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Total no. of page: 96

....From the Desk of Editors



Respected Seniors and my Dear Friends,

As we embrace the arrival of April, the first month of financial year, we are greeted with a sense of optimism and the promise of new beginnings. It is with great pleasure that I connect with you through this bulletin, sharing updates and reflections that I hope will inspire and resonate with each of you. This month, as we embrace the spirit of reflection and action, I encourage each of you to take a moment to review your accomplishments and challenges. Let's use this opportunity to set clear goals and aspirations that will guide us towards continuous growth and success.

"23,000 ITRs for A.Y. 2024-25 have already been filed till 4th April, 2024"

Yes, you have read it correct. Income Tax Department in its Press Release on 4th April, 2024 has published this fact that this is for the first time in recent times, that the Income Tax department has enabled taxpayers to file their Returns on the first day of the new financial year.

The Central Board of Direct Taxes (CBDT) in its regular exercise of revision of monetary limits for filing of appeals/SLPs by the Income-tax Department once again revised the same under Circular no. 5/2024, dated 15-03-2024. In the said circular the Board has *expanded* the scope for filing appeals by the Department before the Income Tax Appellate Tribunal, High Courts and SLPs/appeals before the Supreme Court. The Board has prescribed certain exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits. The said exceptions in the initial circular sometime in 1977 in terms of the Litigation Management Policy of the Government were limited to 2-3 items particularly related to challenge to the statute itself and/or the notifications or circular issued under the same. However, the said exception keeps on increasing and now in the latest Circular No. 5/2024, these exceptions are almost as much as 16 items. More some line items seem not having definition in the statute itself and being used generally. The same may be requiring proper definition by the department in order to have Litigation Management Policy actually to minimise the litigation being the object of the said policy.

At the same time, it is quite appreciative that the CBDT is vigilant enough and has taken a note of slow disposal of the appeals at the first appellate stage and recently has issued guidelines for priority disposal of appeals through Notification F.No. 279/Misc./M-102/2021-ITJ, Dated 07-03-2024. Accordingly, appeals covering genuine and exceptional circumstances having the following situations such as (i) Cases having demand above Rs. 1 Cr, or, (ii) Cases where a VIP/PMO reference is received for expeditious disposal, or (iii) Cases where directions to this effect have been issued by the Courts, or (iv) Cases where request is made by senior citizens and/or super senior citizens, or (v) Any other case of genuine hardship may be referred to the respective Pr.CCsIT/CCsIT/DGsIT or Pr.CCIT(NFAC) in case of faceless appeals. This is a welcome step by the Board and assesses, may represent their cases eligible under the said situations and may get speedy disposal of their appeal at First Appellate stage.

Our calendar for April is brimming with exciting events and initiatives designed to inspire and empower. It ranges from insightful **5 Day's Income Tax workshop to Seminar on Audit Documentations and Regulatory Orders** which is in fact need of the hour. Apart from knowledge and value addition there is lots of networking opportunities and truly speaking there's something for everyone to participate in and contribute to. I urge you to **register soon** as per detailed programme inside this issue, make the most of these activities and collaborate with fellow members to create meaningful impact to your professional sphere.

We also want to take a moment to bring on record the tremendous success of 3rd Series of our Information Technology Seminar - **Accountech 3.0** and other knowledge sessions held in the meantime. The insightful discussions, meaningful interactions, and valuable contributions from all Speakers and participants truly made it a memorable and enriching experience. Your engagement and enthusiasm were instrumental in making these events a resounding success.

Wish you all a Very Happy Poila Baisakh and Ram Navami.

Jai Hind!! Jai DTPA!!

With Best Regards

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

Sujit Sultania
 Co-Chairman
 Journal Sub-Committee, DTPA

which they face as a professional. So with this objective we along with all the study circles in association with EIRC, ICAI had planned a Holi get together – Kavi Sammelan 2024 which was a wonderful evening spent with all our members on 25th March. We not only shared the joys of colours of Holi but also enjoyed the colourful Kavi sammelan by laughing our heart out. This would never have been possible without the detailed planning and execution by EIRC, ICAI and the heartwarming presence of all our members.

Prior to the celebration for Holi, our fellowship committee had planned a wonderful 3 days Holy trip to Mata Vaishno Devi from 15th March to 17th March wherein the members enjoyed the wonderful Darshan which was possible as every detail was taken care of while planning the trip. Many participants have put in requests for more such trips in future as they really enjoyed every bit of the memorable trip with the DTPA family members.

While on this I am really grateful to our Fellowship Committee for planning an International Trip to Almaty from 1st June for 5 nights and 6 days at a very competitive pricing while including the best options for sightseeing. However I along with Fellowship committee would like to thank all our members for their huge response because of which we got more than 60 participants within 24 hours of the announcement of the trip. It was really encouraging for all of us and has also given us the confidence to plan more such trips for all our members in the future without thinking as to how we will get the minimum guaranteed passengers required for the trips.

One of the main advantages of having knowledge seeking members is that they always come up with positive suggestions and constructive criticisms. I am really thankful to all the members for all the suggestions shared by you from time to time, though may be not all of them can be implemented by us.

Based on the suggestions from members we have planned a full day CPE seminar **on Audit Documentation & Regulatory** issues on 27th April so that this critical area which has a huge relevance in today's scenario can be clarified for all the attendees. I am sure the speakers for the sessions who are domain experts with rich experience will surely add value for all the participants and so we should all join the same in huge numbers.

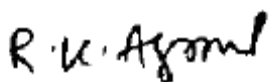
Similarly post the GST training course organised by us, we had received several requests for a similar workshop/training for Income Tax. After long deliberations with the executive committee members and the members at large the Direct Tax committee has finalised the 5 day Income Tax Workshop starting from 29th April. I am sure that each one of you will spread the word about this workshop so that majority of the professionals and their teams can be benefitted from this workshop wherein many relevant issues will be handled in detail. And we can also invite our friends and teams from other states to join as this would be on hybrid mode.

I am very happy to share with all of you that many of our members are encouraging other professionals to join DTPA so that they are also benefitted from the learning and fellowship initiatives of your esteemed organization. I would only request you to kindly share the positive feedback with the professionals in your environment so that we get connected to more and more learned members who turnout to be gems for our organization and also to share your constructive criticism with me directly so that we can act upon them.

Please do accept my deep gratitude for walking alongside in our attempt to take DTPA to newer heights. As the summer and the audit period has set in, please do take care of your health. Looking forward to meeting all of you on 27th April in huge numbers.

Thanking you,

Yours truly



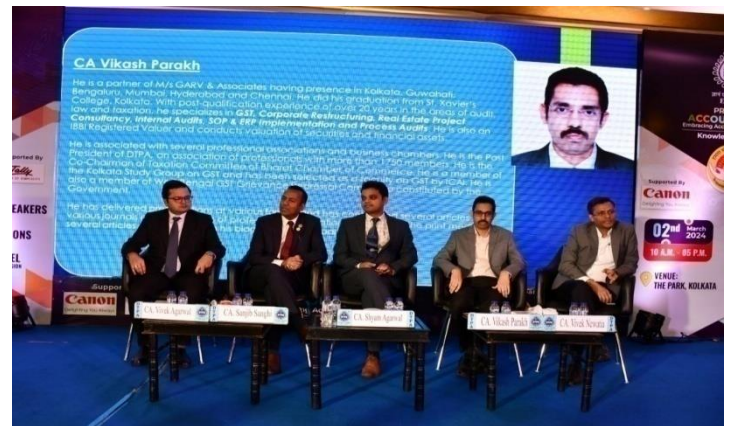
CA Rajesh Agrawal

President

08th April, 2024

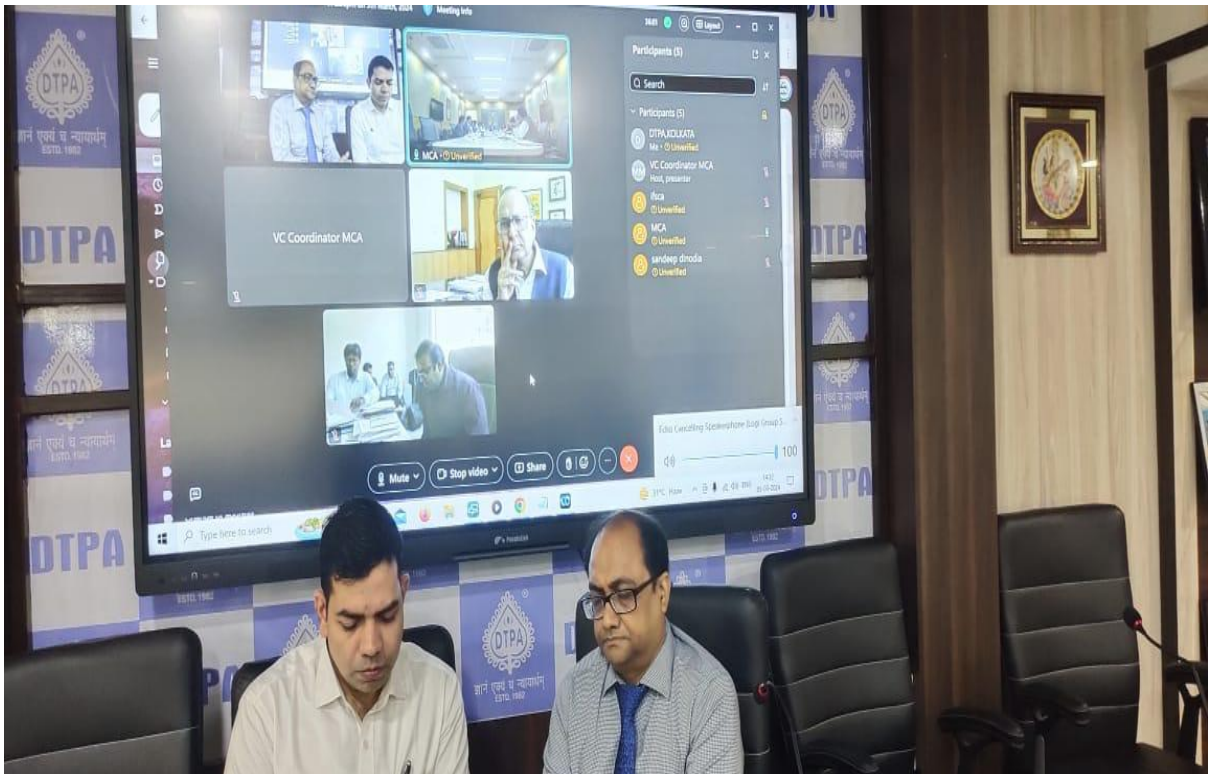
Glimpses of Accountech 3.0 at The Park Hotel On 2nd March, 2024







Virtual Meeting with Ministry of Corporate Affairs On 5th March 2024



Study Circle Meet- Interactive Session With Income Tax Department On TDS Issue – Notice u/s 263 at DTPA Conference Hall on 11th March 2024





Pilgrimage Tour to Maa Vaishno Devi from 15th – 17th March 2024



Felicitation of Shri Manoranjan Panigrahy, Pr. CCIT of West Bengal and Sikkim By DTPA Team at Aayakar Bhawan on 19th March 2024



Glimpses of SCM on "IRAC Norms & Audit Planning, Excel Utility of ICAI, Bank Audit Under CBS environment" At DTPA Conference hall on 21st March 2024



Glimpses of SCM on Audit Trail & Tally

Audit trail review - Recent update

At DTPA Conference hall on 22nd March 2024



Glimpses of DTPA Jointly with EIRC and All CA CPE Study Circles organised Holi Get-Together At Dhono Dhanyo Auditorium Alipore on 25th March, 2024





Forthcoming Programs of Direct Taxes Professionals' Association



ज्ञानं एवमं च न्यायार्थम्
Estd. 1982

Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

5 Days Income Tax Workshop

DTPA is really excited to introduce its maiden Workshop on Income Tax - Law and Procedures. We are sure this refresher course of 5 days will really help all professionals in strengthening their Direct Tax practice. It will also be of immense benefits to tax teams of the corporates.

Request all CA/CS/CMA/Advocates/other tax practitioners to kindly register at the earliest as the seats for physical attendance is on first come first serve basis.

Dates - 29th Apr, 30th Apr, 06th May, 07th May and 08th May, 24
Timing - 3:00 PM - 06:15 PM (Evening)

PARTICIPATION CHARGES:

RS. 2,500/- + GST PER PARTICIPANT
(FIRMS/ORGANISATIONS REGISTERING 5 OR MORE PARTICIPANTS-
RS. 2,200/- + GST PER PARTICIPANT)

Venue:

Physical- DTPA Conference Hall, 3, Govt. Place, IT Building, Kol - 01

Virtual - ZOOM

"HYBRID MODE"

Program Coordinator - Adv Arup Dasgupta (9831503290)

CA Rajesh Kr Agrawal
President

CA Sanjay Bajoria
Chairman,
Direct Taxes
Committee

CA Ashish Rustagi
Co-Chairman,
Direct Taxes
Committee

Adv Rites Goel
Co-Chairman,
Direct Taxes
Committee

CA Mahendra K Agarwal
Gen. Secretary

TENTATIVE PROGRAMME SCHEDULE

<u>Date</u>	<u>Session Name</u>
29th Apr, 2024 Monday	Issues in Selection of Heads of Income
	Clubbing of Income, MAT, Presumptive Taxation for Small Businesses
30th Apr, 2024 Tuesday	IT Returns, TDS/TCS Returns
	Old Regime/New Regime, AIS/TIS
06th May, 2024 Monday	Taxation of Shares & Securities, F&O
	Taxation of AIF/REIT
07th May, 2024 Tuesday	Taxation of NRIs and Foreign Income of Residents
	Real Estate Transactions
08th May, 2024 Wednesday	Carry Forward/ Set off of Losses
	Compliances on IT Portal



Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

Block your Calendar



Annual Conference 2024, Taj Bengal

CA Rajesh Kr Agrawal
President

CA Narendra Kr Goyal
Chairman

CA D S Agarwala
Co-Chairman

CA Mahendra K Agarwal
Gen. Secretary

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



DTPA CA CPE Study Circle of EIRC of ICAI
Ph No :- 033 2242-0638/4003-5451
Email :- dtpacasc@gmail.com

FULL DAY SEMINAR ON AUDIT DOCUMENTATION & REGULATORY ORDERS



SATURDAY
27 APR, 2024



10:00 AM -
17:30 PM



THE PARK
HOTEL

PARTICIPATION CHARGES:

RS. 1500/-

“6 CPE Hours”

FIRST TECHNICAL SESSION:

10:00 AM TO 1:15 PM



SPEAKER: CA VISHAL DOSHI (CCM)

**AUDIT DOCUMENTATION –
PLANNING AND PROCEDURE**



SPEAKER: CA. ANIL SHARMA (NEW DELHI)

**PREPARING FOR PEER REVIEW AND
OTHER REGULATORS' REVIEW**

LUNCH: 1:15 PM TO 2:00

SECOND TECHNICAL SESSION

2:00 PM TO 5:30 PM

1

**GROUP DISCUSSION ON SA 700
(AUDIT REPORTS)**

2

**PANEL DISCUSSION ON FINDINGS OF
NFRA AND FRRB (EMINENT PANELISTS)**



(EXPERT – CA N. JAYENDRAN, MUMBAI)

EXPERT'S VIEW ON GROUP DISCUSSION ON AUDIT REPORTS

**CA Rajesh Kr Agrawal
Convener**

**CA Shyam Agarwal
Deputy Convener**

Compliance Calendar for April, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	30th April, 2024	Mar-24	Due date for deposit of Tax deducted/collected for the month of March, 2024. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	30th April, 2024	Mar-24	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194I-B or 194M in the month of March, 2024	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th April, 2024	Mar-24	GSTR-7 (MONTHLY)	Summary of Tax Deducted at Source (TDS) and Deposited under GST Laws
	10th April, 2024	Mar-24	GSTR-8 (MONTHLY)	Summary of Tax Collected at Source (TCS) and Deposited by e-commerce operators under GST Laws
	11th April, 2024	Mar-24	GSTR-1 (MONTHLY)	GSTR 1 to be filed by Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return
	13th April, 2024	Mar-24	GSTR-1 (QRMP)	GSTR 1 to be filed by Taxpayers having an aggregate turnover of less than Rs. 1.50 Crores or opted to file Quarterly Return
	13th April, 2024	Mar-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th April, 2024	Mar-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	18th April, 2024	Jan'24 – Mar'24	CMP-08 (Quarterly)	Quarterly Challan-cum-Statement to be furnished by Composition taxpayers
	20th April, 2024	Mar-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th April, 2024	Mar-24	GSTR-3B (MONTHLY)	Summary return for taxpayers with turnover more than Rs. 5 Crore in the last FY or have not chosen the QRMP scheme
30th April, 2024	FY 2023-24	GSTR - 4	Composite taxpayers are required to furnish details regarding summary of outward supplies, Inward supplies, import of services and supplies attracting reverse charge in this form.	
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	10th April, 2024	Mar-24	Professional Tax (PT) on Salaries for March 2024	
	15th April, 2024	Mar-24	Provident Fund (PF) & ESI Returns and Payment for March 2024	

Compliance Calendar for May, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th May, 2024	Apr-24	Due date for deposit of Tax deducted/collected for the month of April, 2024. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	15th May, 2024	Jan'24 –Mar'24	Due date for Filing TCS Return in Form 27EQ for January 2024 - March 2024	
	30th May, 2024	Jan'24 –Mar'24	Issue of TCS certificates in Form 27D Jan to March 2024	
	31st May, 2024	Jan'24 –Mar'24	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194I-B or 194M in the month of Jan'24 - Mar'24	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th May, 2024	Apr-24	GSTR-7 (MONTHLY)	Summary of Tax Deducted at Source (TDS) and Deposited under GST Laws
	10th May, 2024	Apr-24	GSTR-8 (MONTHLY)	Summary of Tax Collected at Source (TCS) and Deposited by e-commerce operators under GST Laws
	11th May, 2024	Apr-24	GSTR-1 (MONTHLY)	Summary of Outward Supplies where turnover exceeds Rs. 5 Crore or have not chosen QRMP scheme for April 2024
	13th May, 2024	Apr-24	GSTR-1 (QRMP)	Uploading of outward supplies by quarterly return filers opting for the Invoice Furnishing Facility (IFF) under the QRMP Scheme for April 2024
	13th May, 2024	Apr-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th May, 2024	Apr-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th May, 2024	Apr-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services for April 2024
	20th May, 2024	Apr-24	GSTR-3B (MONTHLY)	Summary return for taxpayers with turnover more than Rs. 5 Crore in the last FY or have not chosen the QRMP scheme for Apr'24.
	25th May, 2024	Apr-24	PMT-06	Challan for depositing GST by taxpayers who have opted for the QRMP Scheme
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	10th May, 2024	Apr-24	Professional Tax (PT) on Salaries for April 2024	
	15th May, 2024	Apr-24	Provident Fund (PF) & ESI Returns and Payment for April 2024	

Feedback and suggestions are Invited:

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

Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Rajesh Kr. Agrawal

President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

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

The articles sent for publication in the newsletter should confirm to the following parameters:

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

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

Thanks and Regards,

CA. Rajesh Kr. Agrawal

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DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 CBDT notifies ITR verification and Acknowledgement forms applicable for AY 2024-25 - **Notification No. G.S.R. 233(E), Dated 27-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified Income-tax return verification and acknowledgment forms applicable for the Assessment Year 2024-25.

- 1.2 CBDT notifies 'DGIT (Systems), Delhi' as specified authority u/s 138 for furnishing info. To 'UP Planning Department' - **Order F. No. 225/196/2023-ITA.II, Dated 27-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified Director General of Income-tax (systems), Delhi as specified authority under section 138 for furnishing information to Principal Secretary, Planning Department, Government of Uttar Pradesh.

- 1.3 CBDT notifies 'National Mission for Clean Ganga' for Sec. 10(46) exemption - **Notification No. S.O. 1545(E), dated 26-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'National Mission for Clean Ganga' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961.

- 1.4 No change in interest rates of small saving schemes for first quarter of FY 2024-25: FinMin - **Notification F. No.1/4/2019-NS), Dated 08-03-2024**

Editorial Note : The Ministry of Finance has announced the small savings scheme rates for the first quarter of FY 2024-25. The interest rates for different small savings schemes during the first quarter of the Financial Year 2024-25, effective from April 1, 2024, to June 30, 2024, will remain unchanged from those set in the fourth quarter of FY 2023-24.

- 1.5 Govt. notifies list of payments made to IFSC units on which no TDS is required - **Notification No. S.O. 1135(E), Dated 07-03-2024**

Editorial Note : Exercising power contained under section 197A(1F) read with section 80LA(2), the Central Government has notified the list of payments on which no deduction of tax shall be made under the provisions of the Income-tax Act if payment is made by any 'payer' to a person being a Unit of International Financial Services Centre.

- 1.6 CBDT waives off late fees & interest for delayed filing of Form 26QE for period from July 2022 to Feb. 2023 - **Circular No. 04/2024, Dated 07-03-2024**

Editorial Note : The CBDT has decided to, ex-post facto, extend the due date of filing Form No. 26QE for specified persons who deducted tax under section 1945 but failed to file Form No. 26QE. The due date is extended to 30.05.2023 for the filing period from 01.07.2022 to 28.02.2023. Accordingly, fee levied under

section 234E and interest charged under section 201(1A) shall be waived.

- 1.7 CBDT allows filing of modified ITR for business reorganization from June 2016 to March 22 until June 30, 2024 - **Notification No. F.No. 225/5/2021-ITA-II, Dated 13-03-2024**

Editorial Note : The CBDT has allowed successor companies to file modified ITRs in cases where the order of business reorganisation of the competent authority was issued after 01.06.2016 but before 01.04.2022. The deadline to file modified ITR is 30.06.2024.

- 1.8 CBDT notifies certain entities for the purpose of section 35 relief - **Notification No. S.O. 1324(E), S.O. 1325(E) & S.O. 1326(E), Dated 13-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified National Forensic Sciences University, Sardar Vallabhbhai National Institute of Technol

- 1.9 CBDT issued a clarificatory circular on FA 2023 amendments pertaining to inter-charity donations - **Circular No. 3/2024, Dated 06-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) issued a circular clarifying that only 85% of eligible inter-charity donations shall be deemed as applied for charitable/religious activities, with the remaining 15% exempt from specified investment requirements under Section 11(5) of the Act.

- 1.10 CBDT amends forms for filing tax audit and tonnage tax application - **Notification No. G.S.R. 155(E), Dated 05-06-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has amended the tax audit form (Form 3CD & Form No. 3CEB) and Form for filing of tonnage tax application (Form 65). In Form 3CD, changes include the addition of clauses related to Section 115BAE tax regime, presumptive taxation u/s 44ADA, etc. Form 65 is amended, requiring certification for IFSC unit status along with disclosure of availed deductions and cessation dates.

- 1.11 CBDT permits trusts & institutions to submit AY 2023-24 audit reports via Form 10B/10BB by March 31, 2024 - **Circular No. 2/2024, Dated 05-03-2024**

Editorial Note : The Central Board of Direct (CBDT) has authorized trusts and institutions that have submitted audit reports by October 31, 2023, using Form No. 10B when Form No. 10BB was required, and vice versa, to file their audit reports for the assessment year 2023-24 by March 31, 2024, under clause (b) of the tenth proviso of section 10(23C) and section 12A(1)(b)(ii), using the appropriate Form No. 10B or 10BB.

- 1.12 CBDT releases guidelines for priority disposal of appeals - **Notification F.No. 279/Misc./M-102/2021-ITJ, Dated 07-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has released guidelines for priority/out of turn disposal of pending appeals at the level of CstT(A/AU) and Add./Jt.CIT(Apeals).

- 1.13 CBDT launches e-campaign to asking taxpayers to accurately pay advance tax based on specified financial transactions - **Press Release, Dated 10-03-2024**

Editorial Note : The Income Tax Department has identified individuals and entities whose advance tax payments for the Financial Year 2023-24 do not match their financial transactions. In response, the Dept. is launching an e-campaign to notify these individuals/entities via email and SMS, urging them to accurately calculate and pay their advance tax by March 15, 2024.

- 1.14 CBDT notifies ITR-7 applicable for AY 2024-25 - **Notification No. G.S.R 153(E), Dated 01-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified the Income-tax Return (ITR) form 7 applicable for filing of return for the Assessment Year 2024-25. The Board has already notified ITR forms 1 to 6 applicable for AY 2024-25.

- 1.15 CBDT extends deadline to process ITRs filed for AY 2021-22 with refund claim to April 30, 2024 - **Notification F. No. 22S/132/2023/ITA-II, Dated 01-03-2024**

Editorial Note : Due to technical issues or other reasons not attributable to assessee, many validly filed returns for AY 2021-22 couldn't be processed, delaying sending processing intimations within the prescribed timeframe. Thus, the CBDT directed that all validly filed returns for Assessment Years 2021-22 bearing refund claims can be processed until 30-04-2024.

- 1.16 CBDT notifies 'Uttar Pradesh RERA' & 'Karnataka Urban Water Supply and Drainage Board' for Sec. 10(46) exemption - **Notification No. S.O. 999(E) & S.O. 1000(E), Dated 01-02-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Uttar Pradesh Real Estate Regulatory Authority' and 'Karnataka Urban Water Supply and Drainage Board' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961.

- 1.17 Tax dept. urges taxpayers to file updated ITRs for specified financial transaction mismatches for AY 2021-22 - **Press Release, Dated 04-03-2024**

Editorial Note : In certain Income Tax Returns for A.Y. 2021-22, mismatches have been found between the filed information and specified financial transactions data available with the Department. The Department urges taxpayers to check their AIS on the e-filing portal and submit updated ITRs if necessary

- 1.18 CBDT notifies 'Press Trust of India' as a news agency for purposes of sec. 10(22B) - **Notification No. S.O. 1413(E), Dated 15-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified "The Press Trust of India Limited, New Delhi" for the purpose of the Section 10(22B) for two assessment years 2022-2023 to 2023-2024.

- 1.19 Income Tax offices shall remain open on 29th, 30th and 31st March 2024: CBDT - **Order F. No. 225/53/2024-ITA-II, Dated 18-03-2024**

Editorial Note : To facilitate the completion of pending departmental work, the Central Board of Direct Taxes (CBDT) has issued directions that all the Income Tax offices throughout India shall remain open on 29th, 30th and 31st March 2024.

- 1.20 CBDT expands scope of filing of appeals/SLPs by the Income-tax Department - **Circular no. 5/2024, dated 15-03-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has expanded the scope for filing appeals by the Department before the Income Tax Appellate Tribunal, High Courts and SLPs/appeals before the Supreme Court. The Board has prescribed scenarios wherein the notified monetary limits are applicable for filing of appeals/SLPs

- 1.21 Govt. notifies reduced tax rates on royalty and FTS with Spain by invoking MFN clause - **Notification No. 33/2024, Dated 19-03-2024**

Editorial Note : The Indian Government has officially announced the lower tax rates on royalties and fees for technical services (FTS) in its Double Taxation Avoidance Agreement (DTAA) with Spain.

- 1.22 CBDT issues corrigendum to include sec. 43B(h) disallowance under clause 22 of Form 3CD - **Notification No. G.S.R. NO. 223(E), Dated 19-03-2024**

Editorial Note : The CBDT notified changes to the Form 3CD vide Notification No. 27/2024 /F. No. 370142/3/2024-TPL, dated 05-03-2024. The changes duly include disclosure of section 43B(h) disallowance under clause 26. However, Clause 22, pertaining to interest restrictions under the MSME Development Act, was not amended. Now, said clause is amended to include disclosure of the amount disallowed under section 43B(h).

- 1.23 Direct Tax collections for FY 2023-24 as of 17-03-2024 rose 19.88% compared to preceding FY: CBDT - **Press Release, Dated 19-03-2024**

Editorial Note : The provisional figures of Direct Tax collections for the Financial Year 2023-24 (as on 17.03.2024) show that Net collections are at Rs. 18,90,259 crore, compared to Rs. 15,76,776 crore in the corresponding period of the preceding Financial Year (i.e. FY 2022-23), representing an increase of 19.88%.

2. SUPREME COURT

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

2.1 SLP dismissed against order of High Court that where AO rejected assessee's revised return claiming exemption under section 10(38) for long-term capital gains and also made additions under sections 68 and 69 based on statements from 'entry operators', since it was assessee's right to correct mistakes by filing revised return and moreover, assessee was denied opportunity to cross examine entry providers, order of AO was to be set aside - **Principal Commissioner of Income-tax. v. Kuntala Mohapatra - [2024] 160 taxmann.com 608 (SC)**

2.2 Burden of proof : SLP dismissed against order of High Court that where assessee provided all details of purchase and sales of shares to AO along with **contract** notes for purchase and sale, demat account and bank statement and, furthermore no incriminating materials were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) merely by relying on statements of accommodation entry providers which were recorded much before date of survey - **Principal Commissioner of Income-tax v. Dipansu Mohapatra - [2024] 160 taxmann.com 289 (SC)**

SECTION 13 OF THE PREVENTION OF CORRUPTION ACT, 1988 - CRIMINAL MISCONDUCT BY A PUBLIC SERVANT

2.3 Favourable outcome in accused's IT appeal in ITAT cannot be considered as conclusive proof to discharge him in corruption case PC Act, 1988 - **Puneet Sabharwal v. CBI - [2024] 160 taxmann.com 547 (SC)**

SECTION 13A OF THE INCOME-TAX ACT, 1961 - POLITICAL PARTIES - INCOME OF

2.4 Electoral Bonds : Where SBI was directed to submit details of Electoral Bonds purchased by contributors and redeemed by political parties between 12-4-2019 till 15-2-2024 and SBI filed a miscellaneous application seeking extension of time until 30-6-2024, since details of Electoral Bonds which had been directed to be disclosed were readily available, SBI was not justified in seeking extension of time and was to be directed to disclose details by close of business hours on 12-3-2024 - **State Bank of India v. Association for Democratic Reforms - [2024] 160 taxmann.com 327 (SC)**

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

2.5 Review petition dismissed against order of Supreme Court wherein it was held that entire/whole amount of difference between Statutory Minimum Price (SMP) and

Additional Price (SAP) fixed for sugarcane cannot be said to be an appropriation of profit, only component of profit worked out while determining final price can be said to be an appropriation of profit and rest of amount is to be considered as deductible expenditure - **Sharad Sahakari Sakhar Karkhana Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 88 (SC)**

2.6 Interest : SLP dismissed against order of High Court that where assessee-company had not commenced business of development of SEZ/Real estate and merely obtained loan from holding company which was utilized for investing in shares of subsidiary company, interest paid on loan could not be treated as expenditure incurred for purpose of business - **Zuari Management Services Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 292 (SC)**

SECTION 43B OF THE INCOME TAX ACT, 1961 - BUSINESS DISALLOWANCE - CERTAIN DEDUCTIONS TO BE ALLOWED ONLY ON ACTUAL PAYMENT - EMPLOYER'S/EMPLOYEE'S CONTRIBUTION

2.7 MLA/MP is not immune from prosecution for bribes taken in connection with vote/speech in Legislature/ in Parliament - **Sita Soren v. Union of India - [2024] 160 taxmann.com 103 (SC)**

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

2.8 Loans : SLP dismissed against order of High Court that where assessee had received certain amount from a firm as partner's capital and he had utilised said amount for repayment of loan, since account reflected that there was an element of income in transaction, question of escapement of income chargeable to tax did not arise and reassessment proceedings initiated against assessee beyond four years on ground that said amount was unexplained was to be set aside - **Income-tax Officer v. Dhirajlal Gandhal Mehta - [2024] 160 taxmann.com 314 (SC)**

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

2.9 Power generation : SLP dismissed against order of High Court that where assessee was a Government of Odisha enterprise solely engaged in business of generation of power and power generated by assessee's plants was sold exclusively to GRIDCO and assessee had no other activity except power generation and interest income was earned by it from advances given to its employees and further, payment for electricity supplied was sought to be made up by GRIDCO by issuing bonds on which assessee earned interest, therefore, interest income had a direct nexus with essential business activity of assessee and revenue was in error in disallowing deduction under section 80-IA - **Assistant Commissioner of Income-tax, Circle 2(2) v. Orissa Power Generation Corporation Ltd. - [2024] 160 taxmann.com 507 (SC)**

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

2.10 Adjustments - Interest : SLP dismissed against order of HC that where assessee received certain amount on account of Interest on receivables wherein credit agreed between assessee and it AEs was 30 days, extra credit allowed could be considered as an independent international transaction and same be compared with internal CUP being average cost of total funds available to assessee - **Principal Comm. of Income-tax v. AMD India (P.) Ltd. - [2024] 160 taxmann.com 355 (SC)**

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

2.11 Illustrations : SLP dismissed against order of High Court that where assessee, a computer and peripherals manufacturer, supplied products to distributors and Assessing Officer deemed payments to distributors as 'commission', since payment from distributor to assessee had no link with further sale made by distributor, said payment could not be treated as commission or brokerage as described in Explanation to section 194H - **Commissioner of Income-tax v. Acer India (P.) Ltd. - [2024] 160 taxmann.com 661 (SC)**

2.12 Illustrations: Where assessee entered into agreements with distributors/franchisees for sale of their prepaid products, however, contractual obligations of distributors/franchisees did not reflect a fiduciary character of relationship, or business being done on principal's account, they would not be under a legal obligation to deduct tax at source on income/profit component in payments received by distributors/franchisees from third parties/customers, or while selling/transferring pre-paid coupons or starter-kits to distributors - **Bharti Cellular Ltd. v. Assistant Commissioner of Income-tax, Circle 57 - [2024] 160 taxmann.com 12 (SC)**

**SECTION 197 OF THE INCOME-TAX ACT, 1961 -
DEDUCTION OF TAX AT SOURCE - CERTIFICATE
FOR DEDUCTION AT LOWER RATE**

2.13 Opportunity of hearing : Where assessee filed writ petition challenging rejection of its application under section 197 and High Court disposed of writ petition on basis of revenue's undertaking that order of rejection to be withdrawn and assessee's application would be reconsidered, since certificates under section 197 had already been given to assessee, there was no reason to interfere with impugned order passed by High Court and, accordingly, SLP was to be dismissed - **Deputy Commissioner of Income-tax (TDS) v. Sodexo SVC India (P.) Ltd. - [2024] 160 taxmann.com 469 (SC)**

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

2.14 SC cannot, under Article 142, issue blanket directions to HCs to decide all cases in which an interim stay has been granted on a day-to-day basis within a time-frame - High Court Bar Association v. State of U.P. - [2024] 160 taxmann.com 32 (SC)

**SECTION 260A OF THE INCOME-TAX ACT, 1961 - HIGH
COURTS - APPEAL TO**

2.15 Condonation of delay : SLP dismissed against order of High Court that where revenue filed notices of motion seeking condonation of delay of 286 days in seeking to set aside self-operating order passed by Prothonotary & Senior Master rejecting revenue's appeal for non-removal of office objections, since affidavits-in-support were bereft of any particulars and there was no explanation for delay, notices of motion were to be dismissed - **Principal Commissioner of Income-tax v. Akruiti City Ltd. - [2024] 160 taxmann.com 343 (SC)**

**SECTION 277 OF THE INCOME-TAX ACT, 1961 -
OFFENCES AND PROSECUTION - FALSE STATEMENT IN
VERIFICATION, ETC.**

2.16 Under reporting of income : SLP dismissed against order of High Court that where prosecution proceedings under section 277 were launched against assessee two years prior to date of filing application before Settlement Commission under section 245C and moreover factum of pending prosecution was not brought to notice of Settlement Commission, provisions under section 245-I was not applicable and, thus, proceedings under section 277 could not be quashed - **S.S. Hyderabad Biryani (P.) Ltd. v. Deputy Director of Income-tax (Investigation) - [2024] 160 taxmann.com 418 (SC)**

3. HIGH COURT

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

- 3.1 Illustrations :** Where assessee-company purchased 37 properties by certain funds which were generated through increase in share capital by issuance of shares at premium by alleged shell companies, transactions in question were arrangements in respect of properties where person providing consideration was fictitious and hence, transactions fell under section 2(9)(D) - **Krishna Sudama Marketing (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 724 (Calcutta)**

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

- 3.2 Sales tax exemption :** Where assessee availed exemption from payment of tax under exemption certificate issued under section 4A of U.P. Trade Tax Act, 1948 on turnover of sales and claimed amount representing tax exemption component as capital receipt, since section 4A clearly indicated that exemption from tax on turnover of sales was not a subsidy granted by Government, aforesaid amount of tax component was a revenue receipt in hands of assessee - **Commissioner of Income-tax v. Birla Corporation Ltd. - [2024] 159 taxmann.com 632 (Calcutta)**

- 3.3 Reassessment :** Where a reopening notice was issued upon assessee on ground that an information was received that assessee had profit shifted out of certain amount and losses shifted in of certain amount resulting in net reduction in income of certain amount through Client Code Modification, minor discrepancies in language employed by revenue and as it stood reflected in reasons provided to assessee and that which existed on record of revenue would clearly not justify for interference with impugned notice, thus, impugned reopening of assessment was justified - **Seema Gupta v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 574 (Delhi)**

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

- 3.4 Permanent establishment - Fixed place PE :** Where Indian company only renders support services which enable assessee in turn to render services to their clients abroad, this outsourcing of work to India would not give rise to a fixed place PE - **Commissioner of Income-tax, (IT)-1 v. ESPN Star Sports Mauritius S.N. CET Compagnie - [2024] 160 taxmann.com 389 (Delhi)**

- 3.5 Royalties /Fees for technical services-Others :** Where assessee had entered into Cost Contribution Agreement (CCA) with SIPCL for provision of General Business Support Services (BSS) and AAR ruled that

nature of General BSS was of consultancy services and thus it was technical service within meaning of article 13, since list of services in General BSS showed that it related to managerial services and not involving anything of a technical nature, services availed could not be said to be technical service and article 13 was wholly inapplicable - **Shell India Markets (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 175 (Bombay)**

- 3.6 Royalties/Fee for technical services - Software services :** Where assessee, an Irish company, entered into a reseller agreement with an Indian company for sale of its products in India and made application under section 197 to receive payments thereunder with Nil or low TDS, since technical assistance and training provided by assessee to its Indian counterpart did not bear characteristics of conferral of specialised or exclusive technical service, order denying Nil or lower TDS certificate to assessee was to be quashed and set aside - **SFDC Ireland Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 328 (Delhi)**

- 3.7 Business Profits - Right to tax :** Subscription fee received by assessee, a tax resident of USA, for providing access to data base pertaining to legal and law related information was in nature of business profits which could not be brought to tax in India in absence of PE - **Commissioner of Income-tax, (IT)-3 v. Relx Inc - [2024] 160 taxmann.com 109 (Delhi)**

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

- 3.8 Exemption of income :** Mere generation of surplus from year to year could not be a basis for rejection of application under section 10(23C) (vi) if it was used for education purposes - Chandigarh **Manav Vikas Trust v. Chief Commissioner of Income-tax - [2024] 160 taxmann.com 403 (Rajasthan)**

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

- 3.9** Where AO rejected assessee's revised return claiming exemption under section 10(38) for long-term capital gains and also made additions under sections 68 and 69 based on statements from 'entry operators', since it was assessee's right to correct mistakes by filing revised return and moreover, assessee was denied opportunity to cross examine entry providers, order of AO was to be set aside - **Principal Commissioner of Income-tax-1 v. Kuntala Mohapatra - [2024] 160 taxmann.com 567 (Orissa)**

