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### DISCLAIMER

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## ....From the Desk of Editors



Respected seniors and my dear friends...

Are you subscribed to so many journals and searching for gist of important statutory updates and legal happenings at one place?

Your wait seems over, In the last issue we have made commitment to our readers for keeping the bar of knowledge high, in this sequence DTPA has brought to you all important notifications, circulars, press release as well as gist of case laws pronounced at different fora starting from Supreme Court, High Court, Tribunals, AAAR, AAR, SAT, PMLA-AT and more under varied subjects like Income Tax Law, GST Law, FEMA and Banking, Corporate Law & SEBI Laws, Insolvency & Bankruptcy Laws as well as Accounting & Auditing happenings at one place and making ease of updating yourself in this busy professional world.

The Finance Act, 2023 is already notified and applicable with effect from 1st April with in total of around 125 amendments to the Income Tax Act, 1961. New ITR forms for asst. year 2023-24 are also notified before the start of the new asst. year.

The Income-tax Department is taking every possible effort for making compliance easier, it has launched a mobile app, 'AIS for Taxpayer', to facilitate taxpayers to view their information as available in the Annual Information Statement (AIS) / Taxpayer Information Summary (TIS). The app is available on Google Play and App Store. We professionals as well as the assessee can make most out of it and avoid litigations due to non-reporting of transactions.

It is known to us that CBDT has extended the Aadhaar-PAN linking deadline from March 31 to June30, 2023, by three months, and announced that all unlinked PAN cards will stopfunctioning as of July 1, 2023. Consequently, TDS and TCS shall be deducted/collected at higher rate, as provided in the Act; No refund shall be made againstsuch PANs; Interest shall not be payable on such refund for the period during which PAN remains inoperative. It is our duty being tax professionals to support the common man who did not able to do their Aadhaar-PAN linking till now so that they should not face unnecessary consequence in further on account of the same.

DTPA is thankful to Taxmann management for joining hands with DTPA in this journey of professional excellence and extend our heartfelt gratitude for each one at Team Taxmann for providing statutory and legal updates in such reader friendly way from their vast unparalleled knowledge repository.

We are grateful to the erudite professional who has taken pain to pen down their thoughts in the form of articles for this DTPA Journal. At the same time, we invite the intellectuals from different field to write Articles for DTPA Journal and become partner in spreading professional excellence.

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

Lots of good wishes to each one of you for Ambedkar Jayanti and Bangla New Year 1430!!  
Jai Hind!! Jai DTPA!!

With Best Regards

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

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

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## ....From the Desk of President

*“Be willing to be a beginner every single morning.”*

*– Meister Eckhart*



Dear Colleagues,

As I am writing this message, many of us are just relieved from the year end book closure workings, advisory and allied professional engagements. At the same time, members in the Auditing profession are busy in completing their bank audit assignments followed by fresh start to a new auditing season under Companies Act, Income Tax Act and many more compliances & filing linked with the financial year end. In fact, be it corporate, industry or advisory firms, we professionals work dutifully and untiringly to serve our employers and clients and, in the process, add value to the growth of the country. Having said so, keeping work life balance is a new challenge and my personal take from recent happenings is that prioritizing one's personal health and being fit is the real earning in today's life. I hope and believe that the financial year just ended must have been a successful year for each one of you and at the same time I wish for lot of success stories of joy, health and happiness for all of us in the new financial year.

Audit Trail has been made mandatory from 1st April, 2023 by Ministry of Corporate Affairs for all the Companies irrespective of their paid-up capital, turnover or other parameters. As the system of this Audit Trail is unique, unprecedented in terms of its implementation so no doubt challenges will be there. At the same time, I am sure, our professional brothers and sisters will extend hand holding to their clients in terms of proper implementation as well as justify their professional duties in terms of making the required reporting as statutory auditors. It is remarkable that ICAI has already released a detailed guidelines for members who are looking for guidance under the obligation to report audit trail done using accounting software in such a short time.

**It is said that the brightest stars shine in the darkest nights!** We all are listening day in day out through media and other sources, instability around different parts of the world on account of economic issues, political situations, natural mishaps, wars, proxy war etc. At the same time, during these difficulty times, India is emerging as one of the brightest stars on the globe. It is a matter of great pride that our country is holding the G20 presidency this year.

As pereconomic growth indicators, I am happy to share that:

- Gross Direct Tax collections (provisional) for the FY 2022-23 stand at Rs. 19.68 lakh crore registering a growth of 20.33%.
- Gross GST revenue collected for March 2023 was 1,60,122 crore which is the 2nd highest since inception of GST and at the same time monthly GST revenues of more than 1.4 lakh crore for 12 months in a row and GST revenues in 2022-23 were 22% higher than that last year which clock 13% growth Year-on-Year.
- The Reserve Bank of India's in its last Monetary Policy Committee meeting left the repo rate unchanged to 6.5% for the first time since May 2022. This rate decision was a booster shot for the Capital markets as benchmark indices erased the losses of the day.

At the same time, on the recommendations of the 49th GST Council meeting, Government has issued notifications for waiver of late fees and extended the time for filing of revocation application for cancellation of registration subject to the condition that compliance is done by 30th June, 2023. DTPA welcomes this move of the Government.

The Finance Bill, 2023 by now is Finance Act, 2023 and we, at DTPA are very much proactive in sharing knowledge. We regularly hold knowledge sessions on varied topics like Income Tax, GST, Company law and other burning issues in contemporary times. In keeping with this, from 26th April, 2023 to 28th April, 2023, DTPA CA CPE Study Circle of EIRC of ICAI is organising a three days seminar on emerging opportunities and latest technologies at DTPA hall.

I am happy to note that Journal Committee at DTPA has taken extensive efforts in bringing to you all a complete knowledge update in terms of statutory and legal updates at one place in varied subjects including Taxation Laws, Corporate Laws, SEBI, FEMA, IBC Laws as well as Accountancy and Auditing.

Before I sign off, I wish you all lots of success in the new financial year and hearty wishes for Ambedkar Jayanti and Bengali New Year (Poila Baisakh) 1430!!

With best regards

**CA D. S. Agarwala**  
President, DTPA

14th April, 2023

## Live Budget discussion on 01.02.2023



## Budget Seminar on 03.02.2023 at National Library



## Health and Stress Management Seminar on 11.02.2023



## NBFC Revised Regulatory Framework & MCA Form Updates on 09.03.2023



## Panel Discussion on Sec. 148 - Recent Developments on 17.03.23



## Interactive Session – Survey, Search & Seizure on 29.03.2023



## Group Discussion Recent Amendments in Finance Act, 2023 on 05.04.2023





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Estd. 1982

## DTPA CA CPE Study Circle of EIRC of ICAI

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

Email : dtpacasc@gmail.com

### 3 Days Seminar on Emerging Opportunities and Latest Technologies

Date : 26th April, 2023, 03.00 PM - 06.00 PM



CA Laxmikant Malpani

Topic :  
ESG and Business Responsibility  
for Sustainability Reporting



CA Manish Kapoor

Topic :  
Virtual CFO - Unexplored  
Opportunities



CA Ravi Kedia

Topic :  
Automation Tools for Professionals

Date : 27th April, 2023, 03.00 PM - 06.00 PM



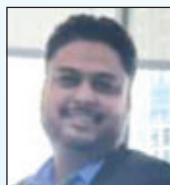
CA Neeraj Jain  
Co-Founder, Real Books

Topic :  
Cloud Accounting



CA Akhil Pachori

Topic :  
Chat GPT use case  
for Professionals



CA Ritesh Garg

Topic :  
UAE Tax Opportunities

Date : 28th April, 2023, 02.00 PM - 06.00 PM



CA Dhaval Paun

Topic :  
Smart Practices



Kewal Kishan

Topic :  
Google Workspace

- Participation Limited to 70 Seats only First Come First Serve Basis  
- Participants may bring their Fully Charged Laptop for Mr. Kewal Kishan's Session

**10 CPE HOURS\***  
\*applied

Venue - DTPA Conference Hall  
3, Government Place, B.B.D. Bagh, Kolkata  
Participation Charges - Rs. 900

CA D S Agarwala  
Convener

CA Manjulata Shukla  
Deputy Convener

## Compliance Calendar for April, 2023

Statute	Due dates	Compliance Period	Details	
<b>Income Tax Act, 1961</b>	07th April, 2023	23-Mar	Depositing TCS for the month of March.	
	14th April, 2023	23-Mar	Issue TDS Certificate for Tax deducted u/s :i)194-IA (TDS on Immovable Property), ii)194-IB (TDS on certain Rent payment), iii)194-M (TDS on payment to resident contractor or resident professional), iv) 194-S (TDS on transfer of Virtual Digital Asset) in the month of Feb, 2023	
	30th April, 2023	23-Mar	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Mar 2023	
	30th April, 2023	23-Mar	TDS Payment for March 2023 by an Taxpayer other than an office of Government	
	30th April, 2023	Jan-Mar 23	uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2023	
	<b>Statute</b>	<b>Due dates</b>	<b>Compliance Period</b>	<b>Return</b>
<b>GST</b>	10th April 2023	23-Mar	GSTR-7	to be filed by Taxpayer who deducts tax at source or TDS under the Goods and Services Tax (GST)
	10th April 2023	23-Mar	GSTR-8	to be filed by e-commerce operators registered under the GST
	11th April 2023	23-Mar	GSTR-1	Above 5 Cr & For Taxpayers who has not opted for QRMP Scheme having Turnover up to 5 crores.
	11th April 2023	23-Mar	GSTR-1/IFF	For Taxpayers who have opted for QRMP Scheme.
	13th April 2023	23-Mar	GSTR-6	ISD
	18th April 2023	23-Mar	CMP-08	Composition Dealers
	20th April 2023	23-Mar	GSTR-5	Non-Resident Foreign Taxpayers
	20th April 2023	23-Mar	GSTR-5A	Non-Resident OIDAR Service Provider
	20th April 2023	23-Mar	GSTR-3B	Turnover Above 5 Cr / Taxpayer not opting for QRMP and having turnover upto 5cr.
	22th April 2023	23-Mar	3B (Quarterl	Taxpayer opting for QRMP and having turnover upto 5cr- Category-I
	24th April 2023	23-Mar	GSTR-3B (Quarterl	Taxpayer opting for QRMP and having turnover upto 5cr- Category-II
	25th April 2023	Oct-22 to Mar-23	ITC-04	Summary of goods sent for Job Work and received after Job Work.
	20th April 2023	23-Mar	GSTR-5A	Non-Resident OIDAR Service Provider
<b>Statute</b>	<b>Due dates</b>	<b>Compliance Period</b>	<b>Details</b>	
<b>ESI, PF &amp; Prof. Tax</b>	21st April 2023	23-Mar	Prof. Tax Payment (West Bengal)	
	15th April 2023	23-Mar	PF Payment	
	15th April 2023	23-Mar	ESIC Payment	
	30th April 2023	Oct-22 to Mar-23	MSME-1	half-yearly return that the specified companies must file with the MCA

## Speaking Opportunity at DTPA Platform

Dear Members,

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

As 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 Programme 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 fill up the attached google form to help us find your interest area and take the things forward:

<https://forms.gle/hcCsJYcsY9U63Mf3A>

Regards,

**CA D. S. Agarwala**  
President-DTPA

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## 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 conform to the following parameters:

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

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

For further details, please contact us at: [dtpejournal@gmail.com](mailto:dtpejournal@gmail.com) and at Mob: 9830255500/ 9831016678

Thanks and Regards,

**CA. D S Agarwala**  
President DTPA  
Ph. 9433097972  
Email: [agards@gmail.com](mailto:agards@gmail.com)

**CA. Giridhar Dhelia**  
Chairman  
DTPA – Journal Sub Committee  
Ph. 9830255500  
Email: [gdhelia@gmail.com](mailto:gdhelia@gmail.com)

**CA. Sujit Sultania**  
Co- Chairman  
DTPA – Journal Sub Committee  
Ph. 9831016678  
Email: [sultaniasujit@gmail.com](mailto:sultaniasujit@gmail.com)



## Direct Tax

### 1. STATUTORY UPDATES

- 1.1. IT Dept. launches mobile app 'A.I.S. for Taxpayer' to view info available in AIS/TIS - **Press Release, Dated 22-03-2023**

**Editorial Note:** The Income-tax Department has launched a mobile app, 'AIS for Taxpayer', to facilitate taxpayers to view their information as available in the Annual Information Statement (AIS) / Taxpayer Information Summary (TIS). The app is available on Google Play and App Store.

- 1.2. 68,000 cases taken up for verification under e-Verification Scheme, 2021: CBDT - **Press Release, Dated 13-03-2023**

**Editorial Note :** The CBDT notified the e-Verification Scheme, 2021, effective from 13-12-2021, to deal with the mismatch of the information uploaded to the taxpayer's registered account by reporting entities. The board has stated that about 68,000 cases, information on financial transactions pertaining to FY 2019-20 have been taken up for e-Verification till now. Details of the transactions have been initially shared with the individual taxpayer through an e-campaign.

- 1.3. Direct Tax collection up to 10-03-2023 for Financial Year 2022-23 showed a growth of 22.58% : CBDT - **Press Release, Dated 11-03-2023**

**Editorial Note :** The Central Board of Direct Taxes (CBDT) has released the provisional figures of Direct Tax collections up to March 10, 2023 for the Financial Year 2022-23. The Direct Tax Collections have continued to register steady growth. Direct Tax collections up to March 10, 2023, show that gross collections are at Rs. 16.68 lakh crore, which is 22.58% higher than the gross collections for the corresponding period of last year.

- 1.4. -CBDT notifies 'Insolvency and Bankruptcy Board of India' for exemption u/s 10(46) - **Notification No. S.O. 947(E), Dated 01-03-2023**

**Editorial Note :** The Central Board of Direct Taxes (CBDT) has notified 'Insolvency and Bankruptcy Board of India' for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be available in respect of Grants-in-aid, fees & fines collected under IBC and interest income accrues on them.

- 1.5. CBDT issues Corrigendum to notification notifying ITR forms for AY 2023-24 - **Corrigendum G.S.R. 156(E), Dated 28-02-2023**

**Editorial Note :** The CBDT has issued corrigendum to its Notification G.S.R. 91(E), dated 10-02-2023 issued to notify new Income-tax Return (ITR) forms applicable for the Assessment Year 2023-24. The corrigendum is issued to correct minor errors/omissions in the ITR forms

- 1.6. CBDT issues Corrigendum to ITR-7 notified for AY 2023-24 - **Corrigendum G.S.R. 164(E), Dated 03-03-2023**

**Editorial Note :** The CBDT has issued corrigendum to its Notification G.S.R. 95(E), dated 14-02-2023 issued to notify

new ITR-7 applicable for the Assessment Year 2023-24. The corrigendum is issued to correct minor errors/omissions in the ITR forms.

- 1.7. CBDT notifies 'Karnataka State Building and Other Construction Workers Welfare Board' for exemption u/s 10(46) - **Notification No. S.O. 1044(E), Dated 03-03-2023**

**Editorial Note:** The Central Board of Direct Taxes (CBDT) has notified 'Karnataka State Building and Other Construction Workers Welfare Board' for the purposes of the clause (46) of section 10 of the Income-tax Act, 1961. The exemption shall be available in respect of cess collected on construction cost, registration fee & annual subscriptions and interest earned on these.

### 2. SUPREME COURT

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

- 2.1. **Dividend - Rate of tax :** Notice issued in SLP filed against order of High Court that dividend received by a Switzerland based company from an Indian company would bear a lower withholding tax rate of 5 per cent instead of 10 per cent in view of MFN clause in protocol to India-Switzerland DTAA - **Income-tax Officer v. Galderma Pharma SA World Trade Center - [2023] 147 taxmann.com 517 (SC)**

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

- 2.2. SC sets aside order of denial of registration to trust u/s 80G by invoking sec 80G(5B) without brining facts on record; Matter remanded to CIT for fresh decision - **Commissioner of Income-tax (Exemption) v. SantGirdharAnandParmhansSant Ashram - [2023] 148 taxmann.com 49 (SC)**

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

- 2.3. **Period of limitation :** SLP granted against High Court order that sections 144C and 153 are mutually inclusive and not mutually exclusive as both contain provisions relating to section 92CA and are interdependent and overlapping and hence, period of limitation prescribed under section 153(2A) or 153(3) is applicable and, when matters are remanded back irrespective of whether it is to Assessing Officer or TPO or DRP, duty is on Assessing Officer to pass orders within stipulated time - **Commissioner of Income-tax v. Roca Bathroom Products (P.) Ltd. - [2023] 147 taxmann.com 224 (SC)**

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

- 2.4. **Conditions precedent :** Notice issued in SLP against order of High Court that Assessing Officer while passing order under section 153A read with section 143(3), ordinarily cannot disturb assessment/reassessment order which has attained finality, unless materials gathered in course of proceedings establish

that finalized assessments are contrary to material unearthed during course of section 153A proceedings - **Principal Commissioner of Income-tax (Central) v. Delhi International Airport (P.) Ltd.** - [2023] 147 taxmann.com 261 (SC)

### SECTION 158BC OF THE INCOME TAX ACT, 1961 - BLOCK ASSESSMENT IN SEARCH CASES - PROCEDURE FOR

- 2.5. Date of the panchnama last drawn is the starting point of limitation of 2 years u/s 158BE for completing block assessment - **Anil Minda v. Commissioner of Income-tax** - [2023] 148 taxmann.com 407 (SC)

### 3. HIGH COURT

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

CBDT's Circular 6/2016, which bars AO from disputing assessee's treatment of listed shares held for more than 12 months as capital assets, is retrospectively applicable - **Commissioner of Income-tax, Kolkata-IV v. Century Plyboards (I) Ltd.** - [2023] 148 taxmann.com 301 (Calcutta)

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

- 3.1. **In case of a partner** : Deemed dividend paid by a company was to be taxed in hands of individual who held shares in that company and not in hands of firm in which said individual/shareholder was a partner - **Mahimananda Mishra v. Assistant Commissioner of Income-tax** - [2023] 147 taxmann.com 521 (Orissa)

#### SECTION 2(42A) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SHORT-TERM CAPITAL ASSETS/GAINS

- 3.2. **Reassessment** : Where Assessing Officer issued notice under section 148 to assessee on ground that assessee had entered into share transactions through a broker which was indulged in providing non-genuine short-term capital gains, since said notice did not clearly brought out allegations against assessee, same was to be set aside, with a direction to Assessing Officer to issue a fresh notice for clearly articulating reasons of escapement of income of assessee - **RK Gupta & Son HUF v. Income-tax Officer** - [2023] 147 taxmann.com 567 (Delhi)

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

- 3.3. **Illustrations** : Where assessee agreed to sell certain land in favour of third party and executed sale agreement, agency agreement and general power of attorney, in favour of third parties, in absence of any recital in aforesaid three documents, much less any recital to effect that possession of property in question was delivered in part performance of contract, documents executed by assessee could not be construed or treated as constituting a 'Transfer' within meaning of section 2(47)(v) and therefore, assessee could not be made liable to pay capital gains tax - **Smt. K. Shashikala v. Assistant Commissioner of Income-tax** - [2023] 147 taxmann.com 315 (Karnataka)

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

- 3.4. **Royalties/Fee for technical services - Others** : Where assessee, a resident of UAE, sought issuance of certificate under section 197 at Nil rate and AO held that income earned by assessee was FTS and tax was to be deducted at 10 per cent, since India-UAE DTAA did not contain article of FTS and assessee had no PE in India, certificate under section 197 was to be issued pegging withholding tax at 4 per cent - **WTS Energy DMCC v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 454 (Delhi)

- 3.5. **Royalties/Fees for technical services - Managerial service** : Where assessee, a company incorporated under laws of USA, received fee for providing managerial services to an Indian company, since there was no back-to-back arrangement and assessee had dominion and control over fees received by it, assessee was entitled to status of a beneficial owner and, according, entitled to benefit of article 12 of DTAA between India and USA - **Commissioner of Income-tax (International Taxation) v. Fujitsu America Inc** - [2023] 147 taxmann.com 379 (Delhi)

- 3.6. **Royalties/Fee for technical services - Marketing services** : Payments received by assessee, a foreign company, from its Indian customers on account of Centralized Services did not constitute fee for technical services as defined under section 9(1)(vii) or fee for included services - **Commissioner of Income-tax, (International Taxation) v. Starwood Hotel & Resorts Worldwide Inc.** - [2023] 148 taxmann.com 131 (Delhi)

- 3.7. **Permanent Establishment - Installation PE** : A building site or an assembly project can only be construed as fixed place of business only when an enterprise commences its activities at project site; any activity which may be related or incidental but was not carried out at site in source country would clearly not be construed as a PE - **Commissioner of Income-tax, International Taxation-1 v. Bellsea Ltd.** - [2023] 147 taxmann.com 488 (Delhi)

- 3.8. **Royalties/fees for technical services - marketing services** : Where assessee made payments to US Company for marketing services and scope of work was to generate customer leads using/subscribing customer data base, market research, analysis, and online research data and that service provider had not made available any technical knowledge, experience, knowhow, process or develop and transfer technical plan or technical design, in view of admitted fact that services were utilized in USA, payments so made could not be considered as royalty or FTS and hence, no TDS was required to be deducted - **Commissioner of Income-tax v. Ad2pro Media Solutions (P.) Ltd.** - [2023] 148 taxmann.com 226 (Karnataka)

HC quashes AAR Ruling denying capital gains tax exemption, under Indo-Mauritius DTAA, to Mauritius SPV on share sale prior to 1-4-2017 - **Bid Services Division (Mauritius) Ltd. v. Authority for Advance Ruling (Income Tax)** - [2023] 148 taxmann.com 215 (Bombay)

- 3.9. **Shipping, Inland waterways transport - General** : Where assessee-company made certain payments to international freight forwarding agents and Assessing Officer made disallowance under section 40(a)(i) for non-deduction of TDS, since international freight forwarding agents were independent legal entities which had no business activity in India, amount paid to agents would not be deemed to accrue or arise in India and hence disallowance made under section 40(a)(i) was to be deleted - **Principal Commissioner of Income-tax v. Nissin**

**ABC Logistics (P.) Ltd. - [2023] 147 taxmann.com 263 (Calcutta)**

**SECTION 10(2A) OF THE INCOME-TAX ACT, 1961 - FIRM - SHARE OF PROFITS TO PARTNER OF FIRM**

**3.10. Illustrations** : Where assessee had declared certain income from interest, remuneration and profit from partnership firm and in scrutiny assessment question about treatment of share of profit in capacity of partner was dealt with, reopening of assessment on same issue was liable to be quashed - **Siddharth Sumer Kothari v. Assistant Commissioner of Income-tax - [2023] 147 taxmann.com 403 (Gujarat)**

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

**3.11.** Where SAIESF was set-up in USA wholly and exclusively for charitable and educational purposes and was formed for sole purpose of assisting and supporting assessee trustees and entire expenses incurred by SAIESF were towards educational purpose of assessee trust, exemption claimed by assessee trust under section 10(23C)(vi) could not have been denied; revenue could not have enquired about receipts and expenses made by SAIESF outside country merely because it was transferring its surplus or even a portion thereof to assessee trust in India - **Laura Entwistle v. Union of India - [2023] 148 taxmann.com 251 (Bombay)**

**SECTION 10(37) OF THE INCOME-TAX ACT, 1961 - COMPENSATION RECEIVED ON COMPULSORY ACQUISITION OF AGRICULTURAL LAND**

**3.12. Allowability of exemption** : Where assessee's agricultural land was acquired by municipal corporation for sewage treatment plant under town planning scheme, it was deemed to be land needed for public purpose and was compulsorily acquired land under section 107 of Gujarat Town Planning and Urban Development Act, 1976 and, thus, exemption under section 10(37) was to be allowed on compensation received for such acquisition of said land - **Principal Commissioner of Income-tax v. UrmiNileshNagarsheth - [2023] 147 taxmann.com 594 (Gujarat)**

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

**3.13. Reassessment** : Where Assessing Officer issued on assessee a notice under section 148 seeking to reopen assessment for reasons that assessee claimed bogus long-term capital gains on penny stock transaction, as objections raised by assessee against notice had not yet been disposed of by Assessing Officer, writ petition being premature could not to be entertained - **MalvikaAtul Shah v. Income-tax Officer - [2023] 147 taxmann.com 381 (Gujarat)**

**3.14. Reassessment** : Where a reopening notice was issued on ground that an information was received that assessee was beneficiary of accommodation entry in form of long-term capital gain (LTCG) on sale of shares claimed as exempt under section 10(38), since said transactions of sale and purchase were admitted by assessee and it had not brought on record anything to suggest that reassessment proceedings were being undertaken in arbitrary manner, in light of abovesaid information which formed basis of initiation of inquiry said reopening notice was justified - **Ajay Gupta (HUF) v. Income-tax Officer - [2023] 147 taxmann.com 277 (Delhi)**

**3.15. Reassessment** : Where assessee in support of its claim of exemption towards long term capital gains from transactions of securities shown in Schedule E-1 in returns had furnished documents evidences to support genuineness of concerned share transactions, impugned reopening notice issued by Assessing Officer by merely quoting information received on Insight portal, which was not based upon any tangible information in order to proceed with notice under section 148 beyond prescribed period of limitation, and without conducting any independent investigation was arbitrary and without requisite jurisdiction under section 148 and thus liable to be set aside - **Anwar Mohammed Shaikh v. Assistant Commissioner of Income-tax, Circle-20(1) - [2023] 148 taxmann.com 288 (Bombay)**

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

**3.16. Rental income** : Where assessee-company had taken on lease certain area in STPI (Software Technology Park Of India) and had sub-leased portion of same to two units, rental income received by assessee from said two units would be eligible for deduction under section 10A - **Principal Commissioner of Income-tax v. Infosys Ltd. - [2023] 147 taxmann.com 520 (Karnataka)**

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

**3.17.** Where Assessing Officer reopened assessment in case of assessee-trust on ground that assessee was not entitled to claim carry forward and set off of deficit after claiming exemption under section 11(1) and thus such exemption was allowed in excess during original assessment, since there was no question of any failure on part of assessee to disclose any material fact necessary for assessment during reopening nor any new tangible material on record, impugned notice issued under section 148 on mere change of opinion and consequent order passed were liable to be set-aside - **FramjiDinshaw Petit Parsee Sanatorium v. Income Tax Officer (Exemption)(2)(4) - [2023] 148 taxmann.com 225 (Bombay)**

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

**3.18. Condonation of delay in filing Form 10B** : Where assessee was a public charitable trust for past 30 years and substantially satisfied conditions for availing exemption under section 11 it should not be denied exemption merely on bar of limitation especially when legislature had conferred wide discretionary powers to condone such delay - **Social Security Scheme of GICEA v. Commissioner of Income-tax (Exemptions) - [2023] 147 taxmann.com 283 (Gujarat)**

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

**3.19. Reassessment** : Where additions made in reassessment order on account of amount deposited by assessee trust with specified person in contravention to section 13(1)(c)(ii) and 13(1)(d) was deleted by Commissioner (Appeals), further addition made by Assessing Officer on account of other issue related to activities of trust not being as per its objects etc. which was not mentioned in reopening notice was also to be deleted - **Commissioner of Income-tax (Exemption) v. B. P.**

**Poddar Foundation For Education - [2023] 148 taxmann.com 125 (Calcutta)**

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

**3.20. Reassessment** : Where issue about allowability of expenditure under section 14A was gone into by Assessing Officer at time of scrutiny assessment on basis of material and information supplied, it could be said that by issuing notice under section 148 Assessing Officer wanted to re-verify facts, which was not an acceptable ground for exercising powers to reopen assessment - **Lambda Therapeutic Research Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 442 (Gujarat)**

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

**3.21. Penny stock shares** : Where Principal Commissioner invoked revisionary proceedings with respect to issue of loss on penny stock on ground that AO failed to do proper verification, since AO in notice under section 143(2) directed assessee to furnish documents with respect to issue and thereafter, assessee submitted an explanation in respect of allowability of loss and also explained various queries raised by AO on said issue, revisionary order was to be quashed - **Principal Commissioner of Income-tax v. Kaushalya Dealers (P.) Ltd. - [2023] 147 taxmann.com 526 (Calcutta)**

**SECTION 36(1)(ii) OF THE INCOME-TAX ACT, 1961 - BONUS OR COMMISSION**

**3.22. Reassessment** : Where assessment was sought to be reopened in case of assessee on ground that assessee was charging lower commission rates to its sister concern / related party, thereby resulting in lesser revenues and leading to lower tax liability and eventually resulting into escapement of income, however, issue with regard to transactions with all parties had been gone into by Assessing Officer and there was no new tangible material to justify reopening, reassessment proceedings being a case of change of opinion were not justified - **Jetair (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle-5(2) - [2023] 148 taxmann.com 185 (Bombay)**

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

**3.23. Advertisement and sales promotion expenses** : Where Assessing Officer had applied his mind during scrutiny assessment to fact that assessee-company had incurred advertisement and sales promotion expenses in a marketing strategy/scheme called 'Colour Idea Stores' and assessee had duly furnished all requisite details with a detailed breakup of said expenses, it could not be said that there was any failure on part of assessee to disclose fully and truly facts which were material and necessary for assessment, therefore, impugned reopening notice issued under section 148, being without jurisdiction, was liable to be quashed - **Asian Paints Ltd. v. Assistant Commissioner of Income-tax - [2023] 148 taxmann.com 99 (Bombay)**

**3.24. Compensation** : Where mines owned by assessee were used by its subsidiaries for captive use, however said mines had lower grade of iron ores and subsidiaries purchased same from third parties, since compensation paid by assessee to its

subsidiaries with respect to difference in price of ores purchased from assessee and third parties was to recoup business losses of subsidiaries and was irrecoverable as far as assessee was concerned, expenditure claimed by assessee with respect to such compensation was to be allowed - **Principal Commissioner of Income-tax v. Industrial Development Corporation of Odisha Ltd. - [2023] 147 taxmann.com 298 (Orissa)**

**3.25. Corporate social responsibility expenditure** : Explanation 2 appended to section 37(1) by Finance Act, 2014 with effect from 1-4-2015 is applicable prospectively from assessment year 2015-16; therefore, corporate social responsibility expenditure incurred by assessee-company on or before 31-3-2014 was to be allowed as deduction under section 37(1) - **Principal Commissioner of Income-tax v. Steel Authority of India Ltd. - [2023] 148 taxmann.com 132 (Delhi)**

**3.26. Reassessment** : Where assessee-company engaged in business of purchase or sale of medical equipments and related services made provision for warranty, which was allowed but thereafter AO observing that it was only provision and not allowable as deduction, passed order under section 148, since only intimation was issued under sub-section (1) of section 143 and return was processed under section 143(1) without making due scrutiny, reassessment was justified - **Healthware (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 147 taxmann.com 598 (Telangana)**

**3.27. Provision or warranty** : Where no liability had arisen in assessment year under consideration and there was no certainty of incurring such expenditure, then provision for warranty made by assessee that might accrue in future would not be eligible for deduction under section 37(1) - **Healthware (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 147 taxmann.com 598 (Telangana)**

**SECTION 40(b) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - INTEREST SALARY, ETC., PAID BY A FIRM TO PARTNER**

**3.28. Scope of provision** : Where assessee-firm claimed deduction of remuneration paid to working partners, since partnership deed did not contain any terms for payment to partners, payment was not an allowable deduction as per section 40(b)(v) - **Egg Guard v. Income-tax Officer - [2023] 147 taxmann.com 394 (Telangana)**

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

**3.29. Others** : Where High Court remanded matter to Tribunal with a direction to verify distance of land in question from municipal limits, Tribunal was expected to follow same in pith and substance; Tribunal manifestly erred in remanding matter to Assessing Authority instead of recording finding with regard to distance of land itself - **Pooja Agarwal v. Commissioner of Income-tax - [2023] 147 taxmann.com 396 (Rajasthan)**

**3.30. Scope of provision** : Where assessee entered into an agreement to sale dated 24-7-2008 for sale of his land and registration took place on 10-5-2012 and said transaction had been taxed by Assessing Officer in assessment year 2009-10 on basis of agreement to sale, charging capital gain tax on very same transaction in assessment year 2013-14 on basis of final execution of sale deed would amount to taxing same twice and thus not permissible - **Principal Commissioner of Income-tax**

*v. Dipak Govindbhai Dalwadi - [2023] 147 taxmann.com 393 (Gujarat)*

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

**3.31. Reassessment :** Where ITO reopened assessment of assessee for **assessment** year 2013-14 after expiry of four years on ground that assessee wrongly claimed long-term capital gain loss in return, since letter of reasons recorded did not show fruitful information regarding escapement of income and moreover, assessee had disclosed all material facts truly and fully while furnishing return, impugned notice was to be declared as time-barred and quashed - **Rampal Samdani v. Union of India - [2023] 148 taxmann.com 114 (Rajasthan)**

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

**3.32. Section 50C** would not be made applicable to determine capital gains on compulsory acquisition of land by National Highways Authority of India (NHAI) as question of payment of stamp duty for effecting such transfer would not arise - **Principal Commissioner of Income-tax v. Durgapur Projects Ltd. - [2023] 148 taxmann.com 50 (Calcutta)**

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

**3.33. Reassessment :** Where a reopening notice was issued upon assessee company, engaged in business of electronic appliances, on ground that an information was received on insights portal that high risk transactions had taken place in case of assessee which was required to be verified, since there was no any mention about "cash credits and subsequent debits" in reasons recorded and there was no live link or nexus between said information received and income escaping assessment, impugned reopening notice was unjustified - **Digi1 Electronics (P.) Ltd. v. Assistant Commissioner of Income Tax-13(2)(2) - [2023] 148 taxmann.com 184 (Bombay)**

**3.34. Burden of proof :** Where pursuant to a search additions were made to income of assessee on account of unexplained cash credit received from certain company since additions were not based on any material found in search and moreover, assessee had furnished all documents and had explained source of credit in its original return, additions were to be deleted - **Principal Commissioner of Income-tax v. Gangol Vincom (P.) Ltd. - [2023] 148 taxmann.com 126 (Orissa)**

**3.35. Loan :** Where assessee-company had discharged onus to prove identity, creditworthiness and genuineness of its loan transactions with various companies by providing income-tax acknowledgments, audited accounts, etc. and some lender companies had also replied to notice issued on them under section 133(6), since Assessing Officer failed to discharge his onus to prove them wrong, impugned additions made under section 68 treating loan amount as unexplained cash credit was to be deleted - **Principal Commissioner of Income tax v. Overtop Marketing (P.) Ltd. - [2023] 148 taxmann.com 94 (Calcutta)**

**3.36. Share application money :** Where assessee-company claimed that amount recorded in account books was received towards share application money from creditor and was paid back fully and moreover account books showed source of fund and identity of party, it was not open to Assessing Officer to raise doubt about creditworthiness of creditor - **Principal**

*Commissioner of Income-tax (Central) v. Ambe Tradecorp (P.) Ltd. - [2023] 147 taxmann.com 375 (Gujarat)*

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

**3.37. Immovable property :** Where Assessing Officer on finding fault in transaction of purchase and sale of immovable property proceeded to issue notice of demand upon assessee, since opportunity of personal hearing was not granted, before framing assessment order, though asked for on behalf of assessee, impugned order and notice could not be sustained and Assessing Officer was directed to pass a fresh order after according personal hearing to assessee - **Shree Amba Industries v. National Faceless Assessment Centre Delhi - [2023] 147 taxmann.com 565 (Delhi)**

