit report upon which calculation had been made for refund of an amount of Rs.17,80,000/, authorities recalculated and awarded refund of Rs. 1,71,824 to petitioner, as an interim relief concerned authorities were directed to refund admitted amount to petitioner - **Maa Sarala Fly Ash Bricks v. Commissioner of CT & GST, Cuttack** - [2023] 154 taxmann.com 146 (Orissa)

3.35 Where custom House Agent accidentally selected wrong tariff item during export of unsaturated polyester resin by petitioner, since duty drawback rates for both tariff items were same and there was no intention to claim higher rate, petitioner was entitled for refund of IGST paid in respect of zero rated along with interest - **Satyen Polymers (P.) Ltd. v. Union of India** - [2023] 154 taxmann.com 605 (Bombay)

3.36 Where grievance of petitioner construction company was that it had carried out certain work contract for Government department and was entitled to refund of GST at rate of 18 per cent, however, refund was granted at rate of 12 per cent; since petitioner could approach revenue authority, writ petition was disposed of - **Maa Vindhya Vasini Construction v. State of U.P.** - [2023] 154 taxmann.com 412 (Allahabad)

3.37 Where management of hotel was imposing GST on customers beyond prescription of Act, Tax Department would not be liable for same; Consumer Forum should not entertain any petition against statutory authority - **Joint Commissioner of State Tax, Commercial Taxes Department v. State Consumer Disputes Redressal Commission** - [2023] 154 taxmann.com 238 (Madras)

3.38 Since GST was not chargeable on preparation of project report service which was provided by DMRC to Surat Municipal Corporation, Surat Municipal Corporation had not paid amount of GST on said services, limitation period for applying for a refund, as prescribed under section 54 of CGST Act, does not apply when GST is not chargeable - **Delhi Metro Rail Corporation Ltd. v. Additional Commissioner, Central Goods and Services Tax Appeals II** - [2023] 154 taxmann.com 567 (Delhi)

3.39 Question as to whether services rendered by petitioner were for facilitating or for arranging principal services and thus, services provided by assessee were that of an

intermediary service making assessee in eligible to get refund of unutilized ITC on export without payment of tax, required examination; matter remanded - **NavitasEduservices (P.) Ltd. v. Additional Commissioner of CGST, Appeal-II - [2023] 154 taxmann.com 556 (Delhi)**

3.40 Where application for amendment of shipping bills had already been made to respondent, respondent authorities were to decide application - **Forward Crop Protection (P.) Ltd. v. Union of India - [2023] 154 taxmann.com 490 (Gujarat)**

3.41 Where there were no allegations against assessee regarding any irregularities in relation to supplies, neither there was any dispute regarding quantum of ITC refund claimed, assessee's refund claim not to be denied - **Solidum and Stars Guild LLP v. Commissioner of Central Tax, Appeal-II - [2023] 154 taxmann.com 271 (Delhi)**

3.42 Amendment in rule 89 (4) of CGST Rules, 2017 which came into effect vide Notification No. 14/2022-Central Tax dated 5-7-2022 introducing comparison between values indicated in tax invoice and shipping bill (to accept lower value in matter of refund), is not clarificatory in nature and, thus, will have a prospective effect - **Tata Steel Ltd. v. Union of India - [2023] 154 taxmann.com 76 (Jharkhand)**

SECTION 56 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REFUND - DELAYED REFUNDS, INTEREST ON

3.43 Interest on delayed refunds is mandatory under section 56 of CGST Act - **Panji Engineering (P.) Ltd. v. Union of India - [2023] 153 taxmann.com 727 (Gujarat)**

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

3.44 Search authorisation issued without proper officer having any reason to believe that conditions specified under section 67 were complied, is invalid - **Bhagat Ram Om Prakash Agro (P.) Ltd. v. Commissioner of Central Tax, GST - [2023] 154 taxmann.com 491 (Delhi)**

3.45 Sub-section (2) of section 67 merely provides that, in search cases, if no notice is issued within stipulated period after order of prohibition is rejected, goods seized are liable to be returned; it does not postulate that such a notice issued after six months is invalid - **Best Crop Science (P.) Ltd. v. Superintendent, CGST - [2023] 154 taxmann.com 476 (Delhi)**

SECTION 72A OF THE FINANCE ACT, 1994 - SPECIAL AUDIT

3.46 Prima facie, notwithstanding judgments in Travelite (India) v. Union of India [2014] 48 taxmann.com 227/46 GST 708 (Delhi) and Mega Cabs (P.) Ltd. v. Union of India [2015] 59 taxmann.com 463/51 GST 768 (Delhi) having been placed in abeyance by Apex Court, declaration of invalidity of Rule

5A of Service Tax Rules, 1994 by Division Bench of High Court would not stand effaced; matter called again - **T.R. Sawhney Motors (P.) Ltd. v. Union of India - [2023] 154 taxmann.com 150 (Delhi)**

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

3.47 Where demand was confirmed on petitioner for short payment of compensation Cess without subjecting product to testing, product which was subject matter of dispute was cut tobacco or manufactured tobacco, issue could be decided by Appellate Commissioner by calling for a report of expert regarding nature of product, writ petition was to be dismissed - **Aasai Super Tobacco v. Assistant Commissioner of GST & Central Excise - [2023] 154 taxmann.com 88 (Madras)**

3.48 Where sufficient time was not afforded to petitioner to represent his case and order passed was ex parte in nature without assigning any reason, matter was directed to be re-adjudicated - **Cement House Refyuji Colony v. Union of India - [2023] 154 taxmann.com 3 (Patna)**

3.49 Bail application was to be dismissed as given serious nature of allegations, including forgery and GST evasion, custodial interrogation was necessary for recovery of proceeds of crime and to confront applicant with evidence - **Aman Gupta v. State - [2023] 154 taxmann.com 482 (Delhi)**

3.50 Where petitioner-assessee instead of filing reply to show cause notice issued by respondent-department under section 73, filed writ petition against issuance of same, no interference could be made with said show cause notice and petitioner-assessee was directed to file reply to aforesaid notice - **Geeta Ganesh Promoters (P.) Ltd. v. Union of India - [2023] 154 taxmann.com 116 (Calcutta)**

3.51 Confirmation of demand without providing opportunity of personal hearing under provisions of GST Act, 2017 would set an unhealthy trend and therefore order confirming demand proposed

3.52 Where show cause notice was issued and assessee furnished written reply and were not interested in personal hearing, designated officer needed to proceed and adjudicate show cause notice; contentions challenging provisional attachment of bank accounts of assessee needed to be kept open to be agitated by assessee after decision on show cause notices in question - **Bharat Parihar v. State of Maharashtra - [2023] 154 taxmann.com 35 (Bombay)**

SECTION 74 OF THE FINANCE ACT, 1994 - RECTIFICATION OF MISTAKE

3.53 Where petitioner had filed a Rectification Application, but respondents authorities had not considered same; authorities should consider same - **Cherry Retail v. Assistant Commissioner of CGST and Central Excise - [2023] 154 taxmann.com 374 (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

- 3.54** Where petitioner submitted that its PAN was misused to obtain GST registration and misuser had made unauthorized transaction and passed on illegal credits using GST registration obtained in name of petitioner due to which petitioner has been imposed with hefty penalty, GST authorities and police are directed to investigate matter - **S. KajaMohideen v. Commissioner of GST and Central Excise - [2023] 154 taxmann.com 561 (Madras)**
- 3.55** Where complexity of architecture of web portal resulted in petitioner-assessee's failure to reply to show cause notice, matter was remitted back to respondent-department and assessment orders passed on basis of show cause notice were set aside - **Sabari Infra Private Limited v. Assistant Commissioner (ST), Chennai - [2023] 154 taxmann.com 147 (Madras)**
- 3.56** Where order was passed within two months from date of issuance of notice denying assessee valuable right to pay and avail concession granted under section 74 in payment of penalty, there was violation of principles of natural justice - **P. R. Hardwares v. State Tax Officer, Tuticorin. - [2023] 154 taxmann.com 151 (Madras)**
- 3.57** Wherein ITC fraud allegation, assessee filed writ petition, in view of fact that petitioner had full opportunity to respond to show cause notice, petitioner should comply with same and adjudication authority should proceed accordingly - **White Mountain Trading (P.) Ltd. v. Commissioner Central Excise and Central GST, Commissionerate Delhi South - [2023] 154 taxmann.com 385 (Delhi)**
- 3.58** Since order determining dues which were liable to be paid by assessee was a non-speaking order, same was to be set aside and matter was remitted back to revenue to pass speaking order on merits in accordance with law - **Tvl. Rajendra Steel Industries v. State Tax Officer (ST) - [2023] 154 taxmann.com 211 (Madras)**
- 3.59** Notice under rule 142(1) of CGST Rules issued to petitioner, was not served, consequent thereto ex-parte order had been passed imposing penalty, order impugned being ex-parte order, was to be set aside - **Sri Bala Ji Marbles v. State of U.P. - [2023] 154 taxmann.com 89 (Allahabad)**
- 3.60** Where an expropriatory action, was taken, principles of natural justice had to be complied with; if before passing assessment order no hearing was accorded to assessee, same was contrary to mandate of law prescribed under section 75(4) of GST Act - **Party Time Hospitality v. State of U.P. - [2023] 154 taxmann.com 85 (Allahabad)**
- 3.61** Where adjudication order was challenged on ground that it did not record any reasons/findings in regard to contentions as urged by assessee, department should readjudicate

matter - **Savvy Fabrics v. Union of India - [2023] 154 taxmann.com 451 (Bombay)**

- 3.62** Writ Jurisdiction cannot be exercised at show cause notice stage when it contains necessary details and grounds and therefore, cannot be said to be patently illegal, being without jurisdiction; assessee should comply with notice - **Abhay Traders v. Commissioner Commercial Tax U.P. - [2023] 153 taxmann.com 725 (Allahabad)**
- 3.63** Where assessee's bank accounts and properties are provisionally attached under section 83 of CGST Act followed by orders under section 74 of CGST Act, impugned orders of attachment was to be quashed and set aside - **Rina Jaiswal v. Commissioner of Central Tax - [2023] 154 taxmann.com 329 (Telangana)**

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

- 3.64** Order not passed and only 'Summary of order' uploaded but not served in any other manner; High Court quashes order giving liberty to initiate proceedings afresh - **VinayagamoorthyTyres v. Deputy State Tax Officer - [2023] 154 taxmann.com 559 (Madras)**
- 3.65** Where demand order was challenged on ground that amount demanded was more than amount proposed in notice while proper officer submitted that already an appropriate notice was issued though assessee was not summoned again, since impugned order being appellable, writ petition was to be disposed - **T.R. Enterprises v. State of Haryana - [2023] 154 taxmann.com 169 (Punjab & Haryana)**
- 3.66** Impugned orders were to be set aside when adverse orders were passed against petitioner without affording opportunity of personal hearing to him - **Tvl. Sree Amman Metal Works v. State Tax Officer (Adjudication)-2 - [2023] 154 taxmann.com 496 (Madras)**
- 3.67** Show cause notice issued under rule 142(1) of CGST Rules did not give any specific date for petitioner to appear for a personal hearing, petitioner thus not participated in proceeding, order passed in pursuance thereafter, without providing opportunity of hearing was passed in gross of violation of principles of natural justice, was to be quashed - **Tvl. M.B. Enterprises v. Assistant Commissioner (ST) - [2023] 154 taxmann.com 388 (Madras)**
- 3.68** An assessee is not required to request for 'opportunity of personal hearing' and it remained mandatory upon Assessing Authority to afford such opportunity before passing an adverse order - **Bajrang Building Material v. State of U.P. - [2023] 154 taxmann.com 214 (Allahabad)**
- 3.69** Where raising demand, relevant Forms and show cause notice were issued, but petitioner had not participated in proceeding, petitioner was given one last opportunity to give a reply - **Tvl. AERO Construction and Equipments v. Assistant Commissioner (ST), Chennai - [2023] 154**

taxmann.com 123 (Madras)

3.70 It is mandatory upon Assessing Authority to afford opportunity of personal hearing before passing an adverse order of assessment; writing 'No' in column meant to mark assessee's choice to avail personal hearing, would bear no legal consequence - **Dana Pani v. State of U.P.** - [2023] 154 taxmann.com 84 (Allahabad)

3.71 Adjudication order passed without providing any opportunity of hearing to assessee was against principle of natural justice; matter was to be readjudicated - **Santosh Traders v. State of U.P.** - [2023] 154 taxmann.com 86 (Allahabad)

SECTION 78 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - INITIATION OF RECOVERY PROCEEDINGS

3.72 Where Assessing Officer recovered assessed tax due just after a day of dismissal of appeal though there was a further appeal provided to be filed before Tribunal which is to be constituted, such an action is a case of valorous overreach by a tax executive; Officer was directed to pay cost to assessee - **Sita Pandey v. State of Bihar** - [2023] 154 taxmann.com 152 (Patna)

SECTION 83 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - PROVISIONAL ATTACHMENT

3.73 Where impugned communications were issued by Commissioner under section 83 of CGST Act, freezing bank accounts of petitioner but one year had elapsed, provisional attachment order would no longer be operative and banks should not interdict operation of bank accounts - **ChamanGoel v. Commissioner, Central Goods & Service Tax** - [2023] 154 taxmann.com 237 (Delhi)

3.74 Where appellant's immovable properties and all bank accounts were provisionally attached, single judge dismissed writ against impugned orders finding mainly that appellant had an effective alternate remedy of appeal to impugn said orders, appellant was to be permitted to operate two of its bank accounts pending finalisation of adjudication proceedings - **S.R Traders v. Additional Director General** - [2023] 154 taxmann.com 7 (Kerala)

3.75 Bank account of taxable person cannot be provisionally attached to secure revenue due from another taxable person - **Zhudao Infotech (P.) Ltd. v. Principal Additional Director General** - [2023] 154 taxmann.com 571 (Delhi)

3.76 Where in ITC fraud case, bank account of assessee-company was attached, on payment of sufficient amount, attachment order was to be lifted; bank should allow petitioner to operate account - **SPDS-HR Solutions (P.) Ltd. v. Principal Additional Director General** - [2023] 154 taxmann.com 522 (Madras)

3.77 State Tax Officer has no jurisdiction to issue communication exercising powers under section 83 - **Saket Agarwal v. Union of India** - [2023] 154 taxmann.com 279 (Bombay)

3.78 Where period of one year has expired after order of defreezing assessee's bank account was passed, concerned bank would not interdict operations of petitioner's bank account on basis of impugned order - **Sutantu Care (P.) Ltd. v. Superintendent CGST Anti Evasion** - [2023] 154 taxmann.com 386 (Delhi)

3.79 In terms of section 83(2) of CGST Act, an order passed under section 83 of CGST Act would cease to be operative after an expiry of a period of one year from date of order - **Arpit Trading Company v. Principal Commissioner of Goods & Service tax** - [2023] 154 taxmann.com 376 (Delhi)

RULE 86A OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - ORDER OF UTILIZATION OF INPUT TAX CREDIT

3.80 Where petitioner received Notice of Intimation issued under rule 86A(1)(a) and (c) of TNGST Rules blocking credit purchases made by petitioner from one supplier, petitioner placed reliance on CBIC letter No. CBEC-20/16/05/2021-GST, dated 2-11-2021, petition was to be disposed of permitting petitioner to give a representation to impugned notice - **Madhu Metal Works v. Assistant Commissioner (ST)** - [2023] 154 taxmann.com 389 (Madras)

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

3.81 Where petitioner wanted to pursue remedy of second appeal by approaching second Appellate Tribunal, which has not yet been constituted as an interim measure subject to petitioner depositing entire tax demand within a period of fifteen days from today, rest of demand shall remain stayed - **Ram KrushnaChatriya v. Additional CT & GST Officer** - [2023] 154 taxmann.com 570 (Orissa)

3.82 Where assessee tried to file appeal through GST portal against TRAN-1 rejection order but failed and GST portal helpdesk asked to wait for further instruction and assessee filed appeal manually even prior to issuance of Notification No. 29/2023-Central Tax, dated 31-7-2023 enabling such cases, order of appellate authority rejecting appeal due to delay was to be rejected - **Rane Madras Ltd. v. Assistant Commercial Tax Officer (Appeals)** - [2023] 154 taxmann.com 6 (Madras)

3.83 Where show-cause notice under section 74 was issued by Competent Authority and assessment order was also passed by Competent Authority, source and jurisdiction of Authority being unquestionable, once petitioner has submitted to jurisdiction of Assessing Officer and thereafter assessment order has been passed, in all fairness, assessee should have approached appellate forum as contemplated under section 107 - **Amba Shakti Udyog Ltd. v. State of M.P.** - [2023] 154 taxmann.com 415 (Madhya Pradesh)

3.84 Extraordinary jurisdiction under Article 226 of Constitution of India cannot be invoked especially since it is not a measure

to be employed where assessee has not been diligent in availing alternate remedies within stipulated time - **JitendraKumar Pathak v. State of Bihar - [2023] 154 taxmann.com 525 (Patna)**

3.85Writ petition under Article 226 of Constitution of India could not be entertained after limitation for filing an appeal has expired - **Sakthi Enterprises v. Assistant Commissioner, Velandipalayam Circle, Coimbatore - [2023] 154 taxmann.com 153 (Madras)**

3.86High Court permits petitioner to present appeal again before appellate authority which was dismissed as filed 10 days after condonable period - **Sri Mutharamman Traders v. State Tax Officer - [2023] 154 taxmann.com 171 (Madras)**