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

- 3.10 Reassessment :** Where AO issued reopening notice on ground that assessee-charitable trust was engaged in commercial activity, since there was not even an allegation that uncontrolled discretion or authority to open or maintain commercial institution was in object of assessee and there was not even a finding to that effect, merely because there were certain receipts received by assessee while conducting

its charitable activities, those receipts could not be treated to be income from commercial activities and thus, reopening could not be sustained - ***Fine Arts Society v. Deputy Director of Income-tax (Exemptions) 1-2 - [2024] 159 taxmann.com 776 (Bombay)***

SECTION 13A OF THE INCOME-TAX ACT, 1961 - POLITICAL PARTIES - INCOME OF

3.11 Exemption : Order of Tribunal rejecting stay application preferred by assessee a political party seeking stay on recovery of demand outstanding could not have been interfered with as continued adjournments were sought by assessee on different dates and it had turned down its offer for appeal itself being put down for final hearing, however, an amount of Rs. 65.94 crores i.e. 48 per cent of outstanding demand having been recovered in interregnum by encashing bank drafts would merit consideration by Tribunal in case assessee chooses to move a fresh application for stay - ***Indian National Congress v. Deputy Commissioner of Income-tax, Central 19 - [2024] 160 taxmann.com 359 (Delhi)***

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

3.12 Rule 8D : Where Tribunal remanded matter back to Assessing Officer for disallowance of expenses under section 14A, since Tribunal did not consider decision of a coordinate Bench in assessee's own case for earlier assessment year where in on similar facts of disallowance under section 14A, Tribunal had allowed interest expenditure to assessee and only referred to and relied upon submissions made by assessee to decide issue for disallowance under section 14A, impugned order of Tribunal was to be set aside and matter was to be remanded to Tribunal to decide issue afresh - ***Gujarat State Fertilizers and Chemicals Ltd. v. Deputy Commissioner of Income-tax, Central Circle 1(1)(1) - [2024] 160 taxmann.com 649 (Gujarat)***

3.13 Reassessment : Where Assessing Officer issued on assessee a notice seeking to reopen assessment on ground that there was short disallowance while computing disallowance under section 14A and without disposing of objection raised by assessee directly passed assessment order, since Assessing officer did not dispose of objections raised by assessee by passing a speaking order, impugned assessment order deserved to be set aside - ***Lucas TVS Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 228 (Madras)***

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

3.14 Provisional Attachment Order : Where petitioners challenged show cause notice and provisional attachment order on ground that alleged benami

transaction had taken place prior to 1-11-2016, date when Prohibition of Benami Property Transactions Act, 1988 stood amended, since show cause notice was a detailed notice containing several factual basis, it was within province of adjudicating authority to decide whether property was benami in nature and whether petitioners were liable for any action under Act of 1988 - ***Santosh Bhadoriya v. Union of India - [2024] 160 taxmann.com 511 (Madhya Pradesh)***

SECTION 28(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS LOSS - ALLOWABILITY OF

3.15 Where Assessing Officer disallowed claim of business loss made by assessee only on basis that assessee had passed general entries to book losses, since Tribunal noticed vouchers relating to transactions filed by assessee and also that transactions were by way of account payee cheque only, impugned disallowance made by assessee was unjustified - ***CCIT /Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - [2024] 160 taxmann.com 560 (Bombay)***

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

3.16 Interest : Where Assessing Officer disallowed interest paid by assessee to banks and others on ground that assessee diverted interest bearing funds for giving interest free advances, since assessee had huge interest free sundry creditors balance with him, impugned interest expenditure was to be allowed - ***CCIT (OSD)/Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Dalal - [2024] 160 taxmann.com 645 (Bombay)***

3.17 Loans to subsidiary, in case of : Where assessee company was charging lower rate of interest on loan extended to its wholly owned subsidiary and no addition had been made on that account in any of earlier years assessments, on same facts, Assessing Officer was not justified in making addition on account of lower rate of interest charged from AE - ***Principal Commissioner of Income-tax v. Uniparts India Ltd. - [2024] 160 taxmann.com 92 (Delhi)***

SECTION 36(1)(vii-a) OF THE INCOME-TAX ACT, 1961 - BAD DEBTS, IN CASE OF BANKS

3.18 Non-performing assets : Where Assessing Officer during assessment proceeding issued a questionnaire to assessee regarding deduction on account of provision for non-performing assets and loss on interest rate swap and same was replied by assessee, it was not a case where no enquiry whatsoever had been conducted by Assessing Officer with respect to claims under consideration and, thus, revision order passed under section 263 was not sustainable - ***Principal Commissioner of Income-tax v. Clix Finance India (P.) Ltd. - [2024] 160 taxmann.com 357 (Delhi)***

3.19 Reassessment : Where AO issued a reopening notice on ground that assessee had claimed provision for bad and doubtful debts on non-rural advances which was not in accordance with law, since during original assessment proceedings AO had called upon assessee to give details of

outstanding balance in provision for bad and doubtful debts created under section 36(1)(vii) and also raised a specific query in respect of rural branches separately and called for proof of such rural branches, reopening of assessment was merely on basis of change of opinion and reopening was to be quashed - **Yes Bank Ltd. v. Assistant Commissioner of Income-tax, Circle 8(3)(2) - [2024] 160 taxmann.com 329 (Bombay)**

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

3.20 Liquidated damages : Where assessee had entered into written contracts with parties in relation to liquidated damages on account of delay in deliverables and assessee had made provision for liquidated damages based on period of delay, since assessee had reversed provision for liquidated damages in year in which clients waived said liquidated damages and write back amount had been offered to tax by assessee, disallowance of provision of liquidated damages was to be deleted - **Principal Commissioner of Income-tax-4 v. Humboldt Wedag India (P.) Ltd. - [2024] 160 taxmann.com 605 (Delhi)**

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

3.21 Scope of provision : Where assessee, a government contractor, made cash payments exceeding Rs. 20,000 on a single day for material purchased since assessee had not shown as to whether supplies were sourced from different persons and had not produced any supporting bills or vouchers, disallowance made by Assessing Officer of 20 per cent of cash payments was in accordance with section 40A(3) - **Mahendra Prasad Singh v. Commissioner of Income-tax - [2024] 160 taxmann.com 233 (Patna)**

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

3.22 Swachh Bharat Cess : Where assessee claimed deduction in respect of amount deposited as Swachh Bharat Cess, however, Assessing Officer disallowed said claim on ground that assessee had failed to demonstrate that amount was actually paid during year in terms of section 43B(a), since Tribunal for first time proceeded to advert to section 43B(a) and upheld disallowance, matter was to be remanded to Assessing Officer for considering claim of assessee afresh - **Matrix Cellular International Services (P.) Ltd. v. Joint Commissioner of Income-tax, Special Range-6 - [2024] 160 taxmann.com 127 (Delhi)**

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

3.23 Business profits : Where assessee, a non-resident, had entered into a contract with an Indian company for supply/lease/hire of rigs to be used for drilling and exploration of mineral oils, amount received by assessee was fully covered under provisions of section 44BB and taxable on gross basis at rate of 10 per cent - **Commissioner of Income-tax, IT-3 v. Umw Sher (L) Ltd. - [2024] 160 taxmann.com 695 (Delhi)**

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

3.24 Reassessment : Where Assessing Officer issued a notice under section 148 seeking to reopen assessment being of view that there was no disclosure of LTCG on sale of shares and that assessee would have also paid brokerage/commission which had escaped assessment under section 147, since assessee had disclosed LTCG on sale of shares, purchase of equity shares of SAL, sale of those shares and gain in computation of income filed by assessee, reopening was merely on basis of change of opinion and, therefore, impugned notice issued under section 148 was unsustainable - **Gaurang Manhar Gandhi v. Assistant Commissioner of Income-tax-3(2)(1) - [2024] 160 taxmann.com 647 (Bombay)**

SECTION 47(iii) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSACTIONS NOT REGARDED AS TRANSFER

3.25 Gift : Where assessee-company gifted shares to NCPL, such transaction would be exempt from capital gain - **Jai Trust v. Union of India - [2024] 160 taxmann.com 690 (Bombay)**

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

3.26 Sale consideration : Where AO issued reopening notice and made addition to income of assessee on account of purchase of land from undisclosed sources, since entire foundation of reopening of assessment and addition to income was laid on basis of photocopy of an alleged agreement to sell property, which was not supported by any other evidence, impugned addition was unjustified and was to be deleted - **Principal Commissioner of Income-tax v. Smt. Rashmi Rajiv Mehta - [2024] 160 taxmann.com 723 (Delhi)**

3.27 Share application money : Where Assessing Officer made additions under section 68 in respect of cash credit entries without properly examining ledger account of assessee and major portion of credit was repaid during year, said additions were to be deleted - **CCIT (OSD)/Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Dalal - [2024] 160 taxmann.com 645 (Bombay)**

3.28 Bank deposits : Where assessee-company in objections to reassessment submitted that cash deposits of Rs. 1.87 crores were made in bank account and said deposits were offered to tax but Assessing Officer without examining these details recorded reasons to believe that cash deposits of Rs. 3.73 crores had resulted in escapement of income, since entire basis of reopening was on information and there was no

independent application of mind by Assessing Officer while recording reasons, reopening was unjustified - **BIC Cello (India) (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-5(2) - [2024] 160 taxmann.com 474 (Bombay)**

3.29 Fictitious loss : Where pursuant to a search and seizure operation in case of a group company, assessee received a notice issued under section 148A(b), in which it was alleged that as per information uploaded on Insite Porta, assessee had carried out transactions in penny scrip and booked fictitious losses, however, assessee gave evidence that information was incorrect and in fact it had made a profit, since Assessing Officer had not reflected on information submitted by assessee and passed orders, impugned order under section 148A(d) and notice under section 148 were to be quashed and set aside - **Banas Finance Ltd. v. Assistant Commissioner of Income-tax, Central Circle-8(3) - [2024] 160 taxmann.com 559 (Bombay)**

3.30 Where AO holding that assessee had mixed up all transactions of sale and purchase of shares in 'Patwat Sheet', a summary of all purchases and corresponding sales transacted in a month disallowed losses on these transactions of sale and purchase of shares, since AO had not made any addition of identical nature in earlier years or subsequent year and operation of assessee were identical in nature for all years, same was to be deleted during year as well - **CCIT /Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - [2024] 160 taxmann.com 560 (Bombay)**

3.31 Where AO made addition on account of a disparity/mismatch in stock of shares as statement of closing stock did not tally with list of closing stock of shares as furnished by assessee, since assessee had pointed out that AO had treated 'renunciation of right' as 'sale of shares' and that Tribunal held that there was nothing on record to contradict explanation of assessee and as per market mechanism, assessee was entitled to sell his rights in favour of another person instead of applying for shares, impugned addition was rightly deleted by Tribunal - **CCIT /Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - [2024] 160 taxmann.com 560 (Bombay)**

3.32 Where assessee received loan from a creditor, since all transactions were routed through bank accounts, mere fact that creditor had not charged interest on outstanding loan did not justify holding transactions to be bogus, thus, impugned addition made on account of said loan amount was to be deleted - **CCIT /Principal Commissioner of Income-tax, Central-2 v. Bhupendra Champaklal Delal - [2024] 160 taxmann.com 560 (Bombay)**

3.33 Loan : Where Assessing Officer issued reopening notice on ground that he had received information from

DG GST that a company 'N' was involved in providing bogus accommodation entries and assessee was one of beneficiary entities who made transactions with 'N', since assessee has disclosed in Form No.3CD that it had taken loan from 'N' along with N's PAN number and balance sheet of assessee also indicates Long Term Borrowings against 'N', there being no failure on part of assessee to truly and fully disclose all material facts necessary for its assessment, impugned notice issued after expiry of four years should be quashed and set aside - **Feng Shui Realtors (P.) Ltd. v. Income-tax Officer - [2024] 160 taxmann.com 401 (Bombay)**

3.34 Accommodation entries: Once source of cash deposit was disclosed and in respect of such cash deposit assessee was treated as accommodation entry provider and, accordingly, brokerage/commission on aforesaid cash deposit was determined as income of assessee for providing service in form of accommodation entry, addition made by Assessing Officer under section 68 was unsustainable - **Commissioner of Income-tax, Central-I v. Pramod Sharma - [2024] 160 taxmann.com 44 (Calcutta)**

3.35 Reassessment : Where a reopening notice was issued for reason that an information was received that assessee had taken accommodation entries of certain amount in form of unsecured loan from an entity, since materials, which had been disclosed, could neither be said to be patently false, much less irrelevant or extraneous to relevant assessment year and transactions made by assessee and also it was admitted that heavy transaction had been made between assessee and said entity, impugned reopening was justified - **Mahaveer Jain v. Income Tax Officer, Ward-1(2) - [2024] 160 taxmann.com 628 (Rajasthan)**

3.36 Bank deposits : Where assessee was not maintaining any books of account and even assuming that passbook could not be treated as part of Books of Accounts, admittedly, source of income in case of assessee had not been proved; inasmuch as, assessee had failed to prove identity/creditworthiness/genuineness of creditors, who had given cash loan as claimed by them, therefore, impugned addition was justified - **Rajmeet Sing v. Income Tax Officer, Ward-2(3) - [2024] 160 taxmann.com 83 (Jharkhand)**

3.37 Bank deposits : Where assessee had failed to prove identity /creditworthiness/ genuineness of creditors, who had given cash loan as claimed by them, impugned addition was justified - **Rajmeet Sing v. Income Tax Officer, Ward-2(3) - [2024] 160 taxmann.com 83 (Jharkhand)**

3.38 Reassessment : Where during original assessment proceedings, Assessing Officer had raised query on assessee-company regarding large share premium received during year and assessee had replied to it, reopening of assessment on ground that there was vast difference in valuation adopted by assessee and performance and valuations had been made with projections that were arbitrary figures merely to suit value of shares adopted at time of transfer to avoid taxation under section 56(2)(viib) of Act was unjustified - **GRI Towers India (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 215 (Bombay)**

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

3.39 Illustrations: Where AO issued to assessee a reopening notice on ground that during search and seizure action in case of a builder firm, it was found that assessee made on-money payment for purchase of a flat, since there was no material on record to indicate that assessee had paid entire amount of flat in cash, impugned reopening notice was unjustified - *Sumathi Janardhana Kurup v. Income tax Officer, Ward-28(3)(1)* - [2024] 160 taxmann.com 40 (Bombay)

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

3.40 Share Transactions : Where Assessing Officer, upon receiving CIB information indicating significant share transactions by assessee, issued a notice under section 148 to reopen assessment, since reasons recorded showed that AO only wanted to verify more details regarding share transaction, that could not substitute for reasons and would not justify reopening of assessments - *Chandni J. Ahuja v. Union of India* - [2024] 160 taxmann.com 404 (Bombay)

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

3.41 Opening stock: Where profit declared by assessee for earlier assessment year included closing stock of certain amount but no set-off was provided by treating same at nil value, in subsequent assessment year closing stock was required to be treated as opening stock and could not have been disallowed - *Principal Commissioner of Income-tax-3 v. Asian Agency* - [2024] 160 taxmann.com 248 (Gujarat)

3.42 Where Assessing Officer, on noting that assessee was engaged in bogus purchases, disallowed entire purchases, considering it unexplained expenditure under section 69C, however, Commissioner (Appeals) on finding genuineness in payments, restricted disallowance to 8% of total purchases, order of Commissioner (Appeals) needed no interference - *Principal Commissioner of Income-tax-32 v. Hitesh Mody (HUF)* - [2024] 160 taxmann.com 110 (Bombay)

3.43 Where documents seized during a search at assessee's residence indicated transactions that assessee claimed were related to real estate commissions, however, since assessee couldn't explain discrepancies with details provided by a developer company, AO rightly treated those transactions as unexplained expenditures under section 69C - *Isidore Fernandes v. Assistant Commissioner of Income-tax, Central Circle, Panaji* - [2024] 160 taxmann.com 216 (Bombay)

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

3.44 Housing projects: Where deduction claimed by assessee under section 80-IB was subject matter of consideration by AO during original assessment proceedings, reopening of assessment to deny deduction claimed under section 80-IB(10) merely on basis of change of opinion of Assessing Officer from that held earlier during course of assessment proceedings would not constitute justification and/or reason to believe that income chargeable to tax had escaped assessment - *Mahavir Enterprises v. Income-tax Officer, Ward 28(2)(2)* - [2024] 160 taxmann.com 38 (Bombay)

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

3.45 Adjustments - Others : Where pursuant to remand order of Tribunal, Assessing Officer failed to frame a final assessment order in case of assessee, there would be no justification for revenue to retain amounts which had been deposited by assessee as a pre-condition to grant of stay on demand and interim protection - *Navisite India (P.) Ltd. v. Commissioner of Income-tax-6* - [2024] 160 taxmann.com 75 (Delhi)

3.46 Comparability factors - Brand value : Selected company having high brand value and profitability as compared to assessee-company, was to be excluded from list of comparables - *Principal Commissioner of Income-tax v. INTEGRION India (P.) Ltd.* - [2024] 160 taxmann.com 453 (Delhi)

3.47 Methods for determination of - CUP Method : Where Tribunal while disposing of assessee's appeal did not deal with issues raised by assessee such as terminal value, comparing actual figures with projections, availability of CUP method, etc. for determination of value of bundle of sports rights, since non-consideration of basic submissions made at hearing was clearly a mistake apparent from record, Tribunal ought to have allowed rectification application - *Star India (P.) Ltd. v. Income-tax Appellate Tribunal* - [2024] 160 taxmann.com 244 (Bombay)

3.48 Adjustments- Aggregation of transactions : Where assessee-company aggregated transaction of payment of royalty and payment of technical fee to its AE but TPO had made upward adjustments in respect of royalty and fee for technical services, since said adjustments during relevant year were deleted by DRP and in subsequent years also said adjustments were deleted by DRP, bearing in mind consistent approach, there was no justification to interfere with order of Tribunal deleting said adjustment - *Principipl Commissioner of Income-tax v. Woodward India (P.) Ltd.* - [2024] 160 taxmann.com 539 (Delhi)

3.49 Comparables, functional similarity - Software consultancy/development services : Where Tribunal in original order had rendered incompatible and inconsistent findings regarding a comparable company, Tribunal was justified in recalling its original order and correcting manifest error apparent on record - *Principal Commissioner of Income-tax v. Fiserv India (P.) Ltd.* - [2024] 160 taxmann.com 315 (Delhi)

3.50 Methods for determining ALP - RPM : Where Tribunal had firstly observed that RPM as adopted by assessee would clearly be applicable, however, in very next paragraph, it had proceeded to undertake quantification of arm's length price in relation to AMP expenditure, since aforesaid observations were clearly inconsistent and incompatible, matter was to be remanded for considering appeal afresh - **Haier Appliances India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 415 (Delhi)**

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

3.51 It is mandatory to follow Digital Evidence Investigation Manual issued by CBDT while conducting search and seizure and it is not optional - **Saravana Selvarathnam Retails (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle 1(2) - [2024] 160 taxmann.com 287 (Madras)**

3.52 Condonation of delay : Where assessee, a resident of USA, filed application under section 119(2)(b) seeking condonation of delay in filing return of income for assessment year 2020-21 and 2021-22, delay in filing return of income was to be condoned as these were years when world including immediate family of assessee was affected by COVID-19 pandemic, thus, being a case of genuine hardship caused to assessee - **Nivas v. Commissioner of Income-Tax (IT) - [2024] 160 taxmann.com 363 (Madras)**

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

3.53 Restraint on repatriation of royalty or dividend : Where assessee-company had deposited an amount of Rs. 230 crores with revenue and search assessment was pending, assessee was to be permitted to repatriate Rs. 97 crores which represented royalty subject to deduction of tax - **Huawei Telecommunications (India) Company (P.) Ltd. v. Deputy Director of Income-tax (INV.)-4(3) - [2024] 160 taxmann.com 105 (Delhi)**

SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - GENERAL

3.54 Condonation of delay : Where assessee after death of his father inherited his late father's business, and it was not possible for him to file return for assessment year 2017-18 as there was claim for refund on account of TDS, delay in filing return of income by assessee either in name of his father or in his individual name ought to have been condoned - **Nileshkumar Uttamchand Rathod v. Office of the Principal Commissioner of Income-tax - [2024] 160 taxmann.com 345 (Gujarat)**

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

3.55 Opportunity of hearing : Where assessee had expressly requested for a personal hearing through video conferencing but AO passed draft assessment order making addition to income of assessee and also disallowing expenses without giving personal hearing, impugned draft assessment order was to be treated as a show-cause notice and Assessing Officer was to be directed to provide a reasonable opportunity, including a personal hearing through video conferencing, and, thereafter, issue a fresh draft assessment order - **Triumph International (India) (P.) Ltd. v. Assessment Officer, National Faceless Assessment Centre - [2024] 160 taxmann.com 637 (Madras)**

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

3.56 Objections to draft assessment order : Where Assessing authority finalised assessment order on ground that assessee had not filed any objections to draft assessment order, since objection to draft assessment order was filed before DRP, and said objection was available on web portal, finding of assessing authority that no objection was filed to draft assessment order was incorrect and thus assessment order was set aside and matter was remanded back - **Asseena Beegam Mohamed Ali v. Deputy Commissioner of Income-tax, (IT), Circle - [2024] 160 taxmann.com 106 (Kerala)**

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

3.57 Revision : Where Assessing Officer after perusal of documents, stock register, etc. completed assessment, Commissioner erred in initiating revisional proceedings regarding understatement in closing stock - **Commissioner of Income-tax v. Gopal Sharma - [2024] 160 taxmann.com 227 (Calcutta)**

3.58 General : Where AO made additions to income of assessee on account of unaccounted profit, disallowance of expenses and inflated purchases, since AO was provided with requisite bills, vouchers and addresses of transacting parties, however he did not make any effort to confirm veracity of alleged bogus or inflated bills, in view of said facts AO could not make addition on account of bogus or inflated expenses on estimate basis without rejecting books of account - **Principal Commissioner of Income-tax, (Central)-1 v. Forum Sales (P.) Ltd. - [2024] 160 taxmann.com 93 (Delhi)**

3.59 Revision : Where assessee was a works contractor and had income from various sources and Assessing Officer rejected assessee's account books and estimated net profit at 6 per cent on gross receipts, since sundry creditors of assessee was not examined by Assessing Officer, estimation of profit on contract receipts alone would be an erroneous exercise and it caused prejudice to interest of revenue - **Commissioner of Income-tax v. Dhananjay Kumar Yadav - [2024] 159 taxmann.com 638 (Patna)**

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

3.60 Non-application of mind : Where Assessing Officer issued reopening notice on ground that assessee had not disclosed a property transaction of purchase of property from a company, since said property transaction pertained to another entity and not of assessee and Assessing Officer in order disposing objections did not deal with said factual position, impugned reopening notice was to be set aside - **Paranjape Schemes (Construction) Ltd. v. Deputy Commissioner of Income-tax, Circle-2(3)(1)** - [2024] 160 taxmann.com 730 (Bombay)

3.61 Opportunity of hearing : Where assessee did not receive subsequent notices in reassessment proceedings as same were issued to an e-mail address which was not being used by assessee's accountant, impugned reassessment order passed without hearing assessee was to be set aside - **SSPV Construction Consortium v. Deputy Commissioner of Income-tax** - [2024] 160 taxmann.com 219 (Madras)

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

3.62 Audit objection : Where revenue audit raised an objection that assessment was not completed in accordance with provisions of Act, it could not be treated as a change of opinion because this was statutory prescription and statutory ground/reason for reopening assessment as Assessing Authority had proceeded strictly in accordance with provisions of clause (ii) of Explanation 1 to section 148 - **Sree Narayana Guru Memorial Educational and Cultural Trust v. Assistant Commissioner of Income-tax** - [2024] 160 taxmann.com 727 (Kerala)

3.63 Non-filing of return : Where assessee had not filed a revised return of income or called upon Assessing Officer to treat original return of income as return in response to notice under section 148, assessee was not entitled to challenge reassessment proceedings on ground that reasons for reassessment were not provided - **Swapna Manuel v. Assistant Commissioner of Income-tax** - [2024] 160 taxmann.com 166 (Madras)

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

3.64 Illustrations : Where Assessing Officer after considering submissions of assessee passed order under section 148A(d) dropping re-assessment proceedings for relevant assessment year, he could not have changed that opinion without any basis and, thus, subsequent notice issued under section 148A(b) and order passed under section 148A(d) taking a complete contrary stand was to be quashed - **Siemens Ltd. v. Deputy Commissioner of Income-tax** - [2024] 160 taxmann.com 243 (Bombay)

3.65 Illustrations : Where Assessing Officer reopened assessment in case of assessee-housewife in order to verify source of payment for purchase of property, since assessee had not made any payment for purchase of property, impugned reopening notice was to be quashed and set aside - **Kalpita Arun Lanjekar v. Income Tax Officer, Ward-28(2)(1)** - [2024] 160 taxmann.com 726 (Bombay)

SECTION 149 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT

3.66 Validity of a notice must be judged on basis of law existing as on date on which notice was issued under section 148, which in instant case was 31-7-2022, by which time Finance Act, 2021 was already on statute and in terms thereof, no notice under section 148 for assessment year 2014-15 could be issued on or after 1-4-2021 based on first proviso to section 149, thus, in view of unamended section 149(1)(b) impugned reopening notice issued on 31-7-2022 was barred by limitation - **Godrej Industries Ltd. v. Assistant Commissioner of Income-tax, Circle 14(1)(2)** - [2024] 160 taxmann.com 13 (Bombay)

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

3.67 Approval : Where Principal Commissioner while granting approval under section 151 simply wrote 'Yes' without specifically noting his approval, such approval could not be considered to be a valid approval - **Principal Commissioner of Income-tax-7 v. Pioneer Town Planners (P.) Ltd.** - [2024] 160 taxmann.com 652 (Delhi)

3.68 Specified authority : Where notice issued under section 148 for assessment year 2016-17 on 1-7-2022 referred to prior approval of Principal Commissioner which was relatable to section 151(i) and not to section 151(ii), said notice and all consequential actions thereto were to be quashed and set aside - **Shri Vardhaman Multi Staet Cooperative Credit Society Ltd. v. Income tax Officer** - [2024] 160 taxmann.com 220 (Bombay)

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

3.69 Block assessment : Where assessee political party filed writ petition challenging validity of notice issued under section 153C on ground that assessment which was proposed to be undertaken for assessment years 2014-15, 2015-16 and 2016-17 would be barred by period of limitation as raised by virtue of first proviso to section 153C, however, writ petition was filed only a few days before time for completion of assessment would expire, there was no justification to interdict assessment proceedings at this belated stage by invoking jurisdiction under article 226 of Constitution - **Indian National Congress v. Deputy Commissioner of Income-tax, Central-19** - [2024] 160 taxmann.com 606 (Delhi)

3.70 Writ jurisdiction : Where assessee had filed writ petition challenging initiation of proceedings under section 153C

contending that no satisfaction note was provided along with notice under section 153C, since satisfaction note of Assessing Officer was served upon assessee subsequent to notice under section 142(1), assessee should have raised all possible objections before Assessing Officer during course of assessment proceedings instead of filing writ petition - ***Shyamal Rupchand Parwani v. Assistant Commissioner of Income-tax*** - [2024] 160 taxmann.com 242 (Gujarat)

3.71 Satisfaction note drawn by Assessing Officer of assessee, although a carbon copy of note of Assessing Officer of searched person, does not warrant rejection, as Assessing Officer of assessee independently recorded satisfaction fulfilling requirements of section 153C - ***Bhagwandas Rupchand Parwani v. Assistant Commissioner of Income-tax, Circle 1(1)(1)*** - [2024] 160 taxmann.com 7 (Gujarat)

3.72 Where assessee challenged section 153C proceedings due to absence of DIN in satisfaction note as per CBDT Circular No.19/2019, however, revenue provided DIN in subsequent communication, meeting CBDT requirement, thus, objection raised by assessee could not be upheld - ***Bhagwandas Rupchand Parwani v. Assistant Commissioner of Income-tax, Circle 1(1)(1)*** - [2024] 160 taxmann.com 7 (Gujarat)

SECTION 154 OF THE INCOME-TAX ACT, 1961 - RECTIFICATION OF MISTAKES - APPARENT FROM RECORD

3.73 Scope of : Where pursuant to order of AAR which was overruled by Supreme Court, assessee filed rectification application seeking refund of taxes paid under protest, since as per circular dated 17-11-1971, an assessee is entitled to seek rectification pursuant to interpretation of law by Supreme Court, impugned order rejecting rectification application was to be set aside and revenue was to be directed to refund taxes paid by assessee - ***Citrix Systems Asia Pacific Proprietary Ltd. v. Deputy Commissioner of Income-tax, IT Circle 1(1)*** - [2024] 160 taxmann.com 625 (Karnataka)

SECTION 158BD OF THE INCOME-TAX ACT, 1961 - BLOCK ASSESSMENT IN SEARCH CASES - UNDISCLOSED INCOME OF ANY OTHER PERSON

3.74 Recording of satisfaction : Where Assessing Officer had not prepared a satisfaction note either before or along with or even after assessment proceedings as mandatorily required under section 158BD, entire proceedings initiated by Assessing Officer to pass an assessment order under section 158BC was illegal and liable to be set-aside - ***Ashok Vardhan Kothari v. Commissioner of Income-tax, Central-II*** - [2024] 160 taxmann.com 69 (Calcutta)

SECTION 159 OF THE INCOME-TAX ACT, 1961 - LEGAL REPRESENTATIVES

3.75 Appeal by legal representative : After death of an assessee, legal representative must register on Income Tax Portal by submitting PAN of deceased assessee along with his PAN as legal representative and produce death certificate of deceased assessee together with his legal heirship certificate and only after such compliance appeal against assessment order can be numbered and heard - ***P.S. Subramanian v. Income-tax Officer*** - [2024] 160 taxmann.com 232 (Madras)

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

3.76 Storage charges : Where assessee had hired storage tanks of various parties for handling import of oil and paid them storage charges, since storage tanks in question did not qualify either as land or as building within meaning of section 194-I, payments in question were not liable for deduction of tax at source under provisions of section 194-I - ***Commissioner of Income-tax (TDS) v. B. Arunkumar Trading Ltd.*** - [2024] 160 taxmann.com 164 (Bombay)

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

3.77 Stay of demand : In view of Instruction No. 1914 issued under section 220 as read with OM [F. No. 404/72/93-ITCC], where appeal is pending before Commissioner (Appeals), Commissioner (Appeals) is to decide appeal expeditiously without insisting on recovery of demand and demand shall be deemed to be stayed without depositing pre-deposit of 20 per cent - ***Anheuser Busch InBev India Ltd. v. Commissioner of Income-tax (TDS)-2*** - [2024] 160 taxmann.com 594 (Punjab & Haryana)

3.78 Stay of demand : Where Dy. Commissioner without considering application filed by assessee under section 220(6) proceeded to adjust demand raised for impugned assessment year against refunds which were due and payable to assessee, matter was to be remanded to Dy. Commissioner for reconsidering application - ***National Association of Software and Services Companies (Nasscom) v. Deputy Commissioner of Income-tax (Exemption), Circle 2(1)*** - [2024] 160 taxmann.com 728 (Delhi)

SECTION 226 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - OTHER PROCEEDINGS

3.79 Illustrations : Where issue with regard to recovery had been put to rest in earlier two rounds of litigation and assessee were trying to re-agitate issue before High Court by filing a petition, it would not be maintainable and hence deserved to be dismissed - ***Arth Rural Connect Services Ltd. v. Union of India*** - [2024] 160 taxmann.com 558 (Madhya Pradesh)

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

3.80 Withholding of refund : Where on directions of Commissioner (Appeals), AO determined amount of refund to

be paid to assessee, however, assessee was deprived of its right to get back refund till date on ground of inability of revenue to verify record to determine whether amount in question was paid to assessee or not, in absence of any fault being attributed to assessee, lack of verification by Assessing Officer of their own records could not be a ground to deny refund - **Clix Capital Services (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 6 (Delhi)**

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

3.81 Where assessee filed a writ petition seeking refund due to a portal error and even after rectification, refund remained pending, CPC was directed to ensure that refund was credited to assessee's account and failure to comply would result in issuance of a physical cheque/pay order for entire refund along with interest under section 244A - **Macrotech Developers Ltd. v. Principal Commissioner of Income-tax, Central-4 - [2024] 160 taxmann.com 254 (Bombay)**

3.82 Additional interest : Where revenue had already granted interest under section 244A(1), without attributing any reason of delay to assessee, there was no cogent reason for not granting additional interest as mandatorily prescribed under section 244A(1A) - **Genpact India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 10(1) - [2024] 160 taxmann.com 268 (Delhi)**

SECTION 245F OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSIONER - POWER AND PROCEDURE OF

3.83 General : Where during pendency of assessment proceedings, assessee filed application before Settlement Commission under section 245C on 30-3-2021, in view of CBDT's press release giving taxpayers an opportunity to file application for settlement by 30-9-2021, application filed by assessee under section 245C would be an eligible application though filed after 31-1-2021 and same was required to be considered as pending application for adjudication on merits - **Sanjay Sevantilal Shah v. Interim Board For Settlement (IBS)-14 - [2024] 160 taxmann.com 255 (Gujarat)**

SECTION 246 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER (APPEALS)

3.84 Where assessee filed writ petition to challenge orders under sections 148A(d) and 147, since impugned assessment order provided detailed reasoning and suffered from no procedural irregularity, High Court could not reappreciate those evidences when alternative remedy by way of appeal was available to assessee - **GSP Piling Constructions (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-4(3) - [2024] 160 taxmann.com 365 (Calcutta)**

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

3.85 Condonation of delay : Where department sought condonation of delay of 879 days in filing appeal on ground that original certified copy of Tribunal's order was misplaced, since there was no proper explanation given for inordinate delay, application for condonation of delay deserved to be dismissed - **Principal Commissioner of Income-tax v. Britannia Industries Ltd. - [2023] 156 taxmann.com 737 (Calcutta)**

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

3.86 Doctrine of merger : Where PCIT initiated proceedings under section 263 to impose penalty under section 271(1)(c) on account of gold found during search operation in assessee's son's residence, in view of facts that Tribunal allowing appeal of revenue confirmed penalty levied by AO and High Court merely gave a fresh opportunity to assessee to explain case afresh, it could not be said there was merger and, thus, order passed by the PCIT invoking section 263 could not be interfered - **R. Revathy v. Assistant Commissioner of Income-tax, Central Circle 1(2) - [2024] 160 taxmann.com 464 (Madras)**

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

3.87 Where revision application filed by assessee under section 264 was rejected by PCIT without affording a fair opportunity of hearing, it deserved to be set aside - **Smt. Ritu Mittal v. Income Tax Officer - [2024] 160 taxmann.com 111 (Allahabad)**

SECTION 268A OF THE INCOME-TAX ACT, 1961 - APPEALS - FILING OF APPEALS OR APPLICATION FOR REFERENCE BY INCOME-TAX AUTHORITY

3.88 Monetary limit : Where tax effect involved in appeal was below limit prescribed by Circular No. 17/2019 dated 8-8-2019, appeal was to be dismissed as per said circular without going into merits of case - **Commissioner of Income-tax v. Rakshit Transport - [2024] 160 taxmann.com 731 (Calcutta)**

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

3.89 Condonation of delay : Where Competent Authority rejected assessee's application filed under section 270AA requesting for immunity from imposition of penalty on grounds that assessee paid amount demanded beyond period specified and application was not made within specified period, since gross total income and total tax liability disclosed by assessee in return were accepted in assessment order, delay of 30 days in filing application deserved to be condoned - **Natarajan Anandh Kumar v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 637 (Madras)**

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

3.90 Disallowance of claim, effect of : Where pursuant to certain additions made in total income of assessee, penalty under

section 271(1)(c) was also levied upon assessee, since assessee had succeeded in getting three out of four additions deleted in quantum proceedings and in respect of fourth addition also Tribunal noted that as assessee had neither furnished inaccurate particulars nor concealed income penalty could not be levied on that score, penalty under section 271(1)(c) levied upon assessee was to be deleted - **Commissioner of Income-tax (International Taxation) v. Standard Chartered Grindlays (P.) Ltd.** - [2024] 159 taxmann.com 1473 (Delhi)

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

3.91 Scope of provision : Where assessee-company filed return and paid self-assessment tax belatedly along with interest, since delayed payment of income-tax would not amount to evasion of tax, complaint filed against assessee-company and its directors under section 276C read with section 278B deserved to be quashed - **Hansa Metalics Ltd. v. Deputy Commissioner of Income-tax** - [2024] 160 taxmann.com 235 (Punjab & Haryana)

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

3.92 Proviso : Only criterion for initiation of prosecution is that there must be a wilful failure to furnish returns as required under section 139(1) and once that requisite is fulfilled, statutory presumption under section 278E starts operating and this provision brings in a statutory presumption with regard to existence of a culpable mental state - **Vinayagam Sabarisanthanakrishnan v. Assistant Commissioner of Income-tax** - [2024] 160 taxmann.com 406 (Madras)

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

3.93 Primary email id : Where Assessing Officer issued a notice under section 148A(b) and passed an order under section 148(d) to assessee-company on secondary email address and not registered e-mail address, impugned notice and consequential order were liable to be quashed and set-aside - **Grs Hotel (P.) Ltd. v. Union of India** - [2024] 160 taxmann.com 125 (Allahabad)

3.94 Where show cause notice for initiating proceedings under section 12A(1)(ac)(iii) was only reflected on e-portal of department and was not served upon assessee, he would be entitled to file his reply and department would be entitled to examine same and pass a fresh order - **Munjal BCU Centre of Innovation and Entrepreneurship v. Commissioner of Income-tax (Exemptions)** - [2024] 160 taxmann.com 629 (Punjab & Haryana)

4. TRIBUNAL

SECTION 2(1A) OF THE INCOME-TAX ACT, 1961 - AGRICULTURAL INCOME

4.1 Cash credit : Where Assessing Officer rejected claim of assessee for exemption of agricultural income on ground that assessee had failed to produce relevant documents to justify agricultural income, since assessee had filed additional evidence in form of surveyor's report to prove that agricultural activities were carried out, matter was to be remanded back for de novo consideration of issue - **Madan Mohan Mishra v. Income Tax Officer, Ward-8(2)(4)** - [2024] 160 taxmann.com 42 (Mumbai - Trib.)

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

4.2 Loans and advances to shareholders : Where Assessing Officer had made an addition treating loan advanced by assessee's group company (IG3) to assessee as deemed dividend under section 2(22)(e), in view of fact that neither assessee nor its shareholders were shareholders of IG3 as on date of advancing of loans and there were no common registered and beneficial shareholders between IG3 and assessee on date of advancing of loans, Commissioner (Appeals) had rightly deleted impugned additions - **Deputy Commissioner of Income-tax, Central Circle 2(2) v. Mukunda Land Developers (P.) Ltd.** - [2024] 160 taxmann.com 291 (Chennai - Trib.)

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

4.3 Subsidy : Subsidy received by assessee from State Government under Package Scheme of Incentives, 2007 to encourage setting up of industries in less developed areas of State and not for purpose of running business more profitably, was capital in nature - **Asian Paints Ltd. v. Assistant Commissioner of Income-tax** - [2024] 160 taxmann.com 402 (Mumbai - Trib.)

