DTPA
Direct Taxes Professionals' Association
ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

April - June, 2022

E Journal

A Publication of The Professionals, for The Professionals, by The Professionals

Headlines

Dear Members,

Our Association is going to complete its 40 years of glorious journey on 28 August 2022 and we shall be celebrating our Foundation Day with all our Members. It has been a long fabulous growth journey of our Association with a member strength of 1772, making us one of the largest Professional Association of Eastern India.

The Editorial Committee is glade to share the E-Journal for June 2022 Quarter with you all. Hope Members will find it useful.

I would sincerely request all the Members to contribute useful articles and complications, which I assure, will find place in the next E-Journal, if found worthy of publication.

Wishing you a Happy CA Day in advance.

With regards

CA MAHENDRA K AGARWAL
Chairman - DTPA Journal Committee
30th June, 2022

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Dear Friends,

I am immensely glad to connect with you in summer season and beginning of Monsoon.

All the Members must be busy with replies to Notices u/s 148 of the I. T. Act 1961, filing of I. T. Returns, Advance Tax payments and regular GST filings.

During the last month, we had Seminars imparting education to the Members.

All the programmes were well attended by our Members.

We have decided to organize Annual Tax Conference on 6th day of August, 2022. Members are requested to enroll for the same.

Foundation Day celebration of DTPA shall also be celebrated. Details of the programme shall be shared soon with you.

We are also in the process of finalising some new publications. Publication Team is working on it. The details would be announced soon.

Friends, Corona is again knocking at the door. So, I request you all to stay masked and keep distance. Please take care of yourself and your family.

Thanking you,

Yours faithfully,

Adv Kamal Kumar Jain

President - DTPA

30th June, 2022

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Index

Panel list for Q & A

DIRECT TAX	GST	Company Law/IBC
Adv. Narayan Jain	CA Daya Sanker Agarwal	CA Sumit Binani
CA P. R. Kothari	CA Sandeep Choraria	CA Binay Singhania
Adv. Parash Kochar	CA Vikash Parakh	
Adv. Subhash Agarwal	Adv. Ankit Kanodia	

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STATEMENT OF FINANCIAL TRANSACTIONS UNDER SEC. 285BA AND ANNUAL INFORMATION STATEMENT UNDER SEC. 285BB

Narayan Jain, LL.M., Advocate

The scope of Statement of Financial Transactions (SFT) under sec. 285BA has been expanded to widen the tax base. Transactions for which statement of financial transaction or reportable account is required to be furnished: Under section 285BA, "statement of financial transaction or reportable account" is to be furnished as per Rule 114E in e-Form No. 61A for the specified financial transactions registered or recorded by the concerned person/ party.

The items are to be reported by the specified persons are mainly the following:

1. **A banking company or a co-operative bank or banking institution to which the Banking Regulation Act, 1949 applies:**

a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to Rs.10 Lakhs or more in a financial year. (b) Payments made in cash aggregating to Rs.10 Lakhs or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India (c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to Rs.50 Lakhs or more in a financial year, in or from one or more current account of a person.

2. **A banking company or a co-operative bank or banking institution to which the Banking Regulation Act, 1949 applies and / or Post Master General :** Cash deposits aggregating to Rs.10 lakh or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.

3. **A banking company or a co-operative bank or banking institution to which the Banking Regulation Act, 1949 applies and Post Master General; Nidhi referred to in section 406 of the Companies Act, 2013 and Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act**: One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs.10 lakh or more in a financial year of a person.

4. **A banking company or a co-operative bank or banking institution to which the Banking Regulation Act, 1949 applies or any other company or institution issuing credit card:** Payments made by any person of an amount aggregating to (i) Rs. One lakh or more in cash; or (ii) Rs.10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.

5. **A company or institution issuing bonds or debentures:** Receipt from any person of an amount aggregating to Rs.10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).

6. **A company issuing shares:** Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares (including share application money) issued by the company.

7. **A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013:** Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to Rs.10 lakh or more in a financial year.

8. **A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be authorised by the trustee:** Receipt from any person of an amount aggregating to Rs.10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).

9. **Authorised person as referred to in section 2(c) of the Foreign Exchange Management Act, 1999:** Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to Rs.10 lakh or more during a financial year.

10. **Inspector-General appointed under section 3 of the Registration Act, 1908 or Registrar or Sub-Registrar appointed under section 6 of that Act:** Purchase or sale by any person of immovable property for an amount of Rs.30 lakh or more or valued by the stamp valuation authority at Rs.30 lakh or more .

11. **Any person who is liable for audit under section 44AB :** Receipt of cash payment exceeding Rs. 2 lakh for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10, if any.)

12. Annual Information Statement: Sec 285BB was inserted in Income Tax Act by the Finance Act, 2022, 1961 and rule 114-I was inserted in Income Tax Rules, 1962 w.e.f. 01.06.2020. The purpose is to promote transparency and simplification in filing of Income tax returns. The new Form 26AS is an Annual Information Statement or AIS which will provide a complete profile of the taxpayer for a particular year. The CBDT may authorise the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by him to upload the information received from any officer, authority or body performing any function under any law or the information received under an agreement referred to in section 90 or section 90A of the Income-tax Act,1961 or the information received from any other person to the extent as it may deem fit in the interest of the revenue in the Annual Information Statement .

12.1 The following information will contain in the Annual Information Statement:

Part A: Permanent Account Number, Aadhaar Number, Name, Date of Birth/Incorporation/Formation, Mobile No., Email Address, and Address.Part B of Form 26AS will contain the following Information:

1. Information relating to tax deducted or collected at source.
2. Information relating to Specified Financial Transactions (SFT)
3. Information relating to payment of taxes
4. Information relating to demand and refund
5. Information relating to pending proceedings
6. Information relating to completed proceedings
7. Any other information in relation to Rule 114-I(2)

12.2 Objectives of Annual Information Statement: The main objectives of AIS are: Display complete information to the taxpayer; Promote voluntary compliance and enable seamless pre-filing of return and Deter non-compliance

12.3 Main Features of new AIS are the following:

a) Inclusion of new in for mation regarding Interest, Dividend, Securities transactions, Mutual fund transactions, Foreign remittance etc.

b) De-duplication of information and generation of a simplified Taxpayer Information Summary (TIS) for ease of filing return (pre-filling will be enabled in a phased manner).

c) Use of Data Analytics to populate PAN in non-PAN data for inclusion in AIS.

d) To enable Taxpayer to submit online feedback on the information display edin AI Sand also download information in PDF, JSON, CSV formats.

AIS Utility will enable taxpayer to view AIS and upload feedback in offline manner.

AIS Mobile Application will enable taxpayer to view AIS and upload feedback on mobile.

12.4 Important Steps for information processing steps for AIS Preparation are:

PAN Population: In caseno valid PAN is available in the submitted in formation, the PAN will be populated on matching Aadhaar Number and other key attributes.

Information Display: Generally, the reported information is displayed against the reported PAN holder. The information display logic for specific information such as property, bank account, demat account etc. aims to show information to relevant PAN holders to enable review and submission of feedback **Information De-duplication:** Incase where similar information is reported under different information types (e.g. reporting of interest/dividend in SFT and TDS) the information with lower value will be marked as "Information is duplicate / included in other information" using automated rules.

Taxpayer Information Summary (TIS) preparation: The information category wise aggregated information summary for a taxpayer is prepared after de duplication of information based on pre-defined rules. It shows processed value (i.e. value generated after de duplication of information based on pre-defined rules) and derived value (i.e. value derived after considering the taxpayer feedback and processed value) under eachin formation category (e.g.Salaries, Interest, Dividend etc.). The derived information may be used for pre-filling of Return.

13 AIS Feedback: The taxpayer will be able to view AIS information and submit following types of response on the information:

a) Information is correct

b) Information is not fully correct

c) Information relates to other PAN/Year

d) Information is duplicate / included in other information

e) Information is denied or Customized Feedback

Taxpayers are advised to furnish proper feedback to avoid complications in assessments.

12.5 AIS Feedback Processing: The AIS Feedback processing approach is as under:

The feedback provided by assessee will be captured in the Annual Information Statement (AIS) and reported value and modified value (i.e. value after feedback) will be shown separately.

The feedback provided by assessee will be considered to update the derived value (value derived after considering the feedback from taxpayer) in Taxpayer Information Summary (TIS)

Information assigned to other PAN/Year in AIS will be processed and information will be shown in the AIS of the taxpayer using automated rules.

Incasetheassignedinformationismodified/denied,thefeedbackwillbeprocessedinaccordancewithRiskManagementRulesandHighRiskfeedbackwillbeflaggedforseekingconfirmationfromtheinformation source.

(Narayan Jain is Chairman — Representation Committee of Direct Taxes Professionals Association and author of the books "How to Handle Income Tax Problems" and "Income Tax Pleading & Practice" with CA Dilip Loyalka).

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IMPACT OF BUSINESS EXPENSES DISALLOWED U/S 37(1) OF I.T. ACT, 1961

Paras Kochar, Advocate

Business expenses mean any expenses which are spent wholly and exclusively for the purpose of business. Such expenses should have commercial expediency. Business expenses which are revenue in nature, are allowable as deduction u/s 37of Income Tax Act, 1961. Business expenses which are capital in nature are not claimed as deduction against income of current year of the assessee. Personal expenses are out of the purview of business expenses. However, business expenses incurred for any unlawful full business is not allowed to be claimed as deduction against business income.

The expression "for the purpose of the business" is essentially wider than the expression "for the purpose of earning profits". It covers not only the running of the business or its administration but also measures for the Preservation of the business and protection of its assets and property.

Section 37 of the Income Tax Act, 1961is a residuary section for allowability of business expenditure and the same is given below:

"37. *(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

Explanation 1—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 *(18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.*

(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party"

As per above section, following conditions are required to be fulfilled for Allowability of business expenses -

- Such expenditure should not be covered under the specific section i.e., sections 30 to 36 of Income Tax Act, 1961.
- Expenditure should not be of capital nature
- The expenditure should be incurred during the previous year.
- The expenditure should not be of personal nature.
- The expenditure should have been incurred wholly or exclusively for the purpose of the business or profession.

- The business should be been commenced
- The expenditure should not be any illegal purpose or violative of any law of the land.

There are number of judgements in which it has been held that expenses incurred wholly and exclusively for the purpose of business or profession is a principal requirement for acid test as under –

the Hon'ble Apex Court approving the observation of ***ATHERTON's case - 1926 AC 205*** in the matter of EASTERN INVESTMENT LIMITED vs COMMISSIONER OF INCOME TAX ***reported in (1951) 20 ITR 1***, held:

"a sum of money expended, none of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade", can be adopted as the best interpretation of the crucial words of Section 10(2)(xv). *The imprudence of the expenditure and its depressing effect on the taxable profits would not deflect the applicability of the section.* ***The acid test, "did the expenditure fall on the assessee in this character as trader and was it for the purpose of the business"***.

The Hon'ble Apex Court in another case of ***Travancore Titanium Products Ltd vs Commissioner Of Income-Tax 1966 AIR 1250*** has held as under: -

"The nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading principles. ***The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the taxpayer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business"***

The Hon'ble Rajasthan High Court in the case of ***Commissioner of Income Tax vs Rajasthan Spg. And Wvg. Mills Ltd. (2005) 198 CTR Raj 96*** has held as under:

"Expression 'wholly and exclusively' does not denote 'necessarily'. The word 'wholly' refers to quantum of expenditure. The word 'exclusively' refers to motive, objective or purpose with which the particular expense has been incurred. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of its or his business. Such expenses can be incurred voluntarily and without necessity. If it is incurred for promoting the business and to earn the profits, the assessee can claim the deduction"

In general parlance, it is said that since the expenses have been made through banking mode, the party is identifiable the expenses should be allowed U/s 37(1) of Income Tax Act, 1961 against business income. But apart from this, the assessee may also be asked by the assessing officer to prove the rendering of services. How the AO may come to conclusion that services have been rendered or not is explained in the following illustration: -

Suppose, A claims in the return that he has paid RS 100000/ as brokerage on sale of Textile goods. During course of scrutiny assessment proceedings, the AO asks for furnishing of evidences in support of the said claim of brokerage as expenses in return of income. The assessee furnishes brokerage bill, confirmation, Agreement, Bank statement, PAN of broker and other evidences. The learned AO apart from these documents further asks for furnishing of details of parties whom goods was sold through the broker and nature of services rendered by the broker. On receipt of such information, the AO proceeds further by issuing notices u/s133(6) of Income Tax Act, 1961 to the buyer if the assessee for identity of the broker and also for confirming services being rendered by the broker related to sale of

goods made to him.Sometimes the party refuses that he has not bought any goods from buyer. If AO is not satisfied by the replies furnished, he may also issue notice u/s 131 of Income Tax Act, 1961 on the broker for recording of his statement. During course of recording of statement If the broker fails to explain nature of services rendered by him or also fails to explain certain information related to party to whom he sold the goods for earning brokerage i.e., Name, phone number, Complete address of the party, Representatives of the assessee or his buyer whom he met during the deal, rate of brokerage, terms of transaction etc and various such other queries. If the AO is not satisfied with the replies of the broker made during recording of statement, he may make disallowance of the brokerage paid by the assessee as the AO is able to prove that no services were rendered by the broker.Therefore, simply production of preliminary evidences and mode of payment through banking channel to the broker, holding PAN etc. may not be sufficient for allowing business expenses against business income of the relevant year of the assessee.

The Hon'ble Delhi ITAT in the case of ***Income Tax Officer, Ward-1(3), Vs. M/s. Alpasso Industries Pvt. Ltd in ITA NO. 4268/Del/2014***had confirmed the addition made by the Ld. Assessing Officer for want of services rendered. The relevant portion of order passed by the Hon'ble Tribunal is given as under:-

"11. Further, the reliance placed by the assessee on the decisions in the case of SA Builders Ltd. Vs. CIT (Supra), Hero Cycles Private ITA No. 4268/Del/2014 Limited Vs. CIT (supra) and CIT vs. Dalmia Cement (P) Ltd. *(supra) are also of no assistance as in those decisions, it is held that once nexus is established between the expenditure and the purpose of business, then Revenue cannot justifiably claim to put itself in the armchair of the businessman and disallow the expense.* ***But in the instant case the prerequisite of establishing services rendered by the sub-agent, has not been fulfilled by way of producing relevant documentary evidences. Accordingly, the ratio of the decisions in those cases, cannot be applied over the facts of the instant case.***

12. In view of above discussion, we set aside the order of the Ld. CIT- (A) on the issue in dispute and restore that of the Assessing Officer. Accordingly, the ground of appeal of the Revenue is allowed."

In another case of ***M/s.Akik Tiles Pvt. Ltd vs. The Jt.Cit.,Mehsana Range in ITA No. 966/AHD/2013***, the Hon'ble Ahmedabad Tribunal had also given similar findings by holding as under :-

"18. We have heard the rival contentions of both the parties and perused the materials available on record. There is no ambiguity to the fact that the AO is not expected to interfere in the decision making process of the assessee. In the business environment, there are certain decision which are taken by the assessee depending upon the market forces. ***However, the primary onus lies upon the assessee at least to justify based on the documentary evidence that the business decision were taken in the course of the business as mandated under the provision of*** section 37 ***of the Act. But in the given case we note that the Ld. AR has just tried to justify the genuineness of the expenses which has been not doubted by the authorities below. What has been doubted, were the services which were rendered by the consultants as discussed above.*** *To this effect no satisfactory explanation was furnished by the Ld. AR for the assessee before us. Therefore, we do not find any ambiguity in the order of the authorities below.*

Hence, the ground of appeal of the assessee is dismissed."