3.87In GST Act, an appellate remedy is provided under section 107; having not availed such statutory remedies available within limitation period, assessee could not seek to approach High Court invoking writ jurisdiction under article 226 of Constitution to challenge an assessment order especially with respect to computation of turn over, determination of taxable turnover and tax payable - **Paradeep Phosphates Ltd. v. Union of India - [2023] 154 taxmann.com 165 (Patna)**

3.88Having not availed statutory remedies available, petitioner cannot seek to approach High Court under Article 226 of Constitution of India to challenge assessment order when there is no jurisdictional error, violation of principles of natural justice or abuse of process of Court averred or argued by petitioner - **Ram Krishna Mission Ashrama v. State of Bihar - [2023] 154 taxmann.com 495 (Patna)**

3.89Where an assessee had not filed appeal within limitation period saved by Supreme Court in Cognizance For Extension of Limitation, In re [2022] 134 taxmann.com 307/441 ITR 722 due to pandemic situation, nor had availed statutory remedy of appeal provided under section 107, he could not seek to approach High Court directly under article 226 of Constitution of India to challenge an assessment order - **Pankaj Kumar v. State Goods & Services Tax - [2023] 154 taxmann.com 217 (Patna)**

3.90Where petitioner-assessee filed appeal beyond period which could be condoned, following decision given in W.P. No. 22716 of 2023 delay in filing appeal was to be condoned and respondent-department was directed to dispose of petitioner's appeal on merits - **TvI. NachimuthuSelvaraj v. Appellate Deputy Commissioner (ST) (FAC) Goods and Services Tax - [2023] 154 taxmann.com 210 (Madras)**

3.91Petitioner's delay in filing appeal was not condoned due to specific timelines for delay condonation and no jurisdictional error, breach of natural justice or abuse of process was found, therefore instant writ petition was to be dismissed - **Punit Kumar Choubey v. Commissioner, Commercial Tax, Patna - [2023] 154 taxmann.com 28 (Patna)**

3.92Where business of company was closing due to loss and it

had lack of employees to log in GST portal regularly and notice adjudication order, same was reasonable explanation for delay in filing appeal; such delay was to be condoned - **SRM Engineering Construction Corporation Ltd. v. Assistant Commissioner (ST) (FAC) - [2023] 154 taxmann.com 448 (Madras)**

3.93Assessee was granted permission to withdraw writ petition to avail remedy of appeal under section 107 - **RameshbhaiRavjibhaiPokal v. Assistant Commissioner, Central Goods and Services Tax - [2023] 154 taxmann.com 446 (Gujarat)**

3.94Since petitioner wants to avail remedy under provisions of law by approaching second Appellate Tribunal, which had not yet been constituted, an interim stay was allowed for remaining tax demand subject to petitioner's deposit of entire tax demand within fifteen days - **S.C. Varghese and Co. v. Additional Commissioner of CT & GST - [2023] 154 taxmann.com 118 (Orissa)**

3.95Where appeal was filed after adjudication order was passed, same was to be numbered and assessee should be permitted to debit amount that were lying unutilised in assessee's Electronic Credit Ledger towards pre-deposit - **Larsen & Toubro Ltd. v. Joint Commissioner (ST) - [2023] 154 taxmann.com 81 (Madras)**

SECTION 108 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REVISIONAL AUTHORITY, POWERS OF

3.96High Court disposes writ petition challenging adjudication order on the ground that suomoturevisional proceedings initiated by department - **Usha Martin Ltd. Wire & Wire Ropes v. State of Punjab - [2023] 154 taxmann.com 560 (Punjab & Haryana)**

RULE 108 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - APPEAL TO THE APPELLATE AUTHORITY

3.97Filing of appeal along with digitally uploaded order on common portal amounts to substantial compliance of rule 108 of CGST Rules, 2017, thus order dismissing such appeal was to be set aside - **KPMG India (P.) Ltd. v. Joint Commissioner of State Tax (Appeals) - [2023] 154 taxmann.com 492 (Punjab & Haryana)**

SECTION 109 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - APPELLATE TRIBUNAL - CONSTITUTION OF, AND BENCHES

3.98Where assessee wanted to avail appellate remedy by Tribunal but in view of non-constitution of Tribunal, recovery was to be stayed on deposit of sum equal to 20 percent of amount of tax in dispute - **PatliputraHytech Infra (P.) Ltd. v. State of Bihar - [2023] 154 taxmann.com 232 (Patna)**

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

3.99Where petitioner was not able to avail remedy before

Appellate Tribunal because of non-constitution thereof, as a temporary measure proceedings for disputed amount would be put on hold subject to petitioner depositing specified amount as per section 112(8) - **Rajasthan Khadi GramodhyogSansthanSangh v. State of Rajasthan - [2023] 154 taxmann.com 527 (Rajasthan)**

3.100 Where Tribunal was not yet constituted so that assessee could avail appellate remedy, subject to deposit of 20 per cent of remaining amount of tax in dispute, in addition to amount deposited earlier under section 107(6), assessee must be extended statutory benefit of stay - **Muskan Event Management and Caterers (P.) Ltd. v. Union of India - [2023] 154 taxmann.com 168 (Patna)**

3.101 Where petitioner-assessee requested to allow writ petition challenging first appellate order on ground that second appellate tribunal had not yet been constituted, matter was to be listed - **SekhAminur Islam v. Commissioner of CT & GST - [2023] 154 taxmann.com 145 (Orissa)**

3.102 Where first appellate authority had not admitted petitioner's appeal holding same to be in contravention of section 107(1) and (4) of GST Act, petitioner wanted to avail remedy of approaching Appellate Tribunal not yet constituted, demand was to remain stayed as interim measure during pendency of writ petition - **Krushna Mohan Dutta v. Commissioner of CT & GST - [2023] 154 taxmann.com 282 (Orissa)**

3.103 Where against order of first appellate authority, assessee wished to file appeal before Tribunal but Tribunal was not yet constituted, matter was listed for final hearing; amount recovered in excess of amount which were required to be paid by pre-deposit before first appellate authority and second appellate authority was to be refunded - **AEW Technologies LLP v. Assistant Commissioner of Revenue, Bureau of Investigation - [2023] 154 taxmann.com 265 (Calcutta)**

SECTION 117 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - HIGH COURT - APPEAL TO

3.104 Where petitioner had submitted a reply on 24-7-2023 and respondent had passed assessment order on 25-7-2023, without considering petitioner's reply, assessment order was passed violating principles of natural justice and was to be quashed and set aside - **M. Sathess Kumar v. Deputy State Tax Officer-2 - [2023] 154 taxmann.com 390 (Madras)**

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

3.105 Where on physical verification, goods were found as per disclosed documents and in absence of any justification to treat product different as disclosed by revenue, action for seizure/detention, demand and levy of penalty was vitiated; once owner of goods has come forward, levy of penalty under section 129(1)(b) could not be justified and as per

section 129(1)(a) penalty amount would be 200 per cent of tax payable and not 200 per cent of value of goods - **Khan Enterprises v. Additional Commissioner - [2023] 154 taxmann.com 149 (Allahabad)**

3.106 Where no E-way bill accompanied goods in transit and petitioner took plea that goods were intended for export and hence, were not exigible to tax and mentioned that letter of undertaking number was mentioned in tax invoice and details could have been verified from GST portal, on payment of penalty of Rs. 25,000 only under section 129(1)(a), all proceedings against petitioner with regard to transaction in question would stand dropped - **Qfroz Trades (P.) Ltd. v. Assistant State tax Officer - [2023] 154 taxmann.com 83 (Kerala)**

3.107 On ground of some small technical fault for not carrying e-way bill, penalty ought not to have been levied in absence of any discrepancy in document accompanying goods - **J. K. Cement Ltd. v. State of U.P. - [2023] 154 taxmann.com 1 (Allahabad)**

3.108 Where driver of vehicle and person in charge of goods, at time of interception, did not produced any statutory documents pertaining to transportation of goods and e-way bills submitted after SCN was issued showed mismatch of vehicle, tax and penalty was rightly imposed - **EVM Passenger Cars India (P.) Ltd. v. State of Kerala - [2023] 154 taxmann.com 555 (Kerala)**

3.109 Since revenue had raised some issues for first time in instant writ petition which were not dealt by appellate authority, matter was to be remanded for reconsideration - **Salim Mohammad v. Assistant Commissioner of Revenue, Bureau of Investigation - [2023] 154 taxmann.com 481 (Calcutta)**

3.110 Where goods and vehicle were detained and penalty order was issued for typographical error in e-invoices by in turn supplier to whom order was directed by petitioner for supply goods to customer directly, vehicle and goods detained for 10 days but no order under section 129(3) passed within 7 days, impugned order was to be modified and goods and conveyance were to be released after payment of nominal penalty - **Tvl.T M Steel v. Deputy State Tax Officer - [2023] 154 taxmann.com 281 (Madras)**

3.111 Where truck carrying tobacco was detained during transit and authorities sought to confiscate goods by way of interim relief, vehicle should be released on payment of tax, penalty and fine - **DipakkumarJayantibhai Patel v. State of Gujarat - [2023] 154 taxmann.com 375 (Gujarat)**

3.112 Where petitioner was aggrieved by order passed under section 129(3) of TNGST Act, imposing penalty @ 200%, impugned order being an appealable order under section 107 of CGST/SGST Act, writ petition was to be dismissed without expressing any opinion on merits of case - **Ibus Network and Infrastructure (P.) Ltd. v. Assistant Commissioner (ST) - [2023] 154 taxmann.com 381 (Madras)**

- 3.113 Where conveyance was intercepted under section 129 and goods were confiscated by passing order under section 130, respondent-department were directed to release goods of petitioner - assessee on conditions that petitioner - assessee should deposit amount of penalty and furnish bond towards fine in lieu of confiscation of goods - **Dipakkumar Jayantibhai Patel v. State of Gujarat - [2023] 154 taxmann.com 269 (Gujarat)**
- 3.114 E-way bills are documents of title to goods in transit; where e-way bills were accompanying goods in transit, conclusion of revenue that petitioner was not owner of goods would be patently erroneous and consequently, penalty proceedings were liable to be initiated under section 129(1)(a), and not under section 129(1)(b) - **Diginx Trader v. State of U.P. - [2023] 154 taxmann.com 267 (Allahabad)**
- 3.115 Where conveyance was intercepted under section 129 and goods were confiscated by passing order under section 130, respondent-department was directed to release goods of petitioner-assessee on conditions that petitioner-assessee should deposit amount of penalty and furnish bond towards fine in lieu of confiscation of goods - **Kansarabazar.In v. State of Gujarat - [2023] 154 taxmann.com 29 (Gujarat)**
- 3.116 Where authorities seized petitioner's goods under section 129 and invoked section 130 for confiscation without utilizing petitioner's benefits under section 129, by way of interim relief authorities were directed to release of goods - **Patel Suprimkumar Jitendrabhai v. State of Gujarat - [2023] 154 taxmann.com 27 (Gujarat)**
- 3.117 Where goods in transit were carrying necessary documents in form of E-Way bill and invoice etc., in view of clarification issued vide Circular dated 31-12-2018, either consigner or consignee should be deemed to be owner and department ought to have considered transporter's prayer for release of goods and vehicle - **Western Carrier India Ltd. v. State of U.P. - [2023] 154 taxmann.com 449 (Allahabad)**
- 3.118 Where, petitioner's goods and conveyance detained and seized as validity of e-way bills was over, penalty under section 129 was imposed, however, no reason had been assigned by any of authorities for disbelieving reasons submitted by petitioner, impugned orders as well as seizure memo were to be quashed and set aside - **Rateria Laminators (P.) Ltd. v. Additional Commissioner Grade 2 - [2023] 153 taxmann.com 726 (Allahabad)**
- SECTION 130 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY**
- 3.119 Where in transit, vehicle were intercepted and detained and petitioner submitted that switching over to section 130 and passing order thereunder without allowing petitioner to avail benefits of release of goods under section 129 was unjustified, petition was listed and interim relief of release of

goods and vehicle granted - **Kansarabazar.In v. State of Gujarat - [2023] 153 taxmann.com 728 (Gujarat)**

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

- 3.120 Where petitioner was in custody for more than 8 months for alleged GST fraud and was not required for further investigation, he was to be released on bail - **Yash Pal Jindal v. State of UT, Chandigarh - [2023] 154 taxmann.com 576 (Punjab & Haryana)**
- 3.121 Where applicant's case was that he was falsely implicated in FIR and no notice was sent by GST authority, in view of fact that co-accused had been released on regular bail, regular bail was also to be granted to applicant - **Arvindbhai Balubhai Vora v. State Of Gujarat - [2023] 154 taxmann.com 278 (Gujarat)**
- 3.122 Where petitioner was in custody since 21.07.2022 for forming bogus firms, trial was not likely to conclude soon, and there were no strong reasons to believe that petitioner would abscond, tamper with evidence, or influence witnesses, therefore, bail application was to be allowed - **Puneet Sonkar v. State of Haryana - [2023] 154 taxmann.com 233 (Punjab & Haryana)**
- 3.123 Where investigation was complete and conclusion of trial was likely to take time, keeping in view custody period and fact that co-accused was granted bail, petitioner was also to be granted bail - **Sanjeev Sharma v. Commissioner of Central Goods and Services Tax - [2023] 154 taxmann.com 266 (Punjab & Haryana)**
- 3.124 Where in alleged GST evasion case, all relevant evidences were already seized and there was no chance of tampering same or risk of his leaving country as assessee-accused was a family member and sole bread winner, bail was to be granted as trial was yet to commence - **Vikram Garg v. Excise and Taxation Officer cum Proper Officer (State Tax) - [2023] 154 taxmann.com 124 (Punjab & Haryana)**

SECTION 134 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - OFFENCES - COGNIZANCE OF OFFENCE

- 3.125 Where in FIR it was alleged that petitioner-Directors of 2 companies had misutilised Input Tax Credit for wrong figures/amount in respect of two Dealers, in view of fact that a batch of writ petitions were filed challenging demand and assessment in which petitioners' case were also registered and Division Bench had quashed demand and assessment order and remitted back matter for fresh consideration, basis of filing FIR had been quashed; criminal proceedings were to be quashed - **Nikit Mittal v. State of Jharkhand - [2023] 154 taxmann.com 313 (Jharkhand)**

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

3.126 Where pursuant to impugned order passed, petitioner filed applications for rectification, pending rectification proceedings recovery would be kept in abeyance - ***Vaishnavi Metals v. Assistant Commissioner (ST)*** - [2023] 154 taxmann.com 331 (Madras)

SECTION 169 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - NOTICE, SERVICE IN CERTAIN CASES

3.127 In writ petitions, question was raised as to whether service of assessment order through web portal under section 169(1)(d) of CGST Act has to be considered as sufficient for purpose of reckoning limitation while filing appeal; writ petitions in cases where petitioner had already received assessment orders through RPAD also were to be dismissed while in case where there was no receiving through RPAD same would be decided in writ petition - ***TvI. AlaghuVivek v. Appellate Deputy Commissioner [ST]*** - [2023] 153 taxmann.com 731 (Madras)

4. AAAR

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

4.1 Supply of aircraft type rating training services to commercial pilots, in accordance with training curriculum approved by Directorate General of Civil Aviation for obtaining extension of aircraft type ratings on their existing licenses, is not exempted from GST - ***CAE Simulation Training (P.) Ltd., In re*** - [2023] 154 taxmann.com 270 (AAAR-UTTAR PRADESH)

5. AAR

CLASSIFICATION OF GOODS

- 5.1 Renewable energy devices** : Supply of wind mills with its parts and accessories is a composite supply of wind mill and liable to tax at rate 12 % GST vide SI No 201A of Schedule II of Notification No 1/2017-Central Tax (Rate) - **Raja Dheepam Spinning Mills (P.) Ltd., In re - [2023] 154 taxmann.com 604 (AAR - TAMILNADU)**
- 5.2 Fortified Rice Kernels** : Fortified Rice Kernels proposed to be manufactured by applicant merits classification under Heading No. 1904 90 00, attracting 18 per cent GST in terms of Sl. No. 15 to Schedule III of Notification No.1/2017-Central Tax (Rate), dated 28-6-2017 - **BrindavanAgrotech (P.) Ltd., In re - [2023] 154 taxmann.com 526 (AAR - CHHATTISGARH)**
- 5.3 Sugar boiled confectionery - Crackle** : Product 'NBS Crackle' is not classified as 'sugar boiled confectionery' under Heading No. 1704 as said product is sold only to ice cream manufacturers and are not meant for consumption by end users directly but are used as part in process of ice cream making, specifically used as topping only - **Sri Venkateswara Cashew Chikky Manufacturers, In re - [2023] 154 taxmann.com 327 (AAR - ANDHRA PRADESH)**
- 5.4 Geo Textile** : Geotextile used in soil reinforcement satisfying specified BIS standard is classifiable under tariff item 5911 9032 as it is the specific entry - **Strata Geosystems India (P.) Ltd., In re - [2023] 154 taxmann.com 172 (AAR - GUJARAT)**
- 5.5 Electric Vehicle - Low speed electric two and three wheeler** : Electrically operated vehicle including three wheeled electric vehicle is to be classified under Heading No. 8703 and thereby attract GST at rate of 5 per cent - **Versatile Auto Components (P.) Ltd., In re - [2023] 154 taxmann.com 480 (AAR- TELANGANA)**
- 5.6 Electrical vehicle - Electrical and Mechanical spare parts** : Electrical and Mechanical spare parts of electrical vehicle fall under SI.No 453 of Schedule-III of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 i.e., 'Goods which are not specified in Schedule I, II, IV, V or VI' falling in any chapter of HSN - **Versatile Auto Components (P.) Ltd., In re - [2023] 154 taxmann.com 480 (AAR- TELANGANA)**
- 5.7 Herbal body oil** : Herbal body oil being commonly understood as a 'preparations for care of skin' is to be considered to be a cosmetic product used to get soft and smoother skin and not considered as a medicament used for treatment or prevention of any disease or ailment; same would be covered under Heading 3304 and taxed accordingly - **Indranil Chatterjee, In re - [2023] 154 taxmann.com 77 (AAR-WEST BENGAL)**