4.4 Subsidy : Subsidy received by assessee from State Government under Package Scheme of Incentives, 2007 to encourage setting up of industries in less developed areas of State and not for purpose of running business more profitably, was capital in nature - **Asian Paints Ltd. v. Asstt. Commissioner of Income-tax** - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

4.5 Grant : Electricity grants received by assessee from State Government under Industrial Policy, 2005 for setting up a project for manufacturing of paints was capital in nature - **Asian Paints Ltd. v. Asstt. Commissioner of Income-tax** - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

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

4.6 Permanent establishment - Others : Where India subsidiary did not perform any additional functions that would lead to creation of a PE in India, remuneration for same would ideally

be NIL and ,thus, amount of profits already offered to taxes by Indian entity should be considered to be at arm's length and no further attribution is required - **AB Sciex (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle, IT 1(1)(1) - [2024] 160 taxmann.com 593 (Delhi - Trib.)**

4.7 Capital gains - Shares/units, transfer of : Where assessee, a Mauritius based company had made investment in shares of Indian companies and claimed exemption under article 13(4) of India-Mauritius DTAA and Assessing Officer denied said exemption on ground that assessee was a shell/conduit company, since shares on sale of which assessee derived capital gain were acquired prior to 1-4-2017, assessee being holder of TRC was beneficial owner of capital gain and, hence, was entitled to benefits under article 13(4) of DTAA - **Norwest Venture Partners X-Mauritius v. Deputy Commissioner of Income-tax, Circle IT - [2024] 160 taxmann.com 632 (Delhi - Trib.)**

4.8 Royalties/Fee for technical services - Rate of tax : Where assessee, a resident of Canada, entered into a joint venture (JV) with an Indian entity for execution of Hydroelectric Project and received technical know-how fee and financial commitment fee from JV, assessee was entitled to get benefit of tax rate provided under Indo-Canada DTAA - **Deputy Commissioner of Income-tax (IT), Circle-1(3)(1) v. Foundation Co. of Canada Ltd. - [2024] 160 taxmann.com 526 (Delhi - Trib.)**

4.9 Royalties/Fees for technical services - make available : Where assessee, a USA based firm, was engaged in business of cloud and hosting services, disaster recovery services, etc. and received certain amount from its Indian customer, since said services did not make available any technical knowledge, skill, know-how or process to assessee's Indian customer, same could not be taxed in India as per provisions of Indo-US tax treaty (Article 12) - **Sungard Availability Services LP v. Income Tax Officer (IT), Ward-4 - [2024] 159 taxmann.com 778 (Pune - Trib.)**

4.10 Royalties/fees for technical services - Software : Where assessee, a Chinese company, supplied software to an Indian company for granting of licence to incorporate software into head unit which is supplied from outside India and get fitted into cars and claimed it as non-taxable under India-China DTAA, since assessee had only supplied a standard/off the shelf software to Indian company and had not transferred copyright/right to use copyright of software, impugned receipts would not fall within scope of Article 12(3) of India-China DTAA to be taxed as royalty income - **SAIC Motor Overseas Intelligent Mobility Technology Co. Ltd. v. Assistant Commissioner of Income-tax, (IT) - [2024] 159 taxmann.com 779 (Delhi - Trib.)**

4.11 Royalties and fee for technical services - Time Charter Hire Charges : Where assessee, engaged in business of dredging, reclamation and other maritime activities, had hired dredging from foreign companies on time charter basis, payments made by assessee would qualify as royalty for use of equipments under section 9(1)(vi) and, therefore, assessee was under an obligation to deduct tax at source as royalty payments at time of making payments to non-resident payee - **Jaisu Shipping Co. (P.) Ltd. v. Additional Director of Income-tax (IT) - [2024] 160 taxmann.com 128 (Rajkot - Trib.)**

4.12 Permanent Establishment - Fixed PE, Place of business : Where assessee, engaged in business of dredging, reclamation and other maritime activities, had hired dredging from foreign companies on time charter basis from MD, British Virgin Islands, since operational staff and captain worked under supervision and control of assessee company in India and, moreover, decision on whether and how much to dredge was completely within domain of assessee company in India, Commissioner (Appeals) had correctly held that non-resident company did not have a business connection in India - **Jaisu Shipping Co. (P.) Ltd. v. Additional Director of Income-tax (IT) - [2024] 160 taxmann.com 128 (Rajkot - Trib.)**

4.13 Elimination of double taxation : Where assessee , a abu Dhabi Investment company , had shown its valid registration as category of foreign portfolio investor obtained with SEBI and held a valid residency certificate and given particulars of income, there was no reason to doubt that it was not authority as mentioned in Article 24 and, accordingly, assessee was liable to benefit provided under Article 24 - **Abu Dhabi Investment Authority v. Deputy Commissioner of Income-tax (IT), Circle-1(1)(1) - [2024] 160 taxmann.com 104 (Mumbai - Trib.)**

4.14 Permanent Establishment - Others : Where assessee a U.K. based company was awarded a contract for offshore manufacture and supply of equipment and parts to ONGC and Assessing Officer held that consortium member was working on behalf of assessee-company which formed PE of assessee and entire receipts of assessee were taxable in India under section 44BB, since burden of proving existence of PE had not been discharged by revenue, section 44BB would not apply - **Baker Hughes Energy Technology UK Ltd. v. Assitant Commissioner of Income-tax, Circle-1(1)(2), IT - [2024] 160 taxmann.com 500 (Delhi - Trib.)**

4.15 Service PE : Where assessee, a Singapore based company, provided legal advisory services to Indian clients and it was found that services had been furnished by assessee only for 44 days in India after excluding vacation period, business development days and common days, assessee did not constitute service PE in India as per India-Singapore DTAA during relevant assessment year - **Clifford Chance PTE Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 424 (Delhi - Trib.)**

4.16 Royalties/fees for technical services : Where assessee, a foundation, engaged in running an educational school, made annual payments under various heads like evaluation fees, authorization fees, fees etc. to various foreign educational institutions and had not offered any explanation regarding basis for raising invoice on assessee and also on what basis discount was offered to assessee even after affording several opportunities to assessee both during course of assessment as well as appellate proceedings, matter was to be remanded to Assessing Officer to understand basis on which lump sum fee was charged by overseas entities from assessee and also basis for allowing/affording discount to assessee - **International Education & Research Foundation v. Deputy Commissioner of Income Tax (IT)-1** - [2024] 160 taxmann.com 454 (Ahmedabad - Trib.)

4.17 Royalties/fees for technical services - Computer software : Where assessee, a US based company, received consideration for sale of software licences to its distributor in India who in turn sold same to end-users, since assessee only permitted end-users to use a copyrighted article and there was no sale of copyright per se in said article, payment received by assessee from said distributor on sale of software to end-users could not be termed as 'royalty' under relevant DTAA - **Deputy Commissioner of Income-tax (International Taxation) v. Mathworks Inc.** - [2024] 159 taxmann.com 1478 (Bangalore - Trib.)

4.18 Royalties/fees for technical services - Information technology support services : Where assessee, a US based company, received consideration towards maintenance services in relation to sale of software licences in India, since said maintenance services were inextricably linked to supply of software licence and when supply of software itself was not taxable as 'royalty', amount received by assessee on account of said maintenance services could not be termed as 'fees for included services' - **Deputy Commissioner of Income-tax (International Taxation) v. Mathworks Inc.** - [2024] 159 taxmann.com 1478 (Bangalore - Trib.)

4.19 Income from employment - Salary payments outside India : Where assessee was a resident of India, however he had exercised employment and received remuneration in US, salary income of assessee was taxable in USA and not in India - **Somnath Duttagupta v. Assistant Commissioner of Income-tax, Circle-2(1)** - [2024] 160 taxmann.com 576 (Kolkata - Trib.)

4.20 Permanent Establishment - Agency PE : Where assessee, a UK based company had entered into off-shore contract with an Indian company, in its independent capacity, since no evidence was brought on record to show that Indian Associate was employed by any 'act' of assessee to represent assessee independently while dealing with PGCIL, there was no force in finding of Assessing Officer that AE of assessee

in India was actively involved in soliciting business for assessee and thus, it constituted dependent agent PE of assessee - **UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1)** - [2024] 160 taxmann.com 694 (Delhi - Trib.)

4.21 Permanent Establishment - Construction PE : Where assessee, a UK based company was not engaged in any construction project in India and its revenues were outcome of offshores supplies and services rendered off shore, there was no question of constitution of Construction PE as per article 5(2) of DTAA - **UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1)** - [2024] 160 taxmann.com 694 (Delhi - Trib.)

4.22 Royalty/fees for technical services - Make available : Where assessee entered into a Global Operations Fees Arrangement with GETDIL and services provided were primarily managerial in nature and also passed arm's length tests and did not involve any technical knowledge etc. to satisfy make available clause contained in article 13(4)(c) of India-UK DTAA, authorities below had fallen in error in taxing global operation fee received from GETDIL as FTS under provisions of Act and India-UK DTAA - **UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1)** - [2024] 160 taxmann.com 694 (Delhi - Trib.)

4.23 Resident - Company, control and management, place of : Where treaty benefit under India UK DTAA were denied to assessee, a UK company, by holding that assessee could not be treated as tax resident of UK, since assessee had enclosed a certificate issued by HM Revenue and Customs, UK in accordance with Article 4 of treaty between India-UK DTAA, assessee was duly entitled for treaty benefits - **UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1)** - [2024] 160 taxmann.com 694 (Delhi - Trib.)

SECTION 10(10D) OF THE INCOME-TAX ACT, 1961 - INSURANCE POLICY, SUM RECEIVED UNDER

4.24 Sums received on surrender of life insurance policy would be eligible for exemption u/s 10(10D) and it could not be taxed under section 28(vi) - **Mihir Parikh v. Assistant Commissioner of Income-tax, Circle-61(1)** - [2024] 160 taxmann.com 141 (Delhi - Trib.)

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

4.25 Exemption, in case of : A partnership firm being a separate assessable 'person' under Income Tax Act, would not be entitled to same exemption under section 10(26) as any or all of individual partners would be in their individual capacity - **Hotel Centre Point v. Income-tax Officer, Ward-1** - [2024] 160 taxmann.com 604 (Guwahati - Trib.)

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

4.26 Sub section 15: Where assessee had been consistently treating grants received from Government of India and utilised

by implementing agencies as income and grants released to SG, as and when utilization certificates were received as expenditure, in compliance with accounting procedure defined in GFR 230(5) of Government of India and directions of IFD and had spent 85 per cent of such income towards its objects, balance income of assessee was exempt under section 11 - **Deputy Commissioner of Income-tax, Exemptions Circle v. National Fisheries Development Board - [2024] 160 taxmann.com 5 (Hyderabad - Trib.)**

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

4.27 Condonation of delay : Where assessee-society claimed exemption under section 11 but assessee had filed audit report in Form No. 10B after expiry of time allowed under section 139(1), since assessee did not cumulatively satisfy set of conditions specified in Para 4(i) of Circular No. 10, dated 22-5-2019 and also had not filed any application for condonation of delay as provided in Para 4(ii) of said circular, there remained no occasion for condonation of delay in filing Form No. 10B and thus exemption under section 11 was rightly declined - **Dr. Murli Manohar Dubey Charitable Society v. Income-tax Officer - [2024] 159 taxmann.com 633 (Raipur - Trib.)**

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

4.28 Scope of provision : Where assessee-trust was already registered under section 12AA and it due to insertion of clause (ac) to section 12A(1) with effect from 1-4-2021 filed application in Form No. 10A well within due date for fresh registration under section 12AB, assessee was entitled for grant of registration from assessment year 2021-22 - **Cheyar Virutcham Educational Trust v. Assistant Commissioner of Income-tax (H.Qrs)(Exemptions) - [2024] 159 taxmann.com 635 (Chennai - Trib.)**

4.29 Cancellation of registration : Violation committed by assessee trust in assessment year 2021-22 could not be basis of cancelling section 12AB registration for assessment year 2022-23 to assessment year 2026-27, as each year is to be considered independently - **Islamic Academy of Education v. Principal Commissioner of Income-tax, (Central), Bengaluru - [2024] 160 taxmann.com 217 (Bangalore - Trib.)**

4.30 Scope of provisions : Where objects of assessee-trust were primarily charitable rather than favouring any specific religious community, CIT(E) was not justified in denying registration under section 12A, by invoking section 13(1)(b) as said provisions would be attracted only at time of assessment and not at time of grant of registration - **Jamiatul Banaat Tankaria v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 358 (Ahmedabad - Trib.)**

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

4.31 Sub-section (2)(c) : Where assessee-society claimed deduction of salary paid to a doctor (trustee of assessee-society) and Assessing Officer disallowed claim on ground that assessee had failed to substantiate its claim and added amount to its income by invoking provisions of section 13(2)(c) read with section 13(3), since Assessing Officer in immediately preceding assessment year had accepted assessee's claim for deduction of salary paid to aforesaid doctor, matter was to be restored to him to verify authenticity of assessee's claim - **Dr. Murli Manohar Dubey Charitable Society v. Income-tax Officer - [2024] 159 taxmann.com 633 (Raipur - Trib.)**

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

4.32 Recording of satisfaction : Disallowance made by Assessing Officer under section 14A read with rule 8D without recording any satisfaction regarding claim of assessee in respect of expenditure incurred in relation to exempt income was to be deleted - **Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai - Trib.)**

4.33 Recording of satisfaction : Disallowance made by Assessing Officer under section 14A read with rule 8D without recording any satisfaction regarding claim of assessee in respect of expenditure incurred in relation to exempt income was to be deleted - **Asian Paints Ltd. v. Asstt. Commissioner of Income-tax - [2024] 160 taxmann.com 356 (Mumbai - Trib.)**

4.34 Interest : Where assessee-bank earned interest income from NABARD bonds which was claimed as exempt under section 10(15) and Assessing Officer disallowed certain amount under section 14A read with rule 8D, since during years under consideration available tax free funds were more than investment made on which exempt income was earned, disallowance made under section 14A read with rule 8D was to be deleted - **Bank of Nova Scotia v. Assistant Director of Income-tax (IT)-3(2) - [2024] 160 taxmann.com 10 (Mumbai - Trib.)**

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

4.35 Rental income : Where assessee, engaged in IT services, earned rental income from a property which was not its business asset but an investment, such rental income would be chargeable to tax under head 'Income from house property' - **Effective Teleservices (P.) Ltd. v. Principal Commissioner of Income-tax-3 - [2024] 160 taxmann.com 689 (Ahmedabad - Trib.)**

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

4.36 Illustrations : Where assessee filed return declaring loss, which was in shape of payment of audit fee etc., since existence of assessee was intact and it had incurred only minimum expenditure for keeping its status as intact, said expenses deserved to be allowed - **SPML HCIL JV v. Income-tax Officer - [2024] 160 taxmann.com 231 (Kolkata - Trib.)**

4.37 Unaccounted income : Where Competent Authority carried out survey u.s. 133A at hospital of assessee and found certain unaccounted receipts in name of doctors and assessee thereafter filed revised return and disclosed unaccounted receipts as part of profit or gain of business of hospital, as unaccounted receipts were relating to business operations of assessee's hospital, they were taxable as business income under section 28; section 68 was not applicable - **ACIT v. Surat Life Care (P.) Ltd. - [2024] 160 taxmann.com 239 (Surat-Trib.)**

4.38 MCX transactions : Where assessee was a dealer in gold and silver bullion and it suffered loss through MCX transactions for hedging its stock-in-trade, since MCX transactions for hedging loss was not covered under speculative transaction and MCX transactions were done in normal course of business of assessee, loss suffered was business loss - **Ambicaa Sales Corporation v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 631 (Bangalore - Trib.)**

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

4.39 Aircraft : Where assessee had acquired an aircraft in July 2012 and brought to India at owner's base after due clearances and a ferry flight in this regard was arranged, thus, even before certificate of airworthiness was issued by DGCA on 21-9-2012, assessee was already de facto and de jure owner of aircraft, depreciation was to be allowed at 40 per cent - **India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1219 (Delhi - Trib.)**

4.40 Carry forward of depreciation : If for use of new plant and machinery for a period of less than 180 days entire amount of additional depreciation cannot be claimed in subject assessment year, balance unclaimed amount can be claimed in subsequent assessment year - **Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai - Trib.)**

4.41 Revision : Where Assessing Officer had inquired into all probable aspects of valuation of intangible assets and consequent claim of depreciation thereon by assessee and moreover assessee's basis of valuation of intangible assets was as per that prescribed by AS-26, revisionary proceedings were not valid - **Accumax Lab Devices (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 240 (Ahmedabad - Trib.)**

4.42 Carry forward of depreciation : If for use of new plant and machinery for a period of less than 180 days entire amount of additional depreciation cannot be claimed in subject asst. year, balance unclaimed amount can be claimed in subsequent asst. year - **Asian Paints Ltd. v. Asstt. Comm of Income-tax - [2024] 160 taxmann.com 356 (Mumbai - Trib.)**

4.43 Windmill : Where assessee-company claimed depreciation on windmill purchased by it through a slump sale agreement, since assessee failed to prove that it had taken possession of windmill and same was put to use for its business during relevant FY impugned depreciation was rightly denied to assessee - **Rugby Regency (P.) Ltd. v. Addl Comm of Income-tax - [2024] 160 taxmann.com 1056 (Delhi - Trib.)**

**SECTION 35AD OF THE INCOME-TAX ACT, 1961 -
 SPECIFIED BUSINESS, EXPENDITURE ON**

4.44 Scope of provision : Where assessee running a hospital filed revised return u.s. 139(5) claiming deduction u.s. 35AD for first time, since assessee had more than hundred beds at relevant time and it had filed original return in time, deduction u.s. 35AD claimed for first time in revised return was allowable - **ACIT v. Surat Life Care (P.) Ltd. - [2024] 160 taxmann.com 239 (Surat-Trib.)**

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

4.45 Legal expenses : Where assessee being chairman of a company holding 19 per cent shares incurred legal expenses in order to protect his interest of voting right, such legal expenses were allowable expenses under section 37(1) - **Amrit Lal Batra v. Additional Commissioner of Income-tax - [2024] 160 taxmann.com 236 (Amritsar - Trib.)**

4.46 Disposal of effluent waste : Where assessee had created a provision for expenses incurring for treatment of disposal of effluent waste and processing charges, in view of fact that said amount had been credited back in subsequent assessment year as income, then same could not be taxed again in impugned asst. year - **Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2) - [2024] 160 taxmann.com 527 (Mumbai - Trib.)**

4.47 Sales return : Provision made for loss of sales return, being an expenditure which was not crystallized and was an anticipated loss, could not be allowed as deduction - **Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2) - [2024] 160 taxmann.com 527 (Mumbai - Trib.)**

4.48 Where CIT (Appeals) passed an ex parte order upholding addition on account of claim of derivative loss, loss of F&O, securities transaction and travelling and conveyance expenses made by AO without giving opportunity of being heard to assessee, matter was to be remanded back to CIT (Appeals) for his objective and meritorious observations and findings on submissions made by assessee - **Wrinkle Marketing (P.) Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1395 (Kolkata - Trib.)**

4.49 New line of business : Where assessee was engaged in manufacturing paints and enamels, expenditure incurred by assessee on exploring various business opportunities such as furniture space, home improvement, kitchen space, bathroom space and acquisition of paints manufacturing company in Ethiopia being completely a new line of business and not an extension of existing business of assessee, was capital in nature - *Asian Paints Ltd. v. Asstt. Commissioner of Income-tax* - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

4.50 Decorative paint business : Where assessee was engaged in business of manufacturing paints and enamels, expenditure incurred on exploring business opportunities on decorative paints business in Indonesia and Turkey being an extension of existing business of assessee, was revenue in nature - *Asian Paints Ltd. v. Asstt. Commissioner of Income-tax* - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

4.51 Trip for dealers : Expenditure incurred by assessee under its trip scheme for its dealer for purpose of expanding assessee's business by encouraging dealers and distributors to achieve a specific target of purchase being closely linked to assessee's business activity was an allowable expenditure - *Asian Paints Ltd. v. Asstt. Commissioner of Income-tax* - [2024] 160 taxmann.com 356 (Mumbai - Trib.)

4.52 Electricity Transformer : Where assessee, a builder and developer, paid certain amount to Gujarat Electricity Board (GEB) for installation of transformer at a project developed by it, since ownership of transformer was always with GEB and no new asset was created in favour of assessee and no personal benefit of enduring in nature was received or enjoyed by assessee, impugned expenditure could not be treated as capital in nature, and thus, same could not be disallowed under section 37(1) - *Deputy Commissioner of Income-tax v. Kishorbhai Babubhai Kheni* - [2024] 159 taxmann.com 1476 (Surat-Trib.)

4.53 Trip for dealers : Expenditure incurred by assessee under its trip scheme for its dealer for purpose of expanding assessee's business by encouraging dealers and distributors to achieve a specific target of purchase being closely linked to assessee's business activity was an allowable expenditure - *Asian Paints Ltd. v. Assistant Commissioner of Income-tax* - [2024] 160 taxmann.com 402 (Mumbai - Trib.)

4.54 Corporate social responsibility expenditure : Amendment brought by way of Explanation 2 to section 37(1) by Finance Act, 2014, with effect from 1-4-2015 is prospective in nature and thus, CSR expenditure incurred prior to 1-4-2015 was to be allowed - *Asian Paints Ltd. v. Assistant Commissioner of Income-tax* - [2024] 160 taxmann.com 402 (Mumbai - Trib.)

4.55 Leased aircraft engine improvement repair and overall check up expenses : Where assessee claimed deferred revenue expenditure on account of engine improvement repair and overall check up of helicopter taken on lease, since issue regarding allowability of such deferred revenue expenditure was restored back to Assessing Officer for previous assessment year 2012-13, same was to be restored back to Assessing Officer for instant assessment year as well - *India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax* - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

4.56 Prior period expenses : Where assessee claimed expenses towards maintenance fee royalty payable to airport and contended that bills for these expenses were received in relevant assessment year, thus, these expenses were crystallized in relevant assessment year, Commissioner (Appeals) had erroneously concluded that assessee had accepted that these were prior period expenses, and thus, issue was to be restored to Commissioner (Appeals) to give a fresh opportunity of hearing to assessee and consider evidences of assessee establishing that bills were received in relevant assessment year and payments were made in present assessment year - *India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax* - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

4.57 Repair and maintenance expenses : Where assessee claimed expenses towards repair and maintenance and had brought on record invoice for same and copy of cheque showing payment against this invoice, however, Assessing Officer failed to take into consideration same, issue was to be restored to Commissioner (Appeals) for taking into consideration evidences of assessee and decide issue afresh - *India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax* - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

4.58 Interest on TDS : Interest paid on tax deductible at source is not an allowable expenditure - *India Flysafe Aviation Ltd. v. Deputy Commissioner of Income-tax* - [2024] 159 taxmann.com 1219 (Delhi - Trib.)

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

4.59 Advertisement/publicity, repair expenses : Where assessee had incurred expenses on account of advertisement, sales promotion and clinical trial and Assessing Officer made an disallowance under section 40(a)(ia) on ground that assessee had not deducted TDS on same, in view of fact regarding these details of expenses and also whether these parties have offered it for tax, assessee had to comply with conditions provided in proviso 201(1), therefore, matter was to be remanded to Assessing Officer to examine applicability of proviso to section 201(1) and whether in few cases TDS was required to be deducted or not - *Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2)* - [2024] 160 taxmann.com 527 (Mumbai - Trib.)

4.60 Where assessee-company made provision for expenses and had voluntarily disallowed same under section 40(a)(ia) on ground that said expenses were not subjected to TDS, since assessee had not credited corresponding liability for expenses to account of concerned vendors who had rendered services, payees became non-identifiable, and hence, there was no question of applicability of TDS provisions on same and that merely because assessee had voluntarily disallowed expenses under section 40(a)(ia) in return, same would not automatically enable AO to treat it as "assessee in default" under section 201(1) and consequentially levy interest under section 201(1A) - **ACIT (TDS) v. Artemis Medicares Services Ltd.** - [2024] 159 taxmann.com 1368 (Delhi - Trib.)

SECTION 40(a)(ii) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - TAXES

4.61 Education cess : Education cess is not an allowable expenditure under provisions of section 37(1), read with section 40(a)(ii) - **Ericsson India Global Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1)** - [2024] 160 taxmann.com 599 (Delhi - Trib.)

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

4.62 Scope of provision : Where assessee, a joint venture, obtained contracts/projects and assigned such contracts on back-to-back basis to other partner and Assessing Officer construed assignment of contractual receipt by assessee to other partner as incurrance of **expenditure** and estimated unreasonable assignment to extent of 1.87 per cent of cost of contract to other partner and disallowed same by invoking section 40A(2)(b), since cost of any project could not be construed as expenditure, impugned disallowance deserved to be deleted - **SPML HCIL JV v. Income-tax Officer** - [2024] 160 taxmann.com 231 (Kolkata - Trib.)

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

4.63 Where assessee engaged in wholesale trading of raw meat and animal wastes, made cash purchases all below Rs. 20,000 each and despite providing **verified** records, AO disregarded them, since purchases were covered under Rule 6DD(e)(ii) due to vendors lacking bank accounts and purchases being from remote areas, disallowances/additions made by A.O. was to be deleted - **Gyasuddin Qureshi v. Income Tax Officer, Ward 3(2)** - [2024] 160 taxmann.com 290 (Delhi - Trib.)

SECTION 44BBB OF THE INCOME-TAX ACT, 1961 - FOREIGN COMPANIES, CIVIL CONSTRUCTION BUSINESS IN CERTAIN TURNKEY PROJECTS

4.64 Conditions precedent : Where revenues derived by assessee, a UK based company were on basis of offshore supplies and not out of any construction,

erection, testing or commissioning activities of a turnkey power project in India, application of section 44BBB to such revenue, which was not per se taxable in India, would not be sustainable - **UK Grid Solutions Ltd. v. Deputy Commissioner of Income-tax (IT)-3(1)(1)** - [2024] 160 taxmann.com 694 (Delhi - Trib.)

SECTION 44C OF THE INCOME-TAX ACT, 1961 - NON-RESIDENT - HEAD OFFICE EXPENDITURE IN CASE OF

4.65 Salary : Where assessee-bank paid salary to two Canadian nationals who were on secondment to Indian operations of assessee and Assessing Officer disallowed claim of deduction of salary paid to these employees on ground that said salary was in nature of head office expenditure under section 44C, since said employee had offered their global income in India for tax, disallowance of claim of deduction of salary was to be deleted - **Bank of Nova Scotia v. Assistant Director of Income-tax (IT)-3(2)** - [2024] 160 taxmann.com 10 (Mumbai - Trib.)

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

4.66 Capital gains v. Business income : Share dealing : Where assessee purchased shares with clear intention of being an investor and held shares by way of investment, gain arising out of transfer of shares had to be treated as capital gain and not business income - **Amrit Lal Batra v. Additional Commissioner of Income-tax** - [2024] 160 taxmann.com 236 (Amritsar - Trib.)

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

4.67 Cost of improvement : Where assessee sold his residential house and claimed cost of improvement while computing LTCG, since all improvements made necessarily lead to improvement in value of sale, assessee was entitled to deduction towards cost of improvement - **Rajiv Ghai v. Assistant Commissioner of Income-tax, Circle1 IT-1(3)(1)** - [2024] 160 taxmann.com 509 (Delhi - Trib.)

4.68 Cost of improvement : Expenses incurred for installation of lift and other sundry expenses to make house habitable was allowable an allowable item of cost of improvement - **Rajiv Ghai v. Assistant Commissioner of Income-tax, Circle1 IT-1(3)(1)** - [2024] 160 taxmann.com 509 (Delhi - Trib.)

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

4.69 Purchase of new house : Where assessee had sold his residential house and reinvested sale proceeds in purchase of property which was registered in name of his parents, since investments in purchase of property were made by assessee from his bank account for payment to seller of property and such registered property was gifted to assessee by parents, assessee was eligible for deduction under section 54 - **Rajiv Ghai v. Assistant Commissioner of Income-tax, Circle1 IT-1(3)(1)** - [2024] 160 taxmann.com 509 (Delhi - Trib.)

4.70 Ownership of house: Where assessee claimed exemption under section 54F in respect of amount invested in a flat, however, Assessing Officer rejected said claim on ground that entire consideration for purchase of flat was not paid during relevant period, since assessee had filed additional evidence in form of share certificate and ledger of vendor to prove that entire consideration was paid, matter was to be remanded back for de novo consideration - **Madan Mohan Mishra v. Income Tax Officer, Ward-8(2)(4) - [2024] 160 taxmann.com 42 (Mumbai - Trib.)**

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

4.71 Share, valuation of : Where assessee-company issued shares at premium and justified premium received by calculating fair market value of shares under rule 11UA, Principal Commissioner invoked revisionary proceedings on ground that FMV computed by assessee was incorrect and held that excess amount received by assessee would be its income as per section 56(2)(viib), since shares issued by assessee were right shares, 56(2)(viib) could not be invoked on a rights issue, and revisionary order was to be set aside - **Tiki Tar Industries Baroda Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1691 (Ahmedabad - Trib.)**

4.72 Scope of provision : Where assessee had issued preference shares to director and ex-director of its company, since section 56(2)(viib) did not carve out any exception as regards applicability of same in a case where shares were issued to directors of a company and, therefore, AO was justified in invoking provisions of section 56(2)(viib) - **Avinash Developers (P.) Ltd. v. Deputy/Assistant Commissioner of Income-tax, Circle-2(1) - [2024] 160 taxmann.com 256 (Raipur - Trib.)**

4.73 Share Premium : Since preference shares do not carry any stake in ownership of company, therefore, net asset value of company represented value of equity shares and not that of preference shares and, thus, NAV method could not be adopted for determining FMV of preference shares issued by assessee-company to its director and ex-director - **Avinash Developers (P.) Ltd. v. Deputy/Assistant Commissioner of Income-tax, Circle-2(1) - [2024] 160 taxmann.com 256 (Raipur - Trib.)**

4.74 Property transactions : Where assessee claimed to have received advance in cash for sale of property, however, AO treated said advance taxable under section 56(2)(ix), since AO in case of buyer had treated said advance as unexplained money and issues involved in these appeals were inextricably linked to additions made by department in hands of buyer of property, these appeals could not be independently decided and therefore, these appeals were to be decided along with other connected appeals pending in

case of buyer of property and her associates at first appellate authority level itself - **Lakshmi Silvers v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 405 (Chennai - Trib.)**

4.75 Valuation of shares : Where assessee-company issued shares to its holding company at a premium and AO opined that premium charged was in excess of FMV of shares and invoking provisions u.s. 56(2)(viib) added same to assessee's income, since premium charged was supportable by valuation report and premium charged was quite negligible, addition was not justified - **Income-tax Officer v. K V Global (P.) Ltd. - [2024] 160 taxmann.com 234 (Delhi - Trib.)**

4.76 Sub-section (2)(viib) : Where assessee-company issued ES to its 100 per cent holding company at a premium based on FMV determined by a CA in accordance with DCF method as prescribed under rule 11UA, AO was not justified in recomputing FMV of shares under NAV method and making additions u.s. 56(2)(viib), furthermore since objective behind provisions of section 56(2)(viib) was to prevent unlawful gain by issuing company in garb of capital receipts, chargeability of deemed income arising from transactions between holding and subsidiary or vice versa would militate against solemn object of section 56(2)(viib) and, thus no addition could be made to income of assessee under section 56(2)(viib) - **Rugby Regency (P.) Ltd. v. Additional Commissioner of Income-tax - [2024] 160 taxmann.com 1056 (Delhi - Trib.)**

4.77 Gifts: Where Assessing Officer completed assessment and disallowed a certain sum as income from other sources under section 56(2)(vii) and during appeal proceedings before CIT(A), assessee's husband expired and consequently notices were issued and served on assessee through email, being wife and legal heir, but no response was received from assessee and Commissioner (Appeals) dismissed appeal of assessee ex parte, since assessee pleaded for another opportunity of being heard, in view principles of natural justice, matter was remitted back to file of Commissioner (Appeals) - **Smt. Vardhanapu Manikumari v. Income-tax Officer, Ward-1 - [2024] 160 taxmann.com 41 (Visakhapatnam - Trib.)**

SECTION 61 OF THE INCOME-TAX ACT, 1961 - TRANSFER OF ASSETS - REVOCABLE

4.78 Income arising from revocable transfer of assets is taxable in hands of transferor, i.e., settlor of revocable trust and it is to be clubbed in total income of transferor and not in total income of transferee of assets - **Reporter Family Private Trust v. Assessing Officer-ITO (IT), 26(1)(1) - [2024] 160 taxmann.com 459 (Mumbai - Trib.)**

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

4.79 Bank deposits : Where chartered accountant opened and operated bank accounts in name of assessee by allegedly misusing KYC documents of assessee, additions made under sections 68 in name of assessee for having failed to explain source of cash deposits was to be deleted - **Pradeep Nimawat v. Income Tax Officer, Ward 2(1) - [2024] 160 taxmann.com 476 (Jodhpur - Trib.)**

4.80 Accommodation entries : Where Assessing Officer reopened assessment on ground that an information was received from ITBA that assessee had received accommodation entry of bogus LTCG to tune of certain amount from trading in penny scrip, since assessee filed Schedule-EI which contained details of exempt LTCG earned by assessee during year, and further, Assessing Officer had acted on borrowed satisfaction without recording his own satisfaction and belief that income of assessee had escaped assessment, impugned reassessment was to be quashed - **Reena Jain v. Income-tax Officer - [2024] 159 taxmann.com 1489 (Kolkata - Trib.)**

4.81 Share capital : Where assessee discharged onus and also established by additional evidence before Commissioner(Appeals) that it was director of company who was also major shareholder had been allotted shares and in remand report also, Assessing Officer had not drawn any adverse inference with respect to evidences submitted by assessee, therefore, Commissioner(Appeals) rightly deletion of Rs. 24.99 crores as identity, creditworthiness of person and genuineness of transaction had been established - **Income Tax Officer, Ward-12(3)(1) v. Next Avenue Ventures (P.) Ltd. - [2024] 160 taxmann.com 76 (Mumbai - Trib.)**

4.82 Share application money : Where assessee-company had received share application money along with share premium in earlier assessment year and not in relevant assessment year, no addition could be made under section 68 with respect to share application money on ground that shares were allotted in relevant assessment year - **Income-tax Officer v. Winstar Ecom (P.) Ltd. - [2024] 159 taxmann.com 1531 (Mumbai - Trib.)**

4.83 Bank deposits : Where assessee had not filed any income-tax return under provision of section 139(1) and there was cash deposit in bank account of assessee, in absence of any return filed by assessee Assessing Officer could not draw any inference about justification for source of cash deposit based on documents, and therefore, impugned notice issued under section 147 was justified - **Prakashbhai Amrutlal Pala v. Income-tax Officer - [2024] 159 taxmann.com 1383 (Rajkot - Trib.)**

4.84 Bank deposits : Where assessee had made cash deposits in his bank account, since to certain amount assessee had sufficiently explained that such cash deposits were out of withdrawals from bank account, no addition was warranted to such extent, however, assessee had not explained source of cash of remaining amount, and therefore, such cash deposits represented income of assessee and addition of same was liable to be sustained - **Prakashbhai Amrutlal Pala v. Income-tax Officer - [2024] 159 taxmann.com 1383 (Rajkot - Trib.)**

4.85 Share application money : Where assessee had received share application money from various companies and assessee had provided all relevant documents and AO did not make any adverse observation in respect of financials of such companies, impugned addition made u.s. 68 on account of share application money was to be deleted - **Vedic Foundation (P.) Ltd. v. ITO - [2024] 160 taxmann.com 1216 (Delhi - Trib.)**

4.86 Share dealings : Where assessee sold shares and claimed LTCG as exempt u.s. 10(38), since assessee had submitted evidences in form of contract notes/bills, demat statement and bank statement to prove genuineness of transactions of purchase and sale of shares by him and AO had no evidence that purchase and sale of shares were done through cash, additions made by AO on account of sale proceeds of shares as undisclosed income of assessee u.s. 68 was to be deleted - **Income Tax Officer, Ward-5(3)(1) v. Ice Worth Reality LLP - [2024] 159 taxmann.com 775 (Ahmedabad - Trib.)**

4.87 Loans : Where Assessing Officer had made addition on account of loans taken by assessee under section 68 as unexplained cash credits, since assessee had filed confirmation letter from lenders, bank statements, income tax return and statement of total income of lenders to prove identity of creditors, genuineness of transactions and creditworthiness of creditors, impugned addition made by Assessing was unsustainable - **Income Tax Officer, Ward-5(3)(1) v. Ice Worth Reality LLP - [2024] 159 taxmann.com 775 (Ahmedabad - Trib.)**

4.88 Incriminating material : Where AO made addition under section 153A in respect of share capital amount received by assessee, since no incriminating material was found or seized during course of search in respect of addition towards said share capital amount and year under consideration was unabated year considering date of conduct of search within meaning of section 153A, no addition could be made to income of assessee and thus same was to be deleted - **Deputy Commissioner of Income-tax v. Arunachal Pradesh Power Corporation (P.) Ltd. - [2024] 159 taxmann.com 1369 (Guwahati - Trib.)**

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

4.89 Customs duty : Where assessee failed to explain reasons for variation in amount of customs duty paid as per Annual Information Report and as per profit and loss account, said difference of amount was to be added to assessee's income under section 69 - **Sanyang Exim India (P.) Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1491 (Delhi - Trib.)**

4.90 Cash deposit : Where assessee was carrying on business of sale of milk and AO had made an addition of bank deposits, since source of amount of credit in assessee's bank account was milk sale turnover for year under consideration, therefore, as per provisions of section 44AD, AO was to be directed to apply 8 per cent net profit on total milk sale - **Swaran Singh v. Income Tax Officer, Ward 4(1) - [2024] 159 taxmann.com 777 (Amritsar - Trib.)**

4.91 Seized documents : Where assessee received certain amount in India under FDI route and AO made addition of said amount in hands of assessee under section 69 on ground that assessee had sent said amount in hawala route to Cypra which had ultimately found its way in form of share capital and share premium under FDI route, since FT&TR reference was made to Cyprus tax authorities, pursuant to which report duly confirmed that one LG fund had raised monies through issue of shares and those monies had been utilized by them for making investment in shares of assessee-company under FDI route, addition made by AO were based on suspicion and were to be deleted - **Alchemist Touchnology v. Assistant Commissioner of Income-tax, Central Circle-20 - [2024] 160 taxmann.com 422 (Delhi - Trib.)**

4.92 Powers of Commissioner (Appeals) : Where CIT (Appeals) upheld order of AO making addition under section 69 on account of excess stock found at factory premises of assessee-company during search, since assessee was not given sufficient opportunity to participate and prosecute matter before first appellate authority, impugned order passed by CIT (Appeals) was to be set aside and matter was to be restored to file of CIT (Appeals) for readjudication - **Sarda Metals & Alloys Ltd. v. Assistant Commissioner of Income-tax - [2024] 159 taxmann.com 1377 (Raipur - Trib.)**

4.93 Powers of Commissioner (Appeals) : Where CIT (Appeals) passed an ex parte order upholding assessment order of taxing surrendered income by assessee under section 115BBE without considering ground of appeal raised by assessee and assessee also claimed that for some of dates of hearing before CIT (Appeals) notice was not received and on some of dates adjournment petition was filed, impugned order of CIT (Appeals) was to be set aside and matter was to be remanded back for de novo adjudication - **Ramson Remedies v. Assistant Commissioner of Income-tax - [2024] 159 taxmann.com 1376 (Amritsar - Trib.)**

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

4.94 Cash deposit during - Demonetization period : Where assessee had disclosed investment in his books of account and had also shown same in computation of income which was offered for taxation, section 69A could not be invoked in case of assessee and thus, addition made on account of unexplained money was to be deleted - **Sobha Devi Dilipkumar v. Income-tax Officer - [2024] 160 taxmann.com 1249 (Visakhapatnam - Trib.)**

