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Total no. of page: 121

.... From the Desk of Editors

Respected Seniors and my Dear Friends,

We are happy to present before you last DTPA e-Journal for this calendar year 2023 however we will stay connected with you in the new year too with new enthusiasm and excitement.

The Income Tax Department appreciates taxpayers and tax professionals for making compliances on time, resulting in a record number of filing of Income Tax Returns (ITRs) till 31-10-2023. The total number of ITRs for AY 2023-24 filed is more than 7.65 crore, which is 11.7% higher than the total number of ITRs of 6.85 crore for AY 2022-23.

The CBDT has released data for direct tax collections upto 09-11-2023. The provisional figures of Direct Tax collections continue to register steady growth. The Gross Direct Tax collections are at Rs. 12.37 lakh crore, which is 17.59% higher than the gross collections for the corresponding period of last year.

CBDT prescribes monetary limit of Rs. 10 lakh or more to withhold refund under Sec. 245(2) -Instruction No. 02/2023, Dated 10-11-2023. AO can withhold a refund under section 245(2) if there's an outstanding demand or pending assessment proceedings and AO believes the grant of refund is likely to affect the revenue adversely. The CBDT has notified that the monetary limit for applying provisions of said section will be where the refund value is Rs. 10 lakhs or more.

In relation to GST the Government has notified amnesty scheme vide Notification No. 53/2023-Central Tax, dated 02-11-2023 for taxable persons who were unable to file an appeal before Appellate Authority against the orders passed up to 31-03-2023 under Section 73 or Section 74 of the CGST Act. In this regard, the GSTN has issued advisory to provide the manner of payment of deposit amount in such cases.

DTPA is regularly organizing programs of professional interest as well as building fellowship amongst we professional. Inside this issue you will find details about DTPA Picnic, Residential Conference to be held at Puri, we welcome each one of your most personally to join us in fellowship cum study programs of DTPA.

Wish you all heartiest Greetings for Christmas and Happy New Year 2024. Jai Hind!! Jai DTPA!!

With Best Regards

Yours truly,

Girdhar Dhelia

Chairman

Journal Sub-Committee, DTPA

Sujit Sultania

Co-Chairman

Journal Sub-Committee, DTPA

Feedback and suggestions are Invited:

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

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....From the desk of President

Dear friends,

At the outset accept my deep gratitude for all your all-round support.

It is indeed a huge opportunity for me to address all our members once again. I'm really happy to share that we have had yet another exciting and insightful month at the DTPA. During the month of November we had our wonderful Diwali- Bijoya get together where approx 340 members joined in the celebrations and enjoyed the heartwarming celebrations and the lovely food. The best of the evening was the lottery which was equally enjoyed by the members and also their spouses and children. Once again, all the members had a wonderful opportunity of informally meeting each other and strengthening their bonds.

DTPA organised a study circle meeting on 20th of November where we had speakers from Direct tax as well as Indirect tax. The meeting was very much appreciated not only for sharing of knowledge but also the way the topic was being handled by both the speakers from all angles and that too in a simple manner. After this session there was a Question and Answers session, where in a large number of issues were addressed by the learned speakers.

As many of us are facing challenges while carrying out the audits, we have planned a CPE study circle meeting on 5th December on the Impact of Recent NAFRA orders on Audit, which I am sure will bring clarity on lot of questions in our mind.

As with every year this year also we would give our recommendations for the budget, for which the different committees have already started working on the areas where trade, industry or professionals are facing hardships or need reliefs. We would request you to also share your suggestions if any at the email id dpakolkata@gmail.com and mention Budget recommendations in the subject.

"If we want our children to move mountains, we first have to let them get out of their chairs." - Nicolette Sowder

So as we enter the winters its time for all of us to unwind and learn at the same time. With the objective in mind we have organized a picnic on 25th December 23 at **Heritage Project, Choudhary Garden, Challa Park** and a Residential Conclave from 12th January to 14th January at Puri. Learning from our past experiences about the Residential Conclave we are planning the itinerary so that learning, fun and fellowship can go hand in hand. We are also fortunate to get confirmations from leading national level speakers who have consented to be the paper writers. The Residential Conclave Sub Committee has also planned sightseeing and other activities during the Residential Conclave.

Expanding and Growing together

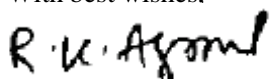
In continuation to my previous address I am really grateful to all members of DTPA for spreading the word on new membership which is helping us to get expand our horizon and also to grow together with our new members who are bringing diversified knowledge to the table. Let's keep up the momentum and take responsibility as an ambassador of DTPA to have a holistic growth.

Value addition through Journal

We are already in discussions with some of the leading thought leaders on different areas which are relevant to professionals like us and we are really happy to share that we have got some resounding support from authors across India who are delving deep into the topics and sharing their thoughts on the topics. We are sure that all our members will be immensely benefitted from the articles in their professional journey. However we request all our members to share with us any article which they would like to share with all other members and also share their suggestions for topics which could be covered in the journal.

Looking forward to a wonderful year ahead where we will scale new heights.

With best wishes.



CA Rajesh Agrawal
President
11th December, 2023

Bijoya Diwali Get Together Celebration on 17th November 2023





Study Circle Meeting on 'Higher TDS for non-ITR filers- Procedure & Implications' and 'Recent Chages in GST- Detailed Review' on 20th November 2023



Forthcoming Programs of Direct Taxes Professionals' Association



Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

PICNIC

DTPA picnic is here.

All the members with their families, friends and relatives are welcome.

Games, Antakshari, Housie, Slides and Jhulas. Relax, take a sun bath and much more.

Delicious Breakfast, Lunch followed by Tea and Snacks preceded by Fruits and Vegetables.

Venue :

Chaudhary Garden

(Heritage Project)

**Challa Park, Near IIMC School,
Kolkata - 700104**

25th Dec, 2023, Monday

09:00 AM Onwards



Charges :

- Members & Guests - Rs. 800/- per head
- Couple - Rs. 1500/- per couple
- Children - Rs. 400/- per head (Upto 12yrs)
(* Children under 5 yrs Complimentary)



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CA Rajesh Kr Agrawal
9007217679

Co-Chairman
CA Barkha Agarwal
9831184871

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CA Ramesh Kr Chokhani
9748747044

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Estd. 1982

DIRECT TAXES PROFESSIONALS' ASSOCIATION

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

Email :- dtpakolkata@gmail.com

Web :- www.dtpa.org

The Chariot, Puri

Residential Conclave '24

2 Nights 3 Days

12th - 14th Jan, 24



**CA BHUPENDRA
SHAH**
MUMBAI
SPEAKER

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



DTPA CA CPE Study Circle of EIRC of ICAI

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

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STUDY CIRCLE MEETING



CA RAVI PATWA

TOPIC:

CODE OF ETHICS



CA VIVEK NEWATIA

TOPIC:

**STANDARDS OF AUDITING -
PRACTICAL ASPECTS**



28 Dec, 2023,
Thursday
03:00 PM -
07:00 PM

" 4 CPE HOURS "



DTPA Conference
Hall

PARTICIPATION

CHARGES:

RS. 200/-

Compliance Calendar for December, 2023

| Statute | Due dates | Compliance Period | Details | |
|--|---------------------|-------------------|--|---|
| Income Tax Act, 1961 | 07th December,2023 | Nov-23 | Payment of TDS/TCS deducted /collected in November 2023 | |
| | 15th December, 2023 | Oct to Dec 2023 | The third advance tax instalment is due for the assessment year 2024–2025 | |
| | 30th December, 2023 | Nov-23 | TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Nov 2023 | |
| | 31st December 2023 | AY 2023-24 | All taxpayers must file a revised or belated income tax return for the assessment year 2023–2024 (if the assessment hasn't been finished by December 31, 2023) | |
| Statute | Due dates | Compliance Period | Return | Turnover/Complying Taxpayer |
| GST | 11th December, 2023 | Nov-23 | GSTR-1 | GSTR 1 to be filed by Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return |
| | 13th December,2023 | Nov-23 | GSTR-1 (QRMP) | GST return for the taxpayers who opted for QRMP scheme (Optional) |
| | 20th December,2023 | Nov-23 | GSTR-3B | The statutory due date for GSTR-3B having an Annual Turnover of more than 5 Crores |
| | 25th December,2023 | Nov-23 | | GST Challan Payment if no sufficient ITC for Nov 2023 (for all Quarterly Filers) |
| | 31st December,2023 | FY 2022-23 | GSTR-9 & 9C | GST Annual Return Filing for FY 2022-23(GSTR-9 & 9C) |
| Statute | Due dates | Compliance Period | Details | |
| ESI, PF & Prof. Tax (West Bengal) | 10th December, 2023 | Nov-23 | Professional Tax (PT) on salaries for the month of November, 2023 | |
| | 15th December, 2023 | Nov-23 | Provident Fund (PF) & ESI Returns and Payment for November, 2023 | |

Compliance Calendar for January, 2024

| Statute | Due dates | Compliance Period | Details | |
|--|--------------------|-------------------|--|---|
| Income Tax Act, 1961 | 07th January, 2024 | Dec-23 | Deposit of Tax deducted/collected for the month of December, 2023. | |
| | 07th January, 2024 | Dec-23 | Due date for deposit of TDS for the period October 2023 to December 2023 when Assessing Officer has permitted quarterly deposit of TDS under 192, 194A, 194D or 194H | |
| | 15th January, 2024 | Dec-23 | Quarterly statement of TCS for the quarter ending December 31, 2023 | |
| | 15th January, 2024 | Dec-23 | Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2023 | |
| | 30th January, 2024 | Dec-23 | Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of December, 2023 | |
| | 31st January, 2024 | Dec-23 | Quarterly statement of TDS for the quarter ending December 31, 2023 | |
| Statute | Due dates | Compliance Period | Return | Turnover/Complying Taxpayer |
| GST | 11th January, 2024 | Dec-23 | GSTR-1 | GSTR 1 to be filed by Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return |
| | 13th January, 2024 | Dec-23 | GSTR-1 (QRMP) | GST return for the taxpayers who opted for QRMP scheme (Optional) |
| | 18th January, 2024 | Oct'23 – Dec'23 | CMP-08 (Quarterly) | Quarterly Challan-Cum-Statement to be furnished by Composition taxpayers |
| | 20th January, 2024 | Dec-23 | GSTR-3B | The statutory due date for GSTR-3B having an Annual Turnover of more than 5 Crores |
| | 28th January, 2024 | Dec-23 | GSTR-11 | Statement of inward supplies by persons having Unique Identification Number (UIN) for claiming a GST refund |
| Statute | Due dates | Compliance Period | Details | |
| ESI, PF & Prof. Tax (West Bengal) | 10th January, 2024 | Dec-23 | Professional Tax (PT) on salaries for the month of December, 2023 | |
| | 15th January, 2024 | Dec-23 | Provident Fund (PF) & ESI Returns and Payment for December, 2023 | |

Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Rajesh Kr. Agrawal

President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

- | | |
|---------------------------|---|
| ● Direct Taxes | <input type="checkbox"/> International Taxation |
| ● GST & Indirect Taxes | <input type="checkbox"/> Accountancy and Audit |
| ● Corporate & Allied Laws | <input type="checkbox"/> Insolvency and Bankruptcy |
| ● Information Technology | <input type="checkbox"/> Emerging areas of Practice |

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

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

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

Thanks and Regards,

CA. Rajesh Kr. Agrawal

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DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 CBDT notifies 'Chhattisgarh Rajya Beej Pramanikaran Sanstha' & 'Maharashtra Council of Homoeopathy' u/s Sec. 10(46) - **Notification No. S.O. 5044(E) and 5045(E), Dated 24-11-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Chhattisgarh Rajya Beej Pramanikaran Sanstha' & 'Maharashtra Council of Homoeopathy' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961.

- 1.2 Govt. notifies 'Deputy Director General (Tech Development Division), UIDAI' as Authority under Sec. 138 - **Notification No. 99/2023, Dated 20-11-2023**

Editorial Note : Section 138(1) facilitates exchange of information about tax evaders by the Income-tax Department with other tax authorities or enforcement authorities. The CBDT has notified Deputy Director General (Tech Development Division), Unique Identification Authority of India (UIDAI), Government of India for the purpose of sharing of information.

- 1.3 CBDT notifies 'BPC Penco XVII Corporation' for Section 10(23FE) exemption - **Notification No. S.O. 4755(E), Dated 01-11-2023**

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

- 1.4 Half-yearly reporting of mutual fund/capital gains transactions in SFT instead of quarterly: CBDT - **Corrigendum to Notification No.3. of 2021, Dated 15-11-2023**

Editorial Note : The CBDT has issued a corrigendum to Notification 3 of 2021 & Notification 4 of 2021. Said notifications specify format, procedure & guidelines for submission of SFT related to capital gains/mutual info. Said notifications have been amended to provide that SFT shall be filed half-yearly instead of quarterly w.e.f. 01-04-2023.

- 1.5 CBDT amends 'Part-B-TI' of ITR-7 applicable for Assessment Year 2023-24 - **Notification No. G.S.R. 813(E), Dated 31-10-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has amended certain items in Part B-TI of ITR-7 form applicable for Assessment Year 2023-24.

- 1.6 Record number of over 7.85 crore ITRs filed till 31-10-2023: CBDT - **Press Release, Dated 1-11-2023**

Editorial Note : The Income Tax Department appreciates taxpayers and tax professionals for making compliances on time, resulting in a record number of filing of Income Tax Returns (ITRs) till 31-10-2023. The

total number of ITRs for AY 2023-24 filed is more than 7.65 crore, which is 11.7% higher than the total number of ITRs of 6.85 crore for AY 2022-23.

- 1.7 FinMin notifies 'Exchange of Information & Assistance in Tax Collection' agreement with Saint Vincent & Grenadines - **Notification No. S.O. 4756(E), Dated 01-11-2023**

Editorial Note : The Ministry of Finance has notified the agreement for the Exchange of Information and Assistance in collection with respect to taxes with the Government of Saint Vincent and the Grenadines. The agreement was signed at Kingstown, Saint Vincent and the Grenadines on 19-05-2022.

- 1.8 Govt. notifies revised sum payable on deposit made under National Savings Recurring Deposit Scheme - **Notification No. G.S.R. 818(E), Dated 03-11-2023**

Editorial Note : The Govt. has notified the revised sum payable on deposits made under the National Savings Recurring Deposit Scheme following the revision of the interest rate notified for the third quarter of the Financial Year 2023-24.

- 1.9 As of November 9, 2023, Direct Tax collections are robust at Rs. 12.37 lakh, marking a 17.59% YoY growth: CBDT - **Press Release, Dated 10-11-2023**

Editorial Note : The CBDT has released data for direct tax collections upto 09-11-2023. The provisional figures of Direct Tax collections continue to register steady growth. The Gross Direct Tax collections are at Rs. 12.37 lakh crore, which is 17.59% higher than the gross collections for the corresponding period of last year.

- 1.10 CBDT prescribes monetary limit of Rs. 10 lakh or more to withhold refund under Sec. 245(2) - **Instruction No. 02/2023, Dated 10-11-2023**

Editorial Note : AO can withhold a refund under section 245(2) if there's an outstanding demand or pending assessment proceedings and AO believes the grant of refund is likely to affect the revenue adversely. The CBDT has notified that the monetary limit for applying provisions of said section will be where the refund value is Rs. 10 lakhs or more.

- 1.11 Post office savings a/c interest rate applies on premature closure under National Savings Time Deposit after 4 years - **Notification No. G.S.R. 830(E), Dated 7-11-2023**

Editorial Note : The Govt. has notified the National Savings Time Deposit (Fourth Amendment) Scheme, 2023, amending the National Savings Time Deposit Scheme 2019. It has been provided that if a deposit in a five-year account is withdrawn prematurely after four years from the date of opening of an account, interest shall be payable at the rate applicable to Post Office Savings Account.

- 1.12 Govt. amends norms for opening an account under the Senior Citizens Savings Scheme 2019 - **Notification No. G.S.R. 829(E), Dated 07-11-2023**

Editorial Note : The Govt. has amended norms for opening an account under the Senior Citizens Savings Scheme 2019 in respect of the person who has attained the age of fifty-five years or more but less than sixty years.

- 1.13 Govt. amends norms for payment of interest on premature closure of account under PPF - **Notification No. G.S.R. 831(E), Dated 7-11-2023**

Editorial Note : The Govt. has amended rule 13, which provide for payment of interest on premature closure of account under the Public Provident Fund Scheme, 2019.

- 1.14 CBDT notifies 'West Bengal Pollution Control Board' for Sec. 10(46) exemption - **Notification S.O. 4703(E) [NO. 92/2023/F.NO. 300196/27/2022-ITA-I], Dated 26-10-2023**

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

2. SUPREME COURT

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

- 2.1 **Preservation of environment** : Where assessee-institution, established under control of Irrigation Department of State Government, imparted training to Government officials in field of water and land management since category within which assessee claimed registration as a charitable trust, was considered to be "per se" a charitable object and did not fall within description of residuary clause of a general public utility concern, it was not a fit case for invoking first proviso to section 2(15) and, thus, assessee's claim for registration was to be allowed - **Commissioner of Income-tax (Exemption) v. Water & Land Management Training & Research Institute - [2023] 156 taxmann.com 193 (SC)**

SECTION 5 OF THE LIMITATION ACT, 1963 - EXTENSION OF PRESCRIBED PERIOD IN CERTAIN CASES

- 2.2 **Condonation of delay** : Where Tribunal dismissed appeals filed by assessee on ground that there was a delay of 246 days in filing appeal and there was no explanation for condoning delay, however, it was found that there was delay in communication of order of Commissioner (Appeals) to assessee and immediately after obtaining a certified copy of order passed by Commissioner (Appeals) assessee had preferred an appeal, delay in filing appeal was to be condoned and matter remanded back to Tribunal for consideration of matter on merits - **Gupta Emerald Mines (P.) Ltd. v. Principal Commissioner of Income-tax, Circle 1 - [2023] 156 taxmann.com 198 (SC)**

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

- 2.3 **Business profits - Commission** : SLP dismissed against order of High Court that where assessee, engaged in business of mining, processing, and exporting of iron ore, appointed commission agents for facilitating its export business outside India, since payments on account of commission to these overseas agents were made on behalf of assessee directly by foreign counter-parties abroad to whom exports were made by assessee, same was not liable to be assessed in India, and, provisions of section 9(1)(i) could not be invoked - **Principal Commissioner of Income-tax (Central) v. Shantilal Khushaldas & Bros. (P.) Ltd. - [2023] 155 taxmann.com 350 (SC)**

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

- 2.4 **Reopening of assessment** : SLP dismissed against impugned order of High Court wherein it was held that where during scrutiny assessment AO carried out minute possible detailed inquiry with respect to cash purchases of raw cotton from individual farmers and assessee had produced every person who Assessing Officer required for purpose of ascertaining factum of sale, reopening of assessment after four years for further inquiry was unjustified - **Assistant**

Commissioner of Income-tax. v. Jaydeep Cotton Fibers (P.) Ltd. - [2023] 156 taxmann.com 240 (SC)

SECTION 44BB OF THE INCOME-TAX ACT, 1961 - NON-RESIDENTS - MINERAL OIL, BUSINESS OF EXPLORATION, ETC., IN CASE OF

2.5 Applicability of : SLP dismissed against impugned order of High Court wherein it was held that reimbursement of service tax ought not to be included in aggregate of amounts specified in clauses (a) and (b) of section 44BB(2), as it is not an amount received by assessee on account of services provided by them in prospecting, extraction or production of mineral oils - **Commissioner of Income-tax v. Vantage International Management Co. - [2023] 156 taxmann.com 23 (SC)**

SECTION 80HHC OF THE INCOME-TAX ACT, 1961 - DEDUCTION - EXPORTERS

2.6 Computation of deduction : Gain from foreign exchange fluctuations in EEFC account would not fall within meaning of 'derived from' export of garments by assessee and, therefore, could not be included in profits of business while calculating deduction under section 80HH - **Shah Originals v. Commissioner of Income-tax-24 - [2023] 156 taxmann.com 695 (SC)**

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

2.7 Illustrations : SLP dismissed against order of High Court that where assessee, a road infrastructure development company, had not only employed plant and machinery and other assets along with staff but also it had been bearing all risks involved in said infrastructure projects, assessee could not be treated a mere work contractors and since assessee was granted deduction under section 80-IA in past assessment years, Rule of consistency had to be applied and deduction under section 80-IA was to be allowed in relevant assessment year also - **Principal Commissioner of Income-tax (Central) v. MBL Infrastructure Ltd. - [2023] 155 taxmann.com 657 (SC)**

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

2.8 Methods for determination of - General : SLP dismissed against impugned order of High Court that TPO ought to have arrived at ALP of assessee's sale to its AE by only comparing it with uncontrolled transaction of sale - **Principal Commissioner of Income-tax v. L & T Valves Ltd. - [2023] 155 taxmann.com 489 (SC)**

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

2.9 Condition precedent : SLP was to be dismissed against decision of High Court holding that where assessment of assessee had attained finality prior to date of search and no incriminating documents or materials had been found and seized at time of search, no addition could be made under Section 153A as case of assessee was of non-abated assessment - **Principal Commissioner of Income-tax (Central) 2 v. Jay Ambey Aromatics - [2023] 156 taxmann.com 691 (SC)**

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

2.10 Dismissal of appeal for non-appearance : Where Tribunal dismissed appeal of assessee for non-prosecution, appeal against assessment order issued by Assessing Officer was to be restored to Commissioner (Appeals) - **Shobha Lakshman v. Commissioner Of Income-tax (Appeals) - [2023] 155 taxmann.com 344 (SC)**

3. HIGH COURT

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

3.1 Scope of provision : Where assessee provided coding services to business entities for certain consideration, though assessee was involved in advancement of general public utility, its services were for benefit of trade and business and thus its claim for exemption could not succeed having regard to amended section 2(15) - *Commissioner of Income-tax (Exemptions) v. GS1 India* - [2023] 155 taxmann.com 491 (Delhi)

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

3.2 Revision : Opting VSV Scheme and finalizing thereof is nothing but closure of disputes in respect of tax arrears which cannot be subsequently reopened by issuing notice under section 263 for revising assessment order - *Principal Commissioner of Income-tax v. Mrs. Swatiben Biharilal Parekh* - [2023] 156 taxmann.com 267 (Gujarat)

SECTION 4 OF THE INCOME-TAX ACT, 1961 - INCOME - CONCEPT OF REAL INCOME

3.3 Firm/partner, in case of : Where assessment in case of assessee, a partner in firm was sought to be reopened on ground that assessee had not offered 'interest on capital' and 'remuneration' alleged to have been received from partnership firm as income, however, perusal of partnership deed indicated that interest and remuneration was not to be paid to partners mandatorily there was no material on record to indicate that, assessee had actually received any interest on capital and remuneration from partnership firm, reopening was unjustified - *Artiben Amishkumar Patel v. Income-tax Officer* - [2023] 156 taxmann.com 225 (Gujarat)

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

3.4 Business profit - Expenses/ Allowability of : Where Assessing Officer had disallowed engineering fees paid by assessee-company in executing a project of DMRC to its head office on ground that time log sheets were not filed but debit notes furnished by assessee provided sufficient information not only concerning names of employees but also as to nature of duties and number of hours that they spent on job assigned to them, disallowance made by Assessing Officer, was to be deleted - *Commissioner of Income-tax (International Taxation)-1, New Delhi v. Cobra Instalaciones Y Servicios S.A.* - [2023] 156 taxmann.com 309 (Delhi)

3.5 Royalties/Fees for technical services - Subscription fee : Where assessee-company had made foreign remittance to Red Hat, Singapore without deducting tax

at source on ground that payment for purchase of subscription was not taxable as per article 7 but Assessing Officer held that impugned subscription fees was liable to be taxed as 'royalty' and assessee was treated as assessee-in-default, since there was no liability of Red Hat, Singapore to pay tax in India and no assessment had been made in respect of tax liability of said company, assessee could not be saddled with liability under section 201 - *Commissioner of Income-tax (International Taxation) v. Red Hat India (P.) Ltd.* - [2023] 155 taxmann.com 349 (Bombay)

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

3.6 Scope of provision : Where assessee filed application for being notified under section 10(46) and CBDT rejected application for reason that assessee was engaged in a commercial activity, since issue raised in instant case now stood concluded by a judgment of SC, matter was to be remanded to CBDT for redetermination in light of above judgment - *Urban Improvement Trust v. Union of India* - [2023] 155 taxmann.com 452 (Rajasthan)

SECTION 14C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - DISPUTE RESOLUTION PANEL

3.7 Passing assessment order : Where objections to draft assessment order were filed before DRP and directions were passed, Assessing Officer ought not to have proceeded to pass assessment order and he ought to have waited till directions were passed by DRP - *Zyme Solutions (P.) Ltd. v. Joint Commissioner of Income-tax (In-SITU), Circle 7(1)(1)* - [2023] 156 taxmann.com 604 (Karnataka)

SECTION 21 OF THE CHARTERED ACCOUNTANTS ACT, 1949 - DISCIPLINARY DIRECTORATE

3.8 Where respondent-Chartered Accountant had assisted various companies in availing credit facilities of huge amounts from various banks by issuing false documents certifying valuation of work undertaken and completed by accused companies and he was naturally aware that issuing such certificates in absence of proper valuation was a fraud on banks as such public and financial institutions rely upon certificates of professionals as part of its due diligence, respondent was thus reprimanded in accordance with section 21(6)(b) - *Institute of Chartered Accountants of India v. Manakchand Laxman Baheti* - [2023] 156 taxmann.com 411 (Bombay)

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

3.9 Applicability of : Where assessee had filed petition challenging validity of SCN issued under section 24 of Prohibition of Benami Property Transaction Act, 1988 on ground of jurisdiction of revenue authority after expiry of date of filing of such reply to impugned SCN and after expiry of date of hearing, such SCN could not be interfered and time to file objection/response to aforesaid impugned SCN was to be extended - *Aachman Marketing (P.) Ltd. v. Deputy*

Commissioner of Income-tax - [2023] 156 taxmann.com 570 (Calcutta)

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

3.10 Bogus loss - Sale of shares : Where assessee claimed loss on sale of shares of a company which were not blacklisted and not termed as penny stock by SEBI and assessee had also produced relevant documents such as contract note of transactions from broker, copy of trading bills, details of STT paid, and further, all transactions were through banking channels, impugned addition made on account of said loss treating same as bogus could not be sustained - **Principal Commissioner of Income-tax v. Sangitaben Jagdishkumar Shah - [2023] 156 taxmann.com 147 (Gujarat)**

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

3.11 Reassessment : Where reopening notice was issued on ground that assessee was not eligible to claim higher depreciation on new assets being plant and machinery, since Assessing Officer had already examined claim of depreciation allowance during original scrutiny proceedings and after considering return of income, tax audit report and other submissions allowed higher depreciation on plants and machinery, impugned reopening of assessment solely based on audit report which was also already available on record was unjustified - **Sun Pharmaceutical Industries Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 615 (Gujarat)**

3.12 Set off of unabsorbed depreciation : Where assessee-firm, during assessment year 2010-11, claimed set off of unabsorbed depreciation, which included unabsorbed depreciation pertaining to assessment years 1996-97 to 2001-02, against short-term capital gains, since there was no profit from business because operation of business had been stopped and to pay off liabilities other assets had been disposed leading to capital gains, assessee should be permitted to set off of impugned unabsorbed depreciation pertaining to assessment years 1996-97 to 2001-02 against short-term capital gains - **Bond Safety Belts (Dissolved) v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 222 (Bombay)**

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

3.13 Payment within due date : Where amount payable towards provident fund and ESI fell due on a National Holiday i.e., 15-8-2018, deposit made on following date i.e., 16-8-2018 was amenable to deduction - **Aero Club v. Assistant Commissioner of Income-tax - [2023] 156 taxmann.com 74 (Delhi)**

3.14 General : Assessee could claim deduction under section 36(1)(va) concerning employee's contribution to Provident Fund deposited on 16-8-2018, when due date fell on a National Holiday i.e., 15-8-2018 - **Principal Commissioner of Income-tax v. Pepsico India Holding (P.) Ltd. - [2023] 156 taxmann.com 25 (Delhi)**

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

3.15 Scope of provision : Where assessee, a scheduled bank, claimed deduction under section 36(1)(vii) and Tribunal relying on a judgment of Supreme Court allowed assessee's appeal, since assessee had not reduced value of its assets by a figure corresponding to bad debts written off by it Tribunal was in error in allowing appeal through a mere application of a ratio in Supreme Court judgment without ascertaining whether factual position that was established in judgment above existed in instant case - **Principal Commissioner of Income-tax v. Dhanalaxmi Bank Ltd. - [2023] 155 taxmann.com 613 (Kerala)**

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

3.16 Reassessment : Where Assessing Officer sought to reopen assessment on ground that net capital loss on exchange derivatives was not allowable expenditure under section 37(1), since assessee had submitted information sought by Assessing Officer relating to exchange rate difference and net exchange rate difference in response to notice issued under section 142(1), impugned reassessment notice issued after expiry of four years on mere change of opinion was liable to be set aside - **Adani Enterprises Ltd. v. Assistant Commissioner of Income-tax - [2023] 156 taxmann.com 269 (Gujarat)**

3.17 Commission : Where assessee provided details of commissions paid and agreements between assessee company and commission agents clearly outlined scope of services and payment terms and commission agents confirmed receiving commission payments through proper banking channels, adding to genuineness of transactions, Assessing Officer and Tribunal were not justified in disallowing part of commission payment - **Indian Hume Pipe Co. Ltd. v. Commissioner of Income-tax - [2023] 155 taxmann.com 415 (Bombay)**

3.18 Repair and maintenance : Where assessee-company engaged in business of manufacturing and selling of Fertilizers & Chemicals claimed deduction of expenditure incurred on repairs and maintenance to plant & machinery, however, expenses in question were not solely for replacements but for parts of machinery/plant that could not be equated with maintenance of entire plant and machinery, Tribunal rightly ruled that these expenses were revenue in nature - **Principal Commissioner of Income-tax v. Gujarat State Fertilizers & Chemicals Ltd. - [2023] 155 taxmann.com 296 (Gujarat)**

3.19 Donation to trust : Where assessee made contribution to Sardar Vallabhbhai Rastriya Ekta Trust for construction of a

statue of Sardar Vallabhbhai Patel on assumption that construction of statue would significantly enhance value of its brand name contention of assessee that expenditure was incurred wholly and exclusively for purpose of business on account of commercial expediency appeared to be genuine and therefore, said expenditure would be allowable under section 37(1) - **Principal Commissioner of Income-tax v. Gujarat State Fertilizers & Chemicals Ltd. - [2023] 155 taxmann.com 296 (Gujarat)**

3.20 Payment for professional services : Where assessee-company entered into an agreement with a company for assisting assessee in developing a growth strategy and profit improvement programme for assessee-company, payment made by assessee to said company on account of professional services rendered by it was to be allowed as revenue expenditure - **Rockman Cycles Industries Ltd. v. Commissioner of Income-tax (Appeals) - [2023] 155 taxmann.com 341 (Punjab & Haryana)**

3.21 Travelling expenditure : Travelling expenditure incurred by assessee-company on director's wife accompanying her husband on business tours was to be allowed as revenue expenditure - **Rockman Cycles Industries Ltd. v. Commissioner of Income-tax (Appeals) - [2023] 155 taxmann.com 341 (Punjab & Haryana)**

3.22 Purchase : Where Assessing Officer issued on assessee notice under section 148A(b) alleging bogus purchases by assessee and assessee found fault with information supplied along with notice and sought specific information to enable it to respond, since notice was accompanied by annexure containing details of facts, said details were sufficient to afford reasonable opportunity to assessee to submit an effective response - **Samridhi Industries v. Central Board of Direct Taxes - [2023] 155 taxmann.com 546 (Madhya Pradesh)**

3.23 Reassessment : Expenditure incurred towards entrance fees and annual membership would be a revenue expenditure because it has been incurred wholly and exclusively for the purposes of business and not towards capital account as such expenditure only facilitates the smooth and efficient running of the business enterprise and does not add to the profit earning apparatus of the business enterprise - **Swiss Re Services India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(3) - [2023] 156 taxmann.com 56 (Bombay)**

3.24 Sales support and management : Where assessee, a real estate builder had undertaken construction of a residential project and had incurred certain expenses related to sales support services and management expenses, since these expenses were incurred towards day to day expenditure incurred on project staff and sales team, which was necessary for exhibition or promotion of a construction project these expenses

should be treated as purely revenue in nature and could not be disallowed on proportionate basis - **Principal Commissioner of Income-tax v. Samudra Developers (P.) Ltd. - [2023] 155 taxmann.com 629 (Bombay)**

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

3.25 Revision : Where AO received information that assessee had made substantial amount of cash withdrawals and deposits and consequently, initiated reassessment proceeding with focus on cash deposits, since no addition was made viz-a-viz deposit in reassessment order, then it was not open to AO to make an addition qua any other amount and thus, Principal Commissioner could not have triggered revisionary proceedings for cash withdrawals - **Principal Commissioner of Income-tax-7 v. Prosperous Buildcon (P.) Ltd. - [2023] 156 taxmann.com 446 (Delhi)**

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

3.26 Where assessee, under a Joint Development Agreement, faced a notice under section 148A(b) for not filing tax returns despite claiming expenditure in 2016-17, since assessee was categorical that he had not received any income in Assessment Year 2016-17 but had claimed a notional expenditure in next Assessment Years while declaring capital gain, merit of such claim should be considered before concluding that there was escapement of tax - **Vinay Narayanswamy v. Income Tax Officer, Ward (1)(1)(1) - [2023] 156 taxmann.com 637 (Karnataka)**

3.27 Reassessment : Where assessee, owner of land, entered into a JDA with a developer in financial year 2014-15 and offered LTCG from same in assessment year 2016-17, Assessing Officer was to be directed to adjust amount available towards LTCG for assessment year 2016-17 against DTVS scheme as availed by assessee for assessment year 2014-15 for capital gain tax liabilities - **Dass Media (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 156 taxmann.com 286 (Madras)**

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

3.28 Rectification : Powers of Commissioner are not limited to correct error committed by subordinate authorities but could even be exercised where errors are committed by assessee which are raised for first time in an application under section 264 - **Pramod R. Agrawal v. Principal Commissioner of Income-tax-5 - [2023] 156 taxmann.com 126 (Bombay)**

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

3.29 Illustrations : Where Assessing Officer issued on assessee a notice under section 148A(b) alleging that she had sold a property and claimed deductions under sections 54 and 54EC but no details had been made available regarding reinvestment of amount claimed for deductions, since

assessee submitted reply and attached necessary documents in form of copy of registered sale deed and moreover copy of income-tax return clearly disclosed sale consideration coupled with deductions claimed, impugned notices and order deserved to be set aside - **Ms. Shalini Mittal v. Income-tax Officer - [2023] 155 taxmann.com 482 (Delhi)**

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

- 3.30 Property Purchased outside India - Position Prior to 1-4-2015** : Where assessee, a Non-Resident Indian working in USA, sold his house property in India and invested sale proceeds in a residential house in USA within specified period, conditions stipulated in section 54F as it stood, prior to amendment of section 54F w.e.f. 1-4-2014 were satisfied and thus assessee was to be allowed exemption under section 54F - **Hemant Dinkar Kandlur v. Commissioner of Income-tax, (International Taxation) - [2023] 155 taxmann.com 493 (Bombay)**

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

- 3.31 Opportunity of hearing** : Where assessee requested for adjournment on ground that only one working day was available to respond to show cause notice proposing addition with respect to variation between purchase value of property and value as per Stamp Duty authority, since AO passed impugned order without acceding request of assessee, same would violate principal of natural justice and pugned order and penalty proceedings were to be set aside - **Sun Glory Education Foundation v. National Faceless Assessment Centre - [2023] 156 taxmann.com 390 (Gujarat)**
- 3.32 Section 56(2)(viiia)** : Where assessee during assessment year 2014-15 purchased 48 per cent shares of a company at a price of Rs. 5 per share and Assessing Officer applying formula contained in rule 11UA valued shares at Rs. 45.72 per share and made addition to assessee's income, since formula applied by Assessing Officer was not applicable to assessment year 2014-15, impugned addition was rightly deleted by Tribunal - **Principal Commissioner of Income-tax v. Minda SM Technocast (P.) Ltd. - [2023] 155 taxmann.com 548 (Delhi)**

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

- 3.33 Revision** : Where assessee claimed deduction under section 57 and Assessing Officer having found that large deduction was claimed by assessee as against low interest income disallowed proportionate interest expenses, Commissioner was not justified in revising said order, particularly when notice was issued under

section 143(2) in which a specific query was put forth regarding claim of section 57 - **Principal Commissioner of Income-tax v. Asian Box Corporation - [2023] 156 taxmann.com 76 (Gujarat)**

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

- 3.34 Share transactions** : Where Assessing Officer made an addition in respect of sale proceeds of shares as unexplained cash credit under section 68, since shares were purchased by assessee on floor of stock exchange and not from broker, payment was made through banking channel, deliverables were taken in DEMAT account where shares remained for more than one year, contract notes were issued and shares were also sold on stock exchange, Tribunal had rightly deleted impugned addition - **Principal Commissioner of Income-tax-3 v. Indravadan Jain - [2023] 156 taxmann.com 605 (Bombay)**
- 3.35 Revision** : Where cash deposits made by assessee during demonetization period were specifically verified during original assessment proceedings wherein assessee produced all necessary documents as asked for by Assessing Officer, it was not a case where no enquiry was made by Assessing Officer during course of assessment proceedings regarding cash deposits, and therefore, impugned revision proceeding under section 263 was to be quashed - **Principal Commissioner of Income-tax v. Mukesh Chand Mal Pitti - [2023] 156 taxmann.com 145 (Gujarat)**
- 3.36 Reassessment** : Where AO issued reopening notice on ground that a letter was received from DCIT (Inv.) intimating that cash of certain amount had been deposited in assessee's bank account which was immediately transferred in bank account of a company in which assessee was a director, since reason recorded indicated that AO wanted only to examine case of assessee with regard to deposits that also only on basis of report received from another Investigating Officer and he did not state that income chargeable to tax had escaped assessment, impugned reopening notice was unjustified - **Mrs. Neetu M. Chandaliya v. Income-tax Officer - [2023] 156 taxmann.com 85 (Bombay)**
- 3.37 Condonation of delay** : Question of limitation is not based on technical consideration, but is on principles of public policy and equity; and substantial justice is paramount consideration and pivotal - **Rarefield Engineers (P.) Ltd. v. Assistant Commissioner of Income-tax, Company Circle-V(3) - [2023] 156 taxmann.com 643 (Madras)**
- 3.38 Bogus purchases** : Where assessee was trading in diamonds and Assessing Officer made disallowance at rate of 100 per cent of purchases made by assessee on account of unexplained purchases being accommodation entries, in view of judicial precedent on identical issue disallowance at rate of 6 per cent of disputed purchases would be sufficient to meet possibility of revenue leakage - **Principal Commissioner of Income-tax v. Vrajendra Jagjivandas Thakkar - [2023] 155 taxmann.com 403 (Gujarat)**

3.39 Reassessment : Subsequent development emerging in course of reassessment proceedings wherein a fact conclusion may be drawn by assessing authority indicating escapement of income below 50 lakhs cannot relate back to have any material bearing on initiation of reassessment proceedings and it cannot undo that initiation of proceeding and fact that some part of allegation of escapement is being dropped or not pursued at stage of quantification of income, may not nullify assumption of jurisdiction, by now invoking section 149 - **Arb Hotels Resorts (P.) Ltd. v. Principal Chief Commissioner of Income-tax** - [2023] 156 taxmann.com 238 (Allahabad)

3.40 Unsecured loan : Where assessee showed unsecured loans received during relevant assessment year and AO made addition on ground that assessee failed to discharge onus of liability as laid down under section 68, since amount of loan received by assessee was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted - **Principal Commissioner of Income-tax v. Ojas Tarmake (P.) Ltd.** - [2023] 156 taxmann.com 75 (Gujarat)

3.41 Reasons to believe : Where assessment was sought to be reopened in case of assessee on ground that cash worth Rs. 7 lakhs had been deposited in bank account of assessee and immediately afterwards, amount had been transferred through cheque in bank account of CCPL, raising suspicions of unaccounted money, however, there were no reasons to believe but, only reasons to suspect that income chargeable to tax had escaped assessment, impugned notice under section 148 was to be quashed and set aside - **Darpan P. Chandaliya v. Income-tax Officer** - [2023] 155 taxmann.com 447 (Bombay)

3.42 Unsecured loan : Where reopening notice was issued on ground that certain amount of unsecured loan was received by assessee in form of accommodation entry, since Assessing Officer had merely labelled transaction of receipt of loan as an accommodation entry without demonstrating as to how material on record furnished reasons for him to form a belief that income chargeable to tax had escaped assessment, and further, specific query was raised vis-à-vis said unsecured loan during scrutiny assessment which was also answered by assessee, impugned reopening notice issued after six years was to be quashed - **Valley Iron & Steel Co. Ltd. v. Assistant Commissioner of Income-tax** - [2023] 155 taxmann.com 348 (Delhi)

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

3.43 Accommodation entries : Where Assessing Officer having noticed that assessee had purchased goods from someone else while bogus bills were organized by some hawala traders treated purchases as bogus and made addition to assessee's income under section 69,

section 69 was not applicable to such purchases and thus only profit element in alleged accommodation entries had to be added to assessee's income - **Principal Commissioner of Income-tax v. Ashwin Purshotam Bajaj** - [2023] 155 taxmann.com 478 (Bombay)

3.44 Purchase of shares : Where assessee and his HUF had purchased shares, out of past income and savings duly shown in accounts and there were no findings given by Assessing Officer that purchase transactions were bogus transactions, Assessing Officer could not have taxed investment made in purchase of shares being income of past years - **Principal Commissioner of Income-tax v. Manoj Kapoor** - [2023] 156 taxmann.com 205 (Jharkhand)

3.45 Reassessment : Where notice for reassessment had been issued to assessee for assessment of income which had already been assessed in same assessment year 2007-08 in hands of another company, since same income could not be simultaneously assessed in hands of different assessee, impugned notice issued mechanically and without application of mind was not justified - **Shantilal L. Chandaliya v. Income-tax Officer** - [2023] 156 taxmann.com 180 (Bombay)

3.46 Illustrations : Where assessee maintained day to day transactions in tally in name of 'A' and there was difference between in figures of capital and loans as per tally data of 'A' and audited account books of assessee, since case of assessee was of suppression of liability in audited books of account vis-a-vis parallel set of account books maintained in name of 'A', same could not be subject matter of addition under section 69/69A - **Principal Commissioner of Income-tax (Central) v. Regent Beers & Wines Ltd.** - [2023] 155 taxmann.com 544 (Madhya Pradesh)

3.47 Reassessment : Where AO passed reassessment order based on discovery of material during course of block assessment, since additions made with respect to unexplained investment were common to block assessment proceedings as well as reassessment proceedings and said additions were deleted by Commissioner (Appeals) in block assessment on ground that evidence in support of capital as well as loans raised by partners was furnished, additions made in reassessment order were to be deleted - **Commissioner of Income-tax v. Deepsons Southened** - [2023] 155 taxmann.com 551 (Delhi)

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

3.48 Where addition was made to assessee's income on account of huge amount deposited in his foreign bank account in Geneva, since there was no material on record to show that said amount was deposited by assessee and justifiable explanation was given by assessee that said account belonged to his nephew residing in U.K who had got his signatures on some papers when he was in India, assessee being an agriculturist and only having a small holding of land apparently could not be in possession of such huge amounts which were also in foreign currency, thus, impugned addition

made on account of amount deposited in foreign bank account of assessee was unjustified - **Principal Commissioner of Income-tax v. Joginder Singh Chatha** - [2023] 156 taxmann.com 509 (Punjab & Haryana)

3.49 Where AO based on information suggesting that deposits were made in bank account by one R out of which monies were remitted to assessee and initiated reassessment proceedings on ground that there had been increase in source of funds from previous assessment year in form of share capital, security premium, share application money, and long-term unsecured loans, since AO was unaware of nature of deposits received by assessee and neither he had list of shareholders as was indicated in reasons to believe, AO did not have tangible material on record that could have persuaded him to form a belief that income had escaped assessment and thus, impugned reopening notice was to be quashed - **Saraswati Petrochem (P.) Ltd. v. Income Tax Officer, Ward 22(3)** - [2023] 156 taxmann.com 471 (Delhi)

3.50 Writ Jurisdiction : Where AO passed impugned order under section 148A(d) and issued notice under section 148 on ground that nil return filed by assessee-partnership firm did not commensurate with loans advanced by assessee, since challenge to said order would be available to assessee while challenging order passed in reassessment proceedings consequent to reopening notice, same would not warrant any interference under article 226 of Constitution of India - **Sidhali Kripa Enterprises v. Income-tax Officer** - [2023] 156 taxmann.com 187 (Allahabad)

3.51 Reassessment : Where assessee, a dealer of BPCL, explained that amount of cash deposited in bank account was pertaining to daily cash as well as of petrol, diesel deposited everyday in bank, reopening of assessment to examine source of cash deposits made in bank accounts was case of change of opinion on part of revenue, hence, not justified - **Nathalal Ambalal & Sons v. Income-tax Officer** - [2023] 156 taxmann.com 31 (Gujarat)

3.52 Where assessee, engaged in stevedores services faced disallowances for inflated payments to two entities following a search, since, assessee filed substantial documents which proved that entities provided Container Freight Services, and moreover, assessee was not obligated to ensure production of third-party books of accounts, said disallowance was rightly deleted by lower authorities - **Principal commissioner of Income-tax-1 v. M. Dinshaw And Co. (P.) Ltd.** - [2023] 156 taxmann.com 170 (Bombay)

3.53 Where Assessing Officer disallowed expenses based on alleged bogus bills from two entities due to non-appearance and lack of delivery challans following a search however, Commissioner (Appeals) deleted said addition, citing supporting documents and confirmation

by one entity's employee and director and Tribunal upheld those findings, there was no need to interfere with said findings - **Principal commissioner of Income-tax-1 v. M. Dinshaw And Co. (P.) Ltd.** - [2023] 156 taxmann.com 170 (Bombay)