- 5.8 Solar home lighting system** : Solar home lighting system, **integrated** system with visual subscriber display/tablet, designed to provide green energy to house for lighting and charging devices like cell phone, is 'Solar power-based devices' at Entry No. 201A of Schedule II of Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, classifiable under Heading No. 9405 50 40 and taxable at rate of 12 per cent (CGST at rate of 6 per cent and SGST at rate of 6 per cent) - **R2V2 technologies (P.) Ltd., In re - [2023] 154 taxmann.com 79 (AAR- UTTAR PRADESH)**

CLASSIFICATION OF SERVICES

- 5.9 Milling, fortification, packing and supply of atta**: Composite supply of services to Food and Supplies Department of State Government by way of milling of whole wheat grains provided by State Government, its fortification and packing for distribution under Public Distribution System is eligible for exemption, since value of goods involved in such composite supply does not exceed 25 per cent of value of supply - **Aryan Flour Mills (P.) Ltd., In re - [2023] 154 taxmann.com 208 (AAR-WEST BENGAL)**
- 5.10Transportation of student** : Service of picking up and dropping of school children and staff of higher secondary school in bus and/or by van by entering into an agreement with schools where bus and van permits will be in name of respective schools; applicant will become eligible for exemption - **MuniyasamyAbinaya, In re - [2023] 154 taxmann.com 383 (AAR - TAMILNADU)**
- 5.11Real estate project** : Where applicant owner of land enter into a joint development agreement with developer for development of residential apartments in which cost of construction shall be borne by Developer and applicant would get 32 per cent share of apartments, applicant is liable to pay tax as per entries 3(i) to 3(id) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No.3/2019-Central Tax (Rate), dated 29-3-2019 depending on nature of apartment - **Vinod Kumar Goyal, In re - [2023] 154 taxmann.com 75 (AAR - KARNATAKA)**

SECTIONS 2(6) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - EXPORT OF SERVICES

- 5.12**Product development and engineering activities relating to foreign principal company of assessee's group of entities, and product development, testing and engineering activities relating to OEM items, fall under section 13(2) of IGST Act, 2017 eligible to 'zero rated supply' under section 16; R&D/testing activities performed on goods provided by foreign principal company fall under section 13(3) and same are liable to CGST and SGST - **Hilti Manufacturing India (P.) Ltd., In re - [2023] 154 taxmann.com 30 (AAR - GUJARAT)**

SECTION 2(47) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - EXEMPT SUPPLY

- 5.13**Only supplier of services are eligible for exemption and not recipient even though it bears incidence of tax - **Anmol**

Industries Ltd., In re - [2023] 154 taxmann.com 148 (AAR-WEST BENGAL)

SECTION 2(74) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - MIXED SUPPLY

5.14 Supply of goods/services for shifting of transmission lines by PSTCL on NHAI's request for road widening is not 'works contract' since ownership of transmission lines/towers still lies with PSTCL; supplies are mixed as they are neither naturally bundled nor provided in conjunction with each other; exemption under Entry No. 25 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 (Tariff Heading No. 9969) will not be applicable; services fall under HSN/SAC 998631 liable to GST at rate of 18 per cent (CGST 9 per cent + SGST 9 per cent) - **Punjab State Transmission Corporation Ltd., In re - [2023] 154 taxmann.com 91 (AAR-PUNJAB)**

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

5.15 Canteen Services provided by employer in factory premises does not amount to supply under Section 7 of CGST Act, 2017; ITC available to the extent of such cost borne by employer - **Tata Autocomp Systems Ltd, In re - [2023] 154 taxmann.com 575 (AAR - GUJARAT)**

5.16 Transportation Services provided by employer in non-AC bus does not amount to supply under Section 7 of CGST Act, 2017; ITC available to the extent of cost borne by employer - **Tata Autocomp Systems Ltd, In re - [2023] 154 taxmann.com 575 (AAR - GUJARAT)**

5.17 GST is not applicable on deduction from salary towards notice pay - **Tata Autocomp Systems Ltd, In re - [2023] 154 taxmann.com 575 (AAR - GUJARAT)**

5.18 Where applicant provided canteen facility to its direct employees as per Factories Act, GST is not leviable at hands of applicant on amount representing employees' portion of canteen charges which is collected by applicant and paid to third party canteen service provider - **EimcoElecon India Ltd., In re - [2023] 154 taxmann.com 209 (AAR - GUJARAT)**

5.19 Where applicant provided canteen facility to contractual workers as per Factories Act, GST is leviable at hands of applicant on amount representing contractual worker portion of canteen charges, which is collected by applicant and paid to third party canteen service provider - **EimcoElecon India Ltd., In re - [2023] 154 taxmann.com 209 (AAR - GUJARAT)**

5.20 Applicant cement manufacturers obligation during scheme period to issue gold coins and white goods to dealers/customers upon achieving stipulated target of purchase/lifting of cement would be regarded as a supply under section 7 of CGST Act, 2017 - **Orient Cement Ltd., In re - [2023] 154 taxmann.com 74 (AAR - KARNATAKA)**

5.21 Where applicant cement manufacturers issues gold coins

and white goods to dealers/customers under promotional scheme upon achieving stipulated target of purchase/lifting of cement, same would be regarded as a "permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration and be subjected to GST under Sl. No.1 of Schedule I to CGST Act, 2017 - **Orient Cement Ltd., In re - [2023] 154 taxmann.com 74 (AAR - KARNATAKA)**

5.22 Where applicant owner of land enter into a joint development agreement with developer for development of residential apartments in which cost of construction shall be borne by Developer and applicant would get 32 per cent share of apartments, applicant is acting as a supplier of works contract service to prospective purchasers of apartments and, hence, liable to pay tax - **Vinod Kumar Goyal, In re - [2023] 154 taxmann.com 75 (AAR - KARNATAKA)**

5.23 Where applicant, a works contractor breached their promise to award total work to their sub-contractor 'DGAL' resulting in payment of liquidated damages and said liquidated damages were paid only to compensate injury or loss of damage suffered by aggrieved party i.e., 'DGAL' due to breach of contract is not taxable under CGST Act, 2017 as there is no supply of service as per entry No. 5(e) of Schedule II of CGST Act, 2017 - **TPSC (India) (P.) Ltd., In re - [2023] 154 taxmann.com 444 (AAR- TELANGANA)**

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

5.24 Where applicant proposed to sale wind mill, with land sold separately, sale of land shall be treated neither as supply of goods nor supply of services in terms of clause 5 of schedule III of CGST Act, 2017 therefore, sale of land is not liable to GST - **Raja Dheepam Spinning Mills (P.) Ltd., In re - [2023] 154 taxmann.com 604 (AAR - TAMILNADU)**

5.25 Where applicant operates 'NammaYatri' App, connecting auto drivers and passengers, applicant collect fees but have no control over service provision, making them not liable for tax discharge under section 9(5) as they do not meet e commerce operator conditions - **Juspay Technologies (P.) Ltd., In re - [2023] 154 taxmann.com 607 (AAR - KARNATAKA)**

5.26 Supply of pre-packaged and labelled packages rice of quantity upto 25 kg. for both domestic and for export supplies, would be liable for GST at rate 5 per cent as per Sl. No. 51 to Schedule I to Notification No. 1/2017-Central Tax (Rate), 28-6-2017 - **Satyam Balajee Rice Industries (P.) Ltd., In re - [2023] 154 taxmann.com 573 (AAR - CHHATTISGARH)**

5.27 Where applicant company director's guarantee is given to bank for applicant, valuation is to be decided under Rule 28(2) of CGST Rules, 2017 read with sections 15(4) and 15(5) of CGST Act, 2017; GST is to be paid under reverse charge mechanism under sections 9(3) and 9(4) of CGST Act, 2017 read with Sl. No. 6 of Notification No. 13/2017-

Central Tax (Rate), dated 28-6-2017 - **Mangala Product (P.) Ltd., In re - [2023] 154 taxmann.com 31 (AAR-RAJASTHAN)**

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

5.28 Pre examination activities i.e. printing of registration certificates, examination enrollment forms, admit cards, and post-examination activities such as scanning and processing of results, generating mark sheets, and printing pass certificates provided by applicant to Educational Boards and Universities are exempted from GST under SL 66 of Notification No 12/2017-Central Tax (Rate) - **Institute of Education & Examination Management (P.) Ltd., In re - [2023] 154 taxmann.com 314 (AAR-WEST BENGAL)**

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

5.29 Where applicant is awarded work for development of sewage treatment plants under terms that 40% of Capex shall be paid by during period of construction as a grant and balance 60% of Capex shall be paid in 60 equal quarterly installments over a 15-year period along with an interest, such interest will be a part of value of supply as per section 15(2)(d) and will be taxed accordingly - **Ganga STP Project (P.) Ltd., In re - [2023] 154 taxmann.com 285 (AAR-WEST BENGAL)**

5.30 Where whole cost of transmission lines shifting by PSTCL, on NHAI's request for widening of road by it, is recovered from NHAI, it is transaction value for levy of GST; ownership of transmission system requiring modification/augmentation/shifting/additions remains with PSTCL even though cost/charges are borne by NHAI - **Punjab State Transmission Corporation Ltd., In re - [2023] 154 taxmann.com 91 (AAR-PUNJAB)**

5.31 Where whole cost of construction/installation of sub-station/transmission lines by PSTCL on behalf of third party is recovered from third party, it is transaction value for levy of GST; ownership of transmission system requiring modification/augmentation/shifting/additions remains with PSTCL even though cost/charges are borne by third party - **Punjab State Transmission Corporation Ltd., In re - [2023] 154 taxmann.com 91 (AAR-PUNJAB)**

5.32 Where applicant-flour miller was engaged in providing services of crushing wheat provided by State Government, its fortification and packing which in turn is supplied by State Government through Public Distribution System, since ownership of wheat or atta is never transferred to applicant, value of supply shall be consideration in money as well as non-cash consideration - **Aryan Flour Mills (P.) Ltd., In re - [2023] 154 taxmann.com 208 (AAR-WEST BENGAL)**

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

5.33 Where applicant cement manufacturers issues gold coins and white goods to dealers/customers under promotional scheme upon achieving stipulated target of purchase/lifting of cement, same would not be regarded as "goods disposed of by way of gift" and Input tax credit would not be restricted under section 17(5)(h) of CGST Act, 2017 - **Orient Cement Ltd., In re - [2023] 154 taxmann.com 74 (AAR - KARNATAKA)**

5.34 PSTCL is entitled to avail ITC on all material/services used in shifting, laying and setting up wires/towers for transmission of electricity, on request of NHAI/third party, even where PSTCL recovers charges for same from NHAI/third party and remains owner of property - **Punjab State Transmission Corporation Ltd., In re - [2023] 154 taxmann.com 91 (AAR-PUNJAB)**

5.35 Where applicant land owner has entered into a joint development agreement with developer for development of residential apartments in which cost of construction shall be borne by Developer and applicant would get 32 per cent share of apartments, applicant who is liable to tax is eligible to claim input tax credit on tax charged by developer for supply of construction services subject to conditions - **Vinod Kumar Goyal, In re - [2023] 154 taxmann.com 75 (AAR - KARNATAKA)**

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

5.36 Where assessee provided canteen facilities to employees, through a registered person who issues tax invoices and levies GST, due to mandatory nature of maintenance of canteen as per Andhra Pradesh Factory Rules, 1950 and as per second proviso to section 17(5)(b) applicant is eligible for proportionate ITC on permanent employee, on food supplies subject to condition that burden of GST have not been passed to employee - **KSH Automotive (P.) Ltd., In re - [2023] 154 taxmann.com 378 (AAR - ANDHRA PRADESH)**

5.37 Where applicant provided canteen facility as per Factories Act, Input Tax Credit (ITC) will be available to applicant on GST charged by canteen service provider in respect of canteen facility provided to applicant's direct employees and ITC will be restricted to extent of cost borne by applicant for providing canteen services to direct employees; however, proportionate credit to extent embedded in cost of goods recovered from such employees would be disallowed - **EimcoElecon India Ltd., In re - [2023] 154 taxmann.com 209 (AAR - GUJARAT)**

5.38 Where applicant provided canteen facility as per Factories Act, ITC on GST paid on canteen facility is not admissible to applicant, on food supplied to contractual worker supplied by labour contractor - **EimcoElecon India Ltd., In re - [2023] 154 taxmann.com 209 (AAR - GUJARAT)**

5.39 T shirt or other items distributed free of cost and for personal use, are not part of furtherance of business or used in course of business, and ITC on such items is

blocked under section 17(5)(g) and (h) of CGST Act, 2017 - **Mangala Product (P.) Ltd., In re - [2023] 154 taxmann.com 31 (AAR- RAJASTHAN)**

5.40VEL had entered into a 99 year lease agreement with State industrial development corporation GIDC for setting up an industrial plant; for setting up/expanding manufacturing facility, applicant has entered into an MoU with VEL to transfer leasehold rights in Industrial plot, applicant is not entitled to take ITC of CGST and SGST paid by them on services received from VEL in form of transfer of its rights in leasehold land owned by GIDC - **Bayer Vapi (P.) Ltd., In re - [2023] 154 taxmann.com 121 (AAR - GUJARAT)**

SECTION 18 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - INPUT TAX CREDIT - CREDIT IN SPECIAL CIRCUMSTANCES, AVAILABILITY OF

5.41When raw materials purchased are already used in manufacture of finished goods and finished goods are destroyed in fire accident completely, ITC is required to reversed; when raw materials procured are lost in fire re - **[2023] 154 taxmann.com 31 (AAR- RAJASTHAN)**

5.44Advance Ruling can be obtained for proposed transaction as well as transaction already undertaken whereas, transactions on which GST is being paid are out of preview of advance ruling - **Mangala Product (P.) Ltd., In re - [2023] 154 taxmann.com 31 (AAR- RAJASTHAN)**

SECTION 97 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - APPLICATION FOR

5.45Ruling given by a State AAR shall be applicable only within jurisdiction of concerned State; AAR-West Bengal is not empowered to pronounce any ruling regarding registration required to be obtained in a state other than State of West Bengal - **Vishnu Engineering Corporation, In re - [2023] 154 taxmann.com 166 (AAR-WEST BENGAL)**

5.46Questions as to address to be mentioned in invoice issued by supplier, validity of supply of goods from Assam to West Bengal and tax to be charged and procedure to generate e-way bill are not covered under any of clauses of section 97(2); hence, advance ruling could not be provided - **Vishnu Engineering Corporation, In re - [2023] 154 taxmann.com 166 (AAR-WEST BENGAL)**

5.47Where in first round, advance ruling application was entertained and ruling was given against which, no appeal was preferred challenging AAR's jurisdiction to rule on question of place of supply, AAR proceeded to decide on merits of matter; ideally, AAR cannot admit application for ruling on question on place of supply as it is not mentioned in section 97(2) of CGST Act, 2017 - **Hilti Manufacturing India (P.) Ltd., In re - [2023] 154 taxmann.com 30 (AAR - GUJARAT)**

5.48Advance ruling regarding applicability of exemption notifications to services supplied cannot to be given to recipient of services - **Anmol Industries Ltd., In re - [2023]**

accident before use in manufacture of finished goods, ITC is required to reversed; when destroyed finished goods can be sold as steel scrap in open market and output tax liability on such supply of scrap is paid, ITC is required to reversed - **Geekay Wires Ltd., In re - [2023] 154 taxmann.com 384 (AAR- TELANGANA)**

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

5.42Interference in matter which has already taken place and transactions on which GST is being paid are out of preview of Advance Ruling and such matter can be decided by competent authority under whose jurisdiction GST has been paid - **Mangala Product (P.) Ltd., In re - [2023] 154 taxmann.com 31 (AAR- RAJASTHAN)**

5.43Where director of applicant is supplier of service, and not applicant, and vague question is raised without details of transaction of specific supply, such questions are out of preview of advance ruling - **Mangala Product (P.) Ltd., In re - [2023] 154 taxmann.com 148 (AAR-WEST BENGAL)**

Company and SEBI Laws Update

1. STATUTORY UPDATES

- 1.1 Hon'ble President nods to the Constitution (160th Amendment) Act, 2023

Editorial Note : The President has given assent to the Constitution (106th Amendment) Act, 2023. The key amendments include the reservation of 33% seats for women in the House of People & in the Legislative Assemblies of State. Further, the Act provides a framework for the reservation of seats for women in the Legislative Assembly of the National Capital Territory of Delhi.

- 1.2 SEBI extends timeline for nomination of Mutual Fund Unitholders by 3 months - **Circular No. SEBI/HO/IMD/IMD-I POD1/P/CIR/2023/160, Dated 27-09-2023**

Editorial Note : SEBI has extended the timeline for nomination of mutual fund unit holders either solely or jointly from 30.09.2023 to 31.12.2023. Further, non-compliance of it will result in freezing of folios w.e.f 01.01.2024. In order to protect the interest of investors & regulate the securities market, AMCs and RTAs must encourage unit holder(s) to fulfil the requirement for nomination/opting out of nomination by sending a communication on a fortnightly basis by way of emails and SMS to unit holder(s).