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

**3.38. Bank deposit :** Where assessee had deposited huge sums of money after demonetisation which was treated as unexplained income under section 69A, since none of responses submitted by assessee online in Income-tax portal were looked into by department owing to some technical problem in system, matter was to be remanded back for deciding issue afresh after taking into account aforementioned responses of assessee - **Manikandan Kalpana v. Income-tax Officer - [2023] 147 taxmann.com 300 (Madras)**

**3.39. Jewellery:** Where pursuant to a search conducted at premises of assessee it was found that assessee had undisclosed income in form of unaccounted jewellery with them, since assessee explained that part of jewellery seized were received as ancestral jewellery but had not been able to produce any evidence in relation to same in said circumstances, Tribunal was justified in making probable disposal of ancestral jewellery and sustaining addition on estimate basis - **S.P. Karthik v. Commissioner of Income-tax - [2023] 147 taxmann.com 287 (Madras)**

**3.40. Bank deposit :** Where in light of information uploaded on insight portal Assessing Officer treated deposit made by assessee in a co-operative credit society as unexplained and reopened assessment of assessee for assessment year 2015-16, it would be necessary for assessee to contest and challenge re-assessment orders on merits and therefore, extraordinary jurisdiction under article 226 could not be invoked - **Gopal Tukaram Bitode v. Income-tax officer - [2023] 147 taxmann.com 450 (Bombay)**

**3.41. Property :** Where department issued a notice to assessee under section 148A on ground that assessee had sold immovable properties and also made cash deposits in savings bank account, since name of assessee was wrongly mentioned in notice and PAN number was also different and moreover, assessee had taken a categorical stand in his reply that he was not owner of subject property which was not taken into consideration by department, it could be said that there was a total non-application of mind and violation of principles of natural justice on part of department and, therefore, notice was liable to be quashed - **D.R. Jayakothandaraman v. Government of India - [2023] 148 taxmann.com 21 (Madras)**

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

**3.42. Scope of provision :** Benefit under section 80P(2)(a)(i) is available to both SLR and non-SLR investments made in bonds as long as it constitutes banking business - **Chennai Central Co-operative Bank Ltd. v. Income-tax Officer - [2023] 148 taxmann.com 17 (Madras)**

**3.43. Interest on deposits :** Where assessee, co-operative society, earned interest income on surplus funds invested in deposits with banks and Government securities, since neither said amount of deposit was due to its members nor it was liability to its members, same would qualify for deduction under section 80P(2)(a)(i) - **Principal Commissioner of Income-tax v. GunjaSamabayKrishiUnnayanSamity Ltd. - [2023] 147 taxmann.com 518 (Calcutta)**

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

**3.44.** Where Assessing Officer passed draft assessment order and made transfer pricing adjustment without reworking ALP as per direction of DRP said draft assessment order was to be set aside as Assessing Officer was bound by directions issued by DRP under section 144C and required to pass assessment order in conformity with said directions - **Principal Commissioner of Income-tax v. Flextronics Technologies (India) (P.) Ltd. - [2023] 148 taxmann.com 123 (Karnataka)**

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

**3.45. General :** Where assessee-co-operative bank challenged constitutional validity of section 115BBE and also challenged action of Assessing Officer of issuing notice for recovery of demand raised pursuant to assessment under section 143(3) terming same as arbitrary and sought stay of demand, notice was to be issued in matter and meanwhile as an interim relief, order restraining revenue from enforcing demand was to be passed and impugned recovery notice was to be stayed - **Panchmahal District Co Operative Bank Ltd. v. Union of India - [2023] 148 taxmann.com 93 (Gujarat)**

#### SECTION 124 OF THE INCOME-TAX ACT, 1961 - ASSESSING OFFICER - JURISDICTION OF

**3.46. Opportunity of hearing :** Where assessee who was initially carrying his business activities from Bhubaneswar had shifted to Kolkata and had been filing returns there, merely because assessee happened to be a director of a company which had been assessed in Balasore Circle would not automatically transfer jurisdiction of assessee's case from Kolkata to Balasore without complying with mandatory requirement of section 124(3) and therefore, assessee would continue to be within jurisdiction of relevant Income-tax Circle at Kolkata - **BiswajayaDagara v. Assistant Commissioner of Income-tax - [2023] 148 taxmann.com 18 (Orissa)**

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

**3.47. Opportunity of hearing :** Where Commissioner vide order passed under section 127 transferred case of assessee from Calcutta to Kanpur, since no show cause notice was issued prior to order of transfer, matter was to be remanded to Commissioner for passing speaking order after affording opportunity of hearing - **Nouvelle Advisory Services (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 148 taxmann.com 25 (Calcutta)**

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

**3.48. Writ jurisdiction :** Where assessee did not file its return on time and also did not respond to notice issued under section 148 and thereafter assessment order was passed, assessee could not challenge said notice or assessment order in writ petition, however, assessee was to be directed to file statutory appeal before appellate authority on merits - **Tamil Nadu State Apex Fisheries Co Operative Federation Ltd. v. Income-tax Officer - [2023] 147 taxmann.com 303 (Madras)**

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

**3.49. Dead person, in case of :** Where it was duly disclosed in return that it was filed by legal representative of deceased assessee, jurisdictional notice issued against deceased assessee and assessment order passed against dead person on his PAN without bringing on record all legal representatives would be null and void and was to be set aside - **Vikram Bhatnagar v. Assistant Commissioner of Income-tax - [2023] 147 taxmann.com 254 (Delhi)**

**3.50. Condition precedent :** Where Assessing Officer did not issue notice under section 143(2) upon assessee, initiation of reassessment proceedings, order of rejecting assessee's objection against assumption of jurisdiction for reopening and, further, reference to TPO were to be quashed - **Amec Foster Wheeler Iberia SLU - India Project Office v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 124 (Madras)**

#### SECTION 143(1)(A) OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - PRIMA FACIE ADJUSTMENT

**3.51. Scope of :** Claim of set-off of adjustment of interest earned by assessee against interest paid for borrowed funds was a debatable issue at time of issuance of intimation under section 143(1)(a) and, therefore, Assessing Officer was not justified in such interest receipt while making prima facie adjustment under section 143(1)(a) - **Commissioner of Income-tax v. GVK Industries Ltd. - [2023] 147 taxmann.com 281 (Telangana)**

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

**3.52. Opportunity of hearing :** Where assessee sought adjournment for furnishing reply to show cause notice of draft assessment order and Assessing Officer without any response having come on record of assessee to show cause notice passed final assessment order, Assessing Officer was to be directed to give an opportunity to assessee to respond to show cause notice - **DangeeDums Ltd. v. National Faceless Assessment Centre, Govt. of India - [2023] 148 taxmann.com 22 (Gujarat)**

**3.53. Opportunity of hearing :** Where Assessing Officer issued on assessee a show cause notice regarding discrepancy in sale/purchase figure of assessee and GSTR-1 returns of various parties since assessee had not been given five days time and effectively it had only 48 hours to submit reply and there was total violation of principles of natural justice, matter was to be remanded back to Assessing Officer for fresh consideration - **Green Valley Industries Ltd. v. Assessment Unit, Income-tax Department - [2023] 147 taxmann.com 295 (Calcutta)**

**3.54. General :** Denial of personal hearing is violative of provisions of section 144B(6)(vii) - *D. B. Engineering (P.) Ltd. v. National Faceless Assessment Centre, Delhi* - [2023] 147 taxmann.com 472 (Delhi)

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

**3.55. Net profit :** Where Tribunal taking note of net profit declared by assessee for previous years which were within range of 0.2 per cent to 0.29 per cent reduced net profit percentage from 8 per cent as estimated by Commissioner (Appeals) to 0.6 per cent for relevant assessment year, no substantial question of law arose for consideration - *Principal Commissioner of Income-tax v. Bridge and Building Construction Co. (P.) Ltd.* - [2023] 147 taxmann.com 440 (Calcutta)

#### SECTION 147 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - NON-DISCLOSURE OF PRIMARY FACTS

**3.56. Audit objection :** Where Assessing Officer had no subjective satisfaction while issuing notice of reopening and reopening on part of Assessing Officer was essentially on audit party opinion and not on basis of his own conviction, it was not justified - *Adani Power Maharashtra Ltd. v. Assistant Commissioner of Income-tax, Circle 1(1)(1)* - [2023] 147 taxmann.com 283 (Gujarat)

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

**3.57. Scope of provision :** Where assessee in response to notice issued under section 148 filed return and Assessing Officer without disposing return issued on assessee a second notice under section 148 for same assessment year, action of Assessing Officer in issuing second notice was not legal - *Elite Pharmaceuticals v. Income-tax officer* - [2023] 147 taxmann.com 378 (Calcutta)

**3.58. Opportunity of hearing :** Where final show cause notice with draft Assessment Order was uploaded on 30-3-2022 and on 31-3-2022 at 16.01 p.m. Assessing Officer passed assessment order, as no reasonable time was given to respond to final show cause notice, matter was to be remitted back for reconsideration - *Pesco Beam Environmental Solutions (P.) Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer, National Faceless Assessment Centre, Delhi* - [2023] 147 taxmann.com 251 (Madras)

**3.59. Reassessment notices for AYs 13-14 & 14-15 can't be issued on or after 1-4-2021 -** *Keenara Industries (P.) Ltd. v. Income Tax Officer, Ward 1(1)(3)* - [2023] 147 taxmann.com 585 (Gujarat)

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

**3.60. Opportunity of hearing :** Where assessee sought time to file objections to show cause notice issued by department under section 148A(b) but department did not pay heed to same and all of a sudden, it directed assessee to file its reply, since it was not a case of time barring assessment nor was there any urgency for it, this approach of department was in violation of principles of natural justice and hence, order of assessment

deserved to be quashed - *Aditya Hareshbhai Sonpal v. Income-tax officer* - [2023] 148 taxmann.com 13 (Gujarat)

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

**3.61. Approval of draft assessment :** Where Approving Authority approved draft assessment order in 85 cases including that of assessee in one day in a mechanical manner without applying independent mind to appraise material before it, Tribunal rightly concluded that approval so granted under section 153D vitiated entire proceedings - *Principal Commissioner of Income-tax v. Sapna Gupta* - [2023] 147 taxmann.com 288 (Allahabad)

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

**3.62. Applicability of TDS provisions :** Where agents act on behalf of non-resident ship-owners or charterers, they would step into shoes of principal and hence, provision of section 172 would apply and not provision of sections 194C and 195 - *Principal Commissioner of Income-tax-1 v. Bajaj Herbals (P.) Ltd.* - [2023] 148 taxmann.com 147 (Gujarat)

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

**3.63. Opportunity of hearing :** Where assessee's claim for NIL TDS under section 197 was summarily rejected without any speaking order, such cryptic and unreasoned order should be quashed and matter be remitted back to file of Assessing Officer for consideration afresh - *Rajagopalan Venkataraman v. Commissioner of Income-tax, International Taxation* - [2023] 147 taxmann.com 399 (Karnataka)

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

**3.64. Form 26AS :** Where there is difference in figure of income in TDS certificate and Form 26AS, assessee's income should be taken as shown in Form 26AS and she should be given TDS credit as reflected in Form 26AS - *Principal Commissioner of Income-tax v. Smt. Nirmali Bhadra* - [2023] 147 taxmann.com 289 (Calcutta)

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

**3.65. Illustrations :** Revenue cannot adjust withheld tax which has not been deposited by deductor/employer in Central Government Account, against refund due and payable to assessee-employee - *Sanjay Sudan v. Assistant Commissioner of Income-tax* - [2023] 148 taxmann.com 329 (Delhi)

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

**3.66. Sale of attached property :** Where sale proclamation of property in auction sale was set aside by Single Bench, in such case entire purchase money paid by appellants-purchasers towards purchase of said property together with interest was to be refunded - *Nadia District Agricultural Dealers Association v. Commissioner of Income-tax* - [2023] 148 taxmann.com 23 (Calcutta)

## SECTION 237 OF THE INCOME-TAX ACT, 1961 - REFUNDS - GENERAL

**3.67. Condonation of delay** : Where assessee claimed a refund for assessment year 2010-11 by filing belated return of income beyond period specified in section 139, delay to be condoned was not to be considered with reference to date on which application under section 119(2)(b) was filed, but with reference to date on which 'application for refund' (return of income) was filed - *K.C. Antony v. Principal Commissioner of Income-tax* - [2023] 148 taxmann.com 28 (Kerala)

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

**3.68. Illustrations** : Where a sum received by assessee on account of interest on income tax refund was assessed as income for assessment year 2014-15, however, said amount had already been brought to tax by revenue in assessment year 2012-13, clearly, it was apposite for Commissioner to have revised assessment order for assessment year 2014-15 as said amount could not be taxed twice - *Interglobe Enterprises (P.) Ltd. v. Principal Commissioner of Income-tax* - [2023] 148 taxmann.com 121 (Delhi)

**3.69. Illustration** : Where assessee made bonafide mistake of including exempt income in her return as taxable income and same could not be rectified by filing revised return as original return was filed belatedly, since assessee had no other remedy except taking recourse to file revision application under section 264, Commissioner could not have rejected revision application merely on ground that assessee failed to file revise return - *Ena Chaudhuri v. Assistant Commissioner of Income-tax* - [2023] 148 taxmann.com 100 (Calcutta)

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

**3.70. Bar of Prosecution** : Where assessee on being show caused regarding opening of an account in a foreign bank in year 1991 filed a revised return in assessment year 2006-07 and declared his additional income, since at time of commission of offence in year 1991 he was more than 55 years of age and not 70 years, he could not be permitted to take benefit of Instruction No. 5051, dated 7-2-1991 to find an escape route for wrong committed by him - *Rajinder Kumar v. State* - [2023] 147 taxmann.com 445 (Delhi)

**3.71. Concealment of income** : Where penalty under section 271(1)(c) imposed upon assessee was set aside by Tribunal on merit holding that there was no concealment of income by assessee, entire criminal proceedings under section 276C was also to be quashed automatically - *Satendra Kumar Jalan v. State of Jharkhand* - [2023] 147 taxmann.com 563 (Jharkhand)

**3.72. Tax Credit** : Where self-assessment tax returns filed by assessee had no element of concealment or any intention to evade tax which was liable to be paid, and assessee had also paid additional amount towards interest and other charges and explained that delayed payment of tax was due to financial difficulties beyond his control, continuation of proceedings against assessee under section 276C(2) read with section 278B would amount to abuse of process of Court - *Sujata Electrical Infratech India (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 148 taxmann.com 133 (Telangana)

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

**3.73. Assessment** framed on non-existing company (amalgamating co.) is to be quashed as it is not a mere procedural irregularity which can be cured u/s 292B - *Inox Wind Energy Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer* - [2023] 148 taxmann.com 289 (Gujarat)

## 4. INCOME TAX APPELLATE TRIBUNAL (ITAT)

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

**4.1. Land** : Where assessee being an owner of land had entered into a joint development agreement (JDA) with a developer, since terms and conditions of JDA showed that assessee had continued to be owner of property throughout development of property and possession of property was given to developer only for limited purpose of development, Assessing Officer took a judicious view that there was only part performance of such agreement, which would not amount to a "transfer" so as to attract provisions of section 43CA and said order could not be treated as erroneous or prejudicial to interest of revenue - *Emporis Properties (P.) Ltd. v. Principal Commissioner of Income-tax* - [2023] 147 taxmann.com 280 (Kolkata - Trib.)

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

**4.2. Education** : Where assessee, a trust registered under section 12A, performed drama for various institutes earning revenue, since it was not developing any knowledge of students by normal schooling, activity carried on by it did not fall in realm of 'education' as used in section 2(15) and hence it was not eligible for exemption under section 11 - *Maharaja ShivchatrapatiPratishthan v. Income-tax Officer (Exemptions)* - [2023] 148 taxmann.com 12 (Pune - Trib.)

### SECTION 4 OF THE INCOME-TAX ACT, 1961 - ASSOCIATION OF PERSON - ASSESSABLE AS

**4.3. Illustrations** : Where assessee-AOP purchased a property and allotment letters were issued to its members who later sold said property, since assessee-AOP was fully funded by its members and assessee allowed right in land to its members and they were real owners, income from sale of property was liable to be taxed in hands of members and not in hands of AOP - *Assistant Commissioner of Income-tax v. Shree Ami Office Owner's Association* - [2023] 148 taxmann.com 130 (Ahmedabad - Trib.)

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

**4.4. Resident General** : Where assessee, an individual, during assessment year 2016-17, was employed with Amazon (India) between 1-4-2015 and 17-10-2015, and was subsequently transferred to (Amazon USA) from 20-10-2015 since, election of assessee under IRC section 7701(b)(4) showed that in relevant year he did not meet SPT, which was mandatory to be considered as tax resident in USA, assessee could not claim exemption from taxes on income earned during relevant period of his stay in USA as he was taxed in USA not on residence basis but on basis of source - *Jenendra Kumar Jain v. Income-tax Officer (International Taxation)* - [2023] 147 taxmann.com 320 (Hyderabad - Trib.)



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

- 4.5. Business profits - Business profit v. Royalty** :Where Assessing Officer had re-characterized income earned by assessee - UK company from royalty to business income without there being any variation in income returned by assessee, assessment order passed by Assessing Officer was invalid due to wrongful assumption of jurisdiction under section 144C(1) - **Superbrands Ltd. (UK) v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 438 (Delhi - Trib.)**
- 4.6. Permanent Establishment - General** : Where assessee, a U.K. based company, entered into an agreement with 'A' and received consideration for use of its brand in India which it offered to tax as royalty in its return of income, however, Assessing Officer treated this royalty as business income by holding that 'A' constituted dependent agent PE of assessee in terms of article 5(4) of Indo-UK DTAA, in view of fact that entire assessment was based on reading of trade mark license agreement and fact that assessee had entered into a supplementary trade mark licence agreement which had not been considered, matter was to be remanded back for adjudication afresh - **Super Brands Ltd. (UK) v. ADIT - [2023] 147 taxmann.com 323 (Delhi - Trib.)**
- 4.7. Royalties/Fees for technical services - Advertising fee** :Amount received by assessee, Google Ireland from sale of advertisement space through its AdWords program could not be brought to tax in India as royalty as assessee had not parted with copyright it held in Adwords program and hence it could not be said that any kind of technical knowhow had been transferred - **Google Ireland Ltd. v. Deputy Commissioner of Income-tax (IT), Circle 1(1) - [2023] 148 taxmann.com 106 (Bengaluru – Trib)**
- 4.8. Royalties/fees for technical services - Others** : Where assessee, a Netherlands based company, entered into two agreements with its Indian subsidiary, viz., license agreement granting rights to use software owned by it and service agreement to provide executive search services, since search fee received under service agreement, was independent of license agreement, same was not taxable in India as fees for technical service or royalty under article 12(5)(a) of DTAA like license fee - **Spencer Stuart International B.V. v. Assistant Commissioner of Income-tax, International Taxation - [2023] 147 taxmann.com 322 (Mumbai - Trib.)**
- 4.9. Royalties/fees for technical services - Reimbursement of expenses** : Payments received by assessee, a Netherlands based company from its Indian subsidiary towards reimbursement of expenses incurred by it towards travel and stay, video conferencing charges, insurance, expenses for purchase of fixed assets and other miscellaneous expenses would not constitute fees for technical services as per article 12 of DTAA between India and Netherlands - **Spencer Stuart International B.V. v. Assistant Commissioner of Income-tax, International Taxation - [2023] 147 taxmann.com 322 (Mumbai - Trib.)**
- 4.10. Royalty/fees for technical services - Others** : Connectivity charges paid by assessee-company to UK based company for co-location and connectivity service provided for process of connecting assessee with various customers for making voice and data connectivity, being for use of process, was to be taxed as royalty - **Allsec Technologies Ltd. v. Deputy**

**Commissioner of Income-tax - [2023] 148 taxmann.com 98 (Chennai - Trib.)**

- 4.11. Royalties or Fees for technical services - Broadcasting services** : Where a tax resident of UK, had granted non-exclusive global right to assessee-company for distribution of news channel and assessee in turn entered into agreement with BWIPL to distribute said channel to cable operators, DTH operators, hotels and institutions in India and received a certain sum, since assessee-company itself had no right over copyright of content of news channel and it had only transferred broadcasting reproduction right through distribution agreement, distribution revenue received by assessee could not be termed as royalty either under section 9(1)(vi) or under India-UK DTAA, and hence not taxable in India - **BBC World Distribution Ltd. v. ADIT, International Taxation - [2023] 148 taxmann.com 122 (Delhi - Trib.)**
- 4.12. Independent personal services - Stay in India** : Where assessee, a US law firm, had received certain amount for providing independent personal services in India out of which certain amount was claimed as non-taxable in India under article 15 of India-US tax treaty and, Assessing Officer refused to accept assessee's claim on ground that assessee was unable to establish through proper documentary evidences that employees of assessee did not stay in India for more than 90 days, since assessee furnished additional documentary evidences to establish that period of stay of employee was less than 90 days, matter should be remanded for consideration afresh - **Curits, Mallet-Prevost, Colt & Mosle LLP v. ACIT, International Taxation - [2023] 148 taxmann.com 20 (Delhi - Trib.)**
- 4.13. Interest - Interest paid by branch to head office** : Interest paid by Indian Branch of assessee-Japanese bank to its overseas head office was not chargeable to tax in India - **Deputy Commissioner of Income-tax v. Mizuho Bank Ltd. - [2023] 147 taxmann.com 523 (Mumbai - Trib.)**
- 4.14. Royalties/fees for technical services - Vessel hire charges** : Where assessee, a UAE based company, entered into time charter contract for transporting coal from one port to another through its ship, since control of equipment remained with assessee and there was no absolute right to use of vessel to charterer, payment received by assessee from time charter of vessel was not in nature of royalty and, hence, same was not taxable under section 9(1)(vi) - **Nan Lian Ship Management LLC v. ACIT (Int. Tax) - [2023] 147 taxmann.com 524 (Mumbai - Trib.)**
- 4.15. Permanent establishment - Liaison office** : Where Liaison Office (LO) of assessee's subsidiary did not constitute a fixed place through which business of assessee was carried out in India and employees of LO merely acted as a communication link between assessee and airline companies, activities carried by LO were thus, preparatory (auxiliary) in nature and, therefore, said LO would not constitute PE of assessee - **S.R. Technics Switzerland Ltd. v. ACIT (International Taxation) - [2023] 147 taxmann.com 568 (Mumbai - Trib.)**
- 4.16. Business profits - Offshore supplies** : Where assessee a tax resident of China along with SIPL formed a consortium for purpose of bidding to tender floated by DMRCL and MMRCL for design, manufacturing, supply, installation, testing, and commissioning of escalators for Noida-Greater Noida MRTS project and NMRCL Project, wherein scope of work of each party was defined and assessee did not carry out any operations in India in respect of its scope of work, income

earned by assessee from offshore supply of escalators and elevators to DMRCL and MMRCL was not taxable in India - **Schindler China Elevator Company Ltd. v. Assistant Commissioner of Income-tax (IT), Circle-4(2)(1) - [2023] 148 taxmann.com 79 (Mumbai - Trib.)**

**4.17. Royalties/Fees for technical services - Make available** :Where rendition of services by UK company to assessee did not enable recipient assessee to provide similar services without recourse to UK company in future and assessee did not gain any technical knowledge, assessee-company would not be liable to withhold tax while making impugned payment to UK company - **CPP Assistance Services (P.) Ltd. v. Commissioner of Income-tax (Appeal) NFAC, New Delhi - [2023] 147 taxmann.com 484 (Delhi - Trib.)**

**4.18. Royalties/Fee for technical services - Management services** :Where assessee-company made certain payments to its parent company, a Dubai (UAE) based company, since consideration was paid with respect to support services rendered by parent company and consideration had no element of mark-up, income element couldnot be established and payments made by assessee couldnot fall within ambit of section 9(1)(vii) - **ITP Publishing India (P.) Ltd. v. A. Commissioner of Income-tax-12(2)(2) - [2023] 148 taxmann.com 250 (Mumbai - Trib.)**

**4.19. Royalties/fees for technical services - Others** : Where marketing and reservation activities performed by assessee were not only distinct and different from license fee but were done under two distinct and separate agreements, they could not be treated to be ancillary and subsidiary to license fee, hence, such fee will not fall under article 12(4)(a) of India-Singapore DTAA and since there was nothing on record to demonstrate that while rendering services, assessee had made available technical knowledge, experience, skill, know-how or processing etc., it could not be brought within ambit of FTS under article 12(4)(b) of treaty - **Shangri-La International Hotel Management Pte. Ltd. v. Assistant Commissioner of Income-tax, Circle 3(1)(2) - [2023] 148 taxmann.com 3 (Delhi - Trib.)**

#### SECTION 10(2A) OF THE INCOME-TAX ACT, 1961 - FIRM - SHARE OF PROFITS TO PARTNER OF FIRM

**Computation of profit** :Where as per income-tax Act, there was no distributable profits but in real theory in impugned assessment year, partnership firm had earned profit, assessee-partner was eligible to claim exemption as per sec. 10(2A) on profit received from partnership firm - **Davalagiri Property Developers (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 474 (Bangalore - Trib.)**

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

**4.20. Sub-section (iiiab)** : Where Assessing Officer denied exemption to assessee, an educational institution, claimed exemption under section 10(23C)(iiiab) on plea that it received donations from various people and it was not wholly or substantially financed by Government of India and Commissioner (Appeals) without advertng to facts of case granted exemption, matter was to be restored to him for decision afresh - **Joint Commissioner of Income-tax (OSD) (Exemptions) v. Deccan Education Society - [2023] 147 taxmann.com 395 (Pune - Trib.)**

**4.21. Condonation of delay** : Commissioner (Exemption) is not vested with any power to condone delay involved in filing application for grant of approval under section 10(23C)(vi) - **ManavRachana Education Society v. Commissioner of Income-tax (Exemptions) - [2023] 148 taxmann.com 24 (Raipur - Trib.)**

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

**4.22. Condition precedent** : Section 10AA does not mandate filing of return of income within specified due date as one of condition precedent for claiming exemption under said section - **OPTO Circuits (India) Ltd. v. Assistant Commissioner of Income-tax - [2023] 147 taxmann.com 597 (Bangalore - Trib.)**

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

**4.23. Original documents, filing of** : Where assessee-trust filed application for registration under section 12AA after amended rule 17A came into effect, assessee was not required to file any original copy of documents rather it had to furnish only self-certified copy/instrument of documents along with application for purpose of verification by Commissioner (Exemption) - **RadheyshyamMandir Trust v. Commissioner of Income-tax (Exemption) - [2023] 147 taxmann.com 301 (Jaipur - Trib.)**

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

**4.24. Conditions precedent** : Where assessee claimed exempt income from PPF **interest**, dividend income and interest on tax-free bonds, Assessing Officer was directed to verify firstly, as to whether assessee had claimed any expenditure for earning interest income and secondly whether all investments for earning exempt income were made from his personal account using own personal funds and not funds from proprietary concern and if both above conditions would be satisfied, no disallowance would be called for under section 14A - **BharatkumarRajendraprasad Dave v. ACIT - [2023] 147 taxmann.com 485 (Ahmedabad - Trib.)**

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

**4.25. Deemed rent** : Where assessee, real estate developer, held unsold flats as **stock-in-trade** for more than one year, and Principal Commissioner invoked revisionary jurisdiction holding that ALV of said flats was to be brought to tax as deemed rent under section 23, since AO in assessment order examined relevant facts of unsold flats and decision not to determine ALV was in line with CBDT Circular No. 2/2018, dated 15-2-2018, Principal Commissioner erred in invoking revisionary jurisdiction - **DhirajlalAmichand Shah v. Principal Commissioner of Income-tax - [2023] 148 taxmann.com 330 (Mumbai - Trib.)**

**4.26. Unsold flat as stock-in-trade** : Amendment to section 23 vide **introduction** of sub-section (5) by Finance Act, 2017 with effect from 1-4-2018 whereby property held as stock-in-trade was brought to tax, would be effective prospectively - **DhirajlalAmichand Shah v. Principal Commissioner of Income-tax - [2023] 148 taxmann.com 330 (Mumbai - Trib.)**

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

**4.27. Capital gain v. business income :** Where assessee-AOP purchased a property and allotment letters were issued to its members who later sold said property, mere fact that assessee-AOP purchased and made construction thereon itself would not be sufficient to hold that income earned on such sale of property would qualify as 'business income and same would be taxable as capital gains - *Assistant Commissioner of Income-tax v. Shree Ami Office Owner's Association - [2023] 148 taxmann.com 130 (Ahmedabad - Trib.)*

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

**4.28. Business, commencement of :** Where new hospital opened by assessee was an extension of existing business and was in same line i.e. spine speciality, and machinery viz. air-conditioning unit and electrical fittings had been purchased during year under consideration, for which assessee had shown consultancy receipts from new hospital unit, depreciation on assets of new unit would be allowed to assessee during year under consideration - *BharatkumarRajendraprasad Dave v. ACIT - [2023] 147 taxmann.com 485 (Ahmedabad - Trib.)*

**4.29. Illustration :** Where assessee-company took over a partnership firm in March 2018, since assessee had filed complete details showing that it had fulfilled all stipulated conditions under sections 47(xiii) and 72A(6) and all assets of partnership firm became assets of assessee after merger, it was entitled to carry forward and set off unabsorbed depreciation of erstwhile firm against income of relevant year for whole 365 days and not only for 31 days i.e. in proportion with merger - *ACIT v. Srinivasa Fashions (P.) Ltd. - [2023] 147 taxmann.com 319 (Chennai - Trib.)*

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

**4.30. Condition precedent :** Weighted deduction under section 35(2AB) cannot be allowed in absence of requisite approval under section 35(2AB) from prescribed authority - *ACIT v. Ajeet Seeds Ltd. - [2023] 148 taxmann.com 14 (Pune - Trib.)*

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

**4.31. Burden of Proof :** Where assessee had taken loan from some parties and used same for business purpose and had furnished copy of ledger account, confirmation, PAN number of said parties for proving genuineness of said loan and moreover, loan taken from said parties had already been considered to be genuine by his predecessor for earlier assessment years, Assessing Officer was not justified in treating loan as bogus and disallowing interest expenses - *ACIT v. HareshbhaiMohanbhaiSakariya - [2023] 148 taxmann.com 115 (Surat-Trib.)*

**4.32. Illustrations :** Where assessee paid interest to certain parties against unsecured loan and reply of all such lender party was seen from ITBA Website and assessee had furnished confirmation, copy of bank account, ledger account wherein interest payment was shown, interest expenses were to be treated as genuine and allowable as deduction - *ACIT v. HareshbhaiMohanbhaiSakariya - [2023] 148 taxmann.com 115 (Surat-Trib.)*

**4.33. Interest-free advances :** Where assessee had given interest free loan to their group concern and claimed deduction of interest paid on borrowed fund in relevant assessment year

since there was no nexus between interest bearing loans and loan advances by assessee and most of loan amounts were advanced before A.Y. 2010-11 and interest bearing loan was taken after that period and moreover, assessee had own capital which were in far excess and no such disallowance was made in earlier years, interest disallowance made by Assessing Officer was to be deleted - *ACIT v. HareshbhaiMohanbhaiSakariya - [2023] 148 taxmann.com 115 (Surat-Trib.)*

**4.34. Mixed funds :** Where assessee had mixed funds both in form of business receipts and borrowings in form of overdraft from bank, since interest free funds (business receipts) were larger than borrowed funds, there would be a presumption that investments made by assessee in mutual funds, etc. were made out of own interest free funds of assessee and not out of interest bearing fund/overdraft, and therefore, no interest expense could be disallowed - *Allen Career Institute v. Joint Commissioner of Income-tax - [2023] 147 taxmann.com 390 (Jaipur - Trib.)*

**4.35. Illustrations :** Where lower authorities partly disallowed interest paid by assessee on borrowed funds on ground that interest bearing funds were partly utilized for non-business purposes, since said authorities had not recorded a definite finding that interest bearing funds had been directly utilized for non-interest bearing purpose, impugned disallowance deserved to be vacated - *Narendra Kumar Khandelwal v. Income-tax Officer - [2023] 147 taxmann.com 255 (Jaipur - Trib.)*

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

**4.36. PF/ESI :** For assessment years prior to 2021-22, non obstante clause under section 43B could not apply in case of amounts which were held in trust as was case of employee's contribution which were deducted from their income and was held in trust by assessee-employer as per section 2(24)(x), thus, said clause would not absolve assessee-employer from its liability to deposit employee's contribution on or before due date as a condition for deduction - *Ocean Exim India (P.) Ltd. v. Income Tax Officer, Ward-1(2) - [2023] 148 taxmann.com 80 (Jaipur - Trib.)*

**4.37. PF/ESI :** Where assessee-employer did not remit employee's contribution to PF and ESI before due date as per explanation to section 36(1)(va), same was rightly disallowed by Assessing Officer - *Motorola Mobility India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 444 (Bengaluru - Trib.)*

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

**4.38. Scholarship scheme :** Where assessee claimed deduction on account of provision made towards expenses incurred for providing scholarship, since liability so created in subject year stood paid off in later years and in some cases where cheques were not encashed by awardee-payee, same stood credited back to scholarship expenses, said deduction claimed by assessee was to be allowed - *Allen Career Institute v. Joint Commissioner of Income-tax - [2023] 147 taxmann.com 390 (Jaipur - Trib.)*

**4.39. Electricity connection, Internet expenses, name transfer fee :** Where assessee claimed expenditure towards new electricity connection charges and internet networking expenses, since neither any new asset was formed by incurring

said expenditures nor assessee got advantage of any enduring nature, said expenditures were to be allowed as revenue in nature - **Allen Career Institute v. Joint Commissioner of Income-tax** - [2023] 147 taxmann.com 390 (Jaipur - Trib.)

**4.40. Construction expenses of boundary wall** : Where assessee claimed construction expenditure for building boundary wall of a building, since it was a fact on record that height of building was raised from existing level, said expenditure was capital in nature - **Allen Career Institute v. Joint Commissioner of Income-tax** - [2023] 147 taxmann.com 390 (Jaipur - Trib.)

**4.41. Penalty** : Amount paid by assessee towards penalty imposed by Urban Improvement Trust, on account of unauthorised construction made could not be allowed as deduction under section 37(1) - **Allen Career Institute v. Joint Commissioner of Income-tax** - [2023] 147 taxmann.com 390 (Jaipur - Trib.)

**4.42. Hospital expansion** :Where assessee-doctor was running a hospital dealing in spine treatment started a new hospital in same line of business, it would constitute extension/expansion of existing business and since said expansion was in same line of business and same/common management as existing hospital, expenses should be allowed as revenue expenses - **Bharatkumar Rajendraprasad Dave v. ACIT** - [2023] 147 taxmann.com 485 (Ahmedabad - Trib.)

**4.43. Provision for expected loss** : Where assessee-company was awarded a project for offshore and onshore supply of super critical turbines for thermal power project, provision made for foreseeable loss as per Accounting Standard 7 could be allowed as deduction if assessee was able to justify cost escalation of contract - **L&T MHPS Generators (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 148 taxmann.com 129 (Mumbai - Trib.)

**4.44. R & D product development** :Where assessee contended that if expenditure incurred towards developing low cost medical equipments was not allowable under section 35(1)(i) then same should be allowed as business expenditure under section 37(1), since no details of said new claim was submitted, matter was to be remanded to Assessing Officer to examine matter afresh - **OPTO Circuits (India) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 147 taxmann.com 597 (Bangalore - Trib.)