Double impact of additions made by invokingSection 115BBE of I.T.Act, 1961

The Taxation Laws (Second Amendment) Act, 2016 (No. 48 of 2016) was passed by the Hon'ble Lok Sabha of India on 29.11.2016. The Second Amendment Act, 2016 received the assent of the President on the 15th December, 2016 and is published for general information. The section 115BBE of the Income tax was substituted by a new section 115BBE w.e.f. 1st April, 2017.

Theamended provisions of Section 115BBE of I.T.Act, 1961 are stated as under:

"115BBE. (1) Where the total income of an assessee, —

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C *or* section 69D *and reflected in the return of income furnished under* section 139*; or*

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C *or* section 69D*, if such income is not covered under clause (a),*

the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1)."

The government made two changes in the amended section: -

1. **Reflected in the return of income furnished under section 139 of Income Tax Act, 1961**

2. **Taxation at flat rate of sixty per cent.**

As per the old provisions, if any assessing officer finds or assesses any income by invoking the provisions of section 68, section 69, section 69A, section 69B, section 69C or section 69D of Income Tax Act, 1961, such income was required to be taxed @ 30%. However, as per amended provisions, the rate of tax at which such income required to be taxed has been changed to 60%. Further, the amendment provision also covers the transactions declared by the assessee in its return of income u/s 139 of Income Tax Act, 1961, which are later found to be unexplained.

The impact of such disallowance, as stated in the illustration mentioned earlier, may be doubled if provisions of section 115 BBE of Income Tax Act, 1961 are invoked by the Assessing Officer i.e. If the expenses claimed by the assessee are found to be bogus and it is established that expenses were in the nature of accommodation entry, then not only such expense will be disallowed u/s 69C of Income Tax Act, 1961 but it shall attract theprovisions of section 115 BBE of Income Tax Act, 1961 and a tax rate of 60%. Further, the assessment of the broker can also be reopened u/s 148 of Income Tax Act, 1961and income shown by him as brokerage may be treated as income from other sources and by applying section 115 BBE of Income Tax Act, 1961, the 60% rate of tax can be charged in the case of broker also asbecause once it is established that the assessee has taken accommodation entries in the guise of brokerage, the brokerage received by payee also becomes bogus credit entries and attracts the provisions of Section 68 of Income Tax Act, 1961. Hence, such disallowance of expenses may lead to additions in the hands of payer as well as the payee.

Possibility of imposition of penalty u/s 271AAD of I.T.Act, 1961.

The Finance Act,2020, has introduced a new

section 271AAD in Chapter XXI – Penalties Imposable to discourage taxpayers to manipulate his books of accounts by recording false entries including fake invoices to claim wrong input credit in GST/VAT. The said section has been inserted following the investigation of Maharashtra Sales Tax Department, who had unearthed a scam of fictitious invoices in excess of Rs.10,000/- Crores claiming input credit of VAT under the Sales Tax Act. Even under the GST regime, the GST department unearthed few big scams of bogus invoices amounting to more than Rs.1,000/- crores, involving availing of GST Input Credit. The new section which was made effective from 1st April 2020 reads as under –

"271AAD. *(1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—*

(i) a false entry; or

(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Explanation. —For the purposes of this section, "false entry" includes use or intention to use—

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.]"

The above section penalises all the false entries found in the books of accounts of an assessee and the amount of such penalty shall be less than equal to the total value of the entries which are found to be false/bogus. Hence,it is stated in context to the aforesaid illustration, that not only the provisions of section 115 BBE will be attracted, the AO may also invoke section 271AADof Income Tax Act, 1961and impose 100% penalty on the total amount of brokerage expense claimed by the assessee and total amount ofincome from brokerage claimed by the broker as because the entries in their respective books were in the nature of accommodation and a false one.

Further, Penalty u/s 270A of Income Tax Act, 1961 may also be imposed on both assessee and the broker for misreporting of income.

Conclusion

In the faceless era of assessment,we shall witness such additions more frequently as time passes by.Transient of information from one officer to another officer or assessment unit is now more likely than earlier. In time to come, it will be more difficult for the tax practitioners to handle faceless assessment where such additions and disallowances will be common. Apart from section 37(1), there are other sections in Income Tax Act which prohibits an expenditure for deduction against income either fully, partly or not during the relevant financial year in which such expenses were incurred.However, section 37(1) of Income Tax Act, 1961 is basic test for allowability of business expenditure against business income of the assessee.

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LATEST INCOME TAX JUDGEMENTS

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

Talisma Corporation (P.) Ltd. v. Deputy Commissioner of Income-tax - [2022] 138 taxmann.com 260 (Bangalore - Trib.)

Comparables, functional similarity - Software manufacturer : Where assessee-company was earlier characterised as manufacturer of software product and subsequently assessee was characterised in different way, matter was remanded back to TPO for de novo verification.

Talisma Corporation (P.) Ltd. v. Deputy Commissioner of Income-tax - [2022] 138 taxmann.com 260 (Bangalore - Trib.) Adjustments

Interest : Outstanding receivables would constitute an international transaction and interest on receivables was to be computed at LIBOR rate + 2%.

Assistant Commissioner of Income-tax, Circle 10(2) v. GP Global Energy (P.) Ltd. - [2022] 138 taxmann.com 484 (Delhi - Trib.)

TP Adjustment - others : In rectification order u/s 154,TPO cannot disallow aggregation of negative values allowed by him in original order, CIT (A) justified in directing TPO to use customs data to benchmark import of fuel oil/HSD.

ANSR Global Corporation (P.) Ltd v. ACIT - [2022] 139 taxmann.com 283 (Bangalore - Trib.)

Comparability factors - Turnover filter : High turnover is good ground for excluding companies as not comparable with company that has low turnover .Comparability factors - Related party transactions : RPT filter has to be applied adopting threshold limit of 15 per cent when good number of comparables are available.

ANSR Global Corporation (P.) Ltd v. ACIT - [2022] 139 taxmann.com 283 (Bangalore - Trib.)

Comparability factors - Intangible assets : By merely pointing out that there is substantial increase in value of intangible assets, assessee cannot seek to exclude any company from list of comparable companies, unless assessee is able to show that presence of intangibles is owing to factors which can affect functional comparability of such company with assessee.

ANSR Global Corporation (P.) Ltd v. ACIT - [2022] 139 taxmann.com 283 (Bangalore - Trib.)

Comparable, functional similarity - Software consultancy/development services : Where assessee had merely argued that a company was functionally different with reference to certain information in website, but said company satisfied various filters adopted by TPO, since information in website cannot be given credence as they are generally forward looking statements with advertisement and promotional motives, said company was functionally comparable to assesse.

Kellogg India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2022] 139 taxmann.com 205 (Mumbai - Trib.)

AMP expenses : ALP adjustment in respect of AMP expenditure could not be made where assessee incurred AMP expense with a view to market and promote its own manufactured products by making payments to third parties in India and there was no express arrangement/agreement between assessee and AE for incurring such expenditure to promote brand of AE.

Kellogg India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2022] 139 taxmann.com 205 (Mumbai - Trib.)

Purchases/imports : Where assessee-company

imported goods from Singapore AE for distribution in India, for benchmarking transaction of import Singapore AE which was remunerated on mere cost plus markup basis and undertook only limited functions would be least complex entity to be taken as tested party for assessee carrying on multiple functions and bearing significant entrepreneurial risk in India .

TV 18 Broadcast Ltd. v. Assistant Commissioner of Income-tax, Central 16(1), Mumbai - [2022] 139 taxmann.com 469 (Mumbai - Trib.)

Interest : No TP adjustment is to be made for subscription by Indian co to interest-free OCDs issued by its foreign AE .

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

Hapag Lloyd India (P.) Ltd. v. Principal Commissioner of Income-tax - [2022] 139 taxmann.com 128 (Bombay)

Dividend - Others : Where assessee filed an application under section 264 on ground that it had inadvertently failed to claim benefit of article 10 of India-Kuwait DTAA, under which dividend distribution was taxed at a lower rate, Commissioner committed an error in rejecting application on ground that claim of return of excess DDT had not been made at time of filing original return of income as well as revised return of income as section 264 does not limit power to correct errors committed by subordinate authorities and could even be exercised where errors are committed by assesse.

Deputy Commissioner of Income-tax v. Marubeni Corporation - [2022] 139 taxmann.com 458 (Mumbai - Trib.)

10% tax rate on interest income on Article 11(2) of Indo-Japan DTAA is inclusive of surcharge and health & education cess .

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

Principal Commissioner of Income-tax v. MC NallySayaji Engineering Ltd. - [2022] 138 taxmann.com 262 (Calcutta)

Computation of : Where assessee was engaged in manufacture and supply of goods and in terms of contract executed between assessee and customer a certain percentage of invoice amount raised by assessee was retained by customer as retention money to be paid after successful completion of contract, in view of decision of Calcutta High Court in case of CIT v. Simplex Concrete Piles (India) (P.) Ltd. [1989] 45 Taxman 370/179 ITR 8 retention money could not be included in computing book profits under section 115JB.

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

Rati Ram Bambelwal v. National Faceless Assessment Centre, Delhi - [2022] 138 taxmann.com 261 (Rajasthan)

Validity of assessment : Where Assessing Officer completed assessment under section 143(3) and thereafter he issued notice under section 148 to reopen such assessment and since assessee did not reply to notice Assessing Officer issued a final notice under section 144 and assessee filed reply to such notice within time permitted and despite this assessment which was carried out through faceless assessment system did not acknowledge such reply and Assessing Officer proceeded to complete assessment by making certain addition, order of assessment suffered from violation of principles of natural justice .

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

Rajendra Kumar v. Assistant Commissioner of Income-tax, Central Circle - I - [2022] 138 taxmann.com 490 (Rajasthan)

HC imposes costs of Rs.50,000 on Income-Tax Department for high-handed action of illegal recovery of disputed demand pending appeal .

Provisions of sec. 40A(3) not applicable if assessee made cash payment for purchase of stock-in-trade: Pune ITAT

Vikrant Happy Homes (P.) Ltd. v. DCIT 2022

Tribunal held that it is settled law as rightly pointed assessee when there is no deduction no disallowance would follow. In the instant case, the fact remains admitted that the sellers from whom the assessee purchased lands identified the transaction and also acknowledged the cash payments. It shows that the transaction was genuine.

Therefore, there was merit in the contention of assessee that the expenditure incurred in cash forming part of the closing stock for which no deduction had not been claimed while computing the income under the business head, the question of disallowance under section 40A(3) does not arise.

Time limit provided by sec. 132B for release of seized doc. after 120 days is mandatory and not directory: HC

Ashish JayantilalSanghavi[2022] 139 taxmann.com 126 (Gujarat)

Where assessee-company had filed various applications under section 132B for release of diamonds seized during search conducted upon company, namely AD, however, revenue retained said asset even after expiry of 120 days from date of last authorization for search, such seized diamonds were to be released to assessee in view of provision of section 132B(1)

Section 132B of the Income-tax Act, 1961 - Search and seizure - Retained assets, application of (Period of limitation) - Assessee-company was engaged in business of diamonds - It had sold polished diamonds for certain consideration to a company, namely AD - A search and seizure was conducted at business of AD, wherein assessee's employee was found to be in possession of said polished diamonds and same were seized - Assessee filed various application for release of such diamonds, however, even after expiry of 120 days from date of last authorizations for search, revenue retained said asset - It was noted that time limit provided in proviso to clause (i) sub-section (1) of section 132 was mandatory and not directory and it was not permissible to read same as being merely permissible - Whether, therefore, in view of provisions of section 132B(1), revenue was to hand over seized asset/diamonds to assessee - Held, yes

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

Principal Commissioner of Income-tax v. Ananda Bazar Patrika (P.) Ltd. - [2022] 138 taxmann.com 507 (Calcutta)

For assessment year 2003-04, where all machinery had been purchased by assessee much after 1-4-2002 for purpose of business and assessee was able to establish that by installing new machinery they had increased production capacity by more than 27 per cent, Tribunal had rightly held that assessee would be entitled to claim additional depreciation in respect of machinery so acquired, which had been used for purpose of business .

S.Srinivasaraghavan v. Assistant Commissioner of Income-tax - [2022] 139 taxmann.com 230 (Madras)

Windmill : Generation of electricity by windmill should be equated to term 'manufacturing or production of article or thing, and, therefore, assessee was entitled to claim additional depreciation on windmill installed as per provision of section 32(1)(iia) .

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

Avantha Realty Ltd. v. Assistant Commissioner of Income-tax - [2022] 139 taxmann.com 127 (Delhi)

Jurisdiction to examine transaction : Where assessee sold a property below circle rate cost of property, Assessing Officer had jurisdiction to examine in detail transaction .

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

ACIT v. Jotindra Steel & Tubes Ltd. - [2022] 139 taxmann.com 157 (Delhi - Trib.)

Sale of shares : Where AO accepted purchase of shares by assessee as genuine transaction, when sames shares were subsequently sold and sale proceeds were duly credited by assessee in profit and loss account, AO could not make addition under section 68 on ground that assessee introduced its own income in form of

proceeds from sale of shares .

Amar Jewellers Ltd. v. Assistant Commissioner of Income-tax - [2022] 139 taxmann.com 198 (Gujarat)

Accommodation entries : Where pursuant to survey under section 133A conducted by Investigating Wing on BAS, he admitted on oath that he was engaged in business of providing accommodation entries to beneficiaries in lieu of commission and had named applicant as one of recipients of accommodation entries and Assessing Officer after examining facts formed belief that income chargeable to tax had escaped assessment, proceedings of reassessment initiated in cases of applicant were justified .

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

ACIT v. Jotindra Steel & Tubes Ltd. - [2022] 139 taxmann.com 157 (Delhi - Trib.)

Seized documents : Where AO made addition under section 69A with respect to cash receipts on basis of documents seized in course of search carried out in case of M group, in view of fact that assessee was never found to be in possession of any real money and, moreover, there was no mention of assessee's name in seized document, impugned addition were merely based on presumption and were to be deleted .

MGV Jain Jewellers (P.) Ltd. v. Income-tax Officer - [2022] 138 taxmann.com 482 (Delhi - Trib.)

Loose papers : Where pursuant to search conducted on third party 'K', certain documents were seized, where name of assessee was mentioned evidencing sale of gold made by assessee to 'K' and remittances received by assessee from 'K', addition of entire sale amount in hands of assessee could not be held to be valid as there was no dispute that sale to 'K' could not have been made without purchase of gold by assessee, hence, cost of gold had to be deducted from sale price and profit earned by assessee through sale was to be brought to tax

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

KedarNathBabbar v. Assistant Commissioner of Income-tax - [2022] 139 taxmann.com 129 (Delhi)

Reassessment : Where AO on perusal of tax evasion petition received from Investigation Wing observed that significant sums from over draft account of petitioner was being transferred to petitioner's son as interest free loan and interest expense incurred on said overdraft account was being fraudulently claimed as revenue expenditure to reduce taxable income of petitioner, since there was prima facie material on record for reopening assessment, issue of reopening notice was justified .

UNEXPLAINED INVESTMENTS

Smt. Gurjeet Kaur v. Income-tax Officer - [2022] 139 taxmann.com 192 (Amritsar - Trib.)