- 1.3 Mutual Funds can exclude investment in 'Corporate Debt Market Development Fund' from asset allocation limits - **Circular No.: SEBI/HO/IMD/PoD2/P/CIR/2023/152, Dated 06-09-2023**

Editorial Note : SEBI has issued a clarification regarding the investment of Mutual Fund schemes in units of Corporate Debt Market Development Fund (CDMDF). SEBI has clarified that for the calculation of asset allocation limits of mutual fund schemes, investment in units of CDMDF shall be excluded from the base of net assets. The provisions of this circular shall be effective immediately.

- 1.4 SEBI extends timeline for trading & demat account holders to submit nominee details by 3 months - **Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2023/158, Dated 26-09-2023**

Editorial Note : SEBI has extended the timeline for existing trading and demat account holders to provide a choice of nomination or formally opt out of nomination through a declaration form by 3 months i.e. 31.12.2023. Further, the submission of choice of nomination for trading accounts has been made voluntary by the regulator as a move towards ease of doing business. Earlier, the deadline for existing trading and demat account holders to provide a choice of nomination was on or before September 30, 2023.

- 1.5 SEBI issues Master Circular for 'Merchant Bankers' - **Master Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2023/157, Dated 26-09-2023**

Editorial Note : The SEBI had issued multiple circulars, directions, and operating instructions to Merchant Bankers on a regular basis to ensure compliance. In order to enable the stakeholders to have access to all circulars at one place, a Master Circular regarding Merchant Bankers has been issued. This Master Circular is a compilation of all the existing circulars, and directions issued by SEBI to Merchant Bankers.

- 1.6 SEBI strengthens the framework for handling of complaints received via SCORES platform - **Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/156, Dated 20-09-2023**

Editorial Note : The SEBI has issued the revised framework for handling of complaints received through SCORES platform for entities and monitoring the complaints by designated bodies. This aims to strengthen the existing investor grievance handling mechanism via SCORES. Now, designated bodies may apply for SCORES authentication and/or for Application Programming Interface integration within the prescribed period to ensure compliance with this circular by 04.12.2023.

- 1.7 SEBI mandates listing of subsequent issuances of outstanding non-convertible debt securities - **Notification No. SEBI/LAD-NRO/GN/2023/151, Dated 19-09-2023**

Editorial Note : SEBI has notified an amendment to the SEBI (LODR) Regulations, 2015. A new regulation 62A has been inserted. The regulation states that a listed entity whose subsequent issues of unlisted non-convertible debt securities made on or before 31.12.2023 are outstanding may list such securities on a stock exchange. Further, a listed entity whose non-convertible debt securities are listed must list all such securities proposed to be issued on or after 01.01.2024 on the stock exchanges.

- 1.8 Lok Sabha passes Constitution Amendment Bill to provide reservation to women in the Assemblies

Editorial Note : The Lok Sabha has passed the Constitution (128th) Amendment Bill, 2023 that was introduced by the Central Government on 19.09.2023. This amendment bill introduces new articles and clauses in the existing Constitution. The bill states that one-third of the total number of seats must be reserved for women in the Legislative Assembly of the National Capital Territory of Delhi. Further, 1/3rd of seats must be reserved for women belonging to SC/ST in the House of People.

- 1.9 Shri Amarjeet Singh takes charge as a Whole-Time Member of SEBI - **Press Release No. 19/2023, Dated 01-09-2023**

Editorial Note : Shri Amarjeet Singh took charge as a Whole Time Member in the SEBI. He will handle various departments including the Investment Management Department, Market Intermediaries Regulation and Supervision Department, Office of International Affairs, Investigations Department and Human Resources Department. Prior to his assignment, Shri Amarjeet Singh was the Executive Director in SEBI.

- 1.10 SEBI releases framework for unitholders of REITs and InvITs allowing them to exercise their board nomination rights - **Circular No: SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 & 154, Dated 11-09-2023**

Editorial Note : SEBI has released a framework for eligible unitholders of Real Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) allowing them to exercise their board nomination rights. As per the framework, the manager of a REIT/InvIT must review whether the eligible unitholders who have exercised their board nomination right, continue to hold the required number of units of REIT/InvIT and make a report on the same. The circular shall be effective immediately.

- 1.11 MCA extends the tenure of Company Law Committee by another one year till 16.09.2024 - **Order No. 2/1/2018-CL-V, Dated 13-09-2023**

Editorial Note : Earlier, the Ministry of Corporate Affairs vide an order dated 18.09.2019 constituted the Company Law Committee to examine and recommend on various provisions and issues pertaining to the implementation of the Companies Act, 2013 and the LLP Act, 2008. As per the order dated 05.09.2022, the tenure of the Company Law Committee was set to expire on 16.09.2023. However, the MCA has now extended the tenure by one year till 16.09.2024.

- 1.12 Govt. introduces Constitution Amendment Bill in Lok Sabha to provide 33% reservation to Women in the Assemblies

Editorial Note : The Central Government has introduced the Constitution (128th) Amendment Bill, 2023 in the Lok Sabha which aims to provide one-third of seats to women in the Lok Sabha, State Assemblies and Delhi Assembly. This will enable greater participation of women in policy-making at the state and national levels and help to achieve the goal of making India a developed country by 2047. The bill will be named as Nari Shakti Vandana Adhiniyam.

- 1.13 SEBI grants renewal of recognition to 'Metropolitan Stock Exchange of India Limited' for a period of 1 year - **Notification No. SEBI/LAD-NRO/GN/2023/150, Dated 13-09-2023**

Editorial Note : SEBI, on being satisfied that it would be in the interest of the trade, and also in the public interest, has granted renewal of recognition to 'Metropolitan Stock Exchange of India Limited' for a period of 1 year commencing on the 16th of September 2023 and ending on the 15th day of September 2024. The recognition is subject to a condition that the Exchange shall comply with the conditions specified by SEBI.

- 1.14 SEBI revamps quarterly reporting format for AIFs to streamline compliance reporting - **Circular No. SEBI/HO/AFD/SEC-1/P/CIR/2023/0155, Dated 14-09-2023**

Editorial Note : In order to enable the AIF industry to have uniform compliance standards, ease compliance reporting and for regulatory and developmental purposes, SEBI has revised the quarterly reporting format for AIFs. The said revised reporting format shall be hosted by the AIF

associations on their website within 2 working days of the issuance of this circular. The quarterly report must be submitted by AIFs online on the SEBI Intermediary Portal as per the revised format, within 15 calendar days.

- 1.15 MCA extends the tenure of Company Law Committee by another one year till 16.09.2024 - **Order F. No. 2/1/2018-CL-V, Dated 13-9-2023**

Editorial Note : Earlier, the Ministry of Corporate Affairs vide an order dated 18.09.2019 constituted the Company Law Committee to examine and recommend on various provisions and issues pertaining to the implementation of the Companies Act, 2013 and the LLP Act, 2008. As per the order dated 05.09.2022, the tenure of the Company Law Committee was set to expire on 16.09.2023. However, the MCA has now extended the tenure by one year till 16.09.2024.

- 1.16 MCA allows companies to hold AGMs & EGMs via 'VC & Other Audio Visual Means' till 30.09.2024 - **General Circular No. 09/2023, Dated 25-09-2023**

Editorial Note : The Ministry has decided to allow companies whose AGMs are due in the Year 2023 or 2024, to conduct their AGMs through Video Conference (VC) or Other Audio-Visual Means (OAVM) on or before 30.09.2024. Also, companies are also allowed to conduct their EGMs through VC or OAVM till 30.09.2024. However, it is clarified that this shall not be treated as any extension of statutory time for holding of AGMs or EGMs.

- 1.17 Shri Kamlesh Chandra Varshney takes charge as a Whole-Time Member of SEBI - **Press Release No. 21/2023, Dated 21-09-2023**

Editorial Note : Shri Kamlesh Chandra Varshney took charge as a whole-time member of the SEBI. He will handle various departments, like Market Intermediaries Regulation and Supervision Department, Legal Affairs Department-LAD1, Integrated Surveillance Department, Information Technology Department, Recovery & Refund Department and Special Enforcement Cell. Prior to this assignment, Shri Kamlesh Chandra was the Joint Secretary (Tax Policy and Legislation) in the Department of Revenue, Government of India.

- 1.18 SEBI approves flexibility in framework for large corporates to raise funds via issuance of debt securities - **Press Release No. 21/2023, Dated 21-09-2023**

Editorial Note : SEBI in its board meeting has approved the flexibility in the framework for Large Corporates (LCs) to meet incremental financing needs via the issuance of debt securities. A higher monetary threshold has been specified for defining LCs, thereby reducing the number of entities qualifying as LCs. Further, the Board has also approved the proposal to extend the timeline for compliance with enhanced qualification and experience requirements for Investment Advisers.

- 1.19 SEBI introduces template for sharing of information by CRAs to Debenture Trustees - **Circular No. SEBI/HO/DDHS/DDHS-POD2/P/CIR/2023/ 151, Dated 04-09-2023**

Editorial Note : Under SEBI norms, Credit Rating

Agencies (CRAs) have to share certain information to Debenture Trustees (DTs). Due to a large quantum of information submitted daily by CRAs to DTs and the short timelines mandated for disclosure of this information, it is essential that data shared by CRAs must be structured and submitted in a specified format. In this regard, SEBI has issued an excel template for daily submissions of rating revisions to DTs. The circular shall be effective from 1.10.2023.

- 1.20 SEBI opens a new bank account for crediting funds to 'Investor Protection and Education Fund' via online mode only - **Circular No. SEBI/HO/GSD/TAD/P/CIR/2023/149, Dated 04-09-2023**

Editorial Note : In order to facilitate market participants to make payment to the SEBI Investor Protection and Education Fund (IPEF), SEBI has opened a new bank account. In this regard, a link has been provided in the homepage of SEBI website under heading 'Click here to make payment to IPEF'. The link enables the remitter to make payments to IPEF using various payment methods via net banking, NEFT/RTGS, etc. Earlier, SEBI prescribed that amounts must be credited via online mode or through a demand draft.

- 1.21 SEBI revises disclosure format of Abridged Prospectus for public issues of Non-Convertible Debt Securities - **Circular No. SEBI/HO/DDHS/PoD1/CIR/P/2023/150, Dated 04-09-2023**

Editorial Note : SEBI has revised the format of the abridged prospectus for public issues of non-convertible debt securities wherein critical information will be provided on the front page of the offer document. The format has been revised to further simplify and provide greater clarity and consistency in the disclosures across various documents. The new format will be applicable for all public issues opening on or after October 1, 2023.

- 1.22 SEBI issues guidelines for strengthening the existing cyber security framework of Markt Infrastructure Institutions - **Circular No. SEBI/HO/MRD/TPD/P/CIR/2023/146, Dated 29-08-2023**

Editorial Note : Considering interdependency of Market Infrastructure Institutions (MIIs) in carrying out their functions, SEBI has decided to issue guidelines for strengthening the existing cyber security and cyber resilience framework of MIIs. Now, MIIs must maintain offline, encrypted backups of data and regularly test these backups at least on a quarterly basis. Also, MIIs must conduct regular vulnerability scanning to identify & address vulnerabilities. The circular shall be effective immediately.

2. HIGH COURT

SECTION 3 OF THE FOOD SAFETY AND STANDARDS ACT, 2006 - DEFINITIONS

- 2.1 Where an FIR was registered against petitioner for possessing prohibited tobacco (GHUTKA) under COPTA and IPC, since Food Safety and Standard Act had no application to tobacco, same was not a food product, and thus, impugned order of cognizance passed in connection with such FIR was to be quashed vis-a-vis adulteration of food intended for sale and sale of noxious food or drink - **Pramod Kumar Sahu @ Pramod Sahu v. State of Odisha - [2023] 153 taxmann.com 385 (Orissa)**

REGULATIONS 4 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995 - PROHIBITION OF MANIPULATIVE, FRAUDULENT AND UNFAIR TRADE PRACTICES

- 2.2 Where a complaint was filed by SEBI against respondent alleging that during his tenure as a director of company 'IHIL', 'IHIL' had bought back its shares through its own group companies, their directors, and friends, so as to artificially raise price of IHILs securities, in view of fact that respondent had found his way into array of parties simply because he was director of 'IHIL' at relevant time and it was not even case of appellant that respondent was at helm of affairs at relevant point of time or that daily functioning of 'IHIL' was being handled by respondent, impugned order passed by Additional Session Judge, setting aside summoning order qua respondent by Metropolitan Magistrate was to be upheld - **Securities & Exchange Board of India v. Arihant Jain - [2023] 153 taxmann.com 292 (Delhi)**

SECTION 8 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - POWER TO REFER PARTIES TO ARBITRATION WHERE THERE IS AN ARBITRATION AGREEMENT

- 2.3 Trial Court was right in referring the dispute between client & stock broker to arbitration in view of the arbitration clause in Account Opening Form - **K.C. Aggarwal v. National Stock Exchange of India Ltd. - [2023] 154 taxmann.com 262 (DeLhi)**

SECTION 18 OF THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 - REFERENCE TO MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL

- 2.4 Where Micro Small Enterprise Facilitation Council proceeded to initiate arbitration under section 18(3) of MSMED Act only after termination of conciliation proceedings under said provision, council had jurisdiction to entertain dispute between petitioner-MSME and supplier claimant - **Anupam Industries Ltd. v. West Bengal Micro Small Enterprise Facilitation Council - [2023] 153 taxmann.com 508 (Calcutta)**

SECTION 24 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - OFFENCES

2.5 There is burgeoning jurisprudence both under SEBI Act, and under Negotiable Instruments Act, 1881 which suggests that liability is fastened upon an individual by virtue of being in charge, and being responsible when offence was committed, and not merely on basis of holding a designation or office in company - **Securities & Exchange Board of India v. Arihant Jain - [2023] 153 taxmann.com 292 (Delhi)**

SECTION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - CONTRAVENTION BY COMPANIES

2.6 Where complaint was filed under section 27 against accused company and its directors including petitioner and petitioner failed to demonstrate that making it stand trial would be an abuse of process of Court, instant petition filed by petitioner seeking to quash such complaint was to be dismissed - **Mohd. Iqbal v. SEBI - [2023] 153 taxmann.com 682 (Delhi)**

2.7 Where petitioner company failed to comply with SEBI (Collective Investment Scheme) Regulations meant to protect interests of investors and SEBI filed a private complaint against petitioners, complaint having lodged by SEBI after recording evidence and Trial Court found prima facie case made out and had taken cognizance and, thus, such complaint was not to be quashed - **Bliss Plantations and Hill (P.) Ltd. v. Securities and Exchange Board of India - [2023] 153 taxmann.com 349 (Madras)**

SECTION 82 OF THE COMPANIES ACT, 2013 - CHARGES - COMPANY TO REPORT SATISFACTION OF

2.8 Where there was a delay in filing CHG-4 form with ROC and said delay was due to demise of founder/director of company, delay could not be held to be deliberate and, thus, cost to tune of Rs. 2 lakhs imposed on company for such delay was to be reduced to Rs. 50,000/- - **Urmil Properties and Investment (P.) Ltd. v. Registrar of Companies - [2023] 153 taxmann.com 473 (Delhi)**

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

2.9 Where an FIR was instituted against petitioners by nominee director of a company alleging that petitioners forged signature of said director and uploaded his resignation on MCA portal fraudulently, there being no reason to believe that said proceeding was maliciously instituted, revision petition filed by petitioners under section 489 of Cr. PC for quashing of said FIR was to be dismissed - **Ramesh Sharan Rai v. State of West Bengal - [2023] 154 taxmann.com 295 (Calcutta)**

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

2.10 Where a co-operative society which had collected huge amounts had advanced loans to various companies floated by it, which were never repaid and, thus, amount collected from innocent investors was siphoned off and petitioner-Director of one of such company, apprehending his arrest had filed instant petition seeking anticipatory bail, in view of fact that petitioner was not likely to flee from course of justice and there was nothing on record to suggest that if petitioner was granted concession of anticipatory bail, he would influence any witness, petitioner was to be granted concession of anticipatory bail - **Aditya Sarda v. Serious Fraud Investigation Office - [2023] 153 taxmann.com 350 (Punjab & Haryana)**

2.11 FIR by EOW in corporate fraud case quashed as complainant's complaint to EOW was a verbatim copy of his complaint to SFIO - **Ashish Bhalla v. State - [2023] 154 taxmann.com 422 (Delhi)**

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT

2.12 HC stays enforcement of anti-suit injunction of foreign court to allow plaintiff to proceed with his oppression & mismanagement plaint before NCLT - **Anupam Mittal v. People Interactive (India) (P.) Ltd. - [2023] 154 taxmann.com 205 (Bombay)**

SECTION 242 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - POWER OF TRIBUNAL

2.13 A nominee director, who no longer has support of nominating group, cannot be allowed to join a petition seeking relief against oppression and mismanagement against other members/shareholder groups of company - **Priya Jain v. Laguna Holdings (P.) Ltd. - [2023] 154 taxmann.com 253 (Delhi)**

SECTION 244 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT

2.14 Where petitioner, being secretary of DDCA had filed instant writ challenging appointment of Ombudsman of DDCA on ground that same was contrary to laws laid down in AoA of DDCA, in view of fact that an equally efficacious remedy was available to petitioner to approach NCLT, writ petition was to be dismissed - **Siddharth Sahib Singh v. Apex Council of DDCA - [2023] 154 taxmann.com 200 (Delhi)**

SECTION 302 OF THE COMPANIES ACT, 2013 - WINDING UP BY TRIBUNAL - DISSOLUTION OF COMPANY

2.15 Where no funds and recoverable assets were available in account of 'G' company under liquidation, liquidation proceedings of 'G' deserved to be brought to an end and 'G' was to be dissolved - **Bhupender Kumar v. Genesis**