3.54 Cash deposits : Where information on Insight Portal with regard to high value cash deposits had prompted Assessing Officer to have a 'reason to believe' that amount in hands of assessee had escaped assessment, however, it had not been indicated in reasons as to how there was formation of belief by Assessing Officer that income had escaped assessment, reopening was merely an outcome of change of opinion of Assessing Officer, hence, notice issued under section 148 was to be quashed and set aside - **Gandhibag Sahakari Bank Ltd. v. Deputy Commissioner of Income-tax/Assistant Commissioner of Income-tax** - [2023] 156 taxmann.com 221 (Bombay)

3.55 Unsecured loan : Where Assessing Officer issued notice under section 148, alleging that assessee had given an unsecured loan to 'B' but same was not adequately substantiated, since reasons provided in notice were vague and lacked fresh material or evidence, impugned notice was invalid and was to be quashed and set aside - **Balvantbhai Devabhai Umrigar v. Assistant Commissioner of Income-tax** - [2023] 156 taxmann.com 224 (Gujarat)

3.56 Reassessment : Where assessment was sought to be reopened in case of assessee on ground that assessee sold immovable property, but no capital gain was offered in return of income, however, sale consideration was received by cheque and Long Term Capital Gain (LTCG) was duly reflected as was evident from relevant statement of LTCG, reopening of assessment was not justified - **Artiben Amishkumar Patel v. Income-tax Officer** - [2023] 156 taxmann.com 225 (Gujarat)

3.57 Optionally Fully Convertible Debentures : Where AO issued reopening notice on ground that assessee had made investment of Rs. 1.80 crores in certain company, however, said amount did not reflect in loans and advances head under balance sheet, since assessee had made investment in Optionally Fully Convertible Debentures (OFCDs) and same was shown under heading non-current investments, furthermore, in reply to notices assessee had provided a complete break-up of investment made, thus, same was not a case in which AO could have triggered reassessment proceedings against assessee - **Koa Investment Ltd. v. Income-tax Officer, Ward 14(4)** - [2023] 156 taxmann.com 414 (Delhi)

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

3.58 Illustrations : Where Revisional Authority having found that assessee had purchased a land for Rs. 15 lacs, whereas as per stamp duty valuation value of land was Rs. 70 lacs and Assessing Officer had failed to examine same revised assessment order, in view of judicial precedent on subject that no presumption could be drawn on this aspect that purchaser of property must have paid more than what was

actually recorded in account books, Tribunal was right in quashing revisional order - **Principal Commissioner of Income-tax v. Yogeshkumar Shantilal Mehta** - [2023] 155 taxmann.com 612 (Gujarat)

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

3.59 Bogus Purchases - Profit element : Where Assessing Officer on basis of an information received from Investigation wing that assessee was beneficiary of bogus purchase bills made additions towards gross profit at rate of 60.54 per cent on alleged bogus purchases, Tribunal rightly directed Assessing Officer to restrict gross profit at rate of 12.5 per cent on bogus purchases - **Principal Commissioner of Income-tax v. Suraj Infrastructures (P.) Ltd.** - [2023] 156 taxmann.com 192 (Bombay)

3.60 Bogus purchases : Where Assessing Officer received report from Investigation Wing that assessee was beneficiary of accommodation entries in form of bogus purchases from a group and made 100 per cent addition with respect to said purchases, Tribunal was justified in limiting addition in respect of bogus purchases at rate of 6 per cent of total purchases considering only income component of disputed transaction - **Principal Commissioner of Income-tax v. Rakesh Kailashchand Jain** - [2023] 156 taxmann.com 82 (Gujarat)

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

3.61 Housing project : Where assessee developed a housing project having different units, deduction under section 80-IB(10) was to be allowed only with respect to those units of housing project which construction was completed prior to 1-4-2004 and construction was completed prior to 31-3-2008 - **Principal Commissioner of Income-tax v. Shree Jivraj Township** - [2023] 155 taxmann.com 614 (Gujarat)

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

3.62 Revision : Once section 263 proceedings were set aside by Tribunal, consequent assessment order giving effect to revision order was void ab initio - **Principal Commissioner of Income-tax v. Sarjan Co-operative Housing Society Ltd.** - [2023] 156 taxmann.com 143 (Gujarat)

3.63 Interest from co-operative banks : Where assessee - cooperative society made investments with co-operative bank which was registered under Tamil Nadu Co-operative Societies Act, 1983, assessee-society would be entitled to claim benefit under section 80P(2)(d) with respect to interest income received from said

investments - **Thorapadi Urban Co-op Credit Society Ltd. v. Income Tax Officer, Ward 1** - [2023] 156 taxmann.com 419 (Madras)

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

3.64 AMP expenses : AMP expenditure incurred by assessee did not amount to an international transaction - **Principal Commissioner of Income-tax v. Wrigley India (P.) Ltd.** - [2023] 156 taxmann.com 245 (Delhi)

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

3.65 Adjustments - Operating profit/cost, computation of : Where TPO made certain adjustments to operating profit by excluding certain items of income, i.e., liabilities written back and doubtful debts written back from scope of operating profit of assessee, since liabilities **written** back belonged to earlier years and were directly relatable to regular business operations of assessee and doubtful debts written back were inextricably linked with business operations of assessee, said liabilities would form part of operating income of assessee - **Principal Commissioner of Income-tax v. Tetra Pak India (P.) Ltd.** - [2023] 156 taxmann.com 81 (Bombay)

3.66 Comparability factors - Segmental result : Where assessee-company was providing software development services to its AEs, a company in **addition** to sale of software was also in business of sale of software, which was sold both abroad and domestically was rightly excluded by Tribunal from list of comparables - **Principal Commissioner of Income-tax-7 v. Qualcomm India (P.) Ltd.** - [2023] 156 taxmann.com 288 (Delhi)

3.67 Comparables, functional similarity - Software consultancy/development services : Where assessee-company was providing **software** development services to its AEs, a company providing technical services unlike assessee, was rightly excluded by Tribunal from list of comparables - **Principal Commissioner of Income-tax-7 v. Qualcomm India (P.) Ltd.** - [2023] 156 taxmann.com 288 (Delhi)

3.68 Comparability factors - Super profit making companies : A company having diversified activities, huge brand name, owned substantial intangibles and a turnover of Rs. 2323 crores could not be treated as **comparable** to assessee having turnover of Rs. 96 crores - **Principal Commissioner of Income-tax-7 v. Qualcomm India (P.) Ltd.** - [2023] 156 taxmann.com 288 (Delhi)

3.69 Adjustments - Interest : Once impact of receivable on working capital is evaluated and consequent profitability/pricing is compared vis-a-vis draft comparables, there is no requirement of any further adjustment only on basis of outstanding receivables - **Principal Commissioner of Income-tax-7 v. Qualcomm India (P.) Ltd.** - [2023] 156 taxmann.com 288 (Delhi)

3.70 Methods for determination of - RPM : RPM was most appropriate method in case of distribution and marketing

activities especially when goods are purchased from associated entities and there are sales to unrelated parties without any processing and value addition - **Principal Commissioner of Income-tax-3 v. Fujitsu India (P.) Ltd.** - [2023] 156 taxmann.com 310 (Delhi)

3.71 Draft assessment order : Where in respect of an international transaction of assessee, TPO made certain adjustments and Assessing Officer issued a final assessment order with TPO's proposed additions, but AO skipped requirement of issuing a draft assessment order under section 144C(1), failure to pass draft assessment order would render assessment order as null and void - **CWT India (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2023] 155 taxmann.com 450 (Bombay)

3.72 Adjustments - General : Where after order was remanded by Tribunal, Deputy Commissioner had called upon assessee to pay certain outstanding demand, since after order under section 254 was received, order had to be passed by Chief Commissioner or Commissioner, but such exercise had not been carried out, this was a fit case for giving a mandamus to Deputy Commissioner to consider and pass appropriate orders - **Bloom Energy (India) (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 155 taxmann.com 474 (Madras)

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

3.73 Filing of FORM 10-IC : Where assessee could not upload Form No.10-IC on ITBA portal due to technical error, there being no fault of assessee, it could not be deprived of benefit particularly when this being first year for availing such benefits - **Principal Commissioner of Income-tax - 1 v. KGY Glass Industries (P.) Ltd.** - [2023] 156 taxmann.com 18 (Gujarat)

SECTION 116 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES

3.74 Appointment of Commissioner (Appeals) is regulated by provisions of Income-tax Act of 1961 and Central Government have jurisdiction to appoint an officer as Commissioner (Appeals) - **Shweta Punj v. Union of India** - [2023] 156 taxmann.com 516 (Allahabad)

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

3.75 Scope of provision : Where assessee, private discretionary trusts, were directed to switch form ITR-2 to ITR-5 e-filing and assessee filed instant writs with grievance that deductions/rebates available when they were treated as individual assessee were not available in new format, since application moved to file physical returns was closed by High Court as revenue claimed that they would resolve glitch in e-filing system, writ petitions were to be treated as application filed under section 119 and CBDT was to be directed to look into

said matter keeping in mind that it was a recurring problem - **Suram Trust v. Deputy Commissioner of Income-tax, (Exemption)** - [2023] 156 taxmann.com 84 (Delhi)

3.76 Scope of power : Nature of power/ function discharged by authority in exercise of its power under Section 119(2)(b) is quasi-judicial in nature and, thus, authority should grant a reasonable opportunity apart from assigning reasons and an order under Section 119(2)(b) ought to be a speaking order - **Envision Communication (P.) Ltd. v. Principal Commissioner of Income-tax-2** - [2023] 156 taxmann.com 459 (Madras)

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

3.77 Statement under section 132(4) : Where Assessing Officer on basis of seized loose bunch in books of account and assessee's statement computed undisclosed income of assessee, since assessee was a businessman and accounts being prepared and audited by Chartered Accountant (CA), it was CA who was in position to give statement regarding statement of accounts or trial balance and Assessing Officer would have examined CA regarding documents seized, matter was to be remanded to Tribunal for reconsideration - **Commissioner of Income Tax, Central-II v. Ashok Kumar Poddar** - [2023] 156 taxmann.com 285 (Calcutta)

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

3.78 Interest on cash seized : Where officer concerned despite order of Tribunal date 24-9-2014 had not returned cash seized to assessee, assessee would be entitled to interest on cash seized at rate of 12 per cent on account of inordinate delay in releasing same from order of Tribunal until payment - **Vinoda B. Jain v. Joint Commissioner of Income-tax** - [2023] 156 taxmann.com 185 (Bombay)

3.79 Scope of provision : Where authorized officer seized certain cash from assessee and assessee sought to treat seized cash as an asset of assessee and adjust seized cash against his tax liability, assessee was to be directed to file application before Assessing Officer under first proviso to section 132B - **Irfanudeen Abdul Munaf v. Principal Director of Income-tax (Inv.)** - [2023] 155 taxmann.com 619 (Madras)

3.80 Scope of provision : Where parcel of assessee containing gold weighing 949.180 grams was seized during search and seizure carried out in premises of one air service and AO made additions treating same as unaccounted investment, since Commissioner (Appeals) deleted said additions and Tribunal decided ownership of seized gold in favour of assessee, AO was directed to grant approval for release of remaining seized gold - **Jaliluddin Jummat Ali Shekh v. Principal Commissioner of Income-tax, (Central)** - [2023] 156 taxmann.com 17 (Gujarat)

SECTION 133A OF THE INCOME-TAX ACT, 1961 - SURVEY

3.81 Reassessment : Where Assessing Officer on basis of assessee's statement obtained during survey under section 133A issued notices under section 148 and assessee filed writ petition submitting that statement could not be basis for making assessment, writ petition at this stage was premature and, hence, not maintainable - **BMN Steels Emporium (Chennai) v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 623 (Madras)**

SECTION 139(9) OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - INVALID RETURN

3.82 Change in name of assessee : Return of income could not be treated as invalid where name of assessee remained same on date of filing of said return and was changed only thereafter - **Religare Advisors Ltd. v. Assistant Commissioner of Income-tax - [2023] 156 taxmann.com 146 (Delhi)**

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

3.83 Issuance of notice in wrong e-mail ID : Where intimations of notices were sent to e-mail IDs of one of Branch Offices of assessee-bank and not at designated e-mail ID of head office of assessee, it was not sufficient for completing assessment, particularly when notice under section 142(1) was earlier sent to correct e-mail ID of assessee and thus assessment order was to be set aside - **Indian Bank v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 264 (Madras)**

3.84 Period of limitation in case of defective return : Date of filing of original return under section 139(1) was to be considered for purpose of computing period of limitation under sections 143(2) and 142(1) and not date on which defects actually came to be removed under section 139(9) - **SMC Comtrade Ltd. v. Assistant Commissioner of Income-tax, Circle 24(1) - [2023] 156 taxmann.com 202 (Delhi)**

3.85 General : Where assessee was issued with a show cause notice and it filed its reply with a request for time but assessment order was passed, since prima facie there were indications that assessee's reply had not been considered while passing impugned order, there was clear violation of principles of natural justice and thus, matter was remitted back - **Hirotec India (P.) Ltd. v. Assessing Officer - [2023] 156 taxmann.com 16 (Madras)**

3.86 Opportunity to cross examine witness : Where statements of employees of the assessee company had been relied upon by Assessing Officer while passing assessment order, it is bounden duty of the Assessing Officer to permit assessee to cross-examine witnesses and not allowing the assessee to cross-examine said witnesses, would by itself make the order nullity inasmuch as it would amount to violation of principles of natural justice - **SKM Animal Feeds and Foods (India) (P.) Ltd. v. Assistant Commissioner of Income-tax,**

Central Circle - [2023] 156 taxmann.com 385 (Madras)

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

3.87 Opportunity of hearing : Where AO passed reassessment order making huge additions without issuing prior notice to assessee on ground that in PAN database no email id was registered, in such case notice was to be served physically upon assessee at least by courier or speed post and acknowledgment filed as was also mentioned in SOP issued by CBDT for assessment units under faceless assessment and revenue was to be directed to strictly comply with SOP in all cases, not just restricted to Faceless assessment proceedings so that assessee would get reasonable opportunity to make his case - **Fayeza Muffadal Contractor v. National Faceless Assessment Centre - [2023] 156 taxmann.com 168 (Bombay)**

3.88 Illustrations : Where case of assessee was selected for faceless assessment and assessee prayed for personal hearing through video conferencing, however opportunity of personal hearing could not be availed due to technical difficulties and Assessing Officer passed assessment order, since for technical fault assessee could not be made to suffer, matter was to be remanded to Assessing Officer to pass fresh assessment order after giving opportunity of hearing to assessee - **Bangabasi Collage v. Union of India - [2023] 155 taxmann.com 479 (Calcutta)**

3.89 Where assessee, a partner in a dissolved partnership firm, requested a video conferencing hearing during re-assessment proceedings, but request was denied, in such circumstances, reassessment passed by revenue would be treated as in violation of principles of natural justice and in breach of procedure laid down under section 144B - **Studio Virtues v. Addl./ Joint/ Dy./ ACIT/ ITO, National Faceless Assessment Centre - [2023] 156 taxmann.com 94 (Gujarat)**

3.90 Opportunity of hearing : Where assessee was granted an opportunity of personal hearing through video conferencing, however due to some technical issues with audio, assessee used chat box in order to communicate with authority concerned and merely some conversation took place in relation to procedural aspects and not merits of case, prescribed procedure laid down as per provisions of section 144B were not followed to afford an opportunity of personal hearing and impugned order was passed by revenue in violation of principles of natural justice - **Leela Trade Link (P.) Ltd. v. National Faceless Assessment Centre - [2023] 156 taxmann.com 50 (Gujarat)**

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

3.91 General : Where draft assessment order passed under section 144C(3) was accompanied by a notice of demand and penalty order under section 271(1)(c), same would make it final assessment order even though it was termed as draft assessment order - **Principal Commissioner of Income-tax**

v. Hyundai Motor India Engineering (P.) Ltd. - [2023] 156 taxmann.com 265 (Telangana)

3.92 Jurisdiction and powers of DRP : DRP can give directions only in pending assessment proceedings; once assessment order is passed, DRP would have no power to pass any directions contemplated under sub-section (5) of section 144C - ***Undercarriage and Tractor Parts (P.) Ltd. v. Dispute Resolution Panel-3 - [2023] 156 taxmann.com 79 (Bombay)***

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

3.93 Excess stock : Where AO found difference in stock during survey and he added back said difference to income of assessee, CIT was not justified in revising said order on basis of an inflated stock statement - ***Principal Commissioner of Income-tax-1 v. Dimple Murarka - [2023] 156 taxmann.com 546 (Orissa)***

3.94 Where Assessing Officer added certain sum to assessee-company's income for alleged excess scrap utilization, but lower authorities allowed appeal, citing proper accounts and well-documented sales of semi-finished goods and further a comparative chart of additions for various years showed consistent sales to a subsidiary, and subsequent assessments didn't face any additions and revenue had not been able to dispute correctness of aforesaid orders, there existed no grounds to interfere with order of lower authorities - ***Principal Commissioner of Income-tax v. Jamna Auto Industries Ltd. - [2023] 156 taxmann.com 239 (Punjab & Haryana)***

SECTION 148 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - GENERAL

3.95 Recording of reasons : Where reasons recorded by Assessing Officer did not disclose nature of transactions, date of transactions and other relevant details, notices issued by Assessing Officer under section 147 and 148 for reopening assessment was to be set-aside as Assessing Officer had failed to record independent reason to believe that income chargeable to tax had escaped assessment - ***Paresh Babubhai Bahalani v. Income Tax Officer, Ward 1(1) - [2023] 156 taxmann.com 517 (Gujarat)***

3.96 Conditions precedent : Where notice was issued by Assessing Officer under Section 148 requiring assessee to file a return within thirty days but return was filed after eight and a half months, since return was filed by assessee in response to said notice though delayed, there should have been a notice issued under Section 143(2) as requirement to issue notice could not be dispensed with - ***Commissioner of Income-tax - 11 v. Nagendra Prasad - [2023] 156 taxmann.com 19 (Patna)***

3.97 General principles : Even in an ex-parte proceedings, Assessing Officer has to record reasons for coming to a

conclusion as to why case has been taken out for re-opening of assessment - ***GSP Piling Constructions (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-4(3) - [2023] 156 taxmann.com 665 (Calcutta)***

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

3.98 Faceless assessment : In view of office memorandum dated 20th February, 2023 being F No. 370153/7/2023-TPL, issuance of notice under section 148 by jurisdictional assessing officer(JAO) instead of National Faceless Assessment Center is justifiable and sustainable in law - ***Triton Overseas (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 318 (Calcutta)***

3.99 Faceless assessment : After introduction of 'Faceless Jurisdiction of Income-tax Authorities Scheme, 2022' and 'e-Assessment of Income Escaping Assessment Scheme, 2022' it became mandatory for revenue to conduct/initiate proceedings pertaining to reassessment under sections 147, 148 and 148A in a faceless manner - ***Kankanala Ravindra Reddy v. Income-tax Officer - [2023] 156 taxmann.com 178 (TELANGANA)***

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

3.100 Reopening notices dated 30.6.2021 and 28.06.2021 under unamended section 148 issued upon assessee in respect of assessment years 2016-17 and 2017-18 respectively would be notices deemed to be issued under substituted section 148A(b) and same were barred by limitation as per section 149 - ***Ganesh Dass Khanna v. Income Tax Officer - [2023] 156 taxmann.com 417 (Delhi)***

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

3.101 Illustrations : No approval is required under section 151 before issuance of notice under section 148A(b) - ***Suraj Singh v. Income Tax Officer, Ward-3(1) - [2023] 156 taxmann.com 668 (Calcutta)***

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

3.102 General : Assessment order passed under section 153A pursuant to search and seizure was bad, when no assessment proceedings were pending as on date of initiation of proceedings under section 153A - ***Assistant Commissioner of Income-tax, Central Circle 1 v. Satish Kumar Keshri - [2023] 156 taxmann.com 547 (Patna)***

3.103 Where cash was seized when Tamil Nadu State Assembly Model Code of Conduct from State Assembly Election in Tamil Nadu was in force and subsequently, a statement was recorded as per which it was clear that practice of assessee as president of education-Trust was to credit salary of staffs/employees into their personal savings

account and thereafter withdraw same by collecting self drawn cheques duly signed by them, exception under Rule 112 F would apply only where assets so seized or requisitioned were in any manner connected with ongoing election in an assembly or Parliamentary constituency, and thus, merely because in instant case requisition was made during Tamil Nadu State Assembly Model Code of Conduct was in force would not mean that assessee would be excluded from issuance of notice under section 153A or section 153C - **St. Antony Educational and Social Society v. Central Board of Direct Tax - [2023] 156 taxmann.com 283 (Madras)**

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

3.104 Where assessee, an entrepreneur in apparel design, underwent a search on March 2, 2021 and subsequent searches on April 29 and 30, 2021, revealed no seizures and an assessment order for year 2015-16 was framed on March 31, 2023, however, Principal Commissioner revised it under section 263, considering fact that search operation was ongoing until April 29, 2021, aligning with assessment under section 153A, it could be said that assessment under section 153A was within time limit of Section 153B - **Anuradha Bakshi v. Principal Commissioner of Income-tax, Central - [2023] 156 taxmann.com 331 (Delhi)**

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

3.105 Satisfaction note : Where assessee challenged order passed under section 153C on ground that satisfaction notes supplied to assessee did not bear DIN number, since satisfaction note was document prepared by AO which was kept in file and unless demanded it was not required to be provided to assessee, furthermore when satisfaction notes were provided to assessee, said communication bore DIN, thus, impugned notice and assessment orders would not be without jurisdiction - **South Coast Spices Exports (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 156 taxmann.com 93 (Kerala)**

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

3.106 Income Tax Officer is competent authority under section 157A for issuing notice for rectification under section 154 - **Triveni Buildzone (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 603 (Allahabad)**

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

3.107 Statutory appeal : Where on writ, assessee had challenged impugned assessment order under section 144 and consequential demand notice under section

156 and had also filed a statutory appeal before Commissioner (Appeals), since assessee had an option to file application to stay further recovery proceedings and impugned Assessment order before concerned Authority, there was no merit in present writ petition - **Andy Nadar Thirumani Nadar v. Income Tax Department - [2023] 156 taxmann.com 460 (Madras)**

SECTION 170 OF THE INCOME-TAX ACT, 1961 - SUCCESSION TO BUSINESS OTHERWISE THAN ON DEATH

3.108 Validity of assessment : Where transferor Company got merged with assessee/transferee Company under scheme of amalgamation and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside - **Virchow Drugs Ltd. v. Income-tax officer. - [2023] 156 taxmann.com 89 (TELANGANA)**

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

3.109 Show cause notice : Where assessee was not residing at given address at time of issuance of show-cause notice against him on said address, impugned order passed under section 179 was in violation of principles of natural justice and same was to be quashed and set aside - **Rajeshkumar Arjanbhai Vekariya v. Deputy Commissioner of Income-tax. - [2023] 155 taxmann.com 547 (Gujarat)**

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

3.110 Processing of milk : Where assessee made payments to a dairy for conversion of raw milk into processed milk and milk products, since processing of milk would fall under section 194C, assessee rightly deducted tax at source under section 194C - **Principal Commissioner of Income-tax v. Maahi Milk Producer Co. Ltd. - [2023] 156 taxmann.com 217 (Gujarat)**

3.111 Work contracts : Where assessee entered into indivisible contracts with BHEL and CIPL for setting up of thermal power plant, since element of testing and commissioning of technical works etc. were part of main contract, in absence of any internal tool arising from contract or in absence of any legal provision allowing AO to break down indivisibility or composite nature of contract, AO could not overlook dominant object of contract to conclude that because part of contract involved testing, commissioning etc., necessarily, there would exist component of fees for technical services and thus, TDS with respect to payment made by assessee to contractors was to be made under section 194C - **Commissioner of Income-tax (TDS) v. Lalitpur Power Generation Co. Ltd. - [2023] 156 taxmann.com 698 (Allahabad)**

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

3.112 Where assessee, a computer and peripherals manufacturer, supplied products to distributors and Assessing Officer deemed payments to distributors as 'commission, since, payment from distributor to assessee had no link with further sale made by distributor, said payment could not be treated as commission or brokerage as described in explanation to Section 194H - *Commissioner of Income-tax v. Acer India (P.) Ltd. - [2023] 156 taxmann.com 664 (Karnataka)*

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

3.113 Application for issuing certificate for nil TDS filed by assessee could not be rejected on ground of pendency of proceedings under section 201 against company to which payment liable for TDS deduction was made - *Bitkuber Investments (P.) Ltd. v. Deputy Commissioner of Income-tax, TDS Circle 1(1) - [2023] 156 taxmann.com 384 (Karnataka)*

SECTION 197(A) OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - NON-DEDUCTION IN CERTAIN CASES

3.114 Where assessee-co-operative bank didn't deduct tax on interest payments within specified thresholds for depositors who submitted Form No. 15G and Assessing Officer issued Show Cause Notices but bank's responses were incomplete and therefore, assessment orders were passed without due consideration, matter would be remitted back to Assessing Officer to pass a fresh order on merits - *Thiruvannamalai District Central Cooperative Bank Ltd. v. Income Tax Officer - [2023] 156 taxmann.com 57 (Madras)*

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

3.115 Deemed reasonable period of limitation is four years when no period of limitation is prescribed by statute - *Income Tax Officer v. Indian Oil Corporation Ltd. - [2023] 156 taxmann.com 576 (Patna)*

SECTION 206C OF THE INCOME-TAX ACT, 1961 - COLLECTION OF TAX AT SOURCE

3.116 Refund : Where seller of coal at instance of department collected certain sum from assessee (buyer of coal) towards tax collected at source (TCS) and deposited same with department, since coal, according to assessee, was genuinely used in generation of power, entire sum collected as TCS from assessee be refunded to seller, who shall refund same to assessee - *Adhunik Power & Natural Resources Ltd. v. Central Coalfields Ltd. - [2023] 156 taxmann.com 227 (Jharkhand)*

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

3.117 Stay of demand : Where Assessing Officer determined tax liability of assessee at Rs. 44.10 crores **and** appeal against assessment order was pending, since it was not case of revenue that conditions prescribed in paragraph 4B of CBDT Office Memorandum dated 29-2-2016 were applicable in instant case, Assessing Officer could have recovered only 20 per cent of demand of Rs. 44.10 crores for granting stay - *Orion Security Solutions (P.) Ltd. v. Deputy Commissioner of Income-tax. - [2023] 155 taxmann.com 411 (Delhi)*

SECTION 221 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - PENALTY PAYABLE WHEN TAX IN DEFAULT

3.118 Demands for period preceding date of Resolution Plan : Dues payable to creditors, including statutory creditors, for periods which precede date when Resolution Plan (RP) is approved, can only be paid as per terms contained in RP, hence, demand recovery notices and consequent orders issued to assessee for period preceding date of RP were unsustainable in law and, hence, could not have been enforced - *Tata Steel Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 104 (Delhi)*

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

3.119 Where assessee received section 143(1) intimation for a refund based on TDS credit and an error in a rectification petition led to a second filing, which resulted in present impugned order and a statutory appeal had been filed and in a writ petition, assessee challenged intimation due to a shortfall in granted tax credit compared to Form 26AS, since assessee had availed statutory remedies and an appeal was pending, there was no justification for assessee to be permitted to opt for multiple remedies for same cause of action - *Vajra Global Consulting Services LLP v. Deputy Director of Income-tax - [2023] 156 taxmann.com 693 (Madras)*

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

3.120 Since purpose of retrospective amendment to section 245A was to make ITSC inoperative right from date of introduction of Bill and to send all pending applications to Interim Board and neither there was any intent nor it was within purpose to do away with pending applications in respect of matters in which cases arose from 1-2-2021 to 31-3-2021, therefore, last date mentioned for filing applications in section 245C(5) should be read as 31-3-2021 instead of 1-2-2021 and, consequently, last date mentioned in Circular should also be read as 31-3-2021 - *Jain Metal Rolling Mills v. Union of India - [2023] 156 taxmann.com 513 (Madras)*

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

3.121 Central Action Plan for disposal of appeals : Where petitioner, All India Federation of Tax Practitioners, raised concerns about delays in disposal of appeals, causing

harassment and costs and urged court to formulate a policy and issue directions to Commissioners (Appeals) for timely disposal of appeals, increase number of Commissioners (Appeals), and provide necessary infrastructural support and, CBDT provided a detailed affidavit outlining manner in which, in past as also in future, pending appeals were to be dealt with and disposed of expeditiously, thus, prayers as sought by petitioner having been suitably addressed by CBDT, no further directions were necessary and PIL was to be disposed of - **All India Federation of Tax Practitioners v. UOI - [2023] 156 taxmann.com 259 (Delhi)**

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

3.122 Ex parte orders : Mere posting of date of hearing of Miscellaneous Petition in cause list is not sufficient, proper communication has to be sent to parties regarding date of hearing of Miscellaneous Petition - **Ejaz Tanning Company v. Assistant Registrar - [2023] 156 taxmann.com 574 (Madras)**

3.123 Power to rectify : Where Tribunal wrongly dismissed appeal under section 268A(1) and 2658A(4) due to a palpable error and it failed to recognize that dismissing appeals solely based on financial implications below 50 lakhs was inappropriate, especially when subject matter fell under exception clause 10(c) of CBDT Instruction No. 03/2018, complemented by Instruction No. 17/2019, with an accepted audit objection, Tribunal's oversight of this glaring mistake justified rectification exercise under section 254(2) - **Gopal Paliwal v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 490 (Madhya Pradesh)**

3.124 Others : Where assessee filed appeal against order of Tribunal for assessment years 2009-10 and 2010-11, questioning absence of documentary proof regarding acceptance of audit objection in Tribunal's records, since no such evidence was found in records presented to High Court, matter was remanded to Tribunal for fresh decision - **Gopal Paliwal v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 490 (Madhya Pradesh)**

3.125 As it is evident from ITAT's decision that issues have been examined threadbare on merits considering the case laws, ITAT's order cannot be rectified u/s 254(2) merely because Revenue contents that the issues have been decided upon a misinterpretation of facts and law - **Principal commissioner of Income-tax, (Central) v. Hitesh Ashok Vaswani - [2023] 156 taxmann.com 200 (Gujarat)**

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

3.126 Scope of provisions : Commissioner under section 263 can interfere with order of Income-tax

Officer on a point which was directly in appeal before Appellate Assistant Commissioner - **Prestige Marketing Division v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 410 (Kerala)**

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

3.127 Illustration : Where assessee initially claimed a substantial tax refund but later revised her income to report long-term capital gains instead of declaring a loss and Assessing Officer imposed a penalty for inaccurate reporting, since mistake in reporting long term capital gains was inadvertent, as it resulted from unavailability of purchase and sale deeds and was made by assessee's non-practicing Chartered Accountant husband, penalty levied under section 271(1)(c) by Assessing Officer was to be deleted - **Principal Commissioner of Income-tax v. Jyoti Yogeshkumar Prajapati - [2023] 156 taxmann.com 150 (Gujarat)**

SECTION 276B OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - FAILURE TO PAY TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES/DEDUCTED AT SOURCE

3.128 Illustrations : Where assessee deposited amount of TDS along with interest prior to date of filing of complaint for prosecution and no penalty proceedings were initiated against assessee, no prosecution under section 276B could be launched against assessee - **A.M. Enterprises v. State of Jharkhand - [2023] 156 taxmann.com 151 (Jharkhand)**

3.129 Reasonable cause : Where petitioners had deducted TDS but not deposited same during statutory time limit but had deposited after substantial period of delay ranging from 31 to 214 delays, they had committed default which comes under offence as provided in section 276B, however, since failure on part of petitioners to deposit deducted TDS was on account of reasonable causes for prevalence of COVID-19 Pandemic standing on their way, Trial Court ought not to have taken cognizance of offences under section 279B, sections 2(35) and 278(B) - **D.N. Homes (P.) Ltd v. Union of India - [2023] 156 taxmann.com 169 (Orissa)**

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

3.130 General : Where AO initiated prosecution under section 276C on ground that assessee-non resident failed to disclose capital gains on sale of shares in return and petition challenging initiation of prosecution had been quashed by High Court, however assessment order was again challenged before Commissioner (Appeals) on ground of levy of interest under sections 234A, 234B and 234C and it was held that assessee was under bonafide belief that there was no tax liability to be discharged by him on account of his residential status as NRE accounts and TDS made by bank, thus, intention to conceal income by furnishing inaccurate particulars was not established, since instant petition was filed considering subsequent developments, continuation of prosecution would not be possible and was liable to be quashed - **Rohitkumar Nemchand Piparia v. Deputy**

Director of Income Tax (Inv.) Unit-4(3) - [2023] 156 taxmann.com 636 (Madras)

- 3.131 Scope of provision** : Where assessee-company paid self assessed tax belatedly, question of evasion of tax did not arise and thus, complaint filed under section 276C deserved to be quashed - **Health Bio Tech Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 220 (Punjab & Haryana)**

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

- 3.132 Concealment of income** : Where Assessing Officer initiated prosecution under sections 276CC against assessee for non-filing of return of income for certain period, however, penalty or assessment against assessee were set-aside in view of subsequent orders passed by Tribunal, entire criminal proceedings against assessee were to be quashed - **S. Arputharaj v. Deputy Commissioner of Income-tax, Central Circle-1 - [2023] 156 taxmann.com 572 (Madras)**

- 3.133** Where directors of assessee-company faced section 276CC charges and they filed returns before prosecution was proposed, and subsequent orders absolved them of additional tax liability, since complaint failed to disclose Directors' role in company, and a mandatory requirement mens rea (guilt) for willful failure under section 276CC was absent in this case and moreover, tax liability being less than Rs. 3,000 was exempted from prosecution as per provision under section 276CC, in such circumstances, entire criminal proceeding was to be quashed - **Gunwant Singh Saluja v. State of Jharkhand - [2023] 156 taxmann.com 172 (Jharkhand)**

- 3.134 Condition precedent** : Where tax payable reduced by advance tax paid and tax deducted at source did not exceed Rs. 3000 but there was a refund claimed by petitioner, initiation of prosecution under section 276CC was not sustainable and liable to be quashed - **Manav Menon v. Deputy Commissioner of Income-tax, Non-Corporate Circle 20(1) - [2023] 156 taxmann.com 666 (Madras)**

4. TRIBUNAL

SECTION 2(13) OF THE INCOME-TAX ACT, 1961 - ADVENTURE IN THE NATURE OF TRADE

- 4.1 Land dealings** : Where assessee, managing director of a construction company, sold land jointly owned with his brother and provided documents and explanations to justify transaction as a capital investment, however, Assessing Officer rejected assessee's contentions, deeming transaction as an 'adventure in nature of trade,' and taxed income as business income, matter was to be remanded back to Assessing Officer to identify true intention of assessee as to whether land is held as investment or as business asset - **Mahendrabhai Chaturbhai Patel v. Assistant Commissioner of Income-tax - [2023] 156 taxmann.com 174 (Ahmedabad - Trib.)**

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

- 4.2 Agricultural land** : Where assessee sold its agricultural land and claimed exemption from capital gain tax, since assessee had fairly established that land was agricultural land evidenced by Adangal and letter of Tahsildar, impugned addition made by Assessing Officer was to be deleted - **Pandit Vettrivel v. ACIT - [2023] 155 taxmann.com 662 (Chennai - Trib.)**

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

- 4.3 Object of general public utility** : Where assessee-trust was, inter alia, set up with objects of establishing/managing "Dharamshala" to facilitate relief to poor, since assessee had let out "Dharamshala" to public at large for multi-facet purposes, i.e., marriage functions, political, religious, and other social functions, etc., it could be said that it was carrying out purely commercial activities and moreover, since gross receipts of trust surpassed prescribed limit as per second proviso to section 2(15), assessee was not entitled for exemption under section 11 - **Ramswaroop Das Niranjnlal Charitable Trust v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 179 (Raipur - Trib.)**

- 4.4 Improvement trust** : Where assessee-trust, incorporated under Punjab Town Improvement Act, was engaged in providing services for improvement and expansion of civic facilities, its activities relating to acquisition of land, development of land and sale thereof was not commercial or business venture per se but one necessitated on account of implementation of provisions of trust through statutory scheme and thus receipts of assessee-trust from its activities of sale of plots, flats, etc., were entitled for exemption under section 11 - **Improvement Trust v. ACIT - [2023] 156 taxmann.com 153 (Chandigarh - Trib.)**

- 4.5 Scope of provision** : Where assessee-trust, registered for advancement and promotion of science and technology, claimed exemption under section 11 stating that it was imparting education and Assessing Officer denied exemption, since Tribunal in assessee's own case for earlier years held

that activities carried out by assessee were not in nature of imparting education but in nature of general public utility, matter was to be restored to Assessing Officer to determine whether these general public utility activities were commercial in nature - **Gujarat Council of Science City v. Deputy Commissioner of Income-tax, (Exemption) - [2023] 155 taxmann.com 295 (Ahmedabad - Trib.)**

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

- 4.6 Sub-clause (ia) :** Where corpus specific voluntary contribution was received by assessee-trust, not registered under section 12AA, it being in nature of capital receipt, was outside scope of income under section 2(24)(ia) and same could not be brought to tax even in case of trust not registered u/s. 12A / 12AA - **Assistant Commissioner of Income-tax, Circle-49(1) v. Financial Inclusion Trust - [2023] 156 taxmann.com 415 (Delhi - Trib.)**

SECTION 2(29A) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - LONG TERM CAPITAL GAINS/ASSETS

- 4.7** Where Assessing Officer treated income from sale of shares and securities as business income, while assessee claimed it as exempt long-term capital gains, however, Commissioner(Appeals) reclassified it as "capital gains" citing CBDT Circular No.6 dated 29-2-2016, considering shares as investments balance sheet and their long holding period (ranging from 3301 to 1352 days), hence, Commissioner's decision needed no interference - **Deputy Commissioner of Income-tax. v. Hero Investment (P.) Ltd., Circle - 11(1) - [2023] 156 taxmann.com 15 (Delhi - Trib.)**

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

- 4.8 Firm/partners, in case of :** Where capital account of assessee-partner in firm was credited with certain amount resulting from revaluation of land and subsequently said firm was converted to a private limited company, since only change that had taken place on firm being transformed into a company was that shares of partners were reflected in form of share certificates and beyond that there was no physical distribution of assets, there was no transfer of assets involved and hence, there was no liability of assessee-partners to pay tax on capital gains - **Income-tax Officer v. Jatin Kanubhai Kotadia - [2023] 155 taxmann.com 617 (Ahmedabad - Trib.)**

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

- 4.9 Interest :** Where interest income earned by assessee on fund was temporarily parked/deposited with banks as fixed deposits prior to commencement of its business, it was in nature of a capital receipt and was required to be set off against pre-operative expenses - **Chandhok**

Cold Storage (P.) Ltd. v. Income Tax Officer, Ward-3(1) - [2023] 156 taxmann.com 13 (Raipur - Trib.)

- 4.10 Donation :** Where assessee-trust received a certain sum as foreign contribution and observed that assessee had not shown donation in income and expenditure account or in computation of total income and treated foreign contribution as income of assessee, since assessee claimed that it had received donation for earlier year, and thus no addition could be made, matter was remitted to Assessing Officer to verify fact and allow relief to assessee - **Amalsad Vibhag Kelvani Mandal v. Income-tax Officer - [2023] 156 taxmann.com 70 (Surat-Trib.)**

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

- 4.11 Accounting justification :** Where Commissioner (Appeals) had given no concrete finding or any basis for holding that income, which was received by assessee during year under consideration, did not accrue to assessee and on basis of which accounting practice, recognition of revenue was deferred to succeeding assessment year, matter was to be restored to file of Commissioner(Appeals) for adjudication afresh - **Deputy Commissioner of Income-tax, Circle-1(1)(2) v. Designmate (India) (P.) Ltd. - [2023] 156 taxmann.com 88 (Ahmedabad - Trib.)**

- 4.12 Interest on fixed deposits :** Interest accrued on bank fixed deposits of assessee subjected to prohibitory order by CBI could not be treated as income until assessee actually receives it from bank, even though it was subject to TDS - **Bellary Iron-Ores (P.) Ltd. v. Income Tax Officer, Ward-2 - [2023] 156 taxmann.com 392 (Bangalore - Trib.)**

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

- 4.13 Royalties/Fees for technical services - Make available :** Where management support services provided by assessee, a Belgium company, to its Indian subsidiary did not make available technical knowledge, skill, experience, know-how, etc., consideration received by assessee for such services was not FTS as per India-Belgium DTAA read with India-UK DTAA - **Wolters Kluwer Financial Services Belgium NV v. Deputy Commissioner of Income-tax,(International Taxation) - [2023] 155 taxmann.com 628 (Delhi - Trib.)**

- 4.14 Royalty/Fees for technical service - Management services :** Where assessee, a Singapore based company, had entered into intra-group services agreement with its India affiliates, services provided in relation to marketing and sales services and operations and standardization services could not be regarded as FTS under article 12(4) of India-Singapore DTAA since said services did not 'make available' technical knowledge, experience, skill, know-how or processes and there was no transfer of technology - **Deputy Commissioner of Income-tax v. CEVA Asia Pacific Holdings Company Pte. Ltd. - [2023] 155 taxmann.com 475 (Delhi - Trib.)**

- 4.15 Royalties/Fees for technical services - Others :** Payments received by assessee, a tax resident of singapore, towards

interconnectivity utility charges (IUC) from Indian customers/end-users cannot be considered as royalty to be brought to tax in India under section 9(1)(vi) and also as per DTAA - **Telecom Italia Sparkle Singapore Pte. Ltd. v. Deputy Commissioner of Income-tax (International - Taxation)** - [2023] 155 taxmann.com 404 (Bangalore - Trib.)

4.16 Permanent establishment-Project office/branch office : Where Commissioner(Appeals) allowed appeal of assessee holding that assessee was not required to deduct TDS at time of making payments to overseas entities for translating its products into foreign languages for sale abroad, however, had made no observation whatsoever regarding applicability of Tax Treaty provisions to aforesaid payments, matter was to be remanded back to Commissioner(Appeals) to pass a detailed / speaking order giving reasons for allowing relief to assessee on this issue - **Deputy Commissioner of Income-tax, Circle-1(1)(2) v. Designmate (India) (P.) Ltd.** - [2023] 156 taxmann.com 88 (Ahmedabad - Trib.)

4.17 Elimination of double taxation - Foreign tax credit : Where assessee claimed relief of foreign tax credit at rate of 10 per cent of royalty received by it from Australian company and said claim was accepted by AO, but thereafter, due to revision in rate of withholding tax to 15 per cent , additional withholding tax was deducted , but AO did not allow claim of additional tax deduction , once credit for foreign withholding tax had been allowed at 10 per cent , subsequent revisional rate of tax was also required to be allowed - **Deputy Commissioner of Income-tax, Corporate Circle v. Ramco Systems Ltd.** - [2023] 156 taxmann.com 640 (Chennai - Trib.)

4.18 Elimination of double taxation - Eligibility of relief : Assessee would be entitled to take credit of income tax paid in a foreign country even in relation to income which is exempt under section 10A - **Wipro Ltd. v. ACIT** - [2023] 156 taxmann.com 186 (Bangalore - Trib.)

4.19 Royalties/fees for technical services - Database, use of : Consideration received by assessee, a tax resident of UK, for distribution of rights of news and business information, was not royalty as defined under article 13(3) of India-UK DTAA or taxable under section 9(1)(vi) - **Factiva Ltd. v. Assistant Commissioner of Income-tax, 2(3)(1)** - [2023] 156 taxmann.com 696 (Mumbai - Trib.)

4.20 Business profits - Offshore supplies : Where assessee, a tax resident of Thailand, received certain amount of consideration in respect of offshore supply of equipments to DMRC, in view of fact that such transfer of ownership/title to DMRC had taken place outside India, same was not to be taxed in India - **Bombardier Transportation Signal (Thailand) Ltd. v. ACIT**

(**International Taxation**) - [2023] 156 taxmann.com 272 (Delhi - Trib.)

4.21 Royalties/FTS - Satellite/Transponder, use of : Amount received by assessee-Netherlands based company for transmission of satellite signals from ship to customers in India and vice versa was not royalty - **Inmarsat Solutions BV v. ACIT (International Taxation)** - [2023] 156 taxmann.com 218 (Delhi - Trib.)

4.22 Dividend-General : DTAA does not get triggered at all when a domestic company pays DDT under section 115-O - **Deputy Commissioner of Income-tax, Circle-3(3)(1), Mumbai v. Total Energies Marketing India (P.) Ltd.** - [2023] 156 taxmann.com 307 (Mumbai - Trib.)

4.23 Reassessment : Where assessee, a non-resident, was appointed as a trustee for issuance of FBBCs of BFL (Indian company) and Assessing Officer based on information received from Assessing Officer of BFL that interest/redemption premium paid to assessee was without deducting TDS, reopened assessment on ground that income chargeable to tax had escaped assessment, since action of Assessing Officer of BFL was deleted by Tribunal holding that income had not arisen in India in hands of recipient/non-resident and there was no obligation on part of BFL to deduct tax at source on payment of interest (redemption premium), action of Assessing Officer to reopen assessment was to be quashed - **Citicorp Trustee Company Ltd. v. Deputy Commissioner of Income-tax (International Taxation)** - [2023] 155 taxmann.com 412 (Mumbai - Trib.)

4.24 Royalties/ fees for technical services - licence fees : Where AO initiated reassessment on ground that assessee, a foreign company had not filed its return in India but had entered into transactions which had resulted in generation of income in India and treated licence fee received by assessee as royalty, since in reasons recorded, Assessing Officer had very clearly and categorically stated that assessee had filed TDS return under Section 194E and under Section 195 , however, it didn't file any return of income, but it was found that assessee had not filed any return , reopening was invalid - **Cricket South Africa (NPC) v. Assistant Commissioner of Income-Tax (IT), Circle - 1(2)(1)** - [2023] 156 taxmann.com 9 (Delhi - Trib.)

4.25 Royalties/Fees for technical services - General : Where assessee, a tax resident of UK, was engaged in business of providing human resource background screening services including pre-employment background screening, employment, education, verification services and investigative due diligence services, since assessee was providing a report summarising its findings with respect to background check undertaken by it of employees which was primarily a factual data and could not per se qualify as literary or artistic or any other copyrightable work, consideration received by assessee under terms of its agreement with its client was purely towards provision of background screening services and could not be regarded as royalty - **Hire Right Ltd. v. ACIT** - [2023] 156 taxmann.com 72 (Delhi - Trib.)