4.95 Share transactions : Where assessee purchased shares at Rs. 5 per share and sold same at Rs. 420 per share and claimed exemption under section 10(38) in respect of long-term capital gain arose from such sale, since assessee had paid amount for purchase of shares through cheque and certificate of said shares was also

taken on record and Assessing Officer had not established that assessee was involved in price manipulation of said scrip, such long-term capital gain could not be treated as unexplained money under section 69A and assessee had rightly claimed exemption under section 10(38) - **Puneet Singh R. Bhadoria v. Income-tax Officer - [2024] 159 taxmann.com 1486 (Ahmedabad - Trib.)**

4.96 Foreign bank account : Where pursuant to search operation, Assessing Officer noted that assessee held foreign bank account at Geneva, Switzerland as per exchange of information framework of DTAC/DTAA between India and France and being of view that assessee had not declared Swiss bank account in his return of income and funds of this account were also not disclosed by assessee, added same to total income of assessee as unexplained investment/deposit, since no incriminating document was found during course of search proceedings, additions so made were to be deleted - **Deputy Commissioner of Income-tax, Central Circle-2 v. Arvind N Nopany - [2024] 160 taxmann.com 8 (Ahmedabad - Trib.)**

4.97 Where AO noticed that during demonetization period assessee deposited a cash of certain amount in bank account which showed abnormal increase in sales with decrease in profitability compared to preceding year and thus made addition under section 69A, since assessee maintained and produced books of account and cash book before AO by offering explanation and by submitting copies of VAT returns to justify sales and corresponding receipts of cash book deposited in bank, impugned addition made under section 69A by AO without even disputing books of account was to be deleted - **Yogesh Gupta v. Assistant Commissioner of Income-tax - [2024] 159 taxmann.com 1396 (Delhi - Trib.)**

4.98 Cash deposits : Where assessee made cash deposits of certain amount during demonetization period and claimed that said deposits were out of gifts received from her parents and as old currency was required to be deposited during demonetization period assessee deposited same out of her earlier withdrawals, since assessee had failed to establish identity, genuineness and creditworthiness of said transactions of said cash deposits during demonetization period by filing proper evidences, impugned addition made on account of said cash deposits was justified - **VUDATHA VANI RAO v. Income-tax Officer - [2024] 159 taxmann.com 1394 (Visakhapatnam - Trib.)**

4.99 Cash deposits : Where assessee made cash deposits of certain amount before demonetization period, since said cash deposits were beyond scope of notice issued under section 143(2) for which assessee's case was selected for limited scrutiny only to examine deposits made during demonetization period, impugned addition made on account of said deposits made before demonetization period was to be deleted - **VUDATHA VANI RAO v. Income-tax Officer - [2024] 159 taxmann.com 1394 (Visakhapatnam - Trib.)**

4.100 Demonetisation period : Where assessee running medical shops deposited certain amount in bank during demonetization period, impugned addition made on account

of said amount deposited merely on ground that amount was received during demonetization period was to be set aside and matter was to be restored to file of Assessing Officer for verification - **Vijay Prakash Mantri v. Income-tax Officer - [2024] 159 taxmann.com 1393 (Hyderabad - Trib.)**

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

4.101 Where assessee, engaged in business of manufacturing and trading of petro-chemicals, had made purchases and had submitted addresses, GST No. PAN No., amount of purchases (Net of VAT), bill/voucher/challan issued by parties mentioned details of assessee, excise duty paid, details of truck/challan no., order no. etc. from all parties and payment were made through cheques, addition made by Assessing Officer treating entire purchase as non-genuine simply because notice sent under section 133(6) through ITBA portal was not responded ignoring other evidences and details available on record was to be deleted - **Isagro (Asia) Agrochemicals (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6(1)(2) - [2024] 160 taxmann.com 527 (Mumbai - Trib.)**

4.102 Objections to reopening: Where Assessing Officer framed assessment making additions to assessee's income by way of disallowance of purchases made by assessee on ground that same were bogus and unexplained, since objections filed by assessee against reopening of assessment were not decided by Assessing Officer, impugned assessment so framed was to be set aside - **Champalal Omprakash v. Income-tax Officer - [2024] 159 taxmann.com 1397 (Kolkata - Trib.)**

4.103 Bogus purchases : Where Assessing Officer was of view that purchases made by assessee were made from grey market and made addition towards bogus purchases at rate of 25 per cent of purchases, since Assessing Officer had made said addition on estimate basis and further corresponding sales had been accepted, impugned addition towards bogus purchase was not sustainable and same was to be deleted - **Deputy Commissioner of Income-tax v. Sharp Mint Ltd. - [2024] 159 taxmann.com 1381 (Delhi - Trib.)**

SECTION 70 OF THE INCOME-TAX ACT, 1961 - LOSSES - SET OFF OF FROM ONE SOURCE AGAINST INCOME FROM ANOTHER SOURCES UNDER SAME HEAD OF INCOME

4.104 Under provisions of section 70(2), STCL arising from any asset could be set off against STCG arising from any other asset under a similar computation made irrespective of different rate of tax - **JS Capital LLC v. Assistant Commissioner of Income-tax, (IT) Circle-3(1)(1) - [2024] 160 taxmann.com 286 (Mumbai - Trib.)**

SECTION 80 OF THE INCOME-TAX ACT, 1961 - LOSSES - RETURN FOR LOSS

4.105 Explanation 2 to section 139 : Where assessee had filed its original return for assessment year 2019-20 within time limit specified under Explanation 2 to section 139(1) and not on 20-2-2020 as mentioned by Commissioner (Appeals), assessee was to be allowed to carry forward loss for assessment year 2019-20 - **Paytm First Games (P.) Ltd. v. Assistant Director of Income-tax - [2024] 159 taxmann.com 1511 (Delhi - Trib.)**

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

4.106 Approval under sub-section (5) : Where assessee-trust filed application in Form No. 10AB for approval under clause (iii) of first proviso to sub-section (5) of section 80G on 2-12-2022 and Commissioner (Exemption) having noted that assessee had not filed application on or before 30-9-2022 as per as per CBDT circular No.8/2022 rejected application as not maintainable, since Tribunal had power to condone delay, hence, delay was to be condoned and matter was to be remitted to Commissioner (Exemption) to decide application afresh on merits - **Swachh Vapi Mission Trust v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 657 (Surat-Trib.)**

4.107 CSR : Only condition for claiming deduction under section 80G as per existing provision is institute to which donation is made must have been registered under section 80G and once aforesaid condition is fulfilled, donor is entitled to avail deduction - **Ericsson India Global Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1) - [2024] 160 taxmann.com 599 (Delhi - Trib.)**

4.108 Date of application : Where assessee had been granted provisional approval under clause (iv) to first proviso to section 80G(5), application for final approval under clause (iii) to first proviso to section 80G(5) could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration - **Anudip Foundation for Social Welfare v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 624 (Kolkata - Trib.)**

4.109 Proviso to section 80G(5) : Timeline prescribed under clause (iii) of first proviso to section 80G(5) should be treated as directory and not mandatory, hence, once timeline prescribed for filing Form No.10A for recognition under section 12A had been extended up to 30-9-2023, same may be treated as extended for forms namely Form No.10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G also - **CIT-1982 Charitable Trust v. Income Tax Officer - [2024] 160 taxmann.com 475 (Chennai - Trib.)**

4.110 Approval under sub-section (5) : Where assessee-society, engaged in religious and charitable activities and registered under section 12AA, applied for regular approval under section 80G(5)(vi), since assessee-society was formed with

objects to provide education, research and training, etc. and expenditure incurred by it were not found to be religious in nature, it was eligible for approval under section 80G(5) - **Sadhumargi Shantkranti Jain v. Commissioner of Income-tax (Exemption)** - [2024] 159 taxmann.com 636 (Raipur - Trib.)

4.111 Approval under sub-section (5) : Where assessee-trust filed application in Form No. 10AB for approval under clause (iii) of first proviso to sub-section (5) of section 80G and Commissioner (Exemption) having noted that assessee had not filed application within time limit as stated in clause (iii) of third proviso to sub-section (5) of section 80G rejected application as not maintainable, since phrase 'whichever is earlier' used in clause (iii) of third proviso to section 80G(5) was applicable only to newly constructed trust and not to old trust, delay in filing Form No. 10AB deserved to be condoned - **Vananchal Kelavani Trust v. Commissioner of Income-tax (Exemption)** - [2024] 159 taxmann.com 634 (Surat-Trib.)

4.112 Sub-section (5) : Where Commissioner (Exemption) rejected assessee's application for approval under section 80G(5) on ground that certain objects of assessee were religious in nature, however, Commissioner (Exemption) had not made any specific observations as to whether less than 5 per cent of total income had been spent by assessee towards religious purposes, matter was to be remanded back for de novo consideration - **Jay Mataji Charitable Trust v. Commissioner of Income-tax (Exemption)** - [2024] 160 taxmann.com 276 (Rajkot - Trib.)

4.113 Sub-section (5) : Where Commissioner (Exemption) rejected application of assessee-trust for approval under section 80G(5) on ground that one of objects of assessee-trust was religious in nature, however, he did not point out any specific object in trust deed which could be termed as religious in nature, matter was to be remanded back for de novo consideration - **Swaminarayan Bhaktidham Dwarka Charitable Trust v. Commissioner of Income-tax (Exemption)** - [2024] 160 taxmann.com 279 (Rajkot - Trib.)

4.114 Date of application : Where CIT (Exemption) rejected application of assessee for provisional approval under clause (iv) to first proviso to section 80G(5) observing that assessee had already commenced its activities since long even prior to grant of provisional registration, after grant of provisional approval, application could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration and that under such circumstances, date of commencement of activity would be counted when an activity was undertaken after grant of provisional registration either under clause (i) or clause (iv) to first proviso to section 80G(5) - **Tomorrow's Foundation v. Commissioner of Income-tax (Exemption)** - [2024] 160 taxmann.com 174 (Kolkata - Trib.)

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

4.115 Form No 10CCB : Where deduction u.s. 80-IA was not allowed to assessee for non-filing of Form No. 10CCB within prescribed time and CIT (Appeals) deleted said disallowance, since CIT (Appeals) had not analysed relevant judicial precedents on subject and had simply accepted version of assessee without independently applying his mind to facts of case, matter was to be restored to file of Commissioner (Appeals) for de novo consideration - **Assistant Commissioner of Income-tax v. Shreeji Shipping Services (India) Ltd.** - [2024] 160 taxmann.com 277 (Rajkot - Trib.)

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

4.116 Revision : Where in assessment order AO allowed deduction u.s. 80-IB(11) claimed by assessee, however, he overlooked that assessee was not eligible for deduction u.s. 80IB(11) rather it was eligible for deduction u.s. 80-IB(11A), impugned order passed by AO was erroneous as well as prejudicial to interest of revenue, and therefore, same was to be set aside and revisionary power was rightly invoked by Principal Commissioner u.s. 263 - **Kishan Cold Storage v. Principal Commissioner of Income-tax** - [2024] 159 taxmann.com 1221 (Rajkot - Trib.)

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

4.117 Interest : Where assessee, co-operative society, claimed deduction u.s. 80P, Commissioner (Appeals) was right in directing Assessing Officer to examine whether assessee was extending/providing credit facilities to non-members and income earned out of such activity could not be granted deduction under section 80P(2)(a)(i) - **Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer** - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

4.118 Interest : Interest income earned by assessee-co-operative society on investments made with co-operative banks/scheduled banks was not eligible for deduction either under section 80P(2)(a)(i) or under section 80P(2)(d) - **Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer** - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

4.119 Interest : Where assessee-co-operative society contended that interest received from certain co-operative banks was on account of compliance with rule 28 of Karnataka Co-operative Societies Rules, 1960, therefore, it constituted income from business of providing credit facilities to its members, and eligible for deduction under section 80P(2)(a), Assessing Officer was to be directed to examine claim of assessee and if same was found to be out of compulsions, such interest income derived would be entitled to deduction under section 80P(2)(a)(i) - **Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer** - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)

4.120 Commission : Where assessee, co-operative society, claimed deduction u.s. 80P(2)(a)(iii) in respect of commission earned from a co-operative society by marketing arecanut grown by members, since assessee had wrongly claimed deduction u.s. 80P(2)(a)(iii) instead of claiming deduction u.s. 80P(2)(e), matter was to be remanded back to AO to examine afresh as to whether assessee was entitled to deduction under any of limbs u.s. 80P - **Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)**

4.121 Pledged agricultural produce : Where assessee co-operative society claimed deduction u.s. 80P(2)(e) on income earned from storing pledged agricultural produce against loans given by it, since full details were not available before AO regarding this claim of assessee, matter was to be remanded back to AO to examine afresh as to whether assessee was entitled to deduction u.s. 80P(2)(e) or 80P(2)(a)(i) - **Savanoor Primary Agricultural Co-operative Society Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1493 (Bangalore - Trib.)**

4.122 Interest from co-operative society : Where assessee claimed deduction u.s. 80P on interest income earned on fixed deposits with banks, since assessee failed to bring any material on record to show that interest received by assessee was only from cooperative society and it was not carrying on business of banking as per RBI Regulations, matter was to be remanded to AO to determine same - **The Ideal Homes Co-operative Building Society Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1529 (Bangalore - Trib.)**

4.123 Grant : Where assessee-society engaged in providing Mini Bank service and sales of fertilizer to its Tribal members claimed deduction u.s. 80P for miscellaneous income, since said income mainly constituted of grant received from WB Government for various activities as per its registered bye-laws, it would be eligible for deduction u.s. 80P - **Udyan Large Size Multipurpose Co-operative Society Ltd. v. Income-tax Officer - [2024] 160 taxmann.com 167 (Kolkata - Trib.)**

4.124 Interest income : Where assessee, co-operative society, had received interest income from a co-operative bank which was registered under Co-operative Societies Act, 1912, said interest income was eligible for deduction u.s. 80P(2)(d) - **Anand Urban Cooperative Credit Society Ltd. v. Income Tax Officer, Ward-1(5) - [2024] 160 taxmann.com 288 (Pune - Trib.)**

4.125 Commission : Where assessee, co-operative society, had received commission income on collection of MSEDCL bills which was from business activity carried on by assessee, same was eligible for deduction u.s. 80P(2)(a) - **Anand Urban Cooperative Credit Society Ltd. v. Income Tax Officer, Ward-1(5) - [2024] 160 taxmann.com 288 (Pune - Trib.)**

4.126 Interest : Where assessee co-operative bank had not claimed deduction u.s. 80P(2)(a)(i) or 80P(2)(d) on interest income earned by it from various banks including co-operative banks and had showed same as income from other sources and accordingly AO had not granted any deduction on said interest income, impugned revision u.s. 263 on ground that Assessing Officer ought to have disallowed deduction u.s. 80P(2)(d) in respect of interest income on banks including co-operative banks was unjustified - **Pane Mangalore RSS Bank Panemangalore RSS Ltd. v. Income Tax Officer - [2024] 159 taxmann.com 1483 (Bangalore - Trib.)**

4.127 Interest income : Where assessee a co-operative society claimed deduction under section 80P(2)(d) on interest income earned from deposits placed with a co-operative bank and Assessing Officer after due examination of facts allowed said claim, Principal Commissioner was not justified in invoking revisionary jurisdiction merely on ground that interest income was not earned from any other co-operative society but from scheduled commercial banks - **Jagadhri Co-operative Marketing Cum Processing Society Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1253 (Chandigarh - Trib.)**

4.128 Interest income : Provisions of section 80P(4) is relevant only where assessee is a co-operative bank and claims deduction u.s. 80P and not where assessee is a co-operative society - **Jagadhri Co-operative Marketing Cum Processing Society Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1253 (Chandigarh - Trib.)**

4.129 Interest income : Where assessee co-operative society claimed that interest income earned by it from investments with Central District Co-operative Bank was in compliance with relevant provisions of Karnataka Co-operative Societies Act 1959 and relevant Rules, since revenue had not adjudicated contentions raised by assessee, issue was to be remanded back to AO to examine whether such interest income received by assessee was out of compulsions and in compliance with Karnataka State Cooperative Societies Act, 1959 and relevant Rules and if it was so, interest income was to be assessed as business income and entitled to deduction under section 80P(2)(a)(i) - **Kalika Parameswari Co-operative Society Ltd. v. ITO - [2024] 159 taxmann.com 1466 (Bangalore - Trib.)**

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

4.130 Condonation of delay : Where appeal was filed by assessee before Commissioner (Appeals) with a delay of 335 days against denial of claim of relief under section 90 in respect of tax paid by assessee in Norway on income earned in Norway, since assessee had explained that it took time to get documents related to details of all tax paid from Norway particularly considering situation emanating from COVID-19 pandemic, impugned delay in filing appeal was to be condoned and appeal was to be decided on merits - **Hanumantappa Giriyapur Manjunatha v. Income-tax Officer - [2024] 159 taxmann.com 1496 (Bangalore - Trib.)**

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

- 4.131 Lending or borrowing / Capital financing :** Where assessee-company issued letters to banks on behalf of some of its associated enterprises who availed loans from banks outside India, since assessee had considered letters of comfort/support to banks on behalf of some of its subsidiaries as its contingent liability, letters of comfort issued by assessee constituted an international transaction within the meaning of section 92B - **Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 214 (Mumbai - Trib.)**
- 4.132 Letter of Comfort :** Where assessee issued a letter of comfort towards credit facilities sanctioned by bank to assessee's subsidiaries, since terms of letter of comfort given by bank to borrower created an obligation on borrower that borrower would prepay loan in case assessee ceased to hold 51 per cent stake in borrower company, what assessee had given to bank towards loan facility granted to its subsidiary was only a letter of comfort and not a guarantee therefore, adjustment made by TPO was to be deleted - **Lupin Ltd. v. Deputy Commissioner of Income-tax. - [2024] 160 taxmann.com 691 (Mumbai - Trib.)**
- 4.133 Corporate guarantee:** Corporate guarantee charged by assessee from its associated enterprises at rate of 1 per cent was at ALP - **Zydus Lifesciences Ltd. v. Deputy Commissioner of Income-tax, Circle 1(1)(2) - [2024] 160 taxmann.com 37 (Ahmedabad - Trib.)**

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

- 4.134 Adjustment - Guarantee commission :** Where assessee issued corporate guarantee on behalf of its AEs and interest benefit of explicit guarantee accrued to both guarantor and borrowed, thus saving of interest benefit between assessee and AE was to be split at 50 : 50 basis - **Dabur India Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1) - [2024] 160 taxmann.com 595 (Delhi - Trib.)**
- 4.135 Adjustments - Interest :** Where assessee raised invoices on account of sales made to its AEs, since international transactions were benchmarked separately for its two segments, separate benchmarking would not be required for receivables and thus, notional interest imputed of trade receivables was to be deleted - **Dabur India Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1) - [2024] 160 taxmann.com 595 (Delhi - Trib.)**
- 4.136 Adjustments - Guarantee Commission :** Where assessee had given corporate guarantee on behalf of its subsidiary and TPO determined ALP of said transaction by taking into account interest rate for unsecured bonds

of AAA rate companies, since corporate guarantee was given by assessee on behalf of its AE for availing loan facility to reduce interest rate charged by banks, ALP on corporate guarantee commission was to be determined on basis of interest saving approach - **ACG Associated Capsules (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-42 - [2024] 160 taxmann.com 623 (Mumbai - Trib.)**

- 4.137 Adjustments - Interest :** Where assessee had given loan to its 100 per cent subsidiary, however neither assessee nor revenue had benchmarked said transaction and merely considered reasonable estimations on notional interests to be levied, matter was to be remanded back for purpose of benchmarking said transaction - **ACG Associated Capsules (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-42 - [2024] 160 taxmann.com 623 (Mumbai - Trib.)**
- 4.138 Methods for determination of - Other method :** Where assessee-company, engaged in setting up a coal based thermal mega power plant, imported majority of plant and equipment for said project from its AE, assessee adopted 'other method' as MAM and noted hard cost of plant and equipment for power projects as benchmarked by statutory body called Central Electricity Regulatory Commission (CERC), since most important criterion for using any method to fix ALP is availability of reliable comparable data which in instant case was a statutory body, method followed by assessee to bench mark hard cost of equipment imported from AE was in accordance with Rule 10AB - **RKM Powergen (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 160 taxmann.com 480 (Chennai - Trib.)**
- 4.139 Methods for determination of - Other method :** Where assessee-company, engaged in setting up a coal based thermal mega power plant, imported majority of plant and equipment for said project from its AE, since project executed by assessee was industry specific and capital goods imported were not general in nature and there was no comparables available in public domain, method followed by assessee to bench mark import of capital goods from AE under any 'other method' would be in accordance with prescribed method for benchmarking this kind of transaction - **RKM Powergen (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 160 taxmann.com 480 (Chennai - Trib.)**
- 4.140 Adjustment - Operating profit/cost, computation of:** ESOP expenditure is non-operating expenses for purpose of computation of operating margin - **Amazon Seller Services (P.) Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 9 (Bangalore - Trib.)**
- 4.141 Adjustment -AMP expenses :** Where assessee excluded delivery and warranty expenses from AMP expenses and TPO accepted same after due enquiry, Commissioner could not have revised order of TPO by holding that delivery and warranty expenses were to be included in AMP expenses - **Amazon Seller Services (P.) Ltd. v. Commissioner of Income-tax - [2024] 160 taxmann.com 9 (Bangalore - Trib.)**

- 4.142 Adjustment -Interest :** Where assessee had advanced Optionally Convertible Loans (OCL) to its associated enterprise, since TPO had proposed adjustment on account of charging of interest on OCL by adopting same methodology followed in preceding assessment years, which was unjustified, same was to be deleted - **Zyodus Lifesciences Ltd. v. Deputy Commissioner of Income-tax, Circle 1(1)(2) - [2024] 160 taxmann.com 37 (Ahmedabad - Trib.)**
- 4.143 Adjustments - Reimbursement of expenses :** Where assessee had reimbursed expenses to its associated enterprises, since assessee had been able to demonstrate that these expenses were incurred in respect of assessee's business interest in overseas jurisdiction, TPO was not justified in holding that arm's length price in respect of these cost to cost reimbursements should be determined at nil - **Zyodus Lifesciences Ltd. v. Deputy Commissioner of Income-tax, Circle 1(1)(2) - [2024] 160 taxmann.com 37 (Ahmedabad - Trib.)**
- 4.144 Adjustments - Working capital adjustments :** Where working capital adjustment was denied on ground that assessee had not demonstrated that working capital differences had impacted its profits; that segmental working capital was not disclosed in annual reports of comparable companies, since assessee submitted that it had furnished all relevant information and working before TPO/AO but it missed attention of both Revenue authorities ,matter was to be remanded back to AO/TPO to decide issue afresh after considering information furnished by assessee - **Medtronic Engineering and Innovation Centre (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-5(1) - [2024] 160 taxmann.com 364 (Hyderabad - Trib.)**
- 4.145 Comparability factors - Segmental result :** Where assessee was engaged in providing contract software development services to its AEs, a company engaged in providing custom development services to offshore and also engaged in software engineering services in different fields, in absence of segmentals, was to be excluded from list of comparables - **Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)**
- 4.146 Comparability factors - Abnormal events :** Where a company engaged in software development services had undergone a process of amalgamation with another company and nothing had been brought on record to establish impact or otherwise of amalgamation on profitability, issue was to be restored to Assessing Officer for examining this aspect and, thereafter, decide whether it could be treated as a comparable to assessee engaged in providing contract software development services to its AEs - **Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)**
- 4.147 Comparables, functional similarity - Software consultancy/development services :** Where assessee was purely a captive contract software development services provider and design and overall guidance relating to specific software was provided by AEs, a company which had incurred sales promotion and marketing expenses and also owned plant, equipment and other intangible assets which presupposes that it was a full risk bearing entity unlike assessee which was more or less a no risk-entity could not be selected as a comparable - **Nokia Solutions and Networks India (P.) Ltd. v. Asst Comm of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)**
- 4.148 Comparability factors - Loss making company :** Where TPO rejected a company selected by assessee on ground that it was having persistent losses for last 3 years up to and including FY 2014-15, however, assessee had furnished cogent evidence to demonstrate that company had made profit in FY 2015-16, therefore, company was to be included in list of comparables - **Nokia Solutions and Networks India (P.) Ltd. v. Asst Comm of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)**
- 4.149 Comparables, functional similarity - Software consultancy/development services :** Where assessee was engaged in providing contract software development services to its AEs, a company earning revenue from software dev. services was functionally similar to assessee and should be treated as comparable - **Nokia Solutions and Networks India (P.) Ltd. v. Asst Comm of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)**
- 4.150 Adjustment - Interest :** Where TPO made an adjustment on account of outstanding receivables, since factors responsible for delay have not been brought on record either by assessee nor had been examined by TPO, issue was to be remanded to AO for de novo adjudication - **Nokia Solutions and Networks India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-15 - [2024] 160 taxmann.com 729 (Delhi - Trib.)**
- 4.151 Adjustments - Benefit from transaction/Allowability of expenditure :** Where intra-group services received by assessee-company were intrinsically linked to core business operations of assessee and there existed a direct nexus between intra-group services received by assessee vis-a-vis revenue earned/cost incurred by assessee, TP adjustment made by TPO was to be deleted - **Avery Dennison (India) (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-1(1) - [2024] 160 taxmann.com 499 (Delhi - Trib.)**
- 4.152 Adjustment - Royalty :** Where assessee entered into an agreement with its overseas AEs and was to receive royalty of 3 per cent of net sales for providing 'Brand Name' along with other technical support, however, considering financial position of subsidiaries, assessee agreed to waive 2 per cent of royalty and received only 1 per cent, addition made by AO of balance 2 per cent royalty, which was waived by assessee was to be deleted - **Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai - Trib.)**

4.153 Operating profit, Cost computation of : Where assessee computed segmented operating margin on cost from rendering of designing engineering and other related services to its AEs but TPO took total revenue and total expenditure for purpose of determining ALP, matter was to be remanded back to consider details furnished by assessee in respect of margin computation for provision of services to AEs - **TPSC (India) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-2(1) - [2024] 160 taxmann.com 693 (Hyderabad - Trib.)**

4.154 Adjustment - Interest : Where assessee- company advanced loan to an associated enterprise and charged interest at rate of 1 month LIBOR plus 300 basis points, adopted CUP method and considered JPSPL, its associated enterprise, as internal comparable because JPSPL had taken loan from Citibank Singapore for tenure of 3 months at rate of 6 months LIBOR plus 225 basis points, since both loans were short term loans, guarantee had been advanced by assessee as a matter of commercial prudence primarily to protect business interest of group by fulfilling shareholder's obligation and both transactions pertained to same period in which LIBOR rates were applied i.e. in 2012, said transaction was at arm's length - **Maharashtra Seamless Ltd. v. Deputy Commissioner of Income-tax, Circle-16(1) - [2024] 160 taxmann.com 143 (Delhi - Trib.)**

4.155 Adjustments - Operating profit/cost, computation of : Where during calculation of Net profit margin, TPO had considered depreciation of assessee and made TP adjustment and grievance of assessee was to consider depreciation as a part of total cost would not be appropriate for purpose of benchmarking since depreciation in case of assessee being newly set up, was 16.92% of its revenue, vis-a-vis depreciation of 4.85% of seven comparable companies as taken by TPO, depreciation should be removed for calculation of net profit margin and cash PLI as prayed for by assessee was justified method - **Jamshedpur Continuous Annealing & Processing Company (P.) Ltd. v. National e-Assessment Centre - [2024] 160 taxmann.com 139 (Kolkata - Trib.)**

4.156 Methods for determination of - CUP method : Where Indian division of assessee-banking company, engaged in trading and finance of precious metals, imported bullion on consignment basis from its London branch which was sold through various product offerings, since LBMA(London Bullion Market Association) database did not capture volatility in market because these rates were published at two times of date, high and low rate published by KITCO & Reuters would be MAM for comparison while benchmarking international transactions of trading in bullion and silver - **Bank of Nova Scotia v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 177 (Mumbai - Trib.)**

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

4.157 General : Where Assessing Officer has not made any reference to TPO, he does not have jurisdiction to propose any transfer pricing adjustment - **Himatsingka Seide Ltd. v. Deputy Commissioner of Income-tax, Central Circle-XVI - [2024] 160 taxmann.com 601 (Kolkata - Trib.)**

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

4.158 Scope of provision : Where assessee filed return within extended due date under section 139(1) opting provisions of section 115BAA and filed Form No. 10-IC before time prescribed in Circular No. 19/2023, dated 23-10-2023, however, these details of filling of Form No. 10-IC and CBDT Circular were not available at time of processing of return of income under section 143(1) with Assessing Officer, issue was to be restored to Assessing Officer to examine and consider applicability of provisions under section 115BAA opted by assessee - **Konti Infrapower & Multiventures (P.) Ltd. v. Income-tax Officer - [2024] 160 taxmann.com 229 (Mumbai - Trib.)**

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

4.159 Release of seized assets : Where during course of search, cash and fixed deposit receipts [FDRs] were seized and assessee had made an application for release/adjustment of cash and FDRs; as per section 132B(1), Assessing Officer ought to have adjusted seized cash and FDRs against tax liability while framing regular assessment and, therefore, there was no question of levy of interest under section 234B - **Nune Trimurtulu Rayudu v. Assistant Commissioner of Income-tax, Central Circle-2 - [2024] 160 taxmann.com 43 (Rajkot - Trib.)**

4.160 Payment of interest on seized FDRs : FDRs cannot be treated as 'money' as referred in section 132B(4)(b) and since by mere seizure of FDRs, assessee had not suffered any pecuniary loss by way of loss of interest, no interest under section 132B(4) could be granted to assessee - **Nune Trimurtulu Rayudu v. Assistant Commissioner of Income-tax, Central Circle-2 - [2024] 160 taxmann.com 43 (Rajkot - Trib.)**

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

4.161 Draft assessment order. Assessing Officer is not empowered to make any other addition which was not proposed in draft assessment order - **Mobase India (P.) Ltd. v. Assistant Commissioner of Income-tax, National e-Assessment Centre - [2024] 160 taxmann.com 165 (Delhi - Trib.)**

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

4.162 Revision : Where assessee, real estate developer, recognized revenue from a project of construction of bungalows on execution of sale deed and Principal Commissioner invoked revisionary proceedings on ground

that revenue should have been recognized by assessee on percentage completion method, since there was no loss of tax causing prejudice to revenue due to method adopted by assessee which was accepted by AO in assessment order, twin conditions to exercise power under section 263 had not been satisfied - **Soham Buildcon v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 1250 (Ahmedabad - Trib.)**

4.163 Valuation of closing stock : Where Principal Commissioner invoked revisionary proceedings on ground that AO had not made any inquiry with respect to method adopted by assessee for valuation of closing stock, since value of closing stock would become opening stock in next year, same would be a tax natural exercise and there would be no loss of tax causing prejudice to revenue due to method adopted by assessee, thus twin conditions to exercise power under section 263 had not been satisfied and revisionary order was to be set aside - **Soham Buildcon v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 1250 (Ahmedabad - Trib.)**

4.164 Where pursuant to a survey conducted at assessee's premises who was running a gold jewellery shop, AO applied net profit rate of 5% rejecting assessee's plea of adoption of a net profit rate of 2% , since Assessing Officer accepted returned income, which aligned with estimated turnover, yielding a profit rate below 5%, there was no question for reducing profit rate to 2% - **Mytheenkunju Muhammed Kunju Kandathil Jewellers v. Deputy Commissioner of Income-tax, IT - [2024] 160 taxmann.com 630 (Cochin - Trib.)**

4.165 Closing stock : Where Assessing Officer had considered actual cost price of damaged stock for purpose of taxation, in view of Tribunal's decision in assessee's own case for preceding assessment year accepting disallowance to extent of 0.5 per cent of value of closing stock damaged stock, Commissioner (Appeals) was justified in restricted said disallowance to tune of 0.5 per cent of value of closing stock for purpose of valuation of closing stock - **Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 402 (Mumbai - Trib.)**

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

4.166 Unabated assessment : In absence of any incriminating material found during search, addition made to income of assessee in respect of certain accommodation entries received by it in assessment made under section 153A on basis of statement recorded under section 132(4) of a third person, without providing an opportunity to cross-examine witness was not justified - **Divya Exim (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1370 (Delhi - Trib.)**

SECTION 153B OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - TIME LIMIT FOR COMPLETION OF ASSESSMENT UNDER SECTION 153A

4.167 Illustrations: Where limitation period expired on 31-3-2014 as per provisions of section 153B for assessment year 2007-08, assessment order passed by Assessing Officer on 27-2-2015 was barred by limitation under section 153B and, therefore, liable to be quashed - **Deputy Commissioner of Income-tax, Central Circle-2 v. Arvind N Nopany - [2024] 160 taxmann.com 8 (Ahmedabad - Trib.)**

SECTION 154 OF THE INCOME-TAX ACT, 1961 - RECTIFICATION OF MISTAKES - APPARENT FROM RECORD

4.168 Scope of : Where assessee filed original return claiming no refund, however, it subsequently filed revised return claiming refund of tax of certain amount which was not sent to CPC within due date, since assessee had put figures in wrong column in its original return instead of appropriate column which was a mistake apparent from record, case was to be remanded back to Assessing Officer to rectify said mistake in original return - **TSO JHE Khangsar Charity Hospital Society v. Income-tax Officer, Exemption - [2024] 159 taxmann.com 1392 (Bangalore - Trib.)**

SECTION 156 OF THE INCOME-TAX ACT, 1961 - NOTICE OF DEMAND

4.169 Where assessment order and intimation bearing DIN were uploaded on revenue's portal, assessee could not challenge validity of assessment order for lack of DIN - **Mytheenkunju Muhammed Kunju Kandathil Jewellers v. Deputy Commissioner of Income-tax, IT - [2024] 160 taxmann.com 630 (Cochin - Trib.)**

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

4.170 Interest on delayed payment to broker : Where assessee-company paid interest on delayed payment to share broker for purchase of shares without deduction of tax at source, since interest amount had not been incurred by assessee on any amount borrowed during normal course of business, same could not be considered as interest under section 2(28A) and, consequently, provisions of sections 194A and 40(a)(ia) would not apply on same - **Standard Financial Consultants (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1488 (Kolkata - Trib.)**

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

4.171 Where assessee-company, engaged in business of establishing, maintaining and running hospital and multi-speciality healthcare facilities, made payment of consultancy charges to doctors, said payment would be covered under section 194J and not under section 192 - **ACIT (TDS) v. Artemis Medicares Services Ltd. - [2024] 159 taxmann.com 1368 (Delhi - Trib.)**

**SECTION 199 OF THE INCOME-TAX ACT, 1961,
READ WITH RULE 37BA OF THE INCOME-TAX
RULES, 1962 - DEDUCTION OF TAX AT SOURCE -
CREDIT FOR TAX DEDUCTED**

- 4.172 Year of allowance of TDS credit :** Where assessee-company received mobilization advance during financial year 2016-17 but offered income on said advance in subsequent years, assessee was to be allowed TDS credit on said advance in relevant assessment year - **Deputy Commissioner of Income-tax, Circle-2(1)(1) v. Cicon Engineers (P.) Ltd. - [2024] 160 taxmann.com 142 (Bangalore - Trib.)**

**SECTION 226 OF THE INCOME TAX ACT, 1961 -
COLLECTION AND RECOVERY OF TAX - OTHER
MODES OF RECOVERY**

- 4.173** ITAT declines to stay recovery of demand against Congress Party pending appeal as delay in determining appeal is not attributable to Revenue - **Indian National Congress All India Congress Committee v. Deputy Commissioner of Income Tax - [2024] 160 taxmann.com 260 (Delhi - Trib.)**

**SECTION 250 OF THE INCOME-TAX ACT, 1961 -
COMMISSIONER (APPEALS) - POWERS OF**

- 4.174 Non-speaking order :** Commissioner (Appeals) has to decide appeal on merit by passing a speaking order and does not have any power to dismiss appeal for non-prosecution - **Meda Raja Kishor Raghuramy Reddy v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 416 (Panaji - Trib.)**

- 4.175 Ex parte order :** Where assessee failed to respond to notices for prosecution of his appeal with evidences and hence appeal was dismissed ex parte by Commissioner (Appeals), keeping in view principles of natural justice, matter was to be remanded back to file of Commissioner (Appeals) and he was to be directed to afford assessee another opportunity of being heard - **Vattikuti Veera Venkata Prasad v. Income-tax Officer - [2024] 160 taxmann.com 1252 (Visakhapatnam - Trib.)**

**SECTION 251 OF THE INCOME-TAX ACT, 1961 -
COMMISSIONER (APPEALS) - POWERS OF**

- 4.176 Condonation of delay :** Where assessee filed appeal against order of Commissioner (Appeals) with delay of 51 days and submitted that delay in filing appeal was due to unfortunate and unforeseen circumstances surrounding her health along with doctor's certificate in support of her submission, since there was a reasonable cause for assessee to file appeal belatedly delay was to be condoned and appeal was to be admitted for hearing in interest of justice - **Smt. Vardhanapu Manikumari v. Income-tax Officer, Ward-1 - [2024] 160 taxmann.com 41 (Visakhapatnam - Trib.)**

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

- 4.177** While filing penalty appeal before Tribunal, assessee was required to remit appeal fees of Rs. 500 only - **S. Sagar Enterprise v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 159 taxmann.com 774 (Mumbai - Trib.)**

- 4.178 Condonation of delay :** Where assessee filed application against revision order of Pr. Comm. with a delay, since delay was caused due to preoccupation of finance department of assessee-company in relation to closing of accounts and preparation of annual reports for year 2018-19 and there was no negligence or laxity attributable to assessee for delay in filing appeal, delay was to be condoned - **Tiki Tar Industries Baroda Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 1691 (Ahmedabad - Trib.)**

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

- 4.179** Where assessee filed appeal before Tribunal with a delay of 58 days and submitted that delay in filing appeal belatedly was not as a result of any negligence or lack of diligence but solely due to unfortunate and unforeseen circumstances surrounding his health and he attached doctors certificate in support of his petition, delay was to be condoned - **Vattikuti Veera Venkata Prasad v. Income-tax Officer - [2024] 160 taxmann.com 1252 (Visakhapatnam - Trib.)**

- 4.180** Where Tribunal while passing order made a typographical and inadvertent errors by misstating deduction amounts, it rightly acknowledged errors and issued a corrigendum to address them - **Tata Steel Ltd. v. Deputy Commissioner of Income-tax-2(3)(1) - [2024] 160 taxmann.com 140 (Mumbai - Trib.)**

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

- 4.181 General :** Where agricultural receipts and issue of adequacy of agricultural expenditure were not verified by AO while passing original assessment under section 143(3) under limited scrutiny, Principal Commissioner was not justified in exercising provisional jurisdiction under section 263 - **Vijay Rajnikant Patel v. Principal Commissioner of Income-tax-3 - [2024] 160 taxmann.com 178 (Ahmedabad - Trib.)**

**SECTION 270A OF THE INCOME-TAX ACT, 1961 -
PENALTY - FOR UNDER-REPORTING AND
MISREPORTING OF INCOME**

- 4.182 Scope of provision :** Where fact of earning interest income and miscellaneous income had been duly disclosed by assessee in its accounts and in original return with full details, it could not be alleged that assessee was guilty of under-reporting and/or misreporting of income penalty under section 270A was not exigible - **Greenwoods Govt. Officers Welfare Society v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 237 (Delhi - Trib.)**

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

4.183 Notice : Where show cause notice proposing penalty upon assessee did not specify as to under which limb of section 271(1)(c), penalty was to be levied upon assessee, notice itself was bad in law and consequently penalty levied was to be set aside - **S. Sagor Enterprise v. Deputy Commissioner of Income-tax, Central Circle-1(1) - [2024] 159 taxmann.com 774 (Mumbai - Trib.)**

4.184 When returned income and assessed income are same, penalty u/s. 271(1)(c) cannot be levied - **Haresh Ghanshyamdas Makhija v. Income Tax Officer, Ward 2(2) - [2024] 160 taxmann.com 326 (Mumbai - Trib.)**

4.185 Disallowance of claim : Within six months from end of month in which Appellate Tribunal passed orders, Assessing Officer became functus officio and he had no jurisdiction to pass second penalty order beyond period prescribed under section 275(1), therefore, Assessing Officer having passed second penalty order beyond period prescribed under section 275(1), said order was to be set aside - **Kamal Enterprises and New Life Hospital v. Deputy Commissioner of Income-tax, Circle-9(1) - [2024] 160 taxmann.com 39 (Hyderabad - Trib.)**

4.186 Disallowance of claim : Where merely because assessee preferred a claim which was not acceptable to revenue, assessee could not be visited with proceedings under section 271(1)(c), unless and until twin requirements under section 271(1)(c) were satisfied - **Kamal Enterprises and New Life Hospital v. Deputy Commissioner of Income-tax, Circle-9(1) - [2024] 160 taxmann.com 39 (Hyderabad - Trib.)**

SECTION 271A OF THE INCOME-TAX ACT, 1961 - PENALTY - FOR FAILURE TO KEEP, MAINTAIN OR RETAIN BOOKS ACCOUNTS, ETC.