Unexplained moneys : Where Assessing Officer made additions to assessee's income on basis of an agreement to sale, however, revenue was only in possession of photocopy of agreement alleged to have been executed and assessee was able to prove that same was an unregistered document, and assessee claimed to have sold land in question vide a registered sale deed, addition made to income of assessee under section 69, on basis of uncertified copy of an agreement to sell was not justified .

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

Adobe Systems India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2022] 139 taxmann.com 387 (Delhi - Trib.)

'Verification got done by TPO before passing order as per DRP's direction' does not extend limitation for passing assessment order u/s 144C(13).

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

G.P. Engineering Works Kachhwa v. Union of India - [2022] 139 taxmann.com 130 (Allahabad)

Scope of provision : No limitation for submission or consideration of compounding application has been provided under sub-section (2) of section 279 and, therefore, compounding application of assessee could not have been rejected by Income-tax Authority concerned by relying on CBDT Circular dated 14-6-2019 on ground of delay in filing application

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

Ranjani Enterprises (P.) Ltd. v. Income-tax Officer - [2022] 139 taxmann.com 208 (Chennai - Trib.)

Notional interest : Where assessee company advanced loans to its sister entity, since assessee agreed not to charge interest as per mutual understanding between both parties as said sister entity was facing financial crunch and further assessee also had business interest in its sister concern, Assessing Officer was not justified in making addition on account of notional interest on such outstanding loans advanced by assessee.

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

Resolve Salvage & Fire India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2022] 139 taxmann.com 196 (Mumbai - Trib.)

Interest on delayed payment of TDS : Interest paid on delayed payment of TDS under section 201(1A) would be compensatory in nature and thus, was to be allowed as deduction.

SECTION 40A(3) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - EXCESSIVE OR UNREASONABLE PAYMENTS

Shiv Shakti Traders v. ACIT - [2022] 139 taxmann.com 193 (Delhi - Trib.)

Rectification of mistake : Where Assessing Officer completed assessment under section 143(3) and thereafter he on basis of audit objection to effect that assessee had made payments for purchasing of trading goods in violation of provisions of section 40A(3) passed a rectificatory order under section 154, overlooking mandatory provision of law in original assessment was apparent mistake of law rectifiable under section 154 .

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

Royal Accord Realtors (P.) Ltd. v. Deputy Commissioner of Income-tax - [2022] 139 taxmann.com 197 (Mumbai - Trib.)

Share Premium : Provisions of section 56(2)(viib) or rule 11UA nowhere provides for rounding off to nearest rupee or multiple of ten or hundred, hence, where FMV of shares was determined at Rs. 3560.77 per share as per rule 11UA, but shares were issued at Rs. 3600 per share, addition made on account of difference between FMV and actual consideration received by assessee in terms of section 56(2)(viib) was justified .

SECTION 276C OF THE INCOME TAX ACT, 1961 - OFFENCE AND PROSECUTION - WILLFUL ATTEMPT TO EVADE TAX, ETC.

Dharampal R. Pandia v. Assistant Commissioner of Income-tax, Business Circle-X - [2022] 139 taxmann.com 441 (Madras)

HC declines to quash prosecution against habitual tax-evader who had huge income despite him clearing tax dues.

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

Deputy Commissioner of Income-tax v. Futurz Next Services Ltd. - [2022] 139 taxmann.com 199 (Delhi - Trib.)

Loans and advances to shareholders : Advances in nature of commercial transactions are outside purview of provisions of deemed dividend under section 2(22)(e).

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

Deputy Commissioner of Income-tax v. Futurz Next Services Ltd. - [2022] 139 taxmann.com 199 (Delhi - Trib.)

Applicability : In absence of any exempt/dividend income during year, disallowance under section 14A was not permissible .

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

Deputy Commissioner of Income-tax v. Futurz Next Services Ltd. - [2022] 139 taxmann.com 199 (Delhi - Trib.)

Interest free loans : Where assessee had business transactions with its group or sister concerns and had sufficient own capital and free reserves which were more than advances given to group concerns, there was no infirmity in order of Commissioner (Appeals) in deleting disallowance under section 36(1)(iii).

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

Principal Commissioner of Income-tax v. Orissa State Police Housing & Welfare Corporation Ltd. - [2022] 139 taxmann.com 207 (Orissa)

Work-in-progress : Where basis for forming a view that profit element in WIP was not accounted for by assessee was absent in revisionary order of Commissioner and section 263 was invoked merely to remand matter to AO to verify correctness of submission made by assessee that profit element was accounted for in its income, impugned order was to be set aside .

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

Deputy Commissioner of Income-tax v. Futurz Next Services Ltd. - [2022] 139 taxmann.com 199 (Delhi - Trib.)

Client code modification : Where AO during search found evidence of client code modifications done by assessee and its sister concerns which were not for genuine reasons and, accordingly, made addition on account of such client code modification, however, it was found that transactions on account of client code modifications done by group concerns were not found to be false and volume of client code modifications done was within permissible limit, order of Commissioner (Appeals) in deleting addition was justified .

SECTION 253 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL

Dwarka Portfolio (P.) Ltd. v. Assistant Commissioner of Income-tax - [2022] 139 taxmann.com 477 (Delhi - Trib.)

Appeals to : Where name of assessee-company was struck down from RoC under section 248 of Companies Act, 2013, certificate of incorporation issued to such company could not be treated as cancelled and thus, appeal filed by it before Tribunal challenging order of revenue would be maintainable.

Circular No. 9 of 2022

F. No.370142/2/2022-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes (TPL Division)

Dated: 9th May, 2022

Sub.: Guidelines under clause (23FE) of section 10 of the Income-tax Act, 1961 - reg.

The Finance Act, 2020, inter-alia, inserted clause (23FE) in section 10 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") to provide for exemption to wholly owned subsidiaries of Abu Dhabi Investment Authority (ADIA), sovereign wealth funds (SWF) and pension funds (PF) [these are referred as "specified person" hereinafter] on their income in the nature of dividend, interest and long-term capital gains arising from investment made in infrastructure in India, during the period beginning with 01.04.2020 and ending on 31.03.2024 subject to fulfilment of certain conditions.

2. In order to incentivise infrastructure investments by specified persons in India the Finance Act, 2021, hereinafter referred to as "Finance Act", inter alia, amended the following provisions of clause (23FE) of section 10 of the Act:

(i) amended item (c) of sub-clause (iii) thereof to allow exemption for investment by specified person in Category I or Category II Alternative Investment Funds (hereinafter referred as AIF) which invest in one or more of the companies, enterprises or entities as referred to in item (b) (hereinafter referred to as "eligible infrastructure entity") through domestic companies and Non-Banking Finance Companies or in AIFs investing in an Infrastructure Investment Trust referred to in sub-clause (i) of clause (13A) of section 2 of the Act (hereinafter referred to as InvIT). Further, the Finance Act also relaxed the condition requiring an AIF to have investment in eligible infrastructure entity or InvIT from 100% to 50%;

(ii) inserted item (d) in sub-clause (iii) thereof, to allow investment by specified person in a domestic company set up and registered on or after 01.04.2021, having minimum 75 per cent investments in eligible infrastructure entity;

(iii) inserted item (e) in sub-clause (iii) thereof, to allow investment by specified person in a Non-Banking Financial Company registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund (hereinafter referred to as NBFC), having minimum 90 per cent lending in eligible infrastructure entity;

(iv) inserted Explanation 3 thereof, to provide that the method for determination of 50 per cent, 75 per cent or 90 per cent investment referred to in item (c), (d) or (e) of sub-clause (iii) of the said clause (23FE) shall be prescribed by the Central Government;

(v) inserted fourth proviso thereof, providing that in case of an AIF, referred to in item (c) of sub-clause (iii), has investment of less than hundred percent in eligible infrastructure entity or in InvIT, income accrued or arisen to, or received by, or attributable to such investment, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the investment made in eligible infrastructure entity or in InvIT , in the prescribed manner.

(vi) inserted fifth proviso thereof providing that in case a domestic company, referred to in item (d) of sub-clause (iii), has investment of less than hundred percent in eligible infrastructure entity, income accrued or arisen to, or received by, or attributable to such investments, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the investment made in eligible infrastructure entity, in the prescribed manner.

(vii) inserted sixth proviso thereof, providing that in case an NBFC, referred to in item (e) of sub-clause (iii), has lending of less than hundred percent in eligible infrastructure entity, income accrued or arisen to, or received by, or attributable to such lending, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the lending in eligible infrastructure entity, in the prescribed manner.

3. The method for computation of eligible threshold of 50 per cent, 75 per cent or 90 per cent and exempt income under clause (23FE) of section 10 of the Act has been prescribed in rule 2DCA of the Income Tax Rules (the Rules) vide Notification No 50 of 2022 dated 6th May, 2022.

4. First proviso to clause (23FE) of section 10 of the Act provides that if any difficulty arises regarding interpretation or implementation of the provisions of the said clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty. In exercise of the powers under this proviso, Board, with the approval of the Central Government, hereby issues the following guidelines:

Guidelines

4.1. Transfer of investment within 3 years by the specified person or AIF/ domestic Company/NBFC

4.1.1. As per clause (23FE) of section 10 of the Act, any income of a specified person in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit, is exempt from income tax subject to certain conditions. One of such conditions is prescribed in sub-clause (ii) of clause (23FE) of section 10 of the Act. Under this sub-clause, such investment is required to be held for at least three years'. It has

been brought to the notice of the Board that there may be cases where any of the following investments is transferred before the lock-in period of 3 years ("three years' rule"):

(a) Investment by the specified person in eligible infrastructure entity or InvIT or AIF or domestic company or NBFC;

(b) Investment by the AIF, out of the investment made by the specified person, in domestic company or NBFC or eligible infrastructure entity or InvIT;

(c) Investment by the domestic company, out of the investment made by the specified person directly or through AIF, in eligible infrastructure entity;

(d) Lending by NBFC, out of the investment made by the specified person either directly or through AIF, to eligible infrastructure entity.

4.1.2. In such cases, as per the third proviso to clause (23FE) of section 10 of the Act, any income which has not been included in the total income of the specified person due to the provisions of this clause, shall be chargeable to income-tax as the income of the specified person of the previous year during which such specified person fails to satisfy any of the conditions of the said clause.

4.1.3. In this context, it is hereby clarified that any capital gain accruing or arising on transfer of such investments (which have been transferred in violation of the three years'' rule) will be treated as follows:

(a) Investment by the specified person in eligible infrastructure entity or InvIT or AI F or domestic company or NBFC : such capital gain will not be exempt from tax under clause (23FE) of section 10 of the Act in the hands of the specified person.

(b) Investment by the AIF, out of the investment made by the specified person, in domestic company or NBFC or eligible infrastructure entity or InvIT: Since AIF is a pass through entity, such capital gain will be taxable in the hands of the specified person and since three years' rule has not been complied with, the income shall not be exempt from tax under clause (23FE) of section 10 of the Act in the hands of the specified person.

(c) Investment by the domestic company, out of the investment made by th e specified person directly or through AIF, in eligible infrastructure entity: the income, attributable to such capital gains, shall be taxable in the hands of the specified person and since three years' rule has not been complied with, such income shall not be exempt from tax under clause (23FE) of section 10 of the Act in the hands of the specified person

(d) Lending by NBFC, out of the investment made by the specified person directly or through AIF, to eligible infrastructure entity: the income, attributable to such capital gain or other income of the NBFC, shall be taxable in the hands of the specified person and since three years' rule has not been complied with, such income shall not be exempt from tax under clause (23FE) of section 10 of the Act in the hands of the specified person

4.1.4. Further any interest or dividend on such investments (which is transferred in violation of the three years' rule) which has been exempted from income-tax under clause (23FE) of section 10 of the Act in the earlier years, will be subjected to tax in the hands of the specified person as the income of the previous year in which such investment is transferred in violation of the three year rule by the specified person or AIF or domestic company or NBFC, as the case may be.

4.1.5. The above guidelines are explained with the help of following examples:

Example 1: Specified person invests Rs 100 crore in an eligible infrastructure entity. The specified person is notified as on 30.04.2021 and such investment is made on 31.03.2022 in the form of shares. During the previous year 2022-23, the specified person gets dividend of Rs 10 crore from such investment which is claimed to be exempt. Further during the previous year 2023-24, dividend of Rs 12 crore is received which is also claimed to be exempt. As on 01.04.2024, the specified person decides to exit and transfers its shares for an amount of Rs 120 crore. In such case, during the previous year 2024-25, the dividend income given exemption during the previous year 2022-23 amounting to Rs 10 crore and Rs 12 crore dividend income given exemption during the previous year 2023-24 will be taxable as income of the previous year 2024-25 in the hands of the specified person. Further, there will be no capital gains tax exemption on transfer of shares of infrastructure company by the specified person.

Example 2: Specified person invests Rs 100 crore in an AIF, as referred to in item (c) of sub-clause (iii) of clause (23FE) of section 10 of the Act. The specified person is notified as on 30.04.2021 and such investment is made on 30.05.2021 in the form of units. The AIF in turn invests in a domestic company referred to in item (d) of sub-clause (iii) of clause (23FE) of section 10 of the Act as on 30.06.2021 out of the investment made by the specified person. The domestic company in turn invests Rs. 100 crore in an eligible infrastructure entity, on 31.07.2021 out of the investment made by the AIF. During the previous year 2022-23, the specified person gets dividend of Rs 10 crore from the investment made in the domestic company through AIF. Under Rule 2DCA of the Rules, an amount of Rs 8 crore is found to be exempt. Further during the previous year 2023-24, dividend of Rs 12 crore is received. Under Rule 2DCA of the Rules, an amount of Rs 10 crore is found to be exempt. As on 15.07.2024, the domestic company decides to exit and transfers its shares in the infrastructure company for an amount of Rs 120 crore. During the previous year 2024-25, dividend of Rs 20 crore is received by the AIF from the domestic company which is passed on by the AIF to the specified person. In such case, during the previous year 2024-25, the dividend of Rs 20 crore received during the previous year 2024-25, the dividend income which was granted exemption during the previous year 2022-23 amounting to Rs 8 crore and the dividend income treated as exempt during the previous year 2023-24 amounting to Rs 10 crore will be taxable as income of the previous year 2024-25 in the

hands of the specified person. Further, there will be no capital gain tax exemption on transfer of share of the domestic company through AIF by the specified person.