- 4.26 Capital gain- Shares/units , transfer of :** Where AO had denied exemption claimed by assessee , a Mauritius company, under article 13 of India Mauritius DTAA on ground that assessee was a conduit company but failed to substantiate same through clinching evidence, assessee was entitled to exemption under article 13 on sale of shares of Indian company - **Veg 'N' Table v. Deputy Commissioner of Income Tax, Circle (IT) 3(1)(1) - [2023] 156 taxmann.com 389 (Delhi - Trib.)**
- 4.27 Income of Government and Institutions - Scope of provision :** Income earned by assessee, a non-resident trust, by virtue of investment in Indian Portfolio companies will be governed by beneficial provisions of India-UAE DTAA and would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or on an application of section 161 conjointly with provisions of article 24 of India-UAE DTAA - **Green Maiden A 2013 Trust v. Assistant Commissioner of Income-tax (International Taxation) - [2023] 156 taxmann.com 149 (Mumbai - Trib.)**
- 4.28 Royalties/Fee for technical services - Others :** Where Assessee-company, a tax resident of Austria, received certain amount of consideration towards Interconnect utility charges (IUC) from an Indian company (VIL) for providing Voice Interconnect Services, since there was no transfer of any intellectual property rights or any exclusive rights that had been granted by assessee to service recipients for using such intellectual property, Interconnect utility charges (IUC) received by assessee, for providing Voice Interconnect Services could not be taxed as royalty under section 9(1)(vi) and also as per DTAA - **AI Telekom Austria Aktiengesellschaft v. Deputy Commissioner of Income-tax, (International Taxation) - [2023] 156 taxmann.com 155 (Bangalore - Trib.)**
- 4.29 Royalties/Fee for technical services - Computer Software :** Where assessee, a tax resident of Singapore was a distributor of software products and copies of invoices showed that they were only in respect of sale of software and did not contain any element of service, receipt from sale of software by assessee would not qualify as FTS - **SoftwareONE Pte. Ltd. v. ACIT, International Taxation - [2023] 156 taxmann.com 33 (Delhi - Trib.)**
- 4.30 Business profit - Composite contract :** Where assessee made certain payments to an Italian company under contract entered into for supply of tissue paper manufacturing plant inclusive of freight and providing of incidental engineering and supervision services, since entire plant was supplied in movable packages and assembled with help of two local contractors engaged by assessee and no documentary evidences were presented by Assessing Officer to establish that plant was assembled or commissioned by non-resident in India, no income could accrue or arise to Italian

company in India under provisions of Act - **Deputy Commissioner of Income-tax, TDS v. Orient Paper Mills - [2023] 156 taxmann.com 29 (Jabalpur - Trib.)**

- 4.31 Dependant personal services :** Where Assessing Officer denied treaty benefits to assessee, a US resident, on ground that she had not furnished any Tax Residency Certificate (TRC) in support of her claim that she was a tax resident of USA, but assessee submitted that as on date she was in possession of TRC issued by competent authority, issue was to be restored to Assessing Officer - **Nymphia Koul v. ACIT (International Taxation) - [2023] 156 taxmann.com 30 (Delhi - Trib.)**
- 4.32 Permanent establishment - Agency PE :** Where assessee, a Mauritius based company, appointed its Indian subsidiary as its advertising sales agent to sell commercial advertisement time to prospective advertisers in India and its distributor to distribute subscription supported television programming service to Indian subscribers and gave it authority to conclude contracts in name of assessee, since Assessing Officer failed to establish that Indian subsidiary habitually exercised authority to conclude contracts on behalf of assessee, said subsidiary could not be said to be dependent agent PE of assessee under article 5(4) of India-Mauritius DTAA and income of assessee was not be taxable in India - **Taj TV Ltd. v. Deputy Commissioner of Income-tax, International Taxation - [2023] 156 taxmann.com 289 (Mumbai - Trib.)**
- 4.33 Royalties/Fees for technical services - Satellite, transponder use of :** Where assessee, a Mauritius based company, paid transponder fee and uplinking charges to US based company for providing facilities of telecasting channels of assessee in India, since said payment was not made for right to use any industrial, commercial or scientific equipment, payment in question would not fall within ambit of 'royalty' as per article 12 of India-USA DTAA - **Taj TV Ltd. v. Deputy Commissioner of Income-tax, International Taxation - [2023] 156 taxmann.com 289 (Mumbai - Trib.)**
- 4.34 Royalties/fees for technical services - Database, use of :** Where assessee, a UK based company, engaged in providing global business news and information services to organizations worldwide, entered into an agreement with its group company for distribution of its financial products in Indian market, since consideration received from its AE towards distribution of its products was merely for use of database and not for use or right to use any equipment, same could not be said to be 'royalty' under provisions of Act or under article 13 of India-UK DTAA - **Factiva Ltd. v. Deputy Commissioner of Income-tax (IT)-2(3)(1) - [2023] 156 taxmann.com 284 (Mumbai - Trib.)**
- 4.35 Permanent Establishment - Service PE :** Consideration received by assessee, a tax resident of Thailand, as regards offshore supply of goods and equipments to an Indian company from outside India could not be brought to tax in India in absence of PE - **Alstom (Thailand) Ltd. v. Assistant Commissioner of Income-tax, Circle 1(1)(2) - [2023] 156 taxmann.com 51 (Delhi - Trib.)**

4.36 Royalties/ fees for technical services - licence fees : Where AO initiated reassessment on ground that assessee, a foreign company had not filed its return in India but had entered into transactions which had resulted in generation of income in India and treated licence fee received by assessee as royalty, however, it was found that, in year under consideration, neither assessee had made remittances to anyone outside India or in India nor deducted any tax at source, reopening of assessment under section 147 was wholly without jurisdiction - **Cricket Australia v. A. Commissioner of Income-tax (IT), Circle-1(2)(1) - [2023] 156 taxmann.com 49 (Delhi - Trib.)**

4.37 Capital gain - Shares/units, transfer of : Where assessee, a Mauritius based company, earned long-term capital gain from transfer of equity shares of Indian company and claimed same as exempt under article 13 of DTAA but Assessing Officer treated assessee as conduit entity and denied treaty benefit, since arguments advanced by both parties required extensive hearing, which could be done during course of hearing of main appeal, it would be apt to direct assessee to deposit of 20 per cent of demand - **India Property (Mauritius) Co. II v. ACIT, International Taxation - [2023] 155 taxmann.com 351 (Delhi - Trib.)**

4.38 Shipping, Inland waterways transport : Where assessee, a Singapore based company, was operating ships in international traffic and had a valid Tax Resident Certificate, Assessing Officer was justified in granting treaty benefits to assessee; Commissioner (Appeals) was not justified in assuming jurisdiction under section 263 to revise assessment order as same could not be considered to be erroneous and prejudicial to interest of revenue - **Tata NYK Shipping Pte. Ltd. v. Commissioner of Income-tax, International Taxation - [2023] 155 taxmann.com 345 (Delhi - Trib.)**

SECTION 10(1) OF THE INCOME-TAX ACT, 1961 - AGRICULTURAL INCOME

4.39 General : Where assessee earned income from growing and selling of hybrid corn seeds jointly with help of farmers and claimed it as exempt under section 10(1) but Assessing Officer denied claim of assessee, since manner in which agricultural process was undertaken by assessee during year was similar to preceding years wherein issue was considered in favour of assessee, assessee was entitled to exemption under section 10(1) - **Bayer Crop Science Ltd. v. Deputy Commissioner of Income-tax, Range-10(2)(2) - [2023] 156 taxmann.com 510 (Mumbai - Trib.)**

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

4.40 Scope of : Loss arising in eligible SEZ/STPI undertakings can be adjusted against profits arising from non-SEZ/non-STP units - **Wipro Ltd. v. ACIT - [2023] 156 taxmann.com 186 (Bangalore - Trib.)**

4.41 Computation of deduction : Where assessee, a STP unit, had made certain sales to another STP unit in India and received sale proceeds in foreign currency, said deemed exports should be included as part of turnover while computing deduction under section 10A - **Wipro Ltd. v. ACIT - [2023] 156 taxmann.com 186 (Bangalore - Trib.)**

4.42 Delayed export proceeds : Where applications had been filed by assessee to RBI seeking permission to receive export proceeds beyond prescribed period, sale amount should be included in the export turnover while computing deduction under section 10A - **Wipro Ltd. v. ACIT - [2023] 156 taxmann.com 186 (Bangalore - Trib.)**

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

4.43 Others : Where assessee-trust, registered under section 12A, received advance from multiple parties towards sale of flats, since charity Commissioner granted approval to assessee trust for sale of flats on 31-3-2021, said flats were not sold by assessee in relevant year 2013-14 and thus, no addition could be made during year - **Income-tax Officer (Exemption) v. Laxminarayan Mandir Trust - [2023] 156 taxmann.com 83 (Mumbai - Trib.)**

4.44 Conditions precedent : Where, assessee-trust engaged in educational activities was not registered under section 12A, computation of its income had to be made as per normal provisions of Act - **Deputy Commissioner of Income-tax v. Shree Saraswati Education Sansthan - [2023] 156 taxmann.com 182 (Ahmedabad - Trib.)**

4.45 Where assessee, an association for Oral Maxillofacial surgeons, in absence of any registration under section 12A, did not claim benefit of exemption under section 11 but urged for case reconsideration, emphasizing its registration under section 12AA on 18-05-2023, since assessment was concluded on 17-12-2019 before registration date, and no benefit under section 11 was claimed in return, assessee could not avail of exemption for year under consideration - **Association of Oral Maxillofacial Surgeons of India v. Income Tax Officer (Exemptions), Ward-1 - [2023] 156 taxmann.com 332 (Pune - Trib.)**

4.46 Scope of provision : Where Competent Authority vide order dated 22-2-2011 rejected assessee's application seeking registration and Tribunal vide order dated 3-1-2018 directed Competent Authority to grant registration to assessee, since after order of Tribunal dated 3-1-2018 assessee had been granted registration, it was eligible for benefit of sections 11 and 12 for assessment year 2010-11 - **Bank of India Retired Employees Medical Assistance Scheme v. Income-tax Officer - [2023] 156 taxmann.com 223 (Mumbai - Trib.)**

4.47 Accumulation of income : Where assessee-trust filed Form No. 10B alongwith original return and filed Form 10 belatedly alongwith revised return, since accumulated amount was deposited in bank as per provisions of section 11(5) and Form No. 10B certified amount of accumulation, substantial compliance of Form 10 would suffice and, therefore,

assessee was to be granted benefit of exemption under section 11 - **Sorthiya Ahir Gnatino Utaro v. ADIT (CPC)** - [2023] 156 taxmann.com 662 (Rajkot - Trib.)

4.48 Net income v. Gross receipts : Taxation of gross receipts of assessee-trust without allowing deduction of revenue expenses incurred by assessee was unjustified inasmuch as only net income can be taxed and not gross receipts - **Annadaneshwara Charitable Trust v. Income-tax Officer** - [2023] 156 taxmann.com 270 (Bangalore - Trib.)

4.49 Condonation of delay : Where lower authorities denied exemption under section 11 to assessee-trust and assessee filed appeal before Tribunal with a delay of 178 days, since assessee was attributing delay due to procedural delay on account of some bureaucratic issues, delay in filing appeal deserved to be condoned - **Gujarat Council of Science City v. Deputy Commissioner of Income-tax, (Exemption)** - [2023] 155 taxmann.com 295 (Ahmedabad - Trib.)

SECTION 12 OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - VOLUNTARY CONTRIBUTIONS

4.50 Corpus donation : Corpus donations by their very nature are towards corpus of trust and are not freely available for utilization by trust, hence, they could not be added to income of assessee trust while computing same as per normal provisions of Act - **Deputy Commissioner of Income-tax v. Shree Saraswati Education Sansthan** - [2023] 156 taxmann.com 182 (Ahmedabad - Trib.)

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

4.51 Where assessee-Bar Association of Income Tax consultants applied for registration under section 12AA, without fulfilling primary condition of registration under relevant statutory authorities, as required by amended Rule 17A, CIT(E) rightly rejected registration application of assessee - **Income Tax Appellate Tribunal Bar Association v. Commissioner of Income-tax (Exemption)** - [2023] 156 taxmann.com 91 (Surat-Trib.)

SECTION 12AB OF THE INCOME-TAX ACT, 1961 - PROCEDURE FOR FRESH REGISTRATION

4.52 General : Where Commissioner (Exemptions) rejected application of assessee for registration under section 12AB on ground of non-compliance towards notices issued to it, since copies of e-mails showed registered email ID as missing, matter should be restored to Commissioner (Exemptions) - **Unnati Jan Kalyaan Shikshan Samiti v. Commissioner of Income-tax (Exemption)** - [2023] 156 taxmann.com 35 (Raipur - Trib.)

4.53 Where CIT(E) had denied registration under section 12AB on ground that charitable activities of trust were confined to particular caste, since assessee had two types of objects, one for exclusively particular caste and other for benefit of public in general, but said fact had not been examined, matter should be remitted back - **Mar Baselius Orthodox Syrian Church v. Commissioner of Income-tax, (Exemption)** - [2023] 156 taxmann.com 548 (Surat-Trib.)

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

4.54 Scope of : Where assessee-trust advanced loans without charging interest to a private company wherein more than 20 per cent shareholding was held by trustees of assessee, since only consequence of case which fell within four corners of section 13 was denial of exemption under section 11, revenue could not compute notional interest in case no such interest was actually charged by trust - **Income-tax Officer (Exemption) v. Laxminarayan Mandir Trust** - [2023] 156 taxmann.com 83 (Mumbai - Trib.)

4.55 Where assessee trust gave advances to other trusts where trustees were also involved and AO considered this in violation of section 13(1)(c) but made no addition, in such circumstances, ground taken by assessee before CIT(A) and consequently, by revenue before Tribunal did not require any adjudication - **Assistant Commissioner of Income-tax, Central Circle-2(2) v. Sinhagad Technical Education Society** - [2023] 156 taxmann.com 92 (Pune - Trib.)

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

4.56 Illustrations : Where Assessing Officer disallowed certain interest expenses under section 14A due to use of mixed funds for investments and assessee argued that if investments were made from mixed funds, it should be presumed that interest-free funds covered investments, however, complete facts were unavailable due to missing audited accounts for relevant period, matter was to be sent back to Assessing Officer for verification and if it was found that interest-free funds covered investments, no disallowance of interest expenses should be made - **Madhu Silica (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 156 taxmann.com 157 (Ahmedabad - Trib.)

4.57 Where Assessing Officer without examining basis of allocation and apportionment of expenses towards exempt income computed disallowance under section 14A as per rule 8D(2)(iii) on notional basis, issue was to be remanded to Assessing Officer for examining it afresh - **Wipro Ltd. v. ACIT** - [2023] 156 taxmann.com 186 (Bangalore - Trib.)

4.58 Conditions precedent : Where no exempt income was earned by assessee in year under consideration, provision of section 14A cannot be applied - **Deputy Commissioner of Income-tax, Circle-4(1)(1) v. Adani Mining (P.) Ltd.** - [2023] 156 taxmann.com 470 (Ahmedabad - Trib.)

4.59 General : No disallowance could be made under section 14A on interest expense *with* respect to investment made in tax-free securities out of own interest free funds of assessee - **Assistant Commissioner of Income-tax, Central Circle-1 v. Chhattisgarh Steel & Power Ltd. - [2023] 156 taxmann.com 606 (Raipur - Trib.)**

4.60 Applicability : Where assessee had not earned any exempt income during year, no disallowance could be made under section 14A - **Assistant Commissioner of Income-tax, Circle-1(1) v. Gold Rush Sales and Service Ltd. - [2023] 156 taxmann.com 514 (Kolkata - Trib.)**

4.61 Dividend : Where no expenditure was incurred by assessee-bank in earning dividend income, no disallowance could be made under section 14A - **Canara Bank v. Deputy Commissioner of Income-tax, Circle 2(1)(1) - [2023] 156 taxmann.com 413 (Bangalore - Trib.)**

4.62 Illustrations : Disallowance made under section 14A read with rule 8D should be restricted to amount of exempted income earned by assessee - **Bellary Iron-Ores (P.) Ltd. v. Income Tax Officer, Ward-2 - [2023] 156 taxmann.com 392 (Bangalore - Trib.)**

4.63 Computation of : Where Assessing Officer had only considered those securities which yielded exempt income and not all investments, disallowance made by Assessing Officer under section 14A read with rule 8D at 0.5 per cent average value of investments was justified - **Jayant Avinash Dave v. Deputy Commissioner of Income-tax, Circle 5 - [2023] 156 taxmann.com 458 (Pune - Trib.)**

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

4.64 Annual Letting Value : Where, assessee a builder and developer had unsold flats in various buildings which were shown as closing stock, and no rental income was earned, in view of amendment to section 23 effective from assessment year 2018-19, providing that if an assessee holds a house property as stock-in-trade, does not let it out for whole or part of year, annual value will be considered Nil for up to one year from financial year in which a completion certificate is obtained, addition made on account of ALV was to be deleted - **Takshashila Realities (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-4(1)(2) - [2023] 156 taxmann.com 175 (Ahmedabad - ITAT)**

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

4.65 Unsold flat as stock in trade : Where assessee-developer, showed vacant property as stock-in-trade, no addition on account of deemed rent income could be

made - **Jayant Avinash Dave v. Deputy Commissioner of Income-tax, Circle 5 - [2023] 156 taxmann.com 458 (Pune - Trib.)**

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

4.66 General : Deduction @ 30 per cent being standard deduction under section 24(a) cannot be allowed where income of assessee is subject to application under sections 11 and 13 - **Amalsad Vibhag Kelvani Mandal v. Income-tax Officer - [2023] 156 taxmann.com 70 (Surat-Trib.)**

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

4.67 Rental income : Rental income earned by assessee from space rented for use of craftsmen on 15 days basis was business income - **Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3 - [2023] 156 taxmann.com 550 (Delhi - Trib.)**

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

4.68 Sale of Share : Where assessee had accepted negative covenant of non-compete along with transfer of shares, other than right to manufacture etc., entire consideration could not be devoted to transfer of shares for computing capital gain under section 45 and consideration for negative covenant relating should be segregated and charged to tax as business income under section 28(va) - **Jayant Avinash Dave v. Deputy Commissioner of Income-tax, Circle 5 - [2023] 156 taxmann.com 458 (Pune - Trib.)**

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

4.69 Non-compete fees : Where by virtue of non compete agreement, assessee had acquired right to carry on business unfettered by any competition which resulted in protection for business as a whole and would help appreciate whole of capital assets, since non compete fees was held as capital expenditure, assessee would be entitled for depreciation under section 32 (1)(ii) - **Eaton Power Quality (P.) Ltd. v. Deputy Commissioner of Income-tax, Pondicherry Circle - [2023] 156 taxmann.com 14 (Chennai - Trib.)**

4.70 Illustrations : Where assessee's claim of depreciation was disallowed by Assessing Officer on ground that business of assessee had not commenced, since Assessing Officer while framing assessment order under section 143(3) for assessment year 2011-12 had accepted that business of assessee had already been started, Commissioner (Appeals) had rightly deleted impugned addition made by Assessing Officer - **Deputy Commissioner of Income-tax, Circle-4(1)(1) v. Adani Mining (P.) Ltd. - [2023] 156 taxmann.com 470 (Ahmedabad - Trib.)**

4.71 Intangible assets : Where assessee's claim for depreciation on intangible assets following an amalgamation, was disallowed, asserting that the intangible assets were fictitious and not eligible for depreciation, since appeal of assessee

against disallowance of depreciation on aforesaid intangible assets in first year itself was currently pending before Commissioner(Appeals), it was deemed appropriate to restore this issue to file of Commissioner(Appeals) for de novo adjudication - **Dow Chemical International (P.) Ltd. v. Deputy Commissioner of Income-tax.** - [2023] 155 taxmann.com 624 (Mumbai - Trib.)

SECTION 32AC OF THE INCOME-TAX ACT, 1961 - SHIPPING BUSINESS, RESERVES FOR

4.72 New assets, meaning of : Where actual cost of Pollution Control Equipment's which was acquired and installed after 30-9-2013, and which was put to use for less than 180 days during current year was allowed 50 per cent depreciation, same would not be considered and included in aggregating actual costs of eligible 'new assets', for computing and allowing deduction under section 32AC - **Madhu Silica (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 156 taxmann.com 157 (Ahmedabad - Trib.)

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

4.73 Scope of provision : Where assessee received interest on unsecured loan provided to a shareholder of its holding company at rate of 11.50 per cent and paid interest on capital borrowed at rate of 13.50 per cent, since assessee was not able to make out a case of commercial expediency and also genuineness of transaction entered into by it, Assessing Officer rightly disallowed certain interest under section 36(1)(iii) being difference of interest paid and received by assessee - **Mitra Trading & Exports (P.) Ltd. v. ACIT** - [2023] 155 taxmann.com 481 (Mumbai - Trib.)

4.74 Interest free loans : Where assessee had substantial interest free funds available with it in form of capital, reserves and surplus and noninterest bearing sundry creditors, then it had to be presumed that interest free advances had been given by assessee from its own interest free funds available with it - **Deputy Commissioner of Income-tax, Circle-1(1)(2) v. Designmate (India) (P.) Ltd.** - [2023] 156 taxmann.com 88 (Ahmedabad - Trib.)

4.75 Interest free loans : Where recovery of interest on loans/advances given by assessee had become virtually impossible since parties were not paying back principal amount also for very long time, short charging and non-charging of interest was as per mercantile system of accounting; and, therefore Commissioner (Appeals) had rightly deleted disallowance of interest expenses made by Assessing Officer - **Deputy Commissioner of Income-tax, Central Circle-1(4) v. Safari Biotech (P.) Ltd.** - [2023] 156 taxmann.com 571 (Ahmedabad - ITAT)

4.76 Set up of business : Where assessee borrowed capital for construction of new mandapam, since construction

of mandapam was completed and it was ready for use during year, although, same started generating revenue from next financial year only, interest expenditure relatable to said Mandapam, was to be allowed as deduction - **Sri MAK & Co. v. Assistant Commissioner of Income-tax** - [2023] 156 taxmann.com 34 (Chennai - Trib.)

4.77 General : Where assessee had sufficient self owned/interest-free funds available with him, then it has to be presumed that the amounts of gifts given to his relatives were made from the said funds - **Rajesh Agrawal v. Deputy Commissioner of Income-tax, Raipur-1(1)** - [2023] 156 taxmann.com 54 (Raipur - Trib.)

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

4.78 EPF : Delayed deposit of employee's share of contribution towards labour welfare funds, viz. Employee's Provident fund (EPF) is liable to be disallowed as per mandate of section 36(1)(va) read with section 2(24)(x) - **Assistant Commissioner of Income-tax, Central Circle-1 v. Chhattisgarh Steel & Power Ltd.** - [2023] 156 taxmann.com 606 (Raipur - Trib.)

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

4.79 Writing off of bad debts : Bad debts written off relating to non-rural branches of assessee-bank would be allowable as deduction under section 36(1)(vii) - **Canara Bank v. Deputy Commissioner of Income-tax, Circle 2(1)(1)** - [2023] 156 taxmann.com 413 (Bangalore - Trib.)

SECTION 36(1)(viia) OF THE INCOME-TAX ACT, 1961, READ WITH RULE 6ABA OF INCOME-TAX RULES, 1962 - BAD DEBTS

4.80 In case of banks : While calculating average aggregate advances of rural branches under section 36(1)(viia), both advance outstanding as well as fresh advances are to be considered - **Canara Bank v. Deputy Commissioner of Income-tax, Circle 2(1)(1)** - [2023] 156 taxmann.com 413 (Bangalore - Trib.)

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

4.81 Gifts : Festival and gift expenses claimed by assessee-company related to and incurred for purpose of its business which were duly reflected in books of accounts were allowable as business expenditure - **Assistant Commissioner of Income-tax, Central Circle-1 v. Chhattisgarh Steel & Power Ltd.** - [2023] 156 taxmann.com 606 (Raipur - Trib.)

4.82 Ash handling expenses : Ash handling expenses claimed by assessee-company related to and incurred for purpose of its business which were duly reflected in books of accounts were allowable as business expenditure - **Assistant Commissioner of Income-tax, Central Circle-1 v. Chhattisgarh Steel & Power Ltd.** - [2023] 156 taxmann.com 606 (Raipur - Trib.)

- 4.83 Advertisement and sales promotion expenses :** In absence of any evidence placed by Assessing Officer that advertisement and sales promotion expenses had resulted into benefit to third-party and these were not incurred wholly and exclusively for purposes of business of assessee, disallowance made by Assessing Officer under section 37 was to be deleted - **Deputy Commissioner of Income-tax, Central Circle-2(4) v. Cleartrip (P.) Ltd. - [2023] 156 taxmann.com 552 (Mumbai - Trib.)**
- 4.84 ESOP :** Employee stock option expenditure is revenue expenditure allowable under section 37(1) - **Deputy Commissioner of Income-tax, Central Circle-2(4) v. Cleartrip (P.) Ltd. - [2023] 156 taxmann.com 552 (Mumbai - Trib.)**
- 4.85 Prior period expenses :** Where Assessing Officer had made disallowance of prior period expenses which could not be booked due to non-receipt of vouchers/bills etc., since assessee had been following mercantile system of accounting and there was no proof that there had been any material change in activities of assessee as compared to earlier years, Commissioner (appeals) had rightly deleted impugned disallowance - **Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3 - [2023] 156 taxmann.com 550 (Delhi - Trib.)**
- 4.86 Unspent Grants :** Unspent revenue grant received by assessee from Government for carrying out its business activities for promotion of tourism related activities every year could not be taxed in hands of assessee - **Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3 - [2023] 156 taxmann.com 550 (Delhi - Trib.)**
- 4.87 Advance rent :** Advance rent received by assessee from Government Agencies could not be taxed in hands of assessee in year under consideration and was subject to taxation in subsequent assessment year for which same was related - **Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3 - [2023] 156 taxmann.com 550 (Delhi - Trib.)**
- 4.88 Land development expenditure :** Land development expenditure is allowable as revenue expenditure under section 37 - **Deputy Commissioner of Income-tax, Circle-4(1)(1) v. Adani Mining (P.) Ltd. - [2023] 156 taxmann.com 470 (Ahmedabad - Trib.)**
- 4.89 Explanation to section 37 :** Provision of Explanation 1 to section 37(1) excludes allowing deduction of expenditure incurred for purpose which is an offence or prohibited by law; where in given case, penalty had been paid by assessee on account of breach of contract which could not be equated with offence, or something prohibited by law, assessee was entitled to claim deduction of said sum - **Assistant Commissioner of Income-tax, Circle-1(1)(1) v. Chittorgarh Kota Tollway (P.) Ltd. - [2023] 156 taxmann.com 469 (Ahmedabad - Trib.)**
- 4.90 Prior period expenses :** Prior period expenses quantified and paid during current year would be allowed as business expenditure in relevant assessment year even though assessee was following mercantile system of accounting - **Takshashila Realities (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-4(1)(2) - [2023] 156 taxmann.com 175 (Ahmedabad - ITAT)**
- 4.91 Compensation :** Where Assessing Officer disallowed payment as compensation for terminating marketing rights and Commissioner(Appeals) allowed appeal of assessee but had not examined initial agreement towards granting of marketing rights and subsequent termination agreement and had also not controverted any of findings made by Assessing Officer at time of making aforesaid disallowance, matter was to be restored to file of Commissioner(Appeals) to carry out necessary verification into genuineness of claim of assessee - **Deputy Commissioner of Income-tax, Circle-1(1)(2) v. Designmate (India) (P.) Ltd. - [2023] 156 taxmann.com 88 (Ahmedabad - Trib.)**
- 4.92 Sales commission :** Where assessee submitted a fabricated agreement and failed to provide any supporting evidence for its sales commission claim, lower authorities were justified in making addition for sales commission received by assessee - **Aditya Exim Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 78 (Ahmedabad - Trib.)**
- 4.93 Travel expenses :** Where assessee claimed foreign travel expenses by a director exploring UK market, however, assessee failed to furnish any evidence to establish that such expenditure had been incurred wholly and exclusively for purpose of its business, said claim was rightly rejected by lower authorities - **Aditya Exim Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 78 (Ahmedabad - Trib.)**
- 4.94 Business promotion expenses :** Where business promotion expenses claimed by assessee were found to be used for personal purposes and gifting jewellery to customers, in absence of any assistance rendered by assessee in that respect, said claim was to be disallowed - **Aditya Exim Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 78 (Ahmedabad - Trib.)**
- 4.95 Burden to prove :** Where assessee had shown certain sum as other expenses claiming as debited in its P&L account during year under consideration, since detailed quantification or basis on which such expenses were booked was not reflected from invoice submitted by assessee and neither such invoices contained any stamp, seal, inward mark or receipt date, said expenses was to be treated as bogus - **Aditya Exim Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 78 (Ahmedabad - Trib.)**
- 4.96 CSR expenditure :** In as much as assessee satisfied conditions of section 80G, assessee is entitled to claim deduction under section 80G in respect of such donations

which formed part of spend towards CSR - **Power Mech Projects Ltd. v. Deputy Commissioner of Income-tax, Central Circle-1(3) - [2023] 156 taxmann.com 575 (Hyderabad - Trib.)**

4.97 Commission : Where assessee-company, engaged in business of trading of drugs and medicines, made payments on account of commission to two doctors, since payments made by assessee to doctors qualified as commission paid for promoting sale of medicines in view of Circular No. 5 of 2012, dated 1-8-2012 read with Explanation 1 to section 37(1), same was not allowable under section 37(1) - **Sunflower Pharmacy v. Income-tax Officer - [2023] 156 taxmann.com 215 (Ahmedabad - Trib.)**

4.98 Software development : Where business of assessee was development of software products or providing of software services, expenditure incurred on development of those applications would constitute revenue expenditure - **Wipro Ltd. v. ACIT - [2023] 156 taxmann.com 186 (Bangalore - Trib.)**

4.99 Penalty for infringement of law : Where assessee-trust was levied with penalty for regularisation of foreign remittance and claimed same as business expenditure and AO disallowed same as being for infringement of law, since violation of some conditions prescribed by NSE when incurred in regular course of business cannot be considered as infringement of law, expenses incurred by assessee in regular course of business were allowable as business expenditure - **Amalsad Vibhag Kelvani Mandal v. Income-tax Officer - [2023] 156 taxmann.com 70 (Surat-Trib.)**

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

4.100 Salary expenses : Where salary payment done by assessee was below taxable limit and further assessee had produced monthly salary and wages register including particulars of each of employee, details of employee-wise and month-wise salary paid and nothing was brought on record by Assessing Officer as to how salary expenditure itself was not genuine, impugned disallowance of salary expenses under section 40(a)(ia) was unjustified - **Bhagwan Dass Jagan Nath v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 473 (Chandigarh - Trib.)**

4.101 Freight expenses : Where AO disallowed freight expenses paid by assessee on ground that expenses were not genuine, since assessee submitted copy of ledger account of freight expenses along with supporting bills/vouchers, ledger account of transporter and declaration under section 194C(6) and nothing was brought on record by AO as to how expenses were non-genuine, impugned disallowance of freight expenses was not correct - **Bhagwan Dass Jagan Nath v.**

Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 473 (Chandigarh - Trib.)

4.102 Where assessee, engaged in a travel business, initially had an addition under section 40(a)(ia) which was deleted by Commissioner(Appeals) after accepting certificates totalling Rs. 18,30,101, since assessee obtained additional certificates of Rs. 26,84,153 later and submitted it, in those circumstances, order of Commissioner(Appeals) needed modification, and Assessing Officer was directed to delete amount of Rs. 26,84,153 - **Smt. Shashikala Ram Kumar v. Assistant Commissioner of Income-tax, Circle-4(1) - [2023] 156 taxmann.com 204 (Hyderabad - Trib.)**

4.103 Where Assessing Officer disallowed certain sum under section 40(a)(ia) assessee didn't deduct TDS on interest payments to two NBFCs and despite claiming that payees included interest in their returns, assessee failed to provide evidence, CIT(A) rightly upheld disallowance, as assessee didn't meet mandatory conditions, contemplated in "2nd proviso" to section 40(a)(ia) along with "1st proviso" to section 201 - **Sanjay Bajpai Builders (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-3(1) - [2023] 156 taxmann.com 692 (Raipur - Trib.)**

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

4.104 Revision : Where AO allowed deduction towards remuneration paid by assessee partnership firm to partners with reference to book-profits computed by considering income chargeable under head 'capital gains', however, CCIT invoked revision on ground that remuneration paid by assessee partnership firm to partners was not deductible in view of income under head 'profits and gains of business or profession' being Nil, since two views were possible on this point and Assessing Officer had taken one of them which was in favour of assessee, impugned revision was unjustified - **Bharatnagar Buildcon LLP v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 552 (Pune - Trib.)**

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

4.105 In case where assessee had made payments not exceeding Rs. 20,000 and genuineness of expenses were not doubted, no addition could be made under section 40A(3) - **Shyamapada Jana v. Income-tax Officer, Ward-2(2) [Now Ward-39(2)] - [2023] 156 taxmann.com 607 (Kolkata - Trib.)**

4.106 Cash reimbursement of employees : Assessee was not entitled to deduction under section 40A(3) in respect of cash payment as reimbursement to employees towards tuition fee, medical expense and children educational allowances exceeding Rs. 20,000 - **Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3 - [2023] 156 taxmann.com 550 (Delhi - Trib.)**

- 4.107** Where by an order of attachment bank account of assessee was frozen on account of which payment was made in cash, since assessee produced copies of such attachments issued by Income Tax Department under section 226(3) and prohibitory order of Employee Provident Fund Organization, in those circumstances, assessee would be entitled for exemption under rule 6DD of Rules and, therefore, no disallowance under section 40A(3) could be made - *Smt. Shashikala Ram Kumar v. Assistant Commissioner of Income-tax, Circle-4(1)* - [2023] 156 taxmann.com 204 (Hyderabad - Trib.)

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

- 4.108** **General** : Where a liability had ceased to exist in year under consideration, same was required to be added to income in previous year rather than postponing it to subsequent years - *Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3* - [2023] 156 taxmann.com 550 (Delhi - Trib.)
- 4.109** **Cessation of liability** : Where Assessing Officer made an addition under section 41(1) being of view that trading liability from which benefit arose to assessee was outstanding for more than 3 years, since assessee had continued to show liability in books of account as payable and there was no material on record which could suggest that parties have waived off right to recover such outstanding amount from assessee, impugned addition was rightly deleted by Commissioner (Appeals) - *Deputy Commissioner of Income-tax, Circle-4(1)(1) v. Adani Mining (P.) Ltd.* - [2023] 156 taxmann.com 470 (Ahmedabad - Trib.)

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

- 4.110** **Excise duty** : Advance excise duty paid by assessee engaged in liquor trade was entitled to deduction under section 43B - *Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3* - [2023] 156 taxmann.com 550 (Delhi - Trib.)
- 4.111** **litigation and sales tax matters** : Where assessee created a provision for litigation and sales tax matters, which was disallowed by Assessing Officer because assessee did not provide sufficient explanation or scientific working to justify provision, however, assessee had filed complete details and explanation with Tribunal which was neither available earlier with Assessing Officer nor with Commissioner (Appeals), issue was to be remitted back to file of Assessing Officer for adjudication afresh - *Eaton Power Quality (P.) Ltd. v. Deputy Commissioner of Income-tax,*

Pondicherry Circle - [2023] 156 taxmann.com 14 (Chennai - Trib.)

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

- 4.112** **Long-term capital gain** : Where assessee an individual filed his return of income claiming long-term capital gains which was denied by Assessing Officer, since in hands of co-owner of property claim for long-term capital gain had been accepted by Assessing Officer along with cost of acquisition and indexation thereon, claim had to be allowed in hands of assessee being other co-owner - *Pradeep Bansal v. ACIT, International Taxation* - [2023] 155 taxmann.com 661 (Delhi - Trib.)

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

- 4.113** **Fee paid for Valuation of property** : Where assessee-NRI sold a flat and claimed deduction towards expenses being fee paid for valuation of flat from DVO and expenses towards travel of assessee to India, since fee paid for DVO valuation was incurred after transfer of asset and expense pertaining to travel of assessee was personal in nature and was not connected with transfer of capital asset, these expenses were to be disallowed - *Bhupendra Sitapchand Zaveri v. Income tax Officer, International Taxation* - [2023] 156 taxmann.com 156 (Mumbai - Trib.)
- 4.114** **Fees for transfer** : Where assessee sold a flat to a party and incurred expenses towards payment of transfer fee for transfer of flat in records of society, since such payment made by assessee to society was expense connected to transfer of capital asset, same should be reduced from full value of consideration while determining amount of LTCG - *Bhupendra Sitapchand Zaveri v. Income tax Officer, International Taxation* - [2023] 156 taxmann.com 156 (Mumbai - Trib.)

- 4.115** **Illustrations** : Where assessee purchased certain shares of a company at Rs. 13.50 per share and Assessing Officer adopted value of shares at Rs. 20.50 per share, as per market value on date of transfer, since share price of above company was Rs. 11 per share on date of signing agreement and payments were made as per agreement to sell and same were verifiable from bank statements, adoption of value at Rs. 20.50 per share by AO was only a hypothetical value and thus not valid - *Trak Services (P.) Ltd. v. Income-tax Officer* - [2023] 156 taxmann.com 226 (Delhi - Trib.)

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

- 4.116** **Reassessment** : Where assessee alongwith another person had sold immovable property for a total sale consideration of Rs. 22 lakhs as against SRO value of Rs. 1 crores (approx.), since assessee had received sale consideration vide cheques as per sale agreement dated 15-6-2006, in view of amended provisions of section 50C(1), it would be proper to restore issue to file of Assessing Officer with a direction to verify circle rate on date of agreement and

adopt same for purpose of calculation of capital gain in hands of assessee - **Smt. Anupama Krishna Rao Premaraju v. Income-tax Officer (International Taxation) - [2023] 156 taxmann.com 32 (Hyderabad - Trib.)**

4.117 Illustrations : Where value of flat sold by assessee as assessable by stamp valuation authority exceeded 110 per cent of sale consideration for flat disclosed by assessee, provisions of section 50C would be attracted, however, since DVO had determine fair market value of property at different amount, LTCG was to be calculated by taking same as full value of consideration - **Bhupendra Sitapchand Zaveri v. Income tax Officer, International Taxation - [2023] 156 taxmann.com 156 (Mumbai - Trib.)**

SECTION 53A OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - ASSESSMENT IN CASE OF

4.118 Foreign bank account : Where information sought for pertaining to assessee for A.Y. 2008-09 could not have been received by revenue since Article 26 of Indo Swiss Treaty regarding exchange of information was applicable for information that related to period on or after 1st April, 2011 and therefore, it was not a valid reference, claim of revenue that period of limitation was extended by one year under section 153B based on said reference was untenable and, accordingly, order passed by A.O. was clearly barred by limitation - **Priti Milan Mehta v. Deputy Commissioner of Income-tax, Central Circle-1(2) - [2023] 156 taxmann.com 244 (Mumbai - Trib.)**

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

4.119 General : Where assessee had sold two house properties and invested sale consideration for purchase of new house property and claimed deduction under section 54 and admitted that there was mistake in claiming correct deduction towards cost of acquisition with indexation from full value of sale consideration, matter may be remitted back to file of AO examine and verify details furnished by assessee - **Alok Ghosh v. Income Tax Officer, Ward-28(4) - [2023] 156 taxmann.com 549 (Kolkata - Trib.)**

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

4.120 Conditions precedent : Where assessee sold land and all payments towards investment in new agricultural land were made after receipt of advances on sale of land received by assessee on various dates and assessee had also taken loan which was invested in new land and loan was repaid afterwards, out of sale consideration received, deduction under section 54B could not have been denied - **Income Tax Officer v.**

Rekhchand Jian - [2023] 156 taxmann.com 90 (Raipur - Trib.)

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

4.121 Purchase : Where entire actual sales consideration had been invested in purchase and construction of residential house by assessee, capital gain would be exempt under section 54F and provisions of section 50C would not be applicable - **Lalit Kumar Kalwar v. Income-tax Officer - [2023] 156 taxmann.com 27 (Jaipur - Trib.)**

4.122 Purchase of new property : Where assessee had purchased a new residential house property within two years from date of transfer of original asset, deduction under section 54F in respect of residential house property was to be allowed - **Zannathul Firdouse v. Income Tax Officer, (IT) Ward-2(2) - [2023] 156 taxmann.com 642 (Chennai - Trib.)**

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

4.123 Interest on loan : Where amount of interest paid by assessee-firm on loan taken for repayment of amount borrowed by assessee from its partner for acquisition of debentures was capitalized, such interest amount along with purchase cost was liable to be deducted from full value of consideration for computing amount of LTCG on sale of debentures - **Bharatnagar Buildcon LLP v. Principal Commissioner of Income-tax - [2023] 155 taxmann.com 552 (Pune - Trib.)**

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

4.124 Share premium : Where assessee-company determined value of shares issued at premium on basis of DCF method, since said methodology was a recognized method of valuation of shares and revenue was unable to show that assessee adopted a demonstrably wrong approach or method of valuation was made on a wholly erroneous basis, Assessing Officer erred in discarding DCF method of valuation of shares adopted by assessee and adopting net assessed liability method - **Thinkstations Learning (P.) Ltd. v. ACIT - [2023] 155 taxmann.com 451 (Delhi - Trib.)**

4.125 Scope of provision : Where assessee purchased a property for certain sum and Assessing Officer made addition to assessee's income under section 52(vii)(b)(ii), in view of claim of assessee that he had entered into agreement through oral agreement and made full payment through banking channel only, issue was to be restored to Assessing Officer to examine issue afresh - **Saleem Ahmed Khan v. Income-tax Officer - [2023] 156 taxmann.com 36 (Jabalpur - Trib.)**

4.126 Interest : Where assessee-company, National Highways Infrastructure Development Corporation (NHIDCL), a fully owned company of Ministry of Road Transport & Highways (MoRTH), was engaged with business of developing National Highways, assessee earned interest

4.136 Demonetization : Where assessee, engaged in business of sale of milk, accepted specified bank notes (SBNs) and deposited same into bank account during period between 8-11-2016 to 30-12-2016, since RBI had withdrawn legal tender of SBNs from 9-11-2016 with certain exemption categories which did not include assessee, considering fact that assessee was in business of highly perishable product, AO was directed to estimate 25 per cent profit towards cash deposits made during demonetisation period and delete balance addition made under section 68 - **Deputy Commissioner of Income-tax, Non-Corporate Circle-1 v. Kannan Rajendra Babu** - [2023] 156 taxmann.com 465 (Chennai - Trib.)

4.137 Gift : Where assessee had received gifts from his son, since assessee had furnished various documentary evidences to establish identity and creditworthiness of donor and to establish genuineness of transaction, Commissioner (Appeals) was justified in deleting addition made under section 68 by Assessing Officer - **Assistant Commissioner of Income-tax v. Pravin Pannalal Shah** - [2023] 156 taxmann.com 216 (Surat-Trib.)

4.138 Share capital : Where assessee had filed all evidences proving identity and creditworthiness of share transactions, mere non-compliance to summons issued under section 131 could not be a ground for making addition under section 68 - **Assistant Commissioner of Income-tax, Circle-1(1) v. Gold Rush Sales and Service Ltd.** - [2023] 156 taxmann.com 514 (Kolkata - Trib.)

4.139 Share transactions : Where assessee claimed capital gain exemptions under section 10(38) on sales of shares of certain company, however, lower authorities on discovering involvement of assessee in fraudulent transactions with an entry provider denied exemption, since assessee deliberately withheld information from lower authorities which was within its exclusive knowledge to establish genuineness of transactions of purchase of shares, it could be said that assessee played fraud against lower authorities and therefore, capital gain exemption was rightly denied to assessee - **Archana Rajendra Malu v. Income-tax Officer** - [2023] 155 taxmann.com 625 (Pune - Trib.)

4.140 Share dealing : Where assessee had filed all documentary evidences for purchase and sale of shares before Assessing Officer, addition made by Assessing Officer under section 68 treating share transactions as bogus and an addition on account of commission for taking bogus accommodation entry under section 69C merely on basis of statement of broker was to be deleted - **Smt. Veena Chaturvedi v. Deputy Commissioner of Income-tax, (CC)-2(3)** - [2023] 156 taxmann.com 457 (Mumbai - Trib.)

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

4.141 Voluntary surrender : Where on survey, assessee made a surrender of certain sum as business income explaining source as business income and due tax had been realized, department should not frame assessment of assessee by taxing same under head 'Income from other sources' under section 69 - **Sharp Chucks and Machines (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle 1** - [2023] 156 taxmann.com 53 (Amritsar - Trib.)

4.142 Sale transaction : Where addition was made to income of assessee pursuant to search on third party where in Satakat (agreement) was found and seized executed by assessee as purchaser and owners and other co-owners in respect of sale of land, however, no investigation was carried out by investigating team against assessee if assessee had direct involvement in ultimate sale of lands or not, Commissioner (Appeals) rightly concluded that there was no direct link between assessee and alleged land transaction mentioned in Satakat - **A. Commissioner of Income-tax v. Piyush Ranchhodbhai Patel** - [2023] 156 taxmann.com 67 (Surat-Trib.)

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

4.143 Scope of provisions : Where miscellaneous business income of certain amount surrendered by assessee was taken as income from undisclosed source under section 69A and tax was calculated on it under section 115BBE, since revenue was not able to submit any evidence to effect that said income was not connected with business income of assessee or was accumulated from non-recognising source, entire addition was certainly without forming proper basis and thus impugned application of section 69A upon income disclosed by assessee and taxing same at special rate as per section 115BBE was improper - **Deepak Setia v. Deputy Commissioner of Income-tax** - [2023] 155 taxmann.com 293 (Amritsar - Trib.)

4.144 Jewellery : Where Assessing Officer under section 69A made addition on account of jewellery found during search in assessee's bank locker, since aforesaid jewellery was gifted to her on various occasions such as marriage, birth of children, etc. impugned addition was to be deleted - **Preeti Singh v. Assistant Commissioner of Income-tax, Central Circle-II** - [2023] 156 taxmann.com 485 (Delhi - Trib.)