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

**4.45. Illustrations** : Where members of assessee-AOP had merely entered into an agreement of sale of property on 10-1-2007 and final conveyance deed was entered into between parties on 22-5-2007 and thereafter complete payment was made, sale consideration of impugned property was taxable in assessment year 2008-09 and not in relevant assessment year 2007-08 - **Assistant Commissioner of Income-tax v. Shree Ami Office Owner's Association** - [2023] 148 taxmann.com 130 (Ahmedabad - Trib.)

**4.46. Capital gains v. Business income - Land dealing** :Where assessee bought a land in year 1997 and sold it after a gap of 13 years, there was clear intention of assessee to hold said land as a capital asset and, therefore, gains arising on sale of such land was to be assessed under head 'income from capital gains' - **ACIT v. Pravin MnailalSanghvi** - [2023] 147 taxmann.com 596 (Pune - Trib.)

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

**4.47. Clause (iii)** : Where pursuant to internal restructuring, assessee-company received shares of Dish TV as a gift at nil consideration from ECRPL (holding company) and PTCPL, another group company, since donor company was permitted by its memorandum/articles of association to make a 'gift', transfer of shares without consideration would be valid and receipt of same as gift by assessee could neither be chargeable to tax under section 56(1) or 28(iv) - **Assistant Commissioner of Income-tax, 6(2)(2) v. Direct Media Distribution Ventures (P.) Ltd.** - [2023] 148 taxmann.com 35 (Mumbai - Trib.)

**4.48. Land earmarked for road and other common amenities** : Where assessee converted its land into stock-in-trade and thereafter earmarked certain land for road and other common amenities purpose in terms of municipal regulations while forming residential layout without receiving any consideration for same, there was no 'transfer' as per section 47(iii) and no long-term capital gains could be computed on such land and also business profit would not arise in terms of section 45(2) - **Assistant Commissioner of Income-tax v. Smt. Sarojini B. Nair** - [2023] 147 taxmann.com 595 (Chennai - Trib.)

#### SECTION 54 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - PROFIT ON SALE OF PROPERTY USED FOR RESIDENCE

**4.49.** Where assessee, a non-resident Indian, had claimed exemption of capital gains received on sale of a property towards investment made in purchase of a residential house, since assessee had received possession of new flat on 24-12-2018 which was within prescribed time limit under section 54 from date of sale of old property i.e. on 23-10-2018, therefore, he was entitled to benefit of exemption under section 54 - **Sanjay Vasant Jumde v. Income Tax Officer (IT), Ward 2** - [2023] 148 taxmann.com 34 (Pune - Trib.)

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

**4.50. Revision** : Section 54B would not be applicable in case land was not used for agricultural purposes in two years preceding date of transfer; where Assessing officer had not made necessary inquiry before allowing deduction under section 54B but grossly allowed claim made by assessee, revisional order passed by Principal Commissioner under section 263 setting aside assessment order, should not call for any interference - **RamanbhaiBholidas Patel v. Principal Commissioner of Income-tax** - [2023] 148 taxmann.com 92 (Ahmedabad - Trib.)

**4.51. Illustrations** : Where assessee claimed capital gains arising on sale of an agricultural land as exempted under section 54B on purchase of another agricultural land, since assessee had furnished all sales documents viz. agreement to sell & purchase, receipt, possession letter, GPA and affidavit, along with copy of return filed by land owner, from whom new land was purchased, wherein she had declared capital gains arising from sale of its land to assessee, benefit of exemption under section 54B was allowable - **Income-tax Officer v. Babita Gupta** - [2023] 147 taxmann.com 317 (Delhi - Trib.)

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

**4.52. Residential house** : Proviso to section 54F(1) which contains condition that deduction is not available if assessee owns more

than one residential house, other than new asset, should be interpreted to mean ownership of residential houses in India and, therefore, deduction under section 54F could not be denied solely on ground that assessee jointly owned two residential houses in USA - **Smt. Maries Joseph v. Deputy Commissioner of Income-tax, International Taxation, Kochi** - [2023] 148 taxmann.com 97 (Cochin - Trib.)

**4.53. Illustrations** : Where assessee owned more than one residential property on date of transfer of capital asset other than new asset acquired and assessee could not prove with evidence that other flats were used for commercial purposes, he was not entitled to benefit of deduction under section 54F - **SurendraBabuSabbineni v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 560 (Hyderabad - Trib.)

#### SECTION 55 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - COST OF ACQUISITION

**4.54. Valuersreport**: Where Commissioner (Appeals), based on valuer's report furnished by assessee, allowed cost of construction of shed on land in question while computing gains arising on its sale, since said valuer's report was not furnished before Assessing Officer during assessment proceedings, matter was to be remanded back for granting Assessing Officer an opportunity of hearing - **ACIT v. Pravin MnailalSanghvi** - [2023] 147 taxmann.com 596 (Pune - Trib.)

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

**4.55. Sub-section(2)(viib)** : Where additional shares were issued by assessee-company to its existing shareholders on a pro rata basis, on basis of their existing shareholding, provisions of section 56(2)(viib) could not be invoked in such case - **Chhattisgarh Metaliks and Alloys (P.) Ltd. v. Income-tax Officer** - [2023] 147 taxmann.com 441 (Raipur - Trib.)

**4.56. Share premium** : In order to apply provisions of section 56(2)(viib), for any previous year, there must be allotment of equity shares and such allotment should be over and above face value of such shares; where allotment of shares by assessee was complete in previous assessment year, when provision of section 56(2)(viib) was not in statute book, said provision could not be invoked to tax balance share premium received by assessee during relevant assessment year on call - **Deputy Commissioner of Income-tax. v. Archean Chemical Industries (P.) Ltd.** - [2023] 148 taxmann.com 16 (Chennai - Trib.)

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

**4.57. Share application money** : Where assessee-company received share application money from certain company and had filed all requisite documents in respect of said transaction i.e., copy of bank account of investor-company clearly evidencing investment made by it towards share application money and source thereof and a confirmation in that regard was also filed, onus cast upon assessee for proving nature and source of share application money stood duly discharged - **Chhattisgarh Metaliks and Alloys (P.) Ltd. v. Income-tax Officer** - [2023] 147 taxmann.com 441 (Raipur - Trib.)

**4.58. Share application premium** : Where Assessing Officer made addition to income of assessee on account of unexplained source of share capital and share premium, since assessee had furnished names and addresses of shareholders and

proved their identity, creditworthiness and genuineness of transaction by filing copies of their confirmations, bank statements from where share application money had been received and even in a search carried out at premises of assessee no adverse material was found to establish that assessee had received any bogus share capital or share premium, addition made under section 68 was to be deleted - **Deputy Commissioner of Income-tax v. BDR Builders & Developers (P.) Ltd.** - [2023] 147 taxmann.com 486 (Delhi - Trib.)

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

**4.59. Plant and machinery** : Where assessee, a sugar mill, made addition to its plant and machinery, as copy of purchase bills stood furnished in assessee's paper book, no case for addition under section 69 was made out - **ACIT v. Mahakaushal Sugar & Power Industries Ltd.** - [2023] 147 taxmann.com 225 (Jabalpur - Trib.)

**4.60. Conditions precedent** : In order to invoke provision of section 69, it is sine qua non that assessee must have made investments which are not recorded in books of account; if such an investment outside books is not proved, assessee cannot be called upon to prove source of such a hypothetical investment - **AnanthkrishnaVasudevAithal v. Income-tax Officer** - [2023] 147 taxmann.com 376 (Bangalore - Trib.)

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

**4.61. Gold** : Where assessee, engaged in business of gold jewellery, claimed that alleged unaccounted gold found during search proceedings was purchased by him and duly furnished documentary evidences in form of copy of tax invoice, ledger copies, bank statements, etc. and likewise, supplier had also confirmed fact of having supplied impugned gold to assessee, merely because supplier behind back of assessee stated that he physically handed over gold to assessee instead of courier, such documentary evidences could not be brushed aside and, therefore, impugned additions made on protective basis in hands of assessee under section 69A were to be deleted - **JaliluddinJummat Ali Shekh v. ACIT** - [2023] 148 taxmann.com 171 (Rajkot - Trib.)

**4.62. Cash deposit during demonetization period** : Where assessee in his return of income declared large sum of cash deposited in his bank account during demonetization period on pretext that said income was declared under Income Declaration Scheme, 2016, since no inquiry was made by Assessing Officer for ascertaining explanation as to source of said cash deposited by assessee and such pile up of cash for years was unreasonable and contrary to normal behaviour of a businessman, impugned invocation of revision proceeding by commissioner and remanding back matter to Assessing Officer for de novo considerations was justified - **Hemant Kumar Mulchandani v. Principal Commissioner of Income-tax** - [2023] 147 taxmann.com 282 (Jabalpur - Trib.)

**4.63. Cash** : Where cash withdrawn by assessee during demonetisation period from its bank account was deposited in very same bank account and both cash withdrawal and deposit were duly substantiated from bank statement of very same branch of bank and there was no findings by lower authorities that cash available with assessee was invested or utilised for any other purpose, cash so deposited could not be treated as unexplained money under section 69A - **AjitBapuSatam v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 222 (Mumbai - Trib.)

**4.64. Cash :** Where cash was deposited in bank account of a firm, during demonetisation period, wherein assessee was one of partner, since firm was a separate assessable entity, Assessing Officer was not justified in treating cash deposited as unexplained money of assessee partner under section 69A especially when nowhere in assessment of firm it was found that cash belonged to assessee - *AjitBapuSatam v. Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 222 (Mumbai - Trib.)

**Property :** Where during search upon a party, a draft deed for sale of property was recovered which showed cash receipt of Rs. 4 crores by assessee on sale of a property, since details like name of vendor, vendee, and amount of sale considerations, etc. matched with original sale deed executed by assessee, additions made to income of assessee based on said draft deed, was justified - *Deputy Commissioner of Income-tax v. Shivram Consultants India (P.) Ltd.* - [2023] 147 taxmann.com 457 (Delhi - Trib.)

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

**4.65. Illustrations :** Where based on incriminating material found in search, assessee filed details of unaccounted assets/liability/sales/capital and thereafter calculated cumulative value and offered undisclosed incomes to tax for assessment years 2012-13, 2013-14 and 2014-15 respectively, Assessing Officer was not justified in adopting different principle of taxing amount of undisclosed income for assessment year 2013-14 and making addition when he had not raised any doubt on various figures shown by assessee for undisclosed and unaccounted assets/liabilities/capital/sales or method of computation of undisclosed income for earlier assessment years - *Assistant Commissioner of Income-tax v. River Valley Flour Mills (P.) Ltd.* - [2023] 147 taxmann.com 566 (Patna - Trib.)

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

**4.66. Bogus purchases :** Where assessee, a rice trader, had duly substantiated purchases made by it by placing on record invoices of suppliers, bank statements of assessee showing payments made, confirmations of brokers, delivery of goods at CCI (a government body) and loading of goods into railway wagons for which bills had been issued by railways that were cleared by assessee, Assessing Officer was unjustified in holding said purchases as bogus - *Assistant Commissioner of Income-tax v. Sanjay Kumar Kochar* - [2023] 147 taxmann.com 446 (Raipur - Trib.)

#### SECTION 74 OF THE INCOME-TAX ACT, 1961 - LOSSES - UNDER HEAD 'CAPITAL GAINS'

**4.67. Income-tax return, filing of :** Where assessee filed her return electronically claiming carry forward of long-term capital loss and subsequently, she filed a revised return claiming said loss at a higher amount, merely because assessee did not furnish acknowledgement of return to CPC at material time but filed same later on with a request to condone delay, same would not invalidate said return and therefore, revised return filed subsequently, within stipulated period claiming loss at a higher level would be considered for carry forward to next year - *Anagha Vijay Deshmukh v. Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 477 (Pune - Trib.)

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

**4.68. Section 69A, application of :** Provisions of section 69A cannot be invoked in respect of incorrect claim of deduction under

section 80G - *BatukVithalabhai Donga v. Income-tax Officer* - [2023] 147 taxmann.com 480 (Rajkot - Trib.)

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

**4.69. Scope of provision :** Where assessee, a sugar mill, set up a power plant and claimed deduction under section 80-IA on profit derived from power generation captively consumed by sugar mill, as evidences adduced by assessee to this effect being boiler, operation sheet; urban working sheet; calculation sheet for power generated had not been denied by revenue, assessee was eligible for deduction under section 80-IA - *ACIT v. Mahakaushal Sugar & Power Industries Ltd.* - [2023] 147 taxmann.com 225 (Jabalpur - Trib.)

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

**4.70. Scope of provision :** Requirement of making a claim in return of income under section 80A(5) is directory in nature and, therefore, lower authorities were not justified in rejecting assessee's claim of deduction under section 80P only on ground that such a claim was not made in return but during course of assessment proceedings - *KrushivibhagKarmchariVrundSahakari Pat SansthaMaryadit v. Income-tax Officer* - [2023] 147 taxmann.com 449 (Nagpur - Trib.)

#### SECTION 80U OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS

**4.71. Where** Assessing Officer made disallowance of deduction claimed under section 80U (permanent disability) without discussing as to how case of assessee was covered by provisions of section 68 or 69, tax could not be imposed under section 155BBE - *BatukVithalabhai Donga v. Income-tax Officer* - [2023] 147 taxmann.com 480 (Rajkot - Trib.)

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

**4.72. Elimination of double taxation - Foreign tax credit :** Rule 128(9) of Rules does not provide for disallowance of Foreign Tax Credit (FTC) in case of delay in filing Form 67 and, therefore, filing of Form 67 is a directory requirement - *Purushothama Reddy Vankireddy v. ADIT (International Taxation)* - [2023] 147 taxmann.com 398 (Hyderabad - Trib.)

#### SECTION 92A OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - ASSOCIATE ENTERPRISE, MEANING OF

**4.73. Condition precedent :** Where assessee a wholly owned subsidiary of USL, pursuant to a share purchase agreement (SPA), sold shares of USL to Relay and later Relay in relevant assessment year further acquired shares of USL from unrealized parties which resulted in it having 26 per cent controlling stakes, assessee and Relay would be AEs as per section 92A(2) and impugned transaction was rightly put through test of benchmarking by TPO - *Palmer Investment Group Ltd. v. Deputy Commissioner of Income-tax, Circle-2(1)* - [2023] 148 taxmann.com 4 (Bengaluru - Trib.)

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

**4.74. Scope of provisions** :Reference made to TPO under clause (i) to section 92BA would not be valid in view of omission of clause (i) of section 92BA and, consequently, no transfer pricing adjustment should be made in respect of specified domestic transaction - *ALA Chemicals (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 475 (Mumbai - Trib.)

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

**4.75. Adjustment - Interest** : Where assessee inherited certain amount as part of merger and had advanced same as loan to its AE; since reflection of loan inherited was only a book entry and did not amount to an international transaction resulting in any benefit to assessee and as there was no realisable value for asset, no notional interest was chargeable on said loan - *Xchanging Solutions Ltd. v. Assessing Officer, National Faceless Assessment Centre, Delhi/Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 404 (Bangalore - Trib.)

**4.76. Comparables, functional similarity - Software consultancy/Development services** : High turnover is a ground for excluding companies as not comparable with a company that has low turnover - *Xchanging Solutions Ltd. v. Assessing Officer, National Faceless Assessment Centre, Delhi/Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 404 (Bangalore - Trib.)

**4.77. Comparables, functional similarity - Software consultancy/Development services** : Where assessee-company was engaged in providing software development services, a company providing software development service and also other allied services to various industrial segments, was incomparable to assessee - *Xchanging Solutions Ltd. v. Assessing Officer, National Faceless Assessment Centre, Delhi/Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 404 (Bangalore - Trib.)

**4.78. Adjustments - Working capital** : A company whose business activities fell within single primary business segment viz. software development was comparable for determination of ALP of assessee, a software development services provider - *Xchanging Solutions Ltd. v. Assessing Officer, National Faceless Assessment Centre, Delhi/Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 404 (Bangalore - Trib.)

**4.79. Comparability factors - Turnover filter** : If working capital adjustment cannot be allowed to profit margins, then comparable uncontrolled transactions chosen for purpose of comparison would be treated as not comparable in terms of rule 10B(3) and, therefore, working capital adjustment as claimed by assessee should be allowed - *Xchanging Solutions Ltd. v. Assessing Officer, National Faceless Assessment Centre, Delhi/Deputy Commissioner of Income-tax* - [2023] 147 taxmann.com 404 (Bangalore - Trib.)

**4.80. Comparability factors - Loss making company** :A company which was continuously incurring losses for three years could not be considered as a comparable - *Toyota Kirloskar Motor (P.) Ltd. v. ACIT, LTU* - [2023] 147 taxmann.com 558 (Bangalore - Trib.)

**4.81. Adjustments - Working capital adjustments** :Working capital adjustment should be provided for purpose of better

comparability - *Toyota Kirloskar Motor (P.) Ltd. v. ACIT, LTU* - [2023] 147 taxmann.com 558 (Bangalore - Trib.)

**4.82. Adjustments - Operating Profit/Cost, Computation of** : Where assessee was in asset-intensive industry of automobile manufacturing, where depreciation was a significant cost, which no prudent businessman would ignore while pricing a passenger car, in such an instance, when price was determined by considering depreciation cost, excluding depreciation from profits for comparison under TNMM would distort comparability analysis and, therefore, cash PLI or PBDIT (Profit before depreciation interest and tax) to sales was not appropriate PLI - *Toyota Kirloskar Motor (P.) Ltd. v. ACIT, LTU* - [2023] 147 taxmann.com 558 (Bangalore - Trib.)

**4.83. Transactions with AE alone are covered** :TP adjustment should be restricted only to AEs transactions only - *Toyota Kirloskar Motor (P.) Ltd. v. ACIT, LTU* - [2023] 147 taxmann.com 558 (Bangalore - Trib.)

**4.84. Adjustment - Aggregation of transactions** :No separate adjustment is required payment of royalty if TNMM approach has been adopted at entity level - *Toyota Kirloskar Motor (P.) Ltd. v. ACIT, LTU* - [2023] 147 taxmann.com 558 (Bangalore - Trib.)

**4.85. Comparability factors - RPT filter** :RPT ratio has to be calculated on an aggregate basis taking ratio of RPT income plus RPT expenses by sales across board for comparable companies - *Toyota Kirloskar Motor (P.) Ltd. v. ACIT, LTU* - [2023] 147 taxmann.com 558 (Bangalore - Trib.)

**4.86. Adjustments - Capacity utilization** :Where assessee had under-utilized its capacity during assessment year and was factually and legally eligible to an adjustment for same, such a benefit could not be denied to assessee only for reason that data about comparable companies was not available and TPO should collate same from comparable companies by exercising his powers under section 133(6) - *Toyota Kirloskar Motor (P.) Ltd. v. ACIT, LTU* - [2023] 147 taxmann.com 558 (Bangalore - Trib.)

**4.87. Adjustments - Aggregation of transactions** :Where each of machinery purchased by assessee from its AE was connected for purpose of operation of assessee-company, same could not be treated as independent transaction requiring separate benchmarking merely because invoices were raised separately or valuation by valuer was done separately - *Tessitura Monti India (P.) Ltd. v. Assistant Commissioner of Income-tax, (OSD)* - [2023] 147 taxmann.com 447 (Mumbai - Trib.)

**4.88. Methods for determination of - TNMM** : Where assessee-company purchased intermediate products from its Associated Enterprise and mean margins of comparable companies were less than margin earned by assessee (PBT/Sales), international transaction of assessee was at arm's length - *ACIT v. Nectar Life Sciences Ltd.* - [2023] 148 taxmann.com 95 (Chandigarh - Trib.)

**4.89. Adjustments - Capacity utilization adjustment** :Where capacity utilization had co-relation with profits earned by company since it lead to under-absorption of fixed cost and levels of working capital had impact on prices charged and profits earned by company, claim of adjustment in respect of capacity utilization and working capital levels should be considered after taking into account detailed working given by assessee - *Witzenmann India (P.) Ltd. v. Deputy*

**Commissioner of Income-tax - [2023] 148 taxmann.com 116 (Kolkata - Trib.)**

- 4.90. Methods for determination of - FAR analysis :** Where Indian branch performed **general** marketing, client relationship management, trading location and was engaged in carrying out function of actually executing and booking trades, since sales/marketing function and its activities could not be separated from other functions, all of which together were necessary elements for assessee to realise income on these transactions, TPO could not allocate entire 'market spread' to assessee's Indian branch without appreciating FAR of AE at trading location - **UBS AG v. Deputy Commissioner of Income-tax, (International Taxation) - [2023] 147 taxmann.com 593 (Mumbai - Trib.)**
- 4.91. Comparables, functional similarity - General :** Where before Commissioner (Appeals) assessee objected to a company being excluded from list of comparables to assessee-manufacturer while computing ALP but Commissioner (Appeals) had not made any observations on this issue on hand, matter was to be restored to file of Commissioner (Appeals) for adjudication on this aspect - **Deputy Commissioner of Income-tax v. GMM Pfaulder (P.) Ltd. - [2023] 147 taxmann.com 514 (Ahmedabad - Trib.)**
- 4.92. Adjustments - Interest :** Where assessee-company had advanced loan to its subsidiary and charged interest which was less by 25 bps vis-a-vis quotation from Citi bank which mentioned interest rate at Swiss LIBOR 150 bps, addition to be restricted to interest rate at Swiss LIBOR plus 150 basis points, equivalent to quotation obtained by assessee from Citi bank in respect of said loan - **Deputy Commissioner of Income-tax v. GMM Pfaulder (P.) Ltd. - [2023] 147 taxmann.com 514 (Ahmedabad - Trib.)**
- 4.93. Adjustments - Interest :** Where interest rate charged on loan advanced to AEs considering LIBOR + 300 bps was within +/- 5 per cent range applicable as per second proviso to section 92C(2), interest received from loan given to AE should be considered at arm's length price - **Sasken Technologies Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 562 (Bangalore - Trib.)**
- 4.94. Adjustments - Interest :** Where assessee-company had provided corporate guarantee to third party bank on behalf of its AE but failed to charge any fee for such guarantee on ground that said AEs were not benefitted by guarantee so given and it was assessee who benefitted, such commercial benefit should be benchmarked as international transaction adopting 0.5 per cent arm's length interest - **Sasken Technologies Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 562 (Bangalore - Trib.)**
- 4.95. Adjustments - Royalty :** Where no royalty was charged by assessee for use of its trademark and brand name by AEs on ground that those AEs were not financially benefitted from such use of trademark, TPO should not attribute any royalty to assessee without carrying out necessary verifications - **Sasken Technologies Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 562 (Bangalore - Trib.)**
- 4.96. Adjustments - Entity level v. transaction level :** Where TPO had considered entity level margins even though segmental details were provided to him by assessee company, matter should be remanded back to TPO - **Sasken Technologies Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 562 (Bangalore - Trib.)**

- 4.97. Adjustments - AMP expenses :** Adjustment made by TPO/DRP/Assessing Officer by applying BLT method on account of AMP expenses incurred by assessee in absence of any international transactions between assessee and AE was not sustainable in eyes of law - **Suzuki Motorcycles (1) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 302 (Delhi - Trib.)**
- 4.98. Adjustments - Export/domestic sale :** Where while applying internal TNMM for benchmarking international transactions of export of goods of assessee, TPO had compared OP/OC from total sales to non-AEs i.e., domestic sales as well as export sales, TPO/Assessing Officer was directed to recompute ALP of international transaction of export by taking OP/OC of export sales to non-AEs - **Lanxess India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 316 (Mumbai - Trib.)**
- 4.99. Passing of assessment order :** Re-characterization of income does not amount to variation of income under section 144C, hence, where Assessing Officer had only re-characterized income which was shown as royalty income by assessee and was taxed as 'business income' by Assessing Officer without there being any variation in income returned by assessee, Assessing Officer wrongly assumed jurisdiction under section 144C, and therefore, impugned orders were liable to be quashed as void ab initio - **Super Brands Ltd. (UK) v. ADIT - [2023] 147 taxmann.com 323 (Delhi - Trib.)**
- 4.100. Comparability factors - Turnover filter :** Where assessee entered into **international** transactions of software development segment (SWD) with its AE since turnover of assessee stood at Rs. 104 crores TPO while making transfer pricing adjustment should have considered upper **turnover** filter of Rs. 200 crores - **Motorola Mobility India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 444 (Bengaluru - Trib.)**
- 4.101. TP adjustment - AMP expenses :** Where TPO made transfer pricing adjustment in respect of advertisement and publicity expenses (AMP) by treating said expenses as a separate international transaction, since breakup of operating cost, clearly showed that operating expenses included AMP cost, no adjustment was required to be made towards AMP expenses and same couldnot be treated as a separate international transaction when TPO had not otherwise rejected margins of assessee in trading segment - **Motorola Mobility India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 444 (Bengaluru - Trib.)**
- 4.102. Comparables, functional similarity - Manufacturer :** A company having diversified business of supply of components to original equipment manufacturers (OEM) as well as aftermarket components, export sale, incurring of expenditure on R&D activities and presence of intangibles, could not be considered as a comparable to assessee engaged in business of manufacturing electrical components for two wheelers such as capacitor, Discharge Igniter CDI and Regular rectifiers and having only domestic sales in manufacturing segment - **Shindengen India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-6 (1)(1) - [2023] 148 taxmann.com 32 (Bangalore - Trib.)**
- 4.103. Adjustments - Interest :** Where assessee-company had kept export proceedings outstanding for similar period from non-AE and did not charge interest thereon, and had also not charged interest on similar period on overdue outstanding of AEs,



adjustment made by TPO towards notional interest on delay in export receivable was to be deleted - **S. Vinodkumar Diamonds (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 284 (Mumbai - Trib.)

**4.104. Adjustments - Others** :Where TP issues were identical and there was absolutely no change in business model of assessee during relevant year under consideration vis-à-vis subsequent financial years in which APA with CBDT had been entered into and complied with by assessee, then same APA should be applied to decide transfer pricing issue in relevant year - **Aker Powergas (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 253 (Mumbai - Trib.)

**4.105. Comparability factors - Government/public companies** : A company could not be excluded from list of comparable simply because it was Government company - **Astra Zeneca Pharma India Ltd. v. Deputy Commissioner of Income-tax, (LTU)** - [2023] 147 taxmann.com 479 (Bangalore - Trib.)

**4.106. Methods for determination of - FAR analysis** :Company excluded by TPO/DRP in previous assessment year on basis of its FAR analysis should also be excluded on account of same principle in current assessment year, only if FAR analysis in current year was similar to previous years - **Astra Zeneca Pharma India Ltd. v. Deputy Commissioner of Income-tax, (LTU)** - [2023] 147 taxmann.com 479 (Bangalore - Trib.)

**4.107. Adjustments - Reimbursement of expenses** :Where TPO held that assessee's international transaction relating to recovery of expenses was not at arm's length by regarding same as administrative support services and thereby making an adjustment, matter should be remanded back to examine said international transaction and role of assessee - **Astra Zeneca Pharma India Ltd. v. Deputy Commissioner of Income-tax, (LTU)** - [2023] 147 taxmann.com 479 (Bangalore - Trib.)

**4.108. Comparability factors - Exclusion/inclusion of comparable selected by assessee/revenue** : Where any company was included by TPO in list of comparable, then such company could not be excluded by DRP suo motu from list of comparables without giving proper notice to assessee - **Astra Zeneca Pharma India Ltd. v. Deputy Commissioner of Income-tax, (LTU)** - [2023] 147 taxmann.com 479 (Bangalore - Trib.)

**4.109. Comparability factors - Data in public domain** : Companies whose data is not available in public domain, could not be included in list of comparables - **Astra Zeneca Pharma India Ltd. v. Deputy Commissioner of Income-tax, (LTU)** - [2023] 147 taxmann.com 479 (Bangalore - Trib.)

**4.110. Adjustments - Guarantee commission** :Where TPO determined ALP of corporate guarantee fee at rate of 1.80 per cent, in view of Tribunal's decision in assessee's own case for preceding four assessment years TPO was to be directed to adopt corporate guarantee commission rate of 0.5 per cent - **Vivimed Labs Ltd. v. A.C.I.T. Central Circle 8(1) Hyderabad** - [2023] 147 taxmann.com 456 (Hyderabad - Trib.)

**4.111. Adjustments - Interest** :Where DRP directed TPO to impute interest on receivables after netting off payables following credit period mentioned in inter-company agreement with AEs or as per invoice period date applying SBI short term deposit rate, since Assessing Officer in final order had not followed directions of DRP, issue was to be remitted to Assessing

Officer - **Vivimed Labs Ltd. v. A.C.I.T. Central Circle 8(1) Hyderabad** - [2023] 147 taxmann.com 456 (Hyderabad - Trib.)

**4.112. Adjustments - AMP expenses** :Where TPO accepted overall margins earned by assessee in trading segment which included AMP expenses as operating cost, incurring of AMP expenses could not be treated as international transaction and no adjustment would be warranted separately for AMP expense - **Lenovo India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-4(1)(1)** - [2023] 148 taxmann.com 237 (Bangalore - Trib.)

**4.113. Adjustments - Entity level v. transaction level** :Transfer pricing adjustment is mandated in respect of international transaction entered with related parties i.e., AEs - **ALA Chemicals (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 475 (Mumbai - Trib.)

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

**4.114. General** : TPO cannot initiate any proceedings against assessee, after passing of final assessment order by Assessing Officer as reference made by Assessing Officer to TPO becomes infructuous after passing of final assessment order - **Witzenmann India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 387 (Kolkata - Trib.)

**4.115. DIN, mentioning of** : Transfer pricing order passed under section 92CA could not be said to have been issued in conformity with CBDT Circular No. 19/2019, if said order neither contained DIN in body of order, nor contained such fact in specific format that communication was issued manually without DIN after obtaining necessary approvals - **Intrado EC India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 147 taxmann.com 380 (Bangalore - Trib.)

#### SECTION 92CD OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - ADVANCE PRICING AGREEMENT, EFFECT OF

**4.116. Illustrations** : Where assessee-company was a contract manufacturer of shoes and as per Advance Pricing Agreement entered into by assessee with CBDT, for subsequent years, it had been agreed that ALP, in no case, would exceed 100 per cent of sale consideration receivable from ultimate customer, TPO was unjustified in proposing overall adjustment for three years exceeding 100 per cent of revenue ultimately realized by assessee group from ultimate customer - **Lotus Footwear Enterprises Ltd. v. Deputy Commissioner of Income-tax, International Taxation-1(2)** - [2023] 147 taxmann.com 290 (Chennai - Trib.)

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

**4.117. Financial corporation, in case of** : Section 115JB deals with only those companies which are registered under Companies Act and not deemed company as per provision of section 2(17) or 2(26) and, thus, assessee, a financial corporation could not be termed as a company within meaning of section 2(17) and consequently, section 115JB could not be made applicable to it - **Deputy Commissioner of Income-tax v. Rajasthan Financial Corporation** - [2023] 147 taxmann.com 525 (Jaipur - Trib.)

#### SECTION 142A OF THE INCOME-TAX ACT, 1961 - ESTIMATE BY VALUATION OFFICER IN CERTAIN CASES

**4.118. Scope of provision :** Where assessee purchased a ready built house, provisions of section 142A were not attracted - **AnanthkrishnaVasudevAithal v. Income-tax Officer - [2023] 147 taxmann.com 376 (Bangalore - Trib.)**

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

**4.119. Illustrations :** Where as per Form No. 26AS gross receipt of assessee, a C&F agent, was more than declared in account book and assessee submitted that clients had deducted TDS on total billed amount including reimbursement of expenses and difference was on account of reimbursement of expenses, Assessing Officer had erred in making addition towards difference in gross receipt as per Form No. 26AS and as per books of account of assessee - **Assistant Commissioner of Income-tax v. K M Trade Link - [2023] 147 taxmann.com 227 (Chennai - Trib.)**

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

**4.120. Draft assessment order :** Where Assessing Officer while passing draft assessment order issued notice of demand under section 156 and initiated penalty proceedings under section 271(1)(c), action of Assessing Officer was without jurisdiction and contrary to provisions of section 144C and therefore deserved to be quashed - **YCH Logistics (India) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 118 (Chennai - Trib.)**

**4.121. Period of limitation :** Sections 144C and 153 are mutually inclusive and not mutually exclusive as both contain provisions relating to section 92CA and are interdependent and overlapping and hence, period of limitation prescribed under section 153(2A) or 153(3) is applicable and when matters are remanded back irrespective of whether it is to Assessing Officer or TPO or DRP, duty is on Assessing Officer to pass orders - **Super Brands Ltd. (UK) v. ADIT - [2023] 147 taxmann.com 323 (Delhi - Trib.)**

**4.122. Draft assessment order :** Where assessee waived off option to file objections before DRP under section 144C, mandatory requirement of forwarding a draft assessment order could not be done away with - **Linc Pen & Plastics Ltd. v. Deputy Commissioner of Income-tax - [2023] 148 taxmann.com 273 (Kolkata - Trib.)**

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

**4.123. Conditions precedent :** Where deceased 'H' received commission for services rendered to two companies before his death and legal heir of 'H' claimed credit for tax deducted on said commission since impugned receipt of commission had not been declared in return filed by legal heir of 'H' (individual) for assessment year 2013-14, Assessing Officer would be directed to re-open assessment of late 'H' for assessment year 2013-14 to bring to tax impugned commission income and allow credit of TDS - **Hari Shankar Singhania Estate v. Joint Commissioner of Income-tax - [2023] 147 taxmann.com 448 (Delhi - Trib.)**

**4.124. Scope of provision :** Where assessee gifted certain amount to his wife who in turn deposited same with bank in her account and earned interest and assessee included interest earned from gifted amount in his income because of applicability of section 64, assessee was entitled to credit of tax deducted at source on interest earned from gifted amount - **Anil RatanlalBohora v. ACIT - [2023] 148 taxmann.com 15 (Pune - Trib.)**

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

**4.125. Illustrations :** Where tax had been deducted by employer from salary accrued to assessee but deductor-employer had not remitted amount after its deduction to Central Government, only course open to revenue was to recover same from very employer who had deducted TDS and not from assessee-employee - **Chandrashekhhar Sadashiv Potphode v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 260 (Pune - Trib.)**

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

**4.126. Illustrations :** Where gross receipts of assessee-builder and developer were more than Rs. one crore and it had not got its account audited as per section 44AB, levy of penalty under section 271B was justified - **Benchmark Realty LLP v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 391 (Pune - Trib.)**

**4.127. Illustrations :** Where assessee was trading in future and option transactions and Assessing Officer determined turnover from said transactions at Rs. 30.94 crores and levied penalty under section 271B on ground that assessee's turnover was beyond limit prescribed under section 44AB and he failed to submit audit report, since as per ICAI 'Guidance Note on Tax Audit' assessee's case did not fall under section 44AB, impugned penalty deserved to be deleted - **Sanjay MarotraoModak v. Deputy Commissioner of Income-tax - [2023] 147 taxmann.com 221 (Mumbai - Trib.)**

# Some Amendments made by the Finance Act, 2023

Adv. Narayan Jain & CA Dilip Loyalka

*The Finance Act, 2023 has made as many as 127 amendments relating to Income Tax. We are analysing some of the amendments in this article.*

**1. Exemption on LIC Receipts withdrawn if Premium exceeds Rs 5 lakhs. [Sec 10(10D) proviso 6 & 7, read with Sec 56(2)(xiii)]:** W.e.f. AY 2024-25 where any sum is received, including the amount allocated by way of bonus, at any time during the previous year, under a Life Insurance Policy/policies shall not qualify for exemption u/s 10(10D) if the aggregate premium paid in any year on such policy exceeds Rs 5 lakh. This provision shall apply to the policies which are taken or after 1<sup>st</sup> April, 2023. The receipts or policies taken before 1<sup>st</sup> April 2023 shall continue to be exempt. **While computing income for such policy the aggregate amount of premium paid on the policy shall be reduced from the total receipts. Sec 56(2)(xiii).** However, the sum received on the death of the insured shall not be taxed under section 10(10D). In this connection it may be mentioned that exemption u/s 10(10D) for ULIPs issued on or after 1<sup>st</sup> February 2021 where aggregate premium in any year exceeds Rs 2,50,000 was withdrawn by the Finance Act 2021 and is liable to be taxed under the head capital gain.