4.187 Once penalty u/s. 271A has been levied for non-maintenance of books of accounts, no penalty u/s. 271B can be levied - **Haresh Ghanshyamdas Makhija v. Income Tax Officer, Ward 2(2) - [2024] 160 taxmann.com 326 (Mumbai - Trib.)**

SECTION 271B OF THE INCOME-TAX ACT, 1961 - PENALTY

4.188 Where assessee did not maintain books of account within due date specified under section 139(1), question of getting them audited to comply provision of section 44AB would not arise and thus, he could not be visited to penalty under section 271B for offence committed by him for not getting accounts audited - **Pradipbhai Dayabhai Aghara v. Income-tax Officer - [2024] 159 taxmann.com 1591 (Rajkot - Trib.)**

SECTION 271FA OF THE INCOME-TAX ACT 1961 - PENALTY - FOR FAILURE TO FURNISH STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT

4.189 Scope of provision : Where assessee had a bonafide belief that no return was required to be filed as there were no reportable transactions, no penalty was exigible under section 271FA upon assessee for not filing its return - **The Motor & General Finance Ltd. v. ACIT - [2024] 159 taxmann.com 1494 (Delhi - Trib.)**

SECTION 282A OF THE INCOME-TAX ACT, 1961 - AUTHENTICATION OF NOTICES AND OTHER DOCUMENTS

4.190 Whereon account of technical issues departmental authorities were prevented from making digital signatures, prompting manual signing of assessment order, however, said orders were uploaded and sent to assessee's registered email ID, it was deemed to be authenticated and therefore, assessment order was valid - **Mytheenkunju Muhammed Kunju Kandathil Jewellers v. Deputy Commissioner of Income-tax, IT - [2024] 160 taxmann.com 630 (Cochin - Trib.)**

GST & INDIRECT TAXES

1. STATUTORY UPDATES

- 1.1** Delhi Govt. issued instruction regarding rectification of assessment orders u/s 161 - **Instruction F. No.3(543)/GST/POLICY/2024/1312-18, Dated 05-03-2024**

Editorial Note : The Delhi Government has received several representations to allow rectification of demand orders and therefore instructions are issued for rectification of demand order pertaining to FY 2017-18 which have apparent errors including arithmetical errors or clerical mistakes.

- 1.2** GSTN Advisory: Integration of E-Waybill system with New IRP Portals

Editorial Note : The GSTN has issued an update to announce the successful integration of E-Waybill services with four new IRP portals via NIC, enabling taxpayers to generate E-Waybills alongside E-Invoicing on the four IRPs.

- 1.3** Rs. 1,68,337 crores gross GST revenue collected during February 2024: Press Release

Editorial Note : The Government has issue press release to inform that Rs. 1,68,337 crores gross GST revenue collected during February 2024 and Gross GST collection reaches Rs. 18.40 lakh crores for FY 2023-24 which is 11.7% higher than the collection for the same period in FY 2022-23.

- 1.4** GSTN Update: Instances of delay in GST registration despite successful Aadhar Authentication

Editorial Note : The GSTN has issued an update to clarify that where a person has undergone Aadhar authentication as per sub-rule (4A) of rule 8 but has been identified in terms of Rule 9(aa) by the common portal for detailed verification based on risk profile, then application for registration would be processed within thirty days of application submission.

- 1.5** GSTN Advisory on GSTR-1/IFF: Introduction of New 14A and 15A tables

Editorial Note : The GSTN has issued an advisory to inform all taxpayers that two new Table 14A and Table 15A have been introduced in GSTR-1 to capture the amendment details of the supplies made through e-commerce operators (ECO) on which e-commerce operators are liable to collect tax under section 52 or liable to pay tax u/s 9(5).

2. HIGH COURT

SECTION 2(112) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TURNOVER IN A STATE/UNION TERRITORY

- 2.1** Where assessee a private general insurance company filed writ petition challenging an asst. order passed by Competent Authority since said authority had accepted explanation of assessee with regard to certain defects but had imposed GST at 36 percent instead of 18 percent on ground that financial statements submitted by assessee did not reflect state-wise turnover, impugned asst. order was to be set aside and matter was to be remanded to Competent Authority for reconsideration - **Tvl. Future General India Insurance Co. Ltd. v. Asst Comm. (State Tax) (FAC) - [2024] 159 taxmann.com 628 (Madras)**

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

- 2.2** Where assessee challenged deficiency memos rejecting his IGST refund application, HC, considering SC decision in Union of India vs. Mohit Minerals Private Limited, directed Revenue to process refund application in accordance with apex court's ruling, holding that decision applied retrospectively - **Sarvesh Pharma Glass v. Assistant Commissioner - [2024] 160 taxmann.com 87 (Gujarat)**

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

- 2.3** Where State Authorities had initiated proceedings against assessee, Summons issued by DGGI under section 70 cannot be said to be initiation of proceedings on same subject matter under CGST Act and thus, was not hit by section 6(2)(b) - **Rais Khan v. Add. Commissioner, Enforcement Wing-II, Rajasthan - [2024] 160 taxmann.com 546 (Rajasthan)**

- 2.4** Where proceedings initiated by SGST authorities were ongoing and assessee received second Show Cause Notice from CGST authorities on the same subject matter, CGST authorities were directed not to proceed with second notice till next hearing, considering pendency of first notice and statutory provisions - **Rajesh Mittal v. Union of India - [2024] 160 taxmann.com 49 (Gauhati)**

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

- 2.5** Where assessee filed writ petition seeking a declaration that activity of holding company providing a Corporate Guarantee to a subsidiary was not in nature of supply of services taxable under section 9, notice was to be issued to revenue and in meantime no coercive action was to be taken against assessee - **Sterlite Power Transmission Ltd. v. Union of India - [2024] 160 taxmann.com 381 (Delhi)**

2.6 Where by agreements, receivables from renters to be received by respondent bank, deposited in escrow account with respondent, dispute over GST on receivables to be given to petitioner/assignor, petition for restraint on respondent from dealing with escrow account, interim order granted, respondent not to transfer or deal with amounts in escrow account till formation of arbitral tribunal and until parties could approach tribunal under section 17 of Arbitration and Conciliation Act, 1996 - **Srei Equipment Finance Ltd. v. Karur Vysya Bank - [2024] 160 taxmann.com 482 (Calcutta)**

2.7 Where assessee was engaged in manufacture and supply of floor cleaners, toilet cleaners, medicated soap, dish wash, hand wash etc, assessee challenged order, which classified "Harpic Disinfectant Toilet Cleaner" and "Lizol Disinfectant Toilet Cleaner" under Item 31 of Fourth Schedule to Tamil Nadu Goods and Services Tax Act, 2017, attracting a tax rate of 28 percent and raised detailed objections but impugned order of assessment suffers from vice of non-application of mind to objection thereby impugned order of assessment stands vitiated and same was to be set aside - **Reckitt Benckiser (India) Ltd. v. State of Tamil Nadu - [2024] 160 taxmann.com 85 (Madras)**

2.8 Where petitioner's sale Order was canceled based on terms and conditions of Online Forward Auction for Sale, cancellation included forfeiture of security deposit, applicable GST, and a six-month debarment from participating in any online Forward Auction by RSP, in view of various judicial precedents said order under could not be sustained in eye of law and was liable to be quashed and was to be quashed - **Kedarnath Mining (P.) Ltd. v. Steel Authority of India - [2024] 160 taxmann.com 395 (Orissa)**

SECTION 14 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - CHANGE IN RATE OF TAX

2.9 Where petitioner company was issued acceptance letter for some work with condition that rates are inclusive of GST, subsequent communication after completion of work, that rates are exclusive of GST, was arbitrary and illegal and was to be set aside - **Kalinga Combines (P.) Ltd. v. Odisha Industrial Infrastructure Development Corporation (IDCO) - [2024] 160 taxmann.com 16 (Orissa)**

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

2.10 Where assessee supplied services to SEZ unit without charging GST since it was a zero rated supply, but while filing GSTR-1 return it inadvertently reported turnover under column taxable value, however, in GSTR-3B return it was correctly reported as a zero rated supply which does not attract GST, impugned

assessment order was to be quashed and matter was to be remanded for reconsideration - **Southern Engineering Services v. Deputy State Tax Officer - 1 - [2024] 160 taxmann.com 514 (Madras)**

2.11 Where assessee filed a writ petition challenging vires of section 16(2)(c) and also order of assessment passed by Assistant Commissioner holding that supplier had not shown transaction with assessee in its Form-GSTR-3B, notice was to be issued to respondent authority and on deposit of 20 percent of assessed tax amount, no coercive action was to be taken against assessee - **OSL Securities Ltd. v. Union of India - [2024] 159 taxmann.com 492 (Orissa)**

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

2.12 Where assessee failed to participate in proceedings and therefore could not place on record documents to contest reversal of ITC, impugned assessment order was to be set aside and Assessing Officer was to be directed to provide a reasonable opportunity to assessee including a personal hearing and issue a fresh assessment order - **Sri Ram Oil Mill v. Deputy State Tax Officer-1 - [2024] 160 taxmann.com 161 (Madras)**

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

2.13 Where show cause notice for GST registration cancellation lacked proper reasoning and supporting evidence of fraudulent intent, cancellation order was liable to be quashed, emphasizing crucial necessity of concrete proof of fraud despite existence of retrospective cancellation under Section 29(2)(e) of CGST Act - **Sreenidhi Alloy Metal Suppliers v. Superintendent (GST) - [2024] 160 taxmann.com 90 (Madras)**

2.14 Where Assessee was not given opportunity to even object to retrospective cancellation and show cause notice did not specify any cogent reason, and merely states "others" and notice also did not give name of officer or place or time where assessee had to appear, therefore same were to be set aside and GST registration of assessee was to be restored - **Rajendra Prop. Ramp Weldsafe and Metal Industries v. Commissioner of CGST - [2024] 160 taxmann.com 82 (Delhi)**

2.15 Where registration of assessee was cancelled for reason that no stock was found at registered business place, assessee had conducted business from said address in as much as returns had been filed for financial years 2021-22 and 2022-23 and this fact not been denied by either adjudicating authority or appellate authority, impugned orders being illegal and arbitrary were to be set aside - **Shree Ram Glass Bachauli Kufatabad Beekapur Thru. v. State Of U.P - [2024] 160 taxmann.com 84 (Allahabad)**

2.16 Where GST Authorities cancelled registration of assessee on ground that physical verification was conducted and no such firm was found present at registered office without giving

assessee an opportunity of being heard impugned order was to be set aside - **Rane Brake Lining Ltd. v. Superintendent, Range-17, Central GST Division - [2024] 159 taxmann.com 596 (Delhi)**

2.17 Where registration of assessee was canceled with retrospective date and assessee had not been put to notice that registration was liable to be canceled retrospectively, order canceling registration was to be set aside and registration of assessee was to be restored - **Apshara Garments (P.) Ltd. v. Commissioner of Delhi Goods and Service Tax - [2024] 159 taxmann.com 593 (Delhi)**

2.18 Where business of assessee was discontinued on death of its proprietor, and an order was passed cancelling registration of assessee retrospectively, since assessee was not put to notice that registration was liable to be cancelled retrospectively, cancellation order was to be modified to extent that same shall operate from date of demise of proprietor of assessee - **Ashish Garg v. GST Officer/AVATO - [2024] 160 taxmann.com 96 (Delhi)**

2.19 Where assessee's appeal against order of cancellation of registration w.e.f. 8-10-2022 rejected vide impugned order on ground of limitation, after cancellation, assessee filed GST returns and last of such returns filed on 31-8-2023, taking into account overall facts and circumstances, appellate authority was to be directed to consider appeal on merits and impugned order was to be set aside - **Sparta Food Factory India (P.) Ltd. v. Superintendent of GST & Central Excise - [2024] 160 taxmann.com 120 (Madras)**

2.20 Where show cause notice for GST registration cancellation cited grounds under Section 29(2)(e) of CGST Act, even in absence of specificity, and assessee failed to respond or provide evidence to substantiate existence of his business, High Court did not interfere with cancellation order as it aligned with provisions of Act and Rules - **Shri Sainath Steel v. State of M.P. - [2024] 160 taxmann.com 119 (Madhya Pradesh)**

2.21 Merely because a taxpayer had not filed returns for some period did not mean that taxpayer's registration was required to be cancelled with retrospective date also covering period when returns were filed, and the taxpayer was compliant; Order of cancellation set aside - **Em Power Engineering (P.) Ltd. v. Central Board of Indirect Taxes and Customs - [2024] 159 taxmann.com 698 (Delhi)**

2.22 Where Competent Authority had cancelled registration of assessee without giving any reason, assessee was to be granted opportunity of hearing before Competent Authority and appropriate order was to be passed in exercise of power under section 108 - **Teszla Multi Trade v. Union of India - [2024] 159 taxmann.com 627 (Gujarat)**

2.23 Where Competent Authority had cancelled registration of assessee without assigning any reasons, impugned order was to be set aside and registration of assessee was to be restored with immediate effect - **Ganesh Enterprises v. State of Maharashtra - [2024] 159 taxmann.com 629 (Bombay)**

2.24 Registration cannot be cancelled with retrospective effect mechanically on ground that taxpayer has not filed returns for some period; order cancelling registration of assessee retrospectively without putting assessee on notice of such cancellation and without giving reason was to be set aside and registration of assessee was to be restored - **Raj Kumar Kukreja v. Principal Commissioner, Delhi Goods and Service Tax - [2024] 160 taxmann.com 29 (Delhi)**

2.25 Where assessee submitted an application seeking cancellation of registration certificate due to discontinuation of business due to husband's death and said application was rejected with no reasons stated, thereafter an order was issued without stating any reasons for retrospective cancellation, therefore same could not be sustained and was to be modified to limited extent that registration shall now be treated as cancelled with effect from date when application of cancellation of GST registration was submitted - **Laxmi Jain v. Principal Commissioner of Delhi Goods & Services Tax - [2024] 160 taxmann.com 338 (Delhi)**

2.26 Where neither show Cause Notice, nor order of cancellation of registration issued to assessee spell out reasons for retrospective cancellation, show Cause Notice and impugned order were bereft of any details accordingly same could not be sustained and therefore in terms of section 29(2) said order was to be set aside and GST registration of assessee was to be restored - **RR Balaji Ad v. Commissioner of SGST Delhi - [2024] 160 taxmann.com 701 (Delhi)**

2.27 Where impugned order of cancellation of assessee's GST registration recorded that assessee did not appear in person upon receipt of show cause notice and did not reply to show cause notice, respondent submitted assessee received and responded to show cause notice by appearing before Assistant Commissioner, statement recorded in impugned order not in consonance with submission of respondent authority, impugned order was to be set aside - **Selvaraj Rajammal v. Assistant Commissioner - [2024] 160 taxmann.com 264 (Madras)**

2.28 Where assessee's GST registration was cancelled on ground that assessee had not filed GST returns for continuous period of six months, in view of Tvl. Suguna Cutpiece Center [2022] 135 taxmann.com 234 (Mad.) writ petition was disposed of directing assessee to file returns for period prior to cancellation of registration together with taxes dues along with interest and restoration of GST registration was subject to conditional upon fulfilling said conditions - **Vijay Enterprises v. Assistant Commissioner, Chennai - [2024] 160 taxmann.com 209 (Madras)**

2.29 Show Cause Notice and order cancelling assessee's registration were bereft of any details accordingly same

could not be sustained and neither Show Cause Notice, nor order spell out reasons for retrospective cancellation, therefore said order was to be modified to limited extent that registration should be treated as cancelled with effect from date when show cause notice was issued - **Krishan Mohan v. Commissioner of GST - [2024] 160 taxmann.com 428 (Delhi)**

- 2.30** Where registration of assessee was cancelled with retrospective effect, since SCN and impugned order were bereft of any details, GST registration of assessee was to be restored - **Ganesh Sales Corporation v. Union of India - [2024] 160 taxmann.com 425 (Delhi)**
- 2.31** Where GST registration of assessee was cancelled with retrospective effect from 15-7-2022 and assessee contended that GST Authorities had not given sufficient time to it to either respond or appear, impugned order was to be set aside and GST Authorities were to be directed to adjudicate upon show cause notice after giving an opportunity of personal hearing to assessee - **Sagar Enterprises v. Principal Commissioner of Goods and Service Tax - [2024] 159 taxmann.com 667 (Delhi)**
- 2.32** Where In body of order of cancellation, except for mentioning numerical "1.", there was nothing else stated to amount to a reason for cancellation, said order was not sustainable for reason that order clearly demonstrate ex facie non-application of mind by revenue, therefore order cancelling GST registration was to be set aside - **Euro Pvc Fabric v. Principal Commissioner of GST - [2024] 160 taxmann.com 112 (Delhi)**
- 2.33** Where there had been suppression of material fact, as assessee had not revealed that a new registration was obtained by assessee subsequent to cancellation of earlier registration, principle of uberrima fides requires a party that comes to a Court to act in utmost good faith ad moment this trust is broken and it is discovered that there is suppression of material facts, therefore instant petition was to be dismissed without granting any relief whatsoever to assessee - **Genius Ortho Industries v. Union of India - [2024] 160 taxmann.com 147 (Allahabad)**
- 2.34** Where application of assessee seeking cancellation was rejected and further impugned order was passed cancelling registration retrospectively, since SCN and impugned order did not put assessee to notice that registration was liable to be cancelled retrospectively, such order was to be modified to extent that same shall operate with effect from date of application of assessee for cancellation of registration - **Subhash Kulkarni v. Union of India - [2024] 160 taxmann.com 30 (Delhi)**
- 2.35** Where assessee's GST registration was cancelled on ground of non-filing of returns for a continuous period of more than six months, assessee was to be granted

restoration of registration subject to condition that it filed returns for period prior to cancellation of registration together with tax dues, interest thereon and fee fixed for belated filing of returns - **R.J. Manpower Consultancy v. Deputy Commissioner (ST) - [2024] 160 taxmann.com 188 (Madras)**

- 2.36** Where assessee was not given any opportunity to object to retrospective cancellation of GST registration and as per section 29(2) registration could not be cancelled with retrospective effect mechanically, it can be cancelled only if proper officer deems it fit to do so, therefore order of cancellation was to be modified to extent that same shall operate with effect from date on which show cause notice was issued - **Friends Media Add Company v. Principal Commissioner of Goods and Service Tax - [2024] 159 taxmann.com 781 (Delhi)**
- 2.37** Restoration of GST registration was to be allowed on filing of returns for period prior to cancellation of registration together with tax dues along with interest thereon and fee fixed for belated filing of returns within a period of forty five days from date of receipt of order - **R.K. Tools v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 518 (Madras)**
- 2.38** Where GST registration of assessee was cancelled with retrospective date, since there was no reason for cancellation of GST registration even for period when assessee was filing returns, order cancelling registration with retrospective date was to be set aside and registration was to be cancelled with effect from date when assessee had stopped business - **Kwatra Auto Industries v. Commissioner of Delhi Goods and Services Tax - [2024] 159 taxmann.com 751 (Delhi)**
- 2.39** Where order for cancellation of registration of assessee's firm was passed without adequate reasoning, it failed to adhere to standards of judicial order and contravened Article 14 of Constitution of India - **Udal Singh v. State of UP - [2024] 160 taxmann.com 299 (Allahabad)**
- 2.40** Where for reasons, due to which registration was cancelled by impugned order, assessee had not been put to notice or had been granted an opportunity of hearing, thus impugned order cancelling registration was not sustainable and same was to be set aside - **Gurunak Merchants v. Deputy State Tax Officer - [2024] 159 taxmann.com 566 (Telangana)**
- 2.41** Merely because a taxpayer has not filed returns for some period does not mean that taxpayer's registration is to be cancelled with retrospective date also covering period when returns were filed and taxpayer was compliant - **Dashmesh Wires and Cables (India) v. Commissioner of GST - [2024] 159 taxmann.com 564 (Delhi)**

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

2.42 Where assessee filed writ petition stating that it could not file return due to suspension of GSTIN and sought direction to GST authorities to open portal so as to enable it to file return, delay in filing revocation application was to be condoned and GST Authorities were to be directed to open portal subject to assessee depositing all taxes, interest, late fee, penalty etc. - **Asit Kumar Pattnaik v. Addl. State Tax Officer, BBSR - [2024] 160 taxmann.com 157 (Orissa)**

2.43 Where assessee filed writ petition stating that it could not file Form GSTR-3B due to suspension of GSTIN and sought direction to GST Authorities to open portal so as to enable it to file return, delay in filing revocation application was to be condoned and GST Authorities were to be directed to open portal subject to assessee depositing all taxes, interest, late fee, penalty etc. - **Akshya Kumar Sahu v. Commissioner, Central Goods and Service Tax & Central Excise - [2024] 160 taxmann.com 129 (Orissa)**

2.44 Where assessee rectified non-filing of returns that had triggered GST registration cancellation notice within extended deadline set by government, subsequent cancellation order based on initial notice was deemed invalid, and conducting hearing after cancellation decision had been issued was impermissible in GST cancellation procedures - **DNC Infrastructure (P.) Ltd. v. Superintendent - [2024] 160 taxmann.com 597 (Telangana)**

2.45 Where registration of assessee was cancelled retrospectively on ground that assessee was not found functioning from given address based on an incorrect Field Visit Report, Competent Authority was directed to consider revocation petition filed by assessee - **Gulab Nagar v. Assistant Commissioner, Ward-26 - [2024] 160 taxmann.com 370 (Delhi)**

2.46 Where registration of assessee was cancelled for non-filing of returns for a continuous period of more than six months, appeal filed by assessee against cancellation order within seven months from date of cancellation was maintainable and, thus, Appellate Order was to be set aside - **Rana Engineering v. Union of India - [2024] 160 taxmann.com 51 (Jharkhand)**

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

2.47 Where assessee made bona fide error in Form DRC-03 regarding financial year for ITC reversal under new GST regime, causing no loss of revenue to government, Revenue Department was directed to permit assessee to amend forms to reflect correct financial year - **Rajesh Real Estate Developers (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 297 (Bombay)**

SECTION 51 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TAX DEDUCTION AT SOURCE

2.48 Where petitioner-association of wholesale dealers of kerosene filed a writ petition to direct concerned authority to consider its representation seeking GST exemption in respect of wholesale kerosene suppliers, said authority was to be directed to consider said representation and dispose of same within two months - **Tamil Nadu Kerosene Dealers Association v. Principal Secretary to Government, State of Tamil Nadu - [2024] 159 taxmann.com 521 (Madras)**

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

2.49 Where assessee, filing for IGST refund on mobile phone exports to Dubai, UAE, was entitled to statutory interest at 6% under Section 56, as refund was credited without interest after 60 days from application date - **Raghav Ventures v. Commissioner of Delhi GST - [2024] 160 taxmann.com 117 (Delhi)**

2.50 Where assessee operates website www.tradingwiser.com, providing online services related to investment options primarily to US clients, Refund claims of Input Tax Credit (ITC) on services provided and tax paid on said exported services were rejected by revenue on ground that Export proceeds received in Indian rupees, not in accordance with RBI directions, merely because receipts were routed through intermediary and received in Indian currency ipso facto would not mean that assessee had not exported services within meaning of Section 2(6) of IGST Act, 2017, therefore as per Circular No.88/07/2019-GST assessee was entitled for refund and impugned order rejecting refund of assessee was to be set aside - **Afortune Trding Research Lab LLP v. Additional Commissioner (Appeals I) - [2024] 159 taxmann.com 780 (Madras)**

2.51 Where assessee made prayer for direction to GST authority for refund of amount alleged to be forcibly recovered/collected by DGGI, GST authority submitted, assessee would have to make application for refund under section 54 of CGST Act, writ petition was to be disposed of by granting liberty to assessee to make application for refund - **Usha Jaiswal v. Senior Intelligence Officer, Directorate General of GST Intelligence - [2024] 160 taxmann.com 152 (Calcutta)**

2.52 Where assessee, a steel manufacturing company, sought a refund for compensation cess on coal used in export supplies, however, rejection order lacked reasons, violated principles of natural justice, and was issued prematurely without a proper opportunity for a hearing. therefore order was to be set aside, and matter was remitted back - **ESL Steel Ltd. v. Principal Commissioner, Central Goods and Service Tax & Central Excise - [2024] 160 taxmann.com 333 (Jharkhand)**

2.53 Where assessee had filed its returns under old (cancelled) GST registration number as well as under new GST registration number and deposited tax with both returns, amount deposited by assessee under erroneous return filed

under cancelled registration number was required to be refunded to assessee - **Yogesh Rajendra Mehra v. Principal Commissioner of Central Goods and Service Tax - [2024] 160 taxmann.com 31 (Bombay)**

- 2.54 Where appellate authority failed to provide personal hearing or issue reasoned orders within reasonable timeframe, despite being requested by assessee, Appellate Authority was directed to grant proper hearing and pass orders promptly to uphold principles of natural justice and right to carry on business - **Openwave India (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 19 (Bombay)**

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

- 2.55 Where assessee was entitled to refund of IGST paid on goods exported during transitional period after deducting differential amount of duty drawback, Competent Authority was to be directed to grant said refund along with simple interest - **Ginny Food v. Union of India - [2024] 160 taxmann.com 132 (Bombay)**

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

- 2.56 Where assessee, a wholesale dealer in kerosene, received a notice alleging discrepancies in filed returns, merely because representations from Tamil Nadu Kerosene Dealers Association for exemption from GST and exemption from TDS were pending consideration, assessee could not evade obligation to respond to a notice alleging discrepancies in returns filed by assessee, therefore instant writ petition was to be disposed of by permitting assessee to file a reply to notice in Form GST ASMT-10 within a period of two weeks - **Tvl.Aarthi Enterprises v. Assistant Commissioner (ST) - [2024] 160 taxmann.com 638 (Madras)**

SECTION 65 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - AUDIT- BY TAX AUTHORITIES

- 2.57 Where assessment order issued to assessee did not discuss reply to show cause notice made by assessee or record any findings in relation thereto, therefore same was to be quashed and matter was remanded for reconsideration - **Bhagyam Exports v. Assistant Commissioner - [2024] 160 taxmann.com 521 (Madras)**

- 2.58 Where Audit Wing of SGST Department issued audit memo pointing out several discrepancies, however, show cause notice by anti-evasion wing of CGST Department considered all points as mentioned in audit memo and discrepancy no.3 was under adjudication, Audit Wing issued show cause notice dated 29.12.2023, Audit Wing was to be directed to keep in

abeyance all proceedings in respect of discrepancy note no.3 including impugned show cause notice - **Mahabir Prasad Kedia v. Assistant Commissioner of State Tax - [2024] 159 taxmann.com 752 (Calcutta)**

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

- 2.59 Where a prohibitory order had been passed under section 67(2) against assessee, assessee could not be permitted to approach High Court without invoking provisions of section 67(6) for release of goods before proper officer - **Kanak Timber House v. Assistant Commissioner of Sales Tax - [2024] 160 taxmann.com 394 (Calcutta)**
- 2.60 Where a search and seizure operation was carried out at premises of assessee and cash was seized from residential premises and office of assessee, since cash is not 'goods', there was no justification for seizure of cash under section 67 and, thus, cash seized by department was to be remitted to assessee along with interest - **Jagdish Bansal v. Union of India - [2024] 160 taxmann.com 28 (Delhi)**
- 2.61 Search **Authorization** issued without application of mind and without having any reason to believe that any goods were liable to confiscation or any document or book or thing was relevant to enquiry was secreted, was illegal; seizure/prohibition order issued during such search proceedings was not sustainable - **Commissioner of CGST v. R.J. Trading Co. - [2024] 160 taxmann.com 532 (SC)**

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

- 2.62 Where order was passed granting bail to assessee which was **challenged** by department, since, as per Section 69, commissioner should have recorded reason in writing that arrest was required and after recording those reasons, decision was conveyed to Officer who in-turn who actually carries out arrest and convey grounds of arrest to accused, but as assessee was not furnished with a copy of any reason to believe that it was imperative that he must be arrested therefore, petition filed by department was dismissed - **Senior Intelligence Officer DGGI v. Dhivi Nellaiyah - [2024] 160 taxmann.com 596 (Madras)**

- 2.63 Where physically challenged accountant challenged frequent **summons** in GST investigation, High court upheld necessity of summons but reduced frequency for interrogation due to his limitations, requiring full cooperation throughout - **Vemula Yougander v. Union of India - [2024] 160 taxmann.com 660 (Telangana)**

SECTION 70 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SEARCH, SEIZURE, ETC. - POWER TO SUMMON FOR EVIDENCE AND DOCUMENTS

- 2.64 Where upon search of premises of assessee, assessee filed a complaint with police alleging threat and abuse, and thereafter, summons were issued by authority to assessee, said file having been transferred to different officer, on writ

filed by assessee challenging said summons, assessee was to be directed to reply to same and participate in proceedings - **Ramesh v. Principal Chief Commissioner of GST - [2024] 160 taxmann.com 189 (Madras)**

SECTION 73 OF THE FINANCE ACT, 1994 - RECOVERY OF SERVICE TAX NOT LEVIED OR PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED

- 2.65** Where assessee contended in writ petition that proceeding was not completed within one year of issuance of show cause notice, since assessee himself took advantage of pandemic period for not appearing before authorities, same also prevailed with department for not concluding proceeding within period envisaged under section 73(4B)(d), thus writ petition was to be dismissed - **Ramesh Kumar Buddanaboina v. Assistant Commissioner of Central Tax - [2024] 159 taxmann.com 519 (TELANGANA)**

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

- 2.66** Where during GST audit certain discrepancies were pointed out by audit team and assessee immediately cleared entire tax liability along with interest, initiating show cause proceedings under section 74 thereafter and passing of impugned order confirming demand was in excess of jurisdiction and same was to be set aside - **Rays Power Infra (P.) Ltd. v. Superintendent of Central Tax - [2024] 160 taxmann.com 190 (Telangana)**
- 2.67** Where show Cause Notice was issued demanding Rs. 62,06,927 from assessee for Ineligible Input Tax Credit [ITC] received from suppliers who did not file GST returns, notice was issued, returnable, and petitioner was directed to file reply to impugned Show Cause Notice and that till returnable date, proceedings initiated pursuant to impugned Show Cause notice may proceed, but no final order in respect of impugned Show Cause Notice shall be passed - **Indus Towers Ltd. v. Union of India - [2024] 160 taxmann.com 15 (Gauhati)**
- 2.68** Where show cause notice under Section 74 of CGST Act was challenged, absence of explicit mention of suppression did not necessarily render it invalid, as suppression was question of fact determined based on reply; thus, writ petitions were generally not entertained against mere issuance of show cause notices - **RKEC Projects Ltd. v. Addl. Commissioner - [2024] 160 taxmann.com 22 (Andhra Pradesh)**
- 2.69** Where AO had issued an assessment order under section 74 but such order did not satisfy ingredients of section 74, impugned assessment order was to be set aside and subject to condition that assessee remit 10

per cent of disputed tax demand, fresh assessment order was to be passed after providing opportunity of hearing to assessee - **Balaji Electrical & Hardwares v. State Tax Officer (ST) - [2024] 159 taxmann.com 562 (Madras)**

- 2.70** Where order u.s. 73 of CGST/MGST Act passed by respondent authority without giving opportunity of hearing, as petitioner had not requested for personal hearing, impugned order passed was in violation of principles of natural justice and ex-facie contrary to provisions of section 75(4) of CGST/MGST Act, thus was to be set aside - **Mauli Sai Developers (P.) Ltd. v. Union of India - [2024] 159 taxmann.com 784 (Bombay)**
- 2.71** Where order disallowing Input Tax Credit was passed by Superintendent, CGST& Central Excise and amount in question exceeded jurisdictional limits prescribed by Circular No. 31/05/2018-GST dated 9th February 2018, said order was declared without jurisdiction and liable to be quashed - **Mansoori Enterprises v. Union of India - [2024] 160 taxmann.com 261 (Allahabad)**
- 2.72** Where asst. order issued to assessee did not contain any reasons for rejecting assessee's reply and for confirming proposed levy of tax, interest and penalty, same was to be set aside as it was violating principles of natural justice - **Rainbow Stones (P.) Ltd. v. Assistant Commissioner (ST)(FAC) - [2024] 160 taxmann.com 48 (Madras)**
- 2.73** Where due to bereavement of husband of proprietor of assessee it could not file a reply to SCN, impugned order confirming demand against assessee was to be set aside and Adjudicating Authority was to be directed to adjudicate show cause notice afresh after giving an opportunity of personal hearing to assessee - **Tek Xplore v. Union of India - [2024] 159 taxmann.com 669 (Delhi)**
- 2.74** Where impugned order was passed against assessee u.s. 73 imposing penalty, since assessee was ready to produce all necessary documents and respondent authority was inclined to give one more opportunity to assessee, impugned order was to be set aside and issue was to be remanded for fresh consideration - **M. Ramakrishnan v. Deputy State Tax Officer-2 - [2024] 160 taxmann.com 437 (Madras)**
- 2.75** Where show cause notice was issued alleging discrepancy between GSTR-3B, GSTR-1 and GSTR-2A auto populated return, and impugned assessment order was passed without considering reply of assessee, since tables of show cause notice itself were contradictory in terms of amount of ITC, impugned assessment order was to be set aside, however it was open for authorities to issue fresh show cause notice - **Ambika Stores v. Deputy State Tax Officer-I - [2024] 160 taxmann.com 433 (Madras)**
- 2.76** Where assessee filed reply to show cause notice but Adjudicating Authority without considering reply passed a cryptic order, impugned order was to be set aside and matter was to be remitted back to Adjudicating Authority for re-adjudication - **Emco Cables (India) (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 145 (Delhi)**

- 2.77** Where assessee had filed reply to SCN, however GST officer without seeking further clarification or documents from assessee, passed impugned adjudication order, same was to be set aside and matter was to be remitted to Adjudicating Authority for re-adjudication after giving an opportunity of personal hearing to assessee - **Shri Shyam Metal v. Union of India** - [2024] 159 taxmann.com 668 (Delhi)
- 2.78** Where assessee was not able to avail opportunity of hearing provided by revenue and there was also a discrepancy in amount appropriated from petitioner's bank account, therefore asst. order was to be quashed and matter was reminded back solely with view to provide an opportunity to assessee - **Agra Coal Impex v. Deputy State Tax Officer-2** - [2024] 160 taxmann.com 390 (Madras)
- 2.79** Where show cause notice issued to petitioner on 2-11-2023 referring to earlier SCN dated 13-7-2007, directing petitioner to appear on 10-11-2023 before respondent authority, writ petition, filed against SCN on 10-11-2023, without mentioning any reason as to what has happened on 10-11-2023 and thereafter, was not to be entertained - **Orissa Stevedores Ltd. v. Addl Commissioner, CGST, Central Excise and Customs** - [2024] 159 taxmann.com 785 (Orissa)
- 2.80** Where show cause notice issued, petitioner alleged to have availed wrongful input tax credit, petitioner registered under DVAT Act never applied for migration to GST and DVAT Registration already cancelled, petitioner submitted, someone wrongfully used his credentials and availed input tax credit, matter to be listed on date specified, in meantime further proceedings on show cause notice was to remain stayed - **Aakash Gupta v. Commissioner of Delhi GST** - [2024] 160 taxmann.com 293 (Delhi)
- 2.81** Where impugned order was passed against assessee confirming demand under section 73 without affording opportunity of hearing, even though same was expressly requested by assessee, same was to be set aside and matter was to be remanded for reconsideration after affording reasonable opportunity to assessee - **Tvl. Liugong India (P.) Ltd. v. State Tax Officer** - [2024] 159 taxmann.com 733 (Madras)
- 2.82** Uploading of show cause notice under category "Additional Notices" instead of "Notices" not a sufficient intimation to taxpayer; subsequent demand order to be set aside and SCN to be re-adjudicated after affording opportunity of hearing to assessee - **Anhad Impex v. Assistant Commissioner** - [2024] 159 taxmann.com 731 (Delhi)
- 2.83** Where Revenue Department failed to consider assessee's detailed and comprehensive reply to Show Cause Notice, resulting could not be sustained and had to be set aside - **Svelte Furnitures (P.) Ltd. v. Sales Tax Officer** - [2024] 160 taxmann.com 298 (Delhi)
- 2.84** Due to inadvertence, show cause notice was not uploaded on portal by way of attachment and right of petitioner to object to the notice and his right to hearing was completely compromised; Accordingly, impugned order is set aside - **Khanna Polyrib (P.) Ltd. v. State of U.P.** - [2024] 160 taxmann.com 456 (Allahabad)
- 2.85** Where assessee, a manufacturer of drip irrigation systems, responded to a show cause notice with a CA certificate and detailed reply, despite assessee's submissions, assessment order was issued stating that taxpayer did not file any objection/reply or avail of opportunity of personal hearing, said assessment order was completely unsustainable and was unseasoned and was issued without application of mind, therefore same was to be quashed and matter was remanded back - **Signet Industries Ltd. v. State Tax Officer** - [2024] 160 taxmann.com 460 (Madras)
- 2.86** Where GST ASMT-10 was issued to assessee and on very next day a show cause notice was issued under section 73, since assessee was not afforded any time for filing reply to ASMT-10, it was violation of principles of natural justice and, therefore, impugned assessment order was set aside and matter was remanded - **Vadakkoot Chackoo Devassy v. Assistant State Tax Officer** - [2024] 160 taxmann.com 659 (Kerala)
- 2.87** Where assessee in reply to intimation stated that two months were required for reply as verification was being undertaken by DGGI and also sum of Rs. 1.5 crore was deposited with regard to three assessment years, since reply of assessee was not taken into account, impugned orders were to be quashed and Assessing Officer was to be directed to provide opportunity to assessee and thereafter issue fresh orders - **Sri Ranganathar Constructions (P.) Ltd. v. Assistant Commissioner (ST) (FAC)** - [2024] 160 taxmann.com 633 (Madras)
- 2.88** Where impugned order recorded no proper reply/explanation had been received from tax-payer despite sufficient and repeated opportunities, assessee had submitted detailed point-wise reply to show cause notice, proper officer had not even looked at reply submitted by assessee, impugned order was to be set aside - **Samsung India Electronics (P.) Ltd. v. Union of India** - [2024] 160 taxmann.com 535 (Delhi)
- 2.89** Where assessee did not reply to show cause notice on ground that it was awaiting particulars from its supplier and thereafter impugned order was passed making entire tax liability with regard to disparity between GSTR-3B and GSTR-2B returns, if explanation of assessee was valid, interest of justice would be prejudiced unless assessee was provided an opportunity to explain alleged disparity - **Tvl. Lakshmi Tex v. Deputy State Tax Officer-1** - [2024] 160 taxmann.com 627 (Madras)
- 2.90** Where documents on record clearly indicate that show cause notice was issued on 20.09.2023 and assessment order was issued on 28.09.2023, time provided to assessee appears to be inadequate and summary of show cause notice did not provide an opportunity of personal hearing to assessee,

which was not in consonance with statutory mandate thus, asst. orders impugned were to be quashed and matter was to be remanded for reconsideration - ***Sri Ranga Ply Industries v. Assistant Commissioner (ST)*** - [2024] 160 taxmann.com 340 (Madras)