Example 3: Specified person invests Rs 100 crore in an AIF, as referred to in item (c) of sub-clause (iii) of clause (23FE) of section 10 of the Act. The specified person is notified as on 30.04.2021 and such investment is made as on 30.05.2021 in the form of units. The AIF in turn invests the entire amount in a domestic company referred to in item (d) of sub-clause (iii) of clause (23FE) of section 10 of the Act as on 30.06.2021 out of the investment made by the specified person. The domestic company in turn invests Rs. 60 crore in an eligible infrastructure entity A and Rs 40 crore in eligible infrastructure entity B, on 31.07.2021 out of the investment made by the AIF. During the previous year 2022-23, the specified person gets dividend of Rs 10 crore from the investment made in the domestic company through AIF. Under Rule 2DCA of the Rules, an amount of Rs 8 crore is found to be exempt (Rs 4.8 crore attributable to investment in eligible infrastructure entity A and 3.2 crore attributable to investment in eligible infrastructure entity B). Further during the previous year 2023-24, dividend of Rs 12 crore is received. Under Rule 2DCA of the Rules, an amount of Rs 10 crore is found to be exempt (Rs 6 crore attributable to investment in eligible infrastructure entity A and 4 crore attributable to investment in eligible infrastructure entity B). As on 15.07.2024, the domestic company decides to exit and transfers its shares in the eligible infrastructure entity A for an amount of Rs 120 crore. During the previous year 2024-25, dividend of Rs 25 crore is received by the AIF from the domestic company which is passed on by the AIF to the specified person (Rs 20 crore attributable to investment in eligible infrastructure entity A and 5 crore attributable to investment in eligible infrastructure entity B). In such case, during the previous year 2024-25, the dividend of Rs 20 crore received during the previous year 2024-25, which is attributable to investment in eligible infrastructure entity A, the dividend income granted exemption during the previous year 2022-23 amounting to Rs 4.8 crore, which is also attributable to investment in eligible infrastructure entity A, and the dividend income granted exemption during the previous year 2023-24 amounting to Rs 6 crore, which is attributable to investment eligible infrastructure entity A, will be taxable as income of the previous year 2024-25 in the hands of the specified person. Further, there will be no capital gain tax exemption on transfer of share of the domestic company through AIF by the specified person with respect to this investment. The amount of exemption under clause (23FE) of section 10 of the Act, with respect to the income of the specified person attributable to the investment in eligible infrastructure entity B, will be decided as per the provisions of rule 2DCA. The minimum threshold of investment by the AIF/domestic company, as per sub-rule (2) and (3) of rule 2DCA, in eligible infrastructure entities or InVIT, as the case may be, will also have to be maintained.

4.2. Eligible infrastructure entity carrying on other businesses as well

4.2.1. A specified person may invest in an eligible infrastructure entity. Such investment by specified person may be either directly or through an AIF or a domestic company or NBFC. It has been brought to the notice of the Board that some such eligible infrastructure entities may be carrying on businesses other than the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility as referred to in item (b) of clause (23FE) of section 10 of the Act. Concerns have been raised that in such cases, whether the entire investment will disqualify for exemption under the said clause.

4.2.2. In order to remove difficulty to the taxpayer, it is clarified that if eligible infrastructure entity carries on businesses other than the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA of the Act or such other business as the Central Government may, by notification in the Official Gazette, specify in this behalf (hereinafter referred as "eligible activity"), the exemption could still be provided if the profit before tax of the eligible infrastructure entity from eligible activity is 50% or more of the total profit before tax of the eligible infrastructure entity. The exempt income from investment in such eligible infrastructure entity (hereinafter referred to as "hybrid infrastructure entity") attributable to such eligible activity shall be calculated proportionately. For the purposes of determination of such exempt income attributable to eligible activity, separate books of account shall be maintained by such hybrid infrastructure entity. The income of the specified person, from such hybrid infrastructure entity attributable to such eligible activity, exempt under clause (23FE) of section 10 of the Act shall be calculated using the following formula, namely:

A= B*C/D, where –

A= The income of the specified person from hybrid infrastructure entity attributable to the investment in eligible activity during the relevant previous year.

C= Profit before tax of the hybrid infrastructure entity from the eligible activity for the relevant previous year.

D= Profit before tax of the hybrid infrastructure entity from all the businesses/activities/sources for the relevant previous year.

"B" shall have the following meaning:

I. In case of direct investment by the specified person in the hybrid infrastructure entity :

B=Income accrued or arisen or attributed to, or received by, the specified person during the relevant previous year from the hybrid infrastructure entity, with respect to eligible investments made under clause (23FE), on or after the date of notification of the specified person under the said clause (23FE).

II. In case of investment by specified person in the hybrid infrastructure entity through AIF :

B= "I" as specified in sub-rule (5) of rule 2DCA of the rules attributable to the investment in hybrid infrastructure entity;

III. In case of investment by specified person in the hybrid infrastructure entity through AIF and domestic company:

B= "J" as specified in sub-rule (5) of rule 2DCA of the rules attributable to the investment in hybrid infrastructure entity;

IV. In case of investment by specified person in the hybrid infrastructure entity through AIF, and non-banking finance company

B="K" as specified in sub-rule (5) of rule 2DCA of the rules attributable to the investment in hybrid infrastructure entity;

V. In case of investment by specified person in the hybrid infrastructure entity thr ough a domestic company:

B= exempt income computed under sub-rule (6) of rule 2DCA of the rules attributable to the investment in hybrid infrastructure entity;

VI. In case of investment by specified person in the hybrid infrastructure entity through non-banking finance company,

B= exempt income computed under sub-rule (7) of rule 2DCA of the rules attributable to the investment in hybrid infrastructure entity.

4.2.3. Where investment has been made by the specified person, either directly or through AIF or domestic company or NBFC, in different eligible infrastructure entities and one or more of such eligible infrastructure entities are hybrid infrastructure entities, exemption under rule 2DCA of the rules shall be computed as follows:

(a) in respect of the hybrid infrastructure entities as per paragraph 4.2.2 of these guidelines;

(b) in respect of other eligible infrastructure entities, as per rule 2DCA of the rules, to the extent attributable to the investment in such entities.

4.2.4. The above guidelines are explained with the help of following examples:

Example 4: Specified person invests Rs 100 crore in an hybrid infrastructure entity. The specified person is notified as on 30.04.2021 and such investment is made on 31.03.2022 in the form of shares. During the previous year 2022-23, the specified person gets dividend of Rs 10 crore from such investment which is claimed to be exempt. In such case, the hybrid infrastructure entity will have to maintain separate books of account for the eligible and non-eligible activities. Assuming that the profit before tax of the eligible infrastructure entity from the eligible infrastructure activities is Rs 50

crore and total profit before tax is Rs 100 crore. In such a case the income of the specified person exempted under clause (23FE) shall be calculated as follows:

A=B*C/D

B= Rs 10 crore

C= Rs 50 crore

D= Rs 100 crore.

A=10 crore* 50 crore/100 crore= Rs 5 crore

[assuming all other conditions of clause (23FE) of section 10 of the Act are satisfied]

Example 5: Specified person invests Rs 100 crore in an AIF, as referred to in item (c) of sub-clause (iii) of clause (23FE) of section 10 of the Act. The specified person is notified as on 30.04.2021 and such investment is made on 31.03.2022 in the form of units. Out of this investment, AIF invests 100 crore in the form of shares in an hybrid infrastructure entity, of the Act as on 31.05.2022. During the previous year 2022-23, the specified person gets dividend of Rs 10 crore from such investment made in eligible infrastructure entity through AIF. Assuming that the, Value of B is 8 Crore, as per paragraph 4.2.2-II. In such case, such hybrid infrastructure entity will have to maintain separate books of account for the eligible and non-eligible business. Assuming that the profit before tax of the hybrid infrastructure entity from the eligible infrastructure activities is Rs 50 crore and total profit before tax is Rs 100 crore. In such a case the income of the specified person exempted under clause (23FE) of section 10 of the Act for the previous year 2022-23 shall be calculated as follows:

A=B*C/D

B= Rs 8 crore

C= Rs 50 crore

D= Rs 100 crore.

A=8 crore* 50 crore/100 crore= Rs 4 crore [assuming all other conditions of clause (23FE) of section 10 of the Act are satisfied]

Example 6: Specified person invests Rs 100 crore in a domestic company, as referred to in item (d) of sub-clause (iii) of clause (23FE) of section 10 of the Act. The specified person is notified as on 30.04.2021 and such investment is made on 31.03.2022 in the form of shares of the domestic company. Such domestic company in turn invests Rs 60 crore out of this 100 crore in an hybrid infrastructure entity, on 31.05.2022 and the rest of Rs 40 crore is invested in companies other than eligible infrastructure entities. During the previous year 2022-23, the specified person gets dividend of Rs 10 crore from investment made in domestic company. Value of exempt income under sub-rule (6) of rule 2DCA of the rules, as per paragraph 4.2.2-V, is 6 crore. In such case, hybrid infrastructure

entity will have to maintain separate books of account for the eligible and non-eligible business. Assuming that the profit before tax of the hybrid infrastructure entity from the eligible infrastructure activities is Rs 50 crore and total profit before tax is Rs 100 crore. In such a case the income of the specified person exempted under clause (23FE) of section 10 of the Act for the previous year 2022-23 shall be calculated as follows:

A=B*C/D

B= Rs 6 crore

C= Rs 50 crore

D= Rs 100 crore.

A=6 crore* 50 crore/100 crore= Rs 3 crore [assuming all other conditions of clause (23FE) of section 10 of the Act are satisfied. The minimum threshold of investment by the domestic company, as per sub-rule (2) and (3) of rule 2DCA, in eligible infrastructure entities will also have to be maintained.]

Example 7: Specified person invests Rs 100 crore in a domestic company, as referred to in item (d) of sub-clause (iii) of clause (23FE) of section 10 of the Act. The specified person is notified as on 30.04.2021 and such investment is made on 31.03.2022 in the form of shares of the domestic company. Such domestic company in turn invests Rs 40 crore out of such 100 crore in an hybrid infrastructure entity A and 20 crore in eligible infrastructure entity B, on 31.05.2022 and the rest of Rs 40 crore is invested in companies other than eligible infrastructure entities. During the previous year 2022-23, the specified person gets dividend of Rs 10 crore from investment made in domestic company.

As per paragraph 4.2.3, since in this case investment has been made by the specified person, through domestic company, in different eligible infrastructure entities and entity A is hybrid infrastructure entity while entity B is eligible infrastructure entity other than hybrid infrastructure entity, exemption under rule 2DCA of the rules shall be computed as follows:

(a) in respect of entity A as per paragraph 4.2.2 of these guidelines;

(b) in respect of entity B, as per rule 2DCA of the rules, to the extent attributable to the investment in such entities.

Exemption attributable to investment in hybrid infrastructure entity A

The value of M, N and O, attributable to investment in hybrid infrastructure entity A, as per these guidelines, are respectively Rs 10 crore, 40 crore and 100 crore then the exemption attributable to investment in eligible infrastructure entity A shall be calculated as follows:

A=B*C/D

Where B=M*N/O (As per paragraph 4.2.2-V, "B" would be equal to the exempt income computed under sub-rule (6) of rule 2DCA of the rules attributable to the investment in hybrid infrastructure entity)

Hence B= 10 crore*40 crore/100 crore= 4 crore

Hybrid infrastructure entity A will have to maintain separate books of account for the eligible and non-eligible activities. Assuming that the profit before tax of the hybrid infrastructure entity -A from the eligible infrastructure activities is Rs 50 crore and total profit before tax is Rs 100 crore. In such case the income of the specified person exempted under clause (23FE) of section 10 of the Act for the previous year 2022-23 shall be calculated as follows:

A=B*C/D

B= Rs 4 crore

C= Rs 50 crore

D= Rs 100 crore.

A=4 crore* 50 crore/100 crore= Rs 2 crore [assuming all other conditions of clause (23FE) of section 10 of the Act are satisfied. The minimum threshold of investment by the domestic company, as per sub-rule (2) and (3) of rule 2DCA, in eligible infrastructure entities will also have to be maintained.].

Exemption attributable to investment in eligible infrastructure entity B

As per clause (b) of the paragraph 4.2.3, exemption with respect to other eligible infrastructure entities shall be computed as per rule 2DCA of the rules to the extent attributable to the investment in such entities. The total investment of the specified person in hybrid infrastructure entity A and eligible infrastructure entity B is Rs 60 crore. As per clause (b) of the paragraph 4.2.3, while computing the exemption with respect to the income from eligible infrastructure entity other than the hybrid infrastructure entity, the investment of the specified person in eligible infrastructure entity other than the hybrid infrastructure entity A will be considered.

Thus, the value of N in the formula in sub-rule (6) of rule 2DCA of the rules shall be Rs 60 crore minus Rs 40 crore=Rs 20 crore and the exemption attributable to investment in eligible infrastructure entity B shall be calculated as follows:

Exempt income as per rule 2DCA=M*N/O (exempt income computed under sub-rule (6) of rule 2DCA of the rules to the extent attributable to the investment in eligible infrastructure entities other than hybrid infrastructure entities)

i.e. 10 crore*20 crore/100 crore= 2 crore

Thus, the total exemption available to the specified person under clause (23FE) of section 10 of the Act shall be Rs 2 crore+2 crore= Rs 4 crore [assuming all other conditions of clause (23FE) of section 10 of the Act are satisfied. The minimum threshold of investment by the domestic company, as per sub-rule (2) and (3) of rule 2DCA, in eligible infrastructure entities will also have to be maintained.].

4.3. Violation of 50 per cent, 75 per cent or 90 per cent condition as per item (c), (d) or (e) of sub-clause (iii) of clause (23FE) of section 10 of the Act

4.3.1. Item (c), (d) and (e) of the said sub-clause (iii) of clause (23FE) of section 10 of the Act provide a threshold of minimum investment in an eligible infrastructure entity or InvIT. Rule 2DCA of the rules provide for the method for calculation of the said threshold. However, it has been brought to the notice of the Board that this threshold of investment is required to be maintained by the AIF or domestic company or NBFC through-out the period of investment, till the investment is transferred. There may be cases where the AIF or domestic company or NBFC decides to invest in non-eligible entity or transfer investment from eligible infrastructure entity or InvIT, as the case may be. In such cases the exemption already provided to the specified person for the years during which the threshold was met may need to be revisited giving rise to the difficulties to the specified persons.

4.3.2. To remove the difficulties, it is hereby clarified that if the AIF or domestic company or NBFC, as referred to in item (c), (d) or (e) of the said sub-clause, fails to meet the threshold of minimum investment in an eligible infrastructure entity or InvIT, as the case may be, during any subsequent previous year (such thresholds were met during all the previous years for which exemption has been claimed by the specified person) then income of specified person which has been exempted during any preceding previous year under the said clause (where minimum threshold was met during that previous year), shall remain to be exempted under the said clause and shall not be withdrawn solely because of the reason of minimum threshold not being met during the subsequent previous year. However, income of the specified person during the previous year of violation of minimum threshold and for all subsequent years, from such AIF/Company/NBFC shall not be exempted under the said clause. This is subject to the condition that other conditions specified under clause (23FE) of section 10 of the Act or rules 2DCA are not violated. For example, if the "three years' rule" is violated, consequences will be decided as per paragraph 4.1 of these guidelines.

4.4. Violation of one or more conditions in clause (23FE) of section 10 of t he Act or rules thereunder or under the notification exempting the specified person under the said clau se.

4.4.1. The exemption provided to the specified person under clause (23FE) of section 10 of the Act is subject to certain conditions provided under the said clause, relevant rules and also specific conditions provided in the notification issued in the case of the specified person. Concerns have been raised that in case of violation of one or more of such conditions during any of the previous years, the

exemption provided during the previous years preceding such previous year may also be taken away leading to a lot of uncertainty in the hands of the investors.

4.4.2. The conditions provided under clause (23FE) of section 10 of the Act or prescribed under Rule 2DB of the Rules or under Circular No 15 of 2020, dated the 22nd July, 2020 with F No. 370142/26/2020-TPL are essential conditions, as may be applicable, (other than the conditions for which relaxation is provided under paragraph 4.4.4 of these guidelines) without which there is no case of exemption under clause (23FE) of section 10 of the Act. Any violation of the applicable conditions specified would require withdrawal of the exemption already allowed. Thus, the "general rule" is that if any of these applicable conditions are violated, exemption under clause (23FE) of section 10 of the Act will be withdrawn for all the years in which the exemption has been claimed and the income will be taxable in the same previous year in which it was claimed to be exempt. To remove difficulty in some cases, in para 4.1 (w.r.t the three years' rule) of these guidelines, it has been clarified that capital gains on transfer of the investment, in violation of the conditions under clause (23FE) of section 10 of the Act, shall be taxable and the income received in earlier previous years on which investments, which has been claimed to be exempt in such years, shall also become taxable in the previous year during which the three years' rule was violated. Thus para 4.1 carves out an exception to the "general rule".