Wellness Clinic (P.) Ltd. - [2023] 153 taxmann.com 749 (Delhi)

SECTION 325 OF THE COMPANIES ACT, 2013 - WINDING UP

2.16 Amalgamation of first and second charges on assets of a company under liquidation could result in an unjust distribution of assets, jeopardizing interests of its workmen and subverting purpose of legislative provision and, hence, application filed by creditor bank seeking to merge both its charges was to be dismissed with imposition of costs of Rs. 10 lakhs - *Tata Iron & Steel Co. Ltd. v. Jhalani Tools India Ltd. - [2023] 154 taxmann.com 141 (Delhi)*

SECTION 430 OF COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - CIVIL COURT NOT TO HAVE JURISDICTION

2.17 Where suit was filed before High Court praying for declaration that names of defendants as shareholders in register of company were recorded fraudulently, NCLT was not competent to enquire into allegation of fraud and such suit was maintainable before High Court - *Phool Chand Gupta v. Mukesh Jaiswal - [2023] 154 taxmann.com 113 (Calcutta)*

3. NCLAT

SECTION 185 OF THE COMPANIES ACT, 2013 - DIRECTORS - LOANS TO

3.1 Where 'Hewlett Packard' had admitted violation of section 185 in regard to inter-corporate loan and projected a suo moto application, for compounding offences committed, in view of fact that default period lasted for nearly one year and six days, compounding fees of Rs.10 lakh could not be said to be an excessive or an exorbitant one - *Hewlett Packard Enterprise India (P.) Ltd. v. Registrar of Companies, Bangalore, Karnataka - [2023] 154 taxmann.com 453 (NCLAT - Chennai)*

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

3.2 Where in a section 241 application NCLT passed an order setting aside removal of respondent-director from board of directors of company and later impugned order was passed by NCLT for implementation of its initial order, since initial order passed by NCLT had attained finality and subsequent development had taken place, i.e. AGM meeting was convened, appeal against said implementation order was to be dismissed - *PradipBanik v. AjitBanik - [2023] 152 taxmann.com 167 (NCLAT- New Delhi)*

3.3 Where appellants and respondents had equal shareholding in company, act of appellants in selling land of company without informing respondent in 'absence' of a specific 'Notice' issued to respondent as per provisions of law; and increasing 'share capital' in 'board meeting', in absence of respondent who was only other director; all fell within ambit of 'definition' of 'Oppression and Mismanagement', as defined under sections 397 and 398 of Companies Act, 1956 - *Rathna Textile Mills (P.) Ltd. v. V.R.A.R. Ramakrishnan - [2023] 153 taxmann.com 616 (NCLAT - Chennai)*

SECTION 242 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - POWERS OF TRIBUNAL

3.4 Where appellant had purchased land from R2 company and constructed units on said land and NCLT in a section 241 application against R2, passed an ad interim order of status quo restraining appellant from either selling or carrying construction on said land, same affected rights of appellant as well as unit purchasers who were not a party before NCLT, which would not be in accordance with law and, therefore, such order was to be set aside - *Galaxy Enterprise v. Indiraben - [2023] 153 taxmann.com 294 (NCLAT- New Delhi)*

SECTION 247 OF THE COMPANIES ACT, 2013 - VALUATION BY REGISTERED VALUERS

3.5 Where no prejudice was caused to appellant by issuance of direction by NCLT to valuer to submit a valuation report in an application filed under section 241,

and said order did not in any way infringe rights and liabilities of appellant, appeal of appellant against said order was not maintainable - **Hyde Engineering + Consulting, Inc. v. Karan Manocha** - [2023] 153 taxmann.com 214 (NCLAT - Chennai)

SECTION 252 OF THE COMPANIES ACT, 2013 - REMOVAL OF NAME FROM REGISTER - RESTORATION OF NAME

- 3.6 Where appellant company, despite of having income from operations, was being struck off by RoC upon vague, false allegation of being inactive and that too without any corroboration, order passed by NCLT dismissing appellant's appeal for its restoration in register maintained by RoC was not justified - **Himalayan Organic Food Specialties (P.) Ltd. v. Registrar of Companies, NCT of Delhi & Haryana** - [2023] 154 taxmann.com 111 (NCLAT- New Delhi)

SECTION 424 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - PROCEDURE BEFORE

- 3.7 Where parties entered a consent term before NCLT under which appellant alleged violation by respondent of non-compete obligation, since appellant failed to approach NCLT for clarification of such violation, same was mere allegation and there was no error in order of NCLT executing said consent terms - **Cotmac Electronics (P.) Ltd. v. MukundMuley** - [2023] 153 taxmann.com 538 (NCLAT- New Delhi)

4. SAT

REGULATION 3 OF THE SEBI (INVESTMENT ADVISORS) REGULATIONS, 2013 - APPLICATION FOR GRANT OF CERTIFICATE

- 4.1 Where appellant was carrying out investment advisory activities without obtaining certificate of registration with SEBI, activities of appellant was prima facie, in violation of section 12(1) read with regulation 3(1) of SEBI (Investment Advisors) Regulations, 2013 - **Yogendra Singh v. Securities and Exchange Board of India** - [2023] 153 taxmann.com 586 (SAT - Mumbai)

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

- 4.2 Where SEBI imposed penalty of Rs. 1 crore on appellant, ex-managing director of company which had come out with issue of GDRs on ground that scheme of issuance of GDRs was fraudulent violating section 12A(a), (b), (c) of SEBI Act read with regulations 3 and 4 of PFUTP Regulations, in view of fact that proceeds of GDR issue had been received by company belatedly and was utilized for purpose for which GDR was issued penalty levied on appellant was to be reduced to Rs. 10 lakhs - **Pravin Champalal Jain v. Securities & Exchange Board of India** - [2023] 153 taxmann.com 474 (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

- 4.3 Where appellants were indulged in synchronized trading of shares of company 'AIL' thereby creating a misleading appearance of trading in scrip, appellants also squared off their entire position on every single day, which scrip and had also created artificial volume of trading in market, impugned order passed by SEBI imposing penalty upon appellants was justified - **LataBejgam v. Securities and Exchange Board of India** - [2023] 153 taxmann.com 382 (SAT - Mumbai)
- 4.4 Mere fact that appellant had professional connection with noticee No. 1 who was alleged to have been main player in promoting YouTube videos and thereby misleading unsuspecting investors to acquire securities in company in question at inflated rate could not lead to conclusion that appellants were engaged in a coordinated scheme to induce unsuspected investors to acquire securities in company in question and, therefore, directions issued by SEBI against appellants, for impounding of alleged unlawful gains, freezing of their bank accounts and further restraining them from accessing securities market were unwarranted and could not be sustained - **Arshad Hussain Warsi v. Securities and Exchange Board of India** - [2023] 153 taxmann.com 380 (SAT - Mumbai)

REGULATION 6 OF THE SEBI (INVESTMENT ADVISERS) REGULATIONS, 2003 - CONSIDERATION OF APPLICATION AND ELIGIBILITY CRITERIA

- 4.5 Where appellant was carrying on investment advisory services without a certificate either from National Institute of Securities Market (NISM) or from any other organization or institution including Financial Planning Standards Boards of India or any recognized stock exchange of India which was accredited by NISM, order passed by SEBI restraining appellant from accessing security market and to take investment advisory services for a period of three years and to refund monies received from investors was justified - *Investment Research Advisor v. Securities and Exchange Board of India - [2023] 154 taxmann.com 254 (SAT - Mumbai)*

REGULATION 10 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 - ACQUISITION OF 15 PER CENT OR MORE OF SHARES OR VOTING RIGHTS OF ANY COMPANY

- 4.6 Transfer of shares by Karta to HUF is not an acquisition of shares nor did it trigger an obligation for making an open offer under regulation 10 or 11 - *Pooja R Tikmani v. Securities and Exchange Board of India - [2023] 154 taxmann.com 202 (SAT - Mumbai)*
- 4.7 Where appellant-promoters of target company acquired its shares in excess of prescribed limit and thus, violated Regulation 14 of SAST Regulations and for alleged violation SEBI initiated proceeding after 10 years, in view of fact that information regarding said acquisition was available in public domain, considering lapse of time in culminating proceedings, impugned order passed by SEBI imposing a penalty of Rs. 10 lakhs on appellants could not be sustained - *Pooja R Tikmani v. Securities and Exchange Board of India - [2023] 154 taxmann.com 202 (SAT - Mumbai)*

SECTION 15F OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - PENALTY - FOR DEFAULT IN CASE OF STOCKBROKER

- 4.8 Where appellant, a client of stockbroker, had margin money lying with broker and upon trading activity of said broker being suspended, complaint filed by appellant before SEBI praying for its margin money was rejected, since no steps were taken by NSE to declare such broker defaulter, after which claims could be filed, there was no error in order passed by SEBI, however, NSE was to be directed to take appropriate measures - *Vijay Devnani v. Securities and Exchange Board of India - [2023] 153 taxmann.com 719 (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

- 4.9 A show cause notice was issued alleging that ATI Bonds of Yes Bank issued initially to institutional investors were

mis-sold to retail investors by Yes Bank officials which resulted in violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 - Appellant was Managing Director and CEO of Yes Bank - Show cause notice did not allege that appellant had designed sale pitch but found him to be responsible for overseeing entire down sell of AT-1 Bond from institutional investors to individual investors and was giving instructions to Yes Bank - Thus, by impugned order a penalty of Rs. 2 crores had been imposed on appellant - *Yes Bank Ltd. v. Securities and Exchange Board of India - [2023] 154 taxmann.com 320 (SAT - Mumbai)*

REGULATION 17 OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 - BOARD OF DIRECTORS

- 4.10 Where due to Covid pandemic and lockdown declared in March 2020, appellant company could not appoint woman director and Company Secretary within prescribed time as per SEBI (LODR) Regulations, penalties and fines imposed by NSE and BSE for non-compliance for quarters ending 30-6-2020 and 30-9-2020 could not be sustained; however since thereafter situation had eased and still appellant did not comply relevant Regulations, respondents were entitled to impose a fine for quarter ending 31-12-2020 - *Shree Pushkar Chemicals & Fertilisers Ltd. v. National Stock Exchange of India Ltd. - [2023] 153 taxmann.com 398 (SAT - Mumbai)*

REGULATION 35 OF THE SEBI (INTERMEDIARIES) REGULATIONS, 2008 - DIRECTIONS

- 4.11 SEBI has a power under section 11 of SEBI Act to direct investment advisors to refund amount received from investors towards investment advisory services; in any case, such power is also derived under regulation 35 of Intermediaries Regulations - *Vijesh Joshi v. Securities and Exchange Board of India - [2023] 154 taxmann.com 107 (SAT - Mumbai)*

SECTION 230 OF THE COMPANIES ACT, 2013 - COMPROMISE AND ARRANGEMENT

- 4.12 Stock Exchange, upon receipt of draft scheme of arrangement shall submit to SEBI its observation letter or no objection letter or objection letter ascertaining that draft scheme of arrangement is in compliance with securities laws or it is otherwise and it is only listed company who can be aggrieved of observation made by stock exchange or SEBI; shareholder cannot be aggrieved by issuance of a letter of observation/no objection certificate - *TejoRatnaKongara v. Securities & Exchange Board of India - [2023] 154 taxmann.com 108 (SAT - Mumbai)*
- 4.13 By buying shares from earlier objector/complainant on commercial consideration right to object does not necessarily pass on to buyer of shares, namely, to appellant, since, no personal injury or grievance was caused upon appellant to qualify him as a person aggrieved - *TejoRatnaKongara v. Securities & Exchange Board of India - [2023] 154 taxmann.com 108 (SAT - Mumbai)*

5. NCLT

SECTION 230 OF THE COMPANIES ACT, 2013 - COMPROMISE AND ARRANGEMENT

- 5.1 NCLT okays amalgamation subject to treating difference between share capital recorded and share capital of transferor companies as Capital Reserves - ***Kamadgiri Industries Ltd., In re - [2023] 154 taxmann.com 155 (NCLT- Chennai)***

COMPETITION LAW

1. HIGH COURT

SECTION 4 OF THE COMPETITION ACT, 2002 - PROHIBITION OF ABUSE OF DOMINANT POSITION

- 1.1 Where petitioner supplied material to second respondent, an organization under Ministry of Railways as per purchase order but second respondent instead of clearing dues of petitioner issued demand order requiring petitions to pay certain amount on ground that petitioner had charged abnormally high price of however, as respondent had lost reference made on similar allegations of excessive pricing on same material on record before CCI, and appeal and review preferred by it before NCLAT had also been dismissed, findings arrived by CCI had attained finality and, therefore, demand order of respondent was to be set aside - ***PPS International v. Union of India - [2023] 153 taxmann.com 348 (Allahabad)***

2. CCI

SECTION 3 OF THE COMPETITION ACT, 2002 - PROHIBITION OF AGREEMENTS - ANTI-COMPETITIVE AGREEMENTS

- 2.1 OP-2 and OP-3 were regional and zonal offices of OP-1 i.e. Hero Moto Corp and OP-4 was super stockist for supply of genuine parts of OP-1 - OP-5 to OP-7 were wholesalers engaged in after-sale distribution of spare parts and services - Informant was a partnership firm and was appointed as a Hero Genuine Part Distributor (HGPD) - Informant had alleged violation of provision of section 3 on ground that OP-1 to OP-4 provided discounts to tune of 21 per cent to OP-5 to OP-7 whereas Informant was provided 18 per cent discount on billing amount - Further, TDS and GST charges were charged from Informant, whereas same was absent with regard to OP-5 to OP-7 - Informant further alleged that practise of OP-1 to OP-4 supporting OP-5 to OP-7, instead of supporting Informant was a clear violation of trade policy of OP-1 to OP-4 - ***Sri Balaji Enterprises v. Hero Moto Corp. Ltd. (Head Office) - [2023] 154 taxmann.com 306 (CCI)***

SECTION 4 OF THE COMPETITION ACT, 2002 - PROHIBITION OF ABUSE OF DOMINANT POSITION

- 2.2 Where other than OP there were number of RERA-approved real-estate developers such as Girdhari Constructions, Ashoka Ventures, Siri Sampada Homes, Sri Rama Bhoomi Developers, Vardhan Developers, etc., having residential plots available for sale in relevant market i.e., market for development and sale of residential plots in Mahabubnagar district in State of Telangana, OP did not enjoy a dominant position in relevant market and in absence of dominance, no case of abuse of dominant position by OP was made out - ***JitendraBathla v. DLF Gayatri Developers - [2023] 153 taxmann.com 406 (CCI)***

FEMA Banking and Insurance Laws

1. STATUTORY UPDATES

- 1.1 Govt. accepts over 10,000 claims of MSMEs under the 'Vivad se Vishwas – I scheme' - **Press Release, Dated 26-09-2023**

Editorial Note : The Government has accepted over 10,000 claims of MSMEs under the Vivad se Vishwas - I scheme, aimed at providing relief to MSMEs during the COVID-19 pandemic. This has led to a grant of more than Rs. 256 crore to MSMEs and an increased flow of bank credit through freeing up of guarantees. The Ministry of Petroleum and Natural Gas (MoPNG) granted the highest relief, amounting to Rs. 116.47 crore.

- 1.2 MHA widens Form FC-4; Now Foreign Cos must disclose both movable & immovable assets created from foreign contributions - **Notification No. G.S.R. 683(E), Dated 22-09-2023**

Editorial Note : The Ministry of Home Affairs has notified an amendment to the Foreign Contribution (Regulation) Rules, 2011. An amendment has been made to Form FC-4. In Form FC-4, two new clauses (ba) and (bb) have been inserted. Clause (ba) shall contain details of movable assets created out of foreign Contributions as on 31st March of FY. Whereas, clause (bb) shall contain details of immovable properties acquired out of foreign contribution as on 31st March of FY.

- 1.3 93% of Rs 2000 banknotes in circulation returned to Banks till August 31, 2023: RBI - **Press Release: 2023-2024/851, Dated 01-09-2023**

Editorial Note : Earlier, RBI had announced the withdrawal of Rs 2000 banknotes from circulation. The total value of Rs 2000 banknotes in circulation, which amounted to Rs 3.62 lakh crore on 31.03.2023 had declined to Rs 3.56 lakh crore as at the close of business on May 19, 2023. According to the data received from the banks, Rs 2000 banknotes in circulation as at the close of business on August 31, 2023 stood at Rs 0.24 lakh crore i.e., 93% of banknotes in circulation returned to banks till 31.08.2023.

- 1.4 REs must display on their websites information of borrowers whose secured assets are taken over under the SARFAESI Act - **Circular No. RBI/2023-24/63 DoR.FIN.REC.41/20.16.003/2023-24, Dated 25-09-2023**

Editorial Note : RBI has directed Regulated Entities (REs) which are secured creditors to display information in respect of the borrowers whose secured assets have been taken into possession by them under the SARFAESI Act. Further, REs must upload the information on their website in the prescribed format. Also, the list of information must be displayed on the website of RE within 6 months and must be updated on a monthly basis.

- 1.5 RBI tweaks norms for classification, valuation and

operation of investment portfolio of commercial banks-
Press Release: 2023-2024/910, Dated 12-09-2023

Editorial Note : RBI has revised directions for classification, valuation and operation of investment portfolio of commercial banks. The directions include principle-based classification of investment portfolio, tightening regulations around transfers to/from held to maturity (HTM) category and sales out of HTM, and inclusion of non-SLR secs. in HTM subject to the fulfilment of certain riders and symmetric recognition of gains and losses. Further, these directions would enhance reporting & disclosure quality.