**2. SPECIAL AUDIT / INVENTORY VALUATION: AO is already empowered to direct for special audit u/s 142(2A).** W.e.f. AY 2023-24, **the AO has been further empowered to direct for inventory valuation in the course of any proceedings**, with the prior approval of PCCIT/CCIT/PCIT/CIT, during the course of any proceedings, AO may direct the assessee to get inventory valued by a cost accountant nominated by PCCIT/CCIT/PCIT/CIT. Such direction can be given after the assessee has been allowed a reasonable opportunity of being heard. Section 142(2D) provides that expenses of and incidental to such inventory valuation shall be determined by the PCCIT/CCIT/PCIT/CIT and shall be borne by the assessee. In case of default in payment of such expenses, the same shall be recoverable from the

assessee in the manner provided in Chapter XVII-D for the recovery of arrears of tax. It may be pointed out that the proviso to section 142(2D) provides that where any direction for audit or **for inventory valuation is issued by the A.O. on or after 1<sup>st</sup> June, 2007**, the expenses of, and incidental to, such inventory valuation (including remuneration of the cost accountant) shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines and that the expenses so determined shall be paid by the Central Government. The proviso still remains and not omitted. Further, the time taken for inventory valuation shall be excluded for computing time limit u/s 153 for the completion of assessment.

### 3. CAPITAL GAINS

**3.1 Consideration received to include receipt by way of cheque or draft or any other mode in case of Joint Development Agreement under Section 45(5A):** Under section 45(5A) the capital gain is taxable in the year in which competition certificate is received and for computing full value of consideration market value of the property increased by consideration received in cash is taken. However, interpretation was taken that the consideration received by way of cheque or draft or any other mode of payment will not be considered for computing full value of consideration. The Finance Act, 2023 has clarified that w.e.f. AY 2024-25 the receipts by way of cheque or draft or any other mode of payment shall also be considered for computing full value of consideration.

**3.2 Interest on house building loan allowed as deduction under section 24(b) or under chapter VIA not to be considered as cost of acquisition**

**or cost of improvement [Sec 48(ii) proviso]:** W.e.f. AY 2024-25 the cost of acquisition of the asset or the cost of improvement thereto shall not include the deductions claimed on the amount of interest under clause (b) of section 24 or under the provisions of Chapter VIA.

**3.3 Capital gain from Specified mutual fund or Market Linked debenture will be considered as Short-Term Capital Gain [Section 50AA]:** W.e.f. AY 2024-25 new section 50AA has been inserted which provides that where the capital asset is a Specified mutual fund or Market Linked Debenture, the full value of consideration received or accruing as a result of the transfer or redemption or maturity of such debenture as reduced by—

- (i) the cost of acquisition of the debenture; and
- (ii) the expenditure incurred wholly and exclusively in connection with such transfer or redemption or maturity,

- shall be deemed to be the capital gains arising from the transfer of a short-term capital asset irrespective of period of holding of debenture.

Further, no deduction shall be allowed in computing the income chargeable under the head “Capital gains” in respect of any sum paid on account of securities transaction tax

“Market Linked Debenture” means a security, by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to the market returns on other underlying securities or indices, and includes any security classified or regulated as a market linked debenture by the SEBI.

“Specified mutual fund” means a mutual fund by whatever name called, where not more than 35% of its total proceeds is invested in the equity shares of domestic companies.

**3.4 Exemption/deduction u/s 54 or 54F limited to 10 Crores [Third Proviso to Section 54(1), 54(2) and 2<sup>nd</sup> Proviso to Section 54F and 54F(2)]:** W.e.f. AY 2024-25 if an assessee for claiming deduction/exemption under section 54 of 54F

purchases or constructs a new house property for a consideration exceeding Rs 10 crores, the investment/consideration shall be deemed to be 10 crores. Similarly, the assessee can make a deposit of maximum Rs 10 Crores under Capital Gain Account Scheme.

**3.5 Cost of acquisition and cost of improvement of all intangible self-generated assets or any self-generated right shall be Nil [Section 55(1)(b)(1) and 55(2)(a)]:** W.e.f. AY 2024-25, the cost of acquisition or improvement of all self-generated intangible assets or any right shall be deemed to be nil. Prior to the amendment cost of acquisition or improvement of self-generated Goodwill, right to manufacture, produce or process any article or thing, right to carry any business or profession, tenancy rights, stage carrier permits or loom hours were deemed to be nil. However, sale of self-generated intangible assets or rights were not liable to capital gain in view of Supreme court decision of **CIT v. B C Srinivasa Setty 128 ITR 294 (SC)**.

**3.6 No capital gain on transfer of a capital asset being an interest in a JV, held by a public sector company, in exchange of shares of a company incorporated outside India by a foreign government, in accordance with laws of that foreign government – Section 47(xx):** W.e.f. AY 2023-24, the capital gain arising from transfer of a capital asset being an interest in a Joint Venture (JV), held by a public sector company, in exchange of shares of a company incorporated outside India by a foreign government shall not be chargeable to tax as the exchange of shares shall not be considered as transfer. Further the cost of acquisition of such shares shall be deemed to be cost of acquisition of the interest in JV.

The amendment is likely to benefit ONGC Videsh Limited (OVL) whose interest in JV in Russia having production sharing agreement with Russian Government in respect of certain oil fields was recently swapped with shares of new Russian company in accordance with decree issued by the Russian President. The swap was

made to address difficulties arising out of existing operator being unable to operate the oilfields due to sanctions on Russia after outbreak of war with Ukraine.

#### 4. REASSESSMENT

**4.1 Period of 3 months provided to file return under sec 148:** W.e.f. 1.4.2023, a return in response to a notice under section 148 is to be furnished within three months from the end of the month in which such notice is issued, or within such further time as may be allowed by the Assessing Officer on a request made in this behalf by the assessee. In case the assessee furnishes the return of income beyond the time allowed, it shall not be treated as a return under sec. 139 and as such notice under sec 143(2) will not be required to be issued in such cases.

**4.2 For search or survey conducted after 15 March of a financial year, 15 days grace period allowed for issuing notice under sec. 148 or 148A(b) – sec. 149 :** Where a search under sec. 132 is initiated or last of the authorisation is executed or requisition made under sec. 132A after 15 March of a financial year, and the period for issue of notice u/s 148 expires on 31 March of such financial year, a period of 15 days shall be excluded for the purpose of computing the period of limitation and the notice issued u/s 148 in such case shall be deemed to have been issued on 31 March of such financial year. That means in such a case, the notice under sec. 148 may be issued by 15 April and it shall be deemed to have been issued on 31 March where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, on or before 31 March of a financial year, in consequence of a search under sec. 132 which is initiated or a search under sec 132 for which last of authorisation is executed or requisition made under sec 132A, after 15 March of a financial year, the notice under sec 148A(b) may be issued by 15 April and it shall be deemed to have been issued on 31 March.

**4.5 CCIT or DGIT can grant approval for the purpose of sec 148 or sec 148A even if Pr CCIT or Pr DGIT exists [sec 151]:** W.e.f. 1.4.2023, Pr CCIT, Pr DGIT, CCIT and DGIT are specified authorities for granting approval for issuing of notices or passing of order under sec. 148A(b), 148A(d) or sec 148 where notice is issued after the expiry of 3 years from the end of relevant assessment year. Prior to the amendment Pr DGIT, Pr CCIT were the specified authorities. CCIT or DGIT were specified authorities where Pr DGIT, Pr CCIT did not exist. For computing the period of 3 years, the period for which the time limit has been extended under third, fourth, fifth proviso or extended by sixth proviso to sec 149(1) shall be excluded.

**5. Time limit for completion of assessment or reassessment including assessment in case of updated return raised to 12 months from 9 months [Sec 153(1)/(3)/(3A)/(5)/(6)]:** The time limit for completion of assessment for the assessment year 2022-23 or any subsequent year shall be 12 months from the end of the relevant assessment year in which the income is first assessable (For the assessment year 2021-22, the time limit for completion of assessment was 9 months).

W.e.f. 01-04-2023 The time limit for completion of assessment u/s 143 or sec. 144 in case of an updated return u/s 139(8A) shall expire on the end of 12 months from the end of the financial year in which updated return is furnished. Prior to the amendment time limit was 9 months from the end of the financial year in which updated return was furnished.

W.e.f.01-04-2023 Section 153(3A) has been inserted which provides that if an assessment/reassessment/or an assessment of updated return is pending on the date of initiation of search under section 132 or making of requisition under section 132A then the time limit for completion of such assessment/reassessment or an assessment of an updated return shall be extended by 12 months.

W.e.f. 01-04-2023 the time limit prescribed for competition of order in pursuance of an order of CIT/PCIT passed u/s 263/264, shall also apply for passing order in pursuance of order passed by Pr CCIT/CCIT u/s 263 or 264.

## **6. NEW TAX REGIME HAS BECOME “DEFAULT REGIME” [Section 115BAC(6)]**

**6.1 New Tax Regime now default Tax Regime:** W.e.f. AY 2024-25, the alternative tax regime u/s 115BAC has been made the default tax regime for an individual/HUF/AOP/BOI/artificial juridical person. However in case there is no income from Business or profession, the option can be exercised to change from one Regime to another Regime. [Prior to the amendment, from AY 2021-22 to AY 2023-24, the regular tax regime was the default regime while an assessee has an option to opt for alternative tax regime].

**6.2 Standard deduction from salary u/s 16(ia), Deduction from family pension u/s 57(ia) and Employer’s contribution to Agniveer Corpus Fund u/s 80CCH(2) shall now be available under new tax regime also [Section 115BAC(1A)]:** W.e.f. AY 2024-25, standard deduction from salary u/s 16(ia), standard deduction from family pension u/s 57(ia) and employer’s (Central Government) contribution to Agniveer Corpus Fund u/s 80CCH(2) shall be available as deduction from gross total income under new tax regime. Deduction u/s 80CCD(2) and Section 80JJAA shall continue to be allowed.

## **7. SEARCH & SEIZURE**

**7.1 Search officer can now take assistance of any person or entity approved by the Principal Chief Commissioner or the Chief**

**Commissioner or the Principal Director General or the Director General [Section 132(2)]:** Prior to the amendment, authorised officer in the course of search was entitled to take assistance of any police officer or any officer of the Central Government or both. However, w.e.f. 01.04.2023 search officer can also take assistance of any person or entity like digital forensic professionals, valuers, archive experts, locksmith, carpenters etc. during the search with the approval of Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General.

**7.2 Search officer can now take assistance of any person or entity or any registered valuer approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General [Section 132(9D)]:** W.e.f. 01.04.2023, search officer can also take assistance of any person or entity or a valuer registered by or under any law, during the search or within sixty days from the date on which the last of the authorisations for search was executed with the approval of Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General. Prior to the amendment, authorised officer was entitled to take assistance of a Valuation officer referred to Section 142A.

*(Adv. Narayan Jain and CA Dilip Loyalka are authors of the famous books “How to Handle Income Tax Problems” and “Income Tax Pleading & Practice”. They are also members of AIFTP as well as DTPA)*

# Possible Thoughts To Test Vires/constitutional Validity of explanation To Sec. 147 (under Old Law Expl. III To Sec. 147) In Light of Revenue Practise To Issue Open /endless Questionnaire to assessee That Too without Foundation Being First Positively confirmed By objective adjudication

(DELIMMA AND ENIGMA OF SEC147 IS DENOVO ASST?)

Adv. Kapil Goel & Adv. Sandeep Goel

## 1. Background/Preface

It is well known that once a case gets reopened on a limited issue whose veracity is still subject matter of the ongoing adjudication, it is a common tendency on part of revenue to issue GENERAL QUESTIONNAIRE as if said assessment is a DENOVO (FRESH/SCRUTINY/REGULAR) assessment and thus making roving and fishing expedition. It is really matter of concern that when reopening itself is to be founded on basis of clear / valid existing / surviving grounds (referses. 148 read with sec. 148A), how far can assessing officers issue such blanket question naire asking every small financial detail *dehors* subject matter of reopening as cabined in order passed u/s 148A of 1961 Act. The pain gets compounded as one stage same revenue when assessee challenges the subjective satisfaction of concerned assessing officer as contained in order u/s 148A(d), vide judicial review under writ petition under art.

226/227 of constitution of India then it is argued by revenue that since said order u/s 148A is in nature of so called *interlocutory/interim* order so revenue thus pleads for *in limine* is missal of writs of assessee against order u/s 148A(d) on this ground and with respect various hon'ble

high court (in authors opinion incorrectly though) has accepted this preliminary objection of revenue to throw writ of assessee at outset where as on the other hand revenue with all due respect making fun of entire newscheme of income escaping assessment , without first lawfully in objective and fair manner passing jurisdictional threshold on veracity of charge of income escaping assessment as state din order u/s 148 A is issuing in bulk and whole sale manner general questionnaire which is total abuse of law to say the least. Unfortunately this latest trend of revenue to use sec. 147/148 in such unlawful and unauthorized manner by issuing such general questionnaire , has not been directly brought before constitutional courts (HC/SC) in authors opinion in present article some little attempt is made to understand as to how at various stages the Hon'ble Courts have opined on scope of reopening /reassessment whether it is DENOVO assessment or not? as treated by revenue in ongoing sec. 147 assessments. *In this hue further attempt is made to understand how far constitutional validity of disputed explanation to sec. 147 can be tested in constitutional courts being apparently manifestly arbitrary and disproportionate.*

2. Position under old law (prior to 1.4.2021) under explanation 3 to Sec. 147 and relevant judicial pronouncements thereon

*Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.*

This explanation 3 was inserted in income tax act by Finance No. 2 2009 with retrospective effect from AY 1989 -90 and subsequent years which is explained in CBDT explanatory **Circular no. 05/2010** (para 47.1 to 47.4 : crux : “47.3 Therefore, to articulate the legislative intention clearly Explanation 3- has been inserted in section 147 to provide that the assessing officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.”). This legislative intent, when seen in broader framework of the whole concept of income escaping assessment u/s 147, in holistic and unbiased manner, it would immediately clarify that this part of extension of sec. 147 proceedings, no where militate from the basic / ground norm position that if foundation of reopening is self found lacking then revenue cannot take recourse of this explanation to make good its case as it is saying that even if sec. 147 proceedings falter / fails on foundational aspects still revenue be permitted to examine unrelated / unconnected issues, same with respect is an argument which could make the entire process of sec. 147 arbitrary and unbridled falling foul of test of article 14 of constitution of India. How an explanation needs to be interpreted is well settled by Constitution bench locus classicus decision in case of

*Sundaram Pillai vs Pattabiraman 1985 1 SCC 591 (further followed by SC in 406 ITR 209) (crux of Pillai decision on scope of explanation : that the object of an Explanation to a statutory provision is— “(a) to explain the meaning and intendment of the Act itself, (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve, (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful, (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”)* Recently Calcutta high court in case of B. P. Poddar Foundation order dated 13.09.2022 by Justice T. S. Sivagnanam (2022 SCC online Cal 2720) has held that once foundation for reassessment proceedings that is valid notice u/s 148 is missing and lacking for want of additions on issues subject matter of reasons then edifice / foundation collapse. *Same is the view of Gujarat high court in recent decision in case of Mayur Dyechem Intermediaries Ltd vs DCIT Circle 2(1)(1) Ahmedabad Special Civil Application 18206/2021 order dated 28 sep. 2022 .Same effect is recent Allahabad high court landmark decision in S.R. Cold Storage vs UOI reported at 2022 SCC online All 550. Same is Calcutta high court decision in case of Excel Commodity & Derivative Pvt Vs UOI in APT /132/2022 order dated 29 august 2022.* So revenue authorities should not cross this statutory and legal AKSHMAN REKHA as adumbrated in litany of judicial pronouncements. *The doctrine of subla to*



***fundam to caditopus (when foundation fails super structure falls) also applies here – reference can be made to leading SC decision in case of State of Punjab v. Davinder Pal Singh Bhullar reported in (2011) 14 SCC 770, Para 107, wherein it has been held as under: “107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim subla to fundamen to cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case”.***

Unfortunately CBDT (apex board ) under income tax act, in authors humble understanding, has never issued any objective and balanced SOP/guidelines on this extant/serious issue of *legitimate /permissible scope & approach of assessing authorities, before they enter in to making roving and fishing inquiries in unrelated / unconnected issues. This aspect UNFORTUNATELY, continues to be hotly litigated and tax payer remains harassed /victimized , as usual with no control on assessing officers as assessee is some how harassed to reply such type of unauthorized roving/fishing inquiries. It may be apt of Quote from Madras high court illuminating words by Justice V. Ramasubramanian, J. as his lordship then was in case of PVP Ventures Limited (writ appeal 1171 & 1172 /2015 order dated 12.10.2015)*

*“31. Sub-Sections (1) and (2) of Section 148 and Explanation 3 under Section 147 contemplate two entry points or two gate ways. The first entry point or the outer gate is the formation of an opinion that there was some income, which escaped assessment and which is reflected in the reasons recorded under Section 148(2). The Assessing Officer will be permitted entry through this outer gate only if he satisfies three criteria namely (i) the existence of a reason to believe that an income chargeable to tax has escaped assessment (ii) the recording of reasons under Section 148(2) and (iii) the issuing of*

*notice under Section 148(1). Once the Assessing Officer satisfies these three criteria, he is allowed entry through the outer gate or the first check-post. The moment he has gained entry lawfully through the first check-post, the proceedings for reassessment begin. In the course of those proceedings, if issues other than those, which triggered the formation of his opinion under Section 147, come to his notice, he would be permitted, by virtue of Explanation 3, to gain entry into all other check-posts located within the prohibited area. Therefore, Explanation 3 comes into play only after the Assessing Officer gain entry through the first door. If the Assessing*

*Officer is imagined to be an air passenger, travelling by flight to another destination, his reason to believe, his recording of reasons and the issuance of notice can be compared to a valid ticket that he holds. Only if he holds such a valid ticket, he will be permitted entry into the airport. After gaining entry into the airport, he may also be permitted to visit restaurants, duty-free shops etc., before boarding the flight. His access to the facilities inside the airport is dependent upon his right of entry into the airport. This is how Sub-Sections (1) and (2) of Section 148 and Explanation 3 to Section 147 have to be understood.” Though in this very judgment the court has highlighted on explanation 3 itself that: “28. A careful perusal of the Explanation extracted above would show that the Assessing Officer is given liberty to assess or reassess the income in respect of any issue that comes to his notice subsequently in the course of the proceedings under Section 147, even if the reasons for such issue have not been included in the proceedings under Section 148(2). Two sets of words found in Explanation 3 are of importance. The word "subsequently" and the words "in the course of proceedings" clearly indicate that an issue other than the one mentioned in the order under Section 148 (2) should have come to his notice, after the recording of reasons. It should have come to*

**his notice "in the course of proceedings"** In authors humble opinion this two paragraph need coalesced and collectively reading. As very succinctly highlighted the words **"subsequently" and "in course of proceedings"** are too important to be overlooked as it is settled law that legislature never uses any phrase in meaningless manner. This is second part of the misuse of provision of explanation to sec. 147 **where without anything subsequently coming to notice of concerned assessing officer in course of proceedings**, roving and fishing inquiries are made by issuing general / blanket questionnaire, to ferret very thing from assessee and then **without keeping in mind the statutory Lakshman Rekha as to whether said issue/information etc , was already in full knowledge of revenue prior to going sec. 148 proceedings being started.**

Some other decisions notable in this regard on restricted and limited scope of explanation III to sec 147 are :

- a) Delhi high court in case of Ranbaxy 336 ITR 136
- b) Mumbai bench ITAT in Juliet Industries Ltd ITA 5452/Mum/2016 order dated 04 April 2018
- c) Delhi bench ITAT in Devki Nandan Bindal ITA No. 4271/D/19 dated 18/12/2019
- d) Delhi bench ITAT decision in case of INS Finance & Investment P. Ltd IN I.T.A. No.9266/DEL/2019 Assessment Year 2010-11 Date of pronouncement: 26102020

**2. Serious is sueson operational scope of explanation 3 to sec. 147 (old law):**

Can revenue without *first* discharging its onus that they got valid "subsequent" information in course of subject sec. 147 /148 proceedings showing prima facie income escaping assessment can revenue go on to make **WILD GOOSE CHASE?** In authors humble opinion answer should be no. Reference is made to Allahabad high court detailed and lesser seen decision in case of : *Dr. Shiva Kant Mishra vs Commissioner of Income Tax on 9 July, 2015 (380 ITR 257)*. In authors humble opinion it has never been the legislative intent to confer such a

*bitrary power* son concerned assessing officers so as permit revenue to use sec. 147/148 as normal / *scrutiny assessment provisions*, and thus permitting misuse and abuse of the extraordinary / exceptional / draconian proceedings u/s 147 of the 1961 Act. That is could ever legislature intended that in garb of making such roving and fishing inquiries permission is given to covert sec. 147/148 (income escaping assessment) to scrutiny and regular assessment u/s 143(3).? In authors humble opinion answer should be no. It is paradoxical to juxtapose that in limited scrutiny cases CBDT has been *very strict on scope of even limited scrutiny assessment u/s 143(3) to confine to reason of limited scrutiny and strict procedure is prescribed to be followed for converting it to comprehensive scrutiny (refer CBDT instruction dated 29.12.2015 (No.20/2015) & Instruction no 5/2016) and here u/s 147/148 which are extra ordinary proceedings (disturbing finality to concluded assessment) then how can such anomalous and in congruous position be allowed to perpetuate u/s 147, by indirectly allowing sec.*

*147/148 to become scrutiny assessment in DISGUISE.*

**3. Constitutional challenge to explanation 3 to sec. 147 (still a open question)**

In this light one needs to test the constitutional validity of then explanation 3 to sec. 147 (now sole explanation to sec. 147) how far same is constitutionally valid specially under article 14 of constitution of india (test of manifest arbitrariness) –reference can be made to **Hon'ble SC three judge bench ruling in case of DCIT vs Pepsi Foods Ltd 433 ITR 295 (income tax law decision : on stay period before ITAT: 3<sup>rd</sup> proviso – sec 254(2A): On article 14 manifest arbitrariness test: Held applies to procedural and substantive law both -reference made to 5 Judge bench locus classicus on Shayara Bano case 2017 9 SCC 1) & recent decision under benami law in case of Ganpati Dealcom reported at 447 ITR 108 and Three**

**Judgebench Hon'ble SC ruling in case of Tamil Nadu marketing corporation ltd vs UOI2020 SCC online SC 953.** One may further gainfully refer to erudite and pointed views of Sh Arvind Datar legal luminary in book on "The Law and Practice of Income Tax by Kanga and Palkivala" on constitutionally vulnerable aspect of explanation 3 to sec. 147.

#### 4. Sole (*parimateria*) Explanation to sec. 147 (new law)

Once explanation 3 to sec. 147 of old law is traversed, it is important to juxtapose it with explanation in new sec. 147 (which is broadly same as its predecessor).

*Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.]*

From above, following striking features of the said EXPLANATION flashes:

- a) It is for sec. 147 only;
- b) It is giving power to concerned Assessing officer;
- c) It is discretion ary in nature (*MAY* word is used);
- d) It is "in respect of any issue" on which income has escaped assessment";
- e) It is joined by phrase "AND"
- f) It further mandates "such issue comes to his notice subsequently in the course of the proceedings under this section"

So viewed the discuss made on explanation 3 to sec 147 above should *mutatis mutandis* / suitably apply to present explanation to sec. 147 also. In nuce, when two essential pre requisites are fulfilled a) one escapement of income on the very issue must be first established before asking assessee's explanation and b) SUBSEQUENT coming to notice in course of

proceedings u/s 147 . If any of this is not fulfilled then recourse to said explanation could not be made. ***And this explanation cannot whittle down the indispensable overriding requirement of positive existence of income escaping assessment on foundational issue on which jurisdiction u/s 148 is assumed.***

For meaning of word ISSUE under explanation to sec 147 : it may be interpreted as : ***The point in question, at the conclusion of the pleadings between contending parties in an action, when one side affirms and the other denies. [Whart.]***

5. To maintain balance of equity when revenue seeks to apply explanation to sec. 147 there must be *fairness* to tax payer so that he can lawfully defend/contest the very applicability of said explanation on jurisdictional points in light of spirit of SC dictum in GKN Driveshaft case 259 ITR 19.
6. In authors humble opinion, there can be valid JUDICIAL review of discretion exercise vide explanation to sec. 147 (***on well settled parameters of: wednesbury reasonableness; illegality; irrationality and procedural impropriety***). (refer three judge bench decision of SC in case of Mohd Mustafa vs UOI in 2022 1 SCC 294 by Justice L. Nageswara Rao).

***This can be achieved in writ petition also (under article 226) specially writ of certiorari/ mandamus apart from regular /statutory appeal under sec 246A/ 253 / 260A before CIT/ ITAT/ HC.***

*As it is broadly submitting a question of law and jurisdictional issue same can be raised at any stage (refer SC in Karan Singh vs Chaman Paswan 1955 1 SCR 117 (4 judge bench) & Raza Textiles Ltd. vs. Income Tax*

*Officer, reported in (1973) 1 SCC 633/87 ITR 539). Jurisdiction can not be conferred by consent and waiver.*

7. Requirement for strictful fillment of conditions under explanation to sec 147 is fortified from article 265 of Indian constitution and SCC on stitutionbench (5 judge) decisionincase of Commissioner of Customsvs Dilip Kumar2018 9 SCC 1. Further veryimportant and off quoted passage of important rule of interpretation can be found in : leading case of : **Reserve Bank of India vs Peerless General Finance & Investment Co. Ltd. 1987 1 SCC 414**

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then Section by section, Clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of it senactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear if ferent than when the statute is looked at without the glasses provided by the context. With the seglasses we must lookat the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

8. Concluding remarks : Since there is growing recognition of need of accountability on part of tax / revenue officials, incases where apparenthar assment is made to tax payer like by misuse of explanation to sec. 147 asking /giving routine / general questionnaire etc in authors humble opinion, one need to follow sage words of SC inone of recent verdict (On need to fix accountability on errant officials): Vijay Rajmohanvs State 2022 SCC online SC1377:

*“33. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge 34. The principle of accountability is considered as a corner stone of the human rights framework. It is a crucial feature that must govern the relationship between “duty bearers” in authority and “right holders” affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 201530 and is also recognized as one of the six principles of the Citizens Charter Movement31. 35. Accountability has three essential constituent dimensions. (i) responsibility, (ii) answerability and (iii) enforceability. Responsibility requires the identification of duties and performance obligations of individuals in authority and with authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to betaken32. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.”*

**WISH & PRAY : ABOVE CHASTE WORDS ARE FOLLOWED ON GROUNDLEVEL IN TAX ADMINISTRATION**

# PE Passive Income Taxation: Force of Attraction

Piyush Baid

B.COM (HONS), FCCA, ACI Arb, MCSI, ADIT, FCTPr. CertBV

The force of attraction principle has been a hotly debated point in taxation with the usual suspects fighting bitter battles all over the place to protect their rights<sup>1</sup>. Apart from surrounding theory, the force of attraction principle in International Taxation essentially means to imply that the Income Tax department will try to club all types of indirect revenue accruing to a foreign organisation to its PE and tax it at a higher rate of 40%.

This essay would attempt to cover aspects of PE Passive Income taxation under various heads, with reference to the OECD and UN model conventions. Discussions on the US convention have not been made owing to the reason that for India it's just one country and also within the limitations of the paper the same wouldn't have been possible.

An important consideration for the allocation of taxing rights to a PE is the effective economic considerations as outlined<sup>2</sup> in OECD report on Attribution of Profits to Permanent Establishments 2008. Economic ownership would be a key determinant to determine income which might be effectively connected to a Permanent Establishment.

Article 7(1) of the United Nations Model Convention provides a more comprehensive outlook towards FOA, as opposed to the more limited US and OECD models. The additional FOA<sup>3</sup> considered under the United Nations Models are

- 1) Sales in that other State of Goods or merchandise of the same or similar kind as those sold through that permanent establishment.
- 2) Other business activities carried on in that other state of the same or similar kind as those

effected through the permanent Establishment.

On the face of it the UN Model appears to make the additional criteria so as to make the profits of MNE's of developed countries attributed to PE's, more susceptible to taxation in source states. In a way applying the effect of the OECD Report on Attribution of Profits to PE's.

India's position on the OECD MC Article 7 is a bit different<sup>4</sup>, in that it has not agreed to changes in mentioned articles and the commentaries in its absolute and also the changes brought into the 2010 version of the Model by the OECD report on Attribution of Profits to Permanent Establishments 2008.

## Model Frameworks

Attribution of Passive Income to Permanent Establishments are more or less treated under the following articles under the most popular model conventions:

Item	OECD Model Convention 2017	UN Model Convention 2017
Dividend	10(4)	10(5),10(4)
Interest	11(4)	11(4)
Royalty	12(3)	12(5)
Other Income	21(2)	21(2)

## Dividends

While a proper exhaustive definition of dividends is not possible<sup>5</sup>, it is also possible that interest payments could be regarded as dividends provided that they become to be associated with the risks attached<sup>6</sup>. With regards to dividends the standard rule is that taxes are shared<sup>7</sup>. The state of source has been given a limited jurisdiction to tax, while the state of residence is the ultimate jurisdiction to tax<sup>8</sup>, however, this guideline

changes when we consider the holding to be an economic part and parcel of a Permanent Establishment. This is of course subject to jurisdictional CFC and look through guidelines, and also to whether the contracting states apply the classical or split rate or imputation taxation systems to dividends<sup>9</sup>.

Dividends by their very nature are a reward for shareholding of a legal entity, which brings us to the paradox as of a PE being a economic and functional entity. A careful perusal of the article 10(4) of all the three major models, would corroborate that there is no element of a FOA within the article. It merely states that in the state of source, the dividends are taxable as a part of the profits of the permanent establishment in the source state owned by the beneficiary of the resident state<sup>10</sup>, if they are in respect of holdings forming part of the permanent establishment or otherwise economically or functionally connected to the PE<sup>11</sup>. Pertinently, the commentaries are silent on the anti-abuse holding threshold of 12 months in the case of an overriding effect by Article 7. Again what is effectively connected is further discussed in para 32.1 of the Commentary to Article 10 of the OECD Model, wherein “*A holding in respect of which dividends, are paid, will be effectively connected with a permanent establishment, and will therefore form part of its business assets, if the “economic” ownership of the holding is allocated to that permanent establishment under the principles developed in the Committee’s report entitled Attribution of Profits to Permanent Establishments*”<sup>12</sup>. However, this has to be read in conjunction with Article 24 Non – Discrimination, and a more similar proposition enshrined u/s 90 of our Income Tax Act. As always, thin capitalisation rules would be an important determinant of functional characterisation between debt and equity.

### Interest

Covered by Article 11, there is a difference between the OECD and UN model conventions, in while the OECD model convention limits

withholding and taxes in the source state at 10% the UN model expressly mentions that the cap or rate would be decided via bilateral negotiations. Under the US Convention this is restricted to 15%, in case the beneficial owner of the interest is a resident of the United States, furthermore, Interest is also subject to Limitation of Benefits under Article 22. Interestingly, the Andean convention provides for source taxation of interest under Article 10. In the EU the Interest and Royalty directive would apply. It’s also interesting to note that the OECD convention (which is inherently biased towards developed and industrialised economies) advocates for no taxation at source for Article 11 (Para 7.12 of the OECD model commentary).

The UN Commentary however, is more exhaustive and still has the Article for Personal Services (Art 14), as a result of that Article 11(4) still uses the term fixed base in addition to permanent establishment. Moreover, unlike the OECD MC Commentary, the UN Model by way of usage of a limited force of attraction principle, defines interest income that may be taxed as business profits.<sup>13</sup>

It might also be noted that a conjoint reading of Articles 7(1) and Article 11(4) of the OECD and UN Model conventions would provide that interest income attributable to a PE wouldn’t be subject to any thresholds as contemplated by Article 11(1). The effect would be that the state would be (subject to domestic law) exercising unlimited taxation. This again is subject to Anti-Discrimination enshrined in Article 24. India on its part has reserved the position that interest on credit sales should be taxed as interest.

### Royalty

As with the earlier two items, the OECD Model commentary explicitly mentions that there is no force of attraction for royalties received by PE<sup>14</sup>. The commentary clearly states that “*It does not stipulate that royalties arising to a resident of a Contracting State from a source situated in the other State must, by a kind of legal presumption,*

or fiction even, be related to a permanent establishment which that resident may have in the latter State, so that the said State would not be obliged to limit its taxation in such a case. The paragraph merely provides that in the State of source the royalties are taxable as part of the profits of the permanent establishment there owned by the beneficiary which is a resident of the other State, if they are paid in respect of rights or property forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment.”<sup>15</sup> Thus if taxed under business profits then the source state is effectively relieved of any limits on taxation that might be imposed. Connection will be effective based on economic ownership of the asset as opposed to the legal structure.<sup>16</sup> The UN model uses a fixed base in addition to Permanent Establishment for congruence with the Article on Personal Services<sup>17</sup>. India has on its part reserved its right to tax royalties in its source.<sup>18</sup> Furthermore, the UN Model Convention Commentary states that *“This paragraph, which provides that royalties are considered income from sources in the residence country of the payer of the royalties, is an innovation of the United Nations Model Convention, not found in the Article 12 of the OECD Model Convention”*<sup>19</sup>

### Other Income

While the model commentaries are silent on the applicability of the force of attraction principle, nonetheless, the income has to be effectively connected to a PE<sup>20</sup>. The OECD Model prescribes exclusive taxing rights to the residence state,<sup>21</sup> however there is an exception provided in Article 21(2) which effectively provides for taxation in source states in case the income is attributed to a PE<sup>22</sup>. However, the same shouldn't be made applicable to a immoveable property which is the exclusive domain of Article 6.<sup>23</sup> An important tie-breaker is witnessed in Para 5 of the OECD Model Commentary as made out in the 2017 amendment. As in other cases the UN Model convention uses the term fixed base in addition to a permanent

establishment to confirm to its article on Independent Personal Services. Furthermore, the commentary to the UN Model convention specifically recommends anti-abuse measures in case the article is abused against the purposes of the relevant DTAA.<sup>24</sup>

### Indian Tax Jurisprudence

While Indian Tax authorities as usual have been very enterprising in order to bring whatever possible to Indian Tax ambit, it is the higher officials or authorities who have provided with a safety net to the assessee. Whether it be the Vodafone case, the Cairn case or the Sanofi Case or the Sumitomo case, the tribunals especially have gone to vast lengths to interpret the law in the correct manner in situations where there was a lot of ambiguity especially in matters of International Taxation.