4.145 Interest : Where assessee had paid interest and could not explain person to whom same had been paid and identity of person, Assessing Officer was justified in treating same as unexplained expenditure under section 69C - **Dev Sharda Developers (P.) Ltd. v. Income Tax Officer, Ward-9(1)(3)** - [2023] 156 taxmann.com 124 (Mumbai - Trib.)

4.146 Loan : Where assessee took loan from N and submitted 7/12 extracts contending that N was an agriculturist, mere filing of 7/12 extracts did not in any way prove source of money lent nor prove genuineness of transaction, therefore, Assessing Officer was justified in making addition under section 69A - **Dev Sharda Developers (P.) Ltd. v. Income**

Tax Officer, Ward-9(1)(3) - [2023] 156 taxmann.com 124 (Mumbai - Trib.)

4.147 Cash deposits during demonetization : Where assessee, carrying on milk distribution business, deposited cash in his bank account during demonetization period in old currency notes, since assessee produced all relevant documents to show that said cash was received from sale of milk in normal course of business, impugned addition under section 69A made on account of said bank deposits was to be deleted - **Arun Manohar Pathak v. Assistant Commissioner of Income-tax - [2023] 155 taxmann.com 417 (Mumbai - Trib.)**

4.148 Bank deposit : Where assessee claimed that cash deposited in bank was on account of sale of property, however, revenue rejected claim of assessee and treated said cash deposit as unexplained cash deposit since assessee claimed that reasonable opportunity was denied, and no personal appearance was taken under section 131 related to buyer, matter was to be remitted back to Assessing Officer for further adjudication de novo by affording an opportunity of hearing to assessee - **Hari Chand v. Income-tax Officer - [2023] 155 taxmann.com 492 (Amritsar - Trib.)**

4.149 DVO report : Where sole basis of addition under section 69A on account of difference in cost of construction of hotel was only valuation report furnished by DVO which had been obtained by AO during search proceedings, since said valuation report was filed beyond prescribed time and, hence, could not be relied upon by either party in eyes of law, no addition per se can be made by AO by placing reliance on an invalid valuation report - **Golden Tulip Hospitality (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle - [2023] 156 taxmann.com 511 (Amritsar - Trib.)**

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

4.150 Where Assessing Officer had made an addition to income of assessee on account of low withdrawals by assessee, in view of fact that assessee's family lived in remote place where expenses were low and assessee's wife had also withdrawn Rs. 60,000 for family expenses from her capital account, impugned disallowance was to be deleted - **Shyamapada Jana v. Income-tax Officer, Ward-2(2) [Now Ward-39(2)] - [2023] 156 taxmann.com 607 (Kolkata - Trib.)**

4.151 Cash payments : Where assessee had made cash payments to K for two housing society projects, since said payment denoted cash generated outside books of accounts and explanation as regards source was bereft of any acceptable evidence, addition made by Assessing Officer under section 69C was justified - **Dev Sharda Developers (P.) Ltd. v. Income Tax**

Officer, Ward-9(1)(3) - [2023] 156 taxmann.com 124 (Mumbai - Trib.)

4.152 Loan : Where assessee had given loan in cash and received same in cash, since amount was not recorded in books of accounts Assessing Officer was justified in treating same as unexplained money under section 69A - **Dev Sharda Developers (P.) Ltd. v. Income Tax Officer, Ward-9(1)(3) - [2023] 156 taxmann.com 124 (Mumbai - Trib.)**

4.153 Loan : Where assessee had received certain amount from N and contended that same was not for purpose of assessee's business but for benefit D, since assessee could not explained as to why said sums were not directly given to D if it indeed was for benefit of D, addition made by Assessing Officer under section 69C was justified - **Dev Sharda Developers (P.) Ltd. v. Income Tax Officer, Ward-9(1)(3) - [2023] 156 taxmann.com 124 (Mumbai - Trib.)**

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

4.154 Approval under section 80G(5) : Where assessee filed application for granting registration under section 80G and assessee was unable to comply with notices of Commissioner (Exemptions) on three occasions, since assessee had neither received any notices in registered e-mail ID nor any real time alerts, matter be remanded to Commissioner (Exemptions) - **Unnati Jan Kalyaan Shikshan Samiti v. Commissioner of Income-tax (Exemption) - [2023] 156 taxmann.com 35 (Raipur - Trib.)**

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

4.155 Scope of provision : Where necessary certificate in Form No. 10CCB along with return of income had not been filed by assessee but same was made available to Assessing Officer before passing of final assessment order, assessee was entitled to claim deduction under section 80IA - **Delhi Tourism & Transportation Development Corporation v. Additional Commissioner of Income-tax, Special Range-3 - [2023] 156 taxmann.com 550 (Delhi - Trib.)**

4.156 Conditions precedent : Once no deduction has been claimed by assessee u/s 80-IA, the question of making any disallowance does not arise - **Assistant Commissioner of Income-tax, Circle-1(1)(1) v. Chittorgarh Kota Tollway (P.) Ltd. - [2023] 156 taxmann.com 469 (Ahmedabad - Trib.)**

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

4.157 Housing project : Where assessee developed several Blocks of residential housing projects and had obtained separate planning permission for each Block separately and after construction, obtained separate Building Usage permission from Local Authority within 5 years period, therefore, assessee could not be denied claim of exemption

under section 80IB(10) even if it had not completed construction of all blocks of housing project within time limit of 5 years prescribed in section 80(1B) - **Takshashila Realities (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-4(1)(2)** - [2023] 156 taxmann.com 175 (Ahmedabad - ITAT)

4.158 Housing projects : Where assessee claimed deduction under section 80IB being income of residential/commercial projects constructed by it, it would be eligible for deduction under section 80IB (10) on commercial construction which was approved by Local Authority within frame work of Development Control Rules and Regulations - **Takshashila Realities (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-4(1)(2)** - [2023] 156 taxmann.com 175 (Ahmedabad - ITAT)

4.159 Housing project : Where assessee sold units to more than one person of a family which was not allowed as per section 80(1B), assessee cannot be denied deduction under section 80IB(10) on entirety and assessee would be eligible for balance units which had been constructed as per conditions laid down in section 80IB(10)(c) - **Takshashila Realities (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-4(1)(2)** - [2023] 156 taxmann.com 175 (Ahmedabad - ITAT)

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

4.160 Interest income received by assessee, a co-operative society, on deposits pertaining to reserved fund with co-operative banks and other nationalized banks is eligible for deduction under section 80P - **Income Tax Officer, Ward-1 v. Yendagandhi Large Sized Co-operative Society Ltd.** - [2023] 156 taxmann.com 669 (Visakhapatnam - Trib.)

4.161 Scope of provision : Requirement of making a claim in return of income under section 80A(5) is directory in nature and since nature of deduction and quantum was not disputed by Assessing Officer, deduction under section 80P(2)(a)(i) and 80P(2)(d) was to be allowed - **Wanka Vividh Karyakari Seva Sahkari Mandali Ltd. v. Income-tax Officer** - [2023] 156 taxmann.com 68 (Surat-Trib.)

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

4.162 Rate of tax : Where provisions of DTAA did not entitle assessee to a refund of DDT paid at a rate exceeding that specified in DTAA, assessee was not justified in claiming beneficial rate on dividends, as specified in Double Taxation Avoidance Agreement (DTAA) - **Dow Chemical International (P.) Ltd. v. Deputy Commissioner of Income-tax.** - [2023] 155 taxmann.com 624 (Mumbai - Trib.)

SECTION 92 OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - GENERAL

4.163 Transactions with AE alone are covered : Section 92 can be applied only in respect of international transactions i.e., transactions with AE and transfer pricing adjustment should be restricted only to AE related transactions of assessee - **Subex Ltd. v. Deputy Commissioner of Income-tax** - [2023] 155 taxmann.com 405 (Bangalore - Trib.)

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

4.164 AMP expenses : Where apart from being a distributor of products manufactured by its AE, assessee manufactured its own products in India under license from AE, AMP expenditure incurred by assessee in India to promote brand would not constitute international transaction requiring any TP adjustment - **Kellogg India (P.) Ltd. v. Assistant Commissioner of Income-tax, 15(1)(2)** - [2023] 156 taxmann.com 610 (Mumbai - Trib.)

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

4.165 Section 80-IA deduction : Where assessee claimed deduction under section 80-IA with respect to its captive power plants(CPPs) and entered into SDT with its non-eligible units for supply of power from CPPs, since non-eligible units also purchased power from distribution companies (DISCOMs) at same rate which it had paid to its captive power plants, said rate would be market rate and assessee was justified in adopting ALP of electricity supply to its non-eligible units at rate charged by DISCOMs - **Tata Steel Ltd. v. Deputy Commissioner of Income-tax-2(3)(1)** - [2023] 156 taxmann.com 262 (Mumbai - Trib.)

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

4.166 Adjustments - Others : Where assessee failed to file any reply to show cause notice or valuation report pertaining to deferred shares by assessee, TPO was justified in benchmarking transaction of redemption of deferred shares using valuation of ordinary shares since deferred shares were converted into ordinary shares and once converted as ordinary shares they acquired all benefits and characters attributable to ordinary shares - **Fabindia Overseas (P.) Ltd. v. Joint Commissioner of Income-tax** - [2023] 155 taxmann.com 618 (Delhi - Trib.)

4.167 Adjustments - Interest : Where assessee had advanced interest free loan to its wholly owned subsidiary out of its own funds, no adjustment was called for - **Fabindia Overseas (P.) Ltd. v. Joint Commissioner of Income-tax** - [2023] 155 taxmann.com 618 (Delhi - Trib.)

4.168 Comparability factors - Current year v. multiple year data : Where assessee had used multiple year data for computing three years weighted average margin of

comparable companies, since TP documentation maintained by assessee was not in accordance with section 92C(1) and (2) and rule 10B and 10C, TPO/DRP had rightly rejected TP study conducted by assessee and use of multiple year data for comparable company - **NVH India Auto Parts (P.) Ltd. v. Deputy Commissioner of Income-tax, Corporate Circle-4(2) - [2023] 156 taxmann.com 330 (Chennai - Trib.)**

4.169 Adjustments - Foreign exchange fluctuation loss/gain : Foreign exchange loss is operating in nature for purpose of computing PLI - **NVH India Auto Parts (P.) Ltd. v. Deputy Commissioner of Income-tax, Corporate Circle-4(2) - [2023] 156 taxmann.com 330 (Chennai - Trib.)**

4.170 Adjustments - Working capital : Where assessee had failed to provide necessary details and also resistant for providing working capital adjustment, DRP had rightly rejected working capital adjustment - **NVH India Auto Parts (P.) Ltd. v. Deputy Commissioner of Income-tax, Corporate Circle-4(2) - [2023] 156 taxmann.com 330 (Chennai - Trib.)**

4.171 Adjustments - Customs duty : Where assessee had claimed custom duty adjustment on ground that it had incurred additional expenditure towards customs duty on imports as compared to comparable companies, since assessee had failed to prove that non-cenvatable customs duty was not factored in cost of goods manufactured and sold, DRP had rightly rejected custom duty adjustment - **NVH India Auto Parts (P.) Ltd. v. Deputy Commissioner of Income-tax, Corporate Circle-4(2) - [2023] 156 taxmann.com 330 (Chennai - Trib.)**

4.172 Adjustments - Allocation of expenses : Where assessee, engaged in manufacturing and trading of colour concentrates and additive masterbatches, allocated expenses between both segments on basis of gross profit ratio, in absence of assessee putting forward any rational basis for allocation, allocation done by TPO on basis of revenues was justified - **Deputy Commissioner of Income-tax v. Ampacet Speciality Products (P.) Ltd. - [2023] 155 taxmann.com 448 (Pune - Trib.)**

4.173 Adjustments - Custom duty : Where assessee claimed adjustment to its operating profits on ground that it paid higher amount of customs duty vis-a-vis comparables, since difference was only in respect of amount of customs duty and not rate of customs duty, no adjustment was required - **Deputy Commissioner of Income-tax v. Ampacet Speciality Products (P.) Ltd. - [2023] 155 taxmann.com 448 (Pune - Trib.)**

4.174 Adjustments - Working capital adjustments : Where assessee could not furnish relevant details before TPO qua working capital adjustment, matter was to be remitted to Assessing Officer/TPO directing him to compute amount of working capital adjustment afresh

after allowing reasonable opportunity of hearing to assessee - **Deputy Commissioner of Income-tax v. Ampacet Speciality Products (P.) Ltd. - [2023] 155 taxmann.com 448 (Pune - Trib.)**

4.175 Comparables and adjustments/Method of computation - TNMM - CUP : Where there was huge difference in quantities of products sold by assessee to its AE and non-AEs, CUP was not MAM for benchmarking assessee's international transaction of sale of finished goods; TNMM was rightly applied - **Deputy Commissioner of Income-tax v. Ampacet Speciality Products (P.) Ltd. - [2023] 155 taxmann.com 448 (Pune - Trib.)**

4.176 Adjustments - Foreign exchange gain/loss : Gain/loss arising from foreign exchange fluctuation is operating in nature and, therefore, should be considered as part of operating cost/operating revenue for computing PLI of tested party and comparables - **Subex Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 405 (Bangalore - Trib.)**

4.177 Comparables, functional similarity - Software consultancy/development services : Where assessee-company rendered software development services, selected company being engaged in product development and product design and analysis services, was functionally different from a pure software service provider and, therefore, be excluded from list of comparables for software development services - **Subex Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 405 (Bangalore - Trib.)**

4.178 Comparables, functional similarity - Software consultancy/development services : Where selected company was a software product company but segmental information on SWD services was not available, it could not be a comparable with assessee, rendering software development services - **Subex Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 405 (Bangalore - Trib.)**

4.179 Adjustments - Interest : Outstanding receivables is a separate international transaction and it would be appropriate to take LIBOR rate +2 per cent - **Subex Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 405 (Bangalore - Trib.)**

4.180 Adjustments - Guarantee commission : Where corporate guarantee provided by assessee to its AE gave benefit to AE and such benefit was passed by assessee to said AE, Assessing Officer was directed to recompute commission for guarantee given by assessee to its AE at rate of 0.5 per cent being arm's length price - **Subex Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 405 (Bangalore - Trib.)**

4.181 Adjustment - Royalty : Where TPO made adjustment in respect of royalty paid by assessee to AE in terms of technology transfer agreement, since royalty remitted by assessee to AE was not found inconsistent or violative of respective Government or RBI guidelines, impugned

adjustment was to be set aside - **Siemens Gamesa Renewable Power (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 406 (Chennai - Trib.)**

4.182 Adjustment - Royalty : Where in course of transfer pricing proceedings, TPO held that no royalty was payable on revenue pertaining to development of land, sub-station development and erection and commissioning, in view of fact that TNMM had been applied for international transactions and it covered under its ambit royalty transaction in question, a separate analysis and consequent deletion of royalty payment was unwarranted - **Siemens Gamesa Renewable Power (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 406 (Chennai - Trib.)**

4.183 Adjustment - Management fee : Where TPO determined value of management fee paid by assessee to its AE at nil, in view of fact that assessee had submitted copies of invoices which elaborated list of services rendered by AE and basis of charging management fee, impugned adjustment was to be deleted - **Siemens Gamesa Renewable Power (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 406 (Chennai - Trib.)**

4.184 Comparability factors- turnover filter : Turnover is a relevant criteria for choosing companies as comparables in determining ALP in transfer pricing cases and application of tolerance range of turnover of ten times is proper - **Infor (India) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-2(1) - [2023] 156 taxmann.com 201 (Hyderabad - Trib.)**

4.185 Adjustments - Management fees : Where TPO determined nil ALP on ground that assessee had not derived any benefit from payment of management fee to its AE, since it is not within TPO's domain to ascertain or apply "benefit" test and further assessee's AE had in fact made payment to another company on cost to cost basis without involving any profit element for said service, matter was restored to TPO - **Infor (India) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-2(1) - [2023] 156 taxmann.com 201 (Hyderabad - Trib.)**

4.186 Adjustment - Corporate Guarantee : Where assessee provided corporate guarantee on behalf of its AE, ALP of commission or guarantee fee be adopted at 0.35 per cent on basis of interest saving approach - **Deputy Commissioner of Income-tax, Central Circle-7(3) v. Macrotech Developers Ltd. - [2023] 156 taxmann.com 641 (Mumbai - Trib.)**

4.187 Adjustments - Interest : Where assessee paid interest to its AE on fully/convertible debentures at rate of 14 per cent and benchmarked transaction by using CUP Method, since Commissioner (Appeals) had neither carried out any examination of comparability of

comparable transactions identified by assessee with transactions undertaken by assessee nor given TPO opportunity to examine same while holding that average rate of interest at rate of 11.77 per cent was ALP, approach adopted by Commissioner (Appeals) could not be countenanced and TPO was to be directed to determine ALP afresh considering benchmarking analysis conducted by assessee - **Deputy Commissioner of Income-tax v. India Debt Management (P.) Ltd. - [2023] 155 taxmann.com 413 (Mumbai - Trib.)**

4.188 Methods for determination of - CUP method : Where assessee adopted internal CUP for benchmarking its transaction of loans advanced to its AEs and charged interest at rate of 3.32 per cent being rate of interest quoted by internal CUP on seeking loan from it, since BNS being a renowned bank having global operations, authenticity of quotation could not be doubted, Commissioner (Appeals) was not justified in rejecting internal CUP for reason that it was a mere quotation - **Intas Pharmaceuticals Ltd. v. Assistant Commissioner of Income-tax, Circle 2(1)(1) - [2023] 156 taxmann.com 391 (Ahmedabad - Trib.)**

4.189 Scope of provisions : Clause (i) of section 92BA being omitted from statute by Finance Act 2017 w.e.f 1-4-2017 and amendment to have retrospective effect as if said transaction never qualified as SDT, therefore, adjustment made on account of SDT under section 92BA was to be deleted - **Intas Pharmaceuticals Ltd. v. Assistant Commissioner of Income-tax, Circle 2(1)(1) - [2023] 156 taxmann.com 391 (Ahmedabad - Trib.)**

4.190 Adjustments- Operating profit/Cost, Computation of : Where certain expenses like advertisement & publicity, business promotion and participation in trade events were undertaken by assessee-company at request of AE, budget in this regard was also controlled by AE and risk and outcome of these expenses were borne or attributed to AE, they should be treated as pass through costs - **Assistant Commissioner of Income-tax, Circle 2(1) v. BBC World (India) (P.) Ltd. - [2023] 156 taxmann.com 386 (Delhi - Trib.)**

4.191 Adjustment - Benefit from transactions/allowability of expenditure : Where assessee-company engaged in business of international integrated transportation services, availed technical know-how services from its AE and TPO made adjustment determining ALP at nil on ground that assessee had failed benefit test, since assessee had submitted adequate evidences to show that services were required for business of assessee and those services were rendered by AE coupled with benefit received by assessee in financial terms as well as in operational terms and were utilized by assessee for supporting core activities of assessee, adjustment made by TPO was to be deleted - **UPS Express (P.) Ltd. v. Deputy Commissioner of Income-tax-3(1)(1) - [2023] 156 taxmann.com 58 (Mumbai - Trib.)**

4.192 Adjustments - Reimbursement of expenses : Where assessee recovered payment made by it to third parties on behalf of its AEs in nature of airline payment and export facilitation and TPO made adjustment charging cost plus mark-up at 3.34 per cent, since repeatedly for several

assessment years, Tribunal had deleted addition with respect to mark-up on reimbursement of expenditure, impugned adjustment made by TPO was to be deleted - **UPS Express (P.) Ltd. v. Deputy Commissioner of Income-tax-3(1)(1) - [2023] 156 taxmann.com 58 (Mumbai - Trib.)**

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

4.193 Period of limitation : Where in terms of section 92CA read with section 153, TPO was required to pass transfer pricing order under section 92CA(3) on or before 31-10-2019 for assessment year 2016-17 but TPO passed order on 1-11-2019, said order was barred by limitation as it was in violation of provisions of section 92CA(3A) - **Teleperformance Global Services (P.) Ltd. v. Additional /Joint/Deputy/Assistant/Income-tax Officer National e-Assessment Centre, Delhi - [2023] 155 taxmann.com 658 (Mumbai - Trib.)**

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

4.194 Scope of provision : Section 115BBC is only applicable to trusts which are registered under section 12A, and does not deal with unregistered charitable trusts - **Deputy Commissioner of Income-tax v. Shree Saraswati Education Sansthan - [2023] 156 taxmann.com 182 (Ahmedabad - Trib.)**

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

4.195 Section 14A application : Amount disallowed under section 14A cannot be adopted for purpose of computation of book profit under section 115JB - **Wipro Ltd. v. ACIT - [2023] 156 taxmann.com 186 (Bangalore - Trib.)**

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

4.196 Scrutiny assessment : Once final assessment order had been passed under section 143(3), Assessing Officer had no powers to either withdraw or modify or substitute assessment order passed under section 143(3) with another assessment order - **Urvashi Narain v. Income-tax Officer (International Taxation) - [2023] 156 taxmann.com 189 (Delhi - Trib.)**

4.197 Order without DIN : Where assessment order was passed by under section 143(3) read with section 263 without any Document Identification Number (DIN) and no reasons were mentioned for not generating DIN at time of passing of such order as mentioned in Circular No. 19/2019, dated 14-8-2019 which would sustain communication of final assessment order manually without DIN, assessment order was to be treated as never been issued - **Deputy Commissioner of Income-tax, Circle - 1 v. Ragova Developers & Auto Services (P.) Ltd. - [2023] 156 taxmann.com 11 (Hyderabad - Trib.)**

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

4.198 Jurisdiction and powers of DRP : As per section 144C(10), every direction issued by DRP shall be binding on Assessing Officer and further as per section 144C(13) Assessing Officer shall pass final assessment order in conformity with direction issued by DRP - **Subex Ltd. v. Deputy Commissioner of Income-tax - [2023] 155 taxmann.com 405 (Bangalore - Trib.)**

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

4.199 Gross profit rate : Where AO found that the assessee had shown GP rate of 11.25 per cent as against GP rate of 12.8% of immediately preceding year and he made addition by taking GP rate of 12.8 per cent for want of relevant documents, since assessee had produced all relevant books before CIT(A) and AO had accepted said books, addition made on account of low GP rate was to be deleted - **Deputy Commissioner of Income-tax, Circle-14(2) v. Kortek Electronics (India) Ltd. - [2023] 156 taxmann.com 52 (Delhi - Trib.)**

4.200 Percentage completion method : Where assessee following percentage completion method claimed contract loss and AO made additions on ground that in application made under section 197 projected contract revenue was at huge variation from amount reflected in financial statements and proposed for adoption of estimated revenue and disallowance of estimated loss, since deviation in estimation and actual revenue stood explained by fact that duration of project got extended to financial year 2020-21 which was much beyond agreed original contract period, estimations could not be taken to be turnover of assessee disregarding actual revenue earned by assessee and impugned additions were unsustainable and were to be deleted - **ST Engineering Electronics Ltd. v. Assistant Commissioner of Income-tax, (IT), Circle-2(2) - [2023] 156 taxmann.com 393 (Chennai - Trib.)**

SECTION 145A OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING IN CERTAIN CASES

4.201 Valuation of stock : Where assessee had been recording its transactions of purchase, sales and valuation of inventories, net of CENVAT consistently, no addition could be made on account of CENVAT credit - **Deputy Commissioner of Income-tax, Circle-4(1)(1) v. Adani Mining (P.) Ltd. - [2023] 156 taxmann.com 470 (Ahmedabad - Trib.)**

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

4.202 Conditions precedent : Where evidence relating to undisclosed investments in respect of relevant assessment years as defined in Explanation 1 to 4th Proviso of section 153A(1) was less than Rs. 50 lakhs, reopening of assessment being bad in law was to be quashed - **Kawaljit Singh v. Assistant Commissioner of Income-Tax, Central Circle-2 - [2023] 156 taxmann.com 127 (Chandigarh - Trib.)**

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

- 4.203 Common area maintenance charges** : Where assessee-company paid certain amount as common area maintenance (CAM) charges, provision of section 194C was applicable on said payment; provision of section 194-I was not attracted - **Welgrow Hotels Concepts (P.) Ltd. v. Income-tax Officer** - [2023] 156 taxmann.com 144 (Delhi - Trib.)

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

- 4.204 Transmission charges** : Wheeling or transmission charges paid to power transmitting companies by assessee-electricity distribution company did not amount to rent requiring deduction of tax at source under section 194-I or 194J and, therefore, no disallowance could be made under section 40(a)(ia) - **Assistant Commissioner of Income-tax, Central Circle-1 v. Chhattisgarh Steel & Power Ltd.** - [2023] 156 taxmann.com 606 (Raipur - Trib.)

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

- 4.205 Illustrations** : Where assessee-cooperative bank took a stand from beginning that it possessed Forms 15G and 15H for a portion of interest, seeking exclusion from TDS, since lower authorities had failed to record specific finding of fact based on documents submitted by assessee in Forms 15G and 15H, matter was to be remanded back to Assessing Officer for fresh adjudication after providing due opportunity of hearing to assessee - **Hooghly District Central Co-operative Bank Ltd. v. Deputy Commissioner of Income-tax** - [2023] 156 taxmann.com 219 (Kolkata - Trib.)

**SECTION 249 OF THE INCOME-TAX ACT, 1961 -
COMMISSIONER**

- 4.206 Appeals** : Where main director/shareholder of assessee company was entangled in various litigations including detention in jurisdiction of United Kingdom from March, 2018 to October, 2021 and, therefore, could not pursue assessment proceedings, order rejecting appeal filed by assessee on 22/12/2022 by Commissioner (Appeals) was to be set aside and case was to be remanded to file of Commissioner for decision on merit - **General Lifescience Distributors v. Commissioner of Income-tax (Appeals)-54** - [2023] 156 taxmann.com 697 (Mumbai - Trib.)

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

- 4.207 Order u/s 119(2)(b)** : As an order passed by Commissioner under section 119(2)(b) did not find any

mention in section 253(1), appeal against said order was not maintainable before Tribunal - **Shrishti Institute of Medical Science and Research Centre v.**

Commissioner of Income-tax (Exemption) - [2023] 156 taxmann.com 183 (Raipur - Trib.)

**SECTION 271(1)(b) OF THE INCOME-TAX ACT, 1961 -
PENALTY - FOR FAILURE TO COMPLY WITH NOTICE
UNDER SECTION 142(1)**

- 4.208 Scope of provision** : Where assessment was completed under section 143(3), penalty under section 271(1)(b) could not be levied - **Saleem Ahmed Khan v. Income-tax Officer** - [2023] 156 taxmann.com 36 (Jabalpur - Trib.)

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

- 4.209** Where assessee, an all India body of surgeons, faced challenges in filing timely returns as it kept moving its area of operations and relevant records from one city to another which caused confusion in coordinating return filing and upon returning to Pune in 2018, trustees realized past years lacked both registration and filed returns and promptly sought registration on 07-10-2018 and filed return for A.Y. 2019-20, it could be said, that there was reasonable cause, which justified delay, in filing return for year under consideration, bringing case out of purview of Explanation 3 to 271(1)(c) - **Association of Oral Maxillofacial Surgeons of India v. Income Tax Officer (Exemptions), Ward-1** - [2023] 156 taxmann.com 332 (Pune - Trib.)

**SECTION 272A OF THE INCOME-TAX ACT, 1961 -
PENALTY - FOR FAILURE TO ANSWER QUESTION, SIGN
STATEMENTS**

- 4.210 Applicability of** : Where assessee-trust failed to file return for relevant year and claimed that it was under a bona fide belief that having been registered under section 12A its income was not exigible for tax, since assessee had regularly filed its returns of income under **section** 139 for subsequent years, omission to file return of income during year under consideration would not be prompted by a bona fide omission and thus, AO was justified in imposing penalty under section 272A(2)(e) - **Bethany Seva Sangam v. Income-tax Officer (Exemption)** - [2023] 155 taxmann.com 352 (Raipur - Trib.)

- 4.211 Applicability of** : Where assessee-trust failed to file return for relevant assessment year, since return of income could have been filed under **section** 139(4A) latest by 31-03-2014, i.e., period provided under section 139(4), obligation cast upon assessee by section 272A(2)(e) to furnish its return under section 139(4A), would be rendered unworkable after lapse of period within which return of income could be filed under section 139 and, therefore, penalty for period falling thereafter could not be imposed - **Bethany Seva Sangam v. Income-tax Officer (Exemption)** - [2023] 155 taxmann.com 352 (Raipur - Trib.)

NOTES on recent Judicial Developments on issue of DOCUMENT IDENTIFICATION NUMBER (DIN) under Income Tax Act, 1961

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1. **Brief background of DIN- LEGAL /STATUTORY landscape:** First legal step in sojourn of “DIN” was taken vide financé (no.2) act 2009 (recd assent of president on **19.08.2009**) whereby section 282B got inserted into 1961 Act w.e.f 01.10.2010 bringing concept of “DIN” and giving it “statutory status. The same is explained in CBDT Circular No. 05/2010 dated **03.06.2010** in following words “

56. Introduction of Document Identification Number

56.1 A tax administration designed to foster voluntarily compliance yields higher revenue than a sound tax policy administered by an inefficient tax administration. It has always been the endeavor of the Income-tax Department to improve the standards of its service and transparency in the functioning of the tax administration. A further step in this direction is to introduce a computer based system of allotment and quoting of Document Identification Number (DIN). Therefore, a new section 282B has been inserted in Chapter XXIII of the Income Tax Act so as to provide that every income tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income- tax authority or assessee or any other person and such number shall be quoted thereon. Where the notice, order, letter or any correspondence issued by any income-tax authority, does not bear a Document Identification Number, such notice, order, letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.

56.2 It is also provided that every document, letter or any correspondence, received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number. Where the document, letter or any correspondence received by any income-tax authority or on behalf of such authority does not bear Document Identification Number, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

56.3 Applicability - This amendment has been made applicable with effect from 1st October, 2010, and will accordingly apply in relation to the assessment year 2011-12 and subsequent years”

It has short life as same got omitted by finance act 2011 w.e.f 1.4.2011 which stands explained in following words in CBDT circular no. 2/2012 dated 22.05.2012

“27. Omission of the requirement of quoting of Document

Identification Number

27.1 Under section 282B of the Income-tax Act, every income-tax authority shall, on or after the 1st day of July, 2011, allot a computer-generated Document Identification Number (DIN) in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

27.2 Considering the practical difficulties due to non-availability of requisite infrastructure on an all India basis, the aforesaid section was omitted.

27.3 Applicability - This amendment takes effect from 1st April, 2011.” This somersault on part of legislature shows the casual manner in which legislative function is discharged and showing much to be desired, though “wider” power of legislature to omit/roll back statutory provision is recognized under constitution of India but aspect of “fairness” / “fair play” towards citizen/taxpayer of the country remains matter of serious question here as something which was perceived as “step” on part of income tax department to “to improve the standards of its service and transparency in the functioning of the tax administration” in 2009/2010 immediately got changed in 2011 that there is “practical difficulties due to non- availability of requisite infrastructure on an all India basis”. This gap needs to be answered by legislature in authors humble opinion.

2. ***Reincarnation of “DIN” and Birth of CBDT Circular 19/2019 on 14.08.2019 (day before country “independence day” on 15.08):*** After vacuum of eight years after roll back of section 282B vide finance act 2011, in 2019, CBDT in exercise of its “primary” powers u/s 119 of 1961 Act issued this “epochal” circular reincarnating concept of “DIN” qua “communication” under 1961 act with avowed objective of maintaining proper “audit trail” of such /stated “communication”. E-governance initiative of income tax department and facility of income tax business application (ITBA) has been bulwark

behind said move. The command /mandate of said epochal circular (para 2) clearly stated that no communication shall be issued by income tax authority **relating to “assessment , appeals, orders statutory or otherwise, exemptions, inquiry, investigation, verification of information, penalty , prosecution , rectification , approval etc”** on/after 1.10.2019 (effective date) unless a “computer generated” DIN has been “allotted” and “duly” “quoted” in the body of such “communication” . For exceptional circumstances (manual communication) only when same falls in para 3 of stated circular with specified format to be mentioned in body of said manual/exceptional communication (highlighting specific limb of exception in para 3(i) to 3(v) and factum of approval of concerned CCIT/DGIT) same can be issued without stated DIN subject to it valid “regularization” within 15 “working days” as per para 5 of said circular (with valid “DIN” being allotted/generated to such manual communication). Notably para 4 of said circular clearly states that any communication which is violation of para 2 and para 3 of said circular “shall” be treated as “invalid” and “never” to have been issued. (that is /in other words “non est”). After this binding and mandatory CBDT circular, there has been lot of instances where income tax administration for reasons best known to them with due respect has devised on purely convenience basis/self suiting grounds specially in “central circle” cases *creative* means to flout/disobey the mandate of said CBDT circular as if the said circular permits to recourse to such novel/ingenious “subterfuge” to revenue authorities.

3. *Salient/striking features of DIN Circular :*

- a) It is issued u/s 119 of 1961 Act.
- b) It is clear that concept of DIN as per cbdt circular clearly mandates “computer generated” DIN, which has not only to be allotted first but “duly” quoted in body of subject “communication.
- c) Further it has to be qua “communication” and not in aggregate/ consolidated for different “communications”.
- d) DIN is qua “particular” communication.
- e) Further communication covers approval ; order “statutory or otherwise” etc.
- f) Further for exceptional /manual communication proper and valid narrative as per prescribed “format” has to be mentioned in body of stated manual communication.
- g) *Further factum of relevant approval of CCIT/DGIT has to be recorded in said manual communication*
- h) *Further stated narrative has to pinpoint specific limb of para 3 of circular which is “invoked” /pressed into service for exceptional communication* (With “etc” word also needs to emphasized as used in para 2 for communication covered: black law dictionary defines etc (etcetera) as “ETCETERA (or ETC1ETERA). And others; and

other things; and others of like character; and others of the like kind; and the rest; and so on; and so forth. *Muir v. Kay*, 66 Utah, 550, 244 P. 901, 904; *Osterberg v. Section 30 Development Co.*, 160 Minn. 497, 200 N.W. 738,739; *State on Inf. Haw v. Three States Lumber Co.*, 274 Mo. 361, 202 S.W. 1083,1084; *Wagner v. Brady*, 130 Tenn. 554, 171 S.W. 1179; *Fleck v. Harmstad*, 304 Pa. 302,155 A. 875,877,77 A.L.R. 874. In its abbreviated form (etc.) this phrase is frequently affixed to one of a series of articles or names to show that others are intended to follow or understood to be included. So, after reciting the initiatory words of a set formula, or a clause already given in full, etc. is added, as an abbreviation, for the sake of convenience. And other things of like kind or purpose as compared with those immediately there to fore mentioned. *Hisaw v. Ellison Ridge Consolidated School Dist.*, 189 Miss. 664,198 So.557,558. In its abbreviated form (etc.) this phrase means and other like purposes” and also **reference is made to Bombay high court Nagpur bench in case of Paresh Kodbal vs State of GOA in WP13/2019 order dated 22.06.2023) ;**

I) Word “duly” as used in para 2 of circular needs to be emphasized, for meaning of word / phrase “duly” reference is made to: decision of hon’ble apex court in case of L.I.C of India vs D.J. Bahadur (1981)1SCC315:1981SCC(L&S)111. (per justice koshal)means

“Means properly, regularly or in due manner”. This meaning of “duly” carries important weight in light of serious /egregious violations made on “din” circular.

- 4. Relevant PRESS RELEASE OF MINISTRY OF FINANCE/GOI: FOR “DIN” dated 1.10.2023 states** “The Documentation Identification Number (DIN) system of Central Board of Direct Taxes (CBDT) has come into existence from today with the generation of about 17,500 communications with DIN on the very first day. This path breaking DIN system has been created as per the direction of Finance Minister Ms. Nirmala Sitharaman and from now onwards every CBDT communication will have to have a documentation identification number. Revenue Secretary Dr. Ajay Bhushan Pandey said, “From today, any communication from Income Tax Department without a computer generated DIN, be it a notice, letter, order and summon or any other correspondence, would be treated as invalid and shall be nonest in lawor deemed to be as if it has never been issued. The DIN system would ensure greater accountability and transparency in tax administration.” “Now from today onwards, all such communications with DIN would be verifiable on the e-filing portal and no communication would be issued manually without DIN except only if it is in the specified exceptional circumstances”, said Dr. Pandey. It would be pertinent to mention here that while specifying such exceptional circumstances the CBDT Circular related to DIN dated 14.08.2019 says thatwhenever any such manual communication would be issued, it would be necessarily required to specify reason of

issuing such a communication without DIN along with the date of obtaining written approval of the Chief Commissioner / Director General of Income Tax in a particular format. Any communication which is not in conformity of with the prescribed guidelines shall be treated as invalid and non est in law. CBDT has specified that any communication issued manually under exceptional circumstances would have to be uploaded and regularised on the system portal within 15 days of its issuance. CBDT has also stated that all pending assessment proceedings, where notices were earlier issued manually, prior to the DIN related Circular dated 14.08.2019 coming into existence, all such cases would be identified and notices so sent would be uploaded on ITBA by the end of this month, i.e., by 31st Oct 2019. *This is in pursuance of the directions by the Hon'ble Prime Minister in which he has asked the Department of Revenue to come up with specific measures to ensure that the honest taxpayers are not harassed and served better. It may be noted that earlier there have been some instances where it was not possible to maintain the audit trail of the manually issued communication which in some cases caused inconvenience to taxpayers sometime. However, with the present system of attaching a DIN to every notice or communication of CBDT would result in better services to taxpayers without any possible harassment.*"

5. **Further relevant are some question/answer available on <https://www.incometax.gov.in/iec/foportal/help/authenticate-notice-faq> where it is stated in one of the question/answer:**

"6. What is DIN? DIN stands for Documentation Identification Number. It is a *computer generated 20 digit unique number* which needs to be duly quoted on every communication (letter/ notice / order/ any other correspondence) issued by any Income Tax Authority to any taxpayer."

6. **Further relevant is instructions from Directorate of Income Tax (System), dated 25.10.2019 where steps of DIN generation are highlighted.**
7. **On binding effect of said CBDT circular and fatal impact of not following reference is made to:** *"It is settled law that the Government is bound to follow the rules and standards they themselves had set on their pain of their action being invalidated [See: Amarjit Singh Ahluwalia Vs. State of Punjab & Ors.; 1975 (3) SCR 82 and Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors.; (1979) 3 SCC 489]."* *And Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (1999) 237 ITR 889 (SC) and Hon'ble Supreme Court in the case of Indian Oil Corporation Ltd., reported in (2004) 267 ITR 272 (SC), & Hon'ble Supreme court decision in case of*

Catholian Syrian Bank reported at 343 ITR 270: wherein the Hon'ble Supreme Court, considering various earlier judgments, has held that the circulars/instructions issued u/s. 119 of the IT Act are binding on the revenue & Hon'ble Andhra Pradesh high court in case of: CIT vs Smt Nayana P Dedhia 270 ITR 572 & Hon'ble delhi high court in case of Cit vs Best Plastics P. Ltd. On 5 April, 2006 295 ITR 256 & Hon'ble High Court of Chattisgarh in the case of Dy. CIT Vs. Sunita Finlease Ltd. [2011] 330 ITR 491 (Chattisgarh) & Hon'ble Madras high court in case of R Chitra 418 ITR 530 and recent decision of hon'ble orissa high court in case of Nababharat Shiksha Prishad vs DCIT ITA 59/2018 order dated 15.12.2022

8. **Reference is made to hon'ble Calcutta high court decision in case of Amal Kumar Ghosh reported at 361 ITR 458 (HELD “We have considered the rival submissions advanced by the learned Advocates. Even assuming that the intention of CBDT was to restrict the time for selection of the cases for scrutiny within a period of three months, it cannot be said that the selection in this case was made within the aforesaid period. Admittedly, the return was filed on 29th October, 2004 and the case was selected for scrutiny on 6th July, 2005. It may be pointed out that Mrs. Gutgutia was, in fact, reiterating the views taken by the learned Tribunal which we also quoted above. By any process of reasoning, it was not open for the learned Tribunal to come to a finding that the department acted within the four corners of Circulars No. 9 and 10 issued by CBDT. The circulars were evidently violated. The circulars are binding upon the department under section 119 of the I.T. Act. Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assesseees from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under Article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act”)**
9. **Further reference is made to: Justice Frankfurter of the United State Supreme Court in Vitarelli vs Seton : “An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the**

requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural swords hall perish with the sword." As observed by Mr. Justice Douglas of the United States Supreme Court in Joint Anti-Fascist Refugee Committee Vs. McGrath, 341 US 123 at 179, "It is procedure that spells much of the difference between rule of law and rule of whim or caprice. Steadfast adherence to strict procedural safeguards are the main assurances that there will be equal justice under law."

10. **Further reference is made to article 265 of constitution of India** whereby it is held that all steps in collection of tax must be in accordance with authority of law). - *scMafatlalindustries ltd vs UOI 19975 SCC536 (Para 160);*
11. **Further two decisions of hon'ble kerala high court** south coast spices exports pvt ltd vs PCIT in W.A. 2002/2023 order dated 22.11.2023 invoking doctrine of "prejudice" to hold in favour of revenue and hon'ble Allahabad high court in case of Chandra bhan vs UOI order dated 18.07.2023 Writ tax 829/2023 neutral citation 2023" AHC: 142867-DB also toes the lines of kerala high court of no prejudice to hold against assessee qua stated violation of DIN Circular. In authors humble opinion few takeaways from this adverse/rev favoring decisions is : firstly they can not apply in jurisdictional of delhi; Bombay and Allahabad where resp. jurisdictional high court decisions are there would bind the authorities there ; secondly for cases where no decision of resp. jurisdictional high court is there, applying the well settled principle that when two views are possible one view which favors the assessee has to be applied/followed and only for kerala and Allahabad till hon'ble apex court settles the law on this issue, respective decision would be applicable. Reference is made to: Hon'ble Supreme Court in the case of Union of India vs Kamalakshi Finance Corporation Ltd reported in 55 ELT 43 (1991) that the decision of Hon'ble Jurisdictional High Court would have higher precedence value than the decision of Hon'ble Non-Jurisdictional High Court on the Tribunal. When there are two conflicting decisions of various High Courts, the Hon'ble Supreme Court in the case of Vegetable Products reported in 88 ITR 192 (SC) had held that Construction that is favourable to the assessee should be adopted. On issue of "prejudice" aspect. With due respect to their lordships of hon'ble Allahabad and kerala high court it is humbly submitted that said view is not correct and requires reconsideration for following reasons: doctrine of "prejudice" cannot be applied to whittle down the binding and mandatory nature of CBDT circular issued u/s 119 of 1961 act and time and again various hon'ble high courts based on hon'ble apex court decision has held that not following CBDT circular is fatal (reference is made to numerous instances in past where violation of CBDT

instructions / office memorandum / sop / guidelines etc relating to CASS scrutiny selection and scope of “limited scrutiny”; stay of tax demand ; etc being violated have been held to be fatal). Further doctrine of prejudice cannot override the serious importance of principle that : ***Prescribed mode of doing a thing cannot beside stepped to suit the convenience of particular AO / revenue: Reliance on accepted / acknowledged principle of Taylor vs Taylor and Nazir vs Emperor***: and said principle is recently acknowledged in following Hon’ble Apex court decisions statutory task has to be performed in prescribed / specified manner only ***hon’ble apex court decisions in cases of Chandra Kishore Jha Vs. Mahaveer and others 1999 8 SCC 266 and Cherrukurimani Vs. Chief Secretary Government of Andhra Pradesh and other 2015 13 SCC 722s and Municipal Corporation Greater Mumbai Vs. Abhilash Lal and others 2020 13 SCC 234 and Opto Circuit India Limited Vs. Axis Bank and others 2021 6 SCC 707 and again in the case of Union of India Vs. Mahesh Singh CAP. No. 4807 of 2022 and Tata Chemicals Limited Vs. Commissioner of Customs (preventive) Jam Nager 2015 11 SCC 628*** (common ratio of these decisions of hon’ble apex court is it is well settled solitary principle that if statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.) note all these decisions stands applied in ***RECENT DECISION OF TELANGANNA HIGH COURT IN LEAD CASE (BATCH MATTERS) OF KANAKALARAV INDRA REDDY VS ACIT WP 25903/2022 ORDER DATED 14 SEP.2023 in context of violation of cbdt notification u/s 151A for faceless mode of income escaping asst; wherein*** also reference is made to: hon’ble apex court 5 judge constitution bench decision in case of **Anjum MH Ghaswala 5 judge Constitution Bench of SC 252 ITR 1 /(2002) 1 SCC 633:-**

“27.Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions.

These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided there in it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119.” Also Refer: Hon’ble Apex court three judge bench by Justice UU Lalit in case of Noor

Mohammed vs Khurram Pasha in SLP (Crl) 2872/2022 order dated 02.08.2022 (20229 SCC 23); State of AP vs A.P. State Waqf Board 2022 SCC online SC 159; Hon'ble Apex court in State of UP vs Virendra Kumar in Civil Appeal 6622 & 6623/2022 order dated 25.11.2022 (Three Judge bench order) 2022 SCC Online SC 1628; Hon'ble Apex court by Justice Hemant Gupta in case of UOI vs Mahendra Singh in Civil Appeal no. 4807/2022 order dated 25 July 2022(2022 SCC Online SC 909); Further it is settled no one can be advantage of his own wrong is also applicable here; reference is made to G.S.Lamba vs UOI AIR 1985SC 1019; Narender Chadha vs UOI AIR 1986 SC 638; JOSE VS ALIVE 1996 6 SCC 342 & T.Srinivasan vs Mrs T Varalaskshmi 1998 3 SCC112; broom's legal maxim 10 the dn p. 191 Maxim Null us commodum capere potest de injuria sua propria has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations. ; Kusheshwar Prasad singh vs state of bihar 2007 11 SCC 447 page 451; UOI vs Shakti LPG Ltd 2008 223 ELT 129(SC); further doctrine of latin maxim of sublato fundamento cadit opus is relied – refer State of Punjab v. Davinder Pal Singh Bhullar reported in (2011) 14 SCC 770, Para 107, where in 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 sublato fundamento cadit opus meaning thereby that foundation being removed, structure/ workfalls, comes into play and applies on all scores in the present case; Further reference is made to text of explanation 2 to section 263 of 1961 act dealing with deemed to be erroneous and prejudicial orders u/s 263 which in clause (C) covers order not passed in accordance with order/ direction/ instruction issued by board u/s 119 so on parity/analogy if there is violation of din circular same should also result in invalidation of said order.