4.4.3. Para 4.3 carves out an exception to the "general rule" and provides that in case of violation of minimum threshold by the AIF or domestic company or NBFC, exemption under the said clause shall not be available to the specified person the previous year in which the violation took place and all subsequent previous years. It may be noted that para 4.1 (w.r.t the three years' rule) and para 4.3 (relaxation for the violation of minimum threshold) are exceptions to the "general rule" and any other violation of any of the applicable conditions provided under clause (23FE) of section 10 of the Act or prescribed under Rule 2DB of the Rules or under Circular No 15 of 2020, dated the 22nd July, 2020 with F No. 370142/26/2020-TPL (other than the conditions for which relaxation is provided under paragraph 4.4.4 of these guidelines) by the specified person will be treated in the same way as provided under paragraph 4.1 i.e. where any income which has not been included in the total income of the specified person due to the provisions of clause (23FE) of section 10 of the Act, shall be chargeable to income-tax as the income of the specified person of the previous year during which such specified person fails to satisfy any of the conditions of the said clause.

4.4.4. Further, the following conditions have been specified in the notifications issued in the case of a specified person being either a SWF or PF:

a. The specified person shall get its books of account audited for the previous years referred to in clause (i) by an accountant specified in the Explanation below sub-section (2) of section

288 of the Act and furnish the Audit Report in the format annexed as Annexure to this notification herewith at least one month prior to the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act

b. It shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act.

4.4.5. It is clarified that if the specified person, being a SWF or PF, fails to meet any of the conditions specified in the notification (referred to in paragraph 4.4.4), during any subsequent previous year then income of the said specified person ,being a SWF or PF, which has been exempted during any previous year earlier under the said clause preceding such previous year, shall not be withdrawn solely because of the reason of violation of any one or both of the conditions mentioned in para 4.4.4 above, during the subsequent previous year. However, income of the specified person, being a SWF or PF, of the previous year in respect of which violation of any one or more of the conditions mentioned in para 4.4.4 above has taken place and for all subsequent years shall not be exempted under the said clause. This is another exception to the "general rule".

4.5. Computation of the capital gains arising to the specified person on account of the transfer of their holding in domestic company or non-banking finance company

4.5.1. Sub-rule (5), (6) and (7) of rule 2DCA provide for the formula to compute the income of specified person exempt under clause (23FE) of section 10 of the Act from the investment in the form of debts, share capital or unit in domestic company under item (d) and in NBFC under item (e) of sub-clause (iii) of said clause, either directly or through AIF, (hereinafter referred as "eligible capital asset"). The following concerns have been raised, namely:-

(a) these domestic companies or NBFC may, at a later stage, transfer their investment/lending in eligible infrastructure entities, made out of the eligible capital assets held by the specified person in such domestic company or NBFC (hereinafter referred as "downstream investment/lending") during the course of time.

(b) As per the provisions of the rule 2DCA of the rules, the exempt income of the specified persons, including the capital gains on eligible capital assets will be calculated as per sub-rule (6) and (7) of rule 2DCA of the rules.

4.5.2. There may be a difference between the year in which the eligible capital asset is transferred by the specified person and the year in which the downstream investment/lending is transferred by the domestic company or repaid to NBFC. This may work to the disadvantage of the specified persons if transfer/repayment of downstream investment/lending precedes transfer of eligible capital asset. This is for the reason that the exemption with respect to capital gains on eligible capital asset will be

available to the specified person in the ratio of the eligible downstream investments/lending to the total investments/lending by the domestic company/NBFC, as on the last date of the previous year immediately preceding the relevant previous year (last date of the relevant previous year if eligible lending has been made during the relevant previous year), in accordance with sub-rule (6) or (7) of rule 2DCA of the rules. Since the eligible downstream investments were transferred by the domestic company in an earlier year, the value of "N", as specified under sub-rule (6) of rule 2DCA of the rule, will reduce and therefore the exemption available to the specified person with respect to the capital gain on the transfer of investment will also reduce and there may be cases where such exemption from capital gains is not at all available to the specified person in the subsequent year in which eligible capital asset is transferred on account of reduction in the value of the said "N".

4.5.3. In order to remove the difficulties, the capital gain arising on eligible capital assets to the specified person may need to be computed in the ratio worked out as per sub-rule (6) or (7) of rule 2DCA of the rules as on the date of transfer of each of the eligible downstream investments or repayment of eligible downstream lending. Hence, capital gain relating to transfer of eligible capital assets shall be computed as follows: —

(a) During the previous year when any eligible downstream investment is transferred, or downstream lending is paid, the capital gain on the eligible capital assets shall be calculated as on the date of transfer of the eligible downstream investment/repayment of lending where fair market value of such eligible capital asset as on the date of transfer/repayment of the eligible downstream investment/lending shall be used for computing the capital gains on the date of transfer of the eligible downstream investment/repayment of lending ;

(b) At the time of subsequent transfer of such eligible capital assets by the specified person, the fair market value, as referred to in clause (a) of this para shall be deemed to be the cost of acquisition of such capital asset and capital gains chargeable to tax, shall be computed accordingly,

4.5.4. For the purposes of these guidelines, "fair market value" means,—

(i) in a case where the eligible capital asset is listed on any recognised stock exchange as on the date of transfer/repayment of eligible downstream investment/lending, the highest price of the capital asset quoted on such exchange on the said date:

Provided that where there is no trading in such asset on such exchange on the date of transfer/repayment of eligible downstream investments/lending, the highest price of such asset on such exchange on a date immediately before such date when such asset was traded on such exchange shall be the fair market value;

(ii) in a case where the eligible capital asset is a unit which is not listed on a recognised stock exchange as on the date of transfer/repayment of eligible downstream investments/lending, the net asset value of such unit as on the said date;

(iii) in a case where the eligible capital asset is an equity share in a company which is not listed on a recognised stock exchange as on the date of transfer/repayment of eligible downstream investments/lending fair market value calculated as per the provisions of sub-rule (2) of rule 11UA of the Income-tax Rules, 1962;

4.5.6. For the purposes of these guidelines, "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43 of the Act;

4.6. Secondary investment in infrastructure companies

4.6.1. As per the provisions of clause (23FE) of section 10 of the Act, the specified person shall invest in eligible infrastructure entities either directly or through AIF or a domestic company or NBFC or in an InvIT either directly or through AIF. The exemption under said clause is intended to promote investment in eligible infrastructure entities or InvIT.

4.6.2. Concerns have been raised that some of the specified persons may acquire the stake in eligible infrastructure entities or InvITs from any other person as secondary investment i.e. the specified person is buying stake from a person who had earlier invested in such entity/InvIT. Similarly, AIF or domestic company may invest the funds of specified persons by acquiring stake in eligible infrastructure entities or InvITs from any other person as secondary investment. Income on such investment may not qualify for exemption under the said clause as it is a secondary investment and not a first time investment in infrastructure made between 1st April, 2020 and 31st March, 2024.

4.6.3. In order to remove the difficulties, it is hereby clarified that the following transfers of capital asset, between 1st April, 2020 and 31st March, 2024 (both days inclusive), shall be considered as investment under clause (23FE) of section 10 of the Act, eligible for exemption under the said clause subject to fulfilment of the conditions, namely:-

(a) Transfer of the shares or units of eligible infrastructure entity or InvIT by any person to a specified person after the date of notification of such specified person under clause (23FE) of section 10 of the Act; or

(b) Transfer of the units of AIF or shares of domestic company or NBFC, which has invested in an eligible infrastructure entity or InvIT, by any person to a specified person after the date of notification of such specified person under clause (23FE) of section 10 of the Act; or

(c) Transfer of the shares of domestic company or NBFC, which has invested in an eligible infrastructure entity, by any person to an AIF where such investment by AIF is made out of the funds of the specified person after the date of notification of such specified person under clause (23FE) of section 10 of the Act; or

(d) Transfer of the shares of an eligible infrastructure entity by a person to a domestic company where such domestic company has made investment out of the funds of the specified person after the date of notification of such specified person under clause (23FE) of section 10 of the Act.

4.7. Tax audit

4.7.1. Clause (vi) of the rule 2DB of the rules provides that the PF shall furnish a certificate in Form No. 10BBC, in respect of compliance to the provisions of clause (23FE) of section 10 of the Act, along with the return of income. Such certificate shall be signed by an accountant as defined in the Explanation below sub-section (2) of section 288 of the Act. The notifications under clause (23FE) of section of the Act, granting exemption to the PFs, have a similar condition.

4.7.2. Similarly, the Circular No 15 of 2020 provides that the SWF shall be required to furnish return of income along with audit report. The notifications under clause (23FE) of section 10 of the Act granting exemption to the SWFs have a condition that the assessee shall get its books of account audited by any accountant specified in the Explanation below sub-section (2) of section 288 of the Act and furnish the Audit Report in the format annexed as Annexure to the said notification at least one month prior to the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act.

4.7.3. Concerns have been raised that the specified person may have large scale global operations out of which the investments made in India may constitute a significantly lower proportion. In such scenarios, it would be difficult for the specified person to get accounts audited for their entire global operations for the purposes of making investment in India.

4.7.4. In order to remove the above mentioned difficulty, it is hereby clarified that where the specified person maintains (i) separate account with respect to the Indian investments and foreign investments and (ii) a segmented account of income and expenditure in respect of eligible investment which qualifies for exemption under clause (23FE) of section 10 of the Act, then the certificate of the accountant, as mentioned in paragraph 4.7.1 and 4.7.2 above, shall be based on audit of the books of account pertaining to the investments made in India only (both eligible and non-eligible investments) and not the global operations of such specified person.

4.8. Quarterly statement of investments

4.8.1. Clause (v) of the rule 2DB of the rules provides that the Pension Fund shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB. The notifications under clause (23FE) of section 10 of the Act, granting exemption to the PFs, also have similar condition.

4.8.2. Similarly, the Circular No 15 of 2020 provides that the SWFs shall be required to furnish a quarterly statement within one month from the end of the quarter electronically in Form II in respect of each investment made during the quarter in the annexure to the said circular. The notifications under clause (23FE) of section 10 of the Act, granting exemption to the SWFs, have similar condition.

4.8.3. Concerns have been raised that the specified persons may have made huge investments, both eligible and ineligible, inside India and outside India and providing details of all investments may be difficult for the SWF/PFs.

4.8.4. In order to remove the difficulties, it is hereby clarified that where the specified person maintains (i) separate account with respect to the Indian investments and foreign investments and (ii) a segmented account of income and expenditure in respect of eligible investment which qualifies for exemption under clause (23FE) of section 10 of the Act, the quarterly details of the investments, as referred to in paragraph 4.8.1 and 4.8.2 above shall be furnished only with respect to the eligible investments made in India.

Neha Sahay

(Neha Sahay)
Under Secretary, TPL- I

Copy to the:

1. PS/ OSD to FM/ PS/OSD to MoS(F).
2. PS to the Finance Secretary.
3. Chairman and Members, CBDT.
4. Joint Secretaries/ CsIT/ Directors/ Deputy Secretaries/ Under Secretaries, CBDT.
5. C&AG of India (30 copies).
6. JS & Legal Adviser, Ministry of Law & Justice. New Delhi.
7. Institute of Chartered Accountants of India.
8. CIT (M&TP). Official Spokesperson of CBDT.
9. Principal DGIT (Systems) for uploading on departmental website.

Neha Sahay

(Neha Sahay)
Under Secretary, TPL- I

CASE LAWS

CA Ankit Kanodia & CA Nishi Jain

BASIC INFORMATION	
IN THE MATTER OF	M/s.Wago Private Limited
NAME OF Authority	GUJARAT AUTHORITY FOR ADVANCE RULING
Petition/Appeal No.	ADVANCE RULING NO. GUJ/GAAR/R/33/2021
Citation	
Date of Order	30th July, 2021
Relevant Section/Rule	Section 16 and 17 of the CGST Act, 2017

FACTS IN BRIEF

The applicant M/s.Wago Private Limited is in the process of establishing their new factory at Vadodara, Gujarat and has entered into a work order for supply, installation, erection and commissioning (SITC), maintenance and warranty of **HVAC works** in the Building comprising the Factory building, Assembly building, the Admin Building and Canteen Building. Therefore, the applicant sought ruling on the admissibility of input tax credit on the same.

JUDGEMENT/ORDER OF THE AUTHORITY

The AAR held as :

(1) The Air conditioning and cooling system have been divided into 4 sub categories - Air conditioning and cooling system, Process water system, the Exhaust system and VRF work. On examination of the work order, invoices raised and all the pictures submitted, single work order had been awarded for the installation and commissioning of HVAC system. No separate clauses have been mentioned for all the 4 categories as applicant bifurcated. Even the Invoice does not contain the description of different systems.

(2) All the parts would get assembled at the site and fitted on the wall, roof and the floor of the building and after being fitted in the building, it looses the identity as machines or parts of machines and become a system. **This AC System is in nature of a system and not machine as a whole.** It come into existence only by assembly and connection of various components and parts. Though each component is dutiable to GST, the air conditioning plant as such is not a good under HSN (Customs Tariff).

(3) In the present case if system is dismantled and individual parts of the air conditioning system are removed they can be transported. AC system as a whole cannot be transported from one place to another. The test of permanency has been answered in subject case as the System cannot be taken as such to the market for sale and cannot be shifted from one place to another as such. It can be shifted only after dismantling the plant which cannot be called 'Air conditioning system' after it is dismantled.

(4) H'ble Supreme Court [2011 (267) ELT (435) (S.C.)] has termed Air conditional Plant as an immovable property, there is no reason to dwell on this issue further as Article 141 of our Constitution says that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

Ruling - Section 17(5) of the CGST Act is a non-obstante sub section, overriding the provisions of Section 16(1) and Section 18(1). Input tax credit is not admissible on Air-conditioning and Cooling System and Ventilation System, as this is blocked credit falling under Section 17(5)(c).
OUR COMMENTS
In the given case, the HVAC is assembled and fitted on the wall, roof and the floor of the building which brings down the temperature and provide sufficient ventilation/fresh air to plant/admin area. However, the AAR reckons that after being fitted in the building, it looses the identity as machine or parts of machine and become a system which is at odds with the Explanation in CGST Act, 2017 - For the purposes of Chapter V the expression — "plant and machinery means apparatus, equipment, and machinery fixed to earth by foundation or structural support." Also 'Things attached to earth' is defined under Section 3 of Transfer of Property Act, 1882, -- "(b) Imbedded in the earth, as in the case of walls or buildings; or (c) Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached." In the given case the authority has held that since the entire HVAC system perse cannot be removed as such, the same would qualify as an immovable property attached to earth and hence not qualify as plant and machinery. In our view the authority has not got in to the details as to under which heading the said would be capitalised in books of accounts. Plant and Machinery is very videly defined and such a narrow construction of the definition may not bring the true intent of the legislature in our view.