- 2.91** Where impugned SCN had been adjudicated by an order which was cryptic and had not taken into consideration reply submitted by assessee, matter required to be remitted back to Adjudicating Authority for fresh adjudication - ***Max Healthcare Institute Ltd. v. Union of India*** - [2024] 160 taxmann.com 339 (Delhi)
- 2.92** Where assessee was not given opportunity to clarify its reply submitted against SCN proposing a demand including penalty or furnish further documents details, therefore, order issued under section 73 without considering said reply submitted by assessee could not be sustained and same was to be set aside and matter was remanded back - ***Balaji Medical and Diagnostic Research Centre v. Union of India*** - [2024] 160 taxmann.com 295 (Delhi)
- 2.93** Where assessee filed detailed reply to show-cause-notice, however, impugned order under section 73 of CGST Act recorded that no proper reply/explanation received from tax-payer despite sufficient and repeated opportunities, impugned order passed was to be set aside - ***Arrow Aircraft Sales And Charters (P.) Ltd. v. Sales Tax Officer*** - [2024] 160 taxmann.com 294 (Delhi)
- 2.94** Where notices for personal hearing were sent to different e-mail id than assessee's registered e-mail id, assessee was deprived of opportunity of personal hearing, impugned order being violative of principles of natural justice was to be set aside - ***Raghava- HES-Navayuga (JV) v. Additional Commissioner of Central Tax*** - [2024] 160 taxmann.com 21 (Telangana)
- 2.95** In case a Proper Officer is of view that assessee's reply to SCN is incomplete and further details are required, same can be sought from assessee; however, without giving assessee opportunity to clarify its reply or furnish further documents/details, order could not be passed - ***D.C. Sales v. Union of India*** - [2024] 159 taxmann.com 565 (Delhi)

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

- 2.96** Where assessee filed a rectification application seeking rectification of errors in an order-in-original and said application was not disposed of, it was just an necessary that same be disposed of expeditiously, therefore revenue was to be directed to consider and dispose of said application within a maximum period of six weeks - ***LLM Appliances (P.) Ltd. v. Additional Commissioner, Central Tax*** - [2024] 159 taxmann.com 734 (Madras)

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

- 2.97** Where notice under section 74 issued granting 15 days time to file reply, reply filed on 26-7-2023, on 31-10-2023 reminder notice issued granting 5 days time to furnish certain documents, on date fixed 6-11-2023 assessee appeared and sought time, no order passed on 6-11-2023, instead impugned order passed on 20-11-2023 without fixing further date and without giving opportunity, assessing authority forced ex-parte nature of order on assessee, breach of natural justice, impugned order was to be set aside - ***Shubham Steel Traders v. State of U.P.*** - [2024] 160 taxmann.com 374 (Allahabad)

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

- 2.98** Where after assessee submitted replies to all show cause notices, it was not provided with an opportunity of personal hearing and replies were also not considered by authorities, impugned order was to be set aside and matter was remanded for fresh consideration - ***Madhu Filament v. Assistant Commissioner (ST) (FAC)*** - [2024] 160 taxmann.com 396 (Madras)

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

- 2.99** Where assessee was not afforded opportunity of hearing and order was passed under section 75(4) imposing tax and penalty without considering replies to show cause notice by assessee, violating principles of natural justice, therefore said order was to be set aside - ***Reet Traders v. State of U.P.*** - [2024] 160 taxmann.com 86 (Allahabad)

- 2.100** Where assessee was issued a show-cause under Section 73(1) but could not appropriately prepare its response due to Durga Puja and requested an extension thereof, despite Proviso to sub-section (5) of Section 75 authorizes revenue to grant upto three extensions, revenue passed final order without formally rejecting extension request, leading to a violation of natural justice principles, therefore same was to be set aside - ***Anurag Garodia v. Assistant Commissioner of State Tax*** - [2024] 160 taxmann.com 144 (Calcutta)

- 2.101** Where amount communicated in intimation was much lower than amount in respect of which assessee was called upon to show cause and tax demand under impugned assessment order was much higher than amount in respect of which assessee was called upon to show cause, such assessment order was to be quashed and matter was to be remanded for reconsideration - ***Quess Corp Ltd. v. Deputy Commissioner (ST)-1, Large Tax Payers Unit*** - [2024] 160 taxmann.com 65 (Madras)

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

2.102 Where order was issued which created a demand against assessee due to an error in claiming (ITC), wherein Integrated GST credit was claimed instead of Central GST and State GST credit, assessee replied to SCN stating that said error was a mere clerical mistake, impugned order lacked proper reasoning as it did not consider assessee's detailed reply adequately and was bereft of any reasoning and therefore, same was to be set aside - **Aarem Tradex (P.) Ltd. v. Sales Tax Officer** - [2024] 160 taxmann.com 592 (Delhi)

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

2.103 Where assessee was negligent in not contesting asst. proceedings until orders of attachment were issued, however said assessment order were issued without hearing assessee, thus same were to be quashed and matter was to be remanded for reconsideration - **Green World Enterprises v. Deputy State Tax Officer** - [2024] 160 taxmann.com 133 (Madras)

2.104 Where intimation notice and show cause notice issued during faceless assessment period did not contain particulars as to how liability was arrived at, no personal hearing provided, only summary of assessment order uploaded on GST portal, impugned orders were to be quashed - **Tvl. Sai Lakshmi Traders v. State Tax Officer (ST)** - [2024] 160 taxmann.com 187 (Madras)

2.105 Where assessee demonstrated that Revenue had found his submission satisfactory, and no further proceedings were required against disputed form, but garnishee order and bank account attachment remained in place, Revenue authority was directed to lift such orders applying principle of precedent set forth in relevant case law - **Bivas De v. State of West Bengal** - [2024] 160 taxmann.com 646 (Calcutta)

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

2.106 Where nature of services provided by company was disputed in CGST appeal, matter was remanded back to Appellate Authority for reconsideration based on relevant service agreements, which assessee was directed to place on record. - **Thales India (P.) Ltd. v. Commissioner of CGST, Delhi** - [2024] 160 taxmann.com 208 (Delhi)

2.107 Where assessee's failure to avail statutory remedy by filing an appeal within prescribed time limit barred them from seeking relief through a writ petition, therefore, Instant writ petition was to be dismissed on grounds that assessee by passed appellate remedy available to them, which they chose not to utilize while challenging demand notice and assessment order - **Aditya Enterprises v. Union of India** - [2024] 160 taxmann.com 421 (Patna)

2.108 Where assessee filed writ petition seeking a mandamus to grant exemption from payment of pre-deposit as a condition for entertaining appeal, respondent authority could not be directed to deviate from statutory prescription, however appeal of assessee was to be disposed of on merit subject to assessee satisfying pre-deposit requirements - **Annai Food Products (P.) Ltd. v. Additional Commissioner (Appeals-II)** - [2024] 159 taxmann.com 697 (Madras)

2.109 CGST Act, recognised as special statute, inherently excludes application of Limitation Act by incorporating a specific mechanism, notably in Section 107 of CGST Act, which defines precise limitation period, thereby rendering Section 5 of the Limitation Act inapplicable - **Garg Enterprises v. State of U.P.** - [2024] 159 taxmann.com 748 (Allahabad)

2.110 Where order was based on report not provided to assessee, violating natural justice principles, order was set aside, and matter was remanded for rehearing with proper document disclosure - **Partha Pratim Bhowmik v. Deputy Commissioner of State Tax** - [2024] 160 taxmann.com 148 (Calcutta)

2.111 Where assessee filed a writ petition challenging several orders in form of a Circular and also challenged vires of said Circular, it was first and foremost duty of HC to consider and decide such issue before embarking journey of determining other issues, and HC should not have relegated parties to statutory authority denuded of such powers to declare any provision of statute or statutory circular to be ultra vires to parent Act of Constitution - **North East Water Tank Manufacturing (P.) Ltd. v. Union of India** - [2024] 159 taxmann.com 764 (Calcutta)

2.112 Petitioners are given liberty to file appropriate representations before Addl Chief Secretary, Finance Dept., Govt. Of WB in respect of additional tax liability imposed by SG on petitioner for execution of subsisting Govt. contracts either awarded in pre-GST regime or in post GST regime without updating the Schedule of Rates (SOR) incorporating the applicable GST while preparing Bill of Quantities (BOQ) for inviting the bids. - **Subimal Kumar Maji v. State of West Bengal** - [2024] 160 taxmann.com 462 (Calcutta)

2.113 Appeal having been taken up for hearing after one year, appellate authority could have granted one more opportunity to appellant; Furthermore, none of the grounds raised by appellant have been considered or dealt with, Therefore, matter is remanded to appellate authority for fresh consideration - **Dipankar Bhowmik v. State of West Bengal** - [2024] 160 taxmann.com 452 (Calcutta)

2.114 Where appeal filed by assessee through an online process within one month from last date of filing appeal was rejected considering date of filing physical copy as filing date, CIT (Appeals) had erroneously not considered application seeking condonation of delay, thus order rejecting appeal was to be set aside and matter was to be remitted to consider application seeking condonation of delay - **White Mountain Trading (P.) Ltd. v. Additional Commissioner, CGST Appeals-II** - [2024] 160 taxmann.com 382 (Delhi)

2.115 Where assessee had an alternative remedy of appeal under section 107 of OGST Act, accepted by assessee also, writ petition was to be disposed of with liberty to assessee to prefer an appeal against impugned order in accordance with law - **Rashmi Agency v. Deputy Commissioner of State Tax, CT & GST, Cuttack - [2024] 160 taxmann.com 205 (Orissa)**

2.116 Where Appellate Authority had dismissed appeal of assessee on ground of limitation without affording any opportunity of hearing, delay in filing appeal was to be condoned and Appellate Authority was to be directed to decide said appeal on merits after affording personal hearing opportunity to assessee - **Jayanta Ghosh v. State of West Bengal - [2024] 160 taxmann.com 223 (Calcutta)**

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

2.117 Where assessee's entitlement to statutory remedies could not be jeopardized due to non-constitution of Appellate Tribunal, it was considered appropriate to provide statutory relief of stay on condition of depositing 20 percent of disputed tax amount - **BPD Steel Syndicate (P.) Ltd. v. Union of India - [2024] 160 taxmann.com 522 (Orissa)**

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

2.118 Where due to non-constitution of Appellate Tribunal as required under Section 109, assessee was deprived of its statutory remedy of appeal and corresponding benefits, in view of Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019, instant writ petition was to be disposed of granting assessee statutory benefit of stay on condition of depositing a sum equal to 20 percent of remaining amount of tax in dispute, or depositing same if not already done and assessee was directed to file appeal under Section 112 once Tribunal is constituted and President or State President enters office - **Aarti Steels Ltd. v. CT and GST Officer - [2024] 160 taxmann.com 622 (Orissa)**

2.119 Where Authorities submitted that Tribunal not been constituted, petition may be disposed off with liberty to assessee to file appeal within stipulated period from date Tribunal constituted, assessee agreed, petition to be disposed off with direction that if assessee makes payment as per provisions of section 112 of GST Act, further proceedings not be drawn for recovery of balance amount - **Shree Dev Narayan Marble v. State of Rajasthan - [2024] 160 taxmann.com 89 (Rajasthan)**

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

2.120 High Court disposes petition challenging summons and seizure of vehicle and directs petitioner to participate in inquiry before department - **Vajeed Khan Pathan v. State of Karnataka - [2024] 160 taxmann.com 376 (Karnataka)**

2.121 Where technical difficulties prevented filling of Part B of e-Way Bill and there was no intention to evade tax, penalties u.s. 129(3) of UPGST Act were deemed unsustainable, as established by precedent set in M/S Roli Enterprises - **Precision Tools India v. State of U.P. - [2024] 160 taxmann.com 80 (Allahabad)**

2.122 Where assessee demonstrated willingness to comply with tax and penalty provisions, Revenue Authority was directed to calculate and release seized goods accordingly, while ensuring procedural fairness by granting the assessee opportunity to respond to show cause notices - **Chelaram v. State of Karnataka - [2024] 160 taxmann.com 503 (Karnataka)**

2.123 Where during transport of goods neither invoice nor E-Way Bill were accompanying goods and same were produced subsequent to interception, production of such documents subsequent to interception could not absolve assessee from liability of penalty under section 129(3) - **Akhilesh Traders v. State of U.P. - [2024] 160 taxmann.com 94 (Allahabad)**

2.124 Where factual circumstances did not demonstrate mens rea for tax evasion and violation regarding expiration of e-way bill was solely technical in nature, penalties u.s. 129(3) of UPGST Act were not warranted - **Riadi Steels Lip v. State of U.P. - [2024] 160 taxmann.com 262 (Allahabad)**

2.125 Detention of goods, demand of GST and penalty not sustainable for bonafide action of transporter in transporting two consignments in single vehicle and offloading them as per his operational convenience - **Deputy Commercial Tax Officer v. Vijay Metal - [2024] 160 taxmann.com 538 (SC)**

2.126 Where Competent Authority had detained goods of assessee under transport and issued a notice u.s. 129(3) for payment of penalty after prescribed period of seven days from date of such detention order, same was to be set aside and goods were to be released immediately - **Pawan Carrying Corporation v. State of Bihar - [2024] 160 taxmann.com 350 (Patna)**

2.127 Where detention of goods was based solely on perceived undervaluation by Revenue without following statutory procedures, such detention lacked validity and could not justify penalty imposition u.s. 129 of UP GST Act, 2017 - **Shamhu Saran Agarwal & Company v. Additional Commissioner Grade-2 - [2024] 160 taxmann.com 151 (Allahabad)**

2.128 Where the invoices containing the vehicle number in which the goods were being transported and only part B of the e-way bill could not be generated and the department has not been able to indicate any intention of the petitioner to evade tax, the court has set aside the orders imposing penalty under Section 129(3) of the UPGST Act on the reason that

the defect was of a technical nature only and without any intention to evade tax - *Ms. Varun Beverages Ltd. v. State of UP* - [2024] 160 taxmann.com 122 (Allahabad)

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

- 2.129 Where apart from an error with regard to address of consignee in e-way bill, there were no other issues with said consignment and imposition of tax was only on basis of a technical error with regard to address of consignee that was wrongly written in e-way bill, order imposing penalty upon assessee was to be set aside and amount deposited by assessee was to be refunded - *Ridhi Sidhi Granite and Tiles v. State of U.P.* - [2024] 160 taxmann.com 191 (Allahabad)

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

- 2.130 Where petitioner was arrested in a complaint of ITC fraud for issuing fake invoices, since he was in custody for last about 6 months and further custody of petitioner would not have served any useful purpose, petitioner was to be granted bail subject to petitioner furnishing bail bonds/surety bonds to satisfaction of learned trial Court/Duty Magistrate/CJM concerned - *Tejpal Singh v. Director General of G.S.T. Intelligence* - [2024] 159 taxmann.com 522 (Punjab & Haryana)
- 2.131 Where assessee was in custody since 19-12-2023 for an offence punishable under section 132 and charge sheet was also filed, he was to be released on bail on executing a personal bond of Rs. 10000 with one surety of like amount to satisfaction of Trial Court - *Parag Nathalal Haria v. State of Gujarat* - [2024] 159 taxmann.com 765 (Gujarat)
- 2.132 Where bail application was filed for offence registered under section 132(1)(c)(f) read with section 132(5) of CGST Act, matter was triable by magistrate, applicant had no criminal antecedents, charge-sheet was filed, offence compoundable in nature, co-accused enlarged on bail, bail application was to be allowed - *Sandeep Singhal v. Directorate General of Central Goods & Services Tax Intelligence* - [2024] 160 taxmann.com 654 (Rajasthan)

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

- 2.133 Where administrative satisfaction contemplated under section 134 of CGST Act recorded by Additional Commissioner and not Commissioner, assessee not party to adjudication proceedings, also not heard before adverse observation recorded in impugned order, prosecution, if any, was to arise only on independent application of mind by Commissioner to

entirety of facts and circumstances of case - *Ravi Kumar Jain v. Union of India* - [2024] 160 taxmann.com 206 (Allahabad)

SECTION 140 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TRANSITIONAL PROVISIONS -INPUT TAX CREDIT - TRANSITIONAL ARRANGEMENT FOR

- 2.134 Where petitioner's, a registered input service distributors, ITC was not allowed to be transitioned due to a defective electronic mechanism, revenue should take an appropriate call on proceedings, before Court proceeded further to hear parties so as to decide these proceedings on merits and accordingly, proceedings were to be adjourned for a further period - *Siemens Ltd. v. Union of India* - [2024] 160 taxmann.com 184 (Bombay)
- 2.135 Where assessee could not file Form 66 within time limit due to non-availability of GST registration number and later it had applied for GST registration, assessee was not entitled to claim transitional credit which had been denied by impugned order, petitioner was to be directed to approach appellate authority as prescribed under statute - *Versuni India Home Solutions Ltd. v. Deputy Commissioner of State Tax-6, Special Circle-II* - [2024] 160 taxmann.com 53 (Kerala)

RULE 142 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - NOTICE AND ORDER FOR DEMAND OF AMOUNTS PAYABLE UNDER THE ACT

- 2.136 Where assessee filed a writ petition challenging order of Assessing Authority to extent that it refused to allow assessee to avail ITC and equivalent penalty in view of binding Circular No. 26/2017, dated 29-12-2017, assessment order was to be set aside matter was to be remitted back - *Vivo Mobile India (P.) Ltd. v. Joint Commissioner, CGST* - [2024] 160 taxmann.com 226 (Allahabad)

SECTION 168 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - BOARD - INSTRUCTIONS OR DIRECTIONS, POWERS TO ISSUE

- 2.137 Where impugned asst. order was challenged, and discrepancies arose in treatment of turnover and tax liability for period prior to implementation of GST laws, it was imperative for assessing officer to exclude turnover pertaining to pre-GST period, and failure to do so constituted non-application of mind, leading to patent errors in asst. order - *Tvl. Viveka Essence Mart v. Deputy State Tax Officer-II* - [2024] 160 taxmann.com 375 (Madras)

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

- 2.138 Where impugned assessment order had been passed after issuing SCN only through online portal, to which assessee could not file reply not being acquainted with technology, said order was to be set aside and matter was to be remanded back to Assessing Authority for fresh consideration - *Abitha Timber Traders v. Assistant Commissioner (ST)(FAC)* - [2024] 160 taxmann.com 379 (Madras)

3. AAAR

CLASSIFICATION OF SERVICES

- 3.1 Construction of Intra-field Pipelines :** Activities undertaken by appellant-assessee of construction of Intra-field pipelines in pursuance of EPC Contract cannot be classified under SAC Heading No. 998621 as these are not in nature of support services to oil and gas extraction - *Kalpataru Projects International Ltd., In re - [2024] 160 taxmann.com 337 (AAAR-RAJASTHAN)*
- 3.2 Construction of Intra-field Pipelines :** Activities undertaken by appellant-assessee of construction of Intra-field pipelines in pursuance of EPC Contract cannot be classified under SAC Heading No. 9983 as these are not in nature of services relating to exploration, mining or drilling of petroleum crude or natural gas - *Kalpataru Projects International Ltd., In re - [2024] 160 taxmann.com 337 (AAAR-RAJASTHAN)*
- 3.3 Construction of Intra-field Pipelines :** Activities undertaken by appellant-assessee of construction of Intra-field pipelines in pursuance of EPC Contract is classified under SAC Heading No. 9954 with tax at rate of 9% in terms of item (xii) of Entry at Sl. No. 3 of Notification No. 11/2017-CT (R), dated 28.06.2017 as amended and 9% in terms of Notification issued under GST Act, 2017 - *Kalpataru Projects International Ltd., In re - [2024] 160 taxmann.com 337 (AAAR-RAJASTHAN)*
- 3.4 Construction of Sulphate Removal Plant :** Activities undertaken by appellant-assessee of construction of sulphate removal plant in pursuance of EPC Contract cannot be classified under SAC Heading No. 998621 as these are not in nature of support services to oil and gas extraction - *ION Exchange (India) Ltd., In re - [2024] 160 taxmann.com 259 (AAAR-RAJASTHAN)*
- 3.5 Construction of Sulphate Removal Plant :** Activities undertaken by appellant-assessee of construction of sulphate removal plant in pursuance of EPC Contract cannot be classified under SAC Heading No. 9983 as these are not in nature of services relating to exploration, mining or drilling of petroleum crude or natural gas - *ION Exchange (India) Ltd., In re - [2024] 160 taxmann.com 259 (AAAR-RAJASTHAN)*
- 3.6 Construction of Sulphate Removal Plant :** Activities undertaken by appellant-assessee of construction of sulphate removal plant in pursuance of EPC Contract is classified under SAC Heading No. 9954 with tax at rate of 9% in terms of item (xii) of Entry at Sl. No. 3 of Notification No. 11/2017-CT (R), dated 28.06.2017 as amended and 9% in terms of Notification issued under GST Act, 2017 - *ION Exchange (India) Ltd., In re - [2024] 160 taxmann.com 259 (AAAR-RAJASTHAN)*

SECTION 2(16) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - NON-TAXABLE ONLINE RECIPIENT

- 3.7** Where service recipient substantiates more than 90% control of government by way of participation, therefore, service recipient is covered under 'Governmental Authority' as defined in explanation to clause (16) of Section 2 of IGST Act, 2017 - *Lakhlan & Qureshi Construction Co. In re - [2024] 160 taxmann.com 179 (AAAR-RAJASTHAN)*

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

- 3.8** Where services of granting permission/NOC for road cutting were provided by local authority for a consideration to appellant-assessee and not to service recipient, therefore, appellant-assessee, being a recipient of services, is liable to pay GST for charges paid to local authority under reverse charge mechanism - *Lakhlan & Qureshi Construction Co. In re - [2024] 160 taxmann.com 179 (AAAR-RAJASTHAN)*

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

- 3.9** Where service recipient qualify to be a Governmental Authority, then, services provided to it by appellant-assessee are considered as services provided to Governmental Authority, therefore, Item number (vi) in Column (3) of Serial number 3 of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 is clearly applicable on appellant-assessee - *Lakhlan & Qureshi Construction Co. In re - [2024] 160 taxmann.com 179 (AAAR-RAJASTHAN)*
- 3.10** Service of fire-fighting system with pump house provided by appellant-assessee are liable to attract GST at 12% (i.e. 6% CGST & 6% SGST) during contracted period only up to 31.12.2021, as after that, in column no. (3) of Serial No. 3 of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 words "Governmental Authority or a Government Entity" has been omitted vide Notification No. 22/2021-Central Tax (Rate) dated 31.12.2021 w.e.f. 01.01.2022 - *Lakhlan & Qureshi Construction Co. In re - [2024] 160 taxmann.com 179 (AAAR-RAJASTHAN)*
- 3.11** Recovery of road cutting charges is not covered under an activity in relation to any function entrusted to a Panchayat under Article 243 G of Constitution or Municipality under Article 243 W of Constitution, therefore, exemption under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is not available to appellant-assessee; appellant-assessee is liable to pay GST on recovery of such road cutting charges from service recipient at 18% - *Lakhlan & Qureshi Construction Co. In re - [2024] 160 taxmann.com 179 (AAAR-RAJASTHAN)*

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

- 3.12** Where appellant-assessee requested advance ruling on question which is related to supplies already undertaken by

them prior to date of filing of application for advance ruling before Authority for Advance Ruling, and Section 95 states that advance ruling means any decision in relation to supply of goods or services or both being undertaken or proposed to be undertaken by applicant, therefore, no ruling was given by Authority for Advance Ruling; Authority for Advance Ruling order was upheld and appeal was rejected. - **Sai Enterprises, In re - [2024] 160 taxmann.com 52 (AAAR-RAJASTHAN)**

SECTION 100 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - APPELLATE AUTHORITY - APPEAL TO

- 3.13 Where appellant had filed appeal beyond prescribed time limit of 30 days due to fact that managing director of company who is a heart patient was advised to be in rest for 3 weeks and therefore relevant documents could not be handed over to consultant on time, in view of documents available on record and as per medical condition of MD appellant has presented sufficient cause that prevented them from filing appeal within normal period, therefore delay of 21 days beyond normal time limit in filing appeal is condonable as provided under proviso to section 100(2) and appeal will be taken for consideration on merits - **Lions Seat Cushions (P.) Ltd., In re - [2024] 160 taxmann.com 699 (AAAR - TAMILNADU)**

4. CCI

SECTION 171 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ANTI - PROFITEERING MEASURE

- 4.1 Where GST rate of restaurant service supplied by assessee was reduced from 18 per cent to 5 per cent and assessee had not passed benefit of reduction in GST rate to recipients by way of commensurate reduction in price in terms of section 171, therefore assessee was directed to deposit profiteered amount in two equal part each in Central Welfare Fund and Uttar Pradesh State Welfare Fund along with interest at rate 18 per cent - **Director General of Anti-Profiteering v. Smokey Kitchen Foods OPC (P.) Ltd. - [2024] 160 taxmann.com 461 (CCI)**

5. AAR

CLASSIFICATION OF GOODS

- 5.1 **Car seat covers** : Original car seat covers manufactured and designed to permanently fit over raw foam seat of vehicles by OEMs as well as seat manufacturers who further sell to OEMs and are sold with vehicle, as essential and integral part of seat was classifiable under heading HSN 8708 liable to GST @ 28% - **Saddles International Automotive & Aviation Interiors (P.) Ltd., In re - [2024] 160 taxmann.com 612 (AAR - ANDHRA PRADESH)**
- 5.2 **Clear Float Glass** : Appropriate classification of imported "Clear Float Glass", traded by Applicant, not undergone any coating process for presence of an absorbent, reflecting or non-reflecting layer, not to be classified under sub heading 7005 10, appropriate classification under tariff sub heading 7005 29 as "Others", at eight digit level, if it was "tinted", classifiable under CTH 7005 2910 and if "non-tinted," under CTH 7005 2990 - **Float Glass Centre., In re - [2024] 160 taxmann.com 732 (AAR - TAMILNADU)**
- 5.3 **Sewage and Waste Collection** : Activity of remediation of open dump and reclamation of open dump along with reclamation of space by bio mining process provided by applicant-assessee is covered under SAC heading 9994 under Notification 11/2017-Central Tax (Rate) dated 28.06.2017 attracting 18% GST - **Gorantla Geosynthetics (P.) Ltd., In re - [2024] 160 taxmann.com 258 (AAR - TAMILNADU)**

CLASSIFICATION OF SERVICES

- 5.4 **Carbon Lining Strips** : Activity of binding carbon friction material, which are imported from their Associate Company in USA, on metal components received from customer, amounts to Supply of job work services under SAC 9988 - **Oerlikon Friction System (India) (P.) Ltd., In re - [2024] 160 taxmann.com 569 (AAR - TAMILNADU)**

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

- 5.5 Where water pump is supplied with solar panel and controller in ordinary course of business and vice versa and there is no principle supply and each component can be supplied separately, therefore, supply of components together as submersible water pump cannot be termed as composite supply - **Aastha Traders, In re - [2024] 160 taxmann.com 446 (AAR- UTTAR PRADESH)**

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

- 5.6 Where supply of different items namely solar panel, controller and solar water pump, without anyone of goods being supplied as principal supply, further, they can be supplied separately, therefore, it would be covered by definition of 'mixed supply' of different type of goods - **Aastha Traders, In re - [2024] 160 taxmann.com 446 (AAR- UTTAR PRADESH)**

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

- 5.7 Where activity of collection of compensation, for liquidated damages from customers to applicant-assessee for non-performance of contract, constitutes supply of service and compensation amounts such as liquidity damages are eligible to tax under CGST at 9% and SGST at 9% each under Heading No. 9997 at Serial No. 35 of Notification No.11/2017- Central tax (rate) dated 28.06.2017 - **South India Krishna Oil & Fats (P.) Ltd., In re - [2024] 160 taxmann.com 186 (AAR - ANDHRA PRADESH)**

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

- 5.8 Car seat cushion suspension wire manufactured by assessee used both in front and back seats of car and forming part of basic skeleton steel structure of seats will fall under Heading no 94019900 and thereby attracting 18 percent GST - **N.R. Engineering Industries, In re - [2024] 160 taxmann.com 631 (AAR - TAMILNADU)**
- 5.9 Steel hooks used to keep steel wires in place and in taut position, so structure is achieved and functional usage i.e. to give cushion effect will fall under Heading no 94019900 and thereby attracting 18 percent GST - **N.R. Engineering Industries, In re - [2024] 160 taxmann.com 631 (AAR - TAMILNADU)**
- 5.10 Supply of enameled winding wire of copper which operated as insulated electric conductor merits classification under heading number 85441110 and attracts GST at rate 18 percent - **KK Processors, In re - [2024] 160 taxmann.com 607 (AAR - TAMILNADU)**
- 5.11 Works contract services performed by assessee as per contracts awarded by M/s Kerela State film development corporation Ltd, a government authority to construct a cultural complex is in nature of construction of structure meant for predominantly use as a cultural establishment and is liable to GST at 12 percent as per Sl 3(vi)(b) of Notification 11/2017-Central Tax (Rate) - **Ray Constructions Ltd., In re - [2024] 160 taxmann.com 510 (AAR - KERALA)**
- 5.12 Assessee is engaged in manufacturing, trading and marketing of chemical fertilizers, water soluble fertilizers, seeds, pesticides and supply of allied services, all used in agriculture, products i.e. Mangla borosan and Mangla G1 are classified under 28332990 as composition of said products, being predominantly sulfate-centric, aligned seamlessly with characteristics outlined in said tariff code - **Zuari Farmhub Ltd., In re - [2024] 160 taxmann.com 488 (AAR - ANDHRA PRADESH)**
- 5.13 Products i.e. Telcoplanin and Caspofungin manufactured by assessee, pharmaceutical company are taxable at 5 percent GST as per Sl 180 of Schedule

1 of Notification 01/2017-Central Tax (Rate) - **Stanex Drugs & Chemicals (P.) Ltd., In re - [2024] 160 taxmann.com 484 (AAR- TELANGANA)**

- 5.14 Where assessee provide canteen facility to their employees and bears 70 percent of cost and rest is borne by said permanent employees, deductions made by assessee from their permanent employees who are availing food in factory would not be considered as supply in terms of section 7, thus, GST is not liable to be discharged on portion of amount recovered by assessee from it permanent employees towards canteen facilities provided to them - **Suzuki Motor Gujarat (P.) Ltd., In re - [2024] 160 taxmann.com 463 (AAR - GUJARAT)**
- 5.15 Where assessee provide canteen facility to employees of SMC on deputation, employees of MSIL on business travel and temporary employees including lease employees who are on third party roll within factory premises, supply of food by assessee to said employees/workers would come under section 2(17)(b) as transaction incidental or ancillary to main business as contractual worker are working for company to run business activity of assessee and said supply of food by assessee is supply of service by assessee to such workers and cost recovered from workers, as deferred payment is consideration for supply, therefore said supply of service would fall within definition of outward supply as per section 2(83) and therefore liable to tax as a supply under GST - **Suzuki Motor Gujarat (P.) Ltd., In re - [2024] 160 taxmann.com 463 (AAR - GUJARAT)**
- 5.16 Solar panel converts sunlight into electricity, also known as a photovoltaic panel, therefore, solar panels are classifiable under Heading No. 8541 and they are chargeable to GST at 12 per cent - **Aastha Traders, In re - [2024] 160 taxmann.com 446 (AAR- UTTAR PRADESH)**
- 5.17 Controller is an independent electrical item suitable for multiple uses is classifiable under Heading No. 8504 covering 'electrical transformers, static converters and inductors' and it is chargeable to GST at 18 per cent - **Aastha Traders, In re - [2024] 160 taxmann.com 446 (AAR- UTTAR PRADESH)**
- 5.18 Water pumps for liquids, whether or not fitted with a measuring device, liquid elevators are classifiable under Heading No. 8413 and GST has been prescribed at 9 per cent - **Aastha Traders, In re - [2024] 160 taxmann.com 446 (AAR- UTTAR PRADESH)**
- 5.19 Where supply of different items namely solar panel, controller and solar water pump together as submersible water pump is a mixed supply and section 8 states that mixed supply comprising of two or more supplies shall be treated as a supply of that particular supply which attracts highest rate of tax, therefore, solar power driven submersible pump is classifiable under Heading No. 8504 which is heading of product with highest rate of GST amongst goods supplied by applicant and it is chargeable to GST at 18 per cent - **Aastha Traders, In re - [2024] 160 taxmann.com 446 (AAR- UTTAR PRADESH)**

5.20 Activity of assessee in nature of transfer one's leasehold rights, it does not amount to further sub-leasing as assessee right as per deed of sub-lease stands extinguished after assignment and neither it create fresh benefit from land, it is in nature of compensation for agreeing to do transfer of assessee's rights in favour of assignee, said service is classifiable under other miscellaneous service (SAC 999792) and is taxable at 18 percent GST - **Remarkable Industries (P.) Ltd., In re - [2024] 160 taxmann.com 150 (AAR-UTTAR PRADESH)**

5.21 Parts of fuel injection pumps manufactured/procured/imported and supplied of assessee are classifiable under heading no 84129190 and are taxable under SI No 453(goods which are not specified in schedule I, II, IV, V and VI) of schedule III of Notification 1/2017 -Integrated Tax(Rate) attracting 18 percent GST - **Delphi TVS Technologies Ltd., In re - [2024] 160 taxmann.com 393 (AAR - TAMILNADU)**

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

5.22 Activity of supply of electricity generated from solar panels by applicant is a supply of goods and supply of electrical energy falling under Customs Tariff Heading No. 2716, therefore, it is exempted from GST as per entry at SI No. 104 of Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 - **YIS Power Solutions (P.) Ltd., In re - [2024] 160 taxmann.com 516 (AAR - KERALA)**

5.23 Where ticket charges collected by applicant, a Governmental Authority, is exclusively meant for admissions to agriculture exhibitions in carnival which is in relation to functions enlisted under Article 243G of Constitution of India,1950, therefore, aforesaid activity is exempted from payment of GST by virtue of SI. No. 5 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 - **Regional Agricultural Research Station Pilicode, In re - [2024] 160 taxmann.com 573 (AAR - KERALA)**

5.24 Where services rendered by applicant-assessee happens to be 'Pure Services' provided to Tumakuru City Corporation which is a 'Local Authority', by way of any activity in relation to any function entrusted to a Municipality under article 243W of Constitution, therefore, services provided by applicant-assessee to Tumakuru City Corporation are exempted under SI.No.3 of Notification 12/2017 dated 28.07.2017, as amended - **Gorantla Geosynthetics (P.) Ltd., In re - [2024] 160 taxmann.com 258 (AAR - TAMILNADU)**

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

5.25 Fact the Job worker can use his own goods for providing job work and valuation of such services are as per Section 15 of CGST Act makes it sufficient to hold that job work activity is clearly stated as supply of service in Schedule II of CGST Act, 2017 - **Oerlikon Friction System (India) (P.) Ltd., In re - [2024] 160 taxmann.com 569 (AAR - TAMILNADU)**

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

5.26 Where GST is leviable activity of collection of compensation, for liquidated damages from customers to applicant-assessee for non-performance of contract, therefore, question of restriction of input tax credit of common services under Rule 42 and Rule 43 of CGST Rules,2017/APGST Rules, 2017 does not arise - **South India Krishna Oil & Fats (P.) Ltd., In re - [2024] 160 taxmann.com 186 (AAR - ANDHRA PRADESH)**

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

5.27 Where basic issue involving availment of Input Tax Credit on differential tax paid is found to be inadmissible in instant case, therefore, query related to time limit prescribed is rendered redundant;No ruling is given - **Mitsubishi Electric India (P.) Ltd., In re - [2024] 160 taxmann.com 372 (AAR - TAMILNADU)**

5.28 Where basic issue involving availment of Input Tax Credit on differential tax paid is found to be inadmissible in instant case, therefore, query related to documents evidencing payment to be considered as a valid duty paying document, is rendered redundant; No ruling is given - **Mitsubishi Electric India (P.) Ltd., In re - [2024] 160 taxmann.com 372 (AAR - TAMILNADU)**

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

5.29 Where assessee intends to manufacture footwear through independent outsource units under sale and buyback model and expresses its willingness to settle mutual debts through book adjustments and net dues through bank transfer, settlement of mutual debts through book adjustment is a valid mode of payment under GST Act, thus, assessee can pay supplier by way of setting book debt since provision of Act has not put any restriction in this regard and can claim credit of input tax - **Paragon Polymer Products (P.) Ltd., In re - [2024] 160 taxmann.com 46 (AAR-WEST BENGAL)**

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

5.30 Where assessee is constructing an industrial building for commercial purposes and for which he has used various goods such as cement, steel, brick etc as inputs and services by architects, consultancy etc as input services and furthermore, assessee is proposing to rent out to large companies for storing their stocks for future sale i.e for

furtherance of his business, therefore as per section 17(5) (D) no ITC is available on any goods or services by assessee for said construction and same cannot be claimed - *Suswani Foundations (P.) Ltd., In re - [2024] 160 taxmann.com 515 (AAR - TAMILNADU)*

5.31 Where Assessee provide canteen facility through a canteen service provider to employees of SMC on deputation, employees of MSIL on business travel and temporary employees including lease employees who are on third party roll within factory premises, in terms of section 17(5)(b)(i), ITC is restricted in respect of supply of food and beverages, thus, assessee is not eligible for ITC in respect of GST charged by CSP for canteen facilities provided to said employees - *Suzuki Motor Gujarat (P.) Ltd., In re - [2024] 160 taxmann.com 463 (AAR - GUJARAT)*

5.32 Applicant-assessee employ more than 250 employees who have been provided with canteen facility through a canteen service provider, in terms of contract with CSP assessee is obligated to provide CSP with kitchen utensils and equipments, as per section 17(5)(b)(i) and notification no 13/2017- Central Tax (Rate) wherein GST rate is without input tax credit on supply of food or any other article for human consumption or any drink at canteen, mess etc, therefore assessee is not eligible for ITC on kitchen utensils and equipments - *Suzuki Motor Gujarat (P.) Ltd., In re - [2024] 160 taxmann.com 463 (AAR - GUJARAT)*

5.33 Where law imposes restriction on availment of Input Tax Credit under Section 17(5), in respect of any tax 'not paid / short paid' in accordance with provisions of section 74, irrespective of fact as to whether proceedings are initiated on basis of audit or on basis of an anti-evasion operation, therefore, differential IGST paid by applicant-assessee does not become eligible for availment of Input Tax Credit as laid down under Section 17(5) - *Mitsubishi Electric India (P.) Ltd., In re - [2024] 160 taxmann.com 372 (AAR - TAMILNADU)*

SECTION 24 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - COMPULSORY, REGISTRATION IN CERTAIN CASES

5.34 Activity of collecting commission as percentage of value of digital gold sold through its platform and entire sale proceeds are paid directly to seller of Digital gold through Escrow account would qualify him as 'Agent' for purpose of GST law, therefore, not covered by applicability of Notification No. 52/2018 and assessee will be required to obtain registration as E-commerce operator - *Changejar Technologies (P.) Ltd., In re - [2024] 160 taxmann.com 524 (AAR - KARNATAKA)*

5.35 Sale of DGIPL products happen through applicants online platform therefore, Assessee fits into definition

and qualifies to be Electronic Commerce Operator and assessee will be required to obtain registration as E-commerce operator - *Changejar Technologies (P.) Ltd., In re - [2024] 160 taxmann.com 524 (AAR - KARNATAKA)*

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

5.36 Where tax demand and penalty against assessee were confirmed entirely on basis of statement recorded after surprise inspection conducted by intelligence wing officials at place of business of petitioner and assessment orders did not take into account returns, reply documents annexed thereto, therefore, said orders were not sustainable and same were to be quashed and matter was remanded back for consideration - *Tvl. Murugesan Kesavan v. State Tax Officer - [2024] 160 taxmann.com 204 (Madras)*

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

5.37 Where question raised does not pertain to a transaction that is being undertaken or proposed to be undertaken by applicant, therefore, it does not fall within purview of definition of advance ruling and question is not admissible; No ruling is given - *YIS Power Solutions (P.) Ltd., In re - [2024] 160 taxmann.com 516 (AAR - KERALA)*

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

5.38 Food services provided on contractual basis to industries, which did not fall within specific GST categories like outdoor catering or restaurant services, were classified under other contract food services, consequently attracting an 18% GST rate - *Jothi Catering Services, In re - [2024] 160 taxmann.com 336 (AAR - TAMILNADU)*

5.39 Where query sought by applicant-assessee does not get covered under any of clauses from (a) to (g) of Section 97(2), therefore, no ruling is given - *Gorantla Geosynthetics (P.) Ltd., In re - [2024] 160 taxmann.com 258 (AAR - TAMILNADU)*

SECTION 98 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - PROCEDURE ON RECEIPT OF APPLICATION

5.40 Where essential character of a product is derived from a service, even if physical materials are transferred, overall activity should be classified as a supply of services - *Gopson Printers (P.) Ltd., In re - [2024] 159 taxmann.com 782 (AAR- UTTAR PRADESH)*

5.41 Services provided to an educational institution, which directly relate to admission process or conduct of examinations, qualify for a GST exemption - *Gopson Printers (P.) Ltd., In re - [2024] 159 taxmann.com 782 (AAR- UTTAR PRADESH)*

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1 Govt. further extends the validity of FCRA registration certificates up to June 30, 2024

Editorial Note : Govt., in public interest has decided to extend the validity of FCRA registration certificates. The validity of registration certificates of entities whose validity was extended till 31.03.2024 and whose renewal is pending, will stand extended till 30.06.2024 or till the date of disposal of renewal application, whichever is earlier. Similarly, the validity of FCRA entities whose 5-year validity period is expiring from 01.04.2024 to 30.06.2024 will stand extended up to 30.06.2024.