For income to be attributable to a PE it has to be “effectively connected” to a PE. What could be an effective connection has been the subject of many a landmark rulings by the judiciary :

1. Whether interest on income tax refund is not effectively connected with PE either on basis of asset-test or activity-test and hence, it is taxable as per provisions in Para No . 2 of article XI of Indo-US DTAA - Held, yes - *Transocean Offshore International Ventures Ltd.* [2022] 136 taxmann.com 351 (Delhi - Trib.)/[2022] 194 ITD 129 (Delhi - Trib.)[28-01-2022]
2. Mere presence of PE in India will not trigger higher rate of tax under Article 7(1) on interest received by Japanese co. from Indian customer *Deputy Commissioner of Income-tax, International Taxation, Circle 3(2)(1), Mumbai v. Marubeni Corporation* [2022] 139 taxmann.com 367 (Mumbai - Trib.)[17-06-2022]
3. Where Singapore based MasterCard Asia Pacific, incorporates an Indian subsidiary which owns and maintains MasterCard Interface Processor placed at customers' locations in India for processing of electronic payment transactions

using MasterCard's global network and infrastructure, part of fees received/to be received by applicant from Indian Customers would be classified as royalty; however, since it is effectively connected to PE, it would be taxed under article 7 and not under article 12 of India-Singapore DTAA **AUTHORITY FOR ADVANCE RULINGS, NEW DELHI MasterCard Asia Pacific Pte. Ltd., In re** [2018] 94 taxmann.com 195 (AAR - New Delhi)/[2018] 406 ITR 43 (AAR - New Delhi)/[2018] 303 CTR 305 (AAR - New Delhi)[06-06-2018]

4. Article 12(5) of the DTAA is on the lines of the OECD Model convention. Clause (5) of article 12 allows the State where PE is located to tax only those profits which are economically attributable to the PE. The income should arise as a result of activities of PE. The clause makes a distinction between those incomes which are the result of activities of PE and the income which arises by reason of direct dealings by the enterprise from the head office without the aid or assistance of the PE. The State where the PE is located can tax the income only, if a connection exists, between the income and the PE. Thus, article 12(5) adopts 'No Force of Attraction Principle'. Another principle that should be kept in mind is the material date for determination of accrual of income arising through the PE is the existence of the PE at the time when whatever decisively caused the profits to accrue, actually accrued. [Para 58]

The term 'effectively connected' used in article 12(5) is not to be construed as the opposite of 'legally connected', but in the sense of something 'really connected'. The connection has to be seen not in the form, but in real substance. The income producing activity should be closely connected in terms of relationship besides being connected economically also with the PE. [Para 59] - **Sumitomo Corpn. Vs Deputy Commissioner of Income-tax, S.R.V, New Delhi** [2008] 114 ITD 61 (Delhi)/[2007] 17 SOT 197 (Delhi)/[2007] 110 TTJ 302 (Delhi)[31-05-2007]

5. Whether mere existence of business connection may result in income to non-resident assessee from transaction with such a business connection accruing or arising in India - Held, no - Whether it would be wrong to equate permanent establishment with a business connection, since former is for purpose of assessment of income of a non-resident under a Double Taxation Avoidance Agreement, and latter is for application of section 9 - Held, yes - Whether income arising out of turnkey project executed in India would be assessable in India, only because a non-resident has a permanent establishment - Held, no - Whether for attracting taxing statute, there has to be some activity through permanent establishment and, if income arises without any activity of permanent establishment, even under DTAA, taxation liability in respect of overseas services would not arise in India - Held, yes - **Ishikawajma-Harima Heavy Industries Ltd. Vs DIT** [2007] 158 Taxman 259 (SC)/[2007] 288 ITR 408 (SC)/[2007] 207 CTR 361 (SC)[04-01-2007] (Please refer to subsequent amendments to Section 9 of the Income Tax Act 1961)

### **(Footnotes)**

- <sup>1</sup> Sumitomo Corporation v. Dy. CIT [2008] 114 ITD 61 (Delhi)/[2007] 17 SOT 197 (Delhi)/[2007] 110 TTJ 302 (Delhi)[31-05-2007],
- <sup>2</sup> Para 15 of the OECD Attribution of Profits to Permanent Establishments 2008
- <sup>3</sup> UN Model Convention
- <sup>4</sup> OECD MC Article 7, Position of Non-Member Countries para 1.1
- <sup>5</sup> OECD MC Commentary Article 10, Para 23
- <sup>6</sup> OECD MC Commentary Article 10, Para 25
- <sup>7</sup> OECD MC Commentary Article 10, para 4-6
- <sup>8</sup> OECD MC Commentary Article 10, Para 9
- <sup>9</sup> OECD MC Commentary Article 10, Para 40-67
- <sup>10</sup> Klaus Vogel on Double Taxation Conventions



- (2021)
- <sup>11</sup> OECD MC Commentary Article 10, Para 31
- <sup>12</sup> OECD MC Commentary Article 10, Para 32.1
- <sup>13</sup> UN Model Convention Commentary Article 10 Para 20.
- <sup>14</sup> OECD Model Convention Commentary Article 12, Para 20
- <sup>15</sup> OECD Model Convention Commentary Article 12, Para 20
- <sup>16</sup> OECD Report on Attribution of Profits to PE (Para 72-97)
- <sup>17</sup> UN Model Convention Article 12(5)
- <sup>18</sup> OECD Model Commentary Article 12, Position of non-member Countries Para 4.1
- <sup>19</sup> UN Model Convention Commentary Article 12(5) para 18
- <sup>20</sup> OECD Model Commentary Article 21 Para 5.1
- <sup>21</sup> OECD Model Commentary Article 21 Para 1
- <sup>22</sup> OECD Model Convention Article 21(2), OECD Model Commentary Article 21 Para 4
- <sup>23</sup> OECD Model Convention Article 21(2), OECD Model Commentary Article 21 Para 4
- <sup>24</sup> UN Model Convention Article 21 – Para 8-9

## GST & Indirect Taxes

### 1. STATUTORY UPDATES

- 1.1. Rs. 1,49,577 crores gross GST revenue collected in February 2023: Press Release

**Editorial Note** : The gross GST revenue collected in the month of February 2023 is Rs. 1,49,577 crores. The revenues for the month of February 2023 are 12% higher than the GST revenues in the same month last year, which was Rs. 1,33,026 crores.

- 1.2. GSTN issued advisory on HSN Code Reporting in e-Invoice on IRPs Portal

**Editorial Note** : GSTN has issued advisory for taxpayers that in case wherever valid six digit HSN code is not available at IRPs portal, a corresponding valid eight digit HSN code be reported instead of artificially creating six digit HSN code.

- 1.3. GSTN advisory on Registration of "One Person Company" in GST

**Editorial Note** : Some issues have been raised by the persons registering as 'One Person Company' while they take GST registration. Now, the GSTN has issued advisory to provide that in the 'Part B' of GST Registration Form 'REG-01', the applicant may select Constitution of Business under 'Business Details' tab using dropdown list option "Others", if the taxpayer wants to register for GST as "One Person Company".

- 1.4. GSTN launches e-invoice registration services with private IRPs

**Editorial Note** : GSTN has launched the e-invoice registration services through multiple private IRPs at the recommendation of the GST Council as an another step towards further digitization of the business process flow. It has been informed that four private companies viz. ClearTax, Cygnet, E&Y and IRIS Business Ltd are empaneled by GSTN for providing these e-invoice registration services to all GST taxpayers of the country.

- 1.5. No Compensation cess on coal rejects supplied to a coal washery as well - **Notification No. 1/2023-Compensation Cess (Rate), Dated 28-02-2023**

**Editorial Note** : The CBIC has issued notification to extend the exemption benefit on coal rejects supplied to coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person.

- 1.6. No GST would be levied on Rab if not pre-packaged and labelled - **Notification No. 04/2023 - Central Tax (Rate), Dated 28-02-2023**

**Editorial Note** : The CBIC has issued notification to exempt Rab which is not pre-packaged and labelled. This notification shall be effective from 1st March, 2023. However, pre-packaged and labelled Rab shall be taxable at 5%.

- 1.7. 12% GST shall be levied on Pencil sharpeners w.e.f. 1st March, 2023 - **Notification No. 03/2023 - Central Tax (Rate), Dated 28-02-2023**

**Editorial Note** : The CBIC has issued notification to provide that pencil sharpeners shall be taxable at 12% and pre-packaged and labelled Rab shall be taxable at 5%. This notification shall be effective from 1st March, 2023.

- 1.8. Tax to be paid under RCM on services provided by Courts and Tribunals - **Notification No. 02/2023 - Central Tax (Rate), Dated 28-02-2023**

**Editorial Note** : The CBIC has issued notification to provide that services provided by Courts and Tribunals shall be covered under RCM and provisions of RCM notification shall apply to Courts and Tribunals as they apply to the Central Government and State Governments. This notification shall come into force with effect from 1st March, 2023.

- 1.9. National Testing Agency to be treated as educational institution for conduct of entrance examination - **Notification No. 01/2023 - Central Tax (Rate), Dated 28-02-2023**

**Editorial Note** : CBIC has issued notification to clarify that any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

- 1.10 Waiver of late fees for composition dealers- **Notification No. 02/2023 - Central Tax, Dated 31-03-2023**

**Editorial Note**: Please refer Article 'Amnesty- April 2023-A brief Discussion

- 1.11 Extension in filing of revocation application for cancellation of registration where registration has been cancelled on or before 31.12.2022- **Notification No. 03/2023 - Central Tax, Dated 31-03-2023**

**Editorial Note**: Please refer Article 'Amnesty- April 2023-A brief Discussion

- 1.12 Aadhar authentication- **Notification No. 04/2023 - Central Tax, Dated 31-03-2023 [Effective from 26.12.2022]**

**Editorial Note**: The CBIC has issued this notification substituting Rule 8(4A) of the CGST Rules, 2017 whereby if an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, then he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Further, as per proviso to Rule 8(4A), every application made under sub-rule (4) by a person, other than a person notified as

above, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centers notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.

Above proviso to Rule 8(4A) shall not apply to States and Union Territories except the State of Gujrat- Rule 8(4B) read with N. No. 27/2022- Central Tax dated 26.12.2022

**1.13 Relief in Best Judgement Assessment where assessment order has been issued on or before 28.02.2023 under section 62(1) of CGST Act- Notification No. 06/2023 - Central Tax, Dated 31-03-2023**

**Editorial Note:** Please refer Article 'Amnesty- April 2023-A brief Discussion

**1.14 Reduction in late fees for Annual return for 2022-23 onwards (for Aggregate turnover upto 20 crores) and waiver of late fee in excess of 20,000/- for 2017-18 to 2021-22 (CGST Rs. 10,000/- and SGST Rs. 10000/-)- Notification No. 07/2023 - Central Tax, Dated 31-03-2023**

**Editorial Note:** Please refer Article 'Amnesty- April 2023-A brief Discussion

**1.15 Waiver of late fee in excess of Rs. 1000/- (CGST Rs. 500/- and SGST Rs. 500/-)- Notification No. 08/2023 - Central Tax, Dated 31-03-2023**

**Editorial Note:** Please refer Article 'Amnesty- April 2023-A brief Discussion

**1.16 Extension of Time limit for issuance of order under section 73(9) - Notification No. 09/2023 - Central Tax, Dated 31-03-2023**

**Editorial Note:** Under Section 73(10) of CGST Act, the proper officer is required to issue the order under section 73(9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund for any reason other than fraud or any wilful-mis-statement or suppression of facts. The said time limit has now been extended as follows:

- (i) For F.Y. 2017-18: upto 31.12.2023
- (ii) For F.Y. 2018-19: upto 31.03.2024
- (iii) For F.Y. 2019-20: upto 30.06.2024

Consequently, under section 73(2), the proper officer can now issue show cause notice under section 73(1) at least three months prior to the time limit specified above.

## 2. SUPREME COURT

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

2.1. High Court of Bombay at Goa has jurisdiction when tax is levied by Government of Goa in respect of business that petitioning company is carrying on within territory of Goa and such tax is not payable by petitioning company in respect of carrying on of any business in territory of Sikkim, therefore, State of Goa shall stand deleted from array of respondents - **State of Goa v. Summit Online Trade Solutions (P.) Ltd. - [2023] 148 taxmann.com 299 (SC)**

2.2. High court essentially has to arrive at conclusion whether cause of action has arisen within its jurisdiction on basis of averments made in petition memo treating the contents as true and correct - **State of Goa v. Summit Online Trade Solutions (P.) Ltd. - [2023] 148 taxmann.com 299 (SC)**

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

2.3. Offence of availing ITC on fake and forged invoices Condition of making part pre-deposit of disputed amount cannot be imposed for grant of anticipatory bail - **Rajesh Kumar Dudani v. State of Uttarakhand - [2023] 148 taxmann.com 88 (SC)**

## 3. HIGH COURT

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

3.1. Summons issued by the CGST officer while proceedings have been initiated by SGST officer would be impermissible if subject matter is same; High Court directs CGST officer to consider reply and to check whether subject matter is one and same - **Tvl.Ai-Madhina Steel Traders v. Superintendent/Intelligence Officer (ECM) - [2023] 148 taxmann.com 86 (Madras)**

### SECTION 8 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMPOSITE AND MIXED SUPPLIERS, TAX LIABILITY ON

3.2. Indian importer being liable to pay IGST on 'composite supply', comprising of supply of goods and supply of services, separate levy of 'ocean freight' on Indian importer for 'supply of services' by shipping line would be in violation of section 8 of CGST Act, 2017 - **Liberty Oil Mills Ltd. v. Union of India - [2023] 148 taxmann.com 85 (Bombay)**

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

3.3. Additional tax liability incurred by contractors with introduction of GST in pursuance of contract awarded before 01.07.2017 requires to be reimbursed to such contractors in terms of State Government order dated 10.10.2018 - **GordhandasGobindram v. State of Chhattisgarh - [2023] 148 taxmann.com 181 (Chhattisgarh)**

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

3.4. Input tax credit on account of mentioning GSTIN of recipient wrongly in GSTR-1 return will be available subject to verification as per procedure prescribed in CBIC Circular on mismatch of ITC in GSTR-2A and GSTR-3B for FY 2019-20 also - **Wipro**

**Ltd. v. Assistant Commissioner of Central Taxes - [2023] 148 taxmann.com 216 (Karnataka)**

- 3.5. Writ petition against show cause notice seeking reversal of input tax credit is pre-mature; High Court directs adjudicating authority to offer one more personal hearing and taxpayer-petitioner to appear before such authority - **S. KajaMohideen v. Commissioner of GST & Central Excise - [2023] 148 taxmann.com 304 (Madras)**

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

- 3.6. Order unblocking ITC account and permitting petitioner to utilize it could not be reversed, having been given effect to by respondents without challenging it - **Jai Mata Di Enterprises v. Commissioner of State Tax - [2023] 148 taxmann.com 42 (Bombay)**

**SECTION 22 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - PERSONS LIABLE FOR**

- 3.7. High Court directs petition to be treated as representation by State GST authorities and consider grievance of petitioner that GST registration was obtained fraudulently using his documents - **Anil Kumar v. GST Commissioner, CGST and Central Excise - [2023] 148 taxmann.com 259 (Delhi)**

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

- 3.8. Due to mere technicalities of law and COVID-19 intervention, petitioner -assessee could not be left remediless, hence order of rejection passed by first appellate authority due to delay in filing appeal was unsustainable in eyes of law; Matter was to be remitted - **Limra Developers v. Additional Commissioner - [2023] 148 taxmann.com 40 (Allahabad)**
- 3.9. Cancellation of registration for not filing return will adversely affect business operation of assessee; High Court directs the authority to give fresh hearing - **Shree Siddivinayak Publications v. Joint Commissioner - [2023] 148 taxmann.com 8 (TELANGANA)**
- 3.10. Delay in filing application for revocation of cancellation of registration is to be condoned as livelihood of any persons who are working with petitioner's company is at stake - **S A Traders v. Commissioner State Goods and Services Tax - [2023] 148 taxmann.com 358 (Uttarakhand)**
- 3.11. Show cause notice issued without providing any proper reasons for cancellation of registration and without even determining amount payable on such cancellation is not sustainable; High Court sets aside cancellation - **Devi Products v. State of Gujarat - [2023] 148 taxmann.com 343 (Gujarat)**
- 3.12. Cancellation of registration based on cryptic show cause notice and rejection of revocation without disclosing basis for allegations is not valid; High Court sets aside orders and notice - **Arsh Traders v. Commercial Tax Officer - [2023] 148 taxmann.com 344 (Gujarat)**

- 3.13. Since, show cause notice and order of cancellation of registration was absolutely cryptic, none reasoned and unpalatable, same was to be quashed and set aside on ground of breach of principles of natural justice - **L M Corporation v. State of Gujarat - [2023] 148 taxmann.com 283 (Gujarat)**
- 3.14. GST authority having suomotu cancelled GST registration of petitioner on ground of non filing of returns and GST Tribunal having not been constituted, petitioner would be left without any remedy; therefore, matter is remanded back - **Nithya Constructions v. Union of India - [2023] 148 taxmann.com 381 (Telangana)**
- 3.15. Where Petitioner would not be able to continue with business in absence of GST registration and which could lead to deprivation of means of livelihood, therefore, order dismissing appeal preferred by petitioner was to be set aside - **Prakash Purohit v. Commissioner, Central Goods and Services Tax - [2023] 148 taxmann.com 242 (Rajasthan)**
- 3.16. On account of cancellation of registration, petitioner was unable to continue with its business which could lead to deprivation of means of livelihood and also it would cause loss of revenue to exchequer, therefore, order dismissing appeal preferred by petitioner was to be set aside - **KanikaVishnoi v. Union of India - [2023] 148 taxmann.com 188 (Rajasthan)**
- 3.17. Where respondent-department failed to adhere to requisites of Section 42 of Central Goods and Services Tax Act, 2017 while serving show cause notice to petitioner-assessee for cancellation of registration, therefore, writ petition was disposed of and petitioner -assessee was directed to file reply to show cause notice - **Liberty Clothing Company v. Union of India - [2023] 148 taxmann.com 140 (Madras)**
- 3.18. Rejection of appeal through computer generated order without hearing taxpayer on cancellation of registration was not sustainable; High Court directs appellate authority to decide the appeal afresh and give opportunity of hearing - **BBCL Infrastructure v. State of U.P. - [2023] 148 taxmann.com 138 (Allahabad)**
- 3.19. Show cause notice issued with reason for proposed action in one word as 'others' without giving any specific reasons is vague in nature; High Court sets aside SCN and order cancelling registration - **VDR Colors and Chemicals (P.) Ltd. v. Principal Commissioner - [2023] 148 taxmann.com 108 (Delhi)**
- 3.20. Show cause notice issued for cancellation of registration and no order passed while registration remains suspended; High Court directs authority to decide based on SCN - **K Ramchandra Rao Transmission and Projects (P.) Ltd. v. Union of India - [2023] 148 taxmann.com 312 (Patna)**
- 3.21. Registration cannot be cancelled solely on ground that reply to show cause notice was not given without assigning any reason; High Court - **Jai Bahadur Singh v. State of U.P. - [2023] 148 taxmann.com 310 (Allahabad)**
- 3.22. Cancellation of registration was not sustainable when show cause notice and order were vague and without reasons; High Court sets aside both SCN and order - **Gigamade Machineries (P.) Ltd. v. State of Gujarat - [2023] 148 taxmann.com 309 (Gujarat)**

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

- 3.23. Cancellation of registration would affect livelihood of many persons who are working in company of the assessee; High Court directs assessee to file application for revocation of cancellation and file pending returns and pay the tax dues - **Anand Prasad v. Commissioner of State Goods and Services Tax - [2023] 148 taxmann.com 178 (Uttarakhand)**
- 3.24. Where petitioner's GSTIN registration was canceled due to non filing of returns for a continuous period of six months, in view of judicial precedents petitioner was afforded opportunity to file an application for revocation of registration to authority under section 30 within 15 days - **Mohankar Timber Co. v. Union of India - [2023] 148 taxmann.com 324 (Bombay)**
- 3.25. Show cause notice without any reasons for proposing cancellation of registration issued in a mechanical manner is not sustainable; High Court sets aside SCN and order cancelling registration after noting absence of provision requiring taxpayer to produce NOC to consider revocation application - **Spinns International v. Principal Commissioner of Goods and Service Tax - [2023] 148 taxmann.com 284 (Delhi)**

**SECTION 37 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RETURNS - OUTWARD SUPPLIES, FURNISHING DETAILS OF**

- 3.26. Permitting assessee to rectify error in GSTR-1 return will not cause any loss to department; High Court directs department to enable petitioner to rectify error in GSTR-1 wherein B2B supply was reported under B2C - **Y. B. Constructions (P.) Ltd. v. Union of India - [2023] 148 taxmann.com 244 (Orissa)**

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

- 3.27. Where appellate authority directed respondents-department to disburse refund claimed by petitioner assessee, it would be debilitating to rule of law if respondents-department were permitted to withhold implementation of orders passed by appellate authority merely on ground that respondents decided to file appeal against appellate authority's order, therefore, respondents-department were directed to comply with orders passed by appellate authority - **Brij Mohan Mangla v. Union of India - [2023] 148 taxmann.com 391 (Delhi)**
- 3.28. Department cannot ignore appellate order directing refund in case of inverted tax structure on ground that it proposes to file appeal before Appellate Tribunal; High Court directs authority to consider refund claim - **Saurabh Singal v. Central Goods & Services Tax - [2023] 148 taxmann.com 294 (Delhi)**
- 3.29. Claim of refund of input tax credit allegedly reversed during investigation under threat or coercion cannot be decided in exercise of writ jurisdiction - **Getalong Enterprises Ltd. v. Superintendent (Anti Evasion) CGST and Central Excise - [2023] 148 taxmann.com 258 (Bombay)**
- 3.30. High Court directs department to consider representation seeking implementation of order on refund of input tax credit due to inverted tax structure - **Suzlon Energy Ltd. v. Commercial Tax Officer-IAC - [2023] 148 taxmann.com 241 (Madras)**

- 3.31. Where petitioner had made supply to Export Oriented Unit, but first appellate authority rejected refund claim on ground that said claim was irregular ITC claim, hence, petitioner-assessee was directed to re-file second refund application as appeal under Section 107 - **Natco Pharma Ltd. v. Assistant Commissioner (ST) - [2023] 148 taxmann.com 111 (Madras)**
- 3.32. Refund of unutilized ITC can be claimed by SEZ unit subject to condition that an undertaking / bond is furnished stating that in case supplier files refund claim, then refund granted to SEZ unit would be recoverable along with interest - **SE Forge Ltd. v. Union of India - [2023] 148 taxmann.com 37 (Gujarat)**
- 3.33. Rejection of refund by Appellate Authority for not mentioning name and GSTIN of supplier in shipping bill was not sustainable when refund was granted by Adjudicating Authority after verification; High Court directed Appellate Authority to consider matter afresh - **Apex Formulations (P.) Ltd. v. Union of India - [2023] 148 taxmann.com 47 (Gujarat)**
- 3.34. Violation of natural justice by Adjudicating Authority cannot be cured by sufficiency of natural justice in Appellate Authority's proceedings - **Chandni Crafts v. Union of India - [2023] 148 taxmann.com 164 (Rajasthan)**
- 3.35. Rectified information as submitted by petitioner had not been taken into account by either of concerned authorities while considering petitioner's grievance regarding non-payment of its refund; matter was to be remanded to Adjudicating Authority - **Shri Shyam Footwear v. Commissioner of Central Goods and Services Tax - [2023] 148 taxmann.com 82 (Delhi)**

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

- 3.36. Writ petition cannot be entertained on the issue of jurisdiction when the time for filing reply and opportunity of personal hearing were granted in intimation and order confirming such demand was not passed - **Primox Steels v. Joint Commissioner (ST) - [2023] 147 taxmann.com 584 (Madras)**
- 3.37. Reversal of input tax credit at midnight during search and seizure operation could not be said as voluntary payment; Department was to be directed to refund ITC reversed - **Shree Ganesh Molasses Trading Co. v. Superintendent, Office of the Commissioner - [2023] 148 taxmann.com 36 (Gujarat)**
- 3.38. Criminal writ petition can alone be filed when the punishment for alleged offence is in the nature of death, imprisonment, fine or forfeiture of property and not civil writ petition as per Nagpur Cable Operators Association case - **Getalong Enterprises Ltd. v. Superintendent (Anti Evasion) CGST and Central Excise - [2023] 148 taxmann.com 258 (Bombay)**

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

- 3.39. Assessment proceedings suffered from serious procedural errors when proper show cause notice and order were not issued but amounts were debited from ledgers by department; High Court directed issuance of fresh SCN - **Solex Energy Ltd. v. State of Jharkhand - [2023] 148 taxmann.com 7 (Jharkhand)**

- 3.40. Since petitioner was denied a valuable right of filing its submission in response to intimation in Form GST DRA-01A, order passed by respondent-revenue under section 73(9) was to be quashed and matter was remitted back to Competent Authority - **Ravi Enterprises v. Commissioner of State Tax - [2023] 148 taxmann.com 5 (Uttarakhand)**
- 3.41. Sufficient time was not afforded to petitioner to represent his case and ex parte order does not assign any sufficient reasons from record, as to how officer could determine amount due and payable by assessee - **Pravin Kumar v. State of Bihar - [2023] 148 taxmann.com 167 (Patna)**
- 3.42. Reply contesting demand proposed in notice issued under Section 75 does not require to be culminated in proceedings in terms of Section 73/74; Department directed to consider reply and pass order under Section 79 of CGST Act, 2017 - **Path Finder India v. Assistant Commissioner (State Tax) (FAC) - [2023] 148 taxmann.com 166 (Madras)**
- 3.43. Writ petition at stage of show cause notice (SCN) was not maintainable; Assessee was directed to file reply to SCN in a case where SCN has been issued by proper officer under CGST Act and another SCN issued by proper officer under SGST Act - **VGN Projects Estates (P.) Ltd. v. Assistant Commissioner (State Taxes) - [2023] 148 taxmann.com 83 (Madras)**
- 3.44. Statutory remedy does not preclude High Court from exercising its writ jurisdiction and interfere with ex-parte order where ex facie it was bad in law for violation of natural justice principles and no reasons were assigned - **Dharamraj Motors Salkhua Bazar v. Union of India - [2023] 148 taxmann.com 308 (Patna)**
- 3.45. Show cause notice issued under section 73 in format without striking out of irrelevant particulars, was vague and does not spell out clearly about contravention for which petitioner was charged; SCN, DRC 01 and also summary of order issued under DRC-07 were to be set aside - **Santosh Kumar Roy v. State of Jharkhand - [2023] 148 taxmann.com 219 (Jharkhand)**
- 3.46. Since principle of natural justice have not been complied in issuing SCN, ground of alternative remedy was not acceptable by instant Court - **Santosh Kumar Roy v. State of Jharkhand - [2023] 148 taxmann.com 219 (Jharkhand)**
- 3.47. Since petitioner-assessee had challenged impugned notice for which no final order had been passed by respondent-department, instant writ petition was to be disposed of by directing adjudicating authority to take final decision on merits and in accordance with law - **Geethanjali v. Assistant Commissioner of CGST & CE, Coimbatore - [2023] 148 taxmann.com 192 (Madras)**
- 3.48. Adjudication order passed without considering grounds raised by assessee and in absence of reply to show cause notice was not sustainable - **Hi-Tech Gears Ltd. v. Deputy Commissioner, SGST, Circle-B - [2023] 148 taxmann.com 191 (Rajasthan)**
- 3.49. Separate application is not required to be made to Appellate Authority at time of filing appeal when same is substantive ground taken in appeal - **Ishan Construction v. Commissioner of Central Excise (Appeals) - [2023] 148 taxmann.com 110 (Chhattisgarh)**
- 3.50. High Court, notwithstanding statutory remedy, was not precluded from interfering where, ex facie, order was bad in law having been passed in violation of principles of natural justice - **MaaKamakhya Construction v. Union of India - [2023] 148 taxmann.com 109 (Patna)**
- 3.51. As per amendment to sub-rule (1A) of Rule 142 of TNGST Rules, with effect from 15-10-2022, requirement of issue of Form GST DRC01 and Form GST DRC-01A were not statutorily imperative but optional at instance of revenue - **Vishaka Exports v. Assistant Commissioner (ST) (FAC) - [2023] 147 taxmann.com 579 (Madras)**
- 3.52. Equivalent penalty cannot be imposed for not showing sales figure in returns where time limit for reconciliation of annual return is not over; High Court takes note of imposition of penalty for three contraventions collectively instead of imposing penalty for each contravention - **SuvarnaFibrotech (P.) Ltd. v. Assistant Commissioner (ST) (FAC) - [2023] 148 taxmann.com 39 (Madras)**
- SECTION 74 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - TAX OR INPUT TAX CREDIT INVOLVING FRAUD OR MISSTATEMENT OR SUPPRESSION**
- 3.53. Show cause notice in Part A of FORM GST DRC-01A having not been issued, any subsequent reminder will not cure inherent defect in proceedings initiated against petitioner - **Tanishka International v. State of U.P. - [2023] 148 taxmann.com 345 (Allahabad)**
- 3.54. Where communication was issued by Joint Commissioner to petitioner stating that Commissioner of CGST was of opinion that points raised in application for rectification were not covered under section 74 of CGST Act, 2017 and said application was stood disposed of, said communication was to set aside as Commissioner who passed Order-in-Original was required to deal with an application for rectification of mistake as per section 74(1) - **ICFAI University Sikkim v. Union of India - [2023] 148 taxmann.com 300 (SIKKIM)**
- SECTION 75 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - GENERAL**
- 3.55. Opportunity of hearing is to be given to assessee where adverse decision is contemplated - **Sendhil Kumar v. State Tax Officer - [2023] 148 taxmann.com 394 (Madras)**
- 3.56. Opportunity of personal hearing is mandatory before passing adverse order creating huge liability is passed even if taxpayer had selected "NA" against personal hearing in online mode; High Court sets aside order and directs fresh consideration - **Mohan Agencies v. State of U.P. - [2023] 148 taxmann.com 323 (Allahabad)**
- 3.57. Ex parte order passed without giving hearing opportunity and without giving sufficient time to assessee to represent his case was not sustainable; High Court directs passing of fresh order - **Balram Singh v. Union of India - [2023] 148 taxmann.com 281 (Patna)**
- 3.58. It was blatant cases of breach of principles of natural justice and total non-application of mind where order was passed without personal hearing and only reason given was that assessee's reply was unacceptable and they had not

deposited tax - **Ultratech Cement Ltd. v. Union of India** - [2023] 148 taxmann.com 246 (Madhya Pradesh)

- 3.59. Where detailed reply submitted on behalf of petitioner was not considered before passing impugned order imposing interest on delayed payment of tax, and also said order, apart from suffering from vice of non-application of mind, run in violation of mandatory requirement of section 75(6) of CGST Act, 2017, therefore, same was to be set aside - **Hindustan Construction Company Ltd. v. Union of India** - [2023] 148 taxmann.com 55 (Rajasthan)

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

- 3.60. Writ petition was disposed of with direction petitioner to approach concerned Authority for release of its bank account - **Chotu Lal v. Union of India** - [2023] 148 taxmann.com 10 (Bombay)

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

- 3.61. Two contradictory views having been expressed by two Judges of instant Court as to whether High Court is empowered under Article 226 of Constitution to condone delay beyond maximum time limit stipulated under section 107 of CGST Act, 2017, Judicial Discipline and Propriety demands that matter is referred to Division Bench of instant Court - **Paul Raj Engineering v. Assistant Commissioner, (Circle)** - [2023] 148 taxmann.com 81 (Madras)
- 3.62. Appellate order holding appeal filed after delay of 21 days as time barred was not sustainable; High Court directed Appellate Authority to accept memorandum of appeal and pass order on merits - **SikhaDebnath v. Assistant Commissioner of State Tax, Cooch Behar** - [2023] 148 taxmann.com 6 (Calcutta)
- 3.63. Appeal filed without praying for extension of time could not be rejected solely on limitation as Appellate Authority had power to extend time; High Court granted liberty to taxpayer to apply for extension of time to file appeal - **Shivnath Singh v. Assistant Commissioner, Jalpaiguri Division** - [2023] 148 taxmann.com 11 (Kolkata)
- 3.64. Where Additional Commissioner (Appeals) passed order without assigning any reasons and without hearing assessee, same was not sustainable and was to be quashed and matter was to be remitted to Adjudicating Authority for fresh adjudication - **Pamm Advertising and Marketing v. Union of India** - [2023] 148 taxmann.com 179 (Patna)
- 3.65. Writ Jurisdiction is invocable against an order which has been passed without assigning reasons and without granting hearing opportunity to assessee even though such order is appealable under statute - **Pamm Advertising and Marketing v. Union of India** - [2023] 148 taxmann.com 179 (Patna)
- 3.66. Appeal rejected on ground of limitation will leave petitioner without remedy as GST Tribunal had not been constituted; High Court remands matter to original authority for fresh decision - **SudhakarBodala v. Goods and Service Tax Officer** - [2023] 148 taxmann.com 302 (Andhra Pradesh)
- 3.67. Appeal was not filed within prescribed period on account of illness for which doctor's certificate also enclosed; delay was

to be condoned - **Kajal Dutta v. Assistant Commissioner of State Tax** - [2023] 148 taxmann.com 112 (Calcutta)

- 3.68. Appeal filed offline due to glitches in GST portal cannot be rejected on ground of technicality; High Court directs Appellate Authority to consider appeal filed offline - **Yash Kothari Public Charitable Trust v. State of U.P.** - [2023] 148 taxmann.com 187 (Allahabad)

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

- 3.69. Show cause notice was not required to be issued in revision proceedings - **Vishaka Exports v. Assistant Commissioner (ST) (FAC)** - [2023] 147 taxmann.com 579 (Madras)

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

- 3.70. High Court stays recovery when amount in excess of pre-deposit for filing appeal with Appellate Tribunal has been paid but Tribunal has not been constituted so far - **Vihaan Networks Ltd. v. State of Bihar** - [2023] 148 taxmann.com 257 (Patna)

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

- 3.71. Detention of goods and imposition of penalty while being transported with expired e-way bill is sustainable; High Court holds authority is not required to appreciate reasons for movement without valid e-way bill - **Abinash Kumar Singh v. State of West Bengal** - [2023] 148 taxmann.com 393 (Calcutta)
- 3.72. E-Way Bill being expired during transit due to truck having remained in non-motorable condition without any intention to evade payment of tax, demand of tax and penalty was not sustainable - **Shree Govind Alloys (P.) Ltd. v. State of Gujarat** - [2023] 148 taxmann.com 382 (Gujarat)
- 3.73. Appellate authority having not adequately dealt with the aspect as to whether there was any wilful intention on the part of the appellant to evade payment of duty, matter is remanded to appellate authority as regards imposition of penalty - **Rumki Biswas v. Senior Joint Commissioner, Commercial Taxes** - [2023] 148 taxmann.com 359 (Calcutta)
- 3.74. Where E-Waybill was generated by petitioner on 8-4-2018 for transportation of goods to Meghalaya, however, due to some reasons truck was made available to petitioner on 17-4-2018 for transportation, since, petitioner had waited 10 long days and did not cancel said E-way bill and had evaded tax, concerned authorities had rightly passed an order of seizure of goods - **Ayann Traders v. State of U.P.** - [2023] 148 taxmann.com 357 (Allahabad)
- 3.75. Where there was no disagreement by petitioner that E-way was not generated at time of interception of vehicle, order of detentions was to be said aside and respondent shall release conveyance forthwith on production of bank Guarantee by petitioner of entire amount payable qua section 129(1)(a) i.e. penalty of 200 percent of tax payable - **Shree Info System Solutions (P.) Ltd. v. Assistant Commissioner (ST)** - [2023] 148 taxmann.com 107 (Madras)