- 1.6 Regulated Entities must release property documents and remove charges within 30 days post full loan settlement: RBI - **Circular No. RBI/2023-24/60 DoR.MCS.REC.38/01.01.001/2023-24, Dated 13-09-2023**

Editorial Note : Recently, RBI observed that REs follow divergent practices in release of movable/immovable property documents, which led to customer grievances and disputes. Now, RBI has issued directions that REs must release all original movable/immovable property documents and remove charges registered with any registry within a period of 30 days after full repayment or settlement of loan account. Further, the timeline and place of return of property documents will be specified in loan sanction letters.

- 1.7 RBI issues revised norms for classification and valuation of investment portfolios by banks - **Circular No. RBI/DOR/2023-24/104 DOR.MRG.36/21.04.141/2023-24, Dated 12-09-2023**

Editorial Note : RBI has issued revised norms for classification, valuation and operation of investment portfolios of commercial banks, aligning them with global standards and best practices. The revised directions include removing the 90-day ceiling on the holding period under HFT, removal of ceilings on Held to Maturity and more detailed disclosures on the investment portfolio. Further, these directions will be applicable from 01.04.2024 to all commercial banks excluding RRBs.

- 1.8 Banks must maintain an extra daily average balance with the RBI in addition to the required daily balance: RBI - **Notification No. DOR.RET.REC.30/12.01.001/2023-24., Dated 10-08-2023**

Editorial Note : RBI has directed that with effect from the fortnight beginning August 12, 2023, all Bank shall have to maintain with the Reserve Bank of India an additional average daily balance over and above the average daily balance required to be maintained u/s 42 1); and that the amount of such additional average daily balance shall not be less than 10 % of the increase in net demand and time liabilities between May 19, 2023 and July 28, 2023.

- 1.9 Govt. appoints 'Special Directors' of Regional Offices of ED as administrators of the property confiscated under PMLA - **Notification No. S.O. 3980(E), Dated 12-09-2023**

Editorial Note : The Govt. has appointed 'Special Directors' of the Regional Offices of the 'ED' as 'Administrators' to receive, manage and dispose of the property confiscated

under provisions of section 8(5) &(7) or section 58B or section 60 (2A) of the Prevention of Money Laundering Act, 2002. The Administrators so appointed shall be governed by the provisions of the said Act and the Prevention of Money-laundering (Receipt and Management of Confiscated Properties) Rules, 2005.

- 1.10 RBI releases directions for All India Financial Institutions regarding Basel III Capital Framework, Exposure Norms, etc. - **Circular No. RBI/DoR/2023-24/105 DoR.FIN.REC.40/01.02.000/2023-24 & Press Release No. 2023-2024/959, Dated 21-09-2023**

Editorial Note : The RBI has released the RBI (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023. These directions shall be applicable to the five All India Financial Institutions (AIFIs) viz., EXIM Bank, NABARD, NABFID, NHB and SIDBI. The Directions shall be applicable w.e.f. 01.04.2024.

- 1.11 RBI issues draft master directions on treatment of 'Wilful Defaulters and Large Defaulters' - **Press Release: 2023-2024/957, Dated 21-09-2023**

Editorial Note : The RBI has issued draft master directions on the treatment of wilful defaulters and large defaulters. The draft Master Direction expands the scope for Regulated Entities (REs) which can classify borrowers as wilful defaulters, broadens the definition of wilful default, and refines the identification process and finalisation on wilful default aspects within 6 months of an account being classified as NPA. The comments/feedback from REs and other stakeholders may be submitted by 31.10.2023.

- 1.12 MoF permits 3 reporting entities to perform authentication under the Aadhaar Act, 2016 - **Notification No. S.O. 3965(E), Dated 06-09-2023**

Editorial Note : The Ministry of Finance has permitted 3 reporting entities to perform authentication under the Aadhaar Act, 2016. The permission is granted only for the purpose of Aadhaar authentication as required u/s 11A of the Money-laundering Act, 2002. Sec 11A requires the verification of the identity of reporting entities' clients and beneficial owner by way of aadhaar authentication.

- 1.13 Natural person eligible for more than 10% of capital or profits of partnership shall be a beneficial owner under PMLA - **Notification No. G.S.R. 652(E), Dated 04-09-2023**

Editorial Note : The Govt. has notified an amendment to the PML (Maintenance of Records) Rules, 2005. As per the amended norms, the beneficial owner of the partnership firm shall be considered as the natural person who has ownership of or entitlement to more than 10% (reduced from 15%) of the capital or profits of the partnership. Further, the Principal Officer as per rule 2(f) shall not hold a position below that of an officer at the management level.

- 1.14 RBI expands UPI functionality, allows transactions

through pre-sanctioned credit lines issued by banks - **Circular No. RBI/2023-24/58 CO.DPSS.POLC.No.S-567/02-23-001/2023-2024, Dated 04-09-2023**

Editorial Note : The RBI has now allowed payments through a pre-sanctioned credit line issued by a Scheduled Commercial Bank to individuals, with prior consent of the individual customer, for transactions using the UPI System. Earlier, RBI through the Statement on Developmental and Regulatory Policies dated 06.04.2023, proposed expansion of the scope of UPI by enabling transfer to / from pre-sanctioned credit lines at banks.

- 1.15 Eligible lending institutions must refer to guidelines issued by the MSME Ministry for PM Vishwakarma Scheme: RBI - **Circular No. RBI/2023-24/61 FIDD.CO.MSME.BC.No.10/06.02.031/2023-24, Dated 13-09-2023**

Editorial Note : The Government of India has introduced the 'PM Vishwakarma Scheme' which aims to provide support to artisans and craftspeople, enabling them to move up the value chain in their respective trades. Now, the RBI has directed eligible lending institutions to refer to the scheme guidelines issued by the Ministry of Micro, Small and Medium Enterprises for appropriate action.

- 1.16 'Mahalaxmi Cooperative Bank Ltd' ceases to be a co-operative bank: RBI - **Notification No. DoR.MON.No. S2646/09.01.101/2023-24; Dated 04-08-2023**

Editorial Note : RBI has notified that 'Mahalaxmi Cooperative Bank Ltd Dharwad, Karnataka' has ceased to be a co-operative bank within the meaning of the Banking Regulation Act, 1949. Further, all the provisions of the said Act applicable to the Mahalaxmi Cooperative Bank Ltd., Dharwad, Karnataka shall cease to apply to it.

- 1.17 SGB Scheme 2023-24-Series II subscription window will open during September 11 to September 15 - **Press Release: 2023-2024/898, Dated 08-09-2023**

Editorial Note : The Sovereign Gold Bond (SGB) Scheme 2023-24 - Series II will be open for subscription during September 11-15, 2023. Further, the Govt. has decided to offer a discount of Rs. 50/- per gram less than the nominal value to the investors applying online and making the payment against the application through digital mode. For such investors, the issue price of Gold Bond will be Rs. 5,873/- (Rupees Five thousand eight hundred and seventy-three only) per gram of gold.

- 1.18 RBI releases amounts impounded under the I-CRR in stages to prevent system liquidity from sudden shocks - **Circular No. RBI/2023-24/5 DOR.RET.REC.34/12.01.001/2023-24, Dated 08-09-2023**

Editorial Note : Earlier, RBI vide Press Release dated September 08, 2023, decided to discontinue the incremental CRR (I-CRR) in a phased manner. Based on an assessment of current & evolving liquidity conditions, RBI has decided that the amounts impounded under I-CRR would be released in stages so that system liquidity is not subjected to sudden shocks. Further, 25% of I-CRR maintained to be released on 09.09.2023 & 23.09.2023 while 50% of I-CRR maintained to be released on 07.10.2023.

2. SUPREME COURT

SECTION 3 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - DEALING IN FOREIGN EXCHANGE, ETC.

- 2.1 Complaint under FERA filed after its repeal, by officer authorized under it, is valid if filed during sunset period of 2 years u/s 49(3) of FEMA - **First Global Stockbroking (P.) Ltd. v. Anil Rishiraj** - [2023] 154 *taxmann.com* 472 (SC)

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 2.2 Right of borrower to redeem the mortgage lapses u/s 13(8) of SARFAESI Act once auction purchaser has made full payment of bid amount - **Celir LLP v. Bafna Motors (Mumbai) (P.) Ltd.** - [2023] 154 *taxmann.com* 473 (SC)

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

- 2.3 SC grants bail to money-laundering accused subject him not being required in any other case - **Bachhu Yadav v. Directorate of Enforcement Government of India** - [2023] 154 *taxmann.com* 160 (SC)

SECTION 45 OF THE BANKING REGULATION ACT, 1949 - POWER OF RESERVE BANK TO APPLY TO CENTRAL GOVERNMENT FOR SUSPENSION OF BUSINESS BY A BANKING COMPANY AND TO PREPARE SCHEME OF RECONSTITUTION OR AMALGAMATION

- 2.4 SC quashes prosecution against DBS Bank for acts of officials of erstwhile Lakshmi Vilas Bank which was non-voluntarily merged into the former bank u/s 45(7) of BR Act - **ReligareInvest Ltd. v. State of NCT Of Delhi** - [2023] 154 *taxmann.com* 263 (SC)

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

- 2.5 In exceptional case, HC can suspend sentence for cheque bounce without insisting on minimum 20% deposit as required u/s 148 of NI Act - **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd.** - [2023] 154 *taxmann.com* 268 (SC)
- 2.6 HC not justified in quashing cheque bounce complaint where it was issued to pay a debt which was clearly not time-barred - **K. Hymavathi v. Stat of Andhra Pradesh** - [2023] 154 *taxmann.com* 207 (SC)

3. HIGH COURT

SECTION 3 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - DEALING IN FOREIGN EXCHANGE, ETC.

- 3.1 HC upholds Trial Court order of enforcement of foreign Court decree on a guarantee given without obtaining RBI approval under FEMA - **Arun Kumar Jagatramka v. Ultrabulk A/S** - [2023] 154 *taxmann.com* 531 (Gujarat)

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

- 3.2 Where in a money laundering case linked to alleged extortion of money from coal transporters, applicant had handled proceeds of crime as per instructions of prime suspect in said case and custodial remand of applicant was required to find out real utilization of proceeds of crime and also to trace whereabouts of main accused, applicant's bail application was to be rejected - **Laxmikant Tiwari v. Directorate of Enforcement** - [2023] 154 *taxmann.com* 201 (Chhattisgarh)

- 3.3 HC directs ED not to arrest TMC leader Abhishek Banerjee in Teacher's Recruitment scam without following procedure u/s 19 of PMLA - **Abhishek Banerjee v. Directorate of Enforcement (ED)** - [2023] 154 *taxmann.com* 530 (Calcutta)

- 3.4 Where petitioner acted as a broker/liason/middlemen on behalf of top leaders of political party 'AAP' for getting bribes/kickbacks from various stakeholders in Delhi Liquor business in exchange of favourable outcomes (policy changes) in Delhi Excise Policy of 2021-22 bail application of petitioner, who was arrested for offence under section 3, was to be rejected - **Vijay Nair v. Directorate of Enforcement** - [2023] 154 *taxmann.com* 183 (Delhi)

- 3.5 Where petitioner availed loans from a company which was involved in money laundering along with accused persons and in FIR registered against accused persons petitioner was also arrayed as an accused and was arrested, in view of fact that petitioner was unaware of money received as loan was tainted and there was no substantial link between money received and criminal activity relating to scheduled offence, petitioner was to be admitted to bail - **Vijay Agrawal v. Directorate of Enforcement** - [2023] 153 *taxmann.com* 509 (Delhi)

SECTION 4 OF THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018 - APPLICATION FOR DECLARATION OF FUGITIVE ECONOMIC OFFENDER AND PROCEDURE THEREFOR

- 3.6 ED's application u/s 4 of FEO Act, 2018, can't be dismissed for noncompliance with section 297 of CRPC - **MehulChoksi v. State of Maharashtra** - [2023] 154 *taxmann.com* 443 (Bombay)

SECTION 5 OF THE SECURITISATION AND

RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ACQUISITION OF RIGHTS OR INTEREST IN FINANCIAL ASSETS

- 3.7 Pledgee is entitled to vote on pledged shares in case of borrower's default as per rights conferred on him by loan agreement, though the loan secured by pledge was 'Evergreened' by lender since evergreening does not void the loan transaction itself though it is barred by RBI Directions and attracts penal action - **World Crest Advisors LLP v. Catalyst Trusteeship Ltd.** - [2023] 154 taxmann.com 157 (Bombay)

SECTION 13 OF THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 - SUSPENSION OF CERTIFICATE

- 3.8 No suspension order under section 13 of FCRA can be issued, without notice of hearing or show cause notice being issued under section 14; where respondent-Ministry of Home Affairs suspended registration of petitioner's FCRA license/certificate for a period of 180 days without issuing notice under section 14, though, as per respondent, same was under process, suspension of petitioner's FCRA certificate was to be stayed till next date of hearing - **Legal Initiative For Forest and Environment v. Union of India** - [2023] 153 taxmann.com 401 (Delhi)

SECTION 13 OF THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 3.9 Where petitioner company obtained a term loan from financial institution and due to continuous defaults, accounts of petitioners were classified as NPA on 31-3-2021, however, same were standard as on 29-2-2020, petitioner was eligible under Emergency Credit Line Guarantee Scheme (ECLGS) and financial institution was to be directed to grant benefit of same to petitioner - **Guha Roy Food Joint and Hotel (P.) Ltd. v. State of West Bengal** - [2023] 153 taxmann.com 506 (Calcutta)
- 3.10 Banks/financial institutions are governed by guidelines issued by Reserve Bank of India in matter of appointment of recovery agents and procedures which are required to be followed in matter of recovery of loans and repossession/sale of hypothecated vehicles; right to recovery of these banks and financial institutions if pitted against constitutional right of life of a person to live with dignity, constitutional rights of person shall prevail - **Dhananjay Seth v. Union of India** - [2023] 153 taxmann.com 212 (Patna)

SECTION 17 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - APPLICATION AGAINST MEASURES TO RECOVER SECURED DEBTS

- 3.11 In view of mandate of section 17 requiring an appeal to

be filed within 45 days of issuance of possession notice by bank, appeal filed by petitioner challenging possession notice after a delay of 772 days was rightly rejected by Debt Recovery Tribunal - **Nitin Subramanian v. Authorized Officer/ Assistant General Manager, Canara Bank** - [2023] 153 taxmann.com 510 (Karnataka)

SECTION 19 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - POWER TO ARREST

- 3.12 No violation of section 19 of PMLA where grounds of arrest are duly notified to arrestee at the time of arrest & disclosed in detail in remand application - **Ram Kishor Arora v. Director, Directorate of Enforcement** - [2023] 154 taxmann.com 569 (Delhi)

SECTION 24 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - BURDEN OF PROOF

- 3.13 Presumption under section 24 of PML Act can be rebutted only at stage of trial and not at stage of framing of charges - **Kumar Pranav v. State** - [2023] 153 taxmann.com 291 (Jharkhand)

SECTION 26E OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - PRIORITY TO SECURED CREDITORS

- 3.14 Where secured creditor had registered its security interest with CERSAI, secured creditor would get priority over dues of Government and on sale of such asset Registrar has to register sale deed as free from any encumbrances - **Ronak Industries v. Assistant Commissioner Central Excise & Customs** - [2023] 154 taxmann.com 110 (Bombay)

SECTION 30 OF RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 - APPEAL AGAINST ORDER OF RECOVERY OFFICER

- 3.15 Where petitioner, a purchaser of subject property filed writ petition against order of Recovery Officer (RO) cancelling auction sale in his favour, in view of fact that lender had filed a substantive appeal under section 30 of RDDB Act, to avoid conflicting decision on very same order, petitioner would also have to approach appellate forum as they were not remediless and, thus, instant writ petition before High Court against order of RO was not maintainable - **Raishkan Firozkhan Pathan v. Recovery Officer, Debts Recovery Tribunal II** - [2023] 153 taxmann.com 402 (Gujarat)

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

- 3.16 Where money laundering case was registered against petitioner however, petitioner was never arrested at any stage of proceedings and had also surrendered before Session Court in compliance with direction issued by High Court, bail application filed by petitioner before High Court on ground that he was ready and willing to co-operate with Trial was to be admitted - **Sandeep Nair v. Union of India** - [2023] 153 taxmann.com 156 (Kerala)

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

3.17 Where complaint was filed by respondent under section 138 alleging that petitioner had issued cheques as security towards gold supplied by respondent to petitioner for making gold ornaments but it did not return gold/ornaments and cheques when presented were dishonoured and petitioner sought to quash complaint taking defence that it had not received any gold from complainant and that liability had not been crystalized so as to attract provisions of section 138, such issue would be subject matter of trial and could not be examined in limited jurisdiction under section 482 of Cr. PC and, therefore, petition was to be dismissed - **VihanExims Co. (P.) Ltd. v. State Govt. of NCT of Delhi - [2023] 154 taxmann.com 106 (Delhi)**

3.18 Where petitioners retired from post of directors of accused company before issuance of dishonoured cheques, petitioners could not be prosecuted under section 138 of Negotiable Instruments Act, 1881 - **Pankaj Saraf v. State of West Bengal - [2023] 153 taxmann.com 647 (Calcutta)**

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

3.19 Phraseology used in section 141 of being in charge and responsible to company for conduct of business of company is a reference to an 'executive activity' which imports an element of running day-to-day affairs of company and would not be extended to a role which is essentially supervisory, policy oriented, of oversight or regulatory, i.e., non-executive in character - **Yashovardhan Birla v. CECIL Webber Engineering Ltd. - [2023] 153 taxmann.com 399 (Delhi)**