So it is humbly submitted that view taken by hon'ble Allahabad and kerala high court needs reconsideration.

12. **Issue of violation of DIN/** CBDT circular is a question of law and jurisdictional issue (goes to root of the matter) same can be raised for first time in appellate proceedings also (even it can be raised for first time before hon'ble SC under article 136 of constitution of India) refer SC in; SC in NTPC case **229 ITR 383**; SC in Karan singh vs Chaman Paswan **19551 SCR 117**(4 judge bench); SC latest order in RAVI RANJAN DEVELOPERS PVT LTD VS ADITYA KUMAR CHATTERJEE REPORTED AT **2022 SCC ONLINE 568** (para18 &19); Del HC in Taylor instrument **198 ITR 1, 15 (article 265 vs additional ground at ITAT)**; P&h High court in VMT Spinning co. 389 ITR 326; Bombay high court in Ventura Textiles 426 ITR 478 (first time legal ground before HC u/s 260A)

In above background, Some practical/ illustrative instances of violation of DIN circular are:

A. Firstly in many cases DIN is not quoted in body of very assessment order/demand notice etc without any compliance to “para 3” of CBDT circular (as to how said communication fulfills exeptional circumstance and how /when approval of concerned CCIT/DGIT is taken?) and separately/subsequently “unsigned” Intimation is sent providing “common” DIN for asst order/ demand notice etc. Is it valid? Can “unsigned” intimation of DIN is valid? Can there be “common” din for asst order and demand notice? No reference is made to three different hon’ble high court reported decisions on the subject namely

- a) Hon’ble Delhi High Court in **CIT vs. Brandix Mauritius Holdings Ltd. 456 ITR 34;**
- b) Hon’ble Bombay high court decision in case of Ashok commercial enterprises vs ACIT 459 ITR 100 and
- c) Hon’ble Calcutta high court decision in case of PCIT vs tata medicalcentre trust 459 ITR 155.

In all these three division bench high court decisions, fatal /incurable “illegality” impact of violation of DIN circular is clearly highlighted.

Also reference is made to hon’ble delhi high court decision in case of Kamlesh Kumar Jha vs PCIT in WP(C) 12914/2023 order dated 03.10.2023 (held sec 127 proceedings – sans valid Document identification number are invalid; **Further reference is made to hon’ble apex court decision in case of Pradeep Goyal vs UOI: DIN Concept relevance and importance – 141 taxmann.com 64.** Further though numerous decisions of hon’ble ITAT benches are there but some selected are referred for brevity: delhi bench ITAT decision in case of ITA no. 1542/Del/2022 order dated 19.09.2022 in the case of **M/s. Brandix Mauritius Holdings Ltd. vs. DCIT approved by hon’ble delhi high court in 456 ITR 34; Delhi ITAT B bench decision in case of Harish gupta vs DCIT vs 27.09.2023 and Case ITANo. 2486, 2487, 2488/DEL/2022, Abhimanyu Chaturvedi Vs Deputy Commissioner of Income Tax, Decidedon 03-08-2023 and Delhi bench ITAT in cases of SHARDA DEVI BAJAJ ITA No. 1898/Del/2022 (ORDER DATED 15.11.2019) & prtatap singh Yadav ITA No. 1898/Del/2022 (30.05.2023) and RAM PASHU AHAR PVT LTD (ITANo.1456/Del/2021 order dated 30.05.2023).**

On fatal impact of not signing the intimation of DIN; reference is made to: **Telangana high court landmark decision on issue of mandatory signing notice etc under 1961 Act after considering sec 282 A in case of WRIT PETITION No. 15169 OF 2022 order dated 06.11.2023 Sri Sai Kumar Mateti vs Income Tax Officer Held “5. From the plain reading of the aforesaid provision of law under sub-Section (1) of Section 282A**

clearly envisages that when the Department intends to issue a notice, the same has to be duly signed either manually or digitally. The said provision has a mandatory force of law. This requirement under sub-Section (1) of Section 282 A is missing in the notice issued under Section 148 of the Act, 1961 by the Department. Since there is a mandatory requirement for compliance of sub-Section (1) and (2) of Section 282A, and in the absence of there being a signature either manual or digital of the authority concerned issuing the same, which is the requirement under sub-Section (1), we are of the considered opinion that the notice under Section 148 of the Act, 1961 to the aforesaid extent is bad in law and the consequential proceedings initiated would also therefore become bad. Thus, we are of the considered opinion that the impugned notice under Section 148 of the Act, 1961 therefore requires to be set-aside/quashed, and is accordingly set-aside” and Hon’ble Bombay high court latest detailed decision in case of Prakash Krishnavtar Bhardwaj vs ITO in WP No 9835/2022 order dated 09.01.2023 (451 ITR 27); Hon’ble Allahabad high court latest decision in case of Vikas Gupta vs UOI reported at 448 ITR 1; P&H high court in case of PCIT vs Prahalad singh order dated 27.02.2020 ITA 91/2019; reference is made to: p&h high court decision in cases of Atlas cycle industries ltd vs CIT 180 ITR 319; CALCUTTA HIGH COURT decision in case of B.K.Gooyee vs CIT 62 ITR 109; Madhya Pradesh high court decision in case of Umashanker Mishra 136 ITR 330; Bangalore bench itat decision in case of M/s Yeshoda electricals vs acit ITA 1175/bang/2016 order dated 03.02.2021; ITAT, Jaipur in 40 Taxmann 200 in ITO Vs. Super Tools India Ltd; ITAT Mumbai in the case of Rajesh A.Yagnik Vs. ACIT, 88 taxmann.com 335 (so once “unsigned intimation” goes then as sub lato fundamendo cadit opus everything falls as ex consequentii as natural concomitant)

Qua “common” DIN” as held in case of delhi bench ITAT in case of Abhimanyu Chaturvedi Vs Deputy Commissioner of Income Tax, Decided on 03-08-2023 “So the assessment order itself is a communication and all compliances expected have to be *specific* to the assessment order.”

- B. Further without valid DIN being firstly generated, said communication/order etc is signed and later on/subsequently after “signing”, DIN is generated “subsequent” to signing. Is it valid? No refer : delhi bench ITAT in case of Abhimanyu Chaturvedi Vs Deputy Commissioner of Income Tax, Decided on 03-08-2023 “If without first generating the DIN and before it is quoted on the order, the order is signed, the order is non- est.”**
- C. Further whether mere generation of ‘din” without its quoting in body of “communication” and without para 3 being followed is it valid? No refer BHC in ashok commercial case 459 ITR 100 and others in para 7 above**

Further without mentioning in specified format as per para 3 of cbd t circular can case be put under exceptional communication on “file” of AO only with so called approval of CCIT on file , without anything there in body of stated

“communication”? no refer decision of delhi bench of ITAT in case of *RAM PASHU AHAR PVT LTD* (ITA No. 1456/Del/2021 order dated 30.05.2023).

- D. Furtherin “statutory” reasons recorded/satisfaction /sanction /approval u/s 148(2)/ 153C/ 151/153D etc there is no “DIN” as per stated circular is it valid? No refer BHC in ashok commercial ent p supra and recent decision of pune bench of ITAT in case of BVG India ltd ITA (SS) A 11 to 16/pun/2023 order dated 19.10.2023 held that if no valid is there on approval u/s 153D after 01.10.2019 same would be invalid and would ipso facto invalidate the resultant tax assessment u/s 153A/153C.
- E. Further in some TDS related default orders u/s 201 (1) there is handwritten some “four” digit number mentioned can it be called as valid “DIN” that too when it is common for order /demand notice? no refer decisions in para 7 above
- F. Further in investigation related proceedings in search warrant u/s 132 (1) and pachnama; prohibitory/restraint order u/s 132 and provisional attachment order u/s 132 etc, there is not valid “DIN” generated/ communicated as per mandate of cbdt circular; is it valid? No refer decisions in para 7 above

CLOSURE NOTE: Chaste /sage words of hon’ble Justice Sanjay Kishan Kaul from hon’ble Supreme Court of India speaking in case of National cooperative case under income tax law reported at 427 ITR 288 where justice importance is highlighted by remembering Late Palkivala sahib in following words: Held “22. *In the end before parting we may refer to the legal legend Mr. Nani A. Palkhivala, who while addressing a letter of congratulations to Mr. Soli J. Sorabjee on attaining his appointment as the Attorney General on 11.12.1989 referred to the greatest glory of Attorney General as not to win cases for the Government but to ensure that justice is done to the people. In this behalf, he refers to the motto of the Department of Justice in the United States carved out into the Rotunda of the Attorney General Office: “The United States wins its case whenever justice is done to one of its citizens in the courts.” The Indian citizenry is entitled to a hope that the aforesaid is what must be the objective of Government litigation, which should prevail even within the Indian legal system. In the words of Martin Luther King, Jr., “We must accept finite disappointment, but never lose infinite hope.” Hon’ble kerala high court decision in case of Prodair air Products india pvt ltd vs State of kerala vide order dated 03.04.2023 2023 SCC Online Ker 1949 has held as under: *on duty of revenue/tax authority while making administrative decision making has to conform to the culture of responsiveness, justification and demonstrated expertise. Responsiveness refers to the requirement that the reasons given by the decision maker must respond to the central issues and concerns raised by the parties by 'listening' rather than merely 'hearing' the parties. Justification refers to the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. Demonstrated expertise refers to the requirement of the decision maker establishing the reasonableness of his decision by demonstrating therein his experience and expertise.**

GST & IN-DIRECT TAXES

1. STATUTORY UPDATES

- 1.1** GSTN Advisory on procedure related to the amnesty scheme for appeals under GST

Editorial Note : The GSTN has issued an advisory to inform that taxpayers can now file an appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024, for the orders passed by the proper officer on or before March 31, 2023.

- 1.2** GSTN issues advisory for applicants of Gujarat and Puducherry for Biometric-Based Aadhaar Authentication

Editorial Note : The GSTN has issued an advisory to inform that functionality of Biometric-based Aadhaar Authentication for GST registration was launched in Puducherry on 30th August 2023 and will be rolled out in Gujarat on 7th November 2023. The said functionality now also provides for the document verification and appointment booking process.

- 1.3** 5% GST to be levied on job work for processing of "Barley" into "Malted Barley" - **Circular No. 206/18/2023-GST, Dated 31-10-2023**

Editorial Note : The CBIC has issued a circular to provide clarifications regarding applicability of GST on certain services. In this circular, it is also clarified that services by way of job work for conversion of barley into malt would attract 5% GST.

- 1.4** 5% GST on imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HSN 5605 - **Circular No. 205/17/2023-GST, Dated 31-10-2023**

Editorial Note : The CBIC has issued a circular to clarify that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HSN 5605 is taxable at 5% and no refund will be permitted on polyester film (metallised)/plastic film on account of inversion of tax rate.

- 1.5** Second highest ever GST revenue collection for October 2023 at Rs. 1.72 lakh crores

Editorial Note : The Government has issued a Press Release to inform that the GST revenue collection for October 2023 is the second highest ever, next only to April 2023, at Rs. 1.72 lakh crores.

- 1.6** GSTN Advisory on Amnesty Scheme for filing appeal before Appellate Authority

Editorial Note : The Government has notified amnesty scheme vide Notification No. 53/2023-Central Tax, dated 02-11-2023 for taxable persons who were unable to file an appeal before Appellate Authority against the

orders passed up to 31-03-2023 under Section 73 or Section 74 of the CGST Act. In this regard, the GSTN has issued advisory to provide the manner of payment of deposit amount in such cases.

- 1.7** GSTN issues Advisory on online compliance for intimation in GST DRC-01C for ITC mismatches

Editorial Note : GSTN has developed the functionality to generate automated intimation in Form GST DRC-01C which enables the taxpayer to explain the differences in ITC available in GSTR-2B and ITC claimed in GSTR-3B return online as directed by the GST Council. This feature is now live on the GST portal.

- 1.8** GSTN issues Advisory on ITC reversal requirement on account of Rule 37A

Editorial Note : Rule 37A of the CGST Rules requires taxpayers to reverse ITC for invoices/debit notes if their suppliers has not filed GSTR-3B by 30th September, despite details being furnished in GSTR-1/IFF. The GSTN has issued an advisory on such reversal of ITC for FY 2022-23.

- 1.9** NIC issues advisory on verification of transporter id in e-way bill system

Editorial Note : The NIC has issued an advisory to inform that ERP system can't distinguish between registered and enrolled transporter IDs. Hence the ERP may be modified to first call the 'Get GSTIN Details' to verify the transporter Id and in case the status is invalid then call 'Get TRANSIN details' API before finally concluding the status of the transporter Id.

- 1.10** CBIC notifies the amnesty scheme for filing of appeals under GST - **Notification No. 53/2023- Central Tax, Dated 02-11-2023**

Editorial Note : The CBIC has issued a notification to notify the amnesty scheme for filing of appeal against order passed on or before 31st March, 2023 subject to certain conditions.

- 1.11** Rule 37A: Navigating through the Intricacies and GSTN Advisory

Editorial Note : Reversal of ITC by the recipient, on account of non-payment of tax by the supplier, has been a subject matter of intense judicial scrutiny. Considering that FY 2022-23 is the first year of operation of Rule 37A and the deadline for reversing ITC is fast approaching, this Article delves into understanding Rule 37A and the corresponding Advisory issued by GSTN, with a specific focus on prevailing ambiguities that await clarification.

- 1.12** Biometric-based Aadhaar authentication and risk-based physical verification introduced in Andhra Pradesh - **Notification No. 54/2023- Central Tax, Dated 17-11-2023**

Editorial Note : The State of Andhra Pradesh has been notified for Biometric-based Aadhaar authentication and risk-based physical verification in terms of Rule 8(4B) of the CGST Rules. Notably, earlier the given functionality was made available on pilot test basis in Gujarat and Puducherry.

2. SUPREME COURT

SECTION 13 OF THE UTTAR PRADESH VALUE ADDED TAX ACT, 2008 - INPUT TAX CREDIT

- 2.1 Assessee is entitled to claim input tax credit of full amount of tax paid towards purchase of raw Rice Bran vide Section 13(1)(a) read with S.No. 2(ii) of the Table appended thereto and Section 13(3)(b) read with Explanation (iii) to Section 13 of UP VAT Act, 2008 - **Modi Naturals Ltd. v. Commissioner of Commercial Tax UP** - [2023] 156 taxmann.com 176 (SC)

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

- 2.2 Provisional release of detained goods was to be allowed on condition of payment of part amount and furnishing of personal surety bond for balance amount instead of bank guarantee - **Garg Oil Traders v. State of Punjab** - [2023] 156 taxmann.com 59 (SC)

RULE 140 OF THE CENTRAL GOODS AND SERVICE TAX RULES, 2017 - BOND AND SECURITY FOR RELEASE OF SEIZED GOODS

- 2.3 Where High Court while admitting writ petition was silent on any interim relief for provisional release of confiscated goods, petitioners were to be permitted to move to High Court seeking expeditious interim relief in matter - **Kaushal Export v. Chief Commissioner, SGST** - [2023] 156 taxmann.com 60 (SC)

3. HIGH COURT

CLASSIFICATION OF GOODS

- 3.1 **Dialysis machines** : Where respondent-authority had clarified HSN code for 'dialysis machines' and applicable IGST rate in its office memorandum, writ petition seeking same was to be disposed of noting that issue was clarified - **Nipro Medical India (P.) Ltd. v. Ministry of Finance Department of Revenue** - [2023] 156 taxmann.com 294 (Delhi)

SECTION 2(52) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - GOODS

- 3.2 Question as to whether petitioner's platform which was used for gaming would fall within an actionable claim amounting to betting and gambling requires to be considered in extenso, thus, as an interim measure, revenue was restrained from taking any further steps on adjudication of show cause notice - **NXGN Sports Interactive (P.) Ltd. v. Union of India** - [2023] 156 taxmann.com 214 (Gujarat)

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

- 3.3 Parallel show cause notices were issued by Central and State GST authorities, whether both SCNs were sustainable when assessee was already assigned to Central GST authorities, High Court issues notice - **Shree Cement Ltd. v. Union of India** - [2023] 156 taxmann.com 557 (Rajasthan)
- 3.4 Where investigation was not against petitioner, it was against two different entities, one registered in Maharashtra and other in Bihar and notices issued to petitioner were not investigations but summons to appear as a witness, section 6 do not prohibit separate investigations if initiated by different authorities and thus, petitioner was directed to appear before both authorities in different months as specified - **Neeraj Jain v. Union of India** - [2023] 156 taxmann.com 328 (Patna)
- 3.5 Object of Section 6 (2) (b) of CGST Act is to restrict parallel proceedings in respect of same subject matter and not to restrict consolidation of proceedings in a single Authority - **Amit Gupta v. Union of India** - [2023] 156 taxmann.com 167 (Delhi)

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

- 3.6 Where lease of land was treated as supply of services under Schedule I of CGST Act, even though it was not specifically mentioned in Schedule III, High Court of Gujarat issued notice to Union of India - **Suyog Dye Chemie (P.) Ltd. v. Union of India** - [2023] 156 taxmann.com 425 (Gujarat)

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

3.7 Online rummy and poker are also games of skill, not games of chance - **All India Gaming Federation v. State of Tamil Nadu - [2023] 156 taxmann.com 305 (Madras)**

3.8 Where assessee, a partnership firm, faced a classification dispute regarding Aluminum Foil Containers under GST regime, following a Supreme Court judgment in 2023 (Civil Appeal No.7561 of 2009), it was held that product should be classified under Heading No. 7615 with a 12 per cent GST rate, not under Heading No. 7607 with an 18 per cent rate - **Veeram Natural Products v. Commissioner of GST and Central Excise - [2023] 156 taxmann.com 65 (Madras)**

3.9 Flavored Milk should be classified under Heading No 0402 as per SI No 8 in the First Schedule to Notification No.1/2017-CT(Rate);GST Council can only Recommend rate but cannot determine classification of goods or services - **Parle Agro (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 420 (Madras)**

3.10 Inspection fees and affiliation fees charged by University from colleges for granting affiliations to colleges is not exempted under SI. No 66 of Notification No. 12 of 2017, dated 28-6-2017 - **Care College of Nursing v. Kaloji Narayana Rao University of Health Sciences - [2023] 156 taxmann.com 450 (TELANGANA)**

SECTION 10 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMPOSITE LEVY

3.11 Where at time of supply, seller existed but subsequently it was found non-existent, since Authorities could have very well verified as to whether after filing of GSTR-1 and GSTR-3B how much tax had been deposited by selling dealer but authorities had failed to do so, impugned order raising demand for entire amount of tax could not be sustained - **Rama Brick Field v. Additional Commissioner, Grade-2 - [2023] 156 taxmann.com 252 (Allahabad)**

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

3.12 Where assessee claimed exemption on coaching fees same was to be necessarily be examined in light of departmental clarification Circular No. 177/09/2022-TRU, dated 3-8-2022 which states that all services supplied by an "educational institution" to its students are exempt from GST; impugned order denying exemption on coaching fees required reconsideration - **Alva's Education Foundation v. State of Karnataka - [2023] 156 taxmann.com 6 (Karnataka)**

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

3.13 Section 15(2)(b) says that value of supply shall include any amount that supplier is liable to pay in relation to such supply; said provision cannot be by-passed by GTA by agreement with service receiver wherein diesel was agreed to be supplied free of cost by service recipient to GTA and diesel provided free of cost by service recipient would nevertheless be added to value for purpose of GST - **Shree Jeet Transport v. Union of India - [2023] 156 taxmann.com 128 (Chhattisgarh)**

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

3.14 Impugned order was passed denying ITC on basis of difference between GSTR-2A and GSTR-3B, since ITC could not be denied merely on basis of difference between GSTR-2A and GSTR-3B, matter was remanded back directing authority to pass fresh orders in accordance with law - **Mina Bazar v. State Tax Officer-1 - [2023] 156 taxmann.com 579 (Kerala)**

3.15 Where business of Tinkona Digital Networks (TDN) was transferred to petitioner along with ITC and petitioner received scrutiny notice for recovery a demand of wrongful availment of ITC, since instant petition was at stage of SCN, no interference was required in proceedings - **Tikona Infinet (P.) Ltd. v. Government of NCT of Delhi - [2023] 156 taxmann.com 647 (Delhi)**

3.16 Where assessee had migrated from VAT to GST, he was entitled to input tax credit on goods received from registered suppliers and revenue could not direct assessee to forgo input tax credit as condition for extending validity of its registration retrospectively - **Tvl.Lourdes Matha Cashew Industries v. Union of India - [2023] 156 taxmann.com 519 (Madras)**

3.17 Where an impugned order was passed against assessee denying ITC due to difference between GSTR-3B and GSTR-2A, since tax for which assessee claimed input tax credit is reflected in Form GSTR 2A, though with some delay, one more opportunity was granted to assessee to prove before assessing authority that ITC claimed in GSTR-3B is actually reflected in GSTR-2A and accordingly, impugned order was set aside and matter was remanded - **Geetha Agencies v. Deputy Commissioner of State Tax - [2023] 156 taxmann.com 165 (Kerala)**

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

3.18 Where ITC of petitioner was blocked and show cause notices were issued, since petitioner was required to deposit only 10 per cent of penalty amount in appeal remedy, account of petitioner could not be blocked beyond 10 per cent of penalty amount - **K.J. International v. State of Punjab - [2023] 156 taxmann.com 212 (Punjab & Haryana)**

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

- 3.19** Where assessee failed to file Form GST ITC-02 on common portal for transferring ITC lying un-utilized in its electronic credit ledger, and filed Form manually, assessee was directed to file response to showcase notice, while revenue was directed to consider case of assessee in light of their own case which was decided by Division Bench of Allahabad High Court - **Tikona Infinet (P.) Ltd. v. State of Gujarat** - [2023] 156 taxmann.com 558 (Gujarat)

SECTION 28 OF THE CUSTOMS ACT, 1962 – RECOVERY OF DUTIES NOT LEVIED OR NOT PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED

- 3.20** Since, petitioner had claimed exemption from payment of IGST on import of wet dates (processed dates) under under Sl. No.51 of the Notification No.02/2017-Integrated tax (Rate) , competent authority is empowered to make assessment regarding claim of exemption from IGST ,instant writ petitioner was to be dismissed - **Ajwa Dry Fruit Impex v. Union of India** - [2023] 156 taxmann.com 448 (Kerala)

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

- 3.21** Where department cancelled registration of assessee on ground that it was not found functioning/existing at its principal place of business and assessee was not permitted to update records to reflect that it changed its place of business, therefore, assessee was directed to file an application for revocation of cancellation of its GST registration, and also substantiate that it was carrying on its business from another premises - **Kordient Ventures (P.) Ltd. v. Commissioner, Delhi GST** - [2023] 156 taxmann.com 556 (Delhi)
- 3.22** Where assessee's accountant, without taking proper instructions from petitioner, filed NIL GSTR-1 and GSTR-3B returns continuously instead of showing actual outwards supplies and therefore, on presumption that petitioner had not commenced any business, concerned authority had cancelled assessee's GST registration and said accountant, without taking steps to restore cancelled GSTIN, had filed GSTR-10 and accepted cancellation, error had been committed only on part of accountant; assessee's registration was to be revived - **E. Dharmaraj v. Assistant Commissioner of State Tax** - [2023] 156 taxmann.com 541 (Madras)
- 3.23** Where no useful purpose would have been served keeping assessee out of GST regime as such assessee would still continue his businesses and supply goods and services and denying right to carry on trade and business would be contrary to constitutional guarantees under Articles 19(1)(g) and 21 of Constitution of India, therefore, order cancelling assessee's GST registration was to be quashed - **Abdul Samad Mohamed Inayathullah v. Superintendent of**

CGST & Central Excise - [2023] 156 taxmann.com 207 (Madras)

- 3.24** Cancellation of GST registration without assigning any cogent reason was violative of principles of natural justice and was liable to be set aside - **Namo Narayan Singh v. State of U.P.** - [2023] 156 taxmann.com 102 (Allahabad)
- 3.25** Instant writ petition was to be disposed of directing revenue to complete proceedings instituted through show cause notice issued to petitioner as petitioner had already replied to said notice - **Pushpendra Singh v. Union of India** - [2023] 156 taxmann.com 702 (Allahabad)
- 3.26** Assessee was not entitled to cross-examine witnesses relied upon by revenue authority while cancelling registration of assessee, as enquiry conducted by revenue authority was not a trial, but rather summary proceeding to determine whether assessee was conducting business from registered address - **Steel India v. State Tax officer** - [2023] 156 taxmann.com 250 (Kerala)
- 3.27** Cancellation of GST registration without reasons was not sustainable because right to reason is indispensable part of a sound judicial system - **Vishwanath Traders v. Union of India** - [2023] 156 taxmann.com 682 (Allahabad)
- 3.28** Show cause notice and order canceling assessee's GST registration were not in accordance with law as assessee was not provided a proper opportunity for a hearing and, therefore, were to be set aside - **Bhupendra Singh v. State Tax Officer** - [2023] 156 taxmann.com 322 (Uttarakhand)
- 3.29** Where notice for cancellation of petitioner's registration mentioned reason of not filing return for continuous six months but order of cancellation did not ascribe any reason of cancellation, impugned order being without application of mind, did not satisfy test of Article 14 of Constitution and was to be set aside - **Makewell Pharma Gomti Nagar Lucknow v. State of U.P.** - [2023] 156 taxmann.com 423 (Allahabad)
- 3.30** Once petitioner's GST registration was restored which was cancelled on an allegation that it was obtained by fraud, misstatement or suppression of facts, it was not open for respondent to again cancel petitioner's GST registration for same reason unless it is premised on ground that had occurred after petitioner's GST registration was first cancelled - **Samayshristi Enterprises v. Superintendent, Range - 31, GST Division** - [2023] 156 taxmann.com 383 (Delhi)
- 3.31** Merely because assessee had not furnished any return for a period of six months, same could not be a ground for cancelling GST registration ab initio from date it was granted - **Balajee Plastomers (P.) Ltd. v. Commissioner of Delhi GST** - [2023] 156 taxmann.com 382 (Delhi)
- 3.32** Where show cause notice and order cancelling registration clearly did not provide for any reason whatsoever for such action being taken against petitioner, there was an incurable

defect in order which could not be improvised in reply of respondents; cancellation of registration was not justified - **Afzal Husain Saiyed v. Principal Commissioner of Central Tax - [2023] 156 taxmann.com 381 (Bombay)**

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

- 3.33** Where registration was cancelled, if petitioner moved representation for revocation of cancellation of registration under section 30 of CGST Act along with filing all GST returns, paying outstanding tax and dues, if any, Competent Authority should consider petitioner's representation and pass appropriate order - **Wahid Hussain Contractor v. Commissioner, State Goods and Services Tax Commissionerate - [2023] 156 taxmann.com 292 (Uttarakhand)**
- 3.34** Where assessee had filed returns and paid tax along with interest, revenue shall be directed to take steps for renewing GST registration of assessee - **Pramod Kumar Sharma v. Union of India - [2023] 156 taxmann.com 582 (Allahabad)**
- 3.35** Where there was no reason or allegation mentioned in cancellation order and no clear indication of failure to file return despite of non-reply to show cause notice, order of cancellation of registration was to be set aside conditionally on undertaking to pay tax, interest and penalty - **Kapildeo Prasad v. State of Bihar - [2023] 156 taxmann.com 650 (Patna)**
- 3.36** Where assessee's application for condonation of delay in filing revocation of registration by 8 days was rejected, delay was due to delay in Aadhar verification, assessee had no duty liability, delay was to be condoned, impugned order was to be set aside - **Kakkaisamy Narayanasamy v. Joint Commissioner - [2023] 156 taxmann.com 675 (Madras)**
- 3.37** SCN must state reasons for proposed action, and order of cancellation of GST registration based on reasons not forming part of SCN was void, moreover SCN failing to meet necessary standards was not sustainable, thus, SCN as well as order cancelling registration was to be set aside - **Mr. Sanal P. v. Union of India - [2023] 156 taxmann.com 297 (Delhi)**

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

- 3.38** Where assessee had availed excess ITC and reversed it before utilizing it for payment of central tax liabilities, demand for interest and penalty by revenue was to be held invalid - **Deepak Sales Corporation v. Union of India - [2023] 156 taxmann.com 325 (Punjab & Haryana)**

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

REFUND OF

- 3.39** Where petitioner-assessee was only issued show cause notice for three out of eight refund claims, and respondent-department had rejected all refund claims without issuing show cause notice, and did not grant opportunity of hearing to petitioner-assessee for all refund claims, therefore, adjudication order rejecting refund claims and appellate order were to be set aside, writ petition was to be allowed - **Fresenius Kabi Oncology Ltd. v. Union of India - [2023] 156 taxmann.com 523 (Punjab & Haryana)**
- 3.40** Where failure to obtain endorsement that goods had entered into SEZ within 45 days for authorised operation was not due to fault on part of assessee and it was for AO to make endorsement in time, orders denying refund claim of IGST was liable to be set aside; it is not mandatory under section 54 that application for refund has to be made within two years and in appropriate cases, refund application can be made even beyond two years - **Lenovo (India) (P.) Ltd. v. Joint Commissioner of GST (Appeals-1) - [2023] 156 taxmann.com 467 (Madras)**
- 3.41** Where assessee claimed duty drawback at higher rates specified in Column A of relevant notifications, they were entitled to refund of IGST, after deducting differential amount of duty drawback, if said differential amount had not already been returned by petitioner - **Intec Export India (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 583 (Delhi)**
- 3.42** Impugned order was passed rejecting refund application filed by assessee on grounds that no documentary evidence was submitted regarding mode in which export has taken place, since statement filed by assessee clearly indicates date of shipping bills and invoices, impugned order was to be set aside and authorities were directed to process refund application - **Star Publishers Distributors v. Assistant Commissioner of CGST, Range-1 - [2023] 156 taxmann.com 596 (Delhi)**
- 3.43** Recovery by adjustment against refund by appellate authority towards certain outward supply while considering appeal on refund claim is not sustainable; High Court directed passing fresh order - **Abinash Rai v. Assistant Commissioner of West Bengal State Tax - [2023] 156 taxmann.com 595 (Calcutta)**
- 3.44** Where appellate authority held that ITC refund sanction order was erroneous as bills were signed and cleared by Inspector, Custom, who was not authorised officer in terms of Section 51 of Customs Act, signing by officials of Custom was mere irregularity from side of customs department but for such irregularity petitioner should not be penalised when he had produced documents, therefore said appellate order was to be set aside - **Vaishnodevi Advisory (P.) Ltd. v. Deputy Commissioner Central Goods & Services Tax & Central Excise - [2023] 156 taxmann.com 707 (Calcutta)**
- 3.45** Assessee had filed application for refund of tax in respect of goods sold prior to roll out of GST regime and returned by customers within period of six months from appointed date,

revenue shall be bound to consider assessee's application and process refund along with applicable interest - **Consulting Rooms (P.) Ltd. v. Commissioner of State Tax Department of Trade & Taxes - [2023] 156 taxmann.com 704 (Delhi)**

- 3.46** In a case where there is accumulation of unutilised ITC as a direct result of rate of tax on inputs exceeding rate of tax on output supplies, scheme of refund as embodied in section 54(3) of CGST Act, 2017 gets attracted; this statutory scheme of refund of unutilised input tax credit is applicable despite there being multiple inputs and output supplies - **Nahar Industrial Enterprises Ltd. v. Union of India - [2023] 156 taxmann.com 95 (Rajasthan)**
- 3.47** Where refund application of assessee was substantially rejected however, appellate authority allowed appeal of assessee directing authorities to issue refund, revenue could not ignore said order-in-appeal and not comply with same without a competent authority or Court staying said order – **Kunal International v. Union of India - [2023] 156 taxmann.com 295 (Delhi)**
- 3.48** Application for refund was rejected without giving applicant an opportunity of being heard; it was a clear violation of principles of natural justice - **Resource Unlimited v. Joint Commissioner of GST and Central Excise (Appeals) - [2023] 156 taxmann.com 290 (Madras)**
- 3.49** Where order passed by Appellate authority quashing tax penalty and fine was never appealed against and a period of more than 1 year 4 months had gone by, State was not justified in divesting petitioner of his fruits of litigation i.e. refund which had accrued to him - **Ganesh Steel (India) v. State of Punjab - [2023] 156 taxmann.com 293 (Punjab & Haryana)**
- 3.50** Where Appellate Authority had directed revenue to refund ITC to assessee, revenue shall not withhold refund on ground that they had not yet decided whether to review order-in-appeal or to file appeal against said order - **Kunal Autotech (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 674 (Delhi)**
- 3.51** Rectified refund application filed under rule 90(3) CGST Rules, 2017 was not fresh application and hence same was not time-barred, moreover, issuance of deficiency memo does not render original refund application as non est - **Global Health Ltd. v. Union of India - [2023] 156 taxmann.com 375 (Punjab & Haryana)**
- 3.52** Where revised refund application for unutilized input tax credit was filed within limitation period as extended by Supreme Court order, revenue was bound to consider same and pass appropriate orders on merits - **Focus Trading Enterprises v. Joint Commissioner of GST, Appeals I - [2023] 156 taxmann.com 422 (Madras)**

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

- 3.53** Various powers of authorities have been saved including power to scrutiny and audit in respect to period prior to 1-7-2017 by virtue of section 174(2)(e); however, procedure to carry on audit has to be as per section 65 or section 66 of CGST Act, 2017 - **Woodland Works (I) (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 522 (Gauhati)**

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

- 3.54** Where petitioner raised concerns about potential bias since same officer who conducted investigation, search and seizure at petitioner's premises also issued order under section 74, said order was to be set aside and revenue was to be directed to initiate de novo proceedings, taking into account said guidelines outlined in Circular, dated 20-9-2022 - **Swastik Plastics v. Commissioner of DGST - [2023] 156 taxmann.com 316 (Delhi)**
- 3.55** If cash found in search does not form a part of stock-in-trade, it cannot be seized - **Bharatkumar Pravinkumar and Co. v. State of Gujarat - [2023] 156 taxmann.com 136 (Gujarat)**

- 3.56** In search and seizure of a business premises, there cannot be authorisation in respect of each and every person and each and every article, goods, books, and documents which may be discovered during search operation; authorisation is granted in respect of business premises of an assessee as a whole - **Velayudhan Gold LLP v. Intelligence Officer - [2023] 156 taxmann.com 21 (Kerala)**

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

- 3.57** Delay in concluding GST investigation proceedings per se is not a ground to quash a summoning order issued to an assessee again after a two-year gap, unless there are other attending circumstances requiring Court's interference - **Mukesh Kumar Tyagi v. Senior Intelligence Officer - [2023] 156 taxmann.com 131 (Uttarakhand)**

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

- 3.58** Government contractee is liable to pay GST tax and interest on works contracts awarded in pre-GST regime, petitioners was to file representations before concerned authorities to neutralise impact of additional tax burden - **Surajit Dey v. State of West Bengal - [2023] 156 taxmann.com 479 (Calcutta)**
- 3.59** Where proceedings were initiated against petitioner due to discrepancies in GSTINs, but Circular No. GST/2022-03/53, dated 2-1-2023 was issued which was beneficial to petitioner in handling said discrepancies, in view various judicial precedents benefit of circulars or notifications which came into existence during pendency of appeal, even up to stage

of revision could not be denied to assessee, therefore, order initiating proceedings against petitioner was to be set aside and matter was to be remanded back - **Santosh Kumar v. Additional Commissioner, Grade-2 - [2023] 156 taxmann.com 475 (Allahabad)**

3.60 Government was liable to pay GST for subsisting government contracts awarded to petitioners without updating Schedule of Rates to incorporate GST, however, petitioner was required to first file representations with government, and if government failed to resolve issue, petitioner could take legal action - **Babun Rakshit v. State of West Bengal - [2023] 156 taxmann.com 477 (Calcutta)**

3.61 Assessment order passed without hearing and order-in-appeal passed without considering application for condonation of delay are not sustainable; High Court directs assessing authority to decide afresh - **Ramji Kirana Store v. State of U.P. - [2023] 156 taxmann.com 600 (Allahabad)**

3.62 Where petitioner submitted that notification dated 31.03.2023 extending time limit specified under Section 73 by virtue of powers under Section 168A is unjustified as extension has to be for special circumstances and having once extended period by virtue of notification dated 05.07.2022, no subsequent extension could be made, notice was to be issued to respondent-state returnable on 30.11.2023 - **SRSS Agro (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 656 (Gujarat)**

3.63 Where assessee received a show cause notice alleging that it had claimed ITC without proper authorization, based on supplies from a non-existent firm, appellate authority failed to consider documents provided by assessee to demonstrate transactions in dispute, thus, order assessing ITC to be paid by assessee alongwith penalty was to be quashed and matter was remanded back - **Mittal Agro (P.) Ltd v. Commissioner, Commercial Tax, U.P - [2023] 156 taxmann.com 100 (Allahabad)**

3.64 Where so-called three opportunities of hearing were given nominally to petitioner but in reality, no fair opportunity of hearing was given to petitioner to put forth their defence and further, no speaking order was passed showing how explanations/objections offered by petitioner was not satisfactory, impugned orders were wholly untenable not only on ground of total violation of principles of natural justice but also on failure to pass a speaking order - **Star Health and Allied Insurance Company Ltd. v. Commissioner of ST - [2023] 156 taxmann.com 98 (Madras)**

3.65 Once allegations of infraction of law arise, adjudication proceedings may not be interjected in exercise of extraordinary jurisdiction of writ court and limited scope of challenge may be preserved for cases involving inherent lack of jurisdiction or grounds of like nature –

Bajrang Trading Company v. Commissioner Commercial Tax - [2023] 156 taxmann.com 137 (Allahabad)

3.66 If a person chargeable to tax fails to deposit tax collected by him within a period of thirty days from due date of payment of such tax, such a person is liable to pay penalty - **Global Plasto Wares v. Assistant State Tax Officer - [2023] 156 taxmann.com 7 (Kerala)**

3.67 Where two show cause notices for same issue and period were dropped by SGST Authority, third impugned notice issued by CGST authority for same issue and period, principle of natural justice not violated, CGST authorities had authority of law to issue impugned third show cause notice - **South Eastern Coalfields Ltd. v. Principal Commissioner, CGST - [2023] 156 taxmann.com 166 (Chhattisgarh)**

3.68 Where according to petitioner ex-parte order was passed by Commissioner while department submitted that notices were in fact issued to petitioner, writ petition was disposed of by requiring respondents to issue fresh notice to petitioner and thereafter proceed to pass orders - **Dev Builder v. Commissioner, Central Gst and Central Excise - [2023] 156 taxmann.com 162 (Allahabad)**

3.69 Where revenue authorities only served summary of show cause notice and adjudication order on petitioner, initiation of proceedings was bad in law and foundation of proceedings suffered from material irregularity - **Aditya Medisales Ltd.v.State of Jharkhand - [2023] 156 taxmann.com 323 (Jharkhand)**

3.70 Where respondent authorities concerned were liable to bear additional tax liability for execution of subsisting government contracts without updating schedule of rates (SoR) to incorporate applicable GST, petitioners were at liberty to file appropriate representations before Additional Chief Secretary, Finance Department, Government of West Bengal - **Krishna Construction v.State of West Bengal - [2023] 156 taxmann.com 326 (Calcutta)**

3.71 Where petitioner argued that State tax authority's proceedings should be stayed until Central tax authority completes its inquiry against petitioner, however in instant case, in view CBEC Circular D.O.F. No. CBEC/20/43/01/2017-GST, Central tax authority initiated proceedings first, therefore, State tax authority's proceedings for same assessment years should be kept in abeyance and documents produced before State tax authority shall be transmitted to Central tax authority and petitioner was directed to appear before Central tax authority - **Baibhaw Construction (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 378 (Patna)**

3.72 Works contractors were liable to pay GST on payments received from Government contractees even if contracts were awarded prior to GST implementation, however, Government contractees were liable to bear additional tax liability arising from non-inclusion of GST in Schedule of Rates while preparing Bill for payment - **Back Street**

Engineers Co-operative Society Ltd. v. State of West Bengal - [2023] 156 taxmann.com 454 (Calcutta)

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

- 3.73** Where show cause notice issued for cancellation of GST registration was vague and incapable of eliciting any meaningful response, order cancelling GST registration on ground that assessee had not given any response to show cause notice is unsustainable and set aside - **Dipti Industries v. Principal Commissioner of CGST - [2023] 156 taxmann.com 651 (Delhi)**
- 3.74** Where show cause notice issued to assessee under section 74 was claimed to be violating rule 142 and aforesaid show cause notice was also not issued in prescribed format, therefore, Court directed assessee to file objections to show cause notice before department; writ petition was to be disposed of - **Rameshwar Prasad Rajendra Prasad v. Commissioner Central Goods and Services Tax and Central Excise - [2023] 156 taxmann.com 585 (Allahabad)**
- 3.75** Where petitioner had been repeatedly threatened and intimidated and was coerced to deposit a sum of Rs. 1 crore without any show cause notice nor any determination of an amount due, instant writ petition was to be disposed of as petitioner could not be compelled to deposit tax without following procedure under section 74 and section 79 - **Sahil Jain v. Directorate General of GST Intelligence DGGI - [2023] 156 taxmann.com 525 (Delhi)**
- 3.76** Where petitioner challenged proceedings initiated under section 74 of UP GST Act and prayed for quashing order passed thereunder, placed reliance on paragraph 3(d) of circular dated 2-1-2023 and claimed that impugned order though mentioned aforesaid circular, benefit under circular had not been extended to petitioner, impugned order was to be quashed - **Shree Krishna Traders v. State of U.P. - [2023] 156 taxmann.com 476 (Allahabad)**
- 3.77** Where on an earlier occasion, petitioner challenged show cause notice issued by revenue by way of writ petition and said show cause notice was set aside and it was directed that proper officer shall hold pre-show cause notice consultation, as proper officer had followed directions given in earlier order, petitioner should respond to show cause notice and should participate in proceedings - **Nektar Therapeutics (India) (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 246 (Telangana)**
- 3.78** Where assessee was transporting goods without e-way bill during period 01-02-2018 to 31-03-2018, High Court held that requirement of e-way bill was unenforceable during that period, as per precedent set in M/s Godrej and Boyce Manufacturing Co. Ltd and M/s Varun Beverages Limited, consequently penalty imposed on assessee was quashed - **Sunil Traders v. State of U.P. - [2023] 156 taxmann.com 703 (Allahabad)**
- 3.79** Where assessee's ITC account was blocked by revenue without following statutory requirements under CGST Act, 2017 and rules framed therein, Impugned notice was in contravention to provisions of CGST and TSGST Acts and was therefore to be set aside - **A S E India v. Union of India - [2023] 156 taxmann.com 706 (TELANGANA)**
- 3.80** Where petitioner's electronic credit ledger under Rule 86-A(1) was blocked on ground that supplier was not a genuine supplier and said tax supplier had issued bogus tax invoices to enable dealer such as petitioner to avail irregular input tax credit earlier, since Petitioner had appeared to have tax invoices and other collateral evidence to substantiate that supplier had indeed supplied goods and petitioner-assessee had paid disputed tax that had been confirmed vide adjudication order under section 74, adjudication order was to be set aside and case was remitted back to respondent-department to pass a fresh orders on merits and in accordance with law - **Tvl. Surana Enterprises (Firm) v. Assistant Commissioner (ST) - [2023] 156 taxmann.com 2 (Madras)**
- 3.81** Where show cause notice was issued to petitioner under section 74 of UPGST Act, containing a stipulation, 'NA' in place of date of hearing, no opportunity of hearing was given before passing order under section 74, principle of natural justice was not followed, thus, impugned order was to be set aside - **Gaurav Enterprises v. State of U.P. - [2023] 156 taxmann.com 321 (Allahabad)**
- 3.82** Where revenue authority erred in rejecting appeal as time barred and assessee was denied principles of natural justice, matter was to be remitted back to revenue for fresh consideration - **Murtaza B Kaukawala v. State of West Bengal - [2023] 156 taxmann.com 377 (Calcutta)**
- 3.83** Impugned order was passed pursuant to show cause notice, issued to assessee under section 74, read with rule 142(1A) without issuing any intimation, since majority of tax period in assessment relates to pre-amendment of rule 142(1A), GST Officer ought to issue intimation before issuing show cause notice under section 74 and therefore, impugned order was to be set aside and authorities were directed to issue fresh tax intimation as per law - **New Morning Star Travels v. Deputy Commissioner (ST) - [2023] 156 taxmann.com 427 (Andhra Pradesh)**
- 3.84** Assessee's contention that opportunity of hearing was not granted to assessee could not be accepted as assessee was having knowledge of notice but did not appear before authorities, therefore, no interference was required in notice as well as consequential order passed by revenue imposing

penalty and interest under section 74(9) - **Modern Steel v. Additional Commissioner** - [2023] 156 taxmann.com 452 (Allahabad)

3.85 Where assessee replied to an intimation in Form DRC-01A under section 74 issued by revenue, but revenue failed to consider reply/objections made by petitioner and passed a non-speaking order, therefore said failure on part of revenue, would vitiate impugned proceedings and order issued under section 74 was to be set aside and matter was remitted back - **SCM Silks (P.) Ltd. v. Assistant Commissioner (ST)** - [2023] 156 taxmann.com 449 (Madras)

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

3.86 Where order was passed by revenue authorities without providing opportunity of hearing to assessee concerned, same being violative of principles of natural justice was liable to be quashed - **Jai Vindhya Udyog v. State of U.P.** - [2023] 156 taxmann.com 210 (Allahabad)

3.87 Where assessee successfully challenged recovery notice issued by revenue authorities, who were found to have not followed procedural safeguards prescribed under rule 88C of the CGST Rules, 2017, therefore revenue authorities were to be directed to issue appropriate notice in accordance with rule 88C of the CGST Act - **Caterpillar India (P.) Ltd. v. Assistant Commissioner** - [2023] 156 taxmann.com 103 (Madras)

3.88 Revenue authority violated principles of natural justice by passing order and confirming demands based on SCN which lacked specificity about personal hearing, without granting an opportunity of hearing to assessee - **Panther Security Guard Services v. State of U.P.** - [2023] 156 taxmann.com 99 (Allahabad)