IN THE MATTER OF	**M/s NARULA MENTHOL INDUSTRIES**
NAME OF Authority	**IN THE HIGH COURT OF UTTARAKHAND**
Petition/Appeal No.	**WPMS 1476 of 2021**
Citation	**-**
Date of Order	**August 06, 2021**
Relevant Section/Rule	**Recovery of ITC based from recipient of goods/services on failure of supplier to pay tax**
FACTS IN BRIEF	
The petitioner was served with a demand intimation notice/letter by the GST department which had directed the petitioner to reverse/pay, ITC on the basis that the supplier from whom the goods were purchases has failed to deposit the tax to the exchequer without following the due process as envisaged under section 73/74 of the CGST Act, 2017 for issuance of SCN for recovery of any tax or input tax credit. The petitioner also challenged the notices on the ground that no DIN was mentioned on the said notice as mandated by CBIC recently. Hence the present petition by the petitioner for quashing of such notices being violative of section 73 of the Act.	
JUDGEMENT/ORDER OF THE AUTHORITY	
The Hon'ble High Court while disposing off the petition held as : -Since the learned counsel for the respondents, based on the instructions, which has been received	

by him from his client, has made a statement that in fact in pursuance to the demand letters which have been put to challenge, in fact, **it is not an actual action of recovery, which is being contemplated to be taken against the petitioner, rather it is only an intimation of demand and hence there is no imminent threat,** which is being faced by the petitioner of the recovery of the amount, which has been reflected in the impugned order

-This writ petition is closed, with liberty left open to the respondents, **that if at all the respondents intend to take any action for the purposes of recovery of the Input Tax Credit, they would proceed with exclusively in accordance with law and particularly in accordance with the procedure provided under Sections 73 and 74 to be read with the Rules.**

OUR COMMENTS

The above judgment asserts the basic principles of law that demand can be created only under the statutory provisions and only issuing letters without mention of any relevant legal provisions cannot compel a bonafide assessee to make payment of the amounts. Since the introduction of the GST regime it has been seen that frivilous notices are being sent to assessees asking them to pay/reverse tax/ITC without mentioning any legal provisions for such demand and mentioning that action will be taken as per law if the said is not paid. The above judgment further makes a direction to the department that if at all the department intends to start recovery proceedings for ITC, then the same has to be done within the walls of section 73/74 and not beyond and after giving oppurtunity of being heard as per the instant provisions. Simialr rulings have been passed in the case of Pramod KhadBhandarvs. The Union of lndia TS(DB)-GST-HC(PAT)-2021-330 and Mahadeo Construction Companyvs. The Union of India,TS(DB)-GST-HC(JHA)-2020-138.

IN THE MATTER OF	**Asst. State Tax Officer (Intelligence) ALAPUZZA vs VST AND SONS PVT LTD**
NAME OF Authority	**IN THE HIGH COURT OF KERALA**
Petition/Appeal No.	**WA NO. 914 OF 2021**
Citation	**2021-TIOL-1588-HC-KERALA-GST**
Date of Order	**22-07-2021**
Relevant Section/Rule	**EWB - Rule 138 of CGST Rules 2017**

FACTS IN BRIEF

The Respondents in this appeal had filed the writ petition challenging the detention of the 'RANGE ROVER' motor vehicle belonging to the 2nd respondent while being transported from Coimbatore to Thiruvananthapuram as 'used personal effect' of the 2nd respondent. The vehicle was detained on the allegation that the same was transported without the E-way bill as contemplated under Rule 138 of the Kerala Goods and Service Tax Rules, 2017. By the impugned judgment, the learned Single Judge allowed the writ petition and quashed the notices of detention by the department. Hence the Revenue is in appeal against the order of the Ld. Single Member Bench.

JUDGEMENT/ORDER OF THE AUTHORITY
The Hon'ble High Court while admitting the petition averred :- The only reason stated for detaining the goods was that it was transported without the e-way bill. It must be remembered that goods that are **classifiable as used personal and household effect falls under Rule 138(14) (a) of the Kerala Goods and Services Tax Rules, 2017 and are exempted from the requirement of e-way bill**. Relying on the assertions in the case of *KUN Motor Company Private Limited and Others v. the Assistant State Tax Officer [(2019) 60 GSRT 144 (Kerala)]*, HC stated "The said decision held that used vehicles, even if it has run only negligible distances are to be categorized as 'used personal effects'. We are in respectful agreement with the observations of this Court in the aforesaid decision. The facts in the present appeal is similar if not almost identical to the facts in the above referred decision, except for the change in place from Puthuchery to Coimbatore." Hence the departmental appeal was dismissed.
OUR COMMENTS
It is clear from the EWB Rules that E-Way Bill is not required to be generated where goods fall under categroy of "used personal and household effect". Section 129 of the act which deals with detention of goods requires contravention of provisions of act or rules prescribed as a prerequisite condition for detentaining goods. Non generation of EWB can be valid reson for detaining goods but not where the law itself exempts from generation of same. Department detaining car being transported as used personal effect, ignoring the exemption provided in Rule 138(14) is not sustainable. As contravention of law has not taken place in the first place, therefore, section 129 cannot be invoked for detaining goods. The HC therefore in the the present case has rightly dismissed the department's appeal stating the car in question is classifiable as "used personal and household effect" and therefore detention of same is bad in the eyes of law.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. 05/2022 – Central Tax

New Delhi, the 17th May, 2022

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in **FORM GSTR-3B** for the month of April, 2022 till the 24th day of May, 2022.

[F. No. CBIC-20006/9/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. 06/2022 – Central Tax

New Delhi, the 17th May, 2022

G.S.R.....(E).— In exercise of the powers conferred by the first proviso to sub-rule (3) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby extends the due date for depositing the tax due under proviso to sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 in **FORM GST PMT-06** for the month of April, 2022 till the 27th day of May, 2022.

[F. No. CBIC-20006/9/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. 07/2022 – Central Tax

New Delhi, the 26th May, 2022

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 73/2017–Central Tax, dated the 29th December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1600(E), dated the 29th December, 2017, namely :–

In the said notification, after the fifth proviso, the following proviso shall be inserted, namely: –

— Provided also that the late fee payable for delay in furnishing of **FORM GSTR-4** for the Financial Year 2021-22 under section 47 of the said Act shall stand waived for the period from the 1st day of May, 2022 till the 30th day of June, 2022.

[F. No. CBIC-20006/8/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: The principal notification No. 73/2017-Central Tax, dated 29th December, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended *vide* notification number 21/2021 – Central Tax, dated the 1st June, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R 365 (E), dated the 1st June, 2021.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. 08/2022 – Central Tax

New Delhi, the 07th June, 2022

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 50 read with section 148 of theCentral Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby notifies the rate of interest per annum to be 'Nil', for the class of registered persons mentioned in column (2) of the Table given below, who were required to furnish the statement in **FORM GSTR-8**, but failed to furnish the said statement for the months mentioned in the corresponding entry in column (3) of the said Table by the due date, for the period mentioned in the corresponding entry in column (4) of the said Table, namely:–

TABLE

Sl. No.	Class of registered persons	Months	Period for which interestis to be Nil
(1)	(2)	(3)	(4)
1.	Electronic commerce operators having the following Goods and Services Tax Identification Numbers who could not file the statement under sub-section (4) of section 52 of the said Act, for the month of December, 2020,by the due-date, due to technical glitch on the portal but had deposited the tax collected undersub-section (1) of section 52 for the said monthin the electronic cash ledger, namely :– 1. 02AACCF0683K1C4 2. 03AAECC3074B1CN 3. 04AACCF0683K1C0 4. 06AAKCA6148C1C6 5. 07AABCB3428P1CS 6. 07AACCO1714E1C8 7. 07AADCI2004E1CK	December, 2020	From the date of depositing the tax collected under subsection (1) of section 52 of the said Act in the electronic cash ledger till the date of filing of statement under subsection (4) of section 52.

	8. 08AAACZ8318D1CL 9. 08AABCB3428P1CQ 10. 08AACCO1714E1C6 11. 08AAHCM4763C1CS 12. 09AABCB3428P1CO 13. 09AABCT1559M1C8 14. 19AABCR4726Q1C2 15. 19AABCT1559M1C7 16. 21AACCF0683K1C4 17. 23AABCB3428P1CY 18. 27AAACZ8318D1CL 19. 32AAECC3074B1CM 20. 33AACCO1714E1CD 21. 03AACCF0683K1C2 22. 06AAHCM7396M1C0 23. 07AAACZ8318D1CN 24. 07AADCD4946L1CN 25. 07AAECC3074B1CF 26. 07AAKCA6148C1C4 27. 08AAECM9636P1CY 28. 08AAKCA6148C1C2 29. 09AAECC3074B1CB 30. 10AACCF0683K1C7 31. 10AAICA3918J1C8 32. 19AADCD4946L1CI 33. 23AADCD4946L1CT 34. 24AAHCM4763C1CY 35. 27AABCB3428P1CQ 36. 32AACCF0683K1C1 37. 36AAACZ8318D1CM 38. 29AAFCD0915M1CS 39. 03AAICA3918J1C3 40. 06AACCF0683K1CW 41. 08AACCF0683K1CS 42. 09AADCD4946L1CJ 43. 19AACCF0683K1CP 44. 19AAICA3918J1CQ 45. 24AACCO1714E1CC 46. 27AADCD4946L1CL 47. 29AACCF0683K1CO 48. 29AADCD4946L1CH 49. 33AACCF0683K1CZ 50. 33AAICA3918J1C0 51. 36AADCD4946L1CM 52. 36AAICA3918J1CU		

	53. 09AACCF0683K1CQ 54. 09AAICA3918J1CR 55. 08AAICA3918J1CT 56. 24AAICA3918J1CZ 57. 27AAICA3918J1CT 58. 24AACCF0683K1CY 59. 07AACCF0683K1CU 60. 07AAICA3918J1CV		
2.	Electronic commerce operators having the following Goods and Services Tax Identification Numbers who could not file the statement under sub-section (4) of section 52 ofthe said Act for the months mentioned incolumn (3), by the due-date, due to technicalglitch on the portal but had deposited the tax collected under sub-section (1) of section 52 forthe said months in the electronic cash ledger :– 1. 06AAHCP1178L1CF 2. 07AAHCP1178L1CD 3. 19AAHCP1178L1C8 4. 24AAHCP1178L1CH 5. 27AAHCP1178L1CB 6. 29AAHCP1178L1C7 7. 32AAHCP1178L1CK 8. 33AAHCP1178L1CI 9. 36AAHCP1178L1CC 10. 07AADCM5146R1C8 11. 27AADCM5146R1C6 12. 29AADCM5146R1C2	September, 2020, October, 2020, November, 2020, December, 2020 and January, 2021.	From the date of depositing the tax collected under subsection (1) of section 52of the said Act in the electronic cash ledger till the date of filing of statement under subsection (4) of section 52.

[F. No. CBIC- 20006/26/2021-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

COMPANY LAW UPDATES

CA Mayur Agrawal

Reference	Date	Topic	Description
General Circular No. 6/2022	31/05/2022	Relaxation in paying additional fees in case of delay in filling all the event based e-forms by LLPs which are due on and after 25th February, 2022 to 31st May, 2022 up to 30th June,2022	To allow LLPs to file event based e-forms by LLPs which are due on and after 25th February, 2022 to 31st May, 2022 up to 30th June,2022 due to transition from version-2 of MCA21 to version-3 https://www.mca.gov.in/bin/dms/getdocument?mds=xVZAKAA2Ap%252B7ha8Y%252FML4fw%253D%253D&type=open
General Circular No. 4/2022	27/05/2022	Relaxation in paying additional fees in case of delay in filing Form 11(Annual Return) by Limited Liability Partnerships up to 30th June, 2022	In view of transition from version-2 of MCA21 to version-3 and to promote compliance on part of LLPs, it has been decided to allow LLPs to file e-Form 11(Annual Return of Limited Liability Partnership) of Financial Year 2021-2022 without paying additional fees upto 30th June, 2022 https://www.mca.gov.in/bin/dms/getdocument?mds=bPU6zFGIKpt0gBxXLV99nw%253D%253D&type=open
General Circular No. 3/2022	05/05/2022	Clarification on passing of Ordinary and Special resolutions by the companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19-Extention of timeline	To allow companies to conduct their EGMs through Video Conference (VC) or Other Audio Visual Means (OAVM) or transact items through postal ballot in accordance with framework provided in the aforesaid circular up to 31st December, 2022. https://www.mca.gov.in/bin/dms/getdocument?mds=JBdXGa0hUFPRoITMEqTz6g%253D%253D&type=open

1. **Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022- dated 09/06/2022**

   Changes w.r.t. to STK-2, now in case of the said form two chances of resubmission shall be given by the ROC

   https://www.mca.gov.in/bin/dms/getdocument?mds=Ugmywq4B8mt%252B11VUDInIPw%253D%253D&type=open

2. **NFRA Amendment Rules 2022- dated 17/06/2022**

   Changes in rule 13 of the said rules w.r.t. fine in case of non-compliances of the NFRA Rules.

   https://www.mca.gov.in/bin/dms/getdocument?mds=ALYJ%252BRnuB%252BCYMY4Llv02JA%253D%253D&type=open

3. **G.S.R. 439(E)-Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2022- dated 10/06/2022**

   Introduction of rule w.r.t. restoration of name of Independent Director in Databank.

   https://www.mca.gov.in/bin/dms/getdocument?mds=aLN2CSvwwwzNAnu%252BGj17uw%253D%253D&type=open

4. **Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022- notification dated 05/05/2022**

   Changes w.r.t. issue of securities to body corporate or individuals of countries sharing land border with India

   https://www.mca.gov.in/bin/dms/getdocument?mds=B400yqqCuZOFOzkykpo8KA%253D%253D&type=open

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"RELATED PARTIES AND RELATED PARTY TRANSACTIONS : IDENTIFICATION, APPROVAL AND MONITORING FOR LISTED ENTITIES"

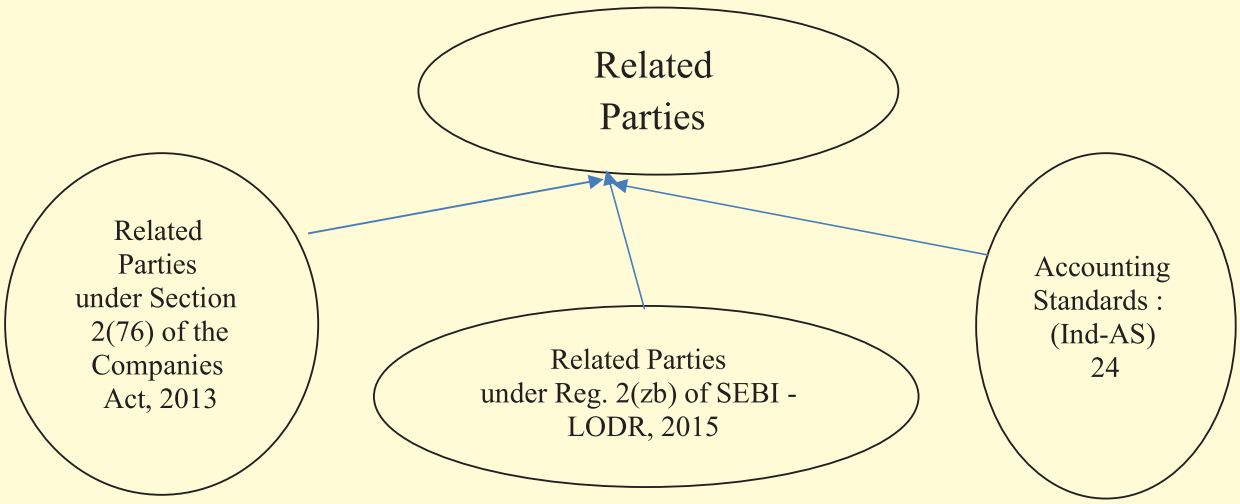
CS Atul Kumar Labh

1. Related Party and Related Party Transactions : Basics

Securities and Exchange Board of India vide its Notification dated 09.11.2021 has expanded the base of identification of Related Parties and the transactions to be entered with such Related Parties vide Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021 and the same has become effective from 01.04.2022 for the listed companies. With this modification, the listed companies are not only required to monitor the Related Party Transactions where the Company itself is a party but also to that of the transactions of their subsidiaries with their related parties or otherwise. The process of identification, approval and monitoring of such related parties vis-à-vis related party transactions for the listed companies, in brief, in a diagrammatically manner is illustrated below.