4. SAFEMA

**SECTION 17 OF THE PREVENTION OF MONEY
LAUNDERING ACT, 2002 - SEARCH AND SEIZURE**

4.1 Where appellant challenged order of Adjudicating Authority dismissing application of appellants to supply copies of documents/records seized by Enforcement Directorate in search under section 17(1), refusal to supply copies of records seized by ED would not cause prejudice to appellants as there was neither any attachment nor seizure and, thus, impugned order was to be upheld - **Hemant Kanoria v. Directorate of Enforcement - [2023] 154 taxmann.com 109 (SAFEMA - New Delhi)**

**SECTION 19 OF THE FOREIGN EXCHANGE
MANAGEMENT ACT, 1999 - APPEAL TO APPELLATE
TRIBUNAL**

4.2 Where appellant failed to establish bona fides of his case i.e. non-receipt of impugned adjudication order dated 10-12-2004 and failed to act diligently about culmination of proceedings of adjudication, appeal filed by appellant in 2019 against such adjudication order was to be dismissed - **Kanak Exports v. Special Director, Directorate of Enforcement - [2023] 153 taxmann.com 403 (SAFEMA - New Delhi)**

**SECTION 21 OF THE PREVENTION OF MONEY
LAUNDERING ACT, 2002 - RETENTION OF RECORDS**

4.3 Authority, who has been authorized under section 17(1) shall immediately after search and seizure forward a copy of reasons to believe recorded under section 17(1) along with material in possession of authorized officer to Adjudicating Authority; by no stretch of imagination word material can include seized records - **Hemant Kanoria v. Directorate of Enforcement - [2023] 154 taxmann.com 109 (SAFEMA - New Delhi)**

**SECTION 42 OF THE FOREIGN EXCHANGE
MANAGEMENT ACT, 1999 - CONTRAVENTION BY
COMPANIES**

4.4 Where a complaint was filed alleging that for 12 outward remittances sent abroad from account of appellant company no Exchange Control Copy of Bills of Entry had been submitted and Adjudicating Authority imposed penalty of Rs. 25 lakhs on appellant, in view of fact that appellant company had been making regular imports of substantial amounts and it was only in miniscule percentage of cases that company failed to submit proof of imports, in interest of justice, penalty under section 13(1) of FEMA was to be reduced to Rs. 5 lakhs - **Akzo Nobel India Ltd v. Joint Director Directorate of Enforcement, Delhi - [2023] 154 taxmann.com 105 (SAFEMA - New Delhi)**

Insolvency and Bankruptcy Code

1. STATUTORY UPDATES

- 1.1 IBBI clarifies with regard to the term "amount realised" for the purpose of calculation of liquidator's fees - **Circular No. IBBI/LIQ/61/2023, Dated 28-09-2023**

Editorial Note : The IBBI has issued a clarification w.r.t. Liquidators' fee under Regulation 4 (2)(b) of the IBBI (Liquidation Process) Regulations, 2016. It has been clarified that "Amount realised" shall refer to the amount realised from assets other than liquid assets such as cash & bank balance including term deposit, mutual fund, quoted share available at start of the process. Further, the term "other liquidation cost" shall denote liquidation costs paid in priority u/s 53, excluding liquidator's fee.

- 1.2 IBBI releases discussion paper on appointment of RP & sharing of report prepared by the RP with personal guarantor

Editorial Note : The IBBI has notified discussion paper on the appointment of RP, sharing of report prepared by the RP with the personal guarantor and mandating summoning of the meeting of the creditors. The discussion paper mainly solicits comments on certain issues which include appointment of RP in the insolvency resolution process of personal guarantors (PGs) to corporate debtors, sharing a copy of report prepared by the RP u/s 99 of the IBC and mandating summoning of the meeting of the creditors u/s 106.

- 1.3 IBBI opens up the facility to submit CIRP forms for all assignments handled by IPEs without any fees till 30.09.23 - **Circular No. IBBI/CIRP/60/2023, Dated 01-09-2023**

Editorial Note : Earlier, IBBI allowed Insolvency Professional Entities (IPEs) to enrol, register, and act as IPs for conducting insolvency processes under the IBC. However, the facility for submitting the CIRP Forms was not made available to the IPEs acting as IPs; hence, these IPEs were unable to submit the relevant CIRP Forms. Now, the said facility for submitting the CIRP Forms has been extended to IPEs acting as IPs. The CIRP forms filed till 30.09.2023 shall not attract any fee.

- 1.4 IBBI mandates operational and financial creditor to submit chronology of debt & default along with evidence - **Notification No. IBBI/2023-24/GN/REG106, Dated 18-09-2023**

Editorial Note : The IBBI has notified an amendment to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. A new regulation 2D has been inserted after regulation 2C. The regulation states that the financial creditor or operational creditor while filing an application u/s 7 or 9, must submit along with the evidence, the chronology of the debt and default including the date when the debt became due, default date and date of part payments and the limitation

applicable.

- 1.5 Acceptance of the application by IPAs must be communicated to the applicant within 60 days: IBBI - **Notification No. IBBI/2023-24/GN/REG105, Dated 18-09-2023**

Editorial Note : IBBI has notified an amendment to the IBBI (Model Bye-Laws and Governing Board of IPAs) Regulations, 2016. An amendment has been made in clause 10(7) of the Schedule. Now, the acceptance of the application must be communicated to the applicant within 60 days. Also, in addition to the existing conditions, the agency may refuse to accept the surrender of membership by any professional member if a member doesn't comply with payment of fees, disciplinary orders, filings and disclosures, etc.

- 1.6 Applicants for insolvency professional activities will now receive their registration certificates within 30 days: IBBI - **Notification No. IBBI/2023-24/GN/REG104, Dated 18-09-2023**

Editorial Note : The IBBI has notified an amendment to the IBBI (Insolvency Professionals) Regulations, 2016. An amendment has been made in Regulation 7 i.e., Certificate of registration. As per the amended norms, the Board on being satisfied, may grant a certificate of registration to the applicant to carry out the activities of an insolvency professional, within 30 days of receipt of the application, instead of 60 days. Also, a new Regulation 10A pertaining to surrender of registration has been introduced

2. SUPREME COURT

SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY FINANCIAL CREDITOR

2.1 CIRP plea u/s. 7 of IBC was rightly admitted as it was filed within limitation extended by OTS proposals filed by CD - **Axis Bank Ltd. v. Naren Sheth** - [2023] 154 taxmann.com 276 (SC)

2.2 Belated claim cannot be entertained after COC's approval of RP even if claimant was not aware that CD was undergoing CIRP - **RPS Infrastructure Ltd. v. Mukul Kumar** - [2023] 154 taxmann.com 243 (SC)

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

2.3 Supreme Court dismissed appeal against NCLAT's order holding that when default had been committed by corporate debtor prior to section 10A period, any subsequent default committed during section 10A period could not be held bar to application which was filed on basis of default prior to section 10A and subsequent to section 10A period - **Naina Nitin Desai v. Edelweiss Asset Reconstruction Ltd.** - [2023] 154 taxmann.com 322 (SC)

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

2.4 Only in exceptional circumstances, where CD is MSME, it is not necessary for promoters to compete with other RAs to retain control over CD - **R. Raghavendran v. C. Raja John** - [2023] 154 taxmann.com 524 (SC)

2.5 Related party is not per se disqualified from bidding in e-auction of assets of corporate debtor in liquidation - **Eva Agro Feeds (P.) Ltd. v. Punjab National Bank** - [2023] 154 taxmann.com 161 (SC)

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

2.6 Where NCLAT on basis of case SP Probuild LLP v. Rabinder Kumar Mintri [Civil Appeal No. 7907 of 2021, dated 12-1-2022] rejected appellant's (home buyers) claim, which was filed belatedly and rejected by RP, there was hardly any merit in instant appeal to interfere with NCLAT's order and, thus, same was to be dismissed - **Nitin Verma v. Today Homes Noida (P.) Ltd.** - [2023] 153 taxmann.com 588 (SC)

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE

PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

2.7 Tata Power-operational creditor cannot insist on payment of arrears, which have to be paid in terms of waterfall mechanism, for restoration/grant of an electricity connection to corporate debtor; dues of corporate debtor have to be paid in manner prescribed in resolution plan, as approved by Adjudicating Authority - **Tata Power Western Odisha Distribution Ltd. (TPWODL) v. Jagannath Sponge (P.) Ltd. Director** - [2023] 154 taxmann.com 484 (SC)

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

2.8 SC vacates NCLAT's interim order since no reasons given by NCLAT for the interim order - **Orbit Electricals (P.) Ltd. v. Deepak Kishan Chhabria** - [2023] 154 taxmann.com 602 (SC)

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

2.9 Supreme Court upheld NCLAT's order wherein it was held that power to review is not inherent upon NCLAT but power to recall its judgment is inherent as has been declared by rule 11 of NCLAT Rules, 2016, which can be exercised on sufficient grounds - **Union Bank of India v. Financial Creditors** - [2023] 154 taxmann.com 203 (SC)

SECTION 238 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - OVERRIDING EFFECT OF CODE

2.10 Where proceedings under IBC were initiated against petitioner company before NCLT and RP had already been appointed and petitioner filed appeal against order of High Court affirming declaration of petitioner company as sick company, there was no reason to proceed further in instant proceedings as company had availed its remedies in accordance with law - **Krystal Stone Exports Ltd. v. Stressed Assets Stabilization Fund (SASF)** - [2023] 153 taxmann.com 311 (SC)

3. HIGH COURT

SECTION 52 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - SECURED CREDITOR IN

- 3.1 Once having relinquished its interest u/s 52 of IBC, the State cannot claim charge w.r.t. VAT dues on CD's property sold to auction purchaser - **KRBL Ltd. v. State of Gujarat** - [2023] 154 taxmann.com 489 (Gujarat)

SECTION 94 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY DEBTOR

- 3.2 Where a complaint was filed under section 138 of NI Act against petitioner-managing director of corporate debtor, petitioner could not escape from penal liability by filing an application under section 94 as application under section 94 related to personal liability of petitioner as a surety, whereas petitioner was facing trial under section 138 of NI Act as a 'natural person' for liability of company - **Sandeep Gupta v. Shri Ram Steel Traders** - [2023] 153 taxmann.com 530 (Delhi)

4. NCLAT

SECTION 5(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- 4.1 Where operational creditor gave premises to corporate debtor on rent and there was voluminous exchange of correspondence prior to issuance of demand notice on non-availability of requisite sanction for running a commercial business, same established pre-existing dispute and, thus, NCLT erred in admitting CIRP application against corporate debtor - **Yash Nachrani v. Pardesi Construction (P.) Ltd.** - [2023] 153 taxmann.com 313 (NCLAT - New Delhi)

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

- 4.2 Where corporate debtor failed to redeem debentures and a CIRP petition against corporate debtor under signatures of 'N' was filed, board resolution having been passed by debenture trustee company authorizing 'N' to file suit before any Court of law or Tribunal on its behalf, order passed by NCLT admitting such petition was not to be interfered with - **Rahul Arunprasad Patel v. Invesco Asset Management (India) (P.) Ltd.** - [2023] 153 taxmann.com 615 (NCLAT - New Delhi)

- 4.3 Where corporate debtor failed to pay loan advanced by financial creditor and same was more than threshold limit of Rs. 1 lakh under section 4, aspect of debt and default committed by corporate debtor was proved and, therefore, application filed under section 7 was rightly admitted by NCLT - **G. Sundaravadivelu v. Indian Overseas Bank** - [2023] 153 taxmann.com 512 (NCLAT - Chennai)

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 4.4 Where corporate debtor failed to follow payment schedule of payments to respondent-operational creditor and corporate debtor had admitted its liability, outstanding debt due and payable was established by respondent and, therefore, section 9 petition filed by respondent was rightly admitted by NCLT - **Nandamuri Meenalatha v. Quality Steels and Wire Products** - [2023] 154 taxmann.com 185 (NCLAT - Chennai)

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

- 4.5 NCLT dismisses CIRP plea on grounds of pre-existing dispute as Company withheld 3% as liquidated damages for delay in completing work - **Tricolite Electrical Industries Ltd. v. Wipro Ltd.** - [2023] 154 taxmann.com 242 (NCLAT - Chennai)

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

- 4.6 Where application filed under section 9 was withdrawn under section 12A due to settlement between parties and further another application under section 7 was admitted against corporate debtor, since withdrawal of section 9 application could have been detrimental to interest of other creditors, CIRP initiated under section 9 was to be allowed to run its due course and orders passed under section 12A and section 7 was to be set aside - **Sintex Plastics Technology Ltd. v. Mahatva Plastic Products and Building Materials (P.) Ltd.** - [2023] 154 taxmann.com 229 (NCLAT- New Delhi)

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT

- 4.7 Where a resolution plan approved by NCLT was challenged on grounds of ineligibility of director of successful resolution applicant company (SRA) but said director was not disqualified under any law, eligibility of SRA under section 29A was not affected and, therefore, such plan was rightly approved by NCLT - **Manesh Agarwal v. Pramod Kumar Sharma, Resolution Professional of B.B. Foods (P.) Ltd.** - [2023] 153 taxmann.com 752 (NCLAT- New Delhi)

SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- 4.8 Where appellant entered into an agreement to purchase shareholdings of corporate debtor, which later went into insolvency and appellant vide an application sought copy of resolution plan pending for approval before NCLT, appellant not having submitted any claim before RP, copy of resolution plan could not be given to a party who was neither a claimant nor a creditor of corporate debtor and, thus, such application was rightly rejected by NCLT - **Rupinder Singh Gill v. Three C Universal Developers (P.) Ltd.** - [2023] 153 taxmann.com 216 (NCLAT- New Delhi)

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 4.9 Where resolution plan approved by NCLT vide impugned order was challenged on ground that its amount was lower than liquidation value of corporate debtor, since IBC does not stipulate that size of resolution plan has to be more than liquidation value, there was no error in such order - **Manesh Agarwal v. Pramod Kumar Sharma, Resolution Professional of B.B. Foods (P.) Ltd.** - [2023] 153 taxmann.com 752 (NCLAT- New Delhi)

SECTION 32 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPEAL

- 4.10 Where an appeal was filed by appellant, against an order of NCLT rejecting resolution plan, in view of fact that appellant was dominus litis, memo filed by appellant for withdrawal of said appeal was to be allowed - **International Asset Reconstruction Company (P.) Ltd. v. Viceroy Hotels Ltd.** - [2023] 153 taxmann.com 384 (NCLAT - Chennai)

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

- 4.11 Where bench IV of NCLT initiated insolvency resolution process against personal guarantor of corporate debtor vide impugned order, despite knowing that a different bench of NCLT was considering liquidation proceedings against corporate debtor, since requirement of law had not been kept in mind by bench IV while considering said insolvency application, such order was to be set aside - **Monica Jajoo v. PHL Fininvest (P.) Ltd.** - [2023] 154 taxmann.com 257 (NCLAT- New Delhi)

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

- 4.12A Third party who is not party to proceeding before Adjudicating Authority may not be asked to file an application seeking leave to prefer appeal - **Trimex Industries (P.) Ltd. v. Bhuvan Madan, RP of Sathavahanalspat Ltd.** - [2023] 153 taxmann.com 750 (NCLAT- New Delhi)

- 4.13 Where CoC has meticulously evaluated matrix in approving plan of successful resolution applicant and sole member of CoC having 100 per cent voting share has already approved plan in their commercial wisdom as contemplated under law, that being case, Adjudicating Authority cannot substitute its views with commercial wisdom of CoC nor deal with merits of Resolution Plan unless it is found to be contrary to express provisions of law and against public interest; there is only limited review which can be exercised by Adjudicating Authority without trespassing upon business decision of CoC - **Deputy Commissioner, UTGST v. Rajeev Dhingra IRP for RadhaMadhav Corporation Ltd.** - [2023] 154 taxmann.com 319 (NCLAT- New Delhi)

- 4.14 Where a scheme of arrangement resulted in de-merger of CLCS's Textiles Division to CLCI and disputes arose regarding rightful recipient of income tax refund, with both CLCI and CLCS making claims, Adjudicating Authority while deciding on rightful claimant of income tax refund had committed no impropriety in holding that refund was payable to CLCI-corporate debtor as it was only after CLCI went into CIRP and CLCS came to realize that refund money could not therefore be utilized by ex-management of CLCI to their benefit that they wrote to IT Department for crediting refund to CLCS and not to CLCI - **CLC & Sons (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 154 taxmann.com

382 (NCLAT- New Delhi)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 4.15 Where account of corporate debtor was declared NPA on 31-8-2007, however, proceedings initiated under SICA before BIFR continued till 2013, which were abated by AAIFR vide order dated 22-5-2013 and balance sheet of corporate debtor for years 2006-07 & 2018-19 also showed acknowledgement of debt, period of petition before BIFR and AAIFR was to be excluded by NCLT and, therefore, application filed under section 7 by appellant on 27-11-2018 was well within period of limitation - **Asset Reconstruction Company (India) Ltd. v. Uniworth Textiles Ltd.** - [2023] 153 taxmann.com 748 (NCLAT- New Delhi)
- 4.16 Where corporate debtor defaulted in making payment of loan instalment in 2018 and, period from 15-3-2020 till 28-2-2022 was excluded by judgment of Supreme Court for purpose of Limitation due to Covid, application filed under section 7 by financial creditor on 4-4-2022, was filed within limitation period - **Indiabulls Housing Finance Ltd. v. Revital Realty (P.) Ltd.** - [2023] 153 taxmann.com 309 (NCLAT- New Delhi)

5.NCLT**SECTION 3(12) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEFAULT**

- 5.1 Where an application was filed by only 2 allottees of corporate debtor's development project for initiation of CIRP under section 7 against corporate debtor, same was to be dismissed as a CIRP application against corporate debtor shall be filed jointly by not less than one hundred allottees or not less than 10 percent of total number of allottees/creditors of same class - **Ms. Rita Malhotra v. Orris Infrastructure (P.) Ltd.** - [2023] 154 taxmann.com 471 (NCLT - New Delhi)

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 5.2 Where applicant had made an excess payment to respondent which was not in pursuance of terms and conditions of purchase order, same could not be considered as payment for supply of goods by respondent as per section 5(21) and, therefore, application filed under section 9 was misconceived and was not maintainable - **Sandvik Mining & Construction Tools Ab v. TA Hydraulics (P.) Ltd.** - [2023] 153 taxmann.com 383 (NCLT - Hyd.)