3.89 Person/assessee is not required to request for 'opportunity of personal hearing' and it remained mandatory upon Assessing Authority to afford such opportunity before passing an adverse order - **S.A. Traders v. State of U.P.** - [2023] 156 taxmann.com 132 (Allahabad)

3.90 Where show cause notice was issued alleging fraud, wilful misstatement, or suppression of facts without specifying specific allegations, subsequent order cancelling GST registration with retrospective effect without providing any reasons was violative of principles of natural justice and same was to be set aside - **Vijay Sales Enterprises v. Superintendent Range-25** - [2023] 156 taxmann.com 455 (Delhi)

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

3.91 Show cause notice was issued after initiation of proceedings under section 67; proceedings would fall under Chapter XV and, thus, attachment of bank account of petitioner was proper; such attachment would be enforced for a period of one year - **Dholagiri Enterprises v. Commissioner, CGST** - [2023] 156 taxmann.com 96 (Punjab & Haryana)

3.92 Since provisional attachment of bank account ceased to be in operation after expiry of one year from date of attachment order and all three consecutive orders issued by respondent-department against petitioner-assessee in order to continue provisional attachment of petitioner's bank account being elapsed were inoperative as per section 83, therefore, present petition was disposed of by directing that concerned bank should not interdict operation of petitioner's bank accounts - **Parisha Sharma v. Union of India** - [2023] 156 taxmann.com 247 (Delhi)

3.93 Where petitioner was issued SCNs pointing out discrepancies in ITC availed under returns, without affording any opportunity to be heard, impugned order passed raising demand, pending appeal respondents proceeded to provisionally attach petitioner's bank account, counsel for respondents stated appeal listed on 19-10-2023 be disposed of expeditiously and meanwhile attachment order would be lifted, petition was to be disposed of binding down respondents to statement made on its behalf - **CCN Digital (P.) Ltd. v. Commissioner of State Goods & Services Tax** - [2023] 156 taxmann.com 209 (Delhi)

3.94 Show cause notice and order cancelling registration clearly did not provide for any reason; hence, cancellation of registration was not justified, petitioner needed to invoke remedy provided in sub-rule (5) of rule 159 of CGST Rules in respect of order of attachment - **Afzal Husain Saiyed v. Principal Commissioner of Central Tax** - [2023] 156 taxmann.com 381 (Bombay)

3.95 Attachment of bank account after expiry of prescribed period without passing fresh orders would surely be illegal being in violation of rights of assessee for carrying on business under article 19 of Constitution of India and, thus, after expiry of one-year period as prescribed under section 83, it is incumbent upon authorities to release provisional attachment; if even on expiry of a year, very purpose for which exercise of provisional attachment was done was not completed, authority should inform bank by issuing a fresh order of provisional attachment - **Grabdeal International v. Union of India** - [2023] 156 taxmann.com 313 (Gujarat)

3.96 Where property was provisionally attached by revenue authorities under section 83 of CGST Act, aggrieved assessee could challenge attachment order by filing objection under sub-rule (5) of rule 159 of CGST Rules - **Ashok Kumar Vishwakarma v. Union of India** - [2023] 156 taxmann.com 426 (Bombay)

SECTION 88 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMPANY IN LIQUIDATION, LIABILITY OF PAY TAX

3.97 Where company was in process of liquidation and Official Liquidator was appointed, revenue should have approached Official Liquidator to recover sales tax dues, if Official Liquidator would determine that company has no sufficient funds to settle sales tax dues, then revenue may proceed against Ex. directors of company - **Smt. K. Malathi v. State Tax Officer (Inspection-Group IV) - [2023] 156 taxmann.com 555 (Madras)**

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

3.98 Where assessment order had not been served on petitioner and only a summary of same had been uploaded in web portal, an opportunity to file a statutory appeal was to be given to petitioner as disputed tax had been recovered - **Classic Engineering Enterprises v. Assistant Commissioner (CT) - [2023] 156 taxmann.com 520 (Madras)**

3.99 Assessee failed to file reply and appear in-person before Authority though aware of fact that impugned order was going to be passed and time limit to file appeal expired, writ petition against impugned attachment order was not to be entertained - **Tvl. Rahman Steel Traders v. Assistant Commissioner (ST) - [2023] 156 taxmann.com 581 (Madras)**

SECTION 101 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - APPELLATE AUTHORITY - ORDERS OF

3.100 Goods in transit were intercepted and weight in e-way bill was found higher than actual weight, notice issued and impugned penalty order was passed, appeal was also dismissed, after detaining goods, notice issued and before seizure order passed, correct e-way bill produced cancelling earlier e-way bill, no adverse inference could be drawn, petitioner was not put to any notice or opportunity afforded to bring material on record, violation of principle of natural justice, impugned orders were to be quashed - **New India Traders v. State of U.P - [2023] 156 taxmann.com 518 (Allahabad)**

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

3.101 Where impugned order was passed dismissing appeal of assessee due to absence of assessee during the proceedings, since appellate authority had a duty and an obligation under statute to look into merits of matter and decide issue on merits, impugned order was to be set aside and appeal was to be restored before appellate authority - **S K Construction and Co. v. State of Bihar - [2023] 156 taxmann.com 553 (Patna)**

3.102 Where revenue alleged that petitioner continued its business activities even after GST registration

cancellation and issued notices to petitioner, as petitioner was not without any remedy, instant writ petition was to be disposed of by giving liberty to petitioner to file a statutory appeal before appellate authority - **Ambika Stores v. Deputy State Tax Officer-I - [2023] 156 taxmann.com 474 (Madras)**

3.103 Where show cause notice was issued to petitioner alleging that petitioner availed ITC on basis of invoices issued by non-existent firms, petitioner having alternate remedy of appeal, instant writ petition challenging said SCN was to be dismissed - **Universal Enterprises v. Union of India - [2023] 156 taxmann.com 601 (Allahabad)**

3.104 Where petitioner/assessee being uneducated and not capable to peruse notices and orders in GST portal could not file appeal within stipulated time, petitioner was to be granted liberty to file appeal and appellate authority was to entertain same without insisting upon limitation - **Tvl. Ram Metals v. Assistant Commissioner (State Tax) - [2023] 156 taxmann.com 598 (Madras)**

3.105 Where alternate remedy for filing an appeal against adjudication order was present but assessee filed a writ petition instead of appeal, therefore, writ petition was disposed of directing assessee to file a statutory appeal - **Agarwal Steel v. Commissioner Goods and Services Tax - [2023] 156 taxmann.com 677 (Allahabad)**

3.106 Where order was passed by revenue dismissing appeal of petitioner/assessee without granting opportunity of hearing said order was liable to be quashed - **Vighnaharta Const. State of U.P. - [2023] 156 taxmann.com 673 (Allahabad)**

3.107 Where appellate authority had not considered submissions of assessee and had not given his reasons in impugned order while deciding limitation issue, order in appeal was to be quashed - **IMS Ship Managements (P.) Ltd. v. State of Maharashtra - [2023] 156 taxmann.com 97 (Bombay)**

3.108 Where petitioner appeal under sub-section (1) of section 107 of OGST Act was not admitted being in contravention to sub-sections (1) and (4) of section 107 of GST Act, second Appellate Tribunal been not constituted, as an interim measure subject to petitioner depositing entire tax demand, rest of demand was to remain stayed during pendency of writ petition - **Saroj Kumar Chhotray v. Commissioner of CT & GST - [2023] 156 taxmann.com 314 (Orissa)**

3.109 Where taxable persons, who could not file an appeal on or before 31-3-2023 against order passed under section 73 or section 74 within time period specified in section 107(1) or appeal was filed but same was rejected solely on grounds that said appeal was not filed within time period, in view of Notification No. 53/2023, dated 2-11-2023, matter was remanded to appellate authority - **Pravat Kumar Choudhury v. Additional State Tax Officer - [2023] 156 taxmann.com 312 (Orissa)**

3.110 Where appeal against order passed by revenue was rejected on ground of delay, since, GST Council in 52nd meeting had extended period of limitation for filing appeal against order passed under section 74 till 31-1-2024 under amnesty scheme, said appellate order was to be set aside - **Modern Steel v. Additional Commissioner** - [2023] 156 taxmann.com 452 (Allahabad)

3.111 Where assessee handed over money to her CA but CA of assessee defaulted in making payment of tax, interest and penalty and assessee's belated appeal was rejected, matter was to be readjudicated as innocent assessee could not suffer injustice for default of her CA - **Jayshree Bhardwah v. Deputy Commissioner of Revenue W.B.State Tax** - [2023] 156 taxmann.com 329 (Calcutta)

3.112 Where assessee wanted to avail remedy under provisions of law by approaching Appellate Tribunal, which had not yet been constituted, as an interim measure subject to assessee depositing entire tax demand, rest of demand would remain stayed during pendency of instant writ petition - **Deepak Kumar Khatua v. CT and GST Officer** - [2023] 156 taxmann.com 163 (Orissa)

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

3.113 Where petitioner wants to avail alternative remedy under section 112 which had not been constituted yet, as an interim measure subject petitioner depositing entire tax demand within 15 days and demand should be stayed - **Sagar Parmanik v. Commissioner of CT & GST** - [2023] 156 taxmann.com 521 (Orissa)

3.114 Where petitioner wants to avail alternative remedy under section 112 which had not been constituted yet, as an interim measure subject petitioner depositing entire tax demand within 15 days and demand should be stayed - **Niranjan Parmanik v. Commissioner of CT & GST, Odisha** - [2023] 156 taxmann.com 580 (Orissa)

3.115 Where State has not constituted Appellate Tribunal and extended period of **limitation** for filing appeal, assessee shall be entitled to stay on recovery of tax subject to depositing 20% of remaining tax amount - **Cohesive Infrastructure Developers (P.) Ltd. v. Central Board of Indirect Taxes and Customs** - [2023] 156 taxmann.com 652 (Patna)

3.116 Where 2nd appellate tribunal was not constituted and there was delay in preferring appeal against order of 1st appellate authority, writ petition was maintainable, subject to deposit of entire tax demand as interim measure - **Lingaraj Pradhan v. Commissioner of CT & GST** - [2023] 156 taxmann.com 648 (Orissa)

SECTION 122 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PENALTY - FOR CERTAIN OFFENCES

3.117 Where order was passed against petitioner imposing penalty of Rs.28,00,476, however, there was allegation against petitioner of evasion, but only allegation was that amount was paid after a delay, maximum punishment in said situation would be Rs 10,000 as per section 126(2), therefore said order was to be set aside and petitioner was directed to pay Rs 10,000 as penalty - **Clear Secured Services (P.) Ltd. v. Commissioner, State Tax GST** - [2023] 156 taxmann.com 645 (Allahabad)

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

3.118 Where goods were accompanied by valid e-way bill and vehicle carrying goods was delayed due to an unavoidable circumstance, such as breakdown, penalty for expired e-way bill shall not be imposed - **Sun Flag Iron and Steel Co. Ltd. v. State of U.P.** - [2023] 156 taxmann.com 554 (Allahabad)

3.119 Penalty order was passed under section 129 on grounds that 'Part B' of e-way bill was not filled, since finding of fact, which has been recorded against assessee has not been assailed, assessee cannot be permitted to argue case beyond pleadings and accordingly, petition was to be set aside and impugned order was upheld - **Millennium Impex (P.) Ltd. v. Additional Commissioner Grade-2** - [2023] 156 taxmann.com 602 (Allahabad)

3.120 Where assessee's vehicle was detained to a missing Part-B on e-way bill, since assessee had no intention to evade tax as goods were sent as a stock transfer and technical breach in e-way bill was rectified promptly by assessee, penalty was not justified, therefore order imposing penalty was to be quashed and fine/penalty deposited by petitioner was to be refunded with interest - **Vacmet India Ltd. v. Additional Commissioner Grade-2 (Appeal)** - [2023] 156 taxmann.com 317 (Allahabad)

3.121 Where a penalty order was passed under section 129(1)(b) by not treating assessee to be owner of goods, since intention to evade tax is a prerequisite for imposition of penalty under section 129 and e-way bills being documents of title to goods were accompanying goods, therefore, conclusion of revenue that assessee was not owner of goods was patently erroneous, accordingly, impugned penalty order was set aside - **Sanjay Sales Agency v. State of U.P.** - [2023] 156 taxmann.com 298 (Allahabad)

3.122 Where revenue authorities failed to consider attending circumstances and prove intention of assessee to evade tax, therefore, penalty order passed against assessee was to be quashed - **Balaji Traders v. State of U.P.** - [2023] 156 taxmann.com 256 (Allahabad)

3.123 Where goods in transit were found to be different than that mentioned in accompanying document, but before detention and seizure order could be passed, petitioner produced another bill i.e. tax invoice along with e-way bill, thus, curing discrepancy, imposition of penalty was not justified - **Galaxy Enterprises v. State of U.P.** - [2023] 156 taxmann.com 291 (Allahabad)

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

3.124 Where accused in GST fraud case had changed their stance on their dealings with fraudulent firm, were unable to provide contact details of persons with whom they had transacted business, and gave evasive answers to questions about their business transactions, custodial interrogation was necessary to unearth entire chain of transactions linked with fraudulent firm - **Shashi Kant Gupta v. State Through Incharge Economic Office Wing Section VII** - [2023] 156 taxmann.com 478 (Delhi)

3.125 Applicant/accused was entitled to be released on regular bail, as there was no evidence to support charges against applicant/accused and police did not have authority and jurisdiction to investigate tax evasion - **Mohammad Faizal Afzalbhai Kholiya v. State of Gujarat** - [2023] 156 taxmann.com 257 (Gujarat)

3.126 Where applicant-assessee was arrested for evasion of GST, and investigation was over but no procedure was initiated by GST department against applicant under provisions of GST Act, application of regular bail was allowed and applicant was ordered to be released on regular bail - **Usangani @ Usman Bungalow Rafikbhai Fatan v. State of Gujarat** - [2023] 156 taxmann.com 3 (Gujarat)

3.127 Where summons issued by revenue authority has been properly replied to and GST had already been paid, in such cases, continuing criminal proceedings against would have been an abuse of legal process and same were to be quashed - Satyendra **Singh Kushwah v. State of Jharkhand** - [2023] 156 taxmann.com 315 (Jharkhand)

3.128 Where no material evidence was found against assessee/accused and co-accused had already been released on bail, assessee/accused was to be granted bail in a GST evasion case - **Murshid Alam Saiyad v. State Of Gujarat** - [2023] 156 taxmann.com 296 (Gujarat)

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

3.129 Where limitation period for claiming transitional credit had expired, and assessee had not filed application for extension of limitation period within reasonable time,

revenue shall not be obliged to extend limitation period - **Malabar Cements Ltd. v. Assistant Commissioner, Central Tax and Central Excise** - [2023] 156 taxmann.com 701 (Kerala)

3.130 Where transitioned input tax credit was allowed by revenue but was not reflected in petitioner's electronic credit ledger, in view of Union of India v. Filco Trade Centre (P.) Ltd. [2022] 142 taxmann.com 89 (SC) revenue was directed to take steps to ensure that said credit was reflected in petitioner's electronic credit ledger in web portal - **Stanley Engineered Fastening India (P.) Ltd. v. State Tax Officer** - [2023] 156 taxmann.com 473 (Madras)

3.131 Where assessee through show cause notice was denied transfer of TDS from pre-GST era to post-GST era, SCN was illegal and contrary to law and assessee was entitled to transition TDS - **Indiabulls Construction Ltd. v. Assistant Commissioner (ST)** - [2023] 156 taxmann.com 451 (Madras)

3.132 Writ petitions challenging rule 117 of CGST Rules, 2017 and seeking relief on GST electronic credit, were rendered infructuous in light of Union of India v. FILCO Trade Centre (P.) Ltd. [2022] 142 taxmann.com 89 (SC) allowing petitioner to file a fresh consolidated petition for comprehensive consideration of all issues - **Gulf Oil Lubricants India Ltd. v. Union of India** - [2023] 156 taxmann.com 379 (Bombay)

3.133 Where assessee was denied benefit of transitional credit for excess tax paid under TNVAT Act, Madras High Court held that assessee was entitled to carry forward ITC of TDS under TNVAT Act to GST regime - **Harshandh Construction (P.) Ltd. v. Assistant Commissioner (ST)** - [2023] 156 taxmann.com 376 (Madras)

SECTION 141 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TRANSITIONAL PROVISIONS - JOB WORK

3.134 Where due to enhancement of rate of GST after introduction of GST, for differential 6 per cent GST approval sought by concerned State highways authority from higher authorities was pending, respondent-State GST authority was to be directed to dispose of petitioner's representation and to take steps for getting amounts due from State highways authority directly - **Vediappan v. Secretary to Government** - [2023] 156 taxmann.com 324 (Madras)

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

3.135 Where petitioner-assessee was granted extended time period to file reply to show cause notice for personal hearing issued by respondent-department, but no reply was filed by petitioner, therefore, no interference was required with regard to said assessment order passed by respondent, however, respondent-department was to be directed to consider rectification application and pass appropriate orders - **Nelson Travels v. Assistant Commissioner (ST)** - [2023] 156 taxmann.com 524 (Madras)

3.136 Where representation was made by assessee to rectify GSTR-3B for shifting ITC, which was already claimed, from one head to another and same was simply rejected by department, since rights available to assessee to correct mistake is by filing a rectification application under section 161, which was not filed, petition was dismissed directing assessee to file rectification application as per section 161 - **Kondamma Trading v. Assistant Commissioner of Central Goods and Services Tax & Central Excise - [2023] 156 taxmann.com 213 (Madras)**

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

3.137 As per section 168 power to issue instructions or directions to central tax officers is vested exclusively in Central Board of Indirect Taxes and Customs, and Tax Research Unit does not have authority or jurisdiction to issue such clarifications independently, therefore circular no 80/54/2018-GST issued by TRU clarifying classification of polypropylene woven and non-woven bags was to be set aside - **Association of Technical Textiles Manufacturers and Processors v. Union of India - [2023] 156 taxmann.com 421 (Delhi)**

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

3.138 Audit carried out by respondent authorities by issuance of notice on 17-8-2017 could not be said to be without jurisdiction or authority, and consequently, issuance of impugned demand-cum-show cause notice dated 7-5-2019 could not also said to be without jurisdiction or nugatory in view of saving of power of audit and recovery vide section 174(2)(e) of CGST Act, 2017 - **Woodland Works (I) (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 522 (Gauhati)**

4. NCLAT

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

4.1 Where respondent filed an appeal before CESTAT in respect of their GST dues and made 7.5% mandatory deposit of principal amount for filing of appeal, since 'pre-deposit for filing appeal is not payment of duty', said filing of appeal by respondent could not be viewed as extinguishment of claim of GST department - **Sarvesh Kashyap, Liquidator of Helpline Hospitality (P.) Ltd. v. T.S. Murali - [2023] 156 taxmann.com 694 (NCLAT- New Delhi)**

5. AAAR

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

5.1 Central Air Conditioners become a part of building once it is installed in a building, therefore, it is an immovable property and it ceases to fall under category of plant and machinery, hence, ITC on supply of central air conditioner is not available in terms of Section 17 - **Varachha Co-op. Bank Ltd., In re - [2023] 156 taxmann.com 4 (AAAR-GUJARAT)**

5.2 Electrical fittings on installation, become a part of building which is constructed by appellant-assessee, therefore, it becomes an immovable property and Input Tax Credit on same is not available terms of Section 17 - **Varachha Co-op. Bank Ltd., In re - [2023] 156 taxmann.com 4 (AAAR-GUJARAT)**

5.3 Roof Solar Plant is not permanently fastened to building constructed by appellant-assessee, thus, it qualifies as a plant and machinery and is not an immovable property, therefore, it is not covered under blocked credit as mentioned in Section 17; Appellant is eligible for input tax credit on installation of roof solar plant - **Varachha Co-op. Bank Ltd., In re - [2023] 156 taxmann.com 4 (AAAR-GUJARAT)**

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

5.4 Lift/elevator is an integral part of immovable property and after installation, it becomes a part of immovable property, therefore, it is an immovable property and it ceases to fall under category of plant and machinery, hence, ITC on supply of lift/elevator is not available in terms of Section 17 - **Varachha Co-op. Bank Ltd., In re - [2023] 156 taxmann.com 4 (AAAR-GUJARAT)**

5.5 Where fire extinguishers are permanently attached to building and once fire extinguishers are fitted in building, they cease to be a movable property, therefore, it becomes an immovable property and Input Tax Credit for same is not available in terms of Section 17 - **Varachha Co-op. Bank Ltd., In re - [2023] 156 taxmann.com 4 (AAAR-GUJARAT)**

5.6 Where Appellant-assessee is constructing a new building and incurring cost on various services fees charged for professional services should be capitalized as per Accounting Standards 10, since appellant-assessee did not capitalize architect services and interior designer services, therefore, Input Tax Credit for same is blocked under Section 17 - **Varachha Co-op. Bank Ltd., In re - [2023] 156 taxmann.com 4 (AAAR-GUJARAT)**

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

5.7 Appeal by recipient of services against ruling of AAR not maintainable. AAR ought not have admitted application from recipient at first place - **Lucknow Producers Cooperative Milk Union Ltd. - [2023] 156 taxmann.com 678 (AAAR-UTTAR PRADESH)**

6. AAR

CLASSIFICATION OF GOODS

- 6.1 **Tapioca flour** : Residue obtained during tapioca starch manufacturing process is classifiable under Heading No. 230310 and liable to 5 per cent GST; exemption is not available as it is not used directly as cattle feed - **V.S. Trading Company, In re - [2023] 156 taxmann.com 424 (AAR - TAMILNADU)**

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

- 6.2 Services for development of plots, such as leveling and drainage work, are taxable under GST as works contracts - **Vaishnai Infratech and Developers (P.) Ltd., In re - [2023] 156 taxmann.com 133 (AAR- TELANGANA)**

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

- 6.3 Treated effluent water is classifiable under Heading No. 2201 and eligible for exemption as per Notification No. 2/2017-Central Tax(Rate), as it contains impurities after treatment also and could be reused in industries - **Veerapandi Common Effluent Treatment Plant (P.) Ltd., In re - [2023] 156 taxmann.com 453 (AAR - TAMILNADU)**

- 6.4 Services of printing question papers for educational institutions exempt from GST under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), as amended - **Saraswaty Press Ltd., In re - [2023] 156 taxmann.com 63 (AAR- WEST BENGAL)**

- 6.5 Tax is not payable by applicant on supply of 'broken rice' if same is supplied 'other than pre-packaged and labelled' as specified in Notification No. 7/2022-Central Tax (Rate), dated 13-7-2022 - **Tamal Kundu, In re - [2023] 156 taxmann.com 64 (AAR-WEST BENGAL)**

SECTION 13 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - TIME OF SUPPLY OF SERVICES

- 6.6 TDR time of supply is 60 days after invoice and development services time of supply is due date of payment or actual payment date - **Vaishnai Infratech and Developers (P.) Ltd., In re - [2023] 156 taxmann.com 133 (AAR-TELANGANA)**

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

- 6.7 Value of supply for GST is determined based on CGST Act and Rules, with rule 30 applied when value is not separately specified - **Vaishnai Infratech and Developers (P.) Ltd., In re - [2023] 156 taxmann.com 133 (AAR- TELANGANA)**

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

- 6.8 Developers can claim input tax credit (ITC) on transfer of development rights if they meet specified conditions and ITC can be utilized when discharging GST liability for development services - **Vaishnai Infratech and Developers (P.) Ltd., In re - [2023] 156 taxmann.com 133 (AAR- TELANGANA)**

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

- 6.9 Sale of developed land is considered as sale of land and is covered by Schedule III of CGST Act, which does not attract GST - **Vaishnai Infratech and Developers (P.) Ltd., In re - [2023] 156 taxmann.com 133 (AAR- TELANGANA)**

- 6.10 Transfer of development rights is taxable under CGST and SGST at rate of 9 per cent each, with liability falling on recipient promoter/applicant under reverse charge - **Vaishnai Infratech and Developers (P.) Ltd., In re - [2023] 156 taxmann.com 133 (AAR- TELANGANA)**

7. CCI

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

- 7.1 Input tax credit (ITC) availed as a percentage of turnover after implementation of GST is lesser than ITC availed before GST and therefore, anti-profiteering provisions are not applicable - **Vivek Kumar v. Bhartiya Urban (P.) Ltd. - [2023] 156 taxmann.com 5 (CCI)**

Job Work under GST-A COMPREHENSIVE STUDY



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Introduction:

Job-work sector constitutes a significant industry in Indian economy. It includes outsourced activities that may or may not culminate into manufacture. The term Job-work itself explains the meaning. It is processing of goods supplied by the principal. The definition of job-work already exists in Central Excise and the job worker plays a major part in the Indian economy due to involvement in the processing of input or unfinished goods. GST makes the Principal (the owner of the goods) take care of compliance on behalf of the job worker. The whole idea is to make principal responsible for meeting compliances on behalf of the job-worker on the goods processed by him (job-worker), considering the fact that typically the job-workers are small persons who are unable to comply with the discrete provisions of the law.

The GST Act makes special provisions with regard to removal of goods for job-work and receiving back the goods after processing from the job-worker without payment of GST. The benefit of these provisions shall be available both to the principal and the job-worker.

What is Job-work?

Section 2(68) of the CGST Act, 2017 defines Job-work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job-worker'. The ownership of the goods does not transfer to the job-worker but it rests with the principal. The job-worker is required to carry out the process specified by the principal, on the goods.

Registration Requirements of Job-worker: Job workers are required to register under GST if their aggregate annual turnover exceeds the threshold limit of Rs. 20 lakhs (or Rs. 10 lakhs for businesses located in the special category states). In addition, if the job worker is registered under GST, then the principal must provide their GST registration number to the job worker.

Job work procedure:

A registered person (Principal) can send inputs/ capital goods under intimation and subject to certain conditions without payment of tax to a job-worker and from there to another job-worker and after completion of Job-work bring back such goods without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods sent to job-worker.

Principal can send inputs or capital goods directly to the job-worker without bringing them to his premises, still the principal can avail the ITC of tax paid on such inputs or capital goods. **The details of challans in respect of goods dispatched to a job worker or received from a job worker, Principal has to file ITC-04 in quarterly basis. FORM GST ITC-04 will serve as the intimation U/s 143.**

However, inputs and/or capital goods sent to a job worker are required to be returned to the principal within 1 year and 3 years, respectively, from the date of sending such goods to the job-worker [the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively]. Further, the provision of return of goods is not applicable in case of moulds and dies, jigs and fixtures or tools supplied by the principal to job-worker.

The procedure for Job Work under GST involves several steps, including documentation, invoicing, and the transfer of goods.

1. **Dispatching Goods for Job Work:** The principal must first send raw materials or semi-finished goods to the job worker for processing, assembly, or completion. They must prepare a delivery challan containing details such as the description of goods, quantity, value, GST identification number of the supplier, and the job worker.
2. **Delivery Challan:** Once the job work is completed, the job worker must update the delivery challan to include the details of the processed goods. The updated delivery challan must be sent back to the principal. The delivery challan shall be prepared in triplicate copy.
3. **Receiving the Processed Goods:** The principal must receive the processed goods along with the updated delivery challan from the job worker. They must also verify the quantity and quality of the goods received.
4. **Issue Tax Invoice:** If the processed goods are supplied back to the principal, then the job worker can issue a tax invoice to the principal. The tax invoice must contain details such as the name and address of the supplier and recipient, GST identification number, description of goods, quantity, value, and applicable GST rate.
5. **Pay GST:** The principal must pay GST on the value of the processed goods supplied by the job worker at the applicable GST rate. If the job worker supplies the processed goods to a third party, then the job worker must issue a tax invoice and pay GST on the value of the goods.
6. **Claim Input Tax Credit:** The principal can claim input tax credit for the GST paid on the raw materials or semi-finished goods sent for job work. However, the job worker cannot claim input tax credit for the GST paid on those materials.
7. **Maintain Records:** Both the principal and job worker must maintain records of the goods sent for job work, processed goods received, and any tax invoices issued or received. These records must be kept for a period of 6 years from the due date of filing of Annual Return of the relevant financial year.

The Responsibilities Lie with The Principal:

1. **The principal issues the challan to the job worker for the inputs or capital goods:** The inputs or capital goods shall be sent to the job-worker under the cover of a challan issued by the principal. The challan shall be issued even for the inputs or capital goods sent directly to the job-worker. The challan shall contain the details specified in Rule 55(1) of the CGST Rules, 2017.

2. **Maintaining the accounts of input and capital goods:** The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

3. **Intimate the jurisdictional officer:** Before supply of goods to job-worker, principal would be required to intimate the Jurisdictional Officer containing the details of description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker. The said intimation shall also contain the details of another job-worker, if any.

After processing of goods, the job-worker may clear the goods to-

- another job-worker for further processing;
- send the goods to any of the place of business of the principal without payment of tax;
- remove the goods on payment of tax within India or without payment of tax for export outside India on fulfillment of specified conditions.

The facility of supply of goods by principal to the third party directly from the premises of the job-worker on payment of tax in India likewise with or without payment of tax for export may be availed by the principal on declaring premises of the job-worker as his additional place of business in registration. In case the job-worker is a registered person under GST, even declaring the premises of the job-worker as additional place of business is not required.

Provision regarding clearance of waste:

Pursuant to Section 143(5) of the CGST Act, 2017, waste generated at the premises of the job-worker may be supplied directly by the registered job-worker from his place of business on payment of tax or such waste may be cleared by the principal, in case the job-worker is not registered.

GST Rate on Job Work

The GST council further reduced the GST rate on the engineering job work from 18 % to now 12% while the diamond supply job work is now under the 1.5% GST rate from 5%. Also in GST circular 126/45/2019, it has been clarified that all the registered taxpayers under job work are to be levied with 12% GST and hence the unregistered taxpayers under the GST job work will have to give 18% GST rate.

| Service Provider (Job Worker) | Service Recipient (Principal) | GST Rate |
|-------------------------------|-------------------------------|----------|
| Registered | Registered | 12% |
| Registered | Unregistered | 18% |
| Unregistered | Unregistered | No GST |

E- Way bill:

As per Rule 138 of CGST Rules, where Principal and job worker are located in the different states, E-way bill must be generated for inter-state movement without considering threshold limit of Rs. 50,000/-. For intra-state movement, the threshold limit of Rs. 50,000/- Rs. 1,00,000/- limit as applicable in such state would apply.

- E-Way Bills are mandatory for the transportation of goods within West Bengal for job work with effect from 01/12/2023.

- This applies irrespective of the distance between the job worker's location and the principal's location or vice versa.
- It's crucial when the estimated value of goods (consignment value) in the vehicle is ₹50,000/- or more.
- Applicable for movements made in motorized conveyance.

Furnishing of returns [rule 45(3) and rule 45(4) of the CGST Rules]

a. The principal is required to submit a quarterly return in Form GST ITC-04 summarizing details of challans regarding goods dispatched to or received from the job worker. The return in Form GST ITC-04 is to be submitted within a period of 25 days of the month succeeding the end of the respective quarter.

b. While filing return in Form GSTR-1, in Table 13 at sr. no. 9 basic details like serial no. of challans issued to and from the job work; total number; cancelled challan numbers and net issued is to be mentioned.

c. Further, in cases, wherein, inputs/ capital goods are not returned back within the prescribed time limit and accordingly the principal is liable to pay the tax. The same is to be declared as supply while filing a return in Form GSTR-1.

The Board vide Circular No. 38/12/2018 dated 26.03.2018 has elaborately clarified many issues related to Job-work. Circular No. 88/07/2019 dated 01.02.2019 has amended certain portions of earlier Circular No. 38/12/2018 dated 26.03.2018. Circular No.126/45/2019-GST dated 22.11.2019 has clarified scope of certain notification entry, related to job work, of Notification No.11/2017-CentralTax (Rate) dated 28.06.2017.

Consequences for Non-Compliance: Non-compliance with Job Work requirements under GST can have several consequences, including penalties and interest charges. Here are some of the consequences of non-compliance:

Penalty: If a business fails to comply with the requirements for Job Work under GST, they may be liable to pay a penalty. The amount of the penalty depends on the nature and severity of the non-compliance. The penalty may be up to 10% of the tax payable or Rs. 10,000, whichever is higher.

Interest: If a business fails to pay the GST liability on time, they may be liable to pay interest on the amount due. The interest rate is usually 18% per annum and is calculated from the due date of payment till the actual date of payment.

Seizure of goods: In some cases, the tax authorities may seize the goods sent for job work if the business fails to comply with the Job Work requirements under GST. This can result in a loss of business and revenue for the business.

Prosecution: If the non-compliance is found to be intentional or fraudulent, the business may face prosecution. This can result in fines, imprisonment or both.

Some major doubts under Job Work:

1. Whether goods imported for the purpose of Job work and re-exported would be liable for GST?

Ans :- Up to 31st January 2019, as there was no specific provision to exclude such job work activity, GST was said to be liable on such transactions, and not as a zero-rated supply. This was in contrast to the erstwhile Excise law, which provided exemption for such activity.

From 1st February 2019 onwards (based on recent IGST Amendment Act) – GST not liable on such job work activity, could be covered under Export of Services (zero-rated supply). Proviso to section 13(3)(a) of IGST Act has been amended which prescribes the place of supply would not be the location where services are performed. This ensures that the place of supply would be the location of the recipient (outside India).

2. Whether goods sent for repairs & maintenance is considered as job work?

Ans :- No, repairs & maintenance and job work are two different concepts under GST. The intention of the customer/principal, and the activity itself should define whether it is to 'repair' such goods, or to undertake any 'process or treatment' on such goods. Also, another indicator could be –

Repairs & maintenance – do not change the nature of the goods.

Job work – may result in a change of nature of the goods.

Repairs & maintenance falls under HSN code 9987, whereas job work falls under HSN code 9988, which also indicates, there is a difference between the two.

3. When the goods sent to job worker and same has been lost / destroyed at job worker premises, will it be considered as deemed supply?

Ans :- Situation 1 When goods are destroyed after receipt of goods by job worker:

In this case Principal needs to treat it as a deemed supply and raise tax invoice for the same, as the goods cannot be returned within time limit prescribed.

Situation 2 When goods destroyed before receipt of goods to job worker (goods in transit): In this case principal need to reverse ITC according to Section 17(5)(h), as the goods are destroyed in the transit where possession of goods are not yet transferred to the job worker.

4. What value is to be provided in the E-way bill, while returning goods from job worker after completion of job work?

Ans :- a. Considering Rule 138 of CGST Rules, 2017 read with explanation 2, EWB is required for movement of goods of consignment value more than 50,000/100000 which requires to disclose the value of goods during movement.

b. The consignment value will be transaction value determined u/s 15 of CGST Act, the transaction value includes the job work charges, therefore the consignment will be the value of goods + job work charges (including taxes) ICAI publications on E-way bill supports the above view.

5. What will be the impact if goods are supplied by unregistered principal to unregistered job worker for the job work to be done?

Ans :- The situation would not be covered under the scope of job work under GST. The activity will be treated as supply of goods between both the parties.

6. Whether job worker has to include the amortization cost of moulds, jigs, fixtures and tools sent by the principal to the job worker in the value of job work services?

Ans :- Amortization cost of moulds, jigs, fixtures and tools sent by principal to job worker shall be included in the value of job worker services only when the responsibility of procuring moulds, jigs, fixtures and tools, is of job worker, but supplied by principal as per section 15(2)(b) of CGST Act. (Refer Circular 47/2018)

7. Whether loss and wastage generated in job worker premises is disclosed in ITC-04?

Ans :- According to ITC-04 format provided in CGST Rules, principal has to disclose loss and wastage incurred in the job worker premises. Returnable delivery challan should contain about the details from the job worker to Principal in order to maintain track & information. Presently GST portal has facilitated to include loss/wastage details.

8. When goods sent outside the India for the purpose of job work, do we need to disclose in the ITC-04?

Ans :- Yes, there is no exception for the said case. It should be disclosed in ITC-04.

CONCLUSION:

In the present competitive world, it is very important to the assessee to be aware of the legal implications under GST in order to avoid extra costs when goods are sent for further processing.

However, the principal has to ensure the proper records of documents, generation of the e-way bill by principal or job worker [if registered] It is be noted that the goods sent for job work is required to be returned back/ sold from the premises of job worker else the interest on deemed supply has to be paid from the date of removal of the goods which would be cost to the principal thus he has to ensure the proper tracking of the goods from the date of removal to the date of receiving/Selling.

Potential challenges in GST for E-commerce operators



Aditya Singhania

Introduction to e-commerce and the rising potential

In the recent years we have observed the increased smartphone penetration, increased affluence and low data prices, which has provided significant impetus for growth in e-commerce business. India is expected to have over 907 million internet users by 2023, which accounts for ~64% of the total population of the country. The India's online shopper base to be the 2nd largest globally by 2030, with nearly 500-600 Mn shoppers. Around 87% of Indian households will have an internet connection by 2025, with 21% rise in duration of internet access through mobiles as compared to 2019. The Indian e-commerce industry has been on an upward growth trajectory. India has emerged as one of the pre-eminent nations of the world to use technology to transform the lives of its citizens. Close to 100 % of pin codes in India have seen e-commerce adoption. More than 60 % of transactions and orders in India come from tier two cities and smaller towns. The government is backing technologies such as UPI, RuPay, DigiLocker, eKYC to help promote digital transactions, increase its adoption in smaller cities, as well we to drive innovation in this space. In the Budget 2023-24, it was declared that in 2022, digital payments showed an increase of 76% in transactions and 91% in value. Currently, e-commerce constitutes ~7% of the total retail market in India. So, the potential amidst such facts clearly brings out the potential of the sector and with any evolution of the business in the digital era, tax complications does come along-with. Some of the key segments in this space is hyperlocal, mobility, health tech, social commerce, B2C (Marketplace), Payments and wallets, travel and hospitality, B2B, Ed-Tech, etc.

Definition of e-commerce in GST

The term "electronic commerce" has been defined in clause (44) of section 2 of the CGST Act, 2017 which means the supply of goods or services or both, including digital products over digital or electronic network. The term commerce is already included in the definition of business, hence, undoubtedly, even electronic commerce is also a business and it is just that such business is carried over the digital or electronic network. Further, the definition of the business nowhere restricts the medium of carrying such commercial activities. The term "electronic commerce operator" has been defined in clause (44) of section 2 of the CGST Act, 2017 which means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Taxability under GST for e-commerce business

Section 9 of the CGST Act, 2017 which deals with **levy and collection of tax**:

(1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under [section 15](#) and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

(2) *The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*

(3) *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which '**shall be paid on reverse charge basis by the recipient**' of such goods or services or both **and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax** in relation to the supply of such goods or services or both.*

(4) *The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, '**pay the tax on reverse charge basis as the recipient**' of such supply of goods or services or both, **and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax** in relation to such supply of goods or services or both.*

(5) *The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which '**shall be paid by the electronic commerce operator**' if such services are supplied through it, **and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax** in relation to the supply of such services.*

On perusal of the marginal heading of the section, it can be observed that it deals with **levy and collection** which means that the section casts the liability on the person who is supposed to pay the tax to the Government. Certainly, GST being an indirect tax in nature is ultimately borne by the end-consumers and the suppliers acts as an agent who in turn deposits the tax to the Government. Accordingly, as per sub-section (1) of the aforesaid section, it is clear that tax needs to be levied and collected on the basis of tax invoices which in turn **shall be paid by the taxable person**. In simple words, the concept of levy and collection works on forward charge mechanism. However, as a measure of ease-of-administration of taxpayers and in order to reduce the cost of revenue collection, liability of payment of tax in some cases have been shifted from the suppliers to the recipients or e-commerce operators i.e., on the taxpayers who are more organised. Accordingly, it can be observed that

there are two sub-sections i.e., 9(3) and 9(4) of the CGST Act, 2017 wherein tax is supposed to be paid by the recipients of supply. Likewise, where both suppliers as well as recipients do not belong to organised class of taxpayers, tax liability has been shifted to e-commerce operators. Ideally, it is only the liability to pay tax which has been shifted for which it clearly mentions:

- *In section 9(3) and 9(4) of the CGST Act, 2017: That **all the provisions of this Act shall apply to such 'recipient' as if he is the person liable for paying the tax.***
- *In section 9(5) of the CGST Act, 2017: That **all the provisions of this Act shall apply to such 'electronic commerce operator' as if he is the supplier liable for paying the tax.***

Interpretation of phrase 'all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax'.

On perusal of the aforesaid discussion, it can be observed that as section 9 of the CGST Act, 2017 deals with levy and collection, it is only the payment of tax liability which has been shifted from the supplier to the e-commerce operator for which it has made necessary safeguards by stating that *all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax* which means that in case e-commerce operator fails to deposit the tax within the due date, or fails to pay interest in case of delay in deposit of tax, or short-reporting, or makes any violation of provisions of the law in regard to adhering to the norms relating to payment of tax under section 9(5), etc. then necessary proceedings can be initiated against the e-commerce operator. The same provision is indeed applicable on the recipients who are supposed to pay tax under reverse charge mechanism under section 9(3) and 9(4) of the CGST Act, 2017.

Services notified under section 9(5) of the CGST Act, 2017

Notification No. 17/2017-Central Tax (Rate), dated 28-6-2017, as amended from time-to-time has notified the following categories of services on which tax shall be paid by the e-commerce operator:

- **Transportation of passengers:**
 - ❖ by a radio-taxi, motorcab, maxicab, motor cycle, or any other motor vehicle except omnibus.
 - ❖ by an omnibus except where the person supplying such service through electronic commerce operator is a company.
- **Hotel Accommodation Services:**
 - ❖ by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, *except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act;*
- **House-keeping services:**
 - ❖ by way of house-keeping, such as plumbing, carpentering etc., *except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods*

and Services Tax Act.

- **Restaurant services:**

- ❖ Supply of restaurant service *other than the services supplied by restaurant, eating joints etc. located at specified premises.*

It is important to note that there are services other than the aforesaid notified services which are also being supplied through ECOs, however, in such cases, the tax shall be paid under forward charge by the supplier itself and the only role of ECO, where such an ECO is collecting the consideration on behalf of the actual supplier, TCS @1% IGST is to be collected by an ECO on the net value of taxable supplies. In such cases, suppliers supplying goods/services through an ECO is liable to obtain mandatory registration.

Tax rates on notified services

Transportation of passengers:

The rate of tax has been notified in *Notification No. 11/2017-CTR dated 28-6-2017*, as amended from time-to-time, in its Sl. No. 8, on passenger transport service, with or without accompanied belongings by (a) air-conditioned contract carriage other than motorcab, (b) air-conditioned stage carriage, and (c) radio taxi, is **5% subject to the condition that credit of input tax charged on goods and services used in supplying the service has not been taken.** *Explanation* No. (iv) of the said Notification stipulates that wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,—

- credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and
- credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

Hotel Accommodation Services:

The term "Hotel accommodation" has been defined in (xxxiv) of *Explanation* to the said Notification which means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation. Sl. No. 7(i) prescribes the rate of **12% GST** on supply of 'hotel accommodation' having value of supply of a unit of accommodation less than or equal to INR 7,500/- per unit per day or equivalent. Sl. No. 7(vi) prescribes the rate of **18% GST** on supply of 'accommodation' service having value of supply of a unit of accommodation above INR 7,500/- per unit per day or equivalent.

House-keeping services:

Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration

under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017, is taxable at the rate of **5% subject to the condition that credit of input tax charged on goods and services has not been taken.** *Explanation (iv)* of the said notification applies *mutatis mutandis* on this.

Restaurant services:

"Restaurant service" has been defined in *Explanation (xxxii)* which means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied. Supply of 'restaurant service' other than at specified premises is taxable at the rate of **5% subject to the condition that credit of input tax charged on goods and services used in supplying the service has not been availed as per Sl. No. 7(ii).** However, where the said service is provided at the 'specified premises' is taxable at the rate of **18% GST.**

Impact of rate structure on e-commerce operator from the perspective of input tax credit

On perusal of all the aforesaid tax rates on the notified services wherein the liability to pay tax has been casted on e-commerce operator under section 9(5) of the CGST Act, 2017, it can be observed that in case of hotel accommodation and the restaurant services provided at the specified premises, the rate is without subject to any condition of non-availment of input tax credit. Hence, whatever rate is being charged from the customers are being collected and paid by the e-commerce operator on behalf of service provider. Therefore, in such cases, there isn't much concern.

However, as we know in e-commerce industry, the transactions are increasingly involving many stakeholders, therefore, it is also important to peruse the transactions from the perspective of each stakeholder and its implication on the e-commerce operator. In this line, what plays a crucial role is the availability of input tax credit especially where the rate of tax is subject to the condition of non-availment of input tax credit. Often, we come across notices wherein the e-commerce operator is asked to reverse the credit of input taxes availed on its inputs, input services and capital goods on the grounds that section 9(5) stipulates that **all the provisions of this Act shall apply to such 'electronic commerce operator' as if he is the supplier liable for paying the tax.** It is often interpreted that the e-commerce operator is considered as the supplier who is liable for paying the tax and accordingly, the tax prescribed under the rate notification will apply as it is on the e-commerce operator and hence, if the rate is subject to condition of non-availment of input tax credit, the condition needs to be fulfilled by the e-commerce operator i.e., the e-commerce operator will not be eligible to avail the input tax credit. Hence, we have seen notices where the input tax credit of the e-commerce operators has been denied on the grounds of *Explanation (iv) of the said rate notification* stipulating that goods and services used in supplying notified services cannot be availed. By any stretch of imagination, ECOs cannot be said to be the supplier of notified services. In this context, it would be worthwhile to mention that a service is something which once originates from a supplier cannot be re-supplied unlike in case of supply of

goods wherein we can see the chains right from the manufacturer, distributor, whole-seller, retailer and customer. Accordingly, once the notified service in respect of a transaction booked at online/mobile platform is executed by the service provider, it is the service provider who is said to be the supplier of notified service from whom the service actually originates. The end-to-end responsibility of notified services rests on the service provider. Accordingly, it cannot be said that for notified service both the service provider as well as ECOs are the suppliers of notified service.