2. Identification of Related Parties

(A) Related Parties are defined under different provisions :



(B) Related Parties under the Companies Act, 2013 :

Related Parties under Section 2(76) of the Companies Act, 2013

"Related Party", with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is :

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(C) an investing company or the venturer of the company; Explanation : "Venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(ix) a director other than an independent director or KMP of the holding Company or his relative with reference to the Company.

(C) Related Parties under SEBI - LODR, 2015 :

Related Parties under Reg. 2(zb) of SEBI - LODR Regulations, 2015

"Related party" means a related party as defined "

(a) under sub-section (76) of section 2 of the Companies Act, 2013; or

(b) under the applicable accounting standards;

Provided that :

(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or

(b) any person or any entity, holding equity shares:

(i) of twenty per cent or more; or

(ii) of ten per cent or more, with effect from April 1, 2023; in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year; shall be deemed to be a related party:"

(D) Related Parties under Accounting Standards :

Related Parties under Accounting Standards : (Ind-AS) 24

A related party is a person or entity that is related to the entity that is preparing its financial statements :

(a) A person or a close member of that person's family is related to a reporting entity if that person :

(i) has control or joint control over the reporting entity;

(ii) has significant influence over the reporting entity; or

(iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

(b) An entity is related to a reporting entity if any of the following conditions applies:

(i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).

(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).

(iii) Both entities are joint ventures of the same third party.

(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.

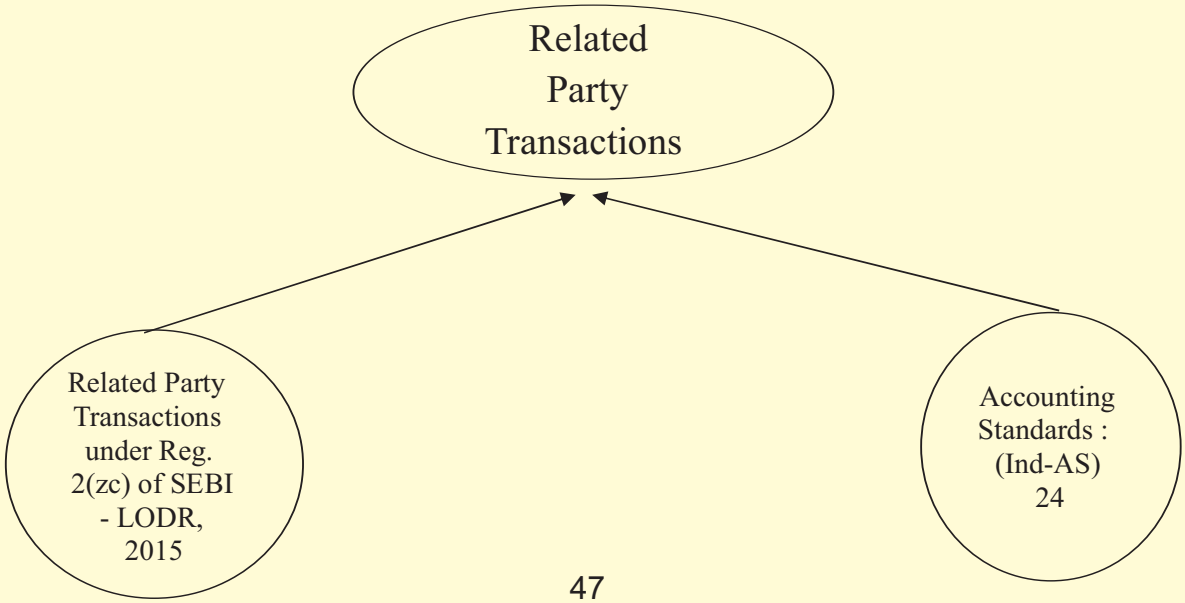
(v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.

(vi) The entity is controlled or jointly controlled by a person identified in (a).

(vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

3. Identification of Related Party Transactions

(A) Related Party Transactions are defined under different provisions :



(B) Related Party Transactions under SEBI-LODR, 2015 :

Related Party Transactions under Reg. 2(zc) of SEBI-LODR, 2015

"Related Party Transaction" means a transaction involving a transfer of resources, services or obligations between:

(i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or

(ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract.

(C) Related Party Transactions under Accounting Standards :

Related Party Transactions under Accounting Standards : (Ind -AS) 24

A related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.

Note :

(i) "Related Party Transaction" has not been defined under the Companies Act, 2013 and hence all transactions with Related Parties with respect to the transactions mentioned vide Section 188 of the said Act will be governed by the applicability of the said provisions read with rules related thereto.

(ii) Each Director and Key Managerial Personnel is responsible for providing notice to the Board/Audit Committee of any potential Related Party Transaction involving him or her or his

or her Relative, including any additional information about the transaction that the Board/Audit Committee may reasonably request. The Board/Audit Committee will determine whether the transaction does, in fact, constitute a Related Party Transaction requiring compliance with this policy statement. The Board/Audit Committee may delegate such powers to the officer(s) of the Company as it deems fit.

(iii) The Compliance Officer or Chief Financial Officer shall at all times:

a. Identify and keep on record Company's Related Parties, along with their personal/ company details.

b. The Compliance Officer or Chief Financial Officer shall identify such managers, departmental heads and such other employees (Designated Employees) who are responsible for entering into contracts/ arrangements/ agreements with entities for and on behalf of the Company and circulate the list of Related Parties to all such Designated Employees of the Company along with the approval thresholds for entering into transactions with such listed Related Parties.

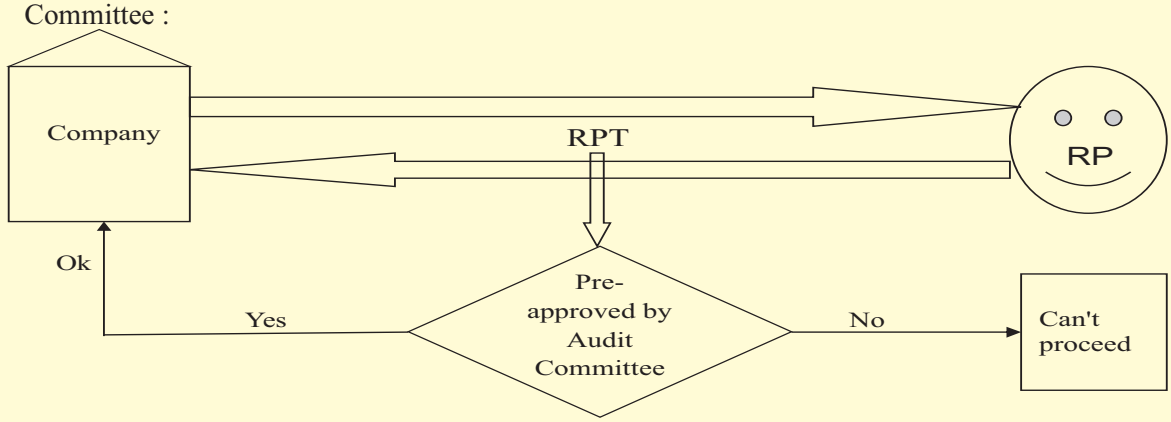
c. The Compliance Officer or Chief Financial Officer shall also set down the mechanism for reporting of such transactions proposed to be entered or entered with related parties by such Designated Employees as specified in (b) above.

d. The record of Related Parties shall be updated whenever necessary and shall be reviewed at least once a year, as on 1st April every year.

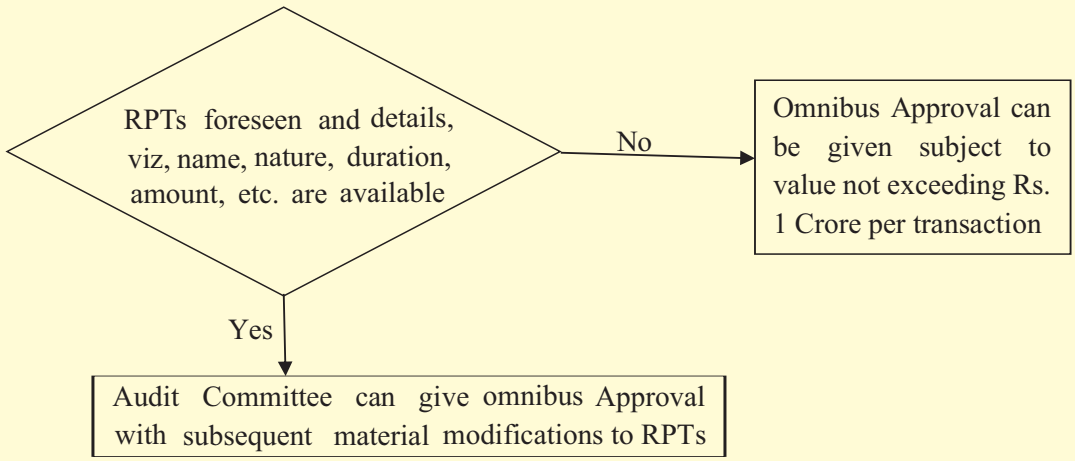
e. Ensure that Senior Management Personnel discloses to the Audit Committee relating to all material, financial and commercial transactions with Related Parties, where they have personal interest that may have a potential conflict with the interest of the listed entity at large.

4. Procedure for review and approval of Related Party Transactions

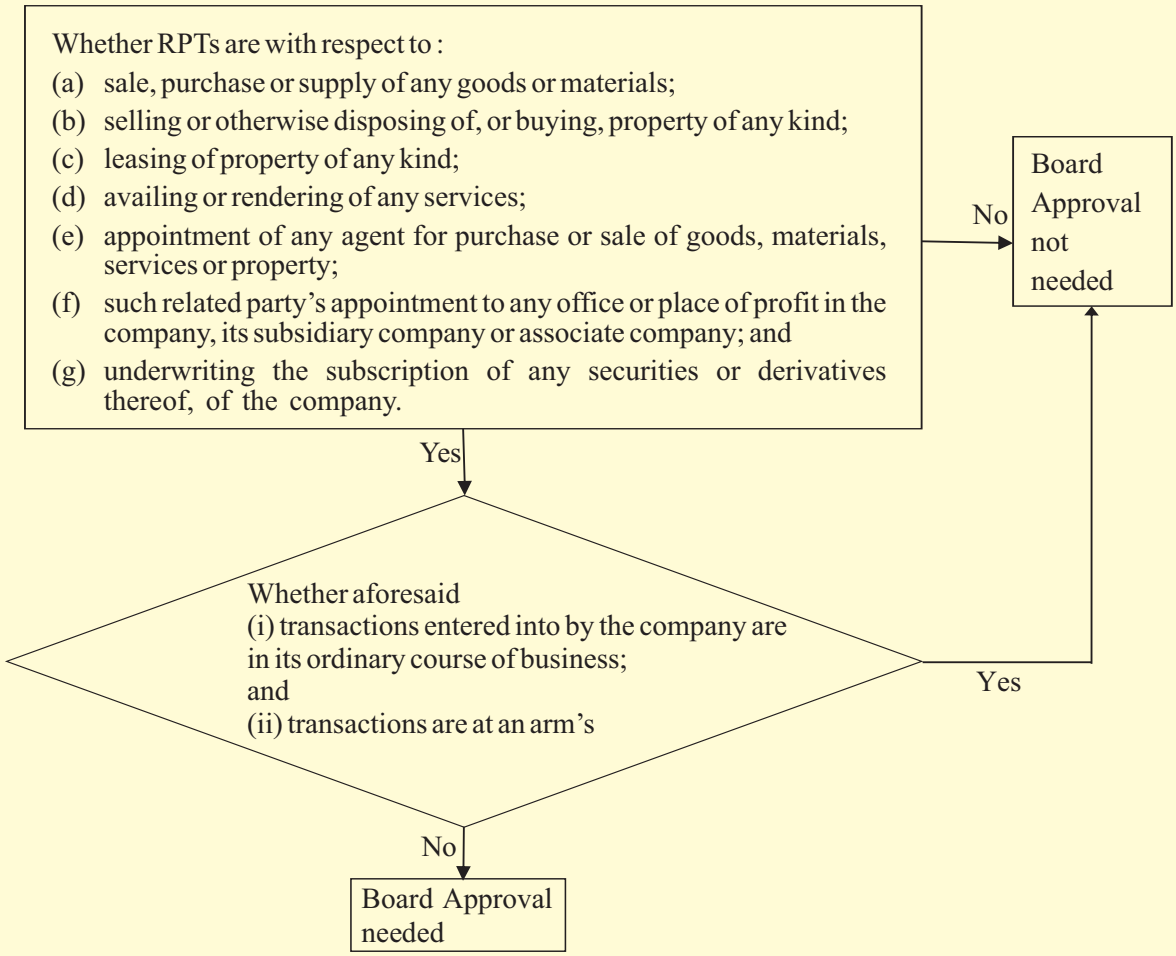
(A) All RPTs and subsequent material modifications thereto must be pre-approved by the Audit Committee :



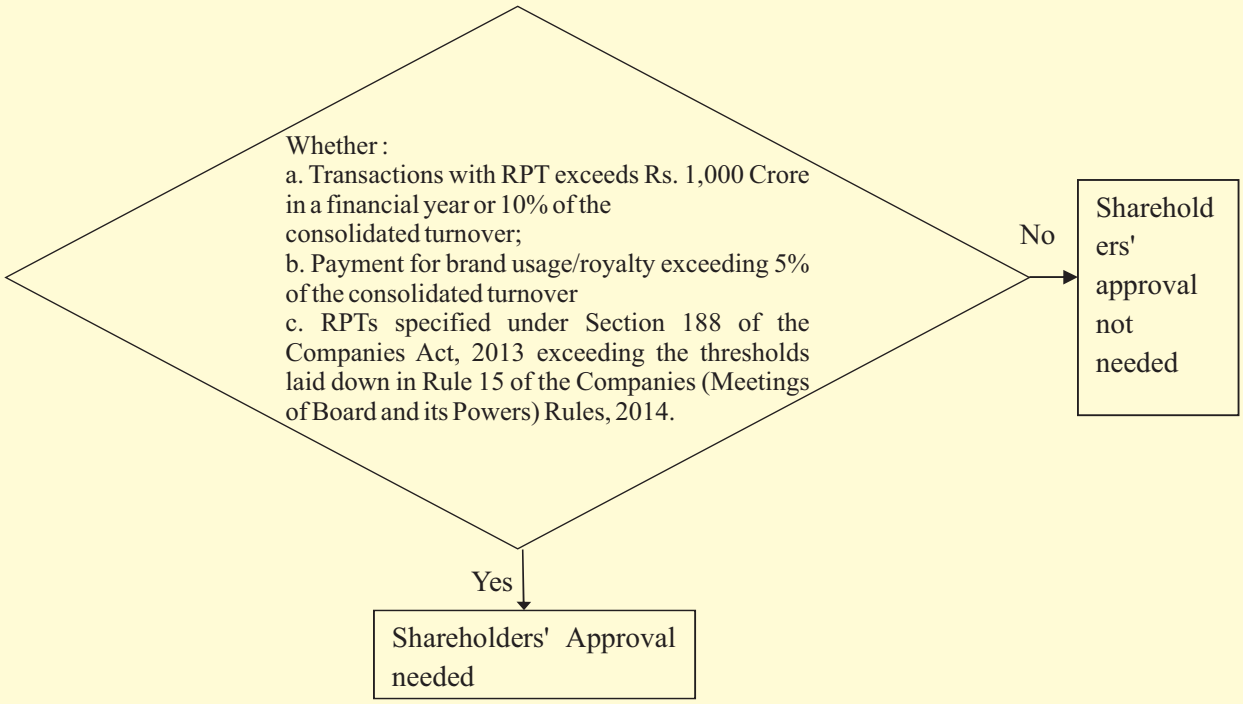
(B) Audit Committee may grant Omnibus Approval for a financial year :



(C) Post Audit Committee approval, certain RPTs need to be approved by the Board too:



(D) All RPTs exceeding materiality thresholds would need shareholders prior approval too :



(a) Related Party Transactions other than transactions referred to in Section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.