- 3.76. Demand of tax and imposition of penalty on detention of vehicle is sustainable when e-way bill was not extended before expiry and no proof was produced to show vehicle suffered breakdown - **Ashok and Sons (HUF) v. Joint Commissioner, State Tax, Office of the Senior Joint Commissioner, Siliguri Circle - [2023] 147 taxmann.com 582 (Calcutta)**
- 3.77. Requirement of e-way bill was postponed till 31-3-2018 by GST Council noticing hardship faced by assessee; High Court sets aside order imposing penalty - **Pioneer Pesticides (P.) Ltd. v. Additional Commissioner, Grade-2 - [2023] 148 taxmann.com 56 (Allahabad)**
- 3.78. Rejection of appeal on ground of non-payment of pre-deposit when part amount had been paid and without considering submissions of taxpayer, was not sustainable; High Court directs appellate authority to decide afresh and taxpayer to deposit amounts as agreed; Department was directed to release confiscated goods and vehicle - **Arafa Traders v. State of Gujarat - [2023] 148 taxmann.com 177 (Gujarat)**
- 3.79. Where full disclosure in regard to purchaser, including GST particulars, address and PAN number made by assessee in tax invoice and e-way bill made in 'Bill to' - 'Ship to' transaction, prescription under rule 46 of CGSTR satisfied and detention goods and vehicle was to be set aside - **DCM Shriram Ltd. v. State Tax Officer-1 (INT.) - [2023] 148 taxmann.com 176 (Madras)**
- 3.80. Neither show cause notice nor order of demand clearly sets out reason for imposing tax liability as well as penalty in respect of detained goods; orders of GST Officer Appellate Authority was to be set aside and matter was remanded to concerned GST officer - **Ram Prakash Chauhan v. Commissioner Of Delhi (Goods And Service Tax) - [2023] 148 taxmann.com 168 (Delhi)**

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

- 3.81. Fact of discrepancy in quantity mentioned in documents produced before tax authorities and quantity actually recovered from petitioner was sufficient for department to suspect evasion of tax; officers were right in initiating proceedings - **SasiPathirakunnath v. Assistant State Tax Officer (Intelligence) - [2023] 148 taxmann.com 41 (Kerala)**

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

- 3.82. High Court rejects bail application on the ground of absence of change in circumstances when bail petition was rejected earlier and apprehension that witnesses may be threatened - **Ashu Gupta v. State of Haryana - [2023] 148 taxmann.com 392 (Punjab & Haryana)**
- 3.83. Where petitioner had already faced incarceration for more than 1 year and 4 months and other two co-accused had already been extended benefit of bail, bail was to be granted to petitioner - **Harsimranjot Singh Bambhi v. Superintendent Preventive Central Goods & Services Tax - [2023] 148 taxmann.com 322 (Punjab & Haryana)**
- 3.84. Bail can be granted to assessee/accused when amount alleged as tax evaded has been deposited and investigation has been completed - **VikasBajoria v. Union of India - [2023] 148 taxmann.com 282 (Rajasthan)**

- 3.85. Utilizing bogus ITC through fake documents by floating firms only on paper thereby causing loss to government exchequer is cheating to amass wealth overnight which needs to be curbed with an iron hand; High Court dismisses petition seeking bail - **Amit Kaushik v. State of Haryana - [2023] 148 taxmann.com 139 (Punjab & Haryana)**
- 3.86. Bail was to be granted with condition to deposit Rs. 2 crores each by petitioners as offence involved evasion of tax of Rs.11.30 crores - **Saurabh Jindal v. Union of India - [2023] 148 taxmann.com 52 (Rajasthan)**

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

- 3.87. Excess TDS under VAT can be transitioned into GST; High Court allows petition filed against order seeking reversal of ITC of VAT TDS - **Anvil Cables (P.) Ltd. v. State of Jharkhand - [2023] 148 taxmann.com 254 (Jharkhand)**

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

- 3.88. Assessee cannot be compelled to exercise option to transition credit accrued in erstwhile tax regime when he had decided to obtain refund of same; Department was directed to grant refund of credit quantified in provisional refund order - **Easwaran Brothers India (P.) Ltd. v. Assistant Commissioner (ST) (FAC) - [2023] 148 taxmann.com 182 (Madras)**
- 3.89. Writ petition is not maintainable when formula prescribed for reimbursement of additional amount by government as service recipient on introduction of GST is not argued as arbitrary and unreasonable and when dispute is covered under arbitration clause - **Vedic Projects (P.) Ltd. v. State of U.P. - [2023] 148 taxmann.com 220 (Allahabad)**

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

- 3.90. Issues as to output mismatch qua Forms GSTR 3B and GSTR 1 and credit notes not reversed in GSTR 3B did not qualify as errors apparent on face of record - **Vishaka Exports v. Assistant Commissioner (ST) (FAC) - [2023] 147 taxmann.com 579 (Madras)**

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

- 3.91. Methods of service adumbrated in section 169 of TNGST Act, 2017 are not conjunctive but alternate methods of service; where impugned order was uploaded or made available in common portal on same day, therefore, section 169 was complied with - **New Grace Automech Products (P.) Ltd. v. State Tax Officer - [2023] 148 taxmann.com 9 (Madras)**  
High Court directs department to serve physical copy of SCN through registered or speed post until technical problems are resolved- Pushpam Realty (2022) 136 Taxmann.com 195 (Madras)

**SECTION 174 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REPEAL AND SAVING**

- 3.92. Where transitional ITC had been denied under section 174 of CGST Act, 2017 for non-filing of Form GST TRAN-1/revised Form GST TRAN-1 electronically within time, department was to be directed to allow assessee to file such Form upto 30-11-2022 as ordered by Supreme Court in [2022] (64) G.S.T.L. 385 (S.C.) and pass fresh order - **Hi-Tech Gears Ltd. v. Deputy Commissioner, SGST, Circle-B - [2023] 148 taxmann.com 191 (Rajasthan)**



#### CLASSIFICATION OF GOODS

**3.93. CNG Dispenser** : CNG dispenser merits classification under Heading 9032 of Customs Tariff Act, 1975 and taxable under Sl. No. 422 of Schedule III to Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 - **Parker Hannifin India (P.) Ltd., In re - [2023] 148 taxmann.com 355 (AAAR-MAHARASHTRA)**

#### CLASSIFICATION OF SERVICES

**3.94. Educational services - Examination related services** : Services rendered by assessee to educational institutes with reference to products associated with conduct of examinations falls within ambit of Entry No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended for Intra-State supplies and Entry No. 69 of Notification No.9/2017-Integrated Tax (Rate), dated 28-6-2017 as amended for Inter-State supplies and are exempt from GST - **Principal Commissioner of Central Tax, In re - [2023] 148 taxmann.com 286 (AAAR - Andhra Pradesh)**

**3.95. Construction services - Replacement of sewer line** : Where appellant-assessee provide service to BWSSB which is not a local authority, therefore, appellant-assessee is not eligible for concessional rate of tax of 12% in terms of Entry Serial. No 3(iii) of Notification No 11/2017 CT (Rate) dated 28-6-2017 and applicable rate of tax on supplies made by appellant-assessee is 18% w.e.f 1-1-2022 - **Indian Hume Pipe Co. Ltd., In re - [2023] 148 taxmann.com 243 (AAAR-KARNATAKA)**

#### SECTION 2(31) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - CONSIDERATION

**3.96.** Where assessee's principal supply is exempt from of GST, according to para 7.1.6 of CBIC Circular No. 178/10/2022-GST dated 3-8-2022 liquidated damages received for such supply does not have GST payment implication and it does not qualify as "supply" under GST law - **Achampet Solar (P.) Ltd., In re - [2023] 148 taxmann.com 222 (AAAR-TELANGANA)**

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

**3.97.** Activity of taking tank containers on lease from a lessor abroad with option to purchase containers, is 'supply of services' and liable to IGST under reverse charge basis with tax to be paid by recipient of services, i.e. appellants - **Deccan Transco Leasing (P.) Ltd., In re - [2023] 148 taxmann.com 385 (AAAR-TELANGANA)**

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

**3.98.** Vouchers and subscription packages are considered as neither goods nor services as per High Court order in Premier Sales Promotions P. Ltd. v. UOI [2023] 147 taxmann.com 85 (Kar.) and therefore, input tax credit of GST paid on purchase of vouchers is not available - **Myntra Designs (P.) Ltd., In re - [2023] 148 taxmann.com 186 (AAAR-KARNATAKA)**

#### 4. AAAR

##### CLASSIFICATION OF GOODS

**4.1. Paper based Corrugated Sheets** : Paper based Corrugated Sheets falls under Heading 4808 and attracts GST at rate of 12 per cent - **S.S.R.K. Plastics (P.) Ltd., In re - [2023] 148 taxmann.com 384 (AAR - HYDERABAD)**

**4.2. Fabric** : Satin Rolls and Taffeta Rolls with sizes between 19 mm to 40 mm and made up of polyester yarn with optical/non optical and acrylic quoting respectively thereon, neither being embroidered nor assembled by using adhesive, are classifiable under Tariff Item 5807 10 20 instead of Heading 5806 of Customs Tariff Act, 1975 - **Mean Light Co. In re - [2023] 148 taxmann.com 346 (AAR - KARNATAKA)**

**4.3. Hearing aids** : Parts and accessories of hearing aids are classifiable under Tariff Item 9021 90 10 of Customs Tariff Act, 1975 and liable to 18% GST in terms of Sl. No. 453 of Schedule III to Notification No. 1/2017-C.T. (Rate), dated 28-6-2017 - **Sivantos India (P.) Ltd., In re - [2023] 148 taxmann.com 389 (AAR - KARNATAKA)**

**4.4. Treated water** : 'Treated Water' obtained from CETP (classifiable under Chapter 2201) is not eligible for exemption from payment of Tax by virtue of Sl. No. 99 of the Exemption Notification No. 02/2017- CT (Rate) dated 28-6-2017 (as amended) but taxable at 18 per cent by virtue of Sl. No. 24 of Schedule - III of Notification No. 01/2017- CT (Rate) - **Palsana Enviro Protection Ltd., In re - [2023] 148 taxmann.com 255 (AAR - GUJARAT)**

**4.5. Jigarthanda - Beverages containing milk** : 'Jigarthanda' produced by applicant-manufacturer qualifies as goods and merits classification under HSN 2202 99 30 with heading 'beverages containing milk' and it attracts GST at 12% - **Madurai Famous Jigarthanda LLP, In re - [2023] 147 taxmann.com 580 (AAR - TAMILNADU)**

##### CLASSIFICATION OF SERVICES

**4.6. Fortified Atta - Public Distribution System** : Since activity of conversion of whole wheat into fortified atta has fulfilled all conditions specified under Serial no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, therefore, it is eligible for exemption under same - **Jai Lokenath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 256 (AAR-WEST BENGAL)**

**4.7. Transfer of Mobile Application Software** : Transfer of Mobile App along with assets and liabilities by an assessee to its wholly owned subsidiary company on slump sale basis, is to be considered as a supply of service by way of transfer of a going concern and exempted in terms of Sl. No. 2 of Notification No. 12/2017-C.T. (Rate) - **Capfront Technologies (P.) Ltd., In re - [2023] 148 taxmann.com 84 (AAR - KARNATAKA)**

**4.8. Cleaning services to Government** : Manpower services of cleaning and sweeping of lawns and garden path areas, segregation and transport of garbage and for maintenance of garden provided to Horticulture Department, Government of Karnataka are liable for GST at NIL rate as per Entry No. 3 of Notification No. 12 of 2017 (Central Tax Rate), dated: 28-6-2017 - **Indian Security and Personnel Arrangements, In re - [2023] 148 taxmann.com 142 (AAR - KARNATAKA)**

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

**4.9.** Activities undertaken by applicant for milling of wheat into wheat flour, along with fortification and packing of same qualify definition of "composite supply" under clause (30) of section 2 of GST Act where supply of services by way of milling is principal supply - **Jai Lokenath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 256 (AAR-WEST BENGAL)**

- 4.10. As per Circular No. 153/09/2021-GST dated 17.06.2021, Public Distribution specifically figures at entry 28 of the 11th Schedule to Constitution, therefore, activity of conversion of wheat into fortified whole meal atta is found to be in relation to any function entrusted to a Panchayat under article 243G of Constitution - **Jai Lokenath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 256 (AAR-WEST BENGAL)**
- 4.11. Construction of Medical Institute and super specialty hospital for SAIL through sub-contractor under EPC contract on turnkey basis is liable to 12 per cent GST [6 per cent CGST + 6 per cent SGST] in terms of Sl. No. 3(vi)(a) or 3(vi)(b) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended - **NBCC (India) Ltd., In re - [2023] 148 taxmann.com 325 (AAR-ODISHA)**
- 4.12. Activities undertaken by applicant for milling of wheat into wheat flour, along with fortification and packing of same qualify definition of "composite supply" under clause (30) of section 2 where supply of services by way of milling is principal supply - **Somnath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 218 (AAR-WEST BENGAL)**

#### SECTION 2(38) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEBIT NOTES

- 4.13. Where consideration under GST includes payment in money or otherwise, therefore, value of 10 grams of gold allowed as wastage to applicant-assessee shall be considered as non-monetary consideration and tax is payable at 5% - **AabhushanJewellers (P.) Ltd., In re - [2023] 148 taxmann.com 163 (AAR-WEST BENGAL)**

#### SECTION 2(68) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - JOB WORK - DEFINITION OF

- 4.14. Where applicant-assessee manufactures ornaments of pure gold provided by principal which is classified as 'Job Work' under Section 2(68) of Central Goods and Services Tax Act, 2017 and applicant-assessee has allowed wastage of 3% of gold which is beyond permissible limit prescribed by government under Handbook of Procedures, therefore, value of pure gold so retained by applicant-assessee shall form a part of supply of job work services - **AabhushanJewellers (P.) Ltd., In re - [2023] 148 taxmann.com 163 (AAR-WEST BENGAL)**

#### SECTION 2(93) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RECIPIENT OF SUPPLY OF SERVICE OR GOODS OR BOTH

- 4.15. Applicant while working as a 'Project Implementing Agency' is making supplies to State Government Department/ Directorate and therefore is required to issue tax invoice on contract value as determined by department - **West Bengal Agro Industries Corporation Ltd., In re - [2023] 148 taxmann.com 143 (AAR-WEST BENGAL)**

#### SECTIONS 2(98) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REVERSE CHARGE

- 4.16. Assessee receiving GTA services for transportation of goods up to Customs station for purpose of export is liable to pay GST on transportation charges under Reverse Charge Mechanism - **Shree Laxmi Exports, In re - [2023] 148 taxmann.com 356 (AAR - CHHATTISGARH)**

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

- 4.17. Construction of new railway siding is 'works contract' and also qualifies to be 'original works' pertaining to railways; taxable at rate of 12 per cent under Sl. No. 3(v)(a) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 till omission of said entry vide Notification No. 3/2022-Central Tax (Rate), dated 13-7-2022 - **TriveniEngicons (P.) Ltd., In re - [2023] 148 taxmann.com 169 (AAR-WEST BENGAL)**
- 4.18. Supply of construction of Road Service is composite supply of work contract and attracts concessional rate of GST at rate of 6 per cent from 1-7-2017 to 17-7-2022 and attract GST at rate of 18 per cent with effect from 18-7-22 onwards - **ITL-KCPL JV, In re - [2023] 148 taxmann.com 305 (AAR - GUJARAT)**
- 4.19. Design and construction of utility service is composite supply of work contract but MBSIRDA not a local authority, therefore, not covered under entry No. 3 (iii) of Notification No. 11/2017-CT-(Rate) Dated 28-6-17 and attracts GST at rate of 18 per cent - **ITL-KCPL JV, In re - [2023] 148 taxmann.com 305 (AAR - GUJARAT)**
- 4.20. Supply of design and construction of Roads and utility Services of TP-1 Area do not constitute composite supply - **ITL-KCPL JV, In re - [2023] 148 taxmann.com 305 (AAR - GUJARAT)**
- 4.21. Construction of houses and infrastructure in slums for Karnataka Slum Development Board under Pradhan MantriAwasYojana as a main contractor is liable to 12% GST (6% CGST + 6% SGST) till 17-7-2022 in terms of Sl. No. 3(iv)(c) of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended and thereafter, such services are liable to 18% GST in terms of Sl. No. 3(xii) of said Notification. However, these services when provided by sub-contractor are also liable to 18% GST - **Yankee Constructions LLP, In re - [2023] 148 taxmann.com 340 (AAR - KARNATAKA)**
- 4.22. Construction services provided to Karnataka Housing Board with respect to construction of Police Station as a main contractor/sub-contractor are liable to 18% GST in terms of Sl. No. 3(xii) of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended - **Yankee Constructions LLP, In re - [2023] 148 taxmann.com 340 (AAR - KARNATAKA)**
- 4.23. Construction services provided to a Special Purpose Vehicle company incorporated by State Government and Municipal Corporation on 50:50 shareholding basis, for development of modern market under a smart city project are liable to 18% GST in terms of Sl. No. 3(xii) of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended irrespective of whether such services are provided by main contractor or sub-contractor - **Yankee Constructions LLP, In re - [2023] 148 taxmann.com 340 (AAR - KARNATAKA)**
- 4.24. Supply of goods and services for construction of railway infrastructure facilities for feeder line of Rail Corridor owned by South Eastern Coalfield Limited for evacuation of coal, under contract awarded by RITES, a PSU, is specifically covered under SAC 9954 21 and same is considered to be an original work pertaining to Railways and a composite supply in terms of section 2(30), therefore such supply would attract 12 per cent GST (6 per cent CGST + 6 per cent SGST) under Sl. No. 3(v)(a) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended subject to

condition that it satisfies definition of works contract under section 2(119), otherwise it would be taxable at rate of 18 per cent GST (9 per cent CGST + 9 per cent SGST) under Sl. No. 3(xii) of said Notification - **TriveniEngicons (P.) Ltd., In re - [2023] 148 taxmann.com 383 (AAR - CHHATTISGARH)**

- 4.25. Term 'pertaining to Railways' occurring in Entry 3(v)(a) of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended includes both Government Railways as well as non-Government Railway - **TriveniEngicons (P.) Ltd., In re - [2023] 148 taxmann.com 383 (AAR - CHHATTISGARH)**

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

- 4.26. 'Jigarthanda' is manufactured by using various ingredients or inputs which is in semi-solid form and satisfies definition of "goods", Hence, "Jigarthanda" falls within purview of 'goods' - **Madurai Famous Jigarthanda LLP, In re - [2023] 147 taxmann.com 580 (AAR - TAMILNADU)**
- 4.27. Alcoholic liquor for human consumption qualifies as goods under GST and sale of such goods falls within scope of supply; Supply of alcoholic liquor for human consumption is a non-taxable supply covered under scope of exempt supply - **Karnani FNB Specialities LLP, In re - [2023] 148 taxmann.com 217 (AAR-WEST BENGAL)**

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

- 4.28. Canteen facilities provided by employer to employees within factory, for which subsidized/nominal deductions made from salary of such employees on monthly basis, are to be considered as supply of service in terms of Section 7(1) read with clause 6 of Schedule II to section 7(1A) of CGST Act, 2017 and liable to GST - **Federal Mogul Goetze India Ltd. In re - [2023] 148 taxmann.com 165 (AAR - KARNATAKA)**

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

- 4.29. Supply of catering service to educational institution providing education from first standard to second PUC is exempted - **Sri Annapurneshwari Enterprises, In re - [2023] 148 taxmann.com 87 (AAR - KARNATAKA)**
- 4.30. Since activity of conversion of whole wheat into fortified atta has fulfilled all conditions specified under Serial no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017, as amended, therefore, it is eligible for exemption under same - **Somnath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 218 (AAR-WEST BENGAL)**
- 4.31. As per Circular No. 153/09/2021-GST dated 17-6-2021, Public Distribution specifically figures at entry 28 of 11th Schedule to Constitution, therefore, activity of conversion of wheat into fortified whole meal atta is found to be in relation to any function entrusted to a Panchayat under article 243G of Constitution - **Somnath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 218 (AAR-WEST BENGAL)**
- 4.32. Bouquets made by applicant-assessee with dry parts of plants, foliage, flower buds and other constituents will be classifiable under Heading No. 0603 90 00 or 0604 99 00 and will be exempted from payment of tax vide Sl. No. 34 of

Notification No.2/2017-Central Tax (Rate) - **Shopinshop Franchise (P.) Ltd., In re - [2023] 148 taxmann.com 180 (AAR-WEST BENGAL)**

- 4.33. Works contract service provided to Bio Centers, Department of Horticulture and Center of Excellence are not exempt from GST - **Sanjeevini Enterprises, In re - [2023] 147 taxmann.com 581 (AAR - KARNATAKA)**
- 4.34. Supply of manpower for tissue culture and for handling process of research on flowers, planting and growing conducted by Horticulture Department is subject to GST at 18 per cent - **Sanjeevini Enterprises, In re - [2023] 147 taxmann.com 581 (AAR - KARNATAKA)**
- 4.35. Materials like fertilizers, soil and sand supplied for use in Bio Centers are not exempt from GST - **Sanjeevini Enterprises, In re - [2023] 147 taxmann.com 581 (AAR - KARNATAKA)**

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

- 4.36. Wherevalue of goods involved in instant supply stands at Rs.60/- against total value of supply of Rs. 260.48, therefore, value of goods involved in instant composite supply stands at 23.03% of total value of supply which does not exceed 25% of value of composite supply - **Somnath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 218 (AAR-WEST BENGAL)**
- 4.37. Wherevalue of goods involved in instant supply stands at Rs.60/- against total value of supply of Rs. 260.48, therefore, value of goods involved in instant composite supply stands at 23.03% of total value of supply which does not exceed 25% of value of composite supply - **Jai Lokenath Flour Mills (P.) Ltd., In re - [2023] 148 taxmann.com 256 (AAR-WEST BENGAL)**
- 4.38. Value of canteen services provided by employer to employees within factory, for which subsidized/nominal deductions are made from salary of such employees on monthly basis, is to be determined in terms of rule 30 or rule 31 of CGST Rules, 2017 at assessee's option and not under section 15(1) of CGST Act, 2017 - **Federal Mogul Goetze India Ltd. In re - [2023] 148 taxmann.com 165 (AAR - KARNATAKA)**

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

- 4.39. Input tax credit of GST paid on purchases cannot be claimed by the recipient when seller has paid tax to government but the preceding supplier (supplier's supplier) had failed to pay GST on such supply - **Vimal Alloys (P.) Ltd., In re - [2023] 148 taxmann.com 240 (AAR-PUNJAB)**
- 4.40. GST paid on manpower supply services received by employer and utilized for providing canteen services to employees, would not be available to him as Input Tax Credit - **Federal Mogul Goetze India Ltd. In re - [2023] 148 taxmann.com 165 (AAR - KARNATAKA)**

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

- 4.41. GST charged by service provider for hiring of bus/motor vehicles having approved seating capacity of more than 13 persons (including driver) for transportation of employees would be available as ITC to assessee-employer subject to fulfillment of conditions prescribed in Section 16 of Central Goods and Services Tax Act, 2017 and such ITC would be restricted to extent of cost of transportation borne by said employer - *Malabar Cements Ltd., In re - [2023] 148 taxmann.com 354 (AAR - KERALA)*
- 4.42. As sale of alcoholic liquor for human consumption is covered under the ambit of exempt supply, input tax credit attributable to such exempt supply is required to be reversed in terms of formula prescribed in Rule 42 of CGST Rules / WBGST Rules - *Karnani FNB Specialities LLP, In re - [2023] 148 taxmann.com 217 (AAR-WEST BENGAL)*
- 4.43. Reversal of ITC would not mean discharging of GST liability on output supply of alcoholic liquor for human consumption as under GST input tax and output tax are different and distinct from each other - *Karnani FNB Specialities LLP, In re - [2023] 148 taxmann.com 217 (AAR-WEST BENGAL)*

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

- 4.44. Exporter is entitled to refund of taxes such as GST/IGST paid on purchase of goods that has been exported under Letter of Undertaking without payment of IGST, GST paid under Reverse Charge Mechanism in respect of GTA services received for transportation of such goods up to Customs station and GST paid on ancillary charges such as

bank charges, documentation charges, brokerage charges and other charges, etc. paid in respect of such export even though he has availed duty drawback under Customs and Central Excise Duties Drawback Rules, 2017 - *Shree Laxmi Exports, In re - [2023] 148 taxmann.com 356 (AAR - CHHATTISGARH)*

#### **SECTION 96 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - AUTHORITY FOR ADVANCE RULING**

- 4.45. Ruling pronounced by Authority for Advance Ruling under GST in a particular case is binding only on applicant in that case and concerned jurisdictional authority of Department - *TriveniEngicons (P.) Ltd., In re - [2023] 148 taxmann.com 383 (AAR - CHHATTISGARH)*

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

- 4.46. Application seeking Advance Ruling on question as to whether tax paid over and above tax liability can be regarded as tax-in-excess to claim refund thereof, does not fall for consideration under section 97 (2) of CGST Act, 2017 - *NBCC (India) Ltd., In re - [2023] 148 taxmann.com 325 (AAR-ODISHA)*

## Amnesty-April 2023 – A brief Discussion

CA Arup Dasgupta, Kolkata

dgarup@gmail.com

During the last 5 years, we have witnessed that due to ignorance or technical glitches or non-availability of funds, many genuine taxpayers have not filed some of their returns on time. As the present regime is a marked shift from the earlier regimes, in terms of late fees on different non-compliances, some tax payers have not filed the returns due to the huge late fees being payable by them. Trade and Industry bodies have many a times represented that once the late fees for the different returns are waived, it will allow many tax payers to return to the mainstream by being compliant. Therefore, as per the decisions taken in the 49<sup>th</sup> GST council meeting, appropriate reliefs have been given by waiver of late fees for filing of GSTR 4 (Return by Composition dealers), GSTR 9 (Annual Return) and GSTR 10 (Final Return).

The above waivers will mainly be of beneficial interest to the MSME's as the late fees was huge and a reason for a financial over burden. Moreover, in case of the annual return where the same was not filed either for interpretations issues or ignorance or because of non-availability of data as books of accounts were not available due to hardware issues or software getting corrupted or because of some search and seizure operation, the huge late fees which was dependent on the turnover was a major road block for non-filing of the same. This was creating not only a major non-compliance issue but was also posing a problem at the time of scrutiny, inspections, search, or audits by department. Therefore, this will be an opportunity which should be seized by the tax payers who are yet to file the

same. However, once 30<sup>th</sup> June is gone, this waiver will not be available, hence the tax payers need to be made aware of the same.

Similarly, after the cancellation of registration, many tax payers have not filed their final return (GSTR 10) on their own as per the timeline given in Section 45. Moreover, when notice is sent u/s 46 that is also overlooked by them which led to best judgment assessment by the Proper officer. Even if the tax payer would like to file the GSTR 10, due to the late fees generated due to time lapses prevents the small tax payers from filing the same, which again leads to litigation. Therefore, the late fees have been waived to a huge extent, if the final return is filed between April 1, 2023 to June 30<sup>th</sup> 2023.

Apart from above, revocation applications can also be filed even if the same is time barred as per section 30. Though this is a welcome step for tax payers who would like to revive their registrations, the disallowance of ITC u/s 16(4) would be a barrier in complying with the conditions of filing all previous returns till the effective date of cancellation. Therefore, an appropriate relief for such class of tax payers for whom the extension has been granted, would surely help in encouraging tax payers in applying for revocation. However, be that as it may, we still feel that this opportunity should not be missed by the tax payers specially where the credentials of the business are a major source of acquiring clients. Another question that is being raised by the tax payers is whether any relief will be

available for the late fees and interest that needs to be paid while filing returns for the period post effective date of cancellation as that would also be a sufficient cash outflow. Moreover, in the matters where the registrations were not restored even after filing of return for past period just because of time barring, the tax payers feel that appropriate relief should be granted in such situations.

While addressing many public forums, we were told that even though the valid returns were filed as per the order issued u/s 62 of the CGST Act, 2017, the order was not withdrawn just because the returns were filed after the 30-day deadline. This led to many litigations before the appellate authorities and/or High Courts. Based on representations from the trade bodies, a huge relief has been given for the deemed withdrawal of the assessment order issued u/s 62(1) of CGST Act 2017, if the conditions laid down have been fulfilled.

Please find appended below the notification wise discussion where in we have tried to share the impact as well as the conditions that need to be taken care of for availing the Amnesty given through the notification.

#### **Waiver of late fees for composition dealers**

**N. No. 02/2023–Central Tax Dated: 31st March, 2023**

“Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 1st day of April,

2023 to the 30th day of June, 2023.”

**GSTR-4 is the Return for registered person who has opted for composition levy or availing benefit of notification No. 02/2019- Central Tax (Rate)**

#### **IMPACT**

**Periods** – Quarterly Returns for July 17 to March 2019 and Returns for FY 2019 -20 to 2021 -22

Turnover – Nil, Late Fees – Nil

Turnover > 0, Maximum Late Fees – Rs. 500 (Rs. 250 CGST and Rs. 250 SGST) per Return

For July 17 to March 2019, quarterly returns will need to be filed

For FY 2019-20 TO 2021-22 one return will need to be filed for the entire FY.

Condition for Waiver – All Returns must be filed between April 1 to June 30<sup>th</sup> 2023.

#### **Author's Note**

The composition dealers were not aware about the filing of the returns and so huge late fees were getting accumulated which acted as a disincentive for filing of the returns. Towards making return filing easier it was shifted from quarterly to annual. However still many returns are pending. Hence now all composition dealers can avail this benefit and file the pending returns.

#### **Extension in filing of Revocation application for cancellation of registration**

**Notification No. 03/2023 – Central Tax dated 31.03.2023.**

Registered person, whose **registration has been cancelled** under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act **on or before the 31st day of December, 2022,**

and

**who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act** as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely: –

(a) the registered person may **apply for revocation of cancellation of such registration upto the 30th day of June, 2023;**

(b) the application for revocation shall be filed only **after furnishing the returns due upto the effective date of cancellation of registration and after payment of any amount due as tax**, in terms of such returns, **along with any amount payable towards interest, penalty and late fee** in respect of the such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registration shall be available in such

**Explanation:** For the purposes of this notification, the person **who has failed** to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.

### IMPACT

#### CLASS OF TAX PAYERS COVERED (**ONLY WHO FULFILL THESE CONDITIONS**)

1. Registered Persons (RTP) whose registration is cancelled for not filing of returns

2. That the registration was cancelled on or before 31<sup>st</sup> December 2022
3. RTP has failed to apply for revocation within the time limit as per Section 30
4. In case an appeal filed against the order for Cancellation or Order rejecting application for revocation of cancellation of registration, the appeal was rejected only **on the ground of non-compliance of Section 30(1)**

#### Conditions to be fulfilled for Revocation application

1. Application for Revocation of Cancellation of Registration must be made between 1<sup>st</sup> April 23 to 30<sup>th</sup> June 23
2. All Pending returns upto the date of effective cancellation of Registration must be filed before filling the application for Revocation
3. All taxes, interest, penalty, and late fees which are due for the returns to be filed till the date of effective cancellation must be paid along with the returns.

#### Author's Note

This is a wonderful opportunity for all taxpayers whose registration was cancelled specially during the pandemic simply for not filing of returns and in many cases where the tax payers alleged that they had not received any notice and so they could not reply to the SCNs. Also, by the time they realised that the revocation applications had to be filed the time was over even after considering the approvals for extension to be given by the Additional Commissioner or the Joint Commissioner OR the Commissioner.

However, we need to appreciate that this is a specific relief and so taxpayers whose

registrations are cancelled for any other reason will not be able to avail this benefit. Further, this would be the last and final opportunity as no further extensions would be granted as per the notification.

### Relief in best judgement assessment

#### Notification No. 06/2023–Central Tax Dated: 31st March, 2023

The registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,- (i) the registered persons shall furnish the said return on or before the 30th day of June 2023; (ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act, irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided

#### Section 62. Assessment of non-filers of returns. -

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for

the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a **valid return within thirty days** of the service of the assessment order under sub-section (1), the said assessment order **shall be deemed to have been withdrawn** but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

#### Conditions for availing the Benefit

1. Assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act.
2. The registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order.

Assessment Order be **deemed to be withdrawn** if

- (i) the registered persons shall furnish the said return on or **before the 30th day of June 2023;**
- (ii) the return shall be accompanied by **payment of interest** due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act

The assessment order will be deemed to be withdrawn irrespective of whether an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided

#### Author's Note

There were numerous matters (*two such judgments- Wild Tree Resorts vs. State Tax*



**Officer [2021] 126 taxmann.com 203 (Kerala) and Bridge Hygiene Services (P.) Ltd. v. State Tax Officer [2019] 112 taxmann.com 177 (Kerala)]** where the returns were filed after the statutory period of 30 days along with all taxes, interest, and late fees. However, the AO could not withdraw the Assessment order as the 30 days window had expired. This was leading to filing of number of appeals by the taxpayers which was an unnecessary and was also enhancing the burden on revenue as well as the tax payers.

Along with this there were some taxpayers for whom some high-pitched assessments were carried out as no information was available with the Proper Officer, hence the taxpayers in this case had filed their returns as per the liability payable by them. However, as the Assessment order was for a higher tax payable, they also had to file appeals or move the High Courts where they felt that they were not given an opportunity of being heard which is a fundamental for the principle of natural justice.

Hence, this is a welcome relief which needs to be availed by taxpayers who in many cases could not file appeals or have filed appeal against the orders or have filed Writs for relief. So, it is suggested that the taxpayers should now file all pending returns if they have not filed yet within 30<sup>th</sup> June 2023 after payment of all taxes, interest, and late fees. And for all tax payers who have filed returns maybe for a lower value than what was assessed under section 62 after 30 days timeline will also get this relief if the assessment order was passed on or before 28<sup>th</sup> February 23.

**Reduction in late fees for annual return from 2022-23 onwards.**

**Notification No. 07/2023–Central Tax Dated: 31st March, 2023**

**FOR FY 2022-23 AND ONWARDS**

Sl. No.	Class of registered persons	Amount
1	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day*, subject to a maximum amount calculated at 0.02 per cent. of turnover in a State or Union territory.
2	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day*, subject to a maximum amount calculated at 0.02 per cent. of turnover in a State or Union territory.

\* Under both CGST & SGST

**Author's Note**

In line with the vision of Atmanirbhar Bharat, there were several requests to rationalise the high late fees that was payable for the delay in filing of Annual Return. The same has been done now. However, for taxpayers with turnover above 20 Crores, there is no reduction in late fees.

**Waiver of late fees for annual return for all tax payers for 2017-18 to 2021-22**

Registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees\*.

\* Under both CGST & SGST

### Author's Note

Many taxpayers who faced different technical issues or maybe whose financial statements could not be finalised did not file the Annual return due to the huge late fees payable and hence there were several requests for waiver of the same. Hence this relief will now enable all the taxpayers who have not filed their annual return for any of the period during FY 2017-18 to 2021-22 **till 31<sup>st</sup> March 23**, can now avail the benefit of lower late fees of Rs. 20,000/- (Rs. 10000/- CGST and Rs. 10000/- SGST) only if they can file the Annual return between 1<sup>st</sup> April 23 to 30<sup>th</sup> June 23. This benefit is available to all Registered persons irrespective of their turnover.