In this context, it is important to understand that different stakeholders are running their own business and are integrated with each other to provide their respective services to the common recipient of service. Hence, each such services need to be classified properly and accordingly should accordingly be made taxable. For instance, in case of passenger transport service, the role of ECO and that of driver partners are different. Likewise, in case of restaurant service provider, the role of ECO, delivery partner and restaurant are different. But common in all these transactions are the ECOs, wherein ECOs provide their own services as an electronic platform and an **intermediary** for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges **commission/fee** etc. for the services it provides which is usually taxable at the rate of 18%. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account. In fact, the same is clarified vide CBIC Circular No. 167 / 23 /2021 – GST dated 17-12-2021 that ECO shall not be required to reverse proportional ITC on his goods and services for the reason that ITC is not admissible on restaurant service. The first question that arises is whether the said Circular is applicable only in case ECOs through which restaurant services is supplied. It has been observed that at times it is viewed otherwise and the same rationale is not applied in cases of other notified services under section 9(5) of the CGST Act, 2017. Hence, it is important to understand the appropriate scope of section 9(5) as explained above, its purpose, reference to the GST Council meeting regarding the Circular, etc., to ascertain the objective and it must be accordingly submitted before the department.

Now, one of the most important concerns that arises is that the ITC to ECOs is allowed only if the goods and services are used in providing the intermediary services for which it charges commission/fee, etc. It is worthwhile to note that e-commerce operator means any person who **owns, operates or manages digital or electronic facility or platform** for electronic commerce. Therefore, department often is of the view that only the goods and services used in **owning, operating or managing digital or electronic facility or platform for electronic commerce** is only eligible for availing and utilizing for payment against the output liability on convenience fee. Hence, it is important to note that any goods and services used by the e-commerce operator in facilitating the electronic commerce on its platform should be backed by appropriate reasoning and must be in compliance with section 16 read with section 17 of the CGST Act, 2017. There could be services used by the ECOs which may *prima facie* appear to be used in the context of notified services under section 9(5), but it will depend on the facts and circumstances of each such cases if such services are used in the capacity of an intermediary. Further, the terms and conditions of the ECOs with the other service providers will also play a crucial role in ascertaining the same and especially the payment clauses between them. Since the input tax credit in the ECOs business may be humongous, hence, it is important to review the availment of credits on input services on periodic

basis in alignment with the agreements with such vendors and the purpose of availing such services.

Impact of clarification issued for cash payment by ECOs on notified services for period before the clarification.

Now the question that arises is whether ECO can utilize its Input Tax Credit to pay tax w.r.t 'notified services' supplied through the ECO? Certainly, CBIC vide *Circular No. 167 / 23 /2021 – GST dated 17-12-2021* has clarified that on restaurant service, ECO shall pay the entire GST liability in cash i.e., no ITC could be utilised for payment of GST on restaurant service supplied through ECO. The question that arises is the clarification in this context has been issued in December, 2021 after 4 years of GST implementation and there are ECOs who have paid the said tax liability utilizing the credits available with them as there was no such restrictions earlier. Hence, it is really important to understand the consequences of the same, as to whether liability is now required to be discharged in cash? Section 49(4) stipulates that the amount available in the electronic credit ledger may be used for making any payment towards output tax. The term 'output tax' is defined in clause (82) of section 2 which in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both **made by him** or by his agent **but excludes tax payable by him on reverse charge basis**. On perusal of the definition of output tax, it is utmost clear that output tax is a tax where the supply is made by the supplier himself. The vital point is that the definition of output tax excludes only where the tax payable by him is on reverse charge basis, however, the point to be noted is that only section 9(3) and 9(4) is said to be covered under reverse charge and section 9(5) is not under reverse charge. Therefore, it really needs to be examined if such payment of tax can be considered as an output tax and if ITC can be utilised thereof.

Impact from the perspective of output tax involving various stakeholders

Since supply of notified services may also involve various stakeholders, therefore, it is important to ascertain the appropriate classification of the services. It is significant from the perspective that in addition to the notified service, there could be some other services which are also been supplied through the ECO in respect of the same transaction for which a consolidated payment is made by the recipient of the supply to the ECO. Hence, it is important to ascertain the nature of transaction whether the same is mixed supply, composite supply or individual supplies and accordingly the classification must be determined and tax must be charged. Further, in cases where the discounts/incentives are directly been offered by the ECOs, the bearing of the same on the transaction value of the notified service needs to be dealt diligently.

Hope the aforesaid adheres in your business/professional needs. In case of any queries or clarification, kindly drop an email at info@singhaniagstconsultancy.com

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1 SEBI floats consultation paper proposes to ease trading plans for company insiders

Editorial Note : Earlier the SEBI had constituted a working group to review provisions relating to 'Trading Plans' under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations, 2015). The committee's key recommendations includes cool-off period, and minimum coverage period, along with the disclosure timelines and format for reporting the details of the trading plans. The public comments are invited on the same latest by 15-12-2023.

- 1.2 SEBI's board meeting approves of significant amendments; Investment by AIFs beyond Sep 2024 to be in demat form - **PR No.27/2023, Dated 25-11-2023**

Editorial Note : SEBI in its 203rd Board Meeting on November 25, 2023, SEBI has given approval to several frameworks and amendments. Among these changes, SEBI has decreased the minimum issue size for public issuance of Zero Coupon Zero Principal Instruments by NPOs on the Social Stock Exchange from Rs.1 Crore to Rs. 50 lakhs. Additionally, any new investments made by Alternative Investment Funds after September 2024 must be held in dematerialized form. The board has also notified various other amendments.

- 1.3 SEBI sets up "BHARAT KAA SHARE BAZAAR" pavilion in International Trade Fair to spread financial literacy/ awareness - **SEBI press release PR No.26/2023, Dated 14-11-2023**

Editorial Note : SEBI with an objective to spread the message of financial literacy and investor awareness, SEBI in association with BSE, NSE, MCX, CDSL, NSDL, and other market intermediaries has set up a pavilion named 'BHARAT KAA SHARE BAZAAR'. This is set up in the 42nd India International Trade Fair, 2023, New Delhi. The theme of the event for this year is "VAISHVIK SAMRIDHI KA ADHAAR, BHARAT KA SHARE BAZAR" which is aligned with the G 20 theme of "VASUDHEV KUTUMBKAM"

- 1.4 Listed entity can't deviate from the materiality thresholds as prescribed in Regulation 30 of LODR; clarifies SEBI - **SEBI/HO/CFD/CFD-PoD-2/P/OW/2023/46659, Dated 23-11-2023**

Editorial Note : A scheme of arrangement i.e. amalgamation was entered by a listed company with other companies. Pursuant to the merger the merged figures were very low, leading to low material threshold as prescribed in Reg. 30.

Company sought informal guidance from SE on whether the Co. can use the revenue criteria in place of PAT for determining the materiality. The stock exchange replied that revenue can't be considered for determining the materiality, the criteria specified in Reg. 30 is to be followed.

- 1.5 SEBI proposes changes in provisions w.r.t Special Situation Funds to facilitate acquisition of stressed loans

Editorial Note : SEBI has released the Consultation papers on changes in the regulatory framework for Special Situation Funds, a sub-category of Category I AIFs, necessary to facilitate Special Situation Funds to acquire stressed loans in terms of RBI (Transfer of Loan Exposures) Directions, 2021. It has been proposed that AIF Regulations shall be amended to specify that 'special situation asset', includes securities of investee companies, whose stressed loans are acquired in terms of RBI Master Directions.

- 1.6 SEBI introduces a procedural framework for dealing with unclaimed amounts lying with InvITs, REITs & specified entities - **Circular No. SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/178, Dated 08-11-2023**

Editorial Note : SEBI with an objective to uniform the process of claiming unclaimed funds by investors has specified a procedural framework for dealing with unclaimed amounts lying with InvITs, REITs and entities having listed non-convertible securities. Further, the norms w.r.t the manner of claiming such unclaimed amounts by investors has also been prescribed. The circular shall be effective from 01st March, 2024.

- 1.7 SEBI redesigns format for Mutual Fund scheme offer documents - **Circular No. SEBI/HO/IMD/IMD-RAC-2/P/CIR/2023/000175, Dated 01-11-2023**

Editorial Note : In the revised format, SEBI mandated AMC's to disclose risk-o-meter of the Benchmark on Front page of initial offering application form, Scheme Information Documents (SID) and Key Information Memorandum (KIM); and in Common application form. The updated format to be implemented w.e.f. April 01, 2024.

- 1.8 Market Regulator mandates brokers to inform most important terms and conditions to clients - **Notification No : SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/180, Dated 13-11-2023**

Editorial Note : SEBI with an objective to bring into focus the critical aspects of the broker-client relationship and for ease of understanding of the clients mandates brokers to inform a standard Most Important Terms and Conditions (MITC) to the clients. Further, this MITC shall be acknowledged by the client. Further, the detailed norms for implementation of MITC shall be published latest by Jan 01, 2024, by the Brokers' Industry Standards Forum (ISF) in consultation with SEBI.

- 1.9 Warrants issued by the listed co's cannot be transferred unless trading approval from exchange has been granted: SEBI

Editorial Note : A BSE listed company has issued equity warrants convertible into equity shares, to non-promoters, on preferential basis. Later, the company has sought informal guidance on whether the holder of Equity Warrants, being non-promoter entity transfer their warrants held after completion of 1 year of lock-in, but prior to its conversion into equity shares. The SEBI directed that warrants issued by the listed entity cannot be transferred unless trading approval from exchange has been granted.

- 1.10 SEBI (ICDR) Amendment Regl, 2022 shall not apply where board approves preferential allotment pre-notification; SEBI

Editorial Note : A listed company has approved the issue of share warrants to the persons other than promoters. Later on, 14th Jan, 2022 SEBI has notified the amendments to SEBI (ICDR) Regulations. The company has sought informal guidance whether the said amendment would be applicable on the share warrants so issued. SEBI has clarified as the board approves preferential allotment pre-notification. Therefore, the amended norms shall not apply to the issue of share warrants.

- 1.11 SEBI set aside the norms w.r.t freezing of folios without PAN, KYC details and nomination - **Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2023/181, Dated 17-11-2023**

Editorial Note : Earlier, the SEBI notified the norms w.r.t furnishing PAN, KYC details and nomination. Under the extant norms, if PAN, nomination, and other details were not submitted by holders of physical securities by Oct 1, 2023, the folios shall be frozen by the RTA and shall also be referred by the RTA / company to the administering authority under the Benami Act/ PMLA. Now SEBI has decided to take away this to mitigate unintended challenges on account of freezing of folios.

- 1.12 MCA notifies LLP (Significant Beneficial Owners) Rules, 2023; introduces mandatory LLP BEN-1 Declaration

Editorial Note : The provisions of these rules shall specifically apply to all the LLPs. As per the newly notified rules, every reporting LLP shall take steps to find out if there is any individual who is a significant beneficial owner, in relation to that LLP, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-1. Existing SBOs shall file declaration within 90 days the commencement of these rules.

2. SUPREME COURT

SECTION 15Z OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - APPEAL TO SUPREME COURT

- 2.1 Where no reply had been filed to ex-parte ad-interim order cum show cause notice passed by Whole Time Member (WTM) of SEBI and impugned order which had been passed by SAT had left it open to appellant to submit a reply to notice to show cause, there was no reason to entertain appeal against order of SAT and accordingly, same was to be dismissed - **Seya Industries Ltd. v. Securities and Exchange Board of India - [2023] 156 taxmann.com 47 (SC)**

- 2.2 Where appellant received shares of company 'Wisec' from its director without consideration and appellant subsequently had sold these shares in minuscule quantities creating new high price which was manipulative and violative of regulations 3 and 4 of PFUTP regulations, impugned order by SEBI imposing penalties on appellant was justified - **Sangeeta Kailash Purohit v. Securities and Exchange Board of India - [2023] 156 taxmann.com 45 (SC)**

SECTION 96 OF THE COMPANIES ACT, 2013 - ANNUAL GENERAL MEETING

- 2.3 Where appellant-director along with other was held guilty for non-compliance of section 96 in holdings AGM and their joint application for compounding of offence was allowed by NCLT while imposing 1/5th of maximum fine, which was also confirmed by NCLAT vide impugned order, same was not to be interfered with - **Salil Gulati v. Registrar of Companies, NCT of Delhi and Haryana - [2023] 155 taxmann.com 556 (SC)**

3. HIGH COURT

SECTION 7 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - ARBITRATION AGREEMENT

- 3.1 Where petitioner (buyer) initiated arbitration over a service order dispute citing respondent's (supplier's) non-payment of dues, and respondent disputed existence of an arbitration agreement, since S.O. containing arbitration clause was referenced in email communications between parties which indicated mutual acknowledgment of existence of arbitration agreement, thus validly establishing an arbitration agreement under Section 7(4)(b) through electronic communications between parties - **Rashmi Cement Ltd. v. Radha Bhattad** - [2023] 156 taxmann.com 670 (Calcutta)

SECTION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - FUNCTIONS OF BOARD

- 3.2 Delhi HC upholds SEBI Circulars dated 10.10.2016 & 01.08.2017 & compulsory delisting action by BSE under the Circulars - **Kusum Lata Singhal v. Securities and Exchange Board of India** - [2023] 156 taxmann.com 199 (Delhi)

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

- 3.3 Where in a payment dispute of a service order between petitioner (buyer) and respondent (supplier), an MSME entity and respondent submitted that petitioner, as a buyer was obligated to make reference to MSME Facilitation Council for any recovery of dues under section 17, since as per section 18, only a supplier could invoke MSME Facilitation Council's jurisdiction for recovery of dues, a sole arbitrator was to be appointed for resolving monetary dispute between parties - **Rashmi Cement Ltd. v. Radha Bhattad** - [2023] 156 taxmann.com 670 (Calcutta)

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

- 3.4 Where a complaint was registered against applicant-acquirer for not paying consideration to shareholders of target company for acquiring shares, application filed by applicant to discharge him from prosecution on ground that he had resigned from company was rightly rejected by SEBI Special Judge in absence of incontrovertible document or any other material to show applicant's resignation - **Madhusudan Khemka v. State of Maharashtra** - [2023] 155 taxmann.com 554 (Bombay)

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

- 3.5 Where petitioner executed a contract in favour of respondent/contractor for widening of bridge but project could not be completed within stipulated period, resulting in a request for extension of time by contractor, which petitioner had granted without levy of any compensation, which showed that delay was attributed to petitioner, petitioner could not deny contractor's claims for escalation cost and for prolongation of contract and, therefore, impugned arbitral award in favour of contractor was justified - **Government of NCT of Delhi v. R.S. Sharma Contractors (P.) Ltd.** - [2023] 155 taxmann.com 302 (Delhi)

SECTION 92 OF THE COMPANIES ACT, 2013 - ANNUAL RETURN

- 3.6 Where complaint was filed by ROC against petitioner company for not filing annual return and balance sheets, petitioners were entitled to benefit of Companies Amendment Act, 2019 and Companies Amendment Act, 2020, which changed or modified rigour of punishment for lapses and prosecution against petitioners was to be transferred to Adjudicating Authority to adjudicate contravention committed by petitioners - **Shine School of Excellence (P.) Ltd. v. Registrar of Companies, Tamilnadu** - [2023] 156 taxmann.com 113 (Madras)

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

- 3.7 Where NCLT directed company to open a separate bank account, in which rent income and other amount collected would be deposited thenceforth which could be utilized for payment of statutory dues subject to satisfaction of NCLT, however, said direction of NCLT was not complied by defendant-directors and Civil Court did not take into account prima facie blameworthy conduct of defendants and permitted them to liquidate fixed deposits held by company to pay statutory dues, impugned order of Civil Court was to be set aside - **Ashutosh Yogesh Maneklal v. Lina Y. Maneklal** - [2023] 155 taxmann.com 301 (Bombay)

SECTION 318 OF THE COMPANIES ACT, 2013 - VOLUNTARY WINDING UP - FINAL MEETING AND DISSOLUTION OF COMPANY

- 3.8 Where Voluntary liquidator verified e-filing portal of income-tax department with respect to petitioner company, which shows that with respect to petitioner company 'No pending action found' and affairs of petitioner company were conducted in manner not prejudicial to interest of members, company was to be wound and would be deemed to be dissolved with effect from date of filing petition for its dissolution - **Remedy Finance (P.) Ltd.** - [2023] 156 taxmann.com 10 (Delhi)

4. NCLAT

SECTION 185 OF THE COMPANIES ACT, 2013 - DIRECTORS - LOANS TO

- 4.1 Where a company sanctioned an inter corporate loan to its fellow subsidiary company having a common director and non-compliance of ingredients of section 185 took place on part of said company and its directors, since violation of section 185 would make erring company liable with fine, order passed by NCLT imposing compounding fee on said company and its directors was free from any legal infirmity - **Som Prakash Satsangi v. Registrar of Companies - [2023] 156 taxmann.com 112 (NCLAT - Chennai)**

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

- 4.2 Where appellant did not hold any shares in respondent no.1 company at time of filing of company petition and had transferred its entire shareholding in favour of respondent nos. 2 and 3, appellant had ceased to be a shareholder of company and, therefore, impugned order passed by NCLT rejecting section 241 petition on ground that appellant was not eligible to maintain said petition was justified - **Sudhir John Horo v. Ideaworks Design & Strategy (P.) Ltd. - [2023] 155 taxmann.com 559 (NCLAT- New Delhi)**

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

- 4.3 There is no justification, in respect of proceedings under section 241 to insist on fresh petition being filed, only resting upon fresh cause of action; a petitioner has no right to withdraw his application/petition filed before Tribunal unless he is granted leave to withdraw same - **G. Rajendran v. Naargo Industries (P.) Ltd. - [2023] 156 taxmann.com 236 (NCLAT - Chennai)**

SECTION 252 OF THE COMPANIES ACT, 2013 - REMOVAL OF NAME FROM REGISTER - APPEAL TO TRIBUNAL

- 4.4 Where appellant company had been regularly filing its Income-tax Returns and was having substantial movable as well as immovable assets, it could not be said that appellant company was not carrying on any business or operations and, therefore, NCLT had committed error in upholding order of RoC of striking off name of appellant company from register of companies - **Shree Radhey Mines (P.) Ltd. v. Registrar of Companies - [2023] 156 taxmann.com 119 (NCLAT- New Delhi)**

- 4.5 If company had itself voluntarily applied for striking off its name by filing an application under easy exit scheme and name of company had been struck off from register of companies following procedure prescribed, no appeal should lie under section 560 of Companies Act, 1956 and, thus, NCLT rightly dismissed petition against order of ROC striking off name of said company - **Rajneesh Ghei v. Registrar of Companies - [2023] 155 taxmann.com 353 (NCLAT- New Delhi)**

SECTION 421 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - APPEAL FROM ORDERS OF

- 4.6 Where an audit report of affairs of a company was held by NCLT on ground of non payment of auditor's fees by directors of said company, NCLT ought to have looked at report and passed appropriate orders, since in instant case NCLT did not do so, instant matter was to be remanded to NCLT for due consideration with direction that final audit report was to be made available to parties by NCLT - **M.N. Pratap Reddy v. Sri Lakshmi Narasimha Mining Co. (P) Ltd. - [2023] 156 taxmann.com 508 (NCLAT - Chennai)**

5. NCLT

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

- 5.1 Where a petition was filed alleging oppression and mismanagement in relation to non implementation of a memorandum of family arrangement, since, instant Tribunal was not a proper forum to adjudicate a dispute which was not falling within ambit of sections 241/242, petitioner had miserably failed to establish a case of sections 241-242, and thus, such petition was to be dismissed - **Vishnu Nischal Rajkumar v. Radha Krishna Mills Ltd. - [2023] 156 taxmann.com 672 (NCLT- Chennai)**

6. SEBI

REGULATION 9 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 - CONDITIONS OF CERTIFICATE

- 6.1 When a transferor-company amalgamates with transferee company, fit and proper status of transferor company does not pass on to resultant company and consequent, if resultant entity is seeking to be an intermediary, it would have to separately fulfil fit and proper criteria - **Aasmaa Commodities (P.) Ltd., In re - [2023] 156 taxmann.com 111 (SEBI)**

7. SAT

REGULATION 3 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICE RELATING TO SECURITIES MARKET) REGULATION, 2003 - PROHIBITION OF CERTAIN DEALINGS IN SECURITIES

- 7.1 Where appellant received shares of company 'Wisec' from its director without consideration and appellant subsequently had sold these shares in minuscule quantities creating new high price which was manipulative and violative of regulations 3 and 4 of PFUTP regulations, impugned order by SEBI imposing penalties on appellant was justified - **Sangeeta Kailash Purohit v. Securities and Exchange Board of India - [2023] 156 taxmann.com 44 (SAT - Mumbai)**
- 7.2 Where appellant was appointed as Managing Director of company 'M' much after issuance of GDR, however, when summons were issued seeking details pertaining to GDR, appellant was Managing Director and responsible for affairs of company, appellant was required to furnish requisite information sought by Adjudicating Officer (AO) and, thus, impugned order passed by AO imposing penalty upon appellant for failure to comply with summons was justified - **Nikunj Babulal Choradiya v. Securities and Exchange Board of India - [2023] 155 taxmann.com 664 (SAT - Mumbai)**

REGULATION 4 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICE RELATING TO SECURITIES MARKET) REGULATION, 2003 - PROHIBITION OF MANIPULATIVE, FRAUDULENT AND UNFAIR TRADE PRACTICES

- 7.3 Where one Prem Agarwal had circulated a false and misleading short message service (SMS) regarding scrip in company IFS and appellant had bought shares prior to issuance of SMS and thereafter sold shares post issuance of SMS, and thus, there were indulged in synchronized trades, in view of fact that there was connection of appellant with SMS sender and BSE in its investigative report found that SMS did not have any impact in price, thus, order of disgorgement towards unlawful gain or loss averted against appellant could not be sustained - **Arvind Babulal Goyal v. Securities & Exchange Board India - [2023] 156 taxmann.com 568 (SAT - Mumbai)**

REGULATION 4 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (BUY BACK OF SECURITIES) REGULATIONS, 1998 - COMPANY MAY BUY BACK ITS OWN SHARES OR OTHER SPECIFIED SECURITIES

- 7.4 Where for alleged buy back of shares by appellant company in complete violation of section 77A of Companies Act, 1956 Act and Buy Back

Regulations, SEBI imposed a penalty of Rs. 65 lakh on appellant, in view of fact that buy back was in public domain and SEBI did not stir in matter, and it was only after 11 years of alleged violation show cause notice was issued to appellant, there had been inordinate delay in initiation of proceedings and, therefore, SEBI's impugned order imposing penalty on appellant was to be quashed - **Apollo Tyres Ltd. v. Securities and Exchange Board of India - [2023] 155 taxmann.com 557 (SAT - Mumbai)**

REGULATION 4 OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 - PRINCIPLES GOVERNING DISCLOSURES AND OBLIGATIONS

- 7.5 SAT quashes SEBI order barring Punit Goenka, MD & CEO of ZEESL, from holding office as KMP in any listed entity or its subsidiaries - **Punit Goenka v. Securities and Exchange Board of India - [2023] 156 taxmann.com 8 (SAT - Mumbai)**

REGULATION 5 OF THE SEBI (STOCK BROKERS) REGULATIONS, 1992 - CONSIDERATION OF APPLICATION FOR GRANT OF REGISTRATION

- 7.6 Where SEBI filed a criminal complaint against commodity derivatives broker / noticee for involvement in paired contracts on National Spot Exchange Ltd. (NSEL), leading to an FIR, since noticee had incurred disqualification under Clause 3(b)(i) of Schedule II on account of said complaint and FIR, noticee did not satisfy fit and proper person criteria specified in Schedule II and it could not be permitted to function as a registered entity in securities market - **RVI Commodity Services (P.) Ltd., In re - [2023] 156 taxmann.com 173 (SAT)**

REGULATION 10 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 - ACQUISITION OF FIFTEEN PER CENT OR MORE OF SHARES OR VOTING RIGHTS OF ANY COMPANY

- 7.7 Where Whole Time Member (WTM) of SEBI issued an impugned ex-parte ad-interim order cum show cause notice directing Noticees 1 to 5 to file a public disclosure to stock exchanges and said direction had been complied with by appellant, however, no reply had been filed to show cause notice, thus, order cum show cause notice could not be interfered with at instant stage - **Seya Industries Ltd. v. Securities and Exchange Board of India - [2023] 156 taxmann.com 46 (SAT - Mumbai)**

SECTION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - FUNCTIONS OF BOARD

- 7.8 Order passed by SEBI cannot travel beyond the measures proposed in the Show Cause Notice - **Urban Infrastructure Trustees Ltd. v. Securities and Exchange Board of India - [2023] 156 taxmann.com 680 (SAT - Mumbai)**

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

7.9 When a specific stand had been taken by appellant from inception that he was never a director of company 'Helios' who had violated provisions of SEBI Act, Companies Act, 1956 and DIP Guidelines and he had been falsely implicated in matter, it was obligation of SEBI to get additional evidence, in form of board resolutions, appointment letter, acceptance letter and such other documentary evidence, to prove that appellant was a director in company at relevant point of time - **Sanjeet Kumar Sharma v. Securities and Exchange Board of India - [2023] 156 taxmann.com 348 (SAT - Mumbai)**

REGULATION 31 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 - DISCLOSURE OF ENCUMBERED SHARES

7.10 Where SEBI alleged that appellant being managing director of company 'PSL' was an insider and was in possession of unpublished price sensitive information (UPSI) related to financial results of PSL for period ended 31.3.2016 and had transferred 25 lakh shares of PSL and therefore violated section 12(A)(d) and (e) of SEBI Act, in view of fact that appellant traded on 4.5.16 on which date there was no UPSI in existence, thus, imposition of penalty by SEBI upon him for alleged violation was not justified - **Prakash C. Kanugo v. Securities and Exchange Board of India - [2023] 156 taxmann.com 412 (SAT - Mumbai)**

7.11 Where appellant being Managing Director of company 'PSL' had transferred 25 lakh shares of PSL to notice 2, and for reasons best known, appellant made a wrong disclosure under Regulation 31 of SAST Regulations whereas requisite disclosure was required to be made under Regulation 7(2)(a) of PIT Regulations for which appropriate penalty could be imposed, therefore, considering false disclosure made by appellant, substantial justice would be done if a penalty of Rs.5 lakh was imposed - **Prakash C. Kanugo v. Securities and Exchange Board of India - [2023] 156 taxmann.com 412 (SAT - Mumbai)**

COMPETITION LAW

1. NCLT

SECTION 3 OF THE COMPETITION ACT, 2002 - PROHIBITION OF AGREEMENTS - ANTI- COMPETITIVE AGREEMENTS

- 1.1 Where an information was filed alleging that two cinema theater companies had entered into an anti-competitive agreement violating section 3, CCI rightly closed information holding that since said companies had merged under a scheme sanctioned by NCLT and fell within definition of combination in terms of section 5, violation of section 3(1) was not made out - **Consumer Unity & Trust Society v. Competition Commission of India** - [2023] 155 *taxmann.com* 309 (NCLAT- New Delhi)

2. CCI

SECTION 4 OF THE COMPETITION ACT, 2002 - PROHIBITION OF ABUSE OF DOMINANT POSITION

- 2.1 Where apart from OP, other Multi System Operators (MSOs) such as SITI, IMCL and Fastway had their presence in relevant market i.e. market of cable TV service in State of Uttar Pradesh which indicated minimal entry barriers in cable television sector, OP did not appear to be dominant in said relevant market and, therefore, no case of contravention of section 4 by OP was made out - **Sobhagaya Media (P.) Ltd. v. DEN Networks Ltd.** - [2023] 156 *taxmann.com* 110 (CCI)

SECTION 6 OF THE COMPETITION ACT, 2002 - REGULATION OF COMBINATIONS

- 2.2 Where an acquisition transaction of target company was consummated without giving notice of same to CCI as required by section 6(2), since target company was jointly controlled by its parent company and investor company i.e. acquirers, such acquisition was not eligible for benefit under item 2 of Schedule 1 of Combination Regulations, 2011 and one composite notice ought to be filed jointly by acquirers to CCI prior to consummating said acquisition and, thus, a penalty of Rs. 1 crores was to be imposed on parent company - **Bharti Airtel Ltd. and Lion Meadow Investment Ltd., In Re** - [2023] 155 *taxmann.com* 356

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 RBI permits Non-resident investment in Government-issued SGBs via 'fully accessible route' for F.Y. 2023-24 - **Circular No. RBI/2023-24/81 FMRD.FMID.No. 04/14.01.006/2023-24, Dated 08-11-2023**

Editorial Note : Earlier, the RBI vide circular dated 30.03.2020 notified Fully Accessible Route (FAR), through which certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well. The RBI has now decided to also designate all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as 'specified securities' under the FAR.

- 1.2 Rs. 2000 banknotes continue to be legal tender; RBI facilitates sending of Rs. 2000 notes to RBI office via India Post - **Press Release: 2023-2024/1222, Dated 01-11-2023**

Editorial Note : RBI allows members of the public to send Rs 2000 banknotes through India Post from any post office in the country to any of the RBI Issue Offices for crediting to their bank accounts in India. Additionally, the RBI has released a prescribed format for deposit applications for credit to the bank account. Further, more than 97% of the Rs 2000 banknotes in circulation as on May 19, 2023 have been returned. The Rs 2000 banknotes continue to be legal tender.

- 1.3 FATF adds Bulgaria to the list of High-Risk Jurisdictions under Increased Monitoring - **Press Release No. 2023-2024/1223, Dated 01-11-2023**

Editorial Note : FATF had earlier identified some jurisdictions as having strategic deficiencies. These jurisdictions were: Albania, Barbados, Burkina Faso, Cameroon, Cayman Islands, Gibraltar, Jordan, Panama etc. Now, Bulgaria has been added to the list of jurisdictions under Increased Monitoring while Albania, the Cayman Islands, Jordan and Panama have been removed from this list based on a review by the Financial Action Task Force (FATF).

- 1.4 RBI decides to directly regulate entities facilitating cross-border payment transactions - **Circular No. RBI/2023-24/80 CO.DPSS.POLC.No.S-786/02-14-008/2023-24, Dated 31-10-2023**

Editorial Note : RBI has issued regulations aimed at governing entities that facilitate payment and settlement for online cross-border export/import transactions. These regulations include Payment Aggregators (PAs), which are entities that support the processing of domestic transactions in online mode. Now, the RBI aims to bring all entities involved in facilitating cross-border payment

transactions for the import and export of goods and services under direct regulation.

- 1.5 RBI allows Qualified Jewellers to remit advance payment for 11 days for silver via IIBX in the same manner as gold - **A.P. (DIR Series) Circular No. 07, Dated 10-11-2023**

Editorial Note : RBI permits that AD Category-I banks may allow Qualified Jewellers to remit advance payment for 11 days for silver import through International Bullion Exchange IFSC Ltd (IIBX). Earlier this facility was available for the import of gold only. The same has been extended to the import of silver as well. Further, the guidelines notified on the import of gold by Qualified Jewellers shall also apply to the import of silver also.

- 1.6 Ministry of External Affairs amends the list of individuals and entities, suspected of having terrorist links - **Notification No. RBI/2023-2024/84 DOR.AML.REC.56/14.06.001/2023-24, Dated 15-11-2023**

Editorial Note : As per Sec 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967 the regulated entities shall ensure that they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links. MEA has now amended the list of individuals and entities subject to the assets freeze, travel ban and arms embargo. Regulated entities are advised to take appropriate action in this regard.

- 1.7 RBI enhances the risk weights in respect of consumer credit exposure of commercial banks - **Circular No. RBI/2023-24/85 DOR.STR.REC.57/21.06.001/2023-24, Dated 16-11-2023**

Editorial Note : As per the Governor's interaction, the high growth was seen in consumer credit and further, increasing dependency of NBFCs on bank borrowings. As per extant instructions applicable to commercial banks, consumer credit attracts a risk weight of 100%. On a review, RBI has decided to increase the risk weights in respect of consumer credit exposure of commercial banks, including personal loans, but excluding housing loans, education & vehicle loans & gold loans, by 25 percentage points to 125%.

- 1.8 RBI permits AD Cat-I banks maintaining Special Rupee Vostro A/c to open special current a/c exclusively for export settlement - **Circular No. RBI/2023-2024/86 FED Circular No. 08, Dated 17-11-2023**

Editorial Note : RBI to provide greater operational flexibility to the exporters permits the AD Category-I banks maintaining Special Rupee Vostro Account to open an additional special current account for its exporter constituent. However, the said account is to be maintained exclusively for settlement of their export transactions.

- 1.9 Govt. amends Insurance Ombudsman rules, 2017, mandates prior notice for resignation of Insurance Ombudsman - **Notification No. G.S.R. 828(E), Dated 9-11-2023**

Editorial Note : The Govt. has notified Insurance Ombudsman (Amendment) Rules, 2023. As per amended rules, Insurance Ombudsman may resign by giving prior notice in writing of not less than 90 days in lieu of 3 months salary, to Council informing his intention to resign. Further, in case last date of notice period falls on Saturday or Sunday or holiday, he must be relieved on next working day. Also, the award must be passed in writing, duly signed or digitally by Insurance Ombudsman along with reasons.

- 1.10 Central Govt amends PMLA norms, designates FIU-India Director as Regulator for expanded reporting entities - **Notification Nos. S.O. 4876(E) & 4877(E), Dated - 9-11-2023**

Editorial Note : Earlier, the Govt. expanded the scope of the PMLA through a notification dated 07.03.2023 & 09.05.2023. The amendments enhanced the coverage by including cryptocurrencies and various entities & individuals such as company directors, individuals serving as formation agents, partners of firms, trustees, & nominee shareholders as reporting entities under PMLA. Now, for the purpose of above-mentioned notification, the govt has designated Director, Financial Intelligence Unit, India as Regulator.

2. SUPREME COURT

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 2.1 Where borrower's account was declared as NPA on 4-2-2015, which date was not disputed by bank and 5 years had been completed from declaration of NPA, borrower was eligible to avail benefit of bank's Settlement Scheme for Doubtful and Loss Assets for NPAs dated 28-3-2019 - **Union Bank of India v. Shirdi Country Inns (P.) Ltd. - [2023] 156 taxmann.com 338 (SC)**

SECTION 45 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCES TO BE COGNIZABLE AND NON-BAILABLE

- 2.2 SC upholds denial of bail to accused in economic offence despite long incarceration if accused fails to discharge the onus u/s 45 of PMLA - **Tarun Kumar v. Assistant Director Directorate of Enforcement - [2023] 156 taxmann.com 480 (SC)**

3. HIGH COURT

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 3.1 Where bank came out with a Centenary Settlement Scheme for Doubtful and Loss Assets for NPAs and borrower's request to avail benefit of said scheme was rejected by bank on ground that it did not meet eligibility criteria set out in said scheme, in view of fact that bank itself had asked borrower to avail benefit of scheme and acting on that representation borrower had deposited two demand drafts towards payment of settlement amount, action of bank in rejecting payment made by borrower was wrongful - **Shirdi Country-Inns (P.) Ltd. v. Union of India - [2023] 156 taxmann.com 337 (Bombay)**
- 3.2 Section 13(10) of SARFAESI Act expressly enables a secured creditor to file an application for a recovery of balance amount from a borrower, if its claims are not fully satisfied from sale proceeds of secured assets - **IDFC First Bank Ltd. v. Union of India - [2023] 156 taxmann.com 635 (Delhi)**

SECTION 50 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - POWERS OF AUTHORITIES REGARDING SUMMONS, PRODUCTION OF DOCUMENTS AND TO GIVE EVIDENCE, ETC.

- 3.3 Where in an alleged money laundering case, petitioner had not been named as accused, and ED summoned petitioner only for purpose of collecting information or evidence, and thus, he had no locus to seek relief of quashing of summoning order or ECIR - **Moloy Ghatak v. Directorate of Enforcement - [2023] 156 taxmann.com 461 (Delhi)**

SECTION 56 OF THE FOREIGN EXCHANGE REGULATION ACT, 1973 - OFFENCES AND PROSECUTIONS

- 3.4 Where respondent initiated proceedings under section 56 against petitioner without serving show cause notice / opportunity notice upon petitioner, same was in violation to principles of natural justice and thus, ex-parte proceedings issued by ED including complaint filed against petitioner and all consequential proceedings emanating thereunder was to be quashed - **Shilpi Modesv. Directorate of Enforcement - [2023] 156 taxmann.com 388 (Delhi)**

4. SAFEMA

REGULATION 7 OF FOREIGN EXCHANGE MANAGEMENT (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA) REGULATIONS, 2000 - PROHIBITION ON ACQUISITION OR TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY CITIZENS OF CERTAIN COUNTRIES

4.1 Where appellant, a citizen of Islamic Republic of Pakistan holding a passport of that country was granted long term visa by Government of India and was subsequently, granted full citizenship as a naturalized citizen, and he purchased immovable property in India without taking any permission from RBI or any other Government body in contravention of regulation 7 of FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 and appellant paid penalty imposed by Adjudicating Authority, levy of further penalty of Rs. 50 thousand was not justified - **Arjun Das Malhotra v. Special Director Directorate of Enforcement, Delhi - [2023] 155 taxmann.com 555 (SAFEMA - New Delhi)**

4.2 Where appellant, a citizen of Islamic Republic of Pakistan was granted long term visa by Government of India and was subsequently granted full citizenship as a naturalized citizen, had purchased immovable property in India without taking any permission from RBI or any other Government body in contravention of regulation 7 and Adjudicating Authority imposed a penalty of Rs. 3 lakh on appellant, which was duly paid by him, levy of further penalty of Rs. 4.5 lakh on appellant was not justified - **Rajkumar Malhotra @ Rohit Malhotra v. Special Director Directorate of Enforcement, Delhi - [2023] 155 taxmann.com 622 (SAFEMA - New Delhi)**

SECTION 20 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - RETENTION OF PROPERTY

4.3 Where during course of investigation in a PMLA case, a search and seizure operation was conducted by ED at premises of appellant and certain incriminating documents and digital evidence were found and seized, since, two of six properties to which seized documents (sale deeds) pertain were alleged to have been acquired out of proceeds of crime, so far as seized records in respect of said two properties were concerned, order of Adjudicating Authority for retention of seized document was to be confirmed - **Anup Prakash Garg v. Deputy Director, Directorate of Enforcement - [2023] 156 taxmann.com 569 (SAFEMA - New Delhi)**

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

- 1.1 IBBI proposes to introduce requirement for prospective bidders to deposit earnest money to ensure confidentiality

Editorial Note : The IBBI has released a discussion paper to strengthen the regulatory framework of the liquidation process in terms of certain matters related to sale, accountability of liquidators etc. To ensure confidentiality of the names of participating prospective bidders, IBBI has proposed the manner in which earnest money is to be deposited by prospective bidders. Also, the liquidator must within 3 days of declaration of the H1 (Highest) bidder conduct due diligence & verification of the eligibility.

- 1.2 IBBI releases discussion paper on real-estate related proposals; proposes mandatory registration of projects with RERA

Editorial Note : The IBBI has released a discussion paper on real-estate related proposals – CIRP and Liquidation. Some of the key proposals include (a) mandatory registration & extension of projects under RERA, (b) operating a separate bank account for each real estate project, (c) execution of registration/sublease deeds with the approval of CoC during the CIRP, (d) CoC to examine and invite separate plans for each project and (e) exclusion of property in possession of homebuyers from the liquidation estate.

- 1.3 IBBI proposes that RPs must conduct monthly meetings of CoC to review work of the CIRP

Editorial Note : The IBBI has released a discussion paper on amendments to the IBBI (Insolvency Resolution Process for Corporate Process) Regulations, 2016. Some of the key proposals include (a) seeking approval of the CoC for insolvency resolution process cost, (b) conducting monthly meetings of CoC to review the work of CIRP by CoC, (c) discussing valuation methodology and report with CoC, (d) disclosing valuation reports, and (e) providing clarity in minimum entitlement to dissenting financial creditors.