- 1.2 SEBI broadens the list of goods for purpose of commodity derivatives u/s 2(bc) of SCRA, 1956 - **Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2024/13, Dated 05-03-2024**

Editorial Note : Earlier, the Govt. notified the list of goods specified in the Schedule as commodity derivatives under section 2(bc) of the SCRA, 1956. Now, SEBI has broadened the list of goods for the purpose of commodity derivatives. SEBI has expanded the list of goods from 91 to 104, introducing 13 new goods and alloys for 5 metals. The diverse list includes apples, cashews, garlic, skimmed milk powder, white butter, etc. The circular shall be effective from the date of issuance.

- 1.3 SEBI repeals norms w.r.t. 'procedure dealing with cases involving offer/allotment of securities up to 200 investors - **Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/ 016, Dated 13-03-2024**

Editorial Note : The SEBI has repealed the circulars outlining the procedure for cases where securities are issued before April 01, 2024, involving the offer/allotment of securities to more than 49 but up to 200 investors in an FY. The same shall stand rescinded w.e.f 6 months from the date of issue of the circular. Further, all cases involving an offer or allotment of securities to more than the permissible no. of investors must be dealt with in line with provisions contained under extant applicable laws.

- 1.4 SEBI amends REITs Regulations, 2014; introduces a new chapter on 'Small and Medium REITs' - **Notification No. SEBI/LAD-NRO/GN/2024/166, Dated 08-03-2024**

Editorial Note : SEBI has notified SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2024. A new chapter VIB i.e. Small and Medium REITs has been inserted to existing regulations. The term "Small and Medium REIT" (SM REIT) refers to a REIT that pools money from investors under one or more schemes as per regulation 26P (2). The regulation

specifies the eligibility criteria for making an offer of units of scheme for SM REITs. Further, SEBI has broadened the definition of REIT under regulation 2(zm).

- 1.5 SEBI notifies Index Providers Regulations, 2024 to enhance transparency and accountability in Index Governance - **Notification No. SEBI/LAD-NRO/GN/2024/167, Dated 08-03-2024**

Editorial Note : SEBI has notified SEBI (Index Providers) Regulations, 2024. These regulations aim to provide a regulatory framework for Index Providers in the securities market to foster transparency and accountability in the governance and administration of Indices. The new norms include various definitions, provisions w.r.t registration of Index Providers, governance and conflict of interest, Index Quality and Methodology, accountability and disclosures etc. Further, it outlines miscellaneous provisions.

- 1.6 Govt. notifies list of Goods for purpose of commodity derivatives u/s 2(bc) of SCRA, 1956 - **Notification No. S.O. 1002(E), Dated 01-03-2024**

Editorial Note : The Govt., in consultation with the SEBI has notified the goods specified in the Schedule as commodity derivatives under section 2(bc) of the SCRA, 1956. The specified Goods are a) Cereals and Pulses b) Oil Seeds, Oil Cakes and Oils, c) Spices d) Fruits & Vegetables, e) Metals f) Precious Metals g) Gems & Stones, h) Forestry i) Fibers, J) Energy k) Chemicals l) Sweeteners m) Plantations o) Dairy and Poultry p) Dry Fruits q) Activities Services, Rights, Interest & Events r) Others

- 1.7 SEBI revises the date for filing of formats for Mutual Fund scheme offer documents - **Circular No. SEBI/HO/IMD/IMD-RAC-2/P/CIR/2024/000015, Dated 12-03-2024**

Editorial Note : Earlier, SEBI vide circular dated November 01, 2023 redesigned the format for Mutual Fund scheme offer documents. In the revised format, SEBI mandated AMCs to disclose risk-o-meter of the Benchmark on Front page of IPO application form, Scheme Information Documents (SID) and Key Information Memorandum (KIM); and in Common application form. The updated format need to be implemented w.e.f. 01.04.2024. Pursuant to a request submitted by AMFI, SEBI has now revised the date to 01.06.2024.

- 1.8 A threshold limit of 25% u/r 15(1)(c) of AIF norms shall apply at level of individual target co. acquired by ARC Trust: SEBI

Editorial Note : AIF registered with SEBI sought informal guidance as to whether threshold limit of 25% in an Investee Co. under regulation 15(1)(c) of AIF Regulations shall apply at the level of individual target co. acquired by ARC Trust or it will be at level of

individual ARC Trust regardless of multiple target co. loan accounts it may hold. SEBI clarified that threshold limit shall apply at level of individual target co. acquired by ARC Trust in addition to investments made by AIF directly in target co.

- 1.9** Govt. specifies the establishment of an 'Empowered Committee' in States or UTs headed by a director of State or UT - **Order No. S.O. 1231(E), Dated 11-03-2024**

Editorial Note : The Govt. has specified the establishment of an 'Empowered Committee' in the States or Union Territories. This committee shall be headed by the director of the respective State or Union Territory and shall consist of officers as members, such as an officer in the Subsidiary Intelligence Bureau not below the rank of Deputy Secretary to the Government of India and jurisdictional Foreigners Regional Registration Officer. Further, these officers must be invitees of the Empowered Committee.

- 1.10** Govt. amends Citizenship Rules, 2009; specifies procedure for grant of citizenship by registration or naturalization - **Notification No. G.S.R 172(E), Dated 11-03-2024**

Editorial Note : Govt. has notified the Citizenship (Amendment) Rules, 2024. A new rule 10A has been inserted w.r.t application process for grant of citizenship by registration or naturalization. It states that an application for a grant of citizenship from a person eligible u/s 6B shall be entertained only upon fulfilment of certain specific conditions. Further, the application must be submitted by applicant in electronic form to Empowered Committee through District Level Committee as notified by the Govt.

- 1.11** SEBI expands framework of 'Qualified Stock Brokers' to strengthen investors trust in securities market - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/14, Dated 11-03-2024**

Editorial Note : Earlier, SEBI specified four parameters for designating a stockbroker as a 'Qualified Stock Broker' (QSB) on an annual basis. Now, SEBI has expanded framework of QSBs to include more stock brokers. Accordingly, SBI has revised a list of QSBs by adding more parameters. The additional parameters include compliance score of stock broker, grievance redressal score of stockbroker and proprietary trading volumes of stockbroker. Also, procedure for identifying stock broker as QSB has been revised.

- 1.12** Key highlights of the SEBI's Board Meeting decisions

Editorial Note : SEBI through its board meeting dated March 15, 2024, has approved a series of proposals aimed at easing regulatory requirements and streamlining business operations for Foreign Portfolio Investors (FPIs). The highlights of the key approvals made by the Board include a) Exempting additional

disclosure requirements for specific FPIs, b) relaxation of timelines for disclosure of material changes by FPIs, c) facilitating ease of doing business for companies coming for IPOs/fundraising

- 1.13** SEBI relaxes timelines for Foreign Portfolio Investors to disclose material changes - **PR No. 5/2024; Dated 15-03-2024**

Editorial Note : SEBI in its 204th board meeting has approved a proposal to relax timelines for disclosure of material changes by FPIs. Now, material changes shall be categorised into Type I and Type II. Type I material changes must be informed to designated depository participant (DDP) within 7 working days of occurrence along with req. supporting documents within 30 days. Type II changes must be informed within 30 days. Currently, FPIs are required to disclose material changes to DDP within 7 working days.

- 1.14** Investment in MF schemes including ETFs is not covered under permissible investments by Category III AIF: SEBI

Editorial Note : A Category III AIF registered with SEBI sought informal guidance regarding the permissibility to make investments in the units of Exchange Traded Funds (ETFs) for earning regular income by the fund. In its response, SEBI clarified that in terms of Reg. 18 of SEBI (AIF) Regulations read with Reg. 2(1)(jb) of MF Regulations, an investment in mutual fund schemes involving ETFs is not covered under the list of permissible investments by Category III AIF.

- 1.15** SEBI allows reporting entities to use e-KYC Aadhaar Authentication services of UIDAI in Securities Market as 'sub-KUA' - **Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2024/17, Dated 19-03-2024**

Editorial Note : Earlier, SEBI had allowed certain reporting entities to perform aadhaar authentication services under the Aadhaar Act, 2016. The permission was granted only for Aadhaar authentication as required u/s 11A of the Money Laundering Act, 2002. These entities are now allowed to perform authentication services of UIDAI in the securities market as sub-KUA. The KUAs shall facilitate the onboarding of these entities as sub-KUAs to provide the services of Aadhaar authentication with respect to KYC.

- 1.16** SEBI proposes to introduce an audio-visual representation of disclosures made in offer documents for public issue - **Circular No. SEBI/HO/CFD/TPD/CIR/P/2024/XXX, Dated 19-03-2024**

Editorial Note : SEBI has proposed that disclosures made in Draft Red Herring Prospectus (DRHP) and Red Herring Prospectus (RHP) of public issues shall also be made available in Audiovisual (AV) format by issuer companies desiring to list on the main board. Further, AV on public issues will be in bilingual version i.e.

English and Hindi and made available in the public domain. This move is intended to facilitate easier understanding of key features of an offer. The comments must be submitted by 09.04.2024.

- 1.17 SEBI put in place safeguards to address concerns of investors transferring securities in a dematerialised mode - **Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/18, Dated 20-03-2024**

Editorial Note : SEBI has issued safeguards to address concerns of the investors arising out of the transfer of securities from the Beneficial Owner (BO) account. These aim to strengthen measures to prevent fraud and misappropriation of inoperative demat accounts. It states that depositories must give more emphasis on investor education, particularly with regard to careful preservation of Delivery Instruction Slip (DIS) by the BOs. Further, DPs must not accept pre-signed DIS with blank columns from the BOs.

- 1.18 FPI with more than 50% of their Indian equity AUM in a corporate group aren't required to make Add'l. disclosures: SEBI - **Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/19, Dated 20-03-2024**

Editorial Note : Earlier, SEBI vide circular dated August 24, 2023 mandated additional disclosures for FPIs that fulfill objective criteria. Further, FPIs satisfying the criteria were exempted from additional disclosure requirements, subject to certain conditions. SEBI has now amended this circular. An FPI with more than 50% of its Indian equity AUM in a corporate group shall not be required to make additional disclosures subject to compliance with certain conditions. The circular shall be effective immediately.

- 1.19 SEBI introduces the Beta version of T+0 rolling settlement cycle on an optional basis - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/20, Dated 21-03-2024**

Editorial Note : Earlier, SEBI vide circular dated September 7, 2021 allowed for introduction of a T+1 rolling settlement cycle. SEBI has now introduced the Beta version of T+0 rolling settlement cycle on an optional basis, in addition to the existing T+1 settlement cycle in the equity cash market. All investors are eligible to participate in the segment for the T+0 settlement cycle, if they can meet the timelines, process and risk requirements as prescribed by the Market Infrastructure Institutions (MIIs).

2. SUPREME COURT

SECTION 3 OF THE INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKINGS ACT, 1993 - LIABILITY OF BUYER TO MAKE PAYMENT

- 2.1 Where respondent sub-contracted order of supply of pipeline to appellant, thus, liability to pay and privity of contract in terms of supply/purchase order was between respondent and appellant and and thus, High Court was justified in upholding arbitral award on respondents failure to pay bill amount - **Snehadeep Structures (P.) Ltd. v. Maharashtra Small Scale Industries Development Corporation Ltd. - [2024] 160 taxmann.com 481 (SC)**

SECTION 11 OF THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992 - DISCHARGE OF LIABILITIES

- 2.2 Where one 'P' was notified under section 3(2) of Special Court (Trial of Offences relating to transactions in Securities) Act, 1992 with effect from 6th October, 2001, a fortiori, his properties would be deemed to be attached with effect from that date and not prior thereto - **Suman L. Shah v. Custodian - [2024] 160 taxmann.com 387 (SC)**

SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - APPLICATION FOR SETTING ASIDE ARBITRAL AWARDS

- 2.3 Where liability of respondent-broker to pay Rs.21 lakh to appellant was recognized by award made by Appellate Arbitral Tribunal and respondent had not chosen to offer said amount till date, therefore, to put an end to litigation which started in 2012, this was a fit case to exercise Extra Ordinary Jurisdiction of Supreme Court under Article 142 of Constitution of India, and thus, respondent was directed to pay Rs.21 lakh to appellant along with simple interest thereon at rate of 12% per annum with effect from date of award of Appellate Arbitral Tribunal - **Sharda Kapur v. Angel Broking Ltd. - [2024] 160 taxmann.com 669 (SC)**

3. HIGH COURT

SECTION 18 OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 - RETURN OF AMOUNT AND COMPENSATION

- 3.1 If a concession is recorded by a Judge, Appellate Court has to believe that such concession was indeed made; this is because Judge, in whose presence concession is recorded, can alone vouch about factum of making such concession - *Era Realtors (P.) Ltd. v. Prakash Shah* - [2024] 160 taxmann.com 721 (Bombay)

SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - APPLICATION FOR SETTING ASIDE ARBITRAL AWARD

- 3.2 Where in a tender floated by appellant for supply of 46 transformers, respondent had failed to supply 4 transformers within timeframe and thus, appellant levied liquidated damages on entire contract value, in view of fact that out of 46 transfers only 20 transformers had been installed and of which, only 8 had been commissioned, thus, no legal injury was suffered by appellant, and therefore, no interference was called for with judgment of Single Judge upholding order passed by Arbitrator to refund liquidated damages - *Bharat Heavy Electricals Ltd. v. Kanohar Electricals Ltd.* - [2024] 160 taxmann.com 473 (Delhi)

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

- 3.3 Where petitioner's request to remove his name as director from records of RoC was rejected by RoC on ground that since petitioner had not fulfilled some of compliances required to be made under provisions of 2013 Act, he was in default as per section 166(3), in view of fact that this was Covid-19 pandemic period during which such compliances could not be made, thus, instant petition filed by petitioner praying for a relief against RoC for a direction to RoC to remove name of petitioner as director of company was to be allowed - *Rajiv Sharma v. Registrar of Companies* - [2024] 160 taxmann.com 36 (Bombay)

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

- 3.4 Where SFIO arrested applicant for offences punishable under section 447 of 2013 Act, in view of fact that investigation was over and applicant's detention was no more required and nothing was to be recovered at instance of applicant, further, there was no reasonable apprehension of applicant absconding or fleeing away from justice since he had always been co-operating with SFIO's investigation, thus, applicant was to be enlarged on bail upon executing a bond in sum of Rs.1 lakh - *Hari Sankaran v. Serious Fraud Investigation Office* - [2024] 160 taxmann.com 564 (Bombay)

4. NCLAT

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

- 4.1 Where appellant alleged other directors of oppression and mismanagement before NCLT, a compromise deed having been arrived by parties and in view of compromise arrived outside NCLT nothing survived in petition filed u.s. 241 against other directors, so, reasons given by NCLT dismissing said petition was to be agreed with - *Ram Avtar Yadav v. H.S. Realty (P.) Ltd.* - [2024] 160 taxmann.com 171 (NCLAT- New Delhi)

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

- 4.2 Where section 241 petition against respondent company was filed before NCLT, NCLT passed an interim order, ordering investigation into affairs of respondent to identify allegations of fraud, Tribunal under Rule 11 of NCLT Rules, 2016 has inherent powers to cause audit of accounts or to make such orders as may be necessary, there was no fault in such order on such account and thus, instant appeal filed by a director of respondent against interim order was to be dismissed - *Veena Ramanathapura Sreenivasarangan v. Amruthamgamaya Nature Care and Leisure (P.) Ltd.* - [2024] 160 taxmann.com 252 (NCLAT - Chennai)

SECTION 248 OF THE COMPANIES ACT, 2013 - REMOVAL OF NAME OF COMPANY - POWER OF REGISTRAR

- 4.3 Where a public notice was issued by RoC and name of appellant company was struck off from register of RoC due to default in non-filing of financial statements and annual returns, act of RoC had caused a grave prejudice to appellant as said public notice was aimed at weeding out shell companies and appellant held fixed assets and was not a shell transactionary vehicle, it would be just and equitable to restore name of appellant to register of companies - *DD Finance and Holdings (P.) Ltd. v. Registrar of Companies, NCT of Delhi & Haryana* - [2024] 160 taxmann.com 451 (NCLAT- New Delhi)

SECTION 430 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - CIVIL COURT NOT TO HAVE JURISDICTION

- 4.4 Once legislature has created a complete bar of jurisdiction of Civil Court by enacting section 430 as per which no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which NCLT or NCLAT is empowered to determine, there is no doubt that jurisdiction to decide rectificatory jurisdiction u.s. 59 should be available to be exercised by NCLT even where there were contested facts and disputed questions, thus, order passed by NCLT dismissing petition filed u.s. 59 for want of jurisdiction was to be set aside - *Gireesh Kumar Sanghi v. Sanghi Industries Ltd.* - [2024] 160 taxmann.com 281 (NCLAT - Chennai)

5. NCLT

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

5.1 Merely by stating that only upon perusal of annual return for financial year ending 2007, petitioner-directors gained knowledge of alleged illegal transfer of shares of company by respondent that was held in 2005, especially when it was not case of petitioners that Annual Reports of company for year 2005 were not uploaded in MCA web site, as once returns were uploaded in MCA web portal, which was in public domain, same constitutes notice to public especially to all directors and members of company - **Ravi Sanghi v. SEZ Zippers (P.) Ltd. - [2024] 160 taxmann.com 213 (NCLT - Hyd.)**

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

5.2 Where petitioner-directors of respondent company claimed to be holding one tenth of total shareholding together with consenting shareholders filed an oppression and mismanagement petition, however, company petition was conspicuously silent of who out of total 32 shareholders have given consent and what was percentage of their shareholdings or even in respect of names of shareholders who have allegedly consented for filing instant petition, and hence, mandatory requirement under section 399 remain unsatisfied - **Ravi Sanghi v. SEZ Zippers (P.) Ltd. - [2024] 160 taxmann.com 213 (NCLT - Hyd.)**

COMPETITION LAW

1. STATUTORY UPDATES

1.1 CCI specifies the procedure for filing commitment applications and conducting commitment proceedings - **Notification No. CCI/Reg-C.R./2024, Dated 06-03-2024**

Editorial Note : The CCI has notified the CCI (Commitment) Regulations, 2024. These regulations aim to specify the procedure for filing commitment applications and conducting commitment proceedings and matters connected therewith or incidental thereto. A "Commitment Application" refers to an application submitted by a Commitment Applicant to the CCI offering commitments in respect of proceedings initiated for the alleged contraventions of section 3 or section 4 of the Act.

1.2 Govt. revises threshold limits for certain enterprises for combinations u/s 5 of Competition Act for specific period - **Notification No. S.O. 1131(E), Dated 07-03-2024**

Editorial Note : Govt. has revised threshold limits for enterprises involved in any acquisition, merger, amalgamation or acquisition of control by a person over an enterprise when such person has already direct/indirect control over another enterprise engaged in production, distribution or trading of similar goods u/s 5 of the Act. The exemption now applies when value of assets acquired, taken control of, merged or amalgamated is not more than Rs 450 cr or turnover is not more than Rs 1250 crore in India.

1.3 Unlocking Insights: Decoding the draft 'Digital Competition Bill, 2024'

Editorial Note : The MCA vide press release dated March 12, 2024 has released the draft report of the Committee on Digital Competition Law (CDCL) and a draft bill on Digital Competition Law. The draft bill is a part of the report that CDCL submitted to the MCA on February 27, 2024. The comments on the draft report and draft bill may be submitted by 15.04.2024.

1.4 CCI notifies 'Determination of Monetary Penalty' Guidelines; specifies methodology to determine penalties - **Notification No. B-14011/1/2024-ATD-II, Dated 06-03-2024**

Editorial Note : The CCI has notified the 'Determination of Monetary Penalty' guidelines, 2024. The objective is to determine the monetary penalty to be levied on the enterprises and/or persons for any contravention of provisions of the Act. The norms prescribe the methodology for determining penalties for enterprises and persons liable u/s 48 of the Act. Also, prescribe norms for residuary powers of the Commission

1.5 CCI notifies norms w.r.t determination of turnover or income under the act; clears the ambiguity - **Notification No. B-14011/2/2024-ATD-I, Dated 06-03-2024**

Editorial Note : CCI has notified the CCI (Determination of Turnover or Income) Regulations, 2024. The regulation deals with the determination of turnover or income for enterprise and the other part deals with the determination of income for individual. This would clarify norms regarding the imposition of penalties in cases of violation, which can have an impact on how firms assess their turnover

1.6 CCI specifies the procedure for filing of settlement applications and for conducting settlement proceedings - **Notification No. CCI/REG-S.R./2024, Dated 06-03-2024**

Editorial Note : CCI has notified the CCI (Settlement) Regulations, 2024. These regulations aim to specify the procedure for filing of settlement applications and for conducting the settlement proceedings and matters **connected** therewith or incidental thereto. The Settlement Application complete in all respects in terms of regulation 3 shall be placed for consideration before the Commission in its ordinary meeting within 7 working days of receipt thereof

1.7 MCA notifies March 6, 2024 as effective date for enforcement of Sections 20, 35 and 40 of Competition (Amendment) Act, 2023 - **Notification No. S.O. 1065(E), Dated 05-03-2024**

Editorial Note : Govt. has notified 06.03.2024 as the effective date for enforcement of sections 20, 35 & 40 of Competition (Amendment) Act, 2023. Section 20 deals with provisions w.r.t amendment of orders by CCI after an inquiry into agreements or abuse of dominant position. It states that CCI may impose such a penalty not exceeding 10% of average turnover or income for the last 3 PFYs. upon each person or enterprise. Sec 35 deals with contravention by companies and sec 40 deals with awarding compensation.

1.8 MCA invites public comments on Report of Committee and the draft bill on 'Digital Competition Law' - **Press Release; Dated, 12-03-2024**

Editorial Note : The MCA constituted a 'Committee on Digital Competition Law' (CDCL) on the recommendations of 53 report of the Parliamentary Standing Committee on Finance on the subject titled 'Anti-Competitive Practices by Big Tech Companies' under chairmanship of Secretary, MCA to examine the need for a separate law on competition in digital markets. Now, MCA has invited public comments on Report of Committee on Digital Competition Law and a draft bill on Digital Competition Law by 15.04.2024.

2. CCI

SECTION 3 OF THE COMPETITION ACT, 2002 - PROHIBITION OF AGREEMENT - ANTI- COMPETITIVE AGREEMENTS

- 2.1 Where informant filed information alleging collusion amongst medical equipment companies i.e. OPs in relation to tender issued by Government Medical College, Haldwani for supply of minikins and simulators and in support of allegations, informant had furnished certain documents, however, said documents did not substantiate allegations made by informant, and thus, no case of contravention of provisions of sections 3 was made out and matter was to be closed forthwith under Section 26(2) - **Manohar Rawat v. Laerdal Medical (P.) Ltd. - [2024] 160 taxmann.com 386 (CCI)**

SECTION 4 OF THE COMPETITION ACT, 2002 - ABUSE OF DOMINANT POSITION

- 2.2 Where informant - shop owner in OP mall alleged OP of charging high electricity costs and selling joint common areas of mall without consent, since in instant case, grievances of informants were in nature of contractual/civil issues/disputes and informant had failed to demonstrate which similar activity OPs were

engaged in to fulfil requirements of horizontal relation as per sections 3(3) and 4, no competition concerns seem to arise in instant matter given nature of allegations and alleged conduct of parties - **Rekha Oberoi v. MGF Development Ltd. - [2024] 160 taxmann.com 366 (CCI)**

SECTION 4 OF THE COMPETITION ACT, 2002 - PROHIBITION OF ABUSE OF DOMINANT POSITION

- 2.3 CCI orders probe into Google's Payment Policies for App Developers - **People Interactive India (P.) Ltd. v. Alphabet Inc. - [2024] 160 taxmann.com 472 (CCI)**

SECTION 33 OF THE COMPETITION ACT, 2002 - POWER TO ISSUE INTERIM ORDERS

- 2.4 Where informant company / apps owner filed an application seeking interim relief to restrain Google-offering internet based products including a proprietary digital store for mobile based apps i.e., Google Play Store, to charge commission on in-app purchases on apps offering digital products / services, informants failed to demonstrate that how Google's conduct would result in irreparable harm that could not be remedied through monetary compensation and, thus, such applications was to be dismissed - **People Interactive India (P.) Ltd. v. Alphabet Inc. - [2024] 160 taxmann.com 722 (CCI)**

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 'Bima Sugam – Insurance Electronic Marketplace' – A one-stop platform for all Insurance needs

Editorial Note : On March 20, 2024, a significant milestone was achieved as Insurance Regulatory and Development Authority of India (**IRDAI**) unveiled IRDAI (Bima Sugam-Insurance Electronic Marketplace) Regulations, 2024. These regulations laid out a strong framework for establishment, governance and functioning of Bima Sugam – Insurance Electronic Marketplace, a company formed to advance insurance landscape in India.

- 1.2 IRDAI notifies IRDAI (Actuarial, Finance and Investment Functions of Insurers) Regulations, 2024 - **Notification F. No. IRDAI/Reg/10/204/2024, Dated 20-03-2024**

Editorial Note : IRDAI has notified IRDAI (Actuarial, Finance and Investment **Functions** of Insurers) Regulations, 2024. The objective is to ensure the protection of policyholders' interests and to facilitate ease of doing business. These regulations apply to all insurers including those engaged exclusively in reinsurance business. They specify norms w.r.t principles governing actuarial, finance and investment functions of insurers, and definitions applicable to life insurers and general insurers.

- 1.3 RBI directs all '**Currency** Chest Holding Banks' dealing with Govt. transactions to remain open on Sunday, March 31, 2024 - **Circular No. RBI/2023-24/142 DCM (CC) No.S3425/03.41.01/2024-25, Dated 27-03-2024**

Editorial Note : The Govt. of India has advised all branches of banks dealing with Government receipts and payments to remain open for transactions on March 31, 2024 (i.e. Sunday) to account **for** all Government transactions relating to receipts and payments in FY 2023-24 itself. Accordingly, the RBI has directed currency chest (CC) holding banks to keep their CC operations open on March 31, 2024 as a normal.

- 1.4 Downstream investment must exclude investments in equity shares of debtor co. **of** REs but include hybrid instruments: RBI clarifies - **Circular No. RBI/2023-24/140 DOR.STR.REC.85/21.04.048/2023-24; Dated 27-03-2024**

Editorial Note : Earlier, RBI issued a circular on 'Investments in Alternative Investment Funds' by regulated entities (REs). The RBI has now modified circular. This is done to ensure uniformity in implementation among REs and to address concerns flagged in various representations received from **stakeholders**. RBI has clarified that downstream investments must exclude investments in equity shares

of the debtor company of the RE but must include all other investments, including investments in hybrid instruments.

- 1.9 RBI directs banks to participate in special clearing operations on March 30 & 31, 2024 - **Circular No. RBI/2023-24/141 CO.DPSS.RPPD.No.S1193/03-01-002/2023-2024, Dated 27-03-2024**

Editorial Note : RBI has directed all banks to participate in the special clearing operations on March 30 & 31, 2024. Accordingly, all the member banks of CTS are also required to keep their inward clearing processing infrastructure open during the Special Clearing hours and maintain sufficient balance in their clearing settlement account to meet settlement obligations arising out of the Special Clearing. Further, special clearing will be held exclusively for government cheques on March 30 & 31, 2024.

- 1.10 RBI signs an MoU with Bank Indonesia to promote the use of local currencies for Bilateral Transactions - **Press Release No. 2023-2024/2017, Dated 07-03-2024**

Editorial Note : The RBI and the Bank Indonesia (BI) signed a Memorandum of Understanding (MoU) today in Mumbai to establish a framework promoting the use of local currencies viz., the Indian Rupee (INR) and the Indonesian Rupiah (IDR) for cross-border transactions. The MoU covers all current account transactions, permissible capital account transactions and any other economic and financial transactions as agreed upon by both countries.

- 1.11 RBI directs card issuers to share card data with outsourcing partners only with explicit consent from the cardholder - **Circular No. RBI/2023-24/132 DOR.RAUG.AUT.REC.No.81/24.01.041/2023-24, Dated, 07-03-2024**

Editorial Note : RBI has amended the master direction on issuance of credit and debit cards. As per the amended norms, RBI has directed the card issuers to put in place an effective mechanism to monitor the end use of funds. Further, card issuers are instructed not to share card data (including transaction data) of cardholders with outsourcing partners unless sharing of such data is essential to discharge functions assigned to latter. In case of sharing, explicit consent from the cardholder must be obtained.

- 1.12 Sovereign Gold Bonds 2016 – 17 (Series IV) can be redeemed prematurely at Rs. 6438 per unit: RBI -**Press Release: 2023-2024/2022, Dated 07-03-2024**

Editorial Note : The next due date of premature redemption of the SGB 2016 - 17, Series IV shall be March 16, 2024. The RBI has notified that the redemption price of SGB for the premature

redemption due on March 16, 2024 shall be Rs.6438/- per unit of SGB based on the simple average of closing gold price of 999 purity of the week (Monday-Friday) preceding the date of redemption as published by the India Bullion and Jewellers Association Ltd (IBJA).

- 1.13** RBI denies extension of cut-off time to agency banks for uploading GST, ICEGATE and TIN 2.0 luggage files - **Circular No: RBI/2023-24/136 CO.DGBA.GBD.No.S1234/31-12-010/2023-2024, Dated 13-03-2024**

Editorial Note : Earlier, the RBI issued a circular on reporting of transactions by agency banks to RBI. As per the circular, the agency banks must ensure that luggage files are uploaded in RBI's QPX/e-Kuber on or before 1800 hours prescribed by CBDT, Central Board of Indirect taxes and customs. Several agency banks requested an extension of time for uploading luggage files. In response, RBI has denied agency banks a cut-off time beyond 1800 hours for uploading these luggage files in QPX/e-Kuber.

- 1.14** Govt. fixes April 10, 2024 as the date for closure of residual transactions of banks for March 2024: RBI - **Circular No. RBI/2023-24/135 DGBA.GBD.No.S1217/42-01-029/2023-2024, Dated 13-03-2024**

Editorial Note : Earlier, the RBI advised on the procedure to be followed for reporting and accounting of Central Govt. transactions at the receiving/Nodal/Focal point branches for FY 2022-23. Now, the Govt. has fixed the date for closure of residual transactions for March 2024 as April 10, 2024. Further, while reporting transactions pertaining to March 2024 up to April 10, 2024, the transactions of April 2024 should not be mixed up with the residual transactions relating to March 2024.

- 1.15** RBI restricts 'JM Financial Products Limited' from engaging in any form of financing against shares and debentures - **Press Release: 2023-2024/2006, Dated 05-03-2024**

Editorial Note : RBI has barred 'JM Financial Products Limited' with immediate effect from doing any form of financing against shares and debentures after it found 'serious deficiencies' that are detrimental to the interest of its customers during a review of its books. This includes sanctioning and disbursing loans against Initial Public Offering (IPO) of shares and subscription to debentures. The RBI has allowed the company to service its existing loan accounts through usual collection and recovery process.

- 1.16** RBI directs card issuers to provide customers with an option to choose from multiple card networks at time of issue - **Circular No. RBI/2023-24/131 CO.DPSS.POLC.No.S1133/02-14-003/2023-24, Dated 06-03-2024**

Editorial Note : The RBI has directed card issuers to provide an option to their eligible customers to choose from multiple card networks at the time of issuance. For existing cardholders, this option may be provided at the time of the next renewal. This directive is made in the interest of the payment system and the public interest. Further, RBI has instructed card issuers not to enter into any arrangement or agreement with card networks that restrains them from availing the services of other card networks.

- 1.17** Govt. directs repayment of '8.35% SBI RTS ISU GOI SPL Bond 2024' - **Press Release, Dated 05-03-2024**

Editorial Note : The Ministry of Finance has directed the repayment of '8.35% SBI RTS ISU GOI SPL Bond 2024'. The outstanding balance of '8.35% SBI RTS ISU GOI SPL Bond 2024' is repayable at par on March 27, 2024. No interest will accrue thereon from the said date. Further, in the event of a holiday being declared on repayment day by any State Government under the Negotiable Instruments Act, 1881, the loans will be repaid by the paying offices in that State on the previous working day.

- 1.18** RBI shifts submission of quarterly statements from XBRL mode to Centralised Information Management System - **Circular No: RBI/2023-24/130 A.P. (DIR Series) Circular No.15, Dated 05-03-2024**

Editorial Note : With the launch of the Centralized Information Management System (CIMS), the RBI has decided that with effect from the quarter ending in March, 2024, submission of quarterly statements on the quantum of remittances received through MTSS will be done on the CIMS portal. This portal serves as the bank's next-generation data warehouse. Further, in case no remittance was received during the quarter, a 'NIL' report must be submitted.

- 1.19** Govt. authorizes Mumbai DRAT Chairperson to discharge Delhi DRAT functions for 'Ramesh Kumar Vs SBI' appeals - **Order No. S.O. 1058(E), Dated 05-03-2024**

Editorial Note : The Central Government has now authorised the Chairperson of Debts Recovery Appellate Tribunal, Mumbai to discharge also the functions of Chairperson of the Debts Recovery Appellate Tribunal, Delhi for deciding appeals in the matter of 'Ramesh Kumar & Anr. Vs SBI & Ors.', Punjab National Bank Vs. M/s Sundar Nagar Integrated Rural Development Association (SIRDA), and Central Bank of India vs Yogesh Jain & Ors. in addition to his being Chairperson of Debts Recovery Appellate Tribunal, Mumbai.

- 1.20** Govt. amends SEZ rules; units undertaking 'aircraft or ship leasing activity' not required to maintain separate offices - **Notification No. G.S.R 194(E), Dated 14-03-2024**

Editorial Note : The Govt. has notified the Special Economic Zones (Second Amendment) Rules, 2024. An amendment has been made to Rule 21B of the existing rules. As per the amended norms, the term 'aircraft leasing' has been replaced with 'aircraft or ship leasing'. Accordingly, units set up in IFSC authorized to undertake aircraft or ship leasing activity are not mandatorily required to maintain a separate office.

- 1.21** Govt. amends FEM (NDI) Rules; clarifies on definition of the term 'unit' under rule 2(aq) - **Notification No. S.O. 1361(E), Dated: 14-03-2024**

Editorial Note : Govt. has notified the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2024. An amendment has been made to rule 2(aq), which defines the term 'unit' as the beneficial interest of an investor in an investment vehicle. As per the amended norms, an explanation has been inserted to the clause. It states that 'unit' shall include a unit that has been partly paid up as permitted under regulations framed by SEBI in consultation with the Government of India.

- 1.22** Govt. notifies the list of reporting entities to perform aadhaar authentication service under the Aadhaar Act - **Notification S.O. 1339(E), Dated 14-03-2024**

Editorial Note : The Ministry of Finance has notified 4 reporting entities to perform authentication under the Aadhaar Act, 2016. The permission is granted only for the purpose of Aadhaar authentication as required u/s 11A of the Money Laundering Act, 2002. Sec 11A requires the verification of the identity of reporting entities' clients and beneficial owners by way of aadhaar authentication.

- 1.23** NEFT & RTGS systems have registered a growth of 700% & 200% respectively during (2014-23): RBI - **Press Release: 2023-2024/1985, Dated 01-03-3024**

Editorial Note : The RBI has informed that during the previous ten years (2014-23), NEFT and RTGS systems have registered growth of 700 per cent and 200 per cent respectively in terms of volume and 670 per cent and 104 per cent respectively in terms of value. The RBI has further informed that RTGS system had processed its highest ever volume of 16.25 lakh transactions in a day on March 31, 2023

- 1.24** Govt. notifies 'contract for the purchase or sale of a right to buy or sell' as a derivative under SCRA, 1956 - **Notification No. S.O. 1003(E), Dated 01-03-2024**

Editorial Note : The Ministry of Finance has declared a 'contract for the purchase or sale of a right to buy or sell, or a right to buy and sell in future, with such underlying goods' as notified under section 2(bc) of the Securities Contracts (Regulation) Act, 1956 as a derivative for the said Act. Sec 2(bc) of the Act defines 'commodity derivative' as a contract for the delivery of such goods as may be notified by the Central Government in the

Official Gazette and which is not a ready delivery contract.