### Waiver of late fees for final return

#### Notification No. 08/2023–Central Tax Dated: 31st March, 2023

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby waives

the amount of late fee referred to in section 47 of the Act, which is in excess of five hundred rupees for the registered persons who fail to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.

### Author's Note

Many taxpayers are unaware that a final return needs to be filed after the cancellation of Registration and therefore in many cases they have filed the Final Return only after receiving notice from the Proper Officer which has led to late fees being due for the same. Hence this relief is now being given so that all pending final GSTR 10 (Final Returns) can be filed with total late fees of Rs.1000/- Rupees (Rs.500 CGST and Rs.500 SGST) only if the same is filed between 1<sup>st</sup> April 23 to 30<sup>th</sup> June 23.

**Disclaimer:** Views expressed are personal and only for sharing of knowledge. Please do get them validated for legal validity.

## Company and SEBI Laws update

### A. STATUTORY UPDATES

- 1.1. Use of e-wallets for investing in Mutual Funds are to be fully compliant with KYC norms prescribed by RBI: says SEBI - **Circular No. SEBI/HO/IMD/IMD-PoD-2/P/CIR/2023/40, Dated 23-03-2023**

**Editorial Note :** Earlier, SEBI vide circular no. SEBI/HO/IMD/DF2/CIR/P/2017/39 dated May 8, 2017 permitted the use of e- wallet for investment in mutual funds within the umbrella limit of INR 50,000 for investments by an investor through both e-wallet and/or cash, per mutual fund per financial year. Now, SEBI has clarified that all e-wallets used for investing in mutual funds should be fully compliant with KYC norms as prescribed by RBI. The circular shall be applicable w.e.f May 01, 2023.

- 1.2. Acquirer holding 50% stake in a co. and its subsidiaries are exempt from making open offer under Takeover Regulations

**Editorial Note :** A company sought informal guidance from SEBI regarding its obligation to make an open offer in case an acquirer holds more than 50% stake in equity shares. In response to query, the SEBI clarified that as per Regulation 10(1)(a)(iii) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the obligation to make an open offer will not apply in case acquisition is made by acquirer holding at least 50% stake in company, its subsidiaries or its holding company.

- 1.3. Govt. establishes C-PACE, to fasten the voluntarily winding up process - **MCA Notification S.O. 1269(E), Dated 17-03-2023**

**Editorial Note :** Finance Minister Nirmala Sitharaman during Budget speech 2022 said "Center for accelerated corporate exit to be set up to accelerate corporate exits. The MCA has established the Centre for Processing Accelerated Corporate Exit (C-PACE). The C-PACE be located at the Indian Institute of Corporate Affairs (IICA), Manesar, Gurugram. It will be effective from 01st April, 2023.

- 1.4. SEBI issues simplified norms/procedural requirements for processing investor's service requests by RTAs - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37, Dated 16-03-2023**

**Editorial Note :** The SEBI has issued simplified norms/procedural requirements for processing investor's service requests by Registrar and share transfer agent (RTAs) to enhance the ease of doing business. The SEBI has clarified that it shall be mandatory for all holders of physical securities in listed entities to furnish PAN, Nomination, Contact details, etc. for their corresponding folio numbers. Also, it is mandatory for investors to link PAN with aadhar. The new framework will be effective from 01.04.2023.

- 1.5. Govt. designates Additional Judicial Commissioner-III of Ranchi as a Special Court under the Companies Act, 2013 - **Notification No. S.O. 1242(E), Dated 15-03-2023**

**Editorial Note :** The Central Government with the concurrence of the Chief Justice of Jharkhand has now designated Additional Judicial Commissioner-III of Ranchi, in the State of Jharkhand as a Special Court for the purposes of providing speedy trial of offences

punishable with imprisonment of two years or more as per clause (a) of sub-section (2) of section 435 of Companies Act 2013. Earlier, Additional Judicial Commissioner, Ranchi was responsible for the same.

- 1.6. SEBI grants renewal of recognition to 'AMC Repo Clearing Limited' for a period of 1 year - **Notification No. SEBI/LAD-NRO/GN/2023/127, Dated 14-03-2023**

**Editorial Note :** The market regulator SEBI, on being satisfied that it would be in the interest of the trade, and also in the public interest, has granted renewal of recognition to the 'AMC Repo Clearing Limited' for a period of 1 year commencing on the 17th of January 2023 and ending on the 16th day of January 2024. The recognition is subject to a condition that the Clearing Corporation shall comply with the conditions specified by SEBI.

- 1.7. SEBI prescribes time limits for FPIs to disclose information to Board and DPs under FPI Regulations - **Notification No. SEBI/LAD-NRO/GN/2023/128., Dated 14-03-2023**

**Editorial Note :** The SEBI has notified the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023. As per the amended norms, FPIs are now required to inform the Board and DPs within 7 working days, if there is any material change in the information, including any direct or indirect change in structure or ownership or control, previously furnished by them. Also, FPIs must maintain accurate details of their investor group with DPs at all times. Various other amendments were prescribed.

- 1.8. Net worth requirement for issuance of MLDs shall be as per Cos Act 2013 and applicable Accounting Standards: SEBI

**Editorial Note :** A company sought informal guidance from SEBI regarding the calculation of minimum net-worth for issuance of Market linked debt securities (MLDs). The company had voluntarily opted for the transition to IND AS which resulted in the net worth exceeding 100 cr. (i.e. minimum net-worth for issuance of MLDs). In response to query, the SEBI clarified that calculation of net-worth for issuance of MLDs shall be as per the Companies Act 2013 and applicable Accounting Standards.

- 1.9. An RTA shall be categorized as a 'Qualified RTA' if no. of folios serviced for listed Cos. in a F.Y. exceeds 2 Crs: SEBI clarifies - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/36, Dated 10-03-2023**

**Editorial Note :** SEBI has issued a clarification regarding Qualified Registrars and Transfer Agents (QRTAs). As per clarification, an RTA shall be categorized as a QRTA, if at any point during a financial year, the combined number of physical and demat folios being serviced by RTA for listed companies exceeds 2 crores. Once RTA becomes a QRTA, it is required to inform SEBI within 5 working days. Also, a relaxation period of 60 days has been provided to comply with the enhanced requirements mandated for QRTAs.

- 1.10. SEBI issues framework for adoption of cloud services by Regulated Entities - **Circular No. SEBI/HO/ITD/ITD\_VAPT/P/CIR/2023/033, Dated 06-03-2023**

**Editorial Note** : SEBI has released a framework for adoption of cloud services by SEBI Regulated Entities (REs) that outlines standards of security and regulatory compliances by the REs.. The main purpose of this framework is to identify the key risks associated with cloud computing and establish mandatory control measures that REs need to implement before adopting cloud services. The framework is applicable to depositories, stock brokers, clearing corporations, AMCs/Mutual funds, KYC Registration Agencies, etc.

- 1.11. SEBI releases guidelines for grant of reward to Informants under Recovery Proceedings

**Editorial Note** : The SEBI has released SEBI (Grant of Reward to Informant under Recovery Proceedings) Guidelines, 2023. These guidelines aim to regulate grants and payment of rewards to informants who provide original Information on defaulters' assets with dues certified as 'Difficult to Recover'. The reward will be granted in two stages, interim & final, and will not exceed 2.5% of the reserve price of the asset or Rs. 5 lakh, for interim, and 10% of dues recovered or Rs. 20 lakh, for final reward.

- 1.12. SEBI introduces definition of a 'non-independent director' under SEBI (Depositories & Participants) Regulations, 2018 - **Notification No. SEBI/LAD-NRO/GN/2023/125, Dated 28-02-2023**

**Editorial Note** : The SEBI has notified the SEBI (Depositories and Participants) (Amendment) Regulations, 2023. As per the amended norms, SEBI has introduced a new definition of a non-independent director. The term "non-independent director" means a director elected or nominated by the shareholders who are neither depository participants nor their associates and agents. In addition, the definition of KMPs has been enhanced. Also, the board has prescribed a code of conduct for depositories and participants.

- 1.13. SEBI broadens scope of IEPF to encompass the use of funds for compensating informants who provide information to Board - **Notification No. SEBI/LAD-NRO/GN/2023/126., Dated 28-02-2023**

**Editorial Note** : The SEBI has notified the SEBI (Investor Protection and Education Fund) (Amendment) Regulations, 2023. A new clause has been inserted to the existing sub-regulation 5(2). Now, the Investors Education and Protection Fund can be used for grant and payment of reward to the informants for providing original information to the Board to recover amounts u/s 28A of the SEBI Act or section 23JB of the SCRA, 1956 or section 19-IB of the Depositories Act, 1996. Various other amendments were prescribed.

- 1.14. SEBI widens the scope of KMP's definition under Securities Contracts Regulations, 2018 - **Notification No. SEBI/LAD-NRO/GN/2023/124., Dated 28-02-2023**

**Editorial Note** : The SEBI has notified SEBI Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2023. As per the amended norms, scope of KMPs definition under regulation 2(1)(j) has been enhanced to include reporting officials of KMP, any person defined as KMP under the Companies Act 2013, etc. The SEBI has introduced a new definition of a non-independent director and also, prescribes a code of conduct for stock exchanges and clearing corporations.

- 1.15. SEBI bans Arshad Warsi and his wife for misleading YouTube videos manipulating shares of Sadhna Broadcast

**Editorial Note** : SEBI has taken action against 31 individuals, including Bollywood actor Arshad Warsi and his wife Maria Goretti Warsi, for manipulating shares of Sadhna Broadcast. The individuals are accused of uploading misleading videos on YouTube to recommend investors to buy the company's shares, thereby inflating its price, and then selling their own shares for profit. The accused said that the Adani group will take over Sadhna Broadcast Ltd and after the acquisition, the company's margin will improve.

- 1.16. Dr. Ruchi Chojer takes charge as an Executive Director of the SEBI - **Press Release No. 04/2023, Dated 01-03-2023**

**Editorial Note** : Dr. Ruchi Chojer took charge as an Executive Director of the SEBI. She will handle Human Resources Department (HRD) and Corporation Finance Investigation Department (CFID). Prior to her promotion as Executive Director, she was the Chief General Manager in SEBI and has handled several assignments in SEBI since joining in 1995. Further, she has in the past served in various Departments including, the Office of Investor Assistance and Education (OIAE), Corporation Finance Department (CFD), etc.

- 1.17. SEBI requires all existing investors to link PAN with Aadhaar number by March 31, 2023 - **SEBI Press Release No. 05/2023, Dated 08-03-2023**

**Editorial Note** : The SEBI has informed all existing investors to ensure the linking of their PAN with Aadhaar number by March 31, 2023, for continual and smooth transactions in the securities market. The reason behind mandating the linking of PAN with Aadhaar is to prevent potential consequences of non-compliance with the CBDT circular. If the linking is not done, accounts may be deemed non-KYC compliant, which could lead to restrictions on securities until PAN and Aadhaar are linked.

- 1.18. SEBI introduces additional restrictions for Companies undertaking buy-back via Stock Exchange Route - **Circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/35, Dated 08-03-2023**

**Editorial Note** : The SEBI has notified SEBI (Buy-Back of Securities) (Amendment) Regulations, 2023. Some additional restrictions have been introduced for Companies buy-backing securities through stock exchange route. Now, company shall not purchase more than 25% of average daily trading volume of its shares in the preceding 10 trading days etc. Further, company shall not place bids in the pre-open market, first 30 min. and the last 30 min. of regular trading session.

## 2. SUPREME COURT

### REGULATION 10 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (STOCK BROKERS AND SUB-BROKERS) REGULATIONS, 1992 - APPROVAL FOR OPERATION IN SEGMENTS OF STOCK EXCHANGE

- 2.1. Where individual who transfers his SE membership card to a co. is only its director & not its WTD at the time of transfer, fee continuity benefit is not available to the co. - **GPSK Capital (P.) Ltd. v. Securities and Exchange Board of India - [2023] 148 taxmann.com 353 (SC)**

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

- 2.2. Unsecured have to accept the scaled down value of their dues as provided under the rehabilitation scheme sanctioned by BIFR u/s 18 of SICA - **Modi Rubber Ltd. v. Continental Carbon India Ltd.** - [2023] 148 taxmann.com 306 (SC)

## RULE 19A OF THE SECURITIES CONTRACTS (REGULATION) RULES 1957 - CONTINUOUS LISTING REQUIREMENT

- 2.3. SC appoints 6-members expert committee headed by retired SC judge to probe Hindenburg report on Adani; issues directions to SEBI to probe stock market crash - **Vishal Tiwari v. Union of India** - [2023] 148 taxmann.com 48 (SC)

## SECTION 71 OF THE COMPANIES ACT, 2013 - DEBENTURES

- 2.4. SC yet again comes to the rescue of retail debenture holders of debt-stressed co. by applying RajkumarNagpal ratio and invoking Article 142- **Authum Investment & Infrastructure Ltd. v. R.K. Mohatta Family Trust** - [2023] 148 taxmann.com 137 (SC)

## 3. HIGH COURT

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

- 3.1. Scope of enquiry in proceedings before NCLT and before Arbitrator is absolutely distinct and thus, when respondent awarded work order for electrical works in its residential project to petitioner and dispute arose between parties regarding payment, merely because petitioner approached NCLT before seeking appointment of Arbitrator, it could not be said that he was indulged in forum shopping - **Brilltech Engineers (P.) Ltd. v. ShapoorjiPallonji and Company (P.) Ltd.** - [2023] 148 taxmann.com 58 (Delhi)

### SECTION 419 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - BENCHES OF

- 3.2. Where appeal against order of NCLT was filed and matter was pending adjudication before NCLAT, there was no need to give an opinion on factual issue i.e., whether appeal was within limitation period or not - **Power Infrastructure India v. Union of India** - [2023] 147 taxmann.com 554 (Delhi)

## 4. SAT

### SECTION 12 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - REGISTRATION OF STOCK BROKERS, SHARE TRANSFER AGENTS ETC.

- 4.1. Where WTM of SEBI suspended certificate of registration of appellant as Registrar to Issue and Share Transfer Agent on ground that it had processed remat shares without specimen signatures and, thus, contravened SEBI (Registrars To An Issue And Share Transfer Agent) Regulations, 1993, in absence of any other irregularity other than those found in alleged inspection, order of suspension was harsh and inappropriate and, therefore, impugned direction of WTM suspending certificate of registration of appellant was to be set aside, however, appellant was prohibited from accepting fresh clients for a period of three months - **Satellite Corporate Services (P.) Ltd. v. Securities and Exchange Board of India** - [2023] 147 taxmann.com 405 (SAT - Mumbai)

## FEMA Banking and Insurance Laws

### 1. STATUTORY UPDATES

- 1.1. Govt. further extends the validity of FCRA registration certificates till 30.09.2023 - **Public Notice No. II/21022/23 (22)/2020-FCRA-III, Dated 24-03-2023**

**Editorial Note :** The Govt., in the public interest, has further extended the validity of FCRA registration certificates up to 30.09.2023 or till the date of disposal of the renewal application, whichever is earlier. The validity of certificates has also been extended for those entities whose validity was earlier extended till 31.03.2023. Also, validity of those FCRA entities whose 5 years validity period is expiring between 01.04.2023 to 30.09.2023 and who have applied for renewal stands extended to 30.09.2023.

- 1.2. RBI Governor lays foundation for a new 'Greenfield Data Centre' and Cybersecurity Training Institute' in Bhubaneswar - **Press Release No. 1898/2022-23, Dated 22-3-202**

**Editorial Note :** The Governor of RBI, Shri Shaktikanta Das, has laid foundation stone for establishment of a "Greenfield Data Centre" and 'Enterprise Computing & Cybersecurity Training Institute' in Bhubaneswar, Odisha. The Governor highlighted the need for augmenting existing computing infrastructure of RBI supported by cutting edge facilities for research and capacity building in emerging areas straddling central banking, technology and cybersecurity for a future ready RBI.

- 1.3. RBI Governor lays foundation for a new 'Greenfield Data Centre' and Cybersecurity Training Institute' in Bhubaneswar - **Press Release: 2022-2023/1898, Dated 22-03-2023**

**Editorial Note :** The Governor of RBI, Shri Shaktikanta Das, has laid foundation stone for establishment of a "Greenfield Data Centre" and 'Enterprise Computing & Cybersecurity Training Institute' in Bhubaneswar, Odisha. The Governor highlighted the need for augmenting existing computing infrastructure of RBI supported by cutting edge facilities for research and capacity building in emerging areas straddling central banking, technology and cybersecurity for a future ready RBI.

- 1.4. RBI directs all banks to keep branches open for the annual closing of Govt. accounts till March 31, 2023 - **Circular No. RBI/2022-23/186 CO.DGBA.GBD.No.S1490/42-01-029/2022-2023; Dated 21-03-2023**

**Editorial Note :** The RBI has directed all agency banks to keep their designated branches open for over-the-counter transactions related to government transactions till the normal working hours of March 31, 2023. All government transactions done by agency banks for the financial year 2022-23 must be accounted for within the same financial year. Further, transactions through National Electronic Funds Transfer (NEFT) and Real Time Gross Settlement (RTGS) System will continue up to 2400 hours on March 31, 2023.

- 1.5. Govt. notifies change in location of DRTs, Bengaluru - **Notification No. S.O. 1295(E), Dated 20-03-2023**

**Editorial Note :** The Central Government has notified the change in the location for various Debt Recovery Tribunals, Bengaluru established under the Recovery of Debts and Bankruptcy Act, 1993. Now, the Debts Recovery Tribunals will function at BSNL Building, Telephone House, 4th Floor, Raj Bhavan Road, Bengaluru- 560001 w.e.f 02.12.2022. Earlier, the

place where the DRTs were functioning was LIC Jeevan Mangal Building, No.4, Residency Road, Bengaluru- 560025.

- 1.6. RBI signs MoU with Central Bank of UAE to promote innovation in financial products and services -**Press Release: 2022-2023/1874, Dated 15-03-2023**

**1.7. Editorial Note :** The RBI and the Central Bank of the United Arab Emirates (CBUAE) signed a Memorandum of Understanding (MoU) on 15.03.2023 in Abu Dhabi, to enhance cooperation and jointly enable innovation in financial products. Under the MoU, both the banks will collaborate on various emerging areas of FinTech, especially Central Bank Digital Currencies (CBDCs) and explore interoperability between the CBDCs of CBUAE and RBI. Also, the MoU provides for technical collaboration and knowledge sharing.

- 1.8. Govt. fixes April 10, 2023 as the date for closure of residual transactions of banks for March 2023: RBI - **Circular No. RBI/2022-23/184 DGBA.GBD.No.S1469/42-01-029/2022-2023, Dated 16-03-2023**

**Editorial Note :** Earlier, RBI vide circular no. dated February 24, 2022 advised procedure to be followed for reporting and accounting of Central Government transactions at the Receiving/Nodal/Focal Point branches of bank for financial year 2021-22. Now, the Govt. has decided that the closure date of residual transactions for March 2023 be fixed as April 10, 2023. Also, such branches should adopt special arrangements so that all payments & collections made towards March end are accounted for in the same FY.

- 1.9. Banking Co's/ FIs to register the details of non-profit organization clients on DARPAN Portal of NITI Aayog - **Notification No. S.O. 1074(E), Dated 07.03.2023**

**Editorial Note :** MoF notified amendment in PML (Maintenance of Records) Rules, 2005. A new clause 'db', defining Politically Exposed Persons has been introduced in Rule 2(1). They are the individuals who have been entrusted with prominent public functions by a foreign country. Now, every Banking Company or Financial Institution shall register the details of non-profit organisation client on the DARPAN Portal of NITI Aayog & maintain such records for a period of 5 years after the end of business relationship.

- 1.10. Govt. brings crypto assets under the purview of PMLA - **Notification No. S.O. 1072(E), Dated 07-03-2023**

**Editorial Note :** The MoF has notified an amendment in Prevention of Money-laundering Act, 2002. Now, activities by a person carrying on designated business or profession under section 2(1) (sa) of PMLA, shall include exchange between virtual digital assets (VDA) and fiat currencies, exchange between one or more forms of virtual digital assets, transfer of virtual digital assets etc. For this purpose, VDA shall have the same meaning assigned to it in clause (47A) of section 2 of the IT Act, 1961.

- 1.11. RBI slaps monetary penalty on Amazon Pay for non-compliance with KYC norms - **RBI Press release: Dated 03-03-2023**

**Editorial Note :** RBI has imposed monetary penalty of Rs. 3,06,66,000/- on Amazon Pay (India) Private Limited. The Amazon Pay (India) Private Limited was non-compliant with the directions issued by RBI on KYC requirements. A notice was also issued to Amazon Pay advising

penalty should not be imposed for non-compliance with the directions. However, RBI was dissatisfied with the entity's response and imposed a penalty thereupon.

## 2. SUPREME COURT

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

- 2.1. SC acquits accused in cheque bounce case, as his defence of absence of legally enforceable debt was rendered probable based on material on record - *AnssRajashakar v. Augustus JebaAnanth* - [2023] 148 taxmann.com 239 (SC)

## 3. HIGH COURT

### SECTION 11 OF THE PREVENTION OF MONEY-LAUNDERING ACT, 2002 - POWER REGARDING SUMMONS, PRODUCTION OF DOCUMENTS AND EVIDENCE, ETC.

- 3.1. Where petitioners filed separate applications before Special Judge, Gurugram exercising powers under PMLA for supply of copies of documents seized during raids, however, trial in instant case had not yet commenced and charges had not been framed, petitioners could only be permitted to file an appropriate application for supply of list of unrelayed documents - *Ashok Solomon v. Directorate of Enforcement* - [2023] 147 taxmann.com 325 (Punjab & Haryana)

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

- 3.2. 'No Civil Court' shall have jurisdiction to entertain any proceeding including a suit in respect of matters wherein any action taken or to be taken falls exclusively within jurisdiction of a 'Debt Recovery Tribunal or Appellate Tribunal, however, there is no bar of any kind for a Civil Court to proceed with such actions, which are beyond domain of SARFAESI Act or RDBFI Act - *Punjab National Bank v. Subhash Aggarwal* - [2023] 147 taxmann.com 345 (Delhi)

### SECTION 143A OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - POWER TO DIRECT INTERIM COMPENSATION

- 3.3. Authorised cheque signatory of a company is not 'drawer' u/s 143A of NI Act & cannot be directed to pay interim compensation u/s 143A - *Lyka Labs Ltd. v. State of Maharashtra* - [2023] 148 taxmann.com 252 (Bombay)

## 4. PMLA-AT

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

- 4.1. Where appellant, pursuant to provisional attachment of its properties by Enforcement Directorate, made an application for cross examination of witnesses, without denial of documents referred by ED and only with a view to delay proceedings before Adjudicating Authority so that proceedings might lapse with expiry of period of 180 days, cross examination of witnesses could not have been allowed - *Abbeys Realcon LLP v. Directorate of Enforcement PMLA, New Delhi* - [2023] 147 taxmann.com 406 ((PMLA-AT), NEW DELHI)

### SECTION 6 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - ADJUDICATING AUTHORITIES, COMPOSITION, POWERS, ETC.

- 4.2. Section 6(5)(a) of PMLA permits constitution of Bench with one or two Members and there is no mandate for constitution of Bench with three Members and, therefore, prayer of appellant to stay proceedings till Adjudicating Authority is constituted with three Members could not have been accepted - *Abbeys Realcon LLP v. Directorate of Enforcement PMLA, New Delhi* - [2023] 147 taxmann.com 406 ((PMLA-AT), NEW DELHI)

# Insolvency and Bankruptcy Code

## 1. STATUTORY UPDATES

- 1.1. IBBI revises CIRP application format; includes Information about multiple applicants - **IBBI Circular No. IBBI/LAD/58/2023, Dated 04-03-2023**

**Editorial Note** : Earlier, IBBI had issued the application format for initiating CIRP under rules 4, 6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Now, the Board has revised the format which includes information about multiple applicants for filing CIRP and aims to ensure the filing of authentic information with the Board and facilitate the efficient sharing of information with the Information Utility (IU). The revised format is provided in Annexure A.

## 2. SUPREME COURT

### SECTION 3(27) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - PROPERTY

- 2.1. Development rights in immovable property created in favour of CD constitute "asset" for the purposes of section 25(2)(a) of IBC - **Victory Iron Works Ltd. v. JitendraLohia - [2023] 148 taxmann.com 290 (SC)**

### SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN

- 2.2. Once the Resolution Plan stands approved by CoC, NCLT can make no alterations /modifications to the approved RP - **SREI Multiple Asset Investment Trust Vision India Fund v. Deccan Chronicle Marketeers - [2023] 148 taxmann.com 320 (SC)**

### SECTION 32 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPEAL

- 2.3. After passing of RP by NCLT, cheque bounce case will cease only against CD if taken over by new management, not against signatories/ ex-directors - **Ajay Kumar RadheyshyamGoenka v. Tourism Finance Corporation of India Ltd. - [2023] 148 taxmann.com 280 (SC)**

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

- 2.4. Where there was a delay of 21 days in filing appeal under section 62 before Supreme Court against order of NCLAT and delay was beyond maximum period, which was condonable in terms of statute, appeal was to be dismissed on ground of limitation - **PEC Ltd. v. Phulchand Exports (P.) Ltd. - [2023] 147 taxmann.com 489 (SC)**

## 3. HIGH COURT

### SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 3.1. Order demanding tax, interest and penalty passed against Corporate Debtor after approval of resolution plan by NCLT in terms of Insolvency and Bankruptcy Code, 2016, is not

sustainable - **EMC Ltd. v. State of Rajasthan - [2023] 148 taxmann.com 31 (Rajasthan)**

### SECTION 66 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR WRONGFUL TRADING

- 3.2. Section 66(1) of IBC is not unconstitutional for being ultra vires of Article 14 as there is no arbitrariness, matchless manifest arbitrariness in it - **Smt. SudipaNath v. Union of India - [2023] 148 taxmann.com 33 (TRIPURA)**

### SECTION 238 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - OVERRIDING EFFECT OF CODE

- 3.3. Where corporate debtor pledged shares to financial creditor against a loan, which were included in liquidation estate of corporate debtor, in view of overriding effect of section 238, ad interim order sought by financial creditor to restrain corporate debtor from taking possession of pledged shares could not be granted - **Alliance Broadband Services (P.) Ltd. v. Manthan Broadband Services (P.) Ltd. (In Liqn.) - [2023] 147 taxmann.com 324 (Calcutta)**

## 4. NCLAT

### SECTION 3(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - CLAIM

- 4.1. Mere fact that operational creditors and financial creditors are not paid same amount and same percentage, cannot be said to be inequitable; equitable treatment of creditors is equitable treatment only within same class and, therefore, it could not be said that resolution plan which provided financial creditors much higher amount as compared to operational creditors violated section 30(2) - **Damodar Valley Corporation v. Dimension Steel and Alloys (P.) Ltd. - [2023] 147 taxmann.com 491 (NCLAT- New Delhi)**

- 4.2. Where corporate debtor placed purchase orders on operational creditor for supply of modems required for a project of TANGEDCO, and only part payments were made by corporate debtor, and corporate debtor stated to have transferred right to operational creditor to claim performance from TANGEDCO, in view of fact that no prior approval was sought from TANGEDCO for such payment, no valid contract existed between operational creditor and TANGEDCO and onus came back to corporate debtor to ensure that amounts were paid to operational creditor - **Babu Rao Kodali v. Vajra IOT (P.) Ltd. - [2023] 147 taxmann.com 327 (NCLAT - Chennai)**

### SECTION 3(7) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - CORPORATE PERSON

- 4.3. Where a NBFC stood as guarantor in respect of corporate debtor, section 3(7) having categorically excluded financial institutions from definition of corporate person, NCLT committed an error in admitting application filed by financial creditor under section 7 against such guarantor - **Nirmal Kumar Agarwal v. State Bank of India - [2023] 147 taxmann.com 495 (NCLAT- New Delhi)**



**SECTION 3(12) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEFAULT**

4.4. A petition filed under section 241 of Companies Act cannot be equated with an application filed under section 7 of IBC and NCLT is required to treat said applications separately and, therefore, NCLT erred in tagging an application filed under section 7 with petition filed under section 241 and referring matter to IAMCH for mediation - **White Stock Ltd. v. Prajay Holdings (P.) Ltd.** - [2023] 147 taxmann.com 329 (NCLAT - Chennai)

**SECTION 3(23) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - PERSON**

4.5. Word 'person', as defined under section 3(23)(d) also includes a trust and, therefore, there is no fetter/embargo or a legal impediment for a trust to be a resolution applicant in submitting a resolution plan - **Aswathi Agencies v. BijoyPrabhakaranPulipra, Resolution Professional PVS Memorial Hospital (P.) Ltd.** - [2023] 147 taxmann.com 590 (NCLAT - Chennai)

**SECTION 3(31) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - SECURITY INTEREST**

4.6. Where appellant-sub-contractor issued bank guarantees to corporate debtor to ensure performance in specific time but appellant had failed to perform its obligation in terms of agreement and bank guarantees were invoked prior to initiation of CIRP, NCLT had rightly rejected application filed by appellant seeking a direction against RP to not to invoke bank guarantees - **Siemens Ltd. v. Meenakshi Energy Ltd.** - [2023] 147 taxmann.com 349 (NCLAT- New Delhi)

**SECTION 4 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION OF**

4.7. Where appellant-operational creditor filed an application under section 9 on 8-9-2021 for an amount below threshold limit of Rs. 1 crore as statutorily required under section 4 with effect from 24-3-2020, application was not maintainable - **Netfinity Solutions v. KarvyDigiKonnnect Ltd.** - [2023] 148 taxmann.com 67 (NCLAT- New Delhi)

4.8. Default by corporate debtor is a condition precedent which gives right to operational creditor to file application under section 9, but for initiating CIRP process threshold, as prescribed under section 4, is to be fulfilled by operational creditor on date of initiation of CIRP process and, therefore, no error had been committed by NCLT in rejecting section 9 application filed by operational creditor on 18-1-2021, which did not fulfil threshold of Rupees One Crore - **HylineMediconz (P.) Ltd. v. Anandaloke Medical Centre (P.) Ltd.** - [2023] 148 taxmann.com 68 (NCLAT- New Delhi)

**SECTION 5(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE**

4.9. Where appellant/ex-Managing Director of corporate debtor had not repudiated that sum of Rs. 3.25 crores was due and payable to operational creditor by corporate debtor and that debt of corporate debtor was very clearly established, which

was more than threshold limit of Rs. 1 crore, admission of section 9 application by Adjudicating Authority was free from any legal infirmities - **KeshavKantamneni v. Kishan Chand Suresh Kumar** - [2023] 148 taxmann.com 57 (NCLAT - Chennai)

4.10. Where corporate debtor had neither disputed existence of 'debt' nor there was anything on record showing any pre-existing dispute as regards quality of goods raised prior to issuance of demand notice, NCLT was justified in passing impugned order admitting application under section 9 - **V VenkataSatyanarayana v. Pattabi Enterprise** - [2023] 147 taxmann.com 412 (NCLAT - Chennai)

4.11. Where Corporate debtor entered into a distribution agreement with appellant for sale, advertisement and distribution of Nike products and corporate debtor raised pre-existing disputes with respect to quality of goods in reply to section 8 notice filed by appellant and appellant's submission that dispute was a moonshine one was not satisfactory, instant was not a case where section 9 proceedings could be initiated - **Nike India (P.) Ltd. v. Enkay Brand Distribution (P.) Ltd.** - [2023] 148 taxmann.com 230 (NCLAT- New Delhi)

**SECTION 5(7) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL CREDITOR**

4.12. Section 5(7), which defines financial creditor, also includes a person to whom a debt has been legally assigned and, thus, where by virtue of assignment assignee became financial creditor and stepped in shoes of original financial creditor, assignee had every right to continue proceeding, which was initiated by original financial creditor - **Siti Networks Ltd. v. Assets Care and Reconstruction Enterprises Ltd.** - [2023] 147 taxmann.com 351 (NCLAT- New Delhi)

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

4.13. Where respondents-financial creditor submitted reply of demand notice containing admission of loan by corporate debtor, Form 16A and balance sheet, which clearly established that loan was granted by financial creditor to corporate debtor with interest, ingredients of financial debt were fully proved and, therefore, no error was found in order of NCLT admitting CIRP application against corporate debtor - **Pradeep Tayal v. Essbert Fashion (P.) Ltd.** - [2023] 148 taxmann.com 135 (NCLAT- New Delhi)

4.14. Where NCLT instead of accepting or rejecting application filed under section 7 when facts that debt was due, remained unpaid and default took place stood established preferred to refer said application to IAMCH for mediation under section 442 of Companies Act, order passed by NCLT was not in conformity with law and, therefore, same was to be set aside - **White Stock Ltd. v. Prajay Holdings (P.) Ltd.** - [2023] 147 taxmann.com 329 (NCLAT - Chennai)

4.15. Where provisions of inter-se agreement entered between consortium financial creditor banks and corporate debtor clearly, stipulated that even if an individual bank wanted to declare an 'event of default, it had to follow procedure set out in said agreement and, intimates security trustees of its intention to declare default, since it had clearly not been done by respondent bank, NCLT had committed an error in admitting section 7 application on ground that any lender was at liberty to

take any decision - **RakshitDhirajlalDoshi v. IDBI Bank Ltd. - [2023] 147 taxmann.com 355 (NCLAT- New Delhi)**

**SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT**

- 4.16. Section 9 application cannot be admitted on ground of non-payment of TDS amounts - **Amitabh Roy v. Master Development Management (India) (P.) Ltd. - [2023] 147 taxmann.com 492 (NCLAT- New Delhi)**
- 4.17. Where R2-corporate debtor had not raised any dispute with regard to goods supplied by R1-operational creditor and R2 had admitted debt through various e-mails and utilized goods supplied by R1, R2 could not avoid or evade its responsibility to make debt amount and, therefore, NCLT had rightly admitted application filed under section 9 - **PaletiPadmaja v. Chevuri Enterprises - [2023] 147 taxmann.com 347 (NCLAT - Chennai)**
- 4.18. Where 40 per cent payment made to operational creditor was acknowledged by corporate debtor, it was clear that debt existed, which was due and unpaid and since arbitration proceeding, which corporate debtor was trying to portray as a pending dispute, was between corporate debtor and a beneficiary third party, there was no error in order passed by NCLT initiating CIRP against corporate debtor - **Babu Rao Kodali v. Vajra IOT (P.) Ltd. - [2023] 147 taxmann.com 327 (NCLAT - Chennai)**

**SECTION 5(24) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RELATED PARTY, IN RELATION TO A CORPORATE DEBTOR**

- 4.19. Where corporate debtor-appellant claimed that demand notice issued under section 8 through IRP was defective on ground that IRP was a related party to operational creditor as per section 5(24)(h), since section 5(24)(h) relates to corporate debtor and not to operational creditor and further, appellant failed to lead evidence that director, partner or manager was accustomed to act on directions or instructions of said IRP, said section was not applicable to facts of instant case - **NileshbhaiShantilal Patel v. Westin Resins and Ploymers (P.) Ltd. - [2023] 148 taxmann.com 30 (NCLAT- New Delhi)**

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

- 4.20. Where despite taking many dates, appellant had failed to consolidate funds for purpose of discharging his liability towards operational creditor but also towards various interveners, his appeal to stay CoC constitution on premise that he was ready to pay remaining amount was dismissed - **NileshbhaiShantilal Patel v. Westin Resins and Ploymers (P.) Ltd. - [2023] 148 taxmann.com 30 (NCLAT- New Delhi)**