2. SUPREME COURT

SECTION 3(11) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEBT

- 2.1 CCD is equity and is not debenture simpliciter and debt u/s 3(11) of IBC unless contract provides it to be so treated on happening of any event - *IFCI Ltd. v. Sutanu Sinha* - [2023] 156 taxmann.com 681 (SC)

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

- 2.2 NCLT's power not to approve an RP to be exercised only if requirements u/s 31(1) not met and only by passing a reasoned order - *Ramkrishna Forgings Ltd. v. Ravindra Loonkar, Resolution Profession of ACIL Ltd.* - [2023] 156 taxmann.com 542 (SC)

SECTION 53 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - ASSETS, DISTRIBUTION OF

- 2.3 SC dismisses petition to review its Rainbow Papers decision on interpretation the waterfall mechanism provisions of section 53 of IBC - *Sanjay Kumar Agarwal v. State Tax Officer* - [2023] 156 taxmann.com 69 (SC)

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

- 2.4 SC finds from CCTV footage that NCLAT Bench wilfully defied its order but drops contempt proceedings after unconditional apologies from Members - *Orbit Electricals (P.) Ltd. v. Deepak Kishan Chhabria* - [2023] 156 taxmann.com 86 (SC)

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

- 2.5 Provisions of section 95 to section 100 of the IBC relating to personal guarantor are not unconstitutional as they do not violate article 14 and article 21 of the Constitution - *Dilip B Jiwrajka v. Union of India* - [2023] 156 taxmann.com 304 (SC)

3. HIGH COURT

REGULATION 3 OF THE IBBI (GRIEVANCE AND COMPLAINT HANDLING PROCEDURE) REGULATIONS, 2017 - FILING OF GRIEVANCE AND COMPLAINT

- 3.1 Where complaint filed against IBBI was disposed of by IBBI on ground that petitioners did not adhere to format prescribed by IBBI, petitioners were permitted to file a fresh complaint in format prescribed under IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 - **Renu Anand v. Insolvency and Bankruptcy Board of India** - [2023] 156 taxmann.com 120 (Delhi)

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- 3.2 Where at instance of certain home buyers, an FIR was registered against petitioner's real estate company alleging diversion of funds collected from them and petitioner had co-operated with investigation and had also furnished all requisite documents, which had been demanded by investigating officer, petitioner had made out a case for grant of interim protection till next date of hearing and accordingly, no coercive action was to be taken against petitioner, subject to his joining investigation as and when directed by investigating officer concerned - **Sidharth Chauhan v. State Govt. of NCT of Delhi** - [2023] 155 taxmann.com 354 (Delhi)

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

- 3.3 Where petitioners terminated lease agreements because corporate debtor - 'GO AIR' failed to make rental payments for aircraft and petitioner filed de-registration application of Aircraft with DGCA, however, in meantime moratorium was imposed on corporate debtor, since aircraft couldn't be flown during this period and petitioners were suffering from irreparable losses due to valuable and sophisticated nature of equipment, RP of corporate debtor was ordered to carry out mandatory maintenance/engine run of aircraft until its de-registration - **Accipiter Investments Aircraft 2 Ltd. v. Union of India** - [2023] 155 taxmann.com 455 (Delhi)

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

- 3.4 Where CIRP was initiated against corporate guarantor of corporate debtor, which culminated in approval of a resolution plan and financial creditor issued a demand notice invoking personal guarantee of petitioner in respect of debt of corporate debtor, no fundamental right of petitioner

was violated and, therefore, writ petition filed by petitioner was to be dismissed - **Vineet Saraf v. Rural Electrification Corporation Ltd.** - [2023] 155 taxmann.com 453 (Delhi)

SECTION 206 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONALS - ENROLLED AND REGISTERED PERSONS TO ACT

- 3.5 IBBI rightly denied registration as IP to applicant penalised by SEBI 11 years ago though his immediate past was clean - **Pooja Menghani v. Insolvency and Bankruptcy Board of India** - [2023] 156 taxmann.com 545 (Delhi)

SECTION 208 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONAL - FUNCTIONS AND OBLIGATIONS OF

- 3.6 Where petitioner-insolvency professional submitted that an inspection order issued to him had been issued by a person who had not been duly authorized by IBBI to issue inspection orders, since IBBI-respondent submitted that there was a complete answer to this argument and same was to be explained to court by filing an affidavit-in-reply on or before 31-10-23, IBBI was ordered to file their reply and impugned order suspending registration of petitioner was to be stayed - **Partha Sarathy Sarkar v. Insolvency & Bankruptcy Board of India (IBBI)** - [2023] 156 taxmann.com 87 (Bombay)

SECTION 220 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS - DISCIPLINARY COMMITTEE - APPOINTMENT OF

- 3.7 Where impugned order passed by disciplinary committee was passed by chairperson of IBBI and not by whole time member of disciplinary committee, but as per proviso to section 220(1), disciplinary committee can consist only of whole time members of IBBI, who can then pass orders, impugned order was not to be acted upon or given effect to until IBBI filed a reply to instant petition challenging said order - **Kairav Anil Trivedi v. Union of India** - [2023] 155 taxmann.com 355 (Bombay)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 3.8 Where date of default was 13-12-2013 and CIRP petition was filed by operational creditor on 10-2-2020 stating that corporate debtor had acknowledged debt in e-mail dated 11-2-2017 but said e-mail did not carry acknowledgement of debt rather it was only an information, said e-mail could not help in extending period of limitation and, therefore, impugned order passed by NCLT rejecting petition filed under section 9 on ground that claim was barred by limitation was free from all legal errors - **Zach System SPA v. Vivid Labs Ltd.** - [2023] 155 taxmann.com 364 (NCLAT - Chennai)

4. NCLAT

SECTION 3(17) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL SERVICE PROVIDER

- 4.1 Where corporate debtor was a financial service provider within meaning of section 3(17), no proceeding under section 7 could have been initiated, against a financial service provider and, therefore, impugned order passed by NCLT admitting section 7 application against corporate debtor was to be set aside - **Nitin Pannalal Shah v. Vipul H Raja** - [2023] 156 taxmann.com 231 (NCLAT- New Delhi)

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

- 4.2 Where financial creditor and corporate debtor entered into a transmission agreement for supplying connectivity for transmission of power to corporate debtor and bank guarantees issued by corporate debtor as per said agreement was invoked by financial creditor on ground that corporate debtor had failed to perform its obligation under agreement since invocation of bank guarantees was in terms of transmission agreement, application filed by liquidator to recover bank guarantees was rightly rejected by NCLT - **Vijay Kumar Garg v. Power Grid Corporation of India Ltd.** - [2023] 155 taxmann.com 497 (NCLAT - Chennai)

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- 4.3 Financial debt can be proved from other relevant documents and, it is not mandatory in terms of regulation 8(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that a written financial contract can be only basis for proving financial debt - **Agarwal Polysacks Ltd. v. K. K. Agro Foods and Storage Ltd.** - [2023] 155 taxmann.com 358 (NCLAT- New Delhi)
- 4.4 Where a financial creditor extended a financial assistance to a corporate debtor through compulsory convertible debentures (CCDs) and there was no condition in any of agreement that would change nature of CCDs from equity to financial debt, CCDs were in nature of equity instruments and it did not fall within definition of financial debt under section 5(8) - **IFCI Ltd. v. Sutanu Sinha (Resolution Professional of IVRCL Chengapalli Tollways Ltd.)** - [2023] 155 taxmann.com 561 (NCLAT - Chennai)

- 4.5 Where NCLT while admitting section 7 application against corporate debtor, recorded that there was a financial debt and default on part of corporate debtor and issue contesting debt and default was not raised by either party, there was no error on part of NCLT, in admitting said application - **Naresh Kumar Aggarwal v. CFM Asset Reconstruction (P.) Ltd.** - [2023] 155 taxmann.com 667 (NCLAT- New Delhi)

- 4.6 Where corporate debtor had itself joined hands with borrower and had taken all rights and liabilities along with co-borrower in respect of facilities extended by financial creditor, there was no error in order passed by NCLT in admitting CIRP application under section 7 against corporate debtor as a co-borrower - **Ashique Ponnampambath v. BMW India Financial Services (P.) Ltd.** - [2023] 156 taxmann.com 117 (NCLAT - Chennai)

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 4.7 Where appellant submitted EMD along with a tender but its tender was rejected by respondent, since EMD payment was not given for any goods or services, same could not be treated as operational debt and, therefore, NCLT had rightly rejected section 9 application filed by appellant on non-payment of EMD by respondent - **Supreme Transport Organization (P.) Ltd. v. Maharashtra Airport Development Company Ltd.** - [2023] 155 taxmann.com 362 (NCLAT- New Delhi)
- 4.8 Where NCLT passed an order dismissing section 9 application on ground that operational debt failed to subsist above minimum threshold limit of Rs. 1 crore as part payments towards said debt was adjusted by operational creditor towards other debts payable by corporate debtor, there was no foundational basis shown by NCLT for disregarding discretion exercised by operational creditor, which it was clearly entitled to exercise and, therefore, order of NCLT was to be set aside and section 9 application was to be remanded back - **Beetel Teletech Ltd. v. Arcelia IT Services (P.) Ltd.** - [2023] 155 taxmann.com 307 (NCLAT- New Delhi)
- 4.9 Operational debt cannot be interpreted widely so as to include any agreement between parties which does not specifically pertain to supply of goods or services; claims of operational creditor on basis of settlement agreement or MoU were contractual claims for which appropriate civil proceedings would lie and, therefore, petition filed under section 9 for initiation of CIRP for non payment of such claims was rightly rejected by NCLT - **Maulik Kirtibhai Shah v. United Telecoms Ltd.** - [2023] 155 taxmann.com 632 (NCLAT - Chennai)

SECTION 10A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - SUSPENSION OF INITIATION OF

4.10 Where default committed by corporate debtor having clocked prior to section 10A period, corporate debtor was clearly not entitled to claim benefit of section 10A period and, therefore, impugned order passed by NCLT dismissing section 9 application filed against corporate debtor on such claim was to be set aside - **Beetel Teletech Ltd. v. Arcelia IT Services (P.) Ltd.** - [2023] 155 taxmann.com 307 (NCLAT- New Delhi)

4.11 Where on default in repayment of loan by principal borrower financial creditor invoked a guarantee vide notice dated 1-10-2020, demand on part of guarantor arose only after notice was sent and, thus, there could not be default on part of guarantor on any earlier date and application filed by financial creditor under section 7 was barred by section 10A - **Pooja Ramesh Singh v. State Bank of India** - [2023] 156 taxmann.com 159 (NCLAT- New Delhi)

4.12 Where financial creditor invoked deed of guarantee of corporate guarantor on 25-8-2020 and filed an application under section 7 against corporate debtor for initiating CIRP, NCLT rightly held that section 7 application was non-maintainable as as default arose in a period excluded by provisions of section 10A - **Vikram Kumar v. Aranca (Mumbai) (P.) Ltd.** - [2023] 155 taxmann.com 419 (NCLAT- New Delhi)

SECTION 19 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL

4.13 Where new Liquidator filed an application before NCLT against son of deceased ex-Liquidator seeking direction to hand over all documents/records pertaining to corporate debtor, since it was always open for new liquidator to approach ex-management of corporate debtor for any documents as required and not received by liquidator, application filed by new Liquidator was wholly misconceived - **Mukesh Kumar Jain, Liquidator Trans Gulf Frozen Food Containers (P.) Ltd. v. Divyanshu Walia** - [2023] 156 taxmann.com 228 (NCLAT- New Delhi)

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

4.14 Where RP sought approval of resolution plan submitted by promoters of corporate debtor (MSME company), since resolution applicants had obtained MSME certificate subsequent to initiation of CIRP, resolution applicants i.e., promoters of corporate debtor were ineligible to submit resolution plan as per section 29A, read with section 240A - **Hari Babu Thota, Resolution**

Professional of Shree Aashraya Infracon Ltd., In re - [2023] 156 taxmann.com 115 (NCLAT - Chennai)

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

4.15 There can be different payments to assenting and dissenting unsecured financial creditors and, thus, resolution plan providing for nil liquidation value to appellant-dissenting unsecured financial creditor was rightly approved by NCLT - **Peter Beck and Partner Vermoögensverwaltung GMBH v. Sharon Bio-medicine Ltd.** - [2023] 155 taxmann.com 458 (NCLAT- New Delhi)

4.16 Where appellant had been recognized as a dissenting financial creditor and was part of CoC and, CoC by its decision had approved both distribution mechanism as well as resolution plan, which proposed distribution based on proportion of admitted claim, thus no error had been committed by NCLT in rejecting appellant's application claiming that its claim was not as per liquidation value attributable - **ICICI Bank Ltd. v. BKM Industries Ltd.** - [2023] 156 taxmann.com 507 (NCLAT- New Delhi)

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

4.17 Where CoC in its commercial wisdom approved resolution plan which was further approved by NCLT, since an unsuccessful resolution applicant had no vested right to challenge resolution plan approved by CoC in commercial wisdom, thus, there was no reason to entertain appeal of appellants against NCLT's order approving said resolution plan and same was to be dismissed - **Jaydip Ghosh v. Niraj Agarwal, RP of Castal Extrusion (P.) Ltd.** - [2023] 156 taxmann.com 353 (NCLAT- New Delhi)

SECTION 36 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATION ESTATE

4.18 Where during liquidation, respondent failed to submit a final settlement proposal of its dues in respect of statutory creditor (GST Department) after multiple time extensions and filed an appeal before CESTAT in terms of its GST dues only to stagger and dispute claims of statutory creditors, since speed is essence of IBC and respondent's actions were only to derail liquidation process, liquidator was directed to proceed with liquidation proceedings - **Sarvesh Kashyap, Liquidator of Helpline Hospitality (P.) Ltd. v. T.S. Murali** - [2023] 156 taxmann.com 694 (NCLAT- New Delhi)

4.19 Where appellant purchased a plot from corporate debtor, however neither security interest was created in favour of appellant nor a registered sale deed of said

plot was executed between corporate debtor and appellant, ownership of said plot rested with corporate debtor and, thus, NCLT rightly dismissed prayer of appellant to exclude said plot from liquidation estate of corporate debtor - **K. Jayant Prabhu v. Pankaj Srivastava** - [2023] 156 *taxmann.com* 351 (NCLAT - Chennai)

SECTION 38A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

4.20 Where accounts of corporate debtor were classified as Non-Performing Asset(NPA) in 2006 and corporate debtor had acknowledged financial debt by offering OTS proposals and acknowledgement letters dated 11-5-2017, since any documents executed during subsistence of limitation amounts to acknowledgment of dues and limitation revives afresh from date of said acknowledgement, section 7 petition filed on 19-3-2020 against corporate debtor was well within period of limitation - **A. L. Sundershan v. Syndicate Bank** - [2023] 156 *taxmann.com* 613 (NCLAT - Chennai)

SECTION 43 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - PREFERENTIAL TRANSACTIONS AND RELEVANT TIME

4.21 Where a transaction was made by corporate debtor in favour of appellant-ex-director within a period of two years immediately preceding insolvency commencement date, such transaction was clearly preferential transactions and benefit of exception that transactions were made during ordinary course of business could not be provided to appellant - **Ashique Ponnampambath v. Vibin Vincent** - [2023] 155 *taxmann.com* 563 (NCLAT - Chennai)

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

4.22 Where appellant-suspended director of corporate debtor entered into an unregistered lease agreement with corporate debtor for five years without authorisation by Board of Directors of corporate debtor, since said lease agreement was only notarised but not registered, appeal filed by appellant against direction to vacate said land claiming to be tenant of major portion of said land was to be rejected - **Jaydip Ghosh v. Niraj Agarwal, RP of Castal Extrusion (P.) Ltd.** - [2023] 156 *taxmann.com* 353 (NCLAT- New Delhi)

4.23 Where appellants filed an application before NCLT raising question of maintainability to an application filed by respondents, since NCLT had already

given opportunity to all appellants in respondent's application to file their reply on issue of maintainability as well as on merit filing separate application on issue of maintainability was not required - **Standard Chartered Bank v. Winsome Investor Welfare Association** - [2023] 155 *taxmann.com* 421 (NCLAT- New Delhi)

4.24 Where appellant, tenant of corporate debtor had not signed any tenancy agreement with corporate debtor and further Leave and Licence Agreement had also expired on 2-7-2020, NCLT possesses correct jurisdiction in considering a liquidator's application for vacation of premises in question and, thus, NCLT was correct in passing Impugned order, Impugned Order passed by NCLT not needed any intervention - **Adinath Jewellery Exports v. Brijendra Kumar Mishra, Liquidator of Shrenuj & Co. Ltd.** - [2023] 156 *taxmann.com* 320 (NCL-AT)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

4.25 Where RP had reduced claim amount of appellant, which was provisionally admitted on basis of Arbitral Award issued in favour of appellant, NCLT had rightly held that no error had been committed by RP in reducing amount of claim of appellant - **Intec Capital Ltd. v. Uday Kumar Bhaskar Bhat IRP of Atharva Auto Logistics (P.) Ltd.** - [2023] 155 *taxmann.com* 665 (NCLAT- New Delhi)

SECTION 196 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - BOARD - POWERS AND FUNCTIONS OF

4.26 In a WP, HC will not sit in appeal over IBBI's decision to close a complaint against RP despite irregularities where process **adopted** by IBBI is fair - **ABBA Consultants (P.) Ltd. v. Insolvency and Bankruptcy Board of India** - [2023] 156 *taxmann.com* 135 (Delhi)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

4.27 Where cause of action arose in year 2001 but balance sheets and related reports for years 2004-05 to 2016-17 contained an **acknowledgement** of debt which extended period of limitation, thus, no error had been committed by NCLT in admitting Section 7 application - **Sanil Prakash Sahu v. Kotak Mahindra Bank Ltd.** - [2023] 156 *taxmann.com* 671 (NCLAT- New Delhi)

5. NCLT

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

- 5.1 Where financial creditor filed instant petition under section 7 for initiation of CIRP against corporate debtor and debt claimed by financial creditor was acknowledged by corporate debtor vide various OTS, given in instant case, claim of financial creditor surpassed threshold limit of rupees one crore under section 4 and there was a financial debt and default in repayment of same, financial creditor had fulfilled all stipulations as required for initiating CIRP by placing evidence of occurrence default by corporate debtor, and thus, instant petition was to be admitted - **Syndicate Bank v. A.L. Sudershan Constructions Co. Ltd.** - [2023] 156 taxmann.com 543 (NCLT - Hyd.)

SECTION 25 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - DUTIES OF

- 5.2 Where corporate debtor/real estate developer failed to deliver possession of flat to allottee/financial creditor and when allottee filed its claim of possession with Resolution Professional, RP denied possession of flat citing procedural and financial constraints, since allottee agreed to receive possession of flat on an 'as-is-where-is' basis, RP was directed to handover possession of flat to allottee as per RP's duties under Code - **Anil Kaushal v. Logix Developers (P.) Ltd.** - [2023] 156 taxmann.com 242 (NCLT - New Delhi)

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

- 5.3 In explanation of section 30(2)(f) clearly lays down that consent of shareholders of corporate debtor shall be deemed to have been given under provisions of Companies Act, 2013 or any other law, if it is required for implementation of resolution plan and it will not be a contravention of Companies Act, 2013 or relevant law, thus, scope of section 30(2)(e) cannot be restricted to provisions of Code, 2016 and Regulations and notifications, circulars etc - **Realiable Finance Corpn (P.) Ltd. v. Nature India Communique Ltd.** - [2023] 156 taxmann.com 612 (NCLT - New Delhi)

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF - CORPORATE DEBTOR WAS A REAL ESTATE DEVELOPER

- 5.4 Where CIRP of corporate debtor, a real estate developer was initiated and **resolution** plan submitted by sole resolution applicant was approved by CoC, RP thus, filed an application for liquidation of corporate debtor, in view of fact that around 71 flats were sold in project, thus, in order

to protect interest of homebuyers, liquidation order was to be passed and flats that were sold, would be kept outside purview of liquidation estate (excluded assets) of corporate debtor - **Tharuvai Ramachandran Ravichandran, RP JBM Homes (P.) Ltd., In re** - [2023] 156 taxmann.com 241 (NCLT- Chennai)

SECTION 43 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - PREFERENTIAL TRANSACTIONS AND RELEVANT TIME

- 5.5 Where R1-**suspended** director of corporate debtor raised a loan at an exorbitant rate of interest from R3-GPA holder and, R3 sold land in favour of (R4), since R1 had failed to provide documents, which showed intention of corporate debtor to give undue advantage to R3 and to defeat rights of other creditors and, therefore, said transaction was avoidable transaction hit by section 43 - **Amazon Enterprises (P.) Ltd., In re** - [2023] 156 taxmann.com 544 (NCLT - Hyd.)

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

- 5.6 NCLT allows creditor's IRP plea against guarantor as the latter admitted the **deed** of guarantee which unconditionally allowed CD & creditor to vary terms of contract - **Siemens Financial Services (P.) Ltd. v. Raheem Rautther Meeran** - [2023] 156 taxmann.com 48 (NCLT - Kochi)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

- 5.7 Where corporate debtor committed default in repayment of loan amount on 31-3-2001 and it had acknowledged its liability in its financial statements for years 2004-05 to 2016-17, it had also submitted a proposed to enter into an OTS on 9-7-2018, which was **also** a clear acknowledgement of debt on part of corporate debtor, and, therefore, application filed under section 7 on 15-10-2019 against corporate debtor was within limitation period of three years - **Kotak Mahindra Bank Ltd. v. Gwalior Polypipes Ltd.** - [2023] 156 taxmann.com 634 (NCLT - Indore)

SECTION 240A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - MICRO, SMALL AND MEDIUM ENTERPRISES - APPLICATION OF CODE TO

- 5.8 Neither Promoters/Ex-Directors nor RP/COC are empowered under IBC 2016 to obtain an MSME Certificate post-commencement of CIRP with sole purpose of opening or enabling a back door entry to defaulting promoters, who are otherwise barred under Section 29A of IBC, 2016 to submit EOI/Resolution Plan - **Hi-Tech Resource Management Ltd. v. Overnite Express Ltd.** - [2023] 156 taxmann.com 611 (NCLT - New Delhi)

ACCOUNT AND AUDIT UPDATES

1.1 ICAI issues Exposure Draft of Lack of Exchangeability - Amendments to Ind AS 21

Editorial Note : ICAI invites comments from the stakeholders on the exposure draft of Lack of Exchangeability - Amendments to Ind AS 21. This exposure draft is issued to bring in line with the Indian Accounting Standards with IFRS Standards. In order to incorporate changes brought in IFRS standard, ICAI issued the exposure draft of Lack of Exchangeability. Comments can be submitted through <http://www.icai.org/comments/asb/> or via mail at <mailto:commentsasb@icai.in> till 01.12.2023

1.2 ICAI issues a Report on Audit Quality Review

Editorial Note : The Quality Review Board (QRB) of the Institute of Chartered Accountants of India (ICAI) has issued a Report on Audit Quality Review. This report is a comprehensive summary of the procedure of selection of audit firms, and conduction of review, thereby highlighting the key findings and observations drawn on the review of audit of private limited companies. The report contains detailed observations with respect to SAs, Ind AS and AS.

1.3 ICAI issues Exposure Draft of Standards on Auditing for Limited Liability Partnerships

Editorial Note : The Institute of Chartered Accountants of India (ICAI) has issued the Exposure Draft of Standards on Auditing (SAs) for Limited Liability Partnerships (LLPs) for comments from various stakeholders. The Standards on Auditing applicable to the audit of companies should apply mutatis mutandis to the audit of limited liability partnerships. The comments can be submitted electronically through <https://forms.gle/kcWPzPSPgojWEm7w7> or through e-mail via <mailto:aasb@icai.in> till 06.01.2024.

EXPLORING THE PENUMBRA OF EVIDENCE UNDER GST LAW:



CA P Ashwin Kumar

Introduction:

Between truth and untruth there lies a penumbral zone where logic and principle falter. Penumbra refers to such grey area inhabited with bright and blurred lines. GST law is rife with such penumbral zones. It is eclipsed between perfect shadow and full light on all sides. I, as a fellow learner of this law, perceive GST law to be more metaphorical on many instances. To my mind, this law discusses about concrete disputes in abstract terms leaving the canal of uncertainty wide open. By reifying rules, law develops frontiers, cores and cutting edges. Without splitting hairs, fine line gets drawn. However, when a law allows penumbra to be embraced, it is the evidence which acts as a sharp line to penetrate the uncertainty and re-enforce the law. Evidence is the shadow of facts. It gets the limelight when the law recognizes the same.

Law of Evidence:

Law of Evidence can be traced back to Ancient Hindu Period. The purpose of any trial is to ascertain the truth. It is emphasized in the Ancient Hindu Dharma that a Judge using his skill should extricate the deceit like a physician taking out from the body an iron dart with the help of surgical instruments. Even Vashista recognizes three kinds of evidence:

- Lekhya (Documentary Evidences)
- Sakshi (Witnesses)
- Bukthi (Possession)

Besides the above, one more kind of evidence was recognized which is called as “Divya”. It was exceptionally practised as it was in the crudest form. Glimpse of this kind of evidence can also be seen in great mythological Ramayana where Lord Rama asked his wife Sita to prove her purity by getting into fire. It can be well argued that the Rule of Evidence is not a British (Foreign) Tree implanted in the Indian Soil. It is the only the codification of Rules of Law of Evidence which has happened in the British Period and Indian Evidence Act, 1872 came into force on 1st September 1972.

The Indian Evidence Act, 1872 not applicable to Quasi-Judicial Proceedings

Now, let me pose a fundamental question whether the provisions of The Indian Evidence Act, 1872 applies to Quasi-Judicial Proceedings or not. The Provisions of the Indian Evidence Act, 1872 shall not apply to departmental proceedings or inquiries. The reason is that the officers holding such proceedings do not possess the knowledge of law.

Revenue Authorities are not fettered by Rules of Evidences and Pleadings. It is a well settled

principle that rule of evidences are not applicable with its rigors in quasi-judicial proceedings, the basic requirement is the observance of principles of natural justice and delinquent person to be informed of all materials against him to put up his defence.¹

However, it is equally clear that in making assessments, Revenue Authorities are not entitled to make pure guess and make an assessment without reference to any evidence or any material at all.²

In short, every statutory absence cannot be treated as a grant of unbridled discretion available to Revenue Authorities to do assessments disregarding evidence. Suspicion however grave, cannot substitute evidences.

Penumbral Uncertainty regarding Disclosure of Evidence as an element of fair hearing:

Eminent Jurist Sir John Holt Said “*It is abominable to convict a man behind his back*”. The general principle is that no evidence should be accepted at the back of the other party and if it is accepted so, the same shall be made available to the other party. Right to fair hearing includes the right to disclosure of relevant evidence. If relevant evidential material is not disclosed at all to party who is substantially prejudiced by it, there is *prima facie* a breach of natural justice.

An assessment made without disclosing to the assessee the information supplied by the departmental representative and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assessee wanted to produce in support of his case constitutes a violation of the fundamental rules of justice and calls for the powers under Art. 136 of the Constitution.³

Instances in CGST Act, 2017 where disclosure of Evidence becomes Quint Essential by Quasi-Judicial Authority:

Section 64 of the CGST Act, 2017

To protect the interest of the revenue, Section 64 of the CGST Act, 2017 confers power to the Proper Officer to summarily assess the tax liability on evidence coming to his notice showing tax liability of such person. Although urge to protect interest on revenue is glaringly palpable on reading the said section, disclosure of such evidence at least on post decisional basis or remedial basis would be required as the subject section cannot disregard principles of natural justice in entirety.

Rule 86A of the CGST Act, 2017

Another instance that comes into my mind would be Rule 86A of the CGST Rules, 2017 wherein disclosure of reasons becomes mandatory at least on post decisional basis or remedial basis would be required. Right to know the reasons behind an administrative order having civil consequences is a well embedded principle forming part of “*Doctrine of Fair Play*” which runs like a thread through the warp and weft of the fabric of our Constitutional order made up by Articles 14 and 21 of the Constitution of India.⁴

¹ Commissioner of Customs, Patna Vs Ghanshyam Prasad Gupta, 2011 (266) E.L.T 448 (Pat.), Para 7

² Dhakeshwari Cotton Mills Ltd Vs Commissioner of Income Tax 1955 SCR (1) 941

³ Seth Gurmukh Singh v. Commissioner of Income-tax, Punjab (1944 I.T.R. 393)

⁴ New Nalbandh Traders vs State of Gujarat & 2 others 2022-VIL-217- GUJ dated 23-02-2022

Some Provisions of Indian Evidence Act, 1872 - relevant to CGST Act, 2017

Evidentiary Value of Entries in the Books of Accounts – Section 34 of the Indian Evidence Act, 1872:

Section 34 of the Indian Evidence Act, 1872 says when the court has to enquire, 'Entries' made in the books of account shall be relevant, however, the same shall not constitute sufficient evidence to discharge the liability. To put to succinctly, entries in the books of accounts does not serve as a substantive piece of evidence but they serve as corroboration to other existing independent piece of evidence.

Entries in Diaries

In **L.K Advani Vs CBI 1997 CR.LJ 2559 &2575 (Delhi)** it has been held that entries in diaries are not substantive piece of evidence and such entries can be used only by way of corroboration to other piece of evidence.

Entries in loose sheet of papers:

In **CBI Vs VC Shukla & Others 1998 3 SCC 410** it is held that file containing loose sheet of paper are not books and does not constitute entries made in books of accounts and the same is not admissible as evidence at all.

Absence of Entries in Books – Constitute an Evidence

In **State of Andhra Pradesh Vs Cheemalapati Ganeshwar Rao AIR 1963 SC 1850**, the Hon'ble SC held that such non- existence of entries in the books of Accounts shall be relevant under Section 11 of the Evidence Act as the absence of entries would be inconsistent with the transaction to be proved but it cannot be brought under Section 34 of the Indian Evidence Act, 1872.

Evidence obtained during illegal search

It is no more *res integra* that evidence obtained during a search proceeding which is declared illegal would not be treated as *ex-facie* inadmissible just because search is declared illegal but the same has to be carefully examined. Thus, evidence obtained during illegal search has to be thoroughly examined and can be used against the taxpayer.

The above principles discussed shall *mutatis-mutandis* apply in context of Section 67(2) CGST Act, 2017.

Section 65B of the Indian Evidence Act, 1872 – Admissibility of Electronic Evidence

Section 65B of the Indian Evidence Act, 1872 is about admissibility of electronic record as evidence. Copies of electronic records are secondary evidences. Admissibility depends on satisfaction of conditions prescribed under the said section. Section 65B of the Indian Evidence Act, 1872 prescribes safeguards to ensure source & authenticity of such electronic records. Since electronic records are susceptible to tampering, alteration, excision, transposition etc... without such safeguards, the whole trial based on proof of electronic records can amount to travesty of justice.⁵

Although rules of evidences are not applicable to quasi - judicial proceedings, now it is *quintessential* on the part of GST Department to comply with the conditions of Section 65B of the Indian Evidence Act, 1872 before relying on the electronic records. Not complying with such conditions can amount to travesty of justice.

⁵ Anvar P.V. Vs P.K Basheer AIR 2015 SC 180

Burden of Proof on various Issues in short

| S.No | Issue | Evidentiary Burden | Case Law |
|------|-------------------|--------------------|---|
| 1 | Taxability | Revenue | Hindustan Zinc Ltd Vs CCE Jaipur 2005 2 SCC 662 |
| 2 | Claim of ITC | Taxpayer | MIRC Electronics Ltd Vs Commissioner of CGST Thane 2021 TIOL 444 CESTAT MUM |
| 3 | Unjust Enrichment | Taxpayer | KMS Coach Builders Vs Commissioner of CCE, Bangalore |
| 4 | Exemption | Taxpayer | DR Enterprises Ltd Vs Asst Collector of Customs and others 2015 TIOL 179 SC Customs Para 28 |

Right of Cross Examination:

Right of cross examination is the inherent right of the taxpayer. It is not only the duty of department to provide the copies of statement or reports relied upon but also the taxpayer is entitled to do cross examination. During Adjudication proceedings, denial of right of cross examination of witness would be violative of principles of natural justice. It is necessary in the interest of justice that all relevant evidence must be submitted, the party must be informed on the evidence on which reliance is placed and to allow witnesses to be questioned and to allow evidence and cross examination on the same.

Conclusion

Thus, the rules regarding evidence in the administration of justice are of high importance. No substantive law can be enforced without the help of rules of law of evidence. If the foundation is weak the structure is bound to collapse. If the evidentiary value of documents is not rightly appraised, administration of justice is bound to go astray.

DOCTRINE OF SUBSTANCE OVER FORM - CONCEPT, MEANING AND APPLICATIONS



CA Manoj Nahata

Introduction:

Recently, we have witnessed the ICC Men's Cricket World Cup 2023. Often in the game of cricket, it is said that **form is temporary and class is permanent**. It essentially means that the form of a player may sometimes down but it is his class that is always permanent because of his natural instincts. The Doctrine of "**Substance over form**" is also somewhat similar to this concept which recognizes the substance of a transaction over its forms. It is the substance of a transaction that is permanent in nature and thus it prevails over its legal form. This doctrine is one of the important doctrines in taxation matters.

Concept & Meaning of Substance over form:

Accounting Concept

Substance over form in accounting refers to a concept that transactions recorded in the financial statements and accompanying disclosures of an entity must reflect their 'economic substance' rather than their 'legal form'. At certain times the 'legal form' of a transaction may not provide its true image. At times, the legal form can be of importance, but it may be ignored to present more relevant knowledge to the users of financial statements, who should not be misled.

Substance over form is an accounting principle used "to ensure that financial statements give a complete, relevant, and accurate picture of transactions and events". If an entity practices the 'substance over form' concept, then the financial statements will show the overall financial reality of the entity (economic substance), rather than the legal form of transactions (form). In accounting for business transactions and other events, the measurement and reporting is for the economic impact of an event, instead of its legal form. Substance over form is critical for reliable financial reporting.

Example:

If a Company buys an asset on a Hire Purchase System by making a certain amount as advance payment and the remaining amount over a certain period of time say, a 10-year period. Now, despite legally owning the asset from an 'economic point of view' the Company will not be recognized as the 'legal owner' until it pays the final installment at the end of the tenth year.

Taxation Concept

Under Taxation, the Doctrine of *Substance over form* allows the tax authorities to ignore the legal form of an arrangement and to look to its actual substance in order to prevent artificial structures from being used for tax avoidance purposes.

The ultimate purpose is to prevent taxpayers from employing artificial or manufactured structures solely to avoid or minimize taxes. Under the substance over form doctrine, tax authorities have the power to re-characterize or reclassify a transaction if they believe that the form adopted by the taxpayer does not reflect the underlying economic substance. If a transaction is found to be improperly structured or lacks economic substance, tax authorities also have the authority to impose penalties and interest on the tax liability associated with the re-characterized transaction. This serves as a deterrent to discourage taxpayers from engaging in tax avoidance schemes.

The doctrine implies that a tax benefit or exemption from liability that cannot be achieved directly, cannot be achieved indirectly either. Its application is based on the rationale that entities in the same economic position should bear the same tax burden. It challenges the legal form of transaction and substitutes it with economic form i.e. commercial reality to tax it accordingly. It is to be applied only when the authorities can establish that the transaction is a sham.

Often tax authorities use this doctrine to curb tax avoidance to serve the overall importance of faithful representation and to give effect to the main objects of tax statutes and treaties.

Example: -

- Co-ownership formed between three brothers to get rental income from their ancestral immovable property. The amount was credited to the common Bank account of the Co-owners and after meeting all the expenses the rental income was divided among the three brothers equally. Such an arrangement is often considered by the tax department as the 'Association of Persons (AOP)' and separate threshold benefits under the indirect tax law are denied to the individual co-owners.
- Auto /Tempo fares reported under the head 'freight' in the Profit & Loss will not *ipso facto* be considered as chargeable to GST under reverse charge mechanism. Mere presentation as 'freight' in the P & L account will not give jurisdiction to the tax department to tax a transaction until and unless exact the nature thereof is ascertained supported by documentary evidence. Thus it is not the legal form or presentation but the real or actual substance of transaction is important for the levy.

Applications of substance over form:

There have been instances where the Courts have relied on the substance of the transaction and held that the said transaction/scheme/arrangement etc. have not been entered into with a contrived objective.

- The Supreme Court in the case of **CIT v. A Raman Co.[1968] 67 ITR 11** observed that avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. Taxpayer may resort to a device to divert the income before it accrues or arises to him. Effectiveness of the device depends not upon considerations of morality, but on the operation of the Act.

- The most important case in respect of 'substance over form' is **McDowell and Co. Ltd. v. CTO (1985) 3 SCC 230/CTO (1985) 154 ITR 148 (SC)** as it had imported the 'substance over form' doctrine by diffusing the distinction between tax avoidance and tax evasion and holding them in a similar light. Supreme Court said tax planning is legitimate, however if the colourable devices are used to plan your affairs so as to reduce the tax liability, the officer has the right to disregard those colourable devices and to make the addition. It pressed on an individual's duty of paying their tax liabilities without resorting to any subterfuge, thereby narrowing down the definition of legal tax planning. The case was about mitigation of sales tax by having the buyers separately pay the excise tax such that this is not covered in the taxable basis of sales tax to be paid by the company. The court held that the excise duty did not become part of the circulating turnover of the McDowell's distillery as the same was paid directly to the excise authorities by the buyers thus not becoming part of the sales tax over the turnover of the company. The assessee thus lost the case in the Supreme Court. There was no scope for discussing tax avoidance or tax evasion in the case of the assessee.
- In the year 2012, the Supreme Court delivered a landmark decision in the case of **Vodafone International Holdings BV v. Union of India [2012] 17 taxmann.com 202/204 Taxman 408/341 ITR 1**, which dealt with the taxability of capital gains arising on transfer of shares between two non-residents where the shares were deriving value from its subsidiaries from India. The Supreme Court, on the facts of the case, observed that one should keep in mind the following factors such as: the concept of participation in investment, the duration of time during which the Holding Structure exists; the period of business operations in India; the generation of taxable revenues in India; the timing of the exit; the continuity of business on such exit. In short, the onus is on the Revenue to identify the scheme and its dominant purpose. Thus, a corporate business purpose must exist to evidence the fact that the impugned transaction is not undertaken as a colourable or artificial device. The Apex Court, in this case, ruled that the Department must employ the 'look at' test by looking at the transaction holistically rather than the 'look through' test by splitting/dissecting the transaction.
- Further, in case of **Super Poly Fabriks Ltd. v. Commissioner of Central Excise, Punjab(2008) 217 CTR (SC) 107 /(2008) 16 VST 115 (SC)** the Supreme Court held that a contract or an agreement has to be read as a whole to understand the purpose and object of the parties agreeing to the laid down terms and conditions. Moreover, if the terms used in the agreement are not conclusive one has to look at the substance of the transaction over form such that it is not always possible that the name given to a transaction would depict the real nature of the transaction to ascertain valid taxes.
- In the case of **Bhopal Sugar Industries limited v. STO Bhopal(1977) (3 SCC 147)** the issue was in relation to the terms used in an agreement i.e whether the use of words agent, buyer, seller etc. would be sufficient to depict the status of the concerned parties? The court held that it is well settled that while interpreting the terms of the agreement, the Court has to look to the substance rather than the form of it. The mere fact that the word 'agent' or 'agency'

is used or the words 'buyer' and 'seller' are used to describe the status of the parties concerned is not sufficient to lead to the irresistible inference that the parties did in fact intend that the said status would be conferred. Thus the mere formal description of a person as an agent or buyer is not conclusive, unless the context shows that the parties clearly intended to treat a buyer as a buyer and not as an agent.

- Hon'ble Supreme Court in the case of **Moped India Limited v. Assistant Collector of Central Excise Nellore and Others [1986 (23) E.L.T. 8 (S.C.) / (1986) 1 SCC 125]**, held that the amount allowed to the dealer has been referred to in the agreement as commission was a trade discount and the label given by the parties would not be a determinative factor to call it as a trade discount or a commission. The court observed that in any commercial transaction the substance must be recognized rather than its form. The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form. Thus while determining the liability in a taxing statute the court has to decide according to the real nature of the transaction as it is not the name of the tax but the real nature of its transaction to decide which category the event falls into to be taxed.
- The Madras High Court in the case of **CIT v. High Energy Batteries (India) Ltd. [2012] 22 taxmann.com 242/208 Taxman 213/348 ITR 574** held that sale and lease back transaction is not a sham transaction. The High Court relied on the decision of the Supreme Court in **Vodafone International Holdings B.V. (supra)** where the Supreme Court had observed that to ascertain the legal nature of the transaction, the Courts have to "look at" the entire transaction as a whole and not to adopt a dissecting approach.
- In **Nilkantha Narayan Singh v. CIT (1951) 20 ITR 8 (Patna)**, it is well settled that an agreement has to be read as a whole and the intention of the parties is to be gathered from it. Moreover, if the terms used in the agreements are not conclusive and one has to look at the substance rather than the form. In addition, it is equally well settled that a name given to a transaction by the parties does not necessarily decide the nature of the transaction. Thus, it is the substance of the contract that has to be regarded.
- In a very recent case of **C.C., C.E. & S.T., Bangalore (Adjudication) v. M/s Northern Operating Systems Private Limited in civil Appeal Nos.2289-2293 of 2021, decided on 19-05-2022/2022 (61) G.S.T.L.129 (S.C.)** the Hon'ble Apex Court has applied the principle of substance over form and held that employees under secondment arrangement are technically not the real employees of the Indian Company. The form and style of employee secondment agreement was "not decisive of its nature" and re-characterize the relationship between the parties as of "manpower supply services" by one to another. The foreign entity continues to qualify as the employer of such seconded employees and the arrangement is in the nature of "manpower recruitment or supply agency service" provided by the foreign entity to the Indian entity, and therefore leviable to services. The aforesaid decision has re-emphasized that every secondment arrangement's facts and substance need to be evaluated in

detail to determine the secondees' real employer and the transaction's nature. Though this judgement was in the context of Service Tax law but the principle will equally hold good in GST regime as well.

Limitations or Restrictions on use of this doctrine:

The doctrine of 'Substance over form' is also distinguished by the Courts in several cases. Thus the doctrine is not of universal application under all circumstances. There are certain limitations to the operation of this doctrine. Over the years, several Courts rejected pleas of substance over form on different grounds. Let us try to understand those situations with some judicial precedents wherein this doctrine was not appreciated.

- In '**State of Rajasthan v. Basant Agrotech (India) Ltd. AIR 2014 SC 487** the Apex Court quoted with approval the opinion of the Privy Council in the celebrated Bank of Chettinad case and other leading decisions to conclude that taxation based on 'substance of the matter' was adversative to the settled jurisprudential norms. The court observes –

“14. The said passage, as has been stated in the said pronouncement, was quoted with approval by the Privy Council in Bank of Chettinad v. CIT AIR 1940 PC 183 and the Privy Council had registered its protest against the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position. Proceeding further the learned Judge stated that:

"It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provision of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter." [Emphasis supplied]"

- The Apex Court in case of **Larsen & Toubro Limited and anr v. State of Karnataka and anr. (2013-TIOL-46-SC-CT-LB)**, wherein the legal test of a works contract as defined under clause (29A)(b) of Article 366 had been analyzed, and the Supreme Court had held that a single and indivisible contract for supply and labour was allowed to be split. The dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are of the nature contemplated in Article 366(29A). Even if the dominant intention of the contract is not to transfer the property in goods and rather it is rendering of service or the ultimate transaction is transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if such contract otherwise has elements of works contract. The enforceability test is also not determinative.

- The larger (5-Judge) bench of the Apex court, on a writ petition in **Kone Elevator India Pvt. Ltd v. State of Tamil Nadu and ors (2014-TIOL-57-SC-CT-CB)**, held that the contract for manufacture, supply and installation of lifts in a building is a “works contract” and not a “contract for sale”. The decision has been taken by majority rule with four members ruling in favour of the decision versus one against. The larger bench has overruled the earlier decision of a 3-member bench of the Apex Court in **State of AP v. Kone Elevator India Pvt. Ltd (2005-TIOL-30-SC-CTLB)**, wherein it had been held that the main object of the contract was to sell the lifts, and that the works done for installation was incidental to the sale of lifts. The Apex Court in the instant case held that the “dominant nature test” or “overwhelming component test” were not applicable to the transaction in hand. After the lifts were assembled and installed with skill and labour at site, it became a permanent fixture of the building, and hence it was not a case of sale of chattel or a chattel being attached to another chattel.
- Similarly, a Three-Judge Bench in **BSNL v. Union of India(2006) 3 SCC 1** reversed a Two-Judge Bench decision in **State of U.P. v. Union of India(2003) 130 STC 1 (SC)/(2003) 3 SCC 239** which had stressed upon the substance test stating that the terminology employed to describe an activity as sale or service is not conclusive in itself. By calling sale as service or vice versa, the substance of the transaction will not get altered. The question has to be determined, by discerning the substance of the transaction in the context of the contract between the parties or in a case of statutory contract in the light of the relevant provisions of the Act and the Rules. Thus before determining the taxes which could be imposed in relation to an agreement the intention of the parties and nature of transaction is to be determined as per law laid down by the Apex court. Thus clearly, the substance over form debate has generally been rejected in its application in the realm of indirect taxes.
- In case of **CCE v. Acer India Ltd., (2004) 8 SCC 173, 24-09-2004** Three-Judge Bench of Supreme Court while determining the valuation of supply categorically ruled out the application of the substance over form test in this sphere of tax laws. Explaining the relevant propositions in the decision, under the heading “principles of interpretation of a taxing/fiscal statute”, the Supreme Court, inter alia, culled out the following rules governing the interpretation -

“33. It is also a well-settled rule of construction of a charging section that before taxing a person it must be shown that he falls within the ambit thereof by clear words used as no one can be taxed by implication. It is further well settled that a transaction in a fiscal legislation cannot be taxed only on any doctrine of “the substance of the matter” as distinguished from its legal signification, for a subject is not liable to tax on supposed “spirit of the law” or “by inference or by analogy.” The taxing authorities cannot ignore the legal character of the transaction and tax it on the basis of what may be called “substance of the matter.” One must find the true nature of the transaction.”

Codification of Substance over form(GAAR):

The Central Government keeping in view the aggressive tax planning with the use of sophisticated structures felt that there is a need for statutory provisions so as to codify the doctrine of "substance over form". The real intention of the parties and effect of transactions and purpose of an arrangement is to be taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose. The net effect of the GAAR provisions is to disregard the legal form of these transactions and look only at the substance, that is the 'Commercial Reality/Economic substance' and tax the entity accordingly.

Finally, the Finance Bill of 2012 introduced the statutory General Anti-Avoidance Rules (GAAR). The Memorandum to the Finance Bill, 2012 stated that the question of substance over form has consistently arisen in the implementation of taxation laws. In the Indian context, anti-avoidance principles are based on various judicial pronouncements where judicial decisions have varied. While some courts in certain circumstances had held that legal forms of transactions can be dispensed with and the real substance of the transaction can be considered while applying the taxation laws, others have held that the form is to be given sanctity

The GAAR provisions after getting deferred for some time finally came into effect from Assessment Year 2018-19 (Financial Year 2017-18). GAAR provisions are applicable if the transaction is an impermissible avoidance arrangement. The term 'impermissible avoidance arrangement' has been defined in these provisions. Under the provisions of GAAR, it is important to prove that the main purpose of a transaction is to obtain the tax benefit. Further one of the additional conditions is to justify that the transaction lacks commercial substance or is deemed to lack commercial substance.

Since then the action on the anti-avoidance front (domestic or international) has been only growing. Though GAAR is a domestic anti-avoidance measure, it is provided in Section 90(2A) of the Act that provisions of GAAR shall apply to the taxpayer even if such provisions are not beneficial to him. In other words, once the provisions of GAAR are invoked, it will have an overriding effect on the beneficial tax treaties.

Substance over form in Indirect Tax/GST:

The application of Doctrine of Substance over form is not much seen in the Indirect Tax law. Under Indirect Tax law, the tax authorities usually do not disregard the legal structure and recharacterize the transaction until and unless there is fraud or some other compelling circumstances demonstrated. The reason is possibly that unlike Direct Tax law the Government has not yet introduced any "general anti-avoidance rules" under the Indirect Tax law. So one may argue that in the absence of anti-avoidance rules the taxpayer's choice of form of a transaction should continue to hold good.

However, the recent judgement of Apex Court in the case of Northern Operating Systems

Private Limited has ignited the debate on the Substance over Form in indirect tax law. Under GST law also the author feels that there may be certain areas where judicial authorities may perhaps apply this doctrine to ascertain the true character and form of transactions. The matters may be related to Valuation, Transactions between related parties, Holding and Subsidiary transactions, Circular Trading, Reversal of output tax reported as an Input tax credit, Sales and leaseback transactions, Schedule-I transactions, etc. are some of the key areas where we may witness the application of this doctrine in future.

Conclusion:

There is no straight jacket formula to judge substance over form. Merely because a particular transaction results in a tax benefit cannot be a parameter to frame that the transaction is a colorable device for tax avoidance. The business consideration and commerciality of transactions are often recognized by the Courts. Therefore, each case has to be examined based on the facts and circumstances and applying the important principles laid down by the Courts.

***Disclaimer:** Views expressed here-in-above are purely personal views of the author. The possibility of other views on the subject matter cannot be ruled out. So, the readers are requested to refer relevant provisions of statute, latest judicial pronouncements, circulars, clarifications etc. before acting on the basis of the above write up.*

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(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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APPLICATION FOR MEMBERSHIP

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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
 Information Technology Human Resource Banking & Financial Services Investment Consultancy Others

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 : _____

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Date of Receipt _____ Membership Approved on _____ Membership No. Allotted _____

Chairman, Membership Sub-Committee

President

General Secretary

NOTES : 1. Fee for Life Membership (a) Individual Rs. 7,500/- (G.S.T. Extra @ 18%), (b) If application is made within a period of 5 years of attaining first professional qualification Rs. 5,000/- (G.S.T. Extra @ 18%), (c) Corporate Bodies Rs. 7,500/- (G.S.T. Extra @ 18%).

2. Cheques should be drawn in favour of "Direct Taxes Professionals' Association".

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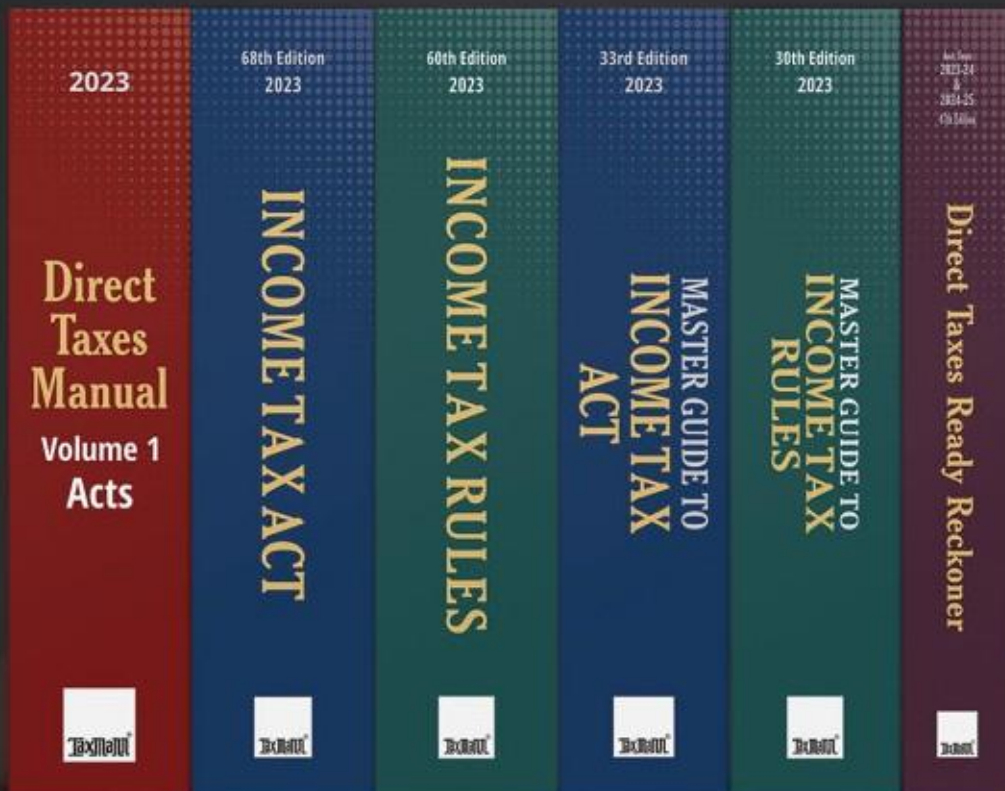
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