- 1.25** RBI decides to withdraw a list of 34 circulars with an immediate effect - **Circular No. RBI/2023-24/129 DoS.CO.ARG/SEC.11/08.91.001/2023-24, Dated 01-03-2024**

Editorial Note : Upon review of circulars issued by RBI from time to time, RBI has now decided to withdraw 34 circulars with immediate effect. The list of withdrawn circulars along with their subjects is mentioned in annexure attached to circular. Some of the circulars cover subjects such as appointment of Statutory Central Auditors for the year 1970, appointment of branch auditors for Indian branches for the year 1970, remuneration payable to Statutory Central and branch auditors of Nationalised Banks etc.

- 1.26** Unit applications for IFSCA authorisation shall be made in Form FA, not F: Finance Ministry - **Notification S.O. 940(E), Dated 28-02-2024**

Editorial Note : The Ministry of Finance has notified amendment in Special Economic Zones Act, 2005 and Special Economic Zones Rules, 2006. As per the amendment in Rule 17 i.e., Proposal for approval of Unit, of Special Economic Zones Rules, 2006, an application seeking permission for setting up a Unit requiring recognition, registration, license or authorisation by the IFSCA shall be made to the Administrator (IFSCA) in Form FA, instead of Form F.

- 1.27** Loans & advances restrictions under Banking Regulation Act shall not be applicable to IFSC banking unit of Foreign Bank - **Notification No. S.O. 942(E), Dated 28-02-2024**

Editorial Note : The Ministry of Finance has notified amendment in Banking Regulation Act, 1949. A new proviso has been inserted in Sub-Section 1 of Section 20 i.e., Restrictions on loans and advances. As per the amended norms, the provisions restricting loans and advances on banking companies shall not apply to loans and advances made by an International Financial Services Centres Banking Unit of a Foreign Bank.

- 1.28** RBI tweaks 'capital adequacy norms' to align with master directions on banks' Investment - **Circular No. RBI/2023-24/128 DOR.MRG.REC.80/00-00-003/2022-23, Dated 28-02-2024**

Editorial Note : RBI has notified amendments to capital adequacy norms to incorporate the changes from master directions on classification, valuation and operation of Investment Portfolio of commercial banks dated 12.09.2023. These directions establish a clearly identifiable trading book under the 'Held for Trading (HFT)' accounting sub-classification and introduce AFS-reserve which would be part of regulatory capital. The changes in capital adequacy norms shall apply from 01.04.2024 to all commercial banks.

- 1.29** MoF permits 'Motilal Oswal Home Finance Limited' to perform authentication under the Aadhaar Act, 2016 - **Notification No. S.O. 933(E), Dated 28-02-2024**

Editorial Note : The Ministry of Finance has permitted 'Motilal Oswal Home Finance Limited', a reporting entity to perform authentication under the Aadhaar Act, 2016. The permission is granted only for the purpose of Aadhaar authentication as required u/s 11A of the Money Laundering Act, 2002. Sec 11A requires the verification of the identity of reporting entities' clients and beneficial owners by way of aadhaar authentication.

- 1.30** RBI releases updated 'Enabling Framework for Regulatory Sandbox' - **Press Release No. 2023-2024/1956, Dated 28-02-2024**

Editorial Note : RBI has placed on its website updated 'Enabling Framework for Regulatory Sandbox' (RS). The framework has been revised based on the experience gained over the last four and half years in running four cohorts and feedback received from FinTechs, banking partners and other stakeholders. RS usually refers to live testing of new products or services in a controlled/test regulatory environment for which regulators may or may not permit certain regulatory relaxations for limited purpose of testing.

- 1.31** RBI invites comments on the "Draft Disclosure Framework on Climate-related Financial Risks, 2024 - **Press Release No. 2023-2024/1958, Dated 28-02-2024**

Editorial Note : RBI has placed on its website the draft guidelines on disclosure framework on Climate-related Financial Risks, 2024. These guidelines shall apply to all Scheduled Commercial Banks (excluding Local Area Banks, Payments Banks and Regional Rural Banks), All Tier-IV Primary (Urban) Co-operative Banks, All All-India Financial Institutions (viz. EXIM Bank, NABARD, NaBFID, NHB and SIDBI) and All Top and Upper Layer Non-Banking Financial Companies (NBFCs). The comments may be sent by April 30, 2024.

- 1.32** RBI revises regulatory framework for 'Bharat Bill Payment Systems' streamlining the bill payment processes - **Master Directions No. RBI/DPSS/2023-24/111CO.DPSS.POLC.No.S1114/02-27-020/2023-2024, Dated 29-02-2024**

Editorial Note : RBI has put in place a revised regulatory framework for the Bharat Bill Payment Systems (BBPS). The framework aims to streamline the process of bill payments, enable greater participation, and enhance customer protection among other changes. It shall apply to NPCI Bharat Bill Pay Limited (NBBL - a wholly owned subsidiary of National Payments Corporation of India); and all Bharat Bill Payment Operating Units (BBPOUs). The revised framework shall be applicable from April 1, 2024.

- 1.33** IRDAI notifies the IRDAI (Rural, Social Sector and Motor Third Party Obligations) Regulations, 2024 - **Notification No. F. No. IRDAI/Reg/4/198/2024, Dated 20-03-2024**

Editorial Note : IRDAI has notified the IRDAI ((Rural, Social Sector and Motor Third Party Obligations) Regulations, 2024. The objective is to specify the minimum rural, social sector, and third-party motor insurance business that insurers are required to underwrite under the Insurance Act, 1938. These norms discuss obligations regarding Rural and Social Sectors, and obligations relating to Motor third-party business. These regulations are effective from 01.04.2024.

- 1.34** IRDAI issues the IRDAI (Bima Sugam-Insurance Electronic Marketplace) Regulations, 2024 -**Notification No. F. No. IRDAI/Reg/5/199/2024, Dated 20-03-2024**

Editorial Note : IRDAI has notified the IRDAI (Bima Sugam - Insurance Electronic Marketplace) Regulations, 2024. The objective is to empower and protect the interests of policyholders, increase the penetration of insurance in India and enhance accessibility by allowing the establishment of a Digital Public Infrastructure called Bima Sugam - Insurance Electronic Marketplace. This infrastructure must be established by a not-for-profit company formed u/s 8 of the Companies Act, 2013.

- 1.35** IRDA notifies IRDA (Insurance Products) Regulations, 2024 to be effective from 01st April, 2024 -**Notification F. No. IRDAI/Reg/8/202/2024 dated 20-03-2024**

Editorial Note : IRDA with an objective to protect the policyholder's interest and to facilitate insurers to respond faster to emerging market needs and also to design innovative products has notified the IRDA (Insurance Products) Regulations, 2024. These regl shall be applicable to insurers who have been granted certificate of registration to transact the business of life insurance or general insurance or health insurance. These regl shall be effective from 01st Apr, 2024.

- 1.36** IRDA notifies IRDA (Protection of Policyholders' Interests, Operations and Allied Matters of Insurers), 2024 - **Notification F. No. IRDAI/Reg/11/205/2024, Dated 20-03-2024**

Editorial Note : IRDA with an objective to protect the interests of policyholders and to ensure that the conduct of the insurer and distribution channel are not prejudicial to the interests of policyholders has notified the IRDA (Protection of Policyholders' Interests, Operations and Allied Matters of Insurers), 2024. These regulations shall be applicable to all insurers and distribution channels except for those engaged exclusively in reinsurance business. These regl shall be effective from 01st Apr, 2024.

- 1.37** IRDAI provides a framework of roles and responsibilities of the Board and management of insurers -**Notification No. F. No. IRDAI/Reg/7/201/2024, Dated 20-03-2024**

Editorial Note : IRDAI has notified the IRDAI (Corporate Governance for Insurers) Regulations, 2024. The objective is to provide a framework for insurers to adopt sound and prudent principles and practices of their governance structure as well as to establish a framework for the roles and responsibilities of the Board and the management of insurers. These regulations shall apply to all insurers except foreign companies engaged in re-insurance business through a branch established in India.

- 1.38** IRDAI appoints Mr. Rakesh Joshi and Mr. Arif Khan as members of reconstituted Insurance Advisory Committee - **Notification No. F. No. IRDAI/IAC/12/206/2024, Dated 20-03-2024**

Editorial Note : The IRDAI has appointed Mr. Rakesh Joshi and Mr. Arif Khan as members of the reconstituted Insurance Advisory Committee to fill vacancies. These appointments will be effective from the date of publication in the official gazette. This action is in the exercise of powers granted under section 25 of the IRDAI Act and in accordance with specified regulations

- 1.39** IRDAI notifies de-notification of prevailing tariffs w.e.f April 01, 2024 - **Notification No. F. No.: IRDAI//Gen Insurance/Tariff/13/207/2024, Dated 20-03-2024**

Editorial Note : IRDAI has notified that all prevailing tariffs such as Fire Insurance Tariffs, Motor Tariffs, Engineering Insurance Tariffs, and Tea Tariffs are entirely de-notified and no longer in force w.e.f. 01.04.2024. Further, IRDAI clarified that no insurer shall at any time withdraw or discourage the use of or decline to offer to any customer any of the tariff products that were in existence prior to this notification.

- 1.40** IRDAI notifies IRDAI (Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers) Regulations, 2024 - **Notification F. No. IRDAI/Reg/6/200/2024, Dated 20-03-2024**

Editorial Note : IRDAI has notified IRDAI (Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers) Regulations, 2024. The objective is to promote growth of insurance sector by simplifying the process of registration of insurers, transfer of shareholding, other forms of capital, an amalgamation of insurers, listing of shares of insurers on stock exchange and to promote ease of doing business. These regulations shall be effective from the date of publication in the Official Gazette.

- 1.41** RBI approves of amalgamation of 'Fincare Small Finance Bank Ltd' with 'AU Small Finance Bank Ltd' - **Press Release No. 2023-2024/1995, Dated 04-03-2024**

Editorial Note : The RBI has approved the scheme of amalgamation of 'Fincare Small Finance Bank Ltd.' with 'AU Small Finance Bank Ltd.'. The scheme has been sanctioned in the exercise of the powers contained in Section 44A of the Banking Regulation Act, 1949. The

effective date of the amalgamation shall be April 01, 2024. Further, all the branches of Fincare Small Finance Bank Ltd. will function as branches of AU Small Finance Bank Ltd. with effect from April 01, 2024.

- 1.42** Govt. permits 100% FDI under automatic route for satellite component manufacturing in India - **Press Note No. 1, Dated 04-03-2024**

Editorial Note : The Govt. has reviewed the existing FDI policy in the space sector and accordingly amended the policy. As per the amended FDI policy, 100% FDI is allowed under the automatic route for manufacturing of components and systems/sub-systems for satellites, ground segments and user segments. Currently, FDI is permitted in the establishment and operation of satellites via Govt. approval route.

- 1.43** RBI directs 'IIFL Finance Ltd' to cease and desist from sanctioning or disbursing gold loans - **Press Release No. 2023-2024/1994, Dated 04-03-2024**

Editorial Note : RBI has directed IIFL Limited ('the company') to cease and desist from sanctioning or disbursing gold loans or assigning/securing/selling any of its gold loans. However, the company can continue to service its existing gold loan portfolio through the usual collection and recovery processes. This directive is effective immediately. Further, this business restriction is without prejudice to any other regulatory or supervisory action that may be initiated by the RBI against the company.

- 1.44** IEPF Authority invites comments from stakeholders to simplify, expedite and streamline claims settlement process - **Press Release; Dated 15-03-2024**

Editorial Note : The IEPF Authority is reaching out to stakeholders for their valuable insights to simplify, expedite and streamline the claims settlement process. In line with its commitment to enhancing the investor experience, IEPFA is soliciting comments from various stakeholders to reimagine the refund process under the Companies Act, 2013. The aim is to ensure a seamless and efficient mechanism for claim refunds from the IEPF Authority. The deadline for submitting comments is April 15, 2024.

- 1.45** RBI directs all agency banks dealing with Govt. transactions to remain open on Sunday, March 31, 2024 - **Circular No. RBI/2023-24/137 DOR.SOG (LEG).REC/84/09.08.024/2023-24, Dated 20-03-2024**

Editorial Note : The Govt. of India has requested to keep all branches of the banks dealing with Government receipts and payments open for transactions on March 31, 2024 (i.e. Sunday) to account for all the Government transactions relating to receipts and payments in the FY 2023-24 itself. Accordingly, the RBI has advised all agency banks to keep all their branches dealing with government business open for March 31, 2024.

2. SUPREME COURT

SECTION 2 OF THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 - FOREIGN SOURCE

- 2.1 Where Supreme Court directed ECI to upload on its website all details furnished by SBI to it of Electoral Bonds purchased / redeemed by political parties, however, ECI claimed that it did not retain a copy of data which was collated by it since it was being placed before Supreme Court in sealed custody, thus, Supreme Court directed Registry to scan and digitize said data and once said exercise was completed, originals would be returned to counsel appearing on behalf of ECI - **Association of Democratic Reforms v. Union of India** - [2024] 160 taxmann.com 720 (SC)

SECTION 2(1)(fa) OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - BENEFICIAL OWNER

- 2.2 SC lifts corporate veil to uphold denial of bail by HC to ex-Minister of Delhi Satyendar Jain in money-laundering case - **Satyendar Kumar Jain v. Directorate of Enforcement** - [2024] 160 taxmann.com 512 (SC)

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

- 2.3 An offence punishable under Section 120-B IPC will become a scheduled offence only if conspiracy alleged is of committing an offence which is specifically included in Schedule and it is not legislative intent behind PMLA to make every offence not included in Schedule a scheduled offence by applying Section 120-B IPC - **Anjaneya Hanumanthaiah v. Union of India** - [2024] 160 taxmann.com 388 (SC)

SECTION 166 OF THE MOTOR VEHICLES ACT, 1988 - APPLICATION FOR COMPENSATION

- 2.4 Where after death of one R in a motor accident, Tribunal assessed income of deceased at Rs.50 thousand per month and assessed total compensation to dependant of deceased towards loss of income at Rs.51 lakh, High Court however, reduced income of deceased from Rs.50 thousand to Rs.20 thousand per month, in view of fact that deceased was doing multiple activities and besides being an agriculturalist, he was also supplying milk and coconuts to school, income of deceased deserved to be re-assessed and it would be reasonable to assess income of deceased at Rs.35 thousand per month - **Vethambal v. Oriental Insurance Company** - [2024] 160 taxmann.com 362 (SC)

3. HIGH COURT

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

- 3.1 Where in a money laundering case, role of applicant was not of generating proceeds of crime and laundering same, but was of directly assisting money laundering activities of accused, thus, role of applicant was much lesser compared to accused and Supreme Court had allowed bail application of accused and enlarged him on bail till disposal of complaint case filed by ED under PMLA, applicant's bail application was to be allowed - **Jayram Vinayak Deshpande v. Directorate of Enforcement** - [2024] 160 taxmann.com 253 (Bombay)

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 3.2 Where account of petitioner company was classified as NPA by RBI due to non renewal of loan account within stipulated period as per master circular issued by RBI, subsequently, RBI issued notice under section 13 to petitioner, RBI acted within purview of said circular and it was justified in declaring petitioner's account as NPA, RBI could not be faulted for issuance of consequential notice under section 13(2) to petitioner and thereafter initiating measures under section 13(4) - **Bhanu Properties Ltd. v. Reserve Bank of India** - [2024] 160 taxmann.com 688 (Calcutta)

SECTION 14 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 CHIEF METROPOLITAN MAGISTRATE OR DISTRICT MAGISTRATE TO ASSIST SECURED CREDITOR IN TAKING POSSESSION OF SECURED ASSET

- 3.3 Where borrower despite having failed to point out any illegality in actions taken by bank under SARFAESI Act, had succeeded in preventing bank from taking physical possession of secured assets by making false representation before DRT and High Court with respect to its intention to clear dues, thus, instant petition for restraining bank from taking physical possession of secured assets and praying for extension of time to pay outstanding amount to bank stood dismissed - **Siba International v. Union Bank of India** - [2024] 160 taxmann.com 108 (Delhi)

SECTION 30 OF THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 - APPEAL AGAINST THE ORDER OF RECOVERY OFFICER

- 3.4 Where borrower filed an application challenging order of attachment, proclamation of sale, auction proceedings and sale of immovable Properties by Recovery Officer and said application was filed without complying with statutory provisions of pre-deposit as required under Rules 60 & 61 of Schedule - II to Income Tax

Rules, 1962, DRT & DRAT ought not to have entertained appeal against order of Recovery Officer and passed impugned order quashing auction sale - **Ram Avtar v. Durga Rice & Dall Mills - [2024] 160 taxmann.com 562 (Allahabad)**

SECTION 35A OF THE BANKING REGULATION ACT, 1949 - POWER OF RESERVE BANK TO GIVE DIRECTIONS

- 3.5 Where a company and its director i.e. petitioner were declared as wilful defaulters as per Master Circular dated 1-7-2015 issued by RBI vide a final order, without analyzing evidence for role of petitioner and providing supporting material for such declaration, such order was a product of non-compliance with principles of natural justice, thus, respondent was to be directed to withdraw such orders and to conduct proceedings afresh from stage of show cause notice after providing proper access to relevant material on record - **Milind Patel v. Union Bank of India - [2024] 160 taxmann.com 457 (Bombay)**
- 3.6 Where lender bank declared borrower company a wilful defaulter under Master Circular dated 1-7-2014 merely on basis of a forensic audit report, which itself did not record any conclusion of any default committed by borrower, a forensic audit report could act as a piece of corroboration for said exercise but not a sole basis, thus, reasons assigned by review committee confirming petitioner as wilful defaulter were unsustainable - **Ratul Puri v. Punjab National Bank - [2024] 160 taxmann.com 634 (Delhi)**

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

- 3.7 Where applicant was in custody in money laundering case and he had filed an interim bail application before Trial Court seeking interim bail for a period of four week since he had to undergo surgery for his left knee namely "Arthroscopic Medial Meniscal Repair Surgery", in view of fact that medical condition of applicant could not be categorized as life-threatening situation, and surgery which was to be undergone by applicant was not of such nature which necessitates applicant's release on interim bail only, applicants bail application was to be rejected - **Sameer Mahandru v. Directorate of Enforcement - [2024] 160 taxmann.com 670 (Delhi)**
- 3.8 Delhi HC denies anticipatory bail to MLA for repeatedly avoiding ED summons in PMLA case - **Amanatullah**

Khan v. Directorate of Enforcement - [2024] 160 taxmann.com 384 (Delhi)

- 3.9 Bail is to be granted to accused in PMLA case where money trail leading to him is weak and co-accused are out on bail - **Sanjay Jain v. Enforcement Directorate - [2024] 160 taxmann.com 367 (Delhi)**

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

- 3.10 Where a complaint was filed under section 138 of NI Act, 1881 for dishonour of cheque against a company and its director / petitioner was arrayed as an accused, cheques were issued while petitioner was shown as an executive director in said company and cheques were issued prior to her resignation as director, since instant issue could be only resolved in light of evidence led on record by parties before Trial Court and not before High Court, instant petition filed by petitioner praying to quash summons issued by Trial Court was to be dismissed - **Yashaswini Mittal v. Shri Tapodhani Aluminium Trading Co. - [2024] 160 taxmann.com 323 (Delhi)**
- 3.11 Where in a cheque bounce case, accused impleaded petitioner as accused claiming that he was deemed / real owner of accused firm, however, complainant had failed to place on record any evidence to substantiate its claim, on other hand, petitioner had placed on record a certificate of acknowledgement of registration from Deputy Registrar of firm which nowhere shows petitioner as a partner in said firm, also cheque was signed by one 'H' and not petitioner, thus, summoning order as well as complaint against petitioner was to be quashed - **Tushar Sharma v. Graphic Advertising - [2024] 160 taxmann.com 284 (Delhi)**

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

- 3.12 Where in a cheque bounce case, accused impleaded petitioner as accused claiming that he was deemed / real owner of accused firm, however, complainant had failed to place on record any evidence to substantiate its claim, on other hand, petitioner had placed on record a certificate of acknowledgement of registration from Deputy Registrar of firm which nowhere shows petitioner as a partner in said firm, also cheque was signed by one 'H' and not petitioner, thus, summoning order as well as complaint against petitioner was to be quashed - **Tushar Sharma v. Shellz Techno Pack (P.) Ltd. - [2024] 160 taxmann.com 430 (Delhi)**

INSOLVENCY AND BANKRUPTCY CODE

1. SUPREME COURT

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 1.1 Where appellant, an unsuccessful resolution applicant challenged approved resolution plan of SRA on ground that SRA had not implemented resolution plan within 30 days of approval, since appellant had no locus to maintain that change in terms of approved resolution plan in regard to extension of time for induction of upfront amount, appeal filed against approval of resolution plan was rightly dismissed by NCLAT - **Hindustan Oil Exploration Co. Ltd. v. Erstwhile Committee of Creditors Jekpl (P.) Ltd.** - [2024] 160 taxmann.com 603 (SC)

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

- 1.2 Where an application filed under section 9 was admitted against corporate debtor and appellant, suspended director of corporate debtor offered to settle dues however, there was dues against corporate debtor amounted to more than Rs.121 Crores and claim of unsecured financial creditor totalling Rs.137.68 crores, since claim against corporate debtor painted a grim picture and, thus, it would not be appropriate for instant Court to entertain instant appeals and same was to be dismissed - **Tejinder Pal Setia v. Kone Elevator India (P.) Ltd.** - [2024] 160 taxmann.com 529 (SC)

2. HIGH COURT

REGULATION 23A OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONAL) REGULATIONS, 2016 - AUTHORIZATION FOR ASSIGNMENT SHALL STAND SUSPENDED UPON INITIATION OF DISCIPLINARY PROCEEDINGS BY AGENCY OR BY BOARD

- 2.1 Where disciplinary proceedings were initiated by IBBI against petitioner / member of IBBI and petitioner challenged constitutional validity of Regulation 23A of IBBI Regulations, 2016, since, petitioner or any other aggrieved professional can only insist upon prompt completion of such proceedings and hardship cannot be a ground for challenging a regulation itself, therefore, constitutional validity of Regulation 23A was to be upheld - **V Venkata Sivakumar v. Insolvency and Bankruptcy Board of India** - [2024] 160 taxmann.com 502 (Madras)

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 2.2 Where resolution plan's waiver clause was not approved by NCLT or by appellate authority and it was left open for determination by appropriate authorities, if applied for, since petitioners attempted to mislead Court by claiming that resolution plan was approved, thus, notices issued by financial creditor claiming transfer fee were in conformity with terms of resolution plan and there was no illegality or irregularity in notices which calls for interference by instant Court - **S S Natural Resources (P.) Ltd. v. West Bengal Industrial Corporation Ltd.** - [2024] 160 taxmann.com 692 (Calcutta)

SECTION 32A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIABILITY FOR PRIOR OFFENCES, ETC.

- 2.3 Sections 32A and 60(5) of IBC are non-obstante provision that operate notwithstanding anything contained in any other law, including PMLA, 2002, and thus, once a resolution plan is approved, no action can be taken against properties of corporate debtor in relation to an offence committed prior to commencement of CIRP of corporate debtor, where such property is covered under a resolution plan approved by it under Section 31 - **Shiv Charan v. Adjudicating Authority** - [2024] 160 taxmann.com 176 (Bombay)

3. NCLAT

SECTION 5(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- 3.1 Where corporate debtor filed instant appeal on ground that despite there being a pre-existing dispute over slow progress and less mobilisation of resources NCLT admitted CIRP petition since, corporate debtor issued a completion certificate prior to demand notice without any reservation and to full satisfaction of corporate debtor, thus, any alleged delay during course of execution of contract could not be treated as an issue that might adversely affect rights of operational creditor impugned order passed by NCLT admitting section 9 application was justified - **Jeevagan Narayana Swami Nadar v. Shapoorji Pallonji & Co. (P.) Ltd.** - [2024] 160 *taxmann.com* 614 (NCLAT- New Delhi)
- 3.2 Where there was a dispute between parties that existed before demand notice was issued and, there had been a consistent and clear denial on part of corporate debtor of their liability to discharge obligations to pay and, therefore, NCLT had correctly rejected section 9 application - **Khimji Poonja Freight Forwarders (P.) Ltd. v. Ingram Micro India (P.) Ltd.** - [2024] 160 *taxmann.com* 505 (NCLAT- New Delhi)

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

- 3.3 Where corporate guarantor furnished guarantee in favour of financial creditor to repay loan given to principal borrower in event of default, principal borrower by proposing various one time settlements had clearly admitted/acknowledged its liability to repay said loan, cause of action against guarantor was equally alive, in view of its liability being co-extensive with that of principal borrower, conclusion arrived at by NCLT admitting a CIRP application against guarantor was free from any legal flaws - **E.M. Najeeb Ellias Mohammed Promoter of Air Travel Enterprises India Ltd. v. Union Bank of India** - [2024] 160 *taxmann.com* 137 (NCLAT - Chennai)

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 3.4 Where operational creditor raised a claim against a corporate debtor, in which out of 234 invoices, 224 invoices were ex-facie time barred and total amount for remaining 10 invoices did not exceed threshold of Rs. one crore, therefore, claim of operational creditor could not be accepted and impugned order passed by NCLT rejecting section 9 application was justified - **Laxmi Trading Corporation v. Hindustan Construction Company Ltd.** - [2024] 160 *taxmann.com* 173 (NCLAT- New Delhi)

SECTION 5(24) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RELATED PARTY IN RELATION TO A CORPORATE DEBTOR

- 3.5 Where appellant, a foreign financial lender, had extended loan facility to corporate debtor and one of its director was also a director in corporate debtor, however, there was no material to indicate that appellant had given advice, direction or instruction to director, promoter or manager of corporate debtor who was accustomed to act accordingly, appellant could not be treated as related party under section 5(24)(h) of IBC - **ODAT GmbH v. CA Santanu Brahma, Interim Resolution Professional of Darjeeling Organic Tea Estates (P.) Ltd.** - [2024] 159 *taxmann.com* 770 (NCLAT- New Delhi)
- 3.6 Where appellant, who entered into an Assignment Agreement with 'SEFL', was classified as a related party by RP and appellant failed to clarify funding source for assignment when there were allegations that assignment was a fraudulent transaction, thus, NCLT rightly concluded that appellant, as assignee, was a related party to corporate debtor, intended for participation in CIRP - **Rare Asset Reconstruction Ltd. v. Avishek Gupta** - [2024] 160 *taxmann.com* 361 (NCLAT- New Delhi)

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

- 3.7 Where resolution plan submitted by appellant was approved by CoC and was pending consideration before NCLT, however, without giving an opportunity to appellant to respond to an application filed by ex. director under section 12A for settlement was allowed by NCLT, since no opportunity had been given to appellant to submit a response, directions issued by NCLT to CoC to consider said plan could not be sustained - **One City Infrastructure (P.) Ltd. v. Pratham Expofab (P.) Ltd.** - [2024] 160 *taxmann.com* 321 (NCLAT- New Delhi)

SECTION 19 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL PERSONNEL TO EXTEND CO-OPERATION

- 3.8 Where appellants, ex-directors were directed to provide requisite assistance and cooperation to liquidator during liquidation process of corporate debtor to ensure that process of insolvency resolution or liquidation would be complete in a timely manner, impugned order did not cause any prejudice to appellant and, thus, direction issued by NCLT to appellant to cooperate with liquidator till completion of liquidation process was justified - **Narappa Manohar Reddy v. Pankaj Srivastava** - [2024] 160 *taxmann.com* 571 (NCLAT - Chennai)

SECTION 25 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - DUTIES OF

- 3.9 Where corporate debtor allotted its property to appellant, who was also made entitled to rent arising therefrom, subsequent to CIRP initiated against corporate debtor, RP running business of corporate debtor, is best person to take a decision as to what part of business of corporate debtor can be carried out and how, therefore, NCLT had not committed any error in not releasing pending monthly rent payable to appellant which was kept in fixed deposit and would be disbursed in accordance with law by RP - **Amit Tyagi v. Indirapuram Habitat Centre (P.) Ltd.** - [2024] 160 *taxmann.com* 283 (NCLAT- New Delhi)

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

- 3.10 Where MSME registration was obtained by corporate debtor before date of submission of resolution plan by successful resolution applicant, thus, SRA was eligible to submit resolution plan claiming benefits of MSME - **Ramesh Shah v. Central Bank of India** - [2024] 160 *taxmann.com* 449 (NCLAT- New Delhi)

SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- 3.11 Extinguishment of personal guarantors right of subrogation is unavoidable and inaccessible fact in insolvency cases and it requires to be respected by all stakeholders and any departure from such principles will have adverse impact on revival of corporate debtors, interest of financial creditors and overall negative impact on national economy; commercial wisdom of CoC has been given supremacy and no grounds exist for NCLT or NCLAT to interfere - **Vikas Aggarwal v. Asian Colour Coated Ispat Ltd.** - [2024] 160 *taxmann.com* 385 (NCLAT- New Delhi)

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 3.12 Where resolution plan of SRA was approved by CoC with 100 per cent voting share and was further approved by NCLT, since appellants-suspended director of corporate debtor had actively participated in CoC meeting, appellant could not at this point of time challenge approved resolution plan - **G. Balasubramaniam v. CA Mahalingam Suresh Kumar, Resolution Professional for GBJ Hotels (P.) Ltd.** - [2024] 160 *taxmann.com* 247 (NCLAT - Chennai)

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

- 3.13 Where a corporate debtor had not been functioning as a going concern for three years prior to admission into CIRP and, continuation of CIRP would only have enhanced CIRP cost without corresponding advantage since, corporate debtor was not capable of revival and, therefore, NCLT had not committed any error in approving CoC's recommendation to liquidate corporate debtor under such circumstances - **Mayank Goyal v. G. Madhusudhan Rao Resolution Professional of the Corporate Debtor** - [2024] 160 *taxmann.com* 211 (NCLAT- New Delhi)

SECTION 54C OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - APPLICATION TO INITIATE PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

- 3.14 Where NCLT rejected an application filed under section 54C on ground that base resolution plan was devised as a mechanism to transfer control to another person in place of existing promoter group, since base resolution plan had been given no finality, nor it was a resolution plan, which ultimately was required to be approved and there was no occasion for consideration of base resolution plan at time of consideration thus, impugned order passed by NCLT was to be set aside - **Garodia Chemicals Ltd., In re** - [2024] 160 *taxmann.com* 427 (NCLAT- New Delhi)

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

- 3.15 Where resolution professional (RP) serves only as a facilitator without adjudicatory or administrative authority and RP is not precluded in any manner to submit a report regarding limitation or on any other jurisdictional fact and, therefore, claim of appellant that application was time barred and it should have been decided at time when NCLT appointed RP could not be accepted and, therefore, NCLT did not commit any error in appointing RP - **CL Sharma v. Bank of Maharashtra** - [2024] 160 *taxmann.com* 250 (NCLAT- New Delhi)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 3.16 Where debt due date was mistakenly was mentioned as 23-10-2012, instead of 3-08-2018, since amendment in pleadings for correction of said error was imperative for proper, effective and efficacious adjudication of controversies involved in main application, same was to be allowed even after statutory period of limitation - **Raj Television Network Ltd. v. Thaicom Public Company Ltd.** - [2024] 160 *taxmann.com* 534 (NCLAT - Chennai)

4. NCLT

SECTION 3(27) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - PROPERTY - SHPL

4.1 **Corporate debtor** : Unregistered Framework Agreement as such cannot be looked into as an evidence for any collateral purpose - **Yes Bank Ltd. v. Sarga Hotel (P.) Ltd.** - [2024] 160 taxmann.com 4 (NCLT - Kolkata) (SB)

SECTION 10 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY CORPORATE APPLICANT

4.2 Petitioner which was registered as an NBFC with an authorization from Financial sector regulator / RBI to carry on financial services was a "financial service provider" in terms of Section 3(17) and thus, was excluded from Insolvency Resolution and Liquidation under section 10 of IBC - **Asmitha Microfin Ltd. v. Reserve Bank of India** - [2024] 159 taxmann.com 771 (NCLT - Hyd.)

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

4.3 In case of a corporate guarantee which was payable on demand, default occurs when a demand is made by financial creditor and there is a failure to pay amount under guarantee; date of default by principal borrower was not relevant to determine date of default by guarantor - **Central Bank of India v. Superfine Profile & Extrusions (P.) Ltd.** - [2024] 160 taxmann.com 212 (NCLT - Mum.)

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

4.4 Where pursuant to e-auction of corporate debtor's property by liquidator applicant was declared as successful bidder and applicant filed an application before NCLT seeking reliefs and concessions related to financial creditors claims related, ROC related, capital structure related, which were necessary to acquire corporate debtor as a going concern, same was to be granted and in so far as taxation was concerned, applicant could approach authorities concerned and concerned authorities would take decisions as per prevailing law, rules and regulations - **SunEdison Energy India (P.) Ltd. v. KSK Energy Company (P.) Ltd.** - [2024] 160 taxmann.com 322 (NCLT - Hyd.)

4.5 Where RP was not able to carry out various activities and actions required to be carried out during CIRP of corporate debtor due to assets of corporate debtor being under attachment by Directorate of Enforcement under provisions of PMLA, 2002 and considering bleak chances of insolvency resolution amid ongoing investigations and attachment of assets, CoC decided to

liquidate corporate debtor by a majority of 90.16 per cent voting share and ,therefore, application filed under section 33 was to be admitted - **Vijay Kumar Garg, Resolution Professional of Gitanjali Gems Ltd., In re** - [2024] 160 taxmann.com 35 (NCLT - Mum.)

SECTION 53 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - ASSETS, DISTRIBUTION

4.6 Where corporate debtor took loan from applicant and mortgage its property and later when corporate debtor went into a liquidation applicant failed to inform liquidator about its claim within 30 days, since applicant failed to comply with requirements of Regulation 21A, decision of liquidator that entire property forms part of liquidation estate would not be contrary to law - **Phoenix ARC Pvt Ltd. v. Kuldeep Verma, Liquidator of K S Oils Ltd.** - [2024] 160 taxmann.com 79 (NCLT - Indore)

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

4.7 There are no provisions in code that provide for intervention by a third party, especially at stage where arguments of financial creditors have concluded, and arguments of corporate debtor were in progress and soon to be concluded - **Nitin Batra v. Anand Infoedge (P.) Ltd.** - [2024] 160 taxmann.com 107 (NCLT - New Delhi)

SECTION 66 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR WRONGFUL TRADING

4.8 Where RP observed CD of fraudulent transactions for conversion of infused capital into unsecured debt to defraud its creditors and investing into numerous entities which were related parties to corporate debtor, since application filed by RP under section 66 was filed on mere suspicion and transaction audit report relied upon by RP recorded lack of adequate information, such shortcomings of said report were explained by erstwhile directors of corporate debtor, observations thereunder could not be considered and, thus, such application was to be dismissed - **Scope Properties (P.) Ltd., In re** - [2024] 160 taxmann.com 91 (NCLT- Chennai) (SB)

4.9 Where applicant-resolution professional filed an application against respondents on ground that they engaged in preferential transactions and also transferred assets of corporate debtor worth Rs. 13.74 lacs to a third person after initiation of CIRP, since said transactions were a fraudulent transaction intended to defraud creditors and ,therefore, instant Tribunal allowed said application and directed suspended director to contribute of Rs. 13.74 lacs to assets of corporate debtor u.s. 66(2) (b) - **I COAT Projects (P.) Ltd. v. Smt. Devulapalli Pranitha** - [2024] 160 taxmann.com 138 (NCLT - Hyd.)

ACCOUNT AND AUDIT UPDATES

1.1 ICAI Announces Online Panel of Experts for Bank Branch Audit Queries: Assistance for FY 2023-24

Editorial Note : To expedite the resolution of queries pertaining to bank branch audits for the fiscal year 2023-24, ICAI has introduced an Online Panel of Experts. This panel will be available for assistance from April 1, 2024, to April 30, 2024. Queries can be submitted via email to <mailto:bankauditfaq@icai.in>.

1.2 ICAI issues Educational Material on Ind AS 12, Income Taxes

Editorial Note : The Institute of Chartered Accountants of India (ICAI) has released updated Educational Material on Ind AS 12. This educational material will help in understanding the fundamental accounting concepts of income taxes including deferred tax assets and liabilities. The material is broken into two parts, a summary of the standard and FAQs for the application of the provisions of the standard.

1.3 ICAI granted grace period for the Peer Review Mandate under Phase II and III

Editorial Note : Considering the request from Practice Units, the Institute of Chartered Accountants of India has decided that the applicability of the Peer Review Mandate for the Practice Units covered under Phase II and III is to be extended. For phase II a grace period allowed upto 30.06.2024 and for phase III upto 01.01.2025.

1.4 ICAI issues Exposure Draft on Business Combination - Disclosures, Goodwill, and Impairment

Editorial Note : International Accounting Standards Board (IASB) issues amendment to disclosure IFRS 3, Business Combination. This disclosure requires Information about the performance of business combinations and Quantitative information about the synergies expected to arise from a business combination. Additionally, IASB proposes amendments to IAS 36 regarding calculation of value in use, the allocation of goodwill to CGUs and the disclosure requirements. The draft is open for public comment till 31.05.2024

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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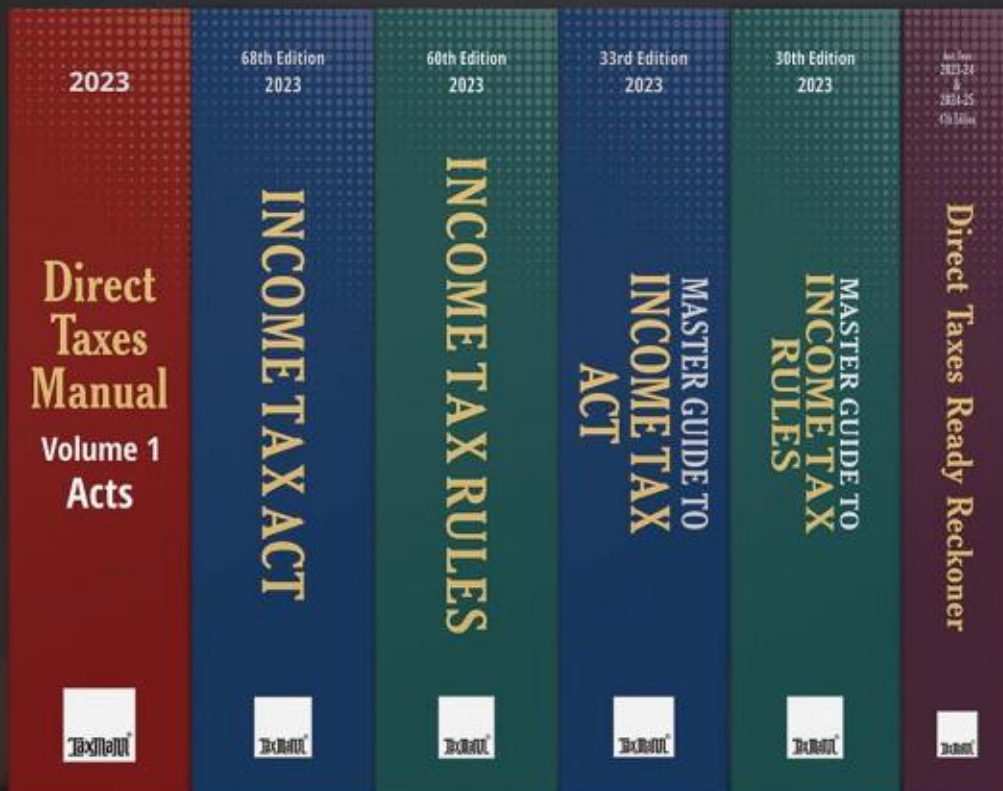
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