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

- 4.21. Where appellant-ex promoter of corporate debtor filed an application before NCLT to keep in abeyance application filed by Resolution Professional for approval of resolution plan after its approval by CoC, NCLT being not satisfied that there was no adequate reason to accept prayer of appellant, no error had

been committed by NCLT in rejecting application filed by appellant - **Hem Singh Bharana v. PawanDoot Estate (P.) Ltd. - [2023] 148 taxmann.com 74 (NCLAT- New Delhi)**

**SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM**

- 4.22. Where NCLT had declared a moratorium on 18-1-2021 and, appellant-financial creditor in possession of corporate debtor's property issued a sale deed certificate in favour of R2 on 20-1-2021, sale certificate issued by appellant disregarded order of moratorium declared by NCLT and, thus, could not stake any claim and advantage in regard to property covered under sale certificate - **Omkara Assets Reconstruction (P.) Ltd. v. ECI Infra Towers Company (P.) Ltd. - [2023] 148 taxmann.com 70 (NCLAT - Chennai)**

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

- 4.23. Where Resolution Professional had included project land allotted to corporate debtor for setting up of a commercial complex in pool of assets of corporate debtor, Resolution Professional had not acted in a manner that transgressed statutory framework of IBC and he could not be held to be remiss in performance of his duties - **Indo World Infrastructure (P.) Ltd. v. Mukesh Gupta Resolution Professional of Rohtas Projects Ltd. - [2023] 148 taxmann.com 63 (NCLAT- New Delhi)**

**SECTION 21 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - COMMITTEE OF CREDITORS**

- 4.24. Where appellants-operational creditor holding 96.75 percent shares in corporate debtor had refused to participate in CoC meeting causing a stalemate, RP was correct in approaching NCLT seeking necessary directions for appellants to pay CIRP costs and RP's fees as decided by CoC - **Income-tax Department, Assistant Commissioner of Income-tax, Delhi v. Indianroots Shopping Ltd. - [2023] 147 taxmann.com 557 (NCLAT- New Delhi)**

**SECTION 28 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - COMMITTEE OF CREDITORS - APPROVAL OF**

- 4.25. Where IRP had provisionally accepted claim of all creditors, including that of appellant-financial creditor but had excluded appellant from CoC on ground that there was a need to verify provisional claims submitted by appellant, conduct of IRP was unjustified and NCLT committed an error in not taking cognizance of fact that IRP denied appellant benefit of being a part of CoC - **Edelweiss Asset Reconstruction Co. Ltd. v. Mohit Goyal - [2023] 148 taxmann.com 76 (NCLAT- New Delhi)**

**SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT**

- 4.26. Where appellant-suspended director of corporate debtor had been declared as a wilful defaulter by bank, he was ineligible to submit resolution plan of corporate debtor - **Athar Zia v. AnupSood - [2023] 147 taxmann.com 493 (NCLAT- New Delhi)**

**SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN**

- 4.27. Where resolution plan was approved by CoC with 100 per cent voting share in its commercial wisdom and same was not discriminatory among class of creditors, NCLT could not interfere with same and had rightly approved such resolution plan - **Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) v. Salasar Steel and Power Ltd.** - [2023] 147 taxmann.com 385 (NCLAT- New Delhi)
- 4.28. Where NCLT allowed an application of CoC seeking consideration of a new resolution plan of a third party subsequent to an already approved resolution plan, since neither there was any irregularity in already approved resolution plan nor was it against provisions of section 30(2), order of NCLT was to be set aside - **Kalinga Allied Industries India (P.) Ltd. v. Committee of Creditors (Bindolspongge Industries Ltd.)** - [2023] 147 taxmann.com 494 (NCLAT- New Delhi)

**SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF**

- 4.29. On approval of resolution plan by NCLT all such claims which were not a part of resolution plan should stand extinguished and no person would be entitled to initiate or continue with proceedings in respect of a claim, which was not part of resolution plan - **R.S Wire Industries v. Trans-Fab Power India (P.) Ltd.** - [2023] 147 taxmann.com 555 (NCLAT- New Delhi)
- 4.30. Time-line provided in section 12 for receiving resolution plan is not mandatory and in certain cases time-line can be extended - **Damodar Valley Corporation v. Dimension Steel and Alloys (P.) Ltd.** - [2023] 147 taxmann.com 491 (NCLAT- New Delhi)
- 4.31. IBC has overriding effect over provisions of West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013; therefore, where under approved resolution plan, appellant operational creditor, provider of electricity to corporate debtor, was transferred a meagre amount and was directed to reconnect electricity of corporate debtor, appellant was obliged to reconnect electricity which was provision of resolution plan and it could not be heard of saying that regulations of West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2013 were not complied with - **Damodar Valley Corporation v. Dimension Steel and Alloys (P.) Ltd.** - [2023] 147 taxmann.com 491 (NCLAT- New Delhi)
- 4.32. Where Resolution Plan approved by CoC did not contravene any of provisions of law for time being in force, non disposal of IAs by Adjudicating Authority before approving resolution plan, did not vitiate CIRP of corporate debtor - **Indo World Infrastructure (P.) Ltd. v. Mukesh Gupta Resolution Professional of Rohtas Projects Ltd.** - [2023] 148 taxmann.com 63 (NCLAT- New Delhi)
- 4.33. Where applicant, Excise and Taxation Commissioner filed application seeking acceptance of claim/revised claim regarding statutory dues of department after a period of more than one year after approval of resolution plan by Adjudicating Authority, same could not have been accepted as regulation 12 of CIRP Regulations, 2016 provides for an outer limit of 90 days from Insolvency commencement date for submission of claims -

**Punjab National Bank v. Dinesh Polytubes (P.) Ltd. - [2023] 147 taxmann.com 553 (NCLT-Chd.)**

- 4.34. Where corporate debtor had only paid 30 per cent of sale consideration for buying equipments from appellant/seller, appellant continued to be owner of said equipments and same ought not to have been included in assets of corporate debtor while approving resolution plan and were to be returned to appellant - **TLD MEAI FZE v. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd.** - [2023] 147 taxmann.com 235 (NCLAT- New Delhi)
- 4.35. Where resolution plan approved by NCLT had already been implemented, at such belated stage application filed by appellant, Commissioner of Custom & Excise, challenging approval of resolution plan by NCLT on ground of unpaid dues could not be accepted - **Commissioner of Customs & Excise, Jp v. Ashika Commercial (P.) Ltd.** - [2023] 147 taxmann.com 591 (NCLAT- New Delhi)
- 4.36. Where appellant secured creditor having voting share of 33.87 per cent challenged section 7 application filed by Andhra Bank but same had been rejected by Supreme Court on all grounds, appellant could not be permitted to challenge initiation of CIRP on ground of limitation and since resolution plan was compliant to section 30, same had been rightly approved by NCLT - **Andhra Pradesh State Financial Corporation v. Kalptaru Steel Rolling Mills Ltd.** - [2023] 148 taxmann.com 59 (NCLAT- New Delhi)

**SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF**

- 4.37. Where sick industrial unit entered into Memorandum of Understanding (MoU) with respondent, on basis of which, implementation of rehabilitation scheme was approved, said rehabilitation scheme could not be treated as a resolution plan within meaning of IBC and, therefore, application filed under section 33 before NCLT for breach of approved rehabilitation plan had rightly been rejected - **Pramod Kumar Pathak v. ARFAT Petrochemicals (P.) Ltd.** - [2023] 148 taxmann.com 61 (NCLAT- New Delhi)
- 4.38. Where last date for submission of resolution plan had expired on 7-12-2019 and respondents submitted their plan belatedly even when statutory period of 330 days had expired, order passed by NCLT directing RP to place said plan before COC for considerations after expiry of last date for submission and that too after completion of CIRP period was unjust, illegal and unwarranted and, therefore, same was to be set aside - **Committee of Creditors of Associated Décor Ltd. v. Svamitva Landmarks** - [2023] 147 taxmann.com 353 (NCLAT - Chennai)

**SECTION 35 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - POWERS AND DUTIES OF**

- 4.39. Regulation 35 mandates disclosure of liquidation value to members of CoC and RP shall provide fair value and liquidation value to every CoC member in electronic form; where appellant was not a member of CoC, plea of non-compliance of regulation 35(2) by RP was rightly rejected - **Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) v. Salasar Steel and Power Ltd.** - [2023] 147 taxmann.com 385 (NCLAT- New Delhi)

**SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY**

- 4.40. Where there was no error or default on part of liquidator in approaching NCLT regarding distribution of accumulated profit of corporate debtor, appeal filed by appellant ex-director of corporate debtor on ground that neither liquidator was authorized to file an application for distribution nor NCLT was competent to grant permission to distribute funds among stakeholders was abuse of process of court and same was to be dismissed - *Yogesh Singh v. Supriyo Kumar Chaudhuri, (Liquidator of JVL Agro Industries Ltd.)* - [2023] 147 taxmann.com 496 (NCLAT- New Delhi)

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

- 4.41. Where resolution plan submitted by successful resolution applicant was approved by CoC with 100 per cent voting share and same was approved by NCLT by impugned order, in view of fact that plan was in accordance with IB Code and Regulations made thereunder and was fully implemented, appeal against impugned order passed by NCLT in approving resolution plan was to be dismissed - *Aswathi Agencies v. BijoyPrabhakaranPulipra, Resolution Professional PVS Memorial Hospital (P.) Ltd.* - [2023] 147 taxmann.com 590 (NCLAT - Chennai)

**SECTION 66 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR WRONGFUL TRADING**

- 4.42. Section 66 does not provide for any look back period as far as fraudulent transactions are concerned - *Thomas George v. K. Easwara Pillai Resolution Professional Mathstraman Manufacturers and Traders (P.) Ltd.* - [2023] 147 taxmann.com 552 (NCLAT - Chennai)
- 4.43. Where RP filed an application under section 66 claiming that erstwhile directors of corporate debtor i.e. appellants had committed fraudulent act knowingly and in a dishonest manner to hoodwink creditors and despite service of notice on appellant, they did not appear before NCLT and, hence, were set as ex-parte, appellants could not now wriggle out of observation made by NCLT that they had committed fraudulent act - *Thomas George v. K. Easwara Pillai Resolution Professional Mathstraman Manufacturers and Traders (P.) Ltd.* - [2023] 147 taxmann.com 552 (NCLAT - Chennai)

**SECTION 94 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY DEBTOR**

- 4.44. Where no steps had been taken by financial creditor bank against appellant-personal guarantor of corporate debtor for recovery of any dues and guarantee had also not been invoked, there was no sufficient ground to admit application under section 94 filed by appellant for initiating CIRP against appellant - *Amanjyot Singh v. Navneet Kumar Jain* - [2023] 148 taxmann.com 72 (NCLAT- New Delhi)

**SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR**

- 4.45. Object behind issuance of limited notice to personal guarantor is to appear before Adjudicating Authority following principle of Natural Justice; where material on record showed that personal guarantor/appellant was represented on that date, it could not be said that appellant was not aware of proceedings and appellant could not claim that limited notice under section 95(1) was not issued to him - *Premjit Singh Chadha v. Bank of Baroda* - [2023] 148 taxmann.com 65 (NCLAT- New Delhi)

**SECTION 96 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - INTERIM-MORATORIUM**

- 4.46. Where during pendency of section 19(2) proceedings, interim moratorium was declared in section 95 proceedings initiated against appellants (suspended directors of corporate debtor), as personal guarantors, since as per section 96 interim moratorium would be for proceedings relating to a liability or obligation due on date when interim moratorium had been declared and cannot be read to mean that any future liability or obligation is to be stayed, NCLT had not erred in rejecting application of appellants for stay of section 19(2) proceedings - *Ashok Mahindru v. VivekParti* - [2023] 147 taxmann.com 490 (NCLAT- New Delhi)

**SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD**

- 4.47. Where date of default disclosed in section 7 application was 12-9-2014, application under section 7 having been filed in year 2018, was clearly filed beyond three years from date when cause of action arose to financial creditor and, therefore, NCLT did not commit any error in rejecting section 7 application filed by financial creditor - *Vedika Credit Capital Ltd. v. Shriram Power and Steel (P.) Ltd.* - [2023] 147 taxmann.com 384 (NCLAT- New Delhi)
- 4.48. Where corporate debtor was declared a sick unit by BIFR on 9-11-2005, right to apply under section 9 accrued to respondent after SICA was repealed on 1-12-2016 and also when Insolvency and Bankruptcy Code, 2016 came into force and, therefore, application filed by respondent-financial creditor on 29-5-2017 was well within a limitation period of three years - *Jord Engineers India Ltd. v. Valia& Co.* - [2023] 148 taxmann.com 66 (NCLAT- New Delhi)
- 4.49. Where annual report of corporate debtor for Financial year 2015-16 and recall notice dated 1-2-2016 itself established existence of debt and default, CIRP application filed by financial creditor on 17-5-2018 was not time barred and NCLT had not committed any error in admitting same - *Abhay Narendra Lodha v. Bank of Baroda* - [2023] 147 taxmann.com 408 (NCLAT- New Delhi)
- 4.50. Where financial creditor granted credit facilities to a corporate debtor and account of corporate debtor was declared NPA on 30-9-2013, however, corporate debtor's balance sheet for years 2014-15 and 2015-16 acknowledged debt and OTS proposal dated 27-12-2018 further extended limitation period, application filed by financial creditor under section 7 on 10-6-2019 was well within period of limitation and, therefore, same was rightly admitted by NCLT - *Dinesh G Jaiswal v. Punjab National Bank* - [2023] 147 taxmann.com 410 (NCLAT- New Delhi)

## Accounts and Audit Updates

**1. ICAI issues Exposure Draft of the 'Guidance Note on Transfer of Capital Reserve'**

**Editorial Note** : Certain Ind AS require the creation of capital reserve for unrealized profits from specific transactions or events. However, there is currently no clear direction on how to transfer these reserves to retained earnings or other free reserves. This GN sets out principles for transfer of capital reserve to free reserve, including timing when such transfer can be made. Research Committee of ICAI invites comments on this ED in writing or sent by e-mail at <mailto:research@icai.in> till 20th Apr 2023.

**2. Bank Audit: ICAI has issued Guidance Note on Audit of Banks (2023 Edition)**

**Editorial Note** : Auditing and Assurance Standards Board of ICAI has issued Guidance Note on Audit of Banks (18th Edition). The statutory audit of banks forms an important part of the control mechanism of the banking industry to boost the confidence of investors in financial information. Thus, to deliver detailed guidance and to require the attention of statutory auditors on the latest developments Guidance Note can be accessed at <https://www.icai.org/post/guidance-note-on-audit-of-banks-2023-edition>.

**3. ICAI issues the Implementation Guide to Standard on Auditing (SA) 580, Written Representations**

**Editorial Note** : The Auditing and Assurance Standards Board (AASB) of ICAI has issued the Implementation Guide to Written Representation. This Guide acts as an important resource for auditors to understand the principles and requirements of the standards. This guide is written in simple language in the form of frequently asked questions (FAQs). The Standard deals with the auditor's responsibility to obtain written representations from management and, where appropriate, those charged with governance.

**4. Bank Branch Audit Checklist for compliance with Standards on Auditing (SAs)**

**Editorial Note** : Effective implementation of SAs is essential to ensure quality in bank branch audits. It is important to keep checklists for SAs in the audit documentation file, ensuring completeness and remarks from signatories against each SA. The scope and objectives of SAs should be discussed and utilized as a reference for the audit assignment undertaken. These checklists will inculcate necessary discipline among staff members and even the signatories of the audit statements.

**5. MoF issues Indian Government Accounting Standard (IGAS) for 'Prior Period Adjustments'**

**Editorial Note** : The Ministry of Finance has released Indian Government Accounting Standard on prior period adjustments. The objective is to prescribe the manner in which prior period adjustments including errors once identified shall be presented and disclosed in the current financial year under the cash basis of accounting. This standard applies to Union Government, State Government and Union territory with a Legislature which prepares and presents financial statements using the cash basis of accounting

**6. Determining the Classification of a Land Lease as a Finance or Operating Lease: A case study**

**Editorial Note** : As per para 9 of Ind AS 116 states that at the inception of a contract, an entity shall assess whether the contract is, or contains a lease. A contract is, or contains a lease if the contract conveys the right to control the use of an identified asset for a period of time to the customer and he has both of the following, (a) the right to obtain substantially all of the economic benefits from use of the identified asset and (b) the right to direct the use of the identified asset.

**7. Non-Compliance with Ind AS 36: Failure to Reverse Impairment Loss in Separate Financial Statements for Subsidiary Investment**

**Editorial Note** : As per Ind AS 36, a reversal of an impairment loss for a CGU shall be allocated to the assets of the unit, except for goodwill, pro rata with the carrying amounts of those assets. These increases in carrying amounts shall be treated as reversals of impairment losses for individual assets. The case of non-reversal of impairment loss, which was previously recognized in the separate financial statement for investment, due to permanently impaired goodwill is discussed in detail.

## Financial Planning For Children Education

CA Vinita Kejriwal

Kejriwalvinita2002@gmail.com

**Investment Planning is the essential component of a financial plan which enables individuals to fulfil their life goals and any aids to overcome any financial crisis.**

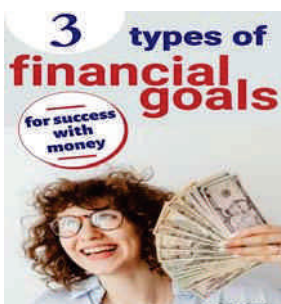


Traditionally, Indian investors have always preferred fixed income securities where the returns are assumed and have compromised on the returns. Indian investors are risk averse. But with the changing trend and popularity of stock market returns many of them are taking the risk and investing in equity. Investment planning is a must in today's world without which you cannot fulfil your life goals and sometimes may end up in a financial crisis. If we are taking investment

decisions today that will directly affect our future wealth, it would make sense that we utilize a plan to help guide our decisions.

An individual should first adequately set their goals and objectives which are achievable and then they should proceed further with their plan. Investment planning provides direction and meaning to one's financial decisions. It allows one to understand how each financial decision affects other areas of finances. By viewing each financial decision as a part of a whole, one can consider its short-term and long-term effects on life goals.

### Types of goals:



The three most common types of investment goal are:

1. Life events, Child's Education
2. **Retirement planning** or property purchase over the very long term
3. **Lifestyle funds to finance goals** such as a dream sports car over the medium to shorter term

Here, we are focusing on why investing for Child Education Plan is important and how we can achieve it.

Education is the foundation of a child's future well-being. Children's education creates various opportunities to help those live better lives. It can also help shape the society at large. With the right education, a child can help the country develop and progress at a faster pace.

### WHY INVESTING FOR YOUR CHILD'S EDUCATION IS ESSENTIAL?

Parenting is no child's play. It takes a lot of commitment and planning, especially when you are planning for their future. The key is to start financial planning right away. Secure their future with Proper

Investment Planning. After all, there is no greater gift you can give to your child than a secure future. Education is the foundation stone for a child's future security. However, while every parent wants to provide their children with the best of opportunities, other expenses sometimes take precedence. Saving and planning for your child's education can be a daunting task for many parents. The level of responsibility and the amount of money that one has to save and invest requires a lot of wisdom and knowledge. It also needs a well thought of timeline and adequate revision and recalculation along the way. This can only be successful with a farsighted plan in place.

Even with all the existing expenses on your plate, devoting a reasonable amount for your child's future is important.

**Fulfilling immediate needs:** A growing child has growing demands. So financial requirements are going to keep growing as they grow.

**Preparing for future needs:** A child's need can be little unpredictable, depending on its interest and calibre. It is important that you are prepared for everything your child wishes to pursue.

**Investing for your child's higher education:** Given the rapid increase in education costs, a child's higher education does require substantial savings.

## Inflation impact on the hidden cost of education

Inflation is **one of the root causes of price hikes in the education sector**. The essential needs of students like uniforms, textbooks, tuition fees, school shoes, and transportation costs have become so expensive that it is slowly becoming impossible for a common man to afford his child's education.

**Source: Mospi, Edufund Research Press releases**



The data highlights the reality that the rise in education costs has surpassed all other necessities and consumables in the last decade.

## If Child wants to study from Abroad:

### Value of \$1 from 2012 to 2023



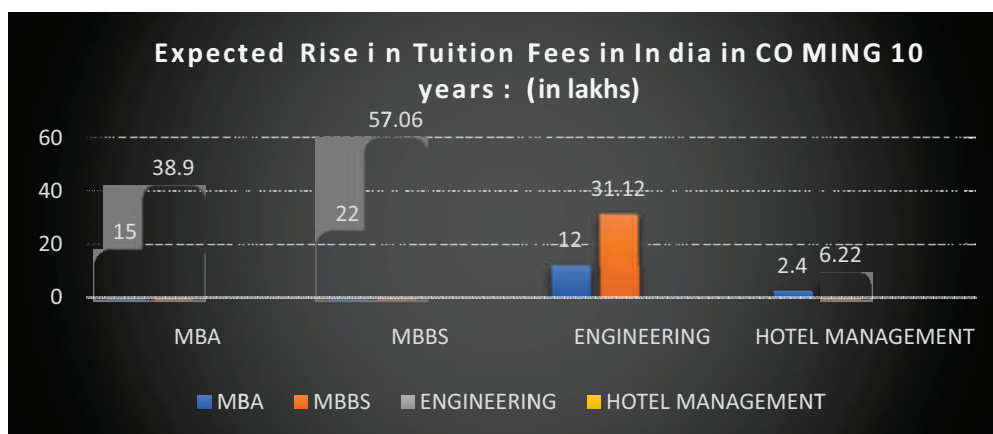
\$1 in 2012 is equivalent in purchasing power to about \$1.30 today, an increase of \$0.30 over 11 years. The dollar had an average inflation rate of 2.44% per year between 2012 and today, producing a cumulative price increase of 30.30%.

This means that today's prices are 1.30 times as high as average prices since 2012, according to the Bureau of Labour Statistics consumer price index. A dollar today only buys 76.923% of what it could buy back then.

Source: [www.inflationtool.com](http://www.inflationtool.com) , <https://www.in2013dollars.com>

### Expected Rise in Tuition Fees in India in COMING 10 years: (in lakhs)

YEAR	MBA	MBBS	ENGINEERING	HOTEL MANAGEMENT
2022	15	22	12	2.4
2032	38.90	57.06	31.12	6.22



Source: Fees from Different University Site, Future Projections based on analysis of past inflationary data, assume education inflation rate 10%; subject to change.

Let us assume you would like it if your daughter does an MBA from a prestigious college in the US. She is too young to understand, but you want to be prepared.



To help you understand the importance of early investing, let us consider two scenarios. In the first scenario, you invest when she is three years old, and on the other hand, you invest when she is ten years old. If we assume that she might want to pursue an MBA at the age of 21, then considering an Education inflation rate of 10 %, you will require a monthly SIP of around Rs.28,538+ when she is three and SIP Rs 40,819+ amount if you invest when she is 10 years. This is the power of compounding.

The sooner you start saving, the better to take advantage of the power of compounding interest

Minor's Age (Years)	3	10
Years left to pursue MBA (Years)	18	11
MBA Course Fees in 2022(Rs)	15,00,000	15,00,000
Expected Inflation rate	10%	10%
MBA Course Fees in 2032(Rs)	38,90,000	38,90,000
Expected Rate of return from Investment	12%	12%
Monthly SIP (Rs)	28,538	40,819

As former US president John F Kennedy once said: "The time to repair the roof is when the sun is shining." The same is true in the case of investing. So, start early and hit the road of financial freedom.

# Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

Secretariat : 3, GOVT. PLACE (WEST), INCOME TAX BUILDING, KOLKATA - 700 001

Ph. +91 33 2242-0638, 4003-5451 • E-mail : [dtpakolkata@gmail.com](mailto:dtpakolkata@gmail.com) • Website : [www.dtpa.org](http://www.dtpa.org)

## APPLICATION FOR MEMBERSHIP

2 Pcs.  
Pass Port  
Colour  
Photographs

To  
The Hony' Secretary,  
**DIRECT TAXES PROFESSIONALS' ASSOCIATION**  
3, Govt. Place, Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.

I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

1. Name in Full ( Mr. / Mrs. / Miss ) : \_\_\_\_\_  
(BLOCK LETTERS)
2. Father's Name : \_\_\_\_\_
3. Date of Birth : \_\_\_\_\_
4. Academic and/or Professional Qualifications : \_\_\_\_\_
5. Professional Status (Pls. specify) :  In Practice  In Service  In Business  Others
6. Organisation : \_\_\_\_\_
8. Mem. No. of CA/CS/ICWAI/Bar Council : \_\_\_\_\_
9. Blood Group : \_\_\_\_\_ (Self) \_\_\_\_\_ (Spouse)
10. Name of Spouse : \_\_\_\_\_
11. Office Address : \_\_\_\_\_  
\_\_\_\_\_
12. Residence Address : \_\_\_\_\_  
\_\_\_\_\_
13. Telephone (Nos.) : (Off.) : \_\_\_\_\_ (Resi.) : \_\_\_\_\_ Fax : \_\_\_\_\_  
Mobile : \_\_\_\_\_ E-mail : \_\_\_\_\_
14. Address where Circular etc. should be sent :  Office  Residence  
Enclosed herewith Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ )  
by Cash/Cheque No. \_\_\_\_\_ Dated \_\_\_\_\_ Drawn on \_\_\_\_\_  
towards  Life Membership  General Membership.

Place : \_\_\_\_\_

Date : \_\_\_\_\_

Signature of the Applicant

Would you like to contribute to the following activities of DTPA ? (Pls. specify)

- Contributing articles for Journal  Being part of the Core group which runs the functioning of DTPA  
 Being faculty / Speaker at Conferences / Seminars / Workshops  Others

Area of Professional Interest (Pls. specify) :  Indian Income Tax  International Tax

- FEMA  Company Law  Auditing  Corporate Finance  Indirect Tax  General Management  
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I would like to receive News Letter / Notices / Circulars by  E-mail  Courier  Both

Proposed By : Name : \_\_\_\_\_

DTPA Membership No. : \_\_\_\_\_

Signature : \_\_\_\_\_

Seconded By : Name : \_\_\_\_\_

DTPA Membership No. : \_\_\_\_\_

Signature : \_\_\_\_\_

### FOR OFFICE USE ONLY

Date of Receipt \_\_\_\_\_ Membership Approved on \_\_\_\_\_ Membership No. Allotted \_\_\_\_\_

Chairman, Membership Sub-Committee

President

General Secretary

**NOTES :** 1. Fee for Life Membership (a) Individual Rs. 7,500/- (G.S.T. Extra @ 18%), (b) If application is made within a period of 5 years of attaining first professional qualification Rs. 5,000/- (G.S.T. Extra @ 18%), (c) Corporate Bodies Rs. 7,500/- (G.S.T. Extra @ 18%).

2. Cheques should be drawn in favour of "Direct Taxes Professionals' Association".

## OFFICE BEARERS 2022-2023

**President**



**Mr. D. S. Agarwala**  
9433097972  
agards@gmail.com

**I.P.P.**



**Mr. Kamal Kr. Jain**  
9830708341  
kamalkrjain@yahoo.com

**Sr. Vice-President**



**Mr. Rajesh Kr. Agrawal**  
9007217679  
thinkvisor18@gmail.com

**Vice-President**



**Mrs. Barkha Agarwal**  
9831184871  
barkhaagarwal@hotmail.com

**General Secretary**



**Ms. Manju Lata Shukla**  
9831491002  
ml\_shukla@rediffmail.com

**Joint Secretary**



**Mr. Mahendra Kr. Agarwal**  
9830096405  
mahendrasubhashandco@gmail.com

**Treasurer**



**Mr. Shyam Agarwal**  
9903040775  
Shyam\_ag12@yahoo.co.in

## EXECUTIVE COMMITTEE MEMBERS 2022-2023



**Mr. Ajit Kr. Tulsian**  
9831131100  
aaakdt@gmail.com



**Mr. Ankit Kanodia**  
9831543580  
ankitkanodia@gmail.com



**Mr. Ashish Rustagi**  
9339768131  
rustagico@rediffmail.com



**Mr. Bharat D Sarawgee**  
9830022057  
bharatsarawgee@gmail.com



**Mr. Giridhar Dhelia**  
9830255500  
gdhelia@gmail.com



**Mr. Kedar Nath Gupta**  
9830648056  
guptakn123@yahoo.co.in



**Mr. Mahadev Lal Agarwal**  
9830056911  
agarwalkejrival@gmail.com



**Mr. Ranjeet Kr. Agarwal**  
9830140211  
ranjeet.airan@gmail.com.com



**Mr. Rites Goel**  
9831029805  
replyrites@gmail.com



**Mr. Ritesh Vimal**  
9830574278  
vimalritesh@gmail.com



**Ms. Ruby Bhalotia**  
9230570007  
rubybhalotia@gmail.com



**Mr. Sanjay Jhajharia**  
9831012743  
s.jhajharia@hotmail.com



**Mr. Sanjay Poddar**  
9830047033  
poddar.sanjay@gmail.com



**Mr. Sushil Jain Choraria**  
9830045315  
Sushil\_choraria@yahoo.com

## PAST PRESIDENTS



**Mr. K. C. JAIN**  
9830073387  
kcjain34@yahoo.co.in



**Mr. N. P. Jain**  
9830951252  
npjainadv@gmail.com



**Mr. J. R. Bhadani**  
9830135150  
jrvtaxation@yahoo.com



**Mr. V. K. Singhania**  
9831003609/9831119952  
vitrum@vsnl.net



**Mr. Indu Chatrath**  
9831048516  
ichatrath@yahoo.com



**Mr. R. D. Kakra**  
9831052151  
rdkakra@gmail.com



**Mr. Pawan Agarwal**  
9830038817/9830262464  
pawan@esac.co.in



**Mr. Raja Ram Chowdhary**  
9830088796  
rrchowdhary@hotmail.com



**Mr. D. N. Agrawal**  
9433039556  
dn.agrawal@dbcca.co.in



**Mr. P. K. Agarwalla**  
9831220797  
pkaco\_ca@yahoo.co.in



**Mr. S. D. Verma**  
9830026177  
kdsanju@hotmail.com



**Mr. M. C. Jagwayan**  
9831021650  
nitjags81@rediffmail.com



**Mr. B. L. Kheria**  
9831696921  
bl\_kheria@yahoo.com



**Mr. R. N. Rustagi**  
9830030845  
rustagico@rediffmail.com



**Mr. A. K. Tibrewal**  
9831070922  
anand@nkpc.co.in



**Mr. Santosh Kulthia**  
9748731590  
kkscaindia@gmail.com



**Ms. Nilima Joshi**  
9830039990  
canilimajoshi@gmail.com



**Mr. P. R. Kothari**  
9830021198  
pk.ramram@gmail.com



**Mr. Arvind Agrawal**  
9831026660  
gpako.office@gmail.com



**Mr. Sajjan Kr. Sultania**  
9830037498  
sundeepsultania@gmail.com



**Mr. Sanjay Bajoria**  
9331845005  
sbaca2019@gmail.com



**Mr. Subash Agarwal**  
9830052141  
subash\_sushma@yahoo.in



**Mr. Aghor Kr. Dudhwewala**  
9831039440  
aghorassociates@yahoo.co.in



**Mr. Bishnu Kr. Loharuka**  
9830260400  
bklharuka2003@yahoo.com



**Mr. P. K. Himmatsinghka**  
9331024755  
pkhko@gmail.com



**Mr. Paras Kochar**  
9831024563  
paraskochar@hotmail.com



**Mr. K. P. Khandelwal**  
9830030216  
ca.kpkhandelwal@gmail.com



**Mr. Sunil Surana**  
9831005533  
thanmalji@hotmail.com



**Mr. Kamal Bagrodia**  
9830043311  
kamalbagrodia@gmail.com



**Mr. Ramesh Kr. Chokhani**  
9748747044  
rkchokhani@yahoo.com



**Mr. Vikash Parakh**  
9830969234  
vikashparakh.ca@gmail.com



**Mr. N. K. Goyal**  
9831046053  
ngc.narendra@hotmail.com

## SUB COMMITTEES 2022-2023

Sub-committee	Chairman/chairperson	Co-chairman/Chairperson	Advisor
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**Note :** President and Secretary will be Ex-Officio members of all Sub-Committees.

## SPECIAL INVITEES



**Mr. Sushil Kr. Goyal**  
9339679796  
skgoyal@icai.org



**Mr. Abhishek Agarwal**  
9831982004  
abhishek@caasa.org



**Mr. Sahib Singh Choudhary**  
9339328137  
sahibschoudhary@gmail.com



**Mr. Ravi Varma**  
9830699356  
ravivarma@texmaco.in/ravivarma@gmail.com



**Mr. Sanjib Sanghi**  
9831434000  
sanjib@cloudinfosolutions.com



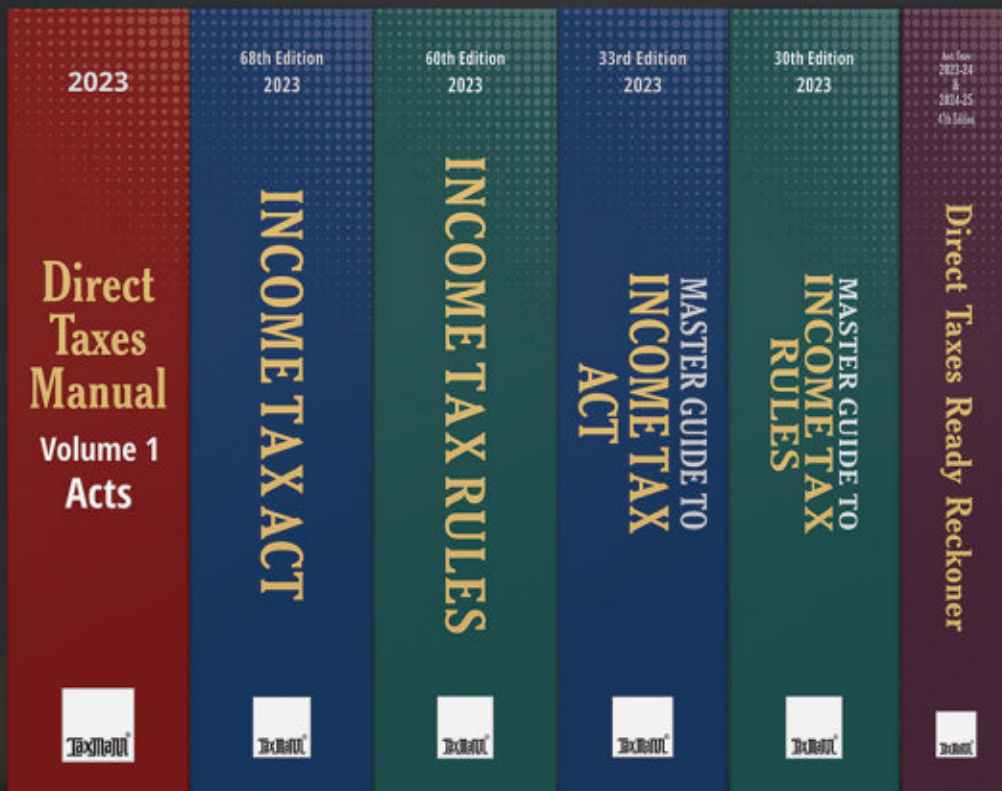
**Mr. Amit Singhania**  
8777692789  
amitsinghania86@yahoo.co.in



**Mr. Sujit Sultania**  
9831016678  
sultaniasujit@gmail.com

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