SECTION 25 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - DUTIES OF

- 5.3 Any transaction entered into by corporate debtor, wherein, transfer of one or more assets by corporate debtor takes place for a consideration value which is significantly less than value of consideration provided by corporate debtor or written down value shall be deemed an undervalued transaction, detrimental to corporate debtor's interest and as such, said transaction need to be reversed - **Ply Com (P.) Ltd. v. Nippon Alloy Ltd.** - [2023] 154 taxmann.com 154 (NCLT - Kolkata)

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

- 5.4 Where applicant was a promoter exercising its control over corporate debtor through its subsidiary company, no error had been committed by RP/CoC in holding applicant as ineligible in terms of section 29A(c) to submit resolution plan - **Indian Bank v. Athena Demwe Power Ltd.** - [2023] 153 taxmann.com 381 (NCLT - New Delhi) (SB)

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

- 5.5 Where NCLT had directed applicant, highest bidder of corporate debtor in e-auction, to deposit balance consideration on or before 6-6-2022 however, same was

breached by applicant despite being given enough opportunity, sale of corporate debtor to applicant stood cancelled - ***VDB Projects (P.) Ltd. v. Anil Mehta, Liquidator of Pratibha Industries Ltd. - [2023] 153 taxmann.com 507 (NCLT - Mum.)***

6. IBBI

SECTION 208 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONALS - FUNCTIONS AND OBLIGATIONS OF

6.1 Where show cause notice was issued to 'R' (Insolvency Professional), who was appointed as liquidator of corporate debtor for alleged contravention of incurring unreasonable cost during liquidation, and making disclosures with respect to professionals engaged, in view of fact that application for withdrawal of IP registration was under consideration it was directed that any fresh application for new IP registration/AFA as might be submitted by 'R' in future to work as professional under IBC processes was to be kept in abeyance till completion of two years - ***Raj Kumar Ralhan, In re - [2023] 153 taxmann.com 307 (IBBI)***

Accounts and Audit Updates

1.1 NFRA's Inquiry: Revealing the EQC Reviewer's Ignorance

Editorial Note : Pursuant to a letter received from the Serious Fraud Investigation Office which had investigated into the affairs of the company and its group companies, NFRA initiated action under Section 132(4) of the Companies Act 2013 for professional or other misconduct against the EQC Reviewer. In exercise of powers under Section 132(4)(c) of the Act, NFRA imposed a monetary penalty of Rupees One Lakh upon EQC Reviewer and a debarment of 1 year from being appointed as an auditor or internal auditor.

1.2 ICAI issues Technical Guide on Audit of Non-Banking Financial Companies (Revised 2023 Edition)

Editorial Note : Non-Banking Financial Companies (NBFCs) play a crucial role in the Indian financial sector by providing funding to both organized and unorganized sectors, including small-scale industries, small entrepreneurs, individuals in self-employment, etc. Given the significant amount of public funds involved in NBFCs, it is essential to maintain a structured approach to financial reporting and audit. In light of this, the ICAI has released this guide to assist its members in conducting audits of NBFCs.

1.3 ICAI issues Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2023)

Editorial Note : Tax audit is the process of verification of the accounts of a taxpayer to confirm their adherence to some specific provisions of the Income tax law. The dynamic nature of income tax law often gives rise to numerous queries and uncertainties in its adherence. In order to guide its members regarding tax audit, ICAI has issued a "Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023)"

1.4 SFIO arrests Chartered Accountant for role during demonetization

Editorial Note : Chartered Accountant (CA) arrested for failure to honour the summons issued by SFIO in connection with its role during the demonetisation period. The arrest was made pursuant to a Non-Bailable Arrest Warrant issued by Special Court and CA was remanded to Judicial Custody.

1.5 ICAI seeks suggestions for Pre-Budget Memorandum-2024

Editorial Note : The Direct Tax Committee of the Institute of Chartered Accountants of India (ICAI) requests its regional council/ branches, members and other stakeholders to submit their suggestions to ICAI in relation to the process of identifying issues that could be included in the Pre-Budget Memoranda – 2024.

Python in Excel: Harnessing the Power of Two Titans.



Author: CA Sanjib Sanghi

In the dynamic landscape of data Analytics and Data Visualization, two names stand out prominently: **Python**, a versatile high-level programming language, and **MS-Excel**, the ubiquitous spreadsheet software from Microsoft. Individually, they have conquered distinct areas of data handling, with Python dominating data science and advanced analytics, and Excel being the go-to for everyday business analytics and data representation. But what if we could merge the powers of both? Let's delve into the world of Python in Excel.

Why use Microsoft Excel in Finance?



For decades, Excel has been the cornerstone of data handling in the corporate world where Data is the King. It's not just a spreadsheet tool with functions, pivot tables, charts, and graphs; Excel can perform significant **Data Analysis** tasks and **Represent** them in a visually appealing manner. Making **Informed Decisions**, **managing Investments**, and **Planning** for the future all hinge on a clear understanding of Financial Data in today's Data-led Universe.

MS-Excel excels at **Organizing** and **Structuring** financial data. Spreadsheets provide a structured canvas where you can input Income Statements, Balance Sheets, Cash Flow Statements and more. The ability to create **pivot tables**, **custom tables** and **charts** makes it easier to visualize trends and patterns in financial data.

Financial analysis often involves complex calculations and modeling. Excel's built-in functions and formulas simplify these tasks. Whether it's calculating **Return on Investment (ROI)**, **Net Present Value (NPV)**, or conducting **Sensitivity Analysis**, Excel streamlines the process. Additionally, users can create custom formulas tailored to specific financial scenarios.

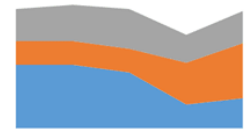
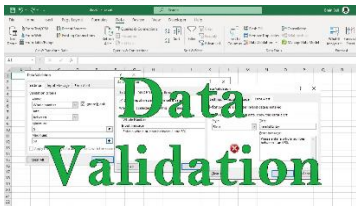


One of Excel's powerful features is **Scenario Analysis (What If Analysis)**. Financial professionals can create multiple scenarios to evaluate the impact of different variables on financial outcomes. This is invaluable for **risk assessment** and **strategic planning**. Excel also offers a **Goal Seek** tool, which allows users to *reverse engineer* calculations to achieve desired results.



Visualizing financial data is crucial for understanding trends and conveying insights. Excel provides a range of **chart** types, from **line graphs** to **pie charts**, to effectively present data. With just a few clicks, financial analysts can transform rows and columns of numbers into visually compelling charts and graphs.

For analyzing Time-Series Data, such as stock prices or economic indicators, Excel's Date & Time functions are indispensable. These functions simplify tasks like calculating **Moving Averages**, identifying **Trends**, and conducting **Historical Performance Analysis**.



Financial models must be error-free, as even a small mistake can have significant consequences. Excel offers **Data Validation** tools to ensure accurate data entry.

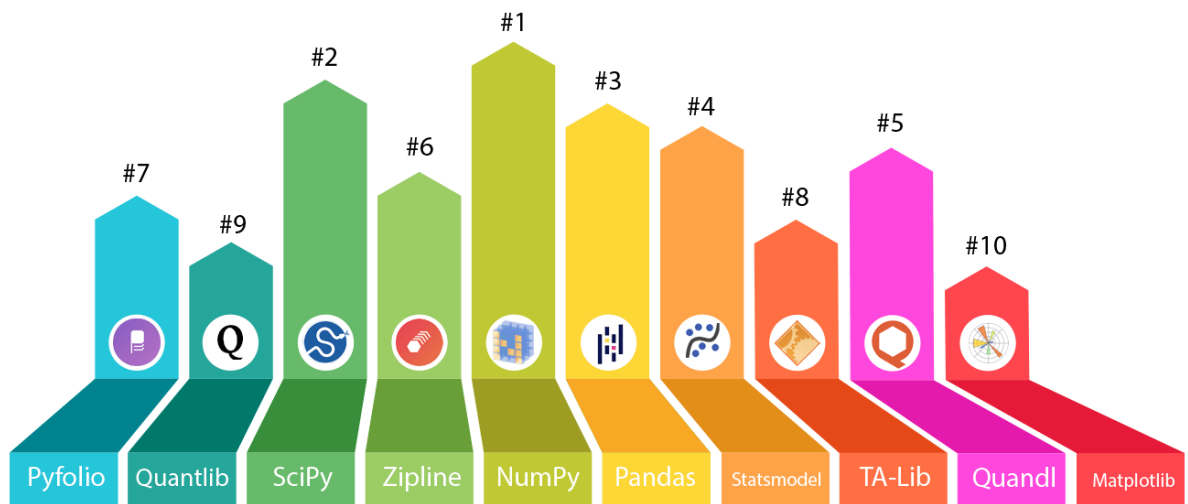
Additionally, it highlights potential errors, such as **Circular References**, making it easier to identify and correct issues.

Why Python in Finance?

Financial Analysis is the backbone of **Informed Decision-Making**. In recent years, Python has emerged as a key tool for financial professionals, offering unparalleled capabilities in **data analysis**, **modeling** and **automation**. Python, with its diverse libraries and frameworks, offers solutions for various data-related tasks such as **Data Cleaning**, **Data Transformation**, **Statistical Analysis**, and **Machine Learning**.



Python's libraries, such as **Pandas** and **NumPy**, make data handling a breeze. Financial data is often messy and diverse, and Python's versatility allows analysts to **clean**, **transform**, and **structure** data efficiently. This ensures that the data used for analysis is **accurate** and **reliable**.



Top 10 Python Financial Packages

Python enables the **creation of complex financial models**, a critical aspect of financial analysis. Whether it's **forecasting future trends**, **assessing risk**, or **optimizing portfolios**, Python's libraries offer the necessary tools. For instance, quant analysts use Python to build intricate algorithms for **high-frequency trading** and **risk management**.

Presenting findings is just as important as the analysis itself. Python's libraries, like *Matplotlib* and *Seaborn*, provide an array of visualization options. From interactive charts to elegant graphs, Python makes it easier to convey complex financial insights in a visually compelling manner.

Python's **scripting capabilities** are invaluable in automating routine financial tasks. Analysts can write scripts to **fetch real-time market data**, perform **calculations**, and generate **reports** automatically. This not only saves time but also reduces the risk of errors inherent in manual processes.

Python seamlessly integrates with various financial data sources, including **Application Program Interfaces (APIs)**, **Databases** and **Web Scraping**. This flexibility allows financial professionals to access a wealth of information directly into their analysis tools.

Financial analysis often requires custom solutions to meet specific needs. Python's **extensibility** allows analysts to develop custom functions and libraries. Whether it's tax calculations conforming to Indian tax laws or unique financial derivatives, Python can be tailored to address diverse financial challenges. Python's adoption in financial analysis is a testament to its versatility and power. Its robust libraries, data handling capabilities, modeling tools, and automation features have made it an indispensable companion for financial professionals worldwide.

In an increasingly data-driven financial landscape, Python equips analysts with the tools needed to **gain deeper insights, make informed decisions, and respond to market dynamics** with **agility**. As financial analysis continues to evolve, Python remains at the forefront, empowering analysts to navigate the complexities of modern finance with precision and confidence.

Python's appeal in the financial sector lies in its versatility and robust libraries. Here's why financial experts around the globe are turning to Python:

- i. **Data Handling:** Python's Pandas library excels at data manipulation, making it ideal for preprocessing and cleaning financial data.
- ii. **Numerical Analysis:** NumPy, another Python library, is essential for performing complex numerical operations often required in finance.
- iii. **Visualization:** Python's Matplotlib and Seaborn enable professionals to create sophisticated visualizations for data interpretation.
- iv. **Automation:** Python scripts can automate routine financial tasks, reducing manual effort and minimizing errors.
- v. **Integration:** Python seamlessly integrates with data sources, APIs, and databases, making it suitable for real-time financial data analysis.

Empowering Financial Analysis

Here's how Python can empower financial analysis within MS Excel:

- i. **Data Cleansing and Transformation:** Financial data is seldom pristine. Python can swiftly handle missing values, outliers, and formatting issues, ensuring that your analysis is based on accurate and consistent data.



- ii. **Advanced Modeling:** Python allows you to build complex financial models for forecasting, risk assessment, and portfolio optimization. These models can be integrated directly into Excel for user-friendly interaction.
- iii. **Real-Time Market Data:** In India's dynamic financial market, real-time data is crucial. Python can fetch and update market data directly in your Excel spreadsheets, keeping your analysis up-to-date.
- iv. **Custom Functions:** Python's integration in Excel enables you to create custom functions tailored to your financial needs. For instance, you can develop functions to calculate complex derivatives or perform tax computations adhering to Indian tax laws.
- v. **Interactive Dashboards:** Python's visualization libraries enable the creation of interactive dashboards within Excel. Visual representations of financial data can enhance decision-making for investors, traders, and analysts.



Use of Python powered MS-Excel in Indian Taxation

Let's consider a practical scenario. Taxation in India is intricate, with various components like Income tax, GST, and more. Python can automate tax calculations within Excel, ensuring compliance with Indian Tax Laws. By leveraging Python, financial professionals can streamline their tax-related tasks and focus on Strategic Financial Planning.

The Road Ahead

The integration of Python with MS-Excel is symbolic of a larger trend. As the horizon line between IT and Business continues to blur, tools that foster such integrations will become invaluable. For professionals, this means a need to be **Adaptable** and **Open to Learning**. As for businesses, leveraging such integrations can lead to faster Data Analysis, decision-making and a more profound understanding of data.

Conclusion

By merging Python's analytical prowess with Excel's representational capabilities, businesses can enjoy the best of both worlds. Whether it's for advanced data analytics or simple data representation, the synergy between Python and Excel is poised to revolutionize the way we handle data and evolve making **informed decisions** and tackling **complex financial challenges**. It bridges the gap between spreadsheet-based simplicity and the analytical power of a programming language. Whether you're managing investments, optimizing portfolios, or navigating intricate tax system, Python in Excel is a valuable tool.

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3	Mr. Subhash Kr. Banka
4	Mr. Rajesh Kr. Dokania
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20	Mr. Mukesh Kr. Sukhani
21	Mr. Swarnava Nandy

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I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

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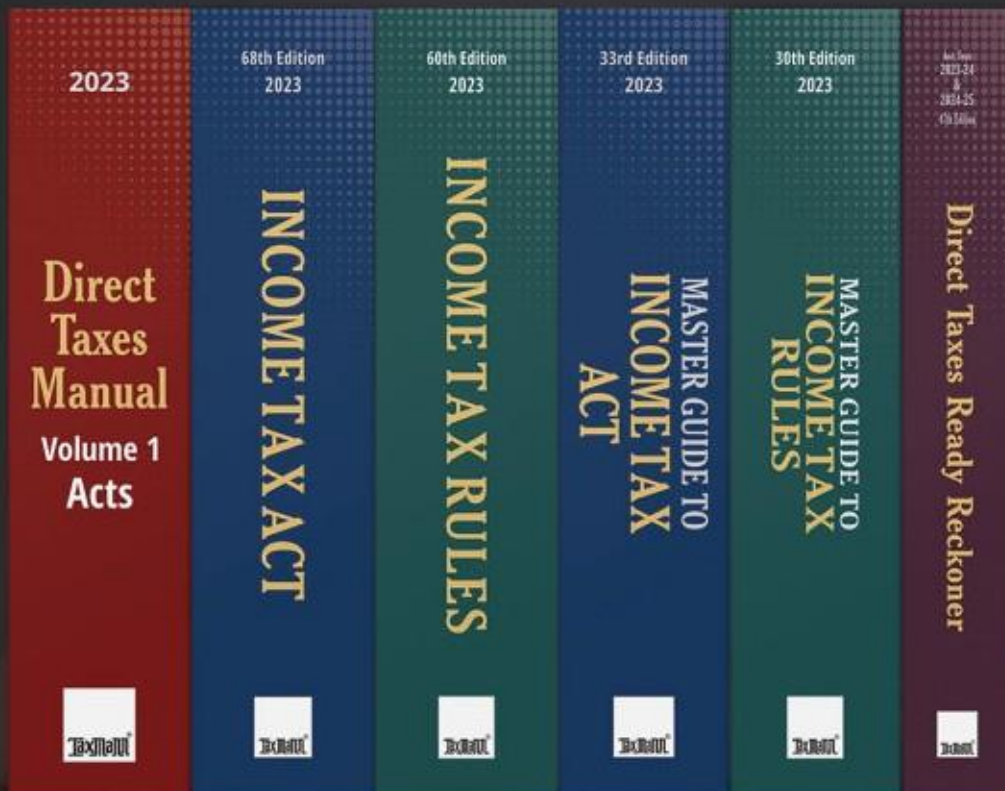
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