(b) The Audit Committee shall mandatorily review on quarterly basis the statement of related party transactions entered by the Company during the quarter.

(c) If prior approval of the Board /general meeting for entering into a Related Party Transactions in terms of the provisions of Section 188 read with rules related thereto, is not feasible, then the Related Party Transaction shall be ratified by the Board/ general meeting, as the case may be, within 3 months of entering in the Related Party Transaction.

(d) All entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not

5. Related Party Transactions' requiring prior approval of the Audit Committee

Following type of transactions with subsequent material modifications thereto will fall within the ambit of Related Party Transactions' for which prior approval of the Audit Committee would be

i. Company ⇄ RP of the Company

ii. Company ⇄ RP of any Subsidiary of the Company

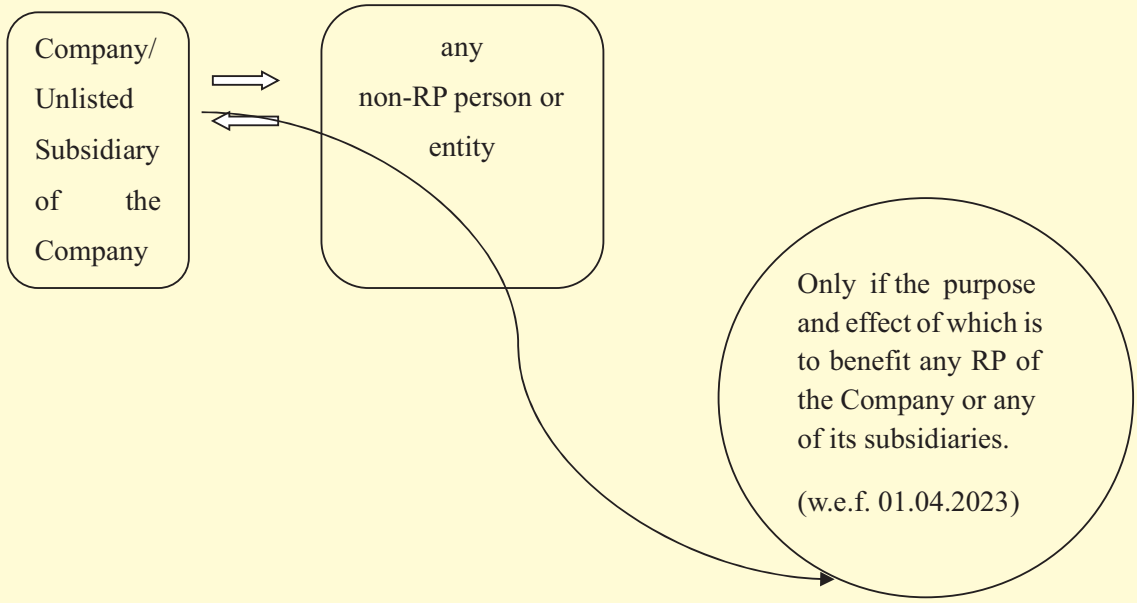
iii. Unlisted Subsidiary of the Company ⇄ RP of the Company

Only if the transaction value exceeds 10% of consolidated turnover of the Company (w.e.f. 01.04.2023 : 10% of the standalone turnover of the Subsidiary Company) in a financial year

iv. Unlisted Subsidiary of the Company ⇄ RP of any Subsidiary of the Company

Only if the transaction value exceeds 10% of consolidated turnover of the Company (w.e.f. 01.04.2023 : 10% of the standalone turnover of the Subsidiary Company) in a financial year

v.



Note :

(a) Prior approval of the audit committee of the Company will not be required for a related party transaction to which the listed subsidiary of the Company is a party but the Company is not a party, if the listed subsidiary company complies with the requirements of prior appro val of their audit committee for such transactions.

(b) No approval is required in the following cases :

(i) transactions entered into between the Company and its wholly owned subsidiary whose accounts are consolidated with the Company and placed before the shareholders at the general meeting for approval.

(ii) transactions entered into between two wholly-owned subsidiaries of the Company, whose accounts are consolidated with the Company and placed before the shareholders at the general meeting for approval.

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DTPA
Direct Taxes Professionals' Association
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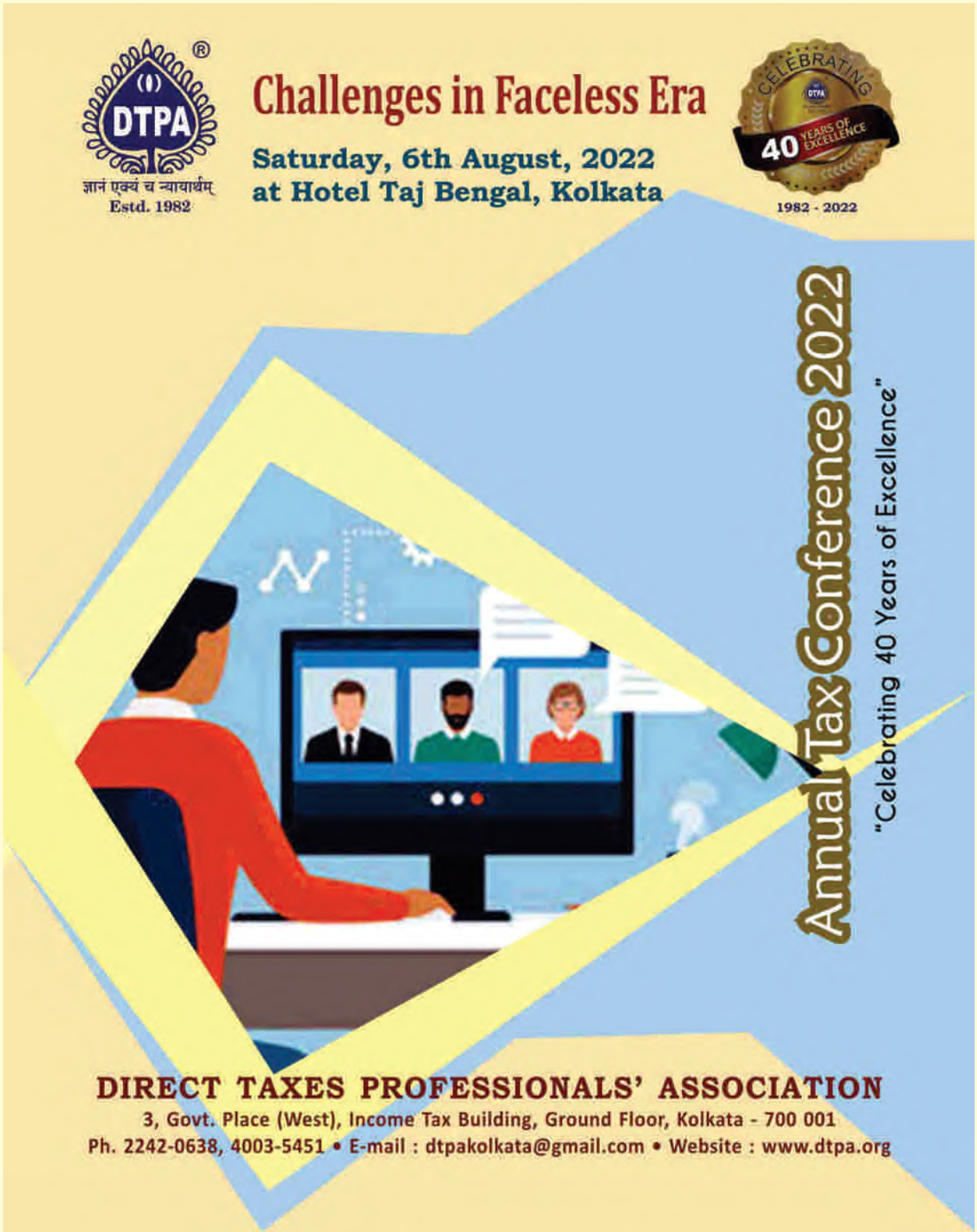

DTPA
Direct Taxes Professionals' Association
ज्ञानं एकं च न्यायार्थम
Estd. 1982

April - June, 2022

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ANNUAL TAX CONFERENCE - 2022

"Celebrating 40 Years of Excellence"

Theme : Challenges in Faceless Era

Saturday, 6th August, 2022 at Hotel Taj Bengal, Kolkata

India is going through path breaking changes in the Tax Administration over the last two years by initiating Faceless Assessment, Appeal and Penalty mechanism without direct interface between Tax payer and Revenue authorities and has also announced its intention to make the proceedings of Income Tax Appellate Tribunal faceless/virtual thereby eliminating any human interface in the proceedings. The Government in the Union Finance Act, 2021 has made several changes in the Re- Assessment Provisions focused more on "Information of Strategic Importance" and the provisions were also amended by the Finance Act, 2022. The Supreme Court has also given its landmark verdict under Article 142 of the Constitution of India on 4th May, 2022 with regard to Notices issued under section 148 by the Income Tax Officials during 1st April, 2021 to 30th June, 2021.

The information is gathered by the Income tax department by various means including by way of Statement of financial transactions or reportable account under section 285BA and by artificial intelligence. The Assessing Officers have access to many information through Insight Portal of the department and action is taken on the basis of such information as well. Plenty of data and information is also available with the department through various Electronic and Social media based on which they would administer the Tax compliance by the assessees. The Professionals are aware that all this information is being accumulated either through sharing of data between Income Tax, GST and MCA, however are very much apprehensive that data shared by one department may not be so relevant to the other department because of different contexts and compositions of the particular information under different laws. Sec. 9B and Sec. 45(4) also needs deliberation.

The taxpayers as well tax professionals are also concerned with action of the department for Revision of orders prejudicial to revenue under section 263 of the Income Tax Act. GST has also assumed new dimension as taxpayers as well as professionals are facing strict action by the GST department including issue of Summons, Show Cause Notices and even arrest in some cases. We are celebrating 40 years of excellence of DTPA this year.

We are going to address these issues in our Annual Tax Conference, 2022 and invite you to kindly wholeheartedly participate and also extend your full support by putting in your valuable Ads in the Souvenir being published to mark the occasion.

With regards,

Adv. Kamal Kr. Jain	Adv. Narayan Jain	Adv. R.D. Kakra	CA Barkha Agarwal
President	Chairman, Conf. Comt.	Co-Chairman, Conf. Comt.	General Secretary

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PROGRAMME

- Registration & Tea — 9.00 to 9.45 AM

INAUGURAL SESSION : 9.45 AM to 10.45 AM

- Inauguration — **Hon'ble Mr. Justice Prakash Shrivastava**, Chief Justice - Calcutta High Court*
- Chief Guest — **Hon'ble Mr. Justice Harish Tandon**, Judge - Calcutta High Court*
- Guest of Honour — **Hon'ble Mr. G.S. Pannu**, President - ITAT
- Honoured Guest — **CA. (Dr.) Debashis Mitra**, President ICAI

FIRST SESSION : 10.45 AM to 1.30 PM

- Session Chairman — **Hon'ble Mr. Justice Md. Nizamuddin**, Judge - Calcutta High Court
- Topic — **Implications of Sec. 9B, 45(4), Virtual Digital Assets & Other Issues.**
- Speaker — **Dr. CA. Girish Ahuja** (New Delhi)
- Topic — **Implication of Re-Assessment u/s 148 and Revision u/s 263/264**
- Speaker — **Adv. Kapil Goel** (New Delhi)

LUNCH BREAK : 1.30 PM to 2.15 PM

SECOND SESSION : 2.15 PM to 3.45 PM

- Session Chairman — **Mr. Khalid A. Anwar**, IAS, Commissioner of State GST (WB)
- Topic — **Contentious Issues in GST**
- Speaker — **Adv. Mr. Pankaj Ghiya** (Jaipur), Deputy National President, AIFTP

BRAIN TRUST SESSION : 3.45 PM to 5.15 PM

- Session Chairman — **Hon'ble Mr. G.S. Pannu**, President - ITAT
- Panelists — **Dr. CA. Girish Ahuja** (New Delhi)
  Adv. Kapil Goel (New Delhi)
  Adv. N.G. Khaitan (Kolkata)
  Adv. J. P. Khaitan (Kolkata)
  Adv. S. M. Surana (Kolkata)

* Confirmation Awaited.

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1982 - 2022

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CELEBRATING 40 YEARS OF EXCELLENCE
1982 - 2022

DELEGATE FORM

To
The General Secretary
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place West, Ground Floor
Kolkata - 700 001

Dear Sir,

Please register me as a delegate for the **Annual Tax Conference - 2022** to be held at **Hotel Taj Bengal, Kolkata** on **Saturday, 6th August, 2022.***

Name of Delegate (in Block Letters) :
Organisation / Firm :
Designation :
GST Registration No. :
Address :
Phone :
Mobile : Email :

DELEGATE FEE :

For Participation (incl. GST) : Rs. 2000/- ***(till 20th July)*** **• Rs. 2360/-** ***(from 21st July)***

I am sending herewith my Registration fee by Cash / DD / Cheque No. .....

dated ..... ₹ ..... drawn on .....

..... in favour of **DIRECT TAXES PROFESSIONALS' ASSOCIATION**

For Online Payment :
A/c. Name : **DIRECT TAXES PROFESSIONALS' ASSOCIATION**
IDBI Bank, A/c No. 0060102000138185, IFSC - IBKL0000060, Kolkata - 700 001.

Yours faithfully,

Date : .....

Place : .....

Note : Registration strictly on first come first serve basis. Delegates are requested to send their queries, if any, in advance to get Expert views from Learned Speakers on **E-mail : dtpakolkata@gmail.com.**

For multiple registrations, please get this form photo copied (Xerox)

Please fill in all particulars

* Annual Conference programme will be subject to changes as per the then Government COVID guidelines.

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